

No. 1977-92

AN ACT

SB 594

Amending the act of May 17, 1921 (P.L. 789, No. 285), entitled, as amended, "An act relating to insurance; establishing an insurance department; and amending, revising, and consolidating the law relating to the licensing, qualification, regulation, examination, suspension, and dissolution of insurance companies, Lloyds associations, reciprocal and inter-insurance exchanges, and certain societies and orders, the examination and regulation of fire insurance rating bureaus, and the licensing and regulation of insurance agents and brokers; the service of legal process upon foreign insurance companies, associations or exchanges; providing penalties, and repealing existing laws," revising and clarifying the procedures with regard to rehabilitation and liquidation of insurers and providing sanctions.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Article V, act of May 17, 1921 (P.L. 789, No. 285), known as "The Insurance Department Act of one thousand nine hundred and twenty-one," is repealed.

Section 2. The act is amended by adding an article to read:

ARTICLE V

SUSPENSION OF BUSINESS - INVOLUNTARY DISSOLUTIONS

(a) GENERAL PROVISIONS

Section 501. Construction and Purpose.—(a) *This article shall not be interpreted to limit the powers granted the commissioner by other provisions of the law.*

(b) *This article shall be liberally construed to effect the purpose stated in subsection (c).*

(c) *The purpose of this article is the protection of the interests of insureds, creditors, and the public generally, with minimum interference with the normal prerogatives of the owners and managers of insurers, through (i) early detection of any potentially dangerous condition in an insurer, and prompt application of appropriate corrective measures; (ii) improved methods for rehabilitating insurers, involving the cooperation and management expertise of the insurance industry; (iii) enhanced efficiency and economy of liquidation, through clarification and specification of the law, to minimize legal uncertainty and litigation; (iv) equitable apportionment of any unavoidable loss; (v) 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 Commonwealth; and (vi) regulation of the insurance business by the impact of the law relating to delinquency procedures and substantive rules on the entire insurance business.*

Section 502. Persons Covered.—*The proceedings authorized by this article may be applied to:*

(1) *All insurers who are doing, or have done, an insurance business in this Commonwealth, and against whom claims arising from that business may exist now or in the future.*

(2) *All insurers who purport to do an insurance business in this Commonwealth.*

(3) *All insurers who have insureds resident in this Commonwealth.*

(4) *All other persons organized or in the process of organizing with the intent to do an insurance business in this Commonwealth.*

(5) *All nonprofit service plans and all fraternal benefit societies and beneficial societies subject to Title 40 of the Pennsylvania Consolidated Statutes (relating to insurance).*

(6) *All title insurance companies, subject to Article VII of the act of May 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law of 1921."*

Section 503. Definitions.—*The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:*

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

"Commissioner" means the Insurance Commissioner of the Commonwealth of Pennsylvania.

"Creditor" is a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed or contingent.

"Delinquency proceeding" means any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing or conserving such insurer, and any summary proceeding under sections 510 through 513.

"Doing business" shall include any of the following acts, whether effected by mail or otherwise:

(1) *the issuance or delivery of contracts or certificates of insurance to persons resident in this Commonwealth;*

(2) *the solicitation of applications for such contracts, or other negotiations preliminary to the execution of such contracts;*

(3) *the collection of premiums, membership fees, assessments or other consideration for such contracts; or*

(4) *the transaction of matters subsequent to execution of such contracts and arising out of them.*

"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.

"Fair consideration" is given for property or obligation:

(1) *when in exchange for such property or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or services are rendered or an obligation is incurred or an antecedent debt is satisfied; or*

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

“Foreign country” means any other jurisdiction not in any state.

“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 such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and on deposit for the security or benefit of all policyholders and creditors shall be treated as general assets.

“Guaranty association.” The Pennsylvania Insurance Guaranty Association provided for by the act of November 25, 1970 (P.L.716, No.232), known as “The Pennsylvania Insurance Guaranty Association Act,” and the Workmen’s Compensation Security Fund provided for by the act of July 1, 1937 (P.L.2532, No.470), known as the “Workmen’s Compensation Security Fund Act,” as amended, and any other similar entity now or hereafter created by the Legislature of this or any other state for the payment of claims of insolvent insurers.

“Insolvency” means:

(1) *For an insurer issuing only assessable fire insurance policies; (i) the inability to pay any obligation within thirty days after it becomes payable, or (ii) if an assessment be made within thirty days after such date, the inability to pay such obligation thirty days following the date specified in the first assessment notice issued after the date of loss pursuant to section 808 of the act of May 17, 1921 (P.L.682, No.284), known as “The Insurance Company Law of 1921.”*

(2) *For any other insurer the inability to pay its obligations when they are due, or whose admitted assets do not exceed its liabilities plus the greater of (i) any capital and surplus required by law for its organization, or (ii) its authorized and issued capital stock. For any insurer licensed to do business in the Commonwealth as of the effective date of this act which does not meet this standard, the term “insolvency” shall mean for a period not to exceed three years from the effective date of this act that it is unable to pay its obligations when they are due or that its admitted assets do not exceed its liabilities plus any required capital contribution ordered by the commissioner under provisions of the insurance law.*

(3) *For the purposes of this paragraph in determining the financial condition of an insurer such assets shall be considered to be admitted as are owned by the insurer and which consist of: (i) cash in the possession of the insurer, or in transit under its control, and including the true balance of any deposit in a solvent bank or trust company; (ii) investments, securities, properties and loans acquired or held in accordance with this act, and in connection therewith the following items: (A) interest due or accrued on*

any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest, (B) declared and unpaid dividends on stock and shares, unless such amount has otherwise been allowed as an asset, (C) interest due or accrued upon a collateral loan in an amount not to exceed one year's interest thereon, (D) interest due or accrued on deposits in solvent banks and trust companies, and interest due or accrued on other assets, if such interest is in the judgment of the commissioner a collectible asset, (E) interest due or accrued on a mortgage loan, in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes thereon over the unpaid principal, but in no event shall interest accrued for a period in excess of twelve months be allowed as an asset, (F) rent due or accrued on real property if such rent is not in arrears for more than three months, and rent more than three months in arrears if the payment of such rent be adequately secured by property held in the name of the tenant and conveyed to the insurer as collateral, (G) the unaccrued portion of taxes paid prior to the due date on real property; (iii) premium notes, policy loans, and other policy assets and liens on policies and certificates of life insurance and annuity contracts and accrued interest thereon, in an amount not exceeding the legal reserve and other policy liabilities carried on each individual policy; (iv) the net amount of uncollected and deferred premiums and annuity consideration in the case of a life insurer; (v) premiums in the course of collection, other than for life insurance, not more than three months past due, less commissions payable thereon. The foregoing limitation shall not apply to premiums payable directly or indirectly by the United States Government or by any of its instrumentalities; (vi) installment premiums other than life insurance premiums to the extent of the unearned premium reserve carried on the policy to which such premiums apply; (vii) notes and like written obligations not past due, taken for premiums other than life insurance premiums, on policies permitted to be issued on such basis, to the extent of the unearned premium reserves carried thereon; (viii) the full amount of reinsurance recoverable by a ceding insurer from a solvent reinsurer and which reinsurance is authorized under section 319 of the act of May 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law of 1921"; (ix) amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty; (x) deposits or equities recoverable from underwriting associations, syndicates and reinsurance funds, or from a suspended banking institution, to the extent deemed by the commissioner available for the payment of losses and claims and at values to be determined by him; (xi) electronic and mechanical machines constituting a data processing and accounting system if the cost of such system is at least one hundred thousand dollars (\$100,000), which cost shall be amortized in full over a period not to exceed ten calendar years; (xii) all assets, whether or not consistent with the provisions of this

section, as may be allowed pursuant to the annual statement form approved by the commissioner for use in this Commonwealth for the kinds of insurance to be reported upon therein; (xiii) other assets, not inconsistent with the provisions of this section, deemed by the commissioner to be available for the payment of losses and claims, at values to be determined by him.

