

LEGISLATIVE BILL 319

Approved by the Governor May 25, 1989

Introduced by Banking, Commerce and Insurance Committee,
Landis, 46, Chairperson; Weihing, 48;
Lynch, 13; Wesely, 26; Abboud, 12;
Schmit, 23

AN ACT relating to insurance; to amend sections 44-120, 44-121, 44-124, 44-133, 44-134, 44-208.05, 44-3,123, 44-1206.01, 44-1525, 44-2403, 44-2406, 44-2409, 44-2710, 44-3276, 44-3323, 44-3519, and 44-3822, Reissue Revised Statutes of Nebraska, 1943, and section 23, Legislative Bill 320, Ninety-first Legislature, First Session, 1989; to adopt the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act; to eliminate provisions relating to insolvent companies; to harmonize provisions; to provide operative dates; to provide severability; to repeal the original sections, and also sections 44-125 to 44-127.10 and 44-127.13 to 44-132, Reissue Revised Statutes of Nebraska, 1943; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. The purpose of the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act is to protect the interests of insureds, claimants, creditors, and the public with minimum interference with the normal prerogatives of the owners and managers of insurers through:

(1) Early detection of any potentially dangerous condition in an insurer and prompt application of appropriate corrective measures;

(2) Improved methods for rehabilitating insurers involving the cooperation and management expertise of the insurance industry;

(3) Enhanced efficiency and economy of liquidation, through clarification of the law, to minimize legal uncertainty and litigation;

(4) Equitable apportionment of any unavoidable loss;

(5) Lessening the problems of interstate rehabilitation and liquidation by facilitating cooperation between states in the liquidation process

and by extending the scope of personal jurisdiction over debtors of the insurer outside this state; and

(6) Regulation of the insurance business by the impact of the law relating to delinquency procedures and substantive rules on the entire insurance business.

The act shall be liberally construed to effect the purposes enumerated in this section and shall not be interpreted to limit the powers granted the director by other provisions of the law.

Sec. 2. The proceedings authorized by the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act may be applied to:

(1) All insurers who are doing or have done an insurance business in this state 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 state;

(3) All insurers who have insureds who are residents of this state;

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

(5) All nonprofit service plans and all fraternal benefit societies and beneficial societies subject to Chapter 44, article 10;

(6) All title insurance companies subject to Chapter 44, article 19;

(7) All health maintenance organizations subject to the Model Health Maintenance Organization Act;

(8) All legal service insurance corporations subject to Chapter 44, article 33;

(9) All service companies subject to Chapter 44, article 35;

(10) All prepaid dental service corporations subject to Chapter 44, article 38; and

(11) All prepaid limited health service organizations subject to the Prepaid Limited Health Service Organization Act.

Sec. 3. For purposes of the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act:

(1) Ancillary state shall mean any state other than a domiciliary state;

(2) Creditor shall mean a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, or absolute, fixed, or contingent;

(3) Delinquency proceeding shall mean any

proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer and any summary proceeding under section 9 or 10 of this act;

(4) Department shall mean the Department of Insurance;

(5) Director shall mean the Director of Insurance;

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

(a) The issuance or delivery of contracts of insurance to persons who are residents of this state;

(b) The solicitation of applications for such contracts or other negotiations preliminary to the execution of such contracts;

(c) The collection of premiums, membership fees, assessments, or other consideration for such contracts;

(d) The transaction of matters subsequent to execution of such contracts and arising out of them; or

(e) Operating as an insurer under a license or certificate of authority issued by the department;

(7) Domiciliary state shall mean the state in which an insurer is incorporated or organized or, in the case of an alien insurer, its state of entry;

(8) Fair consideration is given for property or an obligation:

(a) When in exchange for such property or obligation, as a fair equivalent therefor, and in good faith, (i) property is conveyed, (ii) services are rendered, (iii) an obligation is incurred, or (iv) an antecedent debt is satisfied; or

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

(9) Foreign country shall mean any other jurisdiction not in any state;

(10) Foreign guaranty association shall mean a guaranty association now in existence in or hereafter created by the legislature of another state;

(11) Formal delinquency proceeding shall mean any liquidation or rehabilitation proceeding;

(12) General assets shall mean 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 shall include 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 or all policyholders and creditors, in more than a single state, shall be treated as general assets;

(13) Guaranty association shall mean the Nebraska Property and Liability Insurance Guaranty Association, the Nebraska Life and Health Insurance Guaranty Association, and any other similar entity now or hereafter created by the Legislature for the payment of claims of insolvent insurers;

(14) Insolvency or insolvent shall mean:

(a) For an insurer formed under Chapter 44, article 8:

(i) The inability to pay any obligation within thirty days after it becomes payable; or

(ii) If an assessment is 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;

(b) For any other insurer, that it is unable to pay its obligations when they are due or when its admitted assets do not exceed its liabilities plus the greater of:

(i) Any capital and surplus required by law to be maintained; or

(ii) The total par or stated value of its authorized and issued capital stock; and

(c) For purposes of this subdivision, liabilities shall include, but not be limited to, reserves required by statute or by rules and regulations adopted and promulgated or specific requirements imposed by the director upon a subject company at the time of admission or subsequent thereto;

