

File No. 634

(Reprint of File No. 228)

Substitute House Bill No. 5614
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
April 29, 1998

AN ACT CONCERNING THE INSURERS REHABILITATION AND
LIQUIDATION ACT.

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

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2 statutes is repealed and the following is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

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

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

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

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

25 (4) Equitable apportionment of any unavoidable
26 loss;

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

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

37 (7) Providing for a comprehensive scheme for
38 the rehabilitation and liquidation of insurance
39 companies and those subject to sections 38a-903 to
40 38a-961, inclusive, AS AMENDED, as part of the
41 regulation of the business of insurance [,
42 insurance industry and insurers] in the state.
43 Proceedings in cases of insurer insolvency and
44 delinquency are deemed an integral aspect of the
45 business of insurance and are of vital public
46 interest and concern.

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

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

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

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

71 For the purposes of sections 38a-903 to
72 38a-961, inclusive, AS AMENDED:

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

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

77 (3) "COMMODITY CONTRACT" MEANS: (A) A CONTRACT
78 FOR THE PURCHASE OR SALE OF A COMMODITY FOR FUTURE
79 DELIVERY ON, OR SUBJECT TO THE RULES OF, A BOARD
80 OF TRADE DESIGNATED AS A CONTRACT MARKET BY THE
81 COMMODITY FUTURES TRADING COMMISSION UNDER THE
82 COMMODITY EXCHANGE ACT (7 USC 1, ET SEQ.) OR BOARD
83 OF TRADE OUTSIDE THE UNITED STATES; (B) AN
84 AGREEMENT THAT IS SUBJECT TO REGULATION UNDER
85 SECTION 19 OF THE COMMODITY EXCHANGE ACT (7 USC 1,
86 ET SEQ.) AND THAT IS COMMONLY KNOWN TO THE
87 COMMODITIES TRADE AS A MARGIN ACCOUNT, MARGIN
88 CONTRACT, LEVERAGE ACCOUNT OR LEVERAGE CONTRACT;
89 OR (C) AN AGREEMENT OR TRANSACTION THAT IS SUBJECT
90 TO REGULATION UNDER SECTION 4c(b) OF THE COMMODITY
91 EXCHANGE ACT (7 USC 1 ET SEQ.) AND THAT IS
92 COMMONLY KNOWN TO THE COMMODITIES TRADE AS A
93 COMMODITY OPTION.

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

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

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

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

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

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

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

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

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

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

167 [(j)] (12) "Guaranty association" means the
168 Connecticut Insurance Guaranty Association
169 established pursuant to sections 38a-836 to
170 38a-853, inclusive, the Connecticut Life and
171 Health Insurance Guaranty Association established
172 pursuant to sections 38a-858 to 38a-875,
173 inclusive, and any other similar entity [now or
174 hereafter] created by the [legislature of this
175 state] GENERAL ASSEMBLY for the payment of claims
176 of insolvent insurers. "Foreign guaranty
177 association" means any similar entities [now in
178 existence in or hereafter] created by the
179 legislature of any other state.

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

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

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

210 [(m)] (16) "Preferred claim" means any claim
211 with respect to which the terms of sections
212 38a-903 to 38a-961, inclusive, AS AMENDED, accord

213 priority of payment from the general assets of the
214 insurer.

215 (17) "QUALIFIED FINANCIAL CONTRACT" MEANS A
216 COMMODITY CONTRACT, FORWARD CONTRACT, REPURCHASE
217 AGREEMENT, SECURITIES CONTRACT, SWAP AGREEMENT AND
218 ANY SIMILAR AGREEMENT THAT THE COMMISSIONER
219 DETERMINES TO BE A QUALIFIED FINANCIAL CONTRACT
220 FOR THE PURPOSES OF THIS CHAPTER, AND SECTIONS 7,
221 15 AND 22 OF THIS ACT.

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

225 [(o)] (19) "Reciprocal state" means any state
226 other than this state in which in substance and
227 effect sections 38a-920, AS AMENDED BY THIS ACT,
228 38a-954, 38a-955 and 38a-957 to 38a-959,
229 inclusive, are in force and in which provisions
230 are in force, requiring that the commissioner or
231 equivalent official be the receiver of a
232 delinquent insurer and in which some provision
233 exists for the avoidance of fraudulent conveyances
234 and preferential transfers.

235 (20) "REPURCHASE AGREEMENT" AND "REVERSE
236 REPURCHASE AGREEMENT" MEAN AN AGREEMENT, INCLUDING
237 RELATED TERMS, THAT PROVIDES FOR THE TRANSFER OF
238 CERTIFICATES OF DEPOSIT, ELIGIBLE BANKERS'
239 ACCEPTANCES, OR SECURITIES THAT ARE DIRECT
240 OBLIGATIONS OF, OR THAT ARE FULLY GUARANTEED AS TO
241 PRINCIPAL AND INTEREST BY, THE UNITED STATES OR AN
242 AGENCY OF THE UNITED STATES AGAINST THE TRANSFER
243 OF FUNDS BY THE TRANSFEREE OF THE CERTIFICATES OF
244 DEPOSIT, ELIGIBLE BANKERS' ACCEPTANCES OR
245 SECURITIES WITH A SIMULTANEOUS AGREEMENT BY THE
246 TRANSFEREE TO TRANSFER TO THE TRANSFEROR
247 CERTIFICATES OF DEPOSIT, ELIGIBLE BANKERS'
248 ACCEPTANCES OR SECURITIES AS DESCRIBED IN THIS
249 SUBDIVISION, AT A DATE CERTAIN NOT LATER THAN ONE
250 YEAR AFTER THE TRANSFERS OR ON DEMAND, AGAINST THE
251 TRANSFER OF FUNDS. FOR THE PURPOSES OF THIS
252 SUBDIVISION, THE ITEMS THAT MAY BE SUBJECT TO AN
253 AGREEMENT INCLUDE MORTGAGE-RELATED SECURITIES, A
254 MORTGAGE LOAN, AND AN INTEREST IN A MORTGAGE LOAN,
255 AND SHALL NOT INCLUDE ANY PARTICIPATION IN A
256 COMMERCIAL MORTGAGE LOAN, UNLESS THE COMMISSIONER
257 DETERMINES TO INCLUDE THE PARTICIPATION WITHIN THE
258 MEANING OF THE TERM.

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

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

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

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

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

294 (25) "SWAP AGREEMENT" MEANS AN AGREEMENT,
295 INCLUDING THE TERMS AND CONDITIONS INCORPORATED BY
296 REFERENCE IN AN AGREEMENT, THAT IS A RATE SWAP
297 AGREEMENT, BASIS SWAP, COMMODITY SWAP, FORWARD
298 RATE AGREEMENT, INTEREST RATE FUTURE, INTEREST
299 RATE OPTION, FORWARD FOREIGN EXCHANGE AGREEMENT,
300 SPOT FOREIGN EXCHANGE AGREEMENT, CURRENCY SWAP
301 AGREEMENT, CROSS-CURRENCY RATE SWAP AGREEMENT,
302 CURRENCY FUTURE, OR CURRENCY OPTION OR ANY OTHER
303 SIMILAR AGREEMENT, AND INCLUDES ANY COMBINATION OF
304 AGREEMENTS AND AN OPTION TO ENTER INTO AN
305 AGREEMENT.

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

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

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

319 (a) [Any receiver appointed in a proceeding
320 under sections 38a-903 to 38a-961, inclusive, may
321 at any time apply for and any court of general
322 jurisdiction may grant, such restraining orders,
323 preliminary and permanent injunctions and other
324 orders as may be deemed necessary and proper to
325 prevent: (1)] THE CONSERVATION, REHABILITATION AND
326 LIQUIDATION OF INSURANCE COMPANIES AND OTHER
327 PERSONS SUBJECT TO THE PROVISIONS OF SECTIONS
328 38a-903 TO 38a-961, INCLUSIVE, AS AMENDED, ARE A
329 MATTER OF VITAL PUBLIC INTEREST AND AFFECT THE
330 RELATIONSHIPS BETWEEN INSURED AND THEIR INSURERS.

331 (1) AN APPLICATION OR PETITION UNDER SECTIONS
332 38a-912, 38a-914, 38a-915, 38a-918, 38a-919 and
333 38a-920, AS AMENDED BY THIS ACT, SHALL OPERATE AS
334 AN AUTOMATIC STAY APPLICABLE TO ALL PERSONS, OTHER
335 THAN THE RECEIVER, WHICH SHALL BE PERMANENT AND
336 SURVIVE THE ENTRY OF AN ORDER OF CONSERVATION,
337 REHABILITATION OR LIQUIDATION, AND WHICH SHALL
338 PROHIBIT: (A) The transaction of further business;
339 [(2)] (B) the transfer of property; [(3)] (C)
340 interference with the receiver or with a
341 proceeding under said sections; [(4)] (D) waste of
342 the insurer's assets; [(5)] (E) dissipation and
343 transfer of bank accounts; [(6)] (F) the
344 institution or further prosecution of any actions
345 or proceedings IN WHICH THE INSURER IS A PARTY;
346 [(7)] (G) the obtaining of preferences, judgments,
347 attachments, garnishments, or liens against the
348 insurer, its assets or its policyholders; [(8)]
349 (H) the levying of execution against the insurer,
350 its assets, or its policyholders; [(9)] (I) the
351 making of any sale or deed for nonpayment of taxes
352 or assessments that would lessen the value of the
353 assets of the insurer; [or (10)] (J) the
354 withholding from the receiver of books, accounts,
355 documents, or other records relating to the
356 business of the insurer; or [(11)] (K) any other

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

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

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

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

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

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

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

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

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

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

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

412 [(2)] (1) Be permitted to solicit or accept
413 new business or request or accept the restoration
414 of any suspended or revoked license or certificate
415 of authority;

416 [(3)] (2) Be returned to the control of its
417 shareholders or private management; or

418 [(4)] (3) Have any of its assets returned to
419 the control of its shareholders or private
420 management until all payments of or on account of
421 the insurer's contractual obligations by all
422 guaranty associations, along with all expenses
423 thereof and interest on all such payments and
424 expenses, shall have been repaid to the guaranty
425 associations or a plan of repayment by the insurer
426 shall have been approved by the guaranty
427 association.

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

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

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

450 (d) The appointment of the Insurance
451 Commissioner as receiver shall not make records of

452 a delinquent insurer subject to disclosure under
453 the Freedom of Information Act, as defined in
454 section 1-18a of the general statutes, as amended.
455 In the event a third party successfully pursues a
456 records request in the receivership court, the
457 receiver shall be reimbursed for the reasonable
458 cost of producing such records.

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

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

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

485 (a) An order to rehabilitate the business of a
486 domestic insurer, or an alien insurer domiciled in
487 this state, shall appoint the commissioner and his
488 successors in office the rehabilitator and shall
489 direct the rehabilitator forthwith to take
490 possession of the assets of the insurer and to
491 administer them under the general supervision of
492 the court. THE COMMISSIONER SHALL BE ENTITLED TO
493 REQUEST THE ADMINISTRATIVE JUDGE OF THE SUPERIOR
494 COURT FOR THE JUDICIAL DISTRICT OF HARTFORD-NEW
495 BRITAIN TO APPOINT A SINGLE JUDGE TO SUPERVISE THE
496 REHABILITATION AND HEAR ANY CASES OR CONTROVERSIES
497 ARISING OUT OF OR RELATED TO THE REHABILITATION.
498 REHABILITATION PROCEEDINGS SHALL BE EXEMPT FROM
499 ANY DORMANCY OR SIMILAR PROGRAM MAINTAINED BY THE

500 COURT FOR THE EARLY CLOSURE OF CIVIL ACTIONS. The
501 filing or recording of the order with the clerk of
502 the Superior Court or recorder of deeds of the
503 judicial district in which the principal business
504 of the company is conducted, or the judicial
505 district in which its principal office or place of
506 business is located, shall impart the same notice
507 as a deed, bill of sale or other evidence of title
508 duly filed or recorded with that recorder of deeds
509 would have imparted. The order to rehabilitate the
510 insurer shall by operation of law vest title to
511 all assets of the insurer in the rehabilitator.

