

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H

3

HOUSE BILL 583
Committee Substitute Favorable 5/1/89
Insurance Senate Committee Substitute Adopted 5/31/89

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;

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

13 **"§ 58-641. Persons covered.**

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

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

26 **"§ 58-642. Definitions.**

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

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

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

1 Commissioner upon a subject company at the time of admission or
2 subsequent thereto, except those reserves that are an allocation of
3 surplus as specified in G.S. 57-8.

4 (14) 'Insurer' means any entity licensed under Articles 6, 14, or 17 of this
5 Chapter and under Chapters 57 and 57B of the General Statutes.

6 (15) 'Preferred claim' means any claim with respect to which the provisions
7 of this Article accord priority of payment from the general assets of the
8 insurer.

9 (16) 'Receiver' includes a liquidator, rehabilitator, or conservator, as the
10 context requires.

11 (17) 'Reciprocal state' means any state other than this State in which in
12 substance and effect the provisions of G.S. 58-662(a), 58-693, 58-694,
13 and 58-696 through 58-698 are in force, and in which provisions are in
14 force requiring that the insurance regulator of that state be the receiver
15 of a delinquent insurer; and in which provisions exist for the avoidance
16 of fraudulent conveyances and preferential transfers.

17 (18) 'Secured claim' means any claim secured by mortgage, trust deed,
18 pledge, deposit as security, escrow, or otherwise; and includes any
19 claim that has become a lien upon specific assets by reason of judicial
20 process. 'Secured claim' does not include a special deposit claim or a
21 claim against general assets.

22 (19) 'Special deposit claim' means any claim secured by a deposit made
23 pursuant to statute for the security or benefit of a limited class or
24 classes of persons, but does not include any claim secured by general
25 assets.

26 (20) 'Transfer' includes the sale and every other and different mode,
27 whether direct or indirect, of disposing of or of parting with property,
28 an interest therein, or the possession thereof; or of voluntarily fixing a
29 lien upon property or an interest therein, whether absolutely or
30 conditionally, by or without judicial proceedings. The retention of a
31 security title to property delivered to a debtor is a transfer suffered by
32 the debtor.

33 **"§ 58-643. Jurisdiction and venue.**

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

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

42 (c) In addition to other grounds for jurisdiction provided by the laws of this State,
43 the Court has jurisdiction over a person served pursuant to Chapter 1A of the General

1 Statutes or other applicable provisions of law in an action brought by the receiver of a
2 domestic insurer or an alien insurer domiciled in this State:

- 3 (1) If the person served is obligated to the insurer in any way as an
4 incident to any agency or brokerage arrangement that may exist or has
5 existed between the insurer and the agent or broker, in any action on or
6 incident to the obligation; or
- 7 (2) If the person served is a reinsurer who has at any time entered into a
8 contract of reinsurance with an insurer against which a rehabilitation
9 or liquidation order is in effect when the action is commenced, or is an
10 agent or broker of or for the reinsurer, in any action on or incident to
11 the reinsurance contract; or
- 12 (3) If the person served is or has been an officer, manager, trustee,
13 organizer, promoter, or person in a position of comparable authority or
14 influence, in an insurer against which a rehabilitation or liquidation
15 order is in effect when the action is commenced, in any action
16 resulting from such a relationship with the insurer.

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

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

21 **"§ 58-644. Injunctions and orders.**

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

- 26 (1) The transaction of further business;
27 (2) The transfer of property;
28 (3) Interference with the receiver or with a proceeding under this Article;
29 (4) Waste of the insurer's assets;
30 (5) Dissipation and transfer of bank accounts;
31 (6) The institution or further prosecution of any actions or proceedings;
32 (7) The obtaining of preferences, judgments, attachments, garnishments,
33 or liens against the insurer, its assets or its policyholders;
34 (8) The levying of execution against the insurer, its assets, or its
35 policyholders;
36 (9) The making of any sale or deed for nonpayment of taxes or
37 assessments that would lessen the value of the assets of the insurer;
38 (10) The withholding from the receiver of books, accounts, documents, or
39 other records relating to the business of the insurer; or
40 (11) Any other threatened or contemplated action that might lessen the
41 value of the insurer's assets or prejudice the rights of policyholders,
42 creditors, or shareholders, or the administration of any proceeding
43 under this Article.

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

3 **"§ 58-645. Cooperation of officers, owners and employees.**

4 (a) Any officer, manager, director, trustee, owner, employee, or agent of any
5 insurer, and any other person with authority over or in charge of any segment of the
6 insurer's affairs, shall cooperate with the Commissioner in any proceeding under this
7 Article or any investigation preliminary to the proceeding. As used in this section,
8 'person' includes any person who exercises direct or indirect control over activities of an
9 insurer through any holding company or other affiliate of the insurer. 'Cooperate'
10 includes replying promptly in writing to any inquiry from the Commissioner requesting
11 such a reply and making available to the Commissioner any books, accounts,
12 documents, or other records or information or property of or pertaining to the insurer
13 and in his possession, custody, or control.

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

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

18 (d) Any person described in subsection (a) of this section who fails to cooperate
19 with the Commissioner, or any person who obstructs or interferes with the
20 Commissioner in the conduct of any delinquency proceeding or any investigation
21 preliminary or incidental thereto, or any person who knowingly and willfully violates
22 any order the Commissioner issued validly under this Article is subject to the civil
23 penalty and restitution provisions of G.S. 58-9.7 and is subject further to the revocation
24 or suspension of any licenses issued by the Commissioner.

25 **"§ 58-646. Bonds.**

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

28 **"§ 58-647. Reserved for future codification.**

29 **"§ 58-648. Executory contracts and unexpired leases.**

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

33 (b) (1) If there has been a default in an executory contract or
34 unexpired lease of the insurer, the receiver may not assume such
35 contract or lease unless, at the time of assumption of such contract or
36 lease, the receiver:

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

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

43 c. Provides adequate assurance of future performance under such
44 contract or lease.