(15) Insurer shall mean any person who has done, purports to do, is doing, or is licensed to do an insurance business and is or has been subject to the authority of or to liquidation, rehabilitation, reorganization, supervision, or conservation by the director or an insurance director, commissioner, or equivalent official of another state. Any other persons included under section 2 of this act shall be deemed to be insurers;

(16) Person shall include any individual, corporation, partnership, association, trust, or other entity;

(17) Preferred claim shall mean any claim with respect to which the terms of the act accord priority of payment from the general assets of the insurer;

(18) Receiver shall mean receiver, liquidator, rehabilitator, or conservator as the context requires;

(19) Reciprocal state shall mean any state other than this state in which in substance and effect sections 18, 52, 53, and 55 to 57 of this act are in force, in which provisions are in force requiring that the director 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;

(20) Secured claim shall mean any claim secured by mortgage, trust deed, pledge, or deposit as security, escrow, or otherwise but shall not include a special deposit claim or a claim against general assets. The term shall also include claims which have become liens upon specific assets by reason of judicial process;

(21) Special deposit claim shall mean any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons but shall not include any claim secured by general assets;

(22) State shall mean any state, district, or territory of the United States and the Panama Canal Zone; and

(23) Transfer shall include the sale of property or an interest therein and every other and different mode, direct or indirect, of disposing of or of parting with property, an interest therein, or the possession thereof or of fixing a lien upon property or an interest therein, absolutely or conditionally, voluntarily, or 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.

Sec. 4. (1) No delinquency proceeding shall be commenced under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act by anyone other than the director, and no court shall have jurisdiction to entertain, hear, or determine any proceeding commenced by any other person.

(2) No court of this state shall have jurisdiction to entertain, hear, or determine any complaint praying for the dissolution, liquidation, rehabilitation, sequestration, conservation, or receivership of any insurer or praying for an injunction

or restraining order or other relief preliminary to, incidental to, or relating to such proceedings other than in accordance with the act.

(3) In addition to other grounds for jurisdiction provided by the law of this state, a court of this state having jurisdiction of the subject matter has jurisdiction over a person served pursuant to sections 25-505.01 to 25-530.08 or other applicable provisions of law in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state:

(a) 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;

(b) 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

(c) 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 such a relationship with the insurer.

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

(5) All actions authorized by the act shall be brought in the district court of Lancaster County.

Sec. 5. (1) Any receiver appointed in a proceeding under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act may at any time apply for, and the court may grant, such restraining orders, preliminary and permanent injunctions, and other orders as may be deemed necessary and proper to prevent:

(a) The transaction of further business;

(b) The transfer of property;

(c) Interference with the receiver or with a proceeding under the act;

(d) Waste of the insurer's assets;

(e) Dissipation and transfer of bank accounts;

(f) The institution or further prosecution of

any actions or proceedings:

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

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

(i) The making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer;

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

(k) 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 any proceeding under the act.

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

Sec. 6. (1) Any officer, manager, director, trustee, owner, employee, or agent of any insurer or any other persons with authority over or in charge of any segment of the insurer's affairs shall cooperate with the director in any proceeding under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act or any investigation preliminary to the proceeding. For purposes of this section, the term person shall include any person who exercises control directly or indirectly over activities of the insurer through a management contract or any holding company or other affiliate of the insurer. To cooperate shall include, but shall not be limited to, the following:

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

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

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

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

(4) Any person included within subsection (1) of this section who fails to cooperate with the director

or any person who obstructs or interferes with the director in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto or who violates any order the director issued validly under the act shall be guilty of a Class I misdemeanor and may, after a hearing, be subject to the imposition by the director of a civil penalty not to exceed ten thousand dollars and shall be subject further to the revocation or suspension of any insurance licenses issued by the director.

Sec. 7. In any proceeding under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, the director and his or her 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 director or his or her deputies, and such bond shall be paid for out of the assets of the insurer as a cost of administration.

Sec. 8. No insurer that is subject to any delinquency proceedings, whether formal, informal, administrative, or judicial, shall (1) be released from such proceeding unless such proceeding is converted into a judicial rehabilitation or liquidation proceeding, (2) be returned to the control of its shareholders or private management, or (3) have any of its assets returned to the control of its shareholders or private management, until all payments of or on account of the insurer's contractual obligations by all guaranty associations, along with all expenses thereof and interest on all such payments and expenses, have been repaid to the guaranty associations or a plan of repayment by the insurer has been approved by the guaranty association.

Sec. 9. (1) Whenever the director has reasonable cause to believe and determines, after a hearing held under subsection (5) of this section, that any domestic insurer has committed or engaged in or is about to commit or engage in any act, practice, or transaction that would subject it to delinquency proceedings under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, he or she may make and serve upon the insurer and any other persons involved such orders as are reasonably necessary to correct, eliminate, or remedy such conduct, condition, or ground.

(2) If upon examination or at any other time the director has reasonable cause to believe that any

domestic insurer is in such condition as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance or if such domestic insurer gives its consent, then the director shall upon his or her determination:

(a) Notify the insurer of his or her determination; and

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

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

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

(b) Withdraw from any of its bank accounts;

(c) Lend any of its funds;

(d) Invest any of its funds;

(e) Transfer any of its property;

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

(g) Merge or consolidate with another company;

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

(i) Write or renew any insurance business.

