

- 30 • executory contracts;
- 31 • financial obligations, including approval and payment of expenses and financial
- 32 reporting;
- 33 • reporting;
- 34 • records;
- 35 • the affect of delinquency proceedings commenced before April 30, 2007; and
- 36 • severability;
- 37 ▶ provides procedures governing delinquency proceedings, including:
 - 38 • commencing delinquency proceedings, expedited trials, decisions, and appeals;
 - 39 • preserving the confidentiality of the proceedings; and
 - 40 • finding grounds for rehabilitation or liquidation, and the entry and effect of an
 - 41 order of rehabilitation or liquidation;
- 42 ▶ provides provisions governing the rehabilitation of an insurer, including:
 - 43 • issuing rehabilitation orders;
 - 44 • establishing the powers and duties of the rehabilitator;
 - 45 • filing of rehabilitation plans;
 - 46 • terminating rehabilitation; and
 - 47 • requiring coordination with guaranty associations to assist in the orderly
 - 48 transition to rehabilitation or liquidation;
- 49 ▶ establishes provisions for liquidation of an insurer, including:
 - 50 • addressing liquidation orders;
 - 51 • addressing continuance of coverage;
 - 52 • providing for the sale or dissolution of the corporate entity;
 - 53 • establishing the power of the liquidator;
 - 54 • providing notice requirements; and
 - 55 • duties of agents;
 - 56 ▶ addresses asset recovery, including:
 - 57 • turning over assets;

- 58 • recovering from affiliates;
- 59 • addressing unauthorized postpetition transfers;
- 60 • addressing voidable preferences and liens;
- 61 • addressing avoidance of property title transfers;
- 62 • addressing fraudulent transfers and obligations;
- 63 • addressing receiver as lien creditor;
- 64 • addressing liability of transferees;
- 65 • providing for setoffs;
- 66 • providing for assessments;
- 67 • addressing a reinsurer's liability;
- 68 • reinsurance;
- 69 • recovering of premiums owed;
- 70 • commutation and release agreements; and
- 71 • requiring in certain circumstances reinsurance recoverable trust;
- 72 ▶ establishes claim procedures relating to:
 - 73 • filing, proof, and allowance of claims;
 - 74 • claims under occurrence policies, surety bonds, and surety undertakings;
 - 75 • allowance of contingent and unliquidated claims;
 - 76 • provisions for third party claims, disputed claims, codebtors, and secured
 - 77 creditors' claims;
 - 78 • qualified financial contracts; and
 - 79 • provides for the administration of deductive policies and insured collateral;
- 80 ▶ provides for distribution of assets, including priority for distribution, early
- 81 distribution, and partial and final distribution;
- 82 ▶ establishes discharge and termination of delinquency proceedings;
- 83 ▶ establishes provisions relating to interstate relations; and
- 84 ▶ makes technical and conforming changes.

85 Monies Appropriated in this Bill:

86 None

87 **Other Special Clauses:**

88 None

89 **Utah Code Sections Affected:**

90 AMENDS:

91 **31A-1-106**, as last amended by Chapter 95, Laws of Utah 1987

92 **31A-2-108**, as last amended by Chapter 344, Laws of Utah 1995

93 **31A-2-203**, as last amended by Chapter 177, Laws of Utah 2006

94 **31A-2-204**, as last amended by Chapter 177, Laws of Utah 2006

95 **31A-2-206**, as last amended by Chapters 79 and 204, Laws of Utah 1996

96 **31A-2-207**, as last amended by Chapter 2, Laws of Utah 2004

97 **31A-2-212**, as last amended by Chapter 177, Laws of Utah 2006

98 **31A-2-308**, as last amended by Chapter 58, Laws of Utah 2005

99 **31A-5-212**, as enacted by Chapter 242, Laws of Utah 1985

100 **31A-5-217**, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session

101 **31A-5-305**, as last amended by Chapter 316, Laws of Utah 1994

102 **31A-5-416**, as last amended by Chapter 277, Laws of Utah 1992

103 **31A-5-504**, as last amended by Chapter 320, Laws of Utah 2006

104 **31A-5-506**, as last amended by Chapter 204, Laws of Utah 1986

105 **31A-8-213**, as last amended by Chapter 116, Laws of Utah 2001

106 **31A-9-502**, as last amended by Chapter 300, Laws of Utah 2000

107 **31A-9-504**, as enacted by Chapter 242, Laws of Utah 1985

108 **31A-11-104**, as last amended by Chapter 90, Laws of Utah 2004

109 **31A-11-109**, as enacted by Chapter 242, Laws of Utah 1985

110 **31A-13-107**, as last amended by Chapter 204, Laws of Utah 1986

111 **31A-14-206**, as last amended by Chapter 90, Laws of Utah 2004

112 **31A-14-215**, as last amended by Chapter 204, Laws of Utah 1986

113 **31A-14-217**, as last amended by Chapter 230, Laws of Utah 1992

- 114 **31A-15-105**, as last amended by Chapter 204, Laws of Utah 1986
- 115 **31A-17-605**, as last amended by Chapter 116, Laws of Utah 2001
- 116 **31A-17-606**, as last amended by Chapter 116, Laws of Utah 2001
- 117 **31A-17-609**, as last amended by Chapter 116, Laws of Utah 2001
- 118 **31A-17-610**, as last amended by Chapter 116, Laws of Utah 2001
- 119 **31A-18-106**, as last amended by Chapter 176, Laws of Utah 2006
- 120 **31A-22-617**, as last amended by Chapter 3, Laws of Utah 2005, First Special Session
- 121 **31A-23a-704**, as renumbered and amended by Chapter 298, Laws of Utah 2003
- 122 **31A-28-108**, as last amended by Chapters 116 and 161, Laws of Utah 2001
- 123 **31A-28-114**, as last amended by Chapter 161, Laws of Utah 2001
- 124 **31A-28-207**, as last amended by Chapter 308, Laws of Utah 2002
- 125 **31A-28-213**, as last amended by Chapter 363, Laws of Utah 2001
- 126 **31A-35-103**, as enacted by Chapter 293, Laws of Utah 1998
- 127 **31A-37-504**, as last amended by Chapter 312, Laws of Utah 2004

128 ENACTS:

- 129 **31A-27-502**, Utah Code Annotated 1953
- 130 **31A-27a-101**, Utah Code Annotated 1953
- 131 **31A-27a-102**, Utah Code Annotated 1953
- 132 **31A-27a-103**, Utah Code Annotated 1953
- 133 **31A-27a-104**, Utah Code Annotated 1953
- 134 **31A-27a-105**, Utah Code Annotated 1953
- 135 **31A-27a-106**, Utah Code Annotated 1953
- 136 **31A-27a-107**, Utah Code Annotated 1953
- 137 **31A-27a-108**, Utah Code Annotated 1953
- 138 **31A-27a-109**, Utah Code Annotated 1953
- 139 **31A-27a-110**, Utah Code Annotated 1953
- 140 **31A-27a-111**, Utah Code Annotated 1953
- 141 **31A-27a-112**, Utah Code Annotated 1953

- 142 **31A-27a-113**, Utah Code Annotated 1953
- 143 **31A-27a-114**, Utah Code Annotated 1953
- 144 **31A-27a-115**, Utah Code Annotated 1953
- 145 **31A-27a-116**, Utah Code Annotated 1953
- 146 **31A-27a-117**, Utah Code Annotated 1953
- 147 **31A-27a-119**, Utah Code Annotated 1953
- 148 **31A-27a-120**, Utah Code Annotated 1953
- 149 **31A-27a-201**, Utah Code Annotated 1953
- 150 **31A-27a-202**, Utah Code Annotated 1953
- 151 **31A-27a-203**, Utah Code Annotated 1953
- 152 **31A-27a-204**, Utah Code Annotated 1953
- 153 **31A-27a-205**, Utah Code Annotated 1953
- 154 **31A-27a-206**, Utah Code Annotated 1953
- 155 **31A-27a-207**, Utah Code Annotated 1953
- 156 **31A-27a-208**, Utah Code Annotated 1953
- 157 **31A-27a-209**, Utah Code Annotated 1953
- 158 **31A-27a-301**, Utah Code Annotated 1953
- 159 **31A-27a-302**, Utah Code Annotated 1953
- 160 **31A-27a-303**, Utah Code Annotated 1953
- 161 **31A-27a-304**, Utah Code Annotated 1953
- 162 **31A-27a-305**, Utah Code Annotated 1953
- 163 **31A-27a-401**, Utah Code Annotated 1953
- 164 **31A-27a-402**, Utah Code Annotated 1953
- 165 **31A-27a-403**, Utah Code Annotated 1953
- 166 **31A-27a-404**, Utah Code Annotated 1953
- 167 **31A-27a-405**, Utah Code Annotated 1953
- 168 **31A-27a-406**, Utah Code Annotated 1953
- 169 **31A-27a-407**, Utah Code Annotated 1953

- 170 **31A-27a-501**, Utah Code Annotated 1953
- 171 **31A-27a-502**, Utah Code Annotated 1953
- 172 **31A-27a-503**, Utah Code Annotated 1953
- 173 **31A-27a-504**, Utah Code Annotated 1953
- 174 **31A-27a-505**, Utah Code Annotated 1953
- 175 **31A-27a-506**, Utah Code Annotated 1953
- 176 **31A-27a-507**, Utah Code Annotated 1953
- 177 **31A-27a-508**, Utah Code Annotated 1953
- 178 **31A-27a-509**, Utah Code Annotated 1953
- 179 **31A-27a-510**, Utah Code Annotated 1953
- 180 **31A-27a-511**, Utah Code Annotated 1953
- 181 **31A-27a-512**, Utah Code Annotated 1953
- 182 **31A-27a-513**, Utah Code Annotated 1953
- 183 **31A-27a-514**, Utah Code Annotated 1953
- 184 **31A-27a-515**, Utah Code Annotated 1953
- 185 **31A-27a-516**, Utah Code Annotated 1953
- 186 **31A-27a-601**, Utah Code Annotated 1953
- 187 **31A-27a-602**, Utah Code Annotated 1953
- 188 **31A-27a-603**, Utah Code Annotated 1953
- 189 **31A-27a-604**, Utah Code Annotated 1953
- 190 **31A-27a-605**, Utah Code Annotated 1953
- 191 **31A-27a-606**, Utah Code Annotated 1953
- 192 **31A-27a-607**, Utah Code Annotated 1953
- 193 **31A-27a-608**, Utah Code Annotated 1953
- 194 **31A-27a-609**, Utah Code Annotated 1953
- 195 **31A-27a-610**, Utah Code Annotated 1953
- 196 **31A-27a-611**, Utah Code Annotated 1953
- 197 **31A-27a-612**, Utah Code Annotated 1953

- 198 **31A-27a-701**, Utah Code Annotated 1953
- 199 **31A-27a-702**, Utah Code Annotated 1953
- 200 **31A-27a-703**, Utah Code Annotated 1953
- 201 **31A-27a-704**, Utah Code Annotated 1953
- 202 **31A-27a-705**, Utah Code Annotated 1953
- 203 **31A-27a-801**, Utah Code Annotated 1953
- 204 **31A-27a-802**, Utah Code Annotated 1953
- 205 **31A-27a-803**, Utah Code Annotated 1953
- 206 **31A-27a-804**, Utah Code Annotated 1953
- 207 **31A-27a-805**, Utah Code Annotated 1953
- 208 **31A-27a-901**, Utah Code Annotated 1953
- 209 **31A-27a-902**, Utah Code Annotated 1953

210 RENUMBERS AND AMENDS:

- 211 **31A-27-501**, (Renumbered from 31A-27-101, as last amended by Chapter 204, Laws of
- 212 Utah 1986)
- 213 **31A-27-503**, (Renumbered from 31A-27-201, as last amended by Chapter 161, Laws of
- 214 Utah 1987)
- 215 **31A-27-504**, (Renumbered from 31A-27-203, as last amended by Chapter 204, Laws of
- 216 Utah 1986)
- 217 **31A-27a-118**, (Renumbered from 31A-27-107, as enacted by Chapter 242, Laws of
- 218 Utah 1985)

219 REPEALS:

- 220 **31A-27-102**, as last amended by Chapter 308, Laws of Utah 2002
- 221 **31A-27-103**, as last amended by Chapter 298, Laws of Utah 2003
- 222 **31A-27-104**, as last amended by Chapter 131, Laws of Utah 1999
- 223 **31A-27-105**, as enacted by Chapter 242, Laws of Utah 1985
- 224 **31A-27-106**, as last amended by Chapter 204, Laws of Utah 1986
- 225 **31A-27-108**, as enacted by Chapter 242, Laws of Utah 1985

- 226 **31A-27-109**, as enacted by Chapter 204, Laws of Utah 1986
- 227 **31A-27-110**, as enacted by Chapter 131, Laws of Utah 1999
- 228 **31A-27-202**, as last amended by Chapter 204, Laws of Utah 1986
- 229 **31A-27-301**, as last amended by Chapter 204, Laws of Utah 1986
- 230 **31A-27-302**, as last amended by Chapter 252, Laws of Utah 2003
- 231 **31A-27-303**, as last amended by Chapter 204, Laws of Utah 1986
- 232 **31A-27-304**, as last amended by Chapter 344, Laws of Utah 1995
- 233 **31A-27-305**, as last amended by Chapter 308, Laws of Utah 2002
- 234 **31A-27-306**, as enacted by Chapter 242, Laws of Utah 1985
- 235 **31A-27-307**, as last amended by Chapter 131, Laws of Utah 1999
- 236 **31A-27-308**, as last amended by Chapter 185, Laws of Utah 1997
- 237 **31A-27-309**, as enacted by Chapter 242, Laws of Utah 1985
- 238 **31A-27-310**, as last amended by Chapter 131, Laws of Utah 1999
- 239 **31A-27-311**, as last amended by Chapter 13, Laws of Utah 1998
- 240 **31A-27-311.5**, as last amended by Chapter 252, Laws of Utah 2003
- 241 **31A-27-312**, as last amended by Chapter 230, Laws of Utah 1992
- 242 **31A-27-313**, as enacted by Chapter 242, Laws of Utah 1985
- 243 **31A-27-314**, as last amended by Chapter 105, Laws of Utah 2004
- 244 **31A-27-315**, as last amended by Chapter 177, Laws of Utah 2006
- 245 **31A-27-316**, as last amended by Chapter 298, Laws of Utah 2003
- 246 **31A-27-317**, as last amended by Chapter 308, Laws of Utah 2002
- 247 **31A-27-318**, as enacted by Chapter 242, Laws of Utah 1985
- 248 **31A-27-319**, as last amended by Chapter 204, Laws of Utah 1986
- 249 **31A-27-320**, as last amended by Chapter 204, Laws of Utah 1986
- 250 **31A-27-321**, as last amended by Chapter 277, Laws of Utah 1992
- 251 **31A-27-322**, as enacted by Chapter 204, Laws of Utah 1986
- 252 **31A-27-323**, as last amended by Chapter 131, Laws of Utah 1999
- 253 **31A-27-324**, as last amended by Chapter 298, Laws of Utah 2003

254 **31A-27-325**, as last amended by Chapter 204, Laws of Utah 1986
255 **31A-27-326**, as last amended by Chapter 105, Laws of Utah 2004
256 **31A-27-327**, as last amended by Chapter 105, Laws of Utah 2004
257 **31A-27-328**, as last amended by Chapter 131, Laws of Utah 1999
258 **31A-27-329**, as enacted by Chapter 242, Laws of Utah 1985
259 **31A-27-330**, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
260 **31A-27-330.5**, as last amended by Chapter 185, Laws of Utah 1997
261 **31A-27-330.6**, as last amended by Chapter 105, Laws of Utah 2004
262 **31A-27-331**, as enacted by Chapter 242, Laws of Utah 1985
263 **31A-27-332**, as last amended by Chapter 308, Laws of Utah 2002
264 **31A-27-333**, as last amended by Chapter 204, Laws of Utah 1986
265 **31A-27-334**, as last amended by Chapter 204, Laws of Utah 1986
266 **31A-27-335**, as last amended by Chapter 300, Laws of Utah 2000
267 **31A-27-335.5**, as last amended by Chapter 344, Laws of Utah 1995
268 **31A-27-336**, as enacted by Chapter 242, Laws of Utah 1985
269 **31A-27-337**, as last amended by Chapter 308, Laws of Utah 2002
270 **31A-27-338**, as enacted by Chapter 242, Laws of Utah 1985
271 **31A-27-339**, as last amended by Chapter 204, Laws of Utah 1986
272 **31A-27-340**, as last amended by Chapter 308, Laws of Utah 2002
273 **31A-27-341**, as last amended by Chapter 308, Laws of Utah 2002
274 **31A-27-342**, as enacted by Chapter 242, Laws of Utah 1985
275 **31A-27-401**, as last amended by Chapter 204, Laws of Utah 1986
276 **31A-27-402**, as enacted by Chapter 242, Laws of Utah 1985
277 **31A-27-403**, as enacted by Chapter 242, Laws of Utah 1985
278 **31A-27-404**, as enacted by Chapter 242, Laws of Utah 1985
279 **31A-27-405**, as enacted by Chapter 242, Laws of Utah 1985
280 **31A-27-406**, as enacted by Chapter 242, Laws of Utah 1985
281 **31A-27-407**, as last amended by Chapter 204, Laws of Utah 1986

- 282 **31A-27-408**, as enacted by Chapter 242, Laws of Utah 1985
- 283 **31A-27-409**, as last amended by Chapter 204, Laws of Utah 1986
- 284 **31A-27-410**, as last amended by Chapter 344, Laws of Utah 1995
- 285 **31A-27-411**, as last amended by Chapter 204, Laws of Utah 1986



287 *Be it enacted by the Legislature of the state of Utah:*

288 Section 1. Section **31A-1-106** is amended to read:

289 **31A-1-106. Residual unlicensed domestic insurers.**

290 (1) Every person doing an insurance business in Utah not covered under another
291 section of this title, that does not hold a valid certificate of authority or license under [~~the~~
292 ~~Insurance Code,~~] this title shall, by July 1, 1987, complete one of the actions prescribed in
293 Subsections (2) through (5). This section does not apply to an unauthorized foreign insurer
294 doing an insurance business in Utah in full compliance with Section 31A-15-103.

295 (2) An insurer under Subsection (1) may incorporate and apply, or if already
296 incorporated, may apply for a certificate of authority under Chapter 5, 6, 7, 8, or 9. If the
297 commissioner is satisfied that the insurer substantially complies with the requirements of the
298 appropriate chapter necessary for the protection of insureds and the public, the commissioner
299 shall issue a certificate of authority.

300 (3) An insurer under Subsection (1) may transfer all its obligations to a corporation
301 authorized under this title to assume them, according to a plan approved by the commissioner.
302 The commissioner may disapprove the plan on a finding, after a hearing, that it is contrary to
303 the interests of insureds, the public, or the law.

304 (4) An insurer under Subsection (1) may adopt a plan to run off existing obligations
305 without accepting any new policyholders or new obligations. The commissioner may
306 disapprove the plan on a finding, after a hearing, that it is contrary to the interests of insureds,
307 the public, or the law.

308 (5) The commissioner may, by order, exempt an insurer from the requirements of
309 Subsection (1) or extend the deadline under Subsection (1) on a finding that:

310 (a) incorporation, licensing, reinsurance, or run off would cause disproportionate
311 expense, loss, or substantial hardship; and

312 (b) the nature of the existing and prospective business, the assets, or the business plan
313 of the insurer can be reasonably expected to continue to operate in a sound manner and can be
314 subjected to adequate regulatory controls.

315 (6) Whenever the commissioner grants an exemption under Subsection (5), the
316 commissioner shall issue to the insurer a certificate of authority. The commissioner may
317 amend the certificate at any time, specifying the business that the insurer may transact and
318 specifying in detail the controls to which the insurer shall be subject. These controls shall
319 correspond as nearly as practicable to the controls applicable to corporations transacting a like
320 business.

321 (7) It is a ground for liquidation under Section ~~[31A-27-307]~~ 31A-27a-207 if an insurer
322 has not completed action under one of Subsections (2) through (4) and has not applied for and
323 been granted exemption under Subsection (5) before July 1, 1987.

324 Section 2. Section **31A-2-108** is amended to read:

325 **31A-2-108. Legal services.**

326 (1) Except as provided in Subsection (4), the commissioner shall call upon the attorney
327 general for the legal counsel and assistance necessary to enforce ~~[the provisions of]~~ this title.
328 Upon the commissioner's request, or upon the attorney general's own initiative, the attorney
329 general may hire special legal counsel under Section 67-5-5 to represent the ~~[Insurance]~~
330 department.

331 (2) Upon the commissioner's request, or upon the commissioner's own initiative, the
332 attorney general may aid in any investigation, hearing, or other procedure under this title and
333 may institute, prosecute, and defend proceedings relating to the enforcement or interpretation
334 of this title, including any proceeding to which the state, or the commissioner or any employee
335 of the department in an official capacity, is a party or is interested.

336 (3) The commissioner may refer such evidence as is available concerning violations of
337 this title or of any rule or order under this title to the proper county attorney or district attorney,

338 who may, with or without this reference, institute the appropriate criminal proceedings.

339 (4) For proceedings authorized by [~~Title 31A, Chapter 27, Insurers Rehabilitation and~~
340 ~~Liquidation~~] Chapter 27a, Insurer Receivership Act, the commissioner may employ on a
341 contract basis legal counsel other than the attorney general, with the fees, costs, and expenses
342 of the counsel and the attorney general being a class one administrative expense under Section
343 [~~31A-27-335~~] 31A-27a-701.

344 Section 3. Section **31A-2-203** is amended to read:

345 **31A-2-203. Examinations and alternatives.**

346 (1) (a) Whenever the commissioner considers it necessary in order to inform the
347 commissioner about any matter related to the enforcement of this title, the commissioner may
348 examine the affairs and condition of:

- 349 (i) a licensee under this title;
- 350 (ii) an applicant for a license under this title;
- 351 (iii) a person or organization of persons doing or in process of organizing to do an
352 insurance business in this state; or
- 353 (iv) a person who is not, but should be, licensed under this title.

354 (b) When reasonably necessary for an examination under Subsection (1)(a), the
355 commissioner may examine:

- 356 (i) so far as they relate to the examinee, the accounts, records, documents, or evidences
357 of transactions of:
 - 358 (A) the insurer or other licensee;
 - 359 (B) any officer or other person who has executive authority over or is in charge of any
360 segment of the examinee's affairs; or
 - 361 (C) any affiliate of the examinee; or
- 362 (ii) any third party model or product used by the examinee.
- 363 (c) (i) On demand, each examinee under Subsection (1)(a) shall make available to the
364 commissioner for examination:

- 365 (A) any of the examinee's own accounts, records, files, documents, or evidences of

366 transactions; and

367 (B) to the extent reasonably necessary for an examination, the accounts, records, files,
368 documents, or evidences of transactions of any persons under Subsection (1)(b).

369 (ii) Except as provided in Subsection (1)(c)(iii), failure to make the documents
370 described in Subsection (1)(c)(i) available is concealment of records under Subsection
371 [~~31A-27-307(7)~~] 31A-27a-207(1)(e).

372 (iii) If the examinee is unable to obtain accounts, records, files, documents, or
373 evidences of transactions from persons under Subsection (1)(b), that failure is not concealment
374 of records if the examinee immediately terminates the relationship with the other person.

375 (d) (i) Neither the commissioner nor an examiner may remove any account, record, file,
376 document, evidence of transaction, or other property of the examinee from the examinee's
377 offices unless:

378 (A) the examinee consents in writing; or

379 (B) a court grants permission.

380 (ii) The commissioner may make and remove copies or abstracts of the following
381 described in Subsection (1)(d)(i):

382 (A) an account;

383 (B) a record;

384 (C) a file;

385 (D) a document;

386 (E) evidence of transaction; or

387 (F) other property.

388 (2) (a) Subject to the other provisions of this section, the commissioner shall examine
389 as needed and as otherwise provided by law:

390 (i) every insurer, both domestic and nondomestic;

391 (ii) every licensed rate service organization; and

392 (iii) any other licensee.

393 (b) The commissioner shall examine insurers, both domestic and nondomestic, no less

394 frequently than once every five years, but the commissioner may use in lieu examinations
395 under Subsection (4) to satisfy this requirement.

396 (c) The commissioner shall revoke the certificate of authority of an insurer or the
397 license of a rate service organization that has not been examined, or submitted an acceptable in
398 lieu report under Subsection (4), within the past five years.

399 (d) (i) Any 25 persons who are policyholders, shareholders, or creditors of a domestic
400 insurer may by verified petition demand a hearing under Section 31A-2-301 to determine
401 whether the commissioner should conduct an unscheduled examination of the insurer.

402 (ii) Persons demanding the hearing under this Subsection (2)(d) shall be given an
403 opportunity in the hearing to present evidence that an examination of the insurer is necessary.

404 (iii) If the evidence justifies an examination, the commissioner shall order an
405 examination.

406 (e) (i) When the board of directors of a domestic insurer requests that the
407 commissioner examine the insurer, the commissioner shall examine the insurer as soon as
408 reasonably possible.

409 (ii) If the examination requested under this Subsection (2)(e) is conducted within two
410 years after completion of a comprehensive examination by the commissioner, costs of the
411 requested examination may not be deducted from premium taxes under Section 59-9-102
412 unless the commissioner's order specifically provides for the deduction.

413 (f) Bail bond surety companies as defined in Section 31A-35-102 are exempted from:

414 (i) the five-year examination requirement in Subsection (2)(b);

415 (ii) the revocation under Subsection (2)(c); and

416 (iii) Subsections (2)(d) and (2)(e).

417 (3) (a) The commissioner may order an independent audit or examination by technical
418 experts, including certified public accountants and actuaries:

419 (i) in lieu of all or part of an examination under Subsection (1) or (2); or

420 (ii) in addition to an examination under Subsection (1) or (2).

421 (b) Any audit or evaluation under this Subsection (3) is subject to Subsection (5),

422 Section 31A-2-204, and Subsection 31A-2-205(4).

423 (4) (a) In lieu of all or any part of an examination under this section, the commissioner
424 may accept the report of an examination made by:

425 (i) the insurance department of another state; or

426 (ii) another government agency in:

427 (A) this state;

428 (B) the federal government; or

429 (C) another state.

430 (b) An examination by the commissioner under Subsection (1) or (2) or accepted by the
431 commissioner under this Subsection (4) may use:

432 (i) an audit already made by a certified public accountant; or

433 (ii) an actuarial evaluation made by an actuary approved by the commissioner.

434 (5) (a) An examination may be comprehensive or limited with respect to the
435 examinee's affairs and condition. The commissioner shall determine the nature and scope of
436 each examination, taking into account all relevant factors, including:

437 (i) the length of time the examinee has been licensed in this state;

438 (ii) the nature of the business being examined;

439 (iii) the nature of the accounting or other records available;

440 (iv) reports from:

441 (A) independent auditors; and

442 (B) self-certification entities; and

443 (v) the nature of examinations performed elsewhere.

444 (b) The examination of an alien insurer shall be limited to insurance transactions and
445 assets in the United States, unless the commissioner orders otherwise after finding that
446 extraordinary circumstances necessitate a broader examination.

447 (6) To effectively administer this section, the commissioner:

448 (a) shall:

449 (i) maintain effective financial condition and market regulation surveillance systems

450 including:

451 (A) financial and market analysis; and

452 (B) review of insurance regulatory information system reports;

453 (ii) employ a priority scheduling method that focuses on insurers and other licensees

454 most in need of examination; and

455 (iii) use examination management techniques similar to those outlined in the Financial

456 Condition Examination Handbook of the National Association of Insurance Commissioners;

457 and

458 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,

459 may make rules pertaining to the financial condition and market regulation surveillance

460 systems.

461 Section 4. Section **31A-2-204** is amended to read:

462 **31A-2-204. Conducting examinations.**

463 (1) (a) For each examination under Section 31A-2-203, the commissioner shall issue an

464 order:

465 (i) stating the scope of the examination; and

466 (ii) designating the examiner in charge.

467 (b) The commissioner need not give advance notice of an examination to an examinee.

468 (c) The examiner in charge shall give the examinee a copy of the order issued under

469 this Subsection (1).

470 (d) (i) The commissioner may alter the scope or nature of an examination at any time

471 without advance notice to the examinee.

472 (ii) If the commissioner amends an order described in this Subsection (1), the

473 commissioner shall provide a copy of any amended order to the examinee.

474 (e) Statements in the commissioner's examination order concerning examination scope

475 are for the examiner's guidance only.

476 (f) Examining relevant matters not mentioned in an order issued under this Subsection

477 (1) is not a violation of this title.

- 478 (2) The commissioner shall, whenever practicable, cooperate with the insurance
479 regulators of other states by conducting joint examinations of:
- 480 (a) multistate insurers doing business in this state; or
 - 481 (b) other multistate licensees doing business in this state.
- 482 (3) An examiner authorized by the commissioner shall, when necessary to the purposes
483 of the examination, have access at all reasonable hours to the premises and to any books,
484 records, files, securities, documents, or property of:
- 485 (a) the examinee; and
 - 486 (b) any of the following if the premises, books, records, files, securities, documents, or
487 property relate to the affairs of the examinee:
 - 488 (i) an officer of the examinee;
 - 489 (ii) any other person who:
 - 490 (A) has executive authority over the examinee; or
 - 491 (B) is in charge of any segment of the examinee's affairs; or
 - 492 (iii) any affiliate of the examinee under Subsection 31A-2-203(1)(b).
 - 493 (4) (a) The officers, employees, and agents of the examinee and of persons under
494 Subsection 31A-2-203(1)(b) shall comply with every reasonable request of the examiners for
495 assistance in any matter relating to the examination.
 - 496 (b) A person may not obstruct or interfere with the examination except by legal
497 process.
 - 498 (5) If the commissioner finds the accounts or records to be inadequate for proper
499 examination of the condition and affairs of the examinee or improperly kept or posted, the
500 commissioner may employ experts to rewrite, post, or balance the accounts or records at the
501 expense of the examinee.
 - 502 (6) (a) The examiner in charge of an examination shall make a report of the
503 examination no later than 60 days after the completion of the examination that shall include:
 - 504 (i) the information and analysis ordered under Subsection (1); and
 - 505 (ii) the examiner's recommendations.

506 (b) At the option of the examiner in charge, preparation of the report may include
507 conferences with the examinee or representatives of the examinee.

508 (c) The report is confidential until the report becomes a public document under
509 Subsection (7), except the commissioner may use information from the report as a basis for
510 action under Chapter [~~27, Insurers Rehabilitation and Liquidation~~] 27a, Insurer Receivership
511 Act.

512 (7) (a) The commissioner shall serve a copy of the examination report described in
513 Subsection (6) upon the examinee.

514 (b) Within 20 days after service, the examinee shall:

515 (i) accept the examination report as written; or

516 (ii) request agency action to modify the examination report.

517 (c) The report is considered accepted under this Subsection (7) if the examinee does
518 not file a request for agency action to modify the report within 20 days after service of the
519 report.

520 (d) If the examination report is accepted:

521 (i) the examination report immediately becomes a public document; and

522 (ii) the commissioner shall distribute the examination report to all jurisdictions in
523 which the examinee is authorized to do business.

524 (e) (i) Any adjudicative proceeding held as a result of the examinee's request for
525 agency action shall, upon the examinee's demand, be closed to the public, except that the
526 commissioner need not exclude any participating examiner from this closed hearing.

527 (ii) Within 20 days after the hearing held under this Subsection (7)(e), the
528 commissioner shall:

529 (A) adopt the examination report with any necessary modifications; and

530 (B) serve a copy of the adopted report upon the examinee.

531 (iii) Unless the examinee seeks judicial relief, the adopted examination report:

532 (A) shall become a public document ten days after service; and

533 (B) may be distributed as described in this section.

534 (f) Notwithstanding Title 63, Chapter 46b, Administrative Procedures Act, to the
535 extent that this section is in conflict with Title 63, Chapter 46b, this section governs:

- 536 (i) a request for agency action under this section; or
- 537 (ii) adjudicative proceeding under this section.

538 (8) The examinee shall promptly furnish copies of the adopted examination report
539 described in Subsection (7) to each member of the examinee's board.

540 (9) After an examination report becomes a public document under Subsection (7), the
541 commissioner may furnish, without cost or at a reasonable price set under Section 31A-3-103,
542 a copy of the examination report to interested persons, including:

- 543 (a) a member of the board of the examinee; or
- 544 (b) one or more newspapers in this state.

545 (10) (a) In a proceeding by or against the examinee, or any officer or agent of the
546 examinee, the examination report as adopted by the commissioner is admissible as evidence of
547 the facts stated in the report.

548 (b) In any proceeding commenced under Chapter [~~27, Insurers Rehabilitation and~~
549 ~~Liquidation~~] 27a, Insurer Receivership Act, the examination report, whether adopted by the
550 commissioner or not, is admissible as evidence of the facts stated in the examination report.

551 Section 5. Section **31A-2-206** is amended to read:

552 **31A-2-206. Receipt and handling of deposits.**

553 (1) As used in this chapter:

554 (a) "Custodian institution" means [~~any~~] a financial institution in this state as defined
555 under Section 7-1-103 that:

556 (i) has authority under Title 7, Chapter 5, Trust Business, to engage in a trust business;
557 and

558 (ii) is approved by the commissioner to have custody of deposited securities, whether
559 physically, through the Federal Reserve book-entry system, or through a clearing corporation as
560 defined under Subsection 70A-8-101(1).

561 (b) "Federal Reserve book-entry system" means the computerized system sponsored by

562 the United States Department of the Treasury and certain other agencies and instrumentalities
563 of the United States for holding and transferring securities of the United States government and
564 other agencies and instrumentalities.

565 (2) Subject to the commissioner's approval and to the requirements of this section, the
566 state treasurer shall accept, and a custodian institution qualified under Subsection (1)(a) may
567 accept:

568 (a) deposits required or permitted under this title or rules adopted under this title;

569 (b) deposits of domestic insurers or of alien insurers domiciled in this state if required
570 by the laws of other states as a prerequisite to authority to do an insurance business in other
571 states; and

572 (c) deposits resulting from application of any retaliatory provisions of this title.

573 (3) Deposits authorized under Subsection (2) shall be of securities described in
574 Subsection (7).

575 (4) Unless otherwise provided by the law requiring or permitting the deposit, each
576 deposit shall be held in trust:

577 (a) first, for administrative costs under Subsection [~~31A-27-335~~] 31A-27a-701(2)(a);

578 (b) second, for the claimants under Subsection [~~31A-27-335~~] 31A-27a-701(2)(c);

579 (c) third, for the claimants under Subsection [~~31A-27-335~~] 31A-27a-701(2)(d); and

580 (d) fourth, for all other creditors in the order of priority established under Section
581 [~~31A-27-335~~] 31A-27a-701.

582 (5) A claim may be made against the deposit of an alien insurer only if it arises out of a
583 transaction in the United States.

584 (6) Deposits may be made by:

585 (a) delivering physical custody and control of the deposited security to the state
586 treasurer or a custodian institution, accompanied by a statement signed by the depositor
587 indicating that the deposit shall be held in trust under the terms of this section and subject to
588 the commissioner's exclusive direction until control is released by the commissioner; or

589 (b) delivering to the commissioner, on a form adopted by rule, a signed certificate of a

590 custodian institution, describing securities qualifying for deposit under Subsection (7) that are
591 on deposit with a clearing corporation or held in the Federal Reserve book-entry system in the
592 name of the custodian institution, in trust for the purposes stated under this section, and that
593 these securities are subject to the exclusive direction of the commissioner and may not be
594 withdrawn or transferred by any person, including the insurer owning the securities, without the
595 commissioner's written approval.

596 (7) (a) Deposits may consist of any securities authorized in Subsection (7) (b) for
597 which there is a ready market if they:

598 (i) are expressly approved by the commissioner;

599 (ii) are subject to disposition by the state treasurer or custodian institution only with the
600 concurrence of the commissioner; and

601 (iii) are not available to any other person except as expressly provided by law.

602 (b) The authorized securities are:

603 (i) deposits or certificates of deposit insured by the Federal Deposit Insurance
604 Corporation;

605 (ii) bonds or other evidences of indebtedness that are guaranteed as to principal and
606 interest by the United States;

607 (iii) tax anticipation bonds or notes, general obligation bonds, or revenue bonds of this
608 state or of any county, incorporated city or town, school district, or other political subdivision
609 of this state, if the bonds or notes are rated AAA by Standard and Poor's or an equivalent
610 nationally recognized rating agency;

611 (iv) bonds or other evidences of indebtedness issued or guaranteed by an agency or
612 instrumentality of the United States; and

613 (v) any other security approved by the commissioner that ~~he~~ the commissioner
614 considers an equivalent grade investment to those enumerated under Subsections (7)(b)(i)
615 through (iv) based on tests of the safety of principal and liquidity.

616 (8) Securities held on deposit shall be valued under Section 31A-17-401 as those
617 investments are valued for life insurers, or at market, whichever is lower. The securities shall

618 be revalued whenever the commissioner requests to ensure continued compliance with the
619 requirements of this title.

620 (9) (a) The state treasurer or custodian institution shall:

621 (i) deliver to the depositor a receipt for all securities deposited or held;

622 (ii) issue a duplicate copy of the receipt to the commissioner; and

623 (iii) permit the depositor to inspect its physically held securities at any reasonable time.

624 (b) On application of the depositor or when required by the law of any state or country
625 or by the order of any court of competent jurisdiction, the state treasurer or custodian institution
626 shall certify that the deposit was made and what is on deposit.

627 (c) Depositors, the state treasurer, any custodian institution, and the commissioner shall
628 each keep a permanent record of securities deposited or held under this section and of any
629 substitutions or withdrawals. They shall compare records at least annually.

630 (10) A transfer of a deposited security, whether voluntary or by operation of law, is
631 valid only if approved in writing by the commissioner and countersigned by the state treasurer
632 or custodian institution.

633 (11) Neither a judgment creditor nor other person may levy upon any deposit held
634 under this section.

635 (12) A depositor that has complied with all provisions of this title intended to preserve
636 its financial solidity is, while solvent and complying with the laws of this state, entitled to:

637 (a) receive interest and cash dividends accruing on the securities held for its account;

638 and

639 (b) substitute for deposited securities other eligible securities, as expressly approved by
640 the commissioner.

641 (13) Within 45 days after the commissioner gives notice to a depositor that a deposit is
642 not an acceptable deposit under Subsection (7), the depositor shall substitute other eligible
643 securities expressly approved by the commissioner and allowed under Subsection (7).

644 (14) A depositor may voluntarily deposit or transfer control of eligible securities in
645 excess of requirements to absorb fluctuations in value and to facilitate substitution of

646 securities.

647 (15) Upon the depositor's request and upon approval of the commissioner, any deposit
648 or part of a deposit shall be released to, or on order of, the depositor to the extent not needed to
649 satisfy requirements of this title. On the order of a court of competent jurisdiction, the deposit
650 or appropriate part of the deposit shall be released to the person for whom it is held.

651 (16) Each depositor shall pay the cost of custody of securities by a custodian institution
652 or by the state treasurer.

653 (17) The commissioner shall adopt rules to implement this section.

654 Section 6. Section **31A-2-207** is amended to read:

655 **31A-2-207. Commissioner's records and reports -- Protection from disclosure of**
656 **certain records.**

657 (1) The commissioner shall maintain all department records that are:

- 658 (a) required by law;
- 659 (b) necessary for the effective operation of the department; or
- 660 (c) necessary to maintain a full record of department activities.

661 (2) The records of the department may be preserved, managed, stored, and made
662 available for review consistent with:

- 663 (a) another Utah statute;
- 664 (b) the rules made under Section 63-2-904;
- 665 (c) the decisions of the State Records Committee made under Title 63, Chapter 2,
666 Government Records Access and Management Act; or
- 667 (d) the needs of the public.

668 (3) A department record may not be destroyed, damaged, or disposed of without:

- 669 (a) authorization of the commissioner; and
- 670 (b) compliance with all other applicable laws.

671 (4) The commissioner shall maintain a permanent record of the commissioner's
672 proceedings and important activities, including:

- 673 (a) a concise statement of the condition of each insurer examined by the commissioner;

674 and

675 (b) a record of all certificates of authority and licenses issued by the commissioner.

676 (5) (a) Prior to October 1 of each year, the commissioner shall prepare an annual report
677 to the governor which shall include, for the preceding calendar year, the information
678 concerning the department and the insurance industry which the commissioner believes will be
679 useful to the governor and the public.

680 (b) The report required by this Subsection (5) shall include the information required
681 under Chapter [27] 27a, Insurer Receivership Act, and Subsections 31A-2-106(2),
682 31A-2-205(3), and 31A-2-208(3).

683 (c) The commissioner shall make the report required by this Subsection (5) available to
684 the public and industry in electronic format.

685 (6) All department records and reports are open to public inspection unless specifically
686 provided otherwise by statute or by Title 63, Chapter 2, Government Records Access and
687 Management Act.

688 (7) On request, the commissioner shall provide to any person certified or uncertified
689 copies of any record in the department that is open to public inspection.

690 (8) Notwithstanding Subsection (6) and Title 63, Chapter 2, Government Records
691 Access and Management Act, the commissioner shall protect from disclosure any record, as
692 defined in Section 63-2-103, or other document received from an insurance regulator of
693 another jurisdiction:

694 (a) at least to the same extent the record or document is protected from disclosure
695 under the laws applicable to the insurance regulator providing the record or document; or

696 (b) under the same terms and conditions of confidentiality as the National Association
697 of Insurance Commissioners requires as a condition of participating in any of the National
698 Association of Insurance Commissioners' programs.

699 Section 7. Section **31A-2-212** is amended to read:

700 **31A-2-212. Miscellaneous duties.**

701 (1) Upon issuance of any order limiting, suspending, or revoking an insurer's authority

702 to do business in Utah, and on institution of any proceedings against the insurer under Chapter
703 [~~27, Insurers Rehabilitation and Liquidation~~] 27a, Insurer Receivership Act, the commissioner:

704 (a) shall notify by mail all agents of the insurer of whom the commissioner has record;
705 and

706 (b) may publish notice of the order or proceeding in any manner the commissioner
707 considers necessary to protect the rights of the public.

708 (2) When required for evidence in any legal proceeding, the commissioner shall furnish
709 a certificate of the authority of any licensee to transact insurance business in Utah on any
710 particular date. The court or other officer shall receive the certificate of authority in lieu of the
711 commissioner's testimony.

712 (3) (a) On the request of any insurer authorized to do a surety business, the
713 commissioner shall furnish a copy of the insurer's certificate of authority to any designated
714 public officer in this state who requires that certificate of authority before accepting a bond.

715 (b) The public officer described in Subsection (3)(a) shall file the certificate of
716 authority furnished under Subsection (3)(a).

717 (c) After a certified copy of a certificate of authority has been furnished to a public
718 officer, it is not necessary, while the certificate of authority remains effective, to attach a copy
719 of it to any instrument of suretyship filed with that public officer.

720 (d) Whenever the commissioner revokes the certificate of authority or starts
721 proceedings under Chapter [~~27, Insurers Rehabilitation and Liquidation~~] 27a, Insurer
722 Receivership Act, against any insurer authorized to do a surety business, the commissioner
723 shall immediately give notice of that action to each public officer who was sent a certified copy
724 under this Subsection (3).

725 (4) (a) The commissioner shall immediately notify every judge and clerk of all courts
726 of record in the state when:

727 (i) an authorized insurer doing a surety business:

728 (A) files a petition for receivership; or

729 (B) is in receivership; or

730 (ii) the commissioner has reason to believe that the authorized insurer doing surety
731 business:

732 (A) is in financial difficulty; or

733 (B) has unreasonably failed to carry out any of its contracts.

734 (b) Upon the receipt of the notice required by this Subsection (4) it is the duty of the
735 judges and clerks to notify and require every person that has filed with the court a bond on
736 which the authorized insurer doing surety business is surety, to immediately file a new bond
737 with a new surety.

738 (5) The commissioner shall require an insurer that issues, sells, renews, or offers health
739 insurance coverage in this state to comply with the Health Insurance Portability and
740 Accountability Act, P.L. 104-191, pursuant to 110 Stat. 1968, Sec. 2722.

741 Section 8. Section **31A-2-308** is amended to read:

742 **31A-2-308. Enforcement penalties and procedures.**

743 (1) (a) A person who violates any insurance statute or rule or any order issued under
744 Subsection 31A-2-201(4) shall forfeit to the state twice the amount of any profit gained from
745 the violation, in addition to any other forfeiture or penalty imposed.

746 (b) (i) The commissioner may order an individual producer, limited line producer,
747 customer service representative, managing general agent, reinsurance intermediary, adjuster, or
748 insurance consultant who violates an insurance statute or rule to forfeit to the state not more
749 than \$2,500 for each violation.

750 (ii) The commissioner may order any other person who violates an insurance statute or
751 rule to forfeit to the state not more than \$5,000 for each violation.

752 (c) (i) The commissioner may order an individual producer, limited line producer,
753 customer service representative, managing general agent, reinsurance intermediary, adjuster, or
754 insurance consultant who violates an order issued under Subsection 31A-2-201(4) to forfeit to
755 the state not more than \$2,500 for each violation. Each day the violation continues is a
756 separate violation.

757 (ii) The commissioner may order any other person who violates an order issued under

758 Subsection 31A-2-201(4) to forfeit to the state not more than \$5,000 for each violation. Each
759 day the violation continues is a separate violation.

760 (d) The commissioner may accept or compromise any forfeiture under this Subsection
761 (1) until after a complaint is filed under Subsection (2). After the filing of the complaint, only
762 the attorney general may compromise the forfeiture.

763 (2) When a person fails to comply with an order issued under Subsection
764 31A-2-201(4), including a forfeiture order, the commissioner may file an action in any court of
765 competent jurisdiction or obtain a court order or judgment:

766 (a) enforcing the commissioner's order;

767 (b) (i) directing compliance with the commissioner's order and restraining further
768 violation of the order; and

769 (ii) subjecting the person ordered to the procedures and sanctions available to the court
770 for punishing contempt if the failure to comply continues; or

771 (c) imposing a forfeiture in an amount the court considers just, up to \$10,000 for each
772 day the failure to comply continues after the filing of the complaint until judgment is rendered.

773 (3) The Utah Rules of Civil Procedure govern actions brought under Subsection (2),
774 except that the commissioner may file a complaint seeking a court-ordered forfeiture under
775 Subsection (2)(c) no sooner than two weeks after giving written notice of the commissioner's
776 intention to proceed under Subsection (2)(c). The commissioner's order issued under
777 Subsection 31A-2-201(4) may contain a notice of intention to seek a court-ordered forfeiture if
778 the commissioner's order is disobeyed.

779 (4) If, after a court order is issued under Subsection (2), the person fails to comply with
780 the commissioner's order or judgment:

781 (a) the commissioner may certify the fact of the failure to the court by affidavit; and

782 (b) the court may, after a hearing following at least five days written notice to the
783 parties subject to the order or judgment, amend the order or judgment to add the forfeiture or
784 forfeitures, as prescribed in Subsection (2)(c), until the person complies.

785 (5) (a) The proceeds of all forfeitures under this section, including collection expenses,

786 shall be paid into the General Fund.

787 (b) The expenses of collection shall be credited to the [~~Insurance~~] department's budget.

788 (c) The attorney general's budget shall be credited to the extent the [~~Insurance~~]
789 department reimburses the attorney general's office for its collection expenses under this
790 section.

791 (6) (a) Forfeitures and judgments under this section bear interest at the rate charged by
792 the United States Internal Revenue Service for past due taxes on the:

793 (i) date of entry of the commissioner's order under Subsection (1); or

794 (ii) date of judgment under Subsection (2).

795 (b) Interest accrues from the later of the dates described in Subsection (6)(a) until the
796 forfeiture and accrued interest are fully paid.

797 (7) A forfeiture may not be imposed under Subsection (2)(c) if:

798 (a) at the time the forfeiture action is commenced, the person was in compliance with
799 the commissioner's order; or

800 (b) the violation of the order occurred during the order's suspension.

801 (8) The commissioner may seek an injunction as an alternative to issuing an order
802 under Subsection 31A-2-201(4).

803 (9) (a) A person is guilty of a class B misdemeanor if that person:

804 (i) intentionally violates:

805 (A) an insurance statute or rule of this state; or

806 (B) an order issued under Subsection 31A-2-201(4);

807 (ii) intentionally permits a person over whom that person has authority to violate:

808 (A) an insurance statute or rule of this state; or

809 (B) an order issued under Subsection 31A-2-201(4); or

810 (iii) intentionally aids any person in violating:

811 (A) an insurance statute or rule of this state; or

812 (B) an order issued under Subsection 31A-2-201(4).

813 (b) Unless a specific criminal penalty is provided elsewhere in this title, the person may

814 be fined not more than:

815 (i) \$10,000 if a corporation; or

816 (ii) \$5,000 if a person other than a corporation.

817 (c) If the person is an individual, the person may, in addition, be imprisoned for up to
818 one year.

819 (d) As used in this Subsection (9), "intentionally" has the same meaning as under
820 Subsection 76-2-103(1).

821 (10) (a) A person who knowingly and intentionally violates Section 31A-4-102,
822 31A-8a-208, 31A-15-105, 31A-23a-116, or 31A-31-111 is guilty of a felony as provided in this
823 Subsection (10).

824 (b) When the value of the property, money, or other things obtained or sought to be
825 obtained in violation of Subsection (10)(a):

826 (i) is less than \$5,000, a person is guilty of a third degree felony; or

827 (ii) is or exceeds \$5,000, a person is guilty of a second degree felony.

828 (11) (a) After a hearing, the commissioner may, in whole or in part, revoke, suspend,
829 place on probation, limit, or refuse to renew the licensee's license or certificate of authority:

830 (i) when a licensee of the department, other than a domestic insurer:

831 (A) persistently or substantially violates the insurance law; or

832 (B) violates an order of the commissioner under Subsection 31A-2-201(4);

833 (ii) if there are grounds for delinquency proceedings against the licensee under Section
834 [~~31A-27-301 or Section 31A-27-307~~] 31A-27a-207; or

835 (iii) if the licensee's methods and practices in the conduct of the licensee's business
836 endanger, or the licensee's financial resources are inadequate to safeguard, the legitimate
837 interests of the licensee's customers and the public.

838 (b) Additional license termination or probation provisions for licensees other than
839 insurers are set forth in Sections 31A-19a-303, 31A-19a-304, 31A-23a-111, 31A-23a-112,
840 31A-25-208, 31A-25-209, 31A-26-213, 31A-26-214, 31A-35-501, and 31A-35-503.

841 (12) The enforcement penalties and procedures set forth in this section are not

842 exclusive, but are cumulative of other rights and remedies the commissioner has pursuant to
843 applicable law.

844 Section 9. Section **31A-5-212** is amended to read:

845 **31A-5-212. Certificate of authority.**

846 (1) The corporation may apply for a certificate of authority at any time prior to the
847 expiration of its organization permit. The application shall include a detailed statement by a
848 principal officer about any material changes that have taken place or are likely to take place in
849 the facts on which the issuance of the organization permit was based, and if any material
850 changes are proposed in the business plan, the information about the changes that would be
851 required if an organization permit were being applied for.

852 (2) (a) The commissioner shall issue a certificate of authority if ~~he~~ the commissioner
853 finds:

854 (i) enough cash or property authorized under Subsection 31A-5-207 (1)(a) or (2)(a) has
855 been received to satisfy the requirements of Section 31A-5-211;

856 (ii) there is no basis for revoking the organization permit under Subsection
857 31A-5-209(2); and

858 (iii) all other applicable requirements of the law have been met.

859 (b) The certificate of authority shall specify any limits placed on the insurance business
860 the corporation may carry on and may, within the powers given the commissioner under this
861 title, specify limits on the corporation's methods of operation.

862 (3) After the issuance of the certificate of authority the following action shall take
863 place:

864 (a) The board shall authorize and direct the issuance of certificates for shares, bonds, or
865 notes subscribed to under the organization permit, and of insurance policies upon qualifying
866 applications obtained under the organization permit.

867 (b) The commissioner shall authorize the release to the corporation of all funds held in
868 escrow under Section 31A-5-208.

869 (4) (a) A corporation may apply to the commissioner for a new or amended certificate

870 of authority altering limits on its business or methods of operation. The application shall
871 contain or be accompanied by information in Subsection 31A-5-204(2) as the commissioner
872 reasonably requires. The commissioner shall issue the new certificate if ~~he~~ the commissioner
873 finds:

874 (i) the corporation's capital and surplus satisfy the requirements of Section 31A-5-211
875 as to the operations proposed under the new certificate of authority; and

876 (ii) the proposed business would not be contrary to law or to the interests of insureds or
877 the public.

878 (b) If the commissioner issues ~~a summary~~ an order under ~~Section 31A-27-201~~
879 Chapter 27, Part 5, Administrative Actions, against a corporation, ~~he~~ the commissioner may
880 also revoke the corporation's certificate and issue a new one with any limitation ~~he~~ the
881 commissioner considers necessary.

882 (5) Except as to Subsection (4), this section does not apply to stock or mutual
883 insurance corporations already in existence on July 1, 1986.

884 Section 10. Section **31A-5-217** is amended to read:

885 **31A-5-217. Separate accounts for variable contracts.**

886 (1) Separate accounts under this section may be designated by any appropriate name
887 the corporation wishes to use, except that the commissioner may by rule provide guidelines for
888 the naming of separate accounts.

889 (2) With the approval of the commissioner, any corporation may establish, or at the
890 direction of the commissioner shall establish, one or more separate accounts and allocate to
891 them any amounts paid or remitted to, or held by, the corporation under designated contracts or
892 classes of contracts. These amounts are to be applied to provide benefits payable partly or
893 wholly in variable dollar amounts, and to provide benefits in fixed and guaranteed dollar
894 amounts and other incidental benefits.

895 (3) To the extent necessary to comply with the federal Investment Company Act of
896 1940, 15 U.S.C. Sec. 80a-1 et seq., or its interpretive rules, the corporation may:

897 (a) adopt special procedures for the conduct of the business and affairs of a separate

898 account; and

899 (b) for persons having beneficial interests in a separate account, provide special voting
900 and other rights, including special rights and procedures relating to investment policy,
901 investment advisory services, selection of certified public accountants, and selection of a
902 committee, the members of which need not be otherwise affiliated with the corporation, to
903 manage the business and affairs of the account.

904 (4) The commissioner may specify in the certificate of authority of a newly organized
905 corporation the minimum required capital or the minimum required permanent surplus to be
906 provided for each separate account. If a separate account is established after a certificate of
907 authority has been issued, the commissioner shall require the corporation to allocate an
908 adequate amount of capital and surplus to the separate account. An insurer may not be required
909 to allocate more capital and surplus to a separate account than would be required of a separate
910 insurer under Section 31A-5-211 and Chapter 17, Part 6, Risk-Based Capital.

911 (5) The income and assets attributable to a separate account shall always remain
912 identified with the particular account, but unless the commissioner so orders, the assets need
913 not be kept physically separate from other assets of the corporation. The income and gains and
914 losses, whether or not realized, from assets attributable to a separate account shall be credited
915 to or charged against the account without regard to other income, gains, or losses of the
916 corporation.

917 (6) Except as provided in Subsection (7), liabilities arising out of any other business of
918 the corporation are not to be allocated to a separate account, nor are any liabilities arising out of
919 a separate account to be allocated to any other account of the corporation, except as provided in
920 Subsection (11).

921 (7) (a) Each separate account shall be considered as an insurer within the meaning of
922 Subsection [~~31A-27-102(1)(m)~~] 31A-27a-102(23).

923 (b) A liquidation order under Section [~~31A-27-310~~] 31A-27a-401 for the general
924 account or for any separate account shall have effect as a rehabilitation order under Section
925 [~~31A-27-303~~] 31A-27a-301 for all other accounts of the corporation. Claims remaining unpaid

926 after completion of the liquidation under Chapter [27] 27a, Insurer Receivership Act, shall be
927 liens on the interests of shareholders, if any, but not on any other interests, in all of the
928 corporation's assets that are not liquidated. The rehabilitator may transform these liens into
929 ownership interests under [~~Subsection 31A-27-304(5)~~] Section 31A-27a-302.

930 (8) Assets in excess of the liabilities allocated to separate accounts are the property of
931 the corporation.

932 (9) A corporation may own a particular asset in determinate proportions for separate
933 accounts, for its general account, or as a trustee when acting as such within its legal powers.

934 (10) The corporation may by an identifiable act transfer assets among the separate
935 accounts, the general account, and any trust accounts of the corporation, for fair consideration
936 as defined in [~~Subsection 31A-27-102(1)(h)~~] Section 31A-27a-102.

937 (11) The general account of the corporation, or any separate account, may, for a fair
938 consideration as defined in [~~Subsection 31A-27-102(1)(h)~~] Section 31A-27a-102, provide
939 guarantees in connection with, perform services for, or reinsure other accounts, subject to rules
940 adopted by the commissioner. The determination of a fair consideration shall be made by
941 applying generally accepted accounting principles and realistic actuarial tables.

