

# SENATE BILL NO. 80

# INTRODUCED BY HAZELBAKER, BLAYLOCK

BY REQUEST OF THE STATE COMMISSIONER OF INSURANCE

IN THE SENATE January 10, 1979 Introduced and referred to Committee on Business and Industry. Fiscal note requested. January 15, 1979 Fiscal note returned. January 30, 1979 Committee recommend bill do pass as amended. Report adopted. January 31, 1979 Printed and placed on members' desks. February 1, 1979 Second reading, do pass. February 2, 1979 Considered correctly engrossed. February 3, 1979 Third reading, passed. Transmitted to second house. IN THE HOUSE February 5, 1979 Introduced and referred to Committee on Business and Industry. March 8, 1979 Committee recommend bill be concurred in. Report adopted. March 12, 1979 Second reading, concurred in. March 15, 1979 Third reading, concurred in. IN THE SENATE March 16, 1979 Returned from second house. Concurred in. Sent to enrolling.

Reported correctly enrolled.

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TA BILL NO. Let anloch 1 INTRODUCED BY Z BY REQUEST OF THE STATE CONMISSIONER OF INSURANCE 3 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE 5 SUPERVISION, REHABILITATION, AND LIQUIDATION OF INSURERS; REPEALING SECTIONS 33-2-901 THROUGH 33-2-948, MCA.\* 7 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 9 Section 1. Short title, construction, and purpose. (1) 10 [This act] shall be cited as the "Insurers Supervision+ 11 12 Rehabilitation, and Liquidation Act". (2) [This act] may not be interpreted to limit the 13 powers granted the commissioner by other provisions of the 14 15 law. (3) [This act] shall be liberally construed to effect 16 the purpose stated in subsection (4). 17 (4) The purpose of [this act] is the protection of the 18 interests of insureds, claimants, creditors, and the public 19 generally, with minimum interference with the normal 20 prerogatives of the owners and managers of insurers, 21 22 through: (a) early detection of any potentially dangerous 23

24 condition in an insurer and prompt application of 25 appropriate corrective measures; 1 (b) improved methods for rehabilitating insurers, 2 involving the cooperation and management expertise of the 3 insurance industry;

4 (c) enhanced efficiency and economy of liquidation;
5 through clarification of the law, to minimize lagal
6 uncertainty and litigation;

7 (d) equitable apportionment of any unavoidable loss; (e) lessening the problems of inter state 8 rehabilitation and liquidation by facilitating cooperation 9 10 between states in the liquidation process and by extending the scope of personal jurisdiction over debtors of the 11 12 insurer outside this state; and

(f) regulation of the insurance business by the impact
 of the law relating to delinquency procedures and
 substantive rules on the entire insurance business.

16 Section 2. Definitions. For the purposes of [this act] 17 the following definitions apply:

18 (1) "Ancillary state" means any state other than a 19 domiciliary state.

20 (2) "Commissioner" means the commissioner of insurance
21 of this state.

22 (3) "Creditor" is a person having any claim, whether
23 matured or unmatured, liquidated or unliquidated, secured or
24 unsecured, absolute, fixed, or contingent.

25 (4) "Delinquency proceeding" means any proceeding

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instituted against an insurer for the purpose of
 liquidating, rehabilitating, reorganizing, or conserving
 such insurer and any summary proceeding under [section 9 or
 10], "Formal delinquency proceeding" means any liquidation
 or rehabilitation proceeding.

6 (5) "Doing business" includes any of the following
7 acts, whether effected by mail or otherwise:

8 (a) the issuance or delivery of contracts of insurance
 9 to persons resident in this state;

10 (b) the solicitation of applications for such
 11 contracts or other negotiations preliminary to the execution
 12 of such contracts;

13 (c) the collection of premiums, membership fees,
14 assessments, or other consideration for such contracts;

15 (d) the transaction of matters subsequent to execution16 of such contracts and arising out of them; or

17 (e) operating under a license or certificate of
18 authority, as an insurer, issued by the commissioner.

19 (6) "Domiciliary state" means the state in which an
20 insurer is incorporated or organized or, in the case of an
21 alien insurer, its state of entry.

22 (7) "fair consideration" is given for property or 23 obligation:

(a) when in exchange for such property or obligation,
as a fair equivalent therefor and in good faith, property is

conveyed or services are rendered or an obligation is
 incurred or an antecedent debt is satisfied; or

3 (b) when such property of obligation is received in
4 good faith to secure a present advance or antecedent debt in
5 amount not disproportionately small as compared to the value
6 of the property or obligation obtained.

7 (8) "Foreign country" means any other jurisdiction not
 8 in any state.

(9) "General assets" means all property, real, 9 personal, or otherwise, not specifically mortgaged, pledged, 10 deposited, or otherwise encumbered for the security or 11 benefit of specified persons or classes of persons. As to 12 specifically encumbered property, "general assets" includes 13 14 all such property or its proceeds in excess of the amount 15 necessary to discharge the sum or sums secured thereby. Assets held in trust and on deposit for the security or 16 benefit of all policyholders or all policyholders and 17 creditors, in more than a single state, shall be treated as 16 19 general assets.

(10) "Guaranty association" means the Montana insurance
guaranty association, the workers' compensation security
fund, the Montana life and health insurance guaranty
association, and any other similar entity now or hereafter
created by the legislature of this state for the payment of
claims of insolvent insurers. "Foreign guaranty association"

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1 means any similar entities now in existence in or hereafter

2 created by the legislature of any other state.

3 (11) (a) "Insolvency" or "insolvent" means:

4 (i) for an insurer issuing only assessable fire 5 insurance policies, the inability to pay any obligation 6 within 30 days after it becomes payable; or

7 (ii) for any other insurer, the inability to pay its
8 obligations when they are due or when its admitted assets do
9 not exceed its liabilities plus the greater of:

10 (A) any capital and surplus required by law for its 11 organization; or

12 (B) the total par or stated value of its authorized13 and issued capital stock;

14 (iii) as to any insurer licensed to do business in this 15 state as of [the effective date of this act] which does not 16 meet the standard established under subsection (ii), for a 17 period not to exceed 3 years from [the effective date of 18 this act], the inability to pay its obligations when they 19 are due or that its admitted assets do not exceed its liabilities plus any required capital contribution ordered 20 21 by the commissioner under provisions of the insurance law. 22 (b) For purposes of this subsection "liabilities" 23 include but are not limited to reserves required by statute **Z**4 or by the commissioner upon a subject company at the time of 25 admission or subsequent thereto.

1 (12) "Insurer" means any person who has done, purports 2 to do, is doing, or is licensed to do insurance business and 3 is or has been subject to the authority of or to 4 liquidation, rehabilitation, reorganization, supervision, or 5 conservation by any insurance commissioner. Any other 6 persons included under [section 3] are considered to be 7 insurers.

8 (13) "Preferred claim" means any claim with respect to
9 which the terms of [this act] accord priority of payment
10 from the general assets of the insurer.

(14) "Receiver" means receiver, liquidator,
 rehabilitator, or conservator as the context requires.

13 (15) "Reciprocal state" means any state other than this 14 state in which in substance and effect [sections 18(1), 52, 15 53, and 55 through 57] are in force and in which provisions 16 are in force requiring that the commissioner or equivalent 17 official be the receiver of a delinquent insurer and in 18 which some provision exists for the avoidance of fraudulent 19 conveyances and preferential transfers.

20 (16) "Secured claim" means any claim secured by 21 mortgage, trust deed, pledge, deposit as security, escrow, 22 or otherwise, but not including special deposit claims or 23 claims against general assets. The term also includes claims 24 which have become liens upon specific assets by reason of 25 judicial process.

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1 (17) "Special deposit claim" means any claim secured by 2 a deposit made pursuant to statute for the security or 3 benefit of a limited class of persons, but not including any 4 claim secured by general assets.

5 (18) "State" means any state, district, or territory of
 6 the United States.

(19) "Transfer" includes the sale and every other mode. 7 direct or indirect, of disposing of or parting with property 8 or with an interest therein or with the possession thereof 9 or fixing a lien upon property or upon an interest therein. 10 11 absolutely or conditionally, voluntarily, by or without iudicial proceedings. The retention of a security title to 12 property delivered to a debtor is considered a transfer 13 14 suffered by the debtor.

Section 3. Persons covered. The proceedings authorized
by [this act] may be applied to:

17 (1) all insurers who are doing or have done insurance
18 business in this state and against whom claims arising from
19 that business may exist now or in the future:

20 (2) all insurers who purport to do an insurance21 business in this state;

22 (3) all insurers who have insureds resident in this23 state;

24 (4) all other persons organized or in the process of25 organizing with the intent to do an insurance business in

1 this state;

2 (5) all nonprofit service plans and all fraternal
3 benefit societies and beneficial societies; or

4 (6) all title insurance companies.

5 Section 4. Jurisdiction and venue. (1) No delinquency 6 proceeding may be commenced under [this act] by anyone other 7 than the commissioner and no court shall have jurisdiction 8 to entertain, hear, or determine any proceeding commenced by 9 any other person.

10 (2) No court of this state has jurisdiction to 11 entertain, hear, or determine any complaint praying for the 12 dissolution, liquidation, rehabilitation, sequestration, 13 conservation, or receivership of any insurer or praying for 14 an injunction or restraining order or other relief 15 preliminary to, incidental to, or relating to such 16 proceedings other than in accordance with [this act]-

17 (3) In addition to other grounds for jurisdiction 18 provided by the law of this state, a court of this state 19 having jurisdiction of the subject matter has jurisdiction 20 over a person served pursuant to the Montana Rules of Civil 21 Procedure or other applicable provisions of law in an action 22 brought by the receiver of a domestic insurer or an alien 23 insurer domiciled in this state:

(a) if the person served is obligated to the insurer
in any way as an incident to any agency or brokerage

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arrangement that may exist or has existed between the
 insurer and the agent or broker in any action on or incident
 to the obligation;

4 (b) if the person served is a reinsurer who has at any 5 time written a policy of reinsurance for an insurer against 6 which a rehabilitation or liquidation order is in effect 7 when the action is commenced or is an agent or broker of or 8 for the reinsurer in any action on or incident to the 9 reinsurance contract; or

10 (c) if the person served is or has been an officer, 11 manager, trustee, organizer, promoter, or person in a 12 position of comparable authority or influence in an insurer 13 against which a rehabilitation or liquidation order is in 14 effect when the action is commenced in any action resulting 15 from such a relationship with the insurer.

16 (4) If the court on motion of any party finds that any
17 action should as a matter of substantial justice be tried in
18 a forum outside this state, the court may enter an
19 appropriate order to stay further proceedings on the action
20 in this state.

(5) All actions herein authorized shall be brought in
the district court in the county in which the office of the
commissioner is located.

24 Section 5. Injunctions and orders. (1) Any receiver 25 appointed in a proceeding under [this act] may at any time

apply for and any court of general jurisdiction may grant 1 such restraining orders, preliminary and permanent 2 injunctions, and other orders as may be necessary to 3 4 prevent: (a) the transaction of further business; 5 (b) the transfer of property; ٠ (c) interforence with the receiver or with a 7 8 proceeding under [this act]; 9 (d) waste of the insurer's assets; (e) dissipation and transfer of bank accounts; 10 (f) the institution or further prosecution of any 11 12 actions or proceedings; 13 (q) the obtaining of preferences, judqments. attachments, garnishments, or liens against the insurer, its 14 15 assets, or its policyholders; (h) the levying of execution against the insurer, its 16 assets, or its policyholders; 17 (i) the making of any sale or deed for nonpayment of 18 19 taxes or assessments that would lessen the value of the assets of the insurer; 20

21 (j) the withholding from the receiver of books,
22 accounts, documents, or other records relating to the
23 business of the insurer; or

24 (k) any other threatened or contemplated action that25 might lessen the value of the insurer's assets or prejudice

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the rights of policyholders, creditors, or shareholders or
 the administration of any proceeding under [this act].

3 (2) The receiver may apply to any court outside of the
4 state for the relief described in subsection (1).

Section 6. Cooperation of officers, owners, and 5 employees. (1) Any officer. manager. director. trustee. 6 owner, employee, or agent of any insurer or any other 7 persons with authority over or in charge of any segment of 8 the insurer's affairs shall cooperate with the commissioner 9 in any proceeding under [this act] or any investigation 10 preliminary to the proceeding. The term "person" as used in 11 this section includes any person who exercises control 12 directly or indirectly over activities of an insurer through 13 14 any holding company or other affiliate of the insurer. "To 15 cooperate\* includes but is not limited to the following:

16 (a) replying promptly in writing to any inquiry from17 the commissioner requesting such a reply; and

(b) making available to the commissioner any books,
accounts, documents, or other records or information or
property of or pertaining to the insurer and in his
possession, custody, or control.

22 (2) No person may obstruct or interfere with the 23 commissioner in the conduct of any delinquency proceeding or 24 any investigation preliminary or incidental thereto.

25 (3) This section shall not be construed to abridge

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1	otherwise existing legal rights, including the right to
Z	resist a petition for liquidation or other delinquency
3	proceedings, or other orders.
4	(4) Any person included within subsection (1) who
5	fails to cooperate with the commissioner or any person who
6	obstructs or interferes with the commissioner in the conduct
7	of any delinquency proceeding or any investigation
8	preliminary or incidental thereto or who violates any order
9	the commissioner issued validly under [this act] may:
10	(a) be sentenced to pay a fine not exceeding \$10+000
11	or to undergo imprisonment for a term of not more than 1
12	year, or both; or
13	(b) after a hearing, be subject to the imposition by
14	the commissioner of a civil penalty not to excored \$10,000
15	and to the revocation or suspension of any insurance
16	licenses issued by the commissioner.
17	Section 7. Bonds. In any proceeding under [this act].
18	the commissioner and his deputies are responsible on their
19	official bonds for the faithful performance of their duties.
20	If the court finds it desirable for the protection of the
21	assets, it may at any time require an additional bond from
22	the commissioner or his deputies, and such honds shall be
23	paid for out of the assets of the insurer as a cost of
23 24	paid for out of the assets of the insurer as a cost of administration.

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Every proceeding heretofore commenced under the laws in Ł effect before the enactment of [this act] shall be 2 considered to have commenced under [this act] for the 3 purpose of conducting the proceeding henceforth, except that 4 in the discretion of the commissioner the proceeding may be 5 continued, in whole or in part, as it would have been 6 continued had [this act] not been enacted. 7

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orders and Section 9. Commissioner's sumary 8 supervision proceedings. (1) Whenever the commissioner 9 determines, after a hearing held under subsection (5), that 10 any domestic insurer has committed or engaged in or is about 11 to commit or engage in any act, practice, or transaction 12 13 that would subject it to delinguancy proceedings under [this act), he may make and serve upon the insurer and any other 14 persons involved such orders as are reasonably necessary to 15 16 correct or eliminate such conduct.

17 (2) If upon examination or at any other time the 18 commissioner determines that any domestic insurer is in such condition as to render the continuance of its business 19 hazardous to the public or to holders of its policies or 20 21 certificates of insurance, or if such domestic insurer gives its consent, then the commissioner shall notify the insurer 22 **Z**3 of his determination, and furnish to the insurer a written list of the commissioner's requirements to abate his 24 Z5 determination.

(3) If the commissioner makes a determination to 1 supervise an insurer subject to an order under subsections 2 (1) or (2), he shall notify the insurer that it is under the 3 supervision of the commissioner. Ouring the period of 4 supervision, the commissioner may appoint a supervisor to 5 supervise such insurer. The order appointing a supervisor 6 shall direct the supervisor to enforce orders issued under 7 subsections (1) and (2) and may also require that the insurer may not do any of the following things during the 9 period of supervision without the prior approval of the 10 commissioner or the supervisor: 11 (a) dispose of, convey, or encumber any of its assets 12 13 or its business in force; (b) withdraw from any of its bank accounts; 14 (c) lend any of its funds; 15 invest any of its funds; 16 (0)

- incur any debt, obligation, or liability; 17 (e)
- 18 merge or consolidate with another company; or (f)
- 19 enter into any new reinsurance contract or treaty. (0) 20 (4) Any insurer subject to an order under this section 21 shall comply with the lawful requirements of the ΖZ commissioner and, if placed under supervision, has 60 days 23 from the date the supervision order is served within which 24 to comply with the requirements of the commissioner. If the 25 insurer fails to comply within that time, the commissioner
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may institute proceedings under [section 12 or 17] to have a
 rehabilitator or liquidator appointed or extend the period
 of supervision-

(5) The notice of hearing under subsection (1) and any 4 order issued pursuant to such subsection shall be served 5 upon the insurer pursuant to the applicable rules of civil 6 or administrative procedure. The notice of hearing shall 7 state the time and place of hearing, and the conduct. 8 condition: or ground upon which the commissioner would base Q his order. Unless mutually agreed between the commissioner 10 and the insurer, the hearing shall occur not less than 10 11 days or more than 30 days after notice is served and shall 12 13 be either / in Lewis and Clark County or in some other place convenient to the parties to be designated by the 14 commissioner. The commissioner shall hold all hearings under 15 16 subsection (1) privately unless the insurer requests a 17 public hearing, in which case the hearing shall be public. 18 (6) (a) Any insurer subject to an order under 19 subsection (2) may request a hearing to review that order. 20 Such a hearing shall be held as provided in subsection (5). but the request for a hearing shall not stay the effect of 21 22 the arder.

(b) If the commissioner issues an order under
subsection (2), the insurer may, at any time, waive a
commissioner's hearing and apply for immediate judicial

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relief by means of any remedy afforded by law without first
 exhausting administrative remedies. Subsequent to a hearing,
 any party to the proceedings whose interests are
 substantially affected shall be entitled to judicial review
 of any order issued by the commissioner.

6 (7) During the period of supervision the insurer may 7 request the commissioner to review an action taken or 8 proposed to be taken by the supervisor, specifying wherein 9 the action complained of is believed not to be in the best 10 interest of the insurer.

11 (8) If any person has violated any supervision order 12 issued under this section which as to him was then still in 13 effect, he is subject to a civil penalty imposed by the 14 district court not to exceed \$10,000.

15 (9) The commissioner may apply for and any court of
16 general jurisdiction may grant such restraining orders.
17 preliminary and permanent injunctions, and other orders as
18 may be necessary to enforce a supervision order.

19 (10) If any person subject to the provisions of [this 20 act], including any person described in section 6(1), 21 knowingly violates any valid order of the commissioner 22 issued under the provisions of this section and, as a result 23 of such violation, the net worth of the insurer is reduced 24 or the insurer suffers loss it would not otherwise have 25 suffered, said person is personally liable to the insurer

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the amount of any such reduction or loss. The for 1 commissioner or supervisor is authorized to bring an action 2 on behalf of the insurer in the district court to recover 3 the amount of the reduction or loss together with any costs. 4 The Section 10. Court's (1) seizure order. 5 commissioner may file in a district court of this state a 6 petition alleging, with respect to a domestic insurer: 7

8 (a) that there exist grounds that would justify a
 9 court order for a formal delinquency proceeding against an
 10 insurer under [this act];

(b) that the interests of policyholders, creditors, or
 the public will be endangered by delay; and

13 (c) the contents of an order considered necessary by
 14 the commissioner.

15 (2) Upon a filing under subsection (1), the court may 16 issue forthwith, ex parte and without a hearing, the 17 requested order which shall direct the commissioner to take 18 possession and control of all or a part of the property. 19 books, accounts, documents, and other records of an insurer and of the premises occupied by it for transaction of its 20 business and until further order of the court enjoin the 21 22 insurer and its officers, managers, agents, and employees **Z**3 from disposition of its property and from transaction of its business except with the written consent of the 24 25 commissioner.

(3) The court shall specify in the order what its 1 duration shall be, which shall be such time as the court 2 considers necessary for the commissioner to ascertain the 3 condition of the insurer. On motion of either party or on 4 5 its own motion. the court may from time to time hold such hearings as it considers desirable after such notice as it 6 considers appropriate, and may extend, shorten, or modify 7 the terms of the seizure order. The court shall vacate the A 9 seizure order if the commissioner fails to commence a formal proceeding under [this act] after having had a reasonable 10 opportunity to do so. An order of the court pursuant to a 11 12 formal proceeding under [this act] shall ipso facto vacate 13 the seizure order.

14 (4) Entry of a seizure order under this section shall
15 not constitute an anticipatory breach of any contract of the
16 insurer.

17 (5) An insurer subject to an exparte order under this 18 section may petition the court at any time after the 19 issuance of such order for a hearing and review of the 20 order. The court shall hold such a hearing and review not 21 more than 15 days after the request. A hearing under this 22 subsection may be held privately in chambers, and it shall 23 be so held if the insurer proceeded against so requests.

24 (6) If, at any time after the issuance of such an
25 order, it appears to the court that any person whose

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interest is or will be substantially affected by the order
 did not appear at the hearing and has not been served, the
 court may order that notice be given. An order that notice
 be given shall not stay the effect of any order previously
 issued by the court.

Section 11. Confidentiality of hearings. In all 6 7 proceedings and judicial reviews under [sections 9 and 10]. all records of the insurer, other documents, and all files я 9 and court records and papers of the commissioner, so far as they pertain to or are a part of the record of the 30 11 proceedings, remain confidential except as necessary to 12 obtain compliance therewith, unless the district court, 3 after hearing arouments from the parties in chambers, orders otherwise or unless the insurer requests that the matter be .4 1.5 made public. Until such court order, all papers filed with the clerk of the district court shall be held by him in a 16 17 confidential file.

Section 12. Grounds for rehabilitation. The commissioner may apply by petition to a district court for an order authorizing him to rehabilitate a domestic insurer or an alien insurer domiciled in this state on any one or more of the following grounds:

(1) The insurer is in such condition that the further
 transaction of business would be financially hazardous to
 its policyholders, creditors, or the public.

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1 (2) There is reasonable cause to believe that there 2 has been embezzlement from the insurer, wrongful 3 sequestration or diversion of the insurer's assets, forgery 4 or fraud affecting the insurer, or other illegal conduct in, 5 by, or with respect to the insurer that if established would 6 endanger assets in an amount threatening the solvency of the 7 insurer.

8 (3) The insurer has failed to remove any person who in 9 fact has executive authority in the insurer. whether an 10 officer. manager. general agent. employee. or other person. 11 if the person has been found after notice and hearing by the 12 commissioner to be dishonest or untrustworthy in a way 13 affecting the insurer's business.

14 (4) Control of the insurer, whether by slock ownership
15 or otherwise, and whether direct or indirect, is in a person
16 found after notice and hearing to be untrustworthy.

(5) Any person who in fact has executive authority in 17 the insurer, whether an officer, manager, general agent, 18 director or trustee, employee, or other person, has refused 19 20 to be examined under oath by the commissioner concerning its affairs, whether in this state or elsewhere, and after 21 22 reasonable notice of the fact the insurer has failed promptly and effectively to terminate the employment and 73 24 status of the person and his influence on management.

25 (6) After demand by the commissioner under 33-1-403 or

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under [this act], the insurer has failed to promptly make
 available for examination any of its own property, books,
 accounts, documents, or other records or those of any
 subsidiary or related company within the control of the
 insurer or those of any person having executive authority in
 the insurer so far as they pertain to the insurer.

(7) Without first obtaining the written consent of the 7 commissioner, the insurer has transferred or attempted to 8 transfer, in a manner contrary to chapter 2, part 11, or 9 10 chapter 2+ part 12+ of Title 33+ substantially its entire 11 property or business or has entered into any transaction the 12 effect of which is to merge, consolidate, or reinsure 13 substantially its entire property or business in or with the property or business of any other person-14

(8) The insurer or its property has been or is the 15 16 subject of an application for the appointment of a receiver, 17 trustee. custodian, conservator, or sequestrator or similar 18 fiduciary of the insurer or its property otherwise than as 19 authorized under the insurance laws of this state, and such 20 appointment has been made or is imminent, and such 21 appointment might oust the courts of this state of jurisdiction or might prejudice orderly delinguency 22 23 proceedings under [this act].

24 (9) Within the previous 4 years the insurer has
25 willfully violated its charter or articles of incorporation.

its bylaws, any insurance law of this state, or any valid
 order of the commissioner under [section 9].

(10) The insurer has failed to pay within 60 days after 3 due date any obligation to any state or any subdivision 4 thereof or any judgment entered in any state, if the court 5 in which such judgment was entered had jurisdiction over 6 such subject matter, except that such nonpayment shall not 7 be a ground until 60 days after any good faith effort by the R insurer to contest the obligation has been terminated, 9 whether it is before the commissioner or in the courts, or 10 the insurer has systematically attempted to compromise or 11 12 renegotiate previously agreed settlements with its creditors 13 on the ground that it is financially unable to pay its 14 obligations in full.

15 (11) The insurer has failed to file its annual report 16 or other financial report required by statute within the 17 time allowed by law and, after written demand by the 18 commissioner, has failed to give an adequate explanation 19 immediately.

20 (12) The board of directors or the holders of a
21 majority of the shares entitled to vote request or consent
22 to rehabilitation under [this act].

23 Section 13. Rehabilitation orders. (1) An order to
24 rehabilitate the business of a domestic insurer or an alien
25 insurer domiciled in this state shall appoint the

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commissioner the rehabilitator and shall direct the 1 rehabilitator forthwith to take possession of the assets of z the insurer and to administer them under the general 3 supervision of the court. The filing or recording of the 4 order with the clerk of the district court or clerk and 5 recorder of the county in which the principal business of 6 the company is conducted or the county in which its 7 principal office or place of business is located shall 8 impart the same notice as a deed, bill of sale, or other 9 evidence of title duly filed or recorded with the county 10 clerk and recorder would have imparted. The order to 11 rehabilitate the insurer shall by operation of law vest 12 title to all assets of the insurer in the remabilitator. 13

14 (2) Any order issued under this section shall require
 15 accounting to the court by the rehabilitator. Accountings
 16 shall be <sup>1</sup> at such intervals as the court specifies in its
 17 order.

18 (3) Entry of an order of rehabilitation does not
19 constitute an anticipatory breach of any contracts of the
20 insurer.

21 Section 14. Powers and duties of the rehabilitator. 22 .(1) The commissioner as rehabilitator may appoint one or 23 more special deputies, who shall have all the powers and 24 responsibilities of the rehabilitator granted under this 25 section, and the commissioner may employ counsel, clerks,

and assistants. The compensation of the special deputy: 1 counsel, clerks, and assistants and all expenses of taking. z possession of the insurer and of conducting the proceedings 3 shall be fixed by the commissioner, with the approval of the 4 court and shall be paid out of the funds or assets of the 5 insurer. The persons appointed under this section shall ь serve at the pleasure of the commissioner. If the property 7 of the insurer does not contain sufficient cash or liquid a 9 assets to defray the costs incurred, the commissioner may advance the costs so incurred out of any appropriation for 10 the maintenance of his office. Any amounts so advanced for 11 expenses of administration shall be repaid to the 12 complisationer for the use of his office out of the first 13 14 available money of the insurer.

(2) The rehabilitator may take such action as 15 necessary to reform and revitalize the insurer. He shall 16 have all the powers of the directors, officers, and 17 18 managers, whose authority shall be suspended, except as they 19 are redelegated by the rehabilitator. He shall have full power to direct and manage, to hire and discharge employees 20 21 subject to any contract rights they may have, and to deal 22 with the property and business of the insurer.

(3) If it appears to the rehabilitator that there has
 been criminal or tortious conduct or breach of any
 contractual or fiduciary obligation detrimental to the

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insurer by any officer. manager. agent. broker. employee. or
 other person. he may pursue all appropriate legal remedies
 on behalf of the insurer.

rehabilitator determines that (4) If the 4 reorganization, consolidation, conversion, reinsurance, 5 merger, or other transformation of the insurer is 6 appropriate, he shall prepare a plan to effect such changes. 7 Upon application of the rehabilitator for approval of the 8 plan and after such notice and hearings as the court may Q prescribe, the court may either approve or disapprove the 10 plan proposed or may modify it and approve it as modified. 11 Any plan approved under this section must be, in the 12 judgment of the court, fair and equitable to all parties 13 concerned. If the plan is approved, the rehabilitator shall 14 carry out the plan. In the case of a life insurer, the plan 15 proposed may include the imposition of liens upon the 16 policies of the company, if all rights of shareholders are 17 18 first relinquished. A plan for a life insurer may also 19 propose imposition of a moratorium upon loan and cash surrender rights under policies, for such period and to such 20 21 an extent as may be necessary.

22 (5) The rehabilitator shall have the power under23 [sections 26 and 27] to avoid fraudulent transfers.

24 Section 15. Actions by and against the rehabilitator. 25 (1) Any court in this state before which any action or

proceeding in which the insurer is a party or is obligated 1 to defend a party is pending when a rehabilitation order 2 against the insurer is entered shall stay the action or З proceeding for 90 days and such additional time as is 4 necessary for the rehabilitator to obtain proper 5 representation and prepare for further proceedings. The 6 rehabilitator shall take such action respecting the pending 7 litigation as he considers necessary in the interests of я justice and for the protection of creditors, policyholders, 9 and the public. The rehabilitator shall immediately consider 10 11 all litigation pending outside this state and shall petition the courts having jurisdiction over that litigation for 12 13 stays whenever necessary to protect the estate of the 14 insurer.

(2) No statute of limitations or defense of laches 15 shall run with respect to any action by or against an 16 insurer between the filing of a petition for appointment of 17 a rehabilitator for that insurer and the order granting or 18 denying that petition. Any action by or against the insurer 19 that might have been commenced when the petition was filed 20 may be commenced for at least 60 days after the order of 21 rehabilitation is entered or the petition is denied. 22

(3) Any guaranty association or foreign guaranty
 association covering life or health insurance or annuities
 has standing to appear in any court proceeding concerning

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the rehabilitation of a life or health insurer if such
 association is or may become liable to act as a result of
 the rehabilitation.

Section 16. Termination of rehabilitation. (1) 4 Whenever the commissioner believes further attempts to 5 rehabilitate an insurer would substantially increase the -6 risk of lass to creditors, policyholders, or the public or 7 would be futile, the commissioner may petition the district я court for an order of liquidation. A petition under this 9 subsection shall have the same effect as a petition under 10 [section 17]. The district court shall permit the directors 11 of the insurer to take such actions as are reasonably 12 13 necessary to defend against the petition and may order 14 payment from the estate of the insurer of such costs and 15 other expenses of defense as justice may require.

16 (2) The rehabilitator may at any time petition the 17 district court for an order terminating rehabilitation of an 18 insurer. The court shall also permit the directors of the 19 insurer to petition the court for an order terminating 20 rehabilitation of the insurer and may order payment from the 21 estate of the insurer of such costs and other expenses of 22 such petition as justice may require. If the court finds that rehabilitation has been accomplished and that grounds 23 24 for rehabilitation under [section 12] no longer exist, it 25 shall order that the insurer be restored to possession of its property and the control of the business. The district court may also make that finding and issue that order at any time upon its own motion.

Section 17. Grounds for liquidation. The commissioner
may petition the district court for an order directing him
to liquidate a domestic insurer or an alien insurer
domiciled in this state on the basis:
(1) of any ground for an order of rehabilitation as

9 specified in [section 12], whether or not there has been a
10 prior order directing the rehabilitation of the insurer;

11 (2) that the insurer is insolvent; or

12 (3) that the insurer is in such condition that the
13 further transaction of business would be hazardous,
14 financially or otherwise, to its policyholders, its
15 creditors, or the public.

Section 18. Liquidation orders. (1) An order to 16 17 liquidate the business of a domestic insurer shall appoint the commissioner and his successors in office liquidator and 18 19 shall direct the liquidator forthwith to take possession of ZΟ the assets of the insurer and to administer them under the 21 general supervision of the court. The liquidator shall be 22 vested by operation of law with the title to all of the 23 property, contracts, and rights of action and all of the books and records of the insurer ordered liquidated. 24 25 wherever located, as of the entry of the final order of

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liquidation. The filing or recording of the order with the 1 clerk of the district court and the clerk and recorder of 2 the county in which its principal office or place of 3 business of located or, in the case of real estate, with the 4 clerk and recorder of the county where the property is 5 located shall impart the same notice as a deed, bill of 6 sale, or other evidence of title duly filed or recorded with 7 that clerk and recorder would have imparted. 8

9 (2) Upon issuance of the order, the rights and 10 liabilities of any such insurer and of its creditors, 11 policyholders, shareholders, members, and all other persons 12 interested in its estate shall become fixed as of the date 13 of entry of the order of liquidation, except as provided in 14 [sections 19 and 37].

15 (3) An order to liquidate the business of an alien 16 insurer domiciled in this state shall be in the same terms 17 and have the same legal effect as an order to liquidate a 18 domestic insurer, except that the assets and the business in 19 the United States shall be the only assets and business 20 included therein.

(4) At the time of petitioning for an order of
liquidation or at any time thereafter, the commissioner,
after making appropriate findings of an insurer's
insolvency, may petition the court for a judicial
declaration of such insolvency. After providing such notice

1 and hearing as it considers proper, the court may make the 2 declaration.

3 (5) Any order issued under this section shall require
4 accounting to the court by the liquidator. Accountings shall
5 be at such intervals as the court specifies in its order.

Section 19. Continuance of coverage. (1) All policies.
other than life or health insurance or annuities. in effect
at the time of issuance of an order of liquidation shall
continue in force only for the lesser of:

10 (a) a period of 30 days from the date of entry of the
11 liquidation orders;

12 (b) the expiration of the policy coverage;

13 (c) the date when the insured has replaced the
14 insurance coverage with equivalent insurance in another
15 insurer or otherwise terminated the policy; or

16 (d) the liquidator has effected a transfer of the 17 policy obligation pursuant to [section 21(1)(h)].

18 (2) An order or liquidation under [section 18]
19 terminates coverages at the time specified in subsection (1)
20 for purposes of any other statute.

21 (3) Policies of life or health insurance or annuities
22 continue in force for such period and under such terms as
23 provided by any applicable guaranty association or foreign
24 guaranty association.

25 (4) Policies of life or health insurance or annuities

or any period or coverage of such policies not covered by a
 guaranty association or foreign guaranty association shall
 terminate under subsections (1) and (2).

Section 20. Dissolution of insurer. The commissioner 4 may petition for an order dissolving the corporate existence 5 of a domestic insurer or the United States branch of an 6 alien insurer domiciled in this state at the time he applies 7 for a liquidation order. The court shall order dissolution 8 of the corporation upon petition by the commissioner upon or 9 after the granting of a liquidation order. If the 10 dissolution has not previously been ordered, it shall be 11 effected by operation of law upon the discharge of the 12 liquidator if the insurer is insolvent but may be ordered by 13 14 the court upon the discharge of the liquidator if the 15 insurer is under a liquidation order for some other reason. 16 Section 21. Powers of liquidator. (1) The liquidator 17 may:

(a) appoint a special deputy to act for him under
[this act] and to determine his reasonable compensation. The
special deputy has all powers of the liquidator granted by
this section. The special deputy shall serve at the pleasure
of the liquidator.

(b) employ agents, legal counsel, actuaries,
 accountants, appraisers, consultants, and other personnel
 necessary to assist in the liquidation;

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1 (c) fix the reasonable compensation of employees and 2 agents, legal counsel, actuaries, accountants, appraisers, 3 and consultants with the approval of the court;

(d) pay reasonable compensation to persons appointed 4 and defray from the funds or assets of the insurer all 5 expenses of taking possession of conserving, conducting, 6 7 liquidating, disposing of, or otherwise dealing with the business and property of the insurer. If the property of the 8 0 insurer does not contain sufficient cash or liquid assets to 10 defray the costs incurred, the commissioner may advance the 11 costs so incurred out of any appropriation for the 12 maintenance of the commissioner's office. Any amounts so 13 advanced for expenses of administration shall be repaid to 14 the commissioner for the use of his office out of the first 15 available money of the insurer.

