

17B:32-31

LEGISLATIVE HISTORY CHECKLIST
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"Life & Health Insurers
Rehabilitation & Liquidation Act"

NJSA: 17B:32-31 et al

LAWS OF: 1992

CHAPTER: 65

BILL NO: S719

SPONSOR(S) Sinagra & others

DATE INTRODUCED: May 7, 1992

COMMITTEE: ASSEMBLY: ---

SENATE: Commerce, Budget & Appropriations

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See newspaper clippings--attached
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[FIRST REPRINT]

SENATE, No. 719

STATE OF NEW JERSEY

INTRODUCED MAY 7, 1992

By Senators SINAGRA, SCOTT, Haines,
O' Connor and Bennett

1 AN ACT concerning the rehabilitation and liquidation of certain
2 insurers and repealing parts of the statutory law.

3

4 BE IT ENACTED *by the Senate and General Assembly of the*
5 *State of New Jersey:*

6 1. a. This act shall be known and may be cited as the "Life
7 and Health Insurers Rehabilitation and Liquidation Act."

8 b. The purpose of this act is the protection of the interests of
9 insureds, claimants, creditors and the public generally through:

10 (1) Early detection of any potentially dangerous condition in an
11 insurer, and prompt application of appropriate corrective
12 measures;

13 (2) Improved methods for rehabilitating insurers, involving the
14 cooperation and management expertise of the life and health
15 insurance industry;

16 (3) Enhanced efficiency and economy of liquidation, through
17 clarification of the law, to minimize legal uncertainty and
18 litigation;

19 (4) Equitable apportionment of any unavoidable loss;

20 (5) Lessening the problems of interstate rehabilitation and
21 liquidation by facilitating cooperation between states in the
22 liquidation process, and by extending the scope of personal
23 jurisdiction over debtors of the insurer outside this State;

24 (6) Regulation of the insurance industry by the impact of the
25 law relating to delinquency procedures and substantive rules on
26 the entire life and health insurance industry; and

27 (7) Providing for a comprehensive scheme for the
28 rehabilitation and liquidation of life and health insurers and
29 others subject to this act as part of the regulation of the business
30 of insurance, insurance industry and insurers in this State.
31 Proceedings in cases of insurer insolvency and delinquency are
32 deemed an integral aspect of the business of insurance and are of
33 vital public interest and concern.

34 2. The proceedings authorized by this act shall be applied to:

35 a. All insurers who are doing, or have done, insurance business
36 in this State, and against whom claims arising from that business
37 may exist now or in the future.

38 b. All insurers who purport to do insurance business in this
39 State.

40 c. All insurers who have insureds residing in this State.

41 d. All other persons organized or in the process of organizing
42 with the intent to do life or health insurance or annuity business

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SCM committee amendments adopted June 8, 1992.

1 in this State.

2 3. For the purposes of this act:

3 "Ancillary state" means any state other than a domiciliary
4 state.

5 "Commissioner" means the Commissioner of Insurance of this
6 State.

7 "Creditor" is a person having any claim against the insurer,
8 whether matured or unmatured, liquidated or unliquidated,
9 secured or unsecured, absolute, fixed or contingent.

10 "Delinquency proceeding" means any proceeding instituted
11 against an insurer for the purpose of liquidating, rehabilitating,
12 reorganizing or conserving that insurer, and any summary
13 proceeding under section 9 of this act. "Formal delinquency
14 proceeding" means any liquidation or rehabilitation proceeding.

15 "Department" means the Department of Insurance.

16 "Doing business" includes any of the following acts, whether
17 effected by mail or otherwise:

18 (1) The issuance or delivery of contracts of life or health
19 insurance or annuity to persons residing in this State;

20 (2) The solicitation of applications for those contracts, or
21 other negotiations preliminary to the execution of those
22 contracts;

23 (3) The collection of premiums, membership fees, assessments
24 or other consideration for those contracts;

25 (4) The transaction of matters subsequent to execution of
26 those contracts and arising out of them; or

27 (5) Operating under a license or certificate of authority, as an
28 insurer, issued by the department.

29 "Domiciliary state" means the state in which an insurer is
30 incorporated or organized; or, in the case of an alien insurer, its
31 state of entry.

32 "Fair consideration" is given for property or obligation:

33 (1) When in exchange for that property or obligation, as a fair
34 equivalent therefor, and in good faith, property is conveyed or
35 services are rendered or an obligation is incurred or an
36 antecedent debt is satisfied; or

37 (2) When that property or obligation is received in good faith
38 to secure a present advance or antecedent debt in an amount not
39 disproportionately small as compared to the value of the property
40 or obligation obtained.

41 "Foreign country" means any other jurisdiction not in any state.

42 "General assets" means all property, real, personal or
43 otherwise, not specifically mortgaged, pledged, deposited or
44 otherwise encumbered for the security or benefit of specified
45 persons or classes of persons. As to specifically encumbered
46 property, "general assets" includes all such property or its
47 proceeds in excess of the amount necessary to discharge the sum
48 or sums secured thereby. Assets held in trust and on deposit for
49 the security or benefit of all policyholders or all policyholders
50 and creditors, in more than a single state, shall be treated as
51 general assets.

52 "Guaranty association" means the New Jersey Life and Health
53 Insurance Guaranty Association created in subsection a. of
54 section 5 of P.L.1991, c.208 (C.17B:32A-5) and any other similar

1 entity now or hereafter created by any other law of this State for
2 the payment of claims of insolvent insurers. "Foreign guaranty
3 association" means any similar entities now in existence in, or
4 hereafter created by, any law of any other state.

5 "Insolvency" or "insolvent" means:

6 (1) That an insurer: (a) is unable to pay its obligations when
7 they are due, or (b) its admitted assets do not exceed its
8 liabilities plus the greater of:

9 (i) Any capital and surplus required by law for its organization;
10 or

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

13 (2) As to any insurer licensed to do business in this State, as of
14 the effective date of this act, which does not meet the standard
15 established under paragraph (1) of this definition, the term
16 "insolvency" or "insolvent" shall mean, for a period not to exceed
17 three years from the effective date of this act, that it is unable
18 to pay its obligations when they are due or that its admitted
19 assets do not exceed its liabilities plus any required capital
20 contribution ordered by the commissioner under provisions of the
21 insurance law.

22 (3) For purposes of the definition of "insolvency" or
23 "insolvent," "liabilities" shall include, but not be limited to,
24 reserves required by law or by regulations of the department or
25 specific requirements imposed by the commissioner upon an
26 insurer at the time of admission or subsequent thereto.

27 "Insurer" includes every person engaged as indemnitor or
28 contractor in the business of life insurance, health insurance or of
29 annuities and every such person subject to the supervisory
30 authority of, or to liquidation, rehabilitation, reorganization or
31 conservation by, the commissioner or the equivalent insurance
32 regulator of another state; every person purporting to be engaged
33 as indemnitor or contractor in the business of life insurance,
34 health insurance or of annuities in this State; every person in the
35 process of organization to become engaged as indemnitor or
36 contractor in the business of life insurance, health insurance or of
37 annuities; and every fraternal benefit society established
38 pursuant to P.L.1959, c.167 (C.17:44A-1 et seq.); every mutual
39 benefit association established pursuant to R.S.17:45-1 et seq.;
40 every hospital service corporation established pursuant to
41 P.L.1938, c.366 (C.17:48-1 et seq.); every health service
42 corporation established pursuant to P.L.1985, c.236 (C.17:48E-1
43 et seq.); every medical service corporation established pursuant
44 to P.L.1940, c.74 (C.17:48A-1 et seq.); every dental service
45 corporation established pursuant to P.L.1968, c.305 (C.17:48C-1
46 et seq.); every dental plan organization established pursuant to
47 P.L.1979, c.478 (C.17:48D-1 et seq.); and every health
48 maintenance organization established pursuant to P.L.1973, c.337
49 (C.26:2J-1 et seq.).

50 "Preferred claim" means any claim which is accorded priority
51 of payment from the general assets of the insurer pursuant to the
52 provisions of this act.

53 "Receiver" means receiver, liquidator, rehabilitator or
54 conservator as the context requires.

1 "Reciprocal state" means any state, other than this State, in
2 which in substance and effect, subsection a. of section 17 and
3 sections 51, 52 and 54 through 56 of this act are in force, and in
4 which provisions are in force requiring the commissioner or
5 equivalent official to be the receiver of a delinquent insurer, and
6 in which some provision exists for the avoidance of fraudulent
7 conveyances and preferential transfers.

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

13 "Special deposit claim" means any claim secured by a deposit
14 made pursuant to law for the security or benefit of a limited
15 class or classes of persons, but not including any claim secured by
16 general assets.

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

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

27 4. a. No delinquency proceeding shall be commenced under
28 this act by anyone other than the commissioner and no court shall
29 have jurisdiction to entertain, hear or determine any proceeding
30 commenced by any other person.

31 b. No court of this State shall have jurisdiction to entertain,
32 hear or determine any complaint praying for the dissolution,
33 liquidation, rehabilitation, sequestration, conservation or
34 receivership of any insurer; or praying for an injunction or
35 restraining order or other relief preliminary to, incidental to or
36 relating to such proceedings other than in accordance with this
37 act.

38 c. In addition to other grounds for jurisdiction provided by the
39 law of this state, a court of this State having jurisdiction of the
40 subject matter has jurisdiction over a person served pursuant to
41 the Rules Governing the Courts of the State of New Jersey or
42 other applicable provisions of law in an action brought by the
43 receiver of a domestic insurer or an alien insurer domiciled in
44 this State:

45 (1) If the person served is an agent, broker or other person who
46 has at any time written policies of insurance for, or has acted in
47 any manner whatsoever on behalf of, an insurer against which a
48 delinquency proceeding has been instituted, in any action
49 resulting from or incident to such a relationship with the insurer;

50 (2) If the person served is a reinsurer who has at any time
51 entered into a contract of reinsurance with an insurer against
52 which a delinquency proceeding has been instituted, or is an agent
53 or broker of or for the reinsurer, in any action on or incident to
54 the reinsurance contract;

- 1 (3) If the person served is or has been an officer, director,
2 manager, trustee, organizer, promoter or other person in a
3 position of comparable authority or influence over an insurer
4 against which a delinquency proceeding has been instituted, in
5 any action resulting from or incident to such a relationship with
6 the insurer;
- 7 (4) If the person served is or was at the time of the institution
8 of the delinquency proceeding against the insurer holding assets
9 in which the receiver claims an interest on behalf of the insurer,
10 in any action concerning the assets; or
- 11 (5) If the person served is obligated to the insurer in any way
12 whatsoever, in any action on or incident to the obligation.
- 13 d. If the court on motion of any party finds that any action
14 should as a matter of substantial justice be tried in a forum
15 outside this State, the court may enter an appropriate order to
16 stay further proceedings on the action in this State.
- 17 e. All action authorized pursuant to this section shall be
18 brought in the Superior Court.
- 19 5. a. Any receiver appointed in a proceeding under this act
20 may at any time apply for, and the Superior Court may grant,
21 such restraining orders, preliminary and permanent injunctions,
22 and other orders as may be deemed necessary and proper to
23 prevent:
- 24 (1) The transaction of further business;
25 (2) The transfer of property;
26 (3) Interference with the receiver or with a proceeding under
27 this act;
28 (4) Waste of the insurer's assets;
29 (5) Dissipation and transfer of bank accounts;
30 (6) The institution or further prosecution of any actions or
31 proceedings;
32 (7) The obtaining of preferences, judgments, attachments,
33 garnishments or liens against the insurer, its assets or its
34 policyholders;
35 (8) The levying of execution against the insurer, its assets or
36 its policyholders;
37 (9) The making of any sale or deed for nonpayment of taxes or
38 assessments that would lessen the value of the assets of the
39 insurer;
40 (10) The withholding from the receiver of books, accounts,
41 documents or other records relating to the business of the
42 insurer; or
43 (11) Any other threatened or contemplated action that might
44 lessen the value of the insurer's assets or prejudice the rights of
45 policyholders, creditors or shareholders, or the administration of
46 any proceeding under this act.
- 47 b. The receiver may apply to any court outside of this State
48 for the relief described in subsection a. of this section.
- 49 6. a. Any officer, manager, director, trustee, owner,
50 employee or agent of any insurer, or any other person with
51 authority over or in charge of any segment of the insurer's
52 affairs, including any person who exercises control directly or
53 indirectly over activities of the insurer through any holding
54 company or other affiliate of the insurer, shall cooperate with

1 the commissioner in any proceeding under this act or any
2 investigation preliminary to the proceeding. The term
3 "cooperate" shall include, but shall not be limited to, the
4 following:

5 (1) Replying promptly in writing to any inquiry from the
6 commissioner requesting such a reply; and

7 (2) Making available to the commissioner any books, accounts,
8 documents, or other records or information or property of or
9 pertaining to the insurer and in his possession, custody or control.

10 b. No person shall obstruct or interfere with the commissioner
11 in the conduct of any delinquency proceeding or any investigation
12 preliminary or incidental thereto.

13 c. This section shall not be construed to abridge any other
14 existing legal rights, including the right to resist a petition for
15 liquidation or other delinquency proceedings, or other orders.

16 d. Any person who fails to cooperate with the commissioner
17 pursuant to subsection a. of this section, or who obstructs or
18 interferes with the commissioner pursuant to subsection b. of this
19 section, or who violates any order the commissioner issued validly
20 under this act shall:

21 (1) Be subject to a civil penalty of not more than \$10,000 or to
22 imprisonment for not more than one year, or both; or

23 (2) After a hearing, be subject to an administrative penalty
24 imposed by the commissioner of not more than \$10,000 and to
25 the revocation or suspension of any insurance licenses issued by
26 the commissioner.

27 7. ^{1a.} Every proceeding heretofore commenced under the
28 laws in effect before the enactment of this act shall be deemed
29 to have been commenced under this act henceforth for all
30 purposes and shall be governed by the provisions of this act,
31 including, but not limited to, section 41 of this act, except that,
32 in the discretion of the commissioner, the proceeding may be
33 continued, in whole or in part, as it would have been continued
34 had this act not been enacted.