The following shall not be considered admitted assets in any determination of the financial condition of an insurer: (i) good will, trade names and other like intangible assets; (ii) advances (other than policy loans) to officers, directors, and controlling stockholders, whether secured or not, and advances to employees, agents and other persons on personal security only; (iii) stock of such insurer, owned by it, or any material equity therein or loans secured thereby, or any material proportionate interest in such stock acquired or held through the ownership by such insurer of an interest in another firm, corporation or business unit; (iv) furniture fixtures, furnishings, safes, vehicles, libraries, stationery, literature and supplies (other than data processing and accounting systems authorized under Title 31, § 11.4, Pennsylvania Code), except in the case of title insurers such materials and plants as the insurer is expressly authorized to invest in section 732(21) of the act of May 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law of 1921," and except, in the case of any insurer, such property which is acquired through foreclosure of chattel mortgages acquired pursuant to sections 406, 519, 604, and 732 of "The Insurance Company Law of 1921," or which is reasonably necessary for the maintenance and operation of real estate lawfully acquired and held by the insurer other than real estate used by it for home office, branch office and similar purposes; (v) the amount, if any, by which the aggregate book value of investments as carried in the ledger assets of the insurer exceeds the aggregate value thereof as determined under this article.

For purposes of this article "liabilities" shall include but not be limited to reserves required by statute or by insurance department general regulations or specific requirements imposed by the commissioner upon a subject company at the time of admission or subsequent thereto, and any other capital and surplus requirements.

"Insurer" means any person who is doing, has done, purports to do, or is licensed to do an insurance business, and is or has been subject to the authority of, or to liquidation, rehabilitation, reorganization or conservation by any insurance commissioner. For purposes of this article, any other persons included under section 502 shall be deemed to be insurers.

"Preferred claim" means any claim with respect to which the terms of this act accord priority of payment from the general assets of the insurer.

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

"Reciprocal state" means any state other than this Commonwealth in

which in substance and effect sections 520(a), 555, 556 and 558 through 560 are in force, and in which provisions are in force requiring that the commissioner or equivalent official be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers.

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

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

“State” means any state, district or territory of the United States and the Panama Canal Zone.

“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 therein, or with the possession thereof or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily, by or without judicial proceedings. The retention of a security title to property delivered to a debtor shall be deemed a transfer suffered by the debtor.

Section 504. Jurisdiction and Venue.—(a) No court of this Commonwealth shall have jurisdiction to entertain, hear or determine any delinquency proceeding other than as provided in this article.

(b) In addition to other grounds for jurisdiction provided by the law of this Commonwealth, a court of this Commonwealth having jurisdiction of the subject matter has jurisdiction over a person served pursuant to the Pennsylvania Rules of Civil Procedure or other applicable provisions of law in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this Commonwealth (i) if the person served is obligated to the insurer in any way as an incident to any agency or brokerage arrangement that may exist or has existed between the insurer and the agent or broker, in any action on or incident to the obligation; or (ii) if 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 any action on or incident to the reinsurance contract; or (iii) if the person served is or has been an officer, manager, trustee, organizer, promoter or person in a position of comparable authority or influence in an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced, in any action resulting from the relationship with the insurer.

(c) 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

Commonwealth, the court may enter an appropriate order to stay further proceedings on the action in this Commonwealth.

(d) All action herein authorized shall be brought in the Commonwealth Court of the Commonwealth of Pennsylvania.

Section 505. Injunctions and Orders.—(a) Any receiver appointed in a proceeding under this article may at any time apply for and the Commonwealth Court may grant, such restraining orders, preliminary and permanent injunctions, and other orders as may be deemed necessary and proper to prevent: (i) the transaction of further business; (ii) the transfer of property; (iii) interference with the receiver or with the proceeding; (iv) waste of the insurer's assets; (v) dissipation and transfer of bank accounts; (vi) the institution or further prosecution of any actions or proceedings; (vii) the obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets or its policyholders; (viii) the levying of execution against the insurer, its assets or its policyholders; (ix) the making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of this insurer; (x) the withholding from the receiver of books, accounts, documents or other records relating to the business of the insurer; or (xi) any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of the proceeding.

(b) The receiver may apply to any court outside of the Commonwealth for the relief described in subsection (a) or suspension of any insurance licenses issued by the commissioner.

Section 506. Cooperation of Officers and Employees.—(a) Any employe, officer, manager, trustee, or general agent of any insurer, and any other person with executive authority over or in charge of any segment of the insurer's affairs shall cooperate with the commissioner in any proceeding under this article or any investigation preliminary or incidental to the proceeding. The term "person" as used in this section, shall include any person who exercises control directly or indirectly over activities of an insurer through any holding company or other affiliate of the insurer. "To cooperate" shall include, but shall not be limited to the following:

(1) to reply promptly in writing to any inquiry from the commissioner requesting such a reply; and

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

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

(c) This section shall not be construed to abridge otherwise legal rights to resist a petition for liquidation or other delinquency proceedings:

(i) An insurer shall have the right to engage legal counsel for defense of

and appeal with respect to a delinquency proceeding. Reasonable costs and fees therefore may be paid from the general assets of the insurer, subject to the approval of the administrative or judicial body to which appeal was made.

In the event that such proceedings result in a declaration of insolvency or are subsequent thereto, the approved costs thereof shall be administrative costs or expenses as provided under section 544(b).

(ii) If a stay of proceedings or order is specifically requested in a petition filed by an insurer, the administrative agency or court to which such petition is made may, in its discretion, grant such stay.

(d) Any person included within subsection (a) who fails to cooperate with the commissioner, or any person who obstructs or interferes with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto, or who violates any valid order the commissioner issued under this article may be sentenced to pay a fine not exceeding ten thousand dollars (\$10,000) or to undergo imprisonment for a term of not more than one year, or both, or any person shall, after a hearing, be subject to the imposition by the commissioner, of a civil penalty not to exceed ten thousand dollars (\$10,000) and shall be subject further to the revocation or suspension of any insurance license issued by the commissioner.

Section 507. Bonds.—In any proceeding under this article, the commissioner and his deputies shall be responsible on their official bonds for the faithful performance of their duties. If the court deems it desirable for the protection of the assets, it may at any time require an additional bond from the commissioner or his deputies. Such additional bond shall be paid for out of the assets of the insurer as a cost of administration.

Section 508. Commissioner's Reports.—The commissioner shall as receiver make such reports to the court at such times and in such manner as the court shall require.

Section 509. Continuation of Delinquency.—Every proceeding heretofore commenced under the laws in effect before the enactment of the amendment of this article effective. . . ., 1977, shall be deemed to have commenced under this article so amended for the purpose of conducting the proceeding henceforth, except that in the discretion of the commissioner the proceeding may be continued, in whole or in part, as it would have been continued had this article not been so amended.

(b) SUMMARY PROCEEDINGS

Section 510. Commissioner's Summary Orders.—(a) Whenever the commissioner has reasonable cause to believe, and determines, after a hearing held as prescribed in subsection (c), that any insurer has committed or engaged in any act, practice or transaction that would subject it to formal delinquency proceedings under this article, he may make and serve upon the insurer and any other persons involved, such orders, including an

order suspending the business of an insurer, as are reasonably necessary to correct, eliminate or remedy such conduct, condition or ground.

(b) If the conditions of subsection (a), other than notice and hearing, are satisfied, and if the commissioner has reasonable grounds to believe that irreparable harm to the property or business of the insurer or to the interests of its policy or certificate holders, creditors or the public may occur unless he issues with immediate effect the orders described in subsection (a), he may make and serve such orders without notice and before hearing, simultaneously serving upon the insurer notice of hearing under subsection (c).

(c) The notice of hearing under subsections (a) or (b) and the summary order issued under subsections (a) or (b) shall be served pursuant to the applicable rules of civil or administrative procedure. The notice of hearing under subsection (a) shall state the time and place of hearing, and the conduct, condition or ground upon which the commissioner would base his order; the notice of hearing under subsection (b) shall state the time and place of hearing. Unless mutually agreed between the commissioner and the insurer, the hearing shall occur not more than fifteen days after notice is served and shall be either in Dauphin County or in some other place convenient to the parties to be designated by the commissioner. The commissioner shall not publicize such hearings and shall hold all hearings in summary proceedings privately unless the insurer requests a public hearing, in which case the hearing shall be public.