16 (e) hold hearings, subpoena witnesses to compel their 17 attendance, administer oaths, examine any person under oath, 18 and compel any person to subscribe to his testimony after it 19 has been correctly reduced to writing, and in connection 20 therewith require the production of any books, papers, 21 records or other documents which he considers relevant to 22 the inquiry;

(f) to collect all debts and money due and claims
 belonging to the insurer, wherever located, and for this
 purpose:

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1 (i) institute timely action in other jurisdictions in 2 order to forestall garnishment and attachment proceedings 3 against such debts;

4 {ii} do such other acts as are necessary to collect.
5 conserve. or protect its assets or property. and has the
6 power to sell. compound. compromise. or assign debts for
7 purposes of collection upon such terms and conditions as he
8 considers best; and

9 (iii) pursue any creditor's remedies available to
 10 enforce his claims;

11 (g) conduct public and private sales of the property 12 of the insurer;

(h) use assets of the estate of an insurer under a
liquidation order to transfer policy obligations to a
solvent assuming insurer, if the transfer can be arranged
without prejudice to applicable priorities under [section
42];

18 (i) acquire, encumber, lease, improve, sell, or transfer any property of the insurer at its market value or 19 upon such terms and conditions as are fair and reasonable. 20 He shall also have power to execute, acknowledge, and 21 deliver any and all deeds, assignments, releases, and other 22 instruments necessary or proper to effectuate any sale of 23 property or other transaction in connection with the 24 25 liquidation.

1 (j) borrow money on the security of the insurer's 2 assets or without security and execute and deliver all 3 documents necessary to that transaction for the purpose of 4 facilitating the liquidation;

5 (k) enter into such contracts as are necessary to
6 carry out the order to liquidate, and affirm or disavow any
7 contracts to which the insurer is a party;

(1) continue to prosecute and institute in the name of 8 9 the insurer or in his own name any and all suits and other 10 legal proceedings, in this state or elsewhere, and abandon 11 the prosecution of claims he considers unprofitable to 12 pursue further. If the insurer is dissolved under (section 13 20], he shall have the power to apply to any court in this 14 state or elsewhere for leave to substitute himself for the 15 insurer as plaintiff.

16 (m) prosecute any action which may exist in behalf of 17 the creditors, members, policyholders, or shareholders of 18 the insurer against any officer of the insurer or any other 19 person;

(n) remove any or all records and property of the insurer to the offices of the commissioner or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation. Guaranty associations and foreign guaranty associations shall have such reasonable access to the records of the insurer as is necessary for

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1 them to carry out their statutory obligations.

2 (o) deposit in one or more banks in this state such
3 sums as are required for meeting current administration
4 expenses and dividend distributions;

5 (p) invest all sums not currently needed, unless the
 6 court orders otherwise;

7 (q) file any necessary documents for record in the
8 office of any county clerk and recorder in this state or
9 elsewhere where property of the insurer is located;

(r) assert all defenses available to the insurer as 10 against third persons, including statutes of limitation, 11 12 statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition in liquidation 13 has been filed shall not bind the liquidator. Whenever a 14 quaranty association or foreign quaranty association has an 15 obligation to defend any suit, the liquidator shall give 16 17 precedence to such obligation and may defend only in the 18 absence of a defense by such guaranty associations.

(s) exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included with [sections 26 through 28];

(t) intervene in any proceeding wherever institutedthat might lead to the appointment of a receiver or trustee

1 and act as the receiver or trustee whenever the appointment
2 is offered;

3 (u) enter into agreements with any receiver or 4 commissioner of any other state relating to the 5 rehabilitation, liquidation, conservation, or dissolution of 6 an insurer doing business in both states;

7 (v) exercise all powers now held or hereafter
8 conferred upon receivers by the laws of this state not
9 inconsistent with the provisions of {this act}.

10 (2) The enumeration in this section of the powers and 11 authority of the liquidator shall not be construed as a 12 limitation upon him, nor shall it exclude in any manner his 13 right to do such other acts not herein specifically 14 enumerated, or otherwise provided for, as may be necessary 15 for the accomplishment of or in aid of the purpose of 16 liquidation.

17 Section 22. Notice to creditors and others. (1) Unless 18 the court otherwise directs, the liquidator shall give or 19 cause to be given notice of the liquidation order as soon as 20 possible:

(a) by first-class mail and either by telegram or
telephone to the insurance commissioner of each jurisdiction
in which the insurer is doing business;

(b) by first-class mail to any guaranty association or
foreign guaranty association which is or may become

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1 obligated as a result of the liquidation;

2 (c) by first-class mail to all insurance agents of the
3 insurer;

4 (d) by first-class mail to all persons known or 5 reasonably expected to have claims against the insurer; 6 including all policyholders; at their last-known address as 7 indicated by the records of the insurer; and

8 (e) by publication in a newspaper of general 9 circulation in the county in which the insurer has its 10 principal place of business and in such other locations as 11 the liquidator considers appropriate.

(2) Notice to potential claimants under subsection (1) 12 13 shall require claimants to file with the liquidator their claims together with proper proofs thereof under [section 14 36], on or before a date the liquidator shall specify in the 15 notice. The liquidator need not require persons claiming 16 cash surrender values or other investment values in life 17 18 insurance and annuities to file a claim. All claimants have a duty to keep the liquidator informed of any changes of 19 20 address.

21 (3) If notice is given in accordance with this
22 section, the distribution of assets of the insurer under
23 this chapter shall be conclusive with respect to all
24 claimants, whether or not they received notice.

25 Section 23. Duties of agents. (I) Every person who

receives notice in the form prescribed in [section 22] that 1 an insurer which he represents as an agent is the subject of Z a liquidation order shall within 15 days of such notice give 3 notice of the liquidation order. The notice shall be sent by 4 first-class mail to the last address contained in the 5 6 agent's records to each policyholder or other person named 7 in any policy issued through the agent by the insurer, if he 8 has a record of the address of the policyholder or other 9 person. A policy shall be considered issued through an agent 10 if the agent has a property interest in the expiration of 11 the expiration of the policy or if the agent has had in his 12 possession a copy of the declarations of the policy at any 13 time during the life of the policy, except where the 14 ownership of the expiration of the policy has been 15 transferred to another. The written notice shall include the name and address of the insurer, the name and address of the 16 17 agent, identification of the policy impaired, and the nature 18 of the impairment, including termination of coverage, as described in [section 19]+ Notice by a general agent 19 20 satisfies the notice requirement for any agents under 21 contract to him. Each agent obligated to give notice under this section shall file a report of compliance with the 22 23 liquidator.

24 (2) Any agent failing to give notice or file a report
25 of compliance as required in subsection (1) may be subject

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to payment of a penalty of not more than \$1,000 and may have
 his license suspended, after a hearing held by the
 commissioner.

(3) The liquidator may waive the duties imposed by 4 this section if he determines that other notice to the 5 policyholders of the insurer under liquidation is adequate. 6 Section 24. Actions by and against liquidator. (1) 7 Upon issuance of an order appointing a liquidator of a 8 domestic insurer or of an alien insurer domiciled in this 9 state, no action at law or equity may be brought against the 10 insurer or liquidator, whether in this state or elsewhere, 11 12 nor shall any such existing actions be maintained or further 13 presented after issuance of such order. The courts of this 14 state shall give full faith and credit to injunctions against the liquidator or the company or the continuation of 15 existing actions against the liquidator or the company when 16 17 such injunctions are included in an order to liquidate an 18 insurer issued pursuant to corresponding provisions in other 19 states. Whenever in the liquidator's judgment protection of 20 the estate of the insurer necessitates intervention in an Z1 action against the insurer that is pending outside this 22 states he may intervene in the action. The liquidator may Z3 defend any action in which he intervenes under this section at the expense of the estate of the insurer. 24

25 (2) The liquidator may, upon or after an order for

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liquidation: within 2 years or such time in addition to 2 1 years as applicable law may permit, institute an action or 2 proceeding on behalf of the estate of the insurer upon any 3 cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing 5 of the petition upon which such order is entered. When, by ٨ any agreement, a period of limitation is fixed for 7 instituting a suit or proceeding upon any claim or for A filing any claim, proof of claim, proof of loss, demand, 9 notice, or the like or when in any proceeding, judicial or 10 otherwise, a period of limitation is fixed, either in the 11 proceeding or by applicable law, for taking any action, 12 filing any claim or pleading, or doing any act and when in 13 any such case the period had not expired at the date of the 14 filing of the petition, the liquidator may, for the benefit 15 of the estate, take any such action or do any such act, 16 required of or permitted to the insurer, within a period of 17 180 days subsequent to the entry of an order for 18 liquidation, or within such further period as is shown to 19 20 the satisfaction of the court not to be unfairly prejudicial 21 to the other party.

22 (3) No statute of limitations or defense of laches
23 shall run with respect to any action against an insurer
24 between the filing of a petition for liquidation against an
25 insurer and the denial of the petition. Any action against

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the insurer that might have been commenced when the petition
 was filed may be commenced for at least 60 days after the
 petition is denied.

4 (4) Any guaranty association or foreign guaranty 5 association shall have standing to appear in any court 6 proceeding concerning the liquidation of an insurer if such 7 association is or may become liable to act as a result of 8 the liquidation.

Section 25. Collection and list of assets. (1) As soon 9 as practicable after the liquidation order but not later 10 than 120 days thereafter, the liquidator shall prepare in 11 duplicate a list of the insurar's assets. The list shall be 12 13 amended or supplemented from time to time as the liquidator may determine. One copy shall be filed in the office of the 14 15 clerk of the district court and one copy shall be retained 16 for the liquidator's files. All amendments and supplements 17 shall be similarly filed.

18 (2) The liquidator shall reduce the assets to a degree
19 of liquidity that is consistent with the effective execution
20 of the liquidation.

21 (3) A submission to the court for disbursement of
22 assets in accordance with [section 34] fulfills the
23 requirements of subsection (1) of this section.

24 Section 26. Fraudulent transfers prior to petition.
25 (1) Every transfer made or suffered and every obligation

incurred by an insurer within 1 year prior to the filing of 1 a successful petition for rehabilitation or liquidation 2 under [this act] is fraudulent as to then existing and 3 future creditors if made or incurred without fair 4 consideration or with actual intent to hinder, delay, or 5 defraud either existing or future creditors. A transfer 6 made or an obligation incurred by an insurer ordered to be 7 rehabilitated or liquidated under [this act] which is 8 fraudulent under this section way be avoided by the 9 receiver, except as to a person who in good faith is a 10 purchaser, lienor, or obligee for a present fair equivalent 11 value, and except that any purchaser, lienor, or obligee, 12 13 who in good faith has given a consideration less than fair 14 for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment. The 15 16 court say, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate. 17 18 and in that event, the receiver succeeds to and may enforce 19 the rights of the purchaser, lienor, or obligee.

20 (2) (a) A transfer of property other than real 21 property is considered to be made or suffered when it 22 becomes so far perfected that no subsequent lien obtainable 23 by legal or equitable proceedings on a simple contract could 24 become superior to the rights of the transferee under 25 [section 28(3)].

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. . .

1 (b) A transfer of real property is considered to be 2 made or suffered when it becomes so far perfected that no 3 subsequent bona fide purchaser from the insurer could obtain 4 rights superior to the rights of the transferee.

5 (c) A transfer which creates an equitable lien is not 6 considered to perfected if there are available means by 7 which a legal lien could be created.

8 (d) Any transfer not perfected prior to the filing of
 9 a petition for liquidation is considered to be made
 10 immediately before the filing of the successful petition.

(e) The provisions of this subsection apply whether or
not there are or were creditors who might have obtained any
liens or persons who might have become bona fide purchasers.
(3) Any transaction of the insurer with a reinsurer is
considered fraudulent and may be avoided by the receiver
under subsection (1) if:

17 (a) the transaction consists of the termination: adjustment, or settlement of a reinsurance contract in which 18 19 the reinsurer is released from any part of its duty to pay 20 the originally specified share of losses that had occurred 21 prior to the time of the transaction, unless the reinsurer 22 gives a present fair equivalent value for the release; and 23 (b) any part of the transaction took place within 1 24 year prior to the date of filing of the petition through 25 which the receivership was commenced.

Section 27. Fraudulent transfer after petition. (1) 1 After a petition for rehabilitation or liquidation has been 2 filed, a transfer of any of the real property of the insurer 3 made to a person acting in good faith is valid against the 4 5 receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the 6 extent of the present consideration actually paid therefor. 7 for which amount the transferee shall have a lien on the 8 property so transferred. The commencement of a proceeding in 9 rehabilitation or liquidation is constructive notice upon 10 the recording of a copy of the petition for or order of 11 12 rehabilitation or liquidation with the county clerk and recorder in the county where any real property in question 13 is located. The exercise by a court of the United States or 14 any state or jurisdiction to authorize or effect a judicial 15 sale of real property of the insurer within any county in 16 any state shall not be impaired by the pendency of such a 17 proceeding unless the copy is recorded in the county prior 18 19 to the consummation of the judicial sale. (2) After a petition for rehabilitation or liquidation 2 O 21 has been filed and before either the receiver takes 22 possession of the property of the insurer or an order of 23 rehabilitation or liquidation is granted:

24 (a) a transfer of any of the property of the insurer,
25 other than real property, made to a person acting in good

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faith is valid against the receiver if made for a present 1 fair equivalent value or, if not made for a present fair 2 equivalent value, then to the extent of the present 3 consideration actually paid therefor, for which amount the - 4 transferee shall have a lien on the property so transferred; 5 (b) a person indebted to the insurer or holding 6 property of the insurer may, if acting in good faith, pay 7 the indebtedness or deliver the property, or any part 8 thereof, to the insurer or upon his order, with the same 9 effect as if the petition were not pending; 10

(c) a person having actual knowledge of the pending
 rehabilitation or liquidation is considered not acting in
 good faith;

14 (d) a person asserting the validity of a transfer 15 under this section has the burden of proof. Except as 16 elsewhere provided in this section. no transfer by or on 17 behalf of the insurer after the date of the petition for 18 liquidation by any person other than the liquidator shall be 19 valid against the liquidator.

20 (3) Nothing in [this act] impairs the negotiability of
 21 currency or negotiable instruments.

2! Section 28. Voidable preferences and liens. (1) (a) A
23 preference is a transfer of any of the property of an
24 insurer to or for the benefit of a creditor. for or on
25 account of an antecedent debt. made or suffered by the

insurer within 1 year before the filing of a successful 1 2 petition for liquidation under [this act], the effect of which transfer may be to enable the creditor to obtain a 3 greater percentage of this debt than another creditor of the 4 same class would receive. If a liquidation order is entered 5 while the insurer is already subject to a rehabilitation 6 order. then such transfers shall be considered preferences 7 if made or suffered within 1 year before the filing of the 8 successful petition for rehabilitation or within 2 years 9 before the filing of the successful petition for 10 liquidation, whichever time is shorter. 11 (b) Any preference may be avoided by the liquidator 12 if: 13

14 (i) the insurer was insolvent at the time of the 15 transfer;

16 (ii) the transfer was made within 4 months before the

17 filing of the petition;

18 (iii) the creditor receiving it or to be benefited 19 thereby or his agent acting with reference thereto had, at 20 the time when the transfer was made, reasonable cause to 21 believe that the insurer was insolvent or was about to 22 become insolvent; or

23 (iv) the creditor receiving it was an officer or any
24 employee or attorney or other person who was in fact in a
25 position of comparable influence in the insurer to an

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1 officer whether or not he held such position, or any 2 shareholder holding directly or indirectly more than 5% of 3 any class of any equity security issued by the insurer, or 4 any other person, firm, corporation, association, or 5 aggregation of persons with whom the insurer did not deal at 6 arm's length.

(c) When the preference is voidable, the liquidator 7 may recover the property or, if it has been converted, its 8 value from any person who has received or converted the 9 property, except where a bona fide purchaser or lienor has 10 given less than fair equivalent value, he shall have a lien 11 upon the property to the extent of the consideration 1Z actually given by him. When a preference by way of lien or 13 14 security title is voidable, the court may on due notice order the lien or title to be preserved for the benefit of 15 16 the estate, in which event the lien or title passes to the 17 liquidator.

18 (2) (a) A transfer of property other than real 19 property is considered to be made or suffered when it 20 becomes so far perfected that no subsequent lien obtainable 21 by legal or equitable proceedings on a simple contract could 22 become superior to the rights of the transferee.

(b) A transfer of real property is considered to be
 made or suffered when it becomes so far perfected that no
 subsequent bona fide purchaser from the insurer could obtain

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1 rights superior to the rights of the transferee.

2 (c) A transfer which creates an equitable lien is not
3 considered to be perfected if there are available means by
4 which a legal lien could be created.

5 (d) A transfer not perfected prior to the filing of a 6 petition for liquidation is considered to be made 7 immediately before the filing of the successful petition.

(e) The provisions of this subsection apply whether or 8 not there are or were creditors who might have obtained 9 liens or persons who might have become bona fide purchasers. 10 (3) (a) A lien obtainable by legal or equitable 11 12 proceedings upon a simple contract is one arising in the 13 ordinary course of such proceedings upon the entry or docketing of a judgment or decree or upon attachment. 14 garnishment, execution, or like process, whether before, 15 upon: or after judgment or decree and whether before or upon 16 levy. It does not include liens which under applicable law 17 are given a special priority over other liens which are 18 19 prior in time.

(b) A lien obtainable by legal or equitable
proceedings could become superior to the rights of a
transferee, or a purchaser could obtain rights superior to
the rights of a transferee within the meaning of subsection
(2), if such consequences would follow only from the lien or
purchase itself or from the lien or purchase followed by any

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step wholly within the control of the respective lienholder 1 or purchaser, with or without the aid of ministerial action Z public officials. Such a lien could not, however, become 3 bv superior and such a purchase could not create superior 4 rights for the purpose of subsection (2) through any acts 5 subsequent to the obtaining of such a lien or subsequent to 6 such a purchase which require the agreement or concurrence 7 of any third party or which require any further judicial 8 9 action or ruling.

(4) A transfer of property for or on account of a new 10 and contemporaneous consideration which is considered under 11 subsection (2) to be made or suffered after the transfer 12 because of delay in perfecting it does not thereby become a 13 transfer for or on account of an antecedent debt if any acts 14 required by the applicable law to be performed in order to 15 perfect the transfer as against liens or bona fide 16 17 purchasers\* rights are performed within 21 days or any 18 period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if such a loan is actually 19 made, or a transfer which becomes security for a future loan 20 shall have the same effect as a transfer for or on account 21 of a new and contemporaneous consideration. 22

23 (5) If any lien considered voidable under subsection
24 (1)(b) has been dissolved by the furnishing of a bond or
25 other obligation, the surety on which has been indemnified

directly or indirectly by the transfer of or the creation of a lien upon any property of an insurer before the filing of a petition under [this act] which results in a liquidation order. the indemnifying transfer or lien shall also be considered voidable.

(6) The property affected by any lien considered 6 voidable under subsections (1) and (5) shall be discharged 7 from such lien, and that property and any of the 8 indemnifying property transferred to or for the benefit of a 9 surety shall pass to the liquidator, except that the court 10 may on due notice order any such lien to be preserved for 11 the benefit of the estate and the court may direct that such 12 conveyance be executed as may be proper or adequate to 13 14 evidence the title of the liquidator.

(7) The district court has summary jurisdiction of any 15 proceeding by the liquidator to hear and determine the 16 rights of any parties under this section. Reasonable notice 17 of any hearing in the proceeding shall be given to all 18 19 parties in interest, including the obligee of a releasing 20 bond or other like obligation. When an order is entered for the recovery of indemnifying property in kind or for the 21 avoidance of an indemnifying lien, the court, upon 22 Z3 application of any party in interest, shall in the same proceeding ascertain the value of the property or lien, and 24 if the value is less than the amount for which the property 25

is indemnity or less than the amount of the lien, the
 transferee or lienholder may elect to retain the property or
 lien upon payment of its value, as ascertained by the court,
 to the liquidator, within such reasonable times as the court
 shall fix.

6 (8) The liability of a surety under a releasing bond 7 or other like obligation is discharged to the extent of the 8 value of the indemnifying property recovered or the 9 indemnifying lien nullified and avoided by the liquidator or 10 when the property is retained under subsection (7) to the 11 extent of the amount paid to the liquidator.

12 (9) If a creditor has been preferred and afterward in 13 good faith gives the insurer further credit without security 14 of any kind, for property which becomes a part of the 15 insurer's estate, the amount of the new credit remaining 16 unpaid at the time of the petition may be set off against 17 the preference which would otherwise be recoverable from 18 him.

(10) If an insurer, directly or indirectly, within 4 months before the filing of a successful petition for liquidation under [this act] or at any time in contemplation of a proceeding to liquidate it, pays money or transfers property to an attorney at law for services rendered or to be rendered, the transaction may be examined by the court on its own motion or shall be examined by the court on petition

of the liquidator and shall be held valid only to the extent 1 of a reasonable amount to be determined by the court, and 2 the excess may be recovered by the liquidator for the 3 benefit of the estate, provided that where the attorney is 4 in a position of influence in the insurer or an affiliate 5 thereofy payment of any money or the transfer of any 6 property to the attorney at law for services rendered or to 7 be rendered shall be governed by the provision of subsection 8 (1)(b)(iv). 9

(11) (a) Every officer, manager, employee, shareholder, 10 members subscribers attorneys or any other person acting on 11 behalf of the insurer who knowingly participates in giving 12 any preference when he has reasonable cause to believe the 13 insurer is or is about to become insolvent at the time of 14 the preference is personally liable to the liquidator for 15 the amount of the preference. It is permissible to infer 16 that there is reasonable cause to so believe if the transfer 17 was made within 4 months before the date of filing of this 18 successful petition for liquidation. 19

(b) Every person receiving any property from the
insurer or the benefit thereof as a preference voidable
under subsection (1) is personally liable therefor and is
bound to account to the liquidator.

24 (c) Nothing in this subsection prejudices any other25 claim by the liquidator against any person.

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Section 29. Claims of holders of void or voidable 1 rights. (1) No claims of a creditor who has received or 2 acquired a preference, lien, conveyance, transfer, 3 assignment, or encumbrance voidable under [this act], shall 4 be allowed unless he surrenders the preference. lien. 5 conveyance, transfer, assignment, or encumbrance. If the 6 avoidance is effected by a proceeding in which a final 7 judgment has been entered, the claim may not be allowed 8 unless the money is paid or the property is delivered to the 9 liquidator within 30 days from the date of the entering of 10 judgment, except that the court having 11 the final jurisdiction over the liquidation may allow further time if 12 13 there is an appeal or other continuation of the proceeding. (2) A claim allowable under subsection (1) by reason 14 15 of the avoidance, whether voluntary or involuntary, or a preference, lien, conveyance, transfer, assignment, or 16 17 encumbrance may be filed as an excused late filing under 18 [section 35] if filed within 30 days from the date of the 19 avoidance or within the further time allowed by the court 20 under subsection (1).

21 Section 30. Setoffs and counterclaims. (1) Hutual 22 debts or mutual credits between the insurer and another 23 person in connection with any action or proceeding under 24 [this act] shall be set off and the balance only shall be 25 allowed or paid, except as provided in subsection (2) and 1 [section 33].

(2) No setoff or counterclaim may be allowed in favor
 3 of any person when:

(a) the obligation of the insurer to the person would
not at the date of the filing of a petition for liquidation
entitle the person to share as a claimant in the assets of
the insurer;

8 (b) the obligation of the insurer to the person was
9 purchased by or transferred to the person with a view to its
10 being used as a setoff;

11 (c) the obligation of the person is to pay an 12 assessment levied against the members or subscribers of the 13 insurer or is to pay a balance upon a subscription to the 14 capital stock of the insurer or is an any other way in the 15 nature of a capital contribution; or

16 (d) the obligation of the person is to pay premiums,17 whether earned or unearned, to the insurer.

Section 31. Assessments. (1) As soon as practicable but not more than 2 years from the date of an order of liquidation under [section 18] of an insurer issuing assessable policies, the liquidator shall make a report to the court setting forth:

- 23 (a) the reasonable value of the assets of the insurer;
- 24 (b) the insurer's probable total liabilities;
- 25 (c) the probable aggregate amount of the assessment

necessary to pay all claims of creditors and expenses in
 full, including expenses of administration and costs of
 collecting the assessment; and

4 (d) a recommendation as to whether or not an
5 assessment should be made and in what amount.

6 (2) (a) Upon the basis of the report provided in
 7 subsection (1), including any supplements and amendments
 8 thereto, the district court may levy one or more assessments
 9 against all members of the insurer who are subject to
 10 assessment.

11 (b) Subject to any applicable legal limits on 12 assessability, the aggregate assessment shall be for the 13 amount that the sum of the probable liabilities, the 14 expenses of administration, and the estimated cost of 15 collection of the assessment exceeds the value of existing 16 assets, with due regard being given to assessments that 17 cannot be collected economically.

18 (3) After levy of assessment under subsection (2), the 19 liquidator shall issue an order directing each member who 20 has not paid the assessment pursuant to the order to show 21 cause why the liquidator should not pursue a judoment 22 therefor.

(4) The liquidator shall give notice of the order to
show cause by publication and by first-class mail to each
member liable thereunder mailed to his last-known address as

it appears on the insurer\*s records at least 20 days before
 the return day of the order to show cause.

3 (5) (a) If a member does not appear and serve duly 4 verified objections upon the liquidator on or before the 5 return day of the order to show cause under subsection (3), 6 the court shall make an order adjudging the member liable 7 for the amount of the assessment against him, pursuant to 3 subsection (3), together with costs, and the liquidator 9 shall have a judgment against the member therefor.

(b) If on or before such return day, the member 10 and serves duly verified objections upon the 11 appears liquidator, the commissioner may hear and determine the 12 matter or may appoint a referee to hear it and make such 13 order as the facts warrant. If the commissioner determines 14 that such objections do not warrant relief from assessment. 15 the member may request the court to review the matter and 16 vacate the order to show cause. 17

18 (6) The liquidator may enforce any order or collect
 19 any judgment under subsection (5) by any lawful means.

20 Section 32. Reinsurer's liability. The amount 21 recoverable by the liquidator from reinsurers may not be 22 reduced as a result of delinquency proceedings, regardless 23 of any provision in the reinsurance contract or other 24 agreement. Payment made directly to an insured or other 25 creditor may not diminish the reinsurer's obligation to the

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insurer's estate except when the reinsurance contract provided for direct coverage of a named insured and the

3 payment was made in discharge of that obligation.

Section 33. Recovery of premiums owed. (1) (a) An 4 agent or any other person responsible for the payment of a 5 premium, other than the insured, shall be obligated to pay 6 any unpaid premium for the full policy term due the insurer 7 at the time of the declaration of insolvency, whether earned 8 or unearned, as shown on the records of the insurer. The 9 liquidator may recover from such person any part of an 10 unearned premium that represents commission of such person-11 Credits or setoffs or both may not be allowed to an agent 12 for any amounts advanced to the insurer by the agent on 13 behalf of but in the absence of a payment by the insured. 14

(b) An insured shall pay any unpaid earned premium due
the insurer at the time of the declaration of insolvency, as
shown on the records of the insurer.

18 (2) Upon satisfactory evidence of a violation of this
19 section, the commissioner may pursue either one or both of
20 the following courses of action:

21 (a) suspend or revoke or refuse to renew the licenses22 of any offending party;

(b) impose a penalty of not more than \$1,000 for eachact in violation of this section by such party.

25 (3) Before the commissioner may take any action as set

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forth in subsection (2), he shall give written notice to the 1 persons companys associations or exchange accused of 2 violating the law, stating specifically the nature of the 3 alleged violation and fixing a time and place, at least 10 4 days thereafter, when a hearing on the matter shall be held. 5 After such hearing or upon failure of the accused to appear 6 at such hearing, the commissioner, if he finds a violation, 7 shall impose such penalties under subsection (2) as he 8 9 considers advisable.

10 (4) When the commissioner takes action in any of the
11 ways set out in subsection (2), the party aggrieved may
12 appeal from the action to the district court.

Section 34. Domiciliary liquidator's proposal to 13 distribute assets. (1) Within 120 days of a final 14 15 determination of insolvency of an insurer by a court of competent jurisdiction of this state, the liquidator shall 16 make application to the court for approval of a proposal to 17 disburse assets out of marshalled assets, from time to time 18 as such assets become available, to a guaranty association 19 20 or foreign guaranty association having obligations because of such insolvency. If the liquidator determines that there 21 are insufficient assets to disburse, the application 22 23 required by this section shall be considered satisfied by a filing by the liquidator stating the reasons for this 24 25 determination.

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(2) The proposal shall at least include provisions
 for:

(a) reserving amounts for the payment of expenses of
administration and the payment of claims of secured
creditors, to the extent of the value of the security held,
and claims falling within the priorities established in
[section 42], classes 1 and 2;

8 (b) disbursement of the assets marshalled to date and
9 subsequent disbursement of assets as they become available;
10 (c) equitable allocation of disbursements to each of
11 the guaranty associations and foreign guaranty associations
12 entitled thereto;

13 (d) the securing by the liquidator from each of the associations entitled to disbursements pursuant to this 14 section of an agreement to return to the liquidator such 15 assets, together with income earned on assets previously 16 17 disbursed, as may be required to pay claims of secured creditors and claims falling within the priorities 18 19 established in [section 42] in accordance with such 20 priorities (no bond may be required of any such association); and 21

(e) a full report to be made by each association to
the liquidator accounting for all assets so disbursed to the
association, all disbursements made therefrom, any interest
earned by the association on such assets, and any other

1 matter as the court may direct.

(3) The liquidator's proposal shall provide for 2 disbursements to the associations in unounts estimated at 3 least equal to the claim payments made or to be made thereby 4 for which such associations could assert a claim against the 5 liquidator and shall further provide that if the assets 6 available for disbursement from time to time do not equal or 7 exceed the amount of such claim payments made or to be made н by the association, then disbursements shall be in the 9 amount of available assets. 10

(4) The liquidator's proposal shall, with respect to 11 on insolvent insurer writing life or health insurance or 12 annuities, provide for disbursements of assats to any 13 14 quaranty association or any foreign guaranty association covering life or health insurance or annuities or to any 15 other entity or organization reinsuring, assuming, or 16 guaranteeing policies or contracts of insurance under the 17 18 acts creating such associations.

19 (5) Notice of such application shall be given to the 20 association in and to the commissioners of insurance of each 21 of the states. Any notice shall be considered to have been 22 given when deposited in the United States certified mails, 23 first-class postage prepaid, at least 30 days prior to 24 submission of such application to the court. Action on the 25 application may be taken by the court provided the above

required notice has been given and provided further that the
 liquidator's proposal complies with subsections (?)(d) and
 (2)(b).

4 Section 35. Filing of claims. (1) Proof of all claims 5 shall be filed with the liquidator in the form required by 6 [section 36] on or before the last day for filing specified 7 in the notice required under [section 22], except that proof 8 of claims for cash surrender values or other investment 9 values in life insurance and annuities need not be filed 10 unless the liquidator requires.

11 (2) The liquidator may permit a claimant making a late 12 filing to share in distributions, whether past or future, as 13 if he were not late, to the extent that any such payment 14 will not prejudice the orderly administration of the 15 liquidation, under the following circumstances:

16 (a) the existence of the claim was not known to the
17 claimant and his claim was filed as promptly after learning
18 of it as reasonably possible;

(b) a transfer to a creditor was avoided under
(sections 26 through 28) or was voluntarily surrendered
under [section 29]; and the filing satisfies the conditions
of [section 29]; and

(c) the valuation under [section 41] of security held
by a secured creditor shows a deficiency, which is filed
within 30 days after the valuation.

(3) The liquidator shall permit late filing claims to 1 share in distributions, whether past or future, as if they 2 were not late, if such claims are claims of a guaranty 3 association foreign quaranty association for 4 or reimbursement of covered claims paid or expenses incurred. 5 or both, subsequent to the last day for filing where such 6 7 payments were made and expenses incurred as provided by law. (4) The liquidator may consider any claim filed late 8 9 which is not covered by subsection (2) and permit it to 10 receive distributions which are subsequently declared on any claims of the same or lower priority if the payment does not 11 prejudice the orderly administration of the liquidation. The 12 13 late-filing claimant shall receive, at each distribution, 14 the same percentage of the amount allowed on his claim as is 15 then being paid to claimants of any lower priority. This 16 shall continue until his claim has been paid in full. 17 Section 36. Proof of claim. (1) Proof of claim shall consist of a statement signed by the claimant that includes 18 19 all of the following that are applicable:

20 (a) the particulars of the claim including the21 consideration given for it;

2? (b) the identity and amount of the security on the23 claim;

24 (c) the payments made on the debt, if any;

25 (d) that the sum claimed is justly owing and that

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there is no setoff, counterclaim, or defense to the claim;
 (e) any right of priority of payment or other specific
 right asserted by the claimants;

4 (f) a copy of the written instrument which is the
5 foundation of the claim;

6 (g) the name and address of the claimant and the
 7 attorney who represents him, if any.

8 (2) No claim need be considered or allowed if it does 9 not contain all the information in subsection (1) which may 10 be applicable. The liquidator may require that a prescribed 11 form be used and may require that other information and 12 documents be included.

13 (3) At any time the liquidator may request the 14 claimant to present information or evidence supplementary to 15 that required under subsection (1) and may take testimony 16 under oath, require production of affidavits or depositions. 17 or otherwise obtain additional information or evidence.

18 (4) No judgment or order against an insured or the insurer entered after the date of filing of a successful 19 20 petition for liquidation and no judgment or order against an insured or the insurer entered at any time by default or by 21 22 collusion need be considered as evidence of liability or of quantum of damages. No judgment or order against an insured Z3 or the insurer entered within 4 months before the filing of 24 the petition need be considered as evidence of liability or 25

1 of the quantum of damages.

(5) All claims of a quaranty association or foreign 2 guaranty association shall be in such form and contain such 3 substantiation as may be agreed to by the association and 4 the liquidator. 5 Section 37. Special claims. (1) The claim of a third 6 party which is contingent only on his first obtaining a 7 judgment against the insured shall be considered and allowed а as if there were no such contingency. 9 (2) A claim may be allowed even if contingent, if it 10 is filed in accordance with [section 35]. It may be allowed 11 and may participate in all distributions declared after it 12 is filed to the extent that it does not prejudice the 13 14 orderly administration of the liquidation. (3) Claims that are due except for the passage of time 15 shall be treated as absolute claims are treated, except that 16 such claims may be discounted at the legal rate of interest. 17 (4) Claims made under employment contracts by 18 19 directors, principal officers, or persons in fact performing similar functions or having similar powers are limited to 20 21 payment for services rendered prior to the issuance of any 22 order of rehabilitation or liquidation under [section 13 or 23 18].

24 Section 38. Special provisions for third-party claims.

25 (1) Whenever any third party asserts a cause of action

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against an insured of an insurer in liquidation, the third
 party may file a claim with the liquidator.

3 (2) Whether or not the third party files a claim, the 4 insured may file a claim on his own behalf in the 5 liquidation. If the insured fails to file a claim by the 6 date for filing claims specified in the order of liquidation 7 or within 60 days after mailing of the notice required by 8 [section 22], whichever is later, he is an unexcused late 9 filer.

(3) The liquidator shall make his recommendations to 10 the court under [section 42], for the allowance of an 11 insured's claim under subsection (2), after consideration of 12 the probable outcome of any pending action against the 13 insured on which the claim is based, the probable damages 14 recoverable in the action, and the probable costs and 15 expenses of defense. After allowance by the court, the 16 liquidator shall withhold any dividends payable on the 17 claim, pending the outcome of litigation and negotiation 18 19 with the insured. Whenever it seems appropriate, he shall 20 reconsider the clim on the bases of additional information and amend his recommendations to the court. The insured 21 shall be afforded the same notice and opportunity to pe 22 heard on all changes in the recommendation as in its initial 23 determination. The court may amend its allowance as it Z4 thinks appropriate. As claims against the insured are 25

settled or barred, the insured shall be paid, from the 1 amount withheld, the same percentage dividend as was paid on 2 other claims of like property, based on the lesser of the 3 amount actually recovered from the insured by action or paid 4 by agreement plus the reasonable costs and expenses of 5 defense, or the amount allowed on the claims by the court. 6 After all claims are settled or barred, any sum remaining 7 from the amount withheld shall revert to the undistributed A assets of the insurer. Delay in final payment under this 9 subsection shall not be a reason for unreasonable delay of 10 final distribution and discharge of the liquidator. 11

(4) If several claims founded upon one policy are 12 filed, whether by third parties or as claims by the insured 13 14 under this section and the aggregate allowed amount of the claims to which the same limit of liability in the policy is 15 applicable exceeds that limit, each claim as allowed shall 16 be reduced in the same proportion so that the total equals 17 the policy limit. Claims by the insured shall be evaluated 18 as in subsection (3). If any insured's claim is subsequently 19 20 reduced under subsection (3), the amount thus freed shall be apportioned ratably among the claims which have been reduced 21 under this subsection. 22

(5) no claim may be presented under this section if it
is or may be covered by any guaranty association or foreign
guaranty association.