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

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

- 1 (1) If such contract or lease has not been assumed under this section or
2 under a plan of rehabilitation under G.S. 58-657, immediately before
3 the date of the filing of the petition; or
- 4 (2) If such contract or lease has been assumed under this section or under
5 a plan of rehabilitation under G.S. 58-657:
- 6 a. If before such rejection the proceeding has not been converted
7 to a proceeding under G.S. 58-662 at the time of such rejection;
8 or
- 9 b. If before such rejection the case has been converted to a
10 proceeding under G.S. 58-662: (i) immediately before the date
11 of such conversion, if such contract or lease was assumed
12 before such conversion; or (ii) at the time of such rejection, if
13 such contract or lease was assumed after such conversion.
- 14 (h) (1) If the receiver rejects an unexpired lease of real property of
15 the insurer under which the insurer is the lessor, the lessee under
16 such lease may treat the lease as terminated by such rejection, or, in
17 the alternative, may remain in possession for the balance of the term
18 of such lease and any renewal or extension of such term that is
19 enforceable by such lessee under applicable provision of law outside
20 of this Article.
- 21 (2) If such lessee remains in possession, such lessee may offset against the
22 rent reserved under such lease for the balance of the term after the date
23 of the rejection of such lease, and any such renewal or extension, any
24 damages occurring after such date caused by the nonperformance of
25 any obligation of the insurer after such date, but such lessee does not
26 have any rights against the estate on account of any damages arising
27 after such date from such rejection, other than such offset.
- 28 (i) (1) If the receiver rejects an executory contract of the insurer for
29 the sale of real property under which the purchaser is in possession,
30 such purchaser may treat such contract as terminated, or, in the
31 alternative, may remain in possession of such real property.
- 32 (2) If such purchaser remains in possession:
- 33 a. Such purchaser shall continue to make all payments due under
34 such contract but may offset against such payments any
35 damages occurring after the date of the rejection of such
36 contract caused by the nonperformance of any obligation of the
37 insurer after such date, but such purchaser does not have any
38 rights against the estate on account of any damages arising after
39 such date from such rejection, other than such offset; and
- 40 b. The receiver shall deliver title to such purchaser in accordance
41 with the provisions of such contract, but is relieved of all other
42 obligations to perform under such contract.
- 43 (j) A purchaser that treats an executory contract as terminated under subsection
44 (i) of this section, or a party whose executory contract to purchase real property from

1 the insurer is rejected and under which such party is not in possession, has a lien on the
2 interest of the insurer in such property for the recovery of any portion of the purchase
3 price that such purchaser or party has paid.

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

7 **"§ 58-649. Turnover of property by a custodian.**

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

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

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

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

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

23 (c) A custodian shall:

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

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

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

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

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

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

43 (e) The Court may, after notice and a hearing, excuse compliance with
44 subsection (a), (b), or (c) of this section, if the interests of policyholders, creditors, and

1 any equity security holders would be better served by permitting a custodian to continue
2 in possession, custody, or control of such property.

3 **"§ 58-650. Utility service.**

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

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

14 **"§ 58-651. Continuation of delinquency proceedings.**

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

20 **"§ 58-652. Condition on release from delinquency proceedings.**

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

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

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

36 **"§ 58-653. Commissioner's summary orders and supervision proceedings.**

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

1 (b) If upon examination or at any other time the Commissioner has reasonable
2 cause to believe that any domestic insurer is in such condition as to render the
3 continuance of its business hazardous to the public or to holders of its policies or
4 certificates of insurance, or if such domestic insurer gives its consent, then the
5 Commissioner shall upon his determination:

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

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

9 Notwithstanding any other provision of law limiting the frequency or amount of
10 premium rate adjustments, the Commissioner may include in his list of requirements
11 such rate adjustments for any kinds of insurance written by the insurer that the
12 Commissioner considers necessary to improve the financial condition of the insurer.

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

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

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

24 (3) Lend any of its funds;

25 (4) Invest any of its funds;

26 (5) Transfer any of its property;

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

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

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

30 (d) Any insurer subject to an order under this section shall comply with the
31 lawful requirements of the Commissioner and, if placed under supervision, shall have
32 60 days from the date the supervision order is served within which to comply with the
33 requirements of the Commissioner. The Commissioner may in his discretion extend the
34 time for compliance beyond 60 days for cause. In the event of such insurer's failure to
35 comply within such time, the Commissioner may institute proceedings under this
36 Article to have a rehabilitator or liquidator appointed, or extend the period of
37 supervision.

38 (e) The notice of hearing under subsection (a) of this section and any order
39 issued pursuant to that subsection shall be served upon the insurer pursuant to the
40 applicable rules of civil procedure. The notice of hearing shall state the time and place
41 of hearing, and the conduct, condition, or ground upon which the Commissioner would
42 base his order. Unless mutually agreed upon between the Commissioner and the
43 insurer, the hearing shall occur not less than 10 days nor more than 30 days after notice
44 is served and shall be either in Wake County or in some other place designated by the

1 Commissioner. The Commissioner shall hold all hearings under subsection (a) of this
2 section privately unless the insurer requests a public hearing, in which case the hearing
3 shall be public.

4 (f) Any insurer subject to an order under subsection (b) of this section may
5 request an administrative hearing before the Commissioner or his designee to review
6 that order. Such hearing shall be held as provided in subsection (e) of this section, but
7 the request for a hearing shall not stay the effect of the order. If the Commissioner
8 issues an order under subsection (b) of this section, the insurer may, at any time, waive
9 the hearing and apply for immediate judicial relief by means of any remedy afforded by
10 law without first exhausting its administrative remedies. Subsequent to an
11 administrative hearing, any party to the proceedings whose interests are substantially
12 affected is entitled to judicial review of any order issued by the Commissioner.

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

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

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

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

30 **"§ 58-654. Court's seizure order.**

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

33 (1) That there exist grounds that justify a judicial order for a formal
34 delinquency proceeding against an insurer under this Article;

35 (2) That the interests of policyholders, creditors, or the public will be
36 endangered by delay; and

37 (3) The contents of an order deemed by the Commissioner to be
38 necessary.

39 (b) Upon a filing under subsection (a) of this section, the Court may issue
40 forthwith, **ex parte**, the requested order, that directs the Commissioner to take
41 possession and control of all or a part of the property, books, accounts, documents, and
42 other records of an insurer, and of the premises occupied by it for transaction of its
43 business, and that, until further order of the Court, enjoins the insurer and its officers,

1 managers, agents, and employees from disposing of its property and from transacting its
2 business except with the written consent of the Commissioner.

3 (c) The Court shall specify in the order what its duration shall be, which shall be
4 such time as the Court considers necessary for the Commissioner to ascertain the
5 condition of the insurer. On motion of either party or on its own motion, the Court may
6 from time to time hold such hearings as it considers desirable after such notice as it
7 considers appropriate; and may extend, shorten, or modify the terms of the seizure
8 order. The Court shall vacate the seizure order if the Commissioner fails to commence
9 a formal proceeding under this Article after having a reasonable opportunity to do so.
10 An order of the Court pursuant to a formal proceeding under this Article shall **ipso facto**
11 vacate the seizure order.

