

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 583  
Committee Substitute Favorable 5/1/89

Short Title: Insurer Receiverships.

(Public)

Sponsors:

Referred to:

March 15, 1989

A BILL TO BE ENTITLED

AN ACT TO REWRITE THE LAWS CONCERNING SUPERVISION,  
REHABILITATION, AND LIQUIDATION OF INSURANCE COMPANIES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 58 of the General Statutes is amended by adding a new  
Article to read:

**“ARTICLE 46.**

**“INSURERS SUPERVISION, REHABILITATION, AND LIQUIDATION.**

**”§ 58-640. Construction and purpose.**

(a) This Article does not limit powers granted to the Commissioner by any other provision of law. To the extent practicable, the Commissioner may supplement the provisions of this Article with those of Part 2 of Article 38 of Chapter 1 of the General Statutes.

(b) This Article shall be liberally construed to effect the purpose stated in subsection (c) of this section.

(c) The purpose of this Article is to protect the interests of policyholders, claimants, creditors, and the public generally with minimum interference with the normal prerogatives of the owners and managers of insurers, through:

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

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

- 1           (3) Enhanced efficiency and economy of liquidation, through clarification  
2 of the law, to minimize legal uncertainty and litigation;  
3           (4) Equitable apportionment of any unavoidable loss;  
4           (5) Lessening the problems of interstate rehabilitation and liquidation by  
5 facilitating cooperation between states in the liquidation process, and  
6 by extending the scope of personal jurisdiction over debtors of the  
7 insurer outside this State; and  
8           (6) Regulation of the insurance business by the impact of the law relating  
9 to delinquency procedures and substantive rules on the entire insurance  
10 business.

11 **"§ 58-641. Persons covered.**

12 The proceedings authorized by this Article may be applied to:

- 13           (1) All insurers who are doing, or have done, an insurance business in this  
14 State, and against whom claims arising from that business may exist  
15 now or in the future.  
16           (2) All insurers who purport to do an insurance business in this State.  
17           (3) All insurers who have insureds resident in this State.  
18           (4) All persons organized or in the process of organizing with the intent to  
19 do an insurance business in this State.  
20           (5) All persons subject to General Statute Chapters 57 and 57B; except to  
21 the extent there is a conflict between the provisions of this Article and  
22 the provisions of those Chapters, in which case those Chapters will  
23 govern.

24 **"§ 58-642. Definitions.**

25 As used in this Article, unless the context clearly indicates otherwise:

- 26           (1) 'Alien country' means any other jurisdiction not in any state.  
27           (2) 'Ancillary state' means any state other than a domiciliary state.  
28           (3) 'Court' means the Superior Court of Wake County.  
29           (4) 'Creditor' means a person having any claim, whether matured or  
30 unmatured, liquidated or unliquidated, secured or unsecured, absolute,  
31 fixed, or contingent.  
32           (5) 'Delinquency proceeding' means any proceeding instituted against an  
33 insurer for the purpose of supervising, rehabilitating, conserving, or  
34 liquidating such insurer.  
35           (6) 'Doing business' includes any of the following acts by insurers,  
36 whether effected by mail or otherwise:  
37           a. The issuance or delivery of contracts of insurance to persons  
38 resident in this State;  
39           b. The solicitation of applications for such contracts, or other  
40 negotiations preliminary to the execution of such contracts;  
41           c. The collection of premiums, membership fees, assessments, or  
42 other consideration for such contracts;  
43           d. The transaction of matters subsequent to execution of such  
44 contracts and arising out of them;

- 1           e.     Operating as an insurer under a license or certificate of  
2                 authority issued by the Department; or  
3           f.     The purchase of contracts of insurance issued to persons in this  
4                 State by an assumption agreement.
- 5       (7)   'Domestic guaranty association' means the Postassessment Insurance  
6           Guaranty Association in Article 17B of this Chapter, as amended; the  
7           Workers' Compensation Security Funds in Article 3 of Chapter 97 of  
8           the General Statutes, as amended; the Life and Accident and Health  
9           Insurance Guaranty Association in Article 17C of this Chapter, as  
10           amended; or any other similar entity hereafter created by the General  
11           Assembly for the payment of claims of insolvent insurers.
- 12       (8)   'Domiciliary state' means the state in which an insurer is incorporated  
13           or organized; or, in the case of an alien insurer, its state of entry.
- 14       (9)   'Fair consideration' is given for property or obligation when:  
15           a.     In exchange for such property or obligation, as a fair equivalent  
16                 therefor, and in good faith, property is conveyed or services are  
17                 rendered or an obligation is incurred or an antecedent debt is  
18                 satisfied; or  
19           b.     Such property or obligation is received in good faith to secure a  
20                 present advance or antecedent debt in amount not  
21                 disproportionately small as compared to the value of the  
22                 property or obligation obtained.
- 23       (10) 'Foreign guaranty association' means a guaranty association now in  
24           existence in or hereafter created by the legislature of any other state.
- 25       (11) 'Formal delinquency proceeding' means any liquidation or  
26           rehabilitation proceeding.
- 27       (12) 'General assets' means all real, personal, or other property that is not  
28           specifically mortgaged, pledged, hypothecated, deposited, or otherwise  
29           encumbered for the security or benefit of specified persons or classes  
30           of persons. As to specifically encumbered property, 'general assets'  
31           includes all such property or its proceeds in excess of the amount  
32           necessary to discharge the sum or sums secured thereby. Assets that  
33           are held in trust and on deposit for the security or benefit of all  
34           policyholders in more than one state or all policyholders and creditors  
35           in more than one state shall be treated as 'general assets'.
- 36       (13) 'Insolvency' or 'insolvent' means that an insurer is unable to pay its  
37           obligations when they are due, or that its admitted assets do not exceed  
38           its liabilities plus the greater of (i) any capital and surplus required by  
39           law for its organization; or (ii) the total par or stated value of its  
40           authorized and issued capital stock. For the purposes of this  
41           subdivision, 'liabilities' includes reserves required by statute, by  
42           Department rules, or by specific requirements imposed by the  
43           Commissioner upon a subject company at the time of admission or  
44           subsequent thereto.

- 1           (14) 'Insurer' means any entity licensed under Articles 6, 14, or 17 of this  
2 Chapter and under Chapters 57 and 57B of the General Statutes.
- 3           (15) 'Preferred claim' means any claim with respect to which the provisions  
4 of this Article accord priority of payment from the general assets of the  
5 insurer.
- 6           (16) 'Receiver' includes a liquidator, rehabilitator, or conservator, as the  
7 context requires.
- 8           (17) 'Reciprocal state' means any state other than this State in which in  
9 substance and effect the provisions of G.S. 58-662(a), 58-693, 58-694,  
10 and 58-696 through 58-698 are in force, and in which provisions are in  
11 force requiring that the insurance regulator of that state be the receiver  
12 of a delinquent insurer; and in which provisions exist for the avoidance  
13 of fraudulent conveyances and preferential transfers.
- 14           (18) 'Secured claim' means any claim secured by mortgage, trust deed,  
15 pledge, deposit as security, escrow, or otherwise; and includes any  
16 claim that has become a lien upon specific assets by reason of judicial  
17 process. 'Secured claim' does not include a special deposit claim or a  
18 claim against general assets.
- 19           (19) 'Special deposit claim' means any claim secured by a deposit made  
20 pursuant to statute for the security or benefit of a limited class or  
21 classes of persons, but does not include any claim secured by general  
22 assets.
- 23           (20) 'Transfer' includes the sale and every other and different mode,  
24 whether direct or indirect, of disposing of or of parting with property,  
25 an interest therein, or the possession thereof; or of voluntarily fixing a  
26 lien upon property or an interest therein, whether absolutely or  
27 conditionally, by or without judicial proceedings. The retention of a  
28 security title to property delivered to a debtor is a transfer suffered by  
29 the debtor.

30 **"§ 58-643. Jurisdiction and venue.**

31           (a) No delinquency proceeding shall be commenced by anyone other than the  
32 Commissioner and no other court has jurisdiction to entertain, hear, or determine any  
33 proceeding commenced by any other person.

34           (b) Except as provided in this Article, no court of this State has jurisdiction to  
35 entertain, hear, or determine any complaint praying for the dissolution, liquidation,  
36 rehabilitation, sequestration, conservation, or receivership of any insurer; or praying for  
37 an injunction or restraining order or other relief preliminary to, incidental to, or relating  
38 to such proceedings.

39           (c) In addition to other grounds for jurisdiction provided by the laws of this State,  
40 the Court has jurisdiction over a person served pursuant to Chapter 1A of the General  
41 Statutes or other applicable provisions of law in an action brought by the receiver of a  
42 domestic insurer or an alien insurer domiciled in this State:

- 43           (1) If the person served is obligated to the insurer in any way as an  
44 incident to any agency or brokerage arrangement that may exist or has

1 existed between the insurer and the agent or broker, in any action on or  
2 incident to the obligation; or

3 (2) If the person served is a reinsurer who has at any time entered into a  
4 contract of reinsurance with an insurer against which a rehabilitation  
5 or liquidation order is in effect when the action is commenced, or is an  
6 agent or broker of or for the reinsurer, in any action on or incident to  
7 the reinsurance contract; or

8 (3) If the person served is or has been an officer, manager, trustee,  
9 organizer, promoter, or person in a position of comparable authority or  
10 influence, in an insurer against which a rehabilitation or liquidation  
11 order is in effect when the action is commenced, in any action  
12 resulting from such a relationship with the insurer.

13 (d) All actions authorized in this Article shall be brought in the Superior Court of  
14 Wake County.

15 (e) The provisions of Chapter 150B of the General Statutes do not apply to this  
16 Article.

17 **"§ 58-644. Injunctions and orders.**

18 (a) Any receiver appointed in a proceeding under this Article may at any time  
19 apply for, and any court of general jurisdiction may grant, such restraining orders,  
20 preliminary and permanent injunctions, and other orders as may be deemed to be  
21 necessary and proper to prevent:

22 (1) The transaction of further business;

23 (2) The transfer of property;

24 (3) Interference with the receiver or with a proceeding under this Article;

25 (4) Waste of the insurer's assets;

26 (5) Dissipation and transfer of bank accounts;

27 (6) The institution or further prosecution of any actions or proceedings;

28 (7) The obtaining of preferences, judgments, attachments, garnishments,  
29 or liens against the insurer, its assets or its policyholders;

30 (8) The levying of execution against the insurer, its assets, or its  
31 policyholders;

32 (9) The making of any sale or deed for nonpayment of taxes or  
33 assessments that would lessen the value of the assets of the insurer;

34 (10) The withholding from the receiver of books, accounts, documents, or  
35 other records relating to the business of the insurer; or

36 (11) Any other threatened or contemplated action that might lessen the  
37 value of the insurer's assets or prejudice the rights of policyholders,  
38 creditors, or shareholders, or the administration of any proceeding  
39 under this Article.

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

42 **"§ 58-645. Cooperation of officers, owners and employees.**

43 (a) Any officer, manager, director, trustee, owner, employee, or agent of any  
44 insurer, and any other person with authority over or in charge of any segment of the

1 insurer's affairs, shall cooperate with the Commissioner in any proceeding under this  
2 Article or any investigation preliminary to the proceeding. As used in this section,  
3 'person' includes any person who exercises direct or indirect control over activities of an  
4 insurer through any holding company or other affiliate of the insurer. 'Cooperate'  
5 includes replying promptly in writing to any inquiry from the Commissioner requesting  
6 such a reply and making available to the Commissioner any books, accounts,  
7 documents, or other records or information or property of or pertaining to the insurer  
8 and in his possession, custody, or control.

9 (b) No person shall obstruct or interfere with the Commissioner in the conduct of  
10 any delinquency proceeding or any investigation preliminary or incidental thereto.

11 (c) This section does not abridge otherwise existing legal rights, including the  
12 right to resist a petition for any delinquency proceeding or other order.

13 (d) Any person described in subsection (a) of this section 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 investigation  
16 preliminary or incidental thereto, or any person who knowingly and willfully violates  
17 any order the Commissioner issued validly under this Article is subject to the civil  
18 penalty and restitution provisions of G.S. 58-9.7 and is subject further to the revocation  
19 or suspension of any licenses issued by the Commissioner.

20 **"§ 58-646. Bonds.**

21 In any proceeding under this Article, the Commissioner and his deputies shall be  
22 responsible on their official bonds for the faithful performance of their duties.

23 **"§ 58-647. Reserved for future codification.**

24 **"§ 58-648. Executory contracts and unexpired leases.**

25 (a) Except as provided in subsections (b), (c), and (d) of this section, the receiver,  
26 subject to the Court's approval, may assume or reject any executory contract or  
27 unexpired lease of the insurer.

28 (b) (1) If there has been a default in an executory contract or  
29 unexpired lease of the insurer, the receiver may not assume such  
30 contract or lease unless, at the time of assumption of such contract or  
31 lease, the receiver:

32 a. Cures, or provides adequate assurance that the receiver will  
33 promptly cure, such default;

34 b. Compensates, or provides adequate assurance that the receiver  
35 will promptly compensate, a party, other than the insurer to  
36 such contract or lease, for any actual pecuniary loss to such  
37 party resulting from such default; and

38 c. Provides adequate assurance of future performance under such  
39 contract or lease.

