

**INSURER RECEIVERSHIP ACT**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: James A. Dunnigan**

Senate Sponsor: Curtis S. Bramble

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**LONG TITLE**

**General Description:**

This bill modifies the Insurance Code by repealing existing insurer rehabilitation and liquidation provisions and enacting the Insurer Receivership Act.

**Highlighted Provisions:**

This bill:

- ▶ repeals most provisions of Title 31A, Chapter 27, Insurers Rehabilitation and Liquidation, and enacts Title 31A, Chapter 27a, Insurer Receivership Act;
- ▶ rennumbers and amends provisions related to administrative actions;
- ▶ provides general provisions relating to:
  - definitions;
  - persons covered;
  - court proceedings, including jurisdiction, venue, notice and hearings, orders, and statutes of limitations;
  - exemptions from fees;
  - actions by and against a receiver, providing immunity and indemnification, and the possession and control of an insurer's records by a receiver;
  - financial obligations, including approval and payment of expenses and financial reporting;
  - reporting;
  - the affect of delinquency proceedings commenced before April 30, 2007; and



- 28           • severability;
- 29           ▶ provides procedures governing delinquency proceedings, including:
- 30           • commencing delinquency proceedings, expedited trials, decisions, and appeals;
- 31           • finding grounds for rehabilitation or liquidation, and the entry and effect of an
- 32 order of rehabilitation or liquidation; and
- 33           • preserving the confidentiality of the proceedings;
- 34           ▶ provides provisions governing the rehabilitation of an insurer, including:
- 35           • issuing rehabilitation orders;
- 36           • establishing the powers and duties of the rehabilitator;
- 37           • filing of rehabilitation plans;
- 38           • terminating rehabilitation; and
- 39           • requiring coordination with guaranty associations to assist in the orderly
- 40 transition to rehabilitation or liquidation;
- 41           ▶ establishes provisions for liquidation of an insurer, including:
- 42           • establishing the power of the liquidator;
- 43           • providing notice requirements;
- 44           • addressing liquidation orders;
- 45           • addressing continuance of coverage; and
- 46           • providing for the sale or dissolution of the corporate entity;
- 47           ▶ addresses asset recovery, including:
- 48           • turning over assets;
- 49           • recovering from affiliates;
- 50           • addressing unauthorized postpetition transfers;
- 51           • addressing voidable preferences and liens;
- 52           • addressing avoidance of property title transfers;
- 53           • addressing fraudulent transfers and obligations;
- 54           • addressing liability of transferees;
- 55           • providing for setoffs;
- 56           • providing for assessment of assets;
- 57           • addressing a reinsurer's liability;
- 58           • addressing life and health reinsurance;

- 59           • recovering of premiums owed; and
- 60           • requiring in certain circumstances reinsurance recoverable trust;
- 61         ▶ establishes claim procedures relating to:
  - 62           • filing, proof, and allowance of claims;
  - 63           • claims under occurrence policies, surety bonds, and surety undertakings;
  - 64           • allowance of contingent and unliquidated claims;
  - 65           • provisions for third party claims, disputed claims, codebtors, and secured
  - 66 creditors' claims; and
    - 67           • qualified financial contracts;
  - 68         ▶ provides for distribution of assets, including priority for distribution, early
  - 69 distribution, and partial and final distribution;
    - 70           ▶ establishes discharge and termination of delinquency and liquidations proceedings;
    - 71           ▶ establishes provisions relating to interstate relations; and
    - 72           ▶ makes technical and confirming changes.

73 **Monies Appropriated in this Bill:**

74           None

75 **Other Special Clauses:**

76           None

77 **Utah Code Sections Affected:**

78 **AMENDS:**

- 79           **31A-1-106**, as last amended by Chapter 95, Laws of Utah 1987
- 80           **31A-2-108**, as last amended by Chapter 344, Laws of Utah 1995
- 81           **31A-2-203**, as last amended by Chapter 177, Laws of Utah 2006
- 82           **31A-2-204**, as last amended by Chapter 177, Laws of Utah 2006
- 83           **31A-2-206**, as last amended by Chapters 79 and 204, Laws of Utah 1996
- 84           **31A-2-207**, as last amended by Chapter 2, Laws of Utah 2004
- 85           **31A-2-212**, as last amended by Chapter 177, Laws of Utah 2006
- 86           **31A-2-308**, as last amended by Chapter 58, Laws of Utah 2005
- 87           **31A-5-212**, as enacted by Chapter 242, Laws of Utah 1985
- 88           **31A-5-217**, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 89           **31A-5-305**, as last amended by Chapter 316, Laws of Utah 1994

- 90           **31A-5-416**, as last amended by Chapter 277, Laws of Utah 1992
- 91           **31A-5-504**, as last amended by Chapter 320, Laws of Utah 2006
- 92           **31A-5-506**, as last amended by Chapter 204, Laws of Utah 1986
- 93           **31A-8-213**, as last amended by Chapter 116, Laws of Utah 2001
- 94           **31A-9-502**, as last amended by Chapter 300, Laws of Utah 2000
- 95           **31A-9-504**, as enacted by Chapter 242, Laws of Utah 1985
- 96           **31A-11-104**, as last amended by Chapter 90, Laws of Utah 2004
- 97           **31A-11-109**, as enacted by Chapter 242, Laws of Utah 1985
- 98           **31A-13-107**, as last amended by Chapter 204, Laws of Utah 1986
- 99           **31A-14-206**, as last amended by Chapter 90, Laws of Utah 2004
- 100          **31A-14-215**, as last amended by Chapter 204, Laws of Utah 1986
- 101          **31A-14-217**, as last amended by Chapter 230, Laws of Utah 1992
- 102          **31A-15-105**, as last amended by Chapter 204, Laws of Utah 1986
- 103          **31A-17-605**, as last amended by Chapter 116, Laws of Utah 2001
- 104          **31A-17-606**, as last amended by Chapter 116, Laws of Utah 2001
- 105          **31A-17-609**, as last amended by Chapter 116, Laws of Utah 2001
- 106          **31A-17-610**, as last amended by Chapter 116, Laws of Utah 2001
- 107          **31A-18-106**, as last amended by Chapter 176, Laws of Utah 2006
- 108          **31A-22-617**, as last amended by Chapter 3, Laws of Utah 2005, First Special Session
- 109          **31A-23a-704**, as renumbered and amended by Chapter 298, Laws of Utah 2003
- 110          **31A-28-108**, as last amended by Chapters 116 and 161, Laws of Utah 2001
- 111          **31A-28-114**, as last amended by Chapter 161, Laws of Utah 2001
- 112          **31A-28-207**, as last amended by Chapter 308, Laws of Utah 2002
- 113          **31A-28-213**, as last amended by Chapter 363, Laws of Utah 2001
- 114          **31A-35-103**, as enacted by Chapter 293, Laws of Utah 1998
- 115          **31A-37-504**, as last amended by Chapter 312, Laws of Utah 2004

116 ENACTS:

- 117          **31A-27-502**, Utah Code Annotated 1953
- 118          **31A-27a-101**, Utah Code Annotated 1953
- 119          **31A-27a-102**, Utah Code Annotated 1953
- 120          **31A-27a-103**, Utah Code Annotated 1953

- 121           **31A-27a-104**, Utah Code Annotated 1953
- 122           **31A-27a-105**, Utah Code Annotated 1953
- 123           **31A-27a-106**, Utah Code Annotated 1953
- 124           **31A-27a-107**, Utah Code Annotated 1953
- 125           **31A-27a-108**, Utah Code Annotated 1953
- 126           **31A-27a-109**, Utah Code Annotated 1953
- 127           **31A-27a-110**, Utah Code Annotated 1953
- 128           **31A-27a-111**, Utah Code Annotated 1953
- 129           **31A-27a-112**, Utah Code Annotated 1953
- 130           **31A-27a-113**, Utah Code Annotated 1953
- 131           **31A-27a-114**, Utah Code Annotated 1953
- 132           **31A-27a-115**, Utah Code Annotated 1953
- 133           **31A-27a-116**, Utah Code Annotated 1953
- 134           **31A-27a-117**, Utah Code Annotated 1953
- 135           **31A-27a-119**, Utah Code Annotated 1953
- 136           **31A-27a-120**, Utah Code Annotated 1953
- 137           **31A-27a-201**, Utah Code Annotated 1953
- 138           **31A-27a-202**, Utah Code Annotated 1953
- 139           **31A-27a-203**, Utah Code Annotated 1953
- 140           **31A-27a-204**, Utah Code Annotated 1953
- 141           **31A-27a-205**, Utah Code Annotated 1953
- 142           **31A-27a-206**, Utah Code Annotated 1953
- 143           **31A-27a-207**, Utah Code Annotated 1953
- 144           **31A-27a-208**, Utah Code Annotated 1953
- 145           **31A-27a-209**, Utah Code Annotated 1953
- 146           **31A-27a-301**, Utah Code Annotated 1953
- 147           **31A-27a-302**, Utah Code Annotated 1953
- 148           **31A-27a-303**, Utah Code Annotated 1953
- 149           **31A-27a-304**, Utah Code Annotated 1953
- 150           **31A-27a-305**, Utah Code Annotated 1953
- 151           **31A-27a-401**, Utah Code Annotated 1953

152           **31A-27a-402**, Utah Code Annotated 1953  
153           **31A-27a-403**, Utah Code Annotated 1953  
154           **31A-27a-404**, Utah Code Annotated 1953  
155           **31A-27a-405**, Utah Code Annotated 1953  
156           **31A-27a-406**, Utah Code Annotated 1953  
157           **31A-27a-407**, Utah Code Annotated 1953  
158           **31A-27a-501**, Utah Code Annotated 1953  
159           **31A-27a-502**, Utah Code Annotated 1953  
160           **31A-27a-503**, Utah Code Annotated 1953  
161           **31A-27a-504**, Utah Code Annotated 1953  
162           **31A-27a-505**, Utah Code Annotated 1953  
163           **31A-27a-506**, Utah Code Annotated 1953  
164           **31A-27a-507**, Utah Code Annotated 1953  
165           **31A-27a-508**, Utah Code Annotated 1953  
166           **31A-27a-509**, Utah Code Annotated 1953  
167           **31A-27a-510**, Utah Code Annotated 1953  
168           **31A-27a-511**, Utah Code Annotated 1953  
169           **31A-27a-512**, Utah Code Annotated 1953  
170           **31A-27a-513**, Utah Code Annotated 1953  
171           **31A-27a-514**, Utah Code Annotated 1953  
172           **31A-27a-515**, Utah Code Annotated 1953  
173           **31A-27a-516**, Utah Code Annotated 1953  
174           **31A-27a-601**, Utah Code Annotated 1953  
175           **31A-27a-602**, Utah Code Annotated 1953  
176           **31A-27a-603**, Utah Code Annotated 1953  
177           **31A-27a-604**, Utah Code Annotated 1953  
178           **31A-27a-605**, Utah Code Annotated 1953  
179           **31A-27a-606**, Utah Code Annotated 1953  
180           **31A-27a-607**, Utah Code Annotated 1953  
181           **31A-27a-608**, Utah Code Annotated 1953  
182           **31A-27a-609**, Utah Code Annotated 1953

- 183           **31A-27a-610**, Utah Code Annotated 1953
- 184           **31A-27a-611**, Utah Code Annotated 1953
- 185           **31A-27a-612**, Utah Code Annotated 1953
- 186           **31A-27a-701**, Utah Code Annotated 1953
- 187           **31A-27a-702**, Utah Code Annotated 1953
- 188           **31A-27a-703**, Utah Code Annotated 1953
- 189           **31A-27a-704**, Utah Code Annotated 1953
- 190           **31A-27a-705**, Utah Code Annotated 1953
- 191           **31A-27a-801**, Utah Code Annotated 1953
- 192           **31A-27a-802**, Utah Code Annotated 1953
- 193           **31A-27a-803**, Utah Code Annotated 1953
- 194           **31A-27a-804**, Utah Code Annotated 1953
- 195           **31A-27a-805**, Utah Code Annotated 1953
- 196           **31A-27a-901**, Utah Code Annotated 1953
- 197           **31A-27a-902**, Utah Code Annotated 1953

198 RENUMBERS AND AMENDS:

- 199           **31A-27-501**, (Renumbered from 31A-27-101, as last amended by Chapter 204, Laws of
- 200 Utah 1986)
- 201           **31A-27-503**, (Renumbered from 31A-27-201, as last amended by Chapter 161, Laws of
- 202 Utah 1987)
- 203           **31A-27-504**, (Renumbered from 31A-27-203, as last amended by Chapter 204, Laws of
- 204 Utah 1986)
- 205           **31A-27a-118**, (Renumbered from 31A-27-107, as enacted by Chapter 242, Laws of
- 206 Utah 1985)

207 REPEALS:

- 208           **31A-27-102**, as last amended by Chapter 308, Laws of Utah 2002
- 209           **31A-27-103**, as last amended by Chapter 298, Laws of Utah 2003
- 210           **31A-27-104**, as last amended by Chapter 131, Laws of Utah 1999
- 211           **31A-27-105**, as enacted by Chapter 242, Laws of Utah 1985
- 212           **31A-27-106**, as last amended by Chapter 204, Laws of Utah 1986
- 213           **31A-27-108**, as enacted by Chapter 242, Laws of Utah 1985

214           **31A-27-109**, as enacted by Chapter 204, Laws of Utah 1986  
215           **31A-27-110**, as enacted by Chapter 131, Laws of Utah 1999  
216           **31A-27-202**, as last amended by Chapter 204, Laws of Utah 1986  
217           **31A-27-301**, as last amended by Chapter 204, Laws of Utah 1986  
218           **31A-27-302**, as last amended by Chapter 252, Laws of Utah 2003  
219           **31A-27-303**, as last amended by Chapter 204, Laws of Utah 1986  
220           **31A-27-304**, as last amended by Chapter 344, Laws of Utah 1995  
221           **31A-27-305**, as last amended by Chapter 308, Laws of Utah 2002  
222           **31A-27-306**, as enacted by Chapter 242, Laws of Utah 1985  
223           **31A-27-307**, as last amended by Chapter 131, Laws of Utah 1999  
224           **31A-27-308**, as last amended by Chapter 185, Laws of Utah 1997  
225           **31A-27-309**, as enacted by Chapter 242, Laws of Utah 1985  
226           **31A-27-310**, as last amended by Chapter 131, Laws of Utah 1999  
227           **31A-27-311**, as last amended by Chapter 13, Laws of Utah 1998  
228           **31A-27-311.5**, as last amended by Chapter 252, Laws of Utah 2003  
229           **31A-27-312**, as last amended by Chapter 230, Laws of Utah 1992  
230           **31A-27-313**, as enacted by Chapter 242, Laws of Utah 1985  
231           **31A-27-314**, as last amended by Chapter 105, Laws of Utah 2004  
232           **31A-27-315**, as last amended by Chapter 177, Laws of Utah 2006  
233           **31A-27-316**, as last amended by Chapter 298, Laws of Utah 2003  
234           **31A-27-317**, as last amended by Chapter 308, Laws of Utah 2002  
235           **31A-27-318**, as enacted by Chapter 242, Laws of Utah 1985  
236           **31A-27-319**, as last amended by Chapter 204, Laws of Utah 1986  
237           **31A-27-320**, as last amended by Chapter 204, Laws of Utah 1986  
238           **31A-27-321**, as last amended by Chapter 277, Laws of Utah 1992  
239           **31A-27-322**, as enacted by Chapter 204, Laws of Utah 1986  
240           **31A-27-323**, as last amended by Chapter 131, Laws of Utah 1999  
241           **31A-27-324**, as last amended by Chapter 298, Laws of Utah 2003  
242           **31A-27-325**, as last amended by Chapter 204, Laws of Utah 1986  
243           **31A-27-326**, as last amended by Chapter 105, Laws of Utah 2004  
244           **31A-27-327**, as last amended by Chapter 105, Laws of Utah 2004



- 245           **31A-27-328**, as last amended by Chapter 131, Laws of Utah 1999
- 246           **31A-27-329**, as enacted by Chapter 242, Laws of Utah 1985
- 247           **31A-27-330**, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 248           **31A-27-330.5**, as last amended by Chapter 185, Laws of Utah 1997
- 249           **31A-27-330.6**, as last amended by Chapter 105, Laws of Utah 2004
- 250           **31A-27-331**, as enacted by Chapter 242, Laws of Utah 1985
- 251           **31A-27-332**, as last amended by Chapter 308, Laws of Utah 2002
- 252           **31A-27-333**, as last amended by Chapter 204, Laws of Utah 1986
- 253           **31A-27-334**, as last amended by Chapter 204, Laws of Utah 1986
- 254           **31A-27-335**, as last amended by Chapter 300, Laws of Utah 2000
- 255           **31A-27-335.5**, as last amended by Chapter 344, Laws of Utah 1995
- 256           **31A-27-336**, as enacted by Chapter 242, Laws of Utah 1985
- 257           **31A-27-337**, as last amended by Chapter 308, Laws of Utah 2002
- 258           **31A-27-338**, as enacted by Chapter 242, Laws of Utah 1985
- 259           **31A-27-339**, as last amended by Chapter 204, Laws of Utah 1986
- 260           **31A-27-340**, as last amended by Chapter 308, Laws of Utah 2002
- 261           **31A-27-341**, as last amended by Chapter 308, Laws of Utah 2002
- 262           **31A-27-342**, as enacted by Chapter 242, Laws of Utah 1985
- 263           **31A-27-401**, as last amended by Chapter 204, Laws of Utah 1986
- 264           **31A-27-402**, as enacted by Chapter 242, Laws of Utah 1985
- 265           **31A-27-403**, as enacted by Chapter 242, Laws of Utah 1985
- 266           **31A-27-404**, as enacted by Chapter 242, Laws of Utah 1985
- 267           **31A-27-405**, as enacted by Chapter 242, Laws of Utah 1985
- 268           **31A-27-406**, as enacted by Chapter 242, Laws of Utah 1985
- 269           **31A-27-407**, as last amended by Chapter 204, Laws of Utah 1986
- 270           **31A-27-408**, as enacted by Chapter 242, Laws of Utah 1985
- 271           **31A-27-409**, as last amended by Chapter 204, Laws of Utah 1986
- 272           **31A-27-410**, as last amended by Chapter 344, Laws of Utah 1995
- 273           **31A-27-411**, as last amended by Chapter 204, Laws of Utah 1986

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

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

277 **31A-1-106. Residual unlicensed domestic insurers.**

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

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

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

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

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

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

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

303 (6) Whenever the commissioner grants an exemption under Subsection (5), the  
304 commissioner shall issue to the insurer a certificate of authority. The commissioner may  
305 amend the certificate at any time, specifying the business that the insurer may transact and  
306 specifying in detail the controls to which the insurer shall be subject. These controls shall

307 correspond as nearly as practicable to the controls applicable to corporations transacting a like  
308 business.

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

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

313 **31A-2-108. Legal services.**

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

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

324 (3) The commissioner may refer such evidence as is available concerning violations of  
325 this title or of any rule or order under this title to the proper county attorney or district attorney,  
326 who may, with or without this reference, institute the appropriate criminal proceedings.

327 (4) For proceedings authorized by [~~Title 31A, Chapter 27, Insurers Rehabilitation and~~  
328 ~~Liquidation~~] Chapter 27a, Insurer Receivership Act, the commissioner may employ on a  
329 contract basis legal counsel other than the attorney general, with the fees, costs, and expenses  
330 of the counsel and the attorney general being a class one administrative expense under Section  
331 [~~31A-27-335~~] 31A-27a-701.

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

333 **31A-2-203. Examinations and alternatives.**

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

337 (i) a licensee under this title;

- 338 (ii) an applicant for a license under this title;
- 339 (iii) a person or organization of persons doing or in process of organizing to do an
- 340 insurance business in this state; or
- 341 (iv) a person who is not, but should be, licensed under this title.
- 342 (b) When reasonably necessary for an examination under Subsection (1)(a), the
- 343 commissioner may examine:
  - 344 (i) so far as they relate to the examinee, the accounts, records, documents, or evidences
  - 345 of transactions of:
    - 346 (A) the insurer or other licensee;
    - 347 (B) any officer or other person who has executive authority over or is in charge of any
    - 348 segment of the examinee's affairs; or
    - 349 (C) any affiliate of the examinee; or
  - 350 (ii) any third party model or product used by the examinee.
  - 351 (c) (i) On demand, each examinee under Subsection (1)(a) shall make available to the
  - 352 commissioner for examination:
    - 353 (A) any of the examinee's own accounts, records, files, documents, or evidences of
    - 354 transactions; and
    - 355 (B) to the extent reasonably necessary for an examination, the accounts, records, files,
    - 356 documents, or evidences of transactions of any persons under Subsection (1)(b).
  - 357 (ii) Except as provided in Subsection (1)(c)(iii), failure to make the documents
  - 358 described in Subsection (1)(c)(i) available is concealment of records under Subsection
  - 359 [~~31A-27-307(7)~~] 31A-27a-207(1)(e).
  - 360 (iii) If the examinee is unable to obtain accounts, records, files, documents, or
  - 361 evidences of transactions from persons under Subsection (1)(b), that failure is not concealment
  - 362 of records if the examinee immediately terminates the relationship with the other person.
  - 363 (d) (i) Neither the commissioner nor an examiner may remove any account, record, file,
  - 364 document, evidence of transaction, or other property of the examinee from the examinee's
  - 365 offices unless:
    - 366 (A) the examinee consents in writing; or
    - 367 (B) a court grants permission.
  - 368 (ii) The commissioner may make and remove copies or abstracts of the following

369 described in Subsection (1)(d)(i):

- 370 (A) an account;
- 371 (B) a record;
- 372 (C) a file;
- 373 (D) a document;
- 374 (E) evidence of transaction; or
- 375 (F) other property.

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

- 378 (i) every insurer, both domestic and nondomestic;
- 379 (ii) every licensed rate service organization; and
- 380 (iii) any other licensee.

381 (b) The commissioner shall examine insurers, both domestic and nondomestic, no less  
382 frequently than once every five years, but the commissioner may use in lieu examinations  
383 under Subsection (4) to satisfy this requirement.

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

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

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

392 (iii) If the evidence justifies an examination, the commissioner shall order an  
393 examination.

394 (e) (i) When the board of directors of a domestic insurer requests that the  
395 commissioner examine the insurer, the commissioner shall examine the insurer as soon as  
396 reasonably possible.

397 (ii) If the examination requested under this Subsection (2)(e) is conducted within two  
398 years after completion of a comprehensive examination by the commissioner, costs of the  
399 requested examination may not be deducted from premium taxes under Section 59-9-102

400 unless the commissioner's order specifically provides for the deduction.

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

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

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

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

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

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

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

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

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

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

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

414 (ii) another government agency in:

415 (A) this state;

416 (B) the federal government; or

417 (C) another state.

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

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

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

422 (5) (a) An examination may be comprehensive or limited with respect to the

423 examinee's affairs and condition. The commissioner shall determine the nature and scope of  
424 each examination, taking into account all relevant factors, including:

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

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

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

428 (iv) reports from:

429 (A) independent auditors; and

430 (B) self-certification entities; and

- 431 (v) the nature of examinations performed elsewhere.
- 432 (b) The examination of an alien insurer shall be limited to insurance transactions and  
433 assets in the United States, unless the commissioner orders otherwise after finding that  
434 extraordinary circumstances necessitate a broader examination.
- 435 (6) To effectively administer this section, the commissioner:
- 436 (a) shall:
- 437 (i) maintain effective financial condition and market regulation surveillance systems  
438 including:
- 439 (A) financial and market analysis; and  
440 (B) review of insurance regulatory information system reports;
- 441 (ii) employ a priority scheduling method that focuses on insurers and other licensees  
442 most in need of examination; and
- 443 (iii) use examination management techniques similar to those outlined in the Financial  
444 Condition Examination Handbook of the National Association of Insurance Commissioners;  
445 and
- 446 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,  
447 may make rules pertaining to the financial condition and market regulation surveillance  
448 systems.

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

450 **31A-2-204. Conducting examinations.**

- 451 (1) (a) For each examination under Section 31A-2-203, the commissioner shall issue an  
452 order:
- 453 (i) stating the scope of the examination; and  
454 (ii) designating the examiner in charge.
- 455 (b) The commissioner need not give advance notice of an examination to an examinee.
- 456 (c) The examiner in charge shall give the examinee a copy of the order issued under  
457 this Subsection (1).
- 458 (d) (i) The commissioner may alter the scope or nature of an examination at any time  
459 without advance notice to the examinee.
- 460 (ii) If the commissioner amends an order described in this Subsection (1), the  
461 commissioner shall provide a copy of any amended order to the examinee.

462 (e) Statements in the commissioner's examination order concerning examination scope  
463 are for the examiner's guidance only.

464 (f) Examining relevant matters not mentioned in an order issued under this Subsection  
465 (1) is not a violation of this title.

466 (2) The commissioner shall, whenever practicable, cooperate with the insurance  
467 regulators of other states by conducting joint examinations of:

468 (a) multistate insurers doing business in this state; or

469 (b) other multistate licensees doing business in this state.

470 (3) An examiner authorized by the commissioner shall, when necessary to the purposes  
471 of the examination, have access at all reasonable hours to the premises and to any books,  
472 records, files, securities, documents, or property of:

473 (a) the examinee; and

474 (b) any of the following if the premises, books, records, files, securities, documents, or  
475 property relate to the affairs of the examinee:

476 (i) an officer of the examinee;

477 (ii) any other person who:

478 (A) has executive authority over the examinee; or

479 (B) is in charge of any segment of the examinee's affairs; or

480 (iii) any affiliate of the examinee under Subsection 31A-2-203(1)(b).

481 (4) (a) The officers, employees, and agents of the examinee and of persons under  
482 Subsection 31A-2-203(1)(b) shall comply with every reasonable request of the examiners for  
483 assistance in any matter relating to the examination.

484 (b) A person may not obstruct or interfere with the examination except by legal  
485 process.

486 (5) If the commissioner finds the accounts or records to be inadequate for proper  
487 examination of the condition and affairs of the examinee or improperly kept or posted, the  
488 commissioner may employ experts to rewrite, post, or balance the accounts or records at the  
489 expense of the examinee.

490 (6) (a) The examiner in charge of an examination shall make a report of the  
491 examination no later than 60 days after the completion of the examination that shall include:

492 (i) the information and analysis ordered under Subsection (1); and



493 (ii) the examiner's recommendations.

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

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

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

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

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

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

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

508 (d) If the examination report is accepted:

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

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

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

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

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

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

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

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

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

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

524 (i) a request for agency action under this section; or

525 (ii) adjudicative proceeding under this section.

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

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

531 (a) a member of the board of the examinee; or

532 (b) one or more newspapers in this state.

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

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

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

540 **31A-2-206. Receipt and handling of deposits.**

541 (1) As used in this chapter:

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

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

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

549 (b) "Federal Reserve book-entry system" means the computerized system sponsored by  
550 the United States Department of the Treasury and certain other agencies and instrumentalities  
551 of the United States for holding and transferring securities of the United States government and  
552 other agencies and instrumentalities.

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

555 accept:

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

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

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

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

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

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

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

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

568 (d) fourth, for all other creditors in the order of priority established under Section  
569 [~~31A-27-335~~] 31A-27a-701.

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

572 (6) Deposits may be made by:

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

577 (b) delivering to the commissioner, on a form adopted by rule, a signed certificate of a  
578 custodian institution, describing securities qualifying for deposit under Subsection (7) that are  
579 on deposit with a clearing corporation or held in the Federal Reserve book-entry system in the  
580 name of the custodian institution, in trust for the purposes stated under this section, and that  
581 these securities are subject to the exclusive direction of the commissioner and may not be  
582 withdrawn or transferred by any person, including the insurer owning the securities, without the  
583 commissioner's written approval.

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

- 586 (i) are expressly approved by the commissioner;
- 587 (ii) are subject to disposition by the state treasurer or custodian institution only with the  
588 concurrence of the commissioner; and
- 589 (iii) are not available to any other person except as expressly provided by law.
- 590 (b) The authorized securities are:
- 591 (i) deposits or certificates of deposit insured by the Federal Deposit Insurance  
592 Corporation;
- 593 (ii) bonds or other evidences of indebtedness that are guaranteed as to principal and  
594 interest by the United States;
- 595 (iii) tax anticipation bonds or notes, general obligation bonds, or revenue bonds of this  
596 state or of any county, incorporated city or town, school district, or other political subdivision  
597 of this state, if the bonds or notes are rated AAA by Standard and Poor's or an equivalent  
598 nationally recognized rating agency;
- 599 (iv) bonds or other evidences of indebtedness issued or guaranteed by an agency or  
600 instrumentality of the United States; and
- 601 (v) any other security approved by the commissioner that ~~he~~ the commissioner  
602 considers an equivalent grade investment to those enumerated under Subsections (7)(b)(i)  
603 through (iv) based on tests of the safety of principal and liquidity.
- 604 (8) Securities held on deposit shall be valued under Section 31A-17-401 as those  
605 investments are valued for life insurers, or at market, whichever is lower. The securities shall  
606 be revalued whenever the commissioner requests to ensure continued compliance with the  
607 requirements of this title.
- 608 (9) (a) The state treasurer or custodian institution shall:
- 609 (i) deliver to the depositor a receipt for all securities deposited or held;
- 610 (ii) issue a duplicate copy of the receipt to the commissioner; and
- 611 (iii) permit the depositor to inspect its physically held securities at any reasonable time.
- 612 (b) On application of the depositor or when required by the law of any state or country  
613 or by the order of any court of competent jurisdiction, the state treasurer or custodian institution  
614 shall certify that the deposit was made and what is on deposit.
- 615 (c) Depositors, the state treasurer, any custodian institution, and the commissioner shall  
616 each keep a permanent record of securities deposited or held under this section and of any

617 substitutions or withdrawals. They shall compare records at least annually.

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

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

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

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

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

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

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

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

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

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

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

643 **31A-2-207. Commissioner's records and reports -- Protection from disclosure of**  
644 **certain records.**

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

646 (a) required by law;

647 (b) necessary for the effective operation of the department; or

- 648 (c) necessary to maintain a full record of department activities.
- 649 (2) The records of the department may be preserved, managed, stored, and made  
650 available for review consistent with:
- 651 (a) another Utah statute;
- 652 (b) the rules made under Section 63-2-904;
- 653 (c) the decisions of the State Records Committee made under Title 63, Chapter 2,  
654 Government Records Access and Management Act; or
- 655 (d) the needs of the public.
- 656 (3) A department record may not be destroyed, damaged, or disposed of without:
- 657 (a) authorization of the commissioner; and
- 658 (b) compliance with all other applicable laws.
- 659 (4) The commissioner shall maintain a permanent record of the commissioner's  
660 proceedings and important activities, including:
- 661 (a) a concise statement of the condition of each insurer examined by the commissioner;  
662 and
- 663 (b) a record of all certificates of authority and licenses issued by the commissioner.
- 664 (5) (a) Prior to October 1 of each year, the commissioner shall prepare an annual report  
665 to the governor which shall include, for the preceding calendar year, the information  
666 concerning the department and the insurance industry which the commissioner believes will be  
667 useful to the governor and the public.
- 668 (b) The report required by this Subsection (5) shall include the information required  
669 under Chapter [27] 27a, Insurer Receivership Act, and Subsections 31A-2-106(2),  
670 31A-2-205(3), and 31A-2-208(3).
- 671 (c) The commissioner shall make the report required by this Subsection (5) available to  
672 the public and industry in electronic format.
- 673 (6) All department records and reports are open to public inspection unless specifically  
674 provided otherwise by statute or by Title 63, Chapter 2, Government Records Access and  
675 Management Act.
- 676 (7) On request, the commissioner shall provide to any person certified or uncertified  
677 copies of any record in the department that is open to public inspection.
- 678 (8) Notwithstanding Subsection (6) and Title 63, Chapter 2, Government Records

679 Access and Management Act, the commissioner shall protect from disclosure any record, as  
680 defined in Section 63-2-103, or other document received from an insurance regulator of  
681 another jurisdiction:

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

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

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

688 **31A-2-212. Miscellaneous duties.**

689 (1) Upon issuance of any order limiting, suspending, or revoking an insurer's authority  
690 to do business in Utah, and on institution of any proceedings against the insurer under Chapter  
691 [~~27, Insurers Rehabilitation and Liquidation~~] 27a, Insurer Receivership Act, the commissioner:

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

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

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

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

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

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

708 (d) Whenever the commissioner revokes the certificate of authority or starts  
709 proceedings under Chapter [~~27, Insurers Rehabilitation and Liquidation~~] 27a, Insurer

710 Receivership Act, against any insurer authorized to do a surety business, the commissioner  
711 shall immediately give notice of that action to each public officer who was sent a certified copy  
712 under this Subsection (3).

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

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

716 (A) files a petition for receivership; or

717 (B) is in receivership; or

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

720 (A) is in financial difficulty; or

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

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

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

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

730 **31A-2-308. Enforcement penalties and procedures.**

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

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

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

740 (c) (i) The commissioner may order an individual producer, limited line producer,



741 customer service representative, managing general agent, reinsurance intermediary, adjuster, or  
742 insurance consultant who violates an order issued under Subsection 31A-2-201(4) to forfeit to  
743 the state not more than \$2,500 for each violation. Each day the violation continues is a  
744 separate violation.

745 (ii) The commissioner may order any other person who violates an order issued under  
746 Subsection 31A-2-201(4) to forfeit to the state not more than \$5,000 for each violation. Each  
747 day the violation continues is a separate violation.

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

751 (2) When a person fails to comply with an order issued under Subsection  
752 31A-2-201(4), including a forfeiture order, the commissioner may file an action in any court of  
753 competent jurisdiction or obtain a court order or judgment:

754 (a) enforcing the commissioner's order;

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

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

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

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

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

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

770 (b) the court may, after a hearing following at least five days written notice to the  
771 parties subject to the order or judgment, amend the order or judgment to add the forfeiture or

772 forfeitures, as prescribed in Subsection (2)(c), until the person complies.

773 (5) (a) The proceeds of all forfeitures under this section, including collection expenses,  
774 shall be paid into the General Fund.

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

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

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

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

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

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

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

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

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

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

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

792 (i) intentionally violates:

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

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

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

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

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

798 (iii) intentionally aids any person in violating:

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

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

801 (b) Unless a specific criminal penalty is provided elsewhere in this title, the person may  
802 be fined not more than:

803 (i) \$10,000 if a corporation; or  
804 (ii) \$5,000 if a person other than a corporation.  
805 (c) If the person is an individual, the person may, in addition, be imprisoned for up to  
806 one year.

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

809 (10) (a) A person who knowingly and intentionally violates Section 31A-4-102,  
810 31A-8a-208, 31A-15-105, 31A-23a-116, or 31A-31-111 is guilty of a felony as provided in this  
811 Subsection (10).

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

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

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

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

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

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

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

821 (ii) if there are grounds for delinquency proceedings against the licensee under Section  
822 [~~31A-27-301~~ or Section ~~31A-27-307~~] 31A-27a-207; or

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

826 (b) Additional license termination or probation provisions for licensees other than  
827 insurers are set forth in Sections 31A-19a-303, 31A-19a-304, 31A-23a-111, 31A-23a-112,  
828 31A-25-208, 31A-25-209, 31A-26-213, 31A-26-214, 31A-35-501, and 31A-35-503.

829 (12) The enforcement penalties and procedures set forth in this section are not  
830 exclusive, but are cumulative of other rights and remedies the commissioner has pursuant to  
831 applicable law.

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

833 **31A-5-212. Certificate of authority.**

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

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

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

844 (ii) there is no basis for revoking the organization permit under Subsection  
845 31A-5-209(2); and

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

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

850 (3) After the issuance of the certificate of authority the following action shall take  
851 place:

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

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

857 (4) (a) A corporation may apply to the commissioner for a new or amended certificate  
858 of authority altering limits on its business or methods of operation. The application shall  
859 contain or be accompanied by information in Subsection 31A-5-204(2) as the commissioner  
860 reasonably requires. The commissioner shall issue the new certificate if ~~he~~ the commissioner  
861 finds:

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

864 (ii) the proposed business would not be contrary to law or to the interests of insureds or

865 the public.

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

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

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

873 **31A-5-217. Separate accounts for variable contracts.**

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

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

883 (3) To the extent necessary to comply with the federal Investment Company Act of  
884 1940, 15 U.S.C. Sec. 80a-1 et seq., or its interpretive rules, the corporation may:

885 (a) adopt special procedures for the conduct of the business and affairs of a separate  
886 account; and

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

892 (4) The commissioner may specify in the certificate of authority of a newly organized  
893 corporation the minimum required capital or the minimum required permanent surplus to be  
894 provided for each separate account. If a separate account is established after a certificate of  
895 authority has been issued, the commissioner shall require the corporation to allocate an

896 adequate amount of capital and surplus to the separate account. An insurer may not be required  
897 to allocate more capital and surplus to a separate account than would be required of a separate  
898 insurer under Section 31A-5-211 and Chapter 17, Part 6, Risk-Based Capital.

899 (5) The income and assets attributable to a separate account shall always remain  
900 identified with the particular account, but unless the commissioner so orders, the assets need  
901 not be kept physically separate from other assets of the corporation. The income and gains and  
902 losses, whether or not realized, from assets attributable to a separate account shall be credited  
903 to or charged against the account without regard to other income, gains, or losses of the  
904 corporation.

905 (6) Except as provided in Subsection (7), liabilities arising out of any other business of  
906 the corporation are not to be allocated to a separate account, nor are any liabilities arising out of  
907 a separate account to be allocated to any other account of the corporation, except as provided in  
908 Subsection (11).

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

911 (b) A liquidation order under Section [~~31A-27-310~~] 31A-27a-401 for the general  
912 account or for any separate account shall have effect as a rehabilitation order under Section  
913 [~~31A-27-303~~] 31A-27a-301 for all other accounts of the corporation. Claims remaining unpaid  
914 after completion of the liquidation under Chapter [~~27~~] 27a, Insurer Receivership Act, shall be  
915 liens on the interests of shareholders, if any, but not on any other interests, in all of the  
916 corporation's assets that are not liquidated. The rehabilitator may transform these liens into  
917 ownership interests under [~~Subsection 31A-27-304(5)~~] Section 31A-27a-302.

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

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

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

925 (11) The general account of the corporation, or any separate account, may, for a fair  
926 consideration as defined in [~~Subsection 31A-27-102(1)(h)~~] Section 31A-27a-102, provide

927 guarantees in connection with, perform services for, or reinsure other accounts, subject to rules  
928 adopted by the commissioner. The determination of a fair consideration shall be made by  
929 applying generally accepted accounting principles and realistic actuarial tables.

930 (12) Section 31A-18-102 deals with separate account investments. Section  
931 31A-20-106 requires the commissioner's approval before delivery of certain variable contracts.  
932 Section 31A-22-411 and Subsection 31A-21-301 (1)(d) deal with policy provisions in separate  
933 account contracts.

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

935 **31A-5-305. Authorized securities.**

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

939 (i) ~~no~~ nonvoting common stock may not be issued;

940 (ii) all classes of common stock must have equal voting rights;

941 (iii) all common stock must have a stated par value; and

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

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

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

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

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

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

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

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

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

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

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

968 (b) A mutual may issue contribution notes with the commissioner's approval. The  
969 contribution notes may be denominated by any name that is not misleading. The contribution  
970 notes are subject to this subsection. The commissioner may approve the issuance only if ~~he~~  
971 the commissioner finds that:

972 (i) the notes will not be issued in denominations of less than \$2,500, and no single  
973 issue will be sold to more than 15 persons;

974 (ii) no discount, commission, or other fee will be paid or allowed;

975 (iii) the notes will not be the subject of a public offering;

976 (iv) the terms of the notes are not prejudicial to policyholders, holders of mutual bonds,  
977 or prior contribution notes; and

978 (v) the mutual's articles or bylaws do not forbid their issuance.

979 (c) ~~No~~ A mutual may not:

980 (i) if it has any outstanding obligations on bonds or contribution notes, borrow on  
981 contribution notes from, or sell bonds to, any other insurer without the approval of the  
982 commissioner; or

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

985 (d) Payment of the principal or interest on bonds or contribution notes may be made in  
986 whole or in part only after approval by the commissioner. The commissioner's approval shall  
987 be given if all the financial requirements of the issuer to do the insurance business it is then  
988 doing will continue to be satisfied after that payment, and if the interests of its insureds and the



989 public are not endangered by the payment. In the event of liquidation under Chapter [27] 27a,  
990 Insurer Receivership Act, unpaid amounts of principal and interest on contribution notes are  
991 subordinate to the payment of principal and interest on any bonds issued by the corporation.

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

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

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

996 **31A-5-416. Executive compensation.**

997 (1) Subject to this section, Section 16-10a-302, except Subsection 16-10a-302(13),  
998 applies to stock and mutual corporations.

999 (2) Shareholders' approval is required of any benefit or payment to a director or officer  
1000 for services rendered to a stock corporation more than 90 days before the agreement or decision  
1001 to give the benefit or make the payment, unless the benefit or payment is made under a plan  
1002 approved by the shareholders. Shareholder approval is also required for a new pension plan,  
1003 profit-sharing plan, stock option plan, or an amendment to an existing plan which, so far as it  
1004 pertains to any director or officer, substantially increases the financial burden on the  
1005 corporation.

1006 (3) An action taken by the board of a mutual on the compensation of officers, directors,  
1007 or employees, other than setting individual salaries or standards for salaries of classes of  
1008 employees, shall be reported to the commissioner within 30 days.

1009 (4) The annual report to the commissioner shall include the amount of all direct and  
1010 indirect remuneration for services, including retirement and other deferred compensation  
1011 benefits and stock options, paid or accrued each year:

1012 (a) for the benefit of each director, each officer, and employee whose remuneration  
1013 exceeds an amount established by the commissioner by rule;

1014 (b) for all directors and officers as a group; and

1015 (c) for the five most highly compensated officers, directors, and employees.

1016 (5) ~~No~~ An arrangement for compensation or other employment benefits for any  
1017 director, officer, or employee with decision-making power may not be made if it would:

1018 (a) measure the compensation or other benefits in whole or in part by any criteria that  
1019 would create a financial inducement to act contrary to the best interests of the corporation; or

1020 (b) have a tendency to make the corporation depend for continuance or soundness of  
1021 operation upon the continuation of any director, officer, or employee in [~~his~~] the person's  
1022 position.

1023 (6) Except for the insurer, no person having any authority in the investment or  
1024 disposition of the funds of a domestic insurer may accept any fee, brokerage, gift, or other  
1025 emolument because of any investment, loan, deposit, purchase, sale, payment, or exchange  
1026 made by or for the insurer, nor may that person be financially interested in the investment or  
1027 disposition of funds in any capacity.

1028 (7) Unless the commissioner, acting in the corporation's best interests, orders  
1029 otherwise, if an order of rehabilitation or liquidation is issued under Section [~~31A-27-303~~]  
1030 31A-27a-301 or [~~Section 31A-27-310~~] 31A-27a-401, the contractual obligations of the insurer  
1031 for unperformed services of any director, principal officer, or person performing similar  
1032 functions or having similar powers are terminated. This Subsection (7) does not apply to  
1033 obligations vested before July 1, 1986.

1034 Section 13. Section **31A-5-504** is amended to read:

1035 **31A-5-504. Voluntary dissolution of domestic insurance corporations.**

1036 (1) (a) Except as otherwise modified by this section, a domestic stock insurance  
1037 corporation may dissolve under Sections 16-10a-1401 through 16-10a-1409 and Section  
1038 16-10a-1440.

1039 (b) Except as otherwise modified by this section, a domestic mutual insurance  
1040 corporation may dissolve under Sections 16-6a-1401 through 16-6a-1409 and Section  
1041 16-6a-1419.

1042 (2) (a) At least 60 days prior to the submission to shareholders or policyholders of any  
1043 proposed voluntary dissolution of an insurance corporation, the plan of dissolution shall be  
1044 filed with the commissioner.

1045 (b) The commissioner may require the submission of any information in addition to the  
1046 plan of dissolution that will establish:

1047 (i) the financial condition of the corporation; or

1048 (ii) other facts relevant to the proposed dissolution.

1049 (c) If the shareholders or policyholders adopt the resolution to dissolve, the  
1050 commissioner shall, within 30 days after the adoption of the resolution, begin an examination

1051 of the corporation.

1052 (d) The commissioner shall approve the dissolution unless the commissioner finds,  
1053 after a hearing, that the corporation:

1054 (i) is insolvent; or

1055 (ii) may become insolvent in the process of dissolution.

1056 (e) Upon approval, the corporation may:

1057 (i) transfer all of its obligations under insurance policies to other insurers approved by  
1058 the commissioner; and

1059 (ii) after the transfers described in Subsection (2)(e)(i), dissolve under Subsection (1).

1060 (f) If the commissioner disapproves the dissolution, the commissioner shall petition the  
1061 court for a liquidation under Section [~~31A-27-307~~] 31A-27a-207.

1062 (3) During the dissolution under Subsection (1), the corporation may apply to the  
1063 commissioner to have the dissolution continued under the commissioner's supervision. After  
1064 receiving this application, the commissioner shall apply to the court for a liquidation under  
1065 Section [~~31A-27-307~~] 31A-27a-207.

1066 (4) If the corporation revokes the voluntary dissolution proceedings under Section  
1067 16-6a-1404 or 16-10a-1404, the corporation shall file a copy of the revocation of voluntary  
1068 dissolution proceedings with the commissioner.

1069 (5) In distributing the assets in the dissolution of a nonlife mutual, [~~Subsection~~  
1070 ~~31A-27-337(4)~~] Section 31A-27a-705 applies.

1071 (6) (a) No remedy available to or against the corporation, its directors, officers, or  
1072 shareholders is taken away or impaired if an action or other proceeding is brought within two  
1073 years after dissolution for any right or claim existing, or any liability incurred, prior to the  
1074 voluntary dissolution under this section.

1075 (b) The action or proceeding described in Subsection (6)(a) may be prosecuted or  
1076 defended by the corporation in its corporate name. The shareholders, directors, and officers  
1077 may take appropriate corporate or other action to protect the remedy, right, or claim.

1078 (c) A corporation which is dissolved by the expiration of its period of duration may  
1079 amend its articles of incorporation during the two years to provide for perpetual existence.

1080 (7) During the voluntary dissolution of a domestic insurance corporation under this  
1081 section, its corporate existence continues to allow the winding up of the corporation's affairs

1082 regarding any property and assets not distributed or otherwise disposed of prior to dissolution.

1083 To effect that purpose, the corporation may:

1084 (a) sell or otherwise dispose of the property and assets;

1085 (b) sue and be sued;

1086 (c) contract; and

1087 (d) exercise all other necessary powers.

1088 Section 14. Section **31A-5-506** is amended to read:

1089 **31A-5-506. Conversion of a domestic mutual into a stock corporation.**

1090 (1) (a) Except as provided in Subsection (1) (b), a domestic mutual may be converted  
1091 into a domestic stock corporation under Subsections (2) through (11).

1092 (b) ~~Not~~ A domestic mutual that is affiliated with other mutuals may not be converted  
1093 into a stock corporation, unless all the affiliated mutuals are converted at the same time, or the  
1094 commissioner finds that the interests of the policyholders of the remaining mutuals can be  
1095 permanently protected by limitations on the corporate powers of the new stock corporation or  
1096 on its authority to do business, or otherwise.

1097 (2) The board shall pass a resolution stating that the conversion is in the best interests  
1098 of the policyholders. The resolution shall specify the reasons for and the purposes of the  
1099 proposed conversion, and how the conversion is expected to benefit policyholders.

1100 (3) (a) ~~The provisions of~~ Chapter 16 ~~apply~~, Insurance Holding Companies, applies  
1101 to the conversion of a domestic mutual into a stock corporation. In addition, the commissioner  
1102 shall order the examination and appraisal of the corporation, unless ~~he~~ the commissioner  
1103 finds that:

1104 (i) the resolution is defective upon its face; or

1105 (ii) the basis or the purposes of the proposed conversion are contrary to law, to the  
1106 interests of the policyholders, or to the public.

1107 (b) The commissioner shall examine the company and all of its controlled affiliates  
1108 under Section 31A-2-203 to determine their financial condition and whether they are operating  
1109 in accordance with law.

1110 (c) The commissioner shall appoint an appraisal committee, consisting of at least three  
1111 qualified and disinterested persons with differing expertise, to determine the value of the  
1112 corporation on the date of the resolution required by Subsection (2). Members of the appraisal

1113 committee shall receive reasonable compensation and shall be reimbursed for reasonable  
1114 expenses in discharging their duties. They may employ consultants to advise them on technical  
1115 problems of the appraisal, if necessary. The appraisal committee shall consider the assets and  
1116 liabilities of the corporation, adjusting liabilities to take account of:

1117 (i) the amounts of any reserves in excess of or below realistic estimates;

1118 (ii) the value of the marketing organization;

1119 (iii) the value of goodwill;

1120 (iv) the going-concern value; and

1121 (v) any other factor having an influence on the value of the corporation.

1122 (4) When the examination and appraisal reports have been made to the commissioner,

1123 ~~he~~ the commissioner shall make copies available to the board. The board shall then prepare

1124 and adopt by resolution a plan of conversion. The plan shall be consistent with Subsections

1125 (4)(a) through (e) and shall state how the requirements of those subsections are satisfied.

1126 (a) The plan of conversion shall state the number of shares proposed to be authorized

1127 for the new stock corporation, their par value, if any, and the price per share at which they will

1128 be offered to policyholders. The price per share may not exceed 1/2 of the median equitable

1129 share of all policyholders under Subsection (4)(b).

1130 (b) (i) When an insurer has the type of policies with no investment value to the

1131 policyholders, each person who has been a policyholder and has paid premiums within five

1132 years prior to the resolution under Subsection (2) is entitled, without additional payment, to as

1133 much common stock of the new stock corporation as ~~his~~ that person's equitable share of the

1134 value of the converting corporation will purchase. The equitable share is determined by the

1135 ratio which the net premium ~~he~~ that person has paid to the corporation during the five years

1136 immediately preceding the resolution required by Subsection (2) bears to the total net

1137 premiums received by the corporation during the same period. The net premium is the gross

1138 premium less the return premium and dividends paid. If the equitable share would only

1139 purchase a fraction of a share of stock, the policyholder has the option of either receiving the

1140 value of the fractional share in cash or purchasing a full share by paying the balance in cash.

1141 (ii) When an insurer has the type of policies with specifically attributable investment

1142 value to the policyholders, each policyholder is entitled, without additional payment, to as

1143 much common stock of the new stock corporation as ~~his~~ the policyholder's investment value

1144 in the converting corporation will purchase, determined by the proportion of ~~[his]~~ the  
1145 policyholder's investment value to the aggregate investment values of all policyholders. If the  
1146 policyholder's share would only purchase a fraction of a share of stock, the policyholder has the  
1147 option of either receiving the value of the fractional share in cash or purchasing a full share by  
1148 paying the balance in cash.

1149 (c) A written offer shall be sent to each policyholder indicating ~~[his]~~ the policyholder's  
1150 individual equitable share and the terms upon which the policyholder may subscribe for stock.

1151 (d) ~~[No common]~~ Common shares may not be subscribed by or issued to persons other  
1152 than policyholders, until all subscriptions by the policyholders have been filled. After those  
1153 subscriptions have been filled, any new issue of stock for five years after the conversion shall  
1154 first be offered to the persons who have become shareholders under Subsection (4)(b) in  
1155 proportion to their interests under Subsection (4)(b).

1156 (e) ~~[No]~~ A policyholder in a nonlife mutual may not receive a distribution of shares  
1157 valued under Subsection (4)(b)(i), which distribution is greater than the amount ~~[he]~~ the  
1158 policyholder is entitled to under ~~[Subsection 31A-27-337 (4)]~~ Section 31A-27a-701. Any  
1159 excess over the policyholder's entitlement under ~~[Subsection 31A-27-337 (4)]~~ Section  
1160 31A-27a-701 shall be distributed ~~[in shares to the state treasury for the benefit of the Uniform~~  
1161 ~~School Fund. After five years, the shares may be sold by the state treasurer and the proceeds~~  
1162 ~~credited to the Uniform School Fund]~~ in accordance with Section 31A-27a-705.

1163 (5) The plan of conversion shall be submitted to the commissioner for approval,  
1164 together with:

1165 (a) the proposed articles and bylaws of the new stock corporation which comply with  
1166 Section 31A-5-203;

1167 (b) any information specified under Subsection 31A-5-204(2), which the commissioner  
1168 reasonably requires; and

1169 (c) a projection of the planned or anticipated financial situation of the new corporation  
1170 for five years after the conversion.

1171 (6) The commissioner shall then hold a hearing. The notice of the hearing shall be  
1172 mailed to each person who was a policyholder of the corporation on the date of the resolution  
1173 required by Subsection (2). This notice shall include a copy of the plan of conversion and any  
1174 comments the commissioner considers necessary to adequately inform the policyholders.

1175 (7) The commissioner shall approve the plan of conversion unless ~~he~~ the  
1176 commissioner finds that the plan violates the law or is contrary to the interests of policyholders  
1177 or the public.

1178 (8) After approval under Subsection (7), the conversion plan shall be submitted to a  
1179 vote of:

1180 (a) for mutuals subject to Subsection (4)(b)(i), those persons who were policyholders  
1181 of the mutual on the date of the resolution required by Subsection (2); or

1182 (b) for mutuals subject to Subsection (4)(b)(ii), those persons who had investment  
1183 values in their policies as of the date of the resolution required by Subsection (2).

1184 (9) If the policyholders approve the conversion under Subsection (8), the  
1185 commissioner shall issue a new certificate of authority. The issuance of the certificate is the  
1186 conversion of the mutual to a stock corporation. This stock corporation is considered as being  
1187 organized at the time the converted mutual was organized. Subject to the plan of conversion,  
1188 the directors, officers, agents, and employees of the mutual shall continue in their same  
1189 positions with the stock corporation.

1190 (10) In the proposed conversion, the corporation may not pay any person compensation  
1191 other than regular salaries to existing personnel and compensation for clerical and mailing  
1192 expenses. With the commissioner's approval, the corporation may pay, at reasonable rates, for  
1193 printing costs and for legal and other professional fees for services actually rendered. All  
1194 expenses of the conversion, including the expenses incurred by the commissioner and the  
1195 prorated salaries of any ~~Insurance~~ department staff members involved, shall be paid by the  
1196 corporation being converted.

1197 (11) The commissioner's approval of the plan of conversion satisfies the registration  
1198 requirement of Section 31A-5-302.

1199 Section 15. Section **31A-8-213** is amended to read:

1200 **31A-8-213. Certificate of authority.**

1201 (1) An organization may apply for a certificate of authority at any time prior to the  
1202 expiration of its organization permit. The application shall include:

1203 (a) a detailed statement by a principal officer about any material changes that have  
1204 taken place or are likely to take place in the facts on which the issuance of the organization  
1205 permit was based; and

1206 (b) if any material changes are proposed in the business plan, the information about the  
1207 changes that would be required if an organization permit were then being applied for.

1208 (2) The commissioner shall issue a certificate of authority, if the commissioner finds  
1209 that:

1210 (a) the organization's capital and surplus complies with the requirements of Section  
1211 31A-8-209 as to the operations proposed under the new certificate of authority;

1212 (b) there is no basis for revoking the organization permit under Section 31A-8-207;

1213 (c) the deposit required by Section 31A-8-211 has been made;

1214 (d) the organization satisfies the requirements of Section 31A-8-104; and

1215 (e) all other applicable requirements of the law have been met.

