Act No. 302
Public Act of 1989
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STATE OF MICHIGAN
85TH LEGISLATURE
REGULAR SESSION OF 1989

Introduced by Reps. Wartner, Middaugh, Gnodtke, Stacey, Martin, Ouwinga, Miller, Walberg, Jaye, Krause, Gilmer, Law and Dolan

ENROLLED HOUSE BILL No. 4939

AN ACT to amend sections 222, 901, 2005, 5256, 7702, 7704, 7705, 7706, 7708, 7709, 7710, 7711, 7712, 7714, 7717, and 7921 of Act No. 218 of the Public Acts of 1956, entitled as amended "An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability, and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state, and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance, and with respect to certain claims against uninsured or self-insured persons; and to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to repeal certain acts and parts of acts; to repeal certain acts and parts of acts on specific dates; and to provide penalties for the violation of this act," section 222 as amended by Act No. 173 of the Public Acts of

1986, section 901 as amended by Act No. 340 of the Public Acts of 1988, section 5256 as amended by Act No. 338 of the Public Acts of 1982, sections 7702, 7704, 7705, and 7706 as amended by Act No. 501 of the Public Acts of 1982, sections 7708, 7710, 7711, 7712, 7714, and 7717 as added by Act No. 194 of the Public Acts of 1982, section 7709 as amended by Act No. 121 of the Public Acts of 1986, and section 7921 as amended by Act No. 41 of the Public Acts of 1980, being sections 500.222, 500.901, 500.2005, 500.5256, 500.7702, 500.7704, 500.7705, 500.7706, 500.7708, 500.7709, 500.7710, 500.7711, 500.7712, 500.7714, 500.7717, and 500.7921 of the Michigan Compiled Laws; to add section 416 and chapter 81; and to repeal certain parts of the act.

The People of the State of Michigan enact:

Section 1. Sections 222, 901, 2005, 5256, 7702, 7704, 7705, 7706, 7708, 7709, 7710, 7711, 7712, 7714, 7717, and 7921 of Act No. 218 of the Public Acts of 1956, section 222 as amended by Act No. 173 of the Public Acts of 1986, section 901 as amended by Act No. 340 of the Public Acts of 1988, section 5256 as amended by Act No. 338 of the Public Acts of 1982, sections 7702, 7704, 7705, and 7706 as amended by Act No. 501 of the Public Acts of 1982, sections 7708, 7710, 7711, 7712, 7714, and 7717 as added by Act No. 194 of the Public Acts of 1982, section 7709 as amended by Act No. 121 of the Public Acts of 1986, and section 7921 as amended by Act No. 41 of the Public Acts of 1980, being sections 500.222, 500.901, 500.2005, 500.5256, 500.7702, 500.7704, 500.7705, 500.7706, 500.7708, 500.7709, 500.7710, 500.7711, 500.7712, 500.7714, 500.7717, and 500.7921 of the Michigan Compiled Laws, are amended and section 416 and chapter 81 are added to read as follows:

Sec. 222. (1) The commissioner in person or by any of his or her authorized deputies or examiners may examine any or all of the books, records, documents, and papers of any insurance corporation at any time after its articles of incorporation have been executed and filed, or after it has been authorized to do business in this state. The commissioner at his or her discretion shall examine into the affairs of any fire insurer incorporated under any law of this state, and whenever he or she deems it expedient so to do, to examine into the affairs of any such insurer incorporated under the laws of any other state of the United States doing business by its agents in this state. The commissioner in person or by any of his or her authorized deputies or examiners shall once every 5 years examine the books, records, documents, and papers of each domestic insurer. The commissioner may examine an insurer more frequently and upon its request shall examine a domestic insurer that has not been examined for the 3 years immediately preceding the request.

(2) The business affairs, assets, and contingent liabilities of reciprocal insurers shall be subject to examination by the commissioner at any time. The commissioner may supervise and make the same examination of the business and affairs of every foreign or alien insurer doing business in this state as of domestic insurers doing the same kind of business and of its assets, books, accounts, and general condition. Every such foreign or alien insurer and its agents and officers shall always be subject to and be required to make the same statements and answer the same inquiries and be subject to the same examinations, and, in case of default therein, to the same penalties and liabilities as domestic insurance corporations doing the same kind of business, or any of the agents or officers thereof, are or may be liable to under the laws of this state or the regulations of the insurance department. The commissioner may, whenever he or she deems it necessary, either in person or by a proper person appointed by him or her, repair to the general office of such foreign or alien insurer, wherever the same may be, and make an investigation and examination of its affairs and condition.

(3) Upon such an examination the commissioner, his or her deputy or any examiner authorized by him or her, may examine under oath the officers or agents of the insurer or all persons deemed to have material information regarding the insurer's property or business. The insurer, its officers and agents, shall produce its books and all papers in its or their possession relating to its business or affairs, and any other person may be required to produce any books or papers deemed to be relevant to the examination for the inspection of the commissioner, his or her deputy or examiners, whenever required, and the officers or agents of the insurer shall facilitate the examination and aid in making the same so far as it is in their power to do so.

(4) The deputy or examiners shall make a full and true report, and furnish the insurer a copy of the examination report that shall comprise only facts appearing on the books, records, or documents of the insurer or ascertained from sworn testimony of its officers or agents or other persons examined under oath, concerning its affairs and the conclusions and recommendations as may be reasonably warranted from the facts disclosed. The commissioner shall grant a hearing to any insurer examined, upon its request, before filing the report. Upon request of the insurer subject to the hearing, the hearing shall be closed to the public. Each examination report shall be withheld from public inspection until the report is final and filed with the commissioner. In addition, the commissioner may withhold any examination report from public inspection for such time as he or she may deem proper. In any event, all insurance bureau materials related to an examination report shall be withheld from public inspection and shall be confidential. This subsection shall not be construed as prohibiting the commissioner from releasing to another state's insurance commissioner information relating to the examination of an insurer if the commissioner from the other state provides assurances that the information will be kept confidential.

(5) Notwithstanding the other provisions of this section, the commissioner is not required to finalize and file an examination report for an insurer for a year in which an examination report was not finalized and filed, if the insurer is currently undergoing an examination subsequent to the year for which an examination report was not finalized and filed.

(6) The examination of an alien insurer shall be limited to its United States business, except as otherwise required by the commissioner.

Sec. 416. As a condition of transacting insurance in this state, the commissioner may require an insurer to maintain a special deposit with the state treasurer in such amount as the commissioner considers necessary for the protection of Michigan policyholders and claimants. The special deposit is subject to special deposit claims pursuant to section 8141a.

Sec. 901. (1) Each insurer authorized to transact the business of insurance in this state and each person approved for placement of business by a surplus lines agent pursuant to chapter 19, may loan or invest its funds in any investment, and may buy, sell, hold title to, possess, occupy, pledge, convey, manage, protect, insure, and deal with respect to its investments, property, and money to the same extent as any other person or corporation under the laws of this state or of the United States if the insurer has assets in cash, computers, or as defined in this chapter in a total amount at least equal to the sum of its liabilities including its reserves as required by this code, plus an amount for contingencies as defined in subsection (5), plus an amount equal to the minimum capital or minimum surplus required to be maintained by sections 408 and 410. However, the value of all computers shall not exceed 2% of the assets required by this subsection and the value of each computer shall not exceed the original cost of the computer amortized over a period not to exceed 10 years. For purposes of this section, "computer" means an electronic data processing system, composed of 1 or more components, which utilizes storage and processing mechanization, and which has a direct automatic means of input and output, including, but not limited to, central processing units, data input/output channels, main storage or memory, and peripheral devices for systems control, data input, output, or temporary or permanent storage of information, and associated reusable media required by these devices and operating systems software. Title insurers may include their net investment in their title plant. Assets defined by sections 946 and 947 shall not be used to satisfy more than 20% of this requirement. The sum of the liabilities and reserves may be reduced by 1 or more of the following:

(a) A reinsurance balance recoverable or other credit due from a reinsurer that complies with rule 402 of the general rules of the insurance bureau, being R 500.402 of the Michigan administrative code, or other applicable rule promulgated by the commissioner, to the extent that the balance recoverable or other credit due may be used to offset a liability as authorized in an insurer's annual statement concerning its affairs filed pursuant to section 438.

(b) Policy loans secured by policies included in the liabilities and reserves but not in excess of the cash surrender value of the policies.

(c) Premium notes secured by letters of credit, security trust funds, or unearned premium reserves.

(d) The net amount of life insurance premiums and annuity considerations deferred and uncollected. Reduction under this subdivision shall not be allowed for credit life and credit accident and health premiums deferred and uncollected, whether individual or group, except as allowed pursuant to subdivision (e).

(e) Agents' balances or uncollected premiums owed directly to the insurer or owed indirectly to the insurer through an affiliated or controlled person, including credit insurance premiums, whether individual or group, other than amounts by which liabilities may be reduced in accordance with subdivision (d), from an agent, agency, policyholder, or other person, subject to the following conditions:

(*i*) This reduction shall only be allowed for agents' balances or uncollected premiums not due from an agent, agency, policyholder, or other person for more than 3 months.

(*ii*) This reduction shall only be allowed as to the amount due from each agent, agency, policyholder, or other person to the extent that the balance or uncollected premium does not exceed 10% of the sum of the insurer's liabilities and minimum capital or minimum surplus.

(*iii*) The total amount by which the receivable from all agents, agencies, single policyholders, or other persons, net of ceded balances payable, exceeds 40% of the insurer's surplus as regards policyholders shall not be used to reduce liabilities under this subdivision. Premiums, agents' balances, and installments booked but deferred and not yet due are excluded from the 40% limitation.

(f) Assets, liabilities, and reserves under this subsection shall exclude assets, liabilities, and reserves included in separate accounts established in accordance with section 925. The value of income due and accrued in respect to these assets may be included in the total amount. The assets shall not be valued at more than the actual value as ascertained in a manner approved by the commissioner, except those assets defined by sections 912, 914, 918, 934, 938, and 942 which have a fixed term and rate, if amply secured and not in default as to

principal and interest may be valued as follows: if purchased at par, the par value; if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made. The purchase price shall not be taken at a higher figure than the actual market value at the time of purchase.

(g) Amounts receivable from a person to the extent such amounts offset liabilities or amounts payable to that person. Receivables and payables with respect to reinsurance may be allowed so long as the reinsurance contract has a right of offset provision. A reduction under this subdivision shall not be allowed for agents' balances or uncollected premiums as defined by subdivision (e).

(h) The commissioner may promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, to permit other assets not specifically defined in this section to be used as qualified assets for purposes of this subsection, as long as the assets are financially equivalent to those assets defined in sections 910 to 947.

(2) The assets required by subsection (1) shall not include more than 5% of such assets invested in, loaned to, receivable from, secured by, leased or rented to, or deposited with 1 person or invested in 1 parcel of real estate. This restriction shall not apply to funds deposited with or cash in banks, savings and loan institutions, or credit unions, or obligations of the United States or any state, or agencies or instrumentalities of the United States or any state, if the principal and interest are fully guaranteed by the United States or any state. This restriction shall not apply to cash or cash equivalent, including certificates of deposit in chartered banks. In the case of an alien insurer which is an insurer authorized to transact the business of life insurance, for purposes of this subsection the term "assets" means the total assets of such insurer, excluding assets included in separate accounts, as reported in the total business annual statement filed by the insurer with its domiciliary authority.

(3) The assets referred to in subsection (1) may include assets invested in, loaned to, receivable from, secured by, leased or rented to, or deposited with a person that is, directly or indirectly, owned or controlled by the insurer or that, directly or indirectly, owns, controls, or is affiliated with the insurer. Two persons shall be considered to be affiliated if they are both owned or controlled, directly or indirectly, by the same person or by the same group of persons. Control shall be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies, representing 10% or more of the voting securities of any other person, or in the case of a mutual insurer, owns 10% or more of the mutual insurer's policyholders' surplus through surplus notes, guarantee fund certificates, or other evidences of indebtedness issued by the mutual insurer.

(4) The value of controlled, owned, or affiliated entities, for purposes of subsection (1), shall be calculated in accordance with the following conditions and limitations:

(a) If the owned, affiliated, or controlled entity is an insurer, the entity will be permitted as an asset only if the entity is licensed to transact the business of insurance in this state or, if not licensed to transact the business of insurance in this state, if it possesses the qualifications to become licensed in this state. The value of an affiliated or controlled insurance subsidiary shall be the value of assets in excess of liabilities as determined pursuant to this section prorated to reflect the extent of the insurer's ownership or equity participation with the entity.

(b) If the owned, affiliated, or controlled entity is not an insurer, the value of the entity shall be assets in excess of all liabilities to the extent that the assets comply with sections 910 to 947. The value shall be prorated to reflect the insurer's ownership or equity participation in the entity. However, if an insurer can demonstrate to the satisfaction of the commissioner that other assets of this owned, affiliated, or controlled entity are at least as secure as assets which comply with sections 910 to 947, the assets may be included in calculating the value of the entity.

(5) The amount for contingencies required by subsection (1) shall be calculated in accordance with the following:

(a) The amount for contingencies required by subsection (1) for insurers, other than an insurer authorized to transact life insurance and an insurer transacting only title insurance, shall equal the net premiums written in excess of 3.5 times the insurer's surplus as regards policyholders reported by the insurer in its current statement of financial condition filed with the commissioner.

(b) For purposes of this section, net premiums written shall equal gross premiums less return premiums, including policy and membership fees written during the year, plus all premiums assumed through reinsurance, less premiums ceded through reinsurance.

(c) The 3.5 to 1 limitation, for those insurers required to file financial statements other than on an annual basis, shall be calculated by annualizing the net premiums as reported for interim statements. An even premium volume shall be assumed unless the insurer demonstrates to the satisfaction of the commissioner that another method will more accurately reflect the insurer's projected annual premium volume. However, an alternative projection method which utilizes a projection factor for surplus as regards policyholders shall not be acceptable.

(d) The amount for contingencies referred to in this section for insurers authorized to transact life insurance and insurers transacting only title insurance shall equal zero.

(e) Two or more insurers authorized to transact insurance in this state may compute the amount for contingencies referred to in this section on a consolidated basis and prorate the total amount for contingencies to each insurer in proportion to the premiums earned by each insurer, if either of the following conditions exist:

(*i*) The insurers are affiliated through ownership, where each insurer is wholly owned by or wholly owns 1 or more of the other insurers in the group.

(*ii*) The insurers pool substantially all their business with each other and the commissioner certifies that the computation on a consolidated basis will more accurately reflect the financial condition and affairs of the insurers.