(d) Any suspension order made by the commissioner under the provisions of subsection (a) shall prohibit issuance of policies, transfers of property, and payments of moneys, without prior written approval of the commissioner. Notice of such suspension shall be given, by first class mail within fifteen days thereof, by the suspended organization to those who were creditors, policyholders, members and certificate holders at the date of suspension. Notice of such suspension shall be given, within fifteen days thereof, by the commissioner to creditors, policyholders, members and certificate holders by advertising the same by one publication in a newspaper of general circulation in the county where the suspended organization has its principal office. From the date of such suspension on the ground that the insurer is insolvent, or is in such condition that its further transaction of business will be hazardous financially to its policyholders, creditors, or the public, no action at law or equity shall be commenced or prosecuted nor shall any judgment be entered against nor shall any execution or attachment be issued or prosecuted against the suspended insurer, or against its property, in any court of this Commonwealth: Provided, That if such suspension order be vacated by the Commonwealth Court for the reason that the suspended insurer is no longer insolvent, or in such condition that its further transaction of business will be hazardous to its policyholders or to its creditors or to the public, these restraints upon legal process regarding the insurer shall thereafter cease to be operative.

(e) If the commissioner issues a summary order before hearing under this section, the insurer may at any time waive the commissioner's hearing and apply for immediate judicial relief by means of any remedy afforded by law without first exhausting administrative remedies.

(f) If any person has violated any order issued under this section which as to him was then still in effect, he shall be liable to pay a civil penalty imposed by the Commonwealth Court not to exceed ten thousand dollars (\$10,000).

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

Section 511. Commissioner's Supervision.—*(a) If upon examination or at any other time the commissioner has reasonable cause to believe, and determines, that an insurer has committed, engaged, or is about to engage in any act, practice, or transaction that would subject it to formal delinquency proceedings under this article, or if such insurance company gives its consent, then the commissioner shall upon his determination notify the insurer of his determination and furnish to the insurer an order or orders containing a written list of the commissioner's requirements to abate his determination. If the commissioner after a hearing held as provided in subsection 510(c) makes a further determination to supervise he shall issue an order to the insurer notifying it that it is under the supervision of the commissioner and that the commissioner is applying and effecting the provisions of this section. The commissioner may issue an order under this section without a hearing under the conditions provided under section 510(b), and shall simultaneously serve upon the insurer notice of a hearing to be held in accordance with the provisions of section 510(c), and in such event, the insurer may file an appeal in accordance with the provisions of section 510(e). Such insurer shall comply with the lawful requirements of the commissioner and, if placed under an order of supervision shall have ninety days from the date of service of such order within which to comply with the requirements of the commissioner. In the event of such insurer's failure to comply within such time, the commissioner may institute proceedings in the Commonwealth Court to have a rehabilitator or liquidator appointed under the provisions of this article, or issue an order extending an existing order of supervision. Such order extending any existing order shall be issued prior to the end of each ninety-day period, unless otherwise agreed to by the insurer.*

(b) The commissioner may appoint a supervisor to supervise such insurer and may provide that the insurer may not do any of the following acts, during the period of supervision, without the prior written approval of the commissioner or his supervisor: (i) dispose of, convey or encumber any of its assets or its business in force; (ii) withdraw 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 debit, obligation or liability; (vii) merge or consolidate with another company; or (viii) enter into any new reinsurance contract or treaty.

(c) In the event that any person, subject to the provisions of this article including those persons described in section 506(a), shall violate any valid order of the commissioner issued under the provisions of this section and, as a result, the net worth of the insurer shall be reduced or the insurer shall otherwise suffer loss said person shall become personally liable to the insurer for the amount of any such reduction or loss. The commissioner or supervisor is authorized to bring an action on behalf of the insurer in the Commonwealth Court to recover the amount of the reduction or loss together with any costs.

Section 512. Court's Seizure Order.—(a) Upon the filing by the commissioner in the Commonwealth Court of this Commonwealth of a petition alleging, (i) any ground that would justify a court order for a formal delinquency proceeding against an insurer under this article, and (ii) that the interests of policyholders, creditors or the public will be endangered by delay, and (iii) setting out the order deemed necessary by the commissioner, the court may issue forthwith, ex parte and without a hearing, the requested order which shall direct the commissioner to take possession and control of all or a part of the property, books, accounts, documents, and other records of an insurer, and of the premises occupied by it for the transaction of its business, and until further order of the court enjoin the insurer and its officers, managers, agents, and employes from disposition of its property and from transaction of its business ~~except~~ with the written consent of the commissioner.

(b) The court shall specify in the order what its duration shall be, which shall be such time as the court deems necessary for the commissioner to ascertain the condition of the insurer. Such initial duration or any extension thereof shall not exceed ninety days. On motion of either party or on its own motion, the court may from time to time hold such hearings as it deems desirable after such notice as it deems appropriate, and may extend, shorten, or modify the terms of the seizure order. The court shall vacate the seizure order if the commissioner fails to commence a formal proceeding under this article prior to the expiration of a seizure order or any extension thereof. An order of the court pursuant to a formal proceeding under this article shall ipso facto vacate the seizure order.

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

(d) An insurer subject to an ex parte order of the Commonwealth Court issued under the provisions of this section may petition the court at any time after the issuance of such order for a hearing and review of the order, and the court shall grant such a hearing and review within ten days of the filing of such petition.

Section 513. Conduct of Hearings in Summary Proceedings.—
(a) The Commonwealth Court may hold all hearings in summary proceedings and judicial review thereof privately in chambers, and shall do so on request of the insurer proceeded against.

(b) In all summary proceedings and judicial reviews thereof, all records of the insurer, other documents, and all Insurance Department files and court records and papers, so far as they pertain to or are a part of the record of the summary proceedings, shall be and remain confidential except as is necessary to obtain compliance therewith, unless and until the Commonwealth Court, after hearing arguments from the parties in chambers, shall order otherwise, or unless the insurer requests that the matter be made public. Until such court order, all papers filed with the clerk of the Commonwealth Court shall be held by him in a confidential file.

(c) Any person having possession or custody of and refusing to deliver any of the property, books, accounts, documents or other records of or relating to an insurer against which a seizure order or a summary order has been issued by the commissioner or by the Commonwealth Court, may be fined not more than ten thousand dollars (\$10,000) or sentenced to undergo imprisonment for not more than one year, or both.

(c) FORMAL PROCEEDINGS

A. Rehabilitation

Section 514. Grounds for Rehabilitation.—An order of rehabilitation may be based on one or more of the following grounds:

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

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

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

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

(5) Any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, employe, or other person, has refused to be examined under oath by the commissioner concerning its affairs, whether in this Commonwealth or elsewhere, and after reasonable notice of the fact the insurer has failed promptly and effectively to

terminate the employment and status of the person and all his influence on management.

(6) After demand, the insurer has failed to submit promptly any of its own property, books, accounts, documents or other records, or those of any subsidiary or related company within the control of the insurer, or those of any person having executive authority in the insurer so far as they pertain to the insurer, to examination. If the insurer is unable to submit the property, books, accounts, documents or other records of a person having executive authority in the insurer, it shall be excused from doing so if it promptly and effectively terminates the relationship of the person to the insurer.

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

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

(9) Within the previous four years the insurer has willfully violated its charter or articles of incorporation or its bylaws or any insurance law in a manner which may result or has resulted in substantial harm to the property or business of an insurer or to the interests of its policy or certificate holders, creditors, or the public, or any valid order of the commissioner under sections 510 and 511.

(10) The insurer has failed to pay within sixty days after due date any obligation to this Commonwealth or any subdivision thereof or any judgment entered in this Commonwealth, except that such nonpayment shall not be a ground until sixty days after any good faith effort by the insurer to contest the obligation has been terminated, whether it is before the commissioner or in the courts, or the insurer has systematically attempted to compromise or renegotiate previously agreed settlements with its creditors on the ground that it is financially unable to pay its obligations in full.

(11) The insurer has failed to file its annual report or other report within the time allowed by law and, after written demand by the commissioner, has failed to give a satisfactory explanation immediately.

(12) The board of directors or the holders of a majority of the shares entitled to vote, or a majority of those individuals entitled to the control of those entities specified in section 502, request or consent to rehabilitation under this article.

