

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

CHAPTER 81
SUPERVISION, REHABILITATION, AND LIQUIDATION

500.8101 Construction and purpose of chapter.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8102 Applicability of proceedings authorized by chapter.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8103 Definitions.

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) 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 that 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 that 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.

(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.

(r) "Trusted assets" means the assets of an alien insurer and U.S. branch domiciled in this state and maintained in trust pursuant to section 411(4).

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990;—Am. 1994, Act 227, Imd. Eff. June 27, 1994.

Popular name: Act 218

500.8104 Commencement of delinquency proceeding; jurisdiction; stay of proceedings.

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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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8105 Receiver; application for relief.

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).

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8106 Cooperation with commissioner; obstruction or interference prohibited; existing legal rights not abridged; penalties; petition for relief.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8107 Official bonds.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8108a Prohibited conduct by insurer.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8109 Orders; determination; supervision of insurer; restrictions; compliance; hearings; notice; time; judicial review; review of supervisor's action; violation of supervision order; penalty; enforcement of supervision order; personal liability to insurer for reduction of net worth or loss; action; costs and expenses.

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, the commissioner 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), the commissioner 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 the following:

(a) That the insurer shall not do any of the following things during the period of supervision, without the prior approval of the commissioner or his or her supervisor:

(i) Dispose of, convey, or encumber any of its assets or its business in force including disposing, conveying, or encumbering its assets or business to affiliated companies, either domestic, foreign, or alien.

(ii) Withdraw from any of its bank accounts.

(iii) Lend any of its funds.

(iv) Invest any of its funds.

(v) Transfer any of its property.

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

(vii) Merge or consolidate with another company.

(viii) Enter into any new reinsurance contract or treaty or cancel any existing reinsurance contract or treaty.

(ix) Engage in any other activity that the commissioner or his or her supervisor considers hazardous to the insurer.

(b) That upon the written instruction of the commissioner or his or her supervisor the insurer shall do the following during the period of supervision:

(i) Produce all books, accounts, and records of affiliated companies, as required to be maintained by section 1341(1)(d), including affiliated foreign or alien insurers, for review by the commissioner or his or her supervisor.

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

(iii) Deposit any funds or assets in any of its bank accounts or depositories.

(iv) Collect or enforce provisions of any of its loans, security agreements, mortgages, hypothecations, contracts, or like obligations.

(v) Invest any of its funds.

(vi) Transfer any of its property.

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

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

(ix) Engage in any other activity that the commissioner, or his or her supervisor after review by the commissioner, considers reasonably necessary to insuring compliance by the insurer with the supervision order.

(4) An insurer subject to an order under this section shall comply with the lawful requirements of the commissioner and his or her supervisor 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 to have a rehabilitator or liquidator appointed under section 8112 or 8117, to extend the period of supervision pursuant to the commissioner's written order, or to suspend, revoke, or limit the insurer's certificate of authority to do business in accordance with section 437.

(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 or 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, including an order precluding a person or domestic insurer from transferring business to or writing new business with an affiliated domestic, foreign, or alien insurer so as to avoid the effects of a supervision as provided in subsections (3) and (4).

(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 is reduced or the insurer suffers loss it would not otherwise have suffered, that person is 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.

(11) Reasonable costs and expenses incurred by the commissioner in conducting a supervision of an alien insurer or any investigation preliminary to that supervision under this chapter are an expense of administering a delinquency proceeding and are payable from the assets of the trust established pursuant to section 411(4).

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992;—Am. 1994, Act 227, Imd. Eff. June 27, 1994.

Compiler's note: Section 3 of Act 182 of 1992 reads as follows:

"Section 8109 of Act No. 218 of the Public Acts of 1956, being section 500.8109 of the Michigan Compiled Laws, as amended by this 1992 amendatory act is remedial and applies to all supervisions in effect 90 calendar days prior to the enactment of this amendatory act."

Popular name: Act 218

500.8110 Seizure order.

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 order is issued, 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.

(7) If a visiting or retired judge is assigned to the circuit court for Ingham county in any proceeding filed under this section or in any formal delinquency proceeding brought under this chapter because the estate of the insurer against which the proceeding has been brought is of such size or complexity that additional judicial resources are necessary to conduct the proceeding expeditiously so as to protect to the fullest extent possible the interests of the insurer, its policyholders and creditors, and the public, the expense of the assigned judge shall be an expense of administration of the proceeding and shall be reimbursable from the estate of the insurer against which the proceeding has been brought.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990;—Am. 1994, Act 443, Imd. Eff. Jan. 10, 1995.

Popular name: Act 218

500.8111 Confidentiality; exception; “third parties” defined.

Sec. 8111. (1) Except as provided in subsection (2), in all proceedings and judicial review of these proceedings under sections 8109 and 8110, all records of the insurer, other documents, office of financial and insurance services files, and court records and papers, so far as they pertain to or are a part of the record of the proceedings, are 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.

(2) Without compromising the confidentiality of the records of the commissioner, office of financial and insurance services, or supervisor, the commissioner or his or her supervisor may advise third parties of the existence of a supervision order and of the supervisor's authority if considered by either of them necessary to further the insurer's compliance with the supervision order. The commissioner may advise third parties of the existence of a supervision order and of facts pertaining to the supervision order if considered necessary by the commissioner with regard to other regulatory matters affecting the insurer or a person or entity related to the insurer. Third parties advised under this subsection are required to keep the existence of a supervision confidential. As used in this subsection, "third parties" means the following persons:

- (a) Debtors and creditors of the insurer and its affiliates.
- (b) Persons who hold or control assets of the insurer and its affiliates.
- (c) Reinsurers of the insurer and its affiliates.
- (d) Insurance regulatory officials.
- (e) Law enforcement agencies.
- (f) The workers' compensation agency.
- (g) Representatives of a guaranty association or foreign guaranty association that may become obligated as a result of the insolvency of the insurer. Confidentiality obligations of a guaranty association or foreign guaranty association to the receiver end upon the entry of an order of liquidation with a finding of insolvency against the insurer.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992;—Am. 2006, Act 358, Imd. Eff. Sept. 18, 2006.

