

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 452
HOUSE BILL 583

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

The General Assembly of North Carolina enacts:

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

"ARTICLE 46.

"Insurers Supervision, Rehabilitation, and Liquidation.

"§ 58-640. Construction and purpose.

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

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

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

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

"§ 58-641. Persons covered.

The proceedings authorized by this Article may be applied to:

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

"§ 58-642. Definitions.

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

- (1) 'Alien country' means any other jurisdiction not in any state.
- (2) 'Ancillary state' means any state other than a domiciliary state.
- (3) 'Court' means the Superior Court of Wake County.
- (4) 'Creditor' means a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent.
- (5) 'Delinquency proceeding' means any proceeding instituted against an insurer for the purpose of supervising, rehabilitating, conserving, or liquidating such insurer.
- (6) 'Doing business' includes any of the following acts by insurers, whether effected by mail or otherwise:
 - a. The issuance or delivery of contracts of insurance to persons resident in this State;
 - b. The solicitation of applications for such contracts, or other negotiations preliminary to the execution of such contracts;
 - c. The collection of premiums, membership fees, assessments, or other consideration for such contracts;
 - d. The transaction of matters subsequent to execution of such contracts and arising out of them;
 - e. Operating as an insurer under a license or certificate of authority issued by the Department; or
 - f. The purchase of contracts of insurance issued to persons in this State by an assumption agreement.
- (7) 'Domestic guaranty association' means the Postassessment Insurance Guaranty Association in Article 17B of this Chapter, as amended; the Workers' Compensation Security Funds in Article 3 of Chapter 97 of the General Statutes, as amended; the Life and Accident and Health Insurance Guaranty Association in Article 17C of this Chapter, as amended; or any other similar entity hereafter created by the General Assembly for the payment of claims of insolvent insurers.

- (8) 'Domiciliary state' means the state in which an insurer is incorporated or organized; or, in the case of an alien insurer, its state of entry.
- (9) 'Fair consideration' is given for property or obligation when:
- a. In exchange for such property or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or services are rendered or an obligation is incurred or an antecedent debt is satisfied; or
 - b. Such property or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared to the value of the property or obligation obtained.
- (10) 'Foreign guaranty association' means a guaranty association now in existence in or hereafter created by the legislature of any other state.
- (11) 'Formal delinquency proceeding' means any liquidation or rehabilitation proceeding.
- (12) 'General assets' means all real, personal, or other property that is not specifically mortgaged, pledged, hypothecated, deposited, or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, 'general assets' includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets that are held in trust and on deposit for the security or benefit of all policyholders in more than one state or all policyholders and creditors in more than one state shall be treated as 'general assets'.
- (13) 'Insolvency' or 'insolvent' means that an insurer is unable to pay its obligations when they are due, or that its admitted assets do not exceed its liabilities plus the greater of (i) any capital and surplus required by law for its organization; or (ii) the total par or stated value of its authorized and issued capital stock. For the purposes of this subdivision, 'liabilities' includes reserves required by statute, by Department rules, or by specific requirements imposed by the Commissioner upon a subject company at the time of admission or subsequent thereto, except those reserves that are an allocation of surplus as specified in G.S. 57-8.
- (14) 'Insurer' means any entity licensed under Articles 6, 14, or 17 of this Chapter and under Chapters 57 and 57B of the General Statutes.
- (15) 'Preferred claim' means any claim with respect to which the provisions of this Article accord priority of payment from the general assets of the insurer.
- (16) 'Receiver' includes a liquidator, rehabilitator, or conservator, as the context requires.
- (17) 'Reciprocal state' means any state other than this State in which in substance and effect the provisions of G.S. 58-662(a), 58-693, 58-694, and 58-696 through 58-698 are in force, and in which provisions are in

force requiring that the insurance regulator of that state be the receiver of a delinquent insurer; and in which provisions exist for the avoidance of fraudulent conveyances and preferential transfers.

