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HOUSE FILE 2501

BY COMMITTEE ON SMALL BUSINESS
AND COMMERCE

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Place On Calendar

(Formerly Study Bill 764)

Passed House, Date 3-20-84 (S. 1176) Passed Senate, Date 3-29-84
Vote: Ayes 94 Nays 1 Vote: Ayes 38 Nays 1
Approved May 4, 1984

A BILL FOR

1 An Act relating to the supervision, rehabilitation, and
2 liquidation of insurance companies and providing penalties.

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

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DIVISION I
GENERAL PROVISIONS

Section 1. NEW SECTION. 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 insured, 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.

Sec. 2. NEW SECTION. 507C.2 DEFINITIONS. As used in this chapter, unless the context otherwise requires:

1 1. "Ancillary state" means a state other than a domiciliary
2 state.

3 2. "Commissioner" means the commissioner of insurance.

4 3. "Creditor" is a person having a claim against an
5 insurer, whether the claim is matured or unmatured, liquidated
6 or unliquidated, secured or unsecured, absolute, fixed or
7 contingent.

8 4. "Delinquency proceeding" means a proceeding instituted
9 against an insurer for the purpose of liquidating,
10 rehabilitating, reorganizing or conserving the insurer, and
11 a summary proceeding under section 507C.9 or 507C.10. "Formal
12 delinquency proceeding" means any liquidation or rehabilitation
13 proceeding.

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

16 a. The issuance or delivery of contracts of insurance
17 to persons resident in this state.

18 b. The solicitation of applications for the contracts,
19 or other negotiations preliminary to the execution of the
20 contracts.

21 c. The collection of premiums, membership fees,
22 assessments, or other consideration for the contracts.

23 d. The transaction of matters subsequent to execution
24 of the contracts and arising out of them.

25 e. Operating as an insurer under a license or certificate
26 of authority issued by the insurance department.

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

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

32 a. When in good faith property is conveyed or services
33 are rendered or an obligation is incurred or an antecedent
34 debt is satisfied in exchange for the property or obligation,
35 as a fair equivalent therefor, and in good faith.

1 b. When the property or obligation is received in good
2 faith to secure a present advance or antecedent debt in amount
3 not disproportionately small as compared to the value of the
4 property or obligation obtained.

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

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

17 10. "Guaranty association" means the Iowa insurance
18 guaranty association created in chapter 515B and any other
19 similar entity either presently existing or to be created
20 by the general assembly for the payment of claims of insolvent
21 insurers. "Foreign guaranty association" means a similar
22 entity presently existing in or to be created in the future
23 by the legislature of any other state.

24 11. "Insolvency" or "insolvent" means either of the fol-
25 lowing:

26 a. For an insurer that it is unable to pay its obliga-
27 tions when they are due, or when its admitted assets do not
28 exceed its liabilities plus the greater of:

29 (1) Any capital and surplus required by law for its or-
30 ganization.

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

33 b. As to an insurer licensed to do business in this state
34 as of the effective date of this Act which does not meet the
35 standard established under paragraph "a" the term "insolvency"

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

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

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

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

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

23 15. "Reciprocal state" means a state other than this state
24 in which section 507C.18, subsection 1, sections 507C.52 and
25 507C.53 and sections 507C.55 through 507C.57 are in force,
26 and in which provisions are in force requiring that the
27 commissioner or equivalent official be the receiver of a
28 delinquent insurer, and in which some provision exists for
29 the avoidance of fraudulent conveyances and preferential
30 transfers.

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

1 cess.

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

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

8 19. "Transfer" shall include the sale and every other
9 direct or indirect mode of disposing of or of parting with
10 property or with an interest in property, or with the
11 possession of property or of fixing a lien upon property
12 or upon an interest in property, absolutely or conditionally,
13 voluntarily, by or without judicial proceedings. The retention
14 of a security interest to property delivered to a debtor is
15 a transfer by the debtor.

16 Sec. 3. NEW SECTION. 507C.3 APPLICABILITY. This chapter
17 may be applied to any of the following:

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

21 2. Insurers who purport to do insurance business in this
22 state.

23 3. Insurers who have insureds who are residents in this
24 state.

25 4. Other persons organized or in the process of organizing
26 with the intent to do insurance business in this state.

27 5. Nonprofit health service corporations and all fraternal
28 benefit societies and beneficial societies subject to chapters
29 512, 512A, and 514.

30 Sec. 4. NEW SECTION. 507C.4 JURISDICTION AND VENUE.

31 1. A delinquency proceeding shall not be commenced under
32 this chapter by a person other than the commissioner. A court
33 shall not have jurisdiction over a proceeding under this
34 chapter commenced by a person other than the commissioner.

35 2. A court shall not have jurisdiction over a petition

1 praying for the dissolution, liquidation, rehabilitation,
2 sequestration, conservation or receivership of an insurer,
3 or praying for an injunction or restraining order or other
4 relief preliminary to, incidental to or relating to such pro-
5 ceedings other than pursuant to this chapter.

6 3. A court having jurisdiction of the subject matter has
7 jurisdiction over a person served pursuant to the Iowa rules
8 of civil procedure or other applicable provisions in an ac-
9 tion brought by the receiver of a domestic insurer or an alien
10 insurer domiciled in this state for any of the following:

11 a. In an action on or incident to an obligation if the
12 person served is obligated to the insurer in any way as an
13 incident to an agency or brokerage arrangement that may exist
14 or has existed between the insurer and the agent or broker.

15 b. In an action on or incident to a reinsurance contract
16 if the person served is a reinsurer who has at any time writ-
17 ten a policy of reinsurance for an insurer against which a
18 rehabilitation or liquidation order is in effect when the
19 action is commenced, or is an agent or broker of or for the
20 reinsurer.

21 c. In an action resulting from a relationship with the
22 insurer, if the person served is or has been an officer,
23 manager, trustee, organizer, promoter, or person in a posi-
24 tion of comparable authority or influence in an insurer against
25 which a rehabilitation or liquidation order is in effect
26 when the action is commenced.

27 4. If the court on motion of a party finds that an ac-
28 tion should as a matter of substantial justice be tried in
29 a forum outside this state, the court may enter an order to
30 stay the proceedings on the action in this state.

31 5. All action authorized in this chapter shall be brought
32 in the district court in Polk county.

33 Sec. 5. NEW SECTION. 507C.5 INJUNCTIONS AND ORDERS.

34 1. A receiver appointed in a proceeding under this chap-
35 ter may at any time apply for, and any court of general

1 jurisdiction may grant, restraining orders, preliminary and
2 permanent injunctions, and other orders as necessary to prevent
3 any of the following:

4 a. The transaction of further business.

5 b. The transfer of property.

6 c. Interference with the receiver or with a proceeding
7 under this chapter.

8 d. Waste of the insurer's assets.

9 e. Dissipation and transfer of bank accounts.

10 f. The institution or further prosecution of any actions
11 or proceedings.

12 g. The obtaining of preferences, judgments, attachments,
13 garnishments, or liens against the insurer, its assets or
14 its policyholders.

15 h. The levying of execution against the insurer, its as-
16 sets or its policyholders.

17 i. The making of a sale or deed for nonpayment of taxes
18 or assessments that would lessen the value of the assets of
19 the insurer.

20 j. The withholding from the receiver of books, accounts,
21 documents, or other records relating to the business of the
22 insurer.

23 k. Any other threatened or contemplated action that might
24 lessen the value of the insurer's assets or prejudice the
25 rights of policyholders, creditors, or shareholders, or the
26 administration of a proceeding under this chapter.

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

29 Sec. 6. NEW SECTION. 507C.6 COOPERATION OF OFFICERS,
30 OWNERS, AND EMPLOYEES--PENALTY.

31 1. As used in this section:

32 a. "Person" includes a person who directly or indirectly
33 exercises control over activities of an insurer through a
34 holding company or other affiliate of the insurer.

35 b. "To cooperate" includes, but is not limited to, any

1 of the following:

2 (1) To reply promptly in writing to an inquiry from the
3 commissioner requesting a reply.

4 (2) To make available to the commissioner books, accounts,
5 documents, or other records, information or property of or
6 pertaining to the insurer and in the person's possession,
7 custody or control.

8 2. An officer, manager, director, trustee, owner, employee,
9 or agent of an insurer, or any other persons with authority
10 over or in charge of any segment of the insurer's affairs,
11 shall cooperate with the commissioner in a proceeding under
12 this chapter or any investigation preliminary to the pro-
13 ceeding.

14 3. A person shall not obstruct or interfere with the
15 commissioner in the conduct of a delinquency proceeding or
16 an investigation preliminary or incidental to a delinquency
17 proceeding.

18 4. This section does not abridge otherwise existing legal
19 rights, including the right to resist a petition for liquida-
20 tion, other delinquency proceedings, or other orders.

21 5. A person included within subsection 2 who fails to
22 cooperate with the commissioner, or a person who obstructs
23 or interferes with the commissioner in the conduct of a de-
24 linquency proceeding or an investigation preliminary or in-
25 cidental to a delinquency proceeding, or who violates a valid
26 order the commissioner issued under this chapter is:

27 a. Guilty of an aggravated misdemeanor; and

28 b. After a hearing, subject to the imposition by the
29 commissioner of a civil penalty not to exceed ten thousand
30 dollars and subject to the revocation or suspension of
31 insurance licenses issued by the commissioner.

32 Sec. 7. NEW SECTION. 507C.7 BONDS. In a proceeding
33 under this chapter, the commissioner and the commissioner's
34 deputies shall be responsible on their official bonds for
35 the faithful performance of their duties. If the court deems

1 it desirable for the protection of the assets, it may require
2 an additional bond from the commissioner or the commissioner's
3 deputies. The bonds shall be paid for out of the assets of
4 the insurer as a cost of administration.

5 Sec. 8. NEW SECTION. 507C.8 CONTINUATION OF DELINQUENCY
6 PROCEEDINGS. A proceeding commenced before the effective
7 date of this Act shall be deemed to have commenced under this
8 Act for the purpose of conducting the proceeding thereafter.
9 However, in the discretion of the commissioner the proceeding
10 may be continued, in whole or in part, as it would have con-
11 tinued had this Act not been enacted.

12 DIVISION II

13 SUMMARY PROCEEDINGS

14 Sec. 9. NEW SECTION. 507C.9 SUMMARY ORDERS AND SUPER-
15 VISION PROCEEDINGS--PENALTY.

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

24 2. If the commissioner upon reasonable cause determines
25 that a domestic insurer is in a condition as to render the
26 continuance of its business hazardous to the public or to
27 holders of its policies or certificates of insurance or if
28 the domestic insurer gives its consent then the commissioner
29 shall do both of the following:

30 a. Notify the insurer of the determination.

31 b. Furnish to the insurer a written list of the commis-
32 sioner's requirements to abate the determination.

33 3. If the commissioner makes a determination to supervise
34 an insurer subject to an order under subsection 1 or 2, the
35 commissioner shall notify the insurer that it is under the

1 supervision of the commissioner. During the period of super-
2 vision, the commissioner may appoint a supervisor to supervise
3 the insurer. The order appointing a supervisor shall direct
4 the supervisor to enforce orders issued under subsections
5 1 and 2 and may also require that during the period of
6 supervision, the insurer shall not do any of the following
7 without the prior approval of the commissioner or the
8 commissioner's supervisor:

9 a. Dispose of, convey or encumber its assets or its busi-
10 ness in force.

11 b. Withdraw from its bank accounts.

12 c. Lend its funds.

13 d. Invest its funds.

14 e. Transfer its property.

15 f. Incur any debt, obligation or liability.

16 g. Merge or consolidate with another company.

17 h. Enter into a new reinsurance contract or treaty.

18 i. Write new or renewal business.

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

27 5. The notice of hearing and any order issued pursuant
28 to subsection 1 shall be served upon the insurer pursuant
29 to chapter 17A. The notice of hearing shall state the time
30 and place of hearing, and the conduct, condition or ground
31 upon which the commissioner would base an order. Unless
32 mutually agreed between the commissioner and the insurer,
33 the hearing shall occur not less than ten days nor more than
34 thirty days after notice is served and shall be either in
35 Polk county or in some other place convenient to the parties

1 to be designated by the commissioner. All hearings under
2 subsection 1 shall be confidential unless the insurer requests
3 a public hearing.

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

8 b. If the commissioner issues an order under subsection
9 2, the insurer may waive a commissioner's hearing and apply
10 for immediate judicial relief by means of any remedy afforded
11 by law without first exhausting administrative remedies.
12 Subsequent to a hearing, a party to the proceedings whose
13 interests are substantially affected is entitled to judicial
14 review of any order issued by the commissioner.

15 7. During the period of supervision the insurer may re-
16 quest the commissioner to review an action taken or proposed
17 to be taken by the supervisor by specifying the reasons the
18 action complained of is believed not to be in the best in-
19 terest of the insurer.

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

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

28 Sec. 10. NEW SECTION. 507C.10 SEIZURE ORDER.

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

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

35 b. That the interests of policyholders, creditors, or

1 the public will be endangered by delay.

2 c. The contents of an order deemed necessary by the com-
3 missioner.

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

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

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

28 5. An insurer subject to an ex parte order under this
29 section may petition the court after the issuance of the order
30 for a hearing and review of the order. The court shall hold
31 the hearing and review not more than fifteen days after the
32 request. A hearing under this subsection may be held pri-
33 vately in chambers. Upon request of the insurer the hearing
34 shall be held privately in chambers.

35 6. If at any time after the issuance of an order under

1 this section it appears to the court that a person whose in-
2 terest is or will be substantially affected by the order did
3 not appear at the hearing and has not been served, the court
4 may order that notice be given. An order that notice be given
5 shall not stay the effect of any order previously issued by
6 the court.

7 Sec. 11. NEW SECTION. 507C.11 CONFIDENTIALITY OF HEAR-
8 INGS. Notwithstanding chapter 68A, in all administrative
9 proceedings pursuant to sections 507C.9 and 507C.10 all records
10 and documents pertaining to or a part of the record of the
11 proceedings are confidential except as is necessary to obtain
12 compliance with a proceeding. However, the records may be
13 released if either of the following:

- 14 1. The insurer requests that the records be made public.
- 15 2. After a hearing on the issue with the parties to the
16 proceeding, the court orders that the records be made public.

17 DIVISION III

18 FORMAL PROCEEDINGS

19 Sec. 12. NEW SECTION. 507C.12 GROUNDS FOR REHABILITA-
20 TION. The commissioner may petition the district court for
21 an order to rehabilitate a domestic insurer or an alien in-
22 surer domiciled in this state on any of the following grounds:

23 1. The insurer is in a condition that the further transac-
24 tion of business would be financially hazardous to its policy-
25 holders, creditors, or the public.

26 2. There is reasonable cause to believe that there has
27 been embezzlement from the insurer, wrongful sequestration
28 or diversion of the insurer's assets, forgery or fraud af-
29 fecting the insurer, or other illegal conduct in, by, or with
30 respect to the insurer that, if established, would endanger
31 assets in an amount threatening the solvency of the insurer.

32 3. The insurer has failed to remove a person, whether
33 an officer, manager, general agent, employee, or other person,
34 who in fact has executive authority in the insurer, if the
35 person has been found after notice and hearing by the com-

1 missioner to be dishonest or untrustworthy in a way affecting
2 the insurer's business.

3 4. Control of the insurer is in a person or persons found
4 after notice and hearing to be untrustworthy. Control may
5 be by stock ownership or by other means and may be direct
6 or indirect.

7 5. A person who in fact has executive authority in the
8 insurer, whether an officer, manager, general agent, director
9 or trustee, employee, or other person has refused to be
10 examined under oath by the commissioner concerning the
11 insurer's affairs, in this state or elsewhere, and after
12 reasonable notice of the fact the insurer has failed promptly
13 and effectively to terminate the employment and status of
14 the person and all the person's influence on management.

15 6. After demand by the commissioner under chapter 507
16 or under this chapter, the insurer has failed to promptly
17 make available for examination any of its property, books,
18 accounts, documents, or other records, or those of a subsidiary
19 or related company within the control of the insurer, or those
20 of a person having executive authority in the insurer so far
21 as they pertain to the insurer.

22 7. Without first obtaining the written consent of the
23 commissioner, the insurer has transferred, or attempted to
24 transfer, in a manner contrary to chapter 521 or 521A, sub-
25 stantially its entire property or business, or has entered
26 into a transaction the effect of which is to merge,
27 consolidate, or reinsure substantially its entire property
28 or business in or with the property or business of any other
29 person.

