File No. 228

Substitute House Bill No. 5614

House of Representatives, March 31, 1998. The Committee on Insurance and Real Estate reported through REP. AMANN, 118th DIST., Chairman of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE INSURERS REHABILITATION AND LIQUIDATION ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 38a-903 of the general statutes is repealed and the following is substituted in lieu thereof:

Sections 38a-903 to 38a-961, inclusive, AS AMENDED, may be cited as the "Insurers Rehabilitation and Liquidation Act". Said sections shall not be interpreted to limit the powers granted the commissioner by other provisions of the law. Sections 38a-903 to 38a-961, inclusive, AS AMENDED, shall be construed to effect their purpose which is the protection of the interests of insureds, claimants, creditors and the public generally, with minimum interference with the normal prerogatives of the owners and managers of insurers, through:

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

(2) Improved methods for rehabilitating insurers, involving the cooperation and management expertise of the insurance industry;

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

(4) Equitable apportionment of any unavoidable loss;

(5) Reducing the problems of interstate rehabilitation and liquidation by facilitating cooperation between states in [the liquidation process] DELINQUENCY PROCEEDINGS and by extending the scope of personal jurisdiction over debtors of the insurer outside this state;

(6) Regulation of the BUSINESS OF insurance [business] by the impact of the law relating to delinquency procedures and RELATED substantive rules; [on the entire insurance business;] and

(7) Providing for a comprehensive scheme for the rehabilitation and liquidation of insurance companies and those subject to sections 38a-903 to 38a-961, inclusive, AS AMENDED, as part of the regulation of the business of insurance [, insurance industry and insurers] in the state. Proceedings in cases of insurer insolvency and delinquency are deemed an integral aspect of the business of insurance and are of vital public interest and concern.

Sec. 2. Section 38a-904 of the general statutes is repealed and the following is substituted in lieu thereof:

[The proceedings authorized by sections] SECTIONS 38a-903 to 38a-961, inclusive, AS AMENDED, shall apply to: (1) All insurers who are doing, or have done, an insurance business in this state and against whom claims arising from that business may exist now or in the future, AND ALL PERSONS SUBJECT TO EXAMINATION BY THE COMMISSIONER; (2) all insurers who purport to do an insurance business in this state; (3) all insurers who have insureds resident in this state; (4) all other persons organized OR DOING INSURANCE BUSINESS, or in the process of organizing with the intent to do an insurance business in this state; (5) all nonprofit service plans and all fraternal benefit societies; (6) all title insurance companies; [and] (7) all health care centers; AND (8) ALL WORKERS' COMPENSATION SELF-INSURANCE GROUPS.

Sec. 3. Section 38a-905 of the general

statutes is repealed and the following is substituted in lieu thereof:

For the purposes of sections 38a-903 to 38a-961, inclusive, AS AMENDED:

[(a)] (1) "Ancillary state" means any state other than a domiciliary state.

[(b)] (2) "Commissioner" means the Insurance Commissioner.

(3) "COMMODITY CONTRACT" MEANS: (A) A CONTRACT FOR THE PURCHASE OR SALE OF A COMMODITY FOR FUTURE DELIVERY ON, OR SUBJECT TO THE RULES OF, A BOARD OF TRADE DESIGNATED AS A CONTRACT MARKET BY THE COMMODITY FUTURES TRADING COMMISSION UNDER THE COMMODITY EXCHANGE ACT (7 USC 1, ET SEQ.) OR BOARD OF TRADE OUTSIDE THE UNITED STATES; (B) AN AGREEMENT THAT IS SUBJECT TO REGULATION UNDER SECTION 19 OF THE COMMODITY EXCHANGE ACT (7 USC 1, ET SEQ.) AND THAT IS COMMONLY KNOWN TO THE COMMODITIES TRADE AS A MARGIN ACCOUNT, MARGIN CONTRACT, LEVERAGE ACCOUNT OR LEVERAGE CONTRACT; OR (C) AN AGREEMENT OR TRANSACTION THAT IS SUBJECT TO REGULATION UNDER SECTION 4c(b) OF THE COMMODITY EXCHANGE ACT (7 USC 1 ET SEQ.) AND THAT IS COMMONLY KNOWN TO THE COMMODITIES TRADE AS A COMMODITY OPTION.

[(c)] (4) "Creditor" is a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed or contingent.

[(d)] (5) "Delinquency proceeding" means any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing or conserving such insurer, and any summary proceeding under section 38a-912. "Formal delinquency proceeding" means any liquidation or rehabilitation proceeding.

[(e)] (6) "Doing business", "DOING INSURANCE BUSINESS" AND THE "BUSINESS OF INSURANCE", includes any of the following acts, whether effected by mail or otherwise: [(1)] (A) The issuance or delivery of contracts of insurance, EITHER to persons resident IN OR COVERING A RISK LOCATED in this state; [(2)] (B) the solicitation of applications for such contracts or other negotiations preliminary to the execution of such contracts; [(3)] (C) the collection of premiums, membership fees, assessments or other consideration for such contracts; [(4)] (D) the

transaction of matters subsequent to execution of such contracts and arising out of them; or [(5)] (E) operating under a license or certificate of authority, as an insurer, issued by the Insurance Department.

[(f)] (7) "Domiciliary state" means the state in which an insurer is incorporated or organized, or, in the case of an alien insurer, its state of entry.

[(g)] (8) "Fair consideration" is given for property or obligation: [(1)] (A) When in exchange for such property or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or services are rendered or an obligation is incurred or an antecedent debt is satisfied; or [(2)] (B) when such property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared to the value of the property or obligation obtained.

[(h)] (9) "Foreign country" has the meaning assigned to it in section 38a-1.

(10) "FORWARD CONTRACT" MEANS A CONTRACT, OTHER THAN A COMMODITY CONTRACT, FOR THE PURCHASE, SALE OR TRANSFER OF A COMMODITY, AS DEFINED IN SECTION 1 OF THE COMMODITY EXCHANGE ACT (7 USC 1 ET SEQ.), OR ANY SIMILAR GOOD, ARTICLE, SERVICE, RIGHT OR INTEREST THAT IS PRESENTLY OR IN THE FUTURE BECOMES THE SUBJECT OF DEALING IN THE FORWARD CONTRACT TRADE, OR PRODUCT OR BY-PRODUCT THEREOF, WITH A MATURITY DATE MORE THAN TWO DAYS AFTER THE DATE THE CONTRACT IS ENTERED INTO, INCLUDING, BUT NOT LIMITED TO, A REPURCHASE TRANSACTION, REVERSE REPURCHASE TRANSACTION, UNALLOCATED HEDGE TRANSACTION, DEPOSIT, LOAN, OPTION, ALLOCATED TRANSACTION OR A COMBINATION OF THESE OR OPTION ON ANY OF THEM.

[(i)] (11) "General assets" [means] INCLUDES all property, real, personal or otherwise, not specifically mortgaged, pledged, deposited or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, "general assets" includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors,

in more than a single state, shall be treated as general assets.

[(j)] (12) "Guaranty association" means the Connecticut Insurance Guaranty Association established pursuant to sections 38a-836 to 38a-853, inclusive, the Connecticut Life and Health Insurance Guaranty Association established pursuant to sections 38a-858 to 38a-875, inclusive, and any other similar entity [now or hereafter] created by the [legislature of this state] GENERAL ASSEMBLY for the payment of claims of insolvent insurers. "Foreign guaranty association" means any similar entities [now in existence in or hereafter] created by the legislature of any other state.

[(k)] (13) "Insolvency" and "insolvent" have the meanings assigned to them in section 38a-1, AS AMENDED BY THIS ACT.

[(l)] (14) "Insurer" means any person who has done, purports to do, is doing or is licensed to do an insurance business, and is or has been subject to the authority of, or to liquidation, rehabilitation, reorganization, supervision or conservation by, any insurance commissioner. For purposes of sections 38a-903 to 38a-961, inclusive, AS AMENDED, any other persons included under section 38a-904, AS AMENDED BY THIS ACT, shall be deemed to be insurers.

(15) "NETTING AGREEMENT" MEANS A CONTRACT OR AGREEMENT, INCLUDING TERMS AND CONDITIONS INCORPORATED BY REFERENCE THEREIN, INCLUDING A MASTER AGREEMENT, WHICH MASTER AGREEMENT, TOGETHER WITH ALL SCHEDULES, CONFIRMATIONS, DEFINITIONS AND ADDENDA THERETO AND TRANSACTIONS UNDER ANY THEREOF, SHALL BE TREATED AS ONE NETTING AGREEMENT, THAT (A) DOCUMENTS ONE OR MORE TRANSACTIONS BETWEEN THE PARTIES TO THE AGREEMENT FOR OR INVOLVING ONE OR MORE QUALIFIED FINANCIAL CONTRACTS AND (B) PROVIDES FOR THE NETTING OR LIQUIDATION OF QUALIFIED FINANCIAL CONTRACTS OR PRESENT OR FUTURE PAYMENT OBLIGATIONS OR PAYMENT ENTITLEMENTS THEREUNDER, INCLUDING LIQUIDATION OR CLOSE-OUT VALUES RELATING TO SUCH OBLIGATIONS OR ENTITLEMENTS, AMONG THE PARTIES TO THE NETTING AGREEMENT.

[(m)] (16) "Preferred claim" means any claim with respect to which the terms of sections 38a-903 to 38a-961, inclusive, AS AMENDED, accord

priority of payment from the general assets of the insurer.

(17) "QUALIFIED FINANCIAL CONTRACT" MEANS A COMMODITY CONTRACT, FORWARD CONTRACT, REPURCHASE AGREEMENT, SECURITIES CONTRACT, SWAP AGREEMENT AND ANY SIMILAR AGREEMENT THAT THE COMMISSIONER DETERMINES TO BE A QUALIFIED FINANCIAL CONTRACT FOR THE PURPOSES OF THIS CHAPTER, AND SECTIONS 7, 15 AND 22 OF THIS ACT.

[(n)] (18) "Receiver" means receiver, liquidator, rehabilitator or conservator as the context requires.

[(o)] (19) "Reciprocal state" means any state other than this state in which in substance and effect sections 38a-920, AS AMENDED BY THIS ACT, 38a-954, 38a-955 and 38a-957 to 38a-959, inclusive, are in force and in which provisions are in force, requiring that the commissioner or equivalent official be the receiver of a delinquent insurer and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers.

(20) "REPURCHASE AGREEMENT" AND "REVERSE REPURCHASE AGREEMENT" MEAN AN AGREEMENT, INCLUDING RELATED TERMS, THAT PROVIDES FOR THE TRANSFER OF CERTIFICATES OF DEPOSIT, ELIGIBLE BANKERS' ACCEPTANCES, OR SECURITIES THAT ARE DIRECT OBLIGATIONS OF, OR THAT ARE FULLY GUARANTEED AS TO PRINCIPAL AND INTEREST BY, THE UNITED STATES OR AN AGENCY OF THE UNITED STATES AGAINST THE TRANSFER OF FUNDS BY THE TRANSFEREE OF THE CERTIFICATES OF DEPOSIT, ELIGIBLE BANKERS' ACCEPTANCES OR SECURITIES WITH A SIMULTANEOUS AGREEMENT BY THE TRANSFEREE TO TRANSFER TO THE TRANSFEROR CERTIFICATES OF DEPOSIT, ELIGIBLE BANKERS' ACCEPTANCES OR SECURITIES AS DESCRIBED IN THIS SUBDIVISION, AT A DATE CERTAIN NOT LATER THAN ONE YEAR AFTER THE TRANSFERS OR ON DEMAND, AGAINST THE TRANSFER OF FUNDS. FOR THE PURPOSES OF THIS SUBDIVISION, THE ITEMS THAT MAY BE SUBJECT TO AN AGREEMENT INCLUDE MORTGAGE-RELATED SECURITIES, A MORTGAGE LOAN, AND AN INTEREST IN A MORTGAGE LOAN, AND SHALL NOT INCLUDE ANY PARTICIPATION IN A COMMERCIAL MORTGAGE LOAN, UNLESS THE COMMISSIONER DETERMINES TO INCLUDE THE PARTICIPATION WITHIN THE MEANING OF THE TERM.

[(p)] (21) "Secured claim" means any claim secured by [mortgage, trust deed, pledge, deposit

as security, escrow, or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims which have become liens upon specific assets by reason of judicial process] AN ASSET THAT IS NOT A GENERAL ASSET. "SECURED CLAIM" ALSO INCLUDES CLAIMS WHICH HAVE BECOME LIENS UPON SPECIFIC ASSETS BY REASON OF JUDICIAL PROCESS PRIOR TO FOUR MONTHS BEFORE THE COMMENCEMENT OF DELINQUENCY PROCEEDINGS. "SECURED CLAIM" DOES NOT INCLUDE A SPECIAL DEPOSIT CLAIM OR A CLAIM ARISING FROM A CONSTRUCTIVE OR RESULTING TRUST.

(22) "SECURITIES CONTRACT" MEANS A CONTRACT FOR THE PURCHASE, SALE OR LOAN OF A SECURITY, INCLUDING AN OPTION FOR THE REPURCHASE OR SALE OF A SECURITY, CERTIFICATE OF DEPOSIT, OR GROUP OR INDEX OF SECURITIES, INCLUDING AN INTEREST THEREIN OR BASED ON THE VALUE THEREOF, OR AN OPTION ENTERED INTO ON A NATIONAL SECURITIES EXCHANGE RELATING TO FOREIGN CURRENCIES, OR THE GUARANTEE OF A SETTLEMENT OF CASH OR SECURITIES BY OR TO A SECURITIES CLEARING AGENCY. FOR THE PURPOSES OF THIS SUBDIVISION, "SECURITY" INCLUDES A MORTGAGE LOAN, MORTGAGE-RELATED SECURITIES, AND AN INTEREST IN ANY MORTGAGE LOAN OR MORTGAGE-RELATED SECURITY.

[(q)] (23) "Special deposit claim" means any claim secured by a deposit made pursuant to A STATE statute for the security or benefit of a limited class or classes of persons, but DOES not [including] INCLUDE any claim secured by general assets.

[(r)] (24) "State" means any state, district or territory of the United States.

(25) "SWAP AGREEMENT" MEANS AN AGREEMENT, INCLUDING THE TERMS AND CONDITIONS INCORPORATED BY REFERENCE IN AN AGREEMENT, THAT IS A RATE SWAP AGREEMENT, BASIS SWAP, COMMODITY SWAP, FORWARD RATE AGREEMENT, INTEREST RATE FUTURE, INTEREST RATE OPTION, FORWARD FOREIGN EXCHANGE AGREEMENT, SPOT FOREIGN EXCHANGE AGREEMENT, CURRENCY SWAP AGREEMENT, CROSS-CURRENCY RATE SWAP AGREEMENT, CURRENCY FUTURE, OR CURRENCY OPTION OR ANY OTHER SIMILAR AGREEMENT, AND INCLUDES ANY COMBINATION OF AGREEMENTS AND AN OPTION TO ENTER INTO AN AGREEMENT.

