

INSURERS SUPERVISION, REHABILITATION AND LIQUIDATION

507C.1 Short title construction purpose.

1. This chapter shall be cited as the *"Insurers Supervision, Rehabilitation, and Liquidation Act"*.
2. This chapter shall not be interpreted to limit the powers granted the commissioner by any other law.
3. This chapter shall be liberally construed to effect the purpose stated in subsection 4.
4. The purpose of this chapter is the protection of the interests of 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:
 - a. Early detection of a potentially dangerous condition in an insurer and prompt application of appropriate corrective measures.
 - b. Improved methods for rehabilitating insurers, involving the cooperation and management expertise of the insurance industry.
 - c. Enhanced efficiency and economy of liquidation, through clarification of the law, to minimize legal uncertainty and litigation.
 - d. Equitable apportionment of any unavoidable loss.
 - e. Lessening the problems of interstate rehabilitation and liquidation by facilitating cooperation between states in the liquidation process, and by extending the scope of personal jurisdiction over debtors of the insurer outside this state.
 - f. Regulation of the insurance business by the impact of the law relating to delinquency procedures and substantive rules on the entire insurance business.
 - 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.

84 Acts, ch 1175, § 1; 92 Acts, ch 1117, § 8, 9

507C.2 Definitions.

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

1. *"Ancillary state"* means a state other than a domiciliary state.
2. *"Commissioner"* means the commissioner of insurance and any successor in office.
3. *"Creditor"* is a person having a claim against an insurer, whether the claim is matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed or contingent.
4. *"Delinquency proceeding"* means a proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing or conserving the insurer, and a summary proceeding under section 507C.9 or 507C.10. *"Formal delinquency proceeding"* means any liquidation or rehabilitation proceeding.

5. "*Doing business*" means any of the following acts, whether effected by mail or otherwise:

- a. The issuance or delivery of contracts of insurance to persons resident in this state.
- b. The solicitation of applications for the contracts, or other negotiations preliminary to the execution of the contracts.
- c. The collection of premiums, membership fees, assessments, or other consideration for the contracts.
- d. The transaction of matters subsequent to execution of the contracts and arising out of them.
- e. Operating as an insurer under a license or certificate of authority issued by the division.

6. "*Domiciliary state*" means the state in which an insurer is incorporated or organized, or, in the case of an alien insurer, its state of entry.

7. "*Fair consideration*" is given for property or obligation when either of the following is present:

- a. When in good faith property is conveyed or services are rendered or an obligation is incurred or an antecedent debt is satisfied in exchange for the property or obligation, as a fair equivalent therefor, and in good faith.
- b. When the property or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared to the value of the property or obligation obtained.

8. "*Foreign country*" means another jurisdiction not in a state.

9. "*General assets*" means all real, personal, or other property, 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 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 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.

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 "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*" includes but is not 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.

12. "*Insurer*" means a person who has done, purports to do, is doing or is licensed to do insurance business, and is or has been subject to the authority of, or to liquidation, rehabilitation, reorganization, supervision, or conservation by an insurance commissioner. For purposes of this chapter, any other person included under section 507C.3 is an insurer.

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

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

15. "*Reciprocal state*" means a state other than this state in which section 507C.18, subsection 1, sections 507C.52 and 507C.53 and sections 507C.55 through 507C.57 are in force, and in which provisions are in force requiring that the commissioner or equivalent official be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers.

16. "*Secured claim*" means a claim secured by mortgage, trust deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims which have become liens upon specific assets by reason of judicial process.

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

18. "*State*" means a state, district, or territory of the United States and the Panama Canal Zone.

19. "*Transfer*" shall include the sale and every other and different mode, direct or indirect, of disposing of or of parting with property or with an interest in the property, or with the possession of the property or of fixing a lien upon the property or upon an interest in the property, absolutely or conditionally, voluntarily, by or without judicial proceedings. The retention of a security title to property delivered to a debtor shall be deemed a transfer suffered by a debtor.

84 Acts, ch 1175, § 2; 92 Acts, ch 1117, § 10

507C.3 Applicability.

This chapter may be applied to any of the following:

1. Insurers who are doing or have done insurance business in this state, and against whom claims arising from that business may exist now or in the future.

2. Insurers who purport to do insurance business in this state.
3. Insurers who have insureds who are residents in this state.
4. Other persons organized or in the process of organizing with the intent to do insurance business in this state.
5. Nonprofit health service corporations and all fraternal benefit societies and beneficial societies subject to chapters 512A, 512B, and 514.
6. Prepaid health care delivery plans which are regulated by the commissioner.

84 Acts, ch 1175, § 3; 93 Acts, ch 88, § 5

507C.4 Jurisdiction and venue.

1. A delinquency proceeding shall not be commenced under this chapter by a person other than the commissioner. A court shall not have jurisdiction over a proceeding under this chapter commenced by a person other than the commissioner.
2. A court shall not have jurisdiction over a petition praying for the dissolution, liquidation, rehabilitation, sequestration, conservation or receivership of an insurer, or praying for an injunction or restraining order or other relief preliminary to, incidental to or relating to such proceedings other than pursuant to this chapter.
3. A court having jurisdiction of the subject matter has jurisdiction over a person served pursuant to the Iowa rules of civil procedure or other applicable provisions in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state for any of the following:
 - a.* In an action on or incident to an obligation if the person served is obligated to the insurer in any way as an incident to an agency or brokerage arrangement that may exist or has existed between the insurer and the agent or broker.
 - 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 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.
 - c.* In an action resulting from a relationship with the insurer, if the person served is or has been an officer, manager, trustee, organizer, promoter, or person in a position of comparable authority or influence in an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced.
 - 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.
 - e.* If the person served is obligated to the insurer in any way whatsoever, in an action on or incident to the obligation.
4. If the court on motion of a party finds that an action should as a matter of substantial justice be tried in a forum outside this state, the court may enter an order to stay the proceedings on the action in this state.
5. All action authorized in this chapter shall be brought in the district court in Polk county.

84 Acts, ch 1175, § 4; 92 Acts, ch 1117, § 11, 12

507C.5 Injunctions and orders.

1. A receiver appointed in a proceeding under this chapter may at any time apply for, and any court of general jurisdiction may grant, restraining orders, preliminary and permanent injunctions, and other orders as necessary to prevent any of the following:

- a. The transaction of further business.
- b. The transfer of property.
- c. Interference with the receiver or with a proceeding under this chapter.
- d. Waste of the insurer's assets.
- e. Dissipation and transfer of bank accounts.
- f. The institution or further prosecution of any actions or proceedings.
- g. The obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets or its policyholders.
- h. The levying of execution against the insurer, its assets or its policyholders.
- i. The making of a sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer.
- j. The withholding from the receiver of books, accounts, documents, or other records relating to the business of the insurer.
- k. Any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of a proceeding under this chapter.

2. A receiver may apply to a court outside of the state for the relief described in subsection 1.

84 Acts, ch 1175, § 5

507C.6 Cooperation of officers, owners, and employees penalty.

1. An officer, manager, director, trustee, owner, employee, or agent of an insurer, or any other person with authority over or in charge of any segment of the insurer's affairs, shall cooperate with the commissioner in any proceeding under this chapter or any investigation preliminary to the proceeding. The term "*person*" as used in this section, shall include any person who exercises control directly or indirectly over activities of the insurer through any holding company or other affiliate of the insurer. "*To cooperate*" shall include, but shall not be limited to, the following:

- a. To reply promptly in writing to any inquiry from the commissioner requesting a reply.
- b. To make available to the commissioner any books, accounts, documents, or other records, information, or property of or pertaining to the insurer and in the person's possession, custody, or control.

2. A person shall not obstruct or interfere with the commissioner in the conduct of a delinquency proceeding or an investigation preliminary or incidental to a delinquency proceeding.

3. This section does not abridge otherwise existing legal rights, including the right to resist a petition for liquidation, other delinquency proceedings, or other orders.

4. It shall be unlawful for a person as defined in subsection 1 to fail to cooperate with the commissioner, or to obstruct or interfere with the commissioner in the conduct of a delinquency proceeding or an investigation preliminary or incidental to a delinquency proceeding, or to violate a valid order of the commissioner.

84 Acts, ch 1175, § 6; 90 Acts, ch 1234, §4; 2004 Acts, ch 1110, §25

507C.7 Bonds.

In a proceeding under this chapter, the commissioner and the commissioner's deputies shall be responsible on their official bonds for the faithful performance of their duties. If the court deems it desirable for the protection of the assets, it may require an additional bond from the commissioner or the commissioner's deputies. The bonds shall be paid for out of the assets of the insurer as a cost of administration.