942 (12) Section 31A-18-102 deals with separate account investments. Section
943 31A-20-106 requires the commissioner's approval before delivery of certain variable contracts.
944 Section 31A-22-411 and Subsection 31A-21-301 (1)(d) deal with policy provisions in separate
945 account contracts.

946 Section 11. Section **31A-5-305** is amended to read:

947 **31A-5-305. Authorized securities.**

948 (1) (a) The articles of incorporation of a stock corporation may authorize the kind of
949 shares permitted by Sections 16-10a-601 and 16-10a-602, and stock rights and options, except
950 that:

- 951 (i) [~~no~~] nonvoting common stock may not be issued;
- 952 (ii) all classes of common stock must have equal voting rights;
- 953 (iii) all common stock must have a stated par value; and

954 (iv) except with the commissioner's approval, for two years after the initial issuance of
955 a certificate of authority, the corporation may issue no shares and no other securities
956 convertible into shares except a single class of common stock.

957 (b) Section 16-10a-604 applies to the issuance of certificates for fractional shares or
958 scrip.

959 (c) The consideration and payment for shares and certificates representing shares is
960 governed by ~~[Section]~~ Subsection 31A-5-207(1)(a).

961 (d) The liability of subscribers and shareholders for unpaid subscriptions and the status
962 of stock is governed by Section 16-10a-622.

963 (e) A shareholder's preemptive rights is governed by Section 16-10a-630.

964 (f) Stock corporations may issue bonds and contribution notes on the same basis as
965 mutuals under Subsections (2)(a) and (b).

966 (2) (a) The articles of incorporation of a nonassessable mutual may authorize bonds of
967 one or more classes. The articles of incorporation shall specify the amount of each class of
968 bonds the corporation is authorized to issue, their designations, preferences, limitations, rates
969 of interest, relative rights, and other terms, subject to all of the following provisions:

970 (i) During the first year after the initial issuance of a certificate of authority, the
971 corporation may issue only a single class of bonds with identical rights.

972 (ii) After the first year, but within five years after the initial issuance of a certificate of
973 authority, additional classes of bonds may be authorized after receiving the approval of the
974 commissioner. The commissioner shall approve the issuance if ~~[he]~~ the commissioner finds
975 that policyholders and prior bondholders will not be prejudiced.

976 (iii) The rate of interest shall be fair.

977 (iv) The bonds shall bear a maturity date not later than ten years from the date of
978 issuance, when principal and accrued interest shall be due and payable, subject to Subsection
979 (2)(d).

980 (b) A mutual may issue contribution notes with the commissioner's approval. The
981 contribution notes may be denominated by any name that is not misleading. The contribution

982 notes are subject to this subsection. The commissioner may approve the issuance only if [he]
983 the commissioner finds that:

- 984 (i) the notes will not be issued in denominations of less than \$2,500, and no single
985 issue will be sold to more than 15 persons;
- 986 (ii) no discount, commission, or other fee will be paid or allowed;
- 987 (iii) the notes will not be the subject of a public offering;
- 988 (iv) the terms of the notes are not prejudicial to policyholders, holders of mutual bonds,
989 or prior contribution notes; and
- 990 (v) the mutual's articles or bylaws do not forbid their issuance.

991 (c) ~~[No]~~ A mutual may not:

- 992 (i) if it has any outstanding obligations on bonds or contribution notes, borrow on
993 contribution notes from, or sell bonds to, any other insurer without the approval of the
994 commissioner; or

995 (ii) make a loan to another insurer except a fully secured loan at usual market rates of
996 interest.

997 (d) Payment of the principal or interest on bonds or contribution notes may be made in
998 whole or in part only after approval by the commissioner. The commissioner's approval shall
999 be given if all the financial requirements of the issuer to do the insurance business it is then
1000 doing will continue to be satisfied after that payment, and if the interests of its insureds and the
1001 public are not endangered by the payment. In the event of liquidation under Chapter ~~[27]~~ 27a,
1002 Insurer Receivership Act, unpaid amounts of principal and interest on contribution notes are
1003 subordinate to the payment of principal and interest on any bonds issued by the corporation.

1004 (e) This section does not prevent a mutual from borrowing money on notes which are
1005 its general obligations, nor from pledging any part of its disposable assets.

1006 (3) This section does not apply to securities issued prior to July 1, 1986.

1007 Section 12. Section **31A-5-416** is amended to read:

1008 **31A-5-416. Executive compensation.**

1009 (1) Subject to this section, Section 16-10a-302, except Subsection 16-10a-302(13),

1010 applies to stock and mutual corporations.

1011 (2) Shareholders' approval is required of any benefit or payment to a director or officer
1012 for services rendered to a stock corporation more than 90 days before the agreement or decision
1013 to give the benefit or make the payment, unless the benefit or payment is made under a plan
1014 approved by the shareholders. Shareholder approval is also required for a new pension plan,
1015 profit-sharing plan, stock option plan, or an amendment to an existing plan which, so far as it
1016 pertains to any director or officer, substantially increases the financial burden on the
1017 corporation.

1018 (3) An action taken by the board of a mutual on the compensation of officers, directors,
1019 or employees, other than setting individual salaries or standards for salaries of classes of
1020 employees, shall be reported to the commissioner within 30 days.

1021 (4) The annual report to the commissioner shall include the amount of all direct and
1022 indirect remuneration for services, including retirement and other deferred compensation
1023 benefits and stock options, paid or accrued each year:

1024 (a) for the benefit of each director, each officer, and employee whose remuneration
1025 exceeds an amount established by the commissioner by rule;

1026 (b) for all directors and officers as a group; and

1027 (c) for the five most highly compensated officers, directors, and employees.

1028 (5) ~~No~~ An arrangement for compensation or other employment benefits for any
1029 director, officer, or employee with decision-making power may not be made if it would:

1030 (a) measure the compensation or other benefits in whole or in part by any criteria that
1031 would create a financial inducement to act contrary to the best interests of the corporation; or

1032 (b) have a tendency to make the corporation depend for continuance or soundness of
1033 operation upon the continuation of any director, officer, or employee in ~~his~~ the person's
1034 position.

1035 (6) Except for the insurer, no person having any authority in the investment or
1036 disposition of the funds of a domestic insurer may accept any fee, brokerage, gift, or other
1037 emolument because of any investment, loan, deposit, purchase, sale, payment, or exchange

1038 made by or for the insurer, nor may that person be financially interested in the investment or
1039 disposition of funds in any capacity.

1040 (7) Unless the commissioner, acting in the corporation's best interests, orders
1041 otherwise, if an order of rehabilitation or liquidation is issued under Section [~~31A-27-303~~]
1042 31A-27a-301 or [~~Section 31A-27-310~~] 31A-27a-401, the contractual obligations of the insurer
1043 for unperformed services of any director, principal officer, or person performing similar
1044 functions or having similar powers are terminated. This Subsection (7) does not apply to
1045 obligations vested before July 1, 1986.

1046 Section 13. Section **31A-5-504** is amended to read:

1047 **31A-5-504. Voluntary dissolution of domestic insurance corporations.**

1048 (1) (a) Except as otherwise modified by this section, a domestic stock insurance
1049 corporation may dissolve under Sections 16-10a-1401 through 16-10a-1409 and Section
1050 16-10a-1440.

1051 (b) Except as otherwise modified by this section, a domestic mutual insurance
1052 corporation may dissolve under Sections 16-6a-1401 through 16-6a-1409 and Section
1053 16-6a-1419.

1054 (2) (a) At least 60 days prior to the submission to shareholders or policyholders of any
1055 proposed voluntary dissolution of an insurance corporation, the plan of dissolution shall be
1056 filed with the commissioner.

1057 (b) The commissioner may require the submission of any information in addition to the
1058 plan of dissolution that will establish:

1059 (i) the financial condition of the corporation; or

1060 (ii) other facts relevant to the proposed dissolution.

1061 (c) If the shareholders or policyholders adopt the resolution to dissolve, the
1062 commissioner shall, within 30 days after the adoption of the resolution, begin an examination
1063 of the corporation.

1064 (d) The commissioner shall approve the dissolution unless the commissioner finds,
1065 after a hearing, that the corporation:

- 1066 (i) is insolvent; or
1067 (ii) may become insolvent in the process of dissolution.
1068 (e) Upon approval, the corporation may:
1069 (i) transfer all of its obligations under insurance policies to other insurers approved by
1070 the commissioner; and
1071 (ii) after the transfers described in Subsection (2)(e)(i), dissolve under Subsection (1).
1072 (f) If the commissioner disapproves the dissolution, the commissioner shall petition the
1073 court for a liquidation under Section [~~31A-27-307~~] 31A-27a-207.
1074 (3) During the dissolution under Subsection (1), the corporation may apply to the
1075 commissioner to have the dissolution continued under the commissioner's supervision. After
1076 receiving this application, the commissioner shall apply to the court for a liquidation under
1077 Section [~~31A-27-307~~] 31A-27a-207.
1078 (4) If the corporation revokes the voluntary dissolution proceedings under Section
1079 16-6a-1404 or 16-10a-1404, the corporation shall file a copy of the revocation of voluntary
1080 dissolution proceedings with the commissioner.
1081 (5) In distributing the assets in the dissolution of a nonlife mutual, [~~Subsection~~
1082 ~~31A-27-337(4)~~] Section 31A-27a-705 applies.
1083 (6) (a) No remedy available to or against the corporation, its directors, officers, or
1084 shareholders is taken away or impaired if an action or other proceeding is brought within two
1085 years after dissolution for any right or claim existing, or any liability incurred, prior to the
1086 voluntary dissolution under this section.
1087 (b) The action or proceeding described in Subsection (6)(a) may be prosecuted or
1088 defended by the corporation in its corporate name. The shareholders, directors, and officers
1089 may take appropriate corporate or other action to protect the remedy, right, or claim.
1090 (c) A corporation which is dissolved by the expiration of its period of duration may
1091 amend its articles of incorporation during the two years to provide for perpetual existence.
1092 (7) During the voluntary dissolution of a domestic insurance corporation under this
1093 section, its corporate existence continues to allow the winding up of the corporation's affairs

1094 regarding any property and assets not distributed or otherwise disposed of prior to dissolution.

1095 To effect that purpose, the corporation may:

1096 (a) sell or otherwise dispose of the property and assets;

1097 (b) sue and be sued;

1098 (c) contract; and

1099 (d) exercise all other necessary powers.

1100 Section 14. Section **31A-5-506** is amended to read:

1101 **31A-5-506. Conversion of a domestic mutual into a stock corporation.**

1102 (1) (a) Except as provided in Subsection (1) (b), a domestic mutual may be converted
1103 into a domestic stock corporation under Subsections (2) through (11).

1104 (b) ~~Not~~ A domestic mutual that is affiliated with other mutuals may not be converted
1105 into a stock corporation, unless all the affiliated mutuals are converted at the same time, or the
1106 commissioner finds that the interests of the policyholders of the remaining mutuals can be
1107 permanently protected by limitations on the corporate powers of the new stock corporation or
1108 on its authority to do business, or otherwise.

1109 (2) The board shall pass a resolution stating that the conversion is in the best interests
1110 of the policyholders. The resolution shall specify the reasons for and the purposes of the
1111 proposed conversion, and how the conversion is expected to benefit policyholders.

1112 (3) (a) ~~The provisions of~~ Chapter 16 ~~apply~~, Insurance Holding Companies, applies
1113 to the conversion of a domestic mutual into a stock corporation. In addition, the commissioner
1114 shall order the examination and appraisal of the corporation, unless ~~he~~ the commissioner
1115 finds that:

1116 (i) the resolution is defective upon its face; or

1117 (ii) the basis or the purposes of the proposed conversion are contrary to law, to the
1118 interests of the policyholders, or to the public.

1119 (b) The commissioner shall examine the company and all of its controlled affiliates
1120 under Section 31A-2-203 to determine their financial condition and whether they are operating
1121 in accordance with law.

1122 (c) The commissioner shall appoint an appraisal committee, consisting of at least three
1123 qualified and disinterested persons with differing expertise, to determine the value of the
1124 corporation on the date of the resolution required by Subsection (2). Members of the appraisal
1125 committee shall receive reasonable compensation and shall be reimbursed for reasonable
1126 expenses in discharging their duties. They may employ consultants to advise them on technical
1127 problems of the appraisal, if necessary. The appraisal committee shall consider the assets and
1128 liabilities of the corporation, adjusting liabilities to take account of:

1129 (i) the amounts of any reserves in excess of or below realistic estimates;

1130 (ii) the value of the marketing organization;

1131 (iii) the value of goodwill;

1132 (iv) the going-concern value; and

1133 (v) any other factor having an influence on the value of the corporation.

1134 (4) When the examination and appraisal reports have been made to the commissioner,
1135 ~~he~~ the commissioner shall make copies available to the board. The board shall then prepare
1136 and adopt by resolution a plan of conversion. The plan shall be consistent with Subsections
1137 (4)(a) through (e) and shall state how the requirements of those subsections are satisfied.

1138 (a) The plan of conversion shall state the number of shares proposed to be authorized
1139 for the new stock corporation, their par value, if any, and the price per share at which they will
1140 be offered to policyholders. The price per share may not exceed 1/2 of the median equitable
1141 share of all policyholders under Subsection (4)(b).

1142 (b) (i) When an insurer has the type of policies with no investment value to the
1143 policyholders, each person who has been a policyholder and has paid premiums within five
1144 years prior to the resolution under Subsection (2) is entitled, without additional payment, to as
1145 much common stock of the new stock corporation as ~~his~~ that person's equitable share of the
1146 value of the converting corporation will purchase. The equitable share is determined by the
1147 ratio which the net premium ~~he~~ that person has paid to the corporation during the five years
1148 immediately preceding the resolution required by Subsection (2) bears to the total net
1149 premiums received by the corporation during the same period. The net premium is the gross

1150 premium less the return premium and dividends paid. If the equitable share would only
1151 purchase a fraction of a share of stock, the policyholder has the option of either receiving the
1152 value of the fractional share in cash or purchasing a full share by paying the balance in cash.

1153 (ii) When an insurer has the type of policies with specifically attributable investment
1154 value to the policyholders, each policyholder is entitled, without additional payment, to as
1155 much common stock of the new stock corporation as ~~his~~ the policyholder's investment value
1156 in the converting corporation will purchase, determined by the proportion of ~~his~~ the
1157 policyholder's investment value to the aggregate investment values of all policyholders. If the
1158 policyholder's share would only purchase a fraction of a share of stock, the policyholder has the
1159 option of either receiving the value of the fractional share in cash or purchasing a full share by
1160 paying the balance in cash.

1161 (c) A written offer shall be sent to each policyholder indicating ~~his~~ the policyholder's
1162 individual equitable share and the terms upon which the policyholder may subscribe for stock.

1163 (d) ~~No common~~ Common shares may not be subscribed by or issued to persons other
1164 than policyholders, until all subscriptions by the policyholders have been filled. After those
1165 subscriptions have been filled, any new issue of stock for five years after the conversion shall
1166 first be offered to the persons who have become shareholders under Subsection (4)(b) in
1167 proportion to their interests under Subsection (4)(b).

1168 (e) ~~No~~ A policyholder in a nonlife mutual may not receive a distribution of shares
1169 valued under Subsection (4)(b)(i), which distribution is greater than the amount ~~he~~ the
1170 policyholder is entitled to under ~~Subsection 31A-27-337(4)~~ Section 31A-27a-701. Any
1171 excess over the policyholder's entitlement under ~~Subsection 31A-27-337(4)~~ Section
1172 31A-27a-701 shall be distributed ~~in shares to the state treasury for the benefit of the Uniform~~
1173 ~~School Fund. After five years, the shares may be sold by the state treasurer and the proceeds~~
1174 ~~credited to the Uniform School Fund~~ in accordance with Section 31A-27a-705.

1175 (5) The plan of conversion shall be submitted to the commissioner for approval,
1176 together with:

1177 (a) the proposed articles and bylaws of the new stock corporation which comply with

1178 Section 31A-5-203;

1179 (b) any information specified under Subsection 31A-5-204(2), which the commissioner
1180 reasonably requires; and

1181 (c) a projection of the planned or anticipated financial situation of the new corporation
1182 for five years after the conversion.

1183 (6) The commissioner shall then hold a hearing. The notice of the hearing shall be
1184 mailed to each person who was a policyholder of the corporation on the date of the resolution
1185 required by Subsection (2). This notice shall include a copy of the plan of conversion and any
1186 comments the commissioner considers necessary to adequately inform the policyholders.

1187 (7) The commissioner shall approve the plan of conversion unless ~~he~~ the
1188 commissioner finds that the plan violates the law or is contrary to the interests of policyholders
1189 or the public.

1190 (8) After approval under Subsection (7), the conversion plan shall be submitted to a
1191 vote of:

1192 (a) for mutuals subject to Subsection (4)(b)(i), those persons who were policyholders
1193 of the mutual on the date of the resolution required by Subsection (2); or

1194 (b) for mutuals subject to Subsection (4)(b)(ii), those persons who had investment
1195 values in their policies as of the date of the resolution required by Subsection (2).

1196 (9) If the policyholders approve the conversion under Subsection (8), the commissioner
1197 shall issue a new certificate of authority. The issuance of the certificate is the conversion of the
1198 mutual to a stock corporation. This stock corporation is considered as being organized at the
1199 time the converted mutual was organized. Subject to the plan of conversion, the directors,
1200 officers, agents, and employees of the mutual shall continue in their same positions with the
1201 stock corporation.

1202 (10) In the proposed conversion, the corporation may not pay any person compensation
1203 other than regular salaries to existing personnel and compensation for clerical and mailing
1204 expenses. With the commissioner's approval, the corporation may pay, at reasonable rates, for
1205 printing costs and for legal and other professional fees for services actually rendered. All

1206 expenses of the conversion, including the expenses incurred by the commissioner and the
1207 prorated salaries of any [~~Insurance~~] department staff members involved, shall be paid by the
1208 corporation being converted.

1209 (11) The commissioner's approval of the plan of conversion satisfies the registration
1210 requirement of Section 31A-5-302.

1211 Section 15. Section **31A-8-213** is amended to read:

1212 **31A-8-213. Certificate of authority.**

1213 (1) An organization may apply for a certificate of authority at any time prior to the
1214 expiration of its organization permit. The application shall include:

1215 (a) a detailed statement by a principal officer about any material changes that have
1216 taken place or are likely to take place in the facts on which the issuance of the organization
1217 permit was based; and

1218 (b) if any material changes are proposed in the business plan, the information about the
1219 changes that would be required if an organization permit were then being applied for.

1220 (2) The commissioner shall issue a certificate of authority, if the commissioner finds
1221 that:

1222 (a) the organization's capital and surplus complies with the requirements of Section
1223 31A-8-209 as to the operations proposed under the new certificate of authority;

1224 (b) there is no basis for revoking the organization permit under Section 31A-8-207;

1225 (c) the deposit required by Section 31A-8-211 has been made;

1226 (d) the organization satisfies the requirements of Section 31A-8-104; and

1227 (e) all other applicable requirements of the law have been met.

1228 (3) The certificate of authority shall specify any limits imposed by the commissioner
1229 upon the organization's business or methods of operation, including the general types of health
1230 care services the organization is authorized to provide.

1231 (4) Upon the issuance of the certificate of authority:

1232 (a) the board shall authorize and direct the issuance of certificates for shares, bonds, or
1233 notes subscribed to under the organization permit, and of insurance policies upon qualifying

1234 applications obtained under the organization permit; and

1235 (b) the commissioner shall authorize the release to the organization of all funds held in
1236 escrow under Section 31A-5-208, as adopted by Section 31A-8-206.

1237 (5) (a) An organization may at any time apply to the commissioner for a new or
1238 amended certificate of authority altering the limits on its business or methods of operation.
1239 The application shall contain or be accompanied by that information reasonably required by the
1240 commissioner under Subsections 31A-5-204(2) and 31A-8-205(2). The commissioner shall
1241 issue the new certificate as requested if the commissioner finds that the organization continues
1242 to satisfy the requirements specified under Subsection (2).

1243 (b) If the commissioner issues ~~[a summary]~~ an order under ~~[Section 31A-27-201]~~
1244 Chapter 27, Part 5, Administration Actions, against an organization, the commissioner may
1245 also revoke the organization's certificate and issue a new one with any limitation ~~[he]~~ the
1246 commissioner considers necessary.

1247 Section 16. Section **31A-9-502** is amended to read:

1248 **31A-9-502. Voluntary dissolution of solvent domestic fraternal.**

1249 (1) Subject to this section, a domestic fraternal may voluntarily dissolve under Sections
1250 16-6a-1401 through 16-6a-1405.

1251 (2) The proposal for voluntary dissolution shall be filed with the commissioner at least
1252 60 days prior to the submission of that proposal to the supreme governing body or the
1253 members. The commissioner may require the submission of additional information necessary
1254 to establish the financial condition of the fraternal or other facts relevant to the proposed
1255 dissolution. If the supreme governing body or the members adopt the resolution to dissolve, by
1256 a majority of those voting or a larger number as required by the laws of the fraternal, the
1257 commissioner shall, within 30 days after the adoption of the resolution, begin to examine the
1258 fraternal. The commissioner shall approve the dissolution unless ~~[he]~~ the commissioner finds,
1259 after the examination and a hearing, that it is insolvent or may become insolvent in the process
1260 of dissolution. Upon approval, the fraternal may provide for a transfer to other fraternal
1261 approved by the commissioner of all its obligations under insurance policies and then may

1262 dissolve under Subsection (1). If the commissioner disapproves, ~~he~~ the commissioner shall
1263 petition the court for liquidation under Section ~~[31A-27-307]~~ 31A-27a-207.

1264 (3) During the liquidation under Sections 16-6a-1401 through 16-6a-1408, the fraternal
1265 may apply to the commissioner to have the liquidation continued under the commissioner's
1266 supervision. Upon receiving this request, the commissioner shall apply to the court for
1267 liquidation under Section ~~[31A-27-307]~~ 31A-27a-207.

1268 (4) If the fraternal revokes the voluntary dissolution proceedings under Section
1269 16-6a-1404, a copy of the revocation of voluntary dissolution proceedings shall be filed with
1270 the commissioner.

1271 (5) Subsections 31A-5-504(6) and (7) apply to the survival of remedies and
1272 continuance of corporate existence of a voluntarily dissolved fraternal.

1273 Section 17. Section **31A-9-504** is amended to read:

1274 **31A-9-504. Rehabilitation or involuntary conversion.**

1275 (1) (a) If the commissioner believes that a fraternal does not satisfy the requirements of
1276 this chapter, ~~he~~ the commissioner shall call a hearing. If ~~he~~ the commissioner then finds
1277 that the fraternal does not satisfy the requirements:

1278 ~~[(a)-If]~~ (i) if the fraternal is domestic, the commissioner shall petition for rehabilitation
1279 under Section ~~[31A-27-301]~~ 31A-27a-207 to rehabilitate the fraternal or, if that is not possible,
1280 convert the fraternal to a mutual[-]; or

1281 ~~[(b)-If]~~ (ii) if the fraternal is nondomestic, the commissioner shall order it to comply as
1282 soon as practicable with the requirements of this chapter or lose its tax exemption. ~~[The]~~

1283 (b) An order issued under Subsection (1)(a)(ii) shall specify the ways the nondomestic
1284 fraternal does not comply with this chapter.

1285 (2) If the fraternal does not promptly comply with the requirements of this chapter,
1286 after notice of the adverse results of a hearing under Subsection (1), it is subject to taxation as a
1287 mutual life insurance company. This tax is retroactive to the date on which the commissioner
1288 gave the fraternal notice of the hearing under Subsection (1).

1289 Section 18. Section **31A-11-104** is amended to read:

1290 **31A-11-104. Applicability of other portions of this title.**

1291 (1) In addition to this chapter, motor clubs are subject to the applicable sections of:

1292 (a) Chapters 1, 2, 4, 16, 21, 22, 26, ~~[and]~~ 27, and 27a;

1293 (b) Chapter 3, Part 1;

1294 (c) Chapter 23a, Parts 1, 4, and 5; and

1295 (d) Section 31A-23a-207.

1296 (2) Sections 31A-14-204 and 31A-14-216 apply to nondomestic motor clubs.

1297 (3) Section 31A-5-401 applies to domestic motor clubs.

1298 (4) Sections 31A-5-105, 31A-5-106, and 31A-5-216 apply to both domestic and

1299 nondomestic motor clubs.

1300 (5) Both domestic and nondomestic motor clubs are subject to the ~~[Insurance]~~
 1301 department fees under Section 31A-3-103. Other provisions of ~~[the Insurance Code]~~ this title
 1302 apply to motor clubs only as specifically provided in this chapter.

1303 Section 19. Section **31A-11-109** is amended to read:

1304 **31A-11-109. Alteration or revocation of certificate of authority.**

1305 If the commissioner issues ~~[a summary]~~ an order under ~~[Section 31A-27-201]~~ Chapter
 1306 27, Part 5, Administrative Actions, against a motor club, ~~[he]~~ the commissioner may revoke its
 1307 certificate of authority or issue a new one with the limits ~~[he]~~ the commissioner considers
 1308 necessary.

1309 Section 20. Section **31A-13-107** is amended to read:

1310 **31A-13-107. Commissioner's remedies.**

1311 If the trustees of any employee welfare fund have failed to register the fund in
 1312 accordance with Section 31A-13-103, or otherwise fail to comply with ~~[any provision of]~~ this
 1313 chapter, the commissioner shall notify the employers of the failure. In addition to ordering
 1314 compliance under Subsection 31A-2-201(4), the commissioner may:

1315 (1) order the employers to stop making payments to the trustees until the employers are
 1316 notified by the commissioner that the trustees are in compliance with this chapter; or

1317 (2) rehabilitate or liquidate the employee welfare fund under Chapter ~~[27]~~ 27a, Insurer

1318 Receivership Act.

1319 Section 21. Section **31A-14-206** is amended to read:

1320 **31A-14-206. Commercially domiciled insurers.**

1321 (1) As used in this section, and except as to title insurers, the commissioner may
1322 consider a foreign insurer to be "commercially domiciled" in this state if:

1323 (a) during the three immediately preceding calendar years, the foreign insurer wrote
1324 more insurance premiums in this state than it wrote in its state of domicile during the same
1325 period; or

1326 (b) during the same three-year period, the foreign insurer's gross premiums written in
1327 this state constituted 15% or more of the insurer's total gross premiums written in the United
1328 States.

1329 (2) Subject to Subsection (3), an insurer determined by the commissioner to be
1330 commercially domiciled in this state may be subjected to Chapters 16, 17, 18, 27, and 27a, and
1331 Chapter 5, Parts 4, 5, and 6 in the same manner and to the same extent as domestic insurers.
1332 The commissioner shall, by order, notify any commercially domiciled insurer not exempt under
1333 Subsection (3) of the extent to which the insurer is subject to the provisions listed under this
1334 Subsection (2).

1335 (3) The commissioner may exempt from the provisions of this section any
1336 commercially domiciled insurer if ~~he~~ the commissioner determines that the insurer has assets
1337 physically located in this state or an asset to liability ratio sufficient to justify the conclusion
1338 that there is no reasonable danger that the operations or conduct of the business of the insurer
1339 could present a danger of loss to Utah policyholders.

1340 (4) Subsection 31A-14-205(4) applies to the conflict of the laws of this state with the
1341 laws of the insurer's domicile for foreign insurers, including commercially domiciled insurers,
1342 under this section.

1343 (5) This section does not excuse or exempt any foreign insurer from complying with
1344 the provisions under this title which are otherwise applicable to a foreign insurer.

1345 Section 22. Section **31A-14-215** is amended to read:

1346 **31A-14-215. Assessment by foreign company.**

1347 Every foreign mutual insurer authorized in this state shall notify the commissioner
1348 immediately after making an assessment upon any of its members in this state. The insurer
1349 shall attach to the notice a statement of the condition of the insurer, giving the facts showing
1350 the necessity for the assessment. Unless the commissioner orders otherwise under a Chapter
1351 27, Part 5, Administrative Actions, proceeding, a foreign mutual insurer authorized in this state
1352 may not make or increase any assessment because of its inability to collect assessments from its
1353 members in other states.

1354 Section 23. Section **31A-14-217** is amended to read:

1355 **31A-14-217. Revocation of certificate of authority.**

1356 Whenever there would be grounds for delinquency proceedings under Chapter [~~27~~] 27a,
1357 Insurer Receivership Act, against a foreign insurer, if the foreign insurer were a domestic
1358 insurer, the commissioner may, after any proceeding authorized by Title 63, Chapter 46b,
1359 Administrative Procedures Act, revoke, suspend, or limit the foreign insurer's certificate of
1360 authority. This action does not affect insurance which has already been issued. The insurer
1361 remains subject to regulation until released under Section 31A-14-216.

1362 Section 24. Section **31A-15-105** is amended to read:

1363 **31A-15-105. Effect of contracts illegal because insurer was unauthorized.**

1364 (1) An insurance contract entered into in violation of this chapter is unenforceable by,
1365 but enforceable against, the insurer. In an action against the insurer on the contract, the insured
1366 is bound by the terms of the contract as affected by this title and rules adopted under this title.

1367 (2) An insurance policy entered into in violation of this chapter is voidable by the
1368 policyholder who entered into the transaction without knowing it was illegal. The policyholder
1369 may avoid the contract by notice to the insurer, if no insured has enforced the contract by an
1370 action under Subsection (1), and may recover any consideration paid under the contract.

1371 (3) Any person who assisted in the procurement of an illegal contract under this
1372 chapter, and who knew or should have known the transaction was illegal, is liable to the
1373 insured for the full amount of a claim or loss payable under the contract, if the insurer does not

1374 pay it. The receiver appointed under Chapter [27] 27a, Insurer Receivership Act, may assert the
1375 claims of insureds if the insurer is the subject of a proceeding under Chapter [27] 27a.

1376 Section 25. Section **31A-17-605** is amended to read:

1377 **31A-17-605. Authorized control level event.**

1378 (1) "Authorized control level event" means any of the following events:

1379 (a) the filing of an RBC report by the insurer or health organization that indicates that
1380 the insurer's or health organization's total adjusted capital is greater than or equal to its
1381 mandatory control level RBC but less than its authorized control level RBC;

1382 (b) the notification by the commissioner to the insurer or health organization of an
1383 adjusted RBC report that indicates the event in Subsection (1)(a), provided the insurer or health
1384 organization does not challenge the adjusted RBC report under Section 31A-17-607;

1385 (c) if, pursuant to Section 31A-17-607, the insurer or health organization challenges an
1386 adjusted RBC report that indicates the event in Subsection (1)(a), notification by the
1387 commissioner to the insurer or health organization that after a hearing the commissioner rejects
1388 the insurer's or health organization's challenge;

1389 (d) the failure of the insurer or health organization to respond, in a manner satisfactory
1390 to the commissioner, to a corrective order, provided the insurer or health organization has not
1391 challenged the corrective order under Section 31A-17-607; or

1392 (e) if the insurer or health organization has challenged a corrective order under Section
1393 31A-17-607 and the commissioner after a hearing rejects the challenge or modifies the
1394 corrective order, the failure of the insurer or health organization to respond, in a manner
1395 satisfactory to the commissioner, to the corrective order subsequent to rejection or modification
1396 by the commissioner.

1397 (2) (a) In the event of an authorized control level event with respect to an insurer or
1398 health organization, the commissioner shall:

1399 (i) take any action required under Section 31A-17-604 regarding an insurer or health
1400 organization with respect to which a regulatory action level event has occurred; or

1401 (ii) take any action as is necessary to cause the insurer or health organization to be

1402 placed under regulatory control under [~~Section 31A-27-201~~] Chapter 27, Part 5, Administrative
 1403 Actions, if the commissioner considers it to be in the best interests of:

- 1404 (A) the policyholders or members;
- 1405 (B) creditors of the insurer or health organization; and
- 1406 (C) the public.

1407 (b) [~~In the event~~] If the commissioner takes an action described in Subsection (2)(a),
 1408 the authorized control level event is sufficient grounds for the commissioner to take action
 1409 under [~~Section 31A-27-201~~] Chapter 27, Part 5, Administrative Actions, and the commissioner
 1410 shall have the rights, powers, and duties with respect to the insurer or health organization set
 1411 forth in [~~Section 31A-27-201~~] Chapter 27, Part 5, Administrative Actions.

1412 (c) If the commissioner takes an action under Subsection (2)(a) pursuant to an adjusted
 1413 RBC report, the insurer or health organization is entitled to the protections afforded to an
 1414 insurer or health organization under Section [~~31A-27-203~~] 31A-27-504 pertaining to [~~summary~~
 1415 ~~proceedings~~] an action by the commissioner.

1416 Section 26. Section **31A-17-606** is amended to read:

1417 **31A-17-606. Mandatory control level event.**

1418 (1) "Mandatory control level event" means any of the following events:

1419 (a) the filing of an RBC report that indicates that the insurer's or health organization's
 1420 total adjusted capital is less than its mandatory control level RBC;

1421 (b) notification by the commissioner to the insurer or health organization of an adjusted
 1422 RBC report that indicates the event in Subsection (1)(a), provided the insurer or health
 1423 organization does not challenge the adjusted RBC report under Section 31A-17-607; or

1424 (c) if, pursuant to Section 31A-17-607, the insurer or health organization challenges an
 1425 adjusted RBC report that indicates the event in Subsection (1)(a), notification by the
 1426 commissioner to the insurer or health organization that after a hearing the commissioner rejects
 1427 the insurer's or health organization's challenge.

1428 (2) (a) In the event of a mandatory control level event with respect to an insurer or
 1429 health organization, the commissioner shall take any actions necessary to place the insurer

1430 under regulatory control under [~~Section 31A-27-201~~] Chapter 27, Part 5, Administrative
1431 Actions.

1432 (b) The mandatory control level event is sufficient grounds for the commissioner to
1433 take action under [~~Section 31A-27-201~~] Chapter 27, Part 5, Administrative Actions, and the
1434 commissioner shall have the rights, powers, and duties with respect to the insurer or health
1435 organization as are set forth in [~~Section 31A-27-201~~] Chapter 27, Part 5, Administrative
1436 Actions.

1437 (c) If the commissioner takes an action pursuant to an adjusted RBC report, the insurer
1438 or health organization is entitled to the protections of Section [~~31A-27-203~~] 31A-27-504
1439 pertaining to summary proceedings.

1440 (d) Notwithstanding the other provisions of Subsection (2), the commissioner may
1441 forego action for up to 90 days after the mandatory control level event if the commissioner
1442 finds there is a reasonable expectation that the mandatory control level event may be eliminated
1443 within the 90-day period.

1444 Section 27. Section **31A-17-609** is amended to read:

1445 **31A-17-609. Alternate adjusted capital.**

1446 (1) Except as provided in Section 31A-17-602, an insurer or health organization
1447 licensed under Chapters 5, 7, 8, 9, and 14 shall maintain total adjusted capital as defined in
1448 Section 31A-1-301 in an amount equal to the greater of:

1449 (a) 175% of the minimum required capital, or of the minimum permanent surplus in the
1450 case of nonassessable mutuals, required by Section 31A-5-211, 31A-7-201, 31A-8-209,
1451 31A-9-209, or 31A-14-205; or

1452 (b) the net total of:

1453 (i) 10% of net insurance premiums earned during the year; plus

1454 (ii) 5% of the admitted value of common stocks and real estate; plus

1455 (iii) 2% of the admitted value of all other invested assets, exclusive of cash deposits,
1456 short-term investments, policy loans, and premium notes; less

1457 (iv) the amount of any asset valuation reserve being maintained by the insurer or health

1458 organization, but not to exceed the sum of Subsections (1)(b)(ii) and (iii).

1459 (2) As used in Subsection (1)(b), "premiums earned" means premiums and other
1460 consideration earned for insurance in the 12-month period ending on the date the calculation is
1461 made.

1462 (3) The commissioner may consider an insurer or health organization to be financially
1463 hazardous under Subsection [~~31A-27-307(3)~~] 31A-27a-207(1)(i), if the insurer or health
1464 organization does not have qualified assets in an aggregate value exceeding the sum of the
1465 insurer's or health organization's liabilities and the total adjusted capital required by Subsection
1466 (1).

1467 (4) The commissioner shall consider an insurer or health organization to be financially
1468 hazardous under Subsection [~~31A-27-307(3)~~] 31A-27a-207(1)(i) if the insurer or health
1469 organization does not have qualified assets in an aggregate value exceeding the sum of the
1470 insurer's or health organization's liabilities and 70% of the total adjusted capital required by
1471 Subsection (1).

1472 Section 28. Section **31A-17-610** is amended to read:

1473 **31A-17-610. Foreign insurers or health organizations.**

1474 (1) (a) Any foreign insurer or health organization shall, upon the written request of the
1475 commissioner, submit to the commissioner an RBC report as of the end of the most recent
1476 calendar year by the later of:

1477 (i) the date an RBC report would be required to be filed by a domestic insurer or health
1478 organization under this part; or

1479 (ii) 15 days after the request is received by the foreign insurer or health organization.

1480 (b) Any foreign insurer or health organization shall, at the written request of the
1481 commissioner, promptly submit to the commissioner a copy of any RBC plan that is filed with
1482 the insurance commissioner of any other state.

1483 (2) (a) The commissioner may require a foreign insurer or health organization to file an
1484 RBC plan with the commissioner if:

1485 (i) there is a company action level event, regulatory action level event, or authorized

1486 control level event with respect to the foreign insurer or health organization as determined
1487 under:

1488 (A) the RBC statute applicable in the state of domicile of the insurer or health
1489 organization; or

1490 (B) if no RBC statute is in force in that state, under this part; and

1491 (ii) the insurance commissioner of the state of domicile of the foreign insurer or health
1492 organization fails to require the foreign insurer or health organization to file an RBC plan in the
1493 manner specified under:

1494 (A) that state's RBC statute; or

1495 (B) if no RBC statute is in force in that state, under Section 31A-17-603.

1496 (b) If the commissioner requires a foreign insurer or health organization to file an RBC
1497 plan, the failure of the foreign insurer or health organization to file the RBC plan with the
1498 commissioner is grounds to order the insurer or health organization to cease and desist from
1499 writing new insurance business in this state.

1500 (3) The commissioner may make application to the Third District Court for Salt Lake
1501 County permitted under Section [~~31A-27-401~~] 31A-27a-901 with respect to the liquidation of
1502 property of a foreign insurer or health organization found in this state if:

1503 (a) a mandatory control level event occurs with respect to any foreign insurer or health
1504 organization; and

1505 (b) no domiciliary receiver has been appointed with respect to the foreign insurer or
1506 health organization under the rehabilitation and liquidation statute applicable in the state of
1507 domicile of the foreign insurer or health organization.

1508 Section 29. Section **31A-18-106** is amended to read:

1509 **31A-18-106. Investment limitations generally applicable.**

1510 (1) The investment limitations listed in Subsections (1)(a) through (m) apply to each
1511 insurer.

1512 (a) (i) Except as provided in Subsection (1)(a)(ii), for investments authorized under
1513 Subsection 31A-18-105(1) that are not amortizable under applicable valuation rules, the

1514 limitation is 5% of assets.

1515 (ii) The limitation of Subsection (1)(a)(i) and the limitation of Subsection (2) do not
1516 apply to demand deposits and certificates of deposit in solvent banks and savings and loan
1517 institutions to the extent they are insured by a federal deposit insurance agency.

1518 (b) For investments authorized under Subsection 31A-18-105(2), the limitation is 10%
1519 of assets.

1520 (c) For investments authorized under Subsection 31A-18-105(3), the limitation is 50%
1521 of assets.

1522 (d) For investments authorized under Subsection 31A-18-105(4), that are considered to
1523 be investments in kinds of securities or evidences of debt pledged, those investments are
1524 subject to the class limitations applicable to the pledged securities or evidences of debt.

1525 (e) For investments authorized under Subsection 31A-18-105(5), the limitation is 35%
1526 of assets.

1527 (f) For investments authorized under Subsection 31A-18-105(6), the limitation is:

1528 (i) 20% of assets for life insurers; and

1529 (ii) 50% of assets for nonlife insurers.

1530 (g) For investments authorized under Subsection 31A-18-105(7), the limitation is:

1531 (i) 5% of assets; or

1532 (ii) for insurers organized and operating under Chapter 7, Nonprofit Health Service
1533 Insurance Corporations, 25% of assets.

1534 (h) For investments authorized under Subsection 31A-18-105(8), the limitation is:

1535 (i) 20% of assets, inclusive of home office and branch office properties; or

1536 (ii) for insurers organized and operating under Chapter 7, Nonprofit Health Service
1537 Insurance Corporations, 35% of assets, inclusive of home office and branch office properties.

1538 (i) For investments authorized under Subsection 31A-18-105(10), the limitation is 1%
1539 of assets.

1540 (j) For investments authorized under Subsection 31A-18-105(11), the limitation is the
1541 greater of that permitted or required for compliance with Section 31A-18-103.

1542 (k) Except as provided in Subsection (1)(l), an insurer's investments in subsidiaries is
1543 limited to 50% of the insurer's total adjusted capital. Investments by an insurer in its
1544 subsidiaries includes:

- 1545 (i) the insurer's loans, advances, and contributions to its subsidiaries; and
- 1546 (ii) the insurer's holding of bonds, notes, and stocks of its subsidiaries are included.

1547 (l) Under a plan of merger approved by the commissioner, the commissioner may
1548 allow an insurer any portion of its assets invested in an insurance subsidiary. The approved
1549 plan of merger shall require the acquiring insurer to conform its accounting for investments in
1550 subsidiaries to Subsection (1)(k) within a specified period that may not exceed five years.

1551 (m) For investments authorized under Subsections 31A-18-105(13) and (14), the
1552 aggregate limitation is 10% of assets.

1553 (2) The limits on investments listed in Subsections (2)(a) through (e) apply to each
1554 insurer.

1555 (a) For all investments in a single entity, its affiliates, and subsidiaries, the limitation is
1556 10% of assets, except that the limit imposed by this Subsection (2)(a) does not apply to:

- 1557 (i) investments in the government of the United States or its agencies;
- 1558 (ii) investments guaranteed by the government of the United States; or
- 1559 (iii) investments in the insurer's insurance subsidiaries.

1560 (b) Investments authorized by Subsection 31A-18-105(3) shall comply with the
1561 requirements listed in this Subsection (2)(b).

1562 (i) (A) Except as provided in this Subsection (2)(b)(i), the amount of any loan secured
1563 by a mortgage or deed of trust may not exceed 80% of the value of the real estate interest
1564 mortgaged, unless the excess over 80%:

1565 (I) is insured or guaranteed by the United States, any state of the United States, any
1566 instrumentality, agency, or political subdivision of the United States, any of its states, or a
1567 combination of any of these; or

1568 (II) is insured by an insurer approved by the commissioner and qualified to insure that
1569 type of risk in this state.

1570 (B) Mortgage loans representing purchase money mortgages acquired from the sale of
1571 real estate are not subject to the limitation of Subsection (2)(b)(i)(A).

1572 (ii) Subject to Subsection (2)(b)(v), loans or evidences of debt secured by real estate
1573 may only be secured by:

1574 (A) unencumbered real property that is located in the United States; or

1575 (B) an unencumbered interest in real property that is located in the United States.

1576 (iii) Evidence of debt secured by first mortgages or deeds of trust upon leasehold
1577 estates shall require that:

1578 (A) the leasehold estate exceed the maturity of the loan by not less than 10% of the
1579 lease term;

1580 (B) the real estate not be otherwise encumbered; and

1581 (C) the mortgagee is entitled to be subrogated to all rights under the leasehold.

1582 (iv) Subject to Subsection (2)(b)(v):

1583 (A) participation in any mortgage loan must:

1584 (I) be senior to other participants; and

1585 (II) give the holder substantially the rights of a first mortgagee; or

1586 (B) the interest of the insurer in the evidence of indebtedness must be of equal priority,
1587 to the extent of the interest, with other interests in the real property.

1588 (v) A fee simple or leasehold real estate or any interest in either of them is not
1589 considered to be encumbered within the meaning of this chapter by reason of any prior
1590 mortgage or trust deed held or assumed by the insurer as a lien on the property, if:

1591 (A) the total of the mortgages or trust deeds held does not exceed 70% of the value of
1592 the property; and

1593 (B) the security created by the prior mortgage or trust deed is a first lien.

1594 (c) Loans permitted under Subsection 31A-18-105(4) may not exceed 75% of the
1595 market value of the collateral pledged, except that loans upon the pledge of United States
1596 government bonds may be equal to the market values of the pledge.

1597 (d) For an equity interest in a single real estate property authorized under Subsection

1598 31A-18-105(8), the limitation is 5% of assets.

1599 (e) Investments authorized under Subsection 31A-18-105(10) shall be in connection
1600 with potential changes in the value of specifically identified:

1601 (i) assets which the insurer owns; or

1602 (ii) liabilities which the insurer has incurred.

1603 (3) The restrictions on investments listed in Subsections (3)(a) and (b) apply to each
1604 insurer.

1605 (a) Except for financial futures contracts and real property acquired and occupied by
1606 the insurer for home and branch office purposes, a security or other investment is not eligible
1607 for purchase or acquisition under this chapter unless it is:

1608 (i) interest bearing or income paying; and

1609 (ii) not then in default.

1610 (b) A security is not eligible for purchase at a price above its market value.

1611 (4) Computation of percentage limitations under this section:

1612 (a) is based only upon the insurer's total qualified invested assets described in Section
1613 31A-18-105 and this section, as these assets are valued under Section 31A-17-401; and

1614 (b) excludes investments permitted under Section 31A-18-108 and Subsections
1615 31A-17-203(2) and (3).

1616 (5) An insurer may not make an investment that, because the investment does not
1617 conform to Section 31A-18-105 and this section, has the result of rendering the insurer, under
1618 Chapter 17, Part 6, Risk-Based Capital, subject to proceedings under Chapter [~~27, Insurers
1619 Rehabilitation and Liquidation~~] 27a, Insurer Receivership Act.

1620 (6) A pattern of persistent deviation from the investment diversification standards set
1621 forth in Section 31A-18-105 and this section may be grounds for a finding that the person or
1622 persons with authority to make the insurer's investment decisions are "incompetent" as used in
1623 Subsection 31A-5-410(3).

1624 (7) Section 77r-1 of the Secondary Mortgage Market Enhancement Act of 1984 does
1625 not apply to the purchase, holding, investment, or valuation limitations of assets of insurance

1626 companies subject to this chapter.

1627 Section 30. Section **31A-22-617** is amended to read:

1628 **31A-22-617. Preferred provider contract provisions.**

1629 Health insurance policies may provide for insureds to receive services or
1630 reimbursement under the policies in accordance with preferred health care provider contracts as
1631 follows:

1632 (1) Subject to restrictions under this section, any insurer or third party administrator
1633 may enter into contracts with health care providers as defined in Section 78-14-3 under which
1634 the health care providers agree to supply services, at prices specified in the contracts, to
1635 persons insured by an insurer.

1636 (a) (i) A health care provider contract may require the health care provider to accept the
1637 specified payment as payment in full, relinquishing the right to collect additional amounts from
1638 the insured person.

1639 (ii) In any dispute involving a provider's claim for reimbursement, the same shall be
1640 determined in accordance with applicable law, the provider contract, the subscriber contract,
1641 and the insurer's written payment policies in effect at the time services were rendered.

1642 (iii) If the parties are unable to resolve their dispute, the matter shall be subject to
1643 binding arbitration by a jointly selected arbitrator. Each party is to bear its own expense except
1644 the cost of the jointly selected arbitrator shall be equally shared. This Subsection (1)(a)(iii)
1645 does not apply to the claim of a general acute hospital to the extent it is inconsistent with the
1646 hospital's provider agreement.

1647 (iv) An organization may not penalize a provider solely for pursuing a claims dispute
1648 or otherwise demanding payment for a sum believed owing.

1649 (v) If an insurer permits another entity with which it does not share common ownership
1650 or control to use or otherwise lease one or more of the organization's networks of participating
1651 providers, the organization shall ensure, at a minimum, that the entity pays participating
1652 providers in accordance with the same fee schedule and general payment policies as the
1653 organization would for that network.

1654 (b) The insurance contract may reward the insured for selection of preferred health care
1655 providers by:

- 1656 (i) reducing premium rates;
- 1657 (ii) reducing deductibles;
- 1658 (iii) coinsurance;
- 1659 (iv) other copayments; or
- 1660 (v) any other reasonable manner.

1661 (c) If the insurer is a managed care organization, as defined in Subsection
1662 ~~[31A-27-311.5]~~ 31A-27a-403(1)(f):

1663 (i) the insurance contract and the health care provider contract shall provide that in the
1664 event the managed care organization becomes insolvent, the rehabilitator or liquidator may:

1665 (A) require the health care provider to continue to provide health care services under
1666 the contract until the earlier of:

1667 (I) 90 days after the date of the filing of a petition for rehabilitation or the petition for
1668 liquidation; or

1669 (II) the date the term of the contract ends; and

1670 (B) subject to Subsection (1)(c)(v), reduce the fees the provider is otherwise entitled to
1671 receive from the managed care organization during the time period described in Subsection
1672 (1)(c)(i)(A);

1673 (ii) the provider is required to:

1674 (A) accept the reduced payment under Subsection (1)(c)(i)(B) as payment in full; and

1675 (B) relinquish the right to collect additional amounts from the insolvent managed care
1676 organization's enrollee, as defined in Subsection ~~[31A-27-311.5]~~ 31A-27a-403(1)(b);

1677 (iii) if the contract between the health care provider and the managed care organization
1678 has not been reduced to writing, or the contract fails to contain the language required by
1679 Subsection (1)(c)(i), the provider may not collect or attempt to collect from the enrollee:

1680 (A) sums owed by the insolvent managed care organization; or

1681 (B) the amount of the regular fee reduction authorized under Subsection (1)(c)(i)(B);

1682 (iv) the following may not bill or maintain any action at law against an enrollee to
1683 collect sums owed by the insolvent managed care organization or the amount of the regular fee
1684 reduction authorized under Subsection (1)(c)(i)(B):

1685 (A) a provider;

1686 (B) an agent;

1687 (C) a trustee; or

1688 (D) an assignee of a person described in Subsections (1)(c)(iv)(A) through (C); and

1689 (v) notwithstanding Subsection (1)(c)(i):

1690 (A) a rehabilitator or liquidator may not reduce a fee by less than 75% of the provider's
1691 regular fee set forth in the contract; and

1692 (B) the enrollee shall continue to pay the copayments, deductibles, and other payments
1693 for services received from the provider that the enrollee was required to pay before the filing
1694 of:

1695 (I) a petition for rehabilitation; or

1696 (II) a petition for liquidation.

1697 (2) (a) Subject to Subsections (2)(b) through (2)(f), an insurer using preferred health
1698 care provider contracts shall pay for the services of health care providers not under the contract,
1699 unless the illnesses or injuries treated by the health care provider are not within the scope of the
1700 insurance contract. As used in this section, "class of health care providers" means all health
1701 care providers licensed or licensed and certified by the state within the same professional,
1702 trade, occupational, or facility licensure or licensure and certification category established
1703 pursuant to Titles 26, Utah Health Code and 58, Occupations and Professions.

1704 (b) When the insured receives services from a health care provider not under contract,
1705 the insurer shall reimburse the insured for at least 75% of the average amount paid by the
1706 insurer for comparable services of preferred health care providers who are members of the
1707 same class of health care providers. The commissioner may adopt a rule dealing with the
1708 determination of what constitutes 75% of the average amount paid by the insurer for
1709 comparable services of preferred health care providers who are members of the same class of

1710 health care providers.

1711 (c) When reimbursing for services of health care providers not under contract, the
1712 insurer may make direct payment to the insured.

1713 (d) Notwithstanding Subsection (2)(b), an insurer using preferred health care provider
1714 contracts may impose a deductible on coverage of health care providers not under contract.

1715 (e) When selecting health care providers with whom to contract under Subsection (1),
1716 an insurer may not unfairly discriminate between classes of health care providers, but may
1717 discriminate within a class of health care providers, subject to Subsection (7).

1718 (f) For purposes of this section, unfair discrimination between classes of health care
1719 providers shall include:

1720 (i) refusal to contract with class members in reasonable proportion to the number of
1721 insureds covered by the insurer and the expected demand for services from class members; and

1722 (ii) refusal to cover procedures for one class of providers that are:

1723 (A) commonly utilized by members of the class of health care providers for the
1724 treatment of illnesses, injuries, or conditions;

1725 (B) otherwise covered by the insurer; and

1726 (C) within the scope of practice of the class of health care providers.

1727 (3) Before the insured consents to the insurance contract, the insurer shall fully disclose
1728 to the insured that it has entered into preferred health care provider contracts. The insurer shall
1729 provide sufficient detail on the preferred health care provider contracts to permit the insured to
1730 agree to the terms of the insurance contract. The insurer shall provide at least the following
1731 information:

1732 (a) a list of the health care providers under contract and if requested their business
1733 locations and specialties;

1734 (b) a description of the insured benefits, including any deductibles, coinsurance, or
1735 other copayments;

1736 (c) a description of the quality assurance program required under Subsection (4); and

1737 (d) a description of the adverse benefit determination procedures required under

1738 Subsection (5).

1739 (4) (a) An insurer using preferred health care provider contracts shall maintain a quality
1740 assurance program for assuring that the care provided by the health care providers under
1741 contract meets prevailing standards in the state.

1742 (b) The commissioner in consultation with the executive director of the Department of
1743 Health may designate qualified persons to perform an audit of the quality assurance program.
1744 The auditors shall have full access to all records of the organization and its health care
1745 providers, including medical records of individual patients.

1746 (c) The information contained in the medical records of individual patients shall
1747 remain confidential. All information, interviews, reports, statements, memoranda, or other data
1748 furnished for purposes of the audit and any findings or conclusions of the auditors are
1749 privileged. The information is not subject to discovery, use, or receipt in evidence in any legal
1750 proceeding except hearings before the commissioner concerning alleged violations of this
1751 section.

1752 (5) An insurer using preferred health care provider contracts shall provide a reasonable
1753 procedure for resolving complaints and adverse benefit determinations initiated by the insureds
1754 and health care providers.

1755 (6) An insurer may not contract with a health care provider for treatment of illness or
1756 injury unless the health care provider is licensed to perform that treatment.

1757 (7) (a) A health care provider or insurer may not discriminate against a preferred health
1758 care provider for agreeing to a contract under Subsection (1).

1759 (b) Any health care provider licensed to treat any illness or injury within the scope of
1760 the health care provider's practice, who is willing and able to meet the terms and conditions
1761 established by the insurer for designation as a preferred health care provider, shall be able to
1762 apply for and receive the designation as a preferred health care provider. Contract terms and
1763 conditions may include reasonable limitations on the number of designated preferred health
1764 care providers based upon substantial objective and economic grounds, or expected use of
1765 particular services based upon prior provider-patient profiles.

1766 (8) Upon the written request of a provider excluded from a provider contract, the
1767 commissioner may hold a hearing to determine if the insurer's exclusion of the provider is
1768 based on the criteria set forth in Subsection (7)(b).

1769 (9) Insurers are subject to the provisions of Sections 31A-22-613.5, 31A-22-614.5, and
1770 31A-22-618.

1771 (10) Nothing in this section is to be construed as to require an insurer to offer a certain
1772 benefit or service as part of a health benefit plan.

1773 (11) This section does not apply to catastrophic mental health coverage provided in
1774 accordance with Section 31A-22-625.

1775 Section 31. Section **31A-23a-704** is amended to read:

1776 **31A-23a-704. Penalties.**

1777 (1) (a) If, after notice and opportunity to be heard, the commissioner finds that the
1778 controlling producer or any other person has not materially complied with this part, or any rule
1779 made or order issued under the part, the commissioner may order the controlling producer to
1780 cease placing business with the controlled insurer.

1781 (b) If the commissioner finds that because of the material noncompliance that the
1782 controlled insurer or any policyholder of the controlled insurer has suffered any loss or damage,
1783 the commissioner may maintain a civil action or may intervene in an action brought by or on
1784 behalf of the insurer or policyholder for recovery of compensatory damages for the benefit of
1785 the insurer or policyholder or ~~he~~ the commissioner may seek other appropriate relief.

1786 (2) If an order for liquidation or rehabilitation of the controlled insurer has been
1787 entered pursuant to [~~Title 31A, Chapter 27, Insurers Rehabilitation and Liquidation~~] Chapter
1788 27a, Insurer Receivership Act, and the receiver appointed under that order believes that the
1789 controlling producer or any other person has not materially complied with this part, or any rule
1790 made or order issued under this part, and the insurer suffered any loss or damage as a result of
1791 the noncompliance, the receiver may maintain a civil action for recovery of damages or other
1792 appropriate sanctions for the benefit of the insurer.

1793 (3) Nothing in this section affects the right of the commissioner to impose any other

1794 penalties provided for in this title.

1795 (4) Nothing contained in this section is intended to or shall in any manner alter or
1796 affect the rights of policyholders, claimants, creditors, or other third parties.

1797 Section 32. Section **31A-27-501**, which is renumbered from Section 31A-27-101 is
1798 renumbered and amended to read:

1799 **CHAPTER 27. DELINQUENCY ADMINISTRATIVE ACTION PROVISIONS**

1800 **Part 5. Administrative Actions**

1801 ~~[31A-27-101].~~ **31A-27-501. Title -- Construction -- Commissioner's powers.**

1802 (1) This chapter is known as the "Delinquency Administrative Action Provisions."

