

1 AN ACT to create the Interstate Compact Uniform  
2 Receivership Law.

3 Be it enacted by the People of the State of Illinois,  
4 represented in the General Assembly:

5 Chapter 1. Title and Purpose

6 Section 100. Short title. This Act may be cited as the  
7 Interstate Compact Uniform Receivership Law.

8 Section 101. Interpretation, construction and purpose.

9 A. The underlying purposes and policies of this Act,  
10 which is an integral element of the regulation of the  
11 business of insurance and of vital public interest and  
12 concern, are to:

13 (1) protect the interests of insureds, claimants,  
14 creditors and the public;

15 (2) provide a comprehensive scheme for the  
16 receivership of insurers;

17 (3) maximize the uniformity of the insurer  
18 receivership laws in all states in which it is  
19 applicable;

20 (4) make more efficient the administration of  
21 insurer receiverships on an interstate and international  
22 basis;

23 (5) provide prompt corrective measures for any  
24 potentially dangerous condition in an insurer; and

25 (6) establish a system which equitably apportions  
26 any unavoidable loss.

27 B. It is the intent of this Act that it include, and be  
28 interpreted as including, in substance and effect, those  
29 elements of the National Association of Insurance  
30 Commissioners Insurers Rehabilitation and Liquidation Model

1 Act and the Uniform Insurers Liquidation Act that are  
2 necessary to establish any state in which it is enacted as a  
3 "reciprocal state" as defined in those Acts.

4 C. Except as provided at Section 405, this Act shall not  
5 be interpreted to limit the powers granted the Commissioner  
6 by laws or regulations other than this Act.

7 D. See Section 100 for short title.

8 Section 102. Receivership proceedings to which this Act  
9 is applicable. This Act does not apply to rehabilitation or  
10 liquidation proceedings initiated prior to its effective date  
11 unless the court, on motion of the Commissioner and after  
12 notice and a hearing and for good cause shown, directs that  
13 all or any portion of this Act shall be applicable to such  
14 proceedings.

15 Section 103. Effective date. See Section 1301 for  
16 effective date.

17 Section 104. Severability. If any provision of this Act,  
18 or application thereof to any person or circumstance, is held  
19 invalid, such invalidity does not affect other provisions or  
20 applications of this Act which can be given effect without  
21 the invalid application or provision, and to this end the  
22 provisions of this Act are severable.

23 Section 105. Amendment of uniform law. This Interstate  
24 Compact Uniform Receivership Law may only be amended by  
25 Commission rule subsequently enacted by legislation in a  
26 majority of the compacting states

27 Chapter 2. The Court

28 Section 201. Jurisdiction of the receivership court.

1           A. A receivership proceeding under this Act shall be  
2 filed only in the receivership court, which shall have  
3 original and exclusive jurisdiction of all receivership  
4 proceedings filed under this Act.

5           B. The receivership court shall, as of the commencement  
6 of a receivership proceeding under this Act, have exclusive  
7 jurisdiction of all property of the insurer, wherever  
8 located, including property located outside the territorial  
9 limits of such court.

10          C. (1)The receivership court shall have original but not  
11 exclusive jurisdiction of all civil proceedings arising under  
12 this Act or arising in or related to receivership proceedings  
13 under this Act.

14           (2) On motion of a party in interest and in the  
15 interests of justice the receivership court may abstain  
16 from hearing a matter over which it has original but not  
17 exclusive jurisdiction and may permit such action to  
18 proceed in another forum.

19           (3) Except as provided at Section 405, and except  
20 as to claims filed against the estate, pursuant to  
21 Section 702A; nothing in this Act shall deprive a party  
22 in interest of any contractual right to pursue  
23 arbitration of any dispute under any law.

24          D. In addition to grounds otherwise provided by law, the  
25 following persons are subject to the personal jurisdiction of  
26 the receivership court:

27           (1) current and former agents, managing general  
28 agents, and brokers of the insurer;

29           (2) policyholders and reinsurers of the insurer;  
30 and

31           (3) current and former officers, directors,  
32 managers, trustees, organizers, promoters and persons in  
33 control of the insurer.

34           (4) any third party administrator for an insurer

1 and any person (such as a data processing firm) that  
2 maintains information for an insurer.

3 E. The foregoing provisions of this Section  
4 notwithstanding, the provisions of this Act do not confer  
5 jurisdiction on the receivership court to resolve coverage  
6 disputes between guaranty associations and those asserting  
7 claims against them resulting from the initiation of a  
8 receivership proceeding under this Act except to the extent  
9 that the guaranty association has otherwise expressly  
10 consented pursuant to a plan of rehabilitation or liquidation  
11 that resolves its obligations to covered policyholders.

12 F. The determination of any dispute with respect to the  
13 statutory obligations of any guaranty association by a court  
14 or administrative agency or body with jurisdiction in the  
15 guaranty association's state of domicile shall be binding and  
16 conclusive as to the parties in a receivership proceeding  
17 initiated in the receivership court, including, without  
18 limitation, the policyholders of the insurer.

19 Section 202. Power of the receivership court.

20 A. The receivership court may issue any order, process  
21 or judgment, including such injunctions or other orders as  
22 are necessary or appropriate to carry out the provisions of  
23 this Act or an approved plan.

24 B. No provision of this Act providing for the raising of  
25 an issue by a party in interest shall be construed to  
26 preclude the receivership court from, sua sponte, taking any  
27 action or making any determination necessary or appropriate  
28 to enforce or implement court orders or to prevent an abuse  
29 of process.

30 C. No provision of this Act shall be construed to limit  
31 the ability of the receiver to apply to a court other than  
32 the receivership court in any jurisdiction to carry out any  
33 provision of this Act or for the purpose of pursuing claims

1 against any person.

2 Section 203. Venue of receivership proceedings and civil  
3 proceedings under this Act.

4 A. A receivership proceeding under this Act may only be  
5 filed in the circuit court of Cook County.

6 B. All civil proceedings over which the receivership  
7 court has original but not exclusive jurisdiction and which  
8 are filed in the circuit court of Cook County shall be  
9 assigned to the receivership court.

10 Section 204. Appeals. Appeal from orders of the  
11 receivership court may be taken:

12 A. As of right, by any of the following parties in  
13 interest who have appeared and participated in the hearing on  
14 the matter in question:

15 (1) by the Commissioner or the insurer from any  
16 order of rehabilitation or liquidation or finding of  
17 insolvency, or any order refusing rehabilitation,  
18 liquidation, or a finding of insolvency;

19 (2) by the receiver or any such party from any  
20 order approving or refusing to approve a plan pursuant to  
21 Chapter 8 of this Act;

22 (3) by the receiver, the claimant or any reinsurer  
23 from any order allowing or disallowing a claim;

24 (4) by the person asserting any interest in an  
25 asset from any order finally determining such interest;  
26 or

27 (5) by any guaranty association or association of  
28 guaranty associations from any order which may  
29 substantially affect its rights.

30 B. By leave of court, by any interested party whose  
31 substantial rights may be affected, from any order of the  
32 receivership court, upon a showing that such rights are not

1 amenable to protection by any appeal as of right, or by the  
2 receiver, from any order substantially affecting the  
3 operations of the receivership which is not otherwise  
4 appealable. Leave shall be sought in the first instance from  
5 the receivership court. If the receivership court declines  
6 to grant it, leave to appeal may be granted by the Illinois  
7 Appellate Court upon application by the party concerned.

8 C. Any appeal from the entry or refusal of an order of  
9 receivership must be taken within 5 days of its entry. No  
10 request for reconsideration, review or appeal, and no posting  
11 of a bond shall dissolve or stay such order. Appeals from  
12 such orders shall be expedited by the Illinois Appellate  
13 Court.

14 D. Except as specifically provided in this Section and  
15 Section 205, the procedure on appeal of an order entered  
16 under this Act shall be as for other civil appeals.

17 Section 205. Appeal pendency plans.

18 A. Within 5 days after the filing of a notice of appeal  
19 of an order of liquidation, the liquidator shall present for  
20 the receivership court's approval a plan for the continued  
21 performance of the defendant company's policy claims  
22 obligations, including the duty to defend insureds under  
23 liability insurance policies, during the pendency of an  
24 appeal.

25 B. Such plan may provide for the continued performance  
26 and payment of policy claims obligations in the normal course  
27 of events, notwithstanding the grounds alleged in support of  
28 the order of liquidation, including the ground of  
29 insolvency. In the event the defendant company's financial  
30 condition will not, in the judgment of the liquidator,  
31 support the full performance of all policy claims obligations  
32 during the appeal pendency period, the plan may prefer the  
33 claims of certain policyholders and claimants over creditors

1 and parties in interest as well as other policyholders and  
2 claimants (1) if the liquidator finds that such preference is  
3 in the interests of policyholders and other creditors as a  
4 whole or that such preference is necessary to prevent  
5 hardship to particular policyholders and claimants; and (2)  
6 if the liquidator finds that such preference is fair and  
7 equitable considering the relative circumstances of such  
8 policyholders and claimants. The receivership court shall  
9 examine the plan submitted by the liquidator and if it finds  
10 the plan is in the best interests of the parties and that the  
11 liquidator's findings are supported by substantial evidence,  
12 it shall approve the plan. No action shall lie against the  
13 liquidator or any of his deputies, agents, clerks, assistants  
14 or attorneys by any party based on preference in an appeal  
15 pendency plan approved by the receivership court.

16 C. The appeal pendency plan shall not supersede or  
17 affect the obligations of any insurance guaranty association  
18 which under its own state law is required to pay covered  
19 claims obligations during the appeal pendency period.

20 Chapter 3. General Provisions

21 301. Definitions. As used in this Act:

22 A. "Affiliate" or person "affiliated" with, a specific  
23 person, means a person that directly, or indirectly through  
24 one or more intermediaries, controls, or is controlled by, or  
25 is under common control with, the person specified.

26 B. "Alien insurer" means an insurer incorporated or  
27 organized under the laws of a jurisdiction that is not a  
28 state.

29 C. "Alien representative" means a trustee, receiver,  
30 liquidator, provisional liquidator, administrator or other  
31 representative of an alien insurer in receivership or  
32 equivalent proceedings in a foreign country who has been

1 appointed judicially or pursuant to statute.

2 D. "Ancillary receiver" means the receiver duly  
3 appointed in a foreign jurisdiction.

4 E. "Commission" means the Interstate Insurance  
5 Receivership Commission established by 45 ILCS 160/1 et seq.

6 F. "Commissioner" means the chief insurance regulatory  
7 official of a state. In Illinois, the chief insurance  
8 regulatory official is the Director of Insurance.

9 G. "Contingent claim" means a claim for which the  
10 insurer's obligation to pay has not yet been established.

11 H. "Control" (including the terms "controlling,"  
12 "controlled by" and "under common control with") means the  
13 possession, direct or indirect, of the power to direct or  
14 cause the direction of the management and policies of a  
15 person, whether through the ownership of voting securities,  
16 by contract other than a commercial contract for goods or  
17 nonmanagement services, or otherwise, unless the power is the  
18 result of an official position with or corporate office held  
19 by the person. Control shall be presumed to exist if any  
20 person, directly or indirectly, owns, controls, holds with  
21 the power to vote, or holds proxies representing, 10% or more  
22 of the voting securities of any other person. This  
23 presumption may be rebutted by a showing that control does  
24 not, in fact, exist.

25 I. "Creditor" means a person having a claim against the  
26 insurer, whether matured or unmatured, liquidated or  
27 unliquidated, secured or unsecured, absolute, fixed, or  
28 contingent.

29 J. "Domiciliary state" means the state in which an  
30 insurer is incorporated or organized; or, in the case of an  
31 alien insurer, its state of entry; or, in the case of an  
32 unauthorized insurer not incorporated, organized, or entered  
33 in any state, a state where the insurer is engaged in or  
34 doing business.



1 K. "Estate" means the assets and liabilities of any  
2 insurer in receivership.

3 L. "Fair consideration" is given for property or an  
4 obligation:

5 (1) when in exchange for the property or  
6 obligation, as a fair equivalent of the property or  
7 obligation and in good faith, property is conveyed or  
8 services are rendered or an obligation is incurred or an  
9 antecedent debt is satisfied; or

10 (2) when the property or obligation is received in  
11 good faith to secure a present advance or antecedent debt  
12 in an amount not disproportionately small as compared to  
13 the value of the property or obligation obtained.

14 M. "Foreign country" means any jurisdiction not in any  
15 state.

16 N. "Foreign insurer" means an insurer incorporated or  
17 organized under the laws of a state other than this State and  
18 shall include the United States branch of an alien insurer  
19 domiciled in a state other than this State.

20 O. "General assets" means all property, real, personal,  
21 or otherwise, not specifically mortgaged, pledged, deposited,  
22 or otherwise encumbered for the security or benefit of  
23 specified persons or a limited class or classes of persons,  
24 and as to such specifically encumbered property the term  
25 includes all such property or its proceeds in excess of the  
26 amount necessary to discharge the sum or sums secured  
27 thereby. Assets held in trust and assets held on deposit for  
28 the security or benefit of all policyholders, or all  
29 policyholders and creditors in the United States, shall be  
30 deemed general assets.

31 P. "Guaranty association" means an insurance guaranty  
32 fund or association or any similar entity now or hereafter  
33 created by statute in this or any other state to pay continue  
34 or otherwise assure payment of, in whole or in part, the

1 contractual claim obligations of impaired or insolvent  
2 insurers or health maintenance organizations.

3 Q. "Insolvency" or "insolvent" means:

4 (1) For an insurer issuing only assessable  
5 policies:

6 (a) the inability to pay an obligation within  
7 30 days after it becomes payable; or

8 (b) if an assessment is made within 30 days  
9 after the date in paragraph (1)(a), the inability to  
10 pay an obligation 30 days following the date  
11 specified in the first assessment notice issued  
12 after the date of loss.

13 (2) For an insurer, other than an insurer under  
14 subparagraph (1), the inability to pay its obligations  
15 when they are due or when admitted assets do not exceed  
16 liabilities plus the greater of either of the following:

17 (a) any capital and surplus required by law  
18 for its organization; or

19 (b) the total par or stated value of its  
20 authorized and issued capital stock.

21 (3) For purposes of this subsection, "liabilities"  
22 shall include, but not be limited to, reserves required  
23 by statute or by rule or specific requirements imposed by  
24 the Commissioner upon an insurer at the time of admission  
25 or subsequent to admission.

26 R. "Insurer" means any person or entity that has done,  
27 purports to do, is doing, or is licensed to do any insurance  
28 or reinsurance business, or is or has been subject to the  
29 authority of, or to liquidation, rehabilitation, supervision,  
30 conservation, or ancillary receivership by, any Commissioner.  
31 "Insurer" includes all entities subject to this Act under  
32 Section 401.

33 S. "Multiple beneficiary trust" means a trust  
34 established pursuant to insurance regulatory laws for the

1 benefit of more than one beneficiary except trusts  
2 established by a U.S. branch of an alien insurer domiciled in  
3 this State.

4 T. "Netting agreement" means a contract or agreement  
5 (including terms and conditions incorporated by reference  
6 therein), including a master agreement (which master  
7 agreement, together with all schedules, confirmations,  
8 definitions and addenda thereto and transactions under any  
9 thereof, shall be treated as one netting agreement), that  
10 documents one or more transactions between the parties for or  
11 involving one or more qualified financial contracts and that  
12 provides for the netting of qualified financial contracts or  
13 present or future payment obligations or payment entitlements  
14 thereunder (including liquidation or close-out values  
15 relating to such obligations or entitlements) among the  
16 parties to the netting agreement.

17 U. "Party in interest" means the Commissioner, the  
18 insurer, policyholder, third-party claimant, creditor, equity  
19 security holder, any affected guaranty association, any  
20 non-domiciliary Commissioner, an advisory committee appointed  
21 under this Act, the Commission, an insurer that ceded to or  
22 assumed business from the insurer, and any person, including  
23 any indenture trustee, with a financial or regulatory  
24 interest in the receivership proceeding.

25 V. "Person" means an individual, aggregation of  
26 individuals, partnership and corporation.

27 W. "Qualified financial contract" means a commodity  
28 contract, forward contract, repurchase agreement, securities  
29 contract, swap agreement and any similar agreement that the  
30 Commissioner determines by regulation, resolution or order to  
31 be a qualified financial contract for the purposes of this  
32 Act.

33 (1) "Commodity contract" means:

34 (a) a contract for the purchase or sale of a

1 commodity for future delivery on, or subject to the  
2 rules of, a board of trade designated as a contract  
3 market by the Commodity Futures Trading Commission  
4 under the Commodity Exchange Act (7 U.S.C. 1, et  
5 seq.) or board of trade outside the United States;

6 (b) an agreement that is subject to regulation  
7 under Section 19 of the Commodity Exchange Act (7  
8 U.S.C. 1, et seq.) and that is commonly known to the  
9 commodities trade as a margin account, margin  
10 contract, leverage account or leverage contract; or

11 (c) An agreement or transaction that is  
12 subject to regulation under Section 4c(b) of the  
13 Commodity Exchange Act (7 U.S.C. 1, et seq.) and  
14 that is commonly known to the commodities trade as a  
15 commodity option.

16 (2) "Forward contract" means a contract (other than  
17 a commodity contract) for the purchase, sale, or transfer  
18 of any commodity, as defined in Section 1 of the  
19 Commodity Exchange Act (7 U.S.C. 1, et seq.), or any  
20 similar good, article, service, right or interest that is  
21 presently or in the future becomes the subject of dealing  
22 in the forward contract trade, or product or byproduct  
23 thereof, with a maturity date more than 2 days after the  
24 date the contract is entered into, including, but not  
25 limited to, a repurchase transaction, reverse repurchase  
26 transaction, consignment, lease, swap, hedge transaction,  
27 deposit, loan, option, allocated transaction, unallocated  
28 transaction or any combination of these or option on any  
29 of them.

30 (3) "Repurchase agreement" (which also applies to a  
31 reverse repurchase agreement) means an agreement,  
32 including related terms, that provides for the transfer  
33 of certificates of deposit, eligible bankers'  
34 acceptances, or securities that are direct obligations

1 of, or that are fully guaranteed as to principal and  
2 interest by, the United States or any agency of the  
3 United States against the transfer of funds by the  
4 transferee of such certificates of deposit, eligible  
5 bankers acceptances, or securities with a simultaneous  
6 agreement by the transferee to transfer to the transferor  
7 certificates of deposit, eligible bankers acceptances or  
8 securities as described above, at a date certain not  
9 later than one year after the transfers or on demand,  
10 against the transfer of funds. For the purposes of this  
11 definition, the items that may be subject to an agreement  
12 include mortgage-related securities, a mortgage loan, and  
13 an interest in a mortgage loan, and shall not include any  
14 participation in a commercial mortgage loan, unless the  
15 Commissioner determines by regulation, resolution or  
16 order to include the participation within the meaning of  
17 the term.

18 (4) "Securities contract" means a contract for the  
19 purchase, sale or loan of a security, including an option  
20 for the repurchase or sale of a security, certificate of  
21 deposit, or group or index of securities (including an  
22 interest therein or based on the value thereof), or an  
23 option entered into on a national securities exchange  
24 relating to foreign currencies, or the guarantee of any  
25 settlement of cash or securities by or to a securities  
26 clearing agency. For the purposes of this definition,  
27 the term "security" includes a mortgage loan,  
28 mortgage-related securities, and an interest in any  
29 mortgage loan or mortgage-related security.

30 (5) "Swap agreement" means an agreement, including  
31 the terms and conditions incorporated by reference in an  
32 agreement, that is a rate swap agreement, basis swap,  
33 commodity swap, forward rate agreement, interest rate  
34 future, interest rate option, forward foreign exchange

1 agreement, spot foreign exchange agreement, rate cap  
2 agreement, rate floor agreement, rate collar agreement,  
3 currency swap agreement, cross-currency rate swap  
4 agreement, currency future, or currency option or any  
5 other similar agreement, and includes any combination of  
6 agreements and an option to enter into an agreement.

7 X. "Receiver" means liquidator, rehabilitator,  
8 conservator or ancillary receiver as the context requires.

9 Y. "Receivership court" means the circuit court of Cook  
10 County.

11 Z. "Receivership proceeding" means any liquidation,  
12 rehabilitation, conservation, or ancillary receivership as  
13 the context requires.

14 AA. "Reciprocal state" means a state wherein:

15 (1) In substance and effect the provisions of  
16 Chapter 10 of this Act are in force.

17 (2) Provisions requiring that the Commissioner or  
18 equivalent official be the receiver of a delinquent  
19 insurer are in force.

20 (3) Some provision for the avoidance of fraudulent  
21 conveyances and preferential transfers are in force.

22 AB. "Secured claims" means a claim secured by mortgage,  
23 trust deed, pledge, deposit as security, escrow, or  
24 otherwise, but not including a special deposit claim or claim  
25 against general assets. The term also includes claims that  
26 have become liens upon specific assets by reason of judicial  
27 process.

28 AC. "Separate account" means an account authorized under  
29 Article XIV 1/2 of the Illinois Insurance Code and  
30 established in accordance with the terms of a written  
31 agreement or a contract on a variable basis.

32 AD. "Single beneficiary trust" means a trust established  
33 pursuant to insurance regulatory laws established for the  
34 benefit of a single beneficiary.

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

5           AF. "State" means a state, district, or territory of the  
6 United States.

7           AG. "Transfer" means every mode, direct or indirect,  
8 absolute or conditional, voluntary or involuntary, of  
9 disposing of or parting with property or with an interest in  
10 property, including retention of title as a security interest  
11 and foreclosure of an insurer's equity of redemption.

12           AH. "Unliquidated claim" means a claim for which the  
13 amount of the claim has not been determined.

14           AI. An "unmatured claim" means a claim for which payment  
15 is not yet due.

16           Section 302. Duty to provide information to the  
17 commission, other insurance regulators and guaranty  
18 association.

19           A. In addition to the periodic reports required under  
20 Section 510 of this Act, the receiver shall provide the  
21 Commission with such information as the Commission may  
22 reasonably request.

23           B. The receiver shall provide other state insurance  
24 regulators with relevant receivership information, including  
25 reports and analysis of financial condition and the status of  
26 development of a plan as required by Chapter 8 of this Act  
27 when requested. Access to financial records shall be at  
28 least equivalent to that to which a state insurance regulator  
29 was entitled prior to the commencement of a receivership  
30 proceeding.

31           C. The receiver shall provide the affected guaranty  
32 associations with all information necessary to carry out  
33 their statutory obligations, including without limitation,

1 any information reasonably necessary or appropriate to  
2 evaluate and participate in the development of the plan  
3 referred to in subsection B.

4 D. The receiver shall also permit a state insurance  
5 regulator or guaranty association to obtain a listing of  
6 policyholders and certificate holders residing in the  
7 requestor's state, including current addresses and summary  
8 policy information, provided that the requestor agrees to  
9 maintain the confidentiality of the records and that the  
10 records will be used only for regulatory or guaranty  
11 association purposes.

12 E. In the event the receiver believes that certain  
13 information is sensitive or that disclosure might cause a  
14 diminution in recovery, the receiver may apply to the  
15 receivership court for a protective order imposing additional  
16 restrictions on access and disclosure.

17 F. Except as otherwise provided at Section 422, nothing  
18 contained in this Act shall preclude or prohibit disclosure  
19 or discussion of information or documents relevant to  
20 proceedings hereunder between and among the insurer, the  
21 receiver, the Commission, guaranty associations and state  
22 insurance regulators. No such disclosure or discussion shall  
23 compromise the privilege or confidential nature of such  
24 information or documents.

25 Section 303. Cooperation of officers, owners and  
26 employees.

27 A. An officer, manager, director, trustee, owner,  
28 employee, or agent of an insurer, or any other persons with  
29 authority over or in charge of any segment of the insurer's  
30 affairs, shall cooperate with the receiver in a proceeding  
31 under this Act. The term "person" as used in this Section  
32 shall include a person who exercises control directly or  
33 indirectly over activities of the insurer through a holding



1 company or other affiliate of the insurer. As used in this  
2 Section, "to cooperate" shall include, but shall not be  
3 limited to, the following:

4 (1) to reply promptly in writing to any inquiry  
5 from the receiver requesting such a reply; and

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

10 B. No person shall obstruct or interfere with the  
11 receiver in the conduct of a receivership proceeding.

12 C. This Section shall not be construed to abridge  
13 otherwise existing legal rights, including the right to  
14 resist a petition for receivership proceedings or requests  
15 for other orders.

16 Section 304. Right to appear and be heard.

17 A. A party in interest may raise and may appear and be  
18 heard on any issue in a receivership proceeding under this  
19 Act, without reimbursement of attorneys' fees or expenses  
20 unless such reimbursement is expressly authorized elsewhere  
21 by the statutes of this State. This subsection shall not  
22 affect any right of a reinsurer under a reinsurance contract  
23 to recover reasonable fees and expenses to which it is  
24 entitled in connection with the interposing of defenses to a  
25 claim against the insurer.

26 B. Any guaranty association or association of guaranty  
27 associations which is or may become liable to act as a result  
28 of the entry of an order of receivership shall have standing  
29 to intervene as of right or otherwise appear and participate  
30 in a receivership proceeding under this Act. Exercise by any  
31 guaranty association or association of guaranty associations  
32 of the standing rights conferred under this subsection shall  
33 not constitute a submission to the general jurisdiction of

1 the courts of this State.

2 Chapter 4. Administration of Receivership Proceedings

3 Subchapter I. Commencement of a Receivership Proceeding

4 Section 401. Entities subject to this Act. The  
5 receivership proceedings authorized by this Act may be  
6 initiated against any insurer and against any of the  
7 following persons, if not an insurer, including, but not  
8 limited to, the following:

9 A. a person who is transacting, or has transacted,  
10 insurance business in this State, and against whom claims  
11 arising from that business may exist now or in the future;

12 B. a person who purports to transact an insurance  
13 business in this State;

14 C. an insurer who has insureds resident in this State;

15 D. all other persons organized or in the process of  
16 organizing with the intent to transact an insurance business  
17 in this State;

18 E. agents, managing general agents, brokers, premium  
19 finance companies, insurance holding companies and all other  
20 non risk bearing entities engaged in any aspect of the  
21 business of insurance, whether or not such entities are  
22 licensed to engage in the business of insurance in this  
23 State, if such person is an affiliate of the insurer against  
24 which a receivership proceeding has been or is being filed  
25 under this Act; and

26 F. any other entity which is made subject to this Act by  
27 statute.

28 Section 402. Commencement of a receivership proceeding.

29 A. Only the Commissioner may institute a receivership  
30 proceeding under this Act.

1           B. The Commissioner may initiate a receivership  
2 proceeding against:

3           (1) a domestic insurer;

4           (2) the United States branch of an alien insurer  
5 domiciled in this State; or

6           (3) any other alien entity which is an insurer  
7 under the provisions of Section 401 of this Act;  
8 provided, however, that as to an alien insurer that is  
9 authorized to engage in the business of insurance in this  
10 State but which is not domiciled in this State, such  
11 receivership proceeding shall be only as to assets and  
12 records of such entity in this State.

13          C. At the request of the Commissioner or other  
14 appropriate insurance official of another state, and in his  
15 or her sole discretion, the Commissioner may institute a  
16 receivership proceeding against the assets and records in  
17 this State of a foreign insurer.

18          D. Any petition filed under this Act shall state the  
19 grounds upon which the relief is sought and the relief  
20 requested and may request entry of such injunctive orders as  
21 may be appropriate.

22          Section 403. Grounds for entry of a rehabilitation or  
23 liquidation order.

24          A. Upon the filing of a petition, the receivership court  
25 shall forthwith issue an order of rehabilitation or  
26 liquidation if the insurer consents thereto, if the insurer  
27 fails to contest such application or if the court finds:

28           (1) the insurer is in such condition that the  
29 further transaction of business would be hazardous,  
30 financially or otherwise, to its policyholders, its  
31 creditors, or the public;

32           (2) there is reasonable cause to believe that there  
33 has been embezzlement from the insurer, wrongful

1 sequestration or diversion of the insurer's assets,  
2 forgery or fraud affecting the insurer, or other illegal  
3 conduct in, by, or with respect to the insurer that, if  
4 established, would endanger assets in an amount  
5 threatening the insurer's solvency;

6 (3) the insurer has failed to remove a person who  
7 in fact has executive authority with the insurer, whether  
8 an officer, manager, general agent, employee, or other  
9 person, if the person has been found after notice and  
10 hearing by the Commissioner to be dishonest or  
11 untrustworthy in a way affecting the insurer's business;

12 (4) control of the insurer, whether by stock  
13 ownership or otherwise, and whether direct or indirect,  
14 is in a person found after notice and hearing to be  
15 untrustworthy;

16 (5) a person who in fact has executive authority  
17 with the insurer, whether an officer, manager, general  
18 agent, director or trustee, employee, or other person,  
19 has refused to be examined under oath by the Commissioner  
20 concerning the person's affairs, whether in this State or  
21 elsewhere, and after reasonable notice of the fact, the  
22 insurer has failed promptly and effectively to terminate  
23 the employment and status of the person and all of his or  
24 her influence on management;

25 (6) after demand by the Commissioner, the insurer  
26 has failed to promptly make available for examination its  
27 property, books, accounts, documents, or other records,  
28 or those of a subsidiary or related company within the  
29 control of the insurer, or those of a person having  
30 executive authority with the insurer and pertaining to  
31 the insurer;

32 (7) without first obtaining the Commissioner's  
33 written consent, the insurer has transferred, or  
34 attempted to transfer, in a manner contrary to law,

1 substantially its entire property or business, or has  
2 entered into a transaction the effect of which is to  
3 merge, consolidate, or reinsure substantially its entire  
4 property or business in or with the property or business  
5 of any other person;

6 (8) the insurer has concealed, removed, altered,  
7 destroyed or failed to establish and maintain books,  
8 records, documents, accounts, vouchers and other  
9 pertinent material adequate for the determination of its  
10 financial condition by examination or has failed to  
11 properly administer claims and to maintain claims records  
12 which are adequate for the determination of its  
13 outstanding claims liability;

14 (9) the insurer or its property has been or is the  
15 subject of an application for the appointment of a  
16 receiver, trustee, custodian, conservator, or  
17 sequestrator or similar fiduciary of the insurer or its  
18 property otherwise than as authorized under the insurance  
19 laws of this State, and the appointment has been made or  
20 is imminent, and the appointment may deny the courts of  
21 this State of jurisdiction or might prejudice orderly  
22 receivership proceedings under this Chapter;

23 (10) within the previous 5 years the insurer has  
24 willfully and continuously violated its charter or  
25 articles of incorporation, its bylaws, an insurance law  
26 of this State, or a valid order of the Commissioner.

27 (11) the insurer has failed to pay a judgment  
28 entered against it by a court with personal jurisdiction  
29 over the insurer within 60 days of the date the judgment  
30 becomes final or has failed to pay an obligation due to a  
31 state or state subdivision within 60 days after such  
32 obligation becomes due;

33 (12) the insurer has failed to file its annual  
34 report or other financial report required by statute

1 within the time allowed by law and, after written demand  
2 by the Commissioner, has failed to give immediately an  
3 adequate explanation;

4 (13) the insurer is found, after examination, to be  
5 in a condition so that it could not presently meet the  
6 requirements for incorporation and authorization to  
7 engage in the business of insurance; or

8 (14) the insurer is insolvent.

9 B. In addition to the grounds stated in subsection A of  
10 this Section, if the insurer is a foreign insurer or an alien  
11 insurer not domiciled in this State and no domiciliary  
12 liquidator has been appointed for the insurer, the  
13 receivership court shall issue an order of rehabilitation or  
14 liquidation if it finds that:

15 (1) any of its property has been sequestered by  
16 official action in its domiciliary jurisdiction or in any  
17 other jurisdiction;

18 (2) enough of its property has been sequestered in  
19 a foreign country to give reasonable cause to fear that  
20 the insurer is or may become insolvent; or

21 (3) its certificate of authority to do business in  
22 this State has been revoked or that none was ever issued  
23 and it is in violation of Article VII of the Illinois  
24 Insurance Code and that there are residents of this State  
25 with outstanding claims or outstanding policies.

26 C. In addition to the grounds stated in subsections A  
27 and B of this Section, if the Commissioner or a court of  
28 competent jurisdiction has ordered a trustee to turn over to  
29 the Commissioner, assets held in trust pursuant to Article XI  
30 of the Illinois Insurance Code, the court may direct the  
31 establishment of a receivership for the purpose of  
32 administering said assets and such other assets of the  
33 insurer as are located in this State, provided, however that  
34 any such trust assets shall be administered in accordance

1 with Section 413 of this Act.

2 Section 404. Service of summons and return.

3 A. Upon the filing of a petition, summons shall  
4 forthwith issue, returnable in 3 days after its date, and a  
5 copy of the summons together with the petition in any  
6 receivership proceeding under this Act shall be served upon  
7 the company named in such petition by delivering the same to  
8 its president, vice president, secretary, treasurer,  
9 director, or to its managing agent, or if the company lacks  
10 any of the aforesaid officers, or if they cannot be found  
11 within the State, to the officer performing corresponding  
12 functions under another name; if it be a Lloyds, reciprocal  
13 or inter-insurance exchange, by delivering such summons and  
14 copy of the petition to the duly designated attorney-in-fact.  
15 Upon request of the Commissioner, the receivership court  
16 shall appoint a special process server.

17 B. When it is satisfactorily proved by the report of an  
18 examiner of the department made in accordance with the  
19 provisions of this Act, or by affidavit of anyone familiar  
20 with the facts, that the officers, directors, trustees or  
21 managing agents or members of any company named in said  
22 petition upon whom service is required to be made as above  
23 provided, have, or if a Lloyds, reciprocal or inter-insurance  
24 exchange be named in the petition, that the duly designated  
25 attorney-in-fact, has departed from the State or keep  
26 themselves concealed therein, or if such of the persons  
27 residing in this State and upon whom service is required to  
28 be made as above provided have resigned from their offices,  
29 or that service cannot be made immediately by the exercise of  
30 reasonable diligence, such service may be had by the mailing  
31 of a copy of the petition and summons to the last known  
32 address of the company, or by publication in such form and in  
33 such manner as the receivership court shall order.

1 Section 405. Automatic stay.

2 A. Except as provided in subsections C and D of this  
3 Section or as otherwise provided in this Act the commencement  
4 of a receivership proceeding under this Act operates as a  
5 stay, applicable to all entities, of:

6 (1) the commencement or continuation, including the  
7 issuance or employment of process, of a judicial,  
8 administrative, or other action or proceeding against the  
9 insurer, including arbitration proceedings, that was or  
10 could have been commenced before the commencement of the  
11 receivership proceeding under this Act, or to recover a  
12 claim against the insurer that arose before the  
13 commencement of the receivership proceeding under this  
14 Act;

15 (2) the enforcement, against the insurer or against  
16 property of the insurer, of a judgment obtained before  
17 the commencement of the receivership proceeding under  
18 this Act;

19 (3) any act to obtain possession of property of the  
20 insurer or of property from the insurer or to exercise  
21 control over property or records of the insurer;

22 (4) any act to create, perfect, or enforce any lien  
23 against property of the insurer;

24 (5) any act to collect, assess, or recover a claim  
25 against the insurer that arose before the commencement of  
26 a receivership proceeding under this Act;

27 (6) the commencement or continuation of an action  
28 or proceeding against a reinsurer of the insurer, by the  
29 holder of a claim against the insurer, seeking  
30 reinsurance recoveries which are contractually due to the  
31 insurer; and

32 (7) the commencement or continuation of an action  
33 or proceeding by a governmental unit to terminate or  
34 revoke any insurance license.



1           B. Except as provided in subsections C and D of this  
2 Section or as otherwise provided in this Act, the  
3 commencement of a receivership proceeding under this Act  
4 operates as a stay, applicable to all entities, of the  
5 commencement or continuation, including the issuance or  
6 employment of process, of a judicial, administrative or other  
7 action or proceeding, including without limitation the  
8 enforcement of any judgment, against any insured that was or  
9 could have been commenced before the commencement of the  
10 receivership proceeding under this Act, or to recover a claim  
11 against the insured that arose before or after the  
12 commencement of the receivership proceeding under this Act  
13 and for which the insurer is or may be liable under a policy  
14 of insurance or is obligated to defend a party. The stay  
15 provided by this subsection shall terminate 90 days after  
16 appointment of the receiver unless extended by order of the  
17 receivership court, for good cause shown, after notice to any  
18 affected parties and such hearing as the receivership court  
19 determines is appropriate. Provided, however, that any  
20 applicable statute of limitation with respect to any claim  
21 against an insured shall be tolled during the period of the  
22 stay provided by this subsection and any extensions.

23           C. The commencement of a receivership proceeding under  
24 this Act does not operate as a stay of:

25                 (1) except as provided in subsection A(7),  
26                 regulatory actions by the Commissioners of  
27                 non-domiciliary states, including, but not limited to the  
28                 suspension of licenses;

29                 (2) criminal actions;

30                 (3) any act to perfect, or to maintain or continue  
31                 the perfection of, an interest in property to the extent  
32                 such act is accomplished within any relation back period  
33                 under applicable law.

