

**SENATE BILL No. 299**

By Committee on Financial Institutions and Insurance

1-23

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1 AN ACT concerning insolvent insurance companies; pertaining to certain  
2 exemptions for the federal home loan bank; amending K.S.A. 40-3609,  
3 40-3619, 40-3625, 40-3629, 40-3630 and 40-3631 and repealing the  
4 existing sections.  
5

6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 40-3609 is hereby amended to read as follows: 40-  
8 3609. (a) *Except as provided in subsection (c)*, any receiver appointed in a  
9 proceeding under this act may at any time apply for, and the district court  
10 of Shawnee county may grant, such restraining orders, preliminary and  
11 permanent injunctions and other orders as may be deemed necessary and  
12 proper to prevent:

- 13 (1) The transaction of further business;
- 14 (2) the transfer of property;
- 15 (3) interference with the receiver or with a proceeding under this act;
- 16 (4) waste of the insurer's assets;
- 17 (5) dissipation and transfer of bank accounts;
- 18 (6) the institution or further prosecution of any actions or  
19 proceedings;
- 20 (7) the obtaining of preferences, judgments, attachments,  
21 garnishments or liens against the insurer, its assets or its policyholders;
- 22 (8) the levying of execution against the insurer, its assets or its  
23 policyholders;
- 24 (9) the making of any sale or deed for nonpayment of taxes or  
25 assessments that would lessen the value of the assets of the insurer;
- 26 (10) the withholding from the receiver of books, accounts, documents  
27 or other records relating to the business of the insurer; or
- 28 (11) any other threatened or contemplated action that might lessen the  
29 value of the insurer's assets or prejudice the rights of policyholders,  
30 creditors or shareholders, or the administration of any proceeding under  
31 this act.

32 (b) *Except as provided in subsection (c)*, the receiver may apply to  
33 any court outside the state for the relief described in subsection (a).

34 (c) *No federal home loan bank shall be stayed, enjoined, or*  
35 *prohibited from exercising or enforcing any right or cause of action*  
36 *regarding collateral pledged under:*

- 1       (1) *Any federal home loan security agreement; or*  
2       (2) *any pledge, security, collateral or guarantee agreement or other*  
3 *similar arrangement or credit enhancement relating to such security*  
4 *agreement.*

5       Sec. 2. K.S.A. 40-3619 is hereby amended to read as follows: 40-  
6 3619. (a) *Except as provided in subsection (d)*, any court in this state  
7 before which any action or proceeding in which the insurer is a party, or is  
8 obligated to defend a party, is pending when a rehabilitation order against  
9 the insurer is entered shall stay the action or proceeding for 90 days and  
10 such additional time as is necessary for the rehabilitator to obtain proper  
11 representation and prepare for further proceedings. The rehabilitator shall  
12 take such action respecting the pending litigation as necessary in the  
13 interests of justice and for the protection of creditors, policyholders and  
14 the public. The rehabilitator shall immediately consider all litigation  
15 pending outside this state and shall petition the courts having jurisdiction  
16 over such litigation for stays whenever necessary to protect the estate of  
17 the insurer.

18       (b) *Except as provided in subsection (d)*, no statute of limitation or  
19 defense of laches shall run with respect to any action by or against an  
20 insurer between the filing of a petition for appointment of a rehabilitator  
21 for that insurer and the order granting and denying that petition. Any  
22 action against the insurer that might have been commenced when the  
23 petition was filed may be commenced for at least 60 days after the order or  
24 rehabilitation is entered or the petition is denied. The rehabilitator, upon an  
25 order for rehabilitation, within one year or such other longer time as  
26 applicable law may permit, may institute an action or proceeding on behalf  
27 of the insurer upon any cause of action against which the period of  
28 limitation fixed by applicable law has not expired at the time of the filing  
29 of the petition upon which such order is entered.