- (18) 'Secured claim' means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow, or otherwise; and includes any claim that has become a lien upon specific assets by reason of judicial process. 'Secured claim' does not include a special deposit claim or a claim against general assets.
- (19) 'Special deposit claim' means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but does not include any claim secured by general assets.
- (20) 'Transfer' includes the sale and every other and different mode, whether direct or indirect, of disposing of or of parting with property, an interest therein, or the possession thereof; or of voluntarily fixing a lien upon property or an interest therein, whether absolutely or conditionally, by or without judicial proceedings. The retention of a security title to property delivered to a debtor is a transfer suffered by the debtor.

"§ 58-643. Jurisdiction and venue.

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

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

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

- (1) If the person served is obligated to the insurer in any way as an incident to any agency or brokerage arrangement that may exist or has existed between the insurer and the agent or broker, in any action on or incident to the obligation; or
- (2) If the person served is a reinsurer who has at any time entered into a contract of reinsurance with an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced, or is an agent or broker of or for the reinsurer, in any action on or incident to the reinsurance contract; or
- (3) If the person served is or has been an officer, manager, trustee, organizer, promoter, or person in a position of comparable authority or influence, in an insurer against which a rehabilitation or liquidation

order is in effect when the action is commenced, in any action resulting from such a relationship with the insurer.

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

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

"§ 58-644. Injunctions and orders.

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

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

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

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

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

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

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

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

"§ 58-646. Bonds.

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

"§ 58-647. Reserved for future codification.

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

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

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

- a. Cures, or provides adequate assurance that the receiver will promptly cure, such default;
- b. Compensates, or provides adequate assurance that the receiver will promptly compensate, a party, other than the insurer to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
- c. Provides adequate assurance of future performance under such contract or lease.

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

- a. The insolvency or financial condition of the insurer at any time before the closing of the case;
- b. The commencement of a proceeding under this Article; or
- c. The appointment of or taking possession by a receiver in a proceeding under this Article or a custodian before such commencement.

(3) Notwithstanding any other provision of this section, if there has been a default in an unexpired lease of the insurer, other than a default of a kind specified in subdivision (2) of this subsection, the receiver may not require a lessor to provide services or supplies incidental to such lease before assumption of such lease unless the lessor is compensated under the terms of such lease for any services and supplies provided under such lease before assumption of such lease.

(c) The receiver may not assume or assign an executory contract or unexpired lease of the insurer, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if:

(1) a. Applicable law excuses a party, other than the insurer, to such contract or lease from accepting performance from or rendering performance to the receiver or an assignee of such contract or lease, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and

b. Such party does not consent to such assumption or assignment; or

(2) Such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the insurer, or to issue a security of the insurer.

(d) (1) In a proceeding under G.S. 58-662, if the receiver does not assume or reject an executory contract or unexpired lease of the insurer within 60 days after the order for liquidation, or within such additional time as the Court, for cause, within such 60-day period, fixes, then such contract or lease is deemed to be rejected.

(2) In a proceeding under G.S. 58-657 the receiver may assume or reject an executory contract or unexpired lease of the insurer at any time before the order for a plan of rehabilitation, but the Court, on request of any party to such contract or lease, may order the receiver to determine within a specified period of time whether to assume or reject such contract or lease.

(e) (1) Notwithstanding a provision in an executory contract or unexpired lease, or in applicable law, an executory contract or unexpired lease of the insurer may not be terminated or modified, and any right or obligation under such contract or lease may not be terminated or modified, at any time after the commencement of the proceeding solely because of a provision in such contract or lease that is conditioned on:

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

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

c. The appointment of or taking possession by a receiver in a proceeding under this Article or a custodian before such commencement.

(2) Subdivision (1) of this subsection does not apply to an executory contract or unexpired lease of the insurer, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if:

a. Applicable law excused a party, other than the insurer, to such contract or lease from accepting performance from or rendering performance to the receiver or to an assignee of such contract or