(4) Any insurer subject to an order under this section shall comply with the lawful requirements of the director and, if placed under supervision, shall have sixty days from the date the supervision order is served within which to comply with the requirements of the director. In the event of such insurer's failure to comply within such period, the director may institute proceedings under section 12 or 17 of this act to have a rehabilitator or liquidator appointed or may extend the period of supervision.

(5) A notice of hearing under subsection (1) of this section and any order issued pursuant to such subsection shall be served upon the insurer pursuant to the Administrative Procedure Act. The notice of hearing shall state the time and place of hearing and the conduct, condition, or ground upon which the director

would base his or her order. Unless mutually agreed between the director and the insurer, the hearing shall occur not less than ten days nor more than thirty days after notice is served and shall be either in the offices of the department or in some other place convenient to the parties to be designated by the director. The director shall hold all hearings under subsection (1) of this section privately unless the insurer requests a public hearing, in which case the hearing shall be public.

(6)(a) Any insurer subject to an order under subsection (2) of this section may request a hearing to review the order. Such a hearing shall be held as provided in subsection (5) of this section, but the request for a hearing shall not stay the effect of the order.

(b) If the director issues an order under subsection (2) of this section, the insurer may, at any time, waive a director's hearing and apply for immediate judicial relief by means of any remedy afforded by law without first exhausting administrative remedies. Subsequent to a hearing, any party to the proceedings whose interests are substantially affected shall be entitled to judicial review of any order issued by the director.

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

(8) If any person has violated any supervision order issued under this section which as to him or her was then still in effect, he or she shall be liable to pay a civil penalty imposed by the district court of Lancaster County not to exceed ten thousand dollars.

(9) The director may apply for and the court may grant such restraining orders, preliminary and permanent injunctions, and other orders as may be deemed necessary and proper to enforce a supervision order.

(10) In the event that any person subject to the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, including those persons described in subsection (1) of section 6 of this act, knowingly violates any valid order of the director issued under this section and, as a result of such violation, the net worth of the insurer is reduced or the insurer suffers loss it would not otherwise have suffered, such person shall become personally liable to the insurer for the amount of any such reduction or loss. The director or

supervisor may bring an action on behalf of the insurer in the district court of Lancaster County to recover the amount of the reduction or loss together with any costs.

Sec. 10. (1) The director may file in the district court of Lancaster County a petition alleging, with respect to a domestic insurer:

(a) That there exist any grounds that would justify a court order for a formal delinquency proceeding against an insurer under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act;

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

(c) The contents of an order deemed necessary by the director.

(2) Upon a filing under subsection (1) of this section, the court may issue, forthwith, ex parte, and without a hearing, the requested order which shall direct the director 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 transaction of its business and until further order of the court enjoin the insurer and its officers, managers, agents, and employees from disposition of its property and from the transaction of its business except with the written consent of the director.

(3) The court shall specify in the order what its duration shall be, which shall be such time as the court deems necessary for the director to ascertain the condition of the insurer. 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 director fails to commence a formal proceeding under the act after having had a reasonable opportunity to do so. An order of the court pursuant to a formal proceeding under the act shall ipso facto vacate the seizure order.

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

(5) An insurer subject to an ex parte order under this section may petition the court at any time after the issuance of such order for a hearing and review of the order. The court shall hold such a hearing and review not more than fifteen days after the

request. A hearing under this subsection may be held privately in chambers, and it shall be so held if the insurer proceeded against so requests.

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

Sec. 11. In all proceedings and judicial review thereof under sections 9 and 10 of this act, all records of the insurer, other documents, all department files, and court records and papers, so far as they pertain to or are a part of the record of the proceedings, shall be and remain confidential except as is necessary to obtain compliance therewith unless and until the court, after hearing arguments from the parties in chambers, orders otherwise or unless the insurer requests that the matter be made public. Until such court order, all papers filed with the clerk of the district court shall be held by him or her in a confidential file.

Sec. 12. The director may apply by petition to the district court of Lancaster County for an order authorizing him or her to rehabilitate a domestic insurer or an alien insurer domiciled in this state on any one or more of the following grounds:

(1) The insurer is in such condition that the further transaction of business would be hazardous financially to its policyholders, its 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, employee, or other person, if the person has been found after notice and hearing by the director 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 untrustworthy:

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

(6) After demand by the director under section 44-108 or under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, the insurer has failed to promptly make available for examination any of its own property, books, accounts, documents, or other records, 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;

(7) Without first obtaining the written consent of the director, the insurer has transferred or attempted to transfer, in a manner contrary to sections 44-224.01 to 44-224.10 or 44-2101 to 44-2119, 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 state, such appointment has been made or is imminent, and such appointment might oust the courts of this state of jurisdiction or might prejudice orderly delinquency proceedings under the act;

(9) Within the previous four years the insurer has willfully violated its charter or articles of incorporation, its bylaws, any insurance law of this state, or any valid order of the director under section 9 of this act;

(10) The insurer has failed to pay within sixty days after due date any obligation to any state or any subdivision thereof or any judgment entered in any state if the court in which such judgment was entered had jurisdiction over such subject matter, 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 director 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 financial report required by statute or by rule or regulation within the time allowed by law and, after written demand by the director, has failed to give an adequate explanation immediately; or

(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 requests or consents to rehabilitation under the act.