30       (c) Any guaranty association or foreign guaranty association covering  
31 life or health insurance or annuities shall have standing to appear in any  
32 court proceeding concerning the rehabilitation of a life or health insurer if  
33 such association is or may become liable to act as a result of the  
34 rehabilitation.

35       (d) *No federal home loan bank shall be stayed, enjoined, or*  
36 *prohibited from exercising or enforcing any right or cause of action*  
37 *regarding collateral pledged under:*

- 38       (1) *Any federal home loan security agreement; or*  
39       (2) *any pledge, security, collateral or guarantee agreement or other*  
40 *similar arrangement or credit enhancement relating to such security*  
41 *agreement.*

42       Sec. 3. K.S.A. 40-3625 is hereby amended to read as follows: 40-  
43 3625. (a) The liquidator shall have the power:

1 (1) To appoint a special deputy or deputies to act for the liquidator  
2 under this act, and to determine reasonable compensation for such  
3 deputies. The special deputy shall have all powers of the liquidator granted  
4 by this section. The special deputy shall serve at the pleasure of the  
5 liquidator;

6 (2) to employ employees and agents, legal counsel, actuaries,  
7 accountants, appraisers, consultants and other personnel necessary to assist  
8 in the liquidation;

9 (3) to appoint an advisory committee of policyholders, claimants or  
10 other creditors including guaranty associations should such a committee be  
11 deemed necessary. Such committee shall serve at the pleasure of the  
12 commissioner and shall serve without compensation other than  
13 reimbursement for personal travel and per diem living expenses. No other  
14 committee of any nature shall be appointed by the commissioner or the  
15 court in liquidation proceedings conducted under this act;

16 (4) to fix the reasonable compensation of employees and agents, legal  
17 counsel, actuaries, accountants, appraisers and consultants with the  
18 approval of the court;

19 (5) to pay reasonable compensation to persons appointed and to  
20 defray from the funds or assets of the insurer all expenses of taking  
21 possession of, conserving, conducting, liquidating, disposing of, or  
22 otherwise dealing with the business and property of the insurer;

23 (6) to hold hearings, to subpoena witnesses to compel their  
24 attendance, to administer oaths, to examine any person under oath, and to  
25 compel any person to subscribe to testimony of the person after the  
26 testimony has been correctly reduced to writing; and in connection  
27 therewith to require the production of any books, papers, records or other  
28 documents which are relevant to the inquiry. Such hearings shall be held in  
29 accordance with the Kansas administrative procedure act;

30 (7) to audit the books and records of all agents of the insurer insofar  
31 as those records relate to the business activities of the insurer;

32 (8) to collect all debts and moneys due and claims belonging to the  
33 insurer, wherever located, and for this purpose:

34 (A) To institute timely action in other jurisdictions, in order to  
35 forestall garnishment and attachment proceedings against such debts;

36 (B) to do such other acts as are necessary or expedient to collect,  
37 conserve or protect such insurer's assets or property, including the power  
38 to sell, compound, compromise or assign debts for purposes of collection  
39 upon reasonable terms and conditions; and

40 (C) to pursue any creditor's remedies available to enforce claims;

41 (9) to conduct public and private sales of the property of the insurer;

42 (10) to use assets of the estate of an insurer under a liquidation order  
43 to transfer policy obligations to a solvent assuming insurer, if the transfer

1 can be arranged without prejudice to applicable priorities under K.S.A. 40-  
2 3641, *and amendments thereto*;

3 (11) to acquire, hypothecate, encumber, lease, improve, sell, transfer,  
4 abandon or otherwise dispose of or deal with, any property of the insurer  
5 at its market value or upon such terms and conditions as are fair and  
6 reasonable. The liquidator shall also have power to execute, acknowledge  
7 and deliver any and all deeds, assignments, releases and other instruments  
8 necessary or proper to effectuate any sale of property or other transaction  
9 in connection with the liquidation;