34                 (4) setoff as permitted by Section 611 of this Act;

1           (5) pursuit and enforcement of nonmonetary  
2 governmental claims, judgments, and proceedings;

3           (6) enforcement of a lessor's rights under a lease  
4 that expired prior to the filing of the receivership  
5 proceeding;

6           (7) presentment of a negotiable instrument and the  
7 giving of notice of and protesting dishonor of such an  
8 instrument;

9           (8) enforcement of rights against single  
10 beneficiary trusts;

11           (9) termination, liquidation and netting of  
12 obligations under qualified financial contracts as  
13 provided at Section 612 of this Act;

14           (10) discharge by the guaranty associations of  
15 statutory responsibilities or the pursuit of claims  
16 against guaranty associations to the extent permitted by  
17 law other than this Act;

18           (11) any of the following actions:

19               (a) an audit by a governmental unit to  
20 determine tax liability;

21               (b) the issuance to the insurer by a  
22 governmental unit of a notice of tax deficiency;

23               (c) a demand for tax returns; or

24               (d) the making of an assessment for any tax  
25 and issuance of a notice and demand for payment of  
26 such an assessment.

27           D. In the event the Commissioner seeks an order of  
28 conservation under Section 421 of this Act, the provisions of  
29 subsections A and B of this Section shall be applicable only  
30 to those entities with actual notice or knowledge of the  
31 initiation of the receivership proceeding until such time as  
32 the record of the receivership proceeding is made public  
33 under Section 422.

34           E. Except as provided in subsection F of this Section:

1           (1) the stay of an act against property of the  
2 insurer under subsection A of this Section continues  
3 until such property is no longer property of the  
4 receivership estate;

5           (2) the stay of any other act under subsection A of  
6 this Section continues until the earliest of:

7           (a) the time the receivership proceeding is closed; or

8           (b) the time the receivership proceeding is dismissed.

9 F. Notwithstanding the provisions of subsection A:

10           (1) claims against the insurer that arose before  
11 the commencement of the receivership proceeding under  
12 this Act may be asserted as a counterclaim in any  
13 judicial, administrative or other action or proceeding  
14 initiated by or on behalf of the receiver against the  
15 holder of such claims; and

16           (2) a party against whom a judicial, administrative  
17 or other action or proceeding is initiated by or on  
18 behalf of the receiver may assert and enforce any  
19 contractual right the party may have to require  
20 arbitration of any dispute under any law.

21 G. On request of a party in interest and after notice  
22 and such hearing as the receivership court determines  
23 appropriate, the receivership court may grant relief from the  
24 stay of subsection A of this Section, such as by terminating,  
25 annulling, modifying, or conditioning such stay:

26           (1) for cause; or

27           (2) with respect to a stay of an act against  
28 property under subsection A of this Section if:

29           (a) the insurer does not have an equity in  
30 such property; and

31           (b) such property is not necessary to an  
32 effective plan.

33 H. In any hearing under subsection G of this Section,  
34 the party seeking relief from the stay shall have the burden

1 of proof on each issue which must be established by clear and  
2 convincing evidence.

3 I. The estate of an insurer which is injured by any  
4 willful violation of a stay provided by this Section shall be  
5 entitled to actual damages, including costs and attorneys'  
6 fees, and, in appropriate circumstances, the receivership  
7 court may impose additional sanctions.

8 J. No statute of limitations or defense of laches shall  
9 run with respect to any action by or against an insurer  
10 between the filing of a petition for conservation,  
11 rehabilitation or liquidation against an insurer and the  
12 order granting or denying that petition. Any action against  
13 the insurer that might have been commenced when the petition  
14 was filed may be commenced for at least 60 days after an  
15 order is denied.

16 Section 406. Answer and hearing.

17 A. The respondent insurer shall file its answer to the  
18 Commissioner's petition within 10 days after service of the  
19 summons, exclusive of the day of service. On timely motion  
20 of the respondent, the receivership court shall extend the  
21 time for answering for a period not to exceed an additional  
22 10 days.

23 B. The receivership court, on the return day of the  
24 summons as originally fixed or extended hereunder, shall set  
25 the cause for hearing within 20 days from the return day or  
26 the extended return day.

27 C. Except as provided in Section 423, no motions or  
28 other pleadings, whether to dissolve, modify or continue any  
29 injunction or otherwise, shall be filed by, or permitted on  
30 behalf of the respondent prior to the filing of an answer to  
31 the complaint.

32 D. The receivership court shall receive as  
33 self-authenticated any of the following when offered by the

1 Commissioner:

2 (1) certified copies of the financial statements  
3 made by the insurer; and

4 (2) certified copies of examination reports of the  
5 insurer made by or on behalf of the Commissioner.

6 E. At any hearing, the verified petition and any  
7 exhibits filed therewith shall be received as prima  
8 facia evidence of the facts therein contained.

9 F. The receivership court shall enter judgment within 15  
10 days after the conclusion of the evidence.

11 Section 407. Notice of entry of order of rehabilitation  
12 or liquidation. Unless the receivership court otherwise  
13 directs, the receiver shall give or cause to be given notice  
14 of the order of rehabilitation or liquidation as soon as  
15 possible by:

16 A. first-class mail and, facsimile or telephone to the  
17 insurance Commissioner of each jurisdiction in which the  
18 insurer is doing business and to the Commission;

19 B. first-class mail to the guaranty associations of this  
20 State, and any other guaranty association which is or may  
21 become obligated as a result of the receivership proceeding  
22 and any association of such associations;

23 C. first-class mail to all known insurance agents and  
24 reinsurers of the insurer at their last known address as  
25 indicated by the records of the insurer;

26 D. first-class mail to all persons known or reasonably  
27 expected to have claims against the insurer including all  
28 policyholders, at their last known address as indicated by  
29 the records of the insurer; and

30 E. publication in a newspaper of general circulation in  
31 the county in which the insurer has its principal place of  
32 business and in other locations as the receiver considers  
33 appropriate.

1           Section 408. Contents of notice of receivership. The  
2 notice of the entry of an order of rehabilitation or  
3 liquidation shall:

4           A. contain a statement that the insurer has been placed  
5 in rehabilitation or liquidation;

6           B. advise that an automatic stay is in effect together  
7 with a reference to Section 405 of this Act and a statement  
8 that certain acts against the insurer and its assets are  
9 stayed as well as a description of any additional injunctive  
10 relief of general application ordered by the receivership  
11 court;

12           C. state whether and to what extent the insurer's  
13 policies continue in effect;

14           D. include the deadline for filing claims if one has  
15 been established;

16           E. state the date, time and location of the initial  
17 status hearing established pursuant to Section 409 of this  
18 Act; and

19           F. include such other information as the receiver or the  
20 receivership court deems appropriate.

21           Section 409. Initial status hearing. An initial status  
22 hearing shall be held within 120 days of the entry of an  
23 order of rehabilitation or liquidation. The receiver shall  
24 discuss the condition of the estate and may be questioned by  
25 parties in interest or their representatives concerning the  
26 matters discussed. The hearing shall be conducted informally  
27 under the supervision of the receivership court.

28           Section 410. Dismissal of receivership proceeding.

29           A. Except as provided at subsection C of this Section,  
30 until all payments of or on account of the insurer's  
31 contractual obligations by all guaranty associations and  
32 interest thereon and all reasonable expenses incurred by them

1 in connection therewith are repaid to the guaranty  
2 associations or a plan of repayment by the insurer is  
3 approved by the guaranty associations, an insurer that is  
4 subject to any receivership proceeding shall not:

5 (1) be released from a receivership proceeding;

6 (2) be permitted to solicit or accept new business  
7 or request or accept the restoration of a suspended or  
8 revoked license or certificate of authority; or

9 (3) be returned to the control of its shareholders  
10 or management.

11 B. If the Commissioner, having obtained an ex parte  
12 order of conservation, fails to file a motion in the  
13 receivership proceeding requesting entry of an order of  
14 rehabilitation or liquidation after having had a reasonable  
15 opportunity to do so, the receivership proceeding shall on  
16 motion of a party in interest or on the receivership court's  
17 own motion, be dismissed and vacated.

18 C. A receivership proceeding may be dismissed without  
19 complying with the requirements of subsection A of this  
20 Section if the receivership court, on motion of the receiver,  
21 determines that the receivership estate has no assets or the  
22 estate's assets are insufficient to cover the costs of  
23 administering the receivership.

24 D. In the event a receivership proceeding is dismissed  
25 pursuant to subsection C of this Section, the insurer shall  
26 be dissolved as of entry of the order of dismissal.

27 Section 411. Receivership proceedings for alien  
28 insurers. The receivership court, after notice and hearing,  
29 may dismiss or suspend a receivership proceeding against an  
30 alien insurer under this Act at any time, taking into  
31 consideration the following:

32 A. the interests of insured claimants, creditors and the  
33 public;

1           B. whether the order requested, and any governing  
2 legislation upon which it is based, is consistent with the  
3 objectives of this Act;

4           C. the effect the order requested would have or could  
5 reasonably be expected to have on the ability of the  
6 liquidator to use assets of the insurer's estate under the  
7 liquidation order to transfer policy obligations to a solvent  
8 assuming insurer;

9           D. any agreements with a receiver or Commissioner or  
10 like official of another state in which the insurer was doing  
11 business, or of the country under the laws of which the  
12 insurer is domiciled, relating to the receivership or  
13 dissolution of the insurer;

14           E. the adequacy of information available to the  
15 receivership court upon which to make a determination; and

16           F. the costs that could reasonably be expected to be  
17 incurred as a result of the order.

18           Section 412. Trusteed assets of a U.S. branch of an  
19 alien insurer.

20           A. Any person having an interest in the trusteed assets  
21 of the United States branch of an alien insurer domiciled in  
22 this State and subject to a receivership proceeding under  
23 this Act, may, by motion, seek an order directing that all or  
24 part of the trusteed assets of such insurer be transferred to  
25 such person.

26           B. After providing notice and hearing, the receivership  
27 court may grant, deny, or suspend a motion made pursuant to  
28 subsection A on terms and conditions, or make such other  
29 order, as the court considers appropriate, considering the  
30 following:

31                   (1) the factors set forth in Section 411 of this  
32 Act; and

33                   (2) whether the order requested is consistent with



1 the terms, conditions and objectives of the trust  
2 agreement or agreements.

3 Section 413. Trust fund claims.

4 A. An alien representative having an interest in the  
5 trustee assets of an alien insurer secured by a multiple  
6 beneficiary trust may, by motion, seek an order directing  
7 that all or part of such trustee assets of the insurer be  
8 transferred to such person.

9 B. Notwithstanding Section 411 of this Act, the  
10 receivership court shall not grant relief under this Section  
11 unless the Commissioner has determined that:

12 (1) the assets of such a trust exceed the amount  
13 necessary to satisfy the claims of U.S. beneficiaries of  
14 the trust; or

15 (2) U.S. beneficiaries of the trust will receive a  
16 greater percentage of their claim if the trust fund  
17 assets are returned to the grantor's country of domicile  
18 and a receiver has been appointed for the grantor in that  
19 domicile.

20 C. Claims against the assets of a multiple beneficiary  
21 trust shall be filed and allowed and shall receive  
22 distribution of assets in accordance with the laws of the  
23 state in which the trust is domiciled that are applicable to  
24 the receivership of domestic insurers.

25 Section 414. Limited appearance.

26 A. An alien representative may seek dismissal or  
27 suspension of a receivership proceeding under Section 411 of  
28 this Act.

29 B. An appearance in a receivership court by an alien  
30 representative in connection with a motion or request under  
31 Section 411, 412 or 413 of this Act does not submit such  
32 alien representative to the jurisdiction of the receivership

1 court for any other purpose, but the receivership court may  
2 condition any order under such Sections on compliance by such  
3 alien representative with the orders of the receivership  
4 court.

5 Section 415. Advisory committees. The receivership  
6 court, on motion of the receiver or for good cause shown, may  
7 appoint one or more advisory committees of policyholders,  
8 claimants or other creditors. Any advisory committee shall  
9 serve without compensation and without reimbursement of  
10 expenses.

11 Subchapter II. Conservation Proceedings

12 Section 421. Ex parte orders of conservation and  
13 seizure.

14 A. At the time the Commissioner initiates a receivership  
15 proceeding under this Act, he or she may request entry of an  
16 ex parte conservation order by verified petition alleging:

17 (1) that there exist grounds for entry of an order  
18 of rehabilitation or liquidation; and

19 (2) that the interests of policyholders, creditors,  
20 or the public will be endangered by delay.

21 B. The receivership court shall issue the ex parte  
22 conservation order immediately without prior notice or a  
23 hearing.

24 C. Upon issuance of an ex parte conservation order, the  
25 order, together with a copy of the verified petition and a  
26 summons, shall be promptly served on the insurer as provided  
27 at Section 404. The conservator may also serve the order  
28 upon persons transacting business with the insurer or dealing  
29 with its assets and such others as may be necessary to obtain  
30 compliance therewith. All persons served with the order and  
31 all persons having actual knowledge thereof shall be bound by

1 it.

2 D. At the request of the Commissioner, any order entered  
3 pursuant to this Section shall:

4 (1) appoint the Commissioner as conservator;

5 (2) direct the conservator to take possession and  
6 control of all or a part of the property, books,  
7 accounts, documents, and other records of an insurer, and  
8 of the premises occupied by the insurer for the  
9 transaction of its business;

10 (3) direct any officer or director or other person  
11 or entity that possesses or controls any documents or  
12 recorded information of any nature, including books,  
13 claims files, records, and papers of the insurer or of  
14 any affiliate of the insurer that relate to the insurer's  
15 assets, liabilities, financial affairs or business,  
16 shall immediately disclose and, on request of the  
17 conservator, turn over such documents and recorded  
18 information to the conservator;

19 (4) enjoin the insurer and its officers, managers,  
20 agents, and employees from disposing of its property and  
21 from transacting business except with the conservator's  
22 written consent;

23 (5) contain such other relief as the Commissioner  
24 considers necessary; and

25 (6) specify the duration of the order, which shall  
26 be such time as the receivership court considers  
27 necessary for the conservator to ascertain the condition  
28 of the insurer.

29 E. On motion of the insurer, the conservator or in its  
30 own discretion, the receivership court may at any time modify  
31 such order on such notice and after such hearing, if any, as  
32 the receivership court determines to be appropriate.

33 F. Upon entry of an order under this Section, the  
34 conservator may hold hearings, subpoena witnesses to compel

1 their attendance, administer oaths, examine persons under  
2 oath, and compel persons to subscribe to his or her  
3 testimony after it has been correctly reduced to writing;  
4 and in connection with these powers may require the  
5 production of books, papers, records, or other documents that  
6 he or she considers relevant to the performance of his or her  
7 duties.

8 G. Entry of an order under this Section shall not  
9 constitute an anticipatory breach of any contract to which  
10 the insurer is a party.

11 H. On request of the conservator, those law enforcement  
12 officers with authority to process orders of the receivership  
13 court shall provide the conservator such assistance as is  
14 required to carry out the terms of the order entered under  
15 this Section.

16 Section 422. Confidentiality of hearings. In all  
17 proceedings and judicial review of proceedings under Section  
18 421, all records of the insurer, other documents, department  
19 of insurance files, and receivership court records and  
20 papers, so far as they are a part of the record of the  
21 proceedings under this subchapter, are confidential and shall  
22 be held by the clerk of the court in a confidential file  
23 except as is necessary to obtain compliance therewith, unless  
24 the receivership court, after hearing arguments from the  
25 parties in chambers, orders otherwise or the insurer requests  
26 that the matter be made public. Unless privileged or  
27 confidential under law other than this Act, all such records  
28 shall become public upon filing of a petition for  
29 rehabilitation or liquidation under this Act.

30 Section 423. Modification of orders of conservation. An  
31 insurer against which an order of conservation has been  
32 entered under Section 421 may move for modification of the

1 order at any time prior to the entry of an order of  
2 rehabilitation or liquidation under this Act. The  
3 receivership court shall hear such motion not more than 15  
4 days after it is filed. A hearing under this Section may be  
5 held privately in chambers and shall be held privately in  
6 chambers if so requested by the insurer proceeded against.

7 Subchapter III. Rehabilitation Proceedings

8 Section 431. Authority to operate and restructure  
9 insurer's business. If the receivership court has entered an  
10 order of rehabilitation, the rehabilitator:

11 A. may take such action as he or she considers necessary  
12 or appropriate to reform, revitalize, or runoff the business  
13 of the insurer;

14 B. may operate the business of the insurer including,  
15 but not limited to, the retention or dismissal of the  
16 insurer's employees; and

17 C. shall propose a plan pursuant to Chapter 8 of this  
18 Act.

19 Section 432. Conversion to liquidation.

20 A. If, in the exercise of administrative discretion, the  
21 Commissioner determines that further attempts to rehabilitate  
22 an insurer would:

23 (1) substantially increase the risk of loss to  
24 creditors, policyholders, other parties in interest or  
25 the public, or

26 (2) be futile, or

27 (3) not be in the best interests of creditors,  
28 policyholders, other parties in interest or the public,  
29 he or she may petition the receivership court for an  
30 Order of Liquidation and Finding of Insolvency under  
31 Section 441 of this Act.

1           B. If the rehabilitator suspends payment of all or  
2 substantially all direct policy obligations for a period of 6  
3 months at any time after the entry of an order for relief and  
4 has not filed a plan within that time, unless the  
5 receivership court, for good cause shown, extends such period  
6 the Commissioner shall request that the receivership court  
7 enter a final order of liquidation with a finding of  
8 insolvency.

9                           Subchapter IV. Liquidation Proceedings

10           Section 441. Order of liquidation.

11           A. If the receivership court has entered an order of  
12 liquidation, the liquidator shall:

- 13                       (1) marshall the assets of the insurer; and  
14                       (2) propose a plan pursuant to Chapter 8 of this  
15 Act.

16           B. The Commissioner, as part of an initial petition  
17 filed under this Act, or the receiver, by motion filed in a  
18 pending receivership proceeding, may request that the  
19 receivership court enter a final order of liquidation with a  
20 finding of insolvency.

21           Section 442. Continuation of coverage.

22           A. Notwithstanding any policy or contract language or  
23 any other statute, all reinsurance contracts by which the  
24 insurer has reinsured the insurance obligations of another  
25 person are cancelled upon entry of an order of liquidation,  
26 and all policies, insurance contracts (other than  
27 reinsurance), surety bonds or surety undertakings, other than  
28 life or health insurance or annuities, in effect at the time  
29 of issuance of an order of liquidation shall continue in  
30 force until the earliest of:

- 31                       (1) 30 days from the date of entry of the

1 liquidation order;

2 (2) the expiration of the policy;

3 (3) the date when the insured has replaced the  
4 insurance coverage with equivalent insurance in another  
5 insurer or otherwise terminated the policy;

6 (4) the date the liquidator has effected a transfer  
7 of the policy obligation; or

8 (5) the date proposed by the liquidator and  
9 approved by the receivership court to cancel coverage.

10 B. An order of liquidation shall terminate coverages at  
11 the time provided under subsection A of this Section for  
12 purposes of any other statute.

13 C. Policies of life or health insurance or annuities  
14 covered by a guaranty association and any portion of policies  
15 of life or health insurance or annuities covered by a  
16 guaranty association shall continue in force to the extent  
17 necessary to permit the guaranty association to discharge its  
18 statutory obligations.

19 D. Policies of life or health insurance or annuities not  
20 covered by a guaranty association, and any portion of  
21 policies of life or health insurance or annuities not covered  
22 by a guaranty association, shall terminate as under  
23 subsections A and B, except to the extent that the liquidator  
24 proposes and the receivership court approves the continuation  
25 of such contracts or coverage.

26 E. The cancellation of any bond or surety undertaking  
27 shall not release any co-surety or guarantor.

28 Chapter 5. Office of the Receiver

29 Subchapter I. Authority of the Receiver

30 Section 501. Appointment of receiver. An order of  
31 conservation, rehabilitation or liquidation shall appoint the

1 Commissioner and his or her successors in office as receiver.

2 Section 502. Title to and possession of assets and  
3 records.

4 A. Upon entry of an order of rehabilitation or  
5 liquidation, the rehabilitator or liquidator shall be vested  
6 with title to all of the property, books, accounts, documents  
7 and other records of the insurer, wherever located.

8 B. To the extent reasonable, and in the receiver's sole  
9 discretion, the receiver may immediately take possession and  
10 control of all of the property, books, accounts, documents  
11 and other records of an insurer and of the premises occupied  
12 by the insurer for transaction of its business and remove  
13 such property to another location convenient for the  
14 administration of the estate.

15 Section 503. Immunity and indemnification of the  
16 receiver and employees.

17 A. For the purposes of this Section, the persons  
18 entitled to protection under this Section are:

19 (1) All receivers responsible for the conduct of a  
20 receivership proceeding under this Act including present  
21 and former receivers; and

22 (2) Their employees meaning all present and former  
23 special deputies and assistant special deputies appointed  
24 by the Commissioner and all persons whom the  
25 Commissioner, special deputies, or assistant special  
26 deputies have employed to assist in a receivership  
27 proceeding under this Act. Attorneys, accountants,  
28 auditors, actuaries, investment bankers, financial  
29 advisors, other consultants and any other persons or  
30 firms who are retained by the receiver as independent  
31 contractors and their employees shall not be considered  
32 employees of the receiver for purposes of this Section.



1           B. The receiver and his or her employees shall have  
2 official immunity and shall be immune from suit and  
3 liability, both personally and in their official capacities,  
4 for any claim for damage to or loss of property or personal  
5 injury or other civil liability caused by or resulting from  
6 any alleged act, error or omission of the receiver or any  
7 employee arising out of or by reason of their duties or  
8 employment; provided that nothing in this provision shall be  
9 construed to hold the receiver or any employee immune from  
10 suit and/or liability for any damage, loss, injury or  
11 liability caused by the intentional or willful and wanton  
12 misconduct of the receiver or any employee.

13           C. If any legal action is commenced against the receiver  
14 or any employee, whether against him or her personally or in  
15 his or her official capacity, alleging property damage,  
16 property loss, personal injury or other civil liability  
17 caused by or resulting from any alleged act, error or  
18 omission of the receiver or any employee arising out of or by  
19 reason of their duties or employment, the receiver and any  
20 employee shall be indemnified from the assets of the insurer  
21 for all expenses, attorneys' fees, judgments, settlements,  
22 decrees or amounts due and owing or paid in satisfaction of  
23 or incurred in the defense of such legal action unless it is  
24 determined upon a final adjudication on the merits that the  
25 alleged act, error or omission of the receiver or employee  
26 giving rise to the claim did not arise out of or by reason of  
27 his or her duties or employment, or was caused by intentional  
28 or willful and wanton misconduct.

29           D. Attorneys' fees and any and all related expenses  
30 incurred in defending a legal action for which immunity or  
31 indemnity is available under this Section shall be paid from  
32 the assets of the insurer, as they are incurred, in advance  
33 of the final disposition of such action upon receipt of an  
34 undertaking by or on behalf of the receiver or employee to

1 repay the attorneys' fees and expenses if it shall ultimately  
2 be determined upon a final adjudication on the merits that  
3 the receiver or employee is not entitled to immunity or  
4 indemnity under this Section.

5 E. Any indemnification for expense payments, judgments,  
6 settlements, decrees, attorneys' fees, surety bond premiums  
7 or other amounts paid or to be paid from the insurer's assets  
8 pursuant to this Section shall be an administrative expense  
9 of the insurer.

10 F. In the event of any actual or threatened litigation  
11 against a receiver or any employee for which immunity or  
12 indemnity may be available under this Section, a reasonable  
13 amount of funds which in the judgment of the Commissioner may  
14 be needed to provide immunity or indemnity shall be  
15 segregated and reserved from the assets of the insurer as  
16 security for the payment of indemnity until such time as all  
17 applicable statutes of limitation shall have run and all  
18 actual or threatened actions against the receiver or any  
19 employee have been completely and finally resolved, and all  
20 obligations of the insurer and the Commissioner under this  
21 Section shall have been satisfied.

22 G. In lieu of segregation and reserving of funds, the  
23 Commissioner may, in his or her discretion, obtain a surety  
24 bond or make other arrangements which will enable the  
25 Commissioner to fully secure the payment of all obligations  
26 under this Section.

27 H. If any legal action against an employee for which  
28 indemnity may be available under this Section is settled  
29 prior to final adjudication on the merits, the insurer shall  
30 pay the settlement amount on behalf of the employee, or  
31 indemnify the employee for the settlement amount, unless the  
32 Commissioner determines:

33 (1) that the claim did not arise out of or by  
34 reason of the employee's duties or employment; or

1           (2) that the claim was caused by the intentional or  
2 willful and wanton misconduct of the employee.

3           I. In any legal action in which the receiver is a  
4 defendant, that portion of any settlement relating to the  
5 alleged act, error or omission of the receiver shall be  
6 subject to the approval of the receivership court before  
7 which the receivership proceeding is pending. The  
8 receivership court shall not approve that portion of the  
9 settlement if it determines:

10           (1) that the claim did not arise out of or by  
11 reason of the receiver's duties or employment; or

12           (2) that the claim was caused by the intentional or  
13 willful and wanton misconduct of the receiver.

14           J. Nothing contained or implied in this Section shall  
15 operate, or be construed or applied to deprive the receiver  
16 or any employee of any immunity, indemnity, benefits of law,  
17 rights or any defense otherwise available.

18           K.(1) Subsection B of this Section shall apply to any  
19 suit based in whole or in part on any alleged act, error or  
20 omission which takes place on or after the effective date of  
21 this Act.

22           (2) No legal action shall lie against the receiver  
23 or any employee based in whole or in part on any alleged  
24 act, error or omission which took place prior to the  
25 effective date of this Act, unless suit is filed and  
26 valid service of process is obtained within 12 months  
27 after the effective date of this Act.

28           (3) Subsections C through I of this Section shall  
29 apply to any suit which is pending on or filed after the  
30 effective date of this Act without regard to when the  
31 alleged act, error or omission took place.

32           Section 504. Employment of professional persons. The  
33 receiver may:

1           A. appoint one or more qualified persons, including, but  
2 not limited to this State's life and health insurance  
3 guaranty association and its property and casualty insurance  
4 guaranty association, to serve as deputy receiver which  
5 person(s) shall have all the powers and responsibilities of  
6 the receiver granted under this Act and shall serve at the  
7 pleasure of the receiver;

8           B. employ and fix the compensation of employees and  
9 agents;

10          C. retain attorneys, actuaries, accountants, appraisers,  
11 consultants, and such other personnel as he or she considers  
12 necessary to assist in the receivership; and

13          D. subject to the requirements of Section 522, fix the  
14 compensation of those whom he or she appoints or retains  
15 under subsections A or C of this Section.

16           Section 505. Powers of rehabilitators and liquidators.

17          A. The rehabilitator or liquidator shall have all the  
18 powers of the directors, officers and managers of the  
19 insurer, whose authority shall be suspended, except as they  
20 are re-delegated by the rehabilitator or liquidator.

21          B. In addition to those powers otherwise provided by  
22 this Act, the rehabilitator or liquidator shall have the  
23 power to:

24                 (1) use, sell or lease property of the insurer;

25                 (2) after notice and a hearing, borrow money on the  
26 security of the insurer's assets or to borrow money  
27 without security and to execute and deliver all documents  
28 necessary to that transaction for the purpose of  
29 facilitating the liquidation;

30                 (3) collect all debts and money due and claims  
31 belonging to the insurer, wherever located;

32                 (4) institute and pursue legal actions and to  
33 continue any pending action, in any jurisdiction;

1           (5) suspend, limit or permit policy withdrawals in  
2 connection with life insurance policies or annuity  
3 contracts;

4           (6) do other acts as are necessary or expedient to  
5 collect, marshal, or protect the assets or property,  
6 including the power to sell, compound, compromise, or  
7 assign debts for purposes of collection upon such terms  
8 and conditions as he or she considers best and that are  
9 consistent with this Act;

10          (7) enter into contracts necessary to carry out the  
11 order of rehabilitation or liquidation;

12          (8) hold hearings, to subpoena witnesses to compel  
13 their attendance, to administer oaths, to examine a  
14 person under oath, and to compel a person to subscribe to  
15 his or her testimony after it has been correctly reduced  
16 to writing; and in connection with these powers to  
17 require the production of books, papers, records, or  
18 other documents that he or she considers relevant to the  
19 inquiry; and

20          (9) exercise all powers now held or hereafter  
21 conferred upon receivers by the laws of this State not  
22 inconsistent with the provisions of this Act.

23          C. The liquidator may petition the receivership court  
24 for an order dissolving the corporate existence of a domestic  
25 insurer or the United States branch of an alien insurer  
26 domiciled in this State at any time after entry of the order  
27 of liquidation.

28          D. The enumeration in this Section of the powers and  
29 authority of the rehabilitator or liquidator shall not be  
30 construed as a limitation upon him or her, and it shall not  
31 exclude in any manner his or her right to do other acts not  
32 specifically enumerated in this Section or otherwise provided  
33 for if necessary or appropriate for the accomplishment of or  
34 in aid of the purpose of rehabilitation or liquidation.

1 Section 506. Advances to the receiver. If the property  
2 of the insurer does not contain sufficient cash or liquid  
3 assets to defray the costs incurred, the Commissioner may  
4 advance the incurred costs out of an appropriation for the  
5 department of insurance. Amounts advanced for expenses of  
6 administration shall be repaid to the Commissioner for the  
7 use of the department of insurance out of the first available  
8 money of the insurer with priority over all other costs of  
9 administration.

10 Section 507. Executory non-insurance contracts.

11 A. This Section shall not apply to an insurance policy  
12 or reinsurance contract whether or not it is executory.

13 B. The rehabilitator or liquidator, subject to the  
14 receivership court's approval, may assume or reject any  
15 executory contract or unexpired lease of the insurer.

16 C. Neither the filing of a petition under this Act nor  
17 the entry of an order of rehabilitation or liquidation shall  
18 constitute an anticipatory breach of any contract or lease of  
19 the insurer.

20 D. If there has been a default in an executory contract  
21 or unexpired lease of the insurer, the receiver may not  
22 assume such contract or lease unless, at the time of the  
23 assumption of such contract or lease, the receiver

24 (1) cures or provides adequate assurance that the  
25 receiver will promptly cure such default; and

26 (2) provides adequate assurance of future  
27 performance under such contract or lease.

28 E. Paragraph D of this subsection does not apply to a  
29 default that is a breach of a provision relating to:

30 (1) the insolvency or financial condition of the  
31 insurer at any time before the closing of the  
32 receivership proceeding;

33 (2) the commencement of a receivership proceeding

1 under this Act;

2 (3) the appointment of or taking possession by a  
3 receiver in a case under this Act or a custodian before  
4 such commencement; or

5 (4) the satisfaction of any penalty rate or  
6 provision relating to a default arising from any failure  
7 of the insurer to perform nonmonetary obligations under  
8 the executory contract or unexpired lease.

9 Section 508. Abandonment of property and records. The  
10 receiver may, at any time, abandon any property or records  
11 that are burdensome to the estate or that are of  
12 inconsequential value and benefit to the receivership estate.

13 Section 509. Extension of time.

14 A. The rehabilitator or liquidator may institute any  
15 action or proceeding on behalf of the estate of the insurer  
16 while any statute of limitation is tolled pursuant to this  
17 Section. Unless an applicable limitation period has expired  
18 before a successful petition for rehabilitation or  
19 liquidation was filed, any applicable statute of limitation  
20 is tolled for 2 years. Tolling of the running of any  
21 applicable statute of limitation shall begin with the entry  
22 of an order of rehabilitation or liquidation. The tolling  
23 shall be in addition to any other applicable tolling  
24 provision.

25 B. For actions not covered by subsection A, where any  
26 unexpired time period is fixed, by any agreement or in any  
27 proceeding, for doing any act for the benefit of the estate,  
28 the rehabilitator or liquidator shall have 180 days or such  
29 longer period as the receivership court may allow for good  
30 cause shown, from the entry of the order of rehabilitation or  
31 liquidation to perform the act.

1 Section 510. Periodic reports.

2 A. A rehabilitator or liquidator shall file periodic  
3 reports with the Commission containing such information as is  
4 reasonably available and at such intervals as the Commission  
5 specifies in its operating procedures, rules and laws,  
6 including, but not limited to:

7 (1) cash receipts and disbursements for the period;  
8 and

9 (2) a balance sheet which includes known and  
10 estimated assets and liabilities of the estate.

11 B. A conservator shall file with the Commission a report  
12 reflecting the insurer's:

13 (1) cash receipts and disbursements for the period;  
14 and

15 (2) such other information, reasonably available to  
16 the conservator, as the Commission specifies in operating  
17 procedures, rules and laws.

18 C. The reports required by subsections A and B of this  
19 Section need not be filed more than once for each calendar  
20 year if the insurer's cash and invested assets are less than  
21 \$250,000.

22 Section 511. Document depository.

23 A. The rehabilitator or liquidator shall maintain,  
24 during the pendency of the receivership proceedings, a  
25 document depository containing:

26 (1) copies of the petitions and orders establishing  
27 the receivership proceeding, and any amendments thereto;

28 (2) copies of all reports filed by the receiver  
29 with the receivership court or the commission;

30 (3) copies of all other filings made in the  
31 receivership court;

32 (4) copies of all evidentiary material submitted to  
33 the receivership court;



1           (5) transcripts of any hearings or trials in the  
2 receivership court which are obtained by the receiver;  
3 and

4           (6) an index of all items contained in the  
5 depository.

6           B. Any filing or evidentiary submission made in the  
7 receivership court under seal shall not be maintained in the  
8 depository, subject to the contrary order of the receivership  
9 court, but an index of such filings and submissions,  
10 identifying such material with reasonable specificity, but  
11 preserving the confidentiality of the contents of such  
12 material, shall be maintained in the depository.

13           C. Any party other than the receiver who files pleadings  
14 or documents in the receivership court, or presents  
15 evidentiary materials there, shall forthwith furnish the  
16 receiver with copies thereof, in addition to service copies,  
17 for inclusion in the depository.

18           D. Nothing in this Section shall preclude the receiver  
19 from including additional non-privileged and nonconfidential  
20 items in the document depository.

21           E. Except as otherwise ordered by the receivership  
22 court, all records contained in the depository are public.  
23 The receiver shall make available the materials contained in  
24 the depository, during regular business hours at the  
25 principal office of the receiver or such other location as  
26 the receiver shall specify, and shall provide copies of  
27 depository materials at reasonable cost.

28           Section 512. Audit of receivership records.

29           A. The pendency of any receivership proceeding under  
30 this Act shall in no way affect the power and authority of  
31 the Commissioner to conduct any examination provided for in  
32 Article IX of the Illinois Insurance Code in connection with  
33 the business, conduct or affairs of an insurer.

1           B. An annual audit of any insurer which is in  
2 rehabilitation or liquidation pursuant to this Act and which  
3 has assets of more than \$500,000 shall be performed by an  
4 independent outside certified public accountant. The cost of  
5 this audit shall be paid by the receiver as an expense of  
6 administration.

7   Subchapter II. Notice

8           Section 521. General service list.

9           A. The receiver shall maintain a general service list  
10 for each receivership proceeding. It shall be the  
11 responsibility of the person listed to inform the receiver,  
12 in writing, of any changes in his or her home, business, or  
13 e-mail address, or to request that his or her name be deleted  
14 from the general service list. Any person shall be placed on  
15 the general service list upon written request to the  
16 receiver.

17           B. The receiver may require that listed persons return  
18 continuation request forms which the receiver may serve upon  
19 them at intervals, but not more frequently than every 12  
20 months. Any person who fails to return the continuation  
21 request may be purged from the service list.

22           C. Inclusion on the general service list does not confer  
23 standing in the receivership proceeding to raise, appear or  
24 be heard on any issue.

25           Section 522. Routine matters.

26           A. Notice of the filing of any routine matter in the  
27 receivership court shall be provided by the receiver by  
28 depositing a copy of the item filed in the depository,  
29 including the same in the index and sending notice by U.S.  
30 mail or, if an e-mail address has been provided, by e-mail on  
31 the same date that the copy was deposited in the depository

1 to those persons on the general service list and to any other  
2 person known to the receiver to be directly affected, that  
3 the matter has been filed and the date of its filing and the  
4 date that it was deposited in the depository.

5 B. Any party in interest may object to any routine  
6 matter by filing a motion with the receivership court and  
7 serving a copy thereof on the receiver not later than 30 days  
8 after the copy of the filing was deposited in the depository.  
9 If no objection has been received during such time, no court  
10 approval of the matter is required. If an objection has been  
11 filed within the prescribed time, the court shall set the  
12 matter for hearing and, after hearing, enter such orders  
13 concerning the matter as it finds appropriate.

14 C. For the purpose of the application of this Section,  
15 the following matters are routine, unless the receivership  
16 court otherwise orders:

17 (1) periodic reports of the receiver, as required  
18 by Section 510;

19 (2) the establishment of a basis of compensation of  
20 deputy receivers, attorneys, actuaries, accountants,  
21 appraisers, consultants, and such other personnel as he  
22 or she retains.

23 (3) the disposition of property or choses in action  
24 of the estate the value of which does not exceed the  
25 lesser of \$250,000 or 10% of the last reported total  
26 asset value of the estate.

27 Section 523. Matters requiring prior receivership court  
28 approval.

29 A. Except as hereinafter set out, notice of the filing  
30 of any non-routine matter shall be provided by the receiver  
31 by depositing a copy of the item filed in the depository,  
32 including the same in the index and sending notice to those  
33 persons on the general service list and any other person

1 known to the receiver to be directly affected that the matter  
2 has been filed, the date of its filing, the deadline for the  
3 filing of objections, and the date on which the receiver will  
4 present the matter for hearing by the receivership court.

