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LEGISLATIVE HISTORY CHECKLIST

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Laws of 1975 Chapter 113

Bill No. S 1326

Sponsor(s) Feldman

Date Introduced July 24, 1974

Committee: Assembly Banking & Insurance

Senate Labor, Industry & Professions

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Uniform Insurers Liquidation Act - adopted by National Conference of Comrs. on Uniform State Laws in 1939; made applicable to NJ Life & Health Insurance companies by L. 1971, C. 144 (N.J.S.A. 17B:32-1 et seq.)

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CHAPTER 113 LAWS OF N. J. 1975
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SENATE, No. 1326

STATE OF NEW JERSEY

INTRODUCED JULY 24, 1974

By Senator FELDMAN

Referred to Committee on Labor, Industry and Professions

AN ACT concerning the rehabilitation and liquidation of certain insurers, supplementing Title 17 of the Revised Statutes, and repealing chapter 30 of Title 17 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Definitions.

2 a. "Impairment or insolvency" means the capital of a stock
3 insurer or the surplus of a mutual insurer, shall be deemed to be
4 impaired and the insurer shall be deemed to be insolvent, when
5 such insurer is not possessed of assets at least equal to all liabilities
6 and required reserves together with its total issued and outstand-
7 ing capital stock of a stock insurer, or the minimum surplus if
8 a mutual insurer required by this title to be maintained for the
9 kind or kinds of insurance it is then authorized to transact.

10 b. "Insurer" shall include a person subject to the insurance
11 supervisory authority of, or to liquidation, rehabilitation, reorgani-
12 zation or conservation by, the commissioner or the equivalent
13 insurance supervisory official of another state; also all persons
14 purporting to be engaged as insurer in this State, and persons in
15 process of organization to become insurers, pursuant to the pro-
16 visions of Title 17 of the Revised Statutes.

17 c. "Delinquency proceeding" means any proceeding commenced
18 against an insurer pursuant to this act for the purpose of liquidat-
19 ing, rehabilitating, reorganizing or conserving such insurer.

20 d. "Domiciliary state" means the state in which an insurer has
21 its domicile, or in the case of an alien insurer the State in which
22 such insurer, having become authorized to do business in such
23 state, has at the commencement of delinquency proceedings, the
24 largest amount of its assets held in trust and assets held on deposit
25 for the benefit of its policyholders or policyholders and creditors

26 in the United States, and any such insurer is deemed to be domiciled
27 in such state.

28 e. "Ancillary state" means any state other than a domiciliary
29 state.

30 f. "Reciprocal state" means any state other than this State in
31 which in substance and effect the provisions of the Uniform
32 Insurers Liquidation Act, as defined in section 23 of this act are
33 in force, including the provisions requiring that the commissioner
34 or equivalent insurance supervisory official be the receiver of a
35 delinquent insurer.

36 g. "General assets" means all property, real, personal or
37 otherwise, not specifically mortgaged, pledged, deposited or other-
38 wise encumbered for the security or benefit of specified persons
39 or a limited class or classes of persons, and as to such specifically
40 encumbered property the term includes all such property or its
41 proceeds in excess of the amount necessary to discharge the sum
42 or sums secured thereby. Assets held in trust and assets held on
43 deposit for the security or benefit of all policyholders or all policy-
44 holders and creditors in the United States shall be deemed general
45 assets.

46 h. "Preferred claim" means any claim with respect to which
47 the law of the State or of the United States accords priority of
48 payment from the general assets of the insurer.

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

52 j. "Secured claim" means any claim secured by mortgage, trust,
53 deed, pledge, deposit as security, escrow or otherwise, but not
54 including special deposit claim or claims against general assets.
55 The term also includes claims which more than 4 months prior to
56 the commencement of delinquency proceedings in the state of the
57 insurer's domicile have become liens upon specific assets by reason
58 of judicial process.

59 k. "Receiver" means receiver, liquidator, rehabilitator or con-
60 servator as the context may require.

1 2. Jurisdiction of delinquency proceedings. The Superior Court
2 shall have original jurisdiction of delinquency proceedings under
3 this act.

1 3. Exclusive remedy—appeal. Delinquency proceedings pursuant
2 to this act shall constitute the sole and exclusive method of liquidat-
3 ing, rehabilitating, reorganizing or conserving an insurer, and no
4 court shall entertain a petition for the commencement of such

5 proceedings, or any other similar procedure, unless the same has
6 been instituted by the commissioner.

1 4. Commencement of delinquency proceeding.

2 a. The commissioner shall commence any such proceeding by an
3 application to the court or to any judge thereof, for an order
4 directing the insurer to show cause why the commissioner should
5 not have the relief prayed for.

6 b. The application shall be by verified petition, setting forth the
7 ground or grounds for the proceeding and the relief demanded.

8 c. If the court is satisfied from reading the commissioner's peti-
9 tion that the facts therein alleged, if established, would constitute
10 grounds for a delinquency proceeding under this act, it shall issue
11 an order to show cause as referred to in a. above.

12 d. On the return of the order to show cause, the court shall either
13 deny the application or grant the application together with such
14 other relief as the nature of the case and the interests of the
15 policyholders, creditors, stockholders, members, subscribers or the
16 public may require.

1 5. Injunctions.

2 a. Upon application by the commissioner for such an order to
3 show cause, or at any time thereafter, the court may, without notice,
4 issue an injunction restraining the insurer, its officers, directors,
5 stockholders, policyholders, agents, and all other persons from the
6 transaction of its business or the waste or disposition of its prop-
7 erty until the further order of the court.

8 b. The court may, at any time during a proceeding under this
9 act, issue such other injunctions or orders as may be deemed neces-
10 sary to prevent interference with the commissioner or the proceed-
10A ing, or waste of the assets of the insurer, or the commencement or
11 prosecution of any actions, or the obtaining of preferences, judg-
12 ments, attachments or other liens, or the making of any levy against
13 the insurer or against its assets or any part thereof.

1 6. Grounds for rehabilitation—domestic insurers. The commis-
2 sioner may apply to the court for an order directing him to rehabili-
3 tate a domestic insurer upon one or more of the following grounds:

4 That the insurer

5 a. Is impaired or insolvent; or

6 b. Has refused to submit its books, records, accounts or affairs
7 to the reasonable examination of the commissioner; or

8 c. Has concealed or removed records or assets in violation of
9 regulations which the commissioner may adopt; or

10 d. Has failed to comply with the commissioner's order, made

11 pursuant to law, to make good an impairment of capital (if a stock
12 insurer) or an impairment of surplus (if a mutual insurer) within
13 the time prescribed by law; or

14 e. Has transferred or attempted to transfer substantially its
15 entire property or business, or has entered into any transaction
16 the effect of which is to merge substantially its entire property or
17 business in that of any other insurer without first having obtained
18 the written approval of the commissioner; or

19 f. Is found, after examination, to be in such condition that its
20 further transaction of business will be hazardous to its policy-
21 holders, or to its stockholders, or to its creditors, or to the public; or

22 g. Has willfully violated its charter or any law of this State; or

23 h. Has an officer, director, or manager who has unlawfully
24 refused to be examined under oath, concerning its affairs; or

25 i. Has failed or refused to take such steps as may be necessary
26 to remove from office any officer or director whom the commis-
27 sioner has found, after notice to and hearing of such insurance
28 company and of such officer or director, to be a dishonest or
29 untrustworthy person; or

30 j. Has been the subject of an application for the appointment
31 of a receiver, trustee, custodian or sequestrator of the insurer or
32 of its property, otherwise than pursuant to the provisions of this
33 act but only if such appointment has been made or is imminent; or

34 k. Has consented to such an order through a majority of its
35 directors, stockholders, or policyholders; or

36 l. Has failed to pay a final judgment rendered against it in any
37 state upon any insurance contract issued or assumed by it, within
38 30 days after the judgment became final or within 30 days after
39 time for taking an appeal has expired, or within 30 days after
40 dismissal of an appeal before final determination, whichever date
41 is the later.

1 7. Nature of rehabilitation order—termination of rehabilitation
2 —domestic insurers.

3 a. An order to rehabilitate a domestic insurer shall direct the
4 commissioner forthwith to take possession of the property of the
5 insurer and to conduct the business thereof, and to take such steps
6 toward removal of the causes and conditions which have made
7 rehabilitation necessary, as the court may direct.

8 b. If at any time the commissioner deems that further efforts to
9 rehabilitate the insurer would be useless, he may apply to the
10 court for an order of liquidation.

11 c. The commissioner, or any interested person upon due notice

12 to the commissioner, at any time may apply for an order termi-
13 nating the rehabilitation proceeding and permitting the insurer
14 to resume possession of its property and the conduct of its
15 business.

1 8. Grounds for liquidation. The commissioner may apply to the
2 court for an order directing him to liquidate the business of a
3 domestic insurer or of the United States branch of an alien insurer
4 having trustee assets in this State, regardless of whether or not
5 there has been prior order directing him to rehabilitate such
6 insurer, upon any of the grounds specified in section 6, or upon any
7 one or more of the following grounds: That the insurer

8 a. Has ceased transacting business for a period of 1 year; or

9 b. Is an insolvent insurer and has commenced voluntary liquida-
10 tion or dissolution, or attempts to commence or prosecute any
11 action or proceeding to liquidate its business or affairs, or to
12 dissolve its corporate charter, or to procure the appointment of a
13 receiver, trustee, custodian, or sequestrator under any laws except
14 this act; or

15 c. Has not organized or completed its organization and obtained
16 a certificate of authority as an insurer.

1 9. Order of liquidation—domestic insurers.

2 a. An order to liquidate the business of a domestic insurer shall
3 direct the commissioner forthwith to take possession of the prop-
4 erty of the insurer, to liquidate its business, to deal with the
5 insurer's property and business in his own name as commissioner
6 or in the name of the insurer as the court may direct and to give
7 notice to all creditors who may have claims against the insurer to
8 present such claims.

9 b. The commissioner may apply under this act for an order
10 dissolving the corporate existence of a domestic insurer:

11 (1) Upon his application for an order of liquidation of such
12 insurer, or at any time after such order has been granted; or

13 (2) Upon the grounds specified in section 8 c., regardless of
14 whether an order of liquidation is sought or has been obtained.

1 10. Order of liquidation—alien insurers. An order to liquidate
2 the business of a United States branch of an alien insurer having
3 trustee assets in this State shall be in the same terms as those
4 prescribed for domestic insurers, save and except only that the
5 assets of the business of such United States branch shall be the
6 only assets included therein.

1 11. Grounds for conservation—foreign insurers. The commis-
2 sioner may apply for an order directing him to conserve the assets

3 within this State of a foreign insurer upon any one or more of
4 the following grounds:

5 a. Upon any of the grounds specified in section 6, and in sec-
6 tion 8 b.

7 b. That its property has been sequestrated in its domiciliary
8 sovereignty or in any other sovereignty.

1 12. Grounds for conservation—alien insurers. The commis-
2 sioner may apply for an order directing him to conserve the
3 assets within this State of an alien insurer upon any one or more
4 of the following grounds:

5 a. Upon any of the grounds specified in section 6 and in sec-
6 tion 8 b.

7 b. Upon the ground that the insurer has failed to comply within
8 the time designated by the commissioner, with an order made by
9 him to make good an impairment of its trustee funds, or

10 c. Upon the ground that the property of the insurer has been
11 sequestrated in its domiciliary sovereignty or elsewhere.