1803 ~~[(+)]~~ (2) The proceedings authorized by this [chapter] part may be applied to:

1804 (a) all insurers and reinsurers;

1805 (i) who are doing, or have done, an insurance business in this state[-]; and

1806 (ii) against whom claims arising from that business may exist [now or in the future];

1807 (b) all insurers who ~~[give]~~ have the appearance of or claim they do an insurance
1808 business in this state;

1809 (c) all insurers who have insureds resident in this state; and

1810 (d) all other persons organized or in the process of organizing to do an insurance
1811 business as an insurer in this state.

1812 ~~[(2) The purpose of this chapter is the protection of]~~

1813 (3) This part shall be liberally construed to protect the interests of insureds, creditors,
1814 and the public generally, with minimum interference with the normal prerogatives of owners,
1815 through:

1816 (a) early detection of any potentially dangerous condition in an insurer~~[-and];~~

1817 (b) prompt application of appropriate regulatory corrective measures; and

1818 ~~[(b) improved methods for rehabilitating insurers, by enlisting the advice and~~
1819 ~~management expertise of the insurance industry;]~~

1820 ~~[(c) enhanced efficiency and economy of liquidation, through clarification and~~
1821 ~~specification of the law, to minimize legal uncertainty and litigation;]~~

1822 ~~[(d) equitable apportionment of any unavoidable loss;]~~
 1823 ~~[(e) lessening the problems of interstate rehabilitation and liquidation by facilitating~~
 1824 ~~cooperation between states in the liquidation process, and by extending the scope of personal~~
 1825 ~~jurisdiction over debtors of the insurer outside this state; and]~~

1826 ~~[(f)]~~ (c) regulation of the insurance business by law relating to ~~[delinquency~~
 1827 ~~procedures]~~ insolvency of insurers and by substantive rules on the entire insurance business.

1828 ~~[(3)]~~ (4) This ~~[chapter shall be liberally construed to effect the purpose stated in~~
 1829 ~~Subsection (2). It]~~ part does not limit the powers granted the commissioner by other provisions
 1830 of law.

1831 Section 33. Section **31A-27-502** is enacted to read:

1832 **31A-27-502. Definitions.**

1833 As used in this part, "record" is as defined in Section 31A-27a-102.

1834 Section 34. Section **31A-27-503**, which is renumbered from Section 31A-27-201 is
 1835 renumbered and amended to read:

1836 ~~[31A-27-201].~~ **31A-27-503. Commissioner's administrative actions.**

1837 (1) (a) ~~[Whenever]~~ The commissioner may take an action described in Subsection
 1838 (1)(b) whenever the commissioner has reasonable cause to believe, and determines after a
 1839 hearing that ~~[any]~~ an insurer:

1840 (i) has committed or engaged in[;] an act, practice, or transaction that would subject the
 1841 insurer to a formal delinquency proceeding under Chapter 27a, Insurer Receivership Act;

1842 (ii) is committing or engaging in[,-or] an act, practice, or transaction that would subject
 1843 the insurer to a formal delinquency proceeding under Chapter 27a, Insurer Receivership Act;

1844 (iii) is about to commit or engage in [any] an act, practice, or transaction[,-or] that
 1845 would subject the insurer to a formal delinquency proceeding under Chapter 27a, Insurer
 1846 Receivership Act; or

1847 (iv) is in or is about to be in a condition that would subject [it] the insurer to a formal
 1848 delinquency [proceedings] proceeding under [this chapter, he] Chapter 27a, Insurer
 1849 Receivership Act.

1850 (b) If the conditions of Subsection (1)(a) are met, the commissioner may make and
 1851 serve upon the insurer and any other persons whose action or forbearance from action is
 1852 reasonably necessary, those orders, other than a seizure ~~[orders]~~ order under Section
 1853 ~~[31A-27-202]~~ 31A-27a-201, that are reasonably necessary to correct, eliminate, or remedy
 1854 ~~[that]~~ the act, practice, transaction, or condition described in Subsection (1)(a).

1855 ~~[(b)]~~ (c) The commissioner may issue an order for the insurer to submit to supervision
 1856 by a supervisor appointed by the commissioner until the act, practice, transaction, or condition
 1857 that ~~[was]~~ is the ground for the order has been halted or corrected.

1858 (2) (a) [H] The commissioner may make and serve an order issued under Subsection
 1859 (1) without notice and before a hearing if:

1860 (i) the conditions of Subsection (1) are satisfied~~[, and if];~~ and

1861 (ii) it appears to the commissioner that irreparable harm to the property or business of
 1862 the insurer or to the interests of its policyholders, creditors, or the public may occur unless the
 1863 commissioner issues, with immediate effect, the ~~[orders described in Subsection (1), the~~
 1864 ~~commissioner may make and serve those orders without notice and before a hearing]~~ order.

1865 (b) The commissioner shall serve the insurer with ~~[the orders]~~ an order described in
 1866 this Subsection (2) and a notice of agency action, containing a statement of the reasons why
 1867 irreparable harm is threatened unless the order is issued with immediate effect.

1868 (3) (a) If the commissioner issues an order for supervision of an insurer under
 1869 Subsection (1) or (2), ~~[he]~~ the commissioner shall:

1870 (i) notify the insurer that ~~[it]~~ the insurer is under the supervision of the commissioner;
 1871 and ~~[shall]~~

1872 (ii) explain the reasons for that supervision.

1873 (b) During the period of supervision, the commissioner may prohibit the insurer from
 1874 doing any of the following, without the prior approval of the commissioner or ~~[his]~~ a
 1875 supervisor appointed by the commissioner:

1876 ~~[(a)]~~ (i) transferring any of its assets or its business in force;

1877 ~~[(b)]~~ (ii) withdrawing funds from any of its bank accounts;

1878 ~~[(e)]~~ (iii) lending any of its funds;
 1879 ~~[(d)]~~ (iv) investing any of its funds;
 1880 ~~[(e)]~~ (v) transferring any of its property;
 1881 ~~[(f)]~~ (vi) incurring any debt, obligation, or liability other than in the ordinary and usual
 1882 course of business; or
 1883 ~~[(g)]~~ (vii) entering into any new reinsurance contract or treaty.

1884 (4) (a) If the commissioner issues a summary order before a hearing under Subsection
 1885 (2), the insurer may waive the commissioner's hearing and apply for immediate judicial relief
 1886 by any remedy afforded by law, without first exhausting ~~[its]~~ the insurer's administrative
 1887 remedies.

1888 (b) If the insurer has a hearing before the commissioner, the insurer and any person
 1889 whose interests are substantially affected are entitled to judicial review of any order issued by
 1890 the commissioner.

1891 Section 35. Section **31A-27-504**, which is renumbered from Section 31A-27-203 is
 1892 renumbered and amended to read:

1893 ~~[31A-27-203].~~ **31A-27-504. Conduct of hearings.**

1894 (1) The commissioner shall hold ~~[all hearings in summary proceedings]~~ a hearing
 1895 conducted under Section 31A-27-503 privately unless the insurer requests a public hearing.

1896 ~~[(2) (a) The court may hold all hearings in summary proceedings and judicial reviews~~
 1897 ~~of those proceedings privately, in chambers.]~~

1898 ~~[(b) The court shall hold all proceedings under Subsection (2) (a) privately, on the~~
 1899 ~~request of the insurer against whom the proceedings are brought.]~~

1900 ~~[(3) In all summary proceedings and judicial reviews of them, all]~~

1901 (2) All records of the insurer, other documents, and all ~~[Insurance]~~ department files[;
 1902 ~~court records,]~~ and papers, so far as they pertain to or are a part of the record of ~~[the summary~~
 1903 ~~proceedings]~~ a hearing conducted under Section 31A-27-503, shall be kept confidential[-];

1904 (a) except as is necessary to obtain compliance with ~~[the summary proceedings, unless~~
 1905 ~~the court, after hearing arguments from the parties in chambers, orders otherwise, or]~~ a hearing

1906 conducted under Section 31A-27-503; or

1907 (b) unless the insurer requests that the matter be made public. [Until this type of court
1908 order is issued, all papers filed with the clerk of the court shall be held by the clerk in a
1909 confidential file.]

1910 [(4) If, at any time, it appears to the court that any person whose interest is or will be
1911 substantially affected by an order did not appear at the hearing and has not been served, the
1912 court may order that notice be given and the proceedings be adjourned to give the person
1913 opportunity to appear on just terms.]

1914 [(5)] (3) Any person having possession or custody of and refusing to deliver any of the
1915 [property, books, accounts, documents, or other] records of an insurer against which [a seizure
1916 order or a summary order has been] an order is issued by the commissioner [or by the court] is
1917 in accordance with a hearing conducted under Section 31A-27-503 subject to Section
1918 31A-2-308.

1919 Section 36. Section **31A-27a-101** is enacted to read:

1920 **CHAPTER 27a. INSURER RECEIVERSHIP ACT**

1921 **Part 1. General Provisions**

1922 **31A-27a-101. Title -- Construction -- Commissioner's powers.**

1923 (1) This chapter is known as the "Insurer Receivership Act."

1924 (2) The proceedings authorized by this chapter may be applied to:

1925 (a) all insurers and reinsurers;

1926 (i) who are doing, or have done, an insurance business in this state; and

1927 (ii) against whom claims arising from that business may exist;

1928 (b) all insurers who have the appearance of or claim they do an insurance business in
1929 this state;

1930 (c) all insurers who have insureds resident in this state; and

1931 (d) all other persons organized or in the process of organizing to do an insurance
1932 business as an insurer in this state.

1933 (3) This chapter shall be liberally construed to protect the interests of insureds,

1934 claimants, creditors, and the public generally through:
1935 (a) early detection of any potentially hazardous condition in an insurer;
1936 (b) prompt application of appropriate corrective measures;
1937 (c) improved methods for conserving and rehabilitating insurers;
1938 (d) enhanced efficiency and economy of liquidation, through clarification of the law, to
1939 minimize legal uncertainty and litigation;
1940 (e) apportionment of any unavoidable loss in accordance with the statutory priorities
1941 set out in this chapter;
1942 (f) lessening the problems of interstate receivership by:
1943 (i) facilitating cooperation among states in delinquency proceedings; and
1944 (ii) extending the scope of personal jurisdiction over debtors of the insurer outside this
1945 state;
1946 (g) regulation of the business of insurance by the impact of the law relating to
1947 delinquency procedures and by substantive rules; and
1948 (h) providing for a comprehensive scheme for the receivership of insurance companies
1949 and those subject to this chapter as part of the regulation of the business of insurance in this
1950 state.
1951 (4) A proceeding in the case of insurer insolvency and delinquency are integral aspects
1952 of the business of insurance and are of vital public interest and concern.
1953 (5) This chapter does not limit the powers granted the commissioner by other
1954 provisions of law.
1955 (6) All powers and authority of a receiver under this chapter are:
1956 (a) cumulative; and
1957 (b) in addition to any power or authority available to a receiver under a law other than
1958 this chapter.
1959 Section 37. Section **31A-27a-102** is enacted to read:
1960 **31A-27a-102. Definitions.**
1961 As used in this chapter:

1962 (1) "Admitted assets" is as defined by and is measured in accordance with the National
1963 Association of Insurance Commissioner's Statements of Statutory Accounting Principles, as
1964 incorporated in this state by rules made by the department in accordance with Title 63, Chapter
1965 46a, Utah Administrative Rulemaking Act, for the purposes of Subsection 31A-4-113(1)(b)(ii).

1966 (2) "Affected guaranty association" means a guaranty association that is or may
1967 become liable for payment of a covered claim.

1968 (3) "Affiliate" is as defined in Section 31A-1-301.

1969 (4) Notwithstanding Section 31A-1-301, "alien insurer" means an insurer incorporated
1970 or organized under the laws of a jurisdiction that is not a state.

1971 (5) Notwithstanding Section 31A-1-301, "claimant" or "creditor" means a person
1972 having a claim against an insurer whether the claim is:

1973 (a) matured or not matured;

1974 (b) liquidated or unliquidated;

1975 (c) secured or unsecured;

1976 (d) absolute; or

1977 (e) fixed or contingent.

1978 (6) "Commissioner" is as defined in Section 31A-1-301.

1979 (7) "Commodity contract" means:

1980 (a) a contract for the purchase or sale of a commodity for future delivery on, or subject
1981 to the rules of:

1982 (i) a board of trade or contract market under the Commodity Exchange Act, 7 U.S.C.
1983 Sec. 1 et seq.; or

1984 (ii) a board of trade outside the United States;

1985 (b) an agreement that is:

1986 (i) subject to regulation under Section 19 of the Commodity Exchange Act, 7 U.S.C.
1987 Sec. 1 et seq.; and

1988 (ii) commonly known to the commodities trade as:

1989 (A) a margin account;

- 1990 (B) a margin contract;
- 1991 (C) a leverage account; or
- 1992 (D) a leverage contract;
- 1993 (c) an agreement or transaction that is:
- 1994 (i) subject to regulation under Section 4c(b) of the Commodity Exchange Act, 7 U.S.C.
- 1995 Sec. 1 et seq.; and
- 1996 (ii) commonly known to the commodities trade as a commodity option;
- 1997 (d) a combination of the agreements or transactions referred to in this Subsection (7);
- 1998 or
- 1999 (e) an option to enter into an agreement or transaction referred to in this Subsection (7).
- 2000 (8) "Control" is as defined in Section 31A-1-301.
- 2001 (9) "Delinquency proceeding" means a:
- 2002 (a) proceeding instituted against an insurer for the purpose of rehabilitating or
- 2003 liquidating the insurer; and
- 2004 (b) summary proceeding under Section 31A-27a-201.
- 2005 (10) "Department" is as defined in Section 31A-1-301 unless the context requires
- 2006 otherwise.
- 2007 (11) "Doing business," "doing insurance business," and "business of insurance"
- 2008 includes any of the following acts, whether effected by mail, electronic means, or otherwise:
- 2009 (a) issuing or delivering a contract, certificate, or binder relating to insurance or
- 2010 annuities:
- 2011 (i) to a person who is resident in this state; or
- 2012 (ii) covering a risk located in this state;
- 2013 (b) soliciting an application for the contract, certificate, or binder described in
- 2014 Subsection (11)(a);
- 2015 (c) negotiating preliminary to the execution of the contract, certificate, or binder
- 2016 described in Subsection (11)(a);
- 2017 (d) collecting premiums, membership fees, assessments, or other consideration for the

2018 contract, certificate, or binder described in Subsection (11)(a);
2019 (e) transacting matters:
2020 (i) subsequent to execution of the contract, certificate, or binder described in
2021 Subsection (11)(a); and
2022 (ii) arising out of the contract, certificate, or binder described in Subsection (11)(a);
2023 (f) operating as an insurer under a license or certificate of authority issued by the
2024 department; or
2025 (g) engaging in an act identified in Chapter 15, Unauthorized Insurers, Surplus Lines,
2026 and Risk Retention Groups.
2027 (12) Notwithstanding Section 31A-1-301, "domiciliary state" means the state in which
2028 an insurer is incorporated or organized, except that "domiciliary state" means:
2029 (a) in the case of an alien insurer, its state of entry; or
2030 (b) in the case of a risk retention group, the state in which the risk retention group is
2031 chartered as contemplated in the Liability Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.
2032 (13) "Estate" has the same meaning as "property of the insurer" as defined in
2033 Subsection (30).
2034 (14) "Fair consideration" is given for property or an obligation:
2035 (a) when in exchange for the property or obligation, as a fair equivalent for it, and in
2036 good faith:
2037 (i) property is conveyed;
2038 (ii) services are rendered;
2039 (iii) an obligation is incurred; or
2040 (iv) an antecedent debt is satisfied; or
2041 (b) when the property or obligation is received in good faith to secure a present
2042 advance or an antecedent debt in amount not disproportionately small compared to the value of
2043 the property or obligation obtained.
2044 (15) Notwithstanding Section 31A-1-301, "foreign insurer" means an insurer domiciled
2045 in another state.

- 2046 (16) "Formal delinquency proceeding" means a rehabilitation or liquidation
2047 proceeding.
- 2048 (17) "Forward contract" is as defined in the Federal Deposit Insurance Act, 12 U.S.C.
2049 Sec. 1821(e)(8)(D).
- 2050 (18) (a) "General assets" include all property of the estate that is not:
2051 (i) subject to a properly perfected secured claim;
2052 (ii) subject to a valid and existing express trust for the security or benefit of a specified
2053 person or class of person; or
2054 (iii) required by the insurance laws of this state or any other state to be held for the
2055 benefit of a specified person or class of person.
- 2056 (b) "General assets" include all property of the estate or its proceeds in excess of the
2057 amount necessary to discharge a claim described in Subsection (18)(a).
- 2058 (19) "Good faith" means honesty in fact and intention, and in regard to Part 5, Asset
2059 Recovery, also requires the absence of:
- 2060 (a) information that would lead a reasonable person in the same position to know that
2061 the insurer is financially impaired or insolvent; and
- 2062 (b) knowledge regarding the imminence or pendency of a delinquency proceeding
2063 against the insurer.
- 2064 (20) "Guaranty association" means:
2065 (a) a mechanism mandated by Chapter 28, Guaranty Associations; or
2066 (b) a similar mechanism in another state that is created for the payment of claims or
2067 continuation of policy obligations of a financially impaired or insolvent insurer.
- 2068 (21) "Impaired" means that an insurer:
2069 (a) does not have admitted assets at least equal to the sum of:
2070 (i) all its liabilities; and
2071 (ii) the minimum surplus required to be maintained by Section 31A-5-211 or
2072 31A-8-209; or
2073 (b) has a total adjusted capital that is less than its authorized control level RBC, as

2074 defined in Section 31A-17-601.

2075 (22) "Insolvency" or "insolvent" means that an insurer:

2076 (a) is unable to pay its obligations when they are due;

2077 (b) does not have admitted assets at least equal to all of its liabilities; or

2078 (c) has a total adjusted capital that is less than its mandatory control level RBC, as

2079 defined in Section 31A-17-601.

2080 (23) Notwithstanding Section 31A-1-301, "insurer" means a person who:

2081 (a) is doing, has done, purports to do, or is licensed to do the business of insurance;

2082 (b) is or has been subject to the authority of, or to rehabilitation, liquidation,

2083 reorganization, supervision, or conservation by an insurance commissioner; or

2084 (c) is included under Section 31A-27a-104.

2085 (24) "Liabilities" is as defined by and is measured in accordance with the National

2086 Association of Insurance Commissioner's Statements of Statutory Accounting Principles, as

2087 incorporated in this state by rules made by the department in accordance with Title 63, Chapter

2088 46a, Utah Administrative Rulemaking Act, for the purposes of Subsection 31A-4-113(1)(b)(ii).

2089 (25) (a) Subject to Subsection (21)(b), "netting agreement" means:

2090 (i) a contract or agreement that:

2091 (A) documents one or more transactions between the parties to the agreement for or

2092 involving one or more qualified financial contracts; and

2093 (B) provides for the netting, liquidation, setoff, termination, acceleration, or close out

2094 under or in connection with:

2095 (I) one or more qualified financial contracts; or

2096 (II) present or future payment or delivery obligations or payment or delivery

2097 entitlements under the agreement, including liquidation or close-out values relating to the

2098 obligations or entitlements, among the parties to the netting agreement;

2099 (ii) a master agreement or bridge agreement for one or more master agreements

2100 described in Subsection (25)(a)(i); or

2101 (iii) any of the following related to a contract or agreement described in Subsection

2102 (25)(a)(i) or (ii):
2103 (A) a security agreement;
2104 (B) a security arrangement;
2105 (C) other credit enhancement or guarantee; or
2106 (D) a reimbursement obligation.
2107 (b) If a contract or agreement described in Subsection (25)(a)(i) or (ii) relates to an
2108 agreement or transaction that is not a qualified financial contract, the contract or agreement
2109 described in Subsection (25)(a)(i) or (ii) is considered a netting agreement only with respect to
2110 an agreement or transaction that is a qualified financial contract.
2111 (c) "Netting agreement" includes:
2112 (i) a term or condition incorporated by reference in the contract or agreement described
2113 in Subsection (25)(a); or
2114 (ii) a master agreement described in Subsection (25)(a).
2115 (d) A master agreement described in Subsection (25)(a), together with all schedules,
2116 confirmations, definitions, and addenda to that master agreement and transactions under any of
2117 the items described in this Subsection (25)(d), are treated as one netting agreement.
2118 (26) (a) "New value" means:
2119 (i) money;
2120 (ii) money's worth in goods, services, or new credit; or
2121 (iii) release by a transferee of property previously transferred to the transferee in a
2122 transaction that is neither void nor voidable by the insurer or the receiver under any applicable
2123 law, including proceeds of the property.
2124 (b) "New value" does not include an obligation substituted for an existing obligation.
2125 (27) "Party in interest" means:
2126 (a) the commissioner;
2127 (b) a nondomiciliary commissioner in whose state the insurer has outstanding claims
2128 liabilities;
2129 (c) an affected guaranty association; and

2130 (d) the following parties if the party files a request with the receivership court for
2131 inclusion as a party in interest and to be on the service list:

2132 (i) an insurer that ceded to or assumed business from the insurer;

2133 (ii) a policyholder;

2134 (iii) a third party claimant;

2135 (iv) a creditor;

2136 (v) a 10% or greater equity security holder in the insolvent insurer; and

2137 (vi) a person, including an indenture trustee, with a financial or regulatory interest in
2138 the delinquency proceeding.

2139 (28) (a) Notwithstanding Section 31A-1-301, "policy" means, notwithstanding what it
2140 is called:

2141 (i) a written contract of insurance;

2142 (ii) a written agreement for or affecting insurance; or

2143 (iii) a certificate of a written contract or agreement described in this Subsection (28)(a).

2144 (b) "Policy" includes all clauses, riders, endorsements, and papers that are a part of a
2145 policy.

2146 (c) "Policy" does not include a contract of reinsurance.

2147 (29) "Preference" means a transfer of property of an insurer to or for the benefit of a
2148 creditor:

2149 (a) for or on account of an antecedent debt, made or allowed by the insurer within one
2150 year before the day on which a successful petition for rehabilitation or liquidation is filed under
2151 this chapter;

2152 (b) the effect of which transfer may enable the creditor to obtain a greater percentage of
2153 the creditor's debt than another creditor of the same class would receive; and

2154 (c) if a liquidation order is entered while the insurer is already subject to a
2155 rehabilitation order and the transfer otherwise qualifies, that is made or allowed within the
2156 shorter of:

2157 (i) one year before the day on which a successful petition for rehabilitation is filed; or

2158 (ii) two years before the day on which a successful petition for liquidation is filed.
2159 (30) "Property of the insurer" or "property of the estate" includes:
2160 (a) a right, title, or interest of the insurer in property:
2161 (i) whether:
2162 (A) legal or equitable;
2163 (B) tangible or intangible; or
2164 (C) choate or inchoate; and
2165 (ii) including choses in action, contract rights, and any other interest recognized under
2166 the laws of this state;
2167 (b) entitlements that exist before the entry of an order of rehabilitation or liquidation;
2168 (c) entitlements that may arise by operation of this chapter or other provisions of law
2169 allowing the receiver to avoid prior transfers or assert other rights; and
2170 (d) (i) records or data that is otherwise the property of the insurer; and
2171 (ii) records or data similar to those described in Subsection (30)(d)(i) that are within
2172 the possession, custody, or control of a managing general agent, a third party administrator, a
2173 management company, a data processing company, an accountant, an attorney, an affiliate, or
2174 other person.
2175 (31) Subject to Subsection 31A-27a-611(10), "qualified financial contract" means any
2176 of the following:
2177 (a) a commodity contract;
2178 (b) a forward contract;
2179 (c) a repurchase agreement;
2180 (d) a securities contract;
2181 (e) a swap agreement; or
2182 (f) any similar agreement that the commissioner determines by rule or order to be a
2183 qualified financial contract for purposes of this chapter.
2184 (32) As the context requires, "receiver" means a rehabilitator, liquidator, or ancillary
2185 receiver.

2186 (33) As the context requires, "receivership" means a rehabilitation, liquidation, or
2187 ancillary receivership.

2188 (34) Unless the context requires otherwise, "receivership court" refers to the court in
2189 which a delinquency proceeding is pending.

2190 (35) "Reciprocal state" means any state other than this state that:

2191 (a) enforces a law substantially similar to this chapter;

2192 (b) requires the commissioner to be the receiver of a delinquent insurer; and

2193 (c) has laws for the avoidance of fraudulent conveyances and preferential transfers by
2194 the receiver of a delinquent insurer.

2195 (36) "Record," when used as a noun, means any information or data, in whatever form
2196 maintained, including:

2197 (a) a book;

2198 (b) a document;

2199 (c) a paper;

2200 (d) a file;

2201 (e) an application file;

2202 (f) a policyholder list;

2203 (g) policy information;

2204 (h) a claim or claim file;

2205 (i) an account;

2206 (j) a voucher;

2207 (k) a litigation file;

2208 (l) a premium record;

2209 (m) a rate book;

2210 (n) an underwriting manual;

2211 (o) a personnel record;

2212 (p) a financial record; or

2213 (q) other material.

2214 (37) "Reinsurance" means a transaction or contract under which an assuming insurer
2215 agrees to indemnify a ceding insurer against all, or a part, of any loss that the ceding insurer
2216 may sustain under the one or more policies that the ceding insurer issues or will issue.

2217 (38) "Repurchase agreement" is as defined in the Federal Deposit Insurance Act, 12
2218 U.S.C. Sec. 1821(e)(8)(D).

2219 (39) (a) "Secured claim" means, subject to Subsection (39)(b):

2220 (i) a claim secured by an asset that is not a general asset; or

2221 (ii) the right to set off as provided in Section 31A-27a-510.

2222 (b) "Secured claim" does not include:

2223 (i) a special deposit claim;

2224 (ii) a claim based on mere possession; or

2225 (iii) a claim arising from a constructive or resulting trust.

2226 (40) "Securities contract" is as defined in the Federal Deposit Insurance Act, 12 U.S.C.
2227 Sec. 1821(e)(8)(D).

2228 (41) "Special deposit" means a deposit established pursuant to statute for the security
2229 or benefit of a limited class or classes of persons.

2230 (42) (a) Subject to Subsection (42)(b), "special deposit claim" means a claim secured
2231 by a special deposit.

2232 (b) "Special deposit claim" does not include a claim against the general assets of the
2233 insurer.

2234 (43) "State" means a state, district, or territory of the United States.

2235 (44) "Subsidiary" is as defined in Section 31A-1-301.

2236 (45) "Swap agreement" is as defined in the Federal Deposit Insurance Act, 12 U.S.C.
2237 Sec. 1821(e)(8)(D).

2238 (46) (a) "Transfer" includes the sale and every other and different mode of disposing of
2239 or parting with property or with an interest in property, whether:

2240 (i) directly or indirectly;

2241 (ii) absolutely or conditionally;

2242 (iii) voluntarily or involuntarily; or
2243 (iv) by or without judicial proceedings.
2244 (b) An interest in property includes:
2245 (i) a set off;
2246 (ii) having possession of the property; or
2247 (iii) fixing a lien on the property or on an interest in the property.
2248 (c) The retention of a security title in property delivered to an insurer and foreclosure
2249 of the insurer's equity of redemption is considered a transfer suffered by the insurer.
2250 (47) Notwithstanding Section 31A-1-301, "unauthorized insurer" means an insurer
2251 transacting the business of insurance in this state that has not received a certificate of authority
2252 from this state, or some other type of authority that allows for the transaction of the business of
2253 insurance in this state.
2254 Section 38. Section **31A-27a-103** is enacted to read:
2255 **31A-27a-103. Insurer receivership laws.**
2256 (1) The state's insurer receivership laws consists of:
2257 (a) this chapter; and
2258 (b) Chapter 28, Guaranty Associations.
2259 (2) The laws listed in Subsection (1) shall be construed together in a manner that is
2260 consistent.
2261 Section 39. Section **31A-27a-104** is enacted to read:
2262 **31A-27a-104. Persons covered.**
2263 (1) This chapter applies to:
2264 (a) an insurer who:
2265 (i) is doing, or has done, an insurance business in this state; and
2266 (ii) against whom a claim arising from that business may exist;
2267 (b) a person subject to examination by the commissioner;
2268 (c) an insurer who purports to do an insurance business in this state;
2269 (d) an insurer who has an insured who is resident in this state; and

2270 (e) in addition to Subsections (1)(a) through (d), a person doing business as follows:

2271 (i) under Chapter 6a, Service Contracts;

2272 (ii) under Chapter 7, Nonprofit Health Service Insurance Corporations;

2273 (iii) under Chapter 8a, Health Discount Program Consumer Protection Act;

2274 (iv) under Chapter 9, Insurance Fraternal;

2275 (v) under Chapter 11, Motor Clubs;

2276 (vi) under Chapter 13, Employee Welfare Funds and Plans;

2277 (vii) under Chapter 15, Unauthorized Insurers, Surplus Lines, and Risk Retention

2278 Groups;

2279 (viii) as a bail bond surety company under Chapter 35, Bail Bond Act;

2280 (ix) under Chapter 37, Captive Insurance Companies Act;

2281 (x) a title insurance company;

2282 (xi) a prepaid health care delivery plan; and

2283 (xii) a person not described in Subsections (1)(e)(i) through (xi) that is organized or

2284 doing insurance business, or in the process of organizing with the intent to do insurance

2285 business in this state.

2286 (2) Notwithstanding Sections 31A-1-301 and 31A-27a-102, this chapter does not apply

2287 to a person licensed by the insurance commissioner as one or more of the following in this state

2288 unless the person engages in the business of insurance as an insurer:

2289 (a) an insurance agency;

2290 (b) an insurance producer;

2291 (c) a limited line producer;

2292 (d) a customer service representative;

2293 (e) an insurance consultant;

2294 (f) a managing general agent;

2295 (g) reinsurance intermediary;

2296 (h) a title insurance producer;

2297 (i) a third party administrator;

2298 (j) an insurance adjustor;
2299 (k) a provider of viatical settlements; or
2300 (l) a producer of viatical settlements.
2301 Section 40. Section **31A-27a-105** is enacted to read:
2302 **31A-27a-105. Jurisdiction -- Venue.**
2303 (1) (a) A delinquency proceeding under this chapter may not be commenced by a
2304 person other than the commissioner of this state.
2305 (b) No court has jurisdiction to entertain, hear, or determine a delinquency proceeding
2306 commenced by any person other than the commissioner of this state.
2307 (2) Other than in accordance with this chapter, a court of this state has no jurisdiction
2308 to entertain, hear, or determine any complaint:
2309 (a) requesting the liquidation, rehabilitation, seizure, sequestration, or receivership of
2310 an insurer; or
2311 (b) requesting a stay, an injunction, a restraining order, or other relief preliminary to,
2312 incidental to, or relating to a delinquency proceeding.
2313 (3) (a) The receivership court, as of the commencement of a delinquency proceeding
2314 under this chapter, has exclusive jurisdiction of all property of the insurer, wherever located,
2315 including property located outside the territorial limits of the state.
2316 (b) The receivership court has original but not exclusive jurisdiction of all civil
2317 proceedings arising:
2318 (i) under this chapter; or
2319 (ii) in or related to a delinquency proceeding under this chapter.
2320 (4) In addition to other grounds for jurisdiction provided by the law of this state, a
2321 court of this state having jurisdiction of the subject matter has jurisdiction over a person served
2322 pursuant to the Utah Rules of Civil Procedure or other applicable provisions of law in an action
2323 brought by the receiver if the person served:
2324 (a) in an action resulting from or incident to a relationship with the insurer described in
2325 this Subsection (4)(a), is or has been an agent, broker, or other person who has at any time:

2326 (i) written a policy of insurance for an insurer against which a delinquency proceeding
2327 is instituted; or

2328 (ii) acted in any manner whatsoever on behalf of an insurer against which a
2329 delinquency proceeding is instituted;

2330 (b) in an action on or incident to a reinsurance contract described in this Subsection
2331 (4)(b):

2332 (i) is or has been an insurer or reinsurer who has at any time entered into the contract of
2333 reinsurance with an insurer against which a delinquency proceeding is instituted; or

2334 (ii) is an intermediary, agent, or broker of or for the reinsurer, or with respect to the
2335 contract;

2336 (c) in an action resulting from or incident to a relationship with the insurer described in
2337 this Subsection (4)(c), is or has been an officer, director, manager, trustee, organizer, promoter,
2338 or other person in a position of comparable authority or influence over an insurer against which
2339 a delinquency proceeding is instituted;

2340 (d) in an action concerning assets described in this Subsection (4)(d), is or was at the
2341 time of the institution of the delinquency proceeding against the insurer, holding assets in
2342 which the receiver claims an interest on behalf of the insurer; or

2343 (e) in any action on or incident to the obligation described in this Subsection (4)(e), is
2344 obligated to the insurer in any way whatsoever.

2345 (5) (a) Subject to Subsection (5)(b), service shall be made upon the person named in
2346 the petition in accordance with the Utah Rules of Civil Procedure.

2347 (b) In lieu of service under Subsection (5)(a), upon application to the receivership
2348 court, service may be made in such a manner as the receivership court directs whenever it is
2349 satisfactorily shown by the commissioner's affidavit:

2350 (i) in the case of a corporation, that the officers of the corporation cannot be served
2351 because they have departed from the state or have otherwise concealed themselves with intent
2352 to avoid service;

2353 (ii) in the case of an insurer whose business is conducted, at least in part, by an

2354 attorney-in-fact, managing general agent, or other similar entity including a reciprocal, Lloyd's
2355 association, or interinsurance exchange, that the individual attorney-in-fact, managing general
2356 agent, or other entity, or its officers of the corporate attorney-in-fact cannot be served because
2357 of the individual's departure or concealment; or

2358 (iii) in the case of a natural person, that the person cannot be served because of the
2359 person's departure or concealment.

2360 (6) If the receivership court on motion of any party finds that an action should as a
2361 matter of substantial justice be tried in a forum outside this state, the receivership court may
2362 enter an appropriate order to stay further proceedings on the action in this state.

2363 (7) (a) Nothing in this chapter deprives a reinsurer of any contractual right to pursue
2364 arbitration except:

2365 (i) as to a claim against the estate; and

2366 (ii) in regard to a contract rejected by the receiver under Section 31A-27a-113.

2367 (b) A party in arbitration may bring a claim or counterclaim against the estate, but the
2368 claim or counterclaim is subject to this chapter.

2369 (8) An action authorized by this chapter shall be brought in the Third District Court for
2370 Salt Lake County.

2371 (9) (a) At any time after an order is entered pursuant to Section 31A-27a-201,
2372 31A-27a-301, or 31A-27a-401, the commissioner or receiver may transfer the case to the
2373 county of the principal office of the person proceeded against.

2374 (b) In the event of a transfer under this Subsection (9), the court in which the
2375 proceeding is commenced shall, upon application of the commissioner or receiver, direct its
2376 clerk to transmit the court's file to the clerk of the court to which the case is to be transferred.

2377 (c) After a transfer under this Subsection (9), the proceeding shall be conducted in the
2378 same manner as if it had been commenced in the court to which the matter is transferred.

2379 (10) (a) Except as provided in Subsection (10)(c), a person may not intervene in a
2380 liquidation proceeding in this state for the purpose of seeking or obtaining payment of a
2381 judgment, lien, or other claim of any kind.

2382 (b) Except as provided in Subsection (10)(c), the claims procedure set for this chapter
2383 constitute the exclusive means for obtaining payment of claims from the liquidation estate.

2384 (c) (i) An affected guaranty association or the affected guaranty association's
2385 representative may intervene as a party as a matter of right and otherwise appear and participate
2386 in any court proceeding concerning a liquidation proceeding against an insurer.

2387 (ii) Intervention by an affected guaranty association or by an affected guaranty
2388 association's designated representative conferred by this Subsection (10)(c) may not constitute
2389 grounds to establish general personal jurisdiction by the courts of this state.

2390 (iii) An intervening affected guaranty association or the affected guaranty association's
2391 representative are subject to the receivership court's jurisdiction for the limited purpose for
2392 which the affected guaranty association intervenes.

2393 (11) (a) Notwithstanding the other provisions of this section, this chapter does not
2394 confer jurisdiction on the receivership court to resolve coverage disputes between an affected
2395 guaranty association and those asserting claims against the affected guaranty association
2396 resulting from the initiation of a receivership proceeding under this chapter, except to the
2397 extent that the affected guaranty association otherwise expressly consents to the jurisdiction of
2398 the receivership court pursuant to a plan of rehabilitation or liquidation that resolves its
2399 obligations to covered policyholders.

2400 (b) The determination of a dispute with respect to the statutory coverage obligations of
2401 an affected guaranty association by a court or administrative agency or body with jurisdiction
2402 in the affected guaranty association's state of domicile is binding and conclusive as to the
2403 affected guaranty association's claim in the liquidation proceeding.

2404 (12) Upon the request of the receiver, the receivership court or the presiding judge of
2405 the Third District Court for Salt Lake County may order that one judge hear all cases and
2406 controversies arising out of or related to the delinquency proceeding.

2407 (13) A delinquency proceeding is exempt from any program maintained for the early
2408 closure of civil actions.

2409 Section 41. Section **31A-27a-106** is enacted to read:

2410 **31A-27a-106. Exemption from fees.**

2411 The receiver may not be required to pay any of the following fees to a public officer of
2412 this state:

- 2413 (1) filing fees;
- 2414 (2) recording fees;
- 2415 (3) transcript fees;
- 2416 (4) copying fees;
- 2417 (5) certification fees; or
- 2418 (6) authentication fees.

2419 Section 42. Section **31A-27a-107** is enacted to read:

2420 **31A-27a-107. Notice and hearing on matters submitted by the receiver for**
2421 **receivership court approval.**

2422 (1) (a) Upon written request to the receiver, a person shall be placed on the service list
2423 to receive notice of matters filed by the receiver.

2424 (b) It is the responsibility of the person requesting notice to:

2425 (i) inform the receiver in writing of any changes in the person's address; or

2426 (ii) request that the person's name be deleted from the service list.

2427 (c) (i) The receiver may serve on a person on the service list a request to confirm
2428 continuation on the service list by returning a form.

2429 (ii) The request to confirm continuation may be served periodically but not more
2430 frequently than every 12 months.

2431 (iii) A person who fails to return the form described in this Subsection (1)(c) may be
2432 removed from the service list.

2433 (d) Inclusion on the service list does not confer standing in the delinquency proceeding
2434 to raise, appear, or be heard on any issue.

2435 (e) The receiver shall:

2436 (i) file a copy of the service list with the receivership court; and

2437 (ii) periodically provide to the receivership court notice of changes to the service list.

2438 (2) Except as otherwise provided by this chapter, notice and hearing of any matter
2439 submitted by the receiver to the receivership court for approval under this chapter shall be
2440 conducted in accordance with this Subsection (2).

2441 (a) The receiver:

2442 (i) shall file a motion:

2443 (A) explaining the proposed action; and
2444 (B) the basis for the proposed action; and
2445 (ii) may include any evidence in support of the motion.

2446 (b) If a document, material, or other information supporting the motion is confidential,
2447 the document, material, or other information may be submitted to the receivership court under
2448 seal for in camera inspection.

2449 (c) (i) The receiver shall provide notice and a copy of the motion to:

2450 (A) all persons on the service list; and
2451 (B) any other person as may be required by the receivership court.

2452 (ii) Notice may be provided by first-class mail postage paid, electronic mail, or
2453 facsimile transmission, at the receiver's discretion.

2454 (iii) For purposes of this section, notice is considered to be given on the day on which
2455 it is deposited with the United States Postmaster or transmitted, as applicable, to the
2456 last-known address as shown on the service list.

2457 (d) (i) A party in interest objecting to the motion shall:

2458 (A) file an objection specifying the grounds for the objection within:

2459 (I) ten days of the day on which the notice of the filing of the motion is sent; or
2460 (II) such other time as the receivership court may specify; and
2461 (B) serve copies on:

2462 (I) the receiver; and
2463 (II) any other person served with the motion within the time period described in this
2464 Subsection (2)(d)(i).

2465 (ii) In accordance with the Utah Rules of Civil Procedure, days may be added to the

2466 time for filing an objection if the notice of the motion is sent only by way of United States
2467 mail.

2468 (iii) An objecting party has the burden of showing why the receivership court should
2469 not authorize the proposed action.

2470 (e) (i) If no objection to the motion is timely filed:

2471 (A) the receivership court may:

2472 (I) enter an order approving the motion without a hearing; or

2473 (II) hold a hearing to determine if the receiver's motion should be approved; and

2474 (B) the receiver may request that the receivership court enter an order or hold a hearing
2475 on an expedited basis.

2476 (ii) (A) If an objection is timely filed, the receivership court may hold a hearing.

2477 (B) If the receivership court approves the motion and, upon a motion by the receiver,
2478 determines that the objection is frivolous or filed merely for delay or for other improper
2479 purpose, the receivership court may order the objecting party to pay the receiver's reasonable
2480 costs and fees of defending against the objection.

2481 Section 43. Section **31A-27a-108** is enacted to read:

2482 **31A-27a-108. Injunctions and orders.**

2483 (1) The receivership court may issue an order, process, or judgment including stays,
2484 injunctions, or other orders necessary or appropriate to carry out:

2485 (a) this chapter; or

2486 (b) an approved rehabilitation plan.

2487 (2) This chapter may not be construed to limit the ability of the receiver to apply to a
2488 court other than the receivership court in any jurisdiction:

2489 (a) to carry out this chapter; or

2490 (b) for the purpose of pursuing claims against any person.

2491 (3) Except as provided in Subsections (5) and (6) or as otherwise provided in this
2492 chapter, the commencement of a delinquency proceeding under this chapter operates as a stay,
2493 applicable to all persons, of:

2494 (a) the commencement or continuation, including the issuance or employment of
2495 process, of a judicial, administrative, an arbitration proceeding, or other action or proceeding
2496 against the insurer:

2497 (i) that was or could have been commenced before the commencement of the
2498 delinquency proceeding under this chapter; or

2499 (ii) to recover a claim against the insurer that arises before the commencement of the
2500 delinquency proceeding under this chapter;

2501 (b) the enforcement against the insurer or against property of the insurer of a judgment
2502 obtained before the commencement of the delinquency proceeding under this chapter;

2503 (c) an act to:

2504 (i) obtain or retain possession of:

2505 (A) property of the insurer; or

2506 (B) property from the insurer; or

2507 (ii) exercise control over property or records of the insurer;

2508 (d) an act to create, perfect, or enforce a lien against property of the insurer;

2509 (e) an act to collect, assess, or recover a claim against the insurer that arises before the
2510 commencement of a delinquency proceeding under this chapter;

2511 (f) the commencement or continuation of an action or proceeding against a reinsurer of
2512 the insurer:

2513 (i) by the holder of a claim against the insurer; and

2514 (ii) seeking a reinsurance recovery that is contractually due to the insurer;

2515 (g) the commencement or continuation of an action or proceeding by a governmental
2516 unit to terminate or revoke an insurance license; and

2517 (h) (i) an action described in Subsection (3)(h)(ii):

2518 (A) with respect to a contract, agreement, or lease including:

2519 (I) a policy;

2520 (II) an insurance or reinsurance contract;

2521 (III) a surety bond; or

2522 (IV) a surety undertaking;
2523 (B) whether or not the insurer is a party to the contract, agreement, lease, policy, bond,
2524 or undertaking; and
2525 (C) if the sole basis for the action is:
2526 (I) that the insurer is the subject of a delinquency proceeding;
2527 (II) that one or more of the insurer's licenses have been suspended or revoked because
2528 the insurer is the subject of a delinquency proceeding; or
2529 (III) both Subsections (3)(h)(i)(C)(I) and (II); and
2530 (ii) as to a contract, agreement, lease, policy, bond, or undertaking described in
2531 Subsection (3)(h)(i), an action for:
2532 (A) termination;
2533 (B) failure to renew;
2534 (C) suspension of performance;
2535 (D) declaration of default;
2536 (E) demand for additional, substitute, or replacement security or performance; or
2537 (F) other adverse action.
2538 (4) (a) Except as provided in Subsections (5) and (6) or as otherwise provided in this
2539 chapter, the commencement of a delinquency proceeding under this chapter operates as a stay,
2540 applicable to all persons, of the commencement or continuation, including the issuance or
2541 employment of process, of a judicial, administrative, or other action or proceeding, including
2542 the enforcement of any judgment:
2543 (i) against an insured that is or could have been commenced before the commencement
2544 of the delinquency proceeding under this chapter; or
2545 (ii) (A) to recover a claim against the insured that arises before or after the
2546 commencement of the delinquency proceeding under this chapter; and
2547 (B) for which the insurer:
2548 (I) is or may be liable under a policy of insurance; or
2549 (II) is obligated to defend a party.

2550 (b) Subject to Subsection (4)(c), the stay provided by this Subsection (4) terminates 90
2551 days after the day on which the receiver is appointed unless extended by order of the
2552 receivership court:

2553 (i) for good cause shown; and

2554 (ii) after notice to any affected parties and any hearing the receivership court
2555 determines is appropriate.

2556 (c) Notwithstanding the other provisions of this Subsection (4), any applicable statute
2557 of limitations with respect to any claim against an insured is tolled during the period of the stay
2558 provided by this Subsection (4) and any extensions.

2559 (5) Notwithstanding Subsection (3), the commencement of a delinquency proceeding
2560 under this chapter does not operate as a stay or prohibition of:

2561 (a) except as provided in Subsection (3)(g), a regulatory action by a commissioner of a
2562 nondomiciliary state, including the suspension of a license;

2563 (b) a criminal action;

2564 (c) an act to perfect, or to maintain or continue the perfection of, an interest in property
2565 to the extent that the act is accomplished within any relation back period under applicable law;

2566 (d) a set off as permitted by Section 31A-27a-510;

2567 (e) pursuit and enforcement of a nonmonetary governmental claim, judgment, or
2568 proceeding;

2569 (f) (i) presentment of a negotiable instrument; and

2570 (ii) the giving of notice of and protesting dishonor of the negotiable instrument;

2571 (g) enforcement of a right against a single beneficiary trust established pursuant to and
2572 in compliance with Section 31A-17-404;

2573 (h) under or in connection with a netting agreement or qualified financial contract as
2574 provided for in Section 31A-27a-611, a right to cause:

2575 (i) the netting, liquidation, set off, termination, acceleration, or close out of an
2576 obligation; or

2577 (ii) enforcement of a:

- 2578 (A) security agreement;
- 2579 (B) security arrangement; or
- 2580 (C) other credit enhancement or guarantee or reimbursement obligation;
- 2581 (i) discharge by an affected guaranty association of statutory responsibilities under any
- 2582 statute applicable to the affected guaranty association; or
- 2583 (j) any of the following actions:
- 2584 (i) an audit by a governmental unit to determine tax liability;
- 2585 (ii) the issuance to the insurer by a governmental unit of a notice of tax deficiency;
- 2586 (iii) a demand for a tax return; or
- 2587 (iv) the making of an assessment for any tax and issuance of a notice and demand for
- 2588 payment of the assessment.
- 2589 (6) Except as provided in Subsection (7):
- 2590 (a) the stay of an act against property of the insurer under Subsection (3) continues
- 2591 until the property is no longer property of the receivership; and
- 2592 (b) the stay of any other act under Subsection (3) continues until the earlier of the day
- 2593 on which the delinquency proceeding is closed or the day on which the delinquency proceeding
- 2594 is dismissed.
- 2595 (7) (a) The receivership court may grant relief from a stay of Subsection (3) or (4), by
- 2596 terminating, annulling, modifying, or conditioning the stay:
- 2597 (i) on request of a party in interest;
- 2598 (ii) after notice and any hearing the receivership court determines appropriate; and
- 2599 (iii) (A) for cause; or
- 2600 (B) with respect to a stay of an act against property under Subsection (3) if:
- 2601 (I) the insurer does not have any equity in the property; and
- 2602 (II) the property is not necessary to an effective plan.
- 2603 (b) For the purposes of this Subsection (7), "cause" includes if:
- 2604 (i) the receiver cancels a policy, a surety bond, or a surety undertaking;
- 2605 (ii) the creditor is entitled, by contract or law, to require the insured or the principal to

2606 have a policy, a surety bond, or a surety undertaking; and

2607 (iii) the insured or the principal fails to obtain a replacement policy, surety bond, or
2608 surety undertaking within 30 days from the date of cancellation.

2609 (8) In a hearing under Subsection (7), the party seeking relief from the stay has the
2610 burden of proof on each issue, which shall be established by clear and convincing evidence.

2611 (9) (a) The estate of an insurer that is injured by a willful violation of a stay provided
2612 by this section is entitled to actual damages, including costs and attorney fees.

2613 (b) In appropriate circumstances, the receivership court may impose sanctions in
2614 addition to those under Subsection (9)(a).

2615 (10) Notwithstanding any other provision of law, in relation to any stay or injunction
2616 under this section, a bond may not be required of:

2617 (a) the commissioner; or

2618 (b) a receiver.

2619 Section 44. Section **31A-27a-109** is enacted to read:

2620 **31A-27a-109. Statutes of limitations.**

2621 (1) If applicable law, an order, or an agreement fixes a period within which the insurer
2622 may commence an action, and this period is not expired before the day on which the initial
2623 petition in a delinquency proceeding is filed, the receiver may not by reason of the filing of the
2624 initial petition in a delinquency proceeding be barred from commencing the action if the
2625 receiver commences the action on or before the later of:

2626 (a) the end of the period, including any suspension of the period occurring on or after
2627 the day on which the initial petition in a delinquency proceeding is filed; or

2628 (b) six years after the day on which the most recent receivership order is entered.

2629 (2) (a) Except as provided in Subsection (1), if applicable law, an order, or an
2630 agreement fixes a period within which the insurer may do an act described in Subsection (2)(b)
2631 and the period described in this Subsection (2)(a) is not expired before the date on which the
2632 initial petition in a delinquency proceeding is filed, the receiver may not by reason of the filing
2633 of the petition initiating a formal delinquency proceeding be barred from taking the act if the

2634 receiver does the act on or before the later of:

2635 (i) the end of the period, including any suspension of the period occurring on or after
2636 the day on which the initial petition in a delinquency proceeding is filed; or

2637 (ii) 60 days after the day on which the most recent receivership order is entered.

2638 (b) This Subsection (2) applies to:

2639 (i) filing, curing, or performing:

2640 (A) a pleading;

2641 (B) a demand;

2642 (C) a notice; or

2643 (D) a proof of claim or loss;

2644 (ii) curing a default in a case or proceeding; or

2645 (iii) performing any act similar to one described in Subsection (2)(b)(i) or (ii).

2646 (3) If applicable law, an order, or an agreement fixes a period for commencing or
2647 continuing a civil action in a court other than the receivership court on a claim against the
2648 insurer, and the period has not expired before the day on which the initial petition in a
2649 delinquency proceeding is filed, the period does not expire until the later of:

2650 (a) the end of the period, including any suspension of the period occurring on or after
2651 the day on which the initial petition in a delinquency proceeding is filed; or

2652 (b) 30 days after the day on which the stay pursuant to this section with respect to the
2653 claim is terminated or expires.

2654 Section 45. Section **31A-27a-110** is enacted to read:

2655 **31A-27a-110. Cooperation of officers, owners, and employees.**

2656 (1) As used in this section:

2657 (a) "Cooperate" includes to:

2658 (i) reply promptly in writing to an inquiry from the commissioner or receiver
2659 requesting a reply; and

2660 (ii) promptly make available to the commissioner or receiver any record, account,
2661 information, or property:

2662 (A) of or pertaining to the insurer; and
2663 (B) in the person's possession, custody, or control.
2664 (b) "Person" includes a person who exercises control directly or indirectly over
2665 activities of the insurer through:
2666 (i) a holding company; or
2667 (ii) other affiliate of the insurer.
2668 (2) The following shall cooperate with the commissioner or receiver in a proceeding
2669 under this chapter or an investigation preliminary to a proceeding under this chapter:
2670 (a) a present or former officer, manager, director, trustee, owner, or employee of an
2671 insurer;
2672 (b) a present or former agent of an insurer; or
2673 (c) a person with authority over or in charge of any segment of the insurer's affairs.
2674 (3) A person may not obstruct or interfere with the commissioner or receiver in the
2675 conduct of:
2676 (a) a delinquency proceeding; or
2677 (b) an investigation preliminary or incidental to a delinquency proceeding.
2678 (4) This section may not be construed to abridge otherwise existing legal rights,
2679 including the right to resist:
2680 (a) a petition for liquidation or other delinquency proceeding; or
2681 (b) other orders.
2682 (5) (a) A person described in Subsection (5)(b) is:
2683 (i) guilty of a class B misdemeanor, except that the fine may exceed \$1,000 but may
2684 not exceed \$10,000; or
2685 (ii) after a hearing, subject to:
2686 (A) the commissioner imposing a civil penalty that may not exceed \$10,000;
2687 (B) the revocation or suspension of an insurance license issued by the commissioner;
2688 or
2689 (C) a combination of Subsections (5)(a)(ii)(A) and (B).

2690 (b) This Subsection (5) applies to:

2691 (i) a person described in Subsection (2) who fails to cooperate with the commissioner
2692 or receiver;

2693 (ii) a person who obstructs or interferes with the commissioner or receiver in the
2694 conduct of a delinquency proceeding or an investigation preliminary or incidental to a
2695 delinquency proceeding; or

2696 (iii) a person who violates an order validly issued under this chapter.

2697 Section 46. Section **31A-27a-111** is enacted to read:

2698 **31A-27a-111. Actions by and against the receiver.**

2699 (1) (a) An allegation by the receiver of improper or fraudulent conduct against a person
2700 may not be the basis of a defense to the enforcement of a contractual obligation owed to the
2701 insurer by a third party.

2702 (b) Notwithstanding Subsection (1)(a), a third party described in this Subsection (1) is
2703 not barred by this section from seeking to establish independently as a defense that the conduct
2704 is materially and substantially related to the contractual obligation for which enforcement is
2705 sought.

2706 (2) (a) Subject to Subsection (2)(b), a prior wrongful or negligent action of any present
2707 or former officer, manager, director, trustee, owner, employee, or agent of the insurer may not
2708 be asserted as a defense to a claim by the receiver:

2709 (i) under a theory of:

2710 (A) estoppel;

2711 (B) comparative fault;

2712 (C) intervening cause;

2713 (D) proximate cause;

2714 (E) reliance; or

2715 (F) mitigation of damages; or

2716 (ii) otherwise.

2717 (b) Notwithstanding Subsection (2)(a):

2718 (i) the affirmative defense of fraud in the inducement may be asserted against the
2719 receiver in a claim based on a contract; and

2720 (ii) a principal under a surety bond or a surety undertaking is entitled to credit against
2721 any reimbursement obligation to the receiver for the value of any property pledged to secure the
2722 reimbursement obligation to the extent that:

2723 (A) the receiver has possession or control of the property; or

2724 (B) the insurer or its agents misappropriated, including commingling, the property.

2725 (c) Evidence of fraud in the inducement is admissible only if it is contained in the
2726 records of the insurer.

2727 (3) Action or inaction by an insurance regulatory authority may not be asserted as a
2728 defense to a claim by the receiver.

2729 (4) (a) Subject to Subsection (4)(b), a judgment or order entered against an insured or
2730 the insurer in contravention of a stay or injunction under this chapter, or at any time by default
2731 or collusion, may not be considered as evidence of liability or of the quantum of damages in
2732 adjudicating claims filed in the estate arising out of the subject matter of the judgment or order.

2733 (b) Subsection (4)(a) does not apply to an affected guaranty association's claim for
2734 amounts paid on a settlement or judgment in pursuit of the affected guaranty association's
2735 statutory obligations.

2736 (5) The receiver may not be considered a governmental entity for the purposes of any
2737 state law awarding fees to a litigant who prevails against a governmental entity.

2738 Section 47. Section **31A-27a-112** is enacted to read:

2739 **31A-27a-112. Unrecorded obligations and defenses of affiliates.**

2740 (1) This section applies to a person who in relation to an insurer is:

2741 (a) an affiliate;

2742 (b) a controlled or controlling person; or

2743 (c) a present or former officer, manager, director, trustee, or shareholder.

2744 (2) In a proceeding or claim by the receiver, a person described in Subsection (1) may
2745 not assert a defense unless evidence of the defense:

2746 (a) is recorded in the records of the insurer at or about the time the event giving rise to
 2747 the defense occurs; and

2748 (b) if required by statutory accounting practices and procedures, is timely reported on
 2749 the insurer's official financial statements filed with the commissioner.

2750 (3) A person described in Subsection (1) may not assert a claim, unless the obligation:

2751 (a) is recorded in the records of the insurer at or about the time the obligation is
 2752 incurred; and

2753 (b) if required by statutory accounting practices and procedures, is timely reported on
 2754 the insurer's official financial statements filed with the commissioner.

2755 (4) A claim by the receiver against a person described in Subsection (1) that is made on
 2756 the basis of an unrecorded or unreported transaction is not barred by this section.