5 B. In addition to the notice called for in subsection A  
6 above, the following matters require additional notice:

7 (1) notice of the filing of a plan pursuant to  
8 Chapter 8 of this Act, or of any amendment to such a plan  
9 shall be furnished to all known parties in interest;

10 (2) notice of the entry of an order of liquidation  
11 or finding of insolvency, other than as part of the  
12 initial order of receivership, shall be provided to all  
13 persons entitled to notice under Section 407; and

14 (3) notice of the proposed allowance or  
15 disallowance of the claims of any policyholder or other  
16 creditor shall be provided pursuant to Section 524.

17 C. Notice of the proposed closure of the estate or final  
18 distribution shall be sufficient if mailed to all persons  
19 having allowed claims which have not been paid in full, all  
20 claimants whose claims have not been adjudicated, all  
21 stockholders of the company, and all guaranty associations  
22 interested in the estate, and the general service list.

23 D. Any party in interest may object to any action  
24 proposed to be taken by the receivership court in connection  
25 with a non-routine matter by filing a statement showing that  
26 he or she has an interest in the matter and setting out the  
27 grounds of the objection not later than 30 days after the  
28 sending of notice under subsection A, or such other period as  
29 the court shall direct for good cause shown.

30 E. Upon the presentation of any non-routine matter, the  
31 receivership court may determine any preliminary issues, and  
32 shall set the matter for hearing. Upon hearing the receiver  
33 and any party in interest who has filed a timely objection,  
34 the receivership court may issue such orders concerning the

1 matter as it finds appropriate.

2 F. Any action proposed to be taken by the receiver and  
3 which requires court approval and which is not defined as a  
4 "routine matter," is a "non-routine matter," including,  
5 without limitation, the following:

6 (1) the disposition of any asset or chose in action  
7 (including the settlement of any suit or tort claim of  
8 the estate) which is property of the estate and which  
9 exceeds in value the lesser of \$250,000 or 10% of the  
10 last reported total asset value of the estate;

11 (2) the allowance of a claim or disallowance of a  
12 claim pursuant to Section 711;

13 (3) borrowing or lending of any sum, except for  
14 debts incurred in the ordinary course of the operations  
15 of the receivership and not exceeding \$50,000 per  
16 obligee;

17 (4) conversion of a rehabilitation into a  
18 liquidation, or the issuance of a finding of insolvency  
19 or the imposition of a deadline for the filing of claims  
20 at any time after the entry of an order of rehabilitation  
21 or liquidation; and

22 (5) the adoption of any plan pursuant to Chapter 8  
23 of this Act.

24 G. After notice and a hearing, the receivership court  
25 may designate additional categories of routine and  
26 non-routine matters, and may, for good cause shown, provide  
27 alternate notice, or require the service of additional notice  
28 of any specific matter.

29 Section 524. Notice of proposed claims disposition.  
30 Except as otherwise ordered by the receivership court, notice  
31 of the proposed allowance or disallowance of any claim is  
32 sufficient if the receiver serves:

33 A. each policyholder under whose policy the claim

1 arises, any third party directly interested in the policy,  
2 each guaranty association which is or may be responsible for  
3 the claim or any portion thereof, and any reinsurer which is  
4 or would be liable to the receiver in respect of the claim if  
5 it were allowed with a description of the claim proposed to  
6 be allowed or denied, the rationale for such allowance or  
7 denial, and the procedures for objecting; and

8 B. notice of the filing of the motion on those on the  
9 general service list.

10 Chapter 6. The Estate

11 Section 601. Turnover of property to the receiver.

12 A. Except as provided in subsections C and D of this  
13 Section, any person or entity in possession, custody or  
14 control of property of the insurer shall deliver such  
15 property to the receiver.

16 B. Any person or entity that owes a debt that is  
17 property of the insurer and that is matured, payable on  
18 demand, or payable on order, shall pay such debt to, or on  
19 the order of, the receiver, except to the extent that such  
20 debt may be offset under Section 611 of this Act.

21 C. Subject to any applicable privilege, and unless the  
22 receivership court orders otherwise, any attorney,  
23 accountant, agent, management company, data processing  
24 company or affiliate of the insurer or entity that possesses  
25 or controls any documents or recorded information of any  
26 nature, including books, claims files, records, and papers  
27 of the insurer or of any affiliate of the insurer that relate  
28 to the insurer's assets, liabilities, financial affairs or  
29 business, immediately shall disclose and, on request of the  
30 receiver, turn over such documents and recorded information,  
31 or if the receivership court shall so order, copies thereof,  
32 to the receiver.

1           D. As of the date of the order directing rehabilitation  
2 or liquidation, no possessory lien held by any attorney,  
3 including common law retaining liens, may be asserted or  
4 enforced against the receiver or the insurer as a basis for  
5 withholding files or otherwise. Further, no attorney shall  
6 be granted secured status, security or payment for his or her  
7 claim against the insurer in exchange for the release of  
8 files or the extinguishment of any such lien.

9           Section 602. Turnover of premiums owed.

10          A. Unless otherwise instructed by the receiver in  
11 writing, an agent, premium finance company or any other  
12 person, other than the insured, who is responsible for the  
13 payment of premium who has possession or control of such  
14 premium shall immediately turn over to the receiver, and be  
15 obligated to pay any unpaid earned premium due the insurer,  
16 whether collected or uncollected, and any collected, unearned  
17 premium and any part of an unearned premium representing  
18 commission on or before the date of the entry of a  
19 conservation, liquidation or rehabilitation order. Credits,  
20 setoffs, or both, shall not be allowed to an agent, broker or  
21 premium finance company for an amount advanced to the insurer  
22 by the agent, broker or premium finance company on behalf of,  
23 but in the absence of a payment by, the insured.

24          B. An insured shall be obligated to pay to the receiver  
25 any unpaid earned premium and any retrospectively rated  
26 premium due the insurer.

27          C. Upon satisfactory evidence of a violation of  
28 subsection A, the Commissioner may suspend, revoke or refuse  
29 to renew the licenses of each offending party, impose a  
30 penalty of no more than \$1,000 for each and every act in  
31 violation of this Section by each offending party, or both.

32          D. Before the Commissioner takes action under subsection  
33 C, the Commissioner shall give written notice to the person,

1 company, association or exchange accused of violating the  
2 law, stating specifically the nature of the alleged violation  
3 and fixing a time and place, at least 10 days thereafter, for  
4 a hearing on the matter. After the hearing, or upon failure  
5 of the accused to appear at the hearing, the Commissioner, if  
6 he or she finds a violation, shall impose the penalties under  
7 subsection C as he or she considers advisable.

8 E. If the Commissioner takes action under subsection C,  
9 the party aggrieved may appeal from that action to the  
10 circuit court of Cook County.

11 Section 603. Limitation on avoiding powers. An action  
12 or proceeding under Sections 604, 605, 606, 608 or 609 of  
13 this Act may not be commenced after the earlier of:

14 A. 5 years after the entry of the initial order of  
15 rehabilitation or liquidation under this Act; or

16 B. the time the receivership proceeding is closed or  
17 dismissed.

18 Section 604. Receiver as lien creditor and as successor  
19 to certain creditors, purchasers and fiduciaries.

20 A. The receiver may avoid any transfer of or lien upon  
21 the property of, or obligation incurred by, an insurer that  
22 the insurer or a policyholder, creditor, member or  
23 stockholder of the insurer may have avoided without regard to  
24 any knowledge of the receiver, the Commissioner, the insurer  
25 or any policyholder, creditor, member or stockholder of the  
26 insurer and whether or not such a creditor, member or  
27 shareholder exists.

28 B. The receiver shall be deemed a creditor without  
29 knowledge for purposes of pursuing claims under the Uniform  
30 Fraudulent Transfer Act.

31 Section 605. Preferences.



1           A. A preference is a transfer of any property of an  
2 insurer or of an interest in property of an insurer:

3           (1) to or for the benefit of a creditor;

4           (2) for or on account of an antecedent debt;

5           (3) made or suffered within the 2 years preceding  
6 the filing of a successful petition for rehabilitation or  
7 liquidation under this Act;

8           (4) that enables such creditor to receive more than  
9 such creditor would receive if:

10           (a) the insurer was liquidated under this Act;

11           (b) the transfer had not been made; and

12           (c) such creditor received payment of such  
13 debt to the extent provided by this Act.

14           B. Any preference may be avoided by the receiver if the  
15 insurer was insolvent at the time of the transfer; and

16           (1) the transfer was made within 120 days before  
17 the filing of the petition; or

18           (2) the creditor receiving it or benefited thereby  
19 or his agent acting with reference thereto had, at the  
20 time when the transfer was made, reasonable cause to  
21 believe that the insurer was insolvent or was about to  
22 become insolvent; or

23           (3) The creditor receiving or benefitting from the  
24 transfer was

25           (a) an officer or director of the insurer; or

26           (b) an employee, attorney or other person who  
27 was, in fact, in a position to effect a level of  
28 control or influence over the actions of the insurer  
29 comparable to that of an officer, whether or not the  
30 person held such a position; or

31           (c) any shareholder owning or controlling  
32 directly or indirectly more than 10% of any class of  
33 any equity security issued by the insurer, or any  
34 other person, firm, corporation, association or

1 aggregation of persons with whom the insurer did not  
2 deal at arm's length.

3 C. The receiver may not avoid a transfer under this  
4 Section:

5 (1) to the extent that such transfer was:

6 (a) intended by the insurer and the creditor  
7 to or for whose benefit such transfer was made to be  
8 a contemporaneous exchange for new value given to  
9 the insurer; and

10 (b) in fact a substantially contemporaneous  
11 exchange.

12 (2) to the extent that such transfer was in payment  
13 of a debt incurred by the insurer in the ordinary course  
14 of business or financial affairs of the insurer and the  
15 transferee and such transfer was:

16 (a) made in the ordinary course of business or  
17 financial affairs of the insurer and the  
18 transferee; or

19 (b) made according to ordinary business terms.

20 (3) that creates a security interest in property  
21 acquired by the insurer:

22 (a) to the extent such security interest  
23 secures new value that was:

24 (i) given at or after the signing of a  
25 security agreement that contains a description  
26 of such property as collateral;

27 (ii) given by or on behalf of the secured  
28 party under such agreement;

29 (iii) given to enable the insurer to  
30 acquire such property; and

31 (iv) in fact, used by the insurer to  
32 acquire such property; and

33 (b) that is perfected on or before 21 days or  
34 any other period expressly allowed by law, which

1           ever is less, after the insurer receives possession  
2           of such property.

3           (4) to or for the benefit of a creditor, to the  
4           extent that, after such transfer, such creditor gave new  
5           value to or for the benefit of the insurer:

6                   (a) not secured by an otherwise unavoidable  
7                   security interest; and

8                   (b) on account of which new value the insurer  
9                   did not make an otherwise unavoidable transfer to or  
10                  for the benefit of such creditor.

11          (5) that creates a perfected security interest in a  
12          receivable or its proceeds, except to the extent that the  
13          aggregate of all such transfers to the transferee caused  
14          a reduction, as of the date of the filing of the  
15          petition and to the prejudice of other creditors holding  
16          unsecured claims, of any amount by which the debt secured  
17          by such security interest exceeded the value of all  
18          security interests for such debt on the later of:

19                   (a) (i) with respect to a transfer to which  
20                   subsection B(1) of this Section applies, 120 days  
21                   before the date of the filing of the petition; or

22                   (ii) with respect to a transfer to which  
23                   subsection B(2) or B(3) of this Section applies, one  
24                   year before the date of the filing of the petition;  
25                   or

26                   (b) the date on which new value was first given under  
27                   the security agreement creating such security interest.

28          D. If a lien which is voidable under this Section has  
29          been dissolved by the furnishing of a bond or other  
30          obligation and the surety on which has been indemnified  
31          directly or indirectly by the transfer or the creation of a  
32          lien upon the insurer's property before the filing of a  
33          successful petition for rehabilitation or liquidation then  
34          that indemnifying transfer or lien shall also be

1 considered voidable.

2 E. The liability of the surety under a releasing bond or  
3 other like obligation shall be discharged to the extent of  
4 the value of the indemnifying property recovered or the  
5 indemnifying lien to the extent of the amount paid to the  
6 liquidator.

7 F. For the purposes of this Section:

8 (1) a transfer of property other than real property  
9 shall be deemed to be made or suffered when it becomes so  
10 far perfected that no subsequent lien obtainable by legal  
11 or equitable proceedings on a simple contract could  
12 become superior to the rights of the transferee;

13 (2) a transfer of real property shall be deemed to  
14 be made or suffered when it becomes so far perfected that  
15 no subsequent bona fide purchaser from the insurer could  
16 obtain rights superior to the rights of the transferee;

17 (3) a transfer which creates an equitable lien  
18 shall not be deemed to be perfected if there are  
19 available means by which a legal lien could be created;

20 (4) a transfer not perfected prior to the filing of  
21 a petition for liquidation shall be deemed to be made  
22 immediately before the filing of the successful petition;  
23 and

24 (5) the provisions of this subsection apply whether  
25 or not there are or were creditors who might have  
26 obtained liens or persons who might have become bona fide  
27 purchasers.

28 G. For the purposes of this Section, the receiver has  
29 the burden of proving the avoidability of a transfer under  
30 subsection B of this Section, and the person against whom  
31 recovery or avoidance is sought has the burden of proving the  
32 non-avoidability of a transfer under subsection C of this  
33 Section. The insurer is presumed to have been insolvent on  
34 and during the 120 day period immediately preceding the date

1 of the commencement of the rehabilitation or liquidation  
2 proceeding.

3 H. For the purposes of this Section, "new value" means  
4 money or money's worth in goods, services or new credit, or  
5 release by a transferee of property previously transferred to  
6 such transferee in a transaction that is neither void nor  
7 voidable by the receiver under any applicable law, including  
8 proceeds of such property, but does not include an obligation  
9 substituted for an existing obligation

10 Section 606. Fraudulent transfers and obligations.

11 A. The rehabilitator or liquidator may avoid any  
12 transfer of an interest of the insurer in property, or any  
13 obligation incurred by the insurer, that was made or incurred  
14 on or within one year before the date of the filing of the  
15 petition for rehabilitation or liquidation proceedings under  
16 this Act, if the insurer voluntarily or involuntarily:

17 (1) made such transfer or incurred such obligation  
18 with actual intent to hinder, delay, or defraud any  
19 person to which it was or became indebted on or after the  
20 date that such transfer was made or such obligation was  
21 incurred; or

22 (2) (a) received less than a reasonably equivalent  
23 value in exchange for such transfer or obligation; and

24 (b) (i) was insolvent on the date that such  
25 transfer was made or such obligation was incurred,  
26 or became insolvent as a result of such transfer or  
27 obligation;

28 (ii) was engaged in business or a transaction,  
29 or was about to engage in business or a transaction,  
30 for which any property remaining with the insurer  
31 was an unreasonably small capital; or

32 (iii) intended to incur, or believed that it  
33 would incur, debts that would be beyond its ability

1           to pay as such debts matured.

2           B. Except to the extent that a transfer or obligation  
3 voidable under this Section is voidable under Section 604 or  
4 605 of this Act, a transferee or obligee of such a transfer  
5 or obligation that takes for value and in good faith has a  
6 lien on or may retain any interest transferred or may enforce  
7 any obligation incurred, as the case may be, to the extent  
8 that such transferee or obligee gave value to the insurer in  
9 exchange for such transfer or obligation. A transfer is made  
10 when such transfer is so perfected that a bona fide purchaser  
11 from the insurer against whom applicable law permits such  
12 transfer to be perfected cannot acquire an interest in the  
13 property transferred that is superior to the interest in such  
14 property of the transferee, but if such transfer is not so  
15 perfected before the commencement of the receivership  
16 proceeding, such transfer is made immediately before the date  
17 of the filing of the petition.

18           C. In this Section "value" means property, or  
19 satisfaction or securing of a present or antecedent debt of  
20 the insurer.

21           D. A transaction with a reinsurer of the insurer is  
22 subject to avoidance under this Section if:

23           (1) the transaction released the reinsurer, in  
24 whole or in part, from its obligation to pay to the  
25 insurer the reinsurer's originally specified share of  
26 those losses which had occurred prior to the time of the  
27 transaction but which had not been paid by the insurer  
28 unless the reinsurer gives a present fair equivalent  
29 value for the release; and

30           (2) any part of the transaction was effected within  
31 one year prior to the filing of the petition under this  
32 Act.

33           E. In the event a reinsurance transaction is avoided  
34 under subsection D of this Section:

1           (1) the receiver shall tender to the reinsurer the  
2 value of any consideration transferred to the insurer in  
3 connection with such transaction less the amount of  
4 matured and liquidated liabilities owing by the reinsurer  
5 to the estate; and

6           (2) the parties shall be returned to their relative  
7 positions prior to the implementation of the transaction  
8 avoided.

9           Section 607. Transfer of insurer's property to good  
10 faith purchaser.

11           A. After a petition for receivership has been filed, a  
12 transfer of the insurer's real property made to a person  
13 acting in good faith shall be valid against the receiver if  
14 made for a present fair equivalent value, or if not made for  
15 a present fair equivalent value, then to the extent of the  
16 present consideration actually paid for the property for  
17 which amount the transferee shall have a lien on the  
18 transferred property. Constructive notice of the commencement  
19 of a receivership proceeding shall be given upon the  
20 recording of a copy of the petition initiating a receivership  
21 proceeding with the register of deeds in the county where any  
22 real property in question is located. The exercise by a  
23 court of the United States or any state or jurisdiction to  
24 authorize or effect a judicial sale of real property of the  
25 insurer within any county in any state shall not be impaired  
26 by the pendency of such a proceeding unless the copy is  
27 recorded in the county prior to the consummation of the  
28 judicial sale.

29           B. After a petition for receivership has been filed and  
30 before either the receiver takes possession of the insurer's  
31 property or an order of receivership is granted:

32           (1) a transfer of the insurer's property, other  
33 than real property, made to a person acting in good faith

1 shall be valid against the receiver if made for a present  
2 fair equivalent value, or if not made for a present fair  
3 equivalent value, then to the extent of the present  
4 consideration actually paid for the property for which  
5 amount the transferee shall have a lien on the  
6 transferred property;

7 (2) a person indebted to the insurer or holding  
8 property of the insurer, if acting in good faith, may pay  
9 all or part of the indebtedness or deliver all or part of  
10 the property to the insurer or upon his or her order,  
11 with the same effect as if the petition were not pending;

12 (3) a person having actual knowledge of the pending  
13 receivership shall be considered not to act in good  
14 faith; and

15 (4) a person asserting the validity of a transfer  
16 under this Section shall have the burden of proof.  
17 Except as elsewhere provided in this Section, no transfer  
18 by or on behalf of the insurer after the date of the  
19 petition for receivership proceeding by a person other  
20 than the receiver shall be valid against the receiver.

21 C. Nothing in this Chapter shall impair the  
22 negotiability of currency or negotiable instruments.

23 Section 608. Recoupment from affiliates. If an order of  
24 liquidation or rehabilitation is entered under this Act , the  
25 receiver shall have a right to recover from any affiliate  
26 that controlled it the amount of distributions, other than  
27 stock dividends paid by the insurer on its capital stock,  
28 made at any time during the 5 years preceding the petition  
29 for liquidation or rehabilitation subject to the following  
30 limitations:

31 A. a distribution shall not be recoverable under this  
32 Section if the recipient or other beneficiary of distribution  
33 shows that when paid the distribution was lawful and



1 reasonable, and that the insurer did not know and could not  
2 reasonably have known that the distribution would adversely  
3 affect the ability of the insurer to fulfill its contractual  
4 obligations;

5 B. a person who was an affiliate that controlled the  
6 insurer at the time the distributions were paid shall be  
7 liable up to the amount of distributions he or she received.  
8 A person who was an affiliate that controlled the insurer at  
9 the time the distributions were declared shall be liable up  
10 to the amount of distributions he or she would have received  
11 if they had been paid immediately. If 2 or more persons are  
12 liable with respect to the same distributions, they shall be  
13 jointly and severally liable. If a person liable under this  
14 subdivision is insolvent, all controlling affiliates at the  
15 time the distribution was paid shall be jointly and severally  
16 liable for any resulting deficiency in the amount recovered  
17 from the insolvent affiliate; and

18 C. the maximum amount recoverable under this subsection  
19 shall be the amount needed in excess of all other available  
20 assets of the insurer to pay its contractual obligations.

21 Section 609. Liability of transferee of an avoided  
22 transfer.

23 A. Except as otherwise provided in this Section, to the  
24 extent that a transfer is avoided under Section 604, 605,  
25 606, or 608 of this Act, the receiver may recover, for the  
26 benefit of the estate, the property transferred, or if the  
27 court so orders, the value of such property, from:

- 28 (1) the initial transferee of such transfer or the  
29 entity for whose benefit such transfer was made; or  
30 (2) any immediate or mediate transferee of such  
31 initial transferee.

32 B. An officer, director or other person in control of  
33 the insurer who knowingly participates in making a transfer

1 voidable under Sections 604, 605, 606, or 608 of this Act, if  
2 such person knew or should have known the insurer was or was  
3 about to become insolvent at the time of the transfer, shall  
4 be personally liable to the receiver for the amount of the  
5 transfer. If the transfer was made within 120 days before  
6 the date of filing of a successful petition under this Act  
7 then it shall be presumed that such person knew or should  
8 have known the insurer was or was about to become insolvent.

9 C. The receiver may not recover under Section A(2) of  
10 this Section from:

11 (1) a transferee who or that takes for value,  
12 including satisfaction or securing of a present or  
13 antecedent debt, in good faith, and without knowledge of  
14 the voidability of the transfer avoided; or

15 (2) any immediate or mediate good faith transferee  
16 of such transferee.

17 D. A transfer that is voidable only under Section  
18 605B(3) may not be recovered under this Section from a  
19 transferee that is not:

20 (1) an officer or director of the insurer;

21 (2) an employee, attorney or other person who was,  
22 in fact, in a position to effect a level of control or  
23 influence over the actions of the insurer comparable to  
24 that of an officer, whether or not the person held such a  
25 position; or

26 (3) any shareholder owning or controlling directly  
27 or indirectly more than 10% of any class of any equity  
28 security issued by the insurer, or any other person,  
29 firm, corporation, association, or aggregation of persons  
30 with whom the insurer did not deal at arm's length.

31 E. (1) A good faith transferee from whom the receiver  
32 may recover under subsection A of this Section has a lien on  
33 the property received to secure the lesser of:

34 (a) the cost, to such transferee, of any

1 improvement made after the transfer, less the amount  
2 of any profit realized by or accruing to such  
3 transferee from such property; and

4 (b) any increase in the value of such property  
5 as a result of such improvement, of the property  
6 transferred.

7 (2) In this subsection, "improvement" includes:

8 (a) physical additions or changes to the  
9 property transferred;

10 (b) repairs to such property;

11 (c) payment of any tax on such property;

12 (d) payment of any debt secured by a lien on  
13 such property that is superior or equal to the  
14 rights of the receiver; and

15 (e) preservation of such property.

16 F. An action or proceeding under this Section may not be  
17 commenced after the earlier of:

18 (1) one year after the avoidance of the transfer on  
19 account of which recovery under this Section is sought;  
20 or

21 (2) the time the receivership proceeding is closed  
22 or dismissed.

23 Section 610. Automatic preservation of avoided transfer.  
24 Any transfer avoided under Sections 604, 605, 606, 608 or 609  
25 of this Act is preserved for the benefit of the receivership  
26 but only with respect to property of the insurer.

27 Section 611. Setoff.

28 A. Mutual debts or mutual credits whether arising out of  
29 one or more contracts between an insurer that is subject to a  
30 receivership proceeding under this Act and another person  
31 shall be set off and the balance only shall be allowed or  
32 paid except as provided in subsections B of this Section and

1 in Sections 602 and 615A(4).

2 B. No setoff shall be allowed in favor of any person  
3 when:

4 (1) the obligation of the insurer to the person  
5 would not at the date of the filing of a petition for  
6 receivership entitle the person to share as a claimant in  
7 the assets of the insurer;

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

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

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

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

22 (6) the obligations between the person and the  
23 insurer arise out of transactions by which either the  
24 person or the insurer has assumed risks and obligations  
25 from the other party and then has ceded back to that  
26 party substantially the same risks and obligations.  
27 Notwithstanding the provisions of this subsection, the  
28 receiver may permit setoffs if in his or her discretion a  
29 setoff is appropriate because of specific circumstances  
30 relating to a transaction.

31 C. The provisions of subsection B(6) of this Section  
32 shall apply to all contracts entered into, renewed, extended,  
33 or amended on or after the effective date of this Act, and to  
34 debts or credits arising from any business written after such

1 date pursuant to any such contract. For purposes of this  
2 subsection, any change in the terms of or consideration for  
3 any such contract shall be deemed an amendment of the  
4 contract.

5 Section 612. Qualified financial contracts.

6 A. Notwithstanding any other provision of this Act,  
7 including any other provision of this Act permitting the  
8 modification of contracts, or other law of a state, no person  
9 shall be stayed or prohibited from exercising:

10 (1) any contractual right to terminate, liquidate  
11 or close out any netting agreement or qualified financial  
12 contract with an insurer because of:

13 (a) the insolvency, financial condition or  
14 default of the insurer at any time, provided that  
15 such right is enforceable under applicable law other  
16 than this Act; or

17 (b) the commencement of a receivership  
18 proceeding under this Act;

19 (2) any right under a pledge, security, collateral  
20 or guarantee agreement or any other similar security  
21 arrangement or credit support document relating to a  
22 netting agreement or qualified financial contract; or

23 (3) subject to any provision of Section 611 of this  
24 Act, any right to set off or net out any termination  
25 value, payment amount, or other transfer obligation  
26 arising under or in connection with a netting agreement  
27 or qualified financial contract where the counterpart or  
28 its guarantor is organized under the laws of the United  
29 States or a state or foreign jurisdiction approved by the  
30 Securities Valuation Office (SVO) of the NAIC as eligible  
31 for netting.

32 B. Upon termination of a netting agreement, the net or  
33 settlement amount, if any, owed by a non-defaulting party to

1 an insurer against which an application or petition has been  
2 filed under this Act shall be transferred to or on the order  
3 of the receiver for such insurer, even if the insurer is the  
4 defaulting party, notwithstanding any provision in the  
5 netting agreement that may provide that the non-defaulting  
6 party is not required to pay any net or settlement amount due  
7 to the defaulting party upon termination. Any limited  
8 two-way payment provision in a netting agreement with an  
9 insurer that has defaulted shall be deemed to be a full  
10 two-way payment provision as against the defaulting insurer.  
11 Any such property or amount shall, except to the extent it is  
12 subject to one or more secondary liens or encumbrances, be a  
13 general asset of the insurer.

14 C. In making any transfer of a netting agreement or  
15 qualified financial contract of an insurer concerning which a  
16 receivership proceeding is pending under this Act, the  
17 receiver shall either:

18 (1) transfer to one party (other than an insurer  
19 subject to a proceeding under this Act) all netting  
20 agreements and qualified financial contracts between a  
21 counterpart or any affiliate of such counterpart and the  
22 insurer that is the subject of the proceeding, including:

23 (a) all rights and obligations of each party  
24 under each such netting agreement and qualified  
25 financial contract; and

26 (b) all property, including any guarantees or  
27 credit support documents, securing any claims of  
28 each party under each such netting agreement and  
29 qualified financial contract; or

30 (2) transfer none of the netting agreements,  
31 qualified financial contracts, rights, obligations or  
32 property referred to in paragraph (1) (with respect to  
33 such counter-party and any affiliate of such  
34 counter-party).

1           D. If a receiver for an insurer makes any transfer of  
2 one or more netting agreements, then the receiver shall use  
3 its best efforts to notify any person who is party to the  
4 netting agreements of the transfer by 12:00 noon (the  
5 receiver's local time) on the business day following the  
6 transfer. For purposes of this subsection, business day  
7 means any day other than a Saturday, Sunday or any day on  
8 which either the New York Stock Exchange or the Federal  
9 Reserve Bank of New York is closed.

10          E. Notwithstanding any other provision of this Act, a  
11 receiver may not avoid any transfer of money or other  
12 property arising under or in connection with a netting  
13 agreement (or any pledge, security, collateral or guarantee  
14 agreement or any other similar security arrangement or credit  
15 support document relating to a netting agreement) that is  
16 made before the commencement of a receivership proceeding  
17 under this Act. However, a transfer may be avoided under  
18 Section 609 of this Act if the transfer was made with actual  
19 intent to hinder, delay or defraud the insurer, a receiver  
20 appointed for the insurer or existing or future creditors.

21          F. In exercising any of its powers under this Act to  
22 reject or repudiate a netting agreement, the receiver must  
23 take such action with respect to each netting agreement and  
24 all transactions entered into in connection therewith, in its  
25 entirety. Notwithstanding any other provision of this Act,  
26 any claim of a counter-party against the estate arising from  
27 the receiver's rejection or repudiation of a netting  
28 agreement that has not been previously assumed by the  
29 receiver shall be determined and shall be allowed or  
30 disallowed as if such claim had arisen before the date of the  
31 filing of the petition under this Act, provided that no such  
32 claim shall be allowed to have a priority greater than the  
33 claim of a general creditor. The amount of the claim shall  
34 be the actual direct compensatory damages determined as of

1 the date of the rejection or repudiation of the netting  
2 agreement. The term actual direct compensatory damages does  
3 not include punitive or exemplary damages, damages for lost  
4 profit or lost opportunity or damages for pain and suffering,  
5 but does include normal and reasonable costs of cover or  
6 other reasonable measures of damages utilized in the  
7 derivatives market for the contract and agreement claims.

8 G. The term contractual right as used in this Section  
9 includes any right, whether or not evidenced in writing,  
10 arising under statutory or common law, a rule or bylaw of a  
11 national securities exchange, national securities clearing  
12 organization or securities clearing agency, a rule or bylaw,  
13 or a resolution of the governing body, of a contract market  
14 or its clearing organization, or under law merchant.

15 H. The provisions of this Section shall not apply to  
16 persons who are affiliates of the insurer that is the subject  
17 of the receivership proceeding.

18 I. All rights of counter-parties under this Act shall  
19 apply to netting agreements entered into on behalf of the  
20 general account or separate accounts if the assets of each  
21 separate account are available only to counter-parties to  
22 netting agreements entered into on behalf of that separate  
23 account.

24 Section 613. Recovery from reinsurers. Except as  
25 provided in Section 614, the amount recoverable by the  
26 receiver from reinsurers shall not be reduced as a result of  
27 the filing of a proceeding under this Act, regardless of any  
28 provision in the reinsurance contract or other agreement.

29 Section 614. Cut-through provisions. If a reinsurance  
30 contract or other written agreement is entered into prior to  
31 the receivership proceeding and is not otherwise prohibited  
32 by law and expressly provides for another payee of such



1 reinsurance in the event of the insolvency of the ceding  
2 insurer, any payment made or due to such third party under  
3 such contract or other written agreement shall be a reduction  
4 to the amount due the receiver. Except as provided in this  
5 Section, payment made directly to an insured or other payee  
6 shall not diminish the reinsurer's obligation to the  
7 insurer's estate.

8 Section 615. Life and health reinsurance.

9 A. At any time within one year after the date on which  
10 any life or health guaranty association becomes responsible  
11 for the obligations of a member insurer (the coverage date),  
12 the guaranty association may elect to succeed to the rights  
13 and obligations of the member insurer that accrue on or after  
14 the coverage date and that relate to contracts covered (in  
15 whole or in part) by the guaranty association, under any one  
16 or more indemnity reinsurance agreement(s) entered into by  
17 the member insurer as a ceding insurer and selected by the  
18 guaranty association; provided, however, that the guaranty  
19 association may not exercise any such election with respect  
20 to a reinsurance agreement if the receiver of the member  
21 insurer has previously and expressly rejected the reinsurance  
22 agreement. The election shall be effected by a notice to the  
23 receiver and to the affected reinsurer(s). If the guaranty  
24 association makes an election, subsections A(1) through A(4)  
25 below shall apply with respect to the agreements selected by  
26 the guaranty association:

27 (1) the guaranty association shall be responsible  
28 for all unpaid premiums due under the agreement(s) (for  
29 periods both before and after the coverage date), and  
30 shall be responsible for the performance of all other  
31 obligations to be performed after the coverage date, in  
32 each case which relates to contracts covered (in whole or  
33 in part) by the guaranty association. The term "premiums"

1 as used in this subsection is intended to include other  
2 routine, periodic, monetary considerations, such as  
3 reserve adjustments pursuant to modified coinsurance  
4 agreements, necessary to keep the contracts in effect.  
5 The guaranty association may charge contracts covered in  
6 part by the guaranty association, through reasonable  
7 allocation methods, the costs for reinsurance in excess  
8 of the obligations of the guaranty association;

9 (2) the guaranty association shall be entitled to  
10 any amounts payable by the reinsurer under the  
11 agreement(s) with respect to losses or events that occur  
12 in periods after the coverage date and that relate to  
13 contracts covered by the guaranty association (in whole  
14 or in part), provided that, upon receipt of any such  
15 amounts, the guaranty association shall be obliged to pay  
16 to the beneficiary under the policy or contract on  
17 account of which the amounts were paid a portion of the  
18 amount equal to the excess of (i) the amount received by  
19 the guaranty association, over (ii) the benefits paid by  
20 the guaranty association on account of the policy or  
21 contract less the retention of the impaired or insolvent  
22 member insurer applicable to the loss or event;

23 (3) within 30 days following the guaranty  
24 association's election, the guaranty association and each  
25 indemnity reinsurer shall calculate the net balance due  
26 to or from the guaranty association under each such  
27 reinsurance agreement(s) as of the date of the guaranty  
28 association's election, which calculation shall give full  
29 credit to all items paid by either the member insurer (or  
30 its receiver) or the indemnity reinsurer during the  
31 period between the coverage date and the date of the  
32 guaranty association's election. Either the guaranty  
33 association or indemnity reinsurer shall pay the net  
34 balance due the other within 5 days of the completion of

1 the aforementioned calculation. If the receiver,  
2 rehabilitator or liquidator has received any amounts due  
3 the guaranty association pursuant to subsection A(2) of  
4 this Section, the receiver shall remit the same to the  
5 guaranty association as promptly as practicable, and

6 (4) if the guaranty association, within 60 days of  
7 the election, pays the premiums due for periods both  
8 before and after the coverage date that relate to  
9 contracts covered by the guaranty association (in whole  
10 or in part), the reinsurer shall not be entitled to  
11 terminate the reinsurance agreement(s) (insofar as the  
12 agreement(s) relate to contracts covered by the guaranty  
13 association (in whole or in part)) and shall not be  
14 entitled to set off any unpaid premium due for periods  
15 prior to the coverage date against amounts due the  
16 guaranty association. The term premiums as used in this  
17 subsection is intended to include other routine,  
18 periodic, monetary considerations, such as reserve  
19 adjustments pursuant to modified coinsurance agreements,  
20 necessary to keep the contracts in effect.

21 B. In the event the guaranty association transfers its  
22 obligations to another insurer, and if the guaranty  
23 association and the other insurer agree, the other insurer  
24 shall succeed to the rights and obligations of the guaranty  
25 association under subsection A effective as of the date  
26 agreed upon by the guaranty association and the other insurer  
27 and regardless of whether the guaranty association has made  
28 the election referred to above in subsection A provided that:

29 (1) the indemnity reinsurance agreement(s) shall  
30 automatically terminate for new reinsurance unless the  
31 indemnity reinsurer and the other insurer agree to the  
32 contrary;

33 (2) the obligations described in the proviso to  
34 subsection A(2) above shall no longer apply on and after

1 the date the indemnity reinsurance agreement is  
2 transferred to the third party insurer; and

3 (3) this subsection B shall not apply if the  
4 guaranty association has previously expressly determined  
5 in writing that it will not exercise the election  
6 referred to in subsection A.

7 C. The provisions of this Section shall supersede the  
8 provisions of any law of this State or of any affected  
9 reinsurance agreement(s) that provide for or require any  
10 payment of reinsurance proceeds, on account of losses or  
11 events that occur in periods after the coverage date, to the  
12 receiver of the insolvent member insurer. The receiver,  
13 rehabilitator or liquidator shall remain entitled to any  
14 amounts payable by the reinsurer under the reinsurance  
15 agreement(s) with respect to losses or events that occur in  
16 periods prior to the coverage date (subject to applicable  
17 setoff provisions).

18 D. Except as otherwise expressly provided above, nothing  
19 herein shall alter or modify the terms and conditions of the  
20 indemnity reinsurance agreements of the insolvent member  
21 insurer. Nothing herein shall abrogate or limit any rights  
22 of any reinsurer to claim that it is entitled to rescind a  
23 reinsurance agreement. Nothing herein shall give a policy  
24 owner or beneficiary an independent cause of action against  
25 an indemnity reinsurer that is not otherwise set forth in the  
26 indemnity reinsurance agreement. Nothing herein shall apply  
27 to reinsurance agreements covering property or casualty  
28 risks.

29 E. The provisions of Sections 807 and 808 shall not  
30 apply to any reinsurance agreement(s) selected by a guaranty  
31 association pursuant to subsection A of this Section or by an  
32 insurer pursuant to subsection B of this Section.

1           Section 701. Rights and liabilities of creditors fixed  
2 upon liquidation. The rights and liabilities of the insurer  
3 and of its creditors, policyholders, stockholders or members  
4 and all other persons interested in its assets, shall be  
5 fixed as of the date of the entry of the order of liquidation  
6 unless otherwise provided by order of the receivership court.

7           Section 702. Claims filing; late filing.

8           A. To the extent required, proof of all claims shall be  
9 filed with the receiver in the form required by Section 703  
10 on or before the last day established by the receivership  
11 court, which date shall not be later than 18 months after  
12 entry of the order of liquidation unless the receivership  
13 court, for good cause shown, extends such time, and except  
14 that proofs of claim for cash surrender values or other  
15 investment values in life insurance and annuities need not be  
16 filed unless the receiver expressly so requires.