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

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

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

24 **"§ 58-655. Confidentiality of hearings.**

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

32 **"§ 58-656. Grounds for rehabilitation.**

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

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

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

- 1 (3) The insurer has failed to remove any person who in fact has executive
2 authority in the insurer, whether an officer, manager, general agent,
3 employee, or other person; if the person has been found after notice
4 and hearing by the Commissioner to be dishonest or untrustworthy in a
5 way affecting the insurer's business.
- 6 (4) Control of the insurer, whether by stock ownership or otherwise, and
7 whether direct or indirect, is in a person or persons found after notice
8 and hearing to be untrustworthy.
- 9 (5) Any person who in fact has executive authority in the insurer, whether
10 an officer, manager, general agent, director or trustee, employee, or
11 other person, has refused to be examined under oath by the
12 Commissioner concerning its affairs, whether in this State or
13 elsewhere; and after reasonable notice of the fact, the insurer has failed
14 promptly and effectively to terminate the employment and status of the
15 person and all his influence on management.
- 16 (6) After demand by the Commissioner the insurer has failed to promptly
17 make available for examination any of its own property, books,
18 accounts, documents, or other records; those of any subsidiary or
19 related company within the control of the insurer; or those of any
20 person having executive authority in the insurer insofar as they pertain
21 to the insurer.
- 22 (7) Without first obtaining the written consent of the Commissioner
23 pursuant to G.S. 58-155.1, the insurer has (i) transferred, or attempted
24 to transfer, in a manner contrary to Article 12A of this Chapter,
25 substantially its entire property or business, or (ii) has entered into any
26 transaction, the effect of which is to merge, consolidate, or reinsure
27 substantially its entire property or business in or with the property or
28 business of any other person.
- 29 (8) The insurer or its property has been or is the subject of an application
30 for the appointment of a receiver, trustee, custodian, conservator, or
31 sequestrator or similar fiduciary of the insurer or its property otherwise
32 than as authorized under this Chapter, and such appointment has been
33 made or is imminent, and such appointment might oust the courts of
34 this State of jurisdiction or might prejudice orderly delinquency
35 proceedings under this Article.
- 36 (9) Within the previous four years the insurer has willfully violated its
37 charter or articles of incorporation, its bylaws, this Chapter, or any
38 valid order of the Commissioner under G.S. 58-653.
- 39 (10) The insurer has failed to pay within 60 days after due any obligation to
40 any state or any subdivision thereof or any judgment entered in any
41 state, if the court in which such judgment was entered has jurisdiction
42 over such subject matter; except that such nonpayment is not a ground
43 until 60 days after any good faith effort by the insurer to contest the
44 obligation has been terminated, whether it is before the Commissioner

1 or in the courts, or the insurer has systematically attempted to
2 compromise or renegotiate previously agreed settlements with its
3 creditors on the ground that it is financially unable to pay its
4 obligations in full.

5 (11) The insurer has failed to file its annual report or any other financial
6 report required by statute within the time allowed by law and, after
7 written demand by the Commissioner, has failed to immediately give
8 an adequate explanation.

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

13 **"§ 58-657. Rehabilitation orders.**

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

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

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

29 **"§ 58-658. Powers and duties of the rehabilitator.**

30 (a) The rehabilitator has the power:

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

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

38 (3) To fix the reasonable compensation of employees and agents, legal
39 counsel, actuaries, accountants, appraisers, and consultants, with the
40 approval of the Court.

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

- 1 (5) To hold hearings, to subpoena witnesses to compel their attendance, to
2 administer oaths, to examine any person under oath, and to compel any
3 person to subscribe to this testimony after it has been correctly reduced
4 to writing; and in connection therewith to require the production of any
5 books, papers, records, or other documents that he considers relevant
6 to the inquiry.
- 7 (6) To collect all debts and moneys due and claims belonging to the
8 insurer, wherever located, and for this purpose:
- 9 a. To institute timely action in other jurisdictions, in order to
10 forestall garnishment and attachment proceedings against such
11 debts;
- 12 b. To do such other acts that are necessary or expedient to collect,
13 conserve, or protect its assets or property, including the power
14 to sell, compound, compromise, or assign debts for purposes of
15 collection upon such terms and conditions as he deems to be
16 best; and
- 17 c. To pursue any creditor's remedies available to enforce his
18 claims.
- 19 (7) To conduct public and private sales of the property of the insurer.
- 20 (8) To use assets of the estate of an insurer under a rehabilitation order to
21 transfer policy obligations to a solvent assuming insurer, if the transfer
22 can be arranged without prejudice to applicable priorities under G.S.
23 58-683.
- 24 (9) To acquire, hypothecate, encumber, lease, improve, sell, transfer,
25 abandon, or otherwise dispose of or deal with, any property of the
26 insurer at its market value or upon such terms and conditions that are
27 fair and reasonable. He also has the power to execute, acknowledge,
28 and deliver any and all deeds, assignments, releases and other
29 instruments necessary or proper to effectuate any sale of property or
30 other transaction in connection with the rehabilitation.
- 31 (10) To borrow money on the security of the insurer's assets or without
32 security and to execute and deliver all documents necessary to that
33 transaction for the purpose of facilitating the rehabilitation.
- 34 (11) To enter into such contracts that are necessary to carry out the order to
35 rehabilitate, and to affirm or disavow any contracts to which the
36 insurer is a party.
- 37 (12) To continue to prosecute and to institute in the name of the insurer or
38 in his own name any and all suits and other legal proceedings, in this
39 State or elsewhere, and to abandon the prosecution of claims he deems
40 unprofitable to pursue further.
- 41 (13) To prosecute any action that may exist in behalf of the creditors,
42 members, policyholders, or shareholders of the insurer against any
43 officer of the insurer or against any other person.

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

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

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

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

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

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

15 **"§ 58-659. Actions by and against rehabilitator.**

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

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

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

31 **"§ 58-660. Termination of rehabilitation.**

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

40 (b) The rehabilitator may at any time petition the Court for an order terminating
41 rehabilitation of an insurer. The Court shall also permit the directors of the insurer to
42 petition the Court for an order terminating rehabilitation of the insurer and may order
43 payment from the estate of the insurer of such costs and other expenses of such petition
44 as justice may require. If the Court finds that rehabilitation has been accomplished and

1 that grounds for rehabilitation under G.S. 58-656 no longer exist, it shall order that the
2 insurer be restored to possession of its property and the control of the business. The
3 Court may also make that finding and issue that order at any time upon its own motion.

4 **"§ 58-661. Grounds for liquidation.**

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

7 (1) Of any ground for an order of rehabilitation as specified in G.S. 58-
8 656, whether or not there has been a prior order directing the
9 rehabilitation of the insurer;

10 (2) That the insurer is insolvent; or

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

14 **"§ 58-662. Liquidation orders.**

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

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

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

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

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

41 **"§ 58-663. Continuance of coverage.**

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

- 1 (1) A period of 30 days from the date of entry of the liquidation orders;
2 (2) The expiration of the policy coverage;
3 (3) The date when the insured has replaced the insurance coverage with
4 equivalent insurance in another insurer or otherwise terminated the
5 policy; or
6 (4) The liquidator has effected a transfer of the policy obligation pursuant
7 to G.S. 58-665(a)(8).