(f) An insurer may write premiums in excess of the ratio prescribed in subdivision (c) without incurring a contingency reserve penalty if the insurer elects to deposit funds or securities of the kind described in section 912, registered in the name of the state treasurer of Michigan, designated as exclusively held and deposited for the sole benefit of Michigan policyholders, claimants, and creditors pursuant to section 8141a, in an amount, at market value, equal to the greater of $1,000,000.00 or the aggregate sum of 100% of Michigan direct unpaid losses and unpaid loss adjustment expense plus 100% of Michigan direct unearned premiums. Direct unpaid losses and unpaid loss adjustment expenses shall include a provision for incurred but not reported losses and associated loss adjustment expense. The deposit shall be a special deposit and shall be subject to special deposit claims for the benefit of Michigan policyholders and claimants pursuant to section 8141a. The deposit of funds required by this subdivision shall be increased by adjustment each quarter. A decrease to the deposited fund may be made annually only upon a satisfactory showing by the insurer to the commissioner that a decrease in the deposit is justified. The commissioner may require the special deposits set forth in this subsection as a condition for any insurer to transact insurance in this state if the commissioner finds that a special deposit is necessary for the protection of Michigan policyholders and claimants.

(6) Compliance with subsection (1) is the obligation of each insurer, fund, or fraternal benefit society authorized to transact the business of insurance in this state. Failure to comply shall limit the insurer, fund, or fraternal benefit society under the remainder of this code. If, at any time following compliance with the requirements of this section, an insurer, fund, or fraternal benefit society, fails to maintain compliance, the commissioner shall notify the insurer, fund, or fraternal benefit society that it has failed to maintain compliance with this section. Within 30 business days after notification by the commissioner of noncompliance with the provisions of this section, an insurer shall file a plan to restore compliance with this section. Failure of the insurer to file a plan shall create a presumption that the insurer does not meet the requirements of this code with respect to surplus and assets. The commissioner, upon written request by the insurer, may grant a period of time within which to restore compliance. The period of time may be granted only if the commissioner is satisfied the insurer is safe, reliable, and entitled to public confidence; is satisfied the insurer would suffer a material financial loss from an immediate forced conversion of its assets; and approves the plan filed by the insurer for restoring compliance within the time granted. If the plan is not approved by the commissioner, or if the plan is approved, and, at the end of 1 year the insurer still does not comply with the requirements of this section, the commissioner may grant additional time to comply, or the commissioner may suspend, revoke, or limit the certificate of authority of the insurer pursuant to section 436.

Sec. 2005. An unfair method of competition and an unfair or deceptive act or practice in the business of insurance means the making, issuing, circulating, or causing to be made, issued, or circulated, an estimate, illustration, circular, statement, sales presentation, or comparison which by omission of a material fact or incorrect statement of a material fact does any of the following:

(a) Misrepresents the terms, benefits, advantages, or conditions of an insurance policy.

(b) Misrepresents the dividends or share of the surplus to be received on an insurance policy.

(c) Makes a false or misleading statement as to the dividends or share of surplus previously paid on an insurance policy.

(d) Makes a misleading statement or misrepresentation as to the financial condition of a person engaged in the business of insurance, or as to the legal reserve system upon which a life insurer operates.

(e) Uses a name or title of an insurance policy or class of insurance policies misrepresenting the true nature of that insurance policy or class of insurance policies. A policy approved by the commissioner shall be conclusively presumed not to misrepresent the true nature of that policy.

(f) Makes a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of an insurance policy.

(g) Makes a misrepresentation for the purpose of effecting a pledge or assignment of or a loan against an insurance policy.

(h) Misrepresents an insurance policy as being a security. This subdivision shall not apply to an insurance policy which must be registered as a security pursuant to the law of this state or of the United States.

(i) Misrepresents the nature or extent of coverage afforded an insurance policy or annuity contract by the Michigan life and health insurance guaranty association or the property and casualty guaranty association.

Sec. 5256. (1) Except as provided in subsection (5), each domestic insurer shall keep all of its original books, records, and files, or true copies thereof, at its home office or principal place of doing business in this state, and shall keep all of its securities, notes, mortgages, or other evidences of indebtedness, representing investment of funds at its home office of principal place of doing business in this state. If a domestic insurer was processing and maintaining its books, records, and files in other states on December 17, 1982, it shall be deemed in compliance with this subsection as long as the books, records, and files, or true copies thereof, and personnel knowledgeable about the books, records, and files are made readily available at the principal place of doing business in this state for examination by and at the request of the commissioner.

(2) A domestic insurer may place for safekeeping all or any part of its securities, notes, mortgages, or other evidences of indebtedness, with any national bank, state bank, trust company, or any other corporation authorized to accept and hold personal property for safekeeping and located in the United States. A statutory deposit required by any state or foreign country shall be excepted and any delivery and pledge or assignment of its notes, mortgages, or other securities by any such insurer, as security for money borrowed by it or as required in the regular course of its business by the laws of any state or foreign country, shall also be excepted. The insurer may hold certificates evidencing shares of stock or other registrable securities in the name of a nominee or nominees employed by the insurer and responsible to the insurer. The nominee or nominees, on the request of the insurer, shall indorse the certificate representing shares of stock or other registrable securities in blank or by assignment separate from the certificates. The insurer at all times shall maintain control or possession of the certificate representing the share of stock or other registrable securities, but, if necessary, the nominee or nominees may have access thereto for the purpose of examination under the supervision of the corporation.

(3) Removal of all or a material part of the records of a domestic insurer from this state, except pursuant to a plan or merger or consolidation approved by the commissioner under this code or for such reasonable purposes and periods of time as may be approved in writing by the commissioner, is prohibited. Removal of the records or material part thereof from the home office or other place of business or of safekeeping of the insurer in this state with the intent to remove the records from this state, or concealing or attempting to conceal the records from the commissioner is a violation of this section. If after a hearing is held pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, the commissioner determines that the insurer has violated this section, the commissioner shall reduce his or her findings and decision to writing and shall issue and cause to be served upon the insurer charged with the violation a copy of the findings and order requiring the insurer to return the office, records, and assets to this state. An insurer which violates this section shall be treated as a foreign insurer for the period of time the records were removed from this state, and the insurer shall be liable for both of the following:

(a) The amount of premium tax due and interest in the amount of 3% of the amount due and unpaid for each month or part of a month that the insurer was in violation of this section.

(b) A penalty of $5,000.00 plus an additional $50.00 for each day that the insurer was not in compliance with this section.

(4) If an insurer fails to comply with an order issued under this section, as modified or extended, the commissioner shall suspend or revoke the insurer's certificate of authority.

(5) A domestic insurer that is a subsidiary of an alien insurer formed within the boundaries of Canada and that uses Michigan as its port of entry into the United States through a branch operation satisfies the requirements of subsection (1) by maintaining a deposit of not less than the amount of liabilities with respect to the domestic insurer's business in the United States and adequate capital and surplus to support its writings but not less than the amount of capital and surplus required by statute with the state treasurer, or with trustees resident in the United States, or with any combination of such persons, under a trust indenture approved by the commissioner. The deposit shall be in cash or in securities of the kinds permitted by chapter 9. The domestic insurer and the persons holding the deposit shall submit to the commissioner a report, under oath, on or before March 1 of each year, of the domestic insurer's deposits as of December 31 of the preceding year. The domestic insurer shall pay to the commissioner, as compensation for regulating the domestic insurer under this subsection, 3/4 of 1% upon the domestic insurer's gross premiums written in this state excluding considerations for original annuities. This subsection does not apply in any of the following cases:

(a) To a domestic insurer that is a subsidiary of an alien insurer formed within the boundaries of Canada if all of the domestic insurer's books, records, files, securities, notes, mortgages, or other evidences of indebtedness representing investment of funds are not kept at the Canadian parent corporation's home office or at an administrative office located within this state.

(b) To a domestic insurer that is a subsidiary of an alien insurer formed within the boundaries of Canada if the alien insurer terminates its branch operation in the United States.

(c) To a domestic insurer that is a subsidiary of an alien insurer formed within the boundaries of Canada if the domestic insurer's aggregate policyholder reserves exceed those of its parent's United States operation.

Sec. 7702. (1) The purpose of this chapter is to protect, subject to certain limitations, persons specified in section 7704(1) against failure in the performance of contractual obligations under insurance policies and annuity contracts specified in section 7704(2) because of the impairment or insolvency of the insurer issuing the policies or contracts. To provide this protection:

(a) An association of insurers is created to enable the guaranty of payment of benefits and continuation of coverages as limited in this chapter.

(b) Members of the association are subject to assessment to provide funds to carry out the purpose of this chapter.

(c) The association is authorized to assist the commissioner, in the prescribed manner, in the detection and prevention of insurer impairments or insolvencies.

(2) This chapter shall be liberally construed to execute the purposes provided in subsection (1).

Sec. 7704. (1) This chapter shall provide coverage for the policies and contracts specified in subsection (2) to the following persons:

(a) To a person, other than nonresident certificate holders under group policies or contracts, who, regardless of where he or she resides, is the beneficiary, assignee, or payee of a person covered under subdivision (b).

(b) To a person who is an owner of, or certificate holder under, a policy or contract described in subsection (2), or, in the case of an unallocated annuity contract, to the person who is the contract holder, and which owner, certificate holder, or contract holder is 1 of the following:

(*i*) A resident.

(*ii*) Not a resident, if all of the following conditions are met:

(A) The insurer which issued the policy or contract is domiciled in this state.

(B) The insurer never held a license or certificate of authority in the states in which the person resides.

(C) Such states have associations similar to the association created by this chapter.

(D) The person is not eligible for coverage by those associations.

(*iii*) Not a resident, if both of the following conditions are met:

(A) The person was a resident at the time the coverage was obtained by the person.

(B) The person is not eligible for coverage by another guaranty association.

(2) Except as provided in subsection (3), this chapter shall provide coverage to a person specified in subsection (1) for direct, nongroup life, health, annuity, and supplemental policies or contracts, for certificates under direct group life, health, annuity, and supplemental policies and contracts, for legal expense insurance policies, and for unallocated annuity contracts issued by member insurers, except as limited by this chapter.

(3) This chapter shall not provide coverage for the following:

(a) A portion of a policy or contract not guaranteed by the insurer or under which the risk is borne by the policy or contract holder.

(b) A policy or contract of reinsurance, unless assumption certificates have been issued.

(c) A portion of a policy or contract to the extent that the rate of interest on which it is based exceeds the following:

(*i*) Averaged over the period of 4 years prior to the date on which the association becomes obligated with respect to the policy or contract, a rate of interest determined by subtracting 2 percentage points from Moody's corporate bond yield average averaged for that same 4-year period or for a lesser period if the policy or contract was issued less than 4 years before the association became obligated.

(*ii*) On and after the date on which the association becomes obligated with respect to the policy or contract, the rate of interest determined by subtracting 3 percentage points from Moody's corporate bond yield average as most recently available.

(d) A plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees or members to the extent that the plan or program is self-funded or uninsured, including, but not limited to, benefits payable by an employer, association, or similar entity under any of the following:

(*i*) A multiple employer welfare arrangement as defined in section 7001.

(*ii*) A minimum premium group insurance plan.

(*iii*) A stop-loss group insurance plan.

(*iv*) An administrative services only contract.

(e) A portion of a policy or contract to the extent that it provides dividends or experience rating credits, or provides that any fees or allowances be paid to a person, including the policy or contract holder, in connection with the service to or administration of the policy or contract.

(f) A policy or contract issued in this state by an insurer at a time when it did not have a certificate of authority to issue the policy or contract in this state.

(g) An unallocated annuity contract issued to an employee benefit plan protected under the federal pension benefit guaranty corporation.

(h) A portion of an unallocated annuity contract which is not issued to or in connection with a specific employee, union, or association of natural persons benefit plan or a government lottery.

(i) An amount which is not a contractual obligation including, but not limited to, an award of exemplary or punitive damages or statutory interest.

(4) The benefits for which the association may become liable shall not exceed the lesser of the following:

(a) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer.

(b) With respect to any 1 life, regardless of the number of policies or contracts:

(*i*) $300,000.00 in life insurance death benefits, but not more than $100,000.00 in net cash surrender and net cash withdrawal values for life insurance.

(*ii*) $100,000.00 in health insurance benefits, including any net cash surrender and net cash withdrawal values.

(*iii*) $100,000.00 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values.

(c) With respect to each individual participating in a governmental retirement plan established under section 401(k), 403(b), or 457 of the internal revenue code of 1986, 26 U.S.C. 401, 403, and 457, covered by an unallocated annuity contract or the beneficiaries of each such individual, if deceased, in the aggregate, $100,000.00 in present value annuity benefits, including net cash surrender and net cash withdrawal values.

(d) With respect to any 1 contract holder covered by an unallocated annuity contract not included in subdivision (c), $5,000,000.00 in benefits, irrespective of the number of contracts held by that contract holder.

(5) The association shall not be liable to expend more than the $300,000.00 in the aggregate with respect to any 1 individual under subsection (4)(b) and (c).

Sec. 7705. As used in this chapter:

(a) "Account" means any of the 3 accounts created under section 7706.

(b) "Association" means the Michigan life and health insurance guaranty association created under section 7706.

(c) "Contractual obligation" means an obligation under covered policies.

(d) "Covered policy" means a policy or contract or certificate under a group policy or contract, or portion thereof, for which coverage is provided under section 7704.

(e) "Health insurance" means disability insurance as defined in section 606.

(f) "Impaired insurer" means a member insurer considered by the commissioner after May 1, 1982, to be potentially unable to fulfill the insurer's contractual obligations or is placed under an order of rehabilitation or conservation by a court of competent jurisdiction. Impaired insurer does not mean an insolvent insurer.

(g) "Insolvent insurer" means a member insurer which after May 1, 1982, becomes insolvent and is placed under an order of liquidation, by a court of competent jurisdiction with a finding of insolvency.

(h) "Member insurer" means a person authorized to transact a kind of insurance or annuity business in this state for which coverage is provided under section 7704 and includes an insurer whose certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn. Member insurer does not include the following:

(*i*) A fraternal benefit society.

(*ii*) A cooperative plan insurer authorized under chapter 64.

(*iii*) A health maintenance organization authorized or licensed under part 210 of the public health code, Act No. 368 of the Public Acts of 1978, as amended, being sections 333.21001 to 333.21098 of the Michigan Compiled Laws.

(*iv*) A mandatory state pooling plan.

(*v*) A mutual assessment or any entity that operates on an assessment basis.

(*vi*) A nonprofit dental care corporation operating under Act No. 125 of the Public Acts of 1963, being sections 550.351 to 550.373 of the Michigan Compiled Laws.

(*vii*) A nonprofit health care corporation operating under Act No. 350 of the Public Acts of 1980, as amended, being sections 550.1101 to 550.1704 of the Michigan Compiled Laws.

(*viii*) An insurance exchange.

(*ix*) Any entity similar to the entities described in this subdivision.