84 Acts, ch 1175, § 7

507C.8 Continuation of delinquency proceedings.

A proceeding commenced before July 1, 1984 shall be deemed to have commenced under this chapter for the purpose of conducting the proceeding thereafter. However, in the discretion of the commissioner the proceeding may be continued, in whole or in part, as it would have continued had this chapter not been enacted.

84 Acts, ch 1175, § 8

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.

92 Acts, ch 1117, § 13

507C.9 Summary orders and supervision proceedings penalty.

1. If after a hearing held under subsection 5, the commissioner determines that a domestic insurer has committed or engaged in, or is about to commit or engage in, an act, practice, or transaction that would subject it to delinquency proceedings under this chapter, the commissioner may make and serve upon the insurer and any other persons involved orders as are reasonably necessary to correct, eliminate, or remedy the conduct, condition, or ground.

2. If the commissioner upon reasonable cause determines that a domestic insurer is in a condition as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance

or if the domestic insurer gives its consent then the commissioner shall do both of the following:

- a.* Notify the insurer of the determination.
- b.* Furnish to the insurer a written list of the commissioner's requirements to abate the determination.

3. If the commissioner makes a determination to supervise an insurer subject to an order under subsection 1 or 2, the commissioner shall notify the insurer that it is under the supervision of the commissioner. During the period of supervision, the commissioner may appoint a supervisor to supervise the insurer. The order appointing a supervisor shall direct the supervisor to enforce orders issued under subsections 1 and 2 and may also require that during the period of supervision, the insurer shall not do any of the following without the prior approval of the commissioner or the commissioner's supervisor:

- a.* Dispose of, convey or encumber its assets or its business in force.
- b.* Withdraw from its bank accounts.
- c.* Lend its funds.
- d.* Invest its funds.
- e.* Transfer its property.
- f.* Incur any debt, obligation or liability.
- g.* Merge or consolidate with another company.
- h.* Enter into a new reinsurance contract or treaty.
- i.* Write new or renewal business.

4. An insurer subject to an order under this section shall comply with the lawful requirements of the commissioner and, if placed under supervision, shall have sixty days from the date the supervision order is served within which to comply with the requirements of the commissioner. If the insurer fails to comply, the commissioner may institute proceedings under section 507C.12 or 507C.17 to have a rehabilitator or liquidator appointed or extend the period of supervision.

5. The notice of hearing and any order issued pursuant to subsection 1 shall be served upon the insurer pursuant to chapter 17A. The notice of hearing shall state the time and place of hearing, and the conduct, condition or ground upon which the commissioner would base an order. Unless mutually agreed between the commissioner and the insurer, the hearing shall occur not less than ten days nor more than thirty days after notice is served and shall be either in Polk county or in some other place convenient to the parties to be designated by the commissioner. All hearings under subsection 1 shall be confidential unless the insurer requests a public hearing.

6. *a.* An insurer subject to an order under subsection 2 may request a hearing to review that order. The hearing shall be held as provided in subsection 5. The request for a hearing shall not stay the effect of the order.

b. If the commissioner issues an order under subsection 2, the insurer may waive a commissioner's hearing and apply for immediate judicial relief by means of any remedy afforded by law without first exhausting administrative remedies. Subsequent to a hearing, a party to the proceedings whose interests are substantially affected is entitled to judicial review of any order issued by the commissioner.

7. During the period of supervision the insurer may request the commissioner to review an action taken or proposed to be taken by the supervisor by specifying the reasons the action complained of is believed not to be in the best interest of the insurer.

8. If a person has violated a supervision order issued under this section which was in effect, the person is liable to pay a civil penalty imposed by the district court not to exceed ten thousand dollars.

9. The commissioner may apply for and any court of general jurisdiction may grant restraining orders, preliminary and permanent injunctions, and other orders as necessary to enforce a supervision order.

84 Acts, ch 1175, § 9

507C.10 Seizure order.

1. With respect to a domestic insurer the commissioner may file in the district court a petition alleging all of the following:

a. That there exist grounds that would justify a court order for a formal delinquency proceeding against an insurer under this chapter.

b. That the interests of policyholders, creditors, or the public will be endangered by delay.

c. The contents of an order deemed necessary by the commissioner.

2. Upon a filing under subsection 1, the court may issue, *ex parte* and without a hearing, the requested order which shall direct the commissioner to take possession and control of all or a part of the property, books, accounts, documents, and other records of an insurer, and of the premises occupied by it for transaction of its business, and until further order of the court enjoin the insurer and its officers, managers, agents, and employees from disposing of the insurer's property and from transacting of the insurer's business, except with the written consent of the commissioner.

3. The court shall specify in the order the duration of the order. The duration shall be the time the court deems necessary for the commissioner to ascertain the condition of the insurer. Upon motion or on its own, the court may from time to time hold hearings as it deems desirable after notice as it deems appropriate, and may extend, shorten, or modify the terms of the seizure order. The court shall vacate the seizure order if the commissioner fails to commence a formal proceeding under this chapter after having had a reasonable opportunity to do so. An order of the court pursuant to a formal proceeding under this chapter shall automatically vacate the seizure order.

4. Entry of a seizure order under this section is not an anticipatory breach of a contract of the insurer.

5. An insurer subject to an *ex parte* order under this section may petition the court after the issuance of the order for a hearing and review of the order. The court shall hold the hearing and review not more than fifteen days after the request. A hearing under this subsection may be held privately in chambers. Upon request of the insurer the hearing shall be held privately in chambers.

6. If at any time after the issuance of an order under this section it appears to the court that a person whose interest is or will be substantially affected by the order did not appear at the hearing and has not been served, the court may order that notice be given. An order that notice be given shall not stay the effect of any order previously issued by the court.

84 Acts, ch 1175, § 10

507C.11 Confidentiality of hearings.

Notwithstanding chapter 22, in all administrative proceedings pursuant to sections 507C.9 and 507C.10 all orders, 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.

84 Acts, ch 1175, § 11; 92 Acts, ch 1117, § 14; 2004 Acts, ch 1110, §26

507C.12 Grounds for rehabilitation.

The commissioner may petition the district court for an order to rehabilitate a domestic insurer or an alien insurer domiciled in this state on any of the following grounds:

1. The insurer is in a condition that the further transaction of business would be financially hazardous to its policyholders, creditors, or the public.
2. There is reasonable cause to believe that there has been embezzlement from the insurer, wrongful sequestration or diversion of the insurer's assets, forgery or fraud affecting the insurer, or other illegal conduct in, by, or with respect to the insurer that, if established, would endanger assets in an amount threatening the solvency of the insurer.
3. The insurer has failed to remove a person, whether an officer, manager, general agent, employee, or other person, who in fact has executive authority in the insurer, if the person has been found after notice and hearing by the commissioner to be dishonest or untrustworthy in a way affecting the insurer's business.
4. Control of the insurer is in a person or persons found after notice and hearing to be untrustworthy. Control may be by stock ownership or by other means and may be direct or indirect.
5. A person who in fact has executive authority in the insurer, whether an officer, manager, general agent, director or trustee, employee, or other person has refused to be examined under oath by the commissioner concerning the insurer's affairs, in this state or elsewhere, and after reasonable notice of the fact the insurer has failed promptly and effectively to terminate the employment and status of the person and all the person's influence on management.
6. After demand by the commissioner under chapter 507 or under this chapter, the insurer has failed to promptly make available for examination any of its property, books, accounts, documents, or other records, or those of a subsidiary or related company within the control of the insurer, or those of a person having executive authority in the insurer so far as they pertain to the insurer.
7. Without first obtaining the written consent of the commissioner, the insurer has transferred, or attempted to transfer, in a manner contrary to chapter 521 or 521A, substantially its entire property or business, or has entered into a transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person.
8. The insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator or sequestrator or similar fiduciary of the insurer of its property other than as authorized under the insurance laws of this state, and the appointment has been made or is imminent, and the

appointment might oust the court of this state of jurisdiction or might prejudice orderly delinquency proceedings under this chapter.

9. Within the previous three years the insurer has willfully violated its charter or articles of incorporation, its bylaws, an insurance law of this state, or a valid order of the commissioner under section 507C.9.