10 (12) to borrow money on the security of the insurer's assets or  
11 without security and to execute and deliver all documents necessary to that  
12 transaction for the purpose of facilitating the liquidation. Any such funds  
13 borrowed may be repaid as an administrative expense and have priority  
14 over any other claims in class 1 under the priority of distribution;

15 (13) to enter into such contracts as are necessary to carry out the  
16 order to liquidate, and to affirm or disavow any contracts to which the  
17 insurer is a party, *except that no liquidator shall have the power to*  
18 *disavow, reject or repudiate:*

19 (A) *Any federal home loan bank security agreement; or*

20 (B) *any pledge, security, collateral or guarantee agreement or any*  
21 *other similar arrangement or credit enhancement relating to such security*  
22 *agreement;*

23 (14) to continue to prosecute and to institute in the name of the  
24 insurer or in the liquidator's name any and all suits and other legal  
25 proceedings, in this state or outside this state, and to abandon the  
26 prosecution of unprofitable claims. If the insurer is dissolved under K.S.A.  
27 40-3624, *and amendments thereto*, the liquidator shall have the power to  
28 apply to any court in this state or elsewhere for leave to substitute such  
29 liquidator for the insurer as plaintiff;

30 (15) to prosecute any action which may exist on behalf of the  
31 creditors, members, policyholders or shareholders of the insurer against  
32 any officer of the insurer, or any other person;

33 (16) to remove any or all records and property of the insurer to the  
34 offices of the commissioner or to such other place as may be convenient  
35 for the purposes of efficient and orderly execution of the liquidation.  
36 Guaranty associations and foreign guaranty associations shall have such  
37 reasonable access to the records of the insurer as is necessary for them to  
38 carry out their statutory obligations;

39 (17) to deposit in one or more banks in this state such sums as are  
40 required for meeting current administration expenses and dividend  
41 distributions;

42 (18) to invest all sums not currently needed, unless the court orders  
43 otherwise;

1 (19) to file any necessary documents for record in the office of any  
2 register of deeds or record office in this state or elsewhere where property  
3 of the insurer is located;

4 (20) to assert all defenses available to the insurer as against third  
5 persons, including statutes of limitation, statutes of frauds and the defense  
6 of usury. A waiver of any defense by the insurer after a petition in  
7 liquidation has been filed shall not bind the liquidator. Whenever a  
8 guaranty association or foreign guaranty association has an obligation to  
9 defend any suit, the liquidator shall give precedence to such obligation and  
10 may defend only in the absence of a defense by such guaranty  
11 associations;

12 (21) to exercise and enforce all the rights, remedies and powers of  
13 any creditor, shareholder, policyholder or member; including any power to  
14 avoid any transfer or lien that may be given by the general law and that is  
15 not included with K.S.A. 40-3629 through 40-3631, *and amendments*  
16 *thereto*;

17 (22) to intervene in any proceeding wherever instituted that might  
18 lead to the appointment of a receiver or trustee, and to act as the receiver  
19 or trustee whenever the appointment is offered;

20 (23) to enter into agreements with any receiver or commissioner of  
21 any other state relating to the rehabilitation, liquidation, conservation or  
22 dissolution of an insurer doing business in both states; and

23 (24) to exercise all powers now held or hereafter conferred upon  
24 receivers by the laws of this state not inconsistent with the provisions of  
25 this act.

26 (b) The enumeration, in this section, of the powers and authority of  
27 the liquidator shall not be construed as limitation upon the liquidator, nor  
28 shall it exclude in any manner the right to do such other acts not  
29 specifically enumerated or otherwise provided for, as may be necessary or  
30 appropriate for the accomplishment of or in aid of the purpose of  
31 liquidation.

32 (c) Notwithstanding the powers of the liquidator as stated in  
33 subsections (a) and (b), the liquidator shall have no obligation to defend  
34 claims or to continue to defend claims subsequent to the entry of a  
35 liquidation order.