1216 (3) The certificate of authority shall specify any limits imposed by the commissioner  
1217 upon the organization's business or methods of operation, including the general types of health  
1218 care services the organization is authorized to provide.

1219 (4) Upon the issuance of the certificate of authority:

1220 (a) the board shall authorize and direct the issuance of certificates for shares, bonds, or  
1221 notes subscribed to under the organization permit, and of insurance policies upon qualifying  
1222 applications obtained under the organization permit; and

1223 (b) the commissioner shall authorize the release to the organization of all funds held in  
1224 escrow under Section 31A-5-208, as adopted by Section 31A-8-206.

1225 (5) (a) An organization may at any time apply to the commissioner for a new or  
1226 amended certificate of authority altering the limits on its business or methods of operation.  
1227 The application shall contain or be accompanied by that information reasonably required by the  
1228 commissioner under Subsections 31A-5-204(2) and 31A-8-205(2). The commissioner shall  
1229 issue the new certificate as requested if the commissioner finds that the organization continues  
1230 to satisfy the requirements specified under Subsection (2).

1231 (b) If the commissioner issues [~~a summary~~] an order under [~~Section 31A-27-201~~]  
1232 Chapter 27, Part 5, Administration Actions, against an organization, the commissioner may  
1233 also revoke the organization's certificate and issue a new one with any limitation [~~he~~] the  
1234 commissioner considers necessary.

1235 Section 16. Section **31A-9-502** is amended to read:

1236 **31A-9-502. Voluntary dissolution of solvent domestic fraternal.**



1237 (1) Subject to this section, a domestic fraternal may voluntarily dissolve under Sections  
1238 16-6a-1401 through 16-6a-1405.

1239 (2) The proposal for voluntary dissolution shall be filed with the commissioner at least  
1240 60 days prior to the submission of that proposal to the supreme governing body or the  
1241 members. The commissioner may require the submission of additional information necessary  
1242 to establish the financial condition of the fraternal or other facts relevant to the proposed  
1243 dissolution. If the supreme governing body or the members adopt the resolution to dissolve, by  
1244 a majority of those voting or a larger number as required by the laws of the fraternal, the  
1245 commissioner shall, within 30 days after the adoption of the resolution, begin to examine the  
1246 fraternal. The commissioner shall approve the dissolution unless ~~he~~ the commissioner finds,  
1247 after the examination and a hearing, that it is insolvent or may become insolvent in the process  
1248 of dissolution. Upon approval, the fraternal may provide for a transfer to other fraternal  
1249 approved by the commissioner of all its obligations under insurance policies and then may  
1250 dissolve under Subsection (1). If the commissioner disapproves, ~~he~~ the commissioner shall  
1251 petition the court for liquidation under Section ~~[31A-27-307]~~ 31A-27a-207.

1252 (3) During the liquidation under Sections 16-6a-1401 through 16-6a-1408, the fraternal  
1253 may apply to the commissioner to have the liquidation continued under the commissioner's  
1254 supervision. Upon receiving this request, the commissioner shall apply to the court for  
1255 liquidation under Section ~~[31A-27-307]~~ 31A-27a-207.

1256 (4) If the fraternal revokes the voluntary dissolution proceedings under Section  
1257 16-6a-1404, a copy of the revocation of voluntary dissolution proceedings shall be filed with  
1258 the commissioner.

1259 (5) Subsections 31A-5-504(6) and (7) apply to the survival of remedies and  
1260 continuance of corporate existence of a voluntarily dissolved fraternal.

1261 Section 17. Section **31A-9-504** is amended to read:

1262 **31A-9-504. Rehabilitation or involuntary conversion.**

1263 (1) (a) If the commissioner believes that a fraternal does not satisfy the requirements of  
1264 this chapter, ~~he~~ the commissioner shall call a hearing. If ~~he~~ the commissioner then finds  
1265 that the fraternal does not satisfy the requirements:

1266 ~~[(a)-H]~~ (i) if the fraternal is domestic, the commissioner shall petition for rehabilitation  
1267 under Section ~~[31A-27-301]~~ 31A-27a-207 to rehabilitate the fraternal or, if that is not possible,

1268 convert the fraternal to a mutual[-]; or

1269 ~~[(b)-If]~~ (ii) if the fraternal is nondomestic, the commissioner shall order it to comply as  
1270 soon as practicable with the requirements of this chapter or lose its tax exemption. ~~[The]~~

1271 (b) An order issued under Subsection (1)(a)(ii) shall specify the ways the nondomestic  
1272 fraternal does not comply with this chapter.

1273 (2) If the fraternal does not promptly comply with the requirements of this chapter,  
1274 after notice of the adverse results of a hearing under Subsection (1), it is subject to taxation as a  
1275 mutual life insurance company. This tax is retroactive to the date on which the commissioner  
1276 gave the fraternal notice of the hearing under Subsection (1).

1277 Section 18. Section **31A-11-104** is amended to read:

1278 **31A-11-104. Applicability of other portions of this title.**

1279 (1) In addition to this chapter, motor clubs are subject to the applicable sections of:

1280 (a) Chapters 1, 2, 4, 16, 21, 22, 26, ~~[and]~~ 27, and 27a;

1281 (b) Chapter 3, Part 1;

1282 (c) Chapter 23a, Parts 1, 4, and 5; and

1283 (d) Section 31A-23a-207.

1284 (2) Sections 31A-14-204 and 31A-14-216 apply to nondomestic motor clubs.

1285 (3) Section 31A-5-401 applies to domestic motor clubs.

1286 (4) Sections 31A-5-105, 31A-5-106, and 31A-5-216 apply to both domestic and  
1287 nondomestic motor clubs.

1288 (5) Both domestic and nondomestic motor clubs are subject to the ~~[Insurance]~~  
1289 department fees under Section 31A-3-103. Other provisions of ~~[the Insurance Code]~~ this title  
1290 apply to motor clubs only as specifically provided in this chapter.

1291 Section 19. Section **31A-11-109** is amended to read:

1292 **31A-11-109. Alteration or revocation of certificate of authority.**

1293 If the commissioner issues ~~[a summary]~~ an order under ~~[Section 31A-27-201]~~ Chapter  
1294 27, Part 5, Administrative Actions, against a motor club, ~~[he]~~ the commissioner may revoke its  
1295 certificate of authority or issue a new one with the limits ~~[he]~~ the commissioner considers  
1296 necessary.

1297 Section 20. Section **31A-13-107** is amended to read:

1298 **31A-13-107. Commissioner's remedies.**

1299 If the trustees of any employee welfare fund have failed to register the fund in  
1300 accordance with Section 31A-13-103, or otherwise fail to comply with ~~[any provision of]~~ this  
1301 chapter, the commissioner shall notify the employers of the failure. In addition to ordering  
1302 compliance under Subsection 31A-2-201(4), the commissioner may:

1303 (1) order the employers to stop making payments to the trustees until the employers are  
1304 notified by the commissioner that the trustees are in compliance with this chapter; or

1305 (2) rehabilitate or liquidate the employee welfare fund under Chapter ~~[27]~~ 27a, Insurer  
1306 Receivership Act.

1307 Section 21. Section **31A-14-206** is amended to read:

1308 **31A-14-206. Commercially domiciled insurers.**

1309 (1) As used in this section, and except as to title insurers, the commissioner may  
1310 consider a foreign insurer to be "commercially domiciled" in this state if:

1311 (a) during the three immediately preceding calendar years, the foreign insurer wrote  
1312 more insurance premiums in this state than it wrote in its state of domicile during the same  
1313 period; or

1314 (b) during the same three-year period, the foreign insurer's gross premiums written in  
1315 this state constituted 15% or more of the insurer's total gross premiums written in the United  
1316 States.

1317 (2) Subject to Subsection (3), an insurer determined by the commissioner to be  
1318 commercially domiciled in this state may be subjected to Chapters 16, 17, 18, 27, and 27a, and  
1319 Chapter 5, Parts 4, 5, and 6 in the same manner and to the same extent as domestic insurers.  
1320 The commissioner shall, by order, notify any commercially domiciled insurer not exempt under  
1321 Subsection (3) of the extent to which the insurer is subject to the provisions listed under this  
1322 Subsection (2).

1323 (3) The commissioner may exempt from the provisions of this section any  
1324 commercially domiciled insurer if ~~[he]~~ the commissioner determines that the insurer has assets  
1325 physically located in this state or an asset to liability ratio sufficient to justify the conclusion  
1326 that there is no reasonable danger that the operations or conduct of the business of the insurer  
1327 could present a danger of loss to Utah policyholders.

1328 (4) Subsection 31A-14-205(4) applies to the conflict of the laws of this state with the  
1329 laws of the insurer's domicile for foreign insurers, including commercially domiciled insurers,

1330 under this section.

1331 (5) This section does not excuse or exempt any foreign insurer from complying with  
1332 the provisions under this title which are otherwise applicable to a foreign insurer.

1333 Section 22. Section **31A-14-215** is amended to read:

1334 **31A-14-215. Assessment by foreign company.**

1335 Every foreign mutual insurer authorized in this state shall notify the commissioner  
1336 immediately after making an assessment upon any of its members in this state. The insurer  
1337 shall attach to the notice a statement of the condition of the insurer, giving the facts showing  
1338 the necessity for the assessment. Unless the commissioner orders otherwise under a Chapter  
1339 27, Part 5, Administrative Actions, proceeding, a foreign mutual insurer authorized in this state  
1340 may not make or increase any assessment because of its inability to collect assessments from its  
1341 members in other states.

1342 Section 23. Section **31A-14-217** is amended to read:

1343 **31A-14-217. Revocation of certificate of authority.**

1344 Whenever there would be grounds for delinquency proceedings under Chapter [~~27~~] 27a.  
1345 Insurer Receivership Act, against a foreign insurer, if the foreign insurer were a domestic  
1346 insurer, the commissioner may, after any proceeding authorized by Title 63, Chapter 46b,  
1347 Administrative Procedures Act, revoke, suspend, or limit the foreign insurer's certificate of  
1348 authority. This action does not affect insurance which has already been issued. The insurer  
1349 remains subject to regulation until released under Section 31A-14-216.

1350 Section 24. Section **31A-15-105** is amended to read:

1351 **31A-15-105. Effect of contracts illegal because insurer was unauthorized.**

1352 (1) An insurance contract entered into in violation of this chapter is unenforceable by,  
1353 but enforceable against, the insurer. In an action against the insurer on the contract, the insured  
1354 is bound by the terms of the contract as affected by this title and rules adopted under this title.

1355 (2) An insurance policy entered into in violation of this chapter is voidable by the  
1356 policyholder who entered into the transaction without knowing it was illegal. The policyholder  
1357 may avoid the contract by notice to the insurer, if no insured has enforced the contract by an  
1358 action under Subsection (1), and may recover any consideration paid under the contract.

1359 (3) Any person who assisted in the procurement of an illegal contract under this  
1360 chapter, and who knew or should have known the transaction was illegal, is liable to the

1361 insured for the full amount of a claim or loss payable under the contract, if the insurer does not  
1362 pay it. The receiver appointed under Chapter [27] 27a, Insurer Receivership Act, may assert the  
1363 claims of insureds if the insurer is the subject of a proceeding under Chapter [27] 27a.

1364 Section 25. Section **31A-17-605** is amended to read:

1365 **31A-17-605. Authorized control level event.**

1366 (1) "Authorized control level event" means any of the following events:

1367 (a) the filing of an RBC report by the insurer or health organization that indicates that  
1368 the insurer's or health organization's total adjusted capital is greater than or equal to its  
1369 mandatory control level RBC but less than its authorized control level RBC;

1370 (b) the notification by the commissioner to the insurer or health organization of an  
1371 adjusted RBC report that indicates the event in Subsection (1)(a), provided the insurer or health  
1372 organization does not challenge the adjusted RBC report under Section 31A-17-607;

1373 (c) if, pursuant to Section 31A-17-607, the insurer or health organization challenges an  
1374 adjusted RBC report that indicates the event in Subsection (1)(a), notification by the  
1375 commissioner to the insurer or health organization that after a hearing the commissioner rejects  
1376 the insurer's or health organization's challenge;

1377 (d) the failure of the insurer or health organization to respond, in a manner satisfactory  
1378 to the commissioner, to a corrective order, provided the insurer or health organization has not  
1379 challenged the corrective order under Section 31A-17-607; or

1380 (e) if the insurer or health organization has challenged a corrective order under Section  
1381 31A-17-607 and the commissioner after a hearing rejects the challenge or modifies the  
1382 corrective order, the failure of the insurer or health organization to respond, in a manner  
1383 satisfactory to the commissioner, to the corrective order subsequent to rejection or modification  
1384 by the commissioner.

1385 (2) (a) In the event of an authorized control level event with respect to an insurer or  
1386 health organization, the commissioner shall:

1387 (i) take any action required under Section 31A-17-604 regarding an insurer or health  
1388 organization with respect to which a regulatory action level event has occurred; or

1389 (ii) take any action as is necessary to cause the insurer or health organization to be  
1390 placed under regulatory control under [~~Section 31A-27-20+~~] Chapter 27, Part 5, Administrative  
1391 Actions, if the commissioner considers it to be in the best interests of:

- 1392 (A) the policyholders or members;  
1393 (B) creditors of the insurer or health organization; and  
1394 (C) the public.

1395 (b) ~~[In the event]~~ If the commissioner takes an action described in Subsection (2)(a),  
1396 the authorized control level event is sufficient grounds for the commissioner to take action  
1397 under ~~[Section 31A-27-201]~~ Chapter 27, Part 5, Administrative Actions, and the commissioner  
1398 shall have the rights, powers, and duties with respect to the insurer or health organization set  
1399 forth in ~~[Section 31A-27-201]~~ Chapter 27, Part 5, Administrative Actions.

1400 (c) If the commissioner takes an action under Subsection (2)(a) pursuant to an adjusted  
1401 RBC report, the insurer or health organization is entitled to the protections afforded to an  
1402 insurer or health organization under Section ~~[31A-27-203]~~ 31A-27-504 pertaining to ~~[summary~~  
1403 ~~proceedings]~~ an action by the commissioner.

1404 Section 26. Section **31A-17-606** is amended to read:

1405 **31A-17-606. Mandatory control level event.**

1406 (1) "Mandatory control level event" means any of the following events:

1407 (a) the filing of an RBC report that indicates that the insurer's or health organization's  
1408 total adjusted capital is less than its mandatory control level RBC;

1409 (b) notification by the commissioner to the insurer or health organization of an adjusted  
1410 RBC report that indicates the event in Subsection (1)(a), provided the insurer or health  
1411 organization does not challenge the adjusted RBC report under Section 31A-17-607; or

1412 (c) if, pursuant to Section 31A-17-607, the insurer or health organization challenges an  
1413 adjusted RBC report that indicates the event in Subsection (1)(a), notification by the  
1414 commissioner to the insurer or health organization that after a hearing the commissioner rejects  
1415 the insurer's or health organization's challenge.

1416 (2) (a) In the event of a mandatory control level event with respect to an insurer or  
1417 health organization, the commissioner shall take any actions necessary to place the insurer  
1418 under regulatory control under ~~[Section 31A-27-201]~~ Chapter 27, Part 5, Administrative  
1419 Actions.

1420 (b) The mandatory control level event is sufficient grounds for the commissioner to  
1421 take action under ~~[Section 31A-27-201]~~ Chapter 27, Part 5, Administrative Actions, and the  
1422 commissioner shall have the rights, powers, and duties with respect to the insurer or health

1423 organization as are set forth in [~~Section 31A-27-201~~] Chapter 27, Part 5, Administrative  
1424 Actions.

1425 (c) If the commissioner takes an action pursuant to an adjusted RBC report, the insurer  
1426 or health organization is entitled to the protections of Section [~~31A-27-203~~] 31A-27-504  
1427 pertaining to summary proceedings.

1428 (d) Notwithstanding the other provisions of Subsection (2), the commissioner may  
1429 forego action for up to 90 days after the mandatory control level event if the commissioner  
1430 finds there is a reasonable expectation that the mandatory control level event may be eliminated  
1431 within the 90-day period.

1432 Section 27. Section **31A-17-609** is amended to read:

1433 **31A-17-609. Alternate adjusted capital.**

1434 (1) Except as provided in Section 31A-17-602, an insurer or health organization  
1435 licensed under Chapters 5, 7, 8, 9, and 14 shall maintain total adjusted capital as defined in  
1436 Section 31A-1-301 in an amount equal to the greater of:

1437 (a) 175% of the minimum required capital, or of the minimum permanent surplus in the  
1438 case of nonassessable mutuals, required by Section 31A-5-211, 31A-7-201, 31A-8-209,  
1439 31A-9-209, or 31A-14-205; or

1440 (b) the net total of:

1441 (i) 10% of net insurance premiums earned during the year; plus

1442 (ii) 5% of the admitted value of common stocks and real estate; plus

1443 (iii) 2% of the admitted value of all other invested assets, exclusive of cash deposits,  
1444 short-term investments, policy loans, and premium notes; less

1445 (iv) the amount of any asset valuation reserve being maintained by the insurer or health  
1446 organization, but not to exceed the sum of Subsections (1)(b)(ii) and (iii).

1447 (2) As used in Subsection (1)(b), "premiums earned" means premiums and other  
1448 consideration earned for insurance in the 12-month period ending on the date the calculation is  
1449 made.

1450 (3) The commissioner may consider an insurer or health organization to be financially  
1451 hazardous under Subsection [~~31A-27-307(3)~~] 31A-27a-207(1)(i), if the insurer or health  
1452 organization does not have qualified assets in an aggregate value exceeding the sum of the  
1453 insurer's or health organization's liabilities and the total adjusted capital required by Subsection

1454 (1).

1455 (4) The commissioner shall consider an insurer or health organization to be financially  
1456 hazardous under Subsection [~~31A-27-307(3)~~] 31A-27a-207(1)(i) if the insurer or health  
1457 organization does not have qualified assets in an aggregate value exceeding the sum of the  
1458 insurer's or health organization's liabilities and 70% of the total adjusted capital required by  
1459 Subsection (1).

1460 Section 28. Section **31A-17-610** is amended to read:

1461 **31A-17-610. Foreign insurers or health organizations.**

1462 (1) (a) Any foreign insurer or health organization shall, upon the written request of the  
1463 commissioner, submit to the commissioner an RBC report as of the end of the most recent  
1464 calendar year by the later of:

1465 (i) the date an RBC report would be required to be filed by a domestic insurer or health  
1466 organization under this part; or

1467 (ii) 15 days after the request is received by the foreign insurer or health organization.

1468 (b) Any foreign insurer or health organization shall, at the written request of the  
1469 commissioner, promptly submit to the commissioner a copy of any RBC plan that is filed with  
1470 the insurance commissioner of any other state.

1471 (2) (a) The commissioner may require a foreign insurer or health organization to file an  
1472 RBC plan with the commissioner if:

1473 (i) there is a company action level event, regulatory action level event, or authorized  
1474 control level event with respect to the foreign insurer or health organization as determined  
1475 under:

1476 (A) the RBC statute applicable in the state of domicile of the insurer or health  
1477 organization; or

1478 (B) if no RBC statute is in force in that state, under this part; and

1479 (ii) the insurance commissioner of the state of domicile of the foreign insurer or health  
1480 organization fails to require the foreign insurer or health organization to file an RBC plan in the  
1481 manner specified under:

1482 (A) that state's RBC statute; or

1483 (B) if no RBC statute is in force in that state, under Section 31A-17-603.

1484 (b) If the commissioner requires a foreign insurer or health organization to file an RBC



1485 plan, the failure of the foreign insurer or health organization to file the RBC plan with the  
1486 commissioner is grounds to order the insurer or health organization to cease and desist from  
1487 writing new insurance business in this state.

1488 (3) The commissioner may make application to the Third District Court for Salt Lake  
1489 County permitted under Section [~~31A-27-401~~] 31A-27a-901 with respect to the liquidation of  
1490 property of a foreign insurer or health organization found in this state if:

1491 (a) a mandatory control level event occurs with respect to any foreign insurer or health  
1492 organization; and

1493 (b) no domiciliary receiver has been appointed with respect to the foreign insurer or  
1494 health organization under the rehabilitation and liquidation statute applicable in the state of  
1495 domicile of the foreign insurer or health organization.

1496 Section 29. Section **31A-18-106** is amended to read:

1497 **31A-18-106. Investment limitations generally applicable.**

1498 (1) The investment limitations listed in Subsections (1)(a) through (m) apply to each  
1499 insurer.

1500 (a) (i) Except as provided in Subsection (1)(a)(ii), for investments authorized under  
1501 Subsection 31A-18-105(1) that are not amortizable under applicable valuation rules, the  
1502 limitation is 5% of assets.

1503 (ii) The limitation of Subsection (1)(a)(i) and the limitation of Subsection (2) do not  
1504 apply to demand deposits and certificates of deposit in solvent banks and savings and loan  
1505 institutions to the extent they are insured by a federal deposit insurance agency.

1506 (b) For investments authorized under Subsection 31A-18-105(2), the limitation is 10%  
1507 of assets.

1508 (c) For investments authorized under Subsection 31A-18-105(3), the limitation is 50%  
1509 of assets.

1510 (d) For investments authorized under Subsection 31A-18-105(4), that are considered to  
1511 be investments in kinds of securities or evidences of debt pledged, those investments are  
1512 subject to the class limitations applicable to the pledged securities or evidences of debt.

1513 (e) For investments authorized under Subsection 31A-18-105(5), the limitation is 35%  
1514 of assets.

1515 (f) For investments authorized under Subsection 31A-18-105(6), the limitation is:

- 1516 (i) 20% of assets for life insurers; and  
1517 (ii) 50% of assets for nonlife insurers.  
1518 (g) For investments authorized under Subsection 31A-18-105(7), the limitation is:  
1519 (i) 5% of assets; or  
1520 (ii) for insurers organized and operating under Chapter 7, Nonprofit Health Service  
1521 Insurance Corporations, 25% of assets.  
1522 (h) For investments authorized under Subsection 31A-18-105(8), the limitation is:  
1523 (i) 20% of assets, inclusive of home office and branch office properties; or  
1524 (ii) for insurers organized and operating under Chapter 7, Nonprofit Health Service  
1525 Insurance Corporations, 35% of assets, inclusive of home office and branch office properties.  
1526 (i) For investments authorized under Subsection 31A-18-105(10), the limitation is 1%  
1527 of assets.  
1528 (j) For investments authorized under Subsection 31A-18-105(11), the limitation is the  
1529 greater of that permitted or required for compliance with Section 31A-18-103.  
1530 (k) Except as provided in Subsection (1)(l), an insurer's investments in subsidiaries is  
1531 limited to 50% of the insurer's total adjusted capital. Investments by an insurer in its  
1532 subsidiaries includes:  
1533 (i) the insurer's loans, advances, and contributions to its subsidiaries; and  
1534 (ii) the insurer's holding of bonds, notes, and stocks of its subsidiaries are included.  
1535 (l) Under a plan of merger approved by the commissioner, the commissioner may  
1536 allow an insurer any portion of its assets invested in an insurance subsidiary. The approved  
1537 plan of merger shall require the acquiring insurer to conform its accounting for investments in  
1538 subsidiaries to Subsection (1)(k) within a specified period that may not exceed five years.  
1539 (m) For investments authorized under Subsections 31A-18-105(13) and (14), the  
1540 aggregate limitation is 10% of assets.  
1541 (2) The limits on investments listed in Subsections (2)(a) through (e) apply to each  
1542 insurer.  
1543 (a) For all investments in a single entity, its affiliates, and subsidiaries, the limitation is  
1544 10% of assets, except that the limit imposed by this Subsection (2)(a) does not apply to:  
1545 (i) investments in the government of the United States or its agencies;  
1546 (ii) investments guaranteed by the government of the United States; or

1547 (iii) investments in the insurer's insurance subsidiaries.

1548 (b) Investments authorized by Subsection 31A-18-105(3) shall comply with the  
1549 requirements listed in this Subsection (2)(b).

1550 (i) (A) Except as provided in this Subsection (2)(b)(i), the amount of any loan secured  
1551 by a mortgage or deed of trust may not exceed 80% of the value of the real estate interest  
1552 mortgaged, unless the excess over 80%:

1553 (I) is insured or guaranteed by the United States, any state of the United States, any  
1554 instrumentality, agency, or political subdivision of the United States, any of its states, or a  
1555 combination of any of these; or

1556 (II) insured by an insurer approved by the commissioner and qualified to insure that  
1557 type of risk in this state.

1558 (B) Mortgage loans representing purchase money mortgages acquired from the sale of  
1559 real estate are not subject to the limitation of Subsection (2)(b)(i)(A).

1560 (ii) Subject to Subsection (2)(b)(v), loans or evidences of debt secured by real estate  
1561 may only be secured by:

1562 (A) unencumbered real property that is located in the United States; or

1563 (B) an unencumbered interest in real property that is located in the United States.

1564 (iii) Evidence of debt secured by first mortgages or deeds of trust upon leasehold  
1565 estates shall require that:

1566 (A) the leasehold estate exceed the maturity of the loan by not less than 10% of the  
1567 lease term;

1568 (B) the real estate not be otherwise encumbered; and

1569 (C) the mortgagee is entitled to be subrogated to all rights under the leasehold.

1570 (iv) Subject to Subsection (2)(b)(v):

1571 (A) participation in any mortgage loan must:

1572 (I) be senior to other participants; and

1573 (II) give the holder substantially the rights of a first mortgagee; or

1574 (B) the interest of the insurer in the evidence of indebtedness must be of equal priority,  
1575 to the extent of the interest, with other interests in the real property.

1576 (v) A fee simple or leasehold real estate or any interest in either of them is not  
1577 considered to be encumbered within the meaning of this chapter by reason of any prior

1578 mortgage or trust deed held or assumed by the insurer as a lien on the property, if:  
1579       (A) the total of the mortgages or trust deeds held does not exceed 70% of the value of  
1580 the property; and  
1581       (B) the security created by the prior mortgage or trust deed is a first lien.  
1582       (c) Loans permitted under Subsection 31A-18-105(4) may not exceed 75% of the  
1583 market value of the collateral pledged, except that loans upon the pledge of United States  
1584 government bonds may be equal to the market values of the pledge.  
1585       (d) For an equity interest in a single real estate property authorized under Subsection  
1586 31A-18-105(8), the limitation is 5% of assets.  
1587       (e) Investments authorized under Subsection 31A-18-105(10) shall be in connection  
1588 with potential changes in the value of specifically identified:  
1589       (i) assets which the insurer owns; or  
1590       (ii) liabilities which the insurer has incurred.  
1591       (3) The restrictions on investments listed in Subsections (3)(a) and (b) apply to each  
1592 insurer.  
1593       (a) Except for financial futures contracts and real property acquired and occupied by  
1594 the insurer for home and branch office purposes, a security or other investment is not eligible  
1595 for purchase or acquisition under this chapter unless it is:  
1596       (i) interest bearing or income paying; and  
1597       (ii) not then in default.  
1598       (b) A security is not eligible for purchase at a price above its market value.  
1599       (4) Computation of percentage limitations under this section:  
1600       (a) is based only upon the insurer's total qualified invested assets described in Section  
1601 31A-18-105 and this section, as these assets are valued under Section 31A-17-401; and  
1602       (b) excludes investments permitted under Section 31A-18-108 and Subsections  
1603 31A-17-203(2) and (3).  
1604       (5) An insurer may not make an investment that, because the investment does not  
1605 conform to Section 31A-18-105 and this section, has the result of rendering the insurer, under  
1606 Chapter 17, Part 6, Risk-Based Capital, subject to proceedings under Chapter [~~27, Insurers~~  
1607 ~~Rehabilitation and Liquidation~~] 27a, Insurer Receivership Act.  
1608       (6) A pattern of persistent deviation from the investment diversification standards set

1609 forth in Section 31A-18-105 and this section may be grounds for a finding that the person or  
1610 persons with authority to make the insurer's investment decisions are "incompetent" as used in  
1611 Subsection 31A-5-410(3).

1612 (7) Section 77r-1 of the Secondary Mortgage Market Enhancement Act of 1984 does  
1613 not apply to the purchase, holding, investment, or valuation limitations of assets of insurance  
1614 companies subject to this chapter.

1615 Section 30. Section **31A-22-617** is amended to read:

1616 **31A-22-617. Preferred provider contract provisions.**

1617 Health insurance policies may provide for insureds to receive services or  
1618 reimbursement under the policies in accordance with preferred health care provider contracts as  
1619 follows:

1620 (1) Subject to restrictions under this section, any insurer or third party administrator  
1621 may enter into contracts with health care providers as defined in Section 78-14-3 under which  
1622 the health care providers agree to supply services, at prices specified in the contracts, to  
1623 persons insured by an insurer.

1624 (a) (i) A health care provider contract may require the health care provider to accept the  
1625 specified payment as payment in full, relinquishing the right to collect additional amounts from  
1626 the insured person.

1627 (ii) In any dispute involving a provider's claim for reimbursement, the same shall be  
1628 determined in accordance with applicable law, the provider contract, the subscriber contract,  
1629 and the insurer's written payment policies in effect at the time services were rendered.

1630 (iii) If the parties are unable to resolve their dispute, the matter shall be subject to  
1631 binding arbitration by a jointly selected arbitrator. Each party is to bear its own expense except  
1632 the cost of the jointly selected arbitrator shall be equally shared. This Subsection (1)(a)(iii)  
1633 does not apply to the claim of a general acute hospital to the extent it is inconsistent with the  
1634 hospital's provider agreement.

1635 (iv) An organization may not penalize a provider solely for pursuing a claims dispute  
1636 or otherwise demanding payment for a sum believed owing.

1637 (v) If an insurer permits another entity with which it does not share common ownership  
1638 or control to use or otherwise lease one or more of the organization's networks of participating  
1639 providers, the organization shall ensure, at a minimum, that the entity pays participating

1640 providers in accordance with the same fee schedule and general payment policies as the  
1641 organization would for that network.

1642 (b) The insurance contract may reward the insured for selection of preferred health care  
1643 providers by:

- 1644 (i) reducing premium rates;
- 1645 (ii) reducing deductibles;
- 1646 (iii) coinsurance;
- 1647 (iv) other copayments; or
- 1648 (v) any other reasonable manner.

1649 (c) If the insurer is a managed care organization, as defined in Subsection  
1650 ~~[31A-27-311.5]~~ 31A-27a-403(1)(f):

1651 (i) the insurance contract and the health care provider contract shall provide that in the  
1652 event the managed care organization becomes insolvent, the rehabilitator or liquidator may:

1653 (A) require the health care provider to continue to provide health care services under  
1654 the contract until the earlier of:

1655 (I) 90 days after the date of the filing of a petition for rehabilitation or the petition for  
1656 liquidation; or

1657 (II) the date the term of the contract ends; and

1658 (B) subject to Subsection (1)(c)(v), reduce the fees the provider is otherwise entitled to  
1659 receive from the managed care organization during the time period described in Subsection

1660 (1)(c)(i)(A);

1661 (ii) the provider is required to:

1662 (A) accept the reduced payment under Subsection (1)(c)(i)(B) as payment in full; and

1663 (B) relinquish the right to collect additional amounts from the insolvent managed care  
1664 organization's enrollee, as defined in Subsection ~~[31A-27-311.5]~~ 31A-27a-403(1)(b);

1665 (iii) if the contract between the health care provider and the managed care organization  
1666 has not been reduced to writing, or the contract fails to contain the language required by  
1667 Subsection (1)(c)(i), the provider may not collect or attempt to collect from the enrollee:

1668 (A) sums owed by the insolvent managed care organization; or

1669 (B) the amount of the regular fee reduction authorized under Subsection (1)(c)(i)(B);

1670 (iv) the following may not bill or maintain any action at law against an enrollee to

1671 collect sums owed by the insolvent managed care organization or the amount of the regular fee  
1672 reduction authorized under Subsection (1)(c)(i)(B):

1673 (A) a provider;

1674 (B) an agent;

1675 (C) a trustee; or

1676 (D) an assignee of a person described in Subsections (1)(c)(iv)(A) through (C); and

1677 (v) notwithstanding Subsection (1)(c)(i):

1678 (A) a rehabilitator or liquidator may not reduce a fee by less than 75% of the provider's  
1679 regular fee set forth in the contract; and

1680 (B) the enrollee shall continue to pay the copayments, deductibles, and other payments  
1681 for services received from the provider that the enrollee was required to pay before the filing  
1682 of:

1683 (I) a petition for rehabilitation; or

1684 (II) a petition for liquidation.

1685 (2) (a) Subject to Subsections (2)(b) through (2)(f), an insurer using preferred health  
1686 care provider contracts shall pay for the services of health care providers not under the contract,  
1687 unless the illnesses or injuries treated by the health care provider are not within the scope of the  
1688 insurance contract. As used in this section, "class of health care providers" means all health  
1689 care providers licensed or licensed and certified by the state within the same professional,  
1690 trade, occupational, or facility licensure or licensure and certification category established  
1691 pursuant to Titles 26, Utah Health Code and 58, Occupations and Professions.

1692 (b) When the insured receives services from a health care provider not under contract,  
1693 the insurer shall reimburse the insured for at least 75% of the average amount paid by the  
1694 insurer for comparable services of preferred health care providers who are members of the  
1695 same class of health care providers. The commissioner may adopt a rule dealing with the  
1696 determination of what constitutes 75% of the average amount paid by the insurer for  
1697 comparable services of preferred health care providers who are members of the same class of  
1698 health care providers.

1699 (c) When reimbursing for services of health care providers not under contract, the  
1700 insurer may make direct payment to the insured.

1701 (d) Notwithstanding Subsection (2)(b), an insurer using preferred health care provider

1702 contracts may impose a deductible on coverage of health care providers not under contract.

1703 (e) When selecting health care providers with whom to contract under Subsection (1),  
1704 an insurer may not unfairly discriminate between classes of health care providers, but may  
1705 discriminate within a class of health care providers, subject to Subsection (7).

1706 (f) For purposes of this section, unfair discrimination between classes of health care  
1707 providers shall include:

1708 (i) refusal to contract with class members in reasonable proportion to the number of  
1709 insureds covered by the insurer and the expected demand for services from class members; and

1710 (ii) refusal to cover procedures for one class of providers that are:

1711 (A) commonly utilized by members of the class of health care providers for the  
1712 treatment of illnesses, injuries, or conditions;

1713 (B) otherwise covered by the insurer; and

1714 (C) within the scope of practice of the class of health care providers.

1715 (3) Before the insured consents to the insurance contract, the insurer shall fully disclose  
1716 to the insured that it has entered into preferred health care provider contracts. The insurer shall  
1717 provide sufficient detail on the preferred health care provider contracts to permit the insured to  
1718 agree to the terms of the insurance contract. The insurer shall provide at least the following  
1719 information:

1720 (a) a list of the health care providers under contract and if requested their business  
1721 locations and specialties;

1722 (b) a description of the insured benefits, including any deductibles, coinsurance, or  
1723 other copayments;

1724 (c) a description of the quality assurance program required under Subsection (4); and

1725 (d) a description of the adverse benefit determination procedures required under  
1726 Subsection (5).

1727 (4) (a) An insurer using preferred health care provider contracts shall maintain a quality  
1728 assurance program for assuring that the care provided by the health care providers under  
1729 contract meets prevailing standards in the state.

1730 (b) The commissioner in consultation with the executive director of the Department of  
1731 Health may designate qualified persons to perform an audit of the quality assurance program.

1732 The auditors shall have full access to all records of the organization and its health care



1733 providers, including medical records of individual patients.

1734 (c) The information contained in the medical records of individual patients shall  
1735 remain confidential. All information, interviews, reports, statements, memoranda, or other data  
1736 furnished for purposes of the audit and any findings or conclusions of the auditors are  
1737 privileged. The information is not subject to discovery, use, or receipt in evidence in any legal  
1738 proceeding except hearings before the commissioner concerning alleged violations of this  
1739 section.

1740 (5) An insurer using preferred health care provider contracts shall provide a reasonable  
1741 procedure for resolving complaints and adverse benefit determinations initiated by the insureds  
1742 and health care providers.

1743 (6) An insurer may not contract with a health care provider for treatment of illness or  
1744 injury unless the health care provider is licensed to perform that treatment.

1745 (7) (a) A health care provider or insurer may not discriminate against a preferred health  
1746 care provider for agreeing to a contract under Subsection (1).

1747 (b) Any health care provider licensed to treat any illness or injury within the scope of  
1748 the health care provider's practice, who is willing and able to meet the terms and conditions  
1749 established by the insurer for designation as a preferred health care provider, shall be able to  
1750 apply for and receive the designation as a preferred health care provider. Contract terms and  
1751 conditions may include reasonable limitations on the number of designated preferred health  
1752 care providers based upon substantial objective and economic grounds, or expected use of  
1753 particular services based upon prior provider-patient profiles.

1754 (8) Upon the written request of a provider excluded from a provider contract, the  
1755 commissioner may hold a hearing to determine if the insurer's exclusion of the provider is  
1756 based on the criteria set forth in Subsection (7)(b).

1757 (9) Insurers are subject to the provisions of Sections 31A-22-613.5, 31A-22-614.5, and  
1758 31A-22-618.

1759 (10) Nothing in this section is to be construed as to require an insurer to offer a certain  
1760 benefit or service as part of a health benefit plan.

1761 (11) This section does not apply to catastrophic mental health coverage provided in  
1762 accordance with Section 31A-22-625.

1763 Section 31. Section **31A-23a-704** is amended to read:

1764 **31A-23a-704. Penalties.**

1765 (1) (a) If, after notice and opportunity to be heard, the commissioner finds that the  
1766 controlling producer or any other person has not materially complied with this part, or any rule  
1767 made or order issued under the part, the commissioner may order the controlling producer to  
1768 cease placing business with the controlled insurer.

1769 (b) If the commissioner finds that because of the material noncompliance that the  
1770 controlled insurer or any policyholder of the controlled insurer has suffered any loss or damage,  
1771 the commissioner may maintain a civil action or may intervene in an action brought by or on  
1772 behalf of the insurer or policyholder for recovery of compensatory damages for the benefit of  
1773 the insurer or policyholder or ~~he~~ the commissioner may seek other appropriate relief.

1774 (2) If an order for liquidation or rehabilitation of the controlled insurer has been  
1775 entered pursuant to [~~Title 31A, Chapter 27, Insurers Rehabilitation and Liquidation~~] Chapter  
1776 27a, Insurer Receivership Act, and the receiver appointed under that order believes that the  
1777 controlling producer or any other person has not materially complied with this part, or any rule  
1778 made or order issued under this part, and the insurer suffered any loss or damage as a result of  
1779 the noncompliance, the receiver may maintain a civil action for recovery of damages or other  
1780 appropriate sanctions for the benefit of the insurer.

1781 (3) Nothing in this section affects the right of the commissioner to impose any other  
1782 penalties provided for in this title.

1783 (4) Nothing contained in this section is intended to or shall in any manner alter or  
1784 affect the rights of policyholders, claimants, creditors, or other third parties.

1785 Section 32. Section **31A-27-501**, which is renumbered from Section 31A-27-101 is  
1786 renumbered and amended to read:

1787 **CHAPTER 27. DELINQUENCY ADMINISTRATIVE ACTION PROVISIONS**

1788 **Part 5. Administrative Actions**

1789 ~~[31A-27-101].~~ **31A-27-501. Title -- Construction -- Commissioner's powers.**

1790 (1) This chapter is known as the "Delinquency Administrative Action Provisions."

1791 ~~(+)~~ (2) The proceedings authorized by this ~~[chapter]~~ part may be applied to:

1792 (a) all insurers and reinsurers;

1793 (i) who are doing, or have done, an insurance business in this state~~[-];~~ and

1794 (ii) against whom claims arising from that business may exist ~~[now or in the future];~~

1795 (b) all insurers who ~~[give]~~ have the appearance of or claim they do an insurance  
1796 business in this state;

1797 (c) all insurers who have insureds resident in this state; and

1798 (d) all other persons organized or in the process of organizing to do an insurance  
1799 business as an insurer in this state.

1800 ~~[(2) The purpose of this chapter is the protection of]~~

1801 (3) This part shall be liberally construed to protect the interests of insureds, creditors,  
1802 and the public generally, with minimum interference with the normal prerogatives of owners,  
1803 through:

1804 (a) early detection of any potentially dangerous condition in an insurer~~[-and];~~

1805 (b) prompt application of appropriate regulatory corrective measures; and

1806 ~~[(b) improved methods for rehabilitating insurers, by enlisting the advice and  
1807 management expertise of the insurance industry;]~~

1808 ~~[(c) enhanced efficiency and economy of liquidation, through clarification and  
1809 specification of the law, to minimize legal uncertainty and litigation;]~~

1810 ~~[(d) equitable apportionment of any unavoidable loss;]~~

1811 ~~[(e) lessening the problems of interstate rehabilitation and liquidation by facilitating  
1812 cooperation between states in the liquidation process, and by extending the scope of personal  
1813 jurisdiction over debtors of the insurer outside this state; and]~~

1814 ~~[(f)]~~ (c) regulation of the insurance business by law relating to ~~[delinquency  
1815 procedures]~~ insolvency of insurers and by substantive rules on the entire insurance business.

1816 ~~[(3)]~~ (4) This ~~[chapter shall be liberally construed to effect the purpose stated in  
1817 Subsection (2). It]~~ part does not limit the powers granted the commissioner by other provisions  
1818 of law.

1819 Section 33. Section **31A-27-502** is enacted to read:

1820 **31A-27-502. Definitions.**

1821 As used in this part, "record" is as defined in Section 31A-27a-102.

1822 Section 34. Section **31A-27-503**, which is renumbered from Section 31A-27-201 is  
1823 renumbered and amended to read:

1824 ~~[31A-27-201].~~ **31A-27-503. Commissioner's administrative actions.**

1825 (1) (a) ~~[Whenever]~~ The commissioner may take an action described in Subsection

1826 (1)(b) whenever the commissioner has reasonable cause to believe, and determines after a  
1827 hearing that ~~[any]~~ an insurer:

1828 (i) has committed or engaged in~~[-]~~ an act, practice, or transaction that would subject the  
1829 insurer to a formal delinquency proceeding under Chapter 27a, Insurer Receivership Act;

1830 (ii) is committing or engaging in~~[-or]~~ an act, practice, or transaction that would subject  
1831 the insurer to a formal delinquency proceeding under Chapter 27a, Insurer Receivership Act;

1832 (iii) is about to commit or engage in ~~[any]~~ an act, practice, or transaction~~[-or]~~ that  
1833 would subject the insurer to a formal delinquency proceeding under Chapter 27a, Insurer  
1834 Receivership Act; or

1835 (iv) is in or is about to be in a condition that would subject ~~[it]~~ the insurer to a formal  
1836 delinquency ~~[proceedings]~~ proceeding under ~~[this chapter, he]~~ Chapter 27a, Insurer  
1837 Receivership Act.

1838 (b) If the conditions of Subsection (1)(a) are met, the commissioner may make and  
1839 serve upon the insurer and any other persons whose action or forbearance from action is  
1840 reasonably necessary, those orders, other than a seizure ~~[orders]~~ order under Section  
1841 ~~[31A-27-202]~~ 31A-27a-201, that are reasonably necessary to correct, eliminate, or remedy  
1842 ~~[that]~~ the act, practice, transaction, or condition described in Subsection (1)(a).

1843 ~~[(b)]~~ (c) The commissioner may issue an order for the insurer to submit to supervision  
1844 by a supervisor appointed by the commissioner until the act, practice, transaction, or condition  
1845 that ~~[was]~~ is the ground for the order has been halted or corrected.

1846 (2) (a) ~~[If]~~ The commissioner may make and serve an order issued under Subsection  
1847 (1) without notice and before a hearing if:

1848 (i) the conditions of Subsection (1) are satisfied~~[-and if]~~; and

1849 (ii) it appears to the commissioner that irreparable harm to the property or business of  
1850 the insurer or to the interests of its policyholders, creditors, or the public may occur unless the  
1851 commissioner issues, with immediate effect, the ~~[orders described in Subsection (1), the~~  
1852 ~~commissioner may make and serve those orders without notice and before a hearing]~~ order.

1853 (b) The commissioner shall serve the insurer with ~~[the orders]~~ an order described in  
1854 this Subsection (2) and a notice of agency action, containing a statement of the reasons why  
1855 irreparable harm is threatened unless the order is issued with immediate effect.

1856 (3) (a) If the commissioner issues an order for supervision of an insurer under

1857 Subsection (1) or (2), ~~he~~ the commissioner shall:

1858       (i) notify the insurer that ~~it~~ the insurer is under the supervision of the commissioner;  
1859 and ~~shall~~

1860       (ii) explain the reasons for that supervision.

1861       (b) During the period of supervision, the commissioner may prohibit the insurer from  
1862 doing any of the following, without the prior approval of the commissioner or ~~his~~ a  
1863 supervisor appointed by the commissioner:

1864       ~~(a)~~ (i) transferring any of its assets or its business in force;

1865       ~~(b)~~ (ii) withdrawing funds from any of its bank accounts;

1866       ~~(c)~~ (iii) lending any of its funds;

1867       ~~(d)~~ (iv) investing any of its funds;

1868       ~~(e)~~ (v) transferring any of its property;

1869       ~~(f)~~ (vi) incurring any debt, obligation, or liability other than in the ordinary and usual  
1870 course of business; or

1871       ~~(g)~~ (vii) entering into any new reinsurance contract or treaty.

1872       (4) (a) If the commissioner issues a summary order before a hearing under Subsection  
1873 (2), the insurer may waive the commissioner's hearing and apply for immediate judicial relief  
1874 by any remedy afforded by law, without first exhausting ~~its~~ the insurer's administrative  
1875 remedies.

1876       (b) If the insurer has a hearing before the commissioner, the insurer and any person  
1877 whose interests are substantially affected are entitled to judicial review of any order issued by  
1878 the commissioner.

1879       Section 35. Section **31A-27-504**, which is renumbered from Section 31A-27-203 is  
1880 renumbered and amended to read:

1881       ~~**31A-27-203.**~~       **31A-27-504. Conduct of hearings.**

1882       (1) The commissioner shall hold ~~[all hearings in summary proceedings]~~ a hearing  
1883 conducted under Section 31A-27-503 privately unless the insurer requests a public hearing.

1884       ~~[(2)(a) The court may hold all hearings in summary proceedings and judicial reviews~~  
1885 ~~of those proceedings privately, in chambers.]~~

1886       ~~[(b) The court shall hold all proceedings under Subsection (2) (a) privately, on the~~  
1887 ~~request of the insurer against whom the proceedings are brought.]~~

1888 ~~[(3) In all summary proceedings and judicial reviews of them, all]~~

1889 (2) All records of the insurer, other documents, and all [Insurance] department files[;  
 1890 court records,] and papers, so far as they pertain to or are a part of the record of [~~the summary~~  
 1891 proceedings] a hearing conducted under Section 31A-27-503, shall be kept confidential[;]:

1892 (a) except as is necessary to obtain compliance with [the summary proceedings, unless  
 1893 the court, after hearing arguments from the parties in chambers, orders otherwise, or] a hearing  
 1894 conducted under Section 31A-27-503; or

1895 (b) unless the insurer requests that the matter be made public. [Until this type of court  
 1896 order is issued, all papers filed with the clerk of the court shall be held by the clerk in a  
 1897 confidential file.]

1898 ~~[(4) If, at any time, it appears to the court that any person whose interest is or will be~~  
 1899 ~~substantially affected by an order did not appear at the hearing and has not been served, the~~  
 1900 ~~court may order that notice be given and the proceedings be adjourned to give the person~~  
 1901 ~~opportunity to appear on just terms.]~~

1902 ~~[(5)]~~ (3) Any person having possession or custody of and refusing to deliver any of the  
 1903 [property, books, accounts, documents, or other] records of an insurer against which [a seizure  
 1904 order or a summary order has been] an order is issued by the commissioner [or by the court] is  
 1905 in accordance with a hearing conducted under Section 31A-27-503 subject to Section  
 1906 31A-2-308.

1907 Section 36. Section **31A-27a-101** is enacted to read:

## CHAPTER 27a. INSURER RECEIVERSHIP ACT

### Part 1. General Provisions

1910 **31A-27a-101. Title -- Construction -- Commissioner's powers.**

1911 (1) This chapter is known as the "Insurer Receivership Act."

1912 (2) The proceedings authorized by this chapter may be applied to:

1913 (a) all insurers and reinsurers:

1914 (i) who are doing, or have done, an insurance business in this state; and

1915 (ii) against whom claims arising from that business may exist;

1916 (b) all insurers who have the appearance of or claim they do an insurance business in  
 1917 this state;

1918 (c) all insurers who have insureds resident in this state; and

1919 (d) all other persons organized or in the process of organizing to do an insurance  
1920 business as an insurer in this state.

1921 (3) This chapter shall be liberally construed to protect the interests of insureds,  
1922 claimants, creditors, and the public generally through:

1923 (a) early detection of any potentially hazardous condition in an insurer;

1924 (b) prompt application of appropriate corrective measures;

1925 (c) improved methods for conserving and rehabilitating insurers;

1926 (d) enhanced efficiency and economy of liquidation, through clarification of the law, to  
1927 minimize legal uncertainty and litigation;

1928 (e) apportionment of any unavoidable loss in accordance with the statutory priorities  
1929 set out in this chapter;

1930 (f) lessening the problems of interstate receivership by:

1931 (i) facilitating cooperation among states in delinquency proceedings; and

1932 (ii) extending the scope of personal jurisdiction over debtors of the insurer outside this  
1933 state;

1934 (g) regulation of the business of insurance by the impact of the law relating to  
1935 delinquency procedures and by substantive rules; and

1936 (h) providing for a comprehensive scheme for the receivership of insurance companies  
1937 and those subject to this chapter as part of the regulation of the business of insurance in this  
1938 state.

1939 (4) A proceeding in the case of insurer insolvency and delinquency are integral aspects  
1940 of the business of insurance and are of vital public interest and concern.

1941 (5) This chapter does not limit the powers granted the commissioner by other  
1942 provisions of law.

1943 (6) All powers and authority of a receiver under this chapter are:

1944 (a) cumulative; and

1945 (b) in addition to any power or authority available to a receiver under a law other than  
1946 this chapter.

1947 Section 37. Section **31A-27a-102** is enacted to read:

1948 **31A-27a-102. Definitions.**

1949 As used in this chapter:

1950           (1) "Admitted assets" is as defined by and is measured in accordance with the National  
1951 Association of Insurance Commissioner's Statements of Statutory Accounting Principles, as  
1952 incorporated in this state by rules made by the department in accordance with Title 63, Chapter  
1953 46a, Utah Administrative Rulemaking Act, for the purposes of Subsection 31A-4-113(1)(b)(ii).

1954           (2) "Affected guaranty association" means a guaranty association that is or may  
1955 become liable for payment of a covered claim.

1956           (3) "Affiliate" is as defined in Section 31A-1-301.

1957           (4) Notwithstanding Section 31A-1-301, "alien insurer" means an insurer incorporated  
1958 or organized under the laws of a jurisdiction that is not a state.

1959           (5) Notwithstanding Section 31A-1-301, "claimant" or "creditor" means a person  
1960 having a claim against an insurer whether the claim is:

1961           (a) matured or not matured;

1962           (b) liquidated or unliquidated;

1963           (c) secured or unsecured;

1964           (d) absolute; or

1965           (e) fixed or contingent.

1966           (6) "Commissioner" is as defined in Section 31A-1-301.

1967           (7) "Commodity contract" means:

1968           (a) a contract for the purchase or sale of a commodity for future delivery on, or subject  
1969 to the rules of:

1970           (i) a board of trade or contract market under the Commodity Exchange Act, 7 U.S.C.  
1971 Sec. 1 et seq.; or

1972           (ii) a board of trade outside the United States;

1973           (b) an agreement that is:

1974           (i) subject to regulation under Section 19 of the Commodity Exchange Act, 7 U.S.C.

1975 Sec. 1 et seq.; and

1976           (ii) commonly known to the commodities trade as:

1977           (A) a margin account;

1978           (B) a margin contract;

1979           (C) a leverage account; or

1980           (D) a leverage contract;



- 1981 (c) an agreement or transaction that is:  
1982 (i) subject to regulation under Section 4c(b) of the Commodity Exchange Act, 7 U.S.C.  
1983 Sec. 1 et seq.; and  
1984 (ii) commonly known to the commodities trade as a commodity option;  
1985 (d) a combination of the agreements or transactions referred to in this Subsection (7);  
1986 or  
1987 (e) an option to enter into an agreement or transaction referred to in this Subsection (7).  
1988 (8) "Control" is as defined in Section 31A-1-301.  
1989 (9) "Delinquency proceeding" means a:  
1990 (a) proceeding instituted against an insurer for the purpose of rehabilitating or  
1991 liquidating the insurer; and  
1992 (b) summary proceeding under Section 31A-27a-201.  
1993 (10) "Department" is as defined in Section 31A-1-301 unless the context requires  
1994 otherwise.  
1995 (11) "Doing business," "doing insurance business," and "business of insurance"  
1996 includes any of the following acts, whether effected by mail, electronic means, or otherwise:  
1997 (a) issuing or delivering a contract, certificate, or binder relating to insurance or  
1998 annuities:  
1999 (i) to a person who is resident in this state; or  
2000 (ii) covering a risk located in this state;  
2001 (b) soliciting an application for the contract, certificate, or binder described in  
2002 Subsection (11)(a);  
2003 (c) negotiating preliminary to the execution of the contract, certificate, or binder  
2004 described in Subsection (11)(a);  
2005 (d) collecting premiums, membership fees, assessments, or other consideration for the  
2006 contract, certificate, or binder described in Subsection (11)(a);  
2007 (e) transacting matters:  
2008 (i) subsequent to execution of the contract, certificate, or binder described in  
2009 Subsection (11)(a); and  
2010 (ii) arising out of the contract, certificate, or binder described in Subsection (11)(a);  
2011 (f) operating as an insurer under a license or certificate of authority issued by the

2012 department; or

2013 (g) engaging in an act identified in Chapter 15, Unauthorized Insurers, Surplus Lines,  
2014 and Risk Retention Groups.

2015 (12) Notwithstanding Section 31A-1-301, "domiciliary state" means the state in which  
2016 an insurer is incorporated or organized, except that "domiciliary state" means:

2017 (a) in the case of an alien insurer, its state of entry; or

2018 (b) in the case of a risk retention group, the state in which the risk retention group is  
2019 chartered as contemplated in the Liability Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.

2020 (13) "Estate" has the same meaning as "property of the insurer" as defined in  
2021 Subsection (30).

2022 (14) "Fair consideration" is given for property or an obligation:

2023 (a) when in exchange for the property or obligation, as a fair equivalent for it, and in  
2024 good faith:

2025 (i) property is conveyed;

2026 (ii) services are rendered;

2027 (iii) an obligation is incurred; or

2028 (iv) an antecedent debt is satisfied; or

2029 (b) when the property or obligation is received in good faith to secure a present  
2030 advance or an antecedent debt in amount not disproportionately small compared to the value of  
2031 the property or obligation obtained.

2032 (15) Notwithstanding Section 31A-1-301, "foreign insurer" means an insurer domiciled  
2033 in another state.

2034 (16) "Formal delinquency proceeding" means a rehabilitation or liquidation  
2035 proceeding.

2036 (17) "Forward contract" is as defined in the Federal Deposit Insurance Act, 12 U.S.C.  
2037 Sec. 1821(e)(8)(D).