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

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

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

544 Sec. 10. Section 38a-916 of the general
545 statutes is repealed and the following is
546 substituted in lieu thereof:

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

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

588 (c) The rehabilitator may take such action as
589 he deems necessary or appropriate to reform and
590 revitalize the insurer. He shall have all the
591 powers of the directors, officers and managers,
592 whose authority shall be suspended, except as they
593 are redelegated by the rehabilitator. He shall
594 have full power to direct and manage, to hire and

595 discharge employees subject to any contract rights
596 they may have and to deal with the property and
597 business of the insurer.

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

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

626 (f) The rehabilitator shall have the power
627 pursuant to sections 38a-928 and 38a-929 to avoid
628 fraudulent transfers, AND MAY EXERCISE ANY OF THE
629 POWERS UNDER SECTION 38a-923, AS AMENDED BY THIS
630 ACT, AS NECESSARY OR APPROPRIATE, EXCEPT THAT IN
631 THE CASE OF A LIFE INSURER, THE REHABILITATOR OF
632 SUCH AN INSURER MAY, AS PART OF A COURT APPROVED
633 PLAN OF REHABILITATION, MODIFY OR RESTRUCTURE THE
634 POLICIES OR CONTRACTS OF INSURANCE. IN THE EVENT
635 THE REHABILITATOR PROPOSES TO MODIFY OR
636 RESTRUCTURE THE POLICIES OR CONTRACTS OF
637 INSURANCE, THE REHABILITATOR MAY, WITH THE
638 CONCURRENCE OF THE COURT, APPROVE PAYMENT OF
639 CERTAIN EXPENSES INCURRED BY AN ADVISORY COMMITTEE
640 APPOINTED PURSUANT TO SUBSECTION (a) OF THIS
641 SECTION, THE EXPENSES TO BE LIMITED TO THE
642 REASONABLE AND NECESSARY EXPENSES INCURRED IN

643 OBTAINING AN EXPERT EVALUATION OF THE EFFECT UPON
644 POLICYHOLDERS OF ANY PROPOSED MODIFICATION OR
645 RESTRUCTURING OF POLICIES OR CONTRACTS OF
646 INSURANCE.

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

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

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

688 (b) Upon issuance of the order, the rights and
689 liabilities of any such insurer and of its
690 creditors, policyholders, shareholders, members

691 and all other persons interested in its estate
692 shall become fixed as of the date of entry of the
693 order of liquidation, except as provided in
694 sections 38a-921, AS AMENDED BY THIS ACT, and
695 38a-939, AS AMENDED BY THIS ACT, UNLESS OTHERWISE
696 FIXED BY THE SUPERIOR COURT.

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

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

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

721 (f) (1) [Within] NOT LATER THAN five days
722 after the initiation of an appeal of an order of
723 liquidation, which order has not been stayed, the
724 commissioner shall present for the court's
725 approval a plan for the continued performance of
726 the defendant company's policy claim obligations,
727 including the duty to defend the insured under
728 liability insurance policies, during the pendency
729 of an appeal. Such plan shall provide for the
730 continued performance and payment of policy claim
731 obligations in the normal course of events,
732 notwithstanding the grounds alleged in support of
733 the order of liquidation including the ground of
734 insolvency. In the event the defendant company's
735 financial condition will not, in the judgment of
736 the commissioner, support the full performance of
737 all policy claim obligations during the appeal
738 pendency period, the plan may prefer the claims of

739 certain policyholders and claimants over creditors
740 and interested parties as well as other
741 policyholders and claimants, as the commissioner
742 finds to be fair and equitable considering the
743 relative circumstances of such policyholders and
744 claimants. The court shall examine the plan
745 submitted by the commissioner and if it finds the
746 plan to be in the best interests of the parties,
747 the court shall approve the plan. No action shall
748 lie against the commissioner or any of his
749 deputies, agents, clerks, assistants or attorneys
750 by any party based on preference in an appeal
751 pendency plan approved by the court.

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

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

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

778 (a) [All policies, other than life or health
779 insurance or annuities, in effect at the time of
780 issuance of an order of liquidation shall continue
781 in force only for the lesser of] NOTWITHSTANDING
782 ANY POLICY OR CONTRACT LANGUAGE OR ANY OTHER
783 PROVISION OF LAW, ALL POLICIES, INSURANCE
784 CONTRACTS, OTHER THAN REINSURANCE, SURETY BONDS OR
785 SURETY UNDERTAKINGS, OTHER THAN LIFE OR HEALTH
786 INSURANCE OR ANNUITIES, IN EFFECT AT THE TIME OF

787 ISSUANCE OF AN ORDER OF LIQUIDATION SHALL CONTINUE
788 IN FORCE ONLY FOR THE LESSER OF: (1) A period of
789 thirty days from the date of entry of the
790 liquidation orders; (2) the expiration of the
791 policy coverage; (3) the date when the insured has
792 replaced the insurance coverage with equivalent
793 insurance in another insurer or otherwise
794 terminated the policy; (4) the liquidator has
795 effected a transfer of the policy obligation
796 pursuant to subdivision (8) of subsection (a) of
797 section 38a-923, AS AMENDED BY THIS ACT; or (5)
798 the date proposed by the liquidator and approved
799 by the court to cancel coverage.

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

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

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

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

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

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

825 (a) The liquidator shall have the power: (1)
826 To appoint a special deputy to act for him under
827 sections 38a-903 to 38a-961, inclusive, AS
828 AMENDED, and to determine his reasonable
829 compensation. The special deputy shall have all
830 powers of the liquidator granted by this section.
831 The special deputy shall serve at the pleasure of
832 the liquidator; (2) to employ employees and
833 agents, legal counsel, actuaries, accountants,
834 appraisers, consultants and such other personnel

835 as he may deem necessary to assist in the
836 liquidation, NOTWITHSTANDING ANY CONTRARY
837 PROVISION OF LAW, INCLUDING CHAPTERS 55a AND 67;
838 (3) to fix the reasonable compensation of
839 employees and agents, legal counsel, actuaries,
840 accountants, appraisers and consultants with the
841 approval of the court; (4) to pay reasonable
842 compensation to persons appointed and to defray
843 from the funds or assets of the insurer all
844 expenses of taking possession of, conserving,
845 conducting, liquidating, disposing of, or
846 otherwise dealing with the business and property
847 of the insurer. THE LIQUIDATOR SHALL HAVE THE
848 POWER TO PAY REASONABLE COMPENSATION TO SUCH
849 PERSONS ON AN INTERIM BASIS. ALL SUCH INTERIM
850 PAYMENTS SHALL BE SUBJECT TO THE APPROVAL OF THE
851 COURT UPON SUBMISSION BY THE LIQUIDATOR. In the
852 event that the property of the insurer does not
853 contain sufficient cash or liquid assets to defray
854 the costs incurred, the commissioner may advance
855 the costs so incurred out of any appropriation for
856 the maintenance of the Insurance Department. Any
857 amounts so advanced for expenses of administration
858 shall be repaid to the commissioner for the use of
859 the Insurance Department out of the first
860 available moneys of the insurer; (5) to hold
861 hearings, to subpoena witnesses, to compel their
862 attendance, to administer oaths, to examine any
863 person under oath and to compel any person to
864 subscribe to his testimony after it has been
865 correctly reduced to writing, and in connection
866 therewith to require the production of any books,
867 papers, records or other documents which he deems
868 relevant to the inquiry; (6) to collect all debts
869 and moneys due and claims belonging to the
870 insurer, wherever located, and for this purpose
871 (A) to institute timely action in other
872 jurisdictions in order to forestall garnishment
873 and attachment proceedings against such debts; (B)
874 to do such other acts as are necessary or
875 expedient to collect, conserve or protect its
876 assets or property, including the power to sell,
877 compound, compromise or assign debts for purposes
878 of collection upon such terms and conditions as he
879 deems best; and (C) to pursue any creditor's
880 remedies available to enforce [his] THE CREDITOR'S
881 claims; (7) to conduct public and private sales of
882 the property of the insurer; (8) to use assets of

883 the estate of an insurer under a liquidation order
884 to transfer policy obligations to a solvent
885 assuming insurer, if the transfer can be arranged
886 without prejudice to applicable priorities under
887 section 38a-944, AS AMENDED; (9) to acquire,
888 hypothecate, encumber, lease, improve, sell,
889 transfer, abandon or otherwise dispose of or deal
890 with, any property of the insurer at its market
891 value or upon such terms and conditions as are
892 fair and reasonable. [He] THE LIQUIDATOR shall
893 also have power to execute, acknowledge and
894 deliver any and all deeds, assignments, releases
895 and other instruments necessary or proper to
896 effectuate any sale of property or other
897 transaction in connection with the liquidation;
898 (10) to borrow money on the security of the assets
899 in the insurer's estate or without security and to
900 execute and deliver all documents necessary to
901 that transaction for the purpose of facilitating
902 the liquidation. Any such funds borrowed may be
903 repaid as an administrative expense and have
904 priority over any other claims in class 1 under
905 the priority of distributions; (11) to enter into
906 such contracts as are necessary to carry out the
907 order to liquidate and to affirm or disavow any
908 contracts to which the insurer is a party; (12) to
909 continue to prosecute and to institute in the name
910 of the insurer or in [his] THE LIQUIDATOR'S own
911 name any and all suits and other legal
912 proceedings, in this state or elsewhere, and to
913 abandon the prosecution of claims he deems
914 unprofitable to pursue further. If the insurer is
915 dissolved pursuant to section 38a-922, [he] THE
916 LIQUIDATOR shall have the power to apply to any
917 court in this state or elsewhere for leave to
918 substitute [himself] THE LIQUIDATOR for the
919 insurer as plaintiff; (13) to prosecute any action
920 which may exist [in] ON behalf of the creditors,
921 members, policyholders or shareholders of the
922 insurer against any officer of the insurer or any
923 other person; (14) to remove any or all records
924 and property of the insurer to the offices of the
925 commissioner or to such other place as may be
926 convenient for the purposes of efficient and
927 orderly execution of the liquidation. Guaranty
928 associations [and foreign guaranty associations]
929 shall have such reasonable access to the records
930 of the insurer as is necessary for them to carry

931 out their statutory obligations; (15) to deposit
932 in one or more banks in this state such sums as
933 are required for meeting current administration
934 expenses and dividend distributions; (16) to
935 invest all sums not currently needed, unless the
936 court orders otherwise; (17) to file any necessary
937 documents for record in the office of any recorder
938 of deeds or record office in this state or
939 elsewhere where property of the insurer is
940 located; (18) to assert all defenses available to
941 the insurer as against third persons, including
942 statutes of limitation, statutes of frauds and the
943 defense of usury. A waiver of any defense by the
944 insurer after a petition in liquidation has been
945 filed shall not bind the liquidator. Whenever a
946 guaranty association or foreign guaranty
947 association has an obligation to defend any suit,
948 the liquidator shall give precedence to such
949 obligation and may defend only in the absence of a
950 defense by such guaranty associations; (19) to
951 exercise and enforce all the rights, remedies, and
952 powers of any creditor, shareholder, policyholder,
953 or member, including any power to avoid any
954 transfer or lien that may be given by the general
955 law and that is not included with sections 38a-928
956 to 38a-930, inclusive; (20) to intervene in any
957 proceeding wherever instituted that might lead to
958 the appointment of a receiver or trustee and to
959 act as the receiver or trustee whenever the
960 appointment is offered; (21) to enter into
961 agreements with any receiver or commissioner of
962 any other state relating to the rehabilitation,
963 liquidation, conservation or dissolution of an
964 insurer doing business in both states; (22) to
965 exercise all powers [now held or hereafter]
966 conferred upon receivers by the laws of this state
967 not inconsistent with the provisions of sections
968 38a-903 to 38a-961, inclusive, AS AMENDED; (23) to
969 appoint, with the approval of the court, an
970 advisory committee of policyholders, claimants or
971 other creditors including guaranty associations
972 should such a committee be deemed necessary.
973 [Such] THE committee shall serve at the pleasure
974 of the commissioner and THE DECISION TO APPOINT AN
975 ADVISORY COMMITTEE SHALL BE AT THE SOLE DISCRETION
976 OF THE COMMISSIONER. THE COMMITTEE shall serve
977 without compensation [other than reimbursement for
978 reasonable travel and per diem living expenses]

979 AND WITHOUT REIMBURSEMENT FOR EXPENSES. No other
980 committee shall be appointed by the commissioner
981 or the court in liquidation proceedings conducted
982 under sections 38a-903 to 38a-961, inclusive, AS
983 AMENDED; (24) to audit the books and records of
984 all agents of the insurer insofar as those records
985 relate to the business activities of the insurer.