Sec. 13. (1) An order to rehabilitate the business of a domestic insurer or an alien insurer domiciled in this state shall appoint the director and his or her successors in office the rehabilitator and shall direct the rehabilitator forthwith to take possession of the assets of the insurer and to administer them under the general supervision of the court. The filing or recording of the order with the clerk of the district court of Lancaster County or register of deeds of the county in which the principal business of the company is conducted or in which its principal office or place of business is located shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that register of deeds would have imparted. The order to rehabilitate the insurer shall by operation of law vest title to all assets of the insurer in the rehabilitator.

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

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

Sec. 14. (1) The director as rehabilitator may appoint one or more special deputies who shall have all the powers and responsibilities of the rehabilitator granted under this section, and the director may employ such counsel, clerks, and assistants as deemed necessary. The compensation of the special deputy, counsel, clerks, and assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the director, with the

approval of the court, and shall be paid out of the funds or assets of the insurer. The persons appointed under this section shall serve at the pleasure of the director.

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

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

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

(5) The rehabilitator shall have the power under sections 26 and 27 of this act to avoid fraudulent transfers.

Sec. 15. (1) Any court in this state before which any action or proceeding in which the insurer is a party or is obligated to defend a party is pending when a rehabilitation order against the insurer is entered shall stay the action or proceeding for ninety days and such additional time as is necessary for the rehabilitator to obtain proper representation and

prepare for further proceedings. The rehabilitator shall take such action respecting the pending litigation as he or she 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 state and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer.

(2) No statute of limitations or defense of laches shall run with respect to any action by or against an insurer between the filing of a petition for appointment of a rehabilitator for that insurer and the order granting or denying that petition. 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 or the petition is denied.

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

Sec. 16. (1) Whenever the director believes further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policyholders, or the public or would be futile, the director may petition the district court of Lancaster County for an order of liquidation. A petition under this subsection shall have the same effect as a petition under section 17 of this act. The court shall permit the directors of the insurer to take such actions as are reasonably necessary to defend against the petition and may order payment from the estate of the insurer of such costs and other expenses of defense as justice may require.

(2) The rehabilitator may at any time petition the district court of Lancaster County for an order terminating rehabilitation of an insurer. The court shall also permit the directors of the insurer to petition the court for an order terminating rehabilitation of the insurer and may order payment from the estate of the insurer of such costs and other expenses of such petition as justice may require. If upon the petition of the rehabilitator or the directors of the insurer or upon its own motion at any time the court finds that rehabilitation has been accomplished and that grounds for rehabilitation under section 12 of

this act no longer exist, it shall order that the insurer be restored to possession of its property and the control of the business.

Sec. 17. The director may petition the district court of Lancaster County for an order directing him or her to liquidate a domestic insurer or an alien insurer domiciled in this state on the basis:

(1) Of any ground for an order of rehabilitation as specified in section 12 of this act whether or not there has been a prior order directing the rehabilitation of the insurer;

(2) That the insurer is insolvent; or

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

Sec. 18. (1) An order to liquidate the business of a domestic insurer shall appoint the director and his or her 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 general supervision 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 entry of the final order of liquidation. The filing or recording of the order with the clerk of the district court and the register of deeds of the county in which its principal office or place of business is located or, in the case of real estate, with the register of deeds of the county where the property is located shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that register of deeds would have imparted.

(2) Upon issuance of the order, the rights and liabilities of any such insurer and of its creditors, policyholders, shareholders, and members and all other persons interested in its estate shall become fixed as of the date of entry of the order of liquidation except as provided in sections 19 and 37 of this act.

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

(4) At the time of petitioning for an order of liquidation or at any time thereafter, the director,

after making appropriate findings of an insurer's insolvency, may petition the court for a judicial declaration of such insolvency. After providing such notice and hearing as it deems proper, the court may make the declaration.

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

Sec. 19. (1) All policies, other than life or health insurance or annuities, in effect at the time of issuance of an order of liquidation shall continue in force only for the lesser of:

(a) A period of thirty days from the date of entry of the liquidation order;

(b) The expiration of the policy coverage;

(c) The date when the insured has replaced the insurance coverage with equivalent insurance in another insurer or otherwise terminated the policy; or

(d) The liquidator has effected a transfer of the policy obligation pursuant to subdivision (1)(h) of section 21 of this act.

(2) An order of liquidation under section 18 of this act shall terminate coverages at the time specified in subsection (1) of this section for purposes of any other statute.

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

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

Sec. 20. The director may petition for an order dissolving the corporate existence of a domestic insurer or the United States branch of an alien insurer domiciled in this state at the time he or she applies for a liquidation order. The court shall order dissolution of the corporation upon petition by the director upon or after the granting of a liquidation order. If the dissolution has not previously been ordered, it shall be effected by operation of law upon the discharge of the liquidator if the insurer is insolvent but may be ordered by the court upon the discharge of the liquidator if the insurer is under a liquidation order for some other reason.