2038 (18) (a) "General assets" include all property of the estate that is not:

2039 (i) subject to a properly perfected secured claim;

2040 (ii) subject to a valid and existing express trust for the security or benefit of a specified  
2041 person or class of person; or

2042 (iii) required by the insurance laws of this state or any other state to be held for the

- 2043 benefit of a specified person or class of person.
- 2044 (b) "General assets" include all property of the estate or its proceeds in excess of the
- 2045 amount necessary to discharge a claim described in Subsection (18)(a).
- 2046 (19) "Good faith" means honesty in fact and intention, and in regard to Part 5, Asset
- 2047 Recovery, also requires the absence of:
- 2048 (a) information that would lead a reasonable person in the same position to know that
- 2049 the insurer is financially impaired or insolvent; and
- 2050 (b) knowledge regarding the imminence or pendency of a delinquency proceeding
- 2051 against the insurer.
- 2052 (20) "Guaranty association" means:
- 2053 (a) a mechanism mandated by Chapter 28, Guaranty Associations; or
- 2054 (b) a similar mechanism in another state that is created for the payment of claims or
- 2055 continuation of policy obligations of a financially impaired or insolvent insurer.
- 2056 (21) "Impaired" means that an insurer:
- 2057 (a) does not have admitted assets at least equal to the sum of:
- 2058 (i) all its liabilities; and
- 2059 (ii) the minimum surplus required to be maintained by Section 31A-5-211 or
- 2060 31A-8-209; or
- 2061 (b) has a total adjusted capital that is less than its authorized control level RBC, as
- 2062 defined in Section 31A-17-601.
- 2063 (22) "Insolvency" or "insolvent" means that an insurer:
- 2064 (a) is unable to pay its obligations when they are due;
- 2065 (b) does not have admitted assets at least equal to all of its liabilities; or
- 2066 (c) has a total adjusted capital that is less than its mandatory control level RBC, as
- 2067 defined in Section 31A-17-601.
- 2068 (23) Notwithstanding Section 31A-1-301, "insurer" means a person who:
- 2069 (a) is doing, has done, purports to do, or is licensed to do the business of insurance;
- 2070 (b) is or has been subject to the authority of, or to rehabilitation, liquidation,
- 2071 reorganization, supervision, or conservation by an insurance commissioner; or
- 2072 (c) is included under Section 31A-27a-104.
- 2073 (24) "Liabilities" is as defined by and is measured in accordance with the National

2074 Association of Insurance Commissioner's Statements of Statutory Accounting Principles, as  
2075 incorporated in this state by rules made by the department in accordance with Title 63, Chapter  
2076 46a, Utah Administrative Rulemaking Act, for the purposes of Subsection 31A-4-113(1)(b)(ii).  
2077 (25) (a) Subject to Subsection (21)(b), "netting agreement" means:  
2078 (i) a contract or agreement that:  
2079 (A) documents one or more transactions between the parties to the agreement for or  
2080 involving one or more qualified financial contracts; and  
2081 (B) provides for the netting, liquidation, setoff, termination, acceleration, or close out  
2082 under or in connection with:  
2083 (I) one or more qualified financial contracts; or  
2084 (II) present or future payment or delivery obligations or payment or delivery  
2085 entitlements under the agreement, including liquidation or close-out values relating to the  
2086 obligations or entitlements, among the parties to the netting agreement;  
2087 (ii) a master agreement or bridge agreement for one or more master agreements  
2088 described in Subsection (25)(a)(i); or  
2089 (iii) any of the following related to a contract or agreement described in Subsection  
2090 (25)(a)(i) or (ii):  
2091 (A) a security agreement;  
2092 (B) a security arrangement;  
2093 (C) other credit enhancement or guarantee; or  
2094 (D) a reimbursement obligation.  
2095 (b) If a contract or agreement described in Subsection (25)(a)(i) or (ii) relates to an  
2096 agreement or transaction that is not a qualified financial contract, the contract or agreement  
2097 described in Subsection (25)(a)(i) or (ii) is considered a netting agreement only with respect to  
2098 an agreement or transaction that is a qualified financial contract.  
2099 (c) "Netting agreement" includes:  
2100 (i) a term or condition incorporated by reference in the contract or agreement described  
2101 in Subsection (25)(a); or  
2102 (ii) a master agreement described in Subsection (25)(a).  
2103 (d) A master agreement described in Subsection (25)(a), together with all schedules,  
2104 confirmations, definitions, and addenda to that master agreement and transactions under any of

- 2105 the items described in this Subsection (25)(d), are treated as one netting agreement.
- 2106 (26) (a) "New value" means:
- 2107 (i) money;
- 2108 (ii) money's worth in goods, services, or new credit; or
- 2109 (iii) release by a transferee of property previously transferred to the transferee in a
- 2110 transaction that is neither void nor voidable by the insurer or the receiver under any applicable
- 2111 law, including proceeds of the property.
- 2112 (b) "New value" does not include an obligation substituted for an existing obligation.
- 2113 (27) "Party in interest" means:
- 2114 (a) the commissioner;
- 2115 (b) a nondomiciliary commissioner in whose state the insurer has outstanding claims
- 2116 liabilities;
- 2117 (c) an affected guaranty association; and
- 2118 (d) the following parties if the party files a request with the receivership court for
- 2119 inclusion as a party in interest and to be on the service list:
- 2120 (i) an insurer that ceded to or assumed business from the insurer;
- 2121 (ii) a policyholder;
- 2122 (iii) a third party claimant;
- 2123 (iv) a creditor;
- 2124 (v) a 10% or greater equity security holder in the insolvent insurer; and
- 2125 (vi) a person, including an indenture trustee, with a financial or regulatory interest in
- 2126 the delinquency proceeding.
- 2127 (28) (a) Notwithstanding Section 31A-1-301, "policy" means, notwithstanding what it
- 2128 is called:
- 2129 (i) a written contract of insurance;
- 2130 (ii) a written agreement for or affecting insurance; or
- 2131 (iii) a certificate of a written contract or agreement described in this Subsection (28)(a).
- 2132 (b) "Policy" includes all clauses, riders, endorsements, and papers that are a part of a
- 2133 policy.
- 2134 (c) "Policy" does not include a contract of reinsurance.
- 2135 (29) "Preference" means a transfer of property of an insurer to or for the benefit of a

2136 creditor:

2137 (a) for or on account of an antecedent debt, made or allowed by the insurer within one  
2138 year before the day on which a successful petition for rehabilitation or liquidation is filed under  
2139 this chapter;

2140 (b) the effect of which transfer may enable the creditor to obtain a greater percentage of  
2141 the creditor's debt than another creditor of the same class would receive; and

2142 (c) if a liquidation order is entered while the insurer is already subject to a  
2143 rehabilitation order and the transfer otherwise qualifies, that is made or allowed within the  
2144 shorter of:

2145 (i) one year before the day on which a successful petition for rehabilitation is filed; or

2146 (ii) two years before the day on which a successful petition for liquidation is filed.

2147 (30) "Property of the insurer" or "property of the estate" includes:

2148 (a) a right, title, or interest of the insurer in property:

2149 (i) whether:

2150 (A) legal or equitable;

2151 (B) tangible or intangible; or

2152 (C) choate or inchoate; and

2153 (ii) including choses in action, contract rights, and any other interest recognized under  
2154 the laws of this state;

2155 (b) entitlements that exist before the entry of an order of rehabilitation or liquidation;

2156 (c) entitlements that may arise by operation of this chapter or other provisions of law  
2157 allowing the receiver to avoid prior transfers or assert other rights; and

2158 (d) (i) records or data that is otherwise the property of the insurer; and

2159 (ii) records or data similar to those described in Subsection (30)(d)(i) that are within  
2160 the possession, custody, or control of a managing general agent, a third party administrator, a  
2161 management company, a data processing company, an accountant, an attorney, an affiliate, or  
2162 other person.

2163 (31) Subject to Subsection 31A-27a-611(10), "qualified financial contract" means any  
2164 of the following:

2165 (a) a commodity contract;

2166 (b) a forward contract;

- 2167           (c) a repurchase agreement;
- 2168           (d) a securities contract;
- 2169           (e) a swap agreement; or
- 2170           (f) any similar agreement that the commissioner determines by rule or order to be a
- 2171 qualified financial contract for purposes of this chapter.
- 2172           (32) As the context requires, "receiver" means a rehabilitator, liquidator, or ancillary
- 2173 receiver.
- 2174           (33) As the context requires, "receivership" means a rehabilitation, liquidation, or
- 2175 ancillary receivership.
- 2176           (34) Unless the context requires otherwise, "receivership court" refers to the court in
- 2177 which a delinquency proceeding is pending.
- 2178           (35) "Reciprocal state" means any state other than this state that:
- 2179           (a) enforces a law substantially similar to this chapter;
- 2180           (b) requires the commissioner to be the receiver of a delinquent insurer; and
- 2181           (c) has laws for the avoidance of fraudulent conveyances and preferential transfers by
- 2182 the receiver of a delinquent insurer.
- 2183           (36) "Record," when used as a noun, means any information or data, in whatever form
- 2184 maintained, including:
- 2185           (a) a book;
- 2186           (b) a document;
- 2187           (c) a paper;
- 2188           (d) a file;
- 2189           (e) an application file;
- 2190           (f) a policyholder list;
- 2191           (g) policy information;
- 2192           (h) a claim or claim file;
- 2193           (i) an account;
- 2194           (j) a voucher;
- 2195           (k) a litigation file;
- 2196           (l) a premium record;
- 2197           (m) a rate book;

2198 (n) an underwriting manual;

2199 (o) a personnel record;

2200 (p) a financial record; or

2201 (q) other material.

2202 (37) "Reinsurance" means a transaction or contract under which an assuming insurer  
2203 agrees to indemnify a ceding insurer against all, or a part, of any loss that the ceding insurer  
2204 may sustain under the one or more policies that the ceding insurer issues or will issue.

2205 (38) "Repurchase agreement" is as defined in the Federal Deposit Insurance Act, 12  
2206 U.S.C. Sec. 1821(e)(8)(D).

2207 (39) (a) "Secured claim" means, subject to Subsection (39)(b):

2208 (i) a claim secured by an asset that is not a general asset; or

2209 (ii) the right to set off as provided in Section 31A-27a-510.

2210 (b) "Secured claim" does not include:

2211 (i) a special deposit claim;

2212 (ii) a claim based on mere possession; or

2213 (iii) a claim arising from a constructive or resulting trust.

2214 (40) "Securities contract" is as defined in the Federal Deposit Insurance Act, 12 U.S.C.  
2215 Sec. 1821(e)(8)(D).

2216 (41) "Special deposit" means a deposit established pursuant to statute for the security  
2217 or benefit of a limited class or classes of persons.

2218 (42) (a) Subject to Subsection (42)(b), "special deposit claim" means a claim secured  
2219 by a special deposit.

2220 (b) "Special deposit claim" does not include a claim against the general assets of the  
2221 insurer.

2222 (43) "State" means a state, district, or territory of the United States.

2223 (44) "Subsidiary" is as defined in Section 31A-1-301.

2224 (45) "Swap agreement" is as defined in the Federal Deposit Insurance Act, 12 U.S.C.  
2225 Sec. 1821(e)(8)(D).

2226 (46) (a) "Transfer" includes the sale and every other and different mode of disposing of  
2227 or parting with property or with an interest in property, whether:

2228 (i) directly or indirectly;



- 2229 (ii) absolutely or conditionally;
- 2230 (iii) voluntarily or involuntarily; or
- 2231 (iv) by or without judicial proceedings.
- 2232 (b) An interest in property includes:
- 2233 (i) a set off;
- 2234 (ii) having possession of the property; or
- 2235 (iii) fixing a lien on the property or on an interest in the property.

2236 (c) The retention of a security title in property delivered to an insurer and foreclosure  
 2237 of the insurer's equity of redemption is considered a transfer suffered by the insurer.

2238 (47) Notwithstanding Section 31A-1-301, "unauthorized insurer" means an insurer  
 2239 transacting the business of insurance in this state that has not received a certificate of authority  
 2240 from this state, or some other type of authority that allows for the transaction of the business of  
 2241 insurance in this state.

2242 Section 38. Section **31A-27a-103** is enacted to read:

2243 **31A-27a-103. Insurer receivership laws.**

2244 (1) The state's insurer receivership laws consists of:

- 2245 (a) this chapter; and
- 2246 (b) Chapter 28, Guaranty Associations.

2247 (2) The laws listed in Subsection (1) shall be construed together in a manner that is  
 2248 consistent.

2249 Section 39. Section **31A-27a-104** is enacted to read:

2250 **31A-27a-104. Persons covered.**

2251 (1) This chapter applies to:

- 2252 (a) an insurer who:
  - 2253 (i) is doing, or has done, an insurance business in this state; and
  - 2254 (ii) against whom a claim arising from that business may exist;
- 2255 (b) a person subject to examination by the commissioner;
- 2256 (c) an insurer who purports to do an insurance business in this state;
- 2257 (d) an insurer who has an insured who is resident in this state; and
- 2258 (e) in addition to Subsections (1)(a) through (d), a person doing business as follows:
  - 2259 (i) under Chapter 6a, Service Contracts;

- 2260 (ii) under Chapter 7, Nonprofit Health Service Insurance Corporations;  
2261 (iii) under Chapter 8a, Health Discount Program Consumer Protection Act;  
2262 (iv) under Chapter 9, Insurance Fraternal;  
2263 (v) under Chapter 11, Motor Clubs;  
2264 (vi) under Chapter 13, Employee Welfare Funds and Plans;  
2265 (vii) under Chapter 15, Unauthorized Insurers, Surplus Lines, and Risk Retention  
2266 Groups;  
2267 (viii) as a bail bond surety company under Chapter 35, Bail Bond Act;  
2268 (ix) under Chapter 37, Captive Insurance Companies Act;  
2269 (x) a title insurance company;  
2270 (xi) a prepaid health care delivery plan; and  
2271 (xii) a person not described in Subsections (1)(e)(i) through (xi) that is organized or  
2272 doing insurance business, or in the process of organizing with the intent to do insurance  
2273 business in this state.  
2274 (2) Notwithstanding Sections 31A-1-301 and 31A-27a-102, this chapter does not apply  
2275 to a person licensed by the insurance commissioner as one or more of the following in this state  
2276 unless the person engages in the business of insurance as an insurer:  
2277 (a) an insurance agency;  
2278 (b) an insurance producer;  
2279 (c) a limited line producer;  
2280 (d) a customer service representative;  
2281 (e) an insurance consultant;  
2282 (f) a managing general agent;  
2283 (g) reinsurance intermediary;  
2284 (h) a title insurance producer;  
2285 (i) a third party administrator;  
2286 (j) an insurance adjustor;  
2287 (k) a provider of viatical settlements; or  
2288 (l) a producer of viatical settlements.  
2289 Section 40. Section **31A-27a-105** is enacted to read:  
2290 **31A-27a-105. Jurisdiction -- Venue.**

2291 (1) (a) A delinquency proceeding under this chapter may not be commenced by a  
2292 person other than the commissioner of this state.

2293 (b) No court has jurisdiction to entertain, hear, or determine a delinquency proceeding  
2294 commenced by any person other than the commissioner of this state.

2295 (2) Other than in accordance with this chapter, a court of this state has no jurisdiction  
2296 to entertain, hear, or determine any complaint:

2297 (a) requesting the liquidation, rehabilitation, seizure, sequestration, or receivership of  
2298 an insurer; or

2299 (b) requesting a stay, an injunction, a restraining order, or other relief preliminary to,  
2300 incidental to, or relating to a delinquency proceeding.

2301 (3) (a) The receivership court, as of the commencement of a delinquency proceeding  
2302 under this chapter, has exclusive jurisdiction of all property of the insurer, wherever located,  
2303 including property located outside the territorial limits of the state.

2304 (b) The receivership court has original but not exclusive jurisdiction of all civil  
2305 proceedings arising:

2306 (i) under this chapter; or

2307 (ii) in or related to a delinquency proceeding under this chapter.

2308 (4) In addition to other grounds for jurisdiction provided by the law of this state, a  
2309 court of this state having jurisdiction of the subject matter has jurisdiction over a person served  
2310 pursuant to the Utah Rules of Civil Procedure or other applicable provisions of law in an action  
2311 brought by the receiver if the person served:

2312 (a) in an action resulting from or incident to a relationship with the insurer described in  
2313 this Subsection (4)(a), is or has been an agent, broker, or other person who has at any time:

2314 (i) written a policy of insurance for an insurer against which a delinquency proceeding  
2315 is instituted; or

2316 (ii) acted in any manner whatsoever on behalf of an insurer against which a  
2317 delinquency proceeding is instituted;

2318 (b) in an action on or incident to a reinsurance contract described in this Subsection  
2319 (4)(b):

2320 (i) is or has been an insurer or reinsurer who has at any time entered into the contract of  
2321 reinsurance with an insurer against which a delinquency proceeding is instituted; or

2322 (ii) is an intermediary, agent, or broker of or for the reinsurer, or with respect to the  
2323 contract;

2324 (c) in an action resulting from or incident to a relationship with the insurer described in  
2325 this Subsection (4)(c), is or has been an officer, director, manager, trustee, organizer, promoter,  
2326 or other person in a position of comparable authority or influence over an insurer against which  
2327 a delinquency proceeding is instituted;

2328 (d) in an action concerning assets described in this Subsection (4)(d), is or was at the  
2329 time of the institution of the delinquency proceeding against the insurer, holding assets in  
2330 which the receiver claims an interest on behalf of the insurer; or

2331 (e) in any action on or incident to the obligation described in this Subsection (4)(e), is  
2332 obligated to the insurer in any way whatsoever.

2333 (5) (a) Subject to Subsection (5)(b), service shall be made upon the person named in  
2334 the petition in accordance with the Utah Rules of Civil Procedure.

2335 (b) In lieu of service under Subsection (5)(a), upon application to the receivership  
2336 court, service may be made in such a manner as the receivership court directs whenever it is  
2337 satisfactorily shown by the commissioner's affidavit:

2338 (i) in the case of a corporation, that the officers of the corporation cannot be served  
2339 because they have departed from the state or have otherwise concealed themselves with intent  
2340 to avoid service;

2341 (ii) in the case of an insurer whose business is conducted, at least in part, by an  
2342 attorney-in-fact, managing general agent, or other similar entity including a reciprocal, Lloyd's  
2343 association, or interinsurance exchange, that the individual attorney-in-fact, managing general  
2344 agent, or other entity, or its officers of the corporate attorney-in-fact cannot be served because  
2345 of the individual's departure or concealment; or

2346 (iii) in the case of a natural person, that the person cannot be served because of the  
2347 person's departure or concealment.

2348 (6) If the receivership court on motion of any party finds that an action should as a  
2349 matter of substantial justice be tried in a forum outside this state, the receivership court may  
2350 enter an appropriate order to stay further proceedings on the action in this state.

2351 (7) (a) Nothing in this chapter deprives a reinsurer of any contractual right to pursue  
2352 arbitration except:

- 2353 (i) as to a claim against the estate; and  
2354 (ii) in regard to a contract rejected by the receiver under Section 31A-27a-113.  
2355 (b) A party in arbitration may bring a claim or counterclaim against the estate, but the  
2356 claim or counterclaim is subject to this chapter.  
2357 (8) An action authorized by this chapter shall be brought in the Third District Court for  
2358 Salt Lake County.  
2359 (9) (a) At any time after an order is entered pursuant to Section 31A-27a-201,  
2360 31A-27a-301, or 31A-27a-401, the commissioner or receiver may transfer the case to the  
2361 county of the principal office of the person proceeded against.  
2362 (b) In the event of a transfer under this Subsection (9), the court in which the  
2363 proceeding is commenced shall, upon application of the commissioner or receiver, direct its  
2364 clerk to transmit the court's file to the clerk of the court to which the case is to be transferred.  
2365 (c) After a transfer under this Subsection (9), the proceeding shall be conducted in the  
2366 same manner as if it had been commenced in the court to which the matter is transferred.  
2367 (10) (a) Except as provided in Subsection (10)(c), a person may not intervene in a  
2368 liquidation proceeding in this state for the purpose of seeking or obtaining payment of a  
2369 judgment, lien, or other claim of any kind.  
2370 (b) Except as provided in Subsection (10)(c), the claims procedure set for this chapter  
2371 constitute the exclusive means for obtaining payment of claims from the liquidation estate.  
2372 (c) (i) An affected guaranty association or the affected guaranty association's  
2373 representative may intervene as a party as a matter of right and otherwise appear and participate  
2374 in any court proceeding concerning a liquidation proceeding against an insurer.  
2375 (ii) Intervention by an affected guaranty association or by an affected guaranty  
2376 association's designated representative conferred by this Subsection (10)(c) may not constitute  
2377 grounds to establish general personal jurisdiction by the courts of this state.  
2378 (iii) An intervening affected guaranty association or the affected guaranty association's  
2379 representative are subject to the receivership court's jurisdiction for the limited purpose for  
2380 which the affected guaranty association intervenes.  
2381 (11) (a) Notwithstanding the other provisions of this section, this chapter does not  
2382 confer jurisdiction on the receivership court to resolve coverage disputes between an affected  
2383 guaranty association and those asserting claims against the affected guaranty association

2384 resulting from the initiation of a receivership proceeding under this chapter except to the extent  
2385 that the affected guaranty association otherwise expressly consents to the jurisdiction of the  
2386 receivership court pursuant to a plan of rehabilitation or liquidation that resolves its obligations  
2387 to covered policyholders.

2388 (b) The determination of a dispute with respect to the statutory coverage obligations of  
2389 an affected guaranty association by a court or administrative agency or body with jurisdiction  
2390 in the affected guaranty association's state of domicile is binding and conclusive as to the  
2391 affected guaranty association's claim in the liquidation proceeding.

2392 (12) Upon the request of the receiver, the receivership court or the presiding judge of  
2393 the Third District Court for Salt Lake County may order that one judge hear all cases and  
2394 controversies arising out of or related to the delinquency proceeding.

2395 (13) A delinquency proceeding is exempt from any program maintained for the early  
2396 closure of civil actions.

2397 Section 41. Section **31A-27a-106** is enacted to read:

2398 **31A-27a-106. Exemption from fees.**

2399 The receiver may not be required to pay any of the following fees to a public officer of  
2400 this state:

2401 (1) filing fees;

2402 (2) recording fees;

2403 (3) transcript fees;

2404 (4) copying fees;

2405 (5) certification fees; or

2406 (6) authentication fees.

2407 Section 42. Section **31A-27a-107** is enacted to read:

2408 **31A-27a-107. Notice and hearing on matters submitted by the receiver for**  
2409 **receivership court approval.**

2410 (1) (a) Upon written request to the receiver, a person shall be placed on the service list  
2411 to receive notice of matters filed by the receiver.

2412 (b) It is the responsibility of the person requesting notice to:

2413 (i) inform the receiver in writing of any changes in the person's address; or

2414 (ii) request that the person's name be deleted from the service list.

2415 (c) (i) The receiver may serve on a person on the service list a request to confirm  
2416 continuation on the service list by returning a form.

2417 (ii) The request to confirm continuation may be served periodically but not more  
2418 frequently than every 12 months.

2419 (iii) A person who fails to return the form described in this Subsection (1)(c) may be  
2420 removed from the service list.

2421 (d) Inclusion on the service list does not confer standing in the delinquency proceeding  
2422 to raise, appear, or be heard on any issue.

2423 (e) The receiver shall:

2424 (i) file a copy of the service list with the receivership court; and

2425 (ii) periodically provide to the receivership court notice of changes to the service list.

2426 (2) Except as otherwise provided by this chapter, notice and hearing of any matter  
2427 submitted by the receiver to the receivership court for approval under this chapter shall be  
2428 conducted in accordance with this Subsection (2).

2429 (a) The receiver:

2430 (i) shall file a motion:

2431 (A) explaining the proposed action; and

2432 (B) the basis for the proposed action; and

2433 (ii) may include any evidence in support of the motion.

2434 (b) If a document, material, or other information supporting the motion is confidential,  
2435 the document, material, or other information may be submitted to the receivership court under  
2436 seal for in camera inspection.

2437 (c) (i) The receiver shall provide notice and a copy of the motion to:

2438 (A) all persons on the service list; and

2439 (B) any other person as may be required by the receivership court.

2440 (ii) Notice may be provided by first-class mail postage paid, electronic mail, or  
2441 facsimile transmission, at the receiver's discretion.

2442 (iii) For purposes of this section, notice is considered to be given on the day on which  
2443 it is deposited with the United States Postmaster or transmitted, as applicable, to the  
2444 last-known address as shown on the service list.

2445 (d) (i) A party in interest objecting to the motion shall:

2446 (A) file an objection specifying the grounds for the objection within:  
2447 (I) ten days of the day on which the notice of the filing of the motion is sent; or  
2448 (II) such other time as the receivership court may specify; and  
2449 (B) serve copies on:  
2450 (I) the receiver; and  
2451 (II) any other person served with the motion within the time period described in  
2452 Subsection (2)(d)(i).  
2453 (ii) In accordance with the Utah Rules of Civil Procedure, days may be added to the  
2454 time for filing an objection if the notice of the motion is sent only by way of United States  
2455 mail.  
2456 (iii) An objecting party has the burden of showing why the receivership court should  
2457 not authorize the proposed action.  
2458 (e) (i) If no objection to the motion is timely filed:  
2459 (A) the receivership court may:  
2460 (I) enter an order approving the motion without a hearing; or  
2461 (II) hold a hearing to determine if the receiver's motion should be approved; and  
2462 (B) the receiver may request that the receivership court enter an order or hold a hearing  
2463 on an expedited basis.  
2464 (ii) (A) If an objection is timely filed, the receivership court may hold a hearing.  
2465 (B) If the receivership court approves the motion and, upon a motion by the receiver,  
2466 determines that the objection is frivolous or filed merely for delay or for other improper  
2467 purpose, the receivership court may order the objecting party to pay the receiver's reasonable  
2468 costs and fees of defending against the objection.  
2469 Section 43. Section **31A-27a-108** is enacted to read:  
2470 **31A-27a-108. Injunctions and orders.**  
2471 (1) The receivership court may issue an order, process, or judgment including stays,  
2472 injunctions, or other orders necessary or appropriate to carry out:  
2473 (a) this chapter; or  
2474 (b) an approved rehabilitation plan.  
2475 (2) This chapter may not be construed to limit the ability of the receiver to apply to a  
2476 court other than the receivership court in any jurisdiction:



- 2477 (a) to carry out this chapter; or
- 2478 (b) for the purpose of pursuing claims against any person.
- 2479 (3) Except as provided in Subsections (5) and (6) or as otherwise provided in this
- 2480 chapter, the commencement of a delinquency proceeding under this chapter operates as a stay,
- 2481 applicable to all persons, of:
- 2482 (a) the commencement or continuation, including the issuance or employment of
- 2483 process, of a judicial, administrative, an arbitration proceeding, or other action or proceeding
- 2484 against the insurer:
- 2485 (i) that was or could have been commenced before the commencement of the
- 2486 delinquency proceeding under this chapter; or
- 2487 (ii) to recover a claim against the insurer that arises before the commencement of the
- 2488 delinquency proceeding under this chapter;
- 2489 (b) the enforcement against the insurer or against property of the insurer of a judgment
- 2490 obtained before the commencement of the delinquency proceeding under this chapter;
- 2491 (c) an act to:
- 2492 (i) obtain or retain possession of:
- 2493 (A) property of the insurer; or
- 2494 (B) property from the insurer; or
- 2495 (ii) exercise control over property or records of the insurer;
- 2496 (d) an act to create, perfect, or enforce a lien against property of the insurer;
- 2497 (e) an act to collect, assess, or recover a claim against the insurer that arises before the
- 2498 commencement of a delinquency proceeding under this chapter;
- 2499 (f) the commencement or continuation of an action or proceeding against a reinsurer of
- 2500 the insurer:
- 2501 (i) by the holder of a claim against the insurer; and
- 2502 (ii) seeking a reinsurance recovery that is contractually due to the insurer;
- 2503 (g) the commencement or continuation of an action or proceeding by a governmental
- 2504 unit to terminate or revoke an insurance license; and
- 2505 (h) (i) an action described in Subsection (3)(h)(ii):
- 2506 (A) with respect to a contract, agreement, or lease including:
- 2507 (I) a policy;

2508 (II) an insurance or reinsurance contract;  
2509 (III) a surety bond; or  
2510 (IV) a surety undertaking;  
2511 (B) whether or not the insurer is a party to the contract, agreement, lease, policy, bond,  
2512 or undertaking; and  
2513 (C) if the sole basis for the action is:  
2514 (I) that the insurer is the subject of a delinquency proceeding;  
2515 (II) that one or more of the insurer's licenses have been suspended or revoked because  
2516 the insurer is the subject of a delinquency proceeding; or  
2517 (III) both Subsections (3)(h)(i)(C)(I) and (II); and  
2518 (ii) as to a contract, agreement, lease, policy, bond, or undertaking described in  
2519 Subsection (3)(h)(i), an action for:  
2520 (A) termination;  
2521 (B) failure to renew;  
2522 (C) suspension of performance;  
2523 (D) declaration of default;  
2524 (E) demand for additional, substitute, or replacement security or performance; or  
2525 (F) other adverse action.  
2526 (4) (a) Except as provided in Subsections (5) and (6) or as otherwise provided in this  
2527 chapter, the commencement of a delinquency proceeding under this chapter operates as a stay,  
2528 applicable to all persons, of the commencement or continuation, including the issuance or  
2529 employment of process, of a judicial, administrative, or other action or proceeding, including  
2530 the enforcement of any judgment:  
2531 (i) against an insured that is or could have been commenced before the commencement  
2532 of the delinquency proceeding under this chapter; or  
2533 (ii) (A) to recover a claim against the insured that arises before or after the  
2534 commencement of the delinquency proceeding under this chapter; and  
2535 (B) for which the insurer:  
2536 (I) is or may be liable under a policy of insurance; or  
2537 (II) is obligated to defend a party.  
2538 (b) Subject to Subsection (4)(c), the stay provided by this Subsection (4) terminates 90

2539 days after the day on which the receiver is appointed unless extended by order of the  
2540 receivership court:

2541 (i) for good cause shown; and  
2542 (ii) after notice to any affected parties and any hearing the receivership court  
2543 determines is appropriate.

2544 (c) Notwithstanding the other provisions of this Subsection (4), any applicable statute  
2545 of limitations with respect to any claim against an insured is tolled during the period of the stay  
2546 provided by this Subsection (4) and any extensions.

2547 (5) Notwithstanding Subsection (3), the commencement of a delinquency proceeding  
2548 under this chapter does not operate as a stay or prohibition of:

2549 (a) except as provided in Subsection (3)(g), a regulatory action by a commissioner of a  
2550 nondomiciliary state, including the suspension of a license;

2551 (b) a criminal action;

2552 (c) an act to perfect, or to maintain or continue the perfection of, an interest in property  
2553 to the extent that the act is accomplished within any relation back period under applicable law;

2554 (d) a set off as permitted by Section 31A-27a-510;

2555 (e) pursuit and enforcement of a nonmonetary governmental claim, judgment, or  
2556 proceeding;

2557 (f) (i) presentment of a negotiable instrument; and  
2558 (ii) the giving of notice of and protesting dishonor of the negotiable instrument;

2559 (g) enforcement of a right against a single beneficiary trust established pursuant to and  
2560 in compliance with Section 31A-17-404;

2561 (h) under or in connection with a netting agreement or qualified financial contract as  
2562 provided for in Section 31A-27a-611, a right to cause:

2563 (i) the netting, liquidation, set off, termination, acceleration, or close out of an  
2564 obligation; or

2565 (ii) enforcement of a:

2566 (A) security agreement;

2567 (B) security arrangement; or

2568 (C) other credit enhancement or guarantee or reimbursement obligation;

2569 (i) discharge by an affected guaranty association of statutory responsibilities under any

2570 statute applicable to the affected guaranty association; or  
2571 (j) any of the following actions:  
2572 (i) an audit by a governmental unit to determine tax liability;  
2573 (ii) the issuance to the insurer by a governmental unit of a notice of tax deficiency;  
2574 (iii) a demand for a tax return; or  
2575 (iv) the making of an assessment for any tax and issuance of a notice and demand for  
2576 payment of the assessment.  
2577 (6) Except as provided in Subsection (7):  
2578 (a) the stay of an act against property of the insurer under Subsection (3) continues  
2579 until the property is no longer property of the receivership; and  
2580 (b) the stay of any other act under Subsection (3) continues until the earlier of the day  
2581 on which the delinquency proceeding is closed or the day on which the delinquency proceeding  
2582 is dismissed.  
2583 (7) (a) The receivership court may grant relief from a stay of Subsection (3) or (4), by  
2584 terminating, annulling, modifying, or conditioning the stay:  
2585 (i) on request of a party in interest;  
2586 (ii) after notice and any hearing the receivership court determines appropriate; and  
2587 (iii) (A) for cause; or  
2588 (B) with respect to a stay of an act against property under Subsection (3) if:  
2589 (I) the insurer does not have any equity in the property; and  
2590 (II) the property is not necessary to an effective plan.  
2591 (b) For the purposes of this Subsection (7), "cause" includes if:  
2592 (i) the receiver cancels a policy, a surety bond, or a surety undertaking;  
2593 (ii) the creditor is entitled, by contract or law, to require the insured or the principal to  
2594 have a policy, a surety bond, or a surety undertaking; and  
2595 (iii) the insured or the principal fails to obtain a replacement policy, surety bond, or  
2596 surety undertaking within 30 days from the date of cancellation.  
2597 (8) In a hearing under Subsection (7), the party seeking relief from the stay has the  
2598 burden of proof on each issue, which shall be established by clear and convincing evidence.  
2599 (9) (a) The estate of an insurer that is injured by a willful violation of a stay provided  
2600 by this section is entitled to actual damages, including costs and attorney fees.

2601 (b) In appropriate circumstances, the receivership court may impose sanctions in  
2602 addition to those under Subsection (9)(a).

2603 (10) Notwithstanding any other provision of law, in relation to any stay or injunction  
2604 under this section, a bond may not be required of:

2605 (a) the commissioner; or

2606 (b) a receiver.

2607 Section 44. Section **31A-27a-109** is enacted to read:

2608 **31A-27a-109. Statutes of limitations.**

2609 (1) If applicable law, an order, or an agreement fixes a period within which the insurer  
2610 may commence an action, and this period is not expired before the day on which the initial  
2611 petition in a delinquency proceeding is filed, the receiver may not by reason of the filing of the  
2612 initial petition in a delinquency proceeding be barred from commencing the action if the  
2613 receiver commences the action on or before the later of:

2614 (a) the end of the period, including any suspension of the period occurring on or after  
2615 the day on which the initial petition in a delinquency proceeding is filed; or

2616 (b) six years after the day on which the most recent receivership order is entered.

2617 (2) (a) Except as provided in Subsection (1), if applicable law, an order, or an  
2618 agreement fixes a period within which the insurer may do an act described in Subsection (2)(b)  
2619 and the period described in this Subsection (2)(a) is not expired before the date on which the  
2620 initial petition in a delinquency proceeding is filed, the receiver may not by reason of the filing  
2621 of the petition initiating a formal delinquency proceeding be barred from taking the act if the  
2622 receiver does the act on or before the later of:

2623 (i) the end of the period, including any suspension of the period occurring on or after  
2624 the day on which the initial petition in a delinquency proceeding is filed; or

2625 (ii) 60 days after the day on which the most recent receivership order is entered.

2626 (b) This Subsection (2) applies to:

2627 (i) filing, curing, or performing:

2628 (A) a pleading;

2629 (B) a demand;

2630 (C) a notice; or

2631 (D) a proof of claim or loss;

2632 (ii) curing a default in a case or proceeding; or  
2633 (iii) performing any act similar to one described in Subsection (2)(b)(i) or (ii).  
2634 (3) If applicable law, an order, or an agreement fixes a period for commencing or  
2635 continuing a civil action in a court other than the receivership court on a claim against the  
2636 insurer, and the period has not expired before the day on which the initial petition in a  
2637 delinquency proceeding is filed, the period does not expire until the later of:  
2638 (a) the end of the period, including any suspension of the period occurring on or after  
2639 the day on which the initial petition in a delinquency proceeding is filed; or  
2640 (b) 30 days after the day on which the stay pursuant to this section with respect to the  
2641 claim is terminated or expires.  
2642 Section 45. Section **31A-27a-110** is enacted to read:  
2643 **31A-27a-110. Cooperation of officers, owners, and employees.**  
2644 (1) As used in this section:  
2645 (a) "Cooperate" includes to:  
2646 (i) reply promptly in writing to an inquiry from the commissioner or receiver  
2647 requesting a reply; and  
2648 (ii) promptly make available to the commissioner or receiver any record, account,  
2649 information, or property:  
2650 (A) of or pertaining to the insurer; and  
2651 (B) in the person's possession, custody, or control.  
2652 (b) "Person" includes a person who exercises control directly or indirectly over  
2653 activities of the insurer through:  
2654 (i) a holding company; or  
2655 (ii) other affiliate of the insurer.  
2656 (2) The following shall cooperate with the commissioner or receiver in a proceeding  
2657 under this chapter or an investigation preliminary to a proceeding under this chapter:  
2658 (a) a present or former officer, manager, director, trustee, owner, or employee of an  
2659 insurer;  
2660 (b) a present or former agent of an insurer; or  
2661 (c) a person with authority over or in charge of any segment of the insurer's affairs.  
2662 (3) A person may not obstruct or interfere with the commissioner or receiver in the

2663 conduct of:

2664 (a) a delinquency proceeding; or

2665 (b) an investigation preliminary or incidental to a delinquency proceeding.

2666 (4) This section may not be construed to abridge otherwise existing legal rights,

2667 including the right to resist:

2668 (a) a petition for liquidation or other delinquency proceeding; or

2669 (b) other orders.

2670 (5) (a) A person described in Subsection (5)(b) is:

2671 (i) guilty of a class B misdemeanor, except that the fine may exceed \$1,000 but may

2672 not exceed \$10,000; or

2673 (ii) after a hearing, subject to:

2674 (A) the commissioner imposing a civil penalty that may not exceed \$10,000;

2675 (B) the revocation or suspension of an insurance license issued by the commissioner;

2676 or

2677 (C) a combination of Subsections (5)(a)(ii)(A) and (B).

2678 (b) This Subsection (5) applies to:

2679 (i) a person described in Subsection (2) who fails to cooperate with the commissioner

2680 or receiver;

2681 (ii) a person who obstructs or interferes with the commissioner or receiver in the

2682 conduct of a delinquency proceeding or an investigation preliminary or incidental to a

2683 delinquency proceeding; or

2684 (iii) a person who violates an order validly issued under this chapter.

2685 Section 46. Section **31A-27a-111** is enacted to read:

2686 **31A-27a-111. Actions by and against the receiver.**

2687 (1) (a) An allegation by the receiver of improper or fraudulent conduct against a person

2688 may not be the basis of a defense to the enforcement of a contractual obligation owed to the

2689 insurer by a third party.

2690 (b) Notwithstanding Subsection (1)(a), a third party described in this Subsection (1) is

2691 not barred by this section from seeking to establish independently as a defense that the conduct

2692 is materially and substantially related to the contractual obligation for which enforcement is

2693 sought.

2694 (2) (a) Subject to Subsection (2)(b), a prior wrongful or negligent action of any present  
2695 or former officer, manager, director, trustee, owner, employee, or agent of the insurer may not  
2696 be asserted as a defense to a claim by the receiver:

2697 (i) under a theory of:

2698 (A) estoppel;

2699 (B) comparative fault;

2700 (C) intervening cause;

2701 (D) proximate cause;

2702 (E) reliance; or

2703 (F) mitigation of damages; or

2704 (ii) otherwise.

2705 (b) Notwithstanding Subsection (2)(a):

2706 (i) the affirmative defense of fraud in the inducement may be asserted against the  
2707 receiver in a claim based on a contract; and

2708 (ii) a principal under a surety bond or a surety undertaking is entitled to credit against  
2709 any reimbursement obligation to the receiver for the value of any property pledged to secure the  
2710 reimbursement obligation to the extent that:

2711 (A) the receiver has possession or control of the property; or

2712 (B) the insurer or its agents misappropriated, including commingling, the property.

2713 (c) Evidence of fraud in the inducement is admissible only if it is contained in the  
2714 records of the insurer.

2715 (3) Action or inaction by an insurance regulatory authority may not be asserted as a  
2716 defense to a claim by the receiver.

2717 (4) (a) Subject to Subsection (4)(b), a judgment or order entered against an insured or  
2718 the insurer in contravention of a stay or injunction under this chapter, or at any time by default  
2719 or collusion, may not be considered as evidence of liability or of the quantum of damages in  
2720 adjudicating claims filed in the estate arising out of the subject matter of the judgment or order.

2721 (b) Subsection (4)(a) does not apply to an affected guaranty association's claim for  
2722 amounts paid on a settlement or judgment in pursuit of the affected guaranty association's  
2723 statutory obligations.

2724 (5) The receiver may not be considered a governmental entity for the purposes of any



2725 state law awarding fees to a litigant who prevails against a governmental entity.

2726 Section 47. Section **31A-27a-112** is enacted to read:

2727 **31A-27a-112. Unrecorded obligations and defenses of affiliates.**

2728 (1) This section applies to a person who in relation to an insurer is:

2729 (a) an affiliate;

2730 (b) a controlled or controlling person; or

2731 (c) a present or former officer, manager, director, trustee, or shareholder.

2732 (2) In a proceeding or claim by the receiver, a person described in Subsection (1) may

2733 not assert a defense unless evidence of the defense:

2734 (a) is recorded in the records of the insurer at or about the time the event giving rise to  
2735 the defense occurs; and

2736 (b) if required by statutory accounting practices and procedures, is timely reported on  
2737 the insurer's official financial statements filed with the commissioner.

2738 (3) A person described in Subsection (1) may not assert a claim, unless the obligation:

2739 (a) is recorded in the records of the insurer at or about the time the obligation is  
2740 incurred; and

2741 (b) if required by statutory accounting practices and procedures, is timely reported on  
2742 the insurer's official financial statements filed with the commissioner.

2743 (4) A claim by the receiver against a person described in Subsection (1) that is made on  
2744 the basis of an unrecorded or unreported transaction is not barred by this section.

2745 Section 48. Section **31A-27a-113** is enacted to read:

2746 **31A-27a-113. Executory contracts.**

2747 (1) Subject to the other provisions of this section, the receiver may assume or reject an  
2748 executory contract or unexpired lease of the insurer.

2749 (2) (a) If there is a default in an executory contract or unexpired lease of the insurer, the  
2750 receiver may not assume the contract or lease unless, at the time of the assumption of the  
2751 contract or lease, the receiver:

2752 (i) cures or provides adequate assurance that the receiver will promptly cure the  
2753 default; and

2754 (ii) provides adequate assurance of future performance under the contract or lease.

2755 (b) This Subsection (2) does not apply to a default that is a breach of a provision

2756 relating to:

2757 (i) the insolvency or financial condition of the insurer at any time before the closing of  
2758 the delinquency proceeding;

2759 (ii) the appointment of or taking possession by:

2760 (A) a receiver in a case under this chapter; or

2761 (B) a custodian before the commencement of the delinquency proceeding; or

2762 (iii) the satisfaction of a penalty rate or provision relating to a default arising from a  
2763 failure of the insurer to perform a nonmonetary obligation under the executory contract or  
2764 unexpired lease.

2765 (3) A claim arising from a rejection under this section or under a plan of rehabilitation  
2766 or liquidation of an executory contract or unexpired lease of the insurer that is not assumed  
2767 shall be determined, and shall be treated and classified as though the claim arose before the day  
2768 on which a successful petition commencing the delinquency proceeding is filed.

2769 Section 49. Section **31A-27a-114** is enacted to read:

2770 **31A-27a-114. Immunity and indemnification.**

2771 (1) For purposes of this section:

2772 (a) "Receiver's assistant" includes:

2773 (i) a present or former special deputy or assistant special deputy engaged by contract or  
2774 otherwise;

2775 (ii) a person whom the receiver, a special deputy, or an assistant special deputy  
2776 employs to assist in a delinquency proceeding under this chapter; and

2777 (iii) a state employee acting with respect to a delinquency proceeding under this  
2778 chapter.

2779 (b) "Receiver's contractor" includes a person with whom the receiver, a special deputy,  
2780 or an assistant special deputy contracts to assist in a delinquency proceeding under this chapter  
2781 such as:

2782 (i) an attorney;

2783 (ii) an accountant;

2784 (iii) an auditor;

2785 (iv) an actuary;

2786 (v) an investment banker;

2787 (vi) a financial advisor;

2788 (vii) any other professional or firm who is retained or contracted with by the receiver as  
2789 an independent contractor; and

2790 (viii) an employee of a person described in this Subsection (1)(b).

2791 (2) For the purposes of this section, the following persons are entitled to immunity and  
2792 indemnification, or only immunity, as applicable:

2793 (a) a present or former receiver responsible for the conduct of a delinquency  
2794 proceeding under this chapter;

2795 (b) a present or former receiver's assistant; and

2796 (c) a present or former receiver's contractor.

2797 (3) The receiver, a receiver's assistant, and a receiver's contractor have immunity under  
2798 this chapter, as follows:

2799 (a) the receiver, a receiver's assistant, and a receiver's contractor have official immunity  
2800 and are immune from suit and liability, both personally and in their official capacities, for any  
2801 claim for damage to or loss of property, personal injury, or other civil liability caused by or  
2802 resulting from an alleged act, error, or omission of the receiver, a receiver's assistant, or a  
2803 receiver's contractor arising out of or by reason of the receiver's, receiver's assistant's, or  
2804 receiver's contractor's duties or employment;

2805 (b) the receiver, a receiver's assistant, and a receiver's contractor have absolute judicial  
2806 immunity and are immune from suit and liability, both personally and in their official  
2807 capacities, for any claim for damage to or loss of property, personal injury, or other civil  
2808 liability caused by or resulting from any alleged act, error, or omission of the receiver, a  
2809 receiver's assistant, or a receiver's contractor arising out of or by reason of any matter that is  
2810 subject to review by the receivership court after notice and opportunity to be heard, if the  
2811 alleged act, error, or omission is not disapproved or disallowed by the receivership court; and

2812 (c) this chapter may not be construed to provide official immunity, to provide judicial  
2813 immunity, or to otherwise hold the receiver, a receiver's assistant, or a receiver's contractor  
2814 immune from suit and liability for any damage, loss, injury, or liability caused by the  
2815 intentional or willful and wanton misconduct of the receiver, a receiver's assistant, or a  
2816 receiver's contractor.

2817 (4) The receiver or a receiver's assistant is entitled to indemnification under this

2818 chapter, as follows:

2819 (a) the receiver and a receiver's assistant shall be indemnified from the assets of the  
2820 insurer:

2821 (i) if any legal action is commenced against the receiver or a receiver's assistant:

2822 (A) whether against the receiver or receiver's assistant personally or in the official  
2823 capacity; and

2824 (B) alleging property damage, property loss, personal injury, or other civil liability  
2825 caused by or resulting from any alleged act, error, or omission of the receiver or a receiver's  
2826 assistant arising out of or by reason of the receiver's or receiver's assistant's duties or  
2827 employment;

2828 (ii) for all expenses, attorney fees, judgments, settlements, decrees, or amounts due and  
2829 owing or paid in satisfaction of or incurred in the defense of the legal action; and

2830 (iii) unless it is determined upon a final adjudication on the merits that the alleged act,  
2831 error, or omission of the receiver or receiver's assistant giving rise to the claim:

2832 (A) does not arise out of or by reason of the receiver's or receiver's assistant's duties or  
2833 employment; or

2834 (B) is caused by intentional or willful and wanton misconduct;

2835 (b) attorney fees and related expenses incurred in defending a legal action for which  
2836 immunity or indemnity is available under this section shall be paid from the assets of the  
2837 insurer as they are incurred, in advance of the final disposition of the action upon receipt of an  
2838 agreement by or on behalf of the receiver or receiver's assistant to repay the attorney fees and  
2839 expenses if it is ultimately determined upon a final adjudication on the merits that the receiver  
2840 or receiver's assistant is not entitled to immunity or indemnity under this section;

2841 (c) the following paid pursuant to this section are an administrative expense of the  
2842 insurer, an indemnification for:

2843 (i) an expense payment;

2844 (ii) a judgment;

2845 (iii) a settlement;

2846 (iv) a decree;

2847 (v) attorney fees;

2848 (vi) a surety bond premium; or

2849 (vii) other amounts paid or to be paid from the insurer's assets pursuant to this section;  
2850 (d) in the event of actual or threatened litigation against a receiver or a receiver's  
2851 assistant for which immunity or indemnity may be available under this section, a reasonable  
2852 amount of funds which in the judgment of the receiver may be needed to provide immunity or  
2853 indemnity shall be segregated and reserved from the assets of the insurer:  
2854 (i) as security for the payment of indemnity; and  
2855 (ii) until:  
2856 (A) all applicable statutes of limitations run;  
2857 (B) all actual or threatened actions against the receiver or a receiver's assistant are  
2858 completely and finally resolved; and  
2859 (C) all obligations under this section are satisfied;  
2860 (e) in lieu of segregation and reserving of funds, the receiver may, in the receiver's  
2861 discretion, obtain a surety bond or make other arrangements that will enable the receiver to  
2862 fully secure the payment of all obligations under this section;  
2863 (f) if a legal action against a receiver's assistant for which indemnity may be available  
2864 under this section is settled before final adjudication on the merits, the receiver shall pay the  
2865 settlement amount on behalf of the receiver's assistant, or indemnify the receiver's assistant for  
2866 the settlement amount, unless the receiver determines that the claim:  
2867 (i) does not arise out of or by reason of the receiver's assistant's duties or employment;  
2868 or  
2869 (ii) is caused by the intentional or willful and wanton misconduct of the receiver's  
2870 assistant; and  
2871 (g) in a legal action in which a claim is asserted against the receiver:  
2872 (i) that portion of any settlement relating to the alleged act, error, or omission of the  
2873 receiver is subject to the approval of the receivership court; and  
2874 (ii) the receivership court may not approve that portion of the settlement if the  
2875 receivership court determines that the claim:  
2876 (A) does not arise out of or by reason of the receiver's duties or employment; or  
2877 (B) is caused by the intentional or willful and wanton misconduct of the receiver.  
2878 (5) Nothing contained or implied in this section shall operate, or be construed or  
2879 applied to deprive the receiver, a receiver's assistant, or a receiver's contractor of any immunity.

2880 indemnity, benefits of law, rights, or any defense otherwise available.

2881 (6) The immunity and indemnification provided to a receiver's assistant and the  
2882 immunity provided to a receiver's contractor under this section does not apply to an action by  
2883 the receiver against the receiver's assistant or receiver's contractor.

2884 (7) (a) Subsection (3) applies to any suit based in whole or in part on an alleged act,  
2885 error, or omission that takes place on or after April 30, 2007.

2886 (b) A legal action may not lie against the receiver or a receiver's assistant based in  
2887 whole or in part on an alleged act, error, or omission that takes place before April 30, 2007,  
2888 unless suit is filed and valid service of process is obtained on or after April 30, 2007, but on or  
2889 before April 30, 2008.

2890 (8) Subsection (4) applies to a suit that is pending on or filed after April 30, 2007,  
2891 without regard to when the alleged act, error, or omission takes place.

2892 Section 50. Section **31A-27a-115** is enacted to read:

2893 **31A-27a-115. Approval and payment of expenses.**

2894 (1) The receiver may pay an expense under a contract, lease, employment agreement,  
2895 or other arrangement entered into by the insurer before receivership, as the receiver considers  
2896 necessary for the purposes of this chapter. The receiver:

2897 (a) is not required to pay an expense described in this Subsection (1) that the receiver  
2898 determines is not necessary; and

2899 (b) may reject a contract pursuant to Section 31A-27a-113.

2900 (2) Receivership expenses other than those described in Subsection (1) shall be paid as  
2901 follows:

2902 (a) unless the court orders otherwise in the rehabilitation or liquidation order, the  
2903 receiver may submit a motion pursuant to Section 31A-27a-107 to the receivership court to  
2904 approve:

2905 (i) the terms of compensation of each special deputy or contractor; or

2906 (ii) any other expense in excess of an amount established by this chapter;

2907 (b) the receiver may, as the receiver considers appropriate, submit a motion to approve  
2908 any other compensation, anticipated expense, or incurred expense not described in Subsection

2909 (2)(a);

2910 (c) the receiver may pay as incurred:

- 2911 (i) an expense not requiring receivership court approval; and  
2912 (ii) an expense approved in the rehabilitation or liquidation order; and  
2913 (d) the approval of an expense by the receivership court may not prejudice the right of  
2914 the receiver to seek recovery, recoupment, disgorgement, or reimbursement of a fee based on  
2915 contract or a cause of action recognized in law or in equity.
- 2916 (3) On an annual or more frequent basis, the receiver shall submit to the receivership  
2917 court a report summarizing the expenses incurred in the prior period.
- 2918 (4) Receivership court approval is not required to pay expenses incurred by the receiver  
2919 in connection with the appeal of an order of the receivership court.
- 2920 (5) All expenses of receivership shall be paid from the assets of the insurer, except as  
2921 provided in this Subsection (5).
- 2922 (a) If the property of the insurer does not contain sufficient cash or liquid assets to  
2923 defray the expenses incurred, the commissioner may advance funds from the account  
2924 established under Subsection 31A-27a-705(3).
- 2925 (b) An amount advanced shall be repaid to the account out of the first available moneys  
2926 of the insurer.
- 2927 Section 51. Section **31A-27a-116** is enacted to read:
- 2928 **31A-27a-116. Financial reporting.**
- 2929 (1) (a) The receiver shall comply with all requirements for receivership financial  
2930 reporting as specified by the commissioner by rule within:
- 2931 (i) 180 days after the day on which the receivership court enters an order of  
2932 receivership; and
- 2933 (ii) 45 days following each calendar quarter after the period specified in Subsection  
2934 (1)(a)(i).
- 2935 (b) The rule described in this Subsection (1) shall:
- 2936 (i) comply with this section;
- 2937 (ii) be made in accordance with Title 63, Chapter 46a, Utah Administrative  
2938 Rulemaking Act; and
- 2939 (iii) require the receiver to file any financial report with the receivership court in  
2940 addition to any other person specified in the rule.
- 2941 (c) A financial report shall include, at a minimum, a statement of:

2942 (i) the assets and liabilities of the insurer;  
 2943 (ii) the changes in those assets and liabilities; and  
 2944 (iii) all funds received or disbursed by the receiver during that reporting period.  
 2945 (d) The receiver may qualify a financial report or provide notes to the financial  
 2946 statement for further explanation.  
 2947 (e) The receivership court may order the receiver to provide any additional information  
 2948 as the receivership court considers appropriate.  
 2949 (2) Each affected guaranty association shall file one or more reports with the liquidator:  
 2950 (a) (i) within 180 days after the day on which the receivership court enters an order of  
 2951 liquidation; and  
 2952 (ii) (A) within 45 days following each calendar quarter after the period described in  
 2953 Subsection (2)(a); or  
 2954 (B) at an interval;  
 2955 (I) agreed to between the liquidator and the affected guaranty association; or  
 2956 (II) required by the receivership court; and  
 2957 (b) in no event less than annually.  
 2958 (3) For good cause shown, the receivership court may grant:  
 2959 (a) relief for an extension or modification of time to comply with Subsection (1) or (2);  
 2960 or  
 2961 (b) such other relief as may be appropriate.  
 2962 Section 52. Section **31A-27a-117** is enacted to read:  
 2963 **31A-27a-117. Records.**  
 2964 (1) (a) Upon entry of an order of rehabilitation or liquidation, the receiver is vested  
 2965 with title to all of the records of the insurer:  
 2966 (i) of whatever nature;  
 2967 (ii) in whatever medium;  
 2968 (iii) wherever located; and  
 2969 (iv) regardless of whether the item is in the custody and control of:  
 2970 (A) a third party administrator;  
 2971 (B) a managing general agent;  
 2972 (C) an attorney; or



- 2973 (D) other representatives of the insurer.
- 2974 (b) The receiver may immediately take possession and control of:
- 2975 (i) all of the records of the insurer; and
- 2976 (ii) the premises where the records are located.
- 2977 (c) At the request of the receiver, a third party administrator, managing general agent,
- 2978 attorney, or other representatives of the insurer shall release all records of the insurer to:
- 2979 (i) the receiver; or
- 2980 (ii) the receiver's designee.
- 2981 (d) With the receiver's approval, an affected guaranty association with an obligation
- 2982 under a policy issued by the insurer may take actions necessary to obtain directly from a third
- 2983 party administrator, managing general agent, attorney, or other representative of the insurer all
- 2984 records pertaining to the insurer's business that are appropriate or necessary for the affected
- 2985 guaranty association to fulfill its statutory obligations.
- 2986 (2) The receiver may certify a record of a delinquent insurer described in Subsection
- 2987 (1) and a record of the receiver's office created and maintained in connection with a delinquent
- 2988 insurer, as follows:
- 2989 (a) a record of a delinquent insurer may be certified by the receiver in an affidavit
- 2990 stating that the record is a true and correct copy of the record of the insurer that is received
- 2991 from the custody of the insurer, or found among the insurer's effects; or
- 2992 (b) a record created by or filed with the receiver's office in connection with a
- 2993 delinquent insurer may be certified by the receiver's affidavit stating that the record is a true
- 2994 and correct copy of the record maintained by the receiver's office.
- 2995 (3) (a) An original record or copy of a record certified under Subsection (2):
- 2996 (i) when admitted in evidence is prima facie evidence of the facts disclosed; and
- 2997 (ii) is admissible in evidence in the same manner as a document described in Utah
- 2998 Rules of Evidence, Rule 902(1).
- 2999 (b) The receivership court may consider the certification of a record by the receiver
- 3000 pursuant to this section as satisfying the requirements of Utah Rules of Evidence, Rule 803(6).
- 3001 (4) A record of a delinquent insurer held by the receiver:
- 3002 (a) is not a record of the department for any purposes; and
- 3003 (b) not subject to Title 63, Chapter 2, Government Records Access and Management

3004 Act.

3005 Section 53. Section **31A-27a-118**, which is renumbered from Section 31A-27-107 is  
3006 renumbered and amended to read:

3007 ~~[31A-27-107].~~ **31A-27a-118. Commissioner's reports.**

3008 (1) The commissioner shall include in [his] the commissioner's annual report:

3009 (a) the names of the insurers proceeded against under Sections [~~31A-27-301,~~  
3010 ~~31A-27-307, 31A-27-401, 31A-27-402, and 31A-27-404,~~ and] 31A-27a-207 and 31A-27a-901;

3011 (b) those [~~other~~] facts which indicate in reasonable detail the commissioner's formal  
3012 proceedings under this chapter; and

3013 [~~(b)~~] (c) those facts which generally explain the [~~utilization~~] use and effectiveness of  
3014 proceedings under [~~Sections 31A-27-201 through 31A-27-203 and 31A-27-405~~] Chapter 27,  
3015 Part 5, Administrative Actions, and Section 31A-27a-901.