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

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

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

16 **"§ 58-664. Dissolution of insurer.**

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

24 **"§ 58-665. Powers of liquidator.**

25 (a) The liquidator has the power:

- 26 (1) To appoint a special deputy to act for him under this Article, and to
27 determine his reasonable compensation. The special deputy has all
28 powers of the liquidator granted by this section. The special deputy
29 serves at the pleasure of the liquidator.
30 (2) To employ employees and agents, legal counsel, actuaries,
31 accountants, appraisers, consultants, and such other personnel as he
32 may deem to be necessary to assist in the liquidation.
33 (3) To fix the reasonable compensation of employees and agents, legal
34 counsel, actuaries, accountants, appraisers, and consultants, with the
35 approval of the Court.
36 (4) To pay reasonable compensation to persons appointed; and to defray
37 from the funds or assets of the insurer all expenses of taking
38 possession of, conserving, conducting, liquidating, disposing of, or
39 otherwise dealing with the business and property of the insurer. In the
40 event that the property of the insurer does not contain sufficient cash
41 or liquid assets to defray the costs incurred, the Commissioner may
42 advance the costs so incurred out of any appropriation for the
43 maintenance of the Department. Any amounts so advanced for

- 1 expenses of administration shall be repaid to the Commissioner for the
2 use of the Department out of the first available moneys of the insurer.
- 3 (5) To hold hearings, to subpoena witnesses to compel their attendance, to
4 administer oaths, to examine any person under oath, and to compel any
5 person to subscribe to this testimony after it has been correctly reduced
6 to writing; and in connection therewith to require the production of any
7 books, papers, records, or other documents that he considers relevant
8 to the inquiry.
- 9 (6) To collect all debts and moneys due and claims belonging to the
10 insurer, wherever located, and for this purpose:
- 11 a. To institute timely action in other jurisdictions, in order to
12 forestall garnishment and attachment proceedings against such
13 debts;
- 14 b. To do such other acts that are necessary or expedient to collect,
15 conserve, or protect its assets or property, including the power
16 to sell, compound, compromise, or assign debts for purposes of
17 collection upon such terms and conditions as he deems to be
18 best; and
- 19 c. To pursue any creditor's remedies available to enforce his
20 claims.
- 21 (7) To conduct public and private sales of the property of the insurer.
- 22 (8) To use assets of the estate of an insurer under a liquidation order to
23 transfer policy obligations to a solvent assuming insurer, if the transfer
24 can be arranged without prejudice to applicable priorities under G.S.
25 58-683.
- 26 (9) To acquire, hypothecate, encumber, lease, improve, sell, transfer,
27 abandon, or otherwise dispose of or deal with, any property of the
28 insurer at its market value or upon such terms and conditions that are
29 fair and reasonable. He also has the power to execute, acknowledge,
30 and deliver any and all deeds, assignments, releases and other
31 instruments necessary or proper to effectuate any sale of property or
32 other transaction in connection with the liquidation.
- 33 (10) To borrow money on the security of the insurer's assets or without
34 security and to execute and deliver all documents necessary to that
35 transaction for the purpose of facilitating the liquidation.
- 36 (11) To enter into such contracts that are necessary to carry out the order to
37 liquidate, and to affirm or disavow any contracts to which the insurer
38 is a party.
- 39 (12) To continue to prosecute and to institute in the name of the insurer or
40 in his own name any and all suits and other legal proceedings, in this
41 State or elsewhere, and to abandon the prosecution of claims he deems
42 unprofitable to pursue further. If the insurer is dissolved under G.S.
43 58-664, he shall have the power to apply to any court in this State or
44 elsewhere for leave to substitute himself for the insurer as plaintiff.

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

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

44 **"§ 58-666. Notice to creditors and others.**

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

3 (1) By first-class mail and either by telecopier, telegram, or telephone to
4 the insurance regulator of each jurisdiction in which the insurer is
5 doing business;

6 (2) By first-class mail to any domestic or foreign guaranty association that
7 is or may become obligated as a result of the liquidation;

8 (3) By first-class mail to all insurance agents of the insurer;

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

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

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

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

24 **"§ 58-667. Actions by and against liquidator.**

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

37 (b) The liquidator may, upon or after an order for liquidation, within two years or
38 such subsequent time period as applicable law may permit, institute an action or
39 proceeding on behalf of the estate of the insurer upon any cause of action against which
40 the period of limitation fixed by applicable law has not expired at the time of the filing
41 of the petition upon which such order is entered. Where (i) by any agreement, a period
42 of limitation is fixed for instituting a suit or proceeding upon any claim, or for filing any
43 claim, proof of claim, proof of loss, demand, notice, or the like; or (ii) in any
44 proceeding, judicial or otherwise, a period of limitation is fixed, either in the proceeding

1 or by applicable law, for taking any action, filing any claim or pleading, or doing any
2 act; and (iii) in any such case the period had not expired at the date of the filing of the
3 petition; the liquidator may, for the benefit of the estate, take any such action or do any
4 such act, required of or permitted to the insurer, within a period of 180 days subsequent
5 to the entry of an order for liquidation, or within such further period as is shown to the
6 satisfaction of the Court not to be unfairly prejudicial to the other party.

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

10 **"§ 58-668. Collection and list of assets.**

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

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

18 (c) A submittal to the Court for disbursement of assets in accordance with G.S.
19 58-675.2 fulfills the requirements of subsection (a) of this section.

20 **"§ 58-669. Fraudulent transfers prior to petition.**

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

35 (b) A transfer of property other than real property is made or suffered when it
36 becomes so far perfected that no subsequent lien obtainable by legal or equitable
37 proceedings on a simple contract could become superior to the rights of the transferee
38 under G.S. 58-671(c). A transfer of real property is made or suffered when it becomes
39 so far perfected that no subsequent bona fide purchaser from the insurer could obtain
40 rights superior to the rights of the transferee. A transfer that creates an equitable lien is
41 not perfected if there are available means by which a legal lien could be created. Any
42 transfer that is not perfected prior to the filing of a petition for liquidation shall be
43 deemed to be made immediately before the filing of the successful petition. The

1 provisions of this subsection apply whether or not there are or were creditors who might
2 have obtained any liens or persons who might have become bona fide purchasers.

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

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

10 (2) Any part of the transaction took place within one year prior to the date
11 of filing of the petition through which the receivership was
12 commenced.