2757 Section 48. Section **31A-27a-113** is enacted to read:

2758 **31A-27a-113. Executory contracts.**

2759 (1) Subject to the other provisions of this section, the receiver may assume or reject an
 2760 executory contract or unexpired lease of the insurer.

2761 (2) (a) If there is a default in an executory contract or unexpired lease of the insurer, the
 2762 receiver may not assume the contract or lease unless, at the time of the assumption of the
 2763 contract or lease, the receiver:

2764 (i) cures or provides adequate assurance that the receiver will promptly cure the
 2765 default; and

2766 (ii) provides adequate assurance of future performance under the contract or lease.

2767 (b) This Subsection (2) does not apply to a default that is a breach of a provision
 2768 relating to:

2769 (i) the insolvency or financial condition of the insurer at any time before the closing of
 2770 the delinquency proceeding;

2771 (ii) the appointment of or taking possession by:

2772 (A) a receiver in a case under this chapter; or

2773 (B) a custodian before the commencement of the delinquency proceeding; or

2774 (iii) the satisfaction of a penalty rate or provision relating to a default arising from a
2775 failure of the insurer to perform a nonmonetary obligation under the executory contract or
2776 unexpired lease.

2777 (3) A claim arising from a rejection under this section or under a plan of rehabilitation
2778 or liquidation of an executory contract or unexpired lease of the insurer that is not assumed
2779 shall be determined, and shall be treated and classified as though the claim arose before the day
2780 on which a successful petition commencing the delinquency proceeding is filed.

2781 Section 49. Section **31A-27a-114** is enacted to read:

2782 **31A-27a-114. Immunity and indemnification.**

2783 (1) For purposes of this section:

2784 (a) "Receiver's assistant" includes:

2785 (i) a present or former special deputy or assistant special deputy engaged by contract or
2786 otherwise;

2787 (ii) a person whom the receiver, a special deputy, or an assistant special deputy
2788 employs to assist in a delinquency proceeding under this chapter; and

2789 (iii) a state employee acting with respect to a delinquency proceeding under this
2790 chapter.

2791 (b) "Receiver's contractor" includes a person with whom the receiver, a special deputy,
2792 or an assistant special deputy contracts to assist in a delinquency proceeding under this chapter
2793 such as:

2794 (i) an attorney;

2795 (ii) an accountant;

2796 (iii) an auditor;

2797 (iv) an actuary;

2798 (v) an investment banker;

2799 (vi) a financial advisor;

2800 (vii) any other professional or firm who is retained or contracted with by the receiver as
2801 an independent contractor; and

2802 (viii) an employee of a person described in this Subsection (1)(b).

2803 (2) For the purposes of this section, the following persons are entitled to immunity and
2804 indemnification, or only immunity, as applicable:

2805 (a) a present or former receiver responsible for the conduct of a delinquency
2806 proceeding under this chapter;

2807 (b) a present or former receiver's assistant; and

2808 (c) a present or former receiver's contractor.

2809 (3) The receiver, a receiver's assistant, and a receiver's contractor have immunity under
2810 this chapter, as follows:

2811 (a) the receiver, a receiver's assistant, and a receiver's contractor have official immunity
2812 and are immune from suit and liability, both personally and in their official capacities, for any
2813 claim for damage to or loss of property, personal injury, or other civil liability caused by or
2814 resulting from an alleged act, error, or omission of the receiver, a receiver's assistant, or a
2815 receiver's contractor arising out of or by reason of the receiver's, receiver's assistant's, or
2816 receiver's contractor's duties or employment;

2817 (b) the receiver, a receiver's assistant, and a receiver's contractor have absolute judicial
2818 immunity and are immune from suit and liability, both personally and in their official
2819 capacities, for any claim for damage to or loss of property, personal injury, or other civil
2820 liability caused by or resulting from any alleged act, error, or omission of the receiver, a
2821 receiver's assistant, or a receiver's contractor arising out of or by reason of any matter that is
2822 subject to review by the receivership court after notice and opportunity to be heard, if the
2823 alleged act, error, or omission is not disapproved or disallowed by the receivership court; and

2824 (c) this chapter may not be construed to provide official immunity, to provide judicial
2825 immunity, or to otherwise hold the receiver, a receiver's assistant, or a receiver's contractor
2826 immune from suit and liability for any damage, loss, injury, or liability caused by the
2827 intentional or willful and wanton misconduct of the receiver, a receiver's assistant, or a
2828 receiver's contractor.

2829 (4) The receiver or a receiver's assistant is entitled to indemnification under this

2830 chapter, as follows:

2831 (a) the receiver and a receiver's assistant shall be indemnified from the assets of the
2832 insurer:

2833 (i) if any legal action is commenced against the receiver or a receiver's assistant:

2834 (A) whether against the receiver or receiver's assistant personally or in the official
2835 capacity; and

2836 (B) alleging property damage, property loss, personal injury, or other civil liability
2837 caused by or resulting from any alleged act, error, or omission of the receiver or a receiver's
2838 assistant arising out of or by reason of the receiver's or receiver's assistant's duties or
2839 employment;

2840 (ii) for all expenses, attorney fees, judgments, settlements, decrees, or amounts due and
2841 owing or paid in satisfaction of or incurred in the defense of the legal action; and

2842 (iii) unless it is determined upon a final adjudication on the merits that the alleged act,
2843 error, or omission of the receiver or receiver's assistant giving rise to the claim:

2844 (A) does not arise out of or by reason of the receiver's or receiver's assistant's duties or
2845 employment; or

2846 (B) is caused by intentional or willful and wanton misconduct;

2847 (b) attorney fees and related expenses incurred in defending a legal action for which
2848 immunity or indemnity is available under this section shall be paid from the assets of the
2849 insurer as they are incurred, in advance of the final disposition of the action upon receipt of an
2850 agreement by or on behalf of the receiver or receiver's assistant to repay the attorney fees and
2851 expenses if it is ultimately determined upon a final adjudication on the merits that the receiver
2852 or receiver's assistant is not entitled to immunity or indemnity under this section;

2853 (c) the following paid pursuant to this section are an administrative expense of the
2854 insurer, an indemnification for:

2855 (i) an expense payment;

2856 (ii) a judgment;

2857 (iii) a settlement;

2858 (iv) a decree;
2859 (v) attorney fees;
2860 (vi) a surety bond premium; or
2861 (vii) other amounts paid or to be paid from the insurer's assets pursuant to this section;
2862 (d) in the event of actual or threatened litigation against a receiver or a receiver's
2863 assistant for which immunity or indemnity may be available under this section, a reasonable
2864 amount of funds which in the judgment of the receiver may be needed to provide immunity or
2865 indemnity shall be segregated and reserved from the assets of the insurer:
2866 (i) as security for the payment of indemnity; and
2867 (ii) until:
2868 (A) all applicable statutes of limitations run;
2869 (B) all actual or threatened actions against the receiver or a receiver's assistant are
2870 completely and finally resolved; and
2871 (C) all obligations under this section are satisfied;
2872 (e) in lieu of segregation and reserving of funds, the receiver may, in the receiver's
2873 discretion, obtain a surety bond or make other arrangements that will enable the receiver to
2874 fully secure the payment of all obligations under this section;
2875 (f) if a legal action against a receiver's assistant for which indemnity may be available
2876 under this section is settled before final adjudication on the merits, the receiver shall pay the
2877 settlement amount on behalf of the receiver's assistant, or indemnify the receiver's assistant for
2878 the settlement amount, unless the receiver determines that the claim:
2879 (i) does not arise out of or by reason of the receiver's assistant's duties or employment;
2880 or
2881 (ii) is caused by the intentional or willful and wanton misconduct of the receiver's
2882 assistant; and
2883 (g) in a legal action in which a claim is asserted against the receiver:
2884 (i) that portion of any settlement relating to the alleged act, error, or omission of the
2885 receiver is subject to the approval of the receivership court; and

2886 (ii) the receivership court may not approve that portion of the settlement if the
2887 receivership court determines that the claim:

2888 (A) does not arise out of or by reason of the receiver's duties or employment; or
2889 (B) is caused by the intentional or willful and wanton misconduct of the receiver.

2890 (5) Nothing contained or implied in this section shall operate, or be construed or
2891 applied to deprive the receiver, a receiver's assistant, or a receiver's contractor of any immunity,
2892 indemnity, benefits of law, rights, or any defense otherwise available.

2893 (6) The immunity and indemnification provided to a receiver's assistant and the
2894 immunity provided to a receiver's contractor under this section does not apply to an action by
2895 the receiver against the receiver's assistant or receiver's contractor.

2896 (7) (a) Subsection (3) applies to any suit based in whole or in part on an alleged act,
2897 error, or omission that takes place on or after April 30, 2007.

2898 (b) A legal action may not lie against the receiver or a receiver's assistant based in
2899 whole or in part on an alleged act, error, or omission that takes place before April 30, 2007,
2900 unless suit is filed and valid service of process is obtained on or after April 30, 2007, but on or
2901 before April 30, 2008.

2902 (8) Subsection (4) applies to a suit that is pending on or filed after April 30, 2007,
2903 without regard to when the alleged act, error, or omission takes place.

2904 Section 50. Section **31A-27a-115** is enacted to read:

2905 **31A-27a-115. Approval and payment of expenses.**

2906 (1) The receiver may pay an expense under a contract, lease, employment agreement,
2907 or other arrangement entered into by the insurer before receivership, as the receiver considers
2908 necessary for the purposes of this chapter. The receiver:

2909 (a) is not required to pay an expense described in this Subsection (1) that the receiver
2910 determines is not necessary; and

2911 (b) may reject a contract pursuant to Section 31A-27a-113.

2912 (2) Receivership expenses other than those described in Subsection (1) shall be paid as
2913 follows:

2914 (a) unless the court orders otherwise in the rehabilitation or liquidation order, the
 2915 receiver may submit a motion pursuant to Section 31A-27a-107 to the receivership court to
 2916 approve:

2917 (i) the terms of compensation of each special deputy or contractor; or

2918 (ii) any other expense in excess of an amount established by this chapter;

2919 (b) the receiver may, as the receiver considers appropriate, submit a motion to approve
 2920 any other compensation, anticipated expense, or incurred expense not described in Subsection
 2921 (2)(a);

2922 (c) the receiver may pay as incurred:

2923 (i) an expense not requiring receivership court approval; and

2924 (ii) an expense approved in the rehabilitation or liquidation order; and

2925 (d) the approval of an expense by the receivership court may not prejudice the right of
 2926 the receiver to seek recovery, recoupment, disgorgement, or reimbursement of a fee based on
 2927 contract or a cause of action recognized in law or in equity.

2928 (3) On an annual or more frequent basis, the receiver shall submit to the receivership
 2929 court a report summarizing the expenses incurred in the prior period.

2930 (4) Receivership court approval is not required to pay expenses incurred by the receiver
 2931 in connection with the appeal of an order of the receivership court.

2932 (5) All expenses of receivership shall be paid from the assets of the insurer, except as
 2933 provided in this Subsection (5).

2934 (a) If the property of the insurer does not contain sufficient cash or liquid assets to
 2935 defray the expenses incurred, the commissioner may advance funds from the account
 2936 established under Subsection 31A-27a-705(3).

2937 (b) An amount advanced shall be repaid to the account out of the first available moneys
 2938 of the insurer.

2939 Section 51. Section **31A-27a-116** is enacted to read:

2940 **31A-27a-116. Financial reporting.**

2941 (1) (a) The receiver shall comply with all requirements for receivership financial

2942 reporting as specified by the commissioner by rule within:
2943 (i) 180 days after the day on which the receivership court enters an order of
2944 receivership; and
2945 (ii) 45 days following each calendar quarter after the period specified in Subsection
2946 (1)(a)(i).
2947 (b) The rule described in this Subsection (1) shall:
2948 (i) comply with this section;
2949 (ii) be made in accordance with Title 63, Chapter 46a, Utah Administrative
2950 Rulemaking Act; and
2951 (iii) require the receiver to file any financial report with the receivership court in
2952 addition to any other person specified in the rule.
2953 (c) A financial report shall include, at a minimum, a statement of:
2954 (i) the assets and liabilities of the insurer;
2955 (ii) the changes in those assets and liabilities; and
2956 (iii) all funds received or disbursed by the receiver during that reporting period.
2957 (d) The receiver may qualify a financial report or provide notes to the financial
2958 statement for further explanation.
2959 (e) The receivership court may order the receiver to provide any additional information
2960 as the receivership court considers appropriate.
2961 (2) Each affected guaranty association shall file one or more reports with the liquidator:
2962 (a) (i) within 180 days after the day on which the receivership court enters an order of
2963 liquidation; and
2964 (ii) (A) within 45 days following each calendar quarter after the period described in
2965 Subsection (2)(a)(i); or
2966 (B) at an interval:
2967 (I) agreed to between the liquidator and the affected guaranty association; or
2968 (II) required by the receivership court; and
2969 (b) in no event less than annually.

2970 (3) For good cause shown, the receivership court may grant:
2971 (a) relief for an extension or modification of time to comply with Subsection (1) or (2);
2972 or
2973 (b) such other relief as may be appropriate.
2974 Section 52. Section **31A-27a-117** is enacted to read:
2975 **31A-27a-117. Records.**
2976 (1) (a) Upon entry of an order of rehabilitation or liquidation, the receiver is vested
2977 with title to all of the records of the insurer:
2978 (i) of whatever nature;
2979 (ii) in whatever medium;
2980 (iii) wherever located; and
2981 (iv) regardless of whether the item is in the custody and control of:
2982 (A) a third party administrator;
2983 (B) a managing general agent;
2984 (C) an attorney; or
2985 (D) other representatives of the insurer.
2986 (b) The receiver may immediately take possession and control of:
2987 (i) all of the records of the insurer; and
2988 (ii) the premises where the records are located.
2989 (c) At the request of the receiver, a third party administrator, managing general agent,
2990 attorney, or other representatives of the insurer shall release all records of the insurer to:
2991 (i) the receiver; or
2992 (ii) the receiver's designee.
2993 (d) With the receiver's approval, an affected guaranty association with an obligation
2994 under a policy issued by the insurer may take actions necessary to obtain directly from a third
2995 party administrator, managing general agent, attorney, or other representative of the insurer all
2996 records pertaining to the insurer's business that are appropriate or necessary for the affected
2997 guaranty association to fulfill its statutory obligations.

2998 (2) The receiver may certify a record of a delinquent insurer described in Subsection
 2999 (1) and a record of the receiver's office created and maintained in connection with a delinquent
 3000 insurer, as follows:

3001 (a) a record of a delinquent insurer may be certified by the receiver in an affidavit
 3002 stating that the record is a true and correct copy of the record of the insurer that is received
 3003 from the custody of the insurer, or found among the insurer's effects; or

3004 (b) a record created by or filed with the receiver's office in connection with a
 3005 delinquent insurer may be certified by the receiver's affidavit stating that the record is a true
 3006 and correct copy of the record maintained by the receiver's office.

3007 (3) (a) An original record or copy of a record certified under Subsection (2):

3008 (i) when admitted in evidence is prima facie evidence of the facts disclosed; and

3009 (ii) is admissible in evidence in the same manner as a document described in Utah
 3010 Rules of Evidence, Rule 902(1).

3011 (b) The receivership court may consider the certification of a record by the receiver
 3012 pursuant to this section as satisfying the requirements of Utah Rules of Evidence, Rule 803(6).

3013 (4) A record of a delinquent insurer held by the receiver:

3014 (a) is not a record of the department for any purposes; and

3015 (b) not subject to Title 63, Chapter 2, Government Records Access and Management
 3016 Act.

3017 Section 53. Section **31A-27a-118**, which is renumbered from Section 31A-27-107 is
 3018 renumbered and amended to read:

3019 ~~[31A-27-107].~~ **31A-27a-118. Commissioner's reports.**

3020 (1) The commissioner shall include in [his] the commissioner's annual report:

3021 (a) the names of the insurers proceeded against under Sections ~~[31A-27-301,~~
 3022 ~~31A-27-307, 31A-27-401, 31A-27-402, and 31A-27-404, and]~~ 31A-27a-207 and 31A-27a-901;

3023 (b) those [other] facts which indicate in reasonable detail the commissioner's formal
 3024 proceedings under this chapter; and

3025 ~~[(b)]~~ (c) those facts which generally explain the [utilization] use and effectiveness of

3026 proceedings under [~~Sections 31A-27-201 through 31A-27-203 and 31A-27-405~~] Chapter 27,
3027 Part 5, Administrative Actions, and Section 31A-27a-901.

3028 (2) The commissioner as receiver shall make and file annual reports and any other
3029 required reports for [~~the companies~~] an insurer proceeded against under Sections [~~31A-27-301,~~
3030 ~~31A-27-307, 31A-27-401, 31A-27-402, and 31A-27-404~~] 31A-27a-207 and 31A-27a-901 in
3031 the manner [~~and~~], in the form, and within the time required by law of [~~insurers~~] an insurer
3032 authorized to do business in this state.

3033 Section 54. Section **31A-27a-119** is enacted to read:

3034 **31A-27a-119. Delinquency proceeding commenced before April 30, 2007.**

3035 This chapter does not apply to a delinquency proceeding ongoing on April 30, 2007.

3036 Section 55. Section **31A-27a-120** is enacted to read:

3037 **31A-27a-120. Severability.**

3038 If any provision of this chapter or the application of this chapter to any person or
3039 circumstance is for any reason held invalid, the remainder of the chapter and the application of
3040 the provision to other persons or circumstances shall be given effect without the invalid
3041 provision or application. The provisions of this chapter are severable.

3042 Section 56. Section **31A-27a-201** is enacted to read:

3043 **Part 2. Proceedings**

3044 **31A-27a-201. Receivership court's seizure order.**

3045 (1) The commissioner may file in the Third District Court for Salt Lake County a
3046 petition:

3047 (a) with respect to:

3048 (i) an insurer domiciled in this state;

3049 (ii) an unauthorized insurer; or

3050 (iii) pursuant to Section 31A-27a-901, a foreign insurer;

3051 (b) alleging that:

3052 (i) there exists grounds that would justify a court order for a formal delinquency
3053 proceeding against the insurer under this chapter; and

3054 (ii) the interests of policyholders, creditors, or the public will be endangered by delay;

3055 and

3056 (c) setting forth the contents of a seizure order considered necessary by the

3057 commissioner.

3058 (2) (a) Upon a filing under Subsection (1), the receivership court may issue the

3059 requested seizure order:

3060 (i) immediately, ex parte, and without notice or hearing;

3061 (ii) that directs the commissioner to take possession and control of:

3062 (A) all or a part of the property, accounts, and records of an insurer; and

3063 (B) the premises occupied by the insurer for transaction of the insurer's business; and

3064 (iii) that until further order of the receivership court, enjoins the insurer and its officers,

3065 managers, agents, and employees from disposition of its property and from the transaction of

3066 its business except with the written consent of the commissioner.

3067 (b) Any person having possession or control of and refusing to deliver any of the

3068 records or assets of a person against whom a seizure order is issued under this Subsection (2) is

3069 guilty of a class B misdemeanor.

3070 (3) (a) A petition that requests injunctive relief:

3071 (i) shall be verified by the commissioner or the commissioner's designee; and

3072 (ii) is not required to plead or prove irreparable harm or inadequate remedy at law.

3073 (b) The commissioner shall provide only the notice that the receivership court may

3074 require.

3075 (4) (a) The receivership court shall specify in the seizure order the duration of the

3076 seizure, which shall be the time the receivership court considers necessary for the

3077 commissioner to ascertain the condition of the insurer.

3078 (b) The receivership court may from time to time:

3079 (i) hold a hearing that the receivership court considers desirable:

3080 (A) (I) on motion of the commissioner;

3081 (II) on motion of the insurer; or

3082 (III) on its own motion; and
3083 (B) after the notice the receivership court considers appropriate; and
3084 (ii) extend, shorten, or modify the terms of the seizure order.
3085 (c) The receivership court shall vacate the seizure order if the commissioner fails to
3086 commence a formal proceeding under this chapter after having had a reasonable opportunity to
3087 commence a formal proceeding under this chapter.
3088 (d) An order of the receivership court pursuant to a formal proceeding under this
3089 chapter vacates the seizure order.
3090 (5) Entry of a seizure order under this section does not constitute a breach or an
3091 anticipatory breach of any contract of the insurer.
3092 (6) (a) An insurer subject to an ex parte seizure order under this section may petition
3093 the receivership court at any time after the issuance of a seizure order for a hearing and review
3094 of the seizure order.
3095 (b) The receivership court shall hold the hearing and review requested under this
3096 Subsection (6) not more than 15 days after the day on which the request is received.
3097 (c) A hearing under this Subsection (6):
3098 (i) may be held privately in chambers; and
3099 (ii) shall be held privately in chambers if the insurer proceeded against requests that it
3100 be private.
3101 (7) (a) If, at any time after the issuance of a seizure order, it appears to the receivership
3102 court that a person whose interest is or will be substantially affected by the seizure order did
3103 not appear at the hearing and has not been served, the receivership court may order that notice
3104 be given to the person.
3105 (b) An order under this Subsection (7) that notice be given may not stay the effect of
3106 any seizure order previously issued by the receivership court.
3107 (8) Whenever the commissioner makes a seizure as provided in Subsection (2), on the
3108 demand of the commissioner, it shall be the duty of the sheriff of a county of this state, and of
3109 the police department of a municipality in the state to furnish the commissioner with necessary

3110 deputies or officers to assist the commissioner in making and enforcing the seizure order.

3111 Section 57. Section **31A-27a-202** is enacted to read:

3112 **31A-27a-202. Commencement of formal delinquency proceeding.**

3113 (1) A formal delinquency proceeding against a person shall be commenced by filing a
3114 petition in the name of the commissioner or department.

3115 (2) (a) The petition required by Subsection (1):

3116 (i) shall state:

3117 (A) the grounds upon which the proceeding is based; and

3118 (B) the relief requested; and

3119 (ii) may include a request for restraining orders and injunctive relief as described in
3120 Section 31A-27a-108.

3121 (b) Upon the filing of a petition, the commissioner shall forward a notice of the petition
3122 by first-class mail or electronic communication, as permitted by the receivership court, to the
3123 commissioners and guaranty associations in states in which the insurer did business.

3124 (3) (a) A petition that requests injunctive relief:

3125 (i) shall be verified by the commissioner or the commissioner's designee; and

3126 (ii) is not required to plead or prove irreparable harm or inadequate remedy at law.

3127 (b) The commissioner shall provide only the notice the receivership court requires.

3128 (4) If a temporary restraining order is requested:

3129 (a) the receivership court may issue an initial order containing the relief requested;

3130 (b) the order shall state the time and date of its issuance;

3131 (c) the receivership court shall set a time and date for the return of summons:

3132 (i) not more than ten days from the time and date the initial order is issued; and

3133 (ii) at which time the person proceeded against may appear before the receivership
3134 court for a summary hearing; and

3135 (d) the order may not continue in effect beyond the time and date set for the return of
3136 summons, unless the receivership court expressly enters one or more orders extending the
3137 restraining order.

3138 (5) (a) If no temporary restraining order is requested, the receivership court shall cause
3139 summons to be issued.

3140 (b) The summons shall specify:

3141 (i) a return date not more than 30 days after the day on which the summons is issued;

3142 and

3143 (ii) that an answer must be filed at or before the return date.

3144 Section 58. Section **31A-27a-203** is enacted to read:

3145 **31A-27a-203. Return of summons and summary hearing.**

3146 (1) The receivership court shall hold a summary hearing at the time and date for the
3147 return of summons on a petition to commence a formal delinquency proceeding.

3148 (2) If a person is not served with summons on a petition to commence a formal
3149 delinquency proceeding and fails to appear for the summary hearing, the receivership court
3150 shall:

3151 (a) continue the summary hearing not more than ten days;

3152 (b) provide for alternative service of summons upon the person; and

3153 (c) extend any restraining order.

3154 (3) Upon a showing of good faith efforts to effect personal service upon a person who
3155 fails to appear for a continued summary hearing, the receivership court shall order notice of the
3156 petition to commence a formal delinquency proceeding to be published. The order and notice
3157 shall specify:

3158 (a) a return date not less than 10 nor more than 20 days after the day on which notice is
3159 published; and

3160 (b) that the restraining order is extended to the continued hearing date.

3161 (4) If a person fails to appear for a summary hearing on a petition to commence a
3162 formal delinquency proceeding after service of summons, the receivership court shall enter
3163 judgment in favor of the commissioner against that person.

3164 (5) (a) A person who appears for the summary hearing on a petition to commence a
3165 formal delinquency proceeding shall file its answer at the hearing and the receivership court

3166 shall:

3167 (i) determine whether to extend any temporary restraining order pending final
3168 judgment; and

3169 (ii) set the case for trial on a date not more than ten days from the day on which the
3170 summary hearing is held.

3171 (b) The receivership court may not grant a continuance for filing an answer.

3172 Section 59. Section **31A-27a-204** is enacted to read:

3173 **31A-27a-204. Proceedings for expedited trial -- Continuance -- Evidence --**

3174 **Discovery.**

3175 (1) (a) The receivership court shall proceed to hear the case on the petition to
3176 commence a formal delinquency proceeding:

3177 (i) at the time and date set forth for trial;

3178 (ii) without a jury; and

3179 (iii) without unnecessary delay.

3180 (b) To the extent practicable, the receivership court shall give precedence to the matter
3181 over all other matters.

3182 (c) To the extent authorized by law, the receivership court may assign the matter to
3183 another judge if necessary to comply with the need for expedited proceedings under this
3184 chapter.

3185 (2) A continuance for trial shall be granted only in extreme circumstances.

3186 (3) The receivership court shall admit as self authenticated a certified copy of the
3187 following when offered by the commissioner:

3188 (a) a financial statement made by the insurer or an affiliate;

3189 (b) an examination report of the insurer or an affiliate made by or on behalf of the
3190 commissioner; or

3191 (c) any other document filed with any insurance department by the insurer or an
3192 affiliate.

3193 (4) The facts contained in an examination report of the insurer or an affiliate made by

3194 or on behalf of the commissioner is presumed to be true as of the date of the hearing if the
 3195 examination is made as of a date not more than 270 days before the day on which the petition is
 3196 filed. The presumption:

- 3197 (a) is rebuttable; and
- 3198 (b) shifts the burden of production and persuasion to the insurer.

- 3199 (5) Discovery:
- 3200 (a) is limited to grounds alleged in the petition; and
- 3201 (b) shall be concluded on an expedited basis.

3202 Section 60. Section **31A-27a-205** is enacted to read:

3203 **31A-27a-205. Decision and appeals.**

3204 (1) The receivership court shall enter judgment on the petition to commence formal
 3205 delinquency proceeding within 15 days after the day on which the evidence is concluded.

3206 (2) (a) An order entered pursuant to Subsection (1) is final when entered.

3207 (b) An appeal shall be:

- 3208 (i) handled on an expedited basis; and
- 3209 (ii) taken within five days of the day on which judgment is entered.

3210 (3) (a) Absent entry of an order staying the order pursuant to Subsection (4), the order
 3211 has full force and effect and the receiver shall carry out the order's terms and this chapter.

3212 (b) A request for reconsideration, review, or appeal, or posting of a bond, may not
 3213 dissolve or stay the judgment.

3214 (4) (a) The following motions must first be presented to the receivership court:

- 3215 (i) a motion for a stay of a judgment;
- 3216 (ii) a motion for approval of a supersedes bond; or
- 3217 (iii) a motion for other relief pending appeal.

3218 (b) Except for a grant of a petition for rehabilitation which shall remain in effect
 3219 pending a decision on appeal, during the pendency of an appeal the receivership court may do
 3220 any of the following in accordance with the Utah Rules of Civil Procedure:

- 3221 (i) suspend an order entered under Subsection (1);

3222 (ii) modify an order entered under Subsection (1); or
3223 (iii) make any other appropriate order governing the enforceability of an order entered
3224 under Subsection (1).

3225 (c) The receivership court or an appellate court to which the matter is presented may
3226 condition any relief it grants under this Subsection (4) on the filing of a bond or other
3227 appropriate security with the receivership court.

3228 (5) Section 31A-27a-114 applies to all acts taken during the pendency of an appeal
3229 regardless of the appeal's ultimate disposition.

3230 (6) The reversal or modification on appeal of an order of rehabilitation or liquidation
3231 does not affect the validity of an act of the receiver pursuant to the order unless the order is
3232 stayed pending appeal.

3233 Section 61. Section **31A-27a-206** is enacted to read:

3234 **31A-27a-206. Confidentiality.**

3235 (1) (a) Except as provided in Subsection (1)(b), in a delinquency proceeding or a
3236 judicial review under Section 31A-27a-201:

3237 (i) all records of the insurer, department files, court records and papers, and other
3238 documents, so far as they pertain to or are a part of the record of the proceedings, are
3239 confidential; and

3240 (ii) a paper filed with the clerk of the Third District Court for Salt Lake County shall be
3241 held by the clerk in a confidential file as permitted by law.

3242 (b) The items listed in Subsection (1)(a) are subject to Subsection (1)(a):

3243 (i) except to the extent necessary to obtain compliance with an order entered in
3244 connection with the proceeding; and

3245 (ii) unless and until:

3246 (A) the Third District Court for Salt Lake County, after hearing argument in chambers,
3247 orders otherwise;

3248 (B) the insurer requests that the matter be made public; or

3249 (C) the commissioner applies for an order under Section 31A-27a-207.

3250 (2) (a) If the recipient agrees to maintain the confidentiality of the document, material,
3251 or other information, the commissioner or rehabilitator may share a document, materials, or
3252 other information in the possession, custody, or control of the department, pertaining to an
3253 insurer that is the subject of a delinquency proceeding under this chapter with:

3254 (i) another state, federal, and international regulatory agency;

3255 (ii) the National Association of Insurance Commissioners and its affiliates or
3256 subsidiaries;

3257 (iii) a state, federal, and international law enforcement authority;

3258 (iv) an auditor appointed by the receivership court in accordance with Section
3259 31A-27a-805; or

3260 (v) a representative of an affected guaranty association.

3261 (b) If the domiciliary receiver believes that certain information is sensitive, the receiver
3262 may share that information subject to a continuation of the confidentiality obligations beyond
3263 the period allowed in Subsection (3).

3264 (c) This section does not limit the power of the commissioner to disclose information
3265 under other applicable law.

3266 (3) (a) A domiciliary receiver shall permit a commissioner or a guaranty association of
3267 another state to obtain a listing of policyholders and certificate holders residing in the
3268 requestor's state, including current addresses and summary policy information, if the
3269 commissioner or the guaranty association of another state agrees:

3270 (i) to maintain the confidentiality of the record; and

3271 (ii) that the record will be used only for regulatory or guaranty association purposes.

3272 (b) Access to a record under this Subsection (3) may be limited to normal business
3273 hours.

3274 (c) If the domiciliary receiver believes that certain information described in this
3275 Subsection (3) is sensitive and disclosure might cause a diminution in recovery, the receiver
3276 may apply for a protective order imposing additional restrictions on access.

3277 (4) (a) The confidentiality obligations imposed by this section shall end upon the entry

3278 of an order of liquidation against the insurer, unless:

3279 (i) otherwise agreed to by the parties; or

3280 (ii) pursuant to an order of the receivership court.

3281 (b) A continuation of confidentiality as provided in Subsection (2) does not apply to an
3282 insurer record necessary for a guaranty association to discharge its statutory responsibilities.

3283 (5) A waiver of an applicable privilege or claim of confidentiality does not occur as a
3284 result of a disclosure, or any sharing of documents, materials, or other information, made
3285 pursuant to this section.

3286 Section 62. Section **31A-27a-207** is enacted to read:

3287 **31A-27a-207. Grounds for rehabilitation or liquidation.**

3288 (1) The commissioner may file in the Third District Court for Salt Lake County a
3289 petition with respect to an insurer domiciled in this state or an unauthorized insurer for an order
3290 of rehabilitation or liquidation on any one or more of the following grounds:

3291 (a) the insurer is impaired;

3292 (b) the insurer is insolvent;

3293 (c) subject to Subsection (2), the insurer is about to become insolvent;

3294 (d) (i) the insurer neglects or refuses to comply with an order of the commissioner to
3295 make good within the time prescribed by law any deficiency;

3296 (ii) if a stock company, if its capital and minimum required surplus is impaired; or

3297 (iii) if a company other than a stock company, if its surplus is impaired;

3298 (e) the insurer, its parent company, its subsidiary, or its affiliate:

3299 (i) converts, wastes, or conceals property of the insurer; or

3300 (ii) otherwise improperly disposes of, dissipates, uses, releases, transfers, sells, assigns,
3301 hypothecates, or removes the property of the insurer;

3302 (f) the insurer is in such condition that the insurer could not meet the requirements for
3303 organization and authorization as required by law, except as to the amount of:

3304 (i) the original surplus required of a stock company under Sections 31A-5-211 and
3305 31A-8-209; and

3306 (ii) the surplus required of a company other than a stock company in excess of the
3307 minimum surplus required to be maintained;
3308 (g) the insurer, its parent company, its subsidiary, or its affiliate:
3309 (i) conceals, removes, alters, destroys, or fails to establish and maintain records and
3310 other pertinent material adequate for the determination of the financial condition of the insurer
3311 by examination under Section 31A-2-203; or
3312 (ii) fails to properly administer claims or maintain claims records that are adequate for
3313 the determination of its outstanding claims liability;
3314 (h) at any time after the issuance of an order under Subsection 31A-2-201(4), or at the
3315 time of instituting a proceeding under this chapter, it appears to the commissioner that upon
3316 good cause shown, it is not in the best interest of the policyholders, creditors, or the public to
3317 proceed with the conduct of the business of the insurer;
3318 (i) the insurer is in such condition that the further transaction of business would be
3319 hazardous financially, according to Subsection 31A-17-609(3) or otherwise, to its
3320 policyholders, creditors, or the public;
3321 (j) there is reasonable cause to believe that:
3322 (i) there has been:
3323 (A) embezzlement from the insurer;
3324 (B) wrongful sequestration or diversion of the insurer's property;
3325 (C) forgery or fraud affecting the insurer; or
3326 (D) other illegal conduct in, by, or with respect to the insurer; and
3327 (ii) the act described in Subsection (1)(j)(i) if established would endanger assets in an
3328 amount threatening the solvency of the insurer;
3329 (k) control of the insurer is in a person who is:
3330 (i) dishonest;
3331 (ii) untrustworthy; or
3332 (iii) so lacking in insurance company managerial experience or capability as to be
3333 hazardous to policyholders, creditors, or the public;

- 3334 (l) if:
- 3335 (i) a person who in fact has executive authority in the insurer, whether an officer,
- 3336 manager, general agent, director, trustee, employee, shareholder, or other person:
- 3337 (A) refuses to be examined under oath by the commissioner concerning the insurer's
- 3338 affairs, whether in this state or elsewhere; or
- 3339 (B) if examined under oath, refuses to divulge pertinent information reasonably known
- 3340 to the person; and
- 3341 (ii) after reasonable notice of the facts described in Subsection (1)(l)(i), the insurer fails
- 3342 promptly and effectively to terminate:
- 3343 (A) the employment or status of the person; and
- 3344 (B) all of the person's influence on management;
- 3345 (m) after demand by the commissioner under Section 31A-2-203 or under this chapter,
- 3346 the insurer fails to promptly make available for examination:
- 3347 (i) any of its own property, accounts, or records; or
- 3348 (ii) so far as it pertains to the insurer, property, accounts, or records of:
- 3349 (A) a subsidiary or related company within the control of the insurer; or
- 3350 (B) a person having executive authority in the insurer;
- 3351 (n) without first obtaining the written consent of the commissioner, the insurer:
- 3352 (i) transfers, or attempts to transfer, in a manner contrary to Section 31A-5-508 or
- 3353 31A-16-103, substantially its entire property or business; or
- 3354 (ii) enters into a transaction the effect of which is to merge, consolidate, or reinsure
- 3355 substantially its entire property or business in or with the property or business of any other
- 3356 person;
- 3357 (o) the insurer or its property has been or is the subject of an application for the
- 3358 appointment of a receiver, trustee, custodian, conservator, sequestrator, or similar fiduciary of
- 3359 the insurer or its property otherwise than as authorized under the insurance laws of this state;
- 3360 (p) within the previous five years the insurer willfully and continuously violates:
- 3361 (i) its charter or articles of incorporation;

3362 (ii) its bylaws;
3363 (iii) an insurance law of this state; or
3364 (iv) a valid order of the commissioner;
3365 (q) the insurer fails to pay within 60 days after the due date:
3366 (i) (A) an obligation to any state or any subdivision of a state; or
3367 (B) a judgment entered in any state, if the court in which the judgment is entered has
3368 jurisdiction over the subject matter; and
3369 (ii) except that nonpayment is not a ground until 60 days after a good faith effort by the
3370 insurer to contest the obligation has been terminated, whether it is before the commissioner or
3371 in the courts;
3372 (r) the insurer systematically:
3373 (i) engages in the practice of:
3374 (A) reaching settlements with and obtaining releases from claimants; and
3375 (B) unreasonably delaying payment, or failing to pay the agreed-upon settlements; or
3376 (ii) attempts to compromise with claimants or other creditors on the ground that it is
3377 financially unable to pay its claims or obligations in full;
3378 (s) the insurer fails to file its annual report or other financial report required by statute
3379 within the time allowed by law;
3380 (t) the board of directors or the holders of a majority of the shares entitled to vote, or a
3381 majority of those individuals entitled to the control of those entities specified in Section
3382 31A-27a-104, request or consent to rehabilitation or liquidation under this chapter;
3383 (u) (i) the insurer does not comply with its domiciliary state's requirements for issuance
3384 to it of a certificate of authority; or
3385 (ii) the insurer's certificate of authority is revoked by its state of domicile; or
3386 (v) when authorized by Chapter 17, Part 6, Risk-Based Capital.
3387 (2) For purposes of this section, an insurer is about to become insolvent if it is
3388 reasonably anticipated that the insurer will not have liquid assets to meet its current obligations
3389 for the next 90 days.

3390 Section 63. Section **31A-27a-208** is enacted to read:

3391 **31A-27a-208. Entry of order.**

3392 (1) If the commissioner establishes any of the grounds provided in Section
3393 31A-27a-207, the receivership court shall:

3394 (a) grant the petition; and

3395 (b) issue the order of rehabilitation or liquidation requested in the petition.

3396 (2) Upon the issuance of the order, the commissioner shall forward a copy of the order
3397 by first-class mail or electronic communication as permitted by the receivership court to the
3398 commissioners and guaranty associations in states in which the insurer did business.

3399 Section 64. Section **31A-27a-209** is enacted to read:

3400 **31A-27a-209. Effect of order of rehabilitation or liquidation.**

3401 (1) The filing or recording of an order of receivership with the following imparts the
3402 same notice as a deed, bill of sale, or other evidence of title filed or recorded would have
3403 imparted:

3404 (a) the Third District Court for Salt Lake County;

3405 (b) the recorder of deeds of the county in which the principal business of the insurer is
3406 conducted; or

3407 (c) in the case of real estate, with the recorder of deeds of the county where the
3408 property is located.

3409 (2) The filing of a petition commencing delinquency proceedings under this chapter or
3410 the entry of an order of seizure, rehabilitation, or liquidation does not constitute a breach or an
3411 anticipatory breach of any contract or lease of the insurer.

3412 (3) (a) The receiver may appoint one or more special deputies.

3413 (b) A special deputy:

3414 (i) has the powers and responsibilities of the receiver granted under this section, unless
3415 specifically limited by the receiver; and

3416 (ii) serves at the pleasure of the receiver.

3417 (c) The receiver may employ or contract with:

- 3418 (i) legal counsel;
- 3419 (ii) one or more actuaries;
- 3420 (iii) one or more accountants;
- 3421 (iv) one or more appraisers;
- 3422 (v) one or more consultants;
- 3423 (vi) one or more clerks;
- 3424 (vii) one or more assistants; and
- 3425 (viii) other personnel as may be considered necessary.
- 3426 (d) A special deputy or other person with whom the receiver contracts under this
- 3427 Subsection (3):
- 3428 (i) is considered to be an agent of the commissioner only in the commissioner's
- 3429 capacity as receiver; and
- 3430 (ii) is not considered an agent of the state.
- 3431 (e) The provisions of any law governing the procurement of goods and services by the
- 3432 state do not apply to a contract entered into by the commissioner as receiver.
- 3433 (f) The compensation of a special deputy, employee, or contractor and all expenses of
- 3434 taking possession of the insurer and of conducting the receivership shall be:
- 3435 (i) determined by the receiver, with the approval of the receivership court in
- 3436 accordance with Section 31A-27a-115; and
- 3437 (ii) paid out of the property of the insurer.
- 3438 (g) (i) If the receiver, in the receiver's sole discretion, considers it necessary to the
- 3439 proper performance of the receiver's duties under this chapter, the receiver may appoint an
- 3440 advisory committee of policyholders, claimants, or other creditors including guaranty
- 3441 associations.
- 3442 (ii) The committee described in this Subsection (3)(g) serves:
- 3443 (A) at the pleasure of the receiver; and
- 3444 (B) without compensation and without reimbursement for expenses.
- 3445 (iii) The receiver or the receivership court in proceedings conducted under this chapter

3446 may not appoint any other committee of any nature.

3447 Section 65. Section **31A-27a-301** is enacted to read:

3448 **Part 3. Rehabilitation**

3449 **31A-27a-301. Rehabilitation orders.**

3450 (1) (a) An order to rehabilitate the business of an insurer shall:

3451 (i) appoint the commissioner and the commissioner's successors in office as the
3452 rehabilitator;

3453 (ii) direct the rehabilitator to:

3454 (A) take possession and title of the assets of the insurer; and

3455 (B) administer the assets of the insurer under the general supervision of the court; and

3456 (iii) require accountings to the receivership court by the rehabilitator.

3457 (b) Accountings shall be at the intervals the receivership court specifies in its order, but
3458 no less frequently than semiannually.

3459 (c) Each accounting shall include a report concerning the rehabilitator's opinion as to:

3460 (i) the likelihood that a plan under Section 31A-27a-303 will be prepared by the
3461 rehabilitator; and

3462 (ii) the timetable for preparing the plan described in Subsection (1)(c)(i).

3463 (2) (a) In recognition of the need for a prompt and final resolution for all persons
3464 affected by a plan of rehabilitation, any appeal from an order of rehabilitation or an order
3465 approving a plan of rehabilitation shall be heard on an expedited basis.

3466 (b) A stay of an order of rehabilitation or an order approving a plan of rehabilitation
3467 may not be granted unless the appellant demonstrates that extraordinary circumstances warrant
3468 delaying the recovery under the plan of rehabilitation of all other persons, including
3469 policyholders.

3470 (c) If a plan of rehabilitation provides an appropriate mechanism for adjustment in the
3471 event of an adverse ruling from an appeal, a stay may not be granted.

3472 Section 66. Section **31A-27a-302** is enacted to read:

3473 **31A-27a-302. Powers and duties of the rehabilitator.**

3474 (1) (a) With court approval, the rehabilitator may take an action the rehabilitator
3475 considers necessary or appropriate to reform and revitalize the insurer, including:
3476 (i) canceling:
3477 (A) a policy;
3478 (B) an insurance or reinsurance contract, other than life insurance, health insurance, or
3479 an annuity;
3480 (C) a surety bond; or
3481 (D) a surety undertaking; or
3482 (ii) transferring to a solvent assuming insurer:
3483 (A) a policy;
3484 (B) an insurance or reinsurance contract;
3485 (C) a surety bond; or
3486 (D) a surety undertaking.
3487 (b) The rehabilitator has all the powers of the directors, officers, and managers of the
3488 insurer, whose authority is suspended, except as redelegated by the rehabilitator.
3489 (c) The rehabilitator has full power to:
3490 (i) direct and manage the insurer;
3491 (ii) hire and discharge employees; and
3492 (iii) deal with the property and business of the insurer.
3493 (d) The rehabilitator is not liable as the result of good faith issuance or renewal of a
3494 policy while in rehabilitation.
3495 (2) The rehabilitator may pursue all appropriate legal remedies on behalf of the insurer
3496 if it appears to the rehabilitator that there is or has been criminal or tortious conduct, or breach
3497 of a contractual or fiduciary obligation detrimental to the insurer by an officer, a manager, an
3498 agent, a broker, an employee, an affiliate, or other person.
3499 (3) (a) The rehabilitator may assert all defenses available to the insurer as against a
3500 third person, including statutes of limitations, statutes of frauds, and the defense of usury.
3501 (b) A waiver of a defense by the insurer after a petition pursuant to Section

3502 31A-27a-201 or 31A-27a-207 is filed does not bind the rehabilitator.

3503 (4) The enumeration of the powers and authority of the rehabilitator in this section:

3504 (a) may not be construed as a limitation upon the rehabilitator; and

3505 (b) does not exclude in any manner the right to do other acts:

3506 (i) not specifically enumerated or otherwise provided for; and

3507 (ii) as may be necessary or appropriate for the accomplishment of or in aid of the

3508 purpose of rehabilitation.

3509 Section 67. Section **31A-27a-303** is enacted to read:

3510 **31A-27a-303. Filing of rehabilitation plans.**

3511 (1) (a) The rehabilitator shall prepare and file a plan to effect rehabilitation with the
3512 receivership court within:

3513 (i) one year after the day on which the rehabilitation order is entered; or

3514 (ii) such further time as the receivership court may allow.

3515 (b) The receivership court may take an action described in Subsection (1)(c):

3516 (i) upon application of the rehabilitator for approval of a plan; and

3517 (ii) after the notice and hearings the receivership court may prescribe.

3518 (c) If the conditions of Subsection (1)(b) are met, the receivership court may:

3519 (i) approve the plan proposed;

3520 (ii) disapprove the plan proposed; or

3521 (iii) (A) modify the plan proposed; and

3522 (B) approve the plan as modified.

3523 (d) If the plan is approved, the rehabilitator shall carry out the plan.

3524 (e) In the case of a life insurer, the plan proposed may:

3525 (i) include the imposition of a lien upon a policy of the insurer, if all rights of
3526 shareholders are relinquished; and

3527 (ii) propose imposition of a moratorium upon loan and cash surrender rights under a

3528 policy for a period not to exceed one year from the day on which the order approving the

3529 rehabilitation plan is entered, unless the receivership court, for good cause shown, extends the

3530 moratorium.

3531 (2) Once a plan is filed, any party in interest may object to the plan.

3532 (3) A plan shall:

3533 (a) except as provided in Subsection (5), provide no less favorable treatment of a claim

3534 or class of claims than would occur in liquidation, unless the holder of a particular claim or

3535 interest agrees to a less favorable treatment of that particular claim or interest;

3536 (b) provide adequate means for the plan's implementation;

3537 (c) contain information concerning the financial condition of the insurer and the

3538 operation and effect of the plan, as far as is reasonably practicable in light of:

3539 (i) the nature and history of the insurer;

3540 (ii) the condition of the insurer's records; and

3541 (iii) the nature of the plan; and

3542 (d) provide for the disposition of the records relevant to the duties and obligations

3543 covered by the plan.

3544 (4) A plan may include any other provisions not inconsistent with this chapter,

3545 including:

3546 (a) payment of distributions;

3547 (b) (i) assumption or reinsurance of all or a portion of the insurer's remaining liabilities

3548 by a licensed insurer or other entity; and

3549 (ii) transfer of assets and related records to the licensed insurer or other entity;

3550 (c) to the extent appropriate, application of insurance company regulatory market

3551 conduct standards to any entity administering claims on behalf of the receiver or assuming

3552 direct liabilities of the insurer;

3553 (d) contracting with a guaranty association or any other qualified entity to perform the

3554 administration of claims;

3555 (e) annual independent financial and performance audits of any entity administering

3556 claims on behalf of the receiver that is not otherwise subject to examination pursuant to state

3557 insurance law; and

3558 (f) termination of the insurer's liabilities other than those under policies of insurance as
3559 of a date certain.

3560 (5) (a) A plan may designate and separately treat one or more separate subclasses
3561 consisting only of those claims within the subclasses that are for or reduced to de minimis
3562 amounts.

3563 (b) For purposes of this Subsection (5), a "de minimis amount" is an amount equal to
3564 or less than a maximum de minimis amount approved by the receivership court as being
3565 reasonable and necessary for administrative convenience.

3566 Section 68. Section **31A-27a-304** is enacted to read:

3567 **31A-27a-304. Termination of rehabilitation.**

3568 (1) (a) The rehabilitator may move for an order of liquidation whenever the
3569 rehabilitator believes further attempts to rehabilitate an insurer would:

3570 (i) substantially increase the risk of loss to creditors, policyholders, or the public; or
3571 (ii) be futile.

3572 (b) In accordance with Section 31A-27a-305, the rehabilitator or the rehabilitator's
3573 designated representative shall coordinate with an affected guaranty association and any
3574 national association of guaranty associations to plan for transition to liquidation.

3575 (2) The rehabilitator shall petition the receivership court for an order of liquidation or
3576 seek an order, on good cause shown, for a longer suspension period if:

3577 (a) the payment of a policy obligation is suspended in substantial part for a period of
3578 six months at any time after the appointment of the rehabilitator; and

3579 (b) the rehabilitator has not filed an application for approval of a plan under Section
3580 31A-27a-303.

3581 (3) (a) The receivership court may enter an order terminating rehabilitation of an
3582 insurer:

3583 (i) on petition from the rehabilitator, which may be made at any time;

3584 (ii) on petition from the directors of the insurer, which may be made at any time; or

3585 (iii) on the receivership court's own motion.

3586 (b) Subject to Section 31A-27a-801, if the receivership court finds that rehabilitation is
3587 accomplished and that grounds for rehabilitation under Section 31A-27a-207 no longer exist,
3588 the receivership court shall order that the insurer be restored to:

3589 (i) title and possession of its property; and

3590 (ii) the control of the business.

3591 Section 69. Section **31A-27a-305** is enacted to read:

3592 **31A-27a-305. Coordination with guaranty associations and orderly transition to**
3593 **liquidation.**

3594 (1) No later than 30 days following the day on which an order of rehabilitation is
3595 entered the rehabilitator or the rehabilitator's designated representative shall:

3596 (a) consult with any potentially affected guaranty association or the affected guaranty
3597 association's designated representative to determine the extent to which the affected guaranty
3598 association will be impacted by or may assist in the efforts to rehabilitate the insurer; and

3599 (b) provide appropriate information to the affected guaranty association described in
3600 Subsection (1)(a) to allow the affected guaranty association to evaluate and discharge its
3601 statutory responsibilities.

3602 (2) (a) The rehabilitator shall begin appropriate contingency planning and organizing
3603 so that an orderly transition to liquidation occurs, if liquidation is necessary.

3604 (b) An orderly transition to liquidation requires, among other things, that the
3605 rehabilitator:

3606 (i) to the fullest extent possible, reserve sufficient assets to continue to meet
3607 obligations under insurance policies of the insolvent insurer until guaranty associations are
3608 triggered; and

3609 (ii) conduct affairs in such a way and cooperate as necessary with affected guaranty
3610 associations:

3611 (A) to ensure that affected guaranty associations are provided with:

3612 (I) appropriate information;

3613 (II) necessary updates at reasonable intervals; and

3614 (III) a reasonable period of time to plan and organize; and
3615 (B) so that affected guaranty associations are able to properly discharge statutory
3616 responsibilities upon being triggered.
3617 (3) Appropriate information as referred to in this section:
3618 (a) at a minimum includes the following for lines of business written by the insurer,
3619 whether covered or not covered by a guaranty association:
3620 (i) a general description of the different types of business written or assumed by the
3621 insurer;
3622 (ii) claim counts and policy counts by state and by line of business;
3623 (iii) claim and policy reserves;
3624 (iv) account values;
3625 (v) cash surrender values;
3626 (vi) policy loans;
3627 (vii) interest crediting history;
3628 (viii) premiums and mode of payment;
3629 (ix) unpaid claims and amounts;
3630 (x) sample policies and endorsements;
3631 (xi) listing of different locations of claim files;
3632 (xii) if a third party administrator is used, a copy of an executed contract and a
3633 description of the contractual arrangements; and
3634 (xiii) information concerning claims in litigation or dispute, including a listing of
3635 claims with assigned defense counsel for those claims going to trial in the near future after a
3636 possible liquidation date;
3637 (b) includes information concerning states in which the insurer is or was licensed;
3638 (c) includes information concerning time periods for which the insurer is or was
3639 licensed; and
3640 (d) includes other information reasonably requested by an affected guaranty association
3641 necessary for the affected guaranty association to fulfill its statutory duties.

3642 (4) (a) The listing of information in Subsection (3) is not necessarily an exclusive list.

3643 (b) To ensure that an orderly transition to liquidation occurs, information not listed in
3644 Subsection (3) may be needed and may be appropriately provided by the receiver.

3645 (5) In the case of a property and casualty insurer, the rehabilitator, in cooperation with
3646 affected guaranty associations, shall make all reasonable efforts to prepare the insurer's
3647 electronic policy and claims data so that, upon the entry of an order of liquidation, the data will
3648 be ready for transmission using the Uniform Data Standards as promulgated by the National
3649 Association of Insurance Commissioners.

3650 Section 70. Section **31A-27a-401** is enacted to read:

3651 **Part 4. Liquidation**

3652 **31A-27a-401. Liquidation orders.**

3653 (1) (a) An order to liquidate the business of an insurer shall:

3654 (i) appoint the commissioner and any successor in office as the liquidator; and

3655 (ii) direct the liquidator to:

3656 (A) take possession of the property of the insurer; and

3657 (B) administer the property subject to this chapter.

3658 (b) As of the entry of the final order of liquidation, the liquidator is vested by operation
3659 of law with the title to the following, wherever located, of the insurer ordered liquidated:

3660 (i) all property;

3661 (ii) all contracts;

3662 (iii) all rights of action; and

3663 (iv) all records.

3664 (2) Upon issuance of the order of liquidation, the rights and liabilities of the insurer
3665 and of its creditors, policyholders, shareholders, members, and all other persons interested in its
3666 estate shall become fixed as of the day on which the order of liquidation is entered:

3667 (a) except as provided in Sections 31A-27a-402, 31A-27a-403, and 31A-27a-605; and

3668 (b) unless otherwise fixed by the liquidation court.

3669 (3) An order to liquidate the business of an alien insurer in this state shall be in the

3670 same terms and have the same legal effect as an order to liquidate a domestic insurer.

3671 (4) (a) Whenever applicable, a petition for liquidation should include a request for a
3672 judicial declaration or finding of insolvency.

3673 (b) After providing proper notice and hearing, the receivership court may at any time
3674 make the declaration of insolvency.

3675 (5) If an order of liquidation is set aside upon appeal, the insurer is not released from
3676 delinquency proceedings except in accordance with Section 31A-27a-801.

3677 Section 71. Section **31A-27a-402** is enacted to read:

3678 **31A-27a-402. Continuance of coverage.**

3679 (1) Notwithstanding any policy or contract language or any other statute, and unless
3680 ordered otherwise by the receivership court upon application by the receiver, a reinsurance
3681 contract by which the insurer assumes the insurance obligations of another insurer is cancelled
3682 upon entry of an order of liquidation.

3683 (2) (a) Notwithstanding any policy or contract language or any other statute, and
3684 subject to Subsection (2)(c), the following in effect at the time of issuance of an order of
3685 liquidation shall continue in force as provided in this section until the time period specified in
3686 Subsection (2)(b):

3687 (i) a policy;

3688 (ii) an insurance contract, other than reinsurance by which the insurer has ceded
3689 insurance obligations to another person;

3690 (iii) a surety bond; or

3691 (iv) a surety undertaking.

3692 (b) Any item listed in Subsection (2)(a) continues in force:

3693 (i) until the earlier of:

3694 (A) 30 days from the day on which the liquidation order is entered;

3695 (B) the day on which the policy coverage expires;

3696 (C) the day on which the insured:

3697 (I) replaces the insurance coverage with equivalent insurance with another insurer; or

3698 (II) otherwise terminates the policy;
3699 (D) the day on which the liquidator effects a transfer of the policy obligation pursuant
3700 to Subsection 31A-27a-405(1)(i); or
3701 (E) the date proposed by the liquidator and approved by the receivership court to cancel
3702 coverage; or
3703 (ii) unless further extended by the receiver with the approval of the receivership court.
3704 (c) This Subsection (2) does not apply to:
3705 (i) life insurance;
3706 (ii) disability income insurance;
3707 (iii) long-term care insurance;
3708 (iv) health insurance; or
3709 (v) an annuity.
3710 (3) An order of liquidation under Section 31A-27a-401 terminates coverages at the
3711 time specified in Subsections (1) and (2) for purposes of any other statute.
3712 (4) (a) A life insurance policy, disability income insurance policy, long-term care
3713 insurance policy, health insurance policy, or an annuity continues in force:
3714 (i) if covered by an affected guaranty association or portions are covered by one or
3715 more affected guaranty associations, under applicable law;
3716 (ii) subject to the terms of the policy or annuity, including any terms restructured
3717 pursuant to a court-approved rehabilitation plan; and
3718 (iii) to the extent necessary to permit an affected guaranty association to discharge its
3719 statutory obligations.
3720 (b) A life insurance policy, disability income insurance policy, long-term care
3721 insurance policy, health insurance policy, or an annuity not covered by one or more guaranty
3722 associations, or those portions not covered by one or more guaranty associations terminates as
3723 provided under Subsection (2), except to the extent that the liquidator proposes and the
3724 receivership court approves the use of property of the estate, consistent with Section
3725 31A-27a-701, for the purpose of continuing the contract or coverage by transferring the

3726 contract or coverage to an assuming reinsurer.