3016 (2) The commissioner as receiver shall make and file annual reports and any other  
3017 required reports for [~~the companies~~] an insurer proceeded against under Sections [~~31A-27-301,~~  
3018 ~~31A-27-307, 31A-27-401, 31A-27-402, and 31A-27-404~~] 31A-27a-207 and 31A-27a-901 in  
3019 the manner [~~and~~], in the form, and within the time required by law of [~~insurers~~] an insurer  
3020 authorized to do business in this state.

3021 Section 54. Section **31A-27a-119** is enacted to read:

3022 **31A-27a-119. Delinquency proceeding commenced before April 30, 2007.**

3023 This chapter does not apply to a delinquency proceeding ongoing on April 30, 2007.

3024 Section 55. Section **31A-27a-120** is enacted to read:

3025 **31A-27a-120. Severability.**

3026 If any provision of this chapter or the application of this chapter to any person or  
3027 circumstance is for any reason held invalid, the remainder of the chapter and the application of  
3028 the provision to other persons or circumstances shall be given effect without the invalid  
3029 provision or application. The provisions of this chapter are severable.

3030 Section 56. Section **31A-27a-201** is enacted to read:

3031 **Part 2. Proceedings**

3032 **31A-27a-201. Receivership court's seizure order.**

3033 (1) The commissioner may file in the Third District Court for Salt Lake County a  
3034 petition:

3035 (a) with respect to:  
3036 (i) an insurer domiciled in this state;  
3037 (ii) an unauthorized insurer; or  
3038 (iii) pursuant to Section 31A-27a-901, a foreign insurer;  
3039 (b) alleging that:  
3040 (i) there exists grounds that would justify a court order for a formal delinquency  
3041 proceeding against the insurer under this chapter; and  
3042 (ii) the interests of policyholders, creditors, or the public will be endangered by delay;  
3043 and  
3044 (c) setting forth the contents of a seizure order considered necessary by the  
3045 commissioner.  
3046 (2) (a) Upon a filing under Subsection (1), the receivership court may issue the  
3047 requested seizure order:  
3048 (i) immediately, ex parte, and without notice or hearing;  
3049 (ii) that directs the commissioner to take possession and control of:  
3050 (A) all or a part of the property, accounts, and records of an insurer; and  
3051 (B) the premises occupied by the insurer for transaction of the insurer's business; and  
3052 (iii) that until further order of the receivership court, enjoins the insurer and its officers,  
3053 managers, agents, and employees from disposition of its property and from the transaction of  
3054 its business except with the written consent of the commissioner.  
3055 (b) Any person having possession or control of and refusing to deliver any of the  
3056 records or assets of a person against whom a seizure order is issued under this Subsection (2) is  
3057 guilty of a class B misdemeanor.  
3058 (3) (a) A petition that requests injunctive relief:  
3059 (i) shall be verified by the commissioner or the commissioner's designee; and  
3060 (ii) is not required to plead or prove irreparable harm or inadequate remedy at law.  
3061 (b) The commissioner shall provide only the notice that the receivership court may  
3062 require.  
3063 (4) (a) The receivership court shall specify in the seizure order the duration of the  
3064 seizure, which shall be the time the receivership court considers necessary for the  
3065 commissioner to ascertain the condition of the insurer.

3066 (b) The receivership court may from time to time:  
3067 (i) hold a hearing that the receivership court considers desirable:  
3068 (A) (I) on motion of the commissioner;  
3069 (II) on motion of the insurer; or  
3070 (III) on its own motion; and  
3071 (B) after the notice the receivership court considers appropriate; and  
3072 (ii) extend, shorten, or modify the terms of the seizure order.  
3073 (c) The receivership court shall vacate the seizure order if the commissioner fails to  
3074 commence a formal proceeding under this chapter after having had a reasonable opportunity to  
3075 commence a formal proceeding under this chapter.  
3076 (d) An order of the receivership court pursuant to a formal proceeding under this  
3077 chapter vacates the seizure order.  
3078 (5) Entry of a seizure order under this section does not constitute a breach or an  
3079 anticipatory breach of any contract of the insurer.  
3080 (6) (a) An insurer subject to an ex parte seizure order under this section may petition  
3081 the receivership court at any time after the issuance of a seizure order for a hearing and review  
3082 of the seizure order.  
3083 (b) The receivership court shall hold the hearing and review requested under this  
3084 Subsection (6) not more than 15 days after the day on which the request is received.  
3085 (c) A hearing under this Subsection (6):  
3086 (i) may be held privately in chambers; and  
3087 (ii) shall be held privately in chambers if the insurer proceeded against requests that it  
3088 be private.  
3089 (7) (a) If, at any time after the issuance of a seizure order, it appears to the receivership  
3090 court that a person whose interest is or will be substantially affected by the seizure order did  
3091 not appear at the hearing and has not been served, the receivership court may order that notice  
3092 be given to the person.  
3093 (b) An order under this Subsection (7) that notice be given may not stay the effect of  
3094 any seizure order previously issued by the receivership court.  
3095 (8) Whenever the commissioner makes a seizure as provided in Subsection (2), on the  
3096 demand of the commissioner, it shall be the duty of the sheriff of a county of this state, and of

3097 the police department of a municipality in the state to furnish the commissioner with necessary  
3098 deputies or officers to assist the commissioner in making and enforcing the seizure order.

3099 Section 57. Section **31A-27a-202** is enacted to read:

3100 **31A-27a-202. Commencement of formal delinquency proceeding.**

3101 (1) A formal delinquency proceeding against a person shall be commenced by filing a  
3102 petition in the name of the commissioner or department.

3103 (2) (a) The petition required by Subsection (1):

3104 (i) shall state:

3105 (A) the grounds upon which the proceeding is based; and

3106 (B) the relief requested; and

3107 (ii) may include a request for restraining orders and injunctive relief as described in  
3108 Section 31A-27a-108.

3109 (b) Upon the filing of a petition, the commissioner shall forward a notice of the petition  
3110 by first-class mail or electronic communication, as permitted by the receivership court, to the  
3111 commissioners and guaranty associations in states in which the insurer did business.

3112 (3) (a) A petition that requests injunctive relief:

3113 (i) shall be verified by the commissioner or the commissioner's designee; and

3114 (ii) is not required to plead or prove irreparable harm or inadequate remedy at law.

3115 (b) The commissioner shall provide only the notice the receivership court requires.

3116 (4) If a temporary restraining order is requested:

3117 (a) the receivership court may issue an initial order containing the relief requested;

3118 (b) the order shall state the time and date of its issuance;

3119 (c) the receivership court shall set a time and date for the return of summons:

3120 (i) not more than ten days from the time and date the initial order is issued; and

3121 (ii) at which time the person proceeded against may appear before the receivership  
3122 court for a summary hearing; and

3123 (d) the order may not continue in effect beyond the time and date set for the return of  
3124 summons, unless the receivership court expressly enters one or more orders extending the  
3125 restraining order.

3126 (5) (a) If no temporary restraining order is requested, the receivership court shall cause  
3127 summons to be issued.

3128 (b) The summons shall specify:  
3129 (i) a return date not more than 30 days after the day on which the summons is issued;

3130 and

3131 (ii) that an answer must be filed at or before the return date.

3132 Section 58. Section **31A-27a-203** is enacted to read:

3133 **31A-27a-203. Return of summons and summary hearing.**

3134 (1) The receivership court shall hold a summary hearing at the time and date for the  
3135 return of summons on a petition to commence a formal delinquency proceeding.

3136 (2) If a person is not served with summons on a petition to commence a formal  
3137 delinquency proceeding and fails to appear for the summary hearing, the receivership court  
3138 shall:

3139 (a) continue the summary hearing not more than ten days;

3140 (b) provide for alternative service of summons upon the person; and

3141 (c) extend any restraining order.

3142 (3) Upon a showing of good faith efforts to effect personal service upon a person who  
3143 fails to appear for a continued summary hearing, the receivership court shall order notice of the  
3144 petition to commence a formal delinquency proceeding to be published. The order and notice  
3145 shall specify:

3146 (a) a return date not less than 10 nor more than 20 days after the day on which notice is  
3147 published; and

3148 (b) that the restraining order is extended to the continued hearing date.

3149 (4) If a person fails to appear for a summary hearing on a petition to commence a  
3150 formal delinquency proceeding after service of summons, the receivership court shall enter  
3151 judgment in favor of the commissioner against that person.

3152 (5) (a) A person who appears for the summary hearing on a petition to commence a  
3153 formal delinquency proceeding shall file its answer at the hearing and the receivership court  
3154 shall:

3155 (i) determine whether to extend any temporary restraining order pending final  
3156 judgment; and

3157 (ii) set the case for trial on a date not more than ten days from the day on which the  
3158 summary hearing is held.

3159 (b) The receivership court may not grant a continuance for filing an answer.

3160 Section 59. Section **31A-27a-204** is enacted to read:

3161 **31A-27a-204. Proceedings for expedited trial -- Continuance -- Evidence --**

3162 **Discovery.**

3163 (1) (a) The receivership court shall proceed to hear the case on the petition to  
3164 commence a formal delinquency proceeding:

3165 (i) at the time and date set forth for trial;

3166 (ii) without a jury; and

3167 (iii) without unnecessary delay.

3168 (b) To the extent practicable, the receivership court shall give precedence to the matter  
3169 over all other matters.

3170 (c) To the extent authorized by law, the receivership court may assign the matter to  
3171 another judge if necessary to comply with the need for expedited proceedings under this  
3172 chapter.

3173 (2) A continuance for trial shall be granted only in extreme circumstances.

3174 (3) The receivership court shall admit as self authenticated a certified copy of the  
3175 following when offered by the commissioner:

3176 (a) a financial statement made by the insurer or an affiliate;

3177 (b) an examination report of the insurer or an affiliate made by or on behalf of the  
3178 commissioner; or

3179 (c) any other document filed with any insurance department by the insurer or an  
3180 affiliate.

3181 (4) The facts contained in an examination report of the insurer or an affiliate made by  
3182 or on behalf of the commissioner is presumed to be true as of the date of the hearing if the  
3183 examination is made as of a date not more than 270 days before the day on which the petition is  
3184 filed. The presumption:

3185 (a) is rebuttable; and

3186 (b) shifts the burden of production and persuasion to the insurer.

3187 (5) Discovery:

3188 (a) is limited to grounds alleged in the petition; and

3189 (b) shall be concluded on an expedited basis.

3190 Section 60. Section **31A-27a-205** is enacted to read:

3191 **31A-27a-205. Decision and appeals.**

3192 (1) The receivership court shall enter judgment on the petition to commence formal  
3193 delinquency proceeding within 15 days after the day on which the evidence is concluded.

3194 (2) (a) An order entered pursuant to Subsection (1) is final when entered.

3195 (b) An appeal shall be:

3196 (i) handled on an expedited basis; and

3197 (ii) taken within five days of the day on which judgment is entered.

3198 (3) (a) Absent entry of an order staying the order pursuant to Subsection (4), the order  
3199 has full force and effect and the receiver shall carry out the order's terms and this chapter.

3200 (b) A request for reconsideration, review, or appeal, or posting of a bond, may not  
3201 dissolve or stay the judgment.

3202 (4) (a) The following motions must first be presented to the receivership court:

3203 (i) a motion for a stay of a judgment;

3204 (ii) a motion for approval of a supersedes bond; or

3205 (iii) a motion for other relief pending appeal.

3206 (b) Except for a grant of a petition for rehabilitation which shall remain in effect  
3207 pending a decision on appeal, during the pendency of an appeal the receivership court may do  
3208 any of the following in accordance with the Utah Rules of Civil Procedure:

3209 (i) suspend an order entered under Subsection (1);

3210 (ii) modify an order entered under Subsection (1); or

3211 (iii) make any other appropriate order governing the enforceability of an order entered  
3212 under Subsection (1).

3213 (c) The receivership court or an appellate court to which the matter is presented may  
3214 condition any relief it grants under this Subsection (4) on the filing of a bond or other  
3215 appropriate security with the receivership court.

3216 (5) Section 31A-27a-114 applies to all acts taken during the pendency of an appeal  
3217 regardless of the appeal's ultimate disposition.

3218 (6) The reversal or modification on appeal of an order of rehabilitation or liquidation  
3219 does not affect the validity of an act of the receiver pursuant to the order unless the order is  
3220 stayed pending appeal.



3221 Section 61. Section **31A-27a-206** is enacted to read:

3222 **31A-27a-206. Confidentiality.**

3223 (1) (a) Except as provided in Subsection (1)(b), in a delinquency proceeding or a  
3224 judicial review under Section 31A-27a-201:

3225 (i) all records of the insurer, department files, court records and papers, and other  
3226 documents, so far as they pertain to or are a part of the record of the proceedings, are  
3227 confidential; and

3228 (ii) a paper filed with the clerk of the Third District Court for Salt Lake County shall be  
3229 held by the clerk in a confidential file as permitted by law.

3230 (b) The items listed in Subsection (1)(a) are subject to Subsection (1)(a):

3231 (i) except to the extent necessary to obtain compliance with an order entered in  
3232 connection with the proceeding; and

3233 (ii) unless and until:

3234 (A) the Third District Court for Salt Lake County, after hearing argument in chambers,  
3235 orders otherwise;

3236 (B) the insurer requests that the matter be made public; or

3237 (C) the commissioner applies for an order under Section 31A-27a-207.

3238 (2) (a) If the recipient agrees to maintain the confidentiality of the document, material,  
3239 or other information, the commissioner or rehabilitator may share a document, materials, or  
3240 other information in the possession, custody, or control of the department, pertaining to an  
3241 insurer that is the subject of a delinquency proceeding under this chapter with:

3242 (i) another state, federal, and international regulatory agency;

3243 (ii) the National Association of Insurance Commissioners and its affiliates or  
3244 subsidiaries;

3245 (iii) a state, federal, and international law enforcement authority;

3246 (iv) an auditor appointed by the receivership court in accordance with Section  
3247 31A-27a-805; or

3248 (v) a representative of an affected guaranty association.

3249 (b) If the domiciliary receiver believes that certain information is sensitive, the receiver  
3250 may share that information subject to a continuation of the confidentiality obligations beyond  
3251 the period allowed in Subsection (3).

3252 (c) This section does not limit the power of the commissioner to disclose information  
3253 under other applicable law.

3254 (3) (a) A domiciliary receiver shall permit a commissioner or a guaranty association of  
3255 another state to obtain a listing of policyholders and certificate holders residing in the  
3256 requestor's state, including current addresses and summary policy information, if the  
3257 commissioner or the guaranty association of another state agrees:

3258 (i) to maintain the confidentiality of the record; and

3259 (ii) that the record will be used only for regulatory or guaranty association purposes.

3260 (b) Access to a record under this Subsection (3) may be limited to normal business  
3261 hours.

3262 (c) If the domiciliary receiver believes that certain information described in Subsection  
3263 (3) is sensitive and disclosure might cause a diminution in recovery, the receiver may apply for  
3264 a protective order imposing additional restrictions on access.

3265 (4) (a) The confidentiality obligations imposed by this section shall end upon the entry  
3266 of an order of liquidation against the insurer, unless:

3267 (i) otherwise agreed to by the parties; or

3268 (ii) pursuant to an order of the receivership court.

3269 (b) A continuation of confidentiality as provided in Subsection (2) does not apply to an  
3270 insurer record necessary for a guaranty association to discharge its statutory responsibilities.

3271 (5) A waiver of an applicable privilege or claim of confidentiality does not occur as a  
3272 result of a disclosure, or any sharing of documents, materials, or other information, made  
3273 pursuant to this section.

3274 Section 62. Section **31A-27a-207** is enacted to read:

3275 **31A-27a-207. Grounds for rehabilitation or liquidation.**

3276 (1) The commissioner may file in the Third District Court for Salt Lake County a  
3277 petition with respect to an insurer domiciled in this state or an unauthorized insurer for an order  
3278 of rehabilitation or liquidation on any one or more of the following grounds:

3279 (a) the insurer is impaired;

3280 (b) the insurer is insolvent;

3281 (c) subject to Subsection (2), the insurer is about to become insolvent;

3282 (d) (i) the insurer neglects or refuses to comply with an order of the commissioner to

3283 make good within the time prescribed by law any deficiency;  
3284 (ii) if a stock company, if its capital and minimum required surplus is impaired; or  
3285 (iii) if a company other than a stock company, if its surplus is impaired;  
3286 (e) the insurer, its parent company, its subsidiary, or its affiliate:  
3287 (i) converts, wastes, or conceals property of the insurer; or  
3288 (ii) otherwise improperly disposes of, dissipates, uses, releases, transfers, sells, assigns,  
3289 hypothecates, or removes the property of the insurer;  
3290 (f) the insurer is in such condition that the insurer could not meet the requirements for  
3291 organization and authorization as required by law, except as to the amount of:  
3292 (i) the original surplus required of a stock company under Sections 31A-5-211 and  
3293 31A-8-209; and  
3294 (ii) the surplus required of a company other than a stock company in excess of the  
3295 minimum surplus required to be maintained;  
3296 (g) the insurer, its parent company, its subsidiary, or its affiliate:  
3297 (i) conceals, removes, alters, destroys, or fails to establish and maintain records and  
3298 other pertinent material adequate for the determination of the financial condition of the insurer  
3299 by examination under Section 31A-2-203; or  
3300 (ii) fails to properly administer claims or maintain claims records that are adequate for  
3301 the determination of its outstanding claims liability;  
3302 (h) at any time after the issuance of an order under Subsection 31A-2-201(4), or at the  
3303 time of instituting a proceeding under this chapter, it appears to the commissioner that upon  
3304 good cause shown, it is not in the best interest of the policyholders, creditors, or the public to  
3305 proceed with the conduct of the business of the insurer;  
3306 (i) the insurer is in such condition that the further transaction of business would be  
3307 hazardous financially, according to Subsection 31A-17-609(3) or otherwise, to its  
3308 policyholders, creditors, or the public;  
3309 (j) there is reasonable cause to believe that:  
3310 (i) there has been:  
3311 (A) embezzlement from the insurer;  
3312 (B) wrongful sequestration or diversion of the insurer's property;  
3313 (C) forgery or fraud affecting the insurer; or

3314 (D) other illegal conduct in, by, or with respect to the insurer; and  
3315 (ii) the act described in Subsection (1)(j)(i) if established would endanger assets in an  
3316 amount threatening the solvency of the insurer;  
3317 (k) control of the insurer is in a person who is:  
3318 (i) dishonest;  
3319 (ii) untrustworthy; or  
3320 (iii) so lacking in insurance company managerial experience or capability as to be  
3321 hazardous to policyholders, creditors, or the public;  
3322 (l) if:  
3323 (i) a person who in fact has executive authority in the insurer, whether an officer,  
3324 manager, general agent, director, trustee, employee, shareholder, or other person;  
3325 (A) refuses to be examined under oath by the commissioner concerning the insurer's  
3326 affairs, whether in this state or elsewhere; or  
3327 (B) if examined under oath, refuses to divulge pertinent information reasonably known  
3328 to the person; and  
3329 (ii) after reasonable notice of the facts described in Subsection (1)(l)(i), the insurer fails  
3330 promptly and effectively to terminate:  
3331 (A) the employment or status of the person; and  
3332 (B) all of the person's influence on management;  
3333 (m) after demand by the commissioner under Section 31A-2-203 or under this chapter,  
3334 the insurer fails to promptly make available for examination:  
3335 (i) any of its own property, accounts, or records; or  
3336 (ii) so far as it pertains to the insurer, property, accounts, or records of:  
3337 (A) a subsidiary or related company within the control of the insurer; or  
3338 (B) a person having executive authority in the insurer;  
3339 (n) without first obtaining the written consent of the commissioner, the insurer:  
3340 (i) transfers, or attempts to transfer, in a manner contrary to Section 31A-5-508 or  
3341 31A-16-103, substantially its entire property or business; or  
3342 (ii) enters into a transaction the effect of which is to merge, consolidate, or reinsure  
3343 substantially its entire property or business in or with the property or business of any other  
3344 person;

3345           (o) the insurer or its property has been or is the subject of an application for the  
3346 appointment of a receiver, trustee, custodian, conservator, sequestrator, or similar fiduciary of  
3347 the insurer or its property otherwise than as authorized under the insurance laws of this state;  
3348           (p) within the previous five years the insurer willfully and continuously violates:  
3349           (i) its charter or articles of incorporation;  
3350           (ii) its bylaws;  
3351           (iii) an insurance law of this state; or  
3352           (iv) a valid order of the commissioner;  
3353           (q) the insurer fails to pay within 60 days after the due date:  
3354           (i) (A) an obligation to any state or any subdivision of a state; or  
3355           (B) a judgment entered in any state, if the court in which the judgment is entered has  
3356 jurisdiction over the subject matter; and  
3357           (ii) except that nonpayment is not a ground until 60 days after a good faith effort by the  
3358 insurer to contest the obligation has been terminated, whether it is before the commissioner or  
3359 in the courts;  
3360           (r) the insurer systematically:  
3361           (i) engages in the practice of:  
3362           (A) reaching settlements with and obtaining releases from claimants; and  
3363           (B) unreasonably delaying payment, or failing to pay the agreed-upon settlements; or  
3364           (ii) attempts to compromise with claimants or other creditors on the ground that it is  
3365 financially unable to pay its claims or obligations in full;  
3366           (s) the insurer fails to file its annual report or other financial report required by statute  
3367 within the time allowed by law;  
3368           (t) the board of directors or the holders of a majority of the shares entitled to vote, or a  
3369 majority of those individuals entitled to the control of those entities specified in Section  
3370 31A-27a-104, request or consent to rehabilitation or liquidation under this chapter;  
3371           (u) (i) the insurer does not comply with its domiciliary state's requirements for issuance  
3372 to it of a certificate of authority; or  
3373           (ii) the insurer's certificate of authority is revoked by its state of domicile; or  
3374           (v) when authorized by Chapter 17, Part 6, Risk-Based Capital.  
3375           (2) For purposes of this section, an insurer is about to become insolvent if it is

3376 reasonably anticipated that the insurer will not have liquid assets to meet its current obligations  
3377 for the next 90 days.

3378 Section 63. Section **31A-27a-208** is enacted to read:

3379 **31A-27a-208. Entry of order.**

3380 (1) If the commissioner establishes any of the grounds provided in Section  
3381 31A-27a-207, the receivership court shall:

3382 (a) grant the petition; and

3383 (b) issue the order of rehabilitation or liquidation requested in the petition.

3384 (2) Upon the issuance of the order, the commissioner shall forward a copy of the order  
3385 by first-class mail or electronic communication as permitted by the receivership court to the  
3386 commissioners and guaranty associations in states in which the insurer did business.

3387 Section 64. Section **31A-27a-209** is enacted to read:

3388 **31A-27a-209. Effect of order of rehabilitation or liquidation.**

3389 (1) The filing or recording of an order of receivership with the following imparts the  
3390 same notice as a deed, bill of sale, or other evidence of title filed or recorded would have  
3391 imparted:

3392 (a) the Third District Court for Salt Lake County;

3393 (b) the recorder of deeds of the county in which the principal business of the insurer is  
3394 conducted; or

3395 (c) in the case of real estate, with the recorder of deeds of the county where the  
3396 property is located.

3397 (2) The filing of a petition commencing delinquency proceedings under this chapter or  
3398 the entry of an order of seizure, rehabilitation, or liquidation does not constitute a breach or an  
3399 anticipatory breach of any contract or lease of the insurer.

3400 (3) (a) The receiver may appoint one or more special deputies.

3401 (b) A special deputy:

3402 (i) has the powers and responsibilities of the receiver granted under this section, unless  
3403 specifically limited by the receiver; and

3404 (ii) serves at the pleasure of the receiver.

3405 (c) The receiver may employ or contract with:

3406 (i) legal counsel;

- 3407 (ii) one or more actuaries;
- 3408 (iii) one or more accountants;
- 3409 (iv) one or more appraisers;
- 3410 (v) one or more consultants;
- 3411 (vi) one or more clerks;
- 3412 (vii) one or more assistants; and
- 3413 (viii) other personnel as may be considered necessary.
- 3414 (d) A special deputy or other person with whom the receiver contracts under this
- 3415 Subsection (3):
- 3416 (i) is considered to be an agent of the commissioner only in the commissioner's
- 3417 capacity as receiver; and
- 3418 (ii) is not considered an agent of the state.
- 3419 (e) The provisions of any law governing the procurement of goods and services by the
- 3420 state do not apply to a contract entered into by the commissioner as receiver.
- 3421 (f) The compensation of a special deputy, employee, or contractor and all expenses of
- 3422 taking possession of the insurer and of conducting the receivership shall be:
- 3423 (i) determined by the receiver, with the approval of the receivership court in
- 3424 accordance with Section 31A-27a-115; and
- 3425 (ii) paid out of the property of the insurer.
- 3426 (g) (i) If the receiver, in the receiver's sole discretion, considers it necessary to the
- 3427 proper performance of the receiver's duties under this chapter, the receiver may appoint an
- 3428 advisory committee of policyholders, claimants, or other creditors including guaranty
- 3429 associations.
- 3430 (ii) The committee described in this Subsection (3)(g) serves:
- 3431 (A) at the pleasure of the receiver; and
- 3432 (B) without compensation and without reimbursement for expenses.
- 3433 (iii) The receiver or the receivership court in proceedings conducted under this chapter
- 3434 may not appoint any other committee of any nature.

3435 Section 65. Section **31A-27a-301** is enacted to read:

3436 **Part 3. Rehabilitation**

3437 **31A-27a-301. Rehabilitation orders.**

3438 (1) (a) An order to rehabilitate the business of an insurer shall:  
3439 (i) appoint the commissioner and the commissioner's successors in office as the  
3440 rehabilitator;  
3441 (ii) direct the rehabilitator to:  
3442 (A) take possession and title of the assets of the insurer; and  
3443 (B) administer the assets of the insurer under the general supervision of the court; and  
3444 (iii) require accountings to the receivership court by the rehabilitator.  
3445 (b) Accountings shall be at the intervals the receivership court specifies in its order, but  
3446 no less frequently than semi annually.  
3447 (c) Each accounting shall include a report concerning the rehabilitator's opinion as to:  
3448 (i) the likelihood that a plan under Section 31A-27a-303 will be prepared by the  
3449 rehabilitator; and  
3450 (ii) the timetable for preparing the plan described in Subsection (1)(c)(i).  
3451 (2) (a) In recognition of the need for a prompt and final resolution for all persons  
3452 affected by a plan of rehabilitation, any appeal from an order of rehabilitation or an order  
3453 approving a plan of rehabilitation shall be heard on an expedited basis.  
3454 (b) A stay of an order of rehabilitation or an order approving a plan of rehabilitation  
3455 may not be granted unless the appellant demonstrates that extraordinary circumstances warrant  
3456 delaying the recovery under the plan of rehabilitation of all other persons, including  
3457 policyholders.  
3458 (c) If a plan of rehabilitation provides an appropriate mechanism for adjustment in the  
3459 event of an adverse ruling from an appeal, a stay may not be granted.  
3460 Section 66. Section **31A-27a-302** is enacted to read:  
3461 **31A-27a-302. Powers and duties of the rehabilitator.**  
3462 (1) (a) With court approval, the rehabilitator may take an action the rehabilitator  
3463 considers necessary or appropriate to reform and revitalize the insurer, including:  
3464 (i) canceling:  
3465 (A) a policy;  
3466 (B) an insurance or reinsurance contract, other than life insurance, health insurance, or  
3467 an annuity;  
3468 (C) a surety bond; or



- 3469 (D) a surety undertaking; or  
3470 (ii) transferring to a solvent assuming insurer:  
3471 (A) a policy;  
3472 (B) an insurance or reinsurance contract;  
3473 (C) a surety bond; or  
3474 (D) a surety undertaking.  
3475 (b) The rehabilitator has all the powers of the directors, officers, and managers of the  
3476 insurer, whose authority is suspended, except as redelegated by the rehabilitator.  
3477 (c) The rehabilitator has full power to:  
3478 (i) direct and manage the insurer;  
3479 (ii) hire and discharge employees; and  
3480 (iii) deal with the property and business of the insurer.  
3481 (d) The rehabilitator is not liable as the result of good faith issuance or renewal of a  
3482 policy while in rehabilitation.  
3483 (2) The rehabilitator may pursue all appropriate legal remedies on behalf of the insurer  
3484 if it appears to the rehabilitator that there is or has been criminal or tortious conduct, or breach  
3485 of a contractual or fiduciary obligation detrimental to the insurer by an officer, a manager, an  
3486 agent, a broker, an employee, an affiliate, or other person.  
3487 (3) (a) The rehabilitator may assert all defenses available to the insurer as against a  
3488 third person, including statutes of limitations, statutes of frauds, and the defense of usury.  
3489 (b) A waiver of a defense by the insurer after a petition pursuant to Section  
3490 31A-27a-201 or 31A-27a-207 is filed does not bind the rehabilitator.  
3491 (4) The enumeration of the powers and authority of the rehabilitator in this section:  
3492 (a) may not be construed as a limitation upon the rehabilitator; and  
3493 (b) does not exclude in any manner the right to do other acts:  
3494 (i) not specifically enumerated or otherwise provided for; and  
3495 (ii) as may be necessary or appropriate for the accomplishment of or in aid of the  
3496 purpose of rehabilitation.  
3497 Section 67. Section **31A-27a-303** is enacted to read:  
3498 **31A-27a-303. Filing of rehabilitation plans.**  
3499 (1) (a) The rehabilitator shall prepare and file a plan to effect rehabilitation with the

3500 receivership court within:

3501 (i) one year after the day on which the rehabilitation order is entered; or

3502 (ii) such further time as the receivership court may allow.

3503 (b) The receivership court may take an action described in Subsection (1)(c):

3504 (i) upon application of the rehabilitator for approval of a plan; and

3505 (ii) after the notice and hearings the receivership court may prescribe.

3506 (c) If the conditions of Subsection (1)(b) are met, the receivership court may:

3507 (i) approve the plan proposed;

3508 (ii) disapprove the plan proposed; or

3509 (iii) (A) modify the plan proposed; and

3510 (B) approve the plan as modified.

3511 (d) If the plan is approved, the rehabilitator shall carry out the plan.

3512 (e) In the case of a life insurer, the plan proposed may:

3513 (i) include the imposition of a lien upon a policy of the insurer, if all rights of

3514 shareholders are relinquished; and

3515 (ii) propose imposition of a moratorium upon loan and cash surrender rights under a

3516 policy for a period not to exceed one year from the day on which the order approving the

3517 rehabilitation plan is entered, unless the receivership court, for good cause shown, extends the

3518 moratorium.

3519 (2) Once a plan is filed, any party in interest may object to the plan.

3520 (3) A plan shall:

3521 (a) except as provided in Subsection (5), provide no less favorable treatment of a claim

3522 or class of claims than would occur in liquidation, unless the holder of a particular claim or

3523 interest agrees to a less favorable treatment of that particular claim or interest;

3524 (b) provide adequate means for the plan's implementation;

3525 (c) contain information concerning the financial condition of the insurer and the

3526 operation and effect of the plan, as far as is reasonably practicable in light of:

3527 (i) the nature and history of the insurer;

3528 (ii) the condition of the insurer's records; and

3529 (iii) the nature of the plan; and

3530 (d) provide for the disposition of the records relevant to the duties and obligations

3531 covered by the plan.

3532 (4) A plan may include any other provisions not inconsistent with this chapter,

3533 including:

3534 (a) payment of distributions;

3535 (b) (i) assumption or reinsurance of all or a portion of the insurer's remaining liabilities  
3536 by a licensed insurer or other entity; and

3537 (ii) transfer of assets and related records to the licensed insurer or other entity;

3538 (c) to the extent appropriate, application of insurance company regulatory market  
3539 conduct standards to any entity administering claims on behalf of the receiver or assuming  
3540 direct liabilities of the insurer;

3541 (d) contracting with a guaranty association or any other qualified entity to perform the  
3542 administration of claims;

3543 (e) annual independent financial and performance audits of any entity administering  
3544 claims on behalf of the receiver that is not otherwise subject to examination pursuant to state  
3545 insurance law; and

3546 (f) termination of the insurer's liabilities other than those under policies of insurance as  
3547 of a date certain.

3548 (5) (a) A plan may designate and separately treat one or more separate subclasses  
3549 consisting only of those claims within the subclasses that are for or reduced to de minimis  
3550 amounts.

3551 (b) For purposes of this Subsection (5), a "de minimis amount" is an amount equal to  
3552 or less than a maximum de minimis amount approved by the receivership court as being  
3553 reasonable and necessary for administrative convenience.

3554 Section 68. Section **31A-27a-304** is enacted to read:

3555 **31A-27a-304. Termination of rehabilitation.**

3556 (1) (a) The rehabilitator may move for an order of liquidation whenever the  
3557 rehabilitator believes further attempts to rehabilitate an insurer would:

3558 (i) substantially increase the risk of loss to creditors, policyholders, or the public; or

3559 (ii) be futile.

3560 (b) In accordance with Section 31A-27a-305, the rehabilitator or the rehabilitator's  
3561 designated representative shall coordinate with an affected guaranty association and any

3562 national association of guaranty associations to plan for transition to liquidation.

3563 (2) The rehabilitator shall petition the receivership court for an order of liquidation or  
3564 seek an order, on good cause shown, for a longer suspension period if:

3565 (a) the payment of a policy obligation is suspended in substantial part for a period of  
3566 six months at any time after the appointment of the rehabilitator; and

3567 (b) the rehabilitator has not filed an application for approval of a plan under Section  
3568 31A-27a-303.

3569 (3) (a) The receivership court may enter an order terminating rehabilitation of an  
3570 insurer:

3571 (i) on petition from the rehabilitator, which may be made at any time;

3572 (ii) on petition from the directors of the insurer, which may be made at any time; or

3573 (iii) on the receivership court's own motion.

3574 (b) Subject to Section 31A-27a-801, if the receivership court finds that rehabilitation is  
3575 accomplished and that grounds for rehabilitation under Section 31A-27a-207 no longer exist,  
3576 the receivership court shall order that the insurer be restored to:

3577 (i) title and possession of its property; and

3578 (ii) the control of the business.

3579 Section 69. Section **31A-27a-305** is enacted to read:

3580 **31A-27a-305. Coordination with guaranty associations and orderly transition to**  
3581 **liquidation.**

3582 (1) No later than 30 days following the day on which an order of rehabilitation is  
3583 entered the rehabilitator or the rehabilitator's designated representative shall:

3584 (a) consult with any potentially affected guaranty association or the affected guaranty  
3585 association's designated representative to determine the extent to which the affected guaranty  
3586 association will be impacted by or may assist in the efforts to rehabilitate the insurer; and

3587 (b) provide appropriate information to the affected guaranty association described in  
3588 Subsection (1)(a) to allow the affected guaranty association to evaluate and discharge its  
3589 statutory responsibilities.

3590 (2) (a) The rehabilitator shall begin appropriate contingency planning and organizing  
3591 so that an orderly transition to liquidation occurs, if liquidation is necessary.

3592 (b) An orderly transition to liquidation requires, among other things, that the

3593 rehabilitator:

3594 (i) to the fullest extent possible, reserve sufficient assets to continue to meet  
3595 obligations under insurance policies of the insolvent insurer until guaranty associations are  
3596 triggered; and

3597 (ii) conduct affairs in such a way and cooperate as necessary with affected guaranty  
3598 associations:

3599 (A) to ensure that affected guaranty associations are provided with:

3600 (I) appropriate information;

3601 (II) necessary updates at reasonable intervals; and

3602 (III) a reasonable period of time to plan and organize; and

3603 (B) so that affected guaranty associations are able to properly discharge statutory  
3604 responsibilities upon being triggered.

3605 (3) Appropriate information as referred to in this section:

3606 (a) at a minimum includes the following for lines of business written by the insurer,  
3607 whether covered or not covered by a guaranty association:

3608 (i) a general description of the different types of business written or assumed by the  
3609 insurer;

3610 (ii) claim counts and policy counts by state and by line of business;

3611 (iii) claim and policy reserves;

3612 (iv) account values;

3613 (v) cash surrender values;

3614 (vi) policy loans;

3615 (vii) interest crediting history;

3616 (viii) premiums and mode of payment;

3617 (ix) unpaid claims and amounts;

3618 (x) sample policies and endorsements;

3619 (xi) listing of different locations of claim files;

3620 (xii) if a third party administrator is used, a copy of an executed contract and a  
3621 description of the contractual arrangements; and

3622 (xiii) information concerning claims in litigation or dispute, including a listing of  
3623 claims with assigned defense counsel for those claims going to trial in the near future after a

3624 possible liquidation date:

3625 (b) includes information concerning states in which the insurer is or was licensed;

3626 (c) includes information concerning time periods for which the insurer is or was  
3627 licensed; and

3628 (d) includes other information reasonably requested by an affected guaranty association  
3629 necessary for the affected guaranty association to fulfill its statutory duties.

3630 (4) (a) The listing of information in Subsection (3) is not necessarily an exclusive list.

3631 (b) To ensure that an orderly transition to liquidation occurs, information not listed in  
3632 Subsection (3) may be needed and may be appropriately provided by the receiver.

3633 (5) In the case of a property and casualty insurer, the rehabilitator, in cooperation with  
3634 affected guaranty associations, shall make all reasonable efforts to prepare the insurer's  
3635 electronic policy and claims data so that, upon the entry of an order of liquidation, the data will  
3636 be ready for transmission using the Uniform Data Standards as promulgated by the National  
3637 Association of Insurance Commissioners.

3638 Section 70. Section **31A-27a-401** is enacted to read:

3639 **Part 4. Liquidation**

3640 **31A-27a-401. Liquidation orders.**

3641 (1) (a) An order to liquidate the business of an insurer shall:

3642 (i) appoint the commissioner and any successor in office as the liquidator; and

3643 (ii) direct the liquidator to:

3644 (A) take possession of the property of the insurer; and

3645 (B) administer the property subject to this chapter.

3646 (b) As of the entry of the final order of liquidation, the liquidator is vested by operation  
3647 of law with the title to the following, wherever located, of the insurer ordered liquidated:

3648 (i) all property;

3649 (ii) all contracts;

3650 (iii) all rights of action; and

3651 (iv) all records.

3652 (2) Upon issuance of the order of liquidation, the rights and liabilities of the insurer  
3653 and of its creditors, policyholders, shareholders, members, and all other persons interested in its  
3654 estate shall become fixed as of the day on which the order of liquidation is entered:

3655 (a) except as provided in Sections 31A-27a-402, 31A-27a-403, and 31A-27a-605; and

3656 (b) unless otherwise fixed by the liquidation court.

3657 (3) An order to liquidate the business of an alien insurer in this state shall be in the  
3658 same terms and have the same legal effect as an order to liquidate a domestic insurer.

3659 (4) (a) Whenever applicable, a petition for liquidation should include a request for a  
3660 judicial declaration or finding of insolvency.

3661 (b) After providing proper notice and hearing, the receivership court may at any time  
3662 make the declaration of insolvency.

3663 (5) If an order of liquidation is set aside upon appeal, the insurer is not released from  
3664 delinquency proceedings except in accordance with Section 31A-27a-801.

3665 Section 71. Section **31A-27a-402** is enacted to read:

3666 **31A-27a-402. Continuance of coverage.**

3667 (1) Notwithstanding any policy or contract language or any other statute, and unless  
3668 ordered otherwise by the receivership court upon application by the receiver, a reinsurance  
3669 contract by which the insurer assumes the insurance obligations of another insurer is cancelled  
3670 upon entry of an order of liquidation.

3671 (2) (a) Notwithstanding any policy or contract language or any other statute, and  
3672 subject to Subsection (2)(c), the following in effect at the time of issuance of an order of  
3673 liquidation shall continue in force as provided in this section until the time period specified in  
3674 Subsection (2)(b):

3675 (i) a policy;

3676 (ii) an insurance contract, other than reinsurance by which the insurer has ceded  
3677 insurance obligations to another person;

3678 (iii) a surety bond; or

3679 (iv) a surety undertaking.

3680 (b) Any item listed in Subsection (2)(a) continues in force:

3681 (i) until the earlier of:

3682 (A) 30 days from the day on which the liquidation order is entered;

3683 (B) the day on which the policy coverage expires;

3684 (C) the day on which the insured:

3685 (I) replaces the insurance coverage with equivalent insurance with another insurer; or

3686 (II) otherwise terminates the policy;  
3687 (D) the day on which the liquidator effects a transfer of the policy obligation pursuant  
3688 to Subsection 31A-27a-405(1)(i); or  
3689 (E) the date proposed by the liquidator and approved by the receivership court to cancel  
3690 coverage; or  
3691 (ii) unless further extended by the receiver with the approval of the receivership court.  
3692 (c) This Subsection (2) does not apply to:  
3693 (i) life insurance;  
3694 (ii) disability income insurance;  
3695 (iii) long-term care insurance;  
3696 (iv) health insurance; or  
3697 (v) an annuity.  
3698 (3) An order of liquidation under Section 31A-27a-401 terminates coverages at the  
3699 time specified in Subsections (1) and (2) for purposes of any other statute.  
3700 (4) (a) A life insurance policy, disability income insurance policy, long-term care  
3701 insurance policy, health insurance policy, or an annuity continues in force:  
3702 (i) if covered by an affected guaranty association or portions are covered by one or  
3703 more affected guaranty associations, under applicable law;  
3704 (ii) subject to the terms of the policy or annuity, including any terms restructured  
3705 pursuant to a court-approved rehabilitation plan; and  
3706 (iii) to the extent necessary to permit an affected guaranty association to discharge its  
3707 statutory obligations.  
3708 (b) A life insurance policy, disability income insurance policy, long-term care  
3709 insurance policy, health insurance policy, or an annuity not covered by one or more guaranty  
3710 associations, or those portions not covered by one or more guaranty associations terminates as  
3711 provided under Subsection (2), except to the extent that the liquidator proposes and the  
3712 receivership court approves the use of property of the estate, consistent with Section  
3713 31A-27a-701, for the purpose of continuing the contract or coverage by transferring the  
3714 contract or coverage to an assuming reinsurer.  
3715 (5) The cancellation of a bond or surety undertaking does not release any cosurety or  
3716 guarantor.



3717 (6) Except as otherwise provided in this chapter, the obligations of the insolvent  
3718 insurer's reinsurers may not be released or discharged of a policy ceded to a reinsurer by a  
3719 termination under this section.

3720 (7) A contract by which the insurer reinsures obligations arising under a life insurance  
3721 policy, disability income insurance policy, long-term care insurance policy, or an annuity  
3722 continues or terminates as provided in Section 31A-27a-513.

3723 Section 72. Section **31A-27a-403** is enacted to read:

3724 **31A-27a-403. Continuance of coverage -- Health maintenance organizations.**

3725 (1) As used in this section:

3726 (a) "Basic health care services" is as defined in Section 31A-8-101.

3727 (b) "Enrollee" is as defined in Section 31A-8-101.

3728 (c) "Health care" is as defined in Section 31A-1-301.

3729 (d) "Health maintenance organization" is as defined in Section 31A-8-101.

3730 (e) "Limited health plan" is as defined in Section 31A-8-101.

3731 (f) (i) "Managed care organization" means an entity licensed by, or holding a certificate  
3732 of authority from, the department to furnish health care services or health insurance.

3733 (ii) "Managed care organization" includes:

3734 (A) a limited health plan;

3735 (B) a health maintenance organization;

3736 (C) a preferred provider organization;

3737 (D) a fraternal benefit society; or

3738 (E) an entity similar to an entity described in Subsections (1)(f)(ii)(A) through (D).

3739 (iii) "Managed care organization" does not include:

3740 (A) an insurer or other person that is eligible for membership in a guaranty association  
3741 under Chapter 28, Guaranty Associations;

3742 (B) a mandatory state pooling plan;

3743 (C) a mutual assessment company or an entity that operates on an assessment basis; or

3744 (D) an entity similar to an entity described in Subsections (1)(f)(iii)(A) through (C).

3745 (g) "Participating provider" means a provider who, under a contract with a managed  
3746 care organization authorized under Section 31A-8-407, agrees to provide health care services to  
3747 enrollees with an expectation of receiving payment:

3748 (i) directly or indirectly, from the managed care organization; and

3749 (ii) other than a copayment.

3750 (h) "Participating provider contract" means the agreement between a participating  
3751 provider and a managed care organization authorized under Section 31A-8-407.

3752 (i) "Preferred provider" means a provider who agrees to provide health care services  
3753 under an agreement authorized under Subsection 31A-22-617(1).

3754 (j) "Preferred provider contract" means the written agreement between a preferred  
3755 provider and a managed care organization authorized under Subsection 31A-22-617(1).

3756 (k) (i) Except as provided in Subsection (1)(k)(ii), "preferred provider organization"  
3757 means a person that:

3758 (A) furnishes at a minimum, through a preferred provider, basic health care services to  
3759 an enrollee in return for prepaid periodic payments in an amount agreed to before the time  
3760 during which the health care may be furnished;

3761 (B) is obligated to the enrollee to arrange for the services described in Subsection  
3762 (1)(k)(i)(A); and

3763 (C) permits the enrollee to obtain health care services from a provider who is not a  
3764 preferred provider.

3765 (ii) "Preferred provider organization" does not include:

3766 (A) an insurer licensed under Chapter 7, Nonprofit Health Service Insurance  
3767 Corporations; or

3768 (B) an individual who contracts to render professional or personal services that the  
3769 individual performs.

3770 (l) "Provider" is as defined in Section 31A-8-101.

3771 (m) "Uncovered expenditure" means a cost of health care services that is covered by an  
3772 organization for which an enrollee is liable in the event of the managed care organization's  
3773 insolvency.

3774 (2) The rehabilitator or liquidator may take one or more of the actions described in  
3775 Subsections (2)(a) through (g) to assure continuation of health care coverage for enrollees of an  
3776 insolvent managed care organization.

3777 (a) (i) Subject to Subsection (2)(a)(ii), a rehabilitator or liquidator may require a  
3778 participating provider or preferred provider to continue to provide the health care services the

3779 provider is required to provide under the provider's participating provider contract or preferred  
3780 provider contract until the earlier of:

3781 (A) 90 days after the day on which the following is filed:

3782 (I) a petition for rehabilitation; or

3783 (II) a petition for liquidation; or

3784 (B) the day on which the term of the contract ends.

3785 (ii) A requirement by the rehabilitator or liquidator under Subsection (2)(a)(i) that a  
3786 participating provider or preferred provider continue to provide health care services under the  
3787 provider's participating provider contract or preferred provider contract expires when health  
3788 care coverage for all enrollees of the insolvent managed care organization is obtained from  
3789 another managed care organization or insurer.

3790 (b) (i) Subject to Subsection (2)(b)(ii), a rehabilitator or liquidator may reduce the fees  
3791 a participating provider or preferred provider is otherwise entitled to receive from the managed  
3792 care organization under the provider's participating provider contract or preferred provider  
3793 contract during the time period in Subsection (2)(a)(i).

3794 (ii) Notwithstanding Subsection (2)(b)(i), a rehabilitator or liquidator may not reduce a  
3795 fee to less than 75% of the regular fee set forth in the provider's participating provider contract  
3796 or preferred provider contract.

3797 (iii) An enrollee shall continue to pay the same copayments, deductibles, and other  
3798 payments for services received from a participating provider or preferred provider that the  
3799 enrollee is required to pay before the day on which the following is filed:

3800 (A) the petition for rehabilitation; or

3801 (B) the petition for liquidation.

3802 (c) A participating provider or preferred provider shall:

3803 (i) accept the amounts specified in Subsection (2)(b) as payment in full; and

3804 (ii) relinquish the right to collect additional amounts from the insolvent managed care  
3805 organization's enrollee.

3806 (d) Subsections (2)(b) and (c) apply to the fees paid to a provider who agrees to  
3807 provide health care services to an enrollee but is not a preferred or participating provider.

3808 (e) If the managed care organization is a health maintenance organization, Subsections  
3809 (2)(e)(i) through (vi) apply.

3810 (i) A solvent health maintenance organization licensed under Chapter 8, Health  
3811 Maintenance Organizations and Limited Health Plans, shall extend to the enrollees of an  
3812 insolvent health maintenance organization all rights, privileges, and obligations of being an  
3813 enrollee in the accepting health maintenance organization:

3814 (A) subject to Subsections (2)(e)(ii), (iii), and (v);

3815 (B) upon notification from and subject to the direction of the rehabilitator or liquidator  
3816 of an insolvent health maintenance organization licensed under Chapter 8, Health Maintenance  
3817 Organizations and Limited Health Plans; and

3818 (C) if the solvent health maintenance organization operates within a portion of the  
3819 insolvent health maintenance organization's service area.

3820 (ii) Notwithstanding Subsection (2)(e)(i), the accepting health maintenance  
3821 organization shall give credit to an enrollee for any waiting period already satisfied under the  
3822 enrollee's contract with the insolvent health maintenance organization.

3823 (iii) A health maintenance organization accepting an enrollee of an insolvent health  
3824 maintenance organization under Subsection (2)(e)(i) shall charge the enrollee the premiums  
3825 applicable to the existing business of the accepting health maintenance organization.

3826 (iv) A health maintenance organization's obligation to accept an enrollee under  
3827 Subsection (2)(e)(i) is limited in number to the accepting health maintenance organization's pro  
3828 rata share of all health maintenance organization enrollees in this state, as determined after  
3829 excluding the enrollees of the insolvent insurer.

3830 (v) (A) The rehabilitator or liquidator of an insolvent health maintenance organization  
3831 shall take those measures that are possible to ensure that no health maintenance organization is  
3832 required to accept more than its pro rata share of the adverse risk represented by the enrollees  
3833 of the insolvent health maintenance organization.

3834 (B) If the methodology used by the rehabilitator or liquidator to assign an enrollee is  
3835 one that can be expected to produce a reasonably equitable distribution of adverse risk, that  
3836 methodology and its results are acceptable under this Subsection (2)(e)(v).

3837 (vi) (A) Notwithstanding Section 31A-27a-402, the rehabilitator or liquidator may  
3838 require all solvent health maintenance organizations to pay for the covered claims incurred by  
3839 the enrollees of the insolvent health maintenance organization.

3840 (B) As determined by the rehabilitator or liquidator, payments required under this

3841 Subsection (2)(e)(vi) may:

3842 (I) begin as of the day on which the following is filed:

3843 (Aa) the petition for rehabilitation; or

3844 (Bb) the petition for liquidation; and

3845 (II) continue for a maximum period through the time all enrollees are assigned pursuant  
3846 to this section.

3847 (C) If the rehabilitator or liquidator makes an assessment under this Subsection  
3848 (2)(e)(vi), the rehabilitator or liquidator shall assess each solvent health maintenance  
3849 organization its pro rata share of the total assessment based upon its premiums from the  
3850 previous calendar year.

3851 (D) (I) A solvent health maintenance organization required to pay for covered claims  
3852 under this Subsection (2)(e)(vi) may file a claim against the estate of the insolvent health  
3853 maintenance organization.

3854 (II) Any claim described in Subsection (2)(e)(vi)(D)(I), if allowed by the rehabilitator  
3855 or liquidator, shall share in any distributions from the estate of the insolvent health  
3856 maintenance organization as a Class 3 claim.

3857 (f) (i) A rehabilitator or liquidator may transfer, through sale or otherwise, the group  
3858 and individual health care obligations of the insolvent managed care organization to one or  
3859 more other managed care organizations or other insurers, if those other managed care  
3860 organizations and other insurers:

3861 (A) are licensed to provide the same health care services in this state that are held by  
3862 the insolvent managed care organization; or

3863 (B) have a certificate of authority to provide the same health care services in this state  
3864 that is held by the insolvent managed care organization.

3865 (ii) The rehabilitator or liquidator may combine group and individual health care  
3866 obligations of the insolvent managed care organization in any manner the rehabilitator or  
3867 liquidator considers best to provide for continuous health care coverage for the maximum  
3868 number of enrollees of the insolvent managed care organization.