40 (2) Subdivision (1) of this subsection does not apply to a default that is a  
41 breach of a provision relating to:

42 a. The insolvency or financial condition of the insurer at any time  
43 before the closing of the case;

44 b. The commencement of a proceeding under this Article; or

- 1                   c.     The appointment of or taking possession by a receiver in a  
2                   proceeding under this Article or a custodian before such  
3                   commencement.
- 4           (3)     Notwithstanding any other provision of this section, if there has been a  
5                   default in an unexpired lease of the insurer, other than a default of a  
6                   kind specified in subdivision (2) of this subsection, the receiver may  
7                   not require a lessor to provide services or supplies incidental to such  
8                   lease before assumption of such lease unless the lessor is compensated  
9                   under the terms of such lease for any services and supplies provided  
10                  under such lease before assumption of such lease.
- 11       (c)     The receiver may not assume or assign an executory contract or unexpired  
12       lease of the insurer, whether or not such contract or lease prohibits or restricts  
13       assignment of rights or delegation of duties, if:
- 14           (1)     a.     Applicable law excuses a party, other than the insurer, to such  
15                   contract or lease from accepting performance from or rendering  
16                   performance to the receiver or an assignee of such contract or lease,  
17                   whether or not such contract or lease prohibits or restricts assignment  
18                   of rights or delegation of duties; and
- 19                   b.     Such party does not consent to such assumption or assignment;  
20                   or
- 21           (2)     Such contract is a contract to make a loan, or extend other debt  
22                   financing or financial accommodations, to or for the benefit of the  
23                   insurer, or to issue a security of the insurer.
- 24       (d)     (1)     In a proceeding under G.S. 58-662, if the receiver does not  
25                   assume or reject an executory contract or unexpired lease of the  
26                   insurer within 60 days after the order for liquidation, or within such  
27                   additional time as the Court, for cause, within such 60-day period,  
28                   fixes, then such contract or lease is deemed to be rejected.
- 29           (2)     In a proceeding under G.S. 58-657 the receiver may assume or reject  
30                   an executory contract or unexpired lease of the insurer at any time  
31                   before the order for a plan of rehabilitation, but the Court, on request  
32                   of any party to such contract or lease, may order the receiver to  
33                   determine within a specified period of time whether to assume or reject  
34                   such contract or lease.
- 35       (e)     (1)     Notwithstanding a provision in an executory contract or  
36                   unexpired lease, or in applicable law, an executory contract or  
37                   unexpired lease of the insurer may not be terminated or modified,  
38                   and any right or obligation under such contract or lease may not be  
39                   terminated or modified, at any time after the commencement of the  
40                   proceeding solely because of a provision in such contract or lease  
41                   that is conditioned on:
- 42                   a.     The insolvency or financial condition of the insurer at any time  
43                   before the closing of the proceeding;
- 44                   b.     The commencement of a proceeding under this Article; or

- 1           c.     The appointment of or taking possession by a receiver in a  
2                 proceeding under this Article or a custodian before such  
3                 commencement.
- 4           (2)   Subdivision (1) of this subsection does not apply to an executory  
5                 contract or unexpired lease of the insurer, whether or not such contract  
6                 or lease prohibits or restricts assignment of rights or delegation of  
7                 duties, if:
- 8                 a.     Applicable law excused a party, other than the insurer, to such  
9                 contract or lease from accepting performance from or rendering  
10                performance to the receiver or to an assignee of such contract or  
11                lease, whether or not such contract or lease prohibits or restricts  
12                assignment of rights or delegation of duties and such party does  
13                not consent to such assumption or assignment; or
- 14                b.     Such contract is a contract to make a loan, or extend other debt  
15                financing or financial accommodations, to or for the benefit of  
16                the insurer, or to issue a security of the insurer.
- 17       (f)     (1)    Except as provided in subsection (c) of this section,  
18                notwithstanding a provision in an executory contract or unexpired  
19                lease of the insurer, or in applicable law, that prohibits, restricts, or  
20                conditions the assignment of such contract or lease, the receiver may  
21                assign such contract or lease under subdivision (2) of this subsection.
- 22       (2)    The receiver may assign an executory contract or unexpired lease of  
23                the insurer only if:
- 24                a.     The receiver assumes such contract or lease in accordance with  
25                the provisions of this section; and
- 26                b.     Adequate assurance of future performance by the assignee of  
27                such contract or lease is provided, whether or not there has been  
28                a default in such contract or lease.
- 29       (3)    Notwithstanding a provision in an executory contract or unexpired  
30                lease of the insurer, or in applicable law that terminates or modifies, or  
31                permits a party other than the insurer to terminate or modify, such  
32                contract or lease or a right or obligation under such contract or lease on  
33                account of an assignment of such contract or lease, such contract,  
34                lease, right, or obligation may not be terminated or modified under  
35                such provision because of the assumption or assignment of such  
36                contract or lease by the receiver.
- 37       (g)    Except as provided in subdivisions (h)(2) and (i)(2) of this section, the  
38                rejection of an executory contract or unexpired lease of the insurer constitutes a breach  
39                of such contract or lease:
- 40                (1)    If such contract or lease has not been assumed under this section or  
41                under a plan of rehabilitation under G.S. 58-657, immediately before  
42                the date of the filing of the petition; or
- 43                (2)    If such contract or lease has been assumed under this section or under  
44                a plan of rehabilitation under G.S. 58-657:



- 1           a.     If before such rejection the proceeding has not been converted  
2           to a proceeding under G.S. 58-662 at the time of such rejection;  
3           or  
4           b.     If before such rejection the case has been converted to a  
5           proceeding under G.S. 58-662: (i) immediately before the date  
6           of such conversion, if such contract or lease was assumed  
7           before such conversion; or (ii) at the time of such rejection, if  
8           such contract or lease was assumed after such conversion.
- 9     (h)       (1)     If the receiver rejects an unexpired lease of real property of  
10           the insurer under which the insurer is the lessor, the lessee under  
11           such lease may treat the lease as terminated by such rejection, or, in  
12           the alternative, may remain in possession for the balance of the term  
13           of such lease and any renewal or extension of such term that is  
14           enforceable by such lessee under applicable provision of law outside  
15           of this Article.
- 16           (2)     If such lessee remains in possession, such lessee may offset against the  
17           rent reserved under such lease for the balance of the term after the date  
18           of the rejection of such lease, and any such renewal or extension, any  
19           damages occurring after such date caused by the nonperformance of  
20           any obligation of the insurer after such date, but such lessee does not  
21           have any rights against the estate on account of any damages arising  
22           after such date from such rejection, other than such offset.
- 23     (i)       (1)     If the receiver rejects an executory contract of the insurer for  
24           the sale of real property under which the purchaser is in possession,  
25           such purchaser may treat such contract as terminated, or, in the  
26           alternative, may remain in possession of such real property.
- 27           (2)     If such purchaser remains in possession:
- 28           a.     Such purchaser shall continue to make all payments due under  
29           such contract, but any, offset against such payments any  
30           damages occurring after the date of the rejection of such  
31           contract caused by the nonperformance of any obligation of the  
32           insurer after such date, but such purchaser does not have any  
33           rights against the estate on account of any damages arising after  
34           such date from such rejection, other than such offset; and
- 35           b.     The receiver shall deliver title to such purchaser in accordance  
36           with the provisions of such contract, but is relieved of all other  
37           obligations to perform under such contract.
- 38     (j)       A purchaser that treats an executory contract as terminated under subsection  
39     (i) of this section, or a party whose executory contract to purchase real property from  
40     the insurer is rejected and under which such party is not in possession, has a lien on the  
41     interest of the insurer in such property for the recovery of any portion of the purchase  
42     price that such purchaser or party has paid.

1       (k) Assignment by the receiver to a person of a contract or lease assumed under  
2 this section relieves the receiver and the estate from any liability for any breach of such  
3 contract or lease occurring after such assignment.

4 **"§ 58-649. Turnover of property by a custodian.**

5       (a) As used in this section 'custodian' means:

6           (1) A receiver or trustee of any of the property of the insurer, appointed in  
7 a case or proceeding not under this Article;

8           (2) An assignee under a general assignment for the benefit of the insurer's  
9 creditors; or

10          (3) A trustee, receiver, or agent under applicable law, or under a contract,  
11 that is appointed or authorized to take charge of property of the insurer  
12 for the purpose of enforcing a lien against such property, or for the  
13 purpose of general administration of such property for the benefit of  
14 the insurer's creditors.

15       (b) A custodian with knowledge of the commencement of a proceeding under  
16 this Article may not make any disbursement from, or take any action in the  
17 administration of property of the insurer, proceeds of such property, or property of the  
18 estate, in the possession, custody, or control of such custodian, except such action as is  
19 necessary to preserve such property.

20       (c) A custodian shall:

21           (1) Deliver to the receiver any property of the insurer transferred to such  
22 custodian, or proceeds of such property, that is in such custodian's  
23 possession, custody, or control on the date that such custodian acquires  
24 knowledge of the commencement of the proceeding; and

25           (2) File an accounting of any property of the insurer, or proceeds of such  
26 property, that, at any time, came into the possession, custody, or  
27 control of such custodian.

28       (d) The Court, after notice and a hearing, shall:

29           (1) Protect all entities to which a custodian has become obligated with  
30 respect to such property;

31           (2) Provide for the payment of reasonable compensation for services  
32 rendered and costs and expenses incurred by such custodian; and

33           (3) Surcharge such custodian, other than an assignee for the benefit of the  
34 insurer's creditors that was appointed or took possession more than 120  
35 days before the date of the filing of the petition, for any improper  
36 excessive disbursement, other than a disbursement that has been made  
37 in accordance with applicable law or approved, after notice and a  
38 hearing, by a court of competent jurisdiction before the  
39 commencement of the proceeding under this Article.

40       (e) The Court may, after notice and a hearing, excuse compliance with  
41 subsection (a), (b), or (c) of this section, if the interests of policyholders, creditors, and  
42 any equity security holders would be better served by permitting a custodian to continue  
43 in possession, custody, or control of such property.

44 **"§ 58-650. Utility service.**

1 (a) Except as provided in subsection (b) of this section, a utility may not alter,  
2 refuse, or discontinue service to, or discriminate against, the receiver or the insurer  
3 solely on the basis that a debt owed by the insurer to such utility for service rendered  
4 before an order of rehabilitation or liquidation was not paid when due.

5 (b) Such utility may alter, refuse, or discontinue service if neither the receiver nor  
6 the insurer, within 20 days after the date of an order of rehabilitation or liquidation,  
7 furnishes adequate assurance of payment, in the form of a deposit or other security, for  
8 services after such date. On request of a party in interest and after notice and a hearing,  
9 the Court may order reasonable modification of the amount of the deposit or other  
10 security necessary to provide adequate assurance of payment.

11 **"§ 58-651. Continuation of delinquency proceedings.**

12 Every proceeding that was commenced under the laws in effect before the effective  
13 date of this Article is deemed to have been commenced under this Article for the  
14 purpose of conducting the proceeding; except that in the discretion of the Commissioner  
15 the proceeding may be continued, in whole or in part, as it would have been continued  
16 had this Article not been enacted.

17 **"§ 58-652. Condition on release from delinquency proceedings.**

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

- 20 (1) Be released from such proceeding, unless such proceeding is converted  
21 into a judicial rehabilitation or liquidation proceeding;
- 22 (2) Be permitted to solicit or accept new business or request or accept the  
23 restoration of any suspended or revoked license or certificate of  
24 authority;
- 25 (3) Be returned to the control of its shareholders or private management;  
26 or
- 27 (4) Have any of its assets returned to the control of its shareholders or  
28 private management;

29 until all payments of or on account of the insurer's contractual obligations by all  
30 guaranty associations, along with all expenses thereof and interest on all such payments  
31 and expenses, have been repaid to the guaranty associations or a plan of repayment by  
32 the insurer shall have been approved by the guaranty associations.

33 **"§ 58-653. Commissioner's summary orders and supervision proceedings.**

34 (a) Whenever the Commissioner has reasonable cause to believe, and determines  
35 after a hearing held under subsection (e) of this section, that any domestic insurer has  
36 committed or is engaged in, or is about to commit or engage in, any act, practice, or  
37 transaction that would subject it to delinquency proceedings under this Article, he may  
38 make and serve upon the insurer and any other persons involved, such orders as are  
39 reasonably necessary to correct, eliminate, or remedy such conduct, condition, or  
40 ground.

41 (b) If upon examination or at any other time the Commissioner has reasonable  
42 cause to believe that any domestic insurer is in such condition as to render the  
43 continuance of its business hazardous to the public or to holders of its policies or

1 certificates of insurance, or if such domestic insurer gives its consent, then the  
2 Commissioner shall upon his determination:

3 (1) Notify the insurer of his determination; and

4 (2) Furnish to the insurer a written list of the Commissioner's requirements  
5 to abate his determination.

6 (c) If the Commissioner makes a determination to supervise an insurer subject to  
7 an order under subsections (a) or (b) of this section, he shall notify the insurer that it is  
8 under the supervision of the Commissioner. During the period of supervision, the  
9 Commissioner may appoint a supervisor to supervise such insurer. The order  
10 appointing a supervisor shall direct the supervisor to enforce orders issued under  
11 subsections (a) and (b) of this section and may also require that the insurer may not do  
12 any of the following things during the period of supervision, without the prior approval  
13 of the Commissioner or his supervisor:

14 (1) Dispose of, convey, or encumber any of its assets or its business in  
15 force;

16 (2) Withdraw from any of its bank accounts;

17 (3) Lend any of its funds;

18 (4) Invest any of its funds;

19 (5) Transfer any of its property;

20 (6) Incur any debt, obligation, or liability;

21 (7) Merge or consolidate with another company; or

22 (8) Enter into any new reinsurance contract or treaty.

23 (d) Any insurer subject to an order under this section shall comply with the  
24 lawful requirements of the Commissioner and, if placed under supervision, shall have  
25 60 days from the date the supervision order is served within which to comply with the  
26 requirements of the Commissioner. The Commissioner may in his discretion extend the  
27 time for compliance beyond 60 days for cause. In the event of such insurer's failure to  
28 comply within such time, the Commissioner may institute proceedings under this  
29 Article to have a rehabilitator or liquidator appointed, or extend the period of  
30 supervision.

31 (e) The notice of hearing under subsection (a) of this section and any order  
32 issued pursuant to that subsection shall be served upon the insurer pursuant to the  
33 applicable rules of civil procedure. The notice of hearing shall state the time and place  
34 of hearing, and the conduct, condition, or ground upon which the Commissioner would  
35 base his order. Unless mutually agreed upon between the Commissioner and the  
36 insurer, the hearing shall occur not less than 10 days nor more than 30 days after notice  
37 is served and shall be either in Wake County or in some other place designated by the  
38 Commissioner. The Commissioner shall hold all hearings under subsection (a) of this  
39 section privately unless the insurer requests a public hearing, in which case the hearing  
40 shall be public.

41 (f) Any insurer subject to an order under subsection (b) of this section may  
42 request an administrative hearing before the Commissioner or his designee to review  
43 that order. Such hearing shall be held as provided in subsection (e) of this section, but  
44 the request for a hearing shall not stay the effect of the order. If the Commissioner

1 issues an order under subsection (b) of this section, the insurer may, at any time, waive  
2 the hearing and apply for immediate judicial relief by means of any remedy afforded by  
3 law without first exhausting its administrative remedies. Subsequent to an  
4 administrative hearing, any party to the proceedings whose interests are substantially  
5 affected is entitled to judicial review of any order issued by the Commissioner.