17           B. Upon the rehabilitation or liquidation of any company  
18 which has issued policies insuring the lives of persons, the  
19 Commissioner shall, within a reasonable time after the last  
20 day set for the filing of claims, make a list of the persons  
21 who have not filed proofs of claim with him and whose rights  
22 have not been reinsured, to whom it appears from the books of  
23 the company, there are amounts owing on such policies and he  
24 shall set opposite the name of each person such amount so  
25 owing to such person. The Commissioner shall incur no  
26 personal liability by reason of any mistake in such list.  
27 Each person whose name shall appear upon said list shall be  
28 deemed to have duly filed prior to the last day set for  
29 filing of claims a proof of claim for the amount set opposite  
30 his name on said list.

31           C. The receiver shall permit a claimant making a late  
32 filing to share in distributions, including a ratable share  
33 of distributions previously made, whether past or future, as

1 if the claim were not late-filed, to the extent that the  
2 payment will not prejudice the orderly administration of the  
3 receivership, under the following circumstances:

4 (1) the existence of the claim was not known to the  
5 claimant and the claimant filed the claim as promptly as  
6 reasonably possible after learning of it;

7 (2) the claim is filed pursuant to Section 712B; or

8 (3) the valuation under Section 707 of security  
9 held by a secured creditor shows a deficiency, and the  
10 claim is filed within 30 days after the valuation.

11 D. The receiver shall permit guaranty associations to  
12 file claims late and to receive a ratable share of  
13 distributions previously made as if such claims were not  
14 late.

15 E. Notwithstanding the foregoing, the receiver may  
16 consider and allow a late-filed claim which is not covered by  
17 subsection C and permit it to receive distributions as if it  
18 had not been filed late, to the extent such treatment will  
19 not prejudice the orderly administration of the receivership.  
20 The late-filing claimant shall receive distributions in the  
21 same percentage as other claimants in Class 7, pursuant to  
22 Section 713 G.

23 Section 703. Proof of claim.

24 A. A proof of claim shall consist of a statement signed  
25 by or on behalf of the claimant that includes all of the  
26 following that are applicable:

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

29 (2) the identity and amount of any security for the  
30 claim;

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

32 (4) that the sum claimed is justly owing and that  
33 there is no set off, counterclaim, or defense to the

1 claim;

2 (5) any right of priority of payment or other  
3 specific right asserted by the claimants;

4 (6) the name and address of the claimant and the  
5 attorney who represents him or her, if any; and

6 (7) the claimant's social security or federal  
7 employer identification number.

8 B. The receiver may require that a prescribed form be  
9 used and may require that other information and documents be  
10 included.

11 C. The receiver may request the claimant to present  
12 information or evidence supplementary to that required under  
13 subsection A at any time and may take testimony under oath,  
14 require production of affidavits or depositions, or otherwise  
15 obtain additional information or evidence.

16 D. Any guaranty association shall be permitted to file a  
17 single omnibus proof of claim for all claims of the  
18 association in connection with the payment of claims of the  
19 insolvent insurer. The omnibus proof of claim may be  
20 periodically updated by the association and the association  
21 may be required to submit a reasonable amount of  
22 documentation in support of the claim.

23 Section 704. Allowance of claims.

24 A. The receiver shall review all claims duly filed in  
25 the receivership proceeding and shall further investigate as  
26 he or she considers necessary. Consistent with the  
27 provisions of this Act, the receiver may compound, compromise  
28 or in any other manner negotiate the amount for which claims  
29 will be recommended to the receivership court unless the  
30 receiver is required by law to accept claims as settled by a  
31 person or organization, including a guaranty association,  
32 subject to any statutory or contractual rights of the  
33 affected reinsurers to participate in the claims allowance

1 process.

2 B. Except as provided in Section 705, a contingent or  
3 unliquidated claim may not be allowed unless such claim  
4 becomes absolute on or before the date established by the  
5 receivership court.

6 C. A claim that is unmatured as of the date established  
7 by the receivership court may be allowed as if it were  
8 mature, except it shall be discounted at the higher of the  
9 legal rate of interest accruing on judgments or the rate of  
10 interest available on United States Treasury securities of  
11 approximately the same maturity.

12 D. A judgment or order against an insured or the insurer  
13 entered after the date of the filing of a successful petition  
14 for rehabilitation or liquidation and a judgment or order  
15 against an insured or the insurer entered at any time by  
16 default or by collusion need not be considered as evidence of  
17 liability or of the quantum of damages. A judgment or order  
18 against an insured or the insurer entered within 120 days  
19 before the filing of the petition need not be considered as  
20 evidence of liability or of the quantum of damages.

21 E. Claims under employment contracts by directors,  
22 principal officers or persons in fact performing similar  
23 functions or having similar powers are limited to payment for  
24 services rendered prior to any order of rehabilitation or  
25 liquidation.

26 F. The total liability of the insurer to all claimants  
27 arising out of the same act or policy shall be no greater  
28 than its total liability would be were the insurer not in  
29 rehabilitation or liquidation.

30 G. Claims equal to or less than \$50 shall be disallowed.

31 Section 705. Allowance of contingent and unliquidated  
32 claims. A reported claim of an insured or third party may be  
33 allowed, regardless of the fact that it was contingent or



1 unliquidated as of the date established under Section 702, if  
2 any contingency is removed in accordance with subsection A  
3 and the value of the claim is determined in accordance with  
4 subsection B.

5 A. A contingent claim may be allowed if:

6 (1) the claimant has presented proof of the  
7 insurer's obligation to pay reasonably satisfactory to  
8 the receiver; or

9 (2) the claim was based upon a cause of action  
10 against an insured of the insurer; and

11 (a) it may be reasonably inferred from proof  
12 presented upon the claim that the claimant would be  
13 able to obtain a judgment; and

14 (b) the person has furnished suitable proof,  
15 unless the receivership court for good cause shown  
16 shall otherwise direct, that no further valid claims  
17 can be made against the insurer arising out of the  
18 cause of action other than those already presented.

19 B. An unliquidated claim may be allowed if:

20 (1) its amount has been determined; or

21 (2) its amount remains undetermined, the valuation  
22 of the unliquidated claim may be made by estimate  
23 whenever the receiver determines that either liquidation  
24 of the claim would unduly delay the administration of the  
25 receivership proceeding or that the administrative  
26 expense of processing and adjudicating the claim or group  
27 of claims of a similar type would be unduly excessive  
28 when compared with the assets that are estimated to be  
29 available for distribution with respect to the claim.  
30 Any estimate shall be based on an accepted method of  
31 valuing claims with reasonable certainty, such as  
32 actuarial evaluation.

33 Section 706. Reserve for third party claims against

1 insured.

2 A. If a third party asserts a cause of action against an  
3 insured, the third party may file a claim, which claim may be  
4 allowed as provided in Section 704 of this Act.

5 B. Whether or not the third party files a claim, the  
6 insured may file a claim on his or her behalf. The receiver,  
7 in his or her discretion, may elect to evaluate such claim  
8 under Section 705B or subsection C of this Section.

9 C. The receiver may estimate the amount of an insured's  
10 reported claim after consideration of the probable outcome of  
11 any pending action against the insured on which the claim is  
12 based, the probable damages recoverable in the action and the  
13 probable costs and expenses of defense. Upon the receiver's  
14 petition and after approval by the receivership court, the  
15 receiver shall set aside funds equal to the dividend which  
16 would be payable on the claim as estimated, pending the  
17 outcome of litigation and negotiation between the insured and  
18 the third party. The receiver may reconsider the amount  
19 withheld under this subsection on the basis of additional  
20 information and petition the receivership court as he or she  
21 deems appropriate. After notice and a hearing, the  
22 receivership court may amend its allowance as appropriate.  
23 As claims against the insured are settled or barred, the  
24 claim of the insured shall be allowed and there shall be paid  
25 from the amount reserved the same percentage dividend as was  
26 paid on other claims of the same priority, based on the  
27 lesser of:

28 (1) the amount actually due from the insured on the  
29 basis of a judgment or by agreement with the third party,  
30 plus the reasonable costs and expense of defense; or

31 (2) the amount of the estimate approved by the  
32 receivership court and for which provision was made in  
33 accordance with this subsection.

34 After all claims are settled or barred, any sum remaining

1 from the amount withheld shall revert to the undistributed  
2 assets of the insurer.

3 D. If several claims founded upon one policy are filed,  
4 whether by third parties or as claims by the insured under  
5 this Section, and the aggregate allowed amount of the claims  
6 exceeds the aggregate policy limits, the policy limits shall  
7 be apportioned ratably among the allowed claims. If any  
8 insured's claim is subsequently reduced under subsection C,  
9 the amount thus freed shall be apportioned ratably among the  
10 claims which have been reduced under this subsection.

11 E. No claim may be allowed under this Section to the  
12 extent it is covered by any guaranty association.

13 Section 707. Allowance of secured claims.

14 A. The value of security held by a secured creditor  
15 shall be determined:

16 (1) by converting the same into money according to  
17 the terms of the agreement pursuant to which the security  
18 was delivered to the creditors; or

19 (2) by agreement, arbitration, compromise, or  
20 litigation between the creditor and the receiver.

21 B. The determination shall be under the receivership  
22 court's supervision and control with due regard for the  
23 receiver's recommendation. The amount determined shall be  
24 credited upon the secured claim and any deficiency shall be  
25 treated as an unsecured claim. If the claimant surrenders  
26 his or her security to the receiver, the entire claim shall  
27 be allowed as if unsecured.

28 Section 708. Preliminary notice of claims determination.

29 A. After consideration of claims in accordance with  
30 Sections 704, 705, 706, and 707 the receiver shall provide  
31 notice of his or her preliminary determination and of the  
32 right to object to the claimant or the claimant's

1 representative and to any reinsurer which is or would be  
2 liable to the receiver in respect of the claim if it were  
3 allowed. Notice shall be sent by first class mail to  
4 the intended recipient's last known address, according to  
5 the receiver's records, and shall include a description of  
6 the claim proposed to be allowed or denied, the rationale for  
7 such allowance or denial, and the procedures for submitting  
8 objections to the receiver.

9 B. Within 60 days from the mailing of the notice, the  
10 claimant or the reinsurer may file written objections with  
11 the receiver. Any claimant or reinsurer who fails to object  
12 on a timely basis may not further object to that claim  
13 determination.

14 C. Whenever an objection is filed with the receiver and  
15 the matter is not resolved by the parties, the receiver shall  
16 submit the claim with his or her final determination to the  
17 receivership court in accordance with Section 711.

18 Section 709. Claims of co-debtors. If a creditor, whose  
19 claim against an insurer is secured in whole or in part by  
20 the undertaking of another person, fails to prove and file  
21 that claim, the other person may do so in the creditor's name  
22 and shall be subrogated to the rights of the creditor,  
23 whether the claim has been filed by the creditor or by the  
24 other person in the creditor's name, to the extent that he or  
25 she discharges the undertaking. In the absence of an  
26 agreement with the creditor to the contrary, the other person  
27 shall not be entitled to any distribution until the amount  
28 paid to the creditor on the undertaking plus the  
29 distributions paid on the claim from the insurer's estate to  
30 the creditor equals the amount of the entire claim of the  
31 creditor. Any excess received by the creditor shall be held  
32 by him or her in trust for the other person. The term "other  
33 person" as used in this Section, is not intended to apply to

1 a guaranty association.

2 Section 710. Approval of agreed claims.

3 A. Claims with respect to which no objection is filed on  
4 a timely basis under Section 708 shall be treated as agreed  
5 claims under this Section.

6 B. Unresolved disputes shall be determined in accordance  
7 with Section 711.

8 C. As soon as practicable, the receiver shall file with  
9 the receivership court a report of the agreed claims against  
10 the insurer with his or her recommendations. The report  
11 shall include the name and address of each claimant and the  
12 amount of the claim finally recommended, if any. If the  
13 insurer has issued annuities or life insurance policies, the  
14 receiver shall report the persons, according to the records  
15 of the insurer, to whom amounts are owed as cash surrender  
16 values or other investment value and the amounts owed.

17 D. Notice of the proposed allowance or disallowance of  
18 any claim under this Section shall be given as provided at  
19 Section 524.

20 E. The receivership court may, not sooner than 14 days  
21 from the date notice was mailed pursuant to subsection D,  
22 approve, disapprove or modify the receiver's claim report.

23 Section 711. Denial of a claim.

24 A. If the receiver denies a claim in whole or in part,  
25 he or she shall provide notice of the final determination and  
26 hearing as provided at Section 524, by first class mail at  
27 the last known address, according to the receiver's records.

28 B. A hearing shall be held with respect to the claim  
29 determination, not sooner than 14 days from the date notice  
30 was mailed pursuant to subsection A.

31 Section 712. Claim by creditor in receipt of voidable

1 transfer.

2 A. The receivership court shall disallow the claim of  
3 any entity from which property is recoverable under Section  
4 609 or that is the transferee of a transfer voidable under  
5 Section 604, 605, 606 or 608 of this Act or similar provision  
6 of the laws of this State other than under this Act, unless  
7 such entity or transferee has paid the amount, or turned over  
8 any such property, for which such entity or transferee is  
9 liable under said Sections. If the avoidance is effected by  
10 a proceeding in which a final judgment has been entered, the  
11 claim shall not be allowed unless the money is paid or the  
12 property is delivered to the receiver within 30 days from the  
13 date of the entering of the final judgment, unless the  
14 receivership court allows further time for an appeal or other  
15 continuation of the proceeding.

16 B. A claim arising by reason of the recovery of property  
17 under Section 602 or 609, whether voluntary or involuntary,  
18 may be filed as an excused late filing under Section 702B if  
19 filed within 30 days from the date of the avoidance or within  
20 the further time allowed by the receivership court.

21 Section 713. Priority of distribution. The priority of  
22 distribution from the insurer's general assets shall be in  
23 accordance with the order in which each class of claims is  
24 set forth in this Section. Every claim in each class shall  
25 be paid in full or adequate funds retained for their payment  
26 before the members of the next class receive payment. Except  
27 as provided at subsection A(7) of this Section, Section 506  
28 and Section 802E, subclasses shall not be established within  
29 a class. The order of distribution of claims is as follows:

30 A. Class 1. The costs and expenses of administration,  
31 including, but not limited to, the following:

32 (1) the actual and necessary costs of preserving or  
33 recovering the insurer's assets;

1           (2) reasonable compensation for all services  
2 rendered by or to the receiver;

3           (3) any necessary filing fees;

4           (4) the fees and mileage payable to witnesses;

5           (5) the reasonable expenses of a guaranty  
6 association, including overhead, salaries and other  
7 general administrative expenses, allocable to such  
8 receivership, to include administrative and claims  
9 handling expenses and expenses in connection with  
10 arrangements for ongoing coverage, other than expenses  
11 incurred in the performance of duties under Section  
12 531.12 and Section 547 of the Illinois Insurance Code or  
13 similar duties under the statute governing a similar  
14 organization in another state;

15           (6) the actual and necessary fees and expenses of a  
16 supervisor appointed pursuant to Article XII 1/2 of the  
17 Illinois Insurance Code if the receivership proceeding  
18 was preceded by supervision pursuant to Article XII 1/2  
19 of the Illinois Insurance Code and the fees were not paid  
20 at the date of commencement of the receivership  
21 proceeding under this Act; and

22           (7) unsecured loan and other credit obligations  
23 incurred by the receiver. Any such obligation shall  
24 have priority over all other costs of administration.

25       B. Class 2. All claims under policies, including third  
26 party claims and claims under nonassessable policies for  
27 unearned premium. All other claims of a guaranty association  
28 not included in Class 1 or Class 5 and in the case of a life,  
29 health and annuity guaranty association all claims as a  
30 creditor of the impaired or insolvent insurer for all  
31 payments of and liabilities incurred on behalf of covered  
32 claims or covered obligations of the insurer and for the  
33 funds needed to reinsure those obligations with a solvent  
34 insurer. For purposes of this Section, "policies" shall

1 include either those insurance company products that are  
2 considered policies under the laws of this State as of the  
3 effective date of this Act or those insurance company  
4 products that are considered policies under the laws of this  
5 State as of the date of the entry of the order of  
6 liquidation.

7 If it is provided by written agreement, statute or rule  
8 that the assets in a separate account are not chargeable with  
9 the liabilities arising out of any other business of the  
10 insurer, that part of a claim that includes a separate  
11 account shall be satisfied out of the assets in the separate  
12 account equal to the reserves maintained in the separate  
13 account under the separate account agreement. The remainder  
14 of the claim shall be treated as a Class 2 claim to the  
15 extent that reserves therefor have been established in the  
16 insurer's general account pursuant to statute, rule or the  
17 separate account agreement.

18 Notwithstanding the foregoing, the following claims shall  
19 be excluded from Class 2 priority:

20 (1) obligations of the insolvent insurer arising  
21 out of reinsurance contracts;

22 (2) obligations incurred after the expiration date  
23 of the insurance policy or after the policy has been  
24 replaced by the insured or canceled at the insured's  
25 request or after the policy has been canceled as provided  
26 in this Act. Notwithstanding this subsection, unearned  
27 premium claims on policies, other than reinsurance  
28 agreements, shall not be excluded;

29 (3) any claim which is in excess of any applicable  
30 limits provided in the insurance policy issued by the  
31 insolvent insurer;

32 (4) any amount accrued as punitive or exemplary  
33 damages unless expressly covered under the terms of the  
34 policy; and



1           (5) tort claims of any kind against the insurer and  
2           claims against the insurer for bad faith or wrongful  
3           settlement practices.

4           C. Class 3. Claims of the federal government not  
5           included in Class 2.

6           D. Class 4. Debts due to employees for services  
7           performed to the extent that they do not exceed \$1,000 and  
8           represent payment for services performed within one year  
9           before the filing of the petition for receivership  
10          proceeding. Officers and directors are not entitled to the  
11          benefit of this priority. This priority is in lieu of any  
12          other similar priority that may be authorized by law as to  
13          wages or compensation of employees.

14          E. Class 5. Claims of general creditors not included in  
15          classes one through 4, including claims under reinsurance  
16          contracts and claims of guaranty associations for assessments  
17          not paid by the insurer.

18          F. Class 6. Claims of any state or local government.  
19          Claims, including those of any state or local governmental  
20          body for a penalty or forfeiture, are allowed in this class  
21          only to the extent of the pecuniary loss sustained from the  
22          act, transaction, or proceeding out of which the penalty or  
23          forfeiture arose, with reasonable and actual costs incurred.  
24          The remainder of the claims shall be postponed to the class  
25          of claims under subsection I.

26          G. Class 7. Late filed claims which would otherwise be  
27          classified in Classes 2 through 6.

28          H. Class 8. Surplus, capital or contribution notes, or  
29          similar obligations, and premium refunds on assessable  
30          policies.

31          I. Class 9. The claims of shareholders or other owners.

32          Section 714. Domiciliary liquidator's proposal for early  
33          access disbursements.

1           A. Within 120 days of a final order of liquidation the  
2 liquidator shall make application to the receivership court  
3 for approval of a proposal to make early access disbursements  
4 out of marshaled assets, to any guaranty association having  
5 obligations because of the insolvency.

6           B. The proposal shall at least include provisions for:

7           (1) reserving amounts for the payment of expenses  
8 of administration and the payment of claims of secured  
9 creditors, to the extent of the value of the security  
10 held, and claims falling within the priorities  
11 established in Class 1 and, to the extent not within  
12 guaranty association coverage, Class 2 of Section 713;

13           (2) initial disbursement of the assets marshaled to  
14 date, which shall be as soon as practicable and in any  
15 case not later than 120 days after approval of the early  
16 access plan, and subsequent disbursement of assets which  
17 shall be at least annually;

18           (3) equitable allocation of disbursements to each  
19 of the guaranty associations entitled thereto;

20           (4) the securing by the liquidator from each of the  
21 guaranty associations entitled to disbursements pursuant  
22 to this Section of an agreement to return to the  
23 liquidator such assets, together with investment income  
24 actually earned on assets previously disbursed, as may be  
25 required to pay claims of secured creditors and claims  
26 falling within the priorities established in Section 713  
27 in accordance with such priorities. No bond shall be  
28 required of any such guaranty associations;

29           (5) a full report to be made by each guaranty  
30 association to the liquidator accounting for all assets  
31 so disbursed to the association, all disbursements made  
32 therefrom, any interest earned by the association on the  
33 assets and any other matter as the receivership court may  
34 direct;

1           (6) disbursements to guaranty associations in sums  
2 as large as possible, subject to the limitations set  
3 forth in subsection B(1). If the liquidator determines  
4 that there are insufficient assets to disburse at the  
5 time of any required disbursement, the liquidator shall  
6 make application to the receivership court, with notice  
7 to the affected guaranty associations pursuant to Section  
8 407B for approval of the determination not to disburse,  
9 stating the reasons therefor;

10           (7) the liquidator's proposal shall provide for  
11 disbursements to the guaranty associations in amounts  
12 estimated at least equal to the sum of: (i) claim  
13 payments and allocated loss adjustment expenses of the  
14 association, and (ii) reserves as established by the  
15 association for reported unpaid claims and allocated loss  
16 adjustment expenses. Amounts used for (i) and (ii) above  
17 shall be those reported to the liquidator by the  
18 association in its most recent financial report to the  
19 liquidator. The liquidator's proposal shall further  
20 provide that if the assets available for disbursement  
21 from time to time do not equal or exceed the made or to  
22 be made by the association then disbursements shall be in  
23 the amount of available assets. The liquidator shall  
24 liquidate the assets of the insurer in an expeditious  
25 manner, but is not required to make forced or quick sales  
26 that would result in obtaining less than market value for  
27 assets. Unless otherwise provided for by the  
28 receivership court, the reserves of the insolvent insurer  
29 as reflected in its records on the date of the order of  
30 liquidation shall be used for purposes of determining the  
31 pro rata allocations of initial disbursements among  
32 eligible associations; and

33           (8) the liquidator may not offset the amount to be  
34 disbursed to any guaranty association by the amount of

1 any special deposit or any other statutory deposit or  
2 asset of the insolvent insurer held in that state unless  
3 such deposit has been forwarded to the association.

4 C. Nothing in this Section shall affect the method in  
5 which life and health insurance guaranty associations compute  
6 their coverage obligations.

7 Chapter 8. The Plan

8 Subchapter I. Filing and Court Approval of Plan

9 Section 801. Who may file a plan.

10 A. Except as otherwise provided in this Section, only  
11 the receiver may file a plan within one year after the  
12 earlier of the date of the order of rehabilitation or  
13 liquidation under this Act.

14 B. Any party in interest may file a plan if and only if:

15 (1) the receiver has not filed a plan within one  
16 year after the earlier of the date of the order of  
17 rehabilitation or liquidation under this Act; or

18 (2) the receiver has not filed a plan that has been  
19 approved by the receivership court, within 18 months  
20 after the earlier of the date of the order of  
21 rehabilitation or liquidation under this Act.

22 C. On request of a party in interest made within the  
23 respective periods specified in subsections B(1) and B(2) of  
24 this Section and after such notice as the receivership court  
25 deems appropriate, the receivership court may for cause  
26 reduce or increase the time periods of either subsection.

27 D. Once a plan has been filed, any party in interest may  
28 object to the plan or propose modifications to it.

29 Section 802. Contents of a plan.

30 A. A plan shall:

1           (1) except as provided at subsection E of this  
2 Section, provide the same treatment for each claim or  
3 interest of a particular class, unless the holder of a  
4 particular claim or interest agrees to a less favorable  
5 treatment of such particular claim or interest;

6           (2) provide adequate means for the plan's  
7 implementation; and

8           (3) contain adequate information concerning the  
9 financial condition of the insurer and the operation and  
10 effect of the plan, in sufficient detail as far as is  
11 reasonably practicable in light of the nature and history  
12 of the insurer, the condition of the insurer's books and  
13 records and the nature of the plan. Alternatively, the  
14 plan itself may identify the sources of such information  
15 as contained in the document depository established  
16 pursuant to Section 511 of this Act.

17           (4) provide for the transfer of books, records,  
18 documents and other information relevant to the duties  
19 and obligations covered by the plan;

20           (5) provide for the notice to parties in interest  
21 of the provisions of the plan and an opportunity to be  
22 heard; and

23           (6) provide for the termination of the receivership  
24 proceedings and discharge of the receiver, if  
25 appropriate.

26       B. A plan may include any other provisions not  
27 inconsistent with the provisions of this Act, including, but  
28 not limited to:

29           (1) payment of a dividend pursuant to Section 805;

30           (2) assumption or reinsurance of all or a portion  
31 of the insurer's remaining liabilities by, and transfer  
32 of assets to, a licensed insurer or other entity;

33           (3) to the extent appropriate, provide for  
34 application of insurance company regulatory market

1       conduct standards to any entity administering claims on  
2       behalf of the receiver or assuming direct liabilities of  
3       the insurer;

4             (4) contracting with a state guaranty association  
5       or any other qualified entity to perform the  
6       administration of claims covered and/or not covered by  
7       guaranty associations; and

8             (5) a provision for annual independent financial  
9       and performance audits of any entity administering claims  
10      on behalf of the receiver which is not otherwise subject  
11      to examination pursuant to state insurance law;

12            (6) termination of the insurer's liabilities as of  
13      a date certain.

14      C. If the receivership court has entered an order of  
15      liquidation pursuant to this Act, any plan may include  
16      provisions which:

17            (1) establish a liquidating trust pursuant to  
18      Section 806;

19            (2) establish one or more reinsurance recoverable  
20      trusts pursuant to Sections 807 and 809; or

21            (3) require mandatory negotiation and arbitration  
22      procedures pursuant to Section 809.

23      D. If the insurer has provided life or health insurance  
24      products or annuities, the plan may modify and restructure  
25      policies and insurance contracts or provide substitute  
26      policies or contracts of insurance.

27      E. As to claims which are classified under subsections  
28      B, D or E of Section 713, a plan may designate and separately  
29      treat one or more separate subclasses consisting only of  
30      those claims within such classes that are for or reduced to  
31      de minimis amounts. A de minimis amount shall be any amount  
32      equal to or less than a maximum de minimis amount approved by  
33      the receivership court as being reasonable and necessary for  
34      administrative convenience.

1 Section 803. Receivership court approval of plan.

2 A. After notice and a hearing, the receivership court  
3 shall approve a plan only if it finds that:

4 (1) the plan complies with the applicable  
5 provisions of this Act; and

6 (2) with respect to each class of claims, each  
7 claimant of such class will receive or retain under the  
8 plan on account of such claim property of a value, as of  
9 the effective date of the plan, that is not less than the  
10 amount that such claimant would receive or retain if the  
11 insurer were liquidated within a time period that is  
12 reasonable.

13 B. Notwithstanding any other provision of this Chapter,  
14 if the plan proposes to restructure or substitute policies or  
15 contracts of life or health insurance or annuity contracts,  
16 the receivership court may not approve the plan unless each  
17 guaranty association whose obligations are affected in any  
18 way by such modification or restructuring or substitution  
19 has given its written consent thereto.

20 Section 804. Effect of receivership court approval of  
21 plan.

22 A. Upon its entry, the provisions of a plan and the  
23 order approving it bind the insurer, any entity acquiring  
24 property under the plan, all policyholders, creditors and  
25 equity holders of the insurer.

26 B. Except as provided in the plan or in the order  
27 approving the plan, after court approval of a plan, the  
28 property dealt with by the plan shall be free and clear of  
29 all claims and interests of creditors and equity holders of  
30 the insurer.

31 Section 805. Partial and final distributions or  
32 dividends.

1           A. Pursuant to a plan, a receiver may declare and pay a  
2 partial or final distribution or dividend to claimants whose  
3 claims have been allowed as provided in Chapter 7, or fixed  
4 as provided in subsection C of this Section.

5           B. In determining the percentage of distributions or  
6 dividends to be paid on such claims, the receiver may  
7 consider the estimated value of the insurer's assets  
8 (including estimated reinsurance recoverables in connection  
9 with the insurer's estimated liabilities for unpaid losses  
10 and loss expenses and for incurred but not reported losses  
11 and loss expenses) and the estimated value of the insurer's  
12 liabilities (including estimated liabilities for unpaid  
13 losses and loss expenses and for incurred but not reported  
14 losses and loss expenses).

15           C. The estimation authorized pursuant to this Section  
16 may be used for purposes of fixing a creditor's claim in the  
17 estate and for determining the percentage of a partial or  
18 final distribution or dividend.

19           D. Nothing in this Section or any other Section of this  
20 Act, shall be construed as authorizing the receiver, or any  
21 other entity, to compel payment from a reinsurer on the basis  
22 of estimated incurred but not reported losses or loss  
23 expenses, or, except with respect to claims allowed pursuant  
24 to Section 705, case reserves for unpaid losses and loss  
25 expenses. The obligation of reinsurers to make payments to  
26 the insurer shall be determined on the basis of reported  
27 claims that have been allowed pursuant to Chapter 7 of this  
28 Act.

29           Section 806. Transfer of assets and liabilities to  
30 liquidating trust. If there has been an order of liquidation  
31 entered in the receivership proceeding then, pursuant to a  
32 plan, a receiver may establish one or more liquidating  
33 trusts. In the case of a liquidating trust established in



1 connection with a plan for a property and casualty insurer:

2 A. Some or all of the insurer's assets and liabilities  
3 may be transferred to such trust.

4 B. For purposes of this Section:

5 (1) A "future claim" under this Section is one  
6 which is incurred but not reported to the insurer as of  
7 the date the liquidating trust is established pursuant to  
8 this Section.

9 (2) A "future claimant" under this Section is a  
10 person who has, or may have, a future claim against the  
11 insurer.

12 C. The receiver may declare and pay distributions or  
13 dividends as provided in Section 805 while reserving for the  
14 benefit of future claimants a similar percentage dividend to  
15 be paid on future claims in accordance with subsection D of  
16 this Section.

17 D. Future claimants may share in the proceeds of the  
18 liquidating trust only when, and to the extent, that any  
19 future claim is allowed pursuant to Chapter 7 of this Act.

20 E. The receiver may petition the court for the  
21 appointment of a future claim representative who shall have  
22 the power to represent the interests of those who may assert  
23 future claims against the insurer. Notwithstanding this  
24 subsection, a future claimant may elect to represent his, her  
25 or its own interests and may opt out of being represented by  
26 the future claims representative.

27 F. The receiver may terminate liquidation proceedings  
28 and dispose of property free and clear of the obligation to  
29 future claimants or any other individual or entity as long as  
30 such property was disposed of in accordance with this Section  
31 and other applicable provisions of a Liquidation Plan  
32 authorized by Section 802.

33 Section 807. Collateralization of case reserves and

1 incurred but not reported losses.

2 A. Upon the entry of a receivership order, and  
3 continuing thereafter, reinsurers that are required to  
4 collateralize their obligations to the insurer pursuant to  
5 contract or Article XI of the Illinois Insurance Code shall  
6 be required to maintain such collateralization in accordance  
7 with the terms of the applicable law or contract.

8 B. Any dispute concerning the appropriate amount of  
9 collateral shall be determined in accordance with the  
10 procedure established in Section 809B.

11 Section 808. Commutations.

12 A. The receiver may, in his or her discretion, enter  
13 into a voluntary commutation and release of all obligations  
14 arising from reinsurance agreements entered into by the  
15 insurer, subject to the approval of the court.

16 B. Nothing in this Section, or any other provision of  
17 this Act, shall be construed to override or impair any  
18 provision in a reinsurance agreement which establishes a  
19 commercially reasonable and actuarially sound method for  
20 valuing and commuting the obligations of the parties to the  
21 reinsurance agreement; provided, however, that such  
22 commutation provision shall not be effective if it is  
23 demonstrated to the court that at the time such provision was  
24 entered into, the parties had reasonable cause to believe  
25 that the insurer was insolvent or was about to become  
26 insolvent. Any such contractual commutation provision  
27 entered into within one year of the liquidation order of the  
28 insurer shall be rebuttably presumed to have been entered  
29 into with reasonable cause to believe that the insurer was  
30 insolvent or about to become insolvent.

31 Section 809. Mandatory negotiation and arbitration.

32 A. (1) The receiver may apply to the court, with notice

1 to the other party to the reinsurance agreement, for an order  
2 requiring the parties to submit to a mandatory negotiation  
3 and arbitration procedure in accordance with subsection B of  
4 this Section, if:

5 (a) The ratio of the insurer's actuarially  
6 estimated casualty losses to the sum of (i) reported  
7 claims on casualty losses allowed by the  
8 receivership court and (ii) actuarially estimated  
9 casualty losses, is 25% or less; or

10 (b) The reinsurer's total adjusted capital is  
11 at or below 200% of its authorized control level for  
12 risk-based capital purposes.

13 (2) For purposes of this subsection:

14 (a) "casualty losses" means the insurer's  
15 aggregate losses arising out of insurance contracts  
16 in the following lines: farm owners multiperil,  
17 homeowners multiperil, commercial multiperil,  
18 medical malpractice, workers compensation, other  
19 liability, products liability, auto liability,  
20 aircraft (all peril) and international (of the  
21 foregoing lines); and

22 (b) "actuarially estimated casualty losses"  
23 means actuarially estimated incurred but not  
24 reported casualty losses and estimated case reserves  
25 for claims not yet allowed by the court.

26 B. (1) Within 90 days of the court's order pursuant to  
27 subsection A of this Section, or from the date that either  
28 party to a reinsurance agreement demands arbitration pursuant  
29 to Section 807B, each party shall provide the other party  
30 with an estimate of the liabilities between the parties and  
31 all relevant documents and other information supporting the  
32 estimate, including but not limited to: underlying premium,  
33 commission and loss data; estimated incurred but not reported  
34 losses; projected ultimate payout; net present value and the

1 discount factor proposed.

2 (2) If the parties are unable to reach agreement  
3 within 90 days following the submission of materials  
4 required in paragraph (1) of this subsection, either  
5 party may initiate the arbitration procedure set forth in  
6 paragraph (3) of this subsection by providing the other  
7 party with a demand for arbitration. A copy of the  
8 demand shall be promptly provided to the court by the  
9 liquidator.

10 (3) Venue for the arbitration shall be within the  
11 district of the court's jurisdiction or such other  
12 location as may be agreed to by the parties.

13 (a) Within 30 days of the responding party's  
14 receipt of the arbitration demand, each party shall  
15 appoint an arbitrator who is a disinterested active  
16 or inactive officer, executive or other professional  
17 with no less than 10 years experience in or serving  
18 the insurance or reinsurance industry. The 2  
19 arbitrators shall appoint an independent, impartial,  
20 disinterested umpire who is an active or inactive  
21 officer or executive of an insurance or reinsurance  
22 company. If the arbitrators are unable to agree on  
23 an umpire, each arbitrator shall provide the other  
24 with the names of 3 qualified individuals, each  
25 arbitrator shall strike 2 names from the other's  
26 list and the umpire shall be chosen by drawing lots  
27 from the 2 remaining individuals.

28 (b) Within 60 days following the appointment  
29 of the umpire, the parties shall, unless otherwise  
30 ordered by the panel, submit to the arbitration  
31 panel their estimates of the liabilities between the  
32 parties and other documents and information relevant  
33 to the determination of the parties rights and  
34 obligations under the reinsurance agreements,

1 including but not limited to: underlying premium,  
2 commission and loss data; estimated incurred but not  
3 reported losses; projected ultimate payout; net  
4 present value and the discount factor proposed.

5 (c) The arbitration panel shall issue an award  
6 with respect to the parties obligations and the  
7 court shall confirm such award absent proof of  
8 statutory grounds for vacating or modifying  
9 arbitration awards under the Federal Arbitration  
10 Act.

11 (d) The time periods set forth in this  
12 subsection may be extended upon mutual agreement of  
13 the parties.

14 C. Within 30 days of the issuance of the award pursuant  
15 to a receiver's application under subsection A(1) of this  
16 Section in an arbitration commenced pursuant to Section 807B  
17 over the appropriate amount of collateral, either the  
18 reinsurer shall post additional collateral or the insurer  
19 shall release collateral, as necessary to bring the actual  
20 amount of the collateral to the amount provided for in the  
21 arbitration panel's award.

22 D. Within 30 days of issuance of the award entered  
23 pursuant to a receiver's application under subsection A(1) of  
24 this Section, the reinsurer shall give notice to the receiver  
25 that it

26 (1) opts to voluntarily commute its liabilities to  
27 the insurer for the amount of the award in return for a  
28 full and complete release of all liabilities between the  
29 parties, whether past, present or future; or

30 (2) opts not to commute its liabilities to the  
31 insurer, in which case the reinsurer shall establish a  
32 reinsurance recoverable trust in the amount of 102% of  
33 the award. The trust shall be established and maintained  
34 in accordance with Section 810A. The reinsurer shall pay

1 the costs and fees associated with establishing and  
2 maintaining the trust.

3 E. If the reinsurer notifies the receiver that it opts  
4 to commute its liabilities pursuant to subsection D(1) of  
5 this Section, the receiver shall have 30 days to:

6 (1) accept the reinsurer's offer and tender to the  
7 reinsurer a proposed commutation and release agreement  
8 providing for a full and complete release of all  
9 liabilities between the parties, whether past, present or  
10 future; or

11 (2) reject the reinsurer's offer in exchange for  
12 the reinsurer's establishment of a reinsurance  
13 recoverable trust. If the reinsurer's offer to commute  
14 is rejected by the receiver in accordance with this  
15 paragraph, the insurer shall share equally in the costs  
16 and fees associated with establishing and maintaining the  
17 trust and the receiver shall not initiate procedures  
18 pursuant to this Section for a period of 5 years from the  
19 date of the receiver's notification pursuant to this  
20 subsection, provided that the receiver and reinsurer may  
21 still initiate procedures pursuant to Section 810E.