36 Sec. 4. K.S.A. 40-3629 is hereby amended to read as follows: 40-  
37 3629. (a) *Except as provided in subsection (e)*, every transfer made or  
38 suffered and every obligation incurred by an insurer within one year prior  
39 to the filing of a successful petition for rehabilitation or liquidation under  
40 this act is fraudulent as to then existing and future creditors if made or  
41 incurred without fair consideration, or with actual intent to hinder, delay or  
42 defraud either existing or future creditors. A transfer made or an obligation  
43 incurred by an insurer ordered to be rehabilitated or liquidated under this

1 act, which is fraudulent under this section, may be avoided by the receiver,  
2 except as to a person who in good faith is a purchaser, lienor or obligee for  
3 a present fair equivalent value, and except that any purchaser, lienor or  
4 obligee, who in good faith has given a consideration less than fair for such  
5 transfer, lien or obligation, may retain the property, lien or obligation as  
6 security for repayment. The court, on due notice, may order any such  
7 transfer or obligation to be preserved for the benefit of the estate, and in  
8 that event, the receiver shall succeed to and may enforce the rights of the  
9 purchaser, lienor, or obligee.

10 (b) (1) A transfer of property other than real property shall be deemed  
11 to be made or suffered when it becomes so far perfected that no  
12 subsequent lien obtainable by legal or equitable proceedings on a simple  
13 contract could become superior to the rights of the transferee.

14 (2) A transfer of real property shall be deemed to be made or suffered  
15 when it becomes so far perfected that no subsequent bona fide purchaser  
16 from the insurer could obtain rights superior to the rights of the transferee.

17 (3) A transfer which creates an equitable lien shall not be deemed to  
18 be perfected if there are available means by which a legal lien could be  
19 created.

20 (4) Any transfer not perfected prior to the filing of a petition for  
21 liquidation shall be deemed to be made immediately before the filing of  
22 the successful petition.

23 (5) The provisions of this subsection apply whether or not there are or  
24 were creditors who might have obtained any liens or persons who might  
25 have become bona fide purchasers.

26 (c) Any transaction of the insurer with a reinsurer shall be deemed  
27 fraudulent and may be avoided by the receiver under subsection (a) if:

28 (1) The transaction consists of the termination, adjustment or  
29 settlement of a reinsurance contract in which the reinsurer is released from  
30 any part of its duty to pay the originally specified share of losses that had  
31 occurred prior to the time of the transactions, unless the reinsurer gives a  
32 present fair equivalent value for the release; and

33 (2) any part of the transaction took place within one year prior to the  
34 date of filing of the petition through which the receivership was  
35 commenced.

36 (d) Every person receiving any property from the insurer or any  
37 benefit thereof which is a fraudulent transfer under subsection (a) shall be  
38 personally liable therefor and shall be bound to account to the liquidator.

39 (e) (1) *Except as provided in paragraph (2), no receiver shall be*  
40 *entitled to avoid any transfer of, or any obligation to transfer, money or*  
41 *any other property arising under or in connection with:*

42 (A) *Any federal home loan bank security agreement; or*

43 (B) *any pledge, security, collateral or guarantee agreement or any*

1 *other similar arrangement or credit enhancement relating to such federal*  
2 *home loan bank security agreement.*

3 (2) *A transfer may be avoided under this section if such transfer was*  
4 *made with actual intent to hinder, delay or defraud either existing or*  
5 *future creditors.*

6 Sec. 5. K.S.A. 40-3630 is hereby amended to read as follows: 40-  
7 3630. (a) *Except as provided in subsection (e),* after a petition for  
8 rehabilitation or liquidation has been filed, a transfer of any of the real  
9 property of the insurer made to a person acting in good faith shall be valid  
10 against the receiver if made for a present fair equivalent value, or, if not  
11 made for a present fair equivalent value, then to the extent of the present  
12 consideration actually paid therefor, for which amount the transferee shall  
13 have a lien on the property so transferred. The commencement of a  
14 proceeding in rehabilitation or liquidation shall be constructive notice  
15 upon the recording of a copy of the petition for or order of rehabilitation or  
16 liquidation with the register of deeds in the county where any real property  
17 in question is located. The exercise by a court of the United States or any  
18 state or jurisdiction to authorize or effect a judicial sale of real property of  
19 the insurer within any county in any state shall not be impaired by the  
20 pendency of such a proceeding unless the copy is recorded in the county  
21 prior to the consummation of the judicial sale.