3869 (iii) If the terms of a proposed transfer of the same combination of group and  
3870 individual policy obligations to more than one other managed care organization or insurer are  
3871 otherwise equal, the rehabilitator or liquidator shall give preference to the transfer of the group

3872 and individual policy obligations of an insolvent managed care organization as follows:

3873 (A) from one category of managed care organization to another managed care

3874 organization of the same category, as follows:

3875 (I) from a limited health plan to a limited health plan;

3876 (II) from a health maintenance organization to a health maintenance organization;

3877 (III) from a preferred provider organization to a preferred provider organization;

3878 (IV) from a fraternal benefit society to a fraternal benefit society; and

3879 (V) from an entity similar to an entity described in this Subsection (2)(f)(iii)(A) to a

3880 category that is similar;

3881 (B) from one category of managed care organization to another managed care

3882 organization, regardless of the category of the transferee managed care organization; and

3883 (C) from a managed care organization to a nonmanaged care provider of health care

3884 coverage, including insurers.

3885 (g) If an insolvent managed care organization has required surplus, a rehabilitator or

3886 liquidator may use the insolvent managed care organization's required surplus to continue to

3887 provide coverage for the insolvent managed care organization's enrollees, including paying

3888 uncovered expenditures.

3889 Section 73. Section **31A-27a-404** is enacted to read:

3890 **31A-27a-404. Sale or dissolution of the insurer's corporate entity.**

3891 (1) Notwithstanding the entry of a liquidation order, the liquidator may apply for an

3892 order to sell or dissolve the corporate entity or charter of a domestic insurer, or the United

3893 States branch of an alien insurer domiciled in this state:

3894 (a) at any time after an order of liquidation of the insurer is granted; and

3895 (b) consistent with this section.

3896 (2) Upon an application to sell the corporate entity or charter, with notice as prescribed

3897 in this chapter, the receivership court may enter an order:

3898 (a) separating the corporate entity or charter, together with any of its licenses to do

3899 business and the assets the liquidator considers appropriate to the transaction, from:

3900 (i) the remaining estate in liquidation;

3901 (ii) all of the remaining estate's assets; and

3902 (iii) the claims or interests of all claimants, creditors, policyholders, and stockholders;

3903 (b) canceling all outstanding stock and other securities of, and other equity interests in,  
3904 the corporate entity or charter, except that the cancellation may not affect any claim against the  
3905 estate by holders of the equity interests;

3906 (c) authorizing the issuance and sale of new stock or other securities for the purpose of  
3907 transferring to one or more buyers control and ownership of the corporate entity or charter; and

3908 (d) authorizing the sale of the corporate entity or charter, together with any of its  
3909 licenses to do business and the general assets the liquidator considers appropriate to the  
3910 transaction, free and clear from the claims or interests of all claimants, creditors, policyholders,  
3911 and stockholders.

3912 (3) (a) The sale of the corporate entity or charter may be made in the manner and on the  
3913 terms and conditions:

3914 (i) applied for by the liquidator; and

3915 (ii) ordered by the receivership court.

3916 (b) A sale is subject to the domiciliary state's laws regarding acquisition of an insurer  
3917 under Chapter 16, Insurance Holding Companies.

3918 (c) Upon the sale of a corporate entity or chapter:

3919 (i) the proceeds from the sale become a part of the property of the estate in liquidation;  
3920 and

3921 (ii) the then separate corporate entity or charter, together with any of its licenses to do  
3922 business and the assets the liquidator considers appropriate to the transaction, is free and clear  
3923 from the claims or interests of all claimants, creditors, policyholders, and stockholders of the  
3924 insurer in liquidation.

3925 (d) The court has broad powers to effect the disposition of a corporate entity and its  
3926 charter including, without limiting the statement of broad powers, a reorganization or  
3927 conversion of the corporate entity.

3928 (4) This section shall be liberally construed to:

3929 (a) accomplish its purposes to provide an expeditious and effective procedure to realize  
3930 the maximum proceeds possible from the sale of a corporate entity or charter separated from an  
3931 estate in liquidation; and

3932 (b) ensure that a purchaser receives clear and marketable title.

3933 (5) If permission to sell the corporate entity or charter is not granted before discharge

3934 of the liquidator, in accordance with this section or otherwise with receivership court approval:

3935 (a) the receivership court may order dissolution of the corporate entity or charter;

3936 (b) dissolution is considered complete by operation of law upon the discharge of the  
3937 liquidator if the insurer is insolvent; or

3938 (c) dissolution may be ordered by the receivership court upon the discharge of the  
3939 liquidator if the insurer is under a liquidation order for some other reason.

3940 Section 74. Section **31A-27a-405** is enacted to read:

3941 **31A-27a-405. Powers of the liquidator.**

3942 (1) The liquidator may:

3943 (a) (i) hold hearings, subpoena a witness to compel the witness' attendance, administer  
3944 oaths, examine a person under oath, and compel a person to subscribe to that person's  
3945 testimony after the testimony is correctly reduced to writing; and

3946 (ii) in connection with a power listed in Subsection (1)(a)(i), require the production of  
3947 a record that the liquidator considers relevant to the inquiry;

3948 (b) audit the records of all agents of the insurer to the extent that those records relate to  
3949 the business activities of the insurer;

3950 (c) collect all debts and moneys due and claims belonging to the insurer, wherever  
3951 located, and for this purpose to:

3952 (i) institute action in another jurisdiction, to forestall garnishment and attachment  
3953 proceedings against the debt;

3954 (ii) pay Class 1 administrative costs of the estate:

3955 (A) at the liquidator's sole discretion;

3956 (B) upon approval of the receivership court; and

3957 (C) where the payment assists or results in the collection or recovery of property of the  
3958 insurer that provides a net benefit to creditors of the estate;

3959 (iii) do any other act as is necessary or expedient to collect, conserve, or protect the  
3960 insurer's property, including the power to sell, compound, compromise, or assign a debt for  
3961 purposes of collection upon the terms and conditions that the liquidator considers consistent  
3962 with this chapter; and

3963 (iv) pursue any creditor's remedies available to enforce a claim of the insurer;

3964 (d) conduct public and private sales of the property of the insurer;



3965 (e) subject to Subsection (6), use property of the estate of an insurer under a liquidation  
3966 order to transfer:

3967 (i) (A) a policy obligation; or  
3968 (B) (I) the insurer's obligations under a surety bond or a surety undertaking; and  
3969 (II) collateral held by the insurer with respect to the reimbursement obligations of the  
3970 principals under the surety bond or surety undertaking;

3971 (ii) to a solvent assuming insurer; and  
3972 (iii) if the transfer can be arranged without prejudice to applicable priorities under  
3973 Section 31A-27a-701;

3974 (f) subject to Subsection (4), acquire, hypothecate, encumber, lease, improve, sell,  
3975 transfer, abandon, or otherwise dispose of or deal with, any property of the estate:

3976 (i) at its market value; or  
3977 (ii) upon terms and conditions that are fair and reasonable;  
3978 (g) execute, acknowledge, and deliver any deed, assignment, release, or other  
3979 instrument necessary or proper to effectuate a sale of property or other transaction in  
3980 connection with the liquidation;

3981 (h) (i) subject to Subsection (7), borrow money for the purpose of facilitating the  
3982 liquidation:

3983 (A) on the security of the property of the estate; or  
3984 (B) without security; and

3985 (ii) execute and deliver a document necessary to the transaction to borrow money;  
3986 (i) (i) enter into a contract necessary to carry out the order to liquidate; and  
3987 (ii) subject to Section 31A-27a-113, assume or reject an executory contract or  
3988 unexpired lease to which the insurer is a party;

3989 (j) (i) continue to prosecute or to institute in the name of the insurer or in the  
3990 liquidator's own name a suit or other legal proceeding, in this state or elsewhere; and  
3991 (ii) abandon the prosecution of a claim the liquidator considers unprofitable to pursue  
3992 further;

3993 (k) if the insurer is dissolved under Section 31A-27a-404, apply to a court in this state  
3994 or elsewhere for leave to substitute the liquidator for the insurer as a party;

3995 (l) subject to Subsection (8), prosecute or assert with exclusive standing an action that

3996 may exist on behalf of the public or a creditor, member, policyholder, or shareholder of the  
3997 insurer against a person, except to the extent that:

3998 (i) a claim is personal to a specific creditor, member, policyholder, or shareholder; and  
3999 (ii) recovery on the claim would not inure to the benefit of the estate;

4000 (m) subject to Subsection (8), take possession of a record or property of the insurer as  
4001 may be convenient for the purposes of efficient and orderly execution of the liquidation;

4002 (n) deposit in one or more banks in this state sums required for meeting current  
4003 administration expenses and dividend distributions;

4004 (o) invest all sums not currently needed, unless the receivership court orders otherwise;  
4005 (p) file any necessary document for record in the office of a recorder of deeds or record  
4006 office in this state or elsewhere where property of the insurer is located;

4007 (q) subject to Subsection (9), assert all defenses available to the insurer as against a  
4008 third person, including statutes of limitations, statutes of frauds, and the defense of usury;

4009 (r) exercise and enforce all the rights, remedies, and powers of a creditor, shareholder,  
4010 policyholder, or member, including any power to avoid a transfer or lien that may be voidable  
4011 under this chapter or otherwise;

4012 (s) (i) intervene in a proceeding wherever instituted that might lead to the appointment  
4013 of a receiver or trustee for the insurer or any of its property; and

4014 (ii) act as the receiver or trustee whenever the appointment is offered;  
4015 (t) enter into an agreement with a receiver or commissioner of any other state; and  
4016 (u) exercise all powers held on or conferred after April 30, 2007, on a receiver by the  
4017 laws of this state not inconsistent with this chapter.

4018 (2) The liquidator is vested with all the rights of the one or more entities in  
4019 receivership.

4020 (3) The enumeration of the powers and authority of the liquidator in this section:

4021 (a) may not be construed as a limitation upon the liquidator; and  
4022 (b) does not exclude in any manner the right to do other acts:

4023 (i) not specifically enumerated or otherwise provided for; and  
4024 (ii) to the extent necessary or appropriate for the accomplishment of or in aid of the  
4025 purpose of liquidation.

4026 (4) (a) The liquidator may take the following actions as provided in this Subsection (4):

- 4027 (i) hypothecate, encumber, lease, sell, transfer, abandon, or otherwise dispose of or  
4028 deal with property of the insurer;
- 4029 (ii) settle or resolve a claim brought by the liquidator on behalf of the insurer; or  
4030 (iii) commute or settle a claim of reinsurance under a contract of reinsurance.
- 4031 (b) The liquidator may take an action described in Subsection (4)(a) at the liquidator's  
4032 discretion if the property or claim has a market or settlement value, as shown on the  
4033 receivership's financial statements, that does not exceed:
- 4034 (i) the lesser of:
- 4035 (A) \$1,000,000; or  
4036 (B) 10% of the general assets of the estate; or
- 4037 (ii) an amount increased from the amount described in Subsection (4)(b)(i), if the  
4038 receivership court increases the amount upon a petition of the liquidator and a showing that  
4039 compliance with this Subsection (4)(b) is:
- 4040 (A) burdensome to the liquidator in administering the estate; and  
4041 (B) unnecessary to protect the material interests of creditors.
- 4042 (c) In all instances other than those described in Subsection (4)(b), the liquidator may  
4043 take an action described in Subsection (4)(a) only after obtaining approval of the receivership  
4044 court as provided in Section 31A-27a-107.
- 4045 (d) The liquidator may, at the liquidator's discretion, request the receivership court to  
4046 approve a proposed action as provided in Section 31A-27a-107:
- 4047 (i) if the value of the property or claim appears to be less than the threshold provided in  
4048 Subsection (4)(b) but cannot be ascertained with certainty; or
- 4049 (ii) for any other reason as determined by the liquidator.
- 4050 (e) (i) After obtaining approval of the receivership court as provided in Section  
4051 31A-27a-107, the liquidator may transfer rights to payment under a ceding reinsurance  
4052 agreement covering policy to a third party transferee.
- 4053 (ii) The transferee has the rights to collect and enforce collection of the reinsurance for  
4054 the amount payable to the ceding insurer or to its receiver:
- 4055 (A) without diminution because:
- 4056 (I) of the insolvency; or  
4057 (II) the receiver failed to pay all or a portion of the claim; and

4058 (B) on the basis of the amounts paid or allowed pursuant to Section 31A-27a-511.

4059 (iii) The transfer of the rights described in Subsection (4)(e)(ii) does not give rise to  
4060 any defense regarding the reinsurer's obligations under the reinsurance agreement regardless of  
4061 whether the agreement or other applicable law prohibits the transfer of rights under the  
4062 reinsurance agreement.

4063 (iv) Except as provided in this Subsection (4), a transfer of rights pursuant to this  
4064 Subsection (4)(e) may not impair any right or defense of the reinsurer that:

4065 (A) exists before the transfer; or

4066 (B) would have existed in the absence of the transfer.

4067 (v) Except as otherwise provided in this Subsection (4), a transfer of rights pursuant to  
4068 this Subsection (4)(e) does not relieve the transferee or the liquidator from an obligation owed  
4069 to the reinsurer pursuant to the reinsurance or other agreement.

4070 (5) (a) The liquidator is not obligated to defend an action against the insurer or insured.

4071 (b) If a defense is an obligation of the insurer, an insured not defended by a guaranty  
4072 association may:

4073 (i) provide its own defense; and

4074 (ii) include the cost of the defense as part of the insured's claim.

4075 (c) The right of the liquidator to contest coverage on a particular claim is preserved  
4076 without the necessity for an express reservation of rights.

4077 (6) Once a liquidator makes a transfer described in Subsection (1)(e), the estate has no  
4078 further liability under a transferred policy, surety bond, or surety undertaking after the transfer  
4079 is made if:

4080 (a) all insureds, principals, third party claimants, and obligees under the policy, surety  
4081 bond, or surety undertaking consent; or

4082 (b) the receivership court so orders.

4083 (7) Funds borrowed under Subsection (1)(h):

4084 (a) may be repaid as an administrative expense; and

4085 (b) have priority over any other claims in Class 1 under the priority of distribution.

4086 (8) (a) Subsection (1)(l) does not infringe or impair any of the rights provided to an  
4087 affected guaranty association pursuant to its enabling statute or otherwise.

4088 (b) Notwithstanding Subsection (1)(m), an affected guaranty association shall have

4089 reasonable access to the records of the insurer necessary for the affected guaranty association to  
4090 carry out its statutory obligations.

4091 (9) (a) A waiver of a defense by the insurer after a petition pursuant to Section  
4092 31A-27a-201 or 31A-27a-207 is filed does not bind the liquidator.

4093 (b) Notwithstanding Subsection (1)(q), when an affected guaranty association  
4094 determines it has an obligation to defend a suit, the liquidator:

4095 (i) shall defer to that obligation; and

4096 (ii) may defend only in cooperation with the affected guaranty association.

4097 Section 75. Section **31A-27a-406** is enacted to read:

4098 **31A-27a-406. Notice to creditors and others.**

4099 (1) Unless the receivership court otherwise directs, the liquidator shall give or cause to  
4100 be given notice of the liquidation order as soon as possible:

4101 (a) by first-class mail or electronic communication as permitted by the receivership  
4102 court to the following at their last-known address:

4103 (i) all of the insurer's agents, brokers, or producers of record with a current  
4104 appointment or current license to represent the insurer; and

4105 (ii) all other agents, brokers, or producers that the liquidator considers appropriate;

4106 (b) by first-class mail or electronic communication as permitted by the receivership  
4107 court to:

4108 (i) all current policyholders;

4109 (ii) all pending claimants; and

4110 (iii) as determined by the receivership court, former policyholders and other creditors;

4111 and

4112 (c) by one time publication in a newspaper of general circulation in:

4113 (i) the county in which the insurer has its principal place of business; and

4114 (ii) other locations that the liquidator considers appropriate.

4115 (2) The notice of the entry of an order of liquidation shall contain or provide directions  
4116 for obtaining the following information:

4117 (a) a statement that the insurer has been placed in liquidation;

4118 (b) a statement:

4119 (i) explaining that certain acts are stayed under Section 31A-27a-108; and

- 4120 (ii) describing any additional injunctive relief ordered by the receivership court;  
4121 (c) a statement whether, and to what extent, the insurer's policies continue in effect;  
4122 (d) to the extent applicable, a statement that coverage by guaranty associations may be  
4123 available for all or part of policy benefits in accordance with applicable state guaranty laws;  
4124 (e) a statement of:  
4125 (i) the deadline for filing claims, if established; and  
4126 (ii) the requirements for filing a proof of claim pursuant to Section 31A-27a-601 on or  
4127 before that date;  
4128 (f) a statement of the date, time, and location of any initial status hearing scheduled at  
4129 the time the notice is sent;  
4130 (g) a description of the process for obtaining notice of matters before the receivership  
4131 court; and  
4132 (h) other information as the liquidator or the receivership court considers appropriate.  
4133 (3) If notice is given in accordance with this section, the distribution of property of the  
4134 insurer under this chapter is conclusive with respect to all claimants, whether or not the  
4135 claimant received notice.  
4136 (4) (a) Notwithstanding the other provisions of this section, the liquidator has no duty  
4137 to locate any person if:  
4138 (i) no address is found in the records of the insurer; or  
4139 (ii) a mailing is returned to the liquidator because of inability to deliver at the address  
4140 shown in the insurer's records.  
4141 (b) In the circumstances described in Subsection (4)(a), the notice by publication as  
4142 required by this chapter or actual notice received is sufficient notice.  
4143 (c) Written certification by the liquidator or other knowledgeable person acting for the  
4144 liquidator that a notice is deposited in the United States mail, postage prepaid, or that the notice  
4145 is electronically transmitted is prima facie evidence of mailing and receipt.  
4146 (d) A claimant has a duty to keep the liquidator informed of any change of address.  
4147 (5) Notwithstanding Subsection (1):  
4148 (a) upon application of the liquidator, the receivership court may find that notice by  
4149 publication as required in this section is sufficient notice to those persons holding an  
4150 occurrence policy;

4151 (i) that expired more than four years before the day on which the order of liquidation is  
4152 entered; and

4153 (ii) under which there are no pending claims; or

4154 (b) the receivership court may order other notice to those persons that the receivership  
4155 court considers appropriate.

4156 Section 76. Section **31A-27a-407** is enacted to read:

4157 **31A-27a-407. Duties of agents.**

4158 (1) (a) At the request of the liquidator, an agent receiving notice of the entry of the  
4159 liquidation order shall provide notice of that order:

4160 (i) on a form prescribed by the liquidator;

4161 (ii) to:

4162 (A) each policyholder of a policy issued through the agent; and

4163 (B) other person named in a policy issued through the agent; and

4164 (iii) within:

4165 (A) 15 days of the day on which the agent receives the notice; or

4166 (B) a longer time as the liquidator may require.

4167 (b) Within 30 days of the mailing required by Subsection (1)(a), the agent shall provide  
4168 as prescribed by the liquidator:

4169 (i) a certification of mailing; and

4170 (ii) a list of insureds to which notice is provided.

4171 (2) (a) A person who represents the insurer as an agent and receives notice in the form  
4172 prescribed in Section 31A-27a-406, shall, within 30 days of the day on which the notice being  
4173 sent, provide to the liquidator:

4174 (i) the information the agent is required to provide pursuant to Section 31A-27a-110, if  
4175 any;

4176 (ii) the information in the agent's records related to any policy issued by the insurer  
4177 through the agent; and

4178 (iii) if the agent is a general agent, the information in the general agent's records related  
4179 to any policy issued by the insurer through an agent under contract to the general agent,  
4180 including the name and address of the subagent.

4181 (b) Except where the ownership of the expiration of the policy is transferred to another,

4182 a policy is considered issued through an agent if the agent:

4183 (i) has a property interest in the expiration of the policy; or

4184 (ii) has had in the agent's possession a copy of the declarations of the policy at any time  
4185 during the life of the policy.

4186 (3) If an agent fails to provide information to the liquidator as required in Subsection  
4187 (2), the commissioner after holding a hearing may:

4188 (a) impose against the agent a penalty of not more than \$1,000; and

4189 (b) suspend the agent's license.

4190 (4) Notwithstanding an agent's property interest, if any, in the expiration of a policy,  
4191 the liquidator has the exclusive power to determine whether, and under what terms, to cancel or  
4192 transfer the policy.

4193 Section 77. Section **31A-27a-501** is enacted to read:

4194 **Part 5. Asset Recovery**

4195 **31A-27a-501. Turnover of assets.**

4196 (1) (a) If the receiver determines that funds or property in the possession of another  
4197 person are rightfully the property of the estate, the receiver shall deliver to the person a written  
4198 demand for immediate delivery of the funds or property:

4199 (i) referencing this section by number;

4200 (ii) referencing the court and docket number of the receivership action; and

4201 (iii) notifying the person that any claim of right to the funds or property by the person  
4202 shall be presented to the receivership court within 20 days of the day on which the person  
4203 receives the written demand.

4204 (b) (i) A person who holds funds or other property belonging to an entity subject to an  
4205 order of receivership under this chapter shall deliver the funds or other property to the receiver  
4206 on demand.

4207 (ii) If the person described in Subsection (1)(b)(i) alleges a right to retain the funds or  
4208 other property, the person shall:

4209 (A) file a pleading with the receivership court setting out that right within 20 days of  
4210 the day on which the person receives the demand that the funds or property be delivered to the  
4211 receiver; and

4212 (B) serve a copy of the pleading on the receiver.



4213 (iii) The pleading described in Subsection (1)(b)(ii) shall inform the receivership court  
4214 as to:

4215 (A) the nature of the claim to the funds or property;

4216 (B) the alleged value of the property or amount of funds held; and

4217 (C) what action has been taken by the person to preserve any funds or to preserve and  
4218 protect the property pending determination of the dispute.

4219 (c) The relinquishment of possession of funds or property by a person who receives a  
4220 demand pursuant to this section is not a waiver of a right to make a claim in the receivership.

4221 (2) (a) If requested by the receiver, the receivership court shall hold a hearing to  
4222 determine where and under what conditions the funds or property shall be held by a person  
4223 described in Subsection (1) pending determination of a dispute concerning the funds or  
4224 property.

4225 (b) The receivership court may impose the conditions the receivership court considers  
4226 necessary or appropriate for the preservation of the funds or property until the receivership  
4227 court can determine the validity of the person's claim to the funds or property.

4228 (c) If funds or property are allowed to remain in the possession of the person after  
4229 demand made by the receiver, that person is strictly liable to the estate for any waste, loss, or  
4230 damage to or diminution of value of the funds or property retained.

4231 (3) If a person files a pleading alleging a right to retain funds or property as provided in  
4232 Subsection (1), the receivership court shall hold a subsequent hearing to determine the  
4233 entitlement of the person to the funds or property claimed by the receiver.

4234 (4) If a person fails to deliver the funds or property or to file the pleading described by  
4235 Subsection (1) within the 20-day period, the receivership court may issue a summary order:

4236 (a) upon:

4237 (i) petition of the receiver; and

4238 (ii) a copy of the petition being served by the petitioner to that person;

4239 (b) directing the immediate delivery of the funds or property to the receiver; and

4240 (c) finding that the person waived all claims of right to the funds or property.

4241 (5) The liquidator shall reduce the assets to a degree of liquidity that is consistent with  
4242 the effective execution of the liquidation.

4243 Section 78. Section **31A-27a-502** is enacted to read:

4244 **31A-27a-502. Recovery from affiliates.**

4245 (1) (a) If a receivership order is entered under this chapter, the receiver appointed under  
4246 the receivership order may recover on behalf of the insurer from an affiliate as defined in  
4247 Subsection 31A-1-301(5) the value received by the affiliate at any time during the five years  
4248 preceding the filing date of the delinquency proceedings.

4249 (b) A person disputing that person's status as an affiliate must prove by clear and  
4250 convincing evidence the person's nonaffiliate status.

4251 (c) Recovery from an affiliate is subject to the limitations of Subsections (2) and (6).

4252 (2) If the insurer is a stock corporation, a stock dividend distribution to an affiliate is  
4253 not recoverable if the recipient shows by a preponderance of the evidence that:

4254 (a) when paid, the stock dividend distribution to an affiliate is lawful and reasonable;

4255 (b) the department had notice to and approved the stock dividend; and

4256 (c) the insurer did not know and could not reasonably have known that the stock  
4257 dividend distribution to the affiliate might adversely affect the solvency of the insurer.

4258 (3) The maximum amount recoverable under this section is the amount needed to pay  
4259 all claims under the receivership:

4260 (a) in excess of all other available recoverable assets; and

4261 (b) reduced for each recipient affiliate by any amount that the recipient affiliate pays to  
4262 any receiver under similar laws of other states.

4263 (4) (a) A person who is an affiliate at the time value is received is liable up to the  
4264 amount of value received by the affiliate.

4265 (b) If two or more affiliates are liable regarding the same value received, they are  
4266 jointly and severally liable.

4267 (5) If any affiliate liable under Subsection (4) is insolvent or unable to pay within one  
4268 year, all affiliates at the time the value is received are jointly and severally liable for any  
4269 resulting deficiency in the amount that would have been recovered from the nonpaying  
4270 affiliate.

4271 (6) This section does not enlarge the personal liability of a director under existing law.

4272 (7) An action or proceeding under this section may not be commenced after the earlier  
4273 of:

4274 (a) six years after the day on which a receiver is appointed; or

4275 (b) the day on which the receivership is terminated.

4276 Section 79. Section **31A-27a-503** is enacted to read:

4277 **31A-27a-503. Unauthorized postpetition transfers.**

4278 (1) Except as otherwise provided in this section, the receiver may avoid a transfer of an  
4279 interest of the insurer in property, or an obligation incurred by the insurer, that is:

4280 (a) made or incurred after the day on which a petition for receivership is filed; and

4281 (b) not authorized by the receiver and approved by the receivership court.

4282 (2) Except to the extent that a transfer or obligation voidable under this section is

4283 otherwise voidable under this chapter, a transferee or obligee of a transfer or obligation

4284 described in Subsection (1) has a lien on or may retain, at the option of the receivership court,

4285 an interest transferred or may enforce an obligation incurred, as the case may be:

4286 (a) if the transferee or obligee takes it for value and in good faith; and

4287 (b) to the extent that the transferee or obligee gave value to the insurer in exchange for  
4288 the transfer or obligation.

4289 Section 80. Section **31A-27a-504** is enacted to read:

4290 **31A-27a-504. Voidable preferences and liens.**

4291 (1) (a) A preference may be avoided by the rehabilitator or liquidator, if:

4292 (i) the insurer is insolvent at the time of the transfer;

4293 (ii) the transfer is made within four months before the day on which the petition is  
4294 filed;

4295 (iii) with reference to the transfer, one of the following at the time the transfer is made  
4296 has reasonable cause to believe that the insurer is or is about to become insolvent:

4297 (A) a creditor receiving the transfer;

4298 (B) a creditor to be benefitted by the transfer; or

4299 (C) an agent of a creditor described in this Subsection (1)(a)(iii); or

4300 (iv) the creditor receiving the transfer is an officer, employee, attorney, or other person  
4301 who is in fact in a position of comparable influence on the insurer to:

4302 (A) an officer of the insurer;

4303 (B) a shareholder holding directly or indirectly more than 5% of any class of equity  
4304 security issued by the insurer; or

4305 (C) any other person with whom the insurer did not deal at arm's length.

4306 (b) (i) Subject to the other provisions of this Subsection (1)(b), if a preference is  
4307 voidable, the rehabilitator or liquidator may recover the property or, if the property is  
4308 converted, the property's value, from any person who receives or converts the property.

4309 (ii) Notwithstanding Subsection (1)(b)(i), the rehabilitator or liquidator may not  
4310 recover from a bona fide purchaser or lienor of the debtor's transferee for present fair  
4311 consideration.

4312 (iii) If a bona fide purchaser or lienor gives less than fair consideration, the bona fide  
4313 purchaser or lienor has a lien upon the property to the extent of the consideration actually given  
4314 by the bona fide purchaser or lienor.

4315 (c) If a preference by way of lien or security title is voidable, the court may, on due  
4316 notice, order the lien or title to be preserved for the benefit of the estate, in which event the lien  
4317 or title passes to the liquidator.

4318 (d) A payment to which Subsection 31A-5-415(2) applies is a preference and is  
4319 voidable under Subsection (1)(a):

4320 (i) if it is made within the time period specified in Subsection 31A-27a-102(29); and

4321 (ii) except that a payment made by an insurer for the purchase of insurance under  
4322 Section 16-10a-302 is not a preference.

4323 (2) Section 31A-27a-506 applies to the perfection of a transfer.

4324 (3) Section 31A-27a-506 applies to a lien by a legal or equitable proceeding.

4325 (4) The receiver may not avoid a transfer of property under this section for or because  
4326 of:

4327 (a) new and contemporaneous consideration;

4328 (b) the payment, within 45 days after the day on which a debt is incurred, of a debt  
4329 incurred:

4330 (i) in the ordinary course of the business of the insurer; and

4331 (ii) according to normal business terms;

4332 (c) a transfer of a security interest in property:

4333 (i) to enable the insurer to acquire the property; and

4334 (ii) which is perfected within ten days after the day on which the security interest  
4335 attaches;

4336 (d) a transfer to or for the benefit of a creditor:

4337 (i) to the extent that after the transfer the creditor gives new value not secured by an  
4338 unavoidable security interest; and

4339 (ii) on account of which the insurer did not make an unavoidable transfer to or for the  
4340 benefit of the creditor; or

4341 (e) a transfer of a perfected security interest in inventory, a receivable, or the proceeds  
4342 of either, except to the extent that the aggregate of all of those types of transfers to the  
4343 transferee cause a reduction of the amount by which the debt secured by the security interest  
4344 exceeds the value of the security interest four months before the date of liquidation or any time  
4345 subsequent to the liquidation.

4346 (5) (a) The receiver may avoid a transfer of property of the insurer transferred to secure  
4347 reimbursement of a surety that furnishes a bond or other obligation to dissolve a judicial lien  
4348 that would have been avoidable by the receiver under Subsection (1)(a).

4349 (b) The liability of the surety under the bond or obligation described in Subsection  
4350 (5)(a) shall be discharged to the extent of the value of the property recovered by the receiver or  
4351 the amounts paid to the receiver.

4352 (6) (a) Subject to Subsection (6)(b), the property affected by a lien that is considered  
4353 voidable under Subsections (1)(a) and (5):

4354 (i) is discharged from the lien; and

4355 (ii) passes to the rehabilitator or liquidator with any of the indemnifying property  
4356 transferred to or for the benefit of a surety.

4357 (b) Notwithstanding Subsection (6)(a), the court may:

4358 (i) on due notice, order the lien to be preserved for the benefit of the estate; and

4359 (ii) direct that a conveyance be executed that is adequate to evidence the title of the  
4360 rehabilitator or liquidator.

4361 (7) (a) The court has jurisdiction of any proceeding by the rehabilitator or liquidator, to  
4362 hear and determine the rights of any parties under this section.

4363 (b) Reasonable notice of any hearing in a proceeding described in Subsection (7)(a)  
4364 shall be given to all parties in interest, including the obligee of a releasing bond or other similar  
4365 obligation.

4366 (c) If an order is entered for the recovery of indemnifying property in kind or for the  
4367 avoidance of an indemnifying lien:

4368 (i) the court, upon application of any party in interest, shall in the same proceeding  
4369 ascertain the value of the property or lien; and

4370 (ii) if the value of the property or lien is less than the amount for which the property is  
4371 an indemnity or than the amount of the lien, the transferee or lienholder may elect to retain the  
4372 property or lien upon payment of its value, as ascertained by the court:

4373 (A) to the rehabilitator or liquidator; and

4374 (B) within a reasonable time fixed by the court.

4375 (8) The liability of a surety under a releasing bond or other similar obligation is  
4376 discharged to the extent of the value of:

4377 (a) the indemnifying property recovered;

4378 (b) the indemnifying lien nullified and avoided; or

4379 (c) if the property is retained under Subsection (7), the amount paid to the rehabilitator  
4380 or liquidator.

4381 (9) If a creditor is preferred and afterward in good faith gives the insurer further credit,  
4382 without security of any kind, for property that becomes a part of the insurer's estate, the amount  
4383 of the new credit remaining unpaid at the time of the petition shall be set off against the  
4384 preference which would otherwise be recoverable from the creditor.

4385 (10) (a) If an insurer, directly or indirectly, pays money or transfers property within  
4386 four months before the day on which a successful petition for rehabilitation or liquidation is  
4387 filed under this chapter or at any time in contemplation of a proceeding to rehabilitate or  
4388 liquidate the insurer, to an attorney for services rendered or to be rendered, the transaction:

4389 (i) (A) may be examined by the court on its own motion; or

4390 (B) shall be examined by the court on petition of the rehabilitator or liquidator; and

4391 (ii) shall be held valid only to the extent that the transfer is a reasonable amount as  
4392 determined by the court.

4393 (b) The amount in excess of the amount held valid under Subsection (10)(a), may be  
4394 recovered by the rehabilitator or liquidator for the benefit of the estate.

4395 (c) If the attorney meets the description in Subsection (1)(a)(iv), Subsection (1)(a)(iv)  
4396 applies in place of this Subsection (10).

4397 (11) (a) Every officer, manager, employee, shareholder, member, subscriber, attorney,  
4398 or any other person acting on behalf of the insurer who knowingly participates in giving a

4399 preference when that person has reasonable cause to believe that the insurer is or is about to  
4400 become insolvent at the time of the preference, is personally liable to the rehabilitator or  
4401 liquidator for the amount of the preference.

4402 (b) It is permissible to infer that there is "reasonable cause to so believe" if the transfer  
4403 is made within four months before the date on which a successful petition for rehabilitation or  
4404 liquidation is filed.

4405 (c) A person receiving any property from the insurer or for the benefit of the insurer as  
4406 a preference which is voidable under Subsection (1)(a) is:

4407 (i) personally liable for that transfer and property; and

4408 (ii) bound to account to the rehabilitator or liquidator.

4409 (d) This Subsection (11) does not prejudice any other claim by the rehabilitator or  
4410 liquidator against any person.

4411 Section 81. Section **31A-27a-505** is enacted to read:

4412 **31A-27a-505. Avoidance of property title transfers.**

4413 (1) The rehabilitator or liquidator has the creditor's rights described in this Subsection  
4414 (1), without regard to any knowledge of the rehabilitator or liquidator or any creditor.

4415 (a) (i) The rehabilitator or liquidator is considered to:

4416 (A) have extended credit to the insurer on the day on which the rehabilitation or  
4417 liquidation petition is filed; and

4418 (B) have obtained on the day described in Subsection (1)(a)(i) a judicial lien on all the  
4419 insurer's property on which a creditor under a contract could obtain a judicial lien.

4420 (ii) The rehabilitator or liquidator:

4421 (A) may avoid a transfer that would be avoidable by the type of creditor described in  
4422 this Subsection (1)(a); and

4423 (B) has all the other rights and powers of the type of creditor described in this  
4424 Subsection (1)(a).

4425 (b) (i) The rehabilitator or liquidator is considered to:

4426 (A) have extended credit to the insurer on the day on which the rehabilitation or  
4427 liquidation petition filed; and

4428 (B) have obtained on the day described in Subsection (1)(b)(i), with respect to that  
4429 credit extension, an execution against the insurer on that same date that is returned unsatisfied.

4430 (ii) The rehabilitator or liquidator:  
4431 (A) may avoid a transfer that would be avoidable by the type of creditor described in  
4432 this Subsection (1)(b); and  
4433 (B) has all the other rights and powers of the type of creditor described in this  
4434 Subsection (1)(b).  
4435 (c) The rehabilitator or liquidator:  
4436 (i) is considered to be a bona fide purchaser of the insurer's real property on the day on  
4437 which the rehabilitation or liquidation petition is filed; and  
4438 (ii) has the rights and powers of a bona fide purchaser to avoid other transfers of the  
4439 insurer's realty.  
4440 (2) (a) The rehabilitator or liquidator may avoid a transfer of an interest of the insurer  
4441 in property or an obligation incurred by the insurer that is voidable under applicable law by a  
4442 creditor holding an unsecured claim.  
4443 (b) This Subsection (2) does not apply to secured claims.  
4444 (3) (a) Except as provided in Subsections (3)(b) and (c), the rehabilitator or liquidator  
4445 may avoid a transfer of property of the estate that:  
4446 (i) occurs after the day on which the petition for rehabilitation or liquidation is filed;  
4447 and  
4448 (ii) is not authorized under this chapter or by the court.  
4449 (b) (i) Subject to Subsection (3)(b)(ii), a transfer is valid against the rehabilitator or  
4450 liquidator to the extent of any value, including services if it occurs:  
4451 (A) after the day on which the petition is filed; and  
4452 (B) before the day on which the order for rehabilitation or liquidation is entered.  
4453 (ii) The value described in Subsection (3)(b)(i) does not include the satisfaction or  
4454 securing of a debt:  
4455 (A) that arises before the day on which the petition is filed;  
4456 (B) which is given after the date described in this Subsection (3)(b) in exchange for the  
4457 transfer; and  
4458 (C) notwithstanding the transferee's knowledge or lack of knowledge of the petition.  
4459 (c) (i) Subject to Subsection (3)(c)(ii), the rehabilitator or liquidator may not avoid a  
4460 transfer of real property under Subsection (3)(a) to:



- 4461 (A) a good faith purchaser:  
4462 (I) if the good faith purchaser is without knowledge of the petition for rehabilitation or  
4463 liquidation; and  
4464 (II) for present fair consideration; or  
4465 (B) a purchaser at a judicial sale.  
4466 (ii) Notwithstanding Subsection (3)(c)(i), the rehabilitator or liquidator may avoid a  
4467 transfer of real property under Subsection (3)(a) if a copy of the petition is filed in the office of  
4468 the county recorder before the transfer is so far perfected that a bona fide purchaser of the  
4469 property against whom applicable law permits that type of transfer to be perfected cannot  
4470 acquire an interest that is superior to the interest of the good faith purchaser or judicial sale  
4471 purchaser.  
4472 (iii) Unless a copy of the petition is filed before the transfer is perfected, a good faith  
4473 purchaser of real property under a transfer which the rehabilitator or liquidator may avoid  
4474 under this section has a lien on the property transferred:  
4475 (A) if the good faith purchaser:  
4476 (I) is without knowledge of the petition for rehabilitation or liquidation at the time of  
4477 the transfer; and  
4478 (II) pays less than present fair consideration; and  
4479 (B) to the extent of the present consideration given.  
4480 (4) An action or proceeding under Subsection (1) or (2) may not be commenced after  
4481 the earlier of:  
4482 (a) two years after the day on which a rehabilitator is appointed under Section  
4483 31A-27a-301 or a liquidator is appointed under Section 31A-27a-401; or  
4484 (b) the day on which the rehabilitation is terminated under Subsection 31A-27a-304(3)  
4485 or the liquidation is terminated under Section 31A-27a-802.  
4486 (5) An action or proceeding under Subsection (3) may not be commenced after the  
4487 earlier of:  
4488 (a) two years after the day on which the transfer sought to be avoided is made; or  
4489 (b) the day on which the rehabilitation is terminated under Subsection 31A-27a-304(3)  
4490 or the liquidation is terminated under Section 31A-27a-802.  
4491 Section 82. Section **31A-27a-506** is enacted to read:

4492 31A-27a-506. Fraudulent transfers and obligations.

4493 (1) For purposes of this section:

4494 (a) A "transfer":

4495 (i) is made when the transfer is so perfected that a bona fide purchaser from the insurer  
4496 against whom applicable law permits the transfer to be perfected cannot acquire an interest in  
4497 the property transferred that is superior to the interest in the property of the transferee; or

4498 (ii) if the transfer is not perfected as provided in Subsection (1)(a) before the  
4499 commencement of the delinquency proceeding, is considered made immediately before the day  
4500 on which the initial filing of the petition commencing delinquency proceedings is filed.

4501 (b) "Value" means property or satisfaction or securing of a present or antecedent debt  
4502 of the insurer.

4503 (2) (a) If the conditions of Subsection (2)(b) are met, the receiver may avoid the  
4504 following:

4505 (i) a transfer of an interest of the insurer in property;

4506 (ii) a reinsurance transaction; or

4507 (iii) an obligation incurred by an insurer.

4508 (b) Subsection (2)(a) applies if:

4509 (i) the transfer or obligation is made or incurred on or within two years before the day  
4510 on which the initial filing of a petition commencing delinquency proceedings is filed under this  
4511 chapter; and

4512 (ii) the insurer voluntarily or involuntarily:

4513 (A) makes the transfer or incurs the obligation with actual intent to hinder, delay, or  
4514 defraud a person to which the insurer is or becomes indebted on or after the day on which the  
4515 transfer is made or the obligation is incurred; or

4516 (B) receives less than a reasonably equivalent value in exchange for the transfer or  
4517 obligation.

4518 (3) Except to the extent that a transfer or obligation voidable under this section is  
4519 voidable under other provisions of this chapter, a transferee or obligee of a transfer or  
4520 obligation voidable under this section that takes for value and in good faith:

4521 (a) as the case may be:

4522 (i) has a lien on or may retain any interest transferred; or

4523 (ii) may enforce any obligation incurred; and  
4524 (b) to the extent that the transferee or obligee gave value to the insurer in exchange for  
4525 the transfer or obligation.

4526 (4) If a reinsurance transaction is avoided under this section:

4527 (a) the receiver shall tender to the reinsurer the value of any consideration transferred  
4528 to the insurer in connection with the transaction less the amount of matured and liquidated  
4529 liabilities owing by the reinsurer to the estate; and

4530 (b) the parties shall be returned to their relative positions before the implementation of  
4531 the transaction avoided.

4532 Section 83. Section **31A-27a-507** is enacted to read:

4533 **31A-27a-507. Receiver as lien creditor.**

4534 (1) The receiver may avoid a transfer of or lien on the property of, or obligation  
4535 incurred by, an insurer that the insurer or a policyholder, creditor, member, or stockholder of  
4536 the insurer:

4537 (a) may have avoided without regard to any knowledge of:

4538 (i) the receiver;

4539 (ii) the commissioner;

4540 (iii) the insurer; or

4541 (iv) a policyholder, creditor, member, or stockholder of the insurer; and

4542 (b) whether or not a policyholder, creditor, member, or stockholder described in this

4543 Subsection (1) exists.

4544 (2) The receiver is considered a creditor without knowledge for purposes of pursuing  
4545 claims under:

4546 (a) Title 25, Chapter 6, Uniform Fraudulent Transfer Act; or

4547 (b) similar provisions of state or federal law.

4548 Section 84. Section **31A-27a-508** is enacted to read:

4549 **31A-27a-508. Liability of transferee.**

4550 (1) Except as otherwise provided in this section, to the extent that the receiver obtains  
4551 an order pursuant to Section 31A-27a-501, or avoids a transfer under Section 31A-27a-502,  
4552 31A-27a-503, 31A-27a-504, 31A-27a-506, or 31A-27a-507, the receiver may recover the  
4553 property transferred, or the value of the property, from:

- 4554 (a) the initial transferee of the transfer or the entity for whose benefit the transfer is  
4555 made; or
- 4556 (b) subject to Subsection (2), an immediate or mediate transferee of the initial  
4557 transferee.
- 4558 (2) The receiver may not recover under Subsection (1)(b) from:
- 4559 (a) a transferee that takes for value, including satisfaction or securing of a present or  
4560 antecedent debt:
- 4561 (i) in good faith; and
- 4562 (ii) without knowledge of the voidability of the transfer avoided; or
- 4563 (b) an immediate or mediate good faith transferee of the transferee.
- 4564 (3) A transfer avoided in accordance with this chapter is preserved for the benefit of  
4565 the receivership estate, but only with respect to property of the insurer.
- 4566 (4) In addition to the remedies specifically provided in Sections 31A-27a-501,  
4567 31A-27a-502, 31A-27a-503, 31A-27a-504, 31A-27a-506, and 31A-27a-507 and Subsection  
4568 (1), if the receiver is successful in establishing a claim to the property or any part of the  
4569 property, the receiver may recover judgment for the following:
- 4570 (a) rental for the use of tangible property from the later of:
- 4571 (i) the day on which the receivership order is entered; or
- 4572 (ii) the date of the transfer; and
- 4573 (b) in the case of funds or intangible property:
- 4574 (i) the greater of:
- 4575 (A) the actual interest;
- 4576 (B) income earned by the property; or
- 4577 (C) interest at the statutory rate for judgments; and
- 4578 (ii) from the later of:
- 4579 (A) the day on which the receivership order is entered; or
- 4580 (B) the date of the transfer.
- 4581 (5) In an action pursuant to this section, the receivership court may allow the receiver  
4582 to seek recovery of the property involved or its value.
- 4583 (6) In an action pursuant to Sections 31A-27a-501, 31A-27a-502, 31A-27a-503,  
4584 31A-27a-504, 31A-27a-506, 31A-27a-507, and 31A-27a-510:

4585 (a) the receiver has the burden of proving the avoidability of a transfer; and  
4586 (b) the person against whom recovery or avoidance is sought has the burden of proving  
4587 the nature and extent of any affirmative defense.

4588 Section 85. Section **31A-27a-509** is enacted to read:

4589 **31A-27a-509. Claims of holders of void or voidable rights.**

4590 (1) (a) The receiver may disallow a claim of a creditor who receives or acquires a  
4591 preference, lien, conveyance, transfer, assignment, or encumbrance voidable under this chapter,  
4592 unless the creditor surrenders the preference, lien, conveyance, transfer, assignment, or  
4593 encumbrance.

4594 (b) If an avoidance is effected by a proceeding in which a final judgment is entered, a  
4595 creditor's claim is not allowed unless the money is paid or the property is delivered to the  
4596 receiver within 30 days from the day on which the final judgment is entered, except that the  
4597 receivership court may allow further time if there is an appeal or other continuation of the  
4598 proceeding.

4599 (2) A claim allowable under Subsection (1) by reason of an avoidance, whether  
4600 voluntary or involuntary, or a preference, lien, conveyance, transfer, assignment, or  
4601 encumbrance, may be filed as an excused late filing under Subsection 31A-27a-601(2) if filed  
4602 within:

4603 (a) 30 days from the date of the avoidance; or

4604 (b) the further time allowed by the receivership court under Subsection (1).

4605 Section 86. Section **31A-27a-510** is enacted to read:

4606 **31A-27a-510. Setoffs.**

4607 (1) (a) A mutual debt or mutual credit shall be set off and the balance only allowed or  
4608 paid:

4609 (i) whether arising out of one or more contracts between the insurer and another person  
4610 in connection with an action or proceeding under this chapter; and

4611 (ii) except as provided in Subsection (2) and Sections 31A-27a-513 and 31A-27a-514.

4612 (b) An obligation arising out of the termination of a life, disability income, or  
4613 long-term care reinsurance contract pursuant to Section 31A-27a-513 may be set off against  
4614 other debts and credits arising out of a contract between the insurer and the reinsurer.

4615 (2) (a) A setoff is not allowed after the commencement of a delinquency proceeding

4616 under this chapter in favor of any person if:

4617 (i) the claim against the insurer is disallowed;

4618 (ii) the claim against the insurer is purchased by or transferred to the person:

4619 (A) on or after the day on which the receivership petition is filed; or

4620 (B) within 120 days preceding the day on which the receivership petition is filed;

4621 (iii) the obligation of the insurer is owed to an affiliate or entity other than the person,

4622 absent written assignment of the obligation made more than 120 days before the day on which  
4623 the petition for receivership is filed;

4624 (iv) the obligation of the person is owed to an affiliate or entity other than the insurer,

4625 absent written assignment of the obligation made more than 120 days before the day on which

4626 the petition for receivership is filed;

4627 (v) the obligation of the person is:

4628 (A) to pay:

4629 (I) an assessment levied against a member or subscriber of the insurer; or

4630 (II) a balance upon a subscription to the capital stock of the insurer; or

4631 (B) in any other way in the nature of a capital contribution;

4632 (vi) an obligation between the person and the insurer arises out of a transaction by  
4633 which either the person or the insurer:

4634 (A) assumes a risk or obligation from the other party; and

4635 (B) then cedes back to that party substantially the same risk or obligation;

4636 (vii) the obligation of the person arises out of an avoidance action taken by the  
4637 receiver; or

4638 (viii) the obligation of the insured is for the payment of earned premiums or

4639 retrospectively rated earned premiums in accordance with Section 31A-27a-514.

4640 (b) Notwithstanding Subsection (2)(a)(vi), the receiver may permit a setoff if, in the  
4641 receiver's discretion, a setoff is appropriate because of specific circumstances relating to a  
4642 transaction.

4643 (3) The receiver may avoid pursuant to Sections 31A-27a-504, 31A-27a-506, and  
4644 31A-27a-507 and subject to defenses under those sections, a setoff that occurs before the  
4645 commencement of the delinquency proceeding under this chapter if the setoff would otherwise  
4646 be disallowed pursuant to Subsection (2).

4647 Section 87. Section **31A-27a-511** is enacted to read:

4648 **31A-27a-511. Assessments.**

4649 (1) As soon as practicable but not more than four years from the day on which an order  
4650 of receivership of an insurer issuing assessable policies is entered, the receiver shall make a  
4651 report to the receivership court setting forth:

4652 (a) the reasonable value of the assets of the insurer;

4653 (b) the insurer's probable total liabilities;

4654 (c) the probable aggregate amount of the assessment necessary to pay all claims of  
4655 creditors and expenses in full, including expenses of administration and costs of collecting the  
4656 assessment; and

4657 (d) a recommendation as to:

4658 (i) whether or not an assessment should be made; and

4659 (ii) what amount of assessment.

4660 (2) (a) Upon the basis of the report provided in Subsection (1), including any  
4661 supplement or amendment to the report, the receivership court may approve, solely on  
4662 application by the receiver, one or more assessments against all members of the insurer who are  
4663 subject to assessment.

4664 (b) An order approving an assessment under this Subsection (2) shall provide  
4665 instructions regarding:

4666 (i) notice of the assessment;

4667 (ii) deadlines for payment; and

4668 (iii) other instructions to the receiver for collection of the assessment.

4669 (3) Subject to any applicable legal limit on an ability to assess and with due regard  
4670 given to assessments that cannot be collected economically, the aggregate assessment shall be  
4671 for the amount by which the sum of the following exceeds the value of existing assets:

4672 (a) probable liabilities;

4673 (b) the expenses of administration; and

4674 (c) the estimated cost of collection of the assessment.

4675 (4) (a) After levy of assessment under Subsection (2), the receiver shall petition the  
4676 receivership court for an order directing each member who has not paid the assessment  
4677 pursuant to the levy to show cause why a judgment for the failure to pay the assessment should

4678 not be entered.

4679 (b) At least 20 days before the return day of the order to show cause described in

4680 Subsection (4)(a), the receiver shall give notice of the order to show cause by:

4681 (i) publication or by first-class mail to each member liable on the assessment mailed to

4682 the member's last-known address as it appears on the insurer's records; or

4683 (ii) such other method of notification as the receivership court may direct.

4684 (c) Failure of the member or subscriber to receive the notice of the assessment or of the

4685 order to show cause either within the time specified in the order or at all, is no defense in a

4686 proceeding to collect the assessment.

4687 (5) If a member does not appear and serve verified objections upon the receiver on or

4688 before the return day of the order to show cause under Subsection (4):

4689 (a) the receivership court shall make an order adjudging the member liable for the sum

4690 of:

4691 (i) the amount of the assessment against the member pursuant to Subsection (4); and

4692 (ii) the costs; and

4693 (b) the receiver has a judgment against the member for the amount described in

4694 Subsection (5)(a).

4695 (6) If on or before the return day in the order to show cause described in Subsection (4)

4696 the member appears and serves verified objections on the receiver, the receivership court may:

4697 (a) (i) hear and determine the matter; or

4698 (ii) appoint a referee to hear the matter; and

4699 (b) make such order as the facts warrant.

4700 (7) The receiver may enforce an order or collect a judgment under Subsection (5) by

4701 any lawful means.

4702 (8) An assessment of a subscriber or member of an insurer made by the receiver is

4703 prima facie correct if it is pursuant to the order of receivership court:

4704 (a) fixing the aggregate amount of the assessment against all members or subscribers;

4705 and

4706 (b) approving the classification and formula made by the receiver under this section.

4707 (9) A claim filed by an assessee who fails to pay an assessment, after the conclusion of

4708 a legal action by the assessee objecting to the assessment, is considered a late filed claim under



4709 Section 31A-27a-701.

4710 Section 88. Section **31A-27a-512** is enacted to read:

4711 **31A-27a-512. Reinsurer's liability.**

4712 (1) (a) Except as otherwise provided in this chapter, the amount recoverable by the  
4713 receiver from a reinsurer may not be reduced as a result of a delinquency proceeding with a  
4714 finding of insolvency, regardless of any provision in the reinsurance contract or other  
4715 agreement.

4716 (b) An agreement, written, oral, or otherwise, may not be enforced to the extent it is in  
4717 conflict, or not in strict compliance with this section.

4718 (c) Except as expressly provided in this section, a person other than the receiver  
4719 whether as a creditor, third party beneficiary, or otherwise does not have a direct right to  
4720 reinsurance proceeds from any reinsurer of the insolvent insurer:

4721 (i) on the basis of any written or oral agreement; or

4722 (ii) pursuant to an action or cause of action seeking any equitable or legal remedy.

4723 (d) This section applies to all the insurer's reinsurance contracts including:

4724 (i) treaty reinsurance;

4725 (ii) quota share reinsurance;

4726 (iii) facultative reinsurance; or

4727 (iv) a fronting or captive reinsurance arrangement.

4728 (2) Except as otherwise provided in Subsection (9), the amount recoverable by the  
4729 liquidator from a reinsurer is payable under one or more contracts reinsured by the reinsurer on  
4730 the basis of:

4731 (a) proof of payment of the insured claim by an affected guaranty association, the  
4732 insurer, or the receiver, to the extent of the payment; or

4733 (b) the allowance of the claim pursuant to:

4734 (i) Section 31A-27a-608;

4735 (ii) an order of the receivership court; or

4736 (iii) a plan of rehabilitation.

4737 (3) If the insurer takes credit for a reinsurance contract in a filing or submission made  
4738 to the commissioner and the reinsurance contract does not contain the provisions required with  
4739 respect to the obligations of reinsurers in the event of insolvency of the reinsured, the

4740 reinsurance contract is considered to contain the provisions required with respect to:  
4741 (a) the obligations of reinsurers in the event of insolvency of the reinsured in order to  
4742 obtain credit for reinsurance; or  
4743 (b) other applicable statutes.  
4744 (4) A reinsurance contract that under Subsection (3) is considered to contain certain  
4745 provisions, is considered to contain a provision that:  
4746 (a) in the event of insolvency and the appointment of a receiver, the reinsurance  
4747 obligation is payable to the ceding insurer or to its receiver without diminution because of the  
4748 insolvency or because the receiver fails to pay all or a portion of the claim;  
4749 (b) payment shall be made upon either:  
4750 (i) to the extent of the payment, proof of payment of the insured claim by an affected  
4751 guaranty association, the insurer, or the receiver; or  
4752 (ii) the allowance of the claim pursuant to:  
4753 (A) Section 31A-27a-608;  
4754 (B) an order of the receivership court; or  
4755 (C) a plan of rehabilitation; and  
4756 (c) if a reinsurer does not pay the amount billed by the receiver within 60 days after the  
4757 mailing by the receiver, interest on the unpaid billed amount will begin to accrue at the  
4758 statutory legal rate provided in Subsection 15-1-1(2), except that all or a portion of the interest  
4759 may be waived as part of an arbitration proceeding.  
4760 (5) (a) The receiver shall notify in writing, in accordance with the terms of the contract,  
4761 each reinsurer obligated in relation to the claim or the pendency of a claim against the reinsured  
4762 company.  
4763 (b) The receiver's failure to give notice of a pending claim pursuant to a provision in a  
4764 reinsurance contract:  
4765 (i) does not excuse the obligation of the reinsurer unless the reinsurer is prejudiced by  
4766 the receiver's failure; and  
4767 (ii) if the reinsurer is prejudiced, reduces the reinsurer's obligations only to the extent  
4768 of the prejudice.  
4769 (c) A reinsurer may interpose, at its own expense, in a proceeding in which a claim is  
4770 to be adjudicated, any one or more defenses that the reinsurer considers available to the

4771 reinsured company or its receiver.

