

CHAPTER NO. 383

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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1 *Senate* BILL NO. *209*  
 2 INTRODUCED BY *Halleck* *Blaylock*  
 3 BY REQUEST OF THE STATE COMMISSIONER OF INSURANCE

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE  
 6 SUPERVISION, REHABILITATION, AND LIQUIDATION OF INSURERS;  
 7 REPEALING SECTIONS 33-2-901 THROUGH 33-2-948, MCA."

8  
 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 law.

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;

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 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  
 11 the scope of personal jurisdiction over debtors of the  
 12 insurer outside this state; and

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.

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

1 instituted against an insurer for the purpose of  
 2 liquidating, rehabilitating, reorganizing, or conserving  
 3 such insurer and any summary proceeding under [section 9 or  
 4 10]. "Formal delinquency proceeding" means any liquidation  
 5 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) "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

1 conveyed or services are rendered or an obligation is  
 2 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  
 18 creditors, in more than a single state, shall be treated as  
 19 general assets.

20 (10) "Guaranty association" means the Montana insurance  
 21 guaranty association, the workers' compensation security  
 22 fund, the Montana 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"

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 authorized  
13 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  
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  
24 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.

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.

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.

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,  
11 absolutely or conditionally, voluntarily, by or without  
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 this  
23 state;

24 (4) all other persons organized or in the process of  
25 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:

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

1 arrangement that may 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  
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.

21 (5) All actions herein authorized shall be brought in  
22 the district court in the county in which the office of the  
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

1 apply for and any court of general jurisdiction may grant  
2 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

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  
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  
9 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  
12 this section includes any person who exercises control  
13 directly or indirectly over activities of an insurer through  
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 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 thereto.

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

1 otherwise existing legal rights, including the right to  
2 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 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  
23 paid for out of the assets of the insurer as a cost of  
24 administration.

25 Section 8. Continuation of delinquency proceedings.

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

8 Section 9. Commissioner's summary orders and  
 9 supervision proceedings. (1) Whenever the commissioner  
 10 determines, after a hearing held under subsection (5), that  
 11 any domestic insurer has committed or engaged in or is about  
 12 to commit or engage in any act, practice, or transaction  
 13 that would subject it to delinquency 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  
 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  
 24 list of the commissioner's requirements to abate his  
 25 determination.

1 (3) If the commissioner makes a determination to  
 2 supervise an insurer subject to an order under subsections  
 3 (1) or (2), he shall notify the insurer that it is under the  
 4 supervision of the commissioner. During the period of  
 5 supervision, the commissioner may appoint a supervisor to  
 6 supervise such insurer. The order appointing a supervisor  
 7 shall direct the supervisor to enforce orders issued under  
 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  
 11 commissioner or the supervisor:

12 (a) dispose of, convey, or encumber any of its assets  
 13 or its business in force;

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 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  
 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



1 may institute proceedings under [section 12 or 17] to have a  
2 rehabilitator or liquidator appointed or extend the period  
3 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  
7 or administrative procedure. The notice of hearing shall  
8 state the time and place of hearing, and the conduct,  
9 condition, or ground upon which the commissioner would base  
10 his order. Unless mutually agreed between the commissioner  
11 and the insurer, the hearing shall occur not less than 10  
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  
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),  
21 but the request for a hearing shall not stay the effect of  
22 the order.

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

1 relief by means of any remedy afforded by law without first  
2 exhausting administrative remedies. Subsequent to a hearing,  
3 any party to the proceedings whose interests are  
4 substantially affected shall be entitled to judicial review  
5 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

1 for the amount of any such reduction or loss. The  
 2 commissioner or supervisor is authorized to bring an action  
 3 on behalf of the insurer in the district court to recover  
 4 the amount of the reduction or loss together with any costs.

5 Section 10. Court's seizure order. (1) The  
 6 commissioner may file in a district court of this state a  
 7 petition alleging, with respect to a domestic insurer:

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];

11 (b) that the interests of policyholders, creditors, or  
 12 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  
 20 and of the premises occupied by it for transaction of its  
 21 business and until further order of the court enjoin 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  
 3 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  
 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  
 9 seizure order if the commissioner fails to commence a formal  
 10 proceeding under [this act] after having had a reasonable  
 11 opportunity to do so. An order of the court pursuant to a  
 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 ex parte 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

1 interest is or will be substantially affected by the order  
 2 did not appear at the hearing and has not been served, the  
 3 court may order that notice be given. An order that notice  
 4 be given shall not stay the effect of any order previously  
 5 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:

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

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 stock ownership  
 15 or otherwise, and whether direct or indirect, is in a person  
 16 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  
 21 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

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

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  
 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  
 14 property or business of any other person.

15 (8) The insurer or its property has been or is the  
 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  
 22 jurisdiction or might prejudice orderly delinquency  
 23 proceedings under [this act].

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

1 its bylaws, any insurance law of this state, or any valid  
 2 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  
 8 be a ground until 60 days after any good faith effort by the  
 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  
 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

1 commissioner the rehabilitator and shall direct the  
 2 rehabilitator forthwith to take possession of the assets of  
 3 the insurer and to administer them under the general  
 4 supervision of the court. The filing or recording of the  
 5 order with the clerk of the district court or clerk and  
 6 recorder of the county in which the principal business of  
 7 the company is conducted or the county in which its  
 8 principal office or place of business is located shall  
 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,

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  
 4 shall be fixed by the commissioner, with the approval of the  
 5 court and shall be paid out of the funds or assets of the  
 6 insurer. The persons appointed under this section shall  
 7 serve at the pleasure of the commissioner. If the property  
 8 of the insurer does not contain sufficient cash or liquid  
 9 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  
 13 commissioner for the use of his office out of the first  
 14 available money of the insurer.

15 (2) The rehabilitator may take such action as  
 16 necessary to reform and revitalize the insurer. He shall  
 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

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

4 (4) If the rehabilitator determines that  
 5 reorganization, consolidation, conversion, reinsurance,  
 6 merger, or other transformation of the insurer is  
 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  
 10 prescribe, the court may either approve or disapprove the  
 11 plan proposed or may modify it and approve it as modified.  
 12 Any plan approved under this section must be, in the  
 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  
 18 first relinquished. A plan for a life insurer may also  
 19 propose imposition of a moratorium upon loan and cash  
 20 surrender rights under policies, for such period and to such  
 21 an extent as may be necessary.

22 (5) The rehabilitator shall have the power under  
 23 [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

1 proceeding in which the insurer is a party or is obligated  
 2 to defend a party is pending when a rehabilitation order  
 3 against the insurer is entered shall stay the action or  
 4 proceeding for 90 days and such additional time as is  
 5 necessary for the rehabilitator to obtain proper  
 6 representation and prepare for further proceedings. The  
 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  
 11 all litigation pending outside this state and shall petition  
 12 the courts having jurisdiction over that litigation for  
 13 stays whenever necessary to protect the estate of the  
 14 insurer.

15 (2) No statute of limitations or defense of laches  
 16 shall run with respect to any action by or against an  
 17 insurer between the filing of a petition for appointment of  
 18 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  
 21 may be commenced for at least 60 days after the order of  
 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  
 25 has standing to appear in any court proceeding concerning

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 of rehabilitation. (1)

5 Whenever the commissioner believes further attempts to  
6 rehabilitate an insurer would substantially increase the  
7 risk of loss to creditors, policyholders, or the public or  
8 would be futile, the commissioner may petition the district  
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  
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  
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

1 its property and the control of the business. The district  
2 court may also make that finding and issue that order at any  
3 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.

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  
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  
24 books and records of the insurer ordered liquidated,  
25 wherever located, as of the entry of the final order of

1 liquidation. The filing or recording of the order with the  
 2 clerk of the district court and the clerk and recorder of  
 3 the county in which its principal office or place of  
 4 business is located or, in the case of real estate, with the  
 5 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  
 8 that clerk and recorder would have imparted.

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

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  
 8 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  
 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



1 or any period or coverage of such policies not covered by a  
 2 guaranty association or foreign guaranty association shall  
 3 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  
 8 for a liquidation order. The court shall order dissolution  
 9 of the corporation upon petition by the commissioner upon or  
 10 after the granting of a liquidation order. If the  
 11 dissolution has not previously been ordered, it shall be  
 12 effected by operation of law upon the discharge of the  
 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 may:

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.

23 (b) employ agents, legal counsel, actuaries,  
 24 accountants, appraisers, consultants, and other personnel  
 25 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  
 5 and defray from the funds or assets of the insurer all  
 6 expenses of taking possession of, conserving, conducting,  
 7 liquidating, disposing of, or otherwise dealing with the  
 8 business and property of the insurer. If the property of the  
 9 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;

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

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;

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.  
21 He shall also have power to execute, acknowledge, and  
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.

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 (l) 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  
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;

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

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;

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  
15 guaranty association or foreign guaranty association has an  
16 obligation to defend any suit, the liquidator shall give  
17 precedence to such obligation and may defend only in the  
18 absence of a defense by such guaranty associations.

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 instituted  
25 that 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:

21 (a) by first-class mail and either by telegram or  
22 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

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.

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

1 receives notice in the form prescribed in [section 22] that  
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  
5 first-class mail to the last address contained in the  
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  
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  
21 contract to him. Each agent obligated to give notice under  
22 this section shall file a report of compliance with the  
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

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  
6 policyholders of the insurer under liquidation is adequate.

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  
10 state, no action at law or equity may be brought against the  
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  
16 existing actions against the liquidator or the company when  
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  
24 at the expense of the estate of the insurer.