22 Section 810. Reinsurance recoverable trust provisions.

23 A. As used in this Section:

24 (1) "Beneficiary" means the domiciliary insurance  
25 Commissioner, as receiver of the insurer for whose sole  
26 benefit a reinsurance recoverable trust is established.

27 (2) "Grantor" means the reinsurer who has  
28 established a reinsurance recoverable trust for the sole  
29 benefit of the beneficiary.

30 (3) A "qualified U.S. financial institution" means  
31 an institution that:

32 (a) is organized, or in the case of a U.S.  
33 branch or agency office of a foreign banking

1 organization, licensed under the laws of the United  
2 States or any state thereof and has been granted  
3 authority to operate with fiduciary powers; and

4 (b) is regulated, supervised and examined by  
5 federal or state authorities having regulatory  
6 authority over banks and trust companies.

7 (4) "Reinsurance recoverable trust" means a trust  
8 established pursuant to Section 809 of this Act.

9 B. The trust agreement governing a reinsurance  
10 recoverable trust shall:

11 (1) be entered into between the beneficiary, the  
12 grantor and a trustee, which shall be a qualified United  
13 States financial institution;

14 (2) create a trust account into which assets shall  
15 be deposited in accordance with Section 809 of this Act.  
16 All assets in the trust account shall be held by the  
17 trustee at the trustee's office in the United States;

18 (3) provide that the beneficiary shall have the  
19 right to withdraw assets from the trust, only

20 (a) if the claim was a reported claim allowed  
21 by the court pursuant to Chapter 7; and

22 (b) where the beneficiary has notified the  
23 grantor, in writing, of the court's allowance of the  
24 claim; and

25 (c) if and to the extent that the amount to be  
26 withdrawn exceeds any setoff, permitted by Section  
27 611, due to the grantor; and

28 (d) where 60 days has expired during which the  
29 grantor has failed to either pay the claim or file  
30 notice of a written dispute with respect to the  
31 claim in accordance with the terms of the  
32 reinsurance agreement; or

33 (e) if the beneficiary has complied with any  
34 different or other terms and conditions mutually

1           agreed to by the beneficiary and the grantor in the  
2           trust agreement.

3           (4) require the trustee to:

4                 (a) receive assets and hold all assets in a  
5                 safe place;

6                 (b) determine that all assets are in such form  
7                 that the beneficiary, or the trustee upon direction  
8                 by the beneficiary, may whenever necessary negotiate  
9                 any such assets, without consent or signature from  
10                the grantor or any other person or entity;

11                (c) furnish to the grantor and the beneficiary  
12                a statement of all assets in the trust account upon  
13                its inception and at intervals no less frequent than  
14                the end of each calendar quarter;

15                (d) notify the grantor and the beneficiary  
16                within 10 days, of any deposits to or withdrawals  
17                from the trust account;

18           (5) be made subject to and governed by the laws of  
19           this State;

20           (6) prohibit the invasion of the trust corpus for  
21           the purpose of paying compensation to, or reimbursing the  
22           expenses of, the trustee;

23           (7) provide that the trustee shall be liable for  
24           its negligence, wilful misconduct or lack of good faith;

25           (8) provide that the trustee may resign upon  
26           delivery of a written notice of resignation, effective  
27           not less than 90 days after the beneficiary and grantor  
28           receive the notice and that the trustee may be removed by  
29           the grantor by delivery to the trustee and the  
30           beneficiary or a written notice of removal, effective not  
31           less than 90 days after the trustee and the beneficiary  
32           receive the notice, provided that no such resignation or  
33           removal shall be effective until a successor trustee has  
34           been duly appointed and approved by the beneficiary and



1 the grantor and all assets in the trust have been duly  
2 transferred to the new trustee;

3 (9) provide that the grantor shall have the full  
4 and unqualified right to vote any shares of stock in the  
5 trust account. Subject to other provisions of this  
6 Section, any interest or dividends paid on shares of  
7 stock or other obligations in the trust account, shall  
8 remain in the trust;

9 (10) specify categories of investments reasonably  
10 acceptable to the beneficiary and authorize the trustee  
11 to invest funds and to accept substitutions, by the  
12 grantor, that the trustee determines are at least equal  
13 in market value to the assets withdrawn provided that no  
14 investment or substitution shall be made without prior  
15 approval from the beneficiary, which shall not be  
16 unreasonably or arbitrarily withheld;

17 (11) provide that the beneficiary may at any time  
18 designate a party to which all or part of the trust  
19 assets are to be transferred. Transfer may be  
20 conditioned upon the trustee receiving, prior to or  
21 simultaneously, other specified assets;

22 (12) specify the types of assets that may be  
23 included in the trust account which shall consist only of  
24 cash in United States dollars, certificates of deposit  
25 issued by a United States bank and payable in United  
26 States dollars, and investments permitted by this  
27 State's Insurance Act or any combination of the above,  
28 provided investments in or issued by any entity  
29 controlling, controlled by or under common control with  
30 either the grantor or the beneficiary of the trust shall  
31 not exceed 5% of total investments. Assets deposited in  
32 the trust account shall be valued according to their  
33 current fair market value;

34 (13) give the grantor the right to seek approval

1 from the beneficiary, which shall not be unreasonably or  
2 arbitrarily withheld, to withdraw from the trust account  
3 all or any part of the trust assets and transfer those  
4 assets to the grantor, provided that:

5 (a) the grantor shall, at the time of  
6 withdrawal, replace the withdrawn assets with other  
7 qualified assets so as to maintain at all times the  
8 deposit in the required amount; or

9 (b) after withdrawal and transfer, the market  
10 value of the trust account is no less than 102% of  
11 the award made pursuant to Section 809B(3)(c).

12 (14) provide for the return of any amount withdrawn  
13 in excess of the actual amounts required for payment of  
14 reported allowed claims under paragraph (3) of this  
15 subsection, and for interest payments at a rate not in  
16 excess of the prime rate of interest on the excess  
17 amounts withdrawn;

18 (15) provide for termination of the reinsurance  
19 recoverable trust in accordance with subsection F.

20 C. Nothing in this subsection shall be construed as  
21 altering the rights or obligations of the parties pursuant to  
22 contractual and statutory provisions providing for notice and  
23 the determination of claims.

24 D. The grantor shall, prior to depositing assets with  
25 the trustee, execute assignments or endorsements in blank, or  
26 transfer legal title to the trustee of all shares,  
27 obligations or any other assets requiring assignments, in  
28 order that the beneficiary, or the trustee upon the direction  
29 of the beneficiary, may whenever necessary negotiate these  
30 assets without consent or signature from the grantor or any  
31 other entity.

32 E. Either party may request that an arbitration panel  
33 review the amount held in a reinsurance recoverable trust.  
34 The receivership court may order such review upon a

1 demonstration that the amount in trust is either 25% or more  
2 deficient or 25% or more in excess of the reinsurer's  
3 liabilities to the insurer. Upon such a demonstration,  
4 parties shall reinitiate the procedures established in  
5 Section 809B.

6 F. A reinsurance recoverable trust shall terminate upon  
7 the earlier of:

8 (1) the court approval of a voluntary commutation  
9 between the grantor and the beneficiary pursuant to  
10 Section 808;

11 (2) the mutual agreement of the grantor and the  
12 beneficiary; or

13 (3) a finding by the court that the grantor has  
14 discharged its liabilities to the beneficiary.

15 Upon termination of the trust account, all assets not  
16 previously withdrawn by the beneficiary, pursuant to  
17 paragraph B(3), shall, with written approval of the  
18 beneficiary, be delivered over to the grantor.

19 Section 811. Liquidating trust provisions.

20 A. As used in this Section:

21 (1) "Beneficiary" or "beneficiaries" means the  
22 creditors of the insurer for whose sole benefit the  
23 liquidating trust is established.

24 (2) "Grantor" means the domiciliary insurance  
25 Commissioner, as receiver of the insurer, or his or her  
26 designee.

27 (3) A "qualified U.S. financial institution" shall  
28 have the same meaning as that term has in Section 810.

29 (4) "Liquidating trust" means a trust established  
30 pursuant to Section 806 of this Act.

31 B. A liquidating trust shall be established by the  
32 grantor for the benefit of the beneficiaries, subject to  
33 approval of the court.

1 C. A trust agreement governing a liquidating trust shall  
2 be entered into between the grantor and the trustee, which  
3 shall be a qualified United States financial institution.

4 D. Assets and liabilities of the insurer may be  
5 transferred to the liquidating trust in accordance with  
6 Section 806 and shall be held by the trustee at the trustee's  
7 office in the United States.

8 E. The trust agreement entered into pursuant to  
9 subsection B shall:

- 10 (1) identify the beneficiaries of the trust;
- 11 (2) enumerate the authority and duties of the  
12 trust;
- 13 (3) specify the types of assets and categories of  
14 investments that may be held in the trust account;
- 15 (4) provide that the trustee shall be liable for  
16 its negligence, wilful misconduct or lack of good faith;
- 17 (5) be made subject to and governed by the laws of  
18 this State;
- 19 (6) provide for the compensation of the trustee and  
20 the expense of establishing and maintaining the trust  
21 account;
- 22 (7) provide for the distribution of trust assets to  
23 beneficiaries of the trust; and
- 24 (8) provide for termination of the trust and  
25 distribution of any remaining assets in the trust account
  - 26 (a) after payments have been made to all  
27 beneficiaries,
  - 28 (b) when insufficient assets exist to warrant  
29 maintaining the trust, or
  - 30 (c) when the amount of assets in the trust to  
31 be distributed make it impractical or uneconomic to  
32 distribute to beneficiaries.

33 F. The trustee shall furnish to the grantor a statement  
34 of all assets in the trust account upon its inception and at

1 intervals no less frequent than the end of each calendar  
2 quarter.

3 Chapter 9. Post Plan-Approval Matters

4 Section 901. Unclaimed and undistributed funds.

5 A. Distributions or dividends remaining unclaimed or  
6 unpaid in the receiver's possession for 6 months after the  
7 final order of distribution shall be handled as other  
8 unclaimed funds and shall be paid by the custodian thereof  
9 without interest to the person entitled thereto or his or her  
10 legal representative or shall be presumed abandoned and  
11 handled pursuant to the provisions of the Uniform Disposition  
12 of Unclaimed Property Act.

13 B. Subject to the approval of the receivership court,  
14 after the completion of all post closure activities for which  
15 moneys were reserved, any remaining reserved assets as well  
16 as any other assets in the hands of the receiver, that may  
17 not be practicably or economically distributed to claimants  
18 shall be deposited into a segregated account to be known as  
19 the closed estates fund trust account. The Commissioner may  
20 use moneys held in this account for paying the administrative  
21 expenses of insurers subject to this Act that lack sufficient  
22 assets to allow the Commissioner to perform his or her duties  
23 and obligations under this Act. An annual audit of the  
24 closed estate fund trust account shall be performed in  
25 accordance with Section 512 regardless of its balance.

26 Section 902. Termination of receivership proceedings and  
27 discharge of receiver.

28 A. When all assets justifying the expense of collection  
29 and distribution have been marshaled and distributed under  
30 this Act, the receiver shall petition the receivership court  
31 to terminate the liquidation proceedings and to close the

1 estate. The receivership court may grant such other relief  
2 as may be appropriate, including a full discharge of all  
3 liability and responsibility of the receiver, a reservation  
4 of assets for administrative expenses incurred in the closing  
5 of the estate. The receiver may recommend to the court and  
6 the court shall direct which records should be retained for  
7 what periods of time and which should be destroyed.

8 B. If the dissolution of the insurer's corporate  
9 existence has not previously been ordered, it shall be  
10 effected by operation of law upon the discharge of the  
11 receiver, absent a contrary provision in the plan approved by  
12 the receivership court.

13 Section 903. Petition to reopen proceedings. The  
14 Commissioner or other party in interest may petition the  
15 receivership court at any time to reopen the proceedings for  
16 good cause, including the discovery of additional assets. If  
17 the receivership court is satisfied that there is good cause  
18 for reopening, it shall so order.

19 Chapter 10. Interstate Relations

20 Section 1001. Ancillary receivership proceedings.

21 A. After the commencement of receivership proceedings in  
22 a non-compacting reciprocal state against an insurer  
23 domiciled in such state, a court of competent jurisdiction in  
24 this State shall on the Commissioner's petition appoint the  
25 Commissioner as ancillary receiver in this State of such  
26 insurer. The Commissioner shall file such petition if:

27 (1) the Commissioner finds that there are  
28 sufficient assets of such insurer located in this State  
29 to justify the appointment of an ancillary receiver; or

30 (2) 10 or more persons resident in a state having  
31 claims against such insurer file a petition or petitions

1 in writing with the Commissioner requesting the  
2 appointment of such ancillary receiver.

3 B. As ancillary receiver, the Commissioner shall have  
4 the right to sue for and reduce to possession the insurer's  
5 assets located in this State, and, subject to the domiciliary  
6 receiver's rights, the ancillary receiver shall have the same  
7 powers and be subject to the same duties with respect to such  
8 assets as the domiciliary receiver possesses under this  
9 State's laws.

10 C. The domiciliary receiver of an insurer domiciled in a  
11 non-compacting reciprocal state shall, except as to special  
12 deposits and security on secured claims pursuant to Section  
13 1006, be vested by operation of law with the title to all of  
14 the insurer's assets, property, contracts, agents' balances,  
15 and all of the insurer's books, accounts and other records  
16 located in this State, and shall have the immediate right to  
17 recover balances due from resident agents and to obtain  
18 possession of any of the insurer's books and records located  
19 in this State.

20 Section 1002. Filing and proving of claims of  
21 non-residents against domiciliary insurers.

22 A. In any receivership proceedings begun in this State  
23 against an insurer domiciled in this State, claimants  
24 residing in a non-compacting reciprocal state may file claims  
25 either with the ancillary receiver, if any, or with the  
26 domiciliary receiver. All such claims must be filed on or  
27 before the last date fixed for the filing of claims in the  
28 domiciliary receivership proceedings.

29 B. In any such proceeding, controverted claims belonging  
30 to claimants residing in non-compacting reciprocal states may  
31 either:

- 32 (1) be proved in this State as provided by law; or  
33 (2) if ancillary proceedings have been commenced in

1 such reciprocal state, may be proved in such ancillary  
2 proceedings. In the event a claimant elects to prove his  
3 or her claim in ancillary proceedings, and, if notice of  
4 the claim and opportunity to appear and be heard is  
5 afforded the domiciliary receiver of this State, such  
6 claim, when allowed by the court in the non-compacting  
7 ancillary state, shall be accepted in this State as final  
8 and conclusive as to its amount, and shall also be  
9 accepted as final and conclusive as to its priority, if  
10 any, as against special deposits or other security  
11 located within the non-compacting ancillary state.

12 Section 1003. Proof of claims of residents in connection  
13 with receivership proceedings in other non-compacting states.

14 A. If a receivership proceeding is commenced in a  
15 non-compacting reciprocal state against an insurer domiciled  
16 in such state, claimants against such insurer who reside  
17 within this State may file claims either with the ancillary  
18 receiver, if any, appointed in this State or with the  
19 domiciliary receiver. All such claims must be filed on or  
20 before the last date fixed for the filing of claims in the  
21 domiciliary receivership proceeding. In any such proceeding,  
22 controverted claims belonging to claimants residing in this  
23 State may either:

24 (1) be proved in the non-compacting domiciliary  
25 state as provided by such State's law; or

26 (2) if ancillary proceedings have been commenced in  
27 this State, be proved in such ancillary proceedings.

28 B. In the event that any such claimant elects to prove  
29 his or her claim in this State, the claimant shall file his  
30 or her claim with the ancillary receiver in the manner  
31 provided by this State's law for the proving of claims  
32 against domiciliary insurers, and the claimant shall give, or  
33 cause to be given, at least 40 days prior to the date of



1 hearing, notice to the receiver in the non-compacting  
2 domiciliary state, either by mail or otherwise in writing  
3 that such claim is being made to such ancillary receiver and  
4 the nature and the amount thereof. The domiciliary receiver  
5 shall be entitled to appear or to be represented in any  
6 proceeding in this State involving the adjudication of the  
7 claim. The allowance of the claim by this State's courts  
8 shall be final and conclusive both as to its amount and also  
9 as to its priority, if any, against special deposits or other  
10 security located within this State.

11 Section 1004. Priority of preferred claims.

12 A. In any receivership proceeding against a domiciliary  
13 insurer of this State, claims owing to residents of  
14 non-compacting ancillary states shall be deemed preferred  
15 claims if, and only if, like claims are preferred under this  
16 State's laws. All such claims whether owing to residents or  
17 non-residents shall be given equal priority of payment from  
18 general assets. No law of a non-compacting ancillary state  
19 providing for preferred claims against the insurer's general  
20 assets shall be recognized as against the assets of this  
21 State's delinquent domiciliary insurers regardless of where  
22 such assets may be located.

23 B. In any receivership proceeding against an insurer  
24 domiciled in a non-compacting reciprocal state, claims owing  
25 to this State's residents shall be preferred if, and only if,  
26 such other State's laws prefer like claims.

27 Section 1005. Priority of special deposit claims. The  
28 owners of special deposit claims against an insurer for which  
29 a receiver has been appointed in a receivership proceeding in  
30 this or any non-compacting state shall be given priority  
31 against their several special deposits in accordance with the  
32 provisions of the statutes requiring the creation and

1 maintenance of such special deposits. If there is a  
2 deficiency in any such special deposit so that the claims  
3 secured thereby are not fully discharged therefrom, the  
4 claimants may share in the general assets, but such sharing  
5 shall be deferred until general creditors, and also claimants  
6 against other special deposits who have received a smaller  
7 percentage from their respective special deposits, have been  
8 paid percentages of their claims equal to the percentage paid  
9 from such special deposit, it being this provision's purpose  
10 and intent to equalize to this extent the advantage gained by  
11 the security provided by such special deposits.

12 Section 1006. Priority of secured claims. The owner of  
13 a secured claim against an insurer for which a receiver has  
14 been appointed in a receivership proceeding in this State or  
15 any non-compacting state may surrender his security and file  
16 his claim as a general creditor, or such secured claim may be  
17 discharged by resort to the security, in which receivership  
18 proceeding the deficiency, if any, shall be treated as a  
19 claim against the insurer's general assets on the same basis  
20 as claims of unsecured creditors. If the amount of the  
21 deficiency has been adjudicated in ancillary proceedings as  
22 provided in this Chapter, that amount shall be conclusive;  
23 otherwise, the amount of such deficiency shall be ascertained  
24 and determined in the receivership proceeding in such  
25 insurer's domiciliary state.

26 Section 1007. Right of domiciliary receiver to residuum  
27 of assets of insurers domiciled in non-compacting ancillary  
28 states.

29 A. The ancillary receiver of assets located in this  
30 State of insurers domiciled in non-compacting reciprocal  
31 states and subject to receivership proceedings therein shall,  
32 as soon as practicable, arrange the liquidation or other

1 disposition of special deposit claims and secured claims  
2 proved in the ancillary proceedings in this State, and all  
3 remaining assets, after payment of expenses the ancillary  
4 receiver shall promptly transfer to the domiciliary receiver.

5 B. The domiciliary receiver of a non-compacting  
6 reciprocal state may sue this State's ancillary receiver in  
7 this State's courts for the purpose of collecting or  
8 obtaining any of the insurer's assets to which the ancillary  
9 receiver may be entitled under this State's laws, and, if no  
10 ancillary receiver is appointed in this State, such  
11 domiciliary receiver may collect or reduce to possession, in  
12 this State, and may sue in this State's courts to obtain, any  
13 assets of such delinquent insurer located in this State, to  
14 which the domiciliary receiver may be entitled under this  
15 State's laws.

16 Section 1008. Attachment and garnishment of assets. In  
17 the event of the commencement of receivership proceedings in  
18 any non-compacting reciprocal state, no action or proceeding  
19 in the nature of an attachment, garnishment, execution or  
20 otherwise, shall be commenced in this State's courts against  
21 such insurer or its assets.

22 Section 1009. Declaration of purpose.

23 A. The purpose of Sections 1001 through 1008 is to  
24 promote uniformity in the liquidation, rehabilitation,  
25 reorganization or conservation of insurers doing business in  
26 more than one state. It is intended that Sections 1001  
27 through 1008 shall be liberally construed to the end that so  
28 far as possible such insurers' assets shall be equally and  
29 uniformly conserved in all states, and that claimants against  
30 such insurers shall receive equal and uniform treatment  
31 irrespective of residence or the place of the acts or  
32 contacts upon which their claims are based.

1           B. The provisions of Sections 1001 through 1008 shall be  
2 effective only with respect to this State and other states in  
3 which:

4           (1) it is provided by law that only the insurance  
5 Commissioner or equivalent supervisory official of the  
6 state shall be vested with title to the assets of, and  
7 shall wind up the affairs of, delinquent insurers under  
8 judicial supervision; and

9           (2) in substance and effect, the provisions of  
10 Sections 1001 through 1008 are in force. The provisions  
11 of Sections 1001 through 1009 insofar as applicable to  
12 any insurer incorporated or organized in a foreign  
13 country, shall apply only to the assets, liabilities and  
14 business of such insurer within the several states.

15           Section 1010. Uniformity of interpretation. Sections  
16 1001 through 1009 shall be so interpreted and construed as to  
17 effectuate their general purpose to make uniform the law of  
18 those non-compacting states that enact the Uniform Insurers  
19 Liquidation Act.

20           Chapter 11. The Interstate Compact Commission

21           Section 1101. Cooperation with the Commission and among  
22 compacting states.

23           A. A compacting state and its agents, representatives  
24 and all other persons with authority over or in charge of any  
25 part of the compacting State's compliance with the Commission  
26 rules, operating procedures, bylaws and laws enacted in the  
27 compacting states, shall cooperate with the Commission in the  
28 performance of its obligations and responsibilities under  
29 such rules, operating procedures, bylaws and laws, and shall  
30 take all reasonable actions to comply with such rules,  
31 operating procedures, bylaws and laws. The duty to cooperate

1 shall include, but shall not be limited to, the following:

2 (1) to reply promptly in writing to any inquiry  
3 from the Commission requesting such a reply;

4 (2) to make available to the Commission, its staff,  
5 agents or designees any books, accounts, documents, or  
6 other records or information, except as to privileged  
7 records, data, and information, or property of or  
8 pertaining to the compacting State's compliance with  
9 Commission rules, operating procedures and bylaws and in  
10 such compacting State's possession, custody or control;  
11 and

12 (3) to fully comply with any Commission rule,  
13 operating procedure, bylaws and laws.

14 B. Any person possessing or controlling any asset  
15 located in a compacting state which is an asset of any  
16 insurer in receivership in any compacting state shall  
17 immediately relinquish possession and control of such asset  
18 to the insurer's receiver. The term "asset" as used in this  
19 subsection shall include all real and personal property,  
20 books, records, bank accounts, contracts and rights of  
21 action.

22 C. Claimants residing in this or other compacting states  
23 shall file claims with the domiciliary liquidator in this  
24 or other compacting states in accordance with the domiciliary  
25 State's laws.

26 Section 1102. Interstate enforcement of receivership  
27 order. A copy of any foreign order of conservation,  
28 rehabilitation or liquidation authenticated in accordance  
29 with the act of Congress or the statutes of this State may be  
30 filed in the office of the clerk of any circuit court of this  
31 State. The clerk shall treat such foreign judgment in the  
32 same manner as an order of conservation, rehabilitation or  
33 liquidation of the circuit court of Cook County of this

1 State. An order so filed has the same effect and is subject  
2 to the same procedures, defenses and proceedings for  
3 reopening, vacating, or staying as a judgment of a circuit  
4 court of this State and may be enforced or satisfied in like  
5 manner.

6 Chapter 12. Amendatory Provisions

7 Section 1201. The Illinois Insurance Code is amended by  
8 changing Sections 20, 34, 35A-25, 35A-30, 35A-40, 50, 59.2,  
9 60, 83, 107.06a, 107.08, 123C-11, 131.25, 141a, 147.3, 186.1,  
10 232, 251, 310.1, 311.1, 324, 327, 331, 345, 347, 451, 545,  
11 552, and 1108 as follows:

12 (215 ILCS 5/20) (from Ch. 73, par. 632)

13 Sec. 20. Authority to solicit subscriptions.

14 (1) Upon the approval of the articles of incorporation  
15 by the Director and upon compliance with such reasonable  
16 regulations relating to the offering and subscription of or  
17 for shares as may be promulgated by the Director to the end  
18 that no inequity, fraud or deceit may be worked or tend to be  
19 worked upon prospective subscribers to or purchasers of such  
20 shares, he shall issue to the company a permit, which shall  
21 expire at the end of two years from its date, authorizing it  
22 to solicit subscriptions in accordance with such regulations,  
23 this Code and the form of subscription agreement filed with  
24 him, to receive payment for its shares and to do such other  
25 acts as may be necessary and proper in order to complete its  
26 organization and to entitle it to receive a certificate of  
27 authority to transact an insurance business.

28 (2) No subscription for shares shall be solicited, until  
29 such subscriptions or shares shall have been qualified or  
30 registered in accordance with any law of this State or of the  
31 United States requiring qualification or registration.

1           (3) If the Director finds that any company in process of  
2 organization has failed to comply with, or has violated any  
3 provision of the Code, he may proceed against the company  
4 under the Interstate Compact Uniform Receivership Law Article  
5 XIII, and may after notice and hearing, if any provision of  
6 the Code or any regulation promulgated under subsection (1)  
7 has been violated, revoke the permit issued to it under  
8 subsection (1).

9           (Source: Laws 1959, p. 1428.)

10           (215 ILCS 5/34) (from Ch. 73, par. 646)

11           Sec. 34. Procedure when insufficient assets possessed by  
12 company.

13           (1) Whenever the Director finds that the admitted assets  
14 of any company subject to the provisions of this Article are  
15 less than its capital, minimum required surplus and all  
16 liabilities, he or she must give written notice to the  
17 company of the amount of the impairment and require that the  
18 impairment be removed within such period, which must be not  
19 less than 30 nor more than 90 days from the date of the  
20 notice, as he or she may designate. Unless otherwise allowed  
21 by the Director, the company must discontinue the issuance of  
22 new and renewal policies while the impairment exists.

23           (2) Upon the receipt of the notice from the Director,  
24 the board of directors of the company must cause the  
25 impairment to be removed and call upon its shareholders  
26 ratably for the necessary amount to remove the impairment,  
27 or, by proper action, reduce its capital to meet the  
28 impairment providing the reduced capital is not less than the  
29 minimum requirements fixed by this Code or by other means  
30 remove the impairment. If the impairment is not removed  
31 within the period of time designated, the Director may order  
32 the board of directors to call upon its shareholders ratably.  
33 If a shareholder of the company refuses or neglects to pay

1 the amount so called for after notice, given personally or by  
2 mail, by a date stated in the notice not less than 15 days  
3 from the date of such notice, the Director may order the  
4 board of directors to declare, by resolution, the shares of  
5 such person cancelled, and in lieu thereof may issue new  
6 certificates for shares and dispose of the same at the best  
7 price obtainable not less than par. If the amount received  
8 for such new certificates for shares exceeds the amount  
9 required to be paid by such shareholder, the excess must be  
10 paid to the shareholder so refusing to pay his or her ratable  
11 share of the impairment. Nothing contained in this subsection  
12 may be construed to impose any liability on any shareholder  
13 as a result of any call, enforceable in any manner other than  
14 through a sale of his or her shares as provided in this  
15 subsection.

16 (3) If the impairment is not removed within the period  
17 specified in the Director's notice, the company shall be  
18 deemed insolvent and the Director shall proceed against the  
19 company in accordance with the Interstate Compact Uniform  
20 Receivership Law Article-XIII.

21 (4) If while the impairment exists any officer or  
22 director of the company knowingly renews, issues or delivers  
23 or causes to be renewed, issued or delivered any policy,  
24 contract or certificate of insurance unless allowed by the  
25 Director, and the fact of such impairment is known to the  
26 officer or director of the company, such officer or director  
27 shall be guilty of a business offense and may be fined not  
28 less than \$200 and not more than \$5,000 for each offense.

29 (5) Nothing in this Section prohibits, while such  
30 impairment exists, any such officer, director, trustee, agent  
31 or employee from issuing or renewing a policy of insurance  
32 when an insured or owner exercises an option granted to him  
33 or her under an existing policy to obtain new, renewed or  
34 converted insurance coverage.



1 (Source: P.A. 90-381, eff. 8-14-97.)

2 (215 ILCS 5/35A-25)

3 Sec. 35A-25. Authorized control event.

4 (a) An authorized control event means any of the  
5 following events:

6 (1) The filing of an RBC Report by the insurer that  
7 indicates that the insurer's total adjusted capital is  
8 greater than or equal to its mandatory control level RBC,  
9 but less than its authorized control level RBC.

10 (2) The notification by the Director to the insurer  
11 of an Adjusted RBC Report that indicates the event  
12 described in paragraph (1), provided the insurer does not  
13 challenge the Adjusted RBC Report under Section 35A-35.

14 (3) The notification by the Director to the insurer  
15 that the Director has, after a hearing, rejected the  
16 insurer's challenge under Section 35A-35 to an Adjusted  
17 RBC Report that indicates the event described in  
18 paragraph (1).

19 (4) The insurer's failure to respond to a  
20 Corrective Order in a manner satisfactory to the  
21 Director, provided the insurer does not challenge the  
22 Corrective Order under Section 35A-35.

23 (5) The insurer's failure to respond to a  
24 challenged or modified Corrective Order in a manner  
25 satisfactory to the Director after the Director has,  
26 after a hearing, rejected the insurer's challenge under  
27 Section 35A-35 or modified the Corrective Order.

28 (b) In the event of an authorized control level event,  
29 the Director shall take the actions required under Section  
30 35A-20 regarding an insurer with respect to which a  
31 regulatory action level event has occurred or, if the  
32 Director deems it to be in the best interests of the  
33 insurer's policyholders and creditors and of the public, take

1 the actions necessary to cause the insurer to be placed in  
2 receivership under the Interstate Compact Uniform  
3 Receivership Law Article-XIII. In the event the Director  
4 determines that receivership is necessary, the authorized  
5 control level event shall be deemed sufficient grounds for  
6 the Director to take action under the Interstate Compact  
7 Uniform Receivership Law Article-XIII, and the Director shall  
8 have the rights, powers, and duties with respect to the  
9 insurer that are set forth in the Interstate Compact Uniform  
10 Receivership Law Article-XIII. In the event the Director  
11 takes action under this subsection regarding an Adjusted RBC  
12 Report, the insurer shall be entitled to the protections  
13 afforded insurers under the Interstate Compact Uniform  
14 Receivership Law Article-XIII.

15 (Source: P.A. 88-364.)

16 (215 ILCS 5/35A-30)

17 Sec. 35A-30. Mandatory control level event.

18 (a) A mandatory control level event means any of the  
19 following events:

20 (1) The filing of an RBC Report that indicates that  
21 the insurer's total adjusted capital is less than its  
22 mandatory control level RBC.

23 (2) The notification by the Director to the insurer  
24 of an Adjusted RBC Report that indicates the event  
25 described in paragraph (1), provided the insurer does not  
26 challenge the Adjusted RBC Report under Section 35A-35.

27 (3) The notification by the Director to the insurer  
28 that the Director has, after a hearing, rejected the  
29 insurer's challenge under Section 35A-35 to the Adjusted  
30 RBC Report that indicates the event described in  
31 paragraph (1).

32 (b) In the event of a mandatory control level event with  
33 respect to a life, health, or life and health insurer, the

1 Director shall take actions necessary to place the insurer in  
2 receivership under the Interstate Compact Uniform  
3 Receivership Law Article-XIII. In that event, the mandatory  
4 control level event shall be deemed sufficient grounds for  
5 the Director to take action under the Interstate Compact  
6 Uniform Receivership Law Article-XIII, and the Director shall  
7 have the rights, powers, and duties with respect to the  
8 insurer that are set forth in the Interstate Compact Uniform  
9 Receivership Law Article-XIII. If the Director takes action  
10 under this subsection regarding an Adjusted RBC Report, the  
11 insurer shall be entitled to the protections of the  
12 Interstate Compact Uniform Receivership Law Article-XIII. If  
13 the Director finds that there is a reasonable expectation  
14 that the mandatory control level event may be eliminated  
15 within 90 days after it occurs, the Director may delay action  
16 for not more than 90 days after the mandatory control level  
17 event.

18 (c) In the case of a mandatory control level event with  
19 respect to a property and casualty insurer, the Director  
20 shall take the actions necessary to place the insurer in  
21 receivership under the Interstate Compact Uniform  
22 Receivership Law Article-XIII or, in the case of an insurer  
23 that is writing no business and that is running-off its  
24 existing business, may allow the insurer to continue its  
25 run-off under the supervision of the Director. In either  
26 case, the mandatory control level event is deemed sufficient  
27 grounds for the Director to take action under the Interstate  
28 Compact Uniform Receivership Law Article--XIII, and the  
29 Director has the rights, powers, and duties with respect to  
30 the insurer that are set forth in the Interstate Compact  
31 Uniform Receivership Law Article-XIII. If the Director takes  
32 action regarding an Adjusted RBC Report, the insurer shall be  
33 entitled to the protections of the Interstate Compact Uniform  
34 Receivership Law Article--XIII. If the Director finds that

1 there is a reasonable expectation that the mandatory control  
2 level event may be eliminated within 90 days after it occurs,  
3 the Director may delay action for not more than 90 days after  
4 the mandatory control level event.

5 (d) In the case of a mandatory control level event with  
6 respect to a health organization, the Director shall take the  
7 actions necessary to place the insurer in receivership under  
8 the Interstate Compact Uniform Receivership Law Article XIII  
9 or, in the case of an insurer that is writing no business and  
10 that is running-off its existing business, may allow the  
11 insurer to continue its run-off under the supervision of the  
12 Director. In either case, the mandatory control level event  
13 is deemed sufficient grounds for the Director to take action  
14 under the Interstate Compact Uniform Receivership Law Article  
15 XIII, and the Director has the rights, powers, and duties  
16 with respect to the insurer that are set forth in the  
17 Interstate Compact Uniform Receivership Law Article XIII. If  
18 the Director takes action regarding an Adjusted RBC Report,  
19 the insurer shall be entitled to the protections of the  
20 Interstate Compact Uniform Receivership Law Article XIII. If  
21 the Director finds that there is a reasonable expectation  
22 that the mandatory control level event may be eliminated  
23 within 90 days after it occurs, the Director may delay action  
24 for not more than 90 days after the mandatory control level  
25 event.

26 (Source: P.A. 91-549, eff. 8-14-99.)

27 (215 ILCS 5/35A-40)

28 Sec. 35A-40. Foreign insurers.

29 (a) Upon the written request of the Director, a foreign  
30 insurer shall submit to the Director an RBC Report as of the  
31 end of the previous calendar year no later than the later of  
32 the date an RBC Report would be required to be filed by a  
33 domestic insurer under this Article or 15 days after the

1 foreign insurer receives the Director's request. Upon the  
2 written request of the Director, a foreign insurer shall  
3 promptly submit to the Director a copy of any RBC Plan that  
4 is filed with the chief insurance regulatory official or any  
5 other state.

6 (b) In the event of a company action level event,  
7 regulatory action level event, or authorized control level  
8 event with respect to any foreign insurer as determined under  
9 the RBC statute applicable in the state of domicile of the  
10 insurer or, if no RBC statute is in force in that state,  
11 under the provisions of this Article, if the chief insurance  
12 regulatory official of the state of domicile of the foreign  
13 insurer fails to require the foreign insurer to file an RBC  
14 Plan in the manner specified under that state's RBC statute  
15 or, if no RBC statute is in force in that state, under  
16 Section 35A-15, the Director may require the foreign insurer  
17 to file an RBC Plan with the Director. In that event, the  
18 failure of the foreign insurer to file an RBC Plan with the  
19 Director is grounds to order the insurer to cease and desist  
20 from writing new insurance business in this State.

21 (c) In the event of a mandatory control level event with  
22 respect to any foreign insurer, if no domiciliary receiver  
23 has been appointed with respect to the foreign insurer under  
24 the rehabilitation and liquidation statute applicable in the  
25 state of domicile of the foreign insurer, the Director may  
26 make application to the circuit court of Sangamon-County-or  
27 Cook County as permitted under the Interstate Compact Uniform  
28 Receivership Law Article-XIII with respect to the liquidation  
29 of property of foreign insurers found in this State, and the  
30 occurrence of the mandatory control level event shall be  
31 considered adequate grounds for the application.

32 (Source: P.A. 88-364; 89-97, eff. 7-7-95.)

33 (215 ILCS 5/50) (from Ch. 73, par. 662)

1           Sec. 50. Authority to solicit subscriptions to surplus.

2           (1) Upon the approval of the articles of incorporation  
3 by the Director he shall issue to the company a permit which  
4 shall expire at the end of two years from its date,  
5 authorizing it to solicit subscriptions to surplus in  
6 accordance with this Code and to do such other acts as may be  
7 necessary and proper in order to complete its organization  
8 and to entitle it to receive a certificate of authority to  
9 transact an insurance business.

10          (2) If the Director finds that any company in process of  
11 organization has failed to comply with, or has violated any  
12 provision of the Code, he may proceed against the company  
13 under the Interstate Compact Uniform Receivership Law Article  
14 XIII, and may after notice and hearing revoke the permit  
15 issued to it under subsection (1) of this section.