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1 Section 39. Disputed claims. (1) When a claim is denied in whole or in part by the liquidator, written notice Z of the determination shall be given to the claimant or his 3 attorney by first-class mail at the address shown in the 4 proof of claim. Within 60 days from the mailing of the 5 notice, the claimant may file his objections with the 6 liquidator. If no such filing is made, the claimant may not 7 further object to the determination. 8

(?) Whenever objections are filed with the liquidator 9 and the liquidator does not alter his denial of the claim as 10 a result of the objections, the liquidator shall ask the 11 court for a hearing as soon as practicable and give notice 12 of the hearing by first-class mail to the claimant or his 13 attorney and to any other persons directly affected, not 14 15 less than 10 or more than 30 days before the date of the 16 hearing. The matter may be heard by the court or by a 17 court-appointed referee who shall submit findings of fact 18 along with his recommendation.

Section 40. Claims of surety. Whenever a creditor whose claim against an insurer is secured, in whole or in part, by the undertaking of another person fails to prove and file that claim, the other person may do so in the creditor's name and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name, to the extent

of an agreement with the creditor to the contrary, the other z person shall not be entitled to any distribution until the 3 amount paid to the creditor on the undertaking plus the distributions paid on the claim from the insurer's estate to 5 the creditor equals the amount of the entire claim of the 6 creditor. Any excess received by the creditor shall be held 7 by him in trust for such other person. The term "other 9 person", as used in this section, is not intended to apply 9 to a guaranty association or foreign guaranty association. 10 Section 41. Secured creditor's claims. (1) The value 11 of any security held by a secured creditor shall be 12 determined in one of the following ways, as the court may 13 14 direct:

that he discharges the undertaking. However, in the absence

15 (a) by converting the same into money according to the
16 terms of the agreement pursuant to which the security was
17 delivered to such creditors; or

18 (b) by agreement, arbitration, compromise, or
19 litigation between the creditor and the liquidator.

20 (2) The determination shall be under the supervision 21 and control of the court with due regard for the 22 recommendation of the liquidator. The amount so determined 23 shall be credited upon the secured claim, and any deficiency 24 shall be treated as an unsecured claim. If the claimant 25 surrenders his security to the liquidator, the entire claim

1	shall be allowed as if unsecured.
2	Section 42. Priority of distribution. The priority of
3	distribution of claims from the insurer's estate shall be in
4	accordance with the order in which each class of claims is
5	herein set forth. Every claim in each class shall be paid in
6	full or adequate funds retained for such payment before the
7	members of the next class receive any payment. No subclasses
8	shall be established within any class. The order of
9	distribution of claims shall be as follows:
10	<ol> <li>Class 1—the costs and expenses of administration;</li> </ol>
11	including but not limited to the following:
12	(a) the actual and necessary costs of preserving or
13	recovering the assets of the insurer;
14	(b) compensation for all services rendered in the
15	liquidation;
16	(c) any necessary filing fees;
17	(d) the fees and mileage payable to witnesses;
18	<pre>(e) reasonable attorney's fees;</pre>
19	(f) the reasonable expenses of a guaranty association
20	or foreign guaranty association in handling claims.
21	(2) Class 2-debts due to employees for services
22	performed to the extent that they do not exceed $\$1_{2}000$ and
23	represent payment for services performed within 1 year
24	before the filing of the petition for liquidation. Officers
25	and directors are not entitled to the benefit of this
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priority. Such priority is in lieu of any other similar
 priority which may be authorized by law as to wages or
 compensation of employees.

(3) Class 3--all claims under policies for losses 4 incurred, including third-party claims, all claims against 5 the insurer for liability for bodily injury or for injury to ٨ or destruction of tangible property which are not under 7 policies, and all claims of a guaranty association or 8 foreign guaranty association. All claims under life 9 insurance and annuity policies, whether for death proceeds, 10 11 annuity proceeds, or investment values shall be treated as 12 loss claims. That portion of any loss, indemnification for 13 which is provided by other benefits or advantages recovered 14 by the claimant, shall not be included in this class, other 15 than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of 16 17 succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer to his employee may be 18 19 treated as a gratuity.

20 (4) Class 4--claims under nonassessable policies for
 21 unearned premium or other premium refunds and claims of
 22 general creditors.

(5) Class 5--claims of the federal or any state or
 local government. Claims, including those of any
 governmental body for a penalty or forfeiture, shall be

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allowed in this class only to the extent of the pecuniary
 loss sustained from the act, transaction, or proceeding out
 of which the penalty or forfeiture arose, with reasonable
 and actual costs occasioned thereby. The remainder of such
 claims shall be postponed to the class of claims under
 subsection (8).

7 (6) Class 6--claims filed late or any other claims
8 other than claims under subsections (7) and (8).

9 (7) Class 7--surplus or contribution notes, or similar
10 obligations, and premium refunds on assessable policies.
11 Payments to members of domestic mutual insurance companies
12 shall be limited in accordance with law.

13 (8) Class 8--the claims of shareholders or other14 owners.

15 Section 43. Liquidator's recommendations to the court. 16 (1) The liquidator shall review all claims duly filed in the 17 liquidation and make such further investigation as he considers necessary. He may compound, compromise, or in any 18 19 other manner negotiate the amount for which claims will be 20 recommended to the court except where the liquidator is 21 required by law to accept claims as settled by any person or 22 organization, including any guaranty association or foreign 23 guaranty association. Unresolved disputes shall be 24 determined under [section 39]. As soon as practicable, he shall present to the court a report of the claims against 25

the insurer with his recommendations. The report shall include the name and address of each claimant and the amount of the claim finally recommended, if any. If the insurer has issued annuities or life insurance policies, the liquidator shall report the persons to whom, according to the records of the insurer, amounts are owed as cash surrender values or other investment value and the amounts owed.

8 (\*) The court may approve, disapprove, or modify the 9 report on claims by the liquidator. Reports not modified by 10 the court within a period of 60 days following submission by 11 the liquidator shall be treated by the liquidator as allowed 12 claims, subject to later modification or to rulings made by 13 the court pursuant to [section 39]. No claim under a policy 14 of insurance shall be allowed for an amount in excess of the 15 applicable policy limits.

16 Section 44. Distribution of assets. Under the 17 direction of the court, the liquidator shall pay 18 distributions in a manner that will assure the proper 19 recognition of priorities and a reasonable balance between 20 the expeditious completion of the liquidation and the 21 protection of unliquidated and undetermined claims, 22 including third-party claims. Distribution of assets in kind 23 may be made at valuations set by agreement between the 24 liquidator and the creditor and approved by the court.

25 Section 45. Unclaimed and withheld funds. (1) All

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unclaimed funds subject to distribution remaining in the 1 liquidator's hands when he is ready to apply to the court 2 for discharge, including the amount distributable to any 3 creditor, shareholder, member, or other person who is 4 unknown or cannot be found, shall be deposited with the 5 state treasurer and shall be paid without interest except in 6 accordance with [section 42] to the person entitled thereto 7 or his legal representative upon proof satisfactory to the 8 state treasurer of his right thereto. Any amount on deposit 9 not claimed within 6 years from the discharge of the 10 liquidator shall be considered to have been abandoned and 11 shall be escheated without formal escheat proceedings and be 12 deposited in the general fund. 13

(2) All funds withheld under [section 37] and not 14 distributed shall upon discharge of the liquidator be 15 deposited with the state treasurer and paid by him in 16 accordance with [section 42]. Any sums remaining which under 17 [section 42] would revert to the undistributed assets of the 18 insurer shall be transferred to the state treasurer and 19 become the property of the state under subsection (1)+ 20 unless the commissioner in his discretion petitions the Z1 court to reopen the liquidation under [section 47]. 22

23 Section 46. Termination of proceedings. (1) When all
24 assets justifying the expense of collection and distribution
25 have been collected and distributed under [this act], the

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liquidator shall apply to the court for discharge. The court
 may grant the discharge and make any other orders. including
 an order to transfer any remaining funds that are uneconomic
 to distribute, as may be considered appropriate.

5 {2} Any other person may apply to the court at any 6 time for an order under subsection (1). If the application 7 is denied, the applicant shall pay the costs and expenses of 8 the liquidator in resisting the application, including a 9 reasonable attorney's fee.

After the 10 Section 47. Reopening liquidation. liquidation proceeding has been terminated and the 11 liquidator discharged, the commissioner or other interested 12 party may at any time petition the district court to reopen 13 14 the proceedings for good cause, including the discovery of additional assets. If the court is satisfied that there is 15 justification for reopening, it shall so order. 16

17 Section 48. Disposition of records during and after 18 termination of liquidation. When it appears to the 19 commissioner that the records of any insurer in process of 20 liquidation or completely liquidated are no longer useful. 21 he may recommend to the court and the court shall direct 22 what records should be retained for future reference and 23 what should be destroyed.

24 Section 49. External audit of the receiver's books.
25 The district court may, as it considers desirable, cause

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audits to be made of the books of the commissioner relating 1 to any receivership established under [this act], and a 2 report of each audit shall be filed with the commissioner 3 and with the court. The books, records, and other documents 4 of the receivership shall be made available to the auditor 5 at any time without notice. The expense of each audit shall 6 be considered a cost of administration of the receivership. 7 Section 50. Conservation of property of foreign or 8 alien insurers. (1) If a domiciliary liquidator has not been 9 appointed, the commissioner may apply to the district court 10 by verified petition for an order directing him to act as 11 conservator to conserve the property of an alien insurer not 12 domiciled in this state or a foreign insurer on any one or 13 more of the following grounds: 14

15 (a) any of the grounds in [section 12];

16 (b) that any of its property has been sequestered by
17 official action in its domiciliary state or in any other
18 state;

(c) that enough of its property has been sequestered
in a foreign country to give reasonable cause to fear that
the insurer is or may become insolvent;

(d) that its certificate of authority to do business
in this state has been revoked or that none was ever issued;
(e) that there are residents of this state with
outstanding claims or outstanding policies.

(2) When an order is sought under subsection (1). the court shall cause the insurer to be given such notice and time to respond thereto as is reasonable under the circumstances.

(3) The court may issue the order in whatever terms it 5 considers appropriate. The filing or recording of the order 6 with the clerk of the district court or the clerk and 7 recorder of the county in which the principal business of Б the company is located or the county in which its principal 9 office or place of business is located shall impart the same 10 notice as a deed, bill of sale, or other evidence of title 11 duly filed or recorded with that clerk and recorder would 12 13 have imparted.

(4) The conservator may at any time petition for and 14 the court may grant an order under [section 51] to liquidate 15 16 assets of a foreign or alien insurer under conservation or. if appropriate, for an order under [section 53], to be 17 18 appointed ancillary receiver. 19 (5) The conservator may at any time petition the court 20 for an order terminating conservation of an insurer. If the 21 court finds that the conservation is no longer necessary, it 22 shall order the insurer to be restored to possession of its

23 property and the control of its business. The court may also 24 make such finding and issue such order at any time upon 25 motion of any interested party. but if such motion is

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denied. all costs shall be assessed against such party. 1 Section 51. Liquidation of property of foreign or 2 alien insurers. (1) If no domiciliary receiver has been 3 appointed, the commissioner may apply to the district court 4 by verified petition for an order directing him to liquidate 5 the assets found in this state of a foreign insurer or an 6 alien insurer not domiciled in this state, on any of the 7 following grounds: 8 (a) any of the grounds in [section 12 or 17]; or 9 (b) any of the grounds specified in subsections (1)(b) 10 through (1)(d) of [section 50]. 11

(2) When an order is sought under subsection (1). the
court shall cause the insurer to be given notice and time to
respond thereto as reasonable under the circumstances.

(3) If it appears to the court that the best interests 15 16 of creditors, policyholders, and the public require, the 17 court may issue an order to liquidate in whatever terms it 18 considers appropriate. The filing or recording of the order with the clerk of the district court or the clerk and 19 recorder of the county in which the principal business of 20 21 the company is located or the county in which its principal 22 office or place of business is located shall impart the same 23 notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that clerk and recorder would 24 have imparted. 25

(4) If a domiciliary liquidator is appointed in a 1 reciprocal state while a liquidation is proceeding under 2 this section, the liquidator under this section shall 3 thereafter act as ancillary receiver under [section 53]. If 4 a domiciliary liquidator is appointed in a nonreciprocal 5 state while a liquidation is proceeding under this section, 6 the liquidator under this section may petition the court for 7 permission to act as ancillary receiver under [section 53]. 8 (5) On the same grounds as specified in subsection 9 (1), the commissioner may petition any appropriate federal 10 district court to be appointed receiver to liquidate that 11 portion of the insurer's assets and business over which the 12 13 court will exercise jurisdiction or any lesser part thereof 14 that the commissioner considers desirable for the protection 15 of the policyholders and creditors in this state.

16 (6) The court may order the commissioner, when he has 17 liquidated the assets of a foreign or alien insurer under 18 this section, to pay claims of residents of this state 19 against the insurer under such rules as to the liquidation 20 of insurers under [this act] as are otherwise compatible 21 with the provisions of this section.

Section 5?• Domiciliary liquidators in other states•
(1) The domiciliary liquidator of an insurer domiciled in a
reciprocal state shall, except as to special deposits and
security on secured claims under [section 53(3)]• be vested

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by operation of law with the title to all of the assets. 1 2 property, contracts, and rights of action, agents, balances, and all of the books, accounts, and other records of the 3 insurer located in this state. The date of vesting shall be 4 the date of the filing of the petition, if that date is 5 specified by the domiciliary law for the vesting of property 6 in the domiciliary state. Otherwise, the date of vesting 7 shall be the date of entry of the order directing possession 8 to be taken. The domiciliary liquidator has the immediate 9 10 right to recover balances due from agents and to obtain possession of the books, accounts, and other records of the 11 12 insurer located in this state. He also has the right to 13 recover all other assets of the insurer located in this 14 state, subject to [section 53].

15 (2) If a domiciliary liquidator is appointed for an 16 insurer not domiciled in a reciprocal state, the 17 commissioner of this state is vested by operation of law 18 with the title to all of the property, contracts, and rights of action and all of the books, accounts, and other records 19 of the insurer located in this state, at the same time that zυ 21 the domiciliary liquidator is vested with title in the 22 domicile. The commissioner of this state may petition for a 23 conservation or liquidation order under [section 50 or 51] 24 or for an ancillary receivership under [section 53] or after 25 approval by the district court may transfer title to the LC 0384/01

domiciliary liquidator, as the interests of justice and the
 equitable distribution of the assets require.

3 (3) Claimants residing in this state may file claims 4 with the liquidator or ancillary receiver, if any, in this 5 state or with the domiciliary liquidator, if the domiciliary 6 law permits. The claims must be filed on or before the last 7 date fixed for the filing of claims in the domiciliary 8 liquidation proceedings.

Section 53. Ancillary formal proceedings. (1) If a
domiciliary liquidator has been appointed for an insurer not
domiciled in this state. the commissioner may file a
petition with the district court requesting appointment as
ancillary receiver in this state:

14 (a) if he finds that there are sufficient assets of
15 the insurer located in this state to justify the appointment
16 of an ancillary receiver;

17 (b) if the protection of creditors or policyholders in18 this state so requires.

19 (?) The court may issue an order appointing an 20 ancillary receiver in whatever terms it considers 21 appropriate. The filing or recording of the order with the 22 recorder of deeds in this state imparts the same notice as a 23 deed, bill of sale, or other evidence of title duly filed or 24 recorded with that recorder of deeds.

25 (3) When a domiciliary liquidator has been appointed

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in a reciprocal state, then the ancillary receiver appointed 1 in this state may, whenever necessary, aid and assist the 2 domiciliary liquidator in recovering assets of the insurer 3 located in this state. The ancillary receiver shall, as soon 4 as practicable, liquidate from their respective securities 5 those special deposit claims and secured claims which are 6 proved and allowed in the ancillary proceedings in this 7 state and shall pay the necessary expenses of the 8 proceedings. He shall promptly transfer all remaining 9 assets, books, accounts, and records to the domiciliary 10 liquidator. Subject to this section, the ancillary receiver 11 and his deputies shall have the same powers and be subject 12 to the same duties with respect to the administration of 13 assets as a liquidator of an insurer domiciled in this 14 15 state.

16 (4) When a domiciliary liquidator has been appointed 17 in this state, ancillary receivers appointed in reciprocal 18 states shall have, as to assets and books, accounts, and 19 other records in their respective states, corresponding 20 rights, duties, and powers to those provided in subsection 21 (3) for ancillary receivers appointed in this state.

22 Section 54. Ancillary summary proceedings. The 23 commissioner in his sole discretion may institute 24 proceedings under [sections 9 through 11] at the request of 25 the commissioner or other appropriate insurance official of 1 the domiciliary state of any foreign or alien insurer having

2 property located in this state.

Section 55. Claims of nonresidents against insurers 3 domiciled in this state. (1) In a liquidation proceeding 4 begun in this state against an insurer domiciled in this 5 state, claimants residing in foreign countries or in states 6 not reciprocal states must file claims in this state, and 7 claimants residing in reciprocal states may file claims 8 either with the ancillary receivers, if any, in their 9 respective states, or with the domiciliary liquidator. 10 Claims must be filed on or before the last date fixed for 11 the filing of claims in the domiciliary liquidation 17 13 proceeding.

14 (2) Claims belonging to claimants residing in reciprocal states may be proved either in the liquidation 15 proceeding in this state as provided in [this act] or in 16 ancillary proceedings, if any, in the reciprocal states. If 17 notice of the claims and opportunity to appear and be heard 18 is afforded the domiciliary liquidator of this state as 19 provided in [section 56(2)] with respect to ancillary 20 proceedings, the final allowance of claims by the courts in 21 22 ancillary proceedings in reciprocal states is conclusive as 23 to amount and as to priority against special deposits or other security located in such ancillary states but is not 24 25 conclusive with respect to priorities against general assets

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1 under [section 42].

Section 56. Claims of residents against insurers 2 domiciled in reciprocal states. (1) In a liquidation 3 proceeding in a reciprocal state against an insurer 4 domiciled in that state, claimants against the insurer who 5 reside within this state may file claims either with the 6 ancillary receiver, if any, in this state or with the 7 domiciliary liquidator. Claims must be filed on or before 8 the last dates fixed for the filing of claims in the 9 domiciliary liquidation proceeding. 10

11 (2) Claims belonging to claimants residing in this 12 state may be proved either in the domiciliary state under 13 the law of that state or in ancillary proceedings, if any, 14 in this state. If a claimant elects to prove his claim in this state, he shall file his claim with the liquidator in 15 the manner provided in [sections 35 and 36]. The ancillary 16 17 receiver shall make his recommendation to the court as under 18 [section 43]. He shall also arrange a date for hearing if 19 necessary under [section 39] and shall give notice to the 20 liquidator in the domiciliary state, either by certified 21 mail or by personal service at least 40 days prior to the 22 date set for hearing. If the domiciliary liquidator, within 23 30 days after the giving of such notice, gives notice in writing to the ancillary receiver and to the claimant, Z4 either by certified mail or by personal service, of his 25

intention to contest the claim, he shall be entitled to
 appear or to be represented in any proceeding in this state
 involving the adjudication of the claim.

4 (3) The final allowance of the claim by the courts of 5 this state shall be accepted as conclusive as to amount and 6 as to priority against special deposits or other security 7 located in this state.

8 Section 57. Attachment, garnishment, and levy of 9 execution. During the pendency in this or any other state of 10 a liquidation proceeding, whether called by that name or 11 not, no action or proceeding in the nature of an attachment, 12 garnishment, or levy of execution may be commenced or 13 maintained in this state against the delinquent insurer or 14 its assets.

15 Section 58. Interstate priorities. (1) In a liquidation proceeding in this state involving one or more 16 reciprocal states, the order of distribution of the 17 18 domiciliary state shall control as to all claims of 19 residents of this and reciprocal states. All claims of 20 residents of reciprocal states shall be given equal priority 21 of payment from general assets regardless of where such 22 assets are located.

(2) The owners of special deposit claims against an
 insurer for which a liquidator is appointed in this or any
 other state is given priority against the special apposits

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in accordance with the statutes governing the creation and 1 maintenance of the deposits. If there is a deficiency in any z deposit so that the claims secured by it are not fully 3 discharged from it, the claimants may share in the general 4 assets, but the sharing shall be deferred until general 5 creditors, and also claimants against other special deposits 6 who have received smaller percentages from their respective 7 special deposits, have been paid percentages of their claims 8 equal to the percentage paid from the special deposit. 9

(3) The owner of a secured claim against an insurer 10 for which a liquidator has been appointed in this or any 11 other state may surrender his security and file his claim as 12 13 a general creditor, or the claim may be discharged by resort 14 to the security in accordance with [section 41], in which case the deficiency, if any, shall be treated as a claim 15 16 against the general assets of the insurer on the same basis 17 as claims of unsecured creditors.

18 Section 59. Subordination of claies for 19 noncooperation. If an ancillary receiver in another state or 20 foreign country, whether called by that name or not, fails 21 to transfer to the domiciliary liquidator in this state any 22 assets within his control other than special deposits. diminished only by the expenses of the ancillary 23 24 receivership. if any, the claims filed in the ancillary 25 receivership, other than special deposit claims or secured

claims, shall be placed in the class of claims under

3 Section 60. Severability. If a part of this act is 4 invalid, all valid parts that are severable from the invalid 5 part remain in effect. If a part of this act is invalid in 6 one or more of its applications, the part remains in effect 7 in all valid applications that are severable from the 8 invalid applications.

9 Section 61. Repeater. Sections 33-2-901 through
 10 33-2-948. MCA. are repeated.

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REQUEST NO. 1 FISCAL NOTE Fiscal Note is available from the Office of Budget and Program Planning, the Legislature upon request. DESCRIPTION: An act to provide for the supervision, rehabilitation, and liquidation of insurers. Fiscal IMPACT: January 11	
compliance with a written request receivedJanuary 11, 19 79, there is hereby submitted a	
Senate Bill 80 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Ass ackground information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, the Legislature upon request. DESCRIPTION: An act to provide for the supervision, rehabilitation, and liquidation of insurers.	orm BD-15
An act to provide for the supervision, rehabilitation, and liquidation of insurers.	embly.
ISCAL IMPACT:	
lone. The proposed legislation merely updates the current Supervision, Rehabilitation, and Liquidation Act.	

Richard Lorangen

Office of Budget and Program Planning Date: \_\_\_\_\_\_

# Approved by Committee on <u>Business and Industry</u>

1	SENATE BILL NO. BO
2	INTRODUCED BY HAZELBAKER+ BLAYLOCK
3	BY REQUEST OF THE STATE COMMISSIONER OF INSURANCE
4	
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE
5	SUPERVISION, REHABILITATION, AND LIQUIDATION OF INSURERS;
7	REPEALING SECTIONS 33-2-901 THROUGH 33-2-948, MCA.*
9	
9	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
10	Section 1. Short title, construction, and purpose. (1)
11	[This act] shall be cited as the "Insurers Supervision.
12	Rehabilitation, and Liquidation Act".
13	(2) [This act] may not be interpreted to limit the
14	powers granted the commissioner by other provisions of the
15	124.
16	(3) [This act] shall be liberally construed to effect
17	the purpose stated in subsection (4).
18	(4) The purpose of [this act] is the protection of the
19	interests of insureds, claimants, creditors, and the public
20	generally, with minimum interference with the normal
21	prerogatives of the owners and managers of insurers.
22	through:
23	(a) early detection of any potentially dangerous
24	condition in an insurer and prompt application of
25	appropriate corrective measures;

The changes in 5880, are on pages 29.30. Please refer to white copy for entire content.

(b) improved methods for rehabilitating insurers.
 involving the cooperation and management expertise of the
 insurance industry;

4 (c) enhanced efficiency and economy of liquidation,
5 through clarification of the law, to minimize legal
6 uncertainty and litigation;

7 (d) equitable apportionment of any unavoidable loss; 8 (e) lessening the problems of interstate 9 rehabilitation and liquidation by facilitating cooperation 10 between states in the liquidation process and by extending the scope of personal jurisdiction over debtors of the 11 insurer outside this state; and 12

13 (f) regulation of the insurance business by the impact
14 of the law relating to delinquency procedures and
15 substantive rules on the entire insurance business.

15 Section 2. Definitions. For the purposes of [this act]
17 the following definitions apply:

18 (1) "Ancillary state" means any state other than a 19 domiciliary state.

(2) "Commissioner" means the commissioner of insurance
 of this state.

22 (3) "Creditor" is a person having any claim, whether
23 matured or unmatured, liquidated or unliquidated, secured or
24 unsecured, absolute, fixed, or contingent.

25 (4) "Delinquency proceeding" means any proceeding

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1 liquidation. The filing or recording of the order with the 2 clerk of the district court and the clerk and recorder of the county in which its principal office or place of 3 4 business of IS located or, in the case of real estate, with 5 the clerk and recorder of the county where the property is 6 located shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with 7 that clerk and recorder would have imparted. 8

9 (2) Upon issuance of the order, the rights and 10 liabilities of any such insurer and of its creditors, 11 policyholders, shareholders, members, and all other persons 12 interested in its estate shall become fixed as of the date 13 of entry of the order of liquidation, except as provided in 14 [sections 19 and 37].

15 (3) An order to liquidate the business of an alien 16 insurer domiciled in this state shall be in the same terms 17 and have the same legal effect as an order to liquidate a 18 domestic insurer, except that the assets and the business in 19 the United States shall be the only assets and business 20 included therein.

(4) At the time of petitioning for an order of
liquidation or at any time thereafter, the commissioner,
after making appropriate findings of an insurer\*s
insolvency, may petition the court for a judicial
declaration of such insolvency. After providing such notice

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and hearing as it considers proper, the court may make the declaration.

3 (5) Any order issued under this section shall require
4 accounting to the court by the liquidator. Accountings shall
5 be at such intervals as the court specifies in its order.

Section 19. Continuance of coverage. (1) All policies.
other than life or health insurance or annuities. in effect
at the time of issuance of an order of liquidation shall
continue in force only for the lesser of:

10 (a) a period of 30 days from the date of entry of the11 liquidation orders;

12 (b) the expiration of the policy coverage;

(c) the date when the insured has replaced the
 insurance coverage with equivalent insurance in another
 insurer or otherwise terminated the policy; or

16 (d) the liquidator has effected a transfer of the

17 policy obligation pursuant to [section 21(1)(h)].

18 (2) An order or <u>QE</u> liquidation under [section 16]
 19 terminates coverages at the time specified in subsection (1)

20 for purposes of any other statute.

(3) Policies of life or health insurance or annuities
continue in force for such period and under such terms as
provided by any applicable guaranty association or foreign
guaranty association.

25 (4) Policies of life or health insurance or annuities

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1	SENATE BILL NO. 80	1	{b} improved methods for rehabilitating insurers+
2	INTRODUCED BY HAZELBAKER, BLAYLOCK	Z	involving the cooperation and management expertise of the
3	BY REQUEST OF THE STATE COMMISSIONER OF INSURANCE	3	insurance industry;
4		4	(c) enhanced efficiency and economy of liquidation.
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE	5	through clarification of the law, to minimize legal
6	SUPERVISION, REHABILITATION, AND LIQUIDATION OF INSURERS;	6	uncertainty and litigation;
7	REPEALING SECTIONS 33-2-901 THROUGH 33-2-948+ MCA+*	7	(d) equitable apportionment of any unavoidable loss;
8		8	(a) lessening the problems of interstate
9	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	9	rehabilitation and liquidation by facilitating cooperation
10	Section 1. Short title, construction, and purpose. (1)	10	between states in the liquidation process and by extending
11	[This act] shall be cited as the "Insurers Supervision.	11	the scope of personal jurisdiction over debtors of the
12	Rehabilitation, and Liquidation Act".	12	insurer outside this state; and
13	(2) [This act] may not be interpreted to limit the	13	(f) regulation of the insurance business by the impact
14	powers granted the commissioner by other provisions of the	14	of the law relating to delinquency procedures and
15	lan.	15	substantive rules on the entire insurance business.
16	(3) [This act] shall be liberally construed to effect	15	Section 2. Definitions. For the purposes of [this act]
17	the purpose stated in subsection (4).	17	the following definitions apply:
18	(4) The purpose of [this act] is the protection of the	18	(1) "Ancillary state" means any state other than a
19	interests of insureds, claimants, creditors, and the public	19	domiciliary state.
20	generally, with minimum interference with the normal	20	(2) "Commissioner" means the commissioner of insurance
21	prerogatives of the owners and managers of insurers.	21	of this state.
22	through:	22	(3) "Creditor" is a person having any claim, whether
23	(a) early detection of any potentially dangerous	23	matured or unmatured, liquidated or unliquidated, secured or
24	condition in an insurer and prompt application of	24	unsecured, absolute, fixed, or contingent.
25	appropriate corrective measures;	25	(4) "Delinquency proceeding" means any proceeding
	Please retain this copy. Bill will not be run again unless necessary		-2- SB 80
	be run again unless necessary		THIRD READING

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instituted equinst an insurer for the purpose of
 liquidating, rehabilitating, reorganizing, or conserving
 such insurer and any summary proceeding under [section 9 or
 10], "Formal delinquency proceeding" means any liquidation
 or rehabilitation proceeding.

6 (5) "Doing business" includes any of the following
7 acts, whether effected by mail or otherwise:

8 (a) the issuance or delivery of contracts of insurance
9 to persons resident in this state:

10 (b) the solicitation of applications for such 11 contracts or other negotiations preliminary to the execution 12 of such contracts:

13 (c) the collection of premiums, membership fees,
14 assessments, or other consideration for such contracts;

15 (d) the transaction of matters subsequent to execution
16 of such contracts and arising out of them; or

17 (e) operating under a license or certificate of 18 authority, as an insurer, issued by the commissioner.

19 (6) "DomiciFiery state" means the state in which an
20 insurer is incorporated or organized or, in the case of an
21 alien insurer, its state of entry.

22 (7) "Fair consideration" is given for property or 23 obligation:

24 (a) when in exchange for such property or obligation.
25 as a fair equivalent therefor and in good faith, property is

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conveyed or services are rendered or an obligation is
 incurred or an antecedent debt is setisfied; or

3 (b) when such property of obligation is received in 4 good faith to secure a present advance or antecedent debt in 5 amount not disproportionately small as compared to the value 6 of the property or obligation obtained.

7 (8) "Foreign country" means any other jurisdiction not
 8 in any state.

9 (9) "General assets" means all property, real, personal, or otherwise, not specifically mortgaged, pledged, 10 deposited, or otherwise encumbered for the security or 11 12 benefit of specified persons or classes of persons. As to specifically encumbered property, "general assets" includes 13 all such property or its proceeds in excess of the amount 14 necessary to discharge the sum or sums secured thereby. 15 16 Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and 17 18 creditors, in more than a single state, shall be treated as 19 general assets.

20 (10) "Guaranty association" means the Mohtana insurance 21 guaranty association, the workers' compensation security 22 fund, the Mohtana life and health insurance guaranty 23 association, and any other similar entity now or hereafter 24 created by the legislature of this state for the payment of 25 claims of insolvent insurers. "Foreign guaranty association"

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means any similar entities now in existence in or hereafter
 created by the legislature of any other state.

(11) (a) "Insolvency" or "insolvent" means:

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4 (i) for an insurer issuing only assessable fire 5 insurance policies, the inability to pay any obligation 6 within 30 days after it becomes payable; or

7 (ii) for any other insurer, the inability to pay its 8 obligations when they are due or when its admitted assets do 9 not exceed its liabilities plus the greater of:

10 (A) any capital and surplus required by law for its
11 organization; or

12 (8) the total par or stated value of its authorized13 and issued capital stock;

14 (iii) as to any insurer licensed to do business in this 15 state as of [the effective date of this act] which does not 16 meet the standard established under subsection (ii), for a 17 period not to exceed 3 years from [the effective date of 18 this act], the inability to pay its obligations when they 19 are due or that its admitted assets do not exceed its 20 liabilities plus any required capital contribution ordered by the commissioner under provisions of the insurance law-21 22 (b) For purposes of this subsection "liabilities" include but are not limited to reserves required by statute 23 Ζ4 or by the commissioner upon a subject company at the time of 25 admission or subsequent thereto.

1 (12) "Insurer" means any person who has done, purports 2 to do, is doing, or is licensed to do insurance business and 3 is or has been subject to the authority of or to 4 liquidation, rehabilitation, reorganization, supervision, or 5 conservation by any insurance commissioner. Any other 6 persons included under [section 3] are considered to be 7 insurers.

5

8 (13) "Preferred claim" means any claim with respect to 9 which the terms of [this act] accord priority of payment 10 from the general assets of the insurer.

11 (14) "Receiver" means receiver, liquidator.
12 rehabilitator, or conservator as the context requires.

13 (15) "Reciprocal state" means any state other than this 14 state in which in substance and effect [sections 18(1), 52, 15 53, and 55 through 57] are in force and in which provisions 16 are in force requiring that the commissioner or equivalent 17 official be the receiver of a delinquent insurer and in 18 which some provision exists for the avoidance of fraudulent 19 conveyances and preferential transfers.

20 (16) "Secured claim" means any claim secured by 21 mortgage, trust deed, pledge, deposit as security, escrow, 22 or otherwise, but not including special deposit claims or 23 claims against general assets. The term also includes claims 24 which have become liens upon specific assets by reason of 25 judicial process.

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(17) "Special deposit claim" means any claim secured by
 a deposit made pursuant to statute for the security or
 benefit of a limited class of persons, but not including any
 claim secured by general assets.

5 (18) "State" means any state, district, or territory of
5 the United States.

7 (19) "Transfer" includes the sale and every other mode. direct or indirect. of disposing of or parting with property A or with an interest therein or with the possession thereof 9 or fixing a lien upon property or upon an interest therein. 10 absolutely or conditionally, voluntarily, by or without 11 12 judicial proceedings. The retention of a security title to 13 property delivered to a debtor is considered a transfer 14 suffered by the debtor.

15 Section 3- Persons covered. The proceedings authorized 16 by [this act] may be applied to:

17 (1) all insurers who are doing or have done insurance
18 business in this state and against whom claims arising from
19 that business may exist now or in the future;

20 (2) all insurers who purport to do an insurance
21 business in this state;

22 (3) all insurers who have insureds resident in this23 state;

(4) all other persons organized or in the process oforganizing with the intent to do an insurance business in

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1 this state;

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2 (5) all nonprofit service plans and all fraternal
3 benefit societies and beneficial societies; or

(6) all title insurance companies.

5 Section 4. Juriediction and verse. (1) No delinquency 6 proceeding may be commenced under [this act] by anyone other 7 than the commissioner and no court shall have jurisdiction 8 to entertain, hear, or determine any proceeding commenced by 9 any other person.

10 {2} No court of this state has jurisdiction to 11 entertain, hear, or determine any complaint praying for the 12 dissolution, liquidation, rehabilitation, sequestration, 13 conservation, or receivership of any insurer or praying for 14 an injunction or restraining order or other relief 15 preliminary to, incidental to, or relating to such 16 proceedings other than in accordance with [this act].

17 (3) In addition to other grounds for jurisdiction provided by the law of this state, a court of this state having jurisdiction of the subject matter has jurisdiction over a person served pursuant to the Montana Rules of Civil Procedure or other applicable provisions of law in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state:

24 (a) if the person served is obligated to the insurer
 25 in any way as an incident to any agency or brokerage

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1 arrangement that way exist or has existed between the 2 insurer and the agent or broker in any action on or incident 3 to the obligation;

4 (b) if the person served is a reinsurer who has at any time written a policy of reinsurance for an insurer against 5 5 which a rehabilitation or liquidation order is in effect when the action is commenced or is an agent or broker of or 7 8 for the reinsurer in any action on or incident to the 9 reinsurance contract; or

(c) if the person served is or has been an officer. 10 manager, trustee, organizer, promoter, or person in a 11 12 position of comparable authority or influence in an insurer 13 against which a rehabilitation or liquidation order is in 14 effect when the action is commenced in any action resulting 15 from such a relationship with the insurer.