Popular name: Act 218

500.8112 Rehabilitation of insurer; petition; grounds.

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 of 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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8113 Order to rehabilitate insurer; provisions; filing as notice; title to assets vested in rehabilitator; accounting.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8114 Commissioner as rehabilitator; appointment of special deputies; employment of counsel, clerks, and assistants; compensation; terms; expenses; powers of rehabilitator; criminal or tortious conduct; breach of contractual or fiduciary obligation; plan to effect changes; avoidance of fraudulent transfers.

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 including, but not limited to, the powers in section 8121(1)(f), (l), (m), (r), and (u). The rehabilitator has all the powers of the directors, officers, and managers, whose authority shall be suspended, except as they are redelegated by the rehabilitator. The rehabilitator has 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.

(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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990;—Am. 1996, Act 117, Imd. Eff. Mar. 6, 1996.

Popular name: Act 218

500.8115 Stay of action or proceeding; purpose; duties of rehabilitator; statute of limitations; laches; standing of guaranty association.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8115a Netting agreement or qualified financial contract; rights; transfer; duties of receiver; exception; rights of counterparties; definitions.

Sec. 8115a. (1) Notwithstanding any other provision of this act, including section 8141, any provision of this act permitting the modification of contracts, or other law of this state, a person shall not be stayed or prohibited under this chapter from exercising any of the following:

(a) A contractual right to terminate, liquidate, or close out any netting agreement or qualified financial contract with an insurer because of the commencement of a formal delinquency proceeding under this chapter or the insolvency, financial condition, or default of the insurer at any time, provided that the right is enforceable under applicable law other than this act.

(b) Any right under any of the following:

(i) A pledge, security, collateral, reimbursement, or guarantee agreement or any similar security agreement with a bank established under the authority of the federal home loan bank act, 12 USC 1421 to 1449.

(ii) A pledge, security, collateral, reimbursement, or guarantee agreement or any similar security agreement or credit enhancement relating to at least 1 netting agreement or qualified financial contract.

(c) Subject to section 8130(2), any right to set off or net out any termination value, payment amount, or other transfer obligation arising under or in connection with a netting agreement or qualified financial contract where the counterparty or its guarantor is organized under the laws of the United States or a state or foreign jurisdiction approved by the securities valuation office of the national association of insurance commissioners and approved by the commissioner as eligible for netting.

(2) Upon termination of a netting agreement, the net or settlement amount, if any, owed by a nondefaulting party to an insurer against which an application or petition has been filed under this chapter shall be transferred to or on the order of the receiver for the insurer, even if the insurer is the defaulting party, notwithstanding any provision in the netting agreement that may provide that the nondefaulting party is not required to pay any net or settlement amount due to the defaulting party upon termination. Any limited 2-way payment provision in a netting agreement with an insurer that has defaulted shall be considered to be a full 2-way payment provision as against the defaulting insurer. Any such property or amount shall, except to the extent it is subject to 1 or more secondary liens or encumbrances, be a general asset of the insurer.

(3) In making any transfer of a netting agreement or qualified financial contract of an insurer subject to a proceeding under this chapter, the receiver shall do either of the following:

(a) Transfer to 1 party, other than an insurer subject to a proceeding under this chapter, all netting agreements and qualified financial contracts between a counterparty or any affiliate of the counterparty and the insurer that is the subject of the proceeding, including all rights and obligations of each party under each such netting agreement and qualified financial contract and all property, including any guarantees or credit support documents, securing any claims of each party under each such netting agreement and qualified financial contract.

(b) Transfer none of the netting agreements, qualified financial contracts, rights, obligations, or property referred to in subdivision (a) with respect to the counterparty and any affiliate of the counterparty.

(4) If a receiver for an insurer makes a transfer of 1 or more netting agreements or qualified financial contracts, the receiver shall use its best efforts to notify any person who is party to the netting agreements or qualified financial contracts of the transfer by 12 noon of the receiver's local time on the business day following the transfer. For purposes of this subsection, "business day" means a day other than a Saturday, Sunday, or any day on which either the New York stock exchange or the federal reserve bank of New York is closed.

(5) Except as provided in subsection (6), notwithstanding any other provision of this act, a receiver may not avoid a transfer of money or other property arising in connection with any of the following that is made before the commencement of a formal delinquency proceeding under this chapter:

(a) A netting agreement or qualified financial contract.

(b) A pledge, security, collateral, reimbursement, or guarantee agreement or similar security agreement with a bank established under the authority of the federal home loan bank act, 12 USC 1421 to 1449.

(c) A pledge, security, collateral, reimbursement, or guarantee agreement or any similar security agreement or credit enhancement relating to a netting agreement or qualified financial contract.

(6) Notwithstanding subsection (5), a transfer may be avoided under section 8126 if the transfer was made with actual intent to hinder, delay, or defraud the insurer, a receiver appointed for the insurer, or existing or future creditors.

(7) In exercising any of its powers under this chapter to disaffirm or repudiate a netting agreement or qualified financial contract, the receiver shall take action with respect to each netting agreement or qualified financial contract and all transactions entered into in connection with the netting agreement or qualified financial contract in its entirety. Notwithstanding any other provision of this chapter, any claim of a counterparty against the estate arising from the receiver's disaffirmance or repudiation of a netting agreement or qualified financial contract that has not been previously affirmed in the liquidation or immediately preceding rehabilitation case shall be determined and shall be allowed or disallowed as if the claim had arisen before the date of the filing of the petition for liquidation or, if a rehabilitation proceeding is converted to a liquidation proceeding, as if the claim had arisen before the date of the filing of the petition for rehabilitation.