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

994 (c) [Notwithstanding the powers of the
995 liquidator as stated in subsections (a) and (b) to
996 the contrary, the liquidator shall have no
997 obligation to defend claims or to continue to
998 defend claims subsequent to the entry of a
999 liquidation order.] THE LIQUIDATOR SHALL NOT BE
1000 OBLIGATED TO DEFEND ANY ACTION AGAINST THE INSURER
1001 OR INSURED AND MAY ENFORCE INJUNCTIONS, STAYS AND
1002 THE CLAIMS PROCEDURE SET FORTH IN SECTIONS 38a-903
1003 TO 38a-961, INCLUSIVE, AS AMENDED. THE LIQUIDATOR
1004 MAY ELECT TO DEFEND ANY ACTIONS AGAINST THE
1005 INSURER OR INSURED IF IT IS IN THE BEST INTEREST
1006 OF THE ESTATE. ANY INSURED NOT DEFENDED BY A
1007 GUARANTY ASSOCIATION SHALL PROVIDE THEIR OWN
1008 DEFENSE, AND INCLUDE THE COST OF THE DEFENSE AS
1009 PART OF THEIR CLAIMS, IF THE DEFENSE WAS AN
1010 OBLIGATION OF THE INSURER. THE RIGHTS OF THE
1011 LIQUIDATOR TO CONTEST COVERAGE ON A PARTICULAR
1012 CLAIM SHALL BE DEEMED PRESERVED WITHOUT THE
1013 NECESSITY FOR AN EXPRESS RESERVATION OF RIGHTS.

1014 Sec. 14. Section 38a-924 of the general
1015 statutes is repealed and the following is
1016 substituted in lieu thereof:

1017 (a) Unless the court otherwise directs, the
1018 liquidator shall give or cause to be given notice
1019 of the liquidation order as soon as possible: (1)
1020 By first class mail and [either by telegram or
1021 telephone] ELECTRONIC COMMUNICATION to the
1022 Insurance Commissioner of each jurisdiction in
1023 which the insurer is doing business; (2) by first
1024 class mail to any guaranty association [or foreign
1025 guaranty association] which is or may become
1026 obligated as a result of the liquidation; (3) by

1027 first class mail to all [insurance agents of the
1028 insurer] THE INSURER'S AGENTS, BROKERS OR
1029 PRODUCERS OF RECORD, WITH CURRENT APPOINTMENTS OR
1030 CURRENT LICENSES TO REPRESENT THE INSURER, AND TO
1031 ALL OTHER AGENTS, BROKERS OR PRODUCERS AS THE
1032 LIQUIDATOR DEEMS APPROPRIATE AT THEIR LAST KNOWN
1033 ADDRESS; (4) by first class mail to all persons
1034 known or reasonably expected to have claims
1035 against the insurer, including all policyholders
1036 AND REINSURERS, at their last known addresses as
1037 indicated by the records of the insurer; and (5)
1038 by publication in a newspaper of general
1039 circulation in the town in which the insurer has
1040 its principal place of business and in such other
1041 locations as the liquidator deems appropriate.

1042 (b) WHENEVER THE INSURANCE COMMISSIONER OF
1043 THIS STATE IS APPOINTED RECEIVER FOR AN INSURER
1044 DOMICILED IN ANOTHER STATE, THE NOTICE OF THE
1045 LIQUIDATION ORDER GIVEN BY THE DOMICILIARY
1046 LIQUIDATOR IN COMPLIANCE WITH THE LAWS OF THAT
1047 STATE SHALL BE SUFFICIENT NOTICE, AND THE
1048 ANCILLARY RECEIVER SHALL NOT BE REQUIRED TO GIVE
1049 ANY NOTICE UNLESS THE DOMICILIARY LIQUIDATOR FAILS
1050 TO GIVE NOTICE. THE ANCILLARY RECEIVER MAY REQUEST
1051 THAT THE DOMICILIARY LIQUIDATOR'S NOTICE MENTION
1052 THE EXISTENCE OF ANY APPLICABLE GUARANTY
1053 ASSOCIATION LAWS IN THIS STATE, AND INFORM
1054 CLAIMANTS THAT ANY CLAIMS WHICH THE GUARANTY
1055 ASSOCIATION OF THIS STATE MAY COVER MAY BE FILED
1056 WITH THE DOMICILIARY LIQUIDATOR AND WILL BE
1057 FORWARDED TO THE APPLICABLE GUARANTY ASSOCIATION.
1058 IF NOTICE BY THE DOMICILIARY LIQUIDATOR IN ANOTHER
1059 STATE DOES NOT MENTION THE POSSIBILITY OF GUARANTY
1060 ASSOCIATION COVERAGE IN THIS STATE, THEN THE
1061 ANCILLARY RECEIVER SHALL ARRANGE TO GIVE NOTICE TO
1062 THOSE WHO MAY HAVE RIGHTS UNDER APPLICABLE
1063 GUARANTY ASSOCIATION LAWS IN THIS STATE, TOGETHER
1064 WITH A CITATION TO THE GUARANTY ASSOCIATION
1065 STATUTE IN THIS STATE. THE NOTICE MAY INCLUDE A
1066 BRIEF SUMMARY OF CLAIMANT'S RIGHTS UNDER THE
1067 GUARANTY ASSOCIATION LAWS IN THIS STATE AND ANY
1068 OTHER INFORMATION DEEMED APPROPRIATE.

1069 [(b) Notice] (c) EXCEPT AS OTHERWISE
1070 ESTABLISHED BY THE LIQUIDATOR WITH THE APPROVAL OF
1071 THE COURT, NOTICE to potential claimants under
1072 subsection (a) of this section shall require
1073 claimants to file with the liquidator their claims
1074 together with proper proofs [thereof pursuant to]

1075 SPECIFIED IN section 38a-938, AS AMENDED BY THIS
1076 ACT, on or before a date the liquidator shall
1077 specify in the notice. The liquidator need not
1078 require persons claiming cash surrender values or
1079 other investment values in life insurance and
1080 annuities to file a claim. All claimants shall
1081 have a duty to keep the liquidator informed of any
1082 changes of address.

1083 [(c)] (d) (1) Notice under subsection (a) to
1084 agents of the insurer and to potential claimants
1085 who are policyholders shall include, where
1086 applicable, notice that coverage by state guaranty
1087 associations may be available for all or part of
1088 policy benefits in accordance with applicable
1089 state guaranty laws.

1090 (2) The liquidator shall promptly provide to
1091 the guaranty associations such information
1092 concerning the identities and addresses of such
1093 policyholders and their policy coverages as may be
1094 within the liquidator's possession or control, and
1095 otherwise cooperate with guaranty associations to
1096 assist them in providing to such policyholders
1097 timely notice of the guaranty associations'
1098 coverage of policy benefits, including, as
1099 applicable, coverage of claims and continuation or
1100 termination of coverages.

1101 [(d)] (e) If notice is given in accordance
1102 with this section, the distribution of assets of
1103 the insurer under sections 38a-903 to 38a-961,
1104 inclusive, AS AMENDED, shall be conclusive with
1105 respect to all claimants, whether or not they
1106 received notice.

1107 (f) NOTWITHSTANDING THE PROVISIONS OF
1108 SUBSECTIONS (a) TO (e), INCLUSIVE, OF THIS
1109 SECTION, THE LIQUIDATOR SHALL HAVE NO DUTY TO
1110 LOCATE ANY PERSON IF NO ADDRESS IS FOUND IN THE
1111 RECORDS OF THE INSURER, OR IF MAILINGS ARE
1112 RETURNED TO THE LIQUIDATOR BECAUSE OF AN INABILITY
1113 TO DELIVER AT THE ADDRESS SHOWN IN THE COMPANY'S
1114 BOOKS AND RECORDS. IN SUCH CIRCUMSTANCES THE
1115 NOTICE BY PUBLICATION AS REQUIRED BY THIS CHAPTER
1116 AND SECTIONS 7, 15 AND 22 OF THIS ACT, OR ACTUAL
1117 NOTICE RECEIVED SHALL BE SUFFICIENT NOTICE.
1118 WRITTEN CERTIFICATION BY THE LIQUIDATOR OR OTHER
1119 KNOWLEDGEABLE PERSON ACTING FOR THE LIQUIDATOR,
1120 THAT THE NOTICES WERE DEPOSITED IN THE UNITED
1121 STATES MAIL, POSTAGE PREPAID, SHALL BE PRIMA FACIE
1122 EVIDENCE OF MAILING AND RECEIPT.

1123 (g) UPON APPLICATION OF THE LIQUIDATOR AND FOR
1124 GOOD CAUSE SHOWN, THE COURT MAY FIND THAT NOTICE
1125 BY PUBLICATION AS REQUIRED IN THIS SECTION IS
1126 SUFFICIENT NOTICE TO THOSE PERSONS HOLDING AN
1127 OCCURRENCE POLICY WHICH EXPIRED MORE THAN FOUR
1128 YEARS PRIOR TO THE ENTRY OF THE ORDER OF
1129 LIQUIDATION, AND UNDER WHICH THERE ARE NO PENDING
1130 CLAIMS; OR THE COURT MAY ORDER SUCH NOTICE TO
1131 THOSE PERSONS AS IT DEEMS APPROPRIATE.

1132 Sec. 15. (NEW) (a) If an order instituting a
1133 delinquency proceeding against an insurer
1134 authorized to do business in this state is entered
1135 under chapter 704c of the general statutes or
1136 sections 7, 15 and 22 of this act, the receiver
1137 appointed under the order has a right to recover
1138 on behalf of the insurer from any affiliate that
1139 controlled the insurer the amount of
1140 distributions, other than stock dividends paid by
1141 the insurer on its capital stock, made at any time
1142 during the five years preceding the petition for
1143 liquidation, rehabilitation or conservation. This
1144 recovery is subject to the limitations of
1145 subsections (b) to (g), inclusive, of this
1146 section. For purposes of this section,
1147 "distribution" includes any dividend, or any loan,
1148 advance, payment or other transfer for which the
1149 insurer did not receive fair consideration prior
1150 to the commencement of delinquency proceedings.

1151 (b) No distribution is recoverable if the
1152 recipient shows that, when paid, the distribution
1153 was lawful and reasonable, and that the insurer
1154 did not know and could not reasonably have known
1155 that the distribution might adversely affect its
1156 solvency.

1157 (c) The maximum amount recoverable under this
1158 section is the amount needed, in excess of all
1159 other available assets, to pay all claims under
1160 the receivership, reduced for each recipient by
1161 any amount the recipient has already paid to
1162 receivers under similar laws of other states.

1163 (d) Any person who was an affiliate that
1164 controlled the insurer at the time the
1165 distributions were paid is liable up to the amount
1166 of distributions received. Any person who was an
1167 affiliate that controlled the insurer at the time
1168 the distributions were declared is liable up to
1169 the amount of distributions he would have received
1170 if he had been paid immediately. If two or more

1171 persons are liable regarding the same
1172 distributions, they shall be jointly and severally
1173 liable.

1174 (e) If any person liable under subsection (d)
1175 of this section is insolvent, all affiliates that
1176 controlled that person at the time the dividend
1177 was declared or paid shall be jointly and
1178 severally liable for any resulting deficiency in
1179 the amount recovered from the insolvent affiliate.

1180 (f) An action or proceeding under this section
1181 may not be commenced after the earlier of: (1) Two
1182 years after the appointment of a rehabilitator
1183 under section 38a-915 of the general statutes, as
1184 amended by this act, or a liquidator under section
1185 38a-920 of the general statutes, as amended by
1186 this act; or (2) the date the rehabilitation is
1187 terminated under subsection (b) of section 38a-918
1188 of this general statutes or the liquidation is
1189 terminated under section 38a-948 of the general
1190 statutes.