6 (g) During the period of supervision the insurer may request the Commissioner to  
7 review any action taken or proposed to be taken by the supervisor, specifying wherein  
8 the action complained of is believed not to be in the best interest of the insurer.

9 (h) If any person violates any supervision order issued under this section that as  
10 to him is then still in effect, he shall be liable to pay a civil penalty imposed by the  
11 Court not to exceed ten thousand dollars (\$10,000).

12 (i) The Commissioner may apply for, and any court of general jurisdiction may  
13 grant, such restraining orders, preliminary and permanent injunctions, and other orders  
14 as may be deemed to be necessary and proper to enforce a supervision order.

15 (j) In the event that any person subject to the provisions of this Article, including  
16 any person described in G.S. 58-645(a), knowingly and willfully violates any valid  
17 order of the Commissioner issued under the provisions of this section and, as a result of  
18 such violation, the net worth of the insurer is reduced or the insurer suffers loss that it  
19 would not otherwise have suffered, said person shall become personally liable to the  
20 insurer for the amount of any such reduction or loss. The Commissioner or supervisor  
21 is authorized to bring an action on behalf of the insurer in the Court to recover the  
22 amount of the reduction or loss together with any costs.

23 **"§ 58-654. Court's seizure order.**

24 (a) The Commissioner may file in the Court a petition alleging, with respect to a  
25 domestic insurer:

- 26 (1) That there exist grounds that justify a judicial order for a formal  
27 delinquency proceeding against an insurer under this Article;  
28 (2) That the interests of policyholders, creditors, or the public will be  
29 endangered by delay; and  
30 (3) The contents of an order deemed by the Commissioner to be  
31 necessary.

32 (b) Upon a filing under subsection (a) of this section, the Court may issue  
33 forthwith, **ex parte**, the requested order, that directs the Commissioner to take  
34 possession and control of all or a part of the property, books, accounts, documents, and  
35 other records of an insurer, and of the premises occupied by it for transaction of its  
36 business, and that, until further order of the Court, enjoins the insurer and its officers,  
37 managers, agents, and employees from disposing of its property and from transacting its  
38 business except with the written consent of the Commissioner.

39 (c) The Court shall specify in the order what its duration shall be, which shall be  
40 such time as the Court considers necessary for the Commissioner to ascertain the  
41 condition of the insurer. On motion of either party or on its own motion, the Court may  
42 from time to time hold such hearings as it considers desirable after such notice as it  
43 considers appropriate; and may extend, shorten, or modify the terms of the seizure  
44 order. The Court shall vacate the seizure order if the Commissioner fails to commence

1 a formal proceeding under this Article after having a reasonable opportunity to do so.  
2 An order of the Court pursuant to a formal proceeding under this Article shall **ipso facto**  
3 vacate the seizure order.

4 (d) Entry of a seizure order under this section does not constitute an anticipatory  
5 breach of any contract of the insurer.

6 (e) An insurer subject to an **ex parte** order under this section may petition the  
7 Court at any time after the issuance of such order for a hearing and review of the order.  
8 The Court shall hold such a hearing and review not more than 15 days after the request.  
9 A hearing under this subsection may be held privately in chambers, and it shall be so  
10 held if the insurer proceeded against so requests.

11 (f) If, at any time after the issuance of such an order, it appears to the Court that  
12 any person whose interest is or will be substantially affected by the order did not appear  
13 at the hearing and has not been served, the Court may order that notice be given. An  
14 order that notice be given does not stay the effect of any order previously issued by the  
15 Court.

16 **"§ 58-655. Confidentiality of hearings.**

17 In all proceedings and judicial reviews thereof under G.S. 58-653 and G.S. 58-654,  
18 all records of the insurer, other documents, and all Department files and Court records  
19 and papers, insofar as they pertain to or are a part of the record of the proceedings, shall  
20 be and remain confidential except as is necessary to obtain compliance therewith, unless  
21 the Court, after hearing arguments from the parties in chambers, orders otherwise; or  
22 unless the insurer requests that the matter be made public. Until such Court order, all  
23 papers filed with the clerk of the Court shall be held by him in a confidential file.

24 **"§ 58-656. Grounds for rehabilitation.**

25 The Commissioner may petition the Court for an order authorizing him to  
26 rehabilitate a domestic insurer or an alien insurer domiciled in this State on any one or  
27 more of the following grounds:

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

31 (2) There is reasonable cause to believe that there has been embezzlement  
32 from the insurer, wrongful sequestration or diversion of the insurer's  
33 assets, forgery or fraud affecting the insurer, or other illegal conduct  
34 in, by, or with respect to the insurer that if established would endanger  
35 assets in an amount threatening the solvency of the insurer.

36 (3) The insurer has failed to remove any person who in fact has executive  
37 authority in the insurer, whether an officer, manager, general agent,  
38 employee, or other person; if the person has been found after notice  
39 and hearing by the Commissioner to be dishonest or untrustworthy in a  
40 way affecting the insurer's business.

41 (4) Control of the insurer, whether by stock ownership or otherwise, and  
42 whether direct or indirect, is in a person or persons found after notice  
43 and hearing to be untrustworthy.

- 1           (5)    Any person who in fact has executive authority in the insurer, whether  
2           an officer, manager, general agent, director or trustee, employee, or  
3           other person, has refused to be examined under oath by the  
4           Commissioner concerning its affairs, whether in this State or  
5           elsewhere; and after reasonable notice of the fact, the insurer has failed  
6           promptly and effectively to terminate the employment and status of the  
7           person and all his influence on management.
- 8           (6)    After demand by the Commissioner the insurer has failed to promptly  
9           make available for examination any of its own property, books,  
10          accounts, documents, or other records; those of any subsidiary or  
11          related company within the control of the insurer; or those of any  
12          person having executive authority in the insurer insofar as they pertain  
13          to the insurer.
- 14          (7)    Without first obtaining the written consent of the Commissioner, the  
15          insurer has (i) transferred, or attempted to transfer, in a manner  
16          contrary to Article 12A of this Chapter, substantially its entire property  
17          or business, or (ii) has entered into any transaction, the effect of which  
18          is to merge, consolidate, or reinsure substantially its entire property or  
19          business in or with the property or business of any other person.
- 20          (8)    The insurer or its property has been or is the subject of an application  
21          for the appointment of a receiver, trustee, custodian, conservator, or  
22          sequestrator or similar fiduciary of the insurer or its property otherwise  
23          than as authorized under this Chapter, and such appointment has been  
24          made or is imminent, and such appointment might oust the courts of  
25          this State of jurisdiction or might prejudice orderly delinquency  
26          proceedings under this Article.
- 27          (9)    Within the previous four years the insurer has willfully violated its  
28          charter or articles of incorporation, its bylaws, this Chapter, or any  
29          valid order of the Commissioner under G.S. 58-653.
- 30          (10)   The insurer has failed to pay within 60 days after due any obligation to  
31          any state or any subdivision thereof or any judgment entered in any  
32          state, if the court in which such judgment was entered has jurisdiction  
33          over such subject matter; except that such nonpayment is not a ground  
34          until 60 days after any good faith effort by the insurer to contest the  
35          obligation has been terminated, whether it is before the Commissioner  
36          or in the courts, or the insurer has systematically attempted to  
37          compromise or renegotiate previously agreed settlements with its  
38          creditors on the ground that it is financially unable to pay its  
39          obligations in full.
- 40          (11)   The insurer has failed to file its annual report or any other financial  
41          report required by statute within the time allowed by law and, after  
42          written demand by the Commissioner, has failed to immediately give  
43          an adequate explanation.

1           (12) The board of directors or the holders of a majority of the shares  
2           entitled to vote, or a majority of those individuals entitled to the  
3           control of those persons specified in G.S. 58-641, request or consent to  
4           rehabilitation under this Article.

5 **"§ 58-657. Rehabilitation orders.**

6           (a) An order to rehabilitate the business of a domestic insurer or an alien insurer  
7           domiciled in this State, shall appoint the Commissioner and his successors in office as  
8           the rehabilitator, and shall direct the rehabilitator forthwith to take possession of the  
9           assets of the insurer and to administer them under the general supervision of the Court.  
10          The filing or recording of the order with the clerk of the Court or register of deeds of the  
11          county in which the principal business of the insurer is conducted, or the county in  
12          which its principal office or place of business is located, shall impart the same notice as  
13          a deed, bill of sale, or other evidence of title duly filed or recorded with that register of  
14          deeds would have imparted. The order to rehabilitate the insurer shall by operation of  
15          law vest title to all assets of the insurer in the rehabilitator.

16          (b) Any order issued under this section shall require accounting to the Court by  
17          the rehabilitator. Accountings shall be at such intervals as the Court specifies in its  
18          order.

19          (c) Entry of an order of rehabilitation shall not constitute an anticipatory breach  
20          of any contract of the insurer.

21 **"§ 58-658. Powers and duties of the rehabilitator.**

22          (a) The rehabilitator has the power:

23               (1) To appoint a special deputy to act for him under this Article, and to  
24               determine his reasonable compensation. The special deputy has all  
25               powers of the rehabilitator granted by this section. The special deputy  
26               serves at the pleasure of the rehabilitator.

27               (2) To employ employees and agents, legal counsel, actuaries,  
28               accountants, appraisers, consultants, and such other personnel as he  
29               may deem to be necessary to assist in the rehabilitation.

30               (3) To fix the reasonable compensation of employees and agents, legal  
31               counsel, actuaries, accountants, appraisers, and consultants, with the  
32               approval of the Court.

33               (4) To pay reasonable compensation to persons appointed; and to defray  
34               from the funds or assets of the insurer all expenses of taking  
35               possession of, conserving, conducting, rehabilitating, disposing of, or  
36               otherwise dealing with the business and property of the insurer.

37               (5) To hold hearings, to subpoena witnesses to compel their attendance, to  
38               administer oaths, to examine any person under oath, and to compel any  
39               person to subscribe to this testimony after it has been correctly reduced  
40               to writing; and in connection therewith to require the production of any  
41               books, papers, records, or other documents that he considers relevant  
42               to the inquiry.

43               (6) To collect all debts and moneys due and claims belonging to the  
44               insurer, wherever located, and for this purpose:



- 1           a.     To institute timely action in other jurisdictions, in order to  
2                 forestall garnishment and attachment proceedings against such  
3                 debts;
- 4           b.     To do such other acts that are necessary or expedient to collect,  
5                 conserve, or protect its assets or property, including the power  
6                 to sell, compound, compromise, or assign debts for purposes of  
7                 collection upon such terms and conditions as he deems to be  
8                 best; and
- 9           c.     To pursue any creditor's remedies available to enforce his  
10                claims.
- 11       (7)     To conduct public and private sales of the property of the insurer.
- 12       (8)     To use assets of the estate of an insurer under a rehabilitation order to  
13                transfer policy obligations to a solvent assuming insurer, if the transfer  
14                can be arranged without prejudice to applicable priorities under G.S.  
15                58-683.
- 16       (9)     To acquire, hypothecate, encumber, lease, improve, sell, transfer,  
17                abandon, or otherwise dispose of or deal with, any property of the  
18                insurer at its market value or upon such terms and conditions that are  
19                fair and reasonable. He also has the power to execute, acknowledge,  
20                and deliver any and all deeds, assignments, releases and other  
21                instruments necessary or proper to effectuate any sale of property or  
22                other transaction in connection with the rehabilitation.
- 23       (10)    To borrow money on the security of the insurer's assets or without  
24                security and to execute and deliver all documents necessary to that  
25                transaction for the purpose of facilitating the rehabilitation.
- 26       (11)    To enter into such contracts that are necessary to carry out the order to  
27                rehabilitate, and to affirm or disavow any contracts to which the  
28                insurer is a party.
- 29       (12)    To continue to prosecute and to institute in the name of the insurer or  
30                in his own name any and all suits and other legal proceedings, in this  
31                State or elsewhere, and to abandon the prosecution of claims he deems  
32                unprofitable to pursue further.
- 33       (13)    To prosecute any action that may exist in behalf of the creditors,  
34                members, policyholders, or shareholders of the insurer against any  
35                officer of the insurer or against any other person.
- 36       (14)    To remove any or all records and property of the insurer to the offices  
37                of the Commissioner or to such other place as may be convenient for  
38                the purposes of efficient and orderly execution of the rehabilitation.
- 39       (15)    To deposit in one or more banks in this State such sums as are required  
40                for meeting current administration expenses and dividend  
41                distributions.
- 42       (16)    To invest all sums not currently needed, unless the Court orders  
43                otherwise.

- 1           (17) To file any necessary documents for recording in the office of any  
2           register of deeds in this State or elsewhere where property of the  
3           insurer is located.
- 4           (18) To assert all defenses available to the insurer as against third persons,  
5           including statutes of limitation, statutes of frauds, and the defense of  
6           usury. A waiver of any defense by the insurer after a petition in  
7           rehabilitation has been filed shall not bind the rehabilitator.
- 8           (19) To exercise and enforce all rights, remedies, and powers of any  
9           creditor, shareholder, policyholder, or member; including any power to  
10          avoid any transfer or lien that may be given by law and that is not  
11          included within G.S. 58-669 through 58-671.
- 12          (20) To intervene in any proceeding wherever instituted that might lead to  
13          the appointment of a receiver or trustee, and to act as the receiver or  
14          trustee whenever the appointment is offered.
- 15          (21) To enter into agreements with any receiver or insurance regulator of  
16          any other state relating to the rehabilitation, liquidation, conservation,  
17          or dissolution of an insurer doing business in both states.
- 18          (22) To exercise all powers now held or subsequently conferred upon  
19          receivers by laws of this State not inconsistent with the provisions of  
20          this Article.

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

26          (c) The rehabilitator may take such action as he considers necessary or  
27          appropriate to reform and revitalize the insurer. He shall have all the powers of the  
28          directors, officers, and managers, whose authority shall be suspended, except to the  
29          extent they may be redelegated by the rehabilitator. He shall have full power to direct,  
30          manage, hire, and discharge employees, subject to any contract rights they may have,  
31          and to deal with the property and business of the insurer.

