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SENATE FILE 2286

BY COMMITTEE ON COMMERCE

Approved by 2/27/92

(SUCCESSOR TO SSB 2221)

Passed Senate, Date 3/16/92 (p. 706) Passed House, Date 3/30/92 (p. 217)

Vote: Ayes 47 Nays 0 Vote: Ayes 85 Nays 14

Approved April 22, 1992 (p. 1565)

Repassed Senate 4/6/92 (p. 1239)

Ayes 45, Nays 0

A BILL FOR

1 An Act relating to insurance regulation, including the financial
2 supervision and solvency oversight of insurance companies by
3 the commissioner of insurance and accreditation of the
4 division of insurance as an approved insurance regulator by
5 the national association of insurance commissioners, and
6 providing penalties and an effective date.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 2286

1 Section 1. Section 507.1, Code 1991, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 507.1 PURPOSE -- DEFINITIONS.

5 1. The purpose of this chapter is to provide an effective
6 and efficient system for examining the activities, operations,
7 financial condition, and affairs of all persons transacting
8 the business of insurance in this state and all persons
9 otherwise subject to the jurisdiction of the commissioner.
10 The chapter is intended to enable the commissioner to adopt a
11 flexible system of examinations which directs resources as
12 deemed appropriate and necessary for the administration of the
13 insurance and insurance-related laws of this state.

14 2. As used in this chapter, unless the context otherwise
15 requires:

16 a. "Commissioner" means the commissioner of insurance of
17 this state.

18 b. "Company" means any person engaging in or proposing or
19 attempting to engage in any transaction or kind of insurance
20 or surety business and any person or group of persons who may
21 otherwise be subject to the administrative, regulatory, or
22 taxing authority of the commissioner.

23 c. "Division" means the division of insurance of the
24 department of commerce.

25 d. "Examiner" means any individual or firm authorized by
26 the commissioner to conduct an examination pursuant to this
27 chapter.

28 e. "Insurer" includes all companies or associations
29 organized under chapter 508, 511, 512A, 512B, 514, 514B, 515,
30 515C, or 518A, associations subject to chapters 518 and 520,
31 and companies or associations admitted or seeking to be
32 admitted to this state under any of those chapters.

33 f. "Person" means any individual, aggregation of
34 individuals, trust, association, partnership, or corporation
35 or an affiliate of any of these.

1 Sec. 2. Section 507.2, Code 1991, is amended by striking
2 the section and inserting in lieu thereof the following:

3 507.2 AUTHORITY, SCOPE, AND SCHEDULING OF EXAMINATIONS.

4 1. The commissioner or any of the commissioner's examiners
5 may conduct an examination under this chapter of any company
6 as often as the commissioner deems appropriate, but at a
7 minimum, shall conduct an examination of any domestic insurer
8 licensed in this state no less than once every five years. In
9 scheduling and determining the nature, scope, and frequency of
10 the examinations, the commissioner shall consider such matters
11 as the results of financial statement analyses and ratios,
12 changes in management or ownership, actuarial opinions,
13 reports of independent certified public accountants, and other
14 criteria as set forth in the examiners' handbook adopted by
15 the national association of insurance commissioners and in
16 effect when the commissioner exercises discretion under this
17 section.

18 2. For purposes of completing an examination of any
19 company pursuant to this chapter, the commissioner may examine
20 or investigate any person, or the business of any person,
21 insofar as the examination or investigation is, in the sole
22 discretion of the commissioner, necessary or material to the
23 examination of the company.

24 3. In lieu of an examination under this chapter of any
25 foreign or alien insurer licensed in this state, the
26 commissioner may accept an examination report on the company
27 as prepared by the regulatory authority for insurance for the
28 company's state of domicile or port-of-entry state until
29 January 1, 1994. Thereafter, such reports shall only be
30 accepted if the regulatory authority was at the time of the
31 examination accredited under the national association of
32 insurance commissioners' financial regulation standards and
33 accreditation program or the examination is performed under
34 the supervision of an accredited regulatory authority or with
35 the participation of one or more examiners who are employed by

1 the accredited state and who, after a review of the
2 examination work papers and report, state under oath that the
3 examination was performed in a manner consistent with
4 standards and procedures required by their insurance
5 department.

6 Sec. 3. Section 507.3, Code 1991, is amended by striking
7 the section and inserting in lieu thereof the following:

8 507.3 CONDUCT OF EXAMINATIONS.

9 1. Upon determining that an examination should be
10 conducted, the commissioner or the commissioner's designee may
11 issue an examination warrant appointing one or more examiners
12 to perform the examination and instructing them as to the
13 scope of the examination. In conducting the examination, the
14 examiner shall observe those guidelines and procedures set
15 forth in the examiners' handbook adopted by the national
16 association of insurance commissioners. The commissioner may
17 also employ other guidelines as the commissioner deems
18 appropriate.

19 2. A company or person from whom information is sought and
20 its officers, directors, and agents shall provide to the
21 examiners appointed under subsection 1, timely, convenient,
22 and free access at all reasonable hours at its offices to all
23 books, records, accounts, papers, documents, and any or all
24 computer or other recordings relating to the property, assets,
25 business, and affairs of the company being examined. The
26 officers, directors, employees, and agents of the company or
27 person shall facilitate the examination and aid in the
28 examination so far as it is in their power to do so. The
29 refusal of any company, by its officers, directors, employees,
30 or agents, to submit to examinations or to comply with any
31 reasonable written request of the examiners is grounds for
32 suspension or revocation of, or nonrenewal of, any license or
33 authority held by the company to engage in the business of
34 insurance or other business subject to the commissioner's
35 jurisdiction. Should a company decline or refuse to submit to

1 an examination as provided in this chapter, the commissioner
2 shall immediately revoke its certificate of authority, and if
3 the company is organized under the laws of this state, the
4 commissioner shall report the commissioner's action to the
5 attorney general, who shall immediately apply to the district
6 court for the appointment of a receiver to administer the
7 final affairs of the company.

8 3. The commissioner or any of the commissioner's examiners
9 may issue subpoenas, administer oaths, and examine under oath
10 any person as to any matter pertinent to the examination.
11 Upon the failure or refusal of any person to obey a subpoena,
12 the commissioner may petition a court of competent
13 jurisdiction, and upon proper showing, the court may enter an
14 order compelling the witness to appear and testify or produce
15 documentary evidence. Failure to obey the court order is
16 punishable as contempt of court.

17 4. When making an examination under this chapter, the
18 commissioner may retain attorneys, appraisers, independent
19 actuaries, independent certified public accountants, or other
20 professionals and specialists as examiners, the reasonable
21 cost of which shall be borne by the company which is the
22 subject of the examination.

23 5. This chapter does not limit the commissioner's
24 authority to terminate or suspend any examination in order to
25 pursue other legal or regulatory action pursuant to the
26 insurance laws of this state. Findings of fact and
27 conclusions made pursuant to any examination are deemed to be
28 prima facie evidence in any legal or regulatory action.

29 Sec. 4. Section 507.6, Code 1991, is amended by striking
30 the section and inserting in lieu thereof the following:

31 507.6 CONFLICT OF INTEREST.

32 1. An examiner shall not be appointed by the commissioner
33 if the examiner, either directly or indirectly, has a conflict
34 of interest or is affiliated with the management of or owns a
35 pecuniary interest in any person subject to examination under

1 this chapter. This section shall not be construed to
2 automatically preclude an examiner from being any of the
3 following:

4 a. A policyholder or claimant under an insurance policy.

5 b. A grantor of a mortgage or similar instrument on the
6 examiner's residence to a regulated entity if done under
7 customary terms and in the ordinary course of business.

8 c. An investment owner in shares of regulated diversified
9 investment companies.

10 d. A settlor or beneficiary of a blind trust into which
11 any otherwise impermissible holdings have been placed.

12 2. Notwithstanding the requirements of subsection 1, the
13 commissioner may retain from time to time, on an individual
14 basis, qualified actuaries, certified public accountants, or
15 other similar individuals who are independently practicing
16 their professions, even though the persons may from time to
17 time be similarly employed or retained by persons subject to
18 examination under this chapter.

19 Sec. 5. Section 507.10, Code 1991, is amended by striking
20 the section and inserting in lieu thereof the following:

21 507.10 EXAMINATION REPORTS.

22 1. GENERAL DESCRIPTION. All examination reports shall be
23 comprised only of facts appearing upon the books, records, or
24 other documents of the company, its agents, or other persons
25 examined, or as ascertained from the testimony of its officers
26 or agents or other persons examined concerning its affairs,
27 and such conclusions and recommendations as the examiners find
28 reasonably warranted from the facts.

29 2. FILING OF EXAMINATION REPORT. No later than sixty days
30 following completion of the examination, the examiner in
31 charge shall file with the division a verified written report
32 of examination under oath. Upon receipt of the verified
33 report and after administrative review, the division shall
34 transmit the report to the company examined, together with a
35 notice which shall afford the company examined a reasonable

1 opportunity of not more than thirty days to make a written
2 submission or rebuttal with respect to any matters contained
3 in the examination report.

4 3. ADOPTION OF REPORT ON EXAMINATION. Within twenty days
5 of the end of the period allowed for the receipt of written
6 submissions or rebuttals, the commissioner shall fully
7 consider and review the report, together with any written
8 submissions or rebuttals and any relevant portions of the
9 examiner's work papers and enter an order which does one of
10 the following:

11 a. Adopts the examination report as filed or with
12 modification or corrections. If the examination report
13 reveals that the company is operating in violation of any law
14 or a rule or prior order of the commissioner, the commissioner
15 may order the company to take any action the commissioner
16 considers necessary and appropriate to cure the violation.

17 b. Rejects the examination report with directions to the
18 examiners to reopen the examination for purposes of obtaining
19 additional data, documentation, or information, and refileing
20 pursuant to subsection 1 above.

21 c. Calls for an investigatory hearing with no less than
22 twenty days notice to the company for purposes of obtaining
23 additional documentation, data, information, and testimony.

24 4. ORDERS AND PROCEDURES.

25 a. All orders entered pursuant to subsection 3, paragraph
26 "a", shall be accompanied by findings and conclusions
27 resulting from the commissioner's consideration and review of
28 the examination report, relevant examiner work papers, and any
29 written submissions or rebuttals. Any such order is a final
30 administrative decision and may be appealed pursuant to
31 chapter 17A, and shall be served upon the company by certified
32 mail, together with a copy of the adopted examination report.
33 Within thirty days of the issuance of the adopted report, the
34 company shall file affidavits executed by each of its
35 directors stating under oath that they have received a copy of

1 the adopted report and related orders.

2 b. Any hearing conducted under subsection 3, paragraph
3 "c", by the commissioner or an authorized representative,
4 shall be conducted as a nonadversarial, confidential,
5 investigatory proceeding as necessary for the resolution of
6 any inconsistencies, discrepancies, or disputed issues
7 apparent upon the face of the filed examination report or
8 indicated as a result of the commissioner's review of relevant
9 work papers or by the written submission or rebuttal of the
10 company. Within twenty days of the conclusion of any such
11 hearing, the commissioner shall enter an order pursuant to
12 subsection 3, paragraph "a".

13 (1) The commissioner shall not appoint an examiner as an
14 authorized representative to conduct the hearing. The hearing
15 shall proceed expeditiously with discovery by the company
16 limited to the examiner's work papers which tend to
17 substantiate any assertions set forth in any written
18 submission or rebuttal. The commissioner or a representative
19 acting on the commissioner's behalf may issue subpoenas for
20 the attendance of any witnesses or the production of any
21 documents deemed relevant to the investigation whether under
22 the control of the division of insurance, the company, or
23 other persons. The documents produced shall be included in
24 the record and testimony taken by the commissioner or a
25 representative acting on the commissioner's behalf shall be
26 under oath and preserved for the record.

27 This section does not require the division of insurance to
28 disclose any information or records which would indicate or
29 show the existence of any investigation or activity of a
30 criminal justice agency.

31 (2) The hearing shall proceed with the commissioner or the
32 commissioner's representative posing questions to the persons
33 subpoenaed. Thereafter the company and the division may
34 present testimony relevant to the investigation. Cross-
35 examination shall be conducted only by the commissioner or the

1 commissioner's representative. The company and the division
2 shall be permitted to make closing statements and may be
3 represented by counsel.

4 5. PUBLICATION AND USE.

5 a. Upon the adoption of the preliminary examination report
6 under subsection 3, paragraph "a", the commissioner shall hold
7 the content of the final examination report as private and
8 confidential information not subject to disclosure and it is
9 not a public record under chapter 22, for a period of twenty
10 days except to the extent provided in subsection 2. After the
11 twenty-day period has elapsed, the commissioner may open the
12 final report for public inspection so long as no court of
13 competent jurisdiction has stayed its publication.

14 b. The commissioner is not prevented from disclosing the
15 content of an examination report, preliminary examination
16 report or results, or any matter relating to the report, to an
17 insurance department of any other state or country, or to law
18 enforcement officials of this or any other state or an agency
19 of the federal government at any time, so long as such agency
20 or office receiving the report, or matters relating to the
21 report, agrees in writing to maintain the confidentiality of
22 the report or such matters in a manner consistent with this
23 chapter.

24 c. If the commissioner determines that regulatory action
25 is appropriate as a result of any examination, the
26 commissioner may initiate any proceeding or action as provided
27 by law.

28 Sec. 6. Section 507.14, unnumbered paragraph 1, Code
29 Supplement 1991, is amended to read as follows:

30 A preliminary report, preliminary or final, of an
31 examination of a domestic or foreign insurer, and all notes,
32 work papers, or other documents related to an examination of
33 an insurer are not public records under chapter 22 except when
34 sought by the insurer to whom they relate, or an insurance
35 regulator of another state, or the national association of

1 insurance commissioners, and shall be privileged and
2 confidential in any judicial or administrative proceeding
3 except any of the following:

4 Sec. 7. Section 507.17, Code 1991, is amended by striking
5 the section and inserting in lieu thereof the following:

6 507.17 IMMUNITY FROM LIABILITY.

7 1. A cause of action does not arise nor shall any
8 liability be imposed against the commissioner, the
9 commissioner's authorized representative, or any examiner
10 appointed by the commissioner for any statements made or
11 conduct performed in good faith while carrying out the
12 provisions of this chapter.

13 2. A cause of action does not arise, nor shall any
14 liability be imposed against any person for the act of
15 communicating or delivering information or data to the
16 commissioner or the commissioner's authorized representative,
17 or an examiner pursuant to an examination made under this
18 chapter, if the act of communication or delivery was performed
19 in good faith and without fraudulent intent or the intent to
20 deceive.

21 3. This section does not abrogate or modify in any way any
22 common law or statutory privilege or immunity enjoyed by any
23 person identified in subsection 1.

24 4. A person identified in subsection 1 is entitled to an
25 award of attorney's fees and costs if the person is the
26 prevailing party in a civil cause of action for libel,
27 slander, or any other relevant tort arising out of activities
28 in carrying out the provisions of this chapter and the party
29 bringing the action was not substantially justified in doing
30 so. For purposes of this section, a proceeding is
31 substantially justified if the proceeding has a reasonable
32 basis in law or fact at the time that it is initiated.

33 Sec. 8. Section 507C.1, subsection 4, unnumbered paragraph
34 1, Code 1991, is amended to read as follows:

35 The purpose of this chapter is the protection of the

1 interests of insured insureds, claimants, creditors, and the
2 public, with minimum interference with the normal prerogatives
3 of the owners and managers of insurers, through all of the
4 following:

5 Sec. 9. Section 507C.1, subsection 4, Code 1991, is
6 amended by adding the following new paragraph:

7 NEW PARAGRAPH. g. Providing for a comprehensive scheme
8 for the rehabilitation and liquidation of insurance companies
9 and those subject to this chapter as part of the regulation of
10 the business of insurance, the insurance industry, and
11 insurers in this state. Proceedings in cases of insurer
12 insolvency and delinquency are deemed an integral aspect of
13 the business of insurance and are of vital public interest and
14 concern.

15 Sec. 10. Section 507C.2, subsections 9, 10, 11, and 13,
16 Code 1991, are amended to read as follows:

17 9. "General assets" means all real, personal, or other
18 property, ~~real or personal~~, not specifically mortgaged,
19 pledged, deposited, or otherwise encumbered for the security
20 or benefit of specified persons or classes of persons. As to
21 specifically encumbered property, "general assets" includes
22 all property or its proceeds in excess of the amount necessary
23 to discharge the sum or sums secured by the property or its
24 proceeds. Assets held in trust and on deposit for the
25 security or benefit of all policyholders or all policyholders
26 and creditors, in more than a single state, shall be treated
27 as general assets.

28 10. "Guaranty association" means the Iowa insurance
29 guaranty association created in chapter 515B, the Iowa life
30 and health insurance guaranty association created in chapter
31 508C, and any other similar entity either presently existing
32 or to be created by the general assembly for the payment of
33 claims of insolvent insurers. "Foreign guaranty association"
34 means a similar entity presently existing in or to be created
35 in the future by the legislature of any other state.

1 11. "Insolvency" or "insolvent" means either any of the
2 following:

3 a. For an insurer issuing only assessable fire insurance
4 policies, either of the following:

5 (1) The inability to pay any obligation within thirty days
6 after it becomes payable.

7 (2) If an assessment is made, the inability to pay the
8 assessment within thirty days following the date specified in
9 the first assessment notice issued after the date of loss.

10 b. For an any other insurer that it is unable to pay its
11 obligations when they are due, or when its admitted assets do
12 not exceed its liabilities plus the greater of:

13 (1) Any capital and surplus required by law for its
14 organization.

15 (2) The total par or stated value of its authorized and
16 issued capital stock.

17 b c. As to an insurer licensed to do business in this
18 state as of July 1, 1984, which does not meet the standard
19 established under paragraph "a b", the term "insolvency" or
20 "insolvent" shall mean, for a period not to exceed three years
21 from July 1, 1984, that it is unable to pay its obligations
22 when they are due or that its admitted assets do not exceed
23 its liabilities plus any required capital contribution ordered
24 by the commissioner under provisions of the insurance law.

25 For purposes of this subsection "liabilities" ~~shall include~~
26 includes but is not be limited to reserves required by statute
27 or by the division's rules or specific requirements imposed by
28 the commissioner upon a company at the time of or subsequent
29 to admission.

30 13. "Preferred claim" means a claim with respect to which
31 the terms of this chapter grant accord priority of payment
32 from the general assets of the insurer.

33 Sec. 11. Section 507C.4, subsection 3, paragraph b, Code
34 1991, is amended to read as follows:

35 b. In an action on or incident to a reinsurance contract,

1 if the person served is a reinsurer who has at any time
2 written a policy of reinsurance for an insurer against which a
3 ~~rehabilitation-or-liquidation-order-is-in-effect-when-the~~
4 ~~action-is-commenced~~ delinquency proceeding has been
5 instituted, or is an agent or broker of or for the reinsurer
6 and the action results from or is incident to the relationship
7 with the reinsurer.

8 Sec. 12. Section 507C.4, subsection 3, Code 1991, is
9 amended by adding the following new paragraphs:

10 NEW PARAGRAPH. d. In an action if the person served is or
11 was at the time of the institution of the delinquency
12 proceeding against the insurer holding assets which are the
13 subject of the proceeding and in which the receiver claims an
14 interest on behalf of the insurer.

15 NEW PARAGRAPH. e. If the person served is obligated to
16 the insurer in any way whatsoever, in an action on or incident
17 to the obligation.

18 Sec. 13. NEW SECTION. 507C.8A CONDITION ON RELEASE FROM
19 DELINQUENCY PROCEEDINGS.

20 An insurer subject to a delinquency proceeding shall not be
21 released from the delinquency proceeding unless the proceeding
22 is converted into a rehabilitation or liquidation proceeding;
23 shall not be permitted to solicit or accept new business, or
24 request or accept the restoration of any suspended or revoked
25 license or certificate of authority; and shall not be returned
26 to the control of the insurer's shareholders or private
27 management, or have any of the insurer's assets returned to
28 the control of its shareholders or private management, until
29 all payments of or on account of the insurer's contractual
30 obligations by all guaranty associations, along with all
31 expenses of such obligations and interest on all such payments
32 and expenses, have been repaid to the guaranty association or
33 a plan of repayment by the insurer is approved by the guaranty
34 association.

35 Sec. 14. Section 507C.11, Code 1991, is amended to read as

1 follows:

2 507C.11 CONFIDENTIALITY OF HEARINGS.

3 Notwithstanding chapter 22, in all administrative
4 proceedings pursuant to sections 507C.9 and 507C.10 all
5 records and documents pertaining to or a part of the record of
6 the proceedings are confidential except as is necessary to
7 obtain compliance with a proceeding. However, the records may
8 be released if either of the following occurs:

9 1. The insurer requests that the records be made public.

10 2. After a hearing on the issue with the parties to the
11 proceeding, the court orders that the records be made public.

12 Until such court order, the clerk of court shall hold all
13 papers filed in a confidential file.

14 Sec. 15. Section 507C.13, subsection 2, Code 1991, is
15 amended to read as follows:

16 2. An order issued under this section shall require
17 requires accounting to the court by the rehabilitator.

18 Accountings shall be at intervals the court specified
19 specifies in the order. Each accounting must include a report

20 concerning the rehabilitator's opinion as to whether a plan
21 pursuant to section 507C.14, subsection 4, will be prepared.