The amount of the claim shall be the actual direct compensatory damages determined as of the date of the disaffirmance or repudiation of the netting agreement or qualified financial contract.

(8) This section does not apply to persons who are affiliates of the insurer that is the subject of the proceeding.

(9) All rights of counterparties under this act apply to netting agreements and qualified financial contracts entered into on behalf of the general account or separate accounts if the assets of each separate account are available only to counterparties to netting agreements and qualified financial contracts entered into on behalf of that separate account.

(10) As used in this section:

(a) "Actual direct compensatory damages" includes normal and reasonable costs of cover or other reasonable measures of damages utilized in the derivatives market for the contract and agreement claims, but does not include punitive and exemplary damages, damages for lost profit or lost opportunity, or damages for pain and suffering.

(b) "Commodity contract" means any of the following:

(i) A contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a board of trade designated as a contract market by the commodity futures trading commission under the commodity exchange act, 7 USC 1 to 27f, or board of trade outside the United States.

(ii) An agreement that is subject to regulation under section 23 of the commodity exchange act, 7 USC 23, and that is commonly known to the commodities trade as a margin account, margin contract, leverage account, or leverage contract.

(iii) An agreement or transaction that is subject to regulation under section 6c of the commodity exchange act, 7 USC 6c, and that is commonly known to the commodities trade as a commodity option.

(c) "Contractual right" includes any right, whether or not evidenced in writing, arising under statutory or common law, a rule or bylaw of a national securities exchange, national securities clearing organization, or securities clearing agency, a rule or bylaw, or a resolution of the governing body, of a contract market or its clearing organization, or under law merchant.

(d) "Forward contract" means a contract for the purchase, sale, or transfer of a commodity, as defined in section 1a of the commodity exchange act, 7 USC 1a, or any similar good, article, service, right, or interest that is presently or in the future becomes the subject of dealing in the forward contract trade, or product or by-product thereof, with a maturity date more than 2 days after the date the contract is entered into, including, but not limited to, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or a combination of these or option on any of them. Forward contract does not include a commodity contract.

(e) "Netting agreement" means a contract or agreement, including terms and conditions incorporated by reference in the contract or agreement, that documents 1 or more transactions between the parties to the agreement for or involving 1 or more qualified financial contracts and that provides for the netting or liquidation of qualified financial contracts or present or future payment obligations or payment entitlements thereunder, including liquidation or close-out values relating to those obligations or entitlements, among the parties to the netting agreement. Netting agreement includes a master agreement that otherwise meets this definition. A master agreement includes all schedules, confirmations, definitions, and addenda to it and transactions under it, which shall be treated as 1 netting agreement.

(f) "Qualified financial contract" means a commodity contract, forward contract, repurchase agreement, securities contract, swap agreement, and any similar agreement that the commissioner determines by regulation, resolution, or order to be a qualified financial contract for the purposes of this chapter.

(g) "Repurchase agreement", including a reverse repurchase agreement, means an agreement, including related terms, that provides for the transfer of certificates of deposit, eligible bankers' acceptances, or securities that are direct obligations of, or that are fully guaranteed as to principal and interest by, the United States or an agency of the United States against the transfer of funds by the transferee of the certificates of deposit, eligible bankers' acceptances, or securities with a simultaneous agreement by the transferee to transfer to the transferor certificates of deposit, eligible bankers' acceptances, or securities as described above, at a date certain not later than 1 year after the transfers or on demand, against the transfer of funds. For the purposes of this definition, the items that may be subject to an agreement include mortgage-related securities, a mortgage loan, and an interest in a mortgage loan, and shall not include any participation in a commercial mortgage loan, unless the commissioner determines by regulation, resolution, or order to include the participation within the meaning of the term.

(h) "Securities contract" means a contract for the purchase, sale, or loan of a security, including an option for the repurchase or sale of a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof, or an option entered into on a national securities exchange

relating to foreign currencies, or the guarantee of a settlement of cash or securities by or to a securities clearing agency. As used in this definition, "security" includes a mortgage loan, mortgage-related securities, and an interest in any mortgage loan or mortgage-related security.

(i) "Swap agreement" means an agreement, including the terms and conditions incorporated by reference in an agreement, that is a rate swap agreement, basis swap, commodity swap, forward rate agreement, interest rate future, interest rate option, forward foreign exchange agreement, spot foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency future, or currency option or any other similar agreement, and includes any combination of agreements and an option to enter into an agreement.

History: Add. 2004, Act 217, Imd. Eff. July 14, 2004;—Am. 2012, Act 166, Imd. Eff. June 14, 2012.

Popular name: Act 218

500.8116 Order of liquidation; petition; duties of circuit court; order terminating rehabilitation; restoration to possession of property and control of business.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8117 Liquidation of domestic or alien insurer; basis.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8118 Order of liquidation; provisions; filing as notice; rights and liabilities; judicial declaration of insolvency; accounting.

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 court is vested by operation of law with titles to the trusteed assets of the alien insurer and that the assets and business of the

insurer in the United States shall be the only assets and business included in the order. The liquidator shall administer the trustee assets in accordance with this chapter, subject at all times to the court's direction and supervision.

(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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990;—Am. 1994, Act 227, Imd. Eff. June 27, 1994.

Popular name: Act 218

500.8118a Order transferring title to and possession of trustee assets; actions of court; considerations.

Sec. 8118a. (1) For an alien insurer domiciled in this state, at any time after the court grants an order pursuant to section 8118, any person having an interest in the trustee assets of the insurer or in their due administration or in the due administration of the insurer's estate and seeking to have all or part of the trustee assets transferred to that person shall do so by petitioning the court for an order directing that title to and possession of all or part of the trustee assets be transferred to that person.