10. The insurer has failed to pay within sixty days after the due date an obligation to a state or any subdivision of a state or a judgment entered in a state, if the court in which the judgment was entered had jurisdiction over the subject matter. However, nonpayment shall not be a ground until sixty days after a good faith effort by the insurer to contest the obligation has been terminated whether the effort is before the commissioner or in the courts, or the insurer has systematically attempted to compromise or renegotiate previously agreed settlements with its creditors on the ground that it is financially unable to pay its obligations in full.

11. The insurer has failed to file its annual report or other financial report required within the time allowed and, after written demand by the commissioner, has failed to immediately give an adequate explanation.

12. The board of directors or the holders of a majority of the shares entitled to vote, or a majority of those individuals entitled to the control of those entities request or consent to rehabilitation under this chapter.

If the petition alleges that extraordinary circumstances exist and that there is imminent substantial risk to the insurer's solvency if the insurer is not immediately placed into rehabilitation, the court may issue, ex parte and without a hearing, the requested order of rehabilitation. An insurer subject to an ex parte order under this section may petition the court after the issuance of the order for a hearing and review of the order. The court shall hold the hearing and review not more than fifteen days after the request. A hearing under this section may be held privately in chambers. Upon the request of the insurer, the hearing shall be held privately in chambers.

84 Acts, ch 1175, § 12; 91 Acts, ch 26, §35

507C.13 Rehabilitation orders.

1. An order to rehabilitate the business of a domestic insurer or an alien insurer domiciled in this state shall appoint the commissioner as the rehabilitator. The order shall direct the rehabilitator to take possession of the assets of the insurer, and to administer them under the general supervision of the court. The filing or recording of the order with the clerk of the district court or recorder of deeds of the county in which the principal business of the insurer is conducted, or the county in which its principal office or place of business is located, is the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds. The order to rehabilitate the insurer shall vest title to all assets of the insurer in the rehabilitator.

2. An order issued under this section requires accounting to the court by the rehabilitator. Accountings shall be at intervals the court 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 4, 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.

3. Entry of an order of rehabilitation is not an anticipatory breach of a contract of the insurer.

84 Acts, ch 1175, § 13; 92 Acts, ch 1117, § 15

507C.14 Powers and duties of the rehabilitator.

1. The commissioner as rehabilitator may appoint one or more special deputies. The special deputies shall have the powers and responsibilities of the rehabilitator granted under this section. The commissioner may employ counsel, clerks, and assistants as necessary. The compensation of the special deputy, counsel, clerks, and assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the commissioner with the approval of the court and shall be paid out of the funds or assets of the insurer. The persons appointed under this section shall serve at the pleasure of the commissioner. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of any appropriation for the maintenance of the division. Amounts so advanced for expenses of administration shall be repaid to the commissioner for the use of the division out of the first available money of the insurer.

2. The rehabilitator may take action as the rehabilitator deems necessary or appropriate to reform and revitalize the insurer. The rehabilitator shall have the powers of the directors, officers, and managers of the insurer, whose authority shall be suspended, except as the powers are redelegated by the rehabilitator. The rehabilitator shall have power to direct and manage, to hire and discharge employees subject to contract rights the employees may have, and to deal with the property and business of the insurer.

3. If it appears to the rehabilitator that there has been criminal or tortious conduct, or breach of a contractual or fiduciary obligation by any person detrimental to the insurer, the rehabilitator may pursue appropriate legal remedies on behalf of the insurer.

4. If the rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer is appropriate, the rehabilitator shall prepare a plan to effect the changes. Upon application of the rehabilitator for approval of the plan, and after notice and hearings as the court may prescribe, the court may either approve, disapprove or modify the plan proposed. Before approving a plan, the court shall find that it is fair and equitable to all parties concerned. If the plan is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, if all rights of shareholders are first relinquished, the plan proposed may include the imposition of liens upon the policies of the company. A plan for a life insurer may also propose imposition of a moratorium upon loan and cash surrender rights under policies.

5. The rehabilitator shall have the power under sections 507C.26 and 507C.27 to avoid fraudulent transfers.

84 Acts, ch 1175, § 14; 92 Acts, ch 1117, § 16; 93 Acts, ch 88, § 6

507C.15 Actions by and against rehabilitator.

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.

3. A guaranty association or foreign guaranty association covering life or health insurance or annuities shall have standing to appear in a court proceeding concerning the rehabilitation of a life or health insurer if the association is or may become liable to act as a result of the rehabilitation.

84 Acts, ch 1175, § 15; 92 Acts, ch 1117, § 17

507C.16 Termination of rehabilitation.

1. Whenever the commissioner determines that further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policyholders, or the public, or would be futile, the commissioner may petition the district court for an order of liquidation. A petition under this subsection shall have the same effect as a petition under section 507C.17. The court shall permit the directors of the insurer to take actions as are reasonably necessary to defend against the petition and may order payment from the estate of the insurer of costs and other expenses of defense as justice may require.

2. The rehabilitator may at any time petition the district court for an order terminating rehabilitation of an insurer. The directors of the insurer may petition the court for an order terminating rehabilitation of the insurer and the court may order payment from the estate of the insurer of costs and other expenses of the petition as justice may require. If the court finds that rehabilitation has been accomplished and that grounds for rehabilitation under section 507C.12 no longer exist, it shall order that the insurer be restored to possession of its property and the control of its business. The court may also terminate the rehabilitation at any time upon its own motion.

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.

84 Acts, ch 1175, § 16; 92 Acts, ch 1117, § 18

507C.17 Grounds for liquidation.

The commissioner may petition the district court for an order directing the commissioner to liquidate a domestic insurer or an alien insurer domiciled in this state on any of the following grounds:

1. Any ground for an order of rehabilitation specified in section 507C.12 whether or not there has been a prior order directing the rehabilitation of the insurer.
2. That the insurer is insolvent.
3. That the insurer is in a condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public.

84 Acts, ch 1175, § 17

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 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, 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.37.

3. An order to liquidate the business of an alien insurer domiciled in this state 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 filed within one year of the liquidation order and at such other times as the court may require.

6. *a.* Within five days of July 1, 1992, 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.

Footnotes

Judgment rate of interest, see § 535.3

507C.19 Continuance of coverage.

1. Except for life or health insurance or annuities, policies in effect at the time of issuance of an order of liquidation shall continue in force only for the lesser of:

a. A period of thirty days from the date of entry of the liquidation orders.

b. The expiration of the policy coverage.

c. The date when the insured has replaced the insurance coverage with equivalent insurance in another insurer or otherwise terminated the policy.

d. The liquidator has effected a transfer of the policy obligation pursuant to section 507C.21, subsection 1, paragraph "h".

2. An order or liquidation under section 507C.18 shall terminate coverages at the time specified in subsection 1 for purposes of any other statute.

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

4. Policies of life or health insurance or annuities or any period or coverage of the policies not covered by a guaranty association or foreign guaranty association shall terminate under subsections 1 and 2.

84 Acts, ch 1175, § 19

507C.20 Dissolution or sale of insurer.

The commissioner may petition for an order dissolving the corporate existence of a domestic insurer or the United States branch of an alien insurer domiciled in this state at the time the commissioner applies for a liquidation order. The court shall order dissolution of the corporation upon petition by the commissioner upon or after the granting of a liquidation order. If the dissolution has not previously been ordered, it shall be effected by operation of law upon the discharge of the liquidator if the insurer is insolvent. However, dissolution may be ordered by the court upon the discharge of the liquidator if the insurer is under a liquidation order for some other reason. Notwithstanding the above, upon application by the commissioner and following notice as prescribed by the court and a hearing, the court may sell the corporation as an entity, together with any of its licenses to do business, despite the entry of an order of liquidation. The sale may be made on terms and conditions the court deems appropriate. However, the order approving the sale shall provide that the proceeds of the sale shall become part of the assets of the liquidation estate, to be distributed in the manner set forth in section 507C.42, and that the corporate entity and its licenses shall thereafter be free and clear from the claims or interests of all claimants, creditors, policyholders, and stockholders of the corporation under liquidation.

84 Acts, ch 1175, § 20; 87 Acts, ch 168, §1; 88 Acts, ch 1112, § 502

507C.20A Redomestication of foreign insurer.

The commissioner may petition the court for an ancillary receivership or for an order redomesticating a foreign insurer which is the subject of a liquidation or other delinquency order in a reciprocal state. Only the

corporate charter and rights to the licenses under such charter shall be redomesticated to Iowa. All claims against the foreign insurer shall remain a part of and be administered through the reciprocal state liquidation or other delinquency proceeding. Following notice as prescribed by the court and a hearing, the court may sell the corporation as an entity, together with any of its licenses, free and clear from the claims or interests of all claimants, creditors, policyholders, and stockholders of the corporation under liquidation or other delinquency proceedings, wherever located. The sale may be made on terms and conditions the court deems appropriate. The proceeds of the sale, less court costs, attorney fees, broker's fees, and the commissioner's expenses in effectuating the sale, shall become part of the assets of the liquidation or other estate in the reciprocal state.

