

# HOUSE BILL No. 4939

June 27, 1989, Introduced by Reps. Wartner, Middaugh, Gnodtke, Stacey, Martin, Ouwinga, Miller, Walberg, Jaye, Krause, Gilmer, Law and Dolan and referred to the Committee on Insurance.

A bill to amend sections 901, 2005, 7702, 7704, 7705, 7706, 7708, 7709, 7710, 7711, 7712, 7714, 7717, and 7921 of Act No. 218 of the Public Acts of 1956, entitled as amended

"The insurance code of 1956,"

section 901 as amended by Act No. 340 of the Public Acts of 1988, sections 7702, 7704, 7705, and 7706 as amended by Act No. 501 of the Public Acts of 1982, sections 7708, 7710, 7711, 7712, 7714, and 7717 as added by Act No. 194 of the Public Acts of 1982, section 7709 as amended by Act No. 121 of the Public Acts of 1986, and section 7921 as amended by Act No. 41 of the Public Acts of 1980, being sections 500.901, 500.2005, 500.7702, 500.7704, 500.7705, 500.7706, 500.7708, 500.7709, 500.7710, 500.7711, 500.7712, 500.7714, 500.7717, and 500.7921 of the Michigan Compiled Laws; to add section 412 and chapter 81; and to repeal certain parts of the act.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Section 1. Sections 901, 2005, 7702, 7704, 7705, 7706,  
2 7708, 7709, 7710, 7711, 7712, 7714, 7717, and 7921 of Act No. 218  
3 of the Public Acts of 1956, section 901 as amended by Act No. 340  
4 of the Public Acts of 1988, sections 7702, 7704, 7705, and 7706  
5 as amended by Act No. 501 of the Public Acts of 1982, sections  
6 7708, 7710, 7711, 7712, 7714, and 7717 as added by Act No. 194 of  
7 the Public Acts of 1982, section 7709 as amended by Act No. 121  
8 of the Public Acts of 1986, and section 7921 as amended by Act  
9 No. 41 of the Public Acts of 1980, being sections 500.901,  
10 500.2005, 500.7702, 500.7704, 500.7705, 500.7706, 500.7708,  
11 500.7709, 500.7710, 500.7711, 500.7712, 500.7714, 500.7717, and  
12 500.7921 of the Michigan Compiled Laws, are amended and section  
13 412 and chapter 81 are added to read as follows:

14       SEC. 412. AS A CONDITION OF TRANSACTING INSURANCE IN THIS  
15 STATE, THE COMMISSIONER MAY REQUIRE AN INSURER TO MAINTAIN A SPE-  
16 CIAL DEPOSIT WITH THE STATE TREASURER IN SUCH AMOUNT AS THE COM-  
17 MISSIONER CONSIDERS NECESSARY FOR THE PROTECTION OF MICHIGAN POL-  
18 ICYHOLDERS AND CLAIMANTS. THE SPECIAL DEPOSIT IS SUBJECT TO SPE-  
19 CIAL DEPOSIT CLAIMS PURSUANT TO SECTION 8141A.

20       Sec. 901. (1) Each insurer authorized to transact the busi-  
21 ness of insurance in this state and each person approved for  
22 placement of business by a surplus lines agent pursuant to  
23 chapter 19, may loan or invest its funds in any investment, and  
24 may buy, sell, hold title to, possess, occupy, pledge, convey,  
25 manage, protect, insure, and deal with respect to its  
26 investments, property, and money to the same extent as any other

1 person or corporation under the laws of this state or of the  
2 United States if the insurer has assets in cash, computers, or as  
3 defined in this chapter in a total amount at least equal to the  
4 sum of its liabilities including its reserves as required by this  
5 code, plus an amount for contingencies as defined in  
6 subsection (5), plus an amount equal to the minimum capital or  
7 minimum surplus required to be maintained by sections 408  
8 and 410. However, the value of all computers shall not exceed 2%  
9 of the assets required by this subsection and the value of each  
10 computer shall not exceed the original cost of the computer amor-  
11 tized over a period not to exceed 10 years. For purposes of this  
12 section, "computer" means an electronic data processing system,  
13 composed of 1 or more components, which utilizes storage and pro-  
14 cessing mechanization, and which has a direct automatic means of  
15 input and output, including, but not limited to, central process-  
16 ing units, data input/output channels, main storage or memory,  
17 and peripheral devices for systems control, data input, output,  
18 or temporary or permanent storage of information, and associated  
19 reusable media required by these devices and operating systems  
20 software. Title insurers may include their net investment in  
21 their title plant. Assets defined by sections 946 and 947 shall  
22 not be used to satisfy more than 20% of this requirement. The  
23 sum of the liabilities and reserves may be reduced by 1 or more  
24 of the following:

25 (a) A reinsurance balance recoverable or other credit due  
26 from a reinsurer that complies with rule 402 of the general rules  
27 of the insurance bureau, being R 500.402 of the Michigan

1 administrative code, or other applicable rule promulgated by the  
2 commissioner, to the extent that the balance recoverable or other  
3 credit due may be used to offset a liability as authorized in an  
4 insurer's annual statement concerning its affairs filed pursuant  
5 to section 438.

6 (b) Policy loans secured by policies included in the liabil-  
7 ities and reserves but not in excess of the cash surrender value  
8 of the policies.

9 (c) Premium notes secured by letters of credit, security  
10 trust funds, or unearned premium reserves.

11 (d) The net amount of life insurance premiums and annuity  
12 considerations deferred and uncollected. Reduction under this  
13 subdivision shall not be allowed for credit life and credit acci-  
14 dent and health premiums deferred and uncollected, whether indi-  
15 vidual or group, except as allowed pursuant to subdivision (e).

16 (e) Agents' balances or uncollected premiums owed directly  
17 to the insurer or owed indirectly to the insurer through an  
18 affiliated or controlled person, including credit insurance pre-  
19 miums, whether individual or group, other than amounts by which  
20 liabilities may be reduced in accordance with subdivision (d),  
21 from an agent, agency, policyholder, or other person, subject to  
22 the following conditions:

23 (i) This reduction shall only be allowed for agents' bal-  
24 ances or uncollected premiums not due from an agent, agency, pol-  
25 icyholder, or other person for more than 3 months.

26 (ii) This reduction shall only be allowed as to the amount  
27 due from each agent, agency, policyholder, or other person to the

1 extent that the balance or uncollected premium does not exceed  
2 10% of the sum of the insurer's liabilities and minimum capital  
3 or minimum surplus.

4 (iii) The total amount by which the receivable from all  
5 agents, agencies, single policyholders, or other persons, net of  
6 ceded balances payable, exceeds 40% of the insurer's surplus as  
7 regards policyholders shall not be used to reduce liabilities  
8 under this subdivision. Premiums, agents' balances, and install-  
9 ments booked but deferred and not yet due are excluded from the  
10 40% limitation.

11 (f) Assets, liabilities, and reserves under this subsection  
12 shall exclude assets, liabilities, and reserves included in sepa-  
13 rate accounts established in accordance with section 925. The  
14 value of income due and accrued in respect to these assets may be  
15 included in the total amount. The assets shall not be valued at  
16 more than the actual value as ascertained in a manner approved by  
17 the commissioner, except those assets defined by sections 912,  
18 914, 918, 934, 938, and 942 which have a fixed term and rate, if  
19 amply secured and not in default as to principal and interest may  
20 be valued as follows: if purchased at par, the par value; if  
21 purchased above or below par, on the basis of the purchase price  
22 adjusted so as to bring the value to par at maturity and so as to  
23 yield in the meantime the effective rate of interest at which the  
24 purchase was made. The purchase price shall not be taken at a  
25 higher figure than the actual market value at the time of  
26 purchase.

1 (g) Amounts receivable from a person to the extent such  
2 amounts offset liabilities or amounts payable to that person.  
3 Receivables and payables with respect to reinsurance may be  
4 allowed so long as the reinsurance contract has a right of offset  
5 provision. A reduction under this subdivision shall not be  
6 allowed for agents' balances or uncollected premiums as defined  
7 by subdivision (e).

8 (h) The commissioner may promulgate rules pursuant to the  
9 administrative procedures act of 1969, Act No. 306 of the Public  
10 Acts of 1969, being sections 24.201 to 24.328 of the Michigan  
11 Compiled Laws, to permit other assets not specifically defined in  
12 this section to be used as qualified assets for purposes of this  
13 subsection, as long as the assets are financially equivalent to  
14 those assets defined in sections 910 to 947.

15 (2) The assets required by subsection (1) shall not include  
16 more than 5% of such assets invested in, loaned to, receivable  
17 from, secured by, leased or rented to, or deposited with 1 person  
18 or invested in 1 parcel of real estate. This restriction shall  
19 not apply to funds deposited with or cash in banks, savings and  
20 loan institutions, or credit unions, or obligations of the United  
21 States or any state, or agencies or instrumentalities of the  
22 United States or any state, if the principal and interest are  
23 fully guaranteed by the United States or any state. This  
24 restriction shall not apply to cash or cash equivalent, including  
25 certificates of deposit in chartered banks. In the case of an  
26 alien insurer which is an insurer authorized to transact the  
27 business of life insurance, for purposes of this subsection the

1 term "assets" means the total assets of such insurer, excluding  
2 assets included in separate accounts, as reported in the total  
3 business annual statement filed by the insurer with its domicili-  
4 ary authority.

5 (3) The assets referred to in subsection (1) may include  
6 assets invested in, loaned to, receivable from, secured by,  
7 leased or rented to, or deposited with a person that is, directly  
8 or indirectly, owned or controlled by the insurer or that,  
9 directly or indirectly, owns, controls, or is affiliated with the  
10 insurer. Two persons shall be considered to be affiliated if  
11 they are both owned or controlled, directly or indirectly, by the  
12 same person or by the same group of persons. Control shall be  
13 presumed to exist if a person, directly or indirectly, owns, con-  
14 trols, holds with the power to vote, or holds proxies, represent-  
15 ing 10% or more of the voting securities of any other person, or  
16 in the case of a mutual insurer, owns 10% or more of the mutual  
17 insurer's policyholders' surplus through surplus notes, guarantee  
18 fund certificates, or other evidences of indebtedness issued by  
19 the mutual insurer.

20 (4) The value of controlled, owned, or affiliated entities,  
21 for purposes of subsection (1), shall be calculated in accordance  
22 with the following conditions and limitations:

23 (a) If the owned, affiliated, or controlled entity is an  
24 insurer, the entity will be permitted as an asset only if the  
25 entity is licensed to transact the business of insurance in this  
26 state or, if not licensed to transact the business of insurance  
27 in this state, if it possesses the qualifications to become

1 licensed in this state. The value of an affiliated or controlled  
2 insurance subsidiary shall be the value of assets in excess of  
3 liabilities as determined pursuant to this section prorated to  
4 reflect the extent of the insurer's ownership or equity partici-  
5 pation with the entity.

6 (b) If the owned, affiliated, or controlled entity is not an  
7 insurer, the value of the entity shall be assets in excess of all  
8 liabilities to the extent that the assets comply with  
9 sections 910 to 947. The value shall be prorated to reflect the  
10 insurer's ownership or equity participation in the entity.  
11 However, if an insurer can demonstrate to the satisfaction of the  
12 commissioner that other assets of this owned, affiliated, or con-  
13 trolled entity are at least as secure as assets which comply with  
14 sections 910 to 947, the assets may be included in calculating  
15 the value of the entity.

16 (5) The amount for contingencies required by subsection (1)  
17 shall be calculated in accordance with the following:

18 (a) The amount for contingencies required by subsection (1)  
19 for insurers, other than an insurer authorized to transact life  
20 insurance and an insurer transacting only title insurance, shall  
21 equal the net premiums written in excess of 3.5 times the  
22 insurer's surplus as regards policyholders reported by the  
23 insurer in its current statement of financial condition filed  
24 with the commissioner.

25 (b) For purposes of this section, net premiums written shall  
26 equal gross premiums less return premiums, including policy and  
27 membership fees written during the year, plus all premiums



1 assumed through reinsurance, less premiums ceded through  
2 reinsurance.

3 (c) The 3.5 to 1 limitation, for those insurers required to  
4 file financial statements other than on an annual basis, shall be  
5 calculated by annualizing the net premiums as reported for  
6 interim statements. An even premium volume shall be assumed  
7 unless the insurer demonstrates to the satisfaction of the com-  
8 missioner that another method will more accurately reflect the  
9 insurer's projected annual premium volume. However, an alterna-  
10 tive projection method which utilizes a projection factor for  
11 surplus as regards policyholders shall not be acceptable.

12 (d) The amount for contingencies referred to in this section  
13 for insurers authorized to transact life insurance and insurers  
14 transacting only title insurance shall equal zero.

15 (e) Two or more insurers authorized to transact insurance in  
16 this state may compute the amount for contingencies referred to  
17 in this section on a consolidated basis and prorate the total  
18 amount for contingencies to each insurer in proportion to the  
19 premiums earned by each insurer, if either of the following con-  
20 ditions exist:

21 (i) The insurers are affiliated through ownership, where  
22 each insurer is wholly owned by or wholly owns 1 or more of the  
23 other insurers in the group.

24 (ii) The insurers pool substantially all their business with  
25 each other and the commissioner certifies that the computation on  
26 a consolidated basis will more accurately reflect the financial  
27 condition and affairs of the insurers.

(f) An insurer may write premiums in excess of the ratio prescribed in subdivision (c) without incurring a contingency reserve penalty if the insurer elects to deposit funds or securities of the kind described in section 912, registered in the name of the state treasurer of Michigan, designated as exclusively held and deposited for the sole benefit of Michigan policyholders, claimants, and creditors PURSUANT TO SECTION 8141A, in an amount, at market value, equal to the greater of \$1,000,000.00 or the aggregate sum of 100% of Michigan direct unpaid losses and unpaid loss adjustment expense plus 100% of Michigan direct unearned premiums. Direct unpaid losses and unpaid loss adjustment expenses shall include a provision for incurred but not reported losses and associated loss adjustment expense. The deposit shall be a special deposit and shall be subject to special deposit claims for the benefit of Michigan policyholders ~~AND claimants, and creditors pursuant to the uniform insurers liquidation act, being sections 7836 to 7868~~ PURSUANT TO SECTION 8141A. The deposit of funds required by this subdivision shall be increased by adjustment each quarter. A decrease to the deposited fund may be made annually only upon a satisfactory showing by the insurer to the commissioner that a decrease in the deposit is justified. The commissioner may require the special deposits set forth in this subsection as a condition for any insurer to transact insurance in this state if the commissioner finds that ~~the insurer meets any of the conditions set forth in section 436~~ A SPECIAL DEPOSIT IS NECESSARY FOR THE PROTECTION OF MICHIGAN POLICYHOLDERS AND CLAIMANTS.

(6) Compliance with subsection (1) is the obligation of each insurer, fund, or fraternal benefit society authorized to transact the business of insurance in this state. Failure to comply shall limit the insurer, fund, or fraternal benefit society under the remainder of this code. If, at any time following compliance with the requirements of this section, an insurer, fund, or fraternal benefit society, fails to maintain compliance, the commissioner shall notify the insurer, fund, or fraternal benefit society that it has failed to maintain compliance with this section. Within 30 business days after notification by the commissioner of noncompliance with the provisions of this section, an insurer shall file a plan to restore compliance with this section. Failure of the insurer to file a plan shall create a presumption that the insurer does not meet the requirements of this code with respect to surplus and assets. The commissioner, upon written request by the insurer, may grant a period of time within which to restore compliance. The period of time may be granted only if the commissioner is satisfied the insurer is safe, reliable, and entitled to public confidence; is satisfied the insurer would suffer a material financial loss from an immediate forced conversion of its assets; and approves the plan filed by the insurer for restoring compliance within the time granted. If the plan is not approved by the commissioner, or if the plan is approved, and, at the end of 1 year the insurer still does not comply with the requirements of this section, the commissioner may grant additional time to comply, or the commissioner may suspend,

1 revoke, or limit the certificate of authority of the insurer  
2 pursuant to section 436.

3       Sec. 2005. An unfair method of competition and an unfair or  
4 deceptive act or practice in the business of insurance means the  
5 making, issuing, circulating, or causing to be made, issued, or  
6 circulated, an estimate, illustration, circular, statement, sales  
7 presentation, or comparison which by omission of a material fact  
8 or incorrect statement of a material fact DOES ANY OF THE  
9 FOLLOWING:

10       (a) Misrepresents the terms, benefits, advantages, or condi-  
11 tions of an insurance policy.

12       (b) Misrepresents the dividends or share of the surplus to  
13 be received on an insurance policy.

14       (c) Makes a false or misleading statement as to the divi-  
15 dends or share of surplus previously paid on an insurance  
16 policy.

17       (d) Makes a misleading statement or misrepresentation as to  
18 the financial condition of a person engaged in the business of  
19 insurance, or as to the legal reserve system upon which a life  
20 insurer operates.

21       (e) Uses a name or title of an insurance policy or class of  
22 insurance policies misrepresenting the true nature of that insur-  
23 ance policy or class of insurance policies. A policy approved by  
24 the commissioner shall be conclusively presumed not to misrepre-  
25 sent the true nature of that policy.

1 (f) Makes a misrepresentation for the purpose of inducing or  
 2 tending to induce the lapse, forfeiture, exchange, conversion, or  
 3 surrender of an insurance policy.

4 (g) Makes a misrepresentation for the purpose of effecting a  
 5 pledge or assignment of or a loan against an insurance policy.

6 (h) Misrepresents an insurance policy as being a security.

7 This subdivision shall not apply to an insurance policy which  
 8 must be registered as a security pursuant to the law of this  
 9 state or of the United States.

10 (I) MISREPRESENTS THE NATURE OR EXTENT OF COVERAGE AFFORDED  
 11 AN INSURANCE POLICY OR ANNUITY CONTRACT BY THE MICHIGAN LIFE AND  
 12 HEALTH INSURANCE GUARANTY ASSOCIATION OR THE PROPERTY AND CASU-  
 13 ALTY GUARANTY ASSOCIATION.

14 Sec. 7702. (1) The purpose of this chapter is to protect,  
 15 ~~policy owners, insureds, beneficiaries, annuitants, payees, and~~  
 16 ~~assignees of life insurance policies, health insurance policies,~~  
 17 ~~credit life insurance policies, credit accident and health insur-~~  
 18 ~~ance policies, legal expense insurance policies issued by life or~~  
 19 ~~disability insurers, annuity contracts, and supplemental~~  
 20 ~~contracts,~~ subject to certain limitations, PERSONS SPECIFIED IN  
 21 SECTION 7704(1) against failure in the performance of contractual  
 22 obligations ~~due to~~ UNDER INSURANCE POLICIES AND ANNUITY CON-  
 23 TRACTS SPECIFIED IN SECTION 7704(2) BECAUSE OF the impairment or  
 24 insolvency of the insurer issuing the policies or contracts.  
 25 ~~to~~ TO provide this protection:

1 (a) An association of insurers is created to enable the  
2 guaranty of payment of benefits and continuation of coverages AS  
3 LIMITED IN THIS CHAPTER.

4 (b) Members of the association are subject to assessment to  
5 provide funds to carry out the purpose of this chapter.

6 (c) The association is authorized to assist the commission-  
7 er, in the prescribed manner, in the detection and prevention of  
8 insurer impairments or insolvencies.

9 (2) This chapter shall be liberally construed to execute the  
10 purposes provided in subsection (1).

11 Sec. 7704. ~~(1) This chapter shall apply to direct life~~  
12 ~~insurance policies, health insurance policies, annuity contracts,~~  
13 ~~credit life insurance policies, credit accident and health insur-~~  
14 ~~ance policies, and contracts supplemental to life and health~~  
15 ~~insurance policies, annuity contracts, and contracts supplemental~~  
16 ~~to life and health insurance policies and annuity contracts~~  
17 ~~issued by persons licensed to transact insurance in this state at~~  
18 ~~any time and to legal expense insurance policies issued by per-~~  
19 ~~sons licensed to transact life or disability insurance in this~~  
20 ~~state at any time.~~

21 ~~(2) This chapter shall not apply to the following:~~

22 ~~(a) That part of a variable life insurance or variable annu-~~  
23 ~~ity contract not guaranteed by an insurer.~~

24 ~~(b) That part of a policy or contract under which the risk~~  
25 ~~is borne by the policyholder.~~

1 ~~(c) A policy or contract or part of a policy or contract~~  
2 ~~assumed by the impaired or insolvent insurer under a contract of~~  
3 ~~reinsurance for which assumption certificates have been issued.~~

4 (1) THIS CHAPTER SHALL PROVIDE COVERAGE FOR THE POLICIES AND  
5 CONTRACTS SPECIFIED IN SUBSECTION (2) TO THE FOLLOWING PERSONS:

6 (A) TO A PERSON, OTHER THAN NONRESIDENT CERTIFICATE HOLDERS  
7 UNDER GROUP POLICIES OR CONTRACTS, WHO, REGARDLESS OF WHERE HE OR  
8 SHE RESIDES, IS THE BENEFICIARY, ASSIGNEE, OR PAYEE OF A PERSON  
9 COVERED UNDER SUBDIVISION (B).

10 (B) TO A PERSON WHO IS AN OWNER OF, OR CERTIFICATE HOLDER  
11 UNDER, A POLICY OR CONTRACT DESCRIBED IN SUBSECTION (2), OR, IN  
12 THE CASE OF AN UNALLOCATED ANNUITY CONTRACT, TO THE PERSON WHO IS  
13 THE CONTRACT HOLDER, AND WHICH OWNER, CERTIFICATE HOLDER, OR CON-  
14 TRACT HOLDER IS 1 OF THE FOLLOWING:

15 (i) A RESIDENT.

16 (ii) NOT A RESIDENT, IF ALL OF THE FOLLOWING CONDITIONS ARE  
17 MET:

18 (A) THE INSURER WHICH ISSUED THE POLICY OR CONTRACT IS DOMI-  
19 CILED IN THIS STATE.

20 (B) THE INSURER NEVER HELD A LICENSE OR CERTIFICATE OF  
21 AUTHORITY IN THE STATES IN WHICH THE PERSON RESIDES.

22 (C) SUCH STATES HAVE ASSOCIATIONS SIMILAR TO THE ASSOCIATION  
23 CREATED BY THIS CHAPTER.

24 (D) THE PERSON IS NOT ELIGIBLE FOR COVERAGE BY THOSE  
25 ASSOCIATIONS.

26 (iii) NOT A RESIDENT, IF BOTH OF THE FOLLOWING CONDITIONS  
27 ARE MET:

1 (A) THE PERSON WAS A RESIDENT AT THE TIME THE COVERAGE WAS  
2 OBTAINED BY THE PERSON.

3 (B) THE PERSON IS NOT ELIGIBLE FOR COVERAGE BY ANOTHER GUAR-  
4 ANTY ASSOCIATION.

5 (2) EXCEPT AS PROVIDED IN SUBSECTION (3), THIS CHAPTER SHALL  
6 PROVIDE COVERAGE TO A PERSON SPECIFIED IN SUBSECTION (1) FOR  
7 DIRECT, NONGROUP LIFE, HEALTH, ANNUITY, AND SUPPLEMENTAL POLICIES  
8 OR CONTRACTS, FOR CERTIFICATES UNDER DIRECT GROUP LIFE, HEALTH,  
9 ANNUITY, AND SUPPLEMENTAL POLICIES AND CONTRACTS, FOR LEGAL  
10 EXPENSE INSURANCE POLICIES, AND FOR UNALLOCATED ANNUITY CONTRACTS  
11 ISSUED BY MEMBER INSURERS, EXCEPT AS LIMITED BY THIS CHAPTER.

12 (3) THIS CHAPTER SHALL NOT PROVIDE COVERAGE FOR THE  
13 FOLLOWING:

14 (A) A PORTION OF A POLICY OR CONTRACT NOT GUARANTEED BY THE  
15 INSURER OR UNDER WHICH THE RISK IS BORNE BY THE POLICY OR CON-  
16 TRACT HOLDER.

17 (B) A POLICY OR CONTRACT OF REINSURANCE, UNLESS ASSUMPTION  
18 CERTIFICATES HAVE BEEN ISSUED.

19 (C) A PORTION OF A POLICY OR CONTRACT TO THE EXTENT THAT THE  
20 RATE OF INTEREST ON WHICH IT IS BASED EXCEEDS THE FOLLOWING:

21 (i) AVERAGED OVER THE PERIOD OF 4 YEARS PRIOR TO THE DATE ON  
22 WHICH THE ASSOCIATION BECOMES OBLIGATED WITH RESPECT TO THE  
23 POLICY OR CONTRACT, A RATE OF INTEREST DETERMINED BY SUBTRACTING  
24 2 PERCENTAGE POINTS FROM MOODY'S CORPORATE BOND YIELD AVERAGE  
25 AVERAGED FOR THAT SAME 4-YEAR PERIOD OR FOR A LESSER PERIOD IF  
26 THE POLICY OR CONTRACT WAS ISSUED LESS THAN 4 YEARS BEFORE THE  
27 ASSOCIATION BECAME OBLIGATED.



1 (ii) ON AND AFTER THE DATE ON WHICH THE ASSOCIATION BECOMES  
2 OBLIGATED WITH RESPECT TO THE POLICY OR CONTRACT, THE RATE OF  
3 INTEREST DETERMINED BY SUBTRACTING 3 PERCENTAGE POINTS FROM  
4 MOODY'S CORPORATE BOND YIELD AVERAGE AS MOST RECENTLY AVAILABLE.

5 (D) A PLAN OR PROGRAM OF AN EMPLOYER, ASSOCIATION, OR SIMI-  
6 LAR ENTITY TO PROVIDE LIFE, HEALTH, OR ANNUITY BENEFITS TO ITS  
7 EMPLOYEES OR MEMBERS TO THE EXTENT THAT THE PLAN OR PROGRAM IS  
8 SELF-FUNDED OR UNINSURED, INCLUDING, BUT NOT LIMITED TO, BENEFITS  
9 PAYABLE BY AN EMPLOYER, ASSOCIATION, OR SIMILAR ENTITY UNDER ANY  
10 OF THE FOLLOWING:

11 (i) A MULTIPLE EMPLOYER WELFARE ARRANGEMENT AS DEFINED IN  
12 SECTION 7001.

13 (ii) A MINIMUM PREMIUM GROUP INSURANCE PLAN.

14 (iii) A STOP-LOSS GROUP INSURANCE PLAN.

15 (iv) AN ADMINISTRATIVE SERVICES ONLY CONTRACT.

16 (E) A PORTION OF A POLICY OR CONTRACT TO THE EXTENT THAT IT  
17 PROVIDES DIVIDENDS OR EXPERIENCE RATING CREDITS, OR PROVIDES THAT  
18 ANY FEES OR ALLOWANCES BE PAID TO A PERSON, INCLUDING THE POLICY  
19 OR CONTRACT HOLDER, IN CONNECTION WITH THE SERVICE TO OR ADMINIS-  
20 TRATION OF THE POLICY OR CONTRACT.

21 (F) A POLICY OR CONTRACT ISSUED IN THIS STATE BY AN INSURER  
22 AT A TIME WHEN IT DID NOT HAVE A CERTIFICATE OF AUTHORITY TO  
23 ISSUE THE POLICY OR CONTRACT IN THIS STATE.

24 (G) AN UNALLOCATED ANNUITY CONTRACT ISSUED TO AN EMPLOYEE  
25 BENEFIT PLAN PROTECTED UNDER THE FEDERAL PENSION BENEFIT GUARANTY  
26 CORPORATION.

1 (H) A PORTION OF AN UNALLOCATED ANNUITY CONTRACT WHICH IS  
2 NOT ISSUED TO OR IN CONNECTION WITH A SPECIFIC EMPLOYEE, UNION,  
3 OR ASSOCIATION OF NATURAL PERSONS BENEFIT PLAN OR A GOVERNMENT  
4 LOTTERY.

5 (I) AN AMOUNT WHICH IS NOT A CONTRACTUAL OBLIGATION INCLUD-  
6 ING, BUT NOT LIMITED TO, AN AWARD OF EXEMPLARY OR PUNITIVE DAM-  
7 AGES OR STATUTORY INTEREST.

8 (4) THE BENEFITS FOR WHICH THE ASSOCIATION MAY BECOME LIABLE  
9 SHALL NOT EXCEED THE LESSER OF THE FOLLOWING:

10 (A) THE CONTRACTUAL OBLIGATIONS FOR WHICH THE INSURER IS  
11 LIABLE OR WOULD HAVE BEEN LIABLE IF IT WERE NOT AN IMPAIRED OR  
12 INSOLVENT INSURER.

13 (B) WITH RESPECT TO ANY 1 LIFE, REGARDLESS OF THE NUMBER OF  
14 POLICIES OR CONTRACTS:

15 (i) \$300,000.00 IN LIFE INSURANCE DEATH BENEFITS, BUT NOT  
16 MORE THAN \$100,000.00 IN NET CASH SURRENDER AND NET CASH WITH-  
17 DRAWAL VALUES FOR LIFE INSURANCE.

18 (ii) \$100,000.00 IN HEALTH INSURANCE BENEFITS, INCLUDING ANY  
19 NET CASH SURRENDER AND NET CASH WITHDRAWAL VALUES.

20 (iii) \$100,000.00 IN THE PRESENT VALUE OF ANNUITY BENEFITS,  
21 INCLUDING NET CASH SURRENDER AND NET CASH WITHDRAWAL VALUES.

22 (C) WITH RESPECT TO EACH INDIVIDUAL PARTICIPATING IN A GOV-  
23 ERNMENTAL RETIREMENT PLAN ESTABLISHED UNDER SECTION 401(k),  
24 403(b), OR 457 OF THE INTERNAL REVENUE CODE OF 1986, 26 U.S.C.  
25 401, 403, AND 457, COVERED BY AN UNALLOCATED ANNUITY CONTRACT OR  
26 THE BENEFICIARIES OF EACH SUCH INDIVIDUAL, IF DECEASED, IN THE

1 AGGREGATE, \$100,000.00 IN PRESENT VALUE ANNUITY BENEFITS,  
2 INCLUDING NET CASH SURRENDER AND NET CASH WITHDRAWAL VALUES.

3 (D) WITH RESPECT TO ANY 1 CONTRACT HOLDER COVERED BY AN  
4 UNALLOCATED ANNUITY CONTRACT NOT INCLUDED IN SUBDIVISION (C),  
5 \$5,000,000.00 IN BENEFITS, IRRESPECTIVE OF THE NUMBER OF CON-  
6 TRACTS HELD BY THAT CONTRACT HOLDER.

7 (5) THE ASSOCIATION SHALL NOT BE LIABLE TO EXPEND MORE THAN  
8 THE \$300,000.00 IN THE AGGREGATE WITH RESPECT TO ANY 1 INDIVIDUAL  
9 UNDER SUBSECTION (4)(B) AND (C).

10 Sec. 7705. As used in this chapter:

11 (a) "Account" means any of the ~~4~~ 3 accounts created under  
12 section 7706.

13 (b) "Association" means the Michigan life and health insur-  
14 ance guaranty association created under section 7706.

15 (c) "Contractual obligation" means an obligation under cov-  
16 ered policies.

17 (d) "Covered policy" means a policy or contract ~~within the~~  
18 ~~scope of this chapter~~ OR CERTIFICATE UNDER A GROUP POLICY OR  
19 CONTRACT, OR PORTION THEREOF, FOR WHICH COVERAGE IS PROVIDED  
20 under section 7704.

21 (e) "Health insurance" means disability insurance as defined  
22 in section 606.

23 (f) "Impaired insurer" means a member insurer considered by  
24 the commissioner after May 1, 1982, to be potentially unable to  
25 fulfill the insurer's contractual obligations OR IS PLACED UNDER  
26 AN ORDER OF REHABILITATION OR CONSERVATION BY A COURT OF

1 COMPETENT JURISDICTION. Impaired insurer does not mean an  
2 insolvent insurer.

3 (g) "Insolvent insurer" means a member insurer which after  
4 May 1, 1982, becomes insolvent and is placed under ~~a final~~ AN  
5 order of liquidation, ~~rehabilitation, or conservation~~ by a  
6 court of competent jurisdiction WITH A FINDING OF INSOLVENCY.

7 (h) "Member insurer" means a person authorized to transact  
8 ~~life, health, credit life, or credit accident and health~~ A KIND  
9 OF insurance ~~or~~ or annuity business in this state FOR WHICH COV-  
10 ERAGE IS PROVIDED UNDER SECTION 7704 AND INCLUDES AN INSURER  
11 WHOSE CERTIFICATE OF AUTHORITY IN THIS STATE MAY HAVE BEEN SUS-  
12 PENDED, REVOKED, NOT RENEWED, OR VOLUNTARILY WITHDRAWN. Member  
13 insurer does not include the following:

14 (i) A fraternal benefit society.

15 (ii) A cooperative plan insurer authorized under chapter  
16 64.

17 (iii) A health maintenance organization authorized or  
18 licensed under part 210 of the public health code, Act No. 368 of  
19 the Public Acts of 1978, as amended, being sections 333.21001 to  
20 ~~333.21099~~ 333.21098 of the Michigan Compiled Laws.

21 (iv) A ~~nonprofit medical care corporation operating under~~  
22 ~~Act No. 108 of the Public Acts of 1939, as amended, being sec-~~  
23 ~~tions 550.301 to 550.316 of the Michigan Compiled Laws~~ MANDATORY  
24 STATE POOLING PLAN.

25 (v) A ~~nonprofit hospital service corporation operating~~  
26 ~~under Act No. 109 of the Public Acts of 1939, as amended, being~~

1 ~~sections 550.501 to 550.517 of the Michigan Compiled Laws~~ MUTUAL  
2 ASSESSMENT OR ANY ENTITY THAT OPERATES ON AN ASSESSMENT BASIS.

3 (vi) A nonprofit dental care corporation operating under Act  
4 No. 125 of the Public Acts of 1963, being sections 550.351 to  
5 550.373 of the Michigan Compiled Laws.

6 (vii) A nonprofit health care corporation operating under  
7 Act No. 350 of the Public Acts of 1980, as amended, being sec-  
8 tions 550.1101 to 550.1704 of the Michigan Compiled Laws.

9 (viii) AN INSURANCE EXCHANGE.

10 (ix) ANY ENTITY SIMILAR TO THE ENTITIES DESCRIBED IN THIS  
11 SUBDIVISION.

12 (i) ~~"Premiums" means direct gross insurance premiums and~~  
13 ~~annuity considerations received on a covered policy, less return~~  
14 ~~premiums and considerations on the covered policy and dividends~~  
15 ~~paid or credited to policyholders on such direct business.~~

16 ~~Premiums does not include premiums and considerations on a con-~~  
17 ~~tract between an insurer and a reinsurer.~~ "MOODY'S CORPORATE  
18 BOND YIELD AVERAGE" MEANS THE MONTHLY AVERAGE CORPORATES AS PUB-  
19 LISHED BY MOODY'S INVESTORS SERVICE, INC., OR A SUCCESSOR TO THAT  
20 SERVICE.

21 (j) "Person" means an individual, corporation, partnership,  
22 association, or voluntary organization.

23 (K) "PREMIUMS" MEANS AMOUNTS RECEIVED IN A CALENDAR YEAR ON  
24 COVERED POLICIES OR CONTRACTS LESS PREMIUMS, CONSIDERATIONS, AND  
25 DEPOSITS RETURNED AND LESS DIVIDENDS AND EXPERIENCE CREDITS. THE  
26 TERM "PREMIUMS" DOES NOT INCLUDE AN AMOUNT RECEIVED FOR A POLICY  
27 OR CONTRACT, OR A PORTION OF A POLICY OR CONTRACT FOR WHICH

1 COVERAGE IS NOT PROVIDED UNDER SECTION 7704. HOWEVER, ACCESSIBLE  
2 PREMIUMS SHALL NOT BE REDUCED ON ACCOUNT OF SECTIONS 7704(3)(C)  
3 RELATING TO INTEREST LIMITATIONS AND 7704(4)(B), (C), AND (D)  
4 RELATING TO LIMITATIONS WITH RESPECT TO ANY 1 INDIVIDUAL, ANY 1  
5 PARTICIPANT, AND ANY 1 CONTRACT HOLDER. PREMIUMS SHALL NOT  
6 INCLUDE A PREMIUM IN EXCESS OF \$5,000,000.00 ON AN UNALLOCATED  
7 ANNUITY CONTRACT NOT ISSUED UNDER A GOVERNMENTAL RETIREMENT PLAN  
8 ESTABLISHED UNDER SECTION 401(k), 403(b), OR 457 OF THE INTERNAL  
9 REVENUE CODE OF 1986, 26 U.S.C. 401, 403, AND 457.