22 (b) After a petition for rehabilitation or liquidation has been filed and  
23 before either the receiver takes possession of the property of the insurer or  
24 an order of rehabilitation or liquidation is granted:

25 (1) A transfer of any of the property of the insurer, other than real  
26 property, made to a person acting in good faith shall be valid against the  
27 receiver if made for a present fair equivalent value, or, if not made for a  
28 present fair equivalent value, then to the extent of the present  
29 consideration actually paid therefor, for which amount the transferee shall  
30 have a lien on the property so transferred.

31 (2) A person indebted to the insurer or holding property of the insurer,  
32 if acting in good faith, may pay the indebtedness or deliver the property, or  
33 any part thereof, to the insurer or upon the insurer's order, with the same  
34 effect as if the petition were not pending.

35 (3) A person having actual knowledge of the pending rehabilitation or  
36 liquidation shall be deemed not to act in good faith.

37 (4) A person asserting the validity of a transfer under this section  
38 shall have the burden of proof. Except as elsewhere provided in this  
39 section, no transfer by or on behalf of the insurer after the date of the  
40 petition for liquidation by any person other than the liquidator shall be  
41 valid against the liquidator.

42 (c) Every person receiving any property from the insurer or any  
43 benefit thereof which is a fraudulent transfer under subsection (a) shall be

1 personally liable therefor and shall be bound to account to the liquidator.

2 (d) Nothing in this act shall impair the negotiability of currency or  
3 negotiable instruments.

4 (e) (1) *Except as provided in paragraph (2), no receiver shall be*  
5 *entitled to avoid any transfer of, or any obligation to transfer, money or*  
6 *any other property arising under or in connection with:*

7 (A) *Any federal home loan bank security agreement; or*

8 (B) *any pledge, security, collateral or guarantee agreement or any*  
9 *other similar arrangement or credit enhancement relating to such federal*  
10 *home loan bank security agreement.*

11 (2) *A transfer may be avoided under this section if such transfer was*  
12 *made with actual intent to hinder, delay or defraud either existing or*  
13 *future creditors.*

14 Sec. 6. K.S.A. 40-3631 is hereby amended to read as follows: 40-  
15 3631. (a) (1) A preference is a transfer of any of the property of an insurer  
16 to or for the benefit of a creditor, for or on account of an antecedent debt,  
17 made or suffered by the insurer within one year before the filing of a  
18 successful petition for liquidation under this act, the effect of which  
19 transfer may be to enable the creditor to obtain a greater percentage of this  
20 debt than another creditor of the same class would receive. If a liquidation  
21 order is entered while the insurer is already subject to a rehabilitation  
22 order, then such transfers shall be deemed preferences if made or suffered  
23 within one year before the filing of the successful petition for  
24 rehabilitation, or within two years before the filing of the successful  
25 petition for liquidation, whichever time is shorter.

26 (2) *Except as provided in paragraph (4), any preference may be*  
27 *avoided by the liquidator if:*

28 (A) The insurer was insolvent at the time of the transfer;

29 (B) the transfer was made within four months before the filing of the  
30 petition;

31 (C) the creditor receiving the preference or to be benefited thereby or  
32 the creditor's agent acting with reference thereto had, at the time when the  
33 transfer was made, reasonable cause to believe that the insurer was  
34 insolvent or was about to become insolvent; or

35 (D) the creditor receiving the preference was an officer, or any  
36 employee or attorney or other person who was in fact in a position of  
37 comparable influence with the insurer to an officer whether or not such  
38 creditor held such position, or any shareholder holding directly or  
39 indirectly more than 5% of any class of any equity security issued by the  
40 insurer, or any other person, firm, corporation, association, or aggregation  
41 of persons with whom the insurer did not deal at arm's length.