13 **"§ 58-670. Fraudulent transfer after petition.**

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

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

29 (1) A transfer of any of the property of the insurer, other than real
30 property, made to a person acting in good faith is valid against the
31 receiver if made for a present fair equivalent value; or, if not made for
32 a present fair equivalent value, then to the extent of the present
33 consideration actually paid therefor, for which amount the transferee
34 shall have a lien on the property so transferred.

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

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

41 (4) A person asserting the validity of a transfer under this section has the
42 burden of proof. Except as elsewhere provided in this section, no
43 transfer by or on behalf of the insurer after the date of the petition for

1 liquidation by any person other than the liquidator is valid as against
2 the liquidator.

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

5 **"§ 58-671. Voidable preferences and liens.**

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

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

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

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

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

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

37 (b) A transfer of property other than real property shall be deemed to be made or
38 suffered when it becomes so far perfected that no subsequent lien obtainable by legal or
39 equitable proceedings on a simple contract could become superior to the rights of the
40 transferee. A transfer of real property shall be deemed to be made or suffered when it
41 becomes so far perfected that no subsequent bona fide purchaser from the insurer could
42 obtain rights superior to the rights of the transferee. A transfer that creates an equitable
43 lien shall not be deemed to be perfected if there are available means by which a legal
44 lien could be created. A transfer not perfected prior to the filing of a petition for

1 liquidation shall be deemed to be made immediately before the filing of the successful
2 petition. The provisions of this subsection apply whether or not there are or were
3 creditors who might have obtained liens or persons who might have become bona fide
4 purchasers.

5 (c) A lien obtainable by legal or equitable proceedings upon a simple contract is
6 one arising in the ordinary course of such proceedings upon the entry or docketing of a
7 judgment or decree, or upon attachment, garnishment, execution, or like process,
8 whether before, upon, or after judgment or decree and whether before or upon levy. It
9 does not include liens that under applicable law are given a special priority over other
10 liens that are prior in time. A lien obtainable by legal or equitable proceedings could
11 become superior to the rights of a transferee, or a purchaser could obtain rights superior
12 to the rights of a transferee within the meaning of subsection (b) of this section, if such
13 consequences would follow only from the lien or purchase itself, or from the lien or
14 purchase followed by any step wholly within the control of the respective lienholder or
15 purchaser, with or without the aid of ministerial action by public officials. Such a lien
16 could not, however, become superior and such a purchase could not create superior
17 rights for the purpose of subsection (b) of this section through any acts subsequent to
18 the obtaining of such a lien or subsequent to such a purchase that require the agreement
19 or concurrence of any third party or that require any further judicial action or ruling.

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

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

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

41 (g) The Court shall have summary jurisdiction of any proceeding by the
42 liquidator to hear and determine the rights of any parties under this section. Reasonable
43 notice of any hearing in the proceeding shall be given to all parties in interest, including
44 the obligee of a releasing bond or other like obligation. Where an order is entered for

1 the recovery of indemnifying property in kind or for the avoidance of an indemnifying
2 lien, the Court, upon application of any party in interest, shall in the same proceeding
3 ascertain the value of the property or lien. If such value is less than the amount for
4 which the property is indemnity or than the amount of the lien, the transferee or
5 lienholder may elect to retain the property or lien upon payment of its value, as
6 ascertained by the Court, to the liquidator, within such reasonable times as the Court
7 shall fix.

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

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

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

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

39 **"§ 58-672. Claims of holders of void or voidable rights.**

40 (a) No claims of a creditor who has received or acquired a preference, lien,
41 conveyance, transfer, assignment, or encumbrance voidable under this Article shall be
42 allowed unless he surrenders the preference, lien, conveyance, transfer, assignment or
43 encumbrance. If the avoidance is effected by a proceeding in which a final judgment
44 has been entered, the claim shall not be allowed unless the money is paid or the property

1 is delivered to the liquidator within 30 days from the date of the entering of the final
2 judgment; except that the Court having jurisdiction over the liquidation may allow
3 further time if there is an appeal or other continuation of the proceeding.

4 (b) A claim allowable under subsection (a) of this section by reason of the
5 avoidance, whether voluntary or involuntary, of a preference, lien, conveyance, transfer,
6 assignment, or encumbrance, may be filed as an excused late filing under G.S. 58-676
7 if filed within 30 days from the date of the avoidance, or within the further time allowed
8 by the Court under subsection (a) of this section.

9 **"§ 58-673. Setoffs and counterclaims.**

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

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

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

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

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

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

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

42 **"§ 58-674. Assessments.**

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

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

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

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

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

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

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

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

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

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

38 **§ 58-675. Reinsurer's liability.**

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

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

1 (2) Where the assuming insurer, with the consent of the direct insured or
2 insureds, has assumed the policy obligations of the ceding insurer as
3 direct obligations of the assuming insurer to the payees under policies
4 and in substitution of the obligations of the ceding insurer to the
5 payees.

6 **"§ 58-675.1. Recovery of premiums owed.**

7 (a) An agent, broker, premium finance company, or any other person, other than
8 the insured, responsible for the payment of a premium is obligated to pay an unpaid
9 premium for the full policy term due the insurer at the time of the declaration of
10 insolvency, whether earned or unearned, as shown on the records of the insurer. The
11 liquidator also has the right to recover from such person any part of an unearned
12 premium that represents commission of such person. Except as provided in G.S. 58-
13 673, credits or setoffs or both are not allowed to an agent, broker, or premium finance
14 company for any amounts advanced to the insurer by the agent, broker, or premium
15 finance company on behalf of, but in the absence of a payment by, the insured.

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

18 **"§ 58-675.2. Domiciliary liquidator's proposal to distribute assets.**

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

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

27 (1) Reserving amounts for the payment of expenses of administration and
28 the payment of claims of secured creditors, to the extent of the value of
29 the security held, and claims falling within the priorities established in
30 G.S. 58-683(1) and (2);

31 (2) Disbursement of the assets marshalled to date and subsequent
32 disbursement of assets as they become available;

33 (3) Equitable allocation of disbursements to each of the domestic and
34 foreign guaranty associations entitled thereto;

35 (4) The securing by the liquidator from each of the associations entitled to
36 disbursements pursuant to this section of an agreement to return to the
37 liquidator such assets, together with income earned on assets
38 previously disbursed, as may be required to pay claims of secured
39 creditors and claims falling within the priorities established in G.S. 58-
40 683 in accordance with such priorities. No bond shall be required of
41 any such association; and

42 (5) A full report to be made by each association to the liquidator
43 accounting for all assets so disbursed to the association, all

1 disbursements made therefrom, any interest earned by the association
2 on such assets and any other matter as the Court directs.