10 (L) ~~(K)~~ "Resident" means a person who resides in this  
11 state at the time a member insurer is determined to be an  
12 impaired or insolvent insurer and to whom contractual obligations  
13 are owed. A PERSON SHALL BE CONSIDERED A RESIDENT OF ONLY 1  
14 STATE, WHICH IN THE CASE OF A PERSON OTHER THAN A NATURAL PERSON,  
15 SHALL BE ITS PRINCIPAL PLACE OF BUSINESS.

16 (M) "SUPPLEMENTAL CONTRACT" MEANS AN AGREEMENT ENTERED INTO  
17 FOR THE DISTRIBUTION OF POLICY OR CONTRACT PROCEEDS.

18 (N) "UNALLOCATED ANNUITY CONTRACT" MEANS AN ANNUITY CONTRACT  
19 OR GROUP ANNUITY CERTIFICATE WHICH IS NOT ISSUED TO AND OWNED BY  
20 AN INDIVIDUAL, EXCEPT TO THE EXTENT OF AN ANNUITY BENEFIT GUARAN-  
21 TEED TO AN INDIVIDUAL BY AN INSURER UNDER THE CONTRACT OR  
22 CERTIFICATE. THE TERM SHALL ALSO INCLUDE, BUT NOT BE LIMITED TO,  
23 GUARANTEED INVESTMENT CONTRACTS, DEPOSIT ADMINISTRATION CON-  
24 TRACTS, AND CONTRACTS QUALIFIED UNDER SECTION 403(B) OF THE  
25 INTERNAL REVENUE CODE OF 1986, 26 U.S.C. 403.

26 Sec. 7706. (1) There is created a nonprofit legal entity to  
27 be known as the Michigan life and health insurance guaranty

1 association. A member insurer shall be and remain a member of  
 2 the association as a condition of authority to transact insurance  
 3 in this state. The association shall perform its functions under  
 4 the plan of operation established and approved under section 7710  
 5 and shall exercise its powers through a board of directors estab-  
 6 lished under section 7707. For purposes of administration and  
 7 assessment the association shall maintain the following ~~4~~ 3  
 8 accounts:

9 (a) The health insurance account.

10 (B) THE LIFE INSURANCE AND ANNUITY ACCOUNT WHICH INCLUDES  
 11 THE FOLLOWING SUBACCOUNTS:

12 (i) ~~(b) The~~ A life insurance ~~account~~ SUBACCOUNT.

13 (ii) ~~(c) The~~ AN annuity ~~account~~ SUBACCOUNT.

14 (iii) AN UNALLOCATED ANNUITY SUBACCOUNT.

15 (C) ~~(d) The~~ legal expense insurance account.

16 (2) The association shall be under the immediate supervision  
 17 of the commissioner and shall be subject to the applicable provi-  
 18 sions of the insurance laws of this state. MEETINGS OR RECORDS  
 19 OF THE ASSOCIATION MAY BE OPEN TO THE PUBLIC UPON MAJORITY VOTE  
 20 OF THE BOARD OF DIRECTORS OF THE ASSOCIATION.

21 Sec. 7708. (1) In addition to the powers and duties enumer-  
 22 ated in other sections of this chapter, the association has the  
 23 ~~following~~ powers and duties ~~—~~ PROVIDED IN THIS SECTION.

24 (2) ~~(a) If a domestic~~ MEMBER insurer is an impaired  
 25 DOMESTIC insurer, the association, subject to conditions imposed  
 26 by the association ~~other than those which~~ THAT DO NOT impair  
 27 the contractual obligations of the impaired insurer, and approved

1 by ~~the impaired insurer and~~ the commissioner, AND, EXCEPT FOR  
2 CASES OF COURT ORDERED CONSERVATION OR REHABILITATION, ALSO  
3 APPROVED BY THE IMPAIRED INSURER, may do the following:

4 (A) ~~(i)~~ Guarantee, ASSUME, or reinsure, or cause to be  
5 guaranteed, assumed, or reinsured, any or all of the covered pol-  
6 icies of the impaired insurer.

7 (B) ~~(ii)~~ Provide money, pledges, notes, guarantees, or  
8 other means as are proper to effectuate ~~subparagraph (i)~~  
9 SUBDIVISION (A), and to assure payment of the contractual obliga-  
10 tions of the impaired insurer pending action under ~~subparagraph~~  
11 ~~(i)~~ SUBDIVISION (A).

12 (C) ~~(iii)~~ Loan money to the impaired insurer.

13 (3) SUBJECT TO THE CONDITIONS SPECIFIED IN SUBSECTION (4),  
14 IF A MEMBER INSURER IS AN IMPAIRED INSURER, WHETHER DOMESTIC,  
15 FOREIGN, OR ALIEN, AND THE INSURER IS NOT PAYING CLAIMS TIMELY,  
16 THE ASSOCIATION SHALL DO EITHER OF THE FOLLOWING:

17 (A) TAKE ANY OF THE ACTIONS SPECIFIED IN SUBSECTION (2).

18 (B) PROVIDE SUBSTITUTE BENEFITS IN LIEU OF THE CONTRACTUAL  
19 OBLIGATIONS OF THE IMPAIRED INSURER SOLELY FOR HEALTH CLAIMS,  
20 PERIODIC ANNUITY BENEFIT PAYMENTS, DEATH BENEFITS, SUPPLEMENTAL  
21 BENEFITS, AND CASH WITHDRAWALS FOR POLICY OR CONTRACT OWNERS WHO  
22 PETITION THEREFOR UNDER CLAIMS OF EMERGENCY OR HARDSHIP IN  
23 ACCORDANCE WITH STANDARDS PROPOSED BY THE ASSOCIATION AND  
24 APPROVED BY THE COMMISSIONER.

25 (4) THE ASSOCIATION SHALL BE SUBJECT TO THE REQUIREMENTS OF  
26 SUBSECTION (3) ONLY IF THE FOLLOWING ARE MET:



1 (A) THE LAWS OF THE IMPAIRED INSURER'S STATE OF DOMICILE  
2 PROVIDE THAT UNTIL ALL PAYMENTS OF OR ON ACCOUNT OF THE IMPAIRED  
3 INSURER'S CONTRACTUAL OBLIGATIONS BY ALL GUARANTY ASSOCIATIONS,  
4 ALONG WITH ALL EXPENSES THEREOF AND INTEREST ON ALL SUCH PAYMENTS  
5 AND EXPENSES, HAVE BEEN REPAID TO THE GUARANTY ASSOCIATIONS OR A  
6 PLAN OF REPAYMENT BY THE IMPAIRED INSURER SHALL HAVE BEEN  
7 APPROVED BY THE GUARANTY ASSOCIATIONS:

8 (i) THE DELINQUENCY PROCEEDING SHALL NOT BE DISMISSED.

9 (ii) NEITHER THE IMPAIRED INSURER NOR ITS ASSETS SHALL BE  
10 RETURNED TO THE CONTROL OF ITS SHAREHOLDERS OR PRIVATE  
11 MANAGEMENT.

12 (iii) IT SHALL NOT BE PERMITTED TO SOLICIT OR ACCEPT NEW  
13 BUSINESS OR HAVE ANY SUSPENDED OR REVOKED LICENSE RESTORED.

14 (B) IF THE IMPAIRED INSURER IS A DOMESTIC INSURER, IT HAS  
15 BEEN PLACED UNDER AN ORDER OF REHABILITATION BY A COURT OF COMPE-  
16 TENT JURISDICTION IN THIS STATE.

17 (C) IF THE IMPAIRED INSURER IS A FOREIGN OR ALIEN INSURER,  
18 ANY OF THE FOLLOWING HAS OCCURRED:

19 (i) IT HAS BEEN PROHIBITED FROM SOLICITING OR ACCEPTING NEW  
20 BUSINESS IN THIS STATE.

21 (ii) ITS CERTIFICATE OF AUTHORITY HAS BEEN SUSPENDED OR  
22 REVOKED IN THIS STATE.

23 (iii) A PETITION FOR REHABILITATION OR LIQUIDATION HAS BEEN  
24 FILED IN A COURT OF COMPETENT JURISDICTION IN ITS STATE OF DOMI-  
25 CILE BY THE COMMISSIONER OF THAT STATE.

1       (5) ~~(b)~~ If a ~~domestic~~ MEMBER insurer is an insolvent  
2 insurer, the association shall do EITHER OF the following:  
3 ~~, subject to the approval of the commissioner.~~

4       (A) ~~(i)~~ Guarantee, assume, or reinsure, or cause to be  
5 guaranteed, assumed, or reinsured, the covered policies of the  
6 insolvent insurer ~~. (ii) Assure~~ OR ASSURE payment of the con-  
7 tractual obligations of the insolvent insurer; ~~. (iii) Provide~~  
8 AND PROVIDE money, pledges, notes, guarantees, or other means as  
9 are reasonably necessary to effectuate ~~subparagraphs (i) and~~  
10 ~~(ii)~~ THIS SUBDIVISION.

11       ~~(c) Except as provided in subsection (2), if a foreign or~~  
12 ~~alien insurer is an insolvent insurer, the association shall do~~  
13 ~~the following, subject to the approval of the commissioner:~~

14       ~~(i) Guarantee, assume, or reinsure, or cause to be guaran-~~  
15 ~~teed, assumed, or reinsured, the covered policies of residents.~~

16       ~~(ii) Assure payment of the contractual obligations of the~~  
17 ~~insolvent insurer to residents.~~

18       ~~(iii) Provide money, pledges, notes, guarantees, or other~~  
19 ~~means as are reasonably necessary to effectuate subparagraphs (i)~~  
20 ~~and (ii).~~

21       ~~(2) Subsection (1)(c) shall not apply if the commissioner~~  
22 ~~has determined that the foreign or alien insurer's domiciliary~~  
23 ~~jurisdiction or state of entry provides, by statute, protection~~  
24 ~~substantially similar to that provided by this chapter for resi-~~  
25 ~~dents of this state.~~

26       ~~(3) In carrying out its duties under subsection (1)(b) and~~  
27 ~~(c), permanent policy liens or contract liens may be imposed in~~

1 ~~connection, with a guarantee, assumption, or reinsurance~~  
 2 ~~agreement, if the court does both of the following:~~

3 ~~(a) Finds that the amounts which can be assessed under this~~  
 4 ~~chapter are less than the amounts needed to assure full and~~  
 5 ~~prompt performance of the insolvent insurer's contractual obliga-~~  
 6 ~~tions, or that economic or financial conditions as those condi-~~  
 7 ~~tions affect member insurers are sufficiently adverse so that the~~  
 8 ~~imposition of policy or contract liens is in the public~~  
 9 ~~interest.~~

10 ~~(b) Approves the specific policy liens or contract liens to~~  
 11 ~~be used.~~

12 ~~(4) Before being obligated under subsection (1)(a) and (b),~~  
 13 ~~the association may request, in addition to contractual provi-~~  
 14 ~~sions for deferral of cash or policy loan values, the imposition~~  
 15 ~~of temporary moratoriums or liens on payments of cash values and~~  
 16 ~~policy loans. The temporary moratoriums and liens under this~~  
 17 ~~subsection may be imposed only if approved by the court.~~

18 (B) WITH RESPECT TO LIFE AND HEALTH INSURANCE POLICIES, PRO-  
 19 VIDE BENEFITS AND COVERAGE PURSUANT TO SUBSECTION (6).

20 (6) IF PROCEEDING UNDER SUBSECTION (3)(B) OR (5)(B), WITH  
 21 RESPECT TO ONLY LIFE AND HEALTH INSURANCE POLICIES ALL OF THE  
 22 FOLLOWING APPLY:

23 (A) THE ASSOCIATION SHALL ASSURE PAYMENT OF BENEFITS FOR  
 24 PREMIUMS IDENTICAL TO THE PREMIUMS AND BENEFITS, EXCEPT FOR TERMS  
 25 OF CONVERSION AND RENEWABILITY, THAT WOULD HAVE BEEN PAYABLE  
 26 UNDER THE POLICIES OF THE INSOLVENT INSURER, FOR CLAIMS INCURRED  
 27 AS FOLLOWS:

1       (i) WITH RESPECT TO A GROUP POLICY, NOT LATER THAN THE  
2 EARLIER OF THE NEXT RENEWAL DATE UNDER THE POLICY OR CONTRACT OR  
3 45 DAYS, BUT NOT LESS THAN 30 DAYS, AFTER THE DATE ON WHICH THE  
4 ASSOCIATION BECOMES OBLIGATED WITH RESPECT TO THE POLICY.

5       (ii) WITH RESPECT TO AN INDIVIDUAL POLICY, NOT LATER THAN  
6 THE EARLIER OF THE NEXT RENEWAL DATE, IF ANY, UNDER THE POLICY OR  
7 1 YEAR, BUT NOT LESS THAN 30 DAYS, FROM THE DATE ON WHICH THE  
8 ASSOCIATION BECOMES OBLIGATED WITH RESPECT TO THE POLICY.

9       (B) THE ASSOCIATION SHALL MAKE DILIGENT EFFORTS TO PROVIDE  
10 ALL KNOWN INSUREDS, OR GROUP POLICYHOLDERS WITH RESPECT TO GROUP  
11 POLICIES, 30 DAYS' NOTICE OF THE TERMINATION OF THE BENEFITS  
12 PROVIDED.

13       (C) THE ASSOCIATION SHALL MAKE AVAILABLE SUBSTITUTE COVERAGE  
14 ON AN INDIVIDUAL BASIS IN ACCORDANCE WITH THE PROVISIONS OF SUB-  
15 DIVISION (D), TO EACH KNOWN INSURED UNDER AN INDIVIDUAL POLICY,  
16 OR OWNER IF OTHER THAN THE INSURED, AND TO EACH INDIVIDUAL  
17 FORMERLY INSURED UNDER A GROUP POLICY WHO IS NOT ELIGIBLE FOR  
18 REPLACEMENT GROUP COVERAGE, IF THE INSURED HAD A RIGHT UNDER LAW  
19 OR THE TERMINATED POLICY TO CONVERT COVERAGE TO INDIVIDUAL COVER-  
20 AGE OR TO CONTINUE AN INDIVIDUAL POLICY IN FORCE UNTIL A SPECI-  
21 FIED AGE OR FOR A SPECIFIED TIME, DURING WHICH THE INSURER HAD NO  
22 RIGHT UNILATERALLY TO MAKE CHANGES IN ANY PROVISION OF THE POLICY  
23 OR HAD A RIGHT ONLY TO MAKE CHANGES IN PREMIUM BY CLASS.

24       (D) IN PROVIDING THE SUBSTITUTE COVERAGE REQUIRED UNDER SUB-  
25 DIVISION (C) ALL OF THE FOLLOWING APPLY:

26       (i) THE ASSOCIATION MAY OFFER EITHER TO REISSUE THE  
27 TERMINATED COVERAGE OR TO ISSUE AN ALTERNATIVE POLICY.

1       (ii) ALTERNATIVE OR REISSUED POLICIES SHALL BE OFFERED  
2 WITHOUT REQUIRING EVIDENCE OF INSURABILITY, AND SHALL NOT PROVIDE  
3 FOR ANY WAITING PERIOD OR EXCLUSION THAT WOULD NOT HAVE APPLIED  
4 UNDER THE TERMINATED POLICY.

5       (iii) THE ASSOCIATION MAY REINSURE AN ALTERNATIVE OR REIS-  
6 SUED POLICY.

7       (E) AN ALTERNATIVE POLICY ADOPTED BY THE ASSOCIATION SHALL  
8 BE SUBJECT TO THE APPROVAL OF THE COMMISSIONER. THE ASSOCIATION  
9 MAY ADOPT AN ALTERNATIVE POLICY FOR FUTURE ISSUANCE WITHOUT  
10 REGARD TO ANY PARTICULAR IMPAIRMENT OR INSOLVENCY. AN ALTERNA-  
11 TIVE POLICY SHALL CONTAIN AT LEAST THE MINIMUM STATUTORY PROVI-  
12 SIONS REQUIRED IN THIS STATE AND PROVIDE BENEFITS THAT SHALL NOT  
13 BE UNREASONABLE IN RELATION TO THE PREMIUM CHARGED. THE ASSOCIA-  
14 TION SHALL SET THE PREMIUM IN ACCORDANCE WITH A TABLE OF RATES  
15 WHICH IT SHALL ADOPT. THE PREMIUM SHALL REFLECT THE AMOUNT OF  
16 INSURANCE TO BE PROVIDED AND THE AGE AND CLASS OF RISK OF EACH  
17 INSURED, BUT SHALL NOT REFLECT ANY CHANGES IN THE HEALTH OF THE  
18 INSURED AFTER THE ORIGINAL POLICY WAS LAST UNDERWRITTEN. AN  
19 ALTERNATIVE POLICY ISSUED BY THE ASSOCIATION SHALL PROVIDE COVER-  
20 AGE OF A TYPE SIMILAR TO THAT OF THE POLICY ISSUED BY THE  
21 IMPAIRED OR INSOLVENT INSURER, AS DETERMINED BY THE ASSOCIATION.  
22       (F) IF THE ASSOCIATION ELECTS TO REISSUE TERMINATED COVERAGE  
23 AT A PREMIUM RATE DIFFERENT FROM THAT CHARGED UNDER THE TERMI-  
24 NATED POLICY, THE PREMIUM SHALL BE SET BY THE ASSOCIATION IN  
25 ACCORDANCE WITH THE AMOUNT OF INSURANCE PROVIDED AND THE AGE AND  
26 CLASS OF RISK, SUBJECT TO APPROVAL OF THE COMMISSIONER OR BY A  
27 COURT OF COMPETENT JURISDICTION.

1 (G) THE ASSOCIATION'S OBLIGATIONS WITH RESPECT TO COVERAGE  
2 UNDER A POLICY OF THE IMPAIRED OR INSOLVENT INSURER OR UNDER A  
3 REISSUED OR ALTERNATIVE POLICY SHALL CEASE ON THE DATE THE COVER-  
4 AGE OR POLICY IS REPLACED BY ANOTHER SIMILAR POLICY BY THE POLI-  
5 CYHOLDER, THE INSURED, OR THE ASSOCIATION.

6 (7) IF PROCEEDING UNDER SUBSECTION (3)(B) OR (5), WITH  
7 RESPECT TO A POLICY OR CONTRACT CARRYING GUARANTEED MINIMUM  
8 INTEREST RATES, THE ASSOCIATION SHALL ASSURE THE PAYMENT OR CRED-  
9 ITING OF A RATE OF INTEREST CONSISTENT WITH SECTION 7704(3)(C).

10 (8) NONPAYMENT OF PREMIUMS WITHIN 31 DAYS AFTER THE DATE  
11 REQUIRED UNDER THE TERMS OF A GUARANTEED, ASSUMED, ALTERNATIVE,  
12 OR REISSUED POLICY OR CONTRACT OR SUBSTITUTE COVERAGE SHALL TER-  
13 MINATE THE ASSOCIATION'S OBLIGATIONS UNDER THE POLICY OR COVERAGE  
14 UNDER THIS CHAPTER WITH RESPECT TO THE POLICY OR COVERAGE, EXCEPT  
15 WITH RESPECT TO A CLAIM INCURRED OR ANY NET CASH SURRENDER VALUE  
16 WHICH MAY BE DUE IN ACCORDANCE WITH THE PROVISIONS OF THIS  
17 CHAPTER.

18 (9) PREMIUMS DUE FOR COVERAGE AFTER ENTRY OF AN ORDER OF  
19 LIQUIDATION OF AN INSOLVENT INSURER SHALL BELONG TO AND BE PAY-  
20 ABLE AT THE DIRECTION OF THE ASSOCIATION, AND THE ASSOCIATION  
21 SHALL BE LIABLE FOR UNEARNED PREMIUMS DUE TO POLICY OR CONTRACT  
22 OWNERS ARISING AFTER THE ENTRY OF THE ORDER.

23 (10) THE PROTECTION PROVIDED BY THIS CHAPTER SHALL NOT APPLY  
24 IF GUARANTY PROTECTION IS ALSO PROVIDED TO RESIDENTS OF THIS  
25 STATE BY THE LAWS OF THE DOMICILIARY STATE OF THE IMPAIRED OR  
26 INSOLVENT INSURER.

1 (11) IN CARRYING OUT ITS DUTIES UNDER THIS SECTION, THE  
2 ASSOCIATION, SUBJECT TO APPROVAL BY THE COURT, MAY DO THE  
3 FOLLOWING:

4 (A) IMPOSE PERMANENT POLICY OR CONTRACT LIENS IN CONNECTION  
5 WITH A GUARANTEE, ASSUMPTION, OR REINSURANCE AGREEMENT, IF THE  
6 ASSOCIATION FINDS THAT THE AMOUNTS WHICH CAN BE ASSESSED UNDER  
7 THIS CHAPTER ARE LESS THAN THE AMOUNTS NEEDED TO ASSURE FULL AND  
8 PROMPT PERFORMANCE OF THE ASSOCIATION'S DUTIES UNDER THIS CHAPTER  
9 OR THAT THE ECONOMIC OR FINANCIAL CONDITIONS AS THEY AFFECT  
10 MEMBER INSURERS ARE SUFFICIENTLY ADVERSE TO RENDER THE IMPOSITION  
11 OF THE PERMANENT POLICY OR CONTRACT LIENS TO BE IN THE PUBLIC  
12 INTEREST.

13 (B) IMPOSE TEMPORARY MORATORIUMS OR LIENS ON PAYMENTS OF  
14 CASH VALUES AND POLICY LOANS, OR ANY OTHER RIGHT TO WITHDRAW  
15 FUNDS HELD IN CONJUNCTION WITH POLICIES OR CONTRACTS, IN ADDITION  
16 TO ANY CONTRACTUAL PROVISIONS FOR DEFERRAL OF CASH OR POLICY LOAN  
17 VALUE.

18 (12) ~~(5)~~ If the association fails to act as provided in  
19 ~~subsection (1)(a) and (b)~~ SUBSECTIONS (3)(B), (5), AND (6)  
20 within a reasonable period of time, the commissioner shall have  
21 the powers and duties of the association under this chapter with  
22 respect to IMPAIRED OR insolvent insurers.

23 (13) ~~(6)~~ The association may render assistance and advice  
24 to the commissioner, upon his or her request, concerning rehabil-  
25 itation, payment of claims, continuance of coverage, or the per-  
26 formance of other contractual obligations of an impaired or  
27 insolvent insurer.

1       (14) ~~(7)~~ The association shall have standing to appear  
2 before a court in this state with jurisdiction over an impaired  
3 or insolvent insurer concerning which the association is or may  
4 become obligated under this chapter. The standing shall extend  
5 to all matters germane to the powers and duties of the associa-  
6 tion, including, but not limited to, proposals for reinsuring,  
7 MODIFYING, or guaranteeing the covered policies of the impaired  
8 or insolvent insurer and the determination of the covered poli-  
9 cies and contractual obligations. THE ASSOCIATION MAY ALSO  
10 APPEAR OR INTERVENE BEFORE A COURT IN ANOTHER STATE WITH JURIS-  
11 DICTION OVER AN IMPAIRED OR INSOLVENT INSURER FOR WHICH THE ASSO-  
12 CIATION IS OR MAY BECOME OBLIGATED OR WITH JURISDICTION OVER A  
13 THIRD PARTY AGAINST WHOM THE ASSOCIATION MAY HAVE RIGHTS THROUGH  
14 SUBROGATION OF THE INSURER'S POLICYHOLDERS.

15       (15) ~~(8)~~ A person receiving benefits under this chapter  
16 shall be considered to have assigned the rights under, AND ANY  
17 CAUSES OF ACTION RELATING TO, the covered policy to the associa-  
18 tion to the extent of the benefits received because of this chap-  
19 ter whether the benefits are payments of OR ON ACCOUNT OF con-  
20 tractual obligations, ~~or~~ continuation of coverage, OR PROVISION  
21 OF SUBSTITUTE OR ALTERNATIVE COVERAGES. The association may  
22 require an assignment to the association of such rights AND  
23 CAUSES OF ACTION by a payee, policy or contract owner, beneficia-  
24 ry, insured, or annuitant as a condition precedent to the receipt  
25 of rights or benefits conferred by this chapter upon that  
26 person. The association shall be subrogated to these rights  
27 against the assets of an IMPAIRED OR insolvent insurer. The



1 subrogation rights of the association under this subsection shall  
2 have the same priority against the assets of the IMPAIRED OR  
3 insolvent insurer as that possessed by the person entitled to  
4 receive benefits under this chapter. IN ADDITION, THE ASSOCIA-  
5 TION SHALL HAVE ALL COMMON LAW RIGHTS OF SUBROGATION AND ANY  
6 OTHER EQUITABLE OR LEGAL REMEDY WHICH WOULD HAVE BEEN AVAILABLE  
7 TO THE IMPAIRED OR INSOLVENT INSURER OR HOLDER OF A POLICY OR  
8 CONTRACT WITH RESPECT TO THE POLICY OR CONTRACT.

9 ~~(9) The contractual obligations of an insolvent insurer for~~  
10 ~~which the association becomes or may become liable shall be as~~  
11 ~~great as, but no greater than, the contractual obligations of the~~  
12 ~~insolvent insurer would have been in the absence of an insolvency~~  
13 ~~unless such obligations are reduced as permitted by subsections~~  
14 ~~(3) and (4), but the aggregate liability of the association shall~~  
15 ~~not exceed \$100,000.00 in cash values or \$300,000.00 for all ben-~~  
16 ~~efits, including cash values, with respect to a single life.~~

17 (16) ~~(10)~~ The association may do the following:

18 (a) Enter into contracts which are necessary or proper to  
19 carry out the provisions and purposes of this chapter.

20 (b) Sue or be sued, including taking legal actions necessary  
21 or proper for recovery of unpaid assessments levied under section  
22 7709 AND TO SETTLE CLAIMS OR POTENTIAL CLAIMS AGAINST IT.

23 (c) Borrow money to effect the purposes of this chapter.  
24 Notes or other evidence of indebtedness of the association not in  
25 default shall be legal investments for domestic insurers and may  
26 be carried as admitted assets.

1 (d) Employ or retain the people necessary to handle the  
2 financial transactions of the association and to perform other  
3 functions which become necessary or proper under this chapter.

4 (e) Negotiate and contract with a liquidator, rehabilitator,  
5 conservator, or ancillary receiver to carry out the powers and  
6 duties of the association.

7 (f) Take legal action which is necessary to avoid payment of  
8 improper claims.

9 (g) Exercise, for the purposes of this chapter and to the  
10 extent approved by the commissioner, the powers of a domestic  
11 life or health insurer, but in no case may the association issue  
12 insurance policies or annuity contracts other than those issued  
13 to perform ~~the contractual~~ ITS obligations ~~of an impaired or~~  
14 ~~insolvent insurer~~ UNDER THIS CHAPTER.

15 (H) JOIN AN ORGANIZATION OF 1 OR MORE OTHER STATE ASSOCIA-  
16 TIONS OF SIMILAR PURPOSES, TO FURTHER THE PURPOSES AND ADMINISTER  
17 THE POWERS AND DUTIES OF THE ASSOCIATION.

18 Sec. 7709. (1) Except as otherwise provided in this sec-  
19 tion, for the purpose of providing the funds necessary to carry  
20 out the powers and duties of the association, the board of direc-  
21 tors shall assess the member insurers, separately for each  
22 account, at such time and for such amounts as the board finds  
23 necessary. Assessments shall be due not less than 30 days after  
24 written notice to the member insurers and shall accrue interest  
25 at 12% per annum on and after the due date.

26 (2) There shall be ~~3~~ 2 classes of assessments, as  
27 follows:

1 (a) Class A assessments shall be made for the purpose of  
 2 meeting administrative AND LEGAL costs, other general expenses,  
 3 and the expenses of examinations conducted under section  
 4 7712(5). ~~not related to a particular impaired or insolvent~~  
 5 ~~insurer.~~

6 (b) Class B assessments shall be made to the extent neces-  
 7 sary to carry out the powers and duties of the association under  
 8 section 7708 with regard to an impaired or insolvent ~~domestic~~  
 9 insurer.

10 ~~(c) Class C assessments shall be made to the extent neces-~~  
 11 ~~sary to carry out the powers and duties of the association under~~  
 12 ~~section 7708 with regard to an insolvent foreign or alien~~  
 13 ~~insurer.~~

14 (3) ~~A class A assessment may be made on a non pro rata~~  
 15 ~~basis. Such~~ THE AMOUNT OF A CLASS A ASSESSMENT SHALL BE DETER-  
 16 MINED BY THE BOARD AND MAY BE MADE ON A PRO RATA OR NONPRO RATA  
 17 BASIS. IF PRO RATA, THE BOARD MAY PROVIDE THAT IT BE CREDITED  
 18 AGAINST FUTURE CLASS B ASSESSMENTS. A NONPRO RATA assessment  
 19 shall not exceed ~~-\$100.00 per company~~ \$150.00 PER MEMBER INSURER  
 20 in 1 calendar year.

21 (4) The amount of a class B ~~or C~~ assessment shall be allo-  
 22 cated for assessment purposes among the accounts ~~in the proper~~  
 23 ~~tion that the premiums received by the impaired or insolvent~~  
 24 ~~insurer on the policies covered by each account for the last cal-~~  
 25 ~~endar year preceding the assessment in which the impaired or~~  
 26 ~~insolvent insurer received premiums bears to the premiums~~  
 27 ~~received by such insurer for such calendar year on all covered~~

1 ~~policies~~ PURSUANT TO AN ALLOCATION FORMULA WHICH MAY BE BASED ON  
2 THE PREMIUMS OR RESERVES OF THE IMPAIRED OR INSOLVENT INSURER OR  
3 ANY OTHER STANDARD CONSIDERED BY THE BOARD IN ITS SOLE DISCRETION  
4 AS BEING FAIR AND REASONABLE UNDER THE CIRCUMSTANCES.

5 (5) A class ~~C~~ B assessment against member insurers for  
6 each account AND SUBACCOUNT shall be in the proportion that the  
7 premiums received on business in this state by each assessed  
8 member insurer on policies covered by each account for the 3 MOST  
9 RECENT calendar ~~year~~ YEARS FOR WHICH INFORMATION IS AVAILABLE  
10 preceding the ~~assessment~~ YEAR IN WHICH THE INSURER BECAME  
11 IMPAIRED OR INSOLVENT bears to such premiums received on business  
12 in this state for ~~the~~ THOSE 3 MOST RECENT calendar ~~year pre~~  
13 ~~ceding the~~ YEARS BY ALL assessed member insurers.

14 ~~(6) A class B assessment for each account shall be made~~  
15 ~~separately for each state in which the impaired or insolvent~~  
16 ~~domestic insurer was authorized to transact insurance at any~~  
17 ~~time, in the proportion that the premiums received on business in~~  
18 ~~such state by the impaired or insolvent insurer on policies cov~~  
19 ~~ered by such account for the last calendar year preceding the~~  
20 ~~assessment in which the impaired or insolvent insurer received~~  
21 ~~premiums bears to such premiums received in all such states for~~  
22 ~~such calendar year by the impaired or insolvent insurer. The~~  
23 ~~assessment against member insurers shall be in the proportion~~  
24 ~~that the premiums received on business in each such state by each~~  
25 ~~assessed member insurer on policies covered by each account for~~  
26 ~~the calendar year preceding the assessment bears to such premiums~~

1 ~~received on business in each state for the calendar year~~  
2 ~~preceding assessment by all assessed member insurers.~~

3       (6) ~~-(7)-~~ An assessment for funds to meet the requirements  
4 of the association with respect to an impaired or insolvent  
5 insurer shall not be made until necessary to implement the pur-  
6 poses of this chapter. Classification of assessments under sub-  
7 section (2) and computation of assessments under this section  
8 shall be made with a reasonable degree of accuracy, recognizing  
9 that exact determinations may not always be possible.

10       (7) ~~-(8)-~~ The association may abate or defer, in whole or in  
11 part, the assessment of a member insurer if, in the opinion of  
12 the board, payment of the assessment would endanger the ability  
13 of the member insurer to fulfill that insurer's contractual  
14 obligations. In the event an assessment against a member insurer  
15 is abated or deferred, in whole or in part, the amount by which  
16 such assessment is abated or deferred may be assessed against the  
17 other member insurers in a manner consistent with the basis for  
18 assessments set forth in this section.

19       (8) ~~-(9)-~~ The total of all assessments upon a member insurer  
20 for each account OR SUBACCOUNT shall not in 1 calendar year  
21 exceed 2% of that insurer's AVERAGE premiums received in this  
22 state during the calendar ~~year~~ YEARS FOR WHICH INFORMATION IS  
23 AVAILABLE preceding the assessment on the policies covered by the  
24 account ON THE POLICIES AND CONTRACTS COVERED BY THE ACCOUNT  
25 DURING THE 3 CALENDAR YEARS PRECEDING THE YEAR IN WHICH THE  
26 INSURER BECAME AN IMPAIRED OR INSOLVENT INSURER. If the maximum  
27 assessment FOR ANY ACCOUNT, together with the other assets of the

1 association in ~~either~~ THAT account, does not provide in 1  
2 calendar year in ~~either~~ THAT account an amount sufficient to  
3 carry out the responsibilities of the association, the necessary  
4 additional funds shall be assessed as soon thereafter as permit-  
5 ted by this chapter.

6 (9) THE BOARD MAY PROVIDE IN THE PLAN OF OPERATION A METHOD  
7 OF ALLOCATING FUNDS AMONG CLAIMS, WHETHER RELATING TO 1 OR MORE  
8 IMPAIRED OR INSOLVENT INSURERS, WHEN THE MAXIMUM ASSESSMENT WILL  
9 BE INSUFFICIENT TO COVER ANTICIPATED CLAIMS.

10 (10) IF THE MAXIMUM ASSESSMENT UNDER SUBSECTION (1) IN 2  
11 SUCCESSIVE YEARS FOR ANY SUBACCOUNT IN THE LIFE AND ANNUITY  
12 ACCOUNT DOES NOT PROVIDE AN AMOUNT SUFFICIENT TO CARRY OUT THE  
13 RESPONSIBILITIES OF THE ASSOCIATION, THEN PURSUANT TO  
14 SUBSECTION (5), THE BOARD SHALL ALLOCATE THE NECESSARY ADDITIONAL  
15 AMOUNT AMONG THE OTHER SUBACCOUNTS, IN THE FOLLOWING SEQUENCE:  
16 FROM THE LIFE INSURANCE SUBACCOUNT TO THE ANNUITY SUBACCOUNT TO  
17 THE UNALLOCATED ANNUITY SUBACCOUNT; FROM THE ANNUITY SUBACCOUNT  
18 TO THE UNALLOCATED ANNUITY SUBACCOUNT TO THE LIFE INSURANCE SUB-  
19 ACCOUNT; FROM THE UNALLOCATED ANNUITY SUBACCOUNT TO THE ANNUITY  
20 SUBACCOUNT TO THE LIFE INSURANCE SUBACCOUNT; HOWEVER NO AMOUNT  
21 SHALL BE ALLOCATED TO A SUBACCOUNT FOR ASSESSMENT UNTIL THE MAXI-  
22 MUM AMOUNT HAS BEEN ALLOCATED TO THE PRECEDING SUBACCOUNT.

23 (11) ~~-(10)-~~ The board may refund to member insurers, by an  
24 equitable method as established in the plan of operation and in  
25 proportion to the contribution of each insurer to that account,  
26 the amount by which the assets of the account exceed the amount  
27 the board finds is necessary to carry out during the coming year

1 the obligations of the association with regard to that account,  
2 including assets accruing from net realized gains and income from  
3 investments. A reasonable amount may be retained in an account  
4 to provide funds for the continuing expenses of the association  
5 and for future losses. ~~if refunds are impractical.~~

6 (12) ~~(11)~~ In determining premium rates and policy owner  
7 dividends as to any kind of insurance within the scope of this  
8 chapter, a member insurer may consider the amount reasonably nec-  
9 essary to meet assessment obligations under this chapter.