16          (Source: Laws 1951, p. 1565.)

17          (215 ILCS 5/59.2)

18          Sec. 59.2. Formation of mutual insurance holding company  
19 and conversion of mutual company to stock company.

20          (1) Definitions. For the purposes of this Section, the  
21 following terms shall have the meanings indicated:

22                 (a) "Converted company" means an Illinois domiciled  
23 stock insurance company subject to the provisions of  
24 Article II, except as otherwise provided in this Section,  
25 that continues in existence after a reorganization under  
26 this Section in connection with the formation of a mutual  
27 holding company.

28                 (b) "Converted mutual holding company" means the  
29 stock corporation into which a mutual holding company has  
30 been converted in accordance with Section 59.1 and  
31 subsection (13) of this Section.

32                 (c) "Eligible member" means a member as of the date  
33 the board of directors adopts a plan of MHC conversion

1 under this Section. For the conversion of a mutual  
2 holding company, "eligible member" means a member of the  
3 mutual holding company who is of record as of the date  
4 the mutual holding company board of directors adopts a  
5 plan of conversion under Section 59.1.

6 (d) "Intermediate holding company" means a  
7 corporation authorized to issue one or more classes of  
8 capital stock, the corporate purposes of which include  
9 holding directly or indirectly the voting stock of a  
10 converted company.

11 (e) "Member" means a person who, on the records of  
12 the mutual company and pursuant to its articles of  
13 incorporation or bylaws, is deemed to be a holder of a  
14 membership interest in the mutual company and shall also  
15 include a person or persons insured under a group policy,  
16 subject to the following conditions:

17 (i) the person is insured or covered under a  
18 group life policy or group annuity contract under  
19 which funds are accumulated and allocated to the  
20 respective covered persons;

21 (ii) the person has the right to direct the  
22 application of the funds so allocated;

23 (iii) the group policyholder makes no  
24 contribution to the premiums or deposits for the  
25 policy or contract; and

26 (iv) the mutual company has the names and  
27 addresses of the persons covered under the group  
28 life policy or group annuity contract.

29 On and after the effective date of a plan of MHC  
30 conversion under this Section, the term "member" shall  
31 mean a member of the mutual holding company created  
32 thereby.

33 (f) "Mutual holding company" or "MHC" means a  
34 corporation resulting from a reorganization of a mutual

1 company under this Section. A mutual holding company  
2 shall be subject to the provisions of this Article and to  
3 any other provisions of this Code applicable to mutual  
4 companies, except as otherwise provided in this Section.  
5 The articles of incorporation of a mutual holding company  
6 shall include provisions setting forth the following:

7 (i) that it is a mutual holding company  
8 organized under this Article;

9 (ii) that the mutual holding company may hold  
10 not less than a majority of the shares of voting  
11 stock of a converted company or an intermediate  
12 holding company, which in turn holds directly or  
13 indirectly all of the voting stock of a converted  
14 company;

15 (iii) that it is not authorized to issue any  
16 capital stock except pursuant to a conversion in  
17 accordance with the provisions of Section 59.1 and  
18 subsection (13) of this Section;

19 (iv) that its members shall have the rights  
20 specified in this Section and in its articles of  
21 incorporation and bylaws; and

22 (v) that its assets shall be subject to  
23 inclusion in the estate of the converted company in  
24 any proceedings initiated by the Director against  
25 the converted company under the Interstate Compact  
26 Uniform Receivership Law Article-XIII.

27 (g) "Mutual company" means for purposes of this  
28 Section a mutual life insurer or mutual property-casualty  
29 insurer that may convert pursuant to a plan of MHC  
30 conversion under this Section.

31 (h) "Plan of MHC conversion," or "plan" when used  
32 in this Section means a plan adopted pursuant to this  
33 Section by the board of directors of an Illinois domestic  
34 mutual company for the conversion of the mutual company



1 into a direct or indirect stock subsidiary of a mutual  
2 holding company.

3 (i) "Policy" includes any group or individual  
4 insurance policy or contract issued by a mutual company,  
5 including an annuity contract. The term policy does not  
6 include a certificate of insurance issued in connection  
7 with a group policy or contract.

8 (j) "Policyholder" means the holder of a policy  
9 other than a reinsurance contract.

10 (2) Formation of mutual holding company and conversion  
11 of mutual company. A mutual company, upon approval of the  
12 Director, may reorganize by forming a mutual holding company  
13 and continue the corporate existence of the reorganizing  
14 mutual company as a stock insurance company in accordance  
15 with this Section. Upon effectiveness of a plan of MHC  
16 conversion, and without any further action:

17 (a) The mutual company shall become a stock  
18 corporation, the membership interests of the  
19 policyholders in the mutual company shall be deemed  
20 extinguished and all eligible members of the mutual  
21 company shall be and become members of the mutual holding  
22 company, in accordance with the articles of incorporation  
23 and bylaws of the mutual holding company and the  
24 applicable provisions of this Section and Article III;  
25 and

26 (b) all of the shares of the capital stock of the  
27 converted company shall be issued to the mutual holding  
28 company, which at all times shall own a majority of the  
29 shares of the voting stock of the converted company,  
30 except that either at the time of conversion, or at a  
31 later time with the approval of the Director, an  
32 intermediate holding company or companies may be created,  
33 so long as the mutual holding company at all times owns  
34 directly or indirectly a majority of the shares of the

1 voting stock of the converted company.

2 (3) MHC membership interests.

3 (a) No member of a mutual holding company may  
4 transfer membership in the mutual holding company or any  
5 right arising from the membership.

6 (b) A member of a mutual holding company shall not,  
7 as a member, be personally liable for the acts, debts,  
8 liabilities, or obligations of the company.

9 (c) No assessments of any kind may be imposed upon  
10 the members of a mutual holding company by the directors  
11 or members, or because of any liability of any company  
12 owned or controlled by the mutual holding company or  
13 because of any act, debt, liability, or obligation of the  
14 mutual holding company itself.

15 (d) A membership interest in a domestic mutual  
16 holding company shall not constitute a security under any  
17 law of this State.

18 (4) Adoption of the plan of MHC conversion by the board  
19 of directors.

20 (a) A mutual company seeking to convert to a mutual  
21 holding company structure shall, by the affirmative vote  
22 of two-thirds of its board of directors, adopt a plan of  
23 MHC conversion consistent with the requirements of  
24 subsection (8) of this Section.

25 (b) At any time before approval of a plan by  
26 eligible members, the mutual company, by the affirmative  
27 vote of two-thirds of its board of directors, may amend  
28 or withdraw the plan of MHC conversion.

29 (5) Approval of the plan of MHC conversion by the  
30 Director.

31 (a) Required findings. After adoption or amendment  
32 of the plan by the mutual company's board of directors,  
33 the plan of MHC conversion shall be submitted to the  
34 Director for review and approval. The Director shall

1 hold a public hearing on the plan. The Director shall  
2 approve the plan upon finding that:

3 (i) the provisions of this Section have been  
4 complied with; and

5 (ii) the plan is fair and equitable as it  
6 relates to the interests of the members.

7 (b) Documents to be filed.

8 (i) Prior to the members' approval of the plan  
9 of MHC conversion, a mutual company seeking the  
10 Director's approval of a plan shall file the  
11 following documents with the Director for review and  
12 approval:

13 (A) the plan of MHC conversion;

14 (B) the form of notice required by item  
15 (b) of subsection (6) of this Section for  
16 eligible members to vote on the plan;

17 (C) any proxies to be solicited from  
18 eligible members and any other soliciting  
19 materials;

20 (D) the proposed articles of  
21 incorporation and bylaws of the mutual holding  
22 company, each intermediate holding company, if  
23 any, and the revised articles of incorporation  
24 and bylaws of the converted company.

25 Once filed, these documents shall be approved  
26 or disapproved by the Director within a reasonable  
27 time.

28 (ii) After the members have approved the plan,  
29 the converted company shall file the following  
30 documents with the Director:

31 (A) the minutes of the meeting of the  
32 members at which the plan of MHC conversion was  
33 voted upon; and

34 (B) the articles and bylaws of the mutual

1 holding company and each intermediate holding  
2 company, if any, and the revised articles of  
3 incorporation and bylaws of the converted  
4 company.

5 (c) The Director's approval of a plan pursuant to  
6 this subsection (5) may be made conditional at the sole  
7 discretion of the Director whenever he determines that  
8 such conditions are reasonably necessary to protect  
9 policyholder interests. Such conditions may include, but  
10 shall not be limited to, limitations, requirements, or  
11 prohibitions as follows:

12 (i) prior approval of any acquisition or  
13 formation of affiliate entities of the MHC;

14 (ii) prior approval of the capital structure  
15 of any intermediate holding company or any changes  
16 thereto;

17 (iii) prior approval of any initial public  
18 offering or other issuance of equity or debt  
19 securities of an intermediate holding company or the  
20 converted company in a private sale or public  
21 offering;

22 (iv) prior approval of the expansion of the  
23 mutual holding company system into lines of  
24 business, industries, or operations not presented at  
25 the time of the conversion;

26 (v) limitations on dividends and distributions  
27 if the effect would be to reduce capital and surplus  
28 of the converted company, in addition to any  
29 limitations which may otherwise be authorized by  
30 law; and

31 (vi) limitations on the pledge, incumbrance,  
32 or transfer of the stock of the converted company.

33 (d) Consultant. The Director may retain, at the  
34 mutual company's expense, any qualified expert not

1 otherwise a part of the Director's staff to assist in  
2 reviewing the plan of MHC conversion.

3 (6) Approval of the plan by the members.

4 (a) Members entitled to notice of and to vote on  
5 the plan. All eligible members shall be given notice of  
6 and an opportunity to vote upon the plan of MHC  
7 conversion.

8 (b) Notice required. All eligible members shall be  
9 given notice of the members' meeting to vote upon the  
10 plan of MHC conversion. The notice shall identify in  
11 reasonable detail the benefits and risks of the MHC  
12 conversion. A copy of the plan of MHC conversion or a  
13 summary of the plan, if so authorized by the Director,  
14 shall accompany the notice. If a summary of the plan  
15 accompanies the notice, a copy of the plan shall be made  
16 available without charge to any eligible member upon  
17 request. The notice shall state that approval by the  
18 Director does not constitute a recommendation that  
19 eligible members approve the plan. The notice shall be  
20 mailed to each member's last known address, as shown on  
21 the mutual company's records, within 45 days of the  
22 Director's approval of the plan. The meeting to vote upon  
23 the plan shall not be set for a date less than 60 days  
24 after the date when the notice of the meeting is mailed  
25 by the mutual company. If the meeting to vote upon the  
26 plan is held coincident with the mutual company's annual  
27 meeting of policyholders, only one combined notice of  
28 meeting is required.

29 (c) Vote required for approval.

30 (i) After approval by the Director, the plan  
31 of MHC conversion shall be adopted, at an annual or  
32 special meeting of policyholders at which a quorum  
33 is present, upon receiving the affirmative vote of  
34 at least two-thirds of the votes cast by eligible

1 members.

2 (ii) Members entitled to vote upon the  
3 proposed plan may vote in person or by proxy. Any  
4 proxies to be solicited from eligible members,  
5 together with the related proxy statement and any  
6 other soliciting materials, shall be filed with and  
7 approved by the Director.

8 (iii) The number of votes each eligible member  
9 may cast shall be determined by the mutual company's  
10 bylaws. If the bylaws are silent, each eligible  
11 member may cast one vote.

12 (7) Adoption of articles of incorporation. Adoption of  
13 articles of incorporation for the mutual holding company,  
14 each intermediate holding company, if any, and revised  
15 articles of incorporation for the converted company is  
16 necessary to implement the plan of MHC conversion.  
17 Procedures for adoption or revision of such articles shall be  
18 governed by the applicable provisions of this Code or, in the  
19 case of an intermediate holding company, the business  
20 corporation law of the state in which the intermediate  
21 holding company is incorporated. For a Class I mutual  
22 company, the members may adopt revised articles of  
23 incorporation at the same meeting at which the members  
24 approve the plan. For a Class 2 or 3 mutual company, the  
25 articles of incorporation may be adopted solely by the board  
26 of directors or trustees, as provided in Section 57 of this  
27 Code.

28 (8) Required provisions in a plan of MHC conversion.  
29 The following provisions shall be included in the plan of MHC  
30 conversion:

31 (a) The plan shall set forth the reasons for the  
32 proposed conversion.

33 (b) Effect of MHC conversion on existing policies.

34 (i) The plan shall provide that all policies

1 of the converted company in force on the effective  
2 date of conversion shall continue to remain in force  
3 under the terms of those policies, except that any  
4 voting or other membership rights of the  
5 policyholders provided for under the policies or  
6 under this Code and any contingent liability policy  
7 provisions of the type described in Section 55 of  
8 this Code shall be extinguished on the effective  
9 date of the conversion.

10 (ii) The plan shall further provide that  
11 holders of participating policies in effect on the  
12 date of conversion shall continue to have the right  
13 to receive dividends as provided in the  
14 participating policies, if any.

15 (iii) Except for a mutual company's life  
16 policies, guaranteed renewable accident and health  
17 policies, and non-cancelable accident and health  
18 policies, the converted stock company may issue the  
19 insured a nonparticipating policy as a substitute  
20 for the participating policy upon the renewal date  
21 of a participating policy.

22 (iv) The plan shall provide that a Class I  
23 mutual company's participating life policies in  
24 force on the effective date of the conversion shall  
25 be operated by the converted company for dividend  
26 purposes as a closed block of participating business  
27 except that any or all classes of group  
28 participating policies may be excluded from the  
29 closed block. The plan shall establish one or more  
30 segregated accounts for the benefit of the closed  
31 block of business and shall allocate to those  
32 segregated accounts enough assets of the mutual  
33 company so that the assets together with the revenue  
34 from the closed block of business are sufficient to

1 support the closed block including, but not limited  
2 to, the payment of claims, expenses, taxes, and any  
3 dividends that are provided for under the terms of  
4 the participating policies with appropriate  
5 adjustments in the dividends for experience changes.  
6 The plan shall be accompanied by an opinion of a  
7 qualified actuary or an appointed actuary who meets  
8 the standards set forth in the insurance laws or  
9 regulations for the submission of actuarial opinions  
10 as to the adequacy of reserves or assets. The  
11 opinion shall relate to the adequacy of the assets  
12 allocated to the segregated accounts in support of  
13 the closed block of business. The actuarial opinion  
14 shall be based on methods of analysis deemed  
15 appropriate for those purposes by the Actuarial  
16 Standards Board. The amount of assets allocated to  
17 the segregated accounts of the closed block shall be  
18 based upon the mutual company's last annual  
19 statement that is updated to the effective date of  
20 the conversion. The converted stock company shall  
21 keep a separate accounting for the closed block and  
22 shall make and include in the annual statement to be  
23 filed with the Director each year a separate  
24 statement showing the gains, losses, and expenses  
25 properly attributable to the closed block.  
26 Periodically, upon the Director's approval, those  
27 assets allocated to the closed block as provided  
28 herein that are in excess of the amount of assets  
29 necessary to support the remaining policies in the  
30 closed block shall revert to the benefit of the  
31 converted company. The Director may waive the  
32 requirement for the establishment of a closed block  
33 of business if the Director deems it to be in the  
34 best interests of the participating policyholders of



1 the mutual company to do so.

2 (c) The plan shall set forth the requirements for  
3 granting membership interests to future policyholders of  
4 the converted company.

5 (d) The plan shall include information sufficient  
6 to demonstrate that the financial condition of the  
7 converted company will not be diminished by the plan of  
8 MHC conversion.

9 (e) The plan shall include a description of any  
10 current proposal to issue shares of an intermediate  
11 holding company or the converted company to the public or  
12 to other persons who are not direct or indirect  
13 subsidiaries of the mutual holding company.

14 (f) The plan shall include the identity of the  
15 proposed officers and directors of the mutual holding  
16 company and each intermediate holding company, if any,  
17 together with such other biographical information as the  
18 Director may request.

19 (g) The plan shall include such other information  
20 as the Director may request or may prescribe by rule.

21 (9) Effective date of the plan of MHC conversion. A  
22 plan shall become effective when the Director has approved  
23 the plan, the members have approved the plan and the articles  
24 of incorporation of the mutual holding company, each  
25 intermediate holding company, if any, and the revised  
26 articles of incorporation of the converted company have been  
27 adopted and filed with the Director.

28 (10) Corporate existence.

29 (a) Upon the conversion of a mutual company to a  
30 converted company according to the provisions of this  
31 Section, the corporate existence of the mutual company  
32 shall be continued in the converted company with the  
33 original date of incorporation of the mutual company.  
34 All the rights, franchises, and interests of the mutual

1 company in and to every type of property, real, personal,  
2 and mixed, and things in action thereunto belonging, is  
3 deemed transferred to and vested in the converted company  
4 without any deed or transfer. Simultaneously, the  
5 converted company is deemed to have assumed all the  
6 obligations and liabilities of the mutual company.

7 (b) The directors and officers of the mutual  
8 company, unless otherwise specified in the plan of  
9 conversion shall serve as directors and officers of the  
10 converted company until new directors and officers of the  
11 converted company are duly elected pursuant to the  
12 articles of incorporation and bylaws of the converted  
13 company.

14 (11) Regulation and authority of mutual holding company.

15 (a) A mutual holding company shall have the same  
16 powers granted to domestic mutual companies and be  
17 subject to the same requirements and provisions of  
18 Article III and any other provisions of this Code  
19 applicable to mutual companies that are not inconsistent  
20 with the provisions of this Section, provided however  
21 that a mutual holding company shall not have the  
22 authority to transact insurance pursuant to Section  
23 39(1).

24 (b) Neither the mutual holding company nor any  
25 intermediate holding company shall issue or reinsure  
26 policies of insurance.

27 (c) A mutual holding company may enter into an  
28 affiliation agreement or a merger agreement either at the  
29 time of conversion, or at some later time with the  
30 approval of the Director, with any mutual insurance  
31 company authorized to do business in this State or  
32 another mutual holding company. Any such merger  
33 agreement may authorize members of the mutual insurance  
34 company or other mutual holding company to become members

1 of the mutual holding company. Any such affiliation  
2 agreement or merger agreement shall be subject to the  
3 insurance laws of this State relating to such  
4 transactions entered into by a domestic mutual company.

5 (d) The assets of the MHC shall be held in trust,  
6 under such arrangements and on such terms as the Director  
7 may approve, for the benefit of the policyholders of the  
8 converted company. Any residual rights of the MHC in  
9 such assets or any assets of the MHC determined not to be  
10 held in trust shall be subject to a lien in favor of the  
11 policyholders of the converted company under such terms  
12 as the Director may approve. Upon conversion of the  
13 mutual holding company as provided for in subsection (13)  
14 of this Section, such assets shall be released from trust  
15 in accordance with the plan of conversion approved by the  
16 Director.

17 (12) Diversion of business to affiliates. Without prior  
18 approval of the Director, neither the converted company nor  
19 any other person affiliated with or controlling the converted  
20 company shall divert business from the converted company to  
21 any insurance company affiliate if the purpose or effect  
22 would be to significantly reduce the number of members of the  
23 mutual holding company.

24 (13) Conversion of mutual holding company. A mutual  
25 holding company created pursuant to this Section may  
26 reorganize by complying with the applicable provisions of  
27 Section 59. For purposes of effecting a conversion under  
28 that Section, the mutual holding company shall be deemed a  
29 "mutual company" and the converted mutual holding company  
30 shall be deemed a "converted stock company," as such terms  
31 are defined in Section 59.1.

32 (14) Conflict of interest. No director, officer, agent,  
33 or employee of the mutual company or any other person shall  
34 receive any fee, commission, or other valuable consideration,

1 other than his or her usual regular salary and compensation,  
2 for in any manner aiding, promoting, or assisting in the  
3 conversion except as set forth in the plan of MHC conversion  
4 approved by the Director. This provision does not prohibit  
5 the payment of reasonable fees and compensation to attorneys,  
6 accountants, and actuaries for services performed in the  
7 independent practice of their professions, even if the  
8 attorney, accountant, or actuary is also a director of the  
9 mutual company.

10 (15) Costs and expenses. All the costs and expenses  
11 connected with a plan of MHC conversion shall be paid for or  
12 reimbursed by the mutual company or the converted company.

13 (16) Failure to give notice. If the mutual company  
14 complies substantially and in good faith with the notice  
15 requirements of this Section, the mutual company's failure to  
16 give any member or members any required notice does not  
17 impair the validity of any action taken under this Section.

18 (17) Limitation of actions. Any action challenging the  
19 validity of or arising out of acts taken or proposed to be  
20 taken under this Section shall be commenced within 30 days  
21 after the effective date of the plan of MHC conversion.

22 (Source: P.A. 90-810, eff. 1-6-99.)

23 (215 ILCS 5/60) (from Ch. 73, par. 672)

24 Sec. 60. Procedure When insufficient assets are possessed  
25 by company.

26 (1) Whenever the Director finds that the admitted assets  
27 of a company subject to the provisions of this Article are  
28 less than the aggregate of (a) its liabilities and (b) the  
29 minimum surplus required to be maintained by Section 43, he  
30 must notify the company in writing of the amount of such  
31 impairment and require that such impairment must be removed  
32 within such period, which shall not be less than 30 nor more  
33 than 90 days, as he may designate. Unless otherwise allowed

1 by the Director, the company must discontinue the issuance of  
2 new or renewal policies while such impairment exists. If the  
3 contracts issued by the company contain a provision for a  
4 contingent liability, the Director may order the board of  
5 directors or trustees of the company to levy an assessment  
6 for the purpose of removing such impairment against each  
7 member in accordance with the terms of his policy. If the  
8 Director finds that the company will remove the impairment or  
9 a part thereof from sources other than an assessment, he may  
10 permit a reduction in the amount of the assessment to the  
11 extent of the sum so to be obtained. No member is liable for  
12 an assessment unless notified of the company's claim therefor  
13 within one year after the termination of the policy whether  
14 by expiration, cancellation or otherwise. Nothing contained  
15 in this paragraph may be construed to limit or restrict the  
16 authority of any liquidator, conservator or rehabilitator  
17 acting under the Interstate Compact Uniform Receivership Law  
18 Article-XIII-or-XIII-1/2-of-this-Act.

19 (2) If policies containing provisions for a contingent  
20 liability are outstanding, and the company fails to levy an  
21 assessment within 20 days from the date of an order, or if  
22 the impairment is not removed within the period specified in  
23 the Director's notice, the company shall be deemed insolvent  
24 and the Director may cancel the company's certificate of  
25 authority and shall proceed against it in accordance with the  
26 Interstate Compact Uniform Receivership Law Article-XIII.

27 (3) If, while the impairment exists, any officer,  
28 director, or trustee of the company renews, issues or  
29 delivers or causes to be renewed, issued or delivered any  
30 policy, contract or certificate of insurance unless otherwise  
31 allowed by the Director, and the fact of such impairment is  
32 known to the officer, director, or trustee of the company,  
33 such officer, director, or trustee shall be guilty of a  
34 business offense and may be fined not less than \$200 and not

1 more than \$5,000 for each offense.

2 (4) Nothing in this Section prohibits, while such  
3 impairment exists, any such officer, director, trustee, agent  
4 or employee from issuing or renewing a policy of insurance  
5 when an insured or owner exercises an option granted to him  
6 under an existing policy to obtain new, renewed or converted  
7 insurance coverage.

8 (Source: P.A. 82-498.)

9 (215 ILCS 5/83) (from Ch. 73, par. 695)

10 Sec. 83. Procedure when insufficient assets are possessed  
11 by reciprocal.

12 (1) Whenever the Director finds that the admitted assets  
13 in excess of all liabilities of a reciprocal are less than  
14 the amount required by subsection (2) of Section 66, the  
15 Director shall proceed in the manner set forth as provided in  
16 Section 60 applicable to mutual companies and the reciprocal,  
17 its attorney-in-fact or any officers thereof, shall be  
18 subject to the same requirements and penalties in such  
19 Section provided. Nothing contained in this paragraph shall  
20 be construed to limit or restrict the authority of any  
21 liquidator, conservator or rehabilitator acting under the  
22 provisions of the Interstate Compact Uniform Receivership Law  
23 ~~Article XIII or XIII-1/2 of this Act.~~

24 (2) The attorney-in-fact of any such reciprocal may  
25 repair such deficiency within the period designated by the  
26 Director, by advancing the amount or any part thereof, at an  
27 interest rate not exceeding 7% per annum. The funds so  
28 advanced shall not be treated as a liability of such  
29 reciprocal and such advance including interest thereon shall  
30 be repaid only out of the surplus funds of the reciprocal in  
31 excess of the amount required by Section 66.

32 (Source: Laws 1965, p. 2630.)

(215 ILCS 5/107.06a) (from Ch. 73, par. 719.06a)

Sec. 107.06a. Organization under Illinois Insurance Code.

(a) After December 31, 1997, a syndicate or limited syndicate, except for a limited syndicate formed as a partnership, may only be organized pursuant to Sections 7, 8, 10, 11, 12, 14, 14.1 (other than subsection (d) thereof), 15 (other than subsection (d) thereof), 18, 19, 20, 21, 22, 23, 25, 27.1, 28, 28.1, 28.2, 29, 30, 31, 32, 32.1, 33, and 35.1 and Article X of this Code, to carry on the business of a syndicate, or limited syndicate under Article V-1/2 of this Code; provided that such syndicate or limited syndicate is admitted to the Exchange.

(b) After December 31, 1997, syndicates and limited syndicates are subject to the following:

(1) Articles I, IIA, VIII, VIII 1/2, X, XI, XI 1/2, XII, XII 1/2, ~~XXIII, XXIII-1/2~~, XXIV, XXV (Sections 408 and 412 only), and XXVIII (except for Sections 445, 445.1, 445.2, 445.3, 445.4, and 445.5) of this Code;

(2) Subsections (2) and (3) of Section 155.04 and Sections 13, 132.1 through 140, 141a, 144, 155.01, 155.03, 378, 379.1, 393.1, 395, and 396 of this Code;

(3) the Reinsurance Intermediary Act; and

(4) the Producer Controlled Insurer Act; and

(5) the Interstate Compact Uniform Receivership Law.

(c) No other provision of this Insurance Code shall be applicable to any such syndicate or limited syndicate except as provided in this Article V-1/2.

(Source: P.A. 90-499, eff. 8-19-97; 90-794, eff. 8-14-98; 91-278, eff. 7-23-99.)

(215 ILCS 5/107.08) (from Ch. 73, par. 719.08)

Sec. 107.08. Rehabilitation, conservation or

1 liquidation. If the Board or Director of Insurance determines  
2 after an examination, audit or pursuant to an Exchange  
3 internal hearing, that a syndicate has become insolvent or  
4 financially impaired to the extent that its further  
5 transaction of business is hazardous to its policyholders,  
6 its creditors, or the public, it shall order the syndicate to  
7 cease and desist from assuming insurance or reinsurance  
8 obligations on the Exchange or take such other action for the  
9 protection of policyholders and creditors as provided in this  
10 Article.

11 Upon issuing a cease and desist order as provided in this  
12 Section, the Board shall notify the Director of Insurance of  
13 such action. If the Director determines the syndicate to be  
14 insolvent or financially impaired, the Director shall report  
15 that determination to the Attorney General. The Attorney  
16 General shall apply forthwith by complaint on relation of the  
17 Director in the name of the People of the State of Illinois,  
18 as plaintiff, to the Circuit Court of Cook County, Illinois,  
19 for an order to rehabilitate, conserve, or liquidate the  
20 defendant syndicate as provided in the Interstate Compact  
21 Uniform Receivership Law Article-XIII-of-this-Code and for  
22 such other relief as the nature of the case and the interests  
23 of the policyholders, creditors, or the public may require.

24 The Court, upon entering an Order of Rehabilitation,  
25 Conservation, or Liquidation, shall appoint the Director of  
26 Insurance as Rehabilitator, Conservator, or Liquidator, and  
27 the rehabilitation, conservation, or liquidation shall be  
28 conducted pursuant to the Interstate Compact Uniform  
29 Receivership Law Article-XIII-of-this-Code.

30 (Source: P.A. 89-206, eff. 7-21-95.)

31 (215 ILCS 5/123C-11) (from Ch. 73, par. 735C-11)

32 Sec. 123C-11. Grounds and procedures for suspension or  
33 revocation of certificate of authority.



1           A. The certificate of authority of a captive insurance  
2 company to do an insurance business in this State may be  
3 suspended or revoked by the Director for any of the following  
4 reasons:

5           (1) Insolvency or impairment of capital or surplus;

6           (2) Failure to meet the requirements of Sections 123C-3  
7 or 123C-4;

8           (3) Refusal or failure to submit an annual report, as  
9 required by Section 123C-9, or any other report or statement  
10 required by law or by lawful order of the Director;

11           (4) Failure to comply with the provisions of its own  
12 charter or bylaws (or, in the case of an industrial insured  
13 captive, with the provisions of the investment policy set  
14 forth in its plan of operation as approved from time to time  
15 by the Director);

16           (5) Failure to submit to examination or any legal  
17 obligation relative thereto, as required by Section 123C-10;

18           (6) Refusal or failure to pay expenses and charges as  
19 required by Sections 408, 123C-10 and 123C-17;

20           (7) Use of methods that, although not otherwise  
21 specifically prohibited by law, nevertheless render its  
22 operation detrimental or its condition unsound with respect  
23 to the public or to its policyholders; or

24           (8) Failure otherwise to comply with the laws of this  
25 State.

26           B. If the Director finds, upon examination, hearing, or  
27 other evidence, that any captive insurance company has  
28 committed any of the acts specified in subsection A, he may  
29 suspend or revoke such certificate of authority if he deems  
30 it in the best interest of the public and the policyholders  
31 of such captive insurance company, notwithstanding any other  
32 provision of this Article.

33           C. The provisions of the Interstate Compact Uniform  
34 Receivership Law ~~Articles--XIII-and-XIII-1/2-shall~~ apply to

1 and govern the conservation, rehabilitation, liquidation and  
2 dissolution of captive insurance companies.

3 (Source: P.A. 85-131.)

4 (215 ILCS 5/131.25) (from Ch. 73, par. 743.25)

5 Sec. 131.25. Receivership. Whenever it appears to the  
6 Director that any person has committed a violation of this  
7 Article which so impairs the financial condition of a  
8 domestic company as to threaten insolvency or make the  
9 further transaction of business by it hazardous to its  
10 policyholders, creditors or the public, then the Director may  
11 proceed against the company under the Interstate Compact  
12 Uniform Receivership Law Article XIII of this Code.

13 (Source: P.A. 83-749.)

14 (215 ILCS 5/141a) (from Ch. 73, par. 753a)

15 Sec. 141a. Managing general agents and retrospective  
16 compensation agreements.

17 (a) As used in this Section, the following terms have  
18 the following meanings:

19 "Actuary" means a person who is a member in good standing  
20 of the American Academy of Actuaries.

21 "Gross direct written premium" means direct premium  
22 including policy and membership fees, net of returns and  
23 cancellations, and prior to any cessions.

24 "Insurer" means any person duly licensed in this State as  
25 an insurance company pursuant to Articles II, III, III 1/2,  
26 IV, V, VI, and XVII of this Code.

27 "Managing general agent" means any person, firm,  
28 association, or corporation, either separately or together  
29 with affiliates, that:

30 (1) manages all or part of the insurance business  
31 of an insurer (including the management of a separate  
32 division, department, or underwriting office), and

1           (2) acts as an agent for the insurer whether known  
2 as a managing general agent, manager, or other similar  
3 term, and

4           (3) with or without the authority produces,  
5 directly or indirectly, and underwrites:

6           (A) within any one calendar quarter, an amount  
7 of gross direct written premium equal to or more  
8 than 5% of the policyholders' surplus as reported in  
9 the insurer's last annual statement, or

10           (B) within any one calendar year, an amount of  
11 gross direct written premium equal to or more than  
12 8% of the policyholders' surplus as reported in the  
13 insurer's last annual statement, and either

14           (4) has the authority to bind the company in  
15 settlement of individual claims in amounts in excess of  
16 \$500, or

17           (5) has the authority to negotiate reinsurance on  
18 behalf of the insurer.

19       Notwithstanding the provisions of items (1) through (5),  
20 the following persons shall not be considered to be managing  
21 general agents for the purposes of this Code:

22           (1) An employee of the insurer;

23           (2) A U.S. manager of the United States branch of  
24 an alien insurer;

25           (3) An underwriting manager who, pursuant to a  
26 contract meeting the standards of Section 141.1 manages  
27 all or part of the insurance operations of the insurer,  
28 is affiliated with the insurer, subject to Article VIII  
29 1/2, and whose compensation is not based on the volume of  
30 premiums written;

31           (4) The attorney or the attorney in fact authorized  
32 and acting for or on behalf of the subscriber  
33 policyholders of a reciprocal or inter-insurance  
34 exchange, under the terms of the subscription agreement,

1 power of attorney, or policy of insurance or the attorney  
2 in fact for any Lloyds organization licensed in this  
3 State.

4 "Retrospective compensation agreement" means any  
5 arrangement, agreement, or contract having as its purpose the  
6 actual or constructive retention by the insurer of a fixed  
7 proportion of the gross premiums, with the balance of the  
8 premiums, retained actually or constructively by the agent or  
9 the producer of the business, who assumes to pay therefrom  
10 all losses, all subordinate commission, loss adjustment  
11 expenses, and his profit, if any, with other provisions of  
12 the arrangement, agreement, or contract being auxiliary or  
13 incidental to that purpose.

14 "Underwrite" means to accept or reject risk on behalf of  
15 the insurer.

16 (b) Licensure of managing general agents.

17 (1) No person, firm, association, or corporation  
18 shall act in the capacity of a managing general agent  
19 with respect to risks located in this State for an  
20 insurer licensed in this State unless the person is a  
21 licensed producer or a registered firm in this State  
22 under Article XXXI of this Code or a licensed third party  
23 administrator in this State under Article XXXI 1/4 of  
24 this Code.

25 (2) No person, firm, association, or corporation  
26 shall act in the capacity of a managing general agent  
27 with respect to risks located outside this State for an  
28 insurer domiciled in this State unless the person is a  
29 licensed producer or a registered firm in this State  
30 under Article XXXI of this Code or a licensed third party  
31 administrator in this State under Article XXXI 1/4 of  
32 this Code.

33 (3) The managing general agent must provide a  
34 surety bond for the benefit of the insurer in an amount

1 equal to the greater of \$100,000 or 5% of the gross  
2 direct written premium underwritten by the managing  
3 general agent on behalf of the insurer. The bond shall  
4 provide for a discovery period and prior notification of  
5 cancellation in accordance with the rules of the  
6 Department unless otherwise approved in writing by the  
7 Director.

8 (4) The managing general agent must maintain an  
9 errors and omissions policy for the benefit of the  
10 insurer with coverage in an amount equal to the greater  
11 of \$1,000,000 or 5% of the gross direct written premium  
12 underwritten by the managing general agent on behalf of  
13 the insurer.

14 (5) Evidence of the existence of the bond and the  
15 errors and omissions policy must be made available to the  
16 Director upon his request.

17 (c) No person, firm, association, or corporation acting  
18 in the capacity of a managing general agent shall place  
19 business with an insurer unless there is in force a written  
20 contract between the parties that sets forth the  
21 responsibilities of each party, that, if both parties share  
22 responsibility for a particular function, specifies the  
23 division of responsibility, and that contains the following  
24 minimum provisions:

25 (1) The insurer may terminate the contract for  
26 cause upon written notice to the managing general agent.  
27 The insurer may suspend the underwriting authority of the  
28 managing general agent during the pendency of any dispute  
29 regarding the cause for termination.

30 (2) The managing general agent shall render  
31 accounts to the insurer detailing all transactions and  
32 remit all funds due under the contract to the insurer on  
33 not less than a monthly basis.

34 (3) All funds collected for the account of an

1 insurer shall be held by the managing general agent in a  
2 fiduciary capacity in a bank that is a federally or State  
3 chartered bank and that is a member of the Federal  
4 Deposit Insurance Corporation. This account shall be  
5 used for all payments on behalf of the insurer; however,  
6 the managing general agent shall not have authority to  
7 draw on any other accounts of the insurer. The managing  
8 general agent may retain no more than 3 months estimated  
9 claims payments and allocated loss adjustment expenses.

10 (4) Separate records of business written by the  
11 managing general agent will be maintained. The insurer  
12 shall have access to and the right to copy all accounts  
13 and records related to its business in a form usable by  
14 the insurer, and the Director shall have access to all  
15 books, bank accounts, and records of the managing general  
16 agent in a form usable to the Director.

17 (5) The contract may not be assigned in whole or  
18 part by the managing general agent.

19 (6) The managing general agent shall provide to the  
20 company audited financial statements required under  
21 paragraph (1) of subsection (d).

22 (7) That appropriate underwriting guidelines be  
23 followed, which guidelines shall stipulate the following:

- 24 (A) the maximum annual premium volume;
- 25 (B) the basis of the rates to be charged;
- 26 (C) the types of risks that may be written;
- 27 (D) maximum limits of liability;
- 28 (E) applicable exclusions;
- 29 (F) territorial limitations;
- 30 (G) policy cancellation provisions; and
- 31 (H) the maximum policy period.

32 (8) The insurer shall have the right to: (i) cancel  
33 or nonrenew any policy of insurance subject to applicable  
34 laws and regulations concerning those actions; and (ii)

1 require cancellation of any subproducer's contract after  
2 appropriate notice.