(2) After providing notice and hearing as it considers proper, the court may grant, deny, or suspend a petition made pursuant to subsection (1) on terms and conditions, or make such other order, as the court considers appropriate, considering the following:

(a) The interests of policyholders, other claimants and creditors of the insurer, and the public.

(b) Whether the order requested, and any governing legislation upon which it is based, is conducive to or contrary to the objectives of this chapter.

(c) Whether the order requested is consistent with the terms, conditions, and objectives of the trust agreement or agreements referred to in section 411(4).

(d) The effect the order requested would have or could reasonably be expected to have on the ability of the liquidator to use assets of the insurer's estate under the liquidation order to transfer policy obligations to a solvent assuming insurer.

(e) Any agreements with a receiver or commissioner or like official of another state in which the insurer was doing business, or of the country under the laws of which the insurer was formed, relating to the rehabilitation, liquidation, conservation, or dissolution of the insurer.

(f) The adequacy of information available to the court upon which to make a determination.

(g) The costs that could reasonably be expected to be incurred as a result of the order.

History: Add. 1994, Act 227, Imd. Eff. June 27, 1994.

Popular name: Act 218

500.8119 Order of liquidation; continuation of policies in force; termination of coverages.

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).

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8120 Dissolution of corporation.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8121 Powers of liquidator; extended reporting period; powers and authority not exclusive; delaying sale of assets.

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 and 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 that 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 the following purposes:

(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 except that for trustee assets, any instruments necessary or proper shall be executed only pursuant to court order.

(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 that 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 does 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 or country relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states or countries.

(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 is 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 the assets of the company if 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 the assets.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990;—Am. 1994, Act 227, Imd. Eff. June 27, 1994;—Am. 1996, Act 117, Imd. Eff. Mar. 6, 1996.

Popular name: Act 218

500.8122 Notice of liquidation; filing claims; changes of address.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8123 Notice by agent to policyholder; report of compliance; penalty; waiver.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8124 Order appointing liquidator as bar to action at law or equity; full faith and credit to injunctions; intervention; expense; institution of action or proceeding on behalf of estate of insurer; period of limitation; statute of limitation or defense of laches.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990;—Am. 2006, Act 357, Imd. Eff. Sept. 18, 2006.

Popular name: Act 218

500.8124a Guaranty association or foreign guaranty association; court standing; right to intervene; jurisdiction.

Sec. 8124a. Any guaranty association or foreign guaranty association has standing to appear and may intervene as a party as a matter of right or otherwise appear and participate in any court proceeding concerning the rehabilitation or liquidation of an insurer if the association is or may become liable to act as a result of the liquidation. Exercise by any guaranty association or its designated representative of the right to intervene conferred under this subsection does not constitute grounds to establish general personal jurisdiction by the courts of this state. The intervening guaranty association or foreign guaranty association is subject to the court's jurisdiction only for the limited purpose for which it intervenes.

History: Add. 2006, Act 356, Imd. Eff. Sept. 18, 2006.

Compiler's note: Act 218

500.8125 List of insurer's assets; amendments and supplements; filing; reduction of assets to liquidity; submission of assets for disbursement.

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).

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8126 Transfers and obligations as fraudulent; avoidance by receiver; retention of property, lien, or obligation as security for repayment; preservation of transfer or obligation; perfection of transfer; transfer creating equitable lien; fraudulent transaction of insurer with reinsurer.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8127 Transfer of insurer's real property; validity; constructive notice of commencement of proceeding in rehabilitation or liquidation; judicial sale of real property of insurer; validity of transfer against receiver; payment of indebtedness or delivery of property to insurer; knowledge of pending rehabilitation or liquidation; burden of proof; currency or negotiable instruments not impaired.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8128 Preference generally; transfers considered made or suffered; lien obtainable by legal or equitable proceedings; dissolution of voidable lien; discharge of property from lien; summary jurisdiction; hearing; notice; order; liability of surety; set off against preference; examination of transactions; payment of attorney; personal liability; recovery of certain commissions in delinquency proceedings.

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 any of the following:
 - (i) An officer of the insurer.
 - (ii) 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.
 - (iii) A shareholder holding directly or indirectly more than 5% of any class of any equity security issued by the insurer.
 - (iv) 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 that 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 that under applicable law are given a special priority over other liens that 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 that becomes security for a future loan, shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.
- (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 that becomes a part of the insurer's estate, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference that would otherwise be recoverable from him 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.

(15) For delinquency proceedings commenced after January 1, 1990, and notwithstanding any other provision of law, commissions paid to insurance agents or agencies by an insurer in the ordinary course of business at a time when the insurer was authorized to transact such business are not recoverable unless the agent or agency is affiliated with the insurer or produces more than 10% of the insurer's premium.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990;—Am. 1994, Act 226, Imd. Eff. June 27, 1994.

Popular name: Act 218

500.8129 Claim of creditor; allowance; excused late filing.

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).

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8130 Setoff or counterclaim.

Sec. 8130. (1) Mutual debts or mutual credits, whether arising out of 1 or more contracts, 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 receivership 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 insurer's obligation is owed to an affiliate of the person or any other entity or association other than the person.

(d) The person's obligation is owed to an affiliate of the insurer or any other entity or association other than the insurer.

(e) 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.

(f) The obligations between the person and the insurer arise from business where either the person or the insurer has assumed risks and obligations from the other party and then has ceded back to that party substantially the same risks and obligations.

(3) The receiver shall provide persons with accounting statements identifying all debts that are due and payable. If a person owes to the insurer amounts that are due and payable, against which the person asserts setoff of mutual credits that may become due and payable from the insurer in the future, the person shall promptly pay to the receiver the amounts due and payable, provided that, notwithstanding section 8142 or any other provision of this chapter, the receiver shall promptly and fully refund, to the extent of the person's prior payments, any mutual credits that become due and payable to the person by the insurer. Prior to the termination of any proceeding under this chapter, the amount due the person shall be determined for the purpose of the receiver making a final refund, if any.