(i) "Moody's corporate bond yield average" means the monthly average corporates as published by Moody's investors service, inc., or a successor to that service.

(j) "Person" means an individual, corporation, partnership, association, or voluntary organization.

(k) "Premiums" means amounts received in a calendar year on covered policies or contracts less premiums, considerations, and deposits returned and less dividends and experience credits. The term "premiums" does not include an amount received for a policy or contract, or a portion of a policy or contract for which coverage is not provided under section 7704. However, accessible premiums shall not be reduced on account of sections 7704(3)(c) relating to interest limitations and 7704(4)(b), (c), and (d) relating to limitations with respect to any 1 individual, any 1 participant, and any 1 contract holder. Premiums shall not include a premium in excess of $5,000,000.00 on an unallocated annuity contract not issued under a governmental retirement plan established under section 401(k), 403(b), or 457 of the internal revenue code of 1986, 26 U.S.C. 401, 403, and 457.

(*l*) "Resident" means a person who resides in this state at the time a member insurer is determined to be an impaired or insolvent insurer and to whom contractual obligations are owed. A person shall be considered a resident of only 1 state, which in the case of a person other than a natural person, shall be its principal place of business.

(m) "Supplemental contract" means an agreement entered into for the distribution of policy or contract proceeds.

(n) "Unallocated annuity contract" means an annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of an annuity benefit guaranteed to an individual by an insurer under the contract or certificate. The term shall also include, but not be limited to, guaranteed investment contracts, deposit administration contracts, and contracts qualified under section 403(b) of the internal revenue code of 1986, 26 U.S.C. 403.

Sec. 7706. (1) There is created a nonprofit legal entity to be known as the Michigan life and health insurance guaranty association. A member insurer shall be and remain a member of the association as a condition of authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under section 7710 and shall exercise its powers through a board of directors established under section 7707. For purposes of administration and assessment the association shall maintain the following 3 accounts:

(a) The health insurance account.

(b) The life insurance and annuity account which includes the following subaccounts:

(*i*) A life insurance subaccount.

(*ii*) An annuity subaccount.

(*iii*) An unallocated annuity subaccount.

(c) The legal expense insurance account.

(2) The association shall be under the immediate supervision of the commissioner and shall be subject to the applicable provisions of the insurance laws of this state. Meetings or records of the association may be open to the public upon majority vote of the board of directors of the association.

Sec. 7708. (1) In addition to the powers and duties enumerated in other sections of this chapter, the association has the powers and duties provided in this section.

(2) If a member insurer is an impaired domestic insurer, the association, subject to conditions imposed by the association that do not impair the contractual obligations of the impaired insurer, and approved by the commissioner, and, except for cases of court ordered conservation or rehabilitation, also approved by the impaired insurer, may do the following:

(a) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the covered policies of the impaired insurer.

(b) Provide money, pledges, notes, guarantees, or other means as are proper to effectuate subdivision (a), and to assure payment of the contractual obligations of the impaired insurer pending action under subdivision (a).

(c) Loan money to the impaired insurer.

(3) Subject to the conditions specified in subsection (4), if a member insurer is an impaired insurer, whether domestic, foreign, or alien, and the insurer is not paying claims timely, the association shall do either of the following:

(a) Take any of the actions specified in subsection (2).

(b) Provide substitute benefits in lieu of the contractual obligations of the impaired insurer solely for health claims, periodic annuity benefit payments, death benefits, supplemental benefits, and cash withdrawals for policy or contract owners who petition therefor under claims of emergency or hardship in accordance with standards proposed by the association and approved by the commissioner.

(4) The association shall be subject to the requirements of subsection (3) only if the following are met:

(a) The laws of the impaired insurer's state of domicile provide that until all payments of or on account of the impaired insurer's contractual obligations by all guaranty associations, along with all expenses thereof and interest on all such payments and expenses, have been repaid to the guaranty associations or a plan of repayment by the impaired insurer shall have been approved by the guaranty associations:

(*i*) The delinquency proceeding shall not be dismissed.

(*ii*) Neither the impaired insurer nor its assets shall be returned to the control of its shareholders or private management.

(*iii*) It shall not be permitted to solicit or accept new business or have any suspended or revoked license restored.

(b) If the impaired insurer is a domestic insurer, it has been placed under an order of rehabilitation by a court of competent jurisdiction in this state.

(c) If the impaired insurer is a foreign or alien insurer, any of the following has occurred:

(*i*) It has been prohibited from soliciting or accepting new business in this state.

(*ii*) Its certificate of authority has been suspended or revoked in this state.

(*iii*) A petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state of domicile by the commissioner of that state.

(5) If a member insurer is an insolvent insurer, the association shall do either of the following:

(a) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies of the insolvent insurer or assure payment of the contractual obligations of the insolvent insurer; and provide money, pledges, notes, guarantees, or other means as are reasonably necessary to effectuate this subdivision.

(b) With respect to life and health insurance policies, provide benefits and coverage pursuant to subsection (6).

(6) If proceeding under subsection (3)(b) or (5)(b), with respect to only life and health insurance policies all of the following apply:

(a) The association shall assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies of the insolvent insurer, for claims incurred as follows:

(*i*) With respect to a group policy, not later than the earlier of the next renewal date under the policy or contract or 45 days, but not less than 30 days, after the date on which the association becomes obligated with respect to the policy.

(*ii*) With respect to an individual policy, not later than the earlier of the next renewal date, if any, under the policy or 1 year, but not less than 30 days, from the date on which the association becomes obligated with respect to the policy.

(b) The association shall make diligent efforts to provide all known insureds, or group policyholders with respect to group policies, 30 days' notice of the termination of the benefits provided.

(c) The association shall make available substitute coverage on an individual basis in accordance with the provisions of subdivision (d), to each known insured under an individual policy, or owner if other than the insured, and to each individual formerly insured under a group policy who is not eligible for replacement group coverage, if the insured had a right under law or the terminated policy to convert coverage to individual coverage or to continue an individual policy in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class.

(d) In providing the substitute coverage required under subdivision (c) all of the following apply:

(*i*) The association may offer either to reissue the terminated coverage or to issue an alternative policy.

(*ii*) Alternative or reissued policies shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy.

(*iii*) The association may reinsure an alternative or reissued policy.

(e) An alternative policy adopted by the association shall be subject to the approval of the commissioner. The association may adopt an alternative policy for future issuance without regard to any particular impairment or insolvency. An alternative policy shall contain at least the minimum statutory provisions required in this state and provide benefits that shall not be unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates which it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not reflect any changes in the health of the insured after the original policy was last underwritten. An alternative policy issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.

(f) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the commissioner or by a court of competent jurisdiction.

(g) The association's obligations with respect to coverage under a policy of the impaired or insolvent insurer or under a reissued or alternative policy shall cease on the date the coverage or policy is replaced by another similar policy by the policyholder, the insured, or the association.

(7) If proceeding under subsection (3)(b) or (5), with respect to a policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with section 7704(3)(c).

(8) Nonpayment of premiums within 31 days after the date required under the terms of a guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage shall terminate the association's obligations under the policy or coverage under this chapter with respect to the policy or coverage, except with respect to a claim incurred or any net cash surrender value which may be due in accordance with the provisions of this chapter.

(9) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the association, and the association shall be liable for unearned premiums due to policy or contract owners arising after the entry of the order.

(10) The protection provided by this chapter shall not apply if guaranty protection is also provided to residents of this state by the laws of the domiciliary state of the impaired or insolvent insurer.

(11) In carrying out its duties under this section, the association, subject to approval by the court, may do the following:

(a) Impose permanent policy or contract liens in connection with a guarantee, assumption, or reinsurance agreement, if the association finds that the amounts which can be assessed under this chapter are less than the amounts needed to assure full and prompt performance of the association's duties under this chapter or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of the permanent policy or contract liens to be in the public interest.

(b) Impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value.

(12) If the association fails to act as provided in subsections (3)(b), (5), and (6) within a reasonable period of time, the commissioner shall have the powers and duties of the association under this chapter with respect to impaired or insolvent insurers.

(13) The association may render assistance and advice to the commissioner, upon his or her request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of an impaired or insolvent insurer.

(14) The association shall have standing to appear before a court in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this chapter. The standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring, modifying, or guaranteeing the covered policies of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations. The association may also appear or intervene before a court in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over a third party against whom the association may have rights through subrogation of the insurer's policyholders.

(15) A person receiving benefits under this chapter shall be considered to have assigned the rights under, and any causes of action relating to, the covered policy to the association to the extent of the benefits received because of this chapter whether the benefits are payments of or on account of contractual obligations, continuation of coverage, or provision of substitute or alternative coverages. The association may require an assignment to the association of such rights and causes of action by a payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of rights or benefits conferred by this chapter upon that person. The association shall be subrogated to these rights against the assets of an impaired or insolvent insurer. The subrogation rights of the association under this subsection shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this chapter. In addition, the association shall have all common law rights of subrogation and any other equitable or legal remedy which would have been available to the impaired or insolvent insurer or holder of a policy or contract with respect to the policy or contract.

(16) The association may do the following:

(a) Enter into contracts which are necessary or proper to carry out the provisions and purposes of this chapter.

(b) Sue or be sued, including taking legal actions necessary or proper for recovery of unpaid assessments levied under section 7709 and to settle claims or potential claims against it.

(c) Borrow money to effect the purposes of this chapter. Notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets.

(d) Employ or retain the people necessary to handle the financial transactions of the association and to perform other functions which become necessary or proper under this chapter.

(e) Negotiate and contract with a liquidator, rehabilitator, conservator, or ancillary receiver to carry out the powers and duties of the association.

(f) Take legal action which is necessary to avoid payment of improper claims.

(g) Exercise, for the purposes of this chapter and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform its obligations under this chapter.

(h) Join an organization of 1 or more other state associations of similar purposes, to further the purposes and administer the powers and duties of the association.

Sec. 7709. (1) Except as otherwise provided in this section, for the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary. Assessments shall be due not less than 30 days after written notice to the member insurers and shall accrue interest at 12% per annum on and after the due date.

(2) There shall be 2 classes of assessments, as follows:

(a) Class A assessments shall be made for the purpose of meeting administrative and legal costs, other general expenses, and the expenses of examinations conducted under section 7712(5).

(b) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under section 7708 with regard to an impaired or insolvent insurer.

(3) The amount of a class A assessment shall be determined by the board and may be made on a pro rata or nonpro rata basis. If pro rata, the board may provide that it be credited against future class B assessments. A nonpro rata assessment shall not exceed $150.00 per member insurer in 1 calendar year.

(4) The amount of a class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard considered by the board in its sole discretion as being fair and reasonable under the circumstances.

(5) A class B assessment against member insurers for each account and subaccount shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies covered by each account for the 3 most recent calendar years for which information is available preceding the year in which the insurer became impaired or insolvent bears to such premiums received on business in this state for those 3 most recent calendar years by all assessed member insurers.

(6) An assessment for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be made until necessary to implement the purposes of this chapter. Classification of assessments under subsection (2) and computation of assessments under this section shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(7) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill that insurer's contractual obligations. In the event an assessment against a member insurer is abated or deferred, in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section.

(8) The total of all assessments upon a member insurer for each account or subaccount shall not in 1 calendar year exceed 2% of that insurer's average premiums received in this state during the calendar years for which information is available preceding the assessment on the policies covered by the account on the policies and contracts covered by the account during the 3 calendar years preceding the year in which the insurer became an impaired or insolvent insurer. If the maximum assessment for any account, together with the other assets of the association in that account, does not provide in 1 calendar year in that account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this chapter.

(9) The board may provide in the plan of operation a method of allocating funds among claims, whether relating to 1 or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

(10) If the maximum assessment under subsection (1) in 2 successive years for any subaccount in the life and annuity account does not provide an amount sufficient to carry out the responsibilities of the association, then pursuant to subsection (5), the board shall allocate the necessary additional amount among the other subaccounts, in the following sequence: from the life insurance subaccount to the annuity subaccount to the unallocated annuity subaccount; from the annuity subaccount to the unallocated annuity subaccount to the life insurance subaccount; from the unallocated annuity subaccount to the annuity subaccount to the life insurance subaccount; however no amount shall be allocated to a subaccount for assessment until the maximum amount has been allocated to the preceding subaccount.

(11) The board may refund to member insurers, by an equitable method as established in the plan of operation and in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in an account to provide funds for the continuing expenses of the association and for future losses.

(12) In determining premium rates and policy owner dividends as to any kind of insurance within the scope of this chapter, a member insurer may consider the amount reasonably necessary to meet assessment obligations under this chapter.

(13) The association shall issue to an insurer paying an assessment under this chapter, other than a class A assessment, a certificate of contribution in a form prescribed by the commissioner for the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in the insurer's financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve.

Sec. 7710. (1) The association shall submit to the commissioner a plan of operation and amendments to the plan necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and amendments to the plan shall become effective upon approval in writing by the commissioner or if he or she has not disapproved it within 30 days after submission.

(2) If the association fails to submit a suitable plan of operation within 60 days following the effective date of this chapter or if at any time the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, promulgate rules reasonably necessary or advisable to effectuate this chapter. The rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(3) All member insurers shall comply with the plan of operation.

(4) In addition to requirements enumerated elsewhere in this chapter, the plan of operation shall contain the following:

(a) Procedures for handling the assets of the association.

(b) The amount and method of reimbursing members of the board of directors under section 7707.

(c) Regular places and times for meetings of the board of directors.

(d) Procedures for records to be kept of financial transactions of the association, the association's agents, and the board of directors.

(e) Procedures for election of the board of directors and for submission of board members to the commissioner.

(f) Additional procedures for assessments under section 7709.

(g) Additional provisions necessary or proper for the execution of the powers and duties of the association.

(5) The plan of operation may provide that any or all powers and duties of the association, except those under sections 7708(16)(c) and 7709, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of the association, or the association's equivalent, in 2 or more states.

Sec. 7711. (1) In addition to the duties enumerated elsewhere in this chapter, the commissioner shall:

(a) Upon request of the board of directors, provide the association with a statement of the premiums in the appropriate states for each member insurer.

(b) When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer shall constitute notice to that insurer's shareholders, if any. The failure of the insurer to promptly comply with the demand shall not excuse the association from the performance of the association's powers and duties under this chapter.

(c) In a liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator.

(2) In addition to the powers enumerated elsewhere in this chapter, the commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of a member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative the commissioner may levy a forfeiture on a member insurer which fails to pay an assessment when due. The forfeiture shall not exceed 5% of the unpaid assessment per month, but forfeiture shall not be less than $100.00 per month.

(3) An action by the board of directors or the association may be appealed to the commissioner by a member insurer if the appeal is taken within 60 days of the final action being appealed. If a member company is appealing an assessment, the amount assessed shall be paid to the association and available to meet association obligations during the pendency of an appeal. If the appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member company. A final action or order of the commissioner shall be subject to judicial review in a court of competent jurisdiction.