30 8. The insurer or its property has been or is the subject
31 of an application for the appointment of a receiver, trustee,
32 custodian, conservator or sequestrator or similar fiduciary
33 of the insurer of its property other than as authorized under
34 the insurance laws of this state, and the appointment has
35 been made or is imminent, and the appointment might oust the

1 court of this state of jurisdiction or might prejudice orderly
2 delinquency proceedings under this chapter.

3 9. Within the previous three years the insurer has will-
4 fully violated its charter or articles of incorporation, its
5 bylaws, an insurance law of this state, or a valid order of
6 the commissioner under section 507C.9.

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

19 11. The insurer has failed to file its annual report or
20 other financial report required within the time allowed and,
21 after written demand by the commissioner, has failed to im-
22 mediately give an adequate explanation.

23 12. The board of directors or the holders of a majority
24 of the shares entitled to vote, or a majority of those in-
25 dividuals entitled to the control of those entities request
26 or consent to rehabilitation under this chapter.

27 Sec. 13. NEW SECTION. 507C.13 REHABILITATION ORDERS.

28 1. An order to rehabilitate the business of a domestic
29 insurer or an alien insurer domiciled in this state shall
30 appoint the commissioner as the rehabilitator. The order
31 shall direct the rehabilitator to take possession of the
32 assets of the insurer, and to administer them under the general
33 supervision of the court. The filing or recording of the
34 order with the clerk of the district court or recorder of
35 deeds of the county in which the principal business of the

1 insurer is conducted, or the county in which its principal
2 office or place of business is located, is the same notice
3 as a deed, bill of sale, or other evidence of title duly filed
4 or recorded with that recorder of deeds. The order to
5 rehabilitate the insurer shall vest title to all assets of
6 the insurer in the rehabilitator.

7 2. An order issued under this section shall require ac-
8 counting to the court by the rehabilitator. Accountings shall
9 be at intervals the court specified in the order.

10 3. Entry of an order of rehabilitation is not an anticipa-
11 tory breach of a contract of the insurer.

12 Sec. 14. NEW SECTION. 507C.14 POWERS AND DUTIES OF THE
13 REHABILITATOR.

14 1. The commissioner as rehabilitator may appoint one or
15 more special deputies. The special deputies shall have the
16 powers and responsibilities of the rehabilitator granted under
17 this section. The commissioner may employ counsel, clerks,
18 and assistants as necessary. The compensation of the special
19 deputy, counsel, clerks, and assistants and all expenses of
20 taking possession of the insurer and of conducting the
21 proceedings shall be fixed by the commissioner with the
22 approval of the court and shall be paid out of the funds or
23 assets of the insurer. The persons appointed under this
24 section shall serve at the pleasure of the commissioner.

25 If the property of the insurer does not contain sufficient
26 cash or liquid assets to defray the costs incurred, the
27 commissioner may advance the costs so incurred out of any
28 appropriation for the maintenance of the insurance department.
29 Amounts so advanced for expenses of administration shall be
30 repaid to the commissioner for the use of the insurance
31 department out of the first available money of the insurer.

32 2. The rehabilitator may take action as the rehabilita-
33 tor deems necessary or appropriate to reform and revitalize
34 the insurer. The rehabilitator shall have the powers of the
35 directors, officers, and managers of the insurer, whose au-

1 thority shall be suspended, except as the powers are
2 redelegated by the rehabilitator. The rehabilitator shall
3 have power to direct and manage, to hire and discharge
4 employees subject to contract rights the employees may have,
5 and to deal with the property and business of the insurer.

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

11 4. If the rehabilitator determines that reorganization,
12 consolidation, conversion, reinsurance, merger, or other
13 transformation of the insurer is appropriate, the rehabilita-
14 tor shall prepare a plan to effect the changes. Upon applica-
15 tion of the rehabilitator for approval of the plan, and after
16 notice and hearings as the court may prescribe, the court
17 may either approve, disapprove or modify the plan proposed.
18 Before approving a plan, the court shall find that it is fair
19 and equitable to all parties concerned. If the plan is ap-
20 proved, the rehabilitator shall carry out the plan. In the
21 case of a life insurer, if all rights of shareholders are
22 first relinquished, the plan proposed may include the imposi-
23 tion of liens upon the policies of the company. A plan for
24 a life insurer may also propose imposition of a moratorium
25 upon loan and cash surrender rights under policies.

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

28 Sec. 15. NEW SECTION. 507C.15 ACTIONS BY AND AGAINST
29 REHABILITATOR.

30 1. A court, before which an action or proceeding in which
31 the insurer is a party or is obligated to defend a party is
32 pending when a rehabilitation order against the insurer is
33 entered, shall stay the action or proceeding for ninety days
34 and any additional time as necessary for the rehabilitator
35 to obtain proper representation and prepare for further

1 proceedings. The rehabilitator shall take action respecting
2 the pending litigation as necessary in the interests of justice
3 and for the protection of creditors, policyholders, and the
4 public. The rehabilitator shall immediately consider all
5 litigation pending outside this state and shall petition the
6 courts having jurisdiction over that litigation for stays
7 whenever necessary to protect the estate of the insurer.

8 2. A statute of limitations or defense of laches shall
9 not run in an action by or against an insurer between the
10 filing of a petition for appointment of a rehabilitator for
11 that insurer and the order granting or denying that petition.
12 An action by or against the insurer that might have been
13 commenced when the petition was filed may be commenced for
14 at least sixty days after the order of rehabilitation is
15 entered or the petition is denied.

16 3. A guaranty association or foreign guaranty association
17 covering life or health insurance or annuities shall have
18 standing to appear in a court proceeding concerning the re-
19 habilitation of a life or health insurer if the association
20 is or may become liable to act as a result of the rehabilita-
21 tion.

22 Sec. 16. NEW SECTION. 507C.16 TERMINATION OF REHABILITA-
23 TION.

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

35 2. The rehabilitator may at any time petition the district

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

12 Sec. 17. NEW SECTION. 507C.17 GROUNDS FOR LIQUIDATION.

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

17 1. Any ground for an order of rehabilitation specified
18 in section 507C.12 whether or not there has been a prior order
19 directing the rehabilitation of the insurer.

20 2. That the insurer is insolvent.

21 3. That the insurer is in a condition that the further
22 transaction of business would be hazardous, financially or
23 otherwise, to its policyholders, its creditors, or the public.

24 Sec. 18. NEW SECTION. 507C.18 LIQUIDATION ORDERS.

25 1. An order to liquidate the business of a domestic in-
26 surer shall appoint the commissioner as liquidator and shall
27 direct the liquidator to immediately take possession of the
28 assets of the insurer and to administer them under the general
29 supervision of the court. The liquidator shall be vested
30 with the title to the property, contracts, and rights of
31 action and the books and records of the insurer ordered li-
32 quidated, wherever located, as of the entry of the final order
33 of liquidation. The filing or recording of the order with
34 the clerk of the court and the recorder of deeds of the county
35 in which its principal office or place of business is located,

1 or, in the case of real estate with the recorder of deeds
2 of the county where the property is located, shall be notice
3 as a deed, bill of sale, or other evidence of title duly filed
4 or recorded with the recorder of deeds.

5 2. Upon issuance of the order, the rights and liabilities
6 of an insurer and of its creditors, policyholders, share-
7 holders, members and other persons interested in its estate
8 shall become fixed as of the date of entry of the order of
9 liquidation, except as provided in sections 507C.19 and
10 507C.20.

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

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

23 5. An order issued under this section shall require ac-
24 counting to the court by the liquidator. Accountings shall
25 be at intervals specified in the order.

26 Sec. 19. NEW SECTION. 507C.19 CONTINUANCE OF COVERAGE.

27 1. Except for life or health insurance or annuities, poli-
28 cies in effect at the time of issuance of an order of liquida-
29 tion shall continue in force only for the lesser of:

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

32 b. The expiration of the policy coverage.

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

1 d. The liquidator has effected a transfer of the policy
2 obligation pursuant to section 507C.21, subsection 1, para-
3 graph "h".

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

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

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

15 Sec. 20. NEW SECTION. 507C.20 DISSOLUTION OF INSURER.
16 The commissioner may petition for an order dissolving the
17 corporate existence of a domestic insurer or the United States
18 branch of an alien insurer domiciled in this state at the
19 time the commissioner applies for a liquidation order. The
20 court shall order dissolution of the corporation upon peti-
21 tion by the commissioner upon or after the granting of a
22 liquidation order. If the dissolution has not previously
23 been ordered, it shall be effected by operation of law upon
24 the discharge of the liquidator if the insurer is insolvent.
25 However, dissolution may be ordered by the court upon the
26 discharge of the liquidator if the insurer is under a liquida-
27 tion order for some other reason.

28 Sec. 21. NEW SECTION. 507C.21 POWERS OF LIQUIDATOR.

29 1. The liquidator may:

30 a. Appoint a special deputy to act for the liquidator
31 under this chapter, and to determine the special deputy's
32 reasonable compensation. The special deputy shall have all
33 powers of the liquidator granted by this section. The special
34 deputy shall serve at the pleasure of the liquidator.

35 b. Hire employees and agents, legal counsel, actuaries,

1 accountants, appraisers, consultants, and other personnel
2 as the commissioner may deem necessary to assist in the
3 liquidation.

4 c. With the approval of the court fix the reasonable
5 compensation of employees and agents, legal counsel, actuaries,
6 accountants, appraisers and consultants.

7 d. Pay reasonable compensation to persons appointed and
8 to defray from the funds or assets of the insurer all ex-
9 penses of taking possession of, conserving, conducting,
10 liquidating, disposing of, or otherwise dealing with the
11 business and property of the insurer. If the property of
12 the insurer does not contain sufficient cash or liquid assets
13 to defray the costs incurred, the commissioner may advance
14 the costs so incurred out of an appropriation for the mainte-
15 nance of the insurance department. Amounts so advanced for
16 expenses of administration shall be repaid to the commissioner
17 for the use of the insurance department out of the first
18 available moneys of the insurer.

19 e. Hold hearings, subpoena witnesses, and compel their
20 attendance, administer oaths, examine a person under oath,
21 and compel a person to subscribe to the person's testimony
22 after it has been correctly reduced to writing, and in
23 connection to the proceedings require the production of books,
24 papers, records or other documents which the liquidator deems
25 relevant to the inquiry.

26 f. Collect debts and moneys due and claims belonging to
27 the insurer, wherever located. Pursuant to this paragraph,
28 the liquidator may:

29 (1) Institute timely action in other jurisdictions to
30 forestall garnishment and attachment proceedings against
31 debts.

32 (2) Perform acts as are necessary or expedient to collect,
33 conserve or protect its assets or property, including the
34 power to sell, compound, compromise or assign debts for pur-
35 poses of collection upon terms and conditions as the liquidator

1 deems best.

2 (3) Pursue any creditor's remedies available to enforce
3 claims.

4 g. Conduct public and private sales of the property of
5 the insurer.

6 h. Use assets of the estate of an insurer under a liquida-
7 tion order to transfer policy obligations to a solvent assuming
8 insurer, if the transfer can be arranged without prejudice
9 to applicable priorities under section 507C.42.

10 i. Acquire, hypothecate, encumber, lease, improve, sell,
11 transfer, abandon, or otherwise dispose of or deal with prop-
12 erty of the insurer at its market value or upon terms and
13 conditions as are fair and reasonable. The liquidator shall
14 also have power to execute, acknowledge, and deliver deeds,
15 assignments, releases and other instruments necessary to ef-
16 fectuate a sale of property or other transaction in connection
17 with the liquidation.

18 j. Borrow money on the security of the insurer's assets
19 or without security and to execute and deliver documents
20 necessary to that transaction for the purpose of facilitating
21 the liquidation.

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

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

33 m. Prosecute an action on behalf of the creditors, members,
34 policyholders or shareholders of the insurer against an offi-
35 cer of the insurer, or any other person.

1 n. Remove records and property of the insurer to the of-
2 fices of the commissioner or to other place as may be con-
3 venient for the purposes of efficient and orderly execution
4 of the liquidation. A guaranty association or foreign guaranty
5 association shall have reasonable access to the records of
6 the insurer as necessary to carry out the guaranty's statutory
7 obligations.

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

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

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

16 r. Assert defenses available to the insurer as against
17 third persons. A waiver of a defense by the insurer after
18 a petition in liquidation has been filed shall not bind the
19 liquidator. If a guaranty association or foreign guaranty
20 association has an obligation to defend a suit, the liquidator
21 shall defer to the obligation and may defend only in the ab-
22 sence of a defense by the guaranty association.

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

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

32 u. Enter into agreements with a receiver or commissioner
33 of insurance of any other state relating to the rehabilita-
34 tion, liquidation, conservation or dissolution of an insurer
35 doing business in both states.

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

4 2. This section does not limit the liquidator or exclude
5 the liquidator to exercise a power not listed in subsection
6 1 that may be necessary or appropriate to accomplish the pur-
7 poses of this chapter.

8 Sec. 22. NEW SECTION. 507C.22 NOTICE TO CREDITORS AND
9 OTHERS.

10 1. Unless the court otherwise directs, the liquidator
11 shall give notice of the liquidation order as soon as pos-
12 sible by doing all of the following:

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

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

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

21 d. By first class mail to all persons known or reasonably
22 expected to have claims against the insurer, including policy-
23 holders, by mailing a notice to their last known address as
24 indicated by the records of the insurer.

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

29 2. Notice to potential claimants under subsection 1 shall
30 require claimants to file with the liquidator their claims
31 together with proper proofs of the claim under section 507C.36
32 on or before a date the liquidator shall specify in the notice.

33 The liquidator may require persons claiming cash surrender
34 values or other investment values in life insurance and
35 annuities to file a claim. Claimants shall keep the liquidator

1 informed of changes of address.

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

6 Sec. 23. NEW SECTION. 507C.23 DUTIES OF AGENTS.

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

29 2. An agent failing to give notice or file a report of
30 compliance as required in subsection 1 may be subject to pay-
31 ment of a penalty of not more than one thousand dollars and
32 may have the agent's license suspended. The penalty is to
33 be imposed only after a hearing held by the commissioner.

34 3. The liquidator may waive the duties imposed by this
35 section if the liquidator determines that another notice to

1 the policyholders of the insurer under liquidation is adequate.
2 Sec. 24. NEW SECTION. 507C.24 ACTIONS BY AND AGAINST
3 LIQUIDATOR.

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

21 2. Within two years or such additional time as applicable
22 law may permit, the liquidator may after the issuance of an
23 order for liquidation institute an action or proceeding on
24 behalf of the estate of the insurer upon any cause of ac-
25 tion against which the period of limitation fixed by applicable
26 law has not expired at the time of the filing of the petition
27 upon which the order is entered. Where a period of limitation
28 is fixed by agreement for instituting a suit or proceeding
29 upon a claim, or for filing a claim, proof of claim, proof
30 of loss, demand, notice, or the like, or where in a proceeding
31 a period of limitation is fixed for taking an action, filing
32 a claim or pleading, or doing an act, and where in any case
33 the period had not expired at the date of the filing of the
34 petition, the liquidator may, for the benefit of the estate,
35 take any action or do any act, required of or permitted to

1 the insurer, within a period of one hundred eighty days sub-
2 sequent to the entry of an order for liquidation, or within
3 a further period as is shown to the satisfaction of the court
4 not to be unfairly prejudicial to the other party.

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

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

16 Sec. 25. NEW SECTION. 507C.25 COLLECTION AND LIST OF
17 ASSETS.

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

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

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

32 Sec. 26. NEW SECTION. 507C.26 FRAUDULENT TRANSFERS PRIOR
33 TO PETITION.

34 1. A transfer made and an obligation incurred by an in-
35 surer within one year prior to the filing of a successful

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

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

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

27 c. A transfer which creates an equitable lien is not per-
28 fected if there are available means by which a legal lien
29 could be created.

30 d. A transfer not perfected prior to the filing of a peti-
31 tion for liquidation shall be deemed to be made immediately
32 before the filing of the successful petition.

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

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

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

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

13 Sec. 27. NEW SECTION. 507C.27 FRAUDULENT TRANSFER AFTER
14 PETITION.

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

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

1 or liquidation is granted:

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

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

14 c. A person having actual knowledge of the pending re-
15 habilitation or liquidation is not acting in good faith.