Sec. 21. (1) The liquidator shall have the

power:

(a) To appoint a special deputy to act for him or her under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act and to determine his or her reasonable 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 liquidator;

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

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

(d) To pay reasonable compensation to persons appointed and to defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer;

(e) To hold hearings, to subpoena witnesses, to compel their attendance, to administer oaths and affirmations, to examine any person under oath or affirmation, and to compel any person to subscribe to his or her 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 or she deems relevant to the inquiry;

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

(i) To institute timely action in other jurisdictions, in order to forestall garnishment and attachment proceedings against such debts;

(ii) 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 debts for purposes of collection upon such terms and conditions as he or she deems best; and

(iii) To pursue any creditor's remedies available to enforce his or her claims;

(g) To conduct public and private sales of the property of the insurer;

(h) To use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent assuming insurer if the transfer can be

arranged without prejudice to applicable priorities under section 42 of this act;

(i) 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 or she shall also have power to execute, acknowledge, and deliver any and all deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation;

(j) 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;

(k) 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;

(l) To continue to prosecute and to institute in the name of the insurer or in his or her own name any and all suits and other legal proceedings in this state or elsewhere and to abandon the prosecution of claims he or she deems unprofitable to pursue further. If the insurer is dissolved under section 20 of this act, the liquidator shall have the power to apply to any court in this state or elsewhere for leave to substitute himself or herself for the insurer as plaintiff;

(m) To prosecute any action which may exist on behalf of the creditors, members, policyholders, or shareholders of the insurer against any officer of the insurer or any other person;

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

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

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

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

(r) To assert all defenses available to the insurer as against third persons, including statutes of limitations, 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 liquidator. Whenever a guaranty association or foreign guaranty association has an obligation to defend any suit, the liquidator shall give precedence to such obligation and may defend only in the absence of a defense by such guaranty associations;

(s) 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 26 to 28 of this act;

(t) 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;

(u) To enter into agreements with any receiver or the director, commissioner, or equivalent official of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states; and

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

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

(b) The extended period to report claims made available by the liquidator shall be subject to the terms of the policy to which it relates. The liquidator shall make available such extended period within sixty days after the order of liquidation at a charge to be determined by the liquidator subject to approval of the court. Such offer shall be deemed rejected unless the

offer is accepted in writing and the charge is paid within ninety days after the order of liquidation. No commissions, premium taxes, assessments, or other fees shall be due on the charge pertaining to the extended period to report claims.

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

Sec. 22. (1) Unless the court otherwise directs, the liquidator shall give or cause to be given notice of the liquidation order as soon as possible:

(a) By first-class mail and by telegram, electronic mail, facsimile, or telephone to the director, commissioner, or equivalent official of each jurisdiction in which the insurer is doing business;

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

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

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

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

(2) Notice to potential claimants under subsection (1) of this section shall require claimants to file with the liquidator their claims together with proper proofs thereof under section 36 of this act on or before a date the liquidator shall specify in the notice. Although an earlier date may be set by the liquidator, the last day to file claims shall be no later than eighteen months following the order of liquidation. The liquidator need not require persons claiming cash surrender values or other investment values in life insurance and annuities to file a claim. All claimants shall have a duty to keep the liquidator informed of any changes of address.

(3) If notice is given in accordance with this section, the distribution of assets of the insurer under the Nebraska Insurers Supervision, Rehabilitation, and

Liquidation Act shall be conclusive with respect to all claimants whether or not they receive actual notice.

Sec. 23. (1) Every person who receives notice in the form prescribed in section 22 of this act that an insurer which he or she represents as an 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 or she 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 or her possession a copy of the declarations of the policy at any time during the life of the policy except when 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 19 of this act. Notice by a general agent satisfies the notice requirement for any agents under contract to him or her. Each agent obligated to give notice under this section shall file a report of compliance with the liquidator.

(2) Any agent failing to give notice or file a report of compliance as required in subsection (1) of this section may be subject to payment of a civil penalty of not more than one thousand dollars and may have his or her license suspended. The penalty shall be imposed after a hearing held by the director.

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

Sec. 24. (1) Upon issuance of an order appointing a liquidator of a domestic insurer or of an alien insurer domiciled in this state, no action at law or equity shall be brought against the insurer or liquidator, whether in this state or elsewhere, nor shall any such existing actions be maintained or further presented after issuance of such order. The courts of this state shall give full faith and credit to injunctions against the liquidator or the company or the continuation of existing actions against the liquidator or the company when such injunctions are included in an

order to liquidate an insurer issued pursuant to corresponding provisions in other states. 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 state, he or she may intervene in the action. The liquidator may defend any action in which he or she intervenes under this section at the expense of the estate of the insurer.

(2) The liquidator may, upon or after an order for liquidation, within two years or such time in addition to two years as applicable law may permit, institute an action or proceeding on behalf of the estate of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which such order is entered. In any agreement, when 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 in any proceeding, judicial or otherwise, when 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 when 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 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.

(3) No statute of limitations or defense of laches shall run with respect to any action against an insurer between the filing of a petition for liquidation against an insurer and the denial of the petition. 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.

