

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 83rd General Assembly  
3 Regular Session, 2001  
4

As Engrossed: H3/19/01 H3/27/01

## A Bill

HOUSE BILL 2475

5 By: Representatives Napper, Hunt  
6  
7

### For An Act To Be Entitled

9 AN ACT TO ADOPT THE NATIONAL ASSOCIATION OF  
10 INSURANCE COMMISSIONERS INSURERS REHABILITATION  
11 AND LIQUIDATION MODEL ACT; AND FOR OTHER  
12 PURPOSES.  
13

### Subtitle

15 AN ACT TO ADOPT THE NAIC INSURERS  
16 REHABILITATION AND LIQUIDATION MODEL  
17 ACT.  
18  
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
21

22 SECTION 1. Arkansas Code 23-68-101 is amended to read as follows:

23 23-68-101. ~~Uniform Insurers Liquidation Act.~~ Insurers Rehabilitation  
24 and Liquidation Act.

25 ~~(1) Subdivisions (2) (13) inclusive of § 23-68-102, together with §§~~  
26 ~~23-68-101, 23-68-104, 23-68-105, 23-68-113, and 23-68-115—23-68-120,~~  
27 ~~constitute and may be referred to as the "Uniform Insurers Liquidation Act".~~

28 (a) This act shall be cited as the "Insurers Rehabilitation and  
29 Liquidation Act".

30 ~~(2) The Uniform Insurers Liquidation Act shall be so interpreted and~~  
31 ~~construed as to effectuate its general purpose to make uniform the law of~~  
32 ~~those states that enact it. To the extent that its provisions when~~  
33 ~~applicable conflict with other provisions of this chapter, the provisions of~~  
34 ~~such act shall control.~~

35 (b) This act shall not be interpreted to limit the powers granted the  
36 commissioner by other provisions of law. This act shall be liberally

1 construed to effect its purpose which is the protection of the interests of  
2 insureds, claimants, creditors and the public generally, with minimum  
3 interference with the normal prerogatives of the owners and managers of  
4 insurers, through:

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

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

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

11 (4) Equitable apportionment of any unavoidable loss;

12 (5) Lessening the problems of interstate rehabilitation and  
13 liquidation by facilitating cooperation between states in delinquency  
14 proceedings, and by extending the scope of personal jurisdiction over debtors  
15 of the insurer outside this state;

16 (6) Regulation of the business of insurance by the impact of the  
17 law relating to delinquency procedures and related substantive rules; and

18 (7) Providing for a comprehensive scheme for the rehabilitation  
19 and liquidation of insurance companies and those subject to the act as part  
20 of the regulation of the business of insurance in this state. Proceedings in  
21 cases of insurer insolvency and delinquency are deemed an integral aspect of  
22 the business of insurance and are of vital public interest and concern.

23  
24 SECTION 2. Arkansas Code 23-68-102 is amended to read as follows:

25 23-68-102. ~~Definitions.~~ Persons covered.

26 ~~For the purpose of this chapter:~~

27 ~~(1) "Impairment" or "insolvency". The capital of a stock insurer or~~  
28 ~~the surplus of a mutual or reciprocal insurer shall be deemed to be impaired~~  
29 ~~and the insurer shall be deemed to be insolvent when such insurer is not~~  
30 ~~possessed of assets at least equal to all liabilities and required reserves~~  
31 ~~together with its total issued and outstanding capital stock if a stock~~  
32 ~~insurer, or the minimum surplus if a mutual or reciprocal insurer, required~~  
33 ~~by this code to be maintained for the kind or kinds of insurance it is then~~  
34 ~~authorized to transact.~~

35 ~~(2) "Insurer" means any person, firm, corporation, association, or~~  
36 ~~aggregation of persons doing an insurance business and subject to the~~

1 ~~insurance supervisory authority of, or to liquidation, rehabilitation,~~  
2 ~~reorganization or conservation by the commissioner or the equivalent~~  
3 ~~insurance supervisory official of another state.~~

4 ~~(3) "Delinquency proceeding" means any proceeding commenced against an~~  
5 ~~insurer pursuant to this chapter for the purpose of liquidating,~~  
6 ~~rehabilitating, reorganizing, or conserving such insurer.~~

7 ~~(4) "State" means any state of the United States and also the District~~  
8 ~~of Columbia and Puerto Rico.~~

9 ~~(5) "Foreign country" means territory not in any state.~~

10 ~~(6) "Domiciliary state" means the state in which an insurer is~~  
11 ~~incorporated or organized, or in the case of an insurer incorporated or~~  
12 ~~organized in a foreign country, the state in which such insurer, having~~  
13 ~~become authorized to do business in such state, has, at the commencement of~~  
14 ~~delinquency proceedings, the largest amount of its assets held in trust and~~  
15 ~~assets held on deposit for the benefit of its policyholders or policyholders~~  
16 ~~and creditors in the United States, and any such insurer is deemed to be~~  
17 ~~domiciled in such state.~~

18 ~~(7) "Ancillary state" means any state other than a domiciliary state.~~

19 ~~(8) "Reciprocal state" means any state other than this state in which~~  
20 ~~in substance and effect the provisions of the Uniform Insurers Liquidation~~  
21 ~~Act, as defined in § 23-68-101, are in force, including the provisions~~  
22 ~~requiring that the commissioner of insurance or equivalent insurance~~  
23 ~~supervisory official be the receiver of a delinquent insurer.~~

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

33 ~~(10) "Preferred claim," means any claim with respect to which the law~~  
34 ~~of the state or of the United States accords priority of payments from the~~  
35 ~~general assets of the insurer.~~

36 ~~(11) "Special deposit claim" means any claim secured by a deposit made~~

~~pursuant to statute for the security or benefit of a limited class or classes of persons, but not including any general assets.~~

~~(12) "Secured claim," means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claim or claims against general assets. The term also includes claims which more than four (4) months prior to the commencement of delinquency proceedings in the state of the insurer's domicile have become liens upon specific assets by reason of judicial process.~~

~~(13) "Receiver" means receiver, liquidator, rehabilitator, or conservator as the context may require.~~

~~(14) "Hazardous financially" means the existence of any condition or the omission or commission of any act which would, in the reasonable discretion of the commissioner, seriously affect the advisability of an insurer's continued operation in this state or, as a result of its financial condition or other matters, would render the insurer's continued operation in this state perilous to the general public or to the policyholders or creditors of the insurer. The commissioner is authorized to promulgate regulations to set forth standards by which he might make a determination that the continued operation of an insurer might be hazardous financially.~~

The provisions of this act shall be applied to:

(a) All insurers who are doing, or have done, an insurance business in this state, and against whom claims arising from that business may exist now or in the future, and to all persons subject to examination by the commissioner.

(b) All insurers who purport to do an insurance business in this state;

(c) All insurers who have insureds resident in this state;

(d) All persons organized or doing insurance business, or in the process of organizing with the intent to do an insurance business in this state; and

(e) All other entities specifically regulated by this code and which, in the chapters and subchapters of the code which refer to these entities, there is reference to this act's applicability.

SECTION 3. Arkansas Code 23-68-103 is amended to read as follows:

23-68-103. ~~Delinquency proceedings generally.~~ Definitions.

1 ~~(a) The Circuit Court of Pulaski County shall have original~~  
2 ~~jurisdiction of delinquency proceedings under this chapter, and that court is~~  
3 ~~authorized to make all necessary or proper orders to carry out the purposes~~  
4 ~~of this chapter.~~

5 ~~(b) The venue of delinquency proceedings against a domestic, foreign,~~  
6 ~~or alien insurer shall be in the Circuit Court of Pulaski County.~~

7 ~~(c) Delinquency proceedings pursuant to this chapter shall constitute~~  
8 ~~the sole and exclusive method of liquidating, rehabilitating, reorganizing,~~  
9 ~~or conserving an insurer, and no court shall entertain a petition for the~~  
10 ~~commencement of such proceedings unless the petition has been filed in the~~  
11 ~~name of the state on the relation of the Insurance Commissioner.~~

12 ~~(d) An appeal shall lie to the Supreme Court from an order granting or~~  
13 ~~refusing rehabilitation, liquidation, or conservation, and from every other~~  
14 ~~order in delinquency proceedings having the character of a final order as to~~  
15 ~~the particular portion of the proceedings embraced therein.~~

16 For the purposes of this act:

17 (a) An "affiliate" of, or person "affiliated" with, a specific person,  
18 means a person that directly or indirectly through one or more  
19 intermediaries, controls, or is controlled by, or is under common control  
20 with, the person specified.

21 (b) "Ancillary state" means any state other than a domiciliary state.

22 (c) "Commissioner" means the Insurance Commissioner of this state.

23 (d) "Control", including the terms "controlling", "controlled by" and  
24 "under common control with", means the possession, direct or indirect, of the  
25 power to direct or cause the direction of the management and policies of a  
26 person, whether through the ownership of voting securities, by contract other  
27 than a commercial contract for goods or non-management services, or  
28 otherwise, unless the power is the result of an official position with or  
29 corporate office held by the person. Control shall be presumed to exist if  
30 any person, directly or indirectly, owns, controls, holds with the power to  
31 vote, or holds proxies representing, ten percent (10%) or more of the voting  
32 securities of any other person. This presumption may be rebutted by a  
33 showing that control does not, in fact, exist.

34 (e) "Creditor" is a person having any claim, whether matured or  
35 unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed  
36 or contingent.

1 (f) "Delinquency proceeding" means any proceeding instituted against  
2 an insurer for the purpose of liquidating, rehabilitating or conserving such  
3 insurer, and any summary proceeding under § 23-68-110. "Formal delinquency  
4 proceeding" means any liquidation or rehabilitation proceeding.

5 (g) "Doing business", including "doing insurance business" and the  
6 "business of insurance", includes any of the following acts, whether effected  
7 by mail or otherwise:

8 (1) The issuance or delivery of contracts of insurance, either  
9 to persons resident, or covering a risk located in this state;

10 (2) The solicitation of applications for such contracts, or  
11 other negotiations preliminary to the execution of such contracts;

12 (3) The collection of premiums, membership fees, assessments or  
13 other consideration for such contracts;

14 (4) The transaction of matters subsequent to the execution of  
15 such contracts and arising out of them; or

16 (5) Operating under a license or certificate of authority, as an  
17 insurer, issued by the State Insurance Department.

18 (h) "Domiciliary state" means the state in which an insurer is  
19 incorporated or organized; or, in the case of an alien insurer, its state of  
20 entry.

21 (i) "Fair consideration" is given for property or obligation:

22 (1) When in exchange for the property or obligation, as a fair  
23 equivalent therefor, and in good faith, property is conveyed or services are  
24 rendered or an obligation is incurred or an antecedent debt is satisfied; or

25 (2) When the property or obligation is received in good faith to  
26 secure a present advance or antecedent debt in an amount not  
27 disproportionately small as compared to the value of the property or  
28 obligation obtained.

29 (j) "Foreign country" means any other jurisdiction not in any state.

30 (k) 'General assets' includes all property, real, personal or  
31 otherwise, not specifically mortgaged, pledged, deposited or otherwise  
32 encumbered for the security or benefit of specified persons or classes of  
33 persons. As to specifically encumbered property, "general assets" includes  
34 all such property or its proceeds in excess of the amount necessary to  
35 discharge the sum or sums secured thereby. Assets held in trust and in  
36 deposit for the security or benefit of all policyholders or all policyholders

1 and creditors, in more than a single state, shall be treated as general  
2 assets.

3 (l) "Guaranty association" means any mechanism mandated by state  
4 statute which is created for the payment of claims or continuation of policy  
5 obligations of financially impaired or insolvent insurers.

6 (m) "Insolvency" or "insolvent" means:

7 (1) For an insurer issuing only assessable property or casualty  
8 insurance policies:

9 (A) The inability to pay any obligation within thirty (30)  
10 days after it becomes payable; or

11 (B) If an assessment be made within thirty (30) days after  
12 such date the inability to pay the obligation thirty (30) days following the  
13 date specified in the first assessment notice issued after the date of loss.

14 (2) For any other insurer, that it is unable to pay its  
15 obligations when they are due, or when its admitted assets do not exceed its  
16 liabilities plus the greater of:

17 (A) Capital and surplus required by law for its  
18 organization and continued operation; or

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

21 (3) For purposes of this subsection "liabilities" shall include,  
22 but not be limited to, reserves required by statute or by insurance  
23 department general regulations or specific requirements imposed by the  
24 commissioner upon a subject company at the time of admission or subsequent  
25 thereto.

26 (n) "Insurer" means any person who has done, purports to do, is doing  
27 or is licensed to do an insurance business, and is or has been subject to the  
28 authority of, or to liquidation, rehabilitation, reorganization, supervision,  
29 or conservation by, any insurance commissioner. For purposes of this act,  
30 any other persons included under § 23-68-102 shall be deemed to be insurers.

31 (o) "Netting agreement" means a contract or agreement (including terms  
32 and conditions incorporated by reference therein), including a master  
33 agreement, which master agreement, together with all schedules,  
34 confirmations, definitions and addenda thereto and transactions under any  
35 thereof, shall be treated as one netting agreement, that documents one or  
36 more transactions between the parties to the agreement for or involving one

1 or more qualified financial contracts, and that provides for the netting or  
2 liquidation of qualified financial contracts or present or future payment  
3 obligations, or payment entitlements thereunder (including liquidation or  
4 close-out values relating to such obligations or entitlements) among the  
5 parties to the netting agreement.

6 (p) "Preferred claim," means any claim with respect to which the terms  
7 of this act accord priority of payment from the general assets of the  
8 insurer.

9 (q) "Qualified financial contract" means a commodity contract, forward  
10 contract, repurchase agreement, securities contract, swap agreement and any  
11 similar agreement that the commissioner determines by regulation, resolution  
12 or order to be a qualified financial contract for the purposes of this act.

13 (1) "Commodity contract" means:

14 (A) A contract for the purchase or sale of a commodity for  
15 future delivery on, or subject to the rules of, a board of trade designated  
16 as a contract market by the Commodity Futures Trading Commission under the  
17 Commodity Exchange Act (7 U.S.C. § 1, et seq.) or board of trade outside the  
18 United States;

19 (B) An agreement that is subject to regulation under  
20 Section 19 of the Commodity Exchange Act (7 U.S.C. § 1, et seq.) and that is  
21 commonly known to the commodities trade as a margin account, margin contract,  
22 leverage account or leverage contract; or

23 (C) An agreement or transaction that is subject to  
24 regulation under Section 4c(b) of the Commodity Exchange Act (7 U.S.C. § 1,  
25 et seq.) and that is commonly known to the commodities trade as a commodity  
26 option.

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



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

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

26           (5) "Swap agreement" means an agreement, including the terms and  
27 conditions incorporated by reference in an agreement, that is a rate swap  
28 agreement, basis swap, commodity swap, forward rate agreement, interest rate  
29 future, interest rate option, forward foreign exchange agreement, spot  
30 foreign exchange agreement, rate cap agreement, rate floor agreement, rate  
31 collar agreement, currency swap agreement, cross-currency rate swap  
32 agreement, currency future, or currency option or any other similar  
33 agreement, and includes any combination of agreements and an option to enter  
34 into an agreement.

35           (r) "Receiver" means receiver, liquidator, rehabilitator or  
36 conservator, as the context requires.

1 (s) "Reciprocal state" means any state other than this state in which  
2 in substance and effect §§ 23-68-105, 23-68-117, 23-68-120, 23-68-156, 23-  
3 68-157, 23-68-158 and 23-68-160 through 23-68-162 are in force, and in which  
4 provisions are in force requiring that the commissioner or equivalent  
5 official be the receiver of a delinquent insurer, and in which some provision  
6 exists for the avoidance of fraudulent conveyances and preferential  
7 transfers.

8 (t) "Secured claim," means any claim secured by an asset that is not a  
9 general asset, but not including special deposit claims. The term also  
10 includes claims, which have become liens upon specific assets by reason of  
11 judicial process more than four (4) months before the commencement of  
12 delinquency proceedings. A secured claim shall not include any claim arising  
13 from a constructive or resulting trust.

14 (u) "Special deposit claim" means any claim secured by a deposit made  
15 pursuant to a state statute for the security or benefit of a limited class or  
16 classes of persons, but not including any claim secured by general assets.

17 (v) "State" means any state, district, or territory of the United  
18 States.

19 (w) "Transfer" shall include the sale and every other and different  
20 mode, direct or indirect, of disposing of or of parting with property or with  
21 an interest therein, or with the possession thereof or of fixing a lien upon  
22 property or upon an interest therein, absolutely or conditionally,  
23 voluntarily, by or without judicial proceedings. The retention of a security  
24 title to property delivered to a debtor shall be deemed a transfer suffered  
25 by the debtor.

26  
27 SECTION 4. Arkansas Code 23-68-104 is amended to read as follows:

28 23-68-104. ~~Commencement of delinquency proceedings.~~ Jurisdiction and  
29 venue.

30 ~~The commissioner shall commence any such proceedings by application to~~  
31 ~~the court for an order directing the insurer to show cause why the~~  
32 ~~commissioner should not have the relief prayed for. On the return of such~~  
33 ~~order to show cause, and after a full hearing, the court shall either deny~~  
34 ~~the application or grant the application, together with such other relief as~~  
35 ~~the nature of the case and the interests of the policyholders, creditors,~~  
36 ~~stockholders, members, subscribers, or the public may require.~~

1       (a) No delinquency proceeding shall be commenced under this act by  
2 anyone other than the commissioner of this state and no court shall have  
3 jurisdiction to entertain, hear or determine any proceeding commenced by any  
4 other person.

5       (b) No court of this state shall have jurisdiction to entertain, hear  
6 or determine any complaint praying for the dissolution, liquidation,  
7 rehabilitation, sequestration, conservation or receivership of any insurer;  
8 or praying for an injunction or restraining order or other relief preliminary  
9 to, incidental to or relating to such proceedings other than in accordance  
10 with this chapter.

11       (c) In addition to other grounds for jurisdiction provided by the law  
12 of this state, a court of this state having jurisdiction of the subject  
13 matter has jurisdiction over a person served pursuant to Rule 4, Arkansas  
14 Rules of Civil Procedure, or other applicable provisions of law in an action  
15 brought by the receiver of a domestic insurer or an alien insurer domiciled  
16 in this state:

17               (1) If the person served is or has been an agent, broker or  
18 other person who has at any time written policies of insurance for or has  
19 acted in any manner whatsoever on behalf of an insurer against which a  
20 delinquency proceeding has been instituted, in any action resulting from or  
21 incident to such a relationship with the insurer; or

22               (2) If the person served is or has been an insurer or reinsurer  
23 who has at any time entered into a contract of reinsurance with an insurer  
24 against which a delinquency proceeding has been instituted, or is an agent or  
25 broker of or for the reinsurer, in any action on or incident to the  
26 reinsurance contract; or

27               (3) If the person served is or has been an officer, director,  
28 manager, trustee, organizer, promoter or other person in a position of  
29 comparable authority or influence over an insurer against which a delinquency  
30 proceeding has been instituted, in any action resulting from or incident to  
31 such a relationship with the insurer; or

32               (4) If the person served is or was at the time of the  
33 institution of the delinquency proceeding against the insurer holding assets  
34 in which the receiver claims an interest on behalf of the insurer, in any  
35 action concerning the assets; or

36               (5) If the person served is obligated to the insurer in any way

1 whatsoever, in any action on or incident to the obligation.

2 (d) If the court on motion of any party finds that any action should  
 3 as a matter of substantial justice be tried in a forum outside this state,  
 4 the court may enter an appropriate order to stay further proceedings on the  
 5 action in this state.

6 (e) Service shall be made upon the person named in the petition in  
 7 accordance with Rule 4, Arkansas Rules of Civil Procedure. In lieu of such  
 8 service, upon application to the court, service may be made in such a manner  
 9 as the court directs whenever it is satisfactorily shown by affidavit:

10 (1) In the case of a corporation, that the officers of the  
 11 corporation cannot be served because they have departed from the state or  
 12 otherwise concealed themselves with intent to avoid service; or

13 (2) In the case of a Lloyd's association or interinsurance  
 14 exchange, that the individual attorney in fact or the officers of the  
 15 corporate attorney in fact cannot be served because of their departure or  
 16 concealment; or

17 (3) In the case of a natural person, that the person cannot be  
 18 served because of the person's departure or concealment.

19 (f) The Circuit Court of Pulaski County, Arkansas shall have original  
 20 jurisdiction of all actions herein authorized. The venue of such actions  
 21 against a domestic, foreign or alien insurer shall be in the Circuit Court of  
 22 Pulaski County, Arkansas.

23 (g) Except as provided at § 23-68-105(c)(1), and except as to claims  
 24 filed against the estate pursuant to § 23-68-139, nothing in this Chapter  
 25 shall deprive a person of any contractual right to pursue arbitration of any  
 26 dispute under any law.

27  
 28 SECTION 5. Arkansas Code 23-68-105 is amended to read as follows:

29 23-68-105. ~~Injunctions—Commissioner as party to suits.~~ Injunctions  
 30 and orders.

31 ~~(1) Upon application by the commissioner for such an order to show~~  
 32 ~~cause, or at any time thereafter, the court may without notice issue an~~  
 33 ~~injunction restraining the insurer, its officers, directors, stockholders,~~  
 34 ~~members, subscribers, agents, and all other persons from the transaction of~~  
 35 ~~its business or the waste or disposition of its property until the further~~  
 36 ~~order of the court.~~

1 ~~(2) The court may at any time during a proceeding under this chapter~~  
2 ~~issue such other injunctions or orders as may be deemed necessary to prevent~~  
3 ~~interference with the commissioner or the proceeding, or waste of the assets~~  
4 ~~of the insurer, or the commencement or prosecution of any actions, or the~~  
5 ~~obtaining of preferences, judgments, attachments or other liens, or the~~  
6 ~~making of any levy against the insurer or against its assets or any part~~  
7 ~~thereof.~~

8 ~~(3) Notwithstanding any other provision of law, no bond shall be~~  
9 ~~required of the commissioner as a prerequisite for the issuance of any~~  
10 ~~injunction or restraining order pursuant to this section.~~

11 ~~(4) No judgment or order rendered by any court of this state in any~~  
12 ~~action pending by or against the delinquent insurer after the commencement of~~  
13 ~~delinquency proceedings shall be binding upon the commissioner unless the~~  
14 ~~commissioner shall have been made a party to such suit.~~

15 ~~(5) The commissioner shall not be required to plead any suit in which~~  
16 ~~he may be a proper party plaintiff or defendant in any of the courts of this~~  
17 ~~state until ninety (90) days after the date of his appointment as receiver.~~

18 (a) The conservation, rehabilitation and liquidation of insurance  
19 companies and other persons subject to the provisions of this act are a  
20 matter of vital public interest affecting the relationships between insureds  
21 and their insurers.

22 (1) An application or petition under §§ 23-68-110, 23-68-111,  
23 23-68-117 or 23-68-120 of this act operates as a matter of law as an  
24 automatic stay applicable to all persons and entities, other than the  
25 receiver, which shall be permanent and survive the entry of an order of  
26 conservation, rehabilitation or liquidation, and which shall prohibit:

27 (A) The transaction of further business;

28 (B) The transfer of property;

29 (C) Interference with the receiver or with a proceeding  
30 under this act;

31 (D) Waste of the insurer's assets;

32 (E) Dissipation and transfer of bank accounts;

33 (F) The institution or further prosecution of any actions  
34 or proceedings in which the insurer is a party;

35 (G) The obtaining of preferences, judgments, attachments,  
36 garnishments or liens against the insurer, its assets or its policyholders;

1                   (H) The levying of execution against the insurer, its  
2 assets or its policyholders;

3                   (I) The making of any sale or deed for nonpayment of taxes  
4 or assessments that would lessen the value of the assets of the insurer;

5                   (J) The withholding from the receiver of books, accounts,  
6 documents, or other records relating to the business of the insurer; or

7                   (K) Any other threatened or contemplated action that might  
8 lessen the value of the insurer's assets or prejudice the rights of  
9 policyholders, creditors or shareholders, or the administration of any  
10 proceeding under this act.

11                   (2) Notwithstanding any other provision of law, no bond shall be  
12 required of the commissioner as a prerequisite for the issuance of any  
13 injunction or restraining order pursuant to this section.

14                   (3) Upon motion of a person or entity subject to the stay, the  
15 court, after notice to the receiver and a hearing, may modify or grant relief  
16 from the stay, provided the movant, who shall have the burden of proof,  
17 establishes by clear and convincing evidence that such relief should be  
18 granted.

19                   (4) All matters involving the interpretation or operation of  
20 this section shall remain within the jurisdiction of the domiciliary  
21 receivership court.

22                   (b) Any court in this state in which any action or proceeding in which  
23 the insurer is obligated to defend a party is pending, when a rehabilitation  
24 order against the insurer is entered, shall stay the action or proceeding  
25 for ninety (90) days and such additional time as is necessary for the  
26 rehabilitator to obtain proper representation and prepare for further  
27 proceedings. The rehabilitator shall take such action respecting the pending  
28 litigation as the rehabilitator deems necessary in the interests of justice  
29 and for the protection of creditors, policyholders and the public. The  
30 rehabilitator may petition the court having jurisdiction over the litigation  
31 for a stay whenever necessary to protect the estate of the insurer.

32                   (c)(1) An order appointing a liquidator of a domestic insurer or of an  
33 alien insurer doing business in this state stays all actions and proceedings  
34 at law or equity or in arbitration brought against the insurer or liquidator,  
35 whether in this state or elsewhere. Any existing actions and proceedings may  
36 not be enforced, perfected, maintained or further presented after issuance of

1 such order. The stay of all actions is automatic and the liquidator may not  
2 intervene or defend, except as provided in this section. The stay does not  
3 affect an action brought against former policyholders or other creditors of  
4 the estate, except to the extent that the insurer is named as a separate  
5 defendant in the action or proceeding.

6 (2) The courts of this state shall give full faith and credit to  
7 any stay of all new actions against the liquidator or the company or the  
8 continuation of existing actions against the liquidator or the company, when  
9 such injunctions are pursuant to an order to liquidate an insurer issued in  
10 accordance with corresponding provisions in other states.

11 (3) Whenever, in the liquidator's judgment, protection of the  
12 estate of the insurer necessitates intervention in an action pending against  
13 the insurer, the liquidator may intervene in the action. The liquidator will  
14 apply to the court for leave to intervene or defend, or for ratification by  
15 the court of intervention, and if the application is granted, the action is  
16 not stayed. The liquidator may defend any action in which he or she  
17 intervenes under this section at the expense of the estate of the insurer.