35 ^{1b.} Notwithstanding the provisions of subsection a. of this
36 section and section 41 of this act to the contrary, one-half of
37 the direct, non-contingent obligations incurred on or after August
38 9, 1991, which prior to May 4, 1992, the insurer in rehabilitation
39 under the supervision of the commissioner as rehabilitator had
40 stipulated were due, and which stipulation has been ordered by
41 the court supervising pending delinquency proceedings, shall have
42 a priority of distribution pursuant to section 41 of this act which
43 is after Class 3 claims under paragraph (3) of subsection a. of
44 section 41 of this act and before Class 4 claims under paragraph
45 (4) of subsection a. of section 41 of this act.¹

46 8. No insurer that is subject to any delinquency proceedings,
47 whether administrative or judicial, shall:

48 a. Be released from that proceeding, unless that proceeding is
49 converted into a judicial rehabilitation or liquidation proceeding;

50 b. Be permitted to solicit or accept new business or request or
51 accept the restoration of any suspended or revoked license or
52 certificate of authority;

53 c. Be returned to the control of its shareholders or private
54 management; or

1 d. Have any of its assets returned to the control of its
2 shareholders or private management until all payments of or on
3 account of the insurer's contractual obligations by all guaranty
4 associations, along with all expenses thereof and interest on all
5 such payments and expenses, shall have been repaid to the
6 guaranty associations or a plan of repayment by the insurer shall
7 have been approved by the guaranty associations.

8 9. a. The commissioner may file in the Superior Court of this
9 State a petition alleging that, with respect to a domestic insurer:

10 (1) There exists any grounds that would justify a court order
11 for a formal delinquency proceeding against an insurer under this
12 act;

13 (2) The interests of policyholders, creditors or the public will
14 be endangered by delay; and

15 (3) The contents of an order deemed necessary by the
16 commissioner.

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

27 c. The court shall specify in the order what its duration shall
28 be, which shall be the time the court deems necessary for the
29 commissioner to ascertain the condition of the insurer. On
30 motion of either party or on its own motion, the court may from
31 time to time hold hearings it deems necessary after giving notice
32 it deems appropriate, and may extend, shorten, or modify the
33 terms of the seizure order. The court shall vacate the seizure
34 order if the commissioner fails to commence a formal proceeding
35 under this act after having had a reasonable opportunity to do so.
36 An order of the court pursuant to a formal proceeding under this
37 act shall ipso facto vacate the seizure order.

38 d. Entry of a seizure order under this section shall not
39 constitute an anticipatory breach of any contract of the insurer.

40 e. An insurer subject to an ex parte order under this section
41 may petition the court at any time after the issuance of the order
42 for a hearing and review of the order. The court shall hold a
43 hearing and review not more than 15 days after the request. A
44 hearing under this subsection may be held privately in chambers
45 and it shall be held privately in chambers if requested by the
46 insurer proceeded against.

47 f. If, at any time after the issuance of such an order, it
48 appears to the court that any person whose interest is or will be
49 substantially affected by the order did not appear at the hearing
50 and has not been served, the court may order that notice be
51 given. An order that notice be given shall not stay the effect of
52 any order previously issued by the court.

53 10. In all proceedings and judicial reviews thereof under
54 section 9 of this act, all records of the insurer, other documents,

1 and all department files and court records and papers, so far as
2 they pertain to or are a part of the record of the proceedings,
3 shall be and remain confidential except as is necessary to obtain
4 compliance therewith, unless and until the Superior Court, after
5 hearing arguments from the parties in chambers, shall order
6 otherwise; or unless the insurer requests that the matter be made
7 public. Until such court order, all papers filed with the clerk of
8 the Superior Court shall be held by him in a confidential file.

9 11. The commissioner may petition the Superior Court for an
10 order authorizing him to rehabilitate a domestic insurer or an
11 alien insurer domiciled in this State on any one or more of the
12 following grounds:

13 a. The insurer is in such condition that the further transaction
14 of business would be hazardous financially to its policyholders,
15 creditors or the public.

16 b. There is reasonable cause to believe that there has been
17 embezzlement from the insurer, wrongful sequestration or
18 diversion of the insurer's assets, forgery or fraud affecting the
19 insurer, or other illegal conduct in, by, or with respect to, the
20 insurer that if established would endanger assets in an amount
21 threatening the solvency of the insurer.

22 c. The insurer has failed to remove any person who in fact has
23 executive authority in the insurer, whether an officer, manager,
24 general agent, employee or other person, if the person has been
25 found after notice and hearing by the commissioner to be
26 dishonest or untrustworthy in a way affecting the insurer's
27 business.

28 d. Control of the insurer, whether by stock ownership or
29 otherwise, and whether direct or indirect, is in a person or
30 persons found after notice and hearing to be untrustworthy.

31 e. Any person who in fact has executive authority in the
32 insurer, whether an officer, manager, general agent, director or
33 trustee, employee or other person, has refused to be examined
34 under oath by the commissioner concerning its affairs, whether in
35 this State or elsewhere; and after reasonable notice of that fact,
36 the insurer has failed promptly and effectively to terminate the
37 employment and status of the person and all his influence on
38 management.

39 f. After demand by the commissioner under chapter 21 of Title
40 17B of the New Jersey Statutes or any other law governing the
41 examination of insurers, or under this act, the insurer has failed
42 to promptly make available for examination any of its own
43 property, books, accounts, documents or other records, or those
44 of any subsidiary or related company within the control of the
45 insurer, or those of any person having executive authority in the
46 insurer so far as they pertain to the insurer.

47 g. Without first obtaining the written consent of the
48 commissioner, the insurer has transferred, or attempted to
49 transfer, in a manner contrary to section 2 of P.L.1970, c.22
50 (C.17:27A-2) or N.J.S.17B:18-64, substantially its entire property
51 or business, or has entered into any transaction the effect of
52 which is to merge, consolidate or reinsure substantially its entire
53 property or business in or with the property or business of any
54 other person.

1 h. The insurer or its property has been or is the subject of an
2 application for the appointment of a receiver, trustee, custodian,
3 conservator or sequestrator or similar fiduciary of the insurer or
4 its property otherwise than as authorized under the insurance
5 laws of this State, and such appointment has been made or is
6 imminent, and such appointment might oust the courts of this
7 State of jurisdiction or might prejudice orderly delinquency
8 proceedings under this act.

9 i. Within the previous five years the insurer has willfully
10 violated its charter or articles of incorporation, its bylaws, any
11 insurance law of this State, or any valid order of the
12 commissioner.

13 j. The insurer has failed to pay, within 60 days after due date,
14 any obligation to any state or any subdivision thereof or any
15 judgment entered in any state, if the court in which such
16 judgment was entered had jurisdiction over such subject matter,
17 except that such nonpayment shall not be a ground until 60 days
18 after any good faith effort by the insurer to contest the
19 obligation has been terminated, whether it is before the
20 commissioner or in the courts, or the insurer has systematically
21 attempted to compromise or renegotiate previously agreed
22 settlements with its creditors on the ground that it is financially
23 unable to pay its obligations in full.

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

28 l. The board of directors or the holders of a majority of the
29 shares entitled to vote, or a majority of those individuals entitled
30 to the control of a mutual insurer as defined in N.J.S.17B:18-3,
31 request or consent to rehabilitation under this act. For purposes
32 of this subsection, "control" means the possession, direct or
33 indirect, of the power to direct or cause the direction of the
34 management and policies of the insurer, whether through the
35 ownership of voting securities, by contract other than a
36 commercial contract for goods or nonmanagement services, or
37 otherwise, unless the power is the result of an official position
38 with or corporate office held by the person. Control shall be
39 presumed to exist if any person, directly or indirectly, owns,
40 controls, holds with the power to vote, or holds proxies
41 representing, 10% or more of the voting securities of an insurer.

42 12. a. An order to rehabilitate the business of a domestic
43 insurer, or an alien insurer domiciled in this State, shall appoint
44 the commissioner and his successors in office the rehabilitator,
45 and shall direct the rehabilitator forthwith to take possession of
46 the assets of the insurer, and to administer them under the
47 general supervision of the court. The filing or recording of the
48 order with the clerk of the Superior Court or recorder of deeds of
49 the county in which the principal business of the company is
50 conducted, or the county in which its principal office or place of
51 business is located, shall impart the same notice as a deed, bill of
52 sale or other evidence of title duly filed or recorded with that
53 recorder of deeds would have imparted. The order to rehabilitate
54 the insurer shall by operation of law vest title to all assets of the

1 insurer in the rehabilitator.

2 b. Any order issued under this section shall require accountings
3 to the court by the rehabilitator. Accountings shall be at such
4 intervals as the court specifies in its order, but no less frequently
5 than semi-annually. Each accounting shall include a report
6 concerning the rehabilitator's opinion as to the likelihood that a
7 plan under subsection e. of section 13 of this act will be prepared
8 by the rehabilitator and the timetable for doing so.

9 c. Entry of an order of rehabilitation shall not constitute an
10 anticipatory breach of any contracts of the insurer nor shall it be
11 grounds for retroactive revocation or retroactive cancellation of
12 any contracts of the insurer, unless such revocation or
13 cancellation is done by the rehabilitator pursuant to section 13 of
14 this act.

15 13. a. The commissioner as rehabilitator may appoint one or
16 more special deputies, who shall have all the powers and
17 responsibilities of the rehabilitator granted under this section,
18 and the commissioner may employ such counsel, clerks and
19 assistants as deemed necessary. The commissioner may fix the
20 compensation of employees and agents of the insurer and, with
21 the approval of the court, the special deputy, counsel, clerks and
22 assistants, other than employees of the insurer, and all expenses
23 of taking possession of the insurer and of conducting the
24 proceedings shall be paid out of the funds or assets of the
25 insurer. The persons appointed under this section shall serve at
26 the pleasure of the commissioner. The commissioner, as
27 rehabilitator, may, with the approval of the court, appoint an
28 advisory committee of policyholders, claimants or other
29 creditors, including guaranty associations, should he deem such a
30 committee to be necessary. The committee shall serve at the
31 pleasure of the commissioner and shall serve without
32 compensation. No other committee of any nature shall be
33 appointed by the commissioner or the court in rehabilitation
34 proceedings conducted under this act.

35 b. In the event that the property of the insurer does not
36 contain sufficient cash or liquid assets to defray the costs
37 incurred, the commissioner may advance the costs so incurred out
38 of any appropriation for the maintenance of the department. Any
39 amounts so advanced for expenses of administration shall be
40 repaid to the commissioner for the use of the department out of
41 the first available money of the insurer.

42 c. The rehabilitator may take such action as he deems
43 necessary or appropriate to reform and revitalize the insurer,
44 including, but not limited to, any of the actions which could be
45 taken by a liquidator under paragraphs (6) through (24) of
46 subsection a. of section 20 of this act. He shall have all the
47 powers of the directors, officers and managers, whose authority
48 shall be suspended, except as they are redelegated by the
49 rehabilitator. He shall have full power to direct and manage, to
50 hire and discharge employees subject to any contract rights they
51 may have, and to deal with the property business of the insurer.

52 d. If it appears to the rehabilitator that there has been
53 criminal or tortious conduct, or breach of any contractual or
54 fiduciary obligation detrimental to the insurer by any officer,

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

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

19 f. The rehabilitator shall have the power under sections 25 and
20 26 of this act to avoid fraudulent transfers.

21 14. a. Any court in this State before which any action or
22 proceeding in which the insurer is a party, or is obligated to
23 defend a party, is pending when a rehabilitation order against the
24 insurer is entered shall stay the action or proceeding for 90 days
25 and such additional time as is necessary for the rehabilitator to
26 obtain proper representation and prepare for further
27 proceedings. The rehabilitator shall take such action respecting
28 the pending litigation as he deems necessary in the interests of
29 justice and for the protection of creditors, policyholders and the
30 public. The rehabilitator shall immediately consider all litigation
31 pending outside this State and shall petition the courts having
32 jurisdiction over that litigation for stays whenever necessary to
33 protect the estate of the insurer.

34 b. No statute of limitations or defense of laches shall run with
35 respect to any action by or against an insurer between the filing
36 of a petition for appointment of a rehabilitator for that insurer
37 and the order granting or denying that petition. Any action
38 against the insurer that might have been commenced when the
39 petition was filed may be commenced for at least 60 days after
40 the order of rehabilitation is entered. The rehabilitator may,
41 upon an order for rehabilitation, within one year or such other
42 longer time as applicable law may permit, institute an action or
43 proceeding on behalf of the insurer upon any cause of action
44 against which the period of limitation fixed by applicable law has
45 not expired at the time of the filing of the petition upon which
46 such order is entered.

47 c. Any guaranty association or foreign guaranty association
48 covering life or health insurance or annuities shall have standing
49 to appear in any court proceeding concerning the rehabilitation of
50 an insurer if that association is or may become liable to act as a
51 result of the rehabilitation.

52 15. a. Whenever the commissioner believes further attempts
53 to rehabilitate an insurer would substantially increase the risk of
54 loss to creditors, policyholders or the public, or would be futile,

1 the commissioner may petition the Superior Court for an order of
2 liquidation. A petition under this subsection shall have the same
3 effect as a petition under section 16 of this act. The Superior
4 Court shall permit the directors of the insurer to take such
5 actions as are reasonably necessary to defend against the petition
6 and may order payment from the estate of the insurer of such
7 costs and other expenses of defense as justice may require.

8 b. The protection of the interests of insureds, claimants and
9 the public requires the timely performance of all insurance policy
10 obligations. If the payment of policy obligations is suspended in
11 substantial part for a period of 12 months at any time after the
12 appointment of the rehabilitator and the rehabilitator has not
13 filed an application for approval of a plan under subsection e. of
14 section 13 of this act during the 12-month period, the
15 rehabilitator shall petition the court for an order of liquidation on
16 the grounds of insolvency; provided, however, that prior to the
17 end of that 12-month period the commissioner may petition the
18 court for an extension of the time period to file an application
19 for approval of a plan.