3 (9) If the contract permits the managing general  
4 agent to settle claims on behalf of the insurer:

5 (A) all claims must be reported to the company  
6 in a timely manner.

7 (B) a copy of the claim file must be sent to  
8 the insurer at its request or as soon as it becomes  
9 known that the claim:

10 (i) has the potential to exceed an amount  
11 determined by the company;

12 (ii) involves a coverage dispute;

13 (iii) may exceed the managing general  
14 agent's claims settlement authority;

15 (iv) is open for more than 6 months; or

16 (v) is closed by payment of an amount set  
17 by the company.

18 (C) all claim files will be the joint property  
19 of the insurer and the managing general agent.  
20 However, upon an order of liquidation of the  
21 insurer, the files shall become the sole property of  
22 the insurer or its estate; the managing general  
23 agent shall have reasonable access to and the right  
24 to copy the files on a timely basis.

25 (D) any settlement authority granted to the  
26 managing general agent may be terminated for cause  
27 upon the insurer's written notice to the managing  
28 general agent or upon the termination of the  
29 contract. The insurer may suspend the settlement  
30 authority during the pendency of any dispute  
31 regarding the cause for termination.

32 (10) Where electronic claims files are in  
33 existence, the contract must address the timely  
34 transmission of the data.

1           (11) If the contract provides for a sharing of  
2 interim profits by the managing general agent and the  
3 managing general agent has the authority to determine the  
4 amount of the interim profits by establishing loss  
5 reserves, controlling claim payments, or by any other  
6 manner, interim profits will not be paid to the managing  
7 general agent until one year after they are earned for  
8 property insurance business and until 5 years after they  
9 are earned on casualty business and in either case, not  
10 until the profits have been verified.

11           (12) The managing general agent shall not:

12           (A) Bind reinsurance or retrocessions on  
13 behalf of the insurer, except that the managing  
14 general agent may bind facultative reinsurance  
15 contracts under obligatory facultative agreements if  
16 the contract with the insurer contains reinsurance  
17 underwriting guidelines including, for both  
18 reinsurance assumed and ceded, a list of reinsurers  
19 with which automatic agreements are in effect, the  
20 coverages and amounts or percentages that may be  
21 reinsured, and commission schedules.

22           (B) Appoint any producer without assuring that  
23 the producer is lawfully licensed to transact the  
24 type of insurance for which he is appointed.

25           (C) Without prior approval of the insurer, pay  
26 or commit the insurer to pay a claim over a  
27 specified amount, net of reinsurance, that shall not  
28 exceed 1% of the insurer's policyholders' surplus as  
29 of December 31 of the last completed calendar year.

30           (D) Collect any payment from a reinsurer or  
31 commit the insurer to any claim settlement with a  
32 reinsurer without prior approval of the insurer. If  
33 prior approval is given, a report must be promptly  
34 forwarded to the insurer.



1           (E) Permit its subproducer to serve on its  
2           board of directors.

3           (F) Employ an individual who is also employed  
4           by the insurer.

5           (13) The contract may not be written for a term of  
6           greater than 5 years.

7           (d) Insurers shall have the following duties:

8           (1) The insurer shall have on file the managing  
9           general agent's audited financial statements as of the  
10          end of the most recent fiscal year prepared in accordance  
11          with Generally Accepted Accounting Principles. The  
12          insurer shall notify the Director if the auditor's  
13          opinion on those statements is other than an unqualified  
14          opinion. That notice shall be given to the Director  
15          within 10 days of receiving the audited financial  
16          statements or becoming aware that such opinion has been  
17          given.

18          (2) If a managing general agent establishes loss  
19          reserves, the insurer shall annually obtain the opinion  
20          of an actuary attesting to the adequacy of loss reserves  
21          established for losses incurred and outstanding on  
22          business produced by the managing general agent, in  
23          addition to any other required loss reserve  
24          certification.

25          (3) The insurer shall periodically (at least  
26          semiannually) conduct an on-site review of the  
27          underwriting and claims processing operations of the  
28          managing general agent.

29          (4) Binding authority for all reinsurance contracts  
30          or participation in insurance or reinsurance syndicates  
31          shall rest with an officer of the insurer, who shall not  
32          be affiliated with the managing general agent.

33          (5) Within 30 days of entering into or terminating  
34          a contract with a managing general agent, the insurer

1 shall provide written notification of the appointment or  
2 termination to the Director. Notices of appointment of a  
3 managing general agent shall include a statement of  
4 duties that the applicant is expected to perform on  
5 behalf of the insurer, the lines of insurance for which  
6 the applicant is to be authorized to act, and any other  
7 information the Director may request.

8 (6) An insurer shall review its books and records  
9 each quarter to determine if any producer has become a  
10 managing general agent. If the insurer determines that a  
11 producer has become a managing general agent, the insurer  
12 shall promptly notify the producer and the Director of  
13 that determination, and the insurer and producer must  
14 fully comply with the provisions of this Section within  
15 30 days of the notification.

16 (7) The insurer shall file any managing general  
17 agent contract for the Director's approval within 45 days  
18 after the contract becomes subject to this Section.  
19 Failure of the Director to disapprove the contract within  
20 45 days shall constitute approval thereof. Upon  
21 expiration of the contract, the insurer shall submit the  
22 replacement contract for approval. Contracts filed under  
23 this Section shall be exempt from filing under Sections  
24 141, 141.1 and 131.20a.

25 (8) An insurer shall not appoint to its board of  
26 directors an officer, director, employee, or controlling  
27 shareholder of its managing general agents. This  
28 provision shall not apply to relationships governed by  
29 Article VIII 1/2 of this Code.

30 (e) The acts of a managing general agent are considered  
31 to be the acts of the insurer on whose behalf it is acting.  
32 A managing general agent may be examined in the same manner  
33 as an insurer.

34 (f) Retrospective compensation agreements for business

1 written under Section 4 of this Code in Illinois and outside  
2 of Illinois by an insurer domiciled in this State must be  
3 filed for approval. The standards for approval shall be as  
4 set forth under Section 141 of this Code.

5 (g) Unless specifically required by the Director, the  
6 provisions of this Section shall not apply to arrangements  
7 between a managing general agent not underwriting any risks  
8 located in Illinois and a foreign insurer domiciled in an  
9 NAIC accredited state that has adopted legislation  
10 substantially similar to the NAIC Managing General Agents  
11 Model Act. "NAIC accredited state" means a state or  
12 territory of the United States having an insurance regulatory  
13 agency that maintains an accredited status granted by the  
14 National Association of Insurance Commissioners.

15 (h) If the Director determines that a managing general  
16 agent has not materially complied with this Section or any  
17 regulation or order promulgated hereunder, after notice and  
18 opportunity to be heard, the Director may order a penalty in  
19 an amount not exceeding \$50,000 for each separate violation  
20 and may order the revocation or suspension of the producer's  
21 license. If it is found that because of the material  
22 noncompliance the insurer has suffered any loss or damage,  
23 the Director may maintain a civil action brought by or on  
24 behalf of the insurer and its policyholders and creditors for  
25 recovery of compensatory damages for the benefit of the  
26 insurer and its policyholders and creditors or other  
27 appropriate relief. This subsection (h) shall not be  
28 construed to prevent any other person from taking civil  
29 action against a managing general agent.

30 (i) If an Order of Rehabilitation or Liquidation is  
31 entered under the Interstate Compact Uniform Receivership Law  
32 ~~Article-XXX~~ and the receiver appointed under that Order  
33 determines that the managing general agent or any other  
34 person has not materially complied with this Section or any

1 regulation or Order promulgated hereunder and the insurer  
2 suffered any loss or damage therefrom, the receiver may  
3 maintain a civil action for recovery of damages or other  
4 appropriate sanctions for the benefit of the insurer.

5 Any decision, determination, or order of the Director  
6 under this subsection shall be subject to judicial review  
7 under the Administrative Review Law.

8 Nothing contained in this subsection shall affect the  
9 right of the Director to impose any other penalties provided  
10 for in this Code.

11 Nothing contained in this subsection is intended to or  
12 shall in any manner limit or restrict the rights of  
13 policyholders, claimants, and auditors.

14 (j) A domestic company shall not during any calendar  
15 year write, through a managing general agent or managing  
16 general agents, premiums in an amount equal to or greater  
17 than its capital and surplus as of the preceding December  
18 31st unless the domestic company requests in writing the  
19 Director's permission to do so and the Director has either  
20 approved the request or has not disapproved the request  
21 within 45 days after the Director received the request.

22 No domestic company with less than \$5,000,000 of capital  
23 and surplus may write any business through a managing general  
24 agent unless the domestic company requests in writing the  
25 Director's permission to do so and the Director has either  
26 approved the request or has not disapproved the request  
27 within 45 days after the Director received the request.

28 (Source: P.A. 88-364; 89-97, eff. 7-7-95.)

29 (215 ILCS 5/147.3)

30 Sec. 147.3. Issuance of capital notes by domestic  
31 companies.

32 (a) A domestic company may at any time or from time to  
33 time issue capital notes pursuant to this Section in an

1 aggregate principal amount not exceeding (1) 25% of its total  
2 adjusted capital (including the aggregate principal amount of  
3 outstanding capital notes and outstanding surplus notes or  
4 guaranty fund certificates and guaranty capital shares) as of  
5 the end of the immediately preceding calendar year less (2)  
6 the aggregate principal amount of outstanding capital notes  
7 and outstanding surplus notes or guaranty fund certificates  
8 and guaranty capital shares; provided, however, that capital  
9 notes shall not be issued for an aggregate principal amount  
10 that would cause the aggregate principal amount for all of  
11 the insurer's capital notes scheduled to mature in any  
12 calendar year to exceed 5%, or the aggregate principal amount  
13 of all of the insurer's capital notes scheduled to mature in  
14 any 3 consecutive calendar years to exceed 12%, of the  
15 insurer's total adjusted capital as of the end of the  
16 calendar year immediately preceding the issuance of the  
17 capital notes. The aggregate amount of capital notes and  
18 surplus notes or guaranty fund certificates and guaranty  
19 capital shares is at all times limited to 33 1/3% of total  
20 adjusted capital. Any aggregate amount in excess of this  
21 limit shall reduce the amount of capital notes included in  
22 the insurer's total adjusted capital.

23 (b) No insurer shall issue capital notes pursuant to  
24 this Section unless the form and terms thereof shall have  
25 been approved by the Director. The term of any capital note  
26 shall be no less than 5 years.

27 (c) An insurer with a capital note outstanding shall  
28 file a report with the Director at the same time that the  
29 insurer files its Annual Statement and at such other times as  
30 the Director determines necessary. The Director may by rule  
31 establish times for and the content of these reports.

32 (d) The insurer shall not pay or redeem the principal  
33 amount of any capital notes, make any sinking fund payment,  
34 or pay any interest on the notes, and the principal, payment,

1 and interest shall not become due or payable if, based on the  
2 preceding year-end annual statement filed with the Director:

3 (1)(A) The insurer's total adjusted capital is less  
4 than the insurer's company action level RBC or (B) the  
5 insurer's total adjusted capital is less than the product  
6 of 1.25 and its company action level RBC and there is a  
7 negative trend, as determined in accordance with the  
8 Article IIA of this Code; or

9 (2) the aggregate of all payments or redemptions  
10 made during a calendar year would, if made immediately  
11 prior to the preceding year-end, have caused (A) the  
12 insurer's total adjusted capital to be less than the  
13 insurer's company action level RBC or (B) the insurer's  
14 total adjusted capital at such time to be less than the  
15 product of 1.25 and its company action level RBC and  
16 there is a negative trend, as determined in accordance  
17 with Article IIA of this Code.

18 Notwithstanding items (1) and (2), upon request by the  
19 insurer, the Director may approve, in whole or in part, any  
20 payment or redemption on the capital notes if and at such  
21 time or times as in his or her judgment the financial  
22 condition of the insurer warrants. The amount of the  
23 redemptions or payments of principal amounts of any capital  
24 notes that cannot be made as the result of the provisions of  
25 this subsection may accumulate at the rate of interest of the  
26 capital notes.

27 (e) Capital notes issued pursuant to this Section:

28 (1) may provide (A) for interest payments at fixed  
29 or adjustable rates, sinking fund payments, and payments  
30 and redemptions of principal, in each case in accordance  
31 with the terms of the capital note and without the prior  
32 approval of the Director except to the extent that such  
33 approval is required pursuant to this subsection or  
34 subsection (d) of this Section, (B) that the capital

1 notes automatically become due and payable in the event  
2 the insurer becomes subject to an order of  
3 rehabilitation, liquidation, or conservation granted  
4 pursuant to a proceeding under the Interstate Compact  
5 Uniform Receivership Law Article-XIII-of-this-Code, and  
6 (C) for such other features as the Director determines  
7 are appropriate for capital notes issued according to  
8 this Section; and

9 (2) shall provide that if at the end of any  
10 calendar year the total amount of the insurer's total  
11 adjusted capital (including the aggregate principal  
12 amount of outstanding capital notes and outstanding  
13 surplus notes or guaranty fund certificates and guaranty  
14 capital shares) is less than 3 times the aggregate  
15 principal amount of capital notes outstanding and surplus  
16 notes or guaranty fund certificates and guaranty capital  
17 shares, the Director may notify the insurer that the  
18 financial condition of the insurer does not warrant the  
19 payment or redemption or sinking fund payment, in whole  
20 or in part, on the capital notes. Such action by the  
21 Director shall, without any action on the part of the  
22 insurer or any other person, automatically defer payment  
23 or redemption until such time as the Director finds that  
24 the financial condition warrants payment or redemption.  
25 The amount of redemptions or payments of principal  
26 amounts of any capital notes so deferred may accumulate  
27 at the rate of interest of the capital notes.

28 (f) The outstanding principal of a capital note issued  
29 pursuant to this Section shall be considered part of the  
30 insurer's total adjusted capital, but shall not be considered  
31 part of the insurer's surplus; provided, however, (1) that,  
32 in the case of any capital note maturing 15 years or less  
33 from the year in which the capital note is issued, one-fifth  
34 of the aggregate principal amount of the capital note shall

1 be subtracted from total adjusted capital in each year  
2 starting with the fifth year immediately preceding the  
3 calendar year in which the capital note is scheduled to  
4 mature; and (2) that, in the case of any capital note  
5 maturing more than 15 years from the year in which the  
6 capital note is issued, one-tenth of the aggregate principal  
7 amount of the capital note shall be subtracted from total  
8 adjusted capital in each year starting with the tenth year  
9 immediately preceding the calendar year in which the capital  
10 note is scheduled to mature, and further provided that, in no  
11 event shall the amount included in total adjusted capital for  
12 any capital note exceed the principal amount, at issue, of  
13 the outstanding capital note less the aggregate of all  
14 sinking fund payments made on the capital note. The insurer  
15 shall disclose the aggregate principal amount of capital  
16 notes then outstanding as a liability on its financial  
17 statements filed with the Director pursuant to this Code.

18 (g) As used in this Section, the terms "total adjusted  
19 capital", "company action level RBC", and "authorized control  
20 level RBC" shall have the meanings given those terms in  
21 Article IIA of this Code.

22 (Source: P.A. 90-831, eff. 8-14-97.)

23 (215 ILCS 5/186.1) (from Ch. 73, par. 798.1)

24 Sec. 186.1. Supervision by the Director.

25 (1) If the Director determines that any domestic  
26 insurance company is operating in a manner, that could lead  
27 to, or is in, a financial condition, which if continued would  
28 make it hazardous to the public, and its policyholders, the  
29 Director may issue an order:

30 (a) notifying the company and its Board of Directors of  
31 his determination and setting forth the specific deficiencies  
32 leading to the determination;

33 (b) setting forth the specific action required or



1 prohibited to correct the cited deficiencies; and

2 (c) ordering the company to comply with the Director's  
3 order within such reasonable time as the Director shall  
4 prescribe.

5 (2) Operation or financial condition deficiencies  
6 supporting the Director's determination under subsection (1)  
7 may include, but are not limited to, the following:

8 (a) The company has failed to maintain a relationship of  
9 policyholder surplus to premium writings or policyholder  
10 surplus to claim and unearned premium reserves which provides  
11 a reasonable margin of safety for the policyholders  
12 considering the classes of insurance the company is writing.

13 (b) The company's asset liquidity is not adequate to  
14 provide orderly payment of its obligations.

15 (c) The company's current or projected net income is  
16 inadequate to meet its present or projected obligations.

17 (d) The company has a history of claim reserve  
18 inadequacy which affects the reliability of its financial  
19 statements.

20 (e) The company has failed to maintain adequate books  
21 and records or has otherwise conducted its insurance  
22 operation in a manner which impairs the Director's ability to  
23 determine its true financial condition.

24 (3) If a company fails to comply with the Director's  
25 order issued pursuant to subsection (1) within the time  
26 prescribed for such compliance the Director may institute  
27 proceedings for the conservation, rehabilitation or  
28 liquidation of the company under the Interstate Compact  
29 Uniform Receivership Law Article XIII of this Code.

30 (4)(a) The Director may require that the company prepare  
31 and file a plan to correct the deficiencies cited by the  
32 Director in his order within such time as the Director may  
33 prescribe. A corrective order may require, prohibit or  
34 permit certain acts subject to conditions including the

1 Director's prior approval. The scope of a corrective order  
2 may relate to but shall not be limited to:

- 3 (i) the disposition, recovery or mix of assets;
- 4 (ii) the assumption or cession of reinsurance, including  
5 reinsurance of outstanding risks;
- 6 (iii) lending and borrowing;
- 7 (iv) investments;
- 8 (v) restricting underwriting and marketing activities.

9 (b) The Director may require that any company under such  
10 corrective order direct any certified public accountants,  
11 consulting actuary or financial consultant retained by the  
12 company to prepare for the Director such reports, accounting  
13 data and such other reports as the Director may reasonably  
14 require to assist in carrying out the responsibilities of the  
15 Director under this Section.

16 (5)(a) Any company subject to an order under subsections  
17 (1) or (4) may request a hearing before the Director to  
18 review that order. Such request shall be made in writing  
19 within 10 days of the receipt of such order, shall state the  
20 company's objections to the order, and shall be addressed to  
21 the Director. Such hearing shall be convened not less than  
22 10 days nor more than 20 days after receipt of the written  
23 request for hearing unless otherwise agreed to by the  
24 company. The Director shall make a final determination  
25 within 10 days after the conclusion of the hearing. The  
26 Director shall hold all hearings under this subsection  
27 privately in accordance with subsection (6) of this Section.  
28 The pendency of a hearing or pendency of the Director's final  
29 determination shall not stay the effect of the Director's  
30 order.

31 (b) After the Director's final determination pursuant to  
32 any hearing under this subsection, any party to the  
33 proceedings whose interests are affected by the Director's  
34 final determination shall be entitled to judicial review of

1 such final determination pursuant to the provisions of the  
2 "Administrative Review Law".

3 Notwithstanding the availability of administrative  
4 remedies or judicial review under the "Administrative Review  
5 Law", a company which is subject to an order of the Director  
6 under this Section shall be entitled to immediate judicial  
7 review and injunctive relief in the Circuit Court of Cook  
8 County or the Circuit Court of Sangamon County upon  
9 satisfying the court:

10 (i) that accepting the facts set forth in the order as  
11 true, the order is arbitrary or capricious;

12 (ii) that the company's interests are substantially  
13 impaired by the order; and

14 (iii) that the company will suffer permanent injury in  
15 the absence of immediate injunctive relief.

16 (6) All administrative and judicial proceedings arising  
17 under this Article shall be held privately unless a public  
18 hearing is requested by the company, and all records of the  
19 company, and all records of the Department concerning the  
20 company, so far as they pertain to or are a part of the  
21 record of the proceedings, shall be and remain confidential,  
22 unless the company requests otherwise. Such records shall  
23 not be subject to public disclosure under "the Illinois  
24 Freedom of Information Act", ~~as certified December 27, 1983,~~ as  
25 amended, or otherwise, nor shall such records be subject to  
26 subpoena by third parties, unless the company and Director  
27 consent to such disclosure or release under subpoena.

28 (7) The powers vested in the Director by this Section  
29 are additional to any and all other powers and remedies  
30 vested in the Director by law, and nothing herein contained  
31 shall prohibit the Director from proceeding under any other  
32 applicable law or under this Section in conjunction with any  
33 other law.

34 (Source: P.A. 84-715.)

1 (215 ILCS 5/232) (from Ch. 73, par. 844)

2 Sec. 232. Extension of time and modification of standard  
3 provisions.

4 (1) Any company authorized to transact business in this  
5 State on the effective date of this Code may continue to  
6 issue policies and contracts of the kind or kinds it was  
7 permitted to issue immediately prior to such effective date,  
8 until December 31, 1937.

9 (2) Policies and contracts may be issued and delivered  
10 in this State which contain provisions more favorable to the  
11 holders of such policies or contracts than the standard  
12 provisions required by this Article. No domestic company and  
13 holder of a policy or contract shall after the effective date  
14 of this Code enter into any agreement to waive or modify in  
15 whole or in part a standard provision required by this Code  
16 or any prior law of this State, for the benefit of such  
17 holder, unless the agreement be approved by a court in a  
18 proceeding under the Interstate Compact Uniform Receivership  
19 Law Article-XIII.

20 (Source: Laws 1937, p. 696.)

21 (215 ILCS 5/251) (from Ch. 73, par. 863)

22 Sec. 251. Record of securities; deficit; when insolvent.  
23 The Director shall keep a record of the securities deposited  
24 by each company and when furnishing the annual certificate of  
25 valuation mentioned in section 249, he shall enter thereon  
26 the amount and market value of such securities deposited by  
27 such company. If at any time it shall appear from such  
28 certificate or otherwise that the value of the securities  
29 held on deposit is less than the reserve value of the  
30 registered policies theretofore issued by such company, less  
31 such liens (not exceeding such reserve value) as the company  
32 may have against them, and the company shall fail or neglect  
33 to make good such deposit within sixty days, after written

1 notice by the Director, it shall be deemed to be insolvent  
2 and shall be proceeded against in the manner provided in the  
3 Interstate Compact Uniform Receivership Law Article-XIII.

4 (Source: Laws 1937, p. 696.)

5 (215 ILCS 5/310.1) (from Ch. 73, par. 922.1)

6 Sec. 310.1. Suspension, revocation or refusal to renew  
7 certificate of authority.

8 (a) Domestic societies. When, upon investigation, the  
9 Director is satisfied that any domestic society transacting  
10 business under this amendatory Act has exceeded its powers or  
11 has failed to comply with any provisions of this amendatory  
12 Act or is conducting business fraudulently or in a way  
13 hazardous to its members, creditors or the public or is not  
14 carrying out its contracts in good faith, the Director shall  
15 notify the society of his or her findings, stating in writing  
16 the grounds of his or her dissatisfaction, and, after  
17 reasonable notice, require the society on a date named to  
18 show cause why its certificate of authority should not be  
19 revoked or suspended or why such society should not be fined  
20 as hereinafter provided or why the Director should not  
21 proceed against the society under the Interstate Compact  
22 Uniform Receivership Law Article-XIII-of-this-Code. If, on  
23 the date named in said notice, such objections have not been  
24 removed to the satisfaction of the Director or if the society  
25 does not present good and sufficient reasons why its  
26 authority to transact business in this State should not at  
27 that time be revoked or suspended or why such society should  
28 not be fined as hereinafter provided, the Director may  
29 revoke the authority of the society to continue business in  
30 this State and proceed against the society under the  
31 Interstate Compact Uniform Receivership Law Article-XIII-of  
32 this-Code or suspend such certificate of authority for any  
33 period of time up to, but not to exceed, 2 years; or may by

1 order require such society to pay to the people of the State  
2 of Illinois a penalty in a sum not exceeding \$5,000, and,  
3 upon the failure of such society to pay such penalty within  
4 20 days after the mailing of such order, postage prepaid,  
5 registered and addressed to the last known place of business  
6 of such society, unless such order is stayed by an order of a  
7 court of competent jurisdiction, the Director may revoke or  
8 suspend the license of such society for any period of time  
9 up to, but not exceeding, a period of 2 years.

10 (b) Foreign or alien societies. The Director shall  
11 suspend, revoke or refuse to renew certificates of authority  
12 in accordance with Article VI of this Code.

13 (Source: P.A. 84-303.)

14 (215 ILCS 5/311.1) (from Ch. 73, par. 923.1)

15 Sec. 311.1. Injunction proceedings.

16 (a) Upon the refusal or neglect of any society to make  
17 the annual report, as provided in this amendatory Act, or in  
18 case any such society shall exceed its powers or shall  
19 conduct its business fraudulently or is not carrying out its  
20 contracts in good faith or shall be 30 days in arrears in the  
21 payment of death or disability claims, endowments or  
22 annuities after the same have been allowed by the board of  
23 directors or other person or persons whose duty it is to pass  
24 upon such claims and after establishment of the interest and  
25 competency of the payee to receive, receipt and acquit for  
26 payment, provided that such claim shall be approved or  
27 disapproved within 60 days after receipt of due proof of loss  
28 or death or, after one year's existence, shall have a  
29 membership of less than 500 or shall determine to discontinue  
30 business or shall fail to comply with any of the provisions  
31 of this amendatory Act, the Director shall immediately  
32 commence, or cause to be commenced, an action against such  
33 society under the Interstate Compact Uniform Receivership Law

1 ~~Article XIII of this Code~~ and to enjoin the same from  
2 carrying on any business, and an injunction may be granted,  
3 upon proper showing by the Director, in any circuit court in  
4 this State; provided, however, that no injunction against any  
5 society within this State or application for or appointment  
6 of a receiver or action to prevent any society from carrying  
7 on business in this State shall be made or granted by any  
8 court except on the application of the Director and after  
9 written notice duly made and served upon the chief executive  
10 officer of such society within this State, or, if  
11 incorporated under the laws of another state, then such  
12 notice may be served by sending the same to the president or  
13 secretary of the society by registered mail at the home  
14 office of the society, and a full hearing before such court,  
15 whether the party seeking such relief be the State, member of  
16 such society or any other person whatsoever.

17 (b) If the court shall find that such society so  
18 enjoined was in default as charged and the violation  
19 complained of shall have been corrected and the injunction  
20 dissolved, the society may continue in business provided it  
21 shall have satisfied the Director that it has paid the costs  
22 of the action. Any officer, agent or person acting for any  
23 society or subordinate body thereof within this State and who  
24 shall transact any business for such society contrary to the  
25 provisions of such injunction or prohibition while such  
26 society shall be so enjoined or prohibited from doing  
27 business pursuant to this amendatory Act shall be deemed  
28 guilty of a Class A misdemeanor.

29 (Source: P.A. 84-303.)

30 (215 ILCS 5/324) (from Ch. 73, par. 936)

31 Sec. 324. Membership. Every mutual benefit association  
32 shall have and maintain a membership of at least 500 five  
33 hundred members. If any association shall not have collected

1 any one assessment levied pursuant to this Article from at  
2 least 500 five--hundred members, after the levy of such  
3 assessment, it shall be subject to liquidation and the  
4 Director may proceed against such association under the  
5 Interstate Compact Uniform Receivership Law Article-XIII.  
6 (Source: Laws 1937, p. 696.)

7 (215 ILCS 5/327) (from Ch. 73, par. 939)  
8 Sec. 327. Benefit fund.

9 (1) Every association shall maintain a benefit fund  
10 which shall be used solely for the payment of claims of  
11 members and no part thereof shall be used for defraying the  
12 expenses of the association. Such fund, any portion of which  
13 may be deposited with the Director, may be held in cash or  
14 invested in securities of the United States Government or of  
15 the State of Illinois, and not otherwise. All moneys or other  
16 assets of the benefit account, as defined in the Act  
17 mentioned in Section 316, of any association shall upon the  
18 effective date of this Code be deemed transferred to and  
19 become a part of its benefit fund. The minimum amount of such  
20 benefit fund at all times after one year from the effective  
21 date of this Code shall be \$1,000, plus the sum of \$200 for  
22 each 100 members in excess of 500. If the benefit fund of any  
23 association at any time after one year from the effective  
24 date of this Code shall be less than the minimum amount  
25 required by this section and is not increased to such minimum  
26 within 90 days, the association shall be deemed insolvent and  
27 the Director shall proceed against it under the Interstate  
28 Compact Uniform Receivership Law Article-XIII.

29 (2) Whenever the association shall have been notified of  
30 any loss under its certificate of membership, which exceeds  
31 in amount the benefit fund of the association, the president  
32 shall convene the directors of the association who shall levy  
33 an assessment against all members for an amount sufficient to



1 pay all such losses of the association at the time said  
 2 assessment is made and for an amount in excess thereof  
 3 sufficient to maintain the minimum amount of the benefit fund  
 4 as provided in this section. Assessments provided for in this  
 5 section shall be distributed equally against all members of  
 6 the association except for children under 16 years of age.  
 7 The board of directors shall assess each such child an amount  
 8 not to exceed one half of the amount levied against each  
 9 other member.

10 (3) In order to provide for an unexpected number of  
 11 deaths, an association shall have the right to levy  
 12 additional assessments whenever in the discretion of the  
 13 board of directors the same shall be deemed advisable except  
 14 that no assessment may be levied if the amount in the benefit  
 15 fund exceeds, or if such assessment will increase the amount  
 16 of the benefit fund in excess of a sum equal to \$25 per  
 17 member in good standing. The entire proceeds of all such  
 18 additional assessments shall be placed in the benefit fund.

19 (Source: Laws 1957, p. 68.)

20 (215 ILCS 5/331) (from Ch. 73, par. 943)

21 Sec. 331. Payment of claims. All claims filed with the  
 22 association shall be approved or disapproved within 60 ~~sixty~~  
 23 days after receipt of due proof of death or disability and if  
 24 approved, shall be paid within 60 ~~sixty~~ days after such  
 25 approval. If a claim is disapproved, the association shall  
 26 forthwith notify the beneficiary or person filing the proof  
 27 of death or disability of the reasons for such disapproval.  
 28 The Director shall proceed under the Interstate Compact  
 29 Uniform Receivership Law Article--XIII to liquidate any  
 30 association which shall conduct its business fraudulently, or  
 31 is not carrying out its contracts in good faith, or shall be  
 32 60 ~~sixty~~ days or more in arrears in payment of claims after  
 33 the same have been allowed by the board of directors, or has

1 violated any of the provisions of this Article.

2 (Source: Laws 1937, p. 696.)

3 (215 ILCS 5/345) (from Ch. 73, par. 957)

4 Sec. 345. Society and directors or officers may not  
5 advertise funeral supplies. No burial society nor any  
6 officer, director or agent of any burial society shall offer  
7 or make any oral or written agreement to furnish, or shall  
8 distribute or cause to be distributed any literature or  
9 advertising of any kind whatsoever which offers or purports  
10 to offer, funeral supplies of any kind in lieu of the cash  
11 payment upon the death of a member. Upon any violation of  
12 this Section by any society, or officer, director or agent  
13 thereof, the Director shall proceed to liquidate such society  
14 in accordance with the provisions of the Interstate Compact  
15 Uniform Receivership Law Article-XIII.

16 (Source: Laws 1937, p. 689.)

17 (215 ILCS 5/347) (from Ch. 73, par. 959)

18 Sec. 347. Failure to maintain deposit; Payment of claims.  
19 All claims filed with a society shall be approved or  
20 disapproved within 60 sixty days after receipt of due proof  
21 of death and, if approved, shall be paid within 30 thirty  
22 days after such approval. The Director shall proceed under  
23 the Interstate Compact Uniform Receivership Law Article-XIII  
24 to liquidate any society which shall fail to maintain the  
25 deposit required by this Article, or shall conduct its  
26 business fraudulently, or is not carrying out its contracts  
27 in good faith, or shall be thirty days or more in arrears in  
28 payment of death claims after the same have been allowed by  
29 the board of directors, or has violated any of the provisions  
30 of this Article.

31 (Source: Laws 1937, p. 696.)

1 (215 ILCS 5/451) (from Ch. 73, par. 1063)

2 Sec. 451. Companies not subject to Code. This Code shall  
3 not apply to companies now or hereafter organized or  
4 transacting business under an Act entitled "An Act to provide  
5 for and regulate the business of guaranteeing titles to real  
6 estate by corporations," approved May 13, 1901, or Act  
7 amendatory thereof or supplementary thereto; nor to  
8 corporations now or hereafter organized and transacting  
9 business under "An Act to provide for the incorporation and  
10 regulation of nonprofit hospital service corporations"  
11 approved July 6, 1935, or act amendatory thereof or  
12 supplementary thereto; nor shall any part of this Code other  
13 than Articles X, XI, XIII, and XXIV apply to companies now or  
14 hereafter organized or transacting business under an Act  
15 entitled, "An Act relating to local mutual district, county  
16 and township insurance companies," approved March 13, 1936,  
17 or Act amendatory thereof or supplementary thereto, however,  
18 such companies are subject to the Interstate Compact Uniform  
19 Receivership Law. No domestic company shall be organized  
20 under this Code, nor shall any foreign or alien company  
21 receive a certificate of authority under this Code, to  
22 transact the business of guaranteeing or insuring titles to  
23 real estate.

24 (Source: Laws 1937, p. 696.)

25 (215 ILCS 5/545) (from Ch. 73, par. 1065.95)

26 Sec. 545. Effect of paid claims.

27 (a) Every insured or claimant seeking the protection of  
28 this Article shall cooperate with the Fund to the same extent  
29 as such person would have been required to cooperate with the  
30 insolvent company. The Fund shall have all the rights, duties  
31 and obligations under the policy to the extent of the covered  
32 claim payment, provided the Fund shall have no cause of  
33 action against the insured of the insolvent company for any

1 sums it has paid out except such causes of action as the  
2 insolvent company would have had if such sums had been paid  
3 by the insolvent company and except as provided in paragraph  
4 (d) of this Section.

5 (b) The Fund and any similar organization in another  
6 state shall be recognized as claimants in the liquidation of  
7 an insolvent company for any amounts paid by them on covered  
8 claims obligations as determined under this Article or  
9 similar laws in other states and shall receive dividends at  
10 the priority set forth in the Interstate Compact Uniform  
11 Receivership Law ~~paragraph-(d)-of-subsection-(1)-of-Section~~  
12 ~~205-of-this-Code~~. The liquidator of an insolvent company  
13 shall be bound by determinations of covered claim eligibility  
14 under the Act and by settlements of claims made by the Fund  
15 or a similar organization in another state on the receipt of  
16 certification of such payments, to the extent those  
17 determinations or settlements satisfy obligations of the  
18 Fund, but the receiver shall not be bound in any way by those  
19 determinations or settlements to the extent that there  
20 remains a claim in the estate for amounts in excess of the  
21 payments by the Fund. In submitting their claim for covered  
22 claim payments, the Fund and any similar organization in  
23 another state shall not be subject to the requirements of the  
24 Interstate Compact Uniform Receivership Law ~~Sections-208--and~~  
25 ~~209--of-this-Code~~ and shall not be affected by the failure of  
26 the person receiving a covered claim payment to file a proof  
27 of claim.

28 (c) The expenses of the Fund and of any similar  
29 organization in any other state, other than expenses incurred  
30 in the performance of duties under Section 547 or similar  
31 duties under the statute governing a similar organization in  
32 another state, shall be accorded the same priority as the  
33 liquidator's expenses. The liquidator shall make prompt  
34 reimbursement to the Fund and any similar organization for

1 such expense payments.

2 (d) The Fund has the right to recover from the following  
3 persons the amount of any covered claims and allocated claims  
4 expenses which the Fund paid or incurred on behalf of such  
5 person in satisfaction, in whole or in part, of liability  
6 obligations of such person to any other person:

7 (i) any insured whose net worth on December 31 of  
8 the year next preceding the date the company becomes an  
9 insolvent company exceeds \$25,000,000; provided that an  
10 insured's net worth on such date shall be deemed to  
11 include the aggregate net worth of the insured and all of  
12 its affiliates as calculated on a consolidated basis.

13 (ii) any insured who is an affiliate of the  
14 insolvent company.

15 (Source: P.A. 89-206, eff. 7-21-95; 90-499, eff. 8-19-97.)

16 (215 ILCS 5/552) (from Ch. 73, par. 1065.102)

17 Sec. 552. All provisions of this Article shall be  
18 interpreted in accordance with and pursuant to those Sections  
19 of the Interstate Compact Uniform Receivership Law Article  
20 ~~XIII-of-this-Code~~ which may be applicable.

21 (Source: P.A. 85-576.)

22 (215 ILCS 5/1108) (from Ch. 73, par. 1065.808)

23 Sec. 1108. Trust; filing requirements; records.

24 (1) Any risk retention trust created under this Article  
25 shall file with the Director:

26 (a) A statement of intent to provide named  
27 coverages.

28 (b) The trust agreement between the trust sponsor  
29 and the trustees, detailing the organization and  
30 administration of the trust and fiduciary  
31 responsibilities.

32 (c) Signed risk pooling agreements from each trust

1 member describing their intent to participate in the  
2 trust and maintain the contingency reserve fund.

3 (d) By April 1 of each year a financial statement  
4 for the preceding calendar year ending December 31, and a  
5 list of all beneficiaries during the year. The financial  
6 statement and report shall be in such form as the  
7 Director of Insurance may prescribe. The truth and  
8 accuracy of the financial statement shall be attested to  
9 by each trustee. Each Risk Retention Trust shall file  
10 with the Director by June 1 an opinion of an independent  
11 certified public accountant on the financial condition of  
12 the Risk Retention Trust for the most recent calendar  
13 year and the results of its operations, changes in  
14 financial position and changes in capital and surplus for  
15 the year then ended in conformity with accounting  
16 practices permitted or prescribed by the Illinois  
17 Department of Insurance.