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

36          (e) If the rehabilitator determines that reorganization, consolidation, conversion,  
37          reinsurance, merger, or other transformation of the insurer is appropriate, he shall  
38          prepare a plan to effect such changes. Upon application of the rehabilitator for approval  
39          of the plan, and after such notice and hearings as the Court may prescribe, the Court  
40          may either approve or disapprove the plan proposed, or may modify it and approve it as  
41          modified. Any plan approved under this section shall be, in the opinion of the Court,  
42          fair and equitable to all parties concerned. If the plan is approved, the rehabilitator shall  
43          carry out the plan. In the case of a life insurer, the plan proposed may include the  
44          imposition of liens upon the policies of the insurer, if all rights of shareholders are first

1 relinquished. A plan for a life insurer may also propose imposition of a moratorium  
2 upon loan and cash surrender rights under policies, for such period and to such an extent  
3 as may be necessary.

4 (f) The rehabilitator shall have the power under G.S. 58-669 and G.S. 58-670 to  
5 avoid fraudulent transfers.

6 **"§ 58-659. Actions by and against rehabilitator.**

7 (a) When a rehabilitation order against an insurer is entered, every court in this  
8 State, before which any pending action or proceeding in which the insurer is a party or  
9 is obligated to defend a party, shall stay the action or proceeding for 120 days and such  
10 additional time that is necessary for the rehabilitator to obtain proper representation and  
11 prepare for further proceedings. The rehabilitator may take such action respecting  
12 pending litigation as he deems necessary in the interests of justice and for the protection  
13 of creditors, policyholders, and the public. The rehabilitator may immediately consider  
14 all litigation pending outside this State and may petition the courts having jurisdiction  
15 over that litigation for stays whenever necessary to protect the estate of the insurer.

16 (b) No statute of limitations or defense of laches shall run with respect to any  
17 action by or against an insurer between the filing of a petition for appointment of a  
18 rehabilitator for that insurer and the order granting or denying that petition.

19 (c) Any domestic or foreign guaranty association has standing to appear in any  
20 Court proceeding concerning the rehabilitation of an insurer if such association is or  
21 may become liable to act as a result of the rehabilitation.

22 **"§ 58-660. Termination of rehabilitation.**

23 (a) Whenever the rehabilitator believes further attempts to rehabilitate an insurer  
24 would substantially increase the risk of loss to creditors, policyholders or the public, or  
25 would be futile, the rehabilitator may petition the Court for an order of liquidation. A  
26 petition under this subsection shall have the same effect as a petition under G.S. 58-661.  
27 The Court may make such findings and issue such orders at any time upon its own  
28 motion. The Court shall permit the directors of the insurer to take such actions as are  
29 reasonably necessary to defend against the petition and may order payment from the  
30 estate of the insurer of such costs and other expenses of defense as justice may require.

31 (b) The rehabilitator may at any time petition the Court for an order terminating  
32 rehabilitation of an insurer. The Court shall also permit the directors of the insurer to  
33 petition the Court for an order terminating rehabilitation of the insurer and may order  
34 payment from the estate of the insurer of such costs and other expenses of such petition  
35 as justice may require. If the Court finds that rehabilitation has been accomplished and  
36 that grounds for rehabilitation under G.S. 58-656 no longer exist, it shall order that the  
37 insurer be restored to possession of its property and the control of the business. The  
38 Court may also make that finding and issue that order at any time upon its own motion.

39 **"§ 58-661. Grounds for liquidation.**

40 The Commissioner may petition the Court for an order directing him to liquidate a  
41 domestic insurer or an alien insurer domiciled in this State on the basis:

- 42 (1) Of any ground for an order of rehabilitation as specified in G.S. 58-  
43 656, whether or not there has been a prior order directing the  
44 rehabilitation of the insurer;

1           (2) That the insurer is insolvent; or

2           (3) That the insurer is in such condition that the further transaction of  
3           business would be hazardous, financially or otherwise, to its  
4           policyholders, its creditors, or the public.

5 **"§ 58-662. Liquidation orders.**

6           (a) An order to liquidate the business of a domestic insurer shall appoint the  
7 Commissioner and his successors in office liquidator and shall direct the liquidator  
8 forthwith to take possession of the assets of the insurer and to administer them under the  
9 general supervision of the Court. The liquidator is vested by operation of law with the  
10 title to all of the property, contracts, and rights of action, and all of the books and  
11 records of the insurer ordered liquidated, wherever located, as of the entry of the final  
12 order of liquidation. The filing or recording of the order with the clerk of the superior  
13 court and the register of deeds of the county in which its principal office or place of  
14 business is located; or, in the case of real estate, with the register of deeds of the county  
15 where the property is located, shall impart the same notice as a deed, bill of sale, or  
16 other evidence of title duly filed or recorded with that register of deeds would have  
17 imparted.

18           (b) Upon issuance of the order, the rights and liabilities of any such insurer and  
19 of its creditors, policyholders, shareholders, members and all other persons interested in  
20 its estate shall become fixed as of the date of entry of the order of liquidation, except as  
21 provided in G.S. 58-663 and G.S. 58-678.

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

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

30           (e) Any order issued under this section requires accounting to the Court by the  
31 liquidator. Accountings shall be at such intervals as the Court specifies in its order.

32 **"§ 58-663. Continuance of coverage.**

33           (a) All policies, other than life or health insurance or annuities, that are in effect  
34 at the time of the issuance of an order of liquidation shall continue in force only for the  
35 lesser of:

36           (1) A period of 30 days from the date of entry of the liquidation orders;

37           (2) The expiration of the policy coverage;

38           (3) The date when the insured has replaced the insurance coverage with  
39 equivalent insurance in another insurer or otherwise terminated the  
40 policy; or

41           (4) The liquidator has effected a transfer of the policy obligation pursuant  
42 to G.S. 58-665(a)(8).

43           (b) An order of liquidation under G.S. 58-662 terminates coverages at the time  
44 specified in subsection (a) of this section for the purposes of any other statute.

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

4 (d) Policies of life or health insurance or annuities or any period of coverage of  
5 such policies that are not covered by a domestic or foreign guaranty association shall  
6 terminate under subsections (a) and (b) of this section.

7 **"§ 58-664. Dissolution of insurer.**

8 The Commissioner may petition for an order dissolving the corporate existence of a  
9 domestic insurer or the United States branch of an alien insurer domiciled in this State  
10 at the time he applies for a liquidation order. The Court shall order dissolution of the  
11 corporation upon petition by the Commissioner upon or after the granting of a  
12 liquidation order. If the dissolution has not previously been ordered, it shall be effected  
13 by operation of law upon the discharge of the liquidator if the insurer is under a  
14 liquidation order for some other reason.

15 **"§ 58-665. Powers of liquidator.**

16 (a) The liquidator has the power:

- 17 (1) To appoint a special deputy to act for him under this Article, and to  
18 determine his reasonable compensation. The special deputy has all  
19 powers of the liquidator granted by this section. The special deputy  
20 serves at the pleasure of the liquidator.
- 21 (2) To employ employees and agents, legal counsel, actuaries,  
22 accountants, appraisers, consultants, and such other personnel as he  
23 may deem to be necessary to assist in the liquidation.
- 24 (3) To fix the reasonable compensation of employees and agents, legal  
25 counsel, actuaries, accountants, appraisers, and consultants, with the  
26 approval of the Court.
- 27 (4) To pay reasonable compensation to persons appointed; and to defray  
28 from the funds or assets of the insurer all expenses of taking  
29 possession of, conserving, conducting, liquidating, disposing of, or  
30 otherwise dealing with the business and property of the insurer. In the  
31 event that the property of the insurer does not contain sufficient cash  
32 or liquid assets to defray the costs incurred, the Commissioner may  
33 advance the costs so incurred out of any appropriation for the  
34 maintenance of the Department. Any amounts so advanced for  
35 expenses of administration shall be repaid to the Commissioner for the  
36 use of the Department out of the first available moneys of the insurer.
- 37 (5) To hold hearings, to subpoena witnesses to compel their attendance, to  
38 administer oaths, to examine any person under oath, and to compel any  
39 person to subscribe to this testimony after it has been correctly reduced  
40 to writing; and in connection therewith to require the production of any  
41 books, papers, records, or other documents that he considers relevant  
42 to the inquiry.
- 43 (6) To collect all debts and moneys due and claims belonging to the  
44 insurer, wherever located, and for this purpose:

- 1           a.     To institute timely action in other jurisdictions, in order to  
2                 forestall garnishment and attachment proceedings against such  
3                 debts;
- 4           b.     To do such other acts that are necessary or expedient to collect,  
5                 conserve, or protect its assets or property, including the power  
6                 to sell, compound, compromise, or assign debts for purposes of  
7                 collection upon such terms and conditions as he deems to be  
8                 best; and
- 9           c.     To pursue any creditor's remedies available to enforce his  
10                claims.
- 11       (7)     To conduct public and private sales of the property of the insurer.
- 12       (8)     To use assets of the estate of an insurer under a liquidation order to  
13                transfer policy obligations to a solvent assuming insurer, if the transfer  
14                can be arranged without prejudice to applicable priorities under G.S.  
15                58-683.
- 16       (9)     To acquire, hypothecate, encumber, lease, improve, sell, transfer,  
17                abandon, or otherwise dispose of or deal with, any property of the  
18                insurer at its market value or upon such terms and conditions that are  
19                fair and reasonable. He also has the power to execute, acknowledge,  
20                and deliver any and all deeds, assignments, releases and other  
21                instruments necessary or proper to effectuate any sale of property or  
22                other transaction in connection with the liquidation.
- 23       (10)    To borrow money on the security of the insurer's assets or without  
24                security and to execute and deliver all documents necessary to that  
25                transaction for the purpose of facilitating the liquidation.
- 26       (11)    To enter into such contracts that are necessary to carry out the order to  
27                liquidate, and to affirm or disavow any contracts to which the insurer  
28                is a party.
- 29       (12)    To continue to prosecute and to institute in the name of the insurer or  
30                in his own name any and all suits and other legal proceedings, in this  
31                State or elsewhere, and to abandon the prosecution of claims he deems  
32                unprofitable to pursue further. If the insurer is dissolved under G.S.  
33                58-664, he shall have the power to apply to any court in this State or  
34                elsewhere for leave to substitute himself for the insurer as plaintiff.
- 35       (13)    To prosecute any action that may exist in behalf of the creditors,  
36                members, policyholders, or shareholders of the insurer against any  
37                officer of the insurer or against any other person.
- 38       (14)    To remove any or all records and property of the insurer to the offices  
39                of the Commissioner or to such other place as may be convenient for  
40                the purposes of efficient and orderly execution of the liquidation.  
41                Domestic and foreign guaranty associations shall have such reasonable  
42                access to the records of the insurer as is necessary for them to carry out  
43                their statutory obligations.

- 1           (15) To deposit in one or more banks in this State such sums as are required  
2           for meeting current administration expenses and dividend  
3           distributions.
- 4           (16) To invest all sums not currently needed, unless the Court orders  
5           otherwise.
- 6           (17) To file any necessary documents for recording in the office of any  
7           register of deeds in this State or elsewhere where property of the  
8           insurer is located.
- 9           (18) To assert all defenses available to the insurer as against third persons,  
10          including statutes of limitation, statutes of frauds, and the defense of  
11          usury. A waiver of any defense by the insurer after a petition in  
12          liquidation has been filed shall not bind the liquidator. Whenever a  
13          domestic or foreign guaranty association has an obligation to defend  
14          any suit, the liquidator shall give precedence to such obligation and  
15          may defend only in the absence of a defense by such guaranty  
16          associations.
- 17          (19) To exercise and enforce all rights, remedies, and powers of any  
18          creditor, shareholder, policyholder, or member; including any power to  
19          avoid any transfer or lien that may be given by law and that is not  
20          included within G.S. 58-669 through G.S. 58-671.
- 21          (20) To intervene in any proceeding wherever instituted that might lead to  
22          the appointment of a receiver or trustee, and to act as the receiver or  
23          trustee whenever the appointment is offered.
- 24          (21) To enter into agreements with any receiver or insurance regulator of  
25          any other state relating to the rehabilitation, liquidation, conservation,  
26          or dissolution of an insurer doing business in both states.
- 27          (22) To exercise all powers now held or subsequently conferred upon  
28          receivers by laws of this State not inconsistent with the provisions of  
29          this Article.

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

35          "**§ 58-666. Notice to creditors and others.**"

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

- 38               (1) By first-class mail and either by telecopier, telegram, or telephone to  
39               the insurance regulator of each jurisdiction in which the insurer is  
40               doing business;
- 41               (2) By first-class mail to any domestic or foreign guaranty association that  
42               is or may become obligated as a result of the liquidation;
- 43               (3) By first-class mail to all insurance agents of the insurer;

1           (4) By first-class mail to all persons known or reasonably expected to have  
2 claims against the insurer, including all policyholders, at their last  
3 known addresses indicated by the records of the insurer; and

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

7           (b) Notice to potential claimants under subsection (a) of this section shall require  
8 claimants to file with the liquidator their claims, together with proper proofs thereof  
9 under G.S. 58-677, on or before a date the liquidator specifies in the notice. The  
10 liquidator need not require persons claiming cash surrender values or other investment  
11 values in life insurance and annuities to file claims. All claimants have a duty to keep  
12 the liquidator informed of any changes of address.

13           (c) If notice is given in accordance with this section, the distribution of assets of  
14 the insurer under this Article shall be conclusive with respect to all claimants, whether  
15 or not they receive notice.

16 **"§ 58-667. Actions by and against liquidator.**

17           (a) Upon the issuance of an order appointing a liquidator of a domestic insurer or  
18 of an alien insurer domiciled in this State, no action at law or equity shall be brought  
19 against the insurer or liquidator, whether in this State or elsewhere, nor shall any such  
20 existing actions be maintained or further presented after issuance of such order. The  
21 Court shall give full faith and credit to injunctions against the liquidator or the insurer or  
22 the continuation of existing actions against the liquidator or the insurer, when such  
23 injunctions are included in an order to liquidate an insurer issued pursuant to  
24 corresponding provisions in other states. Whenever, in the liquidator's judgement,  
25 protection of the estate of the insurer necessitates intervention in an action against the  
26 insurer that is pending outside this state, he may intervene in the action. The liquidator  
27 may defend any action in which he intervenes under this section at the expense of the  
28 estate of the insurer.