1191 Sec. 16. Section 38a-935 of the general
1192 statutes is repealed and the following is
1193 substituted in lieu thereof:

1194 (a) (1) A producer, premium finance company or
1195 any other person, other than the insured,
1196 responsible for the payment of a premium shall [be
1197 obligated to] pay any unpaid collected premium
1198 INCLUDING ANY AMOUNT REPRESENTING COMMISSIONS held
1199 by such person at the time of the [declaration of
1200 insolvency] ENTRY OF THE LIQUIDATION ORDER,
1201 whether earned or unearned BASED ON THE
1202 TERMINATION OF COVERAGE UNDER SECTION 38a-921, AS
1203 AMENDED BY THIS ACT, and any unpaid earned
1204 premium, all as shown on the records of the
1205 insurer. A producer, premium finance company or
1206 any other person shall have no obligation to pay
1207 an uncollected unpaid unearned premium to the
1208 liquidator. [The insured shall have the right to
1209 recover from such person any part of an unearned
1210 premium that represents] (2) THE LIQUIDATOR SHALL
1211 ALSO HAVE THE RIGHT TO RECOVER FROM ANY PERSON
1212 OTHER THAN THE INSURED, RESPONSIBLE FOR THE
1213 PAYMENT OF A PREMIUM, ANY UNEARNED commission
1214 actually paid or credited to such person BASED ON
1215 THE TERMINATION OF COVERAGE UNDER SECTION 38a-921,
1216 AS AMENDED BY THIS ACT. Credits or set-offs or
1217 both shall not be allowed to a producer or premium
1218 finance company, OR ANY OTHER PERSON AGAINST

1219 UNPAID PREMIUM DUE THE INSURER for any amounts
1220 advanced to the insurer by [the producer or
1221 premium finance company] SUCH PERSON on behalf of,
1222 but in the absence of a payment by, the insured,
1223 OR FOR ANY OTHER AMOUNT PAID BY SUCH PERSON TO ANY
1224 OTHER PERSON AFTER THE ENTRY OF THE ORDER OF
1225 LIQUIDATION. (3) An insured shall [be obligated
1226 to] pay, EITHER DIRECTLY TO THE LIQUIDATOR OR TO
1227 ANY AGENT WHO HAS PAID OR IS OBLIGATED TO PAY THE
1228 LIQUIDATOR ON BEHALF OF THE INSURED, any unpaid
1229 earned premium OR RETROSPECTIVELY RATED PREMIUM
1230 due the insurer [at the time of the declaration of
1231 insolvency, as shown on the records of the
1232 insurer] BASED ON THE TERMINATION OF COVERAGE
1233 UNDER SECTION 38a-921, AS AMENDED BY THIS ACT.
1234 PREMIUM ON SURETY BUSINESS SHALL BE DEEMED EARNED
1235 AT INCEPTION IF NO POLICY TERM CAN BE DETERMINED.
1236 ALL OTHER PREMIUM SHALL BE DEEMED EARNED AND SHALL
1237 BE PRORATED OVER THE DETERMINED POLICY TERM,
1238 REGARDLESS OF ANY PROVISION IN THE BOND, GUARANTY,
1239 CONTRACT OR OTHER AGREEMENT. IF A CLAIM FOR LOSSES
1240 INCURRED UNDER A POLICY IS APPROVED BY THE COURT
1241 UNDER SUBSECTION (b) OF SECTION 38a-945, AS
1242 AMENDED BY THIS ACT, THEN ALL PREMIUM FOR THE FULL
1243 POLICY TERM SHALL BE DEEMED EARNED. (4) ANY PERSON
1244 WHO COLLECTED PREMIUM, OR FINANCED PREMIUM UNDER A
1245 PREMIUM FINANCE CONTRACT, THAT IS DUE THE INSURER
1246 IN LIQUIDATION SHALL BE DEEMED TO HOLD THAT
1247 PREMIUM IN TRUST AS A FIDUCIARY FOR THE BENEFIT OF
1248 THE INSURER AND TO HAVE AVAILED HIMSELF OF THE
1249 LAWS OF THIS STATE, REGARDLESS OF ANY PROVISION IN
1250 ANY AGENCY CONTRACT OR OTHER AGREEMENT. (5) ANY
1251 PREMIUM FINANCE COMPANY SHALL BE OBLIGATED TO PAY
1252 ANY AMOUNTS DUE THE INSURER FROM PREMIUM FINANCE
1253 CONTRACTS, WHETHER THE PREMIUM IS EARNED OR
1254 UNEARNED. THE LIQUIDATOR HAS THE RIGHT TO COLLECT
1255 ANY UNPAID FINANCED PREMIUM DIRECTLY FROM THE
1256 PREMIUM FINANCE COMPANY, BY TAKING AN ASSIGNMENT
1257 OF THE UNDERLYING PREMIUM FINANCE CONTRACTS, OR
1258 DIRECTLY FROM THE INSURED WHO IS A PARTY TO THE
1259 PREMIUM FINANCE CONTRACT.

1260 (b) Upon satisfactory evidence of a violation
1261 of this section, BY A PERSON OTHER THAN AN
1262 INSURED, the commissioner may pursue either one or
1263 both of the following courses of action: (1)
1264 Suspend or revoke or refuse to renew the licenses
1265 of such offending party or parties; (2) impose a
1266 penalty of not more than one thousand dollars for

1267 each and every act in violation of this section by
1268 said party or parties.

1269 (c) Before the commissioner [shall take] TAKES
1270 any action as set forth in subsection (b) of this
1271 section, he shall give written notice to the
1272 person, company, association, or exchange accused
1273 of violating the law, stating specifically the
1274 nature of the alleged violation, and fixing a time
1275 and place, at least ten days thereafter, when a
1276 hearing on the matter shall be held. After such
1277 hearing, or upon failure of the accused to appear
1278 at such hearing, the commissioner, if he shall
1279 find such violation, shall impose such of the
1280 penalties under subsection (b) of this section as
1281 he deems advisable.

1282 (d) [When the commissioner shall take action
1283 in any or all of the ways set out in subsection
1284 (b) of this section, the party aggrieved may
1285 appeal from said action to the Superior Court.]
1286 ANY PERSON AGGRIEVED BY THE ACTION OF THE
1287 COMMISSIONER IN REVOKING, SUSPENDING OR REFUSING
1288 TO GRANT A LICENSE OR IN IMPOSING A FINE MAY
1289 APPEAL THEREFROM IN ACCORDANCE WITH THE PROVISIONS
1290 OF SECTION 4-183, EXCEPT VENUE FOR SUCH APPEAL
1291 SHALL BE IN THE JUDICIAL DISTRICT OF HARTFORD-NEW
1292 BRITAIN.

1293 Sec. 17. Section 38a-938 of the general
1294 statutes is repealed and the following is
1295 substituted in lieu thereof:

1296 (a) Proof of claim shall consist of a
1297 statement signed by the claimant that includes all
1298 of the following that are applicable: (1) The
1299 particulars of the claim including the
1300 consideration given for it; (2) the identity and
1301 amount of the security on the claim; (3) the
1302 payments made on the debt, if any; (4) that the
1303 sum claimed is justly owing and that there is no
1304 set-off, counterclaim, or defense to the claim;
1305 (5) any right of priority of payment or other
1306 specific right asserted by the claimants; (6) a
1307 copy of ANY written instrument which is the
1308 foundation of the claim; [and] (7) the name and
1309 address of the claimant and the attorney who
1310 represents him, if any; AND (8) THE SOCIAL
1311 SECURITY OR FEDERAL EMPLOYER IDENTIFICATION NUMBER
1312 OF THE CLAIMANT.

1313 (b) No claim need be considered or allowed if
1314 it does not contain all the information in

1315 subsection (a) of this section which may be
1316 applicable. The liquidator may require that a
1317 prescribed form be used and may require that other
1318 information and documents be included.

1319 (c) At any time the liquidator may request the
1320 claimant to present information or evidence
1321 supplementary to that required under subsection
1322 (a) of this section and may take testimony under
1323 oath, require production of affidavits or
1324 depositions or otherwise obtain additional
1325 information or evidence.

1326 (d) No judgment or order against an insured or
1327 the insurer entered after the date of filing of a
1328 successful petition for liquidation, and no
1329 judgment or order against an insured or the
1330 insurer entered at any time by default or by
1331 collusion, need be considered as evidence of
1332 liability or of quantum of damages. No judgment or
1333 order against an insured or the insurer entered
1334 within four months before the filing of the
1335 petition need be considered as evidence of
1336 liability or of the quantum of damages.

1337 (e) [All claims of a guaranty association or
1338 foreign guaranty association shall be in such form
1339 and contain such substantiation as may be agreed
1340 to by the association and the liquidator.] A
1341 GUARANTY ASSOCIATION SHALL BE PERMITTED TO FILE A
1342 SINGLE OMNIBUS PROOF OF CLAIM FOR ALL CLAIMS OF
1343 THE ASSOCIATION IN CONNECTION WITH PAYMENT OF
1344 CLAIMS OF THE INSOLVENT INSURER. THE OMNIBUS PROOF
1345 OF CLAIM SHALL BE PERIODICALLY UPDATED BY THE
1346 ASSOCIATION, AND THE LIQUIDATOR MAY REQUIRE THE
1347 ASSOCIATION TO SUBMIT A REASONABLE AMOUNT OF
1348 SUPPORTING DOCUMENTATION.

1349 Sec. 18. Section 38a-939 of the general
1350 statutes is repealed and the following is
1351 substituted in lieu thereof:

1352 [(a) The claim of a third party which is
1353 contingent only on his first obtaining a judgment
1354 against the insured shall be considered and
1355 allowed as if there were no such contingency.

1356 (b) A claim may be allowed even if contingent,
1357 if it is filed in accordance with section 38a-937.
1358 It may be allowed and may participate in all
1359 distributions declared after it is filed to the
1360 extent that it does not prejudice the orderly
1361 administration of the liquidation.

1362 (c) Claims that are due except for the passage
1363 of time shall be treated as absolute claims are
1364 treated, except that such claims may be discounted
1365 at the legal rate of interest.]

1366 [(d)] (a) Claims made under employment
1367 contracts by directors, principal officers, or
1368 persons in fact performing similar functions or
1369 having similar powers are limited to payment for
1370 services rendered prior to the issuance of any
1371 order of rehabilitation or liquidation pursuant to
1372 section 38a-915 or 38a-920, AS AMENDED.

1373 (b) WHEN A LIQUIDATION ORDER HAS BEEN ENTERED
1374 IN A PROCEEDING AGAINST AN INSURER, ANY INSURED,
1375 REINSURED, THIRD PARTY PERSON WHO HAS A CAUSE OF
1376 ACTION AGAINST AN INSURED OF THE INSURER, OR ANY
1377 OTHER PERSON OR ENTITY THAT HAS A CLAIM OR CAUSE
1378 OF ACTION AGAINST THE INSURER, SHALL HAVE THE
1379 RIGHT TO FILE A CLAIM IN THE PROCEEDING,
1380 REGARDLESS OF THE FACT THAT THE CLAIM MAY BE
1381 CONTINGENT, UNLIQUIDATED OR IMMATURE. FOR PURPOSES
1382 OF THIS SECTION: (1) A CLAIM IS CONTINGENT IF THE
1383 ACCIDENT, CASUALTY, DISASTER OR LOSS INSURED OR
1384 REINSURED AGAINST OCCURRED ON OR BEFORE THE DATE
1385 FIXED UNDER SECTION 38a-920, AS AMENDED BY THIS
1386 ACT, BUT THE ACT OR EVENT TRIGGERING THE INSURER'S
1387 OBLIGATION TO PAY HAS NOT OCCURRED AS OF THAT
1388 DATE; (2) A CLAIM IS UNLIQUIDATED IF THE AMOUNT OF
1389 THE CLAIM HAS NOT BEEN DETERMINED; AND (3) A CLAIM
1390 IS IMMATURE IF PAYMENT ON THE CLAIM IS NOT YET
1391 DUE.