18 (d) The rehabilitator or liquidator may institute any action or  
19 proceeding on behalf of the estate of the insurer while any statute of  
20 limitation is tolled pursuant to this section.

21 (1) Unless an applicable limitation period has expired before a  
22 successful petition for rehabilitation or liquidation was filed, any  
23 applicable statute of limitation is tolled for two (2) years. Tolling any  
24 applicable statute of limitation shall begin with the entry of an order of  
25 rehabilitation or liquidation. This shall be in addition to any other  
26 applicable tolling or such other longer time as applicable law may permit.

27 (2) For actions not covered by subdivision (1), where any  
28 expired time period is fixed, by any agreement or in any proceeding, for  
29 doing any act for the benefit of the estate, the rehabilitator or liquidator  
30 shall have one hundred eighty (180) days or such longer period as the court  
31 may allow for good cause shown, from the entry of the order of rehabilitation  
32 or liquidation to perform the act.

33 (e) No statute of limitations shall run or defense of laches apply  
34 with respect to any action by or against an insurer between the filing of a  
35 petition for rehabilitation or liquidation against an insurer and the order  
36 granting or denying that petition. Any action against the insurer that might

1 have been commenced when the petition was filed may be commenced for at least  
 2 sixty (60) days after an order of rehabilitation or liquidation is entered or  
 3 the petition is denied.

4 (f) Any guaranty association or its designated representative shall  
 5 have standing to appear in any court proceeding concerning the rehabilitation  
 6 or liquidation of an insurer if the association is or may become liable to  
 7 act as a result of the rehabilitation or liquidation.

8  
 9 SECTION 6. Arkansas Code 23-68-106 is amended to read as follows:

10 23-68-106. ~~Grounds for rehabilitation—Domestic insurers.~~ Cooperation  
 11 of officers, owners and employees.

12 ~~The commissioner may apply to the court for an order appointing him in~~  
 13 ~~his official capacity and his successors in office as receiver of and~~  
 14 ~~directing him to rehabilitate a domestic insurer upon one (1) or more of the~~  
 15 ~~following grounds:~~

16 ~~(1) The insurer is impaired or insolvent;~~

17 ~~(2) The insurer has refused to submit any of its books, records,~~  
 18 ~~accounts, or affairs to reasonable examination by the commissioner;~~

19 ~~(3) The insurer has concealed or removed records or assets or~~  
 20 ~~otherwise violated § 23-69-134;~~

21 ~~(4) The insurer has failed to comply with an order of the~~  
 22 ~~commissioner to make good an impairment of capital or surplus or both;~~

23 ~~(5) The insurer has transferred or attempted to transfer~~  
 24 ~~substantially its entire property or business, or has entered into any~~  
 25 ~~transaction the effect of which is to merge substantially its entire property~~  
 26 ~~or business into that of any other insurer without having first obtained the~~  
 27 ~~written approval of the commissioner;~~

28 ~~(6) The insurer has willfully violated its charter or articles~~  
 29 ~~of incorporation or any law of this state;~~

30 ~~(7) The insurer has an officer, director, or manager who has~~  
 31 ~~refused to be examined under oath concerning its affairs;~~

32 ~~(8) The insurer has been or is the subject of an application for~~  
 33 ~~the appointment of a receiver, trustee, custodian, or sequestrator of the~~  
 34 ~~insurer or its property otherwise than pursuant to the provisions of this~~  
 35 ~~code, but only if the appointment has been made or is imminent and its effect~~  
 36 ~~is or would be to oust the courts of this state of jurisdiction hereunder;~~



1 ~~(9) The insurer has consented to an order through a majority of~~  
2 ~~its directors, stockholders, members, or subscribers;~~

3 ~~(10) The insurer has failed to pay a final judgment rendered~~  
4 ~~against it in this state upon any insurance contract issued or assumed by it,~~  
5 ~~within thirty (30) days after the judgment became final, or within thirty~~  
6 ~~(30) days after the time for taking an appeal has expired, or within thirty~~  
7 ~~(30) days after dismissal of an appeal before final termination, whichever~~  
8 ~~date is the later;~~

9 ~~(11) The insurer is in such condition that the further~~  
10 ~~transaction of business would be hazardous financially to its policyholders,~~  
11 ~~creditors, or the public;~~

12 ~~(12) There is a reasonable cause to believe that there has been~~  
13 ~~embezzlement from the insurer, wrongful sequestration or diversion of the~~  
14 ~~insurer's assets, forgery or fraud affecting the insurer, or other illegal~~  
15 ~~conduct in, by, or with respect to, the insurer that if established would~~  
16 ~~endanger assets in an amount threatening the solvency of the insurer;~~

17 ~~(13) The insurer has failed to remove any person who in fact has~~  
18 ~~executive authority in the insurer, whether an officer, manager, general~~  
19 ~~agent, employee, or other person if the person has been found after notice~~  
20 ~~and hearing by the commissioner to be dishonest or untrustworthy in a way~~  
21 ~~affecting the insurer's business;~~

22 ~~(14) Control of the insurer, whether by stock ownership or~~  
23 ~~otherwise, and whether direct or indirect, is in a person or persons found~~  
24 ~~after notice and hearing to be untrustworthy; or~~

25 ~~(15) The insurer has failed to file its annual statement or~~  
26 ~~other financial report required by law within the time allowed by law and,~~  
27 ~~after written demand by the commissioner, has failed to give an adequate~~  
28 ~~explanation immediately.~~

29 (a) Any present or former officer, manager, director, trustee, owner,  
30 employee or agent of any insurer, or any other persons with authority over or  
31 in charge of any segment of the insurer's affairs, shall cooperate with the  
32 commissioner in any proceeding under this act or any investigation  
33 preliminary to the proceeding. The term "person" as used in this section,  
34 shall include any person who exercises control directly or indirectly over  
35 activities of the insurer through any holding company or other affiliate of  
36 the insurer. "To cooperate" shall include, but shall not be limited to, the

1 following:

2 (1) To reply promptly in writing to any inquiry from the  
3 commissioner requesting such a reply; and

4 (2) To make available to the commissioner any books, accounts,  
5 documents, or other records or information or property of or pertaining to  
6 the insurer and in his possession, custody or control.

7 (b) No person shall obstruct or interfere with the commissioner in the  
8 conduct of any delinquency proceeding or any preliminary or incidental  
9 investigation.

10 (c) This section shall not be construed to abridge otherwise existing  
11 legal rights, including the right to resist a petition for liquidation or  
12 other delinquency proceedings, or other orders.

13 (d) Any person included within subsection (a) who fails to cooperate  
14 with the commissioner, or any person who obstructs or interferes with the  
15 commissioner in the conduct of any delinquency proceeding or any preliminary  
16 or incidental investigation, or who violates any order the commissioner  
17 issued validly under this act may:

18 (1) Be sentenced to pay a fine not exceeding ten thousand  
19 dollars (\$10,000) or to undergo imprisonment for a term of not more than one  
20 year, or both; or

21 (2) After a hearing, be subject to the imposition by the  
22 commissioner of a civil penalty not to exceed ten thousand dollars (\$10,000)  
23 and shall be subject further to the revocation or suspension of any insurance  
24 licenses issued by the commissioner.

25

26 SECTION 7. Arkansas Code 23-68-107 is amended to read as follows:

27 23-68-107. ~~Grounds for liquidation.~~ Continuation of delinquency  
28 proceedings.

29 ~~The commissioner may apply to the court for an order appointing him as~~  
30 ~~receiver, if his appointment as receiver shall not be then in effect, and~~  
31 ~~directing him to liquidate the business of a domestic insurer or of the~~  
32 ~~United States branch of an alien insurer having trusteed assets in this~~  
33 ~~state, regardless of whether or not there has been a prior order directing~~  
34 ~~him to rehabilitate such insurer, upon any of the grounds specified in § 23-~~  
35 ~~68-106, or if the insurer:~~

36 ~~(1) Has ceased transacting business for a period of one (1)~~

1 ~~year; or~~

2 ~~(2) Is an insolvent insurer and has commenced voluntary~~  
 3 ~~liquidation or dissolution or attempts to commence or prosecute any action or~~  
 4 ~~proceeding to liquidate its business or affairs or to dissolve its corporate~~  
 5 ~~charter or to procure the appointment of a receiver, trustee, custodian, or~~  
 6 ~~sequestrator under any law except this code.~~

7 Every proceeding commenced under the laws in effect before the  
 8 effective date of this act shall be deemed to have commenced under this act  
 9 for the purpose of conducting the proceeding henceforth, except that in the  
 10 discretion of the commissioner the proceeding may be continued as it would  
 11 have been continued had this act not been enacted.

12

13 SECTION 8. Arkansas Code 23-68-108 is amended to read as follows:

14 23-68-108. ~~Grounds for conservation—Domestic, foreign and alien~~  
 15 ~~insurers.~~ Condition on release from delinquency proceedings.

16 ~~(a) The Insurance Commissioner may apply to the court for an order~~  
 17 ~~appointing him as receiver and directing him to conserve the assets of a~~  
 18 ~~domestic insurer upon any of the grounds specified in § 23-68-106 or § 23-68-~~  
 19 ~~107.~~

20 ~~(b) The commissioner may apply to the court for an order appointing~~  
 21 ~~him as receiver or ancillary receiver and directing him to conserve the~~  
 22 ~~assets within this state of a foreign insurer upon any of the following~~  
 23 ~~grounds:-~~

24 ~~(1) Upon any of the grounds specified in § 23-68-106 or § 23-68-~~  
 25 ~~107; or~~

26 ~~(2) Upon the ground that its property has been sequestered in~~  
 27 ~~its domiciliary sovereignty or in any other sovereignty.~~

28 ~~(c) The commissioner may apply to the court for an order appointing~~  
 29 ~~him as receiver or ancillary receiver and directing him to conserve the~~  
 30 ~~assets within this state of any alien insurer upon any of the following~~  
 31 ~~grounds:-~~

32 ~~(1) Upon any of the grounds specified in § 23-68-106 or § 23-68-~~  
 33 ~~107;~~

34 ~~(2) Upon the ground that the insurer has failed to comply within~~  
 35 ~~the time designated by the commissioner with an order made by him to make~~  
 36 ~~good an impairment of its trusteed funds; or~~

1 ~~(3) Upon the ground that the property of the insurer has been~~  
 2 ~~sequestered in its domiciliary sovereignty or elsewhere.~~

3 No insurer that is subject to any formal delinquency proceedings,  
 4 shall:

5 (a) Be permitted to solicit or accept new business or request or  
 6 accept the restoration of any suspended or revoked license or certificate of  
 7 authority;

8 (b) Be returned to the control of its shareholders or private  
 9 management; or

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

16  
 17 SECTION 9. Arkansas Code 23-68-109 is amended to read as follows:

18 ~~23-68-109. Grounds for ancillary liquidation—Foreign insurers—~~  
 19 ~~Immunity and indemnification of the receiver and employees.~~

20 ~~The commissioner may apply to the court for an order appointing him as~~  
 21 ~~ancillary receiver of and directing him to liquidate the business of a~~  
 22 ~~foreign insurer having assets, business, or claims in this state upon the~~  
 23 ~~appointment in the domiciliary state of the insurer of a receiver,~~  
 24 ~~liquidator, conservator, rehabilitator, or other officer by whatever name~~  
 25 ~~called for the purpose of liquidating the business of the insurer.~~

26 (a) For the purposes of this section, the persons entitled to  
 27 protection under this section are:

28 (1) All receivers responsible for the conduct of a delinquency  
 29 proceeding under this act including present and former receivers; and

30 (2) Their employees, meaning all present and former special  
 31 deputies and assistant special deputies appointed by the commissioner and all  
 32 persons whom the commissioner, special deputies, or assistant special  
 33 deputies have employed to assist in a delinquency proceeding under this act.  
 34 Attorneys, accountants, auditors and other professional persons or firms, who  
 35 are retained by the receiver as independent contractors and their employees,  
 36 shall not be considered employees of the receiver for purposes of this

1 section.

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

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

24 (1) Attorneys' fees and any and all related expenses incurred in  
25 defending a legal action for which immunity or indemnity is available under  
26 this section shall be paid from the assets of the insurer, as they are  
27 incurred, in advance of the final disposition of such action upon receipt of  
28 an undertaking by or on behalf of the receiver or employee to repay the  
29 attorneys' fees and expenses if it shall ultimately be determined upon a  
30 final adjudication on the merits that the receiver or employee is not  
31 entitled to immunity or indemnity under this section.

32 (2) Any indemnification for expense payments, judgments,  
33 settlements, decrees, attorneys' fees, surety bond premiums or other amounts  
34 paid or to be paid from the insurer's assets pursuant to this section shall  
35 be an administrative expense of the insurer.

36 (3) In the event of any actual or threatened litigation against

1 a receiver or any employee for which immunity or indemnity may be available  
2 under this section, a reasonable amount of funds, which in the judgment of  
3 the commissioner may be needed to provide immunity or indemnity, shall be  
4 segregated and reserved from the assets of the insurer as security for the  
5 payment of indemnity until such time as all applicable statutes of limitation  
6 shall have run, and all actual or threatened actions against the receiver or  
7 any employee have been completely and finally resolved, and all obligations  
8 of the insurer and the commissioner under this section shall have been  
9 satisfied.

10 (4) In lieu of segregation and reserving of funds, the  
11 commissioner may, in his discretion, obtain a surety bond or make other  
12 arrangements, which will enable the commissioner to fully secure the payment  
13 of all obligations under this section.

14 (d) If any legal action against an employee for which indemnity may be  
15 available under this section is settled prior to final adjudication on the  
16 merits, the insurer must pay the settlement amount on behalf of the employee,  
17 or indemnify the employee for the settlement amount, unless the commissioner  
18 determines:

19 (1) That the claim did not arise out of or by reason of the  
20 employee's duties or employment; or

21 (2) That the claim was caused by the intentional or willful and  
22 wanton misconduct of the employee.

23 (e) In any legal action in which the receiver is a defendant, that  
24 portion of any settlement relating to the alleged act, error or omission of  
25 the receiver shall be subject to the approval of the court before which the  
26 delinquency proceeding is pending. The court shall not approve that portion  
27 of the settlement if it determines:

28 (1) That the claim did not arise out of or by reason of the  
29 receiver's duties or employment; or

30 (2) That the claim was caused by the intentional or willful and  
31 wanton misconduct of the receiver.

32 (f) Nothing contained or implied in this section shall operate, or be  
33 construed or applied to deprive the receiver or any employee of any immunity,  
34 indemnity, benefits of law, rights or any defense otherwise available.

35 (g)(1) Subsection (b) of this section shall apply to any suit based in  
36 whole or in part on any alleged act, error or omission which takes place on

1 or after the effective date of this act.

2 (2) No legal action shall lie against the receiver or any  
3 employee based in whole or in part on any alleged act, error or omission  
4 which took place prior to the effective date of this act, unless suit is  
5 filed and valid service of process is obtained within twelve (12) months  
6 after the effective date of this act.

7 (3) Subsections (c), (d), and (e) of this section shall apply to  
8 any suit which is pending on, or filed after the effective date of this act  
9 without regard to when the alleged act, error or omission took place.

10  
11 SECTION 10. Arkansas Code 23-68-110 is amended to read as follows:  
12 23-68-110. ~~Order of rehabilitation.~~ Court's seizure order.

13 ~~(a) An order to rehabilitate a domestic insurer shall direct the~~  
14 ~~commissioner forthwith to take possession of the property of the insurer and~~  
15 ~~to conduct the business thereof, and to take such steps toward removal of the~~  
16 ~~causes and conditions, which have made rehabilitation necessary as the court,~~  
17 ~~may direct.~~

18 ~~(b) If at any time the commissioner deems that further efforts to~~  
19 ~~rehabilitate the insurer would be useless, he may apply to the court for an~~  
20 ~~order of liquidation.~~

21 ~~(c) The commissioner, or any interested person upon due notice to the~~  
22 ~~commissioner, at any time may apply to the court for an order terminating the~~  
23 ~~rehabilitation proceedings and permitting the insurer to resume possession of~~  
24 ~~its property and the conduct of its business, but no such order shall be made~~  
25 ~~or entered except when, after a hearing, the court has determined that the~~  
26 ~~purposes of the proceeding have been fully accomplished.~~

27 (a) The commissioner may file in the Circuit Court of Pulaski County a  
28 petition with respect to a domestic insurer:

29 (1) Alleging that there exist grounds that would justify a court  
30 order for a formal delinquency proceeding against an insurer under this act;

31 (2) Alleging that the interests of policyholders, creditors or  
32 the public will be endangered by delay; and

33 (3) Setting forth the contents of an order deemed necessary by  
34 the commissioner.

35 (b) Upon a filing under subsection (a), the court may issue forthwith,  
36 ex parte and without notice or hearing, the requested order which shall

1 direct the commissioner to take possession and control of all or a part of  
2 the property, books, accounts, documents and other records of an insurer, and  
3 of the premises occupied by it for transaction of its business; and until  
4 further order of the court enjoin the insurer and its officers, managers,  
5 agents and employees from disposition of its property and from the  
6 transaction of its business except with the written consent of the  
7 commissioner. Any person having possession or control of, and refusing to  
8 deliver any of the books, records or assets of a person against whom a  
9 seizure order has been issued shall be guilty of a misdemeanor and punishable  
10 by a fine not exceeding one thousand dollars (\$1,000) or imprisonment not  
11 exceeding one (1) year, or both fine and imprisonment.

12 (c) The court shall specify in the order what its duration shall be,  
13 which shall be such time as the court deems necessary for the commissioner to  
14 ascertain the condition of the insurer. On motion of either party or on its  
15 own motion, the court may from time to time hold such hearings as it deems  
16 desirable after such notice as it deems appropriate, and may extend, shorten,  
17 or modify the terms of the seizure order. The court shall vacate the seizure  
18 order if the commissioner fails to commence a formal proceeding under this  
19 act after having had a reasonable opportunity to do so. An order of the court  
20 pursuant to a formal proceeding under this act shall vacate the seizure  
21 order.

22 (d) Entry of a seizure order under this section shall not constitute  
23 an anticipatory breach of any contract of the insurer.

24 (e) An insurer subject to an ex parte order under this section may  
25 petition the court at any time after the issuance of an order for a hearing  
26 and review of the order. The court shall hold the hearing and review not  
27 more than fifteen (15) days after the request. A hearing under this  
28 subsection may be held privately in chambers and it shall be so held if the  
29 insurer proceeded against so requests.

30 (f) If, at any time after the issuance of an order, it appears to the  
31 court that any person whose interest is or will be substantially affected by  
32 the order did not appear at the hearing and has not been served, the court  
33 may order that notice be given. An order that notice be given shall not stay  
34 the effect of any order previously issued by the court.

35 (g) Whenever the commissioner makes any seizure as provided in  
36 subsection (b), it shall, on the demand of the commissioner, be the duty of



1 the sheriff of any county of this state, and of the police department of any  
2 municipal corporation therein, to furnish the commissioner with such  
3 deputies, patrolmen or officers as may be necessary to assist the  
4 commissioner in making and enforcing the seizure.

5 (h) The foregoing provisions of this section shall be applied to  
6 insurers not domiciled in this state to the extent of the insurers' assets  
7 and activities in this state.

8  
9 SECTION 11. Arkansas Code 23-68-111 is amended to read as follows:

10 ~~23-68-111. Order of liquidation—Domestic and alien insurers.~~

11 Commencement of formal delinquency proceeding.

12 ~~(a) (1) An order to liquidate the business of a domestic insurer shall~~  
13 ~~direct the commissioner forthwith to take possession of the property of the~~  
14 ~~insurer, to liquidate its business, to deal with the insurer's property and~~  
15 ~~business in his own name as Insurance Commissioner or in the name of the~~  
16 ~~insurer, as the court may direct, and to give notice to all creditors who may~~  
17 ~~have claims against the insurer to present the claims.~~

18 ~~(2) The commissioner may apply for and secure an order~~  
19 ~~dissolving the corporate existence of a domestic insurer upon his application~~  
20 ~~for an order of liquidation of the insurer or at any time after the order of~~  
21 ~~liquidation has been granted.~~

22 ~~(b) An order to liquidate the business of a United States branch of an~~  
23 ~~alien insurer having trusteed assets in this state shall be in the same terms~~  
24 ~~as those prescribed for domestic insurers, save and except only that the~~  
25 ~~assets of the business of such United States branch shall be the only assets~~  
26 ~~included therein.~~

27 (a) Any formal delinquency proceeding against a person shall be  
28 commenced by filing a petition in the name of the commissioner.

29 (b) The petition shall state the grounds upon which the proceeding is  
30 based and the relief requested, and may include a prayer for restraining  
31 orders and injunctive relief as described in § 23-68-105 of this act.

32 (c) Any petition that prays for a temporary restraining order must be  
33 verified by the commissioner or the commissioner's designee, but need not  
34 plead or prove irreparable harm or inadequate remedy by law. The  
35 commissioner shall provide only such notice as the court may require.

36 (d) If any temporary restraining order is prayed for:

1 (1) The court may issue an initial order containing the relief  
2 requested;

3 (2) The order shall state the time and date of its issuance;

4 (3) The court shall set a time and date for the return of  
5 summons, not more than ten (10) days from the time and date of the issuance  
6 of the initial order, at which time the person proceeded against may appear  
7 before the court for a summary hearing;

8 (4) The order shall not continue in effect beyond the time and  
9 date set for the return of summons, unless the court shall expressly enter  
10 one (1) or more orders extending the restraining order; and

11 (5) The verified petition and the initial order shall be filed  
12 with the clerk of the court and maintained as confidential, except for good  
13 cause shown, until personal service is made.

14 (e) If no temporary restraining order is requested, the court shall  
15 cause summons to be issued. The summons shall specify a return date not more  
16 than twenty (20) days after issuance and that an answer must be filed at or  
17 before the return date.

18  
19 SECTION 12. Arkansas Code 23-68-112 is amended to read as follows:

20 ~~23-68-112. Order of conservation or liquidation—Foreign and alien~~  
21 ~~insurers—~~ Return of summons and summary hearing.

22 ~~(a) An order to conserve the assets of a foreign or alien insurer~~  
23 ~~shall require the commissioner forthwith to take possession of the property~~  
24 ~~of the insurer within this state and to conserve it, subject to the further~~  
25 ~~direction of the court.~~

26 ~~(b) An order to liquidate the assets in this state of a foreign~~  
27 ~~insurer shall require the commissioner forthwith to take possession of the~~  
28 ~~property of the insurer within this state and to liquidate it subject to the~~  
29 ~~orders of the court and with due regard to the rights and powers of the~~  
30 ~~domiciliary receiver, as provided in this chapter.~~

31 (a) The court shall hold a summary hearing at the time and date for  
32 the return of summons.

33 (b) If a person is not served with summons and fails to appear for the  
34 summary hearing, the court shall:

35 (1) Continue the summary hearing not more than ten (10) days;

36 (2) Provide for alternative service of summons upon the person;

1 and

2 (3) Extend any restraining order.

3 (c) Upon a showing of good faith efforts to effect personal service  
4 upon a person who has failed to appear for a continued summary hearing, the  
5 court shall order notice of the petition to be published. The order and  
6 notice shall specify a return date not less than ten (10) nor more than  
7 twenty (20) days after the publication and that the restraining order has  
8 been extended to the continued hearing date.

9 (d) If a person fails to appear for a summary hearing after service of  
10 summons, the court shall enter judgment in favor of the commissioner against  
11 that person.

12 (e) A person who appears for the summary hearing shall file its answer  
13 at the hearing and the court shall:

14 (1) Determine whether to extend any temporary restraining orders  
15 pending final judgment; and

16 (2) Set the case for trial on a date not more than ten (10) days  
17 from the summary hearing.

18 The court shall grant no continuance for filing an answer.

19

20 SECTION 13. Arkansas Code 23-68-113 is amended to read as follows:

21 ~~23-68-113. Conduct of delinquency proceedings against domestic and~~  
22 ~~alien insurers. Proceedings for expedited trial: continuances, discovery,~~  
23 ~~evidence.~~

24 ~~(1) Whenever under this chapter a receiver is to be appointed in~~  
25 ~~delinquency proceedings for a domestic or alien insurer, the court shall~~  
26 ~~appoint the commissioner as such receiver. The court shall order the~~  
27 ~~commissioner forthwith to take possession of the assets of the insurer and to~~  
28 ~~administer the same under the orders of the court.~~

29 ~~(2) As a domiciliary receiver, the commissioner shall be vested by~~  
30 ~~operation of law with the title to all of the property, contracts, and rights~~  
31 ~~of action, and all of the books and records of the insurer, wherever located,~~  
32 ~~as of the date of entry of the order directing him to rehabilitate or~~  
33 ~~liquidate a domestic insurer or to liquidate the United States branch of an~~  
34 ~~alien insurer domiciled in this state; and he shall have the right to recover~~  
35 ~~the same and reduce the same to possession, except that ancillary receivers~~  
36 ~~in reciprocal states shall have, as to assets located in their respective~~

1 ~~states, the rights and powers which are herein prescribed for ancillary~~  
2 ~~receivers appointed in this state as to assets located in this state.~~

3 ~~(3) The filing or recording of the order directing possession to be~~  
4 ~~taken, or a certified copy thereof, in any office where instruments affecting~~  
5 ~~title to property are required to be filed or recorded shall impart the same~~  
6 ~~notice as would be imparted by a deed, bill of sale, or other evidence of~~  
7 ~~title duly filed or recorded.~~

8 ~~(4) The commissioner as domiciliary receiver shall be responsible for~~  
9 ~~the proper administration of all assets coming into his possession or~~  
10 ~~control. The court may at any time require a bond from him or his deputies~~  
11 ~~if deemed desirable for the protection of such assets.~~

12 ~~(5) Upon taking possession of the assets of an insurer, the~~  
13 ~~domiciliary receiver shall, subject to the direction of the court,~~  
14 ~~immediately proceed to conduct the business of the insurer or to take such~~  
15 ~~steps as are authorized by this chapter for the purpose of rehabilitating,~~  
16 ~~liquidating, or conserving the affairs or assets of the insurer.~~

17 ~~(6) In connection with delinquency proceedings, the commissioner may~~  
18 ~~appoint one (1) or more special deputy commissioners to act for him, and he~~  
19 ~~may employ such counsel, clerks, and assistants, as he deems necessary. The~~  
20 ~~compensation of the special deputies, counsel, clerks, or assistants and all~~  
21 ~~expenses of taking possession of the insurer and of conducting the~~  
22 ~~proceedings shall be fixed by the receiver, subject to the approval of the~~  
23 ~~court, and shall be paid out of the funds or assets of the insurer. Within~~  
24 ~~the limits of duties imposed upon them, special deputies shall possess all~~  
25 ~~the powers given to and, in the exercise of those powers, shall be subject to~~  
26 ~~all of the duties imposed upon the receiver with respect to such proceedings.~~

27 (a) The court shall proceed to hear the case at the time and date set  
28 forth for trial without a jury and without unnecessary delays. To the extent  
29 not inconsistent with other laws, the court shall give precedence to the  
30 matter over all other matters. To the extent otherwise authorized by law,  
31 the court may assign the matter to other judges if necessary to comply with  
32 the need for expedited proceedings under this act.