[(s)] (26) "Transfer" [shall include] INCLUDES the sale and every other and different mode, direct or indirect, of disposing of or of

parting with property or with an interest therein, or with the possession thereof or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily, by or without judicial proceedings. The retention of a security title to property delivered to a debtor shall be deemed a transfer suffered by the debtor.

Sec. 4. Section 38a-907 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) [Any receiver appointed in a proceeding under sections 38a-903 to 38a-961, inclusive, may at any time apply for and any court of general jurisdiction may grant, such restraining orders, preliminary and permanent injunctions and other orders as may be deemed necessary and proper to prevent: (1)] THE CONSERVATION, REHABILITATION AND LIQUIDATION OF INSURANCE COMPANIES AND OTHER PERSONS SUBJECT TO THE PROVISIONS OF SECTIONS 38a-903 TO 38a-961, INCLUSIVE, AS AMENDED, ARE A MATTER OF VITAL PUBLIC INTEREST AND AFFECT THE RELATIONSHIPS BETWEEN INSUREDS AND THEIR INSURERS.

(1) AN APPLICATION OR PETITION UNDER SECTIONS 38a-912, 38a-914, 38a-915, 38a-918, 38a-919 and 38a-920, AS AMENDED BY THIS ACT, SHALL OPERATE AS AN AUTOMATIC STAY APPLICABLE TO ALL PERSONS, OTHER THAN THE RECEIVER, WHICH SHALL BE PERMANENT AND SURVIVE THE ENTRY OF AN ORDER OF CONSERVATION, REHABILITATION OR LIQUIDATION, AND WHICH SHALL PROHIBIT: (A) The transaction of further business; [(2)] (B) the transfer of property; [(3)] (C) interference with the receiver or with a proceeding under said sections; [(4)] (D) waste of the insurer's assets; [(5)] (E) dissipation and transfer of bank accounts; [(6)] (F) the institution or further prosecution of any actions or proceedings IN WHICH THE INSURER IS A PARTY; [(7)] (G) the obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets or its policyholders; [(8)] (H) the levying of execution against the insurer, its assets, or its policyholders; [(9)] (I) the making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer; [or (10)] (J) the withholding from the receiver of books, accounts, documents, or other records relating to the business of the insurer; or [(11)] (K) any other

threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of any proceeding under said sections.

(2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NO BOND SHALL BE REQUIRED OF THE COMMISSIONER AS A PREREQUISITE FOR THE ISSUANCE OF ANY INJUNCTION OR RESTRAINING ORDER PURSUANT TO THIS SECTION.

(3) UPON MOTION OF A PERSON SUBJECT TO THE STAY, THE COURT, AFTER NOTICE TO THE RECEIVER AND A HEARING, MAY MODIFY OR GRANT RELIEF FROM THE STAY, PROVIDED SAID PERSON SHALL HAVE THE BURDEN OF PROOF AND SHALL ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT SUCH RELIEF SHOULD BE GRANTED.

(4) ALL MATTERS THAT MAY BE STAYED, ENJOINED OR BARRED UNDER THIS SECTION AND ALL MATTERS INVOLVING ITS INTERPRETATION OR OPERATION SHALL REMAIN WITHIN THE EXCLUSIVE JURISDICTION OF THE DOMICILIARY RECEIVERSHIP COURT.

(b) The receiver may apply to any court outside of the state for the relief described in subsection (a) of this section.

Sec. 5. Section 38a-934 of the general statutes is repealed and the following is substituted in lieu thereof:

The amount recoverable by the liquidator from reinsurers shall not be reduced as a result of the delinquency proceedings, regardless of any provision in the reinsurance contract or other agreement. Payment made directly to an insured or other creditor shall not diminish the reinsurer's obligation to the insurer's estate except when (1) the reinsurance contract [provided for direct coverage of a named insured and the payment was made in discharge of that obligation] PROVIDES FOR PAYMENT OF THE REINSURANCE PROCEEDS TO ANOTHER PAYEE, (2) THE UNDERLYING INSURANCE POLICY, INCLUDING ANY AMENDMENTS OR ENDORSEMENTS, PROVIDES FOR THE ASSUMPTION OF THE POLICY OBLIGATIONS BY THE REINSURER, OR (3) THERE HAS BEEN A NOVATION OF THE UNDERLYING POLICY OBLIGATIONS AND AN ASSUMPTION OF THOSE OBLIGATIONS BY THE REINSURER AND THE PROCEEDS ARE PAYABLE TO ANOTHER PAYEE.

Sec. 6. Section 38a-911 of the general

statutes is repealed and the following is substituted in lieu thereof:

No insurer that is subject to any delinquency proceedings, whether formal, informal, administrative or judicial, shall:

[(1) Be released from such proceedings, unless such proceeding is converted into a judicial rehabilitation or liquidation proceeding;]

[(2)] (1) Be permitted to solicit or accept new business or request or accept the restoration of any suspended or revoked license or certificate of authority;

[(3)] (2) Be returned to the control of its shareholders or private management; or

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

Sec. 7. (NEW) (a) All records or certified copies thereof of any delinquent insurer which come into the possession of the receiver and are held by the receiver in the course of the delinquency proceedings shall be received in evidence in all cases without proof of the correctness of such records and without other proof, except the certificate of the receiver that such records were received from the custody of the delinquent insurer or found among its property. For the purposes of this section, "record" means books, records, documents and papers.

(b) The receiver shall have the authority to certify to the correctness of any record of his office and to make certificates of the receiver certifying to any fact contained in such records. Such records shall be received in evidence in all cases in which the original would be evidence.

(c) Original records, or certified copies thereof, when offered by the receiver and received in evidence shall be prima facie evidence of the facts disclosed.

(d) The appointment of the Insurance Commissioner as receiver shall not make records of a delinquent insurer subject to disclosure under the Freedom of Information Act, as defined in section 1-18a of the general statutes, as amended. In the event a third party successfully pursues a records request in the receivership court, the receiver shall be reimbursed for the reasonable cost of producing such records.

Sec. 8. Section 38a-913 of the general statutes is repealed and the following is substituted in lieu thereof:

In all proceedings and judicial reviews thereof pursuant to section 38a-912, all records of the insurer, other documents and all Insurance Department files and court records and papers, so far as they pertain to or are a part of the record of the proceedings, shall be and remain confidential, AND ALL PAPERS FILED WITH THE CLERK OF THE SUPERIOR COURT SHALL BE HELD BY THE CLERK IN A CONFIDENTIAL FILE, except as is necessary to obtain compliance [therewith] WITH ANY ORDER ENTERED IN CONNECTION WITH SUCH PROCEEDINGS, unless: [and until the] (1) THE Superior Court, after hearing arguments [from the parties] in chambers, [shall order] ORDERS otherwise; [, or unless] (2) the insurer requests that the matter be made public; [. Until such court order, all papers filed with the clerk of the Superior Court shall be held by him in a confidential file] OR (3) THE COMMISSIONER APPLIES FOR AN ORDER UNDER SECTION 38a-914 OR SECTION 38a-919.

Sec. 9. Section 38a-915 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) An order to rehabilitate the business of a domestic insurer, or an alien insurer domiciled in this state, shall appoint the commissioner and his successors in office the rehabilitator and shall direct the rehabilitator forthwith to take possession of the assets of the insurer and to administer them under the general supervision of the court. THE COMMISSIONER SHALL BE ENTITLED TO REQUEST THE ADMINISTRATIVE JUDGE OF THE SUPERIOR COURT FOR THE JUDICIAL DISTRICT OF HARTFORD-NEW BRITAIN TO APPOINT A SINGLE JUDGE TO SUPERVISE THE REHABILITATION AND HEAR ANY CASES OR CONTROVERSIES ARISING OUT OF OR RELATED TO THE REHABILITATION.

REHABILITATION PROCEEDINGS SHALL BE EXEMPT FROM ANY DORMANCY OR SIMILAR PROGRAM MAINTAINED BY THE COURT FOR THE EARLY CLOSURE OF CIVIL ACTIONS. The filing or recording of the order with the clerk of the Superior Court or recorder of deeds of the judicial district in which the principal business of the company is conducted, or the judicial district in which its principal office or place of business is located, shall impart the same notice as a deed, bill of sale or other evidence of title duly filed or recorded with that recorder of deeds would have imparted. The order to rehabilitate the insurer shall by operation of law vest title to all assets of the insurer in the rehabilitator.

(b) Any order issued under this section shall require accounting to the court by the rehabilitator. Accountings shall be at such intervals as the court specified in its order, but no less frequently than semiannually. Each accounting shall include a report concerning the rehabilitator's opinion as to the likelihood that a plan under subsection (e) of section 38a-916, AS AMENDED BY THIS ACT, will be prepared by the rehabilitator and the timetable for doing so.

(c) Entry of an order of rehabilitation shall not constitute an anticipatory breach of any contracts of the insurer nor shall it be grounds for retroactive revocation or retroactive cancellation of any contracts of the insurer unless such revocation or cancellation is done by the rehabilitator pursuant to section 38a-916, AS AMENDED BY THIS ACT.

(d) IN ORDER TO FACILITATE THE PROMPT AND FINAL RESOLUTION FOR ALL AFFECTED BY A PLAN OF REHABILITATION, ANY APPEAL FROM AN ORDER OF REHABILITATION OR AN ORDER APPROVING A PLAN OF REHABILITATION SHALL BE HEARD ON AN EXPEDITED BASIS. A STAY OF AN ORDER OF REHABILITATION OR AN ORDER APPROVING A PLAN OF REHABILITATION SHALL NOT BE GRANTED UNLESS THE APPELLANT DEMONSTRATES THAT EXTRAORDINARY CIRCUMSTANCES WARRANT DELAYING THE RECOVERY UNDER THE PLAN OF REHABILITATION OF ALL OTHER PERSONS, INCLUDING POLICYHOLDERS. IF THE PLAN PROVIDES AN APPROPRIATE MECHANISM FOR ADJUSTMENT IN THE EVENT OF ANY ADVERSE RULING FROM AN APPEAL, NO STAY SHALL BE GRANTED.

Sec. 10. Section 38a-916 of the general

statutes is repealed and the following is substituted in lieu thereof:

(a) The commissioner as rehabilitator may appoint one or more special deputies, who shall have all the powers and responsibilities of the rehabilitator granted under this section, and NOTWITHSTANDING ANY CONTRARY PROVISION OF LAW, INCLUDING CHAPTERS 55a AND 67, the commissioner may employ such counsel, clerks and assistants as deemed necessary. The compensation of the special deputy, counsel, clerks and assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the commissioner, with the approval of the court and shall be paid out of the funds or assets of the insurer. The persons appointed under this section shall serve at the pleasure of the commissioner. The commissioner, as rehabilitator, may, with the approval of the court, appoint an advisory committee of policyholders, claimants or other creditors including guaranty associations should such a committee be deemed necessary, [. Such] EXCEPT THAT THE DECISION TO APPOINT AN ADVISORY COMMITTEE SHALL BE AT THE SOLE DISCRETION OF THE COMMISSIONER, AND THE committee shall serve at the pleasure of the commissioner and shall serve without compensation [other than] AND WITHOUT reimbursement for [reasonable travel and per diem living] expenses. No other committee of any nature shall be appointed by the commissioner or the court in rehabilitation proceedings conducted under sections 38a-903 to 38a-961, inclusive, AS AMENDED.

(b) In the event that the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of any appropriation for the maintenance of the Insurance Department. Any amounts so advanced for expenses of administration shall be repaid to the commissioner for the use of [said] THE Insurance Department out of the first available money of the insurer.

(c) The rehabilitator may take such action as he deems necessary or appropriate to reform and revitalize the insurer. He shall have all the powers of the directors, officers and managers, whose authority shall be suspended, except as they

are redelegated by the rehabilitator. He shall have full power to direct and manage, to hire and discharge employees subject to any contract rights they may have and to deal with the property and business of the insurer.

(d) If it appears to the rehabilitator that there has been criminal or tortious conduct, or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, producer, employee or other person, he may pursue all appropriate legal remedies on behalf of the insurer.

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

(f) The rehabilitator shall have the power pursuant to sections 38a-928 and 38a-929 to avoid fraudulent transfers, AND MAY EXERCISE ANY OF THE POWERS UNDER SECTION 38a-923, AS AMENDED BY THIS ACT, AS NECESSARY OR APPROPRIATE, EXCEPT THAT IN THE CASE OF A LIFE INSURER, THE REHABILITATOR OF SUCH AN INSURER MAY, AS PART OF A COURT APPROVED PLAN OF REHABILITATION, MODIFY OR RESTRUCTURE THE POLICIES OR CONTRACTS OF INSURANCE. IN THE EVENT THE REHABILITATOR PROPOSES TO MODIFY OR RESTRUCTURE THE POLICIES OR CONTRACTS OF INSURANCE, THE REHABILITATOR MAY, WITH THE CONCURRENCE OF THE COURT, APPROVE PAYMENT OF CERTAIN EXPENSES INCURRED BY AN ADVISORY COMMITTEE APPOINTED PURSUANT TO SUBSECTION (a) OF THIS

SECTION, THE EXPENSES TO BE LIMITED TO THE REASONABLE AND NECESSARY EXPENSES INCURRED IN OBTAINING AN EXPERT EVALUATION OF THE EFFECT UPON POLICYHOLDERS OF ANY PROPOSED MODIFICATION OR RESTRUCTURING OF POLICIES OR CONTRACTS OF INSURANCE.

(g) THE ENUMERATION, IN THIS SECTION, OF THE POWERS AND AUTHORITY OF THE REHABILITATOR SHALL NOT BE CONSTRUED AS A LIMITATION UPON THE REHABILITATOR, NOR SHALL IT EXCLUDE IN ANY MANNER THE RIGHT TO DO OTHER ACTS NOT SPECIFICALLY ENUMERATED OR OTHERWISE PROVIDED FOR, AS MAY BE NECESSARY OR APPROPRIATE FOR THE ACCOMPLISHMENT OF OR IN THE AID OF THE PURPOSE OF REHABILITATION.

Sec. 11. Section 38a-920 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) An order to liquidate the business of a domestic insurer shall appoint the commissioner and his successors in office AS liquidator and shall direct the liquidator [forthwith] to take possession of the assets of the insurer and to administer them under the general supervision of the court. THE COMMISSIONER SHALL BE ENTITLED TO REQUEST THE ADMINISTRATIVE JUDGE OF THE SUPERIOR COURT FOR THE JUDICIAL DISTRICT OF HARTFORD-NEW BRITAIN TO APPOINT A SINGLE JUDGE TO SUPERVISE THE LIQUIDATION AND HEAR ANY CASES OR CONTROVERSIES ARISING OUT OF OR RELATED TO THE LIQUIDATION. LIQUIDATION PROCEEDINGS SHALL BE EXEMPT FROM ANY DORMANCY OR SIMILAR PROGRAM MAINTAINED BY THE COURT FOR THE EARLY CLOSURE OF CIVIL ACTIONS. The liquidator shall be vested by operation of law with the title to all of the property, contracts, and rights of action and all of the books and records of the insurer ordered liquidated, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the clerk of the Superior Court and with the recorder of deeds of the town in which its principal office or place of business is located, or, in the case of real estate with the recorder of deeds of the town where the property is located, shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds would have imparted.