1 13. Conservation or ancillary receivership—foreign insurers.

2 a. An order to conserve the assets of a foreign insurer shall
3 direct the commissioner forthwith to take possession of the prop-
4 erty of the insurer within this State and to conserve it, subject to
5 the further direction of the court.

6 b. Whenever a domiciliary receiver is appointed for any such
7 insurer in its domiciliary state the court shall, on application of
8 the commissioner, appoint the commissioner as the ancillary
9 receiver in this State.

10 c. An order to liquidate the assets in this State of a foreign
11 insurer shall require the commissioner forthwith to take posses-
12 sion of the property of the insurer within this State and to liqui-
13 date it subject to the orders of the court and with due regard to
14 the rights and powers of the domiciliary receiver, as provided in
15 this act.

1 14. Conservation or ancillary receivership—alien insurers. An
2 order to conserve the assets of an alien insurer shall direct the
3 commissioner forthwith to take possession of the property of the
4 insurer within this State and to conserve it, subject to the further
5 direction of the court.

1 15. Conduct of delinquency proceedings—domestic insurers.

2 a. Whenever under the laws of this State a receiver is to be
3 appointed in delinquency proceedings for a domestic insurer, the
4 court shall appoint the commissioner as such receiver. The court
5 shall direct the commissioner forthwith to take possession of the

6 assets of the insurer and to administer the same under the orders
7 of the court.

8 b. As domiciliary receiver, the commissioner shall be vested by
9 operation of law, with the title to all property, contracts, and rights
10 of action, and all of the books and records of the insurer wherever
11 located, as of the date of entry of the order directing him to re-
12 habilitate or liquidate a domestic insurer and he shall have the
13 right to recover the same and reduce the same to his possession.

14 c. The filing or recording of the order, directing possession to be
15 taken, or a certified copy thereof, in the office where instruments
16 affecting title to property are required to be filed or recorded,
17 shall impart the same notice as would be imparted by a deed, bill
18 of sale, or other evidence of the title duly filed or recorded.

19 d. The commissioner, as domiciliary receiver, shall be responsible
20 on his official bond for the proper administration of all assets
21 coming into his possession or control. The court may at any time
22 require an additional bond from him or his deputies, if deemed
23 desirable for the protection of the assets.

24 e. Upon taking possession of the assets of an insurer, the
25 domiciliary receiver shall, subject to the direction of the court,
26 immediately proceed to conduct the business of the insurer or to
27 take such steps as are authorized by the laws of this State for the
28 purpose of liquidating, rehabilitating, reorganizing, or conserving
29 the affairs of the insurer.

1 16. Conduct of delinquency proceedings—foreign and alien
2 insurers.

3 a. Whenever under this act an ancillary receiver is to be ap-
4 pointed in delinquency proceedings for an insurer not domiciled
5 in this State, the court shall appoint the commissioner as ancillary
6 receiver. The commissioner shall file a petition requesting the
7 appointment on the grounds set forth in section 13 b. of this act:

8 (1) If he finds that there are sufficient assets of the insurer
9 located in this State to justify the appointment of an ancillary
10 receiver; or

11 (2) If 10 or more persons resident in this State having claims
12 against such insurer file a petition with the commissioner request-
13 ing the appointment of such ancillary receiver.

14 b. The domiciliary receiver for the purpose of liquidating an
15 insurer domiciled in a reciprocal state shall be vested by operation
16 of law with the title to all of the property, contracts and rights
17 of action, and all of the books and records of the insurer located
18 in this State, and he shall have the immediate right to recover

19 balances due from local agents and to obtain possession of any
20 books and records of the insurer found in this State. He shall
21 also be entitled to recover the other assets of the insurer located
22 in this State, except that upon the appointment of an ancillary
23 receiver in this State, the ancillary receiver shall during the
24 ancillary receivership proceedings have the sole right to recover
25 such other assets. The ancillary receiver shall, as soon as
26 practicable, liquidate from their respective securities those special
27 deposit claims and secured claims which are proved and allowed
28 in the ancillary proceedings in this State, and shall pay the neces-
29 sary expenses of the proceedings. All remaining assets he shall
30 promptly transfer to the domiciliary receiver. Subject to the
31 foregoing provisions, the ancillary receiver and his deputies shall
32 have the same powers and be subject to the same duties with
33 respect to the administration of such assets as a receiver of an
34 insurer domiciled in this State.

35 c. The domiciliary receiver of an insurer domiciled in a reciprocal
36 state may sue in this State to recover any assets of such insurer
37 to which he may be entitled under the laws of this State.

1 17. Deputies and assistants. In connection with delinquency
2 proceedings, the commissioner may appoint one or more special
3 deputy commissioners to act for him, and may employ such
4 counsel, clerks, and assistants as he deems necessary. The com-
5 pensation of the special deputies, counsel, clerks, or assistants,
6 and all expenses of taking possession of the insurer and of con-
7 ducting the proceedings, shall be fixed by the receiver subject to
8 the approval of the court, and shall be paid out of funds or assets
9 of the insurer. Within the limits of the duties imposed upon them,
10 special deputies shall possess all the powers given to, and, in the
11 exercise of those powers, shall be subject to all of the duties
12 imposed upon the receiver with respect to such proceedings.

1 18. Claims of nonresidents against domestic insurers.

2 a. In a delinquency proceeding begun in this State against a
3 domestic insurer, claimants residing in reciprocal states may file
4 claims either with the ancillary receivers, if any, in their respec-
5 tive states or with the domiciliary receiver. All such claims must
6 be filed on or before the last date fixed for the filing of claims in
7 domiciliary delinquency proceedings.

8 b. Controverted claims belonging to claimants residing in recip-
9 rocal states may either:

10 (1) Be proved in this State; or

11 (2) If ancillary proceedings have been commenced in such

12 reciprocal states, may be proved in those proceedings. In the event
13 a claimant elects to prove his claim in ancillary proceedings, if
14 notice of the claim and opportunity to appear and be heard is
15 afforded the domiciliary receiver of this State, as provided in
16 section 19 of this act with respect to ancillary proceedings in this
17 State, the final allowance of such claim by the courts in the
18 ancillary state shall be accepted in this State as conclusive as
19 to its amount and shall also be accepted as conclusive as to its
20 priority, if any, against special deposits or other security located
21 within the ancillary state.

1 19. Claims against foreign insurers.

2 a. In a delinquency proceeding in a reciprocal state against an
3 insurer domiciled in that state, claimants against such insurer
4 who reside within this State may file claims either with the ancil-
5 lary receiver, if any, appointed in this State, or with the domi-
6 ciliary receiver. All such claims must be filed on or before the
7 last date fixed for the filing of claims in the domiciliary delin-
8 quency proceedings:

9 b. Controverted claims belonging to claimants residing in this
10 State may either:

11 (1) Be proved in the domiciliary state as provided by the law
12 of that state; or

13 (2) If ancillary proceedings have been commenced in this
14 State, be proved in those proceedings. In the event that any such
15 claimant elects to prove his claim in this State, he shall file his
16 claim with the ancillary receiver and shall give notice in writing
17 to the receiver in the domiciliary state, either by registered mail
18 or by personal service at least 40 days prior to the date set for
19 hearing. The notice shall contain a concise statement of the
20 amount of the claim, the facts on which the claim is based, and
21 the priorities asserted, if any. If the domiciliary receiver within
22 30 days after the giving of such notice shall give notice in writing
23 to the ancillary receiver and to the claimant, either by registered
24 mail or by personal service of his intention to contest such claim,
25 he shall be entitled to appear or to be represented in any proceed-
26 ing in this State involving adjudication of the claim. The final
27 allowance of the claim by the courts of this State shall be accepted
28 as conclusive as to its amount and shall also be accepted as conclu-
29 sive as to its priority if any, against special deposits or other
30 security located within this State.

1 20. Form of claim—notice—hearing.

2 a. All claims against an insurer against which delinquency pro-

3 ceedings have been begun shall set forth in reasonable detail the
4 amount of the claim, or the basis upon which such amount can be
5 ascertained, the facts upon which the claim is based, and the
6 priorities asserted, if any. All such claims shall be verified by the
7 affidavit of the claimant, or someone authorized to act on his behalf
8 and having knowledge of the facts, and shall be supported by such
9 documents as may be material thereto.

10 b. All claims filed in this State shall be filed with the receiver,
11 whether domiciliary or ancillary, in this State, on or before the
12 last date for filing as specified in this act.

13 c. Within 10 days of the receipt of any claim, or within such
14 further period as the court may fix, the receiver shall report the
15 claim to the court, specifying in such report his recommendation
16 with respect to the action to be taken thereon. Upon receipt of
17 such report, the court shall fix a time for hearing the claim and
18 shall direct that the claimant or the receiver, as the court shall
19 specify, shall give such notice as the court shall determine to such
20 persons as shall appear to the court to be interested therein. All
21 such notices shall specify the time and place of the hearing and
22 shall concisely state the amount and nature of the claim, the
23 priorities asserted, if any, and the recommendation of the receiver
24 with reference thereto.

25 d. At the hearing all persons interested shall be entitled to
26 appear and the court shall enter an order allowing, allowing in
27 part, or disallowing the claim. Any such order shall be deemed
28 to be an appealable order.

1 21. Priority of certain claims.

2 a. In a delinquency proceeding against an insurer domiciled in
3 this State, claims owing to residents of ancillary states shall be
4 preferred claims if like claims are preferred under the laws of
5 this State. All such claims owing to residents or nonresidents
6 shall be given equal priority of payment from general assets
7 regardless of where such assets are located.

8 b. In a delinquency proceeding against an insurer domiciled in a
9 reciprocal state, claims owing to residents of this State shall be
10 preferred claims if like claims are preferred by the laws of that
11 state.

12 c. The owners of special deposit claims against an insurer for
13 which a receiver is appointed in this or any other state shall be
14 given priority against their several special deposits in accordance
15 with the provisions of the statutes governing the creation and
16 maintenance of such deposits. If there is a deficiency in any such
17 deposit so that the claims secured thereby are not fully discharged

18 therefrom, the claimants may share in the general assets, but such
19 sharing shall be deferred until general creditors, and also claim-
20 ants against other special deposits who have received smaller
21 percentages from their respective special deposits, have been paid
22 percentages of their claims equal to the percentage paid from a
23 special deposit.

24 d. The owner of a secured claim against an insurer for which a
25 receiver has been appointed in this or any other state may sur-
26 render his security and file his claim as a general credit, or the
27 claim may be discharged by resort to the security, in which case
28 the deficiency, if any, shall be treated as a claim against the general
29 assets of the insurer on the same basis as claims of unsecured
30 creditors. If the amount of the deficiency has been adjudicated
31 in ancillary proceedings as provided in this act, or if it has been
32 adjudicated by a court of competent jurisdiction in proceedings in
33 which the domiciliary receiver has had notice and opportunity to
34 be heard, such amounts shall be conclusive; otherwise the amount
35 shall be determined in the delinquency proceeding in the domi-
36 ciliary state.

1 22. Attachment and garnishment of assets. During the pendency
2 of delinquency proceedings in this or any reciprocal state, no
3 action or proceeding in the nature of an attachment, garnishment
4 or execution shall be commenced or maintained in the courts of
5 this State against the delinquent insurer or its assets. Any lien
6 obtained by any such action or proceeding within 4 months prior
7 to the commencement of any such delinquency proceeding or at any
8 time thereafter shall be void as against any rights arising in such
9 delinquency proceeding.