33 (b) Continuances for trial shall be granted only in extreme  
34 circumstances.

35 (c) The court shall receive as self-authenticated any of the following  
36 when offered by the commissioner:

1 (1) Certified copies of the financial statements made by the  
 2 person; and

3 (2) Certified copies of examination reports of the person made  
 4 by or on behalf of the commissioner.

5 (d) The facts contained in any such examination report shall be  
 6 presumed to be true as of the date of the hearing if such examination was  
 7 made as of a date not more than two hundred seventy (270) days before the  
 8 petition was filed. The presumption shall be rebuttable and shall shift the  
 9 burden of production and persuasion.

10 (e) Discovery shall be limited to grounds alleged in the petition, and  
 11 shall be concluded on an expedited basis.

12  
 13 SECTION 14. Arkansas Code 23-68-114 is amended to read as follows:

14 ~~23-68-114. Disposition of funds held pursuant to § 23-68-113.~~

15 Decisions and appeals.

16 ~~(a)(1) The Liquidation Division of the State Insurance Department is~~  
 17 ~~authorized to deposit funds now held pursuant to the provisions of § 23-68-~~  
 18 ~~113, and the Circuit Court of Pulaski County, in one (1) or more accounts, in~~  
 19 ~~one (1) or more state or national banks, savings banks, savings and loan~~  
 20 ~~associations, or trust companies.~~

21 ~~(2) These funds may be combined to yield the highest rate of~~  
 22 ~~return on the deposits, or in any other way to facilitate the efficient~~  
 23 ~~operation of the Liquidation Division and the respective receiverships under~~  
 24 ~~the jurisdiction of the division.~~

25 ~~(3) These funds may be used for the purpose of operating the~~  
 26 ~~Liquidation Division and the respective receiverships that may, from time to~~  
 27 ~~time, fall under its jurisdiction, and for no other purpose.~~

28 ~~(b) The funds referred to in subsection (a) of this section shall come~~  
 29 ~~from the accounts now held by the Liquidation Division of the State Insurance~~  
 30 ~~Department, comprised of assets sequestered from domestic insurers, and shall~~  
 31 ~~in no way be commingled or combined with funds of the State of Arkansas.~~

32 (a) The court shall enter judgment within fifteen (15) days after the  
 33 conclusion of the evidence.

34 (b) The judgment shall be final when entered. Any appeal shall be  
 35 prosecuted on an expedited basis and must be taken within five (5) days of  
 36 entry. No request for reconsideration, review or appeal and no posting of a

1 bond shall dissolve or stay the judgment.

2  
3 SECTION 15. Arkansas Code 23-68-115 is amended to read as follows:

4 23-68-115. ~~Conduct of delinquency proceedings against foreign~~  
5 ~~insurers.~~ Confidentiality of hearings.

6 ~~(1) Whenever under this chapter an ancillary receiver is to be~~  
7 ~~appointed in delinquency proceedings for an insurer not domiciled in this~~  
8 ~~state, the court shall appoint the commissioner as ancillary receiver. The~~  
9 ~~commissioner shall file a petition requesting the appointment on the grounds~~  
10 ~~set forth in § 23-68-109.~~

11 ~~(a) If he finds that there are sufficient assets of the insurer~~  
12 ~~located in this state to justify the appointment of an ancillary receiver; or~~

13 ~~(b) If ten (10) or more persons resident in this state having~~  
14 ~~claims against such insurer file a petition with the commissioner requesting~~  
15 ~~the appointment of such ancillary receiver.~~

16 ~~(2) The domiciliary receiver for the purpose of liquidation of an~~  
17 ~~insurer domiciled in a reciprocal state shall be vested by operation of law~~  
18 ~~with the title to all of the property, contracts, and rights of action, and~~  
19 ~~all of the books and records of the insurer located in this state; and he~~  
20 ~~shall have the immediate right to recover balances due from local agents and~~  
21 ~~to obtain possession of any books and records of the insurer found in this~~  
22 ~~state. He shall also be entitled to recover the other assets of the insurer~~  
23 ~~located in this state, except that upon the appointment of an ancillary~~  
24 ~~receiver in this state, the ancillary receiver shall during the ancillary~~  
25 ~~receivership proceedings have the sole right to recover such other assets.~~  
26 ~~The ancillary receiver shall, as soon as practicable, liquidate from his~~  
27 ~~respective securities those special deposit claims and secured claims which~~  
28 ~~are proved and allowed in the ancillary proceedings in this state, and shall~~  
29 ~~pay the necessary expenses of the proceedings. He shall promptly transfer~~  
30 ~~all remaining assets to the domiciliary receiver. Subject to the foregoing~~  
31 ~~provisions, the ancillary receiver and his deputies shall have the same~~  
32 ~~powers and be subject to the same duties with respect to the administration~~  
33 ~~of such assets as a receiver of an insurer domiciled in this state.~~

34 ~~(3) The domiciliary receiver of an insurer domiciled in a reciprocal~~  
35 ~~state may sue in this state to recover any assets of such insurer to which he~~  
36 ~~may be entitled under the laws of this state.~~

1 (a) In all proceedings and judicial reviews under § 23-68-110, all  
 2 records of the insurer, other documents, and all State Insurance Department  
 3 files and court records and papers, so far as they pertain to or are a part  
 4 of the record of the proceedings, shall be and remain confidential, and all  
 5 papers filed with the clerk of the Pulaski County Circuit Court shall be held  
 6 by the clerk in a confidential file, except as is necessary to obtain  
 7 compliance with any order entered in connection with the proceedings, unless  
 8 and until:

9 (1) The Pulaski County Circuit Court, after hearing argument in  
 10 chambers, shall order otherwise;

11 (2) The insurer requests that the matter be made public; or

12 (3) The commissioner applies for an order under § 23-68-116.

13 (b) The commissioner may share documents, materials or other  
 14 information in the possession or control of the State Insurance Department  
 15 pertaining to an insurer that is the subject of a proceeding under this act  
 16 with other state, federal and international regulatory agencies, with the  
 17 National Association of Insurance Commissioners and its affiliates and  
 18 subsidiaries, and with state, federal and international law enforcement  
 19 authorities, provided that the recipient agrees to maintain the  
 20 confidentiality of the documents, material or other information. No waiver  
 21 of any applicable privilege or claim of confidentiality shall occur as a  
 22 result of disclosure to the commissioner under this section or as a result of  
 23 sharing documents, materials or other information pursuant to this  
 24 subsection.

25  
 26 SECTION 16. Arkansas Code 23-68-116 is amended to read as follows:

27 ~~23-68-116. Claims of nonresidents against domestic insurers. Grounds~~  
 28 ~~for rehabilitation or liquidation.~~

29 ~~(1) In a delinquency proceeding begun in this state against a domestic~~  
 30 ~~insurer, claimants residing in reciprocal states may file claims either with~~  
 31 ~~the ancillary receivers, if any, in their respective states, or with the~~  
 32 ~~domiciliary receiver. All such claims must be filed on or before the last~~  
 33 ~~date fixed for the filing of claims in the domiciliary delinquency~~  
 34 ~~proceedings.~~

35 ~~(2) Controverted claims belonging to claimants residing in reciprocal~~  
 36 ~~states may either:~~

1 ~~(a) Be proved in this state; or~~

2 ~~(b) If ancillary proceedings have been commenced in such~~  
3 ~~reciprocal states may be proved in those proceedings. In the event a~~  
4 ~~claimant elects to prove his claim in ancillary proceedings, if notice of the~~  
5 ~~claim and opportunity to appear and be heard is afforded the domiciliary~~  
6 ~~receiver of this state, as provided in § 23-68-117 with respect to ancillary~~  
7 ~~proceedings in this state, the final allowance of such claim by the courts in~~  
8 ~~the ancillary state shall be accepted in this state as conclusive as to its~~  
9 ~~amount and shall also be accepted as conclusive as to its priority, if any,~~  
10 ~~against special deposits or other security located within the ancillary~~  
11 ~~state.~~

12 The commissioner may apply by petition to the Pulaski County Circuit  
13 Court for an order authorizing the commissioner to rehabilitate or liquidate  
14 a domestic insurer or an alien insurer domiciled in this state on any one or  
15 more of the following grounds:

16 (a) The insurer is insolvent;

17 (b) The insurer has neglected or refused to observe an order of the  
18 commissioner to make good within the time prescribed by law any deficiency,  
19 whenever its capital and minimum required surplus, if a stock company, or its  
20 surplus, if a company other than stock, has become impaired;

21 (c) The insurer is in such condition that it could not meet the  
22 requirements for organization and authorization as required by law, except as  
23 to the amount of the original surplus required of a stock company, and except  
24 as to the amount of the surplus required of a company other than a stock  
25 company in excess of the minimum surplus required to be maintained;

26 (d) The insurer has concealed, removed, altered, destroyed or failed  
27 to establish and maintain books, records, documents, accounts, vouchers and  
28 other pertinent material adequate for the determination of its financial  
29 condition or otherwise violated § 23-69-134, or has failed to properly  
30 administer claims or maintain claims records which are adequate for the  
31 determination of its outstanding claims liability;

32 (e) At the time of instituting any proceeding under this act, it  
33 appears to the commissioner that upon good cause shown, it would not be in  
34 the best interest of the policyholders, creditors or the public to proceed  
35 with the conduct of the business of the insurer;

36 (f) The insurer is in such condition that the further transaction of



1 business would be hazardous, financially or otherwise, to its policyholders,  
2 creditors or the public;

3 (g) There is reasonable cause to believe that there has been  
4 embezzlement from the insurer, wrongful sequestration or diversion of the  
5 insurer's assets, forgery or fraud affecting the insurer, or other illegal  
6 conduct in, by, or with respect to the insurer that if established would  
7 endanger assets in an amount threatening the solvency of the insurer;

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

13 (i) Control of the insurer, whether by stock ownership or otherwise,  
14 and whether direct or indirect, is in a person or persons found after notice  
15 and hearing to be untrustworthy in a way affecting the insurer's business;

16 (j) Any person who in fact has executive authority in the insurer,  
17 whether an officer, manager, general agent, director or trustee, employee, or  
18 other person, has refused to be examined under oath by the commissioner  
19 concerning its affairs, whether in this state or elsewhere; and after  
20 reasonable notice of the fact, the insurer has failed promptly and  
21 effectively to terminate the employment and status of the person and all his  
22 influence on management;

23 (k) After demand by the commissioner, the insurer has failed to  
24 promptly make available for examination any of its own property, books,  
25 accounts, documents, or other records, or those of any subsidiary or related  
26 company within the control of the insurer, or those of any person having  
27 executive authority in the insurer so far as they pertain to the insurer;

28 (l) Without first obtaining the written consent of the commissioner,  
29 the insurer has transferred, or attempted to transfer, substantially its  
30 entire property or business, or has entered into any transaction the effect  
31 of which is to merge, consolidate or reinsure substantially its entire  
32 property or business in or with the property or business of any other person;

33 (m) The insurer or its property has been or is the subject of an  
34 application for the appointment of a receiver, trustee, custodian,  
35 conservator or sequestrator or similar fiduciary of the insurer or its  
36 property otherwise than as authorized under the insurance laws of this state;

1 (n) Within the previous five (5) years the insurer has willfully and  
 2 continuously violated its charter or articles of incorporation, its bylaws,  
 3 any insurance law of this state, or any valid order of the commissioner;

4 (o) The insurer has failed to pay within sixty (60) days after the due  
 5 date any obligation to any state or any subdivision thereof, or any judgment  
 6 entered in any state, if the court in which the judgment was entered had  
 7 jurisdiction over the subject matter except, that nonpayment shall not be a  
 8 ground until sixty (60) days after any good faith effort by the insurer to  
 9 contest the obligation has been terminated, whether it is before the  
 10 commissioner or in the courts, or the insurer has systematically attempted to  
 11 compromise or renegotiate previously agreed settlements with its creditors on  
 12 the ground that it is financially unable to pay its obligations in full;

13 (p) The insurer has failed to file its annual report or other  
 14 financial report required by statute within the time allowed by law;

15 (q) The board of directors or the holders of a majority of the shares  
 16 entitled to vote, or a majority of those individuals entitled to the control  
 17 of those entities, request or consent to rehabilitation or liquidation under  
 18 this act; or

19 (r) The insurer does not comply with its domiciliary state's  
 20 requirements for issuance to it of a certificate of authority, or that its  
 21 certificate of authority has been revoked by its state of domicile.

22  
 23 SECTION 17. Arkansas Code 23-68-117 is amended to read as follows:

24 ~~23-68-117. Claims against foreign insurers.~~ Rehabilitation orders.

25 ~~(1) In a delinquency proceeding in a reciprocal state against an~~  
 26 ~~insurer domiciled in that state, claimants against such insurer who reside~~  
 27 ~~within this state may file claims either with the ancillary receiver, if any,~~  
 28 ~~appointed in this state, or with the domiciliary receiver. All such claims~~  
 29 ~~must be filed on or before the last date fixed for the filing of claims in~~  
 30 ~~the domiciliary delinquency proceedings.~~

31 ~~(2) Controverted claims belonging to claimants residing in this state~~  
 32 ~~may either:~~

33 ~~(a) Be proved in the domiciliary state as provided by the law of~~  
 34 ~~that state; or~~

35 ~~(b) If ancillary proceedings have been commenced in this state,~~  
 36 ~~be proved in those proceedings.~~

~~In the event that any such claimant elects to prove his claim in this state, he shall file his claim with the ancillary receiver and shall give notice in writing to the receiver in the domiciliary state, either by registered mail or by personal service at least forty (40) days prior to the date set for hearing. The notice shall contain a concise statement of the amount of the claim, the facts on which the claim is based, and the priorities asserted, if any. If the domiciliary receiver within thirty (30) days after the giving of such notice shall give notice in writing to the ancillary receiver and to the claimant, either by registered mail or by personal service, of his intention to contest such claim, he shall be entitled to appear or to be represented in any proceeding in this state involving adjudication of the claim. The final allowance of the claim by the courts of this state shall be accepted as conclusive as to its amount and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within this state.~~

(a) An order to rehabilitate the business of a domestic insurer, or an alien insurer domiciled in this state, shall appoint the commissioner and his successors in office the rehabilitator, and shall direct the rehabilitator to take possession of the assets of the insurer, and to administer them under the general supervision of the court. The filing or recording of the order with the clerk of the Pulaski County Circuit Court or recorder of deeds of the county in which the principal business of the company is conducted, or the county in which its principal office or place of business is located, shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds would have imparted. The order to rehabilitate the insurer shall by operation of law vest title to all assets of the insurer in the rehabilitator.

(b) Any order issued under this section shall require accountings to the court by the rehabilitator. Accountings shall be at such intervals as the court specifies in its order, but no less frequently than semi-annually. Each accounting shall include a report concerning the rehabilitator's opinion as to the likelihood that a plan under § 23-68-118(e) will be prepared by the rehabilitator and the timetable for doing so.

(c) Entry of an order of rehabilitation shall not constitute an anticipatory breach of any contracts of the insurer, nor shall it be grounds for retroactive revocation or retroactive cancellation of any contracts of

1 the insurer, unless the revocation or cancellation is done by the  
 2 rehabilitator pursuant to § 23-68-118.

3 (d) In recognition of the need for a prompt and final resolution for  
 4 all affected by a plan of rehabilitation, any appeal from an order of  
 5 rehabilitation or an order approving a plan of rehabilitation shall be heard  
 6 on an expedited basis. A stay of an order of rehabilitation or an order  
 7 approving a plan of rehabilitation shall not be granted unless the appellant  
 8 demonstrates that extraordinary circumstances warrant delaying the recovery  
 9 under the plan of rehabilitation of all other persons, including  
 10 policyholders. If the plan provides an appropriate mechanism for adjustment  
 11 in the event of any adverse ruling from an appeal, no stay shall be granted.

12  
 13 SECTION 18. Arkansas Code 23-68-118 is amended to read as follows:

14 ~~23-68-118. Form of claim—Notice—Hearing.~~ Powers and duties of the  
 15 rehabilitator.

16 ~~(1) All claims against an insurer against which delinquency~~  
 17 ~~proceedings have been begun shall set forth in reasonable detail the amount~~  
 18 ~~of the claim, or the basis upon which such amount can be ascertained, the~~  
 19 ~~facts upon which the claim is based, and the priorities asserted, if any. All~~  
 20 ~~such claims shall be verified by the affidavit of the claimant, or someone~~  
 21 ~~authorized to act on his behalf and having knowledge of the facts, and shall~~  
 22 ~~be supported by such documents as may be material thereto.~~

23 ~~(2) All claims filed in this state shall be filed with the receiver,~~  
 24 ~~whether domiciliary or ancillary, in this state, on or before the last date~~  
 25 ~~for filing as specified in this chapter.~~

26 ~~(3) Within ten (10) days of the receipt of any claim, or within such~~  
 27 ~~further period as the court may, for good cause shown, fix, the receiver~~  
 28 ~~shall report the claim to the court, specifying in such report his~~  
 29 ~~recommendation with respect to the action to be taken thereon. Upon receipt~~  
 30 ~~of such report, the court shall fix a time for hearing the claim and shall~~  
 31 ~~direct that the claimant or the receiver, as the court shall specify, shall~~  
 32 ~~give such notice as the court shall determine to such persons as shall appear~~  
 33 ~~to the court to be interested therein. All such notices shall specify the~~  
 34 ~~time and place of the hearing and shall concisely state the amount and nature~~  
 35 ~~of the claim, the priorities asserted, if any, and the recommendation of the~~  
 36 ~~receiver with reference thereto.~~

1 ~~(4) At the hearing, all persons interested shall be entitled to~~  
2 ~~appear, and the court shall enter an order allowing, allowing in part, or~~  
3 ~~disallowing the claim. Any such order shall be deemed to be an appealable~~  
4 ~~order.~~

5 (a) The commissioner as rehabilitator may appoint one or more special  
6 deputies, who shall have all the powers and responsibilities of the  
7 rehabilitator granted under this section and the commissioner may employ such  
8 counsel, clerks and assistants as deemed necessary. The compensation of the  
9 special deputy, counsel, clerks and assistants and all expenses of taking  
10 possession of the insurer and of conducting the proceedings shall be fixed by  
11 the commissioner, with the approval of the court, and shall be paid out of  
12 the funds or assets of the insurer. The persons appointed under this section  
13 shall serve at the pleasure of the commissioner. The commissioner, as  
14 rehabilitator, may, with the approval of the court, appoint an advisory  
15 committee of policyholders, claimants or other creditors including guaranty  
16 associations, should such a committee be deemed necessary. The decision to  
17 appoint an advisory committee shall be at the sole discretion of the  
18 commissioner, and the committee shall serve at the pleasure of the  
19 commissioner and shall serve without compensation and without reimbursement  
20 for expenses. No other committee of any nature shall be appointed by the  
21 commissioner or the court in rehabilitation proceedings conducted under this  
22 act.

23 (b) In the event that the property of the insurer does not contain  
24 sufficient cash or liquid assets to defray the costs incurred, the  
25 commissioner may advance the costs so incurred out of any appropriation for  
26 the maintenance of the State Insurance Department. Any amounts so advanced  
27 for expenses of administration shall be repaid to the commissioner for the  
28 use of the State Insurance Department out of the first available money of the  
29 insurer.

30 (c) The rehabilitator may take such action, as the rehabilitator deems  
31 necessary or appropriate to reform and revitalize the insurer. The  
32 rehabilitator shall have all the powers of the directors, officers and  
33 managers, whose authority shall be suspended, except as redelegated by the  
34 rehabilitator. The rehabilitator shall have full power to direct and manage,  
35 to hire and discharge employees subject to any contract rights they may have,  
36 and to deal with the property and business of the insurer.

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

6 (e) If the rehabilitator determines that reorganization,  
7 consolidation, conversion, reinsurance, merger or other transformation of the  
8 insurer is appropriate, the rehabilitator shall prepare a plan to effect such  
9 changes and shall file it with the court within six (6) months after the  
10 entry of the rehabilitation order or such further time as the court may allow  
11 for good cause. Upon application of the rehabilitator for approval of the  
12 plan, and after such notice and hearings as the court may prescribe, the  
13 court may either approve or disapprove the plan proposed, or may modify it  
14 and approve it as modified. Any plan approved under this section shall be,  
15 in the judgment of the court, fair and equitable to all parties concerned.  
16 If the plan is approved, the rehabilitator shall carry out the plan. In the  
17 case of a life insurer, the plan proposed may include the imposition of liens  
18 upon the policies of the company, if all rights of shareholders are first  
19 relinquished. A plan for a life insurer may also propose imposition of a  
20 moratorium upon loan and cash surrender rights under policies, for a period  
21 not to exceed six (6) months from the entry of the rehabilitation order,  
22 unless the court, for good cause shown, shall extend the moratorium.

23 (f) The rehabilitator shall have the power under §§ 23-68-129 and 23-  
24 68-131 to avoid fraudulent transfers, and may exercise any of the powers  
25 under § 23-68-124, as necessary or appropriate, except that in the case of a  
26 life insurer, the rehabilitator of an insurer may, as part of a court  
27 approved plan of rehabilitation, modify or restructure, the policies of  
28 insurance. In the event the rehabilitator proposes to modify or restructure  
29 the policies of insurance, the rehabilitator may, with the concurrence of the  
30 court, approve payment of certain expenses incurred by an advisory committee  
31 appointed pursuant to § 23-68-118(a), the expenses to be limited to the  
32 reasonable and necessary expenses incurred in obtaining an expert evaluation  
33 of the effect upon policyholders of any proposed modification or  
34 restructuring of policies of insurance.

35 (g) The enumeration, in this section, of the powers and authority of  
36 the rehabilitator shall not be construed as a limitation upon the

1 rehabilitator, nor shall it exclude in any manner the right to do other acts  
 2 not specifically enumerated or otherwise provided for, as may be necessary or  
 3 appropriate for the accomplishment of or in aid of the purpose of  
 4 rehabilitation.

5  
 6 SECTION 19. Arkansas Code 23-68-119 is amended to read as follows:

7 23-68-119. ~~Priority of certain claims.~~ Termination of rehabilitation.

8 ~~(1) In a delinquency proceeding against an insurer domiciled in this~~  
 9 ~~state, claims owing to residents of ancillary states shall be preferred~~  
 10 ~~claims if like claims are preferred under the laws of this state. All such~~  
 11 ~~claims owing to residents or nonresidents shall be given equal priority of~~  
 12 ~~payment from general assets regardless of where such assets are located.~~

13 ~~(2) In a delinquency proceeding against an insurer domiciled in a~~  
 14 ~~reciprocal state, claims owing to residents of this state shall be preferred~~  
 15 ~~if like claims are preferred by the laws of that state.~~

16 ~~(3) The owners of special deposit claims against an insurer for which~~  
 17 ~~a receiver is appointed in this or any other state shall be given priority~~  
 18 ~~against their several special deposits in accordance with the provisions of~~  
 19 ~~the statutes governing the creation and maintenance of such deposits. If~~  
 20 ~~there is a deficiency in any such deposit so that the claims secured thereby~~  
 21 ~~are not fully discharged therefrom, the claimants may share in the general~~  
 22 ~~assets, but such sharing shall be deferred until general creditors, and also~~  
 23 ~~claimants against other special deposits who have received smaller~~  
 24 ~~percentages from their respective special deposits, have been paid~~  
 25 ~~percentages of their claims equal to the percentage paid from the special~~  
 26 ~~deposit.~~

27 ~~(4) The owner of a secured claim against an insurer for which a~~  
 28 ~~receiver has been appointed in this or any other state may surrender his~~  
 29 ~~security and file his claim as a general creditor, or the claim may be~~  
 30 ~~discharged by resort to the security, in which case the deficiency, if any,~~  
 31 ~~shall be treated as a claim against the general assets of the insurer on the~~  
 32 ~~same basis as claims of unsecured creditors. If the amount of the deficiency~~  
 33 ~~has been adjudicated in ancillary proceedings as provided in this chapter, or~~  
 34 ~~if it has been adjudicated by a court of competent jurisdiction in~~  
 35 ~~proceedings in which the domiciliary receiver has had notice and opportunity~~  
 36 ~~to be heard, such amounts shall be conclusive; otherwise, the amount shall be~~

1 ~~determined in the delinquency proceeding in the domiciliary state.~~

2 (a) Whenever the commissioner believes further attempts to  
3 rehabilitate an insurer would substantially increase the risk of loss to  
4 creditors, policyholders or the public, or would be futile, the commissioner  
5 may petition the Pulaski County Circuit Court for an order of liquidation. A  
6 petition under this subsection shall have the same effect as a petition under  
7 § 23-68-116.

8 (b) The protection of the interests of insureds, claimants and the  
9 public requires the timely performance of all insurance policy obligations.  
10 If the payment of policy obligations is suspended in substantial part for a  
11 period of six (6) months at any time after the appointment of the  
12 rehabilitator and the rehabilitator has not filed an application for approval  
13 of a plan under § 23-68-118(e), the rehabilitator shall petition the court  
14 for an order of liquidation.

15 (c) The rehabilitator or the directors of the insurer may at any time  
16 petition the Pulaski County Circuit Court for, or the court on its own motion  
17 may enter an order terminating rehabilitation of an insurer. The court shall  
18 also permit the directors of the insurer to petition the court for an order  
19 terminating rehabilitation of the insurer. If the Pulaski County Circuit  
20 Court finds that rehabilitation has been accomplished and that grounds for  
21 rehabilitation under § 23-68-116 no longer exist, it shall order that the  
22 insurer be restored to possession of its property and the control of the  
23 business. The Pulaski County Circuit Court may also make that finding and  
24 issue that order at any time upon its own motion.