10 (13) ~~(12)~~ The association shall issue to an insurer paying  
11 an assessment under this chapter, other than a class A assess-  
12 ment, a certificate of contribution in a form prescribed by the  
13 commissioner for the amount of the assessment so paid. All out-  
14 standing certificates shall be of equal dignity and priority  
15 without reference to amounts or dates of issue. A certificate of  
16 contribution may be shown by the insurer in the insurer's finan-  
17 cial statement as an asset in such form and for such amount, if  
18 any, and period of time as the commissioner may approve.

19 Sec. 7710. (1) The association shall submit to the commis-  
20 sioner a plan of operation and amendments to the plan necessary  
21 or suitable to assure the fair, reasonable, and equitable admin-  
22 istration of the association. The plan of operation and amend-  
23 ments to the plan shall become effective upon approval in writing  
24 by the commissioner OR IF HE OR SHE HAS NOT DISAPPROVED IT WITHIN  
25 30 DAYS AFTER SUBMISSION.

26 (2) If the association fails to submit a suitable plan of  
27 operation within 60 days following the effective date of this

1 chapter or if at any time the association fails to submit  
2 suitable amendments to the plan, the commissioner shall, after  
3 notice and hearing, promulgate rules reasonably necessary or  
4 advisable to effectuate this chapter. The rules shall continue  
5 in force until modified by the commissioner or superseded by a  
6 plan submitted by the association and approved by the  
7 commissioner.

8 (3) All member insurers shall comply with the plan of  
9 operation.

10 (4) In addition to requirements enumerated elsewhere in this  
11 chapter, the plan of operation shall contain the following:

12 (a) Procedures for handling the assets of the association.

13 (b) The amount and method of reimbursing members of the  
14 board of directors under section 7707.

15 (c) Regular places and times for meetings of the board of  
16 directors.

17 (d) Procedures for records to be kept of financial transac-  
18 tions of the association, the association's agents, and the board  
19 of directors.

20 (e) Procedures for election of the board of directors and  
21 for submission of board members to the commissioner.

22 (f) Additional procedures for assessments under section  
23 7709.

24 (g) Additional provisions necessary or proper for the execu-  
25 tion of the powers and duties of the association.

26 (5) The plan of operation may provide that any or all powers  
27 and duties of the association, except those under sections



1 ~~7708(10)(c)~~ 7708(16)(C) and 7709, are delegated to a  
2 corporation, association, or other organization which performs or  
3 will perform functions similar to those of the association, or  
4 the association's equivalent, in 2 or more states. ~~Such a cor-~~  
5 ~~poration, association, or organization shall be reimbursed for~~  
6 ~~payments made on behalf of the association and shall be paid for~~  
7 ~~performance of a function of the association. A delegation under~~  
8 ~~this subsection shall take effect only with the approval of both~~  
9 ~~the board of directors and the commissioner, and may be made only~~  
10 ~~to a corporation, association, or organization which extends pro-~~  
11 ~~tection not substantially less favorable and effective than that~~  
12 ~~provided by this chapter.~~

13       Sec. 7711. (1) In addition to the duties enumerated else-  
14 where in this chapter, the commissioner shall:

15       (a) Upon request of the board of directors, provide the  
16 association with a statement of the premiums in the appropriate  
17 states for each member insurer.

18       (b) When an impairment is declared and the amount of the  
19 impairment is determined, serve a demand upon the impaired  
20 insurer to make good the impairment within a reasonable time.  
21 Notice to the impaired insurer shall constitute notice to that  
22 insurer's shareholders, if any. The failure of the insurer to  
23 promptly comply with ~~such~~ THE demand shall not excuse the asso-  
24 ciation from the performance of the association's powers and  
25 duties under this chapter.

26       (c) In a liquidation or rehabilitation proceeding involving  
27 a domestic insurer, be appointed as the liquidator or

1 rehabilitator. ~~If a foreign or alien member insurer is subject~~  
2 ~~to a liquidation proceeding in the insurer's domiciliary juris-~~  
3 ~~diction or state of entry, the commissioner shall be appointed~~  
4 ~~conservator.~~

5 (2) In addition to the powers enumerated elsewhere in this  
6 chapter, the commissioner may suspend or revoke, after notice and  
7 hearing, the certificate of authority to transact insurance in  
8 this state of a member insurer which fails to pay an assessment  
9 when due or fails to comply with the plan of operation. As an  
10 alternative the commissioner may levy a forfeiture on a member  
11 insurer which fails to pay an assessment when due. The forfei-  
12 ture shall not exceed 5% of the unpaid assessment per month, but  
13 forfeiture shall not be less than ~~\$1,000.00~~ \$100.00 per month.

14 (3) An action by the board of directors or the association  
15 may be appealed to the commissioner by a member insurer if the  
16 appeal is taken within ~~30~~ 60 days of the FINAL action being  
17 appealed. IF A MEMBER COMPANY IS APPEALING AN ASSESSMENT, THE  
18 AMOUNT ASSESSED SHALL BE PAID TO THE ASSOCIATION AND AVAILABLE TO  
19 MEET ASSOCIATION OBLIGATIONS DURING THE PENDENCY OF AN APPEAL.  
20 IF THE APPEAL ON THE ASSESSMENT IS UPHELD, THE AMOUNT PAID IN  
21 ERROR OR EXCESS SHALL BE RETURNED TO THE MEMBER COMPANY. A final  
22 action or order of the commissioner shall be subject to judicial  
23 review in a court of competent jurisdiction.

24 (4) The liquidator, rehabilitator, or conservator of an  
25 impaired insurer may notify all interested persons of the effect  
26 of this chapter.

1       Sec. 7712. (1) To aid in the detection and prevention of  
2 insurer insolvencies or impairments, the commissioner shall do  
3 the following:

4       (A) NOTIFY THE COMMISSIONERS OF ALL THE OTHER STATES, TERRI-  
5 TORIES OF THE UNITED STATES, AND THE DISTRICT OF COLUMBIA WHEN HE  
6 OR SHE TAKES ANY OF THE FOLLOWING ACTIONS AGAINST A MEMBER  
7 INSURER:

8       (i) REVOKES A CERTIFICATE OF AUTHORITY.

9       (ii) SUSPENDS A CERTIFICATE OF AUTHORITY.

10       (iii) MAKES A FORMAL ORDER THAT THE COMPANY RESTRICTS ITS  
11 PREMIUM WRITING, OBTAINS ADDITIONAL CONTRIBUTIONS TO SURPLUS,  
12 WITHDRAWS FROM THE STATE, REINSURES ALL OR A PART OF ITS BUSI-  
13 NESS, OR INCREASES CAPITAL, SURPLUS, OR ANY OTHER ACCOUNT FOR THE  
14 SECURITY OF POLICYHOLDERS OR CREDITORS.

15       (B) MAIL THE NOTICE UNDER SUBDIVISION (A) TO ALL COMMISSION-  
16 ERS WITHIN 30 DAYS FOLLOWING THE ACTION TAKEN.

17       (C) REPORT TO THE BOARD OF DIRECTORS WHEN HE OR SHE HAS  
18 TAKEN ANY OF THE ACTIONS SET FORTH IN SUBDIVISION (A) OR HAS  
19 RECEIVED A REPORT FROM ANY OTHER COMMISSIONER INDICATING THAT  
20 SUCH ACTION HAS BEEN TAKEN IN ANOTHER STATE. THE REPORT TO THE  
21 BOARD OF DIRECTORS SHALL CONTAIN ALL SIGNIFICANT DETAILS OF THE  
22 ACTION TAKEN OR THE REPORT RECEIVED FROM ANOTHER COMMISSIONER.

23       (D) ~~(a)~~ Report to the board of directors when the commis-  
24 sioner has reasonable cause to believe from an examination,  
25 whether completed or in process, of a member company that the  
26 company may be an impaired or insolvent insurer. ~~The report and~~

~~1 information contained in the report shall be kept confidential by  
2 the board of directors until made public by the commissioner.~~

~~3 (b) Furnish to the board of directors the NAIC early warning  
4 tests developed by the national association of insurance  
5 commissioners. The board may use this information to carry out  
6 the board's duties and responsibilities under this chapter.~~

7 (E) FURNISH TO THE BOARD OF DIRECTORS THE NAIC INSURANCE  
8 REGULATORY INFORMATION SYSTEM (IRIS) RATIOS AND LISTINGS OF COM-  
9 PANIES NOT INCLUDED IN THE RATIOS DEVELOPED BY THE NATIONAL ASSO-  
10 CIATION OF INSURANCE COMMISSIONERS. THE BOARD MAY USE THAT  
11 INFORMATION IN CARRYING OUT ITS DUTIES AND RESPONSIBILITIES UNDER  
12 THIS SECTION.

13 (F) THE REPORT AND THE INFORMATION FURNISHED PURSUANT TO  
14 THIS SUBSECTION SHALL BE KEPT CONFIDENTIAL BY THE BOARD OF DIREC-  
15 TORS UNTIL MADE PUBLIC BY THE COMMISSIONER OR OTHER LAWFUL  
16 AUTHORITY.

17 (2) The commissioner may seek the advice and recommendations  
18 of the board of directors concerning a matter affecting his or  
19 her duties and responsibilities regarding the financial condition  
20 of a member company seeking to transact insurance business in  
21 this state.

22 (3) The board of directors, upon majority vote, may make  
23 reports and recommendations to the commissioner upon a matter  
24 germane to the solvency, liquidation, rehabilitation, or conser-  
25 vation of a member insurer or germane to the solvency of a com-  
26 pany seeking to transact insurance business in this state. The

1 reports and recommendations shall not be considered public  
2 documents.

3 (4) The board of directors, upon majority vote, shall notify  
4 the commissioner of information indicating that a member insurer  
5 may be an impaired or insolvent insurer.

6 (5) The board of directors, upon majority vote, may request  
7 that the commissioner order an examination of a member insurer  
8 which the board in good faith believes may be an impaired or  
9 insolvent insurer. Within ~~60~~ 30 days after the receipt of the  
10 request, the commissioner shall begin the examination. The exam-  
11 ination may be conducted as a national association of insurance  
12 commissioners examination or may be conducted by a person whom  
13 the commissioner designates. The cost of the examination shall  
14 be paid by the association, and the examination report shall be  
15 treated in the same manner as other examination reports. An  
16 examination report shall not be released to the board of direc-  
17 tors before release to the public, but this shall not preclude  
18 the commissioner from complying with subsection (1). The commis-  
19 sioner shall notify the board of directors when the examination  
20 is completed. The request for an examination shall be kept on  
21 file by the commissioner but shall not be open to public inspec-  
22 tion before release of the examination report to the public.

23 (6) The board of directors, upon majority vote, may make  
24 recommendations to the commissioner for the detection and preven-  
25 tion of insurer insolvencies.

26 (7) At the conclusion of an insurer insolvency in which the  
27 association was obligated to pay covered claims, the board of

1 directors shall prepare a report to the commissioner containing  
2 information in the board's possession bearing on the history and  
3 causes of the insolvency. The board shall cooperate with the  
4 boards of directors of guaranty associations in other states in  
5 preparing a report on the history and causes for insolvency of a  
6 particular insurer and may adopt by reference a report prepared  
7 by such other associations.

8       Sec. 7714. (1) This chapter shall not be construed to  
9 reduce the liability for unpaid assessments of the insureds on an  
10 impaired or insolvent insurer operating under a plan with assess-  
11 ment liability.

12       (2) Records shall be kept of all negotiations and meetings  
13 in which the association or the association's ~~agents~~  
14 REPRESENTATIVES are involved to discuss the activities of the  
15 association in carrying out powers and duties under section  
16 7708. Records of such negotiations or meetings shall be made  
17 public only upon the termination of a liquidation, rehabilita-  
18 tion, or conservation proceeding involving an impaired or insol-  
19 vent insurer, upon the termination of the impairment or insol-  
20 vency of the insurer, or upon the order of a court of competent  
21 jurisdiction. This subsection shall not limit the duty of the  
22 association to render a report of association activities under  
23 section 7715.

24       (3) For the purpose of carrying out obligations under this  
25 chapter, the association shall be considered a creditor of the  
26 impaired or insolvent insurer to the extent of assets  
27 attributable to covered policies reduced by any amounts to which

1 the association is entitled as subrogee pursuant to section  
2 ~~7808(8)~~ 7708(15). Assets of the impaired or insolvent insurer  
3 attributable to covered policies shall be used to continue all  
4 covered policies and pay all contractual obligations of the  
5 impaired or insolvent insurer as required by this chapter. As  
6 used in this subsection, "assets attributable to covered  
7 policies" means that proportion<sup>o</sup> of the assets which the reserves  
8 that should have been established for the covered policies bear  
9 to the reserves that should have been established for all poli-  
10 cies of insurance written by the impaired or insolvent insurer.

11 (4) PRIOR TO THE TERMINATION OF A LIQUIDATION, REHABILITA-  
12 TION, OR CONSERVATION PROCEEDING, THE COURT MAY TAKE INTO CONSID-  
13 ERATION THE CONTRIBUTIONS OF THE RESPECTIVE PARTIES, INCLUDING  
14 THE ASSOCIATION, THE SHAREHOLDERS, AND POLICYOWNERS OF THE INSOL-  
15 VENT INSURER, AND ANY OTHER PARTY WITH A BONA FIDE INTEREST, IN  
16 MAKING AN EQUITABLE DISTRIBUTION OF THE OWNERSHIP RIGHTS OF THE  
17 INSOLVENT INSURER. IN MAKING A DETERMINATION, CONSIDERATION  
18 SHALL BE GIVEN TO THE WELFARE OF THE POLICYHOLDERS OF THE CON-  
19 TINUING OR SUCCESSOR INSURER.

20 (5) A DISTRIBUTION TO STOCKHOLDERS, IF ANY, OF AN IMPAIRED  
21 OR INSOLVENT INSURER SHALL NOT BE MADE UNTIL AND UNLESS THE TOTAL  
22 AMOUNT OF VALID CLAIMS OF THE ASSOCIATION WITH INTEREST THEREON  
23 FOR FUNDS EXPENDED IN CARRYING OUT ITS POWERS AND DUTIES UNDER  
24 SECTION 7708 WITH RESPECT TO THE INSURER HAVE BEEN FULLY RECOV-  
25 ERED BY THE ASSOCIATION.

26 (6) IF AN ORDER FOR LIQUIDATION OR REHABILITATION OF AN  
27 INSURER DOMICILED IN THIS STATE HAS BEEN ENTERED, THE RECEIVER

1 APPOINTED UNDER THE ORDER SHALL HAVE A RIGHT TO RECOVER ON BEHALF  
2 OF THE INSURER OR FROM ANY AFFILIATE THAT CONTROLLED IT THE  
3 AMOUNT OF DISTRIBUTIONS, OTHER THAN STOCK DIVIDENDS PAID BY THE  
4 INSURER ON ITS CAPITAL STOCK, MADE AT ANY TIME DURING THE 5 YEARS  
5 PRECEDING THE PETITION FOR LIQUIDATION OR REHABILITATION SUBJECT  
6 TO THE FOLLOWING LIMITATIONS:

7 (A) A DISTRIBUTION SHALL NOT BE RECOVERABLE IF THE INSURER  
8 SHOWS THAT WHEN PAID THE DISTRIBUTION WAS LAWFUL AND REASONABLE,  
9 AND THAT THE INSURER DID NOT KNOW AND COULD NOT REASONABLY HAVE  
10 KNOWN THAT THE DISTRIBUTION MIGHT ADVERSELY AFFECT THE ABILITY OF  
11 THE INSURER TO FULFILL ITS CONTRACTUAL OBLIGATIONS.

12 (B) A PERSON WHO WAS AN AFFILIATE THAT CONTROLLED THE  
13 INSURER AT THE TIME THE DISTRIBUTIONS WERE PAID SHALL BE LIABLE  
14 UP TO THE AMOUNT OF DISTRIBUTIONS HE OR SHE RECEIVED. A PERSON  
15 WHO WAS AN AFFILIATE THAT CONTROLLED THE INSURER AT THE TIME THE  
16 DISTRIBUTIONS WERE DECLARED SHALL BE LIABLE UP TO THE AMOUNT OF  
17 DISTRIBUTIONS HE OR SHE WOULD HAVE RECEIVED IF THEY HAD BEEN PAID  
18 IMMEDIATELY. IF 2 OR MORE PERSONS ARE LIABLE WITH RESPECT TO THE  
19 SAME DISTRIBUTIONS, THEY SHALL BE JOINTLY AND SEVERALLY LIABLE.  
20 IF A PERSON LIABLE UNDER THIS SUBDIVISION IS INSOLVENT, ALL CON-  
21 TROLLING AFFILIATES AT THE TIME THE DISTRIBUTION WAS PAID SHALL  
22 BE JOINTLY AND SEVERALLY LIABLE FOR ANY RESULTING DEFICIENCY IN  
23 THE AMOUNT RECOVERED FROM THE INSOLVENT AFFILIATE.

24 (C) THE MAXIMUM AMOUNT RECOVERABLE UNDER THIS SUBSECTION  
25 SHALL BE THE AMOUNT NEEDED IN EXCESS OF ALL OTHER AVAILABLE  
26 ASSETS OF THE INSOLVENT INSURER TO PAY THE CONTRACTUAL  
27 OBLIGATIONS OF THE INSOLVENT INSURER.



1       Sec. 7717. There shall be no liability on the part of and a  
2 cause of action shall not arise against a member insurer or an  
3 insurer's agents or employees, the association or the  
4 association's agents or employees, members of the board of direc-  
5 tors, or the commissioner or his or her representatives for any  
6 action ~~taken~~ OR OMISSION by them in the performance of powers  
7 and duties under this chapter. THIS IMMUNITY SHALL EXTEND TO THE  
8 PARTICIPATION IN AN ORGANIZATION OF 1 OR MORE OTHER STATE ASSOCI-  
9 ATIONS OF SIMILAR PURPOSES AND TO THE ORGANIZATION AND ITS AGENTS  
10 OR EMPLOYEES.

11        Sec. 7921. As used in this chapter:

(a) "Insolvent insurer" means an insurer ~~-(i)-~~ for which a domiciliary receiver has been appointed by a final order in this state or in a reciprocal state, as defined in ~~section 7837(g),~~ after ~~August 11, 1969,~~ SECTION 8103 for the liquidation of the insurer ~~;~~ and ~~-(ii)-~~ which has been a member insurer. The date on which the order becomes final shall be the date on which the receiver is appointed for purposes of this chapter.

19 (b) "Member insurer" means an insurer required to be a  
20 member of the association pursuant to section 7911.

## CHAPTER 81.

## SUPERVISION, REHABILITATION, AND LIQUIDATION

23 SEC. 8101. (1) THIS CHAPTER SHALL NOT BE INTERPRETED TO  
24 LIMIT THE POWERS GRANTED THE COMMISSIONER BY OTHER PROVISIONS OF  
25 THIS CODE.

26 (2) THIS CHAPTER SHALL BE LIBERALLY CONSTRUED TO EFFECT THE  
27 PURPOSE STATED IN SUBSECTION (4).

1       (3) THE PURPOSE OF THIS CHAPTER IS THE PROTECTION OF THE  
2 INTERESTS OF INSURED, CLAIMANTS, CREDITORS, AND THE PUBLIC WITH  
3 MINIMUM INTERFERENCE WITH THE NORMAL PREROGATIVES OF THE OWNERS  
4 AND MANAGERS OF INSURERS, THROUGH THE FOLLOWING:

5       (A) EARLY DETECTION OF POTENTIALLY DANGEROUS CONDITIONS IN  
6 AN INSURER AND PROMPT APPLICATION OF APPROPRIATE CORRECTIVE  
7 MEASURES.

8       (B) IMPROVED METHODS FOR REHABILITATING INSURERS, INVOLVING  
9 THE COOPERATION AND MANAGEMENT EXPERTISE OF THE INSURANCE  
10 INDUSTRY.

11       (C) ENHANCED EFFICIENCY AND ECONOMY OF LIQUIDATION TO MINI-  
12 MIZE LEGAL UNCERTAINTY AND LITIGATION.

13       (D) EQUITABLE APPORTIONMENT OF UNAVOIDABLE LOSS.

14       (E) LESSENING THE PROBLEMS OF INTERSTATE REHABILITATION AND  
15 LIQUIDATION BY FACILITATING COOPERATION BETWEEN STATES IN THE  
16 LIQUIDATION PROCESS AND BY EXTENDING THE SCOPE OF PERSONAL JURIS-  
17 DICTION OVER DEBTORS OF THE INSURER OUTSIDE THIS STATE.

18       (F) REGULATION OF THE INSURANCE BUSINESS RELATING TO DELIN-  
19 QUENCY PROCEDURES AND RULES ON THE ENTIRE INSURANCE BUSINESS.

20       SEC. 8102. THE PROCEEDINGS AUTHORIZED BY THIS CHAPTER MAY  
21 BE APPLIED TO:

22       (A) AN INSURER WHO IS TRANSACTING, OR HAS TRANSACTED, INSUR-  
23 ANCE BUSINESS IN THIS STATE, AND AGAINST WHOM CLAIMS ARISING FROM  
24 THAT BUSINESS MAY EXIST NOW OR IN THE FUTURE.

25       (B) AN INSURER WHO PURPORTS TO TRANSACT AN INSURANCE BUSI-  
26 NESS IN THIS STATE.

(C) AN INSURER WHO HAS INSUREDS RESIDENT IN THIS STATE.

(D) ALL OTHER PERSONS ORGANIZED OR IN THE PROCESS OF ORGANIZING WITH THE INTENT TO TRANSACT AN INSURANCE BUSINESS IN THIS STATE.

SEC. 8103. AS USED IN THIS CHAPTER:

(A) "ANCILLARY STATE" MEANS ANY STATE OTHER THAN A DOMICILIARY STATE.

(B) "CREDITOR" IS A PERSON HAVING A CLAIM AGAINST THE INSURER, WHETHER MATURED OR UNMATURED, LIQUIDATED OR UNLIQUIDATED, SECURED OR UNSECURED, ABSOLUTE, FIXED, OR CONTINGENT.

(C) "DELINQUENCY PROCEEDING" MEANS A PROCEEDING INSTITUTED AGAINST AN INSURER FOR THE PURPOSE OF LIQUIDATING, REHABILITATING, REORGANIZING, OR CONSERVING SUCH INSURER, AND A SUMMARY PROCEEDING UNDER SECTION 8109 OR 8110. "FORMAL DELINQUENCY PROCEEDING" MEANS ANY LIQUIDATION OR REHABILITATION PROCEEDING.

(D) "DOMICILIARY STATE" MEANS THE STATE IN WHICH AN INSURER IS INCORPORATED OR ORGANIZED, OR, IN THE CASE OF AN ALIEN INSURER, ITS STATE OF ENTRY.

(E) "FAIR CONSIDERATION" IS GIVEN FOR PROPERTY OR AN OBLIGATION PURSUANT TO EITHER OF THE FOLLOWING:

(i) IF IN EXCHANGE FOR THE PROPERTY OR OBLIGATION, AS A FAIR EQUIVALENT OF THE PROPERTY OR OBLIGATION AND IN GOOD FAITH, PROPERTY IS CONVEYED OR SERVICES ARE RENDERED OR AN OBLIGATION IS INCURRED OR AN ANTECEDENT DEBT IS SATISFIED.

(ii) IF THE PROPERTY OR OBLIGATION IS RECEIVED IN GOOD FAITH TO SECURE A PRESENT ADVANCE OR ANTECEDENT DEBT IN AN AMOUNT NOT

1 DISPROPORTIONATELY SMALL AS COMPARED TO THE VALUE OF THE PROPERTY  
2 OR OBLIGATION OBTAINED.

3 (F) "FOREIGN COUNTRY" MEANS ANY OTHER JURISDICTION NOT IN  
4 ANY STATE.

5 (G) "GENERAL ASSETS" MEANS ALL PROPERTY, REAL, PERSONAL, OR  
6 OTHERWISE, NOT SPECIFICALLY MORTGAGED, PLEDGED, DEPOSITED, OR  
7 OTHERWISE ENCUMBERED, FOR THE SECURITY OR BENEFIT OF SPECIFIED  
8 PERSONS OR CLASSES OF PERSONS. AS TO SPECIFICALLY ENCUMBERED  
9 PROPERTY, "GENERAL ASSETS" INCLUDES ALL PROPERTY OR ITS PROCEEDS  
10 IN EXCESS OF THE AMOUNT NECESSARY TO DISCHARGE THE SUM OR SUMS  
11 SECURED BY THE PROPERTY. ASSETS HELD IN TRUST AND ON DEPOSIT FOR  
12 THE SECURITY OR BENEFIT OF ALL POLICYHOLDERS OR ALL POLICYHOLDERS  
13 AND CREDITORS, IN MORE THAN A SINGLE STATE, SHALL BE TREATED AS  
14 GENERAL ASSETS. AMOUNTS DUE AN INSOLVENT INSURER AS INDEMNIFICA-  
15 TION FROM THE CATASTROPHIC CLAIMS ASSOCIATION CREATED IN  
16 SECTION 3104 SHALL NOT BE CONSIDERED TO BE ASSETS OF THE RECEIV-  
17 ERSHIP, BUT SHALL BE PAID DIRECTLY TO THE PROPERTY AND CASUALTY  
18 GUARANTY ASSOCIATION UNDER SECTION 7935.

19 (H) "GUARANTY ASSOCIATION" MEANS THE MICHIGAN PROPERTY AND  
20 CASUALTY GUARANTY ASSOCIATION, THE WORKER'S COMPENSATION  
21 SELF-INSURANCE SECURITY FUND, THE MICHIGAN LIFE AND HEALTH INSUR-  
22 ANCE GUARANTY ASSOCIATION, AND ANY OTHER SIMILAR ENTITY NOW OR  
23 HEREAFTER CREATED BY THE LEGISLATURE OF THIS STATE FOR THE PAY-  
24 MENT OF CLAIMS OF INSOLVENT INSURERS. "FOREIGN GUARANTY  
25 ASSOCIATION" MEANS ANY SIMILAR ENTITIES NOW IN EXISTENCE OR HERE-  
26 AFTER CREATED BY THE LEGISLATURE OF ANY OTHER STATE.

(I) "INSOLVENCY" OR "INSOLVENT" MEANS:

(i) FOR AN INSURER ISSUING ONLY ASSESSABLE FIRE INSURANCE POLICIES:

(A) THE INABILITY TO PAY AN OBLIGATION WITHIN 30 DAYS AFTER IT BECOMES PAYABLE.

(B) IF AN ASSESSMENT IS MADE WITHIN 30 DAYS AFTER THE DATE IN SUBPARAGRAPH (i)(A), THE INABILITY TO PAY AN OBLIGATION 30 DAYS FOLLOWING THE DATE SPECIFIED IN THE FIRST ASSESSMENT NOTICE ISSUED AFTER THE DATE OF LOSS.

(ii) FOR AN INSURER, OTHER THAN AN INSURER UNDER SUBPARAGRAPH (i), THE INABILITY TO PAY ITS OBLIGATIONS WHEN THEY ARE DUE OR WHEN ADMITTED ASSETS DO NOT EXCEED LIABILITIES PLUS THE GREATER OF EITHER OF THE FOLLOWING:

(A) ANY CAPITAL AND SURPLUS REQUIRED BY LAW FOR ITS ORGANIZATION.

(B) THE TOTAL PAR OR STATED VALUE OF ITS AUTHORIZED AND ISSUED CAPITAL STOCK.

(iii) AS TO AN INSURER LICENSED TO DO BUSINESS IN THIS STATE AS OF THE EFFECTIVE DATE OF THIS CHAPTER WHICH DOES NOT MEET THE STANDARD ESTABLISHED UNDER SUBPARAGRAPH (ii), THE TERM "INSOLVENCY" OR "INSOLVENT" SHALL MEAN, FOR A PERIOD NOT TO EXCEED 3 YEARS FROM THE EFFECTIVE DATE OF THIS CHAPTER, THAT IT IS UNABLE TO PAY ITS OBLIGATIONS WHEN THEY ARE DUE OR THAT ITS ADMITTED ASSETS DO NOT EXCEED ITS LIABILITIES PLUS ANY REQUIRED CAPITAL CONTRIBUTION ORDERED BY THE COMMISSIONER UNDER PROVISIONS OF THIS ACT.

1 (iv) FOR PURPOSES OF THIS SUBDIVISION, "LIABILITIES" SHALL  
2 INCLUDE, BUT NOT BE LIMITED TO, RESERVES REQUIRED BY STATUTE OR  
3 BY RULE OR SPECIFIC REQUIREMENTS IMPOSED BY THE COMMISSIONER UPON  
4 AN INSURER AT THE TIME OF ADMISSION OR SUBSEQUENT TO ADMISSION.

5 (J) "PREFERRED CLAIM" MEANS A CLAIM WHICH RECEIVES PRIORITY  
6 OF PAYMENT FROM THE GENERAL ASSETS OF THE INSURER UNDER THIS  
7 CHAPTER.

8 (K) "RECEIVER" MEANS RECEIVER, LIQUIDATOR, REHABILITATOR, OR  
9 CONSERVATOR AS THE CONTEXT REQUIRES.

10 (L) "RECIPROCAL STATE" MEANS A STATE OTHER THAN THIS STATE  
11 IN WHICH ALL OF THE FOLLOWING OCCURS:

12 (i) IN SUBSTANCE AND EFFECT SECTIONS 8118(1), 8152, 8153,  
13 8155, 8156, AND 8157 ARE IN FORCE.

14 (ii) PROVISIONS REQUIRING THAT THE COMMISSIONER OR EQUIVA-  
15 LENT OFFICIAL BE THE RECEIVER OF A DELINQUENT INSURER ARE IN  
16 FORCE.

17 (iii) SOME PROVISION FOR THE AVOIDANCE OF FRAUDULENT CONVEY-  
18 ANCES AND PREFERENTIAL TRANSFERS ARE IN FORCE.

19 (M) "SECURED CLAIM" MEANS A CLAIM SECURED BY MORTGAGE, TRUST  
20 DEED, PLEDGE, DEPOSIT AS SECURITY, ESCROW, OR OTHERWISE, BUT NOT  
21 INCLUDING A SPECIAL DEPOSIT CLAIM OR CLAIM AGAINST GENERAL  
22 ASSETS. THE TERM ALSO INCLUDES CLAIMS WHICH HAVE BECOME LIENS  
23 UPON SPECIFIC ASSETS BY REASON OF JUDICIAL PROCESS.

24 (N) "SPECIAL DEPOSIT CLAIM" MEANS A CLAIM SECURED BY A  
25 DEPOSIT MADE PURSUANT TO STATUTE FOR THE SECURITY OR BENEFIT OF A  
26 LIMITED CLASS OR CLASSES OF PERSONS, BUT NOT INCLUDING A CLAIM  
27 SECURED BY GENERAL ASSETS.

1 (O) "STATE" MEANS A STATE, DISTRICT, OR TERRITORY OF THE  
2 UNITED STATES AND THE PANAMA CANAL ZONE.

3 (P) "TRANSACTING BUSINESS" INCLUDES ANY OF THE FOLLOWING  
4 ACTS, WHETHER EFFECTED BY MAIL OR OTHERWISE:

5 (i) THE ISSUANCE OR DELIVERY OF CONTRACTS OF INSURANCE TO  
6 PERSONS RESIDENT IN THIS STATE.

7 (ii) THE SOLICITATION OF APPLICATIONS FOR INSURANCE CON-  
8 TRACTS OR OTHER NEGOTIATIONS PRELIMINARY TO THE EXECUTION OF  
9 INSURANCE CONTRACTS.

10 (iii) THE COLLECTION OF PREMIUMS, MEMBERSHIP FEES, ASSESS-  
11 MENTS, OR OTHER CONSIDERATION FOR INSURANCE CONTRACTS.

12 (iv) THE TRANSACTION OF MATTERS SUBSEQUENT TO EXECUTION OF  
13 INSURANCE CONTRACTS AND ARISING OUT OF THEM.

14 (v) OPERATING UNDER A CERTIFICATE OF AUTHORITY, AS AN INSUR-  
15 ER, ISSUED BY THE COMMISSIONER.

16 (Q) "TRANSFER" SHALL INCLUDE THE SALE AND EVERY OTHER AND  
17 DIFFERENT MODE, DIRECT OR INDIRECT, OF DISPOSING OF OR OF PARTING  
18 WITH PROPERTY OR WITH AN INTEREST IN PROPERTY OR WITH THE POSSES-  
19 SION OF PROPERTY OR OF FIXING A LIEN UPON PROPERTY OR UPON AN  
20 INTEREST IN PROPERTY, ABSOLUTELY OR CONDITIONALLY, VOLUNTARILY,  
21 BY OR WITHOUT JUDICIAL PROCEEDINGS. THE RETENTION OF A SECURITY  
22 TITLE TO PROPERTY DELIVERED TO A DEBTOR SHALL BE CONSIDERED A  
23 TRANSFER SUFFERED BY THE DEBTOR.

24 SEC. 8104. (1) A DELINQUENCY PROCEEDING SHALL NOT BE COM-  
25 MENCED UNDER THIS CHAPTER BY ANYONE OTHER THAN THE COMMISSIONER  
26 OF THIS STATE AND A COURT SHALL NOT HAVE JURISDICTION TO

1 ENTERTAIN, HEAR, OR DETERMINE A PROCEEDING COMMENCED BY ANY OTHER  
2 PERSON.

3 (2) A COURT OF THIS STATE SHALL NOT HAVE JURISDICTION TO  
4 ENTERTAIN, HEAR, OR DETERMINE A COMPLAINT PRAYING FOR THE DISSO-  
5 LUTION, LIQUIDATION, REHABILITATION, SEQUESTRATION, CONSERVATION,  
6 OR RECEIVERSHIP OF AN INSURER; OR PRAYING FOR AN INJUNCTION OR  
7 RESTRAINING ORDER OR OTHER RELIEF PRELIMINARY TO, INCIDENTAL TO,  
8 OR RELATING TO SUCH PROCEEDINGS OTHER THAN IN ACCORDANCE WITH  
9 THIS CHAPTER.

10 (3) THE CIRCUIT COURT FOR INGHAM COUNTY SHALL HAVE SOLE  
11 JURISDICTION OF A DELINQUENCY PROCEEDING COMMENCED UNDER THIS  
12 CHAPTER. IN ADDITION TO OTHER GROUNDS FOR JURISDICTION PROVIDED  
13 BY THE LAW OF THIS STATE, THE CIRCUIT COURT FOR INGHAM COUNTY  
14 SHALL ALSO HAVE JURISDICTION OVER A PERSON SERVED PURSUANT TO THE  
15 APPLICABLE PROVISIONS OF LAW IN AN ACTION BROUGHT BY THE RECEIVER  
16 OF A DOMESTIC INSURER OR AN ALIEN INSURER DOMICILED IN THIS  
17 STATE, IF ANY OF THE FOLLOWING APPLY:

18 (A) THE PERSON SERVED IS OBLIGATED TO THE INSURER AS INCI-  
19 DENT TO AN AGENCY OR BROKERAGE ARRANGEMENT THAT MAY EXIST OR HAS  
20 EXISTED BETWEEN THE INSURER AND THE AGENT OR BROKER, IN AN ACTION  
21 ON OR INCIDENT TO THE OBLIGATION.

22 (B) THE PERSON SERVED IS A REINSURER WHO HAS AT ANY TIME  
23 WRITTEN A POLICY OF REINSURANCE FOR AN INSURER AGAINST WHICH A  
24 REHABILITATION OR LIQUIDATION ORDER IS IN EFFECT WHEN THE ACTION  
25 IS COMMENCED, OR IS AN AGENT OR BROKER OF OR FOR THE REINSURER,  
26 IN AN ACTION ON OR INCIDENT TO THE REINSURANCE CONTRACT.



1 (C) THE PERSON SERVED IS OR HAS BEEN AN OFFICER, MANAGER,  
2 TRUSTEE, ORGANIZER, PROMOTER, OR PERSON IN A POSITION OF  
3 COMPARABLE AUTHORITY OR INFLUENCE ON AN INSURER AGAINST WHICH A  
4 REHABILITATION OR LIQUIDATION ORDER IS IN EFFECT WHEN THE ACTION  
5 IS COMMENCED, IN AN ACTION RESULTING FROM SUCH A RELATIONSHIP  
6 WITH THE INSURER.