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

1 liquidation, within 2 years or such time in addition to 2  
2 years as applicable law may permit, institute an action or  
3 proceeding on behalf of the estate of the insurer upon any  
4 cause of action against which the period of limitation fixed  
5 by applicable law has not expired at the time of the filing  
6 of the petition upon which such order is entered. When, by  
7 any agreement, a period of limitation is fixed for  
8 instituting a suit or proceeding upon any claim or for  
9 filing any claim, proof of claim, proof of loss, demand,  
10 notice, or the like or when in any proceeding, judicial or  
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  
14 any such case the period had not expired at the date of the  
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  
19 liquidation, or within such further period as is shown to  
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

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 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  
10 as practicable after the liquidation order but not later  
11 than 120 days thereafter, the liquidator shall prepare in  
12 duplicate a list of the insurer's assets. The list shall be  
13 amended or supplemented from time to time as the liquidator  
14 may determine. One copy shall be filed in the office of the  
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

1 incurred by an insurer within 1 year prior to the filing of  
2 a successful petition for rehabilitation or liquidation  
3 under [this act] is fraudulent as to then existing and  
4 future creditors if made or incurred without fair  
5 consideration or with actual intent to hinder, delay, or  
6 defraud either existing or future creditors. A transfer  
7 made or an obligation incurred by an insurer ordered to be  
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  
11 purchaser, lienor, or obligee for a present fair equivalent  
12 value, and except that any purchaser, lienor, or obligee,  
13 who in good faith has given a consideration less than fair  
14 for such transfer, lien, or obligation, may retain the  
15 property, lien, or obligation as security for repayment. The  
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.

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)].

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 be 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.

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  
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.

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

1 faith is valid against the receiver if made for a present  
 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  
 7 property of the insurer may, if acting in good faith, pay  
 8 the indebtedness or deliver the property, or any part  
 9 thereof, to the insurer or upon his order, with the same  
 10 effect as if the petition were not pending;

11 (c) a person having actual knowledge of the pending  
 12 rehabilitation or liquidation is considered not acting in  
 13 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 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

1 insurer within 1 year before the filing of a successful  
 2 petition for liquidation under [this act], the effect of  
 3 which transfer may be to enable the creditor to obtain a  
 4 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  
 8 if made or suffered within 1 year before the filing of the  
 9 successful petition for rehabilitation or within 2 years  
 10 before the filing of the successful petition for  
 11 liquidation, whichever time is shorter.

12 (b) Any preference may be avoided by the liquidator  
 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



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  
 11 given less than fair equivalent value, he shall have a lien  
 12 upon the property to the extent of the consideration  
 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.

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

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.

8 (e) The provisions of this subsection apply whether or  
 9 not there are or were creditors who might have obtained  
 10 liens or persons who might have become bona fide purchasers.

11 (3) (a) A lien obtainable by legal or equitable  
 12 proceedings upon a simple contract is one arising in the  
 13 ordinary course of such proceedings upon the entry or  
 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.

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

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  
 4 superior and such a purchase could not create superior  
 5 rights for the purpose of subsection (2) through any acts  
 6 subsequent to the obtaining of such a lien or subsequent to  
 7 such a purchase which require the agreement or concurrence  
 8 of any third party or which require any further judicial  
 9 action or ruling.

10 (4) A transfer of property for or on account of a new  
 11 and contemporaneous consideration which is considered under  
 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  
 15 required by the applicable law to be performed in order to  
 16 perfect the transfer as against liens or bona fide  
 17 purchasers' rights are performed within 21 days or any  
 18 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

1 directly or indirectly by the transfer of or the creation of  
 2 a lien upon any property of an insurer before the filing of  
 3 a petition under [this act] which results in a liquidation  
 4 order, the indemnifying transfer or lien shall also be  
 5 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  
 9 indemnifying property transferred to or for the benefit of a  
 10 surety shall pass to the liquidator, except that the court  
 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  
 18 of any hearing in the proceeding shall be given to all  
 19 parties in interest, including the obligee of a releasing  
 20 bond or other like obligation. When an order is entered for  
 21 the recovery of indemnifying property in kind or for the  
 22 avoidance of an indemnifying lien, the court, upon  
 23 application of any party in interest, shall in the same  
 24 proceeding ascertain the value of the property or lien, and  
 25 if the value is less than the amount for which the property

1 is indemnity or less than the amount of the lien, the  
 2 transferee or lienholder may elect to retain the property or  
 3 lien upon payment of its value, as ascertained by the court,  
 4 to the liquidator, within such reasonable times as the court  
 5 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.

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

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

10 (11) (a) Every officer, manager, employee, shareholder,  
 11 member, 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  
 18 was made within 4 months before the date of filing of this  
 19 successful petition for liquidation.

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

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

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,  
 4 assignment, or encumbrance voidable under [this act], shall  
 5 be allowed unless he surrenders the preference, lien,  
 6 conveyance, transfer, assignment, or encumbrance. If the  
 7 avoidance is effected by a proceeding in which a final  
 8 judgment has been entered, the claim may not be allowed  
 9 unless the money is paid or the property is delivered to the  
 10 liquidator within 30 days from the date of the entering of  
 11 the final judgment, except that the court having  
 12 jurisdiction over the liquidation may allow further time if  
 13 there is an appeal or other continuation of the proceeding.  
 14 (2) A claim allowable under subsection (1) by reason  
 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  
 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) 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

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 in 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.

18 Section 31. Assessments. (1) As soon as practicable  
 19 but not more than 2 years from the date of an order of  
 20 liquidation under [section 18] of an insurer issuing  
 21 assessable policies, the liquidator shall make a report to  
 22 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

1 necessary to pay all claims of creditors and expenses in  
2 full, including expenses of administration and costs of  
3 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.

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

1 it appears on the insurer's records at least 20 days before  
2 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.

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  
14 order as the facts warrant. If the commissioner determines  
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

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

4 Section 33. Recovery of premiums owed. (1) (a) An  
5 agent or any other person responsible for the payment of a  
6 premium, other than the insured, shall be obligated to pay  
7 any unpaid premium for the full policy term due the insurer  
8 at the time of the declaration of insolvency, whether earned  
9 or unearned, as shown on the records of the insurer. The  
10 liquidator may recover from such person any part of an  
11 unearned premium that represents commission of such person.  
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  
14 behalf of but in the absence of a payment by the insured.

15 (b) An insured shall pay any unpaid earned premium due  
16 the insurer at the time of the declaration of insolvency, as  
17 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 licenses  
22 of any offending party;

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

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

1 forth in subsection (2), he shall give written notice to the  
2 person, company, association, or exchange accused of  
3 violating the law, stating specifically the nature of the  
4 alleged violation and fixing a time and place, at least 10  
5 days thereafter, when a hearing on the matter shall be held.  
6 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.

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  
24 filing by the liquidator stating the reasons for this  
25 determination.

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;

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  
16 assets, together with income earned on assets previously  
17 disbursed, as may be required to pay claims of secured  
18 creditors and claims falling within the priorities  
19 established in [section 42] in accordance with such  
20 priorities (no bond may be required of any such  
21 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

1 matter as the court may direct.

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

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

1 required notice has been given and provided further that the  
2 liquidator's proposal complies with subsections (2)(a) and  
3 (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;

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

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

1 (3) The liquidator shall permit late filing claims to  
2 share in distributions, whether past or future, as if they  
3 were not late, if such claims are claims of a guaranty  
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  
10 receive distributions which are subsequently declared on any  
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.

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

20 (a) the particulars of the claim including the  
21 consideration 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;

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



1 there is no setoff, counterclaim, or defense to the claim;

2 (e) any right of priority of payment or other specific  
3 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  
21 insured or the insurer entered at any time by default or by  
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

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.

6 Section 37. Special claims. (1) The claim of a third  
7 party which is contingent only on his first obtaining a  
8 judgment against the insured shall be considered and allowed  
9 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  
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

1 against an insured of an insurer in liquidation, the third  
2 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  
11 the court under [section 42], for the allowance of an  
12 insured's claim under subsection (2), after consideration of  
13 the probable outcome of any pending action against the  
14 insured on which the claim is based, the probable damages  
15 recoverable in the action, and the probable costs and  
16 expenses of defense. After allowance by the court, the  
17 liquidator shall withhold any dividends payable on the  
18 claim, pending the outcome of litigation and negotiation  
19 with the insured. Whenever it seems appropriate, he shall  
20 reconsider the claim on the bases of additional information  
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  
2 amount withheld, the same percentage dividend as was paid on  
3 other claims of like property, based on the lesser of the  
4 amount actually recovered from the insured by action or paid  
5 by agreement plus the reasonable costs and expenses of  
6 defense, or the amount allowed on the claims by the court.  
7 After all claims are settled or barred, any sum remaining  
8 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.

12 (4) If several claims founded upon one policy are  
13 filed, whether by third parties or as claims by the insured  
14 under this section and the aggregate allowed amount of the  
15 claims to which the same limit of liability in the policy is  
16 applicable exceeds that limit, each claim as allowed shall  
17 be reduced in the same proportion so that the total equals  
18 the policy limit. Claims by the insured shall be evaluated  
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.

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.

1 Section 39. Disputed claims. (1) When a claim is  
 2 denied in whole or in part by the liquidator, written notice  
 3 of the determination shall be given to the claimant or his  
 4 attorney by first-class mail at the address shown in the  
 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  
 8 further object to the determination.

9 (?) 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  
 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.

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

1 that he discharges the undertaking. However, in the absence  
 2 of an agreement with the creditor to the contrary, the other  
 3 person shall not be entitled to any distribution until the  
 4 amount paid to the creditor on the undertaking plus the  
 5 distributions paid on the claim from the insurer's estate to  
 6 the creditor equals the amount of the entire claim of the  
 7 creditor. Any excess received by the creditor shall be held  
 8 by him in trust for such other person. The term "other  
 9 person", as used in this section, is not intended to apply  
 10 to a guaranty association or foreign guaranty association.