(4) If the court on motion of any party finds that any 16 17 action should as a matter of substantial justice be tried in 18 a forum outside this state, the court may enter an 19 appropriate order to stay further proceedings on the action 20 in this state.

**21** (5) All actions herein authorized shall be brought in the district court in the county in which the office of the 22 23 commissioner is located.

24 Section 5. Injunctions and orders. (1) Any receiver 25 appointed in a proceeding under [this act] may at any time

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1 apply for and any court of general jurisdiction may grant 2 such restraining orders, preliminary and permanent injunctions, and other orders as may be necessary to 3 4 prevent: 5

(a) the transaction of further business:

(b) the transfer of property;

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7 (c) interference with the receiver or with a 8 proceeding under [this act];

o (d) waste of the insurer's assets;

10 (e) dissipation and transfer of bank accounts;

11 (f) the institution or further prosecution of any 12 actions or proceedings;

13 obtaining of preferences, judgments, (a) the 14 attachments, garnishments, or liens against the insurer, its 15 assets, or its policyholders;

16 (h) the levying of execution against the insurer, its 17 assets, or its policyholders;

18 (i) the making of any sale or deed for nonpayment of 19 taxes or assessments that would lessen the value of the assets of the insurer; 20

21 () the withholding from the receiver of books, accounts, documents, or other records relating to the 22 23 business of the insurer; or

24 (k) any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice 25

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the rights of policyholders, creditors, or shareholders or
 the administration of any proceeding under [this act].

3 (2) The receiver may apply to any court outside of the
4 state for the relief described in subsection (1).

5 Section 6. Cooperation of officers, owners, and 6 employees. (1) Any officer, manager, director, trustee, 7 owner+ employee+ or agent of any insurer or any other 8 persons with authority over or in charge of any segment of ę the insurer's affairs shall cooperate with the commissioner 10 in any proceeding under [this act] or any investigation 11 preliminary to the proceeding. The term "person" as used in this section includes any person who exercises control 12 13 directly or indirectly over activities of an insurer through 14 any holding company or other affiliate of the insurer. "To cooperate" includes but is not limited to the following: 15

16 (a) replying promptly in writing to any inquiry from17 the commissioner requesting such a reply; and

(b) making available to the commissioner any books.
accounts. documents. or other records or information or
property of or pertaining to the insurer and in his
possession. custody. or control.

(2) No person may obstruct or interfere with the
 commissioner in the conduct of any delinquency proceeding or
 any investigation preliminary or incidental thereto.

25 (3) This section shall not be construed to abridge

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otherwise existing legal rights, including the right to
 resist a petition for liquidation or other delinquency
 proceedings, or other orders.

(4) Any person included within subsection (1) who
fails to cooperate with the commissioner or any person who
obstructs or interferes with the commissioner in the conduct
of any delinquency proceeding or any investigation
preliminary or incidental thereto or who violates any order
the commissioner issued validly under [this act] may:

10 (a) be sentenced to pay a fine not exceeding \$10,000
11 or to undergo imprisonment for a term of not more than 1
12 year, or both; or

13 (b) after a hearing, be subject to the imposition by
14 the commissioner of a civil penalty not to exceed \$10,000
15 and to the revocation or suspension of any insurance
16 licenses issued by the commissioner.

17 Section 7. Bonds. In any proceeding under [this act]. 18 the commissioner and his deputies are responsible on their 19 official bonds for the faithful performance of their duties. 20 If the court finds it desirable for the protection of the 21 assets, it may at any time require an additional bond from 22 the commissioner or his deputies, and such bonds shall be paid for out of the assets of the insurer as a cost of 23 administration. 24

25 Section 8. Continuation of delinquency proceedings.

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Every proceeding heretofore commenced under the laws in effect before the enactment of [this act] shall be considered to have commenced under [this act] for the purpose of conducting the proceeding henceforth, except that in the discretion of the commissioner the proceeding may be continued, in whole or in part, as it would have been continued had [this act] not been enacted.

Section 9. Commissioner's Summary orders and 8 supervision proceedings. (1) Whenever the commissioner 9 determines, after a hearing held under subsection (5), that 10 any domestic insurer has committed or engaged in or is about 11 to commit or engage in any act, practice, or transaction 12 that would subject it to delinquency proceedings under [this 13 14 act], he may make and serve upon the insurer and any other 15 persons involved such orders as are reasonably necessary to correct or eliminate such conduct. 16

(2) If upon examination or at any other time the 17 commissioner determines that any domestic insurer is in such 18 19 condition as to render the continuance of its business hazardous to the public or to holders of its policies or 20 21 certificates of insurance, or if such domestic insurer gives 22 its consent, then the commissioner shall notify the insurer 23 of his determination, and furnish to the insurer a written list of the commissioner's requirements to abate his 24 25 determination.

1 (3) If the commissioner makes a determination to Z supervise an insurer subject to an order under subsections 3 (1) or (2)+ he shall notify the insurer that it is under the supervision of the commissioner. During the period of 4 5 supervision, the commissioner may appoint a supervisor to 6 supervise such insurer. The order appointing a supervisor shall direct the supervisor to enforce orders issued under 7 8 subsections (1) and (2) and may also require that the 9 insurer may not do any of the following things during the 10 period of supervision without the prior approval of the commissioner or the supervisor: 11

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12 (a) dispose of convey or encumber any of its assets

13 or its business in force;

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14 (b) withdraw from any of its bank accounts;

15 (c) lend any of its funds;

16 (d) invest any of its funds;

17 (e) incur any debte obligatione or liability;

18 (f) merge or consolidate with another company; or

19 (g) enter into any new reinsurance contract or treaty.

20 (4) Any insurer subject to an order under this section
21 shall comply with the lawful requirements of the
22 commissioner and, if placed under supervision, has 60 days
23 from the date the supervision order is served within which
24 to comply with the requirements of the commissioner. If the
25 insurer fails to comply within that time, the commissioner

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may institute proceedings under [section 12 or 17] to have a
 rehabilitator or liquidator appointed or extend the period
 of supervision.

4 (5) The notice of hearing under subsection (1) and any 5 order issued pursuant to such subsection shall be served 6 upon the insurer pursuant to the applicable rules of civil or administrative procedure. The notice of hearing shall 7 state the time and place of hearing, and the conduct, 8 condition, or ground upon which the commissioner would base 9 10 his order. Unless mutually agreed between the commissioner and the insurer, the hearing shall occur not less than 10 11 days or more than 30 days after notice is served and shall 12 be either in Lewis and Clark County or in some other place 13 convenient to the parties to be designated by the 14 commissioner. The commissioner shall hold all hearings under 15 subsection [1] privately unless the insurer requests a 16 17 public hearing. in which case the hearing shall be public. 18 (6) (a) Any insurer subject to an order under 19 subsection (2) may request a hearing to review that order. 20 Such a hearing shall be held as provided in subsection (5), but the request for a hearing shall not stay the effect of 21 22 the order.

(b) If the commissioner issues an order under
 subsection (2), the insurer may, at any time, waive a
 commissioner's hearing and apply for immediate judicial

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relief by means of any remedy afforded by law without first exhausting administrative remedies. Subsequent to a hearing, any party to the proceedings whose interests are substantially affected shall be entitled to judicial review

5 of any order issued by the commissioner.

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6 {7} During the period of supervision the insurer may
7 request the commissioner to review an action taken or
8 proposed to be taken by the supervisor, specifying wherein
9 the action complained of is believed not to be in the best
10 interest of the insurer.

11 (6) If any person has violated any supervision order 12 issued under this section which as to him was then still in 13 effect, he is subject to a civil penalty imposed by the 14 district court not to exceed \$10,000.

15 (9) The commissioner may apply for and any court of 16 general jurisdiction may grant such restraining orders, 17 preliminary and permanent injunctions, and other orders ar 18 may be necessary to enforce a supervision order.

19 (10) If any person subject to the provisions of [this 20 act], including any person described in section 6(1), 21 knowingly violates any valid order of the commissioner 22 issued under the provisions of this section and, as a result 23 of such violation, the net worth of the insurer is reduced 24 or the insurer suffers loss it would not otherwise have 25 suffered, said person is personally liable to the insurer

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for the amount of any such reduction or loss. The 1 2 commissioner or supervisor is authorized to bring an action on behalf of the insurer in the district court to recover 3 4 the amount of the reduction or loss together with any costs. 5 Section 10. Court's seizure order. (1) The commissioner may file in a district court of this state a 6 petition alleging, with respect to a domestic insurer: 7

8 (a) that there exist grounds that would justify a
 9 court order for a formal delinquency proceeding against an
 10 insurer under [this act];

(b) that the interests of policyholders, creditors, or
 the public will be endangered by delay; and

13 (c) the contents of an order considered necessary by 14 the commissioner.

15 (2) Upon a filing under subsection (1), the court may issue forthwith, ex parte and without a hearing, the 16 17 requested order which shall direct the commissioner to take 16 possession and control of all or a part of the property, books, accounts, documents, and other records of an insurer 19 and of the premises occupied by it for transaction of its 20 21 business and until further order of the court enigin the 22 insurer and its officers, managers, agents, and employees 23 from disposition of its property and from transaction of its 24 business except with the written consent of the 25 commissioner.

1 (3) The court shall specify in the order what its 2 duration shall be, which shall be such time as the court а considers necessary for the commissioner to ascertain the 4 condition of the insurer. On motion of either party or on 5 its own motion. the court may from time to time hold such hearings as it considers desirable after such notice as it 6 considers appropriate, and may extend, shorten, or modify 7 the terms of the seizure order. The court shall vacate the R seizure order if the commissioner fails to commence a formal 9 proceeding under [this act] after having had a reasonable 10 opportunity to do so. An order of the court pursuant to a 11 formal proceeding under [this act] shall ipso facto vacate 12 13 the seizure order.

14 (4) Entry of a seizure order under this section shall
15 not constitute an anticipatory breach of any contract of the
16 insurer.

17 (5) An insurer subject to an exparte order under this 18 section may petition the court at any time after the 19 issuance of such order for a hearing and review of the 20 order. The court shall hold such a hearing and review not 21 more than 15 days after the request. A hearing under this 22 subsection may be held privately in chambers, and it shall 23 be so held if the insurer proceeded against so requests.

24 (6) If at any time after the issuance of such an25 order, it appears to the court that any person whose

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interest is or will be substantially affected by the order
did not appear at the hearing and has not been served. the
court may order that notice be given. An order that notice
be given shall not stay the effect of any order previously
issued by the court.

6 Section 11. Confidentiality of hearings. In all 7 proceedings and judicial reviews under [sections 9 and 10]. 8 all records of the insurer, other documents, and all files 9 and court records and papers of the commissioner, so far as 10 they pertain to or are a part of the record of the 11 proceedings, remain confidential except as necessary to 12 obtain compliance therewith, unless the district court. 13 after hearing arguments from the parties in chambers, orders 14 otherwise or unless the insurer requests that the matter be 15 made public. Until such court order, all papers filed with 16 the clerk of the district court shall be held by him in a 17 confidential file.

18 Section 12. Grounds for rehabilitation. The 19 commissioner may apply by petition to a district court for 20 an order authorizing him to rehabilitate a domestic insurer 21 or an alien insurer domiciled in this state on any one or 22 more of the following grounds:

(1) The insurer is in such condition that the further
transaction of business would be financially hazardous to
its policyholders, creditors, or the public.

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1 (2) There is reasonable cause to believe that there 2 has been embezzlement from the insurer, wrongful 3 sequestration or diversion of the insurer's assets, forgery 4 or fraud affecting the insurer, or other illegal conduct in, 5 by, or with respect to the insurer that if established would 6 endanger assets in all amount threatening the solvency of the 7 insurer.

8 (3) The insurer has failed to remove any person who in 9 fact has executive authority in the insurer. whether an 10 officer. manager. general agent. employee. or other person. 11 if the person has been found after notice and hearing by the 12 commissioner to be dishonest or untrustworthy in a way 13 affecting the insurer's business.

(4) Control of the insurer, whether by stock ownership
 or otherwise, and whether direct or indirect, is in a person
 found after notice and hearing to be untrustworthy.

(5) Any person who in fact has executive authority in 17 18 the insurer, whether an officer, manager, general agent, director or trustee, employee, or other person, has refused 19 20 to be examined under oath by the commissioner concerning its affairs, whether in this state or elsewhere, and after 21 22 reasonable notice of the fact the insurer has failed promptly and effectively to terminate the employment and 23 24 status of the person and his influence on management.

25 (6) After demand by the commissioner under 33-1-40° or

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under [this act], the insurer has failed to promptly make available for examination any of its own property, books, accounts, documents, or other records or those of any subsidiary or related company within the control of the insurer or those of any person having executive authority in the insurer so far as they pertain to the insurer.

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(7) Without first obtaining the written consent of the 7 commissioner, the insurer has transferred or attempted to 8 transfer, in a manner contrary to chapter 2, part 11, or 9 chapter 2, part 12, of Title 33, substantially its entire 10 property or business or has entered into any transaction the 11 effect of which is to merge, consolidate, or reinsure 12 substantially its entire property or business in or with the 13 property or business of any other person. 14

(8) The insurer or its property has been or is the 15 subject of an application for the appointment of a receiver. 16 trustee, custodian, conservator, or sequestrator or similar 17 fiduciary of the insurer or its property otherwise than as 18 authorized under the insurance laws of this state, and such 19 appointment has been made or is imminent, and such 20 appointment might oust the courts of this state of 21 22 jurisdiction or might prejudice orderly delinguency proceedings under [this act]. 23

24 (9) Within the previous 4 years the insurer has
25 willfully violated its charter or articles of incorporation.

its bylaws: any insurance law of this state; or any valid
 order of the commissioner under [section 9].

3 (10) The insurer has failed to pay within 60 days after 4 due date any obligation to any state or any subdivision 5 thereof or any judgment entered in any state, if the court 6 in which such judgment was entered had jurisdiction over 7 such subject matter, except that such nonpayment shall not be a ground until 60 days after any good faith effort by the 8 9 insurer to contest the obligation has been terminated, whether it is before the commissioner or in the courts. or 10 11 the insurer has systematically attempted to compromise or renegotiate previously agreed settlements with its creditors 12 13 on the ground that it is financially unable to pay its 14 obligations in full.

15 (11) The insurer has failed to file its annual report 16 or other financial report required by statute within the 17 time allowed by law and, after written demand by the 18 commissioner, has failed to give an adequate explanation 19 immediately.

20 {12} The board of directors or the holders of a
21 majority of the shares entitled to vote request or consent
22 to rehabilitation under [this act].

23 Section 13. Rehabilitation orders. (1) An order to 24 rehabilitate the business of a domestic insurer or an alien 25 insurer domiciled in this state shall appoint the

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1 commissioner the rehabilitator and shall direct the z rehabilitator forthwith to take possession of the assets of the insurer and to administer them under the general 3 supervision of the court. The filing or recording of the 4 5 order with the clerk of the district court or clerk and 5 recorder of the county in which the principal business of 7 the company is conducted or the county in which its principal office or place of business is located shall 8 9 impart the same notice as a deed, bill of sale, or other 10 evidence of title duly filed or recorded with the county 11 clerk and recorder would have imparted. The order to 12 rehabilitate the insurer shall by operation of law vest 13 title to all assets of the insurer in the rehabilitator.

14 (2) Any order issued under this section shall require 15 accounting to the court by the rehabilitator. Accountings 16 shall be at such intervals as the court specifies in its 17 order.

18 (3) Entry of an order of rehabilitation does not
 19 constitute an anticipatory breach of any contracts of the
 20 insurer.

21 Section 14. Powers and duties of the rehabilitator. 22 (1) The commissioner as rehabilitator may appoint one or 23 more special deputies, who shall have all the powers and 24 responsibilities of the rehabilitator granted under this 25 section, and the commissioner may employ counsel, clerks,

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and assistants. The compensation of the special deputy. 1 2 counsel. clerks. and assistants and all expenses of taking possession of the insurer and of conducting the proceedings 3 shall be fixed b, the commissioner, with the approval of the 4 court and shall be paid out of the funds or assets of the 5 \* insurer. The persons appointed under this section shall 7 serve at the pleasure of the commissioner. If the property of the insurer does not contain sufficient cash or liquid я assets to defray the costs incurred, the commissioner may 9 advance the costs so incurred out of any appropriation for 10 11 the maintenance of his office. Any amounts so advanced for 12 expenses of administration shall be repaid to the commissioner for the use of his office out of the first 13 available money of the insurer. 14

(2) The rehabilitator may take such action as 15 necessary to reform and revitalize the insurer. He shall 16 have all the powers of the directors, officers, and 17 managers, whose authority shall be suspended, except as they 18 are redelegated by the rehabilitator. He shall have full 19 power to direct and manage, to hire and discharge employees 20 subject to any contract rights they may have, and to deal 21 with the property and business of the insurer. 22

23 (3) If it appears to the rehabilitator that there has
 24 been criminal or tortious conduct or breach of any
 25 contractual or fiduciary obligation detrimental to the

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insurer by any officer, manager, agent, broker, employee, or 1 other person, he may pursue all appropriate legal remedies 2 3 on behalf of the insurer.

rehabilitator determines (4) If the that 4 5 reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer is 6 appropriate, he shall prepare a plan to effect such changes. 7 Upon application of the rehabilitator for approval of the A plan and after such notice and hearings as the court may 9 prescribe, the court may either approve or disapprove the 10 plan proposed or may modify it and approve it as modified. 11 Any plan approved under this section must bee in the 12 judgment of the court, fair and equitable to all parties 13 concerned. If the plan is approved, the rehabilitator shall 14 carry out the plan. In the case of a life insurer, the plan 15 proposed may include the imposition of liens upon the 16 policies of the company, if all rights of shareholders are 17 first relinguished. A plan for a life insurer may also 18 19 propose imposition of a moratorium upon loan and cash surrender rights under policies, for such period and to such 20 an extent as may be necessary. 21

(5) The rehabilitator shall have the power under 22 [sections 26 and 27] to avoid fraudulent transfers. 23

24 Section 15. Actions by and against the rehabilitator. 25 (1) Any court in this state before which any action or

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proceeding in which the insurer is a party or is obligated to defend a party is pending when a rehabilitation order 2 3 against the insurer is entered shall stay the action or proceeding for 90 days and such additional time as is 4 5 necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The 6 7 rehabilitator shall take such action respecting the pending 8 litigation as he considers necessary in the interests of 9 justice and for the protection of creditors. policyholders. 10 and the public. The rehabilitator shall immediately consider all litigation pending outside this state and shall petition 11 12 the courts having jurisdiction over that litigation for 13 stays whenever necessary to protect the estate of the insurer. 14

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(2) No statute of limitations or defense of laches 15 16 shall run with respect to any action by or against an 17 insurer between the filing of a petition for appointment of a rehabilitator for that insurer and the order granting or 18 19 denying that petition. Any action by or against the insurer that might have been commenced when the petition was filed 20 may be commenced for at least 60 days after the order of 21 22 rehabilitation is entered or the petition is denied.

23 (3) Any guaranty association or foreign guaranty 24 association covering life or health insurance or annuities has standing to appear in any court proceeding concerning 25

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1 the rehabilitation of a life or health insurer if such 2 association is or may become liable to act as a result of 3 the rehabilitation.

4 Section 16. Termination rehabilitation. of (1) whenever the commissioner believes further attempts to 5 6 rehabilitate an insurer would substantially increase the 7 risk of loss to creditors, policyholders, or the public or would be futile, the commissioner may petition the district 8 9 court for an order of liquidation. A petition under this 10 subsection shall have the same effect as a petition under 11 [section 17]. The district court shall permit the directors of the insurer to take such actions as are reasonably 12 13 necessary to defend against the petition and may order 14 payment from the estate of the insurer of such costs and other expenses of defense as justice may require. 15

16 (2) The rehabilitator may at any time petition the 17 district court for an order terminating rehabilitation of an 18 insurer. The court shall also permit the directors of the 19 insurer to petition the court for an order terminating 20 rehabilitation of the insurer and may order payment from the estate of the insurer of such costs and other expenses of 21 such petition as justice may require. If the court finds 22 23 that rehabilitation has been accomplished and that grounds for rehabilitation under fsection 121 no longer exist, it 24 25 shall order that the insurer be restored to possession of

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its property and the control of the business. The district
 court may also make that finding and issue that order at any
 time upon its own motion.

Section 17. urounds for liquidation. The commissioner
may petition the district court for an order directing him
to liquidate a domestic insurer or an alien insurer
domiciled in this state on the basis:

9 (1) of any ground for an order of rehabilitation as
9 specified in [section 12], whether or not there has been a
10 prior order directing the rehabilitation of the insurer;

11 (2) that the insurer is insolvent; or

12 {3} that the insurer is in such condition that the 13 further transaction of business would be hazardous. 14 financially or otherwise, to its policyholders. its 15 creditors. or the public.

16 Section 18. Liquidation orders. (1) An order to 17 liquidate the business of a domestic insurer shall appoint 18 the commissioner and his successors in office liquidator and 19 shall direct the liquidator forthwith to take possession of 20 the assets of the insurer and to administer them under the general supervision of the court. The liquidator shall be 21 22 vested by operation of law with the title to all of the property, contracts, and rights of action and all of the 23 24 pooks and records of the insurer ordered liquidated, wherever located, as of the entry of the final order of 25

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liquidation. The filing or recording of the order with the 1 clerk of the district court and the clerk and recorder of 2 the county in which its principal office or place of 3 business of IS located or. in the case of real estate, with 4 5 the clerk and recorder of the county where the property is 6 located shall impart the same notice as a deed, bill of 7 sale, or other evidence of title duly filed or recorded with that clerk and recorder would have imparted. 8

9 (2) Upon issuance of the order, the rights and 10 liabilities of any such insurer and of its creditors, 11 policyholders, shareholders, members, and all other persons 12 interested in its estate shall become fixed as of the date 13 of entry of the order of liquidation, except as provided in 14 [sections 19 and 37].

15 (3) An order to liquidate the business of an alien 16 insurer domiciled in this state shall be in the same terms 17 and have the same legal effect as an order to liquidate a 18 domestic insurer, except that the assets and the business in 19 the United States shall be the only assets and business 20 included therein.

(4) At the time of petitioning for an order of
liquidation or at any time thereafter, the commissioner,
after making appropriate findings of an insurer's
insolvency, may petition the court for a judicial
declaration of such insolvency. After providing such notice

1 and hearing as it considers propert the court may make the 2 declaration.

3 (5) Any order issued under this section shall require
4 accounting to the court by the liquidator. Accountings shall
5 be at such intervals as the court specifies in its order.

Section 19. Continuance of coverage. (1) All policies.
other than life or health insurance or annuities. in effect
at the time of issuance of an order of liquidation shall
continue in force only for the lesser of:

10 (a) a period of 30 days from the date of entry of the11 liquidation orders;

12 (b) the expiration of the policy coverage;

13 (c) the date when the insured has replaced the 14 insurance coverage with equivalent insurance in another 15 insurer or otherwise terminated the policy; or

16 (d) the liquidator has effected a transfer of the
17 policy obligation pursuant to [section 21(1)(h)].

18 (2) An order or <u>OE</u> liquidation under [section 18]
19 terminates coverages at the time specified in subsection (1)
20 for purposes of any other statute.

(3) Policies of life or health insurance or "annuities
continue in force for such period and under such terms as
provided by any applicable guaranty association or foreign
guaranty association.

25 (4) Policies of life or health insurance or annuities

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or any period or coverage of such policies not covered by a
 guaranty association or foreign guaranty association shall
 terminate under subsections (1) and (2).

4 Section 20. Dissolution of insurer. The commissioner 5 may petition for an order dissolving the corporate existence 6 of a domestic insurer or the United States branch of an 7 alien insurer domiciled in this state at the time he applies 6 for a liquidation order. The court shall order dissolution of the corporation upon patition by the commissioner upon or 9 after the granting of a liquidation order. If the 10 11 dissolution has not previously been ordered, it shall be effected by operation of law upon the discharge of the 12 13 liquidator if the insurer is insolvent but may be ordered by 14 the court upon the discharge of the liquidator if the 15 insurer is under a liquidation order for some other reason. 16 Section 21. Powers of liquidator. (1) The liquidator 17 aay:

(a) appoint a special deputy to act for him under
[this act] and to determine his reasonable compensation. The
special deputy has all powers of the liquidator granted by
this section. The special deputy shall serve at the pleasure
of the liquidator.

(b) employ agents, legal counsel, actuaries,
accountants, appraisers, consultants, and other personnel
necessary to assist in the liquidation;

1 (c) fix the reasonable compensation of employees and 2 agents, legal counsel, actuaries, accountants, appraisers, 3 and consultants with the approval of the court;

4 (d) pay reasonable compensation to persons appointed and defray from the funds or assets of the insurer all 5 expenses of taking possession of conserving, conducting, 6 liquidating, disposing of, or otherwise dealing with the 7 business and property of the insurer. If the property of the 8 insurer does not contain sufficient cash or liquid assets to 9 defray the costs incurred, the commissioner may advance the 10 costs so incurred out of any appropriation for the 11 maintenance of the commissioner's office. Any amounts so 12 advanced for expenses of administration shall be repaid to 13 the commissioner for the use of his office out of the first 14 available money of the insurer. 15

(e) hold hearings, subpoena witnesses to compel their
attendance, administer oaths, examine any person under oath.
and compel any person to subscribe to his testimony after c
has been correctly reduced to writing, and in connection
therewith require the production of any books, papers.
records or other documents which he considers relevant to
the inquiry;

(f) to collect all debts and money due and claims
belonging to the insurer, wherever located, and for this
purpose:

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1 (i) institute timely action in other jurisdictions in 2 order to forestall garnishment and attachment proceedings 3 against such debts;

4 (ii) do such other acts as are necessary to collect, 5 conserve, or protect its assets or property, and has the 6 power to sell, compound, compromise, or assign debts for 7 purposes of collection upon such terms and conditions as he 8 considers best; and

9 (iii) pursue any creditor's remedies available to
 10 enforce his claims;

(g) conduct public and private sales of the property
 of the insurer;

13 (h) use assets of the estate of an insurer under a 14 liquidation order to transfer policy obligations to a 15 solvent assuming insurer, if the transfer can be arranged 16 without prejudice to applicable priorities under [section 17 42];

18 (i) acquire, encumber, lease, improve, sell, or 19 transfer any property of the insurer at its market value or 20 upon such terms and conditions as are fair and reasonable. He shall also have power to execute, acknowledge, and 21 22 deliver any and all deeds, assignments, releases, and other 23 instruments necessary or proper to effectuate any sale of 24 property or other transaction in connection with the 25 liquidation.

(j) borrow money on the security of the insurer's
 assets or without security and execute and deliver all
 documents necessary to that transaction for the purpose of
 facilitating the liquidation;

5 {k} enter into such contracts as are necessary to 6 carry out the order to liquidate, and affirm or disavow any 7 contracts to which the insurer is a party;

R (1) continue to prosecute and institute in the name of 9 the insurer or in his own name any and all suits and other 10 legal proceedings, in this state or elsewhere, and abandon 11 the prosecution of claims he considers unprofitable to 12 pursue further. If the insurer is dissolved under fsection 20], he shall have the power to apply to any court in this 13 14 state or elsewhere for leave to substitute himself for the 15 insurer as plaintiff.

16 (m) prosecute any action which may exist in behalf of
17 the creditors; members; policyholders; or shareholders of
18 the insurer against any officer of the insurer or any other
19 person;

(n) remove any or all records and property of the insurer to the offices of the commissioner or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation. Guaranty associations and foreign guaranty associations shall have such reasonable access to the records of the insurer as is necessary for

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# them to carry out their statutory obligations. (o) deposit in one or more banks in this state such sums as are required for meeting current administration

expenses and dividend distributions:

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5 (p) invest all sums not currently needed, unless the
6 court orders otherwise;

7 (q) file any necessary documents for record in the 8 office of any county clerk and recorder in this state or 9 elsewhere where property of the insurer is located;

10 (r) assert all defenses available to the insurer as 11 against third persons, including statutes of limitation, 12 statutes of frauds, and the defense of usury. A waiver of 13 any defense by the insurer after a petition in liquidation 14 has been filed shall not bind the liquidator. Whenever a guaranty association or foreign' guaranty association has an 15 16 obligation to defend any suit, the liquidator shall give 17 precedence to such obligation and may defend only in the absence of a defense by such quaranty associations. 18

19 (s) exercise and enforce all the rights, remedies, and 20 powers of any creditor, shareholder, policyholder, or 21 member, including any power to avoid any transfer or lien 22 that may be given by the general law and that is not 23 included with (sections 26 through 28);

(t) intervene in any proceeding wherever institutedthat might lead to the appointment of a receiver or trustee

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1 and act as the receiver or trustee whenever the appointment 2 is offered:

3 (u) enter into agreements with any receiver or 4 commissioner of any other state relating to the 5 rehabilitation, liquidation, conservation, or dissolution of 6 an insurer doing business in both states;

7 (v) exercise all powers now held or hereafter 8 conferred upon receivers by the laws of this state not 9 inconsistent with the provisions of [this act].

10 (2) The enumeration in this section of the powers and 11 authority of the liquidator shall not be construed as a 12 limitation upon him, nor shall it exclude in any manner his 13 right to do such other acts not herein specifically 14 enumerated, or otherwise provided for, as may be necessary 15 for the accomplishment of or in aid of the purpose of 16 liquidation.

Section 22. Notice to creditors and others. (1) Unless
the court otherwise directs, the liquidator shall give cr
cause to be given notice of the liquidation order as soon as
possible:

(a) by first-class mail and either by telegram or
telephone to the insurance commissioner of each jurisdiction
in which the insurer is doing business;

(b) by first-class mail to any guaranty association orforeign guaranty association which is or may become

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1 obligated as a result of the liquidation;

2 (c) by first-class mail to all insurance agents of the
3 insurer;

4 (d) by first-class mail to all persons known or 5 reasonably expected to have claims against the insurer, 6 including all policyholders, at their last-known address as 7 indicated by the records of the insurer; and

8 (e) by publication in a newspaper of general 9 circulation in the county in which the insurer has its 10 principal place of business and in such other locations as 11 the liquidator considers appropriate.

(2) Notice to potential claimants under subsection (1) 12 13 shall require claimants to file with the liquidator their claims together with proper proofs thereof under [section 14 15 361, on or before a date the liquidator shall specify in the notice. The liquidator need not require persons claiming 15 cash surrender values or other investment values in life 17 insurance and annuities to file a claim. All claimants have 18 a duty to keep the liquidator informed of any changes of 19 20 address.

(3) If notice is given in accordance with this
section, the distribution of assets of the insurer under
this chapter shall be conclusive with respect to all
claimants, whether or not they received notice.

25 Section 23. Duties of agents. (1) Every person who

3 a liquidation order shall within 15 days of such notice give 4 notice of the liquidation order. The notice shall be sent by 5 first-class mail to the last address contained in the 6 agent's recurds to each policyholder or other person named 7 in any policy issued through the agent by the insurer, if he 8 has a record of the address of the policyholder or other 9 person. A policy shall be considered issued through an agent if the agent has a property interest in the expiration of 10 11 the expiration of the policy or if the agent has had in his 12 possession a copy of the declarations of the policy at any 13 time during the life of the policy, except where the 14 ownership of the expiration of the policy has been transferred to another. The written notice shall include the 15 16 name and address of the insurer, the name and address of the 17 agent, identification of the policy impaired, and the nature 18 of the impairment, including termination of coverage, as 19 described in [section 19]. Notice by a general agent 20 satisfies the notice requirement for any agents under contract to him. Each agent obligated to give notice under 21

receives notice in the form prescribed in [section 22] that

an insurer which he represents as an agent is the subject of

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liquidator.

24 (2) Any agent failing to give notice or file a report 25 of compliance as required in subsection (1) may be subject

this section shall file a report of compliance with the

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1 to payment of a penalty of not more than \$1,000 and may have
2 his license suspended, after a hearing held by the
3 commissioner.

4 (3) The liquidator may waive the duties imposed by 5 this section if he determines that other notice to the policyholders of the insurer under liquidation is adequate. 6 7 Section 24. Actions by and against liquidator. (1) 8 Upon issuance of an order appointing a liquidator of a 9 domestic insurer or of an alien insurer domiciled in this state, no action at law or equity may be brought against the 10 11 insurer or liquidator, whether in this state or elsewhere, 12 nor shall any such existing actions be maintained or further 13 presented after issuance of such order. The courts of this 14 state shall give full faith and credit to injunctions 15 against the liquidator or the company or the continuation of existing actions against the liquidator or the company when 16 17 such injunctions are included in an order to liquidate an 18 insurer issued pursuant to corresponding provisions in other 19 states. Whenever in the liquidator's judgment protection of 20 the estate of the insurer necessitates intervention in an 21 action against the insurer that is pending outside this 22 state, he may intervene in the action. The liquidator may 23 defend any action in which he intervenes under this section at the expense of the estate of the insurer. 24

25 (2) The liquidator may upon or after an order for

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liquidation. within 2 years or such time in addition to 2 1 2 years as applicable law may permit, institute an action or 3 proceeding on behalf of the estate of the insurer upon any cause of action against which the period of limitation fixed 5 by applicable law has not expired at the time of the filing of the petition upon which such order is entered. When, by 6 7 any agreement, a period of limitation is fixed for instituting a suit or proceeding upon any claim or for A 9 filing any claim, proof of claim, proof of loss, demand, notice, or the like or when in any proceeding, judicial or 10 11 otherwise, a period of limitation is fixed, either in the 12 proceeding or by applicable law, for taking any action, 13 filing any claim or pleading, or doing any act and when in any such case the period had not expired at the date of the 14 15 filing of the petition, the liquidator may, for the benefit 16 of the estate, take any such action or do any such act, 17 required of or permitted to the insurer, within a period of 18 180 days subsequent to the entry of an order for liquidation, or within such further period as is shown to 19 20 the satisfaction of the court not to be unfairly prejudicial 21 to the other party.

(3) No statute of limitations or defense of laches
shall run with respect to any action against an insurer
between the filing of a petition for liquidation against an
insurer and the denial of the petition. Any action against

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the insurer that might have been commenced when the petition
 was filed may be commenced for at least 60 days after the
 petition is denied.

4 (4) Any guaranty association or foreign guaranty 5 association shall have standing to appear in any court 6 proceeding concerning the liquidation of an insurer if such 7 association is or may become liable to act as a result of 8 the liquidation.

9 Section 25. Collection and list of assets. (1) As soon as practicable after the liquidation order but not later 10 than 120 days thereafter, the liquidator shall prepare in 11 duplicate a list of the insurer's assets. The list shall be 12 13 amended or supplemented from time to time as the liquidator may determine. One copy shall be filed in the office of the 14 15 clerk of the district court and one copy shall be retained for the liquidator's files. All amendments and supplements 16 17 shall be similarly filed.

18 (2) The liquidator shall reduce the assets to a degree
19 of liquidity that is consistent with the effective execution
20 of the liquidation.

(3) A submission to the court for disbursement of
 assets in accordance with [section 34] fulfills the
 requirements of subsection (1) of this section.

24 Section 26. Fraudulent transfers prior to petition.
25 (1) Every transfer made or suffered and every obligation

incurred by an insurer within 1 year prior to the filing of 1 2 a successful petition for rehabilitation or liquidation ٦. under ithis act is fraudulent as to then existing and future creditors if made or incurred without fair 4 5 consideration or with actual intent to hinder. delay. or defraud either existing or future creditors. A transfer 6 7 made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under [this act] which is 8 fraudulent under this section may be avoided by the Q. 10 receiver, except as to a person who in good faith is a 11 purchaser, lienor, or obligee for a present fair equivalent 12 value, and except that any purchaser, lienor, or obligee. who in good faith has given a consideration less than fair 13 14 for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment. The 15 16 court may, on due notice, order any such transfer or 17 obligation to be preserved for the benefit of the estate. 18 and in that event, the receiver succeeds to and may enforce 19 the rights of the purchaser, lienor, or obligee.