4772 (6) The entry of an order of rehabilitation or liquidation:

4773 (a) may not be considered a breach or an anticipatory breach of a reinsurance contract;

4774 and

4775 (b) is not grounds for retroactive revocation or retroactive cancellation of a reinsurance  
4776 contract by the reinsurer.

4777 (7) (a) If a reinsurance payment to a receiver of a ceding insurer is later determined to  
4778 be a payment in excess of the amounts actually due to the receiver, the excess shall be:

4779 (i) credited against future payments due to the receiver; or

4780 (ii) repaid to the reinsurer as an administrative expense of the estate pursuant to  
4781 Subsection 31A-27a-701(2)(g).

4782 (b) A repayment under this Subsection (7) may be limited on the basis of the property  
4783 remaining in the estate.

4784 (8) (a) Subject to Subsection (1):

4785 (i) except as provided in Subsection (8)(a)(ii):

4786 (A) a payment made by the reinsurer directly to an insured or other creditor does not  
4787 diminish the reinsurer's obligation to the insurer's estate; and

4788 (B) a payment made by the reinsurer shall be made directly to the ceding insurer or its  
4789 receiver;

4790 (ii) Subsection (8)(a)(i) does not apply when:

4791 (A) the reinsurance contract or other written agreement to which the insured, ceding  
4792 insurer, and reinsurer are all parties:

4793 (I) specifically provides another payee, other than an affiliate of the ceding insurer or  
4794 reinsurer, of the reinsurance in the event of the insolvency or receivership of the ceding insurer;

4795 and

4796 (II) the provision described in this Subsection (8)(a)(ii)(A) is contained in:

4797 (Aa) the reinsurance contract as it is written on the day on which the reinsurance  
4798 contract is initially executed; or

4799 (Bb) the other written agreement as it is written on the day on which the initial policy is  
4800 issued;

4801 (B) the reinsurance contract, as it is written on the day on which the reinsurance

4802 contract is initially executed, contains a provision where the assuming insurer with the consent  
4803 of the direct insured and the ceding insurer assumes all policy obligations of the ceding insurer:

4804 (I) as a direct obligation of the assuming insurer to the payees under the policies; and

4805 (II) in substitution for the entire obligations of the ceding insurer to the payees; or

4806 (C) a life and health insurance guaranty association makes the election to succeed to

4807 the rights and obligations of the insolvent insurer under a contract of reinsurance:

4808 (I) in accordance with:

4809 (Aa) Section 31A-27a-513; or

4810 (Bb) the life and health guaranty association laws of its domiciliary state; or

4811 (II) pursuant to other applicable law, rule, order, or assignment contract; and

4812 (iii) in the circumstances described in Subsection (8)(a)(ii)(C), a payment shall be

4813 made directly to or at the direction of the guaranty association.

4814 (b) Both the receiver and the reinsurer are entitled to recover from a person, other than

4815 the receiver or a guaranty association, who unsuccessfully makes a claim directly against the

4816 reinsurer the following incurred in preventing any collection by that person:

4817 (i) the person's attorney fees; and

4818 (ii) expenses.

4819 (9) This chapter may not be construed to authorize the liquidator or any other entity to

4820 compel payment from a nonlife reinsurer:

4821 (a) on the basis of estimated incurred but not reported losses, loss expenses, or case

4822 reserves for unpaid losses and loss expenses, except under Sections 31A-27a-515 and

4823 31A-27a-516; and

4824 (b) with respect to a claim allowed in accordance with Section 31A-27a-605.

4825 Section 89. Section **31A-27a-513** is enacted to read:

4826 **31A-27a-513. Reinsurance continuation and termination.**

4827 (1) For purposes of this section:

4828 (a) "Coverage date" is the day on which an order of liquidation is entered.

4829 (b) "Election date" is the day on which an affected guaranty association elects to

4830 assume under this section the rights and obligations of a ceding insurer that relate to a policy or

4831 annuity covered, in whole or in part, by the affected guaranty association.

4832 (2) A contract reinsuring a life insurance policy, disability income insurance policy,

4833 long-term care insurance policy, or an annuity issued by a ceding insurer that is placed in  
4834 rehabilitation proceedings pursuant to this chapter shall be continued or terminated pursuant to:  
4835 (a) the terms or conditions of each contract; and  
4836 (b) this section.  
4837 (3) A contract reinsuring a life insurance policy, disability income insurance policy,  
4838 long-term care insurance policy, or an annuity issued by a ceding insurer that is placed into  
4839 liquidation pursuant to this chapter shall be continued, subject to this section, unless:  
4840 (a) the contract is terminated pursuant to the contract's terms before the coverage date;  
4841 or  
4842 (b) the contract is terminated pursuant to the order of liquidation, in which case  
4843 Subsection (10) applies.  
4844 (4) (a) (i) At any time within 180 days of the coverage date, an affected guaranty  
4845 association covering a life insurance policy, disability income insurance policy, long-term care  
4846 insurance policy, or an annuity, in whole or in part, may elect to assume the rights and  
4847 obligations of the ceding insurer that relate to the policy or annuity covered, in whole or in part,  
4848 by the affected guaranty association, under one or more reinsurance contracts between the  
4849 insolvent insurer and the insolvent insurer's reinsurers selected by the affected guaranty  
4850 association.  
4851 (ii) An assumption under this Subsection (4)(a) is effective as of the coverage date.  
4852 (iii) The election described in this Subsection (4)(a) is made by the affected guaranty  
4853 association or a nationally recognized association of guaranty associations that is designated by  
4854 the affected guaranty association to act on the affected guaranty association's behalf for  
4855 purposes of this Subsection (4)(a) by sending written notice, return receipt requested, to the  
4856 affected reinsurers.  
4857 (b) (i) To facilitate the earliest practicable decision about whether to assume a contract  
4858 of reinsurance and to protect the financial position of the estate, the receiver and each reinsurer  
4859 of the ceding insurer shall make available the information described in Subsection (4)(b)(ii):  
4860 (A) upon request to an affected guaranty association; or  
4861 (B) to a nationally recognized association of guaranty associations that is designated by  
4862 the affected guaranty association to act on behalf of the affected guaranty associations for  
4863 purposes of this Subsection (4) as soon as possible after commencement of formal delinquency

4864 proceedings.

4865 (ii) The information described in Subsection (4)(b)(i) is:

4866 (A) copies of all in-force contracts of reinsurance;

4867 (B) all records related to in-force contracts of reinsurance relevant to the determination

4868 of whether the in-force contracts of reinsurance should be assumed; and

4869 (C) notice of:

4870 (I) any default under the in-force contracts of reinsurance; or

4871 (II) any known event or condition that with the passage of time could become a default

4872 under the in-force contracts of reinsurance.

4873 (c) Subsections (4)(c)(i) through (vi) apply to a reinsurance contract assumed by an

4874 affected guaranty association under this Subsection (4).

4875 (i) The guaranty association is responsible for the following that relates to a life

4876 insurance policy, disability income insurance policy, long-term care insurance policy, or an

4877 annuity covered, in whole or in part, by the guaranty association:

4878 (A) all unpaid premiums due under a reinsurance contract, for the periods both before

4879 and after the coverage date; and

4880 (B) the performance of all other obligations to be performed after the coverage date.

4881 (ii) The affected guaranty association:

4882 (A) may charge a policy of insurance or annuity covered in part by the affected

4883 guaranty association, through reasonable allocation methods, the costs for reinsurance in excess

4884 of the obligations of the affected guaranty association; and

4885 (B) if it imposes a charge under this Subsection (4)(c)(ii), shall provide notice and an

4886 accounting of the charge to the liquidator.

4887 (iii) The affected guaranty association is entitled to any amount payable by the

4888 reinsurer under the reinsurance contract with respect to a loss or event:

4889 (A) that:

4890 (I) occurs in a period on or after the coverage date; and

4891 (II) relates to a life insurance policy, disability income insurance policy, long-term care

4892 insurance policy, or an annuity covered, in whole or in part, by the affected guaranty

4893 association; and

4894 (B) except that upon receipt of the amount, the affected guaranty association is obliged

4895 to pay to the beneficiary under the insurance policy or annuity on account of which the amount  
4896 is paid a portion of the amount equal to the lesser of:

4897 (I) the amount received by the affected guaranty association; and

4898 (II) an amount calculated by:

4899 (Aa) determining the excess of the amount received by the affected guaranty

4900 association over the amount equal to the benefits paid by the affected guaranty association on

4901 account of the policy or annuity; and

4902 (Bb) subtracting the retention of the insurer applicable to the loss or event.

4903 (iv) (A) Within 30 days following the election date, the affected guaranty association

4904 and each reinsurer under a contract assumed by the affected guaranty association shall calculate

4905 the net balance due to or from the affected guaranty association under each reinsurance contract

4906 as of the election date with respect to a policy or annuity covered, in whole or in part, by the

4907 affected guaranty association.

4908 (B) The calculation required by Subsection (4)(c)(iv)(A) shall give full credit to all

4909 items paid by the insurer, the insurer's receiver, or the reinsurer before the election date.

4910 (C) The reinsurer shall pay the receiver an amount due for a loss or event before the

4911 coverage date, subject to any setoff for premiums unpaid for periods before the coverage date.

4912 (D) Within five days of the completion of the calculation required by Subsection

4913 (4)(c)(iv)(A), the affected guaranty association or reinsurer shall pay any balance due the other

4914 after completion of the calculation.

4915 (E) A dispute over an amount due to either the affected guaranty association or the

4916 reinsurer shall be resolved by arbitration:

4917 (I) pursuant to the terms of the affected reinsurance contract; or

4918 (II) if the affected reinsurance contract contains no arbitration clause, as provided in

4919 Subsection (10)(d).

4920 (v) If the receiver receives an amount due the affected guaranty association pursuant to

4921 Subsection (4)(c)(iii), the receiver shall remit that amount to the affected guaranty association

4922 as promptly as practicable.

4923 (vi) If the affected guaranty association or the receiver on the affected guaranty

4924 association's behalf, within 60 days of the election date, pays the unpaid premiums due for

4925 periods both before and after the election date that relate to a life insurance policy, disability

4926 income insurance policy, long-term care insurance policy, or an annuity covered, in whole or in  
4927 part, by the affected guaranty association, the reinsurer may not:

4928 (A) terminate the reinsurance contract for failure to pay premiums, insofar as the  
4929 reinsurance contract relates to a life insurance policy, disability income insurance policy,  
4930 long-term care insurance policy, or an annuity covered, in whole or in part, by the affected  
4931 guaranty association; and

4932 (B) set off any unpaid amounts due under other contracts, or unpaid amounts due from  
4933 parties other than the affected guaranty association, against amounts due the affected guaranty  
4934 association.

4935 (5) (a) If pursuant to court approval under Section 31A-27a-402 a receiver continues a  
4936 life insurance policy, disability income insurance policy, long-term care insurance policy, or an  
4937 annuity in force following an order of liquidation, and the policy of insurance is not covered in  
4938 whole or in part by one or more affected guaranty associations, the receiver may elect to  
4939 assume the rights and obligations of the ceding insurer under one or more of the reinsurance  
4940 contracts that relate to the policy or annuity:

4941 (i) within 180 days of the coverage date; and

4942 (ii) if the contract is not terminated as set forth in Subsection (2).

4943 (b) The election described in this Subsection (5) shall be made by sending written  
4944 notice, return receipt requested, to the affected reinsurers.

4945 (c) If the election described in this Subsection (5) is made:

4946 (i) payment of premiums on the reinsurance contract for the policy or annuity, for  
4947 periods both before and after the coverage date, shall be chargeable against the estate as a Class  
4948 1 administrative expense; and

4949 (ii) amounts paid by the reinsurer on account of losses on the policy or annuity shall be  
4950 to the estate of the insolvent insurer.

4951 (6) During the period beginning on the coverage date and ending on the election date:

4952 (a) (i) neither the affected guaranty association nor the reinsurer has any rights or  
4953 obligations under a reinsurance contract that the affected guaranty association has the right to  
4954 assume under Subsection (4), whether for a period before or after the coverage date;

4955 (ii) (A) with respect to the period after the coverage date, neither the receiver nor the  
4956 reinsurer has any rights or obligations under a reinsurance contract that the receiver has the



4957 right to assume under Subsection (5); and

4958 (B) with respect to the period before the coverage date, the rights and obligations of the  
4959 affected guaranty association and the reinsurer remain unchanged; and

4960 (iii) the reinsurer, the receiver, and an affected guaranty association shall, to the extent  
4961 practicable, provide each other data and records reasonably requested; and

4962 (b) once the affected guaranty association or the receiver, as the case may be, elects or  
4963 declines to elect to assume a reinsurance contract, the parties' rights and obligations are  
4964 governed by Subsection (4), (5), or (10), as applicable.

4965 (7) (a) If an affected guaranty association does not elect to assume a reinsurance  
4966 contract by the election date pursuant to Subsection (4), the affected guaranty association has  
4967 no rights or obligations, in each case for periods both before and after the coverage date, with  
4968 respect to the reinsurance contract.

4969 (b) If a receiver does not elect to assume a reinsurance contract by the election date  
4970 pursuant to Subsection (5), the receiver and the reinsurer:

4971 (i) retain their respective rights and obligations with respect to the reinsurance contract  
4972 for the period before the coverage date; and

4973 (ii) have no rights or obligations to each other for the period after the coverage date,  
4974 except as provided in Subsection (10).

4975 (c) (i) If an affected guaranty association or the receiver, as the case may be, does not  
4976 elect to assume a reinsurance contract by the election date, the reinsurance contract terminates  
4977 retroactively effective on the coverage date.

4978 (ii) A reinsurance contract covering a life insurance policy, disability income insurance  
4979 policy, long-term care insurance policy, or an annuity that is terminated pursuant to Section  
4980 31A-27a-402 terminates effective on the coverage date.

4981 (iii) Subsection (10) applies to a reinsurance contract described in Subsection (7)(c)(i)  
4982 or (ii).

4983 (8) (a) Subject to Subsection (8)(b), when a life insurance policy, disability income  
4984 insurance policy, long-term care insurance policy, an annuity, or guaranty association  
4985 obligation with respect to that policy or annuity is transferred to an assuming insurer,  
4986 reinsurance on the policy or annuity may also be transferred:

4987 (i) by the affected guaranty association, in the case of a contract assumed under

4988 Subsection (4); or  
4989 (ii) by the receiver, in the case of a contract assumed under Subsection (5).  
4990 (b) A transfer under Subsection (8)(a), is subject to the following:  
4991 (i) unless the reinsurer and the assuming insurer agree otherwise, the reinsurance  
4992 contract transferred may not cover a new policy of insurance or new annuity in addition to  
4993 those transferred;  
4994 (ii) the obligations described in Subsections (4) and (5) do not apply with respect to  
4995 matters arising after the effective date of the transfer; and  
4996 (iii) notice shall be given in writing, return receipt requested, by the transferring party  
4997 to the affected reinsurer not less than 30 days before the effective date of the transfer.  
4998 (9) (a) This section shall, to the extent provided in this chapter, supersede a law or an  
4999 affected reinsurance contract that provides for or requires a payment of reinsurance proceeds on  
5000 account of a loss or event:  
5001 (i) that occurs in a period after the coverage date; and  
5002 (ii) to the receiver of the insolvent insurer or to any other person.  
5003 (b) The receiver shall remain entitled to any amounts payable by the reinsurer under the  
5004 reinsurance contract with respect to a loss or event that occurs in a period before the coverage  
5005 date, subject to this chapter including applicable setoff provisions.  
5006 (10) If a contract reinsuring a life insurance policy, disability income insurance policy,  
5007 long-term care insurance policy, or an annuity is terminated pursuant to this chapter, the  
5008 procedures of this Subsection (10) apply.  
5009 (a) The reinsurer and the receiver shall, upon written notice to the other party to the  
5010 reinsurance contract no later than 30 days after the receipt by the reinsurer of notice of  
5011 termination, commence a mandatory negotiation and arbitration procedure in accordance with  
5012 this Subsection (10).  
5013 (b) (i) Each party shall appoint an actuary to determine an estimated sum due as a  
5014 result of the termination of the reinsurance contract calculated in a way expected to make the  
5015 parties economically indifferent as to whether the reinsurance contract continues or terminates,  
5016 giving due regard to the economic effects of the insolvency.  
5017 (ii) The estimated sum described in this Subsection (10)(b) shall:  
5018 (A) take into account the present value of future cash flows expected under the

5019 reinsurance contract; and  
5020 (B) be based on a gross premium valuation of net liability using current assumptions:  
5021 (I) that reflect postinsolvency experience expectations, with no additional margins;  
5022 (II) that are net of any amounts payable and receivable; and  
5023 (III) with a market value adjustment to reflect premature sale of assets to fund the  
5024 settlement.  
5025 (c) (i) Within 90 days of the day on which the written request pursuant to Subsection  
5026 (10)(a) is made, each party shall provide the other party with:  
5027 (A) its estimate of the sum due as a result of the termination of the reinsurance  
5028 contract; and  
5029 (B) all relevant documents and other information supporting the estimate.  
5030 (ii) The parties shall make a good faith effort to reach agreement on the sum due.  
5031 (d) (i) If the parties are unable to reach agreement within 90 days following the day on  
5032 which the materials required in Subsection (10)(c) are submitted, either party may initiate  
5033 arbitration proceedings:  
5034 (A) as provided in the reinsurance contract; or  
5035 (B) if the reinsurance contract does not contain an arbitration clause, pursuant to this  
5036 Subsection (10)(d) by providing the other party with a written demand for arbitration.  
5037 (ii) Arbitration under Subsection (10)(d)(i)(B) shall be conducted pursuant to the  
5038 following procedures:  
5039 (A) Venue for the arbitration shall be within the county of the court's jurisdiction or  
5040 another location agreed to by the parties.  
5041 (B) Within 30 days of the responding party's receipt of the arbitration demand, each  
5042 party shall appoint an arbitrator who is:  
5043 (I) a disinterested active or retired officer or executive of a life insurance or reinsurance  
5044 company; or  
5045 (II) other professional with no less than ten years experience in or relating to the field  
5046 of life insurance or life reinsurance.  
5047 (C) The two arbitrators appointed under Subsection (10)(d)(ii)(B) shall appoint an  
5048 independent, impartial, disinterested umpire who is an:  
5049 (I) active or retired officer or executive of a life insurance or reinsurance company; or

5050 (II) other professional with no less than ten years experience in the field of life  
5051 insurance or life reinsurance.

5052 (D) If the arbitrators appointed under Subsection (10)(d)(ii)(B) are unable to agree on  
5053 an umpire:

5054 (I) each arbitrator shall provide the other with the names of three qualified individuals;  
5055 (II) each arbitrator shall strike two names from the other's list; and  
5056 (III) the umpire shall be chosen by drawing lots from the remaining individuals.

5057 (E) Within 60 days following the day on which the umpire is appointed, each party  
5058 shall, unless otherwise ordered by the arbitration panel, submit to the arbitration panel:

5059 (I) the party's estimates of the sum due as a result of the termination of the reinsurance  
5060 contract; and

5061 (II) all relevant documents and other information supporting the estimate.

5062 (F) The time periods set forth in this Subsection (10)(d)(ii) may be extended upon  
5063 mutual agreement of the parties.

5064 (G) The arbitration panel has all powers necessary to conduct the arbitration  
5065 proceedings in a fair and appropriate manner, including the power to:

5066 (I) request additional information from the parties;  
5067 (II) authorize discovery;  
5068 (III) hold hearings; and  
5069 (IV) hear testimony.

5070 (H) The arbitration panel may, if the arbitration panel considers it necessary, appoint  
5071 one or more independent actuarial experts, the expense of which shall be shared equally  
5072 between the parties.

5073 (I) An arbitration panel considering the matters set forth in this Subsection (10)(d)  
5074 shall:

5075 (I) apply the standards set forth in Subsection (10)(b); and  
5076 (II) issue a written award specifying a net settlement amount due from one party or the  
5077 other as a result of the termination of the reinsurance contract.

5078 (e) The supervising court shall confirm an award issued under Subsection (10)(d)(ii)(I)  
5079 absent proof of statutory grounds for vacating or modifying arbitration awards under the  
5080 Federal Arbitration Act, 9 U.S.C. Sec. 1 et seq.

5081 (f) (i) If the net settlement amount agreed or awarded pursuant to this Subsection (10)  
5082 is payable by the reinsurer, the reinsurer shall pay the amount due to the estate subject to any  
5083 applicable setoff under Section 31A-27a-510.

5084 (ii) If the net settlement amount agreed or awarded pursuant to this Subsection (10) is  
5085 payable by the insurer, the reinsurer is considered to have a timely filed claim against the estate  
5086 for that amount, which claim shall be paid pursuant to the priority established in Subsection  
5087 31A-27a-701(2)(f).

5088 (iii) A guaranty association:

5089 (A) is not entitled to receive the net settlement amount, except to the extent it is  
5090 entitled to share in the estate assets as creditors of the estate; and

5091 (B) has no responsibility for the net settlement amount.

5092 (11) (a) Except as otherwise provided in this section, this section does not alter or  
5093 modify the terms and conditions of a reinsurance contract.

5094 (b) This section does not abrogate or limit any rights of a reinsurer to claim that it is  
5095 entitled to rescind a reinsurance contract.

5096 (c) This section does not give a policyholder or beneficiary an independent cause of  
5097 action against a reinsurer that is not otherwise set forth in the reinsurance contract.

5098 (d) This section does not limit or affect any guaranty association's rights as a creditor of  
5099 the estate against the assets of the estate.

5100 (e) This section does not apply to a reinsurance agreement covering property or  
5101 casualty risks.

5102 Section 90. Section **31A-27a-514** is enacted to read:

5103 **31A-27a-514. Recovery of premiums owed.**

5104 (1) (a) An insured shall pay any unpaid earned premium or retrospectively rated  
5105 premium due the insurer:

5106 (i) directly to the receiver; or

5107 (ii) to an agent that pays or is obligated to pay the receiver on behalf of the insured.

5108 (b) (i) Premium on surety business is considered earned at inception if no policy term  
5109 can be determined.

5110 (ii) All premium other than that described in Subsection (1)(b)(i) is considered earned  
5111 and is prorated equally over the determined policy term, regardless of any provision in the

5112 bond, guaranty, contract, or other agreement.

5113 (2) (a) A person, other than the insured, responsible for the remittance of a premium,  
5114 shall turn over to the receiver any unpaid premium due and owing as shown on the records of  
5115 the insurer for the full policy term due the insurer at the time of the entry of the receivership  
5116 order:

5117 (i) including any amount representing commissions; and

5118 (ii) whether earned or unearned based on the termination of coverage under Sections  
5119 31A-27a-402 and 31A-27a-403.

5120 (b) The unpaid premium due the receiver from any person other than the insured  
5121 excludes any premium not collected from the insured and not earned based on the termination  
5122 of coverage under Sections 31A-27a-402 and 31A-27a-403.

5123 (3) (a) A person, other than the insured, responsible for the remittance of a premium,  
5124 shall turn over to the receiver any unearned commission of that person based on the termination  
5125 of coverage under Sections 31A-27a-402 and 31A-27a-403.

5126 (b) A credit, setoff, or both may not be allowed to an agent, broker, premium finance  
5127 company, or any other person for an:

5128 (i) amount advanced to the insurer by the person on behalf of, but in the absence of a  
5129 payment by, the insured; or

5130 (ii) other amount paid by the person to any other person after the day on which the  
5131 order of receivership is entered.

5132 (4) Regardless of any provision to the contrary in an agency contract or other  
5133 agreement, a person that collects premium or finances premium under a premium finance  
5134 contract, that is due the insurer in receivership is considered to:

5135 (a) hold that premium in trust as a fiduciary for the benefit of the insurer; and

5136 (b) have availed itself of the laws of this state.

5137 (5) (a) A premium finance company is obligated to pay an amount due the insurer from  
5138 a premium finance contract, whether the premium is earned or unearned.

5139 (b) The receiver may collect an unpaid financed premium directly from:

5140 (i) the premium finance company by taking an assignment of the underlying premium  
5141 finance contract; or

5142 (ii) the insured that is a party to the premium finance contract.

5143 (6) Upon satisfactory evidence of a violation of this section by a person other than an  
5144 insured, the commissioner may pursue one or more of the following courses of action:

5145 (a) suspend, revoke, or refuse to renew the license of an offending party;

5146 (b) impose a penalty of not more than \$1,000 for each act in violation of this section by  
5147 a party; and

5148 (c) impose any other sanction or penalty allowed for by law.

5149 (7) (a) Before the commissioner may take an action set forth in Subsection (6), written  
5150 notice shall be given to the person accused of violating the law:

5151 (i) stating specifically the nature of the alleged violation; and

5152 (ii) fixing a time and place, at least ten days after the day on which the notice is sent,  
5153 when a hearing on the matter is to be held.

5154 (b) After a hearing, or upon failure of the accused to appear at a hearing, the  
5155 commissioner, if a violation is found, shall impose the penalties under Subsection (6) that the  
5156 commissioner considers advisable.

5157 (c) If the commissioner takes action under this Subsection (7), the party aggrieved may  
5158 appeal from that action as provided in Title 63, Chapter 46b, Administrative Procedures Act.

5159 Section 91. Section **31A-27a-515** is enacted to read:

5160 **31A-27a-515. Commutation and release agreements.**

5161 (1) For purposes of this section, "casualty claims" means the insurer's aggregate claims  
5162 arising out of insurance contracts in the following lines:

5163 (a) farm owner multiperil;

5164 (b) homeowner multiperil;

5165 (c) commercial multiperil;

5166 (d) medical malpractice;

5167 (e) workers' compensation;

5168 (f) other liability;

5169 (g) products liability;

5170 (h) auto liability;

5171 (i) aircraft, all peril; and

5172 (j) international, for lines listed in Subsections (1)(a) through (i).

5173 (2) (a) Notwithstanding Section 31A-27a-512, the liquidator and a reinsurer may

5174 negotiate a voluntary commutation and release of all obligations arising from a reinsurance  
5175 agreement in which the insurer is the ceding party.

5176 (b) A commutation and release agreement voluntarily entered into by the parties shall  
5177 be commercially reasonable, actuarially sound, and in the best interests of the creditors of the  
5178 insurer.

5179 (c) (i) An agreement subject to this Subsection (2) that has a gross consideration in  
5180 excess of \$250,000 shall be submitted pursuant to Section 31A-27a-107 to the receivership  
5181 court for approval.

5182 (ii) An agreement described in this Subsection (2)(c) shall be approved by the  
5183 receivership court if it meets the standards described in this Subsection (2).

5184 (3) Without derogating from Section 31A-27a-512, if the liquidator is unable to  
5185 negotiate a voluntary commutation with a reinsurer with respect to a reinsurance agreement  
5186 between the insurer and that reinsurer, the liquidator may, in addition to any other remedy  
5187 available under applicable law, apply to the receivership court, with notice to the reinsurer, for  
5188 an order requiring that the parties submit commutation proposals with respect to the  
5189 reinsurance agreement to a panel of three arbitrators:

5190 (a) at any time after 75% of the actuarially estimated ultimate incurred liability for all  
5191 of the casualty claims against the liquidation estate is reached by allowance of claims in the  
5192 liquidation estate pursuant to Sections 31A-27a-603 and 31A-27a-605, calculated:

5193 (i) as of the day on which the order of liquidation is entered by or at the instance of the  
5194 liquidator; and

5195 (ii) for purposes of this Subsection (3), not performed during the five-year period  
5196 subsequent to the day on which the order of liquidation is entered; or

5197 (b) at any time in regard to a reinsurer if that reinsurer has a total adjusted capital that  
5198 is less than 250% of its authorized control level RBC as defined in Section 31A-17-601.

5199 (4) Venue for the arbitration is within the district of the receivership court's jurisdiction  
5200 or at another location agreed to by the parties.

5201 (5) (a) If the liquidator determines that commutation would be in the best interests of  
5202 the creditors of the liquidation estate, the liquidator may petition the receivership court to order  
5203 arbitration.

5204 (b) If the liquidator petitions the receivership court under Subsection (5)(a), the



5205 receivership court shall require that the liquidator and the reinsurer each appoint an arbitrator  
5206 within 30 days after the day on which the order for arbitration is entered.

5207 (c) If either party fails to appoint an arbitrator within the 30-day period, the other party  
5208 may appoint both arbitrators and the appointments are binding on the parties.

5209 (d) The two arbitrators shall be active or retired executive officers of insurance or  
5210 reinsurance companies, not under the control of or affiliated with the insurer or the reinsurer.

5211 (e) (i) Within 30 days after the day on which both arbitrators have been appointed, the  
5212 two arbitrators shall agree to the appointment of a third independent, impartial, disinterested  
5213 arbitrator.

5214 (ii) If agreement to the disinterested arbitrator is not reached within the 30-day period,  
5215 the third arbitrator shall be appointed by the receivership court.

5216 (f) The disinterested arbitrator shall be a person who:

5217 (i) is or, if retired, has been, an executive officer of a United States domiciled  
5218 insurance or reinsurance company that is not under the control of or affiliated with either of the  
5219 parties; and

5220 (ii) has at least 15 years experience in the reinsurance industry.

5221 (6) (a) The arbitration panel may choose to retain as an expert to assist the panel in its  
5222 determinations, a retired, disinterested executive officer of a United States domiciled insurance  
5223 or reinsurance company having at least 15 years loss reserving actuarial experience.

5224 (b) If the arbitration panel is unable to unanimously agree on the identity of the expert  
5225 within 14 days of the day on which the disinterested arbitrator is appointed, the expert shall be:

5226 (i) designated by the commissioner:

5227 (A) by rule made in accordance with Title 63, Chapter 46a, Utah Administrative  
5228 Rulemaking Act; and

5229 (B) on the basis of recommendations made by a nationally recognized society of  
5230 actuaries; and

5231 (ii) a disinterested person that has knowledge, experience, and training applicable to  
5232 the line of insurance that is the subject of the arbitration.

5233 (c) The expert:

5234 (i) may not vote in the proceeding; and

5235 (ii) shall issue a written report and recommendations to the arbitration panel within 60

5236 days after the day on which the arbitration panel receives the commutation proposals submitted  
5237 by the parties pursuant to Subsection (7), which report shall:

5238 (A) be included as part of the arbitration record; and

5239 (B) accompany the award issued by the arbitration panel pursuant to Subsection (8).

5240 (d) The cost of the expert is to be paid equally by the parties.

5241 (7) Within 90 days after the day on which the disinterested arbitrator is appointed

5242 under Subsection (5), each party shall submit to the arbitration panel:

5243 (a) the party's commutation proposals; and

5244 (b) other documents and information relevant to the determination of the parties' rights  
5245 and obligations under the reinsurance agreement to be commuted, including:

5246 (i) a written review of any disputed paid claim balances;

5247 (ii) any open claim files and related case reserves at net present value; and

5248 (iii) any actuarial estimates with the basis of computation of any other reserves and any  
5249 incurred-but-not-reported losses at net present value.

5250 (8) (a) Within 90 days after the day on which the parties submit the information

5251 required by Subsection (7), the arbitration panel:

5252 (i) shall issue an award, determined by a majority of the arbitration panel, specifying  
5253 the terms of a commercially reasonable and actuarially sound commutation agreement between  
5254 the parties; or

5255 (ii) may issue an award declining commutation between the parties for a period not to  
5256 exceed two years if a majority of the arbitration panel determines that it is unable to derive a  
5257 commercially reasonable and actuarially sound commutation on the basis of:

5258 (A) the submissions of the parties; and

5259 (B) if applicable, the report and recommendation of the expert retained in accordance  
5260 with Subsection (6).

5261 (b) Following the expiration of the two-year period described in Subsection (8)(a), the

5262 liquidator may again invoke arbitration in accordance with Subsection (2), in which event

5263 Subsections (2) through (9) apply to the renewed proceeding, except that the arbitration panel

5264 is obliged to issue an award under Subsection (8)(a).

5265 (9) Once an award is issued, the liquidator shall promptly submit the award to the  
5266 receivership court for confirmation.

5267 (10) (a) Within 30 days of the day on which the receivership court confirms the award,  
5268 the reinsurer shall give notice to the receiver that the reinsurer:

5269 (i) will commute the reinsurer's liabilities to the insurer for the amount of the award in  
5270 return for a full and complete release of all liabilities between the parties, whether past, present,  
5271 or future; or

5272 (ii) will not commute the reinsurer's liabilities to the insurer.

5273 (b) If the reinsurer's liabilities are not commuted under Subsection (10)(a), the  
5274 reinsurer shall:

5275 (i) establish and maintain in accordance with Section 31A-27a-516 a reinsurance  
5276 recoverable trust in the amount of 102% of the award; and

5277 (ii) pay the costs and fees associated with establishing and maintaining the trust  
5278 established under this Subsection (10)(b).

5279 (11) (a) If the reinsurer notifies the liquidator that it will commute the reinsurer's  
5280 liabilities pursuant to Subsection (10)(a)(i), the liquidator has 30 days from the day on which  
5281 the reinsurer notifies the liquidator to:

5282 (i) tender to the reinsurer a proposed commutation and release agreement:

5283 (A) providing for a full and complete release of all liabilities between the parties,  
5284 whether past, present, or future;

5285 (B) that requires that the reinsurer make payment of the commutation amount within  
5286 14 days from the day on which the agreement is consummated; or

5287 (ii) reject the commutation in writing, subject to receivership court approval.

5288 (b) If the liquidator rejects the commutation subject to approval of the receivership  
5289 court in accordance with Subsection (11)(a)(ii), the reinsurer shall establish and maintain a  
5290 reinsurance recoverable trust in accordance with Section 31A-27a-516.

5291 (c) The liquidator and the reinsurer shall share equally in the costs and fees associated  
5292 with establishing and maintaining the trust established under Subsection (11)(b).

5293 (12) Except for the period provided in Subsection (8)(b), the time periods established  
5294 in Subsections (6), (7), (8), (10), and (11) may be extended:

5295 (a) upon the consent of the parties; or

5296 (b) by order of the receivership court, for good cause shown.

5297 (13) Subject to Subsection (14), this section may not be construed to supersede or

5298 impair any provision in a reinsurance agreement that establishes a commercially reasonable and  
5299 actuarially sound method for valuing and commuting the obligations of the parties to the  
5300 reinsurance agreement by providing in the contract the specific methodology to be used for  
5301 valuing and commuting the obligations between the parties.

5302 (14) (a) A commutation provision in a reinsurance agreement is not effective if it is  
5303 demonstrated to the receivership court that the provision is entered into in contemplation of the  
5304 insolvency of one or more of the parties.

5305 (b) A contractual commutation provision entered into within one year of the day on  
5306 which the liquidation order of the insurer is entered is rebuttably presumed to have been  
5307 entered into in contemplation of insolvency.

5308 Section 92. Section **31A-27a-516** is enacted to read:

5309 **31A-27a-516. Reinsurance recoverable trust provisions.**

5310 (1) As used in this section:

5311 (a) "Beneficiary" means the domiciliary insurance commissioner, as liquidator of the  
5312 insurer for whose sole benefit a reinsurance recoverable trust is established.

5313 (b) "Grantor" means the reinsurer who has established a reinsurance recoverable trust  
5314 for the sole benefit of the beneficiary.

5315 (c) "Qualified United States financial institution" means an institution that:

5316 (i) (A) is organized under the laws of the United States or any state of the United  
5317 States; or

5318 (B) in the case of a United States branch or agency office of a foreign banking  
5319 organization, licensed under the laws of the United States or any state of the United States;

5320 (ii) is granted authority to operate with fiduciary powers; and

5321 (iii) is regulated, supervised, and examined by federal or state authorities having  
5322 regulatory authority over banks and trust companies.

5323 (d) "Reinsurance recoverable trust" means a trust established pursuant to Section  
5324 31A-27a-515.

5325 (2) (a) The trustee of a reinsurance recoverable trust shall be a qualified United States  
5326 financial institution.

5327 (b) The trust agreement governing a reinsurance recoverable trust shall:

5328 (i) be entered into by the beneficiary, the grantor, and a trustee;

5329 (ii) create a trust account into which assets shall be deposited in accordance with  
5330 Section 31A-27a-515;

5331 (iii) provide that the beneficiary may withdraw assets from the trust only:  
5332 (A) on the basis of a filed claim allowed pursuant to Section 31A-27a-603 or  
5333 31A-27a-605;  
5334 (B) where the grantor is notified, in writing, of the allowance of the claim;  
5335 (C) to the extent that the amount to be withdrawn exceeds any setoff permitted by  
5336 Section 31A-27a-510 due to the grantor; and  
5337 (D) when 60 days expires during which the grantor fails to:  
5338 (I) pay the claim; or  
5339 (II) subject to and without derogation from Section 31A-27a-512, which at all times  
5340 governs and remains binding on the reinsurer, file notice of a written dispute with respect to the  
5341 claim under and in terms of the reinsurance agreement; or  
5342 (E) if the beneficiary complies with any different or other terms and conditions  
5343 mutually agreed to by the beneficiary and the grantor in the trust agreement;  
5344 (iv) require the trustee to:  
5345 (A) receive assets and hold all assets at the trustee's office in the United States in a safe  
5346 place;  
5347 (B) determine that all assets are in such form that the beneficiary, or the trustee upon  
5348 direction by the beneficiary, may whenever necessary negotiate the assets, without consent or  
5349 signature from the grantor or any other person;  
5350 (C) furnish to the grantor and the beneficiary a statement of all assets in the trust  
5351 account upon its inception and at intervals no less frequent than the end of each calendar  
5352 quarter; and  
5353 (D) notify the grantor and the beneficiary within ten days of a deposit to or withdrawal  
5354 from the trust account;  
5355 (v) be made subject to and governed by the laws of this state;  
5356 (vi) prohibit the invasion of the trust corpus for the purpose of paying compensation to,  
5357 or reimbursing the expenses of, the trustee;  
5358 (vii) provide that the trustee is liable for the trustee's negligence, willful misconduct, or  
5359 lack of good faith;

5360 (viii) subject to Subsection (2)(c), provide that the trustee may resign upon delivery of  
5361 a written notice of resignation, effective not less than 90 days after the day on which the  
5362 beneficiary and grantor receive the notice;

5363 (ix) subject to Subsection (2)(c), provide that the trustee may be removed by the  
5364 grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective  
5365 not less than 90 days after the day on which the trustee and the beneficiary receive the notice;

5366 (x) provide that the grantor has the full and unqualified right to vote any shares of stock  
5367 in the trust account except that, subject to other provisions of this section, an interest or  
5368 dividend paid on shares of stock or other obligation in the trust account shall remain in the  
5369 trust;

5370 (xi) specify categories of investments reasonably acceptable to the beneficiary;

5371 (xii) authorize the trustee to invest funds and to accept substitutions, by the grantor,  
5372 that the trustee determines are at least equal in market value to the assets withdrawn provided  
5373 that no investment or substitution shall be made without prior approval from the beneficiary,  
5374 which may not be unreasonably or arbitrarily withheld;

5375 (xiii) subject to Subsection (2)(d), provide that the beneficiary may at any time  
5376 designate a party to which all or part of the trust assets are to be transferred;

5377 (xiv) specify the types of assets that may be included in the trust account:

5378 (A) which shall consist only of:

5379 (I) cash in United States dollars;

5380 (II) certificates of deposit issued by a United States bank and payable in United States  
5381 dollars;

5382 (III) investments permitted by this state's insurance law; or

5383 (IV) any combination of the types specified by this Subsection (2)(b)(xiv)(A);

5384 (B) except that if investments in or issued by an entity controlling, controlled by, or  
5385 under common control with either the grantor or the beneficiary of the trust, may not exceed  
5386 5% of total investments; and

5387 (C) subject to the assets deposited in the trust account being valued according to the  
5388 asset's current fair market value;

5389 (xv) give the grantor the right to seek approval from the beneficiary, which may not be  
5390 unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the

5391 trust assets and transfer those assets to the grantor, if:

5392 (A) the grantor, at the time of withdrawal, replaces the withdrawn assets with other  
5393 qualified assets so as to maintain at all times the deposit in the required amount; or

5394 (B) after withdrawal and transfer, the market value of the trust account is no less than  
5395 102% of the award made pursuant to Subsection 31A-27a-515(7)(a);

5396 (xvi) provide for the return of any amount withdrawn in excess of the actual amounts  
5397 required for:

5398 (A) payment of reported allowed claims under Subsection (2)(b)(iii); and

5399 (B) interest payments at a rate not in excess of the prime rate of interest on the excess  
5400 amounts withdrawn; and

5401 (xvii) provide for termination of the reinsurance recoverable trust in accordance with  
5402 Subsection (6).

5403 (c) Notwithstanding Subsection (2)(b)(viii) or (ix), a resignation or removal may not be  
5404 effective until:

5405 (i) a successor trustee is appointed and approved by the beneficiary and the grantor;  
5406 and

5407 (ii) all assets in the trust are transferred to the new trustee.

5408 (d) Notwithstanding Subsection (2)(b)(xiii), a transfer may be conditioned upon the  
5409 trustee receiving, before or simultaneously with, other specified assets.

5410 (e) Subsection (2)(b) may not be construed to alter the rights or obligations of the  
5411 parties pursuant to contractual and statutory provisions providing for notice and the  
5412 determination of a claim.

5413 (3) The grantor shall, before depositing assets with the trustee, execute assignments or  
5414 endorsements in blank, or transfer legal title to the trustee of all shares, obligations, or any  
5415 other assets requiring assignments, in order that the beneficiary, or the trustee upon the  
5416 direction of the beneficiary, may whenever necessary negotiate these assets without consent or  
5417 signature from the grantor or any other person.

5418 (4) (a) Without derogating Section 31A-27a-512, the grantor or the beneficiary may  
5419 request that the receivership court review the amount held if:

5420 (i) the grantor and beneficiary fail to reach agreement on the extent, if any, to which  
5421 supplementation or reduction of a reinsurance recoverable trust should be occasioned;

- 5422 (ii) (A) the reinsurance recoverable trust is exhausted; or  
5423 (B) the reinsurance recoverable trust is insufficient to respond to claims allowed  
5424 pursuant to Section 31A-27a-603 or 31A-27a-605; and  
5425 (iii) the grantor or the beneficiary believe that the amount held in the reinsurance  
5426 recoverable trust is either deficient or overstated.
- 5427 (b) The review described in this Subsection (4) shall be conducted applying procedures  
5428 and terms as the receivership court shall, in its sole discretion, direct.
- 5429 (5) A reinsurance recoverable trust shall terminate upon the earlier of:
- 5430 (a) receivership court approval of a voluntary commutation between the grantor and the  
5431 beneficiary pursuant to Subsection 31A-27a-515(1);
- 5432 (b) the mutual agreement of the grantor and the beneficiary; or
- 5433 (c) a finding by the receivership court that the grantor has discharged its liabilities to  
5434 the beneficiary.
- 5435 (6) Upon termination of a reinsurance recoverable trust, all assets not previously  
5436 withdrawn by the beneficiary, pursuant to Subsection (2)(b)(iii), shall, with written approval of  
5437 the beneficiary, be delivered to the grantor.

5438 Section 93. Section **31A-27a-601** is enacted to read:

5439 **Part 6. Claims**

5440 **31A-27a-601. Filing of claims.**

- 5441 (1) (a) Subject to the other provisions of this Subsection (1), proof of a claim shall be  
5442 filed with the liquidator in the form required by Section 31A-27a-602 on or before the last day  
5443 for filing specified in the notice required under Section 31A-27a-406.
- 5444 (b) The last day for filing specified in the notice may not be later than 18 months after  
5445 the day on which the order of liquidation is entered unless the receivership court, for good  
5446 cause shown, extends the time.
- 5447 (c) Proof of a claim for the following does not need to be filed unless the liquidator  
5448 expressly requires filing of proof:
- 5449 (i) cash surrender value in life insurance and annuities;  
5450 (ii) investment value in life insurance and annuities other than cash surrender value;  
5451 and  
5452 (iii) any other policy insuring the life of a person.



5453 (d) Only upon application of the liquidator, the receivership court may allow  
5454 alternative procedures and requirements for the filing of proof of a claim or for allowing or  
5455 proving a claim.

5456 (e) Upon application, if the receivership court dispenses with the requirements of filing  
5457 a proof of claim by a person, class, or group of persons, a proof of claim for that person, class,  
5458 or group is considered as being filed for all purposes, except that the receivership court's  
5459 waiver of proof of claim requirements may not impact guaranty association proof of claim  
5460 filing requirements or coverage determinations to the extent that the guaranty association  
5461 statute or filing requirements are inconsistent with the receivership court's waiver of proof.

5462 (2) The liquidator may permit a claimant that makes a late filing to share ratably in  
5463 distributions, whether past or future, as if the claim were not filed late, to the extent that the  
5464 payment will not prejudice the orderly administration of the liquidation, under the following  
5465 circumstances:

5466 (a) the eligibility to file a proof of claim was not known to the claimant, and the  
5467 claimant files a proof of claim within 90 days after the day on which the claimant first learns of  
5468 the eligibility;

5469 (b) (i) a transfer to a creditor is:

5470 (A) avoided under Section 31A-27a-503, 31A-27a-504, 31A-27a-506, or 31A-27a-507;

5471 or

5472 (B) voluntarily surrendered under Section 31A-27a-509; and

5473 (ii) the filing satisfies the conditions of Section 31A-27a-509; or

5474 (c) the valuation of security held by a secured creditor under Section 31A-27a-610  
5475 shows a deficiency and the claim for the deficiency is filed within 30 days after the valuation.

5476 (3) If a reinsurer's reinsurance contract terminates pursuant to Section 31A-27a-513:

5477 (a) a claim filed by the receiver which arises from the termination may not be  
5478 considered late if the claim is filed within 90 days of the day on which the reinsurance contract  
5479 terminates; and

5480 (b) the reinsurer shall receive a ratable share of distributions, whether past or future, as  
5481 if the claim described in Subsection (3)(a) is not late.

5482 (4) Notwithstanding any other provision of this chapter, the liquidator may petition the  
5483 receivership court, subject to Section 31A-27a-107, to set a date certain after which no further

5484 claims may be filed.

5485 Section 94. Section **31A-27a-602** is enacted to read:

5486 **31A-27a-602. Proof of claim.**

5487 (1) Proof of claim shall consist of a statement signed by the claimant or on behalf of

5488 the claimant that includes all of the following that are applicable:

5489 (a) the particulars of the claim including the consideration given for the claim;

5490 (b) the identity and amount of the security on the claim;

5491 (c) the payments made on the debt, if any;

5492 (d) that the sum claimed is justly owing and there is no setoff, counterclaim, or defense

5493 to the claim;

5494 (e) any right of priority of payment or other specific right asserted by the claimant;

5495 (f) the name and address of the claimant and the attorney, if any, who represents the

5496 claimant; and

5497 (g) the claimant's Social Security number or federal employer identification number.

5498 (2) The liquidator may require that:

5499 (a) a prescribed form be used under this section; and

5500 (b) other information and documents be included.

5501 (3) At any time the liquidator may:

5502 (a) require the claimant to present information or evidence supplementary to that

5503 required under Subsection (1);

5504 (b) take testimony under oath;

5505 (c) require production of one or more affidavits or depositions; or

5506 (d) otherwise obtain additional information or evidence.

5507 (4) (a) An affected guaranty association may file a single omnibus proof of claim for

5508 all claims of the affected guaranty association in connection with payment of claims of the

5509 insurer.

5510 (b) The omnibus proof of claim may be periodically updated by the affected guaranty  
5511 association without regard to the deadline specified in Subsection 31A-27a-601(1).

5512 (c) An affected guaranty association may be required to submit a reasonable amount of  
5513 documentation in support of the claim.

5514 Section 95. Section **31A-27a-603** is enacted to read:

5515 31A-27a-603. Allowance of claims.

5516 (1) (a) Except as provided in Subsections (11) and (12), the liquidator shall:

5517 (i) review all claims filed in the liquidation proceeding in accordance with this chapter;

5518 and

5519 (ii) further investigate a claim, as the liquidator considers necessary.

5520 (b) Consistent with this chapter, the liquidator may allow, disallow, or compromise a

5521 claim that will be recommended to the receivership court unless the liquidator is required by

5522 law to accept the claim as settled by a person, including an affected guaranty association,

5523 subject to a statutory or contractual right of the affected reinsurers to participate in the claims

5524 allowance process.

5525 (c) Notwithstanding any other provision of this chapter, a claim under a policy of

5526 insurance may not be allowed for an amount in excess of the applicable policy limits.

5527 (2) (a) Pursuant to the review required by Subsection (1), the liquidator shall provide  
5528 notice of the claim determination to the claimant or the claimant's attorney.

5529 (b) The notice required by this Subsection (2) shall set forth:

5530 (i) the amount of the claim allowed by the liquidator, if any;

5531 (ii) the priority class of the claim as established in Section 31A-27a-701; and

5532 (iii) if the claim is denied, the reason for the denial.

5533 (c) In regard to a claim to be allowed pursuant to Section 31A-27a-605, preliminary

5534 notice of the amount of the claim determination shall be provided to any reinsurer that is or

5535 may be liable in respect to the claim at least 45 days before the day on which notice is provided

5536 to the claimant pursuant to this Subsection (2).

5537 (d) In regard to a claim being allowed other than pursuant to Section 31A-27a-605, the

5538 notice sent to the claimant may be provided to any reinsurer that is or may be liable in respect

5539 of the claim.

5540 (e) If no timely objection is submitted, the claim determination is binding on the

5541 reinsurer upon allowance.

5542 (3) (a) Within 45 days after the day on which the notice described in Subsection (2) is

5543 mailed, the claimant noticed may submit a written objection to the liquidator.

5544 (b) An objection provided for under this Subsection (3) shall clearly set out:

5545 (i) all facts and the legal basis, if any, for the objection; and

5546 (ii) the reasons why the claim should be allowed at a different amount or in a different  
5547 priority class.

5548 (c) If no timely objection is submitted, the claimant may not further object, and the  
5549 determination is final.

5550 (d) The liquidator may accelerate the allowance of a claim by obtaining a waiver of an  
5551 objection.

5552 (4) (a) A claim that is not mature as of the coverage termination date established under  
5553 Section 31A-27a-402 may be allowed as if it were mature, except the claim shall be discounted  
5554 to present value.

5555 (b) A claim is not mature if payment on the claim is not yet due.

5556 (5) The following is not required to be considered as evidence of liability or of the  
5557 amount of damages:

5558 (a) a judgment or order against an insured or the insurer entered:

5559 (i) after the day on which a successful petition for receivership is initially filed; or

5560 (ii) within 120 days before the day on which the petition is initially filed; or

5561 (b) a judgment or order against an insured or the insurer entered at any time by default  
5562 or by collusion.

5563 (6) A claim under an employment contract by a director, officer, or person in fact  
5564 performing similar functions or having similar powers is limited to payment for services  
5565 rendered before an order of receivership, unless explicitly approved in writing:

5566 (a) by the commissioner before an order of receivership;

5567 (b) by the rehabilitator before the day on which the order of liquidation is entered; or

5568 (c) by the liquidator after the day on which the order of liquidation is entered.

5569 (7) The total liability of the liquidator to all claimants arising out of the same act or  
5570 policy shall be no greater than the insurer's total liability would have been were the insurer not  
5571 in liquidation.

5572 (8) (a) The liquidator shall disallow a claim that is for or determined to be for a de  
5573 minimis amount.

5574 (b) A de minimis amount is an amount equal to or less than a maximum de minimis  
5575 amount approved by the receivership court as being reasonable and necessary for  
5576 administrative convenience.

5577 (9) A claim that does not contain all the applicable information required by Section  
5578 31A-27a-602:

5579 (a) does not need to be further reviewed or adjudicated; and

5580 (b) may be denied or disallowed by the liquidator subject to the notice and objection  
5581 procedures in this section.

5582 (10) (a) The liquidator may reconsider a claim on the basis of additional information  
5583 and amend the recommendation to the receivership court.

5584 (b) The claimant shall be afforded the same notice and opportunity to be heard on all  
5585 changes in the recommendation as in the claim's initial determination.

5586 (c) The receivership court may amend the receivership court's allowance or  
5587 disallowance as appropriate.

5588 (11) (a) The liquidator is not required to process claims for any class until it appears  
5589 reasonably likely that property will be available for a distribution to that class.

5590 (b) If there are insufficient assets to justify processing all claims for a class listed in  
5591 Section 31A-27a-701, the liquidator shall:

5592 (i) report the facts to the receivership court; and

5593 (ii) make appropriate recommendations for handling the remainder of the claims.

5594 (12) A claim of a lessor for damages resulting from the termination of a lease of real  
5595 property shall be disallowed to the extent that the claim exceeds the sum of:

5596 (a) the rent reserved by the lease, without acceleration, for the greater of one year, or  
5597 15%, not to exceed three years, of the remaining term of the lease, following the earlier of:

5598 (i) the day on which the petition is filed; and

5599 (ii) the day on which the lessor repossessed, or the lessee surrendered, the leased  
5600 property; and

5601 (b) any unpaid rent due under the lease, without acceleration, on the earlier of the dates  
5602 specified in Subsection (12)(a).

5603 Section 96. Section **31A-27a-604** is enacted to read:

5604 **31A-27a-604. Claims under an occurrence policy, surety bond, surety**  
5605 **undertaking.**

5606 (1) Subject to Section 31A-27a-603, an insured may file a claim for the protection  
5607 afforded under the insured's policy, irrespective of whether a claim is known at the time of

5608 filing, if the policy is an occurrence policy.

5609 (2) Subject to Section 31A-27a-603, an obligee may file a claim for the protection  
5610 afforded under a surety bond or a surety undertaking issued by the insurer as to which the  
5611 obligee is the beneficiary, irrespective of whether a claim is known at the time of filing.

5612 (3) After a claim is filed under Subsection (1) or (2), when a specific claim is made by  
5613 or against the insured or by the obligee:

5614 (a) the insured or the obligee shall supplement the claim; and

5615 (b) the receiver shall treat the claim as a contingent or unliquidated claim under  
5616 Section 31A-27a-605.

5617 Section 97. Section **31A-27a-605** is enacted to read:

5618 **31A-27a-605. Allowance of contingent and unliquidated claims.**

5619 (1) As used in this section, "claim" means a demand for payment pursuant to Section  
5620 31A-27a-601 under the terms and conditions of a contract issued by the insurer as a result of a  
5621 known accident, casualty, disaster, loss, event, or occurrence.

5622 (2) (a) A claim of an insured or third party may be allowed under Section  
5623 31A-27a-603, regardless of the fact that it is contingent or unliquidated if:

5624 (i) any contingency is removed in accordance with Subsection (3); and

5625 (ii) the value of the claim is determined in accordance with Subsection (4).

5626 (b) A claim is contingent if:

5627 (i) the accident, casualty, disaster, loss, event, or occurrence insured, reinsured, or  
5628 bonded against occurs on or before the date fixed under Section 31A-27a-601; and

5629 (ii) the act or event triggering the insurer's obligation to pay has not occurred as of the  
5630 date fixed under Section 31A-27a-401.