22 If the rehabilitator includes in any accounting that such a
23 plan is likely, the accounting shall also include a proposed
24 timetable for the preparation and implementation of the plan.

25 Sec. 16. Section 507C.14, Code 1991, is amended by adding
26 the following new subsection following subsection 2, and
27 renumbering the remaining subsections:

28 NEW SUBSECTION. 2A. The rehabilitator, with the approval
29 of the court, may appoint an advisory committee of

30 policyholders, claimants, or other creditors including

31 guaranty associations, should the rehabilitator deem it to be
32 necessary. Each member of the advisory committee shall be

33 reimbursed for necessary travel and actual expenses incurred
34 in fulfilling the duties of the advisory committee. The

35 rehabilitator shall not appoint any other committee related to

1 proceedings pursuant to this chapter.

2 Sec. 17. Section 507C.15, subsections 1 and 2, Code 1991,
3 are amended to read as follows:

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

18 2. A statute of limitations or defense of laches shall not
19 run in an action by or against an insurer between the filing
20 of a petition for appointment of a rehabilitator for that
21 insurer and the order granting or denying that petition. An
22 action by or against the insurer that might have been
23 commenced when the petition was filed may be commenced for at
24 least sixty days after the order of rehabilitation is entered
25 or the petition is denied. The rehabilitator, upon the
26 issuance of an order for rehabilitation pursuant to section
27 507C.13, may institute an action or proceeding on behalf of
28 the insurer based upon a cause of action for which the period
29 of limitation has not expired at the time of the filing of the
30 petition for an order to rehabilitate. The action or
31 proceeding by the rehabilitator may be instituted within one
32 year or a longer period if provided by applicable law, of the
33 issuance of the order for rehabilitation.

34 Sec. 18. Section 507C.16, Code 1991, is amended by adding
35 the following new subsection:

1 NEW SUBSECTION. 3. If the payment of obligations pursuant
2 to a policy issued by the insurer is suspended in substantial
3 part for a period of six months at any time after the
4 appointment of the rehabilitator, and the rehabilitator has
5 not filed an application for a plan pursuant to section
6 507C.14, subsection 4, the rehabilitator shall petition the
7 court for an order of liquidation on grounds of insolvency.

8 Sec. 19. Section 507C.18, Code 1991, is amended to read as
9 follows:

10 507C.18 LIQUIDATION ORDERS.

11 1. An order to liquidate the business of a domestic
12 insurer shall appoint the commissioner as liquidator and shall
13 direct the liquidator to immediately take possession of the
14 assets of the insurer and to administer them under the general
15 supervision of the court. The liquidator ~~shall be~~ is vested
16 with the title to the property, contracts, and rights of
17 action and the books and records of the insurer ordered
18 liquidated, wherever located, as of the entry of the final
19 order of liquidation. The filing or recording of the order
20 with the clerk of the court and the recorder of deeds of the
21 county in which its principal office or place of business is
22 located, or, in the case of real estate with the recorder of
23 deeds of the county where the property is located, ~~shall be~~ is
24 notice as a deed, bill of sale, or other evidence of title
25 duly filed or recorded with the recorder of deeds.

26 2. Upon issuance of the order, the rights and liabilities
27 of an insurer and of its creditors, policyholders,
28 shareholders, members, and other persons interested in its
29 estate shall become fixed as of the date of entry of the order
30 of liquidation, except as provided in sections 507C.19 and
31 507C.37.

32 3. An order to liquidate the business of an alien insurer
33 domiciled in this state ~~shall~~ must be in the same terms and
34 have the same legal effect as an order to liquidate a domestic
35 insurer, except that the assets and the business in the United

1 States shall be the only assets and business included in the
2 order.

3 4. At the time of petitioning for an order of liquidation,
4 or at any time thereafter, the commissioner, after making
5 appropriate findings of an insurer's insolvency, may petition
6 the court for a declaration of insolvency. After providing
7 notice and hearing as it deems proper, the court may make the
8 declaration.

9 5. An order issued under this section shall require
10 accounting to the court by the liquidator. Accountings, at a
11 minimum, must include all funds received or disbursed by the
12 liquidator during the current period. An accounting shall be
13 at-intervals-specified-in-the filed within one year of the
14 liquidation order and at such other times as the court may
15 require.

16 6. a. Within five days of the effective date of this
17 section or, if later, within five days after the initiation of
18 an appeal of an order of liquidation, which order has not been
19 stayed, the commissioner shall present for the court's
20 approval a plan for the continued performance of the defendant
21 company's policy claims obligations, including the duty to
22 defend insureds under liability insurance policies, during the
23 pendency of an appeal. The plan shall provide for the
24 continued performance and payment of policy claims obligations
25 in the normal course of events, notwithstanding the grounds
26 alleged in support of the order of liquidation including the
27 ground of insolvency. If the defendant company's financial
28 condition will not, in the judgment of the commissioner,
29 support the full performance of all policy claims obligations
30 during the appeal pendency period, the plan may prefer the
31 claims of certain policyholders and claimants over creditors
32 and interested parties as well as other policyholders and
33 claimants, as the commissioner finds to be fair and equitable
34 considering the relative circumstances of such policyholders
35 and claimants. The court shall examine the plan submitted by

1 the commissioner and if it finds the plan to be in the best
2 interests of the parties, the court shall approve the plan.
3 No action shall lie against the commissioner or any of the
4 commissioner's deputies, agents, clerks, assistants, or
5 attorneys by any party based on preference in an appeal
6 pendency plan approved by the court.

7 b. The appeal pendency plan shall not supersede or affect
8 the obligations of any insurance guaranty association.

9 c. Any such plans shall provide for equitable adjustments
10 to be made by the liquidator to any distributions of assets to
11 guaranty associations, in the event that the liquidator pays
12 claims from assets of the estate, which would otherwise be the
13 obligations of any particular guaranty association but for the
14 appeal of the order of liquidation, such that all guaranty
15 associations equally benefit on a pro rata basis from the
16 assets of the estate. If an order of liquidation is set aside
17 upon an appeal, the company shall not be released from
18 delinquency proceedings unless and until all funds advanced by
19 a guaranty association, including reasonable administrative
20 expenses in connection therewith relating to obligations of
21 the company, shall be repaid in full, together with interest
22 at the judgment rate of interest, or unless an arrangement for
23 repayment thereof has been made with the consent of all
24 applicable guaranty associations.

25 Sec. 20. Section 507C.21, subsection 1, paragraph j, Code
26 1991, is amended to read as follows:

27 j. Borrow money on the security of the insurer's assets or
28 without security and execute and deliver documents necessary
29 to that transaction for the purpose of facilitating the
30 liquidation. Money borrowed pursuant to this paragraph shall
31 be repaid as an administrative expense and have priority over
32 any other class 1 claims under the priority of distribution
33 established in section 507C.42.

34 Sec. 21. Section 507C.21, subsection 1, Code 1991, is
35 amended by adding the following new paragraph:

1 NEW PARAGRAPH. w. Audit the books and records of all
2 agents of the insurer which relate to the business of the
3 insurer.

4 Sec. 22. Section 507C.22, Code 1991, is amended by adding
5 the following new subsection:

6 NEW SUBSECTION. 2A. a. Notice to agents of the insurer
7 and potential claimants who are policyholders under subsection
8 1, where applicable, shall include notice that coverage by
9 state guaranty associations may be available for all or part
10 of policy benefits in accordance with applicable state
11 guaranty laws.

12 b. The liquidator shall promptly provide to the guaranty
13 associations such information concerning the identities and
14 addresses of the policyholders and their policy coverages as
15 may be within the liquidator's possession or control, and
16 otherwise cooperate with guaranty associations to assist them
17 in providing to the policyholders timely notice of the
18 guaranty associations' coverage of policy benefits including,
19 as applicable, coverage of claims and continuation or
20 termination of coverage.

21 Sec. 23. Section 507C.23, subsection 2, Code 1991, is
22 amended to read as follows:

23 2. An agent failing to ~~give notice or file a report of~~
24 compliance provide information as required in subsection 1 may
25 be subject to payment of a penalty of not more than one
26 thousand dollars and may have the agent's license suspended.
27 The penalty is to be imposed only after a hearing held by the
28 commissioner.

29 Sec. 24. Section 507C.24, subsections 1 and 2, Code 1991,
30 are amended to read as follows:

31 1. After the issuance of an order appointing a liquidator
32 of a domestic insurer or of an alien insurer domiciled in this
33 state, action at law or equity shall not be brought against
34 the insurer or liquidator in this state or elsewhere, nor
35 shall existing actions be maintained or further presented

1 after issuance of the order. The courts of this state shall
2 give full faith and credit to injunctions against the
3 liquidator or the insurer or the continuation of existing
4 actions against the liquidator or the insurer, when the
5 injunctions are included in an order to liquidate an insurer
6 issued pursuant to corresponding provisions in other states.
7 Whenever in the liquidator's judgment, protection of the
8 estate of the insurer necessitates intervention in an action
9 against the insurer that is pending outside this state, the
10 liquidator may intervene in the action. The liquidator may
11 defend, at the expense of the estate of the insurer, an action
12 in which the liquidator intervenes under this section.

13 2. Within two years or such additional time as applicable
14 law may permit, the liquidator may after the issuance of an
15 order for liquidation institute an action or proceeding on
16 behalf of the estate of the insurer upon any cause of action
17 against which the period of limitation fixed by applicable law
18 has not expired at the time of the filing of the petition upon
19 which the order is entered. ~~Where~~ If a period of limitation
20 is fixed by agreement for instituting a suit or proceeding
21 upon a claim, or for filing a claim, proof of claim, proof of
22 loss, demand, notice, or the like, or ~~where~~ if in a
23 proceeding, judicial or otherwise, a period of limitation is
24 fixed in the proceeding or pursuant to applicable law for
25 taking an action, filing a claim or pleading, or doing an act,
26 and ~~where-in-any-case~~ if the period had not expired at the
27 date of the filing of the petition, the liquidator may, for
28 the benefit of the estate, take any action or do any act,
29 required of or permitted to the insurer, within a period of
30 one hundred eighty days subsequent to the entry of an order
31 for liquidation, or within a further period as is shown to the
32 satisfaction of the court not to be unfairly prejudicial to
33 the other party.

34 Sec. 25. Section 507C.27, Code 1991, is amended by adding
35 the following new subsection:

1 NEW SUBSECTION. 2A. A person receiving any property from
2 the insurer or any benefit of the insurer which is a
3 fraudulent transfer under subsection 1 is personally liable
4 for the property or benefit and shall account to the
5 liquidator.

6 Sec. 26. Section 507C.30, subsection 2, Code 1991, is
7 amended by adding the following new paragraph following
8 paragraph b and relettering the remaining paragraphs:

9 NEW PARAGRAPH. c. The obligation of the insurer is owed
10 to the affiliate of such person, or any other entity or
11 association other than the person.

12 Sec. 27. Section 507C.34, subsection 1, Code 1991, is
13 amended to read as follows:

14 1. Within one hundred twenty days of a final determination
15 of insolvency under this chapter as assets become available,
16 the liquidator shall make application to the court for
17 approval of a proposal to disburse assets out of marshaled
18 assets to a guaranty association or foreign guaranty
19 association having obligations because of the insolvency. An
20 application and disbursement of assets shall be made from time
21 to time as assets become available. If the liquidator
22 determines that there are insufficient assets to disburse, the
23 application required by this section shall be considered
24 satisfied by a filing by the liquidator stating the reasons
25 for this determination.

26 Sec. 28. Section 507C.40, Code 1991, is amended to read as
27 follows:

28 507C.40 CLAIMS OF SURETY.

29 If a creditor, whose claim against an insurer is secured in
30 whole or in part, by the undertaking of another person, fails
31 to prove and file that claim, then the other person may do so
32 in the creditor's name:--~~The surety~~ and shall be subrogated to
33 the rights of the creditor, whether the claim has been filed
34 by the creditor or by the surety other person in the
35 creditor's name to the extent that the surety other person

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

11 Sec. 29. Section 507C.42, subsections 1, 2, 3, 4, and 5,
12 Code 1991, are amended to read as follows:

13 1. CLASS 1. The costs and expenses of administration,
14 including but not limited to the following:

15 a. The actual and necessary costs of preserving or
16 recovering the assets of the insurer.

17 b. Compensation for all authorized services rendered in
18 the liquidation.

19 c. Necessary filing fees.

20 d. The fees and mileage payable to witnesses.

21 e. Reasonable Authorized reasonable attorney's fees and
22 other professional services rendered in the liquidation.

23 f. The reasonable expenses of a guaranty association or
24 foreign guaranty association in handling claims.

25 2. CLASS 2. Debts-due Reasonable compensation to
26 employees for services performed to the extent that they do
27 not exceed one-thousand-dollars two months of monetary
28 compensation and represent payment for services performed
29 within one year before the filing of the petition for
30 liquidation or, if the rehabilitation preceded liquidation,
31 within one year before the filing of the petition for
32 rehabilitation. Officers and directors are not entitled to
33 the benefit of this priority. The priority is in lieu of
34 other similar priority which may be authorized by law as to
35 wages or compensation of employees.

1 3. CLASS 3. Claims under policies, including claims of
2 the federal or any state or local government, for losses
3 incurred, including third-party claims, claims against the
4 insurer for liability for bodily injury or for injury to or
5 destruction of tangible property which are not under policies,
6 and claims of a guaranty association or foreign guaranty
7 association. Claims under nonassessable policies for unearned
8 premium. Claims under life insurance and annuity policies,
9 whether for death proceeds, annuity proceeds, or investment
10 values shall be treated as loss claims. That portion of a
11 loss, indemnification for which is provided by other benefits
12 or advantages recovered by the claimant, shall not be included
13 in this class, other than benefits or advantages recovered or
14 recoverable in discharge of familial obligations of support or
15 by way of succession at death or as proceeds of life
16 insurance, or as gratuities. A payment by an employer to an
17 employee is not a gratuity.

18 ~~4. CLASS 4. Claims under nonassessable policies for~~
19 ~~unearned premium or other premium Premium refunds, and claims~~
20 ~~of general creditors, including claims of ceding and assuming~~
21 ~~reinsurers in their capacity as such, and subrogation claims.~~

22 5. CLASS 5. Claims of the federal or any state or local
23 government except those under class 3. Claims, including
24 those of a governmental body for a penalty or forfeiture, are
25 allowed in this class only to the extent of the pecuniary loss
26 sustained from the act, transaction, or proceeding out of
27 which the penalty or forfeiture arose, with reasonable and
28 actual costs incurred. The remainder of such claims shall be
29 postponed to the class of claims under subsection 8.

30 Sec. 30. Section 507C.45, Code 1991, is amended by adding
31 the following new subsection:

32 NEW SUBSECTION. 3. Notwithstanding any other provision of
33 this chapter, funds as identified in subsection 1, with the
34 approval of the court, shall be made available to the
35 commissioner for use in the detection and prevention of future

1 insolvencies. The commissioner shall hold these funds and
2 shall pay without interest, except as provided in section
3 507C.42, to the person entitled to the funds or the person's
4 legal representative upon proof satisfactory to the
5 commissioner of the person's right to the funds. The funds
6 shall be held by the commissioner for a period of two years at
7 which time the rights and duties to the unclaimed funds shall
8 vest in the commissioner.

9 Sec. 31. Section 507C.46, subsection 2, Code 1991, is
10 amended to read as follows:

11 2. Any other person may apply to the court at any time for
12 an order under subsection 1. If the application is denied,
13 the applicant shall pay the costs and expenses including
14 ~~reasonable-attorney's-fee~~ of the liquidator in resisting the
15 application including a reasonable attorney's fee.

16 Sec. 32. Section 507C.52, subsection 1, Code 1991, is
17 amended to read as follows:

18 1. Except as to special deposits and security on secured
19 claims under section 507C.53, subsection 3, the domiciliary
20 liquidator of an insurer domiciled in a reciprocal state shall
21 be vested with the title to the assets, property, contracts,
22 and rights of action, agents' balances, books, accounts, and
23 other records of the insurer located in this state. The date
24 of vesting is the date of the filing of the petition, if that
25 date is specified by the domiciliary law for the vesting of
26 property in the domiciliary state. Otherwise, the date of
27 vesting ~~shall-be~~ is the date of entry of the order directing
28 possession to be taken. The domiciliary liquidator may
29 immediately recover balances due from agents and obtain
30 possession of the books, accounts, and other records of the
31 insurer located in this state. ~~Subject-to-section-507C-53,~~
32 ~~the-domiciliary-liquidator-may-also-recover-all-other-assets~~
33 ~~of-the-insurer-located-in-this-state.~~ The domiciliary
34 liquidator may also have the right to recover all other assets
35 of the insurer located in this state, subject to section

1 507C.53.

2 Sec. 33. Section 507C.55, subsection 2, Code 1991, is
3 amended to read as follows:

4 2. Claims belonging to claimants residing in reciprocal
5 states shall be proved either in the liquidation proceeding in
6 this state as provided in this chapter or in ancillary
7 proceedings in the reciprocal states, if a claim filing
8 procedure is established in the ancillary proceeding. If
9 notice of the claims and opportunity to appear and be heard is
10 afforded the domiciliary liquidator of this state as provided
11 in section 507C.56, subsection 2, with respect to ancillary
12 proceedings, the final allowance of claims by the courts in
13 ancillary proceedings in reciprocal states shall be conclusive
14 as to amount and as to priority against special deposits or
15 other security located in such ancillary states, but shall not
16 be conclusive with respect to priorities against general
17 assets under section 507C.42.

18 Sec. 34. Section 507C.56, subsections 1 and 2, Code 1991,
19 are amended to read as follows:

20 1. ~~In a liquidation proceeding in a reciprocal state~~
21 ~~against an insurer domiciled in that state~~ Promptly after the
22 appointment of the commissioner as ancillary receiver for an
23 insurer not domiciled in this state, the commissioner shall
24 determine whether there are claimants residing in this state
25 who are not protected by guaranty funds and whether the
26 protection of such claimants requires the establishing of a
27 claim filing procedure in the ancillary proceeding. If a
28 claim filing procedure is established, claimants against the
29 insurer who reside within this state may file claims either
30 with the ancillary receiver in this state, or with the
31 domiciliary liquidator. Claims shall be filed on or before
32 the last dates fixed for the filing of claims in the
33 domiciliary liquidation proceeding.

34 2. Claims belonging to claimants residing in this state
35 may be proved either in the domiciliary state under the law of

1 that state, or in ancillary proceedings in this state,
2 provided a claim filing procedure is established in the
3 ancillary proceeding. If a claimant elects to prove the claim
4 in this state, the claimant shall file the claim with the
5 liquidator in the manner provided in sections 507C.35 and
6 507C.36. The ancillary receiver shall make a recommendation
7 to the court as under section 507C.43. The ancillary receiver
8 shall also arrange a date for hearing if necessary under
9 section 507C.39 and shall give notice to the liquidator in the
10 domiciliary state, either by certified mail or by personal
11 service at least forty days prior to the date set for hearing.
12 Within thirty days after the giving of the notice, if the
13 domiciliary liquidator gives notice in writing either by
14 certified mail or by personal service to the ancillary
15 receiver and to the claimant of an intention to contest the
16 claim, the domiciliary liquidator is entitled to appear or to
17 be represented in a proceeding in this state involving the
18 adjudication of the claim.

19 Sec. 35. Section 510A.1, Code Supplement 1991, is amended
20 to read as follows:

21 510A.1 SHORT TITLE.

22 This chapter shall be known and may be cited as the
23 "Business Producer Controlled Property and Casualty Insurer
24 Act."

25 Sec. 36. Section 510A.2, Code Supplement 1991, is amended
26 by striking the section and inserting in lieu thereof the
27 following:

28 510A.2 DEFINITIONS.

29 As used in this chapter unless the context otherwise
30 requires:

31 1. "Accredited state" means a state in which the insurance
32 department or regulatory agency has qualified as meeting the
33 minimum financial regulatory standards promulgated and
34 established by the national association of insurance
35 commissioners.

1 2. "Control" or "controlled" has the meaning ascribed in
2 section 521A.1, subsection 3.

3 3. "Controlled insurer" means a licensed insurer which is
4 controlled, directly or indirectly, by a producer.

5 4. "Controlling producer" means a producer who, directly
6 or indirectly, controls an insurer.

7 5. "Independent casualty actuary" means a casualty actuary
8 who is a member of the American academy of actuaries and who
9 is not an employee, principal, the direct or indirect owner
10 of, affiliated with, or in any way controlled by the insurer
11 or producer.

12 6. "Licensed insurer" or "insurer" means any person duly
13 licensed to transact a property and casualty insurance
14 business in this state. The following are not licensed
15 property and casualty insurers for the purposes of this
16 chapter:

17 a. All risk retention groups as defined in the Superfund
18 Amendments Reauthorization Act of 1986, Pub. L. No. 99-499,
19 100 Stat. 1613 (1986) and the Risk Retention Act, 15 U.S.C. §
20 3901 et seq. (1982 & Supp. 1986), or chapter 515E.

21 b. All residual market pools and joint underwriting
22 authorities or associations.

23 c. All captive insurers. For the purposes of this
24 chapter, captive insurers are insurance companies owned by
25 another organization whose exclusive purpose is to insure
26 risks of the parent organization and affiliated companies or,
27 in the case of groups and associations, insurance
28 organizations owned by the insureds whose exclusive purpose is
29 to insure risks of any group and association members and any
30 affiliates.