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(2) (a) A transfer of property other than real
property is considered to be made or suffered when it
becomes so far perfected that no subsequent lien obtainable
by legal or equitable proceedings on a simple contract could
become superior to the rights of the transferee under
[section 28(3)].

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1 (b) A transfer of real property is considered to be 2 made or suffered when it becomes so far perfected that no 3 subsequent bona fide purchaser from the insurer could obtain 4 rights superior to the rights of the transferee.

5 (c) A transfer which creates an equitable lien is not
6 considered to perfected if there are available means by
7 which a legal lien could be created.

8 (d) Any transfer not perfected prior to the filing of
9 a petition for liquidation is considered to be made
10 immodiately before the filing of the successful petition.

11 (e) The provisions of this subsection apply whether or 12 not there are or were creditors who might have obtained any 13 liens or persons who might have become bona fide purchasers. 14 (3) Any transaction of the insurer with a reinsurer is 15 considered fraudulent and may be avoided by the receiver 16 under subsection (1) if:

17 (a) the transaction consists of the termination. 18 adjustment, or settlement of a reinsurance contract in which 19 the reinsurer is released from any part of its duty to pay 20 the originally specified share of losses that had occurred prior to the time of the transaction, unless the reinsurer 21 22 gives a present fair equivalent value for the release; and 23 (b) any part of the transaction took place within 1 24 year prior to the date of filing of the petition through 25 which the receivership was commenced.

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Section 27. Fraudulent transfer after petition. (1) 1 2 After a petition for rehabilitation or liquidation has been filed, a transfer of any of the real property of the insurer з made to a person acting in good faith is valid against the 4 5 receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the 6 extent of the present consideration actually paid therefore 7 for which amount the transferee shall have a lien on the 8 property so transferred. The commencement of a proceeding in 9 rehabilitation or liquidation is constructive notice upon 10 the recording of a copy of the petition for or order of 11 rehabilitation or liquidation with the county clerk and 12 13 recorder in the county where any real property in question 14 is located. The exercise by a court of the United States or any state or jurisdiction to authorize or effect a judicial 15 sale of real property of the insurer within any county in 16 any state shall not be impaired by the pendency of such a 17 18 proceeding unless the copy is recorded in the county price 19 to the consummation of the judicial sale.

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

24 (a) a transfer of any of the property of the insurer.
25 other than real property, made to a person acting in good

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faith is valid against the receiver if made for a present 1 2 fair equivalent value or, if not made for a present fair 3 equivalent value, then to the extent of the present 4 consideration actually paid therefor, for which amount the 5 transferee shall have a lien on the property so transferred; 6 (b) a person indebted to the insurer or holding property of the insurer may, if acting in good faith, pay 7 8 the indebtedness or deliver the property, or any part thereof, to the insurer or upon his order, with the same 9 effect as if the petition were not pending; 10

(c) a person having actual knowledge of the pending
 renabilitation or liquidation is considered not acting in
 good faith;

14 (d) a person asserting the validity of a transfer 15 under this section has the burden of proof. Except as 16 elsewhere provided in this section, no transfer by or on 17 behalf of the insurer after the date of the petition for 18 liquidation by any person other than the liquidator shall be 19 valid against the liquidator.

20 (3) Nothing in [this act] impairs the negotiability of
 21 currency or negotiable instruments.

22 Section 28. Voidable preferences and Hens. (1) (a) A 23 preference is a transfer of any of the property of an 24 insurer to or for the benefit of a creditor. for or on 25 account of an antecedent debt. made or suffered by the

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1 insurer within 1 year before the filing of a successful petition for liquidation under [this act]. the effect of 2 3 which transfer may be to enable the creditor to obtain a ٠ greater percentage of this debt than another creditor of the 5 same class would receive. If a liquidation order is entered 6 while the insurer is already subject to a rehabilitation 7 order, then such transfers shall be considered preferences if made or suffered within 1 year before the filling of the 8 successful petition for rehabilitation or within 2 years 9 before the filing of the successful petition for 10 liquidation, whichever time is shorter. 11 (b) Any preference may be avoided by the liquidator 12 13 if:

14 (i) the insurer was insolvent at the time of the 15 transfer:

16 (ii) the transfer was made within 4 months before the 17 filing of the petition;

18 (iii) the creditor receiving it or to be benefited 19 thereby or his agent acting with reference thereto had, at 20 the time when the transfer was made, reasonable cause to 21 believe that the insurer was insolvent or was about to 22 become insolvent; or

23 (iv) the creditor receiving it was an officer or any
24 employee or attorney or other person who was in fact in a
25 position of comparable influence in the insurer to an

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1 officer whether or not he held such position: or any 2 shareholder holding directly or indirectly more than 5% of 3 any class of any equity security issued by the insurer. or 4 any other person: firm: corporation: association: or 5 aggregation of persons with whom the insurer did not deal at 6 arm's length.

7 (c) when the preference is voidable, the liquidator 8 may recover the property or, if it has been converted, its 9 value from any person who has received or converted the 10 property, except where a bona fide purchaser or lienor has given less than fair equivalent value, he shall have a lien 11 upon the property to the extent of the consideration 12 13 actually given by him. When a preference by way of lien or 14 security title is voidable, the court may on due notice 15 order the lien or title to be preserved for the benefit of 16 the estate, in which event the lien or title passes to the 17 liquidator.

18 (2) (a) A transfer of property other than real
19 property is considered to be made or suffered when it
20 becomes so far perfected that no subsequent lien obtainable
21 by legal or equitable proceedings on a simple contract could
22 become superior to the rights of the transferee.

(b) A transfer of real property is considered to be
 nade or suffered when it becomes so far perfected that no
 subsequent bona fide purchaser from the insurer could obtain

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1 rights superior to the rights of the transferee.

2 (c) A transfer which creates an equitable lien is not
3 considered to be perfected if there are available means by
4 which a legal lien could be created.

5 (d) A transfer not perfected prior to the filing of a 6 petition for liquidation is considered to be made 7 immediately before the filing of the successful petition.

(e) The provisions of this subsection apply whether or 8 not there are or were creditors who might have obtained 9 liens or persons who might have become bona fide purchasers. 10 11 (3) (a) A lien obtainable by legal or equitable 12 proceedings upon a simple contract is one arising in the ordinary course of such proceedings upon the entry or 13 14 docketing of a judgment or decree or upon attachment. 15 garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon 16 levy. It does not include liens which under applicable law 17 are given a special priority over other liens which are 18 19 prior in time.

(b) A lien obtainable by legal or equitable
proceedings could become superior to the rights of a
transferee, or a purchaser could obtain rights superior to
the rights of a transferee within the meaning of subsection
(2), if such consequences would follow only from the lien or
purchase itself or from the lien or purchase followed by any

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1 step wholly within the control of the respective lienholder 2 or purchaser, with or without the aid of ministerial action 3 by public officials. Such a lien could not, however, become superior and such a purchase could not create superior 4 5 rights for the purpose of subsection (2) through any acts subsequent to the obtaining of such a lien or subsequent to 6 7 such a purchase which require the agreement or concurrence of any third party or which require any further judicial 8 9 action or ruling.

(4) A transfer of property for or on account of a new 10 and contemporaneous consideration which is considered under 11 12 subsection (2) to be made or suffered after the transfer 13 because of delay in perfecting it does not thereby become a 14 transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to 15 perfect the transfer as against liens or bona fide 16 purchasers! rights are performed within 21 days or any 17 13 period expressly allowed by the law, whichever is less. A 19 transfer to secure a future loan, if such a loan is actually 20 made, or a transfer which becomes security for a future loan 21 shall have the same effect as a transfer for or on account 22 of a new and contemporaneous consideration.

23 (5) If any lien considered voidable under subsection
24 (1)(b) has been dissolved by the furnishing of a bond or
25 other obligation, the surety on which has been indemnified

directly or indirectly by the transfer of or the creation of a lien upon any property of an insurer before the filing of a petition under [this act] which results in a liquidation order, the indemnifying transfer or lien shall also be considered voidable.

6 (6) The property affected by any lien considered 7 voidable under subsections (1) and (5) shall be discharged 8 from such lien, and that property and any of the q indemnifying property transferred to or for the benefit of a 10 surety shall pass to the liquidator, except that the court may on due notice order any such lien to be preserved for 11 12 the benefit of the estate and the court may direct that such 13 conveyance be executed as may be proper or adequate to 14 evidence the title of the liquidator.

15 (7) The district court has summary jurisdiction of any 16 proceeding by the liquidator to hear and determine the 17 rights of any parties under this section. Reasonable notice 18 of any hearing in the proceeding shall be given to all 19 parties in interest, including the obligge of a releasing bond or other like obligation. When an order is entered for 20 the recovery of indemnifying property in kind or for the 21 22 avoidance of an indemnifying lien, the court, upon application of any party in interest, shall in the same 23 24 proceeding ascertain the value of the property or lien, and 25 if the value is less than the amount for which the property

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is indemnity or less than the amount of the lien, the
 transferee or lienholder may elect to retain the property or
 lien upon payment of its value, as ascertained by the court.
 to the liquidator, within such reasonable times as the court
 shall fix.

6 (8) The liability of a surety under a releasing bond 7 or other like obligation is discharged to the extent of the 8 value of the indemnifying property recovered or the 9 indemnifying lien nullified and avoided by the liquidator or 10 when the property is retained under subsection (7) to the 11 extent of the amount paid to the liquidator.

12 {9} If a creditor has been preferred and afterward in 13 good faith gives the insurer further credit without security 14 of any kind, for property which becomes a part of the 15 insurer's estate, the amount of the new credit remaining 16 unpaid at the time of the petition may be set off against 17 the preference which would otherwise be recoverable from 18 hime

19 (10) If an insurer, directly or indirectly, within 4 20 months before the filing of a successful petition for 21 liquidation under [this act] or at any time in contemplation 22 of a proceeding to liquidate it, pays money or transfers 23 property to an attorney at law for services rendered or to 24 be rendered, the transaction may be examined by the court on 25 its own motion or shall be examined by the court on petition

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1 of the liquidator and shall be held valid only to the extent 2 of a reasonable amount to be determined by the court, and the excess may be recovered by the liquidator for the 3 4 benefit of the estate, provided that where the attorney is 5 in a position of influence in the insurer or an affiliate thereof, payment of any money or the transfer of any 6 7 property to the attorney at law for services rendered or to A be rendered shall be governed by the provision of subsection • (1)(b)(iv).

10 (11) (a) Every officer, manager, employee, shareholder, 11 aember, subscriber, attorney, or any other person acting on 12 behalf of the insurer who knowingly participates in giving 13 any preference when he has reasonable cause to believe the 14 insurer is or is about to become insolvent at the time of 15 the preference is personally liable to the liquidator for 16 the amount of the preference. It is permissible to infer 17 that there is reasonable cause to so believe if the transfer was made within 4 months before the date of filing of thus 18 19 successful petition for liquidation.

(b) Every person receiving any property from the
insurer or the benefit thereof as a preference voidable
under subsection (1) is personally liable therefor and is
bound to account to the liquidator.

(c) Nothing in this subsection prejudices any other
 claim by the liquidator against any person.

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Section 29. Claims of holders of void or voidable 1 2 rights. (1) No claims of a creditor who has received or 3 acquired a preference, lien, conveyance, transfer, assignment, or encumbrance voidable under [this act], shall 4 5 be allowed unless he surrenders the preference. lien. 6 conveyance, transfer, assignment, or encumbrance. If the avoidance is effected by a proceeding in which a final 7 8 judgment has been entered, the claim may not be allowed 9 unless the money is paid or the property is delivered to the liquidator within 30 days from the date of the entering of 10 the final judgment, except that the court having 11 jurisdiction over the liquidation may allow further time if 12 there is an appeal or other continuation of the proceeding. 13 14 (2) A claim allowable under subsection (1) by reason of the avoidance, whether voluntary or involuntary, or a 15 16 preference, lien, conveyance, transfer, assignment, or encumbrance may be filed as an excused late filing under 17 [section 35] if filed within 30 days from the date of the 18 19 avoidance or within the further time allowed by the court 20 under subsection (1).

21 Section 30. Setoffs and counterclaims. (1) Mutual 22 dects or mutual credits between the insurer and another 23 person in connection with any action or proceeding under 24 [this act] shall be set off and the balance only shall be 25 allowed or paid, except as provided in subsection (2) and 1 [section 33].

2 (2) No setoff or counterclaim may be allowed in favor
3 of any person when:

4 (a) the obligation of the insurer to the person would 5 not at the date of the filing of a petition for liquidation 6 entitle the person to share as a claimant in the assets of 7 the insurer;

8 (b) the obligation of the insurer to the person was
9 purchased by or transferred to the person with a view to its
10 being used as a setoff:

11 (c) the obligation of the person is to pay an 12 assessment levied against the members or subscribers of the 13 insurer or is to pay a balance upon a subscription to the 14 capital stock of the insurer or is an any other way in the 15 nature of a capital contribution; or

16 (d) the obligation of the person is to pay premiums.
17 whether earned or unearned, to the insurer.

Section 31. Assessments. (1) As soon as practicable put not more than 2 years from the date of an order of liquidation under [section 18] of an insurer issuing assessable policies, the liquidator shall make a report to the court setting forth:

- 23 (a) the reasonable value of the assets of the insurer;
- 24 (b) the insurer's probable total liabilities;
- 25 (c) the probable aggregate amount of the assessment

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necessary to pay all claims of creditors and expenses in
 full, including expenses of administration and costs of
 collecting the assessment; and

4 (d) a recommendation as to whether or not an
5 assessment should be made and in what amount.

6 (2) (a) Upon the basis of the report provided in 7 subsection (1), including any supplements and amendments 8 thereto, the district court may levy one or more assessments 9 against all members of the insurer who are subject to 10 assessment.

11 (b) Subject to any applicable legal limits on 12 assessability, the aggregate assessment shall be for the 13 amount that the sum of the probable liabilities, the 14 expenses of administration, and the estimated cost of 15 collection of the assessment exceeds the value of existing 16 assets, with due regard being given to assessments that 17 cannot be collected economically.

18 (3) After levy of assessment under subsection (2), the 19 liquidator shall issue an order directing each member who 20 has not paid the assessment pursuant to the order to show 21 cause why the liquidator should not pursue a judgment 22 therefor.

(4) The liquidator shall give notice of the order to
show cause by publication and by first-class mail to each
member liable thereunder mailed to his last-known address as

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it appears on the insurer's records at least 20 days before
 the return day of the order to show cause.

3 (5) (a) If a member does not appear and serve duly 4 verified object...s upon the liquidator on or before the 5 return day of the order to show cause under subsection (3), 6 the court shall make an order adjudging the member liable 7 for the amount of the assessment against him, pursuant to 8 subsection (3), together with costs, and the liquidator 9 shall have a judgment against the member therefor.

10 (b) If on or before such return day, the member 11 appears and serves duly verified objections upon the 12 liquidator, the commissioner may hear and determine the 13 matter or may appoint a referee to hear it and make such order as the facts warrant. If the commissioner determines . 14 15 that such objections do not warrant relief from assessment, 16 the member may request the court to review the matter and 17 vacate the order to show cause.

18 (6) The liquidator may enforce any order or collect
 19 any judgment under subsection (5) by any lawful means.

20 Section 32. Reinsurer's liability. The amount 21 recoverable by the liquidator from reinsurers may not be 22 reduced as a result of delinquency proceedings, regardless 23 of any provision in the reinsurance contract or other 24 agreement. Payment made directly to an insured or other 25 creditor may not diminish the reinsurer's obligation to the

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insurer's estate except when the reinsurance contract
 provided for direct coverage of a named insured and the
 payment was made in discharge of that obligation.

Section 33. Recovery of premiums owed. (1) (a) An 4 agent or any other person responsible for the payment of a 5 6 premium, other than the insured, shall be obligated to pay 7 any Unpaid premium for the full policy term due the insurer R at the time of the declaration of insolvency, whether earned • or unearned, as shown on the records of the insurer. The 10 liquidator may recover from such person any part of an unearned premium that represents commission of such person-11 12 Credits or setoffs or both may not be allowed to an agent 13 for any amounts advanced to the insurer by the agent on behalf of but in the absence of a payment by the insured. 14

(b) An insured shall pay any unpaid earned premium due
the insurer at the time of the declaration of insolvency, as
shown on the records of the insurer.

18 (2) Upon satisfactory evidence of a violation of this
19 section, the commissioner may pursue either one or both of
20 the following courses of action:

(a) suspend or revoke or refuse to renew the licenses
of any offending party;

(b) impose a penalty of not more than \$1,000 for each
 act in violation of this section by such party.

25 (3) Before the commissioner may take any action as set

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forth in subsection (2), he shall give written notice to the 1 z person, company, association, or exchange accused of violating the law, stating specifically the nature of the а. 4 alleged violation and fixing a time and place, at least 10 5 days thereafter, when a hearing on the matter shall be held. ٨ After such hearing or upon failure of the accused to appear 7 at such hearing, the commissioner, if he finds a violation, 8 shall impose such penalties under subsection (2) as he 9 considers advisable.

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10 (4) When the commissioner takes action in any of the 11 ways set out in subsection (2), the party aggrieved may 12 appeal from the action to the district court.

13 Section 34. Domiciliary liquidator's proposal to 14 distribute assets. (1) Within 120 days of a final 15 determination of insolvency of an insurer by a court of 16 competent jurisdiction of this state, the liquidator shall 17 make application to the court for approval of a proposal to 18 disburse assets out of marshalled assets, from time to time 19 as such assets become available, to a guaranty association 20 or foreign guaranty association having obligations because 21 of such insolvency. If the liquidator determines that there 22 are insufficient assets to disburse, the application 23 required by this section shall be considered satisfied by a filing by the liquidator stating the reasons for this 24 25 determination.

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1 (2) The proposal shall at least include provisions 2 for:

3 (a) reserving amounts for the payment of expenses of 4 administration and the payment of claims of secured 5 creditors, to the extent of the value of the security held, 6 and claims falling within the priorities established in 7 [section 42], classes 1 and 2;

8 (b) disbursement of the assets marshalled to date and
9 subsequent disbursement of assets as they become available;
10 (c) equitable allocation of disbursements to each of
11 the guaranty associations and foreign guaranty associations
12 entitled thereto;

(d) the securing by the liquidator from each of the 13 associations entitled to disbursements pursuant to this 14 section of an agreement to return to the liquidator such 15 assets, together with income earned on assets previously 16 17 disbursed, as may be required to pay claims of secured claims falling within the priorities creditors and 18 19 established in [section 42] in accordance with such required of any such 20 priorities (no bond may be **Z1** association); and

22 (e) a full report to be made by each association to 23 the liquidator accounting for all assets so disbursed to the 24 association, all disbursements made therefrom, any interest 25 earned by the association on such assets, and any other

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1 matter as the court may direct.

(3) The liquidator's proposal shall provide for 2 disbursements to the associations in amounts estimated at 3 least equal to the claim payments made or to be made thereby 4 5 for which such associations could assert a claim against the liquidator and shall further provide that if the assets 6 available for disbursement from time to time do not equal or 7 exceed the amount of such claim payments made or to be made 8 by the association, then disbursements shall be in the 9 10 amount of available assets.

(4) The liquidator's proposal shall, with respect to 11 12 an insolvent insurer writing life or health insurance or annuities, provide for disbursements of assets to any 13 quaranty association or any foreign quaranty association 14 covering life or health insurance or annuities or to any 15 other entity or organization reinsuring, assuming, or 16 unaranteeing policies or contracts of insurance under the 17 18 acts creating such associations.

19 (5) Notice of such application shall be given to the association in and to the commissioners of insurance of each of the states. Any notice shall be considered to have been given when deposited in the United States certified mails, first-class postage prepaid, at least 30 days prior to submission of such application to the court. Action on the application may be taken by the court provided the above

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required notice has been given and provided further that the
 liquidator's proposal complies with subsections (2)(a) and
 (2)(b).

Section 35. filing of claims. (1) Proof of all claims shall be filed with the liquidator in the form required by (section 36] on or before the last day for filing specified in the notice required under [section 22], except that proof of claims for cash surrender values or other investment values in life insurance and annuities need not be filed unless the liquidator requires.

11 (2) The liquidator may permit a claimant making a late 12 filing to share in distributions, whether past or future, as 13 if he were not late, to the extent that any such payment 14 will not prejudice the orderly administration of the 15 liquidation, under the following circumstances:

16 (a) the existence of the claim was not known to the 17 claimant and his claim was filed as promptly after learning 18 of it as reasonably possible;

(b) a transfer to a creditor was avoided under
(sections 26 through 28) or was voluntarily surrendered
under [section 29], and the filing satisfies the conditions
of [section 29]; and

(c) the valuation under [section 41] of security held
oy a secured creditor shows a deficiency, which is filed
within 30 days after the valuation.

t (3) The liquidator shall permit late filing claims to z share in distributions, whether past or future, as if they were not later if such claims are claims of a quaranty 3 4 association or foreign guaranty association for 5 reimbursement of covered claims paid or expenses incurred. 6 or both, subsequent to the last day for filing where such 7 payments were made and expenses incurred as provided by law. 8 (4) The liquidator may consider any claim filed late 9 which is not covered by subsection (2) and permit it to receive distributions which are subsequently declared on any 10 11 claims of the same or lower priority if the payment does not 12 prejudice the orderly administration of the liquidation- The 13 late-filing claimant shall receive, at each distribution. 14 the same percentage of the amount allowed on his claim as is 15 then being paid to claimants of any lower priority. This 16 shall continue until his claim has been paid in full.

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Section 36. Proof of claim. (1) Proof of claim shall
 consist of a statement signed by the claimant that includes
 all of the following that are applicable:

(a) the particulars of the claim including theconsideration given for it;

22 (b) the identity and amount of the security on the 23 claim;

24 (c) the payments made on the debt+ if any;

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25 (d) that the sum claimed is justly owing and that

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there is no setoff, counterclaim, or defense to the claim;
(e) any right of priority of payment or other specific
right asserted by the claimants;

4 (f) a copy of the written instrument which is the
5 foundation of the claim;

6 (g) the name and address of the claimant and the
7 attorney who represents him. if any.

8 (2) No claim need be considered or allowed if it does 9 not contain all the information in subsection (1) which may 10 be applicable. The liquidator may require that a prescribed 11 form be used and may require that other information and 12 documents be included.

13 (3) At any time the liquidator may request the 14 claimant to present information or evidence supplementary to 15 that required under subsection (1) and may take testimony 16 under oath, require production of affidavits or depositions, 17 or otherwise obtain additional information or evidence.

18 (4) No judgment or order against an insured or the 19 insurer entered after the date of filing of a successful 20 petition for liquidation and no judgment or order against an insured or the insurer entered at any time by default or by 21 22 collusion need be considered as evidence of liability or of 23 quantum of damages. No judgment or order against an insured 24 or the insurer entered within 4 months before the filing of 25 the petition need be considered as evidence of liability or

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1 of the quantum of damages.

2 (5) All claims of a guaranty association or foreign
3 guaranty association shall be in such form and contain such
4 substantiation as may be agreed to by the association and
5 the liquidator.

Section 37. Special claims. (1) The claim of a third
party which is contingent only on his first obtaining a
judgment against the insured shall be considered and allowed
as if there were no such contingency.

10 (2) A claim may be allowed even if contingent, if it 11 is filed in accordance with [section 35]. It may be allowed 12 and may participate in all distributions declared after it 13 is filed to the extent that it does not prejudice the 14 orderly administration of the liquidation.

(3) Claims that are due except for the passage of time 15 shall be treated as absolute claims are treated, except that 16 17 such claims may be discounted at the legal rate of interest-(4) Claims made under employment contracts by 18 directors, principal officers, or persons in fact performing 19 similar functions or having similar powers are limited to 20 21 payment for services rendered prior to the issuance of any 22 order of rehabilitation or liquidation under [section 13 or 23 18].

24 Section 38. Special provisions for third-party claims.
25 (1) Whenever any third party asserts a cause of action

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against an insured of an insurer in liquidation, the third
 party may file a claim with the liquidator.

3 (2) Whether or not the third party files a claim, the 4 insured may file a claim on his own behalf in the 5 liquidation. If the insured fails to file a claim by the 6 date for filing claims specified in the order of liquidation 7 or within 60 days after mailing of the notice required by 8 [section 22], whichever is later, he is an unexcused late 9 filer.

10 (3) The liquidator shall make his recommendations to the court under [section 42], for the allowance of an 11 insured's claim under subsection (2), after consideration of 12 the probable outcome of any pending action against the 13 insured on which the claim is based, the probable damages 14 recoverable in the action, and the probable costs and 15 expenses of defense. After allowance by the court, the 16 liquidator shall withhold any dividends payable on the 17 claim, pending the outcome of litigation and negotiation 18 19 with the insured. Whenever it seems appropriate, he shall reconsider the claim on the bases of additional information 20 21 and amend his recommendations to the court. The insured 22 shall be afforded the same notice and opportunity to be 23 heard on all changes in the recommendation as in its initial 24 determination. The court may amend its allowance as it 25 thinks appropriate. As claims against the insured are

1 settled or barred, the insured shall be paid, from the amount withheld, the same percentage dividend as was paid on 2 other claims of like property, based on the lesser of the 3 4 amount actually recovered from the insured by action or paid 5 by agreement plus the reasonable costs and expenses of 6 defenses or the amount allowed on the claims by the court. 7 After all claims are settled or barred, any sum remaining from the amount withheld shall revert to the undistributed R 9 assets of the insurer. Delay in final payment under this 10 subsection shall not be a reason for unreasonable delay of 11 final distribution and discharge of the liquidator.

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12 (4) If several claims founded upon one policy are 13 filed, whether by third parties or as claims by the insured under this section and the aggregate allowed amount of the 14 claims to which the same limit of liability in the policy is 15 16 applicable exceeds that limit, each claim as allowed shall 17 be reduced in the same proportion so that the total equals the policy limit. Claims by the insured shall be evaluated 18 19 as in subsection (3). If any insured's claim is subsequently reduced under subsection (3), the amount thus freed shall be 20 21 apportioned ratably among the claims which have been reduced 22 under this subsection.

23 (5) No claim may be presented under this section if it
24 is or may be covered by any guaranty association or foreign
25 guaranty association.

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1 Section 39. Disputed claims. (1) When a claim is 2 denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant or his 3 attorney by first-class mail at the address shown in the 4 5 proof of claim. Within 60 days from the mailing of the 6 notice, the claimant may file his objections with the 7 liquidator. If no such filing is made, the claimant may not further object to the determination. 8

9 (2) Whenever objections are filed with the liquidator 10 and the liquidator does not alter his denial of the claim as 11 a result of the objections, the liquidator shall ask the 12 court for a hearing as soon as practicable and give notice 13 of the hearing by first-class mail to the claimant or his 14 attorney and to any other persons directly affected, not 15 less than 10 or more than 30 days before the date of the hearing. The matter may be heard by the court or by a 16 17 court-appointed referee who shall submit findings of fact 18 along with his recommendation.

19 Section 40. Claims of surety. Whenever a creditor 20 whose claim against an insurer is secured, in whole or in 21 part, by the undertaking of another person fails to prove 22 and file that claim, the other person may do so in the 23 creditor's name and shall be subrogated to the rights of the 24 creditor, whether the claim has been filed by the creditor 25 or by the other person in the creditor's name, to the extent

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of an agreement with the creditor to the contrary, the other 2 Jerson shall not be entitled to any distribution until the з amount paid to the creditor on the undertaking plus the 4 5 distributions paid on the claim from the insurer's estate to the creditor equals the amount of the entire claim of the 6 creditor. Any excess received by the creditor shall be held 7 by him in trust for such other person. The term "other 8 person", as used in this section, is not intended to apply 9 to a guaranty association or foreign guaranty association. 10 Section 41. Secured creditor's claims. (1) The value 11 of any security held by a secured creditor shall be 12 13 determined in one of the following ways, as the court may 14 direct: (a) by converting the same into money according to the

that he discharges the undertaking. However, in the absence

15 (a) by converting the same into money according to the
16 terms of the agreement pursuant to which the security was
17 delivered to such creditors; or

18 (b) by agreement, arbitration, compromise, or
19 litigation between the creditor and the liquidator.

20 (2) The determination shall be under the supervision 21 and control of the court with due regard for the 22 recommendation of the liquidator. The amount so determined 23 shall be credited upon the secured claim. and any deficiency 24 shall be treated as an unsecured claim. If the claimant 25 surrenders his security to the liquidator, the entire claim

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1 shall be allowed as if unsecured. Section 42. Priority of distribution. The priority of 2 distribution of claims from the insurer's estate shall be in 3 accordance with the order in which each class of claims is 4 herein set forth. Every claim in each class shall be paid in 5 full or adequate funds retained for such payment before the 6 members of the next class receive any payment. No subclasses 7 8 shall be established within any class. The order of 9 distribution of claims shall be as follows: (1) Class 1--the costs and expenses of administration. 10 including but not limited to the following: 11 (a) the actual and necessary costs of preserving or 12 13 recovering the assets of the insurer; (b) compensation for all services rendered in the 14 15 liquidation; (c) any necessary filing fees; 16 (d) the fees and mileage payable to witnesses; 17 18 (e) reasonable attorney's fees; 19 (f) the reasonable expenses of a quaranty association 20 or foreign guaranty association in handling claims. (2) Class 2--debts due to employees for services 21 22 performed to the extent that they do not exceed \$1,000 and 23 represent payment for services performed within 1 year before the filing of the petition for liquidation. Officers 24 and directors are not entitled to the benefit of this 25 SB 80 -69-

priority. Such priority is in lieu of any other similar
 priority which may be authorized by law as to wages or
 compensation of employees.

4 (3) Class 3--all claims under policies for losses 5 incurred, including third-party claims, all claims against the insurer for liability for bodily injury or for injury to 6 7 or destruction of tangible property which are not under 8 policies, and all claims of a guaranty association or foreign guaranty association. All claims under life • insurance and annuity policies, whether for death proceeds, 10 11 annuity proceeds, or investment values shall be treated as 12 loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered 13 14 by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in 15 discharge of familial obligations of support or by way of 16 17 succession at death or as proceeds of life insurance, or as 18 gratuities. No payment by an employer to his employee may be 19 treated as a gratuity.

20 (4) Class 4--Claims under nonassessable policies for
 21 unwarned premium or other premium refunds and claims of
 22 general creditors.

23 (5) Class 5--claims of the federal or any state or
24 local government. Claims, including those of any
25 governmental body for a penalty or forfeiture, shall be

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i allowed in this class only to the extent of the pecuniary loss sustained from the act. transaction. or proceeding out of which the penalty or forfeiture arose. with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under subsection (8).

7 (6) Class 6--claims filed late or any other claims
8 other than claims under subsections (7) and (8).

9 (7) Class 7--surplus or contribution notes, or similar
10 obligations, and premium refunds on assessable policies.
11 Payments to members of domestic mutual insurance companies
12 shall be limited in accordance with law.

13 (8) Class 8--the claims of shareholders or other 14 owners.

15 Section 43. Liquidator's récommendations to the court. (1) The liquidator shall review all claims duly filed in the 16 17 liquidation and make such further investigation as he 18 considers necessary. He may compound, compromise, or in any 19 other manner negotiate the amount for which claims will be 20 recommended to the court except where the liquidator is required by law to accept claims as settled by any person or 21 22 organization, including any guaranty association or foreign 23 guaranty association. Unresolved disputes shall be determined under [section 39]. As soon as practicable, he 24 25 shall present to the court a report of the claims against

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the insurer with his recommendations. The report shall include the name and address of each claimant and the amount of the claim finally recommended, if any. If the insurer has issued annuities or life insurance policies, the liquidator shall report the persons to whom, according to the records of the insurer, amounts are owed as cash surrender values or other investment value and the amounts owed.

(2) The court may approve, disapprove, or modify the 8 report on claims by the liquidator. Reports not modified by 9 the court within a period of 60 days following submission by 10 the liquidator shall be treated by the liquidator as allowed 11 12 claims, subject to later modification or to rulings made by the court pursuant to [section 39]. No claim under a policy 13 of insurance shall be allowed for an amount in excess of the · 14 applicable policy limits. 15

Section 44. Distribution of assets. Under the 16 direction of the court, the liquidator shall pay 17 distributions in a manner that will assure the prope. 18 recognition of priorities and a reasonable balance between 19 the expeditious completion of the liquidation and the 20 protection of unliquidated and undetermined claims, 21 22 including third-party claims. Distribution of assets in kind may be made at valuations set by agreement between the 23 liquidator and the creditor and approved by the court. 24

25 Section 45. Unclaimed and withheld funds. (1) \*11

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1 unclaimed funds subject to distribution remaining in the z liquidator's hands when he is ready to apply to the court 3 for discharge, including the amount distributable to any 4 creditor, shareholder, member, or other person who is 5 unknown or cannot be found, shall be deposited with the state treasurer and shall be paid without interest except in 6 accordance with [section 42] to the person entitled thereto 7 8 or his legal representative upon proof satisfactory to the state treasurer of his right thereto. Any amount on deposit 9 not claimed within 6 years from the discharge of the 10 liquidator shall be considered to have been abandoned and 11 shal) be escheated without formal escheat proceedings and be 12 deposited in the general fund. 13

(2) All funds withheld under [section 37] and not 14 15 distributed shall upon discharge of the liquidator be 15 deposited with the state treasurer and paid by him in accordance with [section 42]. Any sums remaining which under 17 18 [section 42] would revert to the undistributed assets of the 19 insurer shall be transferred to the state treasurer and become the property of the state under subsection (1)+ 20 21 unless the commissioner in his discretion petitions the court to reopen the liquidation under [section 47]. 22

23 Section 46. Termination of proceedings. (1) When all 24 assets justifying the expense of collection and distribution 25 have been collected and distributed under [this act]. the liquidator shall apply to the court for discharge. The court
 may grant the discharge and make any other orders, including
 an order to transfer any remaining funds that are uneconomic
 to distribute, as may be considered appropriate.

5 (2) Any other person may apply to the court at any 6 time for an order under subsection (1). If the application 7 is denied, the applicant shall pay the costs and expenses of 8 the liquidator in resisting the application. including a 9 reasonable attorney's fee.

Section 47. Reopening 10 liquidation. After the liquidation proceeding has 11 been terminated and the 12 liquidator discharged, the commissioner or other interested 13 party may at any time petition the district court to reopen 14 the proceedings for good cause, including the discovery of 15 additional assets. If the court is satisfied that there is 16 justification for reopening, it shall so order.

17 Section 48. Disposition of records during and after 18 termination of liquidation. When it appears to the 19 commissioner that the records of any insurer in process of 20 liquidation or completely liquidated are no longer useful. 21 he may recommend to the court and the court shall direct 22 what records should be retained for future reference and 23 what should be destroyed.

24 Section 49. External audit of the receiver's books.
25 The district court may, as it considers desirable, cause

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audits to be made of the books of the commissioner relating to any receivership established under [this act], and a report of each audit shall be filed with the commissioner and with the court. The books, records, and other documents of the receivership shall be made available to the auditor at any time without notice. The expense of each audit shall be considered a cost of administration of the receivership.

8 Section 50. Conservation of property of foreign or 9 alien insurers. (1) If a domiciliary liquidator has not been 10 appointed, the commissioner may apply to the district court 11 by verified petition for an order directing him to act as 12 conservator to conserve the property of an alien insurer not 13 domiciled in this state or a foreign insurer on any one or 14 more of the following grounds:

(a) any of the grounds in [section 12];

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16 (b) that any of its property has been sequestered by
17 official action in its domiciliary state or in any other
18 state:

19 (c) that enough of its property has been sequestered
20 in a foreign country to give reasonable cause to fear that
21 the insurer is or may become insolvent;

(d) that its certificate of authority to do business
in this state has been revoked or that none was ever issued;
(e) that there are residents of this state with
outstanding claims or outstanding policies.

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1 (2) When an order is sought under subsection (1), the 2 court shall cause the insurer to be given such notice and 3 time to respond thereto as is reasonable under the 4 circumstances.