(4) Subsections (2)(c), (d), and (f) and (3) apply to all contracts entered into, renewed, extended, or amended on or after 1 year after the effective date of this subsection and to debts or credits arising from any business written or transactions occurring after the effective date of this subsection pursuant to any such contract. For purposes of this section any change in the terms of, or consideration for, any such contract shall be considered an amendment.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990;—Am. 1994, Act 226, Imd. Eff. June 27, 1994.

Popular name: Act 218

500.8130a Contributions of parties; determination by court; distribution to stockholders; recovery of distributions; limitations.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8131 Report of liquidator to court; levy of assessment; order to show cause; notice; hearing; determination; enforcement.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8132 Amount recoverable by liquidator from reinsurers; reduction prohibited; reinsurer's obligation to insurer's estate; assumption of obligations by life and health insurance guaranty association.

Sec. 8132. (1) 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. The reinsurance shall be payable pursuant to the terms of the reinsurance contract by the assuming insurer on the basis of reported claims allowed by the liquidation court, except as provided in subsection (2), without diminution because of the insolvency of the ceding insurer. 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 requires or an endorsement signed by the reinsurer to the policies reinsured requires the reinsurer to make payment to the payees under the policies reinsured if the ceding insurer became insolvent.

(2) If a life and health insurance guaranty association or its designated successor life or health insurer has assumed policy obligations as direct obligations of the insolvent ceding insurer and has succeeded to the rights of the insolvent insurer under the contract of reinsurance, then the reinsurer's liability shall continue under the contract of reinsurance and shall be payable pursuant to the direction of the guaranty association or its designated successor. As a condition to succeeding to the insolvent insurer's rights under the contract, the guaranty association or successor life or health insurer shall be responsible for premiums payable under the reinsurance contract for periods after the date of liquidation.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990;—Am. 2000, Act 283, Imd. Eff. July 10, 2000.

Compiler's note: Enacting section 1 of Act 283 of 2000 provides:

"Enacting section 1. The legislature declares that the provisions of this amendatory act are fundamental to the business of insurance as provided in sections 1 and 2 of chapter 20, popularly known as the McCarran-Ferguson act, 59 Stat. 33 and 34, 15 U.S.C. 1011 and 1012. It is the intent of this amendatory act that upon the insolvency of an alien insurer or reinsurer that provides security to fund its United States obligations under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, the assets representing the security shall be maintained in the United States and claims shall be filed with and valued by the state insurance commissioner with regulatory oversight, and the assets shall be distributed under the insurance laws of the state where the trust is domiciled that are applicable to the liquidation of domestic United States insurance companies."

Popular name: Act 218

500.8133 Payment of unpaid earned premium; recovery of unearned premium; prohibited credits and setoffs; violation; penalty; notice; hearing; appeal.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8133a Deductible agreement; collateral as asset maintained and administered by receiver; jurisdiction of circuit court; rights of guaranty association or foreign guaranty association; applicability to delinquency proceedings; applicability to first party claims; definitions.

Sec. 8133a. (1) Notwithstanding any other law or contract to the contrary, any collateral held by or for the benefit of or assigned to the insurer or subsequently the receiver in order to secure the obligations of a policyholder under a deductible agreement shall not be considered an asset of the estate and shall be maintained and administered by the receiver as provided in this section.

(2) If collateral is being held by or for the benefit of or assigned to the insurer or subsequently the receiver to secure obligations under a deductible agreement with a policyholder, the collateral shall be used to secure the policyholder's obligation to fund or reimburse claims payment within the agreed deductible amount as provided in this section.

(3) If a claim that is subject to a deductible agreement and secured by collateral is not covered by any guaranty association or foreign guaranty association and the policyholder is unwilling or unable to take over the handling and payment of the noncovered claims, the receiver shall adjust and pay the noncovered claims using the collateral but only to the extent the available collateral after allocation under subsection (4) is sufficient to pay all outstanding and anticipated claims. If the collateral is exhausted and the insured is not able to provide funds to pay the remaining claims within the deductible after all reasonable means of collection against the insured have been exhausted, the receiver's obligation to pay the claims from the collateral terminates and the remaining claims shall be claims against the insurer's estate subject to complying with other provisions in this chapter for the filing and allowance of those claims. If the liquidator determines that the collateral is insufficient to pay all additional and anticipated claims, the liquidator may file a plan, subject to court approval, for equitably allocating the collateral among claimants.

(4) To the extent that the receiver is holding collateral provided by a policyholder that was obtained to secure a deductible agreement and to secure other obligations of the policyholder to pay the insurer directly or indirectly amounts that become assets of the estate, such as reinsurance obligations under a captive reinsurance program or adjustable premium obligations under a retrospectively rated insurance policy where the premium due is subject to adjustment based upon actual loss experience, the receiver shall equitably allocate the collateral among those obligations and administer the collateral allocated to the deductible agreement as provided in this section. For collateral allocated to obligations under the deductible agreement, if the collateral secured reimbursement obligation under more than 1 line of insurance, then the collateral shall be equitably allocated among the various lines based upon the estimated ultimate exposure within the deductible amount for each line. The receiver shall inform the guaranty associations and foreign guaranty associations of the method and details of all the foregoing allocations.