5631 (c) A claim is unliquidated if the insurer's obligation to pay is established, but the  
5632 amount of the claim has not been determined.

5633 (3) (a) Unless the receivership court directs otherwise, a contingent claim may be  
5634 allowed if:

5635 (i) the claimant presents proof of the insurer's obligation to pay reasonably satisfactory  
5636 to the liquidator; or

5637 (ii) subject to Subsection (3)(b), the claim is based on a cause of action against an  
5638 insured of the insurer, and:

- 5639           (A) it may be reasonably inferred from proof presented upon the claim that the  
5640 claimant would be able to obtain a judgment; and
- 5641           (B) the person furnishes suitable proof.
- 5642           (b) A contingent claim may not be allowed under Subsection (3)(a)(ii)(B) if the  
5643 receivership court for good cause shown shall otherwise direct that no further valid claims can  
5644 be made against the insurer arising out of the cause of action other than those already  
5645 presented.
- 5646           (4) (a) An unliquidated claim may be allowed if its amount has been determined.
- 5647           (b) If the amount of an unliquidated claim filed pursuant to Section 31A-27a-601  
5648 remains undetermined, the valuation of the unliquidated claim may be made by estimate  
5649 whenever the liquidator determines that:
- 5650           (i) liquidation of the claim would unduly delay the administration of the liquidation  
5651 proceeding; or
- 5652           (ii) the administrative expense of processing and adjudicating the claim or group of  
5653 claims of a similar type would be unduly excessive when compared with the property that is  
5654 estimated to be available for distribution with respect to the claim.
- 5655           (c) Any estimate shall be based on an accepted method of valuing a claim with  
5656 reasonable certainty at the claim's net present value, such as an actuarial evaluation.
- 5657           (5) (a) Notwithstanding the other provisions of this section, a claim for the value or  
5658 breach of a life insurance policy, disability income insurance policy, long-term care insurance  
5659 policy, or annuity may not result in or serve as the basis of any liability of a reinsurer of the  
5660 insurer.
- 5661           (b) A reinsurer's liability to the insurer shall be determined exclusively on the basis of  
5662 its contracts of reinsurance and Section 31A-27a-513.
- 5663           (6) (a) The liquidator may petition the receivership court to set a date certain before  
5664 which all claims under this section shall be final.
- 5665           (b) In addition to the notice requirements of Section 31A-27a-107, the liquidator shall  
5666 give notice of the filing of the petition to all claimants with claims that remain contingent or  
5667 unliquidated under this section.
- 5668           Section 98. Section **31A-27a-606** is enacted to read:
- 5669           **31A-27a-606. Special provisions for third party claims.**

5670 (1) Whenever a third party asserts a cause of action against an insured of an insurer in  
5671 liquidation, the third party may file a claim with the liquidator on or before the last day for  
5672 filing claims.

5673 (2) Whether or not the third party files a claim, the insured may file a claim on the  
5674 insured's own behalf in the liquidation.

5675 (3) (a) The liquidator may make recommendations to the receivership court for the  
5676 allowance of an insured's claim after consideration of:

5677 (i) the probable outcome of any pending action against the insured on which the claim  
5678 is based;

5679 (ii) the probable damages recoverable in the action; and

5680 (iii) the probable costs and expenses of defense.

5681 (b) After allowance by the receivership court, the liquidator shall withhold any  
5682 distribution payable on the claim, pending the outcome of litigation and negotiation between  
5683 the insured and the third party.

5684 (c) The liquidator may reconsider the claim as provided in Subsection  
5685 31A-27a-603(10).

5686 (d) As a claim against the insured is settled or barred, the insured or third party, as  
5687 appropriate, shall be paid, from the amount withheld, the same percentage distribution as is  
5688 paid on other claims of like priority, on the basis of the lesser of:

5689 (i) the amount actually due from the insured by action or paid by agreement plus the  
5690 reasonable costs and expense of defense; or

5691 (ii) the amount allowed on the claim by the receivership court.

5692 (e) After all claims are settled or barred, any sum remaining from the amount withheld  
5693 shall revert to the undistributed property of the insurer.

5694 (4) (a) If several claims founded upon one policy are timely filed, whether by third  
5695 parties or as claims by the insured under this section, and the aggregate amount of the timely  
5696 filed allowed claims exceeds the aggregate policy limits, the liquidator may:

5697 (i) apportion the policy limits ratably among the timely filed allowed claims; or

5698 (ii) give notice to the insured, known third parties, and affected guaranty associations  
5699 that the aggregate policy limits have been exceeded.

5700 (b) Thirty days after the day on which the liquidator's notice is given under this



- 5701 Subsection (4):
- 5702 (i) no further amounts shall be allowed;
- 5703 (ii) the policy limits shall be apportioned ratably among the timely filed allowed
- 5704 claims; and
- 5705 (iii) any additional claims shall be rejected.
- 5706 (c) A claim by the insured shall be evaluated as in Subsection (3). If an insured's claim
- 5707 is subsequently reduced under Subsection (3), the amount freed shall be apportioned ratably
- 5708 among the claims that have been reduced under this Subsection (4).
- 5709 (5) A claim may not be allowed under this section to the extent the claim is covered by
- 5710 a guaranty association.
- 5711 (6) A claimant may withdraw a proof of claim with the liquidator's approval. The
- 5712 liquidator may approve the withdrawal:
- 5713 (a) after giving notice of the withdrawal to the insured; and
- 5714 (b) only upon a showing of good cause.
- 5715 (7) The filing of a proof of claim in connection with a claim against an insured shall
- 5716 have the following effect on the rights of the claimant and the insured:
- 5717 (a) By filing a proof of claim, a claimant:
- 5718 (i) waives any right to pursue the personal assets of the insured with respect to the
- 5719 claim, to the extent of the coverage or policy limits provided by the insurer; and
- 5720 (ii) except as provided in this section, agrees that, to the extent of the coverage or
- 5721 policy limits provided by the insurer, the claimant shall seek satisfaction of the claim against
- 5722 the insured solely from:
- 5723 (A) distributions paid by the liquidator on the claim; and
- 5724 (B) any payments that an affected guaranty association may pay on account of the
- 5725 claim.
- 5726 (b) The waiver provided under this section;
- 5727 (i) is conditioned upon the cooperation of the insured with:
- 5728 (A) the liquidator in the defense of the claim; and
- 5729 (B) any applicable guaranty association in defense of the claim; and
- 5730 (ii) does not operate to:
- 5731 (A) discharge the guaranty association from any of its responsibilities and duties;

5732 (B) release the insured with respect to any claim in excess of the coverage or policy  
5733 limits provided by the insurer or any other responsible party; or

5734 (C) release the insured to the extent of the guaranty association's claim for  
5735 reimbursement from the insured under a guaranty association statutory provision instituting a  
5736 right to recover from high net worth insureds.

5737 (c) The waiver provided under this section is void if:

5738 (i) a claimant withdraws the claimant's proof of claim under Subsection (6); or

5739 (ii) the liquidator avoids insurance coverage in connection with a proof of the claim.

5740 (d) The liquidator shall provide, where applicable, notice of the election of remedies  
5741 provision in this section on any proof of claim form it distributes that shall:

5742 (i) be inserted above the claimant's signature line in typeface:

5743 (A) no smaller than the typeface of the rest of the notice; and

5744 (B) in no event smaller than font size 14; and

5745 (ii) include a statement substantially similar to the following: "I understand by filing  
5746 this claim in the estate of the insurer I am waiving any right to pursue the personal assets of the  
5747 insured to the extent that there are policy limits or coverage provided by the now insolvent  
5748 insurer."

5749 Section 99. Section **31A-27a-607** is enacted to read:

5750 **31A-27a-607. Disputed claims.**

5751 (1) (a) When a claim is disallowed in whole or in part by the liquidator, written notice  
5752 of the determination and of the right to object shall be given promptly to the claimant or the  
5753 claimant's attorney of record, if any, by first-class mail at the addresses shown in the proof of  
5754 claim.

5755 (b) (i) Within 45 days from the day on which the notice required by Subsection (1)(a) is  
5756 mailed, the claimant may file an objection with the liquidator.

5757 (ii) If an objection is not filed within the period provided in Subsection (1)(b)(i), the  
5758 claimant may not further object to the determination.

5759 (2) (a) If an objection is filed in accordance with Subsection 31A-27a-603(3)(a) and the  
5760 liquidator does not alter the liquidator's ruling, the liquidator shall ask the court for a hearing as  
5761 soon as practicable.

5762 (b) If the liquidator asks for a hearing under Subsection (2)(a), the court shall issue an

5763 order setting a date as early as possible.

5764 (c) At the request of the liquidator, the court may establish procedures for the  
5765 objections hearing.

5766 (d) The liquidator shall give notice of a hearing under this Subsection (2) by first-class  
5767 mail to:

5768 (i) the claimant or the claimant's attorney; and

5769 (ii) any other persons directly affected.

5770 (e) A hearing under this Subsection (2):

5771 (i) shall be heard without a jury; and

5772 (ii) may be heard by:

5773 (A) the court; or

5774 (B) a court appointed referee.

5775 (f) A hearing under this Subsection (2) shall be limited to the evidence upon which the  
5776 liquidator made the determination of the claim.

5777 (g) If a referee is appointed under this Subsection (2), the referee shall submit to the  
5778 court:

5779 (i) findings of fact;

5780 (ii) recommendations; and

5781 (iii) a transcript of the hearing.

5782 (h) The court shall review the referee's findings of fact and recommendations for  
5783 correctness by reviewing the record, including the hearing transcript.

5784 (i) Consistent with Section 31A-27a-608, the court may approve, disapprove, or  
5785 modify:

5786 (i) the liquidator's determination of a claim; or

5787 (ii) a referee's recommendations on a claim.

5788 (3) A court order issued after a hearing and pursuant to this section may be appealed as  
5789 a final order for purposes of Rule 54, Utah Rules of Civil Procedure.

5790 (4) This section is not applicable to a dispute with respect to a coverage determination  
5791 by an affected guaranty association as part of the affected guaranty association's statutory  
5792 obligations.

5793 Section 100. Section **31A-27a-608** is enacted to read:

5794 **31A-27a-608. Liquidator's recommendations to the receivership court.**

5795 (1) The liquidator shall, from time to time as determined by the liquidator, present to  
5796 the receivership court for approval, reports of claims settled or determined by the liquidator  
5797 under Section 31A-27a-603.

5798 (2) A report required by this section shall include information:

5799 (a) identifying the claim;

5800 (b) the amount of the claim; and

5801 (c) the priority class of the claim.

5802 Section 101. Section **31A-27a-609** is enacted to read:

5803 **31A-27a-609. Claims of codebtor.**

5804 If a creditor does not timely file a proof of the creditor's claim, the following may file a  
5805 proof of the claim:

5806 (1) a person who is liable to the creditor together with the insurer; or

5807 (2) a person who has secured the creditor.

5808 Section 102. Section **31A-27a-610** is enacted to read:

5809 **31A-27a-610. Secured creditor's claims.**

5810 (1) The value of a security held by a secured creditor shall be determined in one of the  
5811 following ways:

5812 (a) by converting the security into money according to the terms of the agreement  
5813 pursuant to which the security is delivered to the creditor; or

5814 (b) by agreement or litigation between the creditor and the liquidator.

5815 (2) (a) The receiver has the first priority to use collateral to reimburse a prepetition loss  
5816 or expense if:

5817 (i) a surety pays a loss or loss adjustment expense under its own surety instrument  
5818 before any petition for a delinquency proceeding;

5819 (ii) the principal posts collateral that remains available to reimburse the loss, the loss  
5820 adjustment expense, or both; and

5821 (iii) at the time of the petition, the collateral posted under this Subsection (2)(a) has not  
5822 been credited against the payments made.

5823 (b) If the principal under a surety bond or a surety undertaking pledges collateral,  
5824 including a guaranty or a letter of credit, to secure the principal's reimbursement obligation to

5825 the insurer, the claim of an obligee or, subject to the discretion of the receiver, completion  
5826 contractor under the surety bond or surety undertaking shall be satisfied first out of the  
5827 collateral or the collateral's proceeds.

5828 (c) In making a distribution to an obligee or completion contractor, the receiver shall  
5829 retain a sufficient reserve for any other potential claim against the collateral under Subsection  
5830 (2)(b).

5831 (d) If the collateral is insufficient to satisfy in full all potential claims against it under  
5832 Subsections (2)(b) and (f):

5833 (i) the claims shall be paid on a pro rata basis; and

5834 (ii) the obligees or completion contractor shall have claims, subject to allowance  
5835 pursuant to Section 31A-27a-603, for any deficiency.

5836 (e) If the time to assert a claim against a surety bond or a surety undertaking expires  
5837 and all claims have been satisfied in full, any remaining collateral for the surety bond or surety  
5838 undertaking shall be returned to the principal.

5839 (f) (i) To the extent that a guaranty association has made a payment relating to a claim  
5840 against a surety bond, the guaranty association shall first be reimbursed for the payment and  
5841 related expenses out of the available collateral or proceeds related to the surety bond.

5842 (ii) To the extent the collateral is sufficient, the guaranty association will be reimbursed  
5843 for 100% of the guaranty association's payment.

5844 (iii) If the collateral is insufficient to satisfy in full all potential claims against it under  
5845 this Subsection (2)(f) and Subsection (2)(b), the one or more guaranty associations that pay  
5846 claims on a surety bond:

5847 (A) are entitled to a pro rata share of the available collateral in accordance with  
5848 Subsection (2)(d); and

5849 (B) have claims against the general assets of the estate in accordance with Section  
5850 31A-27a-603 for any deficiency.

5851 (iv) A payment made to a guaranty association from the collateral may not be  
5852 considered early access or otherwise considered a distribution out of the general assets or  
5853 property of the estate.

5854 (v) A guaranty association shall subtract any payment from the collateral from the  
5855 guaranty association's final claims against the estate.

5856 (3) (a) The amount determined pursuant to Subsection (1) shall be credited upon the  
5857 secured claim, and the claimant may file a proof of claim, subject to the other provisions of this  
5858 chapter, for any deficiency, which shall be treated as an unsecured claim.

5859 (b) If the claimant surrenders the claimant's security to the liquidator, the entire claim  
5860 shall be treated as if unsecured.

5861 (4) The liquidator may recover from property securing an allowed secured claim the  
5862 reasonable, necessary costs and expenses of preserving, or disposing of, the property to the  
5863 extent of any benefit to the holder of the allowed secured claim.

5864 Section 103. Section **31A-27a-611** is enacted to read:

5865 **31A-27a-611. Qualified financial contracts.**

5866 (1) As used in this section:

5867 (a) (i) "Actual direct compensatory damages" does not include:

5868 (A) punitive or exemplary damages;

5869 (B) damages for lost profit or lost opportunity; or

5870 (C) damages for pain and suffering.

5871 (ii) "Actual direct compensatory damages" includes:

5872 (A) normal and reasonable costs of cover; or

5873 (B) other reasonable measures of damages used in the derivatives, securities, or other  
5874 market for the contract or agreement claim.

5875 (b) "Business day" means a day other than:

5876 (i) a Saturday;

5877 (ii) a Sunday; or

5878 (iii) day on which either the New York Stock Exchange or the Federal Reserve Bank of  
5879 New York is closed.

5880 (c) "Contractual right" includes:

5881 (i) a right set forth:

5882 (A) in a rule or bylaw of:

5883 (I) a derivatives clearing organization, as defined in the Commodity Exchange Act, 7  
5884 U.S.C. Sec.1 et seq.;

5885 (II) a multilateral clearing organization, as defined in the Federal Deposit Insurance  
5886 Corporation Improvement Act of 1991, 12 U.S.C. Sec. 4421;

- 5887 (III) a national securities exchange;  
5888 (IV) a national securities association;  
5889 (V) a securities clearing agency;  
5890 (VI) a contract market designated under the Commodity Exchange Act, 7 U.S.C. Sec. 1  
5891 et seq.;  
5892 (VII) a derivatives transaction execution facility registered under the Commodity  
5893 Exchange Act, 7 U.S.C. Sec. 1 et seq.; or  
5894 (VIII) a board of trade, as defined in the Commodity Exchange Act, 7 U.S.C. Sec. 1 et  
5895 seq.; or  
5896 (B) in a resolution of the governing board of an entity described in Subsection  
5897 (1)(c)(i)(A); and  
5898 (ii) a right, whether or not evidenced in writing, arising:  
5899 (A) under statutory or common law;  
5900 (B) under law merchant; or  
5901 (C) by reason of normal business practice.  
5902 (d) For purposes of Subsection (3), "walkaway clause" means a provision in a qualified  
5903 financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in  
5904 whole or in part, or does not create a payment obligation of a party that would otherwise exist:  
5905 (i) solely because of:  
5906 (A) the party's status as a nondefaulting party in connection with the insolvency of an  
5907 insurer that is subject to this chapter and a party to the contract; or  
5908 (B) the appointment of or the exercise of rights or powers by a receiver of an insurer  
5909 that is subject to this chapter and a party to the contract; and  
5910 (ii) not as a result of a party's exercise of any right to offset, setoff, or net obligations  
5911 that exist under:  
5912 (A) the contract;  
5913 (B) any other contract between those parties; or  
5914 (C) applicable law.  
5915 (2) Notwithstanding any other provision of this chapter, including any provision of this  
5916 chapter permitting the modification of a contract, or other law of a state:  
5917 (a) a person may not be stayed or prohibited from exercising:

5918 (i) a contractual right to cause the termination, liquidation, acceleration, or close out of  
5919 an obligation under or in connection with a netting agreement or qualified financial contract  
5920 with an insurer because of:

5921 (A) the insolvency, financial condition, or default of the insurer at any time, if the right  
5922 is enforceable under applicable law other than this chapter; or

5923 (B) the commencement of a formal delinquency proceeding under this chapter;

5924 (ii) a right under any of the following relating to one or more netting agreements or  
5925 qualified financial contracts:

5926 (A) a pledge agreement or arrangement;

5927 (B) a security agreement or arrangement;

5928 (C) a collateral agreement or arrangement;

5929 (D) a reimbursement agreement or arrangement;

5930 (E) a guarantee agreement or arrangement;

5931 (F) any other similar security agreement or arrangement; or

5932 (G) other credit enhancement; or

5933 (iii) subject to Subsection 31A-27a-510(2), a right to set off or net out any termination  
5934 value, payment amount, or other transfer obligation arising under or in connection with one or  
5935 more qualified financial contracts where the counterparty or its guarantor is organized under  
5936 the laws of:

5937 (A) the United States;

5938 (B) a state; or

5939 (C) a foreign jurisdiction approved by the Securities Valuation Office of the National  
5940 Association of Insurance Commission as eligible for netting; or

5941 (b) if a counterparty to a master netting agreement or a qualified financial contract with  
5942 an insurer subject to a proceeding under this chapter terminates, liquidates, closes out, or  
5943 accelerates the master netting agreement or qualified financial contract:

5944 (i) damages shall be measured as of the date or dates of termination, liquidation, close  
5945 out, or acceleration; and

5946 (ii) the amount of a claim for damages shall be actual direct compensatory damages  
5947 calculated in accordance with Subsection (7).

5948 (3) (a) Upon termination of a netting agreement or qualified financial contract, the net



5949 or settlement amount, if any, owed by a nondefaulting party to an insurer against which an  
5950 application or petition is filed under this chapter shall be transferred to or on the order of the  
5951 receiver for the insurer:

5952 (i) even if the insurer is the defaulting party; and

5953 (ii) notwithstanding any walkaway clause in the netting agreement or qualified  
5954 financial contract.

5955 (b) (i) A limited two-way payment or first method provision in a netting agreement or  
5956 qualified financial contract with an insurer that defaults is considered to be a full two-way  
5957 payment or second method provision as against the defaulting insurer.

5958 (ii) Property or an amount described in this Subsection (3)(b) shall, except to the extent  
5959 it is subject to one or more secondary liens or encumbrances or rights of netting or setoff, be a  
5960 general asset of the insurer.

5961 (4) In making a transfer of a netting agreement or qualified financial contract of an  
5962 insurer subject to a proceeding under this chapter, the receiver shall either:

5963 (a) transfer to one party, other than an insurer subject to a proceeding under this  
5964 chapter, all netting agreements and qualified financial contracts between a counterparty or an  
5965 affiliate of the counterparty and the insurer that is the subject of the proceeding, including:

5966 (i) all rights and obligations of each party under each netting agreement and qualified  
5967 financial contract; and

5968 (ii) all property, including any guarantees or other credit enhancement, securing any  
5969 claims of each party under each netting agreement and qualified financial contract; or

5970 (b) transfer none of the netting agreements, qualified financial contracts, rights,  
5971 obligations, or property referred to in Subsection (4)(a) with respect to the counterparty and an  
5972 affiliate of the counterparty.

5973 (5) If a receiver for an insurer makes a transfer of one or more netting agreements or  
5974 qualified financial contracts, the receiver shall use its best efforts to notify any person who is  
5975 party to the netting agreements or qualified financial contracts of the transfer by 12 noon, the  
5976 receiver's local time, on the business day following the transfer.

5977 (6) (a) Notwithstanding any other provision of this chapter and except for Subsection  
5978 (6)(b), a receiver may not avoid a transfer of money or other property arising under or in  
5979 connection with any of the following that is made before the commencement of a formal

5980 delinquency proceeding under this chapter:

5981 (i) a netting agreement;

5982 (ii) a qualified financial contract; or

5983 (iii) one of the following relating to a netting agreement or qualified financial contract:

5984 (A) a pledge agreement;

5985 (B) a security agreement;

5986 (C) a collateral agreement;

5987 (D) a guarantee agreement;

5988 (E) any other similar security arrangement; or

5989 (F) a credit support document.

5990 (b) A transfer may be avoided under Subsection 31A-27a-507(1) if the transfer is made  
5991 with actual intent to hinder, delay, or defraud:

5992 (i) the insurer;

5993 (ii) a receiver appointed for the insurer; or

5994 (iii) an existing or future creditor.

5995 (7) (a) In exercising the rights of disaffirmance or repudiation of a receiver with respect  
5996 to a netting agreement or qualified financial contract to which an insurer is a party, the receiver  
5997 for the insurer shall either:

5998 (i) disaffirm or repudiate all netting agreements and qualified financial contracts  
5999 between a counterparty or an affiliate of the counterparty and the insurer that is the subject of  
6000 the proceeding; or

6001 (ii) disaffirm or repudiate none of the netting agreements and qualified financial  
6002 contracts referred to in Subsection (7)(a)(i) with respect to the person or an affiliate of the  
6003 person.

6004 (b) Notwithstanding any other provision of this chapter, a claim of a counterparty  
6005 against the estate arising from the receiver's disaffirmance or repudiation of a netting  
6006 agreement or qualified financial contract that has not been previously affirmed in the  
6007 liquidation or immediately preceding rehabilitation case shall be determined and shall be  
6008 allowed or disallowed:

6009 (i) as if the claim arose before the day on which the petition for liquidation is filed; or

6010 (ii) if a rehabilitation proceeding is converted to a liquidation proceeding, as if the

6011 claim had arisen before the day on which the petition for rehabilitation is filed.

6012 (c) The amount of a claim shall be the actual direct compensatory damages determined  
6013 as of the date of the disaffirmance or repudiation of the netting agreement or qualified financial  
6014 contract.

6015 (8) This section does not apply to a person who is an affiliate of the insurer that is the  
6016 subject of the proceeding.

6017 (9) All rights of a counterparty under this chapter apply to a netting agreement or  
6018 qualified financial contract entered into on behalf of the general account or separate accounts if  
6019 the assets of each separate account are available only to counterparties to netting agreements  
6020 and qualified financial contracts entered into on behalf of that separate account.

6021 (10) (a) The definition of "qualified financial contract" in Section 31A-27a-102 shall  
6022 be interpreted to be consistent with the definitions applicable under federal law in instances of  
6023 insolvency of other types of financial institutions.

6024 (b) The definition of "qualified financial contract" and this section do not:

6025 (i) affect the scope of permissible investments of insurers or the valuation of those  
6026 investments; or

6027 (ii) modify any other regulatory framework applicable to investments or investment  
6028 practices of insurers.

6029 Section 104. Section **31A-27a-612** is enacted to read:

6030 **31A-27a-612. Administration of deductible policies and insured collateral.**

6031 (1) As used in this section:

6032 (a) "Collateral" means any of the following that secures an insured's obligation to pay  
6033 or to reimburse the insurer for deductible claim payments and to reimburse or pay to the insurer  
6034 other secured obligations:

6035 (i) cash;

6036 (ii) a letter of credit of the insured;

6037 (iii) a surety bond posted by the insured; or

6038 (iv) any other form of security posted by the insured.

6039 (b) "Deductible claim" means a claim, including a loss or allocated loss adjustment  
6040 expense, under a deductible policy within the insured's obligation to pay a portion of a claim or  
6041 claim expense that the insurer is obligated to pay to a person other than the insured by the

6042 deductible policy or by operation of law.

6043 (c) (i) "Deductible limit" means a limit on an amount to be paid or reimbursed by the  
6044 insured under a deductible policy that is equal to or greater than \$5,000.

6045 (ii) A deductible limit may be any amount of the risk exposure before the insurer  
6046 agrees to become liable for the insurance risk without a right of recoupment from the insured  
6047 for the insurer's payment of claims or expenses related to a claim under the deductible policy.

6048 (d) (i) "Deductible policy" means any combination of one or more policies,  
6049 endorsements, contracts, or security agreements in which the insured agrees with the insurer to:

6050 (A) pay directly:

6051 (I) the initial portion of a claim under the policy, endorsement, contract, or agreement  
6052 up to a specified dollar amount; or

6053 (II) the expenses related to a claim; or

6054 (B) reimburse the insurer for the insurer's payment of:

6055 (I) a claim under the policy, endorsement, contract, or agreement up to a specified  
6056 dollar amount; or

6057 (II) the expenses related to a claim.

6058 (ii) "Deductible policy" includes a policy, endorsement, contract, or agreement that  
6059 contains an aggregate limit on the insured's liability for all deductible claims in addition to a  
6060 deductible limit for each claim.

6061 (iii) "Deductible policy" does not include:

6062 (A) a policy, endorsement, contract, or agreement that provides that the initial portion  
6063 of a covered claim shall be self-insured and the insurer has no payment obligation within the  
6064 self-insured retention;

6065 (B) a policy, endorsement, contract, or agreement that provides for retrospectively  
6066 rated premium payments by the insured; or

6067 (C) a reinsurance arrangement or agreement.

6068 (d) "Other secured obligation" means an obligation, such as a reinsurance or  
6069 retrospective premium obligation, that is:

6070 (i) payable by the insured to the insurer; and

6071 (ii) secured by collateral that also secures a deductible obligation.

6072 (e) "Uncovered claim" means a deductible claim that is secured by collateral but that:

6073 (i) is not defined as a covered claim under any relevant guaranty association statute;  
6074 (ii) the insured fails to fund or pay; and  
6075 (iii) is filed with the receiver pursuant to the receivership proof of claim process.  
6076 (2) (a) If an insurer agrees to allow an insured to fund or pay deductible claims directly  
6077 or through a third party administrator, except as prohibited by applicable workers'  
6078 compensation insurance law:  
6079 (i) the insured shall fulfill the insured's obligations notwithstanding a delinquency  
6080 proceeding; and  
6081 (ii) the receiver shall allow the funding or payment agreements to continue  
6082 notwithstanding a delinquency proceeding.  
6083 (b) To the extent the insured funds or pays a deductible claim, the insured's funding or  
6084 payment of a deductible claim:  
6085 (i) bars any deductible claim in a delinquency proceeding including a claim by the  
6086 insured or third party claimant; and  
6087 (ii) extinguishes the obligation, if any, of the receiver or an affected guaranty  
6088 association to pay the deductible claim.  
6089 (c) The insured is responsible for providing timely notice to the receiver and to all  
6090 affected guaranty associations for any claim that may exceed the deductible limit.  
6091 (d) A charge of any kind may not be made against a receiver or an affected guaranty  
6092 association on the basis of an insured's funding or payment of a deductible claim.  
6093 (e) The failure of an insured to fulfill the insured's obligation pursuant to a funding  
6094 agreement entitles the following to the full benefit of all collateral and other rights of recovery  
6095 and reimbursement under the other provisions of this section:  
6096 (i) the receiver that pays a deductible claim; or  
6097 (ii) pursuant to Subsection (6)(b), an affected guaranty association that pays a  
6098 deductible claim.  
6099 (3) Any reimbursement owed to an insurer under a deductible policy issued by an  
6100 insurer subject to a delinquency proceeding shall be administered as follows:  
6101 (a) (i) A reimbursement from an insured for the payment of a deductible claim is a  
6102 general asset of the estate to the extent that:  
6103 (A) the insolvent insurer is owed reimbursement for deductible payments made before

6104 the entry of a final order of liquidation; or  
6105 (B) the receiver is owed reimbursement for a deductible payment.  
6106 (ii) The receiver shall determine if a reimbursement is a general asset of the estate in  
6107 accordance with this section.  
6108 (b) The receiver shall bill an insured for reimbursement of a deductible claim:  
6109 (i) paid by the insurer before the commencement of delinquency proceedings;  
6110 (ii) paid by an affected guaranty association upon receipt of notice of a reimbursable  
6111 payment; or  
6112 (iii) paid or allowed by the receiver.  
6113 (c) The receiver may take all commercially reasonable actions necessary to collect a  
6114 reimbursement owed if the insured does not make payment within:  
6115 (i) the time specified in the deductible policy; or  
6116 (ii) within 60 days after the day of billing if no time is specified in the deductible  
6117 policy.  
6118 (d) The following is not a defense to the insured's reimbursement obligation under a  
6119 deductible policy:  
6120 (i) the insolvency of the insurer;  
6121 (ii) the insurer's inability to perform any of the insurer's obligations under a deductible  
6122 policy; or  
6123 (iii) an allegation of improper handling or payment of a deductible claim by:  
6124 (A) the insurer;  
6125 (B) the receiver;  
6126 (C) an affected guaranty association; or  
6127 (D) any combination of Subsections (3)(d)(iii)(A) through (C).  
6128 (4) The receiver shall adjust and pay uncovered claims as provided in Subsection (5).  
6129 The receiver's obligation under this Subsection (4) terminates once all available collateral is  
6130 exhausted. Once all available collateral is exhausted, any unpaid uncovered claims shall  
6131 continue to be handled as a proof of claim in the receivership estate.  
6132 (5) (a) (i) Except where a deductible policy or other agreement conflicts with this  
6133 section, any collateral held by an insurer subject to a delinquency proceeding under this chapter  
6134 held under a deductible policy issued by the insurer, held for other secured obligations, or held

6135 under both shall be maintained and administered in accordance with:

6136 (A) the deductible policy;

6137 (B) any applicable security agreement;

6138 (C) any agreement regarding other secured obligations; or

6139 (D) any applicable combination of the deductible policy and other agreement.

6140 (ii) This Subsection (5) applies to collateral regardless of whether the collateral is held  
6141 by, for the benefit of, or assigned to the insurer under a deductible policy, agreement, or other  
6142 secured obligation.

6143 (b) (i) Subject to this Subsection (5), collateral shall be used to secure the insured's  
6144 obligation to fund or reimburse deductible claims or other secured obligations or other payment  
6145 obligations under Subsection (8).

6146 (ii) Collateral shall be considered as property of the receivership estate solely for the  
6147 purpose of the receiver administering and handling the collateral.

6148 (iii) Collateral may not be considered as a general asset of the estate, except as  
6149 provided in Subsections (6)(b) and (8).

6150 (c) (i) Subject to Subsection (5)(c)(ii), collateral held to secure the insured's  
6151 performance of obligations is a general asset of the estate to the extent that:

6152 (A) the insurer pays or has paid a deductible claim before the day on which a final  
6153 order of liquidation is entered and the deductible is not reimbursed by the insured;

6154 (B) the receiver pays or has paid a deductible claim; or

6155 (C) the insured fails to pay or reimburse to the insurer other secured obligations to the  
6156 extent the payment or reimbursement is due or payable before the day on which a final order of  
6157 liquidation is entered and remains unpaid.

6158 (ii) The receiver shall determine the extent that collateral described in this Subsection  
6159 (5)(c) is a general asset.

6160 (d) The receiver shall draw down collateral to the extent necessary if the insured fails  
6161 to:

6162 (i) perform the insured's funding or payment obligations under any deductible policy;

6163 (ii) pay deductible reimbursements within:

6164 (A) the time specified in the deductible policy; or

6165 (B) 60 days after the date of the billing if no time is specified in the deductible policy;

6166 (iii) timely fund any other secured obligation; or  
6167 (iv) timely pay expenses defined in Subsection (8).  
6168 (e) (i) The receiver shall first apply or reserve collateral to the insured's obligations  
6169 referenced in Subsection (6)(b).  
6170 (ii) The receiver shall use any collateral remaining after the application of Subsection  
6171 (5)(e)(i) to:  
6172 (A) reimburse deductible claims submitted by an affected guaranty association;  
6173 (B) adjust and pay uncovered claims allowed by the liquidator;  
6174 (C) pay other secured obligations of the insured that become due and payable after the  
6175 date of liquidation; or  
6176 (D) pay expenses as defined in Subsection (8).  
6177 (iii) The receiver shall:  
6178 (A) use collateral under Subsection (5)(e)(ii) in the order that the deductible claims or  
6179 charges against the collateral listed in Subsection (5)(e)(ii) are received and accepted by the  
6180 receiver; and  
6181 (B) continue until all valid deductible claims or charges are fully reimbursed or paid or  
6182 the collateral is exhausted.  
6183 (iv) If there are amounts payable or reimbursable under this Subsection (5)(e) and the  
6184 receiver for any reason has been precluded from drawing the collateral, the receiver may  
6185 establish a reserve against the collateral for those amounts. Only the collateral exceeding the  
6186 reserve shall be considered remaining collateral under this Subsection (5)(e).  
6187 (f) Once all claims, other secured obligations, or expenses under Subsection (8)  
6188 covered by collateral have been paid and the receiver is satisfied that no new claims, other  
6189 secured obligations, or expenses under Subsection (5)(e) may be presented, the receiver shall  
6190 release any remaining collateral to the insured in accordance with the deductible policy or  
6191 agreement relating to other secured obligations.  
6192 (6) To the extent an affected guaranty association pays a deductible claim for which the  
6193 insurer would have been entitled to reimbursement from the insured, the following provisions  
6194 apply:  
6195 (a) (i) When an affected guaranty association pays a deductible claim, the affected  
6196 guaranty association shall report the claim to the receiver.



6197 (ii) The receiver shall collect from the insured all deductible amounts due as  
6198 reimbursement. Subject to Subsection (8), when the insured reimbursements are collected, the  
6199 receiver shall reimburse the affected guaranty association for deductible claims.

6200 (iii) A reimbursement paid to the affected guaranty association pursuant to this  
6201 Subsection (6)(a) may not be treated as a distribution under Section 31A-27a-703 or as an early  
6202 access payment under Section 31A-27a-704.

6203 (iv) If an affected guaranty association pays a deductible claim that is also subject to  
6204 reimbursement under statutory net worth provisions, the affected guaranty association shall:

6205 (A) bill the insured directly;

6206 (B) notify the insurer of the payment; and

6207 (C) notify the receiver of any receipt of a reimbursement under net worth provisions,

6208 which shall be credited against the insured's deductible reimbursement obligations to the extent  
6209 that the reimbursement applies to deductible claims.

6210 (b) (i) This Subsection (6)(b) applies if:

6211 (A) the receiver declines to seek reimbursement from the insured or from any available  
6212 collateral;

6213 (B) the receiver is unsuccessful in obtaining reimbursement from the insured or from  
6214 any available collateral; or

6215 (C) the receiver fails to take available commercially reasonable actions to collect a  
6216 reimbursement owed.

6217 (ii) The receiver shall notify an affected guaranty association if the receiver declines to  
6218 seek or is unsuccessful in obtaining reimbursement from the insured or from any available  
6219 collateral.

6220 (iii) If a condition described in Subsection (6)(b)(i) exists, notwithstanding whether the  
6221 affected guaranty association receives the notice required by Subsection (6)(b)(ii), an affected  
6222 guaranty association:

6223 (A) may, after notice to the receiver, collect a reimbursement due from the insured for  
6224 the deductible claims the affected guaranty association has paid:

6225 (I) on the same basis as the receiver; and

6226 (II) with the same rights and remedies; and

6227 (B) shall report any amounts collected under Subsection (6)(b)(iii)(A) from each

6228 insured to the receiver.

6229 (iv) The receiver shall provide an affected guaranty association with available  
6230 information needed to collect a reimbursement due from the insured.

6231 (v) When an affected guaranty association undertakes to collect reimbursements from  
6232 the insured, the affected guaranty association shall notify all other guaranty associations who  
6233 have paid deductible claims on behalf of the same insured that this action is being taken.

6234 (vi) An amount collected by the affected guaranty association pursuant to this  
6235 Subsection (6)(b) may not be treated as a distribution under Section 31A-27a-703 or as an early  
6236 access payment under Section 31A-27a-704.

6237 (vii) An affected guaranty association may net an expense incurred in collecting a  
6238 reimbursement against that reimbursement.

6239 (c) The receiver shall provide any affected guaranty associations with periodic reports  
6240 concerning the receiver's activities in discharging responsibilities under this section, which  
6241 shall include an accounting for the receiver's deductible billing and collection activities.

6242 (d) To the extent that an affected guaranty association pays a deductible claim that is  
6243 not reimbursed either from collateral or by insured payments, the affected guaranty association  
6244 has a claim for those amounts in the delinquency proceeding. Any claim by an affected  
6245 guaranty association shall be reduced by reimbursed or unreimbursed expenses described in  
6246 Subsection (8) incurred by the receiver.

6247 (e) (i) If any collateral is held under a deductible policy at the time the receiver files an  
6248 application to terminate the delinquency proceeding, and it appears that an additional  
6249 deductible claim may be payable by an affected guaranty association under the deductible  
6250 policy, the receiver shall:

6251 (A) transfer to an affected guaranty association the portion of the collateral that is  
6252 reasonably estimated to be necessary to pay the deductible claim; and

6253 (B) release any remaining portion of the collateral to the insured.

6254 (ii) An affected guaranty association shall handle any collateral transferred from the  
6255 receiver as provided in this section.

6256 (f) Nothing in this Subsection (6) limits any rights of the receiver or an affected  
6257 guaranty association under applicable statutory law to obtain reimbursement from an insured  
6258 for a claims payment made by the affected guaranty association under a policy of the insurer or

6259 for the affected guaranty association's related expenses.

6260 (7) (a) The receiver shall periodically adjust the collateral being held using accepted  
6261 actuarial principles and practices.

6262 (b) The receiver may impose a discretionary safety margin for collateral maintained.

6263 (c) The receiver may not be required to review collateral more than once a year.

6264 (d) The receiver shall inform any affected guaranty association and the insured of any  
6265 collateral reviews, including the basis for any proposed adjustment.

6266 (8) The receiver may do the following in relation to reasonable expenses incurred in  
6267 fulfilling the receiver's responsibilities under this section:

6268 (a) deduct the expense from reimbursements;

6269 (b) deduct the expense from the collateral; or

6270 (c) recover the expense through billings to the insured.

6271 (9) (a) A receiver shall meet the receiver's obligations under this section in a timely  
6272 manner.

6273 (b) If an affected guaranty association believes that a receiver is not meeting an  
6274 obligation under this section in a timely manner, upon motion by an affected guaranty  
6275 association, a receivership court may grant relief to the affected guaranty association if the  
6276 receivership court finds that the receiver is not meeting an obligation under this section in a  
6277 timely manner.

6278 Section 105. Section **31A-27a-701** is enacted to read:

6279 **Part 7. Distributions**

6280 **31A-27a-701. Priority of distribution.**

6281 (1) (a) The priority of payment of distributions on unsecured claims shall be in  
6282 accordance with the order in which each class of claim is set forth in this section except as  
6283 provided in Section 31A-27a-702.

6284 (b) All claims in each class shall be paid in full or adequate funds retained for the  
6285 claim's payment before a member of the next class receives payment.

6286 (c) All claims within a class shall be paid substantially the same percentage.

6287 (d) Except as provided in Subsections (2)(a)(i)(E), (2)(k), and (2)(m), subclasses may  
6288 not be established within a class.

6289 (e) A claim by a shareholder, policyholder, or other creditor may not be permitted to

6290 circumvent the priority classes through the use of equitable remedies.

6291 (2) The order of distribution of claims shall be as follows:

6292 (a) a Class 1 claim, which:

6293 (i) is a cost or expense of administration expressly approved or ratified by the

6294 liquidator, including the following:

6295 (A) the actual and necessary costs of preserving or recovering the property of the

6296 insurer;

6297 (B) reasonable compensation for all services rendered on behalf of the administrative

6298 supervisor or receiver;

6299 (C) a necessary filing fee;

6300 (D) the fees and mileage payable to a witness;

6301 (E) an unsecured loan obtained by the receiver, which:

6302 (I) unless its terms otherwise provide, has priority over all other costs of

6303 administration; and

6304 (II) absent agreement to the contrary, shares pro rata with all other claims described in

6305 this Subsection (2)(a)(i)(E); and

6306 (F) an expense approved by the rehabilitator of the insurer, if any, incurred in the

6307 course of the rehabilitation that is unpaid at the time of the entry of the order of liquidation; and

6308 (ii) except as expressly approved by the receiver, excludes any expense arising from a

6309 duty to indemnify a director, officer, or employee of the insurer which expense, if allowed, is a

6310 Class 7 claim;

6311 (b) a Class 2 claim, which:

6312 (i) is a reasonable expense of a guaranty association, including overhead, salaries, or

6313 other general administrative expenses allocable to the receivership such as:

6314 (A) an administrative or claims handling expense;

6315 (B) an expense in connection with arrangements for ongoing coverage; and

6316 (C) in the case of a property and casualty guaranty association, a loss adjustment

6317 expense, including:

6318 (I) an adjusting or other expense; and

6319 (II) a defense or cost containment expense; and

6320 (ii) excludes an expense incurred in the performance of duties under Section

6321 31A-28-112 or similar duties under the statute governing a similar organization in another  
6322 state;

6323 (c) a Class 3 claim, which:

6324 (i) is:

6325 (A) a claim under a policy of insurance including a third party claim;

6326 (B) a claim under an annuity contract or funding agreement;

6327 (C) a claim under a nonassessable policy for unearned premium;

6328 (D) a claim of an obligee and, subject to the discretion of the receiver, a completion  
6329 contractor under a surety bond or surety undertaking, except for:

6330 (I) a bail bond;

6331 (II) a mortgage guaranty;

6332 (III) a financial guaranty; or

6333 (IV) other form of insurance offering protection against investment risk or warranties;

6334 (E) a claim by a principal under a surety bond or surety undertaking for wrongful  
6335 dissipation of collateral by the insurer or its agents;

6336 (F) an indemnity payment on:

6337 (I) a covered claim;

6338 (II) unearned premium; or

6339 (III) a payment for the continuation of coverage made by an entity responsible for the  
6340 payment of a claim or continuation of coverage of an insolvent health maintenance  
6341 organization;

6342 (G) a claim incurred during the extension of coverage provided for in Sections  
6343 31A-27a-402 and 31A-27a-403; or

6344 (H) all other claims incurred in fulfilling the statutory obligations of a guaranty  
6345 association not included in Class 2, including:

6346 (I) an indemnity payment on covered claims; and

6347 (II) in the case of a life and health guaranty association, a claim:

6348 (Aa) as a creditor of the impaired or insolvent insurer for a payment of and liabilities  
6349 incurred on behalf of a covered claim or covered obligation of the insurer; and

6350 (Bb) for the funds needed to reinsure the obligations described under this Subsection  
6351 (2)(c)(i)(H)(II) with a solvent insurer; and

6352 (ii) notwithstanding any other provision of this chapter, excludes the following which  
6353 shall be paid under Class 7, except as provided in this section:

6354 (A) an obligation of the insolvent insurer arising out of a reinsurance contract;  
6355 (B) an obligation that is incurred pursuant to an occurrence policy or reported pursuant  
6356 to a claims made policy after:

6357 (I) the expiration date of the policy;  
6358 (II) the policy is replaced by the insured;  
6359 (III) the policy is canceled at the insured's request; or  
6360 (IV) the policy is canceled as provided in this chapter;

6361 (C) an obligation to an insurer, insurance pool, or underwriting association and the  
6362 insurer's, insurance pool's, or underwriting association's claim for contribution, indemnity, or  
6363 subrogation, equitable or otherwise, except for direct claims under a policy where the insurer is  
6364 the named insured;

6365 (D) an amount accrued as punitive or exemplary damages unless expressly covered  
6366 under the terms of the policy, which shall be paid as a claim in Class 9;

6367 (E) a tort claim of any kind against the insurer;  
6368 (F) a claim against the insurer for bad faith or wrongful settlement practices; and  
6369 (G) a claim of a guaranty association for assessments not paid by the insurer, which  
6370 claims shall be paid as claims in Class 7; and

6371 (iii) notwithstanding Subsection (2)(c)(ii)(B), does not exclude an unearned premium  
6372 claim on a policy, other than a reinsurance agreement;

6373 (d) a Class 4 claim, which is a claim under a policy for mortgage guaranty, financial  
6374 guaranty, or other forms of insurance offering protection against investment risk or warranties;  
6375 (e) a Class 5 claim, which is a claim of the federal government not included in Class 3  
6376 or 4;

6377 (f) a Class 6 claim, which is a debt due an employee for services or benefits:

6378 (i) to the extent that the expense:

6379 (A) does not exceed the lesser of:

6380 (I) \$5,000; or  
6381 (II) two months' salary; and  
6382 (B) represents payment for services performed within one year before the day on which

6383 the initial order of receivership is issued; and  
6384 (ii) which priority is in lieu of any other similar priority that may be authorized by law  
6385 as to wages or compensation of employees;  
6386 (g) a Class 7 claim, which is a claim of an unsecured creditor not included in Classes 1  
6387 through 6, including:  
6388 (i) a claim under a reinsurance contract;  
6389 (ii) a claim of a guaranty association for an assessment not paid by the insurer; and  
6390 (iii) other claims excluded from Class 3 or 4, unless otherwise assigned to Classes 8  
6391 through 13;  
6392 (h) subject to Subsection (3), a Class 8 claim, which is:  
6393 (i) a claim of a state or local government, except a claim specifically classified  
6394 elsewhere in this section; or  
6395 (ii) a claim for services rendered and expenses incurred in opposing a formal  
6396 delinquency proceeding:  
6397 (i) a Class 9 claim, which is a claim for penalties, punitive damages, or forfeitures,  
6398 unless expressly covered under the terms of a policy of insurance;  
6399 (j) a Class 10 claim, which is, except as provided in Subsections 31A-27a-601(2) and  
6400 31A-27a-601(3), a late filed claim that would otherwise be classified in Classes 3 through 9;  
6401 (k) subject to Subsection (4), a Class 11 claim, which is:  
6402 (i) a surplus note;  
6403 (ii) a capital note;  
6404 (iii) a contribution note;  
6405 (iv) a similar obligation;  
6406 (v) a premium refund on an assessable policy; or  
6407 (vi) any other claim specifically assigned to this class;  
6408 (l) a Class 12 claim, which is a claim for interest on an allowed claim of Classes 1  
6409 through 11, according to the terms of a plan to pay interest on allowed claims proposed by the  
6410 liquidator and approved by the receivership court; and  
6411 (m) subject to Subsection (4), a Class 13 claim, which is a claim of a shareholder or  
6412 other owner arising out of:  
6413 (i) the shareholder's or owner's capacity as shareholder or owner or any other capacity;

6414 and

6415 (ii) except as the claim may be qualified in Class 3, 4, 7, or 12.

6416 (3) To prove a claim described in Class 8, the claimant must show that:

6417 (a) the insurer that is the subject of the delinquency proceeding incurred the fee or  
6418 expense on the basis of the insurer's best knowledge, information, and belief:

6419 (i) formed after reasonable inquiry indicating opposition is in the best interests of the  
6420 insurer;

6421 (ii) that is well grounded in fact; and

6422 (iii) is warranted by existing law or a good faith argument for the extension,  
6423 modification, or reversal of existing law; and

6424 (b) opposition is not pursued for any improper purpose, such as to harass, to cause  
6425 unnecessary delay, or to cause needless increase in the cost of the litigation.

6426 (4) (a) A claim in Class 11 is subject to a subordination agreement related to other  
6427 claims in Class 11 that exist before the entry of a liquidation order.

6428 (b) A claim in Class 13 is subject to a subordination agreement, related to other claims  
6429 in Class 13 that exist before the entry of a liquidation order.

6430 Section 106. Section **31A-27a-702** is enacted to read:

6431 **31A-27a-702. Health maintenance organization claims.**

6432 (1) In the liquidation of a health maintenance organization, a claim for uncovered  
6433 expenditures has priority over a Class 3 claim as provided for in Section 31A-27a-701.

6434 (2) A claim other than one described in Subsection (1) shall follow the priority of  
6435 distribution outlined in Section 31A-27a-701.

6436 Section 107. Section **31A-27a-703** is enacted to read:

6437 **31A-27a-703. Partial and final distributions of assets.**

6438 (1) (a) With the approval of the receivership court, a liquidator may declare and pay:

6439 (i) one or more partial distributions on claims as those claims are allowed; and

6440 (ii) a final distribution.

6441 (b) All claims allowed within a priority class shall be paid at substantially the same  
6442 percentage.

6443 (c) A distribution under this section to a guaranty association is not an advance under  
6444 Section 31A-27a-704.



6445 (2) In determining the percentage of distributions to be paid on a claim, the liquidator  
6446 may consider:

6447 (a) the estimated value of the insurer's property, including estimated reinsurance  
6448 recoverables in connection with the insurer's estimated liabilities for:

6449 (i) unpaid losses and loss expenses; and

6450 (ii) incurred but not reported losses and loss expenses; and

6451 (b) the estimated value of the insurer's liabilities, including estimated liabilities for:

6452 (i) unpaid losses and loss expenses; and

6453 (ii) incurred but not reported losses and loss expenses.

6454 (3) Distribution of property in kind may be made at valuations set by agreement:

6455 (a) between the liquidator and the creditor; and

6456 (b) as approved by the receivership court.

6457 (4) (a) Notwithstanding Subsection (1) and Part 6, Claims, the liquidator may pay  
6458 benefits under a workers' compensation policy after the day on which the liquidation order is  
6459 entered if:

6460 (i) there is an acceptance of liability by the insurer, and no bona fide dispute exists;

6461 (ii) payment is commenced before the entry of the liquidation order; and

6462 (iii) future or past indemnity or medical payments are due.

6463 (b) A claim payment under this Subsection (4) may continue until the applicable  
6464 guaranty association:

6465 (i) assumes responsibility for the claim payments; or

6466 (ii) determines the claim is not a covered claim under its guaranty association law.

6467 (c) A claim payment or related expense made under this Subsection (4) may be treated  
6468 as early access distribution under Section 31A-27a-704 in accordance with an agreement with  
6469 the guaranty association responsible for the payment.

6470 Section 108. Section **31A-27a-704** is enacted to read:

6471 **31A-27a-704. Early access disbursements.**

6472 (1) As used in this section, "distributable assets" means general assets of the  
6473 liquidation estate less:

6474 (a) amounts reserved, to the extent necessary and appropriate, for the entire Subsection  
6475 31A-27a-701(2)(a) expenses of the liquidation through and after the liquidation's closure; and

6476 (b) to the extent necessary and appropriate, reserves for distributions on claims other  
6477 than those of an affected guaranty association falling within the priority classes of claims  
6478 established in Subsection 31A-27a-701(2)(c).

6479 (2) (a) An early access payment to an affected guaranty association shall be made:

6480 (i) as soon as possible after the day on which a liquidation order is entered;

6481 (ii) as frequently as possible after the first early access payment, but at least annually if  
6482 there are distributable assets available to be distributed to the affected guaranty association; and

6483 (iii) in an amount consistent with this section.

6484 (b) An amount advanced to an affected guaranty association pursuant to this section  
6485 shall be accounted for as an advance against distributions to be made under Section  
6486 31A-27a-703.

6487 (c) (i) Subject to Subsection (2)(c)(ii), if sufficient distributable assets are available,  
6488 amounts advanced need not be limited to the claims and expenses paid to date by the affected  
6489 guaranty association.

6490 (ii) Notwithstanding Subsection (2)(c)(i), the liquidator may not distribute distributable  
6491 assets to an affected guaranty association in excess of the anticipated entire claims of the  
6492 affected guaranty association falling within the priority classes of claims established in  
6493 Subsections 31A-27a-701(2)(b) and 31A-27a-701(2)(c).

6494 (3) (a) Within 180 days after the day on which an order of liquidation is entered by the  
6495 receivership court, and at least annually after that date, the liquidator shall:

6496 (i) apply to the receivership court for approval to make early access payments out of  
6497 the general assets of the insurer to an affected guaranty association having an obligation arising  
6498 in connection with the liquidation; or

6499 (ii) report that the liquidator has determined that there are no distributable assets at that  
6500 time based on financial reporting as required in Section 31A-27a-117.

6501 (b) The liquidator may apply to the receivership court for approval to make early  
6502 access payments more frequently than annually based on additional information or the recovery  
6503 of material assets.

6504 (4) Within 60 days after the day on which the receivership court approves an  
6505 application under Subsection (3), the liquidator shall make an early access payment to an  
6506 affected guaranty association as indicated in the approved application.

6507 (5) (a) Notice of each application for early access payments, or of a report required  
6508 pursuant to this section, shall be given in accordance with Section 31A-27a-107 to the affected  
6509 guaranty associations.

6510 (b) Notwithstanding Section 31A-27a-107, the liquidator shall provide the affected  
6511 guaranty associations described in Subsection (5)(a) with at least 30 days actual notice of the  
6512 filing of the application with a complete copy of the application before any action by the  
6513 receivership court.

6514 (c) An affected guaranty association may:

6515 (i) request additional information from the liquidator, who may not unreasonably deny  
6516 the request; and

6517 (ii) object as provided in Section 31A-27a-107 to:

6518 (A) any part of each application; or

6519 (B) any report filed by the liquidator pursuant to this section.

6520 (6) In each application regarding early access payments, the liquidator shall, based on  
6521 the best information available to the liquidator at the time of the application, provide at a  
6522 minimum:

6523 (a) to the extent necessary and appropriate, the amount reserved for:

6524 (i) the entire expenses of the liquidation through and after the liquidation's closure; and

6525 (ii) distributions on claims falling within the priority classes of claims established in  
6526 Subsections 31A-27a-701(2)(b) and (2)(c);

6527 (b) the calculation of distributable assets;

6528 (c) the amount and method of equitable allocation of early access payments to each  
6529 affected guaranty association; and

6530 (d) the most recent financial information filed with the receivership court by the  
6531 liquidator.

6532 (7) (a) Each affected guaranty association that receives a payment pursuant to this  
6533 section agrees, upon depositing the payment in any account to its benefit, to return to the  
6534 liquidator any amount of these payments that may be required to pay:

6535 (i) a claim of a secured creditor; or

6536 (ii) a claim falling within the priority classes of claims established in Subsection  
6537 31A-27a-701(2)(a), (2)(b), or (2)(c).

6538 (b) A bond may not be required of an affected guaranty association.