- lease, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties and such party does not consent to such assumption or assignment; or
- b. Such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the insurer, or to issue a security of the insurer.
- (f) (1) Except as provided in subsection (c) of this section, notwithstanding a provision in an executory contract or unexpired lease of the insurer, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the receiver may assign such contract or lease under subdivision (2) of this subsection.
- (2) The receiver may assign an executory contract or unexpired lease of the insurer only if:
- a. The receiver assumes such contract or lease in accordance with the provisions of this section; and
- b. Adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.
- (3) Notwithstanding a provision in an executory contract or unexpired lease of the insurer, or in applicable law that terminates or modifies, or permits a party other than the insurer to terminate or modify, such contract or lease or a right or obligation under such contract or lease on account of an assignment of such contract or lease, such contract, lease, right, or obligation may not be terminated or modified under such provision because of the assumption or assignment of such contract or lease by the receiver.
- (g) Except as provided in subdivisions (h)(2) and (i)(2) of this section, the rejection of an executory contract or unexpired lease of the insurer constitutes a breach of such contract or lease:
- (1) If such contract or lease has not been assumed under this section or under a plan of rehabilitation under G.S. 58-657, immediately before the date of the filing of the petition; or
- (2) If such contract or lease has been assumed under this section or under a plan of rehabilitation under G.S. 58-657:
- a. If before such rejection the proceeding has not been converted to a proceeding under G.S. 58-662 at the time of such rejection;
or
- b. If before such rejection the case has been converted to a proceeding under G.S. 58-662: (i) immediately before the date of such conversion, if such contract or lease was assumed before such conversion; or (ii) at the time of such rejection, if such contract or lease was assumed after such conversion.
- (h) (1) If the receiver rejects an unexpired lease of real property of the insurer under which the insurer is the lessor, the lessee under such lease may

treat the lease as terminated by such rejection, or, in the alternative, may remain in possession for the balance of the term of such lease and any renewal or extension of such term that is enforceable by such lessee under applicable provision of law outside of this Article.

(2) If such lessee remains in possession, such lessee may offset against the rent reserved under such lease for the balance of the term after the date of the rejection of such lease, and any such renewal or extension, any damages occurring after such date caused by the nonperformance of any obligation of the insurer after such date, but such lessee does not have any rights against the estate on account of any damages arising after such date from such rejection, other than such offset.

(i) (1) If the receiver rejects an executory contract of the insurer for the sale of real property under which the purchaser is in possession, such purchaser may treat such contract as terminated, or, in the alternative, may remain in possession of such real property.

(2) If such purchaser remains in possession:

a. Such purchaser shall continue to make all payments due under such contract but may offset against such payments any damages occurring after the date of the rejection of such contract caused by the nonperformance of any obligation of the insurer after such date, but such purchaser does not have any rights against the estate on account of any damages arising after such date from such rejection, other than such offset; and

b. The receiver shall deliver title to such purchaser in accordance with the provisions of such contract, but is relieved of all other obligations to perform under such contract.

(j) A purchaser that treats an executory contract as terminated under subsection (i) of this section, or a party whose executory contract to purchase real property from the insurer is rejected and under which such party is not in possession, has a lien on the interest of the insurer in such property for the recovery of any portion of the purchase price that such purchaser or party has paid.

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

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

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

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

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

(3) A trustee, receiver, or agent under applicable law, or under a contract, that is appointed or authorized to take charge of property of the insurer for the purpose of enforcing a lien against such property, or for the

purpose of general administration of such property for the benefit of the insurer's creditors.

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

(c) A custodian shall:

- (1) Deliver to the receiver any property of the insurer transferred to such custodian, or proceeds of such property, that is in such custodian's possession, custody, or control on the date that such custodian acquires knowledge of the commencement of the proceeding; and
- (2) File an accounting of any property of the insurer, or proceeds of such property, that, at any time, came into the possession, custody, or control of such custodian.

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

- (1) Protect all entities to which a custodian has become obligated with respect to such property;
- (2) Provide for the payment of reasonable compensation for services rendered and costs and expenses incurred by such custodian; and
- (3) Surcharge such custodian, other than an assignee for the benefit of the insurer's creditors that was appointed or took possession more than 120 days before the date of the filing of the petition, for any improper excessive disbursement, other than a disbursement that has been made in accordance with applicable law or approved, after notice and a hearing, by a court of competent jurisdiction before the commencement of the proceeding under this Article.

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

"§ 58-650. Utility service.

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

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

"§ 58-651. Continuation of delinquency proceedings.

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

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

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

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

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

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

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

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

- (1) Notify the insurer of his determination; and
- (2) Furnish to the insurer a written list of the Commissioner's requirements to abate his determination.