25  
26 SECTION 20. Arkansas Code 23-68-120 is amended to read as follows:

27 ~~23-68-120. Attachment and garnishment of assets. Liquidation orders.~~  
28 ~~During the pendency of delinquency proceedings in this or any~~  
29 ~~reciprocal state, no action or proceeding in the nature of an attachment,~~  
30 ~~garnishment, or execution shall be commenced or maintained in the courts of~~  
31 ~~this state against the delinquent insurer or its assets. Any lien obtained~~  
32 ~~by any such action or proceeding within four (4) months prior to the~~  
33 ~~commencement of any such delinquency proceeding or at any time thereafter~~  
34 ~~shall be void as against any rights arising in such delinquency proceeding.~~

35 (a) An order to liquidate the business of a domestic insurer shall  
36 appoint the commissioner and any successor in office liquidator, and shall



1 direct the liquidator to take possession of the assets of the insurer and to  
2 administer them under the general supervision of the court. The liquidator  
3 shall be vested by operation of law with the title to all of the property,  
4 contracts and rights of action, and all of the books and records of the  
5 insurer ordered liquidated, wherever located, as of the entry of the final  
6 order of liquidation. The filing or recording of the order with the Clerk of  
7 the Pulaski County Circuit Court and the recorder of deeds of the county in  
8 which its principal office or place of business is located, or, in the case  
9 of real estate, with the recorder of deeds of the county where the property  
10 is located, shall impart the same notice as a deed, bill of sale or other  
11 evidence of title duly filed or recorded with that recorder of deeds would  
12 have imparted.

13 (b) Upon issuance of the order, the rights and liabilities of any such  
14 insurer and of its creditors, policyholders, shareholders, members and all  
15 other persons interested in its estate shall become fixed as of the date of  
16 entry of the order of liquidation, except as provided in §§ 23-68-122 and 23-  
17 68-141, unless otherwise fixed by the Pulaski County Circuit Court.

18 (c) An order to liquidate the business of an alien insurer in this  
19 state shall be in the same terms and have the same legal effect as an order  
20 to liquidate a domestic insurer.

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

26 (e) Any order issued under this section shall require financial  
27 reports to the court by the liquidator. Financial reports shall include (at  
28 a minimum), a statement of the assets and liabilities of the insurer and all  
29 funds received or disbursed by the liquidator during the current period.  
30 Financial reports shall be filed within one (1) year of the liquidation order  
31 and at least annually thereafter, unless the court for good cause allows a  
32 longer reporting period.

33 (f) In the event an order of liquidation is set aside upon any appeal,  
34 the company shall not be released from delinquency proceedings unless and  
35 until all funds advanced by any guaranty association, including reasonable  
36 administrative expenses in connection therewith relating to obligations of

1 the company, shall be repaid in full, together with interest at the judgment  
2 rate of interest or unless an arrangement for repayment thereof has been made  
3 with the consent of all applicable guaranty associations.

4  
5 SECTION 21. Arkansas Code 23-68-121 is amended to read as follows:

6 23-68-121. ~~Disposition of moneys collected.~~ Records.

7 ~~(a) The moneys collected by the commissioner in a proceeding under~~  
8 ~~this chapter shall be from time to time deposited in one (1) or more state or~~  
9 ~~national banks, savings banks, or trust companies, and in the case of the~~  
10 ~~insolvency or voluntary or involuntary liquidation of any such depository~~  
11 ~~which is an institution organized and supervised under the laws of this~~  
12 ~~state, such deposits shall be entitled to priority of payment on an equality~~  
13 ~~with any other priority given by the banking laws of this state.~~

14 ~~(b) The commissioner may in his discretion deposit such moneys or any~~  
15 ~~part thereof in a national bank or trust company as a trust fund.~~

16 (a) All books, records, documents and papers of any delinquent insurer  
17 which come into the possession of the receiver and are held by the receiver  
18 in the course of the delinquency proceedings, or certified copies thereof,  
19 shall be received in evidence in all cases, without proof of the correctness  
20 of the same and without other proof, except the certificate of the receiver  
21 that the same were received from the custody of the delinquent insurer or  
22 found among its effects.

23 (b) The receiver shall have the authority to certify to the  
24 correctness of any paper, document or record of his office and to make  
25 certificates of the receiver certifying any fact contained in the papers,  
26 documents or records of the office of the receiver, and the same shall be  
27 received in evidence in all cases in which the original would be evidence.

28 (c) Original books, records, documents and papers, or certified copies  
29 thereof, when received in evidence shall be evidence of the facts disclosed.

30 (d) The appointment of the commissioner as receiver shall in no way  
31 operate to bring records of a delinquent insurer under the Freedom of  
32 Information Act of 1967. In the event a third party successfully pursues a  
33 records request in the receivership court, the receiver shall be reimbursed  
34 for the reasonable cost of producing such records.

35  
36 SECTION 22. Arkansas Code 23-68-122 is amended to read as follows:

1           ~~23-68-122. Exemption from fees.~~ Continuance of coverage.

2           ~~The commissioner shall not be required to pay any fee to any public~~  
3 ~~officer in this state for filing, recording, issuing a transcript or~~  
4 ~~certificate, or authenticating any paper or instrument pertaining to the~~  
5 ~~exercise by the commissioner of any of the powers or duties conferred upon~~  
6 ~~him under this chapter, whether or not the paper or instrument is executed by~~  
7 ~~the commissioner or his deputies, employees, or attorneys of record and~~  
8 ~~whether or not it is connected with the commencement of any action or~~  
9 ~~proceeding by or against the commissioner, or with the subsequent conduct of~~  
10 ~~the action or proceeding.~~

11           (a) Notwithstanding any policy or contract language or any other  
12 statute, all policies, insurance contracts, other than reinsurance, surety  
13 bonds or surety undertakings, other than life or health insurance or  
14 annuities, in effect at the time of issuance of an order of liquidation shall  
15 continue in force only for the lesser of:

16                     (1) A period of thirty (30) days from the date of entry of the  
17 liquidation order;

18                     (2) The expiration of the policy coverage;

19                     (3) The date when the insured has replaced the insurance  
20 coverage with equivalent insurance in another insurer or otherwise terminated  
21 the policy;

22                     (4) The liquidator has effected a transfer of the policy  
23 obligation pursuant to § 23-68-124(a)(9); or

24                     (5) The date proposed by the liquidator and approved by the  
25 court to cancel coverage.

26           (b) An order of liquidation under § 23-68-120 shall terminate  
27 coverages at the time specified in subsection (a) for purposes of any other  
28 statute.

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

32           (d) Policies of life or accident and health insurance or annuities or  
33 any period or coverage of the policies not covered by a guaranty association  
34 shall terminate under subsections (a) and (b).

35           (e) The cancellation of any bond or surety undertaking shall not  
36 release any co-surety or guarantor.

1        (f) The obligations of the insolvent insurer's reinsurers shall not be  
2 affected by a cancellation, under this section, of the insurance ceded to the  
3 reinsurers.

4  
5        SECTION 23. Arkansas Code 23-68-123 is amended to read as follows:

6        23-68-123. ~~Borrowing on pledge of assets.~~ Dissolution of insurer.

7        ~~(a) For the purpose of facilitating the rehabilitation, liquidation,~~  
8 ~~conservation, or dissolution of an insurer pursuant to this chapter, the~~  
9 ~~commissioner may, subject to the approval of the court, borrow money and~~  
10 ~~execute, acknowledge, and deliver notes or other evidences of indebtedness~~  
11 ~~therefor and secure the repayment of the same by the mortgage, pledge,~~  
12 ~~assignment, transfer in trust, or hypothecation of any or all of the~~  
13 ~~property, whether real, personal, or mixed, of the insurer, and the~~  
14 ~~commissioner, subject to the approval of the court, shall have power to take~~  
15 ~~any and all other action necessary and proper to consummate any loan and to~~  
16 ~~provide for the repayment thereof.~~

17        ~~(b) The commissioner shall be under no obligation personally or in his~~  
18 ~~official capacity to repay any loan made pursuant to this section.~~

19        The commissioner may petition for an order dissolving the corporate  
20 existence of a domestic insurer or the United States branch of an alien  
21 insurer domiciled in this state at the time the commissioner applies for a  
22 liquidation order. The court shall order dissolution of the corporation upon  
23 petition by the commissioner upon or after the granting of a liquidation  
24 order. If the dissolution has not previously been ordered, it shall be  
25 effected by operation of law upon the discharge of the liquidator if the  
26 insurer is insolvent, but may be ordered by the court upon the discharge of  
27 the liquidator if the insurer is under a liquidation order for some other  
28 reason.

29  
30        SECTION 24. Arkansas Code 23-68-124 is amended to read as follows;

31        23-68-124. ~~Date of rights and liabilities upon liquidation.~~ Powers of  
32 the liquidator.

33        ~~The rights and liabilities of the insurer and of its creditors,~~  
34 ~~policyholders, stockholders, members, subscribers, and all other persons~~  
35 ~~interested in its estate shall, unless otherwise directed by the court, be~~  
36 ~~fixed as of the date on which the order directing the liquidation of the~~

1 ~~insurer is filed in the office of the clerk of the court which made the~~  
2 ~~order, subject to the provisions of this chapter with respect to the rights~~  
3 ~~of claimants holding contingent claims.~~

4 (a) The liquidator shall have the power:

5 (1) To appoint a special deputy or deputies to act for the  
6 liquidator under this act, and to determine any reasonable compensation. The  
7 special deputy shall have all powers of the liquidator granted by this  
8 section. The special deputy shall serve at the pleasure of the liquidator.

9 (2) To employ employees and agents, legal counsel, actuaries,  
10 accountants, appraisers, consultants and such other personnel as the  
11 liquidator may deem necessary to assist in the liquidation.

12 (3) To appoint, with the approval of the court, an advisory  
13 committee of policyholders, claimants or other creditors including guaranty  
14 associations should such a committee be deemed necessary. The committee  
15 shall serve at the pleasure of the commissioner and the decision to appoint  
16 an advisory committee shall be at the sole discretion of the commissioner.  
17 The committee shall serve without compensation and without reimbursement for  
18 expenses. No other committee of any nature shall be appointed by the  
19 commissioner or the court in liquidation proceedings conducted under this  
20 act.

21 (4) To fix the reasonable compensation of employees and agents,  
22 legal counsel, actuaries, accountants, appraisers and consultants with the  
23 approval of the court.

24 (5) To pay reasonable compensation to persons appointed and to  
25 defray from the funds or assets of the insurer all expenses of taking  
26 possession of, conserving, conducting, liquidating, disposing of, or  
27 otherwise dealing with the business and property of the insurer. The  
28 liquidator shall have the power to pay reasonable compensation to such  
29 persons on an interim basis. All such interim payments shall be subject to  
30 the approval of the court upon submission by the liquidator. Approvals or  
31 payments provided for herein shall not prejudice the right of the liquidator  
32 to seek any recovery, recoupment, disgorgement or reimbursement of fees where  
33 recovery would otherwise be allowed by causes of action recognized in law or  
34 in equity. In the event that the property of the insurer does not contain  
35 sufficient cash or liquid assets to defray the costs incurred, the  
36 commissioner may advance the costs so incurred out of any appropriation for

1 the maintenance of the State Insurance Department. Any amounts so advanced  
2 for expenses of administration shall be repaid to the commissioner for the  
3 use of the State Insurance Department out of the first available moneys of  
4 the insurer.

5 (6) To hold hearings, to subpoena witnesses to compel their  
6 attendance, to administer oaths, to examine any person under oath, and to  
7 compel any persons to subscribe to their testimony after it has been  
8 correctly reduced to writing; and in connection therewith to require the  
9 production of any books, papers, records or other documents which the  
10 liquidator deems relevant to the inquiry.

11 (7) To audit the books and records of all agents of the insurer  
12 insofar as those records relate to the business activities of the insurer.

13 (8) To collect all debts and moneys due and claims belonging to  
14 the insurer, wherever located, and for this purpose:

15 (A) To institute timely action in other jurisdictions, in  
16 order to forestall garnishment and attachment proceedings against such debts;

17 (B) To do such other acts as are necessary or expedient to  
18 collect, conserve or protect its assets or property, including the power to  
19 sell, compound, compromise or assign debts for purposes of collection upon  
20 such terms and conditions as the liquidator deems best; and

21 (C) To pursue any creditor's remedies available to enforce  
22 the creditor's claims.

23 (9) To conduct public and private sales of the property of the  
24 insurer.

25 (10) To use assets of the estate of an insurer under a  
26 liquidation order to transfer policy obligations to a solvent assuming  
27 insurer, if the transfer can be arranged without prejudice to applicable  
28 priorities under § 23-68-147.

29 (11) To acquire, hypothecate, encumber, lease, improve, sell,  
30 transfer, abandon or otherwise dispose of or deal with, any property of the  
31 insurer at its market value or upon such terms and conditions as are fair and  
32 reasonable. The liquidator shall also have power to execute, acknowledge and  
33 deliver any and all deeds, assignments, releases and other instruments  
34 necessary or proper to effectuate any sale of property or other transaction  
35 in connection with the liquidation.

36 (12) To borrow money on the security of the insurer's assets or

1 without security, and to execute and deliver all documents necessary to that  
2 transaction for the purpose of facilitating the liquidation. Any such funds  
3 borrowed may be repaid as an administrative expense and have priority over  
4 any other claims in Class 1 under the priority of distribution.

5 (13) To enter into such contracts as are necessary to carry out  
6 the order to liquidate, and to affirm or disaffirm any executory contract or  
7 unexpired lease to which the insurer is a party. This subsection shall not  
8 apply to an insurance policy or reinsurance contract whether or not it is  
9 executory.

10 (14) To continue to prosecute and to institute in the name of  
11 the insurer or in the liquidator's own name any and all suits and other legal  
12 proceedings, in this state or elsewhere, and to abandon the prosecution of  
13 claims the liquidator deems unprofitable to pursue further. If the insurer  
14 is dissolved under § 23-68-123, the liquidator shall have the power to apply  
15 to any court in this state or elsewhere for leave to substitute the  
16 liquidator for the insurer as plaintiff.

17 (15) To prosecute any action which may exist on behalf of the  
18 creditors, members, policyholders or shareholders of the insurer against any  
19 officer of the insurer, or any other person.

20 (16) To remove any or all records and property of the insurer to  
21 the offices of the commissioner or to such other place as may be convenient  
22 for the purposes of efficient and orderly execution of the liquidation.  
23 Guaranty associations shall have such reasonable access to the records of the  
24 insurer as is necessary for them to carry out their statutory obligations.

25 (17) To deposit in one or more banks in this state such sums as  
26 are required for meeting current administration expenses and dividend  
27 distributions.

28 (18) To invest all sums not currently needed, unless the court  
29 orders otherwise.

30 (19) To file any necessary documents for record in the office of  
31 any recorder of deeds or record office in this state or elsewhere where  
32 property of the insurer is located.

33 (20) To assert all defenses available to the insurer as against  
34 third persons, including statutes of limitation, statutes of frauds, and the  
35 defense of usury. A waiver of any defense by the insurer after a petition in  
36 liquidation has been filed shall not bind the liquidator. Whenever a

1 guaranty association has an obligation to defend any suit, the liquidator  
 2 shall give precedence to such obligation and may defend only in the absence  
 3 of a defense by such guaranty association.

4 (21) To exercise and enforce all the rights, remedies, and  
 5 powers of any creditor, shareholder, policyholder, or member; including any  
 6 power to avoid any transfer or lien that may be given by the general law and  
 7 that is not included with §§ 23-68-129, 23-68-131 and 23-68-132.

8 (22) To intervene in any proceeding wherever instituted that  
 9 might lead to the appointment of a receiver or trustee, and to act as the  
 10 receiver or trustee whenever the appointment is offered.

11 (23) To enter into agreements with any receiver or commissioner  
 12 of any other state relating to the rehabilitation, liquidation, conservation  
 13 or dissolution of an insurer doing business in both states.

14 (24) To exercise all powers now held or hereafter conferred upon  
 15 receivers by the laws of this state not inconsistent with the provisions of  
 16 this act.

17 (b) The enumeration, in this section, of the powers and authority of  
 18 the liquidator shall not be construed as a limitation upon the liquidator,  
 19 nor shall it exclude in any manner the right to do other acts not  
 20 specifically enumerated or otherwise provided for, as may be necessary or  
 21 appropriate for the accomplishment of or in aid of the purpose of  
 22 liquidation.

23 (c) The liquidator shall not be obligated to defend any action against  
 24 the insurer or insured and may enforce injunctions, stays and the claims  
 25 procedure set forth in this act. The liquidator may elect to defend any  
 26 actions against the insurer or insureds if it is in the best interest of the  
 27 estate. Otherwise any insureds not defended by a guaranty association shall  
 28 provide their own defense, and include the cost of the defense as part of  
 29 their claims, if the defense was an obligation of the insurer. The right of  
 30 the liquidator to contest coverage on a particular claim shall be deemed  
 31 preserved without the necessity for an express reservation of rights.

32  
 33 SECTION 25. Arkansas Code 23-68-125 is amended to read as follows:

34 23-68-125. ~~Voidable transfers and liens.~~ Notice to Creditors and  
 35 Others.

36 ~~(a) Any transfer of, or lien upon, the property of an insurer which is~~



1 ~~made or created within four (4) months prior to the granting of an order to~~  
2 ~~show cause under this chapter with the intent of giving to any creditor a~~  
3 ~~preference or of enabling him to obtain a greater percentage of his debt than~~  
4 ~~any other creditor of the same class and which is accepted by the creditor~~  
5 ~~having reasonable cause to believe that the preference will occur, shall be~~  
6 ~~voidable.~~

7 ~~(b) Every director, officer, employee, stockholder, member,~~  
8 ~~subscriber, and any other person acting on behalf of the insurer who shall be~~  
9 ~~concerned in any act or deed and every person receiving thereby any property~~  
10 ~~of the insurer or the benefit thereof shall be personally liable therefor and~~  
11 ~~shall be bound to account to the commissioner.~~

12 ~~(c) The commissioner as receiver in any proceeding under this chapter~~  
13 ~~may avoid any transfer of or lien upon the property of an insurer which any~~  
14 ~~creditor, stockholder, subscriber, or member of such insurer might have~~  
15 ~~avoided and may recover the property so transferred unless such person was a~~  
16 ~~bona fide holder for value prior to the date of the entering of an order to~~  
17 ~~show cause under this chapter. The property or its value may be recovered~~  
18 ~~from anyone who has received it except a bona fide holder for value as herein~~  
19 ~~specified.~~

20 (a) Unless the court otherwise directs, the liquidator shall give or  
21 cause to be given notice of the liquidation order as soon as possible:

22 (1) By first class mail and electronic communication to the  
23 insurance commissioner of each jurisdiction in which the insurer is doing  
24 business;

25 (2) By first class mail to any guaranty association which is or  
26 may become obligated as a result of the liquidation;

27 (3) By first class mail to all the insurer's agents, brokers, or  
28 producers of record, with current appointments or current licenses to  
29 represent the insurer, and to all other agents, brokers or producers as the  
30 liquidator deems appropriate at their last known address;

31 (4) By first class mail to all persons or entities known or  
32 reasonably expected to have claims against the insurer, including all  
33 policyholders, at their last known address as indicated by the records of the  
34 insurer;

35 (5) By first-class mail to all known reinsurers of the insurer at  
36 their last known address as indicated by the records of the insurer; and

1           (6) By publication in a newspaper of general circulation in the  
2 county in which the insurer has its principal place of business and in such  
3 other locations as the liquidator deems appropriate.

4           (b) Whenever the commissioner of this state is appointed receiver for  
5 an insurer domiciled in another state, the notice of the liquidation order  
6 given by the domiciliary liquidator in compliance with the laws of that state  
7 shall be sufficient notice, and the ancillary receiver shall not be required  
8 to give any notice unless the domiciliary liquidator fails to give notice.  
9 The ancillary receiver may request that the domiciliary liquidator's notice  
10 mention the existence of any applicable guaranty association laws in this  
11 state, and inform claimants that any claims which the guaranty association of  
12 this state may cover may be filed with the domiciliary liquidator and will be  
13 forwarded to the applicable guaranty association. If notice by the  
14 domiciliary liquidator in another state does not mention the possibility of  
15 guaranty association coverage in this state, then the ancillary receiver  
16 shall arrange to give notice to those who may have rights under applicable  
17 guaranty association laws in this state, together with a citation to the  
18 guaranty association statute in this state. The notice may include a brief  
19 summary of claimants' rights under the guaranty association laws in this  
20 state and any other information deemed appropriate.

21           (c) Except as otherwise established by the liquidator with approval of  
22 the court, notice to potential claimants under subsection (a) shall require  
23 claimants to file with the liquidator their claims together with proper  
24 proofs specified in § 23-68-140, on or before a date the liquidator shall  
25 specify in the notice. The liquidator need not require persons claiming cash  
26 surrender values or other investment values in life insurance and annuities  
27 to file a claim. All claimants shall have a duty to keep the liquidator  
28 informed of any changes of address.

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

33           (2) The liquidator shall promptly provide to the guaranty  
34 associations such information concerning the identities and addresses of such  
35 policyholders and their policy coverages as may be within the liquidator's  
36 possession or control, and otherwise cooperate with guaranty associations to

1 assist them in providing to such policyholders timely notice of the guaranty  
 2 associations' coverage of policy benefits, including, as applicable, coverage  
 3 of claims and continuation or termination of coverages.

4 (e) If notice is given in accordance with this section, the  
 5 distribution of assets of the insurer under this chapter shall be conclusive  
 6 with respect to all claimants, whether or not they received notice.

7 (f) Notwithstanding the foregoing, the liquidator shall have no duty  
 8 to locate any persons or entities if no address is found in the records of  
 9 the insurer, or if mailings are returned to the liquidator because of  
 10 inability to deliver at the address shown in the company's books and records.  
 11 In such circumstances the notice by publication as required by this act or  
 12 actual notice received is sufficient notice. Written certification by the  
 13 liquidator or other knowledgeable person acting for the liquidator, that the  
 14 notices were deposited in the United States mail, postage prepaid, shall be  
 15 prima facie evidence of mailing and receipt.

16 (g) Upon application of the liquidator and for good cause shown, the  
 17 court may find that notice by publication as required in this section is  
 18 sufficient notice to those persons holding an occurrence policy which expired  
 19 more than four (4) years prior to the entry of the order of liquidation, and  
 20 under which there are no pending claims; or the court may order such other  
 21 notice to those persons as it deems appropriate.

22  
 23 SECTION 26. Arkansas Code 23-68-126 is amended to read as follows:

24 ~~23-68-126. Priority of distribution of general assets. Duties of~~  
 25 ~~agents.~~

26 ~~(a)(1) The priority of distribution of claims from the general assets~~  
 27 ~~of the insurer's estate shall be in accordance with the order in which each~~  
 28 ~~class of claims is set forth in this section.~~

29 ~~(2) Every claim in each class shall be paid in full or adequate~~  
 30 ~~funds retained for the payment, before the members of the next class receive~~  
 31 ~~any payment.~~

32 ~~(3) No subclasses shall be established within any class.~~

33 ~~(b) The order of distribution of claims shall be:~~

34 ~~(1) Class 1. The costs and expenses of administration,~~  
 35 ~~including, but not limited to, the following:~~

36 ~~(A) The actual and necessary costs of preserving or~~

1 ~~recovering the assets of the insurer;~~

2 ~~(B) Compensation for all services rendered in the~~  
3 ~~liquidation;~~

4 ~~(C) Any necessary filing fees from which the receiver is~~  
5 ~~not exempt under § 23-68-122;~~

6 ~~(D) The fees and mileage payable to witnesses;~~

7 ~~(E) Reasonable attorney's fees; and~~

8 ~~(F) The reasonable expenses of the Arkansas Property and~~  
9 ~~Casualty Insurance Guaranty Fund, or any other domestic or foreign guaranty~~  
10 ~~fund or guaranty association, for the handling of claims;~~

11 ~~(2) Class 2. (A) All claims under policies for losses incurred,~~  
12 ~~including third party claims, and all claims of a domestic or foreign~~  
13 ~~guaranty fund or guaranty association.~~

14 ~~(B) All claims under life insurance and annuity policies,~~  
15 ~~whether for death proceeds, annuity proceeds, or investment values, shall be~~  
16 ~~treated as loss claims.~~

17 ~~(C) That portion of any loss, for which indemnification is~~  
18 ~~provided by other benefits or advantages recovered by the claimant shall not~~  
19 ~~be included in this class, other than benefits or advantages recovered or~~  
20 ~~recoverable in discharge of familial obligations of support, or by way of~~  
21 ~~succession at death, or as proceeds of life insurance, or as gratuities.~~

22 ~~(D) No payment by an employer to his employee shall be~~  
23 ~~treated as a gratuity;~~

24 ~~(3) Class 3. Claims under nonassessable policies for unearned~~  
25 ~~premium or other premium refunds;~~

26 ~~(4) Class 4. Claims of the federal government not included in~~  
27 ~~Class 2 or 3 above;~~

28 ~~(5) Class 5. Debts due to employees for services performed to~~  
29 ~~the extent that they do not exceed one thousand dollars (\$1,000) and~~  
30 ~~represent payment for services performed within one (1) year before the~~  
31 ~~filing of the petition for liquidation. Officers and directors shall not be~~  
32 ~~entitled to the benefit of this priority. The priority shall be in lieu of~~  
33 ~~any similar priority, which may be authorized by law as to wages or~~  
34 ~~compensation of employees;~~

35 ~~(6) Class 6. All claims against the insurer for liability for~~  
36 ~~bodily injury to or destruction of tangible property, which are not under~~

1 ~~policies, and claims of general creditors;~~

2 ~~(7) Class 7. Claims of any state or local government. Claims,~~  
 3 ~~including those of any state or local governmental body for a penalty or~~  
 4 ~~forfeiture, shall be allowed in this class only to the extent of the~~  
 5 ~~pecuniary loss sustained from the act, transaction, or proceeding out of~~  
 6 ~~which the penalty or forfeiture arose, with reasonable and actual costs~~  
 7 ~~occasioned thereby. The remainder of the claim shall be postponed to the~~  
 8 ~~class of claims under subdivision (b)(10) of this section;~~

9 ~~(8) Class 8. Claims filed late or any other claims other than~~  
 10 ~~claims under subdivisions (b)(9) and (10) of this section;~~

11 ~~(9) Class 9. Surplus notes, or similar obligations, and premium~~  
 12 ~~refunds on assessable policies. Payments to members of domestic mutual~~  
 13 ~~insurance companies shall be limited in accordance with law;~~

14 ~~(10) Class 10. The claims of shareholders or other owners.~~

15 ~~(c)(1) Every claim under a separate account established under the~~  
 16 ~~provisions of § 23-81-402 providing that the income, gains, and losses,~~  
 17 ~~realized and unrealized, from assets allocated to the separate account shall~~  
 18 ~~be credited to or charged against the account without regard to other income,~~  
 19 ~~gains, or losses of the life insurance company and, to the extent provided~~  
 20 ~~under the applicable contracts, that that portion of the assets of any such~~  
 21 ~~separate account equal to the reserves and other contract liabilities with~~  
 22 ~~respect to the separate account shall not be chargeable with liabilities~~  
 23 ~~arising out of any other business the company may conduct, shall be satisfied~~  
 24 ~~out of the assets in the separate account equal to the reserves maintained in~~  
 25 ~~the account for the contracts.~~

26 ~~(2) To the extent, if any, reserves maintained in the separate~~  
 27 ~~account are in excess of the amounts needed to satisfy claims under the~~  
 28 ~~separate account contracts; the excess shall be treated as general assets of~~  
 29 ~~the life insurance company.~~

30 (a) Every person who receives notice in the form prescribed in § 23-  
 31 68-125 that an insurer which that person represents as an agent is the  
 32 subject of a liquidation order, shall within thirty (30) days of such notice  
 33 provide to the liquidator, in addition to the information the agent may be  
 34 required to provide pursuant to § 23-68-106, the information in the agent's  
 35 records related to any policy issued by the insurer through the agent, and,  
 36 if the agent is a general agent, the information in the general agent's

1 records related to any policy issued by the insurer through an agent under  
2 contract to the general agent, including the name and address of the sub-  
3 agent. A policy shall be deemed issued through an agent if the agent has a  
4 property interest in the expiration of the policy, or if the agent has had in  
5 his possession a copy of the declarations of the policy at any time during  
6 the life of the policy, except where the ownership of the expiration of the  
7 policy has been transferred to another.