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

22 3. This chapter shall not impair the negotiability of
23 currency or negotiable instruments.

24 Sec. 28. NEW SECTION. 507C.28 VOIDABLE PREFERENCES AND
25 LIENS.

26 1. a. A preference is a transfer of the property of an
27 insurer to or for the benefit of a creditor for an antecedent
28 debt made or suffered by the insurer within one year before
29 the filing of a successful petition for liquidation under
30 this chapter, the effect of which transfer may be to enable
31 the creditor to obtain a greater percentage of this debt than
32 another creditor of the same class would receive. If a
33 liquidation order is entered while the insurer is already
34 subject to a rehabilitation order, then the transfers are
35 preferences if made or suffered within one year before the

1 filing of the successful petition for rehabilitation, or
2 within two years before the filing of the successful petition
3 for liquidation, whichever time is shorter.

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

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

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

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

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

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

34 2. a. A transfer of property other than real property
35 is made when it becomes perfected so that a subsequent lien

1 obtainable by legal or equitable proceedings on a simple
2 contract could not become superior to the rights of the
3 transferee.

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

8 c. A transfer which creates an equitable lien is not per-
9 fected if there are available means by which a legal lien
10 could be created.

11 d. A transfer not perfected prior to the filing of a peti-
12 tion for liquidation shall be deemed to be made immediately
13 before the filing of the successful petition.

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

17 3. a. A lien obtainable by legal or equitable proceed-
18 ings upon a simple contract is one arising in the ordinary
19 course of the proceedings upon the entry or docketing of a
20 judgment or decree, or upon attachment, garnishment, execu-
21 tion, or like process, whether before, upon, or after judgment
22 or decree and whether before or upon levy. It does not in-
23 clude liens which under applicable law are given a special
24 priority over other liens which are prior in time.

25 b. A lien obtainable by legal or equitable proceedings
26 could become superior to the rights of a transferee, or a
27 purchaser could obtain rights superior to the rights of a
28 transferee within the meaning of subsection 2, if such con-
29 sequences would follow only from the lien or purchase itself,
30 or from the lien or purchase followed by a step wholly within
31 the control of the respective lienholder or purchaser, with
32 or without the aid of ministerial action by public officials.
33 However, a lien could not become superior and a purchase could
34 not create superior rights for the purpose of subsection 2
35 through an act subsequent to the obtaining of a lien or

1 subsequent to a purchase which requires the agreement or
2 concurrence of any third party or which requires further
3 judicial action or ruling.

4 4. A transfer of property for or on account of a new and
5 contemporaneous consideration, which is under subsection 1
6 made or suffered after the transfer because of delay in
7 perfecting it, does not become a transfer for or on account
8 of an antecedent debt if any acts required by the applicable
9 law to be performed in order to perfect the transfer as against
10 liens or bona fide purchasers' rights are performed within
11 twenty-one days or any period expressly allowed by the law,
12 whichever is less. A transfer to secure a future loan, if
13 a loan is actually made, or a transfer which becomes security
14 for a future loan, shall have the same effect as a transfer
15 for or on account of a new and contemporaneous consideration.

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

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

31 7. The court shall have summary jurisdiction of a pro-
32 ceeding by the liquidator to hear and determine the rights
33 of parties under this section. Reasonable notice of hearing
34 in the proceeding shall be given to all parties in interest,
35 including the obligee of a releasing bond or other like obliga-

1 tion. Where an order is entered for the recovery of indemnify-
2 ing property in kind or for the avoidance of an indemnifying
3 lien, upon application of any party in interest, the court
4 shall in the same proceeding ascertain the value of the prop-
5 erty or lien. If the value is less than the amount for which
6 the property is indemnity or than the amount of the lien,
7 the transferee or lienholder may elect to retain the property
8 or lien upon payment of its value, as ascertained by the
9 court, to the liquidator within time as the court shall fix.

10 8. The liability of a surety under a releasing bond or
11 other like obligation shall be discharged to the extent of
12 the value of the indemnifying property recovered or the in-
13 demnifying lien nullified and avoided by the liquidator.

14 Where the property is retained under subsection 7, the
15 liability of the surety shall be discharged to the extent
16 of the amount paid to the liquidator.

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

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

1 attorney for services rendered or to be rendered shall be
2 governed by the provision of subsection 1, paragraph "b",
3 subparagraph (4).

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

14 b. A person receiving property from the insurer or the
15 benefit thereof as a preference voidable under subsection
16 1 is personally liable for the property and shall account
17 to the liquidator.

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

20 Sec. 29. NEW SECTION. 507C.29 CLAIMS OF HOLDERS OF VOID
21 OR VOIDABLE RIGHTS.

22 1. A claim of a creditor who has received or acquired
23 a preference, lien, conveyance, transfer, assignment, or en-
24 cumbrance, voidable under this chapter shall not be allowed
25 unless the creditor surrenders the preference, lien, con-
26 veyance, transfer, assignment, or encumbrance. If the avoid-
27 ance is effected by a proceeding in which a final judgment
28 has been entered, the claim shall not be allowed unless the
29 money is paid or the property is delivered to the liquidator
30 within thirty days from the date of the entering of the final
31 judgment. However, the court having jurisdiction over the
32 liquidation may allow further time if there is an appeal or
33 other continuation of the proceeding.

34 2. A claim allowable under subsection 1 by reason of a
35 voluntary or involuntary avoidance, preference, lien, con-

1 veyance, transfer, assignment, or encumbrance may be filed
2 as an excused late filing under section 507C.35 if filed
3 within thirty days from the date of the avoidance or within
4 the further time allowed by the court under subsection 1.

5 Sec. 30. NEW SECTION. 507C.30 SETOFFS AND COUNTERCLAIMS.

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

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

13 a. At the date of the filing of a petition for liquida-
14 tion, the obligation of the insurer to the person would not
15 entitle the person to share as a claimant in the assets of
16 the insurer.

17 b. The obligation of the insurer to the person was pur-
18 chased by or transferred to the person with a view to its
19 being used as a setoff.

20 c. The obligation of the person is to pay an assessment
21 levied against the members or subscribers of the insurer,
22 or is to pay a balance upon a subscription to the capital
23 stock of the insurer, or is in any other way in the nature
24 of a capital contribution.

25 d. The obligation of the person is to pay premiums whether
26 earned or unearned to the insurer.

27 Sec. 31. NEW SECTION. 507C.31 ASSESSMENTS.

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

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

33 b. The insurer's probable total liabilities.

34 c. The probable aggregate amount of the assessment neces-
35 sary to pay claims of creditors and expenses in full, including

1 expenses of administration and costs of collecting the assess-
2 ment.

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

5 2. a. Upon the basis of the report provided in subsec-
6 tion 1 and any supplement or amendment to the report, the
7 court may levy one or more assessments against all members
8 of the insurer who are subject to assessment.

9 b. Subject to any applicable legal limits on assess-
10 ability, the aggregate assessment shall be for the amount
11 that the sum of the probable liabilities, the expenses of
12 administration, and the estimated cost of collection of the
13 assessment, exceeds the value of existing assets. Due regard
14 shall be given to assessments that cannot be collected
15 economically.

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

21 4. The liquidator shall give notice of the order to show
22 cause by publication and by first class mail to a member li-
23 able under the order. The notice shall be mailed to the mem-
24 ber's last known address as it appears on the insurer's records
25 at least twenty days before the return day of the order to
26 show cause.

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

34 b. If on or before the return day, the member appears
35 and serves duly verified objections upon the liquidator, the

1 commissioner may hear and determine the matter or may appoint
2 a referee to hear it and make such order as the facts warrant.
3 If the commissioner determines that the objections do not
4 warrant relief from assessment, the member may request the
5 court to review the matter and vacate the order to show cause.

6 6. The liquidator may enforce an order or collect a judg-
7 ment under subsection 5 by any lawful means.

8 Sec. 32. NEW SECTION. 507C.32 REINSURER'S LIABILITY.

9 Notwithstanding a provision in the reinsurance contract or
10 other agreement, the amount recoverable by the liquidator
11 from reinsurers shall not be reduced as a result of delin-
12 quency proceedings. Payment made directly to an insured or
13 other creditor shall not diminish the reinsurer's obligation
14 to the insurer's estate except when the reinsurance contract
15 provided for direct coverage of a named insured and the payment
16 was made in discharge of that obligation.

17 Sec. 33. NEW SECTION. 507C.33 RECOVERY OF PREMIUMS OWED.

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

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

32 2. Upon satisfactory evidence of a violation of this sec-
33 tion, the commissioner may pursue either one or both of the
34 following courses of action:

35 a. Suspend or revoke or refuse to renew the licenses of

1 the offending party.

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

4 3. Before the commissioner shall take any action as set
5 forth in subsection 2, the commissioner shall give written
6 notice to the person, company, association, or exchange ac-
7 cused of violating the law, stating specifically the nature
8 of the alleged violation, and fixing a time and place, at
9 least ten days thereafter, when a hearing on the matter shall
10 be held. After such hearing, or upon failure of the accused
11 to appear at the hearing, if a violation is found the
12 commissioner shall impose those penalties under subsection
13 2 as deemed advisable.

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

17 Sec. 34. NEW SECTION. 507C.34 DOMICILIARY LIQUIDATOR'S
18 PROPOSAL TO DISTRIBUTE ASSETS.

19 1. Within one hundred twenty days of a final determination
20 of insolvency under this chapter as assets become available,
21 the liquidator shall make application to the court for ap-
22 proval of a proposal to disburse assets out of marshalled
23 assets to a guaranty association or foreign guaranty
24 association having obligations because of the insolvency.
25 If the liquidator determines that there are insufficient
26 assets to disburse, the application required by this section
27 shall be considered satisfied by a filing by the liquidator
28 stating the reasons for this determination.

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

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

32 (1) Expenses of administration.

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

35 (3) Claims falling within the priorities established in

1 section 507C.42, subsections 1 and 2.

2 b. Disbursement of the assets marshalled to date and sub-
3 sequent disbursement of assets as they become available.

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

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

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

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

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

35 5. Notice of the application shall be given to the associa-

1 tion in and to the commissioners of insurance of each of the
2 states. Notice is given when deposited in the United States
3 certified mails, first class postage prepaid, at least thirty
4 days prior to submission of the application to the court.

5 Action on the application may be taken by the court provided
6 the required notice has been given and that the liquidator's
7 proposal complies with subsection 2, paragraphs "a" and "b".

8 Sec. 35. NEW SECTION. 507C.35 FILING OF CLAIMS.

9 1. Proof of all claims shall be filed with the liquidator
10 in the form required by section 507C.36 on or before the last
11 day for filing specified in the notice required under section
12 507C.22. However, proof of claims for cash surrender values
13 or other investment values in life insurance and annuities
14 need not be filed unless the liquidator expressly so requires.

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

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

23 b. A transfer to a creditor was avoided under sections
24 507C.26 through 507C.28, or was voluntarily surrendered under
25 section 507C.29, and that the filing satisfies the conditions
26 of section 507C.29.

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

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

1 incurred as provided by law.

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

11 Sec. 36. NEW SECTION. 507C.36 PROOF OF CLAIM.

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

15 a. The particulars of the claim including the considera-
16 tion given for it.

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

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

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

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

24 f. A copy of the written instrument which is the founda-
25 tion of the claim.

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

28 2. A claim need not be considered or allowed if it does
29 not contain all the information in subsection 1 which is ap-
30 plicable. The liquidator may require that a prescribed form
31 be used and may require that other information and documents
32 be included.

33 3. At any time the liquidator may request the claimant
34 to present information or evidence supplementary to that
35 required under subsection 1 and may take testimony under oath,

1 require production of affidavits or depositions, or otherwise
2 obtain additional information or evidence.

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

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

15 Sec. 37. NEW SECTION. 507C.37 SPECIAL CLAIMS.

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

20 2. A claim may be allowed even if contingent, if it is
21 filed in accordance with section 507C.35. It may be allowed
22 and the claimant may participate in all distributions de-
23 clared after it is filed to the extent that it does not pre-
24 judge the orderly administration of the liquidation.

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

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

33 Sec. 38. NEW SECTION. 507C.38 SPECIAL PROVISIONS FOR
34 THIRD-PARTY CLAIMS.

35 1. If a third party asserts a cause of action against

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

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

10 3. The liquidator shall make recommendations to the court
11 under section 507C.42, for the allowance of an insured's claim
12 under subsection 2 after consideration of the probable outcome
13 of a pending action against the insured on which the claim
14 is based, the probable damages recoverable in the action and
15 the probable costs and expenses of defense. After allowance
16 by the court, the liquidator shall withhold dividends payable
17 on the claim, pending the outcome of litigation and negotiation
18 with the insured. If it seems appropriate, the liquidator
19 shall reconsider the claim on the basis of additional
20 information and amend the recommendations to the court. The
21 insured shall be afforded the same notice and opportunity
22 to be heard on all changes in the recommendation as in its
23 initial determination. The court may amend its allowance
24 as it finds appropriate. As claims against the insured are
25 settled or barred, the insured shall be paid from the amount
26 withheld the same percentage dividend as was paid on other
27 claims of like property, based on the lesser of:

28 a. The amount actually recovered from the insured by ac-
29 tion or paid by agreement plus the reasonable costs and
30 expenses of defense.

31 b. The amount allowed on the claims by the court.
32 After all claims are settled or barred, any sum remaining
33 from the amount withheld shall revert to the undistributed
34 assets of the insurer. Delay in final payment under this
35 subsection shall not be a reason for unreasonable delay of

1 final distribution and discharge of the liquidator.

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

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

16 Sec. 39. NEW SECTION. 507C.39 DISPUTED CLAIMS.

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

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

34 Sec. 40. NEW SECTION. 507C.40 CLAIMS OF SURETY. If
35 a creditor whose claim against an insurer is secured in whole

1 or in part, by the undertaking of another person, fails to
2 prove and file that claim, then the other person may do so
3 in the creditor's name. The surety shall be subrogated to
4 the rights of the creditor, whether the claim has been filed
5 by the creditor or by the surety in the creditor's name to
6 the extent that the surety discharges the undertaking.

7 However, in the absence of an agreement with the creditor
8 to the contrary, the surety is not entitled to any distribu-
9 tion until the amount paid to the creditor on the undertaking
10 plus the distributions paid on the claim from the insurer's
11 estate to the creditor equals the amount of the entire claim
12 of the creditor. An excess received by the creditor shall
13 be held by the creditor in trust for the surety. As used
14 in this section, "surety" is not intended to apply to a
15 guaranty association or foreign guaranty association.

16 Sec. 41. NEW SECTION. 507C.41 SECURED CREDITOR'S CLAIMS.

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

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

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

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

32 Sec. 42. NEW SECTION. 507C.42 PRIORITY OF DISTRIBUTION.

33 The priority of distribution of claims from the insurer's
34 estate shall be in accordance with the order in which each
35 class of claims is set forth. Claims in each class shall

1 be paid in full or adequate funds retained for the payment
2 before the members of the next class receive any payment.
3 Subclasses shall not be established within a class. The order
4 of distribution of claims is:

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

7 a. The actual and necessary costs of preserving or re-
8 covering the assets of the insurer.

9 b. Compensation for services rendered in the liquidation.

10 c. Necessary filing fees.

11 d. The fees and mileage payable to witnesses.

12 e. Reasonable attorney's fees.

13 f. The reasonable expenses of a guaranty association or
14 foreign guaranty association in handling claims.

15 2. CLASS 2. Debts due to employees for services performed
16 to the extent that they do not exceed one thousand dollars
17 and represent payment for services performed within one year
18 before the filing of the petition for liquidation. Officers
19 and directors are not entitled to the benefit of this priority.
20 The priority is in lieu of other similar priority which may
21 be authorized by law as to wages or compensation of employees.

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

1 an employee is not a gratuity.

2 4. CLASS 4. Claims under nonassessable policies for un-
3 earned premium or other premium refunds and claims of general
4 creditors.

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

13 6. CLASS 6. Claims filed late or any other claims other
14 than claims under subsections 7 and 8.

15 7. CLASS 7. Surplus or contribution notes, or similar
16 obligations, and premium refunds on assessable policies.
17 Payments to members of domestic mutual insurance companies
18 is limited in accordance with law.

19 8. CLASS 8. The claims of shareholders or other owners.
20 Sec. 43. NEW SECTION. 507C.43 LIQUIDATOR'S RECOMMENDA-
21 TIONS TO THE COURT.