31 7. "Producer" means an insurance broker or brokers or any
32 other person when, for any compensation, commission, or other
33 thing of value, the person acts or aids in any manner in
34 soliciting, negotiating, or procuring the making of an
35 insurance contract on behalf of an insured other than the

1 person.

2 Sec. 37. Section 510A.3, Code Supplement 1991, is amended
3 by striking the section and inserting in lieu thereof the
4 following:

5 510A.3 APPLICABILITY.

6 This chapter applies to licensed insurers as defined in
7 section 510A.2, either domiciled in this state or domiciled in
8 a state that is not an accredited state and having a
9 substantially similar law. All provisions of the insurance
10 holding company Act, to the extent those provisions are not
11 superseded by this chapter, continue to apply to all persons
12 associated with holding companies subject to this chapter.

13 Sec. 38. Section 510A.4, Code Supplement 1991, is amended
14 by striking the section and inserting in lieu thereof the
15 following:

16 510A.4 MINIMUM STANDARDS.

17 1. APPLICABILITY OF SECTION.

18 a. This section applies if, in any calendar year, the
19 aggregate amount of gross written premium on business placed
20 with a controlled insurer by a controlling producer is equal
21 to or greater than five percent of the admitted assets of the
22 controlled insurer, as reported in the controlled insurer's
23 quarterly statement filed as of September 30 of the preceding
24 year.

25 b. Notwithstanding paragraph "a", this section does not
26 apply if both of the following apply:

27 (1) The controlling producer does all of the following:

28 (a) Places insurance only with the controlled insurer, or
29 only with the controlled insurer and members of the controlled
30 insurer's holding company system, or the controlled insurer's
31 parent, affiliate, or subsidiary, and receives no compensation
32 based upon the amount of premiums written in connection with
33 such insurance.

34 (b) Accepts insurance placements only from nonaffiliated
35 subproducers and not directly from insureds.

1 (2) The controlled insurer, except for insurance business
2 written through a residual market facility, accepts insurance
3 business only from the controlling producer, a producer
4 controlled by the controlled insurer, or a producer that is a
5 subsidiary of the controlled insurer.

6 2. REQUIRED CONTRACT PROVISIONS. A controlled insurer
7 shall not accept business from a controlling producer and a
8 controlling producer shall not place business with a
9 controlled insurer unless there is a written contract between
10 the controlling producer and the controlled insurer specifying
11 the responsibilities of each party which has been approved by
12 the board of directors of the controlled insurer and filed
13 with the commissioner. The contract must contain, at a
14 minimum, the following provisions:

15 a. The controlled insurer may terminate the contract for
16 cause, upon written notice to the controlling producer. The
17 controlled insurer shall suspend the authority of the
18 controlling producer to write business during the pendency of
19 any dispute regarding the cause for the termination.

20 b. The controlling producer shall render accounts to the
21 controlled insurer detailing all material transactions,
22 including information necessary to support all commissions,
23 charges, and other fees received by, or owing to, the
24 controlling producer.

25 c. The controlling producer shall remit all funds due
26 under the terms of the contract to the controlled insurer on
27 at least a monthly basis. The due date shall be fixed so that
28 premiums or installments of premiums collected shall be
29 remitted no later than ninety days after the effective date of
30 any policy placed with the controlled insurer under this
31 contract.

32 d. All funds collected for the controlled insurer's
33 account shall be held by the controlling producer in a
34 fiduciary capacity, in one or more appropriately identified
35 bank accounts in banks that are members of the federal reserve

1 system, in accordance with the provisions of the insurance law
2 as applicable. However, funds of a controlling producer not
3 required to be licensed in this state shall be maintained in
4 compliance with the requirements of the controlling producer's
5 domiciliary jurisdiction.

6 e. The controlling producer shall maintain separately
7 identifiable records of business written for the controlled
8 insurer.

9 f. The contract shall not be assigned in whole or in part
10 by the controlling producer.

11 g. The controlled insurer shall provide the controlling
12 producer with its underwriting standards, rules, and
13 procedures manuals setting forth the rates to be charged, and
14 the conditions for the acceptance or rejection of risks. The
15 controlling producer shall adhere to the standards, rules,
16 procedures, rates, and conditions. The standards, rules,
17 procedures, rates, and conditions shall be the same as those
18 applicable to comparable business placed with the controlled
19 insurer by a producer other than the controlling producer.

20 h. The rates and terms of the controlling producer's
21 commissions, charges, or other fees and the purposes for those
22 charges or fees. The rates of the commissions, charges, and
23 other fees shall be no greater than those applicable to
24 comparable business placed with the controlled insurer by
25 producers other than controlling producers. For purposes of
26 this paragraph and paragraph "g" of this subsection,
27 "comparable business" includes the same lines of insurance,
28 same kinds of insurance, same kinds of risks, similar policy
29 limits, and similar quality of business.

30 i. If the contract provides that the controlling producer,
31 on insurance business placed with the controlled insurer, is
32 to be compensated contingent upon the insurer's profits on
33 that business, then such compensation shall not be determined
34 and paid until at least five years after the premiums on
35 liability insurance are earned and at least one year after the

1 premiums are earned on any other insurance. In no event shall
2 the commissions be paid until the adequacy of the controlled
3 insurer's reserves on remaining claims has been independently
4 verified pursuant to subsection 4, paragraph "a".

5 j. A limit on the controlling producer's writings in
6 relation to the controlled insurer's surplus and total
7 writings. The insurer may establish a different limit for
8 each line or subline of business. The controlled insurer
9 shall notify the controlling producer when the applicable
10 limit is approached and shall not accept business from the
11 controlling producer which would exceed the limit. The
12 controlling producer shall not place business with the
13 controlled insurer if it has been notified by the controlled
14 insurer that the limit has been reached.

15 k. The controlling producer may negotiate but shall not
16 bind reinsurance on behalf of the controlled insurer on
17 business the controlling producer places with the controlled
18 insurer, except that the controlling producer may bind
19 facultative reinsurance contracts pursuant to obligatory
20 facultative agreements if the contract with the controlled
21 insurer contains underwriting guidelines including, for both
22 reinsurance assumed and ceded, a list of reinsurers with which
23 such automatic agreements are in effect, the coverages and
24 amounts or percentages that may be reinsured, and commission
25 schedules.

26 3. AUDIT COMMITTEE. A controlled insurer must establish
27 an audit committee of the board of directors composed of
28 independent directors. Prior to approval of the annual
29 financial statement, the audit committee shall meet with
30 management, the insurer's independent certified public
31 accountants, and an independent casualty actuary or other
32 independent loss reserve specialist acceptable to the
33 commissioner, to review the adequacy of the insurer's loss
34 reserves.

35 4. REPORTING REQUIREMENTS.

1 a. In addition to any other required loss reserve
2 certification, the controlled insurer shall annually, on April
3 1 of each year, file with the commissioner an opinion of an
4 independent casualty actuary, or another independent loss
5 reserve specialist acceptable to the commissioner, reporting
6 loss ratios for each line of business written and attesting to
7 the adequacy of loss reserves established for losses incurred
8 and outstanding as of year-end on business placed by the
9 producer, including incurred but not reported losses.

10 b. The controlled insurer shall annually report to the
11 commissioner the amount of commissions paid to the producer,
12 the percentage such amount represents of the net premiums
13 written, and comparable amounts and percentage paid to
14 noncontrolling producers for placements of the same kinds of
15 insurance.

16 Sec. 39. NEW SECTION. 510A.5 DISCLOSURE.

17 The producer, prior to the effective date of the policy,
18 shall deliver written notice to the prospective insured
19 disclosing the relationship between the producer and the
20 controlled insurer; except that, if the business is placed
21 through a subproducer who is not a controlling producer, the
22 controlling producer shall retain in the producer's records a
23 signed commitment from the subproducer that the subproducer is
24 aware of the relationship between the insurer and the producer
25 and that the subproducer has notified or will notify the
26 insured.

27 Sec. 40. Section 521A.5, subsection 3, Code Supplement
28 1991, is amended by striking the subsection and inserting in
29 lieu thereof the following:

30 3. A domestic insurer shall not pay any extraordinary
31 dividend or make any other extraordinary distribution to its
32 shareholders until thirty days after the commissioner has
33 received notice of the declaration of the dividend or
34 distribution and has not disapproved such payment within the
35 period, or at the time the commissioner has approved the

1 payment within the thirty-day period.
2 For purposes of this subsection, an extraordinary dividend
3 or distribution includes any dividend or distribution of cash
4 or other property, whose fair market value together with that
5 of other dividends or distributions made within the preceding
6 twelve months exceeds the lesser of ten percent of the
7 insurer's surplus related to policyholders as of the thirty-
8 first day of December next preceding, or the net gain from
9 operations of the insurer, if the insurer is a life insurer,
10 or the net income, if the insurer is not a life insurer, not
11 including realized capital gains, for the twelve-month period
12 ending the thirty-first day of December next preceding, but
13 does not include pro rata distributions of any class of the
14 insurer's own securities. In determining whether a dividend
15 or distribution is extraordinary, an insurer may carry forward
16 net income or gain from operations from the previous two
17 calendar years that has not already been paid out as
18 dividends. This carry-forward shall be computed by taking the
19 net income or gain from operations from the second and third
20 preceding calendar years, not including realized capital
21 gains, less dividends paid in the second and immediately
22 preceding calendar years.

23 Notwithstanding any other provision of law, an insurer may
24 declare an extraordinary dividend or distribution which is
25 conditional upon the commissioner's approval of the dividend
26 or distribution and the declaration does not confer any rights
27 upon shareholders until the commissioner has approved the
28 payment of the dividend or distribution or the commissioner
29 has not disapproved the payment within the thirty-day period
30 as provided in this subsection.

31 Sec. 41. Section 507.13, Code 1991, is repealed.
32 Sec. 42. Section 41 of this Act, as it amends section
33 521A.5, subsection 3, Code Supplement 1991, is effective
34 October 31, 1993.

35 EXPLANATION

1 The national association of insurance commissioners (NAIC)
2 has initiated a program to accredit state insurance
3 departments as approved insurance regulators. The NAIC
4 minimum standards for accreditation require a state to have
5 certain NAIC model Acts and laws which relate to solvency and
6 financial oversight.

7 Sections 1 through 7 and 42 amend chapter 507 relating to
8 insurance company examinations. Sections 507.1 through 507.3,
9 507.6, 507.10, and 507.17 are stricken and replaced. Section
10 507.14 is amended. Section 507.13 is repealed.

11 Section 1 establishes the purpose and definitions of
12 chapter 507.

13 Section 2 extends the minimum examination cycle to five
14 years while allowing the commissioner to conduct examinations
15 as often as deemed appropriate.

16 Section 3 establishes the commissioner's authority to
17 retain attorneys, appraisers, independent actuaries,
18 independent certified public accountants, or other
19 professionals and specialists as "examiners" and to bill the
20 attendant costs to the company under examination. It also
21 gives the commissioner the right to terminate or suspend a
22 financial examination to pursue other legal or regulatory
23 action against the company and to introduce as prima facie
24 evidence or to otherwise make public any preliminary findings
25 of fact or conclusions made in the course of the examination.

26 Section 4 contains language on potential conflicts of
27 interest that may bar an individual from appointment as an
28 examiner.

29 Section 5 revises the timetable for filing and adopting
30 exam reports, and provides a delineation of the prescribed
31 sequence for the filing, adoption, and issuance of orders and
32 publication of reports.

33 Under this section, the examiner-in-charge now has no more
34 than 60 days from completion of an exam to file a verified and
35 sworn written exam report. Upon receipt, the division must

1 then forward the report to the company allowing 30 days for
2 the insurer to rebut any matters contained in the examination
3 report. At the end of the 30 days, the commissioner is
4 provided an additional 20 days to review the examination
5 documents.

6 Under section 6, the regulators and NAIC are obligated to
7 protect the confidentiality of all information and
8 documentation developed during the course of a financial
9 examination, with certain exceptions.

10 Section 7 protects examiners from civil and criminal
11 liability.

12 Sections 8-41 incorporate changes in existing laws to
13 conform Iowa law to NAIC model laws. These changes reflect
14 both additional requirements imposed from the ongoing efforts
15 of the NAIC and corrections of deficiencies noted during the
16 division's NAIC examination.

17 Chapters 507C, 510A, and 521A are amended. Among the
18 changes:

19 Section 10 expands the definition of "insolvency", and
20 section 12 expands court jurisdiction.

21 Section 13 establishes repayment as a condition for a
22 release from a delinquency proceeding.

23 Section 15 expands requirements for accounting to the
24 court.

25 Section 16 provides for an advisory committee for a
26 rehabilitator, section 17 authorizes a rehabilitator to
27 institute an action or proceeding, and section 18 provides for
28 the rehabilitator to obtain a court order of liquidation.

29 Section 19 requires an appeal pendency plan in liquidation
30 proceedings.

31 Section 22 requires notice to agents and potential
32 claimants of possible guaranty association coverage.

33 Sections 24 through 29 further amend liquidation
34 provisions.

35 Section 30 provides funds which the commissioner may use

- 1 for detection and prevention of future insolvencies.
- 2 Sections 32 through 34 relate to ancillary proceedings for
- 3 a liquidation in another state.
- 4 Sections 35 through 39 rewrite new chapter 510A in the Code
- 5 Supplement relating to property and casualty insurers.
- 6 Sections 40 and 41 amend chapter 521A relating to
- 7 acquisitions by insurers.
- 8 Section 42 repeals section 507.13.
- 9 Section 43 provides a special effective date for section
- 10 41.

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SENATE FILE 2286

H-5517

1 Amend Senate File 2286, as passed by the Senate, as
2 follows:

3 1. Page 32, by inserting after line 30, the
4 following:

5 "Sec. ____ . The commissioner of insurance shall
6 conduct a study relating to the issues involved with
7 compulsory proof of financial responsibility for all
8 operators of motor vehicles in this state. The study
9 shall include an analysis of the impact of requiring
10 such coverage, including the number of additional
11 operators acquiring coverage, the effect on premium
12 costs to consumers, the impact on expenses which would
13 be incurred by insurance carriers as a result of
14 losses paid under such policies, and other related
15 issues.

16 The commissioner of insurance shall conduct at
17 least one public hearing in each of the five new
18 congressional districts during the 1992 legislative
19 interim concerning the issue of compulsory proof of
20 financial responsibility for all operators of motor
21 vehicles in this state. The commissioner shall
22 provide adequate notice of such hearings and encourage
23 participation by all citizens in this state. The
24 commissioner shall make an accurate record or summary
25 of each meeting and provide a complete report to the
26 general assembly no later than January 20, 1993,
27 concerning the proceedings."

28 2. Page 32, line 32, by striking the figure "41"
29 and inserting the following: "40".

30 3. By renumbering as necessary.

By COMMITTEE ON COMMERCE

HANSEN of Woodbury, Chairperson

H-5517 FILED MARCH 25, 1992

Adopted 3/30 (p. 918)

HOUSE AMENDMENT TO
SENATE FILE 2286

S-5480

1 Amend Senate File 2286, as passed by the Senate, as
2 follows:

3 1. Page 32, by inserting after line 30, the
4 following:

5 "Sec. _____. The commissioner of insurance shall
6 conduct a study relating to the issues involved with
7 compulsory proof of financial responsibility for all
8 operators of motor vehicles in this state. The study
9 shall include an analysis of the impact of requiring
10 such coverage, including the number of additional
11 operators acquiring coverage, the effect on premium
12 costs to consumers, the impact on expenses which would
13 be incurred by insurance carriers as a result of
14 losses paid under such policies, and other related
15 issues.

16 The commissioner of insurance shall conduct at
17 least one public hearing in each of the five new
18 congressional districts during the 1992 legislative
19 interim concerning the issue of compulsory proof of
20 financial responsibility for all operators of motor
21 vehicles in this state. The commissioner shall
22 provide adequate notice of such hearings and encourage
23 participation by all citizens in this state. The
24 commissioner shall make an accurate record or summary
25 of each meeting and provide a complete report to the
26 general assembly no later than January 20, 1993,
27 concerning the proceedings."

28 2. Page 32, line 32, by striking the figure "41"
29 and inserting the following: "40".

30 3. By renumbering as necessary.

RECEIVED FROM THE HOUSE

S-5480 FILED APRIL 1, 1992

Senate concurred 4/6 (p 1234)

VARN, CH.
JENSEN
SLIFE
DOYLE
PALMER

SSB 2221

Commerce

Now

SENATE/HOUSE FILE 2286
BY (PROPOSED DEPARTMENT OF
COMMERCE/DIVISION OF
INSURANCE BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to insurance regulation, including the financial
2 supervision and solvency oversight of insurance companies by
3 the commissioner of insurance and accreditation of the
4 division of insurance as an approved insurance regulator by
5 the national association of insurance commissioners, and
6 providing penalties and an effective date.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 507.1, Code 1991, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 507.1 PURPOSE -- DEFINITIONS.

5 1. The purpose of this chapter is to provide an effective
6 and efficient system for examining the activities, operations,
7 financial condition, and affairs of all persons transacting
8 the business of insurance in this state and all persons
9 otherwise subject to the jurisdiction of the commissioner.
10 The chapter is intended to enable the commissioner to adopt a
11 flexible system of examinations which directs resources as
12 deemed appropriate and necessary for the administration of the
13 insurance and insurance-related laws of this state.

14 2. As used in this chapter, unless the context otherwise
15 requires:

16 a. "Commissioner" means the commissioner of insurance of
17 this state.

18 b. "Company" means any person engaging in or proposing or
19 attempting to engage in any transaction or kind of insurance
20 or surety business and any person or group of persons who may
21 otherwise be subject to the administrative, regulatory, or
22 taxing authority of the commissioner.

23 c. "Division" means the division of insurance of the
24 department of commerce.

25 d. "Examiner" means any individual or firm authorized by
26 the commissioner to conduct an examination pursuant to this
27 chapter.

28 e. "Insurer" includes all companies or associations
29 organized under chapter 508, 511, 512A, 512B, 514, 514B, 515,
30 515C, or 518A, associations subject to chapters 518 and 520,
31 and companies or associations admitted or seeking to be
32 admitted to this state under any of those chapters.

33 f. "Person" means any individual, aggregation of
34 individuals, trust, association, partnership, or corporation
35 or an affiliate of any of these.

1 Sec. 2. Section 507.2, Code 1991, is amended by striking
2 the section and inserting in lieu thereof the following:

3 507.2 AUTHORITY, SCOPE, AND SCHEDULING OF EXAMINATIONS.

4 1. The commissioner or any of the commissioner's examiners
5 may conduct an examination under this chapter of any company
6 as often as the commissioner deems appropriate, but at a
7 minimum, shall conduct an examination of any domestic insurer
8 licensed in this state no less than once every five years. In
9 scheduling and determining the nature, scope, and frequency of
10 the examinations, the commissioner shall consider such matters
11 as the results of financial statement analyses and ratios,
12 changes in management or ownership, actuarial opinions,
13 reports of independent certified public accountants, and other
14 criteria as set forth in the examiners' handbook adopted by
15 the national association of insurance commissioners and in
16 effect when the commissioner exercises discretion under this
17 section.

18 2. For purposes of completing an examination of any
19 company pursuant to this chapter, the commissioner may examine
20 or investigate any person, or the business of any person, in
21 so far as the examination or investigation is, in the sole
22 discretion of the commissioner, necessary or material to the
23 examination of the company.

24 3. In lieu of an examination under this chapter of any
25 foreign or alien insurer licensed in this state, the
26 commissioner may accept an examination report on the company
27 as prepared by the regulatory authority for insurance for the
28 company's state of domicile or port-of-entry state until
29 January 1, 1994. Thereafter, such reports shall only be
30 accepted if the regulatory authority was at the time of the
31 examination accredited under the national association of
32 insurance commissioners' financial regulation standards and
33 accreditation program or the examination is performed under
34 the supervision of an accredited regulatory authority or with
35 the participation of one or more examiners who are employed by

1 the accredited state and who, after a review of the
2 examination work papers and report, state under oath that the
3 examination was performed in a manner consistent with
4 standards and procedures required by their insurance
5 department.

6 Sec. 3. Section 507.3, Code 1991, is amended by striking
7 the section and inserting in lieu thereof the following:

8 507.3 CONDUCT OF EXAMINATIONS.

9 1. Upon determining that an examination should be
10 conducted, the commissioner or the commissioner's designee may
11 issue an examination warrant appointing one or more examiners
12 to perform the examination and instructing them as to the
13 scope of the examination. In conducting the examination, the
14 examiner shall observe those guidelines and procedures set
15 forth in the examiners' handbook adopted by the national
16 association of insurance commissioners. The commissioner may
17 also employ other guidelines as the commissioner deems
18 appropriate.