20 c. The rehabilitator may at any time petition the Superior
21 Court for an order terminating rehabilitation of an insurer. The
22 court shall also permit the directors of the insurer to petition the
23 court for an order terminating rehabilitation of the insurer and
24 may order payment from the estate of the insurer of such costs
25 and other expenses of that petition as justice may require. If the
26 court finds that rehabilitation has been accomplished and that
27 grounds for rehabilitation under section 11 of this act no longer
28 exist, it shall order that the insurer be restored to possession of
29 its property and the control of the business. The court may also
30 make that finding and issue that order at any time upon its own
31 motion.

32 16. The commissioner may petition the Superior Court for an
33 order directing him to liquidate a domestic insurer or an alien
34 insurer domiciled in this State on the basis:

35 a. Of any ground for an order of rehabilitation as specified in
36 section 11 of this act, whether or not there has been a prior order
37 directing the rehabilitation of the insurer;

38 b. That the insurer is insolvent; or

39 c. That the insurer is in such condition that the further
40 transaction of business would be hazardous, financially or
41 otherwise, to its policyholders, its creditors or the public.

42 17. a. An order to liquidate the business of a domestic insurer
43 shall appoint the commissioner and his successors in office
44 liquidator and shall direct the liquidator forthwith to take
45 possession of the assets of the insurer and to administer them
46 under the general supervision of the court. The liquidator shall
47 be vested by operation of law with the title to all of the property,
48 contracts and rights of action, and all of the books and records of
49 the insurer ordered liquidated, wherever located, as of the entry
50 of the final order of liquidation. The filing or recording of the
51 order with the Clerk of the Superior Court and the recorder of
52 deeds of the county in which its principal office or place or
53 business is located, or, in the case of real estate, with the
54 recorder of deeds of the county where the property is located,

1 shall impart the same notice as a deed, bill of sale or other
2 evidence of title duly filed or recorded with that recorder of
3 deeds would have imparted.

4 b. Upon issuance of the order, the rights and liabilities of that
5 insurer and of its creditors, policyholders, shareholders, members
6 and all other persons interested in its estate shall become fixed
7 as of the date of entry of the order of liquidation, except as
8 provided in sections 18 and 36 of this act.

9 c. An order to liquidate the business of an alien insurer
10 domiciled in this State shall be in the same terms and have the
11 same legal effect as an order to liquidate a domestic insurer,
12 except that the assets and the business in the United States shall
13 be the only assets and business included therein.

14 d. At the time of petitioning for an order of liquidation, or at
15 any time thereafter; the commissioner, after making appropriate
16 findings of an insurer's insolvency, may petition the court for a
17 judicial declaration of that insolvency. After providing such
18 notice and hearing as it deems proper, the court may make the
19 declaration.

20 e. Any order issued under this section shall require financial
21 reports to the court by the liquidator. Financial reports shall
22 include, at a minimum, the assets and liabilities of the insurer
23 and all funds received or disbursed by the liquidator during the
24 current period. Financial reports shall be filed within one year of
25 the liquidation order and at least annually thereafter.

26 f. (1) Within 90 days of the effective date of this act, or within
27 90 days after the initiation of an appeal of an order of
28 liquidation, which order has not been stayed, whichever is later,
29 the commissioner shall present for the court's approval a plan for
30 the continued performance of the defendant insurer's policy
31 claims obligations during the pendency of an appeal. The plan
32 shall provide for the continued performance and payment of
33 policy claims obligations in the normal course of events,
34 notwithstanding the grounds alleged in support of the order of
35 liquidation including the ground of insolvency. If the defendant
36 insurer's financial condition will not, in the judgment of the
37 commissioner, support the full performance of all policy claims
38 obligations during the appeal pendency period, the plan may
39 prefer the claims of certain policyholders and claimants over
40 creditors and interested parties as well as other policyholders and
41 claimants, as the commissioner finds to be fair and equitable,
42 considering the relative circumstances of such policyholders and
43 claimants. The court shall examine the plan submitted by the
44 commissioner and if it finds the plan to be in the best interests of
45 the parties, the court shall approve the plan. No action shall lie
46 against the commissioner or any of his deputies, agents, clerks,
47 assistants or attorneys by any party based on preference in an
48 appeal pendency plan approved by the court.

49 (2) The appeal pendency plan shall not supersede or affect the
50 obligations of the guaranty association or of any applicable
51 foreign guaranty association.

52 (3) Any such plans shall provide for equitable adjustments to
53 be made by the liquidator to any distributions of assets to
54 guaranty associations, in the event that the liquidator pays claims

1 from assets of the estate, which would otherwise be the
2 obligations of any particular guaranty association, but for the
3 appeal of the order of liquidation, such that all guaranty
4 associations equally benefit on a pro rata basis from the assets of
5 the estate. Further, if an order of liquidation is set aside upon
6 any appeal, the insurer shall not be released from delinquency
7 proceedings unless and until all funds advanced by any guaranty
8 association, including reasonable administrative expenses in
9 connection therewith relating to obligations of the insurer, shall
10 be repaid in full, together with interest at the judgment rate of
11 interest or unless an arrangement for repayment thereof has been
12 made with the consent of all applicable guaranty associations.

13 18. a. Policies of life or health insurance or annuities shall
14 continue in force for such period and under such terms as is
15 provided for by the guaranty association or any applicable foreign
16 guaranty association.

17 b. Policies of life or health insurance or annuities or any
18 period or coverage of those policies not covered by the guaranty
19 association or a foreign guaranty association shall continue in
20 force only for the lessor of:

21 (1) A period of 30 days from the date of entry of the
22 liquidation orders;

23 (2) The expiration of the policy coverage;

24 (3) The date when the insured has replaced the insurance
25 coverage with equivalent insurance in another insurer or
26 otherwise terminated the policy;

27 (4) The liquidator has effected a transfer of the policy
28 obligation pursuant to paragraph (9) of subsection a. of section 20
29 of this act; or

30 (5) The date proposed by the liquidator and approved by the
31 court to cancel coverage.

32 An order for liquidation under section 17 of this act shall
33 terminate coverages at the time specified in this subsection b.
34 for purposes of any other law.

35 19. The commissioner may petition for an order dissolving the
36 corporate existence of a domestic insurer, or the United States
37 branch of an alien insurer domiciled in this State, at the time he
38 applies for a liquidation order. The court shall order dissolution of
39 the corporation upon petition by the commissioner upon or after
40 the granting of a liquidation order. If the dissolution has not
41 previously been ordered, it shall be effected by operation of law
42 upon the discharge of the liquidator if the insurer is insolvent but
43 may be ordered by the court upon the discharge of the liquidator
44 if the insurer is under a liquidation order for some other reason.

45 20. a. The liquidator shall have the power:

46 (1) To appoint a special deputy or deputies to act for him
47 under this act, and to determine his reasonable compensation.
48 The special deputy shall have all powers of the liquidator granted
49 by this section. The special deputy shall serve at the pleasure of
50 the liquidator.

51 (2) To employ employees and agents, legal counsel, actuaries,
52 accountants, appraisers, consultants and such other personnel as
53 he may deem necessary to assist in the liquidation.

54 (3) To appoint, with the approval of the court, an advisory

1 committee of policyholders, claimants or other creditors,
2 including guaranty associations, should he deem such a committee
3 to be necessary. Such committee shall serve at the pleasure of
4 the commissioner and shall serve without compensation. No
5 other committee of any nature shall be appointed by the
6 commissioner or the court in liquidation proceedings conducted
7 under this act.

8 (4) To fix the reasonable compensation of employees and
9 agents of the insurer, and, with the approval of the court, legal
10 counsel, actuaries, accountants, appraisers and consultants, other
11 than employees and agents of the insurer.

12 (5) To pay reasonable compensation to persons appointed and
13 to defray from the funds or assets of the insurer all expenses of
14 taking possession of, conserving, conducting, liquidating,
15 disposing of, or otherwise dealing with the business and property
16 of the insurer. If the property of the insurer does not contain
17 sufficient cash or liquid assets to defray the costs incurred, the
18 commissioner may advance the costs so incurred out of any
19 appropriation for the maintenance of the department. Any
20 amounts so advanced for expenses of administration shall be
21 repaid to the commissioner for the use of the department out of
22 the first available moneys of the insurer.

23 (6) To hold hearings, to subpoena witnesses to compel their
24 attendance, to administer oaths, to examine any person under
25 oath, and to compel any person to subscribe to his testimony
26 after it has been correctly reduced to writing; and in connection
27 therewith to require the production of any books, papers, records
28 or other documents which he deems relevant to the inquiry.

29 (7) To audit the books and records of all agents of the insurer
30 insofar as those records relate to the business activities of the
31 insurer.

32 (8) To collect all debts and moneys due and claims belonging to
33 the insurer, wherever located, and for this purpose:

34 (a) To institute timely action in other jurisdictions, in order to
35 forestall garnishment and attachment proceedings against those
36 debts;

37 (b) To take other actions necessary or expedient to collect,
38 conserve or protect its assets or property, including the power to
39 sell, compound, compromise or assign debts for purposes of
40 collection upon such terms and conditions as he deems best; and

41 (c) To pursue any creditor's remedies available to enforce his
42 claims.

43 (9) To conduct public and private sales of the property of the
44 insurer.

45 (10) To use assets of the estate of an insurer under a
46 liquidation order to transfer policy obligations to a solvent
47 assuming insurer, if the transfer can be arranged without
48 prejudice to applicable priorities under section 41 of this act.

49 (11) To acquire, hypothecate, encumber, lease, improve, sell,
50 transfer, abandon or otherwise dispose of or deal with, any
51 property of the insurer at its market value or upon such terms
52 and conditions as are fair and reasonable. He shall also have
53 power to execute, acknowledge and deliver any and all deeds,
54 assignments, releases and other instruments necessary or proper

- 1 to effectuate any sale of property or other transaction in
2 connection with the liquidation.
- 3 (12) To borrow money on the security of the insurer's assets,
4 or without security, and to execute and deliver all documents
5 necessary to that transaction for the purpose of facilitating the
6 liquidation. Any funds so borrowed may be repaid as an
7 administrative expense and have priority over any other claims in
8 Class 1 under the priority of distribution of claims pursuant to
9 section 41 of this act.
- 10 (13) To enter into any contracts necessary to carry out the
11 order to liquidate, and to affirm or disavow any contracts to
12 which the insurer is a party.
- 13 (14) To continue to prosecute and to institute in the name of
14 the insurer or in his own name any and all suits and other legal
15 proceedings, in this State or elsewhere, and to abandon the
16 prosecution of claims he deems unprofitable to pursue further. If
17 the insurer is dissolved under section 19 of this act, he shall have
18 the power to apply to any court in this State or elsewhere for
19 leave to substitute himself for the insurer as plaintiff.
- 20 (15) To prosecute any action which may exist on behalf of the
21 creditors, members, policyholders or shareholders of the insurer
22 against any director or officer of the insurer, or any other person.
- 23 (16) To remove any or all records and property of the insurer
24 to the offices of the commissioner or to such other place as may
25 be convenient for the purposes of efficient and orderly execution
26 of the liquidation. Guaranty associations and foreign guaranty
27 associations shall have reasonable access to the records of the
28 insurer as is necessary for them to carry out their legal
29 obligations.
- 30 (17) To deposit in one or more banks in this State any sums
31 required for meeting current administration expenses and
32 dividend distributions.
- 33 (18) To invest all sums not currently needed, unless the court
34 orders otherwise.
- 35 (19) To file any necessary documents for record in the office
36 of any recorder of deeds or record office in this State or
37 elsewhere where property of the insurer is located.
- 38 (20) To assert all defenses available to the insurer as against
39 third persons, including statutes of limitation, statutes of frauds,
40 and the defense of usury. A waiver of any defense by the insurer
41 after a petition in liquidation has been filed shall not bind the
42 liquidator. Whenever the guaranty association or a foreign
43 guaranty association has an obligation to defend any suit, the
44 liquidator shall give precedence to that obligation and may
45 defend only in the absence of a defense by those guaranty
46 associations.
- 47 (21) To exercise and enforce all the rights, remedies and
48 powers of any creditor, shareholder, policyholder or member;
49 including any power to avoid any transfer or lien that may be
50 given by law and that is not included with sections 25 through 27
51 of this act.
- 52 (22) To intervene in any proceeding, wherever instituted, that
53 might lead to the appointment of a receiver or trustee, and to act
54 as the receiver or trustee whenever the appointment is offered.

1 (23) To enter into agreements with any receiver or
2 commissioner or insurance regulator of any other state relating
3 to the rehabilitation, liquidation, conservation or dissolution of an
4 insurer doing business in both states.

5 (24) To exercise all powers now held or hereafter conferred
6 upon receivers by the laws of this State not inconsistent with the
7 provisions of this act.

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

14 c. Notwithstanding the powers of the liquidator as stated in
15 subsections a. and b. of this section, the liquidator shall have no
16 obligation to defend claims or to continue to defend claims
17 subsequent to the entry of a liquidation order.

18 21. a. Unless the court otherwise directs, the liquidator shall
19 give or cause to be given notice of the liquidation order as soon
20 as possible:

21 (1) By first class mail and either by telegram or telephone to
22 the commissioner or insurance regulator of each jurisdiction in
23 which the insurer is doing business;

24 (2) By first class mail to the guaranty association and any
25 foreign guaranty association which is or may become obligated as
26 a result of the liquidation;

27 (3) By first class mail to all insurance agents of the insurer;

28 (4) By first class mail to all persons known or reasonably
29 expected to have claims against the insurer, including all
30 policyholders, at their last known address as indicated by the
31 records of the insurer; and

32 (5) By publication in a newspaper of general circulation in the
33 county in which the insurer has its principal place of business and
34 in such other locations as the liquidator deems appropriate.