91 Acts, ch 213, §2

507C.21 Powers of liquidator.

1. The liquidator may:

- a.* Appoint a special deputy to act for the liquidator under this chapter, and determine the special deputy's reasonable compensation. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator.
- b.* Hire employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and other personnel as the commissioner may deem necessary to assist in the liquidation.
- c.* With the approval of the court fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers and consultants.
- d.* Pay reasonable compensation to persons appointed and defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of an appropriation for the maintenance of the division. Amounts so advanced for expenses of administration shall be repaid to the commissioner for the use of the division out of the first available moneys of the insurer.
- e.* Hold hearings, subpoena witnesses, and compel their attendance, administer oaths, examine a person under oath, and compel a person to subscribe to the person's testimony after it has been correctly reduced to writing, and in connection to the proceedings require the production of books, papers, records or other documents which the liquidator deems relevant to the inquiry.
- f.* Collect debts and moneys due and claims belonging to the insurer, wherever located. Pursuant to this paragraph, the liquidator may:
 - (1) Institute timely action in other jurisdictions to forestall garnishment and attachment proceedings against debts.
 - (2) Perform acts as are necessary or expedient to collect, conserve or protect its assets or property, including the power to sell, compound, compromise or assign debts for purposes of collection upon terms and conditions as the liquidator deems best.
 - (3) Pursue any creditor's remedies available to enforce claims.
- g.* Conduct public and private sales of the property of the insurer.
- h.* Use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent

assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under section 507C.42.

i. Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with property of the insurer at its market value or upon terms and conditions as are fair and reasonable. The liquidator shall also have power to execute, acknowledge, and deliver deeds, assignments, releases and other instruments necessary to effectuate a sale of property or other transaction in connection with the liquidation.

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.

k. Enter into contracts as necessary to carry out the order to liquidate and affirm or disavow contracts to which the insurer is a party.

l. Continue to prosecute and to institute in the name of the insurer or in the liquidator's own name any and all suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims the liquidator deems unprofitable to pursue further. If the insurer is dissolved under section 507C.20, the liquidator may apply to any court in this state or elsewhere for leave to substitute the liquidator for the insurer as plaintiff.

m. Prosecute an action on behalf of the creditors, members, policyholders or shareholders of the insurer against an officer of the insurer, or any other person.

n. Remove records and property of the insurer to the offices of the commissioner or to other place as may be convenient for the purposes of efficient and orderly execution of the liquidation. A guaranty association or foreign guaranty association shall have reasonable access to the records of the insurer as necessary to carry out the guaranty's statutory obligations.

o. Deposit in one or more banks in this state sums as are required for meeting current administration expenses and dividend distributions.

p. Unless the court orders otherwise, invest funds not currently needed.

q. File necessary documents for record in the office of a recorder of deeds or record office in this state or elsewhere where property of the insurer is located.

r. Assert defenses available to the insurer as against third persons including statutes of limitation, statutes of fraud, and the defense of usury. A waiver of a defense by the insurer after a petition in liquidation has been filed shall not bind the liquidator. If a guaranty association or foreign guaranty association has an obligation to defend a suit, the liquidator shall defer to the obligation and may defend only in the absence of a defense by the guaranty association.

s. Exercise and enforce the rights, remedies, and powers of a creditor, shareholder, policyholder, or member, including the power to avoid a transfer or lien that may be given by the general law and that is not included with sections 507C.26 through 507C.28.

t. Intervene in a proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered.

u. Enter into agreements with a receiver or commissioner of insurance of any other state relating to the rehabilitation, liquidation, conservation or dissolution of an insurer doing business in both states.

v. Exercise powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with this chapter.

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

2. This section does not limit the liquidator or exclude the liquidator from exercising a power not listed in subsection 1 that may be necessary or appropriate to accomplish the purposes of this chapter.

84 Acts, ch 1175, § 21; 85 Acts, ch 67, § 48; 92 Acts, ch 1117, § 20, 21

507C.22 Notice to creditors and others.

1. Unless the court otherwise directs, the liquidator shall give notice of the liquidation order as soon as possible by doing all of the following:

a. By first class mail and either by telegram or telephone to the insurance commissioner of each jurisdiction in which the insurer is doing business.

b. By first class mail to a guaranty association or foreign guaranty association which is or may become obligated as a result of the liquidation.

c. By first class mail to all insurance agents of the insurer.

d. By first class mail to all persons known or reasonably expected to have claims against the insurer, including policyholders, by mailing a notice to their last known address as indicated by the records of the insurer.

e. By publication in a newspaper of general circulation in the county in which the insurer has its principal place of business and in other locations as the liquidator deems appropriate.

2. Notice to potential claimants under subsection 1 shall require claimants to file with the liquidator their claims together with proper proofs of the claim under section 507C.36 on or before a date the liquidator shall specify in the notice. The liquidator need not require persons claiming cash surrender values or other investment values in life insurance and annuities to file a claim. Claimants shall keep the liquidator informed of changes of address.

3. *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.

4. If notice is given pursuant to this section, the distribution of assets of the insurer under this chapter shall be conclusive with respect to claimants, whether or not a claimant actually received notice.

84 Acts, ch 1175, § 22; 92 Acts, ch 1117, § 22

507C.23 Duties of agents.

1. A person, who receives notice in the form prescribed in section 507C.22 that an insurer which the person represents as an agent is the subject of a liquidation order, shall within fifteen days of the notice give notice to each policyholder or other person named in a policy issued through the agent by the insurer of the liquidation order. The notice shall be sent by first class mail to the last address contained in the agent's records if the agent has a record of the address of the policyholder or other person. A policy is issued through an agent if the agent has a property interest in the expiration of the policy, or if the agent has had in the agent's possession a copy of the declarations of the policy at any time during the life of the policy, except where the ownership of the expiration of the policy has been transferred to another. The written notice shall include the name and address of the insurer, the name and address of the agent, identification of the policy impaired and the nature of the impairment including termination of coverage, as described in section 507C.19. Notice by a general agent satisfies the notice requirement for an agent under contract to the general agent. An agent obligated to give notice under this section shall file a report of compliance with the liquidator.

2. An agent failing to 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.

3. The liquidator may waive the duties imposed by this section if the liquidator determines that another notice to the policyholders of the insurer under liquidation is adequate.

84 Acts, ch 1175, § 23; 92 Acts, ch 1117, § 23

507C.24 Actions by and against liquidator.

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. 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 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 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.

3. A statute of limitations or defense of laches shall not run with respect to an action against an insurer between the filing of a petition for liquidation against an insurer and the denial of the petition. An action against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty days after the petition is denied.

4. A guaranty association or foreign guaranty association shall have standing to appear in a court proceeding concerning the liquidation of an insurer if the association is or may become liable to act as a result of the liquidation.

84 Acts, ch 1175, § 24; 92 Acts, ch 1117, § 24

507C.25 Collection and list of assets.

1. As soon as practicable after the liquidation order but not later than one hundred twenty days thereafter, the liquidator shall prepare in duplicate a list of the insurer's assets. The list shall be amended or supplemented as the liquidator may determine. One copy shall be filed in the office of the clerk of the court and one copy shall be retained for the liquidator's files. Amendments and supplements shall be similarly filed.

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

3. A submission to the court for disbursement of assets in accordance with section 507C.34 fulfills the requirements of subsection 1.

84 Acts, ch 1175, § 25

507C.26 Fraudulent transfers prior to petition.

1. A transfer made and an obligation incurred by an insurer within one year prior to the filing of a successful petition for rehabilitation or liquidation under this chapter is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors. A fraudulent transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under this chapter may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value. A purchaser, lienor, or obligee, who in good faith has given a consideration less than fair for such transfer, lien, or obligation, may retain the property, lien or obligation as security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

2. *a.* A transfer of property other than real property is made when it becomes perfected so that a subsequent lien obtainable by legal or equitable proceedings on a simple contract could not become superior to the rights of the transferee under section 507C.28, subsection 3.

b. A transfer of real property is made when it becomes perfected so that a subsequent bona fide purchaser from the insurer could not obtain rights superior to the rights of the transferee.

c. A transfer which creates an equitable lien is not perfected if there are available means by which a legal lien could be created.

d. A transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

e. This subsection applies whether or not there are or were creditors who might have obtained a lien or persons who might have become bona fide purchasers.