(b) Upon issuance of the order, the rights and liabilities of any such insurer and of its creditors, policyholders, shareholders, members and all other persons interested in its estate shall become fixed as of the date of entry of the order of liquidation, except as provided in sections 38a-921, AS AMENDED BY THIS ACT, and 38a-939, AS AMENDED BY THIS ACT, UNLESS OTHERWISE FIXED BY THE SUPERIOR COURT.

(c) An order to liquidate the business of an alien insurer domiciled in this state shall be in the same terms and have the same legal effect as an order to liquidate a domestic insurer, except that the assets and the business in the United States shall be the only assets and business included therein.

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

(e) Any order issued under this section shall require THE LIQUIDATOR TO SUBMIT financial reports to the court. [by the liquidator.] Financial reports shall include, [as] AT a minimum, A STATEMENT OF the assets and liabilities of the insurer and all funds received or disbursed by the liquidator during the current period. Financial reports shall be filed within one year of the liquidation order and at least annually thereafter.

(f) (1) [Within] NOT LATER THAN five days after the initiation of an appeal of an order of liquidation, which order has not been stayed, the commissioner shall present for the court's approval a plan for the continued performance of the defendant company's policy claim obligations, including the duty to defend the insured under liability insurance policies, during the pendency of an appeal. Such plan shall provide for the continued performance and payment of policy claim obligations in the normal course of events, notwithstanding the grounds alleged in support of the order of liquidation including the ground of insolvency. In the event the defendant company's financial condition will not, in the judgment of

the commissioner, support the full performance of all policy claim obligations during the appeal pendency period, the plan may prefer the claims of certain policyholders and claimants over creditors and interested parties as well as other policyholders and claimants, as the commissioner finds to be fair and equitable considering the relative circumstances of such policyholders and claimants. The court shall examine the plan submitted by the commissioner and if it finds the plan to be in the best interests of the parties, the court shall approve the plan. No action shall lie against the commissioner or any of his deputies, agents, clerks, assistants or attorneys by any party based on preference in an appeal pendency plan approved by the court.

(2) The appeal pendency plan shall not supersede or affect the obligations of any insurance guaranty association.

(3) Any such plans shall provide for equitable adjustments to be made by the liquidator to any distributions of assets to guaranty associations, in the event that the liquidator pays claims from assets of the estate, which would otherwise be the obligations of any particular guaranty association but for the appeal of the order of liquidation, such that all guaranty associations equally benefit on a pro rata basis from the assets of the estate. In the event [,] an order of liquidation is set aside upon any appeal, the company shall not be released from delinquency proceedings unless and until funds advanced by any guaranty association, including reasonable administrative expenses in connection therewith relating to obligations of the company, shall be repaid in full, together with interest at the judgment rate of interest or unless an arrangement for repayment thereof has been made with the consent of all applicable guaranty associations.

Sec. 12. Section 38a-921 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) [All policies, other than life or health insurance or annuities, in effect at the time of issuance of an order of liquidation shall continue in force only for the lesser of] NOTWITHSTANDING ANY POLICY OR CONTRACT LANGUAGE OR ANY OTHER PROVISION OF LAW, ALL POLICIES, INSURANCE

CONTRACTS, OTHER THAN REINSURANCE, SURETY BONDS OR SURETY UNDERTAKINGS, OTHER THAN LIFE OR HEALTH INSURANCE OR ANNUITIES, IN EFFECT AT THE TIME OF ISSUANCE OF AN ORDER OF LIQUIDATION SHALL CONTINUE IN FORCE ONLY FOR THE LESSER OF: (1) A period of thirty days from the date of entry of the liquidation orders; (2) the expiration of the policy coverage; (3) the date when the insured has replaced the insurance coverage with equivalent insurance in another insurer or otherwise terminated the policy; (4) the liquidator has effected a transfer of the policy obligation pursuant to subdivision (8) of subsection (a) of section 38a-923, AS AMENDED BY THIS ACT; or (5) the date proposed by the liquidator and approved by the court to cancel coverage.

(b) An order of liquidation pursuant to section 38a-920, AS AMENDED, shall terminate coverages at the time specified in subsection (a) of this section for purposes of any other statute.

(c) Policies of life or health insurance or annuities shall continue in force for such period and under such terms as is provided for by any applicable guaranty association. [or foreign guaranty association.]

(d) Policies of life or health insurance or annuities or any period of coverage of such policies not covered by a guaranty association [or foreign guaranty association] shall terminate under subsections (a) and (b) of this section.

(e) THE CANCELLATION OF ANY BOND OR SURETY UNDERTAKING SHALL NOT RELEASE ANY COSURETY OR GUARANTOR.

(f) A CANCELLATION UNDER THIS SECTION SHALL NOT AFFECT THE OBLIGATIONS OF THE INSOLVENT INSURER'S REINSURERS WITH RESPECT TO LOSSES ARISING OUT OF ACTS OR OCCURRENCES PRIOR TO SUCH CANCELLATION.

Sec. 13. Section 38a-923 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) The liquidator shall have the power: (1) To appoint a special deputy to act for him under sections 38a-903 to 38a-961, inclusive, AS AMENDED, and to determine his reasonable compensation. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of

the liquidator; (2) to employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants and such other personnel as he may deem necessary to assist in the liquidation, NOTWITHSTANDING ANY CONTRARY PROVISION OF LAW, INCLUDING CHAPTERS 55a AND 67; (3) to fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers and consultants with the approval of the court; (4) to pay reasonable compensation to persons appointed and to defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer. THE LIQUIDATOR SHALL HAVE THE POWER TO PAY REASONABLE COMPENSATION TO SUCH PERSONS ON AN INTERIM BASIS. ALL SUCH INTERIM PAYMENTS SHALL BE SUBJECT TO THE APPROVAL OF THE COURT UPON SUBMISSION BY THE LIQUIDATOR. In the event that the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of any appropriation for the maintenance of the Insurance Department. Any amounts so advanced for expenses of administration shall be repaid to the commissioner for the use of the Insurance Department out of the first available moneys of the insurer; (5) to hold hearings, to subpoena witnesses, to compel their attendance, to administer oaths, to examine any person under oath and to compel any person to subscribe to his testimony after it has been correctly reduced to writing, and in connection therewith to require the production of any books, papers, records or other documents which he deems relevant to the inquiry; (6) to collect all debts and moneys due and claims belonging to the insurer, wherever located, and for this purpose (A) to institute timely action in other jurisdictions in order to forestall garnishment and attachment proceedings against such debts; (B) to do such other acts as are necessary or expedient to collect, conserve or protect its assets or property, including the power to sell, compound, compromise or assign debts for purposes of collection upon such terms and conditions as he deems best; and (C) to pursue any creditor's

remedies available to enforce [his] THE CREDITOR'S claims; (7) to conduct public and private sales of the property of the insurer; (8) to use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under section 38a-944, AS AMENDED; (9) to acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon or otherwise dispose of or deal with, any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable. [He] THE LIQUIDATOR shall also have power to execute, acknowledge and deliver any and all deeds, assignments, releases and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation; (10) to borrow money on the security of the assets in the insurer's estate or without security and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation. Any such funds borrowed may be repaid as an administrative expense and have priority over any other claims in class 1 under the priority of distributions; (11) to enter into such contracts as are necessary to carry out the order to liquidate and to affirm or disavow any contracts to which the insurer is a party; (12) to continue to prosecute and to institute in the name of the insurer or in [his] THE LIQUIDATOR'S own name any and all suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims he deems unprofitable to pursue further. If the insurer is dissolved pursuant to section 38a-922, [he] THE LIQUIDATOR shall have the power to apply to any court in this state or elsewhere for leave to substitute [himself] THE LIQUIDATOR for the insurer as plaintiff; (13) to prosecute any action which may exist [in] ON behalf of the creditors, members, policyholders or shareholders of the insurer against any officer of the insurer or any other person; (14) to remove any or all records and property of the insurer to the offices of the commissioner or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation. Guaranty

associations [and foreign guaranty associations] shall have such reasonable access to the records of the insurer as is necessary for them to carry out their statutory obligations; (15) to deposit in one or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions; (16) to invest all sums not currently needed, unless the court orders otherwise; (17) to file any necessary documents for record in the office of any recorder of deeds or record office in this state or elsewhere where property of the insurer is located; (18) to assert all defenses available to the insurer as against third persons, including statutes of limitation, statutes of frauds and the defense of usury. A waiver of any defense by the insurer after a petition in liquidation has been filed shall not bind the liquidator. Whenever a guaranty association or foreign guaranty association has an obligation to defend any suit, the liquidator shall give precedence to such obligation and may defend only in the absence of a defense by such guaranty associations; (19) to exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included with sections 38a-928 to 38a-930, inclusive; (20) to intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee and to act as the receiver or trustee whenever the appointment is offered; (21) to enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation or dissolution of an insurer doing business in both states; (22) to exercise all powers [now held or hereafter] conferred upon receivers by the laws of this state not inconsistent with the provisions of sections 38a-903 to 38a-961, inclusive, AS AMENDED; (23) to appoint, with the approval of the court, an advisory committee of policyholders, claimants or other creditors including guaranty associations should such a committee be deemed necessary. [Such] THE committee shall serve at the pleasure of the commissioner and THE DECISION TO APPOINT AN ADVISORY COMMITTEE SHALL BE AT THE SOLE DISCRETION

OF THE COMMISSIONER. THE COMMITTEE shall serve without compensation [other than reimbursement for reasonable travel and per diem living expenses] AND WITHOUT REIMBURSEMENT FOR EXPENSES. No other committee shall be appointed by the commissioner or the court in liquidation proceedings conducted under sections 38a-903 to 38a-961, inclusive, AS AMENDED; (24) to audit the books and records of all agents of the insurer insofar as those records relate to the business activities of the insurer.

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

(c) [Notwithstanding the powers of the liquidator as stated in subsections (a) and (b) to the contrary, the liquidator shall have no obligation to defend claims or to continue to defend claims subsequent to the entry of a liquidation order.] THE LIQUIDATOR SHALL NOT BE OBLIGATED TO DEFEND ANY ACTION AGAINST THE INSURER OR INSURED AND MAY ENFORCE INJUNCTIONS, STAYS AND THE CLAIMS PROCEDURE SET FORTH IN SECTIONS 38a-903 TO 38a-961, INCLUSIVE, AS AMENDED. THE LIQUIDATOR MAY ELECT TO DEFEND ANY ACTIONS AGAINST THE INSURER OR INSUREDS IF IT IS IN THE BEST INTEREST OF THE ESTATE. ANY INSUREDS NOT DEFENDED BY A GUARANTY ASSOCIATION SHALL PROVIDE THEIR OWN DEFENSE, AND INCLUDE THE COST OF THE DEFENSE AS PART OF THEIR CLAIMS, IF THE DEFENSE WAS AN OBLIGATION OF THE INSURER. THE RIGHTS OF THE LIQUIDATOR TO CONTEST COVERAGE ON A PARTICULAR CLAIM SHALL BE DEEMED PRESERVED WITHOUT THE NECESSITY FOR AN EXPRESS RESERVATION OF RIGHTS.

Sec. 14. Section 38a-924 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) Unless the court otherwise directs, the liquidator shall give or cause to be given notice of the liquidation order as soon as possible: (1) By first class mail and [either by telegram or telephone] ELECTRONIC COMMUNICATION to the Insurance Commissioner of each jurisdiction in which the insurer is doing business; (2) by first

class mail to any guaranty association [or foreign guaranty association] which is or may become obligated as a result of the liquidation; (3) by first class mail to all [insurance agents of the insurer] THE INSURER'S AGENTS, BROKERS OR PRODUCERS OF RECORD, WITH CURRENT APPOINTMENTS OR CURRENT LICENSES TO REPRESENT THE INSURER, AND TO ALL OTHER AGENTS, BROKERS OR PRODUCERS AS THE LIQUIDATOR DEEMS APPROPRIATE AT THEIR LAST KNOWN ADDRESS; (4) by first class mail to all persons known or reasonably expected to have claims against the insurer, including all policyholders AND REINSURERS, at their last known addresses as indicated by the records of the insurer; and (5) by publication in a newspaper of general circulation in the town in which the insurer has its principal place of business and in such other locations as the liquidator deems appropriate.

(b) WHENEVER THE INSURANCE COMMISSIONER OF THIS STATE IS APPOINTED RECEIVER FOR AN INSURER DOMICILED IN ANOTHER STATE, THE NOTICE OF THE LIQUIDATION ORDER GIVEN BY THE DOMICILIARY LIQUIDATOR IN COMPLIANCE WITH THE LAWS OF THAT STATE SHALL BE SUFFICIENT NOTICE, AND THE ANCILLARY RECEIVER SHALL NOT BE REQUIRED TO GIVE ANY NOTICE UNLESS THE DOMICILIARY LIQUIDATOR FAILS TO GIVE NOTICE. THE ANCILLARY RECEIVER MAY REQUEST THAT THE DOMICILIARY LIQUIDATOR'S NOTICE MENTION THE EXISTENCE OF ANY APPLICABLE GUARANTY ASSOCIATION LAWS IN THIS STATE, AND INFORM CLAIMANTS THAT ANY CLAIMS WHICH THE GUARANTY ASSOCIATION OF THIS STATE MAY COVER MAY BE FILED WITH THE DOMICILIARY LIQUIDATOR AND WILL BE FORWARDED TO THE APPLICABLE GUARANTY ASSOCIATION. IF NOTICE BY THE DOMICILIARY LIQUIDATOR IN ANOTHER STATE DOES NOT MENTION THE POSSIBILITY OF GUARANTY ASSOCIATION COVERAGE IN THIS STATE, THEN THE ANCILLARY RECEIVER SHALL ARRANGE TO GIVE NOTICE TO THOSE WHO MAY HAVE RIGHTS UNDER APPLICABLE GUARANTY ASSOCIATION LAWS IN THIS STATE, TOGETHER WITH A CITATION TO THE GUARANTY ASSOCIATION STATUTE IN THIS STATE. THE NOTICE MAY INCLUDE A BRIEF SUMMARY OF CLAIMANT'S RIGHTS UNDER THE GUARANTY ASSOCIATION LAWS IN THIS STATE AND ANY OTHER INFORMATION DEEMED APPROPRIATE.