19 2. A company or person from whom information is sought and
20 its officers, directors, and agents shall provide to the
21 examiners appointed under subsection 1, timely, convenient,
22 and free access at all reasonable hours at its offices to all
23 books, records, accounts, papers, documents, and any or all
24 computer or other recordings relating to the property, assets,
25 business, and affairs of the company being examined. The
26 officers, directors, employees, and agents of the company or
27 person shall facilitate the examination and aid in the
28 examination so far as it is in their power to do so. The
29 refusal of any company, by its officers, directors, employees,
30 or agents, to submit to examinations or to comply with any
31 reasonable written request of the examiners is grounds for
32 suspension or revocation of, or nonrenewal of, any license or
33 authority held by the company to engage in the business of
34 insurance or other business subject to the commissioner's
35 jurisdiction. Should a company decline or refuse to submit to

1 an examination as provided in this chapter, the commissioner
2 shall immediately revoke its certificate of authority, and if
3 the company is organized under the laws of this state, the
4 commissioner shall report the commissioner's action to the
5 attorney general, who shall immediately apply to the district
6 court for the appointment of a receiver to administer the
7 final affairs of the company.

8 3. The commissioner or any of the commissioner's examiners
9 may issue subpoenas, administer oaths, and examine under oath
10 any person as to any matter pertinent to the examination.
11 Upon the failure or refusal of any person to obey a subpoena,
12 the commissioner may petition a court of competent
13 jurisdiction, and upon proper showing, the court may enter an
14 order compelling the witness to appear and testify or produce
15 documentary evidence. Failure to obey the court order is
16 punishable as contempt of court.

17 4. When making an examination under this chapter, the
18 commissioner may retain attorneys, appraisers, independent
19 actuaries, independent certified public accountants, or other
20 professionals and specialists as examiners, the cost of which
21 shall be borne by the company which is the subject of the
22 examination.

23 5. This chapter does not limit the commissioner's
24 authority to terminate or suspend any examination in order to
25 pursue other legal or regulatory action pursuant to the
26 insurance laws of this state. Findings of fact and
27 conclusions made pursuant to any examination are deemed to be
28 prima facie evidence in any legal or regulatory action.

29 Sec. 4. Section 507.6, Code 1991, is amended by striking
30 the section and inserting in lieu thereof the following:

31 507.6 CONFLICT OF INTEREST.

32 1. An examiner shall not be appointed by the commissioner
33 if the examiner, either directly or indirectly, has a conflict
34 of interest or is affiliated with the management of or owns a
35 pecuniary interest in any person subject to examination under

1 this chapter. This section shall not be construed to
2 automatically preclude an examiner from being any of the
3 following:

4 a. A policyholder or claimant under an insurance policy.

5 b. A grantor of a mortgage or similar instrument on the
6 examiner's residence to a regulated entity if done under
7 customary terms and in the ordinary course of business.

8 c. An investment owner in shares of regulated diversified
9 investment companies.

10 d. A settlor or beneficiary of a blind trust into which
11 any otherwise impermissible holdings have been placed.

12 2. Notwithstanding the requirements of subsection 7, the
13 commissioner may retain from time to time, on an individual
14 basis, qualified actuaries, certified public accountants, or
15 other similar individuals who are independently practicing
16 their professions, even though the persons may from time to
17 time be similarly employed or retained by persons subject to
18 examination under this chapter.

19 Sec. 5. Section 507.10, Code 1991, is amended by striking
20 the section and inserting in lieu thereof the following:

21 507.10 EXAMINATION REPORTS.

22 1. GENERAL DESCRIPTION. All examination reports shall be
23 comprised only of facts appearing upon the books, records, or
24 other documents of the company, its agents, or other persons
25 examined, or as ascertained from the testimony of its officers
26 or agents or other persons examined concerning its affairs,
27 and such conclusions and recommendations as the examiners find
28 reasonably warranted from the facts.

29 2. FILING OF EXAMINATION REPORT. No later than sixty days
30 following completion of the examination, the examiner in
31 charge shall file with the division a verified written report
32 of examination under oath. Upon receipt of the verified
33 report and after administrative review, the division shall
34 transmit the report to the company examined, together with a
35 notice which shall afford the company examined a reasonable

1 opportunity of not more than twenty days to make a written
2 submission or rebuttal with respect to any matters contained
3 in the examination report.

4 3. ADOPTION OF REPORT ON EXAMINATION. Within twenty days
5 of the end of the period allowed for the receipt of written
6 submissions or rebuttals, the commissioner shall fully
7 consider and review the report, together with any written
8 submissions or rebuttals and any relevant portions of the
9 examiner's work papers and enter an order which does one of
10 the following:

11 a. Adopts the examination report as filed or with
12 modification or corrections. If the examination report
13 reveals that the company is operating in violation of any law
14 or a rule or prior order of the commissioner, the commissioner
15 may order the company to take any action the commissioner
16 considers necessary and appropriate to cure the violation.

17 b. Rejects the examination report with directions to the
18 examiners to reopen the examination for purposes of obtaining
19 additional data, documentation, or information, and refileing
20 pursuant to subsection 1 above.

21 c. Calls for an investigatory hearing with no less than
22 twenty days notice to the company for purposes of obtaining
23 additional documentation, data, information, and testimony.

24 4. ORDERS AND PROCEDURES.

25 a. All orders entered pursuant to subsection 3, paragraph
26 "a", shall be accompanied by findings and conclusions
27 resulting from the commissioner's consideration and review of
28 the examination report, relevant examiner work papers, and any
29 written submissions or rebuttals. Any such order is a final
30 administrative decision and may be appealed pursuant to
31 chapter 17A, and shall be served upon the company by certified
32 mail, together with a copy of the adopted examination report.

33 Within thirty days of this issuance of the adopted report, the
34 company shall file affidavits executed by each of its
35 directors stating under oath that they have received a copy of

1 the adopted report and related orders.

2 b. Any hearing conducted under subsection 3, paragraph
3 "c", by the commissioner or an authorized representative,
4 shall be conducted as a nonadversarial, confidential,
5 investigatory proceeding as necessary for the resolution of
6 any inconsistencies, discrepancies, or disputed issues
7 apparent upon the face of the filed examination report or
8 indicated as a result of the commissioner's review of relevant
9 work papers or by the written submission or rebuttal of the
10 company. Within twenty days of the conclusion of any such
11 hearing, the commissioner shall enter an order pursuant to
12 subsection 3, paragraph "a".

13 (1) The commissioner shall not appoint an examiner as an
14 authorized representative to conduct the hearing. The hearing
15 shall proceed expeditiously with discovery by the company
16 limited to the examiner's work papers which tend to
17 substantiate any assertions set forth in any written
18 submission or rebuttal. The commissioner or a representative
19 acting on the commissioner's behalf may issue subpoenas for
20 the attendance of any witnesses or the production of any
21 documents deemed relevant to the investigation whether under
22 the control of the division of insurance, the company, or
23 other persons. The documents produced shall be included in
24 the record and testimony taken by the commissioner or a
25 representative acting on the commissioner's behalf shall be
26 under oath and preserved for the record.

27 This section does not require the division of insurance to
28 disclose any information or records which would indicate or
29 show the existence of any investigation or activity of a
30 criminal justice agency.

31 (2) The hearing shall proceed with the commissioner or
32 the commissioner's representative posing questions to the
33 persons subpoenaed. Thereafter the company and the division
34 may present testimony relevant to the investigation. Cross
35 examination shall be conducted only by the commissioner or the

1 commissioner's representative. The company and the division
2 shall be permitted to make closing statements and may be
3 represented by counsel.

4 5. PUBLICATION AND USE.

5 a. Upon the adoption of the examination report under
6 subsection 3, paragraph "a", the commissioner shall continue
7 to hold the content of the examination report as private and
8 confidential information for a period of twenty days except to
9 the extent provided in subsection 2. Thereafter, the
10 commissioner may open the report for public inspection so long
11 as no court of competent jurisdiction has stayed its
12 publication.

13 b. The commissioner is not prevented from disclosing the
14 content of an examination report, preliminary examination
15 report or results, or any matter relating to the report, to an
16 insurance department of any other state or country, or to law
17 enforcement officials of this or any other state or an agency
18 of the federal government at any time, so long as such agency
19 or office receiving the report, or matters relating to the
20 report, agrees in writing to maintain the confidentiality of
21 the report or such matters in a manner consistent with this
22 chapter.

23 c. If the commissioner determines that regulatory action
24 is appropriate as a result of any examination, the
25 commissioner may initiate any proceeding or action as provided
26 by law.

27 6. CONFIDENTIALITY OF ANCILLARY INFORMATION. All working
28 papers, recorded information, documents, and copies of such
29 items produced by, obtained by, or disclosed to the
30 commissioner or any other person in the course of an
31 examination made under this chapter shall be given
32 confidential treatment and are not subject to subpoena and
33 shall not be made public by the commissioner or any other
34 person, except to the extent provided in subsection 5. Access
35 may also be granted to the national association of insurance

1 commissioners. Such parties must agree in writing prior to
2 receiving the information to maintain the confidentiality of
3 the information in the same manner as required by this
4 section, unless the prior written consent of the company to
5 which the information pertains has been obtained.

6 Sec. 6. Section 507.14, Code Supplement 1991, is amended
7 to read as follows:

8 507.14 CONFIDENTIAL DOCUMENTS -- EXCEPTIONS.

9 A preliminary report, ~~preliminary or final~~, of an
10 examination of a domestic or foreign insurer, and all notes,
11 work papers, or other documents related to an examination of
12 an insurer are not public records under chapter 22 except when
13 sought by the insurer to whom they relate, or an insurance
14 regulator of another state, or the national association of
15 insurance commissioners, and shall be privileged and
16 confidential in any judicial or administrative proceeding
17 except any of the following:

18 1. An action commenced by the commissioner under chapter
19 507C.

20 2. An administrative proceeding brought by the insurance
21 division under chapter 17A.

22 3. A judicial review proceeding under chapter 17A brought
23 by an insurer to whom the records relate.

24 4. An action or proceeding which arises out of the
25 criminal provisions of the laws of this state or the United
26 States.

27 5. An action brought in a shareholders' derivative suit
28 against an insurer.

29 6. An action brought to recover moneys or to recover upon
30 an indemnity bond for embezzlement, misappropriation, or
31 misuse of insurer funds.

32 7. Any other legal action which the commissioner deems
33 appropriate.

34 ~~A report of an examination of a domestic or foreign insurer~~
35 ~~which is preliminary under the rules of the division is not a~~

1 public-record-under-chapter-22-except-when-sought-by-the
2 insurer-to-which-the-report-relates-or-an-insurance-regulator
3 of-another-state,-and-is-privileged-and-confidential-in-any
4 judicial-or-administrative-proceeding-

5 A financial statement filed by an employer self-insuring
6 workers' compensation liability pursuant to section 87.11, or
7 the working papers of an examiner or the division in
8 connection with calculating appropriate security and reserves
9 for the self-insured employer are not public records under
10 chapter 22 except when sought by the employer to which the
11 financial statement or working papers relate or an insurance
12 or workers' compensation self-insurance regulator of another
13 state, and are privileged and confidential in any judicial or
14 administrative proceeding. The financial information of a
15 nonpublicly traded employer which self-insures for workers'
16 compensation liability pursuant to section 87.11 is protected
17 as proprietary trade secrets to the extent consistent with the
18 commissioner's duties to oversee the security of self-insured
19 workers' compensation liability.

20 Sec. 7. Section 507.17, Code 1991, is amended by striking
21 the section and inserting in lieu thereof the following:

22 507.17 IMMUNITY FROM LIABILITY.

23 1. A cause of action does not arise nor shall any
24 liability be imposed against the commissioner, the
25 commissioner's authorized representative, or any examiner
26 appointed by the commissioner for any statements made or
27 conduct performed in good faith while carrying out the
28 provisions of this chapter.

29 2. A cause of action does not arise, nor shall any
30 liability be imposed against any person for the act of
31 communicating or delivering information or data to the
32 commissioner or the commissioner's authorized representative,
33 or an examiner pursuant to an examination made under this
34 chapter, if the act of communication or delivery was performed
35 in good faith and without fraudulent intent or the intent to

1 deceive.

2 3. This section does not abrogate or modify in any way any
3 common law or statutory privilege or immunity enjoyed by any
4 person identified in subsection 1.

5 4. A person identified in subsection 1 is entitled to an
6 award of attorney's fees and costs if the person is the
7 prevailing party in a civil cause of action for libel,
8 slander, or any other relevant tort arising out of activities
9 in carrying out the provisions of this chapter and the party
10 bringing the action was not substantially justified in doing
11 so. For purposes of this section, a proceeding is
12 substantially justified if the proceeding has a reasonable
13 basis in law or fact at the time that it is initiated.

14 Sec. 8. Section 507C.1, subsection 4, unnumbered paragraph
15 1, Code 1991, is amended to read as follows:

16 The purpose of this chapter is the protection of the
17 interests of ~~insured~~ insureds, claimants, creditors, and the
18 public, with minimum interference with the normal prerogatives
19 of the owners and managers of insurers, through all of the
20 following:

21 Sec. 9. Section 507C.1, subsection 4, Code 1991, is
22 amended by adding the following new paragraph:

23 NEW PARAGRAPH. g. Providing for a comprehensive scheme
24 for the rehabilitation and liquidation of insurance companies
25 and those subject to this chapter as part of the regulation of
26 the business of insurance, the insurance industry, and
27 insurers in this state. Proceedings in cases of insurer
28 insolvency and delinquency are deemed an integral aspect of
29 the business of insurance and are of vital public interest and
30 concern.

31 Sec. 10. Section 507C.2, subsections 9, 10, 11, and 13,
32 Code 1991, are amended to read as follows:

33 9. "General assets" means all real, personal, or other
34 ~~property, real or personal~~, not specifically mortgaged,
35 pledged, deposited, or otherwise encumbered for the security

1 or benefit of specified persons or classes of persons. As to
2 specifically encumbered property, "general assets" includes
3 all property or its proceeds in excess of the amount necessary
4 to discharge the sum or sums secured by the property or its
5 proceeds. Assets held in trust and on deposit for the
6 security or benefit of all policyholders or all policyholders
7 and creditors, in more than a single state, shall be treated
8 as general assets.

9 10. "Guaranty association" means the Iowa insurance
10 guaranty association created in chapter 515B, the Iowa life
11 and health insurance guaranty association created in chapter
12 508C, and any other similar entity either presently existing
13 or to be created by the general assembly for the payment of
14 claims of insolvent insurers. "Foreign guaranty association"
15 means a similar entity presently existing in or to be created
16 in the future by the legislature of any other state.

17 11. "Insolvency" or "insolvent" means either any of the
18 following:

19 a. For an insurer issuing only assessable fire insurance
20 policies, either of the following:

21 (1) The inability to pay any obligation within thirty days
22 after it becomes payable.

23 (2) If an assessment is made, the inability to pay the
24 assessment within thirty days following the date specified in
25 the first assessment notice issued after the date of loss.

26 b. For an any other insurer that it is unable to pay its
27 obligations when they are due, or when its admitted assets do
28 not exceed its liabilities plus the greater of:

29 (1) Any capital and surplus required by law for its
30 organization.

31 (2) The total par or stated value of its authorized and
32 issued capital stock.

33 b c. As to an insurer licensed to do business in this
34 state as of July 1, 1984, which does not meet the standard
35 established under paragraph "a b", the term "insolvency" or

1 "insolvent" shall mean, for a period not to exceed three years
2 from July 1, 1984, that it is unable to pay its obligations
3 when they are due or that its admitted assets do not exceed
4 its liabilities plus any required capital contribution ordered
5 by the commissioner under provisions of the insurance law.

6 For purposes of this subsection "liabilities" ~~shall include~~
7 includes but is not be limited to reserves required by statute
8 or by the division's rules or specific requirements imposed by
9 the commissioner upon a company at the time of or subsequent
10 to admission.

11 13. "Preferred claim" means a claim with respect to which
12 the terms of this chapter ~~grant~~ accord priority of payment
13 from the general assets of the insurer.

14 Sec. 11. Section 507C.4, subsection 3, paragraph b, Code
15 1991, is amended to read as follows:

16 b. In an action on or incident to a reinsurance contract,
17 if the person served is a reinsurer who has at any time
18 written a policy of reinsurance for an insurer against which a
19 ~~rehabilitation-or-liquidation-order-is-in-effect-when-the~~
20 action-is-commenced delinquency proceeding has been
21 instituted, or is an agent or broker of or for the reinsurer
22 and the action results from or is incident to the relationship
23 with the reinsurer.

24 Sec. 12. Section 507C.4, subsection 3, Code 1991, is
25 amended by adding the following new paragraphs:

26 NEW PARAGRAPH. d. In an action if the person served is or
27 was at the time of the institution of the delinquency
28 proceeding against the insurer holding assets which are the
29 subject of the proceeding and in which the receiver claims an
30 interest on behalf of the insurer.

31 NEW PARAGRAPH. e. If the person served is obligated to
32 the insurer in any way whatsoever, in an action on or incident
33 to the obligation.

34 Sec. 13. NEW SECTION. 507C.8A CONDITION ON RELEASE FROM
35 DELINQUENCY PROCEEDINGS.

1 An insurer subject to a delinquency proceeding shall not be
 2 released from the delinquency proceeding unless the proceeding
 3 is converted into a rehabilitation or liquidation proceeding;
 4 shall not be permitted to solicit or accept new business, or
 5 request or accept the restoration of any suspended or revoked
 6 license or certificate of authority; and shall not be returned
 7 to the control of the insurer's shareholders or private
 8 management, or have any of the insurer's assets returned to
 9 the control of its shareholders or private management, until
 10 all payments of or on account of the insurer's contractual
 11 obligations by all guaranty associations, along with all
 12 expenses of such obligations and interest on all such payments
 13 and expenses, have been repaid to the guaranty association or
 14 a plan of repayment by the insurer is approved by the guaranty
 15 association.

16 Sec. 14. Section 507C.11, Code 1991, is amended to read as
 17 follows:

18 507C.11 CONFIDENTIALITY OF HEARINGS.

19 Notwithstanding chapter 22, in all administrative
 20 proceedings pursuant to sections 507C.9 and 507C.10 all
 21 records and documents pertaining to or a part of the record of
 22 the proceedings are confidential except as is necessary to
 23 obtain compliance with a proceeding. However, the records may
 24 be released if either of the following occurs:

- 25 1. The insurer requests that the records be made public.
 - 26 2. After a hearing on the issue with the parties to the
 27 proceeding, the court orders that the records be made public.
- 28 Until such court order, the clerk of court shall hold all
 29 papers filed in a confidential file.

30 Sec. 15. Section 507C.13, subsection 2, Code 1991, is
 31 amended to read as follows:

32 2. An order issued under this section ~~shall~~ require
 33 requires accounting to the court by the rehabilitator.
 34 Accountings shall be at intervals the court specified
 35 specifies in the order. Each accounting must include a report

1 concerning the rehabilitator's opinion as to whether a plan
2 pursuant to section 507C.14, subsection 4, will be prepared.
3 If the rehabilitator includes in any accounting that such a
4 plan is likely, the accounting shall also include a proposed
5 timetable for the preparation and implementation of the plan.

6 Sec. 16. Section 507C.14, Code 1991, is amended by adding
7 the following new subsection following subsection 2, and
8 renumbering the remaining subsections:

9 NEW SUBSECTION. 2A. The rehabilitator, with the approval
10 of the court, may appoint an advisory committee of
11 policyholders, claimants, or other creditors including
12 guaranty associations, should the rehabilitator deem it to be
13 necessary. Each member of the advisory committee shall be
14 reimbursed for necessary travel and actual expenses incurred
15 in fulfilling the duties of the advisory committee. The
16 rehabilitator shall not appoint any other committee related to
17 proceedings pursuant to this chapter.

18 Sec. 17. Section 507C.15, subsections 1 and 2, Code 1991,
19 are amended to read as follows:

20 1. A court in this state, before which an action or
21 proceeding in which the insurer is a party or is obligated to
22 defend a party is pending when a rehabilitation order against
23 the insurer is entered, shall stay the action or proceeding
24 for ninety days and any additional time as necessary for the
25 rehabilitator to obtain proper representation and prepare for
26 further proceedings. The rehabilitator shall take action
27 respecting the pending litigation as necessary in the
28 interests of justice and for the protection of creditors,
29 policyholders, and the public. The rehabilitator shall
30 immediately consider all litigation pending outside this state
31 and shall petition the courts having jurisdiction over that
32 litigation for stays whenever necessary to protect the estate
33 of the insurer.

34 2. A statute of limitations or defense of laches shall not
35 run in an action by or against an insurer between the filing

1 of a petition for appointment of a rehabilitator for that
 2 insurer and the order granting or denying that petition. An
 3 action by or against the insurer that might have been
 4 commenced when the petition was filed may be commenced for at
 5 least sixty days after the order of rehabilitation is entered
 6 or the petition is denied. The rehabilitator, upon the
 7 issuance of an order for rehabilitation pursuant to section
 8 507C.13, may institute an action or proceeding on behalf of
 9 the insurer based upon a cause of action for which the period
 10 of limitation has not expired at the time of the filing of the
 11 petition for an order to rehabilitate. The action or
 12 proceeding by the rehabilitator may be instituted within one
 13 year or a longer period if provided by applicable law, of the
 14 issuance of the order for rehabilitation.

15 Sec. 18. Section 507C.16, Code 1991, is amended by adding
 16 the following new subsection:

17 NEW SUBSECTION. 3. If the payment of obligations pursuant
 18 to a policy issued by the insurer is suspended in substantial
 19 part for a period of six months at any time after the
 20 appointment of the rehabilitator, and the rehabilitator has
 21 not filed an application for a plan pursuant to section
 22 507C.14, subsection 4, the rehabilitator shall petition the
 23 court for an order of liquidation on grounds of insolvency.