1 23. Uniform insurers liquidation act.

2 a. Subsections b. through k. of section 1, subsections a. and c.
3 of section 4, together with sections 5 and 15 through 23 constitute
4 and may be referred to as the Uniform Insurers Liquidation Act.

5 b. The Uniform Insurers Liquidation Act shall be so inter-
6 preted and construed as to effectuate its general purpose to make
7 uniform the law of those states that enact it. To the extent that
8 its provisions when applicable conflict with other provisions of
9 this act, the provisions of such act shall control.

1 24. Borrowing on pledge of assets. For the purpose of facilitat-
2 ing the rehabilitation, liquidations, conservation or dissolution of
3 an insurer pursuant to this act, the commissioner may, subject
4 to the approval of the court, borrow money and execute, acknowl-
5 edge and deliver notes or other evidences of indebtedness therefor,

6 and secure the payment of the same by the mortgage, pledge,
7 assignment, transfer in trust or hypothecation of any or all of the
8 property of such insurer, whether real, personal or mixed, and the
9 commissioner, subject to the approval of the court, shall have
10 power to take any and all other action necessary and proper to
11 consummate any such loans and to provide for the repayment
12 thereof. The commissioner shall be under no obligation personally
13 or in his official capacity as commissioner to repay any loan made
14 pursuant to this act.

1 25. Voidable transfers.

2 a. Any transfer of, or lien upon, the property of an insurer
3 which is made or created within 4 months prior to the granting of
4 an order to show cause under this act with the intent of giving
5 to any creditor or of enabling him to obtain a greater percentage
6 of his debt than any other creditor of the same class, and which is
7 accepted by such creditor having reasonable cause to believe that
8 such a preference will occur, shall be voidable.

9 b. Every director, officer, employee, stockholder, policyholder,
10 and any other person acting on behalf of such insurer who shall
11 be concerned in any such act or deed and every person receiving
12 thereby any property of such insurer or the benefit thereof, shall
13 be personally liable therefor and shall be bound to account to the
14 commissioner.

15 c. The commissioner, as receiver in any proceeding under this
16 act, may avoid any transfer of, or lien upon the property of an
17 insurer which any creditor, stockholder or policyholder of such
18 insurer might have avoided, and may recover the property so
19 transferred, or its value from the person to whom it was trans-
20 ferred, unless such person was a bona fide holder for value prior
21 to the date of the granting of an order to show cause under this
22 act. Such property or its value may be recovered from anyone
23 who has received it, except a bona fide holder for value as above
24 specified.

1 26. Priority of claims for compensation.

2 a. Compensation actually owing to employees other than officers
3 of an insurer, for services rendered within 3 months prior to the
4 commencement of a proceeding against the insurer under this act,
5 but not exceeding \$1,000.00 for each such employee, shall be paid
6 prior to the payment of any other debt or claim, and in the dis-
7 cretion of the commissioner, may be paid as soon as practicable
8 after the proceeding has been commenced; except, that at all times
9 the commissioner shall reserve such funds as will, in his opinion,
10 be sufficient for the expenses of administration.

11 b. Such priority shall be in lieu of any other similar priority
12 which may be authorized by law as to the wages or compensation
13 of such employees.

1 27. Offsets.

2 a. In all cases of mutual debts or mutual credits between the
3 insurer and another person in connection with any action or pro-
4 ceeding under this act, such credits and debts shall be set off and
5 the balance only shall be allowed or paid, except as provided in
6 subsection b. below.

7 b. No offset shall be allowed in favor of any such person where

8 (1) The obligation of the insurer to such person would not at
9 the date of the entry of any liquidation order, or at such other
10 date determined by the court for fixing the rights and liabilities
11 with respect to the estate of the insurer, have entitled him to share
12 as a claimant in the assets of the insurer; or

13 (2) The obligation of the insurer to such person was purchased
14 by or transferred to such person with a view of its being used as
15 an offset; or

16 (3) The obligation of such person is to pay a balance upon a
17 subscription to the capital stock of a stock insurer.

1 28. Allowance of certain claims. a. No contingent claim shall
2 share in a distribution of the assets of an insurer which has been
3 adjudicated to be insolvent by an order made pursuant to sec-
4 tion 30 a., except that such claims shall be considered, if properly
5 presented, and may be allowed to share where

6 (1) Such claim becomes absolute against the insurer on or
7 before the last day fixed for filing of proofs of claim against the
8 assets of such insurer; or

9 (2) There is a surplus and the liquidation is thereafter con-
10 ducted upon the basis that such insurer is solvent.

11 b. Where an insurer has been so adjudicated to be insolvent, any
12 person who has a cause of action against an insured of such
13 insurer, shall have the right to file a claim in the liquidation pro-
14 ceeding, regardless of the fact that such claim may be contingent,
15 and such claim may be allowed

16 (1) If it may be reasonably inferred from the proof presented
17 upon such claim that such person would be able to obtain a judg-
18 ment upon such cause of action against such insured; and

19 (2) If such person shall furnish suitable proof, unless the
20 court, for good cause shown, shall otherwise direct, that no further
21 valid claims against such insurer arising out of his cause of action,
22 other than those already presented, can be made; and

23 (3) If the total liability of such insurer to all claimants arising
24 out of the same act of its insured shall be no greater than its
25 maximum liability would be, were it not in liquidation.

26 c. No judgment against such an insured, taken after the date
27 of the entry of the liquidated order, shall be considered in the
28 liquidation proceedings as evidence of liability, or of the amount
29 of damages, and no judgment against an insured taken by default,
30 inquest or by collusion prior to the entry of the liquidation order,
31 shall be considered as conclusive evidence in the liquidation pro-
32 ceeding, either of the liability of such insured to such person upon
33 such cause of action, or of the amount of damage to which such
34 person is therein entitled.

1 29. Allowance of secured claims. No claim of any secured
2 claimant shall be allowed at a sum greater than the difference
3 between the value of the claim without security and the value of
4 the security itself as of the date of the entry of the order of
5 liquidation, or such other date set by the court for fixation of
6 rights and liabilities, unless the claimant shall surrender his
7 security to the commissioner, in which event the claim shall be
8 allowed in the full amount for which it is valued.

1 30. Time to file the claims.

2 a. If upon the granting of an order of liquidation under this act,
3 or at any time thereafter during the liquidation proceeding, the
4 insurer shall not be clearly solvent, the court shall, after such
5 notice and hearing as it deems proper, make an order declaring
6 the insurer to be insolvent. Thereupon, regardless of any prior
7 notice which may have been given to creditors, the commissioner
8 shall notify all persons who may have claims against such insurer
9 and who have not filed proper proofs thereof, to present the same
10 to him, at a place specified in such notice, within 4 months from
11 the date of the entry of such order, or, if the commissioner shall
12 certify that it is necessary, within such longer time as the court
13 shall prescribe. The last day for the filing of proofs of claims
14 shall be specified in the notice. Such notice shall be given in a
15 manner determined by the court.

16 b. Proofs of claim may be filed subsequent to the date specified,
17 but no such claim shall share in the distribution of the assets until
18 all allowed claims, proofs of which have been filed before said
19 date, have been paid in full, with interest.

1 31. Repealer. Chapter 30 of Title 17 of the Revised Statutes
2 is repealed **but such repeal shall not affect pending proceedings*
3 *under such sections**.

1 32. This act shall take effect immediately.

SENATE, No. 1326

STATE OF NEW JERSEY

INTRODUCED JULY 24, 1974

By Senator FELDMAN

Referred to Committee on Labor, Industry and Professions

AN ACT concerning the rehabilitation and liquidation of certain insurers, supplementing Title 17 of the Revised Statutes, and repealing chapter 30 of Title 17 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Definitions.

2 a. "Impairment or insolvency" means the capital of a stock
3 insurer or the surplus of a mutual insurer, shall be deemed to be
4 impaired and the insurer shall be deemed to be insolvent, when
5 such insurer is not possessed of assets at least equal to all liabilities
6 and required reserves together with its total issued and outstand-
7 ing capital stock of a stock insurer, or the minimum surplus if
8 a mutual insurer required by this title to be maintained for the
9 kind or kinds of insurance it is then authorized to transact.

10 b. "Insurer" shall include a person subject to the insurance
11 supervisory authority of, or to liquidation, rehabilitation, reorgani-
12 zation or conservation by, the commissioner or the equivalent
13 insurance supervisory official of another state; also all persons
14 purporting to be engaged as insurer in this State, and persons in
15 process of organization to become insurers, pursuant to the pro-
16 visions of Title 17 of the Revised Statutes.

17 c. "Delinquency proceeding" means any proceeding commenced
18 against an insurer pursuant to this act for the purpose of liquidat-
19 ing, rehabilitating, reorganizing or conserving such insurer.

20 d. "Domiciliary state" means the state in which an insurer has
21 its domicile, or in the case of an alien insurer the State in which
22 such insurer, having become authorized to do business in such
23 state, has at the commencement of delinquency proceedings, the
24 largest amount of its assets held in trust and assets held on deposit
25 for the benefit of its policyholders or policyholders and creditors

26 in the United States, and any such insurer is deemed to be domiciled
27 in such state.

28 e. "Ancillary state" means any state other than a domiciliary
29 state.

30 f. "Reciprocal state" means any state other than this State in
31 which in substance and effect the provisions of the Uniform
32 Insurers Liquidation Act, as defined in section 23 of this act are
33 in force, including the provisions requiring that the commissioner
34 or equivalent insurance supervisory official be the receiver of a
35 delinquent insurer.

36 g. "General assets" means all property, real, personal or
37 otherwise, not specifically mortgaged, pledged, deposited or other-
38 wise encumbered for the security or benefit of specified persons
39 or a limited class or classes of persons, and as to such specifically
40 encumbered property the term includes all such property or its
41 proceeds in excess of the amount necessary to discharge the sum
42 or sums secured thereby. Assets held in trust and assets held on
43 deposit for the security or benefit of all policyholders or all policy-
44 holders and creditors in the United States shall be deemed general
45 assets.

46 h. "Preferred claim" means any claim with respect to which
47 the law of the State or of the United States accords priority of
48 payment from the general assets of the insurer.

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

52 j. "Secured claim" means any claim secured by mortgage, trust,
53 deed, pledge, deposit as security, escrow or otherwise, but not
54 including special deposit claim or claims against general assets.
55 The term also includes claims which more than 4 months prior to
56 the commencement of delinquency proceedings in the state of the
57 insurer's domicile have become liens upon specific assets by reason
58 of judicial process.

59 k. "Receiver" means receiver, liquidator, rehabilitator or con-
60 servator as the context may require.

1 2. Jurisdiction of delinquency proceedings. The Superior Court
2 shall have original jurisdiction of delinquency proceedings under
3 this act.

1 3. Exclusive remedy—appeal. Delinquency proceedings pursuant
2 to this act shall constitute the sole and exclusive method of liquidat-
3 ing, rehabilitating, reorganizing or conserving an insurer, and no
4 court shall entertain a petition for the commencement of such

5 proceedings, or any other similar procedure, unless the same has
6 been instituted by the commissioner.

1 4. Commencement of delinquency proceeding.