(4) The liquidator, rehabilitator, or conservator of an impaired insurer may notify all interested persons of the effect of this chapter.

Sec. 7712. (1) To aid in the detection and prevention of insurer insolvencies or impairments, the commissioner shall do the following:

(a) Notify the commissioners of all the other states, territories of the United States, and the District of Columbia when he or she takes any of the following actions against a member insurer:

(*i*) Revokes a certificate of authority.

(*ii*) Suspends a certificate of authority.

(*iii*) Makes a formal order that the company restricts its premium writing, obtains additional contributions to surplus, withdraws from the state, reinsures all or a part of its business, or increases capital, surplus, or any other account for the security of policyholders or creditors.

(b) Mail the notice under subdivision (a) to all commissioners within 30 days following the action taken.

(c) Report to the board of directors when he or she has taken any of the actions set forth in subdivision (a) or has received a report from any other commissioner indicating that such action has been taken in another state. The report to the board of directors shall contain all significant details of the action taken or the report received from another commissioner.

(d) Report to the board of directors when the commissioner has reasonable cause to believe from an examination, whether completed or in process, of a member company that the company may be an impaired or insolvent insurer.

(e) Furnish to the board of directors the NAIC insurance regulatory information system (IRIS) ratios and listings of companies not included in the ratios developed by the national association of insurance commissioners. The board may use that information in carrying out its duties and responsibilities under this section.

(f) The report and the information furnished pursuant to this subsection shall be kept confidential by the board of directors until made public by the commissioner or other lawful authority.

(2) The commissioner may seek the advice and recommendations of the board of directors concerning a matter affecting his or her duties and responsibilities regarding the financial condition of a member company seeking to transact insurance business in this state.

(3) The board of directors, upon majority vote, may make reports and recommendations to the commissioner upon a matter germane to the solvency, liquidation, rehabilitation, or conservation of a member insurer or germane to the solvency of a company seeking to transact insurance business in this state. The reports and recommendations shall not be considered public documents.

(4) The board of directors, upon majority vote, shall notify the commissioner of information indicating that a member insurer may be an impaired or insolvent insurer.

(5) The board of directors, upon majority vote, may request that the commissioner order an examination of a member insurer which the board in good faith believes may be an impaired or insolvent insurer. Within 30 days after the receipt of the request, the commissioner shall begin the examination. The examination may be conducted as a national association of insurance commissioners examination or may be conducted by a person whom the commissioner designates. The cost of the examination shall be paid by the association, and the examination report shall be treated in the same manner as other examination reports. An examination report shall not be released to the board of directors before release to the public, but this shall not preclude the commissioner from complying with subsection (1). The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner but shall not be open to public inspection before release of the examination report to the public.

(6) The board of directors, upon majority vote, may make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(7) At the conclusion of an insurer insolvency in which the association was obligated to pay covered claims, the board of directors shall prepare a report to the commissioner containing information in the board's possession bearing on the history and causes of the insolvency. The board shall cooperate with the boards of directors of guaranty associations in other states in preparing a report on the history and causes for insolvency of a particular insurer and may adopt by reference a report prepared by such other associations.

Sec. 7714. (1) This chapter shall not be construed to reduce the liability for unpaid assessments of the insureds on an impaired or insolvent insurer operating under a plan with assessment liability.

(2) Records shall be kept of all negotiations and meetings in which the association or the association's representatives are involved to discuss the activities of the association in carrying out powers and duties under section 7708. Records of such negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation, or conservation proceeding involving an impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction. This subsection shall not limit the duty of the association to render a report of association activities under section 7715.

(3) For the purpose of carrying out obligations under this chapter, the association shall be considered a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to section 7708(15). Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this chapter. As used in this subsection, "assets attributable to covered policies" means that proportion of the assets which the reserves that should have been established for the covered policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.

Sec. 7717. There shall be no liability on the part of and a cause of action shall not arise against a member insurer or an insurer's agents or employees, the association or the association's agents or employees, members of the board of directors, or the commissioner or his or her representatives for any action or omission by them in the performance of powers and duties under this chapter. This immunity shall extend to the participation in an organization of 1 or more other state associations of similar purposes and to the organization and its agents or employees.

Sec. 7921. As used in this chapter:

(a) "Insolvent insurer" means an insurer for which a domiciliary receiver has been appointed by a final order in this state or in a reciprocal state, as defined in section 8103 for the liquidation of the insurer and which has been a member insurer. The date on which the order becomes final shall be the date on which the receiver is appointed for purposes of this chapter.

(b) "Member insurer" means an insurer required to be a member of the association pursuant to section 7911.

CHAPTER 81.

SUPERVISION, REHABILITATION, AND LIQUIDATION

Sec. 8101. (1) This chapter shall not be interpreted to limit the powers granted the commissioner by other provisions of this code.

(2) This chapter shall be liberally construed to effect the purpose stated in subsection (3).

(3) The purpose of this chapter is the protection of the interests of insureds, claimants, creditors, and the public with minimum interference with the normal prerogatives of the owners and managers of insurers, through the following:

(a) Early detection of potentially dangerous conditions in an insurer and prompt application of appropriate corrective measures.

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

(c) Enhanced efficiency and economy of liquidation to minimize legal uncertainty and litigation.

(d) Equitable apportionment of unavoidable loss.

(e) Lessening the problems of interstate rehabilitation and liquidation by facilitating cooperation between states in the liquidation process and by extending the scope of personal jurisdiction over debtors of the insurer outside this state.

(f) Regulation of the insurance business relating to delinquency procedures and rules on the entire insurance business.

(4) This chapter does not apply to insurers that are subject to delinquency proceedings commenced prior to January 1, 1990. Delinquency proceedings commenced prior to January 1, 1990, shall be conducted pursuant to former chapter 78.

Sec. 8102. The proceedings authorized by this chapter may be applied to:

(a) An insurer who is transacting, or has transacted, insurance business in this state, and against whom claims arising from that business may exist now or in the future.

(b) An insurer who purports to transact an insurance business in this state.

(c) An insurer who has insureds resident in this state.

(d) All other persons organized or in the process of organizing with the intent to transact an insurance business in this state.

Sec. 8103. As used in this chapter:

(a) "Ancillary state" means any state other than a domiciliary state.

(b) "Creditor" is a person having a claim against the insurer, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent.

(c) "Delinquency proceeding" means a proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer, and a summary proceeding under section 8109 or 8110. "Formal delinquency proceeding" means any liquidation or rehabilitation proceeding.

(d) "Domiciliary state" means the state in which an insurer is incorporated or organized, or, in the case of an alien insurer, its state of entry.

(e) "Fair consideration" is given for property or an obligation pursuant to either of the following:

(*i*) If in exchange for the property or obligation, as a fair equivalent of the property or obligation and in good faith, property is conveyed or services are rendered or an obligation is incurred or an antecedent debt is satisfied.

(*ii*) If the property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared to the value of the property or obligation obtained.

(f) "Foreign country" means any other jurisdiction not in any state.

(g) "General assets" means all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited, or otherwise encumbered, for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, "general assets" includes all property or its proceeds in excess of the amount necessary to discharge the sum or sums secured by the property. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, shall be treated as general assets. Amounts due an insolvent insurer as indemnification from the catastrophic claims

association created in section 3104 shall not be considered to be assets of the receivership, but shall be paid directly to the property and casualty guaranty association under section 7935.

(h) "Guaranty association" means the Michigan property and casualty guaranty association, the worker's compensation self-insurance security fund, the Michigan life and health insurance guaranty association, and any other similar entity now or hereafter created by the legislature of this state for the payment of claims of insolvent insurers. "Foreign guaranty association" means any similar entities now in existence or hereafter created by the legislature of any other state.

(i) "Insolvency" or "insolvent" means:

(*i*) For an insurer issuing only assessable fire insurance policies:

(A) The inability to pay an obligation within 30 days after it becomes payable.

(B) If an assessment is made within 30 days after the date in subparagraph (*i*)(A), the inability to pay an obligation 30 days following the date specified in the first assessment notice issued after the date of loss.

(*ii*) For an insurer, other than an insurer under subparagraph (*i*), the inability to pay its obligations when they are due or when admitted assets do not exceed liabilities plus the greater of either of the following:

(A) Any capital and surplus required by law for its organization.

(B) The total par or stated value of its authorized and issued capital stock.

(*iii*) As to an insurer licensed to do business in this state as of the effective date of this chapter which does not meet the standard established under subparagraph (*ii*), the term "insolvency" or "insolvent" shall mean, for a period not to exceed 3 years from the effective date of this chapter, that it is unable to pay its obligations when they are due or that its admitted assets do not exceed its liabilities plus any required capital contribution ordered by the commissioner under provisions of this act.

(*iv*) For purposes of this subdivision, "liabilities" shall include, but not be limited to, reserves required by statute or by rule or specific requirements imposed by the commissioner upon an insurer at the time of admission or subsequent to admission.

(j) "Preferred claim" means a claim which receives priority of payment from the general assets of the insurer under this chapter.

(k) "Receiver" means receiver, liquidator, rehabilitator, or conservator as the context requires.

(*l*) "Reciprocal state" means a state other than this state in which all of the following occurs:

(*i*) In substance and effect sections 8118(1), 8152, 8153, 8155, 8156, and 8157 are in force.

(*ii*) Provisions requiring that the commissioner or equivalent official be the receiver of a delinquent insurer are in force.

(*iii*) Some provision for the avoidance of fraudulent conveyances and preferential transfers are in force.

(m) "Secured claim" means a claim secured by mortgage, trust deed, pledge, deposit as security, escrow, or otherwise, but not including a special deposit claim or claim against general assets. The term also includes claims which have become liens upon specific assets by reason of judicial process.

(n) "Special deposit claim" means a claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including a claim secured by general assets.

(o) "State" means a state, district, or territory of the United States and the Panama Canal zone.

(p) "Transacting business" includes any of the following acts, whether effected by mail or otherwise:

(*i*) The issuance or delivery of contracts of insurance to persons resident in this state.

(*ii*) The solicitation of applications for insurance contracts or other negotiations preliminary to the execution of insurance contracts.

(*iii*) The collection of premiums, membership fees, assessments, or other consideration for insurance contracts.

(*iv*) The transaction of matters subsequent to execution of insurance contracts and arising out of them.

(*v*) Operating under a certificate of authority, as an insurer, issued by the commissioner.

(q) "Transfer" shall include the sale and every other and different mode, direct or indirect, of disposing of or of parting with property or with an interest in property or with the possession of property or of fixing a lien upon property or upon an interest in property, absolutely or conditionally, voluntarily, by or without judicial proceedings. The retention of a security title to property delivered to a debtor shall be considered a transfer suffered by the debtor.

Sec. 8104. (1) A delinquency proceeding shall not be commenced under this chapter by anyone other than the commissioner of this state and a court shall not have jurisdiction to entertain, hear, or determine a proceeding commenced by any other person.

(2) A court of this state shall not have jurisdiction to entertain, hear, or determine a complaint praying for the dissolution, liquidation, rehabilitation, sequestration, conservation, or receivership of an insurer; or praying for an injunction or restraining order or other relief preliminary to, incidental to, or relating to such proceedings other than in accordance with this chapter.

(3) The circuit court for Ingham county shall have sole jurisdiction of a delinquency proceeding commenced under this chapter. In addition to other grounds for jurisdiction provided by the law of this state, the circuit court for Ingham county shall also have jurisdiction over a person served pursuant to the applicable provisions of law in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state, if any of the following apply:

(a) The person served is obligated to the insurer as incident to an agency or brokerage arrangement that may exist or has existed between the insurer and the agent or broker, in an action on or incident to the obligation.

(b) The person served is a reinsurer who has at any time written a policy of reinsurance for an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced, or is an agent or broker of or for the reinsurer, in an action on or incident to the reinsurance contract.

(c) The person served is or has been an officer, manager, trustee, organizer, promoter, or person in a position of comparable authority or influence on an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced, in an action resulting from such a relationship with the insurer.

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

Sec. 8105. (1) A receiver appointed in a proceeding under this chapter may at any time apply for, and the circuit court for Ingham county may grant, a restraining order, preliminary injunction, permanent injunction, and any other order as may be considered necessary and proper to prevent any of the following:

(a) The transaction of further business by the insurer.

(b) The transfer of property.

(c) Interference with the receiver or with a proceeding under this chapter.

(d) Waste of the insurer's assets.

(e) Dissipation and transfer of bank accounts.

(f) The institution or further prosecution of any actions or proceedings.

(g) The obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets, or its policyholders.

(h) The levying of execution against the insurer, its assets, or its policyholders.

(i) The making of a sale or deed for nonpayment of taxes or assessments that would lessen the value of the insurer's assets.

(j) The withholding from the receiver of books, accounts, documents, or other records relating to the insurer's business.

(k) Other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of a proceeding under this chapter.

(2) The receiver may apply to a court outside of the state for the relief described in subsection (1).

Sec. 8106. (1) An officer, manager, director, trustee, owner, employee, or agent of an insurer, or any other persons with authority over or in charge of any segment of the insurer's affairs, shall cooperate with the commissioner in a proceeding under this chapter or an investigation preliminary to the proceeding. The term "person" as used in this section shall include a person who exercises control directly or indirectly over activities of the insurer through a holding company or other affiliate of the insurer. As used in this section, "to cooperate" shall include, but shall not be limited to, the following:

(a) To reply promptly in writing to any inquiry from the commissioner requesting such a reply.

(b) To make available to the commissioner books, accounts, documents, or other records, information, or property of, or pertaining to, the insurer and in his or her possession, custody, or control.

(2) A person shall not obstruct or interfere with the commissioner in the conduct of a delinquency proceeding or an investigation preliminary or incidental to a delinquency proceeding.

(3) This section shall not be construed to abridge otherwise existing legal rights, including the right to resist a petition for liquidation or other delinquency proceedings or orders.

(4) A person included within subsection (1) who fails to cooperate with the commissioner, or a person who obstructs or interferes with the commissioner in the conduct of a delinquency proceeding or an investigation preliminary or incidental to a delinquency proceeding, or who violates an order the commissioner issued validly under this chapter may:

(a) Be sentenced to pay a fine not exceeding $10,000.00, or imprisonment for a term of not more than 1 year, or both.

(b) After a hearing, be subject to the imposition by the commissioner of a civil penalty not to exceed $10,000.00, or the revocation or suspension of any insurance licenses issued by the commissioner, or both.

(5) An insurer subject to a delinquency proceeding pursuant to this chapter shall have the right to petition the court for relief from the actions of the commissioner or other person involved with the delinquency proceeding, including but not limited to the following:

(a) To review the expenses of the receivership in the event that the insurer claims the expenses are excessive or unreasonable.