[(b) Notice] (c) EXCEPT AS OTHERWISE ESTABLISHED BY THE LIQUIDATOR WITH THE APPROVAL OF THE COURT, NOTICE to potential claimants under

subsection (a) of this section shall require claimants to file with the liquidator their claims together with proper proofs [thereof pursuant to] SPECIFIED IN section 38a-938, AS AMENDED BY THIS ACT, on or before a date the liquidator shall specify in the notice. The liquidator need not require persons claiming cash surrender values or other investment values in life insurance and annuities to file a claim. All claimants shall have a duty to keep the liquidator informed of any changes of address.

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

(2) The liquidator shall promptly provide to the guaranty associations such information concerning the identities and addresses of such policyholders and their policy coverages as may be within the liquidator's possession or control, and otherwise cooperate with guaranty associations to assist them in providing to such policyholders timely notice of the guaranty associations' coverage of policy benefits, including, as applicable, coverage of claims and continuation or termination of coverages.

[(d)] (e) If notice is given in accordance with this section, the distribution of assets of the insurer under sections 38a-903 to 38a-961, inclusive, AS AMENDED, shall be conclusive with respect to all claimants, whether or not they received notice.

(f) NOTWITHSTANDING THE PROVISIONS OF SUBSECTIONS (a) TO (e), INCLUSIVE, OF THIS SECTION, THE LIQUIDATOR SHALL HAVE NO DUTY TO LOCATE ANY PERSON IF NO ADDRESS IS FOUND IN THE RECORDS OF THE INSURER, OR IF MAILINGS ARE RETURNED TO THE LIQUIDATOR BECAUSE OF AN INABILITY TO DELIVER AT THE ADDRESS SHOWN IN THE COMPANY'S BOOKS AND RECORDS. IN SUCH CIRCUMSTANCES THE NOTICE BY PUBLICATION AS REQUIRED BY THIS CHAPTER AND SECTIONS 7, 15 AND 22 OF THIS ACT, OR ACTUAL NOTICE RECEIVED SHALL BE SUFFICIENT NOTICE. WRITTEN CERTIFICATION BY THE LIQUIDATOR OR OTHER KNOWLEDGEABLE PERSON ACTING FOR THE LIQUIDATOR,

THAT THE NOTICES WERE DEPOSITED IN THE UNITED STATES MAIL, POSTAGE PREPAID, SHALL BE PRIMA FACIE EVIDENCE OF MAILING AND RECEIPT.

(g) UPON APPLICATION OF THE LIQUIDATOR AND FOR GOOD CAUSE SHOWN, THE COURT MAY FIND THAT NOTICE BY PUBLICATION AS REQUIRED IN THIS SECTION IS SUFFICIENT NOTICE TO THOSE PERSONS HOLDING AN OCCURRENCE POLICY WHICH EXPIRED MORE THAN FOUR YEARS PRIOR TO THE ENTRY OF THE ORDER OF LIQUIDATION, AND UNDER WHICH THERE ARE NO PENDING CLAIMS; OR THE COURT MAY ORDER SUCH NOTICE TO THOSE PERSONS AS IT DEEMS APPROPRIATE.

Sec. 15. (NEW) (a) If an order instituting a delinquency proceeding against an insurer authorized to do business in this state is entered under chapter 704c of the general statutes or sections 7, 15 and 22 of this act, the receiver appointed under the order has a right to recover on behalf of the insurer from any affiliate that controlled the insurer the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation, rehabilitation or conservation. This recovery is subject to the limitations of subsections (b) to (g), inclusive, of this section. For purposes of this section, "distribution" includes any dividend, or any loan, advance, payment or other transfer for which the insurer did not receive fair consideration prior to the commencement of delinquency proceedings.

(b) No distribution is recoverable if the recipient shows that, when paid, the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect its solvency.

(c) The maximum amount recoverable under this section is the amount needed, in excess of all other available assets, to pay all claims under the receivership, reduced for each recipient by any amount the recipient has already paid to receivers under similar laws of other states.

(d) Any person who was an affiliate that controlled the insurer at the time the distributions were paid is liable up to the amount of distributions received. Any person who was an affiliate that controlled the insurer at the time

the distributions were declared is liable up to the amount of distributions he would have received if he had been paid immediately. If two or more persons are liable regarding the same distributions, they shall be jointly and severally liable.

(e) If any person liable under subsection (d) of this section is insolvent, all affiliates that controlled that person at the time the dividend was declared or paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

(f) An action or proceeding under this section may not be commenced after the earlier of: (1) Two years after the appointment of a rehabilitator under section 38a-915 of the general statutes, as amended by this act, or a liquidator under section 38a-920 of the general statutes, as amended by this act; or (2) the date the rehabilitation is terminated under subsection (b) of section 38a-918 of this general statutes or the liquidation is terminated under section 38a-948 of the general statutes.

Sec. 16. Section 38a-935 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) (1) A producer, premium finance company or any other person, other than the insured, responsible for the payment of a premium shall [be obligated to] pay any unpaid collected premium INCLUDING ANY AMOUNT REPRESENTING COMMISSIONS held by such person at the time of the [declaration of insolvency] ENTRY OF THE LIQUIDATION ORDER, whether earned or unearned BASED ON THE TERMINATION OF COVERAGE UNDER SECTION 38a-921, AS AMENDED BY THIS ACT, and any unpaid earned premium, all as shown on the records of the insurer. A producer, premium finance company or any other person shall have no obligation to pay an uncollected unpaid unearned premium to the liquidator. [The insured shall have the right to recover from such person any part of an unearned premium that represents] (2) THE LIQUIDATOR SHALL ALSO HAVE THE RIGHT TO RECOVER FROM ANY PERSON OTHER THAN THE INSURED, RESPONSIBLE FOR THE PAYMENT OF A PREMIUM, ANY UNEARNED commission actually paid or credited to such person BASED ON THE TERMINATION OF COVERAGE UNDER SECTION 38a-921,

AS AMENDED BY THIS ACT. Credits or set-offs or both shall not be allowed to a producer or premium finance company, OR ANY OTHER PERSON AGAINST UNPAID PREMIUM DUE THE INSURER for any amounts advanced to the insurer by [the producer or premium finance company] SUCH PERSON on behalf of, but in the absence of a payment by, the insured, OR FOR ANY OTHER AMOUNT PAID BY SUCH PERSON TO ANY OTHER PERSON AFTER THE ENTRY OF THE ORDER OF LIQUIDATION. (3) An insured shall [be obligated to] pay, EITHER DIRECTLY TO THE LIQUIDATOR OR TO ANY AGENT WHO HAS PAID OR IS OBLIGATED TO PAY THE LIQUIDATOR ON BEHALF OF THE INSURED, any unpaid earned premium OR RETROSPECTIVELY RATED PREMIUM due the insurer [at the time of the declaration of insolvency, as shown on the records of the insurer] BASED ON THE TERMINATION OF COVERAGE UNDER SECTION 38a-921, AS AMENDED BY THIS ACT. PREMIUM ON SURETY BUSINESS SHALL BE DEEMED EARNED AT INCEPTION IF NO POLICY TERM CAN BE DETERMINED. ALL OTHER PREMIUM SHALL BE DEEMED EARNED AND SHALL BE PRORATED OVER THE DETERMINED POLICY TERM, REGARDLESS OF ANY PROVISION IN THE BOND, GUARANTY, CONTRACT OR OTHER AGREEMENT. IF A CLAIM FOR LOSSES INCURRED UNDER A POLICY IS APPROVED BY THE COURT UNDER SUBSECTION (b) OF SECTION 38a-945, AS AMENDED BY THIS ACT, THEN ALL PREMIUM FOR THE FULL POLICY TERM SHALL BE DEEMED EARNED. (4) ANY PERSON WHO COLLECTED PREMIUM, OR FINANCED PREMIUM UNDER A PREMIUM FINANCE CONTRACT, THAT IS DUE THE INSURER IN LIQUIDATION SHALL BE DEEMED TO HOLD THAT PREMIUM IN TRUST AS A FIDUCIARY FOR THE BENEFIT OF THE INSURER AND TO HAVE AVAILED HIMSELF OF THE LAWS OF THIS STATE, REGARDLESS OF ANY PROVISION IN ANY AGENCY CONTRACT OR OTHER AGREEMENT. (5) ANY PREMIUM FINANCE COMPANY SHALL BE OBLIGATED TO PAY ANY AMOUNTS DUE THE INSURER FROM PREMIUM FINANCE CONTRACTS, WHETHER THE PREMIUM IS EARNED OR UNEARNED. THE LIQUIDATOR HAS THE RIGHT TO COLLECT ANY UNPAID FINANCED PREMIUM DIRECTLY FROM THE PREMIUM FINANCE COMPANY, BY TAKING AN ASSIGNMENT OF THE UNDERLYING PREMIUM FINANCE CONTRACTS, OR DIRECTLY FROM THE INSURED WHO IS A PARTY TO THE PREMIUM FINANCE CONTRACT.

(b) Upon satisfactory evidence of a violation of this section, BY A PERSON OTHER THAN AN INSURED, the commissioner may pursue either one or both of the following courses of action: (1)

Suspend or revoke or refuse to renew the licenses of such offending party or parties; (2) impose a penalty of not more than one thousand dollars for each and every act in violation of this section by said party or parties.

(c) Before the commissioner [shall take] TAKES any action as set forth in subsection (b) of this section, he shall give written notice to the person, company, association, or exchange accused of violating the law, stating specifically the nature of the alleged violation, and fixing a time and place, at least ten days thereafter, when a hearing on the matter shall be held. After such hearing, or upon failure of the accused to appear at such hearing, the commissioner, if he shall find such violation, shall impose such of the penalties under subsection (b) of this section as he deems advisable.

(d) [When the commissioner shall take action in any or all of the ways set out in subsection (b) of this section, the party aggrieved may appeal from said action to the Superior Court.] ANY PERSON AGGRIEVED BY THE ACTION OF THE COMMISSIONER IN REVOKING, SUSPENDING OR REFUSING TO GRANT A LICENSE OR IN IMPOSING A FINE MAY APPEAL THEREFROM IN ACCORDANCE WITH THE PROVISIONS OF SECTION 4-183, EXCEPT VENUE FOR SUCH APPEAL SHALL BE IN THE JUDICIAL DISTRICT OF HARTFORD-NEW BRITAIN.

Sec. 17. Section 38a-938 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) Proof of claim shall consist of a statement signed by the claimant that includes all of the following that are applicable: (1) The particulars of the claim including the consideration given for it; (2) the identity and amount of the security on the claim; (3) the payments made on the debt, if any; (4) that the sum claimed is justly owing and that there is no set-off, counterclaim, or defense to the claim; (5) any right of priority of payment or other specific right asserted by the claimants; (6) a copy of ANY written instrument which is the foundation of the claim; [and] (7) the name and address of the claimant and the attorney who represents him, if any; AND (8) THE SOCIAL

SECURITY OR FEDERAL EMPLOYER IDENTIFICATION NUMBER OF THE CLAIMANT.

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

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

(d) No judgment or order against an insured or the insurer entered after the date of filing of a successful petition for liquidation, and no judgment or order against an insured or the insurer entered at any time by default or by collusion, need be considered as evidence of liability or of quantum of damages. No judgment or order against an insured or the insurer entered within four months before the filing of the petition need be considered as evidence of liability or of the quantum of damages.

(e) [All claims of a guaranty association or foreign guaranty association shall be in such form and contain such substantiation as may be agreed to by the association and the liquidator.] A GUARANTY ASSOCIATION SHALL BE PERMITTED TO FILE A SINGLE OMNIBUS PROOF OF CLAIM FOR ALL CLAIMS OF THE ASSOCIATION IN CONNECTION WITH PAYMENT OF CLAIMS OF THE INSOLVENT INSURER. THE OMNIBUS PROOF OF CLAIM SHALL BE PERIODICALLY UPDATED BY THE ASSOCIATION, AND THE LIQUIDATOR MAY REQUIRE THE ASSOCIATION TO SUBMIT A REASONABLE AMOUNT OF SUPPORTING DOCUMENTATION.

Sec. 18. Section 38a-939 of the general statutes is repealed and the following is substituted in lieu thereof:

[(a) The claim of a third party which is contingent only on his first obtaining a judgment against the insured shall be considered and allowed as if there were no such contingency.

(b) A claim may be allowed even if contingent, if it is filed in accordance with section 38a-937. It may be allowed and may

participate in all distributions declared after it is filed to the extent that it does not prejudice the orderly administration of the liquidation.

(c) Claims that are due except for the passage of time shall be treated as absolute claims are treated, except that such claims may be discounted at the legal rate of interest.]

[(d)] (a) Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to the issuance of any order of rehabilitation or liquidation pursuant to section 38a-915 or 38a-920, AS AMENDED.

(b) WHEN A LIQUIDATION ORDER HAS BEEN ENTERED IN A PROCEEDING AGAINST AN INSURER, ANY INSURED, REINSURED, THIRD PARTY PERSON WHO HAS A CAUSE OF ACTION AGAINST AN INSURED OF THE INSURER, OR ANY OTHER PERSON OR ENTITY THAT HAS A CLAIM OR CAUSE OF ACTION AGAINST THE INSURER, SHALL HAVE THE RIGHT TO FILE A CLAIM IN THE PROCEEDING, REGARDLESS OF THE FACT THAT THE CLAIM MAY BE CONTINGENT, UNLIQUIDATED OR IMMATURE. FOR PURPOSES OF THIS SECTION: (1) A CLAIM IS CONTINGENT IF THE ACCIDENT, CASUALTY, DISASTER OR LOSS INSURED OR REINSURED AGAINST OCCURRED ON OR BEFORE THE DATE FIXED UNDER SECTION 38a-920, AS AMENDED BY THIS ACT, BUT THE ACT OR EVENT TRIGGERING THE INSURER'S OBLIGATION TO PAY HAS NOT OCCURRED AS OF THAT DATE; (2) A CLAIM IS UNLIQUIDATED IF THE AMOUNT OF THE CLAIM HAS NOT BEEN DETERMINED; AND (3) A CLAIM IS IMMATURE IF PAYMENT ON THE CLAIM IS NOT YET DUE.