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

(c) If the Commissioner makes a determination to supervise an insurer subject to an order under subsections (a) or (b) of this section, he shall notify the insurer that it is under the supervision of the Commissioner. During the period of supervision, the

Commissioner may appoint a supervisor to supervise such insurer. The order appointing a supervisor shall direct the supervisor to enforce orders issued under subsections (a) and (b) of this section and may also require that the insurer may not do any of the following things during the period of supervision, without the prior approval of the Commissioner or his supervisor:

- (1) Dispose of, convey, or encumber any of its assets or its business in force;
 - (2) Withdraw from any of its bank accounts;
 - (3) Lend any of its funds;
 - (4) Invest any of its funds;
 - (5) Transfer any of its property;
 - (6) Incur any debt, obligation, or liability;
 - (7) Merge or consolidate with another company; or
 - (8) Enter into any new reinsurance contract or treaty.
- (d) Any insurer subject to an order under this section shall comply with the lawful requirements of the Commissioner and, if placed under supervision, shall have 60 days from the date the supervision order is served within which to comply with the requirements of the Commissioner. The Commissioner may in his discretion extend the time for compliance beyond 60 days for cause. In the event of such insurer's failure to comply within such time, the Commissioner may institute proceedings under this Article to have a rehabilitator or liquidator appointed, or extend the period of supervision.

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

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

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

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

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

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

"§ 58-654. Court's seizure order.

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

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

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

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

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

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

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

"§ 58-655. Confidentiality of hearings.

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

"§ 58-656. Grounds for rehabilitation.

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

- (1) The insurer is in such condition that the further transaction of business would be hazardous financially to its policyholders, creditors, or the public.
- (2) There is reasonable cause to believe that there has been embezzlement from the insurer, wrongful sequestration or diversion of the insurer's assets, forgery or fraud affecting the insurer, or other illegal conduct in, by, or with respect to the insurer that if established would endanger assets in an amount threatening the solvency of the insurer.
- (3) The insurer has failed to remove any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, employee, or other person; if the person has been found after notice and hearing by the Commissioner to be dishonest or untrustworthy in a way affecting the insurer's business.
- (4) Control of the insurer, whether by stock ownership or otherwise, and whether direct or indirect, is in a person or persons found after notice and hearing to be untrustworthy.
- (5) Any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, director or trustee, employee, or other person, has refused to be examined under oath by the Commissioner concerning its affairs, whether in this State or elsewhere; and after reasonable notice of the fact, the insurer has failed

- promptly and effectively to terminate the employment and status of the person and all his influence on management.
- (6) After demand by the Commissioner the insurer has failed to promptly make available for examination any of its own property, books, accounts, documents, or other records; those of any subsidiary or related company within the control of the insurer; or those of any person having executive authority in the insurer insofar as they pertain to the insurer.
 - (7) Without first obtaining the written consent of the Commissioner pursuant to G.S. 58-155.1, the insurer has (i) transferred, or attempted to transfer, in a manner contrary to Article 12A of this Chapter, substantially its entire property or business, or (ii) has entered into any transaction, the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person.
 - (8) The insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator, or sequestrator or similar fiduciary of the insurer or its property otherwise than as authorized under this Chapter, and such appointment has been made or is imminent, and such appointment might oust the courts of this State of jurisdiction or might prejudice orderly delinquency proceedings under this Article.
 - (9) Within the previous four years the insurer has willfully violated its charter or articles of incorporation, its bylaws, this Chapter, or any valid order of the Commissioner under G.S. 58-653.
 - (10) The insurer has failed to pay within 60 days after due any obligation to any state or any subdivision thereof or any judgment entered in any state, if the court in which such judgment was entered has jurisdiction over such subject matter; except that such nonpayment is not a ground until 60 days after any good faith effort by the insurer to contest the obligation has been terminated, whether it is before the Commissioner or in the courts, or the insurer has systematically attempted to compromise or renegotiate previously agreed settlements with its creditors on the ground that it is financially unable to pay its obligations in full.
 - (11) The insurer has failed to file its annual report or any other financial report required by statute within the time allowed by law and, after written demand by the Commissioner, has failed to immediately give an adequate explanation.
 - (12) The board of directors or the holders of a majority of the shares entitled to vote, or a majority of those individuals entitled to the control of those persons specified in G.S. 58-641, request or consent to rehabilitation under this Article.