35 b. Except as otherwise established by the liquidator with
36 approval of the court, notice to potential claimants under
37 subsection a. of this section shall require claimants to file with
38 the liquidator their claims, together with proper proofs thereof
39 under section 35 of this act, on or before a date the liquidator
40 shall specify in the notice. The liquidator need not require
41 persons claiming cash surrender values or other investment values
42 in life insurance and annuities to file a claim. All claimants shall
43 have a duty to keep the liquidator informed of any changes of
44 address.

45 c. (1) Notice under subsection a. of this section to agents of
46 the insurer and to potential claimants who are policyholders shall
47 include, where applicable, notice that coverage by state guaranty
48 associations may be available for all or part of policy benefits in
49 accordance with applicable state guaranty association laws.

50 (2) The liquidator shall promptly provide to the guaranty
51 associations such information concerning the identities and
52 addresses of policyholders and their policy coverages as may be
53 within the liquidator's possession or control, and otherwise
54 cooperate with guaranty associations to assist them in providing

1 to those policyholders timely notice of the guaranty associations'
2 coverage of policy benefits, including, as applicable, coverage of
3 claims and continuation or termination of coverages.

4 d. If notice is given in accordance with this section, the
5 distribution of assets of the insurer under this act shall be
6 conclusive with respect to all claimants, whether or not they
7 received notice.

8 22. a. Every person who receives notice, in the form
9 prescribed in section 21 of this act, that an insurer which he
10 represents as an agent is the subject of a liquidation order, shall
11 within 30 days of such notice provide to the liquidator, in addition
12 to the information he may be required to provide pursuant to
13 section 6 of this act, the information in the agent's records
14 related to any policy issued by the insurer through the agent, and,
15 if the agent is a general agent, the information in the general
16 agent's records related to any policy issued by the insurer
17 through an agent under contract to him, including the name and
18 address of such subagent. A policy shall be deemed issued
19 through an agent if the agent has a property interest in the
20 expiration of the policy, or if the agent has had in his possession a
21 copy of the declarations of the policy at any time during the life
22 of the policy, except where the ownership of the expiration of the
23 policy has been transferred to another.

24 b. The commissioner may refuse to renew a license, or may
25 suspend or revoke a license, if he finds after notice and an
26 opportunity for a hearing that an agent has failed to provide
27 information to the liquidator as required in subsection a. of this
28 section. In addition or an alternative to any other penalty, the
29 commissioner may, after a hearing, impose an administrative
30 penalty of not more than \$10,000 for each violation of this
31 section.

32 23. a. Upon issuance of an order appointing a liquidator of a
33 domestic insurer or of an alien insurer domiciled in this State, no
34 action at law or equity or in arbitration shall be brought against
35 the insurer or liquidator, whether in this State or elsewhere, nor
36 shall any such existing actions be maintained or further presented
37 after issuance of that order. The courts of this State shall give
38 full faith and credit to injunctions against the liquidator or the
39 insurer or the continuation of existing actions against the
40 liquidator or the insurer, when those injunctions are included in
41 an order to liquidate an insurer issued pursuant to corresponding
42 provisions in other states. Whenever, in the liquidator's
43 judgment, protection of the estate of the insurer necessitates
44 intervention in an action against the insurer that is pending
45 outside this State, he may intervene in the action. The liquidator
46 may defend any action in which he intervenes under this section
47 at the expense of the estate of the insurer.

48 b. The liquidator may, upon or after an order for liquidation,
49 institute an action or proceeding on behalf of the estate of the
50 insurer upon any cause of action against which the period of
51 limitation fixed by applicable law has not expired at the time of
52 the filing of the petition upon which that order is entered. If, by
53 any agreement, a period of limitation is fixed for instituting an
54 action or proceeding upon any claim, or for filing any claim,

1 proof of claim, proof of loss, demand, notice or the like, or if in
2 any proceeding, judicial or otherwise, a period of limitation is
3 fixed, either in the proceeding or by applicable law, for taking
4 any action, filing any claim or pleading, or doing any act, and if
5 in any such case the period had not expired at the date of the
6 filing of the petition, the liquidator may, for the benefit of the
7 estate, take any such action or do any such act, required of or
8 permitted to the insurer, within a period of 180 days subsequent
9 to the entry of an order for liquidation, or within any further
10 period as is shown to the satisfaction of the court not to be
11 unfairly prejudicial to the other party.

12 c. No statute of limitation or defense of laches shall run with
13 respect to any action against an insurer between the filing of a
14 petition for liquidation against an insurer and the denial of the
15 petition.

16 d. Any guaranty association or foreign guaranty association
17 shall have standing to appear in any court proceeding concerning
18 the liquidation of an insurer if such association is or may become
19 liable to act as a result of the liquidation.

20 24. a. As soon as practicable after the liquidation order but
21 not later than 120 days thereafter, the liquidator shall prepare in
22 duplicate a list of the insurer's assets. The list shall be amended
23 or supplemented from time to time as the liquidator may
24 determine. One copy shall be filed in the office of the Clerk of
25 the Superior Court and one copy shall be retained for the
26 liquidator's files. All amendments and supplements shall be
27 similarly filed.

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

31 c. A submission to the court for disbursement of assets in
32 accordance with section 33 of this act fulfills the requirements of
33 subsection a. of this section.

34 25. a. Every transfer made or suffered and every obligation
35 incurred by an insurer within one year prior to the filing of a
36 successful petition for rehabilitation or liquidation under this act
37 shall be fraudulent as to then existing and future creditors if
38 made or incurred without fair consideration, or with actual intent
39 to hinder, delay or defraud either existing or future creditors. A
40 transfer made or an obligation incurred by an insurer ordered to
41 be rehabilitated or liquidated under this act, which is fraudulent
42 under this section, may be avoided by the receiver, except as to a
43 person who in good faith is a purchaser, lienholder or obligee for
44 a present fair equivalent value, and except that any purchaser,
45 lienholder or obligee, who in good faith has given a consideration
46 which is less than fair for that transfer, lien or obligation, may
47 retain the property, lien or obligation as security for repayment.
48 The court may, on due notice, order any such transfer or
49 obligation to be preserved for the benefit of the estate, and in
50 that event, the receiver shall succeed to and may enforce the
51 rights of the purchaser, lienholder or obligee.

52 b. (1) A transfer of property other than real property shall be
53 deemed to be made or suffered when it becomes so far perfected
54 that no subsequent lien obtainable by legal or equitable

1 proceedings on a simple contract could become superior to the
2 rights of the transferee under subsection c. of section 27 of this
3 act.

4 (2) A transfer of real property shall be deemed to be made or
5 suffered when it becomes so far perfected that no subsequent
6 bona fide purchaser from the insurer could obtain rights superior
7 to the rights of the transferee.

8 (3) A transfer which creates an equitable lien shall not be
9 deemed to be perfected if there are available means by which a
10 legal lien could be created.

11 (4) Any transfer not perfected prior to the filing of a petition
12 for liquidation shall be deemed to be made immediately before
13 the filing of the successful petition.

14 (5) The provisions of this subsection apply whether or not there
15 are or were creditors who might have obtained any liens or
16 persons who might have become bona fide purchasers.

17 c. Any transaction of the insurer with a reinsurer shall be
18 deemed fraudulent and may be avoided by the receiver under
19 subsection a. of this section if:

20 (1) The transaction consists of the termination, adjustment or
21 settlement of a reinsurance contract in which the reinsurer is
22 released from any part of its duty to pay the originally specified
23 share of losses that had occurred prior to the time of the
24 transactions, unless the reinsurer gives a present fair equivalent
25 value for the release; and

26 (2) Any part of the transaction took place within one year
27 prior to the date of filing of the petition through which the
28 receivership was commenced.

29 d. Every director, officer, employee, stockholder, policyholder
30 and any other person acting on behalf of the insurer who is
31 concerned in any fraudulent transfer and every person receiving
32 any property from the insurer or any benefit thereof which is a
33 fraudulent transfer under subsection a. of this section shall be
34 personally liable therefor and shall be bound to account to the
35 liquidator.

36 26. a. After a petition for rehabilitation or liquidation has
37 been filed, but before an order of rehabilitation or liquidation is
38 granted, a transfer of any of the real property of the insurer
39 made to a person acting in good faith shall be valid against the
40 receiver if made for a present fair equivalent value; or, if not
41 made for a present fair equivalent value, then to the extent of
42 the present consideration actually paid therefor, for which
43 amount the transferee shall have a lien on the property so
44 transferred. The commencement of a proceeding in
45 rehabilitation or liquidation shall be constructive notice upon the
46 recording of a copy of the petition for or order of rehabilitation
47 or liquidation with the recorder of deeds in the county where any
48 real property in question is located. The exercise by a court of
49 the United States or any state or jurisdiction to authorize or
50 effect a judicial sale of real property of the insurer within any
51 county in any state shall not be impaired by the pendency of such
52 a proceeding unless the copy is recorded in the county prior to
53 the consummation of the judicial sale.

54 b. After a petition for rehabilitation or liquidation has been

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

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

11 (2) A person indebted to the insurer or holding property of the
12 insurer may, if acting in good faith, pay the indebtedness or
13 deliver the property, or any part thereof, to the insurer or upon
14 his order, with the same effect as if the petition were not
15 pending.

16 (3) A person having actual knowledge of the pending
17 rehabilitation or liquidation shall be deemed not to act in good
18 faith pursuant to the provisions of this section.

19 (4) A person asserting the validity of a transfer under this
20 section shall have the burden of proof. Except as elsewhere
21 provided in this section, no transfer by or on behalf of the insurer
22 after the date of the petition for liquidation by any person other
23 than the liquidator shall be valid against the liquidator.

24 c. Every director, officer, employee, stockholder, policyholder
25 and any other person acting on behalf of the insurer who is
26 concerned in any fraudulent transfer, and every person receiving
27 any property from the insurer or any benefit thereof which is a
28 fraudulent transfer under subsection a. of this section shall be
29 personally liable therefor and shall be bound to account to the
30 liquidator.

31 d. Nothing in this act shall impair the negotiability of currency
32 or negotiable instruments.

33 27. a. (1) A preference is a transfer of any of the property of
34 an insurer to or for the benefit of a creditor, for or on account of
35 an antecedent debt, made or suffered by the insurer within one
36 year before the filing of a successful petition for liquidation
37 under this act, the effect of which transfer may be to enable the
38 creditor to obtain a greater percentage of this debt than another
39 creditor of the same class would receive. If a liquidation order is
40 entered while the insurer is already subject to a rehabilitation
41 order, then such transfers shall be deemed preferences if made or
42 suffered within one year before the filing of the successful
43 petition for rehabilitation, or within two years before the filing
44 of the successful petition for liquidation, whichever time is
45 shorter.

46 (2) Any preference may be avoided by the liquidator if:

47 (a) The insurer was insolvent at the time of the transfer;

48 (b) The transfer was made within four months before the filing
49 of the petition;

50 (c) The creditor receiving it or to be benefitted thereby or his
51 agent acting with reference thereto had, at the time the transfer
52 was made, reasonable cause to believe that the insurer was
53 insolvent or was about to become insolvent; or

54 (d) The creditor receiving it was an officer, or any employee

1 or attorney or other person who was in fact in a position of
2 comparable influence on the insurer to an officer, whether or not
3 he held such position, or any shareholder holding directly or
4 indirectly more than five percent of any class of any equity
5 security issued by the insurer, or any other person, firm,
6 corporation, association, or aggregation of persons with whom the
7 insurer did not deal at arm's length.

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

18 b. (1) A transfer of property, other than real property, shall
19 be deemed to be made or suffered when it becomes so far
20 perfected that no subsequent lien obtainable by legal or equitable
21 proceedings on a simple contract could become superior to the
22 rights of the transferee.

23 (2) A transfer of real property shall be deemed to be made or
24 suffered when it becomes so far perfected that no subsequent
25 bona fide purchaser from the insurer could obtain rights superior
26 to the rights of the transferee.

27 (3) A transfer which creates an equitable lien shall not be
28 deemed to be perfected if there are available means by which a
29 legal lien could be created.

30 (4) A transfer not perfected prior to the filing of a petition for
31 liquidation shall be deemed to be made immediately before the
32 filing of the successful petition.

33 (5) The provisions of this subsection apply whether or not there
34 are or were creditors who might have obtained liens or persons
35 who might have become bona fide purchasers.

36 c. (1) A lien obtainable by legal or equitable proceedings upon
37 a simple contract is one arising in the ordinary course of such
38 proceedings upon the entry or docketing of a judgment or decree,
39 or upon attachment, garnishment, execution or like process,
40 whether before, upon or after judgment or decree and whether
41 before or upon levy. It does not include liens which under
42 applicable law are given a special priority over other liens which
43 are prior in time.

44 (2) A lien obtainable by legal or equitable proceedings may
45 become superior to the rights of a transferee, or a purchaser may
46 obtain rights superior to the rights of a transferee within the
47 meaning of subsection b. of this section, if such consequences
48 would follow only from the lien or purchase itself, or from the
49 lien or purchase followed by any step wholly within the control of
50 the respective lienholder or purchaser, with or without the aid of
51 ministerial action by public officials. Such a lien could not,
52 however, become superior and such a purchase could not create
53 superior rights for the purpose of subsection b. of this section
54 through any acts subsequent to the obtaining of such a lien or

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

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

17 e. If any lien deemed voidable under paragraph (2) of
18 subsection a. of this section has been dissolved by the furnishing
19 of a bond or other obligation, the surety on which has been
20 indemnified directly or indirectly by the transfer of, or the
21 creation of a lien upon, any property of an insurer before the
22 filing of a petition under this act which results in a liquidation
23 order, the indemnifying transfer or lien shall also be deemed
24 voidable.

25 f. The property affected by any lien deemed voidable under
26 subsections a. and e. of this section shall be discharged from that
27 lien, and that property and any of the indemnifying property
28 transferred to or for the benefit of a surety shall pass to the
29 liquidator, except that the court may on due notice order any
30 such lien to be preserved for the benefit of the estate and the
31 court may direct that such conveyance be executed as may be
32 proper or adequate to evidence the title of the liquidator.