(5) Regardless of whether there is collateral, if the insurer has contractually agreed to allow the policyholder to fund its own claims within the deductible amount pursuant to a deductible agreement, either through the policyholder's own administration of its claims or through the policyholder providing funds directly to a third party administrator who administers the claims, the receiver shall allow this funding arrangement to continue and, where applicable, will enforce the arrangement to the fullest extent possible. The funding of these claims by the policyholder within the deductible amount will act as a bar to any claim for such amount in the liquidation proceeding, including, but not limited to, any claim by the policyholder or the third party claimant. This funding arrangement extinguishes both the obligation, if any, of any guaranty association to pay those claims within the deductible amount, as well as the obligations, if any, of the policyholder or third party administrator to reimburse the guaranty association. If a policyholder has entered into an agreement to which this subsection applies and is prevented from funding its own claims due to any proceeding under 11 USC 101 to 1330 and 1501 to 1532, then the guaranty funds that would otherwise be obligated to pay the claims shall pay the claims to the extent required by applicable state law and, in addition to any other rights of recovery arising from payment of the claims, shall have the full benefit of all collateral and other rights of reimbursement and recovery under this section from the bankruptcy court, liquidator, or receiver. No charge of any kind shall be made against any guaranty association on the basis of the policyholder funding of claim payments made pursuant to an arrangement described in this subsection.

(6) If the insurer has not contractually agreed to allow the policyholder to fund its own claims within the deductible amount, to the extent a guaranty association or foreign guaranty association is required by applicable state law to pay any claims for which the insurer would have been entitled to reimbursement from the policyholder under the terms of the deductible agreement and to the extent the claims have not been paid by a policyholder or third party, the receiver shall promptly bill the policyholder for reimbursement and the policyholder is obligated to pay the reimbursement amount to the receiver for the benefit of the guaranty association or foreign guaranty associations who paid the claims. Neither the insolvency of the insurer, nor its inability to perform any of its obligations under the deductible agreement, is a defense to the policyholder's reimbursement obligation under the deductible agreement. The receiver shall promptly reimburse the guaranty association or foreign guaranty association for claims paid that were subject to the deductible when the policyholder reimbursements are collected. If the policyholder fails to pay the amounts due within 60 days after the bill for the reimbursement is due, the receiver shall use the collateral to the extent necessary to reimburse the guaranty association or foreign guaranty associations, and, at the same time, may pursue other collections efforts against the policyholder. If more than 1 guaranty association or foreign guaranty association has a claim against the same collateral and the available collateral, after allocation under subsection (4), along with billing and collection efforts, are together insufficient to pay each guaranty association and foreign guaranty association in full, then the receiver will prorate payments to each guaranty association and foreign guaranty association based upon the relationship the amount of claims each guaranty association and foreign guaranty association has paid bears to the total of all claims paid by the guaranty association and foreign guaranty associations.

(7) The receiver is entitled to deduct from reimbursements owed to a guaranty association or foreign guaranty association or collateral to be returned to a policyholder reasonable actual expenses incurred in fulfilling the responsibilities under this section, not to exceed 3% of the collateral or the total deductible reimbursements actually collected by the receiver. For claim payments made by a guaranty association or foreign guaranty association, the receiver shall promptly provide the guaranty association or foreign guaranty association with a complete accounting of the receiver's deductible billing and collection activities, including copies of the policyholder billings when rendered, the reimbursements collected, the available amounts and use of collateral for each account, and any proration of payments when it occurs. If the receiver fails to make a good faith effort within 120 days of receipt of claims payment reports to collect reimbursements due from a policyholder under a deductible agreement based on claim payments made by the guaranty association or

foreign guaranty association, the guaranty association or foreign guaranty association may pursue collection from the policyholders directly on the same basis as the receiver, and with the same rights and remedies, and shall report any amounts collected from each policyholder to the receiver. To the extent that a guaranty association or foreign guaranty association pays claims within the deductible amount, but is not reimbursed by either the receiver under this section or by policyholder payments from the guaranty association's or foreign guaranty association's own collection efforts, the guaranty association or foreign guaranty association shall have a claim in the insolvent insurer's estate for unreimbursed claims payments.

(8) The receiver shall adjust the collateral being held as the claims subject to the deductible agreement are run off, so long as adequate collateral is maintained to secure the entire estimated ultimate obligation of the policyholder plus a reasonable safety factor. The receiver shall make these adjustments periodically, but is not required to adjust the collateral more than once a year. The guaranty association and any foreign guaranty association shall be informed of all such collateral reviews, including, but not limited to, the basis for the adjustment. Once all claims covered by the collateral have been paid and the receiver is satisfied that no new claims can be presented, the receiver will release any remaining collateral to the policyholder.

(9) The Ingham county circuit court having jurisdiction over the liquidation proceedings shall have jurisdiction to resolve disputes arising under this section.

(10) This section does not limit or adversely affect any right a guaranty association or foreign guaranty association may have under applicable state law to obtain reimbursement from certain classes of policyholders for claims payments made by the guaranty association or foreign guaranty association under policies of the insolvent insurer or for related expenses the guaranty association or foreign guaranty association incurs.

(11) This section applies to all delinquency proceedings that are open and pending on the effective date of this section.

(12) This section does not apply to first party claims or to claims funded by a guaranty association or foreign guaranty association net of the deductible unless subsection (5) applies.

(13) As used in this section:

(a) "Deductible agreement" means any combination of 1 or more policies, endorsements, contracts, or security agreements that provide for the policyholder to bear the risk of loss within a specified amount per claim or occurrence covered under a policy of insurance and may be subject to aggregate limit of policyholder reimbursement obligations.

(b) "Noncovered claim" means a claim that is subject to a deductible agreement, may be secured by collateral, and is not covered by a guaranty association or foreign guaranty association.

History: Add. 2006, Act 355, Imd. Eff. Sept. 18, 2006.

Compiler's note: Act 218

500.8134 Proposal to make early access disbursements; effect of insufficient assets; report; provisions of proposal; notice of application; action on application; return of early access funds; limitation.