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

Sec. 25. (1) As soon as practicable after the liquidation order but not later than one hundred twenty days thereafter, the liquidator shall prepare in duplicate a list of the insurer's assets. The list

shall be amended or supplemented from time to time as the liquidator may determine. One copy shall be filed in the office of the clerk of the district court of Lancaster County and one copy shall be retained for the liquidator's files. All amendments and supplements shall be similarly filed.

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

(3) The submission of an application to the court for disbursement of assets in accordance with section 34 of this act shall fulfill the requirements of subsection (1) of this section.

Sec. 26. (1) 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 the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act shall be 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 the act 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.

(2)(a) 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 subsection (3) of section 28 of this act.

(b) 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.

(c) 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.

(d) 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.

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

(3) Any transaction of the insurer with a reinsurer shall be deemed fraudulent and may be avoided by the receiver under subsection (1) of this section if:

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

(b) 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.

Sec. 27. (1) After a petition for rehabilitation or liquidation has been filed, 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 register of deeds in the county where any real property in question is located. The exercise by a court of the United States or any state or jurisdiction to authorize or effect a judicial sale of real property of the insurer within any county in any state shall not be impaired by the pendency of such a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

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

(a) 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;

(b) 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 or her order with the same effect as if the petition were not pending;

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

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

(3) Nothing in the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act shall impair the negotiability of currency or negotiable instruments.

Sec. 28. (1)(a) A preference shall mean 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 the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act the effect of which transfer may be to enable the creditor to obtain a greater percentage of such 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, such transfers 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.

(b) 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 or her 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;

(iv) The creditor receiving it was: An officer; any employee, attorney, or other person who was in fact in a position of comparable influence in the insurer to an officer whether or not he or she held such position; any shareholder holding directly or indirectly more than five percent 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; or

(v) When 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 when a bona fide purchaser or lienor has given less than fair equivalent value, he or she shall have a lien upon the property to the extent of the consideration actually given by him or her. When 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.

(2)(a) 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.

(b) 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.

(c) 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.

(d) 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.

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

(3)(a) A lien obtainable by legal or equitable proceedings upon a simple contract shall be 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 shall not include liens which under applicable law are given a special priority over other liens which are prior in time.

(b) 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 (2) of this section 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 (2) of this section 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.

(4) A transfer of property for or on account of a new and contemporaneous consideration which is deemed under subsection (2) of this section to be made or suffered after the transfer because of delay in perfecting shall 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.

(5) If any lien deemed voidable under subdivision (1)(b) of this section 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 the act which results in a liquidation order, the indemnifying transfer or lien shall also be deemed voidable.

(6) The property affected by any lien deemed

voidable under subsections (1) and (5) of this section 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.

(7) The district court of Lancaster County 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. When 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.

(8) The liability of the surety under a releasing bond or other like obligation shall be discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator or, when the property is retained under subsection (7) of this section, to the extent of the amount paid to the liquidator.

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

(10) If an insurer, directly or indirectly, within four months before the filing of a successful petition for liquidation under the act or at any time in contemplation of a proceeding to liquidate, pays money or transfers property to an attorney for services rendered or to be rendered, the transactions may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator and

shall be held valid only to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the liquidator for the benefit of the estate, except that if 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 for services rendered or to be rendered shall be governed by subdivision (1)(b)(iv) of this section.

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

(b) Every person receiving any property from the insurer or the benefit thereof as a preference voidable under subsection (1) of this section shall be personally liable therefor and shall be bound to account to the liquidator.

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

Sec. 29. (1) No claims of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance voidable under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act shall be allowed unless he or she 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.

(2) A claim allowable under subsection (1) of this section by reason of the avoidance, whether voluntary or involuntary, of a preference, lien, conveyance, transfer, assignment, or encumbrance may be filed as an excused late filing under section 35 of this act if filed within thirty days from the date of the avoidance or within the further time allowed by the

court under subsection (1) of this section.

Sec. 30. (1) Mutual debts or mutual credits between the insurer and another person in connection with any action or proceeding under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act shall be set off and the balance only shall be allowed or paid except as provided in subsection (2) of this section and in section 33 of this act.

(2) No setoff or counterclaim shall be allowed in favor of any person when:

(a) 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;

(b) 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;

(c) The obligation of the person is to pay an assessment levied against the members or subscribers of the insurer, 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

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

Sec. 31. (1) As soon as practicable, but not more than two years from the date of an order of liquidation under section 18 of this act of an insurer issuing assessable policies, the liquidator shall make a report to the court setting forth:

(a) The reasonable value of the assets of the insurer;

(b) The insurer's probable total liabilities;

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

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

(2)(a) Upon the basis of the report provided in subsection (1) of this section, including any supplements and amendments thereto, the district court of Lancaster County may levy one or more assessments against all members of the insurer who are subject to assessment.

(b) 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.

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

(4) 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 or her 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.

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

(b) If on or before such return day the member appears and serves duly verified objections upon the liquidator, the director 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 director 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.

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

Sec. 32. The amount recoverable by the liquidator from reinsurers shall not be reduced as a result of the delinquency proceedings, regardless of any provision in the reinsurance contract or other agreement. Payment made directly to an insured or other creditor shall not diminish the reinsurer's obligation to the insurer's estate except when the reinsurance contract provided for direct coverage of a named insured and the payment was made in discharge of that obligation.