7 (4) IF THE COURT ON MOTION OF ANY PARTY FINDS THAT ANY  
8 ACTION SHOULD AS A MATTER OF SUBSTANTIAL JUSTICE BE TRIED IN A  
9 FORUM OUTSIDE THIS STATE, THE COURT MAY ENTER AN APPROPRIATE  
10 ORDER TO STAY FURTHER PROCEEDINGS ON THE ACTION IN THIS STATE.

11 SEC. 8105. (1) A RECEIVER APPOINTED IN A PROCEEDING UNDER  
12 THIS CHAPTER MAY AT ANY TIME APPLY FOR, AND THE CIRCUIT COURT FOR  
13 INGHAM COUNTY MAY GRANT, A RESTRAINING ORDER, PRELIMINARY INJUNC-  
14 TION, PERMANENT INJUNCTION, AND ANY OTHER ORDER AS MAY BE CONSID-  
15 ERED NECESSARY AND PROPER TO PREVENT ANY OF THE FOLLOWING:

16 (A) THE TRANSACTION OF FURTHER BUSINESS BY THE INSURER.

17 (B) THE TRANSFER OF PROPERTY.

18 (C) INTERFERENCE WITH THE RECEIVER OR WITH A PROCEEDING  
19 UNDER THIS CHAPTER.

20 (D) WASTE OF THE INSURER'S ASSETS.

21 (E) DISSIPATION AND TRANSFER OF BANK ACCOUNTS.

22 (F) THE INSTITUTION OR FURTHER PROSECUTION OF ANY ACTIONS OR  
23 PROCEEDINGS.

24 (G) THE OBTAINING OF PREFERENCES, JUDGMENTS, ATTACHMENTS,  
25 GARNISHMENTS, OR LIENS AGAINST THE INSURER, ITS ASSETS, OR ITS  
26 POLICYHOLDERS.

1 (H) THE LEVYING OF EXECUTION AGAINST THE INSURER, ITS  
2 ASSETS, OR ITS POLICYHOLDERS.

3 (I) THE MAKING OF A SALE OR DEED FOR NONPAYMENT OF TAXES OR  
4 ASSESSMENTS THAT WOULD LESSEN THE VALUE OF THE INSURER'S ASSETS.

5 (J) THE WITHHOLDING FROM THE RECEIVER OF BOOKS, ACCOUNTS,  
6 DOCUMENTS, OR OTHER RECORDS RELATING TO THE INSURER'S BUSINESS.

7 (K) OTHER THREATENED OR CONTEMPLATED ACTION THAT MIGHT  
8 LESSEN THE VALUE OF THE INSURER'S ASSETS OR PREJUDICE THE RIGHTS  
9 OF POLICYHOLDERS, CREDITORS, OR SHAREHOLDERS, OR THE ADMINISTRA-  
10 TION OF A PROCEEDING UNDER THIS CHAPTER.

11 (2) THE RECEIVER MAY APPLY TO A COURT OUTSIDE OF THE STATE  
12 FOR THE RELIEF DESCRIBED IN SUBSECTION (1).

13 SEC. 8106. (1) AN OFFICER, MANAGER, DIRECTOR, TRUSTEE,  
14 OWNER, EMPLOYEE, OR AGENT OF AN INSURER, OR ANY OTHER PERSONS  
15 WITH AUTHORITY OVER OR IN CHARGE OF ANY SEGMENT OF THE INSURER'S  
16 AFFAIRS, SHALL COOPERATE WITH THE COMMISSIONER IN A PROCEEDING  
17 UNDER THIS CHAPTER OR AN INVESTIGATION PRELIMINARY TO THE  
18 PROCEEDING. THE TERM "PERSON" AS USED IN THIS SECTION SHALL  
19 INCLUDE A PERSON WHO EXERCISES CONTROL DIRECTLY OR INDIRECTLY  
20 OVER ACTIVITIES OF THE INSURER THROUGH A HOLDING COMPANY OR OTHER  
21 AFFILIATE OF THE INSURER. AS USED IN THIS SECTION, "TO  
22 COOPERATE" SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO, THE  
23 FOLLOWING:

24 (A) TO REPLY PROMPTLY IN WRITING TO ANY INQUIRY FROM THE  
25 COMMISSIONER REQUESTING SUCH A REPLY.

26 (B) TO MAKE AVAILABLE TO THE COMMISSIONER BOOKS, ACCOUNTS,  
27 DOCUMENTS, OR OTHER RECORDS, INFORMATION, OR PROPERTY OF, OR

1 PERTAINING TO, THE INSURER AND IN HIS OR HER POSSESSION, CUSTODY,  
2 OR CONTROL.

3 (2) A PERSON SHALL NOT OBSTRUCT OR INTERFERE WITH THE COM-  
4 MISSIONER IN THE CONDUCT OF A DELINQUENCY PROCEEDING OR AN INVES-  
5 TIGATION PRELIMINARY OR INCIDENTAL TO A DELINQUENCY PROCEEDING.

6 (3) THIS SECTION SHALL NOT BE CONSTRUED TO ABRIDGE OTHERWISE  
7 EXISTING LEGAL RIGHTS, INCLUDING THE RIGHT TO RESIST A PETITION  
8 FOR LIQUIDATION OR OTHER DELINQUENCY PROCEEDINGS OR ORDERS.

9 (4) A PERSON INCLUDED WITHIN SUBSECTION (1) WHO FAILS TO  
10 COOPERATE WITH THE COMMISSIONER, OR A PERSON WHO OBSTRUCTS OR  
11 INTERFERES WITH THE COMMISSIONER IN THE CONDUCT OF A DELINQUENCY  
12 PROCEEDING OR AN INVESTIGATION PRELIMINARY OR INCIDENTAL TO A  
13 DELINQUENCY PROCEEDING, OR WHO VIOLATES AN ORDER THE COMMISSIONER  
14 ISSUED VALIDLY UNDER THIS CHAPTER MAY:

15 (A) BE SENTENCED TO PAY A FINE NOT EXCEEDING \$10,000.00, OR  
16 IMPRISONMENT FOR A TERM OF NOT MORE THAN 1 YEAR, OR BOTH.

17 (B) AFTER A HEARING, BE SUBJECT TO THE IMPOSITION BY THE  
18 COMMISSIONER OF A CIVIL PENALTY NOT TO EXCEED \$10,000.00, OR THE  
19 REVOCATION OR SUSPENSION OF ANY INSURANCE LICENSES ISSUED BY THE  
20 COMMISSIONER, OR BOTH.

21 SEC. 8107. IN A PROCEEDING UNDER THIS CHAPTER, THE COMMIS-  
22 SIONER AND HIS OR HER DEPUTIES SHALL BE RESPONSIBLE ON THEIR  
23 OFFICIAL BONDS FOR THE FAITHFUL PERFORMANCE OF THEIR DUTIES. IF  
24 THE COURT CONSIDERS IT DESIRABLE FOR THE PROTECTION OF THE  
25 ASSETS, THE COURT MAY AT ANY TIME REQUIRE AN ADDITIONAL BOND FROM  
26 THE COMMISSIONER OR HIS OR HER DEPUTIES, AND THE BOND SHALL BE

1 PAID FOR OUT OF THE ASSETS OF THE INSURER AS A COST OF  
2 ADMINISTRATION.

3 SEC. 8108. A PROCEEDING COMMENCED UNDER THE LAWS IN EFFECT  
4 BEFORE THE ENACTMENT OF THIS CHAPTER SHALL BE CONSIDERED TO HAVE  
5 COMMENCED UNDER THIS CHAPTER FOR THE PURPOSE OF CONDUCTING THE  
6 PROCEEDING HENCEFORTH, EXCEPT THAT IN THE DISCRETION OF THE COM-  
7 MISSIONER THE PROCEEDING MAY BE CONTINUED, IN WHOLE OR IN PART,  
8 AS IT WOULD HAVE BEEN CONTINUED HAD THIS CHAPTER NOT BEEN  
9 ENACTED.

10 SEC. 8108A. UNTIL ALL PAYMENTS OF OR ON ACCOUNT OF THE  
11 INSURER'S CONTRACTUAL OBLIGATIONS BY ALL GUARANTY ASSOCIATIONS  
12 AND ALL EXPENSES AND INTEREST ON THE PAYMENTS AND EXPENSES ARE  
13 REPAID TO THE GUARANTY ASSOCIATIONS OR A PLAN OF REPAYMENT BY THE  
14 INSURER IS APPROVED BY THE GUARANTY ASSOCIATIONS, AN INSURER THAT  
15 IS SUBJECT TO ANY DELINQUENCY PROCEEDINGS, WHETHER FORMAL OR  
16 INFORMAL, ADMINISTRATIVE OR JUDICIAL, SHALL NOT:

17 (A) BE RELEASED FROM THE PROCEEDING, UNLESS THE PROCEEDING  
18 IS CONVERTED INTO A JUDICIAL REHABILITATION OR LIQUIDATION  
19 PROCEEDING.

20 (B) BE PERMITTED TO SOLICIT OR ACCEPT NEW BUSINESS OR  
21 REQUEST OR ACCEPT THE RESTORATION OF A SUSPENDED OR REVOKED  
22 LICENSE OR CERTIFICATE OF AUTHORITY.

23 (C) BE RETURNED TO THE CONTROL OF ITS SHAREHOLDERS OR PRI-  
24 VATE MANAGEMENT.

25 (D) HAVE ITS ASSETS RETURNED TO THE CONTROL OF ITS SHARE-  
26 HOLDERS OR PRIVATE MANAGEMENT.

1        SEC. 8109. (1) IF THE COMMISSIONER HAS REASONABLE CAUSE TO  
2 BELIEVE AND DETERMINES AFTER A HEARING HELD UNDER SUBSECTION (5)  
3 THAT A DOMESTIC INSURER HAS COMMITTED OR ENGAGED IN, OR IS ABOUT  
4 TO COMMIT OR ENGAGE IN, AN ACT, PRACTICE, OR TRANSACTION THAT  
5 WOULD SUBJECT IT TO DELINQUENCY PROCEEDINGS UNDER THIS CHAPTER,  
6 HE OR SHE MAY MAKE AND SERVE UPON THE INSURER AND ANY OTHER PER-  
7 SONS INVOLVED ANY ORDER AS IS REASONABLY NECESSARY TO CORRECT,  
8 ELIMINATE, OR REMEDY THE CONDUCT, CONDITION, OR GROUND.

9        (2) IF UPON EXAMINATION OR AT ANY OTHER TIME THE COMMIS-  
10 SIONER HAS REASONABLE CAUSE TO BELIEVE THAT A DOMESTIC INSURER IS  
11 IN SUCH CONDITION AS TO RENDER THE CONTINUANCE OF ITS BUSINESS  
12 HAZARDOUS TO THE PUBLIC OR TO HOLDERS OF ITS POLICIES OR CERTIFI-  
13 CATES OF INSURANCE, OR IF THE DOMESTIC INSURER GIVES ITS CONSENT,  
14 THEN THE COMMISSIONER SHALL UPON HIS OR HER DETERMINATION:

15        (A) NOTIFY THE INSURER OF HIS OR HER DETERMINATION.

16        (B) FURNISH TO THE INSURER A WRITTEN LIST OF THE  
17 COMMISSIONER'S REQUIREMENTS TO ABATE HIS OR HER DETERMINATION.

18        (3) IF THE COMMISSIONER MAKES A DETERMINATION TO SUPERVISE  
19 AN INSURER SUBJECT TO AN ORDER UNDER SUBSECTION (1) OR (2), HE OR  
20 SHE SHALL NOTIFY THE INSURER THAT IT IS UNDER THE SUPERVISION OF  
21 THE COMMISSIONER. DURING THE PERIOD OF SUPERVISION, THE COMMIS-  
22 SIONER MAY APPOINT A SUPERVISOR TO SUPERVISE THE INSURER. THE  
23 ORDER APPOINTING A SUPERVISOR SHALL DIRECT THE SUPERVISOR TO  
24 ENFORCE ORDERS ISSUED UNDER SUBSECTIONS (1) AND (2) AND MAY ALSO  
25 REQUIRE THAT THE INSURER MAY NOT DO ANY OF THE FOLLOWING THINGS  
26 DURING THE PERIOD OF SUPERVISION, WITHOUT THE PRIOR APPROVAL OF  
27 THE COMMISSIONER OR HIS OR HER SUPERVISOR:

1 (A) DISPOSE OF, CONVEY, OR ENCUMBER ANY OF ITS ASSETS OR ITS  
2 BUSINESS IN FORCE.

3 (B) WITHDRAW FROM ANY OF ITS BANK ACCOUNTS.

4 (C) LEND ANY OF ITS FUNDS.

5 (D) INVEST ANY OF ITS FUNDS.

6 (E) TRANSFER ANY OF ITS PROPERTY.

7 (F) INCUR ANY DEBT, OBLIGATION, OR LIABILITY.

8 (G) MERGE OR CONSOLIDATE WITH ANOTHER COMPANY.

9 (H) ENTER INTO ANY NEW REINSURANCE CONTRACT OR TREATY.

10 (4) AN INSURER SUBJECT TO AN ORDER UNDER THIS SECTION SHALL  
11 COMPLY WITH THE LAWFUL REQUIREMENTS OF THE COMMISSIONER AND, IF  
12 PLACED UNDER SUPERVISION, SHALL HAVE 60 DAYS FROM THE DATE THE  
13 SUPERVISION ORDER IS SERVED WITHIN WHICH TO COMPLY WITH THE  
14 COMMISSIONER'S REQUIREMENTS. IF THE INSURER FAILS TO COMPLY  
15 WITHIN THAT TIME, THE COMMISSIONER MAY INSTITUTE PROCEEDINGS  
16 UNDER SECTION 8112 OR 8117 TO HAVE A REHABILITATOR OR LIQUIDATOR  
17 APPOINTED OR TO EXTEND THE PERIOD OF SUPERVISION.

18 (5) THE NOTICE OF HEARING UNDER SUBSECTION (1) AND AN ORDER  
19 ISSUED PURSUANT TO SUBSECTION (1) SHALL BE SERVED UPON THE  
20 INSURER PURSUANT TO THE APPLICABLE RULES OF THE ADMINISTRATIVE  
21 PROCEDURES ACT OF 1969, ACT NO. 306 OF THE PUBLIC ACTS OF 1969,  
22 BEING SECTIONS 24.201 TO 24.328 OF THE MICHIGAN COMPILED LAWS.  
23 THE NOTICE OF HEARING SHALL STATE THE TIME AND PLACE OF HEARING,  
24 AND THE CONDUCT, CONDITION, OR GROUND UPON WHICH THE COMMISSIONER  
25 WOULD BASE HIS OR HER ORDER. UNLESS MUTUALLY AGREED BETWEEN THE  
26 COMMISSIONER AND THE INSURER, THE HEARING SHALL OCCUR NOT LESS  
27 THAN 10 DAYS NOR MORE THAN 30 DAYS AFTER NOTICE IS SERVED AND

1 SHALL BE EITHER IN INGHAM COUNTY OR IN SOME OTHER PLACE  
2 CONVENIENT TO THE PARTIES TO BE DESIGNATED BY THE COMMISSIONER.  
3 THE COMMISSIONER SHALL HOLD ALL HEARINGS UNDER SUBSECTION (1)  
4 PRIVATELY UNLESS THE INSURER REQUESTS A PUBLIC HEARING, IN WHICH  
5 CASE THE HEARING SHALL BE PUBLIC.

6 (6) AN INSURER SUBJECT TO AN ORDER UNDER SUBSECTION (2) MAY  
7 REQUEST A HEARING TO REVIEW THAT ORDER. SUCH A HEARING SHALL BE  
8 HELD AS PROVIDED IN SUBSECTION (5), BUT THE REQUEST FOR A HEARING  
9 SHALL NOT STAY THE EFFECT OF THE ORDER. IF THE COMMISSIONER  
10 ISSUES AN ORDER UNDER SUBSECTION (2), THE INSURER, AT ANY TIME,  
11 MAY WAIVE A COMMISSIONER'S HEARING AND APPLY FOR IMMEDIATE JUDI-  
12 CIAL RELIEF BY MEANS OF ANY REMEDY AFFORDED BY LAW WITHOUT FIRST  
13 EXHAUSTING ADMINISTRATIVE REMEDIES. SUBSEQUENT TO A HEARING, A  
14 PARTY TO THE PROCEEDINGS WHOSE INTERESTS ARE SUBSTANTIALLY  
15 AFFECTED SHALL BE ENTITLED TO JUDICIAL REVIEW OF AN ORDER ISSUED  
16 BY THE COMMISSIONER.

17 (7) DURING THE PERIOD OF SUPERVISION, THE INSURER MAY  
18 REQUEST THE COMMISSIONER TO REVIEW AN ACTION TAKEN OR PROPOSED TO  
19 BE TAKEN BY THE SUPERVISOR, SPECIFYING WHEREIN THE ACTION COM-  
20 PLAINED OF IS BELIEVED NOT TO BE IN THE BEST INTEREST OF THE  
21 INSURER.

22 (8) IF A PERSON HAS VIOLATED A SUPERVISION ORDER ISSUED  
23 UNDER THIS SECTION WHICH AS TO HIM OR HER WAS THEN STILL IN  
24 EFFECT, HE OR SHE MAY BE SENTENCED BY THE COURT TO PAY A FINE NOT  
25 EXCEEDING \$10,000.00.

26 (9) THE COMMISSIONER MAY APPLY FOR, AND THE CIRCUIT COURT  
27 MAY GRANT, A RESTRAINING ORDER, PRELIMINARY INJUNCTION, PERMANENT

1 INJUNCTION, AND ANY OTHER ORDER AS MAY BE CONSIDERED NECESSARY  
2 AND PROPER TO ENFORCE A SUPERVISION ORDER.

3       (10) IF A PERSON SUBJECT TO THE PROVISIONS OF THIS CHAPTER,  
4 INCLUDING THOSE PERSONS DESCRIBED IN SECTION 8106(1), KNOWINGLY  
5 VIOLATES A VALID ORDER OF THE COMMISSIONER ISSUED UNDER THE PRO-  
6 VISIONS OF THIS SECTION AND, AS A RESULT OF THE VIOLATION, THE  
7 NET WORTH OF THE INSURER SHALL BE REDUCED OR THE INSURER SHALL  
8 SUFFER LOSS IT WOULD NOT OTHERWISE HAVE SUFFERED, THAT PERSON  
9 SHALL BECOME PERSONALLY LIABLE TO THE INSURER FOR THE AMOUNT OF  
10 THE REDUCTION OR LOSS. THE COMMISSIONER OR SUPERVISOR IS AUTHO-  
11 RIZED TO BRING AN ACTION ON BEHALF OF THE INSURER IN THE CIRCUIT  
12 COURT FOR INGHAM COUNTY TO RECOVER THE AMOUNT OF THE REDUCTION OR  
13 LOSS, TOGETHER WITH COST.

14       SEC. 8110. (1) THE COMMISSIONER MAY FILE IN THE CIRCUIT  
15 COURT FOR INGHAM COUNTY A PETITION ALLEGING, WITH RESPECT TO A  
16 DOMESTIC INSURER:

17       (A) THAT THERE EXISTS GROUNDS JUSTIFYING A COURT ORDER FOR A  
18 FORMAL DELINQUENCY PROCEEDING AGAINST AN INSURER UNDER THIS  
19 CHAPTER.

20       (B) THAT THE INTERESTS OF POLICYHOLDERS, CREDITORS, OR THE  
21 PUBLIC WILL BE ENDANGERED BY DELAY.

22       (C) THE CONTENTS OF AN ORDER CONSIDERED NECESSARY BY THE  
23 COMMISSIONER.

24       (2) UPON A FILING UNDER SUBSECTION (1), THE COURT MAY ISSUE  
25 IMMEDIATELY AND WITHOUT A HEARING THE REQUESTED ORDER DIRECTING  
26 THE COMMISSIONER TO TAKE POSSESSION AND CONTROL OF ALL OR A PART  
27 OF THE PROPERTY, BOOKS, ACCOUNTS, DOCUMENTS, AND OTHER RECORDS OF



1 AN INSURER, AND OF THE PREMISES OCCUPIED BY THE INSURER FOR THE  
2 TRANSACTION OF ITS BUSINESS; AND UNTIL FURTHER ORDER OF THE COURT  
3 ENJOIN THE INSURER AND ITS OFFICERS, MANAGERS, AGENTS, AND  
4 EMPLOYEES FROM DISPOSITION OF ITS PROPERTY AND FROM THE TRANSAC-  
5 TION OF ITS BUSINESS EXCEPT WITH THE COMMISSIONER'S WRITTEN  
6 CONSENT.

7 (3) THE COURT SHALL SPECIFY IN THE ORDER THE DURATION OF THE  
8 ORDER, WHICH SHALL BE SUCH TIME AS THE COURT CONSIDERS NECESSARY  
9 FOR THE COMMISSIONER TO ASCERTAIN THE CONDITION OF THE INSURER.  
10 ON MOTION OF EITHER PARTY OR IN ITS OWN DISCRETION, THE COURT MAY  
11 HOLD HEARINGS, FROM TIME TO TIME, AS IT CONSIDERS DESIRABLE AFTER  
12 SUCH NOTICE AS IT CONSIDERS APPROPRIATE, AND MAY EXTEND, SHORTEN,  
13 OR MODIFY THE TERMS OF THE SEIZURE ORDER. THE COURT SHALL VACATE  
14 THE SEIZURE ORDER IF THE COMMISSIONER FAILS TO COMMENCE A FORMAL  
15 PROCEEDING UNDER THIS CHAPTER AFTER HAVING HAD A REASONABLE  
16 OPPORTUNITY TO DO SO. AN ORDER OF THE COURT PURSUANT TO A FORMAL  
17 PROCEEDING UNDER THIS ACT SHALL VACATE THE SEIZURE ORDER.

18 (4) ENTRY OF A SEIZURE ORDER UNDER THIS SECTION SHALL NOT  
19 CONSTITUTE AN ANTICIPATORY BREACH OF ANY INSURER CONTRACT.

20 (5) AN INSURER, SUBJECT TO AN EX PARTE ORDER UNDER THIS SEC-  
21 TION, MAY PETITION THE CIRCUIT COURT FOR INGHAM COUNTY AT ANY  
22 TIME AFTER THE ISSUANCE OF THE ORDER, FOR A HEARING AND REVIEW OF  
23 THE ORDER. THE COURT SHALL HOLD A HEARING AND REVIEW NOT MORE  
24 THAN 15 DAYS AFTER THE REQUEST. A HEARING UNDER THIS SUBSECTION  
25 MAY BE HELD PRIVATELY IN CHAMBERS AND SHALL BE HELD PRIVATELY IN  
26 CHAMBERS IF SO REQUESTED BY THE INSURER PROCEEDED AGAINST.

1 (6) IF, AT ANY TIME AFTER THE ISSUANCE OF AN EX PARTE ORDER,  
2 IT APPEARS TO THE COURT THAT A PERSON WHOSE INTEREST IS OR WILL  
3 BE SUBSTANTIALLY AFFECTED BY THE ORDER DID NOT APPEAR AT THE  
4 HEARING AND HAS NOT BEEN SERVED, THE COURT MAY ORDER THAT NOTICE  
5 BE GIVEN. AN ORDER THAT NOTICE BE GIVEN SHALL NOT STAY THE  
6 EFFECT OF AN ORDER PREVIOUSLY ISSUED BY THE COURT.

7 SEC. 8111. IN ALL PROCEEDINGS AND JUDICIAL REVIEW OF THESE  
8 PROCEEDINGS UNDER SECTIONS 8109 AND 8110, ALL RECORDS OF THE  
9 INSURER, OTHER DOCUMENTS, INSURANCE BUREAU FILES, AND COURT  
10 RECORDS AND PAPERS, SO FAR AS THEY PERTAIN TO OR ARE A PART OF  
11 THE RECORD OF THE PROCEEDINGS, SHALL BE AND REMAIN CONFIDENTIAL  
12 AND SHALL BE HELD BY THE CLERK OF THE COURT IN A CONFIDENTIAL  
13 FILE EXCEPT AS IS NECESSARY TO OBTAIN COMPLIANCE THEREWITH,  
14 UNLESS THE COURT, AFTER HEARING ARGUMENTS FROM THE PARTIES IN  
15 CHAMBERS, ORDERS OTHERWISE OR THE INSURER REQUESTS THAT THE  
16 MATTER BE MADE PUBLIC.

17 SEC. 8112. THE COMMISSIONER MAY APPLY BY PETITION TO THE  
18 CIRCUIT COURT FOR INGHAM COUNTY FOR AN ORDER AUTHORIZING THE COM-  
19 MISSIONER TO REHABILITATE A DOMESTIC INSURER OR AN ALIEN INSURER  
20 DOMICILED IN THIS STATE ON 1 OR MORE OF THE FOLLOWING GROUNDS:

21 (A) THE INSURER IS IN SUCH CONDITION THAT THE FURTHER TRANS-  
22 ACTION OF BUSINESS WOULD BE HAZARDOUS FINANCIALLY TO ITS POLICY-  
23 HOLDERS, CREDITORS, OR THE PUBLIC.

24 (B) THERE IS REASONABLE CAUSE TO BELIEVE THAT THERE HAS BEEN  
25 EMBEZZLEMENT FROM THE INSURER, WRONGFUL SEQUESTRATION OR DIVER-  
26 SION OF THE INSURER'S ASSETS, FORGERY OR FRAUD AFFECTING THE  
27 INSURER, OR OTHER ILLEGAL CONDUCT IN, BY, OR WITH RESPECT TO THE

1 INSURER THAT, IF ESTABLISHED, WOULD ENDANGER ASSETS IN AN AMOUNT  
2 THREATENING THE INSURER'S SOLVENCY.

3 (C) THE INSURER HAS FAILED TO REMOVE A PERSON WHO IN FACT  
4 HAS EXECUTIVE AUTHORITY WITH THE INSURER, WHETHER AN OFFICER,  
5 MANAGER, GENERAL AGENT, EMPLOYEE, OR OTHER PERSON, IF THE PERSON  
6 HAS BEEN FOUND AFTER NOTICE AND HEARING BY THE COMMISSIONER TO BE  
7 DISHONEST OR UNTRUSTWORTHY IN A WAY AFFECTING THE INSURER'S  
8 BUSINESS.

9 (D) CONTROL OF THE INSURER, WHETHER BY STOCK OWNERSHIP OR  
10 OTHERWISE, AND WHETHER DIRECT OR INDIRECT, IS IN A PERSON OR PER-  
11 SONS FOUND AFTER NOTICE AND HEARING TO BE UNTRUSTWORTHY.

12 (E) A PERSON WHO IN FACT HAS EXECUTIVE AUTHORITY WITH THE  
13 INSURER, WHETHER AN OFFICER, MANAGER, GENERAL AGENT, DIRECTOR OR  
14 TRUSTEE, EMPLOYEE, OR OTHER PERSON, HAS REFUSED TO BE EXAMINED  
15 UNDER OATH BY THE COMMISSIONER CONCERNING ITS AFFAIRS, WHETHER IN  
16 THIS STATE OR ELSEWHERE, AND AFTER REASONABLE NOTICE OF THE FACT,  
17 THE INSURER HAS FAILED PROMPTLY AND EFFECTIVELY TO TERMINATE THE  
18 EMPLOYMENT AND STATUS OF THE PERSON AND ALL OF HIS OR HER INFLU-  
19 ENCE ON MANAGEMENT.

20 (F) AFTER DEMAND BY THE COMMISSIONER, THE INSURER HAS FAILED  
21 TO PROMPTLY MAKE AVAILABLE FOR EXAMINATION ITS PROPERTY, BOOKS,  
22 ACCOUNTS, DOCUMENTS, OR OTHER RECORDS, OR THOSE OF A SUBSIDIARY  
23 OR RELATED COMPANY WITHIN THE CONTROL OF THE INSURER, OR THOSE OF  
24 A PERSON HAVING EXECUTIVE AUTHORITY WITH THE INSURER AND PERTAIN-  
25 ING TO THE INSURER.

26 (G) WITHOUT FIRST OBTAINING THE COMMISSIONER'S WRITTEN  
27 CONSENT, THE INSURER HAS TRANSFERRED, OR ATTEMPTED TO TRANSFER,

1 IN A MANNER CONTRARY TO LAW, SUBSTANTIALLY ITS ENTIRE PROPERTY OR  
2 BUSINESS, OR HAS ENTERED INTO A TRANSACTION THE EFFECT OF WHICH  
3 IS TO MERGE, CONSOLIDATE, OR REINSURE SUBSTANTIALLY ITS ENTIRE  
4 PROPERTY OR BUSINESS IN OR WITH THE PROPERTY OR BUSINESS OF ANY  
5 OTHER PERSON.

6 (H) THE INSURER OR ITS PROPERTY HAS BEEN OR IS THE SUBJECT  
7 OF AN APPLICATION FOR THE APPOINTMENT OF A RECEIVER, TRUSTEE,  
8 CUSTODIAN, CONSERVATOR, OR SEQUESTRATOR OR SIMILAR FIDUCIARY OF  
9 THE INSURER OR ITS PROPERTY OTHERWISE THAN AS AUTHORIZED UNDER  
10 THE INSURANCE LAWS OF THIS STATE, AND THE APPOINTMENT HAS BEEN  
11 MADE OR IS IMMINENT, AND THE APPOINTMENT MAY DENY THE COURTS OF  
12 THIS STATE OF JURISDICTION OR MIGHT PREJUDICE ORDERLY DELINQUENCY  
13 PROCEEDINGS UNDER THIS CHAPTER.

14 (I) WITHIN THE PREVIOUS 4 YEARS THE INSURER HAS WILLFULLY  
15 VIOLATED ITS CHARTER OR ARTICLES OF INCORPORATION, ITS BYLAWS, AN  
16 INSURANCE LAW OF THIS STATE, OR A VALID ORDER OF THE COMMISSIONER  
17 UNDER SECTION 8109.

18 (J) THE INSURER HAS FAILED TO PAY WITHIN 60 DAYS AFTER DUE  
19 DATE AN OBLIGATION TO A STATE OR A SUBDIVISION OF A STATE OR A  
20 JUDGMENT ENTERED IN A STATE, IF THE COURT IN WHICH THE JUDGMENT  
21 WAS ENTERED HAD JURISDICTION OVER THE SUBJECT MATTER. HOWEVER,  
22 NONPAYMENT SHALL NOT BE A GROUND UNTIL 60 DAYS AFTER A GOOD FAITH  
23 EFFORT BY THE INSURER TO CONTEST THE OBLIGATION HAS BEEN TERMI-  
24 NATED, WHETHER IT IS BEFORE THE COMMISSIONER OR THE COURT, OR THE  
25 INSURER HAS SYSTEMATICALLY ATTEMPTED TO COMPROMISE OR RENEGOTIATE  
26 PREVIOUSLY AGREED SETTLEMENTS WITH ITS CREDITORS ON THE GROUND  
27 THAT IT IS FINANCIALLY UNABLE TO PAY ITS OBLIGATIONS IN FULL.

1 (K) THE INSURER HAS FAILED TO FILE ITS ANNUAL REPORT OR  
2 OTHER FINANCIAL REPORT REQUIRED BY STATUTE WITHIN THE TIME  
3 ALLOWED BY LAW AND, AFTER WRITTEN DEMAND BY THE COMMISSIONER, HAS  
4 FAILED TO GIVE IMMEDIATELY AN ADEQUATE EXPLANATION.

5 (L) THE BOARD OF DIRECTORS OR THE HOLDERS OF A MAJORITY OF  
6 THE SHARES ENTITLED TO VOTE REQUEST OR CONSENT TO REHABILITATION  
7 UNDER THIS CHAPTER.

8 (M) IS FOUND, AFTER EXAMINATION, TO BE IN A CONDITION SO  
9 THAT IT COULD NOT PRESENTLY MEET THE REQUIREMENTS FOR INCORPORA-  
10 TION AND AUTHORIZATION.

11 SEC. 8113. (1) AN ORDER TO REHABILITATE THE BUSINESS OF A  
12 DOMESTIC INSURER, OR AN ALIEN INSURER DOMICILED IN THIS STATE,  
13 SHALL APPOINT THE COMMISSIONER AND HIS OR HER SUCCESSORS IN  
14 OFFICE AS THE REHABILITATOR, AND SHALL DIRECT THE REHABILITATOR  
15 TO TAKE IMMEDIATE POSSESSION OF THE ASSETS OF THE INSURER, AND TO  
16 ADMINISTER THEM UNDER THE COURT'S GENERAL SUPERVISION. THE  
17 FILING OR RECORDING OF THE ORDER WITH THE CLERK OF THE CIRCUIT  
18 COURT OR REGISTER OF DEEDS FOR THE COUNTY IN WHICH THE PRINCIPAL  
19 BUSINESS OF THE COMPANY IS CONDUCTED, OR THE COUNTY IN WHICH ITS  
20 PRINCIPAL OFFICE OR PLACE OF BUSINESS IS LOCATED, SHALL IMPART  
21 THE SAME NOTICE AS A DEED, BILL OF SALE, OR OTHER EVIDENCE OF  
22 TITLE DULY FILED OR RECORDED WITH THAT REGISTER OF DEEDS WOULD  
23 HAVE IMPARTED. THE ORDER TO REHABILITATE THE INSURER SHALL BY  
24 OPERATION OF LAW VEST TITLE TO ALL ASSETS OF THE INSURER IN THE  
25 REHABILITATOR.

1       (2) AN ORDER ISSUED UNDER THIS SECTION SHALL REQUIRE  
2 ACCOUNTING TO THE COURT BY THE REHABILITATOR. ACCOUNTINGS SHALL  
3 BE AT SUCH INTERVALS AS THE COURT SPECIFIES IN THE ORDER.

4       (3) ENTRY OF AN ORDER OF REHABILITATION SHALL NOT CONSTITUTE  
5 AN ANTICIPATORY BREACH OF ANY INSURER CONTRACTS.

6       SEC. 8114. (1) THE COMMISSIONER AS REHABILITATOR MAY  
7 APPOINT 1 OR MORE SPECIAL DEPUTIES, INCLUDING BUT NOT LIMITED TO  
8 THE MICHIGAN LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION AND  
9 THE MICHIGAN PROPERTY AND CASUALTY GUARANTY ASSOCIATION, WHO  
10 SHALL HAVE ALL THE POWERS AND RESPONSIBILITIES OF THE REHABILITA-  
11 TOR GRANTED UNDER THIS SECTION, AND THE COMMISSIONER MAY EMPLOY  
12 SUCH COUNSEL, CLERKS, AND ASSISTANTS AS CONSIDERED NECESSARY.  
13 THE COMPENSATION OF THE SPECIAL DEPUTY, COUNSEL, CLERKS, AND  
14 ASSISTANTS AND ALL EXPENSES OF TAKING POSSESSION OF THE INSURER  
15 AND OF CONDUCTING THE PROCEEDINGS SHALL BE FIXED BY THE COMMIS-  
16 SIONER, WITH THE APPROVAL OF THE COURT AND SHALL BE PAID OUT OF  
17 THE FUNDS OR ASSETS OF THE INSURER. THE PERSONS APPOINTED UNDER  
18 THIS SECTION SHALL SERVE AT THE PLEASURE OF THE COMMISSIONER. IF  
19 THE PROPERTY OF THE INSURER DOES NOT CONTAIN SUFFICIENT CASH OR  
20 LIQUID ASSETS TO DEFRAY THE COSTS INCURRED, THE COMMISSIONER MAY  
21 ADVANCE THE INCURRED COSTS OUT OF AN APPROPRIATION FOR THE MAIN-  
22 TENANCE OF THE INSURANCE BUREAU. AMOUNTS ADVANCED FOR EXPENSES  
23 OF ADMINISTRATION SHALL BE REPAID TO THE COMMISSIONER FOR THE USE  
24 OF THE INSURANCE BUREAU OUT OF THE FIRST AVAILABLE MONEY OF THE  
25 INSURER.

26       (2) THE REHABILITATOR MAY TAKE SUCH ACTION AS HE OR SHE  
27 CONSIDERS NECESSARY OR APPROPRIATE TO REFORM AND REVITALIZE THE

1 INSURER. HE OR SHE SHALL HAVE ALL THE POWERS OF THE DIRECTORS,  
2 OFFICERS, AND MANAGERS, WHOSE AUTHORITY SHALL BE SUSPENDED,  
3 EXCEPT AS THEY ARE REDELEGATED BY THE REHABILITATOR. HE OR SHE  
4 SHALL HAVE FULL POWER TO DIRECT AND MANAGE, TO HIRE AND DISCHARGE  
5 EMPLOYEES SUBJECT TO ANY CONTRACT RIGHTS THEY MAY HAVE, AND TO  
6 DEAL WITH THE PROPERTY AND BUSINESS OF THE INSURER.