8 (b) Any agent failing to provide information to the liquidator as  
9 required in subsection (a) may be subject to payment of a penalty of not more  
10 than one thousand dollars (\$1,000) and the agent's license may be suspended  
11 after a hearing held by the commissioner.

12  
13 SECTION 27. Arkansas Code 23-68-127 is amended to read as follows:

14 23-68-127. ~~Offsets.~~ Actions by and against the liquidator.

15 ~~(a) In all cases of mutual debts or mutual credits between the insurer~~  
16 ~~and another person in connection with any action or proceeding under this~~  
17 ~~chapter, the credits and debts shall be set off, and the balance only shall~~  
18 ~~be allowed or paid, except as provided in subsection (b) of this section.~~

19 ~~(b) No offset shall be allowed in favor of any such person where:~~

20 ~~(1) The obligation of the insurer to the person would not at the~~  
21 ~~date of the entry of any liquidation order or otherwise, as provided in § 23-~~  
22 ~~68-124, entitle him to share as a claimant in the assets of the insurer;~~

23 ~~(2) The obligation of the insurer to the person was purchased by~~  
24 ~~or transferred to the person with a view of its being used as an offset; or~~

25 ~~(3) The obligation of the person is to pay an assessment levied~~  
26 ~~against the members of a mutual insurer, or against the subscribers of a~~  
27 ~~reciprocal insurer, or is to pay a balance upon the subscription to the~~  
28 ~~capital stock of a stock insurer.~~

29 Unless the otherwise applicable stay provisions or injunctive  
30 provisions are lifted or modified by the domiciliary receivership court, any  
31 judgment or order taken by any person against the insurer after the date of  
32 the liquidation in any court other than the domiciliary receivership court or  
33 a court in which an ancillary proceeding is pending in a reciprocal state, or  
34 in contravention of the terms of the injunctive provisions of the court of  
35 this state's order of liquidation or rehabilitation, shall automatically  
36 place the claim in a priority of class 6 as described in § 23-68-147 of this

1 act, irrespective of what class the claim would have been entitled to without  
 2 such an order or judgment. Any claimant possessing such a judgment may set  
 3 aside the judgment as to the insurer and the claims will not be subject to  
 4 this provision.

5  
 6 SECTION 28. Arkansas Code 23-68-128 is amended to read as follows:

7 23-68-128. ~~Allowance of certain claims.~~ Collection and list of assets.

8 ~~(a) No contingent and unliquidated claim shall share in a distribution~~  
 9 ~~of the assets of an insurer which has been adjudicated to be insolvent by an~~  
 10 ~~order made pursuant to this chapter, except that the claim shall be~~  
 11 ~~considered, if properly presented, and may be allowed to share where:~~

12 ~~(1) The claim becomes absolute against the insurer on or before~~  
 13 ~~the last day for filing claims against the assets of the insurer; or~~

14 ~~(2) There is a surplus and the liquidation is thereafter~~  
 15 ~~conducted upon the basis that the insurer is solvent.~~

16 ~~(b) Where an insurer has been so adjudicated to be insolvent, any~~  
 17 ~~person who has a cause of action against an insured of the insurer under a~~  
 18 ~~liability insurance policy issued by the insurer shall have the right to file~~  
 19 ~~a claim in the liquidation proceeding, regardless of the fact that the claim~~  
 20 ~~may be contingent, and the claim may be allowed if:~~

21 ~~(1) It may be reasonably inferred from the proof presented upon~~  
 22 ~~the claim that the person would be able to obtain a judgment upon the cause~~  
 23 ~~of action against the insured; and~~

24 ~~(2) The person shall furnish suitable proof, unless the court~~  
 25 ~~for good cause shown shall otherwise direct, that no further valid claim~~  
 26 ~~against the insurer arising out of his cause of action other than those~~  
 27 ~~already presented can be made; and~~

28 ~~(3) If the total liability of the insurer to all claimants~~  
 29 ~~arising out of the same act of its insured shall be no greater than its~~  
 30 ~~maximum liability would be were it not in liquidation.~~

31 ~~(c) No judgment against an insured taken after the date of entry of~~  
 32 ~~the liquidation order shall be considered in the liquidation proceedings as~~  
 33 ~~evidence of liability, or of the amount of damages, and no judgment against~~  
 34 ~~an insured taken by default, or by collusion prior to the entry of the~~  
 35 ~~liquidation order shall be considered as conclusive evidence in the~~  
 36 ~~liquidation proceedings, either of the liability of the insured to the person~~

1 ~~upon the cause of action or of the amount of damages to which the person is~~  
 2 ~~therein entitled.~~

3 ~~(d) No claim of any secured claimant shall be allowed at a sum greater~~  
 4 ~~than the difference between the value of the claim without security and the~~  
 5 ~~value of the security itself as of the date of the entry of the order of~~  
 6 ~~liquidation or such other date set by the court for determining rights and~~  
 7 ~~liabilities as provided in § 23-68-124 unless the claimant shall surrender~~  
 8 ~~his security to the commissioner, in which event the claim shall be allowed~~  
 9 ~~in the full amount for which it is valued.~~

10 (a) As soon as practicable after the liquidation order, but not later  
 11 than one hundred twenty (120) days thereafter, the liquidator shall prepare  
 12 in duplicate a list of the insurer's assets. The list shall be amended or  
 13 supplemented from time to time as the liquidator may determine. One (1) copy  
 14 shall be filed in the office of the Clerk of the Pulaski County Circuit Court  
 15 and one (1) copy shall be retained for the liquidator's files. All  
 16 amendments and supplements shall be similarly filed.

17 (b) The liquidator shall reduce the assets to a degree of liquidity  
 18 that is consistent with the effective execution of the liquidation.

19 (c) A submission to the court for disbursement of assets in accordance  
 20 with § 23-68-138 fulfills the requirements of subsection (a) of this section.

21  
 22 SECTION 29. Arkansas Code 23-68-129 is amended to read as follows:

23 ~~23-68-129. Time for filing claims.~~ Fraudulent transfers prior to  
 24 petition.

25 ~~(a) If, upon the entry of an order of liquidation under this chapter~~  
 26 ~~or at any time thereafter during liquidation proceedings, the insurer shall~~  
 27 ~~not be clearly solvent, the court shall, upon hearing after such notice as it~~  
 28 ~~deems proper, make and enter an order adjudging the insurer to be insolvent.~~

29 ~~(b)(1) After the entry of the order of insolvency, regardless of any~~  
 30 ~~prior notice that may have been given to creditors, the commissioner shall~~  
 31 ~~notify all persons who may have claims against the insurer to file the claims~~  
 32 ~~with him, at a place and within the time specified in the notice, or that the~~  
 33 ~~claims shall be forever barred.~~

34 ~~(2) The time specified in the notice shall be as fixed by the~~  
 35 ~~court for filing of claims and which shall be not less than six (6) months~~  
 36 ~~after the entry of the order of insolvency.~~



1 ~~(3) The notice shall be given in such manner and for such~~  
2 ~~reasonable period of time as may be ordered by the court.~~

3 (a) Every transfer made or suffered and every obligation incurred by  
4 an insurer within one (1) year prior to the filing of a successful petition  
5 for rehabilitation or liquidation under this act is fraudulent as to then  
6 existing and future creditors if made or incurred without fair consideration,  
7 or with actual intent to hinder, delay or defraud either existing or future  
8 creditors. A transfer made or an obligation incurred by an insurer ordered  
9 to be rehabilitated or liquidated under this act, which is fraudulent under  
10 this section, may be avoided by the receiver, except as to a person who in  
11 good faith is a purchaser, lienor, or obligee for a present fair equivalent  
12 value, and except that any purchaser, lienor or obligee, who in good faith  
13 has given a consideration less than fair for such transfer, lien, or  
14 obligation, may retain the property, lien or obligation as security for  
15 repayment. The court may, on due notice, order any such transfer or  
16 obligation to be preserved for the benefit of the estate, and in that event,  
17 the receiver shall succeed to and may enforce the rights of the purchaser,  
18 lienor, or obligee.

19 (b)(1) A transfer of property other than real property shall be deemed  
20 to be made or suffered when it becomes so far perfected that no subsequent  
21 lien obtainable by legal or equitable proceedings on a simple contract could  
22 become superior to the rights of the transferee under § 23-68-132(c).

23 (2) A transfer of real property shall be deemed to be made or  
24 suffered when it becomes so far perfected that no subsequent bona fide  
25 purchaser from the insurer could obtain rights superior to the rights of the  
26 transferee.

27 (3) A transfer, which creates an equitable lien, shall not be  
28 deemed to be perfected if there are available means by which a legal lien  
29 could be created.

30 (4) Any transfer not perfected prior to the filing of a petition  
31 for liquidation shall be deemed to be made immediately before the filing of  
32 the successful petition.

33 (5) The provisions of this subsection apply whether or not there  
34 are or were creditors who might have obtained any liens, or persons who might  
35 have become bona fide purchasers.

36 (c) Any transaction of the insurer with a reinsurer shall be deemed

1 fraudulent and may be avoided by the receiver under subsection (a) if:

2 (1) The transaction consists of the termination, adjustment or  
3 settlement of a reinsurance contract in which the reinsurer is released from  
4 any part of its duty to pay the originally specified share of losses that had  
5 occurred prior to the time of the transactions, unless the reinsurer gives a  
6 present fair equivalent value for the release; and

7 (2) Any part of the transaction took place within one (1) year  
8 prior to the date of filing of the petition through which the receivership  
9 was commenced.

10 (d) In the event a reinsurance transaction is avoided under subsection  
11 (c):

12 (1) The receiver shall tender to the reinsurer the value of any  
13 consideration transferred to the insurer in connection with such transaction  
14 less the amount of matured and liquidated liabilities owing by the reinsurer  
15 to the estate; and

16 (2) The parties shall be returned to their relative positions  
17 prior to the implementation of the transaction avoided.

18 (e) Every person receiving any property from the insurer or any benefit  
19 thereof, which is a fraudulent transfer under subsection (a), shall be  
20 personally liable therefor and shall be bound to account to the liquidator.

21  
22 SECTION 30. Arkansas Code 23-68-130 is amended to read as follows:

23 ~~23-68-130. Report and petition for assessment.~~ Recoupment from  
24 affiliates.

25 ~~Within three (3) years after the date of the entry of an order of~~  
26 ~~rehabilitation or liquidation of a domestic mutual insurer or a domestic~~  
27 ~~reciprocal insurer, the commissioner may make and file his report and~~  
28 ~~petition to the court setting forth:~~

29 ~~(1) The reasonable value of the assets of the insurer;~~

30 ~~(2) The liabilities of the insurer to the extent thus far ascertained~~  
31 ~~by the commissioner;~~

32 ~~(3) The aggregate amount of the assessment, if any, which the~~  
33 ~~commissioner deems reasonably necessary to pay all claims, the costs and~~  
34 ~~expenses of the collection of the assessments, and the costs and expenses of~~  
35 ~~the delinquency proceedings in full; and~~

36 ~~(4) Any other information relative to the affairs or property of the~~

1 ~~insurer that the commissioner deems material.~~

2 (a) If an order instituting a delinquency proceeding against an  
3 insurer authorized to do business in this state is entered under this act,  
4 the receiver appointed under the order has a right to recover on behalf of  
5 the insurer from any affiliate that controlled the insurer the amount of  
6 distributions, other than stock dividends paid by the insurer on its capital  
7 stock, made at any time during the five (5) years preceding the petition for  
8 liquidation, rehabilitation or conservation. This recovery is subject to the  
9 limitations of subsections (b) through (g).

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

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

18 (d) Any person who was an affiliate that controlled the insurer at the  
19 time the distributions were paid is liable up to the amount of distributions  
20 received. Any person who was an affiliate that controlled the insurer at the  
21 time the distributions were declared is liable up to the amount of  
22 distributions the person would have received if the distributions had been  
23 paid immediately. If two (2) or more persons are liable regarding the same  
24 distributions, they are jointly and severally liable.

25 (e) If any person liable under subsection (d) is insolvent, all  
26 affiliates that controlled that person at the time the dividend was declared  
27 or paid are jointly and severally liable for any resulting deficiency in the  
28 amount recovered from the insolvent affiliate.

29 (f) This section does not enlarge the personal liability of a director  
30 under existing law.

31 (g) An action or proceeding under this section may not be commenced  
32 after the earlier of:

33 (1) Two (2) years after the appointment of a rehabilitator under  
34 § 23-68-117 or a liquidator under §23-68-120; or

35 (2) The date the rehabilitation is terminated under § 23-68-  
36 119(c) or the liquidation is terminated under § 23-68-151.

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SECTION 31. Arkansas Code 23-68-131 is amended to read as follows:

~~23-68-131. Order and levy of assessment. Fraudulent transfer after petition.~~

~~(a)(1) Upon the filing and reading of the report and petition provided for in § 23-68-130, the court, ex parte, may order the commissioner to assess all members or subscribers of the insurer who may be subject to the assessment, in such an aggregate amount as the court finds reasonably necessary to pay all valid claims as may be timely filed and proved in the delinquency proceedings, together with the costs and expenses of levying and collecting assessments and the costs and expenses of the delinquency proceedings in full.~~

~~(2) Any order shall require the commissioner to assess each member or subscriber for his proportion of the aggregate assessment, according to such reasonable classification of such members or subscribers and formula as may be made by the commissioner and approved by the court.~~

~~(b) The court may order additional assessments upon the filing and reading of any amendment or supplement to the report and petition referred to in subsection (a) of this section if the amendment or supplement is filed within three (3) years after the date of the entry of the order of rehabilitation or liquidation.~~

~~(c) After the entry of the order to levy and assess members or subscribers of an insurer referred to in subsection (a) of this section, the commissioner shall levy and assess members or subscribers in accordance with the order.~~

~~(d) The total of all assessments against any member or subscriber with respect to any policy, whether levied pursuant to this chapter or pursuant to any other provision of this code, shall be for no greater amount than that specified in the policy or policies of the member or subscriber and as limited under this code, except as to any policy which was issued at a rate of premium below the minimum rate lawfully permitted for the risk insured, in which event the assessment against the policyholder shall be upon the basis of the minimum rate for such risk.~~

~~(e) No assessment shall be levied against any member or subscriber with respect to any nonassessable policy issued in accordance with §§ 23-69-125 and 23-70-120.~~

1       (a) After a petition for rehabilitation or liquidation has been filed,  
2 a transfer of any of the real property of the insurer made to a person acting  
3 in good faith shall be valid against the receiver if made for a present fair  
4 equivalent value; or, if not made for a present fair equivalent value, then  
5 to the extent of the present consideration actually paid therefor, for which  
6 amount the transferee shall have a lien on the property so transferred. The  
7 commencement of a proceeding in rehabilitation or liquidation shall be  
8 constructive notice upon the recording of a copy of the petition for or order  
9 of rehabilitation or liquidation with the recorder of deeds in the county  
10 where any real property in question is located. The exercise by a court of  
11 the United States or any state or jurisdiction to authorize or effect a  
12 judicial sale of real property of the insurer within any county in any state  
13 shall not be impaired by the pendency of such a proceeding unless the copy is  
14 recorded in the county prior to the consummation of the judicial sale.

15       (b) After a petition for rehabilitation or liquidation has been filed,  
16 and before either the receiver takes possession of the property of the  
17 insurer or an order of rehabilitation or liquidation is granted:

18               (1) A transfer of any of the property of the insurer, other than  
19 real property, made to a person acting in good faith shall be valid against  
20 the receiver if made for a present fair equivalent value; or, if not made for  
21 a present fair equivalent value, then to the extent of the present  
22 consideration actually paid therefor, for which amount the transferee shall  
23 have a lien on the property so transferred.

24               (2) A person indebted to the insurer or holding property of the  
25 insurer may, if acting in good faith, pay the indebtedness or deliver the  
26 property, or any part thereof, to the insurer or upon his order, with the  
27 same effect as if the petition were not pending.

28               (3) A person having actual knowledge of the pending  
29 rehabilitation or liquidation shall be deemed not to act in good faith.

30               (4) A person asserting the validity of a transfer under this  
31 section shall have the burden of proof. Except as elsewhere provided in this  
32 section, no transfer by or on behalf of the insurer after the date of the  
33 petition for liquidation by any person other than the liquidator shall be  
34 valid against the liquidator.

35       (c) Every person receiving any property from the insurer or any  
36 benefit thereof, which is a fraudulent transfer under subsection (a), shall

1 be personally liable therefor and shall be bound to account to the  
2 liquidator.

3 (d) Nothing in this act shall impair the negotiability of currency or  
4 negotiable instruments.

5

6 SECTION 32. Arkansas Code 23-68-132 is amended to read as follows:

7 23-68-132. ~~Assessment prima facie correct—Procedures to collect~~  
8 ~~assessment.~~ Voidable preferences and liens.

9 ~~(a) Any assessment of a subscriber or member of an insurer made by the~~  
10 ~~commissioner pursuant to an order of the court fixing the aggregate amount of~~  
11 ~~the assessment against all members or subscribers and approving the~~  
12 ~~classification and formula made by the commissioner under § 23-68-131(a)~~  
13 ~~shall be prima facie correct.~~

14 ~~(b) Each member or subscriber shall be notified of the amount of~~  
15 ~~assessment to be paid by him by written notice mailed to the address of the~~  
16 ~~member or subscriber last of record with the insurer. Failure of the member~~  
17 ~~or subscriber to receive the notice so mailed, within the time specified~~  
18 ~~therein or at all, shall be no defense in any proceeding to collect the~~  
19 ~~assessment.~~

20 ~~(c) If any member or subscriber fails to pay the assessment within the~~  
21 ~~period specified in the notice, which period shall not be less than twenty~~  
22 ~~(20) days after mailing, the commissioner may obtain an order in the~~  
23 ~~delinquency proceedings requiring the member or subscriber to show cause at a~~  
24 ~~time and place fixed by the court why judgment should not be entered against~~  
25 ~~the member or subscriber for the amount of the assessment together with all~~  
26 ~~costs, and a copy of the order and a copy of the petition therefor shall be~~  
27 ~~served upon the member or subscriber within the time and in the manner~~  
28 ~~designated in the order.~~

29 ~~(d) If the subscriber or member after due service of a copy of the~~  
30 ~~order and petition referred to in subsection (c) of this section is made upon~~  
31 ~~him:-~~

32 ~~(1) Fails to appear at the time and place specified in the~~  
33 ~~order, judgment shall be entered against him as prayed for in the petition;~~  
34 ~~or~~

35 ~~(2) Appears in the manner and form required by law in response~~  
36 ~~to the order, the court shall hear and determine the matter and enter a~~

1 ~~judgment in accordance with its decision.~~

2 ~~(e) The commissioner may collect the assessment through any other~~  
3 ~~lawful means.~~

4 (a)(1) A preference is a transfer of any of the property of an insurer  
5 to or for the benefit of, a creditor, for or on account of an antecedent  
6 debt, made or suffered by the insurer within one (1) year before the filing  
7 of a successful petition for liquidation under this act, the effect of which  
8 transfer may be to enable the creditor to obtain a greater percentage of this  
9 debt than another creditor of the same class would receive. If a liquidation  
10 order is entered while the insurer is already subject to a rehabilitation  
11 order, then the transfers shall be deemed preferences if made or suffered  
12 within one (1) year before the filing of the successful petition for  
13 rehabilitation, or within two (2) years before the filing of the successful  
14 petition for liquidation, whichever time is shorter.

15 (2) Any preference may be avoided by the liquidator if:

16 (A) The insurer was insolvent at the time of the transfer;

17 and

18 (B) The transfer was made within four (4) months before  
19 the filing of the petition; or

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

24 (D) The creditor receiving it was an officer, or any  
25 employee or attorney or other person who was in fact in a position of  
26 comparable influence in the insurer to an officer, whether or not he held  
27 such position, or any shareholder holding directly or indirectly more than  
28 five percent (5%) of any class of any equity security issued by the insurer,  
29 or any other person, firm, corporation, association, or aggregation of  
30 persons with whom the insurer did not deal at arm's length.

31 (3) Where the preference is voidable, the liquidator may recover  
32 the property or, if it has been converted, its value from any person who has  
33 received or converted the property; except where a bona fide purchaser or  
34 lienor has given less than fair equivalent value, the purchaser or lienor  
35 shall have a lien upon the property to the extent of the consideration  
36 actually given. Where a preference by way of lien or security title is

1 voidable, the court may on due notice order the lien or title to be preserved  
2 for the benefit of the estate, in which event the lien or title shall pass to  
3 the liquidator.

4 (b)(1) A transfer of property other than real property shall be deemed  
5 to be made or suffered when it becomes so far perfected that no subsequent  
6 lien obtainable by legal or equitable proceedings on a simple contract could  
7 become superior to the rights of the transferee.

8 (2) A transfer of real property shall be deemed to be made or  
9 suffered when it becomes so far perfected that no subsequent bona fide  
10 purchaser from the insurer could obtain rights superior to the rights of the  
11 transferee.

12 (3) A transfer, which creates an equitable lien, shall not be  
13 deemed to be perfected if there are available means by which a legal lien  
14 could be created.

15 (4) A transfer not perfected prior to the filing of a petition  
16 for liquidation shall be deemed to be made immediately before the filing of  
17 the successful petition.

18 (5) The provisions of this subsection apply whether or not there  
19 are or were creditors who might have obtained liens or persons who might have  
20 become bona fide purchasers.

21 (c)(1) A lien obtainable by legal or equitable proceedings upon a  
22 simple contract is one arising in the ordinary course of such proceedings  
23 upon the entry or docketing of a judgment or decree, or upon attachment,  
24 garnishment, execution, or like process, whether before, upon, or after  
25 judgment or decree and whether before or upon levy. It does not include  
26 liens, which under applicable law are given a special priority over other  
27 liens, which are prior in time.

28 (2) A lien obtainable by legal or equitable proceedings could  
29 become superior to the rights of a transferee, or a purchaser could obtain  
30 rights superior to the rights of a transferee within the meaning of  
31 subsection (b), if such consequences would follow only from the lien or  
32 purchase itself, or from the lien or purchase followed by any step wholly  
33 within the control of the respective lienholder or purchaser, with or without  
34 the aid of ministerial action by public officials. Such a lien could not,  
35 however, become superior and such a purchase could not create superior rights  
36 for the purpose of subsection (b) through any acts subsequent to the



1 obtaining of such a lien or subsequent to such a purchase which require the  
2 agreement or concurrence of any third party or which require any further  
3 judicial action or ruling.

4 (d) A transfer of property for or on account of a new and  
5 contemporaneous consideration which is deemed under subsection (b) to be made  
6 or suffered after the transfer because of delay in perfecting it does not  
7 thereby become a transfer for or on account of an antecedent debt if any acts  
8 required by the applicable law to be performed in order to prefect the  
9 transfer as against liens or bona fide purchasers' rights are performed  
10 within twenty-one (21) days or any period expressly allowed by the law,  
11 whichever is less. A transfer to secure a future loan, if such a loan is  
12 actually made, or a transfer, which becomes security for a future loan, shall  
13 have the same effect as a transfer for or on account of a new and  
14 contemporaneous consideration.

15 (e) If any lien deemed voidable under subsection (a)(2) has been  
16 dissolved by the furnishing of a bond or other obligation, the surety on  
17 which has been indemnified directly or indirectly by the transfer of or the  
18 creation of a lien upon any property of an insurer before the filing of a  
19 petition under this act which results in a liquidation order, the  
20 indemnifying transfer or lien shall also be deemed voidable.

21 (f) The property affected by any lien deemed voidable under  
22 subsections (a) and (e) shall be discharged from the lien, and that property  
23 and any of the indemnifying property transferred to or for the benefit of a  
24 surety shall pass to the liquidator, except that the court may on due notice  
25 order any such lien to be preserved for the benefit of the estate and the  
26 court may direct that such conveyance be executed as may be proper or  
27 adequate to evidence the title of the liquidator.