5 (3) The court may issue the order in whatever terms it 6 considers appropriate. The filing or recording of the order with the clerk of the district court or the clerk and 7 8 recorder of the county in which the principal business of the company is located or the county in which its principal 9 office or place of business is located shall impart the same 10 11 notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that clerk and recorder would 12 13 have imparted.

14 (4) The conservator may at any time petition for and
15 the court may grant an order under [section 51] to liquidate
16 assets of a foreign or alien insurer under conservation or.
17 if appropriate, for an order under [section 53], to be
18 appointed ancillary receiver.

19 (5) The conservator may at any time petition the court 20 for an order terminating conservation of an insurer. If the 21 court finds that the conservation is no longer necessary. it 22 shall order the insurer to be restored to possession of its 23 property and the control of its business. The court may also 24 make such finding and issue such order at any time upon 25 motion of any interested party, but if such motion is

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1 denied, all costs shall be assessed against such party. 2 Section 51. Liquidation of property of foreign or 3 alien insurers. (1) If no domiciliary receiver has been appointed, the commissioner may apply to the district court 4 by verified petition for an order directing him to liquidate 5 the assets found in this state of a foreign insurer or an 6 alien insurer not domiciled in this state, on any of the 7 following grounds: 8

9 (a) any of the grounds in [section 12 or 17]; or

(b) any of the grounds specified in subsections (1)(b).
through (1)(d) of [section 50].

12 (2) When an order is sought under subsection (1). the
 13 court shall cause the insurer to be given notice and time to
 14 respond thereto as reasonable under the circumstances.

15 (3) If it appears to the court that the best interests 16 of creditors, policyholders, and the public require, the court may issue an order to liquidate in whatever terms it 17 considers appropriate. The filing or recording of the order 18 with the clerk of the district court or the clerk and 19 recorder of the county in which the principal business of 20 the company is located or the county in which its principal 21 22 office or place of business is located shall impart the same 23 notice as a deed, bill of sale, or other evidence of title 24 duly filed or recorded with that clerk and recorder would 25 have imparted.

(4) If a domiciliary liquidator is appointed in a reciprocal state while a liquidation is proceeding under this section, the liquidator under this section shall thereafter act as ancillary receiver under [section 53]. If a domiciliary liquidator is appointed in a nonreciprocal

the liquidator under this section may petition the court for 7 8 permission to act as ancillary receiver under [section 53]. 9 (5) On the same grounds as specified in subsection (1), the commissioner may petition any appropriate federal 10 11 district court to be appointed receiver to liquidate that 12 portion of the insurer's assets and business over which the court will exercise jurisdiction or any lesser part thereof 13 14 that the commissioner considers desirable for the protection 15 of the policyholders and creditors in this state.

state while a liquidation is proceeding under this section,

16 (6) The court may order the commissioner, when he has 17 liquidated the assets of a foreign or alien insurer under 18 this section, to pay claims of residents of this state 19 against the insurer under such rules as to the liquidation 20 of insurers under [this act] as are otherwise compatible 21 with the provisions of this section.

22 Section 52. Domiciliary liquidators in other states. 23 (1) The domiciliary liquidator of an insurer domiciled in a 24 reciprocal state shall, except as to special deposits and 25 security on secured claims under [section 53(3)], be vested

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1 by operation of law with the title to all of the assets. 2 property, contracts, and rights of action, agents, balances, 3 and all of the books, accounts, and other records of the 4 insurer located in this state. The date of vesting shall be 5 the date of the filing of the petition, if that date is 6 specified by the domiciliary law for the vesting of property 7 in the domiciliary state. Utherwise, the date of vesting shall be the date of entry of the order directing possession 8 to be taken. The domiciliary liquidator has the immediate 9 right to recover balances due from agents and to obtain 10 possession of the books, accounts, and other records of the 11 12 insurer located in this state. He also has the right to 13 recover all other assets of the insurer located in this 14 state, subject to [section 53].

15 (2) If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal state, the 16 17 commissioner of this state is vested by operation of law 18 with the title to all of the property, contracts, and rights 19 of action and all of the books, accounts, and other records 20 of the insurer located in this state, at the same time that 21 the domiciliary liquidator is vested with title in the 22 domicile. The commissioner of this state may petition for a 23 conservation or liquidation order under [section 50 or 51] 24 or for an ancillary receivership under [section 53] or after 25 approval by the district court may transfer title to the

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domiciliary liquidator. as the interests of justice and the
 equitable distribution of the assets require.

3 (3) Claimants residing in this state may file claims 4 with the liquide or or ancillary receiver. if any. In this 5 state or with the domiciliary liquidator, if the domiciliary 6 law permits. The claims must be filed on or before the last 7 date fixed for the filing of claims in the domiciliary 8 liquidation proceedings.

9 Section 53. Ancillary formal proceedings. (1) If a domicillary liquidator has been appointed for an insurer not 11 domiciled in this state. the commissioner may file a 12 petition with the district court requesting appointment as 13 ancillary receiver in this state:

. 14 (a) if he finds that there are sufficient assets of
 15 the insurer located in this state to justify the appointment
 16 of an ancillary receiver;

17 (b) if the protection of creditors or policyholders in18 this state so requires.

19 (2) The court may issue an order appointing an 20 ancillary receiver in whatever terms it considers 21 appropriate. The filing or recording of the order with the 22 recorder of deeds in this state imparts the same notice as a 23 deed, bill of sale, or other evidence of title duly filed or 24 recorded with that recorder of deeds.

25 (3) When a domiciliary liquidator has been appointed

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in a reciprocal state, then the ancillary receiver appointed 1 in this state may, whenever necessary, ald and assist the 2 domiciliary liquidator in recovering assets of the insurer 3 located in this state. The ancillary receiver shall, as soon 4 as practicable, liquidate from their respective securities 5 those special deposit claims and secured claims which are 6 proved and allowed in the ancillary proceedings in this 7 state and shall pay the necessary expenses of the я proceedings. He shall promptly transfer all remaining 9 assets, books, accounts, and records to the domiciliary 10 liquidator. Subject to this section, the ancillary receiver 11 and his deputies shall have the same powers and be subject 12 to the same duties with respect to the administration of 13 assets as a liquidator of an insurer domiciled in this 14 state. 15

16 (4) When a domiciliary liquidator has been appointed 17 in this state, ancillary receivers appointed in reciprocal 18 states shall have, as to assets and books, accounts, and 19 other records in their respective states, corresponding 20 rights, duties, and powers to those provided in subsection 21 (3) for ancillary receivers appointed in this state.

22 Section 54. Ancillary summary proceedings. The 23 commissioner in his sole discretion may institute 24 proceedings under [sections 9 through 11] at the request of 25 the commissioner or other appropriate insurance official of

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the domiciliary state of any foreign or alien insurer having
 property located in this state.

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Section 55. Claims of nonresidents against insurers 3 domiciled in this state. (1) In a liquidation proceeding 4 begun in this state against an insurer domiciled in this 5 6 state, claimants residing in foreign countries or in states 7 not reciprocal states must file claims in this state, and 8 claimants residing in reciprocal states may file claims 9 either with the ancillary receivers, if any, in their 10 respective states, or with the domiciliary liquidator. 11 Claims must be filed on or before the last date fixed for 12 the filing of claims in the domiciliary liquidation 13 proceeding.

14 (2) Claims belonging to claimants residing in 15 reciprocal states may be proved either in the liquidation 16 proceeding in this state as provided in [this act] or in 17 ancillary proceedings, if any, in the reciprocal states. If notice of the claims and opportunity to appear and be heard 18 is afforded the domiciliary liquidator of this state as 19 provided in (section 56(2)) with respect to ancillary 20 proceedings. the final allowance of claims by the courts in 21 22 ancillary proceedings in reciprocal states is conclusive as 23 to amount and as to priority against special deposits or other security located in such ancillary states but is not 24 conclusive with respect to priorities against general assets 25

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1 under [section 42].

2 Section 56. Claims of residents against insurers domiciled in reciprocal states. (1) In a liquidation 3 proceeding in a reciprocal state against an insurer 4 domiciled in that state, claimants against the insurer who 5 - 6 reside within this state may file claims either with the 7 ancillary receiver, if any, in this state or with the domiciliary liquidator. Claims must be filed on or before 8 9 the last dates fixed for the filing of claims in the 10 domicillary liquidation proceeding.

11 (2) Claims belonging to claimants residing in this state may be proved either in the domiciliary state under 12 the law of that state or in ancillary proceedings, if any, 13 14 in this state. If a claimant elects to prove his claim in this state, he shall file his claim with the liquidator in 15 16 the manner provided in [sections 35 and 36]. The ancillary 17 receiver shall make his recommendation to the court as under 18 [section 43]. He shall also arrange a date for hearing if 19 necessary under [section 39] and shall give notice to the liquidator in the domiciliary state, either by certified 20 21 mail or by personal service at least 40 days prior to the 22 date set for hearing. If the domiciliary liquidator, within 23 30 days after the giving of such notice, gives notice in 24 writing to the ancillary receiver and to the claimant, 25 either by certified mail or by personal service, of his intention to contest the claim, he shall be entitled to
 appear or to be represented in any proceeding in this state
 involving the adjudication of the claim.

4 (3) The fine, allowance of the claim by the courts of
5 this state shall be accepted as conclusive as to amount and
6 as to priority against special deposits or other security
7. located in this state.

8 Section 57. Attachment, garnishment, and levy of 9 execution. During the pendency in this or any other state of 10 a liquidation proceeding, whether called by that name or 11 not, no action or proceeding in the nature of an attachment, 12 garnishment, or levy of execution may be commenced or 13 maintained in this state against the delinquent insurer or 14 its assets.

Section 58. Interstate priorities. (1)In a 15 liquidation proceeding in this state involving one or more 16 states, the order of distribution of the 17 reciprocal domiciliary state shall control as to all claims co 18 19 residents of this and reciprocal states. All claims of residents of reciprocal states shall be given equal priority 20 21 of payment from general assets regardless of where such 22 assets are located.

(2) The owners of special deposit claims against an
 insurer for which a liquidator is appointed in this or any
 other state is given priority against the special deposits

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e.,...

1 in accordance with the statutes governing the creation and 2 maintenance of the deposits. If there is a deficiency in any 3 deposit so that the claims secured by it are not fully 4 discharged from it, the claimants may share in the general assets, but the sharing shall be deferred until general 5 creditors, and also claimants against other special deposits 6 7 who have received smaller percentages from their respective special deposits, have been paid percentages of their claims 8 9 equal to the percentage paid from the special deposit.

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(3) The owner of a secured claim against an insurer 10 11 for which a liquidator has been appointed in this or any other state may surrender his security and file his claim as 12 13 a general creditor, or the claim may be discharged by resort 14 to the security in accordance with [section 41], in which 15 case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis 16 as claims of unsecured creditors. 17

of claims 18 Section 59. Subordination for 19 noncooperation. If an ancillary receiver in another state or 20 foreign country, whether called by that name or not, fails 21 to transfer to the domiciliary liquidator in this state any 22 assets within his control other than special deposits. 23 diminished only by the expenses of the ancillary receivership, if any, the claims filed in the ancillary 24 25 receivership, other than special deposit claims or secured

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1 claims, shall be placed in the class of claims under 2 [section 42(7)].

3 Section 60. Severability. If a part of this act is 4 invalid. all valid parts that are severable from the invalid 5 part remain in effect. If a part of this act is invalid in 6 one or more of its applications, the part remains in effect 7 in all valid applications that are severable from the 8 invalid applications.

9 Section 61. Repeater. Sections 33-2-901 through
 10 33-2-948, MCA, are repeated.

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(b) improved methods for rehabilitating insurers, 1 1 SENATE BILL NO. 80 2 2 INTRODUCED BY HAZELBAKER. BLAYLUCK insurance industry; 3 3 BY REQUEST OF THE STATE COMMISSIONER OF INSURANCE 4 4 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE 5 6 uncertainty and litigation; SUPERVISION+ REHABILITATION+ AND LIQUIDATION OF INSURERS: 6 7 REPEALING SECTIONS 33-2-901 THROUGH 33-2-948, MCA.\* 7 R (e) lessening the 8 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 9 10 10 Section 1. Short title, construction, and purpose. (1) 11 [This act] shall be cited as the "Insurers Supervision. 11 12 insurer outside this state; and 12 Rehabilitation, and Liquidation Act. 13 (2) [This act] may not be interpreted to limit the 13 14 powers granted the commissioner by other provisions of the 14 15 15 law. 16 (3) (This act) shall be liberally construed to effect 16 17 the following definitions apply: 17 the purpose stated in subsection (4). 15 18 (4) The purpose of [this act] is the protection of the 19 domiciliary state. 19 interests of insureds, claimants, creditors, and the public generally, with minimum interference with the normal 20 20 prerogatives of the owners and managers of insurers. 21 of this state. 21 22 22 through: 23 (a) early detection of any potentially dangerous 23 condition in an insurer and prompt application of 24 24 25 appropriate corrective measures; 25

involving the cooperation and management expertise of the (c) enhanced efficiency and economy of liquidation.

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through clarification of the law, to minimize legal

(d) equitable apportionment of any unavoidable loss: problems of interstate rehabilitation and liquidation by facilitating cooperation between states in the liquidation process and by extending the scope of personal jurisdiction over debtors of the

(f) regulation of the insurance business by the impact of the law relating to delinguency procedures and substantive rules on the entire insurance business.

Section 2. Definitions. For the purposes of [this act]

(1) "Ancillary state" means any state other than a

(2) "Commissioner" means the commissioner of insurance

(3) "Creditor" is a person having any claim, whether

matured or unmatured, liquidated or unliquidated, secured or

unsecured, absolute, fixed, or contingent.

(4) "Delinquency proceeding" means any proceeding

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instituted against an insurer for the purpose of
 liquidating, rehabilitating, reorganizing, or conserving
 such insurer and any summary proceeding under [section 9 or
 10], "Formal delinquency proceeding" means any liquidation
 or rehabilitation proceeding.

6 (5) "Doing business" includes any of the following
7 acts, whether effected by mail or otherwise:

8 (a) the issuance or delivery of contracts of insurance9 to persons resident in this state;

10 (b) the solicitation of applications for such 11 contracts or other negotiations preliminary to the execution 12 of such contracts:

13 (c) the collection of premiums, membership fees,
 14 assessments, or other consideration for such contracts;

15 (d) the transaction of matters subsequent to execution16 of such contracts and arising out of them; or

17 (e) operating under a license or certificate of
18 authority, as an insurer, issued by the commissioner.

19 (6) "Domiciliary state" means the state in which an
20 insurer is incorporated or organized or, in the case of an
21 alien insurer, its state of entry.

22 (7) "Fair consideration" is given for property or 23 obligation:

24 (a) when in exchange for such property or obligation.25 as a fair equivalent therefor and in good faith, property is

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conveyed or services are rendered or an obligation is
 incurred or an antecedent debt is satisfied; or

3 (b) when such property of obligation is received in 4 good faith to secure a present advance or antecedent debt in 5 amount not disproportionately small as compared to the value 6 of the property or obligation obtained.

7 (8) "Foreign country" means any other jurisdiction not
8 in any state.

0 (9) "General assets" means all property, real, 10 personal, or otherwise, not specifically mortgaged, pledged, 11 deposited, or otherwise encumbered for the security or 12 benefit of specified persons or classes of persons. As to 13 specifically encumbered property+ "general assets" includes 14 all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. 15 16 Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and 17 creditors, in more than a single state, shall be treated as 18 19 general assets.

20 (10) "Guaranty association" means the Montana insurance 21 guaranty association: the workers' compensation security 22 fund: the Nontana life and health insurance guaranty 23 association: and any other similar entity now or hereafter 24 created by the legislature of this state for the payment of 25 claims of insolvent insurers. "Foreign guaranty association"

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ì	SENATE BILL NO. 80	1	(b) improved methods for rehabilitating insurers+
2	INTRODUCED BY HAZELBAKER, BLAYLUCK	2	involving the cooperation and management expertise of the
3	BY REQUEST OF THE STATE COMMISSIONER OF INSURANCE	3	insurance industry;
4		4	(c) enhanced efficiency and economy of liquidation.
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE	5	through clarification of the law, to minimize legal
6	SUPERVISION, REHABILITATION, AND LIQUIDATION OF INSURERS;	6	uncertainty and litigation;
7	REPEALING SECTIONS 33-2-901 THROUGH 33-2-948, MCA.*	٦	(d) equitable apportionment of any unavoidable loss;
8		8	(e) lessening the problems of interstate
9	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	9	rehabilitation and liquidation by facilitating cooperation
10	Section 1. Short title. construction. and purpose. (1)	10	between states in the liquidation process and by extending
11	[This act] shall be cited as the "Insurers Supervision,	11	the scope of personal jurisdiction over debtors of the
12	Rehabilitation, and Liquidation Act".	12	insurer outside this state; and
13	(2) [This act] may not be interpreted to limit the	13	(f) regulation of the insurance business by the impact
14	powers granted the commissioner by other provisions of the	14	of the law relating to delinquency procedures and
15	]ew•	15	substantive rules on the entire insurance business.
16	(3) [This act] shall be liberally construed to effect	16	Section 2. Definitions. For the purposes of [this act]
17	the purpose stated in subsection (4).	17	the following definitions apply:
18	(4) The purpose of [this act] is the protection of the	15	(1) "Ancillary state" means any state other than a
19	interests of insureds, claimants, creditors, and the public	19	domiciliary state.
20	generally, with minimum interference with the normal	20	(2) "Commissioner" means the commissioner of insurance
21	prerogatives of the owners and managers of insurers.	21	of this state.
22	through:	22	(3) "Creditor" is a person having any claim, whether
23	(a) early detection of any potentially dangerous	23	matured or unmatured, liquidated or unliquidated, secured or
24	condition in an insurer and prompt application of	24	unsecured, absolute, fixed, or contingent.
25	appropriate corrective measures;	25	(4) "Delinquency proceeding" means any proceeding
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REFERENCE BILL

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instituted against an insurer for the purpose of
 liquidating, rehabilitating, reorganizing, or conserving
 such insurer and any summary proceeding under (section 9 or
 10], "Formal delinguency proceeding" means any liquidation
 or rehabilitation proceeding.

6 (5) "Doing business" includes any of the following
7 acts, whether effected by mail or otherwise:

B (a) the issuance or delivery of contracts of insurance
9 to persons resident in this state;

10 (b) the solicitation of applications for such 11 contracts or other negotiations preliminary to the execution 12 of such contracts;

13 (c) the collection of premiums, membership fees,
 14 assessments, or other consideration for such contracts;

15 (d) the transaction of matters subsequent to execution16 of such contracts and arising out of them; or

17 (e) operating under a license or certificate of18 authority, as an insurer, issued by the commissioner.

19 (6) "Domiciliary state" means the state in which an 20 insurer is incorporated or organized or, in the case of an 21 alien insurer, its state of entry.

22 (7) "Fair consideration" is given for property or 23 obligation:

24 (a) when in exchange for such property or obligation.25 as a fair equivalent therefor and in good faith, property is

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conveyed or services are rendered or an obligation is
 incurred or an antecedent debt is satisfied; or

3 (b) when such property of obligation is received in
4 good faith to secure a present advance or antecedent debt in
5 amount not disproportionately small as compared to the value
6 of the property or obligation obtained.

7 (8) "Foreign country" means any other jurisdiction not
 8 in any state.

9 (9) "General assets" means all property, real, 10 personal, or otherwise, not specifically mortgaged, pledged, 11 deposited, or otherwise encumbered for the security or 12 benefit of specified persons or classes of persons. As to 13 specifically encumbered property, "general assets" includes 14 all such property or its proceeds in excess of the amount 15 necessary to discharge the sum or sums secured thereby. 16 Assets held in trust and on deposit for the security or 17 benefit of all policyholders or all policyholders and creditors, in more than a single state, shall be treated as 13 general assets. 19

(10) "Guaranty association" means the Montana insurance guaranty association. the workers' compensation security fund. the Montana life and health insurance guaranty association. and any other similar entity now or hereafter created by the legislature of this state for the payment of claims of insolvent insurers. "Foreign guaranty association"

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means any similar entities now in existence in or hereafter 1 z created by the legislature of any other state. 2 (11) (a) "Insolvency" or "insolvent" means: 4 (i) for an insurer issuing only assessable fire 5 insurance policies, the inability to pay any obligation 5 within 30 days after it becomes payable; or 7 (ii) for any other insurer, the inability to pay its 8 obligations when they are due or when its admitted assets do 9 not exceed its liabilities plus the greater of:

10 (A) any capital and surplus required by law for its 11 organization; or

12 (B) the total par or stated value of its authorized13 and issued capital stock;

(iii) as to any insurer licensed to do business in this 14 state as of [the effective date of this act] which does not 15 meet the standard established under subsection (ii), for a 16 17 period not to exceed 3 years from [the effective date of this act], the inability to pay its obligations when they 13 are due or that its admitted assets do not exceed its 19 liabilities plus any required capital contribution ordered 20 by the commissioner under provisions of the insurance law. 21 22 (b) For purposes of this subsection "liabilities" include but are not limited to reserves required by statute 23 24 or by the commissioner upon a subject company at the time of admission or subsequent thereto. 25

1 (12) "Insurer" means any person who has done, purports 2 to do, is doing, or is licensed to do insurance business and 3 is or has been subject to the authority of or to 4 liquidation, rehabilitation, reorganization, supervision, or 5 conservation by any insurance commissioner. Any other 6 persons included under [section 3] are considered to be 7 insurers.

8 (13) "Preferred claim" means any claim with respect to
9 which the terms of [this act] accord priority of payment
10 from the general assets of the insurer.

11 (14) "Receiver" means receiver, liquidator, 12 rehabilitator, or conservator as the context requires.

13 (15) "Reciprocal state" means any state other than this 14 state in which in substance and effect [sections 18(1), 52; 15 53; and 55 through 57] are in force and in which provisions 16 are in force requiring that the commissioner or equivalent 17 official be the receiver of a delinquent insurer and in 18 which some provision exists for the avoidance of fraudulent 19 conveyances and preferential transfers.

20 (16) "Secured claim" means any claim secured by 21 mortgage, trust deed, pledge, deposit as security, escrow, 22 or otherwise, but not including special deposit claims or 23 claims against general assets. The term also includes claims 24 which have become liens upon specific assets by reason of 25 judicial process.

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(17) "Special deposit claim" means any claim secured by
 a deposit made pursuant to statute for the security or
 benefit of a limited class of persons, but not including any
 claim secured by general assets.

5 (18) "State" means any state. district. or territory of
6 the United States.

7 (19) "Transfer" includes the sale and every other mode. 8 direct or indirect, of disposing of or parting with property 9 or with an interest therein or with the possession thereof 10 or fixing a lien upon property or upon an interest therein. absolutely or conditionally, voluntarily, by or without 11 12 judicial proceedings. The retention of a security title to 13 property delivered to a debtor is considered a transfer 14 suffered by the debtor.

Section 3. Persons covered. The proceedings authorized
by [this act] may be applied to:

17 (1) all insurers who are doing or have done insurance
18 business in this state and against whom claims arising from
19 that business may exist now or in the future;

20 (2) all insurers who purport to do an insurance21 business in this state;

22 (3) all insurers who have insureds resident in this 23 state;

24 (4) all other persons organized or in the process of25 organizing with the intent to do an insurance business in

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1 this state;

2 (5) all nonprofit service plans and all fraternal
 3 benefit societies and beneficial societies; or

4 (6) all title insurance companies.

5 Section 4. Jurisdiction and venue. (1) No delinquency 6 proceeding may be commenced under [this act] by anyone other 7 than the commissioner and no court shall have jurisdiction 8 to entertain, hear, or determine any proceeding commenced by 9 any other person.

10 (2) No court of this state has jurisdiction to 11 entertain, hear, or determine any complaint praying for the 12 dissolution, liquidation, rehabilitation, sequestration, 13 conservation, or receivership of any insurer or praying for 14 injunction or restraining order or other relief an 15 preliminary to, incidental to, or relating to such 16 proceedings other than in accordance with [this act].

17 (3) In addition to other grounds for jurisdiction 18 provided by the law of this state, a court of this state 19 having jurisdiction of the subject matter has jurisdiction 20 over a person served pursuant to the Montana Rules of Civil 21 Procedure or other applicable provisions of law in an action 22 brought by the receiver of a domestic insurer or an alien 23 insurer domiciled in this state:

24 (a) if the person served is obligated to the insurer25 in any way as an incident to any agency or brokerage

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arrangement that may exist or has existed between the
 insurer and the agent or broker in any action on or incident
 to the obligation;

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4 (b) if the person served is a reinsurer who has at any 5 time written a policy of reinsurance for an insurer against 6 which a rehabilitation or liquidation order is in effect 7 when the action is commenced or is an agent or broker of or 8 for the reinsurer in any action on or incident to the 9 reinsurance contract; or

10 (c) if the person served is or has been an officer, 11 manager, trustee, organizer, promoter, or person in a 12 position of comparable authority or influence in an insurer 13 against which a rehabilitation or liquidation order is in 14 effect when the action is commenced in any action resulting 15 from such a relationship with the insurer.

16 (4) If the court on motion of any party finds that any 17 action should as a matter of substantial justice be tried in 18 a forum outside this state, the court may enter an 19 appropriate order to stay further proceedings on the action 20 in this state.

(5) All actions herein authorized shall be brought in
 the district court in the county in which the office of the
 commissioner is located.

24 Section 5. Injunctions and orders. (1) Any receiver 25 appointed in a proceeding under [this act] may at any time

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1	apply for and any court of general jurisdiction may grant
Z	such restraining orders, preliminary and permanent
3	injunctions, and other orders as may be necessary to
4	prevent:
5	(a) the transaction of further business;
6	(b) the transfer of property;
7	(c) interference with the receiver or with a
8	proceeding under [this act];
9	(d) waste of the insurer's assets;
10	(e) dissipation and transfer of bank accounts;
11	(f) the institution or further prosecution of any
12	actions or proceedings:
13	(g) the obtaining of preferences+ judgments+
14	attachments+ garnishments+ or liens against the insurer+ its
15	assets, or its policyholders;
16	(h) the levying of execution against the insurer, its
17	assets, or its policyholders;
18	(i) the making of any sale or deed for nonpayment of
19	taxes or assessments that would lessen the value of the
20	assets of the insurer;
21	(j) the withholding from the receiver of books,
22	accounts, documents, or other records relating to the
23	business of the insurer; or
24	(K) any other threatened or contemplated action that
25	might lessen the value of the insurer's assets or prejudice

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1 the rights of policyholders, creditors, or shareholders or 2 the administration of any proceeding under [this act].

3 (2) The receiver may apply to any court outside of the
4 state for the relief described in subsection (1).

5 Section 6. Cooperation of officers, owners, and employees. (1) Any officer. manager. director. trustee. 6 7 owner, employee, or agent of any insurer or any other persons with authority over or in charge of any segment of B 9 the insurer's affairs shall cooperate with the commissioner in any proceeding under [this act] or any investigation 10 preliminary to the proceeding. The term "person" as used in 11 this section includes any person who exercises control 12 directly or indirectly over activities of an insurer through 13 any holding company or other affiliate of the insurer. "To 14 15 cooperate<sup>w</sup> includes but is not limited to the following:

16 (a) replying promptly in writing to any inquiry from
17 the commissioner requesting such a reply; and

18 (b) making available to the commissioner any books.
19 accounts, documents, or other records or information or
20 property of or pertaining to the insurer and in his
21 possession, custody, or control.

22 (2) No person may obstruct or interfere with the
 23 commissioner in the conduct of any delinquency proceeding or
 24 any investigation preliminary or incidental thereta.

25 (3) This section shall not be construed to abridge

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otherwise existing legal rights, including the right to
 resist a petition for liquidation or other delinquency
 proceedings, or other orders.

4 (4) Any person included within subsection (1) who
5 fails to cooperate with the commissioner or any person who
6 obstructs or interferes with the commissioner in the conduct
7 of any delinquency proceeding or any investigation
8 preliminary or incidental thereto or who violates any order
9 the commissioner issued validly under [this act] may:

10 (a) be sentenced to pay a fine not exceeding \$10,000
 11 or to undergo imprisonment for a term of not more than 1
 12 year, or both; or

(b) after a hearing, be subject to the imposition by
the commissioner of a civil penalty not to exceed \$10,000
and to the revocation or suspension of any insurance
licenses issued by the commissioner.

17 Section 7. Bonds. In any proceeding under [this act], 18 the commissioner and his deputies are responsible on their 19 official bonds for the faithful performance of their duties. 20 If the court finds it desirable for the protection of the 21 assets, it may at any time require an additional bond from 22 the commissioner or his deputies, and such bonds shall be paid for out of the assets of the insurer as a cost of 23 24 administration.

25 Section 8. Continuation of delinquency proceedings.

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Every proceeding heretofore commenced under the laws in effect before the enactment of [this act] shall be considered to have commenced under [this act] for the purpose of conducting the proceeding henceforth, except that in the discretion of the commissioner the proceeding may be continued, in whole or in part, as it would have been continued had [this act] not been enacted.

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8 Section 9. Commissioner's SUMMAry orders and 9 supervision proceedings. (1) Whenever the commissioner determines, after a hearing held under subsection (5), that 10 any domestic insurer has committed or engaged in or is about 11 to commit or engage in any act, practice, or transaction 12 13 that would subject it to delinguency proceedings under [this 14 act], he may make and serve upon the insurer and any other 15 persons involved such orders as are reasonably necessary to 16 correct or eliminate such conduct.

17 (2) If upon examination or at any other time the 18 commissioner determines that any domestic insurer is in such 19 condition as to render the continuance of its business 20 hazardous to the public or to holders of its policies or certificates of insurance, or if such domestic insurer gives 21 22 its consent, then the commissioner shall notify the insurer 23 of his determination, and furnish to the insurer a written 24 list of the commissioner's requirements to abate his 25 determination.

1 (3) If the commissioner makes a determination to Z supervise an insurer subject to an order under subsections (1) or (2), he shall notify the insurer that it is under the 3 supervision of the commissioner. During the period of 4 5 supervision, the commissioner may appoint a supervisor to supervise such insurer. The order appointing a supervisor 6 7 shall direct the supervisor to enforce orders issued under subsections (1) and (2) and may also require that the 8 9 insurer may not do any of the following things during the period of supervision without the prior approval of the 10 11 commissioner or the supervisor: (a) dispose of, convey, or encumber any of its assets 12 13 or its business in force: (b) withdraw from any of its bank accounts; 14 15 (c) lend any of its funds: 16 (4) invest any of its funds: 17 fe) incur any debt, obligation, or liability; 18 (f) merge or consolidate with another company; or 19 (g) enter into any new reinsurance contract or treaty. 20 (4) Any insurer subject to an order under this section 21 shall comply with the lawful requirements of the 22 commissioner and, if placed under supervision, has 60 days

25 insurer fails to comply within that time, the commissioner

from the date the supervision order is served within which

to comply with the requirements of the commissioner. If the

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may institute proceedings under [section 12 or 17] to have a
 rehabilitator or liquidator appointed or extend the period
 of supervision.

4 (5) The notice of hearing under subsection (1) and any order issued pursuant to such subsection shall be served 5 6 upon the insurer pursuant to the applicable rules of civil 7 or administrative procedure. The notice of hearing shall state the time and place of hearing, and the conduct, 8 9 conditions or ground upon which the commissioner would base 10 his order. Unless mutually agreed between the commissioner and the insurer, the hearing shall occur not less than 10 11 12 days or more than 30 days after notice is served and shall 13 be either in Lewis and Clark County or in some other place 14 convenient to the parties to be designated by the 15 commissioner. The commissioner shall hold all hearings under 16 subsection (1) privately unless the insurer requests a public hearing, in which case the hearing shall be public. 17 18 (6) (a) Any insurer subject to an order under 19 subsection (2) may request a hearing to review that orders Such a hearing shall be held as provided in subsection (5). 20 but the request for a hearing shall not stay the effect of 21 22 the order.

(b) If the commissioner issues an order under
 subsection (2)+ the insurer may, at any time+ waive a
 commissioner\*s hearing and apply for immediate judicial

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relief by means of any remedy afforded by law without first
 exhausting administrative remedies. Subsequent to a hearings
 any party to the proceedings whose interests are
 substantially affected shall be entitled to judicial review
 of any order issued by the commissioners

6 (7) During the period of supervision the insurer may
7 request the commissioner to review an action taken or
8 proposed to be taken by the supervisors specifying wherein
9 the action complained of is believed not to be in the best
10 interest of the insurer.

11 (8) If any person has violated any supervision order 12 issued under this section which as to him was then still in 13 effect; he is subject to a civil penalty imposed by the 14 district court not to exceed \$10,000.

15 (9) The commissioner may apply for and any court of 16 general jurisdiction may grant such restraining orders. 17 preliminary and permanent injunctions, and other orders as 18 may be necessary to enforce a supervision order.

(10) If any person subject to the provisions of [this act], including any person described in section 6(1), knowingly violates any valid order of the commissioner issued under the provisions of this section and, as a result of such violation, the net worth of the insurer is reduced or the insurer suffers loss it would not otherwise have suffered, said person is personally liable to the insurer

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1 for the amount of any such reduction or loss. The 2 commissioner or supervisor is authorized to bring an action on behalf of the insurer in the district court to recover 2 the amount of the reduction or loss together with any costs. 4 Section 10. Court's seizure order. The 5 (1)commissioner may file in a district court of this state a 6 petition alleging, with respect to a domestic insurer: 7

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8 (a) that there exist grounds that would justify a
9 court order for a formal delinquency proceeding against an
10 insurer under [this act];

(b) that the interests of policyholders, creditors, or
 the public will be endangered by delay; and

13 (c) the contents of an order considered necessary by
 14 the commissioner.

(2) Upon a filing under subsection (1), the court may 15 issue forthwith, ex parte and without a hearing, the 15 17 requested order which shall direct the commissioner to take possession and control of all or a part of the property. 18 books, accounts, documents, and other records of an insurer 19 and of the premises occupied by it for transaction of its 20 business and until further order of the court enjoin the 21 insurer and its officers, managers, agents, and employees 22 from disposition of its property and from transaction of its 23 business except with the written consent of the 24 commissioner. 25

(3) The court shall specify in the order what its 1 Juration shall be, which shall be such time as the court 2 3 considers necessary for the commissioner to ascertain the condition of the insurer. On motion of either party or on 4 5 its own motion, the court may from time to time hold such 6 hearings as it considers desirable after such notice as it 7 considers appropriate, and may extend, shorten, or modify 8 the terms of the seizure order. The court shall vacate the q seizure order if the commissioner fails to commence a formal 10 proceeding under [this act] after having had a reasonable opportunity to do so. An order of the court pursuant to a 11 formal proceeding under [this act] shall ipso facto vacate 12 13 the seizure order...

14 (4) Entry of a seizure order under this section shall
15 not constitute an anticipatory breach of any contract of the
16 insurer.

(5) An insurer subject to an exparte order under this 17 18 section may petition the court at any time after the issuance of such order for a hearing and review of the 19 order. The court shall hold such a hearing and review not 20 more than 15 days after the request. A hearing under this 21 subsection may be held privately in chambers, and it shall 22 be so held if the insurer proceeded against so requests. 23 24 (b) If, at any time after the issuance of such an

25 order, it appears to the court that any person whose

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interest is or will be substantially affected by the order did not appear at the hearing and has not been served, the court may order that notice be given. An order that notice be given shall not stay the effect of any order previously issued by the court.

Section 11. Confidentiality of hearings. In all 6 7 proceedings and judicial reviews under [sections 9 and 10]. 8 all records of the insurer+ other documents, and all files 9 and court records and papers of the commissioner, so far as 10 they pertain to or are a part of the record of the 11 proceedings, remain confidential, except as necessary to 12 obtain compliance therewith, unless the district court, 13 after hearing arguments from the parties in chambers, orders 14 otherwise or unless the insurer requests that the matter be 15 made public. Until such court order, all papers filed with 16 the clerk of the district court shall be held by him in a 17 confidential file.