2 a. The commissioner shall commence any such proceeding by an
3 application to the court or to any judge thereof, for an order
4 directing the insurer to show cause why the commissioner should
5 not have the relief prayed for.

6 b. The application shall be by verified petition, setting forth the
7 ground or grounds for the proceeding and the relief demanded.

8 c. If the court is satisfied from reading the commissioner's peti-
9 tion that the facts therein alleged, if established, would constitute
10 grounds for a delinquency proceeding under this act, it shall issue
11 an order to show cause as referred to in a. above.

12 d. On the return of the order to show cause, the court shall either
13 deny the application or grant the application together with such
14 other relief as the nature of the case and the interests of the
15 policyholders, creditors, stockholders, members, subscribers or the
16 public may require.

1 5. Injunctions.

2 a. Upon application by the commissioner for such an order to
3 show cause, or at any time thereafter, the court may, without notice,
4 issue an injunction restraining the insurer, its officers, directors,
5 stockholders, policyholders, agents, and all other persons from the
6 transaction of its business or the waste or disposition of its prop-
7 erty until the further order of the court.

8 b. The court may, at any time during a proceeding under this
9 act, issue such other injunctions or orders as may be deemed neces-
10 sary to prevent interference with the commissioner or the proceed-
10A ing, or waste of the assets of the insurer, or the commencement or
11 prosecution of any actions, or the obtaining of preferences, judg-
12 ments, attachments or other liens, or the making of any levy against
13 the insurer or against its assets or any part thereof.

1 6. Grounds for rehabilitation—domestic insurers. The commis-
2 sioner may apply to the court for an order directing him to rehabili-
3 tate a domestic insurer upon one or more of the following grounds:

4 That the insurer

5 a. Is impaired or insolvent; or

6 b. Has refused to submit its books, records, accounts or affairs
7 to the reasonable examination of the commissioner; or

8 c. Has concealed or removed records or assets in violation of
9 regulations which the commissioner may adopt; or

10 d. Has failed to comply with the commissioner's order, made

11 pursuant to law, to make good an impairment of capital (if a stock
12 insurer) or an impairment of surplus (if a mutual insurer) within
13 the time prescribed by law; or

14 e. Has transferred or attempted to transfer substantially its
15 entire property or business, or has entered into any transaction
16 the effect of which is to merge substantially its entire property or
17 business in that of any other insurer without first having obtained
18 the written approval of the commissioner; or

19 f. Is found, after examination, to be in such condition that its
20 further transaction of business will be hazardous to its policy-
21 holders, or to its stockholders, or to its creditors, or to the public; or

22 g. Has willfully violated its charter or any law of this State; or

23 h. Has an officer, director, or manager who has unlawfully
24 refused to be examined under oath, concerning its affairs; or

25 i. Has failed or refused to take such steps as may be necessary
26 to remove from office any officer or director whom the commis-
27 sioner has found, after notice to and hearing of such insurance
28 company and of such officer or director, to be a dishonest or
29 untrustworthy person; or

30 j. Has been the subject of an application for the appointment
31 of a receiver, trustee, custodian or sequestrator of the insurer or
32 of its property, otherwise than pursuant to the provisions of this
33 act but only if such appointment has been made or is imminent; or

34 k. Has consented to such an order through a majority of its
35 directors, stockholders, or policyholders; or

36 l. Has failed to pay a final judgment rendered against it in any
37 state upon any insurance contract issued or assumed by it, within
38 30 days after the judgment became final or within 30 days after
39 time for taking an appeal has expired, or within 30 days after
40 dismissal of an appeal before final determination, whichever date
41 is the later.

1 7. Nature of rehabilitation order—termination of rehabilitation
2 —domestic insurers.

3 a. An order to rehabilitate a domestic insurer shall direct the
4 commissioner forthwith to take possession of the property of the
5 insurer and to conduct the business thereof, and to take such steps
6 toward removal of the causes and conditions which have made
7 rehabilitation necessary, as the court may direct.

8 b. If at any time the commissioner deems that further efforts to
9 rehabilitate the insurer would be useless, he may apply to the
10 court for an order of liquidation.

11 c. The commissioner, or any interested person upon due notice

12 to the commissioner, at any time may apply for an order termi-
13 nating the rehabilitation proceeding and permitting the insurer
14 to resume possession of its property and the conduct of its
15 business.

1 8. Grounds for liquidation. The commissioner may apply to the
2 court for an order directing him to liquidate the business of a
3 domestic insurer or of the United States branch of an alien insurer
4 having trustee assets in this State, regardless of whether or not
5 there has been prior order directing him to rehabilitate such
6 insurer, upon any of the grounds specified in section 6, or upon any
7 one or more of the following grounds: That the insurer

8 a. Has ceased transacting business for a period of 1 year; or

9 b. Is an insolvent insurer and has commenced voluntary liquida-
10 tion or dissolution, or attempts to commence or prosecute any
11 action or proceeding to liquidate its business or affairs, or to
12 dissolve its corporate charter, or to procure the appointment of a
13 receiver, trustee, custodian, or sequestrator under any laws except
14 this act; or

15 c. Has not organized or completed its organization and obtained
16 a certificate of authority as an insurer.

1 9. Order of liquidation—domestic insurers.

2 a. An order to liquidate the business of a domestic insurer shall
3 direct the commissioner forthwith to take possession of the prop-
4 erty of the insurer, to liquidate its business, to deal with the
5 insurer's property and business in his own name as commissioner
6 or in the name of the insurer as the court may direct and to give
7 notice to all creditors who may have claims against the insurer to
8 present such claims.

9 b. The commissioner may apply under this act for an order
10 dissolving the corporate existence of a domestic insurer:

11 (1) Upon his application for an order of liquidation of such
12 insurer, or at any time after such order has been granted; or

13 (2) Upon the grounds specified in section 8 c., regardless of
14 whether an order of liquidation is sought or has been obtained.

1 10. Order of liquidation—alien insurers. An order to liquidate
2 the business of a United States branch of an alien insurer having
3 trustee assets in this State shall be in the same terms as those
4 prescribed for domestic insurers, save and except only that the
5 assets of the business of such United States branch shall be the
6 only assets included therein.

1 11. Grounds for conservation—foreign insurers. The commis-
2 sioner may apply for an order directing him to conserve the assets

3 within this State of a foreign insurer upon any one or more of
4 the following grounds:

5 a. Upon any of the grounds specified in section 6, and in sec-
6 tion 8 b.

7 b. That its property has been sequestrated in its domiciliary
8 sovereignty or in any other sovereignty.

1 12. Grounds for conservation—alien insurers. The commis-
2 sioner may apply for an order directing him to conserve the
3 assets within this State of an alien insurer upon any one or more
4 of the following grounds:

5 a. Upon any of the grounds specified in section 6 and in sec-
6 tion 8 b.

7 b. Upon the ground that the insurer has failed to comply within
8 the time designated by the commissioner, with an order made by
9 him to make good an impairment of its trusteed funds, or

10 c. Upon the ground that the property of the insurer has been
11 sequestrated in its domiciliary sovereignty or elsewhere.

1 13. Conservation or ancillary receivership—foreign insurers.

2 a. An order to conserve the assets of a foreign insurer shall
3 direct the commissioner forthwith to take possession of the prop-
4 erty of the insurer within this State and to conserve it, subject to
5 the further direction of the court.

6 b. Whenever a domiciliary receiver is appointed for any such
7 insurer in its domiciliary state the court shall, on application of
8 the commissioner, appoint the commissioner as the ancillary
9 receiver in this State.

10 c. An order to liquidate the assets in this State of a foreign
11 insurer shall require the commissioner forthwith to take posses-
12 sion of the property of the insurer within this State and to liqui-
13 date it subject to the orders of the court and with due regard to
14 the rights and powers of the domiciliary receiver, as provided in
15 this act.

1 14. Conservation or ancillary receivership—alien insurers. An
2 order to conserve the assets of an alien insurer shall direct the
3 commissioner forthwith to take possession of the property of the
4 insurer within this State and to conserve it, subject to the further
5 direction of the court.

1 15. Conduct of delinquency proceedings—domestic insurers.

2 a. Whenever under the laws of this State a receiver is to be
3 appointed in delinquency proceedings for a domestic insurer, the
4 court shall appoint the commissioner as such receiver. The court
5 shall direct the commissioner forthwith to take possession of the

6 assets of the insurer and to administer the same under the orders
7 of the court.

8 b. As domiciliary receiver, the commissioner shall be vested by
9 operation of law, with the title to all property, contracts, and rights
10 of action, and all of the books and records of the insurer wherever
11 located, as of the date of entry of the order directing him to re-
12 habilitate or liquidate a domestic insurer and he shall have the
13 right to recover the same and reduce the same to his possession.

14 c. The filing or recording of the order, directing possession to be
15 taken, or a certified copy thereof, in the office where instruments
16 affecting title to property are required to be filed or recorded,
17 shall impart the same notice as would be imparted by a deed, bill
18 of sale, or other evidence of the title duly filed or recorded.

19 d. The commissioner, as domiciliary receiver, shall be responsible
20 on his official bond for the proper administration of all assets
21 coming into his possession or control. The court may at any time
22 require an additional bond from him or his deputies, if deemed
23 desirable for the protection of the assets.

24 e. Upon taking possession of the assets of an insurer, the
25 domiciliary receiver shall, subject to the direction of the court,
26 immediately proceed to conduct the business of the insurer or to
27 take such steps as are authorized by the laws of this State for the
28 purpose of liquidating, rehabilitating, reorganizing, or conserving
29 the affairs of the insurer.

1 16. Conduct of delinquency proceedings—foreign and alien
2 insurers.

3 a. Whenever under this act an ancillary receiver is to be ap-
4 pointed in delinquency proceedings for an insurer not domiciled
5 in this State, the court shall appoint the commissioner as ancillary
6 receiver. The commissioner shall file a petition requesting the
7 appointment on the grounds set forth in section 13 b. of this act:

8 (1) If he finds that there are sufficient assets of the insurer
9 located in this State to justify the appointment of an ancillary
10 receiver; or

11 (2) If 10 or more persons resident in this State having claims
12 against such insurer file a petition with the commissioner request-
13 ing the appointment of such ancillary receiver.

14 b. The domiciliary receiver for the purpose of liquidating an
15 insurer domiciled in a reciprocal state shall be vested by operation
16 of law with the title to all of the property, contracts and rights
17 of action, and all of the books and records of the insurer located
18 in this State, and he shall have the immediate right to recover

19 balances due from local agents and to obtain possession of any
20 books and records of the insurer found in this State. He shall
21 also be entitled to recover the other assets of the insurer located
22 in this State, except that upon the appointment of an ancillary
23 receiver in this State, the ancillary receiver shall during the
24 ancillary receivership proceedings have the sole right to recover
25 such other assets. The ancillary receiver shall, as soon as
26 practicable, liquidate from their respective securities those special
27 deposit claims and secured claims which are proved and allowed
28 in the ancillary proceedings in this State, and shall pay the neces-
29 sary expenses of the proceedings. All remaining assets he shall
30 promptly transfer to the domiciliary receiver. Subject to the
31 foregoing provisions, the ancillary receiver and his deputies shall
32 have the same powers and be subject to the same duties with
33 respect to the administration of such assets as a receiver of an
34 insurer domiciled in this State.