3727 (5) The cancellation of a bond or surety undertaking does not release any cosurety or
3728 guarantor.

3729 (6) Except as otherwise provided in this chapter, the obligations of the insolvent
3730 insurer's reinsurers may not be released or discharged of a policy ceded to a reinsurer by a
3731 termination under this section.

3732 (7) A contract by which the insurer reinsures obligations arising under a life insurance
3733 policy, disability income insurance policy, long-term care insurance policy, or an annuity
3734 continues or terminates as provided in Section 31A-27a-513.

3735 Section 72. Section **31A-27a-403** is enacted to read:

3736 **31A-27a-403. Continuance of coverage -- Health maintenance organizations.**

3737 (1) As used in this section:

3738 (a) "Basic health care services" is as defined in Section 31A-8-101.

3739 (b) "Enrollee" is as defined in Section 31A-8-101.

3740 (c) "Health care" is as defined in Section 31A-1-301.

3741 (d) "Health maintenance organization" is as defined in Section 31A-8-101.

3742 (e) "Limited health plan" is as defined in Section 31A-8-101.

3743 (f) (i) "Managed care organization" means an entity licensed by, or holding a certificate
3744 of authority from, the department to furnish health care services or health insurance.

3745 (ii) "Managed care organization" includes:

3746 (A) a limited health plan;

3747 (B) a health maintenance organization;

3748 (C) a preferred provider organization;

3749 (D) a fraternal benefit society; or

3750 (E) an entity similar to an entity described in Subsections (1)(f)(ii)(A) through (D).

3751 (iii) "Managed care organization" does not include:

3752 (A) an insurer or other person that is eligible for membership in a guaranty association
3753 under Chapter 28, Guaranty Associations;

3754 (B) a mandatory state pooling plan;
3755 (C) a mutual assessment company or an entity that operates on an assessment basis; or
3756 (D) an entity similar to an entity described in Subsections (1)(f)(iii)(A) through (C).
3757 (g) "Participating provider" means a provider who, under a contract with a managed
3758 care organization authorized under Section 31A-8-407, agrees to provide health care services to
3759 enrollees with an expectation of receiving payment:
3760 (i) directly or indirectly, from the managed care organization; and
3761 (ii) other than a copayment.
3762 (h) "Participating provider contract" means the agreement between a participating
3763 provider and a managed care organization authorized under Section 31A-8-407.
3764 (i) "Preferred provider" means a provider who agrees to provide health care services
3765 under an agreement authorized under Subsection 31A-22-617(1).
3766 (j) "Preferred provider contract" means the written agreement between a preferred
3767 provider and a managed care organization authorized under Subsection 31A-22-617(1).
3768 (k) (i) Except as provided in Subsection (1)(k)(ii), "preferred provider organization"
3769 means a person that:
3770 (A) furnishes at a minimum, through a preferred provider, basic health care services to
3771 an enrollee in return for prepaid periodic payments in an amount agreed to before the time
3772 during which the health care may be furnished;
3773 (B) is obligated to the enrollee to arrange for the services described in Subsection
3774 (1)(k)(i)(A); and
3775 (C) permits the enrollee to obtain health care services from a provider who is not a
3776 preferred provider.
3777 (ii) "Preferred provider organization" does not include:
3778 (A) an insurer licensed under Chapter 7, Nonprofit Health Service Insurance
3779 Corporations; or
3780 (B) an individual who contracts to render professional or personal services that the
3781 individual performs.

3782 (l) "Provider" is as defined in Section 31A-8-101.

3783 (m) "Uncovered expenditure" means a cost of health care services that is covered by an
3784 organization for which an enrollee is liable in the event of the managed care organization's
3785 insolvency.

3786 (2) The rehabilitator or liquidator may take one or more of the actions described in
3787 Subsections (2)(a) through (g) to assure continuation of health care coverage for enrollees of an
3788 insolvent managed care organization.

3789 (a) (i) Subject to Subsection (2)(a)(ii), a rehabilitator or liquidator may require a
3790 participating provider or preferred provider to continue to provide the health care services the
3791 provider is required to provide under the provider's participating provider contract or preferred
3792 provider contract until the earlier of:

3793 (A) 90 days after the day on which the following is filed:

3794 (I) a petition for rehabilitation; or

3795 (II) a petition for liquidation; or

3796 (B) the day on which the term of the contract ends.

3797 (ii) A requirement by the rehabilitator or liquidator under Subsection (2)(a)(i) that a
3798 participating provider or preferred provider continue to provide health care services under the
3799 provider's participating provider contract or preferred provider contract expires when health
3800 care coverage for all enrollees of the insolvent managed care organization is obtained from
3801 another managed care organization or insurer.

3802 (b) (i) Subject to Subsection (2)(b)(ii), a rehabilitator or liquidator may reduce the fees
3803 a participating provider or preferred provider is otherwise entitled to receive from the managed
3804 care organization under the provider's participating provider contract or preferred provider
3805 contract during the time period in Subsection (2)(a)(i).

3806 (ii) Notwithstanding Subsection (2)(b)(i), a rehabilitator or liquidator may not reduce a
3807 fee to less than 75% of the regular fee set forth in the provider's participating provider contract
3808 or preferred provider contract.

3809 (iii) An enrollee shall continue to pay the same copayments, deductibles, and other

3810 payments for services received from a participating provider or preferred provider that the
3811 enrollee is required to pay before the day on which the following is filed:

3812 (A) the petition for rehabilitation; or

3813 (B) the petition for liquidation.

3814 (c) A participating provider or preferred provider shall:

3815 (i) accept the amounts specified in Subsection (2)(b) as payment in full; and

3816 (ii) relinquish the right to collect additional amounts from the insolvent managed care
3817 organization's enrollee.

3818 (d) Subsections (2)(b) and (c) apply to the fees paid to a provider who agrees to
3819 provide health care services to an enrollee but is not a preferred or participating provider.

3820 (e) If the managed care organization is a health maintenance organization, Subsections
3821 (2)(e)(i) through (vi) apply.

3822 (i) A solvent health maintenance organization licensed under Chapter 8, Health
3823 Maintenance Organizations and Limited Health Plans, shall extend to the enrollees of an
3824 insolvent health maintenance organization all rights, privileges, and obligations of being an
3825 enrollee in the accepting health maintenance organization:

3826 (A) subject to Subsections (2)(e)(ii), (iii), and (v);

3827 (B) upon notification from and subject to the direction of the rehabilitator or liquidator
3828 of an insolvent health maintenance organization licensed under Chapter 8, Health Maintenance
3829 Organizations and Limited Health Plans; and

3830 (C) if the solvent health maintenance organization operates within a portion of the
3831 insolvent health maintenance organization's service area.

3832 (ii) Notwithstanding Subsection (2)(e)(i), the accepting health maintenance
3833 organization shall give credit to an enrollee for any waiting period already satisfied under the
3834 enrollee's contract with the insolvent health maintenance organization.

3835 (iii) A health maintenance organization accepting an enrollee of an insolvent health
3836 maintenance organization under Subsection (2)(e)(i) shall charge the enrollee the premiums
3837 applicable to the existing business of the accepting health maintenance organization.

3838 (iv) A health maintenance organization's obligation to accept an enrollee under
3839 Subsection (2)(e)(i) is limited in number to the accepting health maintenance organization's pro
3840 rata share of all health maintenance organization enrollees in this state, as determined after
3841 excluding the enrollees of the insolvent insurer.

3842 (v) (A) The rehabilitator or liquidator of an insolvent health maintenance organization
3843 shall take those measures that are possible to ensure that no health maintenance organization is
3844 required to accept more than its pro rata share of the adverse risk represented by the enrollees
3845 of the insolvent health maintenance organization.

3846 (B) If the methodology used by the rehabilitator or liquidator to assign an enrollee is
3847 one that can be expected to produce a reasonably equitable distribution of adverse risk, that
3848 methodology and its results are acceptable under this Subsection (2)(e)(v).

3849 (vi) (A) Notwithstanding Section 31A-27a-402, the rehabilitator or liquidator may
3850 require all solvent health maintenance organizations to pay for the covered claims incurred by
3851 the enrollees of the insolvent health maintenance organization.

3852 (B) As determined by the rehabilitator or liquidator, payments required under this
3853 Subsection (2)(e)(vi) may:

3854 (I) begin as of the day on which the following is filed:

3855 (Aa) the petition for rehabilitation; or

3856 (Bb) the petition for liquidation; and

3857 (II) continue for a maximum period through the time all enrollees are assigned pursuant
3858 to this section.

3859 (C) If the rehabilitator or liquidator makes an assessment under this Subsection
3860 (2)(e)(vi), the rehabilitator or liquidator shall assess each solvent health maintenance
3861 organization its pro rata share of the total assessment based upon its premiums from the
3862 previous calendar year.

3863 (D) (I) A solvent health maintenance organization required to pay for covered claims
3864 under this Subsection (2)(e)(vi) may file a claim against the estate of the insolvent health
3865 maintenance organization.

3866 (II) Any claim described in Subsection (2)(e)(vi)(D)(I), if allowed by the rehabilitator
3867 or liquidator, shall share in any distributions from the estate of the insolvent health
3868 maintenance organization as a Class 3 claim.

3869 (f) (i) A rehabilitator or liquidator may transfer, through sale or otherwise, the group
3870 and individual health care obligations of the insolvent managed care organization to one or
3871 more other managed care organizations or other insurers, if those other managed care
3872 organizations and other insurers:

3873 (A) are licensed to provide the same health care services in this state that are held by
3874 the insolvent managed care organization; or

3875 (B) have a certificate of authority to provide the same health care services in this state
3876 that is held by the insolvent managed care organization.

3877 (ii) The rehabilitator or liquidator may combine group and individual health care
3878 obligations of the insolvent managed care organization in any manner the rehabilitator or
3879 liquidator considers best to provide for continuous health care coverage for the maximum
3880 number of enrollees of the insolvent managed care organization.

3881 (iii) If the terms of a proposed transfer of the same combination of group and
3882 individual policy obligations to more than one other managed care organization or insurer are
3883 otherwise equal, the rehabilitator or liquidator shall give preference to the transfer of the group
3884 and individual policy obligations of an insolvent managed care organization as follows:

3885 (A) from one category of managed care organization to another managed care
3886 organization of the same category, as follows:

3887 (I) from a limited health plan to a limited health plan;

3888 (II) from a health maintenance organization to a health maintenance organization;

3889 (III) from a preferred provider organization to a preferred provider organization;

3890 (IV) from a fraternal benefit society to a fraternal benefit society; and

3891 (V) from an entity similar to an entity described in this Subsection (2)(f)(iii)(A) to a
3892 category that is similar;

3893 (B) from one category of managed care organization to another managed care

3894 organization, regardless of the category of the transferee managed care organization; and
3895 (C) from a managed care organization to a nonmanaged care provider of health care
3896 coverage, including insurers.

3897 (g) If an insolvent managed care organization has required surplus, a rehabilitator or
3898 liquidator may use the insolvent managed care organization's required surplus to continue to
3899 provide coverage for the insolvent managed care organization's enrollees, including paying
3900 uncovered expenditures.

3901 Section 73. Section **31A-27a-404** is enacted to read:

3902 **31A-27a-404. Sale or dissolution of the insurer's corporate entity.**

3903 (1) Notwithstanding the entry of a liquidation order, the liquidator may apply for an
3904 order to sell or dissolve the corporate entity or charter of a domestic insurer, or the United
3905 States branch of an alien insurer domiciled in this state:

3906 (a) at any time after an order of liquidation of the insurer is granted; and

3907 (b) consistent with this section.

3908 (2) Upon an application to sell the corporate entity or charter, with notice as prescribed
3909 in this chapter, the receivership court may enter an order:

3910 (a) separating the corporate entity or charter, together with any of its licenses to do
3911 business and the assets the liquidator considers appropriate to the transaction, from:

3912 (i) the remaining estate in liquidation;

3913 (ii) all of the remaining estate's assets; and

3914 (iii) the claims or interests of all claimants, creditors, policyholders, and stockholders;

3915 (b) canceling all outstanding stock and other securities of, and other equity interests in,
3916 the corporate entity or charter, except that the cancellation may not affect any claim against the
3917 estate by holders of the equity interests;

3918 (c) authorizing the issuance and sale of new stock or other securities for the purpose of
3919 transferring to one or more buyers control and ownership of the corporate entity or charter; and

3920 (d) authorizing the sale of the corporate entity or charter, together with any of its
3921 licenses to do business and the general assets the liquidator considers appropriate to the

3922 transaction, free and clear from the claims or interests of all claimants, creditors, policyholders,
3923 and stockholders.

3924 (3) (a) The sale of the corporate entity or charter may be made in the manner and on the
3925 terms and conditions:

3926 (i) applied for by the liquidator; and

3927 (ii) ordered by the receivership court.

3928 (b) A sale is subject to the domiciliary state's laws regarding acquisition of an insurer
3929 under Chapter 16, Insurance Holding Companies.

3930 (c) Upon the sale of a corporate entity or chapter:

3931 (i) the proceeds from the sale become a part of the property of the estate in liquidation;
3932 and

3933 (ii) the then separate corporate entity or charter, together with any of its licenses to do
3934 business and the assets the liquidator considers appropriate to the transaction, is free and clear
3935 from the claims or interests of all claimants, creditors, policyholders, and stockholders of the
3936 insurer in liquidation.

3937 (d) The court has broad powers to effect the disposition of a corporate entity and its
3938 charter including, without limiting the statement of broad powers, a reorganization or
3939 conversion of the corporate entity.

3940 (4) This section shall be liberally construed to:

3941 (a) accomplish its purposes to provide an expeditious and effective procedure to realize
3942 the maximum proceeds possible from the sale of a corporate entity or charter separated from an
3943 estate in liquidation; and

3944 (b) ensure that a purchaser receives clear and marketable title.

3945 (5) If permission to sell the corporate entity or charter is not granted before discharge
3946 of the liquidator, in accordance with this section or otherwise with receivership court approval:

3947 (a) the receivership court may order dissolution of the corporate entity or charter;

3948 (b) dissolution is considered complete by operation of law upon the discharge of the
3949 liquidator if the insurer is insolvent; or

3950 (c) dissolution may be ordered by the receivership court upon the discharge of the
3951 liquidator if the insurer is under a liquidation order for some other reason.

3952 Section 74. Section **31A-27a-405** is enacted to read:

3953 **31A-27a-405. Powers of the liquidator.**

3954 (1) The liquidator may:

3955 (a) (i) hold hearings, subpoena a witness to compel the witness' attendance, administer
3956 oaths, examine a person under oath, and compel a person to subscribe to that person's
3957 testimony after the testimony is correctly reduced to writing; and

3958 (ii) in connection with a power listed in Subsection (1)(a)(i), require the production of
3959 a record that the liquidator considers relevant to the inquiry;

3960 (b) audit the records of all agents of the insurer to the extent that those records relate to
3961 the business activities of the insurer;

3962 (c) collect all debts and moneys due and claims belonging to the insurer, wherever
3963 located, and for this purpose to:

3964 (i) institute action in another jurisdiction, to forestall garnishment and attachment
3965 proceedings against the debt;

3966 (ii) in addition to paying other Class 1 claims described in Subsection
3967 31A-27a-701(2)(a), if the payment assists or results in the collection or recovery of property of
3968 the insurer that provides a net benefit to creditors of the estate, pay Class 1 administrative costs
3969 of the estate:

3970 (A) upon approval of the receivership court; and

3971 (B) only to the extent of the collection or recovery of the property;

3972 (iii) do any other act as is necessary or expedient to collect, conserve, or protect the
3973 insurer's property, including the power to sell, compound, compromise, or assign a debt for
3974 purposes of collection upon the terms and conditions that the liquidator considers consistent
3975 with this chapter; and

3976 (iv) pursue any creditor's remedies available to enforce a claim of the insurer;

3977 (d) conduct public and private sales of the property of the insurer;

3978 (e) subject to Subsection (6), use property of the estate of an insurer under a liquidation
3979 order to transfer:
3980 (i) (A) a policy obligation; or
3981 (B) (I) the insurer's obligations under a surety bond or a surety undertaking; and
3982 (II) collateral held by the insurer with respect to the reimbursement obligations of the
3983 principals under the surety bond or surety undertaking;
3984 (ii) to a solvent assuming insurer; and
3985 (iii) if the transfer can be arranged without prejudice to applicable priorities under
3986 Section 31A-27a-701;
3987 (f) subject to Subsection (4), acquire, hypothecate, encumber, lease, improve, sell,
3988 transfer, abandon, or otherwise dispose of or deal with, any property of the estate:
3989 (i) at its market value; or
3990 (ii) upon terms and conditions that are fair and reasonable;
3991 (g) execute, acknowledge, and deliver any deed, assignment, release, or other
3992 instrument necessary or proper to effectuate a sale of property or other transaction in
3993 connection with the liquidation;
3994 (h) (i) subject to Subsection (7), borrow money for the purpose of facilitating the
3995 liquidation:
3996 (A) on the security of the property of the estate; or
3997 (B) without security; and
3998 (ii) execute and deliver a document necessary to the transaction to borrow money;
3999 (i) (i) enter into a contract necessary to carry out the order to liquidate; and
4000 (ii) subject to Section 31A-27a-113, assume or reject an executory contract or
4001 unexpired lease to which the insurer is a party;
4002 (j) (i) continue to prosecute or to institute in the name of the insurer or in the
4003 liquidator's own name a suit or other legal proceeding, in this state or elsewhere; and
4004 (ii) abandon the prosecution of a claim the liquidator considers unprofitable to pursue
4005 further;

4006 (k) if the insurer is dissolved under Section 31A-27a-404, apply to a court in this state
4007 or elsewhere for leave to substitute the liquidator for the insurer as a party;

4008 (l) subject to Subsection (8), prosecute or assert with exclusive standing an action that
4009 may exist on behalf of the public or a creditor, member, policyholder, or shareholder of the
4010 insurer against a person, except to the extent that:

4011 (i) a claim is personal to a specific creditor, member, policyholder, or shareholder; and

4012 (ii) recovery on the claim would not inure to the benefit of the estate;

4013 (m) subject to Subsection (8), take possession of a record or property of the insurer as
4014 may be convenient for the purposes of efficient and orderly execution of the liquidation;

4015 (n) deposit in one or more banks in this state sums required for meeting current
4016 administration expenses and dividend distributions;

4017 (o) invest all sums not currently needed, unless the receivership court orders otherwise;

4018 (p) file any necessary document for record in the office of a recorder of deeds or record
4019 office in this state or elsewhere where property of the insurer is located;

4020 (q) subject to Subsection (9), assert all defenses available to the insurer as against a
4021 third person, including statutes of limitations, statutes of frauds, and the defense of usury;

4022 (r) exercise and enforce all the rights, remedies, and powers of a creditor, shareholder,
4023 policyholder, or member, including any power to avoid a transfer or lien that may be voidable
4024 under this chapter or otherwise;

4025 (s) (i) intervene in a proceeding wherever instituted that might lead to the appointment
4026 of a receiver or trustee for the insurer or any of its property; and

4027 (ii) act as the receiver or trustee whenever the appointment is offered;

4028 (t) enter into an agreement with a receiver or commissioner of any other state; and

4029 (u) exercise all powers held on or conferred after April 30, 2007, on a receiver by the
4030 laws of this state not inconsistent with this chapter.

4031 (2) The liquidator is vested with all the rights of the one or more entities in
4032 receivership.

4033 (3) The enumeration of the powers and authority of the liquidator in this section:

4034 (a) may not be construed as a limitation upon the liquidator; and
4035 (b) does not exclude in any manner the right to do other acts:
4036 (i) not specifically enumerated or otherwise provided for; and
4037 (ii) to the extent necessary or appropriate for the accomplishment of or in aid of the
4038 purpose of liquidation.
4039 (4) (a) The liquidator may take the following actions as provided in this Subsection (4):
4040 (i) hypothecate, encumber, lease, sell, transfer, abandon, or otherwise dispose of or
4041 deal with property of the insurer;
4042 (ii) settle or resolve a claim brought by the liquidator on behalf of the insurer; or
4043 (iii) commute or settle a claim of reinsurance under a contract of reinsurance.
4044 (b) The liquidator may take an action described in Subsection (4)(a) at the liquidator's
4045 discretion if the property or claim has a market or settlement value, as shown on the
4046 receivership's financial statements, that does not exceed:
4047 (i) the lesser of:
4048 (A) \$1,000,000; or
4049 (B) 10% of the general assets of the estate; or
4050 (ii) an amount increased from the amount described in Subsection (4)(b)(i), if the
4051 receivership court increases the amount upon a petition of the liquidator and a showing that
4052 compliance with this Subsection (4)(b) is:
4053 (A) burdensome to the liquidator in administering the estate; and
4054 (B) unnecessary to protect the material interests of creditors.
4055 (c) In all instances other than those described in Subsection (4)(b), the liquidator may
4056 take an action described in Subsection (4)(a) only after obtaining approval of the receivership
4057 court as provided in Section 31A-27a-107.
4058 (d) The liquidator may, at the liquidator's discretion, request the receivership court to
4059 approve a proposed action as provided in Section 31A-27a-107:
4060 (i) if the value of the property or claim appears to be less than the threshold provided in
4061 Subsection (4)(b) but cannot be ascertained with certainty; or

- 4062 (ii) for any other reason as determined by the liquidator.
- 4063 (e) (i) After obtaining approval of the receivership court as provided in Section
- 4064 31A-27a-107, the liquidator may transfer rights to payment under a ceding reinsurance
- 4065 agreement covering policy to a third party transferee.
- 4066 (ii) The transferee has the rights to collect and enforce collection of the reinsurance for
- 4067 the amount payable to the ceding insurer or to its receiver:
- 4068 (A) without diminution because:
- 4069 (I) of the insolvency; or
- 4070 (II) the receiver failed to pay all or a portion of the claim; and
- 4071 (B) on the basis of the amounts paid or allowed pursuant to Section 31A-27a-511.
- 4072 (iii) The transfer of the rights described in Subsection (4)(e)(ii) does not give rise to
- 4073 any defense regarding the reinsurer's obligations under the reinsurance agreement regardless of
- 4074 whether the agreement or other applicable law prohibits the transfer of rights under the
- 4075 reinsurance agreement.
- 4076 (iv) Except as provided in this Subsection (4), a transfer of rights pursuant to this
- 4077 Subsection (4)(e) may not impair any right or defense of the reinsurer that:
- 4078 (A) exists before the transfer; or
- 4079 (B) would have existed in the absence of the transfer.
- 4080 (v) Except as otherwise provided in this Subsection (4), a transfer of rights pursuant to
- 4081 this Subsection (4)(e) does not relieve the transferee or the liquidator from an obligation owed
- 4082 to the reinsurer pursuant to the reinsurance or other agreement.
- 4083 (5) (a) The liquidator is not obligated to defend an action against the insurer or insured.
- 4084 (b) If a defense is an obligation of the insurer, an insured not defended by a guaranty
- 4085 association may:
- 4086 (i) provide its own defense; and
- 4087 (ii) include the cost of the defense as part of the insured's claim.
- 4088 (c) The right of the liquidator to contest coverage on a particular claim is preserved
- 4089 without the necessity for an express reservation of rights.

4090 (6) Once a liquidator makes a transfer described in Subsection (1)(e), the estate has no
 4091 further liability under a transferred policy, surety bond, or surety undertaking after the transfer
 4092 is made if:

4093 (a) all insureds, principals, third party claimants, and obligees under the policy, surety
 4094 bond, or surety undertaking consent; or

4095 (b) the receivership court so orders.

4096 (7) Funds borrowed under Subsection (1)(h):

4097 (a) may be repaid as an administrative expense; and

4098 (b) have priority over any other claims in Class 1 under the priority of distribution.

4099 (8) (a) Subsection (1)(l) does not infringe or impair any of the rights provided to an
 4100 affected guaranty association pursuant to its enabling statute or otherwise.

4101 (b) Notwithstanding Subsection (1)(m), an affected guaranty association shall have
 4102 reasonable access to the records of the insurer necessary for the affected guaranty association to
 4103 carry out its statutory obligations.

4104 (9) (a) A waiver of a defense by the insurer after a petition pursuant to Section
 4105 31A-27a-201 or 31A-27a-207 is filed does not bind the liquidator.

4106 (b) Notwithstanding Subsection (1)(q), when an affected guaranty association
 4107 determines it has an obligation to defend a suit, the liquidator:

4108 (i) shall defer to that obligation; and

4109 (ii) may defend only in cooperation with the affected guaranty association.

4110 Section 75. Section **31A-27a-406** is enacted to read:

4111 **31A-27a-406. Notice to creditors and others.**

4112 (1) Unless the receivership court otherwise directs, the liquidator shall give or cause to
 4113 be given notice of the liquidation order as soon as possible:

4114 (a) by first-class mail or electronic communication as permitted by the receivership
 4115 court to the following at their last-known address:

4116 (i) all of the insurer's agents, brokers, or producers of record with a current
 4117 appointment or current license to represent the insurer; and

4118 (ii) all other agents, brokers, or producers that the liquidator considers appropriate;
4119 (b) by first-class mail or electronic communication as permitted by the receivership
4120 court to:
4121 (i) all current policyholders;
4122 (ii) all pending claimants; and
4123 (iii) as determined by the receivership court, former policyholders and other creditors;
4124 and
4125 (c) by one time publication in a newspaper of general circulation in:
4126 (i) the county in which the insurer has its principal place of business; and
4127 (ii) other locations that the liquidator considers appropriate.
4128 (2) The notice of the entry of an order of liquidation shall contain or provide directions
4129 for obtaining the following information:
4130 (a) a statement that the insurer has been placed in liquidation;
4131 (b) a statement:
4132 (i) explaining that certain acts are stayed under Section 31A-27a-108; and
4133 (ii) describing any additional injunctive relief ordered by the receivership court;
4134 (c) a statement whether, and to what extent, the insurer's policies continue in effect;
4135 (d) to the extent applicable, a statement that coverage by guaranty associations may be
4136 available for all or part of policy benefits in accordance with applicable state guaranty laws;
4137 (e) a statement of:
4138 (i) the deadline for filing claims, if established; and
4139 (ii) the requirements for filing a proof of claim pursuant to Section 31A-27a-601 on or
4140 before that date;
4141 (f) a statement of the date, time, and location of any initial status hearing scheduled at
4142 the time the notice is sent;
4143 (g) a description of the process for obtaining notice of matters before the receivership
4144 court; and
4145 (h) other information as the liquidator or the receivership court considers appropriate.

4146 (3) If notice is given in accordance with this section, the distribution of property of the
4147 insurer under this chapter is conclusive with respect to all claimants, whether or not the
4148 claimant received notice.

4149 (4) (a) Notwithstanding the other provisions of this section, the liquidator has no duty
4150 to locate any person if:

4151 (i) no address is found in the records of the insurer; or

4152 (ii) a mailing is returned to the liquidator because of inability to deliver at the address
4153 shown in the insurer's records.

4154 (b) In the circumstances described in Subsection (4)(a), the notice by publication as
4155 required by this chapter or actual notice received is sufficient notice.

4156 (c) Written certification by the liquidator or other knowledgeable person acting for the
4157 liquidator that a notice is deposited in the United States mail, postage prepaid, or that the notice
4158 is electronically transmitted is prima facie evidence of mailing and receipt.

4159 (d) A claimant has a duty to keep the liquidator informed of any change of address.

4160 (5) Notwithstanding Subsection (1):

4161 (a) upon application of the liquidator, the receivership court may find that notice by
4162 publication as required in this section is sufficient notice to those persons holding an
4163 occurrence policy:

4164 (i) that expired more than four years before the day on which the order of liquidation is
4165 entered; and

4166 (ii) under which there are no pending claims; or

4167 (b) the receivership court may order other notice to those persons that the receivership
4168 court considers appropriate.

4169 Section 76. Section **31A-27a-407** is enacted to read:

4170 **31A-27a-407. Duties of agents.**

4171 (1) (a) At the request of the liquidator, an agent receiving notice of the entry of the
4172 liquidation order shall provide notice of that order:

4173 (i) on a form prescribed by the liquidator;

4174 (ii) to:
4175 (A) each policyholder of a policy issued through the agent; and
4176 (B) other person named in a policy issued through the agent; and
4177 (iii) within:
4178 (A) 15 days of the day on which the agent receives the notice; or
4179 (B) a longer time as the liquidator may require.
4180 (b) Within 30 days of the mailing required by Subsection (1)(a), the agent shall provide
4181 as prescribed by the liquidator:
4182 (i) a certification of mailing; and
4183 (ii) a list of insureds to which notice is provided.
4184 (2) (a) A person who represents the insurer as an agent and receives notice in the form
4185 prescribed in Section 31A-27a-406, shall, within 30 days of the day on which the notice being
4186 sent, provide to the liquidator:
4187 (i) the information the agent is required to provide pursuant to Section 31A-27a-110, if
4188 any;
4189 (ii) the information in the agent's records related to any policy issued by the insurer
4190 through the agent; and
4191 (iii) if the agent is a general agent, the information in the general agent's records related
4192 to any policy issued by the insurer through an agent under contract to the general agent,
4193 including the name and address of the subagent.
4194 (b) Except where the ownership of the expiration of the policy is transferred to another,
4195 a policy is considered issued through an agent if the agent:
4196 (i) has a property interest in the expiration of the policy; or
4197 (ii) has had in the agent's possession a copy of the declarations of the policy at any time
4198 during the life of the policy.
4199 (3) If an agent fails to provide information to the liquidator as required in Subsection
4200 (2), the commissioner after holding a hearing may:
4201 (a) impose against the agent a penalty of not more than \$1,000; and

4202 (b) suspend the agent's license.

4203 (4) Notwithstanding an agent's property interest, if any, in the expiration of a policy,
4204 the liquidator has the exclusive power to determine whether, and under what terms, to cancel or
4205 transfer the policy.

4206 Section 77. Section **31A-27a-501** is enacted to read:

4207 **Part 5. Asset Recovery**

4208 **31A-27a-501. Turnover of assets.**

4209 (1) (a) If the receiver determines that funds or property in the possession of another
4210 person are rightfully the property of the estate, the receiver shall deliver to the person a written
4211 demand for immediate delivery of the funds or property:

4212 (i) referencing this section by number;

4213 (ii) referencing the court and docket number of the receivership action; and

4214 (iii) notifying the person that any claim of right to the funds or property by the person
4215 shall be presented to the receivership court within 20 days of the day on which the person
4216 receives the written demand.

4217 (b) (i) A person who holds funds or other property belonging to an entity subject to an
4218 order of receivership under this chapter shall deliver the funds or other property to the receiver
4219 on demand.

4220 (ii) If the person described in Subsection (1)(b)(i) alleges a right to retain the funds or
4221 other property, the person shall:

4222 (A) file a pleading with the receivership court setting out that right within 20 days of
4223 the day on which the person receives the demand that the funds or property be delivered to the
4224 receiver; and

4225 (B) serve a copy of the pleading on the receiver.

4226 (iii) The pleading described in Subsection (1)(b)(ii) shall inform the receivership court
4227 as to:

4228 (A) the nature of the claim to the funds or property;

4229 (B) the alleged value of the property or amount of funds held; and

4230 (C) what action has been taken by the person to preserve any funds or to preserve and
4231 protect the property pending determination of the dispute.

4232 (c) The relinquishment of possession of funds or property by a person who receives a
4233 demand pursuant to this section is not a waiver of a right to make a claim in the receivership.

4234 (2) (a) If requested by the receiver, the receivership court shall hold a hearing to
4235 determine where and under what conditions the funds or property shall be held by a person
4236 described in Subsection (1) pending determination of a dispute concerning the funds or
4237 property.

4238 (b) The receivership court may impose the conditions the receivership court considers
4239 necessary or appropriate for the preservation of the funds or property until the receivership
4240 court can determine the validity of the person's claim to the funds or property.

4241 (c) If funds or property are allowed to remain in the possession of the person after
4242 demand made by the receiver, that person is strictly liable to the estate for any waste, loss, or
4243 damage to or diminution of value of the funds or property retained.

4244 (3) If a person files a pleading alleging a right to retain funds or property as provided in
4245 Subsection (1), the receivership court shall hold a subsequent hearing to determine the
4246 entitlement of the person to the funds or property claimed by the receiver.

4247 (4) If a person fails to deliver the funds or property or to file the pleading described by
4248 Subsection (1) within the 20-day period, the receivership court may issue a summary order:

4249 (a) upon:

4250 (i) petition of the receiver; and

4251 (ii) a copy of the petition being served by the petitioner to that person;

4252 (b) directing the immediate delivery of the funds or property to the receiver; and

4253 (c) finding that the person waived all claims of right to the funds or property.

4254 (5) The liquidator shall reduce the assets to a degree of liquidity that is consistent with
4255 the effective execution of the liquidation.

4256 Section 78. Section **31A-27a-502** is enacted to read:

4257 **31A-27a-502. Recovery from affiliates.**

4258 (1) (a) If a receivership order is entered under this chapter, the receiver appointed under
4259 the receivership order may recover on behalf of the insurer from an affiliate as defined in
4260 Subsection 31A-1-301(5) the value received by the affiliate at any time during the five years
4261 preceding the filing date of the delinquency proceedings.

4262 (b) A person disputing that person's status as an affiliate must prove by clear and
4263 convincing evidence the person's nonaffiliate status.

4264 (c) Recovery from an affiliate is subject to the limitations of Subsections (2) and (6).

4265 (2) If the insurer is a stock corporation, a stock dividend distribution to an affiliate is
4266 not recoverable if the recipient shows by a preponderance of the evidence that:

4267 (a) when paid, the stock dividend distribution to an affiliate is lawful and reasonable;

4268 (b) the department had notice to and approved the stock dividend; and

4269 (c) the insurer did not know and could not reasonably have known that the stock
4270 dividend distribution to the affiliate might adversely affect the solvency of the insurer.

4271 (3) The maximum amount recoverable under this section is the amount needed to pay
4272 all claims under the receivership:

4273 (a) in excess of all other available recoverable assets; and

4274 (b) reduced for each recipient affiliate by any amount that the recipient affiliate pays to
4275 any receiver under similar laws of other states.

4276 (4) (a) A person who is an affiliate at the time value is received is liable up to the
4277 amount of value received by the affiliate.

4278 (b) If two or more affiliates are liable regarding the same value received, they are
4279 jointly and severally liable.

4280 (5) If any affiliate liable under Subsection (4) is insolvent or unable to pay within one
4281 year, all affiliates at the time the value is received are jointly and severally liable for any
4282 resulting deficiency in the amount that would have been recovered from the nonpaying
4283 affiliate.

4284 (6) This section does not enlarge the personal liability of a director under existing law.

4285 (7) An action or proceeding under this section may not be commenced after the earlier

4286 of:

4287 (a) six years after the day on which a receiver is appointed; or

4288 (b) the day on which the receivership is terminated.

4289 Section 79. Section **31A-27a-503** is enacted to read:

4290 **31A-27a-503. Unauthorized postpetition transfers.**

4291 (1) Except as otherwise provided in this section, the receiver may avoid a transfer of an
4292 interest of the insurer in property, or an obligation incurred by the insurer, that is:

4293 (a) made or incurred after the day on which a petition for receivership is filed; and

4294 (b) not authorized by the receiver and approved by the receivership court.

4295 (2) Except to the extent that a transfer or obligation voidable under this section is
4296 otherwise voidable under this chapter, a transferee or obligee of a transfer or obligation
4297 described in Subsection (1) has a lien on or may retain, at the option of the receivership court,
4298 an interest transferred or may enforce an obligation incurred, as the case may be:

4299 (a) if the transferee or obligee takes it for value and in good faith; and

4300 (b) to the extent that the transferee or obligee gave value to the insurer in exchange for
4301 the transfer or obligation.

4302 Section 80. Section **31A-27a-504** is enacted to read:

4303 **31A-27a-504. Voidable preferences and liens.**

4304 (1) (a) A preference may be avoided by the rehabilitator or liquidator, if:

4305 (i) the insurer is insolvent at the time of the transfer;

4306 (ii) the transfer is made within four months before the day on which the petition is

4307 filed;

4308 (iii) with reference to the transfer, one of the following at the time the transfer is made
4309 has reasonable cause to believe that the insurer is or is about to become insolvent:

4310 (A) a creditor receiving the transfer;

4311 (B) a creditor to be benefitted by the transfer; or

4312 (C) an agent of a creditor described in this Subsection (1)(a)(iii); or

4313 (iv) the creditor receiving the transfer is an officer, employee, attorney, or other person

4314 who is in fact in a position of comparable influence on the insurer to:

4315 (A) an officer of the insurer;

4316 (B) a shareholder holding directly or indirectly more than 5% of any class of equity
4317 security issued by the insurer; or

4318 (C) any other person with whom the insurer did not deal at arm's length.

4319 (b) (i) Subject to the other provisions of this Subsection (1)(b), if a preference is
4320 voidable, the rehabilitator or liquidator may recover the property or, if the property is
4321 converted, the property's value, from any person who receives or converts the property.

4322 (ii) Notwithstanding Subsection (1)(b)(i), the rehabilitator or liquidator may not
4323 recover from a bona fide purchaser or lienor of the debtor's transferee for present fair
4324 consideration.

4325 (iii) If a bona fide purchaser or lienor gives less than fair consideration, the bona fide
4326 purchaser or lienor has a lien upon the property to the extent of the consideration actually given
4327 by the bona fide purchaser or lienor.

4328 (c) If a preference by way of lien or security title is voidable, the court may, on due
4329 notice, order the lien or title to be preserved for the benefit of the estate, in which event the lien
4330 or title passes to the liquidator.

4331 (d) A payment to which Subsection 31A-5-415(2) applies is a preference and is
4332 voidable under Subsection (1)(a):

4333 (i) if it is made within the time period specified in Subsection 31A-27a-102(29); and

4334 (ii) except that a payment made by an insurer for the purchase of insurance under
4335 Section 16-10a-302 is not a preference.

4336 (2) Section 31A-27a-506 applies to the perfection of a transfer.

4337 (3) Section 31A-27a-506 applies to a lien by a legal or equitable proceeding.

4338 (4) The receiver may not avoid a transfer of property under this section for or because
4339 of:

4340 (a) new and contemporaneous consideration;

4341 (b) the payment, within 45 days after the day on which a debt is incurred, of a debt

- 4342 incurred:
- 4343 (i) in the ordinary course of the business of the insurer; and
- 4344 (ii) according to normal business terms;
- 4345 (c) a transfer of a security interest in property:
- 4346 (i) to enable the insurer to acquire the property; and
- 4347 (ii) which is perfected within ten days after the day on which the security interest
- 4348 attaches:
- 4349 (d) a transfer to or for the benefit of a creditor:
- 4350 (i) to the extent that after the transfer the creditor gives new value not secured by an
- 4351 unavoidable security interest; and
- 4352 (ii) on account of which the insurer did not make an unavoidable transfer to or for the
- 4353 benefit of the creditor; or
- 4354 (e) a transfer of a perfected security interest in inventory, a receivable, or the proceeds
- 4355 of either, except to the extent that the aggregate of all of those types of transfers to the
- 4356 transferee cause a reduction of the amount by which the debt secured by the security interest
- 4357 exceeds the value of the security interest four months before the date of liquidation or any time
- 4358 subsequent to the liquidation.
- 4359 (5) (a) The receiver may avoid a transfer of property of the insurer transferred to secure
- 4360 reimbursement of a surety that furnishes a bond or other obligation to dissolve a judicial lien
- 4361 that would have been avoidable by the receiver under Subsection (1)(a).
- 4362 (b) The liability of the surety under the bond or obligation described in Subsection
- 4363 (5)(a) shall be discharged to the extent of the value of the property recovered by the receiver or
- 4364 the amounts paid to the receiver.
- 4365 (6) (a) Subject to Subsection (6)(b), the property affected by a lien that is considered
- 4366 voidable under Subsections (1)(a) and (5):
- 4367 (i) is discharged from the lien; and
- 4368 (ii) passes to the rehabilitator or liquidator with any of the indemnifying property
- 4369 transferred to or for the benefit of a surety.

4370 (b) Notwithstanding Subsection (6)(a), the court may:
4371 (i) on due notice, order the lien to be preserved for the benefit of the estate; and
4372 (ii) direct that a conveyance be executed that is adequate to evidence the title of the
4373 rehabilitator or liquidator.
4374 (7) (a) The court has jurisdiction of any proceeding by the rehabilitator or liquidator, to
4375 hear and determine the rights of any parties under this section.
4376 (b) Reasonable notice of any hearing in a proceeding described in Subsection (7)(a)
4377 shall be given to all parties in interest, including the obligee of a releasing bond or other similar
4378 obligation.
4379 (c) If an order is entered for the recovery of indemnifying property in kind or for the
4380 avoidance of an indemnifying lien:
4381 (i) the court, upon application of any party in interest, shall in the same proceeding
4382 ascertain the value of the property or lien; and
4383 (ii) if the value of the property or lien is less than the amount for which the property is
4384 an indemnity or than the amount of the lien, the transferee or lienholder may elect to retain the
4385 property or lien upon payment of its value, as ascertained by the court:
4386 (A) to the rehabilitator or liquidator; and
4387 (B) within a reasonable time fixed by the court.
4388 (8) The liability of a surety under a releasing bond or other similar obligation is
4389 discharged to the extent of the value of:
4390 (a) the indemnifying property recovered;
4391 (b) the indemnifying lien nullified and avoided; or
4392 (c) if the property is retained under Subsection (7), the amount paid to the rehabilitator
4393 or liquidator.
4394 (9) If a creditor is preferred and afterward in good faith gives the insurer further credit,
4395 without security of any kind, for property that becomes a part of the insurer's estate, the amount
4396 of the new credit remaining unpaid at the time of the petition shall be set off against the
4397 preference which would otherwise be recoverable from the creditor.

4398 (10) (a) If an insurer, directly or indirectly, pays money or transfers property within
4399 four months before the day on which a successful petition for rehabilitation or liquidation is
4400 filed under this chapter or at any time in contemplation of a proceeding to rehabilitate or
4401 liquidate the insurer, to an attorney for services rendered or to be rendered, the transaction:

4402 (i) (A) may be examined by the court on its own motion; or

4403 (B) shall be examined by the court on petition of the rehabilitator or liquidator; and

4404 (ii) shall be held valid only to the extent that the transfer is a reasonable amount as
4405 determined by the court.

4406 (b) The amount in excess of the amount held valid under Subsection (10)(a), may be
4407 recovered by the rehabilitator or liquidator for the benefit of the estate.

4408 (c) If the attorney meets the description in Subsection (1)(a)(iv), Subsection (1)(a)(iv)
4409 applies in place of this Subsection (10).

4410 (11) (a) Every officer, manager, employee, shareholder, member, subscriber, attorney,
4411 or any other person acting on behalf of the insurer who knowingly participates in giving a
4412 preference when that person has reasonable cause to believe that the insurer is or is about to
4413 become insolvent at the time of the preference, is personally liable to the rehabilitator or
4414 liquidator for the amount of the preference.

4415 (b) It is permissible to infer that there is "reasonable cause to so believe" if the transfer
4416 is made within four months before the date on which a successful petition for rehabilitation or
4417 liquidation is filed.

4418 (c) A person receiving any property from the insurer or for the benefit of the insurer as
4419 a preference which is voidable under Subsection (1)(a) is:

4420 (i) personally liable for that transfer and property; and

4421 (ii) bound to account to the rehabilitator or liquidator.

4422 (d) This Subsection (11) does not prejudice any other claim by the rehabilitator or
4423 liquidator against any person.

4424 Section 81. Section **31A-27a-505** is enacted to read:

4425 **31A-27a-505. Avoidance of property title transfers.**

4426 (1) The rehabilitator or liquidator has the creditor's rights described in this Subsection
4427 (1), without regard to any knowledge of the rehabilitator or liquidator or any creditor.

4428 (a) (i) The rehabilitator or liquidator is considered to:

4429 (A) have extended credit to the insurer on the day on which the rehabilitation or
4430 liquidation petition is filed; and

4431 (B) have obtained on the day described in Subsection (1)(a)(i) a judicial lien on all the
4432 insurer's property on which a creditor under a contract could obtain a judicial lien.

4433 (ii) The rehabilitator or liquidator:

4434 (A) may avoid a transfer that would be avoidable by the type of creditor described in
4435 this Subsection (1)(a); and

4436 (B) has all the other rights and powers of the type of creditor described in this
4437 Subsection (1)(a).

4438 (b) (i) The rehabilitator or liquidator is considered to:

4439 (A) have extended credit to the insurer on the day on which the rehabilitation or
4440 liquidation petition filed; and

4441 (B) have obtained on the day described in this Subsection (1)(b)(i), with respect to that
4442 credit extension, an execution against the insurer on that same date that is returned unsatisfied.

4443 (ii) The rehabilitator or liquidator:

4444 (A) may avoid a transfer that would be avoidable by the type of creditor described in
4445 this Subsection (1)(b); and

4446 (B) has all the other rights and powers of the type of creditor described in this
4447 Subsection (1)(b).

4448 (c) The rehabilitator or liquidator:

4449 (i) is considered to be a bona fide purchaser of the insurer's real property on the day on
4450 which the rehabilitation or liquidation petition is filed; and

4451 (ii) has the rights and powers of a bona fide purchaser to avoid other transfers of the
4452 insurer's realty.

4453 (2) (a) The rehabilitator or liquidator may avoid a transfer of an interest of the insurer

4454 in property or an obligation incurred by the insurer that is voidable under applicable law by a
4455 creditor holding an unsecured claim.

4456 (b) This Subsection (2) does not apply to secured claims.

4457 (3) (a) Except as provided in Subsections (3)(b) and (c), the rehabilitator or liquidator
4458 may avoid a transfer of property of the estate that:

4459 (i) occurs after the day on which the petition for rehabilitation or liquidation is filed;

4460 and

4461 (ii) is not authorized under this chapter or by the court.

4462 (b) (i) Subject to Subsection (3)(b)(ii), a transfer is valid against the rehabilitator or
4463 liquidator to the extent of any value, including services if it occurs:

4464 (A) after the day on which the petition is filed; and

4465 (B) before the day on which the order for rehabilitation or liquidation is entered.

4466 (ii) The value described in Subsection (3)(b)(i) does not include the satisfaction or
4467 securing of a debt:

4468 (A) that arises before the day on which the petition is filed;

4469 (B) which is given after the date described in this Subsection (3)(b) in exchange for the
4470 transfer; and

4471 (C) notwithstanding the transferee's knowledge or lack of knowledge of the petition.

4472 (c) (i) Subject to Subsection (3)(c)(ii), the rehabilitator or liquidator may not avoid a
4473 transfer of real property under Subsection (3)(a) to:

4474 (A) a good faith purchaser:

4475 (I) if the good faith purchaser is without knowledge of the petition for rehabilitation or
4476 liquidation; and

4477 (II) for present fair consideration; or

4478 (B) a purchaser at a judicial sale.

4479 (ii) Notwithstanding Subsection (3)(c)(i), the rehabilitator or liquidator may avoid a
4480 transfer of real property under Subsection (3)(a) if a copy of the petition is filed in the office of
4481 the county recorder before the transfer is so far perfected that a bona fide purchaser of the

4482 property against whom applicable law permits that type of transfer to be perfected cannot
4483 acquire an interest that is superior to the interest of the good faith purchaser or judicial sale
4484 purchaser.

4485 (iii) Unless a copy of the petition is filed before the transfer is perfected, a good faith
4486 purchaser of real property under a transfer which the rehabilitator or liquidator may avoid
4487 under this section has a lien on the property transferred:

4488 (A) if the good faith purchaser:

4489 (I) is without knowledge of the petition for rehabilitation or liquidation at the time of
4490 the transfer; and

4491 (II) pays less than present fair consideration; and

4492 (B) to the extent of the present consideration given.

4493 (4) An action or proceeding under Subsection (1) or (2) may not be commenced after
4494 the earlier of:

4495 (a) two years after the day on which a rehabilitator is appointed under Section
4496 31A-27a-301 or a liquidator is appointed under Section 31A-27a-401; or

4497 (b) the day on which the rehabilitation is terminated under Subsection 31A-27a-304(3)
4498 or the liquidation is terminated under Section 31A-27a-802.

4499 (5) An action or proceeding under Subsection (3) may not be commenced after the
4500 earlier of:

4501 (a) two years after the day on which the transfer sought to be avoided is made; or

4502 (b) the day on which the rehabilitation is terminated under Subsection 31A-27a-304(3)
4503 or the liquidation is terminated under Section 31A-27a-802.

4504 Section 82. Section **31A-27a-506** is enacted to read:

4505 **31A-27a-506. Fraudulent transfers and obligations.**

4506 (1) For purposes of this section:

4507 (a) A "transfer":

4508 (i) is made when the transfer is so perfected that a bona fide purchaser from the insurer
4509 against whom applicable law permits the transfer to be perfected cannot acquire an interest in

4510 the property transferred that is superior to the interest in the property of the transferee; or
4511 (ii) if the transfer is not perfected as provided in Subsection (1)(a)(i) before the
4512 commencement of the delinquency proceeding, is considered made immediately before the day
4513 on which the initial filing of the petition commencing delinquency proceedings is filed.

4514 (b) "Value" means property or satisfaction or securing of a present or antecedent debt
4515 of the insurer.

4516 (2) (a) If the conditions of Subsection (2)(b) are met, the receiver may avoid the
4517 following:

4518 (i) a transfer of an interest of the insurer in property;

4519 (ii) a reinsurance transaction; or

4520 (iii) an obligation incurred by an insurer.

4521 (b) Subsection (2)(a) applies if:

4522 (i) the transfer or obligation is made or incurred on or within two years before the day
4523 on which the initial filing of a petition commencing delinquency proceedings is filed under this
4524 chapter; and

4525 (ii) the insurer voluntarily or involuntarily:

4526 (A) makes the transfer or incurs the obligation with actual intent to hinder, delay, or
4527 defraud a person to which the insurer is or becomes indebted on or after the day on which the
4528 transfer is made or the obligation is incurred; or

4529 (B) receives less than a reasonably equivalent value in exchange for the transfer or
4530 obligation.

4531 (3) Except to the extent that a transfer or obligation voidable under this section is
4532 voidable under other provisions of this chapter, a transferee or obligee of a transfer or
4533 obligation voidable under this section that takes for value and in good faith:

4534 (a) as the case may be:

4535 (i) has a lien on or may retain any interest transferred; or

4536 (ii) may enforce any obligation incurred; and

4537 (b) to the extent that the transferee or obligee gave value to the insurer in exchange for

4538 the transfer or obligation.

4539 (4) If a reinsurance transaction is avoided under this section:

4540 (a) the receiver shall tender to the reinsurer the value of any consideration transferred
4541 to the insurer in connection with the transaction less the amount of matured and liquidated
4542 liabilities owing by the reinsurer to the estate; and

4543 (b) the parties shall be returned to their relative positions before the implementation of
4544 the transaction avoided.

4545 Section 83. Section **31A-27a-507** is enacted to read:

4546 **31A-27a-507. Receiver as lien creditor.**

4547 (1) The receiver may avoid a transfer of or lien on the property of, or obligation
4548 incurred by, an insurer that the insurer or a policyholder, creditor, member, or stockholder of
4549 the insurer:

4550 (a) may have avoided without regard to any knowledge of:

4551 (i) the receiver;

4552 (ii) the commissioner;

4553 (iii) the insurer; or

4554 (iv) a policyholder, creditor, member, or stockholder of the insurer; and

4555 (b) whether or not a policyholder, creditor, member, or stockholder described in this
4556 Subsection (1) exists.

4557 (2) The receiver is considered a creditor without knowledge for purposes of pursuing
4558 claims under:

4559 (a) Title 25, Chapter 6, Uniform Fraudulent Transfer Act; or

4560 (b) similar provisions of state or federal law.

4561 Section 84. Section **31A-27a-508** is enacted to read:

4562 **31A-27a-508. Liability of transferee.**

4563 (1) Except as otherwise provided in this section, to the extent that the receiver obtains
4564 an order pursuant to Section 31A-27a-501, or avoids a transfer under Section 31A-27a-502,
4565 31A-27a-503, 31A-27a-504, 31A-27a-506, or 31A-27a-507, the receiver may recover the

4566 property transferred, or the value of the property, from:

4567 (a) the initial transferee of the transfer or the entity for whose benefit the transfer is
4568 made; or

4569 (b) subject to Subsection (2), an immediate or mediate transferee of the initial
4570 transferee.

4571 (2) The receiver may not recover under Subsection (1)(b) from:

4572 (a) a transferee that takes for value, including satisfaction or securing of a present or
4573 antecedent debt:

4574 (i) in good faith; and

4575 (ii) without knowledge of the voidability of the transfer avoided; or

4576 (b) an immediate or mediate good faith transferee of the transferee.

4577 (3) A transfer avoided in accordance with this chapter is preserved for the benefit of
4578 the receivership estate, but only with respect to property of the insurer.

4579 (4) In addition to the remedies specifically provided in Sections 31A-27a-501,
4580 31A-27a-502, 31A-27a-503, 31A-27a-504, 31A-27a-506, and 31A-27a-507 and Subsection
4581 (1), if the receiver is successful in establishing a claim to the property or any part of the
4582 property, the receiver may recover judgment for the following:

4583 (a) rental for the use of tangible property from the later of:

4584 (i) the day on which the receivership order is entered; or

4585 (ii) the date of the transfer; and

4586 (b) in the case of funds or intangible property:

4587 (i) the greater of:

4588 (A) the actual interest;

4589 (B) income earned by the property; or

4590 (C) interest at the statutory rate for judgments; and

4591 (ii) from the later of:

4592 (A) the day on which the receivership order is entered; or

4593 (B) the date of the transfer.

4594 (5) In an action pursuant to this section, the receivership court may allow the receiver
4595 to seek recovery of the property involved or its value.

4596 (6) In an action pursuant to Sections 31A-27a-501, 31A-27a-502, 31A-27a-503,
4597 31A-27a-504, 31A-27a-506, 31A-27a-507, and 31A-27a-510:

4598 (a) the receiver has the burden of proving the avoidability of a transfer; and

4599 (b) the person against whom recovery or avoidance is sought has the burden of proving
4600 the nature and extent of any affirmative defense.

4601 Section 85. Section **31A-27a-509** is enacted to read:

4602 **31A-27a-509. Claims of holders of void or voidable rights.**

4603 (1) (a) The receiver may disallow a claim of a creditor who receives or acquires a
4604 preference, lien, conveyance, transfer, assignment, or encumbrance voidable under this chapter,
4605 unless the creditor surrenders the preference, lien, conveyance, transfer, assignment, or
4606 encumbrance.

4607 (b) If an avoidance is effected by a proceeding in which a final judgment is entered, a
4608 creditor's claim is not allowed unless the money is paid or the property is delivered to the
4609 receiver within 30 days from the day on which the final judgment is entered, except that the
4610 receivership court may allow further time if there is an appeal or other continuation of the
4611 proceeding.

4612 (2) A claim allowable under Subsection (1) by reason of an avoidance, whether
4613 voluntary or involuntary, or a preference, lien, conveyance, transfer, assignment, or
4614 encumbrance, may be filed as an excused late filing under Subsection 31A-27a-601(2) if filed
4615 within:

4616 (a) 30 days from the date of the avoidance; or

4617 (b) the further time allowed by the receivership court under Subsection (1).

4618 Section 86. Section **31A-27a-510** is enacted to read:

4619 **31A-27a-510. Setoffs.**

4620 (1) (a) A mutual debt or mutual credit shall be set off and the balance only allowed or
4621 paid:

4622 (i) whether arising out of one or more contracts between the insurer and another person
4623 in connection with an action or proceeding under this chapter; and

4624 (ii) except as provided in Subsection (2) and Sections 31A-27a-513 and 31A-27a-514.

4625 (b) An obligation arising out of the termination of a life, disability income, or
4626 long-term care reinsurance contract pursuant to Section 31A-27a-513 may be set off against
4627 other debts and credits arising out of a contract between the insurer and the reinsurer.

4628 (2) (a) A setoff is not allowed after the commencement of a delinquency proceeding
4629 under this chapter in favor of any person if:

4630 (i) the claim against the insurer is disallowed;

4631 (ii) the claim against the insurer is purchased by or transferred to the person:

4632 (A) on or after the day on which the receivership petition is filed; or

4633 (B) within 120 days preceding the day on which the receivership petition is filed;

4634 (iii) the obligation of the insurer is owed to an affiliate or entity other than the person,
4635 absent written assignment of the obligation made more than 120 days before the day on which
4636 the petition for receivership is filed;

4637 (iv) the obligation of the person is owed to an affiliate or entity other than the insurer,
4638 absent written assignment of the obligation made more than 120 days before the day on which
4639 the petition for receivership is filed;

4640 (v) the obligation of the person is:

4641 (A) to pay:

4642 (I) an assessment levied against a member or subscriber of the insurer; or

4643 (II) a balance upon a subscription to the capital stock of the insurer; or

4644 (B) in any other way in the nature of a capital contribution;

4645 (vi) an obligation between the person and the insurer arises out of a transaction by
4646 which either the person or the insurer:

4647 (A) assumes a risk or obligation from the other party; and

4648 (B) then cedes back to that party substantially the same risk or obligation;

4649 (vii) the obligation of the person arises out of an avoidance action taken by the

4650 receiver; or

4651 (viii) the obligation of the insured is for the payment of earned premiums or
4652 retrospectively rated earned premiums in accordance with Section 31A-27a-514.