Section 515. Rehabilitation Orders.—(a) *The commissioner may apply by petition to the Commonwealth Court, for an order authorizing him to rehabilitate a domestic insurer or an alien insurer domiciled in this Commonwealth, alleging that the insurer has committed one or more acts which may constitute grounds for rehabilitation as set forth in section 514 of this article.*

(b) *An order of the Commonwealth Court to rehabilitate the business of an insurer shall be issued only after a hearing before the court or pursuant to a written consent of the insurer.*

(c) *An order to rehabilitate the business of a domestic insurer, or an alien insurer domiciled in this Commonwealth, shall appoint the commissioner and his successors in office the rehabilitator, and shall direct the rehabilitator forthwith to take possession of the assets of the insurer including any deposits held by the commissioner, and to administer them under the orders of the court. The filing or recording of the order with the clerk of the Commonwealth Court or recorder of deeds of 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 recorder of deeds would have imparted.*

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

Section 516. Powers and Duties of the Rehabilitator.—(a) *The commissioner as rehabilitator may appoint a special deputy who shall have all the powers of the rehabilitator granted under this section. The commissioner shall make such arrangements for compensation as are necessary to obtain a special deputy of proven ability. The special deputy shall serve at the pleasure of the commissioner.*

(b) *The rehabilitator may take such action as he deems necessary or expedient to correct the condition or conditions which constituted the grounds for the order of the court to rehabilitate the insurer. He shall have all the powers of the directors, officers and managers, whose authority shall be suspended, except as they are redelegated by the rehabilitator. He shall have full power to direct and manage, to hire and discharge employes subject to any contract rights they may have, and to deal with the property and business of the insurer.*

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

(d) *The rehabilitator may prepare a plan for the reorganization, consolidation, conversion, reinsurance, merger or other transformation of the insurer. Upon application of the rehabilitator for approval of the plan, and after such notice and hearing as the court may prescribe, the court may*

either approve or disapprove the plan proposed, or may modify it and approve it as modified. If it is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, the plan proposed may include the imposition of liens upon the equities of policyholders of the company, provided that 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.

(e) The rehabilitator shall have the power to avoid fraudulent transfers under sections 528 and 529.

Section 517. Actions By and Against Rehabilitator.—(a) On request of the rehabilitator, any court in this State before which any action or proceeding by or against an insurer is pending when a rehabilitation order against the insurer is entered shall stay the action or proceeding for such time as is necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The Commonwealth Court shall order the rehabilitator to take such action respecting the pending litigation as the court deems necessary in the interests of justice and for the protection of creditors, policyholders, and the public. The rehabilitator shall immediately consider all litigation pending outside this Commonwealth and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer.

(b) The time between the filing of a petition for rehabilitation against an insurer and denial of the petition or an order of rehabilitation shall not be considered to be a part of the time within which any action may be commenced by or against the insurer. Any action by or against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty days after the order of rehabilitation is entered.

Section 518. Termination of Rehabilitation.—(a) Whenever he has reasonable cause to believe that further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policy and certificate holders, or the public, or would be futile, the rehabilitator may petition the Commonwealth Court for an order of liquidation. A petition under this subsection shall have the same effect as a petition under section 520. The Commonwealth Court shall permit the directors to take such actions as are reasonably necessary to defend against the petition and may order payment from the estate of the insurer of such costs and other expenses of defense as justice may require.

(b) The rehabilitator may at any time petition the Commonwealth Court for an order terminating rehabilitation of an insurer. If the Commonwealth Court finds that rehabilitation has been accomplished and that grounds for rehabilitation under section 514 no longer exists, it shall order that the insurer be restored to possession of its property and the control of its business. The Commonwealth Court may also make that finding and issue that order at any time upon its own motion.

B. Liquidation

1. Initiation of Proceeding

Section 519. Grounds for Liquidation.—Any ground on which an order of rehabilitation may be based, as specified in section 514, whether or not there has been a prior order of rehabilitation of the insurer shall be grounds for liquidation.

Section 520. Liquidation Orders.—(a) The commissioner may apply by petition to the Commonwealth Court for an order directing him to liquidate a domestic insurer, domiciled in this Commonwealth, alleging that the insurer has committed one or more acts which may constitute grounds for liquidation as set forth in sections 514 and 519 of this article.

(b) An order of the Commonwealth Court to liquidate the business of an insurer shall be issued only after a hearing before the court or pursuant to a written consent of the insurer.

(c) An order to liquidate the business of a domestic insurer shall appoint the commissioner and his successors in office liquidator and shall direct the liquidator forthwith to take possession of the assets of the insurer and to administer them under the orders of the court. 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 date of the filing of the petition for liquidation. He may recover and reduce the same to possession except that ancillary receivers in reciprocal states shall have, as to assets located in their respective states, the rights and powers which are prescribed in section 556(c) for ancillary receivers appointed in this Commonwealth as to assets located in this Commonwealth. The filing or recording of the order with the Clerk of the Commonwealth Court or with the recorder of deeds of 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 recorder of deeds would have imparted.

(d) Upon issuance of the order, the rights and liabilities of any such insurer and of its creditors, policyholders, shareholders, members and all other persons interested in its estate shall become fixed as of the date of filing of the petition for liquidation, except as provided in sections 521 and 539.

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

(f) 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, following an administrative hearing, may petition the court for a judicial declaration of such insolvency. After providing such

notice and hearing as are permitted for appeals from administrative agencies, the court may make the declaration.

Section 521. Continuance of Coverage.—*All insurance in effect at the time of issuance an order of liquidation shall continue in force only with respect to the risks in effect, at that time (i) for a period of thirty days from the date of entry of the liquidation order; (ii) until the normal expiration of the policy coverage; (iii) until the insured has replaced the insurance coverage with equivalent insurance in another insurer or otherwise terminated the policy; or (iv) until the liquidator has effected a transfer of the policy obligation pursuant to section 523(8), whichever time is less.*

Section 522. Dissolution of Insurer.—*The commissioner may petition for an order dissolving the corporate existence of a domestic insurer or the United States branch of an alien insurer domiciled in this Commonwealth at the time he applied 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.*

2. Powers and Duties of Liquidators and Others

Section 523. Powers of Liquidator.—*The liquidator shall have the power:*

(1) To appoint a special deputy to act for him under this article, and to determine his compensation. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the commissioner.

(2) To employ employes and agents, legal counsel, actuaries, accountants, appraisers, consultants and such other personnel as he may deem necessary to assist in the liquidation.

(3) To fix the compensation of employes and agents, legal counsel, actuaries, accountants, appraisers and consultants without complying with civil service regulations.

(4) To pay compensation to persons appointed and to defray all expenses of taking possession of, conserving, conducting, liquidating, disposing of or otherwise dealing with the business and property of the insurer. In the event that the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner shall advance the costs so incurred out of the appropriation for the maintenance of the Insurance Department. Any amounts so paid shall be deemed expense of administration and shall be repaid to the commissioner for the use of the Insurance Department out of the first available moneys of the insurer.

(5) To hold hearings, to subpoena witnesses, to compel their attendance, to administer oaths, to examine any person under oath, and to compel any person to subscribe to his testimony after it has been correctly reduced to writing, and in connection therewith to require the production

of any books, papers, records or other documents which he deems relevant to the inquiry.

(6) To collect all debts and moneys due and claims belonging to the insurer which it is economical to collect, wherever located, and for this purpose to institute timely action in other jurisdictions, in order to forestall garnishment and attachment proceedings against such debts; to do such other acts as are necessary or expedient to collect, conserve or protect its assets or property, including the power to sell, compound, compromise or assign for purposes of collection upon such terms and conditions as he deems best, any bad or doubtful debts; to pursue any creditor's remedies available to enforce his claims.

(7) To conduct public and private sales of the property of the insurer.

(8) To use assets of the estate to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under section 544.

(9) To acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon or otherwise dispose of or deal with, any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable. He shall also have power to execute, acknowledge and deliver any and all deeds, assignments, releases and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation is pending, the liquidator shall cause to be filed with the recorder of deeds for the county in which the property is located a certified copy of the order appointing him liquidator.

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

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

(12) To continue to prosecute and to institute in the name of the insurer or in his own name any and all suits and other legal proceedings, in this Commonwealth or elsewhere, and to abandon the prosecution of claims he deems unprofitable to pursue further. If the insurer is dissolved under section 522, he shall have the power to apply to any court in this State or elsewhere for leave to substitute himself for the insurer as plaintiff.

(13) To prosecute any action which may exist in behalf of the creditors, members, policyholders or shareholders of the insurer against any officer of the insurer, or any other person.

(14) To remove any or all records and property of the insurer to the offices of the commissioner or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation.

(15) To deposit in one or more banks in this Commonwealth such sums as are required for meeting current administration and operating costs.