33 g. The Superior Court shall have summary jurisdiction of any
34 proceeding by the liquidator to hear and determine the rights of
35 any parties under this section. Reasonable notice of any hearing
36 in the proceeding shall be given to all parties in interest,
37 including the obligee of a releasing bond or other like obligation.
38 If an order is entered for the recovery of indemnifying property
39 in kind or for the avoidance of an indemnifying lien, the court,
40 upon application of any party in interest, shall in the same
41 proceeding ascertain the value of the property or lien, and if the
42 value is less than the amount for which the property is
43 indemnified or less than the amount of the lien, the transferee or
44 lienholder may elect to retain the property or lien upon payment
45 of its value, as ascertained by the court, to the liquidator, within
46 a reasonable time as the court shall fix.

47 h. The liability of the surety under a releasing bond or other
48 like obligation shall be discharged to the extent of the value of
49 the indemnifying property recovered or the indemnifying lien
50 nullified and avoided by the liquidator, or where the property is
51 retained under subsection g. of this section, to the extent of the
52 amount paid to the liquidator.

53 i. If a creditor has been preferred, and afterward in good faith
54 gives the insurer further credit without security of any kind, for

1 property which becomes a part of the insurer's estate, the
2 amount of the new credit remaining unpaid at the time of the
3 petition may be set off against the preference which would
4 otherwise be recoverable from him.

5 j. If an insurer shall, directly or indirectly, within four months
6 before the filing of a successful petition for liquidation under this
7 act, or at any time in contemplation of a proceeding to liquidate
8 it, pay money or transfer property to an attorney-at-law for
9 services rendered or to be rendered, the transactions may be
10 examined by the court on its own motion or shall be examined by
11 the court on petition of the liquidator and shall be held valid only
12 to the extent of a reasonable amount to be determined by the
13 court, and the excess may be recovered by the liquidator for the
14 benefits of the estate. If, however, the attorney is in a position
15 of influence on the insurer or an affiliate thereof, payment of any
16 money or the transfer of any property to the attorney-at-law for
17 services rendered or to be rendered shall be governed by the
18 provision of subparagraph (d) of paragraph (2) of subsection a. of
19 this subsection.

20 k. (1) Every officer, manager, employee, shareholder,
21 member, subscriber, attorney or any other person acting on
22 behalf of the insurer who knowingly participates in giving any
23 preference when he has reasonable cause to believe the insurer is
24 or is about to become insolvent at the time of the preference
25 shall be personally liable to the liquidator for the amount of the
26 preference. It is permissible to infer that there is a reasonable
27 cause to so believe if the transfer was made within four months
28 before the date of filing of this successful petition for liquidation.

29 (2) Every person receiving any property from the insurer or the
30 benefit thereof as a preference voidable under subsection a. of
31 this section shall be personally liable therefor and shall be bound
32 to account to the liquidator.

33 (3) Nothing in this subsection shall prejudice any other claim
34 by the liquidator against any person.

35 28. a. No claims of a creditor who has received or acquired a
36 preference, lien, conveyance, transfer, assignment or
37 encumbrance voidable under this act, shall be allowed unless he
38 surrenders the preference, lien, conveyance, transfer, assignment
39 or encumbrance. If the avoidance is effected by a proceeding in
40 which a final judgment has been entered, the claim shall not be
41 allowed unless the money is paid or the property is delivered to
42 the liquidator within 30 days from the date of the entering of the
43 final judgment, except that the court having jurisdiction over the
44 liquidation may allow further time if there is an appeal or other
45 continuation of the proceeding.

46 b. A claim allowable under subsection a. of this section by
47 reason of the avoidance, whether voluntary or involuntary, of a
48 preference, lien, conveyance, transfer, assignment or
49 encumbrance, may be filed as an excused last filing under section
50 34 of this act if filed within 30 days from the date of the
51 avoidance, or within the further time allowed by the court under
52 subsection a. of this section.

53 29. a. Mutual debts or mutual credits, whether arising out of
54 one or more contracts between the insurer and another person in

1 connection with any action or proceeding under this act, shall be
2 set off and the balance only shall be allowed or paid, except as
3 provided in subsections b., c. and d. of this section and section 32
4 of this act.

5 b. No setoff shall be allowed in favor of any person if:

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

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

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

14 (4) The obligation of the person is owed to an affiliate of the
15 insurer, or any other entity or association other than the insurer;
16 or

17 (5) The obligation of the person is to pay an assessment levied
18 against the members or subscribers of the insurer, or is to pay a
19 balance upon a subscription to the capital stock of the insurer, or
20 is in any other way in the nature of a capital contribution; or

21 (6) The obligations between the person and the insurer arise
22 from business which is both ceded to and assumed from the
23 insurer except that the rehabilitator may, with regard to such
24 business, allow certain setoffs in rehabilitation if he finds the
25 allowance of said setoffs appropriate.

26 c. The liquidator shall provide persons that assumed business
27 from the insurer with accounting statements identifying debts
28 which are currently due and payable. Such persons may set off
29 against such debts only mutual credits which are currently due
30 and payable by the insurer to such persons for the period covered
31 by the accounting statement.

32 d. A person that ceded business to the insurer may setoff debts
33 due the insurer against only those mutual credits which the
34 person has paid or which have been allowed in the insurer's
35 delinquency proceedings.

36 e. Notwithstanding the foregoing, a setoff of sums due on
37 obligations in the nature of those set forth in paragraph (6) of
38 subsection b. of this section shall be allowed for those sums
39 accruing from business written if: the contracts were entered
40 into, renewed or extended with the express written approval of
41 the commissioner or other insurance regulator of the state of
42 domicile of the insolvent insurer, when in the judgment of that
43 commissioner or regulator it was necessary to provide
44 reinsurance in order to prevent or mitigate a threatened
45 impairment or insolvency of a domiciliary insurer in connection
46 with the exercise of the commissioner's or regulator's regulatory
47 responsibilities.

48 f. The provisions of this section shall become effective on the
49 180th day following the effective date of this act and shall apply
50 to all contracts entered into, renewed, extended or amended on
51 or after that 180th day, and to debts or credits arising from any
52 business written or transactions occurring after that 180th day
53 pursuant to any contract, including any contract in existence
54 prior to that 180th day, and shall supersede any agreements or

1 contractual provisions which might be construed to enlarge the
2 setoff rights of any person under any contract with the insurer.
3 For purposes of this section, any change in the terms of, or
4 consideration for, any such contract shall be deemed an
5 amendment.

6 30. a. As soon as practicable, but not more than two years
7 from the date of an order of liquidation under section 17 of this
8 act of an insurer issuing assessable policies, the liquidator shall
9 make a report to the court setting forth:

10 (1) The reasonable value of the assets of the insurer;

11 (2) The insurer's probable total liabilities;

12 (3) The probable aggregate amount of the assessment
13 necessary to pay all claims of creditors and expenses in full,
14 including expenses of administration and costs of collecting the
15 assessment; and

16 (4) A recommendation as to whether or not an assessment
17 should be made and in what amount.

18 b. (1) Upon the basis of the report provided in subsection a. of
19 this section, the Superior Court may levy one or more
20 assessments against all members of the insurer who are subject to
21 assessment.

22 (2) Subject to any applicable legal limits on assessability, the
23 aggregate assessment shall be for the amount that the sum of the
24 probable liabilities, the expenses of administration, and the
25 estimated cost of collection of the assessment, exceeds the value
26 of existing assets, with due regard being given to assessments
27 that cannot be collected economically.

28 c. After levy of assessment under subsection b. of this section,
29 the liquidator shall issue an order directing each member who has
30 not paid the assessment pursuant to the order, to show cause why
31 the liquidator should not pursue a judgment therefor.

32 d. The liquidator shall give notice of the order to show cause
33 by publication and by first class mail to each member liable
34 thereunder mailed to his last known address as it appears on the
35 insurer's records, at least 20 days before the return day of the
36 order to show cause.

37 e. (1) If a member does not appear and serve duly verified
38 objections upon the liquidator on or before the return day of the
39 order to show cause under subsection c. of this section,, the court
40 shall make an order adjudging the member liable for the amount
41 of the assessment against him pursuant to subsection c. of this
42 section, together with costs, and the liquidator shall have a
43 judgment against the member therefor.

44 (2) If on or before such return day, the member appears and
45 serves duly verified objections upon the liquidator, the
46 commissioner may hear and determine the matter or may appoint
47 a referee to hear it and make such order as the facts warrant. In
48 the event that the commissioner determines that such objections
49 do not warrant relief from assessment, the member may request
50 the court to review the matter and vacate the order to show
51 cause.

52 f. The liquidator may enforce any order or collect any
53 judgment under subsection e. of this section by any lawful means.

54 31. The amount recoverable by the liquidator from reinsurers

1 shall not be reduced as a result of the delinquency proceedings,
2 regardless of any provision in the reinsurance contract or other
3 agreement. Payment made directly to an insured or other
4 creditor shall not diminish the reinsurer's obligation to the
5 insurer's estate except when the reinsurance contract provided
6 for direct coverage of a named insured and the payment was
7 made in discharge of that obligation.

8 32. a. (1) An agent, broker, premium finance company, or any
9 other person, other than the insured, responsible for the payment
10 of a premium shall be obligated to pay any unpaid premium for
11 the full policy term due the insurer at the time of the declaration
12 of insolvency, whether earned or unearned, as shown on the
13 records of the insurer. The liquidator shall also have the right to
14 recover from such person any part of an unearned premium that
15 represents commission of such person. Credits or setoffs or both
16 shall not be allowed to an agent, broker or premium finance
17 company for any amounts advanced to the insurer by the agent,
18 broker or premium finance company on behalf of, but in the
19 absence of a payment by, the insured.

20 (2) An insured shall be obligated to pay any unpaid earned
21 premium due the insurer, as shown on the records of the insurer,
22 at the time of the declaration of insolvency.

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

26 (1) Suspend or revoke or refuse to renew the licenses of such
27 offending party or parties.

28 (2) After a hearing, impose an administrative penalty of not
29 more than \$10,000 for each violation of this section.

30 c. Before the commissioner takes any action as set forth in
31 subsection b. of this section, he shall give written notice to the
32 person, company, association or exchange accused of violating
33 the law, stating specifically the nature of the alleged violation;
34 and fixing a time and place, at least 10 days thereafter, when a
35 hearing on the matter shall be held. After that hearing, or upon
36 failure of the accused to appear at the hearing, the
37 commissioner, if he shall find a violation, shall impose those
38 penalties under subsection b. of this section as he deems
39 advisable.

40 d. When the commissioner takes action in any or all of the
41 ways set out in subsection b. of this section, the party aggrieved
42 may appeal from that action to the Superior Court.

43 33. a. Within 120 days of a final determination of insolvency
44 of an insurer by a court of competent jurisdiction of this State,
45 the liquidator shall make application to the court for approval of
46 a proposal to disburse assets out of marshalled assets, from time
47 to time as those assets become available, to a guaranty
48 association or foreign guaranty association having obligations
49 because of that insolvency. If the liquidator determines that
50 there are insufficient assets to disburse, the application required
51 by this section shall be considered satisfied by a filing by the
52 liquidator stating the reasons for this determination.

53 b. The proposal shall at least include provisions for:

54 (1) Reserving amounts for the payment of expenses of

1 administration and the payment of claims of secured creditors, to
2 the extent of the value of the security held, and claims falling
3 within Classes 1 and 2 of the priorities of distribution established
4 pursuant to paragraphs (1) and (2) of subsection a. of section 41 of
5 this act;

6 (2) Disbursement of the assets marshalled to date and
7 subsequent disbursement of assets as they become available;

8 (3) Equitable allocation of disbursements to each guaranty
9 association and foreign guaranty association entitled thereto;

10 (4) The securing by the liquidator from each guaranty
11 association and foreign guaranty association entitled to
12 disbursements pursuant to this section of an agreement to return
13 to the liquidator such assets, together with income earned on
14 assets previously disbursed, as may be required to pay claims of
15 secured creditors and claims falling within the priorities of
16 distribution established in section 41 of this act in accordance
17 with those priorities. No bond shall be required of any guaranty
18 association or foreign guaranty association; and

19 (5) A full report to be made by each guaranty association and
20 foreign guaranty association to the liquidator accounting for all
21 assets so disbursed to the association, all disbursements made
22 therefrom, any interest earned by the association on those assets
23 and any other matter as the court may direct.

24 c. The liquidator's proposal shall provide for disbursements to
25 each guaranty association and foreign guaranty association in
26 amounts estimated at least equal to the claim payments made or
27 to be made thereby for which such association could assert a
28 claim against the liquidator, and shall further provide that if the
29 assets available for disbursement from time to time do not equal
30 or exceed the amount of those claims payments made or to be
31 made by the association, then disbursements shall be in the
32 amount of available assets.

33 d. Notice of application pursuant to this section shall be given
34 to the guaranty association and foreign guaranty associations and
35 the commissioners or other insurance regulators of each of the
36 states. Any such notice shall be deemed to have been given when
37 deposited in the United States certified mails, first class postage
38 prepaid, at least 30 days prior to submission of the application to
39 the court. Action on the application may be taken by the court
40 provided the above required notice has been given and provided
41 further that the liquidator's proposal complies with paragraphs
42 (1) and (2) of subsection b. of this section.

43 34. a. Proof of all claims shall be filed with the liquidator in
44 the form required by section 35 of this act on or before the last
45 day for filing specified in the notice required under section 21 of
46 this act, except that proof of claims for cash surrender values or
47 other investment values in life insurance and annuities need not
48 be filed unless the liquidator expressly so requires.