(b) To review the actions of the receiver, commissioner, or other person involved in the delinquency proceeding, in the event the insurer claims the receiver, commissioner, or other person is abusing his or her authority under this chapter or is causing financial or administrative harm to the insurer.

Sec. 8107. In a proceeding under this chapter, the commissioner and his or her deputies shall be responsible on their official bonds for the faithful performance of their duties. If the court considers it desirable for the protection of the assets, the court may at any time require an additional bond from the commissioner or his or her deputies, and the bond shall be paid for out of the assets of the insurer as a cost of administration.

Sec. 8108a. Until all payments of or on account of the insurer's contractual obligations by all guaranty associations and all expenses and interest on the payments and expenses are repaid to the guaranty associations or a plan of repayment by the insurer is approved by the guaranty associations, an insurer that is subject to any delinquency proceedings, whether formal or informal, administrative or judicial, shall not:

(a) Be released from the proceeding, unless the proceeding is converted into a judicial rehabilitation or liquidation proceeding.

(b) Be permitted to solicit or accept new business or request or accept the restoration of a suspended or revoked license or certificate of authority.

(c) Be returned to the control of its shareholders or private management.

(d) Have its assets returned to the control of its shareholders or private management.

Sec. 8109. (1) If the commissioner has reasonable cause to believe and determines after a hearing held under subsection (5) that a domestic insurer has committed or engaged in, or is about to commit or engage in, an act, practice, or transaction that would subject it to delinquency proceedings under this chapter, he or she may make and serve upon the insurer and any other persons involved any order as is reasonably necessary to correct, eliminate, or remedy the conduct, condition, or ground.

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

(a) Notify the insurer of his or her determination.

(b) Furnish to the insurer a written list of the commissioner's requirements to abate his or her determination.

(3) If the commissioner makes a determination to supervise an insurer subject to an order under subsection (1) or (2), he or she shall notify the insurer that it is under the supervision of the commissioner. During the period of supervision, the commissioner may appoint a supervisor to supervise the insurer. The order appointing a supervisor shall direct the supervisor to enforce orders issued under subsections (1) and (2) and may also require that the insurer may not do any of the following things during the period of supervision, without the prior approval of the commissioner or his or her supervisor:

(a) Dispose of, convey, or encumber any of its assets or its business in force.

(b) Withdraw from any of its bank accounts.

(c) Lend any of its funds.

(d) Invest any of its funds.

(e) Transfer any of its property.

(f) Incur any debt, obligation, or liability.

(g) Merge or consolidate with another company.

(h) Enter into any new reinsurance contract or treaty.

(4) An insurer subject to an order under this section shall comply with the lawful requirements of the commissioner and, if placed under supervision, shall have 60 days from the date the supervision order is served within which to comply with the commissioner's requirements. If the insurer fails to comply within that time, the commissioner may institute proceedings under section 8112 or 8117 to have a rehabilitator or liquidator appointed or to extend the period of supervision.

(5) The notice of hearing under subsection (1) and an order issued pursuant to subsection (1) shall be served upon the insurer pursuant to the applicable rules of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. The notice of hearing shall state the time and place of hearing, and the conduct, condition, or ground upon which the commissioner would base his or her order. Unless mutually agreed between the commissioner and the insurer, the hearing shall occur not less than 10 days nor more than 30 days after notice is served and shall be either in Ingham county or in some other place convenient to the parties to be designated by the commissioner. The commissioner shall hold all hearings under subsection (1) privately unless the insurer requests a public hearing, in which case the hearing shall be public.

(6) An insurer subject to an order under subsection (2) may request a hearing to review that order. Such a hearing shall be held as provided in subsection (5), but the request for a hearing shall not stay the effect of the order. If the commissioner issues an order under subsection (2), the insurer, at any time, may waive a commissioner's hearing and apply for immediate judicial relief by means of any remedy afforded by law without first exhausting administrative remedies. Subsequent to a hearing, a party to the proceedings whose interests are substantially affected shall be entitled to judicial review of an order issued by the commissioner.

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

(8) If a person has violated a supervision order issued under this section which as to him or her was then still in effect, he or she may be sentenced by the court to pay a fine not exceeding $10,000.00.

(9) The commissioner may apply for, and the circuit court may grant, a restraining order, preliminary injunction, permanent injunction, and any other order as may be considered necessary and proper to enforce a supervision order.

(10) If a person subject to the provisions of this chapter, including those persons described in section 8106(1), knowingly violates a valid order of the commissioner issued under the provisions of this section and, as a result of the violation, the net worth of the insurer shall be reduced or the insurer shall suffer loss it would not otherwise have suffered, that person shall become personally liable to the insurer for the amount of the reduction or loss. The commissioner or supervisor is authorized to bring an action on behalf of the insurer in the circuit court for Ingham county to recover the amount of the reduction or loss, together with cost.

Sec. 8110. (1) The commissioner may file in the circuit court for Ingham county a petition alleging, with respect to a domestic insurer:

(a) That there exists grounds justifying a court order for a formal delinquency proceeding against an insurer under this chapter.

(b) That the interests of policyholders, creditors, or the public will be endangered by delay.

(c) The contents of an order considered necessary by the commissioner.

(2) Upon a filing under subsection (1), the court may issue immediately and without a hearing the requested order directing the commissioner to take possession and control of all or a part of the property, books, accounts, documents, and other records of an insurer, and of the premises occupied by the insurer for the transaction of its business; and until further order of the court enjoin the insurer and its officers, managers, agents, and employees from disposition of its property and from the transaction of its business except with the commissioner's written consent.

(3) The court shall specify in the order the duration of the order, which shall be such time as the court considers necessary for the commissioner to ascertain the condition of the insurer. On motion of either party or in its own discretion, the court may hold hearings, from time to time, as it considers desirable after such notice as it considers appropriate, and may extend, shorten, or modify the terms of the seizure order. The court shall vacate the seizure order if the commissioner fails to commence a formal proceeding under this chapter after having had a reasonable opportunity to do so. An order of the court pursuant to a formal proceeding under this act shall vacate the seizure order.

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

(5) An insurer, subject to an ex parte order under this section, may petition the circuit court for Ingham county at any time after the issuance of the order, for a hearing and review of the order. The court shall hold a hearing and review not more than 15 days after the request. A hearing under this subsection may be held privately in chambers and shall be held privately in chambers if so requested by the insurer proceeded against.

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

Sec. 8111. In all proceedings and judicial review of these proceedings under sections 8109 and 8110, all records of the insurer, other documents, insurance bureau files, and court records and papers, so far as they pertain to or are a part of the record of the proceedings, shall be and remain confidential and shall be held by the clerk of the court in a confidential file except as is necessary to obtain compliance therewith, unless the court, after hearing arguments from the parties in chambers, orders otherwise or the insurer requests that the matter be made public.

Sec. 8112. The commissioner may apply by petition to the circuit court for Ingham county for an order authorizing the commissioner to rehabilitate a domestic insurer or an alien insurer domiciled in this state on 1 or more of the following grounds:

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

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

(c) The insurer has failed to remove a person who in fact has executive authority with the insurer, whether an officer, manager, general agent, employee, or other person, if the person has been found after notice and hearing by the commissioner to be dishonest or untrustworthy in a way affecting the insurer's business.

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

(e) A person who in fact has executive authority with the insurer, whether an officer, manager, general agent, director or trustee, employee, or other person, has refused to be examined under oath by the commissioner concerning its affairs, whether in this state or elsewhere, and after reasonable notice of the fact, the insurer has failed promptly and effectively to terminate the employment and status of the person and all of his or her influence on management.

(f) After demand by the commissioner, the insurer has failed to promptly make available for examination its property, books, accounts, documents, or other records, or those of a subsidiary or related company within the control of the insurer, or those of a person having executive authority with the insurer and pertaining to the insurer.

(g) Without first obtaining the commissioner's written consent, the insurer has transferred, or attempted to transfer, in a manner contrary to law, substantially its entire property or business, or has entered into a transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person.

(h) The insurer or its property has been or is the subject of an application for the appointment or a receiver, trustee, custodian, conservator, or sequestrator or similar fiduciary of the insurer or its property otherwise than as authorized under the insurance laws of this state, and the appointment has been made or is imminent, and the appointment may deny the courts of this state of jurisdiction or might prejudice orderly delinquency proceedings under this chapter.

(i) Within the previous 4 years the insurer has willfully violated its charter or articles of incorporation, its bylaws, an insurance law of this state, or a valid order of the commissioner under section 8109.

(j) The insurer has failed to pay within 60 days after due date an obligation to a state or a subdivision of a state or a judgment entered in a state, if the court in which the judgment was entered had jurisdiction over the subject matter. However, nonpayment shall not be a ground until 60 days after a good faith effort by the insurer to contest the obligation has been terminated, whether it is before the commissioner or the court, or the insurer has systematically attempted to compromise or renegotiate previously agreed settlements with its creditors on the ground that it is financially unable to pay its obligations in full.

(k) The insurer has failed to file its annual report or other financial report required by statute within the time allowed by law and, after written demand by the commissioner, has failed to give immediately an adequate explanation.

(*l*) The board of directors or the holders of a majority of the shares entitled to vote request or consent to rehabilitation under this chapter.

(m) Is found, after examination, to be in a condition so that it could not presently meet the requirements for incorporation and authorization.

Sec. 8113. (1) An order to rehabilitate the business of a domestic insurer, or an alien insurer domiciled in this state, shall appoint the commissioner and his or her successors in office as the rehabilitator, and shall direct the rehabilitator to take immediate possession of the assets of the insurer, and to administer them under the court's general supervision. The filing or recording of the order with the clerk of the circuit court or register of deeds for the county in which the principal business of the company is conducted, or the county in which its principal office or place of business is located, shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that register of deeds would have imparted. The order to rehabilitate the insurer shall by operation of law vest title to all assets of the insurer in the rehabilitator.

(2) An order issued under this section shall require accounting to the court by the rehabilitator. Accountings shall be at such intervals as the court specifies in the order.

(3) Entry of an order of rehabilitation shall not constitute an anticipatory breach of any insurer contracts.

Sec. 8114. (1) The commissioner as rehabilitator may appoint 1 or more special deputies, including but not limited to the Michigan life and health insurance guaranty association and the Michigan property and casualty guaranty association, who shall have all the powers and responsibilities of the rehabilitator granted under this section, and the commissioner may employ such counsel, clerks, and assistants as considered necessary. The compensation of the special deputy, counsel, clerks, and assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the commissioner, with the approval of the court and shall be paid out of the funds or assets of the insurer. The persons appointed under this section shall serve at the pleasure of the commissioner. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the incurred costs out of an appropriation for the maintenance of the insurance bureau. Amounts advanced for expenses of administration shall be repaid to the commissioner for the use of the insurance bureau out of the first available money of the insurer.

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

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

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

(5) The rehabilitator shall have the power under sections 8126 and 8127 to avoid fraudulent transfers.

Sec. 8115. (1) A court in this state before which an action or proceeding in which the insurer is a party, or is obligated to defend a party, is pending when a rehabilitation order against the insurer is entered shall stay the action or proceeding for 90 days and such additional time as is necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The rehabilitator shall take action respecting the pending litigation as he or she considers necessary in the interests of justice and for the protection of creditors, policyholders, and the public. The rehabilitator shall consider immediately all litigation pending outside this state and shall petition the courts having jurisdiction over that litigation for stays if necessary to protect the insurer's estate.

(2) A statute of limitations or defense of laches shall not run with respect to an action by or against an insurer between the filing of a petition for appointment of a rehabilitator for that insurer and the order granting or denying that petition. An action by or against the insurer that might have been commenced when the petition was filed may be commenced for at least 60 days after the order of rehabilitation is entered or the petition is denied.

(3) A guaranty association or foreign guaranty association covering life or health insurance or annuities shall have standing to appear in a court proceeding concerning the rehabilitation of a life or health insurer if the association is or may become liable to act as a result of the rehabilitation.

Sec. 8116. (1) If the commissioner believes further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policyholders, or the public, or would be futile, the commissioner may petition the circuit court for Ingham county for an order of liquidation. A petition under this subsection shall have the same effect as a petition under section 8117. The circuit court shall permit the directors of the insurer to take such actions as are reasonably necessary to defend against the petition and may order payment from the insurer's estate for costs and other defense expenses as justice may require.

(2) The rehabilitator may petition at any time the circuit court for Ingham county for an order terminating rehabilitation of an insurer. The court shall also permit the insurer's directors to petition the court for an order terminating rehabilitation of the insurer and may order payment from the insurer's estate for costs and other expenses of the petition as justice may require. If the court finds that rehabilitation has been accomplished and that grounds for rehabilitation under section 8112 no longer exist, it shall order that the insurer be restored to possession of its property and the control of the business. The court may also make that finding and issue that order at any time upon its own motion.

Sec. 8117. The commissioner may petition the circuit court for Ingham county for an order directing him or her to liquidate a domestic insurer or an alien insurer domiciled in this state on the following basis:

(a) Any ground for an order of rehabilitation as specified in section 8112, whether or not there has been a prior order directing the rehabilitation of the insurer.

(b) That the insurer is insolvent.

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

Sec. 8118. (1) An order to liquidate the business of a domestic insurer shall appoint the commissioner and his or her successors in office as liquidator and shall direct the liquidator to take possession immediately of the insurer's assets and to administer them under the court's general supervision. The liquidator shall be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books and records of the insurer ordered liquidated, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the clerk of the circuit court and the register of deeds of the county in which its principal office or place of business is located; or, in the case of real estate, with the register of deeds of the county where the property is located, shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded which the register of deeds would have imparted.

(2) Upon issuance of the order, the rights and liabilities of the insurer and of its creditors, policyholders, shareholders, members, and all other persons interested in its estate shall become fixed as of the date of entry of the order of liquidation, except as provided in sections 8119 and 8137.

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

(4) At the time of petitioning for an order of liquidation, or at any time thereafter, the commissioner, after making appropriate findings of an insurer's insolvency, may petition the court for a judicial declaration of insolvency. After providing notice and hearing as it considers proper, the court may make the declaration.

(5) An order issued under this section shall require accounting to the court by the liquidator. Accountings shall be at intervals as the court specifies in its order.

Sec. 8119. (1) All policies, other than life or health insurance or annuities, in effect at the time of issuance of an order of liquidation shall continue in force only for the lesser of:

(a) A period of 30 days from the date of entry of the liquidation order.

(b) The expiration of the policy coverage.

(c) The date the insured replaces the insurance coverage with equivalent insurance in another insurer or otherwise terminates the policy.

(d) The date the liquidator effects a transfer of the policy obligation pursuant to section 8121(1)(h).