22 1. The liquidator shall review claims duly filed in the
23 liquidation and shall make further investigation as neces-
24 sary. The liquidator may compound, compromise or in any other
25 manner negotiate the amount for which claims will be
26 recommended to the court except where the liquidator is re-
27 quired by law to accept claims as settled by a person or or-
28 ganization, including a guaranty association or foreign
29 guaranty association. Unresolved disputes shall be determined
30 under section 507C.39. As soon as practicable, the liquidator
31 shall present to the court a report of the claims against
32 the insurer with the liquidator's recommendations. The report
33 shall include the name and address of each claimant and the
34 amount of the claim finally recommended. If the insurer has
35 issued annuities or life insurance policies, the liquidator

1 shall report the persons to whom, according to the records
2 of the insurer, amounts are owed as cash surrender values
3 or other investment value and the amounts owed.

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

12 Sec. 44. NEW SECTION. 507C.44 DISTRIBUTION OF ASSETS.
13 Under the direction of the court, the liquidator shall pay
14 distributions in a manner that will assure the proper
15 recognition of priorities and a reasonable balance between
16 the expeditious completion of the liquidation and the
17 protection of unliquidated and undetermined claims, including
18 third-party claims. Distribution of assets in kind may be
19 made at valuations set by agreement between the liquidator
20 and the creditor and approved by the court.

21 Sec. 45. NEW SECTION. 507C.45 UNCLAIMED AND WITHHELD
22 FUNDS.

23 1. Unclaimed funds subject to distribution remaining in
24 the liquidator's hands when the liquidator is ready to apply
25 to the court for discharge, including the amount distributable
26 to a creditor, shareholder, member, or other person who is
27 unknown or cannot be found, shall be deposited with the state
28 treasurer, and shall be paid without interest, except in ac-
29 cordance with section 507C.42, to the person entitled or the
30 person's legal representative upon proof satisfactory to the
31 state treasurer of the right to the funds. An amount on de-
32 posit not claimed within six years from the discharge of the
33 liquidator is deemed to have been abandoned and shall become
34 the property of the state without formal escheat proceedings
35 and be deposited with the general fund.

1 2. Funds withheld under section 507C.37 and not dis-
2 tributed shall upon discharge of the liquidator be deposited
3 with the state treasurer and paid in accordance with section
4 507C.42. Sums remaining which under section 507C.42 would
5 revert to the undistributed assets of the insurer shall be
6 transferred to the state treasurer and become the property
7 of the state under subsection 1, unless the commissioner in
8 the commissioner's discretion petitions the court to reopen
9 the liquidation under section 507C.47.

10 Sec. 46. NEW SECTION. 507C.46 TERMINATION OF PROCEEDINGS.

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

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

22 Sec. 47. NEW SECTION. 507C.47 REOPENING LIQUIDATION.

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

30 Sec. 48. NEW SECTION. 507C.48 DISPOSITION OF RECORDS
31 DURING AND AFTER TERMINATION OF LIQUIDATION. If it appears
32 to the commissioner that the records of an insurer in process
33 of liquidation or completely liquidated are no longer useful,
34 the commissioner may recommend to the court and the court
35 shall direct what records shall be retained for future

1 reference and what shall be destroyed.

2 Sec. 49. NEW SECTION. 507C.49 EXTERNAL AUDIT OF THE
3 RECEIVER'S BOOKS. The court may order audits to be made of
4 the books of the commissioner relating to a receivership
5 established under this chapter, and a report of each audit
6 shall be filed with the commissioner and with the court.
7 The books, records, and other documents of the receivership
8 shall be made available to the auditor at any time without
9 notice. The expense of an audit shall be considered a cost
10 of administration of the receivership.

11 DIVISION IV

12 INTERSTATE RELATIONS

13 Sec. 50. NEW SECTION. 507C.50 CONSERVATION OF PROPERTY
14 OF FOREIGN OR ALIEN INSURERS FOUND IN THIS STATE.

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

21 a. Any of the grounds in section 507C.12.

22 b. That property has been sequestered by official action
23 in the insurer's domiciliary state, or in any other state.

24 c. That enough of its property has been sequestered in
25 a foreign country to give reasonable cause to fear that the
26 insurer is or may become insolvent.

27 d. That both of the following are found:

28 (1) That its certificate of authority to do business in
29 this state has been revoked or that no certificate was ever
30 issued.

31 (2) That there are residents of this state with outstanding
32 claims or outstanding policies.

33 2. When an order is sought under subsection 1, the court
34 shall cause the insurer to be given notice and time to re-
35 spond to the petition as is reasonable under the circumstances.

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

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

14 5. The conservator may at any time petition the court
15 for an order terminating conservation of an insurer. If the
16 court finds that the conservation is no longer necessary,
17 it shall order that the insurer be restored to possession
18 of its property and the control of its business. The court
19 may also make such finding and issue such order at any time
20 upon motion of any interested party, but if the motion is
21 denied costs shall be assessed against the party.

22 Sec. 51. NEW SECTION. 507C.51 LIQUIDATION OF PROPERTY
23 OF FOREIGN OR ALIEN INSURERS FOUND IN THIS STATE.

24 1. If a domiciliary receiver has not been appointed, the
25 commissioner may apply to the court by verified petition for
26 an order directing the commissioner to liquidate the assets
27 found in this state of a foreign insurer or an alien insurer
28 not domiciled in this state on any of the following grounds:

29 a. Any of the grounds in section 507C.12 or 507C.17.

30 b. Any of the grounds specified in section 507C.50, sub-
31 section 1, paragraphs "b" through "d".

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

35 3. If it appears to the court that the best interests

1 of creditors, policyholders, and the public require, the court
2 may issue an order to liquidate in whatever terms it deems
3 appropriate. The filing or recording of the order with the
4 clerk of the court or the recorder of deeds of the county
5 in which the principal business of the company is located
6 or the county in which its principal office or place of
7 business is located, is same notice as a deed, bill of sale,
8 or other evidence of title duly filed or recorded with that
9 recorder of deeds.

10 4. If a domiciliary liquidator is appointed in a reciprocal
11 state while a liquidation is proceeding under this section,
12 the liquidator under this section shall act as ancillary re-
13 ceiver under section 507C.53. If a domiciliary liquidator
14 is appointed in a nonreciprocal state while a liquidation
15 is proceeding under this section, the liquidator under this
16 section may petition the court for permission to act as
17 ancillary receiver under section 507C.53.

18 5. On the same grounds as are specified in subsection
19 1, the commissioner may petition an appropriate federal
20 district court to be appointed receiver to liquidate that
21 portion of the insurer's assets and business over which the
22 court will exercise jurisdiction, or any lesser part that
23 the commissioner deems desirable for the protection of the
24 policyholders and creditors in this state.

25 6. When the commissioner has liquidated the assets of
26 a foreign or alien insurer under this section, the court may
27 order the commissioner to pay claims of residents of this
28 state against the insurer under rules as to the liquidation
29 of insurers under this chapter as are otherwise compatible
30 with this section.

31 Sec. 52. NEW SECTION. 507C.52 DOMICILIARY LIQUIDATORS
32 IN OTHER STATES.

33 1. Except as to special deposits and security on secured
34 claims under section 507C.53, subsection 3, the domiciliary
35 liquidator of an insurer domiciled in a reciprocal state shall

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

14 2. If a domiciliary liquidator is appointed for an insurer
15 not domiciled in a reciprocal state, the commissioner of
16 this state shall be vested with the title to the property,
17 contracts and rights of action, books, accounts and other
18 records of the insurer located in this state, at the same
19 time that the domiciliary liquidator is vested with title
20 in the domicile. The commissioner of this state may petition
21 for a conservation or liquidation order under section 507C.50
22 or 507C.51, or for an ancillary receivership under section
23 507C.53, or after approval by the court may transfer title
24 to the domiciliary liquidator, as the interests of justice
25 and the equitable distribution of the assets require.

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

32 Sec. 53. NEW SECTION. 507C.53 ANCILLARY FORMAL PRO-
33 CEEDINGS.

34 1. If a domiciliary liquidator has been appointed for
35 an insurer not domiciled in this state, the commissioner may

1 file a petition with the court requesting appointment as
2 ancillary receiver in this state if both of the following
3 exist:

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

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

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

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

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

1 Sec. 54. NEW SECTION. 507C.54 ANCILLARY SUMMARY PRO-
2 CEEDINGS. In the sole discretion of the commissioner, the
3 commissioner may institute proceedings under sections 507C.9
4 through 507C.11 at the request of the commissioner or other
5 appropriate insurance official of the domiciliary state of
6 a foreign or alien insurer having property located in this
7 state.

8 Sec. 55. NEW SECTION. 507C.55 CLAIMS OF NONRESIDENTS
9 AGAINST INSURERS DOMICILED IN THIS STATE.

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

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

31 Sec. 56. NEW SECTION. 507C.56 CLAIMS OF RESIDENTS AGAINST
32 INSURERS DOMICILED IN RECIPROCAL STATES.

33 1. In a liquidation proceeding in a reciprocal state
34 against an insurer domiciled in that state, claimants against
35 the insurer who reside within this state may file claims

1 either with the ancillary receiver in this state, or with
2 the domiciliary liquidator. Claims shall be filed on or
3 before the last dates fixed for the filing of claims in the
4 domiciliary liquidation proceeding.

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

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

27 Sec. 57. NEW SECTION. 507C.57 ATTACHMENT, GARNISHMENT,
28 AND LEVY OF EXECUTION. An action or proceeding in the nature
29 of an attachment, garnishment, or levy of execution shall
30 not be commenced or maintained in this state against the
31 delinquent insurer or its assets during the pendency in this
32 or any other state of a liquidation proceeding, whether called
33 by that name or not.

34 Sec. 58. NEW SECTION. 507C.58 INTERSTATE PRIORITIES.

35 1. In a liquidation proceeding in this state involving

1 one or more reciprocal states, the order of distribution of
2 the domiciliary state shall control as to claims of residents
3 of this and reciprocal states. Claims of residents of
4 reciprocal states shall be given equal priority of payment
5 from general assets regardless of where the assets are located.

6 2. The owners of special deposit claims against an in-
7 surer for which a liquidator is appointed in this or any other
8 state is given priority against the special deposits in ac-
9 cordance with the statutes governing the creation and mainte-
10 nance of the deposits. If there is a deficiency in a deposit
11 so that the claims secured by it are not fully discharged
12 from it, the claimants may share in the general assets.
13 However, the sharing shall be deferred until general creditors
14 and claimants against other special deposits who have received
15 smaller percentages from their respective special deposits
16 have been paid percentages of their claims equal to the per-
17 centage paid from the special deposit.

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

26 Sec. 59. NEW SECTION. 507C.59 SUBORDINATION OF CLAIMS
27 FOR NONCOOPERATION. If an ancillary receiver in another state
28 or foreign country, whether called by that name or not, fails
29 to transfer to the domiciliary liquidator in this state assets
30 within the ancillary receiver's control other than special
31 deposits, diminished only by the expenses of the ancillary
32 receivership, the claims filed in the ancillary receivership,
33 other than special deposit claims or secured claims, shall
34 be placed in the class of claims under section 507C.42,
35 subsection 7.

HOUSE FILE 2501

H-5627

1 Amend House File 2501 as follows:

2 1. Page 2, line 3, by inserting after the word
3 "insurance" the words "and any successor in office".

4 2. Page 3, line 31, by striking the word "part"
5 and inserting in lieu thereof the word "par".

6 3. Page 5, by striking lines 8 through 15 and
7 inserting in lieu thereof the following:

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

18 4. By striking page 7, line 31 through page 8,
19 line 13, and inserting in lieu thereof the following:

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

32 a. To reply promptly in writing to any inquiry
33 from the commissioner requesting a reply.

34 b. To make available to the commissioner any
35 books, accounts, documents, or other records or
36 information or property of or pertaining to the insurer
37 and in the commissioner's possession, custody or
38 control."

39 5. Page 20, line 10, by striking the figure
40 "507C.20" and inserting in lieu thereof the figure
41 "507C.37".

42 6. Page 24, line 17, by inserting after the word
43 "persons" the words "including statutes of limitation,
44 statutes of fraud, and the defense of usury".

45 7. Page 25, line 33, by striking the word "may"
46 and inserting in lieu thereof the words "need not".

47 8. Page 29, line 13, by striking the words "a
48 fraudulent" and inserting in lieu thereof the words
49 "any such".

50 9. Page 34, line 5, by striking the figure "1"

H-5627
Page Two

- 1 and inserting in lieu thereof the figure "2".
2 10. Page 37, line 29, by inserting after the word
3 "liquidation" the words and figure "under section
4 507C.18".
5 11. Page 39, by striking line 18 and inserting
6 in lieu thereof the following:
7 "1. a. An agent, broker, premium finance company
8 or any other person responsible for".
9 12. Page 40, line 1, by inserting after the word
10 "party" the words "or parties".
11 13. Page 40, line 3, by inserting after the word
12 "party" the words "or parties".
13 14. Page 45, line 8, by striking the word "a"
14 and inserting in lieu thereof the words "an unexcused".
15 15. Page 49, line 12, by striking the word
16 "subsubsection" and inserting in lieu thereof the
17 word "subsection".

BY SKOW of Guthrie
CHIODO of Polk
HALVORSON of Clayton

H-5627 FILED MARCH 13, 1984

Adopted 3/20 (p. 1175)

HOUSE FILE 2501

H-5721

- 1 Amend House File 2501 as follows:
2 1. Page 60, by striking lines 1 through 4.

H-5721 FILED MARCH 15, 1984 BY HALVORSON of Clayton

Adopted 3/20 (p. 1176)

Senate Commerce 3/22 D. Pass 3/23 (p. 1004)

HOUSE FILE 2501

BY COMMITTEE ON SMALL BUSINESS
AND COMMERCE

Passed House, Date 3-20-84 (p. 1176) Passed Senate, Date 3-29-84 (p. 1169)

Vote: Ayes 94 Nays 1 Vote: Ayes 38 Nays 1

Approved May 2, 1984

A BILL FOR

1 An Act relating to the supervision, rehabilitation, and
2 liquidation of insurance companies and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I

GENERAL PROVISIONS

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Section 1. NEW SECTION. 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 insured, 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.

Sec. 2. NEW SECTION. 507C.2 DEFINITIONS. As used in
this chapter, unless the context otherwise requires:

- 1 1. "Ancillary state" means a state other than a domiciliary
2 state.
- 3 2. "Commissioner" means the commissioner of insurance
4 and any successor in office.
- 5 3. "Creditor" is a person having a claim against an
6 insurer, whether the claim is matured or unmatured, liquidated
7 or unliquidated, secured or unsecured, absolute, fixed or
8 contingent.
- 9 4. "Delinquency proceeding" means a proceeding instituted
10 against an insurer for the purpose of liquidating,
11 rehabilitating, reorganizing or conserving the insurer, and
12 a summary proceeding under section 507C.9 or 507C.10. "Formal
13 delinquency proceeding" means any liquidation or rehabilitation
14 proceeding.
- 15 5. "Doing business" means any of the following acts,
16 whether effected by mail or otherwise:
 - 17 a. The issuance or delivery of contracts of insurance
18 to persons resident in this state.
 - 19 b. The solicitation of applications for the contracts,
20 or other negotiations preliminary to the execution of the
21 contracts.
 - 22 c. The collection of premiums, membership fees,
23 assessments, or other consideration for the contracts.
 - 24 d. The transaction of matters subsequent to execution
25 of the contracts and arising out of them.
 - 26 e. Operating as an insurer under a license or certificate
27 of authority issued by the insurance department.
- 28 6. "Domiciliary state" means the state in which an insurer
29 is incorporated or organized, or, in the case of an alien
30 insurer, its state of entry.
- 31 7. "Fair consideration" is given for property or obligation
32 when either of the following is present:
 - 33 a. When in good faith property is conveyed or services
34 are rendered or an obligation is incurred or an antecedent
35 debt is satisfied in exchange for the property or obligation,

1 as a fair equivalent therefor, and in good faith.

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

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

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

18 10. "Guaranty association" means the Iowa insurance
19 guaranty association created in chapter 515B and any other
20 similar entity either presently existing or to be created
21 by the general assembly for the payment of claims of insolvent
22 insurers. "Foreign guaranty association" means a similar
23 entity presently existing in or to be created in the future
24 by the legislature of any other state.