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

54 (1) The existence of the claim was not known to the claimant

1 and he filed his claim as promptly thereafter as reasonably
2 possible after learning of it;

3 (2) A transfer to a creditor was avoided under sections 25
4 through 27 of this act, or was voluntarily surrendered under
5 section 28 of this act, and that the filing satisfies the conditions
6 of section 28 of this act;

7 (3) The valuation under section 40 of this act, of any security
8 held by a secured creditor shows a deficiency, which is filed
9 within 30 days after the valuation; and

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

16 d. The liquidator may consider any claim filed late which is
17 not covered by subsection b. of this section, and permit it to
18 receive distributions which are subsequently declared on any
19 claims of the same or lower priority if the payment does not
20 prejudice the orderly administration of the liquidation. The
21 late-filing claimant shall receive, at each distribution, the same
22 percentage of the amount allowed on his claim as is then being
23 paid to claimants of any lower priority. This shall continue until
24 his claim has been paid in full.

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

27 (1) The particulars of the claim including the consideration
28 given for it;

29 (2) The identity and amount of the security on the claim;

30 (3) The payments made on the debt, if any;

31 (4) That the sum claimed is justly owing and that there is no
32 setoff, counterclaim or defense to the claim;

33 (5) Any right of priority of payment or other specific right
34 asserted by the claimants;

35 (6) A copy of the written instrument which is the foundation of
36 the claim; and

37 (7) The name and address of the claimant and the attorney who
38 represents him, if any.

39 b. No claim need be considered or allowed if it does not
40 contain all the information in subsection a. of this section which
41 may be applicable. The liquidator may require that a prescribed
42 form be used, and may require that other information and
43 documents be included.

44 c. At any time the liquidator may request the claimant to
45 present information or evidence supplementary to that required
46 under subsection a. of this section and may take testimony under
47 oath, require production of affidavits or depositions, or otherwise
48 obtain additional information or evidence.

49 d. No judgment or order against an insured or the insurer
50 entered after the date of filing of a successful petition for
51 liquidation, and no judgment or order against an insured or the
52 insurer entered at any time by default or by collusion need be
53 considered as evidence of liability or of quantum of damages. No
54 judgment or order against an insured or the insurer entered within

1 four months before the filing of the petition need be considered
2 as evidence of liability or of the quantum of damages.

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

6 36. a. A claim may be allowed even if contingent, if it is filed
7 in accordance with section 34 of this act. It may be allowed and
8 may participate in all distributions declared after it is filed to
9 the extent that it does not prejudice the orderly administration of
10 the liquidation.

11 b. Claims that are due except for the passage of time shall be
12 treated as absolute claims are treated, except that such claims
13 may be discounted at a rate of interest determined by the
14 commissioner.

15 c. Claims made under employment contracts by directors,
16 principal officers, or persons in fact performing similar functions
17 or having similar powers are limited to payment for services
18 rendered prior to the issuance of any order of rehabilitation or
19 liquidation under section 12 or 17 of this act.

20 37. a. Whenever any third party asserts a cause of action
21 against an insured of an insurer in liquidation, the third party may
22 file a claim with the liquidator.

23 b. Whether or not the third party files a claim, the insured
24 may file a claim on its own behalf in the liquidation. If the
25 insured fails to file a claim by the date for filing claims specified
26 in the order of liquidation or within 60 days after mailing of the
27 notice required by section 21 of this act, whichever is later, he is
28 an unexcused late filer.

29 c. The liquidator shall make his recommendations to the court
30 under section 42 of this act, for the allowance of an insured's
31 claim under subsection b. of this section after consideration of
32 the probable outcome of any pending action against the insured
33 on which the claim is based, the probable damages recoverable in
34 the action and the probable costs and expenses of defense. After
35 allowance by the court, the liquidator shall withhold any
36 dividends payable on the claim, pending the outcome of litigation
37 and negotiation with the insured. Whenever it seems appropriate,
38 he shall reconsider the claim on the basis of additional
39 information and amend his recommendations to the court. The
40 insured shall be afforded the same notice and opportunity to be
41 heard on all changes in the recommendation as in its initial
42 determination. The court may amend its allowance as it deems
43 appropriate. As claims against the insured are settled or barred,
44 the insured shall be paid from the amount withheld the same
45 percentage dividend as was paid on other claims of like property,
46 based on the lesser of: (1) the amount actually recovered from
47 the insured by action or paid by agreement plus the reasonable
48 costs and expense of defense, or (2) the amount allowed on the
49 claims by the court.

50 After all claims are settled or barred, any sum remaining from
51 the amount withheld shall revert to the undistributed assets of
52 the insurer. Delay in final payment under this subsection shall not
53 be a reason for unreasonable delay of final distribution and
54 discharge of the liquidator.

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

11 e. No claim may be presented under this section if it is or may
12 be covered by any guaranty association or foreign guaranty
13 association.

14 38. a. When a claim is denied in whole or in part by the
15 liquidator, written notice of the determination shall be given to
16 the claimant or his attorney by first class mail at the address
17 shown in the proof of claim. Within 60 days from the mailing of
18 the notice, the claimant may file his objections with the
19 liquidator. If no such filing is made, the claimant may not
20 further object to the determination.

21 b. Whenever objections are filed with the liquidator and the
22 liquidator does not alter his denial of the claim as a result of the
23 objections, the liquidator shall ask the court for a hearing as soon
24 as practicable and give notice of the hearing by first class mail to
25 the claimant or his attorney and to any other persons directly
26 affected, not less than 10 nor more than 30 days before the date
27 of the hearing. The matter may be heard by the court or by a
28 court-appointed referee who shall submit findings of fact along
29 with his recommendation.

30 39. Whenever a creditor, whose claim against an insurer is
31 secured, in whole or in part, by the undertaking of another
32 person, fails to prove and file that claim, the other person may do
33 so in the creditor's name, and shall be subrogated to the rights of
34 the creditor, whether the claim has been filed by the creditor or
35 by the other person in the creditor's name, to the extent that he
36 discharges the undertaking. In the absence of an agreement with
37 the creditor to the contrary, the other person shall not be
38 entitled to any distribution, however, until the amount paid to the
39 creditor on the undertaking plus the distributions paid on the
40 claim from the insurer's estate to the creditor equals the amount
41 of the entire claim of the creditor. Any excess received by the
42 creditor shall be held by him in trust for that other person. The
43 term "other person," as used in this section, shall not apply to a
44 guaranty association or foreign guaranty association.

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

48 (1) By converting the same into money according to the terms
49 of the agreement pursuant to which the security was delivered to
50 the creditor; or

51 (2) By agreement, arbitration, compromise or litigation
52 between the creditor and the liquidator.

53 b. The determination shall be under the supervision and control
54 of the court with due regard for the recommendation of the

1 liquidator. The amount so determined shall be credited upon the
2 secured claim, and any deficiency shall be treated as an
3 unsecured claim. If the claimant shall surrender his security to
4 the liquidator, the entire claim shall be allowed as if unsecured.

5 41. a. The priority of distribution of claims from the insurer's
6 estate shall be in accordance with the order in which each class
7 of claims is set forth in this section. Every claim in each class
8 shall be paid in full or adequate funds or other assets retained for
9 such payment before the members of the next class receive any
10 payment. No subclasses shall be established within any class. The
11 order of distribution of claims shall be:

12 (1) Class 1. The costs and expenses of administration during
13 rehabilitation and liquidation, including but not limited to the
14 following:

15 (a) The actual and necessary costs of preserving or recovering
16 the assets of the insurer;

17 (b) Compensation for all authorized services rendered in the
18 rehabilitation and liquidation;

19 (c) Any necessary filing fees;

20 (d) The fees and mileage payable to witnesses;

21 (e) Authorized reasonable attorney's fees and other
22 professional services rendered in the rehabilitation and
23 liquidation;

24 (f) The reasonable expenses of a guaranty association or
25 foreign guaranty association for unallocated loss adjustment
26 expenses. For purposes of this subparagraph, "unallocated loss
27 adjustment expenses" means expenses associated with claims
28 settlement due to the insolvency of a member insurer that cannot
29 be assigned to an individual claim.

30 (2) Class 2. Reasonable compensation to employees for
31 services performed to the extent that they do not exceed two
32 months of monetary compensation and represent payment for
33 services performed within one year before the filing of the
34 petition for liquidation or, if rehabilitation preceded liquidation,
35 within one year before the filing of the petition for
36 rehabilitation. Principal officers and directors shall not be
37 entitled to the benefit of this priority except as otherwise
38 approved by the liquidator and the court. Such priority shall be in
39 lieu of any other similar priority which may be authorized by law
40 as to wages or compensation of employees.

41 (3) Class 3. All claims under policies, including claims of the
42 federal or any state or local government for losses incurred and
43 including third party claims and all claims of a guaranty
44 association or foreign guaranty association, but excluding
45 amounts recoverable under Class 1 claims pursuant to paragraph
46 (1) of this subsection. All claims under life insurance and annuity
47 policies, whether for death proceeds, annuity proceeds, or
48 investment values, shall be treated as loss claims. 1For the
49 purpose of this section, life insurance and annuity policies shall
50 include, but not be limited to, any and all individual and group
51 annuity and investment contracts issued by an insurer under or in
52 connection with an employee benefit plan or program to which
53 section 401, 403(b), 408 or 457 of the federal Internal Revenue
54 Code of 1986 (26 U.S.C. §401, 403(b), 408 or 457) relates, to

1 whomever or whatever persons or entities such contracts are
2 issued, together with all individual annuities issued pursuant to
3 any such contracts.¹ That portion of any loss, indemnification
4 for which is provided by other benefits or advantages recovered
5 by the claimant, shall not be included in this class, other than
6 benefits or advantages recovered or recoverable in discharge of
7 familial obligation of support or by way of succession at death or
8 as proceeds of life insurance, or as gratuities. No payment by an
9 employer to his employee shall be treated as a gratuity. Claims
10 of enrollees, members or subscribers, and their beneficiaries, of a
11 fraternal benefit society, mutual benefit association, hospital
12 service corporation, medical service corporation, health service
13 corporation, dental service corporation, dental plan organization
14 or health maintenance organization, as the case may be, shall
15 have the same priority established by this section for
16 policyholders and beneficiaries of insurers. Any provider of
17 health care services to an enrollee, member or subscriber shall
18 have a priority of distribution of general assets immediately
19 following that of enrollees, members or subscribers and their
20 beneficiaries, and immediately preceding Class 4 claims under
21 paragraph (4) of this subsection.

22 (4) Class 4. Claims under nonassessable policies for unearned
23 premium or other premium refunds and claims of general
24 creditors including claims of ceding and assuming companies in
25 their capacity as such.

26 (5) Class 5. Claims of the federal or any state or local
27 government except those under Class 3 claims pursuant to
28 paragraph (3) of subsection a. of this section. Claims, including
29 those of any governmental body for a penalty or forfeiture, shall
30 be allowed in this class only to the extent of the pecuniary loss
31 sustained from the act, transaction or proceeding out of which
32 the penalty or forfeiture arose, with reasonable and actual costs
33 occasioned thereby. The remainder of such claims shall be
34 postponed to the Class 8 claims under paragraph (8) of this
35 subsection.

36 (6) Class 6. Claims filed late or any other claims other than
37 Class 7 and Class 8 claims under paragraphs (7) and (8) of this
38 subsection.

39 (7) Class 7. Surplus or contribution notes, or similar
40 obligations, and premium refunds on assessable policies.
41 Payments to members of domestic mutual insurance companies
42 shall be limited in accordance with law.

43 (8) Class 8. The claims of shareholders or other owners in
44 their capacity as shareholders.

45 b. Every claim under a separate account agreement providing,
46 in effect, that the assets in the separate account shall not be
47 chargeable with liabilities arising out of any other business of the
48 insurer shall be satisfied out of the assets in the separate account
49 equal to the reserves maintained in that account for that
50 agreement. To the extent, if any, that a claim under a separate
51 account agreement is not fully discharged by such assets, such
52 claim shall be treated as a Class 3 claim pursuant to paragraph
53 (3) of subsection a. of this section against the estate of the
54 insurer.

1 42. a. The liquidator shall review all claims duly filed in the
2 liquidation and shall make such further investigation as he shall
3 deem necessary. He may compound, compromise or in any other
4 manner negotiate the amount for which claims will be
5 recommended to the court except where the liquidator is required
6 by law to accept claims as settled by any person or organization,
7 including any guaranty association or foreign guaranty
8 association. Unresolved disputes shall be determined under
9 section 38 of this act. As soon as practicable, he shall present to
10 the court a report of the claims against the insurer with his
11 recommendations. The report shall include the name and address
12 of each claimant and the amount of the claim finally
13 recommended, if any. If the insurer has issued annuities or life
14 insurance policies, the liquidator shall report the persons to
15 whom, according to the records of the insurer, amounts are owed
16 as cash surrender values or other investment value and the
17 amounts owed.

18 b. The court may approve, disapprove or modify the report on
19 claims by the liquidator. Reports that are not modified by the
20 court within a period of 60 days following submission by the
21 liquidator shall be treated by the liquidator as allowed claims,
22 subject thereafter to later modification or to rulings made by the
23 court pursuant to section 38 of this act. No claim under a policy
24 of insurance shall be allowed for an amount in excess of the
25 applicable policy limits.

26 43. Under the direction of the court, the liquidator shall pay
27 distributions in a manner that will assure the proper recognition
28 of priorities and a reasonable balance between the expeditious
29 completion of the liquidation and the protection of unliquidated
30 and undetermined claims, including third party claims.
31 Distribution of assets in kind may be made at valuations set by
32 agreement between the liquidator and the creditor and approved
33 by the court.

34 44. Distribution of all unclaimed funds subject to distribution
35 remaining in the liquidator's hands when he is ready to apply to
36 the court for discharge, including the amount distributable to any
37 creditor, shareholder, member or other person who is unknown or
38 cannot be found, shall be made in accordance with the "Uniform
39 Unclaimed Property Act (1981)," R.S. 46:30B-1 et seq.

40 45. a. When all assets justifying the expense of collection and
41 distribution have been collected and distributed under this act,
42 the liquidator shall apply to the court for discharge. The court
43 may grant the discharge and make any other orders, including an
44 order to transfer any remaining funds that are uneconomic to
45 distribute, as may be deemed appropriate.