1392 (c) EXCEPT AS PROVIDED IN THIS SECTION, A
1393 CLAIM MAY NOT SHARE IN A DISTRIBUTION OF ASSETS
1394 PURSUANT TO THIS CHAPTER OR SECTIONS 7, 15 AND 22
1395 OF THIS ACT, UNLESS IT HAS BEEN DEFINITELY
1396 DETERMINED, PROVED AND ALLOWED. A CONTINGENT,
1397 UNLIQUIDATED OR IMMATURE CLAIM MAY SHARE IN A
1398 DISTRIBUTION OF ASSETS PROVIDED THAT, AS OF THE
1399 TIME OF THE ALLOWANCE OR DISALLOWANCE OF THE CLAIM
1400 BY THE COURT: (1) IF THE CLAIM WAS A CONTINGENT
1401 CLAIM AGAINST THE INSURER AS OF THE DATE
1402 ESTABLISHED UNDER SECTION 38a-920, AS AMENDED, THE
1403 CLAIMANT HAS PRESENTED PROOF OF THE INSURER'S
1404 OBLIGATION TO PAY REASONABLY SATISFACTORY TO THE
1405 RECEIVER; (2) IF THE CLAIM WAS A CONTINGENT CLAIM
1406 AS OF THE DATE ESTABLISHED UNDER SECTION 38a-920,
1407 AS AMENDED BY THIS ACT, AND WAS BASED UPON A CAUSE
1408 OF ACTION AGAINST AN INSURED OF THE INSURER, (A)
1409 IT MAY BE REASONABLY INFERRED FROM PROOF PRESENTED

1410 UPON THE CLAIM THAT THE CLAIMANT WOULD BE ABLE TO
1411 OBTAIN A JUDGMENT, (B) THE PERSON HAS FURNISHED
1412 SUITABLE PROOF, UNLESS THE COURT FOR GOOD CAUSE
1413 SHOWN SHALL OTHERWISE DIRECT, THAT NO FURTHER
1414 VALID CLAIMS CAN BE MADE AGAINST THE INSURER
1415 ARISING OUT OF THE CAUSE OF ACTION OTHER THAN
1416 THOSE ALREADY PRESENTED, AND (C) THE TOTAL
1417 LIABILITY OF THE INSURER TO ALL CLAIMANTS ARISING
1418 OUT OF THE SAME ACT SHALL BE NO GREATER THAN ITS
1419 TOTAL LIABILITY WOULD BE WERE IT NOT IN
1420 LIQUIDATION. IN THOSE CASES UNDER SUBPARAGRAPH (C)
1421 OF THIS SUBDIVISION, INSUREDS MAY INCLUDE IN
1422 CONTINGENT CLAIMS REASONABLE ATTORNEY'S FEES FOR
1423 SERVICES RENDERED AFTER THE DATE OF LIQUIDATION,
1424 IN DEFENSE OF CLAIMS OR SUITS COVERED BY THE
1425 INSURED'S POLICY, PROVIDED THE ATTORNEY'S FEES
1426 HAVE BEEN PAID BY THE INSURED AND EVIDENCE OF
1427 PAYMENT IS PRESENTED TO THE RECEIVER; (3) IF THE
1428 CLAIM WAS UNLIQUIDATED AS OF THE DATE ESTABLISHED
1429 UNDER SECTION 38a-920, AS AMENDED BY THIS ACT, ITS
1430 AMOUNT HAS BEEN DETERMINED, PROVIDED SUCH
1431 DETERMINATION DOES NOT PREJUDICE THE ORDERLY
1432 ADMINISTRATION OF THE LIQUIDATION PROCEEDING; OR
1433 (4) IF THE CLAIM WAS IMMATURE AS OF THE DATE
1434 ESTABLISHED UNDER SECTION 38a-920, AS AMENDED BY
1435 THIS ACT, IT SHALL BE DISCOUNTED AT THE HIGHER OF
1436 THE LEGAL RATE OF INTEREST ACCRUING ON JUDGMENTS
1437 OR THE RATE OF INTEREST AVAILABLE ON UNITED STATES
1438 TREASURY SECURITIES OF APPROXIMATELY THE SAME
1439 MATURITY.

1440 (d) NOTWITHSTANDING THE PROVISIONS OF
1441 SUBSECTIONS (a) TO (c), INCLUSIVE, OF THIS
1442 SECTION, ANY INSURED SHALL HAVE THE RIGHT TO FILE
1443 A CLAIM FOR THE PROTECTION AFFORDED UNDER THE
1444 INSURED'S POLICY, IRRESPECTIVE OF WHETHER A CLAIM
1445 IS THEN KNOWN, IF THE POLICY IS AN OCCURRENCE
1446 POLICY. THEREAFTER, AT SUCH TIME THAT A SPECIFIC
1447 CLAIM IS MADE BY OR AGAINST THE INSURER, THE
1448 INSURED SHALL SUPPLEMENT HIS CLAIM AND THE
1449 RECEIVER SHALL TREAT THE SAME AS A CONTINGENT,
1450 UNLIQUIDATED OR IMMATURE CLAIM. ANY SUCH CLAIMS OF
1451 POLICYHOLDERS FOR THE PROTECTION UNDER AN
1452 OCCURRENCE POLICY REMAINING AT OR NEAR THE CLOSING
1453 OF THE ESTATE SHALL BE DISPOSED OF IN ACCORDANCE
1454 WITH SECTION 38a-945, AS AMENDED BY THIS ACT.

1455 (e) THE ESTIMATION AND ALLOWANCE OF A
1456 CONTINGENT CLAIM UNDER THIS SECTION SHALL NOT
1457 PROVIDE A BASIS TO COMPEL PAYMENT FROM A REINSURER

1458 OF ESTIMATED INCURRED BUT NOT REPORTED LOSSES AND,
1459 EXCEPT WITH RESPECT TO CLAIMS MADE UNDER
1460 SUBSECTION (c) OF SECTION 38a-939, AS AMENDED,
1461 OUTSTANDING RESERVES, UNLESS THE REINSURANCE
1462 CONTRACT SPECIFICALLY PROVIDES FOR THE PAYMENT OF
1463 SUCH LOSSES OR RESERVES.

1464 Sec. 19. Section 38a-940 of the general
1465 statutes is repealed and the following is
1466 substituted in lieu thereof:

1467 (a) Whenever any third party asserts a cause
1468 of action against an insured of an insurer in
1469 liquidation, the third party may file a claim with
1470 the liquidator ON OR BEFORE THE LAST DAY FOR
1471 FILING CLAIMS.

1472 (b) Whether or not the third party files a
1473 claim, the insured may file a claim on [his] THE
1474 INSURED'S own behalf in the liquidation. TO THE
1475 EXTENT THE INSURED FILES A CLAIM, IT SHALL BE
1476 DEEMED SUFFICIENT TO COVER ALL RELATED THIRD PARTY
1477 CLAIMS. If the insured fails to file a claim by
1478 the date for filing claims specified in the order
1479 of liquidation or within sixty days after mailing
1480 of the notice required by section 38a-924, AS
1481 AMENDED BY THIS ACT, whichever is later, [he is]
1482 THE INSURER SHALL BE DEEMED an unexcused late
1483 filer.

1484 (c) The liquidator shall make [his]
1485 recommendations to the court pursuant to section
1486 38a-944, AS AMENDED BY THIS ACT, for the allowance
1487 of an insured's claim pursuant to subsection (b)
1488 of this section after consideration of the
1489 probable outcome of any pending action against the
1490 insured on which the claim is based, the probable
1491 damages recoverable in the action and the probable
1492 costs and expenses of defense. After allowance by
1493 the court, the liquidator shall withhold any
1494 dividends payable on the claim, pending the
1495 outcome of litigation and negotiation with the
1496 insured. Whenever it seems appropriate, [he] THE
1497 LIQUIDATOR shall reconsider the claim on the basis
1498 of additional information and amend his
1499 recommendations to the court. The insured shall be
1500 afforded the same notice and opportunity to be
1501 heard on all changes in the recommendation as in
1502 its initial determination. The court may amend its
1503 allowance as it [thinks] FINDS appropriate. As
1504 claims against the insured are settled or barred,
1505 the insured shall be paid from the amount withheld

1506 the same percentage dividend as was paid on other
1507 claims of like priority, based on the lesser of
1508 (1) the amount actually recovered from the insured
1509 by action or paid by agreement plus the reasonable
1510 costs and expenses of defense, or (2) the amount
1511 allowed on the claims by the court. After all
1512 claims are settled or barred, any sum remaining
1513 from the amount withheld shall revert to the
1514 undistributed assets of the insurer. Delay in
1515 final payment under this subsection shall not be a
1516 reason for unreasonable delay of final
1517 distribution and discharge of the liquidator.

1518 (d) If several claims founded upon one policy
1519 are filed, whether by third parties or as claims
1520 by the insured under this section, and the
1521 aggregate allowed amount of the claims to which
1522 the same limit of liability in the policy is
1523 applicable exceeds that limit, each claim as
1524 allowed shall be reduced in the same proportion so
1525 that the total equals the policy limit. Claims by
1526 the insured shall be evaluated as in subsection
1527 (c) of this section. If any insured's claim is
1528 subsequently reduced under subsection (c) of this
1529 section, the amount thus freed shall be
1530 apportioned ratably among the claims which have
1531 been reduced under this subsection.

1532 (e) No claim may be presented under this
1533 section if it is or may be covered by any guaranty
1534 association. [or foreign guaranty association.]

1535 Sec. 20. Section 38a-941 of the general
1536 statutes is repealed and the following is
1537 substituted in lieu thereof:

1538 (a) When a claim is denied in whole or in part
1539 by the liquidator, written notice of the
1540 determination shall be given to the claimant or
1541 [his] THE CLAIMANT'S attorney by first class mail
1542 at the address shown in the proof of claim.
1543 [Within sixty] NOT LATER THAN THIRTY days [from]
1544 AFTER the mailing of the notice, the claimant may
1545 file [his] objections with the liquidator. ANY
1546 FILED OBJECTIONS SHALL CLEARLY SET FORTH ALL FACTS
1547 AND THE LEGAL BASIS FOR THE OBJECTIONS AND THE
1548 REASONS WHY THE CLAIM SHOULD BE ALLOWED. If no
1549 such filing is made, [the claimant may not further
1550 object to] the determination SHALL BE FINAL.

1551 (b) Whenever objections are filed with the
1552 liquidator and the liquidator does not alter [his
1553 denial] THE DETERMINATION of the claim as a result

1554 of the objections, the liquidator shall ask the
1555 court for a hearing as soon as practicable and
1556 give notice of the hearing by first class mail to
1557 the claimant or [his] THE CLAIMANT'S attorney and
1558 to any other persons directly affected, not less
1559 than ten nor more than thirty days before the date
1560 of the hearing. The matter may be heard by the
1561 court or by a court-appointed referee. [who shall
1562 submit findings of fact along with his
1563 recommendation.] THE HEARING SHALL BE CONDUCTED ON
1564 THE RECORD IN AN INFORMAL MANNER AND THE FORMAL
1565 RULES OF EVIDENCE AND CIVIL PROCEDURE NEED NOT BE
1566 STRICTLY APPLIED. HEARINGS SHALL BE HELD WITHOUT A
1567 JURY. PREHEARING DISCOVERY SHALL BE LIMITED TO
1568 SUCH PRETRIAL DISCOVERY AS EXPRESSLY PERMITTED IN
1569 ARBITRATION PROCEEDINGS UNDER CHAPTER 909.

1570 (c) WHEN A DISPUTED CLAIM IS HEARD BY A
1571 REFEREE, THE REFEREE SHALL SUBMIT WRITTEN FINDINGS
1572 OF FACT AND CONCLUSIONS OF LAW ALONG WITH THE
1573 RECOMMENDATION FOR DISPOSITION TO THE COURT. THE
1574 REFEREE'S RECOMMENDATION SHALL BECOME THE FINAL
1575 JUDGMENT OF THE COURT, UNLESS OBJECTIONS TO THE
1576 REFEREE'S RECOMMENDATIONS ARE FILED BY THE
1577 LIQUIDATOR OR CLAIMANT WITH THE COURT NOT LATER
1578 THAN FIFTEEN DAYS AFTER THE RECOMMENDATION IS
1579 MAILED TO THE LIQUIDATOR AND CLAIMANT.