11 Section 41. Secured creditor's claims. (1) The value  
 12 of any security held by a secured creditor shall be  
 13 determined in one of the following ways, as the court may  
 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

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 (1) Class 1--the costs and expenses of administration,  
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 (e) reasonable attorney's fees;

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 \$1,000 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

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

4 (3) Class 3--all claims under policies for losses  
5 incurred, including third-party claims, all claims against  
6 the insurer for liability for bodily injury or for injury to  
7 or destruction of tangible property which are not under  
8 policies, and all claims of a guaranty association or  
9 foreign guaranty association. All claims under life  
10 insurance and annuity policies, whether for death proceeds,  
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  
16 discharge of familial obligations of support or by way of  
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 unearned 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

1 allowed in this class only to the extent of the pecuniary  
 2 loss sustained from the act, transaction, or proceeding out  
 3 of which the penalty or forfeiture arose, with reasonable  
 4 and actual costs occasioned thereby. The remainder of such  
 5 claims shall be postponed to the class of claims under  
 6 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 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  
 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  
 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  
 25 shall present to the court a report of the claims against

1 the insurer with his recommendations. The report shall  
 2 include the name and address of each claimant and the amount  
 3 of the claim finally recommended, if any. If the insurer has  
 4 issued annuities or life insurance policies, the liquidator  
 5 shall report the persons to whom, according to the records  
 6 of the insurer, amounts are owed as cash surrender values or  
 7 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

1 unclaimed funds subject to distribution remaining in the  
 2 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  
 6 state treasurer and shall be paid without interest except in  
 7 accordance with [section 42] to the person entitled thereto  
 8 or his legal representative upon proof satisfactory to the  
 9 state treasurer of his right thereto. Any amount on deposit  
 10 not claimed within 6 years from the discharge of the  
 11 liquidator shall be considered to have been abandoned and  
 12 shall be escheated without formal escheat proceedings and be  
 13 deposited in the general fund.

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

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

1 liquidator shall apply to the court for discharge. The court  
 2 may grant the discharge and make any other orders, including  
 3 an order to transfer any remaining funds that are uneconomic  
 4 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.

10 Section 47. Reopening liquidation. After the  
 11 liquidation proceeding has 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

1 audits to be made of the books of the commissioner relating  
 2 to any receivership established under [this act], and a  
 3 report of each audit shall be filed with the commissioner  
 4 and with the court. The books, records, and other documents  
 5 of the receivership shall be made available to the auditor  
 6 at any time without notice. The expense of each audit shall  
 7 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:

- 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;  
 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.

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  
 7 with the clerk of the district court or the clerk and  
 8 recorder of the county in which the principal business of  
 9 the company is located or the county in which its principal  
 10 office or place of business is located shall impart the same  
 11 notice as a deed, bill of sale, or other evidence of title  
 12 duly filed or recorded with that clerk and recorder would  
 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

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  
4 appointed, the commissioner may apply to the district court  
5 by verified petition for an order directing him to liquidate  
6 the assets found in this state of a foreign insurer or an  
7 alien insurer not domiciled in this state, on any of the  
8 following grounds:

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

10 (b) any of the grounds specified in subsections (1)(b)  
11 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  
17 court may issue an order to liquidate in whatever terms it  
18 considers appropriate. The filing or recording of the order  
19 with the clerk of the district court or the clerk and  
20 recorder of the county in which the principal business of  
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  
24 duly filed or recorded with that clerk and recorder would  
25 have imparted.

1 (4) If a domiciliary liquidator is appointed in a  
2 reciprocal state while a liquidation is proceeding under  
3 this section, the liquidator under this section shall  
4 thereafter act as ancillary receiver under [section 53]. If  
5 a domiciliary liquidator is appointed in a nonreciprocal  
6 state while a liquidation is proceeding under this section,  
7 the liquidator under this section may petition the court for  
8 permission to act as ancillary receiver under [section 53].

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  
12 portion of the insurer's assets and business over which the  
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.

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



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. Otherwise, the date of vesting  
 8 shall be the date of entry of the order directing possession  
 9 to be taken. The domiciliary liquidator has the immediate  
 10 right to recover balances due from agents and to obtain  
 11 possession of the books, accounts, and other records of the  
 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  
 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

1 domiciliary liquidator, as the interests of justice and the  
 2 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.

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 (?) 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

1 in a reciprocal state, then the ancillary receiver appointed  
 2 in this state may, whenever necessary, aid and assist the  
 3 domiciliary liquidator in recovering assets of the insurer  
 4 located in this state. The ancillary receiver shall, as soon  
 5 as practicable, liquidate from their respective securities  
 6 those special deposit claims and secured claims which are  
 7 proved and allowed in the ancillary proceedings in this  
 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  
 14 assets as a liquidator of an insurer domiciled in this  
 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.

3 Section 55. Claims of nonresidents against insurers  
 4 domiciled in this state. (1) In a liquidation proceeding  
 5 begun in this state against an insurer domiciled in this  
 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  
 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  
 22 ancillary proceedings in reciprocal states is conclusive as  
 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

1 under [section 42].

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

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  
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  
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  
24 writing to the ancillary receiver and to the claimant,  
25 either by certified mail or by personal service, of his

1 intention to contest the claim, he shall be entitled to  
2 appear or to be represented in any proceeding in this state  
3 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  
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  
20 residents of reciprocal states shall be given equal priority  
21 of payment from general assets regardless of where such  
22 assets are located.

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

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  
 5 assets, but the sharing shall be deferred until general  
 6 creditors, and also claimants against other special deposits  
 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.

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 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  
 16 against the general assets of the insurer on the same basis  
 17 as claims of unsecured creditors.

18 Section 59. Subordination of claims 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  
 24 receivership, if any, the claims filed in the ancillary  
 25 receivership, other than special deposit claims or secured

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. Repealer. Sections 33-2-901 through  
 10 33-2-948, MCA, are repealed.

-End-

STATE OF MONTANA

REQUEST NO. 12-79

FISCAL NOTE

Form BD-15

In compliance with a written request received January 11, 19 79, there is hereby submitted a Fiscal Note for Senate Bill 80 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

**DESCRIPTION:**

**An act to provide for the supervision, rehabilitation, and liquidation of insurers.**

**FISCAL IMPACT:**

**None. The proposed legislation merely updates the current Supervision, Rehabilitation, and Liquidation Act.**

*Richard L. Drayton*  
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1/15/79

Approved by Committee  
on Business and Industry

SENATE BILL NO. 80

INTRODUCED BY HAZELBAKER, BLAYLOCK

BY REQUEST OF THE STATE COMMISSIONER OF INSURANCE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE  
SUPERVISION, REHABILITATION, AND LIQUIDATION OF INSURERS;  
REPEALING SECTIONS 33-2-901 THROUGH 33-2-948, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title, construction, and purpose. (1)  
[This act] shall be cited as the "Insurers Supervision,  
Rehabilitation, and Liquidation Act".

(2) [This act] may not be interpreted to limit the  
powers granted the commissioner by other provisions of the  
law.

(3) [This act] shall be liberally construed to effect  
the purpose stated in subsection (4).

(4) The purpose of [this act] is the protection of the  
interests of insureds, claimants, creditors, and the public  
generally, with minimum interference with the normal  
prerogatives of the owners and managers of insurers,  
through:

(a) early detection of any potentially dangerous  
condition in an insurer and prompt application of  
appropriate corrective measures;

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

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

(d) equitable apportionment of any unavoidable loss;

(e) lessening the 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  
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.

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

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

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

(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

The changes in SB 80, are on pages 29, 30.  
Please refer to white copy for entire content.

1 liquidation. The filing or recording of the order with the  
 2 clerk of the district court and the clerk and recorder of  
 3 the county in which its principal office or place of  
 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  
 7 sale, or other evidence of title duly filed or recorded with  
 8 that clerk and recorder would have imparted.

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

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  
 8 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  
 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 QE liquidation under [section 16]  
 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

## 1 SENATE BILL NO. 80

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  
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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 law.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;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 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  
11 the scope of personal jurisdiction over debtors of the  
12 insurer outside this state; and13 (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.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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1 instituted against an insurer for the purpose of  
 2 liquidating, rehabilitating, reorganizing, or conserving  
 3 such insurer and any summary proceeding under [section 9 or  
 4 10]. "Formal delinquency proceeding" means any liquidation  
 5 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) "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

1 conveyed or services are rendered or an obligation is  
 2 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  
 18 creditors, in more than a single state, shall be treated as  
 19 general assets.

20 (10) "Guaranty association" means the Montana insurance  
 21 guaranty association, the workers' compensation security  
 22 fund, the Montana 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"

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 authorized  
13 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  
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  
24 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.

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.

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.

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,  
11 absolutely or conditionally, voluntarily, by or without  
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 this  
23 state;

24 (4) all other persons organized or in the process of  
25 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:

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

1 arrangement that may 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  
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.

21 (5) All actions herein authorized shall be brought in  
22 the district court in the county in which the office of the  
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

1 apply for and any court of general jurisdiction may grant  
2 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

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  
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  
9 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  
12 this section includes any person who exercises control  
13 directly or indirectly over activities of an insurer through  
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 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 thereto.

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

1 otherwise existing legal rights, including the right to  
2 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 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  
23 paid for out of the assets of the insurer as a cost of  
24 administration.

25 Section 8. Continuation of delinquency proceedings.

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

8 Section 9. Commissioner's summary orders and  
 9 supervision proceedings. (1) Whenever the commissioner  
 10 determines, after a hearing held under subsection (5), that  
 11 any domestic insurer has committed or engaged in or is about  
 12 to commit or engage in any act, practice, or transaction  
 13 that would subject it to delinquency 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  
 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  
 24 list of the commissioner's requirements to abate his  
 25 determination.