"§ 58-657. Rehabilitation orders.

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

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

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

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

(a) The rehabilitator has the power:

- (1) To appoint a special deputy to act for him under this Article, and to determine his reasonable compensation. The special deputy has all powers of the rehabilitator granted by this section. The special deputy serves at the pleasure of the rehabilitator.
- (2) To employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and such other personnel as he may deem to be necessary to assist in the rehabilitation.
- (3) To fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers, and consultants, with the approval of the Court.
- (4) To pay reasonable compensation to persons appointed; and to defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, rehabilitating, disposing of, or otherwise dealing with the business and property of the insurer.
- (5) To hold hearings, to subpoena witnesses to compel their attendance, to administer oaths, to examine any person under oath, and to compel any person to subscribe to this testimony after it has been correctly reduced to writing; and in connection therewith to require the production of any books, papers, records, or other documents that he considers relevant to the inquiry.
- (6) To collect all debts and moneys due and claims belonging to the insurer, wherever located, and for this purpose:
 - a. To institute timely action in other jurisdictions, in order to forestall garnishment and attachment proceedings against such debts;
 - b. To do such other acts that are necessary or expedient to collect, conserve, or protect its assets or property, including the power

to sell, compound, compromise, or assign debts for purposes of collection upon such terms and conditions as he deems to be best; and

- c. To pursue any creditor's remedies available to enforce his claims.
- (7) To conduct public and private sales of the property of the insurer.
- (8) To use assets of the estate of an insurer under a rehabilitation order to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under G.S. 58-683.
- (9) To acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with, any property of the insurer at its market value or upon such terms and conditions that are fair and reasonable. He also has the power to execute, acknowledge, and deliver any and all deeds, assignments, releases and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the rehabilitation.
- (10) To borrow money on the security of the insurer's assets or without security and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the rehabilitation.
- (11) To enter into such contracts that are necessary to carry out the order to rehabilitate, and to affirm or disavow any contracts to which the insurer is a party.
- (12) To continue to prosecute and to institute in the name of the insurer or in his own name any and all suits and other legal proceedings, in this State or elsewhere, and to abandon the prosecution of claims he deems unprofitable to pursue further.
- (13) To prosecute any action that may exist in behalf of the creditors, members, policyholders, or shareholders of the insurer against any officer of the insurer or against any other person.
- (14) To remove any or all records and property of the insurer to the offices of the Commissioner or to such other place as may be convenient for the purposes of efficient and orderly execution of the rehabilitation.
- (15) To deposit in one or more banks in this State such sums as are required for meeting current administration expenses and dividend distributions.
- (16) To invest all sums not currently needed, unless the Court orders otherwise.
- (17) To file any necessary documents for recording in the office of any register of deeds in this State or elsewhere where property of the insurer is located.
- (18) To assert all defenses available to the insurer as against third persons, including statutes of limitation, statutes of frauds, and the defense of

usury. A waiver of any defense by the insurer after a petition in rehabilitation has been filed shall not bind the rehabilitator.

- (19) To exercise and enforce all rights, remedies, and powers of any creditor, shareholder, policyholder, or member; including any power to avoid any transfer or lien that may be given by law and that is not included within G.S. 58-669 through 58-671.
- (20) To intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and to act as the receiver or trustee whenever the appointment is offered.
- (21) To enter into agreements with any receiver or insurance regulator of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states.
- (22) To exercise all powers now held or subsequently conferred upon receivers by laws of this State not inconsistent with the provisions of this Article.

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

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

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

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

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

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

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

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

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

"§ 58-660. Termination of rehabilitation.

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

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

"§ 58-661. Grounds for liquidation.

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

- (1) Of any ground for an order of rehabilitation as specified in G.S. 58-656, whether or not there has been a prior order directing the rehabilitation of the insurer;
- (2) That the insurer is insolvent; or
- (3) That the insurer is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public.

"§ 58-662. Liquidation orders.

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

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

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

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

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

"§ 58-663. Continuance of coverage.