42 (3) Where the preference is voidable, the liquidator may recover the  
43 property or, if it has been converted, its value from any person who has



1 received or converted the property, except where a bona fide purchaser or  
2 lienor has given less than fair equivalent value, such person shall have a  
3 lien upon the property to the extent of the consideration actually given.  
4 Where a preference by way of lien or security title is voidable, the court  
5 may on due notice order the lien or title to be preserved for the benefit of  
6 the estate, in which event the lien or title shall pass to the liquidator.

7 (4) *No liquidator or receiver shall be entitled to avoid any preference*  
8 *arising under or in connection with:*

9 (A) *Any federal home loan bank security agreement; or*

10 (B) *any pledge, security, collateral or guarantee agreement or any*  
11 *other similar arrangement or credit enhancement relating to such security*  
12 *agreement.*

13 (b) (1) A transfer of property other than real property shall be deemed  
14 to be made or suffered when such transfer becomes so far perfected that no  
15 subsequent lien obtainable by legal or equitable proceedings on a simple  
16 contract could become superior to the rights of the transferee.

17 (2) A transfer of real property shall be deemed to be made or suffered  
18 when such transfer becomes so far perfected that no subsequent bona fide  
19 purchaser from the insurer could obtain rights superior to the rights of the  
20 transferee.

21 (3) A transfer which creates an equitable lien shall not be deemed to  
22 be perfected if there are available means by which a legal lien could be  
23 created.

24 (4) A transfer not perfected prior to the filing of a petition for  
25 liquidation shall be deemed to be made immediately before the filing of  
26 the successful petition.

27 (5) The provisions of this subsection apply whether or not there are,  
28 or were, creditors who might have obtained liens or persons who might  
29 have become bona fide purchasers.

30 (c) (1) A lien obtainable by legal or equitable proceedings upon a  
31 simple contract is one arising in the ordinary course of such proceedings  
32 upon the entry or docketing of a judgment or decree, or upon attachment,  
33 garnishment, execution or like process, whether before, upon, or after  
34 judgment or decree and whether before or upon levy. It does not include  
35 liens which under applicable law are given a special priority over other  
36 liens which are prior in time.

37 (2) A lien obtainable by legal or equitable proceedings could become  
38 superior to the rights of a transferee, or a purchaser could obtain rights  
39 superior to the rights of a transferee within the meaning of subsection (b),  
40 if such consequences would follow only from the lien or purchase itself, or  
41 from the lien or purchase followed by any step wholly within the control  
42 of the respective lienholder or purchaser, with or without the aid of  
43 ministerial action by public officials. Such a lien could not, however,

1 become superior and such a purchase could not create superior rights for  
2 the purpose of subsection (b) through any actions subsequent to the  
3 obtaining of such a lien or subsequent to such a purchase which requires  
4 the agreement or concurrence of any third party or which require any  
5 further judicial action or ruling.

6 (d) A transfer of property for or on account of a new and  
7 contemporaneous consideration which is deemed under subsection (b) to  
8 be made or suffered after the transfer because of delay in perfecting such  
9 transfer does not thereby become a transfer for or on account of an  
10 antecedent debt if any acts required by the applicable law to be performed  
11 in order to perfect the transfer as against liens or bona fide purchasers'  
12 rights are performed within 21 days or any period expressly allowed by  
13 law, whichever is less. A transfer to secure a future loan, if such a loan is  
14 actually made, or a transfer which becomes security for a future loan, shall  
15 have the same effect as a transfer for or on account of a new and  
16 contemporaneous consideration.