3. A transaction of the insurer with a reinsurer is fraudulent and may be avoided by the receiver under subsection 1 if both of the following exist:

a. The transaction consists of the termination, adjustment, or settlement of a reinsurance contract in which the reinsurer is released from any part of its duty to pay the originally specified share of losses that had occurred prior to the time of the transaction, unless the reinsurer gives a present fair equivalent value for the release.

b. Part of the transaction took place within one year prior to the date of filing of the petition through which the receivership was commenced.

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

84 Acts, ch 1175, § 26; 93 Acts, ch 88, § 7

507C.27 Fraudulent transfer after petition.

1. After a petition for rehabilitation or liquidation has been filed a transfer of real property of the insurer made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value. If the transfer was not made for a present fair equivalent value, then the transfer is valid to the extent of the present consideration actually paid for which amount the transferee shall have a lien on the property transferred. The commencement of a proceeding in rehabilitation or liquidation is constructive notice upon the recording of a copy of the petition for or order of rehabilitation or liquidation with the recorder of deeds in the county where any real property in question is located. The exercise by a court of the United States or a state or jurisdiction to authorize a judicial sale of real property of the insurer within a county in a state shall not be impaired by the pendency of a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

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

a. A transfer of the property, other than real property, of the insurer made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value. If the transfer was not made for a present fair equivalent value, then the transfer is valid to the extent of the present consideration actually paid for which amount the transferee shall have a lien on the property transferred.

b. If acting in good faith, a person indebted to the insurer or holding property of the insurer may pay the debt or deliver the property, or any part thereof, to the insurer or upon the insurer's order as if the petition were not pending.

c. A person having actual knowledge of the pending rehabilitation or liquidation is not acting in good faith.

d. A person asserting the validity of a transfer under this section shall have the burden of proof. Except as provided in this section, a transfer by or on behalf of the insurer after the date of the petition for liquidation by any person other than the liquidator shall not be valid against the liquidator.

3. 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.

4. This chapter shall not impair the negotiability of currency or negotiable instruments.

84 Acts, ch 1175, § 27; 92 Acts, ch 1117, § 25

507C.28 Voidable preferences and liens.

1. *a.* A preference is a transfer of the property of an insurer to or for the benefit of a creditor for an antecedent

debt made or suffered by the insurer within one year before the filing of a successful petition for liquidation under this chapter, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, then the transfers are preferences if made or suffered within one year before the filing of the successful petition for rehabilitation, or within two years before the filing of the successful petition for liquidation, whichever time is shorter.

b. A preference may be avoided by the liquidator if any of the following exist:

(1) The insurer was insolvent at the time of the transfer.

(2) The transfer was made within four months before the filing of the petition.

(3) At the time the transfer was made, the creditor receiving it or to be benefited by the transfer or the creditor's agent acting with reference to the transfer had reasonable cause to believe that the insurer was insolvent or was about to become insolvent.

(4) The creditor receiving the transfer was an officer, or an employee, attorney or other person who was in fact in a position of comparable influence in the insurer to an officer whether or not the person held the position of an officer, or a shareholder directly or indirectly holding more than five per centum of a class of an equity security issued by the insurer, or other person, firm, corporation, association, or aggregation of persons with whom the insurer did not deal at arm's length.

c. Where the preference is voidable, the liquidator may recover the property. If the property has been converted, the liquidator may recover its value from a person who has received or converted the property. However, if a bona fide purchaser or lienor has given less than fair equivalent value, the purchaser or lienor shall have a lien upon the property to the extent of the consideration actually given. Where a preference by way of lien or security interest is voidable, the court may on due notice order the lien or security interest to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

2. *a.* A transfer of property other than real property is made when it becomes perfected so that a subsequent lien obtainable by legal or equitable proceedings on a simple contract could not become superior to the rights of the transferee.

b. A transfer of real property is made when it becomes perfected so that a subsequent bona fide purchaser from the insurer could not obtain rights superior to the rights of the transferee.

c. A transfer which creates an equitable lien is not perfected if there are available means by which a legal lien could be created.

d. A transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

e. This subsection applies whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

3. *a.* A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of the proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.

b. A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee, or a

purchaser could obtain rights superior to the rights of a transferee within the meaning of subsection 2, if such consequences would follow only from the lien or purchase itself, or from the lien or purchase followed by a step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. However, a lien could not become superior and a purchase could not create superior rights for the purpose of subsection 2 through an act subsequent to the obtaining of a lien or subsequent to a purchase which requires the agreement or concurrence of any third party or which requires further judicial action or ruling.

4. A transfer of property for or on account of a new and contemporaneous consideration, which is under subsection 2 made or suffered after the transfer because of delay in perfecting it, does not become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or bona fide purchasers' rights are performed within twenty-one days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if a loan is actually made, or a transfer which becomes security for a future loan, shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

5. If a lien voidable under subsection 1, paragraph "b" has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon property of an insurer before the filing of a petition under this chapter which results in a liquidation order, the indemnifying transfer or lien is also voidable.

6. The property affected by a lien voidable under subsections 1 and 5 is discharged from the lien. The property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator. However, the court may on due notice order a lien to be preserved for the benefit of the estate and the court may direct that the conveyance be executed to evidence the title of the liquidator.

7. The court shall have summary jurisdiction of a proceeding by the liquidator to hear and determine the rights of parties under this section. Reasonable notice of hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. Where an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, upon application of any party in interest, the court shall in the same proceeding ascertain the value of the property or lien. If the value is less than the amount for which the property is indemnity or than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the liquidator within time as the court shall fix.

8. The liability of a surety under a releasing bond or other like obligation shall be discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator. Where the property is retained under subsection 7, the liability of the surety shall be discharged to the extent of the amount paid to the liquidator.

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

10. If within four months before the filing of a successful petition for liquidation under this chapter, or at any time in contemplation of a proceeding to liquidate an insurer directly or indirectly, pays money or transfers property to an attorney for services rendered or to be rendered, the transaction may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator. The payment or transfer shall be held valid only to the extent of a reasonable amount to be determined by the court. The excess may be recovered by the liquidator for the benefit of the estate. However, where the attorney is in a position of

influence in the insurer or an affiliate, payment of any money or the transfer of any property to the attorney for services rendered or to be rendered shall be governed by the provision of subsection 1, paragraph "b", subparagraph (4).

11. *a.* An officer, manager, employee, shareholder, member, subscriber, attorney, or any other person acting on behalf of the insurer who knowingly participates in giving any preference when the person has reasonable cause to believe the insurer is or is about to become insolvent at the time of the preference is personally liable to the liquidator for the amount of the preference. There is an inference that reasonable cause exists if the transfer was made within four months before the date of filing of this successful petition for liquidation.

b. A person receiving property from the insurer or the benefit thereof as a preference voidable under subsection 1 is personally liable for the property and shall account to the liquidator.

c. This subsection shall not prejudice any other claim by the liquidator against any person.

84 Acts, ch 1175, § 28

507C.29 Claims of holders of void or voidable rights.

1. A claim of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance, voidable under this chapter shall not be allowed unless the creditor surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim shall not be allowed unless the money is paid or the property is delivered to the liquidator within thirty days from the date of the entering of the final judgment. However, the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

2. A claim allowable under subsection 1 by reason of a voluntary or involuntary avoidance, preference, lien, conveyance, transfer, assignment, or encumbrance may be filed as an excused late filing under section 507C.35 if filed within thirty days from the date of the avoidance or within the further time allowed by the court under subsection 1.

84 Acts, ch 1175, § 29

507C.30 Setoffs.

1. Except as provided in subsection 2 and section 507C.33 mutual debts or mutual credits between the insurer and another person in connection with an action or proceeding under this chapter shall be set off and the balance only shall be allowed or paid.

2. *a.* A setoff shall not be allowed in favor of a person where any of the following are found:

(1) At the date of the filing of a petition for liquidation, the obligation of the insurer to the person would not entitle the person to share as a claimant in the assets of the insurer.

(2) The obligation of the insurer to the person was purchased by or transferred to the person with a view to its being used as a setoff.

(3) The obligation of the insurer is owed to the affiliate of such person, or any other entity or association other than the person.

(4) The obligation of the person is to pay an assessment levied against the members or subscribers of the insurer, or is to pay a balance upon a subscription to the capital stock of the insurer, or is in any other way in

the nature of a capital contribution.