18 Section 12. Grounds for rehabilitation. The 19 commissioner may apply by petition to a district court for 20 an order authorizing him to rehabilitate a domestic insurer 21 or an alien insurer domiciled in this state on any one or 22 more of the following grounds:

23 (1) The insurer is in such condition that the further
24 transaction of business would be financially hazardous to
25 its policynolders, creditors, or the public.

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1 (2) There is reasonable cause to believe that there 2 has been embezzlement from the insurer, wrongful 3 sequestration or diversion of the insurer's assets, forgery 4 or fraud affecting the insurer, or other illegal conduct in, 5 by, or with respect to the insurer that if established would 6 endanger assets in an amount threatening the solvency of the 7 insurer.

8 (3) The insurer has failed to remove any person who in
9 fact has executive authority in the insurer, whether an
10 officer, manager, general agent, employee, or other person,
11 if the person has been found after notice and hearing by the
12 commissioner to be dishonest or untrustworthy in a way
13 affecting the insurer's business.

(4) Control of the insurer, whether by stock ownership
 or otherwise, and whether direct or indirect, is in a person
 found after notice and hearing to be untrustworthy.

17 (5) Any person who in fact has executive authority in 18 the insurer, whether an officer, manager, general agent, 19 director or trustee, employee, or other person, has refused 20 to be examined under oath by the commissioner concerning its 15 affairs, whether in this state or elsewhere, and after 22 reasonable notice of the fact the insurer has failed 23 promptly and effectively to terminate the employment and 24 status of the person and his influence on management.

25 (6) After demand by the commissioner under 33-1-403 or

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under [this act], the insurer has failed to promptly make
 available for examination any of its own property, books,
 accounts, documents, or other records or those of any
 subsidiary or related company within the control of the
 insurer or those of any person having executive authority in
 the insurer so far as they pertain to the insurer.

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7 (7) Without first obtaining the written consent of the 8 commissioner, the insurer has transferred or attempted to 9 transfer, in a manner contrary to chapter 2, part 11, or chapter 2, part 12, of Title 33, substantially its entire 10 11 property or business or has entered into any transaction the 12 effect of which is to merge, consolidate, or reinsure 13 substantially its entire property or business in or with the 14 property or business of any other person.

(8) The insurer or its property has been or is the 15 16 subject of an application for the appointment of a receiver, 17 trustee, custodian, conservator, or sequestrator or similar 18 fiduciary of the insurer or its property otherwise than as 19 authorized under the insurance laws of this state, and such 20 appointment has been made or is imminent, and such 21 appointment might oust the courts of this state of jurisdiction or might prejudice orderly delinquency 22 23 proceedings under [this act].

24 (9) Within the previous 4 years the insurer has
25 willfully violated its charter or articles of incorporation,

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its bylaws, any insurance law of this state, or any valid order of the commissioner under [section 9].

3 (10) The insurer has failed to pay within 60 days after due date any obligation to any state or any subdivision 4 5 thereof or any judgment entered in any state, if the court in which such judgment was entered had jurisdiction over 6 7 such subject matter, except that such nonpayment shall not be a ground until 60 days after any good faith effort by the 8 9 insurer to contest the obligation has been terminated. 10 whether it is before the commissioner or in the courts. or 11 the insurer has systematically attempted to compromise or renegotiate previously agreed settlements with its creditors 12 13 on the ground that it is financially unable to pay its 14 obligations in full.

15 (11) The insurer has failed to file its annual report 16 or other financial report required by statute within the 17 time allowed by law and, after written demand by the 18 commissioner, has failed to give an adequate explanation 19 immediately.

20 (12) The board of directors or the holders of a
21 majority of the shares entitled to vote request or consent
22 to rehabilitation under [this act].

Section 13. Rehabilitation orders. (1) An order to
 rehabilitate the business of a domestic insurer or an alien
 insurer domiciled in this state shall appoint the

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1 commissioner the rehabilitator and shall direct the 2 rehabilitator forthwith to take possession of the assets of the insurer and to administer them under the general 3 4 supervision of the court. The filing or recording of the order with the clerk of the district court or clerk and 5 6 recorder of the county in which the principal business of 7 the company is conducted or the county in which its principal office or place of business is located shall 8 9 impart the same notice as a deed, bill of sale, or other 10 evidence of title duly filed or recorded with the county 11 clerk and recorder would have imparted. The order to 12 rehabilitate the insurer shall by operation of law vest 13 title to all assets of the insurer in the rehabilitator.

14 (2) Any order issued under this section shall require 15 accounting to the court by the rehabilitator. Accountings 16 shall be at such intervals as the court specifies in its 17 order.

18 (3) Entry of an order of rehabilitation does not
 19 constitute an anticipatory breach of any contracts of the
 20 insurer.

21 Section 14. Powers and duties of the rehabilitator. 22 (1) The commissioner as rehabilitator may appoint one or 23 more special deputies, who shall have all the powers and 24 responsibilities of the rehabilitator granted under this 25 section, and the commissioner may employ counsel, clerks,

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1 and assistants. The compensation of the special deputy. 2 counsel, clerks, and assistants and all expenses of taking 3 possession of the insurer and of conducting the proceedings shall be fixed by the commissioner, with the approval of the 4 5 court and shall be paid out of the funds or assets of the 6 insurer. The persons appointed under this section shall serve at the pleasure of the commissioner. If the property 7 8 of the insurer does not contain sufficient cash or liquid Q assets to defray the costs incurred, the commissioner may 10 advance the costs so incurred out of any appropriation for 11 the maintenance of his office. Any amounts so advanced for 12 expenses of administration shall be repaid to the commissioner for the use of his office out of the first 13 available money of the insurer. 14

15 (2) The rehabilitator may take such action as necessary to reform and revitalize the insurer. He shall 16 17 have all the powers of the directors, officers, and 18 managers, whose authority shall be suspended, except as they 19 are redelegated by the rehabilitator. He shall have full 20 power to direct and manage, to hire and discharge employees 21 subject to any contract rights they may have, and to deal 22 with the property and business of the insurer.

23 (3) If it appears to the rehabilitator that there has
24 been criminal or tortious conduct or breach of any
25 contractual or fiduciary obligation detrimental to the

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insurer by any officer, manager, agent, broker, employee, or
 other person, he may pursue all appropriate legal remedies
 on behalf of the insurer.

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rehabilitator 4 (4) If the determines that 5 reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer is 6 7 appropriate, he shall prepare a plan to effect such changes. 8 Upon application of the rehabilitator for approval of the 9 plan and after such notice and hearings as the court may prescribe, the court may either approve or disapprove the 10 11 plan proposed or may modify it and approve it as modified. Any plan approved under this section must be, in the 12 13 judgment of the court, fair and equitable to all parties 14 concerned. If the plan is approved, the rehabilitator shall 15 carry out the plan. In the case of a life insurer, the plan 16 proposed may include the imposition of liens upon the 17 policies of the company, if all rights of shareholders are first relinguished. A plan for a life insurer may also 18 propose imposition of a moratorium upon loan and cash 19 20 surrender rights under policies, for such period and to such an extent as may be necessary. 21

(5) The rehabilitator shall have the power under
[sections 26 and 27] to avoid fraudulent transfers.

24 Section 15. Actions by and against the rehabilitator.25 (1) Any court in this state before which any action or

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proceeding in which the insurer is a party or is obligated to defend a party is pending when a rehabilitation order against the insurer is entered shall stay the action or proceeding for 90 days and such additional time as is necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The rehabilitator shall take such action respecting the pending litigation as he considers necessary in the interests of justice and for the protection of creditors, policyholders, and the public. The rehabilitator shall immediately consider all litigation pending outside this state and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the

14 insurer.

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(2) No statute of limitations or defense of laches 15 15 shall run with respect to any action by or against an 17 insurer between the filing of a petition for appointment of LB a rehabilitator for that insurer and the order granting or 19 denying that petition. Any action by or against the insurer 20 that might have been commenced when the petition was filed may be commenced for at least 60 days after the order of 21 22 rehabilitation is entered or the petition is denied.

(3) Any guaranty association or foreign guaranty
 association covering life or health insurance or annuities
 has standing to appear in any court proceeding concerning

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the rehabilitation of a life or health insurer if such
 association is or may become liable to act as a result of
 the rehabilitation.

4 Section 16. Termination of rehabilitation. (1) 5 Whenever the commissioner believes further attempts to rehabilitate an insurer would substantially increase the 6 7 risk of loss to creditors, policyholders, or the public or would be futile, the commissioner may petition the district 8 9 court for an order of liquidation. A petition under this 10 subsection shall have the same effect as a petition under 11 [section 17]. The district court shall permit the directors 12 of the insurer to take such actions as are reasonably 13 necessary to defend against the petition and may order 14 payment from the estate of the insurer of such costs and 15 other expenses of defense as justice may require.

16 (2) The rehabilitator may at any time petition the 17 district court for an order terminating rehabilitation of an 19 insurer. The court shall also permit the directors of the 19 insurer to petition the court for an order terminating 20 rehabilitation of the insurer and may order payment from the 21 estate of the insurer of such costs and other expenses of 22 such petition as justice may require. If the court finds 23 that rehabilitation has been accomplished and that grounds 24 for rehabilitation under [section 12] no longer exist. it 25 shall order that the insurer be restored to possession of

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its property and the control of the business. The district
 court may also make that finding and issue that order at any
 time upon its own motion.

4 Section 17. Grounds for liquidation. The commissioner 5 may petition the district court for an order directing him 6 to liquidate a domestic insurer or an alien insurer 7 domiciled in this state on the basis:

8 (1) of any ground for an order of rehabilitation as
9 specified in [section 12], whether or not there has been a
10 prior order directing the rehabilitation of the insurer;

11 (2) that the insurer is insolvent; or

12 (3) that the insurer is in such condition that the 13 further transaction of business would be hazardous. 14 financially or otherwise, to its policyholders, its 15 creditors, or the public.

Section 18. Liquidation orders. (1) An order to 16 17 liquidate the business of a domestic insurer shall appoint the commissioner and his successors in office liquidator and 18 19 shall direct the liquidator forthwith to take possession of 20 the assets of the insurer and to administer them under the 21 general supervision of the court. The liquidator shall be vested by operation of law with the title to all of the 22 23 property, contracts, and rights of action and all of the books and records of the insurer ordered liquidated. 24 wherever located, as of the entry of the final order of 25

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liquidation. The filing or recording of the order with the 1 clerk of the district court and the clerk and recorder of 2 the county in which its principal office or place of 3 business of IS located or, in the case of real estate, with 4 the clerk and recorder of the county where the property is 5 6 located shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with 7 that clerk and recorder would have imparted. R

9 (2) Upon issuance of the order, the rights and 10 liabilities of any such insurer and of its creditors, 11 policyholders, shareholders, members, and all other persons 12 interested in its estate shall become fixed as of the date 13 of entry of the order of liquidation, except as provided in 14 (sections 19 and 37).

15 (3) An order to liquidate the business of an alien 16 insurer domiciled in this state shall be in the same terms 17 and have the same legal effect as an order to liquidate a 18 domestic insurer, except that the assets and the business in 19 the United States shall be the only assets and business 20 included therein.

21 (4) At the time of petitioning for an order of 22 liquidation or at any time thereafter. the commissioner. 23 after making appropriate findings of an insurer's 24 insolvency. may petition the court for a judicial 25 declaration of such insolvency. After providing such notice

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1 and hearing as it considers proper, the court may make the 2 declaration. 3 (5) Any order issued under this section shall require 4 accounting to the court by the liquidator. Accountings shall 5 be at such intervals as the court specifies in its order. 6 Section 19. Continuance of coverage. (1) All policies, 7 other than life or health insurance or annuities, in effect я at the time of issuance of an order of liquidation shall 9 continue in force only for the lesser of: 10 (a) a period of 30 days from the date of entry of the 11 liquidation orders: 12 (b) the expiration of the policy coverage; 13 (c) the date when the insured has replaced the insurance coverage with equivalent insurance in another 14 insurer or otherwise terminated the policy; or 15 16 (d) the liquidator has effected a transfer of the 17 policy obligation pursuant to [section 21(1)(h)]. 19 (2) An order or OE liquidation under [section 18] terminates coverages at the time specified in subsection (1) 19 for purposes of any other statute. 20 21 (3) Policies of life or health insurance or annuities continue in force for such period and under such terms as 22 provided by any applicable guaranty association or foreign 23 quaranty association. 24 (4) Policies of life or health insurance or annuities 25

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or any period or coverage of such policies not covered by a
 guaranty association or foreign guaranty association shall
 terminate under subsections (1) and (2).

4 Section 20. Dissolution of insurar. The commissioner 5 may petition for an order dissolving the corporate existence of a domestic insurer or the United States branch of an - 6 7 alien insurer domiciled in this state at the time he applies 8 for a liquidation order. The court shall order dissolution 9 of the corporation upon petition by the commissioner upon or after the granting of a liquidation order. If the 10 11 dissolution has not previously been ordered, it shall be effected by operation of law upon the discharge of the 12 liquidator if the insurer is insolvent but may be ordered by 13 the court upon the discharge of the liquidator if the 14 insurer is under a liquidation order for some other reason. 15 Section 21. Powers of liquidator. (1) The liquidator 16 17 mav:

18 (a) appoint a special deputy to act for him under
19 [this act] and to determine his reasonable compensation. The
20 special deputy has all powers of the liquidator granted by
21 this section. The special deputy shall serve at the pleasure
22 of the liquidator.

(b) employ agents, legal counsel, actuaries,
accountants, appraisers, consultants, and other personnel
necessary to assist in the liquidation;

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(c) fix the reasonable compensation of employees and
 agents, legal counsel, actuaries, accountants, appraisers;
 and consultants with the approval of the court;

4 (d) pay reasonable compensation to persons appointed 5 and defrav from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, 6 7 liquidating, disposing of, or otherwise dealing with the 8 business and property of the insurer. If the property of the insurer does not contain sufficient cash or liquid assets to 9 10 defray the costs incurred, the commissioner may advance the 11 costs so incurred out of any appropriation for the 12 maintenance of the commissioner's office. Any amounts so 13 advanced for expenses of administration shall be repaid to 14 the commissioner for the use of his office out of the first 15 available money of the insurer.

16 (e) hold hearings, subpoena witnesses to compel their 17 attendance, administer oaths, examine any person under oath, 18 and compel any person to subscribe to his testimony after it 19 has been correctly reduced to writing, and in connection 20 therewith require the production of any books, papers, 21 records or other documents which he considers relevant to 22 the inquiry;

(f) to collect all debts and money due and claims
belonging to the insurer, wherever located, and for this
purpose:

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{i} institute timely action in other jurisdictions in
 order to forestall garnishment and attachment proceedings
 against such debts;

4 (ii) do such other acts as are necessary to collect. 5 conserve, or protect its assets or property, and has the 6 power to sell, compound, compromise, or assign debts for 7 purposes of collection upon such terms and conditions as he 8 considers best; and

9 (iii) pursue any creditor's remedies available to 10 enforce his claims;

(g) conduct public and private sales of the property
 of the insurer;

13 (h) use assets of the estate of an insurer under a 14 liquidation order to transfer policy obligations to a 15 solvent assuming insurer, if the transfer can be arranged 16 without prejudice to applicable priorities under [section 17 42];

(i) acquire, encumber, lease, improve, sell, or 18 transfer any property of the insurer at its market value or 19 upon such terms and conditions as are fair and reasonable. 20 He shall also have power to execute, acknowledge, and 21 22 deliver any and all deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of 23 property or other transaction in connection with the 24 25 liquidation.

1 (j) borrow money on the security of the insurer's 2 assets or without security and execute and deliver all 3 documents necessary to that transaction for the purpose of 4 facilitating the liquidation;

5 (k) enter into such contracts as are necessary to
6 carry out the order to liquidate, and affirm or disavow any
7 contracts to which the insurer is a party;

8 (1) continue to prosecute and institute in the name of 9 the insurer or in his own name any and all suits and other 10 legal proceedings, in this state or elsewhere, and abandon 11 the prosecution of claims he considers unprofitable to 12 pursue further. If the insurer is dissolved under [section 20], he shall have the power to apply to any court in this 13 state or elsewhere for leave to substitute himself for the 14 15 insurer as plaintiff.

16 (m) prosecute any action which may exist in behalf of 17 the creditors, members, policyholders, or shareholders of 18 the insurer against any officer of the insurer or any other 19 person;

20 (n) remove any or all records and property of the 21 insurer to the offices of the commissioner or to such other 22 place as may be convenient for the purposes of efficient and 23 orderly execution of the liquidation. Guaranty associations 24 and foreign guaranty associations shall have such reasonable 25 access to the records of the insurer as is necessary for

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them to carry out their statutory obligations.
 (o) deposit in one or more banks in this state such
 sums as are required for meeting current administration
 expenses and dividend distributions;
 (p) invest all sums not currently needed; unless the
 court orders otherwise;

7 (q) file any necessary documents for record in the 8 office of any county clerk and recorder in this state or 9 elsewhere where property of the insurer is located;

(r) assert all defenses available to the insurer as 10 against third persons. including statutes of limitation. 11 statutes of frauds, and the defense of usury. A waiver of 12 any defense by the insurer after a petition in liquidation 13 has been filed shall not bind the liquidator. Whenever a 14 quaranty association or foreign guaranty association has an 15 obligation to defend any suit: the liquidator shall give 16 precedence to such obligation and may defend only in the 17 absence of a defense by such guaranty associations. 18

19 (s) exercise and enforce all the rights, remedies, and 20 powers of any creditor, shareholder, policyholder, or 21 member, including any power to avoid any transfer or lien 22 that may be given by the general law and that is not 23 included with [sections 26 through 28];

24 (t) intervene in any proceeding wherever instituted25 that might lead to the appointment of a receiver or trustee

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and act as the receiver or trustee whenever the appointment

2 is offered;

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3 (u) enter into agreements with any receiver or
4 commissioner of any other state relating to the
5 rehabilitation, liquidation, conservation, or dissolution of
6 an insurer doing business in both states;
7 (v) exercise all powers now held or hereafter
8 conferred upon receivers by the laws of this state not
9 inconsistent with the provisions of [this act].

10 (2) The enumeration in this section of the powers and 11 authority of the liquidator shall not be construed as a 12 limitation upon him, nor shall it exclude in any manner his 13 right to do such other acts not herein specifically 14 enumerated, or otherwise provided for, as may be necessary 15 for the accomplishment of or in aid of the purpose of 16 liquidation.

17 Section 22. Notice to creditors and others. (1) Unless 18 the court otherwise directs, the liquidator shall give or 19 cause to be given notice of the liquidation order as soon as 20 possible:

(a) by first-class mail and either by telegram or
 telephone to the insurance commissioner of each jurisdiction

23 in which the insurer is doing business;

24 (b) by first-class mail to any guaranty association or
25 foreign guaranty association which is or may become

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obligated as a result of the liquidation; 1 (c) by first-class mail to all insurance agents of the 2 3 insurer: (d) by first-class mail to all persons known or 4 5 reasonably expected to have claims against the insurer. including all policyholders, at their last-known address as 6 indicated by the records of the insurer; and 7 (e) by publication in a newspaper of general 8 circulation in the county in which the insurer has its 9 principal place of business and in such other locations as 10 the liquidator considers appropriate. 11 (2) Notice to potential claimants under subsection (1)

12 shall require claimants to file with the liquidator their 13 claims together with proper proofs thereof under [section 14 36], on or before a date the liquidator shall specify in the 15 notice. The liquidator need not require persons claiming 16 cash surrender values or other investment values in life 17 18 insurance and annuities to file a claim. All claimants have a juty to keep the liquidator informed of any changes of 19 20 address.

(3) If notice is given in accordance with this
section, the distribution of assets of the insurer under
this chapter shall be conclusive with respect to all
claimants, whether or not they received notice.

25 Section 23+ Duties of agents+ (1) Every person who

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receives notice in the form prescribed in [section 22] that 1 2 an insurer which he represents as an agent is the subject of 3 a liquidation order shall within 15 days of such notice give 4 notice of the liquidation order. The notice shall be sent by first-class mail to the last address contained in the 5 agent's records to each policyholder or other person named 6 7 in any policy issued through the agent by the insurer, if he 8 has a record of the address of the policyholder or other 9 person. A policy shall be considered issued through an agent if the agent has a property interest in the expiration of 10 the expiration of the policy or if the agent has had in his 11 12 possession a copy of the declarations of the policy at any 13 time during the life of the policy, except where the 14 ownership of the expiration of the policy has been 15 transferred to another. The written notice shall include the name and address of the insurer, the name and address of the 16 17 agent, identification of the policy impaired, and the nature of the impairment, including termination of coverage, as 18 described in [section 19]. Notice by a general agent 19 20 satisfies the notice requirement for any agents under contract to him. Each agent obligated to give notice under 21 this section shall file a report of compliance with the 22 liquidator. 23

(2) Any agent failing to give notice or file a report
 of compliance as required in subsection (1) may be subject

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1 to payment of a penalty of not more than \$1,300 and may have
2 nis license suspended, after a hearing held by the
3 commissioner.

(3) The liquidator may waive the duties imposed by 4 this section if he determines that other notice to the 5 policyholders of the insurer under liquidation is adequate. 6 7 Section 24. Actions by and against figuidator. (1) Upon issuance of an order appointing a liquidator of a 8 domestic insurer or of an alien insurer domiciled in this 9 10 state, no action at law or equity may be brought against the insurer or liquidator, whether in this state or elsewhere. 11 nor shall any such existing actions be maintained or further 12 presented after issuance of such order. The courts of this 13 state shall give full faith and credit to injunctions 14 against the liquidator or the company or the continuation of 15 existing actions against the liquidator or the company when 16 17 such injunctions are included in an order to liquidate an insurer issued pursuant to corresponding provisions in other 18 states. Whenever in the liquidator's judgment protection of 19 20 the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this 21 state, he may intervene in the action. The liquidator may 22 defend any action in which he intervenes under this section 23 at the expense of the estate of the insurer. 24

25 (2) The liquidator may, upon or after an order for

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liquidation, within 2 years or such time in addition to 2 1 years as applicable law may permity institute an action or 2 proceeding on behalf of the estate of the insurer upon any 3 cause of action against which the period of limitation fixed 4 by applicable law has not expired at the time of the filing 5 of the petition upon which such order is entered. When, by 6 any agreement, a period of limitation is fixed for 7 instituting a suit or proceeding upon any claim or for 8 filing any claim, proof of claim, proof of loss, demand, 9 notice, or the like or when in any proceeding, judicial or 10 otherwise, a period of limitation is fixed, either in the 11 proceeding or by applicable law, for taking any action, 12 filing any claim or pleading, or doing any act and when in 13 any such case the period had not expired at the date of the 14 filing of the petition, the liquidator may, for the benefit 15 of the estate, take any such action or do any such act. 16 required of or permitted to the insurer, within a period of 17 180 days subsequent to the entry of an order for 18 liquidation, or within such further period as is shown to 19 20 the satisfaction of the court not to be unfairly prejudicial to the other party. 21

(3) No statute of limitations or defense of laches
shall run with respect to any action against an insurer
between the filing of a petition for liquidation analist an
insurer and the denial of the petition. Any action against

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1 the insurer that might have been commenced when the petition 2 was filed may be commenced for at least 60 days after the 3 petition is denied.

4 (4) Any quaranty association or foreign guaranty 5 association shall have standing to appear in any court 6 proceeding concerning the liquidation of an insurer if such 7 association is or may become liable to act as a result of 8 the liquidation.

Section 25. Collection and list of assets. (1) As soon 9 as practicable after the liquidation order but not later 10 than 120 days thereafter, the liquidator shall prepare in 11 duplicate a list of the insurer's assets. The list shall be 12 amended or supplemented from time to time as the liquidator 13 may determine. One copy shall be filed in the office of the 14 clerk of the district court and one copy shall be retained 15 for the liquidator's files. All amendments and supplements 16 17 shall be similarly filed.

18 (2) The liquidator shall reduce the assets to a degree
19 of liquidity that is consistent with the effective execution
20 of the liquidation.

(3) A submission to the court for disbursement of
assets in accordance with [section 34] fulfills the
requirements of subsection (1) of this section.

24 Section 26. Fraudulent transfers prior to petition.
25 (1) Every transfer made or suffered and every obligation

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incurred by an insurer within 1 year prior to the filing of Ł a successful petition for rehabilitation or liquidation 2 3 under [this act] is fraudulent as to then existing and future creditors if made or incurred without fair 4 consideration or with actual intent to hinder, delay, or 5 defraud either existing or future creditors. A transfer 6 made or an obligation incurred by an insurer ordered to be 7 8 rehabilitated or liquidated under [this act] which is 9 fraudulent under this section may be avoided by the 10 receiver, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent 11 12 value, and except that any purchaser, lienor, or obligee, 13 who in good faith has given a consideration less than fair for such transfer, lien, or obligation, may retain the 14 property, lien, or obligation as security for repayment. The 15 16 court may, on due notice, order any such transfer or 17 obligation to be preserved for the benefit of the estate, 18 and in that event, the receiver succeeds to and may enforce 19 the rights of the purchaser+ lienor+ or obligee.

(2) (3) A transfer of property other than real
property is considered to be made or suffered when it
becomes so far perfected that no subsequent lien obtainable
by legal or equitable proceedings on a simple contract could
become superior to the rights of the transferee under
(section 28(3)).

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1 (b) A transfer of real property is considered to be 2 made or suffered when it becomes so far perfected that no 3 subsequent bona fide purchaser from the insurer could obtain 4 rights superior to the rights of the transferee.

5 (c) A transfer which creates an equitable lien is not 6 considered to perfected if there are available means by 7 which a legal lien could be created.

8 (d) Any transfer not perfected prior to the filing of
 9 a petition for liquidation is considered to be made
 10 immediately before the filing of the successful petition.

(e) The provisions of this subsection apply whether or
not there are or were creditors who might have obtained any
liens or persons who might have become bona fide purchasers.
(3) Any transaction of the insurer with a reinsurer is
considered fraudulent and may be avoided by the receiver
under subsection (1) if:

17 (a) the transaction consists of the termination: 18 adjustment, or settlement of a reinsurance contract in which the reinsurer is released from any part of its duty to pay 19 the originally specified share of losses that had occurred 20 prior to the time of the transaction, unless the reinsurer 21 gives a present fair equivalent value for the release; and 22 (b) any part of the transaction took place within 1 23 year prior to the date of filing of the petition through 24 which the receivership was commenced. 25

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Section 27. Fraudulent transfer after petition. (1) 1 2 After a petition for rehabilitation or liquidation has been filed, a transfer of any of the real property of the insurer 3 made to a person acting in good faith is valid against the 4 receiver if made for a present fair equivalent value or, if 5 not made for a present fair equivalent value, then to the 6 extent of the present consideration actually paid therefor. 7 for which amount the transferee shall have a lien on the 8 æ property so transferred. The commencement of a proceeding in 10 rehabilitation or liquidation is constructive notice upon the recording of a copy of the petition for or order of 11 rehabilitation or liquidation with the county clerk and 12 recorder in the county where any real property in question 13 is located. The exercise by a court of the United States or 14 15 any state or jurisdiction to authorize or effect a judicial 15 sale of real property of the insurer within any county in 17 any state shall not be impaired by the pendency of such a 19 proceeding unless the copy is recorded in the county prior 19 to the consummation of the judicial sale. 20 (2) After a petition for rehabilitation or liquidation

21 has been filed and before either the receiver takes
22 possession of the property of the insurer or an order of
23 rehabilitation or liquidation is granted:

24 (a) a transfer of any of the property of the insurer,
25 other than real property, made to a person acting in good

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1 faith is valid against the receiver if made for a present 2 fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present 3 4 consideration actually paid therefor, for which amount the 5 transferee shall have a lien on the property so transferred; 6 (b) a person indebted to the insurer or holding 7 property of the insurer may, if acting in good faith, pay 8 the indebtedness or deliver the property, or any part thereof, to the insurer or upon his order, with the same 9 10 effect as if the petition were not pending;

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(c) a person having actual knowledge of the pending
 rehabilitation or liquidation is considered not acting in
 good faith;

(d) a person asserting the validity of a transfer under this section has the burden of proof. Except as elsewhere provided in this section, no transfer by or on behalf of the insurer after the date of the petition for liquidation by any person other than the liquidator shall be yalid against the liquidator.

20 (3) Nothing in [this act] impairs the negotiability of
21 currency or negotiable instruments.

22 Section 28. Voidable preferences and liens. (1) (a) A 23 preference is a transfer of any of the property of an 24 insurer to or for the benefit of a creditor; for or on 25 account of an antecedent debt; made or suffered by the

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insurer within 1 year before the filing of a successful 1 Z petition for liquidation under [this act], the effect of which transfer may be to enable the creditor to obtain a 3 greater percentage of this debt than another creditor of the 4 5 same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation 6 1 order, then such transfers shall be considered preferences 8 if made or suffered within 1 year before the filing of the 9 successful petition for rehabilitation or within 2 years before the filing of the successful petition for 10 11 liquidation, whichever time is shorter. (b) Any preference may be avoided by the liquidator 12 if: 13 (i) the insurer was insolvent at the time of the 14 15 transferi 16 (ii) the transfer was made within 4 months before the 17 filing of the petition; 18 (iii) the creditor receiving it or to be benefited 19 thereby or his agent acting with reference thereto had, at 20 the time when the transfer was made, reasonable cause to believe that the insurer was insolvent or was about to 21 22 become insolvent; or 23 (iv) the creditor receiving it was an officer or any 24 employee or attorney or other person who was in fact in a 25 position of comparable influence in the insurer to an

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1 officer whether or not he held such position, or any shareholder holding directly or indirectly more than 5% of any class of any equity security issued by the insurer, or any other person, firm, corporation, association, or saggregation of persons with whom the insurer did not deal at arm's length.

(c) When the preference is voidable, the liquidator 7 may recover the property or, if it has been converted, its 8 value from any person who has received or converted the 9 property, except where a bona fide purchaser or lienor has 10 given less than fair equivalent value, he shall have a lien 11 12 upon the property to the extent of the consideration actually given by him. When a preference by way of lien or 13 security title is voidable. the court may on due notice 14 order the lien or title to be preserved for the benefit of 15 the estate, in which event the lien or title passes to the 15 17 liquidator.

(2) (a) A transfer of property other than real
property is considered to be made or suffered when it
becomes so fur perfected that no subsequent lien obtainable
by legal or equitable proceedings on a simple contract could
become superior to the rights of the transferee.

(b) A transfer of real property is considered to be
 made or suffered when it becomes so far perfected that no
 subsequent bona fide purchaser from the insurer could obtain

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rights superior to the rights of the transferee.
 (c) A transfer which creates an equitable lien is not

3 considered to be perfected if there are available means by
4 which a legal lian could be created.

5 (d) A transfer not perfected prior to the filing of a
 6 petition for liquidation is considered to be made
 7 immediately before the filing of the successful petition.

8 (e) The provisions of this subsection apply whether or 9 not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers. 10 11 (3) (a) A lien obtainable by legal or equitable 12 proceedings upon a simple contract is one arising in the ordinary course of such proceedings upon the entry or 13 14 docketing of a judgment or decree or upon attachment, 15 garnishment, execution, or like process, whether before, 16 upon, or after judgment or decree and whether before or upon 17 levy. It does not include liens which under applicable law 18 are given a special priority over other liens which are 19 prior in time.

(b) A lien obtainable by legal or equitable
proceedings could become superior to the rights of a
transferee. or a purchaser could obtain rights superior to
the rights of a transferee within the meaning of subsection
(2), if such consequences would follow only from the lien or
purchase itself or from the lien or purchase followed by any

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step wholly within the control of the respective lienholder 1 or purchaser with or without the aid of ministerial action 2 by public officials. Such a lien could not: however: become 3 superior and such a purchase could not create superior 4 rights for the purpose of subsection (2) through any acts 5 subsequent to the obtaining of such a lien or subsequent to 6 such a purchase which require the agreement or concurrence. 7 of any third party or which require any further judicial 8 9 action or ruling.

(4) A transfer of property for or on account of a new 10 11 and contemporaneous consideration which is considered under subsection (2) to be made or suffered after the transfer 12 13 because of delay in perfecting it does not thereby become a transfer for or on account of an antecedent debt if any acts 14 15 required by the applicable law to be performed in order to 16 perfect the transfer as against liens or bona fide purchaserst rights are performed within 21 days or any 17 period expressly allowed by the law+ whichever is less+ A 18 transfer to secure a future loan, if such a loan is actually 19 made, or a transfer which becomes security for a future loan 20 shall have the same effect as a transfer for or on account 21 of a new and contemporaneous consideration. 22

(5) If any lien considered voidable under subsection
(1)(b) has been dissolved by the furnishing of a bond or
other obligation, the surety on which has been indemnified

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directly or indirectly by the transfer of or the creation of a lien upon any property of an insurer before the filing of a petition under [this act] which results in a liquidation order, the indemnifying transfer or lien shall also be considered voidable.

6 (6) The property affected by any lien considered 7 voidable under subsections (1) and (5) shall be discharged R from such lien, and that property and any of the indemnifying property transferred to or for the benefit of a 9 surety shall pass to the liquidator, except that the court 10 11 may on due notice order any such lien to be preserved for 12 the benefit of the estate and the court may direct that such 13 conveyance be executed as may be proper or adequate to 14 evidence the title of the liquidator.

15 (7) The district court has summary jurisdiction of any 16 proceeding by the liquidator to hear and determine the 17 rights of any parties under this section. Reasonable notice of any hearing in the proceeding shall be given to all 18 parties in interest, including the obligee of a releasing 19 bond or other like obligation. When an order is entered for 20 21 the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, the court, upon 22 23 application of any party in interest, shall in the same proceeding ascertain the value of the property or lien, and 24 25 if the value is less than the amount for which the property

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is indemnity or less than the amount of the lien, the
 transferme or lienholder may elect to retain the property or
 lien upon payment of its value, as ascertained by the court,
 to the liquidator, within such reasonable times as the court
 shall fix.

6 (8) The liability of a surety under a releasing bond 7 or other like obligation is discharged to the extent of the 8 value of the indemnifying property recovered or the 9 indemnifying lien nullified and avoided by the liquidator or 10 when the property is retained under subsection (7) to the 11 extent of the amount paid to the liquidator.

12 (9) If a creditor has been preferred and afterward in 13 good faith gives the insurer further credit without security 14 of any kind, for property which becomes a part of the 15 insurer's estate, the amount of the new credit remaining 16 unpaid at the time of the petition may be set off against 17 the preference which would otherwise be recoverable from 18 him.

(10) If an insurer, directly or indirectly, within 4 months before the filing of a successful petition for liquidation under [this act] or at any time in contemplation of a proceeding to liquidate it, pays money or transfers property to an attorney at law for services rendered or to be rendered, the transaction may be examined by the court on its own motion or shall be examined by the court on petition

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of the liquidator and shall be held valid only to the extent 1 of a reasonable amount to be determined by the courty and 2 the excess may be recovered by the liquidator for the 3 benefit of the estate, provided that where the attorney is 4 in a position of influence in the insurer or an affiliate 5 thereof, payment of any money or the transfer of any 6 7 property to the attorney at law for services rendered or to be rendered shall be governed by the provision of subsection 8 q (1)(0)(iv).

(11) (a) Every officer, manager, employee, shareholder, 10 11 member, subscriber, attorney, or any other person acting on behalf of the insurer who knowingly participates in giving 12 13 any preference when he has reasonable cause to believe the 14 insurer is or is about to become insolvent at the time of the preference is personally liable to the liquidator for 15 the amount of the preference. It is permissible to infer 16 that there is reasonable cause to so believe if the transfer 17 was made within 4 months before the date of filing of this 13 19 successful petition for liquidation.

(b) Every person receiving any property from the
insurer or the benefit thereof as a preference voidable
under subsection (1) is personally liable therefor and is
bound to account to the liquidator.

24 (c) Nothing in this subsection prejudices any other25 claim by the liquidator against any person.