1 (3) If the commissioner makes a determination to  
 2 supervise an insurer subject to an order under subsections  
 3 (1) or (2), he shall notify the insurer that it is under the  
 4 supervision of the commissioner. During the period of  
 5 supervision, the commissioner may appoint a supervisor to  
 6 supervise such insurer. The order appointing a supervisor  
 7 shall direct the supervisor to enforce orders issued under  
 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  
 11 commissioner or the supervisor:

12 (a) dispose of, convey, or encumber any of its assets  
 13 or its business in force;

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 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  
 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

1 may institute proceedings under [section 12 or 17] to have a  
2 rehabilitator or liquidator appointed or extend the period  
3 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  
7 or administrative procedure. The notice of hearing shall  
8 state the time and place of hearing, and the conduct,  
9 condition, or ground upon which the commissioner would base  
10 his order. Unless mutually agreed between the commissioner  
11 and the insurer, the hearing shall occur not less than 10  
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  
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),  
21 but the request for a hearing shall not stay the effect of  
22 the order.

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

1 relief by means of any remedy afforded by law without first  
2 exhausting administrative remedies. Subsequent to a hearing,  
3 any party to the proceedings whose interests are  
4 substantially affected shall be entitled to judicial review  
5 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

1 for the amount of any such reduction or loss. The  
 2 commissioner or supervisor is authorized to bring an action  
 3 on behalf of the insurer in the district court to recover  
 4 the amount of the reduction or loss together with any costs.

5 Section 10. Court's seizure order. (1) The  
 6 commissioner may file in a district court of this state a  
 7 petition alleging, with respect to a domestic insurer:

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];

11 (b) that the interests of policyholders, creditors, or  
 12 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  
 20 and of the premises occupied by it for transaction of its  
 21 business and until further order of the court enjoin 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  
 3 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  
 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  
 9 seizure order if the commissioner fails to commence a formal  
 10 proceeding under [this act] after having had a reasonable  
 11 opportunity to do so. An order of the court pursuant to a  
 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 ex parte 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



1 interest is or will be substantially affected by the order  
 2 did not appear at the hearing and has not been served, the  
 3 court may order that notice be given. An order that notice  
 4 be given shall not stay the effect of any order previously  
 5 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:

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

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 stock ownership  
 15 or otherwise, and whether direct or indirect, is in a person  
 16 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  
 21 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 33-1-40 or

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

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  
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  
14 property or business of any other person.

15 (8) The insurer or its property has been or is the  
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  
22 jurisdiction or might prejudice orderly delinquency  
23 proceedings under [this act].

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

1 its bylaws, any insurance law of this state, or any valid  
2 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  
8 be a ground until 60 days after any good faith effort by the  
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  
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

1 commissioner the rehabilitator and shall direct the  
 2 rehabilitator forthwith to take possession of the assets of  
 3 the insurer and to administer them under the general  
 4 supervision of the court. The filing or recording of the  
 5 order with the clerk of the district court or clerk and  
 6 recorder of the county in which the principal business of  
 7 the company is conducted or the county in which its  
 8 principal office or place of business is located shall  
 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,

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  
 4 shall be fixed by the commissioner, with the approval of the  
 5 court and shall be paid out of the funds or assets of the  
 6 insurer. The persons appointed under this section shall  
 7 serve at the pleasure of the commissioner. If the property  
 8 of the insurer does not contain sufficient cash or liquid  
 9 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  
 13 commissioner for the use of his office out of the first  
 14 available money of the insurer.

15 (2) The rehabilitator may take such action as  
 16 necessary to reform and revitalize the insurer. He shall  
 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

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

4 (4) If the rehabilitator determines that  
5 reorganization, consolidation, conversion, reinsurance,  
6 merger, or other transformation of the insurer is  
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  
10 prescribe, the court may either approve or disapprove the  
11 plan proposed or may modify it and approve it as modified.  
12 Any plan approved under this section must be, in the  
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  
18 first relinquished. A plan for a life insurer may also  
19 propose imposition of a moratorium upon loan and cash  
20 surrender rights under policies, for such period and to such  
21 an extent as may be necessary.

22 (5) The rehabilitator shall have the power under  
23 [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

1 proceeding in which the insurer is a party or is obligated  
2 to defend a party is pending when a rehabilitation order  
3 against the insurer is entered shall stay the action or  
4 proceeding for 90 days and such additional time as is  
5 necessary for the rehabilitator to obtain proper  
6 representation and prepare for further proceedings. The  
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  
11 all litigation pending outside this state and shall petition  
12 the courts having jurisdiction over that litigation for  
13 stays whenever necessary to protect the estate of the  
14 insurer.

15 (2) No statute of limitations or defense of laches  
16 shall run with respect to any action by or against an  
17 insurer between the filing of a petition for appointment of  
18 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  
21 may be commenced for at least 60 days after the order of  
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  
25 has standing to appear in any court proceeding concerning

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 of rehabilitation. (1)  
5 Whenever the commissioner believes further attempts to  
6 rehabilitate an insurer would substantially increase the  
7 risk of loss to creditors, policyholders, or the public or  
8 would be futile, the commissioner may petition the district  
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  
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  
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

1 its property and the control of the business. The district  
2 court may also make that finding and issue that order at any  
3 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.

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  
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  
24 books and records of the insurer ordered liquidated,  
25 wherever located, as of the entry of the final order of

1 liquidation. The filing or recording of the order with the  
 2 clerk of the district court and the clerk and recorder of  
 3 the county in which its principal office or place of  
 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  
 7 sale, or other evidence of title duly filed or recorded with  
 8 that clerk and recorder would have imparted.

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

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  
 8 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  
 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 of OE 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

1 or any period or coverage of such policies not covered by a  
2 guaranty association or foreign guaranty association shall  
3 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  
8 for a liquidation order. The court shall order dissolution  
9 of the corporation upon petition by the commissioner upon or  
10 after the granting of a liquidation order. If the  
11 dissolution has not previously been ordered, it shall be  
12 effected by operation of law upon the discharge of the  
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 may:

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.

23 (b) employ agents, legal counsel, actuaries,  
24 accountants, appraisers, consultants, and other personnel  
25 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  
5 and defray from the funds or assets of the insurer all  
6 expenses of taking possession of, conserving, conducting,  
7 liquidating, disposing of, or otherwise dealing with the  
8 business and property of the insurer. If the property of the  
9 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 c  
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;

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

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;

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.  
21 He shall also have power to execute, acknowledge, and  
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.

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 (l) 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  
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;

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



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;

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  
15 guaranty association or foreign guaranty association has an  
16 obligation to defend any suit, the liquidator shall give  
17 precedence to such obligation and may defend only in the  
18 absence of a defense by such guaranty associations.

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 instituted  
25 that 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:

21 (a) by first-class mail and either by telegram or  
22 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

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.

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

1 receives notice in the form prescribed in [section 22] that  
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  
5 first-class mail to the last address contained in the  
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  
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  
21 contract to him. Each agent obligated to give notice under  
22 this section shall file a report of compliance with the  
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

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  
6 policyholders of the insurer under liquidation is adequate.

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  
10 state, no action at law or equity may be brought against the  
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  
16 existing actions against the liquidator or the company when  
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  
24 at the expense of the estate of the insurer.

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

1 liquidation, within 2 years or such time in addition to 2  
2 years as applicable law may permit, institute an action or  
3 proceeding on behalf of the estate of the insurer upon any  
4 cause of action against which the period of limitation fixed  
5 by applicable law has not expired at the time of the filing  
6 of the petition upon which such order is entered. When, by  
7 any agreement, a period of limitation is fixed for  
8 instituting a suit or proceeding upon any claim or for  
9 filing any claim, proof of claim, proof of loss, demand,  
10 notice, or the like or when in any proceeding, judicial or  
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  
14 any such case the period had not expired at the date of the  
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  
19 liquidation, or within such further period as is shown to  
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

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 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  
10 as practicable after the liquidation order but not later  
11 than 120 days thereafter, the liquidator shall prepare in  
12 duplicate a list of the insurer's assets. The list shall be  
13 amended or supplemented from time to time as the liquidator  
14 may determine. One copy shall be filed in the office of the  
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

1 incurred by an insurer within 1 year prior to the filing of  
2 a successful petition for rehabilitation or liquidation  
3 under [this act] is fraudulent as to then existing and  
4 future creditors if made or incurred without fair  
5 consideration or with actual intent to hinder, delay, or  
6 defraud either existing or future creditors. A transfer  
7 made or an obligation incurred by an insurer ordered to be  
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  
11 purchaser, lienor, or obligee for a present fair equivalent  
12 value, and except that any purchaser, lienor, or obligee,  
13 who in good faith has given a consideration less than fair  
14 for such transfer, lien, or obligation, may retain the  
15 property, lien, or obligation as security for repayment. The  
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.

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)].

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 be 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.

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  
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.

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

1 faith is valid against the receiver if made for a present  
 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  
 7 property of the insurer may, if acting in good faith, pay  
 8 the indebtedness or deliver the property, or any part  
 9 thereof, to the insurer or upon his order, with the same  
 10 effect as if the petition were not pending;

11 (c) a person having actual knowledge of the pending  
 12 rehabilitation or liquidation is considered not acting in  
 13 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 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

1 insurer within 1 year before the filing of a successful  
 2 petition for liquidation under [this act], the effect of  
 3 which transfer may be to enable the creditor to obtain a  
 4 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  
 8 if made or suffered within 1 year before the filing of the  
 9 successful petition for rehabilitation or within 2 years  
 10 before the filing of the successful petition for  
 11 liquidation, whichever time is shorter.

12 (b) Any preference may be avoided by the liquidator  
 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

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  
11 given less than fair equivalent value, he shall have a lien  
12 upon the property to the extent of the consideration  
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.

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

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.

8 (e) The provisions of this subsection apply whether or  
9 not there are or were creditors who might have obtained  
10 liens or persons who might have become bona fide purchasers.