24 Sec. 19. Section 507C.18, Code 1991, is amended to read as
 25 follows:

26 507C.18 LIQUIDATION ORDERS.

27 1. An order to liquidate the business of a domestic
 28 insurer shall appoint the commissioner as liquidator and shall
 29 direct the liquidator to immediately take possession of the
 30 assets of the insurer and to administer them under the general
 31 supervision of the court. The liquidator ~~shall~~ is vested
 32 with the title to the property, contracts, and rights of
 33 action and the books and records of the insurer ordered
 34 liquidated, wherever located, as of the entry of the final
 35 order of liquidation. The filing or recording of the order

1 with the clerk of the court and the recorder of deeds of the
2 county in which its principal office or place or business is
3 located, or, in the case of real estate with the recorder of
4 deeds of the county where the property is located, ~~shall be~~ is
5 notice as a deed, bill of sale, or other evidence of title
6 duly filed or recorded with the recorder of deeds.

7 2. Upon issuance of the order, the rights and liabilities
8 of an insurer and of its creditors, policyholders,
9 shareholders, members, and other persons interested in its
10 estate shall become fixed as of the date of entry of the order
11 of liquidation, except as provided in sections 507C.19 and
12 507C.37.

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

19 4. At the time of petitioning for an order of liquidation,
20 or at any time thereafter, the commissioner, after making
21 appropriate findings of an insurer's insolvency, may petition
22 the court for a declaration of insolvency. After providing
23 notice and hearing as it deems proper, the court may make the
24 declaration.

25 5. An order issued under this section shall require
26 accounting to the court by the liquidator. Accountings, at a
27 minimum, must include all funds received or disbursed by the
28 liquidator during the current period. An accounting shall be
29 at-intervals-specified-in-the filed within one year of the
30 liquidation order and at such other times as the court may
31 require.

32 6. a. Within five days of the effective date of this
33 section or, if later, within five days after the initiation of
34 an appeal of an order of liquidation, which order has not been
35 stayed, the commissioner shall present for the court's

1 approval a plan for the continued performance of the defendant
2 company's policy claims obligations, including the duty to
3 defend insureds under liability insurance policies, during the
4 pendency of an appeal. The plan shall provide for the
5 continued performance and payment of policy claims obligations
6 in the normal course of events, notwithstanding the grounds
7 alleged in support of the order of liquidation including the
8 ground of insolvency. If the defendant company's financial
9 condition will not, in the judgment of the commissioner,
10 support the full performance of all policy claims obligations
11 during the appeal pendency period, the plan may prefer the
12 claims of certain policyholders and claimants over creditors
13 and interested parties as well as other policyholders and
14 claimants, as the commissioner finds to be fair and equitable
15 considering the relative circumstances of such policyholders
16 and claimants. The court shall examine the plan submitted by
17 the commissioner and if it finds the plan to be in the best
18 interests of the parties, the court shall approve the plan.
19 No action shall lie against the commissioner or any of the
20 commissioner's deputies, agents, clerks, assistants, or
21 attorneys by any party based on preference in an appeal
22 pendency plan approved by the court.

23 b. The appeal pendency plan shall not supersede or affect
24 the obligations of any insurance guaranty association.

25 c. Any such plans shall provide for equitable adjustments
26 to be made by the liquidator to any distributions of assets to
27 guaranty associations, in the event that the liquidator pays
28 claims from assets of the estate, which would otherwise be the
29 obligations of any particular guaranty association but for the
30 appeal of the order of liquidation, such that all guaranty
31 associations equally benefit on a pro rata basis from the
32 assets of the estate. If an order of liquidation is set aside
33 upon an appeal, the company shall not be released from
34 delinquency proceedings unless and until all funds advanced by
35 a guaranty association, including reasonable administrative

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1 expenses in connection therewith relating to obligations of
2 the company, shall be repaid in full, together with interest
3 at the judgment rate of interest, or unless an arrangement for
4 repayment thereof has been made with the consent of all
5 applicable guaranty associations.

6 Sec. 20. Section 507C.21, subsection 1, paragraph j, Code
7 1991, is amended to read as follows:

8 j. Borrow money on the security of the insurer's assets or
9 without security and execute and deliver documents necessary
10 to that transaction for the purpose of facilitating the
11 liquidation. Money borrowed pursuant to this paragraph shall
12 be repaid as an administrative expense and have priority over
13 any other class 1 claims under the priority of distribution
14 established in section 507C.42.

15 Sec. 21. Section 507C.21, subsection 1, Code 1991, is
16 amended by adding the following new paragraph:

17 NEW PARAGRAPH. w. Audit the books and records of all
18 agents of the insurer which relate to the business of the
19 insurer.

20 Sec. 22. Section 507C.22, Code 1991, is amended by adding
21 the following new subsection:

22 NEW SUBSECTION. 2A. a. Notice to agents of the insurer
23 and potential claimants who are policyholders under subsection
24 1, where applicable, shall include notice that coverage by
25 state guaranty associations may be available for all or part
26 of policy benefits in accordance with applicable state
27 guaranty laws.

28 b. The liquidator shall promptly provide to the guaranty
29 associations such information concerning the identities and
30 addresses of the policyholders and their policy coverages as
31 may be within the liquidator's possession or control, and
32 otherwise cooperate with guaranty associations to assist them
33 in providing to the policyholders timely notice of the
34 guaranty associations' coverage of policy benefits including,
35 as applicable, coverage of claims and continuation or

1 termination of coverage.

2 Sec. 23. Section 507C.23, subsection 2, Code 1991, is
3 amended to read as follows:

4 2. An agent failing to ~~give notice or file a report of~~
5 compliance provide information as required in subsection 1 may
6 be subject to payment of a penalty of not more than one
7 thousand dollars and may have the agent's license suspended.
8 The penalty is to be imposed only after a hearing held by the
9 commissioner.

10 Sec. 24. Section 507C.24, subsections 1 and 2, Code 1991,
11 are amended to read as follows:

12 1. After the issuance of an order appointing a liquidator
13 of a domestic insurer or of an alien insurer domiciled in this
14 state, action at law or equity shall not be brought against
15 the insurer or liquidator in this state or elsewhere, nor
16 shall existing actions be maintained or further presented
17 after issuance of the order. The courts of this state shall
18 give full faith and credit to injunctions against the
19 liquidator or the insurer or the continuation of existing
20 actions against the liquidator or the insurer, when the
21 injunctions are included in an order to liquidate an insurer
22 issued pursuant to corresponding provisions in other states.
23 Whenever in the liquidator's judgment, protection of the
24 estate of the insurer necessitates intervention in an action
25 against the insurer that is pending outside this state, the
26 liquidator may intervene in the action. The liquidator may
27 defend, at the expense of the estate of the insurer, an action
28 in which the liquidator intervenes under this section.

29 2. Within two years or such additional time as applicable
30 law may permit, the liquidator may after the issuance of an
31 order for liquidation institute an action or proceeding on
32 behalf of the estate of the insurer upon any cause of action
33 against which the period of limitation fixed by applicable law
34 has not expired at the time of the filing of the petition upon
35 which the order is entered. ~~Where~~ If a period of limitation

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1 is fixed by agreement for instituting a suit or proceeding
2 upon a claim, or for filing a claim, proof of claim, proof of
3 loss, demand, notice, or the like, or where if in a
4 proceeding, judicial or otherwise, a period of limitation is
5 fixed in the proceeding or pursuant to applicable law for
6 taking an action, filing a claim or pleading, or doing an act,
7 and ~~where-in-any-case~~ if the period had not expired at the
8 date of the filing of the petition, the liquidator may, for
9 the benefit of the estate, take any action or do any act,
10 required of or permitted to the insurer, within a period of
11 one hundred eighty days subsequent to the entry of an order
12 for liquidation, or within a further period as is shown to the
13 satisfaction of the court not to be unfairly prejudicial to
14 the other party.

15 Sec. 25. Section 507C.27, Code 1991, is amended by adding
16 the following new subsection:

17 NEW SUBSECTION. 2A. A person receiving any property from
18 the insurer or any benefit of the insurer which is a
19 fraudulent transfer under subsection 1 is personally liable
20 for the property or benefit and shall account to the
21 liquidator.

22 Sec. 26. Section 507C.30, subsection 2, Code 1991, is
23 amended by adding the following new paragraph following
24 paragraph b and relettering the remaining paragraphs:

25 NEW PARAGRAPH. c. The obligation of the insurer is owed
26 to the affiliate of such person, or any other entity or
27 association other than the person.

28 Sec. 27. Section 507C.34, subsection 1, Code 1991, is
29 amended to read as follows:

30 1. Within one hundred twenty days of a final determination
31 of insolvency under this chapter as assets become available,
32 the liquidator shall make application to the court for
33 approval of a proposal to disburse assets out of marshaled
34 assets to a guaranty association or foreign guaranty
35 association having obligations because of the insolvency. An

1 application and disbursement of assets shall be made from time
2 to time as assets become available. If the liquidator
3 determines that there are insufficient assets to disburse, the
4 application required by this section shall be considered
5 satisfied by a filing by the liquidator stating the reasons
6 for this determination.

7 Sec. 28. Section 507C.40, Code 1991, is amended to read as
8 follows:

9 507C.40 CLAIMS OF SURETY.

10 If a creditor, whose claim against an insurer is secured in
11 whole or in part, by the undertaking of another person, fails
12 to prove and file that claim, then the other person may do so
13 in the creditor's name. ~~The surety~~ and shall be subrogated to
14 the rights of the creditor, whether the claim has been filed
15 by the creditor or by the surety other person in the
16 creditor's name to the extent that the surety other person
17 discharges the undertaking. However, in the absence of an
18 agreement with the creditor to the contrary, the surety other
19 person is not entitled to any distribution until the amount
20 paid to the creditor on the undertaking plus the distributions
21 paid on the claim from the insurer's estate to the creditor
22 equals equal the amount of the entire claim of the creditor.
23 An excess received by the creditor shall be held by the
24 creditor in trust for the surety other person. As used in
25 this section, "surety" "other person" is not intended to apply
26 to a guaranty association or foreign guaranty association.

27 Sec. 29. Section 507C.42, subsections 1, 2, 3, 4, and 5,
28 Code 1991, are amended to read as follows:

29 1. CLASS 1. The costs and expenses of administration,
30 including but not limited to the following:

31 a. The actual and necessary costs of preserving or
32 recovering the assets of the insurer.

33 b. Compensation for all authorized services rendered in
34 the liquidation.

35 c. Necessary filing fees.

1 d. The fees and mileage payable to witnesses.

2 e. Reasonable Authorized reasonable attorney's fees and
3 other professional services rendered in the liquidation.

4 f. The reasonable expenses of a guaranty association or
5 foreign guaranty association in handling claims for loss
6 adjustment expenses.

7 2. CLASS 2. Debts-due Reasonable compensation to
8 employees for services performed to the extent that they do
9 not exceed one-thousand-dollars two months of monetary
10 compensation and represent payment for services performed
11 within one year before the filing of the petition for
12 liquidation or, if the rehabilitation preceded liquidation,
13 within one year before the filing of the petition for
14 rehabilitation. Officers and directors are not entitled to
15 the benefit of this priority. The priority is in lieu of
16 other similar priority which may be authorized by law as to
17 wages or compensation of employees.

18 3. CLASS 3. Claims under policies, including claims of
19 the federal or any state or local government, for losses
20 incurred, including third-party claims, claims against the
21 insurer for liability for bodily injury or for injury to or
22 destruction of tangible property which are not under policies,
23 and claims of a guaranty association or foreign guaranty
24 association. Claims under nonassessable policies for unearned
25 premium. Claims under life insurance and annuity policies,
26 whether for death proceeds, annuity proceeds, or investment
27 values shall be treated as loss claims. That portion of a
28 loss, indemnification for which is provided by other benefits
29 or advantages recovered by the claimant, shall not be included
30 in this class, other than benefits or advantages recovered or
31 recoverable in discharge of familial obligations of support or
32 by way of succession at death or as proceeds of life
33 insurance, or as gratuities. A payment by an employer to an
34 employee is not a gratuity.

35 4. CLASS 4. Claims-under-nonassessable-policies-for

1 ~~unearned-premium-or-other-premium~~ Premium refunds, and claims
2 of general creditors, including claims of ceding and assuming
3 reinsurers in their capacity as such, and subrogation claims.

4 5. CLASS 5. Claims of the federal or any state or local
5 government except those under class 3. Claims, including
6 those of a governmental body for a penalty or forfeiture, are
7 allowed in this class only to the extent of the pecuniary loss
8 sustained from the act, transaction, or proceeding out of
9 which the penalty or forfeiture arose, with reasonable and
10 actual costs incurred. The remainder of such claims shall be
11 postponed to the class of claims under subsection 8.

12 Sec. 30. Section 507C.45, Code 1991, is amended by adding
13 the following new subsection:

14 NEW SUBSECTION. 3. Notwithstanding any other provision of
15 this chapter, funds as identified in subsection 1, with the
16 approval of the court, shall be made available to the
17 commissioner for use in the detection and prevention of future
18 insolvencies. The commissioner shall hold these funds and
19 shall pay without interest, except as provided in section
20 507C.42, to the person entitled to the funds or the person's
21 legal representative upon proof satisfactory to the
22 commissioner of the person's right to the funds. The funds
23 shall be held by the commissioner for a period of two years at
24 which time the rights and duties to the unclaimed funds shall
25 vest in the commissioner.

26 Sec. 31. Section 507C.46, subsection 2, Code 1991, is
27 amended to read as follows:

28 2. Any other person may apply to the court at any time for
29 an order under subsection 1. If the application is denied,
30 the applicant shall pay the costs and expenses including
31 reasonable-attorney's-fee of the liquidator in resisting the
32 application including a reasonable attorney's fee.

33 Sec. 32. Section 507C.52, subsection 1, Code 1991, is
34 amended to read as follows:

35 1. Except as to special deposits and security on secured

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1 claims under section 507C.53, subsection 3, the domiciliary
2 liquidator of an insurer domiciled in a reciprocal state shall
3 be vested with the title to the assets, property, contracts,
4 and rights of action, agents' balances, books, accounts, and
5 other records of the insurer located in this state. The date
6 of vesting is the date of the filing of the petition, if that
7 date is specified by the domiciliary law for the vesting of
8 property in the domiciliary state. Otherwise, the date of
9 vesting ~~shall be~~ is the date of entry of the order directing
10 possession to be taken. The domiciliary liquidator may
11 immediately recover balances due from agents and obtain
12 possession of the books, accounts, and other records of the
13 insurer located in this state. ~~Subject to section 507E.53,~~
14 ~~the domiciliary liquidator may also recover all other assets~~
15 ~~of the insurer located in this state.~~ The domiciliary
16 liquidator may also have the right to recover all other assets
17 of the insurer located in this state, subject to section
18 507C.53.

19 Sec. 33. Section 507C.55, subsection 2, Code 1991, is
20 amended to read as follows:

21 2. Claims belonging to claimants residing in reciprocal
22 states shall be proved either in the liquidation proceeding in
23 this state as provided in this chapter or in ancillary
24 proceedings in the reciprocal states, if a claim filing
25 procedure is established in the ancillary proceeding. If
26 notice of the claims and opportunity to appear and be heard is
27 afforded the domiciliary liquidator of this state as provided
28 in section 507C.56, subsection 2, with respect to ancillary
29 proceedings, the final allowance of claims by the courts in
30 ancillary proceedings in reciprocal states shall be conclusive
31 as to amount and as to priority against special deposits or
32 other security located in such ancillary states, but shall not
33 be conclusive with respect to priorities against general
34 assets under section 507C.42.

35 Sec. 34. Section 507C.56, subsections 1 and 2, Code 1991,

1 are amended to read as follows:

2 1. ~~In-a-liquidation-proceeding-in-a-reciprocal-state~~
3 ~~against-an-insurer-domiciled-in-that-state~~ Promptly after the
4 appointment of the commissioner as ancillary receiver for an
5 insurer not domiciled in this state, the commissioner shall
6 determine whether there are claimants residing in this state
7 who are not protected by guaranty funds and whether the
8 protection of such claimants requires the establishing of a
9 claim filing procedure in the ancillary proceeding. If a
10 claim filing procedure is established, claimants against the
11 insurer who reside within this state may file claims either
12 with the ancillary receiver in this state, or with the
13 domiciliary liquidator. Claims shall be filed on or before
14 the last dates fixed for the filing of claims in the
15 domiciliary liquidation proceeding.

16 2. Claims belonging to claimants residing in this state
17 may be proved either in the domiciliary state under the law of
18 that state, or in ancillary proceedings in this state,
19 provided a claim filing procedure is established in the
20 ancillary proceeding. If a claimant elects to prove the claim
21 in this state, the claimant shall file the claim with the
22 liquidator in the manner provided in sections 507C.35 and
23 507C.36. The ancillary receiver shall make a recommendation
24 to the court as under section 507C.43. The ancillary receiver
25 shall also arrange a date for hearing if necessary under
26 section 507C.39 and shall give notice to the liquidator in the
27 domiciliary state, either by certified mail or by personal
28 service at least forty days prior to the date set for hearing.
29 Within thirty days after the giving of the notice, if the
30 domiciliary liquidator gives notice in writing either by
31 certified mail or by personal service to the ancillary
32 receiver and to the claimant of an intention to contest the
33 claim, the domiciliary liquidator is entitled to appear or to
34 be represented in a proceeding in this state involving the
35 adjudication of the claim.

1 Sec. 35. Section 510A.1, Code Supplement 1991, is amended
2 to read as follows:

3 510A.1 SHORT TITLE.

4 This chapter shall be known and may be cited as the
5 "Business Producer Controlled Property and Casualty Insurer
6 Act."

7 Sec. 36. Section 510A.2, Code Supplement 1991, is amended
8 by striking the section and inserting in lieu thereof the
9 following:

10 510A.2 DEFINITIONS.

11 As used in this chapter unless the context otherwise
12 requires:

13 1. "Accredited state" means a state in which the insurance
14 department or regulatory agency has qualified as meeting the
15 minimum financial regulatory standards promulgated and
16 established by the national association of insurance
17 commissioners.

18 2. "Control" or "controlled" has the meaning ascribed in
19 section 521A.1, subsection 3.

20 3. "Controlled insurer" means a licensed insurer which is
21 controlled, directly or indirectly, by a producer.

22 4. "Controlling producer" means a producer who, directly
23 or indirectly, controls an insurer.

24 5. "Independent casualty actuary" means a casualty actuary
25 who is a member of the American academy of actuaries and who
26 is not an employee, principal, the direct or indirect owner
27 of, affiliated with, or in any way controlled by the insurer
28 or producer.

29 6. "Licensed insurer" or "insurer" means any person duly
30 licensed to transact a property and casualty insurance
31 business in this state. The following are not licensed
32 property and casualty insurers for the purposes of this
33 chapter:

34 a. All risk retention groups as defined in the Superfund
35 Amendments Reauthorization Act of 1986, Pub. L. No. 99-499,

1 100 Stat. 1613 (1986) and the Risk Retention Act, 15 U.S.C. §
2 3901 et seq. (1982 & Supp. 1986), or chapter 515E.

3 b. All residual market pools and joint underwriting
4 authorities or associations.

5 c. All captive insurers. For the purposes of this
6 chapter, captive insurers are insurance companies owned by
7 another organization whose exclusive purpose is to insure
8 risks of the parent organization and affiliated companies or,
9 in the case of groups and associations, insurance
10 organizations owned by the insureds whose exclusive purpose is
11 to insure risks of any group and association members and any
12 affiliates.

13 7. "Producer" means an insurance broker or brokers or any
14 other person when, for any compensation, commission, or other
15 thing of value, the person acts or aids in any manner in
16 soliciting, negotiating, or procuring the making of an
17 insurance contract on behalf of an insured other than the
18 person.

19 Sec. 37. Section 510A.3, Code Supplement 1991, is amended
20 by striking the section and inserting in lieu thereof the
21 following:

22 510A.3 APPLICABILITY.

23 This chapter applies to licensed insurers as defined in
24 section 510A.2, either domiciled in this state or domiciled in
25 a state that is not an accredited state and having a
26 substantially similar law. All provisions of the insurance
27 holding company Act, to the extent those provisions are not
28 superseded by this chapter, continue to apply to all persons
29 associated with holding companies subject to this chapter.

30 Sec. 38. Section 510A.4, Code Supplement 1991, is amended
31 by striking the section and inserting in lieu thereof the
32 following:

33 510A.4 MINIMUM STANDARDS.

34 1. APPLICABILITY OF SECTION.

35 a. This section applies if, in any calendar year, the

1 aggregate amount of gross written premium on business placed
2 with a controlled insurer by a controlling producer is equal
3 to or greater than five percent of the admitted assets of the
4 controlled insurer, as reported in the controlled insurer's
5 quarterly statement filed as of September 30 of the preceding
6 year.

7 b. Notwithstanding paragraph "a", this section does not
8 apply if both of the following apply:

9 (1) The controlling producer does all of the following:

10 (a) Places insurance only with the controlled insurer, or
11 only with the controlled insurer and members of the controlled
12 insurer's holding company system, or the controlled insurer's
13 parent, affiliate, or subsidiary, and receives no compensation
14 based upon the amount of premiums written in connection with
15 such insurance.