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1 Section 29. Claims of holders of void or voidable 2 rights. (1) No claims of a creditor who has received or 3 acquired a preference, lien, conveyance, transfer, assignment, or encumbrance voidable under {this act}, shall 4 5 be allowed unless he surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance. If the 6 7 avoidance is effected by a proceeding in which a final judgment has been entered, the claim may not be allowed 8 9 unless the money is paid or the property is delivered to the liquidator within 30 days from the date of the entering of 10 11 the final judgment, except that the court having jurisdiction over the liquidation may allow further time if 12 there is an appeal or other continuation of the proceeding. 13 (2) A claim allowable under subsection (1) by reason 14 15 of the avoidance, whether voluntary or involuntary, or a 16 preference, lien, conveyance, transfer, assignment, or 17 encumbrance may be filed as an excused late filing under [section 35] if filed within 30 days from the date of the 18 avoidance or within the further time allowed by the court 19 20 under subsection (1).

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21 Section 30. Setoffs and counterclaims. (1) Mutual 22 debts or mutual credits between the insurer and another 23 person in connection with any action or proceeding under 24 [this act] shall be set off and the balance only shall be 25 allowed or paid, except as provided in subsection (2) and

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1 [section 33].

2 (2) No setoff or counterclaim may be allowed in favor
 3 of any person when:

4 (a) the obligation of the insurer to the person would 5 not at the date of the filing of a petition for liquidation 6 entitle the person to share as a claimant in the assets of 7 the insurer;

(b) the obligation of the insurer to the person was
purchased by or transferred to the person with a view to its
Deing used as a setoff;

11 (c) the obligation of the person is to pay an 12 assessment levied against the members or subscribers of the 13 insurer or is to pay a balance upon a subscription to the 14 capital stock of the insurer or is an any other way in the 15 nature of a capital contribution; or

16 (d) the obligation of the person is to pay premiums.17 whether earned or uncarned, to the insurer.

Section 31. Assessments. (1) As soon as practicable but not more than 2 years from the date of an order of liquidation under [section 18] of an insurer issuing assessable policies. the liquidator shall make a report to the court setting forth:

23 (a) the reasonable value of the assets of the insurer:

24 (b) the insurer's probable total liabilities;

25 (c) the probable aggregate amount of the assessment

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necessary to pay all claims of creditors and expenses in
 full. including expenses of administration and costs of
 collecting the assessment; and

(d) a recommendation as to whether or not an
 assessment should be made and in what amount.

6 (2) (a) Upon the basis of the report provided in 7 subsection (1), including any supplements and amendments 8 thereto, the district court may levy one or more assessments 9 against all members of the insurer who are subject to 10 assessment.

11 (b) Subject to any applicable legal limits on 12 assessability, the aggregate assessment shall be for the 13 amount that the sum of the probable liabilities, the 14 expenses of administration, and the estimated cost of 15 collection of the assessment exceeds the value of existing 16 assets, with due regard being given to assessments that 17 cannot be collected economically.

18 (3) After levy of assessment under subsection (2), the 19 liquidator shall issue an order directing each member who 20 has not paid the assessment pursuant to the order to show 21 cause why the liquidator should not pursue a judgment 22 therefor.

(4) The liquidator shall give notice of the order to
show cause by publication and by first-class mail to each
member liable thereunder mailed to his last-known address as

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it appears on the insurer's records at least 20 days before
 the return day of the order to show cause.

3 (5) (a) If a member does not appear and serve duly 4 verified objections upon the liquidator on or before the 5 return day of the order to show cause under subsection (3), 6 the court shall make an order adjudging the member liable 7 for the amount of the assessment against him, pursuant to 8 subsection (3), together with costs, and the liquidator 9 shall have a judgment against the member therefor.

(b) If on or before such return day, the member 10 appears and serves duly verified objections upon the 11 12 liquidator, the commissioner may hear and determine the matter or may appoint a referee to hear it and make such 13 order as the facts warrant. If the commissioner determines 14 that such objections do not warrant relief from assessment. 15 the member may request the court to review the matter and 16 17 vacate the order to show cause.

18 (6) The liquidator may enforce any order or collect
 19 any judgment under subsection (5) by any lawful means.

20 Section 32. Reinsurer's liability. The amount 21 recoverable by the liquidator from reinsurers may not be 22 reduced as a result of delinquency proceedings, regardless 23 of any provision in the reinsurance contract or other 24 agreement. Payment made directly to an insured or other 25 creditor may not diminish the reinsurer's obligation to the

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insurer's estate except when the reinsurance contract
 provided for direct coverage of a named insured and the
 payment was made in discharge of that obligation.

Section 33. Recovery of premiums owed. (1) (a) An 4 agent or any other person responsible for the payment of a 5 premium, other than the insured, shall be obligated to pay 6 any unpaid premium for the full policy term due the insurer 7 at the time of the declaration of insolvency, whether earned 8 or unearned; as shown on the records of the insurer. The 9 liquidator may recover from such person any part of an 10 unearned premium that represents commission of such person. 11 Credits or setoffs or both may not be allowed to an agent 12 for any amounts advanced to the insurer by the agent on 13 behalf of but in the absence of a payment by the insured. 14

(b) An insured shall pay any unpaid earned premium due
the insurer at the time of the declaration of insolvency, as
shown on the records of the insurer.

18 (2) Upon satisfactory evidence of a violation of this 19 section. the commissioner may pursue either one or both of 20 the following courses of action:

(a) suspend or revoke or refuse to renew the licenses
of any offending party;

(b) impose a penalty of not more than \$1,000 for each
act in violation of this section by such party.

25 (3) Before the commissioner may take any action as set

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forth in subsection (2), he shall give written notice to the 1 2 person, company, association, or exchange accused of 3 violating the law, stating specifically the nature of the alleged violation and fixing a time and place, at least 10 4 5 days thereafter, when a hearing on the matter shall be held. After such hearing or upon failure of the accused to appear 6 7 at such hearing, the commissioner, if he finds a violation, shall impose such penalties under subsection (2) as he 8 9 considers advisable.

10 (4) When the commissioner takes action in any of the 11 ways set out in subsection (2), the party aggrieved may 12 appeal from the action to the district court.

Section 34. 'Domiciliary liquidator's proposal to 13 distribute assets. (1) Within 120 days of a final 14 determination of insolvency of an insurer by a court of 15 16 competent jurisdiction of this state, the liquidator shall 17 make application to the court for approval of a proposal to disburse assets out of marshalled assets, from time to time 18 19 as such assets become available, to a guaranty association 20 or foreign guaranty association having obligations because 21 of such insolvency. If the liquidator determines that there 22 are insufficient assets to disburse, the application 23 required by this section shall be considered satisfied by a 24 filing by the liquidator stating the reasons for this 25 determination.

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1 {2} The proposal shall at least include provisions
2 for:

3 (a) reserving amounts for the payment of expenses of 4 administration and the payment of claims of secured 5 creditors: to the extent of the value of the security held. 6 and claims falling within the priorities established in 7 [section 42], classes 1 and 2;

8 (b) disbursement of the assets marshalled to date and
9 subsequent disbursement of assets as they become available;
10 (c) equitable allocation of dishursements to each of
11 the guaranty associations and formign guaranty associations
12 entitled thereto;

13 (d) the securing by the liquidator from each of the 14 associations entitled to disbursements pursuant to this 15 section of an agreement to return to the liquidator such assets, together with income earned on assets previously 16 17 disbursed, as may be required to pay claims of secured creditors and claims falling within the priorities 18 established in [section 42] in accordance with such 19 bond may be required of any such priorities (no 20 association); and 21

(e) a full report to be made by each association to
the liquidator accounting for all assets so disbursed to the
association, all disbursements made therefrom, any interest
earned by the association on such assets, and any other

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1 matter as the court may direct.

(3) The liquidator's proposal shall provide for Z disbursements to the associations in amounts estimated at 3 least equal to the claim payments made or to be made thereby 6 for which such associations could assert a claim against the 5 liquidator and shall further provide that if the assets 6 available for disbursement from time to time do not equal or 1 exceed the amount of such claim payments made or to be made 8 by the association, then disbursements shall be in the 9 10 amount of available assets.

(4) The liquidator's proposal shall, with respect to 11 an insolvent insurer writing life or health insurance or 12 annuities, provide for disbursements of assets to any 13 quaranty association or any foreign guaranty association 14 covering life or health insurance or annuities or to any 15 other entity or organization reinsuring, assuming, or 16 17 guaranteeing policies or contracts of insurance under the 19 acts creating such associations.

19 (5) Notice of such application shall be given to the 20 association in and to the commissioners of insurance of each 21 of the states. Any notice shall be considered to have been 22 given when deposited in the United States certified mails. 23 first-class postage prepaid, at least 30 days prior to 24 submission of such application to the court. Action on the 25 application may be taken by the court provided the above

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required notice has been given and provided further that the
 liquidator's proposal complies with subsections (2)(a) and
 (2)(b).

Section 35. Filing of claims. (1) Proof of all claims shall be filed with the liquidator in the form required by (section 36) on or before the last day for filing specified in the notice required under [section 22], except that proof of claims for cash surrender values or other investment values in life insurance and annuities need not be filed unless the liquidator requires.

11 (2) The liquidator may permit a claimant making a late 12 filing to share in distributions, whether past or future, as 13 if he were not late, to the extent that any such payment 14 will not prejudice the orderly administration of the 15 liquidation, under the following circumstances:

16 (a) the existence of the claim was not known to the
17 claimant and his claim was filed as promptly after learning
18 of it as reasonably possible;

(b) a transfer to a creditor was avoided under
[sections 26 through 28] or was voluntarily surrendered
under [section 29], and the filing satisfies the conditions

22 of [section 29]; and

(c) the valuation under [section 41] of security held
by a secured creditor shows a deficiency, which is filed
within 30 days after the valuation.

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(3) The liquidator shall permit late filing claims to L share in distributions, whether past or future, as if they 2 were not late, if such claims are claims of a guaranty ٦ quaranty association for 4 association or foreign reimbursement of covered claims paid or expenses incurred. 5 or both, subsequent to the last day for filing where such ٨ payments were made and expenses incurred as provided by law. 7 (4) The liquidator may consider any claim filed late 8 which is not covered by subsection (2) and permit it to 9 receive distributions which are subsequently declared on any 10 11 claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The 12 13 late-filing claimant shall receive, at each distribution, the same percentage of the amount allowed on his claim as is 14 15 then being paid to claimants of any lower priority. This 16 shall continue until his claim has been paid in full. Section 36. Proof of claim. (1) Proof of claim shall 17 consist of a statement signed by the claimant that includes 18 all of the following that are applicable: 19 (a) the particulars of the claim including the 20 21 consideration given for it; 22 (b) the identity and amount of the security on the 23 claim; (c) the payments made on the debt, if any; 24 25 (d) that the sum claimed is justly owing and that

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there is no setoff, counterclaim, or defense to the claim;
 (e) any right of priority of payment or other specific
 right asserted by the claimants;

4 (f) a copy of the written instrument which is the
5 foundation of the claim;

6 (g) the name and address of the claimant and the7 attorney who represents him, if any.

8 (2) No claim need be considered or allowed if it does
9 not contain all the information in subsection (1) which may
10 be applicable. The liquidator may require that a prescribed
11 form be used and may require that other information and
12 documents be included.

13 (3) At any time the liquidator may request the
14 claimant to present information or evidence supplementary to
15 that required under subsection {1} and may take testimony
16 under oath, require production of affidavits or depositions.
17 or otherwise obtain additional information or evidence.

18 (4) No judgment or order against an insured or the 19 insurer entered after the date of filing of a successful petition for liquidation and no judgment or order against an 20 insured or the insurer entered at any time by default or by 21 collusion need be considered as evidence of liability or of 22 quantum of damages. No judgment or order against an insured 23 or the insurer entered within 4 months before the filing of 24 the petition need be considered as evidence of liability or 25

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1 of the quantum of damages.

(5) All claims of a guaranty association or foreign
3 yuaranty association shall be in such form and contain such
4 substantiation as may be agreed to by the association and
5 the liquidator.

Section 37. Special claims. (1) The claim of a third
party which is contingent only on his first obtaining a
judgment against the insured shall be considered and allowed
as if there were no such contingency.

10 (2) A claim may be allowed even if contingent, if it 11 is filed in accordance with [section 35]. It may be allowed 12 and may participate in all distributions declared after it 13 is filed to the extent that it does not prejudice the 14 orderly administration of the liquidation.

15 (3) Claims that are due except for the passage of time 16 shall be treated as absolute claims are treated, except that 17 such claims may be discounted at the legal rate of interest. 18 (4) Claims made under employment contracts by 19 directors, principal officers, or persons in fact performing 20 similar functions or having similar powers are limited to payment for services rendered prior to the issuance of any 21 22 order of rehabilitation or liquidation under [section 13 or 23 181.

24 Section 36. Special provisions for third-party claims.

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25 (1) Whenever any third party asserts a cause of action

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against an insured of an insurer in liquidation, the third
 party may file a claim with the liquidator.

3 (2) Whether or not the third party files a claim, the 4 insured may file a claim on his own behalf in the 5 liquidation. If the insured fails to file a claim by the 6 date for filing claims specified in the order of liquidation 7 or within 60 days after mailing of the notice required by 8 [section 22], whichever is later, he is an unexcused late 9 filer.

(3) The liquidator shall make his recommendations to 10 the court under [section 42], for the allowance of an 11 insured's claim under subsection (2), after consideration of 12 the probable outcome of any pending action against the 13 insured on which the claim is based, the probable damages 14 recoverable in the action, and the probable cos+s and 15 expenses of defense. After allowance by the court, the 16 liquidator shall withhold any dividends payable on the 17 claim, pending the outcome of litigation and negotiation 18 19 with the insured. Whenever it seems appropriate, he shall reconsider the claim on the bases of additional information 20 21 and amend his recommendations to the court. The insured 22 shall be afforded the same notice and opportunity to be 23 heard on all changes in the recommendation as in its initial determination. The court may amend its allowance as it 24 25 thinks appropriate. As claims against the insured are

settled or barred, the insured shall be paid, from the amount withheld, the same percentage dividend as was paid on other claims of like property, based on the lesser of the amount actually recovered from the insured by action or paid by agreement plus the reasonable costs and expenses of defense, or the amount allowed on the claims by the court. After all claims are settled or barred, any sum remaining from the amount withheld shall revert to the undistributed

9 assets of the insurer. Delay in final payment under this 10 subsection shall not be a reason for unreasonable delay of 11 final distribution and discharge of the liquidator.

(4) If several claims founded upon one policy are 12 filed, whether by third parties or as claims by the insured 13 under this section and the aggregate allowed amount of the 14 claims to which the same limit of liability in the policy is 15 16 applicable exceeds that limit, each claim as allowed shall be reduced in the same proportion so that the total equals 17 the policy limit. Claims by the insured shall be evaluated 18 19 as in subsection (3). If any insured's claim is subsequently 20 reduced under subsection (3), the amount thus freed shall be 21 apportioned ratably among the claims which have been reduced 22 under this subsection.

(5) No claim may be presented under this section if it
is or may be covered by any quaranty association or foreign
guaranty association.

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1 Section 39. Disputed claims. (1) When a claim is 2 denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant or his 3 attorney by first-class mail at the address shown in the 4 5 proof of claim. Within 60 days from the mailing of the notice, the claimant may file his objections with the 6 7 liquidator. If no such filing is made, the claimant may not further object to the determination. 8

(2) Whenever objections are filed with the liquidator 9 and the liquidator does not alter his denial of the claim as 10 a result of the objections, the liquidator shall ask the 11 12 court for a hearing as soon as practicable and give notice of the hearing by first-class mail to the claimant or his 13 14 attorney and to any other persons directly affected, not 15 less than 10 or more than 30 days before the date of the hearing. The matter may be heard by the court or by a 16 court-appointed referee who shall submit findings of fact 17 19 along with his recommendation.

Section 40. Claims of surety. Whenever a creditor whose claim against an insurer is secured, in whole or in part, by the undertaking of another person fails to prove and file that claim, the other person may do so in the creditor's name and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name, to the extent

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that he discharges the undertaking. However, in the absence 1 2 of an agreement with the creditor to the contrary, the other person shall not be entitled to any distribution until the 3 4 amount paid to the creditor on the undertaking plus the distributions paid on the claim from the insurer's estate to ς. 6 the creditor equals the amount of the entire claim of the creditor. Any excess received by the creditor shall be held 7 by him in trust for such other person. The term "other 8 9 person", as used in this section, is not intended to apply 10 to a guaranty association or foreign guaranty association. Section 41. Secured creditor's claims. (1) The value 11 12 of any security held by a secured creditor shall be determined in one of the following ways, as the court may 13 14 direct: 15 (a) by converting the same into money according to the 16 terms of the agreement pursuant to which the security was 17 delivered to such creditors; or 18 (b) by agreement, arbitration, compromise, or 19 litigation between the creditor and the liquidator.

20 (2) The determination shall be under the supervision 21 and control of the court with due regard for the 22 recommendation of the liquidator. The amount so determined 23 shall be credited upon the secured claim, and any deficiency 24 shall be treated as an unsecured claim. If the claimant 25 surrenders his security to the liquidator, the entire claim

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shall be allowed as if unsecured. 1 Section 42. Priority of distribution. The priority of 2 distribution of claims from the insurer's estate shall be in 3 accordance with the order in which each class of claims is 4 herein set forth. Every claim in each class shall be paid in 5 full or adequate funds retained for such payment before the 6 members of the next class receive any payment. No subclasses 7 8 shall be established within any class. The order of distribution of claims shall be as follows: 9 10 Class 1--the costs and expenses of administration+ including but not limited to the following: 11 (a) the actual and necessary costs of preserving or 12 recovering the assets of the insurer; 13 (b) compensation for all services rendered in the 14 15 liquidation: (c) any necessary filing fees; 16 (d) the fees and mileage payable to witnesses; 17 (e) reasonable attorney's fees; 18 (f) the reasonable expenses of a guaranty association 19 20 or foreign guaranty association in handling claims. (2) Class 2--debts due to employees for services. 21 performed to the extent that they do not exceed \$1,000 and 22 represent payment for services performed within 1 year 23 before the filing of the petition for liquidation. Officers 24 and directors are not entitled to the benefit of this 25 \$8.80 -69-

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priority. Such priority is in lieu of any other similar
 priority which may be authorized by law as to wages or
 compensation of employees.

(3) Class 3--all claims under policies for losses 4 5 incurred, including third-party claims, all claims against the insurer for liability for bodily injury or for injury to 6 7 or destruction of tangible property which are not under policies, and all claims of a guaranty association or 8 foreign guaranty association. All claims under life 9 10 insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values shall be treated as 11 12 loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered 13 by the claimant, shall not be included in this class, other 14 than benefits or advantages recovered or recoverable in 15 16 discharge of familial obligations of support or hy way of 17 succession at death or as proceeds of life insurance, or as 18 gratuities. No payment by an employer to his employed may be 19 treated as a gratuity.

(4) Class 4--claims under nonassessable policies for
 unearned premium or other premium refunds and claims of
 general creditors.

23 (5) Class 5--claims of the federal or any state or
24 local government. Claims, including those of any
25 governmental body for a penalty or forfeiture, shall be

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allowed in this class only to the extent of the pecuniary
 loss sustained from the act. transaction, or proceeding out
 of which the penalty or forfeiture arose, with reasonable
 and actual costs occasioned thereby. The remainder of such
 claims shall be postponed to the class of claims under
 subsection (8).

7 (6) Class 6--claims filed late or any other claims
8 other than claims under subsections (7) and (8).

9 (7) Class 7--surplus or contribution notes, or similar
10 obligations, and premium refunds on assessable policies.
11 Payments to members of domestic mutual insurance companies
12 shall be limited in accordance with law.

13 (8) Class 9-the claims of shareholders or other
 14 owners.

Section 43. Liquidator's recommendations to the court. 15 16 (1) The liquidator shall review all claims duly filed in the 17 liquidation and make such further investigation as he 18 considers necessary. He may compound, compromise, or in any 19 other manner negotiate the amount for which claims will be 20 recommended to the court except where the liquidator is required by law to accept claims as settled by any person or 21 organization, including any guaranty association or foreign 22 quaranty association. Unresolved disputes shall be 23 determined under [section 39]. As soon as practicable: he 24 25 shall present to the court a report of the claims against

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the insurer with his recommendations. The report shall include the name and address of each claimant and the amount of the claim finally recommended, if any. If the insurer has issued annuities or life insurance policies, the liquidator shall report the persons to whom, according to the records of the insurer, amounts are owed as cash surrender values or other investment value and the amounts owed. (2) The court may approve, disapprove, or modify the

8 (2) The court may approve, disapprove, or modify the 9 report on claims by the liquidator. Reports not modified by 10 the court within a period of 60 days following submission by 11 the liquidator shall be treated by the liquidator as allowed 12 claims, subject to later modification or to rulings made by 13 the court pursuant to [section 39]. No claim under a policy 14 of insurance shall be allowed for an amount in excess of the 15 applicable policy limits.

16 Section 44. Distribution of assets. Under the 17 direction of the court, the liquidator shall pay 18 distributions in a manner that will assure the proper 19 recognition of priorities and a reasonable balance between 20 the expeditious completion of the liquidation and the 21 protection of unliquidated and undetermined claims, 22 including third-party claims. Distribution of assets in kind 23 may be made at valuations set by agreement between the 24 liquidator and the creditor and approved by the court. 25 Section 45. Unclaimed and withheld funds. (1) All

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unclaimed funds subject to distribution remaining in the 1 liquidator's hands when he is ready to apply to the court 2 for discharge, including the amount distributable to any 3 creditor, shareholder, member, or other person who is 4 unknown or cannot be found, shall be deposited with the 5 state treasurer and shall be paid without interest except in 5 accordance with [section 42] to the person entitled thereto 7 or his legal representative upon proof satisfactory to the я state treasurer of his right thereto. Any amount on deposit 9 not claimed within 6 years from the discharge of the 10 liquidator shall be considered to have been abandoned and 11 shall be escheated without formal escheat proceedings and be 12 13 deposited in the general fund.

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(2) All funds withheld under [section 37] and not 14 15 distributed shall upon discharge of the liquidator be deposited with the state treasurer and paid by him in 16 accordance with [section 42]. Any sums remaining which under 17 [section 42] would revert to the undistributed assets of the 18 insurer, shall be transferred to the state treasurer and 19 become the property of the state under subsection (1). 20 unless the commissioner in his discretion petitions the 21 court to reopen the liquidation under [section 47]. 22

23 Section 46. Termination of proceedings. (1) When all 24 assets justifying the expense of collection and distribution 25 have been collected and distributed under [this act], the liquidator snall apply to the court for discharge. The court
 may grant the discharge and make any other orders, including
 an order to transfer any remaining funds that are uneconomic
 to distribute, as may be considered appropriate.

5 (2) Any other person may apply to the court at any 6 time for an order under subsection (1). If the application 7 is denied, the applicant shall pay the costs and expenses of 8 the liquidator in resisting the application, including a 9 reasonable attorney's fee.

liquidation. After 10 Section 47. Reopening the 11 liquidation proceeding has been terminated and the liquidator discharged, the commissioner or other interested 12 13 party may at any time petition the district court to reopen the proceedings for good cause, including the discovery of 14 additional assets. If the court is satisfied that there is 15 justification for reopening, it shall so order. 16

17 Section 48. Disposition of records during and after 18 termination of liquidation. When it appears to the 19 commissioner that the records of any insurer in process of 20 liquidation or completely liquidated are no longer useful, 21 he may recommend to the court and the court shall direct 22 what records should be retained for future reference and 23 what should be destroyed.

Section 49. External audit of the receiver's books.
The district court may, as it considers desirable, cause

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1 audits to be made of the books of the commissioner relating to any receivership established under [this act], and a 2 report of each audit shall be filed with the commissioner 3 and with the court. The books, records, and other documents 4 of the receivership shall be made available to the auditor 5 6 at any time without notice. The expense of each audit shall 7 be considered a cost of administration of the receivership. Section 50. Conservation of property of foreign or 8 alien insurers. (1) If a domiciliary liquidator has not been 9 appointed, the commissioner may apply to the district court 10 by verified petition for an order directing him to act as 11 12 conservator to conserve the property of an alien insurer not 13 domiciled in this state or a foreign insurer on any one or more of the following grounds: 14 15 (a) any of the grounds in [section 12]; (b) that any of its property has been sequestered by 16

17 official action in its domiciliary state or in any other 18 state:

19 (c) that enough of its property has been sequestered
20 in a foreign country to give reasonable cause to fear that
21 the insurer is or may become insolvent;

22 (d) that its certificate of authority to do business
23 in this state has been revoked or that none was ever issued;
24 (e) that there are residents of this state with
25 outstanding claims or outstanding policies.

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1 (2) when an order is sought under subsection (1). the 2 court shall cause the insurer to be given such notice and 3 time to respond thereto as is reasonable under the 4 circumstances.

(3) The court may issue the order in whatever terms it 5 considers appropriate. The filing or recording of the order 6 7 with the clerk of the district court or the clerk and recorder of the county in which the principal business of A the company is located or the county in which its principal 9 office or place of business is located shall impart the same 10 notice as a deed, bill of sale, or other evidence of title 11 duly filed or recorded with that clerk and recorder would 12 13 have imparted.

14 (4) The conservator may at any time petition for and 15 the court may grant an order under [section 51] to liquidate 16 assets of a foreign or alien insurer under conservation or, 17 if appropriate, for an order under [section 53], to be 19 appointed ancillary receiver.

19 (5) The conservator may at any time petition the court 20 for an order terminating conservation of an insurer. If the 21 court finds that the conservation is no longer necessary, it 22 shall order the insurer to be restored to possession of its 23 property and the control of its business. The court may also 24 make such finding and issue such order at any time upon 25 motion of any interested party, but if such motion is

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denied, all costs shall be assessed against such party. 1 Section 51. Liquidation of property of foreign or 2 alien insurers. (1) If no domiciliary receiver has been 3 appointed, the commissioner may apply to the district court 4 by verified petition for an order directing him to liquidate 5 the assets found in this state of a foreign insurer or an 6 alien insurer not domiciled in this state, on any of the 7 8 following grounds:

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9 (a) any of the grounds in [section 12 or 17]; or

(b) any of the grounds specified in subsections (1)(b)
through (1)(d) of [section 50].

(2) When an order is sought under subsection {1}, the
court shall cause the insurer to be given notice and time to
respond thereto as reasonable under the circumstances.

15 (3) If it appears to the court that the best interests of creditors, policyholders, and the public require, the 16 17 court may issue an order to liquidate in whatever terms it considers appropriate. The filing or recording of the order 18 with the clerk of the district court or the clerk and 19 recorder of the county in which the principal business of 20 the company is located or the county in which its principal 21 office or place of business is located shall impart the same 22 notice as a deed, bill of sale, or other evidence of title 23 duly filed or recorded with that clerk and recorder would 24 have imparted. 25

(4) If a domiciliary liquidator is appointed in a 1 reciprocal state while a liquidation is proceeding under 2 this section, the liquidator under this section shall 3 4 thereafter act as ancillary receiver under [section 53]. If a domiciliary liquidator is appointed in a nonreciprocal 5 state while a liquidation is proceeding under this section. 6 7 the liquidator under this section may petition the court for permission to act as ancillary receiver under [section 53]. 8 9 (5) On the same grounds as specified in subsection 10 (1). the commissioner may petition any appropriate federal 11 district court to be appointed receiver to liquidate that portion of the insurer's assets and business over which the 12 13 court will exercise jurisdiction or any lesser part thereof that the commissioner considers desirable for the protection 14 15 of the policyholders and creditors in this state. 16 (6) The court may order the commissioner, when he has 17 liquidated the assets of a foreign or alien insurer under

17 liquidated the assets of a foreign or alien insurer under
18 this section, to pay claims of residents of this state
19 against the insurer under such rules as to the liquidation
20 of insurers under [this act] as are otherwise compatible
21 with the provisions of this section.
22 Section 52. Domiciliary liquidators in other states.
23 {1} The domiciliary liquidator of an insurer domiciled in a
24 reciprocal state shall, except as to special deposits and

25 security on secured claims under [section 53(3)], be vested

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1 by operation of law with the title to all of the assets. property, contracts, and rights of action, agents, balances, 2 and all of the books; accounts; and other records of the 3 insurer located in this state. The date of vesting shall be 4 the date of the filing of the petitions if that date is 5 specified by the domiciliary law for the vesting of property 6 7 in the domiciliary state. Otherwise: the date of vesting shall be the date of entry of the order directing possession 8 9 to be taken. The domiciliary liquidator has the immediate right to recover balances due from agents and to obtain 10 possession of the books, accounts, and other records of the 11 insurer located in this state. He also has the right to 12 recover all other assets of the insurer located in this 13 state, subject to [section 53]. 14

(2) If a domiciliary liquidator is appointed for an 15 16 insurer not domiciled in a reciprocal state, the commissioner of this state is vested by operation of law 17 with the title to all of the property, contracts, and rights 18 of action and all of the books, accounts, and other records 19 20 of the insurer located in this state, at the same time that the domiciliary liquidator is vested with title in the 21 domicile. The commissioner of this state may petition for a 22 conservation or liquidation order under [section 50 or 51] 23 or for an ancillary receivership under [section 53] or after 24 approval by the district court may transfer title to the 25

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domiciliary liquidatory as the interests of justice and the
 eduitable distribution of the assets requires

3 (3) Claimants residing in this state may file claims 4 with the liquidator or ancillary receivers if anys in this 5 state or with the domiciliary liquidators if the domiciliary 6 law permits. The claims must be filed on or before the last 7 date fixed for the filing of claims in the domiciliary 8 liquidation proceedings.

9 Section 53. Ancillary formal proceedings. (1) IF a
10 domiciliary liquidator has been appointed for an insurer not
11 domiciled in this state. the commissioner may file a
12 petition with the district court requesting appointment as
13 ancillary receiver in this state:
14 (a) if he finds that there are sufficient assets of
15 the insurer located in this state to justify the appointment

16 of an ancillary receiver;

17 (b) if the protection of creditors or policyholders in
18 this state so requires.

19 (2) The court may issue an order appointing an 20 ancillary receiver in whatever terms it considers 21 appropriate. The filing or recording of the order with the 22 recorder of deeds in this state imparts the same notice as a 23 deed, bill of sale, or other evidence of title duly filed or 24 recorded with that recorder of deeds.

25 (3) When a domiciliary liquidator has been appointed

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1 in a reciprocal state, then the ancillary receiver appointed in this state may, whenever necessary, aid and assist the 2 3 domiciliary liquidator in recovering assets of the insurer located in this state. The ancillary receiver shall, as soon 4 as practicable, liquidate from their respective securities 5 those special deposit claims and secured claims which are 6 proved and allowed in the ancillary proceedings in this 7 8 state and shall pay the necessary expenses of the 9 proceedings. He shall promptly transfer all remaining 10 assets, books, accounts, and records to the domiciliary 11 liquidator. Subject to this section. the ancillary receiver 12 and his deputies shall have the same powers and be subject 13 to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in this 14 15 state.

16 (4) When a domiciliary liquidator has been appointed 17 in this state, ancillary receivers appointed in reciprocal 18 states shall have, as to assets and books, accounts, and 19 other records in their respective states, corresponding 20 rights, duties, and powers to those provided in subsection 21 (3) for ancillary receivers appointed in this state.

22 Section 54. Ancillary summary proceedings. The 23 commissioner in his sole discretion may institute 24 proceedings under [sections 9 through 11] at the request of 25 the commissioner or other appropriate insurance official of SR 0080/03

1 the domiciliary state of any foreign or alien insurer having

2 property located in this state.

Section 55. Claims of nonresidents against insurers 3 domiciled in this state. (1) In a liquidation proceeding 4 begun in this state against an insurer domiciled in this 5 state, claimants residing in foreign countries or in states . 7 not reciprocal states must file claims in this state, and 8 claimants residing in reciprocal states may file claims 9 either with the ancillary receivers, if any, in their 10 respective states, or with the domiciliary liquidator. Claims must be filed on or before the last date fixed for 11 12 the filing of claims in the domiciliary liquidation 13 proceeding.

14 (2) Claims belonging to claimants residing in 15 reciprocal states may be proved either in the liquidation proceeding in this state as provided in [this act] or in 16 17 ancillary proceedings, if any, in the reciprocal states. If 18 notice of the claims and opportunity to appear and be heard 19 is afforded the domiciliary liquidator of this state as 20 provided in [section 56(2)] with respect to ancillary 21 proceedings. the final allowance of claims by the courts in ancillary proceedings in reciprocal states is conclusive as 22 23 to amount and as to priority against special deposits or 24 other security located in such ancillary states but is not 25 conclusive with respect to priorities against general assets

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1 under [section 42].

2 Section 56. Claims of residents against insurers 3 domiciled in reciprocal states. (1) In a liquidation proceeding in a reciprocal state against an insurer 4 domiciled in that state, claimants against the insurer who 5 reside within this state may file claims either with the 6 ancillary receiver, if any, in this state or with the 7 domiciliary liquidator. Claims must be filed on or before R the last dates fixed for the filing of claims in the . domiciliary liquidation proceeding. 10

11 (2) Claims belonging to claimants residing in this state may be proved either in the domiciliary state under 12 13 the law of that state or in ancillary proceedings, if any, in this state. If a claimant elects to prove his claim in 14 15 this state, he shall file his claim with the liquidator in 16 the manner provided in [sections 35 and 36]. The ancillary 17 receiver shall make his recommendation to the court as under 19 [section 43]. He shall also arrange a date for hearing if 19 necessary under [section 39] and shall give notice to the 20 liquidator in the domiciliary state, either by certified mail or by personal service at least 40 days prior to the 21 date set for hearing. If the domiciliary liquidator, within 22 30 days after the giving of such notice, gives notice in 23 writing to the ancillary receiver and to the claimant. 24 either by certified mail or by personal service, of his 25

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intention to contest the claim, he shall be entitled to
 appear or to be represented in any proceeding in this state
 involving the adjudication of the claim.

4 (3) The final allowance of the claim by the courts of 5 this state shall be accepted as conclusive as to amount and 6 as to priority against special deposits or other security 7 located in this state.

8 Section 57. Attachment, garnishment; and levy of 9 execution: During the pendency in this or any other state of 10 a liquidation proceeding, whether called by that name or 11 not, no action or proceeding in the nature of an attachment; 12 yarnishment, or levy of execution may be commenced or 13 maintained in this state against the delinquent insurer or 14 its assets.

15 Section 58. Interstate priorities. (1) ln а 16 liquidation proceeding in this state involving one or more 17 reciprocal states, the order of distribution of the 18 domiciliary state shall control as to all claims of 19 residents of this and reciprocal states. All claims of residents of reciprocal states shall be given equal priority 20 21 of payment from general assets regardless of where such 22 assets are located.

(2) The owners of special deposit claims against an
insurer for which a liquidator is appointed in this or any
other state is given priority against the special deposits

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1 in accordance with the statutes governing the creation and 2 maintenance of the deposits. If there is a deficiency in any deposit so that the claims secured by it are not fully 3 4 discharged from it, the claimants may share in the general 5 assets, but the sharing shall be deferred until general creditors, and also claimants against other special deposits 6 7 who have received smaller percentages from their respective 8 special deposits, have been paid percentages of their claims 9 equal to the percentage paid from the special deposit.

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10 (3) The owner of a secured claim against an insurer 11 for which a liquidator has been appointed in this or any 12 other state may surrender his security and file his claim as 13 a general creditory or the claim may be discharged by resort to the security in accordance with [section 41], in which 14 15 case the deficiency, if any, shall be treated as a claim 16 against the general assets of the insurer on the same basis 17 as claims of unsecured creditors.

13 Section 59. Subordination of claims for noncooperation. If an ancillary receiver in another state or 19 foreign country, whether called by that name or not, fails 20 21 to transfer to the domiciliary liquidator in this state any assets within his control other than special deposits. 22 diminished only by the expenses of the ancillary 23 receivership, if any, the claims filed in the ancillary 24 receivership, other than special deposit claims or secured 25

1 claims, shall be placed in the class of claims under 2 [section 42(7)].

3 Section 60. Severability. If a part of this act is 4 invalid. all valid parts that are severable from the invalid 5 part remain in effect. If a part of this act is invalid in 6 one or more of its applications. the part remains in effect 7 in all valid applications that are severable from the 8 invalid applications.

9 Section 61. Repeater. Sections 33-2-901 through
10 33-2-948. MCA. are repeated.

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