46 b. Any other person may apply to the court at any time for an
47 order under subsection a. of this section. If the application is
48 denied, the applicant shall pay the costs and expenses of the
49 liquidator in resisting the application, including reasonable
50 attorney's fees.

51 46. After the liquidation proceeding has been terminated and
52 the liquidator discharged, the commissioner or other interested
53 party may at any time petition the Superior Court to reopen the
54 proceedings for good cause, including the discovery of additional

1 assets. If the court is satisfied that there is justification for
2 reopening, it shall so order.

3 47. Whenever it shall appear to the commissioner that the
4 records of any insurer in the process of liquidation or completely
5 liquidated are no longer useful, he may recommend to the court
6 and the court shall direct what records should be retained for
7 future reference and what should be destroyed.

8 48. The Superior Court may, as it deems appropriate, cause
9 audits to be made of the books of the commissioner relating to
10 any receivership established under this act, and a report of each
11 audit shall be filed with the commissioner and with the court.
12 The books, records and other documents of the receivership shall
13 be made available to the auditor at any time without notice. The
14 expense of each audit shall be considered a cost of administration
15 of the receivership.

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

22 (1) Any of the grounds in section 11 of this act;

23 (2) That any of its property has been sequestered by official
24 action in its domiciliary state, or in any other state;

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

28 (4) (a) That its certificate of authority to do business in this
29 State has been revoked or that none was ever issued; and

30 (b) That there are residents of this State with outstanding
31 claims or outstanding policies.

32 b. When an order is sought under subsection a. of this section,
33 the court shall give the insurer notice and time to respond
34 thereto as is reasonable under the circumstances.

35 c. The court may issue the order in whatever terms it shall
36 deem appropriate. The filing or recording of the order with the
37 Clerk of Superior Court or the recorder of deeds of the county in
38 which the principal business of the insurer is located, shall impart
39 the same notice as a deed, bill of sale or other evidence of title
40 duly filed or recorded with that recorder of deeds would have
41 imparted.

42 d. The conservator may at any time petition for and the court
43 may grant an order under section 50 of this act to liquidate assets
44 of a foreign or alien insurer under conservation, or, if
45 appropriate, for an order under section 52 of this act, to be
46 appointed ancillary receiver.

47 e. The conservator may at any time petition the court for an
48 order terminating conservation of an insurer. If the court finds
49 that the conservation is no longer necessary, it shall order that
50 the insurer be restored to possession of its property and the
51 control of its business. The court may also make such finding and
52 issue such order at any time upon motion of any interested party,
53 but if such motion is denied all costs shall be assessed against
54 that party.

1 50. a. If no domiciliary receiver has been appointed, the
2 commissioner may apply to the Superior Court by verified
3 petition for an order directing him to liquidate the assets found in
4 this State of a foreign insurer or an alien insurer not domiciled in
5 this State, on any of the following grounds:

6 (1) Any of the grounds in section 11 or 16 of this act; or

7 (2) Any of the grounds specified in paragraphs (2) through (4)
8 of subsection a. of section 49 of this act.

9 b. When an order is sought under subsection a. of this section,
10 the court shall give the insurer notice and time to respond
11 thereto as is reasonable under the circumstances.

12 c. If it shall appear to the court that the best interests of
13 creditors, policyholders and the public require, the court may
14 issue an order to liquidate in whatever terms it shall deem
15 appropriate. The filing or recording of the order with the Clerk
16 of the Superior Court or the recorder of deeds of the county in
17 which the principal business of the insurer is located or the
18 county in which its principal office or place of business is
19 located, shall impart the same notice as a deed, bill of sale or
20 other evidence of title duly filed or recorded with that recorder
21 of deeds would have imparted.

22 d. If a domiciliary liquidator is appointed in a reciprocal state
23 while a liquidation is proceeding under this section, the liquidator
24 under this section shall thereafter act as ancillary receiver under
25 section 52 of this act. If a domiciliary liquidator is appointed in a
26 nonreciprocal state while a liquidation is proceeding under this
27 section, the liquidator under this section may petition the court
28 for permission to act as ancillary receiver under section 52 of
29 this act.

30 e. On the same grounds as are specified in subsection a. of this
31 section, the commissioner may petition any appropriate federal
32 district court to be appointed receiver to liquidate that portion of
33 the insurer's assets and business over which the court will
34 exercise jurisdiction, or any lesser part thereof that the
35 commissioner deems desirable for the protection of the
36 policyholders and creditors in this State.

37 f. The court may order the commissioner, when he has
38 liquidated the assets of a foreign or alien insurer under this
39 section, to pay claims of residents of this State against the
40 insurer under such rules as to the liquidation of insurers under
41 this act as are otherwise compatible with the provisions of this
42 section.

43 51. a. The domiciliary liquidator of an insurer domiciled in a
44 reciprocal state shall, except as to special deposits and security
45 on secured claims under subsection c. of section 52 of this act, be
46 vested by operation of law with the title to all of the assets,
47 property, contracts and rights of action, agents' balances, and all
48 of the books, accounts and other records of the insurer located in
49 this State. The date of vesting shall be the date of the filing of
50 the petition, if that date is specified by the domiciliary law for
51 the vesting of property in the domiciliary state. Otherwise, the
52 date of vesting shall be the date of entry of the order directing
53 possession to be taken. The domiciliary liquidator shall have the
54 immediate right to recover balances due from agents and to

1 obtain possession of the books, accounts and other records of the
2 insurer located in this State. He also shall have the right to
3 recover all other assets of the insurer located in this State,
4 subject to the provisions of section 52 of this act.

5 b. If a domiciliary liquidator is appointed for an insurer not
6 domiciled in a reciprocal state, the commissioner of this State
7 shall be vested by operation of law with the title to all of the
8 property, contracts and right of action, and all of the books,
9 accounts and other records of the insurer located in this State, at
10 the same time that the domiciliary liquidator is vested with title
11 in the domicile. The commissioner of this State may petition for
12 a conservation or liquidation order under section 49 or 50 of this
13 act, or for an ancillary receivership under section 52 of this act,
14 or after approval by the Superior Court may transfer title to the
15 domiciliary liquidator, as the interests of justice and the
16 equitable distribution of the assets require.

17 c. Claimants residing in this State may file claims with the
18 liquidator or ancillary receiver, if any, in this State or with the
19 domiciliary liquidator, if the domiciliary law permits. The claims
20 shall be filed on or before the last date fixed for the filing of
21 claims in the domiciliary liquidation proceedings.

22 52. a. If a domiciliary liquidator has been appointed for an
23 insurer not domiciled in this State, the commissioner may file a
24 petition with the Superior Court requesting appointment as
25 ancillary receiver in this State:

26 (1) If he finds that there are sufficient assets of the insurer
27 located in this State to justify the appointment of an ancillary
28 receiver;

29 (2) If the protection of creditors or policyholders in this State
30 so requires.

31 b. The court may issue an order appointing an ancillary
32 receiver in whatever terms it shall deem appropriate. The filing
33 or recording of the order with the recorder of deeds in this State
34 imparts the same notice as a deed, bill of sale or other evidence
35 of title duly filed or recorded with that recorder of deeds.

36 c. When a domiciliary liquidator has been appointed in a
37 reciprocal state, then the ancillary receiver appointed in this
38 State may, whenever necessary, aid and assist the domiciliary
39 liquidator in recovering assets of the insurer located in this
40 State. The ancillary receiver shall, as soon as practicable,
41 liquidate from their respective securities those special deposit
42 claims and secured claims which are proved and allowed in the
43 ancillary proceedings in this State, and shall pay the necessary
44 expenses of the proceedings. He shall promptly transfer all
45 remaining assets, books, accounts and records to the domiciliary
46 liquidator. Subject to this section, the ancillary receiver and his
47 deputies shall have the same powers and be subject to the same
48 duties with respect to the administration of assets as a liquidator
49 of an insurer domiciled in this State.

50 d. When a domiciliary liquidator has been appointed in this
51 State, ancillary receivers appointed in reciprocal states shall
52 have, as to assets and books, accounts and other records in their
53 respective states, corresponding rights, duties and powers to
54 those provided in subsection c. of this section for ancillary

1 receivers appointed in this State.

2 53. The commissioner in his sole discretion may institute
3 proceedings under sections 9 and 10 of this act at the request of
4 the commissioner or other appropriate insurance official of the
5 domiciliary state of any foreign or alien insurer having property
6 located in this State.

7 54. a. In a liquidation proceeding begun in this State against
8 an insurer domiciled in this State, claimants residing in foreign
9 countries or in states not reciprocal states must file claims in
10 this State, and claimants residing in reciprocal states may file
11 claims either with the ancillary receivers, if any, in their
12 respective states, or with the domiciliary liquidator. Claims shall
13 be filed on or before the last date fixed for the filing of claims in
14 the domiciliary liquidation proceeding.

15 b. Claims belonging to claimants residing in reciprocal states
16 may be proved either in the liquidation proceeding in this State as
17 provided in this act, or in ancillary proceedings, if any, in the
18 reciprocal states. If notice of the claims and opportunity to
19 appear and be heard is afforded the domiciliary liquidator of this
20 State as provided in subsection b. of section 55 of this act with
21 respect to ancillary proceedings, the final allowance of claims by
22 the courts in ancillary proceedings in reciprocal states shall be
23 conclusive as to amount and as to priority against special deposits
24 or other security located in such ancillary states, but shall not be
25 conclusive with respect to priorities against general assets under
26 section 41 of this act.

27 55. a. In a liquidation proceeding in a reciprocal state against
28 an insurer domiciled in that state, claimants against the insurer
29 who reside within this State may file claims either with the
30 ancillary receiver, if any, in this State, or with the domiciliary
31 liquidator. Claims shall be filed on or before the last dates fixed
32 for the filing of claims in the domiciliary liquidation proceeding.

33 b. Claims belonging to claimants residing in this State may be
34 proved either in the domiciliary state under the law of that state,
35 or in ancillary proceedings, if any, in this State. If a claimant
36 elects to prove his claim in this State, he shall file his claim with
37 the liquidator in the manner provided in sections 34 and 35 of this
38 act. The ancillary receiver shall make his recommendation to the
39 court as under section 42 of this act. He shall also arrange a date
40 for hearing if necessary under section 38 of this act and shall give
41 notice to the liquidator in the domiciliary state, either by
42 certified mail or by personal service at least 40 days prior to the
43 date set for hearing. If the domiciliary liquidator, within 30 days
44 after the giving of such notice, gives notice in writing to the
45 ancillary receiver and to the claimant, either by certified mail or
46 by personal service, of his intention to contest the claim, he shall
47 be entitled to appear or to be represented in any proceeding in
48 this State involving the adjudication of the claim.

49 c. The final allowance of the claim by the courts of this State
50 shall be accepted as conclusive as to amount and as to priority
51 against special deposits or other security located in this State.

52 56. During the pendency in this or any other state of a
53 liquidation proceeding, whether called by that name or not, no
54 action or proceeding in the nature of an attachment, garnishment

1 or levy of execution shall be commenced or maintained in this
2 State against the delinquent insurer or its assets.

3 57. a. In a liquidation proceeding in this State involving one or
4 more reciprocal states, the order of distribution of the
5 domiciliary state shall control as to all claims of residents of this
6 and reciprocal states. All claims of residents of reciprocal states
7 shall be given equal priority of payment from general assets
8 regardless of where such assets are located.

9 b. The owners of special deposit claims against an insurer for
10 which a liquidator is appointed in this or any other state shall be
11 given priority against the special deposits in accordance with the
12 laws governing the creation and maintenance of the deposits. If
13 there is a deficiency in any deposit, so that the claims secured by
14 it are not fully discharged from it, the claimants may share in the
15 general assets, but the sharing shall be deferred until general
16 creditors, and also claimants against other special deposits who
17 have received smaller percentages from their respective special
18 deposits, have been paid percentages of their claims equal to the
19 percentage paid from the special deposit.

20 c. The owner of a secured claim against an insurer for which a
21 liquidator has been appointed in this or any other state may
22 surrender his security and file his claim as a general creditor, or
23 the claim may be discharged by resort to the security in
24 accordance with section 40 of this act, in which case the
25 deficiency, if any, shall be treated as a claim against the general
26 assets of the insurer on the same basis as claims of unsecured
27 creditors, except to the extent such deficiency is treated as a
28 Class 3 claim pursuant to subsection b. of section 41 of this act.

29 58. If an ancillary receiver in another state or foreign country,
30 whether called by that name or not, fails to transfer to the
31 domiciliary liquidator in this State any assets within his control,
32 other than special deposits, diminished only by the expenses of
33 the ancillary receivership, if any, the claims filed in the ancillary
34 receivership, other than special deposit claims or secured claims,
35 shall be Class 7 claims pursuant to paragraph (7) of subsection a.
36 of section 41 of this act.

37 59. a. For the purpose of this section, the following persons
38 are entitled to protection under subsection b. of this section:

39 (1) All receivers responsible for the conduct of a delinquency
40 proceeding under this act including present and former receivers;
41 and

42 (2) Their employees, including all present and former special
43 deputies and assistant special deputies appointed by the
44 commissioner and all persons whom the commissioner and all
45 persons whom the commissioner, special deputies, or assistant
46 special deputies have employed to assist in a delinquency
47 proceeding under this act. Attorneys, accountants, auditors and
48 other professional persons or firms who are retained by the
49 receiver as independent contractors and their employees shall not
50 be considered employees of the receiver for purposes of this
51 section.

52 b. No person covered under subsection a. of this section shall
53 be liable, either personally or in his official capacity, for any
54 claim for damage to or loss of property or personal injury or

1 other civil liability caused by or resulting from any alleged act,
2 error or omission of that person arising out of or by reason of his
3 duties as a receiver, or employment by a receiver, except that
4 nothing in this subsection shall be deemed to grant immunity to
5 any person causing such damage by his willful, wanton or grossly
6 negligent act of commission or omission.