11 (3) (a) A lien obtainable by legal or equitable  
12 proceedings upon a simple contract is one arising in the  
13 ordinary course of such proceedings upon the entry or  
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.

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

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  
 4 superior and such a purchase could not create superior  
 5 rights for the purpose of subsection (2) through any acts  
 6 subsequent to the obtaining of such a lien or subsequent to  
 7 such a purchase which require the agreement or concurrence  
 8 of any third party or which require any further judicial  
 9 action or ruling.

10 (4) A transfer of property for or on account of a new  
 11 and contemporaneous consideration which is considered under  
 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  
 15 required by the applicable law to be performed in order to  
 16 perfect the transfer as against liens or bona fide  
 17 purchasers' rights are performed within 21 days or any  
 18 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

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

6 (6) The property affected by any lien considered  
 7 voidable under subsections (1) and (5) shall be discharged  
 8 from such liens and that property and any of the  
 9 indemnifying property transferred to or for the benefit of a  
 10 surety shall pass to the liquidator, except that the court  
 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  
 18 of any hearing in the proceeding shall be given to all  
 19 parties in interest, including the obligee of a releasing  
 20 bond or other like obligation. When an order is entered for  
 21 the recovery of indemnifying property in kind or for the  
 22 avoidance of an indemnifying lien, the court, upon  
 23 application of any party in interest, shall in the same  
 24 proceeding ascertain the value of the property or lien, and  
 25 if the value is less than the amount for which the property



1 is indemnity or less than the amount of the lien, the  
2 transferee or lienholder may elect to retain the property or  
3 lien upon payment of its value, as ascertained by the court,  
4 to the liquidator, within such reasonable times as the court  
5 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.

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

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

10 (11) (a) Every officer, manager, employee, shareholder,  
11 member, 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  
18 was made within 4 months before the date of filing of the  
19 successful petition for liquidation.

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

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

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,  
 4 assignment, or encumbrance voidable under [this act], shall  
 5 be allowed unless he surrenders the preference, lien,  
 6 conveyance, transfer, assignment, or encumbrance. If the  
 7 avoidance is effected by a proceeding in which a final  
 8 judgment has been entered, the claim may not be allowed  
 9 unless the money is paid or the property is delivered to the  
 10 liquidator within 30 days from the date of the entering of  
 11 the final judgment, except that the court having  
 12 jurisdiction over the liquidation may allow further time if  
 13 there is an appeal or other continuation of the proceeding.

14 (2) A claim allowable under subsection (1) by reason  
 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  
 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) 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

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 in 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.

18 Section 31. Assessments. (1) As soon as practicable  
 19 out not more than 2 years from the date of an order of  
 20 liquidation under [section 18] of an insurer issuing  
 21 assessable policies, the liquidator shall make a report to  
 22 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

1 necessary to pay all claims of creditors and expenses in  
2 full, including expenses of administration and costs of  
3 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.

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

1 it appears on the insurer's records at least 20 days before  
2 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.

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  
14 order as the facts warrant. If the commissioner determines  
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

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

4 Section 33. Recovery of premiums owed. (1) (a) An  
5 agent or any other person responsible for the payment of a  
6 premium, other than the insured, shall be obligated to pay  
7 any unpaid premium for the full policy term due the insurer  
8 at the time of the declaration of insolvency, whether earned  
9 or unearned, as shown on the records of the insurer. The  
10 liquidator may recover from such person any part of an  
11 unearned premium that represents commission of such person.  
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  
14 behalf of but in the absence of a payment by the insured.

15 (b) An insured shall pay any unpaid earned premium due  
16 the insurer at the time of the declaration of insolvency, as  
17 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 licenses  
22 of any offending party;

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

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

1 forth in subsection (2), he shall give written notice to the  
2 person, company, association, or exchange accused of  
3 violating the law, stating specifically the nature of the  
4 alleged violation and fixing a time and place, at least 10  
5 days thereafter, when a hearing on the matter shall be held.  
6 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.

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  
24 filing by the liquidator stating the reasons for this  
25 determination.

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;

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  
16 assets, together with income earned on assets previously  
17 disbursed, as may be required to pay claims of secured  
18 creditors and claims falling within the priorities  
19 established in [section 42] in accordance with such  
20 priorities (no bond may be required of any such  
21 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

1 matter as the court may direct.

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

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

1 required notice has been given and provided further that the  
2 liquidator's proposal complies with subsections (2)(a) and  
3 (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;

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

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

1 (3) The liquidator shall permit late filing claims to  
2 share in distributions, whether past or future, as if they  
3 were not late, if such claims are claims of a guaranty  
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  
10 receive distributions which are subsequently declared on any  
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.

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

20 (a) the particulars of the claim including the  
21 consideration 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;

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

1 there is no setoff, counterclaim, or defense to the claim;

2 (e) any right of priority of payment or other specific  
3 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  
21 insured or the insurer entered at any time by default or by  
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

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.

6 Section 37. Special claims. (1) The claim of a third  
7 party which is contingent only on his first obtaining a  
8 judgment against the insured shall be considered and allowed  
9 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  
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

1 against an insured of an insurer in liquidation, the third  
2 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  
11 the court under [section 42], for the allowance of an  
12 insured's claim under subsection (2), after consideration of  
13 the probable outcome of any pending action against the  
14 insured on which the claim is based, the probable damages  
15 recoverable in the action, and the probable costs and  
16 expenses of defense. After allowance by the court, the  
17 liquidator shall withhold any dividends payable on the  
18 claim, pending the outcome of litigation and negotiation  
19 with the insured. Whenever it seems appropriate, he shall  
20 reconsider the claim on the bases of additional information  
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  
2 amount withheld, the same percentage dividend as was paid on  
3 other claims of like property, based on the lesser of the  
4 amount actually recovered from the insured by action or paid  
5 by agreement plus the reasonable costs and expenses of  
6 defense, or the amount allowed on the claims by the court.  
7 After all claims are settled or barred, any sum remaining  
8 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.

12 (4) If several claims founded upon one policy are  
13 filed, whether by third parties or as claims by the insured  
14 under this section and the aggregate allowed amount of the  
15 claims to which the same limit of liability in the policy is  
16 applicable exceeds that limit, each claim as allowed shall  
17 be reduced in the same proportion so that the total equals  
18 the policy limit. Claims by the insured shall be evaluated  
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.

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.



1 Section 39. Disputed claims. (1) When a claim is  
 2 denied in whole or in part by the liquidator, written notice  
 3 of the determination shall be given to the claimant or his  
 4 attorney by first-class mail at the address shown in the  
 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  
 8 further object to the determination.

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  
 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.

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

1 that he discharges the undertaking. However, in the absence  
 2 of an agreement with the creditor to the contrary, the other  
 3 person shall not be entitled to any distribution until the  
 4 amount paid to the creditor on the undertaking plus the  
 5 distributions paid on the claim from the insurer's estate to  
 6 the creditor equals the amount of the entire claim of the  
 7 creditor. Any excess received by the creditor shall be held  
 8 by him in trust for such other person. The term "other  
 9 person", as used in this section, is not intended to apply  
 10 to a guaranty association or foreign guaranty association.

11 Section 41. Secured creditor's claims. (1) The value  
 12 of any security held by a secured creditor shall be  
 13 determined in one of the following ways, as the court may  
 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

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 (1) Class 1--the costs and expenses of administration,  
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 (e) reasonable attorney's fees;

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 \$1,000 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

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

4 (3) Class 3--all claims under policies for losses  
5 incurred, including third-party claims, all claims against  
6 the insurer for liability for bodily injury or for injury to  
7 or destruction of tangible property which are not under  
8 policies, and all claims of a guaranty association or  
9 foreign guaranty association. All claims under life  
10 insurance and annuity policies, whether for death proceeds,  
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  
16 discharge of familial obligations of support or by way of  
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 unearned 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

1 allowed in this class only to the extent of the pecuniary  
 2 loss sustained from the act, transaction, or proceeding out  
 3 of which the penalty or forfeiture arose, with reasonable  
 4 and actual costs occasioned thereby. The remainder of such  
 5 claims shall be postponed to the class of claims under  
 6 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 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  
 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  
 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  
 25 shall present to the court a report of the claims against

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

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

1 unclaimed funds subject to distribution remaining in the  
 2 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  
 6 state treasurer and shall be paid without interest except in  
 7 accordance with [section 42] to the person entitled thereto  
 8 or his legal representative upon proof satisfactory to the  
 9 state treasurer of his right thereto. Any amount on deposit  
 10 not claimed within 6 years from the discharge of the  
 11 liquidator shall be considered to have been abandoned and  
 12 shall be escheated without formal escheat proceedings and be  
 13 deposited in the general fund.

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

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

1 liquidator shall apply to the court for discharge. The court  
 2 may grant the discharge and make any other orders, including  
 3 an order to transfer any remaining funds that are uneconomic  
 4 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.

10 Section 47. Reopening liquidation. After the  
 11 liquidation proceeding has 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

1 audits to be made of the books of the commissioner relating  
 2 to any receivership established under [this act], and a  
 3 report of each audit shall be filed with the commissioner  
 4 and with the court. The books, records, and other documents  
 5 of the receivership shall be made available to the auditor  
 6 at any time without notice. The expense of each audit shall  
 7 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:

- 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;  
 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.

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  
 7 with the clerk of the district court or the clerk and  
 8 recorder of the county in which the principal business of  
 9 the company is located or the county in which its principal  
 10 office or place of business is located shall impart the same  
 11 notice as a deed, bill of sale, or other evidence of title  
 12 duly filed or recorded with that clerk and recorder would  
 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

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  
4 appointed, the commissioner may apply to the district court  
5 by verified petition for an order directing him to liquidate  
6 the assets found in this state of a foreign insurer or an  
7 alien insurer not domiciled in this state, on any of the  
8 following grounds:

- 9 (a) any of the grounds in [section 12 or 17]; or  
10 (b) any of the grounds specified in subsections (1)(b)  
11 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  
17 court may issue an order to liquidate in whatever terms it  
18 considers appropriate. The filing or recording of the order  
19 with the clerk of the district court or the clerk and  
20 recorder of the county in which the principal business of  
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  
24 duly filed or recorded with that clerk and recorder would  
25 have imparted.