4653 (b) Notwithstanding Subsection (2)(a)(vi), the receiver may permit a setoff if, in the
4654 receiver's discretion, a setoff is appropriate because of specific circumstances relating to a
4655 transaction.

4656 (3) The receiver may avoid pursuant to Sections 31A-27a-504, 31A-27a-506, and
4657 31A-27a-507 and subject to defenses under those sections, a setoff that occurs before the
4658 commencement of the delinquency proceeding under this chapter if the setoff would otherwise
4659 be disallowed pursuant to Subsection (2).

4660 Section 87. Section **31A-27a-511** is enacted to read:

4661 **31A-27a-511. Assessments.**

4662 (1) As soon as practicable but not more than four years from the day on which an order
4663 of receivership of an insurer issuing assessable policies is entered, the receiver shall make a
4664 report to the receivership court setting forth:

4665 (a) the reasonable value of the assets of the insurer;

4666 (b) the insurer's probable total liabilities;

4667 (c) the probable aggregate amount of the assessment necessary to pay all claims of
4668 creditors and expenses in full, including expenses of administration and costs of collecting the
4669 assessment; and

4670 (d) a recommendation as to:

4671 (i) whether or not an assessment should be made; and

4672 (ii) what amount of assessment.

4673 (2) (a) Upon the basis of the report provided in Subsection (1), including any
4674 supplement or amendment to the report, the receivership court may approve, solely on
4675 application by the receiver, one or more assessments against all members of the insurer who are
4676 subject to assessment.

4677 (b) An order approving an assessment under this Subsection (2) shall provide

4678 instructions regarding:

4679 (i) notice of the assessment;

4680 (ii) deadlines for payment; and

4681 (iii) other instructions to the receiver for collection of the assessment.

4682 (3) Subject to any applicable legal limit on an ability to assess and with due regard

4683 given to assessments that cannot be collected economically, the aggregate assessment shall be

4684 for the amount by which the sum of the following exceeds the value of existing assets:

4685 (a) probable liabilities;

4686 (b) the expenses of administration; and

4687 (c) the estimated cost of collection of the assessment.

4688 (4) (a) After levy of an assessment under Subsection (2), the receiver shall petition the

4689 receivership court for an order directing each member who has not paid the assessment

4690 pursuant to the levy to show cause why a judgment for the failure to pay the assessment should

4691 not be entered.

4692 (b) At least 20 days before the return day of the order to show cause described in

4693 Subsection (4)(a), the receiver shall give notice of the order to show cause by:

4694 (i) publication or by first-class mail to each member liable on the assessment mailed to

4695 the member's last-known address as it appears on the insurer's records; or

4696 (ii) such other method of notification as the receivership court may direct.

4697 (c) Failure of the member or subscriber to receive the notice of the assessment or of the

4698 order to show cause either within the time specified in the order or at all, is no defense in a

4699 proceeding to collect the assessment.

4700 (5) If a member does not appear and serve verified objections upon the receiver on or

4701 before the return day of the order to show cause under Subsection (4):

4702 (a) the receivership court shall make an order adjudging the member liable for the sum

4703 of:

4704 (i) the amount of the assessment against the member pursuant to Subsection (4); and

4705 (ii) the costs; and

4706 (b) the receiver has a judgment against the member for the amount described in
4707 Subsection (5)(a).

4708 (6) If on or before the return day in the order to show cause described in Subsection (4)
4709 the member appears and serves verified objections on the receiver, the receivership court may:

4710 (a) (i) hear and determine the matter; or
4711 (ii) appoint a referee to hear the matter; and
4712 (b) make such order as the facts warrant.

4713 (7) The receiver may enforce an order or collect a judgment under Subsection (5) by
4714 any lawful means.

4715 (8) An assessment of a subscriber or member of an insurer made by the receiver is
4716 prima facie correct if it is pursuant to the order of receivership court:

4717 (a) fixing the aggregate amount of the assessment against all members or subscribers;
4718 and

4719 (b) approving the classification and formula made by the receiver under this section.

4720 (9) A claim filed by an assessee who fails to pay an assessment, after the conclusion of
4721 a legal action by the assessee objecting to the assessment, is considered a late filed claim under
4722 Section 31A-27a-701.

4723 Section 88. Section **31A-27a-512** is enacted to read:

4724 **31A-27a-512. Reinsurer's liability.**

4725 (1) (a) Except as otherwise provided in this chapter, the amount recoverable by the
4726 receiver from a reinsurer may not be reduced as a result of a delinquency proceeding with a
4727 finding of insolvency, regardless of any provision in the reinsurance contract or other
4728 agreement.

4729 (b) An agreement, written, oral, or otherwise, may not be enforced to the extent it is in
4730 conflict, or not in strict compliance with this section.

4731 (c) Except as expressly provided in this section, a person other than the receiver
4732 whether as a creditor, third party beneficiary, or otherwise does not have a direct right to
4733 reinsurance proceeds from any reinsurer of the insolvent insurer;

4734 (i) on the basis of any written or oral agreement; or
4735 (ii) pursuant to an action or cause of action seeking any equitable or legal remedy.
4736 (d) This section applies to all the insurer's reinsurance contracts including:
4737 (i) treaty reinsurance;
4738 (ii) quota share reinsurance;
4739 (iii) facultative reinsurance; or
4740 (iv) a fronting or captive reinsurance arrangement.
4741 (2) Except as otherwise provided in Subsection (9), the amount recoverable by the
4742 liquidator from a reinsurer is payable under one or more contracts reinsured by the reinsurer on
4743 the basis of:
4744 (a) proof of payment of the insured claim by an affected guaranty association, the
4745 insurer, or the receiver, to the extent of the payment; or
4746 (b) the allowance of the claim pursuant to:
4747 (i) Section 31A-27a-608;
4748 (ii) an order of the receivership court; or
4749 (iii) a plan of rehabilitation.
4750 (3) If the insurer takes credit for a reinsurance contract in a filing or submission made
4751 to the commissioner and the reinsurance contract does not contain the provisions required with
4752 respect to the obligations of reinsurers in the event of insolvency of the reinsured, the
4753 reinsurance contract is considered to contain the provisions required with respect to:
4754 (a) the obligations of reinsurers in the event of insolvency of the reinsured in order to
4755 obtain credit for reinsurance; or
4756 (b) other applicable statutes.
4757 (4) A reinsurance contract that under Subsection (3) is considered to contain certain
4758 provisions, is considered to contain a provision that:
4759 (a) in the event of insolvency and the appointment of a receiver, the reinsurance
4760 obligation is payable to the ceding insurer or to its receiver without diminution because of the
4761 insolvency or because the receiver fails to pay all or a portion of the claim;

4762 (b) payment shall be made upon either:
4763 (i) to the extent of the payment, proof of payment of the insured claim by an affected
4764 guaranty association, the insurer, or the receiver; or
4765 (ii) the allowance of the claim pursuant to:
4766 (A) Section 31A-27a-608;
4767 (B) an order of the receivership court; or
4768 (C) a plan of rehabilitation; and
4769 (c) if a reinsurer does not pay the amount billed by the receiver within 60 days after the
4770 mailing by the receiver, interest on the unpaid billed amount will begin to accrue at the
4771 statutory legal rate provided in Subsection 15-1-1(2), except that all or a portion of the interest
4772 may be waived as part of an arbitration proceeding.
4773 (5) (a) The receiver shall notify in writing, in accordance with the terms of the contract,
4774 each reinsurer obligated in relation to the claim or the pendency of a claim against the reinsured
4775 company.
4776 (b) The receiver's failure to give notice of a pending claim pursuant to a provision in a
4777 reinsurance contract:
4778 (i) does not excuse the obligation of the reinsurer unless the reinsurer is prejudiced by
4779 the receiver's failure; and
4780 (ii) if the reinsurer is prejudiced, reduces the reinsurer's obligations only to the extent
4781 of the prejudice.
4782 (c) A reinsurer may interpose, at its own expense, in a proceeding in which a claim is
4783 to be adjudicated, any one or more defenses that the reinsurer considers available to the
4784 reinsured company or its receiver.
4785 (6) The entry of an order of rehabilitation or liquidation:
4786 (a) may not be considered a breach or an anticipatory breach of a reinsurance contract;
4787 and
4788 (b) is not grounds for retroactive revocation or retroactive cancellation of a reinsurance
4789 contract by the reinsurer.

4790 (7) (a) If a reinsurance payment to a receiver of a ceding insurer is later determined to
4791 be a payment in excess of the amounts actually due to the receiver, the excess shall be:

4792 (i) credited against future payments due to the receiver; or

4793 (ii) repaid to the reinsurer as an administrative expense of the estate pursuant to

4794 Subsection 31A-27a-701(2)(g).

4795 (b) A repayment under this Subsection (7) may be limited on the basis of the property
4796 remaining in the estate.

4797 (8) (a) Subject to Subsection (1):

4798 (i) except as provided in Subsection (8)(a)(ii):

4799 (A) a payment made by the reinsurer directly to an insured or other creditor does not
4800 diminish the reinsurer's obligation to the insurer's estate; and

4801 (B) a payment made by the reinsurer shall be made directly to the ceding insurer or its
4802 receiver;

4803 (ii) Subsection (8)(a)(i) does not apply when:

4804 (A) the reinsurance contract or other written agreement to which the insured, ceding
4805 insurer, and reinsurer are all parties:

4806 (I) specifically provides another payee, other than an affiliate of the ceding insurer or
4807 reinsurer, of the reinsurance in the event of the insolvency or receivership of the ceding insurer;
4808 and

4809 (II) the provision described in this Subsection (8)(a)(ii)(A) is contained in:

4810 (Aa) the reinsurance contract as it is written on the day on which the reinsurance
4811 contract is initially executed; or

4812 (Bb) the other written agreement as it is written on the day on which the initial policy is
4813 issued;

4814 (B) the reinsurance contract, as it is written on the day on which the reinsurance
4815 contract is initially executed, contains a provision where the assuming insurer with the consent
4816 of the direct insured and the ceding insurer assumes all policy obligations of the ceding insurer:

4817 (I) as a direct obligation of the assuming insurer to the payees under the policies; and

4818 (II) in substitution for the entire obligations of the ceding insurer to the payees; or
4819 (C) a life and health insurance guaranty association makes the election to succeed to
4820 the rights and obligations of the insolvent insurer under a contract of reinsurance:

4821 (I) in accordance with:

4822 (Aa) Section 31A-27a-513; or

4823 (Bb) the life and health guaranty association laws of its domiciliary state; or

4824 (II) pursuant to other applicable law, rule, order, or assignment contract; and

4825 (iii) in the circumstances described in Subsection (8)(a)(ii)(C), a payment shall be
4826 made directly to or at the direction of the guaranty association.

4827 (b) Both the receiver and the reinsurer are entitled to recover from a person, other than
4828 the receiver or a guaranty association, who unsuccessfully makes a claim directly against the
4829 reinsurer the following incurred in preventing any collection by that person:

4830 (i) the person's attorney fees; and

4831 (ii) expenses.

4832 (9) This chapter may not be construed to authorize the liquidator or any other entity to
4833 compel payment from a nonlife reinsurer:

4834 (a) on the basis of estimated incurred but not reported losses, loss expenses, or case
4835 reserves for unpaid losses and loss expenses, except under Sections 31A-27a-515 and
4836 31A-27a-516; and

4837 (b) with respect to a claim allowed in accordance with Section 31A-27a-605.

4838 Section 89. Section **31A-27a-513** is enacted to read:

4839 **31A-27a-513. Reinsurance continuation and termination.**

4840 (1) For purposes of this section:

4841 (a) "Coverage date" is the day on which an order of liquidation is entered.

4842 (b) "Election date" is the day on which an affected guaranty association elects to
4843 assume under this section the rights and obligations of a ceding insurer that relate to a policy or
4844 annuity covered, in whole or in part, by the affected guaranty association.

4845 (2) A contract reinsuring a life insurance policy, disability income insurance policy,

4846 long-term care insurance policy, or an annuity issued by a ceding insurer that is placed in
4847 rehabilitation proceedings pursuant to this chapter shall be continued or terminated pursuant to:

4848 (a) the terms or conditions of each contract; and

4849 (b) this section.

4850 (3) A contract reinsuring a life insurance policy, disability income insurance policy,
4851 long-term care insurance policy, or an annuity issued by a ceding insurer that is placed into
4852 liquidation pursuant to this chapter shall be continued, subject to this section, unless:

4853 (a) the contract is terminated pursuant to the contract's terms before the coverage date;

4854 or

4855 (b) the contract is terminated pursuant to the order of liquidation, in which case
4856 Subsection (10) applies.

4857 (4) (a) (i) At any time within 180 days of the coverage date, an affected guaranty
4858 association covering a life insurance policy, disability income insurance policy, long-term care
4859 insurance policy, or an annuity, in whole or in part, may elect to assume the rights and
4860 obligations of the ceding insurer that relate to the policy or annuity covered, in whole or in part,
4861 by the affected guaranty association, under one or more reinsurance contracts between the
4862 insolvent insurer and the insolvent insurer's reinsurers selected by the affected guaranty
4863 association.

4864 (ii) An assumption under this Subsection (4)(a) is effective as of the coverage date.

4865 (iii) The election described in this Subsection (4)(a) is made by the affected guaranty
4866 association or a nationally recognized association of guaranty associations that is designated by
4867 the affected guaranty association to act on the affected guaranty association's behalf for
4868 purposes of this Subsection (4)(a) by sending written notice, return receipt requested, to the
4869 affected reinsurers.

4870 (b) (i) To facilitate the earliest practicable decision about whether to assume a contract
4871 of reinsurance and to protect the financial position of the estate, the receiver and each reinsurer
4872 of the ceding insurer shall make available the information described in Subsection (4)(b)(ii):

4873 (A) upon request to an affected guaranty association; or

4874 (B) to a nationally recognized association of guaranty associations that is designated by
4875 the affected guaranty association to act on behalf of the affected guaranty associations for
4876 purposes of this Subsection (4) as soon as possible after commencement of formal delinquency
4877 proceedings.

4878 (ii) The information described in Subsection (4)(b)(i) is:

4879 (A) copies of all in-force contracts of reinsurance;

4880 (B) all records related to in-force contracts of reinsurance relevant to the determination
4881 of whether the in-force contracts of reinsurance should be assumed; and

4882 (C) notice of:

4883 (I) any default under the in-force contracts of reinsurance; or

4884 (II) any known event or condition that with the passage of time could become a default
4885 under the in-force contracts of reinsurance.

4886 (c) Subsections (4)(c)(i) through (vi) apply to a reinsurance contract assumed by an
4887 affected guaranty association under this Subsection (4).

4888 (i) The guaranty association is responsible for the following that relates to a life
4889 insurance policy, disability income insurance policy, long-term care insurance policy, or an
4890 annuity covered, in whole or in part, by the guaranty association:

4891 (A) all unpaid premiums due under a reinsurance contract, for the periods both before
4892 and after the coverage date; and

4893 (B) the performance of all other obligations to be performed after the coverage date.

4894 (ii) The affected guaranty association:

4895 (A) may charge a policy of insurance or annuity covered in part by the affected
4896 guaranty association, through reasonable allocation methods, the costs for reinsurance in excess
4897 of the obligations of the affected guaranty association; and

4898 (B) if it imposes a charge under this Subsection (4)(c)(ii), shall provide notice and an
4899 accounting of the charge to the liquidator.

4900 (iii) The affected guaranty association is entitled to any amount payable by the
4901 reinsurer under the reinsurance contract with respect to a loss or event:

4902 (A) that:
4903 (I) occurs in a period on or after the coverage date; and
4904 (II) relates to a life insurance policy, disability income insurance policy, long-term care
4905 insurance policy, or an annuity covered, in whole or in part, by the affected guaranty
4906 association; and
4907 (B) except that upon receipt of the amount, the affected guaranty association is obliged
4908 to pay to the beneficiary under the insurance policy or annuity on account of which the amount
4909 is paid a portion of the amount equal to the lesser of:
4910 (I) the amount received by the affected guaranty association; and
4911 (II) an amount calculated by:
4912 (Aa) determining the excess of the amount received by the affected guaranty
4913 association over the amount equal to the benefits paid by the affected guaranty association on
4914 account of the policy or annuity; and
4915 (Bb) subtracting the retention of the insurer applicable to the loss or event.
4916 (iv) (A) Within 30 days following the election date, the affected guaranty association
4917 and each reinsurer under a contract assumed by the affected guaranty association shall calculate
4918 the net balance due to or from the affected guaranty association under each reinsurance contract
4919 as of the election date with respect to a policy or annuity covered, in whole or in part, by the
4920 affected guaranty association.
4921 (B) The calculation required by Subsection (4)(c)(iv)(A) shall give full credit to all
4922 items paid by the insurer, the insurer's receiver, or the reinsurer before the election date.
4923 (C) The reinsurer shall pay the receiver an amount due for a loss or event before the
4924 coverage date, subject to any setoff for premiums unpaid for periods before the coverage date.
4925 (D) Within five days of the completion of the calculation required by Subsection
4926 (4)(c)(iv)(A), the affected guaranty association or reinsurer shall pay any balance due the other
4927 after completion of the calculation.
4928 (E) A dispute over an amount due to either the affected guaranty association or the
4929 reinsurer shall be resolved by arbitration:

4930 (I) pursuant to the terms of the affected reinsurance contract; or
4931 (II) if the affected reinsurance contract contains no arbitration clause, as provided in
4932 Subsection (10)(d).

4933 (v) If the receiver receives an amount due the affected guaranty association pursuant to
4934 Subsection (4)(c)(iii), the receiver shall remit that amount to the affected guaranty association
4935 as promptly as practicable.

4936 (vi) If the affected guaranty association or the receiver on the affected guaranty
4937 association's behalf, within 60 days of the election date, pays the unpaid premiums due for
4938 periods both before and after the election date that relate to a life insurance policy, disability
4939 income insurance policy, long-term care insurance policy, or an annuity covered, in whole or in
4940 part, by the affected guaranty association, the reinsurer may not:

4941 (A) terminate the reinsurance contract for failure to pay premiums, insofar as the
4942 reinsurance contract relates to a life insurance policy, disability income insurance policy,
4943 long-term care insurance policy, or an annuity covered, in whole or in part, by the affected
4944 guaranty association; and

4945 (B) set off any unpaid amounts due under other contracts, or unpaid amounts due from
4946 parties other than the affected guaranty association, against amounts due the affected guaranty
4947 association.

4948 (5) (a) If pursuant to court approval under Section 31A-27a-402 a receiver continues a
4949 life insurance policy, disability income insurance policy, long-term care insurance policy, or an
4950 annuity in force following an order of liquidation, and the policy of insurance is not covered in
4951 whole or in part by one or more affected guaranty associations, the receiver may elect to
4952 assume the rights and obligations of the ceding insurer under one or more of the reinsurance
4953 contracts that relate to the policy or annuity:

4954 (i) within 180 days of the coverage date; and

4955 (ii) if the contract is not terminated as set forth in Subsection (2).

4956 (b) The election described in this Subsection (5) shall be made by sending written
4957 notice, return receipt requested, to the affected reinsurers.

4958 (c) If the election described in this Subsection (5) is made:
4959 (i) payment of premiums on the reinsurance contract for the policy or annuity, for
4960 periods both before and after the coverage date, shall be chargeable against the estate as a Class
4961 1 administrative expense; and
4962 (ii) amounts paid by the reinsurer on account of losses on the policy or annuity shall be
4963 to the estate of the insolvent insurer.
4964 (6) During the period beginning on the coverage date and ending on the election date:
4965 (a) (i) neither the affected guaranty association nor the reinsurer has any rights or
4966 obligations under a reinsurance contract that the affected guaranty association has the right to
4967 assume under Subsection (4), whether for a period before or after the coverage date;
4968 (ii) (A) with respect to the period after the coverage date, neither the receiver nor the
4969 reinsurer has any rights or obligations under a reinsurance contract that the receiver has the
4970 right to assume under Subsection (5); and
4971 (B) with respect to the period before the coverage date, the rights and obligations of the
4972 affected guaranty association and the reinsurer remain unchanged; and
4973 (iii) the reinsurer, the receiver, and an affected guaranty association shall, to the extent
4974 practicable, provide each other data and records reasonably requested; and
4975 (b) once the affected guaranty association or the receiver, as the case may be, elects or
4976 declines to elect to assume a reinsurance contract, the parties' rights and obligations are
4977 governed by Subsection (4), (5), or (10), as applicable.
4978 (7) (a) If an affected guaranty association does not elect to assume a reinsurance
4979 contract by the election date pursuant to Subsection (4), the affected guaranty association has
4980 no rights or obligations, in each case for periods both before and after the coverage date, with
4981 respect to the reinsurance contract.
4982 (b) If a receiver does not elect to assume a reinsurance contract by the election date
4983 pursuant to Subsection (5), the receiver and the reinsurer:
4984 (i) retain their respective rights and obligations with respect to the reinsurance contract
4985 for the period before the coverage date; and

4986 (ii) have no rights or obligations to each other for the period after the coverage date,
4987 except as provided in Subsection (10).

4988 (c) (i) If an affected guaranty association or the receiver, as the case may be, does not
4989 elect to assume a reinsurance contract by the election date, the reinsurance contract terminates
4990 retroactively effective on the coverage date.

4991 (ii) A reinsurance contract covering a life insurance policy, disability income insurance
4992 policy, long-term care insurance policy, or an annuity that is terminated pursuant to Section
4993 31A-27a-402 terminates effective on the coverage date.

4994 (iii) Subsection (10) applies to a reinsurance contract described in Subsection (7)(c)(i)
4995 or (ii).

4996 (8) (a) Subject to Subsection (8)(b), when a life insurance policy, disability income
4997 insurance policy, long-term care insurance policy, an annuity, or guaranty association
4998 obligation with respect to that policy or annuity is transferred to an assuming insurer,
4999 reinsurance on the policy or annuity may also be transferred:

5000 (i) by the affected guaranty association, in the case of a contract assumed under
5001 Subsection (4); or

5002 (ii) by the receiver, in the case of a contract assumed under Subsection (5).

5003 (b) A transfer under Subsection (8)(a), is subject to the following:

5004 (i) unless the reinsurer and the assuming insurer agree otherwise, the reinsurance
5005 contract transferred may not cover a new policy of insurance or new annuity in addition to
5006 those transferred;

5007 (ii) the obligations described in Subsections (4) and (5) do not apply with respect to
5008 matters arising after the effective date of the transfer; and

5009 (iii) notice shall be given in writing, return receipt requested, by the transferring party
5010 to the affected reinsurer not less than 30 days before the effective date of the transfer.

5011 (9) (a) This section shall, to the extent provided in this chapter, supersede a law or an
5012 affected reinsurance contract that provides for or requires a payment of reinsurance proceeds on
5013 account of a loss or event:

5014 (i) that occurs in a period after the coverage date; and
5015 (ii) to the receiver of the insolvent insurer or to any other person.
5016 (b) The receiver shall remain entitled to any amounts payable by the reinsurer under the
5017 reinsurance contract with respect to a loss or event that occurs in a period before the coverage
5018 date, subject to this chapter including applicable setoff provisions.
5019 (10) If a contract reinsuring a life insurance policy, disability income insurance policy,
5020 long-term care insurance policy, or an annuity is terminated pursuant to this chapter, the
5021 procedures of this Subsection (10) apply.
5022 (a) The reinsurer and the receiver shall, upon written notice to the other party to the
5023 reinsurance contract no later than 30 days after the receipt by the reinsurer of notice of
5024 termination, commence a mandatory negotiation and arbitration procedure in accordance with
5025 this Subsection (10).
5026 (b) (i) Each party shall appoint an actuary to determine an estimated sum due as a
5027 result of the termination of the reinsurance contract calculated in a way expected to make the
5028 parties economically indifferent as to whether the reinsurance contract continues or terminates,
5029 giving due regard to the economic effects of the insolvency.
5030 (ii) The estimated sum described in this Subsection (10)(b) shall:
5031 (A) take into account the present value of future cash flows expected under the
5032 reinsurance contract; and
5033 (B) be based on a gross premium valuation of net liability using current assumptions:
5034 (I) that reflect postinsolvency experience expectations, with no additional margins;
5035 (II) that are net of any amounts payable and receivable; and
5036 (III) with a market value adjustment to reflect premature sale of assets to fund the
5037 settlement.
5038 (c) (i) Within 90 days of the day on which the written request pursuant to Subsection
5039 (10)(a) is made, each party shall provide the other party with:
5040 (A) its estimate of the sum due as a result of the termination of the reinsurance
5041 contract; and

5042 (B) all relevant documents and other information supporting the estimate.
5043 (ii) The parties shall make a good faith effort to reach agreement on the sum due.
5044 (d) (i) If the parties are unable to reach agreement within 90 days following the day on
5045 which the materials required in Subsection (10)(c) are submitted, either party may initiate
5046 arbitration proceedings:
5047 (A) as provided in the reinsurance contract; or
5048 (B) if the reinsurance contract does not contain an arbitration clause, pursuant to this
5049 Subsection (10)(d) by providing the other party with a written demand for arbitration.
5050 (ii) Arbitration under Subsection (10)(d)(i)(B) shall be conducted pursuant to the
5051 following procedures:
5052 (A) Venue for the arbitration shall be within the county of the court's jurisdiction or
5053 another location agreed to by the parties.
5054 (B) Within 30 days of the responding party's receipt of the arbitration demand, each
5055 party shall appoint an arbitrator who is:
5056 (I) a disinterested active or retired officer or executive of a life insurance or reinsurance
5057 company; or
5058 (II) other professional with no less than ten years experience in or relating to the field
5059 of life insurance or life reinsurance.
5060 (C) The two arbitrators appointed under Subsection (10)(d)(ii)(B) shall appoint an
5061 independent, impartial, disinterested umpire who is an:
5062 (I) active or retired officer or executive of a life insurance or reinsurance company; or
5063 (II) other professional with no less than ten years experience in the field of life
5064 insurance or life reinsurance.
5065 (D) If the arbitrators appointed under Subsection (10)(d)(ii)(B) are unable to agree on
5066 an umpire:
5067 (I) each arbitrator shall provide the other with the names of three qualified individuals;
5068 (II) each arbitrator shall strike two names from the other's list; and
5069 (III) the umpire shall be chosen by drawing lots from the remaining individuals.

5070 (E) Within 60 days following the day on which the umpire is appointed, each party
5071 shall, unless otherwise ordered by the arbitration panel, submit to the arbitration panel:

5072 (I) the party's estimates of the sum due as a result of the termination of the reinsurance
5073 contract; and

5074 (II) all relevant documents and other information supporting the estimate.

5075 (F) The time periods set forth in this Subsection (10)(d)(ii) may be extended upon
5076 mutual agreement of the parties.

5077 (G) The arbitration panel has all powers necessary to conduct the arbitration
5078 proceedings in a fair and appropriate manner, including the power to:

5079 (I) request additional information from the parties;

5080 (II) authorize discovery;

5081 (III) hold hearings; and

5082 (IV) hear testimony.

5083 (H) The arbitration panel may, if the arbitration panel considers it necessary, appoint
5084 one or more independent actuarial experts, the expense of which shall be shared equally
5085 between the parties.

5086 (I) An arbitration panel considering the matters set forth in this Subsection (10)(d)
5087 shall:

5088 (I) apply the standards set forth in Subsection (10)(b); and

5089 (II) issue a written award specifying a net settlement amount due from one party or the
5090 other as a result of the termination of the reinsurance contract.

5091 (e) The supervising court shall confirm an award issued under Subsection (10)(d)(ii)(I)
5092 absent proof of statutory grounds for vacating or modifying arbitration awards under the
5093 Federal Arbitration Act, 9 U.S.C. Sec. 1 et seq.

5094 (f) (i) If the net settlement amount agreed or awarded pursuant to this Subsection (10)
5095 is payable by the reinsurer, the reinsurer shall pay the amount due to the estate subject to any
5096 applicable setoff under Section 31A-27a-510.

5097 (ii) If the net settlement amount agreed or awarded pursuant to this Subsection (10) is

5098 payable by the insurer, the reinsurer is considered to have a timely filed claim against the estate
5099 for that amount, which claim shall be paid pursuant to the priority established in Subsection
5100 31A-27a-701(2)(f).

5101 (iii) A guaranty association:

5102 (A) is not entitled to receive the net settlement amount, except to the extent it is
5103 entitled to share in the estate assets as creditors of the estate; and

5104 (B) has no responsibility for the net settlement amount.

5105 (11) (a) Except as otherwise provided in this section, this section does not alter or
5106 modify the terms and conditions of a reinsurance contract.

5107 (b) This section does not abrogate or limit any rights of a reinsurer to claim that it is
5108 entitled to rescind a reinsurance contract.

5109 (c) This section does not give a policyholder or beneficiary an independent cause of
5110 action against a reinsurer that is not otherwise set forth in the reinsurance contract.

5111 (d) This section does not limit or affect any guaranty association's rights as a creditor of
5112 the estate against the assets of the estate.

5113 (e) This section does not apply to a reinsurance agreement covering property or
5114 casualty risks.

5115 Section 90. Section **31A-27a-514** is enacted to read:

5116 **31A-27a-514. Recovery of premiums owed.**

5117 (1) (a) An insured shall pay any unpaid earned premium or retrospectively rated
5118 premium due the insurer:

5119 (i) directly to the receiver; or

5120 (ii) to an agent that pays or is obligated to pay the receiver on behalf of the insured.

5121 (b) (i) Premium on surety business is considered earned at inception if no policy term
5122 can be determined.

5123 (ii) All premium other than that described in Subsection (1)(b)(i) is considered earned
5124 and is prorated equally over the determined policy term, regardless of any provision in the
5125 bond, guaranty, contract, or other agreement.

5126 (2) (a) A person, other than the insured, responsible for the remittance of a premium,
5127 shall turn over to the receiver any unpaid premium due and owing as shown on the records of
5128 the insurer for the full policy term due the insurer at the time of the entry of the receivership
5129 order:

5130 (i) including any amount representing commissions; and

5131 (ii) whether earned or unearned based on the termination of coverage under Sections
5132 31A-27a-402 and 31A-27a-403.

5133 (b) The unpaid premium due the receiver from any person other than the insured
5134 excludes any premium not collected from the insured and not earned based on the termination
5135 of coverage under Sections 31A-27a-402 and 31A-27a-403.

5136 (3) (a) A person, other than the insured, responsible for the remittance of a premium,
5137 shall turn over to the receiver any unearned commission of that person based on the termination
5138 of coverage under Sections 31A-27a-402 and 31A-27a-403.

5139 (b) A credit, setoff, or both may not be allowed to an agent, broker, premium finance
5140 company, or any other person for an:

5141 (i) amount advanced to the insurer by the person on behalf of, but in the absence of a
5142 payment by, the insured; or

5143 (ii) other amount paid by the person to any other person after the day on which the
5144 order of receivership is entered.

5145 (4) Regardless of any provision to the contrary in an agency contract or other
5146 agreement, a person that collects premium or finances premium under a premium finance
5147 contract, that is due the insurer in receivership is considered to:

5148 (a) hold that premium in trust as a fiduciary for the benefit of the insurer; and

5149 (b) have availed itself of the laws of this state.

5150 (5) (a) A premium finance company is obligated to pay an amount due the insurer from
5151 a premium finance contract, whether the premium is earned or unearned.

5152 (b) The receiver may collect an unpaid financed premium directly from:

5153 (i) the premium finance company by taking an assignment of the underlying premium

5154 finance contract; or
5155 (ii) the insured that is a party to the premium finance contract.
5156 (6) Upon satisfactory evidence of a violation of this section by a person other than an
5157 insured, the commissioner may pursue one or more of the following courses of action:
5158 (a) suspend, revoke, or refuse to renew the license of an offending party;
5159 (b) impose a penalty of not more than \$1,000 for each act in violation of this section by
5160 a party; and
5161 (c) impose any other sanction or penalty allowed for by law.
5162 (7) (a) Before the commissioner may take an action set forth in Subsection (6), written
5163 notice shall be given to the person accused of violating the law:
5164 (i) stating specifically the nature of the alleged violation; and
5165 (ii) fixing a time and place, at least ten days after the day on which the notice is sent,
5166 when a hearing on the matter is to be held.
5167 (b) After a hearing, or upon failure of the accused to appear at a hearing, the
5168 commissioner, if a violation is found, shall impose the penalties under Subsection (6) that the
5169 commissioner considers advisable.
5170 (c) If the commissioner takes action under this Subsection (7), the party aggrieved may
5171 appeal from that action as provided in Title 63, Chapter 46b, Administrative Procedures Act.
5172 Section 91. Section **31A-27a-515** is enacted to read:
5173 **31A-27a-515. Commutation and release agreements.**
5174 (1) For purposes of this section, "casualty claims" means the insurer's aggregate claims
5175 arising out of insurance contracts in the following lines:
5176 (a) farm owner multiperil;
5177 (b) homeowner multiperil;
5178 (c) commercial multiperil;
5179 (d) medical malpractice;
5180 (e) workers' compensation;
5181 (f) other liability;

5182 (g) products liability;

5183 (h) auto liability;

5184 (i) aircraft, all peril; and

5185 (j) international, for lines listed in Subsections (1)(a) through (i).

5186 (2) (a) Notwithstanding Section 31A-27a-512, the liquidator and a reinsurer may
5187 negotiate a voluntary commutation and release of all obligations arising from a reinsurance
5188 agreement in which the insurer is the ceding party.

5189 (b) A commutation and release agreement voluntarily entered into by the parties shall
5190 be commercially reasonable, actuarially sound, and in the best interests of the creditors of the
5191 insurer.

5192 (c) (i) An agreement subject to this Subsection (2) that has a gross consideration in
5193 excess of \$250,000 shall be submitted pursuant to Section 31A-27a-107 to the receivership
5194 court for approval.

5195 (ii) An agreement described in this Subsection (2)(c) shall be approved by the
5196 receivership court if it meets the standards described in this Subsection (2).

5197 (3) Without derogating from Section 31A-27a-512, if the liquidator is unable to
5198 negotiate a voluntary commutation with a reinsurer with respect to a reinsurance agreement
5199 between the insurer and that reinsurer, the liquidator may, in addition to any other remedy
5200 available under applicable law, apply to the receivership court, with notice to the reinsurer, for
5201 an order requiring that the parties submit commutation proposals with respect to the
5202 reinsurance agreement to a panel of three arbitrators:

5203 (a) at any time after 75% of the actuarially estimated ultimate incurred liability for all
5204 of the casualty claims against the liquidation estate is reached by allowance of claims in the
5205 liquidation estate pursuant to Sections 31A-27a-603 and 31A-27a-605, calculated:

5206 (i) as of the day on which the order of liquidation is entered by or at the instance of the
5207 liquidator; and

5208 (ii) for purposes of this Subsection (3), not performed during the five-year period
5209 subsequent to the day on which the order of liquidation is entered; or

5210 (b) at any time in regard to a reinsurer if that reinsurer has a total adjusted capital that
5211 is less than 250% of its authorized control level RBC as defined in Section 31A-17-601.

5212 (4) Venue for the arbitration is within the district of the receivership court's jurisdiction
5213 or at another location agreed to by the parties.

5214 (5) (a) If the liquidator determines that commutation would be in the best interests of
5215 the creditors of the liquidation estate, the liquidator may petition the receivership court to order
5216 arbitration.

5217 (b) If the liquidator petitions the receivership court under Subsection (5)(a), the
5218 receivership court shall require that the liquidator and the reinsurer each appoint an arbitrator
5219 within 30 days after the day on which the order for arbitration is entered.

5220 (c) If either party fails to appoint an arbitrator within the 30-day period, the other party
5221 may appoint both arbitrators and the appointments are binding on the parties.

5222 (d) The two arbitrators shall be active or retired executive officers of insurance or
5223 reinsurance companies, not under the control of or affiliated with the insurer or the reinsurer.

5224 (e) (i) Within 30 days after the day on which both arbitrators have been appointed, the
5225 two arbitrators shall agree to the appointment of a third independent, impartial, disinterested
5226 arbitrator.

5227 (ii) If agreement to the disinterested arbitrator is not reached within the 30-day period,
5228 the third arbitrator shall be appointed by the receivership court.

5229 (f) The disinterested arbitrator shall be a person who:

5230 (i) is or, if retired, has been, an executive officer of a United States domiciled
5231 insurance or reinsurance company that is not under the control of or affiliated with either of the
5232 parties; and

5233 (ii) has at least 15 years experience in the reinsurance industry.

5234 (6) (a) The arbitration panel may choose to retain as an expert to assist the panel in its
5235 determinations, a retired, disinterested executive officer of a United States domiciled insurance
5236 or reinsurance company having at least 15 years loss reserving actuarial experience.

5237 (b) If the arbitration panel is unable to unanimously agree on the identity of the expert

5238 within 14 days of the day on which the disinterested arbitrator is appointed, the expert shall be:
5239 (i) designated by the commissioner:
5240 (A) by rule made in accordance with Title 63, Chapter 46a, Utah Administrative
5241 Rulemaking Act; and
5242 (B) on the basis of recommendations made by a nationally recognized society of
5243 actuaries; and
5244 (ii) a disinterested person that has knowledge, experience, and training applicable to
5245 the line of insurance that is the subject of the arbitration.
5246 (c) The expert:
5247 (i) may not vote in the proceeding; and
5248 (ii) shall issue a written report and recommendations to the arbitration panel within 60
5249 days after the day on which the arbitration panel receives the commutation proposals submitted
5250 by the parties pursuant to Subsection (7), which report shall:
5251 (A) be included as part of the arbitration record; and
5252 (B) accompany the award issued by the arbitration panel pursuant to Subsection (8).
5253 (d) The cost of the expert is to be paid equally by the parties.
5254 (7) Within 90 days after the day on which the disinterested arbitrator is appointed
5255 under Subsection (5), each party shall submit to the arbitration panel:
5256 (a) the party's commutation proposals; and
5257 (b) other documents and information relevant to the determination of the parties' rights
5258 and obligations under the reinsurance agreement to be commuted, including:
5259 (i) a written review of any disputed paid claim balances;
5260 (ii) any open claim files and related case reserves at net present value; and
5261 (iii) any actuarial estimates with the basis of computation of any other reserves and any
5262 incurred-but-not-reported losses at net present value.
5263 (8) (a) Within 90 days after the day on which the parties submit the information
5264 required by Subsection (7), the arbitration panel:
5265 (i) shall issue an award, determined by a majority of the arbitration panel, specifying

5266 the terms of a commercially reasonable and actuarially sound commutation agreement between
5267 the parties; or

5268 (ii) may issue an award declining commutation between the parties for a period not to
5269 exceed two years if a majority of the arbitration panel determines that it is unable to derive a
5270 commercially reasonable and actuarially sound commutation on the basis of:

5271 (A) the submissions of the parties; and

5272 (B) if applicable, the report and recommendation of the expert retained in accordance
5273 with Subsection (6).

5274 (b) Following the expiration of the two-year period described in Subsection (8)(a), the
5275 liquidator may again invoke arbitration in accordance with Subsection (2), in which event
5276 Subsections (2) through (9) apply to the renewed proceeding, except that the arbitration panel
5277 is obliged to issue an award under Subsection (8)(a).

5278 (9) Once an award is issued, the liquidator shall promptly submit the award to the
5279 receivership court for confirmation.

5280 (10) (a) Within 30 days of the day on which the receivership court confirms the award,
5281 the reinsurer shall give notice to the receiver that the reinsurer:

5282 (i) will commute the reinsurer's liabilities to the insurer for the amount of the award in
5283 return for a full and complete release of all liabilities between the parties, whether past, present,
5284 or future; or

5285 (ii) will not commute the reinsurer's liabilities to the insurer.

5286 (b) If the reinsurer's liabilities are not commuted under Subsection (10)(a), the
5287 reinsurer shall:

5288 (i) establish and maintain in accordance with Section 31A-27a-516 a reinsurance
5289 recoverable trust in the amount of 102% of the award; and

5290 (ii) pay the costs and fees associated with establishing and maintaining the trust
5291 established under this Subsection (10)(b).

5292 (11) (a) If the reinsurer notifies the liquidator that it will commute the reinsurer's
5293 liabilities pursuant to Subsection (10)(a)(i), the liquidator has 30 days from the day on which

5294 the reinsurer notifies the liquidator to:

5295 (i) tender to the reinsurer a proposed commutation and release agreement:

5296 (A) providing for a full and complete release of all liabilities between the parties,

5297 whether past, present, or future;

5298 (B) that requires that the reinsurer make payment of the commutation amount within

5299 14 days from the day on which the agreement is consummated; or

5300 (ii) reject the commutation in writing, subject to receivership court approval.

5301 (b) If the liquidator rejects the commutation subject to approval of the receivership

5302 court in accordance with Subsection (11)(a)(ii), the reinsurer shall establish and maintain a

5303 reinsurance recoverable trust in accordance with Section 31A-27a-516.

5304 (c) The liquidator and the reinsurer shall share equally in the costs and fees associated

5305 with establishing and maintaining the trust established under Subsection (11)(b).

5306 (12) Except for the period provided in Subsection (8)(b), the time periods established

5307 in Subsections (6), (7), (8), (10), and (11) may be extended:

5308 (a) upon the consent of the parties; or

5309 (b) by order of the receivership court, for good cause shown.

5310 (13) Subject to Subsection (14), this section may not be construed to supersede or

5311 impair any provision in a reinsurance agreement that establishes a commercially reasonable and

5312 actuarially sound method for valuing and commuting the obligations of the parties to the

5313 reinsurance agreement by providing in the contract the specific methodology to be used for

5314 valuing and commuting the obligations between the parties.

5315 (14) (a) A commutation provision in a reinsurance agreement is not effective if it is

5316 demonstrated to the receivership court that the provision is entered into in contemplation of the

5317 insolvency of one or more of the parties.

5318 (b) A contractual commutation provision entered into within one year of the day on

5319 which the liquidation order of the insurer is entered is rebuttably presumed to have been

5320 entered into in contemplation of insolvency.

5321 Section 92. Section **31A-27a-516** is enacted to read:

5322 **31A-27a-516. Reinsurance recoverable trust provisions.**
5323 (1) As used in this section:
5324 (a) "Beneficiary" means the domiciliary insurance commissioner, as liquidator of the
5325 insurer for whose sole benefit a reinsurance recoverable trust is established.
5326 (b) "Grantor" means the reinsurer who has established a reinsurance recoverable trust
5327 for the sole benefit of the beneficiary.
5328 (c) "Qualified United States financial institution" means an institution that:
5329 (i) (A) is organized under the laws of the United States or any state of the United
5330 States; or
5331 (B) in the case of a United States branch or agency office of a foreign banking
5332 organization, licensed under the laws of the United States or any state of the United States;
5333 (ii) is granted authority to operate with fiduciary powers; and
5334 (iii) is regulated, supervised, and examined by federal or state authorities having
5335 regulatory authority over banks and trust companies.
5336 (d) "Reinsurance recoverable trust" means a trust established pursuant to Section
5337 31A-27a-515.
5338 (2) (a) The trustee of a reinsurance recoverable trust shall be a qualified United States
5339 financial institution.
5340 (b) The trust agreement governing a reinsurance recoverable trust shall:
5341 (i) be entered into by the beneficiary, the grantor, and a trustee;
5342 (ii) create a trust account into which assets shall be deposited in accordance with
5343 Section 31A-27a-515;
5344 (iii) provide that the beneficiary may withdraw assets from the trust only:
5345 (A) on the basis of a filed claim allowed pursuant to Section 31A-27a-603 or
5346 31A-27a-605;
5347 (B) where the grantor is notified, in writing, of the allowance of the claim;
5348 (C) to the extent that the amount to be withdrawn exceeds any setoff permitted by
5349 Section 31A-27a-510 due to the grantor; and

5350 (D) when 60 days expires during which the grantor fails to:
5351 (I) pay the claim; or
5352 (II) subject to and without derogation from Section 31A-27a-512, which at all times
5353 governs and remains binding on the reinsurer, file notice of a written dispute with respect to the
5354 claim under and in terms of the reinsurance agreement; or
5355 (E) if the beneficiary complies with any different or other terms and conditions
5356 mutually agreed to by the beneficiary and the grantor in the trust agreement;
5357 (iv) require the trustee to:
5358 (A) receive assets and hold all assets at the trustee's office in the United States in a safe
5359 place;
5360 (B) determine that all assets are in such form that the beneficiary, or the trustee upon
5361 direction by the beneficiary, may whenever necessary negotiate the assets, without consent or
5362 signature from the grantor or any other person;
5363 (C) furnish to the grantor and the beneficiary a statement of all assets in the trust
5364 account upon its inception and at intervals no less frequent than the end of each calendar
5365 quarter; and
5366 (D) notify the grantor and the beneficiary within ten days of a deposit to or withdrawal
5367 from the trust account;
5368 (v) be made subject to and governed by the laws of this state;
5369 (vi) prohibit the invasion of the trust corpus for the purpose of paying compensation to,
5370 or reimbursing the expenses of, the trustee;
5371 (vii) provide that the trustee is liable for the trustee's negligence, willful misconduct, or
5372 lack of good faith;
5373 (viii) subject to Subsection (2)(c), provide that the trustee may resign upon delivery of
5374 a written notice of resignation, effective not less than 90 days after the day on which the
5375 beneficiary and grantor receive the notice;
5376 (ix) subject to Subsection (2)(c), provide that the trustee may be removed by the
5377 grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective

5378 not less than 90 days after the day on which the trustee and the beneficiary receive the notice;

5379 (x) provide that the grantor has the full and unqualified right to vote any shares of stock
5380 in the trust account except that, subject to other provisions of this section, an interest or
5381 dividend paid on shares of stock or other obligation in the trust account shall remain in the
5382 trust;

5383 (xi) specify categories of investments reasonably acceptable to the beneficiary;

5384 (xii) authorize the trustee to invest funds and to accept substitutions, by the grantor,
5385 that the trustee determines are at least equal in market value to the assets withdrawn provided
5386 that no investment or substitution shall be made without prior approval from the beneficiary,
5387 which may not be unreasonably or arbitrarily withheld;

5388 (xiii) subject to Subsection (2)(d), provide that the beneficiary may at any time
5389 designate a party to which all or part of the trust assets are to be transferred;

5390 (xiv) specify the types of assets that may be included in the trust account:

5391 (A) which shall consist only of:

5392 (I) cash in United States dollars;

5393 (II) certificates of deposit issued by a United States bank and payable in United States
5394 dollars;

5395 (III) investments permitted by this state's insurance law; or

5396 (IV) any combination of the types specified by this Subsection (2)(b)(xiv)(A);

5397 (B) except that if investments in or issued by an entity controlling, controlled by, or
5398 under common control with either the grantor or the beneficiary of the trust, may not exceed
5399 5% of total investments; and

5400 (C) subject to the assets deposited in the trust account being valued according to the
5401 asset's current fair market value;

5402 (xv) give the grantor the right to seek approval from the beneficiary, which may not be
5403 unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the
5404 trust assets and transfer those assets to the grantor, if:

5405 (A) the grantor, at the time of withdrawal, replaces the withdrawn assets with other

5406 qualified assets so as to maintain at all times the deposit in the required amount; or
5407 (B) after withdrawal and transfer, the market value of the trust account is no less than
5408 102% of the award made pursuant to Subsection 31A-27a-515(7)(a);
5409 (xvi) provide for the return of any amount withdrawn in excess of the actual amounts
5410 required for:
5411 (A) payment of reported allowed claims under Subsection (2)(b)(iii); and
5412 (B) interest payments at a rate not in excess of the prime rate of interest on the excess
5413 amounts withdrawn; and
5414 (xvii) provide for termination of the reinsurance recoverable trust in accordance with
5415 Subsection (6).
5416 (c) Notwithstanding Subsection (2)(b)(viii) or (ix), a resignation or removal may not be
5417 effective until:
5418 (i) a successor trustee is appointed and approved by the beneficiary and the grantor;
5419 and
5420 (ii) all assets in the trust are transferred to the new trustee.
5421 (d) Notwithstanding Subsection (2)(b)(xiii), a transfer may be conditioned upon the
5422 trustee receiving, before or simultaneously with, other specified assets.
5423 (e) Subsection (2)(b) may not be construed to alter the rights or obligations of the
5424 parties pursuant to contractual and statutory provisions providing for notice and the
5425 determination of a claim.
5426 (3) The grantor shall, before depositing assets with the trustee, execute assignments or
5427 endorsements in blank, or transfer legal title to the trustee of all shares, obligations, or any
5428 other assets requiring assignments, in order that the beneficiary, or the trustee upon the
5429 direction of the beneficiary, may whenever necessary negotiate these assets without consent or
5430 signature from the grantor or any other person.
5431 (4) (a) Without derogating Section 31A-27a-512, the grantor or the beneficiary may
5432 request that the receivership court review the amount held if:
5433 (i) the grantor and beneficiary fail to reach agreement on the extent, if any, to which

5434 supplementation or reduction of a reinsurance recoverable trust should be occasioned;
5435 (ii) (A) the reinsurance recoverable trust is exhausted; or
5436 (B) the reinsurance recoverable trust is insufficient to respond to claims allowed
5437 pursuant to Section 31A-27a-603 or 31A-27a-605; and
5438 (iii) the grantor or the beneficiary believe that the amount held in the reinsurance
5439 recoverable trust is either deficient or overstated.
5440 (b) The review described in this Subsection (4) shall be conducted applying procedures
5441 and terms as the receivership court shall, in its sole discretion, direct.
5442 (5) A reinsurance recoverable trust shall terminate upon the earlier of:
5443 (a) receivership court approval of a voluntary commutation between the grantor and the
5444 beneficiary pursuant to Subsection 31A-27a-515(1);
5445 (b) the mutual agreement of the grantor and the beneficiary; or
5446 (c) a finding by the receivership court that the grantor has discharged its liabilities to
5447 the beneficiary.
5448 (6) Upon termination of a reinsurance recoverable trust, all assets not previously
5449 withdrawn by the beneficiary, pursuant to Subsection (2)(b)(iii), shall, with written approval of
5450 the beneficiary, be delivered to the grantor.

5451 Section 93. Section **31A-27a-601** is enacted to read:

5452 **Part 6. Claims**

5453 **31A-27a-601. Filing of claims.**

5454 (1) (a) Subject to the other provisions of this Subsection (1), proof of a claim shall be
5455 filed with the liquidator in the form required by Section 31A-27a-602 on or before the last day
5456 for filing specified in the notice required under Section 31A-27a-406.

5457 (b) The last day for filing specified in the notice may not be later than 18 months after
5458 the day on which the order of liquidation is entered unless the receivership court, for good
5459 cause shown, extends the time.

5460 (c) Proof of a claim for the following does not need to be filed unless the liquidator
5461 expressly requires filing of proof:

- 5462 (i) cash surrender value in life insurance and annuities;
5463 (ii) investment value in life insurance and annuities other than cash surrender value;
5464 and
5465 (iii) any other policy insuring the life of a person.
5466 (d) Only upon application of the liquidator, the receivership court may allow
5467 alternative procedures and requirements for the filing of proof of a claim or for allowing or
5468 proving a claim.
5469 (e) Upon application, if the receivership court dispenses with the requirements of filing
5470 a proof of claim by a person, class, or group of persons, a proof of claim for that person, class,
5471 or group is considered as being filed for all purposes, except that the receivership court's
5472 waiver of proof of claim requirements may not impact guaranty association proof of claim
5473 filing requirements or coverage determinations to the extent that the guaranty association
5474 statute or filing requirements are inconsistent with the receivership court's waiver of proof.
5475 (2) The liquidator may permit a claimant that makes a late filing to share ratably in
5476 distributions, whether past or future, as if the claim were not filed late, to the extent that the
5477 payment will not prejudice the orderly administration of the liquidation, under the following
5478 circumstances:
5479 (a) the eligibility to file a proof of claim was not known to the claimant, and the
5480 claimant files a proof of claim within 90 days after the day on which the claimant first learns of
5481 the eligibility;
5482 (b) (i) a transfer to a creditor is:
5483 (A) avoided under Section 31A-27a-503, 31A-27a-504, 31A-27a-506, or 31A-27a-507;
5484 or
5485 (B) voluntarily surrendered under Section 31A-27a-509; and
5486 (ii) the filing satisfies the conditions of Section 31A-27a-509; or
5487 (c) the valuation of security held by a secured creditor under Section 31A-27a-610
5488 shows a deficiency and the claim for the deficiency is filed within 30 days after the valuation.
5489 (3) If a reinsurer's reinsurance contract terminates pursuant to Section 31A-27a-513:

5490 (a) a claim filed by the receiver which arises from the termination may not be
5491 considered late if the claim is filed within 90 days of the day on which the reinsurance contract
5492 terminates; and

5493 (b) the reinsurer shall receive a ratable share of distributions, whether past or future, as
5494 if the claim described in Subsection (3)(a) is not late.

5495 (4) Notwithstanding any other provision of this chapter, the liquidator may petition the
5496 receivership court, subject to Section 31A-27a-107, to set a date certain after which no further
5497 claims may be filed.

5498 Section 94. Section **31A-27a-602** is enacted to read:

5499 **31A-27a-602. Proof of claim.**

5500 (1) Proof of claim shall consist of a statement signed by the claimant or on behalf of
5501 the claimant that includes all of the following that are applicable:

5502 (a) the particulars of the claim including the consideration given for the claim;

5503 (b) the identity and amount of the security on the claim;

5504 (c) the payments made on the debt, if any;

5505 (d) that the sum claimed is justly owing and there is no setoff, counterclaim, or defense
5506 to the claim;

5507 (e) any right of priority of payment or other specific right asserted by the claimant;

5508 (f) the name and address of the claimant and the attorney, if any, who represents the
5509 claimant; and

5510 (g) the claimant's Social Security number or federal employer identification number.

5511 (2) The liquidator may require that:

5512 (a) a prescribed form be used under this section; and

5513 (b) other information and documents be included.

5514 (3) At any time the liquidator may:

5515 (a) require the claimant to present information or evidence supplementary to that
5516 required under Subsection (1);

5517 (b) take testimony under oath;

5518 (c) require production of one or more affidavits or depositions; or

5519 (d) otherwise obtain additional information or evidence.

5520 (4) (a) An affected guaranty association may file a single omnibus proof of claim for
5521 all claims of the affected guaranty association in connection with payment of claims of the
5522 insurer.

5523 (b) The omnibus proof of claim may be periodically updated by the affected guaranty
5524 association without regard to the deadline specified in Subsection 31A-27a-601(1).

5525 (c) An affected guaranty association may be required to submit a reasonable amount of
5526 documentation in support of the claim.

5527 Section 95. Section **31A-27a-603** is enacted to read:

5528 **31A-27a-603. Allowance of claims.**

5529 (1) (a) Except as provided in Subsections (11) and (12), the liquidator shall:

5530 (i) review all claims filed in the liquidation proceeding in accordance with this chapter;

5531 and

5532 (ii) further investigate a claim, as the liquidator considers necessary.

5533 (b) Consistent with this chapter, the liquidator may allow, disallow, or compromise a
5534 claim that will be recommended to the receivership court unless the liquidator is required by
5535 law to accept the claim as settled by a person, including an affected guaranty association,
5536 subject to a statutory or contractual right of the affected reinsurers to participate in the claims
5537 allowance process.

5538 (c) Notwithstanding any other provision of this chapter, a claim under a policy of
5539 insurance may not be allowed for an amount in excess of the applicable policy limits.

5540 (2) (a) Pursuant to the review required by Subsection (1), the liquidator shall provide
5541 notice of the claim determination to the claimant or the claimant's attorney.

5542 (b) The notice required by this Subsection (2) shall set forth:

5543 (i) the amount of the claim allowed by the liquidator, if any;

5544 (ii) the priority class of the claim as established in Section 31A-27a-701; and

5545 (iii) if the claim is denied, the reason for the denial.

5546 (c) In regard to a claim to be allowed pursuant to Section 31A-27a-605, preliminary
5547 notice of the amount of the claim determination shall be provided to any reinsurer that is or
5548 may be liable in respect to the claim at least 45 days before the day on which notice is provided
5549 to the claimant pursuant to this Subsection (2).

5550 (d) In regard to a claim being allowed other than pursuant to Section 31A-27a-605, the
5551 notice sent to the claimant may be provided to any reinsurer that is or may be liable in respect
5552 to the claim.

5553 (e) If no timely objection is submitted, the claim determination is binding on the
5554 reinsurer upon allowance.

5555 (3) (a) Within 45 days after the day on which the notice described in Subsection (2) is
5556 mailed, the claimant noticed may submit a written objection to the liquidator.