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

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

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

21 **"§ 58-676. Filing of claims.**

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

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

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

34 (2) A transfer to a creditor was avoided under G.S. 58-669 through 58-
35 671, or was voluntarily surrendered under G.S. 58-672, and that the
36 filing satisfies the conditions of G.S. 58-672; and

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

39 (c) The liquidator shall permit late filing claims to share in distributions, whether
40 past or future, as if they were not late, if such claims are claims of a guaranty
41 association or foreign guaranty association for reimbursement of covered claims paid or
42 expenses incurred, or both, subsequent to the last day for filing where such payments
43 were made and expenses incurred as provided by law. Claims of domestic and foreign

1 guaranty associations for reimbursement of covered claims paid or expenses incurred
2 shall be deemed to be absolute.

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

10 **"§ 58-677. Proof of claim.**

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

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

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

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

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

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

20 (6) A copy of the written instrument that is the foundation of the claim;
21 and

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

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

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

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

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

41 **"§ 58-678. Special claims.**

42 (a) No contingent claim shall share in a distribution of the assets of an insurer
43 that has been adjudicated to be insolvent by an order made pursuant to G.S. 58-662;

1 except that such claims shall be considered, if properly presented, and may be allowed
2 to share where:

3 (1) Such claim becomes absolute against the insurer on or before the last
4 day fixed for filing of proofs of claim against the assets of such
5 insurer, or

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

8 (b) Where an insurer has been so adjudicated to be insolvent, any person who has
9 a cause of action against an insured of such insurer under a liability insurance policy
10 issued by such insurer, has the right to file a claim in the liquidation proceedings,
11 regardless of the fact that such claim may be contingent, and such claim may be
12 allowed:

13 (1) If it may be reasonably inferred from the proof presented upon such
14 claim that such person would be able to obtain a judgment upon such
15 cause of action against such insured; and

16 (2) If such person furnishes suitable proof, unless the Court for good cause
17 shown otherwise directs, that no further valid claims against such
18 insurer arising out of his cause of action other than those already
19 presented can be made; and

20 (3) If the total liability of such insurer to all claimants arising out of the
21 same act of its insured is no greater than its total liability would be
22 were it not in liquidation.

23 No judgment against such an insured taken after the date of the entry of the liquidation
24 order shall be considered in the liquidation proceedings as evidence of liability or of the
25 amount of damages, and no judgment against an insured taken by default, inquest, or by
26 collusion prior to the entry of the liquidation order shall be considered as conclusive
27 evidence in the liquidation proceeding, either of the liability of such insured to such
28 person upon such cause of action or of the amount of damages to which such person is
29 therein entitled.

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

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

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

43 “§ 58-679. Special provisions for third party claims.

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

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

7 (c) The liquidator shall make his recommendations to the court under G.S. 58-
8 666, for the allowance of an insured's claim under subsection (b) of this section after
9 consideration of the probable outcome of any pending action against the insured on
10 which the claim is based, the probable damages recoverable in the action, and the
11 probable costs and expenses of defense. After allowance by the Court, the liquidator
12 shall withhold any dividends payable on the claim, pending the outcome of litigation
13 and negotiation with the insured. Whenever it seems appropriate, he shall reconsider
14 the claim on the basis of additional information and amend his recommendations to the
15 court. The insured shall be afforded the same notice and opportunity to be heard on all
16 changes in the recommendation as in its initial determination. The Court may amend its
17 allowance as it thinks appropriate. As claims against the insured are settled or barred,
18 the insured shall be paid from the amount withheld the same percentage dividend as was
19 paid on other claims of like property, based on the lesser of (i) the amount actually
20 recovered from the insured by action or paid by agreement plus the reasonable costs and
21 expense of defense, or (ii) the amount allowed on the claims by the Court. After all
22 claims are settled or barred, any sum remaining from the amount withheld shall revert to
23 the undistributed assets of the insurer. Delay in final payment under this subsection
24 shall not be a reason for unreasonable delay of final distribution and discharge of the
25 liquidator.

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

28 **"§ 58-680. Disputed claims.**

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

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

41 **"§ 58-681. Claims of surety.**

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

1 whether the claim has been filed by the creditor or by the other person in the creditor's
2 name, to the extent that he discharges the undertaking. In the absence of an agreement
3 with the creditor to the contrary, the other person shall not be entitled to any distribution
4 until the amount paid to the creditor on the undertaking plus the distributions paid on
5 the claim from the insurer's estate to the creditor equals the amount of the entire claim
6 of the creditor. Any excess received by the creditor shall be held by him in trust for
7 such other person. As used in this section, 'other person' does not mean a guaranty
8 association or foreign guaranty association.

9 **"§ 58-682. Secured creditor's claims.**

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

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

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

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

22 **"§ 58-683. Priority of distribution.**

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

29 (1) Claims for cost of administration and conservation of assets of the
30 insurer.

31 (2) Compensation actually owing to employees other than officers of the
32 insurer for services rendered within three months prior to the
33 commencement of a delinquency proceeding against the insurer under
34 this Article, but not exceeding one thousand dollars (\$1,000) for each
35 employee. In the discretion of the Commissioner, this compensation
36 may be paid as soon as practicable after the proceeding has been
37 commenced. This priority is in lieu of any other similar priority that
38 may be authorized by law as to wages or compensation of those
39 employees.

40 (3) Claims or portions of claims for benefits under policies and for losses
41 incurred, including claims of third parties under liability policies, up to
42 an amount of three hundred thousand dollars (\$300,000) per claim and
43 claims of domestic and foreign guaranty associations; but excluding
44 claims of insurance pools, underwriting associations, or those arising

1 out of reinsurance agreements, claims of other insurers for
2 subrogation, and claims of insurers for payments and settlements under
3 uninsured and underinsured motorist coverages.

4 (4) Claims for unearned premiums.

5 (5) Claims of general creditors, including claims of insurance pools,
6 underwriting associations, or those arising out of reinsurance
7 agreements; claims of other insurers for subrogation; those portions of
8 claims for benefits under policies and for losses incurred, including
9 claims of third parties under liability policies, in excess of three
10 hundred thousand dollars (\$300,000) per claim; and claims of insurers
11 for payments and settlements under uninsured and underinsured
12 motorist coverages.

13 **"§ 58-684. Liquidator's recommendations to the Court.**

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

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

32 **"§ 58-685. Distribution of assets.**

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

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

42 **"§ 58-686. Unclaimed and withheld funds.**

43 (a) All unclaimed funds subject to distribution remaining in the liquidator's hands
44 when he is ready to apply to the Court for discharge, including the amount distributable

1 to any creditor, shareholder, member, or other person who is unknown or cannot be
2 found, shall be deposited with the State Treasurer, and shall be paid without interest
3 except in accordance with G.S. 58-683 to the person entitled thereto or his legal
4 representative upon proof satisfactory to the State Treasurer of his right thereto. Any
5 amount on deposit not claimed within six years from the discharge of the liquidator
6 shall be considered abandoned and shall be escheated without formal escheat
7 proceedings.