25 11. "Insolvency" or "insolvent" means either of the fol-
26 lowing:

27 a. For an insurer that it is unable to pay its obliga-
28 tions when they are due, or when its admitted assets do not
29 exceed its liabilities plus the greater of:

30 (1) Any capital and surplus required by law for its or-
31 ganization.

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

34 b. As to an insurer licensed to do business in this state
35 as of the effective date of this Act which does not meet the

1 standard established under paragraph "a" the term "insolvency"
2 or "insolvent" shall mean, for a period not to exceed three
3 years from the effective date of this Act, that it is unable
4 to pay its obligations when they are due or that its admitted
5 assets do not exceed its liabilities plus any required capital
6 contribution ordered by the commissioner under provisions
7 of the insurance law.

8 For purposes of this subsection "liabilities" shall include
9 but not be limited to reserves required by statute or by the
10 insurance department's rules or specific requirements imposed
11 by the commissioner upon a company at the time of or subsequent
12 to admission.

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

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

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

24 15. "Reciprocal state" means a state other than this state
25 in which section 507C.18, subsection 1, sections 507C.52 and
26 507C.53 and sections 507C.55 through 507C.57 are in force,
27 and in which provisions are in force requiring that the
28 commissioner or equivalent official be the receiver of a
29 delinquent insurer, and in which some provision exists for
30 the avoidance of fraudulent conveyances and preferential
31 transfers.

32 16. "Secured claim" means a claim secured by mortgage,
33 trust deed, pledge, deposit as security, escrow, or otherwise,
34 but not including special deposit claims or claims against
35 general assets. The term also includes claims which have

1 become liens upon specific assets by reason of judicial pro-
2 cess.

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

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

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

18 Sec. 3. NEW SECTION. 507C.3 APPLICABILITY. This chapter
19 may be applied to any of the following:

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

23 2. Insurers who purport to do insurance business in this
24 state.

25 3. Insurers who have insureds who are residents in this
26 state.

27 4. Other persons organized or in the process of organizing
28 with the intent to do insurance business in this state.

29 5. Nonprofit health service corporations and all fraternal
30 benefit societies and beneficial societies subject to chapters
31 512, 512A, and 514.

32 Sec. 4. NEW SECTION. 507C.4 JURISDICTION AND VENUE.

33 1. A delinquency proceeding shall not be commenced under
34 this chapter by a person other than the commissioner. A court
35 shall not have jurisdiction over a proceeding under this

1 chapter commenced by a person other than the commissioner.

2 2. A court shall not have jurisdiction over a petition
3 praying for the dissolution, liquidation, rehabilitation,
4 sequestration, conservation or receivership of an insurer,
5 or praying for an injunction or restraining order or other
6 relief preliminary to, incidental to or relating to such pro-
7 ceedings other than pursuant to this chapter.

8 3. A court having jurisdiction of the subject matter has
9 jurisdiction over a person served pursuant to the Iowa rules
10 of civil procedure or other applicable provisions in an ac-
11 tion brought by the receiver of a domestic insurer or an alien
12 insurer domiciled in this state for any of the following:

13 a. In an action on or incident to an obligation if the
14 person served is obligated to the insurer in any way as an
15 incident to an agency or brokerage arrangement that may exist
16 or has existed between the insurer and the agent or broker.

17 b. In an action on or incident to a reinsurance contract
18 if the person served is a reinsurer who has at any time writ-
19 ten a policy of reinsurance for an insurer against which a
20 rehabilitation or liquidation order is in effect when the
21 action is commenced, or is an agent or broker of or for the
22 reinsurer.

23 c. In an action resulting from a relationship with the
24 insurer, if the person served is or has been an officer,
25 manager, trustee, organizer, promoter, or person in a posi-
26 tion of comparable authority or influence in an insurer against
27 which a rehabilitation or liquidation order is in effect when
28 the action is commenced.

29 4. If the court on motion of a party finds that an ac-
30 tion should as a matter of substantial justice be tried in
31 a forum outside this state, the court may enter an order to
32 stay the proceedings on the action in this state.

33 5. All action authorized in this chapter shall be brought
34 in the district court in Polk county.

35 Sec. 5. NEW SECTION. 507C.5 INJUNCTIONS AND ORDERS.

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

- 6 a. The transaction of further business.
- 7 b. The transfer of property.
- 8 c. Interference with the receiver or with a proceeding
9 under this chapter.
- 10 d. Waste of the insurer's assets.
- 11 e. Dissipation and transfer of bank accounts.
- 12 f. The institution or further prosecution of any actions
13 or proceedings.
- 14 g. The obtaining of preferences, judgments, attachments,
15 garnishments, or liens against the insurer, its assets or
16 its policyholders.
- 17 h. The levying of execution against the insurer, its as-
18 sets or its policyholders.
- 19 i. The making of a sale or deed for nonpayment of taxes
20 or assessments that would lessen the value of the assets of
21 the insurer.
- 22 j. The withholding from the receiver of books, accounts,
23 documents, or other records relating to the business of the
24 insurer.

25 k. Any other threatened or contemplated action that might
26 lessen the value of the insurer's assets or prejudice the
27 rights of policyholders, creditors, or shareholders, or the
28 administration of a proceeding under this chapter.

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

31 Sec. 6. NEW SECTION. 507C.6 COOPERATION OF OFFICERS,
32 OWNERS, AND EMPLOYEES--PENALTY.

33 1. An officer, manager, director, trustee, owner, employee,
34 or agent of an insurer, or any other person with authority
35 over or in charge of any segment of the insurer's affairs,

1 shall cooperate with the commissioner in any proceeding under
2 this chapter or any investigation preliminary to the
3 proceeding. The term "person" as used in this section, shall
4 include any person who exercises control directly or indirectly
5 over activities of insurer through any holding company or
6 other affiliate of the insurer. "To cooperate" shall include,
7 but shall not be limited to, the following:

8 a. To reply promptly in writing to any inquiry from the
9 commissioner requesting a reply.

10 b. To make available to the commissioner any books,
11 accounts, documents, or other records or information or
12 property of or pertaining to the insurer and in the
13 commissioner's possession, custody or control.

14 3. A person shall not obstruct or interfere with the
15 commissioner in the conduct of a delinquency proceeding or
16 an investigation preliminary or incidental to a delinquency
17 proceeding.

18 4. This section does not abridge otherwise existing legal
19 rights, including the right to resist a petition for liquida-
20 tion, other delinquency proceedings, or other orders.

21 5. A person included within subsection 2 who fails to
22 cooperate with the commissioner, or a person who obstructs
23 or interferes with the commissioner in the conduct of a de-
24 linquency proceeding or an investigation preliminary or in-
25 cidental to a delinquency proceeding, or who violates a valid
26 order the commissioner issued under this chapter is:

27 a. Guilty of an aggravated misdemeanor; and

28 b. After a hearing, subject to the imposition by the
29 commissioner of a civil penalty not to exceed ten thousand
30 dollars and subject to the revocation or suspension of
31 insurance licenses issued by the commissioner.

32 Sec. 7. NEW SECTION. 507C.7 BONDS. In a proceeding
33 under this chapter, the commissioner and the commissioner's
34 deputies shall be responsible on their official bonds for
35 the faithful performance of their duties. If the court deems

1 it desirable for the protection of the assets, it may require
2 an additional bond from the commissioner or the commissioner's
3 deputies. The bonds shall be paid for out of the assets of
4 the insurer as a cost of administration.

5 Sec. 8. NEW SECTION. 507C.8 CONTINUATION OF DELINQUENCY
6 PROCEEDINGS. A proceeding commenced before the effective
7 date of this Act shall be deemed to have commenced under this
8 Act for the purpose of conducting the proceeding thereafter.
9 However, in the discretion of the commissioner the proceeding
10 may be continued, in whole or in part, as it would have con-
11 tinued had this Act not been enacted.

12 DIVISION II

13 SUMMARY PROCEEDINGS

14 Sec. 9. NEW SECTION. 507C.9 SUMMARY ORDERS AND SUPER-
15 VISION PROCEEDINGS--PENALTY.

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

24 2. If the commissioner upon reasonable cause determines
25 that a domestic insurer is in a condition as to render the
26 continuance of its business hazardous to the public or to
27 holders of its policies or certificates of insurance or if
28 the domestic insurer gives its consent then the commissioner
29 shall do both of the following:

30 a. Notify the insurer of the determination.

31 b. Furnish to the insurer a written list of the commis-
32 sioner's requirements to abate the determination.

33 3. If the commissioner makes a determination to supervise
34 an insurer subject to an order under subsection 1 or 2, the
35 commissioner shall notify the insurer that it is under the

1 supervision of the commissioner. During the period of super-
2 vision, the commissioner may appoint a supervisor to supervise
3 the insurer. The order appointing a supervisor shall direct
4 the supervisor to enforce orders issued under subsections
5 1 and 2 and may also require that during the period of
6 supervision, the insurer shall not do any of the following
7 without the prior approval of the commissioner or the
8 commissioner's supervisor:

9 a. Dispose of, convey or encumber its assets or its busi-
10 ness in force.

11 b. Withdraw from its bank accounts.

12 c. Lend its funds.

13 d. Invest its funds.

14 e. Transfer its property.

15 f. Incur any debt, obligation or liability.

16 g. Merge or consolidate with another company.

17 h. Enter into a new reinsurance contract or treaty.

18 i. Write new or renewal business.

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

27 5. The notice of hearing and any order issued pursuant
28 to subsection 1 shall be served upon the insurer pursuant
29 to chapter 17A. The notice of hearing shall state the time
30 and place of hearing, and the conduct, condition or ground
31 upon which the commissioner would base an order. Unless
32 mutually agreed between the commissioner and the insurer,
33 the hearing shall occur not less than ten days nor more than
34 thirty days after notice is served and shall be either in
35 Polk county or in some other place convenient to the parties

1 to be designated by the commissioner. All hearings under
2 subsection 1 shall be confidential unless the insurer requests
3 a public hearing.

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

8 b. If the commissioner issues an order under subsection
9 2, the insurer may waive a commissioner's hearing and apply
10 for immediate judicial relief by means of any remedy afforded
11 by law without first exhausting administrative remedies.

12 Subsequent to a hearing, a party to the proceedings whose
13 interests are substantially affected is entitled to judicial
14 review of any order issued by the commissioner.

15 7. During the period of supervision the insurer may re-
16 quest the commissioner to review an action taken or proposed
17 to be taken by the supervisor by specifying the reasons the
18 action complained of is believed not to be in the best in-
19 terest of the insurer.

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

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

28 Sec. 10. NEW SECTION. 507C.10 SEIZURE ORDER.

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

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

35 b. That the interests of policyholders, creditors, or

1 the public will be endangered by delay.

2 c. The contents of an order deemed necessary by the com-
3 missioner.

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

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

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

28 5. An insurer subject to an ex parte order under this
29 section may petition the court after the issuance of the order
30 for a hearing and review of the order. The court shall hold
31 the hearing and review not more than fifteen days after the
32 request. A hearing under this subsection may be held pri-
33 vately in chambers. Upon request of the insurer the hearing
34 shall be held privately in chambers.

35 6. If at any time after the issuance of an order under

1 this section it appears to the court that a person whose in-
2 terest is or will be substantially affected by the order did
3 not appear at the hearing and has not been served, the court
4 may order that notice be given. An order that notice be given
5 shall not stay the effect of any order previously issued by
6 the court.

7 Sec. 11. NEW SECTION. 507C.11 CONFIDENTIALITY OF HEAR-
8 INGS. Notwithstanding chapter 68A, in all administrative
9 proceedings pursuant to sections 507C.9 and 507C.10 all records
10 and documents pertaining to or a part of the record of the
11 proceedings are confidential except as is necessary to obtain
12 compliance with a proceeding. However, the records may be
13 released if either of the following:

- 14 1. The insurer requests that the records be made public.
- 15 2. After a hearing on the issue with the parties to the
16 proceeding, the court orders that the records be made public.

17 DIVISION III

18 FORMAL PROCEEDINGS

19 Sec. 12. NEW SECTION. 507C.12 GROUNDS FOR REHABILITA-
20 TION. The commissioner may petition the district court for
21 an order to rehabilitate a domestic insurer or an alien in-
22 surer domiciled in this state on any of the following grounds:

23 1. The insurer is in a condition that the further transac-
24 tion of business would be financially hazardous to its policy-
25 holders, creditors, or the public.

26 2. There is reasonable cause to believe that there has
27 been embezzlement from the insurer, wrongful sequestration
28 or diversion of the insurer's assets, forgery or fraud af-
29 fecting the insurer, or other illegal conduct in, by, or with
30 respect to the insurer that, if established, would endanger
31 assets in an amount threatening the solvency of the insurer.

32 3. The insurer has failed to remove a person, whether
33 an officer, manager, general agent, employee, or other person,
34 who in fact has executive authority in the insurer, if the
35 person has been found after notice and hearing by the com-

1 missioner to be dishonest or untrustworthy in a way affecting
2 the insurer's business.

3 4. Control of the insurer is in a person or persons found
4 after notice and hearing to be untrustworthy. Control may
5 be by stock ownership or by other means and may be direct
6 or indirect.

7 5. A person who in fact has executive authority in the
8 insurer, whether an officer, manager, general agent, director
9 or trustee, employee, or other person has refused to be
10 examined under oath by the commissioner concerning the
11 insurer's affairs, in this state or elsewhere, and after
12 reasonable notice of the fact the insurer has failed promptly
13 and effectively to terminate the employment and status of
14 the person and all the person's influence on management.

15 6. After demand by the commissioner under chapter 507
16 or under this chapter, the insurer has failed to promptly
17 make available for examination any of its property, books,
18 accounts, documents, or other records, or those of a subsidiary
19 or related company within the control of the insurer, or those
20 of a person having executive authority in the insurer so far
21 as they pertain to the insurer.

22 7. Without first obtaining the written consent of the
23 commissioner, the insurer has transferred, or attempted to
24 transfer, in a manner contrary to chapter 521 or 521A, sub-
25 stantially its entire property or business, or has entered
26 into a transaction the effect of which is to merge,
27 consolidate, or reinsure substantially its entire property
28 or business in or with the property or business of any other
29 person.

30 8. The insurer or its property has been or is the subject
31 of an application for the appointment of a receiver, trustee,
32 custodian, conservator or sequestrator or similar fiduciary
33 of the insurer of its property other than as authorized under
34 the insurance laws of this state, and the appointment has
35 been made or is imminent, and the appointment might oust the

1 court of this state of jurisdiction or might prejudice orderly
2 delinquency proceedings under this chapter.

3 9. Within the previous three years the insurer has will-
4 fully violated its charter or articles of incorporation, its
5 bylaws, an insurance law of this state, or a valid order of
6 the commissioner under section 507C.9.

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

19 11. The insurer has failed to file its annual report or
20 other financial report required within the time allowed and,
21 after written demand by the commissioner, has failed to im-
22 mediately give an adequate explanation.

23 12. The board of directors or the holders of a majority
24 of the shares entitled to vote, or a majority of those in-
25 dividuals entitled to the control of those entities request
26 or consent to rehabilitation under this chapter.

27 Sec. 13. NEW SECTION. 507C.13 REHABILITATION ORDERS.

28 1. An order to rehabilitate the business of a domestic
29 insurer or an alien insurer domiciled in this state shall
30 appoint the commissioner as the rehabilitator. The order
31 shall direct the rehabilitator to take possession of the
32 assets of the insurer, and to administer them under the general
33 supervision of the court. The filing or recording of the
34 order with the clerk of the district court or recorder of
35 deeds of the county in which the principal business of the

1 insurer is conducted, or the county in which its principal
2 office or place of business is located, is the same notice
3 as a deed, bill of sale, or other evidence of title duly filed
4 or recorded with that recorder of deeds. The order to
5 rehabilitate the insurer shall vest title to all assets of
6 the insurer in the rehabilitator.

7 2. An order issued under this section shall require ac-
8 counting to the court by the rehabilitator. Accountings shall
9 be at intervals the court specified in the order.

10 3. Entry of an order of rehabilitation is not an anticipa-
11 tory breach of a contract of the insurer.