1580 (d) THE FINAL DISPOSITION BY THE COURT OF A
1581 DISPUTED CLAIM, WHETHER AFTER A HEARING BY THE
1582 COURT OR AFTER A RECOMMENDATION BY A REFEREE,
1583 SHALL BE DEEMED A FINAL JUDGMENT FOR PURPOSES OF
1584 APPEAL.

1585 (e) THE COURTS OF THIS STATE MAY MAKE SPECIAL
1586 RULES OF CIVIL PROCEDURE FOR DISPUTED CLAIMS,
1587 PROVIDED THAT THE RULES ARE NOT INCONSISTENT WITH
1588 THIS CHAPTER AND SECTIONS 7, 15 AND 22 OF THIS
1589 ACT.

1590 Sec. 21. Section 38a-942 of the general
1591 statutes is repealed and the following is
1592 substituted in lieu thereof:

1593 Whenever [a creditor] AN OBLIGEE whose claim
1594 against an insurer is secured, in whole or in
1595 part, by the undertaking of another person, fails
1596 to prove and file that claim, the other person may
1597 do so in the [creditor's] OBLIGEE'S name, and
1598 shall be subrogated to the rights of the
1599 [creditor] OBLIGEE, whether the claim has been
1600 filed by the [creditor] OBLIGEE or by the other
1601 person in the [creditor's] OBLIGEE'S name, to the

1602 extent that [he] THE OBLIGEE discharges the
1603 undertaking. In the absence of an agreement with
1604 the [creditor] OBLIGEE to the contrary, the other
1605 person shall not be entitled to any distribution
1606 [, however,] until the amount paid to the
1607 [creditor] OBLIGEE on the undertaking plus the
1608 distributions paid on the claim from the insurer's
1609 estate to the [creditor] OBLIGEE equals the amount
1610 of the entire claim of the [creditor] OBLIGEE. Any
1611 excess received by the [creditor] OBLIGEE shall be
1612 held by him in trust for such other person. The
1613 term "other person", as used in this section is
1614 not intended to apply to a guaranty association.
1615 [or foreign guaranty association.]

1616 Sec. 22. (NEW) (a) Notwithstanding any
1617 provision of sections 38a-903 to 38a-961,
1618 inclusive, of the general statutes, as amended,
1619 including any provision permitting the
1620 modification of contracts, or other law of a
1621 state, no person shall be stayed or prohibited
1622 from exercising: (1) A contractual right to
1623 terminate, liquidate or close out any netting
1624 agreement or qualified financial contract with an
1625 insurer because of: (A) The insolvency, financial
1626 condition or default of the insurer at any time,
1627 provided that the right is enforceable under
1628 applicable law other than sections 38a-903 to
1629 38a-961, inclusive, of the general statutes, as
1630 amended, or (B) the commencement of a formal
1631 delinquency proceeding under sections 38a-903 to
1632 38a-961, inclusive, of the general statutes, as
1633 amended. (2) Any right under a pledge, security,
1634 collateral or guarantee agreement or any other
1635 similar security arrangement or credit support
1636 document relating to a netting agreement or
1637 qualified financial contract. (3) Subject to any
1638 provision of subsection (b) of section 38a-932 of
1639 the general statutes, any right to set off or net
1640 out any termination value, payment amount, or
1641 other transfer obligation arising under or in
1642 connection with a netting agreement or qualified
1643 financial contract where the counterparty or its
1644 guarantor is organized under the laws of the
1645 United States or a state or foreign jurisdiction
1646 approved by the Securities Valuation Office of the
1647 National Association of Insurance Commissioners as
1648 eligible for netting.

1649 (b) Upon termination of a netting agreement,
1650 the net or settlement amount, if any, owed by a
1651 nondefaulting party to an insurer against which an
1652 application or petition has been filed under
1653 sections 38a-903 to 38a-961, inclusive, of the
1654 general statutes, as amended, shall be transferred
1655 to or on the order of the receiver for the
1656 insurer, even if the insurer is the defaulting
1657 party, notwithstanding any provision in the
1658 netting agreement that may provide that the
1659 nondefaulting party is not required to pay any net
1660 or settlement amount due to the defaulting party
1661 upon termination. Any limited two-way payment
1662 provision in a netting agreement with an insurer
1663 that has defaulted shall be deemed to be a full
1664 two-way payment provision as against the
1665 defaulting insurer. Any such property or amount
1666 shall, except to the extent it is subject to one
1667 or more secondary liens or encumbrances, be a
1668 general asset of the insurer.

1669 (c) In making any transfer of a netting
1670 agreement or qualified financial contract of an
1671 insurer subject to a delinquency proceeding, the
1672 receiver shall either: (1) Transfer to one party,
1673 other than an insurer subject to a delinquency
1674 proceeding, all netting agreements and qualified
1675 financial contracts between a counterparty or any
1676 affiliate of the counterparty and the insurer that
1677 is the subject of the proceeding, including: (A)
1678 All rights and obligations of each party under
1679 each such netting agreement and qualified
1680 financial contract; and (B) all property,
1681 including any guarantees or credit support
1682 documents, securing any claims of each party under
1683 such netting agreement and qualified financial
1684 contract; or (2) transfer none of the netting
1685 agreements, qualified financial contracts, rights,
1686 obligations or property referred to in subdivision
1687 (1) of this subsection, with respect to such
1688 counterparty and any affiliate of such
1689 counterparty.

1690 (d) If a receiver for an insurer makes a
1691 transfer of one or more netting agreements or
1692 qualified financial contracts, then the receiver
1693 shall use its best efforts to notify any person
1694 who is a party to the netting agreements or
1695 qualified financial contracts of the transfer by
1696 twelve o'clock noon, the receiver's local time, on

1697 the business day following the transfer. For
1698 purposes of this subsection, "business day" means
1699 a day other than a Saturday, Sunday or any day on
1700 which either the New York Stock Exchange or the
1701 Federal Reserve Bank of New York is closed.

1702 (e) Notwithstanding any other provision of
1703 sections 38a-903 to 38a-961, inclusive, of the
1704 general statutes, as amended, a receiver may not
1705 avoid a transfer of money or other property
1706 arising under or in connection with a netting
1707 agreement or qualified financial contract, or any
1708 pledge, security, collateral or guarantee
1709 agreement or any other similar security
1710 arrangement or credit support document relating to
1711 a netting agreement or qualified financial
1712 contract, that is made before the commencement of
1713 a formal delinquency proceeding under sections
1714 38a-903 to 38a-961, inclusive, of the general
1715 statutes, as amended, except that a transfer may
1716 be avoided under subsection (a) of section 38a-928
1717 of the general statutes, as amended, if the
1718 transfer was made with actual intent to hinder,
1719 delay or defraud the insurer, a receiver appointed
1720 for the insurer or existing or future creditors.

1721 (f) Notwithstanding any other provision of
1722 sections 38a-903 to 38a-961, inclusive, of the
1723 general statutes, as amended, any claim of a
1724 counterparty against the estate arising from the
1725 receiver's disaffirmance or repudiation of a
1726 netting agreement or qualified financial contract
1727 that has not been previously affirmed in the
1728 liquidation or immediately preceding
1729 rehabilitation case shall be determined and shall
1730 be allowed or disallowed as if the claim has
1731 arisen before the date of the filing of the
1732 petition for liquidation or, if a rehabilitation
1733 proceeding is converted to a liquidation
1734 proceeding, as if the claim had arisen before the
1735 date of the filing of the petition for
1736 rehabilitation. The amount of the claim shall be
1737 the actual direct compensatory damages determined
1738 as of the date of the disaffirmance or repudiation
1739 of the netting agreement or qualified financial
1740 contract. "Actual direct compensatory damages"
1741 does not include punitive or exemplary damages,
1742 damages for lost profit or lost opportunity or
1743 damages for pain and suffering, but does include
1744 normal and reasonable costs of cover or other

1745 reasonable measures of damages utilized in the
1746 derivatives market for the contract and agreement
1747 claims.

1748 (g) As used in this section, "contractual
1749 right" includes any right, whether or not
1750 evidenced in writing, arising under statutory or
1751 common law, a rule or bylaw of a national
1752 securities exchange, national securities clearing
1753 organization or securities clearing agency, a rule
1754 or bylaw, or a resolution of the governing body,
1755 of a contract market or its clearing organization,
1756 or under law merchant.

1757 (h) The provisions of this section shall not
1758 apply to persons who are affiliates of the insurer
1759 that is the subject of the proceeding.

1760 (i) All rights of counterparties under
1761 sections 38a-903 to 38a-961, inclusive, of the
1762 general statutes, as amended, shall apply to
1763 netting agreements entered into on behalf of the
1764 general account or separate accounts if the assets
1765 of each separate account are available only to
1766 counterparties to netting agreements entered into
1767 on behalf of that separate account.

1768 Sec. 23. Section 38a-944 of the general
1769 statutes, as amended by section 1 of public act
1770 97-113, is repealed and the following is
1771 substituted in lieu thereof:

1772 (a) The priority of distribution of claims
1773 from the insurer's estate shall be in accordance
1774 with the order in which each class of claims is
1775 set forth in this section. Every claim in each
1776 class shall be paid in full or adequate funds
1777 retained for such payment before the members of
1778 the next class receive any payment. ONCE SUCH
1779 FUNDS ARE RETAINED BY THE LIQUIDATOR AND APPROVED
1780 BY THE COURT, THE INSURER'S ESTATE SHALL HAVE NO
1781 FURTHER LIABILITY TO MEMBERS OF THAT CLASS EXCEPT
1782 TO THE EXTENT OF THE RETAINED FUNDS AND ANY OTHER
1783 UNDISTURBED FUNDS. No subclasses shall be
1784 established within any class, EXCEPT AS PROVIDED
1785 IN SUBDIVISION (1) OF SUBSECTION (a) OF SECTION
1786 38a-923, AS AMENDED. No claim by a shareholder,
1787 policyholder or other creditor shall be permitted
1788 to circumvent the priority classes through the use
1789 of equitable remedies. The order of distribution
1790 of claims shall be:

1791 (1) Class 1. The costs and expenses of
1792 administration EXPRESSLY APPROVED BY THE RECEIVER,