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

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

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

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

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

"§ 58-664. Dissolution of insurer.

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

"§ 58-665. Powers of liquidator.

(a) The liquidator has the power:

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

- b. To do such other acts that are necessary or expedient to collect, conserve, or protect its assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon such terms and conditions as he deems to be best; and
- c. To pursue any creditor's remedies available to enforce his claims.
- (7) To conduct public and private sales of the property of the insurer.
- (8) To use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under G.S. 58-683.
- (9) To acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with, any property of the insurer at its market value or upon such terms and conditions that are fair and reasonable. He also has the power to execute, acknowledge, and deliver any and all deeds, assignments, releases and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation.
- (10) To borrow money on the security of the insurer's assets or without security and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation.
- (11) To enter into such contracts that are necessary to carry out the order to liquidate, and to affirm or disavow any contracts to which the insurer is a party.
- (12) To continue to prosecute and to institute in the name of the insurer or in his own name any and all suits and other legal proceedings, in this State or elsewhere, and to abandon the prosecution of claims he deems unprofitable to pursue further. If the insurer is dissolved under G.S. 58-664, he shall have the power to apply to any court in this State or elsewhere for leave to substitute himself for the insurer as plaintiff.
- (13) To prosecute any action that may exist in behalf of the creditors, members, policyholders, or shareholders of the insurer against any officer of the insurer or against any other person.
- (14) To remove any or all records and property of the insurer to the offices of the Commissioner or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation. Domestic and foreign guaranty associations shall have such reasonable access to the records of the insurer as is necessary for them to carry out their statutory obligations.
- (15) To deposit in one or more banks in this State such sums as are required for meeting current administration expenses and dividend distributions.

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

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

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

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

- (1) By first-class mail and either by telecopier, telegram, or telephone to the insurance regulator of each jurisdiction in which the insurer is doing business;
- (2) By first-class mail to any domestic or foreign guaranty association that is or may become obligated as a result of the liquidation;
- (3) By first-class mail to all insurance agents of the insurer;
- (4) By first-class mail to all persons known or reasonably expected to have claims against the insurer, including all policyholders, at their last known addresses indicated by the records of the insurer; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"§ 58-670. Fraudulent transfer after petition.

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

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

- (1) A transfer of any of the property of the insurer, other than real property, made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value; or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred.
- (2) A person indebted to the insurer or holding property of the insurer may, if acting in good faith, pay the indebtedness or deliver the property, or any part thereof, to the insurer or upon his order, with the same effect as if the petition were not pending.
- (3) A person having actual knowledge of the pending rehabilitation or liquidation shall be deemed not to act in good faith.
- (4) A person asserting the validity of a transfer under this section has the burden of proof. Except as elsewhere provided in this section, no transfer by or on behalf of the insurer after the date of the petition for liquidation by any person other than the liquidator is valid as against the liquidator.

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

"§ 58-671. Voidable preferences and liens.

(a) A preference is a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within one year before the filing of a successful petition for liquidation under this Article, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a

liquidation order is entered while the insurer is already subject to a rehabilitation order, then such transfers shall be deemed to be preferences if made or suffered within one year before the filing of the successful petition for rehabilitation, or within two years before the filing of the successful petition for liquidation, whichever time is shorter. Any preference may be avoided by the liquidator if:

- (1) The insurer was insolvent at the time of the transfer;
- (2) The transfer was made within four months before the filing of the petition;
- (3) The creditor receiving it or to be benefited thereby or his agent acting with reference thereto had, at the time the transfer was made, reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or
- (4) The creditor receiving it was an officer, or any employee, attorney, or other person who was in fact in a position of comparable influence in the insurer to an officer, whether or not he held such position, or any shareholder holding directly or indirectly more than five percent (5%) of any class of any equity security issued by the insurer, or any other person, firm, corporation, association, or aggregation of persons with whom the insurer did not deal at arm's length.

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

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

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

become superior to the rights of a transferee, or a purchaser could obtain rights superior to the rights of a transferee within the meaning of subsection (b) of this section, if such consequences would follow only from the lien or purchase itself, or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. Such a lien could not, however, become superior and such a purchase could not create superior rights for the purpose of subsection (b) of this section through any acts subsequent to the obtaining of such a lien or subsequent to such a purchase that require the agreement or concurrence of any third party or that require any further judicial action or ruling.