7 (3) IF IT APPEARS TO THE REHABILITATOR THAT THERE HAS BEEN  
8 CRIMINAL OR TORTIOUS CONDUCT OR BREACH OF A CONTRACTUAL OR FIDU-  
9 CIARY OBLIGATION DETRIMENTAL TO THE INSURER BY AN OFFICER, MANAG-  
10 ER, AGENT, BROKER, EMPLOYEE, OR OTHER PERSON, HE OR SHE MAY  
11 PURSUE ALL APPROPRIATE LEGAL REMEDIES ON BEHALF OF THE INSURER.

12 (4) IF THE REHABILITATOR DETERMINES THAT REORGANIZATION,  
13 CONSOLIDATION, CONVERSION, REINSURANCE, MERGER, OR OTHER TRANS-  
14 FORMATION OF THE INSURER IS APPROPRIATE, HE OR SHE SHALL PREPARE  
15 A PLAN TO EFFECT THOSE CHANGES. UPON APPLICATION OF THE REHABIL-  
16 ITATOR FOR APPROVAL OF THE PLAN, AND AFTER NOTICE AND HEARINGS AS  
17 THE COURT MAY PRESCRIBE, THE COURT MAY EITHER APPROVE OR DISAP-  
18 PROVE THE PLAN PROPOSED, OR MAY MODIFY IT AND APPROVE IT AS  
19 MODIFIED. A PLAN APPROVED UNDER THIS SECTION SHALL BE, IN THE  
20 COURT'S JUDGMENT, FAIR AND EQUITABLE TO ALL PARTIES CONCERNED.  
21 IF THE PLAN IS APPROVED, THE REHABILITATOR SHALL IMPLEMENT THE  
22 PLAN. FOR A LIFE INSURER, THE PLAN PROPOSED MAY INCLUDE THE  
23 IMPOSITION OF LIENS UPON THE POLICIES OF THE COMPANY, IF ALL  
24 RIGHTS OF SHAREHOLDERS ARE FIRST RELINQUISHED. A PLAN FOR A LIFE  
25 INSURER MAY ALSO PROPOSE IMPOSITION OF A MORATORIUM UPON LOAN AND  
26 CASH SURRENDER RIGHTS UNDER POLICIES, FOR SUCH PERIOD AND TO SUCH  
27 AN EXTENT AS MAY BE NECESSARY.

1 (5) THE REHABILITATOR SHALL HAVE THE POWER UNDER  
2 SECTIONS 8126 AND 8127 TO AVOID FRAUDULENT TRANSFERS.

3 SEC. 8115. (1) A COURT IN THIS STATE BEFORE WHICH AN ACTION  
4 OR PROCEEDING IN WHICH THE INSURER IS A PARTY, OR IS OBLIGATED TO  
5 DEFEND A PARTY, IS PENDING WHEN A REHABILITATION ORDER AGAINST  
6 THE INSURER IS ENTERED SHALL STAY THE ACTION OR PROCEEDING FOR  
7 90 DAYS AND SUCH ADDITIONAL TIME AS IS NECESSARY FOR THE REHABIL-  
8 ITATOR TO OBTAIN PROPER REPRESENTATION AND PREPARE FOR FURTHER  
9 PROCEEDINGS. THE REHABILITATOR SHALL TAKE ACTION RESPECTING THE  
10 PENDING LITIGATION AS HE OR SHE CONSIDERS NECESSARY IN THE INTER-  
11 ESTS OF JUSTICE AND FOR THE PROTECTION OF CREDITORS, POLICYHOLD-  
12 ERS, AND THE PUBLIC. THE REHABILITATOR SHALL CONSIDER IMMEDI-  
13 ATELY ALL LITIGATION PENDING OUTSIDE THIS STATE AND SHALL PETI-  
14 TION THE COURTS HAVING JURISDICTION OVER THAT LITIGATION FOR  
15 STAYS IF NECESSARY TO PROTECT THE INSURER'S ESTATE.

16 (2) A STATUTE OF LIMITATIONS OR DEFENSE OF LACHES SHALL NOT  
17 RUN WITH RESPECT TO AN ACTION BY OR AGAINST AN INSURER BETWEEN  
18 THE FILING OF A PETITION FOR APPOINTMENT OF A REHABILITATOR FOR  
19 THAT INSURER AND THE ORDER GRANTING OR DENYING THAT PETITION. AN  
20 ACTION BY OR AGAINST THE INSURER THAT MIGHT HAVE BEEN COMMENCED  
21 WHEN THE PETITION WAS FILED MAY BE COMMENCED FOR AT LEAST 60 DAYS  
22 AFTER THE ORDER OF REHABILITATION IS ENTERED OR THE PETITION IS  
23 DENIED.

24 (3) A GUARANTY ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION  
25 COVERING LIFE OR HEALTH INSURANCE OR ANNUITIES SHALL HAVE STAND-  
26 ING TO APPEAR IN A COURT PROCEEDING CONCERNING THE REHABILITATION



1 OF A LIFE OR HEALTH INSURER IF THE ASSOCIATION IS OR MAY BECOME  
2 LIABLE TO ACT AS A RESULT OF THE REHABILITATION.

3       SEC. 8116. (1) IF THE COMMISSIONER BELIEVES FURTHER  
4 ATTEMPTS TO REHABILITATE AN INSURER WOULD SUBSTANTIALLY INCREASE  
5 THE RISK OF LOSS TO CREDITORS, POLICYHOLDERS, OR THE PUBLIC, OR  
6 WOULD BE FUTILE, THE COMMISSIONER MAY PETITION THE CIRCUIT COURT  
7 FOR INGHAM COUNTY FOR AN ORDER OF LIQUIDATION. A PETITION UNDER  
8 THIS SUBSECTION SHALL HAVE THE SAME EFFECT AS A PETITION UNDER  
9 SECTION 8117. THE CIRCUIT COURT SHALL PERMIT THE DIRECTORS OF  
10 THE INSURER TO TAKE SUCH ACTIONS AS ARE REASONABLY NECESSARY TO  
11 DEFEND AGAINST THE PETITION AND MAY ORDER PAYMENT FROM THE  
12 INSURER'S ESTATE FOR COSTS AND OTHER DEFENSE EXPENSES AS JUSTICE  
13 MAY REQUIRE.

14       (2) THE REHABILITATOR MAY PETITION AT ANY TIME THE CIRCUIT  
15 COURT FOR INGHAM COUNTY FOR AN ORDER TERMINATING REHABILITATION  
16 OF AN INSURER. THE COURT SHALL ALSO PERMIT THE INSURER'S DIREC-  
17 TORS TO PETITION THE COURT FOR AN ORDER TERMINATING REHABILITA-  
18 TION OF THE INSURER AND MAY ORDER PAYMENT FROM THE INSURER'S  
19 ESTATE FOR COSTS AND OTHER EXPENSES OF THE PETITION AS JUSTICE  
20 MAY REQUIRE. IF THE COURT FINDS THAT REHABILITATION HAS BEEN  
21 ACCOMPLISHED AND THAT GROUNDS FOR REHABILITATION UNDER  
22 SECTION 8112 NO LONGER EXIST, IT SHALL ORDER THAT THE INSURER BE  
23 RESTORED TO POSSESSION OF ITS PROPERTY AND THE CONTROL OF THE  
24 BUSINESS. THE COURT MAY ALSO MAKE THAT FINDING AND ISSUE THAT  
25 ORDER AT ANY TIME UPON ITS OWN MOTION.

26       SEC. 8117. THE COMMISSIONER MAY PETITION THE CIRCUIT COURT  
27 FOR INGHAM COUNTY FOR AN ORDER DIRECTING HIM OR HER TO LIQUIDATE

1 A DOMESTIC INSURER OR AN ALIEN INSURER DOMICILED IN THIS STATE ON  
2 THE FOLLOWING BASIS:

3 (A) ANY GROUND FOR AN ORDER OF REHABILITATION AS SPECIFIED  
4 IN SECTION 8112, WHETHER OR NOT THERE HAS BEEN A PRIOR ORDER  
5 DIRECTING THE REHABILITATION OF THE INSURER.

6 (B) THAT THE INSURER IS INSOLVENT.

7 (C) THAT THE INSURER IS IN SUCH CONDITION THAT THE FURTHER  
8 TRANSACTION OF BUSINESS WOULD BE HAZARDOUS, FINANCIALLY OR OTHER-  
9 WISE, TO ITS POLICYHOLDERS, ITS CREDITORS, OR THE PUBLIC.

10 SEC. 8118. (1) AN ORDER TO LIQUIDATE THE BUSINESS OF A  
11 DOMESTIC INSURER SHALL APPOINT THE COMMISSIONER AND HIS OR HER  
12 SUCCESSORS IN OFFICE AS LIQUIDATOR AND SHALL DIRECT THE LIQUIDA-  
13 TOR TO TAKE POSSESSION IMMEDIATELY OF THE INSURER'S ASSETS AND TO  
14 ADMINISTER THEM UNDER THE COURT'S GENERAL SUPERVISION. THE LIQ-  
15 UIDATOR SHALL BE VESTED BY OPERATION OF LAW WITH THE TITLE TO ALL  
16 OF THE PROPERTY, CONTRACTS, AND RIGHTS OF ACTION, AND ALL OF THE  
17 BOOKS AND RECORDS OF THE INSURER ORDERED LIQUIDATED, WHEREVER  
18 LOCATED, AS OF THE ENTRY OF THE FINAL ORDER OF LIQUIDATION. THE  
19 FILING OR RECORDING OF THE ORDER WITH THE CLERK OF THE CIRCUIT  
20 COURT AND THE REGISTER OF DEEDS OF THE COUNTY IN WHICH ITS PRIN-  
21 CIPAL OFFICE OR PLACE OF BUSINESS IS LOCATED; OR, IN THE CASE OF  
22 REAL ESTATE, WITH THE REGISTER OF DEEDS OF THE COUNTY WHERE THE  
23 PROPERTY IS LOCATED, SHALL IMPART THE SAME NOTICE AS A DEED, BILL  
24 OF SALE, OR OTHER EVIDENCE OF TITLE DULY FILED OR RECORDED WHICH  
25 THE REGISTER OF DEEDS WOULD HAVE IMPARTED.

26 (2) UPON ISSUANCE OF THE ORDER, THE RIGHTS AND LIABILITIES  
27 OF THE INSURER AND OF ITS CREDITORS, POLICYHOLDERS, SHAREHOLDERS,

1 MEMBERS, AND ALL OTHER PERSONS INTERESTED IN ITS ESTATE SHALL  
2 BECOME FIXED AS OF THE DATE OF ENTRY OF THE ORDER OF LIQUIDATION,  
3 EXCEPT AS PROVIDED IN SECTIONS 8119 AND 8137.

4 (3) AN ORDER TO LIQUIDATE THE BUSINESS OF AN ALIEN INSURER  
5 DOMICILED IN THIS STATE SHALL BE IN THE SAME TERMS AND HAVE THE  
6 SAME LEGAL EFFECT AS AN ORDER TO LIQUIDATE A DOMESTIC INSURER,  
7 EXCEPT THAT THE ASSETS AND THE BUSINESS IN THE UNITED STATES  
8 SHALL BE THE ONLY ASSETS AND BUSINESS INCLUDED IN THE ORDER.

9 (4) AT THE TIME OF PETITIONING FOR AN ORDER OF LIQUIDATION,  
10 OR AT ANY TIME THEREAFTER, THE COMMISSIONER, AFTER MAKING APPRO-  
11 PRIATE FINDINGS OF AN INSURER'S INSOLVENCY, MAY PETITION THE  
12 COURT FOR A JUDICIAL DECLARATION OF INSOLVENCY. AFTER PROVIDING  
13 NOTICE AND HEARING AS IT CONSIDERS PROPER, THE COURT MAY MAKE THE  
14 DECLARATION.

15 (5) AN ORDER ISSUED UNDER THIS SECTION SHALL REQUIRE  
16 ACCOUNTING TO THE COURT BY THE LIQUIDATOR. ACCOUNTINGS SHALL BE  
17 AT INTERVALS AS THE COURT SPECIFIES IN ITS ORDER.

18 SEC. 8119. (1) ALL POLICIES, OTHER THAN LIFE OR HEALTH  
19 INSURANCE OR ANNUITIES, IN EFFECT AT THE TIME OF ISSUANCE OF AN  
20 ORDER OF LIQUIDATION SHALL CONTINUE IN FORCE ONLY FOR THE LESSER  
21 OF:

22 (A) A PERIOD OF 30 DAYS FROM THE DATE OF ENTRY OF THE LIQUI-  
23 DATION ORDER.

24 (B) THE EXPIRATION OF THE POLICY COVERAGE.

25 (C) THE DATE THE INSURED REPLACES THE INSURANCE COVERAGE  
26 WITH EQUIVALENT INSURANCE IN ANOTHER INSURER OR OTHERWISE  
27 TERMINATES THE POLICY.

1 (D) THE DATE THE LIQUIDATOR EFFECTS A TRANSFER OF THE POLICY  
2 OBLIGATION PURSUANT TO SECTION 8121(1)(H).

3 (2) AN ORDER OF LIQUIDATION UNDER SECTION 8118 SHALL TERMI-  
4 NATE COVERAGES AT THE TIME SPECIFIED IN SUBSECTION (1) FOR PUR-  
5 POSES OF ANY OTHER STATUTE.

6 (3) POLICIES OF LIFE OR HEALTH INSURANCE OR ANNUITIES SHALL  
7 CONTINUE IN FORCE FOR SUCH PERIOD AND UNDER SUCH TERMS AS IS PRO-  
8 VIDED FOR BY AN APPLICABLE GUARANTY ASSOCIATION OR FOREIGN GUAR-  
9 ANTY ASSOCIATION.

10 (4) POLICIES OF LIFE OR HEALTH INSURANCE OR ANNUITIES OR ANY  
11 PERIOD OR COVERAGE OF SUCH POLICIES NOT COVERED BY A GUARANTY  
12 ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION SHALL TERMINATE UNDER  
13 SUBSECTIONS (1) AND (2).

14 SEC. 8120. THE COMMISSIONER MAY PETITION FOR AN ORDER DIS-  
15 SOLVING THE CORPORATE EXISTENCE OF A DOMESTIC INSURER OR THE  
16 UNITED STATES BRANCH OF AN ALIEN INSURER DOMICILED IN THIS STATE  
17 AT THE TIME HE OR SHE APPLIES FOR A LIQUIDATION ORDER. THE COURT  
18 SHALL ORDER DISSOLUTION OF THE CORPORATION UPON PETITION BY THE  
19 COMMISSIONER UPON OR AFTER THE GRANTING OF A LIQUIDATION ORDER.  
20 IF THE DISSOLUTION HAS NOT PREVIOUSLY BEEN ORDERED, IT SHALL BE  
21 EFFECTED BY OPERATION OF LAW UPON THE DISCHARGE OF THE LIQUIDATOR  
22 IF THE INSURER IS INSOLVENT AND MAY BE ORDERED BY THE COURT UPON  
23 THE DISCHARGE OF THE LIQUIDATOR IF THE INSURER IS UNDER A LIQUI-  
24 DATION ORDER FOR SOME OTHER REASON.

25 SEC. 8121. (1) THE LIQUIDATOR SHALL HAVE THE POWER TO DO  
26 THE FOLLOWING:

1 (A) TO APPOINT A SPECIAL DEPUTY, INCLUDING, BUT NOT LIMITED  
2 TO, THE MICHIGAN LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION  
3 WITH ITS CONSENT OR THE MICHIGAN PROPERTY AND CASUALTY GUARANTY  
4 ASSOCIATION WITH ITS CONSENT TO ACT FOR HIM OR HER UNDER THIS  
5 CHAPTER AND TO DETERMINE THE SPECIAL DEPUTY'S REASONABLE  
6 COMPENSATION. THE SPECIAL DEPUTY SHALL HAVE ALL POWERS OF THE  
7 LIQUIDATOR GRANTED BY THIS CHAPTER. THE SPECIAL DEPUTY SHALL  
8 SERVE AT THE PLEASURE OF THE LIQUIDATOR.

9 (B) TO EMPLOY EMPLOYEES AND AGENTS, LEGAL COUNSEL, ACTU-  
10 ARIES, ACCOUNTANTS, APPRAISERS, CONSULTANTS, AND SUCH OTHER PER-  
11 SONNEL AS HE OR SHE CONSIDERS NECESSARY TO ASSIST IN THE  
12 LIQUIDATION.

13 (C) TO FIX THE REASONABLE COMPENSATION OF EMPLOYEES AND  
14 AGENTS, LEGAL COUNSEL, ACTUARIES, ACCOUNTANTS, COURT'S APPRAIS-  
15 ERS, AND CONSULTANTS WITH THE COURT'S APPROVAL.

16 (D) TO PAY REASONABLE COMPENSATION TO PERSONS APPOINTED AND  
17 TO DEFRAY FROM THE FUNDS OR ASSETS OF THE INSURER ALL EXPENSES OF  
18 TAKING POSSESSION OF, CONSERVING, CONDUCTING, LIQUIDATING, DIS-  
19 POSING OF, OR OTHERWISE DEALING WITH, THE INSURER'S BUSINESS AND  
20 PROPERTY. IF THE INSURER'S PROPERTY DOES NOT CONTAIN SUFFICIENT  
21 CASH OR LIQUID ASSETS TO DEFRAY THE COSTS INCURRED, THE COMMIS-  
22 SIONER MAY ADVANCE THE INCURRED COSTS OUT OF AN APPROPRIATION FOR  
23 THE MAINTENANCE OF THE INSURANCE BUREAU. AMOUNTS ADVANCED FOR  
24 EXPENSES OF ADMINISTRATION SHALL BE REPAYED TO THE COMMISSIONER  
25 FOR THE USE OF THE INSURANCE BUREAU OUT OF THE FIRST AVAILABLE  
26 MONEY OF THE INSURER.

1 (E) TO HOLD HEARINGS, TO SUBPOENA WITNESSES TO COMPEL THEIR  
2 ATTENDANCE, TO ADMINISTER OATHS, TO EXAMINE A PERSON UNDER OATH,  
3 AND TO COMPEL A PERSON TO SUBSCRIBE TO HIS OR HER TESTIMONY AFTER  
4 IT HAS BEEN CORRECTLY REDUCED TO WRITING; AND IN CONNECTION WITH  
5 THESE POWERS TO REQUIRE THE PRODUCTION OF BOOKS, PAPERS, RECORDS,  
6 OR OTHER DOCUMENTS WHICH HE OR SHE CONSIDERS RELEVANT TO THE  
7 INQUIRY.

8 (F) TO COLLECT ALL DEBTS AND MONEY DUE AND CLAIMS BELONGING  
9 TO THE INSURER, WHEREVER LOCATED, AND FOR THIS PURPOSE:

10 (i) TO INSTITUTE TIMELY ACTION IN OTHER JURISDICTIONS TO  
11 FORESTALL GARNISHMENT AND ATTACHMENT PROCEEDINGS AGAINST DEBTS.

12 (ii) TO DO OTHER ACTS AS ARE NECESSARY OR EXPEDIENT TO COL-  
13 LECT, CONSERVE, OR PROTECT THE ASSETS OR PROPERTY, INCLUDING THE  
14 POWER TO SELL, COMPOUND, COMPROMISE, OR ASSIGN DEBTS FOR PURPOSES  
15 OF COLLECTION UPON TERMS AND CONDITIONS AS HE OR SHE CONSIDERS  
16 BEST.

17 (iii) TO PURSUE A CREDITOR'S REMEDIES AVAILABLE TO ENFORCE  
18 THE CREDITOR'S CLAIMS.

19 (G) TO CONDUCT PUBLIC AND PRIVATE SALES OF THE INSURER'S  
20 PROPERTY.

21 (H) TO USE ASSETS OF THE INSURER'S ESTATE UNDER A LIQUIDA-  
22 TION ORDER TO TRANSFER POLICY OBLIGATIONS TO A SOLVENT ASSUMING  
23 INSURER, IF THE TRANSFER CAN BE ARRANGED WITHOUT PREJUDICE TO  
24 APPLICABLE PRIORITIES UNDER SECTION 8142.

25 (I) TO ACQUIRE, HYPOTHECATE, ENCUMBER, LEASE, IMPROVE, SELL,  
26 TRANSFER, ABANDON, OR OTHERWISE DISPOSE OF, OR DEAL WITH, INSURER  
27 PROPERTY AT ITS MARKET VALUE OR UPON TERMS AND CONDITIONS AS ARE

1 FAIR AND REASONABLE. HE OR SHE SHALL ALSO HAVE POWER TO EXECUTE,  
2 ACKNOWLEDGE, AND DELIVER ANY AND ALL DEEDS, ASSIGNMENTS,  
3 RELEASES, AND OTHER INSTRUMENTS NECESSARY OR PROPER TO EFFECTUATE  
4 THE SALE OF PROPERTY OR OTHER TRANSACTION IN CONNECTION WITH THE  
5 LIQUIDATION.

6 (J) TO BORROW MONEY ON THE SECURITY OF THE INSURER'S ASSETS  
7 OR TO BORROW MONEY WITHOUT SECURITY AND TO EXECUTE AND DELIVER  
8 ALL DOCUMENTS NECESSARY TO THAT TRANSACTION FOR THE PURPOSE OF  
9 FACILITATING THE LIQUIDATION.

10 (K) TO ENTER INTO CONTRACTS NECESSARY TO CARRY OUT THE ORDER  
11 TO LIQUIDATE, AND TO AFFIRM OR DISAVOW ANY CONTRACTS TO WHICH THE  
12 INSURER IS A PARTY.

13 (L) TO CONTINUE TO PROSECUTE AND TO INSTITUTE IN THE NAME OF  
14 THE INSURER OR IN HIS OR HER OWN NAME SUITS AND OTHER LEGAL PRO-  
15 CEEDINGS, IN THIS STATE OR ELSEWHERE, AND TO ABANDON THE PROSECU-  
16 TION OF CLAIMS HE OR SHE CONSIDERS UNPROFITABLE TO PURSUE  
17 FURTHER. IF THE INSURER IS DISSOLVED UNDER SECTION 8120, HE OR  
18 SHE SHALL HAVE THE POWER TO APPLY TO ANY COURT IN THIS STATE OR  
19 ELSEWHERE FOR LEAVE TO SUBSTITUTE HIMSELF OR HERSELF FOR THE  
20 INSURER AS PLAINTIFF.

21 (M) TO PROSECUTE AN ACTION WHICH MAY EXIST ON BEHALF OF THE  
22 CREDITORS, MEMBERS, POLICYHOLDERS, OR SHAREHOLDERS OF THE INSURER  
23 AGAINST AN OFFICER OF THE INSURER OR ANOTHER PERSON.

24 (N) TO REMOVE RECORDS AND PROPERTY OF THE INSURER TO THE  
25 COMMISSIONER'S OFFICES OR TO SUCH OTHER PLACE AS MAY BE CONVEN-  
26 IENT FOR THE PURPOSES OF EFFICIENT AND ORDERLY EXECUTION OF THE  
27 LIQUIDATION. GUARANTY ASSOCIATIONS AND FOREIGN GUARANTY

1 ASSOCIATIONS SHALL HAVE SUCH REASONABLE ACCESS TO THE RECORDS OF  
2 THE INSURER AS IS NECESSARY FOR THEM TO CARRY OUT THEIR STATUTORY  
3 OBLIGATIONS.

4 (O) TO DEPOSIT IN 1 OR MORE BANKS IN THIS STATE SUCH SUMS AS  
5 ARE REQUIRED FOR MEETING CURRENT ADMINISTRATION EXPENSES AND DIV-  
6 IDEND DISTRIBUTIONS.

7 (P) TO INVEST ALL SUMS NOT CURRENTLY NEEDED, UNLESS THE  
8 COURT ORDERS OTHERWISE.

9 (Q) TO FILE ANY NECESSARY DOCUMENTS FOR RECORDING IN THE  
10 OFFICE OF ANY REGISTER OF DEEDS IN THIS STATE OR ELSEWHERE WHERE  
11 PROPERTY OF THE INSURER IS LOCATED.

12 (R) TO ASSERT ALL DEFENSES AVAILABLE TO THE INSURER AS  
13 AGAINST THIRD PERSONS, INCLUDING STATUTES OF LIMITATION, STATUTES  
14 OF FRAUDS, AND THE DEFENSE OF USURY. A WAIVER OF A DEFENSE BY  
15 THE INSURER AFTER A PETITION IN LIQUIDATION HAS BEEN FILED SHALL  
16 NOT BIND THE LIQUIDATOR. IF A GUARANTY ASSOCIATION OR FOREIGN  
17 GUARANTY ASSOCIATION HAS AN OBLIGATION TO DEFEND A SUIT, THE LIQ-  
18 UIDATOR SHALL GIVE PRECEDENCE TO THAT OBLIGATION AND MAY DEFEND  
19 ONLY IN THE ABSENCE OF A DEFENSE BY THE GUARANTY ASSOCIATIONS.

20 (S) TO EXERCISE AND ENFORCE ALL THE RIGHTS, REMEDIES, AND  
21 POWERS OF A CREDITOR, SHAREHOLDER, POLICYHOLDER, OR MEMBER,  
22 INCLUDING THE POWER TO AVOID A TRANSFER OR LIEN THAT MAY BE GIVEN  
23 BY THE GENERAL LAW AND THAT IS NOT INCLUDED IN SECTIONS 8126 TO  
24 8128.

25 (T) TO INTERVENE IN A PROCEEDING WHEREVER INSTITUTED THAT  
26 MIGHT LEAD TO THE APPOINTMENT OF A RECEIVER OR TRUSTEE AND TO ACT  
27 AS THE RECEIVER OR TRUSTEE WHENEVER THE APPOINTMENT IS OFFERED.



1 (U) TO ENTER INTO AGREEMENTS WITH A RECEIVER OR COMMISSIONER  
2 OF ANOTHER STATE RELATING TO THE REHABILITATION, LIQUIDATION,  
3 CONSERVATION, OR DISSOLUTION OF AN INSURER DOING BUSINESS IN BOTH  
4 STATES.

5 (V) TO EXERCISE ALL POWERS NOW HELD OR HEREAFTER CONFERRED  
6 UPON RECEIVERS BY THE LAWS OF THIS STATE NOT INCONSISTENT WITH  
7 THE PROVISIONS OF THIS CHAPTER.

8 (2) IF A COMPANY PLACED IN LIQUIDATION ISSUED LIABILITY POL-  
9 ICIES ON A CLAIMS MADE BASIS, WHICH PROVIDED AN OPTION TO PUR-  
10 CHASE AN EXTENDED PERIOD TO REPORT CLAIMS, THEN THE LIQUIDATOR  
11 MAY MAKE AVAILABLE TO HOLDERS OF THOSE POLICIES, FOR A CHARGE, AN  
12 EXTENDED PERIOD TO REPORT CLAIMS AS STATED IN THIS CHAPTER. THE  
13 EXTENDED REPORTING PERIOD SHALL BE MADE AVAILABLE ONLY TO THOSE  
14 INSURED WHO HAVE NOT SECURED SUBSTITUTE COVERAGE. THE EXTENDED  
15 PERIOD MADE AVAILABLE BY THE LIQUIDATOR SHALL BEGIN UPON TERMINA-  
16 TION OF AN EXTENDED PERIOD TO REPORT CLAIMS IN THE BASIC POLICY  
17 AND SHALL END AT THE EARLIER OF THE FINAL DATE FOR FILING OF  
18 CLAIMS IN THE LIQUIDATION PROCEEDING OR 18 MONTHS FROM THE ORDER  
19 OF LIQUIDATION.

20 (3) THE EXTENDED PERIOD TO REPORT CLAIMS MADE AVAILABLE BY  
21 THE LIQUIDATOR SHALL BE SUBJECT TO THE TERMS OF THE POLICY TO  
22 WHICH IT RELATES. THE LIQUIDATOR SHALL MAKE AVAILABLE THE  
23 EXTENDED PERIOD WITHIN 60 DAYS AFTER THE ORDER OF LIQUIDATION AT  
24 A CHARGE TO BE DETERMINED BY THE LIQUIDATOR SUBJECT TO THE  
25 COURT'S APPROVAL. THE OFFER SHALL BE CONSIDERED REJECTED UNLESS  
26 THE OFFER IS ACCEPTED IN WRITING AND THE CHARGE IS PAID WITHIN  
27 90 DAYS AFTER THE ORDER OF LIQUIDATION. COMMISSIONS, PREMIUM

1 TAXES, ASSESSMENTS, OR OTHER FEES SHALL NOT BE DUE ON THE CHARGE  
2 PERTAINING TO THE EXTENDED PERIOD TO REPORT CLAIMS.

3 (4) THE ENUMERATION IN THIS SECTION OF THE POWERS AND  
4 AUTHORITY OF THE LIQUIDATOR SHALL NOT BE CONSTRUED AS A LIMITA-  
5 TION UPON HIM OR HER, AND IT SHALL NOT EXCLUDE IN ANY MANNER HIS  
6 OR HER RIGHT TO DO OTHER ACTS NOT SPECIFICALLY ENUMERATED IN THIS  
7 SECTION OR OTHERWISE PROVIDED FOR IF NECESSARY OR APPROPRIATE FOR  
8 THE ACCOMPLISHMENT OF OR IN AID OF THE PURPOSE OF LIQUIDATION.

9 SEC. 8122. (1) UNLESS THE COURT OTHERWISE DIRECTS, THE LIQ-  
10 UIDATOR SHALL GIVE OR CAUSE TO BE GIVEN NOTICE OF THE LIQUIDATION  
11 ORDER AS SOON AS POSSIBLE AS FOLLOWS:

12 (A) BY FIRST-CLASS MAIL AND EITHER BY TELEGRAM OR TELEPHONE  
13 TO THE INSURANCE COMMISSIONER OF EACH JURISDICTION IN WHICH THE  
14 INSURER IS DOING BUSINESS.

15 (B) BY FIRST-CLASS MAIL TO EACH GUARANTY ASSOCIATION OR FOR-  
16 EIGN GUARANTY ASSOCIATION WHICH IS OR MAY BECOME OBLIGATED AS A  
17 RESULT OF THE LIQUIDATION.

18 (C) BY FIRST CLASS MAIL TO ALL INSURANCE AGENTS OF THE  
19 INSURER.

20 (D) BY FIRST CLASS MAIL TO ALL PERSONS KNOWN OR REASONABLY  
21 EXPECTED TO HAVE CLAIMS AGAINST THE INSURER INCLUDING ALL POLICY-  
22 HOLDERS, AT THEIR LAST KNOWN ADDRESS AS INDICATED BY THE RECORDS  
23 OF THE INSURER.

24 (E) BY PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION IN  
25 THE COUNTY IN WHICH THE INSURER HAS ITS PRINCIPAL PLACE OF BUSI-  
26 NESS AND IN OTHER LOCATIONS AS THE LIQUIDATOR CONSIDERS  
27 APPROPRIATE.

1       (2) NOTICE TO POTENTIAL CLAIMANTS UNDER SUBSECTION (1) SHALL  
2 REQUIRE CLAIMANTS TO FILE WITH THE LIQUIDATOR THEIR CLAIMS  
3 TOGETHER WITH PROPER PROOFS AS REQUIRED UNDER SECTION 8136 ON OR  
4 BEFORE A DATE THE LIQUIDATOR SHALL SPECIFY IN THE NOTICE.  
5 ALTHOUGH AN EARLIER DATE MAY BE SET BY THE LIQUIDATOR, THE LAST  
6 DAY TO FILE CLAIMS SHALL BE NOT LATER THAN 18 MONTHS FOLLOWING  
7 THE ORDER OF LIQUIDATION. THE LIQUIDATOR NEED NOT REQUIRE PER-  
8 SONS CLAIMING CASH SURRENDER VALUES OR OTHER INVESTMENT VALUES IN  
9 LIFE INSURANCE AND ANNUITIES TO FILE A CLAIM. ALL CLAIMANTS  
10 SHALL HAVE A DUTY TO KEEP THE LIQUIDATOR INFORMED OF ANY CHANGES  
11 OF ADDRESS.

12       (3) IF NOTICE IS GIVEN IN ACCORDANCE WITH THIS SECTION, THE  
13 DISTRIBUTION OF ASSETS OF THE INSURER UNDER THIS CHAPTER SHALL BE  
14 CONCLUSIVE WITH RESPECT TO ALL CLAIMANTS, WHETHER OR NOT THEY  
15 RECEIVED NOTICE.

16       SEC. 8123. (1) EVERY AGENT WHO RECEIVES NOTICE IN THE FORM  
17 PRESCRIBED IN SECTION 8122 THAT AN INSURER WHICH HE OR SHE REPRESENTS AS AN AGENT IS THE SUBJECT OF A LIQUIDATION ORDER SHALL  
18 WITHIN 15 DAYS OF THE NOTICE GIVE NOTICE OF THE LIQUIDATION ORDER  
19 TO EACH POLICYHOLDER OR OTHER PERSON NAMED IN A POLICY ISSUED  
20 THROUGH THE AGENT BY THE INSURED. THE NOTICE SHALL BE SENT BY  
21 FIRST CLASS MAIL TO THE LAST ADDRESS CONTAINED IN THE AGENT'S  
22 RECORDS FOR EACH POLICYHOLDER OR OTHER PERSON NAMED IN THE POLICY  
23 ISSUED THROUGH THE AGENT BY THE INSURER, IF THE AGENT HAS A  
24 RECORD OF THE ADDRESS OF THE POLICYHOLDER OR OTHER PERSON. A  
25 POLICY SHALL BE CONSIDERED ISSUED THROUGH AN AGENT, IF THE AGENT  
26 HAS A PROPERTY INTEREST IN THE EXPIRATION OF THE POLICY OR IF THE

1 AGENT HAS HAD IN HIS OR HER POSSESSION A COPY OF THE DECLARATIONS  
2 OF THE POLICY AT ANY TIME DURING THE LIFE OF THE POLICY, UNLESS  
3 THE PROPERTY INTEREST HAS BEEN TRANSFERRED TO ANOTHER. THE WRIT-  
4 TEN NOTICE SHALL INCLUDE THE NAME AND ADDRESS OF THE INSURER, THE  
5 NAME AND ADDRESS OF THE AGENT, IDENTIFICATION OF THE POLICY  
6 IMPAIRED, AND THE NATURE OF THE IMPAIRMENT INCLUDING TERMINATION  
7 OF COVERAGE, AS DESCRIBED IN SECTION 8119. NOTICE BY A GENERAL  
8 AGENT SATISFIES THE NOTICE REQUIREMENT FOR AN AGENT UNDER CON-  
9 TRACT TO THE GENERAL AGENT. EACH AGENT OBLIGATED TO GIVE NOTICE  
10 UNDER THIS SECTION SHALL FILE A REPORT OF COMPLIANCE WITH THE  
11 LIQUIDATOR.

12 (2) AN AGENT FAILING TO GIVE NOTICE OR FILE A REPORT OF COM-  
13 PLIANCE AS REQUIRED IN SUBSECTION (1) MAY BE SUBJECT TO PAYMENT  
14 OF A PENALTY OF NOT MORE THAN \$1,000.00 AND MAY HAVE HIS OR HER  
15 LICENSE SUSPENDED AFTER A HEARING HELD BY THE COMMISSIONER.

16 (3) THE LIQUIDATOR MAY WAIVE THE DUTIES IMPOSED BY THIS SEC-  
17 TION IF HE OR SHE DETERMINES THAT OTHER NOTICE TO THE POLICYHOLD-  
18 ERS OF THE INSURER UNDER LIQUIDATION IS ADEQUATE.