(c) EXCEPT AS PROVIDED IN THIS SECTION, A CLAIM MAY NOT SHARE IN A DISTRIBUTION OF ASSETS PURSUANT TO THIS CHAPTER OR SECTIONS 7, 15 AND 22 OF THIS ACT, UNLESS IT HAS BEEN DEFINITELY DETERMINED, PROVED AND ALLOWED. A CONTINGENT, UNLIQUIDATED OR IMMATURE CLAIM MAY SHARE IN A DISTRIBUTION OF ASSETS PROVIDED THAT, AS OF THE TIME OF THE ALLOWANCE OR DISALLOWANCE OF THE CLAIM BY THE COURT: (1) IF THE CLAIM WAS A CONTINGENT CLAIM AGAINST THE INSURER AS OF THE DATE ESTABLISHED UNDER SECTION 38a-920, AS AMENDED, THE CLAIMANT HAS PRESENTED PROOF OF THE INSURER'S OBLIGATION TO PAY REASONABLY SATISFACTORY TO THE RECEIVER; (2) IF THE CLAIM WAS A CONTINGENT CLAIM AS OF THE DATE ESTABLISHED UNDER SECTION 38a-920,

AS AMENDED BY THIS ACT, AND WAS BASED UPON A CAUSE OF ACTION AGAINST AN INSURED OF THE INSURER, (A) IT MAY BE REASONABLY INFERRED FROM PROOF PRESENTED UPON THE CLAIM THAT THE CLAIMANT WOULD BE ABLE TO OBTAIN A JUDGMENT, (B) THE PERSON HAS FURNISHED SUITABLE PROOF, UNLESS THE COURT FOR GOOD CAUSE SHOWN SHALL OTHERWISE DIRECT, THAT NO FURTHER VALID CLAIMS CAN BE MADE AGAINST THE INSURER ARISING OUT OF THE CAUSE OF ACTION OTHER THAN THOSE ALREADY PRESENTED, AND (C) THE TOTAL LIABILITY OF THE INSURER TO ALL CLAIMANTS ARISING OUT OF THE SAME ACT SHALL BE NO GREATER THAN ITS TOTAL LIABILITY WOULD BE WERE IT NOT IN LIQUIDATION. IN THOSE CASES UNDER SUBPARAGRAPH (C) OF THIS SUBDIVISION, INSUREDS MAY INCLUDE IN CONTINGENT CLAIMS REASONABLE ATTORNEY'S FEES FOR SERVICES RENDERED AFTER THE DATE OF LIQUIDATION, IN DEFENSE OF CLAIMS OR SUITS COVERED BY THE INSURED'S POLICY, PROVIDED THE ATTORNEY'S FEES HAVE BEEN PAID BY THE INSURED AND EVIDENCE OF PAYMENT IS PRESENTED TO THE RECEIVER; (3) IF THE CLAIM WAS UNLIQUIDATED AS OF THE DATE ESTABLISHED UNDER SECTION 38a-920, AS AMENDED BY THIS ACT, ITS AMOUNT HAS BEEN DETERMINED, PROVIDED SUCH DETERMINATION DOES NOT PREJUDICE THE ORDERLY ADMINISTRATION OF THE LIQUIDATION PROCEEDING; OR (4) IF THE CLAIM WAS IMMATURE AS OF THE DATE ESTABLISHED UNDER SECTION 38a-920, AS AMENDED BY THIS ACT, IT SHALL BE DISCOUNTED AT THE HIGHER OF THE LEGAL RATE OF INTEREST ACCRUING ON JUDGMENTS OR THE RATE OF INTEREST AVAILABLE ON UNITED STATES TREASURY SECURITIES OF APPROXIMATELY THE SAME MATURITY.

(d) NOTWITHSTANDING THE PROVISIONS OF SUBSECTIONS (a) TO (c), INCLUSIVE, OF THIS SECTION, ANY INSURED SHALL HAVE THE RIGHT TO FILE A CLAIM FOR THE PROTECTION AFFORDED UNDER THE INSURED'S POLICY, IRRESPECTIVE OF WHETHER A CLAIM IS THEN KNOWN, IF THE POLICY IS AN OCCURRENCE POLICY. THEREAFTER, AT SUCH TIME THAT A SPECIFIC CLAIM IS MADE BY OR AGAINST THE INSURER, THE INSURED SHALL SUPPLEMENT HIS CLAIM AND THE RECEIVER SHALL TREAT THE SAME AS A CONTINGENT, UNLIQUIDATED OR IMMATURE CLAIM. ANY SUCH CLAIMS OF POLICYHOLDERS FOR THE PROTECTION UNDER AN OCCURRENCE POLICY REMAINING AT OR NEAR THE CLOSING OF THE ESTATE SHALL BE DISPOSED OF IN ACCORDANCE WITH SECTION 38a-945, AS AMENDED BY THIS ACT.

(e) THE ESTIMATION AND ALLOWANCE OF A CONTINGENT CLAIM UNDER THIS SECTION SHALL NOT PROVIDE A BASIS TO COMPEL PAYMENT FROM A REINSURER OF ESTIMATED INCURRED BUT NOT REPORTED LOSSES AND, EXCEPT WITH RESPECT TO CLAIMS MADE UNDER SUBSECTION (c) OF SECTION 38a-939, AS AMENDED, OUTSTANDING RESERVES, UNLESS THE REINSURANCE CONTRACT SPECIFICALLY PROVIDES FOR THE PAYMENT OF SUCH LOSSES OR RESERVES.

Sec. 19. Section 38a-940 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) Whenever any third party asserts a cause of action against an insured of an insurer in liquidation, the third party may file a claim with the liquidator ON OR BEFORE THE LAST DAY FOR FILING CLAIMS.

(b) Whether or not the third party files a claim, the insured may file a claim on [his] THE INSURED'S own behalf in the liquidation. TO THE EXTENT THE INSURED FILES A CLAIM, IT SHALL BE DEEMED SUFFICIENT TO COVER ALL RELATED THIRD PARTY CLAIMS. If the insured fails to file a claim by the date for filing claims specified in the order of liquidation or within sixty days after mailing of the notice required by section 38a-924, AS AMENDED BY THIS ACT, whichever is later, [he is] THE INSURER SHALL BE DEEMED an unexcused late filer.

(c) The liquidator shall make [his] recommendations to the court pursuant to section 38a-944, AS AMENDED BY THIS ACT, for the allowance of an insured's claim pursuant to subsection (b) of this section after consideration of the probable outcome of any pending action against the insured on which the claim is based, the probable damages recoverable in the action and the probable costs and expenses of defense. After allowance by the court, the liquidator shall withhold any dividends payable on the claim, pending the outcome of litigation and negotiation with the insured. Whenever it seems appropriate, [he] THE LIQUIDATOR shall reconsider the claim on the basis of additional information and amend his recommendations to the court. The insured shall be afforded the same notice and opportunity to be heard on all changes in the recommendation as in its initial determination. The court may amend its

allowance as it [thinks] FINDS appropriate. As claims against the insured are settled or barred, the insured shall be paid from the amount withheld the same percentage dividend as was paid on other claims of like priority, based on the lesser of (1) the amount actually recovered from the insured by action or paid by agreement plus the reasonable costs and expenses of defense, or (2) the amount allowed on the claims by the court. After all claims are settled or barred, any sum remaining from the amount withheld shall revert to the undistributed assets of the insurer. Delay in final payment under this subsection shall not be a reason for unreasonable delay of final distribution and discharge of the liquidator.

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

(e) No claim may be presented under this section if it is or may be covered by any guaranty association. [or foreign guaranty association.]

Sec. 20. Section 38a-941 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) When a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant or [his] THE CLAIMANT'S attorney by first class mail at the address shown in the proof of claim. [Within sixty] NOT LATER THAN THIRTY days [from] AFTER the mailing of the notice, the claimant may file [his] objections with the liquidator. ANY FILED OBJECTIONS SHALL CLEARLY SET FORTH ALL FACTS AND THE LEGAL BASIS FOR THE OBJECTIONS AND THE REASONS WHY THE CLAIM SHOULD BE ALLOWED. If no such filing is made, [the claimant may not further object to] the determination SHALL BE FINAL.

(b) Whenever objections are filed with the liquidator and the liquidator does not alter [his denial] THE DETERMINATION of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first class mail to the claimant or [his] THE CLAIMANT'S attorney and to any other persons directly affected, not less than ten nor more than thirty days before the date of the hearing. The matter may be heard by the court or by a court-appointed referee. [who shall submit findings of fact along with his recommendation.] THE HEARING SHALL BE CONDUCTED ON THE RECORD IN AN INFORMAL MANNER AND THE FORMAL RULES OF EVIDENCE AND CIVIL PROCEDURE NEED NOT BE STRICTLY APPLIED. HEARINGS SHALL BE HELD WITHOUT A JURY. PREHEARING DISCOVERY SHALL BE LIMITED TO SUCH PRETRIAL DISCOVERY AS EXPRESSLY PERMITTED IN ARBITRATION PROCEEDINGS UNDER CHAPTER 909.

(c) WHEN A DISPUTED CLAIM IS HEARD BY A REFEREE, THE REFEREE SHALL SUBMIT WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW ALONG WITH THE RECOMMENDATION FOR DISPOSITION TO THE COURT. THE REFEREE'S RECOMMENDATION SHALL BECOME THE FINAL JUDGMENT OF THE COURT, UNLESS OBJECTIONS TO THE REFEREE'S RECOMMENDATIONS ARE FILED BY THE LIQUIDATOR OR CLAIMANT WITH THE COURT NOT LATER THAN FIFTEEN DAYS AFTER THE RECOMMENDATION IS MAILED TO THE LIQUIDATOR AND CLAIMANT.

(d) THE FINAL DISPOSITION BY THE COURT OF A DISPUTED CLAIM, WHETHER AFTER A HEARING BY THE COURT OR AFTER A RECOMMENDATION BY A REFEREE, SHALL BE DEEMED A FINAL JUDGMENT FOR PURPOSES OF APPEAL.

(e) THE COURTS OF THIS STATE MAY MAKE SPECIAL RULES OF CIVIL PROCEDURE FOR DISPUTED CLAIMS, PROVIDED THAT THE RULES ARE NOT INCONSISTENT WITH THIS CHAPTER AND SECTIONS 7, 15 AND 22 OF THIS ACT.

Sec. 21. Section 38a-942 of the general statutes is repealed and the following is substituted in lieu thereof:

Whenever [a creditor] AN OBLIGEE whose claim against an insurer is secured, in whole or in part, by the undertaking of another person, fails to prove and file that claim, the other person may do so in the [creditor's] OBLIGEE'S name, and shall be subrogated to the rights of the

[creditor] OBLIGEE, whether the claim has been filed by the [creditor] OBLIGEE or by the other person in the [creditor's] OBLIGEE'S name, to the extent that [he] THE OBLIGEE discharges the undertaking. In the absence of an agreement with the [creditor] OBLIGEE to the contrary, the other person shall not be entitled to any distribution [, however,] until the amount paid to the [creditor] OBLIGEE on the undertaking plus the distributions paid on the claim from the insurer's estate to the [creditor] OBLIGEE equals the amount of the entire claim of the [creditor] OBLIGEE. Any excess received by the [creditor] OBLIGEE shall be held by him in trust for such other person. The term "other person", as used in this section is not intended to apply to a guaranty association. [or foreign guaranty association.]

Sec. 22. (NEW) (a) Notwithstanding any provision of sections 38a-903 to 38a-961, inclusive, of the general statutes, as amended, including any provision permitting the modification of contracts, or other law of a state, no person shall be stayed or prohibited from exercising: (1) A contractual right to terminate, liquidate or close out any netting agreement or qualified financial contract with an insurer because of: (A) The insolvency, financial condition or default of the insurer at any time, provided that the right is enforceable under applicable law other than sections 38a-903 to 38a-961, inclusive, of the general statutes, as amended, or (B) the commencement of a formal delinquency proceeding under sections 38a-903 to 38a-961, inclusive, of the general statutes, as amended. (2) Any right under a pledge, security, collateral or guarantee agreement or any other similar security arrangement or credit support document relating to a netting agreement or qualified financial contract. (3) Subject to any provision of subsection (b) of section 38a-932 of the general statutes, any right to set off or net out any termination value, payment amount, or other transfer obligation arising under or in connection with a netting agreement or qualified financial contract where the counterparty or its guarantor is organized under the laws of the United States or a state or foreign jurisdiction approved by the Securities Valuation Office of the

National Association of Insurance Commissioners as eligible for netting.

(b) Upon termination of a netting agreement, the net or settlement amount, if any, owed by a nondefaulting party to an insurer against which an application or petition has been filed under sections 38a-903 to 38a-961, inclusive, of the general statutes, as amended, shall be transferred to or on the order of the receiver for the insurer, even if the insurer is the defaulting party, notwithstanding any provision in the netting agreement that may provide that the nondefaulting party is not required to pay any net or settlement amount due to the defaulting party upon termination. Any limited two-way payment provision in a netting agreement with an insurer that has defaulted shall be deemed to be a full two-way payment provision as against the defaulting insurer. Any such property or amount shall, except to the extent it is subject to one or more secondary liens or encumbrances, be a general asset of the insurer.

(c) In making any transfer of a netting agreement or qualified financial contract of an insurer subject to a delinquency proceeding, the receiver shall either: (1) Transfer to one party, other than an insurer subject to a delinquency proceeding, all netting agreements and qualified financial contracts between a counterparty or any affiliate of the counterparty and the insurer that is the subject of the proceeding, including: (A) All rights and obligations of each party under each such netting agreement and qualified financial contract; and (B) all property, including any guarantees or credit support documents, securing any claims of each party under such netting agreement and qualified financial contract; or (2) transfer none of the netting agreements, qualified financial contracts, rights, obligations or property referred to in subdivision (1) of this subsection, with respect to such counterparty and any affiliate of such counterparty.

(d) If a receiver for an insurer makes a transfer of one or more netting agreements or qualified financial contracts, then the receiver shall use its best efforts to notify any person who is a party to the netting agreements or

qualified financial contracts of the transfer by twelve o'clock noon, the receiver's local time, on the business day following the transfer. For purposes of this subsection, "business day" means a day other than a Saturday, Sunday or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(e) Notwithstanding any other provision of sections 38a-903 to 38a-961, inclusive, of the general statutes, as amended, a receiver may not avoid a transfer of money or other property arising under or in connection with a netting agreement or qualified financial contract, or any pledge, security, collateral or guarantee agreement or any other similar security arrangement or credit support document relating to a netting agreement or qualified financial contract, that is made before the commencement of a formal delinquency proceeding under sections 38a-903 to 38a-961, inclusive, of the general statutes, as amended, except that a transfer may be avoided under subsection (a) of section 38a-928 of the general statutes, as amended, if the transfer was made with actual intent to hinder, delay or defraud the insurer, a receiver appointed for the insurer or existing or future creditors.

(f) Notwithstanding any other provision of sections 38a-903 to 38a-961, inclusive, of the general statutes, as amended, any claim of a counterparty against the estate arising from the receiver's disaffirmance or repudiation of a netting agreement or qualified financial contract that has not been previously affirmed in the liquidation or immediately preceding rehabilitation case shall be determined and shall be allowed or disallowed as if the claim has arisen before the date of the filing of the petition for liquidation or, if a rehabilitation proceeding is converted to a liquidation proceeding, as if the claim had arisen before the date of the filing of the petition for rehabilitation. The amount of the claim shall be the actual direct compensatory damages determined as of the date of the disaffirmance or repudiation of the netting agreement or qualified financial contract. "Actual direct compensatory damages" does not include punitive or exemplary damages, damages for lost profit or lost opportunity or

damages for pain and suffering, but does include normal and reasonable costs of cover or other reasonable measures of damages utilized in the derivatives market for the contract and agreement claims.