1793 including but not limited to the following: (A)
1794 The actual and necessary costs of preserving or
1795 recovering the assets of the insurer; (B)
1796 compensation for all services rendered in the
1797 CONSERVATION, REHABILITATION OR liquidation; (C)
1798 any necessary filing fees; (D) the fees and
1799 mileage payable to witnesses; AND (E) authorized
1800 reasonable attorney's fees and other professional
1801 services rendered in the CONSERVATION,
1802 rehabilitation [and] OR liquidation. [; (F) the
1803 reasonable expenses of a guaranty association or
1804 foreign guaranty association in handling claims.]
1805 (2) CLASS 2. THE ADMINISTRATIVE EXPENSES OF
1806 GUARANTY ASSOCIATIONS. FOR PURPOSES OF THIS
1807 SECTION SUCH EXPENSES SHALL BE THOSE REASONABLE
1808 EXPENSES INCURRED BY GUARANTY ASSOCIATIONS WHERE
1809 THE EXPENSES ARE NOT PAYMENTS OR EXPENSES WHICH
1810 ARE REQUIRED TO BE INCURRED AS DIRECT POLICY
1811 BENEFITS IN FULFILLMENT OF THE TERMS OF THE
1812 INSURANCE CONTRACT OR POLICY, AND THAT ARE OF THE
1813 TYPE AND NATURE THAT, BUT FOR THE ACTIVITIES OF
1814 THE GUARANTY ASSOCIATION OTHERWISE WOULD HAVE BEEN
1815 INCURRED BY THE RECEIVER, INCLUDING, BUT NOT
1816 LIMITED TO, EVALUATIONS OF POLICY COVERAGE,
1817 ACTIVITIES INVOLVED IN THE ADJUSTMENT AND
1818 SETTLEMENT OF CLAIMS UNDER POLICIES, INCLUDING
1819 THOSE OF IN-HOUSE OR OUTSIDE ADJUSTERS, AND THE
1820 REASONABLE EXPENSES INCURRED IN CONNECTION WITH
1821 THE ARRANGEMENTS FOR ONGOING COVERAGE THROUGH
1822 TRANSFER TO OTHER INSURERS, POLICY EXCHANGES OR
1823 MAINTAINING POLICIES IN FORCE. THE RECEIVER MAY IN
1824 HIS OR HER SOLE DISCRETION APPROVE AS AN
1825 ADMINISTRATIVE EXPENSE UNDER THIS SECTION ANY
1826 OTHER REASONABLE EXPENSES OF THE GUARANTY
1827 ASSOCIATION IF THE RECEIVER FINDS: (A) THE
1828 EXPENSES ARE NOT EXPENSES REQUIRED TO BE PAID OR
1829 INCURRED AS DIRECT POLICY BENEFITS BY THE TERMS OF
1830 THE POLICY, AND (B) THE EXPENSES WERE INCURRED IN
1831 FURTHERANCE OF ACTIVITIES THAT PROVIDED A MATERIAL
1832 ECONOMIC BENEFIT TO THE ESTATE AS A WHOLE,
1833 IRRESPECTIVE OF WHETHER THE ACTIVITIES RESULTED IN
1834 ADDITIONAL BENEFITS TO COVERED CLAIMANTS. THE
1835 COURT SHALL APPROVE SUCH EXPENSES UNLESS IT FINDS
1836 THE RECEIVER ABUSED HIS OR HER DISCRETION IN
1837 APPROVING THE EXPENSES. IF THE RECEIVER DETERMINES
1838 THAT THE ASSETS OF THE ESTATE WILL BE SUFFICIENT
1839 TO PAY ALL CLASS 1 CLAIMS IN FULL, CLASS 2 CLAIMS
1840 SHALL BE PAID CURRENTLY, PROVIDED THAT THE

1841 LIQUIDATOR SHALL SECURE FROM EACH OF THE
1842 ASSOCIATIONS RECEIVING DISBURSEMENTS PURSUANT TO
1843 THIS SECTION AN AGREEMENT TO RETURN TO THE
1844 LIQUIDATOR SUCH DISBURSEMENT, TOGETHER WITH
1845 INVESTMENT INCOME ACTUALLY EARNED ON SUCH
1846 DISBURSEMENTS, AS MAY BE REQUIRED TO PAY CLASS 1
1847 CLAIMS. NO BOND SHALL BE REQUIRED OF ANY SUCH
1848 ASSOCIATION.

1849 [(2) Class 2] (3) CLASS 3. All claims under
1850 policies including such claims of the federal or
1851 any state or local government for losses incurred,
1852 including third party claims, CLAIMS FOR UNEARNED
1853 PREMIUMS, and all claims of a guaranty association
1854 [or foreign guaranty association] FOR PAYMENT OF
1855 COVERED CLAIMS OR COVERED OBLIGATIONS OF THE
1856 INSURER. ALL CLAIMS OF A GUARANTY ASSOCIATION FOR
1857 REASONABLE EXPENSES other than those included in
1858 class [1] 2. All claims under life AND HEALTH
1859 insurance policies, annuity contracts and funding
1860 agreements, whether for death proceeds, HEALTH
1861 BENEFITS, annuity proceeds, or investment values
1862 shall be treated as loss claims. That portion of
1863 any loss, indemnification for which is provided by
1864 other benefits or advantages recovered by the
1865 claimant, shall not be included in this class,
1866 other than benefits or advantages recovered or
1867 recoverable in discharge of familial obligations
1868 of support or by way of succession at death or as
1869 proceeds of life insurance, or as gratuities. No
1870 payment by an employer to his employee shall be
1871 treated as a gratuity. NOTWITHSTANDING THE
1872 PROVISIONS OF THIS SUBDIVISION, THE FOLLOWING
1873 CLAIMS SHALL BE EXCLUDED FROM CLASS 3 PRIORITY:
1874 (A) OBLIGATIONS OF THE INSOLVENT INSURER ARISING
1875 OUT OF REINSURANCE CONTRACTS; (B) OBLIGATIONS
1876 INCURRED AFTER THE EXPIRATION DATE OF THE
1877 INSURANCE POLICY OR AFTER THE POLICY HAS BEEN
1878 REPLACED BY THE INSURED OR CANCELED AT THE
1879 INSURED'S REQUEST OR AFTER THE POLICY HAS BEEN
1880 CANCELED AS PROVIDED IN THIS CHAPTER, AND SECTIONS
1881 7, 15 AND 22 OF THIS ACT. NOTWITHSTANDING THE
1882 PROVISIONS OF THIS SUBDIVISION, EARNED PREMIUM
1883 CLAIMS ON POLICIES, OTHER THAN REINSURANCE
1884 AGREEMENTS, SHALL NOT BE EXCLUDED; (C) OBLIGATIONS
1885 TO INSURERS, INSURANCE POOLS OR UNDERWRITING
1886 ASSOCIATIONS AND THEIR CLAIMS FOR CONTRIBUTION,
1887 INDEMNITY OR SUBROGATION, EQUITABLE OR OTHERWISE;
1888 AND (D) ANY CLAIM WHICH IS IN EXCESS OF ANY

1889 APPLICABLE LIMITS PROVIDED IN THE INSURANCE POLICY
1890 ISSUED BY THE INSOLVENT INSURER.

1891 [(3) Class 3] (4) CLASS 4. Claims of the
1892 federal government except those under class [2] 3.
1893 [(4) Class 4, Reasonable] (5) CLASS 5. DEBTS
1894 DUE EMPLOYEES FOR SERVICES, BENEFITS, CONTRACTUAL
1895 OR OTHERWISE DUE ARISING OUT OF SUCH REASONABLE
1896 compensation to employees for services performed
1897 to the extent that they do not exceed two months
1898 of monetary compensation and represent payment for
1899 services performed within [one year] SIX MONTHS
1900 before the filing of the petition for liquidation
1901 or, if rehabilitation preceded liquidation, within
1902 one year before the filing of the petition for
1903 rehabilitation. Officers and directors shall not
1904 be entitled to the benefit of this priority,
1905 except as otherwise approved by the liquidator and
1906 the court. Such priority shall be in lieu of any
1907 other similar priority which may be authorized by
1908 law as to wages or compensation of employees.

1909 [(5) Class 5] (6) CLASS 6. Claims [under
1910 nonassessable policies for unearned premium or
1911 other premium refunds and claims] of general
1912 creditors, including claims of ceding and assuming
1913 companies in their capacity as such, and claims
1914 against the insurer for liability for bodily
1915 injury or for injury to or destruction of tangible
1916 property which are not under policies.

1917 [(6) Class 6] (7) CLASS 7. Claims of any state
1918 or local government, except those under class [2]
1919 4. Claims [, including those] of any such
1920 governmental body for a penalty or forfeiture,
1921 [shall be allowed in this class] BUT only to the
1922 extent of the pecuniary loss sustained from the
1923 act, transaction or proceeding out of which the
1924 penalty or forfeiture arose, with reasonable and
1925 actual costs occasioned thereby. The remainder of
1926 such claims shall be postponed to the class of
1927 claims under subdivision (8) of this subsection.

1928 [(7) Class 7. Claims filed late or any other
1929 claims other than claims under subdivisions (8)
1930 and (9) of this subsection.]

1931 (8) Class 8. Surplus or contribution notes, or
1932 similar obligations, and premium refunds on
1933 assessable policies, INTEREST ON CLAIMS OF CLASSES
1934 1 TO 7, INCLUSIVE, AND ANY OTHER CLAIMS
1935 SPECIFICALLY SUBORDINATED TO THIS CLASS. [Payments

1936 to members of domestic mutual insurance companies
1937 shall be limited in accordance with law.]

1938 (9) Class 9. [The claims of shareholders or
1939 other owners in their capacity as shareholders.]
1940 CLAIMS OF SHAREHOLDERS OR OTHER OWNERS ARISING OUT
1941 OF THEIR CAPACITY AS SHAREHOLDERS OR OWNERS, OR
1942 ARISING IN ANY OTHER CAPACITY OR FACTS EXCEPT AS
1943 THEY MAY BE QUALIFIED IN CLASS 3 OR 4.

1944 (b) UPON THE DECLARATION OF A DIVIDEND, THE
1945 RECEIVER SHALL APPLY THE AMOUNT OF THE DIVIDEND
1946 AGAINST ANY INDEBTEDNESS OWED TO THE INSURER BY
1947 THE PERSON ENTITLED TO THE DIVIDEND. THERE SHALL
1948 BE NO CLAIM ALLOWED FOR ANY DEDUCTIBLE CHARGED BY
1949 A GUARANTY ASSOCIATION OR ENTITY PERFORMING A
1950 SIMILAR FUNCTION.

1951 [(b)] (c) Every claim under a separate account
1952 agreement providing, in effect, that the assets in
1953 the separate account shall not be chargeable with
1954 liabilities arising out of any other business of
1955 the insurer shall be satisfied out of the assets
1956 in the separate account equal to the reserves
1957 maintained in such account for such agreement and,
1958 to the extent, if any, not fully discharged
1959 thereby, shall be treated as a class [2] 3 claim
1960 against the estate. For the purposes of this
1961 section, the "insurer's estate" shall mean the
1962 general assets of such company less any assets
1963 held in separate accounts that, pursuant to
1964 section 38a-433 or 38a-459, AS AMENDED, are not
1965 chargeable with liabilities arising out of any
1966 other business of the insurer.

1967 Sec. 24. Section 38a-945 of the general
1968 statutes is repealed and the following is
1969 substituted in lieu thereof:

1970 (a) The liquidator shall review all claims
1971 duly filed in the liquidation and shall make such
1972 further investigation as [he shall deem] DEEMED
1973 necessary. [He] THE LIQUIDATOR may compound,
1974 compromise or in any other manner negotiate the
1975 amount for which claims will be recommended to the
1976 court except where the liquidator is required by
1977 law to accept claims as settled by any person or
1978 organization, including any guaranty association.
1979 [or foreign guaranty association.] Unresolved
1980 disputes shall be determined pursuant to section
1981 38a-941, AS AMENDED BY THIS ACT. As soon as
1982 practicable, he shall present to the court a
1983 report of the claims against the insurer with his

1984 recommendations. The report shall include the name
1985 and address of each claimant and the amount of the
1986 claim finally recommended, if any. If the insurer
1987 has issued annuities or life insurance policies,
1988 the liquidator shall report the persons to whom,
1989 according to the records of the insurer, amounts
1990 are owed as cash surrender values or other
1991 investment value and the amounts owed.

1992 (b) The court may approve, disapprove, or
1993 modify, the report on claims by the liquidator.
1994 Such reports as are not modified by the court
1995 within a period of sixty days following submission
1996 by the liquidator shall be treated by the
1997 liquidator as allowed claims, subject thereafter
1998 to later modification or to rulings made by the
1999 court pursuant to section 38a-941, AS AMENDED. No
2000 claim under a policy of insurance shall be allowed
2001 for an amount in excess of the applicable policy
2002 limits.

2003 (c) AFTER GIVING DUE CONSIDERATION TO THE
2004 NATURE OF THE POLICIES THAT WERE SOLD BY THE
2005 INSURER, AND THE NUMBER OF CLAIMS BY POLICYHOLDERS
2006 FOR PROTECTION UNDER THEIR POLICIES, AND AFTER
2007 CONSIDERING ACTUARIAL ESTIMATES THAT SUBSTANTIAL
2008 AMOUNTS OF INCURRED BUT NOT REPORTED LOSSES EXIST,
2009 THE LIQUIDATOR MAY, BUT NEED NOT, FORMULATE A
2010 PROPOSAL, SUBJECT TO THE APPROVAL OF THE COURT TO
2011 ALLOW SUCH CLAIMS. THE PROPOSAL MAY ALLOCATE OR
2012 ATTRIBUTE ALL OR A PORTION OF THE INCURRED BUT NOT
2013 REPORTED LOSSES TO INDIVIDUAL POLICYHOLDER
2014 CLAIMANTS ON A BASIS OF REASONABLE EXPERT OPINION.
2015 THE COURT SHALL APPROVE THE PROPOSAL AND THE
2016 ALLOWANCE OF THE CLAIMS UNLESS IT FINDS THAT THE
2017 BASIS OF ALLOCATION IS ARBITRARY OR CAPRICIOUS.