19 SEC. 8124. (1) UPON ISSUANCE OF AN ORDER APPOINTING A LIQ-  
20 UIDATOR OF A DOMESTIC INSURER OR OF AN ALIEN INSURER DOMICILED IN  
21 THIS STATE, AN ACTION AT LAW OR EQUITY SHALL NOT BE BROUGHT  
22 AGAINST THE INSURER OR LIQUIDATOR, WHETHER IN THIS STATE OR ELSE-  
23 WHERE, AND ANY SUCH EXISTING ACTION SHALL NOT BE MAINTAINED OR  
24 FURTHER PRESENTED AFTER ISSUANCE OF SUCH ORDER. THE COURTS OF  
25 THIS STATE SHALL GIVE FULL FAITH AND CREDIT TO INJUNCTIONS  
26 AGAINST THE LIQUIDATOR OR THE COMPANY OR THE CONTINUATION OF  
27 EXISTING ACTIONS AGAINST THE LIQUIDATOR OR THE COMPANY, IF SUCH

1 INJUNCTIONS ARE INCLUDED IN AN ORDER TO LIQUIDATE AN INSURER  
2 ISSUED PURSUANT TO CORRESPONDING PROVISIONS IN OTHER STATES. IF,  
3 IN THE LIQUIDATOR'S JUDGMENT, PROTECTION OF THE ESTATE OF THE  
4 INSURER NECESSITATES INTERVENTION IN AN ACTION AGAINST THE  
5 INSURER THAT IS PENDING OUTSIDE THIS STATE, HE OR SHE MAY INTER-  
6 VENE IN THE ACTION. THE LIQUIDATOR MAY DEFEND AN ACTION IN WHICH  
7 HE OR SHE INTERVENES UNDER THIS SECTION AT THE EXPENSE OF THE  
8 ESTATE OF THE INSURER.

9 (2) THE LIQUIDATOR MAY, UPON OR AFTER AN ORDER FOR LIQUIDA-  
10 TION, WITHIN 2 YEARS OR SUCH TIME IN ADDITION TO 2 YEARS AS  
11 APPLICABLE LAW MAY PERMIT, INSTITUTE AN ACTION OR PROCEEDING ON  
12 BEHALF OF THE ESTATE OF THE INSURER UPON ANY CAUSE OF ACTION  
13 AGAINST WHICH THE PERIOD OF LIMITATION FIXED BY APPLICABLE LAW  
14 HAS NOT EXPIRED AT THE TIME OF THE FILING OF THE PETITION UPON  
15 WHICH THE ORDER IS ENTERED. IF, BY AGREEMENT, A PERIOD OF LIMI-  
16 TATION IS FIXED FOR INSTITUTING A SUIT OR PROCEEDING UPON A  
17 CLAIM, OR FOR FILING A CLAIM, PROOF OF CLAIM, PROOF OF LOSS,  
18 DEMAND, NOTICE, OR THE LIKE, OR IF IN A PROCEEDING, JUDICIAL OR  
19 OTHERWISE, A PERIOD OF LIMITATION IS FIXED, EITHER IN THE PRO-  
20 CEEDING OR BY APPLICABLE LAW, FOR TAKING ACTION, FILING A CLAIM  
21 OR PLEADING, OR DOING ANY ACT, AND THE PERIOD HAD NOT EXPIRED AT  
22 THE DATE OF THE FILING OF THE PETITION, THE LIQUIDATOR MAY, FOR  
23 THE BENEFIT OF THE ESTATE, TAKE ACTION OR DO AN ACT REQUIRED OF  
24 OR PERMITTED TO THE INSURER WITHIN A PERIOD OF 180 DAYS SUBSE-  
25 QUENT TO THE ENTRY OF AN ORDER FOR LIQUIDATION, OR WITHIN SUCH  
26 FURTHER PERIOD AS IS SHOWN TO THE SATISFACTION OF THE COURT NOT  
27 TO BE UNFAIRLY PREJUDICIAL TO THE OTHER PARTY.

1 (3) A STATUTE OF LIMITATION OR DEFENSE OF LACHES SHALL NOT  
2 RUN WITH RESPECT TO AN ACTION AGAINST AN INSURER BETWEEN THE  
3 FILING OF A PETITION FOR LIQUIDATION AGAINST AN INSURER AND THE  
4 DENIAL OF THE PETITION. AN ACTION AGAINST THE INSURER THAT MIGHT  
5 HAVE BEEN COMMENCED WHEN THE PETITION WAS FILED MAY BE COMMENCED  
6 AT LEAST WITHIN 60 DAYS AFTER THE PETITION IS DENIED.

7 (4) A GUARANTY ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION  
8 SHALL HAVE STANDING TO APPEAR IN A COURT PROCEEDING CONCERNING  
9 THE LIQUIDATION OF AN INSURER IF THE ASSOCIATION IS OR MAY BECOME  
10 LIABLE TO ACT AS A RESULT OF THE LIQUIDATION.

11 SEC. 8125. (1) AS SOON AS PRACTICABLE AFTER THE LIQUIDATION  
12 ORDER BUT NOT LATER THAN 120 DAYS AFTER THE LIQUIDATION ORDER,  
13 THE LIQUIDATOR SHALL PREPARE IN DUPLICATE A LIST OF THE INSURER'S  
14 ASSETS. THE LIST SHALL BE AMENDED OR SUPPLEMENTED FROM TIME TO  
15 TIME AS THE LIQUIDATOR MAY DETERMINE. ONE COPY SHALL BE FILED IN  
16 THE OFFICE OF THE CLERK OF THE CIRCUIT COURT AND 1 COPY SHALL BE  
17 RETAINED FOR THE LIQUIDATOR'S FILES. ALL AMENDMENTS AND SUPPLE-  
18 MENTS SHALL BE SIMILARLY FILED.

19 (2) THE LIQUIDATOR SHALL REDUCE THE ASSETS TO A DEGREE OF  
20 LIQUIDITY THAT IS CONSISTENT WITH THE EFFECTIVE EXECUTION OF THE  
21 LIQUIDATION.

22 (3) A SUBMISSION TO THE COURT FOR DISBURSEMENT OF ASSETS IN  
23 ACCORDANCE WITH SECTION 8134 FULFILLS THE REQUIREMENTS OF SUBSEC-  
24 TION (1).

25 SEC. 8126. (1) EVERY TRANSFER MADE OR SUFFERED AND EVERY  
26 OBLIGATION INCURRED BY AN INSURER WITHIN 1 YEAR PRIOR TO THE  
27 FILING OF A SUCCESSFUL PETITION FOR REHABILITATION OR LIQUIDATION

1 UNDER THIS CHAPTER IS FRAUDULENT AS TO THEN EXISTING AND FUTURE  
2 CREDITORS, IF MADE OR INCURRED WITHOUT FAIR CONSIDERATION OR WITH  
3 ACTUAL INTENT TO HINDER, DELAY, OR DEFRAUD EITHER EXISTING OR  
4 FUTURE CREDITORS. A TRANSFER MADE OR AN OBLIGATION INCURRED BY  
5 AN INSURER ORDERED TO BE REHABILITATED OR LIQUIDATED UNDER THIS  
6 CHAPTER, WHICH IS FRAUDULENT UNDER THIS SECTION, MAY BE AVOIDED  
7 BY THE RECEIVER, EXCEPT AS TO A PERSON WHO IN GOOD FAITH IS A  
8 PURCHASER, LIENOR, OR OBLIGEE, FOR A PRESENT FAIR EQUIVALENT  
9 VALUE, AND EXCEPT THAT A PURCHASER, LIENOR, OR OBLIGEE, WHO IN  
10 GOOD FAITH HAS GIVEN A CONSIDERATION LESS THAN FAIR EQUIVALENT  
11 VALUE FOR THE TRANSFER, LIEN, OR OBLIGATION MAY RETAIN THE PROP-  
12 ERTY, LIEN, OR OBLIGATION AS SECURITY FOR REPAYMENT. THE COURT,  
13 ON DUE NOTICE, MAY ORDER THE TRANSFER OR OBLIGATION TO BE PRE-  
14 SERVED FOR THE BENEFIT OF THE ESTATE, AND IF SO ORDERED, THE  
15 RECEIVER SHALL SUCCEED TO AND MAY ENFORCE THE RIGHTS OF THE PUR-  
16 CHASER, LIENOR, OR OBLIGEE.

17 (2) A TRANSFER OF PROPERTY OTHER THAN REAL PROPERTY SHALL BE  
18 CONSIDERED TO BE MADE OR SUFFERED WHEN IT BECOMES SO FAR PERFEC-  
19 TED THAT NO SUBSEQUENT LIEN OBTAINABLE BY LEGAL OR EQUITABLE PRO-  
20 CEEDING ON A SIMPLE CONTRACT COULD BECOME SUPERIOR TO THE RIGHTS  
21 OF THE TRANSFEREE UNDER SECTION 8128(5) AND (6). A TRANSFER OF  
22 REAL PROPERTY SHALL BE CONSIDERED TO BE MADE OR SUFFERED WHEN IT  
23 BECOMES SO FAR PERFECTED THAT NO SUBSEQUENT BONA FIDE PURCHASER  
24 FROM THE INSURER COULD OBTAIN RIGHTS SUPERIOR TO THE RIGHTS OF  
25 THE TRANSFEREE. A TRANSFER WHICH CREATES AN EQUITABLE LIEN SHALL  
26 NOT BE CONSIDERED TO BE PERFECTED IF THERE ARE AVAILABLE MEANS BY  
27 WHICH A LEGAL LIEN COULD BE CREATED. A TRANSFER NOT PERFECTED

1 PRIOR TO THE FILING OF A PETITION FOR LIQUIDATION SHALL BE  
2 CONSIDERED TO BE MADE IMMEDIATELY BEFORE THE FILING OF THE SUC-  
3 CESSFUL PETITION. THE PROVISIONS OF THIS SUBSECTION APPLY  
4 WHETHER OR NOT THERE ARE OR WERE CREDITORS WHO MIGHT HAVE  
5 OBTAINED A LIEN OR PERSONS WHO MIGHT HAVE BECOME BONA FIDE  
6 PURCHASERS.

7 (3) A TRANSACTION OF THE INSURER WITH A REINSURER SHALL BE  
8 CONSIDERED FRAUDULENT AND MAY BE AVOIDED BY THE RECEIVER UNDER  
9 SUBSECTION (1) IF BOTH OF THE FOLLOWING OCCUR:

10 (A) THE TRANSACTION CONSISTS OF THE TERMINATION, ADJUSTMENT,  
11 OR SETTLEMENT OF A REINSURANCE CONTRACT IN WHICH THE REINSURER IS  
12 RELEASED FROM ANY PART OF ITS DUTY TO PAY THE ORIGINALLY SPECI-  
13 FIED SHARE OF LOSSES THAT HAD OCCURRED PRIOR TO THE TIME OF THE  
14 TRANSACTIONS, UNLESS THE REINSURER GIVES A PRESENT FAIR EQUIVA-  
15 LENT VALUE FOR THE RELEASE.

16 (B) ANY PART OF THE TRANSACTION TOOK PLACE WITHIN 1 YEAR  
17 PRIOR TO THE DATE OF FILING OF THE PETITION THROUGH WHICH THE  
18 RECEIVERSHIP WAS COMMENCED.

19 SEC. 8127. (1) AFTER A PETITION FOR REHABILITATION OR  
20 LIQUIDATION HAS BEEN FILED, A TRANSFER OF THE INSURER'S REAL  
21 PROPERTY MADE TO A PERSON ACTING IN GOOD FAITH SHALL BE VALID  
22 AGAINST THE RECEIVER IF MADE FOR A PRESENT FAIR EQUIVALENT VALUE,  
23 OR IF NOT MADE FOR A PRESENT FAIR EQUIVALENT VALUE, THEN TO THE  
24 EXTENT OF THE PRESENT CONSIDERATION ACTUALLY PAID FOR THE PROP-  
25 ERTY FOR WHICH AMOUNT THE TRANSFEREE SHALL HAVE A LIEN ON THE  
26 TRANSFERRED PROPERTY. CONSTRUCTIVE NOTICE OF THE COMMENCEMENT OF  
27 A PROCEEDING IN REHABILITATION OR LIQUIDATION SHALL BE GIVEN UPON



1 THE RECORDING OF A COPY OF THE PETITION FOR OR ORDER OF  
2 REHABILITATION OR LIQUIDATION WITH THE REGISTER OF DEEDS IN THE  
3 COUNTY WHERE ANY REAL PROPERTY IN QUESTION IS LOCATED. THE EXER-  
4 CISE BY A COURT OF THE UNITED STATES OR ANY STATE OR JURISDICTION  
5 TO AUTHORIZE OR EFFECT A JUDICIAL SALE OF REAL PROPERTY OF THE  
6 INSURER WITHIN ANY COUNTY IN ANY STATE SHALL NOT BE IMPAIRED BY  
7 THE PENDENCY OF SUCH A PROCEEDING UNLESS THE COPY IS RECORDED IN  
8 THE COUNTY PRIOR TO THE CONSUMMATION OF THE JUDICIAL SALE.

9 (2) AFTER A PETITION FOR REHABILITATION OR LIQUIDATION HAS  
10 BEEN FILED AND BEFORE EITHER THE RECEIVER TAKES POSSESSION OF THE  
11 INSURER'S PROPERTY OR AN ORDER OF REHABILITATION OR LIQUIDATION  
12 IS GRANTED:

13 (A) A TRANSFER OF THE INSURER'S PROPERTY, OTHER THAN REAL  
14 PROPERTY, MADE TO A PERSON ACTING IN GOOD FAITH SHALL BE VALID  
15 AGAINST THE RECEIVER IF MADE FOR A PRESENT FAIR EQUIVALENT VALUE,  
16 OR IF NOT MADE FOR A PRESENT FAIR EQUIVALENT VALUE, THEN TO THE  
17 EXTENT OF THE PRESENT CONSIDERATION ACTUALLY PAID FOR THE PROP-  
18 ERTY FOR WHICH AMOUNT THE TRANSFEREE SHALL HAVE A LIEN ON THE  
19 TRANSFERRED PROPERTY.

20 (B) A PERSON INDEBTED TO THE INSURER OR HOLDING PROPERTY OF  
21 THE INSURER, IF ACTING IN GOOD FAITH, MAY PAY ALL OR PART OF THE  
22 INDEBTEDNESS OR DELIVER ALL OR PART OF THE PROPERTY TO THE  
23 INSURER OR UPON HIS OR HER ORDER, WITH THE SAME EFFECT AS IF THE  
24 PETITION WERE NOT PENDING.

25 (C) A PERSON HAVING ACTUAL KNOWLEDGE OF THE PENDING REHABIL-  
26 ITATION OR LIQUIDATION SHALL BE CONSIDERED NOT TO ACT IN GOOD  
27 FAITH.

1 (D) A PERSON ASSERTING THE VALIDITY OF A TRANSFER UNDER THIS  
2 SECTION SHALL HAVE THE BURDEN OF PROOF. EXCEPT AS ELSEWHERE PRO-  
3 VIDED IN THIS SECTION, NO TRANSFER BY OR ON BEHALF OF THE INSURER  
4 AFTER THE DATE OF THE PETITION FOR LIQUIDATION BY A PERSON OTHER  
5 THAN THE LIQUIDATOR SHALL BE VALID AGAINST THE LIQUIDATOR.

6 (3) NOTHING IN THIS CHAPTER SHALL IMPAIR THE NEGOTIABILITY  
7 OF CURRENCY OR NEGOTIABLE INSTRUMENTS.

8 SEC. 8128. (1) A PREFERENCE IS A TRANSFER OF ANY OF THE  
9 PROPERTY OF AN INSURER TO OR FOR THE BENEFIT OF A CREDITOR, FOR  
10 OR ON ACCOUNT OF AN ANTECEDENT DEBT, MADE OR SUFFERED BY THE  
11 INSURER WITHIN 1 YEAR BEFORE THE FILING OF A SUCCESSFUL PETITION  
12 FOR LIQUIDATION UNDER THIS CHAPTER, THE EFFECT OF WHICH TRANSFER  
13 MAY BE TO ENABLE THE CREDITOR TO OBTAIN A GREATER PERCENTAGE OF  
14 THIS DEBT THAN ANOTHER CREDITOR OF THE SAME CLASS WOULD RECEIVE.  
15 IF A LIQUIDATION ORDER IS ENTERED WHILE THE INSURER IS ALREADY  
16 SUBJECT TO A REHABILITATION ORDER, THEN A TRANSFER SHALL BE CON-  
17 sidered A PREFERENCE IF MADE OR SUFFERED WITHIN 1 YEAR BEFORE THE  
18 FILING OF THE SUCCESSFUL PETITION FOR REHABILITATION, OR WITHIN 2  
19 YEARS BEFORE THE FILING OF THE SUCCESSFUL PETITION FOR LIQUIDA-  
20 TION, WHICHEVER TIME IS SHORTER.

21 (2) A PREFERENCE MAY BE AVOIDED BY THE LIQUIDATOR IF ANY OF  
22 THE FOLLOWING OCCURS:

23 (A) THE INSURER WAS INSOLVENT AT THE TIME OF THE TRANSFER.

24 (B) THE TRANSFER WAS MADE WITHIN 4 MONTHS BEFORE THE FILING  
25 OF THE PETITION.

26 (C) THE CREDITOR RECEIVING THE TRANSFER OR BENEFITED BY THE  
27 TRANSFER OR HIS OR HER AGENT ACTING WITH REFERENCE TO THE

1 TRANSFER HAD, AT THE TIME THE TRANSFER WAS MADE, REASONABLE CAUSE  
2 TO BELIEVE THAT THE INSURER WAS INSOLVENT OR WAS ABOUT TO BECOME  
3 INSOLVENT.

4 (D) THE CREDITOR RECEIVING THE TRANSFER WAS AN OFFICER; AN  
5 EMPLOYEE, ATTORNEY, OR OTHER PERSON WHO WAS IN FACT IN A POSITION  
6 OF COMPARABLE INFLUENCE WITH THE INSURER AS AN OFFICER WHETHER OR  
7 NOT HE OR SHE HELD AN OFFICER POSITION; A SHAREHOLDER HOLDING  
8 DIRECTLY OR INDIRECTLY MORE THAN 5% OF ANY CLASS OF ANY EQUITY  
9 SECURITY ISSUED BY THE INSURER; OR ANOTHER PERSON, FIRM, CORPORA-  
10 TION, OR ASSOCIATION WITH WHOM THE INSURER DID NOT DEAL AT ARM'S  
11 LENGTH.

12 (3) IF THE PREFERENCE IS VOIDABLE, THE LIQUIDATOR MAY  
13 RECOVER THE PROPERTY OR, IF THE PROPERTY HAS NOT BEEN CONVERTED,  
14 THE PROPERTY'S VALUE FROM A PERSON WHO HAS RECEIVED OR CONVERTED  
15 THE PROPERTY. HOWEVER, IF A BONA FIDE PURCHASER OR LIENOR HAS  
16 GIVEN LESS THAN FAIR EQUIVALENT VALUE, HE OR SHE SHALL HAVE A  
17 LIEN UPON THE PROPERTY TO THE EXTENT OF THE CONSIDERATION ACTU-  
18 ALLY GIVEN BY HIM OR HER. IF A PREFERENCE BY WAY OF LIEN OR  
19 SECURITY TITLE IS VOIDABLE, THE COURT MAY ON DUE NOTICE ORDER THE  
20 LIEN OR TITLE TO BE PRESERVED FOR THE BENEFIT OF THE ESTATE AND  
21 IF SO ORDERED, THE LIEN OR TITLE SHALL PASS TO THE LIQUIDATOR.

22 (4) A TRANSFER OF PROPERTY OTHER THAN REAL PROPERTY SHALL BE  
23 CONSIDERED TO BE MADE OR SUFFERED WHEN IT BECOMES SO FAR PERFEC-  
24 TED THAT NO SUBSEQUENT LIEN OBTAINABLE BY LEGAL OR EQUITABLE PRO-  
25 CEEDINGS ON A SIMPLE CONTRACT COULD BECOME SUPERIOR TO THE RIGHTS  
26 OF THE TRANSFEREE. A TRANSFER OF REAL PROPERTY SHALL BE  
27 CONSIDERED TO BE MADE OR SUFFERED WHEN IT BECOMES SO FAR

1 PERFECTED THAT NO SUBSEQUENT BONA FIDE PURCHASER FROM THE INSURER  
2 COULD OBTAIN RIGHTS SUPERIOR TO THE RIGHTS OF THE TRANSFEREE. A  
3 TRANSFER WHICH CREATES AN EQUITABLE LIEN SHALL NOT BE CONSIDERED  
4 TO BE PERFECTED IF THERE ARE AVAILABLE MEANS BY WHICH A LEGAL  
5 LIEN COULD BE CREATED. A TRANSFER NOT PERFECTED PRIOR TO THE  
6 FILING OF A PETITION FOR LIQUIDATION SHALL BE CONSIDERED TO BE  
7 MADE IMMEDIATELY BEFORE THE FILING OF THE SUCCESSFUL PETITION.  
8 THE PROVISIONS OF THIS SUBSECTION APPLY WHETHER OR NOT THERE ARE  
9 OR WERE CREDITORS WHO MIGHT HAVE OBTAINED LIENS OR PERSONS WHO  
10 MIGHT HAVE BECOME BONA FIDE PURCHASERS.

11 (5) A LIEN OBTAINABLE BY LEGAL OR EQUITABLE PROCEEDINGS UPON  
12 A SIMPLE CONTRACT IS A LIEN ARISING IN THE ORDINARY COURSE OF  
13 SUCH PROCEEDINGS UPON THE ENTRY OR DOCKETING OF A JUDGMENT OR  
14 DECREE, OR UPON ATTACHMENT, GARNISHMENT, EXECUTION, OR LIKE PRO-  
15 CESS, WHETHER BEFORE, UPON, OR AFTER JUDGMENT OR DECREE AND  
16 WHETHER BEFORE OR UPON LEVY. IT DOES NOT INCLUDE LIENS WHICH  
17 UNDER APPLICABLE LAW ARE GIVEN A SPECIAL PRIORITY OVER OTHER  
18 LIENS WHICH ARE PRIOR IN TIME.

19 (6) A LIEN OBTAINABLE BY LEGAL OR EQUITABLE PROCEEDINGS  
20 COULD BECOME SUPERIOR TO THE RIGHTS OF A TRANSFEREE, OR A PUR-  
21 CHASER COULD OBTAIN RIGHTS SUPERIOR TO THE RIGHTS OF A TRANSFEREE  
22 WITHIN THE MEANING OF SUBSECTION (4), IF THAT SUPERIORITY WOULD  
23 FOLLOW ONLY FROM THE LIEN OR PURCHASE ITSELF OR FROM THE LIEN OR  
24 PURCHASE FOLLOWED BY ANY STEP WHOLLY WITHIN THE CONTROL OF THE  
25 RESPECTIVE LIENHOLDER OR PURCHASER, WITH OR WITHOUT THE AID OF  
26 MINISTERIAL ACTION BY PUBLIC OFFICIALS. SUCH A LIEN COULD NOT,  
27 HOWEVER, BECOME SUPERIOR AND SUCH A PURCHASE COULD NOT CREATE

1 SUPERIOR RIGHTS FOR THE PURPOSE OF SUBSECTION (4) THROUGH ANY  
2 ACTS SUBSEQUENT TO THE OBTAINING OF THE LIEN OR SUBSEQUENT TO THE  
3 PURCHASE WHICH REQUIRE THE AGREEMENT OR CONCURRENCE OF A THIRD  
4 PARTY OR WHICH REQUIRE FURTHER JUDICIAL ACTION OR RULING.

5 (7) A TRANSFER OF PROPERTY FOR OR ON ACCOUNT OF A NEW AND  
6 CONTEMPORANEOUS CONSIDERATION WHICH IS CONSIDERED UNDER SUBSEC-  
7 TION (4) TO BE MADE OR SUFFERED AFTER THE TRANSFER BECAUSE OF  
8 DELAY IN PERFECTING IT DOES NOT THEREBY BECOME A TRANSFER FOR OR  
9 ON ACCOUNT OF AN ANTECEDENT DEBT IF ANY ACTS REQUIRED BY THE  
10 APPLICABLE LAW TO BE PERFORMED IN ORDER TO PERFECT THE TRANSFER  
11 AS AGAINST LIENS OR BONA FIDE PURCHASERS' RIGHTS ARE PERFORMED  
12 WITHIN 21 DAYS, OR A PERIOD EXPRESSLY ALLOWED BY THE LAW, WHICH-  
13 EVER IS LESS. A TRANSFER TO SECURE A FUTURE LOAN, IF THE LOAN IS  
14 ACTUALLY MADE, OR A TRANSFER WHICH BECOMES SECURITY FOR A FUTURE  
15 LOAN, SHALL HAVE THE SAME EFFECT AS A TRANSFER FOR OR ON ACCOUNT  
16 OF A NEW AND CONTEMPORANEOUS CONSIDERATION.

17 (8) IF A LIEN CONSIDERED VOIDABLE UNDER SUBSECTION (2) HAS  
18 BEEN DISSOLVED BY THE FURNISHING OF A BOND OR OTHER OBLIGATION  
19 AND THE SURETY ON WHICH HAS BEEN INDEMNIFIED DIRECTLY OR INDI-  
20 RECTLY BY THE TRANSFER OF OR THE CREATION OF A LIEN UPON THE  
21 INSURER'S PROPERTY BEFORE THE FILING OF A PETITION UNDER THIS  
22 CHAPTER WHICH RESULTS IN A LIQUIDATION ORDER, THEN THAT INDEMNIFI-  
23 FING TRANSFER OR LIEN SHALL ALSO BE CONSIDERED VOIDABLE.

24 (9) THE PROPERTY AFFECTED BY A LIEN CONSIDERED VOIDABLE  
25 UNDER SUBSECTIONS (1) AND (8) SHALL BE DISCHARGED FROM THE LIEN,  
26 AND THAT PROPERTY AND ANY OF THE INDEMNIFYING PROPERTY  
27 TRANSFERRED TO OR FOR THE BENEFIT OF A SURETY SHALL PASS TO THE

1 LIQUIDATOR, EXCEPT THAT THE COURT, UPON DUE NOTICE, MAY ORDER THE  
2 LIEN TO BE PRESERVED FOR THE ESTATE'S BENEFIT AND THE COURT MAY  
3 DIRECT THAT A CONVEYANCE BE EXECUTED AS MAY BE PROPER OR ADEQUATE  
4 TO EVIDENCE THE LIQUIDATOR'S TITLE.

5 (10) THE CIRCUIT COURT SHALL HAVE SUMMARY JURISDICTION OF A  
6 PROCEEDING BY THE LIQUIDATOR TO HEAR AND DETERMINE THE RIGHTS OF  
7 PARTIES UNDER THIS SECTION. REASONABLE NOTICE OF EACH HEARING IN  
8 THE PROCEEDING SHALL BE GIVEN TO ALL PARTIES IN INTEREST, INCLUD-  
9 ING THE OBLIGEE OF A RELEASING BOND OR OTHER LIKE OBLIGATION. IF  
10 AN ORDER IS ENTERED FOR THE RECOVERY OF INDEMNIFYING PROPERTY OR  
11 FOR THE AVOIDANCE OF AN INDEMNIFYING LIEN, THE COURT, UPON APPLI-  
12 CATION OF ANY PARTY IN INTEREST, SHALL ASCERTAIN IN THE SAME PRO-  
13 CEEDING THE VALUE OF THE PROPERTY OR LIEN, AND IF THE VALUE IS  
14 LESS THAN THE AMOUNT FOR WHICH THE PROPERTY IS INDEMNITY OR THAN  
15 THE AMOUNT OF THE LIEN, THE TRANSFEREE OR LIENHOLDER MAY ELECT TO  
16 RETAIN THE PROPERTY OR LIEN UPON PAYMENT OF ITS VALUE, AS ASCER-  
17 TAINED BY THE COURT, TO THE LIQUIDATOR, WITHIN SUCH REASONABLE  
18 TIMES AS THE COURT SHALL FIX.

19 (11) THE LIABILITY OF THE SURETY UNDER A RELEASING BOND OR  
20 OTHER LIKE OBLIGATION SHALL BE DISCHARGED TO THE EXTENT OF THE  
21 VALUE OF THE INDEMNIFYING PROPERTY RECOVERED OR THE INDEMNIFYING  
22 LIEN NULLIFIED AND AVOIDED BY THE LIQUIDATOR, OR IF THE PROPERTY  
23 IS RETAINED UNDER SUBSECTION (10), TO THE EXTENT OF THE AMOUNT  
24 PAID TO THE LIQUIDATOR.

25 (12) IF A CREDITOR HAS BEEN PREFERRED, AND AFTERWARD IN GOOD  
26 FAITH GIVES THE INSURER FURTHER CREDIT WITHOUT SECURITY OF ANY  
27 KIND FOR PROPERTY WHICH BECOMES A PART OF THE INSURER'S ESTATE,

1 THE AMOUNT OF THE NEW CREDIT REMAINING UNPAID AT THE TIME OF THE  
2 PETITION MAY BE SET OFF AGAINST THE PREFERENCE WHICH WOULD OTHER-  
3 WISE BE RECOVERABLE FROM HIM OR HER.

4 (13) IF AN INSURER, DIRECTLY OR INDIRECTLY, WITHIN 4 MONTHS  
5 BEFORE THE FILING OF A SUCCESSFUL PETITION FOR LIQUIDATION UNDER  
6 THIS CHAPTER OR AT ANY TIME IN CONTEMPLATION OF A PROCEEDING TO  
7 LIQUIDATE, PAYS MONEY OR TRANSFERS PROPERTY TO AN ATTORNEY FOR  
8 SERVICES RENDERED OR TO BE RENDERED, THE TRANSACTIONS MAY BE  
9 EXAMINED BY THE COURT ON ITS OWN MOTION OR SHALL BE EXAMINED BY  
10 THE COURT ON PETITION OF THE LIQUIDATOR AND SHALL BE HELD VALID  
11 ONLY TO THE EXTENT OF A REASONABLE AMOUNT TO BE DETERMINED BY THE  
12 COURT AND THE EXCESS MAY BE RECOVERED BY THE LIQUIDATOR FOR THE  
13 ESTATE'S BENEFIT. IF THE ATTORNEY IS IN A POSITION OF INFLUENCE  
14 WITH THE INSURER OR AN AFFILIATE OF THE INSURER, PAYMENT OF ANY  
15 MONEY OR THE TRANSFER OF ANY PROPERTY TO THE ATTORNEY FOR SERV-  
16 ICES RENDERED OR TO BE RENDERED SHALL BE GOVERNED BY THE PROVI-  
17 SION OF SUBSECTION (2)(D).

18 (14) AN OFFICER, MANAGER, EMPLOYEE, SHAREHOLDER, MEMBER,  
19 SUBSCRIBER, ATTORNEY, OR OTHER PERSON ACTING ON BEHALF OF THE  
20 INSURER WHO KNOWINGLY PARTICIPATES IN GIVING A PREFERENCE IF HE  
21 OR SHE HAS REASONABLE CAUSE TO BELIEVE THE INSURER IS OR IS ABOUT  
22 TO BECOME INSOLVENT AT THE TIME OF THE PREFERENCE SHALL BE PER-  
23 SONALLY LIABLE TO THE LIQUIDATOR FOR THE AMOUNT OF THE  
24 PREFERENCE. IF A TRANSFER WAS MADE WITHIN 4 MONTHS BEFORE THE  
25 DATE OF FILING OF A SUCCESSFUL PETITION FOR LIQUIDATION, AN  
26 INFERENCE MAY BE MADE THAT REASONABLE CAUSE EXISTED TO BELIEVE  
27 THE INSURER WAS OR WAS ABOUT TO BECOME INSOLVENT AT THE TIME OF

1 THE PREFERENCE. A PERSON RECEIVING PROPERTY OR THE BENEFIT OF  
2 THE PROPERTY FROM THE INSURER AS A PREFERENCE VOIDABLE UNDER SUB-  
3 SECTION (1) SHALL BE PERSONALLY LIABLE FOR THE PROPERTY OR BENE-  
4 FIT AND SHALL BE BOUND TO ACCOUNT TO THE LIQUIDATOR. NOTHING IN  
5 THIS SUBSECTION SHALL PREJUDICE ANY OTHER CLAIM BY THE LIQUIDATOR  
6 AGAINST ANY PERSON.

7 SEC. 8129. (1) A CLAIM OF A CREDITOR WHO HAS RECEIVED OR  
8 ACQUIRED A PREFERENCE, LIEN, CONVEYANCE, TRANSFER, ASSIGNMENT, OR  
9 ENCUMBRANCE VOIDABLE UNDER THIS CHAPTER SHALL NOT BE ALLOWED  
10 UNLESS THE CREDITOR SURRENDERS THE PREFERENCE, LIEN, CONVEYANCE,  
11 TRANSFER, ASSIGNMENT, OR ENCUMBRANCE. IF THE AVOIDANCE IS  
12 EFFECTED BY A PROCEEDING IN WHICH A FINAL JUDGMENT HAS BEEN  
13 ENTERED, THE CLAIM SHALL NOT BE ALLOWED UNLESS THE MONEY IS PAID  
14 OR THE PROPERTY IS DELIVERED TO THE LIQUIDATOR WITHIN 30 DAYS  
15 FROM THE DATE OF THE ENTERING OF THE FINAL JUDGMENT, UNLESS THE  
16 COURT HAVING JURISDICTION OVER THE LIQUIDATION ALLOWS FURTHER  
17 TIME FOR AN APPEAL OR OTHER CONTINUATION OF THE PROCEEDING.

18 (2) A CLAIM ALLOWABLE UNDER SUBSECTION (1) BY REASON OF THE  
19 AVOIDANCE, WHETHER VOLUNTARY OR INVOLUNTARY, OR A PREFERENCE,  
20 LIEN, CONVEYANCE, TRANSFER, ASSIGNMENT, OR ENCUMBRANCE, MAY BE  
21 FILED AS AN EXCUSED LATE FILING UNDER SECTION 8135 IF FILED  
22 WITHIN 30 DAYS FROM THE DATE OF THE AVOIDANCE OR WITHIN THE FUR-  
23 THER TIME ALLOWED BY THE COURT UNDER SUBSECTION (1).

24 SEC. 8130. (1) MUTUAL DEBTS OR MUTUAL CREDITS BETWEEN THE  
25 INSURER AND ANOTHER PERSON IN CONNECTION WITH AN ACTION OR PRO-  
26 CEEDING UNDER THIS CHAPTER SHALL BE SET OFF AND THE BALANCE ONLY



1 SHALL BE ALLOWED OR PAID, EXCEPT AS PROVIDED IN SUBSECTION (2)  
2 AND SECTION 8133.

3 (2) A SETOFF OR COUNTERCLAIM SHALL NOT BE ALLOWED IN FAVOR  
4 OF A PERSON IF:

5 (A) THE INSURER'S OBLIGATION TO THE PERSON WOULD NOT AT THE  
6 DATE OF THE FILING OF A PETITION FOR LIQUIDATION ENTITLE THE  
7 PERSON TO SHARE AS A CLAIMANT IN THE ASSETS OF THE INSURER.

8 (B) THE INSURER'S OBLIGATION TO THE PERSON WAS PURCHASED BY  
9 OR TRANSFERRED TO THE PERSON WITH A VIEW TO ITS BEING USED AS A  
10 SETOFF.

11 (C) THE PERSON'S OBLIGATION IS TO PAY AN ASSESSMENT LEVIED  
12 AGAINST THE INSURER'S MEMBERS OR SUBSCRIBERS, IS TO PAY A BALANCE  
13 UPON A SUBSCRIPTION TO THE CAPITAL STOCK OF THE INSURER, OR IS IN  
14 ANY OTHER WAY IN THE NATURE OF A CAPITAL CONTRIBUTION.

15 (D) THE PERSON'S OBLIGATION IS TO PAY PREMIUMS WHETHER  
16 EARNED OR UNEARNED TO THE INSURER.

17 SEC. 8131. (1) AS SOON AS PRACTICABLE BUT NOT MORE THAN 2  
18 YEARS FROM THE DATE OF AN ORDER OF LIQUIDATION UNDER SECTION 8118  
19 OF AN INSURER ISSUING ASSESSABLE POLICIES, THE LIQUIDATOR SHALL  
20 REPORT TO THE COURT ON ALL OF THE FOLLOWING:

21 (A) THE REASONABLE VALUE OF THE INSURER'S ASSETS.

22 (B) THE INSURER'S PROBABLE TOTAL LIABILITIES.

23 (C) THE PROBABLE AGGREGATE AMOUNT OF THE ASSESSMENT NECES-  
24 SARY TO PAY ALL CLAIMS OF CREDITORS AND EXPENSES IN FULL, INCLUD-  
25 ING EXPENSES OF ADMINISTRATION AND COSTS OF COLLECTING THE  
26 ASSESSMENT.