35 c. The domiciliary receiver of an insurer domiciled in a reciprocal
36 state may sue in this State to recover any assets of such insurer
37 to which he may be entitled under the laws of this State.

1 17. Deputies and assistants. In connection with delinquency
2 proceedings, the commissioner may appoint one or more special
3 deputy commissioners to act for him, and may employ such
4 counsel, clerks, and assistants as he deems necessary. The com-
5 pensation of the special deputies, counsel, clerks, or assistants,
6 and all expenses of taking possession of the insurer and of con-
7 ducting the proceedings, shall be fixed by the receiver subject to
8 the approval of the court, and shall be paid out of funds or assets
9 of the insurer. Within the limits of the duties imposed upon them,
10 special deputies shall possess all the powers given to, and, in the
11 exercise of those powers, shall be subject to all of the duties
12 imposed upon the receiver with respect to such proceedings.

1 18. Claims of nonresidents against domestic insurers.

2 a. In a delinquency proceeding begun in this State against a
3 domestic insurer, claimants residing in reciprocal states may file
4 claims either with the ancillary receivers, if any, in their respec-
5 tive states or with the domiciliary receiver. All such claims must
6 be filed on or before the last date fixed for the filing of claims in
7 domiciliary delinquency proceedings.

8 b. Controverted claims belonging to claimants residing in recip-
9 rocal states may either:

10 (1) Be proved in this State; or

11 (2) If ancillary proceedings have been commenced in such

12 reciprocal states, may be proved in those proceedings. In the event
 13 a claimant elects to prove his claim in ancillary proceedings, if
 14 notice of the claim and opportunity to appear and be heard is
 15 afforded the domiciliary receiver of this State, as provided in
 16 section 19 of this act with respect to ancillary proceedings in this
 17 State, the final allowance of such claim by the courts in the
 18 ancillary state shall be accepted in this State as conclusive as
 19 to its amount and shall also be accepted as conclusive as to its
 20 priority, if any, against special deposits or other security located
 21 within the ancillary state.

1 19. Claims against foreign insurers.

2 a. In a delinquency proceeding in a reciprocal state against an
 3 insurer domiciled in that state, claimants against such insurer
 4 who reside within this State may file claims either with the ancil-
 5 lary receiver, if any, appointed in this State, or with the domi-
 6 ciliary receiver. All such claims must be filed on or before the
 7 last date fixed for the filing of claims in the domiciliary delin-
 8 quency proceedings:

9 b. Controverted claims belonging to claimants residing in this
 10 State may either:

11 (1) Be proved in the domiciliary state as provided by the law
 12 of that state; or

13 (2) If ancillary proceedings have been commenced in this
 14 State, be proved in those proceedings. In the event that any such
 15 claimant elects to prove his claim in this State, he shall file his
 16 claim with the ancillary receiver and shall give notice in writing
 17 to the receiver in the domiciliary state, either by registered mail
 18 or by personal service at least 40 days prior to the date set for
 19 hearing. The notice shall contain a concise statement of the
 20 amount of the claim, the facts on which the claim is based, and
 21 the priorities asserted, if any. If the domiciliary receiver within
 22 30 days after the giving of such notice shall give notice in writing
 23 to the ancillary receiver and to the claimant, either by registered
 24 mail or by personal service of his intention to contest such claim,
 25 he shall be entitled to appear or to be represented in any proceed-
 26 ing in this State involving adjudication of the claim. The final
 27 allowance of the claim by the courts of this State shall be accepted
 28 as conclusive as to its amount and shall also be accepted as conclu-
 29 sive as to its priority if any, against special deposits or other
 30 security located within this State.

1 20. Form of claim—notice—hearing.

2 a. All claims against an insurer against which delinquency pro-

3 ceedings have been begun shall set forth in reasonable detail the
4 amount of the claim, or the basis upon which such amount can be
5 ascertained, the facts upon which the claim is based, and the
6 priorities asserted, if any. All such claims shall be verified by the
7 affidavit of the claimant, or someone authorized to act on his behalf
8 and having knowledge of the facts, and shall be supported by such
9 documents as may be material thereto.

10 b. All claims filed in this State shall be filed with the receiver,
11 whether domiciliary or ancillary, in this State, on or before the
12 last date for filing as specified in this act.

13 c. Within 10 days of the receipt of any claim, or within such
14 further period as the court may fix, the receiver shall report the
15 claim to the court, specifying in such report his recommendation
16 with respect to the action to be taken thereon. Upon receipt of
17 such report, the court shall fix a time for hearing the claim and
18 shall direct that the claimant or the receiver, as the court shall
19 specify, shall give such notice as the court shall determine to such
20 persons as shall appear to the court to be interested therein. All
21 such notices shall specify the time and place of the hearing and
22 shall concisely state the amount and nature of the claim, the
23 priorities asserted, if any, and the recommendation of the receiver
24 with reference thereto.

25 d. At the hearing all persons interested shall be entitled to
26 appear and the court shall enter an order allowing, allowing in
27 part, or disallowing the claim. Any such order shall be deemed
28 to be an appealable order.

1 21. Priority of certain claims.

2 a. In a delinquency proceeding against an insurer domiciled in
3 this State, claims owing to residents of ancillary states shall be
4 preferred claims if like claims are preferred under the laws of
5 this State. All such claims owing to residents or nonresidents
6 shall be given equal priority of payment from general assets
7 regardless of where such assets are located.

8 b. In a delinquency proceeding against an insurer domiciled in a
9 reciprocal state, claims owing to residents of this State shall be
10 preferred claims if like claims are preferred by the laws of that
11 state.

12 c. The owners of special deposit claims against an insurer for
13 which a receiver is appointed in this or any other state shall be
14 given priority against their several special deposits in accordance
15 with the provisions of the statutes governing the creation and
16 maintenance of such deposits. If there is a deficiency in any such

17 deposit so that the claims secured thereby are not fully discharged
18 therefrom, the claimants may share in the general assets, but such
19 sharing shall be deferred until general creditors, and also claim-
20 ants against other special deposits who have received smaller
21 percentages from their respective special deposits, have been paid
22 percentages of their claims equal to the percentage paid from a
23 special deposit.

24 d. The owner of a secured claim against an insurer for which a
25 receiver has been appointed in this or any other state may sur-
26 render his security and file his claim as a general credit, or the
27 claim may be discharged by resort to the security, in which case
28 the deficiency, if any, shall be treated as a claim against the general
29 assets of the insurer on the same basis as claims of unsecured
30 creditors. If the amount of the deficiency has been adjudicated
31 in ancillary proceedings as provided in this act, or if it has been
32 adjudicated by a court of competent jurisdiction in proceedings in
33 which the domiciliary receiver has had notice and opportunity to
34 be heard, such amounts shall be conclusive; otherwise the amount
35 shall be determined in the delinquency proceeding in the domi-
36 ciliary state.

1 22. Attachment and garnishment of assets. During the pendency
2 of delinquency proceedings in this or any reciprocal state, no
3 action or proceeding in the nature of an attachment, garnishment
4 or execution shall be commenced or maintained in the courts of
5 this State against the delinquent insurer or its assets. Any lien
6 obtained by any such action or proceeding within 4 months prior
7 to the commencement of any such delinquency proceeding or at any
8 time thereafter shall be void as against any rights arising in such
9 delinquency proceeding.

1 23. Uniform insurers liquidation act.

2 a. Subsections b. through k. of section 1, subsections a. and c.
3 of section 4, together with sections 5 and 15 through 23 constitute
4 and may be referred to as the Uniform Insurers Liquidation Act.

5 b. The Uniform Insurers Liquidation Act shall be so inter-
6 preted and construed as to effectuate its general purpose to make
7 uniform the law of those states that enact it. To the extent that
8 its provisions when applicable conflict with other provisions of
9 this act, the provisions of such act shall control.

1 24. Borrowing on pledge of assets. For the purpose of facilitat-
2 ing the rehabilitation, liquidations, conservation or dissolution of
3 an insurer pursuant to this act, the commissioner may, subject
4 to the approval of the court, borrow money and execute, acknowl-

5 edge and deliver notes or other evidences of indebtedness therefor,
6 and secure the payment of the same by the mortgage, pledge,
7 assignment, transfer in trust or hypothecation of any or all of the
8 property of such insurer, whether real, personal or mixed, and the
9 commissioner, subject to the approval of the court, shall have
10 power to take any and all other action necessary and proper to
11 consummate any such loans and to provide for the repayment
12 thereof. The commissioner shall be under no obligation personally
13 or in his official capacity as commissioner to repay any loan made
14 pursuant to this act.

1 25. Voidable transfers.

2 a. Any transfer of, or lien upon, the property of an insurer
3 which is made or created within 4 months prior to the granting of
4 an order to show cause under this act with the intent of giving
5 to any creditor or of enabling him to obtain a greater percentage
6 of his debt than any other creditor of the same class, and which is
7 accepted by such creditor having reasonable cause to believe that
8 such a preference will occur, shall be voidable.

9 b. Every director, officer, employee, stockholder, policyholder,
10 and any other person acting on behalf of such insurer who shall
11 be concerned in any such act or deed and every person receiving
12 thereby any property of such insurer or the benefit thereof, shall
13 be personally liable therefor and shall be bound to account to the
14 commissioner.

15 c. The commissioner, as receiver in any proceeding under this
16 act, may avoid any transfer of, or lien upon the property of an
17 insurer which any creditor, stockholder or policyholder of such
18 insurer might have avoided, and may recover the property so
19 transferred, or its value from the person to whom it was trans-
20 ferred, unless such person was a bona fide holder for value prior
21 to the date of the granting of an order to show cause under this
22 act. Such property or its value may be recovered from anyone
23 who has received it, except a bona fide holder for value as above
24 specified.

1 26. Priority of claims for compensation.

2 a. Compensation actually owing to employees other than officers
3 of an insurer, for services rendered within 3 months prior to the
4 commencement of a proceeding against the insurer under this act,
5 but not exceeding \$1,000.00 for each such employee, shall be paid
6 prior to the payment of any other debt or claim, and in the dis-
7 cretion of the commissioner, may be paid as soon as practicable
8 after the proceeding has been commenced; except, that at all times

9 the commissioner shall reserve such funds as will, in his opinion,
10 be sufficient for the expenses of administration.

11 b. Such priority shall be in lieu of any other similar priority
12 which may be authorized by law as to the wages or compensation
13 of such employees.

1 27. Offsets.

2 a. In all cases of mutual debts or mutual credits between the
3 insurer and another person in connection with any action or pro-
4 ceeding under this act, such credits and debts shall be set off and
5 the balance only shall be allowed or paid, except as provided in
6 subsection b. below.

7 b. No offset shall be allowed in favor of any such person where
8 (1) The obligation of the insurer to such person would not at
9 the date of the entry of any liquidation order, or at such other
10 date determined by the court for fixing the rights and liabilities
11 with respect to the estate of the insurer, have entitled him to share
12 as a claimant in the assets of the insurer; or

13 (2) The obligation of the insurer to such person was purchased
14 by or transferred to such person with a view of its being used as
15 an offset; or

16 (3) The obligation of such person is to pay a balance upon a
17 subscription to the capital stock of a stock insurer.