8 (b) All funds withheld under G.S. 58-678 and not distributed shall upon
9 discharge of the liquidator be deposited with the State Treasurer and paid by him in
10 accordance with G.S. 58-683. Any sums remaining that under G.S. 58-683 would revert
11 to the undistributed assets of the insurer shall be transferred to the State Treasurer and
12 become the property of the State under subsection (a) of this section, unless the
13 Commissioner in his discretion petitions the Court to reopen the liquidation under G.S.
14 58-688.

15 **"§ 58-687. Termination of proceedings.**

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

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

25 **"§ 58-688. Reopening liquidation.**

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

30 **"§ 58-689. Disposition of records during and after termination of liquidation.**

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

35 **"§ 58-690. External audit of the receiver's books.**

36 The Court may, as it deems to be desirable, cause audits to be made of the books of
37 the Commissioner relating to any receivership established under this Article, and a
38 report of each audit shall be filed with the Commissioner and with the Court. The
39 books, records, and other documents of the receivership shall be made available to any
40 auditor at any time without notice. The expense of each audit shall be considered a cost
41 of administration of the receivership.

42 **"§ 58-691. Conservation of property of foreign or alien insurers found in this**
43 **State.**

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

5 (1) Any of the grounds in G.S. 58-656;

6 (2) That any of its property has been sequestered by official action in its
7 domiciliary state, or in any other state;

8 (3) That enough of its property has been sequestered in an alien country to
9 give reasonable cause to fear that the insurer is or may become
10 insolvent;

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

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

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

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

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

32 **"§ 58-692. Liquidation of property of foreign or alien insurers found in this State.**

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

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

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

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

42 (c) If it appears to the Court that the best interests of creditors, policyholders, and
43 the public require, the Court may issue an order to liquidate in whatever terms it deems
44 to be appropriate. The filing or recording of the order with the clerk of the Court or the

1 register of deeds of the county in which the principal business of the insurer is located
2 or the county in which its principal office or place of business is located, shall impart
3 the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded
4 with that register of deeds would have imparted.

5 (d) If a domiciliary liquidator is appointed in a reciprocal state while a liquidation
6 is proceeding under this section, the liquidator under this section shall thereafter act as
7 ancillary receiver under G.S. 58-694. If a domiciliary liquidator is appointed in a
8 nonreciprocal state while a liquidation is proceeding under this section, the liquidator
9 under this section, may petition the court for permission to act as ancillary receiver
10 under G.S. 58-694.

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

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

20 **"§ 58-693. Domiciliary liquidators in other states.**

21 (a) The domiciliary liquidator of an insurer domiciled in a reciprocal state is,
22 except as to special deposits and security on secured claims under G.S. 58-694(c),
23 vested by operation of law with the title to all of the assets, property, contracts and
24 rights of action, agents' balances, and all of the books, accounts, and other records of the
25 insurer located in this State. The date of vesting shall be the date of the filing of the
26 petition, if that date is specified by the domiciliary law for the vesting of property in the
27 domiciliary state. Otherwise, the date of vesting shall be the date of entry of the order
28 directing possession to be taken. The domiciliary liquidator shall have the immediate
29 right to recover the balances due from agents and to obtain possession of the books,
30 accounts, and other records of the insurer located in this State. He also shall have the
31 right to recover all other assets of the insurer located in this State, subject to G.S. 58-
32 694.

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

42 (c) Claimants residing in this State may file claims with the liquidator or
43 ancillary receiver, if any, in this State or with the domiciliary liquidator, if the

1 domiciliary law permits. The claims must be filed on or before the last date fixed for
2 the filing of claims in the domiciliary liquidation proceedings.

3 **"§ 58-694. Ancillary formal proceedings.**

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

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

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

10 (b) The Court may issue an order appointing an ancillary receiver in whatever
11 terms it deems to be appropriate. The filing or recording of the order with a register of
12 deeds in this State imparts the same notice as a deed, bill of sale, or other evidence of
13 title duly filed or recorded with that register of deeds.

14 (c) When a domiciliary liquidator has been appointed in a reciprocal state, then
15 the ancillary receiver appointed in this State, may, whenever necessary, aid and assist
16 the domiciliary liquidator in recovering assets of the insurer located in this State. The
17 ancillary receiver shall, as soon as practicable, liquidate from their respective securities
18 those special deposit claims and secured claims which are proved and allowed in the
19 ancillary proceedings in this State, and shall pay the necessary expenses of the
20 proceedings. He shall promptly transfer all remaining assets, books, accounts, and
21 records to the domiciliary liquidator. Subject to this section, the ancillary receiver and
22 his deputies shall have the same powers and be subject to the same duties with respect
23 to the administration of assets as a liquidator of an insurer domiciled in this State.

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

28 **"§ 58-695. Ancillary summary proceedings.**

29 The Commissioner in his sole discretion may institute proceedings under G.S. 58-
30 653 through 58-655 at the request of the insurance regulator of the domiciliary state of
31 any foreign or alien insurer having property located in this State.

32 **"§ 58-696. Claims of nonresidents against insurers domiciled in this State.**

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

39 (b) Claims belonging to claimants residing in reciprocal states may be proved
40 either in the liquidation proceeding in this State as provided in this Article, or in
41 ancillary proceedings, if any, in the reciprocal states. If notice of the claims and
42 opportunity to appear and be heard is afforded the domiciliary liquidator of this State as
43 provided in G.S. 58-697(b) with respect to ancillary proceedings, the final allowance of
44 claims by the courts in ancillary proceedings in reciprocal states shall be conclusive as

1 to amount and as to priority against special deposits or other security located in such
2 ancillary states, but shall not be conclusive with respect to priorities against general
3 assets under G.S. 58-683.

4 **"§ 58-697. Claims of residents against insurers domiciled in reciprocal states.**

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

10 (b) Claims belonging to claimants residing in this State may be proved either in
11 the domiciliary state under the law of that state, or in ancillary proceedings, if any, in
12 this State. If a claimant elects to prove his claim in this State, he shall file his claim
13 with the liquidator in the manner provided in G.S. 58-676 and G.S. 58-677. The
14 ancillary receiver shall make his recommendation to the Court as under G.S. 58-684.
15 He shall also arrange a date for hearing if necessary under G.S. 58-680 and shall give
16 notice to the liquidator in the domiciliary state, either by certified mail or by personal
17 service at least 40 days prior to the date set for hearing. If the domiciliary liquidator,
18 within 30 days after the giving of such notice, gives notice in writing to the ancillary
19 receiver and to the claimant, either by certified mail or by personal service, of his
20 intention to contest the claim, he shall be entitled to appear or to be represented in any
21 proceedings in this State involving the adjudication of the claim.