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

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

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

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

(h) The liability of the surety under a releasing bond or other like obligation shall be discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator; or where the property is

retained under subsection (g) of this section to the extent of the amount paid to the liquidator.

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

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

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

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

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

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

"§ 58-673. Setoffs and counterclaims.

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

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

- (1) The obligation of the insurer to the person would not at the date of the filing of a petition for liquidation entitle the person to share as a claimant in the assets of the insurer;
- (2) The obligation of the insurer to the person was purchased by or transferred to the person with a view to its being used as a setoff;
- (3) The obligation of the person is to pay an assessment levied against the members or subscribers of the insurer, or is to pay a balance upon a subscription to the capital stock of the insurer, or is in any other way in the nature of a capital contribution; or
- (4) The obligation of the person is to pay earned premiums to the insurer.

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

"§ 58-674. Assessments.

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

- (1) The reasonable value of the assets of the insurer;
- (2) The insurer's probable total liabilities;
- (3) The probable aggregate amount of the assessment necessary to pay all claims of creditors and expenses in full, including expenses of administration and costs of collecting the assessment; and
- (4) A recommendation as to whether an assessment should be made and in what amount.

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

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

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

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

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

"§ 58-675. Reinsurer's liability.

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

- (1) Where the contract specifically provides for another payee of the reinsurance in the event of the insolvency of the ceding insurer or
- (2) Where the assuming insurer, with the consent of the direct insured or insureds, has assumed the policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under policies and in substitution of the obligations of the ceding insurer to the payees.

"§ 58-675.1. Recovery of premiums owed.

(a) An agent, broker, premium finance company, or any other person, other than the insured, responsible for the payment of a premium is obligated to pay an unpaid premium for the full policy term due the insurer at the time of the declaration of insolvency, whether earned or unearned, as shown on the records of the insurer. The

liquidator also has the right to recover from such person any part of an unearned premium that represents commission of such person. Except as provided in G.S. 58-673, credits or setoffs or both are not allowed to an agent, broker, or premium finance company for any amounts advanced to the insurer by the agent, broker, or premium finance company on behalf of, but in the absence of a payment by, the insured.

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

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

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

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

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

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

(d) The liquidator's proposal shall, with respect to an insolvent insurer writing life or health insurance or annuities, provide for disbursements of assets to any domestic or foreign guaranty association covering life or health insurance or annuities or to any

other entity reinsuring, assuming, or guaranteeing policies or contracts of insurance under the acts creating such associations.

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

"§ 58-676. Filing of claims.

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

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

- (1) The existence of the claim was not known to the claimant and that he filed his claim as promptly thereafter as reasonably possible after learning of it;
- (2) A transfer to a creditor was avoided under G.S. 58-669 through 58-671, or was voluntarily surrendered under G.S. 58-672, and that the filing satisfies the conditions of G.S. 58-672; and
- (3) The valuation under G.S. 58-682, of security held by a secured creditor shows a deficiency, that is filed within 30 days after the valuation.

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

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

"§ 58-677. Proof of claim.

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

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

- (2) The identity and amount of the security on the claim;
- (3) The payments made on the debt, if any;
- (4) That the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to the claim;
- (5) Any right of priority of payment or other specific right asserted by the claimant;
- (6) A copy of the written instrument that is the foundation of the claim;
and
- (7) The name and address of the claimant and any attorney who represents him.

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

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

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

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

"§ 58-678. Special claims.

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

- (1) Such claim becomes absolute against the insurer on or before the last day fixed for filing of proofs of claim against the assets of such insurer, or
- (2) There is a surplus and the liquidation is thereafter conducted upon the basis that such insurer is solvent.

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

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

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

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

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

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

"§ 58-679. Special provisions for third party claims.