1 28. Allowance of certain claims. a. No contingent claim shall
2 share in a distribution of the assets of an insurer which has been
3 adjudicated to be insolvent by an order made pursuant to sec-
4 tion 30 a., except that such claims shall be considered, if properly
5 presented, and may be allowed to share where

6 (1) Such claim becomes absolute against the insurer on or
7 before the last day fixed for filing of proofs of claim against the
8 assets of such insurer; or

9 (2) There is a surplus and the liquidation is thereafter con-
10 ducted upon the basis that such insurer is solvent.

11 b. Where an insurer has been so adjudicated to be insolvent, any
12 person who has a cause of action against an insured of such
13 insurer, shall have the right to file a claim in the liquidation pro-
14 ceeding, regardless of the fact that such claim may be contingent,
15 and such claim may be allowed

16 (1) If it may be reasonably inferred from the proof presented
17 upon such claim that such person would be able to obtain a judg-
18 ment upon such cause of action against such insured; and

19 (2) If such person shall furnish suitable proof, unless the
20 court, for good cause shown, shall otherwise direct, that no further

21 valid claims against such insurer arising out of his cause of action,
22 other than those already presented, can be made; and

23 (3) If the total liability of such insurer to all claimants arising
24 out of the same act of its insured shall be no greater than its
25 maximum liability would be, were it not in liquidation.

26 c. No judgment against such an insured, taken after the date
27 of the entry of the liquidated order, shall be considered in the
28 liquidation proceedings as evidence of liability, or of the amount
29 of damages, and no judgment against an insured taken by default,
30 inquest or by collusion prior to the entry of the liquidation order,
31 shall be considered as conclusive evidence in the liquidation pro-
32 ceeding, either of the liability of such insured to such person upon
33 such cause of action, or of the amount of damage to which such
34 person is therein entitled.

1 29. Allowance of secured claims. No claim of any secured
2 claimant shall be allowed at a sum greater than the difference
3 between the value of the claim without security and the value of
4 the security itself as of the date of the entry of the order of
5 liquidation, or such other date set by the court for fixation of
6 rights and liabilities, unless the claimant shall surrender his
7 security to the commissioner, in which event the claim shall be
8 allowed in the full amount for which it is valued.

1 30. Time to file the claims.

2 a. If upon the granting of an order of liquidation under this act,
3 or at any time thereafter during the liquidation proceeding, the
4 insurer shall not be clearly solvent, the court shall, after such
5 notice and hearing as it deems proper, make an order declaring
6 the insurer to be insolvent. Thereupon, regardless of any prior
7 notice which may have been given to creditors, the commissioner
8 shall notify all persons who may have claims against such insurer
9 and who have not filed proper proofs thereof, to present the same
10 to him, at a place specified in such notice, within 4 months from
11 the date of the entry of such order, or, if the commissioner shall
12 certify that it is necessary, within such longer time as the court
13 shall prescribe. The last day for the filing of proofs of claims
14 shall be specified in the notice. Such notice shall be given in a
15 manner determined by the court.

16 b. Proofs of claim may be filed subsequent to the date specified,
17 but no such claim shall share in the distribution of the assets until
18 all allowed claims, proofs of which have been filed before said
19 date, have been paid in full, with interest.

1 31. Repealer. Chapter 30 of Title 17 of the Revised Statutes
2 is repealed.

1 32. This act shall take effect immediately.

STATEMENT

This bill would expand the powers of the Commissioner of Insurance with respect to the rehabilitation and liquidation of insolvent insurance companies doing business under Title 17 of the New Jersey Statutes. The Uniform Insurers Liquidation Act has previously been made applicable to life and health insurance companies doing business under Title 17B of the New Jersey Statutes. This bill would now make the Uniform Act also applicable to domestic, foreign and alien property and casualty insurance companies doing business in New Jersey under Title 17.

SENATE LABOR, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO
SENATE, No 1326

STATE OF NEW JERSEY

DATED: DECEMBER 10, 1974

The statement appended to and printed with the bill adequately explains its provisions.

ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

SENATE, No. 1326

STATE OF NEW JERSEY

DATED: APRIL 14, 1975

This bill would expand the powers of the Commissioner of Insurance with respect to the rehabilitation and/or liquidation of insolvent domestic, foreign, and alien property and casualty insurance companies doing business in New Jersey under Title 17 of the Revised Statutes. The Uniform Insurers Liquidation Act has previously been made applicable to life and health insurance companies doing business in New Jersey; this bill would establish the same procedures for the rehabilitation or liquidation for all insurers selling property and casualty insurance in this State.

[ASSEMBLY REPRINT]

SENATE, No. 1326

with Assembly amendment adopted April 28, 1975

STATE OF NEW JERSEY

INTRODUCED JULY 24, 1974

By Senator FELDMAN

Referred to Committee on Labor, Industry and Professions

AN ACT concerning the rehabilitation and liquidation of certain insurers, supplementing Title 17 of the Revised Statutes, and repealing chapter 30 of Title 17 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Definitions.

2 a. "Impairment or insolvency" means the capital of a stock
3 insurer or the surplus of a mutual insurer, shall be deemed to be
4 impaired and the insurer shall be deemed to be insolvent, when
5 such insurer is not possessed of assets at least equal to all liabilities
6 and required reserves together with its total issued and outstand-
7 ing capital stock of a stock insurer, or the minimum surplus if
8 a mutual insurer required by this title to be maintained for the
9 kind or kinds of insurance it is then authorized to transact.

10 b. "Insurer" shall include a person subject to the insurance
11 supervisory authority of, or to liquidation, rehabilitation, reorgani-
12 zation or conservation by, the commissioner or the equivalent
13 insurance supervisory official of another state; also all persons
14 purporting to be engaged as insurer in this State, and persons in
15 process of organization to become insurers, pursuant to the pro-
16 visions of Title 17 of the Revised Statutes.

17 c. "Delinquency proceeding" means any proceeding commenced
18 against an insurer pursuant to this act for the purpose of liquidat-
19 ing, rehabilitating, reorganizing or conserving such insurer.

20 d. "Domiciliary state" means the state in which an insurer has
21 its domicile, or in the case of an alien insurer the State in which
22 such insurer, having become authorized to do business in such
23 state, has at the commencement of delinquency proceedings, the
24 largest amount of its assets held in trust and assets held on deposit
25 for the benefit of its policyholders or policyholders and creditors

26 in the United States, and any such insurer is deemed to be domiciled
27 in such state.

28 e. "Ancillary state" means any state other than a domiciliary
29 state.

30 f. "Reciprocal state" means any state other than this State in
31 which in substance and effect the provisions of the Uniform
32 Insurers Liquidation Act, as defined in section 23 of this act are
33 in force, including the provisions requiring that the commissioner
34 or equivalent insurance supervisory official be the receiver of a
35 delinquent insurer.

36 g. "General assets" means all property, real, personal or
37 otherwise, not specifically mortgaged, pledged, deposited or other-
38 wise encumbered for the security or benefit of specified persons
39 or a limited class or classes of persons, and as to such specifically
40 encumbered property the term includes all such property or its
41 proceeds in excess of the amount necessary to discharge the sum
42 or sums secured thereby. Assets held in trust and assets held on
43 deposit for the security or benefit of all policyholders or all policy-
44 holders and creditors in the United States shall be deemed general
45 assets.

46 h. "Preferred claim" means any claim with respect to which
47 the law of the State or of the United States accords priority of
48 payment from the general assets of the insurer.

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

52 j. "Secured claim" means any claim secured by mortgage, trust,
53 deed, pledge, deposit as security, escrow or otherwise, but not
54 including special deposit claim or claims against general assets.
55 The term also includes claims which more than 4 months prior to
56 the commencement of delinquency proceedings in the state of the
57 insurer's domicile have become liens upon specific assets by reason
58 of judicial process.

59 k. "Receiver" means receiver, liquidator, rehabilitator or con-
60 servator as the context may require.

1 2. Jurisdiction of delinquency proceedings. The Superior Court
2 shall have original jurisdiction of delinquency proceedings under
3 this act.

1 3. Exclusive remedy—appeal. Delinquency proceedings pursuant
2 to this act shall constitute the sole and exclusive method of liquidat-
3 ing, rehabilitating, reorganizing or conserving an insurer, and no
4 court shall entertain a petition for the commencement of such

5 proceedings, or any other similar procedure, unless the same has
6 been instituted by the commissioner.

1 4. Commencement of delinquency proceeding.

2 a. The commissioner shall commence any such proceeding by an
3 application to the court or to any judge thereof, for an order
4 directing the insurer to show cause why the commissioner should
5 not have the relief prayed for.

6 b. The application shall be by verified petition, setting forth the
7 ground or grounds for the proceeding and the relief demanded.

8 c. If the court is satisfied from reading the commissioner's peti-
9 tion that the facts therein alleged, if established, would constitute
10 grounds for a delinquency proceeding under this act, it shall issue
11 an order to show cause as referred to in a. above.

12 d. On the return of the order to show cause, the court shall either
13 deny the application or grant the application together with such
14 other relief as the nature of the case and the interests of the
15 policyholders, creditors, stockholders, members, subscribers or the
16 public may require.

1 5. Injunctions.

2 a. Upon application by the commissioner for such an order to
3 show cause, or at any time thereafter, the court may, without notice,
4 issue an injunction restraining the insurer, its officers, directors,
5 stockholders, policyholders, agents, and all other persons from the
6 transaction of its business or the waste or disposition of its prop-
7 erty until the further order of the court.

8 b. The court may, at any time during a proceeding under this
9 act, issue such other injunctions or orders as may be deemed neces-
10 sary to prevent interference with the commissioner or the proceed-
10a ing, or waste of the assets of the insurer, or the commencement or
11 prosecution of any actions, or the obtaining of preferences, judg-
12 ments, attachments or other liens, or the making of any levy against
13 the insurer or against its assets or any part thereof.

1 6. Grounds for rehabilitation—domestic insurers. The commis-
2 sioner may apply to the court for an order directing him to rehabili-
3 tate a domestic insurer upon one or more of the following grounds:

4 That the insurer

5 a. Is impaired or insolvent; or

6 b. Has refused to submit its books, records, accounts or affairs
7 to the reasonable examination of the commissioner; or

8 c. Has concealed or removed records or assets in violation of
9 regulations which the commissioner may adopt; or

10 d. Has failed to comply with the commissioner's order, made

11 pursuant to law, to make good an impairment of capital (if a stock
12 insurer) or an impairment of surplus (if a mutual insurer) within
13 the time prescribed by law; or

14 e. Has transferred or attempted to transfer substantially its
15 entire property or business, or has entered into any transaction
16 the effect of which is to merge substantially its entire property or
17 business in that of any other insurer without first having obtained
18 the written approval of the commissioner; or

19 f. Is found, after examination, to be in such condition that its
20 further transaction of business will be hazardous to its policy-
21 holders, or to its stockholders, or to its creditors, or to the public; or

22 g. Has willfully violated its charter or any law of this State; or

23 h. Has an officer, director, or manager who has unlawfully
24 refused to be examined under oath, concerning its affairs; or

25 i. Has failed or refused to take such steps as may be necessary
26 to remove from office any officer or director whom the commis-
27 sioner has found, after notice to and hearing of such insurance
28 company and of such officer or director, to be a dishonest or
29 untrustworthy person; or

30 j. Has been the subject of an application for the appointment
31 of a receiver, trustee, custodian or sequestrator of the insurer or
32 of its property, otherwise than pursuant to the provisions of this
33 act but only if such appointment has been made or is imminent; or

34 k. Has consented to such an order through a majority of its
35 directors, stockholders, or policyholders; or

36 l. Has failed to pay a final judgment rendered against it in any
37 state upon any insurance contract issued or assumed by it, within
38 30 days after the judgment became final or within 30 days after
39 time for taking an appeal has expired, or within 30 days after
40 dismissal of an appeal before final determination, whichever date
41 is the later.