(2) An order of liquidation under section 8118 shall terminate coverages at the time specified in subsection (1) for purposes of any other statute.

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

(4) Policies of life or health insurance or annuities or any period or coverage of such policies not covered by a guaranty association or foreign guaranty association shall terminate under subsections (1) and (2).

Sec. 8120. The commissioner may petition for an order dissolving the corporate existence of a domestic insurer or the United States branch of an alien insurer domiciled in this state at the time he or she applies for a liquidation order. The court shall order dissolution of the corporation upon petition by the commissioner upon or after the granting of a liquidation order. If the dissolution has not previously been ordered, it shall be effected by operation of law upon the discharge of the liquidator if the insurer is insolvent and may be ordered by the court upon the discharge of the liquidator if the insurer is under a liquidation order for some other reason.

Sec. 8121. (1) The liquidator shall have the power to do the following:

(a) To appoint a special deputy, including, but not limited to, the Michigan life and health insurance guaranty association with its consent or the Michigan property and casualty guaranty association with its consent to act for him or her under this chapter and to determine the special deputy's reasonable compensation. The special deputy shall have all powers of the liquidator granted by this chapter. The special deputy shall serve at the pleasure of the liquidator.

(b) To employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and such other personnel as he or she considers necessary to assist in the liquidation.

(c) To fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, court's appraisers, and consultants with the court's approval.

(d) To pay reasonable compensation to persons appointed and to defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with, the insurer's business and property. If the insurer's property does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the incurred costs out of an appropriation for the maintenance of the insurance bureau. Amounts advanced for expenses of administration shall be repaid to the commissioner for the use of the insurance bureau out of the first available money of the insurer.

(e) To hold hearings, to subpoena witnesses to compel their attendance, to administer oaths, to examine a person under oath, and to compel a person to subscribe to his or her testimony after it has been correctly reduced to writing; and in connection with these powers to require the production of books, papers, records, or other documents which he or she considers relevant to the inquiry.

(f) To collect all debts and money due and claims belonging to the insurer, wherever located, and for this purpose:

(*i*) To institute timely action in other jurisdictions to forestall garnishment and attachment proceedings against debts.

(*ii*) To do other acts as are necessary or expedient to collect, conserve, or protect the assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon terms and conditions as he or she considers best.

(*iii*) To pursue a creditor's remedies available to enforce the creditor's claims.

(g) To conduct public and private sales of the insurer's property.

(h) To use assets of the insurer's estate under a liquidation order to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under section 8142.

(i) To acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of, or deal with, insurer property at its market value or upon terms and conditions as are fair and reasonable. He or she shall also have power to execute, acknowledge, and deliver any and all deeds, assignments, releases, and other instruments necessary or proper to effectuate the sale of property or other transaction in connection with the liquidation.

(j) To borrow money on the security of the insurer's assets or to borrow money without security and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation.

(k) To enter into contracts necessary to carry out the order to liquidate, and to affirm or disavow any contracts to which the insurer is a party.

(*l*) To continue to prosecute and to institute in the name of the insurer or in his or her own name suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims he or she considers unprofitable to pursue further. If the insurer is dissolved under section 8120, he or she shall have the power to apply to any court in this state or elsewhere for leave to substitute himself or herself for the insurer as plaintiff.

(m) To prosecute an action which may exist on behalf of the creditors, members, policyholders, or shareholders of the insurer against an officer of the insurer or another person.

(n) To remove records and property of the insurer to the commissioner's offices or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation. Guaranty associations and foreign guaranty associations shall have such reasonable access to the records of the insurer as is necessary for them to carry out their statutory obligations.

(o) To deposit in 1 or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions.

(p) To invest all sums not currently needed, unless the court orders otherwise.

(q) To file any necessary documents for recording in the office of any register of deeds in this state or elsewhere where property of the insurer is located.

(r) To assert all defenses available to the insurer as against third persons, including statutes of limitation, statutes of frauds, and the defense of usury. A waiver of a defense by the insurer after a petition in liquidation has been filed shall not bind the liquidator. If a guaranty association or foreign guaranty association has an obligation to defend a suit, the liquidator shall give precedence to that obligation and may defend only in the absence of a defense by the guaranty associations.

(s) To exercise and enforce all the rights, remedies, and powers of a creditor, shareholder, policyholder, or member, including the power to avoid a transfer or lien that may be given by the general law and that is not included in sections 8126 to 8128.

(t) To intervene in a proceeding wherever instituted that might lead to the appointment of a receiver or trustee and to act as the receiver or trustee whenever the appointment is offered.

(u) To enter into agreements with a receiver or commissioner of another state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states.

(*v*) To exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with the provisions of this chapter.

(2) If a company placed in liquidation issued liability policies on a claims made basis, which provided an option to purchase an extended period to report claims, then the liquidator may make available to holders of those policies, for a charge, an extended period to report claims as stated in this chapter. The extended reporting period shall be made available only to those insureds who have not secured substitute coverage. The extended period made available by the liquidator shall begin upon termination of an extended period to report claims in the basic policy and shall end at the earlier of the final date for filing of claims in the liquidation proceeding or 18 months from the order of liquidation.

(3) The extended period to report claims made available by the liquidator shall be subject to the terms of the policy to which it relates. The liquidator shall make available the extended period within 60 days after the order of liquidation at a charge to be determined by the liquidator subject to the court's approval. The offer shall be considered rejected unless the offer is accepted in writing and the charge is paid within 90 days after the order of liquidation. Commissions, premium taxes, assessments, or other fees shall not be due on the charge pertaining to the extended period to report claims.

(4) The enumeration in this section of the powers and authority of the liquidator shall not be construed as a limitation upon him or her, and it shall not exclude in any manner his or her right to do other acts not specifically enumerated in this section or otherwise provided for if necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation.

(5) The liquidator may delay the sale of such assets of the company in the event that the liquidator determines a delay in the sale would be prudent in order to obtain a more favorable rate of return on the sale of such assets.

Sec. 8122. (1) Unless the court otherwise directs, the liquidator shall give or cause to be given notice of the liquidation order as soon as possible as follows:

(a) By first-class mail and either by telegram or telephone to the insurance commissioner of each jurisdiction in which the insurer is doing business.

(b) By first-class mail to each guaranty association or foreign guaranty association which is or may become obligated as a result of the liquidation.

(c) By first-class mail to all insurance agents of the insurer.

(d) By first-class mail to all persons known or reasonably expected to have claims against the insurer including all policyholders, at their last known address as indicated by the records of the insurer.

(e) By publication in a newspaper of general circulation in the county in which the insurer has its principal place of business and in other locations as the liquidator considers appropriate.

(2) Notice to potential claimants under subsection (1) shall require claimants to file with the liquidator their claims together with proper proofs as required under section 8136 on or before a date the liquidator shall specify in the notice. Although an earlier date may be set by the liquidator, the last day to file claims shall be not later than 18 months following the order of liquidation. The liquidator need not require persons claiming cash surrender values or other investment values in life insurance and annuities to file a claim. All claimants shall have a duty to keep the liquidator informed of any changes of address.

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

Sec. 8123. (1) Every agent who receives notice in the form prescribed in section 8122 that an insurer which he or she represents as an agent is the subject of a liquidation order shall within 15 days of the notice give notice of the liquidation order to each policyholder or other person named in a policy issued through the agent by the insured. The notice shall be sent by first-class mail to the last address contained in the agent's records for each policyholder or other person named in the policy issued through the agent by the insurer, if the agent has a record of the address of the policyholder or other person. A policy shall be considered issued through an agent, if the agent has a property interest in the expiration of the policy or if the agent has had in his or her possession a copy of the declarations of the policy at any time during the life of the policy, unless the property interest or the files of the insured have been transferred to another. The written notice shall include the name and address of the insurer, the name and address of the agent, identification of the policy impaired, and the nature of the impairment including termination of coverage, as described in section 8119. Notice by a general agent satisfies the notice requirement for an agent under contract to the general agent. Each agent obligated to give notice under this section shall file a report of compliance with the liquidator.

(2) An agent failing to give notice or file a report of compliance as required in subsection (1) may be subject to payment of a penalty of not more than $1,000.00 and may have his or her license suspended after a hearing held by the commissioner.

(3) The liquidator may waive the duties imposed by this section if he or she determines that other notice to the policyholders of the insurer under liquidation is adequate.

Sec. 8124. (1) Upon issuance of an order appointing a liquidator of a domestic insurer or of an alien insurer domiciled in this state, an action at law or equity shall not be brought against the insurer or liquidator, whether in this state or elsewhere, and any such existing action shall not be maintained or further presented after issuance of such order. The courts of this state shall give full faith and credit to injunctions against the liquidator or the company or the continuation of existing actions against the liquidator or the company, if such injunctions are included in an order to liquidate an insurer issued pursuant to corresponding provisions in other states. If, in the liquidator's judgment, protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, he or she may intervene in the action. The liquidator may defend an action in which he or she intervenes under this section at the expense of the estate of the insurer.

(2) The liquidator may, upon or after an order for liquidation, within 2 years or such time in addition to 2 years as applicable law may permit, institute an action or proceeding on behalf of the estate of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which the order is entered. If, by agreement, a period of limitation is fixed for instituting a suit or proceeding upon a claim, or for filing a claim, proof of claim, proof of loss, demand, notice, or the like, or if in a proceeding, judicial or otherwise, a period of limitation is fixed, either in the proceeding or by applicable law, for taking action, filing a claim or pleading, or doing any act, and the period had not expired at the date of the filing of the petition, the liquidator may, for the benefit of the estate, take action or do an act required of or permitted to the insurer within a period of 180 days subsequent to the entry of an order for liquidation, or within such further period as is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

(3) A statute of limitation or defense of laches shall not run with respect to an action against an insurer between the filing of a petition for liquidation against an insurer and the denial of the petition. An action against the insurer that might have been commenced when the petition was filed may be commenced at least within 60 days after the petition is denied.

(4) A guaranty association or foreign guaranty association shall have standing to appear in a court proceeding concerning the liquidation of an insurer if the association is or may become liable to act as a result of the liquidation.

Sec. 8125. (1) As soon as practicable after the liquidation order but not later than 120 days after the liquidation order, the liquidator shall prepare in duplicate a list of the insurer's assets. The list shall be amended or supplemented from time to time as the liquidator may determine. One copy shall be filed in the office of the clerk of the circuit court and 1 copy shall be retained for the liquidator's files. All amendments and supplements shall be similarly filed.

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

(3) A submission to the court for disbursement of assets in accordance with section 8134 fulfills the requirements of subsection (1).

Sec. 8126. (1) Every transfer made or suffered and every obligation incurred by an insurer within 1 year prior to the filing of a successful petition for rehabilitation or liquidation under this chapter is fraudulent as to then existing and future creditors, if made or incurred without fair consideration or with actual intent to hinder, delay, or defraud either existing or future creditors. A transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under this chapter, which is fraudulent under this section, may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee, for a present fair equivalent value, and except that a purchaser, lienor, or obligee, who in good faith has given a consideration less than fair equivalent value for the transfer, lien, or obligation may retain the property, lien, or obligation as security for repayment. The court, on due notice, may order the transfer or obligation to be preserved for the benefit of the estate, and if so ordered, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

(2) A transfer of property other than real property shall be considered to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceeding on a simple contract could become superior to the rights of the transferee under section 8128(5) and (6). A transfer of real property shall be considered to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee. A transfer which creates an equitable lien shall not be considered to be perfected if there are available means by which a legal lien could be created. A transfer not perfected prior to the filing of a petition for liquidation shall be considered to be made immediately before the filing of the successful petition. The provisions of this subsection apply whether or not there are or were creditors who might have obtained a lien or persons who might have become bona fide purchasers.

(3) A transaction of the insurer with a reinsurer shall be considered fraudulent and may be avoided by the receiver under subsection (1) if both of the following occur:

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

(b) Any part of the transaction took place within 1 year prior to the date of filing of the petition through which the receivership was commenced.

Sec. 8127. (1) After a petition for rehabilitation or liquidation has been filed, a transfer of the insurer's real property made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value, or if not made for a present fair equivalent value, then to the extent of the present consideration actually paid for the property for which amount the transferee shall have a lien on the transferred property. Constructive notice of the commencement of a proceeding in rehabilitation or liquidation shall be given upon the recording of a copy of the petition for or order of rehabilitation or liquidation with the register of deeds in the county where any real property in question is located. The exercise by a court of the United States or any state or jurisdiction to authorize or effect a judicial sale of real property of the insurer within any county in any state shall not be impaired by the pendency of such a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

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

(a) A transfer of the insurer's property, other than real property, made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value, or if not made for a present fair equivalent value, then to the extent of the present consideration actually paid for the property for which amount the transferee shall have a lien on the transferred property.

(b) A person indebted to the insurer or holding property of the insurer, if acting in good faith, may pay all or part of the indebtedness or deliver all or part of the property to the insurer or upon his or her order, with the same effect as if the petition were not pending.

(c) A person having actual knowledge of the pending rehabilitation or liquidation shall be considered not to act in good faith.

(d) A person asserting the validity of a transfer under this section shall have the burden of proof. Except as elsewhere provided in this section, no transfer by or on behalf of the insurer after the date of the petition for liquidation by a person other than the liquidator shall be valid against the liquidator.

(3) Nothing in this chapter shall impair the negotiability of currency or negotiable instruments.

Sec. 8128. (1) A preference is a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within 1 year before the filing of a successful petition for liquidation under this chapter, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, then a transfer shall be considered a preference if made or suffered within 1 year before the filing of the successful petition for rehabilitation, or within 2 years before the filing of the successful petition for liquidation, whichever time is shorter.

(2) A preference may be avoided by the liquidator if any of the following occurs:

(a) The insurer was insolvent at the time of the transfer.

(b) The transfer was made within 4 months before the filing of the petition.

(c) The creditor receiving the transfer or benefited by the transfer or his or her agent acting with reference to the transfer had, at the time the transfer was made, reasonable cause to believe that the insurer was insolvent or was about to become insolvent.

(d) The creditor receiving the transfer was an officer; an employee, attorney, or other person who was in fact in a position of comparable influence with the insurer as an officer whether or not he or she held an officer position; a shareholder holding directly or indirectly more than 5% of any class of any equity security issued by the insurer; or another person, firm, corporation, or association with whom the insurer did not deal at arm's length.

(3) If the preference is voidable, the liquidator may recover the property or, if the property has not been converted, the property's value from a person who has received or converted the property. However, if a bona fide purchaser or lienor has given less than fair equivalent value, he or she shall have a lien upon the property to the extent of the consideration actually given by him or her. If a preference by way of lien or security title is voidable, the court may on due notice order the lien or title to be preserved for the benefit of the estate and if so ordered, the lien or title shall pass to the liquidator.