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

25 **"§ 58-698. Attachment, garnishment and levy of execution.**

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

30 **"§ 58-699. Interstate priorities.**

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

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

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

7 **"§ 58-700. Subordination of claims for noncooperation.**

8 If an ancillary receiver in another state or foreign country, whether called by that
9 name or not, fails to transfer to the domiciliary liquidator in this State any assets within
10 his control other than special deposits, diminished only by the expenses of the ancillary
11 receivership, if any, the claims filed in the ancillary receivership, other than special
12 deposit claims or secured claims shall be placed in the class of claims under G.S. 58-
13 683(5)."

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

15 **"§ 57B-17. Rehabilitation, liquidation, or conservation of health maintenance**
16 **organization.**

17 Any rehabilitation, liquidation or conservation of a health maintenance organization
18 shall be deemed to be the rehabilitation, liquidation, or conservation of an insurance
19 company and shall be conducted under the supervision of the Commissioner pursuant to
20 the law governing the rehabilitation, liquidation, or conservation of insurance
21 companies, except that the provisions of Articles 17B and 17C of Chapter 58 of the
22 General Statutes shall not apply to health maintenance organizations. The
23 Commissioner may apply for an order directing him to rehabilitate, liquidate, or
24 conserve a health maintenance organization upon one or more grounds set out in Article
25 ~~17A-46~~ of Chapter 58 of the General Statutes or when in his opinion the continued
26 operation of the health maintenance organization would be hazardous either to the
27 enrollees or to the people of this State."

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

29 "(c) The removal from this State of all or a material part of the records or assets of a
30 domestic insurer that has its home or principal office outside this State except pursuant
31 to a plan of merger or consolidation approved by the Commissioner under or for such
32 reasonable purposes and periods of time as may be approved by the Commissioner in
33 writing in advance of such removal, or concealment of such records or assets or material
34 part thereof from the Commissioner is prohibited. Any person who, without the prior
35 approval of the Commissioner, removes or attempts to remove such records or assets or
36 such material part thereof from the office or offices in which they are required to be
37 kept and maintained under subsection (a) of this section or who conceals or attempts to
38 conceal such records from the Commissioner, in violation of this subsection, shall be
39 guilty of a Class J felony. Upon any removal or attempted removal of such records or
40 assets or upon retention of such records or assets or material part thereof outside this
41 State, beyond the period therefor specified in the consent of the Commissioner under
42 which consent the records were so removed thereat, or upon concealment of or attempt
43 to conceal records or assets in violation of this section, the Commissioner may institute

1 delinquency proceedings against the insurer pursuant to the provisions of Article ~~17A~~
2 46 of this Chapter."

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

4 "**§ 58-415. Prohibition of hypothecation.**

5 (a) Every insurer subject to this Article shall at all times have and maintain free
6 and unencumbered assets in an amount equal to its reserve liabilities. No insurer shall
7 pledge, hypothecate, or otherwise encumber its assets in an amount in excess of the
8 amount of its capital and surplus. No insurer shall pledge, hypothecate, or otherwise
9 encumber more than ten percent (10%) of its reserve assets. The Commissioner, upon
10 application made to him, may issue a written order approving the pledging,
11 hypothecation, or encumbrance of any of the assets of an insurer in any amount upon a
12 finding that the pledging, hypothecation, or encumbrance will not adversely affect the
13 solvency of the insurer.

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

19 (i) Title to assets in an amount equal to the reserve liability of the insurer that are not
20 pledged, hypothecated, or otherwise encumbered is vested in the insurer; (ii) the only
21 assets of the insurer that are pledged, hypothecated, or otherwise encumbered are as
22 identified and reported in the sworn statement and no other assets of the insurer are
23 pledged, hypothecated, or otherwise encumbered; and (iii) the terms and provisions of
24 the transaction of the pledge, hypothecation, or encumbrance are as reported in such
25 sworn statement.

26 (c) Any person that accepts a pledge, hypothecation, or encumbrance of any asset
27 of an insurer, as security for a debt or other obligation of the insurer, not in accordance
28 with this Article, is deemed to have accepted the asset subject to a superior, preferential,
29 and automatically perfected lien in favor of claimants: Provided, that said lien does not
30 apply to the assets of an insurer in a delinquency proceeding under Article ~~17A-46~~
31 46 of this Chapter if the Commissioner or the court, whichever is appropriate, approves the
32 pledge, hypothecation, or encumbrance of the assets.

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

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

40 "**§ 58-155.60. Use of deposits made by insolvent insurer.**

41 Notwithstanding any other provision of this Chapter pertaining to the use of deposits
42 made by insurance companies for the protection of policyholders, the Commissioner
43 shall deliver to the Association, and the Association is hereby authorized to expend, any
44 deposit or deposits previously or hereinafter made, whether or not required by statute,

1 by an insolvent insurer to the extent those deposits are needed by the Association first to
2 pay the covered claims as required by this Article and then to the extent those deposits
3 are needed to pay all expenses of the Association relating to the insurer: Provided that
4 before delivering any deposit to the Association the Commissioner may retain an
5 amount of the deposit up to five thousand dollars (\$5,000) to defray administrative costs
6 to be incurred by the Commissioner in carrying out his powers and duties with respect
7 to the insolvent insurer, notwithstanding G.S. 58-185. As used in this section, the term
8 'administrative costs' does not include any salary or expenses paid to or on behalf of any
9 State employee or to any person appointed or employed pursuant to ~~G.S. 58-155.11(f)~~
10 ~~or 58-155.36~~ G.S. 58-653(c), 58-656, or 58-665.

11 However, in the case of a deposit made by an insolvent domestic insurer, only the
12 portions of the deposit made for the protection of policyholders having covered claims
13 shall be delivered by the Commissioner to the Association. Said portions shall be in the
14 proportions that the insolvent domestic insurer's domestic net direct written premiums
15 for the preceding calendar year on the kinds of insurance in the account bears to its total
16 net direct written premiums for the preceding calendar year on the kinds of insurance in
17 the account.

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

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

29 **"§ 58-155.84. Use of deposits made by impaired insurer.**

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

1 ~~155.36~~G.S. 58-653(c), 58-656, or 58-665. The Association shall account to the
2 Commissioner and the impaired insurer for all deposits received from the Commissioner
3 hereunder. After all of the deposits of the impaired insurer have been expended by the
4 Association for the purposes set out in this section, the member insurers shall be
5 assessed as provided by this Article to pay any remaining liabilities of the Association
6 arising under this Article."

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

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

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

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