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 make early access disbursements out of marshaled assets, to any guaranty association or foreign guaranty association having obligations because of the insolvency. If the liquidator determines that the estate will not have sufficient assets to make any early access disbursements to a guaranty association or foreign guaranty association under this section, the liquidator shall file a report with the court supporting this determination. Notice to the state insurance commissioners, guaranty associations, and foreign guaranty associations and court review of the report shall be provided under subsection (5). This report may be given instead of an application for a proposal to make early access disbursements. However, if at any time the estate obtains sufficient assets to support an early access disbursement under this section, the liquidator shall file an application for a proposal to make early access disbursements within 60 days of the estate obtaining those assets. If, within 120 days of a final determination of insolvency, the liquidator fails to file an application with the court for approval of a proposal to make early access disbursements or, alternatively, fails to file a report with the court supporting the determination that the estate will not have sufficient assets to make early access disbursements, any guaranty association or foreign guaranty association that may become obligated to pay claims as a result of the insolvency may file this application. An application filed by an association shall be reviewed by the court and, if the proposal submitted by the association meets the requirements set out in this section, the application shall be approved by the court. Upon court approval of the guaranty association or foreign guaranty association proposal, the liquidator shall begin making early access disbursements in accordance with the proposal.

(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(1)(a) and (b) and (2). When a reserve for uncovered claims under section 8142(2) is appropriate, the amount of estate assets to be reserved for those claims shall be a percentage of the uncovered claims under section 8142(2), equal in proportion to the percentage of assets distributed, or proposed for distribution, to the guaranty association or foreign guaranty association with respect to covered obligations at the time the reserve for uncovered claims is calculated. Reserves shall be established based on the best available information at the time the distribution is calculated and modified from time to time as more refined information becomes available.

(b) Disbursement of the assets marshaled 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 directs.

(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 before 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).

(6) The liquidator shall not offset the amount to be disbursed to any guaranty association or foreign guaranty association by any special or statutory deposit or any other asset of the insolvent insurer except to the extent the deposit or asset has been paid to the association for the purpose of satisfying the association's claims. If a guaranty association or foreign guaranty association has received an early access distribution and thereafter also receives a special or statutory deposit or any other asset of the insolvent insurer, the liquidator may request the return of the early access funds up to the amount of the special or statutory deposit or other asset of the insolvent insurer.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990;—Am. 1998, Act 279, Imd. Eff. July 27, 1998;—Am. 2006, Act 354, Imd. Eff. Sept. 18, 2006.

Popular name: Act 218

500.8135 Proof of claims; filing; circumstances permitting late filing; receipt of distributions by late filing claimants.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8136 Proof of claim; statement; form; additional information or evidence; judgment or order entered by default or collusion; judgment or order as evidence of liability or quantum of damages; claims of guaranty association.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8137 Contingent claims; discounting claims at legal rate of interest; claims made under employment contracts.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8138 Third party claim; claim by insured; insured as unexcused late filer; recommendations of liquidator; withholding dividends; hearing; payment of insured; reversions to undistributed assets; delay in final payment; filing of several claims founded on 1 policy; prohibited claims.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8139 Denial of claim; filing of objections; hearing; notice.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8140 Subrogation to rights of creditor; distribution; excess received by creditor.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8141 Value of security; determination; supervision and control; crediting amount determined; deficiency treated as unsecured claim; surrender of security to liquidator.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8141a Payment of special deposit claims; priority; transfer of special deposits.

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 Michigan policyholders of the insurer and to claimants of those Michigan policyholders.

(d) To Michigan beneficiaries of insurance contracts owned by non-Michigan residents.

(e) To other Michigan claimants of the insurer.

(f) To claims of non-Michigan policyholders of the insurer and to claimants of those non-Michigan policyholders.

(g) To non-Michigan beneficiaries of insurance contracts owned by non-Michigan residents.

(h) To the stockholders or owners 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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990;—Am. 1994, Act 443, Imd. Eff. Jan. 10, 1995.

Compiler's note: Section 2 of Act 443 of 1994 provides:

"Section 8141a of Act No. 218 of the Public Acts of 1956, being section 500.8141a of the Michigan Compiled Laws, as amended by this amendatory act is curative, reflects the original intent of the legislature, is retroactive, and is effective beginning January 3, 1990."

Popular name: Act 218

500.8142 Priority of distribution of claims from insurer's estate; class of claims; subclasses prohibited; order of distribution; assets in separate account; definitions.

Sec. 8142. (1) Except as provided in subsection (2), 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 is 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.

(vii) 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, if the

court determines that the payments are reasonably necessary to an orderly and effective administration for the protection of class 2 claimants. Officers and directors are not entitled to the benefit of this priority. This priority is in lieu of any other similar priority authorized by law as to wages or compensation of employees.

(viii) Beginning January 3, 1990, the actual and necessary fees of a supervisor appointed pursuant to section 8109 if the liquidation was preceded by supervision pursuant to section 8109 and the fees were not paid at the date of liquidation.

(b) Class 2. Except as otherwise provided in this section, all claims under policies for losses incurred, including third party claims, and all claims of a guaranty association or foreign guaranty association. However, obligations of an insolvent insurer arising out of reinsurance contracts shall not be included in this class. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values, shall be treated as loss claims. For purposes of this section, life insurance and annuity policies include, but are not limited to, individual annuities, group annuities, guaranteed investment contracts, and funding agreement contracts, issued by an insurer. 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.

(c) Class 3. Claims of the federal government.

(d) Class 4. All claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property that are not under policies and, to the extent not included in class 1, 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 are not entitled to the benefit of the priority for debts due to employees for services performed. The priority for debts due to employees for services performed is in lieu of any other similar priority authorized by law as to wages or compensation of employees.

(e) Class 5. Claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors.

(f) Class 6. Claims of any state or local government. Claims, including those of any governmental body for a penalty or forfeiture, are 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 incurred. The remainder of the claims shall be postponed to the class of claims under subdivision (i).

(g) Class 7. Claims filed late or any other claims other than claims under subdivisions (h) and (i).

(h) Class 8. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies are limited in accordance with law.

(i) Class 9. The claims of shareholders or other owners. In paying claims pursuant to this class, disinterested shareholders have priority over interested shareholders who are directors or officers who fail to exercise their duties in accordance with section 5240.