(5) The obligation of the person is to pay earned premiums to the insurer.

b. Nothing in paragraph "a", however, restricts the right of a person to set off premium due to or from the insurer pursuant to a reinsurance contract.

84 Acts, ch 1175, § 30; 92 Acts, ch 1117, § 26; 96 Acts, ch 1045, § 1

507C.31 Assessments.

1. As soon as practicable but not more than two years from the date of an order of liquidation under section 507C.18 of an insurer issuing assessable policies, the liquidator shall make a report to the court setting forth all of the following:

a. The reasonable value of the assets of the insurer.

b. The insurer's probable total liabilities.

c. The probable aggregate amount of the assessment necessary to pay claims of creditors and expenses in full, including expenses of administration and costs of collecting the assessment.

d. A recommendation as to whether an assessment should be made and, if so, in what amount.

2. *a.* Upon the basis of the report provided in subsection 1 and any supplement or amendment to the report, the court may levy one or more assessments against all members of the insurer who are subject to assessment.

b. Subject to any applicable legal limits on assessability, the aggregate assessment shall be for the amount that the sum of the probable liabilities, the expenses of administration, and the estimated cost of collection of the assessment, exceeds the value of existing assets. Due regard shall be given to assessments that cannot be collected economically.

3. After levy of assessment under subsection 2, the liquidator shall issue an order directing a member who has not paid the assessment pursuant to the order to show cause why the liquidator should not pursue a judgment for the assessment.

4. The liquidator shall give notice of the order to show cause by publication and by first class mail to a member liable under the order. The notice shall be mailed to the member's last known address as it appears on the insurer's records at least twenty days before the return day of the order to show cause.

5. *a.* If a member does not appear and serve duly verified objections upon the liquidator on or before the return day of the order to show cause under subsection 3, the court shall order the adjudging member to be liable for the amount of the assessment plus costs. The liquidator shall have a judgment against the member for the amount entered in the order.

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

6. The liquidator may enforce an order or collect a judgment under subsection 5 by any lawful means.

84 Acts, ch 1175, § 31

507C.32 Reinsurer's liability.

Notwithstanding a provision in the reinsurance contract or other agreement, the amount recoverable by the liquidator from reinsurers shall not be reduced as a result of delinquency proceedings. Payment made directly to an insured or other creditor shall not diminish the reinsurer's obligation to the insurer's estate except when either of the following applies:

1. The contract or other written agreement specifically provides for another payee of the reinsurance in the event of the insolvency of the ceding insurer.
2. The assuming insurer, with the consent of the direct insured, has assumed the policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under the policies and in substitution for the obligations of the ceding insurer to the payees.

84 Acts, ch 1175, § 32; 98 Acts, ch 1057, § 2

507C.33 Recovery of premiums owed.

1. *a.* An agent, broker, premium finance company or any other person responsible for the payment of a premium is obligated to pay an unpaid premium for the full policy term due the insurer at the time of the declaration of insolvency, whether earned or unearned, as shown on the records of the insurer. The liquidator shall also have the right to recover from the person any part of an unearned premium that represents commission of the person. Credits or setoffs or both shall not be allowed to an agent, broker, or premium finance company for amounts advanced to the insurer by the agent, broker, or premium finance company on behalf of, but in the absence of a payment by, the insured.

b. Notwithstanding paragraph "*a*", the agent, broker, premium finance company, or other person, is not liable for uncollected unearned premium of the insurer. A presumption exists that the premium as shown on the books of the insurer is collected and the burden is upon the agent, broker, premium finance company, or other person to demonstrate by a preponderance of the evidence that the unearned premium was not actually collected. For purposes of this paragraph, "*unearned premium*" means that portion of an insurance premium covering the unexpired term of the policy or the unexpired period of the policy period.

c. An insured is obligated to pay an unpaid earned premium due the insurer as shown on the records of the insurer at the time of the declaration of insolvency.

2. Upon satisfactory evidence of a violation of this section, the commissioner may pursue either one or both of the following courses of action:

a. Suspend or revoke or refuse to renew the licenses of the offending party or parties.

b. Impose a penalty of not more than one thousand dollars for each act in violation of this section by the party or parties.

3. Before the commissioner shall take any action as set forth in subsection 2, the commissioner shall give written notice to the person, company, association, or exchange accused of violating the law, stating specifically the nature of the alleged violation, and fixing a time and place, at least ten days thereafter, when a hearing on the matter shall be held. After such hearing, or upon failure of the accused to appear at the hearing, if a violation is found the commissioner shall impose those penalties under subsection 2 as deemed advisable.

4. When the commissioner shall take action in any or all of the ways set out in subsection 2, the party aggrieved may appeal from the action to court.

507C.34 Domiciliary liquidator's proposal to distribute assets.

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.

2. The proposal shall at least include provisions for all of the following:

a. Reserving amounts for the payment of all the following:

(1) Expenses of administration.

(2) To the extent of the value of the security held, the payment of claims of secured creditors.

(3) Claims falling within the priorities established in section 507C.42, subsection 1.

b. Disbursement of the assets marshaled to date and subsequent disbursement of assets as they become available.

c. Equitable allocation of disbursements to each of the guaranty associations and foreign guaranty associations entitled to disbursements.

d. The securing by the liquidator from each of the associations entitled to disbursements of an agreement to return to the liquidator the assets, together with income earned on assets previously disbursed, as may be required to pay claims of secured creditors and claims falling within the priorities established in section 507C.42 in accordance with the priorities. A bond shall not be required of an association.

e. A full report to be made by each association to the liquidator accounting for assets so disbursed to the association, all disbursements made from the assets, interest earned by the association on the assets and any other matter as the court may direct.

3. The liquidator's proposal shall provide for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made for which the associations could assert a claim against the liquidator. The proposal shall provide that if the assets available for disbursement do not equal or exceed the amount of the claim payments made or to be made by the association then disbursements shall be in the amount of available assets.

4. With respect to an insolvent insurer writing life or health insurance or annuities, the liquidator's proposal shall provide for disbursements of assets to a guaranty association or a foreign guaranty association covering life or health insurance or annuities or to any other entity or organization reinsuring, assuming, or guaranteeing policies or contracts of insurance under the acts creating the associations.

5. Notice of the application shall be given to the association in and to the commissioners of insurance of each of the states. Notice is given when deposited in the United States certified mails, first class postage prepaid, at least thirty days prior to submission of the application to the court. Action on the application may be taken by the court provided the required notice has been given and that the liquidator's proposal complies with subsection 2, paragraphs "a" and "b".

507C.35 Filing of claims.

1. Proof of all claims shall be filed with the liquidator in the form required by section 507C.36 on or before the last day for filing specified in the notice required under section 507C.22. However, proof of claims for cash surrender values or other investment values in life insurance and annuities need not be filed unless the liquidator expressly so requires.

2. The liquidator may permit a claimant making a late filing to share in distributions, whether past or future, as if the claimant were not late, to the extent that the payment will not prejudice the orderly administration of the liquidation under any of the following circumstances:

a. The existence of the claim was not known to the claimant and that the claimant filed the claim as promptly thereafter as reasonably possible after learning of it.

b. A transfer to a creditor was avoided under sections 507C.26 through 507C.28, or was voluntarily surrendered under section 507C.29, and that the filing satisfies the conditions of section 507C.29.

c. The valuation under section 507C.41 of security held by a secured creditor shows a deficiency, which is filed within thirty days after the valuation.

3. The liquidator shall permit late filing claims to share in distributions, whether past or future, as if they were not late, if the claims are claims of a guaranty association or foreign guaranty association for reimbursement of covered claims paid or expenses incurred, or both, subsequent to the last day for filing where the payments were made and expenses incurred as provided by law.

4. The liquidator may consider any claim filed late which is not covered by subsection 2, and permit it to receive distributions which are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The late-filing claimant shall receive at each distribution the same percentage of the amount allowed on the claim as is then being paid to claimants of any lower priority. This shall continue until the claim has been paid in full.

507C.36 Proof of claim.

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

a. The particulars of the claim including the consideration given for it.

b. The identity and amount of the security on the claim.

c. The payments, if any, made on the debt.

d. A statement that the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to the claim.

e. Any right of priority of payment or other specific right asserted by the claimant.

f. A copy of the written instrument which is the foundation of the claim.

g. The name and address of the claimant and the attorney who represents the claimant, if any.

2. A claim need not be considered or allowed if it does not contain all the information in subsection 1 which is applicable. The liquidator may require that a prescribed form be used and may require that other information and documents be included.