Sec. 33. (1)(a) An agent, broker, premium finance company, or any other person, other than the insured, responsible for the payment of a premium shall be obligated to pay any unpaid earned premium due the insurer at the time of the declaration of insolvency 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 commission of such person. An agent, broker, premium finance company, or any other person, other than the insured, responsible for the payment of a premium shall not be obligated to pay the unpaid unearned premium due the insurer at the time of the declaration of insolvency as shown on the records of the insurer, and any such unearned premium in the possession of such agent, broker, premium finance company, or other person at such time shall be returned promptly by such agent, broker, premium finance company, or other person to the insured or other person from whom it was received. Credits or setoffs or both shall not be allowed to an agent, broker, or premium finance company for any amounts advanced to the insurer by the agent, broker, or premium finance company on behalf of, but in the absence of a payment by, the insured.

(b) An insured shall be obligated to pay any unpaid earned premium due the insurer at the time of the declaration of insolvency as shown on the records of the insurer.

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

(a) Suspend, revoke, or refuse to renew the licenses of such offending party or parties; or

(b) Impose a civil penalty of not more than one thousand dollars for each and every act in violation of this section by the party or parties.

(3) Before the director takes any action as set forth in subsection (2) of this section, he or she 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 on the matter shall be held. After such hearing or upon failure of the accused to appear at such hearing, the director, if he or she finds such violation, shall impose the penalties under subsection (2) of this section as he or she deems advisable.

(4) When the director takes action in any or all of the ways set out in subsection (2) of this section, the party aggrieved may appeal from the action to the district court of Lancaster County.

Sec. 34. (1) Within one hundred twenty days of a final determination of insolvency of an insurer by a court of competent jurisdiction of this state, the liquidator shall make application to the court for approval of a proposal to disburse assets out of

marshalled assets, from time to time as such assets become available, to a guaranty association or foreign guaranty association having obligations because of such insolvency. If the liquidator determines that there are insufficient assets to disburse, the application required by this section shall be considered satisfied by a filing by the liquidator stating the reasons for this determination.

(2) Such proposal shall at least include provisions for:

(a) Reserving amounts for the payment of expenses of administration and the payment of claims of secured creditors to the extent of the value of the security held and claims falling within the priorities established in subdivisions (1) and (2) of section 42 of this act;

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

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

(d) The securing by the liquidator from each of the associations entitled to disbursements pursuant to this section of an agreement to return to the liquidator such assets, together with income earned on assets previously disbursed, as may be required to pay claims of secured creditors and claims falling within the priorities established in section 42 of this act in accordance with such priorities. No bond shall be required of any such association; and

(e) A full report to be made by each association to the liquidator 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.

(3) The liquidator's proposal shall provide for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made thereby for which 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 association, then disbursements shall be in the amount of available assets.

(4) The liquidator's proposal shall, with respect to an insolvent insurer writing life or health

insurance or annuities, provide for disbursements of assets to any guaranty association or any foreign guaranty association covering life or health insurance or annuities or to any other entity or organization reinsuring, assuming, or guaranteeing policies or contracts of insurance under the laws creating such associations.

(5) Notice of such application shall be given to the association in and to the director, commissioner, or equivalent official of each of the states. Any such notice shall be deemed to have been given when deposited in the United States certified mail, first-class postage prepaid, at least thirty days prior to submission of such application to the court. Action on the application may be taken by the court if the required notice has been given and the liquidator's proposal complies with subdivisions (2)(a) and (b) of this section.

Sec. 35. (1) Proof of all claims shall be filed with the liquidator in the form required by section 36 of this act on or before the last day for filing specified in the notice required under section 22 of this act, except that proof of claims for cash surrender values or other investment values in life insurance and annuities need not be filed unless the liquidator expressly so requires.

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

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

(b) A transfer to a creditor was avoided under sections 26 to 28 of this act or was voluntarily surrendered under section 29 of this act and the filing satisfies the conditions of such section; or

(c) The valuation under section 41 of this act of security held by a secured creditor shows a deficiency, which is filed within thirty days after the valuation.

(3) The liquidator shall permit late filing claims to share in distributions, whether past or future, as if they were not late if such claims are claims of a guaranty association or foreign guaranty association for reimbursement of covered claims paid or

expenses incurred, or both, subsequent to the last day for filing when such payments were made and expenses incurred as provided by law.

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

Sec. 36. (1) Proof of claim shall consist of a statement signed by the claimant that includes all of the following that are applicable:

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

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

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

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

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

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

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

(2) No claim need be considered or allowed if it does not contain all the information in subsection (1) of this section which may be applicable. The liquidator may require that a prescribed form be used and may require that other information and documents be included.

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

(4) 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. No judgment or order against an insured or the insurer entered within four months before the filing of the petition need be considered as evidence of liability or of the quantum of damages.

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

Sec. 37. (1) The claim of a third party which is contingent only on his or her first obtaining a judgment against the insured shall be considered and allowed as if there were no such contingency.

(2) A claim may be allowed even if contingent if it is filed in accordance with section 35 of this act. It may be allowed and may participate in all distributions declared after it is filed to the extent that it does not prejudice the orderly administration of the liquidation.