(g) As used in this section, "contractual right" includes any right, whether or not evidenced in writing, arising under statutory or common law, a rule or bylaw of a national securities exchange, national securities clearing organization or securities clearing agency, a rule or bylaw, or a resolution of the governing body, of a contract market or its clearing organization, or under law merchant.

(h) The provisions of this section shall not apply to persons who are affiliates of the insurer that is the subject of the proceeding.

(i) All rights of counterparties under sections 38a-903 to 38a-961, inclusive, of the general statutes, as amended, shall apply to netting agreements entered into on behalf of the general account or separate accounts if the assets of each separate account are available only to counterparties to netting agreements entered into on behalf of that separate account.

Sec. 23. Section 38a-944 of the general statutes, as amended by section 1 of public act 97-113, is repealed and the following is substituted in lieu thereof:

(a) The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this section. Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. ONCE SUCH FUNDS ARE RETAINED BY THE LIQUIDATOR AND APPROVED BY THE COURT, THE INSURER'S ESTATE SHALL HAVE NO FURTHER LIABILITY TO MEMBERS OF THAT CLASS EXCEPT TO THE EXTENT OF THE RETAINED FUNDS AND ANY OTHER UNDISTURBED FUNDS. No subclasses shall be established within any class, EXCEPT AS PROVIDED IN SUBDIVISION (1) OF SUBSECTION (a) OF SECTION 38a-923, AS AMENDED. No claim by a shareholder, policyholder or other creditor shall be permitted to circumvent the priority classes through the use of equitable remedies. The order of distribution of claims shall be:

(1) Class 1. The costs and expenses of administration EXPRESSLY APPROVED BY THE RECEIVER, including but not limited to the following: (A) The actual and necessary costs of preserving or recovering the assets of the insurer; (B) compensation for all services rendered in the CONSERVATION, REHABILITATION OR liquidation; (C) any necessary filing fees; (D) the fees and mileage payable to witnesses; AND (E) authorized reasonable attorney's fees and other professional services rendered in the CONSERVATION, rehabilitation [and] OR liquidation. [; (F) the reasonable expenses of a guaranty association or foreign guaranty association in handling claims.]

(2) CLASS 2. THE ADMINISTRATIVE EXPENSES OF GUARANTY ASSOCIATIONS. FOR PURPOSES OF THIS SECTION SUCH EXPENSES SHALL BE THOSE REASONABLE EXPENSES INCURRED BY GUARANTY ASSOCIATIONS WHERE THE EXPENSES ARE NOT PAYMENTS OR EXPENSES WHICH ARE REQUIRED TO BE INCURRED AS DIRECT POLICY BENEFITS IN FULFILLMENT OF THE TERMS OF THE INSURANCE CONTRACT OR POLICY, AND THAT ARE OF THE TYPE AND NATURE THAT, BUT FOR THE ACTIVITIES OF THE GUARANTY ASSOCIATION OTHERWISE WOULD HAVE BEEN INCURRED BY THE RECEIVER, INCLUDING, BUT NOT LIMITED TO, EVALUATIONS OF POLICY COVERAGE, ACTIVITIES INVOLVED IN THE ADJUSTMENT AND SETTLEMENT OF CLAIMS UNDER POLICIES, INCLUDING THOSE OF IN-HOUSE OR OUTSIDE ADJUSTERS, AND THE REASONABLE EXPENSES INCURRED IN CONNECTION WITH THE ARRANGEMENTS FOR ONGOING COVERAGE THROUGH TRANSFER TO OTHER INSURERS, POLICY EXCHANGES OR MAINTAINING POLICIES IN FORCE. THE RECEIVER MAY IN HIS OR HER SOLE DISCRETION APPROVE AS AN ADMINISTRATIVE EXPENSE UNDER THIS SECTION ANY OTHER REASONABLE EXPENSES OF THE GUARANTY ASSOCIATION IF THE RECEIVER FINDS: (A) THE EXPENSES ARE NOT EXPENSES REQUIRED TO BE PAID OR INCURRED AS DIRECT POLICY BENEFITS BY THE TERMS OF THE POLICY, AND (B) THE EXPENSES WERE INCURRED IN FURTHERANCE OF ACTIVITIES THAT PROVIDED A MATERIAL ECONOMIC BENEFIT TO THE ESTATE AS A WHOLE, IRRESPECTIVE OF WHETHER THE ACTIVITIES RESULTED IN ADDITIONAL BENEFITS TO COVERED CLAIMANTS. THE COURT SHALL APPROVE SUCH EXPENSES UNLESS IT FINDS THE RECEIVER ABUSED HIS OR HER DISCRETION IN APPROVING THE EXPENSES. IF THE RECEIVER DETERMINES THAT THE ASSETS OF THE ESTATE WILL BE SUFFICIENT

TO PAY ALL CLASS 1 CLAIMS IN FULL, CLASS 2 CLAIMS SHALL BE PAID CURRENTLY, PROVIDED THAT THE LIQUIDATOR SHALL SECURE FROM EACH OF THE ASSOCIATIONS RECEIVING DISBURSEMENTS PURSUANT TO THIS SECTION AN AGREEMENT TO RETURN TO THE LIQUIDATOR SUCH DISBURSEMENT, TOGETHER WITH INVESTMENT INCOME ACTUALLY EARNED ON SUCH DISBURSEMENTS, AS MAY BE REQUIRED TO PAY CLASS 1 CLAIMS. NO BOND SHALL BE REQUIRED OF ANY SUCH ASSOCIATION.

[(2) Class 2] (3) CLASS 3. All claims under policies including such claims of the federal or any state or local government for losses incurred, including third party claims, CLAIMS FOR UNEARNED PREMIUMS, and all claims of a guaranty association [or foreign guaranty association] FOR PAYMENT OF COVERED CLAIMS OR COVERED OBLIGATIONS OF THE INSURER. ALL CLAIMS OF A GUARANTY ASSOCIATION FOR REASONABLE EXPENSES other than those included in class [1] 2. All claims under life AND HEALTH insurance policies, annuity contracts and funding agreements, whether for death proceeds, HEALTH BENEFITS, annuity proceeds, or investment values shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer to his employee shall be treated as a gratuity. NOTWITHSTANDING THE PROVISIONS OF THIS SUBDIVISION, THE FOLLOWING CLAIMS SHALL BE EXCLUDED FROM CLASS 3 PRIORITY: (A) OBLIGATIONS OF THE INSOLVENT INSURER ARISING OUT OF REINSURANCE CONTRACTS; (B) OBLIGATIONS INCURRED AFTER THE EXPIRATION DATE OF THE INSURANCE POLICY OR AFTER THE POLICY HAS BEEN REPLACED BY THE INSURED OR CANCELED AT THE INSURED'S REQUEST OR AFTER THE POLICY HAS BEEN CANCELED AS PROVIDED IN THIS CHAPTER, AND SECTIONS 7, 15 AND 22 OF THIS ACT. NOTWITHSTANDING THE PROVISIONS OF THIS SUBDIVISION, EARNED PREMIUM CLAIMS ON POLICIES, OTHER THAN REINSURANCE AGREEMENTS, SHALL NOT BE EXCLUDED; (C) OBLIGATIONS TO INSURERS, INSURANCE POOLS OR UNDERWRITING ASSOCIATIONS AND THEIR CLAIMS FOR CONTRIBUTION,

INDEMNITY OR SUBROGATION, EQUITABLE OR OTHERWISE; (D) ANY CLAIM WHICH IS IN EXCESS OF ANY APPLICABLE LIMITS PROVIDED IN THE INSURANCE POLICY ISSUED BY THE INSOLVENT INSURER; (E) ANY AMOUNT ACCRUED AS PUNITIVE OR EXEMPLARY DAMAGES UNLESS EXPRESSLY COVERED UNDER THE TERMS OF THE POLICY; AND (F) TORT CLAIMS OF ANY KIND AGAINST THE INSURER, AND CLAIMS AGAINST THE INSURER FOR BAD FAITH OR WRONGFUL SETTLEMENT PRACTICES.

[(3) Class 3] (4) CLASS 4. Claims of the federal government except those under class [2] 3.

[(4) Class 4, Reasonable] (5) CLASS 5. DEBTS DUE EMPLOYEES FOR SERVICES, BENEFITS, CONTRACTUAL OR OTHERWISE DUE ARISING OUT OF SUCH REASONABLE compensation to employees for services performed to the extent that they do not exceed two months of monetary compensation and represent payment for services performed within [one year] SIX MONTHS before the filing of the petition for liquidation or, if rehabilitation preceded liquidation, within one year before the filing of the petition for rehabilitation. Officers and directors shall not be entitled to the benefit of this priority, except as otherwise approved by the liquidator and the court. Such priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees.

[(5) Class 5] (6) CLASS 6. Claims [under nonassessable policies for unearned premium or other premium refunds and claims] of general creditors, including claims of ceding and assuming companies in their capacity as such, and claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies.

[(6) Class 6] (7) CLASS 7. Claims of any state or local government, except those under class [2] 4. Claims [, including those] of any such governmental body for a penalty or forfeiture, [shall be allowed in this class] BUT only to the extent of the pecuniary loss sustained from the act, transaction or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under subdivision (8) of this subsection.

[(7) Class 7. Claims filed late or any other claims other than claims under subdivisions (8) and (9) of this subsection.]

(8) Class 8. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies, INTEREST ON CLAIMS OF CLASSES 1 TO 7, INCLUSIVE, AND ANY OTHER CLAIMS SPECIFICALLY SUBORDINATED TO THIS CLASS. [Payments to members of domestic mutual insurance companies shall be limited in accordance with law.]

(9) Class 9. [The claims of shareholders or other owners in their capacity as shareholders.] CLAIMS OF SHAREHOLDERS OR OTHER OWNERS ARISING OUT OF THEIR CAPACITY AS SHAREHOLDERS OR OWNERS, OR ARISING IN ANY OTHER CAPACITY OR FACTS EXCEPT AS THEY MAY BE QUALIFIED IN CLASS 3 OR 4.

(b) UPON THE DECLARATION OF A DIVIDEND, THE RECEIVER SHALL APPLY THE AMOUNT OF THE DIVIDEND AGAINST ANY INDEBTEDNESS OWED TO THE INSURER BY THE PERSON ENTITLED TO THE DIVIDEND. THERE SHALL BE NO CLAIM ALLOWED FOR ANY DEDUCTIBLE CHARGED BY A GUARANTY ASSOCIATION OR ENTITY PERFORMING A SIMILAR FUNCTION.

[(b)] (c) Every claim under a separate account agreement providing, in effect, that the assets in the separate account shall not be chargeable with liabilities arising out of any other business of the insurer shall be satisfied out of the assets in the separate account equal to the reserves maintained in such account for such agreement and, to the extent, if any, not fully discharged thereby, shall be treated as a class [2] 3 claim against the estate. For the purposes of this section, the "insurer's estate" shall mean the general assets of such company less any assets held in separate accounts that, pursuant to section 38a-433 or 38a-459, AS AMENDED, are not chargeable with liabilities arising out of any other business of the insurer.

Sec. 24. Section 38a-945 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) The liquidator shall review all claims duly filed in the liquidation and shall make such further investigation as [he shall deem] DEEMED necessary. [He] THE LIQUIDATOR may compound, compromise or in any other manner negotiate the amount for which claims will be recommended to the

court except where the liquidator is required by law to accept claims as settled by any person or organization, including any guaranty association. [or foreign guaranty association.] Unresolved disputes shall be determined pursuant to section 38a-941, AS AMENDED BY THIS ACT. As soon as practicable, he shall present to the court a report of the claims against the insurer with his recommendations. The report shall include the name and address of each claimant and the amount of the claim finally recommended, if any. If the insurer has issued annuities or life insurance policies, the liquidator shall report the persons to whom, according to the records of the insurer, amounts are owed as cash surrender values or other investment value and the amounts owed.

(b) The court may approve, disapprove, or modify, the report on claims by the liquidator. Such reports as are not modified by the court within a period of sixty days following submission by the liquidator shall be treated by the liquidator as allowed claims, subject thereafter to later modification or to rulings made by the court pursuant to section 38a-941, AS AMENDED. No claim under a policy of insurance shall be allowed for an amount in excess of the applicable policy limits.

(c) AFTER GIVING DUE CONSIDERATION TO THE NATURE OF THE POLICIES THAT WERE SOLD BY THE INSURER, AND THE NUMBER OF CLAIMS BY POLICYHOLDERS FOR PROTECTION UNDER THEIR POLICIES, AND AFTER CONSIDERING ACTUARIAL ESTIMATES THAT SUBSTANTIAL AMOUNTS OF INCURRED BUT NOT REPORTED LOSSES EXIST, THE LIQUIDATOR MAY, BUT NEED NOT, FORMULATE A PROPOSAL, SUBJECT TO THE APPROVAL OF THE COURT TO ALLOW SUCH CLAIMS. THE PROPOSAL MAY ALLOCATE OR ATTRIBUTE ALL OR A PORTION OF THE INCURRED BUT NOT REPORTED LOSSES TO INDIVIDUAL POLICYHOLDER CLAIMANTS ON A BASIS OF REASONABLE EXPERT OPINION. THE COURT SHALL APPROVE THE PROPOSAL AND THE ALLOWANCE OF THE CLAIMS UNLESS IT FINDS THAT THE BASIS OF ALLOCATION IS ARBITRARY OR CAPRICIOUS.

(d) THE LIQUIDATOR IS NOT REQUIRED TO PROCESS CLAIMS FOR ANY CLASS UNTIL IT APPEARS REASONABLY LIKELY THAT ASSETS WILL BE AVAILABLE FOR A DISTRIBUTION TO THAT CLASS. IF THERE ARE INSUFFICIENT ASSETS TO JUSTIFY PROCESSING ALL CLAIMS FOR ANY CLASS LISTED IN SECTION 38a-944, AS

AMENDED, THE LIQUIDATOR SHALL REPORT THE FACTS TO THE COURT AND MAKE SUCH RECOMMENDATIONS AS MAY BE APPROPRIATE FOR HANDLING THE REMAINDER OF THE CLAIMS.