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

4. A judgment or order against an insured or the insurer entered after the date of filing of a successful petition for liquidation, or a judgment or order against an insured or the insurer entered at any time by default or by collusion need not be considered as evidence of liability or of quantum of damages. A judgment or order against an insured or the insurer entered within four months before the filing of the petition need not be considered as evidence of liability or of the quantum of damages.

5. Claims of a guaranty association or foreign guaranty association shall be in the form and contain the substantiation as may be agreed to by the association and the liquidator.

84 Acts, ch 1175, § 36

507C.37 Special claims.

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

2. A claim may be allowed even if contingent, if it is filed in accordance with section 507C.35. It may be allowed and the claimant may participate in all distributions declared after it is filed to the extent that it does not prejudice the orderly administration of the liquidation.

3. Claims that are due except for the passage of time shall be treated as absolute claims are treated. However, the claims may be discounted at the legal rate of interest.

4. Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to the issuance of an order of rehabilitation or liquidation under section 507C.13 or 507C.18.

84 Acts, ch 1175, § 37

507C.38 Special provisions for third-party claims.

1. If a third party asserts a cause of action against an insured of an insurer in liquidation, the third party may file a claim with the liquidator.

2. Whether or not the third party files a claim, the insured may file a claim on the insured's own behalf in the liquidation. If the insured fails to file a claim by the date for filing claims specified in the order of liquidation or within sixty days after mailing of the notice required by section 507C.22, whichever is later, the insured is an unexcused late filer.

3. The liquidator shall make recommendations to the court under section 507C.42, for the allowance of an insured's claim under subsection 2 after consideration of the probable outcome of a pending action against the insured on which the claim is based, the probable damages recoverable in the action and the probable costs and expenses of defense. After allowance by the court, the liquidator shall withhold dividends payable on the

claim, pending the outcome of litigation and negotiation with the insured. If it seems appropriate, the liquidator shall reconsider the claim on the basis of additional information and amend the recommendations to the court. The insured shall be afforded the same notice and opportunity to be heard on all changes in the recommendation as in its initial determination. The court may amend its allowance as it finds appropriate. As claims against the insured are settled or barred, the insured shall be paid from the amount withheld the same percentage dividend as was paid on other claims of like property, based on the lesser of:

- a.* The amount actually recovered from the insured by action or paid by agreement plus the reasonable costs and expenses of defense.
- b.* The amount allowed on the claims by the court. After all claims are settled or barred, any sum remaining from the amount withheld shall revert to the undistributed assets of the insurer. Delay in final payment under this subsection shall not be a reason for unreasonable delay of final distribution and discharge of the liquidator.

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

5. A claim may not be presented under this section if it is or may be covered by any guaranty association or foreign guaranty association.

84 Acts, ch 1175, § 38

507C.39 Disputed claims.

1. If a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant or the claimant's attorney by first class mail at the address shown in the proof of claim. Within sixty days from the mailing of the notice, the claimant may file objections with the liquidator. Unless a filing is made, the claimant may not further object to the determination.

2. If objections are filed with the liquidator and the liquidator does not alter the denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first class mail to the claimant or the claimant's attorney and to any other persons directly affected. The notice shall be given not less than ten nor more than thirty days before the date of the hearing. The matter shall be heard by the court or by a court-appointed referee. The referee shall submit findings of fact along with a recommendation.

84 Acts, ch 1175, § 39

507C.40 Claims of other person.

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 and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name to the extent that the other person discharges the undertaking. However, in the absence of an agreement with the creditor to the contrary, the 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 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 other person. As used in this section, "*other person*" is not intended to apply to a guaranty association or foreign guaranty association.

84 Acts, ch 1175, § 40; 92 Acts, ch 1117, § 28

507C.41 Secured creditor's claims.

1. The value of security held by a secured creditor shall be determined in one of the following ways, as the court may direct:

a. By converting the security into money according to the terms of the agreement pursuant to which the security was delivered to the creditors.

b. By agreement, arbitration, compromise or litigation between the creditor and the liquidator.

2. The determination shall be under the supervision and control of the court with due regard for the recommendation of the liquidator. The amount so determined shall be credited upon the secured claim. A deficiency shall be treated as an unsecured claim. If the claimant surrenders the security to the liquidator, the entire claim shall be allowed as if unsecured.

84 Acts, ch 1175, § 41

507C.42 Priority of distribution.

The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth. Claims in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. Subclasses shall not be established within a class. The order of distribution of claims is:

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. 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.* 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, claims of a guaranty association or foreign guaranty association, and claims 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.

3. *Class 3.* Claims of the federal government except those under class 2.

4. *Class 4.* Reasonable compensation to employees for services performed to the extent that they do not exceed 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.

5. *Class 5.* Claims of general creditors, including claims of ceding and assuming reinsurers in their capacity as such, and subrogation claims.

6. *Class 6.* Claims of any state or local government except those under class 2. 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 9.

7. *Class 7.* Claims filed late or any other claims other than claims under subsections 8 and 9.

8. *Class 8.* Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies are limited in accordance with law.

9. *Class 9.* The claims of shareholders or other owners.

84 Acts, ch 1175, § 42; 92 Acts, ch 1117, § 29; 93 Acts, ch 88, §8; 94 Acts, ch 1023, §114; 97 Acts, ch 186, §4

507C.43 Liquidator's recommendations to the court.

1. The liquidator shall review claims duly filed in the liquidation and shall make further investigation as necessary. The liquidator may compound, compromise or in any other manner negotiate the amount for which claims will be recommended to the court except where the liquidator is required by law to accept claims as settled by a person or organization, including a guaranty association or foreign guaranty association. Unresolved disputes shall be determined under section 507C.39. As soon as practicable, the liquidator shall present to the court a report of the claims against the insurer with the liquidator's recommendations. The report shall include the name and address of each claimant and the amount of the claim finally recommended. If the insurer has issued annuities or life insurance policies, the liquidator shall report the persons to whom, according to the records of the insurer, amounts are owed as cash surrender values or other investment value and the amounts owed.

2. The court may approve, disapprove, or modify the report on claims by the liquidator. Reports not modified by the court within sixty days following submission by the liquidator shall be treated by the liquidator as allowed claims, subject to later modification or to rulings made by the court pursuant to section 507C.39. A claim under a policy of insurance shall not be allowed for an amount in excess of the applicable policy limits.

84 Acts, ch 1175, § 43

507C.44 Distribution of assets.

Under the direction of the court, the liquidator shall pay distributions in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third-party claims. Distribution of assets in

kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court.

84 Acts, ch 1175, § 44

507C.45 Unclaimed and withheld funds.

1. Unclaimed funds subject to distribution remaining in the liquidator's hands when the liquidator is ready to apply to the court for discharge, including the amount distributable to a creditor, shareholder, member, or other person who is unknown or cannot be found, shall be deposited with the state treasurer, and shall be paid without interest, except in accordance with section 507C.42, to the person entitled or the person's legal representative upon proof satisfactory to the state treasurer of the right to the funds. An amount on deposit not claimed within six years from the discharge of the liquidator is deemed to have been abandoned and shall become the property of the state without formal escheat proceedings and be deposited with the general fund.

2. Funds withheld under section 507C.37 and not distributed shall upon discharge of the liquidator be deposited with the state treasurer and paid in accordance with section 507C.42. Sums remaining which under section 507C.42 would revert to the undistributed assets of the insurer shall be transferred to the state treasurer and become the property of the state under subsection 1, unless the commissioner in the commissioner's discretion petitions the court to reopen the liquidation under section 507C.47.

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.

84 Acts, ch 1175, § 45; 92 Acts, ch 1117, § 30

507C.46 Termination of proceedings.

1. When all assets justifying the expense of collection and distribution have been collected and distributed under this chapter, the liquidator shall apply to the court for discharge. The court may grant the discharge and make any other orders, including an order to transfer remaining funds that are uneconomical to distribute, as appropriate.

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 of the liquidator in resisting the application including a reasonable attorney's fee.

84 Acts, ch 1175, § 46; 92 Acts, ch 1117, § 31

507C.47 Reopening liquidation.

At any time after the liquidation proceeding has been terminated and the liquidator discharged, the commissioner or other interested party may petition the court to reopen the proceedings for good cause including the discovery of additional assets. The court shall order the proceeding reopened if it is satisfied that there is justification for the reopening.

84 Acts, ch 1175, § 47

507C.48 Disposition of records during and after termination of liquidation.

If it appears to the commissioner that the records of an insurer in process of liquidation or completely liquidated are no longer useful, the commissioner may recommend to the court and the court shall direct what records shall be retained for future reference and what shall be destroyed.