(2) If it is provided by written agreement, statute, or rule that the assets in a separate account are not chargeable with liabilities arising out of any other business of the insurer, that part of a claim that includes a separate account shall be satisfied out of the assets in the separate account equal to the reserves maintained in the separate account under the separate account agreement. The remainder of the claim shall be treated as a Class 2 claim against the insurer's estate to the extent that reserves have been established in the insurer's general account pursuant to statute, rule, or the separate account agreement.

(3) As used in this section:

(a) "Separate account" means a separate account authorized under section 925 and established in accordance with the terms of a written agreement or a contract on a variable basis.

(b) "Insurer's estate" means all of the assets of the insurer less any assets held in separate accounts. The following assets shall not be considered separate account assets:

(i) Assets that represent money provided by the insurer initially to fund the separate account.

(ii) Assets that represent policy reserves that are properly allocable to the general account.

(iii) General account investments held in the separate account.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990;—Am. 1991, Act 79, Imd. Eff. July 18, 1991;—Am. 1996, Act 429, Imd. Eff. Nov. 26, 1996;—Am. 1998, Act 279, Imd. Eff. July 27, 1998;—Am. 2002, Act 359, Imd. Eff. May 23, 2002.

Compiler's note: Section 2 of 429 of 1996 provides:

"Section 2. (1) Sections 8142 and 8159 of Act No. 218 of the Public Acts of 1956, being sections 500.8142 and 500.8159 of the Michigan Compiled Laws, as amended by this amendatory act, apply to all pending and future cases brought under chapter 81 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.8101 to 500.8159 of the Michigan Compiled Laws, on and after the effective date of this amendatory act. These sections, as amended by this amendatory act, are intended to correct existing

law in light of the United States Supreme Court decision in US Dept of Treasury v Fabe, 508 US 491; 113 S Ct 2202; 124 L Ed 2d 449 (1993), and to introduce regulations conducive to the public good.

“(2) If any portion of this amendatory act or the application of this amendatory act to any person or circumstance is found to be invalid by a court, the invalidity shall not affect the remaining portions or applications of the amendatory act that can be given effect without the invalid portion or application provided the remaining portion is not determined by the court to be inoperable. The court may alter the composition and order of classes listed in section 8142 of Act No. 218 of the Public Acts of 1956, being section 500.8142 of the Michigan Compiled Laws, as amended by this amendatory act, to the minimum extent necessary to render that section valid.”

Popular name: Act 218

500.8143 Review of claims by liquidator; investigation; negotiation; unresolved disputes; report on claims by liquidator; approval, disapproval, or modification; limitation.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8144 Distributions; manner of payment; distribution of assets in kind.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8145 Disposition of unclaimed or withheld funds.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8146 Application for discharge.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8147 Petition to reopen proceedings.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8148 Retention or destruction of records.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8149 Audits.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8150 Conservator.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8151 Petition for order directing commissioner to liquidate assets; grounds; notice; order; liquidator as ancillary receiver; commissioner as receiver; paying claims of residents.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8152 Vesting of title in domiciliary liquidator or commissioner; filing claims.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8153 Petition requesting appointment of ancillary receiver; order; notice; powers and duties of ancillary receiver.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8154 Institution of proceedings under MCL 500.8109 to 500.8111.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8155 Filing of claims; proof; conclusiveness of final allowance of claims.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8156 Filing of claims; proof; recommendation; hearing; notice; appearance or representation; conclusiveness of final allowance of claim.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218

500.8157 Prohibited action or proceeding.

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.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Compiler's note: At the beginning of this section, the word "during" evidently should read "During."

Popular name: Act 218

500.8158 Controlling order of distribution; equal priority of payment; priority against special deposits; deficiency; deferred sharing; surrender of security and filing claim as general creditor; discharge of claim.

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 claim against a security fund or share in the general assets, but the sharing shall be deferred until general creditors having the same priority, and also claimants against other special deposits having the same priority 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 secured claim against an insurer for which a liquidator has been appointed in this or any other state may surrender his or her security for the claim 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 or the appropriate security fund on the same basis as claims of unsecured creditors having the same priority.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990;—Am. 1994, Act 226, Imd. Eff. June 27, 1994.

Popular name: Act 218

500.8159 Failure to transfer assets.

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(1)(h).

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990;—Am. 1996, Act 429, Imd. Eff. Nov. 26, 1996;—Am. 1998, Act 279, Imd. Eff. July 27, 1998.

Compiler's note: Section 2 of Act 429 of 1996 provides:

"Section 2. (1) Sections 8142 and 8159 of Act No. 218 of the Public Acts of 1956, being sections 500.8142 and 500.8159 of the Michigan Compiled Laws, as amended by this amendatory act, apply to all pending and future cases brought under chapter 81 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.8101 to 500.8159 of the Michigan Compiled Laws, on and after the effective date of this amendatory act. These sections, as amended by this amendatory act, are intended to correct existing law in light of the United States Supreme Court decision in US Dept of Treasury v Fabe, 508 US 491; 113 S Ct 2202; 124 L Ed 2d 449 (1993), and to introduce regulations conducive to the public good.

"(2) If any portion of this amendatory act or the application of this amendatory act to any person or circumstance is found to be invalid by a court, the invalidity shall not affect the remaining portions or applications of the amendatory act that can be given effect without the invalid portion or application provided the remaining portion is not determined by the court to be inoperable. The court may alter the composition and order of classes listed in section 8142 of Act No. 218 of the Public Acts of 1956, being section 500.8142 of the Michigan Compiled Laws, as amended by this amendatory act, to the minimum extent necessary to render that section valid."

Popular name: Act 218

500.8160 Repealed. 2001, Act 143, Imd. Eff. Oct. 26, 2001.

Compiler's note: The repealed section pertained to reports to legislature.

Popular name: Act 218