16 (b) Accepts insurance placements only from nonaffiliated
17 subproducers and not directly from insureds.

18 (2) The controlled insurer, except for insurance business
19 written through a residual market facility, accepts insurance
20 business only from the controlling producer, a producer
21 controlled by the controlled insurer, or a producer that is a
22 subsidiary of the controlled insurer.

23 2. REQUIRED CONTRACT PROVISIONS. A controlled insurer
24 shall not accept business from a controlling producer and a
25 controlling producer shall not place business with a
26 controlled insurer unless there is a written contract between
27 the controlling producer and the controlled insurer specifying
28 the responsibilities of each party which has been approved by
29 the board of directors of the controlled insurer and filed
30 with the commissioner. The contract must contain, at a
31 minimum, the following provisions:

32 a. The controlled insurer may terminate the contract for
33 cause, upon written notice to the controlling producer. The
34 controlled insurer shall suspend the authority of the
35 controlling producer to write business during the pendency of

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1 any dispute regarding the cause for the termination.

2 b. The controlling producer shall render accounts to the
3 controlled insurer detailing all material transactions,
4 including information necessary to support all commissions,
5 charges, and other fees received by, or owing to, the
6 controlling producer.

7 c. The controlling producer shall remit all funds due
8 under the terms of the contract to the controlled insurer on
9 at least a monthly basis. The due date shall be fixed so that
10 premiums or installments of premiums collected shall be
11 remitted no later than ninety days after the effective date of
12 any policy placed with the controlled insurer under this
13 contract.

14 d. All funds collected for the controlled insurer's
15 account shall be held by the controlling producer in a
16 fiduciary capacity, in one or more appropriately identified
17 bank accounts in banks that are members of the federal reserve
18 system, in accordance with the provisions of the insurance law
19 as applicable. However, funds of a controlling producer not
20 required to be licensed in this state shall be maintained in
21 compliance with the requirements of the controlling producer's
22 domiciliary jurisdiction.

23 e. The controlling producer shall maintain separately
24 identifiable records of business written for the controlled
25 insurer.

26 f. The contract shall not be assigned in whole or in part
27 by the controlling producer.

28 g. The controlled insurer shall provide the controlling
29 producer with its underwriting standards, rules, and
30 procedures manuals setting forth the rates to be charged, and
31 the conditions for the acceptance or rejection of risks. The
32 controlling producer shall adhere to the standards, rules,
33 procedures, rates, and conditions. The standards, rules,
34 procedures, rates, and conditions shall be the same as those
35 applicable to comparable business placed with the controlled

1 insurer by a producer other than the controlling producer.

2 h. The rates and terms of the controlling producer's
3 commissions, charges, or other fees and the purposes for those
4 charges or fees. The rates of the commissions, charges, and
5 other fees shall be no greater than those applicable to
6 comparable business placed with the controlled insurer by
7 producers other than controlling producers. For purposes of
8 this paragraph and paragraph "g" of this subsection,
9 "comparable business" includes the same lines of insurance,
10 same kinds of insurance, same kinds of risks, similar policy
11 limits, and similar quality of business.

12 i. If the contract provides that the controlling producer,
13 on insurance business placed with the controlled insurer, is
14 to be compensated contingent upon the insurer's profits on
15 that business, then such compensation shall not be determined
16 and paid until at least five years after the premiums on
17 liability insurance are earned and at least one year after the
18 premiums are earned on any other insurance. In no event shall
19 the commissions be paid until the adequacy of the controlled
20 insurer's reserves on remaining claims has been independently
21 verified pursuant to subsection 4, paragraph "a".

22 j. A limit on the controlling producer's writings in
23 relation to the controlled insurer's surplus and total
24 writings. The insurer may establish a different limit for
25 each line or subline of business. The controlled insurer
26 shall notify the controlling producer when the applicable
27 limit is approached and shall not accept business from the
28 controlling producer which would exceed the limit. The
29 controlling producer shall not place business with the
30 controlled insurer if it has been notified by the controlled
31 insurer that the limit has been reached.

32 k. The controlling producer may negotiate but shall not
33 bind reinsurance on behalf of the controlled insurer on
34 business the controlling producer places with the controlled
35 insurer, except that the controlling producer may bind

1 facultative reinsurance contracts pursuant to obligatory
 2 facultative agreements if the contract with the controlled
 3 insurer contains underwriting guidelines including, for both
 4 reinsurance assumed and ceded, a list of reinsurers with which
 5 such automatic agreements are in effect, the coverages and
 6 amounts or percentages that may be reinsured, and commission
 7 schedules.

8 3. AUDIT COMMITTEE. A controlled insurer must establish
 9 an audit committee of the board of directors composed of
 10 independent directors. Prior to approval of the annual
 11 financial statement, the audit committee shall meet with
 12 management, the insurer's independent certified public
 13 accountants, and an independent casualty actuary or other
 14 independent loss reserve specialist acceptable to the
 15 commissioner, to review the adequacy of the insurer's loss
 16 reserves.

17 4. REPORTING REQUIREMENTS.

18 a. In addition to any other required loss reserve
 19 certification, the controlled insurer shall annually, on April
 20 1 of each year, file with the commissioner an opinion of an
 21 independent casualty actuary, or another independent loss
 22 reserve specialist acceptable to the commissioner, reporting
 23 loss ratios for each line of business written and attesting to
 24 the adequacy of loss reserves established for losses incurred
 25 and outstanding as of year-end on business placed by the
 26 producer, including incurred but not reported losses.

27 b. The controlled insurer shall annually report to the
 28 commissioner the amount of commissions paid to the producer,
 29 the percentage such amount represents of the net premiums
 30 written, and comparable amounts and percentage paid to
 31 noncontrolling producers for placements of the same kinds of
 32 insurance.

33 Sec. 39. NEW SECTION. 510A.5 DISCLOSURE.

34 The producer, prior to the effective date of the policy,
 35 shall deliver written notice to the prospective insured

1 disclosing the relationship between the producer and the
2 controlled insurer; except that, if the business is placed
3 through a subproducer who is not a controlling producer, the
4 controlling producer shall retain in the producer's records a
5 signed commitment from the subproducer that the subproducer is
6 aware of the relationship between the insurer and the producer
7 and that the subproducer has notified or will notify the
8 insured.

9 Sec. 40. NEW SECTION. 521A.3A ACQUISITIONS INVOLVING
10 INSURERS NOT OTHERWISE COVERED.

11 1. DEFINITIONS. As used in this section, unless the
12 context otherwise requires:

13 a. "Acquisition" means any agreement, arrangement, or
14 activity, the consummation of which results in a person
15 acquiring directly or indirectly the control of another
16 person, and includes but is not limited to the acquisition of
17 voting securities, assets, bulk reinsurance, and mergers.

18 b. An "involved insurer" includes an insurer which either
19 acquires or is acquired, is affiliated with an insurer who
20 acquires or is acquired, or who is the result of a merger.

21 2. SCOPE.

22 a. Except as provided in paragraph "b", this section
23 applies to any acquisition in which there is a change in
24 control of an insurer authorized to do business in this state.

25 b. This section does not apply to the following:

26 (1) An acquisition subject to approval or disapproval by
27 the commissioner pursuant to section 521A.3.

28 (2) A purchase of securities solely for investment
29 purposes so long as the securities are not used through
30 voting, or otherwise, to cause or attempt to cause the
31 substantial lessening of competition in any insurance market
32 in this state. If a purchase of securities results in a
33 presumption of control under section 521A.1, subsection 3, the
34 purchase is not solely for investment purposes unless the
35 commissioner of the insurer's state of domicile accepts a

1 disclaimer of control or affirmatively finds that control does
2 not exist, and the disclaimer action or affirmative finding is
3 communicated by the domiciliary commissioner to the
4 commissioner of this state.

5 (3) The acquisition of a person by another person when
6 both persons are neither directly, nor through affiliates,
7 primarily engaged in the business of insurance, if
8 preacquisition notification is filed with the commissioner in
9 accordance with subsection 3, paragraph "a", thirty days prior
10 to the proposed effective date of the acquisition. However,
11 such preacquisition notification is not required for exclusion
12 from this section if the acquisition would otherwise be
13 excluded from this section by any other subparagraph of
14 section 521A.3A, subsection 2, paragraph "b".

15 (4) The acquisition of already affiliated persons.

16 (5) An acquisition which would not, as an immediate result
17 of the acquisition, result in any of the following:

18 (a) The combined market share of the involved insurers
19 does not exceed five percent of the total of an identifiable
20 market.

21 (b) There would be no increase in any market share.

22 (c) In an identifiable market both of the following would
23 not occur:

24 (i) The combined market share of the involved insurers
25 exceeds twelve percent of the total market.

26 (ii) The market share increases by more than two percent
27 of the total market.

28 (d) For the purpose of this subparagraph (5), a market
29 means direct written insurance premium in this state for a
30 line of business as contained in the annual statement required
31 to be filed by insurers licensed to do business in this state.

32 (6) An acquisition for which a preacquisition notification
33 would be required pursuant to this section due solely to the
34 resulting effect on the ocean marine insurance line of
35 business.

1 (7) An acquisition of an insurer whose domiciliary
2 commissioner affirmatively finds that the insurer is in
3 failing condition, there is a lack of feasible alternative to
4 improving the condition, the public benefits of improving the
5 insurer's condition through the acquisition exceed the public
6 benefits that would arise from not lessening competition, and
7 such findings are communicated by the domiciliary commissioner
8 to the commissioner of this state.

9 c. Section 521A.9, subsections 2 and 3, and section
10 521A.11 do not apply to acquisitions to which this subsection
11 applies.

12 3. PREACQUISITION NOTIFICATION, WAITING PERIOD.

13 a. An acquisition covered by subsection 2 may be subject
14 to an order pursuant to subsection 5 unless the acquiring
15 person files a preacquisition notification and the waiting
16 period has expired. The acquired person may also file a
17 preacquisition notification. The commissioner shall give
18 confidential treatment to information submitted under this
19 subsection in the same manner as provided in section 521A.7.

20 b. The preacquisition notification shall be in the form
21 and contain information as prescribed by the national
22 association of insurance commissioners relating to those
23 markets which, under subsection 2, paragraph "b", subparagraph
24 (5), do not result in the acquisition being exempted from this
25 section. The commissioner may require additional material and
26 information as deemed necessary to determine whether the
27 proposed acquisition, if consummated, would violate the
28 competitive standard of subsection 4. The required
29 information may include an opinion of an economist as to the
30 competitive impact of the acquisition in this state
31 accompanied by a summary of the education and experience of
32 the economist indicating the economist's ability to render an
33 informed opinion.

34 c. The required waiting period begins on the date of
35 receipt by the commissioner of a preacquisition notification

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1 and ends on the earlier of the thirtieth day after the date of
2 such receipt, or the termination of the waiting period by the
3 commissioner. Prior to the end of the waiting period, the
4 commissioner on a one-time basis may require the submission of
5 additional needed information relevant to the proposed
6 acquisition, in which event the waiting period shall end on
7 the earlier of the thirtieth day after receipt of the
8 additional information by the commissioner or the termination
9 of the waiting period by the commissioner.

10 d. For purposes of this subsection, unless the context
11 otherwise requires:

12 (1) "Insurer" includes any company or group of companies
13 under common management, ownership, or control.

14 (2) "Market" means the relevant product and geographical
15 markets. In determining the relevant product and geographical
16 markets, the commissioner shall give due consideration to,
17 among other things, the definitions or guidelines, if any,
18 promulgated by the national association of insurance
19 commissioners, and to any information submitted by the parties
20 to the acquisition. In the absence of sufficient information
21 to the contrary, the relevant product market is assumed to be
22 the direct written insurance premium for a line of business,
23 as defined in the annual statement required to be filed by
24 insurers doing business in this state, and the relevant
25 geographical market is assumed to be this state.

26 4. COMPETITIVE STANDARD.

27 a. The commissioner may enter an order under subsection 5,
28 paragraph "a", with respect to an acquisition if there is
29 substantial evidence that the effect of the acquisition may be
30 to substantially lessen competition in any line of insurance
31 in this state, or to tend to create a monopoly in this state,
32 or if the insurer fails to file adequate information in
33 compliance with subsection 3.

34 b. In determining whether a proposed acquisition would
35 violate the competitive standard of paragraph "a", the

1 commissioner shall consider the following:

2 (1) Any acquisition covered under subsection 2 involving
3 two or more insurers competing in the same market is prima
4 facie evidence of violation of the competitive standards if
5 either of the following apply:

6 (a) The market is highly concentrated and the involved
7 insurers possess, in combination, any of the following shares
8 of the market:

9	Insurer A	Insurer B
10	4%	4% or more
11	10%	2% or more
12	15%	1% or more

13 (b) The market is not highly concentrated and the involved
14 insurers possess, in combination, any of the following shares
15 of the market:

16	Insurer A	Insurer B
17	5%	5% or more
18	10%	4% or more
19	15%	3% or more
20	19%	1% or more

21 (c) For purposes of this subparagraph, a highly
22 concentrated market is one in which the total combined share
23 of the four largest insurers is seventy-five percent or more
24 of the market. Percentages not shown in the tables are
25 interpolated proportionately to the percentages that are
26 shown. If more than two insurers are involved, total combined
27 market share of the insurers involved exceeding the total of
28 the two columns in the table is prima facie evidence of
29 violation of the competitive standard in subparagraph
30 subdivision (a). For the purpose of this subparagraph (1),
31 the insurer with the largest share of the market shall be
32 deemed to be insurer A.

33 (2) The existence of a significant trend toward increased
34 concentration, evidenced by the aggregate market share of any
35 grouping of the largest insurers in the market, from the two

1 largest to the eight largest, increasing by seven percent or
2 more of the market over a period of time extending from any
3 base year, five to ten years prior to the acquisition, up to
4 the time of the acquisition. Any acquisition or merger
5 covered under subsection 2 involving two or more insurers
6 competing in the same market is prima facie evidence of a
7 violation of the competitive standard in paragraph "a" of this
8 subsection if all of the following apply:

9 (a) There is a significant trend toward increased
10 concentration in the market.

11 (b) One of the insurers involved is one of the insurers in
12 a grouping of such large insurers showing the requisite
13 increase in the market share.

14 (c) Another involved insurer's market is two percent or
15 more.

16 (3) The commissioner has the burden of showing prima facie
17 evidence of violation of the competitive standard.

18 (4) Even though an acquisition is not prima facie
19 violative of the competitive standard under subparagraphs (1)
20 or (2), the commissioner may establish the requisite
21 anticompetitive effect based upon other substantial evidence.
22 Even though an acquisition is prima facie violative of the
23 competitive standard under subparagraphs (1) or (2), a party
24 may establish the absence of the requisite anticompetitive
25 effect based upon other substantial evidence. Relevant
26 factors in making a determination under this subparagraph
27 include, but are not limited to, market shares, volatility of
28 ranking of market leaders, number of competitors,
29 concentration, trend of concentration in the industry, and
30 ease of entry and exit into the market.

31 c. An order shall not be entered under subsection 5,
32 paragraph "a", if either of the following apply:

33 (1) The acquisition will yield substantial economies of
34 scale or economies in resource utilization that cannot be
35 feasibly achieved in any other way, and the public benefits

1 which would arise from such economies exceed the public
2 benefits which would arise from not lessening competition.

3 (2) The acquisition will substantially increase the
4 availability of insurance, and the public benefits of such
5 increase exceed the public benefits which would arise from not
6 lessening competition.

7 5. ORDERS AND PENALTIES.

8 a. The commissioner, as the result of an acquisition which
9 violates the standards of this section, may enter an order
10 which does either of the following:

11 (1) Requires an involved insurer to cease and desist from
12 doing business in this state with respect to the line or lines
13 of insurance involved in the violation.

14 (2) Denies the application of an acquired or acquiring
15 insurer for a license to do business in this state.

16 b. Such an order shall not be entered unless there is a
17 hearing, notice of the hearing is issued prior to the end of
18 the waiting period and not less than fifteen days prior to the
19 hearing, and the hearing is concluded and the order is issued
20 no later than sixty days after the end of the waiting period.
21 Every order shall be accompanied by a written decision of the
22 commissioner setting forth the commissioner's findings of fact
23 and conclusions of law.

24 c. An order entered under this subsection shall not become
25 final earlier than thirty days after it is issued, during
26 which time the involved insurer may submit a plan to remedy
27 the anticompetitive impact of the acquisition within a
28 reasonable time. Based upon such plan or other information,
29 the commissioner shall specify the conditions, if any, under
30 the time period during which the aspects of the acquisition
31 causing a violation of the standards of this section would be
32 remedied and the order vacated or modified.

33 d. An order pursuant to this subsection shall not apply if
34 the acquisition is not consummated.

35 e. Any person who violates a cease and desist order of the

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1 commissioner under paragraph "a", after notice and hearing and
2 upon order of the commissioner, may be subject at the
3 discretion of the commissioner to one or more of the
4 following:

5 (1) A civil penalty of not more than ten thousand dollars
6 for every day of the violation.

7 (2) Suspension or revocation of such person's license.

8 f. Any insurer or other person who fails to make any
9 filing required by this section and who also fails to
10 demonstrate a good faith effort to comply with any such filing
11 requirement is subject to a fine of not more than fifty
12 thousand dollars.

13 Sec. 41. Section 521A.5, subsection 3, Code Supplement
14 1991, is amended by striking the subsection and inserting in
15 lieu thereof the following:

16 3. A domestic insurer shall not pay any extraordinary
17 dividend or make any other extraordinary distribution to its
18 shareholders until thirty days after the commissioner has
19 received notice of the declaration of the dividend or
20 distribution and has not disapproved such payment within the
21 period, or at the time the commissioner has approved the
22 payment within the thirty-day period.

23 For purposes of this subsection, an extraordinary dividend
24 or distribution includes any dividend or distribution of cash
25 or other property, whose fair market value together with that
26 of other dividends or distributions made within the preceding
27 twelve months exceeds the lesser of ten percent of the
28 insurer's surplus related to policyholders as of the thirty-
29 first day of December next preceding, or the net gain from
30 operations of the insurer, if the insurer is a life insurer,
31 or the net income, if the insurer is not a life insurer, not
32 including realized capital gains, for the twelve-month period
33 ending the thirty-first day of December next preceding, but
34 does not include pro rata distributions of any class of the
35 insurer's own securities. In determining whether a dividend

1 or distribution is extraordinary, an insurer may carry forward
2 net income from the previous two calendar years that has not
3 already been paid out as dividends. This carry-forward shall
4 be computed by taking the net income from the second and third
5 preceding calendar years, not including realized capital
6 gains, less dividends paid in the second and immediately
7 preceding calendar years.

8 Notwithstanding any other provision of law, an insurer may
9 declare an extraordinary dividend or distribution which is
10 conditional upon the commissioner's approval of the dividend
11 or distribution and the declaration does not confer any rights
12 upon shareholders until the commissioner has approved the
13 payment of the dividend or distribution or the commissioner
14 has not disapproved the payment within the thirty-day period
15 as provided in this subsection.

16 Sec. 42. Section 507.13, Code 1991, is repealed.

17 Sec. 43. Section 41 of this Act, as it amends section
18 521A.5, subsection 3, Code Supplement 1991, is effective
19 October 31, 1993.

20 EXPLANATION

21 The national association of insurance commissioners (NAIC)
22 has initiated a program to accredit state insurance
23 departments as approved insurance regulators. The NAIC
24 minimum standards for accreditation require a state to have
25 certain NAIC model Acts and laws which relate to solvency and
26 financial oversight.

27 Sections 1 through 7 and 42 amend chapter 507 relating to
28 insurance company examinations. Sections 507.1 through 507.3,
29 507.6, 507.10, and 507.17 are stricken and replaced. Section
30 507.14 is amended. Section 507.13 is repealed.

31 Section 1 establishes the purpose and definitions of
32 chapter 507.

33 Section 2 extends the minimum examination cycle to five
34 years while allowing the commissioner to conduct examinations
35 as often as deemed appropriate.

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1 Section 3 establishes the commissioner's authority to
 2 retain attorneys, appraisers, independent actuaries,
 3 independent certified public accountants, or other
 4 professionals and specialists as "examiners" and to bill the
 5 attendant costs to the company under examination. It also
 6 gives the commissioner the right to terminate or suspend a
 7 financial examination to pursue other legal or regulatory
 8 action against the company and to introduce as prima facie
 9 evidence or to otherwise make public any preliminary findings
 10 of fact or conclusions made in the course of the examination.

11 Section 4 contains language on potential conflicts of
 12 interest that may bar an individual from appointment as an
 13 examiner.

14 Section 5 revises the timetable for filing and adopting
 15 exam reports, and provides a delineation of the prescribed
 16 sequence for the filing, adoption, and issuance of orders and
 17 publication of reports.

18 Under this section, the examiner-in-charge now has no more
 19 than 60 days from completion of an exam to file a verified and
 20 sworn written exam report. Upon receipt, the division must
 21 then forward the report to the company allowing 30 days for
 22 the insurer to rebut any matters contained in the examination
 23 report. At the end of the 30 days, the commissioner is
 24 provided an additional 30 days to review the examination
 25 documents.

26 Under section 6, the regulators and NAIC are obligated to
 27 protect the confidentiality of all information and
 28 documentation developed during the course of a financial
 29 examination, with certain exceptions.