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

(17) *To file any necessary documents for record in the office of any recorder of deeds or record office in this Commonwealth or elsewhere where property of the insurer is located.*

(18) *To assert all defenses available to the insurer as against third persons, including statutes of limitation, statutes of frauds and the defense of usury; a waiver of any defense by the insurer after a petition in liquidation has been filed shall not bind the commissioner. When a guaranty association has an obligation to defend a suit, the liquidator shall give precedence to such obligations and shall defend only in the absence of a defense by the guaranty association.*

(19) *To exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included with sections 528 through 530.*

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

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

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

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

Section 524. Notice to Creditors and Others.—(a) *The liquidator shall give notice of the liquidation order as soon as possible by first class mail and either by telegram or telephone to the insurance commissioner of each jurisdiction in which the insurer is licensed to do business, by first class mail and by telephone to any responsible guaranty association of this Commonwealth, by first class mail to all insurance agents having a duty under section 525 and to all known policyholders, creditors and claimants.*

(b) *Notice to potential claimants under subsection (a) shall require claimants to file with the liquidator their claims together with proper proofs thereof under section 538, on or before a date the liquidator shall specify in the notice. All claimants shall have a duty to keep the liquidator informed of any change of address.*

Section 525. Duties of Agents.—(a) *Every person who receives notice in the form prescribed in section 524 that an insurer which he represents as an independent agent is the subject of a liquidation order, shall within fifteen days of such notice give notice of the liquidation order. The notice shall be sent by first class mail to the last address contained in*

the agent's records to each policyholder or other person named in any policy issued through the agent by the insurer, if he has a record of the address of the policyholder or other person. A policy shall be deemed 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 possession a copy of the declarations of the policy at any time during the life of the policy, except where the ownership of the expiration of the policy has 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 521. Notice by a general agent satisfies the notice requirement for any agents under contract to him.

(b) Any agent failing to give notice as required in subsection (a) may be subject to payment of a penalty of not more than one thousand dollars (\$1,000) and may have his license suspended, said penalty to be imposed after a hearing held by the insurance commissioner.

Section 526. Actions By and Against Liquidator.—(a) Upon issuance of an order appointing the commissioner liquidator of a domestic insurer or of an alien insurer domiciled in this Commonwealth, no action at law or equity shall be brought by or against the insurer, whether in this Commonwealth or elsewhere, nor shall any such existing actions be continued after issuance of such order. Whenever 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 Commonwealth, with approval of the court he may intervene in the action. The liquidator may defend any action in which he intervenes under this section at the expense of the estate of the insurer.

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

(c) The time between the filing of a petition for liquidation against an insurer and the denial of the petition shall not be considered to be a part of the time within which any action may be commenced against the insurer. Any action against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty days after the petition is denied.

3. Estate of Insurer

Section 527. Collection and List of Assets.—(a) As soon as practicable 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 court shall require. One copy shall be filed in the office of the clerk of the Commonwealth Court and one copy shall be retained for the liquidator's files. All amendments and supplements shall be similarly filed.

(b) The liquidator shall reduce the assets to a degree of liquidity that is consistent with the effective execution of the liquidation as rapidly and economically as he can.

Section 528. Fraudulent Transfers Prior to Petition.—(a) Every transfer made or suffered and every obligation incurred by an insurer within one year prior to the filing of a successful petition for rehabilitation or liquidation under this article is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors. A transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under this article, 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 any purchaser, lienor, or obligee, who in good faith has given a consideration less than fair for such transfer, lien, or obligation, may retain the property, lien or obligation as security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

(b) A transfer of property other than real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee, under section 530(c).

A transfer of real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

A transfer which creates an equitable lien shall not be deemed to be perfected if there are available means by which a legal lien could be created.

Any transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

The provisions of this subsection apply whether or not there are or were creditors who might have obtained any liens or persons who might have become bona fide purchasers.

(c) Any transaction of the insurer with a reinsurer shall be deemed fraudulent and may be avoided by the receiver under subsection (a) if (i) the transaction consists of the termination, adjustment or settlement of a reinsurance contract in which the reinsurer is released from any part of its duty to pay the originally specified share of losses that had occurred prior to the time of the transaction, unless the reinsurer gives a present fair equivalent value for the release; and (ii) any part of the transaction took place within one year prior to the date of filing of the petition through which the receivership was commenced.

Section 529. Fraudulent Transfers After Petition.—(a) After a petition for rehabilitation or liquidation a transfer of any of the real property of the insurer made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value, or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred. The commencement of a proceeding in rehabilitation or liquidation shall be constructive notice upon the recording of a copy of the petition for or order of rehabilitation or liquidation with the recorder 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.

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

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

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

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

(4) A person asserting the validity of a transfer under this section shall have the burden of proof. Except as elsewhere provided in this section, no transfer by or in behalf of the insurer after the date of the petition for

liquidation by any person other than the liquidator shall be valid against the liquidator.

(c) Nothing in this article shall impair the negotiability of currency or negotiable instruments.

Section 530. Voidable Preferences and Liens.—(a) A preference is a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within one year before the filing of a successful petition for liquidation under this article the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, then transfers otherwise qualifying shall be deemed preferences if made or suffered within one year before the filing of the successful petition for rehabilitation or within two years before the filing of the successful petition for liquidation, whichever time is shorter.

Any preference may be avoided by the liquidator, if (i) the insurer was insolvent at the time of the transfer; (ii) the transfer was made within four months before the filing of the petition; (iii) the creditor receiving it or to be benefited thereby or his agent acting with reference thereto had, at the time when the transfer was made, reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or (iv) the creditor receiving it was an officer, any employe or attorney or other person who was in fact in a position of comparable influence in the insurer to an officer: whether or not he held such position, or any shareholder holding directly or indirectly more than five per centum of any class of any equity security issued by the insurer, or any other person, firm, corporation, association, or aggregation of persons with whom the insurer did not deal at arm's length. Where the preference is voidable, the liquidator may recover the property or, if it has been converted, its value from any person who has received or converted the property, except where a bona fide purchaser or lienor has given less than fair equivalent value, he shall have a lien upon the property to the extent of the consideration actually given by him. Where a preference by way of lien or security title is voidable, the court may on due notice order the lien or title to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

(b) A transfer of property other than real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee.

A transfer of real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

A transfer which creates an equitable lien shall not be deemed to be perfected if there are available means by which a legal lien could be created.

A transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

The provisions of this subsection apply whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

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

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

(d) A transfer of property for or on account of a new and contemporaneous consideration which is deemed under subsection (b) 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 twenty-one days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if such a loan is actually made, or a transfer which becomes security for a future loan, shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

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

(f) The property affected by any lien deemed voidable under subsections (a) and (e) shall be discharged from such lien, and that property and any of the indemnifying property transferred to or for the benefit of a

surety shall pass to the liquidator, except that the court may on due notice order any such lien to be preserved for the benefit of the estate and the court may direct that such conveyance be executed as may be proper or adequate to evidence the title of the liquidator.

(g) The Commonwealth Court shall have summary jurisdiction of any proceeding by the liquidator to hear and determine the rights of any parties under this section. Reasonable notice of any hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. Where an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, the court, upon application of any party in interest, shall in the same proceeding ascertain the value of the property or lien, 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.

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

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

(j) If an insurer shall, directly or indirectly, within four months before the filing of a successful petition for liquidation under this article, or at any time in contemplation of a proceeding to liquidate it, pay money or transfer property to an attorney-at-law for services rendered or to be rendered, the transaction 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 benefit of the estate provided that where the attorney is in a position of influence in the insurer or an affiliate thereof payment of any money or the transfer of any property to the attorney-at-law for services rendered or to be rendered shall be governed by the provision of subsection (a)(iv).

(k) Every officer, manager, employe, shareholder, member, subscriber, attorney, or any other person acting on behalf of the insurer who knowingly participates in giving any preference when he has reasonable cause to believe the insurer is or is about to become insolvent at the time of the preference shall be personally liable to the liquidator for the amount of the preference. It is permissible to infer that there is reasonable cause to so believe if the transfer was made within four months before the date of filing of the successful petition for liquidation.

Every person receiving any property from the insurer or the benefit thereof as a preference voidable under subsection (a) shall be personally liable therefor and shall be bound to account to the liquidator.

Nothing in this subsection shall prejudice any other claim by the liquidator against any person.