1 7. Nature of rehabilitation order—termination of rehabilitation
2 —domestic insurers.

3 a. An order to rehabilitate a domestic insurer shall direct the
4 commissioner forthwith to take possession of the property of the
5 insurer and to conduct the business thereof, and to take such steps
6 toward removal of the causes and conditions which have made
7 rehabilitation necessary, as the court may direct.

8 b. If at any time the commissioner deems that further efforts to
9 rehabilitate the insurer would be useless, he may apply to the
10 court for an order of liquidation.

11 c. The commissioner, or any interested person upon due notice

12 to the commissioner, at any time may apply for an order termi-
13 nating the rehabilitation proceeding and permitting the insurer
14 to resume possession of its property and the conduct of its
15 business.

1 8. Grounds for liquidation. The commissioner may apply to the
2 court for an order directing him to liquidate the business of a
3 domestic insurer or of the United States branch of an alien insurer
4 having trusteed assets in this State, regardless of whether or not
5 there has been prior order directing him to rehabilitate such
6 insurer, upon any of the grounds specified in section 6, or upon any
7 one or more of the following grounds: That the insurer

8 a. Has ceased transacting business for a period of 1 year; or

9 b. Is an insolvent insurer and has commenced voluntary liquida-
10 tion or dissolution, or attempts to commence or prosecute any
11 action or proceeding to liquidate its business or affairs, or to
12 dissolve its corporate charter, or to procure the appointment of a
13 receiver, trustee, custodian, or sequestrator under any laws except
14 this act; or

15 c. Has not organized or completed its organization and obtained
16 a certificate of authority as an insurer.

1 9. Order of liquidation—domestic insurers.

2 a. An order to liquidate the business of a domestic insurer shall
3 direct the commissioner forthwith to take possession of the prop-
4 erty of the insurer, to liquidate its business, to deal with the
5 insurer's property and business in his own name as commissioner
6 or in the name of the insurer as the court may direct and to give
7 notice to all creditors who may have claims against the insurer to
8 present such claims.

9 b. The commissioner may apply under this act for an order
10 dissolving the corporate existence of a domestic insurer:

11 (1) Upon his application for an order of liquidation of such
12 insurer, or at any time after such order has been granted; or

13 (2) Upon the grounds specified in section 8 c., regardless of
14 whether an order of liquidation is sought or has been obtained.

1 10. Order of liquidation—alien insurers. An order to liquidate
2 the business of a United States branch of an alien insurer having
3 trusteed assets in this State shall be in the same terms as those
4 prescribed for domestic insurers, save and except only that the
5 assets of the business of such United States branch shall be the
6 only assets included therein.

1 11. Grounds for conservation—foreign insurers. The commis-
2 sioner may apply for an order directing him to conserve the assets

3 within this State of a foreign insurer upon any one or more of
4 the following grounds:

5 a. Upon any of the grounds specified in section 6, and in sec-
6 tion 8 b.

7 b. That its property has been sequestrated in its domiciliary
8 sovereignty or in any other sovereignty.

1 12. Grounds for conservation—alien insurers. The commis-
2 sioner may apply for an order directing him to conserve the
3 assets within this State of an alien insurer upon any one or more
4 of the following grounds:

5 a. Upon any of the grounds specified in section 6 and in sec-
6 tion 8 b.

7 b. Upon the ground that the insurer has failed to comply within
8 the time designated by the commissioner, with an order made by
9 him to make good an impairment of its trusteed funds, or

10 c. Upon the ground that the property of the insurer has been
11 sequestrated in its domiciliary sovereignty or elsewhere.

1 13. Conservation or ancillary receivership—foreign insurers.

2 a. An order to conserve the assets of a foreign insurer shall
3 direct the commissioner forthwith to take possession of the prop-
4 erty of the insurer within this State and to conserve it, subject to
5 the further direction of the court.

6 b. Whenever a domiciliary receiver is appointed for any such
7 insurer in its domiciliary state the court shall, on application of
8 the commissioner, appoint the commissioner as the ancillary
9 receiver in this State.

10 c. An order to liquidate the assets in this State of a foreign
11 insurer shall require the commissioner forthwith to take posses-
12 sion of the property of the insurer within this State and to liqui-
13 date it subject to the orders of the court and with due regard to
14 the rights and powers of the domiciliary receiver, as provided in
15 this act.

1 14. Conservation or ancillary receivership—alien insurers. An
2 order to conserve the assets of an alien insurer shall direct the
3 commissioner forthwith to take possession of the property of the
4 insurer within this State and to conserve it, subject to the further
5 direction of the court.

1 15. Conduct of delinquency proceedings—domestic insurers.

2 a. Whenever under the laws of this State a receiver is to be
3 appointed in delinquency proceedings for a domestic insurer, the
4 court shall appoint the commissioner as such receiver. The court
5 shall direct the commissioner forthwith to take possession of the

6 assets of the insurer and to administer the same under the orders
7 of the court.

8 b. As domiciliary receiver, the commissioner shall be vested by
9 operation of law, with the title to all property, contracts, and rights
10 of action, and all of the books and records of the insurer wherever
11 located, as of the date of entry of the order directing him to re-
12 habilitate or liquidate a domestic insurer and he shall have the
13 right to recover the same and reduce the same to his possession.

14 c. The filing or recording of the order, directing possession to be
15 taken, or a certified copy thereof, in the office where instruments
16 affecting title to property are required to be filed or recorded,
17 shall impart the same notice as would be imparted by a deed, bill
18 of sale, or other evidence of the title duly filed or recorded.

19 d. The commissioner, as domiciliary receiver, shall be responsible
20 on his official bond for the proper administration of all assets
21 coming into his possession or control. The court may at any time
22 require an additional bond from him or his deputies, if deemed
23 desirable for the protection of the assets.

24 e. Upon taking possession of the assets of an insurer, the
25 domiciliary receiver shall, subject to the direction of the court,
26 immediately proceed to conduct the business of the insurer or to
27 take such steps as are authorized by the laws of this State for the
28 purpose of liquidating, rehabilitating, reorganizing, or conserving
29 the affairs of the insurer.

1 16. Conduct of delinquency proceedings—foreign and alien
2 insurers.

3 a. Whenever under this act an ancillary receiver is to be ap-
4 pointed in delinquency proceedings for an insurer not domiciled
5 in this State, the court shall appoint the commissioner as ancillary
6 receiver. The commissioner shall file a petition requesting the
7 appointment on the grounds set forth in section 13 b. of this act:

8 (1) If he finds that there are sufficient assets of the insurer
9 located in this State to justify the appointment of an ancillary
10 receiver; or

11 (2) If 10 or more persons resident in this State having claims
12 against such insurer file a petition with the commissioner request-
13 ing the appointment of such ancillary receiver.

14 b. The domiciliary receiver for the purpose of liquidating an
15 insurer domiciled in a reciprocal state shall be vested by operation
16 of law with the title to all of the property, contracts and rights
17 of action, and all of the books and records of the insurer located
18 in this State, and he shall have the immediate right to recover

19 balances due from local agents and to obtain possession of any
20 books and records of the insurer found in this State. He shall
21 also be entitled to recover the other assets of the insurer located
22 in this State, except that upon the appointment of an ancillary
23 receiver in this State, the ancillary receiver shall during the
24 ancillary receivership proceedings have the sole right to recover
25 such other assets. The ancillary receiver shall, as soon as
26 practicable, liquidate from their respective securities those special
27 deposit claims and secured claims which are proved and allowed
28 in the ancillary proceedings in this State, and shall pay the neces-
29 sary expenses of the proceedings. All remaining assets he shall
30 promptly transfer to the domiciliary receiver. Subject to the
31 foregoing provisions, the ancillary receiver and his deputies shall
32 have the same powers and be subject to the same duties with
33 respect to the administration of such assets as a receiver of an
34 insurer domiciled in this State.

35 c. The domiciliary receiver of an insurer domiciled in a reciprocal
36 state may sue in this State to recover any assets of such insurer
37 to which he may be entitled under the laws of this State.

1 17. Deputies and assistants. In connection with delinquency
2 proceedings, the commissioner may appoint one or more special
3 deputy commissioners to act for him, and may employ such
4 counsel, clerks, and assistants as he deems necessary. The com-
5 pensation of the special deputies, counsel, clerks, or assistants,
6 and all expenses of taking possession of the insurer and of con-
7 ducting the proceedings, shall be fixed by the receiver subject to
8 the approval of the court, and shall be paid out of funds or assets
9 of the insurer. Within the limits of the duties imposed upon them,
10 special deputies shall possess all the powers given to, and, in the
11 exercise of those powers, shall be subject to all of the duties
12 imposed upon the receiver with respect to such proceedings.

1 18. Claims of nonresidents against domestic insurers.

2 a. In a delinquency proceeding begun in this State against a
3 domestic insurer, claimants residing in reciprocal states may file
4 claims either with the ancillary receivers, if any, in their respec-
5 tive states or with the domiciliary receiver. All such claims must
6 be filed on or before the last date fixed for the filing of claims in
7 domiciliary delinquency proceedings.

8 b. Controverted claims belonging to claimants residing in recip-
9 rocal states may either:

10 (1) Be proved in this State; or

11 (2) If ancillary proceedings have been commenced in such

12 reciprocal states, may be proved in those proceedings. In the event
13 a claimant elects to prove his claim in ancillary proceedings, if
14 notice of the claim and opportunity to appear and be heard is
15 afforded the domiciliary receiver of this State, as provided in
16 section 19 of this act with respect to ancillary proceedings in this
17 State, the final allowance of such claim by the courts in the
18 ancillary state shall be accepted in this State as conclusive as
19 to its amount and shall also be accepted as conclusive as to its
20 priority, if any, against special deposits or other security located
21 within the ancillary state.

1 19. Claims against foreign insurers.

2 a. In a delinquency proceeding in a reciprocal state against an
3 insurer domiciled in that state, claimants against such insurer
4 who reside within this State may file claims either with the ancil-
5 lary receiver, if any, appointed in this State, or with the domi-
6 ciliary receiver. All such claims must be filed on or before the
7 last date fixed for the filing of claims in the domiciliary delin-
8 quency proceedings:

9 b. Controverted claims belonging to claimants residing in this
10 State may either:

11 (1) Be proved in the domiciliary state as provided by the law
12 of that state; or

13 (2) If ancillary proceedings have been commenced in this
14 State, be proved in those proceedings. In the event that any such
15 claimant elects to prove his claim in this State, he shall file his
16 claim with the ancillary receiver and shall give notice in writing
17 to the receiver in the domiciliary state, either by registered mail
18 or by personal service at least 40 days prior to the date set for
19 hearing. The notice shall contain a concise statement of the
20 amount of the claim, the facts on which the claim is based, and
21 the priorities asserted, if any. If the domiciliary receiver within
22 30 days after the giving of such notice shall give notice in writing
23 to the ancillary receiver and to the claimant, either by registered
24 mail or by personal service of his intention to contest such claim,
25 he shall be entitled to appear or to be represented in any proceed-
26 ing in this State involving adjudication of the claim. The final
27 allowance of the claim by the courts of this State shall be accepted
28 as conclusive as to its amount and shall also be accepted as conclu-
29 sive as to its priority if any, against special deposits or other
30 security located within this State.