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

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

(c) The liquidator shall make his recommendations to the court under G.S. 58-666, for the allowance of an insured's claim under subsection (b) of this section after consideration of the probable outcome of any pending action against the insured on which the claim is based, the probable damages recoverable in the action, and the probable costs and expenses of defense. After allowance by the Court, the liquidator shall withhold any dividends payable on the claim, pending the outcome of litigation and negotiation with the insured. Whenever it seems appropriate, he shall reconsider

the claim on the basis of additional information and amend his recommendations to the court. The insured shall be afforded the same notice and opportunity to be heard on all changes in the recommendation as in its initial determination. The Court may amend its allowance as it thinks appropriate. As claims against the insured are settled or barred, the insured shall be paid from the amount withheld the same percentage dividend as was paid on other claims of like property, based on the lesser of (i) the amount actually recovered from the insured by action or paid by agreement plus the reasonable costs and expense of defense, or (ii) the amount allowed on the claims by the Court. After all claims are settled or barred, any sum remaining from the amount withheld shall revert to the undistributed assets of the insurer. Delay in final payment under this subsection shall not be a reason for unreasonable delay of final distribution and discharge of the liquidator.

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

"§ 58-680. Disputed claims.

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

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

"§ 58-681. Claims of surety.

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

"§ 58-682. Secured creditor's claims.

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

- (1) By converting the same into money according to the terms of the agreement pursuant to which the security was delivered to such creditors; or
- (2) By agreement, arbitration, compromise or litigation between the creditor and the liquidator.

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

"§ 58-683. Priority of distribution.

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

- (1) Claims for cost of administration and conservation of assets of the insurer.
- (2) Compensation actually owing to employees other than officers of the insurer for services rendered within three months prior to the commencement of a delinquency proceeding against the insurer under this Article, but not exceeding one thousand dollars (\$1,000) for each employee. In the discretion of the Commissioner, this compensation may be paid as soon as practicable after the proceeding has been commenced. This priority is in lieu of any other similar priority that may be authorized by law as to wages or compensation of those employees.
- (3) Claims or portions of claims for benefits under policies and for losses incurred, including claims of third parties under liability policies, up to an amount of three hundred thousand dollars (\$300,000) per claim and claims of domestic and foreign guaranty associations; but excluding claims of insurance pools, underwriting associations, or those arising out of reinsurance agreements, claims of other insurers for subrogation, and claims of insurers for payments and settlements under uninsured and underinsured motorist coverages.
- (4) Claims for unearned premiums.
- (5) Claims of general creditors, including claims of insurance pools, underwriting associations, or those arising out of reinsurance agreements; claims of other insurers for subrogation; those portions of claims for benefits under policies and for losses incurred, including claims of third parties under liability policies, in excess of three hundred thousand dollars (\$300,000) per claim; and claims of insurers

for payments and settlements under uninsured and underinsured motorist coverages.

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

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

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

"§ 58-685. Distribution of assets.

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

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

"§ 58-686. Unclaimed and withheld funds.

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

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

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

"§ 58-687. Termination of proceedings.

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

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

"§ 58-688. Reopening liquidation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"§ 58-694. Ancillary formal proceedings.

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

- (1) If he finds that there are sufficient assets of the insurer located in this State to justify the appointment of an ancillary receiver;
- (2) If the protection of creditors or policyholders in this State so requires.

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

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

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

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

"§ 58-695. Ancillary summary proceedings.

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

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

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

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

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

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

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

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

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

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

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

"§ 58-699. Interstate priorities.

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

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

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

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

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

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

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

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

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

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

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

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

"§ 58-415. Prohibition of hypothecation.

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

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

(b) Any insurer that pledges, hypothecates, or otherwise encumbers any of its assets shall within 10 days thereafter report in writing to the Commissioner the amount and identity of the assets so pledged, hypothecated, or encumbered and the terms and conditions of the transaction. In addition, the insurer shall file, along with its statement under G.S. 58-21, a statement sworn to by the chief executive officer of the insurer that: (i) Title to assets in an amount equal to the reserve liability of the insurer that are not pledged, hypothecated, or otherwise encumbered is vested in the insurer; (ii) the only assets of the insurer that are pledged, hypothecated, or otherwise encumbered are as identified and reported in the sworn statement and no other assets of the insurer are pledged, hypothecated, or otherwise encumbered; and (iii) the terms and provisions of the transaction of the pledge, hypothecation, or encumbrance are as reported in such sworn statement.

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 10. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of June, 1989.