Section 531. Claims of Holders of Void or Voidable Rights.—(a) *No claims of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment or encumbrance, voidable under this article, shall be allowed unless he surrenders the preference, lien, conveyance, transfer assignment or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim shall not be allowed unless the money is paid or the property is delivered to the liquidator within thirty days from the date of the entering of the final judgment, except that the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.*

(b) *A claim allowable under subsection (a) 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 537 if filed within thirty days from the date of the avoidance, or within the further time allowed by the court under subsection (a).*

Section 532. Setoffs and Counterclaims.—(a) *Mutual debts or mutual credits between the insurer and another person in connection with any action or proceeding under this article shall be setoff and the balance only shall be allowed or paid, except as provided in subsection (b).*

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

(1) *the obligation of the insurer to the person would not at the date of the filing of a petition for liquidation entitle the person to share as a claimant in the assets of the insurer;*

(2) *the obligation of the insurer to the person was purchased by or transferred to the person with a view to its being used as a setoff;*

(3) *the obligation of the person is to pay an assessment levied against the members or subscribers of the insurer, or is to pay a balance upon a subscription to the capital stock of the insurer, or is in any other way in the nature of a capital contribution; or*

(4) *the obligation of the person is to pay premiums, whether earned or unearned, to the insurer.*

Section 533. Assessments.—(a) *As soon as practicable but not more than two years from the date of an order of liquidation under this article of an insurer issuing assessable policies, the liquidator shall make a report to the Commonwealth Court setting forth:*

(1) *the reasonable value of the assets of the insurer;*

(2) *the insurer's probable total liabilities;*

(3) *the probable aggregate amount of the assessment necessary to pay*

all claims of creditors and expenses in full, including expenses of administration and costs of collecting the assessment; and

(4) whether or not an assessment should be made and what amount.

(b) Upon the basis of the report provided in subsection (a), including any supplements and amendments thereto, the Commonwealth Court may levy one or more assessments against all members of the insurer who are subject to assessment. No member shall be assessed for any loss that occurred when his policy was not in effect. No assessment shall be made or collection procedures begun after two years from the expiration date of a policy. The maximum assessment against any member for each year or part thereof in which a policy or policies issued to such member were in effect shall not exceed one hundred per centum of the average total annual premium during the life of the policy as written in such policy or policies including any increase or reduction in premium as the result of any endorsement thereto.

Subject to any applicable legal limits on assessability, the aggregate assessment shall be for the amount that the sum of the probable liabilities, the expenses of administration and the estimated cost of collection of the assessment, exceeds the value of existing assets, with due regard being given to assessments that cannot be collected economically.

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

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

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

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

Section 534. Reinsurer's Liability.—The amount recoverable by the liquidator from reinsurers shall not be reduced as a result of delinquency proceedings, regardless of any provision in the reinsurance contract or

other agreement. Payment made directly to an insured or other creditor shall not diminish the reinsurer's obligation to the insurer's estate except when the reinsurance contract provided for direct coverage of a particular named insured and the payment was made in discharge of that obligation.

Section 535. Recovery of Premiums Owed.—(a) *An insured, agent, broker, premium finance company or any other person responsible for the payment of a premium shall be obligated to pay any unpaid premium for the full policy term due the insurer at the time of the declaration of insolvency whether earned or unearned as shown on the records of the insurer. The liquidator shall also have the right to recover from such person any part of an unearned premium that represents commission of such person. Credits and/or setoff shall not be allowed to an agent, broker or premium finance company on account of any credits volunteered by such person.*

(b) *Upon satisfactory evidence of a violation of this section, the Insurance Commissioner may, in his discretion, pursue any one or more of the following courses of action:*

(1) *Suspend or revoke or refuse to renew the licenses of such offending party or parties.*

(2) *Impose a penalty of not more than one thousand dollars (\$1,000) for each and every act in violation of this section by said party or parties.*

Before the Insurance Commissioner shall take any action as above set forth, he 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 ten days thereafter, when a hearing of the matter shall be held. After such hearing, or upon failure of the accused to appear at such hearing, the Insurance Commissioner shall impose such of the above penalties as he deems advisable.

When the Insurance Commissioner shall take action in any or all of the ways above recited, the party aggrieved may appeal from said action to the Commonwealth Court.

Section 536. Liquidator's Proposal to Distribute Assets.—(a) *Within one hundred twenty days of a final determination that an insurer is insolvent or in such condition that its further transaction of business will be hazardous to its policyholders, or to its creditors, or to the public by a court of competent jurisdiction of this Commonwealth, the liquidator shall make application to the Commonwealth Court for approval of a proposal to disburse assets out of such company's marshalled assets, from time to time as such assets become available, to any guaranty association in the Commonwealth or in any other state having substantially the same provision of law. The liquidator need not make application, as required above, in instances where it is reasonable to conclude that the assets of the insolvent insurer will not exceed the amounts necessary to pay the costs of liquidation and the payment of claims of*

creditors either secured or with a priority higher than the claims of policyholders. A guaranty association shall have the right to petition the Commonwealth Court to review an order of the liquidator concluding the assets will not exceed such costs.

(b) *The proposal shall at least include provisions for:*

(1) *Reserving amounts for the payment of expenses of administration and the payment of claims of secured creditors to the extent of the value of the security held and claims having a priority higher than that of the claims of policyholders.*

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

(3) *Equitable allocation of disbursements to each of the associations entitled thereto.*

(4) *The securing by the liquidator, from each of the associations entitled to disbursements pursuant to this section, of an agreement to return to the liquidator such assets previously disbursed as may be required to pay the claims of secured creditors, claims falling within the priorities referred to in subsection (b)(1) and the proportional share of the assets disbursed required by the liquidator to make equivalent distribution to creditors of the same class of priority as policyholders in the event that the association may have received a disbursement of assets in excess of that available to pay all creditors of the insolvent insurer in the same class of priority as policyholders. An association shall return such assets to the liquidator when needed upon its own initiative or upon demand of the liquidator together with any investment income earned on the assets reimbursed. No bond shall be required of any such association.*

(5) *The liquidator may require reports to be made by an association at such time and covering such matters as he may determine. A full report shall be made by the association to the liquidator when assets received have been disbursed or the obligation of an association to pay covered claims of the insolvent insurer has been fulfilled accounting for all assets so disbursed to the association, all disbursements made therefrom, any interest earned by the association on such assets and any other matter as the court may direct.*

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

(d) *Notice of such application shall be given to the associations and to the commissioners of insurance of each of the states where the company is licensed. Any such notice shall be deemed to have been given when deposited in the United States certified mails, first class postage prepaid, at least thirty days prior to the submission of such application to the*

Commonwealth Court. Action on the application may be taken by the court provided the above required notice has been given and provided further that the liquidator's proposal complies with subsection (b)(1) and (4).

4. Claims

Section 537. Filing of Claims.—(a) Proof of all claims shall be filed with the liquidator in the form required by section 538 on or before the last day for filing specified in the notice required under section 524, except that proofs of claim for cash surrender values or other investment values in life insurance and annuities need not be filed unless the liquidator expressly so requires.

(b) For good cause shown, the liquidator may permit a claimant making a late filing to share in distributions, whether past or future, as if he were not late, to the extent that any such payment will not prejudice the orderly administration of the liquidation. Good cause shall include but shall not be limited to the following:

(1) that existence of claim was not known to the claimant and that he filed his claim as promptly thereafter as reasonably possible after learning of it;

(2) that a transfer to a creditor was avoided under sections 528 through 530, or was voluntarily surrendered under section 531, and that the filing satisfies the conditions of section 531;

(3) that valuation under section 543 of security held by a secured creditor shows a deficiency, which is filed within thirty days after the valuation;

(4) that a claim was contingent and became absolute, and was filed as soon as reasonably possible after it became absolute; and

(5) that the claim was the claim of a guaranty association for reimbursement of covered claims paid and/or expenses incurred, subsequent to the last day for filing where such payments were made and expenses incurred as a result of requirements of law.

(c) The liquidator may consider any claim filed late which is not covered by subsection (b), 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 claim as is then being paid to other claimants of the same priority plus the same percentage of the amount allowed on his claim as is then being paid to claimants of any lower priority. This shall continue until his claim has been paid in full.

Section 538. Proof of Claim.—(a) Proof of claim shall consist of a statement signed by the claimant that includes all of the following that are applicable:

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

(2) the identity and amount of the security on the claim;

- (3) *the payments made on the debt, if any;*
- (4) *that the sum claimed is justly owing and that there is no setoff, counterclaim or defense to the claim;*
- (5) *any right of priority of payment or other specific right asserted by the claimants;*
- (6) *a copy of written instrument which is the foundation of the claim;*
- (7) *in the case of any third party claim based on a liability policy issued by the insurer, a conditional release of the insured pursuant to section 540(a); and*
- (8) *the name and address of the claimant and the attorney who represents him, if any.*

No claim need be considered or allowed if it does not contain all the foregoing information which may be applicable. The liquidator may require that a prescribed form be used, and may require that other information and documents be included.