17 (e) If any lien deemed voidable under subsection (a)(2) has been  
18 dissolved by the furnishing of a bond or other obligation, the surety on  
19 which has been indemnified directly or indirectly by the transfer of or the  
20 creation of a lien upon any property of an insurer before the filing of a  
21 petition under this act which results in a liquidation order, the  
22 indemnifying transfer or lien shall also be deemed voidable.

23 (f) The property affected by any lien deemed voidable under  
24 subsections (a) and (e) shall be discharged from such lien, and that  
25 property and any of the indemnifying property transferred to or for the  
26 benefit of a surety shall pass to the liquidator, except that the court may on  
27 due notice order any such lien to be preserved for the benefit of the estate  
28 and the court may direct that such conveyance be executed as may be  
29 proper or adequate to evidence the title of the liquidator.

30 (g) The district court of Shawnee county shall have summary  
31 jurisdiction of any proceeding by the liquidator to hear and determine the  
32 rights of any parties under this section. Reasonable notice of any hearing  
33 in the proceeding shall be given to all parties in interest, including the  
34 obligee of a releasing bond or other like obligation. Where an order is  
35 entered for the recovery of indemnifying property in-kind or for the  
36 avoidance of an indemnifying lien, the court, upon application of any party  
37 in interest, shall in the same proceeding ascertain the value of the property  
38 or lien, and if the value is less than the amount for which the property is  
39 indemnity or than the amount of the lien, the transferee or lienholder may  
40 elect to retain the property or lien upon payment of its value, as  
41 ascertained by the court, to the liquidator, within such reasonable times as  
42 the court shall fix.

43 (h) The liability of the surety under a releasing bond or other like

1 obligation shall be discharged to the extent of the value of the  
2 indemnifying property recovered or the indemnifying lien nullified and  
3 avoided by the liquidator, or where the property is retained under  
4 subsection (g) to the extent of the amount paid to the liquidator.

5 (i) If a creditor has been preferred, and afterward in good faith gives  
6 the insurer further credit without security of any kind, for property which  
7 becomes a part of the insurer's estate, the amount of the new credit  
8 remaining unpaid at the time of the petition may be setoff against the  
9 preference which would otherwise be recoverable.

10 (j) If an insurer shall, directly or indirectly, within four months before  
11 the filing of a successful petition for liquidation under this act, or at any  
12 time in contemplation of a proceeding to liquidate such insurer, pay money  
13 or transfer property to an attorney-at-law for services rendered or to be  
14 rendered, the transactions may be examined by the court on its own motion  
15 or shall be examined by the court on petition of the liquidator and shall be  
16 held valid only to the extent of a reasonable amount to be determined by  
17 the court, and the excess may be recovered by the liquidator for the  
18 benefits of the estate provided that where the attorney is in a position of  
19 influence with the insurer or an affiliate thereof payment of any money or  
20 the transfer of any property to the attorney-at-law for services rendered or  
21 to be rendered shall be governed by the provision of subsection (a)(2)(D).

22 (k) (1) Every officer, manager, employee, shareholder, member,  
23 subscriber, attorney or any other person acting on behalf of the insurer who  
24 knowingly participates in giving any preference when such person has  
25 reasonable cause to believe the insurer is or is about to become insolvent at  
26 the time of the preference shall be personally liable to the liquidator for the  
27 amount of the preference. It is permissible to infer that there is a  
28 reasonable cause to so believe if the transfer was made within four months  
29 before the date of filing of this successful petition for liquidation.

30 (2) Every person receiving any property from the insurer or the  
31 benefit thereof as a preference voidable under subsection (a) shall be  
32 personally liable therefor and shall be bound to account to the liquidator.

33 (3) Nothing in this subsection shall prejudice any other claim by the  
34 liquidator against any person.

35 Sec. 7. K.S.A. 40-3609, 40-3619, 40-3625, 40-3629, 40-3630 and 40-  
36 3631 are hereby repealed.

37 Sec. 8. This act shall take effect and be in force from and after its  
38 publication in the statute book.