28 (g) The Pulaski County Circuit Court shall have summary jurisdiction  
29 of any proceeding by the liquidator to hear and determine the rights of any  
30 parties under this section. Reasonable notice of any hearing in the  
31 proceeding shall be given to all parties in interest, including the obligee  
32 of a releasing bond or other like obligation. Where an order is entered for  
33 the recovery of indemnifying property in kind or for the avoidance of an  
34 indemnifying lien, the court, upon application of any party in interest,  
35 shall in the same proceeding ascertain the value of the property or lien, and  
36 if the value is less that the amount for which the property is indemnity or

1 than the amount of the lien, the transferee or lienholder may elect to retain  
2 the property or lien upon payment of its value, as ascertained by the court,  
3 to the liquidator, within such reasonable times as the court shall fix.

4 (h) The liability of the surety under a releasing bond or other like  
5 obligation shall be discharged to the extent of the value of the indemnifying  
6 property recovered or the indemnifying lien nullified and avoided by the  
7 liquidator, or where the property is retained under subsection (g) to the  
8 extent of the amount paid to the liquidator.

9 (i) If a creditor has been preferred, and afterward in good faith  
10 gives the insurer further credit without security of any kind, for property  
11 which becomes a part of the insurer's estate, the amount of the new credit  
12 remaining unpaid at the time of the petition may be set off against the  
13 preference which would otherwise be recoverable from him.

14 (j) If an insurer shall, directly or indirectly, within four (4)  
15 months before the filing of a successful petition for liquidation under this  
16 act, or at any time in contemplation of a proceeding to liquidate it, pay  
17 money or transfer property to an attorney at law for services rendered or to  
18 be rendered, the transactions may be examined by the court on its own motion  
19 or shall be examined by the court on petition of the liquidator and shall be  
20 held valid only to the extent of a reasonable amount to be determined by the  
21 court, and the excess may be recovered by the liquidator for the benefits of  
22 the estate, provided that where the attorney is in a position of influence in  
23 the insurer or an affiliate thereof payment of any money or the transfer of  
24 any property to the attorney at law for services rendered or to be rendered  
25 shall be governed by the provision of subsection (a)(2)(D).

26 (k)(1) Every officer, manager, employee, shareholder, member,  
27 subscriber, attorney or any other person acting on behalf of the insurer, who  
28 knowingly participates in giving any preference when he or she has reasonable  
29 cause to believe the insurer is or is about to become insolvent at the time  
30 of the preference, shall be personally liable to the liquidator for the  
31 amount of the preference. It is permissible to infer that there is a  
32 reasonable cause to so believe if the transfer was made within four (4)  
33 months before the date of filing of this successful petition for liquidation.

34 (2) Every person receiving any property from the insurer or the  
35 benefit thereof as a preference voidable under subsection (a) shall be  
36 personally liable therefor and shall be bound to account to the liquidator.

1                   (3) Nothing in this subsection shall prejudice any other claim  
 2 by the liquidator against any person.

3  
 4           SECTION 33. Arkansas Code 23-68-133 is amended to read as follows:

5           23-68-133. ~~Reinsurer's liability.~~ Claims of holders of void or  
 6 voidable rights.

7           ~~(a) The amount recoverable by the liquidator from reinsurers shall not~~  
 8 ~~be reduced as a result of the delinquency proceedings, regardless of any~~  
 9 ~~provision in the reinsurance contract or other agreement.~~

10           ~~(b) All reinsurance contracts to which an insurer domiciled in this~~  
 11 ~~state is a party that do not contain the provisions required with respect to~~  
 12 ~~the obligation of reinsurers in the event of insolvency of the reinsured in~~  
 13 ~~order to obtain credit for reinsurance or other applicable statutes, shall be~~  
 14 ~~construed to contain the following provisions:~~

15                   ~~(1)(A) In the event of insolvency and the appointment of a~~  
 16 ~~receiver, the reinsurance obligation shall be payable to the receiver upon~~  
 17 ~~demand, with reasonable provision for verification, on the basis of claims~~  
 18 ~~allowed pursuant to this subchapter, without diminution because of the~~  
 19 ~~insolvency or because the receiver has failed to pay all or a portion of any~~  
 20 ~~claims.~~

21                           ~~(B) Payments by the reinsurer as set forth above shall be~~  
 22 ~~made directly to the ceding insurer or to its receiver; and~~

23                   ~~(2)(A) The receiver of a reinsured company shall give written~~  
 24 ~~notice of the pendency of a claim against the reinsured company indicating~~  
 25 ~~the policy or bond reinsured within a reasonable time after the claim is~~  
 26 ~~filed.~~

27                           ~~(B) The receiver of a reinsured company may arrange for~~  
 28 ~~the giving of notice of the pendency of claims on reinsured policies by~~  
 29 ~~guaranty funds or by other persons responsible for the adjustment and~~  
 30 ~~settlement of the reinsured company's claims.~~

31                           ~~(C) Failure to give notice shall not excuse the obligation~~  
 32 ~~of the reinsurer unless it is substantially prejudiced thereby.~~

33                           ~~(D) The reinsurer may interpose, at its own expense, in~~  
 34 ~~the proceeding where the claim is to be adjudicated, any defense or defenses~~  
 35 ~~which it may deem available to the reinsured company or its receiver.~~

36           ~~(c)(1) Payments by the reinsurer as set forth shall be made directly~~

1 ~~to the ceding insurer or its receiver, except where the contract of insurance~~  
 2 ~~or reinsurance specifically provides for another payee in the event of~~  
 3 ~~insolvency of the ceding insurer in accordance with any applicable~~  
 4 ~~requirements of statutes, rules, or orders of the domiciliary state of the~~  
 5 ~~ceding insurer.~~

6 ~~(2) The receiver shall be entitled to recover from any person~~  
 7 ~~who unsuccessfully makes a claim directly against the reinsurer the~~  
 8 ~~receiver's attorneys' fees and expenses incurred in preventing any collection~~  
 9 ~~by the person.~~

10 ~~(d) This section shall become effective on and after January 1, 1998,~~  
 11 ~~and shall apply to all contracts entered into, renewed, extended, or amended~~  
 12 ~~on or after that date, and to obligations arising from any business written~~  
 13 ~~or transaction occurring covered by reinsurance after January 1, 1998,~~  
 14 ~~pursuant to any contract, including those in existence prior to the effective~~  
 15 ~~date.~~

16 (a) No claims of a creditor who has received or acquired a preference,  
 17 lien, conveyance, transfer, assignment or encumbrance voidable under this  
 18 act, shall be allowed unless he surrenders the preference, lien, conveyance,  
 19 transfer, assignment or encumbrance. If the avoidance is effected by a  
 20 proceeding in which a final judgment has been entered, the claim shall not be  
 21 allowed unless the money is paid or the property is delivered to the  
 22 liquidator within thirty (30) days from the date of the entering of the final  
 23 judgment, except that the court having jurisdiction over the liquidation may  
 24 allow further time if there is an appeal or other continuation of the  
 25 proceeding.

26 (b) A claim allowable under subsection (a) by reason of the avoidance,  
 27 whether voluntary or involuntary, or a preference, lien, conveyance,  
 28 transfer, assignment or encumbrance, may be filed as an excused late filing  
 29 under § 23-68-139 if filed within thirty (30) days from the date of the  
 30 avoidance, or within the further time allowed by the court under subsection  
 31 (a).

32  
 33 SECTION 34. Arkansas Code 23-68-134 is amended to read as follows:

34 23-68-134. ~~Priority of distribution of claims—Legislative intent.~~  
 35 Setoffs.

36 ~~It is the intent of the General Assembly that § 23-68-126 as amended by~~

~~this act apply to pending and future claims in existing delinquency proceedings as well as to claims in delinquency proceedings arising after July 2, 1997; that, in light of the ruling of the United States Supreme Court in U.S. Department of the Treasury v. Fabe, 113 S.Ct. 2202 (1993), the General Assembly considers this act to be curative, remedial and not affecting substantive rights in the distribution of assets in delinquency proceedings; that this Act is necessary to cure any potential defect in the present priority of distribution scheme that may result from the Fabe decision and to preserve the original intent of the General Assembly with regard to the priorities of payment in delinquency proceedings.~~

(a) Mutual debts or mutual credits whether arising out of one or more contracts between an insurer that is subject to a receivership proceeding under this Chapter and another person shall be setoff and the balance only shall be allowed or paid except as provided in subsection (b) of this section and in § 23-96-110(f)(4).

(b) No setoff shall be allowed in favor of any person when:

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

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

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

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

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

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

1       (c) The provisions of subdivision (b)(6) of this section shall apply to  
2 all contracts entered into, renewed, extended, or amended on or after the  
3 effective date of this act, and to debts or credits arising from any business  
4 written after such date pursuant to any such contract. For purposes of this  
5 subsection, any change in the terms of or consideration for any such contract  
6 shall be deemed an amendment of the contract.

7  
8       SECTION 35. Arkansas Code Title 23, Chapter 68, Subchapter 1 is  
9 amended to add additional sections to read as follows:

10       23-68-135. Assessments.

11       (a) As soon as practicable, but not more than two (2) years from the  
12 date of an order of liquidation under § 23-68-120 of an insurer issuing  
13 assessable policies, the liquidator shall make a report to the court setting  
14 forth:

15               (1) The reasonable value of the assets of the insurer;

16               (2) The insurer's probable total liabilities;

17               (3) The probable aggregate amount of the assessment necessary to  
18 pay all claims of creditors and expenses in full, including expenses of  
19 administration and costs of collecting the assessment; and

20               (4) A recommendation as to whether or not an assessment should  
21 be made and in what amount.

22       (b)(1) Upon the basis of the report provided in subsection (a),  
23 including any supplements and amendments thereto, the Pulaski County Circuit  
24 Court may levy one or more assessments against all members of the insurer who  
25 are subject to assessment.

26               (2) Subject to any applicable legal limits on accessibility, the  
27 aggregate assessment shall be for the amount that the sum of the probable  
28 liabilities, the expenses of administration, and the estimated cost of  
29 collection of the assessment, exceeds the value of existing assets, with due  
30 regard being given to assessments that cannot be collected economically.

31       (c) After levy of assessment under subsection (b), the liquidator  
32 shall issue an order directing each member who has not paid the assessment  
33 pursuant to the order, to show cause why the liquidator should not pursue a  
34 judgment therefor.

35       (d) The liquidator shall give notice of the order to show cause by  
36 publication and by first class mail to each member liable thereunder mailed

1 to the member's last known address as it appears on the insurer's records, at  
2 least twenty (20) days before the return day of the order to show cause.

3 (e)(1) If a member does not appear and serve duly verified objections  
4 upon the liquidator on or before the return day of the order to show cause  
5 under subsection (c), the court shall make an order adjudging the member  
6 liable for the amount of the assessment against the member pursuant to  
7 subsection (c) together with costs, and the liquidator shall have a judgment  
8 against the member therefor.

9 (2) If on or before such return day, the member appears and  
10 serves duly verified objections upon the liquidator, the commissioner may  
11 hear and determine the matter or may appoint a referee to hear it and make  
12 such order as the facts warrant. In the event that the commissioner  
13 determines that such objections do not warrant relief from assessment, the  
14 member may request the court to review the matter and vacate the order to  
15 show cause.

16 (f) The liquidator may enforce any order or collect any judgment under  
17 subsection (e) by any lawful means.

18  
19 23-68-136. Reinsurer's liability.

20 (a) The amount recoverable by the liquidator from reinsurers shall not  
21 be reduced as a result of the delinquency proceedings, regardless of any  
22 provision in the reinsurance contract or other agreement.

23 (b) Reinsurance shall be payable under a contract or contracts  
24 reinsured by the assuming insurer on the basis of reported claims allowed by  
25 the liquidation court, without diminution because of the insolvency of the  
26 ceding insurer. Such payments shall be made directly to the ceding insurer  
27 or to its domiciliary liquidator except:

28 (1) Where the contract or other written agreement specifically  
29 provides another payee of such reinsurance in the event of the insolvency of  
30 the ceding insurer; or

31 (2) Where the assuming insurer, with the consent of the direct  
32 insured or insureds, has assumed such policy obligations of the ceding  
33 insurer as direct obligations of the assuming insurer to the payees under  
34 such policies and in substitution for the obligations of the ceding insurer  
35 to such payees.

36 (c) Notwithstanding subsection (b), in the event that a life and health

1 insurance guaranty association has made the election to succeed to the rights  
2 and obligations of the insolvent insurer under the contract of reinsurance,  
3 then the reinsurer's liability to pay covered reinsured claims shall continue  
4 under the contract of reinsurance, subject to the payment to the reinsurer of  
5 the reinsurance premiums for such coverage. Payment for such reinsured  
6 claims shall only be made by the reinsurer pursuant to the direction of the  
7 guaranty association or its designated successor. Any payment made at the  
8 direction of the guaranty association or its designated successor by the  
9 reinsurer will discharge the reinsurer of all further liability to any other  
10 party for said claim payment.

11  
12 23-68-137. Recovery of premiums owed.

13 (a)(1) An insured is obligated to pay, either directly to the  
14 liquidator or to any agent that has paid or is obligated to pay the  
15 liquidator on behalf of the insured, any unpaid earned premium or  
16 retrospectively rated premium due the insurer based on the termination of  
17 coverage under § 23-68-122 of this act. Premium on surety business is deemed  
18 earned at inception if no policy term can be determined. All other premium  
19 will be deemed earned and will be prorated over the determined policy term,  
20 regardless of any provision in the bond, guaranty, contract or other  
21 agreement. If a claim for losses incurred under a policy is approved by the  
22 court under § 23-68-148(b), then all premium for the full policy term is  
23 deemed earned.

24 (2) Any person, other than the insured, responsible for the  
25 payment of a premium is obligated to pay any unpaid premium, including any  
26 amount representing commissions, for the full policy term due the insurer at  
27 the time of the entry of the liquidation order, whether earned or unearned  
28 based on the termination of coverage under § 23-68-122 of this act, as shown  
29 on the records of the insurer. The unpaid premium due the insurer from any  
30 person other than the insured excludes any premium not collected from the  
31 insured and not earned based on the termination of coverage under § 23-68-122  
32 of this act.

33 (3) The liquidator shall also have the right to recover from any  
34 person, other than the insured, responsible for the payment of a premium, any  
35 unearned commission of such person based on the termination of coverage under  
36 § 23-68-122. Credits or setoffs or both shall not be allowed to an agent,



1 broker, premium finance company, or any other person against unpaid premium  
2 due the insurer for any amounts advanced to the insurer by such person on  
3 behalf of, but in the absence of a payment by, the insured, or for any other  
4 amount paid by such person to any other person after the entry of the order  
5 of liquidation.

6 (4) Persons that collect premium, or finance premium under a  
7 premium finance contract, that is due the insurer in liquidation are deemed  
8 to hold that premium in trust as a fiduciary for the benefit of the insurer  
9 and to have availed themselves of the laws of this state, regardless of any  
10 provision in any agency contract or other agreement.

11 (5) Any premium finance company is obligated to pay any amounts  
12 due the insurer from premium finance contracts, whether the premium is earned  
13 or unearned. The liquidator has the right to collect any unpaid financed  
14 premium directly from the premium finance company, by taking an assignment of  
15 the underlying premium finance contracts, or directly from the insured that  
16 is a party to the premium finance contract.

17 (b) Upon satisfactory evidence of a violation of this section, by a  
18 person other than an insured, the commissioner may pursue either one or all  
19 of the following courses of action:

20 (1) Suspend, revoke, or refuse to renew the licenses of such  
21 offending party or parties.

22 (2) Impose a penalty of not more than one thousand dollars  
23 (\$1,000) for each and every act in violation of this section by said party or  
24 parties.

25 (3) Impose any other sanction or penalty allowed for by the  
26 commissioner.

27 (c) Before the commissioner shall take any action as set forth in  
28 subsection (b), written notice shall be given to the person, company,  
29 association or exchange accused of violating the law, stating specifically  
30 the nature of the alleged violation, and fixing a time and place, at least  
31 ten (10) days thereafter, when a hearing on the matter shall be held. After  
32 a hearing, or upon failure of the accused to appear at a hearing, the  
33 commissioner, if a violation is found, shall impose such of the penalties  
34 under subsection (b) as deemed advisable.

35  
36 23-68-138. Domiciliary liquidator's proposal to distribute assets.

1       (a) Within one hundred twenty (120) days of a final determination of  
2 insolvency of an insurer by a court of competent jurisdiction of this state,  
3 the liquidator shall make application to the court for approval of a proposal  
4 to disburse assets out of marshalled assets, from time to time as such assets  
5 become available, to a guaranty association having obligations because of the  
6 insolvency. If the liquidator determines that there are insufficient assets  
7 to disburse, the application required by this section shall be considered  
8 satisfied by a filing by the liquidator stating the reasons for this  
9 determination.

10       (b) The proposal shall at least include provisions for:

11               (1) Reserving amounts for the payment of expenses of  
12 administration and the payment of claims of secured creditors, to the extent  
13 of the value of the security held, and claims falling within the priorities  
14 established in § 23-68-147, Classes 1 and 2;

15               (2) Disbursement of the assets marshalled to date and subsequent  
16 disbursement of assets, as they become available;

17               (3) Equitable allocation of disbursements to each of the  
18 guaranty associations entitled thereto;

19               (4) The securing by the liquidator from each of the guaranty  
20 associations entitled to disbursements pursuant to this section of an  
21 agreement to return to the liquidator such assets, together with investment  
22 income actually earned on assets previously disbursed, as may be required to  
23 pay claims of secured creditors and claims falling within the priorities  
24 established in § 23-68-147 in accordance with such priorities. No bond shall  
25 be required of the association; and

26               (5) A full report to be made by each guaranty association to the  
27 liquidator accounting for all assets so disbursed to the association, all  
28 disbursements made therefrom, any interest earned by the association on the  
29 assets and any other matter as the court may direct.

30       (c) The liquidator's proposal shall provide for disbursements to the  
31 associations in amounts estimated at least equal to the claim payments and  
32 allocated loss adjustment expenses made or to be made thereby for which such  
33 associations could assert a claim against the liquidator, and shall further  
34 provide that if the assets available for disbursement from time to time do  
35 not equal or exceed the amount of claim payments made or to be made by the  
36 association, then disbursements shall be in the amount of available assets.

1 The liquidator shall annually make disbursements to the associations to the  
2 extent of available assets subject to the provisions of subsection (b)(1).  
3 The liquidator shall liquidate the assets of the insurer in an expeditious  
4 manner, but is not required to make forced or quick sales that would result  
5 in obtaining less than market value for assets. Unless otherwise provided  
6 for by the court, the reserves of the insolvent insurer as reflected in its  
7 records on the date of the order of liquidation shall be used for purposes of  
8 determining the pro rata allocations of funds among eligible associations.

9 (d) The liquidator's proposal shall, with respect to an insolvent  
10 insurer writing life or health insurance or annuities, provide for  
11 disbursements of assets to any guaranty association covering life or health  
12 insurance or annuities or to any other entity or organization reinsuring,  
13 assuming or guaranteeing policies or contracts of insurance under the acts  
14 creating such associations.

15 (e) Notice of the application shall be given to the association in and  
16 to the commissioners of insurance of each of the states. Any such notice  
17 shall be deemed to have been given when deposited in the United States  
18 certified mails, first class postage prepaid, at least thirty (30) days prior  
19 to submission of the application to the court. Action on the application may  
20 be taken by the court provided the above required notice has been given, and  
21 provided further that the liquidator's proposal complies with subsection  
22 (b)(1) and (b)(2).

23 (f) The liquidator may offset the amount to be disbursed to the  
24 applicable guaranty association and any entity or person performing a  
25 function in any state similar to that function performed by the applicable  
26 guaranty association by the amount of any "special deposit" and any other  
27 statutory deposit or asset of the insolvent insurer held in that state unless  
28 the state or ancillary receiver agrees to promptly return the asset to the  
29 domiciliary liquidator in this state.

30  
31 23-68-139. Filing of claims.

32 (a) Proof of all claims shall be filed with the liquidator in the form  
33 required by § 23-68-140 on or before the last day for filing specified in the  
34 notice required under § 23-68-125, except that proof of claims for cash  
35 surrender values or other investment values in life insurance and annuities  
36 need not be filed unless the liquidator expressly so requires. Provided,

1 however, only upon application of the liquidator, the court may allow  
2 alternative procedures and requirements for the filing of proofs of claim or  
3 for allowing or proving claims. Upon application, if the court dispenses  
4 with the requirements of filing a proof of claim by a person, class or group  
5 of persons, a proof of claim for such persons shall be deemed as having been  
6 filed for all purposes, including the application of guaranty association or  
7 foreign guaranty association laws.

8 (b) The liquidator may permit a claimant making a late filing to share  
9 in distributions, whether past or future, as if the claimant were not late,  
10 to the extent that the payment will not prejudice the orderly administration  
11 of the liquidation, under the following circumstances:

12 (1) The existence of the claim was not known to the claimant and  
13 that the claimant filed the claim as promptly thereafter as reasonably  
14 possible after learning of it;

15 (2) A transfer to a creditor was avoided under §§ 23-68-129, 23-  
16 68-131 or 23-68-132, or was voluntarily surrendered under § 23-68-133, and  
17 that the filing satisfies the conditions of § 23-68-133; or

18 (3) The valuation under § 23-68-145 of security held by a  
19 secured creditor shows a deficiency, which is filed within thirty (30) days  
20 after the valuation.

21 (c) The liquidator may consider any claim filed late which is not  
22 covered by subsection (b), and permit it to receive distributions, which are  
23 subsequently declared on any claims of the same or lower priority if the  
24 payment does not prejudice the orderly administration of the liquidation.  
25 The late filing claimant shall receive, at each distribution, the same  
26 percentage of the amount allowed on the claim as is then being paid to  
27 claimants of any lower priority. This shall continue until the claim has  
28 been paid in full.

29  
30 23-68-140. Proof of claim.

31 (a) Proof of claim shall consist of a statement signed by the claimant  
32 that includes all of the following that are applicable:

33 (1) The particulars of the claim including the consideration  
34 given for it;

35 (2) The identity and amount of the security on the claim;

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

1           (4) That the sum claimed is justly owing and that there is no  
2 setoff, counterclaim or defense to the claim;

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

5           (6) A copy of the written instrument which is the foundation of  
6 the claim;

7           (7) The name and address of the claimant and the attorney who  
8 represents the claimant, if any; and

9           (8) The social security or federal employer identification  
10 number of the claimant.

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

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

19           (d) No judgment or order against an insured or the insurer entered  
20 after the date of filing of a successful petition for liquidation, and no  
21 judgment or order against an insured or the insurer entered at any time by  
22 default or by collusion need be considered as evidence of liability or of  
23 quantum of damages. No judgment or order against an insured or the insurer  
24 entered within four (4) months before the filing of the petition need be  
25 considered as evidence of liability or of the quantum of damages.

26           (e) A guaranty association shall be permitted to file a single omnibus  
27 proof of claim for all claims of the association in connection with payment  
28 of claims of the insolvent insurer. The omnibus proof of claim may be  
29 periodically updated by the association, and the association may be required  
30 to submit a reasonable amount of documentation in support of the claim.

31  
32           23-68-141. Special claims.

33           (a) Claims made under employment contracts by directors, principal  
34 officers, or persons in fact performing similar functions or having similar  
35 powers are limited to payment for services rendered prior to the issuance of  
36 any order of rehabilitation or liquidation under §§ 23-68-117 or 23-68-120.

1 (b) When a liquidation order has been entered in a proceeding against  
2 an insurer, any insured, reinsured, reinsurer, third party person who has a  
3 cause of action against an insured of the insurer, or any other person or  
4 entity that has a claim or cause of action against the insurer, shall have  
5 the right to file a claim in the proceeding, regardless of the fact that the  
6 claim may be contingent, unliquidated or immature. For purposes of this  
7 section:

8 (1) A claim is contingent if the accident, casualty, disaster or  
9 loss insured or reinsured against occurred on or before the date fixed under  
10 § 23-68-120, but the act or event triggering the company's obligation to pay  
11 has not occurred as of that date;

12 (2) A claim is unliquidated if the amount of the claim has not  
13 been determined;

14 (3) A claim is immature if payment on the claim is not yet due.

15 (c) A contingent, unliquidated or immature claim may share in a  
16 distribution of assets provided that, as of the time of the allowance or  
17 disallowance of the claim by the court:

18 (1) If the claim was a contingent claim against the insurer as  
19 of the date established under § 23-68-120, the claimant has presented proof  
20 of the insurer's obligation to pay reasonably satisfactory to the receiver.

21 (2) If the claim was a contingent claim as of the date  
22 established under § 23-68-120 of this act and was based upon a cause of  
23 action against an insured of the insurer:

24 (A) It may be reasonably inferred from proof presented  
25 upon the claim that the claimant would be able to obtain a judgment;

26 (B) The person has furnished suitable proof, unless the  
27 court for good cause shown shall otherwise direct, that no further valid  
28 claims can be made against the insurer arising out of the cause of action  
29 other than those already presented; and

30 (C) The total liability of the insurer to all claimants  
31 arising out of the same act shall be no greater than its total liability  
32 would be were it not in liquidation. In those cases, insureds may include in  
33 contingent claims reasonable attorney fees for services rendered after the  
34 date of liquidation, in defense of claims or suits covered by the insured's  
35 policy, provided the attorney fees have been paid by the insured and evidence  
36 of payment is presented to the receiver.

1           (3) If the claim was unliquidated as of the date established  
2 under § 23-68-120, its amount has been determined. In those cases, the  
3 determination and allowance of unliquidated claims may be made by estimate  
4 whenever the receiver determines that either liquidation of the claim would  
5 unduly delay the administration of the liquidation proceeding, or that the  
6 administrative expenses of processing and adjudicating the claims or group of  
7 claims of a similar type would be unduly excessive when compared with the  
8 assets that are estimated to be available for distribution with respect to  
9 the claim. Any estimate shall be based upon an accepted method of valuing  
10 claims with reasonable certainty, such as actuarial evaluation; or

11           (4) If the claim was immature as of the date established under  
12 §23-68-120, it shall be discounted at the higher of the legal rate of  
13 interest accruing on judgments or the rate of interest available on United  
14 States Treasury securities of approximately the same maturity.