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

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

(d) A claim of a guaranty association for reimbursement of payments made for the payments of covered claims and for expenses shall be in such form and contain such substantiation as may be agreed to by the guaranty association and the liquidator subject to review by the Commonwealth Court.

Section 539. Special Claims.—(a) The claim of a third party which is contingent only on his first obtaining a judgment against the insured shall be considered and allowed as if there were no such contingency.

(b) Any claim that would have become absolute if there had been no termination of coverage under section 521, and which was not covered by insurance acquired to replace the terminated coverage, shall be allowed as if the coverage had remained in effect, unless at least ten days before the insured event occurred either the claimant had actual notice of the termination or notice was mailed to him as prescribed by section 524(a) or 525(a). If allowed the claim shall share in distributions under section 544(f).

(c) A claim may be allowed even if contingent, if it is filed in accordance with section 537(b). 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.

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

(e) The treasurer of this State in his capacity as custodian of the workmen's compensation security funds may file a claim with the liquidator for all sums paid or to be paid from those funds.

Section 540. Special Provisions for Third Party Claims.—(a) Whenever any third party asserts a cause of action against an insured of an insurer in liquidation the third party may file a claim with the liquidator. The filing of the claim shall operate as a release of the insured's liability to the third party on that cause of action in the amount of the applicable policy limit, but the liquidator shall also insert in any form used for the filing of third party claims appropriate language to constitute such a release. The release shall be null and void if the insurance coverage is avoided by the liquidator.

(b) Whether or not the third party files a claim, the insured may file a claim on his own behalf in the liquidation. If the insured fails to file a claim by the date for filing claims specified in the order of liquidation or within sixty days after mailing of the notice required by section 524(a), whichever is later, he shall be deemed to be an unexcused late filer.

(c) The liquidator shall make his recommendations to the court under section 545 for the allowance of an insured's claim under subsection (b) after consideration of the probable outcome of any pending action against the insured on which the claim is based, the probable damages recoverable in the action, and the probable costs and expenses of defense. Such recommendations as are not modified by the court within a period of sixty days following submission by the liquidator shall be treated by the liquidator as allowed recommendations, subject thereafter to later modification or to rulings made by the court pursuant to section 541. After allowance by the court, the liquidator shall withhold any distributions payable on the claim, pending the outcome of litigation and negotiation with the insured. Whenever it seems appropriate, he shall reconsider the claim on the basis of additional information and amend his recommendations to the court. The court may amend its allowance as it thinks appropriate. As claims against the insured are settled, the claimant shall be paid from the amount withheld the same percentage distribution as was paid on other claims of like priority, based on the lesser of either: (i) the amount allowed on the claims by the court, or (ii) the amount actually recovered from the insured by action or paid by agreement plus the reasonable costs and expenses of defense. After all claims are settled, any sum remaining from the amount withheld shall revert to the undistributed assets of the insurer. Delay in final payment under this subsection shall not be a reason for unreasonable delay of final distribution and discharge of the liquidator.

(d) In the event several claims founded upon one 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, then each claim as

allowed shall be reduced a proportionate amount so that the total equals the policy limit. Claims by the insured shall be evaluated as in subsection (c). If any insured's claim is subsequently reduced under subsection (c), the amount thus freed shall be apportioned ratably among the claims which have been reduced under this subsection.

Section 541. Disputed Claims.—(a) When a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant and his attorney by first class mail at the address shown in the proof of claim. Within sixty days from the mailing of the notice, the claimant may file his objections with the court. If no such filing is made, the claimant may not further object to the determination.

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

Section 542. Claims of Surety.—Whenever a creditor whose claim against an insurer is secured, in whole or in part, by the undertaking of another person, fails to prove and file that claim, the other person may do so in the creditor's name, and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name, to the extent that he discharges the undertaking. In the absence of an agreement with the creditor to the contrary, the other person shall not be entitled to any distribution, however, until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the insurer's estate to the creditor equals the amount of the entire claim of the creditor. Any excess received by the creditor shall be held by him in trust for such other person. The term "other person," as used in this section is not intended to apply to a guaranty association.

Section 543. Secured Creditor's Claims.—The value of any security held by a secured creditor shall be determined in one of the following ways, as the court may direct:

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

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

Section 544. Order of Distribution.—*The order of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is herein set forth. Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. No subclasses shall be established within any class.*

(a) *Debts due to employes for services performed to the extent that they do not exceed one thousand dollars (\$1,000) and represent payment for services performed within one year before the filing of the petition for liquidation. Officers and directors shall not be entitled to the benefit of this priority.*

Such priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of employes.

(b) *The costs and expenses of administration, including but not limited to the following; the actual and necessary costs of preserving or recovering the assets of the insurer; compensation for all services rendered in the liquidation; any necessary filing fees; the fees and mileage payable to witnesses; reasonable attorney's fees; the expenses of a guaranty association in handling claims.*

(c) *All claims under policies for losses wherever incurred, including third party claims, and all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies, shall have the next priority. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment made by an employer to his employe shall be treated as a gratuity.*

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

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

(f) *The following claims:*

(1) *Claims under section 539(b), to the extent that such claims were disallowed under that section.*

(2) *Claims filed late.*

(3) *Claims or portions of claims, payment of which is provided by other benefits or advantages recovered by the claimant.*

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

(h) *The claims of shareholders or other owners.*

5. Settlement of the Estate

Section 545. Liquidator's Recommendations to the Court.—(a) The liquidator shall review all claims duly filed in the liquidation and shall make such further investigation as he shall deem necessary. He may comport, compromise or in any other manner negotiate the amount for which claims will be recommended to the court. Unresolved disputes shall be determined under section 541. As soon as practicable, he shall present to the court a report of the claims against the insurer with his recommendations. The report shall include the name and address of each claimant, the particulars of the claim, and the amount of the claim finally recommended, if any.

(b) The court may approve, disapprove, or modify, the report on claims by the liquidator, except that the liquidator's agreements with other parties shall be final and binding on the court to the extent permitted by law. Such recommendations as are not modified by the court within a period of sixty days following submission by the liquidator shall be treated by the liquidator as allowed recommendations, subject thereafter to later modification or to rulings made by the court pursuant to section 541. No claim under a policy of insurance shall be allowed for an amount in excess of the applicable policy limits.

Section 546. Distribution of Assets.—Under the direction of the court, the liquidator shall pay distributions in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court.

Section 547. Unclaimed and Withheld Funds.—(a) All unclaimed funds subject to distribution remaining in the liquidator's hands when he is ready to apply to the court for discharge, including the amount distributable to any creditor, shareholder, member or other person who is unknown or cannot be found, shall be deposited with the State Treasurer. Any amount on deposit not claimed within six years from the discharge of the liquidator shall be deemed to have been abandoned and shall be escheated without formal escheat proceedings and be deposited with the General Fund. Any amounts barred shall become the property of the Commonwealth, and the State Treasurer shall at the end of each fiscal year transfer the amount so barred to the General Fund for the use and operation of liquidation proceedings.

(b) All funds withheld under section 540 and not distributed shall upon discharge of the liquidator be deposited with the State Treasurer and paid

by him in accordance with section 540. Any sums remaining which under section 540 would revert to the undistributed assets of the insurer shall be transferred to the State Treasurer and become the property of the Commonwealth under subsection (a), unless the commissioner in his discretion petitions the court to reopen the liquidation under section 549.

Section 548. Termination of Proceedings.—(a) When all assets justifying the expense of collection and distribution have been collected and distributed under this article, the liquidator shall apply to the court for discharge. The court may grant the discharge, and make any other orders deemed appropriate, including an order to transfer any remaining funds that are uneconomic to distribute as may be deemed appropriate.

(b) Any other person may apply to the court at any time for an order under subsection (a). 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.

Section 549. Reopening Liquidation.—After the liquidation proceeding has been terminated and the liquidator discharged, the commissioner or other interested party may at any time petition the Commonwealth Court to reopen the proceedings for good cause, including the discovery of additional assets. If the court is satisfied that there is justification for reopening, it shall so order.

Section 550. Disposition of Records During and After Termination of Liquidation.—Whenever it shall appear to the commissioner that the records of any insurer in process of liquidation or completely liquidated are no longer useful, he may recommend to the court what records should be retained for future reference and what should be destroyed.