12 Sec. 14. NEW SECTION. 507C.14 POWERS AND DUTIES OF THE
13 REHABILITATOR.

14 1. The commissioner as rehabilitator may appoint one or
15 more special deputies. The special deputies shall have the
16 powers and responsibilities of the rehabilitator granted under
17 this section. The commissioner may employ counsel, clerks,
18 and assistants as necessary. The compensation of the special
19 deputy, counsel, clerks, and assistants and all expenses of
20 taking possession of the insurer and of conducting the
21 proceedings shall be fixed by the commissioner with the
22 approval of the court and shall be paid out of the funds or
23 assets of the insurer. The persons appointed under this
24 section shall serve at the pleasure of the commissioner.

25 If the property of the insurer does not contain sufficient
26 cash or liquid assets to defray the costs incurred, the
27 commissioner may advance the costs so incurred out of any
28 appropriation for the maintenance of the insurance department.
29 Amounts so advanced for expenses of administration shall be
30 repaid to the commissioner for the use of the insurance
31 department out of the first available money of the insurer.

32 2. The rehabilitator may take action as the rehabilita-
33 tor deems necessary or appropriate to reform and revitalize
34 the insurer. The rehabilitator shall have the powers of the
35 directors, officers, and managers of the insurer, whose au-

1 thority shall be suspended, except as the powers are
2 redelegated by the rehabilitator. The rehabilitator shall
3 have power to direct and manage, to hire and discharge
4 employees subject to contract rights the employees may have,
5 and to deal with the property and business of the insurer.

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

11 4. If the rehabilitator determines that reorganization,
12 consolidation, conversion, reinsurance, merger, or other
13 transformation of the insurer is appropriate, the rehabilita-
14 tor shall prepare a plan to effect the changes. Upon applica-
15 tion of the rehabilitator for approval of the plan, and after
16 notice and hearings as the court may prescribe, the court
17 may either approve, disapprove or modify the plan proposed.
18 Before approving a plan, the court shall find that it is fair
19 and equitable to all parties concerned. If the plan is ap-
20 proved, the rehabilitator shall carry out the plan. In the
21 case of a life insurer, if all rights of shareholders are
22 first relinquished, the plan proposed may include the imposi-
23 tion of liens upon the policies of the company. A plan for
24 a life insurer may also propose imposition of a moratorium
25 upon loan and cash surrender rights under policies.

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

28 Sec. 15. NEW SECTION. 507C.15 ACTIONS BY AND AGAINST
29 REHABILITATOR.

30 1. A court, before which an action or proceeding in which
31 the insurer is a party or is obligated to defend a party is
32 pending when a rehabilitation order against the insurer is
33 entered, shall stay the action or proceeding for ninety days
34 and any additional time as necessary for the rehabilitator
35 to obtain proper representation and prepare for further

1 proceedings. The rehabilitator shall take action respecting
2 the pending litigation as necessary in the interests of justice
3 and for the protection of creditors, policyholders, and the
4 public. The rehabilitator shall immediately consider all
5 litigation pending outside this state and shall petition the
6 courts having jurisdiction over that litigation for stays
7 whenever necessary to protect the estate of the insurer.

8 2. A statute of limitations or defense of laches shall
9 not run in an action by or against an insurer between the
10 filing of a petition for appointment of a rehabilitator for
11 that insurer and the order granting or denying that petition.
12 An action by or against the insurer that might have been
13 commenced when the petition was filed may be commenced for
14 at least sixty days after the order of rehabilitation is
15 entered or the petition is denied.

16 3. A guaranty association or foreign guaranty association
17 covering life or health insurance or annuities shall have
18 standing to appear in a court proceeding concerning the re-
19 habilitation of a life or health insurer if the association
20 is or may become liable to act as a result of the rehabilita-
21 tion.

22 Sec. 16. NEW SECTION. 507C.16 TERMINATION OF REHABILITA-
23 TION.

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

35 2. The rehabilitator may at any time petition the district

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

12 Sec. 17. NEW SECTION. 507C.17 GROUNDS FOR LIQUIDATION.

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

17 1. Any ground for an order of rehabilitation specified
18 in section 507C.12 whether or not there has been a prior order
19 directing the rehabilitation of the insurer.

20 2. That the insurer is insolvent.

21 3. That the insurer is in a condition that the further
22 transaction of business would be hazardous, financially or
23 otherwise, to its policyholders, its creditors, or the public.

24 Sec. 18. NEW SECTION. 507C.18 LIQUIDATION ORDERS.

25 1. An order to liquidate the business of a domestic in-
26 surer shall appoint the commissioner as liquidator and shall
27 direct the liquidator to immediately take possession of the
28 assets of the insurer and to administer them under the general
29 supervision of the court. The liquidator shall be vested
30 with the title to the property, contracts, and rights of
31 action and the books and records of the insurer ordered li-
32 quidated, wherever located, as of the entry of the final order
33 of liquidation. The filing or recording of the order with
34 the clerk of the court and the recorder of deeds of the county
35 in which its principal office or place of business is located,

1 or, in the case of real estate with the recorder of deeds
2 of the county where the property is located, shall be notice
3 as a deed, bill of sale, or other evidence of title duly filed
4 or recorded with the recorder of deeds.

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

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

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

23 5. An order issued under this section shall require ac-
24 counting to the court by the liquidator. Accountings shall
25 be at intervals specified in the order.

26 Sec. 19. NEW SECTION. 507C.19 CONTINUANCE OF COVERAGE.

27 1. Except for life or health insurance or annuities, poli-
28 cies in effect at the time of issuance of an order of liquida-
29 tion shall continue in force only for the lesser of:

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

32 b. The expiration of the policy coverage.

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

1 d. The liquidator has effected a transfer of the policy
2 obligation pursuant to section 507C.21, subsection 1, para-
3 graph "h".

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

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

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

15 Sec. 20. NEW SECTION. 507C.20 DISSOLUTION OF INSURER.

16 The commissioner may petition for an order dissolving the
17 corporate existence of a domestic insurer or the United States
18 branch of an alien insurer domiciled in this state at the
19 time the commissioner applies for a liquidation order. The
20 court shall order dissolution of the corporation upon peti-
21 tion by the commissioner upon or after the granting of a
22 liquidation order. If the dissolution has not previously
23 been ordered, it shall be effected by operation of law upon
24 the discharge of the liquidator if the insurer is insolvent.
25 However, dissolution may be ordered by the court upon the
26 discharge of the liquidator if the insurer is under a liquida-
27 tion order for some other reason.

28 Sec. 21. NEW SECTION. 507C.21 POWERS OF LIQUIDATOR.

29 1. The liquidator may:

30 a. Appoint a special deputy to act for the liquidator
31 under this chapter, and to determine the special deputy's
32 reasonable compensation. The special deputy shall have all
33 powers of the liquidator granted by this section. The special
34 deputy shall serve at the pleasure of the liquidator.

35 b. Hire employees and agents, legal counsel, actuaries,

1 accountants, appraisers, consultants, and other personnel
2 as the commissioner may deem necessary to assist in the
3 liquidation.

4 c. With the approval of the court fix the reasonable
5 compensation of employees and agents, legal counsel, actuaries,
6 accountants, appraisers and consultants.

7 d. Pay reasonable compensation to persons appointed and
8 to defray from the funds or assets of the insurer all ex-
9 penses of taking possession of, conserving, conducting,
10 liquidating, disposing of, or otherwise dealing with the
11 business and property of the insurer. If the property of
12 the insurer does not contain sufficient cash or liquid assets
13 to defray the costs incurred, the commissioner may advance
14 the costs so incurred out of an appropriation for the mainte-
15 nance of the insurance department. Amounts so advanced for
16 expenses of administration shall be repaid to the commissioner
17 for the use of the insurance department out of the first
18 available moneys of the insurer.

19 e. Hold hearings, subpoena witnesses, and compel their
20 attendance, administer oaths, examine a person under oath,
21 and compel a person to subscribe to the person's testimony
22 after it has been correctly reduced to writing, and in
23 connection to the proceedings require the production of books,
24 papers, records or other documents which the liquidator deems
25 relevant to the inquiry.

26 f. Collect debts and moneys due and claims belonging to
27 the insurer, wherever located. Pursuant to this paragraph,
28 the liquidator may:

29 (1) Institute timely action in other jurisdictions to
30 forestall garnishment and attachment proceedings against
31 debts.

32 (2) Perform acts as are necessary or expedient to collect,
33 conserve or protect its assets or property, including the
34 power to sell, compound, compromise or assign debts for pur-
35 poses of collection upon terms and conditions as the liquidator

1 deems best.

2 (3) Pursue any creditor's remedies available to enforce
3 claims.

4 g. Conduct public and private sales of the property of
5 the insurer.

6 h. Use assets of the estate of an insurer under a liquida-
7 tion order to transfer policy obligations to a solvent assuming
8 insurer, if the transfer can be arranged without prejudice
9 to applicable priorities under section 507C.42.

10 i. Acquire, hypothecate, encumber, lease, improve, sell,
11 transfer, abandon, or otherwise dispose of or deal with prop-
12 erty of the insurer at its market value or upon terms and
13 conditions as are fair and reasonable. The liquidator shall
14 also have power to execute, acknowledge, and deliver deeds,
15 assignments, releases and other instruments necessary to ef-
16 fectuate a sale of property or other transaction in connection
17 with the liquidation.

18 j. Borrow money on the security of the insurer's assets
19 or without security and to execute and deliver documents
20 necessary to that transaction for the purpose of facilitating
21 the liquidation.

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

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

33 m. Prosecute an action on behalf of the creditors, members,
34 policyholders or shareholders of the insurer against an offi-
35 cer of the insurer, or any other person.

1 n. Remove records and property of the insurer to the of-
2 fices of the commissioner or to other place as may be con-
3 venient for the purposes of efficient and orderly execution
4 of the liquidation. A guaranty association or foreign guaranty
5 association shall have reasonable access to the records of
6 the insurer as necessary to carry out the guaranty's statutory
7 obligations.

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

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

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

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

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

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

34 u. Enter into agreements with a receiver or commissioner
35 of insurance of any other state relating to the rehabilita-

1 tion, liquidation, conservation or dissolution of an insurer
2 doing business in both states.

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

6 2. This section does not limit the liquidator or exclude
7 the liquidator to exercise a power not listed in subsection
8 1 that may be necessary or appropriate to accomplish the pur-
9 poses of this chapter.

10 Sec. 22. NEW SECTION. 507C.22 NOTICE TO CREDITORS AND
11 OTHERS.

12 1. Unless the court otherwise directs, the liquidator
13 shall give notice of the liquidation order as soon as pos-
14 sible by doing all of the following:

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

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

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

23 d. By first class mail to all persons known or reasonably
24 expected to have claims against the insurer, including policy-
25 holders, by mailing a notice to their last known address as
26 indicated by the records of the insurer.

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

31 2. Notice to potential claimants under subsection 1 shall
32 require claimants to file with the liquidator their claims
33 together with proper proofs of the claim under section 507C.36
34 on or before a date the liquidator shall specify in the notice.
35 The liquidator need not require persons claiming cash surrender

1 values or other investment values in life insurance and
2 annuities to file a claim. Claimants shall keep the liquidator
3 informed of changes of address.

4 3. If notice is given pursuant to this section, the dis-
5 tribution of assets of the insurer under this chapter shall
6 be conclusive with respect to claimants, whether or not a
7 claimant actually received notice.

8 Sec. 23. NEW SECTION. 507C.23 DUTIES OF AGENTS.

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

31 2. An agent failing to give notice or file a report of
32 compliance as required in subsection 1 may be subject to pay-
33 ment of a penalty of not more than one thousand dollars and
34 may have the agent's license suspended. The penalty is to
35 be imposed only after a hearing held by the commissioner.

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

4 Sec. 24. NEW SECTION. 507C.24 ACTIONS BY AND AGAINST
5 LIQUIDATOR.

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

23 2. Within two years or such additional time as applicable
24 law may permit, the liquidator may after the issuance of an
25 order for liquidation institute an action or proceeding on
26 behalf of the estate of the insurer upon any cause of ac-
27 tion against which the period of limitation fixed by applicable
28 law has not expired at the time of the filing of the petition
29 upon which the order is entered. Where a period of limitation
30 is fixed by agreement for instituting a suit or proceeding
31 upon a claim, or for filing a claim, proof of claim, proof
32 of loss, demand, notice, or the like, or where in a proceeding
33 a period of limitation is fixed for taking an action, filing
34 a claim or pleading, or doing an act, and where in any case
35 the period had not expired at the date of the filing of the

1 petition, the liquidator may, for the benefit of the estate,
2 take any action or do any act, required of or permitted to
3 the insurer, within a period of one hundred eighty days sub-
4 sequent to the entry of an order for liquidation, or within
5 a further period as is shown to the satisfaction of the court
6 not to be unfairly prejudicial to the other party.

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

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

18 Sec. 25. NEW SECTION. 507C.25 COLLECTION AND LIST OF
19 ASSETS.

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

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

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

34 Sec. 26. NEW SECTION. 507C.26 FRAUDULENT TRANSFERS PRIOR
35 TO PETITION.

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

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

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

29 c. A transfer which creates an equitable lien is not per-
30 fected if there are available means by which a legal lien
31 could be created.

32 d. A transfer not perfected prior to the filing of a peti-
33 tion for liquidation shall be deemed to be made immediately
34 before the filing of the successful petition.

35 e. This subsection applies whether or not there are or

1 were creditors who might have obtained a lien or persons who
2 might have become bona fide purchasers.

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

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

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

15 Sec. 27. NEW SECTION. 507C.27 FRAUDULENT TRANSFER AFTER
16 PETITION.

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

35 2. After a petition for rehabilitation or liquidation

1 has been filed and before either the receiver takes possession
2 of the property of the insurer or an order of rehabilitation
3 or liquidation is granted:

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

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

16 c. A person having actual knowledge of the pending re-
17 habilitation or liquidation is not acting in good faith.

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

24 3. This chapter shall not impair the negotiability of
25 currency or negotiable instruments.

26 Sec. 28. NEW SECTION. 507C.28 VOIDABLE PREFERENCES AND
27 LIENS.

28 1. a. A preference is a transfer of the property of an
29 insurer to or for the benefit of a creditor for an antecedent
30 debt made or suffered by the insurer within one year before
31 the filing of a successful petition for liquidation under
32 this chapter, the effect of which transfer may be to enable
33 the creditor to obtain a greater percentage of this debt than
34 another creditor of the same class would receive. If a
35 liquidation order is entered while the insurer is already

1 subject to a rehabilitation order, then the transfers are
2 preferences if made or suffered within one year before the
3 filing of the successful petition for rehabilitation, or
4 within two years before the filing of the successful petition
5 for liquidation, whichever time is shorter.

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

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

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

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

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

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

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

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

10 c. A transfer which creates an equitable lien is not per-
11 fected if there are available means by which a legal lien
12 could be created.

13 d. A transfer not perfected prior to the filing of a peti-
14 tion for liquidation shall be deemed to be made immediately
15 before the filing of the successful petition.

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

19 3. a. A lien obtainable by legal or equitable proceed-
20 ings upon a simple contract is one arising in the ordinary
21 course of the proceedings upon the entry or docketing of a
22 judgment or decree, or upon attachment, garnishment, execu-
23 tion, or like process, whether before, upon, or after judgment
24 or decree and whether before or upon levy. It does not in-
25 clude liens which under applicable law are given a special
26 priority over other liens which are prior in time.

27 b. A lien obtainable by legal or equitable proceedings
28 could become superior to the rights of a transferee, or a
29 purchaser could obtain rights superior to the rights of a
30 transferee within the meaning of subsection 2, if such con-
31 sequences would follow only from the lien or purchase itself,
32 or from the lien or purchase followed by a step wholly within
33 the control of the respective lienholder or purchaser, with
34 or without the aid of ministerial action by public officials.
35 However, a lien could not become superior and a purchase could

1 not create superior rights for the purpose of subsection 2
2 through an act subsequent to the obtaining of a lien or
3 subsequent to a purchase which requires the agreement or
4 concurrence of any third party or which requires further
5 judicial action or ruling.

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

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

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

33 7. The court shall have summary jurisdiction of a pro-
34 ceeding by the liquidator to hear and determine the rights
35 of parties under this section. Reasonable notice of hearing

1 in the proceeding shall be given to all parties in interest,
2 including the obligee of a releasing bond or other like obliga-
3 tion. Where an order is entered for the recovery of indemnify-
4 ing property in kind or for the avoidance of an indemnifying
5 lien, upon application of any party in interest, the court
6 shall in the same proceeding ascertain the value of the prop-
7 erty or lien. If the value is less than the amount for which
8 the property is indemnity or than the amount of the lien,
9 the transferee or lienholder may elect to retain the property
10 or lien upon payment of its value, as ascertained by the
11 court, to the liquidator within time as the court shall fix.