15           (d) Notwithstanding the foregoing, any insured shall have the right to  
16 file a claim for the protection afforded under the insured's policy,  
17 irrespective of whether a claim is then known, if the policy is an occurrence  
18 policy. Thereafter, at such time that a specific claim is made by or against  
19 the insurer, the insured shall supplement his claim and the receiver shall  
20 treat the same as a contingent, unliquidated or immature claim. Any such  
21 claims of policyholders for the protection under an occurrence policy  
22 remaining at or near the closing of the estate shall be disposed of in  
23 accordance with § 23-68-148(c).

24  
25           23-68-142. Special provisions for third party claims.

26           (a) Whenever any third party asserts a cause of action against an  
27 insured of an insurer in liquidation, the third party may file a claim with  
28 the liquidator on or before the last day for filing claims.

29           (b) Whether or not the third party files a claim, the insured may file  
30 a claim on the insured's own behalf in the liquidation. To the extent the  
31 insured files a claim, it is sufficient to cover all related third party  
32 claims. If the insured fails to file a claim by the date for filing claims  
33 specified in the order of liquidation or within sixty (60) days after mailing  
34 of the notice required by § 23-68-125, whichever is later, the insured is an  
35 unexcused late filer.

36           (c) The liquidator shall make recommendations to the court under § 23-

1 68-147, for the allowance of an insured's claim under subsection (b) after  
2 consideration of the probable outcome of any pending action against the  
3 insured on which the claim is based, the probable damages recoverable in the  
4 action and the probable costs and expenses of defense. After allowance by  
5 the court, the liquidator shall withhold any dividends payable on the claim,  
6 pending the outcome of litigation and negotiation with the insured. Whenever  
7 it seems appropriate, the liquidator shall reconsider the claim on the basis  
8 of additional information and amend the recommendations to the court. The  
9 insured shall be afforded the same notice and opportunity to be heard on all  
10 changes in the recommendation as in its initial determination. The court may  
11 amend its allowance, as it thinks appropriate. As claims against the insured  
12 are settled or barred, the insured shall be paid from the amount withheld the  
13 same percentage dividend as was paid on other claims of like property, based  
14 on the lesser of the amount actually recovered from the insured by action or  
15 paid by agreement plus the reasonable costs and expense of defense, or the  
16 amount allowed on the claims by the court. After all claims are settled or  
17 barred, any sum remaining from the amount withheld shall revert to the  
18 undistributed assets of the insurer. Delay in final payment under this  
19 subsection shall not be a reason for unreasonable delay of final distribution  
20 and discharge of the liquidator.

21 (d) If several claims founded upon one policy are filed, whether by  
22 third parties or as claims by the insured under this section, and the  
23 aggregate allowed amount of the claims is equal to the aggregate policy  
24 limits, no further amounts may be allowed and any additional claims may be  
25 rejected. Claims by the insured shall be evaluated as in subsection (c). If  
26 any insured's claim is subsequently reduced under subsection (c), the amount  
27 thus freed shall be apportioned ratably among the claims which have been  
28 reduced under this subsection.

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

31  
32 23-68-143. Disputed claims.

33 (a) When a claim is denied in whole or in part by the liquidator,  
34 written notice of the determination shall be given to the claimant or the  
35 claimant's attorney by first class mail at the address shown in the proof of  
36 claim. Within thirty (30) days from the mailing of the notice, the claimant



1 may file objections with the liquidator. Any filed objections shall clearly  
2 set out all facts and the legal basis, if any, for the objections and the  
3 reasons why the claim should be allowed. If no such filing is made, the  
4 determination is final.

5 (b) Whenever objections are filed with the liquidator and the  
6 liquidator does not alter the determination of the claim as a result of the  
7 objections, the liquidator shall ask the court for a hearing as soon as  
8 practicable and give notice of the hearing by first class mail to the  
9 claimant or the claimant's attorney and to any other persons directly  
10 affected, not less than ten (10) nor more than thirty (30) days before the  
11 date of the hearing. The matter may be heard by the court or by a court-  
12 appointed referee. The hearing shall be conducted on the record in an  
13 informal manner and the formal rules of evidence and civil procedure need not  
14 be strictly applied. Hearings shall be held without a jury. Prehearing  
15 discovery shall be limited to such pretrial discovery as expressly permitted  
16 in arbitration proceedings under the Uniform Arbitration Act.

17 (c) When a disputed claim is heard by a referee, the referee shall  
18 submit written findings of fact and conclusions of law along with the  
19 recommendation for disposition to the court. The referee's recommendation  
20 shall become the final judgment of the court, unless objections to the  
21 referee's recommendation are filed by the liquidator or claimant with the  
22 court within fifteen (15) days after the recommendation is mailed to the  
23 liquidator and claimant.

24 (d) The final disposition by the court of a disputed claim, whether  
25 after a hearing by the court or after a recommendation by a referee, shall be  
26 deemed a final judgment for purposes of appeal.

27 (e) The courts of this state may make special rules of civil procedure  
28 for disputed claims, provided that the rules are not inconsistent with this  
29 act.

30  
31 23-68-144. Claims of surety

32 Whenever an obligee whose claim against an insurer is secured, in whole  
33 or in part, by the undertaking of another person, fails to prove and file  
34 that claim, the other person may do so in the obligee's name, and shall be  
35 subrogated to the rights of the obligee, whether the claim has been filed by  
36 the obligee or by the other person in the obligee's name, to the extent that

1 the obligee discharges the undertaking. In the absence of an agreement with  
2 the obligee to the contrary, the other person shall not be entitled to any  
3 distribution, however, until the amount paid to the obligee on the  
4 undertaking plus the distributions paid on the claim from the insurer's  
5 estate to the obligee equals the amount of the entire claim of the obligee.

6 Any excess received by the obligee shall be held by the obligee in  
7 trust for such other person. The term "other person" as used in this section  
8 is not intended to apply to a guaranty association.

9  
10 23-68-145. Secured creditor's claims

11 (a) The value of any security held by a secured creditor shall be  
12 determined in one of the following ways, as the court may direct:

13 (1) By converting the same into money according to the terms of  
14 the agreement pursuant to which the security was delivered to such creditors;  
15 or

16 (2) By agreement, arbitration, compromise or litigation between  
17 the creditor and the liquidator.

18 (b) The determination shall be under the supervision and control of  
19 the court with due regard for the recommendation of the liquidator. The  
20 amount so determined shall be credited upon the secured claim, and any  
21 deficiency shall be treated as an unsecured claim. If the claimant shall  
22 surrender the claimant's security to the liquidator, the entire claim shall  
23 be allowed as if unsecured.

24  
25 23-68-146. Qualified financial contracts.

26 (a) Notwithstanding any other provision of this act, including any  
27 other provision of this act permitting the modification of contracts, or  
28 other law of a state, no person shall be stayed or prohibited from  
29 exercising:

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

32 (A) The insolvency, financial condition or default of the  
33 insurer at any time, provided that the right is enforceable under applicable  
34 law other than this act; or

35 (B) The commencement of a formal delinquency proceeding  
36 under this act.

1 (2) Any right under a pledge, security, collateral or guarantee  
2 agreement or any other similar security arrangement or credit support  
3 document relating to a netting agreement or qualified financial contract.

4 (3) Subject to any provision of § 23-68-134(b) of this act, any  
5 right to set off or net out any termination value, payment amount, or other  
6 transfer obligation arising under or in connection with a netting agreement  
7 or qualified financial contract where the counterparty or its guarantor is  
8 organized under the laws of the United States or a state or foreign  
9 jurisdiction approved by the Securities Valuation Office (SVO) of the NAIC as  
10 eligible for netting.

11 (b) Upon termination of a netting agreement, the net or settlement  
12 amount, if any, owed by a non-defaulting party to an insurer against which an  
13 application or petition has been filed under this act shall be transferred to  
14 or on the order of the receiver for the insurer, even if the insurer is the  
15 defaulting party, notwithstanding any provision in the netting agreement that  
16 may provide that the non-defaulting party is not required to pay any net or  
17 settlement amount due to the defaulting party upon termination. Any limited  
18 two-way payment provision in a netting agreement with an insurer that has  
19 defaulted shall be deemed to be a full two-way payment provision as against  
20 the defaulting insurer. Any such property or amount shall, except to the  
21 extent it is subject to one or more secondary liens or encumbrances, be a  
22 general asset of the insurer.

23 (c) In making any transfer of a netting agreement or qualified  
24 financial contract of an insurer subject to a proceeding under this act, the  
25 receiver shall either:

26 (1) Transfer to one party, other than an insurer subject to a  
27 proceeding under this act, all netting agreements and qualified financial  
28 contracts between a counterparty or any affiliate of the counterparty and the  
29 insurer that is the subject of the proceeding, including:

30 (A) All rights and obligations of each party under each  
31 such netting agreement and qualified financial contract; and

32 (B) All property, including any guarantees or credit  
33 support documents, securing any claims of each party under each such netting  
34 agreement and qualified financial contract; or

35 (2) Transfer none of the netting agreements, qualified financial  
36 contracts, rights, obligations or property referred to in subdivision (1),

1 with respect to the counterparty and any affiliate of the counterparty.

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

10 (e) Notwithstanding any other provision of this act, a receiver may  
11 not avoid a transfer of money or other property arising under or in  
12 connection with a netting agreement or qualified financial contract, or any  
13 pledge, security, collateral or guarantee agreement or any other similar  
14 security arrangement or credit support document relating to a netting  
15 agreement or qualified financial contract, that is made before the  
16 commencement of a formal delinquency proceeding under this act. However, a  
17 transfer may be avoided under § 23-68-129(a) of this act if the transfer was  
18 made with actual intent to hinder, delay or defraud the insurer, a receiver  
19 appointed for the insurer, or existing or future creditors.

20 (f) In exercising any of its powers under this act to disaffirm or  
21 repudiate a netting agreement or qualified financial contract, the receiver  
22 must take action with respect to each netting agreement or qualified  
23 financial contract and all transactions entered into in connection therewith,  
24 in its entirety. Notwithstanding any other provision of this act, any claim  
25 of a counterparty against the estate arising from the receiver's  
26 disaffirmance or repudiation of a netting agreement or qualified financial  
27 contract that has not been previously affirmed in the liquidation or the  
28 immediately preceding rehabilitation case shall be determined and shall be  
29 allowed or disallowed as if the claim had arisen before the date of the  
30 filing of the petition for liquidation or, if a rehabilitation proceeding is  
31 converted to a liquidation proceeding, as if the claim had arisen before the  
32 date of the filing of the petition for rehabilitation. The amount of the  
33 claim shall be the actual direct compensatory damages determined as of the  
34 date of the disaffirmance or repudiation of the netting agreement or  
35 qualified financial contract. The term "actual direct compensatory damages"  
36 does not include punitive or exemplary damages, damages for lost profit or

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

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

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

12 (i) All rights of counterparties under this act shall apply to netting  
13 agreements and qualified financial contracts entered into on behalf of the  
14 general account or separate accounts if the assets of each separate account  
15 are available only to counterparties to netting agreements and qualified  
16 financial contracts entered into on behalf of that separate account.

17  
18 23-68-147. Priority of distribution.

19 The priority of distribution of claims from the insurer's estate shall  
20 be in accordance with the order in which each class of claims is set forth in  
21 this section. Every claim in each class shall be paid in full or adequate  
22 funds retained for such payment before the members of the next class receive  
23 any payment. Once such funds are retained by the liquidator and approved by  
24 the court, the insurer's estate shall have no further liability to members of  
25 that class except to the extent of the retained funds and any other  
26 undistributed funds. No subclasses shall be established within any class  
27 except as provided in § 23-68-124(a)(12). No claim by a shareholder,  
28 policyholder or other creditor shall be permitted to circumvent the priority  
29 classes through the use of equitable remedies. The order of distribution of  
30 claims shall be:

31 (a) Class 1. The costs and expenses of administration expressly  
32 approved by the receiver, including but not limited to the following:

33 (1) The actual and necessary costs of preserving or recovering  
34 the assets of the insurer;

35 (2) Compensation for all authorized services rendered in the  
36 conservation, rehabilitation or liquidation;

1 (3) Any necessary filing fees;

2 (4) The fees and mileage payable to witnesses; and

3 (5) Authorized reasonable attorney's fees and other professional  
4 services rendered in the conservation, rehabilitation or liquidation.

5 (b) Class 2. The administrative expenses of guaranty associations.

6 For purposes of this section, these expenses shall be the reasonable expenses  
7 incurred by guaranty associations where the expenses are not payments or  
8 expenses which are required to be incurred as direct policy benefits in  
9 fulfillment of the terms of the insurance contract or policy, and that are of  
10 the type and nature that, but for the activities of the guaranty association,  
11 otherwise would have been incurred by the receiver, including but not limited  
12 to evaluations of policy coverage, activities involved in the adjustment and  
13 settlement of claims under policies, including those of in-house or outside  
14 adjusters, and the reasonable expenses incurred in connection with the  
15 arrangements for ongoing coverage through transfer to other insurers, policy  
16 exchanges or maintaining policies in force. The receiver may in his or her  
17 sole discretion approve as an administrative expense under this section any  
18 other reasonable expenses of the guaranty association if the receiver finds:

19 (1) The expenses are not expenses required to be paid or  
20 incurred as direct policy benefits by the terms of the policy; and

21 (2) The expenses were incurred in furtherance of activities that  
22 provided a material economic benefit to the estate as a whole, irrespective  
23 of whether the activities resulted in additional benefits to covered  
24 claimants. The court shall approve such expenses unless it finds the  
25 receiver abused his or her discretion in approving the expenses.

26 If the receiver determines that the assets of the estate will be  
27 sufficient to pay all Class 1 claims in full, Class 2 claims shall be paid  
28 currently, provided that the liquidator shall secure from each of the  
29 associations receiving disbursements pursuant to this section an agreement to  
30 return to the liquidator such disbursements, together with investment income  
31 actually earned on such disbursements, as may be required to pay Class 1  
32 claims. No bond shall be required of any such association.

33 (c) Class 3. All claims under policies including claims of the  
34 federal or any state or local government for losses incurred, ("loss claims")  
35 including third party claims, claims for unearned premiums, and all claims of  
36 a guaranty association, for payment of covered claims or covered obligations

1 of the insurer. All claims of a guaranty association for reasonable expenses  
2 other than those included in Class 2. All claims under life and accident and  
3 health insurance and annuity policies, whether for death proceeds, health  
4 benefits, annuity proceeds, or investment values shall be treated as loss  
5 claims. That portion of any loss, indemnification for which is provided by  
6 other benefits or advantages recovered by the claimant, shall not be included  
7 in this class, other than benefits or advantages recovered or recoverable in  
8 discharge of familial obligation of support or by way of succession at death  
9 or as proceeds of life insurance, or as gratuities. No payment by an  
10 employer to his employee shall be treated as a gratuity.

11 Notwithstanding the foregoing, the following claims shall be excluded  
12 from Class 3 priority:

13 (1) Obligations of the insolvent insurer arising out of  
14 reinsurance contracts;

15 (2) Obligations incurred after the expiration date of the  
16 insurance policy, or after the policy has been replaced by the insured or  
17  canceled at the insured's request, or after the policy has been canceled as  
18  provided in this act;

19 (3) Obligations to insurers, insurance pools or underwriting  
20 associations and their claims for contribution, indemnity or subrogation,  
21 equitable or otherwise;

22 (4) Any claim which is in excess of any applicable limits  
23 provided in the insurance policy issued by the insolvent insurer;

24 (5) Any amount accrued as punitive or exemplary damages unless  
25 expressly covered under the terms of the policy; and

26 (6) Tort claims of any kind against the insurer, and claims  
27 against the insurer for bad faith or wrongful settlement practices.

28 (d) Class 4. Claims of the federal government other than those claims  
29 included in Class 3.

30 (e) Class 5. Debts due employees for services, benefits, contractual  
31 or otherwise due arising out of such reasonable compensation to employees for  
32 services performed to the extent that they do not exceed two (2) months of  
33 monetary compensation and represent payment for services performed within six  
34 (6) months before the filing of the petition for liquidation or, if  
35 rehabilitation preceded liquidation, within one (1) year before the filing of  
36 the petition for rehabilitation. Principal officers and directors shall not

1 be entitled to the benefit of this priority except as otherwise approved by  
2 the liquidator and the court. This priority shall be in lieu of any other  
3 similar priority, which may be authorized by law as to wages or compensation  
4 of employees.

5 (f) Class 6. Claims of any person, including claims of state or local  
6 governments, except those specifically classified elsewhere in this section.  
7 Claims of attorneys for fees and expenses owed them by a person for services  
8 rendered in opposing a formal delinquency proceeding. In order to prove the  
9 claim, the claimant must show that the insurer which is the subject of the  
10 delinquency proceeding incurred such fees and expenses based on its best  
11 knowledge, information and belief, formed after reasonable inquiry indicating  
12 opposition was in the best interests of the person, was well grounded in fact  
13 and was warranted by existing law or a good faith argument for the extension,  
14 modification or reversal of existing law, and that opposition was not pursued  
15 for any improper purpose, such as to harass or to cause unnecessary delay or  
16 needless increase in the cost of the litigation.

17 (g) Class 7. Claims, of any state or local government for a penalty  
18 or forfeiture, but only to the extent of the pecuniary loss sustained from  
19 the act, transaction or proceeding out of which the penalty or forfeiture  
20 arose, with reasonable and actual costs occasioned thereby. The remainder of  
21 such claims shall be postponed to the class of claims under subsection (h).

22 (h) Class 8. Surplus or contribution notes or similar obligations,  
23 premium refunds on assessable policies, interest on claims of Classes 1  
24 through 7 and any other claims specifically subordinated to this class.

25 (i) Class 9. Claims of shareholders or other owners arising out of  
26 their capacity as shareholders or other owners, or any other capacity except  
27 as they may be qualified in Class 3 or 6 above.

28 If any claimant of this state, another state or foreign country shall  
29 be entitled to or shall receive a dividend upon his or her claim out of a  
30 statutory deposit or the proceeds of any bond or other asset located in  
31 another state or foreign country, unless such deposit or proceeds shall have  
32 been delivered to the domiciliary liquidator pursuant to § 23-68-157, then  
33 the claimants shall not be entitled to any further dividend from the receiver  
34 until and unless all other claimants of the same class, irrespective of  
35 residence or place of the acts or contracts upon which their claims are  
36 based, shall have received an equal dividend upon their claims, and after



1 such equalization, such claimants shall be entitled to share in the  
2 distribution of further dividends by the receiver, along with and like all  
3 other creditors of the same class, wheresoever residing.

4 Upon the declaration of a dividend, the receiver shall apply the amount  
5 of the dividend against any indebtedness owed to the insurer by the person  
6 entitled to the dividend. There shall be no claim allowed for any deductible  
7 charged by a guaranty association or entity performing a similar function.

8 It is the intent of the General Assembly that § 23-68-147 of this act  
9 apply to pending and future claims in existing delinquency proceedings as  
10 well as to claims in delinquency proceedings arising after July 2, 1997;  
11 that, in light of the ruling of the United States Supreme Court in U. S.  
12 Department of the Treasury v. Fabe, 113 S.Ct. 2202 (1993), the General  
13 Assembly considers this act to be curative, remedial and not affecting  
14 substantive rights in the distribution of assets in delinquency proceedings;  
15 that this act is necessary to cure any potential defect in the present  
16 priority of distribution scheme that may result from the Fabe decision and to  
17 preserve the original intent of the General Assembly with regard to the  
18 priorities of payment in delinquency proceedings.

19  
20 23-68-148. Liquidator's recommendations to the court.

21 (a) The liquidator shall review all claims duly filed in the  
22 liquidation and shall make such further investigation as deemed necessary.  
23 The liquidator may compound, compromise or in any other manner negotiate the  
24 amount for which claims will be recommended to the court except where the  
25 liquidator is required by law to accept claims as settled by any person or  
26 organization, including any guaranty association. Unresolved disputes shall  
27 be determined under § 23-68-143. As soon as practicable, the liquidator  
28 shall present to the court a report of the claims against the insurer with  
29 his or her recommendations. The report shall include the name and address of  
30 each claimant and the amount of the claim finally recommended, if any. If  
31 the insurer has issued annuities or life insurance policies, the liquidator  
32 shall report the persons to whom, according to the records of the insurer,  
33 amounts are owed as cash surrender values or other investment value and the  
34 amounts owed.

35 (b) The court may approve, disapprove or modify the report on claims  
36 by the liquidator. Reports not modified by the court within a period of

1 sixty (60) days following submission by the liquidator shall be treated by  
2 the liquidator as allowed claims, subject to later modification or to rulings  
3 made by the court pursuant to § 23-68-143. No claim under a policy of  
4 insurance shall be allowed for an amount in excess of the applicable policy  
5 limits.

6 (c) After giving due consideration to the nature of the policies that  
7 were sold by the insurer, and the number of claims by policyholders for  
8 protection under their policies, and having considered actuarial estimates  
9 that substantial amounts of incurred-but-not-reported losses exist, the  
10 liquidator may, but need not, formulate a proposal, subject to approval of  
11 the court to allow such claims. The proposal may allocate or attribute all  
12 or a portion of the incurred-but-not-reported losses to individual  
13 policyholder claimants on a basis of reasonable expert opinion. The court  
14 shall approve the proposal and the allowance of the claims unless it finds  
15 that the basis of allocation is arbitrary or capricious.

16 (d) The liquidator is not required to process claims for any class  
17 until it appears reasonably likely that assets will be available for a  
18 distribution to that class. If there are insufficient assets to justify  
19 processing all claims for any class listed in § 23-68-147, the liquidator  
20 shall report the facts to the court and make such recommendations as may be  
21 appropriate for handling the remainder of the claims.

22  
23 23-68-149. Distribution of assets.

24 Under the direction of the court, the liquidator shall pay  
25 distributions in a manner that will assure the proper recognition of  
26 priorities and a reasonable balance between the expeditious completion of the  
27 liquidation and the protection of unliquidated and undetermined claims,  
28 including third party claims. Distribution of assets in kind may be made at  
29 valuations set by agreement between the liquidator and the creditor and  
30 approved by the court.

31  
32 23-68-150. Unclaimed and withheld funds.

33 (a) All unclaimed funds subject to distribution remaining in the  
34 liquidator's hands when the liquidator is ready to apply to the court for  
35 discharge, including the amount distributable to any creditor, shareholder,  
36 member or other person who is unknown or cannot be found, shall be deposited

1 with the State Treasurer, and shall be paid without interest except in  
2 accordance with § 23-68-146 to the person entitled thereto or that person's  
3 legal representative upon proof satisfactory to the State Treasurer of his or  
4 her right thereto. Any amount on deposit not claimed within six (6) years  
5 from the discharge of the liquidator shall be deemed to have been abandoned  
6 and shall be escheated without formal escheat proceedings and be deposited  
7 with the general fund. Alternatively, the liquidator may elect to apply to  
8 the court for authority to hold the unclaimed funds subject to distribution  
9 for a period of two (2) years. Thereafter, any unclaimed funds may be  
10 distributed to approved claimants who have previously received a  
11 distribution, if it is economically feasible for the liquidator to make the  
12 distribution, or the liquidator may apply to the court for permission for the  
13 funds to be held by the commissioner for the purpose of defraying the costs  
14 and expenses of administration of other insolvent insurers for which there  
15 are insufficient assets to fund the costs and expenses of administration.  
16 With the approval of the supervising court, the liquidator may deposit  
17 unclaimed and withheld funds into a segregated account to be known as the  
18 "Closed Estate Fund". The commissioner may thereafter use monies held in the  
19 account to fund the administrative expenses of proceedings against persons  
20 subject to this act that lack sufficient assets to fund administration. The  
21 commissioner shall maintain complete records with respect to all transactions  
22 involving the Closed Estate Fund and shall prepare an annual accounting of  
23 the Closed Estate Fund subject to audit by the Division of Legislative Audit.  
24 If subsequent to disbursement of monies from the Closed Estate Fund, assets  
25 of the person become available to fund administration, the Closed Estate Fund  
26 shall be reimbursed before other administrative expenses are paid.

27 (b) All funds withheld under § 23-68-141 and not distributed shall  
28 upon discharge of the liquidator be deposited with the State Treasurer and  
29 paid in accordance with § 23-68-147. Any sums remaining, which under § 23-  
30 68-147 would revert to the undistributed assets of the insurer, shall be  
31 transferred to the State Treasurer and become the property of the state under  
32 subsection (a), unless the commissioner in his or her discretion petitions  
33 the court to reopen the liquidation under § 23-68-152.

34  
35 23-68-151. Termination of proceedings.

36 (a) When all assets justifying the expense of collection and

1 distribution have been collected and distributed under this act, the  
2 liquidator shall apply to the court for discharge. The court may grant the  
3 discharge and make any other orders, including an order to transfer any  
4 remaining funds that are uneconomic to distribute, as may be deemed  
5 appropriate.

6 (b) Any other person may apply to the court at any time for an order  
7 under subsection (a). If the application is denied, the applicant shall pay  
8 the costs and expenses of the liquidator in resisting the application,  
9 including a reasonable attorney's fee.

10  
11 23-68-152. Reopening liquidation.

12 After the liquidation proceeding has been terminated and the liquidator  
13 discharged, the commissioner or other interested party may at any time  
14 petition the Pulaski County Circuit Court to reopen the proceedings for good  
15 cause, including the discovery of additional assets. If the court is  
16 satisfied that there is justification for reopening, it shall so order.

17  
18 23-68-153. Disposition of records during and after termination of  
19 liquidation.

20 Whenever it shall appear to the commissioner that the records of any  
21 insurer in process of liquidation or completely liquidated are no longer  
22 useful, he may recommend to the court and the court shall direct what records  
23 should be retained for future reference and what should be destroyed.

24  
25 23-68-154. External audit of the receiver's books.

26 The Pulaski County Circuit Court may, as it deems desirable, cause  
27 audits to be made of the books of the commissioner relating to any  
28 receivership established under this act, and a report of each audit shall be  
29 filed with the commissioner and with the court. The books, records and other  
30 documents of the receivership shall be made available to the auditor at any  
31 time without notice. The expense of each audit shall be considered a cost of  
32 administration of the receivership.

33  
34 23-68-155. Conservation of property of foreign or alien insurers found  
35 in this state.