5557 (b) An objection provided for under this Subsection (3) shall clearly set out:

5558 (i) all facts and the legal basis, if any, for the objection; and

5559 (ii) the reasons why the claim should be allowed at a different amount or in a different
5560 priority class.

5561 (c) If no timely objection is submitted, the claimant may not further object, and the
5562 determination is final.

5563 (d) The liquidator may accelerate the allowance of a claim by obtaining a waiver of an
5564 objection.

5565 (4) (a) A claim that is not mature as of the coverage termination date established under
5566 Section 31A-27a-402 may be allowed as if it were mature, except the claim shall be discounted
5567 to present value.

5568 (b) A claim is not mature if payment on the claim is not yet due.

5569 (5) The following is not required to be considered as evidence of liability or of the
5570 amount of damages:

5571 (a) a judgment or order against an insured or the insurer entered:

5572 (i) after the day on which a successful petition for receivership is initially filed; or

5573 (ii) within 120 days before the day on which the petition is initially filed; or

5574 (b) a judgment or order against an insured or the insurer entered at any time by default
5575 or by collusion.

5576 (6) A claim under an employment contract by a director, officer, or person in fact
5577 performing similar functions or having similar powers is limited to payment for services
5578 rendered before an order of receivership, unless explicitly approved in writing by:

5579 (a) the commissioner before an order of receivership;

5580 (b) the rehabilitator before the day on which the order of liquidation is entered; or

5581 (c) the liquidator after the day on which the order of liquidation is entered.

5582 (7) The total liability of the liquidator to all claimants arising out of the same act or
5583 policy shall be no greater than the insurer's total liability would have been were the insurer not
5584 in liquidation.

5585 (8) (a) The liquidator shall disallow a claim that is for or determined to be for a de
5586 minimis amount.

5587 (b) A de minimis amount is an amount equal to or less than a maximum de minimis
5588 amount approved by the receivership court as being reasonable and necessary for
5589 administrative convenience.

5590 (9) A claim that does not contain all the applicable information required by Section
5591 31A-27a-602:

5592 (a) does not need to be further reviewed or adjudicated; and

5593 (b) may be denied or disallowed by the liquidator subject to the notice and objection
5594 procedures in this section.

5595 (10) (a) The liquidator may reconsider a claim on the basis of additional information
5596 and amend the recommendation to the receivership court.

5597 (b) The claimant shall be afforded the same notice and opportunity to be heard on all
5598 changes in the recommendation as in the claim's initial determination.

5599 (c) The receivership court may amend the receivership court's allowance or
5600 disallowance as appropriate.

5601 (11) (a) The liquidator is not required to process claims for any class until it appears

5602 reasonably likely that property will be available for a distribution to that class.

5603 (b) If there are insufficient assets to justify processing all claims for a class listed in
5604 Section 31A-27a-701, the liquidator shall:

5605 (i) report the facts to the receivership court; and

5606 (ii) make appropriate recommendations for handling the remainder of the claims.

5607 (12) A claim of a lessor for damages resulting from the termination of a lease of real
5608 property shall be disallowed to the extent that the claim exceeds the sum of:

5609 (a) the rent reserved by the lease, without acceleration, for the greater of one year, or
5610 15%, not to exceed three years, of the remaining term of the lease, following the earlier of:

5611 (i) the day on which the petition is filed; and

5612 (ii) the day on which the lessor repossessed, or the lessee surrendered, the leased
5613 property; and

5614 (b) any unpaid rent due under the lease, without acceleration, on the earlier of the dates
5615 specified in Subsection (12)(a).

5616 Section 96. Section **31A-27a-604** is enacted to read:

5617 **31A-27a-604. Claims under an occurrence policy, surety bond, surety**
5618 **undertaking.**

5619 (1) Subject to Section 31A-27a-603, an insured may file a claim for the protection
5620 afforded under the insured's policy, irrespective of whether a claim is known at the time of
5621 filing, if the policy is an occurrence policy.

5622 (2) Subject to Section 31A-27a-603, an obligee may file a claim for the protection
5623 afforded under a surety bond or a surety undertaking issued by the insurer as to which the
5624 obligee is the beneficiary, irrespective of whether a claim is known at the time of filing.

5625 (3) After a claim is filed under Subsection (1) or (2), when a specific claim is made by
5626 or against the insured or by the obligee:

5627 (a) the insured or the obligee shall supplement the claim; and

5628 (b) the receiver shall treat the claim as a contingent or unliquidated claim under
5629 Section 31A-27a-605.

5630 Section 97. Section **31A-27a-605** is enacted to read:

5631 **31A-27a-605. Allowance of contingent and unliquidated claims.**

5632 (1) As used in this section, "claim" means a demand for payment pursuant to Section
5633 31A-27a-601 under the terms and conditions of a contract issued by the insurer as a result of a
5634 known accident, casualty, disaster, loss, event, or occurrence.

5635 (2) (a) A claim of an insured or third party may be allowed under Section
5636 31A-27a-603, regardless of the fact that it is contingent or unliquidated if:

5637 (i) any contingency is removed in accordance with Subsection (3); and

5638 (ii) the value of the claim is determined in accordance with Subsection (4).

5639 (b) A claim is contingent if:

5640 (i) the accident, casualty, disaster, loss, event, or occurrence insured, reinsured, or
5641 bonded against occurs on or before the date fixed under Section 31A-27a-601; and

5642 (ii) the act or event triggering the insurer's obligation to pay has not occurred as of the
5643 date fixed under Section 31A-27a-401.

5644 (c) A claim is unliquidated if the insurer's obligation to pay is established, but the
5645 amount of the claim has not been determined.

5646 (3) (a) Unless the receivership court directs otherwise, a contingent claim may be
5647 allowed if:

5648 (i) the claimant presents proof of the insurer's obligation to pay reasonably satisfactory
5649 to the liquidator; or

5650 (ii) subject to Subsection (3)(b), the claim is based on a cause of action against an
5651 insured of the insurer, and:

5652 (A) it may be reasonably inferred from proof presented upon the claim that the
5653 claimant would be able to obtain a judgment; and

5654 (B) the person furnishes suitable proof.

5655 (b) A contingent claim may not be allowed under Subsection (3)(a)(ii)(B) if the
5656 receivership court for good cause shown shall otherwise direct that no further valid claims can
5657 be made against the insurer arising out of the cause of action other than those already

5658 presented.

5659 (4) (a) An unliquidated claim may be allowed if its amount has been determined.

5660 (b) If the amount of an unliquidated claim filed pursuant to Section 31A-27a-601
5661 remains undetermined, the valuation of the unliquidated claim may be made by estimate
5662 whenever the liquidator determines that:

5663 (i) liquidation of the claim would unduly delay the administration of the liquidation
5664 proceeding; or

5665 (ii) the administrative expense of processing and adjudicating the claim or group of
5666 claims of a similar type would be unduly excessive when compared with the property that is
5667 estimated to be available for distribution with respect to the claim.

5668 (c) Any estimate shall be based on an accepted method of valuing a claim with
5669 reasonable certainty at the claim's net present value, such as an actuarial evaluation.

5670 (5) (a) Notwithstanding the other provisions of this section, a claim for the value or
5671 breach of a life insurance policy, disability income insurance policy, long-term care insurance
5672 policy, or annuity may not result in or serve as the basis of any liability of a reinsurer of the
5673 insurer.

5674 (b) A reinsurer's liability to the insurer shall be determined exclusively on the basis of
5675 its contracts of reinsurance and Section 31A-27a-513.

5676 (6) (a) The liquidator may petition the receivership court to set a date certain before
5677 which all claims under this section shall be final.

5678 (b) In addition to the notice requirements of Section 31A-27a-107, the liquidator shall
5679 give notice of the filing of the petition to all claimants with claims that remain contingent or
5680 unliquidated under this section.

5681 Section 98. Section **31A-27a-606** is enacted to read:

5682 **31A-27a-606. Special provisions for third party claims.**

5683 (1) Whenever a third party asserts a cause of action against an insured of an insurer in
5684 liquidation, the third party may file a claim with the liquidator on or before the last day for
5685 filing claims.

5686 (2) Whether or not the third party files a claim, the insured may file a claim on the
5687 insured's own behalf in the liquidation.

5688 (3) (a) The liquidator may make recommendations to the receivership court for the
5689 allowance of an insured's claim after consideration of:

5690 (i) the probable outcome of any pending action against the insured on which the claim
5691 is based;

5692 (ii) the probable damages recoverable in the action; and

5693 (iii) the probable costs and expenses of defense.

5694 (b) After allowance by the receivership court, the liquidator shall withhold any
5695 distribution payable on the claim, pending the outcome of litigation and negotiation between
5696 the insured and the third party.

5697 (c) The liquidator may reconsider the claim as provided in Subsection
5698 31A-27a-603(10).

5699 (d) As a claim against the insured is settled or barred, the insured or third party, as
5700 appropriate, shall be paid, from the amount withheld, the same percentage distribution as is
5701 paid on other claims of like priority, on the basis of the lesser of:

5702 (i) the amount actually due from the insured by action or paid by agreement plus the
5703 reasonable costs and expense of defense; or

5704 (ii) the amount allowed on the claim by the receivership court.

5705 (e) After all claims are settled or barred, any sum remaining from the amount withheld
5706 shall revert to the undistributed property of the insurer.

5707 (4) (a) If several claims founded upon one policy are timely filed, whether by third
5708 parties or as claims by the insured under this section, and the aggregate amount of the timely
5709 filed allowed claims exceeds the aggregate policy limits, the liquidator may:

5710 (i) apportion the policy limits ratably among the timely filed allowed claims; or

5711 (ii) give notice to the insured, known third parties, and affected guaranty associations
5712 that the aggregate policy limits have been exceeded.

5713 (b) Thirty days after the day on which the liquidator's notice is given under this

5714 Subsection (4):

5715 (i) no further amounts shall be allowed;

5716 (ii) the policy limits shall be apportioned ratably among the timely filed allowed
5717 claims; and

5718 (iii) any additional claims shall be rejected.

5719 (c) A claim by the insured shall be evaluated as in Subsection (3). If an insured's claim
5720 is subsequently reduced under Subsection (3), the amount freed shall be apportioned ratably
5721 among the claims that have been reduced under this Subsection (4).

5722 (5) A claim may not be allowed under this section to the extent the claim is covered by
5723 a guaranty association.

5724 (6) A claimant may withdraw a proof of claim with the liquidator's approval. The
5725 liquidator may approve the withdrawal:

5726 (a) after giving notice of the withdrawal to the insured; and

5727 (b) only upon a showing of good cause.

5728 (7) The filing of a proof of claim in connection with a claim against an insured shall
5729 have the following effect on the rights of the claimant and the insured:

5730 (a) By filing a proof of claim, a claimant:

5731 (i) waives any right to pursue the personal assets of the insured with respect to the
5732 claim, to the extent of the coverage or policy limits provided by the insurer; and

5733 (ii) except as provided in this section, agrees that, to the extent of the coverage or
5734 policy limits provided by the insurer, the claimant shall seek satisfaction of the claim against
5735 the insured solely from:

5736 (A) distributions paid by the liquidator on the claim; and

5737 (B) any payments that an affected guaranty association may pay on account of the
5738 claim.

5739 (b) The waiver provided under this section:

5740 (i) is conditioned upon the cooperation of the insured with:

5741 (A) the liquidator in the defense of the claim; and

5742 (B) any applicable guaranty association in defense of the claim; and
5743 (ii) does not operate to:
5744 (A) discharge the guaranty association from any of its responsibilities and duties;
5745 (B) release the insured with respect to any claim in excess of the coverage or policy
5746 limits provided by the insurer or any other responsible party; or
5747 (C) release the insured to the extent of the guaranty association's claim for
5748 reimbursement from the insured under a guaranty association statutory provision instituting a
5749 right to recover from high net worth insureds.

5750 (c) The waiver provided under this section is void if:
5751 (i) a claimant withdraws the claimant's proof of claim under Subsection (6); or
5752 (ii) the liquidator avoids insurance coverage in connection with a proof of the claim.
5753 (d) The liquidator shall provide, where applicable, notice of the election of remedies
5754 provision in this section on any proof of claim form it distributes that shall:
5755 (i) be inserted above the claimant's signature line in typeface:
5756 (A) no smaller than the typeface of the rest of the notice; and
5757 (B) in no event smaller than font size 14; and
5758 (ii) include a statement substantially similar to the following: "I understand by filing
5759 this claim in the estate of the insurer I am waiving any right to pursue the personal assets of the
5760 insured to the extent that there are policy limits or coverage provided by the now insolvent
5761 insurer."

5762 Section 99. Section **31A-27a-607** is enacted to read:
5763 **31A-27a-607. Disputed claims.**
5764 (1) (a) When a claim is disallowed in whole or in part by the liquidator, written notice
5765 of the determination and of the right to object shall be given promptly to the claimant or the
5766 claimant's attorney of record, if any, by first-class mail at the addresses shown in the proof of
5767 claim.

5768 (b) (i) Within 45 days from the day on which the notice required by Subsection (1)(a) is
5769 mailed, the claimant may file an objection with the liquidator.

5770 (ii) If an objection is not filed within the period provided in Subsection (1)(b)(i), the
5771 claimant may not further object to the determination.

5772 (2) (a) If an objection is filed in accordance with Subsection 31A-27a-603(3)(a) and the
5773 liquidator does not alter the liquidator's ruling, the liquidator shall ask the court for a hearing as
5774 soon as practicable.

5775 (b) If the liquidator asks for a hearing under Subsection (2)(a), the court shall issue an
5776 order setting a date as early as possible.

5777 (c) At the request of the liquidator, the court may establish procedures for the
5778 objections hearing.

5779 (d) The liquidator shall give notice of a hearing under this Subsection (2) by first-class
5780 mail to:

5781 (i) the claimant or the claimant's attorney; and

5782 (ii) any other persons directly affected.

5783 (e) A hearing under this Subsection (2):

5784 (i) shall be heard without a jury; and

5785 (ii) may be heard by:

5786 (A) the court; or

5787 (B) a court appointed referee.

5788 (f) A hearing under this Subsection (2) shall be limited to the evidence upon which the
5789 liquidator made the determination of the claim.

5790 (g) If a referee is appointed under this Subsection (2), the referee shall submit to the
5791 court:

5792 (i) findings of fact;

5793 (ii) recommendations; and

5794 (iii) a transcript of the hearing.

5795 (h) The court shall review the referee's findings of fact and recommendations for
5796 correctness by reviewing the record, including the hearing transcript.

5797 (i) Consistent with Section 31A-27a-608, the court may approve, disapprove, or

5798 modify:

5799 (i) the liquidator's determination of a claim; or

5800 (ii) a referee's recommendations on a claim.

5801 (3) A court order issued after a hearing and pursuant to this section may be appealed as

5802 a final order for purposes of Rule 54, Utah Rules of Civil Procedure.

5803 (4) This section is not applicable to a dispute with respect to a coverage determination

5804 by an affected guaranty association as part of the affected guaranty association's statutory

5805 obligations.

5806 Section 100. Section **31A-27a-608** is enacted to read:

5807 **31A-27a-608. Liquidator's recommendations to the receivership court.**

5808 (1) The liquidator shall, from time to time as determined by the liquidator, present to

5809 the receivership court for approval, reports of claims settled or determined by the liquidator

5810 under Section 31A-27a-603.

5811 (2) A report required by this section shall include information identifying:

5812 (a) the claim;

5813 (b) the amount of the claim; and

5814 (c) the priority class of the claim.

5815 Section 101. Section **31A-27a-609** is enacted to read:

5816 **31A-27a-609. Claims of codebtor.**

5817 If a creditor does not timely file a proof of the creditor's claim, the following may file a

5818 proof of the claim:

5819 (1) a person who is liable to the creditor together with the insurer; or

5820 (2) a person who has secured the creditor.

5821 Section 102. Section **31A-27a-610** is enacted to read:

5822 **31A-27a-610. Secured creditor's claims.**

5823 (1) The value of a security held by a secured creditor shall be determined in one of the

5824 following ways:

5825 (a) by converting the security into money according to the terms of the agreement

5826 pursuant to which the security is delivered to the creditor; or

5827 (b) by agreement or litigation between the creditor and the liquidator.

5828 (2) (a) The receiver has the first priority to use collateral to reimburse a prepetition loss
5829 or expense if:

5830 (i) a surety pays a loss or loss adjustment expense under its own surety instrument
5831 before any petition for a delinquency proceeding;

5832 (ii) the principal posts collateral that remains available to reimburse the loss, the loss
5833 adjustment expense, or both; and

5834 (iii) at the time of the petition, the collateral posted under this Subsection (2)(a) has not
5835 been credited against the payments made.

5836 (b) If the principal under a surety bond or a surety undertaking pledges collateral,
5837 including a guaranty or a letter of credit, to secure the principal's reimbursement obligation to
5838 the insurer, the claim of an obligee or, subject to the discretion of the receiver, completion
5839 contractor under the surety bond or surety undertaking shall be satisfied first out of the
5840 collateral or the collateral's proceeds.

5841 (c) In making a distribution to an obligee or completion contractor, the receiver shall
5842 retain a sufficient reserve for any other potential claim against the collateral under Subsection
5843 (2)(b).

5844 (d) If the collateral is insufficient to satisfy in full all potential claims against it under
5845 Subsections (2)(b) and (f):

5846 (i) the claims shall be paid on a pro rata basis; and

5847 (ii) the obligees or completion contractor shall have claims, subject to allowance
5848 pursuant to Section 31A-27a-603, for any deficiency.

5849 (e) If the time to assert a claim against a surety bond or a surety undertaking expires
5850 and all claims have been satisfied in full, any remaining collateral for the surety bond or surety
5851 undertaking shall be returned to the principal.

5852 (f) (i) To the extent that a guaranty association has made a payment relating to a claim
5853 against a surety bond, the guaranty association shall first be reimbursed for the payment and

5854 related expenses out of the available collateral or proceeds related to the surety bond.

5855 (ii) To the extent the collateral is sufficient, the guaranty association will be reimbursed
5856 for 100% of the guaranty association's payment.

5857 (iii) If the collateral is insufficient to satisfy in full all potential claims against it under
5858 this Subsection (2)(f) and Subsection (2)(b), the one or more guaranty associations that pay
5859 claims on a surety bond:

5860 (A) are entitled to a pro rata share of the available collateral in accordance with
5861 Subsection (2)(d); and

5862 (B) have claims against the general assets of the estate in accordance with Section
5863 31A-27a-603 for any deficiency.

5864 (iv) A payment made to a guaranty association from the collateral may not be
5865 considered early access or otherwise considered a distribution out of the general assets or
5866 property of the estate.

5867 (v) A guaranty association shall subtract any payment from the collateral from the
5868 guaranty association's final claims against the estate.

5869 (3) (a) The amount determined pursuant to Subsection (1) shall be credited upon the
5870 secured claim, and the claimant may file a proof of claim, subject to the other provisions of this
5871 chapter, for any deficiency, which shall be treated as an unsecured claim.

5872 (b) If the claimant surrenders the claimant's security to the liquidator, the entire claim
5873 shall be treated as if unsecured.

5874 (4) The liquidator may recover from property securing an allowed secured claim the
5875 reasonable, necessary costs and expenses of preserving, or disposing of, the property to the
5876 extent of any benefit to the holder of the allowed secured claim.

5877 Section 103. Section **31A-27a-611** is enacted to read:

5878 **31A-27a-611. Qualified financial contracts.**

5879 (1) As used in this section:

5880 (a) (i) "Actual direct compensatory damages" does not include:

5881 (A) punitive or exemplary damages;

- 5882 (B) damages for lost profit or lost opportunity; or
- 5883 (C) damages for pain and suffering.
- 5884 (ii) "Actual direct compensatory damages" includes:
- 5885 (A) normal and reasonable costs of cover; or
- 5886 (B) other reasonable measures of damages used in the derivatives, securities, or other
- 5887 market for the contract or agreement claim.
- 5888 (b) "Business day" means a day other than:
- 5889 (i) a Saturday;
- 5890 (ii) a Sunday; or
- 5891 (iii) day on which either the New York Stock Exchange or the Federal Reserve Bank of
- 5892 New York is closed.
- 5893 (c) "Contractual right" includes:
- 5894 (i) a right set forth:
- 5895 (A) in a rule or bylaw of:
- 5896 (I) a derivatives clearing organization, as defined in the Commodity Exchange Act, 7
- 5897 U.S.C. Sec.1 et seq.;
- 5898 (II) a multilateral clearing organization, as defined in the Federal Deposit Insurance
- 5899 Corporation Improvement Act of 1991, 12 U.S.C. Sec. 4421;
- 5900 (III) a national securities exchange;
- 5901 (IV) a national securities association;
- 5902 (V) a securities clearing agency;
- 5903 (VI) a contract market designated under the Commodity Exchange Act, 7 U.S.C. Sec. 1
- 5904 et seq.;
- 5905 (VII) a derivatives transaction execution facility registered under the Commodity
- 5906 Exchange Act, 7 U.S.C. Sec. 1 et seq.; or
- 5907 (VIII) a board of trade, as defined in the Commodity Exchange Act, 7 U.S.C. Sec. 1 et
- 5908 seq.; or
- 5909 (B) in a resolution of the governing board of an entity described in Subsection

5910 (1)(c)(i)(A); and
5911 (ii) a right, whether or not evidenced in writing, arising:
5912 (A) under statutory or common law;
5913 (B) under law merchant; or
5914 (C) by reason of normal business practice.
5915 (d) For purposes of Subsection (3), "walkaway clause" means a provision in a qualified
5916 financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in
5917 whole or in part, or does not create a payment obligation of a party that would otherwise exist:
5918 (i) solely because of:
5919 (A) the party's status as a nondefaulting party in connection with the insolvency of an
5920 insurer that is subject to this chapter and a party to the contract; or
5921 (B) the appointment of or the exercise of rights or powers by a receiver of an insurer
5922 that is subject to this chapter and a party to the contract; and
5923 (ii) not as a result of a party's exercise of any right to offset, setoff, or net obligations
5924 that exist under:
5925 (A) the contract;
5926 (B) any other contract between those parties; or
5927 (C) applicable law.
5928 (2) Notwithstanding any other provision of this chapter, including any provision of this
5929 chapter permitting the modification of a contract, or other law of a state:
5930 (a) a person may not be stayed or prohibited from exercising:
5931 (i) a contractual right to cause the termination, liquidation, acceleration, or close out of
5932 an obligation under or in connection with a netting agreement or qualified financial contract
5933 with an insurer because of:
5934 (A) the insolvency, financial condition, or default of the insurer at any time, if the right
5935 is enforceable under applicable law other than this chapter; or
5936 (B) the commencement of a formal delinquency proceeding under this chapter;
5937 (ii) a right under any of the following relating to one or more netting agreements or

5938 qualified financial contracts:
5939 (A) a pledge agreement or arrangement;
5940 (B) a security agreement or arrangement;
5941 (C) a collateral agreement or arrangement;
5942 (D) a reimbursement agreement or arrangement;
5943 (E) a guarantee agreement or arrangement;
5944 (F) any other similar security agreement or arrangement; or
5945 (G) other credit enhancement; or
5946 (iii) subject to Subsection 31A-27a-510(2), a right to set off or net out any termination
5947 value, payment amount, or other transfer obligation arising under or in connection with one or
5948 more qualified financial contracts where the counterparty or its guarantor is organized under
5949 the laws of:
5950 (A) the United States;
5951 (B) a state; or
5952 (C) a foreign jurisdiction approved by the Securities Valuation Office of the National
5953 Association of Insurance Commissioners as eligible for netting; or
5954 (b) if a counterparty to a master netting agreement or a qualified financial contract with
5955 an insurer subject to a proceeding under this chapter terminates, liquidates, closes out, or
5956 accelerates the master netting agreement or qualified financial contract:
5957 (i) damages shall be measured as of the date or dates of termination, liquidation, close
5958 out, or acceleration; and
5959 (ii) the amount of a claim for damages shall be actual direct compensatory damages
5960 calculated in accordance with Subsection (7).
5961 (3) (a) Upon termination of a netting agreement or qualified financial contract, the net
5962 or settlement amount, if any, owed by a nondefaulting party to an insurer against which an
5963 application or petition is filed under this chapter shall be transferred to or on the order of the
5964 receiver for the insurer:
5965 (i) even if the insurer is the defaulting party; and

5966 (ii) notwithstanding any walkaway clause in the netting agreement or qualified
5967 financial contract.

5968 (b) (i) A limited two-way payment or first method provision in a netting agreement or
5969 qualified financial contract with an insurer that defaults is considered to be a full two-way
5970 payment or second method provision as against the defaulting insurer.

5971 (ii) Property or an amount described in this Subsection (3)(b) shall, except to the extent
5972 it is subject to one or more secondary liens or encumbrances or rights of netting or setoff, be a
5973 general asset of the insurer.

5974 (4) In making a transfer of a netting agreement or qualified financial contract of an
5975 insurer subject to a proceeding under this chapter, the receiver shall either:

5976 (a) transfer to one party, other than an insurer subject to a proceeding under this
5977 chapter, all netting agreements and qualified financial contracts between a counterparty or an
5978 affiliate of the counterparty and the insurer that is the subject of the proceeding, including:

5979 (i) all rights and obligations of each party under each netting agreement and qualified
5980 financial contract; and

5981 (ii) all property, including any guarantees or other credit enhancement, securing any
5982 claims of each party under each netting agreement and qualified financial contract; or

5983 (b) transfer none of the netting agreements, qualified financial contracts, rights,
5984 obligations, or property referred to in Subsection (4)(a) with respect to the counterparty and an
5985 affiliate of the counterparty.

5986 (5) If a receiver for an insurer makes a transfer of one or more netting agreements or
5987 qualified financial contracts, the receiver shall use its best efforts to notify any person who is
5988 party to the netting agreements or qualified financial contracts of the transfer by 12 noon, the
5989 receiver's local time, on the business day following the transfer.

5990 (6) (a) Notwithstanding any other provision of this chapter and except for Subsection
5991 (6)(b), a receiver may not avoid a transfer of money or other property arising under or in
5992 connection with any of the following that is made before the commencement of a formal
5993 delinquency proceeding under this chapter:

5994 (i) a netting agreement;
5995 (ii) a qualified financial contract; or
5996 (iii) one of the following relating to a netting agreement or qualified financial contract:
5997 (A) a pledge agreement;
5998 (B) a security agreement;
5999 (C) a collateral agreement;
6000 (D) a guarantee agreement;
6001 (E) any other similar security arrangement; or
6002 (F) a credit support document.
6003 (b) A transfer may be avoided under Subsection 31A-27a-507(1) if the transfer is made
6004 with actual intent to hinder, delay, or defraud:
6005 (i) the insurer;
6006 (ii) a receiver appointed for the insurer; or
6007 (iii) an existing or future creditor.
6008 (7) (a) In exercising the rights of disaffirmance or repudiation of a receiver with respect
6009 to a netting agreement or qualified financial contract to which an insurer is a party, the receiver
6010 for the insurer shall either:
6011 (i) disaffirm or repudiate all netting agreements and qualified financial contracts
6012 between a counterparty or an affiliate of the counterparty and the insurer that is the subject of
6013 the proceeding; or
6014 (ii) disaffirm or repudiate none of the netting agreements and qualified financial
6015 contracts referred to in Subsection (7)(a)(i) with respect to the person or an affiliate of the
6016 person.
6017 (b) Notwithstanding any other provision of this chapter, a claim of a counterparty
6018 against the estate arising from the receiver's disaffirmance or repudiation of a netting
6019 agreement or qualified financial contract that has not been previously affirmed in the
6020 liquidation or immediately preceding rehabilitation case shall be determined and shall be
6021 allowed or disallowed:

6022 (i) as if the claim arose before the day on which the petition for liquidation is filed; or

6023 (ii) if a rehabilitation proceeding is converted to a liquidation proceeding, as if the

6024 claim had arisen before the day on which the petition for rehabilitation is filed.

6025 (c) The amount of a claim shall be the actual direct compensatory damages determined

6026 as of the date of the disaffirmance or repudiation of the netting agreement or qualified financial

6027 contract.

6028 (8) This section does not apply to a person who is an affiliate of the insurer that is the

6029 subject of the proceeding.

6030 (9) All rights of a counterparty under this chapter apply to a netting agreement or

6031 qualified financial contract entered into on behalf of the general account or separate accounts if

6032 the assets of each separate account are available only to counterparties to netting agreements

6033 and qualified financial contracts entered into on behalf of that separate account.

6034 (10) (a) The definition of "qualified financial contract" in Section 31A-27a-102 shall

6035 be interpreted to be consistent with the definitions applicable under federal law in instances of

6036 insolvency of other types of financial institutions.

6037 (b) The definition of "qualified financial contract" and this section do not:

6038 (i) affect the scope of permissible investments of insurers or the valuation of those

6039 investments; or

6040 (ii) modify any other regulatory framework applicable to investments or investment

6041 practices of insurers.

6042 Section 104. Section **31A-27a-612** is enacted to read:

6043 **31A-27a-612. Administration of deductible policies and insured collateral.**

6044 (1) As used in this section:

6045 (a) "Collateral" means any of the following that secures an insured's obligation to pay

6046 or to reimburse the insurer for deductible claim payments and to reimburse or pay to the insurer

6047 other secured obligations:

6048 (i) cash;

6049 (ii) a letter of credit of the insured;

6050 (iii) a surety bond posted by the insured; or

6051 (iv) any other form of security posted by the insured.

6052 (b) "Deductible claim" means a claim, including a loss or allocated loss adjustment
6053 expense, under a deductible policy within the insured's obligation to pay a portion of a claim or
6054 claim expense that the insurer is obligated to pay to a person other than the insured by the
6055 deductible policy or by operation of law.

6056 (c) (i) "Deductible limit" means a limit on an amount to be paid or reimbursed by the
6057 insured under a deductible policy that is equal to or greater than \$5,000.

6058 (ii) A deductible limit may be any amount of the risk exposure before the insurer
6059 agrees to become liable for the insurance risk without a right of recoupment from the insured
6060 for the insurer's payment of claims or expenses related to a claim under the deductible policy.

6061 (d) (i) "Deductible policy" means any combination of one or more policies,
6062 endorsements, contracts, or security agreements in which the insured agrees with the insurer to:

6063 (A) pay directly:

6064 (I) the initial portion of a claim under the policy, endorsement, contract, or agreement
6065 up to a specified dollar amount; or

6066 (II) the expenses related to a claim; or

6067 (B) reimburse the insurer for the insurer's payment of:

6068 (I) a claim under the policy, endorsement, contract, or agreement up to a specified
6069 dollar amount; or

6070 (II) the expenses related to a claim.

6071 (ii) "Deductible policy" includes a policy, endorsement, contract, or agreement that
6072 contains an aggregate limit on the insured's liability for all deductible claims in addition to a
6073 deductible limit for each claim.

6074 (iii) "Deductible policy" does not include:

6075 (A) a policy, endorsement, contract, or agreement that provides that the initial portion
6076 of a covered claim shall be self-insured and the insurer has no payment obligation within the
6077 self-insured retention;

6078 (B) a policy, endorsement, contract, or agreement that provides for retrospectively
6079 rated premium payments by the insured; or

6080 (C) a reinsurance arrangement or agreement.

6081 (e) "Other secured obligation" means an obligation, such as a reinsurance or
6082 retrospective premium obligation, that is:

6083 (i) payable by the insured to the insurer; and

6084 (ii) secured by collateral that also secures a deductible obligation.

6085 (f) "Uncovered claim" means a deductible claim that is secured by collateral but that:

6086 (i) is not defined as a covered claim under any relevant guaranty association statute;

6087 (ii) the insured fails to fund or pay; and

6088 (iii) is filed with the receiver pursuant to the receivership proof of claim process.

6089 (2) (a) If an insurer agrees to allow an insured to fund or pay deductible claims directly
6090 or through a third party administrator, except as prohibited by applicable workers'
6091 compensation insurance law:

6092 (i) the insured shall fulfill the insured's obligations notwithstanding a delinquency
6093 proceeding; and

6094 (ii) the receiver shall allow the funding or payment agreements to continue
6095 notwithstanding a delinquency proceeding.

6096 (b) To the extent the insured funds or pays a deductible claim, the insured's funding or
6097 payment of a deductible claim:

6098 (i) bars any deductible claim in a delinquency proceeding including a claim by the
6099 insured or third party claimant; and

6100 (ii) extinguishes the obligation, if any, of the receiver or an affected guaranty
6101 association to pay the deductible claim.

6102 (c) The insured is responsible for providing timely notice to the receiver and to all
6103 affected guaranty associations for any claim that may exceed the deductible limit.

6104 (d) A charge of any kind may not be made against a receiver or an affected guaranty
6105 association on the basis of an insured's funding or payment of a deductible claim.

6106 (e) The failure of an insured to fulfill the insured's obligation pursuant to a funding
6107 agreement entitles the following to the full benefit of all collateral and other rights of recovery
6108 and reimbursement under the other provisions of this section:

6109 (i) the receiver that pays a deductible claim; or

6110 (ii) pursuant to Subsection (6)(b), an affected guaranty association that pays a
6111 deductible claim.

6112 (3) Any reimbursement owed to an insurer under a deductible policy issued by an
6113 insurer subject to a delinquency proceeding shall be administered as follows:

6114 (a) (i) A reimbursement from an insured for the payment of a deductible claim is a
6115 general asset of the estate to the extent that:

6116 (A) the insolvent insurer is owed reimbursement for deductible payments made before
6117 the entry of a final order of liquidation; or

6118 (B) the receiver is owed reimbursement for a deductible payment.

6119 (ii) The receiver shall determine if a reimbursement is a general asset of the estate in
6120 accordance with this section.

6121 (b) The receiver shall bill an insured for reimbursement of a deductible claim:

6122 (i) paid by the insurer before the commencement of delinquency proceedings;

6123 (ii) paid by an affected guaranty association upon receipt of notice of a reimbursable
6124 payment; or

6125 (iii) paid or allowed by the receiver.

6126 (c) The receiver may take all commercially reasonable actions necessary to collect a
6127 reimbursement owed if the insured does not make payment within:

6128 (i) the time specified in the deductible policy; or

6129 (ii) within 60 days after the day of billing if no time is specified in the deductible
6130 policy.

6131 (d) The following is not a defense to the insured's reimbursement obligation under a
6132 deductible policy:

6133 (i) the insolvency of the insurer;

6134 (ii) the insurer's inability to perform any of the insurer's obligations under a deductible
6135 policy; or

6136 (iii) an allegation of improper handling or payment of a deductible claim by:

6137 (A) the insurer;

6138 (B) the receiver;

6139 (C) an affected guaranty association; or

6140 (D) any combination of Subsections (3)(d)(iii)(A) through (C).

6141 (4) The receiver shall adjust and pay uncovered claims as provided in Subsection (5).

6142 The receiver's obligation under this Subsection (4) terminates once all available collateral is
6143 exhausted. Once all available collateral is exhausted, any unpaid uncovered claims shall
6144 continue to be handled as a proof of claim in the receivership estate.

6145 (5) (a) (i) Except where a deductible policy or other agreement conflicts with this
6146 section, any collateral held by an insurer subject to a delinquency proceeding under this chapter
6147 held under a deductible policy issued by the insurer, held for other secured obligations, or held
6148 under both shall be maintained and administered in accordance with:

6149 (A) the deductible policy;

6150 (B) any applicable security agreement;

6151 (C) any agreement regarding other secured obligations; or

6152 (D) any applicable combination of the deductible policy and other agreement.

6153 (ii) This Subsection (5) applies to collateral regardless of whether the collateral is held
6154 by, for the benefit of, or assigned to the insurer under a deductible policy, agreement, or other
6155 secured obligation.

6156 (b) (i) Subject to this Subsection (5), collateral shall be used to secure the insured's
6157 obligation to fund or reimburse deductible claims or other secured obligations or other payment
6158 obligations under Subsection (8).

6159 (ii) Collateral shall be considered as property of the receivership estate solely for the
6160 purpose of the receiver administering and handling the collateral.

6161 (iii) Collateral may not be considered as a general asset of the estate, except as

6162 provided in Subsections (5)(c) and (8).

6163 (c) (i) Subject to Subsection (5)(c)(ii), collateral held to secure the insured's
6164 performance of obligations is a general asset of the estate to the extent that:

6165 (A) the insurer pays or has paid a deductible claim before the day on which a final
6166 order of liquidation is entered and the deductible is not reimbursed by the insured;

6167 (B) the receiver pays or has paid a deductible claim; or

6168 (C) the insured fails to pay or reimburse to the insurer other secured obligations to the
6169 extent the payment or reimbursement is due or payable before the day on which a final order of
6170 liquidation is entered and remains unpaid.

6171 (ii) The receiver shall determine the extent that collateral described in this Subsection
6172 (5)(c) is a general asset.

6173 (d) The receiver shall draw down collateral to the extent necessary if the insured fails
6174 to:

6175 (i) perform the insured's funding or payment obligations under any deductible policy;

6176 (ii) pay deductible reimbursements within:

6177 (A) the time specified in the deductible policy; or

6178 (B) 60 days after the date of the billing if no time is specified in the deductible policy;

6179 (iii) timely fund any other secured obligation; or

6180 (iv) timely pay expenses defined in Subsection (8).

6181 (e) (i) The receiver shall first apply or reserve collateral to the insured's obligations
6182 referenced in Subsections (5)(c)(i)(A) and (C).

6183 (ii) The receiver shall use any collateral remaining after the application of Subsection
6184 (5)(e)(i) to:

6185 (A) reimburse deductible claims submitted by an affected guaranty association;

6186 (B) adjust and pay uncovered claims allowed by the liquidator;

6187 (C) pay other secured obligations of the insured that become due and payable after the
6188 date of liquidation; or

6189 (D) pay expenses as defined in Subsection (8).

6190 (iii) The receiver shall:

6191 (A) use collateral under Subsection (5)(e)(ii) in the order that the deductible claims or
6192 charges against the collateral listed in Subsection (5)(e)(ii) are received and accepted by the
6193 receiver; and

6194 (B) continue until all valid deductible claims or charges are fully reimbursed or paid or
6195 the collateral is exhausted.

6196 (iv) If there are amounts payable or reimbursable under this Subsection (5)(e) and the
6197 receiver for any reason has been precluded from drawing the collateral, the receiver may
6198 establish a reserve against the collateral for those amounts. Only the collateral exceeding the
6199 reserve shall be considered remaining collateral under this Subsection (5)(e).

6200 (f) Once all claims, other secured obligations, or expenses under Subsection (8)
6201 covered by collateral have been paid and the receiver is satisfied that no new claims, other
6202 secured obligations, or expenses under Subsection (5)(e) may be presented, the receiver shall
6203 release any remaining collateral to the insured in accordance with the deductible policy or
6204 agreement relating to other secured obligations.

6205 (6) To the extent an affected guaranty association pays a deductible claim for which the
6206 insurer would have been entitled to reimbursement from the insured, the following provisions
6207 apply:

6208 (a) (i) When an affected guaranty association pays a deductible claim, the affected
6209 guaranty association shall report the claim to the receiver.

6210 (ii) The receiver shall collect from the insured all deductible amounts due as
6211 reimbursement. Subject to Subsection (8), when the insured reimbursements are collected, the
6212 receiver shall reimburse the affected guaranty association for deductible claims.

6213 (iii) A reimbursement paid to the affected guaranty association pursuant to this
6214 Subsection (6)(a) may not be treated as a distribution under Section 31A-27a-703 or as an early
6215 access payment under Section 31A-27a-704.

6216 (iv) If an affected guaranty association pays a deductible claim that is also subject to
6217 reimbursement under statutory net worth provisions, the affected guaranty association shall:

6218 (A) bill the insured directly;
6219 (B) notify the insurer of the payment; and
6220 (C) notify the receiver of any receipt of a reimbursement under net worth provisions,
6221 which shall be credited against the insured's deductible reimbursement obligations to the extent
6222 that the reimbursement applies to deductible claims.
6223 (b) (i) This Subsection (6)(b) applies if:
6224 (A) the receiver declines to seek reimbursement from the insured or from any available
6225 collateral;
6226 (B) the receiver is unsuccessful in obtaining reimbursement from the insured or from
6227 any available collateral; or
6228 (C) the receiver fails to take available commercially reasonable actions to collect a
6229 reimbursement owed.
6230 (ii) The receiver shall notify an affected guaranty association if the receiver declines to
6231 seek or is unsuccessful in obtaining reimbursement from the insured or from any available
6232 collateral.
6233 (iii) If a condition described in Subsection (6)(b)(i) exists, notwithstanding whether the
6234 affected guaranty association receives the notice required by Subsection (6)(b)(ii), an affected
6235 guaranty association:
6236 (A) may, after notice to the receiver, collect a reimbursement due from the insured for
6237 the deductible claims the affected guaranty association has paid:
6238 (I) on the same basis as the receiver; and
6239 (II) with the same rights and remedies; and
6240 (B) shall report any amounts collected under Subsection (6)(b)(iii)(A) from each
6241 insured to the receiver.
6242 (iv) The receiver shall provide an affected guaranty association with available
6243 information needed to collect a reimbursement due from the insured.
6244 (v) When an affected guaranty association undertakes to collect reimbursements from
6245 the insured, the affected guaranty association shall notify all other guaranty associations who

6246 have paid deductible claims on behalf of the same insured that this action is being taken.

6247 (vi) An amount collected by the affected guaranty association pursuant to this
6248 Subsection (6)(b) may not be treated as a distribution under Section 31A-27a-703 or as an early
6249 access payment under Section 31A-27a-704.

6250 (vii) An affected guaranty association may net an expense incurred in collecting a
6251 reimbursement against that reimbursement.

6252 (c) The receiver shall provide any affected guaranty associations with periodic reports
6253 concerning the receiver's activities in discharging responsibilities under this section, which
6254 shall include an accounting for the receiver's deductible billing and collection activities.

6255 (d) To the extent that an affected guaranty association pays a deductible claim that is
6256 not reimbursed either from collateral or by insured payments, the affected guaranty association
6257 has a claim for those amounts in the delinquency proceeding. Any claim by an affected
6258 guaranty association shall be reduced by reimbursed or unreimbursed expenses described in
6259 Subsection (8) incurred by the receiver.

6260 (e) (i) If any collateral is held under a deductible policy at the time the receiver files an
6261 application to terminate the delinquency proceeding, and it appears that an additional
6262 deductible claim may be payable by an affected guaranty association under the deductible
6263 policy, the receiver shall:

6264 (A) transfer to an affected guaranty association the portion of the collateral that is
6265 reasonably estimated to be necessary to pay the deductible claim; and

6266 (B) release any remaining portion of the collateral to the insured.

6267 (ii) An affected guaranty association shall handle any collateral transferred from the
6268 receiver as provided in this section.

6269 (f) Nothing in this Subsection (6) limits any rights of the receiver or an affected
6270 guaranty association under applicable statutory law to obtain reimbursement from an insured
6271 for a claims payment made by the affected guaranty association under a policy of the insurer or
6272 for the affected guaranty association's related expenses.

6273 (7) (a) The receiver shall periodically adjust the collateral being held using accepted

6274 actuarial principles and practices.

6275 (b) The receiver may impose a discretionary safety margin for collateral maintained.

6276 (c) The receiver may not be required to review collateral more than once a year.

6277 (d) The receiver shall inform any affected guaranty association and the insured of any
 6278 collateral reviews, including the basis for any proposed adjustment.

6279 (8) The receiver may do the following in relation to reasonable expenses incurred in
 6280 fulfilling the receiver's responsibilities under this section:

6281 (a) deduct the expense from reimbursements;

6282 (b) deduct the expense from the collateral; or

6283 (c) recover the expense through billings to the insured.

6284 (9) (a) A receiver shall meet the receiver's obligations under this section in a timely
 6285 manner.

6286 (b) If an affected guaranty association believes that a receiver is not meeting an
 6287 obligation under this section in a timely manner, upon motion by an affected guaranty
 6288 association, a receivership court may grant relief to the affected guaranty association if the
 6289 receivership court finds that the receiver is not meeting an obligation under this section in a
 6290 timely manner.

6291 (10) This section modifies Subsection 31A-22-1010(2)(b) to the extent necessary to
 6292 permit an insured to participate in the payment of the insurance claims and losses by
 6293 reimbursement of a receiver or affected guaranty association as provided in this section.

6294 Section 105. Section **31A-27a-701** is enacted to read:

6295 **Part 7. Distributions**

6296 **31A-27a-701. Priority of distribution.**

6297 (1) (a) The priority of payment of distributions on unsecured claims shall be in
 6298 accordance with the order in which each class of claim is set forth in this section except as
 6299 provided in Section 31A-27a-702.

6300 (b) All claims in each class shall be paid in full or adequate funds retained for the
 6301 claim's payment before a member of the next class receives payment.

6302 (c) All claims within a class shall be paid substantially the same percentage.
6303 (d) Except as provided in Subsections (2)(a)(i)(E), (2)(k), and (2)(m), subclasses may
6304 not be established within a class.
6305 (e) A claim by a shareholder, policyholder, or other creditor may not be permitted to
6306 circumvent the priority classes through the use of equitable remedies.
6307 (2) The order of distribution of claims shall be as follows:
6308 (a) a Class 1 claim, which:
6309 (i) is a cost or expense of administration expressly approved or ratified by the
6310 liquidator, including the following:
6311 (A) the actual and necessary costs of preserving or recovering the property of the
6312 insurer;
6313 (B) reasonable compensation for all services rendered on behalf of the administrative
6314 supervisor or receiver;
6315 (C) a necessary filing fee;
6316 (D) the fees and mileage payable to a witness;
6317 (E) an unsecured loan obtained by the receiver, which:
6318 (I) unless its terms otherwise provide, has priority over all other costs of
6319 administration; and
6320 (II) absent agreement to the contrary, shares pro rata with all other claims described in
6321 this Subsection (2)(a)(i)(E); and
6322 (F) an expense approved by the rehabilitator of the insurer, if any, incurred in the
6323 course of the rehabilitation that is unpaid at the time of the entry of the order of liquidation; and
6324 (ii) except as expressly approved by the receiver, excludes any expense arising from a
6325 duty to indemnify a director, officer, or employee of the insurer which expense, if allowed, is a
6326 Class 7 claim;
6327 (b) a Class 2 claim, which:
6328 (i) is a reasonable expense of a guaranty association, including overhead, salaries, or
6329 other general administrative expenses allocable to the receivership such as:

- 6330 (A) an administrative or claims handling expense;
- 6331 (B) an expense in connection with arrangements for ongoing coverage; and
- 6332 (C) in the case of a property and casualty guaranty association, a loss adjustment
- 6333 expense, including:
- 6334 (I) an adjusting or other expense; and
- 6335 (II) a defense or cost containment expense; and
- 6336 (ii) excludes an expense incurred in the performance of duties under Section
- 6337 31A-28-112 or similar duties under the statute governing a similar organization in another
- 6338 state;
- 6339 (c) a Class 3 claim, which:
- 6340 (i) is:
- 6341 (A) a claim under a policy of insurance including a third party claim;
- 6342 (B) a claim under an annuity contract or funding agreement;
- 6343 (C) a claim under a nonassessable policy for unearned premium;
- 6344 (D) a claim of an obligee and, subject to the discretion of the receiver, a completion
- 6345 contractor under a surety bond or surety undertaking, except for:
- 6346 (I) a bail bond;
- 6347 (II) a mortgage guaranty;
- 6348 (III) a financial guaranty; or
- 6349 (IV) other form of insurance offering protection against investment risk or warranties;
- 6350 (E) a claim by a principal under a surety bond or surety undertaking for wrongful
- 6351 dissipation of collateral by the insurer or its agents;
- 6352 (F) an indemnity payment on:
- 6353 (I) a covered claim;
- 6354 (II) unearned premium; or
- 6355 (III) a payment for the continuation of coverage made by an entity responsible for the
- 6356 payment of a claim or continuation of coverage of an insolvent health maintenance
- 6357 organization;

- 6358 (G) a claim incurred during the extension of coverage provided for in Sections
6359 31A-27a-402 and 31A-27a-403; or
- 6360 (H) all other claims incurred in fulfilling the statutory obligations of a guaranty
6361 association not included in Class 2, including:
- 6362 (I) an indemnity payment on covered claims; and
6363 (II) in the case of a life and health guaranty association, a claim:
- 6364 (Aa) as a creditor of the impaired or insolvent insurer for a payment of and liabilities
6365 incurred on behalf of a covered claim or covered obligation of the insurer; and
- 6366 (Bb) for the funds needed to reinsure the obligations described under this Subsection
6367 (2)(c)(i)(H)(II) with a solvent insurer; and
- 6368 (ii) notwithstanding any other provision of this chapter, excludes the following which
6369 shall be paid under Class 7, except as provided in this section:
- 6370 (A) an obligation of the insolvent insurer arising out of a reinsurance contract;
6371 (B) an obligation that is incurred pursuant to an occurrence policy or reported pursuant
6372 to a claims made policy after:
- 6373 (I) the expiration date of the policy;
6374 (II) the policy is replaced by the insured;
6375 (III) the policy is canceled at the insured's request; or
6376 (IV) the policy is canceled as provided in this chapter;
- 6377 (C) an obligation to an insurer, insurance pool, or underwriting association and the
6378 insurer's, insurance pool's, or underwriting association's claim for contribution, indemnity, or
6379 subrogation, equitable or otherwise, except for direct claims under a policy where the insurer is
6380 the named insured;
- 6381 (D) an amount accrued as punitive or exemplary damages unless expressly covered
6382 under the terms of the policy, which shall be paid as a claim in Class 9;
- 6383 (E) a tort claim of any kind against the insurer;
6384 (F) a claim against the insurer for bad faith or wrongful settlement practices; and
6385 (G) a claim of a guaranty association for assessments not paid by the insurer, which

6386 claims shall be paid as claims in Class 7; and
6387 (iii) notwithstanding Subsection (2)(c)(ii)(B), does not exclude an unearned premium
6388 claim on a policy, other than a reinsurance agreement:
6389 (d) a Class 4 claim, which is a claim under a policy for mortgage guaranty, financial
6390 guaranty, or other forms of insurance offering protection against investment risk or warranties;
6391 (e) a Class 5 claim, which is a claim of the federal government not included in Class 3
6392 or 4;
6393 (f) a Class 6 claim, which is a debt due an employee for services or benefits:
6394 (i) to the extent that the expense:
6395 (A) does not exceed the lesser of:
6396 (I) \$5,000; or
6397 (II) two months' salary; and
6398 (B) represents payment for services performed within one year before the day on which
6399 the initial order of receivership is issued; and
6400 (ii) which priority is in lieu of any other similar priority that may be authorized by law
6401 as to wages or compensation of employees;
6402 (g) a Class 7 claim, which is a claim of an unsecured creditor not included in Classes 1
6403 through 6, including:
6404 (i) a claim under a reinsurance contract;
6405 (ii) a claim of a guaranty association for an assessment not paid by the insurer; and
6406 (iii) other claims excluded from Class 3 or 4, unless otherwise assigned to Classes 8
6407 through 13;
6408 (h) subject to Subsection (3), a Class 8 claim, which is:
6409 (i) a claim of a state or local government, except a claim specifically classified
6410 elsewhere in this section; or
6411 (ii) a claim for services rendered and expenses incurred in opposing a formal
6412 delinquency proceeding;
6413 (i) a Class 9 claim, which is a claim for penalties, punitive damages, or forfeitures,

6414 unless expressly covered under the terms of a policy of insurance;
6415 (j) a Class 10 claim, which is, except as provided in Subsections 31A-27a-601(2) and
6416 31A-27a-601(3), a late filed claim that would otherwise be classified in Classes 3 through 9;
6417 (k) subject to Subsection (4), a Class 11 claim, which is:
6418 (i) a surplus note;
6419 (ii) a capital note;
6420 (iii) a contribution note;
6421 (iv) a similar obligation;
6422 (v) a premium refund on an assessable policy; or
6423 (vi) any other claim specifically assigned to this class;
6424 (l) a Class 12 claim, which is a claim for interest on an allowed claim of Classes 1
6425 through 11, according to the terms of a plan to pay interest on allowed claims proposed by the
6426 liquidator and approved by the receivership court; and
6427 (m) subject to Subsection (4), a Class 13 claim, which is a claim of a shareholder or
6428 other owner arising out of:
6429 (i) the shareholder's or owner's capacity as shareholder or owner or any other capacity;
6430 and
6431 (ii) except as the claim may be qualified in Class 3, 4, 7, or 12.
6432 (3) To prove a claim described in Class 8, the claimant must show that:
6433 (a) the insurer that is the subject of the delinquency proceeding incurred the fee or
6434 expense on the basis of the insurer's best knowledge, information, and belief:
6435 (i) formed after reasonable inquiry indicating opposition is in the best interests of the
6436 insurer;
6437 (ii) that is well grounded in fact; and
6438 (iii) is warranted by existing law or a good faith argument for the extension,
6439 modification, or reversal of existing law; and
6440 (b) opposition is not pursued for any improper purpose, such as to harass, to cause
6441 unnecessary delay, or to cause needless increase in the cost of the litigation.

6442 (4) (a) A claim in Class 11 is subject to a subordination agreement related to other
6443 claims in Class 11 that exist before the entry of a liquidation order.

6444 (b) A claim in Class 13 is subject to a subordination agreement, related to other claims
6445 in Class 13 that exist before the entry of a liquidation order.

6446 Section 106. Section **31A-27a-702** is enacted to read:

6447 **31A-27a-702. Health maintenance organization claims.**

6448 (1) In the liquidation of a health maintenance organization, a claim for uncovered
6449 expenditures has priority over a Class 3 claim as provided for in Section 31A-27a-701.

6450 (2) A claim other than one described in Subsection (1) shall follow the priority of
6451 distribution outlined in Section 31A-27a-701.

6452 Section 107. Section **31A-27a-703** is enacted to read:

6453 **31A-27a-703. Partial and final distributions of assets.**

6454 (1) (a) With the approval of the receivership court, a liquidator may declare and pay:

6455 (i) one or more partial distributions on claims as those claims are allowed; and

6456 (ii) a final distribution.

6457 (b) All claims allowed within a priority class shall be paid at substantially the same
6458 percentage.

6459 (c) A distribution under this section to a guaranty association is not an advance under
6460 Section 31A-27a-704.

6461 (2) In determining the percentage of distributions to be paid on a claim, the liquidator
6462 may consider:

6463 (a) the estimated value of the insurer's property, including estimated reinsurance
6464 recoverables in connection with the insurer's estimated liabilities for:

6465 (i) unpaid losses and loss expenses; and

6466 (ii) incurred but not reported losses and loss expenses; and

6467 (b) the estimated value of the insurer's liabilities, including estimated liabilities for:

6468 (i) unpaid losses and loss expenses; and

6469 (ii) incurred but not reported losses and loss expenses.

- 6470 (3) Distribution of property in kind may be made at valuations set by agreement:
6471 (a) between the liquidator and the creditor; and
6472 (b) as approved by the receivership court.
6473 (4) (a) Notwithstanding Subsection (1) and Part 6, Claims, the liquidator may pay
6474 benefits under a workers' compensation policy after the day on which the liquidation order is
6475 entered if:
6476 (i) there is an acceptance of liability by the insurer, and no bona fide dispute exists;
6477 (ii) payment is commenced before the entry of the liquidation order; and
6478 (iii) future or past indemnity or medical payments are due.
6479 (b) A claim payment under this Subsection (4) may continue until the applicable
6480 guaranty association:
6481 (i) assumes responsibility for the claim payments; or
6482 (ii) determines the claim is not a covered claim under its guaranty association law.
6483 (c) A claim payment or related expense made under this Subsection (4) may be treated
6484 as early access distribution under Section 31A-27a-704 in accordance with an agreement with
6485 the guaranty association responsible for the payment.
6486 Section 108. Section **31A-27a-704** is enacted to read:
6487 **31A-27a-704. Early access disbursements.**
6488 (1) As used in this section, "distributable assets" means general assets of the
6489 liquidation estate less:
6490 (a) amounts reserved, to the extent necessary and appropriate, for the entire Subsection
6491 31A-27a-701(2)(a) expenses of the liquidation through and after the liquidation's closure; and
6492 (b) to the extent necessary and appropriate, reserves for distributions on claims other
6493 than those of an affected guaranty association falling within the priority classes of claims
6494 established in Subsection 31A-27a-701(2)(c).
6495 (2) (a) An early access payment to an affected guaranty association shall be made:
6496 (i) as soon as possible after the day on which a liquidation order is entered;
6497 (ii) as frequently as possible after the first early access payment, but at least annually if

6498 there are distributable assets available to be distributed to the affected guaranty association; and

6499 (iii) in an amount consistent with this section.

6500 (b) An amount advanced to an affected guaranty association pursuant to this section

6501 shall be accounted for as an advance against distributions to be made under Section

6502 31A-27a-703.

6503 (c) (i) Subject to Subsection (2)(c)(ii), if sufficient distributable assets are available,

6504 amounts advanced need not be limited to the claims and expenses paid to date by the affected

6505 guaranty association.