Sec. 25. Section 38a-947 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) All unclaimed funds subject to distribution remaining in the liquidator's hands when [he] THE LIQUIDATOR is ready to apply to the court for discharge, including the amount distributable to any creditor, shareholder, member, or other person who is unknown or cannot be found, shall be deposited with the State Treasurer, and shall be paid without interest except in accordance with section 38a-944, AS AMENDED, to the person entitled thereto or [his] THAT PERSON'S legal representative upon proof satisfactory to the State Treasurer of his right thereto. Any amount on deposit not claimed within six years from the discharge of the liquidator shall be deemed to have been abandoned and shall be escheated without formal escheat proceedings and be deposited in the General Fund. THE LIQUIDATOR MAY ELECT TO APPLY TO THE COURT FOR AUTHORITY TO HOLD THE UNCLAIMED FUNDS SUBJECT TO DISTRIBUTION FOR A PERIOD OF TWO YEARS. THEREAFTER, ANY UNCLAIMED FUNDS MAY BE DISTRIBUTED TO APPROVED CLAIMANTS WHO HAVE PREVIOUSLY RECEIVED A DISTRIBUTION, IF IT IS ECONOMICALLY FEASIBLE FOR THE LIQUIDATOR TO MAKE THE DISTRIBUTION, OR THE LIQUIDATOR MAY APPLY TO THE COURT FOR PERMISSION FOR THE FUNDS TO BE HELD BY THE STATE TREASURER IN AN ACCOUNT ON BEHALF OF THE COMMISSIONER IN HIS CAPACITY AS RECEIVER FOR THE PURPOSE AND USE OF DEFRAYING THE COSTS AND EXPENSES OF ADMINISTRATION OF OTHER INSOLVENT INSURERS FOR WHICH THERE ARE INSUFFICIENT ASSETS TO FUND THE COSTS AND EXPENSES OF ADMINISTRATION.

(b) All funds withheld pursuant to section 38a-939, AS AMENDED BY THIS ACT, and not distributed shall upon discharge of the liquidator be deposited with the State Treasurer and paid by him in accordance with section 38a-944, AS AMENDED BY THIS ACT. Any sums remaining which pursuant to section 38a-944, AS AMENDED BY THIS ACT, would revert to the undistributed assets of the insurer shall be transferred to the State Treasurer and

become the property of the state under subsection (a), unless the commissioner in his discretion petitions the court to reopen the liquidation pursuant to section 38a-949.

Sec. 26. Section 38a-952 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) If a domiciliary liquidator has not been appointed, the commissioner may apply to the Superior Court by verified petition for an order directing [him] THE COMMISSIONER to act as conservator to conserve the property FOUND IN THIS STATE of an alien insurer not domiciled in this state or PROPERTY FOUND IN THIS STATE OF a foreign insurer on any one or more of the following grounds: (1) Any of the grounds pursuant to section 38a-914; (2) that any of its property has been sequestered by official action in its domiciliary state or in any other state; (3) that enough of its property has been sequestered in a foreign country to give reasonable cause to fear that the insurer is or may become insolvent; (4) that its certificate of authority to do business in this state has been revoked or that none was ever issued; and (5) that there are residents of this state with outstanding claims or outstanding policies.

(b) When an order is sought pursuant to subsection (a) of this section, the court shall cause the insurer to be given such notice and time to respond [thereto] as is reasonable under the circumstances.

(c) The court may issue the order in whatever terms it shall deem appropriate. The filing or recording of the order with the clerk of the superior court of the judicial district or the recorder of deeds of the town in which the principal business of the company is located or the country in which its principal office or place of business is located shall impart the same notice as a deed, bill of sale or other evidence of title duly filed or recorded with that recorder of deeds would have imparted.

(d) The conservator may at any time petition for and the court may grant an order pursuant to section 38a-953 to liquidate assets of a foreign or alien insurer under conservation, or, if appropriate, for an order pursuant to section

38a-955, to be appointed ancillary receiver. THE COMMISSIONER SHALL BE ENTITLED TO REQUEST THE ADMINISTRATIVE JUDGE OF THE SUPERIOR COURT FOR THE JUDICIAL DISTRICT OF HARTFORD-NEW BRITAIN TO APPOINT A SINGLE JUDGE TO SUPERVISE THE ANCILLARY PROCEEDING AND HEAR ANY CASES OR CONTROVERSIES ARISING OUT OF OR RELATED TO THE ANCILLARY PROCEEDING. ANCILLARY PROCEEDINGS SHALL BE EXEMPT FROM ANY DORMANCY OR SIMILAR PROGRAM MAINTAINED BY THE COURT FOR THE EARLY CLOSURE OF CIVIL ACTIONS.

(e) The conservator may at any time petition the court for an order terminating conservation of THE PROPERTY OF an insurer. If the court finds that the conservation is no longer necessary, it shall order that the insurer be restored to possession of its property and the control of its business. The court may also make [such] A finding and issue [such] AN order at any time upon motion of any interested party, but if [such] THE motion is denied all costs shall be assessed against such party.

Sec. 27. Section 38a-961 of the general statutes is repealed and the following is substituted in lieu thereof:

If an ancillary receiver in another state or foreign country, whether called by that name or not, fails to transfer to the domiciliary liquidator in this state any assets within his control other than special deposits, diminished only by the expenses of the ancillary receivership, if any, the claims filed in the ancillary receivership, other than special deposit claims or secured claims, shall be placed in the class of claims pursuant to [subsection (g)] SUBDIVISION (8) OF SUBSECTION (a) of section 38a-944, AS AMENDED BY THIS ACT.

Sec. 28. Subdivision (9) of section 38a-1 of the general statutes is repealed and the following is substituted in lieu thereof:

(9) "Insolvency" or "insolvent" means, for any insurer, that it is unable to pay its obligations when they are due, or when its admitted assets do not exceed its liabilities plus the greater of: (A) [Any capital] CAPITAL and surplus required by law for its organization AND CONTINUED OPERATION; or (B) the total par or stated value of its authorized and issued capital stock. For purposes of this subdivision

"liabilities" shall include but not be limited to reserves required by statute or by regulations adopted by the commissioner or specific requirements imposed by the commissioner upon a subject company at the time of admission or subsequent thereto.

Sec. 29. Section 38a-69 of the general statutes is repealed and the following is substituted in lieu thereof:

Except as otherwise provided in title 38a, sections 38a-11, AS AMENDED, 38a-50, 38a-52, [38a-65,] 38a-70 to 38a-76, inclusive, 38a-81 to 38a-83, inclusive, and 38a-153, and the regulations adopted to implement said sections apply to all insurers, including reinsurers, licensed to do business in this state.

Sec. 30. Subdivision (15) of section 38a-816 of the general statutes, as amended by public act 97-95, section 3 of public act 97-126 and section 13 of public act 97-202, is repealed and the following is substituted in lieu thereof:

(15) Failure to pay accident and health claims within forty-five days of receipt by an insurer of the claimant's proof of loss form unless the Insurance Commissioner determines that a legitimate dispute exists as to coverage, liability or damages or that the claimant has fraudulently caused or contributed to the loss. Any insurer who fails to pay such a claim within the forty-five-day period shall pay the claimant the amount of such claim plus interest at the rate of fifteen per cent per annum, in addition to any other penalties which may be imposed pursuant to sections 38a-11, AS AMENDED, 38a-25, AS AMENDED, 38a-41 to 38a-53, inclusive, 38a-57 to 38a-60, inclusive, 38a-62 to [38a-65] 38a-64, inclusive, 38a-76, 38a-83, 38a-84, 38a-117 to 38a-124, inclusive, 38a-129 to 38a-140, inclusive, 38a-146 to 38a-155, inclusive, 38a-283, 38a-288 to 38a-290, inclusive, 38a-319, 38a-320, AS AMENDED, 38a-459, AS AMENDED, 38a-464, 38a-815 to 38a-819, inclusive, AS AMENDED, 38a-824 to 38a-826, inclusive, and 38a-828 to 38a-831, inclusive. Whenever the interest due a claimant pursuant to this section is less than one dollar, the insurer shall deposit such amount in a separate interest-bearing account in which all such amounts shall be deposited. At the end of each calendar

year each such insurer shall donate one-half of such amount to The University of Connecticut Health Center and one-half of such amount to Uncas-on-Thames Hospital.

Sec. 31. Subsection (f) of section 38a-88a of the general statutes, as amended by section 1 of public act 97-292, is repealed and the following is substituted in lieu thereof:

(f) The credit allowed by this section may be claimed only with respect to an income year for which a certification of continued eligibility required under subsection (g) of this section has been issued. If, with respect to any year for which a tax credit is claimed, any subject insurance business ceases at any time to employ at least twenty-five per cent of its total work force in new jobs, then, except as provided in subsection (g) of this section, the entitlement to the credit allowed by this section shall not be allowed for the taxable year in which such employment ceases, and there shall not be a pro rata application of the credit to such taxable year; provided, if the reason for such cessation is the dissolution of such insurance business in bankruptcy or delinquency proceeding, as defined in [subsection (d) of] section 38a-905, AS AMENDED BY THIS ACT, the credit shall be allowed.

Sec. 32. Sections 38a-65 and 38a-316 of the general statutes are repealed.

INS COMMITTEE VOTE: YEA 18 NAY 0 JFS

* * * * *

"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

* * * * *

FISCAL IMPACT STATEMENT - BILL NUMBER sHB 5614

STATE IMPACT	Minimal Cost, Can be Absorbed, see explanation below
MUNICIPAL IMPACT	None
STATE AGENCY(S)	Insurance Department, Judicial Department

EXPLANATION OF ESTIMATES:

The bill results in a workload increase for the Department of Insurance associated with all people and entities, subject to examination by the Insurance Commissioner, coming under the purview of the model Rehabilitation and Liquidation Act. It is expected that all responsibilities of the Department associated with this bill can be handled within the anticipated resources of the Department of Insurance.

In addition, the bill provides for the appointment of a single judge to supervise rehabilitation, liquidation, or conservation proceedings upon the request of the Insurance Commissioner. The court system would be involved in various steps of the rehabilitation process: from developing special civil procedure rules for the handling of disputed claims, to the distribution of unclaimed and withheld funds. This would involve a reallocation of resources from other cases to these cases and can be handled within current budgetary and caseload structures of the court system.

* * * * *

OLR BILL ANALYSIS

sHB 5614

AN ACT CONCERNING THE INSURERS REHABILITATION AND LIQUIDATION ACT

SUMMARY: This bill amends the state's Insurers Rehabilitation and Liquidation Act to conform to revisions made to the model Insurers Rehabilitation and Liquidation Act adopted by the National Association of Insurance Commissioners. That act allows the state insurance commissioner to be receiver for insurance companies facing insolvency and sets procedures for court supervised "delinquency proceedings," which are instituted against an insurance company to liquidate, rehabilitate, reorganize, or conserve it. The bill (1) expands the scope of the act to make it apply to all people and entities subject to examination by the insurance commissioner, to all people and entities conducting an insurance business in the state, and to workers' compensation self-insured groups; (2) provides for an automatic stay and gives exclusive jurisdiction to the court in the state of domicile of a financially impaired insurer; (3) allows for the introduction into evidence of an insolvent insurer's books and records but limits their disclosure; (4) allows the commissioner to ask the court to appoint a single judge to supervise certain proceedings and requires that appeals from a rehabilitation order or plan be heard on an expedited basis; (5) gives rehabilitators and the commissioner added authority; (6) gives liquidators the authority to make certain payments and certain other discretionary powers; (7) expands the notice requirement when the commissioner is appointed receiver for an insurer domiciled in another state; (8) allows a receiver to recover certain distributions, premiums, and fees; (9) allows the filing of contingent, unliquidated, or immature claims and lets them share in a distribution of an insolvent insurer's estate; (10) protects contractual rights of participants in certain agreements; and (11) alters the priority of payment of claims against an insolvent insurer's estate.

The bill expands the instances in which a reinsurers' direct payment releases his obligation to the insurer and adds reinsurance contracts and surety bonds to the

list of policies and contracts that cannot be continued after a liquidation order. It specifies when a third-party claim must be filed and who it covers. The bill changes some procedures involving disputed claims, allows liquidators to make certain proposals to the court, and establishes an alternative to escheat for unclaimed funds. It also repeals certain obsolete statutes and makes numerous minor and technical changes.

EFFECTIVE DATE: October 1, 1998

FURTHER EXPLANATION

Automatic Stay and Exclusive Jurisdiction (Secs. 4(a)(1) to (4))

The bill makes an application or petition for a seizure, rehabilitation, or liquidation order serve as an automatic stay prohibiting people from engaging in any actions that might lessen the value of an insurer's assets or prejudice the proceedings or the rights of policyholders, creditors, or shareholders. The stay becomes permanent and survives the entry of an order of conservation, rehabilitation, or liquidation. Under current law, the receiver must apply to any court of general jurisdiction for a restraining order, preliminary or permanent injunction, or other necessary and proper order to prevent any action that may lessen the value of the insurer's estate. Under the bill, anyone subject to a stay can file a motion with the court and the court, after notice and hearing, may modify or grant relief from the stay. The person making the motion has the burden of proof and must establish by clear and convincing evidence that the relief should be granted. The bill specifies that the receivership court of an insurer's domicile has exclusive jurisdiction over all matters that may be stayed, enjoined, or barred and all matters involving their interpretation or operation.

Books and Records (Secs. 7 and 8)

The bill establishes that a delinquent insurer's books, records, documents, and papers that come into the receiver's possession and are held by him in the course of the delinquency proceeding may be received in evidence without proof of their correctness or other

proof. The receiver must only certify that the records were received from the delinquent insurer or found among its property. The receiver has the authority to certify the correctness of his office records and to certify any facts contained in them. In all cases, copies of such records may be received in evidence if the original can be introduced in evidence. The bill makes original records or their certified copies prima facie evidence when offered and received in evidence. The bill specifies that the appointment of the commissioner as receiver does not make the delinquent insurer's records subject to disclosure under the Freedom of Information Act. It requires third parties who successfully pursue a request for records in court to reimburse the receiver for the cost of producing them.

It extends confidential treatment of the insurer's, Insurance Department's, and court's records and documents to papers filed with the Superior Court clerk unless (1) the court orders otherwise or (2) the commissioner applies for an order of rehabilitation or liquidation.

Supervision (Secs. 9, 11, and 26)

In rehabilitation, liquidation, or conservation proceedings, the bill allows the commissioner to ask the administrative judge for the judicial district of Hartford-New Britain to appoint a single judge to supervise the proceeding and to hear related cases or controversies. Under current law, these proceedings, are under the general supervision of the court and subject to the court's rules. The bill exempts the proceedings from court rules or programs for early closure of civil cases. It also requires that appeals from a rehabilitation order or plan be heard on an expedited basis and that a stay of an order or plan of rehabilitation may not be granted unless the appellant shows that extraordinary circumstances warrant it. But if the plan provides a mechanism for adjustment in the event of an adverse ruling on appeal, a stay must be granted.

Rehabilitator's and Commissioner's Authority (Secs. 10 (a), (f) and (g), 13 (a))

The bill expands the rehabilitator's authority by

allowing him to exercise all of the powers of a liquidator and, as part of a court approved rehabilitation plan, to modify or restructure life insurance policies. As a result of the modification or restructuring, he may approve payment of the reasonable and necessary expenses of an expert hired by an advisory committee to evaluate the modification's effect on policyholders. The court must approve the payment. Under current law, the rehabilitator may take the action he deems necessary to reform and revitalize the insurer, including directing and managing, hiring and discharging employees, and pursuing legal remedies on the insurer's behalf. The bill specifies that its enumeration of the rehabilitator's powers and authority cannot be construed as a limitation on him or a prohibition against exercising other powers not specifically enumerated but necessary and appropriate to rehabilitate an insurer.