29           (b) The liquidator may, upon or after an order for liquidation, within two years or  
30 such subsequent time period as applicable law may permit, institute an action or  
31 proceeding on behalf of the estate of the insurer upon any cause of action against which  
32 the period of limitation fixed by applicable law has not expired at the time of the filing  
33 of the petition upon which such order is entered. Where, by any agreement, (1) a period  
34 of limitation is fixed for instituting a suit or proceeding upon any claim, or for filing any  
35 claim, proof of claim, proof of loss, demand, notice, or the like; or (2) where in any  
36 proceeding, judicial or otherwise, a period of limitation is fixed, either in the proceeding  
37 or by applicable law, for taking any action, filing any claim or pleading, or doing any  
38 act; and (3) where in any such case the period had not expired at the date of the filing of  
39 the petition; the liquidator may, for the benefit of the estate, take any such action or do  
40 any such act, required of or permitted to the insurer, within a period of 180 days  
41 subsequent to the entry of an order for liquidation, or within such further period as is  
42 shown to the satisfaction of the Court not to be unfairly prejudicial to the other party.



1 (c) Any domestic or foreign guaranty association has standing to appear in any  
2 Court proceeding concerning the liquidation of an insurer if such association is or may  
3 become liable to act as result of the liquidation.

4 **"§ 58-668. Collection and list of assets.**

5 (a) As soon as practicable after the liquidation order but not later than 120 days  
6 thereafter, the liquidator shall prepare in duplicate a list of the insurer's assets. The list  
7 shall be amended or supplemented from time to time as the liquidator determines. One  
8 copy shall be filed in the office of the clerk of the Court and one copy shall be retained  
9 for the liquidator's files. All amendments and supplements shall be similarly filed.

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

12 (c) A submittal to the Court for disbursement of assets in accordance with G.S.  
13 58-675.2 fulfills the requirements of subsection (a) of this section.

14 **"§ 58-669. Fraudulent transfers prior to petition.**

15 (a) Every transfer made or suffered and every obligation incurred by an insurer  
16 within one year prior to the filing of a successful petition for rehabilitation or liquidation  
17 under this Article is fraudulent as to then existing and future creditors if made or  
18 incurred without fair consideration or if made or incurred with actual intent to hinder,  
19 delay, or defraud either existing or future creditors. A transfer made or an obligation  
20 incurred by an insurer ordered to be rehabilitated or liquidated under this Article, that is  
21 fraudulent under this section, may be avoided by the receiver, except as to a person who  
22 in good faith is a purchaser, lienor, or obligee, for a present fair equivalent value; and  
23 except that any purchaser, lienor, or obligee, who in good faith has given a  
24 consideration less than fair for such transfer, lien, or obligation, may retain the property,  
25 lien, or obligation as security for repayment. The Court may, on due notice, order any  
26 such transfer or obligation to be preserved for the benefit of the estate, and in that event,  
27 the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or  
28 obligee.

29 (b) A transfer of property other than real property is made or suffered when it  
30 becomes so far perfected that no subsequent lien obtainable by legal or equitable  
31 proceedings on a simple contract could become superior to the rights of the transferee  
32 under G.S. 58-671(c). A transfer of real property is made or suffered when it becomes  
33 so far perfected that no subsequent bona fide purchaser from the insurer could obtain  
34 rights superior to the rights of the transferee. A transfer that creates an equitable lien is  
35 not perfected if there are available means by which a legal lien could be created. Any  
36 transfer that is not perfected prior to the filing of a petition for liquidation is made  
37 immediately before the filing of the successful petition. The provisions of this  
38 subsection apply whether or not there are or were creditors who might have obtained  
39 any liens or persons who might have become bona fide purchasers.

40 (c) Any transaction of the insurer with a reinsurer is fraudulent and may be  
41 avoided by the receiver under subsection (a) of this section if:

- 42 (1) The transaction consists of the termination, adjustment, or settlement  
43 of a reinsurance contract in which the reinsurer is released from any  
44 part of its duty to pay the originally specified share of losses that had

1           occurred prior to the time of the transaction, unless the reinsurer gives  
2           a present fair equivalent value for the release; and

- 3           (2) Any part of the transaction took place within one year prior to the date  
4           of filing of the petition through which the receivership was  
5           commenced.

6 **"§ 58-670. Fraudulent transfer after petition.**

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

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

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

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

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

- 34           (4) A person asserting the validity of a transfer under this section has the  
35 burden of proof. Except as elsewhere provided in this section, no  
36 transfer by or on behalf of the insurer after the date of the petition for  
37 liquidation by any person other than the liquidator is valid as against  
38 the liquidator.

39           (c) Nothing in this Article impairs the validity of currency or the negotiability of  
40 any instrument.

41 **"§ 58-671. Voidable preferences and liens.**

42           (a) A preference is a transfer of any of the property of an insurer to or for the  
43 benefit of a creditor, for or on account of an antecedent debt, made or suffered by the  
44 insurer within one year before the filing of a successful petition for liquidation under

1 this Article, the effect of which transfer may be to enable the creditor to obtain a greater  
2 percentage of this debt than another creditor of the same class would receive. If a  
3 liquidation order is entered while the insurer is already subject to a rehabilitation order,  
4 then such transfers shall be deemed to be preferences if made or suffered within one  
5 year before the filing of the successful petition for rehabilitation, or within two years  
6 before the filing of the successful petition for liquidation, whichever time is shorter.  
7 Any preference may be avoided by the liquidator if:

8 (1) The insurer was insolvent at the time of the transfer;

9 (2) The transfer was made within four months before the filing of the  
10 petition;

11 (3) The creditor receiving it or to be benefited thereby or his agent acting  
12 with reference thereto had, at the time the transfer was made,  
13 reasonable cause to believe that the insurer was insolvent or was about  
14 to become insolvent; or

15 (4) The creditor receiving it was an officer, or any employee, attorney, or  
16 other person who was in fact in a position of comparable influence in  
17 the insurer to an officer, whether or not he held such position, or any  
18 shareholder holding directly or indirectly more than five percent (5%)  
19 of any class of any equity security issued by the insurer, or any other  
20 person, firm, corporation, association, or aggregation of persons with  
21 whom the insurer did not deal at arm's length.

22 Where the preference is voidable, the liquidator may recover the property or, if it has  
23 been converted, its value from any person who has received or converted the property;  
24 except where a bona fide purchaser or lienor has given less than fair equivalent value,  
25 he shall have a lien upon the property to the extent of the consideration actually given  
26 by him. Where a preference by way of lien or security title is voidable, the Court may  
27 on due notice order the lien or title to be preserved for the benefit of the estate, in which  
28 event the lien or title shall pass to the liquidator.

29 (b) A transfer of property other than real property shall be deemed to be made or  
30 suffered when it becomes so far perfected that no subsequent lien obtainable by legal or  
31 equitable proceedings on a simple contract could become superior to the rights of the  
32 transferee. A transfer of real property shall be deemed to be made or suffered when it  
33 becomes so far perfected that no subsequent bona fide purchaser from the insurer could  
34 obtain rights superior to the rights of the transferee. A transfer that creates an equitable  
35 lien shall not be deemed to be perfected if there are available means by which a legal  
36 lien could be created. A transfer not perfected prior to the filing of a petition for  
37 liquidation shall be deemed to be made immediately before the filing of the successful  
38 petition. The provisions of this subsection apply whether or not there are or were  
39 creditors who might have obtained liens or persons who might have become bona fide  
40 purchasers.

41 (c) A lien obtainable by legal or equitable proceedings upon a simple contract is  
42 one arising in the ordinary course of such proceedings upon the entry or docketing of a  
43 judgment or decree, or upon attachment, garnishment, execution, or like process,  
44 whether before, upon, or after judgment or decree and whether before or upon levy. It

1 does not include liens that under applicable law are given a special priority over other  
2 liens that are prior in time. A lien obtainable by legal or equitable proceedings could  
3 become superior to the rights of a transferee, or a purchaser could obtain rights superior  
4 to the rights of a transferee within the meaning of subsection (b) of this section, if such  
5 consequences would follow only from the lien or purchase itself, or from the lien or  
6 purchase followed by any step wholly within the control of the respective lienholder or  
7 purchaser, with or without the aid of ministerial action by public officials. Such a lien  
8 could not, however, become superior and such a purchase could not create superior  
9 rights for the purpose of subsection (b) of this section through any acts subsequent to  
10 the obtaining of such a lien or subsequent to such a purchase that require the agreement  
11 or concurrence of any third party or that require any further judicial action or ruling.

12 (d) A transfer of property for or on account of a new and contemporaneous  
13 consideration that is deemed under subsection (b) of this section to be made or suffered  
14 after the transfer because of delay in perfecting it does not thereby become a transfer for  
15 or on account of any antecedent debt if any acts required by the applicable law to be  
16 performed in order to perfect the transfer as against liens or bona fide purchasers' rights  
17 are performed within 21 days or any period expressly allowed by the law, whichever is  
18 less. A transfer to secure a future loan, if such a loan is actually made, or a transfer that  
19 becomes security for a future loan, shall have the same effect as a transfer for or on  
20 account of a new and contemporaneous consideration.

21 (e) If any lien deemed to be voidable under subdivision (a)(2) of this section has  
22 been dissolved by the furnishing of a bond or other obligation, the surety on which has  
23 been indemnified directly or indirectly by the transfer of or the creation of a lien upon  
24 any property of an insurer before the filing of a petition under this Article that results in  
25 a liquidation order, the indemnifying transfer or lien shall also be deemed to be  
26 voidable.

27 (f) The property affected by any lien deemed to be voidable under subsections  
28 (a) and (e) of this section shall be discharged from such lien, and that property and any  
29 of the indemnifying property transferred to or for the benefit of a surety shall pass to the  
30 liquidator; except that the Court may on due notice order any such lien to be preserved  
31 for the benefit of the estate, and the Court may direct that such conveyance be executed  
32 as may be proper or adequate to evidence the title of the liquidator.

33 (g) The Court shall have summary jurisdiction of any proceeding by the  
34 liquidator to hear and determine the rights of any parties under this section. Reasonable  
35 notice of any hearing in the proceeding shall be given to all parties in interest, including  
36 the obligee of a releasing bond or other like obligation. Where an order is entered for  
37 the recovery of indemnifying property in kind or for the avoidance of an indemnifying  
38 lien, the Court, upon application of any party in interest, shall in the same proceeding  
39 ascertain the value of the property or lien. If such value is less than the amount for  
40 which the property is indemnity or than the amount of the lien, the transferee or  
41 lienholder may elect to retain the property or lien upon payment of its value, as  
42 ascertained by the Court, to the liquidator, within such reasonable times as the Court  
43 shall fix.

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

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

11       (j) If an insurer, within four months before the filing of a successful petition for  
12 liquidation under this Article, or at any time in contemplation of a proceeding to  
13 liquidate it, directly or indirectly pays money or transfers property to an attorney at law  
14 for services rendered or to be rendered, such transactions may be examined by the Court  
15 on its own motion or on petition of the liquidator, and shall be held valid only to the  
16 extent of a reasonable amount to be determined by the Court. Any excess may be  
17 recovered by the liquidator for the benefits of the estate; provided that where the  
18 attorney is in a position of influence in the insurer or an affiliate thereof, payment of any  
19 money or the transfer of any property to the attorney at law for services rendered or to  
20 be rendered shall be governed by the provision of subdivision (a)(4) of this section.

21       (k) Every officer, manager, employee, shareholder, member, subscriber, attorney,  
22 or any other person acting on behalf of the insurer who knowingly participates in giving  
23 any preference, when he has reasonable cause to believe the insurer is or is about to  
24 become insolvent at the time of the preference, shall be personally liable to the  
25 liquidator for the amount of the preference. It is permissible to infer that there is a  
26 reasonable cause to so believe if the transfer was made within four months before the  
27 date of filing of the successful petition for liquidation. Every person receiving any  
28 property from the insurer or the benefit thereof as a preference voidable under  
29 subsection (a) of this section shall be personally liable therefor and shall be bound to  
30 account to the liquidator. Nothing in this subsection prejudices any other claim by the  
31 liquidator against any person.

32 **"§ 58-672. Claims of holders of void or voidable rights.**

33       (a) No claims of a creditor who has received or acquired a preference, lien,  
34 conveyance, transfer, assignment, or encumbrance voidable under this Article shall be  
35 allowed unless he surrenders the preference, lien, conveyance, transfer, assignment or  
36 encumbrance. If the avoidance is effected by a proceeding in which a final judgment  
37 has been entered, the claim shall not be allowed unless the money is paid or the property  
38 is delivered to the liquidator within 30 days from the date of the entering of the final  
39 judgment; except that the Court having jurisdiction over the liquidation may allow  
40 further time if there is an appeal or other continuation of the proceeding.

41       (b) A claim allowable under subsection (a) of this section by reason of the  
42 avoidance, whether voluntary or involuntary, of a preference, lien, conveyance, transfer,  
43 assignment, or encumbrance, may be filed as an excused late filing under G.S. 58-676

1 if filed within 30 days from the date of the avoidance, or within the further time allowed  
2 by the Court under subsection (a) of this section.

3 **"§ 58-673. Setoffs and counterclaims.**

4 (a) Mutual debts or mutual credits between the insurer and another person in  
5 connection with any action or proceeding under this Article shall be set off and the  
6 balance only shall be allowed or paid, except as provided in subsection (b) of this  
7 section and in G.S. 58-675.1.

8 (b) No setoff or counterclaim shall be allowed in favor of any person where:

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

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

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

18 (4) The obligation of the person is to pay earned premiums to the insurer.

19 (c) A setoff shall be permitted to local agents against agents' balances otherwise  
20 payable to the domiciliary or ancillary receiver for the amount expended by such agents  
21 to replace insurance coverage of their insureds and the reasonable expenses incident  
22 thereto as a result of any domestic, foreign or alien insurer being placed in delinquency  
23 proceedings. Agents claiming such setoff shall within 60 days of replacing such  
24 coverage provide a verified accounting of the replacement of such insurance to the  
25 domiciliary receiver, the ancillary receiver, if any, and the North Carolina Insurance  
26 Guaranty Association or similar organization in the state of residence of the  
27 policyholder. The verified accounting shall include the name of the agent, the name of  
28 the insured, the policy number, the replacement policy number, the cost of the  
29 replacement policy, the amount of unearned premium under each policy as to which  
30 setoff is claimed, any claimed expenses and a verification that the accounting has been  
31 provided to each of the persons and entities described herein. Unearned premiums set  
32 off as provided above in any amount shall be deemed paid in full by the insurer and no  
33 person shall have a claim for such unearned premiums against the North Carolina  
34 Insurance Guaranty Association or similar organization in the state of residence of the  
35 policyholder.