1 (D) A RECOMMENDATION AS TO WHETHER OR NOT AN ASSESSMENT  
2 SHOULD BE MADE AND IN WHAT AMOUNT.

3 (2) UPON THE BASIS OF THE REPORT PROVIDED IN SUBSECTION (1),  
4 INCLUDING SUPPLEMENTS AND AMENDMENTS TO THE REPORT, THE CIRCUIT  
5 COURT MAY LEVY 1 OR MORE ASSESSMENTS AGAINST ALL MEMBERS OF THE  
6 INSURER WHO ARE SUBJECT TO ASSESSMENT. SUBJECT TO APPLICABLE  
7 LEGAL LIMITS ON ASSESSABILITY, THE AGGREGATE ASSESSMENT SHALL BE  
8 FOR THE AMOUNT THAT THE SUM OF THE PROBABLE LIABILITIES, THE  
9 EXPENSES OF ADMINISTRATION, AND THE ESTIMATED COST OF COLLECTION  
10 OF THE ASSESSMENT, EXCEEDS THE VALUE OF EXISTING ASSETS, WITH DUE  
11 REGARD BEING GIVEN TO ASSESSMENTS THAT CANNOT BE COLLECTED  
12 ECONOMICALLY.

13 (3) AFTER LEVY OF ASSESSMENT UNDER SUBSECTION (2), THE LIQ-  
14 UIDATOR SHALL ISSUE AN ORDER DIRECTING EACH MEMBER WHO HAS NOT  
15 PAID THE ASSESSMENT PURSUANT TO THE ORDER TO SHOW CAUSE WHY THE  
16 LIQUIDATOR SHOULD NOT PURSUE A JUDGMENT AGAINST THE RESPECTIVE  
17 MEMBERS.

18 (4) THE LIQUIDATOR SHALL GIVE NOTICE OF THE ORDER TO SHOW  
19 CAUSE BY PUBLICATION AND BY FIRST CLASS MAIL TO EACH LIABLE  
20 MEMBER, MAILED TO HIS OR HER LAST KNOWN ADDRESS AS IT APPEARS ON  
21 THE INSURER'S RECORDS, AT LEAST 20 DAYS BEFORE THE RETURN DAY OF  
22 THE ORDER TO SHOW CAUSE.

23 (5) IF A MEMBER DOES NOT APPEAR AND SERVE DULY VERIFIED  
24 OBJECTIONS UPON THE LIQUIDATOR ON OR BEFORE THE RETURN DAY OF THE  
25 ORDER TO SHOW CAUSE UNDER SUBSECTION (3), THE COURT SHALL MAKE AN  
26 ORDER ADJUDGING THE MEMBER LIABLE FOR THE AMOUNT OF THE  
27 ASSESSMENT AGAINST HIM OR HER PURSUANT TO SUBSECTION (3),

1 TOGETHER WITH COSTS, AND THE LIQUIDATOR SHALL HAVE A JUDGMENT  
2 AGAINST THE MEMBER THEREFOR. IF ON OR BEFORE THE RETURN DAY THE  
3 MEMBER APPEARS AND SERVES DULY VERIFIED OBJECTIONS UPON THE LIQ-  
4 UIDATOR, THE COMMISSIONER MAY HEAR AND DETERMINE THE MATTER OR  
5 MAY APPOINT A REFEREE TO HEAR THE MATTER AND MAKE SUCH ORDER AS  
6 THE FACTS WARRANT. IF THE COMMISSIONER DETERMINES THAT THE  
7 OBJECTIONS DO NOT WARRANT RELIEF FROM ASSESSMENT, THE MEMBER MAY  
8 REQUEST THE COURT TO REVIEW THE MATTER AND VACATE THE ORDER TO  
9 SHOW CAUSE.

10 (6) THE LIQUIDATOR MAY ENFORCE ANY ORDER OR COLLECT ANY  
11 JUDGMENT UNDER SUBSECTION (5) BY ANY LAWFUL MEANS.

12 SEC. 8132. THE AMOUNT RECOVERABLE BY THE LIQUIDATOR FROM  
13 REINSURERS SHALL NOT BE REDUCED AS A RESULT OF THE DELINQUENCY  
14 PROCEEDINGS, REGARDLESS OF ANY PROVISION IN THE REINSURANCE CON-  
15 TRACT OR OTHER AGREEMENT. PAYMENT MADE DIRECTLY TO AN INSURED OR  
16 OTHER CREDITOR SHALL NOT DIMINISH THE REINSURER'S OBLIGATION TO  
17 THE INSURER'S ESTATE UNLESS THE REINSURANCE CONTRACT PROVIDED FOR  
18 DIRECT COVERAGE OF A NAMED INSURED AND THE PAYMENT WAS MADE IN  
19 DISCHARGE OF THAT OBLIGATION.

20 SEC. 8133. (1) AN AGENT, PREMIUM FINANCE COMPANY, OR ANY  
21 OTHER PERSON, OTHER THAN THE INSURED, RESPONSIBLE FOR THE PAYMENT  
22 OF A PREMIUM HELD BY HIM OR HER SHALL BE OBLIGATED TO PAY ANY  
23 UNPAID EARNED PREMIUM DUE THE INSURER AT THE TIME OF THE DECLARA-  
24 TION OF INSOLVENCY. THE LIQUIDATOR SHALL ALSO HAVE THE RIGHT TO  
25 RECOVER FROM THAT PERSON ANY PART OF AN UNEARNED PREMIUM THAT  
26 REPRESENTS THAT PERSON'S COMMISSION. CREDITS, SETOFFS, OR BOTH,  
27 SHALL NOT BE ALLOWED TO AN AGENT, BROKER, OR PREMIUM FINANCE

1 COMPANY FOR AN AMOUNT ADVANCED TO THE INSURER BY THE AGENT,  
2 BROKER, OR PREMIUM FINANCE COMPANY ON BEHALF OF, BUT IN THE  
3 ABSENCE OF A PAYMENT BY, THE INSURED. AN INSURED SHALL BE OBLI-  
4 GATED TO PAY ANY UNPAID EARNED PREMIUM DUE THE INSURER AT THE  
5 TIME OF THE DECLARATION OF INSOLVENCY, AS SHOWN ON THE INSURER'S  
6 RECORDS.

7 (2) UPON SATISFACTORY EVIDENCE OF A VIOLATION OF THIS SEC-  
8 TION, THE COMMISSIONER MAY PURSUE EITHER 1 OR BOTH OF THE FOLLOW-  
9 ING COURSES OF ACTION:

10 (A) SUSPEND OR REVOKE OR REFUSE TO RENEW THE LICENSES OF  
11 EACH OFFENDING PARTY.

12 (B) IMPOSE A PENALTY OF NOT MORE THAN \$1,000.00 FOR EACH AND  
13 EVERY ACT IN VIOLATION OF THIS SECTION BY EACH OFFENDING PARTY.

14 (3) BEFORE THE COMMISSIONER TAKES ACTION UNDER SUBSECTION  
15 (2), THE COMMISSIONER SHALL GIVE WRITTEN NOTICE TO THE PERSON,  
16 COMPANY, ASSOCIATION, OR EXCHANGE ACCUSED OF VIOLATING THE LAW,  
17 STATING SPECIFICALLY THE NATURE OF THE ALLEGED VIOLATION AND  
18 FIXING A TIME AND PLACE, AT LEAST 10 DAYS THEREAFTER, FOR A HEAR-  
19 ING ON THE MATTER. AFTER THE HEARING, OR UPON FAILURE OF THE  
20 ACCUSED TO APPEAR AT THE HEARING, THE COMMISSIONER, IF HE OR SHE  
21 FINDS A VIOLATION, SHALL IMPOSE THE PENALTIES UNDER SUBSECTION  
22 (2) AS HE OR SHE CONSIDERS ADVISABLE.

23 (4) IF THE COMMISSIONER TAKES ACTION UNDER SUBSECTION (2),  
24 THE PARTY AGGRIEVED MAY APPEAL FROM THAT ACTION TO THE CIRCUIT  
25 COURT.

26 SEC. 8134. (1) WITHIN 120 DAYS OF A FINAL DETERMINATION OF  
27 INSOLVENCY OF AN INSURER BY A COURT OF COMPETENT JURISDICTION OF

1 THIS STATE, THE LIQUIDATOR SHALL MAKE APPLICATION TO THE COURT  
2 FOR APPROVAL OF A PROPOSAL TO DISBURSE ASSETS OUT OF MARSHALLED  
3 ASSETS, FROM TIME TO TIME AS SUCH ASSETS BECOME AVAILABLE, TO A  
4 GUARANTY ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION HAVING OBLI-  
5 GATIONS BECAUSE OF THE INSOLVENCY. IF THE LIQUIDATOR DETERMINES  
6 THAT THERE ARE INSUFFICIENT ASSETS TO DISBURSE, THE APPLICATION  
7 REQUIRED BY THIS SECTION SHALL BE CONSIDERED SATISFIED BY A  
8 FILING BY THE LIQUIDATOR STATING THE REASONS FOR THIS  
9 DETERMINATION.

10 (2) A PROPOSAL UNDER SUBSECTION (1) SHALL AT LEAST INCLUDE  
11 PROVISIONS FOR ALL OF THE FOLLOWING:

12 (A) RESERVING AMOUNTS FOR THE PAYMENT OF EXPENSES OF ADMIN-  
13 ISTRATION AND THE PAYMENT OF CLAIMS OF SECURED CREDITORS, TO THE  
14 EXTENT OF THE VALUE OF THE SECURITY HELD, AND CLAIMS FALLING  
15 WITHIN THE PRIORITIES ESTABLISHED IN SECTION 8142(A) AND (B).

16 (B) DISBURSEMENT OF THE ASSETS MARSHALLED TO DATE AND SUBSE-  
17 QUENT DISBURSEMENT OF ASSETS AS THEY BECOME AVAILABLE.

18 (C) EQUITABLE ALLOCATION OF DISBURSEMENTS TO EACH OF THE  
19 GUARANTY ASSOCIATIONS AND FOREIGN GUARANTY ASSOCIATIONS ENTITLED  
20 TO DISBURSEMENTS.

21 (D) THE SECURING BY THE LIQUIDATOR FROM EACH OF THE ASSOCIA-  
22 TIONS ENTITLED TO DISBURSEMENTS PURSUANT TO THIS SECTION OF AN  
23 AGREEMENT TO RETURN TO THE LIQUIDATOR SUCH ASSETS, TOGETHER WITH  
24 INCOME EARNED ON ASSETS PREVIOUSLY DISBURSED, AS MAY BE REQUIRED  
25 TO PAY CLAIMS OF SECURED CREDITORS AND CLAIMS FALLING WITHIN THE  
26 PRIORITIES ESTABLISHED IN SECTION 8142 IN ACCORDANCE WITH THOSE

1 PRIORITIES. A BOND SHALL NOT BE REQUIRED OF ANY SUCH  
2 ASSOCIATION.

3 (E) A FULL REPORT TO BE MADE BY EACH ASSOCIATION TO THE LIQ-  
4 UIDATOR ACCOUNTING FOR ASSETS DISBURSED TO THE ASSOCIATION, ALL  
5 DISBURSEMENTS MADE FROM THE ASSETS, INTEREST EARNED BY THE ASSO-  
6 CIATION ON THE ASSETS, AND ANY OTHER MATTER AS THE COURT MAY  
7 DIRECT.

8 (3) THE LIQUIDATOR'S PROPOSAL SHALL PROVIDE FOR DISBURSE-  
9 MENTS TO THE ASSOCIATIONS IN AMOUNTS ESTIMATED AT LEAST EQUAL TO  
10 THE CLAIM PAYMENTS MADE OR TO BE MADE THEREBY FOR WHICH THE ASSO-  
11 CIATIONS COULD ASSERT A CLAIM AGAINST THE LIQUIDATOR, AND SHALL  
12 FURTHER PROVIDE THAT IF THE ASSETS AVAILABLE FOR DISBURSEMENT  
13 FROM TIME TO TIME DO NOT EQUAL OR EXCEED THE AMOUNT OF CLAIM PAY-  
14 MENTS MADE OR TO BE MADE BY THE ASSOCIATION, THEN DISBURSEMENTS  
15 SHALL BE IN THE AMOUNT OF AVAILABLE ASSETS.

16 (4) THE LIQUIDATOR'S PROPOSAL SHALL, WITH RESPECT TO AN  
17 INSOLVENT INSURER WRITING LIFE OR HEALTH INSURANCE OR ANNUITIES,  
18 PROVIDE FOR DISBURSEMENTS OF ASSETS TO ANY GUARANTY ASSOCIATION  
19 OR ANY FOREIGN GUARANTY ASSOCIATION COVERING LIFE OR HEALTH  
20 INSURANCE OR ANNUITIES OR TO ANY OTHER ENTITY OR ORGANIZATION  
21 REINSURING, ASSUMING, OR GUARANTEEING POLICIES OR CONTRACTS OF  
22 INSURANCE UNDER THE ACTS CREATING THE ASSOCIATIONS.

23 (5) NOTICE OF APPLICATION SHALL BE GIVEN TO THE ASSOCIATION  
24 IN EACH STATE AND TO THE COMMISSIONERS OF INSURANCE OF EACH  
25 STATE. NOTICE SHALL BE CONSIDERED TO HAVE BEEN GIVEN WHEN DEPOS-  
26 ITED IN THE UNITED STATES CERTIFIED MAILS, FIRST CLASS POSTAGE  
27 PREPAID, AT LEAST 30 DAYS PRIOR TO SUBMISSION OF THE APPLICATION

1 TO THE COURT. ACTION ON THE APPLICATION MAY BE TAKEN BY THE  
2 COURT IF THE NOTICE UNDER THIS SUBSECTION HAS BEEN GIVEN AND IF  
3 THE LIQUIDATOR'S PROPOSAL COMPLIES WITH SUBSECTION (2)(A) AND  
4 (B).

5 SEC. 8135. (1) PROOF OF ALL CLAIMS SHALL BE FILED WITH THE  
6 LIQUIDATOR IN THE FORM REQUIRED BY SECTION 8136 ON OR BEFORE THE  
7 LAST DAY FOR FILING SPECIFIED IN THE NOTICE REQUIRED UNDER SEC-  
8 TION 8122, EXCEPT THAT PROOF OF CLAIMS FOR CASH SURRENDER VALUES  
9 OR OTHER INVESTMENT VALUES IN LIFE INSURANCE AND ANNUITIES NEED  
10 NOT BE FILED UNLESS THE LIQUIDATOR EXPRESSLY SO REQUIRES.

11 (2) THE LIQUIDATOR MAY PERMIT A CLAIMANT MAKING A LATE  
12 FILING TO SHARE IN DISTRIBUTIONS, WHETHER PAST OR FUTURE, AS IF  
13 HE OR SHE WERE NOT LATE, TO THE EXTENT THAT THE PAYMENT WILL NOT  
14 PREJUDICE THE ORDERLY ADMINISTRATION OF THE LIQUIDATION, UNDER  
15 THE FOLLOWING CIRCUMSTANCES:

16 (A) THE EXISTENCE OF THE CLAIM WAS NOT KNOWN TO THE CLAIMANT  
17 AND THAT HE OR SHE FILED HIS OR HER CLAIM AS PROMPTLY THEREAFTER  
18 AS REASONABLY POSSIBLE AFTER LEARNING OF IT.

19 (B) A TRANSFER TO A CREDITOR WAS AVOIDED UNDER SECTIONS 8126  
20 TO 8128, OR WAS VOLUNTARILY SURRENDERED UNDER SECTION 8129, AND  
21 THAT THE FILING SATISFIES THE CONDITIONS OF SECTION 8129.

22 (C) THE VALUATION UNDER SECTION 8141 OF SECURITY HELD BY A  
23 SECURED CREDITOR SHOWS A DEFICIENCY, WHICH IS FILED WITHIN 30  
24 DAYS AFTER THE VALUATION.

25 (3) THE LIQUIDATOR SHALL PERMIT LATE FILING CLAIMS TO SHARE  
26 IN DISTRIBUTIONS, WHETHER PAST OR FUTURE, AS IF THEY WERE NOT  
27 LATE, IF THOSE CLAIMS ARE CLAIMS OF A GUARANTY ASSOCIATION OR

1 FOREIGN GUARANTY ASSOCIATION FOR REIMBURSEMENT OF COVERED CLAIMS  
2 PAID, EXPENSES INCURRED, OR BOTH, AFTER THE LAST DAY FOR FILING  
3 AND IF THE PAYMENTS WERE MADE AND EXPENSES INCURRED AS PROVIDED  
4 BY LAW.

5 (4) THE LIQUIDATOR MAY CONSIDER A CLAIM FILED LATE WHICH IS  
6 NOT COVERED BY SUBSECTION (2) AND PERMIT IT TO RECEIVE DISTRIBUTIONS WHICH ARE SUBSEQUENTLY DECLARED ON ANY CLAIMS OF THE SAME  
7 OR LOWER PRIORITY IF THE PAYMENT DOES NOT PREJUDICE THE ORDERLY  
8 ADMINISTRATION OF THE LIQUIDATION. THE LATE FILING CLAIMANT  
9 SHALL RECEIVE, AT EACH DISTRIBUTION, THE SAME PERCENTAGE OF THE  
10 AMOUNT ALLOWED ON HIS OR HER CLAIM AS IS THEN BEING PAID TO  
11 CLAIMANTS OF ANY LOWER PRIORITY. THIS SHALL CONTINUE UNTIL HIS  
12 OR HER CLAIM HAS BEEN PAID IN FULL.

14 SEC. 8136. (1) PROOF OF CLAIM SHALL CONSIST OF A STATEMENT  
15 SIGNED BY THE CLAIMANT OR OTHER AUTHORIZED PERSON THAT INCLUDES  
16 ALL OF THE FOLLOWING THAT ARE APPLICABLE:

17 (A) THE PARTICULARS OF THE CLAIM, INCLUDING THE CONSIDERATION GIVEN FOR IT.

19 (B) THE IDENTITY AND AMOUNT OF THE SECURITY ON THE CLAIM.

20 (C) THE PAYMENTS MADE ON THE DEBT, IF ANY.

21 (D) THAT THE SUM CLAIMED IS JUSTLY OWING AND THAT THERE IS  
22 NO SETOFF, COUNTERCLAIM, OR DEFENSE TO THE CLAIM.

23 (E) ANY RIGHT OF PRIORITY OF PAYMENT OR OTHER SPECIFIC RIGHT  
24 ASSERTED BY THE CLAIMANTS.

25 (F) A COPY OF THE WRITTEN INSTRUMENT WHICH IS THE FOUNDATION  
26 OF THE CLAIM.



1 (G) THE NAME AND ADDRESS OF THE CLAIMANT AND THE ATTORNEY.  
2 WHO REPRESENTS HIM OR HER, IF ANY.

3 (2) A CLAIM NEED NOT BE CONSIDERED OR ALLOWED IF IT DOES NOT  
4 CONTAIN ALL THE INFORMATION IN SUBSECTION (1) WHICH MAY BE  
5 APPLICABLE. THE LIQUIDATOR MAY REQUIRE THAT A PRESCRIBED FORM BE  
6 USED AND MAY REQUIRE THAT OTHER INFORMATION AND DOCUMENTS BE  
7 INCLUDED.

8 (3) THE LIQUIDATOR MAY REQUEST THE CLAIMANT TO PRESENT  
9 INFORMATION OR EVIDENCE SUPPLEMENTARY TO THAT REQUIRED UNDER SUB-  
10 SECTION (1) AT ANY TIME AND MAY TAKE TESTIMONY UNDER OATH,  
11 REQUIRE PRODUCTION OF AFFIDAVITS OR DEPOSITIONS, OR OTHERWISE  
12 OBTAIN ADDITIONAL INFORMATION OR EVIDENCE.

13 (4) A JUDGMENT OR ORDER AGAINST AN INSURED OR THE INSURER  
14 ENTERED AFTER THE DATE OF FILING OF A SUCCESSFUL PETITION FOR  
15 LIQUIDATION AND A JUDGMENT OR ORDER AGAINST AN INSURED OR THE  
16 INSURER ENTERED AT ANY TIME BY DEFAULT OR BY COLLUSION NEED NOT  
17 BE CONSIDERED AS EVIDENCE OF LIABILITY OR OF QUANTUM OF DAMAGES.  
18 A JUDGMENT OR ORDER AGAINST AN INSURED OR THE INSURER ENTERED  
19 WITHIN 4 MONTHS BEFORE THE FILING OF THE PETITION NEED NOT BE  
20 CONSIDERED AS EVIDENCE OF LIABILITY OR OF THE QUANTUM OF  
21 DAMAGES.

22 (5) ALL CLAIMS OF A GUARANTY ASSOCIATION OR FOREIGN GUARANTY  
23 ASSOCIATION SHALL BE IN THE FORM AND CONTAIN THE SUBSTANTIATION  
24 AGREED TO BY THE ASSOCIATION AND THE LIQUIDATOR.

25 SEC. 8137. (1) THE CLAIM OF A THIRD PARTY WHICH IS CONTIN-  
26 GENT ONLY ON HIS OR HER FIRST OBTAINING A JUDGMENT AGAINST THE

1 INSURED SHALL BE CONSIDERED AND ALLOWED AS IF THERE WERE NO SUCH  
2 CONTINGENCY.

3 (2) A CLAIM MAY BE ALLOWED EVEN IF CONTINGENT, IF IT IS  
4 FILED IN ACCORDANCE WITH SECTION 8135. IT MAY BE ALLOWED AND MAY  
5 PARTICIPATE IN ALL DISTRIBUTIONS DECLARED AFTER IT IS FILED TO  
6 THE EXTENT THAT IT DOES NOT PREJUDICE THE ORDERLY ADMINISTRATION  
7 OF THE LIQUIDATION.

8 (3) CLAIMS THAT ARE DUE EXCEPT FOR THE PASSAGE OF TIME SHALL  
9 BE TREATED AS ABSOLUTE CLAIMS ARE TREATED, EXCEPT THAT THOSE  
10 CLAIMS MAY BE DISCOUNTED AT THE LEGAL RATE OF INTEREST.

11 (4) CLAIMS MADE UNDER EMPLOYMENT CONTRACTS BY DIRECTORS,  
12 PRINCIPAL OFFICERS, OR PERSONS IN FACT PERFORMING SIMILAR FUNC-  
13 TIONS OR HAVING SIMILAR POWERS ARE LIMITED TO PAYMENT FOR SERV-  
14 ICES RENDERED PRIOR TO THE ISSUANCE OF AN ORDER OF REHABILITATION  
15 OR LIQUIDATION UNDER SECTION 8113 OR 8118.

16 SEC. 8138. (1) IF A THIRD PARTY ASSERTS A CAUSE OF ACTION  
17 AGAINST AN INSURED OF AN INSURER IN LIQUIDATION, THE THIRD PARTY  
18 MAY FILE A CLAIM WITH THE LIQUIDATOR.

19 (2) WHETHER OR NOT THE THIRD PARTY FILES A CLAIM, THE  
20 INSURED MAY FILE A CLAIM ON HIS OR HER OWN BEHALF IN THE  
21 LIQUIDATION. IF THE INSURED FAILS TO FILE A CLAIM BY THE DATE  
22 FOR FILING CLAIMS SPECIFIED IN THE ORDER OF LIQUIDATION OR WITHIN  
23 60 DAYS AFTER MAILING OF THE NOTICE REQUIRED BY SECTION 8122,  
24 WHICHEVER IS LATER, HE OR SHE IS AN UNEXCUSED LATE FILER.

25 (3) THE LIQUIDATOR SHALL MAKE HIS OR HER RECOMMENDATIONS TO  
26 THE COURT UNDER SECTION 8142 FOR THE ALLOWANCE OF AN INSURED'S  
27 CLAIM UNDER SUBSECTION (1) AFTER CONSIDERATION OF THE PROBABLE

1 OUTCOME OF A PENDING ACTION AGAINST THE INSURED ON WHICH THE  
2 CLAIM IS BASED, THE PROBABLE DAMAGES RECOVERABLE IN THE ACTION,  
3 AND THE PROBABLE COSTS AND EXPENSES OF DEFENSE. AFTER ALLOWANCE  
4 BY THE COURT, THE LIQUIDATOR SHALL WITHHOLD DIVIDENDS PAYABLE ON  
5 THE CLAIM PENDING THE OUTCOME OF LITIGATION AND NEGOTIATION WITH  
6 THE INSURED. IF APPROPRIATE, THE LIQUIDATOR SHALL RECONSIDER THE  
7 CLAIM ON THE BASIS OF ADDITIONAL INFORMATION AND AMEND HIS OR HER  
8 RECOMMENDATIONS TO THE COURT. THE INSURED SHALL BE AFFORDED THE  
9 SAME NOTICE AND OPPORTUNITY TO BE HEARD ON ALL CHANGES IN THE  
10 RECOMMENDATION AS IN THE INITIAL DETERMINATION. THE COURT MAY  
11 AMEND THE ALLOWANCE AS THE COURT CONSIDERS APPROPRIATE. AS  
12 CLAIMS AGAINST THE INSURED ARE SETTLED OR BARRED, THE INSURED  
13 SHALL BE PAID FROM THE AMOUNT WITHHELD THE SAME PERCENTAGE DIVI-  
14 DEND AS WAS PAID ON OTHER CLAIMS OF LIKE PROPERTY, BASED ON THE  
15 LESSER OF THE AMOUNT ACTUALLY RECOVERED FROM THE INSURED BY  
16 ACTION OR PAID BY AGREEMENT PLUS THE REASONABLE COSTS AND EXPENSE  
17 OF DEFENSE, OR THE AMOUNT ALLOWED ON THE CLAIMS BY THE COURT.  
18 AFTER ALL CLAIMS ARE SETTLED OR BARRED, ANY SUM REMAINING FROM  
19 THE AMOUNT WITHHELD SHALL REVERT TO THE UNDISTRIBUTED ASSETS OF  
20 THE INSURER. DELAY IN FINAL PAYMENT UNDER THIS SUBSECTION SHALL  
21 NOT BE A REASON FOR UNREASONABLE DELAY OF FINAL DISTRIBUTION AND  
22 DISCHARGE OF THE LIQUIDATOR.

23 (4) IF SEVERAL CLAIMS FOUNDED UPON 1 POLICY ARE FILED,  
24 WHETHER BY THIRD PARTIES OR AS CLAIMS BY THE INSURED UNDER THIS  
25 SECTION, AND THE AGGREGATE ALLOWED AMOUNT OF THE CLAIMS TO WHICH  
26 THE SAME LIMIT OF LIABILITY IN THE POLICY IS APPLICABLE EXCEEDS  
27 THAT LIMIT, EACH CLAIM AS ALLOWED SHALL BE REDUCED IN THE SAME

1 PROPORTION SO THAT THE TOTAL EQUALS THE POLICY LIMIT. CLAIMS BY  
2 THE INSURED SHALL BE EVALUATED AS IN SUBSECTION (3). IF ANY  
3 INSURED'S CLAIM IS SUBSEQUENTLY REDUCED UNDER SUBSECTION (3), THE  
4 AMOUNT THUS FREED SHALL BE APPORTIONED RATABLY AMONG THE CLAIMS  
5 WHICH HAVE BEEN REDUCED UNDER THIS SUBSECTION.

6 (5) A CLAIM MAY NOT BE PRESENTED UNDER THIS SECTION IF IT IS  
7 OR MAY BE COVERED BY A GUARANTY ASSOCIATION OR FOREIGN GUARANTY  
8 ASSOCIATION.

9 SEC. 8139. (1) IF A CLAIM IS DENIED IN WHOLE OR IN PART BY  
10 THE LIQUIDATOR, WRITTEN NOTICE OF THE DETERMINATION SHALL BE  
11 GIVEN TO THE CLAIMANT OR HIS OR HER ATTORNEY BY FIRST CLASS MAIL  
12 AT THE ADDRESS SHOWN IN THE PROOF OF CLAIM. WITHIN 60 DAYS FROM  
13 THE MAILING OF THE NOTICE, THE CLAIMANT MAY FILE HIS OR HER  
14 OBJECTIONS WITH THE LIQUIDATOR. IF A FILING OF OBJECTION IS NOT  
15 MADE, THE CLAIMANT SHALL NOT FURTHER OBJECT TO THE  
16 DETERMINATION.

17 (2) IF OBJECTIONS ARE FILED WITH THE LIQUIDATOR AND THE LIQ-  
18 UIDATOR DOES NOT ALTER HIS OR HER DENIAL OF THE CLAIM AS A RESULT  
19 OF THE OBJECTIONS, THE LIQUIDATOR SHALL ASK THE COURT FOR A HEAR-  
20 ING AS SOON AS PRACTICABLE AND SHALL GIVE NOTICE OF THE HEARING  
21 BY FIRST CLASS MAIL TO THE CLAIMANT OR HIS OR HER ATTORNEY AND TO  
22 ANY OTHER PERSONS DIRECTLY AFFECTED, NOT LESS THAN 10 NOR MORE  
23 THAN 30 DAYS BEFORE THE DATE OF THE HEARING. THE MATTER MAY BE  
24 HEARD BY THE COURT OR BY A COURT APPOINTED REFEREE WHO SHALL  
25 SUBMIT FINDINGS OF FACT ALONG WITH HIS OR HER RECOMMENDATION.

26 SEC. 8140. IF A CREDITOR, WHOSE CLAIM AGAINST AN INSURER IS  
27 SECURED IN WHOLE OR IN PART BY THE UNDERTAKING OF ANOTHER PERSON,

1 FAILS TO PROVE AND FILE THAT CLAIM, THE OTHER PERSON MAY DO SO IN  
2 THE CREDITOR'S NAME AND SHALL BE SUBROGATED TO THE RIGHTS OF THE  
3 CREDITOR, WHETHER THE CLAIM HAS BEEN FILED BY THE CREDITOR OR BY  
4 THE OTHER PERSON IN THE CREDITOR'S NAME, TO THE EXTENT THAT HE OR  
5 SHE DISCHARGES THE UNDERTAKING. IN THE ABSENCE OF AN AGREEMENT  
6 WITH THE CREDITOR TO THE CONTRARY, THE OTHER PERSON SHALL NOT BE  
7 ENTITLED TO ANY DISTRIBUTION UNTIL THE AMOUNT PAID TO THE CREDI-  
8 TOR ON THE UNDERTAKING PLUS THE DISTRIBUTIONS PAID ON THE CLAIM  
9 FROM THE INSURER'S ESTATE TO THE CREDITOR EQUALS THE AMOUNT OF  
10 THE ENTIRE CLAIM OF THE CREDITOR. ANY EXCESS RECEIVED BY THE  
11 CREDITOR SHALL BE HELD BY HIM OR HER IN TRUST FOR THE OTHER  
12 PERSON. THE TERM "OTHER PERSON", AS USED IN THIS SECTION, IS NOT  
13 INTENDED TO APPLY TO A GUARANTY ASSOCIATION OR FOREIGN GUARANTY  
14 ASSOCIATION.

15 SEC. 8141. (1) THE VALUE OF SECURITY HELD BY A SECURED  
16 CREDITOR SHALL BE DETERMINED IN 1 OF THE FOLLOWING WAYS, AS THE  
17 COURT MAY DIRECT:

18 (A) BY CONVERTING THE SAME INTO MONEY ACCORDING TO THE TERMS  
19 OF THE AGREEMENT PURSUANT TO WHICH THE SECURITY WAS DELIVERED TO  
20 THE CREDITORS.

21 (B) BY AGREEMENT, ARBITRATION, COMPROMISE, OR LITIGATION  
22 BETWEEN THE CREDITOR AND THE LIQUIDATOR.

23 (2) THE DETERMINATION SHALL BE UNDER THE COURT'S SUPERVISION  
24 AND CONTROL WITH DUE REGARD FOR THE LIQUIDATOR'S RECOMMENDATION.  
25 THE AMOUNT DETERMINED SHALL BE CREDITED UPON THE SECURED CLAIM  
26 AND ANY DEFICIENCY SHALL BE TREATED AS AN UNSECURED CLAIM. IF

1 THE CLAIMANT SURRENDERS HIS OR HER SECURITY TO THE LIQUIDATOR,  
2 THE ENTIRE CLAIM SHALL BE ALLOWED AS IF UNSECURED.

3 SEC. 8141A. (1) SPECIAL DEPOSIT CLAIMS SHALL BE PAID PURSU-  
4 ANT TO THE FOLLOWING ORDER OF PRIORITY:

5 (A) TO THE RECEIVER FOR THE COSTS AND EXPENSES OF THE  
6 RECEIVERSHIP.

7 (B) TO THE GUARANTY ASSOCIATION FOR THE COSTS AND EXPENSES  
8 OF ADMINISTRATION WITH RESPECT TO THE PAYMENT OF CLAIMS.

9 (C) TO CLAIMS OF POLICYHOLDERS OF THE INSURER AND TO CLAIM-  
10 ANTS OF SUCH POLICYHOLDERS.

11 (D) TO OTHER CLAIMANTS OF THE INSURER.

12 (E) TO THE STOCKHOLDERS OR MEMBERS OF THE INSURER.

13 (2) UPON REQUEST OF A GUARANTY ASSOCIATION OF THIS STATE TO  
14 WHICH THE INSURER IS A MEMBER, SPECIAL DEPOSITS MADE BY THE  
15 INSURER SHALL BE TRANSFERRED TO THAT GUARANTY ASSOCIATION FOR THE  
16 PAYMENT OF CLAIMS PURSUANT TO THIS SECTION.

17 SEC. 8142. THE PRIORITY OF DISTRIBUTION OF CLAIMS FROM THE  
18 INSURER'S ESTATE SHALL BE IN ACCORDANCE WITH THE ORDER IN WHICH  
19 EACH CLASS OF CLAIMS IS SET FORTH IN THIS SECTION. EVERY CLAIM  
20 IN EACH CLASS SHALL BE PAID IN FULL OR ADEQUATE FUNDS RETAINED  
21 FOR THEIR PAYMENT BEFORE THE MEMBERS OF THE NEXT CLASS RECEIVE  
22 PAYMENT. SUBCLASSES SHALL NOT BE ESTABLISHED WITHIN A CLASS.

23 THE ORDER OF DISTRIBUTION OF CLAIMS SHALL BE AS FOLLOWS:

24 (A) CLASS 1. THE COSTS AND EXPENSES OF ADMINISTRATION,  
25 INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING:

26 (i) THE ACTUAL AND NECESSARY COSTS OF PRESERVING OR  
27 RECOVERING THE INSURER'S ASSETS.

1 (ii) COMPENSATION FOR ALL SERVICES RENDERED IN THE  
2 LIQUIDATION.

3 (iii) ANY NECESSARY FILING FEES.

4 (iv) THE FEES AND MILEAGE PAYABLE TO WITNESSES.

5 (v) REASONABLE ATTORNEY'S FEES.

6 (vi) THE REASONABLE EXPENSES OF A GUARANTY ASSOCIATION OR  
7 FOREIGN GUARANTY ASSOCIATION IN HANDLING CLAIMS.

8 (B) CLASS 2. DEBTS DUE TO EMPLOYEES FOR SERVICES PERFORMED  
9 TO THE EXTENT THAT THEY DO NOT EXCEED \$1,000.00 AND REPRESENT  
10 PAYMENT FOR SERVICES PERFORMED WITHIN 1 YEAR BEFORE THE FILING OF  
11 THE PETITION FOR LIQUIDATION. OFFICERS AND DIRECTORS SHALL NOT  
12 BE ENTITLED TO THE BENEFIT OF THIS PRIORITY. THIS PRIORITY SHALL  
13 BE IN LIEU OF ANY OTHER SIMILAR PRIORITY WHICH MAY BE AUTHORIZED  
14 BY LAW AS TO WAGES OR COMPENSATION OF EMPLOYEES.