30 Section 7 protects examiners from civil and criminal
 31 liability.

32 Sections 8-41 incorporate changes in existing laws to
 33 conform Iowa law to NAIC model laws. These changes reflect
 34 both additional requirements imposed from the ongoing efforts
 35 of the NAIC and corrections of deficiencies noted during the

1 division's NAIC examination.

2 Chapters 507C, 510A, and 521A are amended. Among the
3 changes:

4 Section 10 expands the definition of "insolvency", and
5 section 12 expands court jurisdiction.

6 Section 13 establishes repayment as a condition for a
7 release from a delinquency proceeding.

8 Section 15 expands requirements for accounting to the
9 court.

10 Section 16 provides for an advisory committee for a
11 rehabilitator, section 17 authorizes a rehabilitator to
12 institute an action or proceeding, and section 18 provides for
13 the rehabilitator to obtain a court order of liquidation.

14 Section 19 requires an appeal pendency plan in liquidation
15 proceedings.

16 Section 22 requires notice to agents and potential
17 claimants of possible guaranty association coverage.

18 Sections 24 through 29 further amend liquidation
19 provisions.

20 Section 30 provides funds which the commissioner may use
21 for detection and prevention of future insolvencies.

22 Sections 32 through 34 relate to ancillary proceedings for
23 a liquidation in another state.

24 Sections 35 through 39 rewrite new chapter 510A in the Code
25 Supplement relating to property and casualty insurers.

26 Sections 40 and 41 amend chapter 521A relating to
27 acquisitions by insurers.

28 Section 42 repeals section 507.13.

29 Section 43 provides a special effective date for section
30 41.

31 BACKGROUND STATEMENT

32 SUBMITTED BY THE AGENCY

33 The national association of insurance commissioners (NAIC)
34 has initiated a program to accredit state insurance
35 departments as approved insurance regulators. The program is

1 in part a response to criticism of the lack of uniformity of
2 solvency standards between the states. The NAIC minimum
3 standards for accreditation require a state to have certain
4 NAIC model Acts which relate to solvency and financial
5 oversight.

6 Last year the legislature passed House File 518 which
7 included four model acts required for accreditation. Sections
8 1-35 incorporate changes in existing laws necessary to conform
9 Iowa law to NAIC model laws and are necessary for Iowa to gain
10 and retain accredited status.

11 The committee on examination processes of the national
12 association of insurance commissioners, charged to assess the
13 financial condition examination process, culminated in 17
14 recommendations designed to strengthen the current system of
15 financial examination of insurance companies. One of these
16 recommendations was the adoption of the model law on
17 examinations, sections 36-44 of this bill.

18 The objective of the statutory changes is to direct
19 division resources to companies having or likely to have
20 financial difficulty. However, all companies are required to
21 be examined once every five years, although the scope and
22 extent of that exam will be based on the particular attributes
23 of the company to be examined.

24 The conceptual change reflected by this statutory change
25 can be accomplished because over the last several years a
26 variety of additional financial regulatory tools have been
27 developed and implemented, including annual independent CPA
28 audits, opinions on insurance reserves by qualified actuaries,
29 annual financial statement analyses, and others which
30 alleviate the necessity for comprehensive periodic
31 examinations. This statute will not diminish the
32 commissioner's authority to conduct examinations but rather
33 will see that examinations are a more effective part of the
34 department's financial regulation and surveillance program.

35 The new model law on examinations replaces in its entirety

1 the current statutory scheme. This model has been added to
2 the other model regulations contained in the NAIC's financial
3 regulation standards and is a key element of the association's
4 solvency policing agenda. As such, it is part of the
5 requirements that state insurance departments must meet in
6 order to receive accreditation from the NAIC.

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SENATE FILE 2286

AN ACT

RELATING TO INSURANCE REGULATION, INCLUDING THE FINANCIAL SUPERVISION AND SOLVENCY OVERSIGHT OF INSURANCE COMPANIES BY THE COMMISSIONER OF INSURANCE AND ACCREDITATION OF THE DIVISION OF INSURANCE AS AN APPROVED INSURANCE REGULATOR BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, AND PROVIDING PENALTIES AND AN EFFECTIVE DATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 507.1, Code 1991, is amended by striking the section and inserting in lieu thereof the following:

507.1 PURPOSE -- DEFINITIONS.

1. The purpose of this chapter is to provide an effective and efficient system for examining the activities, operations, financial condition, and affairs of all persons transacting the business of insurance in this state and all persons otherwise subject to the jurisdiction of the commissioner. The chapter is intended to enable the commissioner to adopt a flexible system of examinations which directs resources as deemed appropriate and necessary for the administration of the insurance and insurance-related laws of this state.

2. As used in this chapter, unless the context otherwise requires:

a. "Commissioner" means the commissioner of insurance of this state.

b. "Company" means any person engaging in or proposing or attempting to engage in any transaction or kind of insurance

or surety business and any person or group of persons who may otherwise be subject to the administrative, regulatory, or taxing authority of the commissioner.

c. "Division" means the division of insurance of the department of commerce.

d. "Examiner" means any individual or firm authorized by the commissioner to conduct an examination pursuant to this chapter.

e. "Insurer" includes all companies or associations organized under chapter 508, 511, 512A, 512B, 514, 514B, 515, 515C, or 518A, associations subject to chapters 518 and 520, and companies or associations admitted or seeking to be admitted to this state under any of those chapters.

f. "Person" means any individual, aggregation of individuals, trust, association, partnership, or corporation or an affiliate of any of these.

Sec. 2. Section 507.2, Code 1991, is amended by striking the section and inserting in lieu thereof the following:

507.2 AUTHORITY, SCOPE, AND SCHEDULING OF EXAMINATIONS.

1. The commissioner or any of the commissioner's examiners may conduct an examination under this chapter of any company as often as the commissioner deems appropriate, but at a minimum, shall conduct an examination of any domestic insurer licensed in this state no less than once every five years. In scheduling and determining the nature, scope, and frequency of the examinations, the commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the examiners' handbook adopted by the national association of insurance commissioners and in effect when the commissioner exercises discretion under this section.

2. For purposes of completing an examination of any company pursuant to this chapter, the commissioner may examine

or investigate any person, or the business of any person, insofar as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company.

3. In lieu of an examination under this chapter of any foreign or alien insurer licensed in this state, the commissioner may accept an examination report on the company as prepared by the regulatory authority for insurance for the company's state of domicile or port-of-entry state until January 1, 1994. Thereafter, such reports shall only be accepted if the regulatory authority was at the time of the examination accredited under the national association of insurance commissioners' financial regulation standards and accreditation program or the examination is performed under the supervision of an accredited regulatory authority or with the participation of one or more examiners who are employed by the accredited state and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with standards and procedures required by their insurance department.

Sec. 3. Section 507.3, Code 1991, is amended by striking the section and inserting in lieu thereof the following:

507.3 CONDUCT OF EXAMINATIONS.

1. Upon determining that an examination should be conducted, the commissioner or the commissioner's designee may issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the examiners' handbook adopted by the national association of insurance commissioners. The commissioner may also employ other guidelines as the commissioner deems appropriate.

2. A company or person from whom information is sought and its officers, directors, and agents shall provide to the examiners appointed under subsection 1, timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, and any or all computer or other recordings relating to the property, assets, business, and affairs of the company being examined. The officers, directors, employees, and agents of the company or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of any company, by its officers, directors, employees, or agents, to submit to examinations or to comply with any reasonable written request of the examiners is grounds for suspension or revocation of, or nonrenewal of, any license or authority held by the company to engage in the business of insurance or other business subject to the commissioner's jurisdiction. Should a company decline or refuse to submit to an examination as provided in this chapter, the commissioner shall immediately revoke its certificate of authority, and if the company is organized under the laws of this state, the commissioner shall report the commissioner's action to the attorney general, who shall immediately apply to the district court for the appointment of a receiver to administer the final affairs of the company.

3. The commissioner or any of the commissioner's examiners may issue subpoenas, administer oaths, and examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order is punishable as contempt of court.

4. When making an examination under this chapter, the commissioner may retain attorneys, appraisers, independent

actuaries, independent certified public accountants, or other professionals and specialists as examiners, the reasonable cost of which shall be borne by the company which is the subject of the examination.

5. This chapter does not limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination are deemed to be prima facie evidence in any legal or regulatory action.

Sec. 4. Section 507.6, Code 1991, is amended by striking the section and inserting in lieu thereof the following:

507.6 CONFLICT OF INTEREST.

1. An examiner shall not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this chapter. This section shall not be construed to automatically preclude an examiner from being any of the following:

- a. A policyholder or claimant under an insurance policy.
- b. A grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business.
- c. An investment owner in shares of regulated diversified investment companies.
- d. A settlor or beneficiary of a blind trust into which any otherwise impermissible holdings have been placed.

2. Notwithstanding the requirements of subsection 1, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though the persons may from time to time be similarly employed or retained by persons subject to examination under this chapter.

Sec. 5, Section 507.10, Code 1991, is amended by striking the section and inserting in lieu thereof the following:

507.10 EXAMINATION REPORTS.

1. GENERAL DESCRIPTION. All examination reports shall be comprised only of facts appearing upon the books, records, or other documents of the company, its agents, or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

2. FILING OF EXAMINATION REPORT. No later than sixty days following completion of the examination, the examiner in charge shall file with the division a verified written report of examination under oath. Upon receipt of the verified report and after administrative review, the division shall transmit the report to the company examined, together with a notice which shall afford the company examined a reasonable opportunity of not more than thirty days to make a written submission or rebuttal with respect to any matters contained in the examination report.

3. ADOPTION OF REPORT ON EXAMINATION. Within twenty days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's work papers and enter an order which does one of the following:

a. Adopts the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law or a rule or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure the violation.

b. Rejects the examination report with directions to the examiners to reopen the examination for purposes of obtaining

additional data, documentation, or information, and refiling pursuant to subsection 1 above.

c. Calls for an investigatory hearing with no less than twenty days notice to the company for purposes of obtaining additional documentation, data, information, and testimony.

4. ORDERS AND PROCEDURES.

a. All orders entered pursuant to subsection 3, paragraph "a", shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner work papers, and any written submissions or rebuttals. Any such order is a final administrative decision and may be appealed pursuant to chapter 17A, and shall be served upon the company by certified mail, together with a copy of the adopted examination report. Within thirty days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

b. Any hearing conducted under subsection 3, paragraph "c", by the commissioner or an authorized representative, shall be conducted as a nonadversarial, confidential, investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or indicated as a result of the commissioner's review of relevant work papers or by the written submission or rebuttal of the company. Within twenty days of the conclusion of any such hearing, the commissioner shall enter an order pursuant to subsection 3, paragraph "a".

(1) The commissioner shall not appoint an examiner as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the company limited to the examiner's work papers which tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or a representative

acting on the commissioner's behalf may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation whether under the control of the division of insurance, the company, or other persons. The documents produced shall be included in the record and testimony taken by the commissioner or a representative acting on the commissioner's behalf shall be under oath and preserved for the record.

This section does not require the division of insurance to disclose any information or records which would indicate or show the existence of any investigation or activity of a criminal justice agency.

(2) The hearing shall proceed with the commissioner or the commissioner's representative posing questions to the persons subpoenaed. Thereafter the company and the division may present testimony relevant to the investigation. Cross-examination shall be conducted only by the commissioner or the commissioner's representative. The company and the division shall be permitted to make closing statements and may be represented by counsel.

5. PUBLICATION AND USE.

a. Upon the adoption of the preliminary examination report under subsection 3, paragraph "a", the commissioner shall hold the content of the final examination report as private and confidential information not subject to disclosure and it is not a public record under chapter 22, for a period of twenty days except to the extent provided in subsection 2. After the twenty-day period has elapsed, the commissioner may open the final report for public inspection so long as no court of competent jurisdiction has stayed its publication.

b. The commissioner is not prevented from disclosing the content of an examination report, preliminary examination report or results, or any matter relating to the report, to an insurance department of any other state or country, or to law enforcement officials of this or any other state or an agency

of the federal government at any time, so long as such agency or office receiving the report, or matters relating to the report, agrees in writing to maintain the confidentiality of the report or such matters in a manner consistent with this chapter.

c. If the commissioner determines that regulatory action is appropriate as a result of any examination, the commissioner may initiate any proceeding or action as provided by law.

Sec. 6. Section 507.14, unnumbered paragraph 1, Code Supplement 1991, is amended to read as follows:

A ~~preliminary~~ report~~y-preliminary-or-final~~y of an examination of a domestic or foreign insurer, and all notes, work papers, or other documents related to an examination of an insurer are not public records under chapter 22 except when sought by the insurer to whom they relate, or an insurance regulator of another state, or the national association of insurance commissioners, and shall be privileged and confidential in any judicial or administrative proceeding except any of the following:

Sec. 7. Section 507.17, Code 1991, is amended by striking the section and inserting in lieu thereof the following:

507.17 IMMUNITY FROM LIABILITY.

1. A cause of action does not arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representative, or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this chapter.

2. A cause of action does not arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative, or an examiner pursuant to an examination made under this chapter, if the act of communication or delivery was performed

in good faith and without fraudulent intent or the intent to deceive.

3. This section does not abrogate or modify in any way any common law or statutory privilege or immunity enjoyed by any person identified in subsection 1.

4. A person identified in subsection 1 is entitled to an award of attorney's fees and costs if the person is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of this chapter and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is substantially justified if the proceeding has a reasonable basis in law or fact at the time that it is initiated.

Sec. 8. Section 507C.1, subsection 4, unnumbered paragraph 1, Code 1991, is amended to read as follows:

The purpose of this chapter is the protection of the interests of insured insureds, claimants, creditors, and the public, with minimum interference with the normal prerogatives of the owners and managers of insurers, through all of the following:

Sec. 9. Section 507C.1, subsection 4, Code 1991, is amended by adding the following new paragraph:

NEW PARAGRAPH. g. Providing for a comprehensive scheme for the rehabilitation and liquidation of insurance companies and those subject to this chapter as part of the regulation of the business of insurance, the insurance industry, and insurers in this state. Proceedings in cases of insurer insolvency and delinquency are deemed an integral aspect of the business of insurance and are of vital public interest and concern.

Sec. 10. Section 507C.2, subsections 9, 10, 11, and 13, Code 1991, are amended to read as follows:

9. "General assets" means all real, personal, or other property~~-real-or-personal~~, not specifically mortgaged,

pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, "general assets" includes all property or its proceeds in excess of the amount necessary to discharge the sum or sums secured by the property or its proceeds. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, shall be treated as general assets.

10. "Guaranty association" means the Iowa insurance guaranty association created in chapter 515B, the Iowa life and health insurance guaranty association created in chapter 508C, and any other similar entity either presently existing or to be created by the general assembly for the payment of claims of insolvent insurers. "Foreign guaranty association" means a similar entity presently existing in or to be created in the future by the legislature of any other state.

11. "Insolvency" or "insolvent" means either any of the following:

a. For an insurer issuing only assessable fire insurance policies, either of the following:

(1) The inability to pay any obligation within thirty days after it becomes payable.

(2) If an assessment is made, the inability to pay the assessment within thirty days following the date specified in the first assessment notice issued after the date of loss.

b. For an any other insurer that it is unable to pay its obligations when they are due, or when its admitted assets do not exceed its liabilities plus the greater of:

(1) Any capital and surplus required by law for its organization.

(2) The total par or stated value of its authorized and issued capital stock.

b c. As to an insurer licensed to do business in this state as of July 1, 1984, which does not meet the standard

established under paragraph "a b", the term "insolvency" or "insolvent" shall mean, for a period not to exceed three years from July 1, 1984, that it is unable to pay its obligations when they are due or that its admitted assets do not exceed its liabilities plus any required capital contribution ordered by the commissioner under provisions of the insurance law.

For purposes of this subsection "liabilities" ~~shall include~~ includes but is not be limited to reserves required by statute or by the division's rules or specific requirements imposed by the commissioner upon a company at the time of or subsequent to admission.

13. "Preferred claim" means a claim with respect to which the terms of this chapter grant accord priority of payment from the general assets of the insurer.

Sec. 11. Section 507C.4, subsection 3, paragraph b, Code 1991, is amended to read as follows:

b. In an action on or incident to a reinsurance contract, if the person served is a reinsurer who has at any time written a policy of reinsurance for an insurer against which a ~~rehabilitation or liquidation order is in effect when the action is commenced~~ delinquency proceeding has been instituted, or is an agent or broker of or for the reinsurer and the action results from or is incident to the relationship with the reinsurer.

Sec. 12. Section 507C.4, subsection 3, Code 1991, is amended by adding the following new paragraphs:

NEW PARAGRAPH. d. In an action if the person served is or was at the time of the institution of the delinquency proceeding against the insurer holding assets which are the subject of the proceeding and in which the receiver claims an interest on behalf of the insurer.

NEW PARAGRAPH. e. If the person served is obligated to the insurer in any way whatsoever, in an action on or incident to the obligation.

Sec. 13. NEW SECTION. 507C.8A CONDITION ON RELEASE FROM DELINQUENCY PROCEEDINGS.

An insurer subject to a delinquency proceeding shall not be released from the delinquency proceeding unless the proceeding is converted into a rehabilitation or liquidation proceeding; shall not be permitted to solicit or accept new business, or request or accept the restoration of any suspended or revoked license or certificate of authority; and shall not be returned to the control of the insurer's shareholders or private management, or have any of the insurer's assets returned to the control of its shareholders or private management, until all payments of or on account of the insurer's contractual obligations by all guaranty associations, along with all expenses of such obligations and interest on all such payments and expenses, have been repaid to the guaranty association or a plan of repayment by the insurer is approved by the guaranty association.

Sec. 14. Section 507C.11, Code 1991, is amended to read as follows:

507C.11 CONFIDENTIALITY OF HEARINGS.

Notwithstanding chapter 22, in all administrative proceedings pursuant to sections 507C.9 and 507C.10 all records and documents pertaining to or a part of the record of the proceedings are confidential except as is necessary to obtain compliance with a proceeding. However, the records may be released if either of the following occurs:

1. The insurer requests that the records be made public.
2. After a hearing on the issue with the parties to the proceeding, the court orders that the records be made public. Until such court order, the clerk of court shall hold all papers filed in a confidential file.

Sec. 15. Section 507C.13, subsection 2, Code 1991, is amended to read as follows:

2. An order issued under this section shall require requires accounting to the court by the rehabilitator.

Accountings shall be at intervals the court specified specifies in the order. Each accounting must include a report concerning the rehabilitator's opinion as to whether a plan pursuant to section 507C.14, subsection 3, will be prepared. If the rehabilitator includes in any accounting that such a plan is likely, the accounting shall also include a proposed timetable for the preparation and implementation of the plan.

Sec. 16. Section 507C.14, Code 1991, is amended by adding the following new subsection following subsection 2, and renumbering the remaining subsections:

NEW SUBSECTION. 2A. The rehabilitator, with the approval of the court, may appoint an advisory committee of policyholders, claimants, or other creditors including guaranty associations, should the rehabilitator deem it to be necessary. Each member of the advisory committee shall be reimbursed for necessary travel and actual expenses incurred in fulfilling the duties of the advisory committee. The rehabilitator shall not appoint any other committee related to proceedings pursuant to this chapter.

Sec. 17. Section 507C.15, subsections 1 and 2, Code 1991, are amended to read as follows:

1. A court in this state, before which an action or proceeding in which the insurer is a party or is obligated to defend a party is pending when a rehabilitation order against the insurer is entered, shall stay the action or proceeding for ninety days and any additional time as necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The rehabilitator shall take action respecting the pending litigation as necessary in the interests of justice and for the protection of creditors, policyholders, and the public. The rehabilitator shall immediately consider all litigation pending outside this state and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer.

2. A statute of limitations or defense of laches shall not run in an action by or against an insurer between the filing of a petition for appointment of a rehabilitator for that insurer and the order granting or denying that petition. An action by or against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty days after the order of rehabilitation is entered or the petition is denied. The rehabilitator, upon the issuance of an order for rehabilitation pursuant to section 507C.13, may institute an action or proceeding on behalf of the insurer based upon a cause of action for which the period of limitation has not expired at the time of the filing of the petition for an order to rehabilitate. The action or proceeding by the rehabilitator may be instituted within one year or a longer period if provided by applicable law, of the issuance of the order for rehabilitation.

Sec. 18. Section 507C.16, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 3. If the payment of obligations pursuant to a policy issued by the insurer is suspended in substantial part for a period of six months at any time after the appointment of the rehabilitator, and the rehabilitator has not filed an application for a plan pursuant to section 507C.14, subsection 4, the rehabilitator shall petition the court for an order of liquidation on grounds of insolvency.

Sec. 19. Section 507C.18, Code 1991, is amended to read as follows:

507C.18 LIQUIDATION ORDERS.

1. An order to liquidate the business of a domestic insurer shall appoint the commissioner as liquidator and shall direct the liquidator to immediately take possession of the assets of the insurer and to administer them under the general supervision of the court. The liquidator ~~shall be~~ is vested with the title to the property, contracts, and rights of action and the books and records of the insurer ordered

liquidated, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the clerk of the court and the recorder of deeds of the county in which its principal office or place of business is located, or, in the case of real estate with the recorder of deeds of the county where the property is located, ~~shall be~~ is notice as a deed, bill of sale, or other evidence of title duly filed or recorded with the recorder of deeds.