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

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

(6) A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee, or a purchaser could obtain rights superior to the rights of a transferee within the meaning of subsection (4), if that superiority would follow only from the lien or purchase itself or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. Such a lien could not, however, become superior and such a purchase could not create superior rights for the purpose of subsection (4) through any acts subsequent to the obtaining of the lien or subsequent to the purchase which require the agreement or concurrence of a third party or which require further judicial action or ruling.

(7) A transfer of property for or on account of a new and contemporaneous consideration which is considered under subsection (4) to be made or suffered after the transfer because of delay in perfecting it does not thereby become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or bona fide purchasers' rights are performed within 21 days, or a period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if the loan is actually made, or a transfer which becomes security for a future loan, shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

(8) If a lien considered voidable under subsection (2) has been dissolved by the furnishing of a bond or other obligation and the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon the insurer's property before the filing of a petition under this chapter which results in a liquidation order, then that indemnifying transfer or lien shall also be considered voidable.

(9) The property affected by a lien considered voidable under subsections (1) and (8) shall be discharged from the lien, and that property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator, except that the court, upon due notice, may order the lien to be preserved for the estate's benefit and the court may direct that a conveyance be executed as may be proper or adequate to evidence the liquidator's title.

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

(11) The liability of the surety under a releasing bond or other like obligation shall be discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator, or if the property is retained under subsection (10), to the extent of the amount paid to the liquidator.

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

(13) If an insurer, directly or indirectly, within 4 months before the filing of a successful petition for liquidation under this chapter or at any time in contemplation of a proceeding to liquidate, pays money or transfers property to an attorney for services rendered or to be rendered, the transactions may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator and shall be held valid only to the extent of a reasonable amount to be determined by the court and the excess may be recovered by the liquidator for the estate's benefit. If the attorney is in a position of influence with the insurer or an affiliate of the insurer, payment of any money or the transfer of any property to the attorney for services rendered or to be rendered shall be governed by the provision of subsection (2)(d).

(14) An officer, manager, employee, shareholder, member, subscriber, attorney, or other person acting on behalf of the insurer who knowingly participates in giving a preference if he or she has reasonable cause to believe the insurer is or is about to become insolvent at the time of the preference shall be personally liable to the liquidator for the amount of the preference. If a transfer was made within 4 months before the date of filing of a successful petition for liquidation, an inference may be made that reasonable cause existed to believe the insurer was or was about to become insolvent at the time of the preference. A person receiving property or the benefit of the property from the insurer as a preference voidable under subsection (1) shall be personally liable for the property or benefit and shall be bound to account to the liquidator. Nothing in this subsection shall prejudice any other claim by the liquidator against any person.

Sec. 8129. (1) A claim of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance voidable under this chapter shall not be allowed unless the creditor surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim shall not be allowed unless the money is paid or the property is delivered to the liquidator within 30 days from the date of the entering of the final judgment, unless the court having jurisdiction over the liquidation allows further time for an appeal or other continuation of the proceeding.

(2) A claim allowable under subsection (1) by reason of the avoidance, whether voluntary or involuntary, or a preference, lien, conveyance, transfer, assignment, or encumbrance, may be filed as an excused late filing under section 8135 if filed within 30 days from the date of the avoidance or within the further time allowed by the court under subsection (1).

Sec. 8130. (1) Mutual debts or mutual credits between the insurer and another person in connection with an action or proceeding under this chapter shall be set off and the balance only shall be allowed or paid, except as provided in subsection (2) and section 8133.

(2) A setoff or counterclaim shall not be allowed in favor of a person if:

(a) The insurer's obligation to the person would not at the date of the filing of a petition for liquidation entitle the person to share as a claimant in the assets of the insurer.

(b) The insurer's obligation to the person was purchased by or transferred to the person with a view to its being used as a setoff.

(c) The person's obligation is to pay an assessment levied against the insurer's members or subscribers, is to pay a balance upon a subscription to the capital stock of the insurer, or is in any other way in the nature of a capital contribution.

(d) The person's obligation is to pay premiums whether earned or unearned to the insurer.

Sec. 8130a. (1) Prior to the termination of a liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders, and policyowners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the insolvent insurer. In making a determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

(2) A distribution to stockholders, if any, of an impaired or insolvent insurer shall not be made until and unless the total amount of valid claims of the association with interest thereon for funds expended in carrying out its powers and duties under section 7708 with respect to the insurer have been fully recovered by the association.

(3) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under the order shall have a right to recover on behalf of the insurer or from any affiliate that controlled it the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the 5 years preceding the petition for liquidation or rehabilitation subject to the following limitations:

(a) A distribution shall not be recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(b) A person who was an affiliate that controlled the insurer at the time the distributions were paid shall be liable up to the amount of distributions he or she received. A person who was an affiliate that controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions he or she would have received if they had been paid immediately. If 2 or more persons are liable with respect to the same distributions, they shall be jointly and severally liable. If a person liable under this subdivision is insolvent, all controlling affiliates at the time the distribution was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

(c) The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.

Sec. 8131. (1) As soon as practicable but not more than 2 years from the date of an order of liquidation under section 8118 of an insurer issuing assessable policies, the liquidator shall report to the court on all of the following:

(a) The reasonable value of the insurer's assets.

(b) The insurer's probable total liabilities.

(c) The probable aggregate amount of the assessment necessary to pay all claims of creditors and expenses in full, including expenses of administration and costs of collecting the assessment.

(d) A recommendation as to whether or not an assessment should be made and in what amount.

(2) Upon the basis of the report provided in subsection (1), including supplements and amendments to the report, the circuit court may levy 1 or more assessments against all members of the insurer who are subject to assessment. Subject to applicable legal limits on assessability, the aggregate assessment shall be for the amount that the sum of the probable liabilities, the expenses of administration, and the estimated cost of collection of the assessment, exceeds the value of existing assets, with due regard being given to assessments that cannot be collected economically.

(3) After levy of assessment under subsection (2), the liquidator shall issue an order directing each member who has not paid the assessment pursuant to the order to show cause why the liquidator should not pursue a judgment against the respective members.

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

(5) If a member does not appear and serve duly verified objections upon the liquidator on or before the return day of the order to show cause under subsection (3), the court shall make an order adjudging the member liable for the amount of the assessment against him or her pursuant to subsection (3), together with costs, and the liquidator shall have a judgment against the member therefor. If on or before the return day the member

appears and serves duly verified objections upon the liquidator, the commissioner may hear and determine the matter or may appoint a referee to hear the matter and make such order as the facts warrant. If the commissioner determines that the objections do not warrant relief from assessment, the member may request the court to review the matter and vacate the order to show cause.

(6) The liquidator may enforce any order or collect any judgment under subsection (5) by any lawful means.

Sec. 8132. The amount recoverable by the liquidator from reinsurers shall not be reduced as a result of the delinquency proceedings, regardless of any provision in the reinsurance contract or other agreement. Payment made directly to an insured or other creditor shall not diminish the reinsurer's obligation to the insurer's estate unless the reinsurance contract provided for direct coverage of a named insured and the payment was made in discharge of that obligation.

Sec. 8133. (1) An agent, premium finance company, or any other person, other than the insured, responsible for the payment of a premium held by him or her shall be obligated to pay any unpaid earned premium due the insurer at the time of the declaration of insolvency. The liquidator shall also have the right to recover from that person any part of an unearned premium that represents that person's commission. Credits, setoffs, or both, shall not be allowed to an agent, broker, or premium finance company for an amount advanced to the insurer by the agent, broker, or premium finance company on behalf of, but in the absence of a payment by, the insured. An insured shall be obligated to pay any unpaid earned premium due the insurer at the time of the declaration of insolvency, as shown on the insurer's records.

(2) Upon satisfactory evidence of a violation of this section, the commissioner may pursue either 1 or both of the following courses of action:

(a) Suspend or revoke or refuse to renew the licenses of each offending party.

(b) Impose a penalty of not more than $1,000.00 for each and every act in violation of this section by each offending party.

(3) Before the commissioner takes action under subsection (2), the commissioner shall give written notice to the person, company, association, or exchange accused of violating the law, stating specifically the nature of the alleged violation and fixing a time and place, at least 10 days thereafter, for a hearing on the matter. After the hearing, or upon failure of the accused to appear at the hearing, the commissioner, if he or she finds a violation, shall impose the penalties under subsection (2) as he or she considers advisable.

(4) If the commissioner takes action under subsection (2), the party aggrieved may appeal from that action to the circuit court.

Sec. 8134. (1) Within 120 days of a final determination of insolvency of an insurer by a court of competent jurisdiction of this state, the liquidator shall make application to the court for approval of a proposal to disburse assets out of marshalled assets, from time to time as such assets become available, to a guaranty association or foreign guaranty association having obligations because of the insolvency. If the liquidator determines that there are insufficient assets to disburse, the application required by this section shall be considered satisfied by a filing by the liquidator stating the reasons for this determination.

(2) A proposal under subsection (1) shall at least include provisions for all of the following:

(a) Reserving amounts for the payment of expenses of administration and the payment of claims of secured creditors, to the extent of the value of the security held, and claims falling within the priorities established in section 8142(a) and (b).

(b) Disbursement of the assets marshalled to date and subsequent disbursement of assets as they become available.

(c) Equitable allocation of disbursements to each of the guaranty associations and foreign guaranty associations entitled to disbursements.

(d) The securing by the liquidator from each of the associations entitled to disbursements pursuant to this section of an agreement to return to the liquidator such assets, together with income earned on assets previously disbursed, as may be required to pay claims of secured creditors and claims falling within the priorities established in section 8142 in accordance with those priorities. A bond shall not be required of any such association.

(e) A full report to be made by each association to the liquidator accounting for assets disbursed to the association, all disbursements made from the assets, interest earned by the association on the assets, and any other matter as the court may direct.

(3) The liquidator's proposal shall provide for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made thereby for which the associations could assert a claim against the liquidator, and shall further provide that if the assets available for disbursement from time to time do not

equal or exceed the amount of claim payments made or to be made by the association, then disbursements shall be in the amount of available assets.

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

(5) Notice of application shall be given to the association in each state and to the commissioners of insurance of each state. Notice shall be considered to have been given when deposited in the United States certified mails, first-class postage prepaid, at least 30 days prior to submission of the application to the court. Action on the application may be taken by the court if the notice under this subsection has been given and if the liquidator's proposal complies with subsection (2)(a) and (b).

Sec. 8135. (1) Proof of all claims shall be filed with the liquidator in the form required by section 8136 on or before the last day for filing specified in the notice required under section 8122, except that proof of claims for cash surrender values or other investment values in life insurance and annuities need not be filed unless the liquidator expressly so requires.

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

(a) The existence of the claim was not known to the claimant and that he or she filed his or her claim as promptly thereafter as reasonably possible after learning of it.

(b) A transfer to a creditor was avoided under sections 8126 to 8128, or was voluntarily surrendered under section 8129, and that the filing satisfies the conditions of section 8129.

(c) The valuation under section 8141 of security held by a secured creditor shows a deficiency, which is filed within 30 days after the valuation.

(3) The liquidator shall permit late filing claims to share in distributions, whether past or future, as if they were not late, if those claims are claims of a guaranty association or foreign guaranty association for reimbursement of covered claims paid, expenses incurred, or both, after the last day for filing and if the payments were made and expenses incurred as provided by law.

(4) The liquidator may consider a claim filed late which is not covered by subsection (2) and permit it to receive distributions which are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The late filing claimant shall receive, at each distribution, the same percentage of the amount allowed on his or her claim as is then being paid to claimants of any lower priority. This shall continue until his or her claim has been paid in full.

Sec. 8136. (1) Proof of claim shall consist of a statement signed by the claimant or other authorized person that includes all of the following that are applicable:

(a) The particulars of the claim, including the consideration given for it.

(b) The identity and amount of the security on the claim.

(c) The payments made on the debt, if any.

(d) That the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to the claim.

(e) Any right of priority of payment or other specific right asserted by the claimants.

(f) A copy of the written instrument which is the foundation of the claim.

(g) The name and address of the claimant and the attorney who represents him or her, if any.

(2) A claim need not be considered or allowed if it does not contain all the information in subsection (1) which may be applicable. The liquidator may require that a prescribed form be used and may require that other information and documents be included.

(3) The liquidator may request the claimant to present information or evidence supplementary to that required under subsection (1) at any time and may take testimony under oath, require production of affidavits or depositions, or otherwise obtain additional information or evidence.

(4) A judgment or order against an insured or the insurer entered after the date of filing of a successful petition for liquidation and a judgment or order against an insured or the insurer entered at any time by default or by collusion need not be considered as evidence of liability or of quantum of damages. A judgment or order against an insured or the insurer entered within 4 months before the filing of the petition need not be considered as evidence of liability or of the quantum of damages.

(5) All claims of a guaranty association or foreign guaranty association shall be in the form and contain the substantiation agreed to by the association and the liquidator.

Sec. 8137. (1) The claim of a third party which is contingent only on his or her first obtaining a judgment against the insured shall be considered and allowed as if there were no such contingency.

(2) A claim may be allowed even if contingent, if it is filed in accordance with section 8135. It may be allowed and may participate in all distributions declared after it is filed to the extent that it does not prejudice the orderly administration of the liquidation.

(3) Claims that are due except for the passage of time shall be treated as absolute claims are treated, except that those claims may be discounted at the legal rate of interest.

(4) Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to the issuance of an order of rehabilitation or liquidation under section 8113 or 8118.

Sec. 8138. (1) If a third party asserts a cause of action against an insured of an insurer in liquidation, the third party may file a claim with the liquidator.

(2) Whether or not the third party files a claim, the insured may file a claim on his or her own behalf in the liquidation. If the insured fails to file a claim by the date for filing claims specified in the order of liquidation or within 60 days after mailing of the notice required by section 8122, whichever is later, he or she is an unexcused late filer.

(3) The liquidator shall make his or her recommendations to the court under section 8142 for the allowance of an insured's claim under subsection (1) after consideration of the probable outcome of a pending action against the insured on which the claim is based, the probable damages recoverable in the action, and the probable costs and expenses of defense. After allowance by the court, the liquidator shall withhold dividends payable on the claim pending the outcome of litigation and negotiation with the insured. If appropriate, the liquidator shall reconsider the claim on the basis of additional information and amend his or her recommendations to the court. The insured shall be afforded the same notice and opportunity to be heard on all changes in the recommendation as in the initial determination. The court may amend the allowance as the court considers appropriate. As claims against the insured are settled or barred, the insured shall be paid from the amount withheld the same percentage dividend as was paid on other claims of like property, based on the lesser of the amount actually recovered from the insured by action or paid by agreement plus the reasonable costs and expense of defense, or the amount allowed on the claims by the court. After all claims are settled or barred, any sum remaining from the amount withheld shall revert to the undistributed assets of the insurer. Delay in final payment under this subsection shall not be a reason for unreasonable delay of final distribution and discharge of the liquidator.