1 (4) If a domiciliary liquidator is appointed in a  
2 reciprocal state while a liquidation is proceeding under  
3 this section, the liquidator under this section shall  
4 thereafter act as ancillary receiver under [section 53]. If  
5 a domiciliary liquidator is appointed in a nonreciprocal  
6 state while a liquidation is proceeding under this section,  
7 the liquidator under this section may petition the court for  
8 permission to act as ancillary receiver under [section 53].

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  
12 portion of the insurer's assets and business over which the  
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.

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

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. Otherwise, the date of vesting  
 8 shall be the date of entry of the order directing possession  
 9 to be taken. The domiciliary liquidator has the immediate  
 10 right to recover balances due from agents and to obtain  
 11 possession of the books, accounts, and other records of the  
 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  
 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

1 domiciliary liquidator, as the interests of justice and the  
 2 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.

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

1 in a reciprocal state, then the ancillary receiver appointed  
 2 in this state may, whenever necessary, aid and assist the  
 3 domiciliary liquidator in recovering assets of the insurer  
 4 located in this state. The ancillary receiver shall, as soon  
 5 as practicable, liquidate from their respective securities  
 6 those special deposit claims and secured claims which are  
 7 proved and allowed in the ancillary proceedings in this  
 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  
 14 assets as a liquidator of an insurer domiciled in this  
 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.

3 Section 55. Claims of nonresidents against insurers  
 4 domiciled in this state. (1) In a liquidation proceeding  
 5 begun in this state against an insurer domiciled in this  
 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  
 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  
 22 ancillary proceedings in reciprocal states is conclusive as  
 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



1 under [section 42].

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

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  
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  
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  
24 writing to the ancillary receiver and to the claimant,  
25 either by certified mail or by personal service, of his

1 intention to contest the claim, he shall be entitled to  
2 appear or to be represented in any proceeding in this state  
3 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  
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  
20 residents of reciprocal states shall be given equal priority  
21 of payment from general assets regardless of where such  
22 assets are located.

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

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  
 5 assets, but the sharing shall be deferred until general  
 6 creditors, and also claimants against other special deposits  
 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.

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 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  
 16 against the general assets of the insurer on the same basis  
 17 as claims of unsecured creditors.

18 Section 59. Subordination of claims 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  
 24 receivership, if any, the claims filed in the ancillary  
 25 receivership, other than special deposit claims or secured

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. Repealer. Sections 33-2-901 through  
 10 33-2-948, MCA, are repealed.

-End-

## 1 SENATE BILL NO. 80

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  
6 SUPERVISION, REHABILITATION, AND LIQUIDATION OF INSURERS;  
7 REPEALING SECTIONS 33-2-901 THROUGH 33-2-948, MCA."

8  
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 law.

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;

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 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  
11 the scope of personal jurisdiction over debtors of the  
12 insurer outside this state; and

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.

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

-2- REFERENCE BILL SB 80

Please refer to *blue* copy for complete text.

1 instituted against an insurer for the purpose of  
 2 liquidating, rehabilitating, reorganizing, or conserving  
 3 such insurer and any summary proceeding under [section 9 or  
 4 10]. "Formal delinquency proceeding" means any liquidation  
 5 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) "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

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

3 (b) when such property or 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  
 18 creditors, in more than a single state, shall be treated as  
 19 general assets.

20 (10) "Guaranty association" means the Montana insurance  
 21 guaranty association, the workers' compensation security  
 22 fund, the Montana 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"

SENATE BILL NO. 80

INTRODUCED BY HAZELBAKER, BLAYLOCK

BY REQUEST OF THE STATE COMMISSIONER OF INSURANCE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE SUPERVISION, REHABILITATION, AND LIQUIDATION OF INSURERS; REPEALING SECTIONS 33-2-901 THROUGH 33-2-94B, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title, construction, and purpose. (1) [This act] shall be cited as the "Insurers Supervision, Rehabilitation, and Liquidation Act".

(2) [This act] may not be interpreted to limit the powers granted the commissioner by other provisions of the law.

(3) [This act] shall be liberally construed to effect the purpose stated in subsection (4).

(4) The purpose of [this act] is the protection of the interests of insureds, claimants, creditors, and the public generally, with minimum interference with the normal prerogatives of the owners and managers of insurers, through:

(a) early detection of any potentially dangerous condition in an insurer and prompt application of appropriate corrective measures;

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

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

(d) equitable apportionment of any unavoidable loss;

(e) lessening the 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 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.

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

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

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

(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

1 instituted against an insurer for the purpose of  
 2 liquidating, rehabilitating, reorganizing, or conserving  
 3 such insurer and any summary proceeding under [section 9 or  
 4 10]. "Formal delinquency proceeding" means any liquidation  
 5 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) "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

1 conveyed or services are rendered or an obligation is  
 2 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  
 18 creditors, in more than a single state, shall be treated as  
 19 general assets.

20 (10) "Guaranty association" means the Montana insurance  
 21 guaranty association, the workers' compensation security  
 22 fund, the Montana 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"

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 authorized  
13 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  
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  
24 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.

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.

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.

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,  
 11 absolutely or conditionally, voluntarily, by or without  
 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 this  
 23 state;

24 (4) all other persons organized or in the process of  
 25 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:

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



1 arrangement that may 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  
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.

21 (5) All actions herein authorized shall be brought in  
22 the district court in the county in which the office of the  
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

1 apply for and any court of general jurisdiction may grant  
2 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

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  
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  
9 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  
12 this section includes any person who exercises control  
13 directly or indirectly over activities of an insurer through  
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 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 thereto.

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

1 otherwise existing legal rights, including the right to  
2 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 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  
23 paid for out of the assets of the insurer as a cost of  
24 administration.

25 Section 8. Continuation of delinquency proceedings.

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

8 Section 9. Commissioner's summary orders and  
 9 supervision proceedings. (1) Whenever the commissioner  
 10 determines, after a hearing held under subsection (5), that  
 11 any domestic insurer has committed or engaged in or is about  
 12 to commit or engage in any act, practice, or transaction  
 13 that would subject it to delinquency 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  
 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  
 24 list of the commissioner's requirements to abate his  
 25 determination.

1 (3) If the commissioner makes a determination to  
 2 supervise an insurer subject to an order under subsections  
 3 (1) or (2), he shall notify the insurer that it is under the  
 4 supervision of the commissioner. During the period of  
 5 supervision, the commissioner may appoint a supervisor to  
 6 supervise such insurer. The order appointing a supervisor  
 7 shall direct the supervisor to enforce orders issued under  
 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  
 11 commissioner or the supervisor:

12 (a) dispose of, convey, or encumber any of its assets  
 13 or its business in force;

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 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  
 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

1 may institute proceedings under [section 12 or 17] to have a  
2 rehabilitator or liquidator appointed or extend the period  
3 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  
7 or administrative procedure. The notice of hearing shall  
8 state the time and place of hearing, and the conduct,  
9 condition, or ground upon which the commissioner would base  
10 his order. Unless mutually agreed between the commissioner  
11 and the insurer, the hearing shall occur not less than 10  
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  
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),  
21 but the request for a hearing shall not stay the effect of  
22 the order.

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

1 relief by means of any remedy afforded by law without first  
2 exhausting administrative remedies. Subsequent to a hearing,  
3 any party to the proceedings whose interests are  
4 substantially affected shall be entitled to judicial review  
5 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

1 for the amount of any such reduction or loss. The  
 2 commissioner or supervisor is authorized to bring an action  
 3 on behalf of the insurer in the district court to recover  
 4 the amount of the reduction or loss together with any costs.

5 Section 10. Court's seizure order. (1) The  
 6 commissioner may file in a district court of this state a  
 7 petition alleging, with respect to a domestic insurer:

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];

11 (b) that the interests of policyholders, creditors, or  
 12 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  
 20 and of the premises occupied by it for transaction of its  
 21 business and until further order of the court enjoin 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  
 3 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  
 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  
 9 seizure order if the commissioner fails to commence a formal  
 10 proceeding under [this act] after having had a reasonable  
 11 opportunity to do so. An order of the court pursuant to a  
 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 ex parte 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 (b) If, at any time after the issuance of such an  
 25 order, it appears to the court that any person whose

1 interest is or will be substantially affected by the order  
 2 did not appear at the hearing and has not been served, the  
 3 court may order that notice be given. An order that notice  
 4 be given shall not stay the effect of any order previously  
 5 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:

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

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 stock ownership  
 15 or otherwise, and whether direct or indirect, is in a person  
 16 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  
 21 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

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

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  
 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  
 14 property or business of any other person.

15 (8) The insurer or its property has been or is the  
 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  
 22 jurisdiction or might prejudice orderly delinquency  
 23 proceedings under [this act].

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

1 its bylaws, any insurance law of this state, or any valid  
 2 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  
 8 be a ground until 60 days after any good faith effort by the  
 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  
 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

1 commissioner the rehabilitator and shall direct the  
 2 rehabilitator forthwith to take possession of the assets of  
 3 the insurer and to administer them under the general  
 4 supervision of the court. The filing or recording of the  
 5 order with the clerk of the district court or clerk and  
 6 recorder of the county in which the principal business of  
 7 the company is conducted or the county in which its  
 8 principal office or place of business is located shall  
 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,

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  
 4 shall be fixed by the commissioner, with the approval of the  
 5 court and shall be paid out of the funds or assets of the  
 6 insurer. The persons appointed under this section shall  
 7 serve at the pleasure of the commissioner. If the property  
 8 of the insurer does not contain sufficient cash or liquid  
 9 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  
 13 commissioner for the use of his office out of the first  
 14 available money of the insurer.