2. Upon issuance of the order, the rights and liabilities of an insurer and of its creditors, policyholders, shareholders, members, and other persons interested in its estate shall become fixed as of the date of entry of the order of liquidation, except as provided in sections 507C.19 and 507C.17.

3. An order to liquidate the business of an alien insurer domiciled in this state ~~shall~~ must be in the same terms and have the same legal effect as an order to liquidate a domestic insurer, except that the assets and the business in the United States shall be the only assets and business included in the order.

4. At the time of petitioning for an order of liquidation, or at any time thereafter, the commissioner, after making appropriate findings of an insurer's insolvency, may petition the court for a declaration of insolvency. After providing notice and hearing as it deems proper, the court may make the declaration.

5. An order issued under this section shall require accounting to the court by the liquidator. Accountings, at a minimum, must include all funds received or disbursed by the liquidator during the current period. An accounting shall be at intervals specified in the filed within one year of the liquidation order and at such other times as the court may require.

6. a. Within five days of the effective date of this section or, if later, within five days after the initiation of

an appeal of an order of liquidation, which order has not been stayed, the commissioner shall present for the court's approval a plan for the continued performance of the defendant company's policy claims obligations, including the duty to defend insureds under liability insurance policies, during the pendency of an appeal. The plan shall provide for the continued performance and payment of policy claims obligations in the normal course of events, notwithstanding the grounds alleged in support of the order of liquidation including the ground of insolvency. If the defendant company's financial condition will not, in the judgment of the commissioner, support the full performance of all policy claims obligations during the appeal pendency period, the plan may prefer the claims of certain policyholders and claimants over creditors and interested parties as well as other policyholders and claimants, as the commissioner finds to be fair and equitable considering the relative circumstances of such policyholders and claimants. The court shall examine the plan submitted by the commissioner and if it finds the plan to be in the best interests of the parties, the court shall approve the plan. No action shall lie against the commissioner or any of the commissioner's deputies, agents, clerks, assistants, or attorneys by any party based on preference in an appeal pendency plan approved by the court.

b. The appeal pendency plan shall not supersede or affect the obligations of any insurance guaranty association.

c. Any such plans shall provide for equitable adjustments to be made by the liquidator to any distributions of assets to guaranty associations, in the event that the liquidator pays claims from assets of the estate, which would otherwise be the obligations of any particular guaranty association but for the appeal of the order of liquidation, such that all guaranty associations equally benefit on a pro rata basis from the assets of the estate. If an order of liquidation is set aside upon an appeal, the company shall not be released from

delinquency proceedings unless and until all funds advanced by a guaranty association, including reasonable administrative expenses in connection therewith relating to obligations of the company, shall be repaid in full, together with interest at the judgment rate of interest, or unless an arrangement for repayment thereof has been made with the consent of all applicable guaranty associations.

Sec. 20. Section 507C.21, subsection 1, paragraph j, Code 1991, is amended to read as follows:

j. Borrow money on the security of the insurer's assets or without security and execute and deliver documents necessary to that transaction for the purpose of facilitating the liquidation. Money borrowed pursuant to this paragraph shall be repaid as an administrative expense and have priority over any other class 1 claims under the priority of distribution established in section 507C.42.

Sec. 21. Section 507C.21, subsection 1, Code 1991, is amended by adding the following new paragraph:

NEW PARAGRAPH. w. Audit the books and records of all agents of the insurer which relate to the business of the insurer.

Sec. 22. Section 507C.22, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 2A. a. Notice to agents of the insurer and potential claimants who are policyholders under subsection 1, where applicable, shall include notice that coverage by state guaranty associations may be available for all or part of policy benefits in accordance with applicable state guaranty laws.

b. The liquidator shall promptly provide to the guaranty associations such information concerning the identities and addresses of the policyholders and their policy coverages as may be within the liquidator's possession or control, and otherwise cooperate with guaranty associations to assist them in providing to the policyholders timely notice of the

guaranty associations' coverage of policy benefits including, as applicable, coverage of claims and continuation or termination of coverage.

Sec. 23. Section 507C.23, subsection 2, Code 1991, is amended to read as follows:

2. An agent failing to ~~give notice or file a report of compliance~~ provide information as required in subsection 1 may be subject to payment of a penalty of not more than one thousand dollars and may have the agent's license suspended. The penalty is to be imposed only after a hearing held by the commissioner.

Sec. 24. Section 507C.24, subsections 1 and 2, Code 1991, are amended to read as follows:

1. After the issuance of an order appointing a liquidator of a domestic insurer or of an alien insurer domiciled in this state, action at law or equity shall not be brought against the insurer or liquidator in this state or elsewhere, nor shall existing actions be maintained or further presented after issuance of the order. The courts of this state shall give full faith and credit to injunctions against the liquidator or the insurer or the continuation of existing actions against the liquidator or the insurer, when the injunctions are included in an order to liquidate an insurer issued pursuant to corresponding provisions in other states. Whenever in the liquidator's judgment, protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, the liquidator may intervene in the action. The liquidator may defend, at the expense of the estate of the insurer, an action in which the liquidator intervenes under this section.

2. Within two years or such additional time as applicable law may permit, the liquidator may after the issuance of an order for liquidation institute an action or proceeding on behalf of the estate of the insurer upon any cause of action against which the period of limitation fixed by applicable law

has not expired at the time of the filing of the petition upon which the order is entered. ~~Where if~~ a period of limitation is fixed by agreement for instituting a suit or proceeding upon a claim, or for filing a claim, proof of claim, proof of loss, demand, notice, or the like, or ~~where if~~ in a proceeding, judicial or otherwise, a period of limitation is fixed in the proceeding or pursuant to applicable law for taking an action, filing a claim or pleading, or doing an act, and ~~where-in-any-case if~~ the period had not expired at the date of the filing of the petition, the liquidator may, for the benefit of the estate, take any action or do any act, required of or permitted to the insurer, within a period of one hundred eighty days subsequent to the entry of an order for liquidation, or within a further period as is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

Sec. 25. Section 507C.27, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 2A. A person receiving any property from the insurer or any benefit of the insurer which is a fraudulent transfer under subsection 1 is personally liable for the property or benefit and shall account to the liquidator.

Sec. 26. Section 507C.30, subsection 2, Code 1991, is amended by adding the following new paragraph following paragraph b and relettering the remaining paragraphs:

NEW PARAGRAPH. c. The obligation of the insurer is owed to the affiliate of such person, or any other entity or association other than the person.

Sec. 27. Section 507C.34, subsection 1, Code 1991, is amended to read as follows:

1. Within one hundred twenty days of a final determination of insolvency under this chapter as assets become available, the liquidator shall make application to the court for approval of a proposal to disburse assets out of marshaled

assets to a guaranty association or foreign guaranty association having obligations because of the insolvency. An application and disbursement of assets shall be made from time to time as assets become available. If the liquidator determines that there are insufficient assets to disburse, the application required by this section shall be considered satisfied by a filing by the liquidator stating the reasons for this determination.

Sec. 28. Section 507C.40, Code 1991, is amended to read as follows:

507C.40 CLAIMS OF SURETY.

If a creditor, whose claim against an insurer is secured in whole or in part by the undertaking of another person, fails to prove and file that claim, then the other person may do so in the creditor's name--~~The surety and~~ shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the surety other person in the creditor's name to the extent that the surety other person discharges the undertaking. However, in the absence of an agreement with the creditor to the contrary, the surety other person is not entitled to any distribution until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the insurer's estate to the creditor equals equal the amount of the entire claim of the creditor. An excess received by the creditor shall be held by the creditor in trust for the surety other person. As used in this section, "surety" "other person" is not intended to apply to a guaranty association or foreign guaranty association.

Sec. 29. Section 507C.42, subsections 1, 2, 3, 4, and 5, Code 1991, are amended to read as follows:

1. CLASS 1. The costs and expenses of administration, including but not limited to the following:
 - a. The actual and necessary costs of preserving or recovering the assets of the insurer.

- b. Compensation for all authorized services rendered in the liquidation.
- c. Necessary filing fees.
- d. The fees and mileage payable to witnesses.
- e. Reasonable Authorized reasonable attorney's fees and other professional services rendered in the liquidation.
- f. The reasonable expenses of a guaranty association or foreign guaranty association in handling claims.

2. CLASS 2. Debts due Reasonable compensation to employees for services performed to the extent that they do not exceed one-thousand-dollars two months of monetary compensation and represent payment for services performed within one year before the filing of the petition for liquidation or, if the rehabilitation preceded liquidation, within one year before the filing of the petition for rehabilitation. Officers and directors are not entitled to the benefit of this priority. The priority is in lieu of other similar priority which may be authorized by law as to wages or compensation of employees.

3. CLASS 3. Claims under policies, including claims of the federal or any state or local government, for losses incurred, including third-party claims, claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies, and claims of a guaranty association or foreign guaranty association. Claims under nonassessable policies for unearned premium. Claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values shall be treated as loss claims. That portion of a loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. A payment by an employer to an employee is not a gratuity.

4. CLASS 4. ~~Claims under nonassessable policies for unearned premium or other premium~~ Premium refunds, and claims of general creditors, including claims of ceding and assuming reinsurers in their capacity as such, and subrogation claims.

5. CLASS 5. Claims of the federal or any state or local government except those under class 3. Claims, including those of a governmental body for a penalty or forfeiture, are allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs incurred. The remainder of such claims shall be postponed to the class of claims under subsection 8.

Sec. 30. Section 507C.45, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 3. Notwithstanding any other provision of this chapter, funds as identified in subsection 1, with the approval of the court, shall be made available to the commissioner for use in the detection and prevention of future insolvencies. The commissioner shall hold these funds and shall pay without interest, except as provided in section 507C.42, to the person entitled to the funds or the person's legal representative upon proof satisfactory to the commissioner of the person's right to the funds. The funds shall be held by the commissioner for a period of two years at which time the rights and duties to the unclaimed funds shall vest in the commissioner.

Sec. 31. Section 507C.46, subsection 2, Code 1991, is amended to read as follows:

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

Sec. 32. Section 507C.52, subsection 1, Code 1991, is amended to read as follows:

1. Except as to special deposits and security on secured claims under section 507C.53, subsection 3, the domiciliary liquidator of an insurer domiciled in a reciprocal state shall be vested with the title to the assets, property, contracts, and rights of action, agents' balances, books, accounts, and other records of the insurer located in this state. The date of vesting is the date of the filing of the petition, if that date is specified by the domiciliary law for the vesting of property in the domiciliary state. Otherwise, the date of vesting ~~shall be~~ is the date of entry of the order directing possession to be taken. The domiciliary liquidator may immediately recover balances due from agents and obtain possession of the books, accounts, and other records of the insurer located in this state. ~~Subject to section 507E-53, the domiciliary liquidator may also recover all other assets of the insurer located in this state.~~ The domiciliary liquidator may also have the right to recover all other assets of the insurer located in this state, subject to section 507C.53.

Sec. 33. Section 507C.55, subsection 2, Code 1991, is amended to read as follows:

2. Claims belonging to claimants residing in reciprocal states shall be proved either in the liquidation proceeding in this state as provided in this chapter or in ancillary proceedings in the reciprocal states, if a claim filing procedure is established in the ancillary proceeding. If notice of the claims and opportunity to appear and be heard is afforded the domiciliary liquidator of this state as provided in section 507C.56, subsection 2, with respect to ancillary proceedings, the final allowance of claims by the courts in ancillary proceedings in reciprocal states shall be conclusive as to amount and as to priority against special deposits or other security located in such ancillary states, but shall not be conclusive with respect to priorities against general assets under section 507C.42.

Sec. 34. Section 507C.56, subsections 1 and 2, Code 1991, are amended to read as follows:

1. ~~In-a-liquidation-proceeding-in-a-reciprocal-state against-an-insurer-domiciled-in-that-state~~ Promptly after the appointment of the commissioner as ancillary receiver for an insurer not domiciled in this state, the commissioner shall determine whether there are claimants residing in this state who are not protected by guaranty funds and whether the protection of such claimants requires the establishing of a claim filing procedure in the ancillary proceeding. If a claim filing procedure is established, claimants against the insurer who reside within this state may file claims either with the ancillary receiver in this state, or with the domiciliary liquidator. Claims shall be filed on or before the last dates fixed for the filing of claims in the domiciliary liquidation proceeding.

2. Claims belonging to claimants residing in this state may be proved either in the domiciliary state under the law of that state, or in ancillary proceedings in this state, provided a claim filing procedure is established in the ancillary proceeding. If a claimant elects to prove the claim in this state, the claimant shall file the claim with the liquidator in the manner provided in sections 507C.35 and 507C.36. The ancillary receiver shall make a recommendation to the court as under section 507C.43. The ancillary receiver shall also arrange a date for hearing if necessary under section 507C.39 and shall give notice to the liquidator in the domiciliary state, either by certified mail or by personal service at least forty days prior to the date set for hearing. Within thirty days after the giving of the notice, if the domiciliary liquidator gives notice in writing either by certified mail or by personal service to the ancillary receiver and to the claimant of an intention to contest the claim, the domiciliary liquidator is entitled to appear or to be represented in a proceeding in this state involving the adjudication of the claim.

Sec. 35. Section 510A.1, Code Supplement 1991, is amended to read as follows:

510A.1 SHORT TITLE.

This chapter shall be known and may be cited as the "Business Producer Controlled Property and Casualty Insurer Act."

Sec. 36. Section 510A.2, Code Supplement 1991, is amended by striking the section and inserting in lieu thereof the following:

510A.2 DEFINITIONS.

As used in this chapter unless the context otherwise requires:

1. "Accredited state" means a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established by the national association of insurance commissioners.

2. "Control" or "controlled" has the meaning ascribed in section 521A.1, subsection 3.

3. "Controlled insurer" means a licensed insurer which is controlled, directly or indirectly, by a producer.

4. "Controlling producer" means a producer who, directly or indirectly, controls an insurer.

5. "Independent casualty actuary" means a casualty actuary who is a member of the American academy of actuaries and who is not an employee, principal, the direct or indirect owner of, affiliated with, or in any way controlled by the insurer or producer.

6. "Licensed insurer" or "insurer" means any person duly licensed to transact a property and casualty insurance business in this state. The following are not licensed property and casualty insurers for the purposes of this chapter:

a. All risk retention groups as defined in the Superfund Amendments Reauthorization Act of 1986, Pub. L. No. 99-499,

100 Stat. 1613 (1986) and the Risk Retention Act, 15 U.S.C. § 3901 et seq. (1982 & Supp. 1986), or chapter 515E.

b. All residual market pools and joint underwriting authorities or associations.

c. All captive insurers. For the purposes of this chapter, captive insurers are insurance companies owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks of any group and association members and any affiliates.

7. "Producer" means an insurance broker or brokers or any other person when, for any compensation, commission, or other thing of value, the person acts or aids in any manner in soliciting, negotiating, or procuring the making of an insurance contract on behalf of an insured other than the person.

Sec. 37. Section 510A.3, Code Supplement 1991, is amended by striking the section and inserting in lieu thereof the following:

510A.3 APPLICABILITY.

This chapter applies to licensed insurers as defined in section 510A.2, either domiciled in this state or domiciled in a state that is not an accredited state and having a substantially similar law. All provisions of the insurance holding company Act, to the extent those provisions are not superseded by this chapter, continue to apply to all persons associated with holding companies subject to this chapter.

Sec. 38. Section 510A.4, Code Supplement 1991, is amended by striking the section and inserting in lieu thereof the following:

510A.4 MINIMUM STANDARDS.

1. APPLICABILITY OF SECTION.

a. This section applies if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling producer is equal to or greater than five percent of the admitted assets of the controlled insurer, as reported in the controlled insurer's quarterly statement filed as of September 30 of the preceding year.

b. Notwithstanding paragraph "a", this section does not apply if both of the following apply:

(1) The controlling producer does all of the following:

(a) Places insurance only with the controlled insurer, or only with the controlled insurer and members of the controlled insurer's holding company system, or the controlled insurer's parent, affiliate, or subsidiary, and receives no compensation based upon the amount of premiums written in connection with such insurance.

(b) Accepts insurance placements only from nonaffiliated subproducers and not directly from insureds.

(2) The controlled insurer, except for insurance business written through a residual market facility, accepts insurance business only from the controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.

2. REQUIRED CONTRACT PROVISIONS. A controlled insurer shall not accept business from a controlling producer and a controlling producer shall not place business with a controlled insurer unless there is a written contract between the controlling producer and the controlled insurer specifying the responsibilities of each party which has been approved by the board of directors of the controlled insurer and filed with the commissioner. The contract must contain, at a minimum, the following provisions:

a. The controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer shall suspend the authority of the

controlling producer to write business during the pendency of any dispute regarding the cause for the termination.

b. The controlling producer shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the controlling producer.

c. The controlling producer shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date shall be fixed so that premiums or installments of premiums collected shall be remitted no later than ninety days after the effective date of any policy placed with the controlled insurer under this contract.

d. All funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the federal reserve system, in accordance with the provisions of the insurance law as applicable. However, funds of a controlling producer not required to be licensed in this state shall be maintained in compliance with the requirements of the controlling producer's domiciliary jurisdiction.

e. The controlling producer shall maintain separately identifiable records of business written for the controlled insurer.

f. The contract shall not be assigned in whole or in part by the controlling producer.

g. The controlled insurer shall provide the controlling producer with its underwriting standards, rules, and procedures manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions shall be the same as those

applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer.

h. The rates and terms of the controlling producer's commissions, charges, or other fees and the purposes for those charges or fees. The rates of the commissions, charges, and other fees shall be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this paragraph and paragraph "g" of this subsection, "comparable business" includes the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business.

i. If the contract provides that the controlling producer, on insurance business placed with the controlled insurer, is to be compensated contingent upon the insurer's profits on that business, then such compensation shall not be determined and paid until at least five years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to subsection 4, paragraph "a".

j. A limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings. The insurer may establish a different limit for each line or subline of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and shall not accept business from the controlling producer which would exceed the limit. The controlling producer shall not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached.

k. The controlling producer may negotiate but shall not bind reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled

insurer, except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

3. **AUDIT COMMITTEE.** A controlled insurer must establish an audit committee of the board of directors composed of independent directors. Prior to approval of the annual financial statement, the audit committee shall meet with management, the insurer's independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the commissioner, to review the adequacy of the insurer's loss reserves.

4. **REPORTING REQUIREMENTS.**

a. In addition to any other required loss reserve certification, the controlled insurer shall annually, on April 1 of each year, file with the commissioner an opinion of an independent casualty actuary, or another independent loss reserve specialist acceptable to the commissioner, reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end on business placed by the producer, including incurred but not reported losses.

b. The controlled insurer shall annually report to the commissioner the amount of commissions paid to the producer, the percentage such amount represents of the net premiums written, and comparable amounts and percentage paid to noncontrolling producers for placements of the same kinds of insurance.

Sec. 39. **NEW SECTION. 510A.5 DISCLOSURE.**

The producer, prior to the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the producer and the controlled insurer; except that, if the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in the producer's records a signed commitment from the subproducer that the subproducer is aware of the relationship between the insurer and the producer and that the subproducer has notified or will notify the insured.

Sec. 40. Section 521A.5, subsection 3, Code Supplement 1991, is amended by striking the subsection and inserting in lieu thereof the following:

3. A domestic insurer shall not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until thirty days after the commissioner has received notice of the declaration of the dividend or distribution and has not disapproved such payment within the period, or at the time the commissioner has approved the payment within the thirty-day period.

For purposes of this subsection, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds the lesser of ten percent of the insurer's surplus related to policyholders as of the thirty-first day of December next preceding, or the net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the twelve-month period ending the thirty-first day of December next preceding, but does not include pro rata distributions of any class of the insurer's own securities. In determining whether a dividend or distribution is extraordinary, an insurer may carry forward net income or gain from operations from the previous two

calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income or gain from operations from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediately preceding calendar years.

Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval of the dividend or distribution and the declaration does not confer any rights upon shareholders until the commissioner has approved the payment of the dividend or distribution or the commissioner has not disapproved the payment within the thirty-day period as provided in this subsection.

Sec. 41. The commissioner of insurance shall conduct a study relating to the issues involved with compulsory proof of financial responsibility for all operators of motor vehicles in this state. The study shall include an analysis of the impact of requiring such coverage, including the number of additional operators acquiring coverage, the effect on premium costs to consumers, the impact on expenses which would be incurred by insurance carriers as a result of losses paid under such policies, and other related issues.

The commissioner of insurance shall conduct at least one public hearing in each of the five new congressional districts during the 1992 legislative interim concerning the issue of compulsory proof of financial responsibility for all operators of motor vehicles in this state. The commissioner shall provide adequate notice of such hearings and encourage participation by all citizens in this state. The commissioner shall make an accurate record or summary of each meeting and provide a complete report to the general assembly no later than January 20, 1993, concerning the proceedings.

Sec. 42. Section 507.13, Code 1991, is repealed.

Sec. 43. Section 40 of this Act, as it amends section 521A.5, subsection 3, Code Supplement 1991, is effective October 31, 1993.

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MICHAEL E. GRONSTAL
President of the Senate

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ROBERT C. ARNOULD
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2286, Seventy-fourth General Assembly.

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JOHN F. DWYER
Secretary of the Senate

Approved  1992

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TERRY E. BRANSTAD
Governor