36 **"§ 58-674. Assessments.**

37 (a) As soon as practicable but not more than two years from the date of an order  
38 of liquidation under G.S. 58-662 of an insurer issuing assessable policies, the liquidator  
39 shall make a report to the Court setting forth:

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

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

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

1           (4) A recommendation as to whether an assessment should be made and in  
2           what amount.

3           (b) Upon the basis of the report provided in subsection (a) of this section,  
4 including any supplements and amendments thereto, the Court may levy one or more  
5 assessments against all members of the insurer who are subject to assessment. Subject  
6 to any applicable legal limits on assessability, the aggregate assessment shall be for the  
7 amount that the sum of the probable liabilities, the expenses of administration, and the  
8 estimated cost of collection of the assessment, exceeds the value of existing assets, with  
9 due regard given to assessments that cannot be collected economically.

10          (c) After a levy of assessment under subsection (b) of this section, the liquidator  
11 shall issue an order directing each member who has not paid the assessment pursuant to  
12 the order, to show cause why the liquidator should not pursue a judgment therefor.

13          (d) The liquidator shall give notice of the order to show cause by publication and  
14 by first class mail to each member liable thereunder mailed to his last known address as  
15 it appears on the insurer's records, at least 20 days before the return day of the order to  
16 show cause.

17          (e) If a member does not appear and serve duly verified objections upon the  
18 liquidator on or before the return day of the order to show cause under subsection (c) of  
19 this section, the Court shall make an order adjudging the member liable for the amount  
20 of the assessment against him pursuant to subsection (c) of this section, together with  
21 costs, and the liquidator shall have a judgment against the member therefor. If on or  
22 before such return day, the member appears and serves duly verified objections upon the  
23 liquidator, the Commissioner may hear and determine the matter or may appoint a  
24 referee to hear it and make such order as the facts warrant. In the event that the  
25 Commissioner determines that such objections do not warrant relief from assessment,  
26 the member may request the Court to review the matter and vacate the order to show  
27 cause.

28          (f) The liquidator may enforce any order or collect any judgment under  
29 subsection (e) of this section by any lawful means.

30 **"§ 58-675. Reinsurer's liability.**

31          The amount recoverable by the liquidator from reinsurers shall not be reduced as a  
32 result of the delinquency proceedings, regardless of any provision in the reinsurance  
33 contract or other agreement. Payment made directly to an insured or other creditor does  
34 not diminish the reinsurer's obligation to the insurer's estate except;

35           (1) Where the contract specifically provides for another payee of the  
36 reinsurance in the event of the insolvency of the ceding insurer or

37           (2) Where the assuming insurer, with the consent of the direct insured or  
38 insureds, has assumed the policy obligations of the ceding insurer as  
39 direct obligations of the assuming insurer to the payees under policies  
40 and in substitution of the obligations of the ceding insurer to the  
41 payees.

42 **"§ 58-675.1. Recovery of premiums owed.**

43          (a) An agent, broker, premium finance company, or any other person, other than  
44 the insured, responsible for the payment of a premium is obligated to pay an unpaid

1 premium for the full policy term due the insurer at the time of the declaration of  
2 insolvency, whether earned or unearned, as shown on the records of the insurer. The  
3 liquidator also has the right to recover from such person any part of an unearned  
4 premium that represents commission of such person. Except as provided in G.S. 58-  
5 673, credits or setoffs or both are not allowed to an agent, broker, or premium finance  
6 company for any amounts advanced to the insurer by the agent, broker, or premium  
7 finance company on behalf of, but in the absence of a payment by, the insured.

8 (b) An insured is obligated to pay any unpaid premium due the insurer at the time  
9 of the declaration of insolvency, as shown on the records of the insurer.

10 **"§ 58-675.2. Domiciliary liquidator's proposal to distribute assets.**

11 (a) Within 120 days of a final determination of insolvency of an insurer by the  
12 Court, the liquidator shall make application to the Court for approval of a proposal to  
13 disburse assets out of marshalled assets, from time to time as such assets become  
14 available, to a domestic or foreign guaranty association having obligations because of  
15 such insolvency. If the liquidator determines that there are insufficient assets to  
16 disburse, the application required by this section shall be considered satisfied by a filing  
17 by the liquidator stating the reasons for this determination.

18 (b) Such proposal shall at least include provisions for:

- 19 (1) Reserving amounts for the payment of expenses of administration and  
20 the payment of claims of secured creditors, to the extent of the value of  
21 the security held, and claims falling within the priorities established in  
22 G.S. 58-683(1) and (2);
- 23 (2) Disbursement of the assets marshalled to date and subsequent  
24 disbursement of assets as they become available;
- 25 (3) Equitable allocation of disbursements to each of the domestic and  
26 foreign guaranty associations entitled thereto;
- 27 (4) The securing by the liquidator from each of the associations entitled to  
28 disbursements pursuant to this section of an agreement to return to the  
29 liquidator such assets, together with income earned on assets  
30 previously disbursed, as may be required to pay claims of secured  
31 creditors and claims falling within the priorities established in G.S. 58-  
32 683 in accordance with such priorities. No bond shall be required of  
33 any such association; and
- 34 (5) A full report to be made by each association to the liquidator  
35 accounting for all assets so disbursed to the association, all  
36 disbursements made therefrom, any interest earned by the association  
37 on such assets and any other matter as the Court directs.

38 (c) The liquidator's proposal shall provide for disbursements to the associations  
39 in amounts estimated at least equal to the claim payments made or to be made thereby  
40 for which such associations could assert a claim against the liquidator; and shall further  
41 provide that if the assets available for disbursement from time to time do not equal or  
42 exceed the amount of such claim payments made or to be made by the association then  
43 disbursements shall be in the amount of available assets.



1       (d) The liquidator's proposal shall, with respect to an insolvent insurer writing  
2 life or health insurance or annuities, provide for disbursements of assets to any domestic  
3 or foreign guaranty association covering life or health insurance or annuities or to any  
4 other entity reinsuring, assuming, or guaranteeing policies or contracts of insurance  
5 under the acts creating such associations.

6       (e) Notice of such application shall be given to the association in and to the  
7 insurance regulators of each of the states. Any such notice shall be deemed to have  
8 been given when deposited in United States certified mail, first class postage prepaid, at  
9 least 30 days prior to submission of such application to the Court. Action on the  
10 application may be taken by the Court provided the above required notice has been  
11 given and provided further that the liquidator's proposal complies with subdivisions  
12 (b)(1) and (b)(2) of this section.

13 **"§ 58-676. Filing of claims.**

14       (a) Proof of all claims shall be filed with the liquidator in the form required by  
15 G.S. 58-677 on or before the last day for filing specified in the notice required under  
16 G.S. 58-666, except that proof of claims for cash surrender values or other investment  
17 values in life insurance and annuities need not be filed unless the liquidator expressly so  
18 requires.

19       (b) The liquidator may permit a claimant making a late filing to share in  
20 distributions, whether past or future, as if he were not late, to the extent that any such  
21 payment will not prejudice the orderly administration of the liquidation, under the  
22 following circumstances:

23           (1) The existence of the claim was not known to the claimant and that he  
24 filed his claim as promptly thereafter as reasonably possible after  
25 learning of it;

26           (2) A transfer to a creditor was avoided under G.S. 58-669 through 58-  
27 671, or was voluntarily surrendered under G.S. 58-672, and that the  
28 filing satisfies the conditions of G.S. 58-672;

29           (3) The valuation under G.S. 58-682, of security held by a secured creditor  
30 shows a deficiency, that is filed within 30 days after the valuation; and

31       (c) The liquidator shall permit late filing claims to share in distributions, whether  
32 past or future, as if they were not late, if such claims are claims of a guaranty  
33 association or foreign guaranty association for reimbursement of covered claims paid or  
34 expenses incurred, or both, subsequent to the last day for filing where such payments  
35 were made and expenses incurred as provided by law. Claims of domestic and foreign  
36 guaranty associations for reimbursement of covered claims paid or expenses incurred  
37 shall be deemed to be absolute.

38       (d) The liquidator may consider any claim filed late that is not covered by  
39 subsection (b) of this section, and permit it to receive distributions that are subsequently  
40 declared on any claims of the same or lower priority if the payment does not prejudice  
41 the orderly administration of the liquidation. The late-filing claimant shall receive, at  
42 each distribution, the same percentage of the amount allowed on his claim as is then  
43 being paid to claimants of any lower priority. This shall continue until his claim has  
44 been paid in full.

1 **"§ 58-677. Proof of claim.**

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

4 (1) The particulars of the claim, including the consideration given for it;

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

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

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

9 (5) Any right of priority of payment or other specific right asserted by the  
10 claimant;

11 (6) A copy of the written instrument that is the foundation of the claim;  
12 and

13 (7) The name and address of the claimant and any attorney who represents  
14 him.

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

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

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

29 (e) All claims of a guaranty association or foreign guaranty association shall be  
30 in such form and contain such substantiation as may be agreed to by the association and  
31 the liquidator; and failing such agreement as ordered by the Court.

32 **"§ 58-678. Special claims.**

33 (a) No contingent claim shall share in a distribution of the assets of an insurer  
34 that has been adjudicated to be insolvent by an order made pursuant to G.S. 58-662;  
35 except that such claims shall be considered, if properly presented, and may be allowed  
36 to share where:

37 (1) Such claim becomes absolute against the insurer on or before the last  
38 day fixed for filing of proofs of claim against the assets of such  
39 insurer, or

40 (2) There is a surplus and the liquidation is thereafter conducted upon the  
41 basis that such insurer is solvent.

42 (b) Where an insurer has been so adjudicated to be insolvent, any person who has  
43 a cause of action against an insured of such insurer under a liability insurance policy  
44 issued by such insurer, has the right to file a claim in the liquidation proceedings,

1 regardless of the fact that such claim may be contingent, and such claim may be  
2 allowed:

- 3       (1) If it may be reasonably inferred from the proof presented upon such  
4 claim that such person would be able to obtain a judgment upon such  
5 cause of action against such insured; and  
6       (2) If such person furnishes suitable proof, unless the Court for good cause  
7 shown otherwise directs, that no further valid claims against such  
8 insurer arising out of his cause of action other than those already  
9 presented can be made; and  
10       (3) If the total liability of such insurer to all claimants arising out of the  
11 same act of its insured is no greater than its total liability would be  
12 were it not in liquidation.

13 No judgment against such an insured taken after the date of the entry of the liquidation  
14 order shall be considered in the liquidation proceedings as evidence of liability or of the  
15 amount of damages, and no judgment against an insured taken by default, inquest, or by  
16 collusion prior to the entry of the liquidation order shall be considered as conclusive  
17 evidence in the liquidation proceeding, either of the liability of such insured to such  
18 person upon such cause of action or of the amount of damages to which such person is  
19 therein entitled.

20       (c) No claim of any secured claimant shall be allowed at a sum greater than the  
21 difference between the value of the claim without security and the value of the security  
22 itself as of the date of entry of the order of liquidation or such other date set by the  
23 Court for fixation of rights and liabilities as provided in G.S. 58-662 unless the claimant  
24 surrenders his security to the Commissioner, in which event the claim shall be allowed  
25 in the full amount for which it is valued.

26       (d) Claims that are due but for the passage of time, including any structured  
27 settlements or judgments involving periodic payments, shall be treated the same as  
28 absolute claims, except that such claims may be discounted at the legal rate of interest.

29       (e) Claims made under employment contracts by directors, principal officers, or  
30 persons in fact performing similar functions or having similar powers, are limited to  
31 payment for services rendered prior to the issuance of any order of rehabilitation or  
32 liquidation under this Article.

33 “§ 58-679. Special provisions for third party claims.

34       (a) Whenever any third party asserts a cause of action against an insured of an  
35 insurer in liquidation, the third party may file a claim with the liquidator.

36       (b) Whether or not the third party files a claim, the insured may file a claim on  
37 his own behalf in the liquidation. If the insured fails to file a claim by the date for filing  
38 claims specified in the order of liquidation or within 60 days after mailing of the notice  
39 required by G.S. 58-666, whichever is later, he is an unexcused late filer.

40       (c) The liquidator shall make his recommendations to the court under G.S. 58-  
41 666, for the allowance of an insured's claim under subsection (b) of this section after  
42 consideration of the probable outcome of any pending action against the insured on  
43 which the claim is based, the probable damages recoverable in the action, and the  
44 probable costs and expenses of defense. After allowance by the Court, the liquidator

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

15 (d) No claim may be presented under this section if it is or may be covered by  
16 any domestic or foreign guaranty association.

17 **"§ 58-680. Disputed claims.**

18 (a) When a claim is denied in whole or in part by the liquidator, written notice of  
19 the determination shall be given to the claimant or his attorney by first class mail at the  
20 address shown in the proof of claim. Within 60 days from the mailing of the notice, the  
21 claimant may file his objections with the liquidator. If no such filing is made, the  
22 claimant may not further object to the determination.

23 (b) Whenever objections are filed with the liquidator and the liquidator does not  
24 alter his denial of the claim as a result of the objections, the liquidator shall ask the  
25 Court for a hearing as soon as practicable and give notice of the hearing by first class  
26 mail to the claimant or his attorney and to any other persons directly affected, not less  
27 than 10 nor more than 30 days before the date of the hearing. The matter may be heard  
28 by the Court or by a court-appointed referee who shall submit findings of fact along  
29 with his recommendation.

30 **"§ 58-681. Claims of surety.**

31 Whenever a creditor, whose claim against an insurer is secured in whole or in part  
32 by the undertaking of another person, fails to prove and file that claim, the other person  
33 may do so in the creditor's name and shall be subrogated to the rights of the creditor,  
34 whether the claim has been filed by the creditor or by the other person in the creditor's  
35 name, to the extent that he discharges the undertaking. In the absence of an agreement  
36 with the creditor to the contrary, the other person shall not be entitled to any distribution  
37 until the amount paid to the creditor on the undertaking plus the distributions paid on  
38 the claim from the insurer's estate to the creditor equals the amount of the entire claim  
39 of the creditor. Any excess received by the creditor shall be held by him in trust for  
40 such other person. As used in this section, 'other person' does not mean a guaranty  
41 association or foreign guaranty association.