15 (2) The rehabilitator may take such action as  
 16 necessary to reform and revitalize the insurer. He shall  
 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



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

4 (4) If the rehabilitator determines that  
 5 reorganization, consolidation, conversion, reinsurance,  
 6 merger, or other transformation of the insurer is  
 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  
 10 prescribe, the court may either approve or disapprove the  
 11 plan proposed or may modify it and approve it as modified.  
 12 Any plan approved under this section must be, in the  
 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  
 18 first relinquished. A plan for a life insurer may also  
 19 propose imposition of a moratorium upon loan and cash  
 20 surrender rights under policies, for such period and to such  
 21 an extent as may be necessary.

22 (5) The rehabilitator shall have the power under  
 23 [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

1 proceeding in which the insurer is a party or is obligated  
 2 to defend a party is pending when a rehabilitation order  
 3 against the insurer is entered shall stay the action or  
 4 proceeding for 90 days and such additional time as is  
 5 necessary for the rehabilitator to obtain proper  
 6 representation and prepare for further proceedings. The  
 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  
 11 all litigation pending outside this state and shall petition  
 12 the courts having jurisdiction over that litigation for  
 13 stays whenever necessary to protect the estate of the  
 14 insurer.

15 (2) No statute of limitations or defense of laches  
 16 shall run with respect to any action by or against an  
 17 insurer between the filing of a petition for appointment of  
 18 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  
 21 may be commenced for at least 60 days after the order of  
 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  
 25 has standing to appear in any court proceeding concerning

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 of rehabilitation. (1)  
5 Whenever the commissioner believes further attempts to  
6 rehabilitate an insurer would substantially increase the  
7 risk of loss to creditors, policyholders, or the public or  
8 would be futile, the commissioner may petition the district  
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  
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  
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

1 its property and the control of the business. The district  
2 court may also make that finding and issue that order at any  
3 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.

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  
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  
24 books and records of the insurer ordered liquidated,  
25 wherever located, as of the entry of the final order of

1 liquidation. The filing or recording of the order with the  
 2 clerk of the district court and the clerk and recorder of  
 3 the county in which its principal office or place of  
 4 business of LS 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  
 7 sale, or other evidence of title duly filed or recorded with  
 8 that clerk and recorder would have imparted.

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

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  
 8 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  
 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 QE 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

1 or any period or coverage of such policies not covered by a  
 2 guaranty association or foreign guaranty association shall  
 3 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  
 8 for a liquidation order. The court shall order dissolution  
 9 of the corporation upon petition by the commissioner upon or  
 10 after the granting of a liquidation order. If the  
 11 dissolution has not previously been ordered, it shall be  
 12 effected by operation of law upon the discharge of the  
 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 may:

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.

23 (b) employ agents, legal counsel, actuaries,  
 24 accountants, appraisers, consultants, and other personnel  
 25 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  
 5 and defray from the funds or assets of the insurer all  
 6 expenses of taking possession of, conserving, conducting,  
 7 liquidating, disposing of, or otherwise dealing with the  
 8 business and property of the insurer. If the property of the  
 9 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;

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

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;

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.  
21 He shall also have power to execute, acknowledge, and  
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.

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 (l) 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  
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;

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

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;

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

15 guaranty association or foreign guaranty association has an

16 obligation to defend any suit, the liquidator shall give

17 precedence to such obligation and may defend only in the

18 absence of a defense by such guaranty associations.

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 instituted

25 that 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:

21 (a) by first-class mail and either by telegram or

22 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

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.

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

1 receives notice in the form prescribed in [section 22] that  
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  
5 first-class mail to the last address contained in the  
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  
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  
21 contract to him. Each agent obligated to give notice under  
22 this section shall file a report of compliance with the  
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

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  
 6 policyholders of the insurer under liquidation is adequate.

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  
 10 state, no action at law or equity may be brought against the  
 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  
 16 existing actions against the liquidator or the company when  
 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  
 24 at the expense of the estate of the insurer.

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

1 liquidation, within 2 years or such time in addition to 2  
 2 years as applicable law may permit, institute an action or  
 3 proceeding on behalf of the estate of the insurer upon any  
 4 cause of action against which the period of limitation fixed  
 5 by applicable law has not expired at the time of the filing  
 6 of the petition upon which such order is entered. When, by  
 7 any agreement, a period of limitation is fixed for  
 8 instituting a suit or proceeding upon any claim or for  
 9 filing any claim, proof of claim, proof of loss, demand,  
 10 notice, or the like or when in any proceeding, judicial or  
 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  
 14 any such case the period had not expired at the date of the  
 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  
 19 liquidation, or within such further period as is shown to  
 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



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 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  
10 as practicable after the liquidation order but not later  
11 than 120 days thereafter, the liquidator shall prepare in  
12 duplicate a list of the insurer's assets. The list shall be  
13 amended or supplemented from time to time as the liquidator  
14 may determine. One copy shall be filed in the office of the  
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

1 incurred by an insurer within 1 year prior to the filing of  
2 a successful petition for rehabilitation or liquidation  
3 under [this act] is fraudulent as to then existing and  
4 future creditors if made or incurred without fair  
5 consideration or with actual intent to hinder, delay, or  
6 defraud either existing or future creditors. A transfer  
7 made or an obligation incurred by an insurer ordered to be  
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  
11 purchaser, lienor, or obligee for a present fair equivalent  
12 value, and except that any purchaser, lienor, or obligee,  
13 who in good faith has given a consideration less than fair  
14 for such transfer, lien, or obligation, may retain the  
15 property, lien, or obligation as security for repayment. The  
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.

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)].

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 be 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.

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  
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.

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

1 faith is valid against the receiver if made for a present  
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  
7 property of the insurer may, if acting in good faith, pay  
8 the indebtedness or deliver the property, or any part  
9 thereof, to the insurer or upon his order, with the same  
10 effect as if the petition were not pending;

11 (c) a person having actual knowledge of the pending  
12 rehabilitation or liquidation is considered not acting in  
13 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 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

1 insurer within 1 year before the filing of a successful  
2 petition for liquidation under [this act], the effect of  
3 which transfer may be to enable the creditor to obtain a  
4 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  
8 if made or suffered within 1 year before the filing of the  
9 successful petition for rehabilitation or within 2 years  
10 before the filing of the successful petition for  
11 liquidation, whichever time is shorter.

12 (b) Any preference may be avoided by the liquidator  
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

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  
 11 given less than fair equivalent value, he shall have a lien  
 12 upon the property to the extent of the consideration  
 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.

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

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.

8 (e) The provisions of this subsection apply whether or  
 9 not there are or were creditors who might have obtained  
 10 liens or persons who might have become bona fide purchasers.

11 (3) (a) A lien obtainable by legal or equitable  
 12 proceedings upon a simple contract is one arising in the  
 13 ordinary course of such proceedings upon the entry or  
 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.

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

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  
 4 superior and such a purchase could not create superior  
 5 rights for the purpose of subsection (2) through any acts  
 6 subsequent to the obtaining of such a lien or subsequent to  
 7 such a purchase which require the agreement or concurrence  
 8 of any third party or which require any further judicial  
 9 action or ruling.

10 (4) A transfer of property for or on account of a new  
 11 and contemporaneous consideration which is considered under  
 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  
 15 required by the applicable law to be performed in order to  
 16 perfect the transfer as against liens or bona fide  
 17 purchasers' rights are performed within 21 days or any  
 18 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

1 directly or indirectly by the transfer of or the creation of  
 2 a lien upon any property of an insurer before the filing of  
 3 a petition under [this act] which results in a liquidation  
 4 order, the indemnifying transfer or lien shall also be  
 5 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  
 9 indemnifying property transferred to or for the benefit of a  
 10 surety shall pass to the liquidator, except that the court  
 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  
 18 of any hearing in the proceeding shall be given to all  
 19 parties in interest, including the obligee of a releasing  
 20 bond or other like obligation. When an order is entered for  
 21 the recovery of indemnifying property in kind or for the  
 22 avoidance of an indemnifying lien, the court, upon  
 23 application of any party in interest, shall in the same  
 24 proceeding ascertain the value of the property or lien, and  
 25 if the value is less than the amount for which the property

1 is indemnity or less than the amount of the lien, the  
 2 transferee or lienholder may elect to retain the property or  
 3 lien upon payment of its value, as ascertained by the court,  
 4 to the liquidator, within such reasonable times as the court  
 5 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.

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

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

10 (11) (a) Every officer, manager, employee, shareholder,  
 11 member, 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  
 18 was made within 4 months before the date of filing of this  
 19 successful petition for liquidation.

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

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

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,  
 4 assignment, or encumbrance voidable under [this act], shall  
 5 be allowed unless he surrenders the preference, lien,  
 6 conveyance, transfer, assignment, or encumbrance. If the  
 7 avoidance is effected by a proceeding in which a final  
 8 judgment has been entered, the claim may not be allowed  
 9 unless the money is paid or the property is delivered to the  
 10 liquidator within 30 days from the date of the entering of  
 11 the final judgment, except that the court having  
 12 jurisdiction over the liquidation may allow further time if  
 13 there is an appeal or other continuation of the proceeding.

14 (2) A claim allowable under subsection (1) by reason  
 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  
 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) 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

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 in 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.

18 Section 31. Assessments. (1) As soon as practicable  
 19 but not more than 2 years from the date of an order of  
 20 liquidation under [section 18] of an insurer issuing  
 21 assessable policies, the liquidator shall make a report to  
 22 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

1 necessary to pay all claims of creditors and expenses in  
2 full, including expenses of administration and costs of  
3 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.