Section 551. External Audit of the Receiver's Books.—The Commonwealth Court may, as it deems desirable, cause audits to be made of the books of the commissioner relating to any receivership established under this article, and a report of each audit shall be filed with the commissioner and with the court. The books, records, and other documents of the receivership shall be made available to the auditor at any time without notice. The expense of each audit shall be considered a cost of administration of the receivership.

Section 552. Federal Receivership.—(a) Whenever in the commissioner's opinion, liquidation of a domestic insurer or an alien insurer domiciled in this State would be facilitated by a Federal receivership, and when any ground exists upon which the commissioner might petition the court for an order of rehabilitation or liquidation under section 514 or section 519, or if an order of rehabilitation or liquidation has already been entered, the commissioner may request another commissioner of another state to petition any appropriate Federal District Court for the appointment of a Federal receiver. The commissioner shall have power to intervene in any such action to support or oppose the petition, and shall have power to accept appointment as the receiver if he is

so designated. So much of this act shall apply to the receivership as can be made applicable and is appropriate. Upon motion of the commissioner, the Commonwealth Court shall relinquish all jurisdiction over the insurer for purposes of rehabilitation or liquidation.

(b) If the commissioner is appointed receiver under this section, he shall comply with any requirements necessary to give him title to and control over the assets and affairs of the insurer.

(d) INTERSTATE RELATIONS

Section 553. Conservation of Property of Foreign or Alien Insurers Found in This State.—(a) If a domiciliary liquidator has not been appointed, the commissioner may apply to the Commonwealth Court by verified petition for an order directing him to conserve the property of an alien insurer not domiciled in this Commonwealth or a foreign insurer on any one or more of the following grounds:

(1) any of the grounds in section 514;

(2) that any of its property has been sequestered by official action in its domiciliary state, or in any other state;

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

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

(b) The court may issue the order in whatever terms it shall deem appropriate. The filing or recording of the order with the recorder of deeds of Dauphin County 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.

(c) The conservator may at any time petition for and the court may grant an order under section 554 to liquidate the assets of a foreign or alien insurer under conservation, or, if appropriate, for an order under section 556, to be appointed ancillary receiver.

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

Section 554. Liquidation of Property of Foreign or Alien Insurers Found in This State.—(a) If no domiciliary receiver has been appointed, the commissioner may apply to the Commonwealth Court by verified petition for an order directing him to liquidate the assets found in this Commonwealth of a foreign insurer or an alien insurer not domiciled in this Commonwealth, on any of the following grounds:

(1) any of the grounds in section 514; or

(2) any of the grounds in section 553.

(b) If it shall appear to the court that the best interests of creditors, policyholders and the public require, the court may issue an order to liquidate in whatever terms it shall deem appropriate. The filing or recording of the order with the clerk of the Commonwealth Court 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.

(c) 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 556. 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 556.

(d) On the same grounds as are specified in subsection (a), 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 deems desirable for the protection of the policyholders and creditors in this Commonwealth. The commissioner may accept appointment as Federal receiver if another person files a petition.

Section 555. Foreign Domiciliary Receivers in Other States.—

(a) The domiciliary liquidator of an insurer domiciled in a reciprocal state shall be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the books, accounts and other records of the insurer located in this Commonwealth. 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 Commonwealth. He also shall have the right to recover the other assets of the insurer located in this Commonwealth, subject to section 556.

(b) If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal state, the commissioner of this Commonwealth shall be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the books, accounts and other records of the insurer located in this Commonwealth, at the same time and that the domiciliary liquidator is vested with title in the state of domicile. The commissioner of this Commonwealth may petition for a conservation or liquidation order under section 553 or 554, or for an ancillary receivership under section 556, or after approval by the Commonwealth Court, may

transfer title to the domiciliary liquidator, as the interests of justice and the equitable distribution of the assets require.

(c) Claimants residing in the Commonwealth may file claims with the liquidator or ancillary receiver, if any, in this Commonwealth, 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.

(d) Subject to the provisions of this section, the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in this Commonwealth.

Section 556. Ancillary Formal Proceedings.—(a) If a domiciliary liquidator has been appointed for an insurer not domiciled in this Commonwealth, the commissioner may file a petition with the Commonwealth Court requesting appointment as ancillary receiver in this Commonwealth:

(1) if he finds that there are sufficient assets of the insurer located in this Commonwealth to justify the appointment of an ancillary receiver; or

(2) if the protection of creditors or policyholders in this Commonwealth so requires.

(b) The court may issue an order appointing an ancillary receiver in whatever terms it shall deem appropriate. The filing or recording of the order with the recorder of deeds of Dauphin County 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.

(c) When a domiciliary liquidator has been appointed in a reciprocal state, then the ancillary receiver appointed in this Commonwealth under subsection (a) shall have the sole right to recover all the assets of the insurer in this Commonwealth not already recovered by the domiciliary liquidator. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this Commonwealth, and shall pay the necessary expenses of the proceedings. He shall promptly transfer all remaining assets, books, accounts and records to the domiciliary liquidator. Subject to this section, the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in this Commonwealth.

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

Section 557. Ancillary Summary Proceedings.—The commissioner in his sole discretion may institute proceedings under sections 510 through

513 at the request of the appropriate insurance official of the domiciliary state of any foreign or alien insurer having property located in this State.

Section 558. Claims of Nonresidents Against Insurers Domiciled in This State.—(a) In a liquidation proceeding begun in this Commonwealth against an insurer domiciled in this Commonwealth, claimants residing in foreign countries or in states not reciprocal states must file claims in this Commonwealth, 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. In reciprocal states, where an ancillary receiver has been appointed, a guaranty association of that state must file its claims with the ancillary receiver. Claims must be filed on or before the last dates fixed for the filing of claims in the domiciliary liquidation proceeding.

(b) Claims belonging to claimants residing in reciprocal states may be proved either in the liquidation proceeding in this Commonwealth as provided in this article, or in ancillary proceedings, if any, in the reciprocal states. If notice of the claim and opportunity to appear and be heard is afforded the domiciliary liquidator of this Commonwealth as provided in section 559(b) with respect to ancillary proceedings in this Commonwealth, 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 544.

Section 559. Claims of Residents Against Insurers Domiciled in Reciprocal States.—(a) In a liquidation proceeding in a reciprocal state against an insurer domiciled in that state, claimants against the insurer who reside within this Commonwealth may file claims either with the ancillary receiver, if any, in this Commonwealth, 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.

(b) Claims belonging to claimants residing in this Commonwealth may be proved either in the domiciliary state under the law of that state, or in ancillary proceedings, if any, in this Commonwealth. If a claimant elects to prove his claim in this Commonwealth, he shall file his claim with the liquidator in the manner provided in sections 537 and 538. The ancillary receiver shall make his recommendation to the court as under section 545. He shall also arrange a date for hearing if necessary under section 541 and shall give notice to the liquidator in the domiciliary state, either by certified mail or by personal service at least forty days prior to the date set for hearing. If the domiciliary liquidator, within thirty days after the giving of such notice, gives notice in writing to the ancillary receiver and to the claimant, either by certified mail or by personal service, of his intention to contest the claim, he shall be entitled to appear or to be represented in any proceeding in this Commonwealth involving the adjudication of the

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

Section 560. Attachment, Garnishment and Levy of Execution.—During the pendency in this or any other state of a liquidation proceeding, whether called by that name or not, no action or proceeding in the nature of an attachment, garnishment or levy of execution shall be commenced or maintained in this Commonwealth against the delinquent insurer or its assets.

Section 561. Interstate Priorities.—(a) In a liquidation proceeding in this Commonwealth involving one or more reciprocal states, the order of distribution of the domiciliary state shall control as to all claims of residents of this and reciprocal states shall be given equal priority of payment from general assets regardless of where such assets are located.

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

(c) The owner of a secured claim against an insurer for which a liquidator has been appointed in this or any other state may surrender his security and file his claim as a general creditor, or the claim may be discharged by resort to the security in accordance with section 543, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors.

Section 562. Subordination of Claims for Non-cooperation.—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 Commonwealth any assets within his control other than special deposits, diminished only by the expenses of the ancillary receivership, if any, the claims filed in the ancillary receivership, other than special deposit claims or secured claims, shall be placed in the class of claims under section 544(f).

Section 563. Constitutionality.—If any provision or clause of this article or the application thereof to any person or situation is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

Section 3. This act shall take effect immediately.

APPROVED—The 14th day of December, A. D. 1977.

MILTON J. SHAPP