84 Acts, ch 1175, § 48

507C.49 External audit of the receiver's books.

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

84 Acts, ch 1175, § 49

507C.50 Conservation of property of foreign or alien insurers found in this state.

1. If a domiciliary liquidator has not been appointed, the commissioner may apply to the court by verified petition for an order directing the commissioner to act as conservator to conserve the property of an alien insurer not domiciled in this state or a foreign insurer on any of the following grounds:

- a.* Any of the grounds in section 507C.12.
- b.* That property has been sequestered by official action in the insurer's domiciliary state, or in any other state.
- c.* That enough of its property has been sequestered in a foreign country to give reasonable cause to fear that the insurer is or may become insolvent.
- d.* That both of the following are found:
 - (1) That its certificate of authority to do business in this state has been revoked or that no certificate was ever issued.
 - (2) That there are residents of this state with outstanding claims or outstanding policies.

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

3. The court may issue the order in whatever terms it deems appropriate. The filing or recording of the order with the clerk of court or the recorder of deeds of the county in which the principal business of the company is located or the county in which its principal office or place of business is located is the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds.

4. The conservator may at any time petition for and the court may grant an order under section 507C.51 to liquidate assets of a foreign or alien insurer under conservation, or, for an order under section 507C.53, to be appointed ancillary receiver.

5. The conservator may at any time petition the court for an order terminating conservation of an insurer. If the court finds that the conservation is no longer necessary, it shall order that the insurer be restored to

possession of its property and the control of its business. The court may also make such finding and issue such order at any time upon motion of any interested party, but if the motion is denied costs shall be assessed against the party.

84 Acts, ch 1175, § 50; 85 Acts, ch 67, §49

507C.51 Liquidation of property of foreign or alien insurers found in this state.

1. If a domiciliary receiver has not been appointed, the commissioner may apply to the court by verified petition for an order directing the commissioner to liquidate the assets found in this state of a foreign insurer or an alien insurer not domiciled in this state on any of the following grounds:
 - a. Any of the grounds in section 507C.12 or 507C.17.
 - b. Any of the grounds specified in section 507C.50, subsection 1, paragraphs "b" through "d".
2. When an order is sought under subsection 1, the court shall cause the insurer to be given notice and time to respond to the petition as is reasonable under the circumstances.
3. If it appears to the court that the best interests of creditors, policyholders, and the public require, the court may issue an order to liquidate in whatever terms it deems appropriate. The filing or recording of the order with the clerk of the court or the recorder of deeds of the county in which the principal business of the company is located or the county in which its principal office or place of business is located, is same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds.
4. If a domiciliary liquidator is appointed in a reciprocal state while a liquidation is proceeding under this section, the liquidator under this section shall act as ancillary receiver under section 507C.53. If a domiciliary liquidator is appointed in a nonreciprocal state while a liquidation is proceeding under this section, the liquidator under this section may petition the court for permission to act as ancillary receiver under section 507C.53.
5. On the same grounds as are specified in subsection 1, the commissioner may petition an appropriate federal district court to be appointed receiver to liquidate that portion of the insurer's assets and business over which the court will exercise jurisdiction, or any lesser part that the commissioner deems desirable for the protection of the policyholders and creditors in this state.
6. When the commissioner has liquidated the assets of a foreign or alien insurer under this section, the court may order the commissioner to pay claims of residents of this state against the insurer under rules as to the liquidation of insurers under this chapter as are otherwise compatible with this section.

84 Acts, ch 1175, § 51

507C.52 Domiciliary liquidators in other states.

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, 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 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. 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.

2. If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal state, the commissioner of this state shall be vested with the title to the property, contracts and rights of action, books, accounts and other records of the insurer located in this state, at the same time that the domiciliary liquidator is vested with title in the domicile. The commissioner of this state may petition for a conservation or liquidation order under section 507C.50 or 507C.51, or for an ancillary receivership under section 507C.53, or after approval by the court may transfer title to the domiciliary liquidator, as the interests of justice and the equitable distribution of the assets require.

3. Claimants residing in this state may file claims with the liquidator or ancillary receiver in this state or with the domiciliary liquidator, if the domiciliary law permits. The claims shall be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceedings.

84 Acts, ch 1175, § 52; 92 Acts, ch 1117, § 32

507C.53 Ancillary formal proceedings.

1. If a domiciliary liquidator has been appointed for an insurer not domiciled in this state, the commissioner may file a petition with the court requesting appointment as ancillary receiver in this state if both of the following exist:

a. If the domiciliary liquidator finds that there are sufficient assets of the insurer located in this state to justify the appointment of an ancillary receiver.

b. If the protection of creditors or policyholders in this state so requires.

2. The court may issue an order appointing an ancillary receiver in whatever terms it deems appropriate. The filing or recording of the order with the recorder of deeds in this state is the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds.

3. When a domiciliary liquidator has been appointed in a reciprocal state, then the ancillary receiver appointed in this state may aid and assist the domiciliary liquidator in recovering assets of the insurer located in this state. As soon as practicable, the ancillary receiver shall liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state. The ancillary receiver shall pay the necessary expenses of the proceedings and shall promptly transfer all remaining assets, books, accounts and records to the domiciliary liquidator. Subject to this section, the ancillary receiver and any deputies have the same powers and are subject to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in this state.

4. As to assets and books, accounts, and other records in their respective states, when a domiciliary liquidator has been appointed in this state, ancillary receivers appointed in reciprocal states shall have corresponding rights, duties and powers to those provided in subsection 3 for ancillary receivers appointed in this state.

84 Acts, ch 1175, § 53

507C.54 Ancillary summary proceedings.

In the sole discretion of the commissioner, the commissioner may institute proceedings under sections 507C.9 through 507C.11 at the request of the commissioner or other appropriate insurance official of the domiciliary state of a foreign or alien insurer having property located in this state.

84 Acts, ch 1175, § 54

507C.55 Claims of nonresidents against insurers domiciled in this state.

1. In a liquidation proceeding begun in this state against an insurer domiciled in this state, claimants residing in foreign countries or in nonreciprocal states shall file claims in this state, and claimants residing in reciprocal states shall file claims either with the ancillary receivers in their respective states or with the domiciliary liquidator. Claims shall be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceeding.

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.

84 Acts, ch 1175, § 55; 92 Acts, ch 1117, § 33

507C.56 Claims of residents against insurers domiciled in reciprocal states.

1. 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.

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

84 Acts, ch 1175, § 56; 92 Acts, ch 1117, § 34

507C.57 Attachment, garnishment, and levy of execution.

An action or proceeding in the nature of an attachment, garnishment, or levy of execution shall not be commenced or maintained in this state against the delinquent insurer or its assets during the pendency in this or any other state of a liquidation proceeding, whether called by that name or not.

84 Acts, ch 1175, § 57

507C.58 Interstate priorities.

1. In a liquidation proceeding in this state involving one or more reciprocal states, the order of distribution of the domiciliary state shall control as to claims of residents of this and reciprocal states. Claims of residents of reciprocal states shall be given equal priority of payment from general assets regardless of where the assets are located.

2. The owners of special deposit claims against an insurer for which a liquidator is appointed in this or any other state is given priority against the special deposits in accordance with the statutes governing the creation and maintenance of the deposits. If there is a deficiency in a deposit so that the claims secured by it are not fully discharged from it, the claimants may share in the general assets. However, the sharing shall be deferred until general creditors and claimants against other special deposits who have received smaller percentages from their respective special deposits have been paid percentages of their claims equal to the percentage paid from the special deposit.

3. The owner of a secured claim against an insurer for which a liquidator has been appointed in this or any other state may surrender the security and file the claim as a general creditor, or the claim may be discharged by resort to the security in accordance with section 507C.41, in which case the deficiency shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors.

84 Acts, ch 1175, § 58

507C.59 Subordination of claims for noncooperation.

If an ancillary receiver in another state or foreign country, whether called by that name or not, fails to transfer to the domiciliary liquidator in this state assets within the ancillary receiver's control other than special deposits, diminished only by the expenses of the ancillary receivership, the claims filed in the ancillary receivership, other than special deposit claims or secured claims, shall be placed in the class of claims under section 507C.42, subsection 8.

84 Acts, ch 1175, § 59; 97 Acts, ch 186, §5

507C.60 Suspension of certificate of authority.

Without advance notice or a hearing, the commissioner may suspend immediately the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state by the public insurance supervisory official of that state.

2002 Acts, ch 1111, §7