15 (C) CLASS 3. ALL CLAIMS UNDER POLICIES FOR LOSSES INCURRED,  
16 INCLUDING THIRD PARTY CLAIMS, ALL CLAIMS AGAINST THE INSURER FOR  
17 LIABILITY FOR BODILY INJURY OR FOR INJURY TO OR DESTRUCTION OF  
18 TANGIBLE PROPERTY WHICH ARE NOT UNDER POLICIES, AND ALL CLAIMS OF  
19 A GUARANTY ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION. ALL  
20 CLAIMS UNDER LIFE INSURANCE AND ANNUITY POLICIES, WHETHER FOR  
21 DEATH PROCEEDS, ANNUITY PROCEEDS, OR INVESTMENT VALUES, SHALL BE  
22 TREATED AS LOSS CLAIMS. THAT PORTION OF ANY LOSS, INDEMNIFICA-  
23 TION FOR WHICH IS PROVIDED BY OTHER BENEFITS OR ADVANTAGES RECOV-  
24 ERED BY THE CLAIMANT, SHALL NOT BE INCLUDED IN THIS CLASS, OTHER  
25 THAN BENEFITS OR ADVANTAGES RECOVERED OR RECOVERABLE IN DISCHARGE  
26 OF FAMILIAL OBLIGATION OF SUPPORT OR BY WAY OF SUCCESSION AT  
27 DEATH OR AS PROCEEDS OF LIFE INSURANCE, OR AS GRATUITIES. A

1 PAYMENT BY AN EMPLOYER TO HIS OR HER EMPLOYEE SHALL NOT BE  
2 TREATED AS A GRATUITY.

3 (D) CLASS 4. CLAIMS UNDER NONASSESSABLE POLICIES FOR  
4 UNEARNED PREMIUM OR OTHER PREMIUM REFUNDS AND CLAIMS OF GENERAL  
5 CREDITORS.

6 (E) CLASS 5. CLAIMS OF THE FEDERAL OR ANY STATE OR LOCAL  
7 GOVERNMENT. CLAIMS, INCLUDING THOSE OF ANY GOVERNMENTAL BODY FOR  
8 A PENALTY OR FORFEITURE, SHALL BE ALLOWED IN THIS CLASS ONLY TO  
9 THE EXTENT OF THE PECUNIARY LOSS SUSTAINED FROM THE ACT, TRANSAC-  
10 TION, OR PROCEEDING OUT OF WHICH THE PENALTY OR FORFEITURE AROSE,  
11 WITH REASONABLE AND ACTUAL COSTS OCCASIONED THEREBY. THE REMAIN-  
12 DER OF SUCH CLAIMS SHALL BE POSTPONED TO THE CLASS OF CLAIMS  
13 UNDER SUBDIVISION (H).

14 (F) CLASS 6. CLAIMS FILED LATE OR ANY OTHER CLAIMS OTHER  
15 THAN CLAIMS UNDER SUBDIVISIONS (G) AND (H).

16 (G) CLASS 7. SURPLUS OR CONTRIBUTION NOTES, OR SIMILAR  
17 OBLIGATIONS, AND PREMIUM REFUNDS ON ASSESSABLE POLICIES.  
18 PAYMENTS TO MEMBERS OF DOMESTIC MUTUAL INSURANCE COMPANIES SHALL  
19 BE LIMITED IN ACCORDANCE WITH LAW.

20 (H) CLASS 8. THE CLAIMS OF SHAREHOLDERS OR OTHER OWNERS.

21 SEC. 8143. (1) THE LIQUIDATOR SHALL REVIEW ALL CLAIMS DULY  
22 FILED IN THE LIQUIDATION AND SHALL FURTHER INVESTIGATE AS HE OR  
23 SHE CONSIDERS NECESSARY. THE LIQUIDATOR MAY COMPOUND, COM-  
24 PROMISE, OR IN ANY OTHER MANNER NEGOTIATE THE AMOUNT FOR WHICH  
25 CLAIMS WILL BE RECOMMENDED TO THE COURT UNLESS THE LIQUIDATOR IS  
26 REQUIRED BY LAW TO ACCEPT CLAIMS AS SETTLED BY A PERSON OR  
27 ORGANIZATION, INCLUDING A GUARANTY ASSOCIATION OR FOREIGN



1 GUARANTY ASSOCIATION. UNRESOLVED DISPUTES SHALL BE DETERMINED  
2 UNDER SECTION 8139. AS SOON AS PRACTICABLE, THE LIQUIDATOR SHALL  
3 PRESENT TO THE COURT A REPORT OF THE CLAIMS AGAINST THE INSURER  
4 WITH HIS OR HER RECOMMENDATIONS. THE REPORT SHALL INCLUDE THE  
5 NAME AND ADDRESS OF EACH CLAIMANT AND THE AMOUNT OF THE CLAIM  
6 FINALLY RECOMMENDED, IF ANY. IF THE INSURER HAS ISSUED ANNUITIES  
7 OR LIFE INSURANCE POLICIES, THE LIQUIDATOR SHALL REPORT THE PER-  
8 SONS, ACCORDING TO THE RECORDS OF THE INSURER, TO WHOM AMOUNTS  
9 ARE OWED AS CASH SURRENDER VALUES OR OTHER INVESTMENT VALUE AND  
10 THE AMOUNTS OWED.

11 (2) THE COURT MAY APPROVE, DISAPPROVE, OR MODIFY THE REPORT  
12 ON CLAIMS BY THE LIQUIDATOR. REPORTS NOT MODIFIED BY THE COURT  
13 WITHIN A PERIOD OF 60 DAYS FOLLOWING SUBMISSION BY THE LIQUIDATOR  
14 SHALL BE TREATED BY THE LIQUIDATOR AS ALLOWED CLAIMS, SUBJECT TO  
15 LATER MODIFICATION OR TO RULINGS MADE BY THE COURT PURSUANT TO  
16 SECTION 8139. A CLAIM UNDER A POLICY OF INSURANCE SHALL NOT BE  
17 ALLOWED FOR AN AMOUNT IN EXCESS OF THE APPLICABLE POLICY LIMITS.

18 SEC. 8144. UNDER THE COURT'S DIRECTION, THE LIQUIDATOR  
19 SHALL PAY DISTRIBUTIONS IN A MANNER THAT WILL ASSURE THE PROPER  
20 RECOGNITION OF PRIORITIES AND A REASONABLE BALANCE BETWEEN THE  
21 EXPEDITIOUS COMPLETION OF THE LIQUIDATION AND THE PROTECTION OF  
22 UNLIQUIDATED AND UNDETERMINED CLAIMS, INCLUDING THIRD PARTY  
23 CLAIMS. DISTRIBUTION OF ASSETS IN KIND MAY BE MADE AT VALUATIONS  
24 SET BY AGREEMENT BETWEEN THE LIQUIDATOR AND THE CREDITOR AND  
25 APPROVED BY THE COURT.

26 SEC. 8145. (1) ALL UNCLAIMED FUNDS SUBJECT TO DISTRIBUTION  
27 REMAINING IN THE LIQUIDATOR'S HANDS WHEN HE OR SHE IS READY TO

1 APPLY TO THE COURT FOR DISCHARGE, INCLUDING THE AMOUNT  
2 DISTRIBUTABLE TO A CREDITOR, SHAREHOLDER, MEMBER, OR OTHER PERSON  
3 WHO IS UNKNOWN OR CANNOT BE FOUND, SHALL BE DEPOSITED WITH THE  
4 STATE TREASURER, AND SHALL BE PAID WITHOUT INTEREST EXCEPT IN  
5 ACCORDANCE WITH SECTION 8142 TO THE PERSON ENTITLED OR HIS OR HER  
6 LEGAL REPRESENTATIVE UPON PROOF OF RIGHT TO IT SATISFACTORY TO  
7 THE STATE TREASURER. AN AMOUNT ON DEPOSIT NOT CLAIMED WITHIN 6  
8 YEARS FROM THE DISCHARGE OF THE LIQUIDATOR SHALL BE CONSIDERED TO  
9 HAVE BEEN ABANDONED, SHALL ESCHEAT TO THE STATE WITHOUT FORMAL  
10 ESCHEAT PROCEEDINGS, AND SHALL BE DEPOSITED IN THE GENERAL FUND.

11 (2) ALL FUNDS WITHHELD UNDER SECTION 8137 AND NOT DISTRIB-  
12 UTED SHALL BE DEPOSITED, UPON DISCHARGE OF THE LIQUIDATOR, WITH  
13 THE STATE TREASURER AND PAID BY HIM OR HER IN ACCORDANCE WITH  
14 SECTION 8142. SUMS REMAINING WHICH UNDER SECTION 8142 WOULD  
15 REVERT TO THE UNDISTRIBUTED ASSETS OF THE INSURER SHALL BE TRANS-  
16 FERRED TO THE STATE TREASURER AND BECOME THE PROPERTY OF THE  
17 STATE UNDER SUBSECTION (1), UNLESS THE COMMISSIONER IN HIS OR HER  
18 DISCRETION PETITIONS THE COURT TO REOPEN THE LIQUIDATION UNDER  
19 SECTION 8147.

20 SEC. 8146. (1) IF ALL ASSETS JUSTIFYING THE EXPENSE OF COL-  
21 LECTION AND DISTRIBUTION HAVE BEEN COLLECTED AND DISTRIBUTED  
22 UNDER THIS CHAPTER, THE LIQUIDATOR SHALL APPLY TO THE COURT FOR  
23 DISCHARGE. THE COURT MAY GRANT THE DISCHARGE AND MAKE ANY OTHER  
24 ORDERS, INCLUDING AN ORDER TO TRANSFER ANY REMAINING FUNDS THAT  
25 ARE UNECONOMIC TO DISTRIBUTE, AS MAY BE CONSIDERED APPROPRIATE.

26 (2) ANY OTHER PERSON MAY APPLY TO THE COURT AT ANY TIME FOR  
27 AN ORDER UNDER SUBSECTION (1). IF THE APPLICATION IS DENIED, THE

1 APPLICANT SHALL PAY THE COSTS AND EXPENSES OF THE LIQUIDATOR IN  
2 RESISTING THE APPLICATION, INCLUDING A REASONABLE ATTORNEY'S  
3 FEE.

4 SEC. 8147. AFTER THE LIQUIDATION PROCEEDING HAS BEEN TERMI-  
5 NATED AND THE LIQUIDATOR DISCHARGED, THE COMMISSIONER OR OTHER  
6 INTERESTED PARTY MAY PETITION THE CIRCUIT COURT AT ANY TIME TO  
7 REOPEN THE PROCEEDINGS FOR GOOD CAUSE, INCLUDING THE DISCOVERY OF  
8 ADDITIONAL ASSETS. IF THE COURT IS SATISFIED THAT THERE IS JUS-  
9 TIFICATION FOR REOPENING, IT SHALL ORDER A REOPENING.

10 SEC. 8148. IF IT APPEARS TO THE COMMISSIONER THAT THE  
11 RECORDS OF AN INSURER IN PROCESS OF LIQUIDATION OR COMPLETELY  
12 LIQUIDATED ARE NO LONGER USEFUL, THE COMMISSIONER MAY RECOMMEND  
13 TO THE COURT AND THE COURT SHALL DIRECT WHAT RECORDS SHOULD BE  
14 RETAINED FOR FUTURE REFERENCE AND WHAT SHOULD BE DESTROYED.

15 SEC. 8149. THE CIRCUIT COURT MAY CAUSE AUDITS, AS IT CON-  
16 SIDERS DESIRABLE, TO BE MADE OF THE BOOKS OF THE COMMISSIONER  
17 RELATING TO ANY RECEIVERSHIP ESTABLISHED UNDER THIS CHAPTER AND A  
18 REPORT OF EACH AUDIT SHALL BE FILED WITH THE COMMISSIONER AND  
19 WITH THE COURT. THE BOOKS, RECORDS, AND OTHER DOCUMENTS OF THE  
20 RECEIVERSHIP SHALL BE MADE AVAILABLE TO THE AUDITOR AT ANY TIME  
21 WITHOUT NOTICE. THE EXPENSE OF EACH AUDIT SHALL BE CONSIDERED A  
22 COST OF ADMINISTRATION OF THE RECEIVERSHIP.

23 SEC. 8150. (1) IF A DOMICILIARY LIQUIDATOR HAS NOT BEEN  
24 APPOINTED, THE COMMISSIONER MAY APPLY TO THE CIRCUIT COURT BY  
25 VERIFIED PETITION FOR AN ORDER DIRECTING HIM OR HER TO ACT AS  
26 CONSERVATOR TO CONSERVE THE PROPERTY OF AN ALIEN INSURER NOT

1 DOMICILED IN THIS STATE OR A FOREIGN INSURER ON ANY 1 OR MORE OF  
2 THE FOLLOWING GROUNDS:

3 (A) ANY OF THE GROUNDS IN SECTION 8112.

4 (B) THAT ANY OF ITS PROPERTY HAS BEEN SEQUESTERED BY OFFI-  
5 CIAL ACTION IN ITS DOMICILIARY STATE, OR IN ANY OTHER STATE.

6 (C) THAT ENOUGH OF ITS PROPERTY HAS BEEN SEQUESTERED IN A  
7 FOREIGN COUNTRY TO GIVE REASONABLE CAUSE TO FEAR THAT THE INSURER  
8 IS OR MAY BECOME INSOLVENT.

9 (D) THAT ITS CERTIFICATE OF AUTHORITY TO DO BUSINESS IN THIS  
10 STATE HAS BEEN REVOKED OR THAT NONE WAS EVER ISSUED, AND THAT  
11 THERE ARE RESIDENTS OF THIS STATE WITH OUTSTANDING CLAIMS OR OUT-  
12 STANDING POLICIES.

13 (2) IF AN ORDER IS SOUGHT UNDER SUBSECTION (1), THE COURT  
14 SHALL CAUSE THE INSURER TO BE GIVEN NOTICE AND TIME TO RESPOND AS  
15 IS REASONABLE UNDER THE CIRCUMSTANCES.

16 (3) THE COURT MAY ISSUE THE ORDER IN WHATEVER TERMS IT CON-  
17 SIDERS APPROPRIATE. THE FILING OR RECORDING OF THE ORDER WITH  
18 THE CLERK OF THE CIRCUIT COURT OR THE RECORDER OF DEEDS OF THE  
19 COUNTY IN WHICH THE PRINCIPAL BUSINESS OF THE COMPANY IS LOCATED  
20 SHALL IMPART THE SAME NOTICE AS A DEED, BILL OF SALE, OR OTHER  
21 EVIDENCE OF TITLE DULY FILED OR RECORDED WITH THAT RECORDER OF  
22 DEEDS WOULD HAVE IMPARTED.

23 (4) THE CONSERVATOR MAY AT ANY TIME PETITION FOR AND THE  
24 COURT MAY GRANT AN ORDER UNDER SECTION 8151 TO LIQUIDATE ASSETS  
25 OF A FOREIGN OR ALIEN INSURER UNDER CONSERVATION, OR IF APPROPRI-  
26 ATE FOR AN ORDER UNDER SECTION 8153 TO BE APPOINTED ANCILLARY  
27 RECEIVER.

1 (5) THE CONSERVATOR MAY AT ANY TIME PETITION THE COURT FOR  
2 AN ORDER TERMINATING CONSERVATION OF AN INSURER. IF THE COURT  
3 FINDS THAT THE CONSERVATION IS NO LONGER NECESSARY, THE COURT  
4 SHALL ORDER THAT THE INSURER BE RESTORED TO POSSESSION OF ITS  
5 PROPERTY AND THE CONTROL OF ITS BUSINESS. THE COURT MAY ALSO  
6 MAKE SUCH FINDING AND ISSUE SUCH ORDER AT ANY TIME UPON MOTION OF  
7 ANY INTERESTED PARTY, BUT IF THE MOTION IS DENIED, ALL COSTS  
8 SHALL BE ASSESSED AGAINST THAT PARTY.

9 SEC. 8151. (1) IF A DOMICILIARY RECEIVER HAS NOT BEEN  
10 APPOINTED, THE COMMISSIONER MAY APPLY TO THE CIRCUIT COURT BY  
11 VERIFIED PETITION FOR AN ORDER DIRECTING HIM OR HER TO LIQUIDATE  
12 THE ASSETS FOUND IN THIS STATE OF A FOREIGN INSURER OR AN ALIEN  
13 INSURER NOT DOMICILED IN THIS STATE, ON ANY OF THE FOLLOWING  
14 GROUNDS:

15 (A) ANY OF THE GROUNDS IN SECTION 8112 OR 8117.

16 (B) ANY OF THE GROUNDS SPECIFIED IN SECTION 8150(1)(B) TO  
17 (D).

18 (2) IF AN ORDER IS SOUGHT UNDER SUBSECTION (1), THE COURT  
19 SHALL CAUSE THE INSURER TO BE GIVEN NOTICE AND TIME TO RESPOND AS  
20 IS REASONABLE UNDER THE CIRCUMSTANCES.

21 (3) IF IT APPEARS TO THE COURT THAT THE BEST INTERESTS OF  
22 CREDITORS, POLICYHOLDERS, AND THE PUBLIC REQUIRE, THE COURT MAY  
23 ISSUE AN ORDER TO LIQUIDATE IN TERMS THE COURT CONSIDERS  
24 APPROPRIATE. THE FILING OR RECORDING OF THE ORDER WITH THE CLERK  
25 OF THE CIRCUIT COURT OR THE REGISTER OF DEEDS OF THE COUNTY IN  
26 WHICH THE PRINCIPAL BUSINESS OF THE COMPANY IS LOCATED OR THE  
27 COUNTY IN WHICH ITS PRINCIPAL OFFICE OR PLACE OF BUSINESS IS

1 LOCATED SHALL IMPART THE SAME NOTICE AS A DEED, BILL OF SALE, OR  
2 OTHER EVIDENCE OF TITLE DULY FILED OR RECORDED WITH THAT REGISTER  
3 OF DEEDS WOULD HAVE IMPARTED.

4 (4) IF A DOMICILIARY LIQUIDATOR IS APPOINTED IN A RECIPROCAL  
5 STATE WHILE A LIQUIDATION IS PROCEEDING UNDER THIS SECTION, THE  
6 LIQUIDATOR UNDER THIS SECTION SHALL THEREAFTER ACT AS ANCILLARY  
7 RECEIVER UNDER SECTION 8153. IF A DOMICILIARY LIQUIDATOR IS  
8 APPOINTED IN A NONRECIPROCAL STATE WHILE A LIQUIDATION IS PRO-  
9 CEEDING UNDER THIS SECTION, THE LIQUIDATOR UNDER THIS SECTION MAY  
10 PETITION THE COURT FOR PERMISSION TO ACT AS ANCILLARY RECEIVER  
11 UNDER SECTION 8153.

12 (5) ON THE SAME GROUNDS AS ARE SPECIFIED IN SUBSECTION (1),  
13 THE COMMISSIONER MAY PETITION ANY APPROPRIATE FEDERAL DISTRICT  
14 COURT TO BE APPOINTED RECEIVER TO LIQUIDATE THAT PORTION OF THE  
15 INSURER'S ASSETS AND BUSINESS OVER WHICH THE COURT WILL EXERCISE  
16 JURISDICTION OR ANY LESSER PART THEREOF THAT THE COMMISSIONER  
17 CONSIDERS DESIRABLE FOR THE PROTECTION OF THE POLICYHOLDERS AND  
18 CREDITORS IN THIS STATE.

19 (6) THE COURT MAY ORDER THE COMMISSIONER, WHEN HE OR SHE HAS  
20 LIQUIDATED THE ASSETS OF A FOREIGN OR ALIEN INSURER UNDER THIS  
21 SECTION, TO PAY CLAIMS OF RESIDENTS OF THIS STATE AGAINST THE  
22 INSURER UNDER RULES AS TO THE LIQUIDATION OF INSURERS UNDER THIS  
23 CHAPTER AS ARE OTHERWISE COMPATIBLE WITH THE PROVISIONS OF THIS  
24 SECTION.

25 SEC. 8152. (1) THE DOMICILIARY LIQUIDATOR OF AN INSURER  
26 DOMICILED IN A RECIPROCAL STATE SHALL BE VESTED BY OPERATION OF  
27 LAW, EXCEPT AS TO SPECIAL DEPOSITS AND SECURITY ON SECURED CLAIMS

1 UNDER SECTION 8153(3), WITH THE TITLE TO ALL OF THE ASSETS,  
2 PROPERTY, CONTRACTS AND RIGHTS OF ACTION, AGENTS' BALANCES, AND  
3 ALL OF THE BOOKS, ACCOUNTS, AND OTHER RECORDS OF THE INSURER  
4 LOCATED IN THIS STATE. THE DATE OF VESTING SHALL BE THE DATE OF  
5 THE FILING OF THE PETITION, IF THAT DATE IS SPECIFIED BY THE  
6 DOMICILIARY LAW FOR THE VESTING OF PROPERTY IN THE DOMICILIARY  
7 STATE. OTHERWISE, THE DATE OF VESTING SHALL BE THE DATE OF ENTRY  
8 OF THE ORDER DIRECTING POSSESSION TO BE TAKEN. THE DOMICILIARY  
9 LIQUIDATOR SHALL HAVE THE IMMEDIATE RIGHT TO RECOVER BALANCES DUE  
10 FROM AGENTS AND TO OBTAIN POSSESSION OF THE BOOKS, ACCOUNTS, AND  
11 OTHER RECORDS OF THE INSURER LOCATED IN THIS STATE. THE DOMICIL-  
12 IARY LIQUIDATOR SHALL ALSO HAVE THE RIGHT TO RECOVER ALL OTHER  
13 ASSETS OF THE INSURER LOCATED IN THIS STATE, SUBJECT TO  
14 SECTION 8153.

15 (2) IF A DOMICILIARY LIQUIDATOR IS APPOINTED FOR AN INSURER  
16 NOT DOMICILED IN A RECIPROCAL STATE, THE COMMISSIONER OF THIS  
17 STATE SHALL BE VESTED BY OPERATION OF LAW WITH THE TITLE TO ALL  
18 OF THE PROPERTY, CONTRACTS AND RIGHT OF ACTION, AND ALL OF THE  
19 BOOKS, ACCOUNTS, AND OTHER RECORDS OF THE INSURER LOCATED IN THIS  
20 STATE, AT THE SAME TIME THAT THE DOMICILIARY LIQUIDATOR IS VESTED  
21 WITH TITLE IN THE DOMICILE. THE COMMISSIONER OF THIS STATE MAY  
22 PETITION FOR A CONSERVATION OR LIQUIDATION ORDER UNDER  
23 SECTION 8150 OR 8151, OR FOR AN ANCILLARY RECEIVERSHIP UNDER  
24 SECTION 8153, OR AFTER APPROVAL BY THE CIRCUIT COURT MAY TRANSFER  
25 TITLE TO THE DOMICILIARY LIQUIDATOR, AS THE INTERESTS OF JUSTICE  
26 AND THE EQUITABLE DISTRIBUTION OF THE ASSETS REQUIRE.

1 (3) CLAIMANTS RESIDING IN THIS STATE MAY FILE CLAIMS WITH  
2 THE LIQUIDATOR OR ANCILLARY RECEIVER, IF ANY, IN THIS STATE OR  
3 WITH THE DOMICILIARY LIQUIDATOR IF THE DOMICILIARY LAW PERMITS.  
4 THE CLAIMS MUST BE FILED ON OR BEFORE THE LAST DATE FIXED FOR THE  
5 FILING OF CLAIMS IN THE DOMICILIARY LIQUIDATION PROCEEDINGS.

6 SEC. 8153. (1) IF A DOMICILIARY LIQUIDATOR HAS BEEN  
7 APPOINTED FOR AN INSURER NOT DOMICILED IN THIS STATE, THE COMMIS-  
8 SIONER MAY FILE A PETITION WITH THE CIRCUIT COURT REQUESTING  
9 APPOINTMENT AS ANCILLARY RECEIVER IN THIS STATE IN EITHER OF THE  
10 FOLLOWING CASES:

11 (A) IF HE OR SHE FINDS THAT THERE ARE SUFFICIENT ASSETS OF  
12 THE INSURER LOCATED IN THIS STATE TO JUSTIFY THE APPOINTMENT OF  
13 AN ANCILLARY RECEIVER.

14 (B) IF THE PROTECTION OF CREDITORS OR POLICYHOLDERS IN THIS  
15 STATE REQUIRES.

16 (2) THE COURT MAY ISSUE AN ORDER APPOINTING AN ANCILLARY  
17 RECEIVER IN TERMS AS THE COURT CONSIDERS APPROPRIATE. THE FILING  
18 OR RECORDING OF THE ORDER WITH THE REGISTER OF DEEDS IN THIS  
19 STATE IMPARTS THE SAME NOTICE AS A DEED, BILL OF SALE, OR OTHER  
20 EVIDENCE OF TITLE DULY FILED OR RECORDED WITH THAT REGISTER OF  
21 DEEDS.

22 (3) IF A DOMICILIARY LIQUIDATOR HAS BEEN APPOINTED IN A  
23 RECIPROCAL STATE THE ANCILLARY RECEIVER APPOINTED IN THIS STATE  
24 MAY AID AND ASSIST THE DOMICILIARY LIQUIDATOR IN RECOVERING  
25 ASSETS OF THE INSURER LOCATED IN THIS STATE IF NECESSARY. THE  
26 ANCILLARY RECEIVER SHALL LIQUIDATE FROM THEIR RESPECTIVE  
27 SECURITIES, AS SOON AS PRACTICABLE, THOSE SPECIAL DEPOSIT CLAIMS



1 AND SECURED CLAIMS THAT ARE PROVED AND ALLOWED IN THE ANCILLARY  
2 PROCEEDINGS IN THIS STATE AND SHALL PAY THE NECESSARY EXPENSES OF  
3 THE PROCEEDINGS. THE ANCILLARY RECEIVER SHALL PROMPTLY TRANSFER  
4 ALL REMAINING ASSETS, BOOKS, ACCOUNTS, AND RECORDS TO THE DOMI-  
5 CILIARY LIQUIDATOR. SUBJECT TO THIS SECTION, THE ANCILLARY  
6 RECEIVER AND HIS OR HER DEPUTIES SHALL HAVE THE SAME POWERS AND  
7 BE SUBJECT TO THE SAME DUTIES WITH RESPECT TO THE ADMINISTRATION  
8 OF ASSETS AS A LIQUIDATOR OF AN INSURER DOMICILED IN THIS STATE.

9 (4) IF A DOMICILIARY LIQUIDATOR HAS BEEN APPOINTED IN THIS  
10 STATE, ANCILLARY RECEIVERS APPOINTED IN RECIPROCAL STATES SHALL  
11 HAVE, AS TO ASSETS AND BOOKS, ACCOUNTS, AND OTHER RECORDS IN  
12 THEIR RESPECTIVE STATES, CORRESPONDING RIGHTS, DUTIES, AND POWERS  
13 TO THOSE PROVIDED IN SUBSECTION (3) FOR ANCILLARY RECEIVERS  
14 APPOINTED IN THIS STATE.

15 SEC. 8154. THE COMMISSIONER IN HIS OR HER SOLE DISCRETION  
16 MAY INSTITUTE PROCEEDINGS UNDER SECTIONS 8109 TO 8111 AT THE  
17 REQUEST OF THE COMMISSIONER OR OTHER APPROPRIATE INSURANCE OFFI-  
18 CIAL OF THE DOMICILIARY STATE OF ANY FOREIGN OR ALIEN INSURER  
19 HAVING PROPERTY LOCATED IN THIS STATE.

20 SEC. 8155. (1) IN A LIQUIDATION PROCEEDING BEGUN IN THIS  
21 STATE AGAINST AN INSURER DOMICILED IN THIS STATE, CLAIMANTS  
22 RESIDING IN FOREIGN COUNTRIES OR IN STATES NOT RECIPROCAL STATES  
23 SHALL FILE CLAIMS IN THIS STATE, AND CLAIMANTS RESIDING IN RECIP-  
24 ROCAL STATES MAY FILE CLAIMS EITHER WITH THE ANCILLARY RECEIVERS,  
25 IF ANY, IN THEIR RESPECTIVE STATES OR WITH THE DOMICILIARY  
26 LIQUIDATOR. CLAIMS MUST BE FILED ON OR BEFORE THE LAST DATE

1 FIXED FOR THE FILING OF CLAIMS IN THE DOMICILIARY LIQUIDATION  
2 PROCEEDING.

3 (2) CLAIMS BELONGING TO CLAIMANTS RESIDING IN RECIPROCAL  
4 STATES MAY BE PROVED EITHER IN THE LIQUIDATION PROCEEDING IN THIS  
5 STATE AS PROVIDED IN THIS CHAPTER OR IN ANCILLARY PROCEEDINGS, IF  
6 ANY, IN THE RECIPROCAL STATES. IF NOTICE OF THE CLAIMS AND  
7 OPPORTUNITY TO APPEAR AND BE HEARD IS AFFORDED THE DOMICILIARY  
8 LIQUIDATOR OF THIS STATE AS PROVIDED IN SECTION 8156(2) WITH  
9 RESPECT TO ANCILLARY PROCEEDINGS, THE FINAL ALLOWANCE OF CLAIMS  
10 BY THE COURTS IN ANCILLARY PROCEEDINGS IN RECIPROCAL STATES SHALL  
11 BE CONCLUSIVE AS TO AMOUNT AND AS TO PRIORITY AGAINST SPECIAL  
12 DEPOSITS OR OTHER SECURITY LOCATED IN SUCH ANCILLARY STATES, BUT  
13 SHALL NOT BE CONCLUSIVE WITH RESPECT TO PRIORITIES AGAINST GEN-  
14 ERAL ASSETS UNDER SECTION 8142.

15 SEC. 8156. (1) IN A LIQUIDATION PROCEEDING IN A RECIPROCAL  
16 STATE AGAINST AN INSURER DOMICILED IN THAT STATE, CLAIMANTS  
17 AGAINST THE INSURER WHO RESIDE WITHIN THIS STATE MAY FILE CLAIMS  
18 EITHER WITH THE ANCILLARY RECEIVER, IF ANY, IN THIS STATE OR WITH  
19 THE DOMICILIARY LIQUIDATOR. CLAIMS MUST BE FILED ON OR BEFORE  
20 THE LAST DATES FIXED FOR THE FILING OF CLAIMS IN THE DOMICILIARY  
21 LIQUIDATION PROCEEDING.

22 (2) CLAIMS BELONGING TO CLAIMANTS RESIDING IN THIS STATE MAY  
23 BE PROVED EITHER IN THE DOMICILIARY STATE UNDER THE LAW OF THAT  
24 STATE, OR IN ANCILLARY PROCEEDINGS, IF ANY, IN THIS STATE. IF A  
25 CLAIMANT ELECTS TO PROVE HIS OR HER CLAIM IN THIS STATE, HE OR  
26 SHE SHALL FILE HIS OR HER CLAIM WITH THE LIQUIDATOR IN THE MANNER  
27 PROVIDED IN SECTIONS 8135 AND 8136. THE ANCILLARY RECEIVER SHALL

1 MAKE HIS OR HER RECOMMENDATION TO THE COURT AS UNDER  
2 SECTION 8143. THE ANCILLARY RECEIVER SHALL ALSO ARRANGE A DATE  
3 FOR HEARING, IF NECESSARY UNDER SECTION 8139, AND SHALL GIVE  
4 NOTICE TO THE LIQUIDATOR IN THE DOMICILIARY STATE BY CERTIFIED  
5 MAIL OR BY PERSONAL SERVICE AT LEAST 40 DAYS PRIOR TO THE DATE  
6 SET FOR HEARING. IF THE DOMICILIARY LIQUIDATOR, WITHIN 30 DAYS  
7 AFTER THE GIVING OF SUCH NOTICE, GIVES NOTICE IN WRITING TO THE  
8 ANCILLARY RECEIVER AND TO THE CLAIMANT BY CERTIFIED MAIL OR BY  
9 PERSONAL SERVICE OF HIS OR HER INTENTION TO CONTEST THE CLAIM, HE  
10 OR SHE SHALL BE ENTITLED TO APPEAR OR TO BE REPRESENTED IN ANY  
11 PROCEEDING IN THIS STATE INVOLVING THE ADJUDICATION OF THE  
12 CLAIM.

13 (3) THE FINAL ALLOWANCE OF THE CLAIM BY THE COURTS OF THIS  
14 STATE SHALL BE ACCEPTED AS CONCLUSIVE AS TO AMOUNT AND AS TO PRI-  
15 ORITY AGAINST SPECIAL DEPOSITS OR OTHER SECURITY LOCATED IN THIS  
16 STATE.

17 SEC. 8157. DURING THE PENDENCY IN THIS OR ANY OTHER STATE  
18 OF A LIQUIDATION PROCEEDING, WHETHER CALLED BY THAT NAME OR NOT,  
19 AN ACTION OR PROCEEDING IN THE NATURE OF AN ATTACHMENT, GARNISH-  
20 MENT, OR LEVY OF EXECUTION SHALL NOT BE COMMENCED OR MAINTAINED  
21 IN THIS STATE AGAINST THE DELINQUENT INSURER OR ITS ASSETS.

22 SEC. 8158. (1) IN A LIQUIDATION PROCEEDING IN THIS STATE  
23 INVOLVING 1 OR MORE RECIPROCAL STATES, THE ORDER OF DISTRIBUTION  
24 OF THE DOMICILIARY STATE SHALL CONTROL AS TO ALL CLAIMS OF RESI-  
25 DENTS OF THIS AND RECIPROCAL STATES. ALL CLAIMS OF RESIDENTS OF  
26 RECIPROCAL STATES SHALL BE GIVEN EQUAL PRIORITY OF PAYMENT FROM  
27 GENERAL ASSETS REGARDLESS OF WHERE THE ASSETS ARE LOCATED.

1       (2) THE OWNERS OF SPECIAL DEPOSIT CLAIMS AGAINST AN INSURER  
2 FOR WHICH A LIQUIDATOR IS APPOINTED IN THIS OR ANY OTHER STATE  
3 SHALL BE GIVEN PRIORITY AGAINST THE SPECIAL DEPOSITS IN ACCORD-  
4 ANCE WITH THE STATUTES GOVERNING THE CREATION AND MAINTENANCE OF  
5 THE DEPOSITS. IF THERE IS A DEFICIENCY IN ANY DEPOSIT SO THAT  
6 THE CLAIMS SECURED BY IT ARE NOT FULLY DISCHARGED FROM IT, THE  
7 CLAIMANTS MAY SHARE IN THE GENERAL ASSETS, BUT THE SHARING SHALL  
8 BE DEFERRED UNTIL GENERAL CREDITORS, AND ALSO CLAIMANTS AGAINST  
9 OTHER SPECIAL DEPOSITS WHO HAVE RECEIVED SMALLER PERCENTAGES FROM  
10 THEIR RESPECTIVE SPECIAL DEPOSITS, HAVE BEEN PAID PERCENTAGES OF  
11 THEIR CLAIMS EQUAL TO THE PERCENTAGE PAID FROM THE SPECIAL  
12 DEPOSIT.

13       (3) THE OWNER OF A SECURE CLAIM AGAINST AN INSURER FOR WHICH  
14 A LIQUIDATOR HAS BEEN APPOINTED IN THIS OR ANY OTHER STATE MAY  
15 SURRENDER HIS OR HER SECURITY AND FILE HIS OR HER CLAIM AS A GEN-  
16 ERAL CREDITOR, OR THE CLAIM MAY BE DISCHARGED BY RESORT TO THE  
17 SECURITY IN ACCORDANCE WITH SECTION 8141, IN WHICH CASE THE DEFI-  
18 CIENCY, IF ANY, SHALL BE TREATED AS A CLAIM AGAINST THE GENERAL  
19 ASSETS OF THE INSURER ON THE SAME BASIS AS CLAIMS OF UNSECURED  
20 CREDITORS.

21       SEC. 8159. IF AN ANCILLARY RECEIVER IN ANOTHER STATE OR  
22 FOREIGN COUNTRY, WHETHER CALLED BY THAT NAME OR NOT, FAILS TO  
23 TRANSFER TO THE DOMICILIARY LIQUIDATOR IN THIS STATE ANY ASSETS  
24 WITHIN HIS OR HER CONTROL OTHER THAN SPECIAL DEPOSITS, DIMINISHED  
25 ONLY BY THE EXPENSES OF THE ANCILLARY RECEIVERSHIP, IF ANY, THE  
26 CLAIMS FILED IN THE ANCILLARY RECEIVERSHIP, OTHER THAN SPECIAL

1 DEPOSIT CLAIMS OR SECURED CLAIMS, SHALL BE PLACED IN THE CLASS OF  
2 CLAIMS UNDER SECTION 8142(G).

3 Section 2. Section 7719 and chapter 78 of Act No. 218 of  
4 the Public Acts of 1956, being sections 500.7719 and 500.7800 to  
5 500.7868 of the Michigan Compiled Laws, are repealed.