42 **"§ 58-682. Secured creditor's claims.**

43 (a) The value of any security held by a secured creditor shall be determined in  
44 one of the following ways, the Court may direct:

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

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

6           (b) The determination shall be under the supervision and control of the Court  
7           with due regard for the recommendation of the liquidator. The amount so determined  
8           shall be credited upon the secured claim, and any deficiency shall be treated as an  
9           unsecured claim. If the claimant surrenders his security to the liquidator, the entire  
10          claim shall be allowed as if unsecured.

11          **"§ 58-683. Priority of distribution.**

12          The priority of distribution of claims from the insurer's estate shall be in accordance  
13          with the order in which each class of claims is set forth in this section. Every claim in  
14          each class shall be paid in full or adequate funds shall be retained for such payment  
15          before the members of the next class receive any payment. No subcategories shall be  
16          established within the categories in any class. The order of distribution of claims shall  
17          be:

18          (1) Claims for cost of administration and conservation of assets of the  
19          insurer.

20          (2) Compensation actually owing to employees other than officers of the  
21          insurer for services rendered within three months prior to the  
22          commencement of a delinquency proceeding against the insurer under  
23          this Article, but not exceeding one thousand dollars (\$1,000) for each  
24          employee. In the discretion of the Commissioner, this compensation  
25          may be paid as soon as practicable after the proceeding has been  
26          commenced. This priority is in lieu of any other similar priority that  
27          may be authorized by law as to wages or compensation of those  
28          employees.

29          (3) Claims or portions of claims for benefits under policies and for losses  
30          incurred, including claims of third parties under liability policies, up to  
31          an amount of three hundred thousand dollars (\$300,000) per claim and  
32          claims of domestic and foreign guaranty associations; but excluding  
33          claims of insurance pools, underwriting associations, or those arising  
34          out of reinsurance agreements, claims of other insurers for  
35          subrogation, and claims of insurers for payments and settlements under  
36          uninsured and underinsured motorist coverages.

37          (4) Claims for unearned premiums.

38          (5) Claims of general creditors, including claims of insurance pools,  
39          underwriting associations, or those arising out of reinsurance  
40          agreements; claims of other insurers for subrogation; those portions of  
41          claims for benefits under policies and for losses incurred, including  
42          claims of third parties under liability policies, in excess of three  
43          hundred thousand dollars (\$300,000) per claim; and claims of insurers

1                   for payments and settlements under uninsured and underinsured  
2                   motorist coverages.

3 **"§ 58-684. Liquidator's recommendations to the Court.**

4       (a)   The liquidator shall review all claims duly filed in the liquidation and shall  
5 make such further investigation as necessary. He may compound, compromise, or in  
6 any other manner negotiate the amount for which claims will be recommended to the  
7 Court except where he is required by law to accept claims as settled by any person or  
8 organization, including any domestic or foreign guaranty association. Unresolved  
9 disputes shall be determined under G.S. 58-680. As soon as practicable, the liquidator  
10 shall present to the Court a report of the claims against the insurer with his  
11 recommendations. The report shall include the name and address of each claimant and  
12 the amount of any claim finally recommended. If the insurer has issued annuities or life  
13 insurance policies, the liquidator shall report the persons to whom, according to the  
14 records of the insurer, amounts are owed as cash surrender values or other investment  
15 values and the amounts owed.

16       (b)   The Court may approve, disapprove, or modify the report on claims by the  
17 liquidator. Such reports that are not modified by the Court within a period of 60 days  
18 following submission by the liquidator shall be treated by the liquidator as allowed  
19 claims, subject thereafter to later modification or to rulings made by the Court pursuant  
20 to G. S. 58-680. No claim under a policy of insurance shall be allowed for an amount in  
21 excess of the applicable policy benefits.

22 **"§ 58-685. Distribution of assets.**

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

29       (b)   Interest on claims shall be paid only after all claims have been paid under  
30 subsection (a) of this section. This subsection does not apply to interest awarded as part  
31 of a judgment.

32 **"§ 58-686. Unclaimed and withheld funds.**

33       (a)   All unclaimed funds subject to distribution remaining in the liquidator's hands  
34 when he is ready to apply to the Court for discharge, including the amount distributable  
35 to any creditor, shareholder, member, or other person who is unknown or cannot be  
36 found, shall be deposited with the State Treasurer, and shall be paid without interest  
37 except in accordance with G.S. 58-683 to the person entitled thereto or his legal  
38 representative upon proof satisfactory to the State Treasurer of his right thereto. Any  
39 amount on deposit not claimed within six years from the discharge of the liquidator  
40 shall be considered abandoned and shall be escheated without formal escheat  
41 proceedings.

42       (b)   All funds withheld under G.S. 58-678 and not distributed shall upon  
43 discharge of the liquidator be deposited with the State Treasurer and paid by him in  
44 accordance with G.S. 58-683. Any sums remaining that under G.S. 58-683 would revert

1 to the undistributed assets of the insurer shall be transferred to the State Treasurer and  
2 become the property of the State under subsection (a) of this section, unless the  
3 Commissioner in his discretion petitions the Court to reopen the liquidation under G.S.  
4 58-688.

5 **"§ 58-687. Termination of proceedings.**

6 (a) When all assets justifying the expense of collection and distribution have  
7 been collected and distributed under this Article, the liquidator shall apply to the Court  
8 for discharge. The Court may grant the discharge and make any other orders, including  
9 an order to transfer any remaining funds that are uneconomic to distribute, as may be  
10 deemed appropriate.

11 (b) Any other person may apply to the Court at any time for an order under  
12 subsection (a) of this section. If the application is denied, the applicant shall pay the  
13 costs and expenses of the liquidator in resisting the application, including reasonable  
14 attorney fees.

15 **"§ 58-688. Reopening liquidation.**

16 After the liquidation proceeding has been terminated and the liquidator discharged,  
17 the Commissioner or other interested party may at any time petition the Court to reopen  
18 the proceedings for good cause, including the discovery of additional assets. If the  
19 Court is satisfied that there is justification for reopening, it shall so order.

20 **"§ 58-689. Disposition of records during and after termination of liquidation.**

21 Whenever it appears to the Commissioner that the records of any insurer in process  
22 of liquidation or completely liquidated are no longer useful, he may recommend to the  
23 Court and the Court shall direct what records should be retained for future reference and  
24 what should be destroyed.

25 **"§ 58-690. External audit of the receiver's books.**

26 The Court may, as deems to be desirable, cause audits to be made of the books of the  
27 Commissioner relating to any receivership established under this Article, and a report of  
28 each audit shall be filed with the Commissioner and with the Court. The books, records,  
29 and other documents of the receivership shall be made available to any auditor at any  
30 time without notice. The expense of each audit shall be considered a cost of  
31 administration of the receivership.

32 **"§ 58-691. Conservation of property of foreign or alien insurers found in this**  
33 **State.**

34 (a) If a domiciliary liquidator has not been appointed, the Commissioner may  
35 apply to the Court by verified petition for an order directing him to act as conservator to  
36 conserve the property of an alien insurer not domiciled in this State or a foreign insurer  
37 on any one or more of the following grounds:

- 38 (1) Any of the grounds in G.S. 58-656;
- 39 (2) That any of its property has been sequestered by official action in its  
40 domiciliary state, or in any other state;
- 41 (3) That enough of its property has been sequestered in an alien country to  
42 give reasonable cause to fear that the insurer is or may become  
43 insolvent;

1           (4) That its certificate of authority to do business in this State has been  
2 revoked or that none was ever issued; and that there are residents of  
3 this State with outstanding claims or outstanding policies.

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

7           (c) The Court may issue the order in whatever terms it shall deem appropriate.  
8 The filing or recording of the order with the clerk of court or the register of deeds of the  
9 county in which the principal business of the company is located, shall impart the same  
10 notice as a deed, bill of sale or other evidence of title duly filed or recorded with that  
11 register of deeds would have imparted.

12           (d) The conservator may at any time petition for and the Court may grant an  
13 order under G.S. 58-692 to liquidate assets of a foreign or alien insurer under  
14 conservation, or, if appropriate, for an order under G.S. 58-694, to be appointed  
15 ancillary receiver.

16           (e) The conservator may at any time petition the Court for an order terminating  
17 conservation of an insurer. If the Court finds that the conservation is no longer  
18 necessary, it shall order that the insurer be restored to possession of its property and the  
19 control of its business. The Court may also make such finding and issue such order at  
20 any time upon motion of any interested party, but if such motion is denied all costs shall  
21 be assessed against such party.

22 **"§ 58-692. Liquidation of property of foreign or alien insurers found in this State.**

23           (a) If no domiciliary receiver has been appointed, the Commissioner may apply  
24 to the Court by verified petition for an order directing him to liquidate the assets found  
25 in this State of a foreign insurer or an alien insurer not domiciled in this State, on any of  
26 the following grounds:

27                   (1) Any of the grounds in G.S. 58-656 or G.S. 58-661; or

28                   (2) Any of the grounds specified in G.S. 58-691(a)(2) through (4).

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

32           (c) If it appears to the Court that the best interests of creditors, policyholders, and  
33 the public require, the Court may issue an order to liquidate in whatever terms it deems  
34 to be appropriate. The filing or recording of the order with the clerk of the Court or the  
35 register of deeds of the county in which the principal business of the insurer is located  
36 or the county in which its principal office or place of business is located, shall impart  
37 the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded  
38 with that register of deeds would have imparted.

39           (d) If a domiciliary liquidator is appointed in a reciprocal state while a liquidation  
40 is proceeding under this section, the liquidator under this section shall thereafter act as  
41 ancillary receiver under G.S. 58-694. If a domiciliary liquidator is appointed in a  
42 nonreciprocal state while a liquidation is proceeding under this section, the liquidator  
43 under this section, may petition the court for permission to act as ancillary receiver  
44 under G.S. 58-694.



1 (e) On the same grounds as are specified in subsection (a) of this section, the  
2 Commissioner may petition any appropriate federal district court to be appointed  
3 receiver to liquidate that portion of the insurer's assets and business over which that  
4 court will exercise jurisdiction, or any lesser part thereof that the Commissioner  
5 considers desirable for the protection of the policyholders and creditors in this State.

6 (f) The Court may order the Commissioner, when he has liquidated the assets of  
7 a foreign or alien insurer under this section, to pay claims of residents of this State  
8 against the insurer under such rules as to the liquidation of insurers under this Article as  
9 are otherwise compatible with the provisions of this section.

10 **"§ 58-693. Domiciliary liquidators in other states.**

11 (a) The domiciliary liquidator of an insurer domiciled in a reciprocal state is,  
12 except as to special deposits and security on secured claims under G.S. 58-694(c),  
13 vested by operation of law with the title to all of the assets, property, contracts and  
14 rights of action, agents' balances, and all of the books, accounts, and other records of the  
15 insurer located in this State. The date of vesting shall be the date of the filing of the  
16 petition, if that date is specified by the domiciliary law for the vesting of property in the  
17 domiciliary state. Otherwise, the date of vesting shall be the date of entry of the order  
18 directing possession to be taken. The domiciliary liquidator shall have the immediate  
19 right to recover the balances due from agents and to obtain possession of the books,  
20 accounts, and other records of the insurer located in this State. He also shall have the  
21 right to recover all other assets of the insurer located in this State, subject to G.S. 58-  
22 694.

23 (b) If a domiciliary liquidator is appointed for an insurer not domiciled in a  
24 reciprocal state, the Commissioner shall be vested by operation of law with the title to  
25 all of the property, contracts, and rights of action, and all of the books, accounts and  
26 other records of the insurer located in this State, at the same time that the domiciliary  
27 liquidator is vested with title in the domicile. The Commissioner may petition for a  
28 conservation or liquidation order under G.S. 58-691 and G.S. 58-692, or for an ancillary  
29 receivership under G.S. 58-694, or after approval by the Court may transfer title to the  
30 domiciliary liquidator, as the interests of justice and the equitable distribution of the  
31 assets require.

32 (c) Claimants residing in this State may file claims with the liquidator or  
33 ancillary receiver, if any, in this State or with the domiciliary liquidator, if the  
34 domiciliary law permits. The claims must be filed on or before the last date fixed for  
35 the filing of claims in the domiciliary liquidation proceedings.

36 **"§ 58-694. Ancillary formal proceedings.**

37 (a) If a domiciliary liquidator has been appointed for an insurer not domiciled in  
38 this State, the Commissioner may file a petition with the Court requesting appointment  
39 as ancillary receiver in this State:

40 (1) If he finds that there are sufficient assets of the insurer located in this  
41 State to justify the appointment of an ancillary receiver;

42 (2) If the protection of creditors or policyholders in this State so requires.

43 (b) The Court may issue an order appointing an ancillary receiver in whatever  
44 terms it deems to be appropriate. The filing or recording of the order with a register of

1 deeds in this State imparts the same notice as a deed, bill of sale, or other evidence of  
2 title duly filed or recorded with that register of deeds.

3 (c) When a domiciliary liquidator has been appointed in a reciprocal state, then  
4 the ancillary receiver appointed in this State, may, whenever necessary, aid and assist  
5 the domiciliary liquidator in recovering assets of the insurer located in this State. The  
6 ancillary receiver shall, as soon as practicable, liquidate from their respective securities  
7 those special deposit claims and secured claims which are proved and allowed in the  
8 ancillary proceedings in this State, and shall pay the necessary expenses of the  
9 proceedings. He shall promptly transfer all remaining assets, books, accounts, and  
10 records to the domiciliary liquidator. Subject to this section, the ancillary receiver and  
11 his deputies shall have the same powers and be subject to the same duties with respect  
12 to the administration of assets as a liquidator of an insurer domiciled in this State.

13 (d) When a domiciliary liquidator has been appointed in this State, ancillary  
14 receivers appointed in reciprocal states shall have, as to assets and books, accounts, and  
15 other records in their respective states, corresponding rights, duties and powers to those  
16 provided in subsection (c) of this section for ancillary receivers appointed in this State.