6506 (ii) Notwithstanding Subsection (2)(c)(i), the liquidator may not distribute distributable

6507 assets to an affected guaranty association in excess of the anticipated entire claims of the

6508 affected guaranty association falling within the priority classes of claims established in

6509 Subsections 31A-27a-701(2)(b) and 31A-27a-701(2)(c).

6510 (3) (a) Within 180 days after the day on which an order of liquidation is entered by the

6511 receivership court, and at least annually after that date, the liquidator shall:

6512 (i) apply to the receivership court for approval to make early access payments out of

6513 the general assets of the insurer to an affected guaranty association having an obligation arising

6514 in connection with the liquidation; or

6515 (ii) report that the liquidator has determined that there are no distributable assets at that

6516 time based on financial reporting as required in Section 31A-27a-117.

6517 (b) The liquidator may apply to the receivership court for approval to make early

6518 access payments more frequently than annually based on additional information or the recovery

6519 of material assets.

6520 (4) Within 60 days after the day on which the receivership court approves an

6521 application under Subsection (3), the liquidator shall make an early access payment to an

6522 affected guaranty association as indicated in the approved application.

6523 (5) (a) Notice of each application for early access payments, or of a report required

6524 pursuant to this section, shall be given in accordance with Section 31A-27a-107 to the affected

6525 guaranty associations.

6526 (b) Notwithstanding Section 31A-27a-107, the liquidator shall provide the affected
6527 guaranty associations described in Subsection (5)(a) with at least 30 days actual notice of the
6528 filing of the application with a complete copy of the application before any action by the
6529 receivership court.

6530 (c) An affected guaranty association may:

6531 (i) request additional information from the liquidator, who may not unreasonably deny
6532 the request; and

6533 (ii) object as provided in Section 31A-27a-107 to:

6534 (A) any part of each application; or

6535 (B) any report filed by the liquidator pursuant to this section.

6536 (6) In each application regarding early access payments, the liquidator shall, based on
6537 the best information available to the liquidator at the time of the application, provide at a
6538 minimum:

6539 (a) to the extent necessary and appropriate, the amount reserved for:

6540 (i) the entire expenses of the liquidation through and after the liquidation's closure; and

6541 (ii) distributions on claims falling within the priority classes of claims established in
6542 Subsections 31A-27a-701(2)(b) and (2)(c);

6543 (b) the calculation of distributable assets;

6544 (c) the amount and method of equitable allocation of early access payments to each
6545 affected guaranty association; and

6546 (d) the most recent financial information filed with the receivership court by the
6547 liquidator.

6548 (7) (a) Each affected guaranty association that receives a payment pursuant to this
6549 section agrees, upon depositing the payment in any account to its benefit, to return to the
6550 liquidator any amount of these payments that may be required to pay:

6551 (i) a claim of a secured creditor; or

6552 (ii) a claim falling within the priority classes of claims established in Subsection
6553 31A-27a-701(2)(a), (2)(b), or (2)(c).

6554 (b) A bond may not be required of an affected guaranty association.
6555 (8) Without the consent of an affected guaranty association or an order of the
6556 receivership court, the liquidator may not offset the amount to be disbursed to the affected
6557 guaranty association by the amount of any special deposit, any other statutory deposit, or any
6558 asset of the insolvent insurer held in that state unless the affected guaranty association actually
6559 receives the deposit or asset.

6560 Section 109. Section **31A-27a-705** is enacted to read:

6561 **31A-27a-705. Unclaimed and withheld funds.**

6562 (1) (a) If any funds of the receivership estate remain unclaimed after the final
6563 distribution under Section 31A-27a-703, the funds shall be placed in a segregated unclaimed
6564 funds account held by the commissioner.

6565 (b) If the owner of any of the funds described in Subsection (1)(a) presents proof of
6566 ownership satisfactory to the commissioner within two years after the day on which the
6567 delinquency proceeding terminates, the commissioner shall remit the funds to the owner.

6568 (c) The interest earned on funds held in the unclaimed funds account may be used to
6569 pay any administrative costs related to the handling or return of unclaimed funds.

6570 (2) (a) If any amounts held in the unclaimed funds account remain unclaimed for two
6571 years after the day on which the delinquency proceeding terminates, the commissioner may file
6572 a motion for an order directing the disposition of the funds in the court in which the
6573 delinquency proceeding was pending.

6574 (b) Any costs incurred in connection with the motion made under this Subsection (2)
6575 may be paid from the unclaimed funds account.

6576 (c) A motion under this Subsection (2) shall identify:

6577 (i) the name of the insurer;

6578 (ii) the names and last-known addresses of the one or more persons entitled to the
6579 unclaimed funds, if known; and

6580 (iii) the amount of the funds.

6581 (d) Notice of the motion shall be given as directed by the court.

6582 (e) Upon a finding by the court that the funds have not been claimed within two years
6583 after the day on which the delinquency proceeding terminates:

6584 (i) the court shall order that a claim for unclaimed funds, and any interest earned on the
6585 claim that has not been expended under Subsection (1), is abandoned; and

6586 (ii) the funds shall be disbursed under one of the following methods, the amounts may
6587 be:

6588 (A) deposited in the general receivership expense account under Subsection (3);

6589 (B) transferred to the state treasurer and deposited into the General Fund; or

6590 (C) (I) used to reopen the receivership in accordance with Section 31A-27a-803; and

6591 (II) distributed to the known claimants with approved claims.

6592 (3) The commissioner may establish an account for the following purposes:

6593 (a) to pay general expenses related to the administration of receiverships; or

6594 (b) to advance funds to a receivership that does not have sufficient cash to pay its
6595 operating expenses.

6596 (4) Any advance to a receivership estate under Subsection (3)(b) may be treated:

6597 (a) as a claim under Section 31A-27a-701 as may be agreed at the time the advance is
6598 made; or

6599 (b) in the absence of an agreement described in Subsection (4)(a), in a priority
6600 determined to be appropriate by the receivership court.

6601 (5) If the commissioner determines at any time that the funds in the account created in
6602 Subsection (3) exceed the amount required, the commissioner may transfer the funds or any
6603 part of the funds to the state treasurer, and the transferred funds shall be deposited into the
6604 General Fund.

6605 Section 110. Section **31A-27a-801** is enacted to read:

6606 **Part 8. Discharge**

6607 **31A-27a-801. Condition on release from delinquency proceedings.**

6608 (1) Unless otherwise provided in a plan approved by the guaranty associations, an
6609 insurer that is subject to a rehabilitation proceeding may not take an action listed in Subsection

6610 (2) until all payments by all guaranty associations of or on account of the insurer's contractual
6611 obligations are repaid to the guaranty associations with:

6612 (a) all expenses related to the payments by all guaranty associations of or on account of
6613 the insurer's contractual obligations; and

6614 (b) interest on all the payments.

6615 (2) Until an insurer that is subject to a rehabilitation proceeding complies with
6616 Subsection (1), the insurer may not:

6617 (a) be permitted to:

6618 (i) solicit or accept new business; or

6619 (ii) request or accept the restoration of any suspended or revoked license or certificate
6620 of authority;

6621 (b) be returned to the control of its shareholders or private management; or

6622 (c) have any of its assets returned to the control of its shareholders or private
6623 management.

6624 Section 111. Section **31A-27a-802** is enacted to read:

6625 **31A-27a-802. Discharge of liquidator and termination of liquidation proceedings.**

6626 (1) When all property justifying the expense of collection and distribution is collected
6627 and distributed under this chapter, the liquidator shall apply to the receivership court for an
6628 order discharging the liquidator and terminating the proceeding.

6629 (2) The receivership court may grant the application and make any other orders,
6630 including orders to:

6631 (a) transfer any remaining funds that are uneconomic to distribute; or

6632 (b) pursuant to Subsection 31A-27a-703(3), assign an asset that remains unliquidated,
6633 including a claim or cause of action, as may be considered appropriate.

6634 Section 112. Section **31A-27a-803** is enacted to read:

6635 **31A-27a-803. Reopening liquidation.**

6636 (1) After a liquidation proceeding is terminated and the liquidator discharged, the
6637 commissioner may at any time petition the court that was the receivership court to reopen the

6638 proceedings for good cause, including the discovery of additional property.

6639 (2) If the court is satisfied that there is justification for reopening the proceedings, the
6640 court shall order the proceedings reopened.

6641 Section 113. Section **31A-27a-804** is enacted to read:

6642 **31A-27a-804. Disposition of records during and after termination of liquidation.**

6643 (1) Whenever it appears to the receiver that records of the insurer in receivership are no
6644 longer useful, the receiver may recommend to the receivership court, and the receivership court
6645 shall direct what records shall be destroyed.

6646 (2) (a) If the receiver determines that records should be maintained after the closing of
6647 the delinquency proceeding, the receiver may reserve property from the receivership estate for
6648 the maintenance of the records.

6649 (b) Any amounts retained under this Subsection (2) are an administrative expense of
6650 the estate under Subsection 31A-27a-701(2)(a).

6651 (c) Any records retained pursuant to this Subsection (2) shall be transferred to the
6652 custody of the commissioner, and the commissioner may retain or dispose of the records as
6653 appropriate, at the commissioner's discretion.

6654 (d) Records of a delinquent insurer that are transferred to the commissioner:

6655 (i) may not be considered a record of the department for any purpose; and

6656 (ii) are not subject to Title 63, Chapter 2, Government Records Access and
6657 Management Act.

6658 Section 114. Section **31A-27a-805** is enacted to read:

6659 **31A-27a-805. External audit of the receiver's books.**

6660 (1) As used in this section, "books" means:

6661 (a) the business operations of the receiver;

6662 (b) the accounting systems and procedures of the receiver; and

6663 (c) the financial records of the receiver.

6664 (2) (a) The receivership court may, as it considers desirable, order an audit to be made
6665 of the books of the receiver relating to any receivership established under this chapter.

6666 (b) A report of each audit under this Subsection (1) shall be filed with:
6667 (i) the commissioner; and
6668 (ii) the receivership court.
6669 (3) The books of the receivership shall be made available to the auditor at any time
6670 without notice.

6671 (4) The expense of each audit shall be considered a cost of administration of the
6672 receivership.

6673 Section 115. Section **31A-27a-901** is enacted to read:

6674 **Part 9. Interstate Relations**

6675 **31A-27a-901. Ancillary conservation of foreign insurers.**

6676 (1) The commissioner may initiate an action against a foreign insurer pursuant to
6677 Section 31A-27a-201 on any of the grounds stated in that section or on the basis that:

6678 (a) any of the foreign insurer's property is sequestered, garnished, or seized by official
6679 action in its domiciliary state or in any other state;

6680 (b) (i) the foreign insurer's certificate of authority to do business in this state is revoked
6681 or a certificate of authority is never issued; and

6682 (ii) there is a resident of this state with an unpaid claim or in-force policy; or

6683 (c) it is necessary to enforce a stay under Chapter 28, Guaranty Associations.

6684 (2) If a domiciliary receiver is appointed, the commissioner may initiate an action
6685 against a foreign insurer under this section only with the consent of the domiciliary receiver.

6686 (3) (a) An order entered pursuant to this section shall appoint the commissioner as
6687 conservator.

6688 (b) The conservator's title to assets shall be limited to the insurer's property and records
6689 located in this state.

6690 (4) (a) Notwithstanding Subsection 31A-27a-201(3), the conservator shall hold and
6691 conserve the assets located in this state until:

6692 (i) the commissioner in the insurer's domiciliary state appoints its receiver; or

6693 (ii) an order terminating conservation is entered under Subsection (7).

6694 (b) Once a domiciliary receiver is appointed, the conservator shall turn over to the
6695 domiciliary receiver all property subject to an order under this section.

6696 (5) The conservator may liquidate the property of the insurer that may be necessary to
6697 cover the costs incurred in the initiation or administration of a proceeding under this section.

6698 (6) (a) The court in which an action under this section is pending may issue a finding
6699 of insolvency or an ancillary liquidation order.

6700 (b) An ancillary liquidation order shall be entered for the limited purposes of:

6701 (i) liquidating assets in this state to pay costs under Subsection (5); or

6702 (ii) activating applicable guaranty associations in this state to pay valid claims that are
6703 not being paid by the insurer.

6704 (7) The conservator may at any time petition the receivership court for an order
6705 terminating an order entered under this section.

6706 Section 116. Section **31A-27a-902** is enacted to read:

6707 **31A-27a-902. Domiciliary receivers appointed in other states.**

6708 (1) (a) A domiciliary receiver appointed in another state is vested by operation of law
6709 with title to, and may summarily take possession of, all property and records of the insurer in
6710 this state.

6711 (b) Notwithstanding any other provision of law regarding special deposits, a special
6712 deposit held in this state for a guaranty association in this state as the only beneficiary shall be,
6713 upon the entry of an order of liquidation with a finding of insolvency, distributed to the
6714 guaranty association in this state as early access distributions, subject to Section 31A-27a-704,
6715 in relation to the lines of business for which the special deposit is made.

6716 (c) The holder of a special deposit shall account to the domiciliary receiver for all
6717 distributions from the special deposit at the time of the distribution.

6718 (d) The following shall be given full faith and credit in this state:

6719 (i) a statutory provision of another state;

6720 (ii) an order entered by a court of competent jurisdiction in relation to the appointment
6721 of a domiciliary receiver of an insurer; and

- 6722 (iii) a related proceeding in another state.
- 6723 (e) For purposes of this chapter, another state means any state other than this state.
- 6724 (f) This state shall treat all foreign states as reciprocal states.
- 6725 (2) The commissioner shall immediately transfer title to and possession of all property
- 6726 of the insurer under the commissioner's control to a domiciliary receiver:
- 6727 (a) upon appointment of the domiciliary receiver in another state;
- 6728 (b) unless otherwise agreed by the domiciliary receiver; and
- 6729 (c) including all statutory general or special deposits other than special deposits where
- 6730 that state's guaranty association is the only beneficiary.
- 6731 (3) (a) Except as provided in Subsection (1), the domiciliary receiver shall handle a
- 6732 special deposit or special deposit claim in accordance with the statutes pursuant to which the
- 6733 special deposit is required and applicable federal law.
- 6734 (b) All amounts in excess of the estimated amount necessary to administer the special
- 6735 deposit and pay the unpaid special deposit claims shall be considered general assets of the
- 6736 estate.
- 6737 (c) (i) Subject to Subsection (3)(c)(ii), if there is a deficiency in a special deposit so
- 6738 that a claim secured by the special deposit is not fully discharged from the special deposit, the
- 6739 claimant may share in the general assets of the insurer to the extent of the deficiency at the
- 6740 same priority as other claimants in the claimant's class of priority under Section 31A-27a-701.
- 6741 (ii) The sharing described in Subsection (3)(c)(i) shall be deferred until the other
- 6742 claimants of the class are paid percentages of their claims equal to the percentage paid from the
- 6743 special deposit.
- 6744 (iii) The intent of Subsection (3)(c)(ii) is to equalize to the extent provided in this
- 6745 Subsection (3) the advantage gained by the security provided by the special deposit.
- 6746 Section 117. Section **31A-28-108** is amended to read:
- 6747 **31A-28-108. Powers and duties of the association.**
- 6748 (1) (a) If a member insurer is an impaired insurer, subject to any conditions imposed by
- 6749 the association that do not impair the contractual obligations of the impaired insurer, the

6750 association may elect to provide the protections provided by this part to the policyholders of
6751 the impaired insurer.

6752 (b) If the association makes the election described in Subsection (1)(a), the association
6753 may proceed under one or more of the options described in Subsection (3).

6754 (2) If a member insurer is an insolvent insurer, the association shall provide the
6755 protections provided by this part to the policyholders of the insolvent insurer by electing in its
6756 discretion to proceed under one or more of the options in Subsection (3).

6757 (3) With respect to the covered portions of covered policies of an impaired or insolvent
6758 insurer, the association may:

6759 (a) (i) (A) guaranty, assume, or reinsure, or cause to be guaranteed, assumed, or
6760 reinsured, the policies or contracts of the insurer; or

6761 (B) assure payment of the contractual obligations of the insolvent insurer; and

6762 (ii) provide such monies, pledges, guarantees, or other means as are reasonably
6763 necessary to discharge such duties; or

6764 (b) provide benefits and coverages in accordance with Subsection (4).

6765 (4) (a) In accordance with Subsection (3)(b), the association may:

6766 (i) assure payment of benefits for premiums identical to the premiums and benefits,
6767 except for terms of conversion and renewability, that would have been payable under the
6768 policies or contracts of the insurer, for claims incurred:

6769 (A) with respect to group policies:

6770 (I) not later than the earlier of the next renewal date under the policies or contracts or
6771 45 days after the coverage date; and

6772 (II) in no event less than 30 days after the coverage date; or

6773 (B) with respect to nongroup policies or contracts:

6774 (I) not later than the earlier of the next renewal date, if any, under the policies or
6775 contracts or one year from the coverage date; and

6776 (II) in no event less than 30 days from the coverage date;

6777 (ii) make diligent efforts to provide 30 days' notice of any termination of the benefits

6778 provided to:

6779 (A) all known insureds or annuitants for nongroup policies and contracts; or

6780 (B) group policy owners for group policies and contracts; and

6781 (iii) with respect to nongroup life and accident and health insurance policies and

6782 annuities, make available substitute coverage on an individual basis, in accordance with

6783 Subsection (4)(b), to each known insured, annuitant, or owner and to each individual formerly

6784 insured or formerly an annuitant under a group policy who is not eligible for replacement group

6785 coverage on an individual basis in accordance with Subsection (4)(b), if the insured or

6786 annuitant had a right under law or the terminated policy or annuity contract to:

6787 (A) convert coverage to individual coverage; or

6788 (B) continue an individual policy in force until a specified age or for a specified time

6789 during which the insurer had:

6790 (I) no right unilaterally to make changes in any provision of the policy; or

6791 (II) a right only to make changes in premium by class.

6792 (b) (i) In providing the substitute coverage required under Subsection (4)(a)(iii), the

6793 association may offer to:

6794 (A) reissue the terminated coverage; or

6795 (B) issue an alternative policy.

6796 (ii) An alternative or reissued policy under Subsection (4)(b)(i):

6797 (A) shall be offered without requiring evidence of insurability; and

6798 (B) may not provide for any waiting period or exclusion that would not have applied

6799 under the terminated policy.

6800 (iii) The association may reinsure any alternative or reissued policy.

6801 (c) (i) An alternative policy adopted by the association shall be subject to the approval

6802 of the commissioner.

6803 (ii) The association may adopt alternative policies of various types for future issuance

6804 without regard to any particular impairment or insolvency.

6805 (iii) An alternative policy:

6806 (A) shall contain at least the minimum statutory provisions required in this state; and

6807 (B) provide benefits that are not unreasonable in relation to the premium charged.

6808 (iv) The association shall set the premium for an alternative policy in accordance with

6809 a table of rates that the association adopts. The premium shall reflect:

6810 (A) the amount of insurance to be provided; and

6811 (B) the age and class of risk of each insured.

6812 (v) For an alternative policy issued under an individual policy of the impaired or

6813 insolvent insurer:

6814 (A) age shall be determined in accordance with the original policy provisions; and

6815 (B) class of risk shall be the class of risk under the original policy.

6816 (vi) For an alternative policy issued to individuals insured under a group policy:

6817 (A) age and class of risk shall be determined by the association in accordance with the

6818 alternative policy provisions and risk classification standards approved by the commissioner;

6819 and

6820 (B) the premium may not reflect any changes in the health of the insured after the

6821 original policy was last underwritten.

6822 (vii) Any alternative policy issued by the association shall provide coverage of a type

6823 similar to that of the policy issued by the impaired or insolvent insurer, as determined by the

6824 association.

6825 (d) If the association elects to reissue terminated coverage at a premium rate different

6826 from that charged under the terminated policy, the premium shall be set by the association in

6827 accordance with the amount of insurance provided and the age and class of risk, subject to the

6828 approval of the commissioner or by a court of competent jurisdiction.

6829 (e) The association's obligations with respect to coverage under any policy of the

6830 impaired or insolvent insurer or under any reissued or alternative policy shall cease on the date

6831 the coverage or policy is replaced by another similar policy by:

6832 (i) the policyholder;

6833 (ii) the insured; or

6834 (iii) the association.

6835 (f) (i) With respect to a claim unpaid as of the coverage date and a claim incurred
6836 during the period defined in Subsection (4)(a)(i), a provider of health care services, by
6837 accepting a payment from the association upon a claim of the provider against an insured
6838 whose health care insurer is an insolvent member insurer, agrees to forgive the insured of 20%
6839 of the debt which otherwise would be paid by the insurer had it not been insolvent, subject to a
6840 maximum of \$8,000 being required to be forgiven by any one provider as to each claimant.

6841 (ii) The obligations of a solvent insurer to pay all or part of the covered claim are not
6842 diminished by the forgiveness provided for in this section.

6843 (5) When proceeding under Subsection (3)(b) with respect to any policy or contract
6844 carrying guaranteed minimum interest rates, the association shall assure the payment or
6845 crediting of a rate of interest consistent with Subsection 31A-28-103(2)(b)(iii).

6846 (6) Nonpayment of premiums within 31 days after the date required under the terms of
6847 any guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage shall
6848 terminate the association's obligations under the policy or coverage under this part with respect
6849 to the policy or coverage, except with respect to any claims incurred or any net cash surrender
6850 value that may be due in accordance with this part.

6851 (7) (a) Premiums due after the coverage date with respect to the covered portion of a
6852 policy or contract of an impaired or insolvent insurer shall belong to and be payable at the
6853 direction of the association.

6854 (b) The association is liable to the policy or contract owners for unearned premiums
6855 due to policy or contract owners arising after the coverage date with respect to the covered
6856 portion of the policy or contract.

6857 (8) The protection provided by this part does not apply if any guaranty protection is
6858 provided to residents of this state by laws of the domiciliary state or jurisdiction of the
6859 impaired or insolvent insurer other than this state.

6860 (9) In carrying out its duties under Subsections (1) and (2), and subject to approval by a
6861 court in this state, the association may:

6862 (a) impose permanent policy or contract liens in connection with a guarantee,
6863 assumption, or reinsurance agreement, if the association finds that:

6864 (i) the amounts that can be assessed under this part are less than the amounts needed to
6865 assure full and prompt performance of the association's duties under this part; or

6866 (ii) the economic or financial conditions as they affect member insurers are sufficiently
6867 adverse to render the imposition of the permanent policy or contract liens to be in the public
6868 interest;

6869 (b) impose temporary moratoriums or liens on payments of cash values and policy
6870 loans, or any other right to withdraw funds held in conjunction with policies or contracts, in
6871 addition to any contractual provisions for deferral of cash or policy loan value; and

6872 (c) if the receivership court imposes a temporary moratorium or moratorium charge on
6873 payment of cash values or policy loans, or on any other right to withdraw funds held in
6874 conjunction with policies or contracts, out of the assets of the impaired or insolvent insurer,
6875 defer the payment of cash values, policy loans, or other rights by the association for the period
6876 of the moratorium or moratorium charge imposed by the receivership court, except for claims
6877 covered by the association to be paid in accordance with a hardship procedure:

6878 (i) established by the liquidator or rehabilitator; and

6879 (ii) approved by the receivership court.

6880 (10) (a) A deposit in this state held pursuant to law or required by the commissioner for
6881 the benefit of creditors, including policy owners, that is not turned over to the domiciliary
6882 liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan
6883 of an insurer domiciled in ~~[this]~~ any state ~~[or in a reciprocal state, defined in Subsection~~
6884 ~~31A-27-102(1)(p),]~~ shall be promptly paid to the association.

6885 (b) Any amount paid under Subsection (10)(a) to the association less the amount
6886 retained by the association shall be treated as a distribution of estate assets pursuant to
6887 ~~[Subsection 31A-27-337(2)]~~ Sections 31A-27a-601, 31A-27a-602, and 31A-27a-702.

6888 (11) If the association fails to act within a reasonable period of time as provided in this
6889 section, the commissioner shall have the powers and duties of the association under this part

6890 with respect to an impaired or insolvent insurer.

6891 (12) The association may render assistance and advice to the commissioner, upon the
6892 commissioner's request, concerning:

6893 (a) rehabilitation;

6894 (b) payment of claims;

6895 (c) continuance of coverage; or

6896 (d) the performance of other contractual obligations of any impaired or insolvent
6897 insurer.

6898 (13) (a) The association has standing to appear or intervene before a court or agency in
6899 this state with jurisdiction over:

6900 (i) an impaired or insolvent insurer concerning which the association is or may become
6901 obligated under this part; or

6902 (ii) any person or property against which the association may have rights through
6903 subrogation or otherwise.

6904 (b) The standing referred to in Subsection (13)(a) extends to all matters germane to the
6905 powers and duties of the association, including:

6906 (i) proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the
6907 impaired or insolvent insurer; and

6908 (ii) the determination of the policies or contracts and contractual obligations.

6909 (c) The association has the right to appear or intervene before a court in another state
6910 with jurisdiction over:

6911 (i) an impaired or insolvent insurer for which the association is or may become
6912 obligated; or

6913 (ii) any person or property against which the association may have rights through
6914 subrogation of the insurer's policyholders.

6915 (14) (a) Any person receiving benefits under this part shall be considered to have
6916 assigned the rights under, and any causes of action against any person for losses arising under,
6917 resulting from, or otherwise relating to the covered policy or contract to the association to the

6918 extent of the benefits received because of this part, whether the benefits are payments of, or on
6919 account of:

- 6920 (i) contractual obligations;
- 6921 (ii) continuation of coverage; or
- 6922 (iii) provision of substitute or alternative coverages.

6923 (b) As a condition precedent to the receipt of any right or benefits conferred by this part
6924 upon that person, the association may require an assignment to it of the rights and causes of
6925 action described in Subsection (14)(a) by any:

- 6926 (i) payee;
- 6927 (ii) policy or contract owner;
- 6928 (iii) beneficiary;
- 6929 (iv) insured; or
- 6930 (v) annuitant.

6931 (c) The subrogation rights obtained by the association under this Subsection (14) shall
6932 have the same priority against the assets of the impaired or insolvent insurer as that possessed
6933 by the person entitled to receive benefits under this part.

6934 (d) In addition to Subsections (14)(a) through (c), the association has all common law
6935 rights of subrogation and any other equitable or legal remedy that would have been available to
6936 the impaired or insolvent insurer or owner, beneficiary, or payee of a policy or contract with
6937 respect to the policy or contract, including in the case of a structured settlement annuity any
6938 rights of the owner, beneficiary, or payee of the annuity to the extent of benefits received
6939 pursuant to this part against a person originally or by succession responsible for the losses
6940 arising from the personal injury relating to the annuity or payment of the annuity.

6941 (e) If a provision of this Subsection (14) is invalid or ineffective with respect to any
6942 person or claim for any reason, the amount payable by the association with respect to the
6943 related covered obligations shall be reduced by the amount realized by any other person with
6944 respect to the person or claim that is attributable to the policies, or portion of the policies,
6945 covered by the association.

6946 (f) If the association has provided benefits with respect to a covered policy and a
6947 person recovers amounts as to which the association has rights as described in this Subsection
6948 (14), the person shall pay to the association the portion of the recovery attributable to the
6949 covered policies.

6950 (15) (a) In addition to the rights and powers elsewhere in this part, the association may:

6951 (i) enter into contracts that are necessary or proper to carry out the provisions and
6952 purposes of this part;

6953 (ii) sue or be sued, including taking any legal actions necessary or proper to:

6954 (A) recover any unpaid assessments under Section 31A-28-109; and

6955 (B) settle claims or potential claims against the association;

6956 (iii) borrow money to effect the purposes of this part;

6957 (iv) employ or retain the persons necessary or the appropriate staff members to:

6958 (A) handle the financial transactions of the association; and

6959 (B) perform other functions as become necessary or proper under this part;

6960 (v) take necessary or appropriate legal action to avoid or recover payment of improper
6961 claims;

6962 (vi) exercise, for the purposes of this part and to the extent approved by the
6963 commissioner, the powers of a domestic life or health insurer, but in no case may the
6964 association issue insurance policies or annuity contracts other than those issued to perform its
6965 obligation under this part;

6966 (vii) request information from a person seeking coverage from the association to aid
6967 the association in determining the association's obligations under this part with respect to the
6968 person;

6969 (viii) take other necessary or appropriate action to discharge the association's duties
6970 and obligations under this part or to exercise the association's powers under this part; and

6971 (ix) act as a special deputy liquidator if appointed by the commissioner.

6972 (b) Any note or other evidence of indebtedness of the association under Subsection
6973 (15)(a)(iii) that is not in default:

6974 (i) is a legal investment for a domestic insurer; and

6975 (ii) may be carried as admitted assets.

6976 (c) A person seeking coverage from the association shall promptly comply with a
6977 request for information by the association under Subsection (15)(a)(vii).

6978 (16) The association may join an organization of one or more other state associations
6979 of similar purposes to further the purposes and administer the powers and duties of the
6980 association.

6981 (17) (a) Except as provided in Subsection (17)(b), at any time within one year after the
6982 coverage date, the association may elect to succeed to the rights and obligations of the member
6983 insurer that:

6984 (i) accrue on or after the coverage date; and

6985 (ii) relate to covered policies under any one or more indemnity reinsurance agreements
6986 entered into by the member insurer as a ceding insurer and selected by the association.

6987 (b) Notwithstanding Subsection (17)(a), the association may not exercise an election
6988 with respect to a reinsurance agreement if the receiver, rehabilitator, or liquidator of the
6989 member insurer has previously and expressly disaffirmed the reinsurance agreement.

6990 (c) The election described in Subsection (17)(a) shall be effected by a notice to:

6991 (i) (A) the receiver;

6992 (B) rehabilitator; or

6993 (C) liquidator; and

6994 (ii) the affected reinsurers.

6995 (d) If the association makes an election under Subsection (17)(a), the association shall
6996 comply with Subsections (17)(d)(i) through (vi) with respect to the agreements selected by the
6997 association.

6998 (i) For contracts covered, in whole or in part, by the association, the association shall
6999 be responsible for:

7000 (A) all unpaid premiums due under the agreements for periods both before and after the
7001 coverage date; and

7002 (B) the performance of all other obligations to be performed after the coverage date.

7003 (ii) The association may charge contracts covered in part by the association the costs
7004 for reinsurance in excess of the obligations of the association, through reasonable allocation
7005 methods.

7006 (iii) The association is entitled to any amounts payable by the reinsurer under the
7007 agreements with respect to losses or events that:

7008 (A) occur in periods after the coverage date; and

7009 (B) relate to contracts covered by the association, in whole or in part.

7010 (iv) On receipt of any amounts under Subsection (17)(d)(iii), the association shall pay
7011 to the beneficiary under the policy or contract on account of which the amounts were paid an
7012 amount equal to the excess of the amount received by the association over the benefits paid or
7013 payable by the association on account of the policy or contract.

7014 (v) (A) Within 30 days following the association's election, the association and each
7015 indemnity reinsurer shall calculate the net balance due to or from the association under each
7016 reinsurance agreement as of the date of the association's election, giving full credit to all items
7017 paid by either the member insurer, or its receiver, rehabilitator, or liquidator, or the indemnity
7018 reinsurer during the period between the coverage date and the date of the association's election.

7019 (B) Either the association or indemnity reinsurer shall pay the net balance due the other
7020 within five days of the completion of the calculation under Subsection (17)(d)(v)(A).

7021 (C) If the receiver, rehabilitator, or liquidator has received any amounts due the
7022 association pursuant to Subsection (17)(d)(iii), the receiver, rehabilitator, or liquidator shall
7023 remit the same to the association as promptly as practicable.

7024 (vi) If the association, within 60 days of the election, pays the premiums due for
7025 periods both before and after the coverage date that relate to contracts covered by the
7026 association, in whole or in part, the reinsurer may not:

7027 (A) terminate the reinsurance agreements, to the extent the agreements relate to
7028 contracts covered by the association, in whole or in part; and

7029 (B) set off any unpaid premium due for periods prior to the coverage date against

7030 amounts due the association.

7031 (e) An insurer other than the association shall succeed to the rights and obligations of
7032 the association under Subsections (17)(a) through (d) effective as of the date agreed upon by
7033 the association and the other insurer and regardless of whether the association has made the
7034 election referred to in Subsections (17)(a) through (d) provided that:

7035 (i) the association transfers its obligations to the other insurer;

7036 (ii) the association and the other insurer agree to the transfer;

7037 (iii) the indemnity reinsurance agreements automatically terminate for new reinsurance
7038 unless the indemnity reinsurer and the other insurer agree to the contrary;

7039 (iv) the obligations described in Subsection (17)(d)(iv) may not apply on and after the
7040 date the indemnity reinsurance agreement is transferred to the third party insurer; and

7041 (v) this Subsection (17)(e) may not apply if the association has previously expressly
7042 determined in writing that the association will not exercise the election referred to in
7043 Subsections (17)(a) through (d).

7044 (f) (i) This Subsection (17) supersedes the provisions of any law of this state or of any
7045 affected reinsurance agreement that provides for or requires any payment of reinsurance
7046 proceeds on account of losses or events that occur in periods after the coverage date, to the
7047 receiver, liquidator, or rehabilitator of an insolvent member insurer.

7048 (ii) The receiver, rehabilitator, or liquidator shall remain entitled to any amounts
7049 payable by the reinsurer under the reinsurance agreement with respect to losses or events that
7050 occur in periods prior to the coverage date, subject to applicable setoff provisions.

7051 (g) Except as otherwise expressly provided in Subsections (17)(a) through (f), this
7052 Subsection (17) does not:

7053 (i) alter or modify the terms and conditions of the indemnity reinsurance agreements of
7054 the insolvent member insurer;

7055 (ii) abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a
7056 reinsurance agreement; or

7057 (iii) give a policy owner or beneficiary an independent cause of action against an

7058 indemnity reinsurer that is not otherwise set forth in the indemnity reinsurance agreement.

7059 (18) The board of directors of the association shall have discretion and may exercise
7060 reasonable business judgment to determine the means by which the association is to provide
7061 the benefits of this part in an economical and efficient manner.

7062 (19) If the association has arranged or offered to provide the benefits of this part to a
7063 covered person under a plan or arrangement that fulfills the association's obligations under this
7064 part, the person is not entitled to benefits from the association in addition to or other than those
7065 provided under the plan or arrangement.

7066 (20) (a) Venue in a suit against the association arising under this part shall be in Salt
7067 Lake County.

7068 (b) The association may not be required to give an appeal bond in an appeal that relates
7069 to a cause of action arising under this part.

7070 Section 118. Section **31A-28-114** is amended to read:

7071 **31A-28-114. Miscellaneous provisions.**

7072 (1) Nothing in this part shall be construed to reduce the liability for unpaid assessments
7073 of the insureds of an impaired or insolvent insurer operating under a plan with assessment
7074 liability.

7075 (2) (a) Records shall be kept of all meetings of the board of directors to discuss the
7076 activities of the association in carrying out its powers and duties under Section 31A-28-108.

7077 (b) Records of the association with respect to an impaired or insolvent insurer may not
7078 be disclosed before the earlier of:

7079 (i) the termination of a liquidation, rehabilitation, or conservation proceeding involving
7080 the impaired or insolvent insurer;

7081 (ii) the termination of the impairment or insolvency of the insurer; or

7082 (iii) upon the order of a court of competent jurisdiction.

7083 (c) Nothing in this Subsection (2) shall limit the duty of the association to render a
7084 report of its activities under Section 31A-28-115.

7085 (3) (a) For the purpose of carrying out its obligations under this part, the association

7086 shall be considered to be a creditor of an impaired or insolvent insurer to the extent of assets
7087 attributable to covered policies reduced by any amounts to which the association is entitled as
7088 subrogee pursuant to Subsection 31A-28-108(14).

7089 (b) Assets of the impaired or insolvent insurer attributable to covered policies shall be
7090 used to continue all covered policies and pay all contractual obligations of the impaired or
7091 insolvent insurer as required by this part.

7092 (c) As used in this Subsection (3), assets attributable to covered policies are that
7093 proportion of the assets which the reserves that should have been established for covered
7094 policies bear to the reserves that should have been established for all policies of insurance
7095 written by the impaired or insolvent insurer.

7096 (4) (a) As a creditor of the impaired or insolvent insurer under Subsection (3) and
7097 consistent with Section [~~31A-27-335~~] 31A-27a-701, the association and any other similar
7098 association are entitled to receive a disbursement of assets out of the marshaled assets, from
7099 time to time as the assets become available to reimburse the association and any other similar
7100 association.

7101 (b) If, within 120 days of a final determination of insolvency of an insurer by the
7102 receivership court, the liquidator has not made an application to the court for the approval of a
7103 proposal to disburse assets out of marshaled assets to all guaranty associations having
7104 obligations because of the insolvency, the association is entitled to make application to the
7105 receivership court for approval of the association's proposal for disbursement of these assets.

7106 (5) (a) Prior to the termination of any liquidation, rehabilitation, or conservation
7107 proceeding, the court may take into consideration the contributions of the respective parties,
7108 including:

7109 (i) the association;

7110 (ii) the shareholders;

7111 (iii) policyowners of the insolvent insurer; and

7112 (iv) any other party with a bona fide interest in making an equitable distribution of the
7113 ownership rights of the insolvent insurer.

7114 (b) In making a determination under Subsection (5)(a), the court shall consider the
7115 welfare of the policyholders of the continuing or successor insurer.

7116 (c) A distribution to any stockholder of an impaired or insolvent insurer may not be
7117 made until and unless the total amount of valid claims of the association with interest has been
7118 fully recovered by the association for funds expended in carrying out its powers and duties
7119 under Section 31A-28-108 with respect to the insurer.

7120 (6) (a) If an order for liquidation or rehabilitation of an insurer domiciled in this state
7121 has been entered, the receiver appointed under the order shall have a right to recover on behalf
7122 of the insurer, from any affiliate that controlled the insurer, the amount of distributions, other
7123 than stock dividends paid by the insurer on its capital stock, made at any time during the five
7124 years preceding the petition for liquidation or rehabilitation subject to the limitations of
7125 Subsections (6)(b) through (d).

7126 (b) A distribution described in Subsection (6)(a) may not be recovered if the insurer
7127 shows that:

7128 (i) when paid the distribution was lawful and reasonable; and

7129 (ii) the insurer did not know and could not reasonably have known that the distribution
7130 might adversely affect the ability of the insurer to fulfill its contractual obligations.

7131 (c) (i) A person that was an affiliate that controlled the insurer at the time the
7132 distributions were paid shall be liable up to the amount of distributions received.

7133 (ii) A person that was an affiliate that controlled the insurer at the time the distributions
7134 were declared shall be liable up to the amount of distributions that would have been received if
7135 they had been paid immediately.

7136 (iii) If two or more persons are liable with respect to the same distributions, they shall
7137 be jointly and severally liable.

7138 (d) The maximum amount recoverable under this Subsection (6) shall be the amount
7139 needed in excess of all other available assets of the insolvent insurer to pay the contractual
7140 obligations of the insolvent insurer.

7141 (e) If any person liable under Subsection (6)(c) is insolvent, all of its affiliates that

7142 controlled it at the time the distribution was paid shall be jointly and severally liable for any
7143 resulting deficiency in the amount recovered from the insolvent affiliate.

7144 Section 119. Section **31A-28-207** is amended to read:

7145 **31A-28-207. Powers and duties of the association.**

7146 (1) (a) The association is obligated on the amount of the covered claims:

7147 (i) existing prior to the order of liquidation; and

7148 (ii) arising:

7149 (A) within 30 days after the order of liquidation; or

7150 (B) (I) before the policy expiration date if it is less than 30 days after the order of
7151 liquidation; or

7152 (II) before the insured replaces the policy or causes its cancellation, if the insured does
7153 so within 30 days of the order of liquidation.

7154 (b) The obligation under Subsection (1)(a) includes only that amount of each covered
7155 claim that is less than \$300,000.

7156 (c) A claim under a personal lines policy for unearned premiums shall include only
7157 those claims that exceed \$100 in amount, subject to a maximum of \$10,000 per policy.

7158 (d) The association shall pay the full amount of any covered claim arising out of a
7159 workers' compensation policy. The association is not obligated to a policyholder or claimant in
7160 an amount in excess of the obligation of the insolvent insurer under the policy from which the
7161 claim arises.

7162 (e) Any obligation of the association to defend an insured on a covered claim shall
7163 cease:

7164 (i) upon payment by the association, as part of a settlement releasing the insured; or

7165 (ii) on a judgment, of the lesser of:

7166 (A) the association's covered claim obligation limit; or

7167 (B) the applicable policy limit.

7168 (f) The association:

7169 (i) is considered as the insurer only to the extent of its obligation on the covered

7170 claims, subject to the limitations provided in this part;

7171 (ii) has all the rights, duties, and obligations of the insolvent insurer as if the insurer
7172 had not yet become insolvent, including the right to pursue and retain salvage and subrogation
7173 recoverable on paid covered claim obligations; and

7174 (iii) may not be considered the insolvent insurer for any purpose relating to whether the
7175 association is subject to personal jurisdiction in the courts of any state.

7176 (g) (i) Notwithstanding any other provisions of this part, except in the case of a claim
7177 for benefits under workers' compensation coverage, any obligation of the association to or on
7178 behalf of a particular insured and its affiliates on covered claims shall cease when:

7179 (A) a total amount of \$10,000,000 has been paid to or on behalf of the insured and its
7180 affiliates on covered claims by the association or a similar association; and

7181 (B) all payments on covered claims arise under one or more policies of a single
7182 insolvent insurer.

7183 (ii) The association may establish a plan to allocate the amounts payable by the
7184 association in a manner the association considers equitable if the association determines that:

7185 (A) there is more than one claimant asserting a covered claim against:

7186 (I) the association;

7187 (II) a similar association; or

7188 (III) a property or casualty insurance security fund in another state; and

7189 (B) all claims arise under the policy or policies of a single insolvent insurer.

7190 (h) The association shall assess member insurers amounts necessary to pay:

7191 (i) the obligations of the association under Subsection (1)(a), as limited by Subsections
7192 (1)(e) through (g), subsequent to the liquidation of an insolvent insurer;

7193 (ii) the expenses of handling covered claims subsequent to the liquidation of an
7194 insolvent insurer;

7195 (iii) the cost of examinations under Section 31A-28-214; and

7196 (iv) other expenses authorized by this part.

7197 (i) (i) The association shall:

- 7198 (A) investigate claims brought against the association; and
7199 (B) adjust, compromise, settle, and pay covered claims to the extent of the association's
7200 obligation and deny all other claims.
- 7201 (ii) The association is not bound by a settlement, release, compromise, waiver, or
7202 judgment executed or entered into by the insolvent insurer:
- 7203 (A) less than 12 months before the entry of an order of liquidation; or
7204 (B) more than 12 months before the entry of an order of liquidation if the settlement,
7205 release, compromise, waiver, or judgment is:
- 7206 (I) based on a claim that is not a covered claim; or
7207 (II) the result of fraud, collusion, default, or failure to defend.
- 7208 (iii) The association may assert all defenses available including defenses applicable to
7209 determining and enforcing the association's statutory rights and obligations to a claim.
- 7210 (iv) The association may appoint and direct legal counsel retained under a liability
7211 insurance policy for the defense of a covered claim.
- 7212 (j) (i) The association shall handle claims through:
- 7213 (A) its employees;
7214 (B) one or more insurers; or
7215 (C) other persons designated as servicing facilities.
- 7216 (ii) Designation of a servicing facility is subject to the approval of the commissioner,
7217 but this designation may be declined by a member insurer.
- 7218 (k) The association shall:
- 7219 (i) reimburse each servicing facility for:
- 7220 (A) obligations of the association paid by the facility; and
7221 (B) expenses incurred by the facility while handling claims on behalf of the
7222 association; and
- 7223 (ii) pay the other expenses of the association as authorized by this title.
- 7224 (2) The association may:
- 7225 (a) employ or retain the persons, including private legal counsel, necessary to handle

7226 claims and perform other duties of the association;

7227 (b) borrow funds necessary to implement the purposes of this part in accord with the
7228 plan of operation;

7229 (c) sue or be sued;

7230 (d) negotiate and become a party to the contracts necessary to carry out the purpose of
7231 this part;

7232 (e) perform any other acts necessary or proper to accomplish the purposes of this
7233 chapter; or

7234 (f) refund to the member insurers, in proportion to the contribution of each member
7235 insurer to the association account, the amount that the assets of the account exceed the
7236 liabilities, if, at the end of any calendar year, the board of directors finds that:

7237 (i) the assets of the association in the association account exceed the liabilities as
7238 estimated by the board of directors for the coming year; and

7239 (ii) the excess assets are not needed for other purposes of this part.

7240 (3) For a refund due to a member insurer for an assessment that has been offset against
7241 premium taxes, the association may pay the amount of the refund directly to the State Tax
7242 Commission.

7243 (4) The courts of the state shall have exclusive jurisdiction over all actions brought
7244 against the association that relate to or arise out of this part.

7245 (5) (a) Any person recovering under this part is considered to have assigned that
7246 person's rights under the policy to the association to the extent of that person's recovery from
7247 the association.

7248 (b) Every insured or claimant seeking the protection of this chapter shall cooperate
7249 with the association to the same extent the person would have been required to cooperate with
7250 the insolvent insurer.

7251 (c) Except as provided in Subsection (5)(e), the association has no cause of action
7252 against the insured of the insolvent insurer for any sums the association has paid out except
7253 those causes of action the insolvent insurer would have had if the sums had been paid by the

7254 insolvent insurer.

7255 (d) When an insolvent insurer operates on a plan with assessment liability, payments of
7256 claims of the association do not reduce the liability for unpaid assessments of the insurer to:

7257 (i) the receiver;

7258 (ii) liquidator; or

7259 (iii) statutory successor.

7260 (e) The association may recover from the following persons the amount of any
7261 "covered claim" paid on behalf of that person pursuant to this part:

7262 (i) any insured whose:

7263 (A) net worth on December 31 of the year next preceding the date the insurer becomes
7264 insolvent, exceeds \$25,000,000; and

7265 (B) liability obligations to other persons are satisfied in whole or in part by payments
7266 made under this part; and

7267 (ii) any person:

7268 (A) who is an affiliate of the insolvent insurer; and

7269 (B) whose liability obligations to other persons are satisfied in whole or in part by
7270 payments made under this part.

7271 (f) (i) The receiver, liquidator, or statutory successor of an insolvent insurer is bound
7272 by:

7273 (A) a determination of a covered claim eligibility under this part; and

7274 (B) a settlement of a covered claim by the association or a similar organization in
7275 another state.

7276 (ii) The court having jurisdiction shall grant settled claims a priority equal to that
7277 which the claimant would have been entitled to in the absence of this part, against the assets of
7278 the insolvent insurer.

7279 (g) The association or any similar organization in another state shall:

7280 (i) be recognized as a claimant in the liquidation of an insolvent insurer for any

7281 amounts paid on a covered claim obligation as determined under this part or a similar law in

7282 another state; and

7283 (ii) receive dividends or distributions at the priority set forth in Section [~~31A-27-335~~]

7284 31A-27a-701.

7285 (h) (i) The association shall periodically file with the receiver or liquidator of the

7286 insolvent insurer:

7287 (A) statements of the covered claims paid by the association; and

7288 (B) estimates of anticipated claims on the association.

7289 (ii) The filing under this Subsection (5)(h) preserves the rights of the association for

7290 claims against the assets of the insolvent insurer.

7291 (i) The association need not pay any claim filed after the final date under Sections

7292 [~~31A-27-315~~] 31A-27a-406 and [~~31A-27-328~~] 31A-27a-601, or similar statutes of other states,

7293 for filing the same type of claim with the liquidator of the insolvent insurer.

7294 Section 120. Section **31A-28-213** is amended to read:

7295 **31A-28-213. Miscellaneous provisions.**

7296 (1) (a) Any person who has a claim against an insurer, whether or not the insurer is a

7297 member insurer, under any provision in an insurance policy, other than a policy of an insolvent

7298 insurer that is also a covered claim, is required to first exhaust that person's right under that

7299 person's policy.

7300 (b) Any amount payable on a covered claim under this part under an insurance policy is

7301 reduced by the amount of any recovery under the insurance policy described in Subsection

7302 (1)(a).

7303 (c) (i) Except as provided in Subsection (1)(c)(ii) a person having a claim that may be

7304 recovered under more than one insurance guaranty association or its equivalent shall first seek

7305 recovery from the association of the place of residence of the insured.

7306 (ii) If the person's claim is:

7307 (A) a first-party claim for damage to property with a permanent location, the person

7308 shall seek recovery first from the association of the location of the property; and

7309 (B) a workers' compensation claim, the person shall seek recovery first from the

7310 association of the residence of the claimant.

7311 (iii) Any recovery under this part shall be reduced by the amount of recovery from any
7312 other insurance guaranty association or its equivalent.

7313 (2) This part may not be construed to reduce the liability for unpaid assessments of the
7314 insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

7315 (3) (a) Records shall be kept of all negotiations and meetings in which the association
7316 or its representatives are involved to discuss the activities of the association in carrying out the
7317 association's powers and duties under Section 31A-28-207. Records of these negotiations or
7318 meetings shall be made public only:

7319 (i) upon the termination of a liquidation, rehabilitation, or conservation proceeding
7320 involving the insolvent insurer;

7321 (ii) the termination of the insolvency of the insurer; or

7322 (iii) the order of a court of competent jurisdiction.

7323 (b) This Subsection (3) does not limit the duty of the association to render a report of
7324 its activities under Section 31A-28-214.

7325 (4) For the purpose of carrying out its obligations under this part, the association is
7326 considered to be a creditor of the insolvent insurer, except to the extent of any amounts the
7327 association is entitled as subrogee under Section 31A-28-207.

7328 (5) (a) Before the termination of any liquidation, rehabilitation, or conservation
7329 proceeding, the court may take into consideration the contributions of the respective parties,
7330 including:

7331 (i) the association;

7332 (ii) the shareholders;

7333 (iii) the policyowners of the insolvent insurer; and

7334 (iv) any other party with a bona fide interest, in making an equitable distribution of the
7335 ownership rights of the insolvent insurer.

7336 (b) In making the determination described in Subsection (5)(a), the court shall consider
7337 the welfare of the policyholders of the continuing or successor insurer.

7338 (c) A distribution to stockholders, if any, of an insolvent insurer may not be made until
7339 the total amount of valid claims of the association with interest on those claims for funds
7340 expended in carrying out its powers and duties under Section 31A-28-207 regarding this
7341 insurer have been fully recovered by the association.

7342 (6) A rehabilitator, liquidator, or conservator appointed under any section of this part
7343 may recover on behalf of the insurer for excessive distributions paid to affiliates, pursuant to
7344 Section ~~[31A-27-322]~~ 31A-27a-502.

7345 Section 121. Section **31A-35-103** is amended to read:

7346 **31A-35-103. Exemption from other sections of this title.**

7347 Bail bond surety companies are exempted from:

7348 (1) ~~[Title 31A,]~~ Chapter 3, Department Funding, Fees, and Taxes, except Section
7349 31A-3-103;

7350 (2) ~~[Title 31A,]~~ Chapter 4, Insurance in General, except Sections 31A-4-102,
7351 31A-4-103, 31A-4-104, and 31A-4-107;

7352 (3) ~~[Title 31A,]~~ Chapter 5, Domestic Stock and Mutual Insurance Corporations, except
7353 Section 31A-5-103, and

7354 (4) ~~[Title 31A,]~~ Chapters 6, 6a, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 24, 25,
7355 26, 27, 27a, 28, 29, 30, 31, 32, 33, and 34.

7356 Section 122. Section **31A-37-504** is amended to read:

7357 **31A-37-504. Business written by a captive insurance company -- Examinations --**
7358 **Application of code provisions.**

7359 (1) This section applies to all business written by a captive insurance company.

7360 (2) Notwithstanding this section, the examination for a branch captive insurance
7361 company shall be of branch business and branch operations only, if the branch captive
7362 insurance company:

7363 (a) provides annually to the commissioner a certificate of compliance, or an equivalent,
7364 issued by or filed with the licensing authority of the jurisdiction in which the branch captive
7365 insurance company is formed; and

7366 (b) demonstrates to the commissioner's satisfaction that the branch captive insurance
7367 company is operating in sound financial condition in accordance with all applicable laws and
7368 regulations of the jurisdiction in which the branch captive insurance company is formed.

7369 (3) As a condition of obtaining a certificate of authority, an alien captive insurance
7370 company shall grant authority to the commissioner to examine the affairs of the alien captive
7371 insurance company in the jurisdiction in which the alien captive insurance company is formed.

7372 (4) To the extent that the provisions of Chapters 2, 4, 5, 14, 16, 17, 18, 19a, [~~and~~] 27,
7373 and 27a do not contradict this section, these chapters apply to captive insurance companies that
7374 have received a certificate of authority under this chapter.

7375 Section 123. **Repealer.**

7376 This bill repeals:

7377 Section **31A-27-102, Definitions.**

7378 Section **31A-27-103, Jurisdiction and venue.**

7379 Section **31A-27-104, Injunctions and orders.**

7380 Section **31A-27-105, Cooperation of officers and employees.**

7381 Section **31A-27-106, Bonds.**

7382 Section **31A-27-108, Continuation of delinquency proceedings.**

7383 Section **31A-27-109, Standing of guaranty associations.**

7384 Section **31A-27-110, Immunity and indemnification of the receiver.**

7385 Section **31A-27-202, Court's seizure order.**

7386 Section **31A-27-301, Grounds for rehabilitation.**

7387 Section **31A-27-302, Answering the petition -- Hearing -- Appeal.**

7388 Section **31A-27-303, Rehabilitation orders.**

7389 Section **31A-27-304, Powers and duties of the rehabilitator.**

7390 Section **31A-27-305, Actions by and against a rehabilitator.**

7391 Section **31A-27-306, Termination of rehabilitation.**

7392 Section **31A-27-307, Grounds for liquidation.**

7393 Section **31A-27-308, Answering the petition.**

- 7394 Section **31A-27-309, Pending the liquidation order.**
- 7395 Section **31A-27-310, Liquidation orders.**
- 7396 Section **31A-27-311, Continuance of coverage.**
- 7397 Section **31A-27-311.5, Continuance of coverage -- Health maintenance**
- 7398 **organizations.**
- 7399 Section **31A-27-312, Dissolution of insurer.**
- 7400 Section **31A-27-313, Legislative intent concerning retention of jurisdiction.**
- 7401 Section **31A-27-314, Powers and duties of the liquidator.**
- 7402 Section **31A-27-315, Notice to creditors and others.**
- 7403 Section **31A-27-316, Duties of producers.**
- 7404 Section **31A-27-317, Actions by and against a liquidator.**
- 7405 Section **31A-27-318, Collection and list of assets.**
- 7406 Section **31A-27-319, Avoidance of property title transfers.**
- 7407 Section **31A-27-320, Fraudulent transfers prior to petition.**
- 7408 Section **31A-27-321, Voidable preferences and liens.**
- 7409 Section **31A-27-322, Recoupment from affiliates.**
- 7410 Section **31A-27-323, Setoffs.**
- 7411 Section **31A-27-324, Recovery of premiums owed.**
- 7412 Section **31A-27-325, Assessments.**
- 7413 Section **31A-27-326, Reinsurer's liability -- Paid claims.**
- 7414 Section **31A-27-327, Applicability of claims settlement provisions to loss claims.**
- 7415 Section **31A-27-328, Filing of claims.**
- 7416 Section **31A-27-329, Proof of claim.**
- 7417 Section **31A-27-330, Special claims.**
- 7418 Section **31A-27-330.5, Claim estimation.**
- 7419 Section **31A-27-330.6, Reinsurance commutations.**
- 7420 Section **31A-27-331, Special provisions for third party claims.**
- 7421 Section **31A-27-332, Disputed claims.**

- 7422 Section **31A-27-333, Surety's claims against insurer.**
- 7423 Section **31A-27-334, Secured claims.**
- 7424 Section **31A-27-335, Priority of distribution.**
- 7425 Section **31A-27-335.5, Health maintenance organization claims.**
- 7426 Section **31A-27-336, Liquidator's recommendations to the court.**
- 7427 Section **31A-27-337, Distribution of assets.**
- 7428 Section **31A-27-338, Unclaimed funds.**
- 7429 Section **31A-27-339, Termination of proceedings.**
- 7430 Section **31A-27-340, Reopening liquidation.**
- 7431 Section **31A-27-341, Disposition of records.**
- 7432 Section **31A-27-342, External audit of receiver's books.**
- 7433 Section **31A-27-401, Conservation of property of foreign or alien insurers found in**
- 7434 **this state.**
- 7435 Section **31A-27-402, Liquidation of property of foreign or alien insurers found in**
- 7436 **this state.**
- 7437 Section **31A-27-403, Foreign domiciliary receivers.**
- 7438 Section **31A-27-404, Ancillary formal proceedings.**
- 7439 Section **31A-27-405, Ancillary summary proceedings.**
- 7440 Section **31A-27-406, Claims of nonresidents against insurers domiciled in Utah.**
- 7441 Section **31A-27-407, Claims of residents against insurers domiciled in reciprocal**
- 7442 **states.**
- 7443 Section **31A-27-408, Attachment, garnishment, and levy of execution.**
- 7444 Section **31A-27-409, Interstate priorities.**
- 7445 Section **31A-27-410, Subordination of claims for noncooperation.**
- 7446 Section **31A-27-411, Severability clause.**