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

1 it appears on the insurer's records at least 20 days before  
2 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.

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  
14 order as the facts warrant. If the commissioner determines  
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



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

4 Section 33. Recovery of premiums owed. (1) (a) An  
5 agent or any other person responsible for the payment of a  
6 premium, other than the insured, shall be obligated to pay  
7 any unpaid premium for the full policy term due the insurer  
8 at the time of the declaration of insolvency, whether earned  
9 or unearned, as shown on the records of the insurer. The  
10 liquidator may recover from such person any part of an  
11 unearned premium that represents commission of such person.  
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  
14 behalf of but in the absence of a payment by the insured.

15 (b) An insured shall pay any unpaid earned premium due  
16 the insurer at the time of the declaration of insolvency, as  
17 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 licenses  
22 of any offending party;

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

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

1 forth in subsection (2), he shall give written notice to the  
2 person, company, association, or exchange accused of  
3 violating the law, stating specifically the nature of the  
4 alleged violation and fixing a time and place, at least 10  
5 days thereafter, when a hearing on the matter shall be held.  
6 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.

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  
24 filing by the liquidator stating the reasons for this  
25 determination.

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;

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  
16 assets, together with income earned on assets previously  
17 disbursed, as may be required to pay claims of secured  
18 creditors and claims falling within the priorities  
19 established in [section 42] in accordance with such  
20 priorities (no bond may be required of any such  
21 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

1 matter as the court may direct.

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

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

1 required notice has been given and provided further that the  
2 liquidator's proposal complies with subsections (2)(a) and  
3 (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;

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

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

1 (3) The liquidator shall permit late filing claims to  
2 share in distributions, whether past or future, as if they  
3 were not late, if such claims are claims of a guaranty  
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  
10 receive distributions which are subsequently declared on any  
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.

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

20 (a) the particulars of the claim including the  
21 consideration 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;

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

1 there is no setoff, counterclaim, or defense to the claim;

2 (e) any right of priority of payment or other specific  
3 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  
21 insured or the insurer entered at any time by default or by  
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

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.

6 Section 37. Special claims. (1) The claim of a third  
7 party which is contingent only on his first obtaining a  
8 judgment against the insured shall be considered and allowed  
9 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  
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

1 against an insured of an insurer in liquidation, the third  
2 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  
11 the court under [section 42], for the allowance of an  
12 insured's claim under subsection (2), after consideration of  
13 the probable outcome of any pending action against the  
14 insured on which the claim is based, the probable damages  
15 recoverable in the action, and the probable costs and  
16 expenses of defense. After allowance by the court, the  
17 liquidator shall withhold any dividends payable on the  
18 claim, pending the outcome of litigation and negotiation  
19 with the insured. Whenever it seems appropriate, he shall  
20 reconsider the claim on the bases of additional information  
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  
2 amount withheld, the same percentage dividend as was paid on  
3 other claims of like property, based on the lesser of the  
4 amount actually recovered from the insured by action or paid  
5 by agreement plus the reasonable costs and expenses of  
6 defense, or the amount allowed on the claims by the court.  
7 After all claims are settled or barred, any sum remaining  
8 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.

12 (4) If several claims founded upon one policy are  
13 filed, whether by third parties or as claims by the insured  
14 under this section and the aggregate allowed amount of the  
15 claims to which the same limit of liability in the policy is  
16 applicable exceeds that limit, each claim as allowed shall  
17 be reduced in the same proportion so that the total equals  
18 the policy limit. Claims by the insured shall be evaluated  
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.

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.

1 Section 39. Disputed claims. (1) When a claim is  
 2 denied in whole or in part by the liquidator, written notice  
 3 of the determination shall be given to the claimant or his  
 4 attorney by first-class mail at the address shown in the  
 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  
 8 further object to the determination.

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  
 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.

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

1 that he discharges the undertaking. However, in the absence  
 2 of an agreement with the creditor to the contrary, the other  
 3 person shall not be entitled to any distribution until the  
 4 amount paid to the creditor on the undertaking plus the  
 5 distributions paid on the claim from the insurer's estate to  
 6 the creditor equals the amount of the entire claim of the  
 7 creditor. Any excess received by the creditor shall be held  
 8 by him in trust for such other person. The term "other  
 9 person", as used in this section, is not intended to apply  
 10 to a guaranty association or foreign guaranty association.

11 Section 41. Secured creditor's claims. (1) The value  
 12 of any security held by a secured creditor shall be  
 13 determined in one of the following ways, as the court may  
 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

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 (1) Class 1--the costs and expenses of administration,  
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 (e) reasonable attorney's fees;

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 \$1,000 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

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

4 (3) Class 3--all claims under policies for losses  
5 incurred, including third-party claims, all claims against  
6 the insurer for liability for bodily injury or for injury to  
7 or destruction of tangible property which are not under  
8 policies, and all claims of a guaranty association or  
9 foreign guaranty association. All claims under life  
10 insurance and annuity policies, whether for death proceeds,  
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  
16 discharge of familial obligations of support or by way of  
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 unearned 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

1 allowed in this class only to the extent of the pecuniary  
 2 loss sustained from the act, transaction, or proceeding out  
 3 of which the penalty or forfeiture arose, with reasonable  
 4 and actual costs occasioned thereby. The remainder of such  
 5 claims shall be postponed to the class of claims under  
 6 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 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  
 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  
 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  
 25 shall present to the court a report of the claims against

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

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



1 unclaimed funds subject to distribution remaining in the  
 2 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  
 6 state treasurer and shall be paid without interest except in  
 7 accordance with [section 42] to the person entitled thereto  
 8 or his legal representative upon proof satisfactory to the  
 9 state treasurer of his right thereto. Any amount on deposit  
 10 not claimed within 6 years from the discharge of the  
 11 liquidator shall be considered to have been abandoned and  
 12 shall be escheated without formal escheat proceedings and be  
 13 deposited in the general fund.

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

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

1 liquidator shall apply to the court for discharge. The court  
 2 may grant the discharge and make any other orders, including  
 3 an order to transfer any remaining funds that are uneconomic  
 4 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.

10 Section 47. Reopening liquidation. After the  
 11 liquidation proceeding has 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

1 audits to be made of the books of the commissioner relating  
 2 to any receivership established under [this act], and a  
 3 report of each audit shall be filed with the commissioner  
 4 and with the court. The books, records, and other documents  
 5 of the receivership shall be made available to the auditor  
 6 at any time without notice. The expense of each audit shall  
 7 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:

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;

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.

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  
 7 with the clerk of the district court or the clerk and  
 8 recorder of the county in which the principal business of  
 9 the company is located or the county in which its principal  
 10 office or place of business is located shall impart the same  
 11 notice as a deed, bill of sale, or other evidence of title  
 12 duly filed or recorded with that clerk and recorder would  
 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

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  
4 appointed, the commissioner may apply to the district court  
5 by verified petition for an order directing him to liquidate  
6 the assets found in this state of a foreign insurer or an  
7 alien insurer not domiciled in this state, on any of the  
8 following grounds:

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

10 (b) any of the grounds specified in subsections (1)(b)  
11 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  
17 court may issue an order to liquidate in whatever terms it  
18 considers appropriate. The filing or recording of the order  
19 with the clerk of the district court or the clerk and  
20 recorder of the county in which the principal business of  
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  
24 duly filed or recorded with that clerk and recorder would  
25 have imparted.

1 (4) If a domiciliary liquidator is appointed in a  
2 reciprocal state while a liquidation is proceeding under  
3 this section, the liquidator under this section shall  
4 thereafter act as ancillary receiver under [section 53]. If  
5 a domiciliary liquidator is appointed in a nonreciprocal  
6 state while a liquidation is proceeding under this section,  
7 the liquidator under this section may petition the court for  
8 permission to act as ancillary receiver under [section 53].

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  
12 portion of the insurer's assets and business over which the  
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.

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

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. Otherwise, the date of vesting  
 8 shall be the date of entry of the order directing possession  
 9 to be taken. The domiciliary liquidator has the immediate  
 10 right to recover balances due from agents and to obtain  
 11 possession of the books, accounts, and other records of the  
 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  
 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

1 domiciliary liquidator, as the interests of justice and the  
 2 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.

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

1 in a reciprocal state, then the ancillary receiver appointed  
 2 in this state may, whenever necessary, aid and assist the  
 3 domiciliary liquidator in recovering assets of the insurer  
 4 located in this state. The ancillary receiver shall, as soon  
 5 as practicable, liquidate from their respective securities  
 6 those special deposit claims and secured claims which are  
 7 proved and allowed in the ancillary proceedings in this  
 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  
 14 assets as a liquidator of an insurer domiciled in this  
 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.

3 Section 55. Claims of nonresidents against insurers  
 4 domiciled in this state. (1) In a liquidation proceeding  
 5 begun in this state against an insurer domiciled in this  
 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  
 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  
 22 ancillary proceedings in reciprocal states is conclusive as  
 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

1 under [section 42].

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

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  
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  
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  
24 writing to the ancillary receiver and to the claimant,  
25 either by certified mail or by personal service, of his

1 intention to contest the claim, he shall be entitled to  
2 appear or to be represented in any proceeding in this state  
3 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  
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  
20 residents of reciprocal states shall be given equal priority  
21 of payment from general assets regardless of where such  
22 assets are located.

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

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  
 5 assets, but the sharing shall be deferred until general  
 6 creditors, and also claimants against other special deposits  
 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.

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 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  
 16 against the general assets of the insurer on the same basis  
 17 as claims of unsecured creditors.

18 Section 59. Subordination of claims 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  
 24 receivership, if any, the claims filed in the ancillary  
 25 receivership, other than special deposit claims or secured

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. Repealer. Sections 33-2-901 through  
 10 33-2-948, MCA, are repealed.

-End-