2018 (d) THE LIQUIDATOR IS NOT REQUIRED TO PROCESS
2019 CLAIMS FOR ANY CLASS UNTIL IT APPEARS REASONABLY
2020 LIKELY THAT ASSETS WILL BE AVAILABLE FOR A
2021 DISTRIBUTION TO THAT CLASS. IF THERE ARE
2022 INSUFFICIENT ASSETS TO JUSTIFY PROCESSING ALL
2023 CLAIMS FOR ANY CLASS LISTED IN SECTION 38a-944, AS
2024 AMENDED, THE LIQUIDATOR SHALL REPORT THE FACTS TO
2025 THE COURT AND MAKE SUCH RECOMMENDATIONS AS MAY BE
2026 APPROPRIATE FOR HANDLING THE REMAINDER OF THE
2027 CLAIMS.

2028 Sec. 25. Section 38a-947 of the general
2029 statutes is repealed and the following is
2030 substituted in lieu thereof:

2031 (a) All unclaimed funds subject to
2032 distribution remaining in the liquidator's hands
2033 when [he] THE LIQUIDATOR is ready to apply to the
2034 court for discharge, including the amount
2035 distributable to any creditor, shareholder,
2036 member, or other person who is unknown or cannot
2037 be found, shall be deposited with the State
2038 Treasurer, and shall be paid without interest
2039 except in accordance with section 38a-944, AS
2040 AMENDED, to the person entitled thereto or [his]
2041 THAT PERSON'S legal representative upon proof
2042 satisfactory to the State Treasurer of his right
2043 thereto. Any amount on deposit not claimed within
2044 six years from the discharge of the liquidator
2045 shall be deemed to have been abandoned and shall
2046 be escheated without formal escheat proceedings
2047 and be deposited in the General Fund. THE
2048 LIQUIDATOR MAY ELECT TO APPLY TO THE COURT FOR
2049 AUTHORITY TO HOLD THE UNCLAIMED FUNDS SUBJECT TO
2050 DISTRIBUTION FOR A PERIOD OF TWO YEARS.
2051 THEREAFTER, ANY UNCLAIMED FUNDS MAY BE DISTRIBUTED
2052 TO APPROVED CLAIMANTS WHO HAVE PREVIOUSLY RECEIVED
2053 A DISTRIBUTION, IF IT IS ECONOMICALLY FEASIBLE FOR
2054 THE LIQUIDATOR TO MAKE THE DISTRIBUTION, OR THE
2055 LIQUIDATOR MAY APPLY TO THE COURT FOR PERMISSION
2056 FOR THE FUNDS TO BE HELD BY THE STATE TREASURER IN
2057 AN ACCOUNT ON BEHALF OF THE COMMISSIONER IN HIS
2058 CAPACITY AS RECEIVER FOR THE PURPOSE AND USE OF
2059 DEFRAYING THE COSTS AND EXPENSES OF ADMINISTRATION
2060 OF OTHER INSOLVENT INSURERS FOR WHICH THERE ARE
2061 INSUFFICIENT ASSETS TO FUND THE COSTS AND EXPENSES
2062 OF ADMINISTRATION.

2063 (b) All funds withheld pursuant to section
2064 38a-939, AS AMENDED BY THIS ACT, and not
2065 distributed shall upon discharge of the liquidator
2066 be deposited with the State Treasurer and paid by
2067 him in accordance with section 38a-944, AS AMENDED
2068 BY THIS ACT. Any sums remaining which pursuant to
2069 section 38a-944, AS AMENDED BY THIS ACT, would
2070 revert to the undistributed assets of the insurer
2071 shall be transferred to the State Treasurer and
2072 become the property of the state under subsection
2073 (a), unless the commissioner in his discretion
2074 petitions the court to reopen the liquidation
2075 pursuant to section 38a-949.

2076 Sec. 26. Section 38a-952 of the general
2077 statutes is repealed and the following is
2078 substituted in lieu thereof:

2079 (a) If a domiciliary liquidator has not been
2080 appointed, the commissioner may apply to the
2081 Superior Court by verified petition for an order
2082 directing [him] THE COMMISSIONER to act as
2083 conservator to conserve the property FOUND IN THIS
2084 STATE of an alien insurer not domiciled in this
2085 state or PROPERTY FOUND IN THIS STATE OF a foreign
2086 insurer on any one or more of the following
2087 grounds: (1) Any of the grounds pursuant to
2088 section 38a-914; (2) that any of its property has
2089 been sequestered by official action in its
2090 domiciliary state or in any other state; (3) that
2091 enough of its property has been sequestered in a
2092 foreign country to give reasonable cause to fear
2093 that the insurer is or may become insolvent; (4)
2094 that its certificate of authority to do business
2095 in this state has been revoked or that none was
2096 ever issued; and (5) that there are residents of
2097 this state with outstanding claims or outstanding
2098 policies.

2099 (b) When an order is sought pursuant to
2100 subsection (a) of this section, the court shall
2101 cause the insurer to be given such notice and time
2102 to respond [thereto] as is reasonable under the
2103 circumstances.

2104 (c) The court may issue the order in whatever
2105 terms it shall deem appropriate. The filing or
2106 recording of the order with the clerk of the
2107 superior court of the judicial district or the
2108 recorder of deeds of the town in which the
2109 principal business of the company is located or
2110 the country in which its principal office or place
2111 of business is located shall impart the same
2112 notice as a deed, bill of sale or other evidence
2113 of title duly filed or recorded with that recorder
2114 of deeds would have imparted.

2115 (d) The conservator may at any time petition
2116 for and the court may grant an order pursuant to
2117 section 38a-953 to liquidate assets of a foreign
2118 or alien insurer under conservation, or, if
2119 appropriate, for an order pursuant to section
2120 38a-955, to be appointed ancillary receiver. THE
2121 COMMISSIONER SHALL BE ENTITLED TO REQUEST THE
2122 ADMINISTRATIVE JUDGE OF THE SUPERIOR COURT FOR THE
2123 JUDICIAL DISTRICT OF HARTFORD-NEW BRITAIN TO
2124 APPOINT A SINGLE JUDGE TO SUPERVISE THE ANCILLARY
2125 PROCEEDING AND HEAR ANY CASES OR CONTROVERSIES
2126 ARISING OUT OF OR RELATED TO THE ANCILLARY

2127 PROCEEDING. ANCILLARY PROCEEDINGS SHALL BE EXEMPT
2128 FROM ANY DORMANCY OR SIMILAR PROGRAM MAINTAINED BY
2129 THE COURT FOR THE EARLY CLOSURE OF CIVIL ACTIONS.

2130 (e) The conservator may at any time petition
2131 the court for an order terminating conservation of
2132 THE PROPERTY OF an insurer. If the court finds
2133 that the conservation is no longer necessary, it
2134 shall order that the insurer be restored to
2135 possession of its property and the control of its
2136 business. The court may also make [such] A finding
2137 and issue [such] AN order at any time upon motion
2138 of any interested party, but if [such] THE motion
2139 is denied all costs shall be assessed against such
2140 party.

2141 Sec. 27. Section 38a-961 of the general
2142 statutes is repealed and the following is
2143 substituted in lieu thereof:

2144 If an ancillary receiver in another state or
2145 foreign country, whether called by that name or
2146 not, fails to transfer to the domiciliary
2147 liquidator in this state any assets within his
2148 control other than special deposits, diminished
2149 only by the expenses of the ancillary
2150 receivership, if any, the claims filed in the
2151 ancillary receivership, other than special deposit
2152 claims or secured claims, shall be placed in the
2153 class of claims pursuant to [subsection (g)]
2154 SUBDIVISION (8) OF SUBSECTION (a) of section
2155 38a-944, AS AMENDED BY THIS ACT.

2156 Sec. 28. Subdivision (9) of section 38a-1 of
2157 the general statutes is repealed and the following
2158 is substituted in lieu thereof:

2159 (9) "Insolvency" or "insolvent" means, for any
2160 insurer, that it is unable to pay its obligations
2161 when they are due, or when its admitted assets do
2162 not exceed its liabilities plus the greater of:
2163 (A) [Any capital] CAPITAL and surplus required by
2164 law for its organization AND CONTINUED OPERATION;
2165 or (B) the total par or stated value of its
2166 authorized and issued capital stock. For purposes
2167 of this subdivision "liabilities" shall include
2168 but not be limited to reserves required by statute
2169 or by regulations adopted by the commissioner or
2170 specific requirements imposed by the commissioner
2171 upon a subject company at the time of admission or
2172 subsequent thereto.

2173 Sec. 29. Section 38a-69 of the general

2174 statutes is repealed and the following is
2175 substituted in lieu thereof:

2176 Except as otherwise provided in title 38a,
2177 sections 38a-11, AS AMENDED, 38a-50, 38a-52,
2178 [38a-65,] 38a-70 to 38a-76, inclusive, 38a-81 to
2179 38a-83, inclusive, and 38a-153, and the
2180 regulations adopted to implement said sections
2181 apply to all insurers, including reinsurers,
2182 licensed to do business in this state.

2183 Sec. 30. Subdivision (15) of section 38a-816
2184 of the general statutes, as amended by public act
2185 97-95, section 3 of public act 97-126 and section
2186 13 of public act 97-202, is repealed and the
2187 following is substituted in lieu thereof:

2188 (15) Failure to pay accident and health claims
2189 within forty-five days of receipt by an insurer of
2190 the claimant's proof of loss form unless the
2191 Insurance Commissioner determines that a
2192 legitimate dispute exists as to coverage,
2193 liability or damages or that the claimant has
2194 fraudulently caused or contributed to the loss.
2195 Any insurer who fails to pay such a claim within
2196 the forty-five-day period shall pay the claimant
2197 the amount of such claim plus interest at the rate
2198 of fifteen per cent per annum, in addition to any
2199 other penalties which may be imposed pursuant to
2200 sections 38a-11, AS AMENDED, 38a-25, AS AMENDED,
2201 38a-41 to 38a-53, inclusive, 38a-57 to 38a-60,
2202 inclusive, 38a-62 to [38a-65] 38a-64, inclusive,
2203 38a-76, 38a-83, 38a-84, 38a-117 to 38a-124,
2204 inclusive, 38a-129 to 38a-140, inclusive, 38a-146
2205 to 38a-155, inclusive, 38a-283, 38a-288 to
2206 38a-290, inclusive, 38a-319, 38a-320, AS AMENDED,
2207 38a-459, AS AMENDED, 38a-464, 38a-815 to 38a-819,
2208 inclusive, AS AMENDED, 38a-824 to 38a-826,
2209 inclusive, and 38a-828 to 38a-831, inclusive.
2210 Whenever the interest due a claimant pursuant to
2211 this section is less than one dollar, the insurer
2212 shall deposit such amount in a separate
2213 interest-bearing account in which all such amounts
2214 shall be deposited. At the end of each calendar
2215 year each such insurer shall donate one-half of
2216 such amount to The University of Connecticut
2217 Health Center and one-half of such amount to
2218 Uncas-on-Thames Hospital.

2219 Sec. 31. Subsection (f) of section 38a-88a of
2220 the general statutes, as amended by section 1 of

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"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."

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FISCAL IMPACT STATEMENT - BILL NUMBER sHB 5614

STATE IMPACT	Minimal Workload Increase, 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.

House "A" is technical in nature and has no fiscal impact.

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OLR AMENDED BILL ANALYSIS

sHB 5614 (as amended by House "A")*

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.

*House Amendment "A" restores (1) an insurer's claims for contribution, indemnity, or subrogation; (2) assessments claims from insurance pools and underwriting associations; and (3) excess policy limit, punitive or exemplary damage, tort, and bad faith or wrongful settlement practice claims as Class 3 claims under the priority of distribution of an insolvent insurer's estate.

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, obligations (1) of the insolvent insurer under any reinsurance contract and (2) incurred after a policy expires, has been replaced, or is canceled.

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.