Under current law, when the commissioner acts in the capacity of a rehabilitator or liquidator, he can appoint an advisory committee of policyholders, claimants, or creditors to assist him. The bill specifies that the decision to appoint the committee is solely in his discretion. It eliminates committee members' right to receive reimbursement for reasonable travel and per diem expenses. The commissioner still makes the appointment with the approval of the court.

Liquidator's Authority (Secs. 13 (a) and (c))

The bill gives the liquidator specific authority to compensate attorneys, accountants, and others he employs on an interim basis subject to the court's approval. Under current law, the liquidator has the option of defending any claim against an insurer or insured. He may assert a defense if he determines it is in the best interest of the insolvent insurer's estate. The bill requires insureds not defended by a guaranty association to provide their own defense and include its cost in their claim if the defense was the insurer's obligation. Liquidators have the right to contest coverage on a particular claim without an express reservation of rights, and to enforce injunctions and stays.

Notice to Creditors and Others (Secs. 14 (a), (b), (f), and (g))

The bill limits the giving of notice about a liquidation to agents, brokers, and producers with current appointments or licenses instead of all agents of the insurer. Notice may be given to other agents, brokers, and producers, as the liquidator deems necessary. The bill specifies that the liquidation notice given by a domiciliary liquidator is sufficient when the insurance commissioner of this state is appointed receiver for an out-of-state insurer and that ancillary receivers are not required to give notice unless the domiciliary receiver fails to do so. The notice may include a reference to guaranty association coverage and inform claimants that any claims, which this state's association may cover, may be filed with the domiciliary liquidator and forwarded to the proper association. Guaranty associations are associations of insurers that pay policyholders' claims against an insolvent insurer.

If notice by the domiciliary liquidator in another state does not mention the possibility of association coverage in this state, then the ancillary receiver must arrange to give notice to those who may have rights under this state's association law. The notice must include a citation to the guaranty association statute and may include a summary of claimant's rights and any other appropriate information.

The bill specifies that the liquidator has no duty to locate people if no address is found in the insurer's records or if mail is returned. In such cases, mailing by publication or actual notice received is sufficient. The liquidator's or other knowledgeable person's written certification that the notices were deposited in the U.S. mail, postage prepaid, is prima facie evidence of mailing and receipt.

The bill allows, upon application of the liquidator and for good cause, the court to find that notice by publication is sufficient for people holding an occurrence policy that expired more than four years before entry of the liquidation order and under which there are no pending claims. But the court may also require notice to such people if it deems it necessary.

Distributions, Premiums, Unearned Premiums, and Commissions (Secs. 15 and 16)

The bill gives a receiver appointed in a delinquency proceeding the authority to recover from affiliates who controlled the insurer distributions made within the preceding five-year period. The maximum amount recoverable is the amount needed, in excess of all other available assets, to pay all claims, reduced by any amount already paid to receivers under similar laws of other states. A recipient may keep the distribution if he shows it to be lawful and reasonable and that he could not have known that the distribution would affect the insurer's solvency.

Distribution includes dividends (other than stock dividends), loans, advances, payments, or transfers for which the insurer did not receive fair consideration. The bill makes entities that were affiliates that controlled the insurer when a distribution was declared or paid liable for it. If more than one is liable for the same distribution, they are jointly and severally liable. If any one of them is insolvent, then all affiliates that controlled them when the distribution was declared or paid are jointly and severally liable for any deficiency. Under the bill, lawsuits to recover distributions may not be brought after the earlier of (1) two years after the appointment of a rehabilitator or liquidator or (2) the date the rehabilitation or liquidation is terminated.

The bill specifies that producers, premium finance companies, and others responsible for paying premiums must also pay the commission when an order of liquidation is entered. It eliminates an insured's right to recover unearned premiums due to coverage termination and specifies that the liquidator has the right to recover premiums or unearned commissions due to coverage termination. The insured must pay the liquidator or agent who paid or is obligated to pay any retrospectively rated premium due the insurer.

The bill specifies that premiums on surety business are earned at inception if no policy term can be determined. All other premiums are earned and prorated over the policy's term and if a claim is approved, all premium for the full policy term is earned. People who collect premiums under a premium finance agreement hold them in trust for the benefit of the insurer. Premium finance companies must pay any amount due the insurer under the contract whether the premium is earned or

unearned. Liquidators can collect any unpaid financed premium from the company by taking an assignment or they can take directly from the insured.

Contingent, Unliquidated, and Immature Claims (Sec. 18 (b))

By law, third-party claims that are contingent on first obtaining a judgment against the insured may be allowed and may participate in a distribution of assets if they do not prejudice the proceeding. When a liquidation order is entered against an insurer, the bill extends this right to insureds and reinsureds who have a cause of action against the insured and to other people or entities who have a claim or cause of action against the insurer. It also extends the right to file a contingent claim to unliquidated and immature claims.

The bill specifies that a claim is (1) contingent, if the accident, casualty, disaster, or loss insured or reinsured against occurred on or before the date the liquidation order is entered and the act or event triggering the insurer's obligation to pay has not occurred as of that date; (2) unliquidated, if the amount of the claim is not determined; and (3) immature, if payment on the claim is not yet due.

In order to share in a distribution the claimant of a contingent claim must (1) present reasonably satisfactory proof to the receiver of the insurer's obligation to pay or (2) if the claim is based on a cause of action against the insured, meet the following standards: (a) it must be reasonably inferred from the proof presented that the claimant can obtain a judgment, (b) the claimant, must furnish suitable proof unless the court directs for good cause that no further claims can be presented, and (c) the insured's total liability to all claimants arising from the same act is no greater than its total liability would be were it not in liquidation.

Attorney fees for service rendered in defense of claims or suits covered by the policy may be included in contingent claims the insured pays and for which it presents evidence of payment to the receiver. Unliquidated claims can share in a distribution if the amount is determined and it does not prejudice the proceeding, and immature claims can participate if

discounted at the higher of the legal rate of interest on judgments or the rate of interest on U.S. Treasury securities of approximately the same maturity.

The bill allows an insured to file a claim under his occurrence policy, whether or not the claim is known. Thereafter, at the time a specific claim is made by or against the insurer, the insured must supplement his claim and the receiver must treat it as a contingent, unliquidated, or immature claim. Compromise or negotiation may dispose of any claims under an occurrence policy that remain at or near the closing of the estate. Except for special claims, the bill specifies that the estimation and allowance of contingent claims is not a basis to compel a reinsurer to pay incurred but unreported losses or outstanding reserves unless the reinsurance contract provides for payment.

Qualified Financial Contracts (Sec. 22)

A netting agreement usually involves the reduction of exposure or risk between two parties by offsetting mutual obligations. Qualified financial contracts are securities and commodity contracts and similar agreements as determined by the insurance commissioner.

The bill establishes the right of any person to assert any (1) contractual right to terminate, liquidate, or close out a netting agreement or qualified financial contract with an insurer because of its insolvency, financial condition, or default if the right is enforceable or formal delinquency proceedings have begun; (2) right under a pledge, security, collateral, guarantee agreement, or similar security arrangement or credit document relating to a netting agreement or qualified financial contract; (3) right to set off or net out any termination value, payment amount, or transfer obligation in connection with a netting agreement or qualified financial contract where the counterparty or his guarantor is organized under state or federal law or approved foreign jurisdiction by the Securities Valuation Office of the National Association of Insurance Commissioners.

The bill specifies that on termination of an agreement, the net or settlement amount, if any, owed by the nondefaulting party to an insurer in delinquency

proceedings must be transferred to the insurer's receiver, even if the insurer is the defaulting party or a provision in the agreement says that the nondefaulting party is not required to pay the defaulting party. Any limited two-way payment provision in an agreement with a defaulting insurer is deemed to be a full two-way payment provision against the defaulting insurer. Any property or money is a general asset of the insurer, unless subject to one or more secondary liens or encumbrances.

In making a transfer, the bill requires the receiver to transfer to one party either all or none of the agreements and contracts between a counterparty or his affiliate and the insurer in the delinquency proceeding, including the rights and obligations of each party, all property, and any guarantees or credit documents securing the claims of each party. If the receiver makes a transfer, he must use his best efforts to notify everyone who is a party about the transfer by 12 o'clock noon, the receiver's local time, on the business day following the transfer. A receiver may not avoid transfers made before the beginning of a delinquency proceeding, except for those that are fraudulent and made with the intent to hinder, delay, or defraud the insurer, another receiver, or existing or future creditors.

The bill specifies that any counterparty's claim against the estate because of the receiver's disallowance or repudiation of an agreement or contract previously affirmed must be determined and allowed or disallowed as if the claim arose before the filing date of the petition for liquidation or rehabilitation. The amount of the claim is the actual direct compensatory damages determined on the date of the disallowance or repudiation. Actual compensatory damages do not include punitive or exemplary damages, or damages for lost profit, opportunity, or pain and suffering. They do include certain normal and reasonable costs and other measures of damages used in the derivatives market.

Contractual right includes any right arising under statutory or common law; a rule or bylaw of a national securities exchange, clearing organization; or agency; or a rule, bylaw, or resolution of a contract market's or clearing organization's governing body; or under law merchant. The rules relating to netting agreements and

qualified financial contracts do not apply to affiliates of the insurer subject to delinquency proceedings. Counterparty rights apply to agreements on behalf of general or separate accounts if the assets of each account are available only to those counterparties who have agreements with the separate account.

Priority of Distribution (Sec. 23 (a))

Once funds are retained by the liquidator and approved by the court, the bill specifies that the insolvent insurer's estate is no longer liable to members of a particular class except to the extent of retained and undistributed funds. Under the bill, the liquidator must pay claims in a specified order depending on what class they fall into.

In Class 1 claims (costs and expenses of administration), the bill requires that the receiver expressly approve these items, adds compensation for services rendered in a conservation and rehabilitation proceeding, and eliminates the expenses of guaranty associations. The bill creates a new Class 2 claim category for administrative expenses of guaranty associations which it removed from Class 1. These are defined as expenses that would have been incurred by the receiver if the association did not exist. They include expenses related to the evaluation of policy coverage, activities involved in the adjustment and settlement of claims, and those connected with ongoing coverage through transfers to other insurers, policy exchanges, or maintaining policies in force. They also include expenses the receiver approves in his sole discretion if he finds they are (1) not paid or incurred as direct policy benefits and (2) incurred to further a material economic benefit to the estate. The court must approve them unless it finds that the receiver abused his discretion.

The bill requires the receiver to pay Class 2 claims concurrently with Class 1 claims if the assets of the estate are sufficient to pay Class 1 claims in full. The liquidator must get an agreement from each association receiving payment to return such payments with investment income if needed to pay Class 1 claims. No association is required to post a bond.

The bill shifts the other existing classes down by one. Claims for unearned premium from health insurance policies and guaranty association payments, expenses for insurer claims or obligations and obligations of the insurer not included in Class 2 are added to Class 3. The bill excludes from Class 3 (1) obligations of the insolvent insurer under any reinsurance contract; (2) obligations incurred after a policy expires, has been replaced, or is canceled; (3) contribution, indemnity, or subrogation claims of insurers, and insurance pool and underwriting association assessments; and (4) claims in excess of policy limits, for punitive or exemplary damages, torts, and bad faith or wrongful settlement practices.

If incurred within six months instead of one year before the filing of a delinquency petition, debts due employees for services or benefits are added to Class 5 claims. Claims under nonassessable policies for unearned premium and other refunds are excluded from Class 6 claims. Interest on claims of Classes 1 to 7 and other claims specifically subordinate to Class 8 claims are added to Class 8, but payments to members of domestic mutual insurance companies are excluded. Class 9 adds a requirement that the receiver may set-off the amount of any indebtedness owed to an insurer against the dividend of a person entitled to one.

Definitions, Reinsurer's Direct Payment, and Proof of Claim (Secs. 3, 5, and 17(a)(8))

The bill revises the definition of "secured claim" to exclude special deposit claims and claims arising from a constructive or resulting trust. It includes judicial liens on specific assets as a secured claim if it was created more than four months prior to the beginning of the delinquency proceeding.

The bill allows a reinsurer's direct payment to an insured or creditor to reduce his obligation to the liquidator when: (1) the reinsurance contract provides for the payment of its proceeds to another payee instead of the named insured; (2) the underlying policy provides for the reinsurer's assumption of the obligation; or (3) there is a substitution of the underlying policy obligation, the assumption of it by the reinsurer, and the proceeds are payable to another payee.

The bill requires claimants to add their Social Security or federal employer identification numbers to proof of claim statements.

Third-Party and Disputed Claims (Secs. 19 (a), 20 (a) to (d))

The bill requires filing of third-party claims against insolvent insurers by the last day for filing claims as stated in the liquidation order. It also specifies that when the insured files a claim on his own behalf it covers all third-party claims.

The bill shortens from 60 to 30 days the time to file an objection to a claims determination; adds a claimant's attorney as one of the people to receive notice of the determination; and requires any filed objection to set forth all facts, the legal basis for it, and the reasons the claim should be allowed. The court hearing on filed objections does not need to be conducted according to strict rules of evidence and civil procedure. Under the bill, prehearing discovery is limited as in arbitration proceedings and a jury is not present.

When disputed claims are heard by a referee, he must submit written findings of fact and conclusions of law along with his recommendation to the court. The referee's findings are final unless an objection is filed within 15 days and the final disposition of a disputed claim by the court is deemed a final judgment for purposes of an appeal. The bill allows the court to make special civil procedure rules for disputed claim hearings.

Liquidator's Recommendation and Unclaimed Funds (Secs. 24 (c) and (d), 25 (a))

The bill establishes standards under which the liquidator may provide for incurred but unreported losses. The liquidator must (1) consider the nature of the policies sold by the insurer and the number of claims under them and (2) make an actuarial estimate of the amount of incurred but unreported claim losses. After considering these factors and with the help of experts, the liquidator may propose to the court to pay all or a portion of them. The court must approve the proposal and the claims unless it finds that the

payments are arbitrary and capricious. Under current law, the liquidator, with the court's approval, may compound, compromise or negotiate the amount of claims recommended. The bill specifies that the liquidator is not required to settle any claims of a class if it is unlikely that assets will be sufficient to fund a distribution to that class.

The bill gives liquidators the authority, if the court approves, to hold unclaimed funds for two years and distribute them to claimants if economically feasible, or to ask the court to retain the funds to defray the cost of administration when assets are insufficient. Under current law, unclaimed funds are deposited with the state treasurer and paid out according to the priority of claim distributions. Any undistributed assets become the property of the state unless the liquidation is reopened.

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable Substitute
Yea 18 Nay 0