36 (a) If a domiciliary liquidator has not been appointed, the

1 commissioner may apply to the Pulaski County Circuit Court by verified  
2 petition for an order directing the commissioner to act as conservator to  
3 conserve the property found in this state of an alien insurer not domiciled  
4 in this state, or property found in this state of a foreign insurer on any  
5 one or more of the following grounds:

6 (1) Any of the grounds in § 23-68-116;

7 (2) That any of its property has been sequestered by official  
8 action in its domiciliary state, or in any other state;

9 (3) That enough of its property has been sequestered in a  
10 foreign country to give reasonable cause to fear that the insurer is or may  
11 become insolvent;

12 (4)(A) That its certificate of authority to do business in this  
13 state has been revoked or that none was ever issued; and

14 (B) That there are residents of this state with  
15 outstanding claims or outstanding policies.

16 (b) When an order is sought under subsection (a), the court shall  
17 cause the insurer to be given notice and time to respond thereto as is  
18 reasonable under the circumstances.

19 (c) The court may issue the order in whatever terms it shall deem  
20 appropriate. The filing or recording of the order with the Clerk of Pulaski  
21 County Circuit Court or the recorder of deeds of the county in which the  
22 principal business of the company is located, shall impart the same notice as  
23 a deed, bill of sale or other evidence of title duly filed or recorded with  
24 that recorder of deeds would have imparted.

25 (d) The conservator shall hold and conserve the assets until such time  
26 as the commissioner in the domiciliary state begins formal delinquency  
27 proceedings against the insurer or until an order terminating conservation is  
28 entered under subsection (e). Once a delinquency proceeding is instituted in  
29 the domiciliary state, the conservator may either turn the property over to  
30 the domiciliary commissioner or petition for an order under § 23-68-158 to be  
31 appointed ancillary receiver. In the event the insurer is an alien insurer  
32 than has not established a domicile in the United States under an appropriate  
33 port of entry statute, the conservator may petition the court for an order of  
34 liquidation under any ground specified in § 23-68-116. The application may  
35 seek, and the order of liquidation shall provide, that all property and  
36 assets, affairs and claims against the alien insurer shall be vested in the

1 liquidator in this state as if the insurer was domiciled in this state.  
2 Provided, however, that if an order of liquidation of the alien insurer has  
3 been entered by a court of competent jurisdiction in a reciprocal state,  
4 which provides for the reciprocal state's receiver to be treated as if it is  
5 the domiciliary liquidator, then the order of liquidation in this state shall  
6 be issued as an order appointing an ancillary receiver.

7 (e) The conservator may at any time petition the court for an order  
8 terminating conservation of the property of an insurer. If the court finds  
9 that the conservation is no longer necessary, it shall order that the insurer  
10 be restored to possession of its property and the control of its business.  
11 The court may also make a finding and issue an order at any time upon motion  
12 of any interested party, but if the motion is denied all costs shall be  
13 assessed against such party.

14  
15 23-68-156. Domiciliary liquidators in other states.

16 (a) The domiciliary liquidator of an insurer domiciled in a reciprocal  
17 state shall be vested by operation of law with the title to all of the  
18 assets, property, contracts and rights of action, agents' balances, and all  
19 of the books, accounts and other records of the insurer located in this  
20 state. The date of vesting shall be the date of the filing of the petition,  
21 if that date is specified by the domiciliary law for the vesting of property  
22 in the domiciliary state. Otherwise, the date of vesting shall be the date  
23 of entry of the order directing possession to be taken. The domiciliary  
24 liquidator shall have the immediate right to recover all such vested  
25 property, assets, and causes of action of the insurer located in this state,  
26 subject to § 23-68-158.

27 (b) If a domiciliary liquidator is appointed for an insurer not  
28 domiciled in a reciprocal state, the commissioner of this state shall be  
29 vested by operation of law with the title to all the property, contracts and  
30 right of action, and all of the books, accounts and other records of the  
31 insurer located in this state, at the same time that the domiciliary  
32 liquidator is vested with title in the domicile. The commissioner of this  
33 state may petition for an order under § 23-68-155, or for an ancillary  
34 receivership under § 23-68-158, or after approval by the Pulaski County  
35 Circuit Court, may transfer title to the domiciliary liquidator, as the  
36 interests of justice and the equitable distribution of the assets require.

1       (c) When a domiciliary liquidator is appointed in a reciprocal state,  
2 claimants residing in this state must file in the domiciliary proceeding  
3 subject to its deadlines, and may have claims contested under § 23-68-161 or  
4 a similar section of the domiciliary state's laws. When a domiciliary  
5 liquidator is appointed in a nonreciprocal state, claimants residing in this  
6 state may file and contest claims with the liquidator or ancillary receiver,  
7 if any, in this state or with the domiciliary liquidator, if the domiciliary  
8 law permits.

9  
10       23-68-157. Special or statutory deposits.

11       Notwithstanding any other provision of this act, or any other law of  
12 this state, upon the entry of a final order of liquidation or order approving  
13 a rehabilitation plan of an insurer domiciled in this state or in a  
14 reciprocal state, any deposit held in this state, which is a special or  
15 statutory deposit held pursuant to any statute, or as required by any order  
16 of the commissioner, for the benefit of any creditors, including  
17 policyholders, of the insurer shall be delivered to the domiciliary  
18 liquidator. The proceeds of the deposit shall then be held by the  
19 domiciliary liquidator as a general asset for the benefit of all creditors no  
20 matter where they reside, in accordance with the priorities set by the laws  
21 of the domiciliary state. The holder of the deposit in this state shall,  
22 upon the receipt of a certified copy of an order approving the plan of  
23 rehabilitation or liquidation, deliver the deposit to the domiciliary state's  
24 conservator, rehabilitator or liquidator, and when so delivered shall become  
25 part of the general assets of the insurer.

26  
27       23-68-158. Ancillary formal proceedings.

28       (a) If a domiciliary liquidator has been appointed for an insurer not  
29 domiciled in this state, the commissioner may file a petition with the  
30 Pulaski County Circuit Court requesting appointment as ancillary receiver in  
31 this state:

32               (1) If the commissioner finds that there are sufficient assets  
33 of the insurer located in this state to justify the appointment of an  
34 ancillary receiver;

35               (2) If the protection of creditors or policyholders in this  
36 state so requires; or

1           (3) If the domiciliary liquidator requests the commissioner to  
2 file for appointment as ancillary receiver.

3           (b) The court may issue an order appointing an ancillary receiver in  
4 whatever terms it shall deem appropriate, in accordance with the domiciliary  
5 liquidation order. The filing or recording of the order with the recorder of  
6 deeds in this state imparts the same notice as a deed, bill of sale or other  
7 evidence of title duly filed or recorded with that recorder of deeds.

8           (c) When a domiciliary liquidator has been appointed in a reciprocal  
9 state, then the ancillary receiver appointed in this state may, whenever  
10 necessary, aid and assist the domiciliary liquidator in recovering assets of  
11 the insurer located in this state. The ancillary receiver shall render only  
12 such assistance as is requested from the domiciliary liquidator or  
13 rehabilitator. Any action taken by the ancillary receiver at the request of  
14 the domiciliary liquidator shall entitle the ancillary receiver to payment of  
15 his or her costs or expenses in connection with such activities from the  
16 domiciliary liquidator. The domiciliary liquidator and ancillary receiver  
17 may enter into agreements regarding the payment or advancement of expenses.  
18 When acting at the request of the domiciliary liquidator, the ancillary  
19 receiver and his or her deputies shall have the same powers and be subject to  
20 the same duties with respect to the administration of assets as a liquidator  
21 of an insurer domiciled in this state.

22           (d) When a domiciliary liquidator has been appointed in this state,  
23 ancillary receivers appointed in reciprocal states shall have, as to assets  
24 and books, accounts, and other records in their respective states,  
25 corresponding rights, duties and powers to those provided in subsection (c)  
26 for ancillary receivers appointed in this state.

27  
28           23-68-159. Ancillary summary proceedings.

29           The commissioner, in the commissioner's sole discretion, may institute  
30 proceedings under § 23-68-110 through § 23-68-115 at the request of the  
31 commissioner or other appropriate insurance official of the domiciliary state  
32 of any foreign or alien insurer having property located in this state.

33  
34           23-68-160. Claims of nonresidents against insurers domiciled in this  
35 state.

36           (a) All claimants must file their claims in the domiciliary



1 liquidation on or before the last date fixed for filing claims in the  
2 domiciliary liquidation proceeding.

3 (b) Controverted claims shall be proved or determined in the  
4 domiciliary state unless the claimant notifies the domiciliary liquidator in  
5 writing that the claimant elects to determine or prove the claim in the  
6 claimant's respective reciprocal state where an ancillary receiver has been  
7 appointed. An election by an insured shall be binding on all claimants  
8 interested in the claim as to the place of determining or proving the claim.  
9 In the event a claimant elects to prove the claimant's claim in ancillary  
10 proceedings, if at least thirty (30) days' notice of the claim and an  
11 opportunity to appear and be heard is afforded the domiciliary liquidator of  
12 this state, the final allowance of the claim by the courts of the ancillary  
13 state shall be accepted in this state as conclusive as to its amount and  
14 validity but not as to the priority of distribution, which shall be  
15 determined in the domiciliary proceeding. The domiciliary liquidator is not  
16 required to notify claimants of their right to make such an election.

17  
18 23-68-161. Claims of residents against insurers domiciled in  
19 reciprocal states.

20 (a) Promptly after the appointment of the commissioner as ancillary  
21 receiver for an insurer not domiciled in this state, the commissioner shall  
22 determine whether there are claimants residing in this state who are not  
23 protected by guaranty funds and if so, whether the protection of the  
24 claimants requires the establishing of a controverted claim procedure in the  
25 ancillary proceeding. If a controverted claim procedure is established,  
26 claimants who have made the election provided for in § 23-68-160(b) who  
27 reside within this state may controvert denied claims either under the  
28 ancillary controverted claim procedure, if any, in this state, or with the  
29 domiciliary liquidator.

30 (b) Claims belonging to claimants who have made the election in § 23-  
31 68-160(b) residing in this state may be controverted either in the  
32 domiciliary state under the law of that state, or in ancillary proceedings,  
33 if any, in this state, provided a controverted claim procedure is established  
34 in the ancillary proceeding.

35 (c) The final allowance of the claim by the courts of this state shall  
36 be accepted as conclusive as to validity and amount. All issues of priority

1 shall be determined in the domiciliary state.

2  
3 23-68-162. Attachment, garnishment, and levy of execution.

4 During the pendency in this or any other state of a liquidation  
5 proceeding, whether called by that name or not, no action or proceeding in  
6 the nature of an attachment, garnishment or levy of execution shall be  
7 commenced or maintained in this state against the delinquent insurer or its  
8 assets.

9  
10 23-68-163. Interstate priorities.

11 (a) In a liquidation proceeding in this state involving one or more  
12 reciprocal states, the order of distribution of the domiciliary state shall  
13 control as to all claims of residents of this and reciprocal states. All  
14 claims of residents of reciprocal states shall be given equal priority of  
15 payment from general assets regardless of where such assets are located.

16 (b) The owners of secured claims against an insurer for which a  
17 liquidator has been appointed in this or any other state may surrender their  
18 security and file their claims as general creditors, or the claims may be  
19 discharged by resort to the security in accordance with § 23-68-145, in which  
20 case the deficiency, if any, shall be treated as a claim against the general  
21 assets of the insurer on the same basis as claims of unsecured creditors in  
22 the same class.

23  
24 23-68-164. Subordination of claims for noncooperation.

25 If an ancillary receiver in another state or foreign country, whether  
26 called by that name or not, fails to transfer to the domiciliary liquidator  
27 in this state any assets within his control diminished only by the expenses  
28 of the ancillary receivership in accordance with § 23-68-158, if any, the  
29 claims filed by residents of the ancillary receiver's state or foreign  
30 country, including those contested in the ancillary receivership contested  
31 claims proceeding, shall be placed in the class of claims under § 23-68-  
32 147(h).

33  
34 23-68-165. Duty to provide information to other insurance regulators  
35 and guaranty associations.

36 The domiciliary receiver shall provide information to other state

1 insurance regulators and guaranty associations, including reports and  
 2 analyses of financial condition and the status of development of a plan of  
 3 rehabilitation. The domiciliary receiver shall also permit a state insurance  
 4 regulator or guaranty association to obtain a listing of policyholders and  
 5 certificate holders residing in the requestor's state, including current  
 6 addresses and summary policy information, provided that the regulator or  
 7 guaranty association agrees to maintain the confidentiality of the records,  
 8 and that the records will be used only for regulatory or guaranty association  
 9 purposes. Access to financial records shall be at least equivalent to that  
 10 to which a state insurance regulator was entitled prior to the commencement  
 11 of a formal delinquency proceeding. Access to records may be limited to  
 12 normal business hours. In the event that the domiciliary receiver believes  
 13 that certain information is sensitive, and disclosure might cause a  
 14 diminution in recovery, the receiver may apply for a protective order  
 15 imposing additional restrictions on access. No waiver of any applicable  
 16 privilege shall occur as a result of disclosure to the commissioner or  
 17 receiver under this section or as a result of sharing documents, materials or  
 18 other information pursuant to this section.

19  
 20 SECTION 36. Arkansas Code 23-63-104 is amended to read as follows:

21 23-63-104. Domicile of alien insurer.

22 (a) For the purpose of this code, except as provided under ~~§ 23-68-~~  
 23 ~~102(6)~~ the applicable provisions of § 23-68-101 et seq., the domicile of an  
 24 alien insurer, other than insurers formed under the laws of Canada, shall be  
 25 that state designated by the insurer in writing filed with the commissioner  
 26 at time of admission to this state or within six (6) months after the  
 27 effective date of this code, whichever date is the later, and may be any one  
 28 (1) of the following states:

29 (1) That in which the insurer was first authorized to transact  
 30 insurance;

31 (2) That in which is located the insurer's principal place of  
 32 business in the United States;

33 (3) That in which is held the larger deposit of trusteed assets  
 34 of the insurer for the protection of its policyholders, or policyholders and  
 35 creditors, in the United States.

36 (b) If the insurer makes no designation, its domicile shall be deemed

1 to be that state in which is located its principal place of business in the  
2 United States.

3

4 SECTION 37. Arkansas Code 23-63-910(b)(2), concerning the market value  
5 of an insurer's statutory deposit, is amended to read as follows:

6 (b)(2) If the insurer has failed to cure the deficiency, after the  
7 commissioner has given the insurer notice of deficiency by registered mail,  
8 within such reasonable time, not exceeding ninety (90) days, as may be  
9 allowed by the commissioner and so specified in his notice, the insurer shall  
10 be deemed to be insolvent. The commissioner shall then revoke its certificate  
11 of authority and institute delinquency proceedings against the insurer ~~under~~  
12 ~~§§ 23-68-101—23-68-113 and 23-68-115—23-68-132~~ § 23-68-101 et seq.

13

14 SECTION 38. Arkansas Code 23-69-156(c), concerning extinguishment of  
15 unused corporate charters, is amended to read as follows:

16 (c) The period during which a corporation referred to in subsection  
17 (b) of this section is the subject of delinquency proceedings under ~~§§ 23-68-~~  
18 ~~101—23-68-113 and 23-68-115—23-68-132~~ § 23-68-101 et seq. shall not be  
19 counted as part of any such thirty-six-month period.

20

21 SECTION 39. Arkansas Code 23-70-124(b), concerning impaired  
22 reciprocals, is amended to read as follows:

23 (b) If the attorney fails to make up the deficiency or to make the  
24 assessment within thirty (30) days after the commissioner orders him to do so  
25 or if the deficiency is not fully made up within sixty (60) days after the  
26 date the assessment was made, the insurer shall be deemed insolvent and shall  
27 be proceeded against as authorized by ~~§§ 23-68-101—23-68-113 and 23-68-115~~  
28 ~~—23-68-132~~ § 23-68-101 et seq.

29

30 SECTION 40. Arkansas Code 23-71-113(b)(2), concerning insolvency of a  
31 stipulated premium plan insurer, is amended to read as follows:

32 (b)(2) If the insurer fails to cure the insolvency within the period  
33 so allowed by the commissioner, then the commissioner shall immediately  
34 revoke its certificate of authority and institute proceedings for the  
35 liquidation of the insurer under ~~§§ 23-68-101—23-68-113 and 23-68-115—23-~~  
36 ~~68-132~~ § 23-68-101 et seq.

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SECTION 41. Arkansas Code 23-73-104(6), concerning other applicable provisions regarding farmers' mutual aid associations, is amended to read as follows:

(6) Sections ~~23-68-101~~ ~~23-68-113~~ and ~~23-68-115~~ ~~23-68-132~~ 23-68-101 et seq., rehabilitation and liquidation;

SECTION 42. Arkansas Code 23-73-120(b), concerning dissolution of a farmers' mutual aid association, is amended to read as follows:

(b) Involuntary. An association or company shall be statutorily dissolved in accordance with the provisions of ~~§§ 23-68-101~~ ~~23-68-113~~ and ~~23-68-115~~ ~~23-68-132~~ § 23-68-10 et seq.

SECTION 43. Arkansas Code 23-74-705 is amended to read as follows:  
23-74-705. Applicability of other code provisions.

In addition to those contained in this chapter, the following provisions of this code shall also apply to fraternal benefit societies to the extent as applicable:

- (1) Sections 23-60-101 - 23-60-108 and 23-60-110, general provisions;
- (2) Subchapters 1-3 of chapter 61 of this title, the State Insurance Department;
- (3) Section 23-61-401, license and miscellaneous fees;
- (4) Chapter 65 of this title, unauthorized insurers and surplus lines;
- (5) Sections ~~23-68-101~~ ~~23-68-113~~ and ~~23-68-115~~ ~~23-68-132~~ 23-68-101 et seq., rehabilitation and liquidation; and
- (6) Section 23-79-208, damages and attorney fees on loss claims.

SECTION 44. Arkansas Code 23-76-124(b), concerning rehabilitation, liquidation or conservation of a health maintenance organization, is amended to read as follows:

(b) The commissioner may apply for an order directing him to rehabilitate, liquidate, or conserve a health maintenance organization upon any one (1) or more grounds set out in ~~§ 23-68-107~~ § 23-68-116 or when in his opinion the continued operation of the health maintenance organization would be hazardous either to the enrollees or to the people of this state.

1           SECTION 45. Arkansas Code 23-81-130(c), concerning registered life and  
2 annuity policies, is amended to read as follows:

3           (c) All securities not negotiable by delivery and deposited by an  
4 insurer under this section shall be assigned to the commissioner and his  
5 successors in office, but the assignments shall be deemed to be conditional  
6 only and shall not be recorded unless and until the commissioner has revoked  
7 or refused to continue the insurer's certificate of authority or until the  
8 commissioner has applied to the court for receivership of the insurer in  
9 accordance with either ~~§ 23-68-106 or § 23-68-107~~ § 23-68-116.

10  
11           SECTION 46. Arkansas Code 23-90-110(b), concerning officers, directors  
12 or employees of an insurer as members of the Arkansas Property and Casualty  
13 Advisory Association, is amended to read as follows:

14           (b) The advisory association or any insurer assessed under this  
15 chapter shall ~~be an interested party under § 23-68-118~~ file as a claimant  
16 under § 23-68-140.

17  
18           SECTION 47. Arkansas Code 23-90-112(a), concerning the estimation of  
19 amounts necessary to pay claims by the receiver, is amended to read as  
20 follows:

21           (a)(1) Whenever a court of competent jurisdiction determines that an  
22 insurer has become an insolvent insurer, the receiver appointed in accordance  
23 with ~~§§ 23-68-101, 23-68-113 and 23-68-115~~ ~~23-68-132~~ § 23-68-101 et seq.  
24 shall promptly estimate the amount of additional funds needed to supplement  
25 the assets of the insolvent insurer and any available amounts in the fund  
26 described in § 23-90-114 which are immediately available to the receiver for  
27 the purpose of making payment of all covered claims.

28           (2) Thereafter, the commissioner shall be empowered to make such  
29 assessments as may be necessary to produce the additional funds needed to  
30 make payment of all covered claims.

31           (3) The commissioner may make partial assessments as the actual  
32 need for additional funds arises for each insolvent insurer.

33  
34           SECTION 48. Arkansas Code 23-90-116(a), concerning the duties of the  
35 receiver relative to the association, is amended to read as follows:

36           (a)(1) Covered claims against an insolvent insurer placed in temporary

1 or permanent receivership under an order of liquidation, rehabilitation, or  
 2 conservation by a court of competent jurisdiction shall be processed and  
 3 acted upon by the receiver or ancillary receiver in the same manner as other  
 4 claims as provided in ~~§§ 23-68-101—23-68-113 and 23-68-115—23-68-132~~ §  
 5 23-68-101 et seq. and as ordered by the court in which the receivership is  
 6 pending.

7 (2) However, the funds received from assessments shall be liable  
 8 only for the difference between the amount of the covered claims approved by  
 9 the receiver and the amount of the assets marshalled by the receiver for  
 10 payment to holders of covered claims, and, in ancillary receiverships in this  
 11 state, funds received from assessments shall be liable only for the  
 12 difference between the amount of the covered claims approved by the ancillary  
 13 receiver and the amount of assets marshalled by the receivers in other states  
 14 for application to payment of covered claims within this state.

15 (3) Funds received from assessments shall not be liable for any  
 16 amount over and above that approved by the receiver for a covered claim, and  
 17 any action brought by the holder of the covered claim appealing from the  
 18 receiver's action shall not increase the liability of the funds, provided  
 19 that the receiver may review his action in approving a covered claim and for  
 20 just cause modify the approval at any time during the pendency of the  
 21 receivership.

22  
 23 SECTION 49. Arkansas Code 23-91-213(4), concerning segregated accounts  
 24 of a pre-paid legal insurer, is amended to read as follows:

25 (4) Claims remaining unpaid after completion of any liquidation under  
 26 the applicable and relevant provisions of ~~§§ 23-68-111 and 23-68-112~~ § 23-68-  
 27 101 et seq. shall have liens on the interests of shareholders, if any, in all  
 28 of the person's assets that are not liquidated. The segregated account shall  
 29 be deemed an insurer within the meaning of ~~subdivision (2) of § 23-68-102~~ §  
 30 23-68-103(n);

31  
 32 SECTION 50. Arkansas Code 23-91-223 is amended to read as follows:

33 23-91-223. Rehabilitation and liquidation.

34 The relevant provisions of ~~§§ 23-68-101—23-68-113 and 23-68-115—23-~~  
 35 ~~68-132~~ § 23-68-101 et seq. shall apply to a person transacting the business  
 36 of legal insurance under the provisions of this subchapter.

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SECTION 51. Arkansas Code 23-96-113(c)(3), concerning the authority of the Life and Disability Guaranty Association, is amended to read as follows:

(c)(3) A deposit in this state, held pursuant to law or required by the commissioner for the benefit of creditors, including policy owners, not turned over to the domiciliary liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of an insurer domiciled in this state or in a reciprocal state, pursuant to ~~§ 23-68-115~~ § 23-68-101 et seq., shall be promptly paid to the association. The association (i) shall be entitled to retain a portion of any amount so paid to it equal to the percentage determined by dividing the aggregate amount of policy owners claims related to that insolvency for which the association has provided statutory benefits by the aggregate amount of all policy owners' claims in this state related to that insolvency and (ii) shall remit to the domiciliary receiver the amount so paid to the association and retained pursuant to clause (i). Any amount so paid to the association and retained by it pursuant to clause (i) shall be treated as a distribution of estate assets pursuant to ~~§ 23-68-126~~ § 23-68-147 or similar provision of the state of domicile of the impaired or insolvent insurer.

SECTION 52. Arkansas Code 23-96-114E., concerning obligations of the Life and Disability Guaranty Association, is amended to read as follows:

E. As a creditor of the impaired or insolvent insurer as established in subsection D of this section and consistent with ~~§ 23-68-126~~ § 23-68-147, the association and other similar associations shall be entitled to receive a disbursement of assets out of the marshaled assets, from time to time as the assets become available, to reimburse it, as a credit against contractual obligations under this chapter. If the liquidator has not, within one hundred twenty (120) days of a final determination of insolvency of an insurer by the receivership court, made an application to the court for the approval of a proposal to disburse assets out of marshaled assets to guaranty associations having obligations because of the insolvency, then the association shall be entitled to make application to the receivership court for approval of its own proposal to disburse these assets.

SECTION 53. Arkansas Code 23-102-112(c)(3), concerning funding for the



1 Arkansas Earthquake Authority, is amended to read as follows:

2 (c)(3) An insurer may petition the commissioner for an abatement or  
3 deferment of all or part of an assessment imposed by the authority. The  
4 commissioner may abate or defer, in whole or in part, such assessment if, in  
5 the opinion of the commissioner, payment of the assessment would cause the  
6 insurer to be deemed in hazardous financial condition, as defined in ~~§ 23-68-~~  
7 ~~102(14)~~ § 23-68-116(f). In the event an assessment against an insurer is  
8 abated or deferred in whole or in part, the amount by which such assessment  
9 is abated or deferred shall be assessed against the other insurers in a  
10 manner consistent with the basis for assessments set forth in subsection (a)  
11 of this section. The insurer receiving such abatement or deferment shall  
12 remain liable to the plan for the deficiency for four (4) years.

13

14 SECTION 54. Arkansas Code 23-102-112(d)(6), concerning funding for the  
15 Arkansas Earthquake Authority, is amended to read as follows:

16 (d)(6) The authority may exempt or defer, in whole or in part, the  
17 assessment of any insurer if the assessment would cause the insurer to be  
18 deemed in hazardous financial condition, as defined in ~~§ 23-68-102(14)~~ § 23-  
19 68-116(f).

20

21 SECTION 55. Arkansas Code 16-66-218(a)(12), concerning exemptions from  
22 execution under federal bankruptcy laws, is amended to read as follows:

23 (a)(12) Assets of delinquent insurer - ~~§23-68-120~~ § 23-68-162;

24

25 SECTION 56. Emergency Clause: It is found and determined by the 83<sup>rd</sup>  
26 General Assembly that this act is necessary in order to promote more  
27 uniformity, certainty and efficiency in the conservation, rehabilitation and  
28 liquidation of insolvent insurers. Therefore, an emergency is declared to  
29 exist and this act being immediately necessary for the preservation of the  
30 public peace, health and safety shall become effective on the date of its  
31 approval by the governor. If the bill is neither approved nor vetoed by the  
32 Governor, it shall become effective on the expiration of the period of time  
33 during which the Governor may veto the bill. If the bill is vetoed by the  
34 Governor and the veto is overridden, it shall become effective on the date  
35 the last house overrides the veto.

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*/s/ Napper*