12 8. The liability of a surety under a releasing bond or
13 other like obligation shall be discharged to the extent of
14 the value of the indemnifying property recovered or the in-
15 demnifying lien nullified and avoided by the liquidator.
16 Where the property is retained under subsection 7, the
17 liability of the surety shall be discharged to the extent
18 of the amount paid to the liquidator.

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

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

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

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

16 b. A person receiving property from the insurer or the
17 benefit thereof as a preference voidable under subsection
18 1 is personally liable for the property and shall account
19 to the liquidator.

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

22 Sec. 29. NEW SECTION. 507C.29 CLAIMS OF HOLDERS OF VOID
23 OR VOIDABLE RIGHTS.

24 1. A claim of a creditor who has received or acquired
25 a preference, lien, conveyance, transfer, assignment, or en-
26 cumbrance, voidable under this chapter shall not be allowed
27 unless the creditor surrenders the preference, lien, con-
28 veyance, transfer, assignment, or encumbrance. If the avoid-
29 ance is effected by a proceeding in which a final judgment
30 has been entered, the claim shall not be allowed unless the
31 money is paid or the property is delivered to the liquidator
32 within thirty days from the date of the entering of the final
33 judgment. However, the court having jurisdiction over the
34 liquidation may allow further time if there is an appeal or
35 other continuation of the proceeding.

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

7 Sec. 30. NEW SECTION. 507C.30 SETOFFS AND COUNTERCLAIMS.

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

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

15 a. At the date of the filing of a petition for liquida-
16 tion, the obligation of the insurer to the person would not
17 entitle the person to share as a claimant in the assets of
18 the insurer.

19 b. The obligation of the insurer to the person was pur-
20 chased by or transferred to the person with a view to its
21 being used as a setoff.

22 c. The obligation of the person is to pay an assessment
23 levied against the members or subscribers of the insurer,
24 or is to pay a balance upon a subscription to the capital
25 stock of the insurer, or is in any other way in the nature
26 of a capital contribution.

27 d. The obligation of the person is to pay premiums whether
28 earned or unearned to the insurer.

29 Sec. 31. NEW SECTION. 507C.31 ASSESSMENTS.

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

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

1 b. The insurer's probable total liabilities.

2 c. The probable aggregate amount of the assessment neces-
3 sary to pay claims of creditors and expenses in full, including
4 expenses of administration and costs of collecting the assess-
5 ment.

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

8 2. a. Upon the basis of the report provided in subsec-
9 tion 1 and any supplement or amendment to the report, the
10 court may levy one or more assessments against all members
11 of the insurer who are subject to assessment.

12 b. Subject to any applicable legal limits on assess-
13 ability, the aggregate assessment shall be for the amount
14 that the sum of the probable liabilities, the expenses of
15 administration, and the estimated cost of collection of the
16 assessment, exceeds the value of existing assets. Due regard
17 shall be given to assessments that cannot be collected
18 economically.

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

24 4. The liquidator shall give notice of the order to show
25 cause by publication and by first class mail to a member li-
26 able under the order. The notice shall be mailed to the mem-
27 ber's last known address as it appears on the insurer's records
28 at least twenty days before the return day of the order to
29 show cause.

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

1 order.

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

9 6. The liquidator may enforce an order or collect a judg-
10 ment under subsection 5 by any lawful means.

11 Sec. 32. NEW SECTION. 507C.32 REINSURER'S LIABILITY.
12 Notwithstanding a provision in the reinsurance contract or
13 other agreement, the amount recoverable by the liquidator
14 from reinsurers shall not be reduced as a result of delin-
15 quency proceedings. Payment made directly to an insured or
16 other creditor shall not diminish the reinsurer's obligation
17 to the insurer's estate except when the reinsurance contract
18 provided for direct coverage of a named insured and the payment
19 was made in discharge of that obligation.

20 Sec. 33. NEW SECTION. 507C.33 RECOVERY OF PREMIUMS OWED.

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

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

1 2. Upon satisfactory evidence of a violation of this sec-
2 tion, the commissioner may pursue either one or both of the
3 following courses of action:

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

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

9 3. Before the commissioner shall take any action as set
10 forth in subsection 2, the commissioner shall give written
11 notice to the person, company, association, or exchange ac-
12 cused of violating the law, stating specifically the nature
13 of the alleged violation, and fixing a time and place, at
14 least ten days thereafter, when a hearing on the matter shall
15 be held. After such hearing, or upon failure of the accused
16 to appear at the hearing, if a violation is found the
17 commissioner shall impose those penalties under subsection
18 2 as deemed advisable.

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

22 Sec. 34. NEW SECTION. 507C.34 DOMICILIARY LIQUIDATOR'S
23 PROPOSAL TO DISTRIBUTE ASSETS.

24 1. Within one hundred twenty days of a final determination
25 of insolvency under this chapter as assets become available,
26 the liquidator shall make application to the court for ap-
27 proval of a proposal to disburse assets out of marshalled
28 assets to a guaranty association or foreign guaranty
29 association having obligations because of the insolvency.
30 If the liquidator determines that there are insufficient
31 assets to disburse, the application required by this section
32 shall be considered satisfied by a filing by the liquidator
33 stating the reasons for this determination.

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

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

2 (1) Expenses of administration.

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

5 (3) Claims falling within the priorities established in
6 section 507C.42, subsections 1 and 2.

7 b. Disbursement of the assets marshalled to date and sub-
8 sequent disbursement of assets as they become available.

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

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

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

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

33 4. With respect to an insolvent insurer writing life or
34 health insurance or annuities, the liquidator's proposal shall
35 provide for disbursements of assets to a guaranty association

1 or a foreign guaranty association covering life or health
2 insurance or annuities or to any other entity or organization
3 reinsuring, assuming, or guaranteeing policies or contracts
4 of insurance under the acts creating the associations.

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

13 Sec. 35. NEW SECTION. 507C.35 FILING OF CLAIMS.

14 1. Proof of all claims shall be filed with the liquidator
15 in the form required by section 507C.36 on or before the last
16 day for filing specified in the notice required under section
17 507C.22. However, proof of claims for cash surrender values
18 or other investment values in life insurance and annuities
19 need not be filed unless the liquidator expressly so requires.

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

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

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

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

35 3. The liquidator shall permit late filing claims to share

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

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

16 Sec. 36. NEW SECTION. 507C.36 PROOF OF CLAIM.

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

20 a. The particulars of the claim including the considera-
21 tion given for it.

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

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

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

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

29 f. A copy of the written instrument which is the founda-
30 tion of the claim.

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

33 2. A claim need not be considered or allowed if it does
34 not contain all the information in subsection 1 which is ap-
35 plicable. The liquidator may require that a prescribed form

1 be used and may require that other information and documents
2 be included.

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

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

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

20 Sec. 37. NEW SECTION. 507C.37 SPECIAL CLAIMS.

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

25 2. A claim may be allowed even if contingent, if it is
26 filed in accordance with section 507C.35. It may be allowed
27 and the claimant may participate in all distributions de-
28 clared after it is filed to the extent that it does not pre-
29 judice the orderly administration of the liquidation.

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

33 4. Claims made under employment contracts by directors,
34 principal officers, or persons in fact performing similar
35 functions or having similar powers are limited to payment

1 for services rendered prior to the issuance of an order of
2 rehabilitation or liquidation under section 507C.13 or 507C.18.

3 Sec. 38. NEW SECTION. 507C.38 SPECIAL PROVISIONS FOR
4 THIRD-PARTY CLAIMS.

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

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

15 3. The liquidator shall make recommendations to the court
16 under section 507C.42, for the allowance of an insured's claim
17 under subsection 2 after consideration of the probable outcome
18 of a pending action against the insured on which the claim
19 is based, the probable damages recoverable in the action and
20 the probable costs and expenses of defense. After allowance
21 by the court, the liquidator shall withhold dividends payable
22 on the claim, pending the outcome of litigation and negotiation
23 with the insured. If it seems appropriate, the liquidator
24 shall reconsider the claim on the basis of additional
25 information and amend the recommendations to the court. The
26 insured shall be afforded the same notice and opportunity
27 to be heard on all changes in the recommendation as in its
28 initial determination. The court may amend its allowance
29 as it finds appropriate. As claims against the insured are
30 settled or barred, the insured shall be paid from the amount
31 withheld the same percentage dividend as was paid on other
32 claims of like property, based on the lesser of:

33 a. The amount actually recovered from the insured by ac-
34 tion or paid by agreement plus the reasonable costs and
35 expenses of defense.

1 b. The amount allowed on the claims by the court.
2 After all claims are settled or barred, any sum remaining
3 from the amount withheld shall revert to the undistributed
4 assets of the insurer. Delay in final payment under this
5 subsection shall not be a reason for unreasonable delay of
6 final distribution and discharge of the liquidator.

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

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

21 Sec. 39. NEW SECTION. 507C.39 DISPUTED CLAIMS.

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

29 2. If objections are filed with the liquidator and the
30 liquidator does not alter the denial of the claim as a result
31 of the objections, the liquidator shall ask the court for
32 a hearing as soon as practicable and give notice of the hearing
33 by first class mail to the claimant or the claimant's attorney
34 and to any other persons directly affected. The notice shall
35 be given not less than ten nor more than thirty days before

1 the date of the hearing. The matter shall be heard by the
2 court or by a court-appointed referee. The referee shall
3 submit findings of fact along with a recommendation.

4 Sec. 40. NEW SECTION. 507C.40 CLAIMS OF SURETY. If
5 a creditor whose claim against an insurer is secured in whole
6 or in part, by the undertaking of another person, fails to
7 prove and file that claim, then the other person may do so
8 in the creditor's name. The surety shall be subrogated to
9 the rights of the creditor, whether the claim has been filed
10 by the creditor or by the surety in the creditor's name to
11 the extent that the surety discharges the undertaking.

12 However, in the absence of an agreement with the creditor
13 to the contrary, the surety is not entitled to any distribu-
14 tion until the amount paid to the creditor on the undertaking
15 plus the distributions paid on the claim from the insurer's
16 estate to the creditor equals the amount of the entire claim
17 of the creditor. An excess received by the creditor shall
18 be held by the creditor in trust for the surety. As used
19 in this section, "surety" is not intended to apply to a
20 guaranty association or foreign guaranty association.

21 Sec. 41. NEW SECTION. 507C.41 SECURED CREDITOR'S CLAIMS.

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

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

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

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

1 unsecured.

2 Sec. 42. NEW SECTION. 507C.42 PRIORITY OF DISTRIBUTION.

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

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

- 12 a. The actual and necessary costs of preserving or re-
13 covering the assets of the insurer.
14 b. Compensation for services rendered in the liquidation.
15 c. Necessary filing fees.
16 d. The fees and mileage payable to witnesses.
17 e. Reasonable attorney's fees.
18 f. The reasonable expenses of a guaranty association or
19 foreign guaranty association in handling claims.

20 2. CLASS 2. Debts due to employees for services performed
21 to the extent that they do not exceed one thousand dollars
22 and represent payment for services performed within one year
23 before the filing of the petition for liquidation. Officers
24 and directors are not entitled to the benefit of this priority.
25 The priority is in lieu of other similar priority which may
26 be authorized by law as to wages or compensation of employees.

27 3. CLASS 3. Claims under policies for losses incurred,
28 including third-party claims, claims against the insurer for
29 liability for bodily injury or for injury to or destruction
30 of tangible property which are not under policies, and claims
31 of a guaranty association or foreign guaranty association.
32 Claims under life insurance and annuity policies, whether
33 for death proceeds, annuity proceeds, or investment values
34 shall be treated as loss claims. That portion of a loss,
35 indemnification for which is provided by other benefits or

1 advantages recovered by the claimant, shall not be included
2 in this class, other than benefits or advantages recovered
3 or recoverable in discharge of familial obligations of support
4 or by way of succession at death or as proceeds of life
5 insurance, or as gratuities. A payment by an employer to
6 an employee is not a gratuity.

7 4. CLASS 4. Claims under nonassessable policies for un-
8 earned premium or other premium refunds and claims of general
9 creditors.

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

18 6. CLASS 6. Claims filed late or any other claims other
19 than claims under subsections 7 and 8.

20 7. CLASS 7. Surplus or contribution notes, or similar
21 obligations, and premium refunds on assessable policies.
22 Payments to members of domestic mutual insurance companies
23 is limited in accordance with law.

24 8. CLASS 8. The claims of shareholders or other owners.

25 Sec. 43. NEW SECTION. 507C.43 LIQUIDATOR'S RECOMMENDA-
26 TIONS TO THE COURT.

27 1. The liquidator shall review claims duly filed in the
28 liquidation and shall make further investigation as neces-
29 sary. The liquidator may compound, compromise or in any other
30 manner negotiate the amount for which claims will be
31 recommended to the court except where the liquidator is re-
32 quired by law to accept claims as settled by a person or or-
33 ganization, including a guaranty association or foreign
34 guaranty association. Unresolved disputes shall be determined
35 under section 507C.39. As soon as practicable, the liquidator

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

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

17 Sec. 44. NEW SECTION. 507C.44 DISTRIBUTION OF ASSETS.

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

26 Sec. 45. NEW SECTION. 507C.45 UNCLAIMED AND WITHHELD
27 FUNDS.

28 1. Unclaimed funds subject to distribution remaining in
29 the liquidator's hands when the liquidator is ready to apply
30 to the court for discharge, including the amount distributable
31 to a creditor, shareholder, member, or other person who is
32 unknown or cannot be found, shall be deposited with the state
33 treasurer, and shall be paid without interest, except in ac-
34 cordance with section 507C.42, to the person entitled or the
35 person's legal representative upon proof satisfactory to the

1 state treasurer of the right to the funds. An amount on de-
2 posit not claimed within six years from the discharge of the
3 liquidator is deemed to have been abandoned and shall become
4 the property of the state without formal escheat proceedings
5 and be deposited with the general fund.

6 2. Funds withheld under section 507C.37 and not dis-
7 tributed shall upon discharge of the liquidator be deposited
8 with the state treasurer and paid in accordance with section
9 507C.42. Sums remaining which under section 507C.42 would
10 revert to the undistributed assets of the insurer shall be
11 transferred to the state treasurer and become the property
12 of the state under subsection 1, unless the commissioner in
13 the commissioner's discretion petitions the court to reopen
14 the liquidation under section 507C.47.

15 Sec. 46. NEW SECTION. 507C.46 TERMINATION OF PROCEEDINGS.

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

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

27 Sec. 47. NEW SECTION. 507C.47 REOPENING LIQUIDATION.

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

35 Sec. 48. NEW SECTION. 507C.48 DISPOSITION OF RECORDS

1 DURING AND AFTER TERMINATION OF LIQUIDATION. If it appears
2 to the commissioner that the records of an insurer in process
3 of liquidation or completely liquidated are no longer useful,
4 the commissioner may recommend to the court and the court
5 shall direct what records shall be retained for future
6 reference and what shall be destroyed.

7 Sec. 49. NEW SECTION. 507C.49 EXTERNAL AUDIT OF THE
8 RECEIVER'S BOOKS. The court may order audits to be made of
9 the books of the commissioner relating to a receivership
10 established under this chapter, and a report of each audit
11 shall be filed with the commissioner and with the court.
12 The books, records, and other documents of the receivership
13 shall be made available to the auditor at any time without
14 notice. The expense of an audit shall be considered a cost
15 of administration of the receivership.

16 DIVISION IV

17 INTERSTATE RELATIONS

18 Sec. 50. NEW SECTION. 507C.50 CONSERVATION OF PROPERTY
19 OF FOREIGN OR ALIEN INSURERS FOUND IN THIS STATE.

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

26 a. Any of the grounds in section 507C.12.

27 b. That property has been sequestered by official action
28 in the insurer's domiciliary state, or in any other state.

29 c. That enough of its property has been sequestered in
30 a foreign country to give reasonable cause to fear that the
31 insurer is or may become insolvent.

32 d. That both of the following are found:

33 (1) That its certificate of authority to do business in
34 this state has been revoked or that no certificate was ever
35 issued.

1 (2) That there are residents of this state with outstanding
2 claims or outstanding policies.