(4) If several claims founded upon 1 policy are filed, whether by third parties or as claims by the insured under this section, and the aggregate allowed amount of the claims to which the same limit of liability in the policy is applicable exceeds that limit, each claim as allowed shall be reduced in the same proportion so that the total equals the policy limit. Claims by the insured shall be evaluated as in subsection (3). If any insured's claim is subsequently reduced under subsection (3), the amount thus freed shall be apportioned ratably among the claims which have been reduced under this subsection.

(5) A claim may not be presented under this section if it is or may be covered by a guaranty association or foreign guaranty association.

Sec. 8139. (1) If a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant or his or her attorney by first-class mail at the address shown in the proof of claim. Within 60 days from the mailing of the notice, the claimant may file his or her objections with the liquidator. If a filing of objection is not made, the claimant shall not further object to the determination.

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

Sec. 8140. If a creditor, whose claim against an insurer is secured in whole or in part by the undertaking of another person, fails to prove and file that claim, the other person may do so in the creditor's name and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name, to the extent that he or she discharges the undertaking. In the absence of an agreement with the creditor to the contrary, the other person shall not be entitled to any distribution until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the insurer's estate to the creditor equals the amount of the entire claim of the creditor. Any excess received by the creditor shall be held by him or her in trust for the other person. The term "other person", as used in this section, is not intended to apply to a guaranty association or foreign guaranty association.

Sec. 8141. (1) The value of security held by a secured creditor shall be determined in 1 of the following ways, as the court may direct:

(a) By converting the same into money according to the terms of the agreement pursuant to which the security was delivered to the creditors.

(b) By agreement, arbitration, compromise, or litigation between the creditor and the liquidator.

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

Sec. 8141a. (1) Special deposit claims shall be paid pursuant to the following order of priority:

(a) To the receiver for the costs and expenses of the receivership.

(b) To the guaranty association for the costs and expenses of administration with respect to the payment of claims.

(c) To claims of policyholders of the insurer and to claimants of such policyholders.

(d) To other claimants of the insurer.

(e) To the stockholders or members of the insurer.

(2) Upon request of a guaranty association of this state to which the insurer is a member, special deposits made by the insurer shall be transferred to that guaranty association for the payment of claims pursuant to this section.

Sec. 8142. The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this section. Every claim in each class shall be paid in full or adequate funds retained for their payment before the members of the next class receive payment. Subclasses shall not be established within a class. The order of distribution of claims shall be as follows:

(a) Class 1. The costs and expenses of administration, including, but not limited to, the following:

(*i*) The actual and necessary costs of preserving or recovering the insurer's assets.

(*ii*) Compensation for all services rendered in the liquidation.

(*iii*) Any necessary filing fees.

(*iv*) The fees and mileage payable to witnesses.

(*v*) Reasonable attorney's fees.

(*vi*) The reasonable expenses of a guaranty association or foreign guaranty association in handling claims.

(b) Class 2. Debts due to employees for services performed to the extent that they do not exceed $1,000.00 and represent payment for services performed within 1 year before the filing of the petition for liquidation. Officers and directors shall not be entitled to the benefit of this priority. This priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees.

(c) Class 3. All claims under policies for losses incurred, including third party claims, all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies, and all claims of a guaranty association or foreign guaranty association. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values, shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligation of support or by way of succession at death or as proceeds of life insurance, or as gratuities. A payment by an employer to his or her employee shall not be treated as a gratuity.

(d) Class 4. Claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors.

(e) Class 5. Claims of the federal or any state or local government. Claims, including those of any governmental body for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under subdivision (h).

(f) Class 6. Claims filed late or any other claims other than claims under subdivisions (g) and (h).

(g) Class 7. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies shall be limited in accordance with law.

(h) Class 8. The claims of shareholders or other owners. In paying claims pursuant to this class, disinterested shareholders shall have priority over interested shareholders who are directors or officers who fail to exercise their duties in accordance with section 5240.

Sec. 8143. (1) The liquidator shall review all claims duly filed in the liquidation and shall further investigate as he or she considers necessary. The liquidator may compound, compromise, or in any other manner negotiate the amount for which claims will be recommended to the court unless the liquidator is required by law to accept claims as settled by a person or organization, including a guaranty association or foreign guaranty association. Unresolved disputes shall be determined under section 8139. As soon as practicable, the liquidator shall present to the court a report of the claims against the insurer with his or her recommendations. The report shall include the name and address of each claimant and the amount of the claim finally recommended, if any. If the insurer has issued annuities or life insurance policies, the liquidator shall report the persons, according to the records of the insurer, to whom amounts are owed as cash surrender values or other investment value and the amounts owed.

(2) The court may approve, disapprove, or modify the report on claims by the liquidator. Reports not modified by the court within a period of 60 days following submission by the liquidator shall be treated by the liquidator as allowed claims, subject to later modification or to rulings made by the court pursuant to section 8139. A claim under a policy of insurance shall not be allowed for an amount in excess of the applicable policy limits.

Sec. 8144. Under the court's direction, the liquidator shall pay distributions in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court.

Sec. 8145. (1) All unclaimed funds subject to distribution remaining in the liquidator's hands when he or she is ready to apply to the court for discharge, including the amount distributable to a creditor, shareholder, member, or other person who is unknown or cannot be found, shall be deposited with the state treasurer, and shall be paid without interest except in accordance with section 8142 to the person entitled or his or her legal representative upon proof of right to it satisfactory to the state treasurer. An amount on deposit not claimed within 6 years from the discharge of the liquidator shall be considered to have been abandoned, shall escheat to the state without formal escheat proceedings, and shall be deposited in the general fund.

(2) All funds withheld under section 8137 and not distributed shall be deposited, upon discharge of the liquidator, with the state treasurer and paid by him or her in accordance with section 8142. Sums remaining which under section 8142 would revert to the undistributed assets of the insurer shall be transferred to the state treasurer and become the property of the state under subsection (1), unless the commissioner in his or her discretion petitions the court to reopen the liquidation under section 8147.

Sec. 8146. (1) If all assets justifying the expense of collection and distribution have been collected and distributed under this chapter, the liquidator shall apply to the court for discharge. The court may grant the discharge and make any other orders, including an order to transfer any remaining funds that are uneconomic to distribute, as may be considered appropriate.

(2) Any other person may apply to the court at any time for an order under subsection (1). If the application is denied, the applicant shall pay the costs and expenses of the liquidator in resisting the application, including a reasonable attorney's fee.

Sec. 8147. After the liquidation proceeding has been terminated and the liquidator discharged, the commissioner or other interested party may petition the circuit court at any time to reopen the proceedings for good cause, including the discovery of additional assets. If the court is satisfied that there is justification for reopening, it shall order a reopening.

Sec. 8148. If it appears to the commissioner that the records of an insurer in process of liquidation or completely liquidated are no longer useful, the commissioner may recommend to the court and the court shall direct what records should be retained for future reference and what should be destroyed.

Sec. 8149. The circuit court may cause audits, as it considers desirable, to be made of the books of the commissioner relating to any receivership established under this chapter and a report of each audit shall be filed with the commissioner and with the court. The books, records, and other documents of the receivership shall be made available to the auditor at any time without notice. The expense of each audit shall be considered a cost of administration of the receivership.

Sec. 8150. (1) If a domiciliary liquidator has not been appointed, the commissioner may apply to the circuit court by verified petition for an order directing him or her to act as conservator to conserve the property of an alien insurer not domiciled in this state or a foreign insurer on any 1 or more of the following grounds:

(a) Any of the grounds in section 8112.

(b) That any of its property has been sequestered by official action in its domiciliary state, or in any other state.

(c) That enough of its property has been sequestered in a foreign country to give reasonable cause to fear that the insurer is or may become insolvent.

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

(2) If an order is sought under subsection (1), the court shall cause the insurer to be given notice and time to respond as is reasonable under the circumstances.

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

(4) The conservator may at any time petition for and the court may grant an order under section 8151 to liquidate assets of a foreign or alien insurer under conservation, or if appropriate for an order under section 8153 to be appointed ancillary receiver.

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

Sec. 8151. (1) If a domiciliary receiver has not been appointed, the commissioner may apply to the circuit court by verified petition for an order directing him or her to liquidate the assets found in this state of a foreign insurer or an alien insurer not domiciled in this state, on any of the following grounds:

(a) Any of the grounds in section 8112 or 8117.

(b) Any of the grounds specified in section 8150(1)(b) to (d).

(2) If an order is sought under subsection (1), the court shall cause the insurer to be given notice and time to respond as is reasonable under the circumstances.

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

(4) If a domiciliary liquidator is appointed in a reciprocal state while a liquidation is proceeding under this section, the liquidator under this section shall thereafter act as ancillary receiver under section 8153. If a domiciliary liquidator is appointed in a nonreciprocal state while a liquidation is proceeding under this section, the liquidator under this section may petition the court for permission to act as ancillary receiver under section 8153.

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

(6) The court may order the commissioner, when he or she has liquidated the assets of a foreign or alien insurer under this section, to pay claims of residents of this state against the insurer under rules as to the liquidation of insurers under this chapter as are otherwise compatible with the provisions of this section.

Sec. 8152. (1) The domiciliary liquidator of an insurer domiciled in a reciprocal state shall be vested by operation of law, except as to special deposits and security on secured claims under section 8153(3), with the title to all of the assets, property, contracts and rights of action, agents' balances, and all of the books, accounts, and other records of the insurer located in this state. The date of vesting shall be the date of the filing of the petition, if that date is specified by the domiciliary law for the vesting of property in the domiciliary state. Otherwise, the date of vesting shall be the date of entry of the order directing possession to be taken. The domiciliary liquidator shall have the immediate right to recover balances due from agents and to obtain possession of the books, accounts, and other records of the insurer located in this state. The domiciliary

liquidator shall also have the right to recover all other assets of the insurer located in this state, subject to section 8153.

(2) If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal state, the commissioner of this state shall be vested by operation of law with the title to all of the property, contracts and right of action, and all of the books, accounts, and other records of the insurer located in this state, at the same time that the domiciliary liquidator is vested with title in the domicile. The commissioner of this state may petition for a conservation or liquidation order under section 8150 or 8151, or for an ancillary receivership under section 8153, or after approval by the circuit court may transfer title to the domiciliary liquidator, as the interests of justice and the equitable distribution of the assets require.

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

Sec. 8153. (1) If a domiciliary liquidator has been appointed for an insurer not domiciled in this state, the commissioner may file a petition with the circuit court requesting appointment as ancillary receiver in this state in either of the following cases:

(a) If he or she finds that there are sufficient assets of the insurer located in this state to justify the appointment of an ancillary receiver.

(b) If the protection of creditors or policyholders in this state requires.

(2) The court may issue an order appointing an ancillary receiver in terms as the court considers appropriate. The filing or recording of the order with the register of deeds in this state imparts the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that register of deeds.

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

(4) If a domiciliary liquidator has been appointed in this state, ancillary receivers appointed in reciprocal states shall have, as to assets and books, accounts, and other records in their respective states, corresponding rights, duties, and powers to those provided in subsection (3) for ancillary receivers appointed in this state.

Sec. 8154. The commissioner in his or her sole discretion may institute proceedings under sections 8109 to 8111 at the request of the commissioner or other appropriate insurance official of the domiciliary state of any foreign or alien insurer having property located in this state.

Sec. 8155. (1) In a liquidation proceeding begun in this state against an insurer domiciled in this state, claimants residing in foreign countries or in states not reciprocal states shall file claims in this state, and claimants residing in reciprocal states may file claims either with the ancillary receivers, if any, in their respective states or with the domiciliary liquidator. Claims must be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceeding.

(2) Claims belonging to claimants residing in reciprocal states may be proved either in the liquidation proceeding in this state as provided in this chapter or in ancillary proceedings, if any, in the reciprocal states. If notice of the claims and opportunity to appear and be heard is afforded the domiciliary liquidator of this state as provided in section 8156(2) with respect to ancillary proceedings, the final allowance of claims by the courts in ancillary proceedings in reciprocal states shall be conclusive as to amount and as to priority against special deposits or other security located in such ancillary states, but shall not be conclusive with respect to priorities against general assets under section 8142.

Sec. 8156. (1) In a liquidation proceeding in a reciprocal state against an insurer domiciled in that state, claimants against the insurer who reside within this state may file claims either with the ancillary receiver, if any, in this state or with the domiciliary liquidator. Claims must be filed on or before the last dates fixed for the filing of claims in the domiciliary liquidation proceeding.

(2) Claims belonging to claimants residing in this state may be proved either in the domiciliary state under the law of that state, or in ancillary proceedings, if any, in this state. If a claimant elects to prove his or her claim in this state, he or she shall file his or her claim with the liquidator in the manner provided in sections 8135 and 8136. The ancillary receiver shall make his or her recommendation to the court as under section 8143. The ancillary receiver shall also arrange a date for hearing, if necessary under section 8139, and shall give notice to the liquidator in the domiciliary state by certified mail or by personal service at least 40 days prior to

the date set for hearing. If the domiciliary liquidator, within 30 days after the giving of such notice, gives notice in writing to the ancillary receiver and to the claimant by certified mail or by personal service of his or her intention to contest the claim, he or she shall be entitled to appear or to be represented in any proceeding in this state involving the adjudication of the claim.

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

Sec. 8157. during the pendency in this or any other state of a liquidation proceeding, whether called by that name or not, an action or proceeding in the nature of an attachment, garnishment, or levy of execution shall not be commenced or maintained in this state against the delinquent insurer or its assets.

Sec. 8158. (1) In a liquidation proceeding in this state involving 1 or more reciprocal states, the order of distribution of the domiciliary state shall control as to all claims of residents of this and reciprocal states. All claims of residents of reciprocal states shall be given equal priority of payment from general assets regardless of where the assets are located.

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

(3) The owner of a secure claim against an insurer for which a liquidator has been appointed in this or any other state may surrender his or her security and file his or her claim as a general creditor, or the claim may be discharged by resort to the security in accordance with section 8141, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors.

Sec. 8159. If an ancillary receiver in another state or foreign country, whether called by that name or not, fails to transfer to the domiciliary liquidator in this state any assets within his or her control other than special deposits, diminished only by the expenses of the ancillary receivership, if any, the claims filed in the ancillary receivership, other than special deposit claims or secured claims, shall be placed in the class of claims under section 8142(g).

Section 2. Section 7719 and chapter 78 of Act No. 218 of the Public Acts of 1956, being sections 500.7719 and 500.7800 to 500.7868 of the Michigan Compiled Laws, are repealed.

Section 3. This amendatory act shall take effect January 1, 1990.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved .....

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Governor.