18 (e) The name of a bank or trust company with whom  
19 the trust will enter into an escrow agreement which shall  
20 state that the contingency reserve fund will be  
21 maintained at the levels prescribed in this Article.

22 (f) Copies of coverage grants it will issue.

23 (2) The Director of Insurance shall charge, collect and  
24 give proper acquittances for the payment of the following  
25 fees and charges:

26 (a) For filing trust instruments, amendments  
27 thereto and financial statement and report of the  
28 trustees, \$25.

29 (b) For copies of papers or records per page, \$1.

30 (c) For certificate to copy of paper, \$5.

31 (d) For filing an application for the licensing of  
32 a risk retention trust, \$500.

33 (3) The trust shall keep its books and records in  
34 accordance with the provisions of Section 133 of this Code.

1 The Director may examine such books and records from time to  
2 time as provided in Sections 132 through 132.7 of this Code  
3 and may charge the expense of such examination to the trust  
4 as provided in subsection (3) of Section 408 of this Code.

5 (4) Trust funds established under this Section and all  
6 persons interest therein or dealing therewith shall be  
7 subject to the provisions of Sections 133, 144.1, 149, 401,  
8 401.1, 402, 403, 403A, 412, and all of the provisions of  
9 Articles VII, VIII, and XII 1/2 and-XIII of this the Code and  
10 the Interstate Compact Uniform Receivership Law,~~as--~~amended.  
11 Except as otherwise provided in this Section, trust funds  
12 established under and which fully comply with this Section,  
13 shall not be subjected to any other provision of the Code.

14 (5) The Director of Insurance may make reasonable rules  
15 and regulations pertaining to the standards of coverage and  
16 administration of the trust authorized by this Section. Such  
17 rules may include but need not be limited to reasonable  
18 standards for fiduciary duties of the trustees, standards for  
19 the investment of funds, limitation of risks assumed, minimum  
20 size, capital, surplus, reserves, and contingency reserves.  
21 (Source: P.A. 89-97, eff. 7-7-95.)

22 (215 ILCS 5/Art. XIII rep.)

23 (215 ILCS 5/Art. XIII 1/2 rep.)

24 Section 1202. The Illinois Insurance Code is amended by  
25 repealing Articles XIII and XIII 1/2.

26 Section 1203. The Reinsurance Intermediary Act is  
27 amended by changing Section 55 as follows:

28 (215 ILCS 100/55) (from Ch. 73, par. 1655)

29 Sec. 55. Penalties and liabilities.

30 (a) If the Director determines that a reinsurance

1 intermediary has not materially complied with this Act or any  
2 regulation or Order promulgated hereunder, after notice and  
3 opportunity to be heard, the Director may order a penalty in  
4 an amount not exceeding \$50,000 for each separate violation  
5 and may order the revocation or suspension of the reinsurance  
6 intermediary's license. If it is found that because of the  
7 material noncompliance the insurer or reinsurer has suffered  
8 any loss or damage, the Director may maintain a civil action  
9 brought by or on behalf of the reinsurer or insurer and its  
10 policyholders and creditors for recovery of compensatory  
11 damages for the benefit of the reinsurer or insurer and its  
12 policyholders and creditors or seek other appropriate relief.  
13 This subsection (a) shall not be construed to prevent any  
14 other person from taking civil action against a reinsurance  
15 intermediary.

16 (b) If an Order of Rehabilitation or Liquidation of the  
17 insurer is entered under the Interstate Compact Uniform  
18 Receivership Law Article XIII of the Illinois Insurance Code  
19 and the receiver appointed under that Order determines that  
20 the reinsurance intermediary or any other person has not  
21 materially complied with this Act or any regulation or Order  
22 promulgated hereunder and the insurer has suffered any loss  
23 or damage therefrom, the receiver may maintain a civil action  
24 for recovery of damages or other appropriate sanctions for  
25 the benefit of the insurer.

26 (c) The decision, determination, or order of the  
27 Director under subsection (a) of this Section shall be  
28 subject to judicial review under the Administrative Review  
29 Law.

30 (d) Nothing contained in this Act shall affect the right  
31 of the Director to impose any other penalties provided in the  
32 Illinois Insurance Code.

33 (e) Nothing contained in this Act is intended to or  
34 shall in any manner limit or restrict the rights of



1 policyholders, claimants, creditors, or other third parties  
2 or confer any rights to those persons.

3 (Source: P.A. 87-108; 88-364.)

4 Section 1204. The Producer Controlled Insurer Act is  
5 amended by changing Section 25 as follows:

6 (215 ILCS 107/25)

7 Sec. 25. Penalties.

8 (a) If the Director believes that the controlling  
9 producer or any other person has not materially complied with  
10 this Act or any regulation or order promulgated hereunder,  
11 after notice and opportunity to be heard, the Director may  
12 order the controlling producer to cease placing business with  
13 the controlled insurer. If it is found that the controlled  
14 insurer or any policyholder thereof has suffered any loss or  
15 damage because of the material noncompliance, the Director  
16 may maintain a civil action or intervene in an action brought  
17 by or on behalf of the insurer or policyholder for recovery  
18 of compensatory damages or other appropriate relief. This  
19 subsection (a) shall not be construed to prevent any other  
20 person from taking civil action against a controlling  
21 producer.

22 (b) If an order for liquidation or rehabilitation of the  
23 controlled insurer has been entered under the Interstate  
24 Compact Uniform Receivership Law Article XIII of the Illinois  
25 Insurance Code and the receiver appointed under that order  
26 believes that the controlling producer or any other person  
27 has not materially complied with this Act or any regulation  
28 or order promulgated hereunder and the insurer suffered any  
29 loss or damage as a result, the receiver may maintain a civil  
30 action for recovery of damages or other appropriate sanctions  
31 for the benefit of the insurer.

32 (c) Nothing in this Section shall affect the right of

1 the Director to impose any other penalties authorized under  
2 the Illinois Insurance Code.

3 (d) Nothing in this Section is intended to, or shall in  
4 any manner, alter or affect the rights of policyholder,  
5 claimants, creditors, or other third parties.

6 (Source: P.A. 87-1090; 88-364.)

7 Section 1205. The Dental Service Plan Act is amended by  
8 changing Section 38 as follows:

9 (215 ILCS 110/38) (from Ch. 32, par. 690.38)

10 Sec. 38. To the extent that the same are applicable and  
11 not inconsistent with the provisions of this Act, all  
12 proceedings for the rehabilitation, liquidation, conservation  
13 or dissolution of dental service plan corporations shall be  
14 subject to the provisions of the Interstate Compact Uniform  
15 Receivership Law Article XIII of the "Illinois Insurance  
16 Code", approved June 29, 1937, as amended.

17 (Source: Laws 1965, p. 2179.)

18 Section 1206. The Farm Mutual Insurance Company Act of  
19 1986 is amended by changing Sections 10 and 14 as follows:

20 (215 ILCS 120/10) (from Ch. 73, par. 1260)

21 Sec. 10. Property insurable; limitations of risk.

22 (1) Farm mutual insurance companies are permitted to  
23 insure the following classes of property:

24 (a) Farm property, including residences and other  
25 farm buildings and all classes of personal property in  
26 connection therewith, other than motor vehicles required  
27 to be licensed for road use, including such property  
28 temporarily located elsewhere;

29 (b) Growing crops;

30 (c) Buildings and personal property used in the

1 processing of agricultural products in conjunction with a  
2 farming operation;

3 (d) Residences, including household and personal  
4 effects, and including such property temporarily located  
5 elsewhere;

6 (e) Churches, schools and community buildings and  
7 such property as may be properly contained therein.

8 No farm mutual insurance company may insure any property  
9 within the limits of any city containing over 50,000  
10 inhabitants at the time of the organization of the company.

11 (2) No farm mutual insurance company authorized to write  
12 the kinds of insurance enumerated in Section 5 of this Act  
13 may expose itself to any loss on any one risk in an amount in  
14 excess of \$20,000 plus 10% of its policyholders' surplus in  
15 excess of \$20,000.

16 A farm mutual insurance company insuring against the  
17 perils of wind or hail must have and maintain catastrophic  
18 reinsurance which limits the company's exposure on any one  
19 loss occurrence to 20% of its policyholders' surplus.

20 No portion of any such risk which has been reinsured with  
21 a farm mutual insurance company or an insurance company  
22 authorized to write the kinds of insurance described in Class  
23 2 or Class 3 of Section 4 of the Illinois Insurance Code  
24 shall be included in determining the limitation of risk  
25 described herein.

26 For purposes of this Section:

27 A single risk shall be all real and personal property in  
28 one fixed location and not separated by 50 feet.

29 As regards the peril of wind or hail, the term "loss  
30 occurrence" shall mean all losses occasioned by tornadoes,  
31 cyclones, windstorms, hurricanes, or hail stones arising from  
32 the same atmospheric disturbance and occurring during any  
33 continuous period of not less than 48 hours.

34 (3) Whenever the company's financial condition is such

1 that the further assumption of risks might be hazardous to  
2 policyholders, the Director of Insurance may order the  
3 company to take one or more of the following steps:

4 (a) To reduce the loss exposure by reinsurance;

5 (b) To reduce the volume of business being written  
6 or renewed;

7 (c) To suspend the writing of new business;

8 (d) To suspend the writing of both new and renewal  
9 business;

10 (e) To levy a special assessment of policyholders;

11 (f) To reduce general or acquisition expenses by  
12 specified methods.

13 (4) Whenever the Director determines that a farm mutual  
14 insurance company is insolvent he shall order the farm mutual  
15 insurance company to levy a special assessment within 30 days  
16 of receipt of such order. If the insolvency is not corrected  
17 within 90 days of the mailing of such assessment, the company  
18 shall be subject to liquidation pursuant to the Interstate  
19 Compact Uniform Receivership Law Article-XIII-of-the-Illinois  
20 Insurance-Code.

21 (Source: P.A. 88-364.)

22 (215 ILCS 120/14) (from Ch. 73, par. 1264)

23 Sec. 14. Membership requirement. Any company which, on or  
24 after December 31, 1988, fails to maintain a minimum of 100  
25 members shall be subject to liquidation pursuant to the  
26 Interstate Compact Uniform Receivership Law Article-XIII-of  
27 the-Illinois-Insurance-Code.

28 (Source: P.A. 84-1431.)

29 Section 1207. The Health Maintenance Organization Act is  
30 amended by changing Sections 5-3, 5-6, and 6-8 as follows:

31 (215 ILCS 125/5-3) (from Ch. 111 1/2, par. 1411.2)

1           Sec. 5-3. Insurance Code provisions.

2           (a) Health Maintenance Organizations shall be subject to  
3 the provisions of Sections 133, 134, 137, 140, 141.1, 141.2,  
4 141.3, 143, 143c, 147, 148, 149, 151, 152, 153, 154, 154.5,  
5 154.6, 154.7, 154.8, 155.04, 355.2, 356m, 356v, 356w, 356x,  
6 356y, 367i, 368a, 401, 401.1, 402, 403, 403A, 408, 408.2,  
7 409, 412, 444, and 444.1, paragraph (c) of subsection (2) of  
8 Section 367, and Articles IIA, VIII 1/2, XII, XII 1/2, ~~XIII~~,  
9 ~~XIII-1/2~~, XXV, and XXVI of the Illinois Insurance Code.

10           (a-5) Health maintenance organizations are subject to  
11 the Interstate Compact Uniform Receivership Law.

12           (b) For purposes of the Illinois Insurance Code, except  
13 for Sections 444 and 444.1 and ~~Articles XIII--and--XIII--1/2~~,  
14 Health Maintenance Organizations in the following categories  
15 are deemed to be "domestic companies":

16                   (1) a corporation authorized under the Dental  
17 Service Plan Act or the Voluntary Health Services Plans  
18 Act;

19                   (2) a corporation organized under the laws of this  
20 State; or

21                   (3) a corporation organized under the laws of  
22 another state, 30% or more of the enrollees of which are  
23 residents of this State, except a corporation subject to  
24 substantially the same requirements in its state of  
25 organization as is a "domestic company" under Article  
26 VIII 1/2 of the Illinois Insurance Code.

27           (c) In considering the merger, consolidation, or other  
28 acquisition of control of a Health Maintenance Organization  
29 pursuant to Article VIII 1/2 of the Illinois Insurance Code,

30                   (1) the Director shall give primary consideration  
31 to the continuation of benefits to enrollees and the  
32 financial conditions of the acquired Health Maintenance  
33 Organization after the merger, consolidation, or other  
34 acquisition of control takes effect;

1           (2)(i) the criteria specified in subsection (1)(b)  
2 of Section 131.8 of the Illinois Insurance Code shall not  
3 apply and (ii) the Director, in making his determination  
4 with respect to the merger, consolidation, or other  
5 acquisition of control, need not take into account the  
6 effect on competition of the merger, consolidation, or  
7 other acquisition of control;

8           (3) the Director shall have the power to require  
9 the following information:

10           (A) certification by an independent actuary of  
11 the adequacy of the reserves of the Health  
12 Maintenance Organization sought to be acquired;

13           (B) pro forma financial statements reflecting  
14 the combined balance sheets of the acquiring company  
15 and the Health Maintenance Organization sought to be  
16 acquired as of the end of the preceding year and as  
17 of a date 90 days prior to the acquisition, as well  
18 as pro forma financial statements reflecting  
19 projected combined operation for a period of 2  
20 years;

21           (C) a pro forma business plan detailing an  
22 acquiring party's plans with respect to the  
23 operation of the Health Maintenance Organization  
24 sought to be acquired for a period of not less than  
25 3 years; and

26           (D) such other information as the Director  
27 shall require.

28           (d) The provisions of Article VIII 1/2 of the Illinois  
29 Insurance Code and this Section 5-3 shall apply to the sale  
30 by any health maintenance organization of greater than 10% of  
31 its enrollee population (including without limitation the  
32 health maintenance organization's right, title, and interest  
33 in and to its health care certificates).

34           (e) In considering any management contract or service

1 agreement subject to Section 141.1 of the Illinois Insurance  
2 Code, the Director (i) shall, in addition to the criteria  
3 specified in Section 141.2 of the Illinois Insurance Code,  
4 take into account the effect of the management contract or  
5 service agreement on the continuation of benefits to  
6 enrollees and the financial condition of the health  
7 maintenance organization to be managed or serviced, and (ii)  
8 need not take into account the effect of the management  
9 contract or service agreement on competition.

10 (f) Except for small employer groups as defined in the  
11 Small Employer Rating, Renewability and Portability Health  
12 Insurance Act and except for medicare supplement policies as  
13 defined in Section 363 of the Illinois Insurance Code, a  
14 Health Maintenance Organization may by contract agree with a  
15 group or other enrollment unit to effect refunds or charge  
16 additional premiums under the following terms and conditions:

17 (i) the amount of, and other terms and conditions  
18 with respect to, the refund or additional premium are set  
19 forth in the group or enrollment unit contract agreed in  
20 advance of the period for which a refund is to be paid or  
21 additional premium is to be charged (which period shall  
22 not be less than one year); and

23 (ii) the amount of the refund or additional premium  
24 shall not exceed 20% of the Health Maintenance  
25 Organization's profitable or unprofitable experience with  
26 respect to the group or other enrollment unit for the  
27 period (and, for purposes of a refund or additional  
28 premium, the profitable or unprofitable experience shall  
29 be calculated taking into account a pro rata share of the  
30 Health Maintenance Organization's administrative and  
31 marketing expenses, but shall not include any refund to  
32 be made or additional premium to be paid pursuant to this  
33 subsection (f)). The Health Maintenance Organization and  
34 the group or enrollment unit may agree that the

1 profitable or unprofitable experience may be calculated  
2 taking into account the refund period and the immediately  
3 preceding 2 plan years.

4 The Health Maintenance Organization shall include a  
5 statement in the evidence of coverage issued to each enrollee  
6 describing the possibility of a refund or additional premium,  
7 and upon request of any group or enrollment unit, provide to  
8 the group or enrollment unit a description of the method used  
9 to calculate (1) the Health Maintenance Organization's  
10 profitable experience with respect to the group or enrollment  
11 unit and the resulting refund to the group or enrollment unit  
12 or (2) the Health Maintenance Organization's unprofitable  
13 experience with respect to the group or enrollment unit and  
14 the resulting additional premium to be paid by the group or  
15 enrollment unit.

16 In no event shall the Illinois Health Maintenance  
17 Organization Guaranty Association be liable to pay any  
18 contractual obligation of an insolvent organization to pay  
19 any refund authorized under this Section.

20 (Source: P.A. 90-25, eff. 1-1-98; 90-177, eff. 7-23-97;  
21 90-372, eff. 7-1-98; 90-583, eff. 5-29-98; 90-655, eff.  
22 7-30-98; 90-741, eff. 1-1-99; 91-357, eff. 7-29-99; 91-406,  
23 eff. 1-1-00; 91-549, eff. 8-14-99; 91-605, eff. 12-14-99;  
24 91-788, eff. 6-9-00.)

25 (215 ILCS 125/5-6) (from Ch. 111 1/2, par. 1414)

26 Sec. 5-6. Supervision of rehabilitation, liquidation or  
27 conservation by the Director.

28 (a) For purposes of the rehabilitation, liquidation or  
29 conservation of a health maintenance organization, the  
30 operation of a health maintenance organization in this State  
31 constitutes a form of insurance protection which should be  
32 governed by the same provisions governing the rehabilitation,  
33 liquidation or conservation of insurance companies. Any



1 rehabilitation, liquidation or conservation of a Health  
2 Maintenance Organization shall be based upon the grounds set  
3 forth in and subject to the provisions of the laws of this  
4 State regarding the rehabilitation, liquidation, or  
5 conservation of an insurance company and shall be conducted  
6 under the supervision of the Director. Insolvency, as a  
7 ground for rehabilitation, liquidation, or conservation of a  
8 Health Maintenance Organization, shall be recognized when a  
9 Health Maintenance Organization cannot be expected to satisfy  
10 its financial obligations when such obligations are to become  
11 due or when the Health Maintenance Organization has neglected  
12 to correct within the time prescribed by subsection (c) of  
13 Section 2-4, a deficiency occurring due to such  
14 organization's prescribed minimum net worth or special  
15 contingent reserve being impaired. For purpose of  
16 determining the priority of distribution of general assets,  
17 claims of enrollees and enrollees' beneficiaries shall have  
18 the same priority as established by Section 205 of the  
19 Illinois Insurance Code for policyholders and beneficiaries  
20 of insureds of insurance companies. If an enrollee is liable  
21 to any provider for services provided pursuant to and covered  
22 by the health care plan, that liability shall have the status  
23 of an enrollee claim for distribution of general assets.

24 Any provider who is obligated by statute or agreement to  
25 hold enrollees harmless from liability for services provided  
26 pursuant to and covered by a health care plan shall have a  
27 priority of distribution of the general assets immediately  
28 following that of enrollees and enrollees' beneficiaries as  
29 described herein, and immediately preceding the priority of  
30 distribution described in the Interstate Compact Uniform  
31 Receivership Law paragraph-(e)-of-subsection-(1)-of-Section  
32 205-of-the-Illinois-Insurance-Code.

33 (b) For purposes of the Interstate Compact Uniform  
34 Receivership Law Articles-XIII-and-XIII-1/2-of--the--Illinois

1 Insurance--Code, organizations in the following categories  
2 shall be deemed to be a "domestic company" and a "domiciliary  
3 company":

4 (i) a corporation authorized under the Dental  
5 Service Plan Act or the Voluntary Health Services Plans  
6 Act;

7 (ii) a corporation organized under the laws of this  
8 State; or

9 (iii) a corporation organized under the laws of  
10 another state, 20% or more of the enrollees of which are  
11 residents of this State, except where such a corporation  
12 is, in its state of incorporation, subject to  
13 rehabilitation, liquidation and conservation under the  
14 laws relating to insurance companies.

15 (c) In the event of the insolvency of a health  
16 maintenance organization, no enrollee of such organization  
17 shall be liable to any provider for medical services rendered  
18 by such provider, except for applicable co-payments or  
19 deductibles for covered services or fees for services not  
20 covered by the health maintenance organization, with respect  
21 to the amounts such provider is not paid by the Association  
22 pursuant to the provisions of Section 6-8 (8)(b) and (c). No  
23 provider, whether or not the provider is obligated by statute  
24 or agreement to hold enrollees harmless from liability, shall  
25 seek to recover any such amount from any enrollee until the  
26 Association has made a final determination of its liability  
27 (or the resolution of any dispute or litigation resulting  
28 therefrom) with respect to the matters specified in such  
29 provisions. In the event that the provider seeks to recover  
30 such amounts before the Association's final determination of  
31 its liability (or the resolution of any dispute or litigation  
32 resulting therefrom), the provider shall be liable for all  
33 reasonable costs and attorney fees incurred by the Director  
34 or the Association in enforcing this provision or any court

1 orders related hereto.

2 (Source: P.A. 89-206, eff. 7-21-95; 90-177, eff. 7-23-97;  
3 90-372, eff. 7-1-98; 90-655, eff. 7-30-98.)

4 (215 ILCS 125/6-8) (from Ch. 111 1/2, par. 1418.8)

5 Sec. 6-8. Powers and duties of the Association. In  
6 addition to the powers and duties enumerated in other  
7 Sections of this Article, the Association shall have the  
8 powers set forth in this Section.

9 (1) If a domestic organization is an impaired  
10 organization, the Association may, subject to any conditions  
11 imposed by the Association other than those which impair the  
12 contractual obligations of the impaired organization, and  
13 approved by the impaired organization and the Director:

14 (a) guarantee or reinsure, or cause to be  
15 guaranteed, assumed or reinsured, any or all of the  
16 covered health care plan certificates of covered persons  
17 of the impaired organization;

18 (b) provide such monies, pledges, notes,  
19 guarantees, or other means as are proper to effectuate  
20 paragraph (a), and assure payment of the contractual  
21 obligations of the impaired organization pending action  
22 under paragraph (a); and

23 (c) loan money to the impaired organization.

24 (2) If a domestic, foreign, or alien organization is an  
25 insolvent organization, the Association shall, subject to the  
26 approval of the Director:

27 (a) guarantee, assume, indemnify or reinsure or  
28 cause to be guaranteed, assumed, indemnified or reinsured  
29 the covered health care plan benefits of covered persons  
30 of the insolvent organization; however, in the event that  
31 the Director of the Department of Public Aid assigns  
32 individuals that are recipients of public aid from an  
33 insolvent organization to another organization, the

1 Director of the Department of Public Aid shall, before  
2 fixing the rates to be paid by the Department of Public  
3 Aid to the transferee organization on account of such  
4 individuals, consult with the Director of the Department  
5 of Insurance as to the reasonableness of such rates in  
6 light of the health care needs of such individuals and  
7 the costs of providing health care services to such  
8 individuals;

9 (b) assure payment of the contractual obligations  
10 of the insolvent organization to covered persons;

11 (c) make payments to providers of health care, or  
12 indemnity payments to covered persons, so as to assure  
13 the continued payment of benefits substantially similar  
14 to those provided for under covered health care plan  
15 certificate issued by the insolvent organization to  
16 covered persons; and

17 (d) provide such monies, pledges, notes,  
18 guaranties, or other means as are reasonably necessary to  
19 discharge such duties.

20 This subsection (2) shall not apply when the Director has  
21 determined that the foreign or alien organization's  
22 domiciliary jurisdiction or state of entry provides, by  
23 statute, protection substantially similar to that provided by  
24 this Article for residents of this State and such protection  
25 will be provided in a timely manner.

26 (3) There shall be no liability on the part of and no  
27 cause of action shall arise against the Association or  
28 against any transferee from the Association in connection  
29 with the transfer by reinsurance or otherwise of all or any  
30 part of an impaired or insolvent organization's business by  
31 reason of any action taken or any failure to take any action  
32 by the impaired or insolvent organization at any time.

33 (4) If the Association fails to act within a reasonable  
34 period of time as provided in subsection (2) of this Section

1 with respect to an insolvent organization, the Director shall  
2 have the powers and duties of the Association under this  
3 Article with regard to such insolvent organization.

4 (5) The Association or its designated representatives  
5 may render assistance and advice to the Director, upon his  
6 request, concerning rehabilitation, payment of claims,  
7 continuations of coverage, or the performance of other  
8 contractual obligations of any impaired or insolvent  
9 organization.

10 (6) The Association has standing to appear before any  
11 court concerning all matters germane to the powers and duties  
12 of the Association, including, but not limited to, proposals  
13 for reinsuring or guaranteeing the covered health care plan  
14 certificates of the impaired or insolvent organization and  
15 the determination of the covered health care plan  
16 certificates and contractual obligations.

17 (7) (a) Any person receiving benefits under this Article  
18 is deemed to have assigned the rights under the covered  
19 health care plan certificates to the Association to the  
20 extent of the benefits received because of this Article  
21 whether the benefits are payments of contractual obligations  
22 or continuation of coverage. The Association may require an  
23 assignment to it of such rights by any payee, enrollee or  
24 beneficiary as a condition precedent to the receipt of any  
25 rights or benefits conferred by this Article upon such  
26 person. The Association is subrogated to these rights  
27 against the assets of any insolvent organization and against  
28 any other party who may be liable to such payee, enrollee or  
29 beneficiary.

30 (b) The subrogation rights of the Association under this  
31 subsection have the same priority against the assets of the  
32 insolvent organization as that possessed by the person  
33 entitled to receive benefits under this Article.

34 (8) (a) The contractual obligations of the insolvent

1 organization for which the Association becomes or may become  
2 liable are as great as but no greater than the contractual  
3 obligations of the insolvent organization would have been in  
4 the absence of an insolvency unless such obligations are  
5 reduced as permitted by subsection (3), but the aggregate  
6 liability of the Association shall not exceed \$300,000 with  
7 respect to any one natural person.

8 (b) Furthermore, the Association shall not be required  
9 to pay, and shall have no liability to, any provider of  
10 health care services to an enrollee:

11 (i) if such provider, or his or its affiliates or  
12 members of his immediate family, at any time within the  
13 one year prior to the date of the issuance of the first  
14 order, by a court of competent jurisdiction, of  
15 conservation, rehabilitation or liquidation pertaining to  
16 the health maintenance organization:

17 (A) was a securityholder of such organization  
18 (but excluding any securityholder holding an equity  
19 interest of 5% or less);

20 (B) exercised control over the organization by  
21 means such as serving as an officer or director,  
22 through a management agreement or as a principal  
23 member of a not-for-profit organization;

24 (C) had a representative serving by virtue or  
25 his or her official position as a representative of  
26 such provider on the board of any entity which  
27 exercised control over the organization;

28 (D) received provider payments made by such  
29 organization pursuant to a contract which was not a  
30 product of arms-length bargaining; or

31 (E) received distributions other than for  
32 physician services from a not-for-profit  
33 organization on account of such provider's status as  
34 a member of such organization.

1           For purposes of this subparagraph (i), the terms  
2           "affiliate," "person," "control" and "securityholder"  
3           shall have the meanings ascribed to such terms in Section  
4           131.1 of the Illinois Insurance Code; or

5           (ii) if and to the extent such a provider has  
6           agreed by contract not to seek payment from the enrollee  
7           for services provided to such enrollee or if, and to the  
8           extent, as a matter of law such provider may not seek  
9           payment from the enrollee for services provided to such  
10          enrollee.

11          (c) In no event shall the Association be required to pay  
12          any provider participating in the insolvent organization any  
13          amount for in-plan services rendered by such provider prior  
14          to the insolvency of the organization in excess of (1) the  
15          amount provided by a capitation contract between a physician  
16          provider and the insolvent organization for such services; or  
17          (2) the amounts provided by contract between a hospital  
18          provider and the Department of Public Aid for similar  
19          services to recipients of public aid; or (3) in the event  
20          neither (1) nor (2) above is applicable, then the amounts  
21          paid under the Medicare area prevailing rate for the area  
22          where the services were provided, or if no such rate exists  
23          with respect to such services, then 80% of the usual and  
24          customary rates established by the Health Insurance  
25          Association of America. The payments required to be made by  
26          the Association under this Section shall constitute full and  
27          complete payment for such provider services to the enrollee.

28          (d) The Association shall not be required to pay more  
29          than an aggregate of \$300,000 for any organization which is  
30          declared to be insolvent prior to July 1, 1987, and such  
31          funds shall be distributed first to enrollees who are not  
32          public aid recipients pursuant to a plan recommended by the  
33          Association and approved by the Director and the court having  
34          jurisdiction over the liquidation.

1 (9) The Association may:

2 (a) Enter into such contracts as are necessary or  
3 proper to carry out the provisions and purposes of this  
4 Article.

5 (b) Sue or be sued, including taking any legal  
6 actions necessary or proper for recovery of any unpaid  
7 assessments under Section 6-9. The Association shall not  
8 be liable for punitive or exemplary damages.

9 (c) Borrow money to effect the purposes of this  
10 Article. Any notes or other evidence of indebtedness of  
11 the Association not in default are legal investments for  
12 domestic organizations and may be carried as admitted  
13 assets.

14 (d) Employ or retain such persons as are necessary  
15 to handle the financial transactions of the Association,  
16 and to perform such other functions as become necessary  
17 or proper under this Article.

18 (e) Negotiate and contract with any liquidator,  
19 rehabilitator, conservator, or ancillary receiver to  
20 carry out the powers and duties of the Association.

21 (f) Take such legal action as may be necessary to  
22 avoid payment of improper claims.

23 (g) Exercise, for the purposes of this Article and  
24 to the extent approved by the Director, the powers of a  
25 domestic organization, but in no case may the Association  
26 issue evidence of coverage other than that issued to  
27 perform the contractual obligations of the impaired or  
28 insolvent organization.

29 (h) Exercise all the rights of the Director under  
30 the Interstate Compact Uniform Receivership Law Section  
31 193(4) of the Illinois Insurance Code with respect to  
32 covered health care plan certificates after the  
33 association becomes obligated by statute.

34 (10) The obligations of the Association under this



1 Article shall not relieve any reinsurer, insurer or other  
2 person of its obligations to the insolvent organization (or  
3 its conservator, rehabilitator, liquidator or similar  
4 official) or its enrollees, including without limitation any  
5 reinsurer, insurer or other person liable to the insolvent  
6 insurer (or its conservator, rehabilitator, liquidator or  
7 similar official) or its enrollees under any contract of  
8 reinsurance, any contract providing stop loss coverage or  
9 similar coverage or any health care contract. With respect to  
10 covered health care plan certificates for which the  
11 Association becomes obligated after an entry of an order of  
12 liquidation or rehabilitation, the Association may elect to  
13 succeed to the rights of the insolvent organization arising  
14 after the date of the order of liquidation or rehabilitation  
15 under any contract of reinsurance, any contract providing  
16 stop loss coverage or similar coverages or any health care  
17 service contract to which the insolvent organization was a  
18 party, on the terms set forth under such contract, to the  
19 extent that such contract provides coverage for health care  
20 services provided after the date of the order of liquidation  
21 or rehabilitation. As a condition to making this election,  
22 the Association must pay premiums for coverage relating to  
23 periods after the date of the order of liquidation or  
24 rehabilitation.

25 (11) The Association shall be entitled to collect  
26 premiums due under or with respect to covered health care  
27 certificates for a period from the date on which the  
28 domestic, foreign, or alien organization became an insolvent  
29 organization until the Association no longer has obligations  
30 under subsection (2) of this Section with respect to such  
31 certificates. The Association's obligations under subsection  
32 (2) of this Section with respect to any covered health care  
33 plan certificates shall terminate in the event that all such  
34 premiums due under or with respect to such covered health

1 care plan certificates are not paid to the Association (i)  
 2 within 30 days of the Association's demand therefor, or (ii)  
 3 in the event that such certificates provide for a longer  
 4 grace period for payment of premiums after notice of  
 5 non-payment or demand therefor, within the lesser of (A) the  
 6 period provided for in such certificates or (B) 60 days.

7 (Source: P.A. 90-655, eff. 7-30-98.)

8 Section 1208. The Limited Health Service Organization  
 9 Act is amended by changing Sections 4003 and 4006 as follows:

10 (215 ILCS 130/4003) (from Ch. 73, par. 1504-3)

11 Sec. 4003. Illinois Insurance Code provisions.

12 (a) Limited health service organizations shall be  
 13 subject to the provisions of Sections 133, 134, 137, 140,  
 14 141.1, 141.2, 141.3, 143, 143c, 147, 148, 149, 151, 152, 153,  
 15 154, 154.5, 154.6, 154.7, 154.8, 155.04, 355.2, 356v, 368a,  
 16 401, 401.1, 402, 403, 403A, 408, 408.2, 409, 412, 444, and  
 17 444.1 and Articles IIA, VIII 1/2, XII, XII 1/2, ~~XIII~~  
 18 ~~1/2~~, XXV, and XXVI of the Illinois Insurance Code. For  
 19 purposes of the Illinois Insurance Code, except for Sections  
 20 444 and 444.1 and ~~Articles XIII and XIII-1/2~~, limited health  
 21 service organizations in the following categories are deemed  
 22 to be domestic companies:

- 23 (1) a corporation under the laws of this State; or
- 24 (2) a corporation organized under the laws of
- 25 another state, 30% of more of the enrollees of which are
- 26 residents of this State, except a corporation subject to
- 27 substantially the same requirements in its state of
- 28 organization as is a domestic company under Article VIII
- 29 1/2 of the Illinois Insurance Code.

30 (b) Limited health service organizations are subject to  
 31 the Interstate Compact Uniform Receivership Law.

32 (Source: P.A. 90-25, eff. 1-1-98; 90-583, eff. 5-29-98;

1 90-655, eff. 7-30-98; 91-549, eff. 8-14-99; 91-605, eff.  
2 12-14-99; 91-788, eff. 6-9-00.)

3 (215 ILCS 130/4006) (from Ch. 73, par. 1504-6)

4 Sec. 4006. Supervision of rehabilitation, liquidation or  
5 conservation by the Director.

6 (a) For purposes of the rehabilitation, liquidation or  
7 conservation of a limited health service organization, the  
8 operation of a limited health service organization in this  
9 State constitutes a form of insurance protection which should  
10 be governed by the same provisions governing the  
11 rehabilitation, liquidation or conservation of insurance  
12 companies. Any rehabilitation, liquidation or conservation  
13 of a limited health service organization shall be based upon  
14 the grounds set forth in and subject to the provisions of the  
15 laws of this State regarding the rehabilitation, liquidation  
16 or conservation of an insurance company and shall be  
17 conducted under the supervision of the Director. Insolvency,  
18 as a ground for rehabilitation, liquidation or conservation  
19 of a limited health service organization, shall be recognized  
20 when a limited health service organization cannot be expected  
21 to satisfy its financial obligations when such obligations  
22 are to become due or when the limited health service  
23 organization has neglected to correct, within the time  
24 prescribed by subsection (c) of Section 2004, a deficiency  
25 occurring due to such organization's prescribed minimum net  
26 worth being impaired. For purpose of determining the  
27 priority of distribution of general assets, claims of  
28 enrollees and enrollees' beneficiaries shall have the same  
29 priority as established by the Interstate Compact Uniform  
30 Receivership Law Section-205-of-the-Illinois-Insurance--Code,  
31 for policyholders and beneficiaries of insureds of insurance  
32 companies. If an enrollee is liable to any provider for  
33 services provided pursuant to and covered by the limited

1 health care plan, that liability shall have the status of an  
2 enrollee claim for distribution of general assets.

3 Any provider who is obligated by statute or agreement to  
4 hold enrollees harmless from liability for services provided  
5 pursuant to and covered by a limited health care plan shall  
6 have a priority of distribution of the general assets  
7 immediately following that of enrollees and enrollees'  
8 beneficiaries as described herein, and immediately preceding  
9 the priority of distribution described in the Interstate  
10 Compact Uniform Receivership Law paragraph-(e)-of-subsection  
11 (1)-of-Section-205-of-the-Illinois-Insurance-Code.

12 (b) For purposes of the Interstate Compact Uniform  
13 Receivership Law Articles-XIII-and-XIII-1/2-of--the--Illinois  
14 Insurance--Code, organizations in the following categories  
15 shall be deemed to be a domestic company and a domiciliary  
16 company:

17 (1) a corporation organized under the laws of this  
18 State; or

19 (2) a corporation organized under the laws of  
20 another state, 20% or more the enrollees of which are  
21 residents of this State, except where such a corporation  
22 is, in its state of incorporation, subject to  
23 rehabilitation, liquidation and conservation under the  
24 laws relating to insurance companies.

25 (Source: P.A. 89-206, eff. 7-21-95.)

26 Section 1209. The Voluntary Health Services Plans Act is  
27 amended by changing Section 23 as follows:

28 (215 ILCS 165/23) (from Ch. 32, par. 617)

29 Sec. 23. To the extent that the same are applicable and  
30 not inconsistent with the provisions of this Act, all  
31 proceedings for the rehabilitation, liquidation, conservation  
32 or dissolution of health services plan corporations shall be

1 subject to the provisions of the Interstate Compact Uniform  
2 Receivership Law Article--XIII--of--the--Illinois--Insurance  
3 Code, approved June 29, 1937, as amended.

4 (Source: Laws 1951, p. 569.)

5 Chapter 13. Effective Date.

6 Section 1301. Effective date. This Act takes effect on  
7 the later of January 1, 2002 or, notwithstanding the  
8 provisions of Section (3) of Article VII of the Interstate  
9 Insurance Receivership Compact, the date on which provisions  
10 substantially identical to the provisions of this Act are  
11 adopted by all of the other states that currently are members  
12 of the Interstate Insurance Receivership Compact.

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