7 60. This act shall not be interpreted to limit the powers
8 granted to the commissioner by other provisions of law.

9 61. The commissioner may, pursuant to the "Administrative
10 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), promulgate
11 necessary rules and regulations to implement the provisions of
12 this act.

13 62. The following are repealed: section 27 of P.L.1959, c.167
14 (C.17:44A-27); R.S.17:45-15; section 13 of P.L.1938, c.366
15 (C.17:48-13); section 20 of P.L.1940, c.74 (C.17:48A-20); section
16 40 of P.L.1985, c.236 (C.17:48E-40); section 29 of P.L.1968, c.305
17 (C.17:48C-29); section 19 of P.L.1979, c.478 (C.17:48D-19);
18 section 20 of P.L.1973, c.337 (C.26:2J-20); and chapter 32 of
19 Title 17B of the New Jersey Statutes (N.J.S.17B:32-1 through
20 N.J.S.17B:32-30).

21 63. This act shall take effect immediately.

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26 The "Life and Health Insurers Rehabilitation and Liquidation
27 Act."

STATEMENT

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This bill, the "Life and Health Insurers Rehabilitation and Liquidation Act," is based on the rehabilitation and liquidation model bill of the National Association of Insurance Commissioners and provides a detailed framework under which life and health insurers may be rehabilitated and liquidated. The rehabilitation and liquidation scheme under the bill applies not only to commercial life and health insurers but to fraternal benefit societies, mutual benefit associations, hospital service corporations, medical service corporations, health service corporations, dental service corporations, dental plan organizations and health maintenance organizations. The current rehabilitation and liquidation procedures applicable to these various entities are repealed under the bill.

The "Life and Health Insurers Rehabilitation and Liquidation Act."

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 719

with Senate committee amendments

STATE OF NEW JERSEY

DATED: JUNE 8, 1992

The Senate Commerce Committee reports favorably and with committee amendments Senate, No. 719.

This bill, the "Life and Health Insurers Rehabilitation and Liquidation Act," provides a detailed framework under which life and health insurers may be rehabilitated or liquidated. The rehabilitation and liquidation schemes under this bill apply not only to commercial life and health insurers but to fraternal benefit societies, mutual benefit associations, hospital service corporations, medical service corporations, health service corporations, dental service corporations, dental plan organizations and health maintenance organizations. The current rehabilitation and liquidation procedures applicable to these various entities are repealed under the bill.

The major differences between this bill and the current regulatory scheme are that this bill:

(1) Expands and clarifies that the Commissioner of Insurance may apply for, and a court may grant, restraining orders, preliminary and permanent injunctions and other orders as necessary and proper to prevent dissipation and transfer of property, withholding documents from the receiver, or any other threatened or contemplated action that may lessen the value of the insurer's assets and prejudice the rights of policyholders, creditors, shareholders or the administration of any proceeding under this bill;

(2) Specifically requires the cooperation of officers, managers, directors, trustees, owners and employees in any proceeding under the bill, and provides penalties for failure to do so;

(3) Provides for summary proceedings in cases where the interest of policyholders, creditors or the public will be endangered by delay;

(4) Provides additional grounds for the commissioner to seek an order authorizing him to rehabilitate an insurer, such grounds as reasonable cause to believe that there has been embezzlement from the insurer or forgery or fraud affecting the insurer or other illegal conduct; that control of the insurer is in a person or persons found to be untrustworthy; or that the insurer has failed to make available for examination any property of any subsidiary or related company within the control of the insurer, or of any person having executive authority in the insurer, in addition to failing to make available any of its own property;

(5) Specifically provides that an order of rehabilitation shall require accountings to the court by the rehabilitator at specified intervals;

(6) In addition to providing for the appointment of special deputies and employment of counsels, clerks and assistants necessary to facilitate the commissioner's performance of his duties under the bill, authorizes the rehabilitator to appoint an advisory committee of policyholders, claimants or other creditors. It also specifies that the appointment of special deputies, clerks and assistants shall be at the pleasure of the commissioner;

(7) Specifically provides that if the property of the insurer does not contain sufficient cash or liquid assets to defray costs incurred, the commissioner may advance costs incurred out of any appropriation for the maintenance of the department;

(8) Revises the grounds upon which the commissioner may petition the court for an order directing him to liquidate an insurer in that it provides as grounds for liquidation that the insurer is insolvent and that the insurer is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors or the public. New Jersey's current statutes provide as a ground for liquidation that the insurer is insolvent and has commenced voluntary liquidation or dissolution or attempts to commence or prosecute any actual proceeding to liquidate its business or affairs;

(9) Requires the liquidator to file financial reports describing the assets and liabilities of the insurer within one year of the liquidation order and annually thereafter;

(10) Requires that the commissioner present for the court's approval a plan for the continued performance of the liquidated insurer's policy claims obligations;

(11) Provides guidelines for the termination of coverage by an insurer under liquidation;

(12) Expands the powers of the liquidator to include the power to appoint an advisory committee of policyholders, claimants or other creditors; to fix reasonable compensation of employees and agents of the insurer, and with the approval of the court, legal counsel, actuaries, accountants, appraisers and consultants other than employees of the insurer; to pay reasonable compensation to persons appointed as special deputies to assist the liquidator; to hold hearings, subpoena witnesses and compel their attendance; administer oaths; require production of any other books, papers, records or documents deemed relevant; and audit the books and records of all agents of the insurer insofar as those records relate to the business activities of the insurer;

(13) Requires that the liquidator give notice of the liquidation to various interested parties including the insurance regulators of each jurisdiction in which the insurer is doing business, any guaranty association which may become obligated as a result of the liquidation, all insurance agents of the insurer, and all persons known or reasonably expected to have claims against the insurer. Such notice to claimants shall require them to file with the liquidator their claims with proper proofs as provided for in the bill on or before the date specified in the notice;

(14) Requires agents who receive the notice described above to provide specified information to the liquidator regarding policies issued by the insurer under liquidation;

(15) Provides a detailed framework regarding the avoidance by the rehabilitator or liquidator of fraudulent transfers both before and after a petition for rehabilitation or liquidation is filed. A fraudulent transfer is a transfer made or suffered or an obligation incurred by an insurer within one year before the filing of a successful petition for rehabilitation or liquidation, if made or incurred without fair consideration or with actual intent to hinder, delay or defraud existing or future creditors. The bill provides standards and guidelines as to when a transfer of property shall be deemed to be transferred, made or suffered. It also provides similar detail with respect to the avoidance of preferences and liens by the rehabilitator or liquidator. A preference is a transfer of the property of the insurer to or for the benefit of a creditor for or on account of an antecedent debt made or suffered by the insurer within one year before the filing of a successful petition for liquidation, and the effect of the transfer is to enable the creditor to obtain a greater percentage of the debt than another creditor of the same class would receive. The bill provides guidelines for avoidance by the liquidator of such preferences. For example, the preference may be avoided if the insurer was insolvent at the time of the transfer, or the transfer was made within four months before the filing of the petition for liquidation;

(16) Provides for modification of setoffs. Under the current statutes, mutual debts or mutual credits between the insurer and another person in connection with an action or proceeding would be setoff and the balance only would be allowed or paid, except when: the obligation of the insurer to the person would not, at the date of the filing of the petition for liquidation, be entitled to share as a claimant in the assets of the insurer; or the obligation of the insurer to the person was purchased by or transferred to the person with a view towards it becoming used as a setoff; or the obligation of the person is to pay a balance upon a subscription to the capital stock of the insurer. This bill would clarify that mutuality of the transaction is not necessary for the setoff to be permitted, prohibits the use of setoffs owing or payable by affiliates, permits debts and credits arising from one or more ceding transactions or assuming transactions to be setoff, but prohibits debts and credits from ceding and assuming transactions to be a setoff against one another. However, the commissioner is provided with the flexibility to permit setoffs of assumed/ceded debts and credits in a rehabilitation proceeding. An insurer which assumed business from the insolvent insurer may only set off against debts which are identified in accounting statements provided to the assuming insurer by the liquidator. The bill limits setoffs due a ceding insurer to only those amounts paid by the ceding insurer or approved in the insolvency proceeding:

(17) Provides for the recovery of premiums owed from any agent, broker, premium finance company or any person to the insolvent insurer;

(18) Provides procedures for claimants making late filings; requirements for the proof of claims submitted by potential claimants; and provides specific guidelines with respect to the treatment of contingent claims, third party claims, and disputed claims;

(19) Provides a detailed scheme with respect to the priority of distribution of claims from an insurer's estate. Under current law, a priority of distribution of claims, except for secured interests and certain other claims, does not exist. For example, a claim of a policyholder is currently on the same priority level as a claim of a general creditor of an insurer.

(20) Provides additional grounds upon which the commissioner may apply to the court for an order directing him to act as a conservator to conserve the property of an alien insurer or a foreign insurer. For example, it provides as an additional ground that enough of a foreign or alien insurer's property has been sequestered in a foreign country to give reasonable cause to fear that the insurer is or may become insolvent, or that its certificate of authority has been revoked or never issued and that there are residents in this State with outstanding claims or outstanding policies;

(21) Provides grounds upon which the commissioner may apply to the court for an order directing him to liquidate the assets found in this State of a foreign insurer, or alien insurer not domiciled in this State, if no domiciliary receiver has been appointed.

The committee amended section 41 of the bill to clarify that life insurance and annuity policies include certain individual and group annuity and investment contracts and thereby have a Class 3 priority of distribution under this bill and section 7 of the bill to provide for an improved priority for part of a possible debt in a current insurer rehabilitation.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[FIRST REPRINT]

SENATE, No. 719

STATE OF NEW JERSEY

DATED: JUNE 15, 1992

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 719 (1R).

This bill, the "Life and Health Insurers Rehabilitation and Liquidation Act," revises the procedures under which life and health insurers may be rehabilitated or liquidated. The rehabilitation and liquidation schemes under this bill apply not only to commercial life and health insurers, but to fraternal benefit societies, mutual benefit associations, hospital service corporations (Blue Cross), medical service corporations (Blue Shield), health service corporations (Blue Cross/Blue Shield), dental service corporations, dental plan organizations and health maintenance organizations. The current rehabilitation and liquidation procedures applicable to these various entities are repealed under the bill.

Of the most relevance to policyholders and creditors, the bill provides a detailed scheme with respect to the priority of distribution of claims from an insurer's estate. Under current law, a priority of distribution of claims, except for secured interests and certain other claims, does not exist. For example, a claim of a policyholder is currently on the same priority level as a claim of a general creditor of an insurer.

This bill is based on the National Association of Insurance Commissioners' (NAIC) rehabilitation and liquidation model bill. Twenty-seven states have adopted this NAIC model bill. Because life and health insurers are national concerns, it is important that there be uniformity in the laws of the various states concerning the rehabilitation, conservation and liquidation of these insurers.

FISCAL IMPACT

This bill was not certified as requiring a fiscal note. The bill specifically provides that if the property of the insurer does not contain sufficient cash or liquid assets to defray administrative costs incurred, the commissioner may advance those costs out of any appropriation for the maintenance of the department; however, amounts so advanced must be repaid out of the first available money of the insurer. Moreover, the expenses of administration during rehabilitation and liquidation are accorded the highest priority for distribution of claims from among the insurer's estate under the bill. Therefore, cost to the department should ultimately be nominal.



OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001

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GOVERNOR FLORIO SIGNS BILL PROTECTING POLICYHOLDERS OF LIFE AND HEALTH INSURERS

Governor Jim Florio today signed legislation that protects the interests of policyholders and annuitants of troubled life and health insurers by giving their claims priority over large corporate creditors.

At a bill signing attended by members of the Mutual Benefit Life Annuitants Association, Gov. Florio praised the aggressive lobbying effort by a group of annuitants that helped the bill gain passage.

"It would have been easy for the Annuitants Association to complain while the special interests cleaned up," Gov. Florio said. "But the men and women of your Association knew Mutual Benefit's creditors had nothing to lose but a few ticks of profit on a tiny slice of their massive investment portfolios, while the policyholders were only asking for the benefits they'd already paid for."

"You formed a grass roots group, you got the word out, you testified before committees, you insisted on a fair deal, and you won," Gov. Florio said.

"Today we sign a law that takes care of customers first, and multi-national banks later," Gov. Florio said. "We sign a law that provides peace of mind for Mutual Benefit employees, and over 600,000 Mutual Benefit policy and annuity holders. And this time, the special interests have to get in line, behind the policyholders and annuitants who were counting on their investments for retirement."

The bill was approved despite an energetic lobbying effort on behalf of several large banks, which sought equal footing with policyholders and annuitants in recovering debts from Mutual Benefit. Those financial institutions had advanced a competing legislative proposal that would have protected their interests at the expense of policyholders.

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Insurance Commissioner Samuel F. Fortunato said passage of the bill is required in order for the state to move ahead on efforts to reach an agreement with the insurance industry and the National Association of Life and Health Guaranty Associations that will provide a full guarantee of all Mutual Benefit policyholder claims. Work on that agreement is ongoing.

"From the beginning of the rehabilitation process, Governor Florio and I had one goal -- to protect the interests of Mutual Benefit's policyholders and annuitants," Commissioner Fortunato said. "This bill and the cooperation of the insurance industry will clear the way for a rehabilitation plan that ensures the company honors its obligations to its policyholders."

Until today, New Jersey was one of six states that did not have a law in place outlining the priority of claims during the rehabilitation or liquidation of a life or health insurer.

In addition to giving policyholders priority over general unsecured creditors, the bill makes several other statutory changes that better enable the state to rehabilitate financially troubled insurers. These changes include expanding the commissioner's authority to obtain court injunctions to prevent the transfer of property by an insurers, and allowing speedier resolution of proceedings in which delays could harm policyholders and the general public.

In addition, the law provides added grounds on which the commissioner may intercede in a troubled insurer company and gives the state broader powers to prevent fraudulent transfers of assets both before and after a state rehabilitation or liquidation of a company is started.

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