17 **"§ 58-695. Ancillary summary proceedings.**

18 The Commissioner in his sole discretion may institute proceedings under G.S. 58-  
19 653 through 58-655 at the request of the insurance regulator of the domiciliary state of  
20 any foreign or alien insurer having property located in this State.

21 **"§ 58-696. Claims of nonresidents against insurers domiciled in this State.**

22 (a) In a liquidation proceeding begun in this State against an insurer domiciled in  
23 this State, claimants residing in foreign countries or in states not reciprocal states must  
24 file claims in this State, and claimants residing in reciprocal states may file claims either  
25 with the ancillary receivers, if any, in their respective states, or with the domiciliary  
26 liquidator. Claims must be filed on or before the last date fixed for the filing of claims  
27 in the domiciliary liquidation proceeding.

28 (b) Claims belonging to claimants residing in reciprocal states may be proved  
29 either in the liquidation proceeding in this State as provided in this Article, or in  
30 ancillary proceedings, if any, in the reciprocal states. If notice of the claims and  
31 opportunity to appear and be heard is afforded the domiciliary liquidator of this State as  
32 provided in G.S. 58-697(b) with respect to ancillary proceedings, the final allowance of  
33 claims by the courts in ancillary proceedings in reciprocal states shall be conclusive as  
34 to amount and as to priority against special deposits or other security located in such  
35 ancillary states, but shall not be conclusive with respect to priorities against general  
36 assets under G.S. 58-683.

37 **"§ 58-697. Claims of residents against insurers domiciled in reciprocal states.**

38 (a) In a liquidation proceeding in a reciprocal state against an insurer domiciled  
39 in that state, claimants against the insurer who reside within this State may file claims  
40 either with the ancillary receiver, if any, in this State, or with the domiciliary liquidator.  
41 Claims must be filed on or before the last dates fixed for the filing of claims in the  
42 domiciliary proceeding.

43 (b) Claims belonging to claimants residing in this State may be proved either in  
44 the domiciliary state under the law of that state, or in ancillary proceedings, if any, in

1 this State. If a claimant elects to prove his claim in this State, he shall file his claim  
2 with the liquidator in the manner provided in G.S. 58-676 and G.S. 58-677. The  
3 ancillary receiver shall make his recommendation to the Court as under G.S. 58-684.  
4 He shall also arrange a date for hearing if necessary under G.S. 58-680 and shall give  
5 notice to the liquidator in the domiciliary state, either by certified mail or by personal  
6 service at least 40 days prior to the date set for hearing. If the domiciliary liquidator,  
7 within 30 days after the giving of such notice, gives notice in writing to the ancillary  
8 receiver and to the claimant, either by certified mail or by personal service, of his  
9 intention to contest the claim, he shall be entitled to appear or to be represented in any  
10 proceedings in this State involving the adjudication of the claim.

11 (c) The final allowance of the claim by the courts of this State shall be accepted  
12 as conclusive as to amount and as to priority against special deposits or other security  
13 located in this State.

14 **"§ 58-698. Attachment, garnishment and levy of execution.**

15 During the pendency in this or any other state of a liquidation proceeding, whether  
16 called by that name or not, no action or proceeding in the nature of an attachment,  
17 garnishment, or levy of execution shall be commenced or maintained in this State  
18 against the delinquent insurer or its assets.

19 **"§ 58-699. Interstate priorities.**

20 (a) In a liquidation proceeding in this State involving one or more reciprocal  
21 states, the order of distribution of the domiciliary state shall control as to all claims of  
22 residents of this and reciprocal states. All claims of residents of reciprocal states shall  
23 be given equal priority of payment from general assets regardless of where such assets  
24 are located.

25 (b) The owners of special deposit claims against an insurer for which a liquidator  
26 is appointed in this or any other state shall be given priority against the special deposits  
27 in accordance with the statutes governing the creation and maintenance of the deposits.  
28 If there is a deficiency in any deposit, so that the claims secured by it are not fully  
29 discharged from it, the claimants may share in the general assets, but the sharing shall  
30 be deferred until general creditors, and also claimants against other special deposits who  
31 have received smaller percentages from their respective special deposits, have been paid  
32 percentages of their claims equal to the percentage paid from the special deposit.

33 (c) The owner of a secure claim against an insurer for which a liquidator has  
34 been appointed in this or any other state may surrender his security and file his claim as  
35 a general creditor, or the claim may be discharged by resort to the security in  
36 accordance with G.S. 58-682 in which case the deficiency, if any, shall be treated as a  
37 claim against the general assets of the insurer on the same basis as claims of unsecured  
38 creditors.

39 **"§ 58-700. Subordination of claims for noncooperation.**

40 If an ancillary receiver in another state or foreign country, whether called by that  
41 name or not, fails to transfer to the domiciliary liquidator in this State any assets within  
42 his control other than special deposits, diminished only by the expenses of the ancillary  
43 receivership, if any, the claims filed in the ancillary receivership, other than special

1 deposit claims or secured claims shall be placed in the class of claims under G.S. 58-  
2 683(5)."

3 Sec. 2. G.S. 57B-17 reads as rewritten:

4 "**§ 57B-17. Rehabilitation, liquidation, or conservation of health maintenance**  
5 **organization.**

6 Any rehabilitation, liquidation or conservation of a health maintenance organization  
7 shall be deemed to be the rehabilitation, liquidation, or conservation of an insurance  
8 company and shall be conducted under the supervision of the Commissioner pursuant to  
9 the law governing the rehabilitation, liquidation, or conservation of insurance  
10 companies, except that the provisions of Articles 17B and 17C of Chapter 58 of the  
11 General Statutes shall not apply to health maintenance organizations. The  
12 Commissioner may apply for an order directing him to rehabilitate, liquidate, or  
13 conserve a health maintenance organization upon one or more grounds set out in Article  
14 ~~17A-46~~ of Chapter 58 of the General Statutes or when in his opinion the continued  
15 operation of the health maintenance organization would be hazardous either to the  
16 enrollees or to the people of this State."

17 Sec. 3. G.S. 58-75.1(c) reads as rewritten:

18 "(c) The removal from this State of all or a material part of the records or assets of a  
19 domestic insurer that has its home or principal office outside this State except pursuant  
20 to a plan of merger or consolidation approved by the Commissioner under or for such  
21 reasonable purposes and periods of time as may be approved by the Commissioner in  
22 writing in advance of such removal, or concealment of such records or assets or material  
23 part thereof from the Commissioner is prohibited. Any person who, without the prior  
24 approval of the Commissioner, removes or attempts to remove such records or assets or  
25 such material part thereof from the office or offices in which they are required to be  
26 kept and maintained under subsection (a) of this section or who conceals or attempts to  
27 conceal such records from the Commissioner, in violation of this subsection, shall be  
28 guilty of a Class J felony. Upon any removal or attempted removal of such records or  
29 assets or upon retention of such records or assets or material part thereof outside this  
30 State, beyond the period therefor specified in the consent of the Commissioner under  
31 which consent the records were so removed thereat, or upon concealment of or attempt  
32 to conceal records or assets in violation of this section, the Commissioner may institute  
33 delinquency proceedings against the insurer pursuant to the provisions of Article ~~17A~~  
34 46 of this Chapter."

35 Sec. 4. G.S. 58-415 reads as rewritten:

36 "**§ 58-415. Prohibition of hypothecation.**

37 (a) Every insurer subject to this Article shall at all times have and maintain free  
38 and unencumbered assets in an amount equal to its reserve liabilities. No insurer shall  
39 pledge, hypothecate, or otherwise encumber its assets in an amount in excess of the  
40 amount of its capital and surplus. No insurer shall pledge, hypothecate, or otherwise  
41 encumber more than ten percent (10%) of its reserve assets. The Commissioner, upon  
42 application made to him, may issue a written order approving the pledging,  
43 hypothecation, or encumbrance of any of the assets of an insurer in any amount upon a

1 finding that the pledging, hypothecation, or encumbrance will not adversely affect the  
2 solvency of the insurer.

3 (b) Any insurer that pledges, hypothecates, or otherwise encumbers any of its  
4 assets shall within 10 days thereafter report in writing to the Commissioner the amount  
5 and identity of the assets so pledged, hypothecated, or encumbered and the terms and  
6 conditions of the transaction. In addition, the insurer shall file, along with its statement  
7 under G.S. 58-21, a statement sworn to by the chief executive officer of the insurer that:

8 (i) Title to assets in an amount equal to the reserve liability of the insurer that are not  
9 pledged, hypothecated, or otherwise encumbered is vested in the insurer; (ii) the only  
10 assets of the insurer that are pledged, hypothecated, or otherwise encumbered are as  
11 identified and reported in the sworn statement and no other assets of the insurer are  
12 pledged, hypothecated, or otherwise encumbered; and (iii) the terms and provisions of  
13 the transaction of the pledge, hypothecation, or encumbrance are as reported in such  
14 sworn statement.

15 (c) Any person that accepts a pledge, hypothecation, or encumbrance of any asset  
16 of an insurer, as security for a debt or other obligation of the insurer, not in accordance  
17 with this Article, is deemed to have accepted the asset subject to a superior, preferential,  
18 and automatically perfected lien in favor of claimants: Provided, that said lien does not  
19 apply to the assets of an insurer in a delinquency proceeding under Article ~~17A-46~~ of  
20 this Chapter if the Commissioner or the court, whichever is appropriate, approves the  
21 pledge, hypothecation, or encumbrance of the assets.

22 (d) In the event of the liquidation of any insurer subject to this Article, claimants  
23 of the insurer shall have a prior and preferential claim against all assets of the insurer  
24 except those that have been pledged, hypothecated, or encumbered in accordance with  
25 this Article. Subject to ~~G.S. 58-155.15(a)~~ Article 46 of this Chapter, all claimants have  
26 equal status; and their prior and preferential claims are superior to any claim or cause of  
27 action against the insurer by any other person."

28 Sec. 5. G.S. 58-155.60 reads as rewritten:

29 **"§ 58-155.60. Use of deposits made by insolvent insurer.**

30 Notwithstanding any other provision of this Chapter pertaining to the use of deposits  
31 made by insurance companies for the protection of policyholders, the Commissioner  
32 shall deliver to the Association, and the Association is hereby authorized to expend, any  
33 deposit or deposits previously or hereinafter made, whether or not required by statute,  
34 by an insolvent insurer to the extent those deposits are needed by the Association first to  
35 pay the covered claims as required by this Article and then to the extent those deposits  
36 are needed to pay all expenses of the Association relating to the insurer: Provided that  
37 before delivering any deposit to the Association the Commissioner may retain an  
38 amount of the deposit up to five thousand dollars (\$5,000) to defray administrative costs  
39 to be incurred by the Commissioner in carrying out his powers and duties with respect  
40 to the insolvent insurer, notwithstanding G.S. 58-185. As used in this section, the term  
41 'administrative costs' does not include any salary or expenses paid to or on behalf of any  
42 State employee or to any person appointed or employed pursuant to ~~G.S. 58-155.11(f)~~  
43 ~~or 58-155.36~~ G.S. 58-653(c), 58-656, or 58-665.

1       However, in the case of a deposit made by an insolvent domestic insurer, only the  
2 portions of the deposit made for the protection of policyholders having covered claims  
3 shall be delivered by the Commissioner to the Association. Said portions shall be in the  
4 proportions that the insolvent domestic insurer's domestic net direct written premiums  
5 for the preceding calendar year on the kinds of insurance in the account bears to its total  
6 net direct written premiums for the preceding calendar year on the kinds of insurance in  
7 the account.

8       The Association shall account to the Commissioner and the insolvent insurer for all  
9 deposits received from the Commissioner hereunder, and shall repay to the  
10 Commissioner a portion of the deposits received which shall be equal to the total  
11 amount of the claims against the insolvent insurer that are not covered claims under this  
12 Article solely by reason that the amount of the claim is fifty dollars (\$50.00) or less.  
13 Said repayment shall in no way prejudice the rights of the Association with regard to the  
14 portion of the deposit repaid to the Commissioner. After all of the deposits of the  
15 insolvent insurer have been expended by the Association for the purposes set out in this  
16 section, the member insurers shall be assessed as provided by this Article to pay any  
17 remaining liabilities of the Association arising under this Article.”

18       Sec. 6. G.S. 58-155.84 reads as rewritten:

19       **“§ 58-155.84. Use of deposits made by impaired insurer.**

20       Notwithstanding any other provision of Chapter 58 of the General Statutes  
21 pertaining to the use of deposits made by insurance companies for the protection of  
22 policyholders, the Commissioner shall deliver to the Association, and the Association is  
23 hereby authorized to expend, any deposit or deposits previously or hereinafter made,  
24 whether or not made pursuant to statute, by an insurer determined to be impaired under  
25 this Article to the extent those deposits are needed by the Association to pay contractual  
26 obligations of that impaired insurer owed under covered policies as required by this  
27 Article, and to the extent those deposits are needed to pay all expenses of the  
28 Association relating to the impaired insurer: Provided that before delivering any deposit  
29 to the Association the Commissioner may retain an amount of the deposit up to five  
30 thousand dollars (\$5,000) to defray administrative costs to be incurred by the  
31 Commissioner in carrying out his powers and duties with respect to the insolvent  
32 insurer, notwithstanding G.S. 58-185. As used in this section, the term ‘administrative  
33 costs’ does not include any salary or expenses paid to or on behalf of any State  
34 employee or to any person appointed or employed pursuant to ~~G.S. 58-155.11(f) or 58-~~  
35 ~~155.36~~G.S. 58-653(c), 58-656, or 58-665. The Association shall account to the  
36 Commissioner and the impaired insurer for all deposits received from the Commissioner  
37 hereunder. After all of the deposits of the impaired insurer have been expended by the  
38 Association for the purposes set out in this section, the member insurers shall be  
39 assessed as provided by this Article to pay any remaining liabilities of the Association  
40 arising under this Article.”

41       Sec. 7. G.S. 58-155.2 through G.S. 58-155.36 are repealed.

42       Sec. 8. The title of Article 17A of Chapter 58 of the General Statutes is  
43 rewritten to read: "Mergers of Insurance Companies."

1           Sec. 9. In the event any provision of this act is held to be invalid by any court  
2 of competent jurisdiction, the court's holding as to that provision shall not affect the  
3 validity or operation of other provisions of this act; and to that end the provisions of this  
4 act are severable.

5           Sec. 10. This act is effective upon ratification.