1 20. Form of claim—notice—hearing.

2 a. All claims against an insurer against which delinquency pro-

3 ceedings have been begun shall set forth in reasonable detail the
4 amount of the claim, or the basis upon which such amount can be
5 ascertained, the facts upon which the claim is based, and the
6 priorities asserted, if any. All such claims shall be verified by the
7 affidavit of the claimant, or someone authorized to act on his behalf
8 and having knowledge of the facts, and shall be supported by such
9 documents as may be material thereto.

10 b. All claims filed in this State shall be filed with the receiver,
11 whether domiciliary or ancillary, in this State, on or before the
12 last date for filing as specified in this act.

13 c. Within 10 days of the receipt of any claim, or within such
14 further period as the court may fix, the receiver shall report the
15 claim to the court, specifying in such report his recommendation
16 with respect to the action to be taken thereon. Upon receipt of
17 such report, the court shall fix a time for hearing the claim and
18 shall direct that the claimant or the receiver, as the court shall
19 specify, shall give such notice as the court shall determine to such
20 persons as shall appear to the court to be interested therein. All
21 such notices shall specify the time and place of the hearing and
22 shall concisely state the amount and nature of the claim, the
23 priorities asserted, if any, and the recommendation of the receiver
24 with reference thereto.

25 d. At the hearing all persons interested shall be entitled to
26 appear and the court shall enter an order allowing, allowing in
27 part, or disallowing the claim. Any such order shall be deemed
28 to be an appealable order.

1 21. Priority of certain claims.

2 a. In a delinquency proceeding against an insurer domiciled in
3 this State, claims owing to residents of ancillary states shall be
4 preferred claims if like claims are preferred under the laws of
5 this State. All such claims owing to residents or nonresidents
6 shall be given equal priority of payment from general assets
7 regardless of where such assets are located.

8 b. In a delinquency proceeding against an insurer domiciled in a
9 reciprocal state, claims owing to residents of this State shall be
10 preferred claims if like claims are preferred by the laws of that
11 state.

12 c. The owners of special deposit claims against an insurer for
13 which a receiver is appointed in this or any other state shall be
14 given priority against their several special deposits in accordance
15 with the provisions of the statutes governing the creation and
16 maintenance of such deposits. If there is a deficiency in any such
17 deposit so that the claims secured thereby are not fully discharged

18 therefrom, the claimants may share in the general assets, but such
19 sharing shall be deferred until general creditors, and also claim-
20 ants against other special deposits who have received smaller
21 percentages from their respective special deposits, have been paid
22 percentages of their claims equal to the percentage paid from a
23 special deposit.

24 d. The owner of a secured claim against an insurer for which a
25 receiver has been appointed in this or any other state may sur-
26 render his security and file his claim as a general credit, or the
27 claim may be discharged by resort to the security, in which case
28 the deficiency, if any, shall be treated as a claim against the general
29 assets of the insurer on the same basis as claims of unsecured
30 creditors. If the amount of the deficiency has been adjudicated
31 in ancillary proceedings as provided in this act, or if it has been
32 adjudicated by a court of competent jurisdiction in proceedings in
33 which the domiciliary receiver has had notice and opportunity to
34 be heard, such amounts shall be conclusive; otherwise the amount
35 shall be determined in the delinquency proceeding in the domi-
36 ciliary state.

1 22. Attachment and garnishment of assets. During the pendency
2 of delinquency proceedings in this or any reciprocal state, no
3 action or proceeding in the nature of an attachment, garnishment
4 or execution shall be commenced or maintained in the courts of
5 this State against the delinquent insurer or its assets. Any lien
6 obtained by any such action or proceeding within 4 months prior
7 to the commencement of any such delinquency proceeding or at any
8 time thereafter shall be void as against any rights arising in such
9 delinquency proceeding.

1 23. Uniform insurers liquidation act.

2 a. Subsections b. through k. of section 1, subsections a. and c.
3 of section 4, together with sections 5 and 15 through 23 constitute
4 and may be referred to as the Uniform Insurers Liquidation Act.

5 b. The Uniform Insurers Liquidation Act shall be so inter-
6 preted and construed as to effectuate its general purpose to make
7 uniform the law of those states that enact it. To the extent that
8 its provisions when applicable conflict with other provisions of
9 this act, the provisions of such act shall control.

1 24. Borrowing on pledge of assets. For the purpose of facilitat-
2 ing the rehabilitation, liquidations, conservation or dissolution of
3 an insurer pursuant to this act, the commissioner may, subject
4 to the approval of the court, borrow money and execute, acknowl-
5 edge and deliver notes or other evidences of indebtedness therefor,

6 and secure the payment of the same by the mortgage, pledge,
7 assignment, transfer in trust or hypothecation of any or all of the
8 property of such insurer, whether real, personal or mixed, and the
9 commissioner, subject to the approval of the court, shall have
10 power to take any and all other action necessary and proper to
11 consummate any such loans and to provide for the repayment
12 thereof. The commissioner shall be under no obligation personally
13 or in his official capacity as commissioner to repay any loan made
14 pursuant to this act.

1 25. Voidable transfers.

2 a. Any transfer of, or lien upon, the property of an insurer
3 which is made or created within 4 months prior to the granting of
4 an order to show cause under this act with the intent of giving
5 to any creditor or of enabling him to obtain a greater percentage
6 of his debt than any other creditor of the same class, and which is
7 accepted by such creditor having reasonable cause to believe that
8 such a preference will occur, shall be voidable.

9 b. Every director, officer, employee, stockholder, policyholder,
10 and any other person acting on behalf of such insurer who shall
11 be concerned in any such act or deed and every person receiving
12 thereby any property of such insurer or the benefit thereof, shall
13 be personally liable therefor and shall be bound to account to the
14 commissioner.

15 c. The commissioner, as receiver in any proceeding under this
16 act, may avoid any transfer of, or lien upon the property of an
17 insurer which any creditor, stockholder or policyholder of such
18 insurer might have avoided, and may recover the property so
19 transferred, or its value from the person to whom it was trans-
20 ferred, unless such person was a bona fide holder for value prior
21 to the date of the granting of an order to show cause under this
22 act. Such property or its value may be recovered from anyone
23 who has received it, except a bona fide holder for value as above
24 specified.

1 26. Priority of claims for compensation.

2 a. Compensation actually owing to employees other than officers
3 of an insurer, for services rendered within 3 months prior to the
4 commencement of a proceeding against the insurer under this act,
5 but not exceeding \$1,000.00 for each such employee, shall be paid
6 prior to the payment of any other debt or claim, and in the dis-
7 cretion of the commissioner, may be paid as soon as practicable
8 after the proceeding has been commenced; except, that at all times
9 the commissioner shall reserve such funds as will, in his opinion,
10 be sufficient for the expenses of administration.

11 b. Such priority shall be in lieu of any other similar priority
12 which may be authorized by law as to the wages or compensation
13 of such employees.

1 27. Offsets.

2 a. In all cases of mutual debts or mutual credits between the
3 insurer and another person in connection with any action or pro-
4 ceeding under this act, such credits and debts shall be set off and
5 the balance only shall be allowed or paid, except as provided in
6 subsection b. below.

7 b. No offset shall be allowed in favor of any such person where

8 (1) The obligation of the insurer to such person would not at
9 the date of the entry of any liquidation order, or at such other
10 date determined by the court for fixing the rights and liabilities
11 with respect to the estate of the insurer, have entitled him to share
12 as a claimant in the assets of the insurer; or

13 (2) The obligation of the insurer to such person was purchased
14 by or transferred to such person with a view of its being used as
15 an offset; or

16 (3) The obligation of such person is to pay a balance upon a
17 subscription to the capital stock of a stock insurer.

1 28. Allowance of certain claims. a. No contingent claim shall
2 share in a distribution of the assets of an insurer which has been
3 adjudicated to be insolvent by an order made pursuant to sec-
4 tion 30 a., except that such claims shall be considered, if properly
5 presented, and may be allowed to share where

6 (1) Such claim becomes absolute against the insurer on or
7 before the last day fixed for filing of proofs of claim against the
8 assets of such insurer; or

9 (2) There is a surplus and the liquidation is thereafter con-
10 ducted upon the basis that such insurer is solvent.

11 b. Where an insurer has been so adjudicated to be insolvent, any
12 person who has a cause of action against an insured of such
13 insurer, shall have the right to file a claim in the liquidation pro-
14 ceeding, regardless of the fact that such claim may be contingent,
15 and such claim may be allowed

16 (1) If it may be reasonably inferred from the proof presented
17 upon such claim that such person would be able to obtain a judg-
18 ment upon such cause of action against such insured; and

19 (2) If such person shall furnish suitable proof, unless the
20 court, for good cause shown, shall otherwise direct, that no further
21 valid claims against such insurer arising out of his cause of action,
22 other than those already presented, can be made; and

23 (3) If the total liability of such insurer to all claimants arising
24 out of the same act of its insured shall be no greater than its
25 maximum liability would be, were it not in liquidation.

26 c. No judgment against such an insured, taken after the date
27 of the entry of the liquidated order, shall be considered in the
28 liquidation proceedings as evidence of liability, or of the amount
29 of damages, and no judgment against an insured taken by default,
30 inquest or by collusion prior to the entry of the liquidation order,
31 shall be considered as conclusive evidence in the liquidation pro-
32 ceeding, either of the liability of such insured to such person upon
33 such cause of action, or of the amount of damage to which such
34 person is therein entitled.

1 29. Allowance of secured claims. No claim of any secured
2 claimant shall be allowed at a sum greater than the difference
3 between the value of the claim without security and the value of
4 the security itself as of the date of the entry of the order of
5 liquidation, or such other date set by the court for fixation of
6 rights and liabilities, unless the claimant shall surrender his
7 security to the commissioner, in which event the claim shall be
8 allowed in the full amount for which it is valued.

1 30. Time to file the claims.

2 a. If upon the granting of an order of liquidation under this act,
3 or at any time thereafter during the liquidation proceeding, the
4 insurer shall not be clearly solvent, the court shall, after such
5 notice and hearing as it deems proper, make an order declaring
6 the insurer to be insolvent. Thereupon, regardless of any prior
7 notice which may have been given to creditors, the commissioner
8 shall notify all persons who may have claims against such insurer
9 and who have not filed proper proofs thereof, to present the same
10 to him, at a place specified in such notice, within 4 months from
11 the date of the entry of such order, or, if the commissioner shall
12 certify that it is necessary, within such longer time as the court
13 shall prescribe. The last day for the filing of proofs of claims
14 shall be specified in the notice. Such notice shall be given in a
15 manner determined by the court.

16 b. Proofs of claim may be filed subsequent to the date specified,
17 but no such claim shall share in the distribution of the assets until
18 all allowed claims, proofs of which have been filed before said
19 date, have been paid in full, with interest.

1 31. Repealer. Chapter 30 of Title 17 of the Revised Statutes
2 is repealed **but such repeal shall not affect pending proceedings*
3 *under such sections**.

1 32. This act shall take effect immediately.