3 2. When an order is sought under subsection 1, the court
4 shall cause the insurer to be given notice and time to re-
5 spond to the petition as is reasonable under the circumstances.

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

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

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

27 Sec. 51. NEW SECTION. 507C.51 LIQUIDATION OF PROPERTY
28 OF FOREIGN OR ALIEN INSURERS FOUND IN THIS STATE.

29 1. If a domiciliary receiver has not been appointed, the
30 commissioner may apply to the court by verified petition for
31 an order directing the commissioner to liquidate the assets
32 found in this state of a foreign insurer or an alien insurer
33 not domiciled in this state on any of the following grounds:

34 a. Any of the grounds in section 507C.12 or 507C.17.

35 b. Any of the grounds specified in section 507C.50, sub-

1 section 1, paragraphs "b" through "d".

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

5 3. If it appears to the court that the best interests
6 of creditors, policyholders, and the public require, the court
7 may issue an order to liquidate in whatever terms it deems
8 appropriate. The filing or recording of the order with the
9 clerk of the court or the recorder of deeds of the county
10 in which the principal business of the company is located
11 or the county in which its principal office or place of
12 business is located, is same notice as a deed, bill of sale,
13 or other evidence of title duly filed or recorded with that
14 recorder of deeds.

15 4. If a domiciliary liquidator is appointed in a reciprocal
16 state while a liquidation is proceeding under this section,
17 the liquidator under this section shall act as ancillary re-
18 ceiver under section 507C.53. If a domiciliary liquidator
19 is appointed in a nonreciprocal state while a liquidation
20 is proceeding under this section, the liquidator under this
21 section may petition the court for permission to act as
22 ancillary receiver under section 507C.53.

23 5. On the same grounds as are specified in subsection
24 1, the commissioner may petition an appropriate federal
25 district court to be appointed receiver to liquidate that
26 portion of the insurer's assets and business over which the
27 court will exercise jurisdiction, or any lesser part that
28 the commissioner deems desirable for the protection of the
29 policyholders and creditors in this state.

30 6. When the commissioner has liquidated the assets of
31 a foreign or alien insurer under this section, the court may
32 order the commissioner to pay claims of residents of this
33 state against the insurer under rules as to the liquidation
34 of insurers under this chapter as are otherwise compatible
35 with this section.

1 Sec. 52. NEW SECTION. 507C.52 DOMICILIARY LIQUIDATORS
2 IN OTHER STATES.

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

19 2. If a domiciliary liquidator is appointed for an insurer
20 not domiciled in a reciprocal state, the commissioner of
21 this state shall be vested with the title to the property,
22 contracts and rights of action, books, accounts and other
23 records of the insurer located in this state, at the same
24 time that the domiciliary liquidator is vested with title
25 in the domicile. The commissioner of this state may petition
26 for a conservation or liquidation order under section 507C.50
27 or 507C.51, or for an ancillary receivership under section
28 507C.53, or after approval by the court may transfer title
29 to the domiciliary liquidator, as the interests of justice
30 and the equitable distribution of the assets require.

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

1 proceedings.

2 Sec. 53. NEW SECTION. 507C.53 ANCILLARY FORMAL PRO-
3 CEEDINGS.

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

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

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

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

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

35 4. As to assets and books, accounts, and other records

1 in their respective states, when a domiciliary liquidator
2 has been appointed in this state, ancillary receivers appointed
3 in reciprocal states shall have corresponding rights, duties
4 and powers to those provided in subsection 3 for ancillary
5 receivers appointed in this state.

6 Sec. 54. NEW SECTION. 507C.54 ANCILLARY SUMMARY PRO-
7 CEEDINGS. In the sole discretion of the commissioner, the
8 commissioner may institute proceedings under sections 507C.9
9 through 507C.11 at the request of the commissioner or other
10 appropriate insurance official of the domiciliary state of
11 a foreign or alien insurer having property located in this
12 state.

13 Sec. 55. NEW SECTION. 507C.55 CLAIMS OF NONRESIDENTS
14 AGAINST INSURERS DOMICILED IN THIS STATE.

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

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

1 Sec. 56. NEW SECTION. 507C.56 CLAIMS OF RESIDENTS AGAINST
2 INSURERS DOMICILED IN RECIPROCAL STATES.

3 1. In a liquidation proceeding in a reciprocal state
4 against an insurer domiciled in that state, claimants against
5 the insurer who reside within this state may file claims
6 either with the ancillary receiver in this state, or with
7 the domiciliary liquidator. Claims shall be filed on or
8 before the last dates fixed for the filing of claims in the
9 domiciliary liquidation proceeding.

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

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

32 Sec. 57. NEW SECTION. 507C.57 ATTACHMENT, GARNISHMENT,
33 AND LEVY OF EXECUTION. An action or proceeding in the nature
34 of an attachment, garnishment, or levy of execution shall
35 not be commenced or maintained in this state against the

1 delinquent insurer or its assets during the pendency in this
2 or any other state of a liquidation proceeding, whether called
3 by that name or not.

4 Sec. 58. NEW SECTION. 507C.58 INTERSTATE PRIORITIES.

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

11 2. The owners of special deposit claims against an in-
12 surer for which a liquidator is appointed in this or any other
13 state is given priority against the special deposits in ac-
14 cordance with the statutes governing the creation and mainte-
15 nance of the deposits. If there is a deficiency in a deposit
16 so that the claims secured by it are not fully discharged
17 from it, the claimants may share in the general assets.
18 However, the sharing shall be deferred until general creditors
19 and claimants against other special deposits who have received
20 smaller percentages from their respective special deposits
21 have been paid percentages of their claims equal to the per-
22 centage paid from the special deposit.

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

31 Sec. 59. NEW SECTION. 507C.59 SUBORDINATION OF CLAIMS
32 FOR NONCOOPERATION. If an ancillary receiver in another state
33 or foreign country, whether called by that name or not, fails
34 to transfer to the domiciliary liquidator in this state assets
35 within the ancillary receiver's control other than special

1 deposits, diminished only by the expenses of the ancillary
2 receivership, the claims filed in the ancillary receivership,
3 other than special deposit claims or secured claims, shall
4 be placed in the class of claims under section 507C.42,
5 subsection 7.

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HOUSE FILE 2501

AN ACT
RELATING TO THE SUPERVISION, REHABILITATION, AND LIQUIDATION
OF INSURANCE COMPANIES AND PROVIDING PENALTIES.

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

DIVISION I
GENERAL PROVISIONS

Section 1. NEW SECTION. 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 insured, 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.

Sec. 2. NEW SECTION. 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 insurance department.
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 property, real or personal, not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, "general assets" includes all property or its proceeds in excess of the amount necessary to discharge the sum or sums secured by the property or its proceeds. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, shall be treated as general assets.

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

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

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

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

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

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

For purposes of this subsection "liabilities" shall include but not be limited to reserves required by statute or by the insurance department'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 grant 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.

Sec. 3. NEW SECTION. 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 512, 512A, and 514.

Sec. 4. NEW SECTION. 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 rehabilitation or liquidation order is in effect when the action is commenced, or is an agent or broker of or for 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.

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.

Sec. 5. NEW SECTION. 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.

Sec. 6. NEW SECTION. 5070.6 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 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 or information or property of or pertaining to the insurer and in the commissioner's possession, custody or control.
- 3. 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.
- 4. This section does not abridge otherwise existing legal rights, including the right to resist a petition for liquidation, other delinquency proceedings, or other orders.
- 5. A person included within subsection 2 who fails to cooperate with the commissioner, or a person who obstructs or interferes with the commissioner in the conduct of a delinquency proceeding or an investigation preliminary or incidental to a delinquency proceeding, or who violates a valid order the commissioner issued under this chapter is:
 - a. Guilty of an aggravated misdemeanor; and
 - b. After a hearing, subject to the imposition by the commissioner of a civil penalty not to exceed ten thousand dollars and subject to the revocation or suspension of insurance licenses issued by the commissioner.

Sec. 7. NEW SECTION. 5070.7 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.

Sec. 8. NEW SECTION. 5070.8 CONTINUATION OF DELINQUENCY PROCEEDINGS. A proceeding commenced before the effective date of this Act shall be deemed to have commenced under this Act 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 Act not been enacted.

DIVISION II

SUMMARY PROCEEDINGS

Sec. 9. NEW SECTION. 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.

Sec. 10. NEW SECTION. 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.

Sec. 11. NEW SECTION. 507C.11 CONFIDENTIALITY OF HEARINGS. Notwithstanding chapter 68A, in all administrative proceedings pursuant to sections 507C.9 and 507C.10 all records and documents pertaining to or a part of the record of the proceedings are confidential except as is necessary to obtain compliance with a proceeding. However, the records may be released if either of the following:

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.

DIVISION III

FORMAL PROCEEDINGS

Sec. 12. NEW SECTION. 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 or 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.

Sec. 13. NEW SECTION. 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 shall require accounting to the court by the rehabilitator. Accountings shall be at intervals the court specified in the order.

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

Sec. 14. NEW SECTION. 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 insurance department. Amounts so advanced for expenses of administration shall be repaid to the commissioner for the use of the insurance department 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 imposi-

tion 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.

Sec. 15. NEW SECTION. 507C.15 ACTIONS BY AND AGAINST REHABILITATOR.

1. A court, 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.

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.

Sec. 16. NEW SECTION. 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.

Sec. 17. NEW SECTION. 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.

Sec. 18. NEW SECTION. 507C.18 LIQUIDATION ORDERS.

1. An order to liquidate the business of a domestic insurer shall appoint the commissioner as liquidator and shall direct the liquidator to immediately take possession of the assets of the insurer and to administer them under the general supervision of the court. The liquidator shall be vested with the title to the property, contracts, and rights of action and the books and records of the insurer ordered liquidated, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the clerk of the court and the recorder of deeds of the county in which its principal office or place of business is located, or, in the case of real estate with the recorder of deeds of the county where the property is located, shall be 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 shall 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 shall be at intervals specified in the order.

Sec. 19. NEW SECTION. 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 of 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.

Sec. 20. NEW SECTION. 507C.20 DISSOLUTION 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.

Sec. 21. NEW SECTION. 507C.21 POWERS OF LIQUIDATOR.

1. The liquidator may:

a. Appoint a special deputy to act for the liquidator under this chapter, and to 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 to 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 insurance department. Amounts so advanced for expenses of administration shall be repaid to the commissioner for the use of the insurance department 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 to execute and deliver documents necessary to that transaction for the purpose of facilitating the liquidation.

k. Enter into contracts as are necessary to carry out the order to liquidate and to 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.

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

Sec. 22. NEW SECTION. 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. 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.

Sec. 23. NEW SECTION. 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 give notice or file a report of compliance 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.

Sec. 24. NEW SECTION. 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 nor shall existing actions be maintained or further presented after issuance of the order. The courts of this state shall give full faith and credit to injunctions against the liquidator or the insurer or the continuation of existing actions against the liquidator or the insurer, when the injunctions are included in an order to liquidate an insurer issued pursuant to corresponding provisions in other states. Whenever in the liquidator's judgment, protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, the liquidator may intervene in the action. The liquidator may defend at the expense of the estate of the insurer an action in which the liquidator intervenes under this section.

2. Within two years or such additional time as applicable law may permit, the liquidator may after the issuance of an order for liquidation institute an action or proceeding on behalf of the estate of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which the order is entered. Where a period of limitation is fixed by agreement for instituting a suit or proceeding upon a claim, or for filing a claim, proof of claim, proof of loss, demand, notice, or the like, or where in a proceeding a period of limitation is fixed for taking an action, filing a claim or pleading, or doing an act, and where in any case 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.

Sec. 25. NEW SECTION. 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.

Sec. 26. NEW SECTION. 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.

Sec. 27. NEW SECTION. 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. This chapter shall not impair the negotiability of currency or negotiable instruments.

Sec. 28. NEW SECTION. 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 the bond or obligation 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.

Sec. 29. NEW SECTION. 567C.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.

Sec. 30. NEW SECTION. 507C.30 SETOFFS AND COUNTERCLAIMS.

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 setoff or counterclaim shall not be allowed in favor of a person where any of the following are found:

a. 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.

b. 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.

c. 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.

d. The obligation of the person is to pay premiums whether earned or unearned to the insurer.

Sec. 31. NEW SECTION. 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.

Sec. 32. NEW SECTION. 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 the reinsurance contract provided for direct coverage of a named insured and the payment was made in discharge of that obligation.

Sec. 33. NEW SECTION. 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. 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.

Sec. 34. NEW SECTION. 507C.34 DECEASED 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. 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, subsections 1 and 2

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".

Sec. 35. NEW SECTION. 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.

Sec. 36. NEW SECTION. 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.

Sec. 37. NEW SECTION. 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.

Sec. 38. NEW SECTION. 507C.38 SPECIAL PROVISIONS FOR THIRD-PARTY CLAIMS.

1. If a third party asserts a cause of action against an insured or 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.

Sec. 39. NEW SECTION. 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.

Sec. 40. NEW SECTION. 507C.40 CLAIMS OF SURETY. If a creditor whose claim against an insurer is secured in whole or in part, by the undertaking of another person, fails to prove and file that claim, then the other person may do so in the creditor's name. The surety shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the surety in the creditor's name to the extent that the surety discharges the undertaking.

However, in the absence of an agreement with the creditor to the contrary, the surety is not entitled to any distribution until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the insurer's estate to the creditor equals the amount of the entire claim of the creditor. An excess received by the creditor shall be held by the creditor in trust for the surety. As used in this section, "surety" is not intended to apply to a guaranty association or foreign guaranty association.

Sec. 41. NEW SECTION. 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.

Sec. 42. NEW SECTION. 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 services rendered in the liquidation

c. Necessary filing fees.

d. The fees and mileage payable to witnesses.

e. Reasonable attorney's fees.

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

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

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

4. CLASS 4. Claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors.

5. CLASS 5. Claims of the federal or any state or local government. 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. The remainder of such claims shall be postponed to the class of claims under subsection 8.

6. CLASS 6. Claims filed late or any other claims other than claims under subsections 7 and 8.

7. CLASS 7. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies is limited in accordance with law.

8. CLASS 8. The claims of shareholders or other owners.

Sec. 43. NEW SECTION. 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.

Sec. 44. NEW SECTION. 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.

Sec. 45. NEW SECTION. 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.

Sec. 46. NEW SECTION. 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 including reasonable attorney's fee of the liquidator in resisting the application.

Sec. 47. NEW SECTION. 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.

Sec. 48. NEW SECTION. 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.

Sec. 49. NEW SECTION. 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.

DIVISION IV

INTERSTATE RELATIONS

Sec. 50. NEW SECTION. 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 commission 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.

Sec. 51. NEW SECTION. 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.

Sec. 52. NEW SECTION. 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, and rights of action, agents' balances, books, accounts and other records of the insurer located in this state. The date of vesting is the date of the filing of the petition, if that date is specified by the domiciliary law for the vesting of property in the domiciliary state. Otherwise, the date of vesting shall be the date of entry of the order directing possession to be taken. The domiciliary liquidator may immediately recover balances due from agents and obtain possession of the books, accounts and other records of the insurer located in this state. Subject to section 507C.53, the domiciliary liquidator may also recover all other assets of the insurer located in this state.

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.

Sec. 53. NEW SECTION. 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 is 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.

Sec. 54. NEW SECTION. 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.

Sec. 55. NEW SECTION. 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 notice of the claims and opportunity to appear and be heard is afforded the domiciliary liquidator of this state as provided in section 507C.56, subsection 2 with respect to ancillary proceedings, the final allowance of claims by the courts in ancillary proceedings in reciprocal states shall be conclusive as to amount and as to priority against special deposits or other security located in such ancillary states, but shall not be conclusive with respect to priorities against general assets under section 507C.42.

Sec. 56. NEW SECTION. 507C.56 CLAIMS OF RESIDENTS AGAINST INSURERS DOMICILED IN RECIPROCAL STATES.

1. In a liquidation proceeding in a reciprocal state against an insurer domiciled in that state, 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. 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.

Sec. 57. NEW SECTION. 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.

Sec. 58. NEW SECTION. 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.

Sec. 59. NEW SECTION. 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 7.

DONALD D. AVENSON
Speaker of the House

ROBERT T. ANDERSON
President of the Senate

I hereby certify that this bill originated in the House and
is known as House File 2501, Seventieth General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved May 2, 1984

TERRY E. BRANSTAD
Governor