6539 (8) Without the consent of an affected guaranty association or an order of the  
6540 receivership court, the liquidator may not offset the amount to be disbursed to the affected  
6541 guaranty association by the amount of any special deposit, any other statutory deposit, or any  
6542 asset of the insolvent insurer held in that state unless the affected guaranty association actually  
6543 receives the deposit or asset.

6544 Section 109. Section **31A-27a-705** is enacted to read:

6545 **31A-27a-705. Unclaimed and withheld funds.**

6546 (1) (a) If any funds of the receivership estate remain unclaimed after the final  
6547 distribution under Section 31A-27a-703, the funds shall be placed in a segregated unclaimed  
6548 funds account held by the commissioner.

6549 (b) If the owner of any of the funds described in Subsection (1)(a) presents proof of  
6550 ownership satisfactory to the commissioner within two years after the day on which the  
6551 delinquency proceeding terminates, the commissioner shall remit the funds to the owner.

6552 (c) The interest earned on funds held in the unclaimed funds account may be used to  
6553 pay any administrative costs related to the handling or return of unclaimed funds.

6554 (2) (a) If any amounts held in the unclaimed funds account remain unclaimed for two  
6555 years after the day on which the delinquency proceeding terminates, the commissioner may file  
6556 a motion for an order directing the disposition of the funds in the court in which the  
6557 delinquency proceeding was pending.

6558 (b) Any costs incurred in connection with the motion made under this Subsection (2)  
6559 may be paid from the unclaimed funds account.

6560 (c) A motion under this Subsection (2) shall identify:

6561 (i) the name of the insurer;

6562 (ii) the names and last-known addresses of the one or more persons entitled to the  
6563 unclaimed funds, if known; and

6564 (iii) the amount of the funds.

6565 (d) Notice of the motion shall be given as directed by the court.

6566 (e) Upon a finding by the court that the funds have not been claimed within two years  
6567 after the day on which the delinquency proceeding terminates:

6568 (i) the court shall order that a claim for unclaimed funds, and any interest earned on the

6569 claim that has not been expended under Subsection (1), is abandoned; and  
6570 (ii) the funds shall be disbursed under one of the following methods, the amounts may  
6571 be:  
6572 (A) deposited in the general receivership expense account under Subsection (3);  
6573 (B) transferred to the state treasurer and deposited into the General Fund; or  
6574 (C) (I) used to reopen the receivership in accordance with Section 31A-27a-803; and  
6575 (II) distributed to the known claimants with approved claims.  
6576 (3) The commissioner may establish an account for the following purposes:  
6577 (a) to pay general expenses related to the administration of receiverships; or  
6578 (b) to advance funds to a receivership that does not have sufficient cash to pay its  
6579 operating expenses.  
6580 (4) Any advance to a receivership estate under Subsection (3)(b) may be treated:  
6581 (a) as a claim under Section 31A-27a-701 as may be agreed at the time the advance is  
6582 made; or  
6583 (b) in the absence of an agreement described in Subsection (4)(a), in a priority  
6584 determined to be appropriate by the receivership court.  
6585 (5) If the commissioner determines at any time that the funds in the account created in  
6586 Subsection (3) exceed the amount required, the commissioner may transfer the funds or any  
6587 part of the funds to the state treasurer, and the transferred funds shall be deposited into the  
6588 General Fund.

6589 Section 110. Section **31A-27a-801** is enacted to read:

6590 **Part 8. Discharge**

6591 **31A-27a-801. Condition on release from delinquency proceedings.**

6592 (1) Unless otherwise provided in a plan approved by the guaranty associations, an  
6593 insurer that is subject to a rehabilitation proceeding may not take an action listed in Subsection  
6594 (2) until all payments by all guaranty associations of or on account of the insurer's contractual  
6595 obligations are repaid to the guaranty associations with:

6596 (a) all expenses related to the payments by all guaranty associations of or on account of  
6597 the insurer's contractual obligations; and  
6598 (b) interest on all the payments.  
6599 (2) Until an insurer that is subject to a rehabilitation proceeding complies with

6600 Subsection (1), the insurer may not:

6601 (a) be permitted to:

6602 (i) solicit or accept new business; or

6603 (ii) request or accept the restoration of any suspended or revoked license or certificate

6604 of authority;

6605 (b) be returned to the control of its shareholders or private management; or

6606 (c) have any of its assets returned to the control of its shareholders or private

6607 management.

6608 Section 111. Section **31A-27a-802** is enacted to read:

6609 **31A-27a-802. Discharge of liquidator and termination of liquidation proceedings.**

6610 (1) When all property justifying the expense of collection and distribution is collected

6611 and distributed under this chapter, the liquidator shall apply to the receivership court for an

6612 order discharging the liquidator and terminating the proceeding.

6613 (2) The receivership court may grant the application and make any other orders,

6614 including orders to:

6615 (a) transfer any remaining funds that are uneconomic to distribute; or

6616 (b) pursuant to Subsection 31A-27a-703(3), assign an asset that remains unliquidated,

6617 including a claim or cause of action, as may be considered appropriate.

6618 Section 112. Section **31A-27a-803** is enacted to read:

6619 **31A-27a-803. Reopening liquidation.**

6620 (1) After a liquidation proceeding is terminated and the liquidator discharged, the

6621 commissioner may at any time petition the court that was the receivership court to reopen the

6622 proceedings for good cause, including the discovery of additional property.

6623 (2) If the court is satisfied that there is justification for reopening the proceedings, the

6624 court shall order the proceedings reopened.

6625 Section 113. Section **31A-27a-804** is enacted to read:

6626 **31A-27a-804. Disposition of records during and after termination of liquidation.**

6627 (1) Whenever it appears to the receiver that records of the insurer in receivership are no

6628 longer useful, the receiver may recommend to the receivership court, and the receivership court

6629 shall direct what records shall be destroyed.

6630 (2) (a) If the receiver determines that records should be maintained after the closing of

6631 the delinquency proceeding, the receiver may reserve property from the receivership estate for  
6632 the maintenance of the records.

6633 (b) Any amounts retained under this Subsection (2) are an administrative expense of  
6634 the estate under Subsection 31A-27a-701(2)(a).

6635 (c) Any records retained pursuant to this Subsection (2) shall be transferred to the  
6636 custody of the commissioner, and the commissioner may retain or dispose of the records as  
6637 appropriate, at the commissioner's discretion.

6638 (d) Records of a delinquent insurer that are transferred to the commissioner:

6639 (i) may not be considered a record of the department for any purpose; and

6640 (ii) are not subject to Title 63, Chapter 2, Government Records Access and  
6641 Management Act.

6642 Section 114. Section **31A-27a-805** is enacted to read:

6643 **31A-27a-805. External audit of the receiver's books.**

6644 (1) As used in this section, "books" means:

6645 (a) the business operations of the receiver;

6646 (b) the accounting systems and procedures of the receiver; and

6647 (c) the financial records of the receiver.

6648 (2) (a) The receivership court may, as it considers desirable, order an audit to be made  
6649 of the books of the receiver relating to any receivership established under this chapter.

6650 (b) A report of each audit under this Subsection (1) shall be filed with:

6651 (i) the commissioner; and

6652 (ii) the receivership court.

6653 (3) The books of the receivership shall be made available to the auditor at any time  
6654 without notice.

6655 (4) The expense of each audit shall be considered a cost of administration of the  
6656 receivership.

6657 Section 115. Section **31A-27a-901** is enacted to read:

6658 **Part 9. Interstate Relations**

6659 **31A-27a-901. Ancillary conservation of foreign insurers.**

6660 (1) The commissioner may initiate an action against a foreign insurer pursuant to  
6661 Section 31A-27a-201 on any of the grounds stated in that section or on the basis that:

6662 (a) any of the foreign insurer's property is sequestered, garnished, or seized by official  
6663 action in its domiciliary state or in any other state;

6664 (b) (i) the foreign insurer's certificate of authority to do business in this state is revoked  
6665 or a certificate of authority is never issued; and

6666 (ii) there is a resident of this state with an unpaid claim or in-force policy; or

6667 (c) it is necessary to enforce a stay under Chapter 28, Guaranty Associations.

6668 (2) If a domiciliary receiver is appointed, the commissioner may initiate an action  
6669 against a foreign insurer under this section only with the consent of the domiciliary receiver.

6670 (3) (a) An order entered pursuant to this section shall appoint the commissioner as  
6671 conservator.

6672 (b) The conservator's title to assets shall be limited to the insurer's property and records  
6673 located in this state.

6674 (4) (a) Notwithstanding Subsection 31A-27a-201(3), the conservator shall hold and  
6675 conserve the assets located in this state until:

6676 (i) the commissioner in the insurer's domiciliary state appoints its receiver; or

6677 (ii) an order terminating conservation is entered under Subsection (7).

6678 (b) Once a domiciliary receiver is appointed, the conservator shall turn over to the  
6679 domiciliary receiver all property subject to an order under this section.

6680 (5) The conservator may liquidate the property of the insurer that may be necessary to  
6681 cover the costs incurred in the initiation or administration of a proceeding under this section.

6682 (6) (a) The court in which an action under this section is pending may issue a finding  
6683 of insolvency or an ancillary liquidation order.

6684 (b) An ancillary liquidation order shall be entered for the limited purposes of:

6685 (i) liquidating assets in this state to pay costs under Subsection (5); or

6686 (ii) activating applicable guaranty associations in this state to pay valid claims that are  
6687 not being paid by the insurer.

6688 (7) The conservator may at any time petition the receivership court for an order  
6689 terminating an order entered under this section.

6690 Section 116. Section **31A-27a-902** is enacted to read:

6691 **31A-27a-902. Domiciliary receivers appointed in other states.**

6692 (1) (a) A domiciliary receiver appointed in another state is vested by operation of law



6693 with title to, and may summarily take possession of, all property and records of the insurer in  
6694 this state.

6695 (b) Notwithstanding any other provision of law regarding special deposits, a special  
6696 deposit held in this state for a guaranty association in this state as the only beneficiary shall be,  
6697 upon the entry of an order of liquidation with a finding of insolvency, distributed to the  
6698 guaranty association in this state as early access distributions, subject to Section 31A-27a-704,  
6699 in relation to the lines of business for which the special deposit is made.

6700 (c) The holder of a special deposit shall account to the domiciliary receiver for all  
6701 distributions from the special deposit at the time of the distribution.

6702 (d) The following shall be given full faith and credit in this state:

6703 (i) a statutory provision of another state;

6704 (ii) an order entered by a court of competent jurisdiction in relation to the appointment  
6705 of a domiciliary receiver of an insurer; and

6706 (iii) a related proceeding in another state.

6707 (e) For purposes of this chapter, another state means any state other than this state.

6708 (f) This state shall treat all foreign states as reciprocal states.

6709 (2) The commissioner shall immediately transfer title to and possession of all property  
6710 of the insurer under the commissioner's control to a domiciliary receiver:

6711 (a) upon appointment of the domiciliary receiver in another state;

6712 (b) unless otherwise agreed by the domiciliary receiver; and

6713 (c) including all statutory general or special deposits other than special deposits where  
6714 that state's guaranty association is the only beneficiary.

6715 (3) (a) Except as provided in Subsection (1), the domiciliary receiver shall handle a  
6716 special deposit or special deposit claim in accordance with the statutes pursuant to which the  
6717 special deposit is required and applicable federal law.

6718 (b) All amounts in excess of the estimated amount necessary to administer the special  
6719 deposit and pay the unpaid special deposit claims shall be considered general assets of the  
6720 estate.

6721 (c) (i) Subject to Subsection (3)(c)(ii), if there is a deficiency in a special deposit so  
6722 that a claim secured by the special deposit is not fully discharged from the special deposit, the  
6723 claimant may share in the general assets of the insurer to the extent of the deficiency at the

6724 same priority as other claimants in the claimant's class of priority under Section 31A-27a-701.

6725 (ii) The sharing described in Subsection (3)(c)(i) shall be deferred until the other  
6726 claimants of the class are paid percentages of their claims equal to the percentage paid from the  
6727 special deposit.

6728 (iii) The intent of Subsection (3)(c)(ii) is to equalize to the extent provided in this  
6729 Subsection (3) the advantage gained by the security provided by the special deposit.

6730 Section 117. Section **31A-28-108** is amended to read:

6731 **31A-28-108. Powers and duties of the association.**

6732 (1) (a) If a member insurer is an impaired insurer, subject to any conditions imposed by  
6733 the association that do not impair the contractual obligations of the impaired insurer, the  
6734 association may elect to provide the protections provided by this part to the policyholders of  
6735 the impaired insurer.

6736 (b) If the association makes the election described in Subsection (1)(a), the association  
6737 may proceed under one or more of the options described in Subsection (3).

6738 (2) If a member insurer is an insolvent insurer, the association shall provide the  
6739 protections provided by this part to the policyholders of the insolvent insurer by electing in its  
6740 discretion to proceed under one or more of the options in Subsection (3).

6741 (3) With respect to the covered portions of covered policies of an impaired or insolvent  
6742 insurer, the association may:

6743 (a) (i) (A) guaranty, assume, or reinsure, or cause to be guaranteed, assumed, or  
6744 reinsured, the policies or contracts of the insurer; or

6745 (B) assure payment of the contractual obligations of the insolvent insurer; and

6746 (ii) provide such monies, pledges, guarantees, or other means as are reasonably  
6747 necessary to discharge such duties; or

6748 (b) provide benefits and coverages in accordance with Subsection (4).

6749 (4) (a) In accordance with Subsection (3)(b), the association may:

6750 (i) assure payment of benefits for premiums identical to the premiums and benefits,  
6751 except for terms of conversion and renewability, that would have been payable under the  
6752 policies or contracts of the insurer, for claims incurred:

6753 (A) with respect to group policies:

6754 (I) not later than the earlier of the next renewal date under the policies or contracts or

6755 45 days after the coverage date; and  
6756 (II) in no event less than 30 days after the coverage date; or  
6757 (B) with respect to nongroup policies or contracts:  
6758 (I) not later than the earlier of the next renewal date, if any, under the policies or  
6759 contracts or one year from the coverage date; and  
6760 (II) in no event less than 30 days from the coverage date;  
6761 (ii) make diligent efforts to provide 30 days' notice of any termination of the benefits  
6762 provided to:  
6763 (A) all known insureds or annuitants for nongroup policies and contracts; or  
6764 (B) group policy owners for group policies and contracts; and  
6765 (iii) with respect to nongroup life and accident and health insurance policies and  
6766 annuities, make available substitute coverage on an individual basis, in accordance with  
6767 Subsection (4) (b), to each known insured, annuitant, or owner and to each individual formerly  
6768 insured or formerly an annuitant under a group policy who is not eligible for replacement group  
6769 coverage on an individual basis in accordance with Subsection (4)(b), if the insured or  
6770 annuitant had a right under law or the terminated policy or annuity contract to:  
6771 (A) convert coverage to individual coverage; or  
6772 (B) continue an individual policy in force until a specified age or for a specified time  
6773 during which the insurer had:  
6774 (I) no right unilaterally to make changes in any provision of the policy; or  
6775 (II) a right only to make changes in premium by class.  
6776 (b) (i) In providing the substitute coverage required under Subsection (4)(a)(iii), the  
6777 association may offer to:  
6778 (A) reissue the terminated coverage; or  
6779 (B) issue an alternative policy.  
6780 (ii) An alternative or reissued policy under Subsection (4)(b)(i):  
6781 (A) shall be offered without requiring evidence of insurability; and  
6782 (B) may not provide for any waiting period or exclusion that would not have applied  
6783 under the terminated policy.  
6784 (iii) The association may reinsure any alternative or reissued policy.  
6785 (c) (i) An alternative policy adopted by the association shall be subject to the approval

6786 of the commissioner.

6787 (ii) The association may adopt alternative policies of various types for future issuance  
6788 without regard to any particular impairment or insolvency.

6789 (iii) An alternative policy:

6790 (A) shall contain at least the minimum statutory provisions required in this state; and

6791 (B) provide benefits that are not unreasonable in relation to the premium charged.

6792 (iv) The association shall set the premium for an alternative policy in accordance with  
6793 a table of rates that the association adopts. The premium shall reflect:

6794 (A) the amount of insurance to be provided; and

6795 (B) the age and class of risk of each insured.

6796 (v) For an alternative policy issued under an individual policy of the impaired or  
6797 insolvent insurer:

6798 (A) age shall be determined in accordance with the original policy provisions; and

6799 (B) class of risk shall be the class of risk under the original policy.

6800 (vi) For an alternative policy issued to individuals insured under a group policy:

6801 (A) age and class of risk shall be determined by the association in accordance with the  
6802 alternative policy provisions and risk classification standards approved by the commissioner;  
6803 and

6804 (B) the premium may not reflect any changes in the health of the insured after the  
6805 original policy was last underwritten.

6806 (vii) Any alternative policy issued by the association shall provide coverage of a type  
6807 similar to that of the policy issued by the impaired or insolvent insurer, as determined by the  
6808 association.

6809 (d) If the association elects to reissue terminated coverage at a premium rate different  
6810 from that charged under the terminated policy, the premium shall be set by the association in  
6811 accordance with the amount of insurance provided and the age and class of risk, subject to the  
6812 approval of the commissioner or by a court of competent jurisdiction.

6813 (e) The association's obligations with respect to coverage under any policy of the  
6814 impaired or insolvent insurer or under any reissued or alternative policy shall cease on the date  
6815 the coverage or policy is replaced by another similar policy by:

6816 (i) the policyholder;

6817 (ii) the insured; or

6818 (iii) the association.

6819 (f) (i) With respect to a claim unpaid as of the coverage date and a claim incurred  
6820 during the period defined in Subsection (4)(a)(i), a provider of health care services, by  
6821 accepting a payment from the association upon a claim of the provider against an insured  
6822 whose health care insurer is an insolvent member insurer, agrees to forgive the insured of 20%  
6823 of the debt which otherwise would be paid by the insurer had it not been insolvent, subject to a  
6824 maximum of \$8,000 being required to be forgiven by any one provider as to each claimant.

6825 (ii) The obligations of a solvent insurer to pay all or part of the covered claim are not  
6826 diminished by the forgiveness provided for in this section.

6827 (5) When proceeding under Subsection (3)(b) with respect to any policy or contract  
6828 carrying guaranteed minimum interest rates, the association shall assure the payment or  
6829 crediting of a rate of interest consistent with Subsection 31A-28-103(2)(b)(iii).

6830 (6) Nonpayment of premiums within 31 days after the date required under the terms of  
6831 any guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage shall  
6832 terminate the association's obligations under the policy or coverage under this part with respect  
6833 to the policy or coverage, except with respect to any claims incurred or any net cash surrender  
6834 value that may be due in accordance with this part.

6835 (7) (a) Premiums due after the coverage date with respect to the covered portion of a  
6836 policy or contract of an impaired or insolvent insurer shall belong to and be payable at the  
6837 direction of the association.

6838 (b) The association is liable to the policy or contract owners for unearned premiums  
6839 due to policy or contract owners arising after the coverage date with respect to the covered  
6840 portion of the policy or contract.

6841 (8) The protection provided by this part does not apply if any guaranty protection is  
6842 provided to residents of this state by laws of the domiciliary state or jurisdiction of the  
6843 impaired or insolvent insurer other than this state.

6844 (9) In carrying out its duties under Subsections (1) and (2), and subject to approval by a  
6845 court in this state, the association may:

6846 (a) impose permanent policy or contract liens in connection with a guarantee,  
6847 assumption, or reinsurance agreement, if the association finds that:

6848 (i) the amounts that can be assessed under this part are less than the amounts needed to  
6849 assure full and prompt performance of the association's duties under this part; or

6850 (ii) the economic or financial conditions as they affect member insurers are sufficiently  
6851 adverse to render the imposition of the permanent policy or contract liens to be in the public  
6852 interest;

6853 (b) impose temporary moratoriums or liens on payments of cash values and policy  
6854 loans, or any other right to withdraw funds held in conjunction with policies or contracts, in  
6855 addition to any contractual provisions for deferral of cash or policy loan value; and

6856 (c) if the receivership court imposes a temporary moratorium or moratorium charge on  
6857 payment of cash values or policy loans, or on any other right to withdraw funds held in  
6858 conjunction with policies or contracts, out of the assets of the impaired or insolvent insurer,  
6859 defer the payment of cash values, policy loans, or other rights by the association for the period  
6860 of the moratorium or moratorium charge imposed by the receivership court, except for claims  
6861 covered by the association to be paid in accordance with a hardship procedure:

6862 (i) established by the liquidator or rehabilitator; and

6863 (ii) approved by the receivership court.

6864 (10) (a) A deposit in this state held pursuant to law or required by the commissioner for  
6865 the benefit of creditors, including policy owners, that is not turned over to the domiciliary  
6866 liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan  
6867 of an insurer domiciled in ~~[this]~~ any state ~~[or in a reciprocal state, defined in Subsection~~  
6868 ~~31A-27-102(1)(p);]~~ shall be promptly paid to the association.

6869 (b) Any amount paid under Subsection (10)(a) to the association less the amount  
6870 retained by the association shall be treated as a distribution of estate assets pursuant to  
6871 ~~[Subsection 31A-27-337(2)]~~ Sections 31A-27a-601, 31A-27a-602, and 31A-27a-702.

6872 (11) If the association fails to act within a reasonable period of time as provided in this  
6873 section, the commissioner shall have the powers and duties of the association under this part  
6874 with respect to an impaired or insolvent insurer.

6875 (12) The association may render assistance and advice to the commissioner, upon the  
6876 commissioner's request, concerning:

6877 (a) rehabilitation;

6878 (b) payment of claims;

6879 (c) continuance of coverage; or

6880 (d) the performance of other contractual obligations of any impaired or insolvent

6881 insurer.

6882 (13) (a) The association has standing to appear or intervene before a court or agency in

6883 this state with jurisdiction over:

6884 (i) an impaired or insolvent insurer concerning which the association is or may become  
6885 obligated under this part; or

6886 (ii) any person or property against which the association may have rights through  
6887 subrogation or otherwise.

6888 (b) The standing referred to in Subsection (13)(a) extends to all matters germane to the  
6889 powers and duties of the association, including:

6890 (i) proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the  
6891 impaired or insolvent insurer; and

6892 (ii) the determination of the policies or contracts and contractual obligations.

6893 (c) The association has the right to appear or intervene before a court in another state  
6894 with jurisdiction over:

6895 (i) an impaired or insolvent insurer for which the association is or may become  
6896 obligated; or

6897 (ii) any person or property against which the association may have rights through  
6898 subrogation of the insurer's policyholders.

6899 (14) (a) Any person receiving benefits under this part shall be considered to have  
6900 assigned the rights under, and any causes of action against any person for losses arising under,  
6901 resulting from, or otherwise relating to the covered policy or contract to the association to the  
6902 extent of the benefits received because of this part, whether the benefits are payments of, or on  
6903 account of:

6904 (i) contractual obligations;

6905 (ii) continuation of coverage; or

6906 (iii) provision of substitute or alternative coverages.

6907 (b) As a condition precedent to the receipt of any right or benefits conferred by this part  
6908 upon that person, the association may require an assignment to it of the rights and causes of  
6909 action described in Subsection (14)(a) by any:

- 6910 (i) payee;
- 6911 (ii) policy or contract owner;
- 6912 (iii) beneficiary;
- 6913 (iv) insured; or
- 6914 (v) annuitant.

6915 (c) The subrogation rights obtained by the association under this Subsection (14) shall  
6916 have the same priority against the assets of the impaired or insolvent insurer as that possessed  
6917 by the person entitled to receive benefits under this part.

6918 (d) In addition to Subsections (14)(a) through (c), the association has all common law  
6919 rights of subrogation and any other equitable or legal remedy that would have been available to  
6920 the impaired or insolvent insurer or owner, beneficiary, or payee of a policy or contract with  
6921 respect to the policy or contract, including in the case of a structured settlement annuity any  
6922 rights of the owner, beneficiary, or payee of the annuity to the extent of benefits received  
6923 pursuant to this part against a person originally or by succession responsible for the losses  
6924 arising from the personal injury relating to the annuity or payment of the annuity.

6925 (e) If a provision of this Subsection (14) is invalid or ineffective with respect to any  
6926 person or claim for any reason, the amount payable by the association with respect to the  
6927 related covered obligations shall be reduced by the amount realized by any other person with  
6928 respect to the person or claim that is attributable to the policies, or portion of the policies,  
6929 covered by the association.

6930 (f) If the association has provided benefits with respect to a covered policy and a  
6931 person recovers amounts as to which the association has rights as described in this Subsection  
6932 (14), the person shall pay to the association the portion of the recovery attributable to the  
6933 covered policies.

6934 (15) (a) In addition to the rights and powers elsewhere in this part, the association may:

- 6935 (i) enter into contracts that are necessary or proper to carry out the provisions and  
6936 purposes of this part;
- 6937 (ii) sue or be sued, including taking any legal actions necessary or proper to:
  - 6938 (A) recover any unpaid assessments under Section 31A-28-109; and
  - 6939 (B) settle claims or potential claims against the association;
- 6940 (iii) borrow money to effect the purposes of this part;



- 6941 (iv) employ or retain the persons necessary or the appropriate staff members to:  
6942 (A) handle the financial transactions of the association; and  
6943 (B) perform other functions as become necessary or proper under this part;  
6944 (v) take necessary or appropriate legal action to avoid or recover payment of improper  
6945 claims;  
6946 (vi) exercise, for the purposes of this part and to the extent approved by the  
6947 commissioner, the powers of a domestic life or health insurer, but in no case may the  
6948 association issue insurance policies or annuity contracts other than those issued to perform its  
6949 obligation under this part;  
6950 (vii) request information from a person seeking coverage from the association to aid  
6951 the association in determining the association's obligations under this part with respect to the  
6952 person;  
6953 (viii) take other necessary or appropriate action to discharge the association's duties  
6954 and obligations under this part or to exercise the association's powers under this part; and  
6955 (ix) act as a special deputy liquidator if appointed by the commissioner.  
6956 (b) Any note or other evidence of indebtedness of the association under Subsection  
6957 (15)(a)(iii) that is not in default:  
6958 (i) is a legal investment for a domestic insurer; and  
6959 (ii) may be carried as admitted assets.  
6960 (c) A person seeking coverage from the association shall promptly comply with a  
6961 request for information by the association under Subsection (15)(a)(vii).  
6962 (16) The association may join an organization of one or more other state associations  
6963 of similar purposes to further the purposes and administer the powers and duties of the  
6964 association.  
6965 (17) (a) Except as provided in Subsection (17)(b), at any time within one year after the  
6966 coverage date, the association may elect to succeed to the rights and obligations of the member  
6967 insurer that:  
6968 (i) accrue on or after the coverage date; and  
6969 (ii) relate to covered policies under any one or more indemnity reinsurance agreements  
6970 entered into by the member insurer as a ceding insurer and selected by the association.  
6971 (b) Notwithstanding Subsection (17)(a), the association may not exercise an election

6972 with respect to a reinsurance agreement if the receiver, rehabilitator, or liquidator of the  
6973 member insurer has previously and expressly disaffirmed the reinsurance agreement.

6974 (c) The election described in Subsection (17)(a) shall be effected by a notice to:

6975 (i) (A) the receiver;

6976 (B) rehabilitator; or

6977 (C) liquidator; and

6978 (ii) the affected reinsurers.

6979 (d) If the association makes an election under Subsection (17)(a), the association shall  
6980 comply with Subsections (17)(d)(i) through (vi) with respect to the agreements selected by the  
6981 association.

6982 (i) For contracts covered, in whole or in part, by the association, the association shall  
6983 be responsible for:

6984 (A) all unpaid premiums due under the agreements for periods both before and after the  
6985 coverage date; and

6986 (B) the performance of all other obligations to be performed after the coverage date.

6987 (ii) The association may charge contracts covered in part by the association the costs  
6988 for reinsurance in excess of the obligations of the association, through reasonable allocation  
6989 methods.

6990 (iii) The association is entitled to any amounts payable by the reinsurer under the  
6991 agreements with respect to losses or events that:

6992 (A) occur in periods after the coverage date; and

6993 (B) relate to contracts covered by the association, in whole or in part.

6994 (iv) On receipt of any amounts under Subsection (17)(d)(iii), the association shall pay  
6995 to the beneficiary under the policy or contract on account of which the amounts were paid an  
6996 amount equal to the excess of the amount received by the association over the benefits paid or  
6997 payable by the association on account of the policy or contract.

6998 (v) (A) Within 30 days following the association's election, the association and each  
6999 indemnity reinsurer shall calculate the net balance due to or from the association under each  
7000 reinsurance agreement as of the date of the association's election, giving full credit to all items  
7001 paid by either the member insurer, or its receiver, rehabilitator, or liquidator, or the indemnity  
7002 reinsurer during the period between the coverage date and the date of the association's election.

7003 (B) Either the association or indemnity reinsurer shall pay the net balance due the other  
7004 within five days of the completion of the calculation under Subsection (17)(d)(v)(A).

7005 (C) If the receiver, rehabilitator, or liquidator has received any amounts due the  
7006 association pursuant to Subsection (17)(d)(iii), the receiver, rehabilitator, or liquidator shall  
7007 remit the same to the association as promptly as practicable.

7008 (vi) If the association, within 60 days of the election, pays the premiums due for  
7009 periods both before and after the coverage date that relate to contracts covered by the  
7010 association, in whole or in part, the reinsurer may not:

7011 (A) terminate the reinsurance agreements, to the extent the agreements relate to  
7012 contracts covered by the association, in whole or in part; and

7013 (B) set off any unpaid premium due for periods prior to the coverage date against  
7014 amounts due the association.

7015 (e) An insurer other than the association shall succeed to the rights and obligations of  
7016 the association under Subsections (17)(a) through (d) effective as of the date agreed upon by  
7017 the association and the other insurer and regardless of whether the association has made the  
7018 election referred to in Subsections (17)(a) through (d) provided that:

7019 (i) the association transfers its obligations to the other insurer;

7020 (ii) the association and the other insurer agree to the transfer;

7021 (iii) the indemnity reinsurance agreements automatically terminate for new reinsurance  
7022 unless the indemnity reinsurer and the other insurer agree to the contrary;

7023 (iv) the obligations described in Subsection (17)(d)(iv) may not apply on and after the  
7024 date the indemnity reinsurance agreement is transferred to the third party insurer; and

7025 (v) this Subsection (17)(e) may not apply if the association has previously expressly  
7026 determined in writing that the association will not exercise the election referred to in  
7027 Subsections (17)(a) through (d).

7028 (f) (i) This Subsection (17) supersedes the provisions of any law of this state or of any  
7029 affected reinsurance agreement that provides for or requires any payment of reinsurance  
7030 proceeds on account of losses or events that occur in periods after the coverage date, to the  
7031 receiver, liquidator, or rehabilitator of an insolvent member insurer.

7032 (ii) The receiver, rehabilitator, or liquidator shall remain entitled to any amounts  
7033 payable by the reinsurer under the reinsurance agreement with respect to losses or events that

7034 occur in periods prior to the coverage date, subject to applicable setoff provisions.

7035 (g) Except as otherwise expressly provided in Subsections (17)(a) through (f), this  
7036 Subsection (17) does not:

7037 (i) alter or modify the terms and conditions of the indemnity reinsurance agreements of  
7038 the insolvent member insurer;

7039 (ii) abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a  
7040 reinsurance agreement; or

7041 (iii) give a policy owner or beneficiary an independent cause of action against an  
7042 indemnity reinsurer that is not otherwise set forth in the indemnity reinsurance agreement.

7043 (18) The board of directors of the association shall have discretion and may exercise  
7044 reasonable business judgment to determine the means by which the association is to provide  
7045 the benefits of this part in an economical and efficient manner.

7046 (19) If the association has arranged or offered to provide the benefits of this part to a  
7047 covered person under a plan or arrangement that fulfills the association's obligations under this  
7048 part, the person is not entitled to benefits from the association in addition to or other than those  
7049 provided under the plan or arrangement.

7050 (20) (a) Venue in a suit against the association arising under this part shall be in Salt  
7051 Lake County.

7052 (b) The association may not be required to give an appeal bond in an appeal that relates  
7053 to a cause of action arising under this part.

7054 Section 118. Section **31A-28-114** is amended to read:

7055 **31A-28-114. Miscellaneous provisions.**

7056 (1) Nothing in this part shall be construed to reduce the liability for unpaid assessments  
7057 of the insureds of an impaired or insolvent insurer operating under a plan with assessment  
7058 liability.

7059 (2) (a) Records shall be kept of all meetings of the board of directors to discuss the  
7060 activities of the association in carrying out its powers and duties under Section 31A-28-108.

7061 (b) Records of the association with respect to an impaired or insolvent insurer may not  
7062 be disclosed before the earlier of:

7063 (i) the termination of a liquidation, rehabilitation, or conservation proceeding involving  
7064 the impaired or insolvent insurer;

7065 (ii) the termination of the impairment or insolvency of the insurer; or

7066 (iii) upon the order of a court of competent jurisdiction.

7067 (c) Nothing in this Subsection (2) shall limit the duty of the association to render a  
7068 report of its activities under Section 31A-28-115.

7069 (3) (a) For the purpose of carrying out its obligations under this part, the association  
7070 shall be considered to be a creditor of an impaired or insolvent insurer to the extent of assets  
7071 attributable to covered policies reduced by any amounts to which the association is entitled as  
7072 subrogee pursuant to Subsection 31A-28-108(14).

7073 (b) Assets of the impaired or insolvent insurer attributable to covered policies shall be  
7074 used to continue all covered policies and pay all contractual obligations of the impaired or  
7075 insolvent insurer as required by this part.

7076 (c) As used in this Subsection (3), assets attributable to covered policies are that  
7077 proportion of the assets which the reserves that should have been established for covered  
7078 policies bear to the reserves that should have been established for all policies of insurance  
7079 written by the impaired or insolvent insurer.

7080 (4) (a) As a creditor of the impaired or insolvent insurer under Subsection (3) and  
7081 consistent with Section [~~31A-27-335~~] 31A-27a-701, the association and any other similar  
7082 association are entitled to receive a disbursement of assets out of the marshaled assets, from  
7083 time to time as the assets become available to reimburse the association and any other similar  
7084 association.

7085 (b) If, within 120 days of a final determination of insolvency of an insurer by the  
7086 receivership court, the liquidator has not made an application to the court for the approval of a  
7087 proposal to disburse assets out of marshaled assets to all guaranty associations having  
7088 obligations because of the insolvency, the association is entitled to make application to the  
7089 receivership court for approval of the association's proposal for disbursement of these assets.

7090 (5) (a) Prior to the termination of any liquidation, rehabilitation, or conservation  
7091 proceeding, the court may take into consideration the contributions of the respective parties,  
7092 including:

7093 (i) the association;

7094 (ii) the shareholders;

7095 (iii) policyowners of the insolvent insurer; and

7096 (iv) any other party with a bona fide interest in making an equitable distribution of the  
7097 ownership rights of the insolvent insurer.

7098 (b) In making a determination under Subsection (5)(a), the court shall consider the  
7099 welfare of the policyholders of the continuing or successor insurer.

7100 (c) A distribution to any stockholder of an impaired or insolvent insurer may not be  
7101 made until and unless the total amount of valid claims of the association with interest has been  
7102 fully recovered by the association for funds expended in carrying out its powers and duties  
7103 under Section 31A-28-108 with respect to the insurer.

7104 (6) (a) If an order for liquidation or rehabilitation of an insurer domiciled in this state  
7105 has been entered, the receiver appointed under the order shall have a right to recover on behalf  
7106 of the insurer, from any affiliate that controlled the insurer, the amount of distributions, other  
7107 than stock dividends paid by the insurer on its capital stock, made at any time during the five  
7108 years preceding the petition for liquidation or rehabilitation subject to the limitations of  
7109 Subsections (6)(b) through (d).

7110 (b) A distribution described in Subsection (6)(a) may not be recovered if the insurer  
7111 shows that:

7112 (i) when paid the distribution was lawful and reasonable; and

7113 (ii) the insurer did not know and could not reasonably have known that the distribution  
7114 might adversely affect the ability of the insurer to fulfill its contractual obligations.

7115 (c) (i) A person that was an affiliate that controlled the insurer at the time the  
7116 distributions were paid shall be liable up to the amount of distributions received.

7117 (ii) A person that was an affiliate that controlled the insurer at the time the distributions  
7118 were declared shall be liable up to the amount of distributions that would have been received if  
7119 they had been paid immediately.

7120 (iii) If two or more persons are liable with respect to the same distributions, they shall  
7121 be jointly and severally liable.

7122 (d) The maximum amount recoverable under this Subsection (6) shall be the amount  
7123 needed in excess of all other available assets of the insolvent insurer to pay the contractual  
7124 obligations of the insolvent insurer.

7125 (e) If any person liable under Subsection (6)(c) is insolvent, all of its affiliates that  
7126 controlled it at the time the distribution was paid shall be jointly and severally liable for any

7127 resulting deficiency in the amount recovered from the insolvent affiliate.

7128 Section 119. Section **31A-28-207** is amended to read:

7129 **31A-28-207. Powers and duties of the association.**

7130 (1) (a) The association is obligated on the amount of the covered claims:

7131 (i) existing prior to the order of liquidation; and

7132 (ii) arising:

7133 (A) within 30 days after the order of liquidation; or

7134 (B) (I) before the policy expiration date if it is less than 30 days after the order of

7135 liquidation; or

7136 (II) before the insured replaces the policy or causes its cancellation, if the insured does

7137 so within 30 days of the order of liquidation.

7138 (b) The obligation under Subsection (1)(a) includes only that amount of each covered

7139 claim that is less than \$300,000.

7140 (c) A claim under a personal lines policy for unearned premiums shall include only

7141 those claims that exceed \$100 in amount, subject to a maximum of \$10,000 per policy.

7142 (d) The association shall pay the full amount of any covered claim arising out of a

7143 workers' compensation policy. The association is not obligated to a policyholder or claimant in

7144 an amount in excess of the obligation of the insolvent insurer under the policy from which the

7145 claim arises.

7146 (e) Any obligation of the association to defend an insured on a covered claim shall

7147 cease:

7148 (i) upon payment by the association, as part of a settlement releasing the insured; or

7149 (ii) on a judgment, of the lesser of:

7150 (A) the association's covered claim obligation limit; or

7151 (B) the applicable policy limit.

7152 (f) The association:

7153 (i) is considered as the insurer only to the extent of its obligation on the covered

7154 claims, subject to the limitations provided in this part;

7155 (ii) has all the rights, duties, and obligations of the insolvent insurer as if the insurer

7156 had not yet become insolvent, including the right to pursue and retain salvage and subrogation

7157 recoverable on paid covered claim obligations; and

7158 (iii) may not be considered the insolvent insurer for any purpose relating to whether the  
7159 association is subject to personal jurisdiction in the courts of any state.

7160 (g) (i) Notwithstanding any other provisions of this part, except in the case of a claim  
7161 for benefits under workers' compensation coverage, any obligation of the association to or on  
7162 behalf of a particular insured and its affiliates on covered claims shall cease when:

7163 (A) a total amount of \$10,000,000 has been paid to or on behalf of the insured and its  
7164 affiliates on covered claims by the association or a similar association; and

7165 (B) all payments on covered claims arise under one or more policies of a single  
7166 insolvent insurer.

7167 (ii) The association may establish a plan to allocate the amounts payable by the  
7168 association in a manner the association considers equitable if the association determines that:

7169 (A) there is more than one claimant asserting a covered claim against:

7170 (I) the association;

7171 (II) a similar association; or

7172 (III) a property or casualty insurance security fund in another state; and

7173 (B) all claims arise under the policy or policies of a single insolvent insurer.

7174 (h) The association shall assess member insurers amounts necessary to pay:

7175 (i) the obligations of the association under Subsection (1)(a), as limited by Subsections  
7176 (1)(e) through (g), subsequent to the liquidation of an insolvent insurer;

7177 (ii) the expenses of handling covered claims subsequent to the liquidation of an  
7178 insolvent insurer;

7179 (iii) the cost of examinations under Section 31A-28-214; and

7180 (iv) other expenses authorized by this part.

7181 (i) (i) The association shall:

7182 (A) investigate claims brought against the association; and

7183 (B) adjust, compromise, settle, and pay covered claims to the extent of the association's  
7184 obligation and deny all other claims.

7185 (ii) The association is not bound by a settlement, release, compromise, waiver, or  
7186 judgment executed or entered into by the insolvent insurer:

7187 (A) less than 12 months before the entry of an order of liquidation; or

7188 (B) more than 12 months before the entry of an order of liquidation if the settlement,



7189 release, compromise, waiver, or judgment is:

7190 (I) based on a claim that is not a covered claim; or

7191 (II) the result of fraud, collusion, default, or failure to defend.

7192 (iii) The association may assert all defenses available including defenses applicable to

7193 determining and enforcing the association's statutory rights and obligations to a claim.

7194 (iv) The association may appoint and direct legal counsel retained under a liability

7195 insurance policy for the defense of a covered claim.

7196 (j) (i) The association shall handle claims through:

7197 (A) its employees;

7198 (B) one or more insurers; or

7199 (C) other persons designated as servicing facilities.

7200 (ii) Designation of a servicing facility is subject to the approval of the commissioner,

7201 but this designation may be declined by a member insurer.

7202 (k) The association shall:

7203 (i) reimburse each servicing facility for:

7204 (A) obligations of the association paid by the facility; and

7205 (B) expenses incurred by the facility while handling claims on behalf of the

7206 association; and

7207 (ii) pay the other expenses of the association as authorized by this title.

7208 (2) The association may:

7209 (a) employ or retain the persons, including private legal counsel, necessary to handle  
7210 claims and perform other duties of the association;

7211 (b) borrow funds necessary to implement the purposes of this part in accord with the  
7212 plan of operation;

7213 (c) sue or be sued;

7214 (d) negotiate and become a party to the contracts necessary to carry out the purpose of  
7215 this part;

7216 (e) perform any other acts necessary or proper to accomplish the purposes of this  
7217 chapter; or

7218 (f) refund to the member insurers, in proportion to the contribution of each member  
7219 insurer to the association account, the amount that the assets of the account exceed the

7220 liabilities, if, at the end of any calendar year, the board of directors finds that:

7221 (i) the assets of the association in the association account exceed the liabilities as  
7222 estimated by the board of directors for the coming year; and

7223 (ii) the excess assets are not needed for other purposes of this part.

7224 (3) For a refund due to a member insurer for an assessment that has been offset against  
7225 premium taxes, the association may pay the amount of the refund directly to the State Tax  
7226 Commission.

7227 (4) The courts of the state shall have exclusive jurisdiction over all actions brought  
7228 against the association that relate to or arise out of this part.

7229 (5) (a) Any person recovering under this part is considered to have assigned that  
7230 person's rights under the policy to the association to the extent of that person's recovery from  
7231 the association.

7232 (b) Every insured or claimant seeking the protection of this chapter shall cooperate  
7233 with the association to the same extent the person would have been required to cooperate with  
7234 the insolvent insurer.

7235 (c) Except as provided in Subsection (5)(e), the association has no cause of action  
7236 against the insured of the insolvent insurer for any sums the association has paid out except  
7237 those causes of action the insolvent insurer would have had if the sums had been paid by the  
7238 insolvent insurer.

7239 (d) When an insolvent insurer operates on a plan with assessment liability, payments of  
7240 claims of the association do not reduce the liability for unpaid assessments of the insurer to:

7241 (i) the receiver;

7242 (ii) liquidator; or

7243 (iii) statutory successor.

7244 (e) The association may recover from the following persons the amount of any  
7245 "covered claim" paid on behalf of that person pursuant to this part:

7246 (i) any insured whose:

7247 (A) net worth on December 31 of the year next preceding the date the insurer becomes  
7248 insolvent, exceeds \$25,000,000; and

7249 (B) liability obligations to other persons are satisfied in whole or in part by payments  
7250 made under this part; and

- 7251 (ii) any person:
- 7252 (A) who is an affiliate of the insolvent insurer; and
- 7253 (B) whose liability obligations to other persons are satisfied in whole or in part by
- 7254 payments made under this part.
- 7255 (f) (i) The receiver, liquidator, or statutory successor of an insolvent insurer is bound
- 7256 by:
- 7257 (A) a determination of a covered claim eligibility under this part; and
- 7258 (B) a settlement of a covered claim by the association or a similar organization in
- 7259 another state.
- 7260 (ii) The court having jurisdiction shall grant settled claims a priority equal to that
- 7261 which the claimant would have been entitled to in the absence of this part, against the assets of
- 7262 the insolvent insurer.
- 7263 (g) The association or any similar organization in another state shall:
- 7264 (i) be recognized as a claimant in the liquidation of an insolvent insurer for any
- 7265 amounts paid on a covered claim obligation as determined under this part or a similar law in
- 7266 another state; and
- 7267 (ii) receive dividends or distributions at the priority set forth in Section [~~31A-27-335~~]
- 7268 31A-27a-701.
- 7269 (h) (i) The association shall periodically file with the receiver or liquidator of the
- 7270 insolvent insurer:
- 7271 (A) statements of the covered claims paid by the association; and
- 7272 (B) estimates of anticipated claims on the association.
- 7273 (ii) The filing under this Subsection (5)(h) preserves the rights of the association for
- 7274 claims against the assets of the insolvent insurer.
- 7275 (i) The association need not pay any claim filed after the final date under Sections
- 7276 [~~31A-27-315~~] 31A-27a-406 and [~~31A-27-328~~] 31A-27a-601, or similar statutes of other states,
- 7277 for filing the same type of claim with the liquidator of the insolvent insurer.
- 7278 Section 120. Section **31A-28-213** is amended to read:
- 7279 **31A-28-213. Miscellaneous provisions.**
- 7280 (1) (a) Any person who has a claim against an insurer, whether or not the insurer is a
- 7281 member insurer, under any provision in an insurance policy, other than a policy of an insolvent

7282 insurer that is also a covered claim, is required to first exhaust that person's right under that  
7283 person's policy.

7284 (b) Any amount payable on a covered claim under this part under an insurance policy is  
7285 reduced by the amount of any recovery under the insurance policy described in Subsection  
7286 (1)(a).

7287 (c) (i) Except as provided in Subsection (1)(c)(ii) a person having a claim that may be  
7288 recovered under more than one insurance guaranty association or its equivalent shall first seek  
7289 recovery from the association of the place of residence of the insured.

7290 (ii) If the person's claim is:

7291 (A) a first-party claim for damage to property with a permanent location, the person  
7292 shall seek recovery first from the association of the location of the property; and

7293 (B) a workers' compensation claim, the person shall seek recovery first from the  
7294 association of the residence of the claimant.

7295 (iii) Any recovery under this part shall be reduced by the amount of recovery from any  
7296 other insurance guaranty association or its equivalent.

7297 (2) This part may not be construed to reduce the liability for unpaid assessments of the  
7298 insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

7299 (3) (a) Records shall be kept of all negotiations and meetings in which the association  
7300 or its representatives are involved to discuss the activities of the association in carrying out the  
7301 association's powers and duties under Section 31A-28-207. Records of these negotiations or  
7302 meetings shall be made public only:

7303 (i) upon the termination of a liquidation, rehabilitation, or conservation proceeding  
7304 involving the insolvent insurer;

7305 (ii) the termination of the insolvency of the insurer; or

7306 (iii) the order of a court of competent jurisdiction.

7307 (b) This Subsection (3) does not limit the duty of the association to render a report of  
7308 its activities under Section 31A-28-214.

7309 (4) For the purpose of carrying out its obligations under this part, the association is  
7310 considered to be a creditor of the insolvent insurer, except to the extent of any amounts the  
7311 association is entitled as subrogee under Section 31A-28-207.

7312 (5) (a) Before the termination of any liquidation, rehabilitation, or conservation

7313 proceeding, the court may take into consideration the contributions of the respective parties,  
7314 including:

- 7315 (i) the association;
- 7316 (ii) the shareholders;
- 7317 (iii) the policyowners of the insolvent insurer; and
- 7318 (iv) any other party with a bona fide interest, in making an equitable distribution of the  
7319 ownership rights of the insolvent insurer.

7320 (b) In making the determination described in Subsection (5)(a), the court shall consider  
7321 the welfare of the policyholders of the continuing or successor insurer.

7322 (c) A distribution to stockholders, if any, of an insolvent insurer may not be made until  
7323 the total amount of valid claims of the association with interest on those claims for funds  
7324 expended in carrying out its powers and duties under Section 31A-28-207 regarding this  
7325 insurer have been fully recovered by the association.

7326 (6) A rehabilitator, liquidator, or conservator appointed under any section of this part  
7327 may recover on behalf of the insurer for excessive distributions paid to affiliates, pursuant to  
7328 Section ~~[31A-27-322]~~ 31A-27a-502.

7329 Section 121. Section **31A-35-103** is amended to read:

7330 **31A-35-103. Exemption from other sections of this title.**

7331 Bail bond surety companies are exempted from:

7332 (1) ~~[Title 31A,]~~ Chapter 3, Department Funding, Fees, and Taxes, except Section  
7333 31A-3-103;

7334 (2) ~~[Title 31A,]~~ Chapter 4, Insurance in General, except Sections 31A-4-102,  
7335 31A-4-103, 31A-4-104, and 31A-4-107;

7336 (3) ~~[Title 31A,]~~ Chapter 5, Domestic Stock and Mutual Insurance Corporations, except  
7337 Section 31A-5-103, and

7338 (4) ~~[Title 31A,]~~ Chapters 6, 6a, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 24, 25,  
7339 26, 27, 27a, 28, 29, 30, 31, 32, 33, and 34.

7340 Section 122. Section **31A-37-504** is amended to read:

7341 **31A-37-504. Business written by a captive insurance company -- Examinations --**  
7342 **Application of code provisions.**

7343 (1) This section applies to all business written by a captive insurance company.

7344 (2) Notwithstanding this section, the examination for a branch captive insurance  
7345 company shall be of branch business and branch operations only, if the branch captive  
7346 insurance company:

7347 (a) provides annually to the commissioner a certificate of compliance, or an equivalent,  
7348 issued by or filed with the licensing authority of the jurisdiction in which the branch captive  
7349 insurance company is formed; and

7350 (b) demonstrates to the commissioner's satisfaction that the branch captive insurance  
7351 company is operating in sound financial condition in accordance with all applicable laws and  
7352 regulations of the jurisdiction in which the branch captive insurance company is formed.

7353 (3) As a condition of obtaining a certificate of authority, an alien captive insurance  
7354 company shall grant authority to the commissioner to examine the affairs of the alien captive  
7355 insurance company in the jurisdiction in which the alien captive insurance company is formed.

7356 (4) To the extent that the provisions of Chapters 2, 4, 5, 14, 16, 17, 18, 19a, [~~and~~] 27,  
7357 and 27a do not contradict this section, these chapters apply to captive insurance companies that  
7358 have received a certificate of authority under this chapter.

7359 Section 123. **Repealer.**

7360 This bill repeals:

7361 Section **31A-27-102, Definitions.**

7362 Section **31A-27-103, Jurisdiction and venue.**

7363 Section **31A-27-104, Injunctions and orders.**

7364 Section **31A-27-105, Cooperation of officers and employees.**

7365 Section **31A-27-106, Bonds.**

7366 Section **31A-27-108, Continuation of delinquency proceedings.**

7367 Section **31A-27-109, Standing of guaranty associations.**

7368 Section **31A-27-110, Immunity and indemnification of the receiver.**

7369 Section **31A-27-202, Court's seizure order.**

7370 Section **31A-27-301, Grounds for rehabilitation.**

7371 Section **31A-27-302, Answering the petition -- Hearing -- Appeal.**

7372 Section **31A-27-303, Rehabilitation orders.**

7373 Section **31A-27-304, Powers and duties of the rehabilitator.**

7374 Section **31A-27-305, Actions by and against a rehabilitator.**

- 7375 Section 31A-27-306, Termination of rehabilitation.
- 7376 Section 31A-27-307, Grounds for liquidation.
- 7377 Section 31A-27-308, Answering the petition.
- 7378 Section 31A-27-309, Pending the liquidation order.
- 7379 Section 31A-27-310, Liquidation orders.
- 7380 Section 31A-27-311, Continuance of coverage.
- 7381 Section 31A-27-311.5, Continuance of coverage -- Health maintenance
- 7382 organizations.
- 7383 Section 31A-27-312, Dissolution of insurer.
- 7384 Section 31A-27-313, Legislative intent concerning retention of jurisdiction.
- 7385 Section 31A-27-314, Powers and duties of the liquidator.
- 7386 Section 31A-27-315, Notice to creditors and others.
- 7387 Section 31A-27-316, Duties of producers.
- 7388 Section 31A-27-317, Actions by and against a liquidator.
- 7389 Section 31A-27-318, Collection and list of assets.
- 7390 Section 31A-27-319, Avoidance of property title transfers.
- 7391 Section 31A-27-320, Fraudulent transfers prior to petition.
- 7392 Section 31A-27-321, Voidable preferences and liens.
- 7393 Section 31A-27-322, Recoupment from affiliates.
- 7394 Section 31A-27-323, Setoffs.
- 7395 Section 31A-27-324, Recovery of premiums owed.
- 7396 Section 31A-27-325, Assessments.
- 7397 Section 31A-27-326, Reinsurer's liability -- Paid claims.
- 7398 Section 31A-27-327, Applicability of claims settlement provisions to loss claims.
- 7399 Section 31A-27-328, Filing of claims.
- 7400 Section 31A-27-329, Proof of claim.
- 7401 Section 31A-27-330, Special claims.
- 7402 Section 31A-27-330.5, Claim estimation.
- 7403 Section 31A-27-330.6, Reinsurance commutations.
- 7404 Section 31A-27-331, Special provisions for third party claims.
- 7405 Section 31A-27-332, Disputed claims.

- 7406           Section **31A-27-333, Surety's claims against insurer.**
- 7407           Section **31A-27-334, Secured claims.**
- 7408           Section **31A-27-335, Priority of distribution.**
- 7409           Section **31A-27-335.5, Health maintenance organization claims.**
- 7410           Section **31A-27-336, Liquidator's recommendations to the court.**
- 7411           Section **31A-27-337, Distribution of assets.**
- 7412           Section **31A-27-338, Unclaimed funds.**
- 7413           Section **31A-27-339, Termination of proceedings.**
- 7414           Section **31A-27-340, Reopening liquidation.**
- 7415           Section **31A-27-341, Disposition of records.**
- 7416           Section **31A-27-342, External audit of receiver's books.**
- 7417           Section **31A-27-401, Conservation of property of foreign or alien insurers found in**
- 7418 **this state.**
- 7419           Section **31A-27-402, Liquidation of property of foreign or alien insurers found in**
- 7420 **this state.**
- 7421           Section **31A-27-403, Foreign domiciliary receivers.**
- 7422           Section **31A-27-404, Ancillary formal proceedings.**
- 7423           Section **31A-27-405, Ancillary summary proceedings.**
- 7424           Section **31A-27-406, Claims of nonresidents against insurers domiciled in Utah.**
- 7425           Section **31A-27-407, Claims of residents against insurers domiciled in reciprocal**
- 7426 **states.**
- 7427           Section **31A-27-408, Attachment, garnishment, and levy of execution.**
- 7428           Section **31A-27-409, Interstate priorities.**
- 7429           Section **31A-27-410, Subordination of claims for noncooperation.**
- 7430           Section **31A-27-411, Severability clause.**

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**Legislative Review Note**  
**as of 1-23-07 4:11 PM**

**Office of Legislative Research and General Counsel**



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**H.B. 340 - Insurer Receivership Act**

**Fiscal Note**

2007 General Session  
State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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*1/26/2007, 10:17:24 AM, Lead Analyst: Eckersley, S.*

**Office of the Legislative Fiscal Analyst**