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

(4) Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers shall be limited to payment for services rendered prior to the issuance of any order of rehabilitation or liquidation under section 13 or 18 of this act.

Sec. 38. (1) 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.

(2) Whether or not the third party files a claim, the insured may file a claim on his or her own behalf in the liquidation. If the insured fails to file a claim by the date for filing claims specified in the order of liquidation or within sixty days after mailing of the notice required by section 22 of this act, whichever is later, he or she is an unexcused late filer.

(3) The liquidator shall make his or her recommendations to the court under section 42 of this act for the allowance of an insured's claim under subsection (2) of this section 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. After allowance by the

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

(4) If several claims founded upon 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, each claim as allowed shall be reduced in the same proportion so that the total equals the policy limit. Claims by the insured shall be evaluated as in subsection (3) of this section. If any insured's claim is subsequently reduced under subsection (3) of this section, the amount thus freed shall be apportioned ratably among the claims which have been reduced under this subsection.

(5) No claim may be presented under this section if it is or may be covered by any guaranty association or foreign guaranty association.

Sec. 39. (1) When a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant or his or her attorney by first-class mail at the address shown in the proof of claim. Within sixty days from the mailing of the notice, the claimant may file his or her objections with the liquidator. If no such filing is made, the claimant may not further object to the determination.

(2) Whenever objections are filed with the liquidator and the liquidator does not alter his or her

denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first-class mail to the claimant or his or her attorney and to any other persons directly affected not less than ten or 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 or her recommendation.

Sec. 40. 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 the claim, the other person may do so in the creditor's name and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name, to the extent that he or she discharges the undertaking. In the absence of an agreement with the creditor to the contrary, the other person shall not be entitled to any distribution until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the insurer's estate to the creditor equals the amount of the entire claim of the creditor. Any excess received by the creditor shall be held by him or her in trust for such other person. The term other person as used in this section shall not apply to a guaranty association or foreign guaranty association.

Sec. 41. (1) The value of any security held by a secured creditor shall be determined in one of the following ways, as the court may direct:

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

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

(2) 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 surrenders his or her security to the liquidator, the entire claim shall be allowed as if unsecured.

Sec. 42. The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this section. Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any

payment. No subclasses shall be established within any class. The order of distribution of claims shall be:

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

(a) The actual and necessary costs of preserving or recovering the assets of the insurer;

(b) Compensation for all properly authorized services rendered in the liquidation;

(c) Any necessary filing fees;

(d) The fees and mileage payable to witnesses;

(e) Reasonable attorney's fees;

(f) The reasonable expenses of a guaranty association or foreign guaranty association in handling claims; and

(g) The expenses of examinations conducted pursuant to sections 44-107 to 44-107.03;

(2) Class 2. Debts due to employees for services performed to the extent that they do not exceed one thousand dollars and represent payment for services performed within one year before the filing of the petition for liquidation. Officers and directors of the insurer 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 employees;

(3) Class 3. All claims under policies for losses incurred, including third-party claims, all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies, and all claims of a guaranty association or foreign guaranty association. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values, shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligation of support or by way of succession at death or as proceeds of life insurance or as gratuities. No payment by an employer to his or her employee shall be treated as a gratuity;

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

(5) Class 5. Claims of the federal or any state or local government. Claims, including those of any governmental body for a penalty or forfeiture, shall

be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under subdivision (8) of this section;

(6) Class 6. Claims filed late or any other claims other than claims under subdivisions (7) and (8) of this section;

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

(8) Class 8. The claims of shareholders or other owners.

Sec. 43. (1) The liquidator shall review all claims duly filed in the liquidation and shall make such further investigation as he or she deems necessary. He or she may compound, compromise, or in any other manner negotiate the amount for which claims will be recommended to the court except when the liquidator is required by law to accept claims as settled by any person or organization, including any guaranty association or foreign guaranty association. Unresolved disputes shall be determined under section 39 of this act. As soon as practicable, the liquidator shall present to the court a report of the claims against the insurer with his or her recommendations. The report shall include the name and address of each claimant and the amount of the claim finally recommended, if any. If the insurer has issued annuities or life insurance policies, the liquidator shall report the persons to whom, according to the records of the insurer, amounts are owed as cash surrender values or other investment value and the amounts owed.

(2) The court may approve, disapprove, or modify the report on claims by the liquidator. Such reports 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 claims, subject thereafter to later modification or to rulings made by the court pursuant to section 39 of this act. No claim under a policy of insurance shall be allowed for an amount in excess of the applicable policy limits.

Sec. 44. 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.

Sec. 45. (1) All unclaimed funds subject to distribution remaining in the liquidator's hands when he or she is ready to apply to the court for discharge, including the amount distributable to any creditor, shareholder, member, or other person who is unknown or cannot be found, shall be deposited with the district court and shall be paid without interest, except in accordance with section 42 of this act, to the person entitled thereto or his or her legal representative upon proof satisfactory to the district court of his or her right thereto. Any amount on deposit not claimed within three years from the date such amount was paid to the district court shall be presumed abandoned and shall be subject to the Uniform Disposition of Unclaimed Property Act.

(2) All funds withheld under section 38 of this act and not distributed shall, upon discharge of the liquidator, be deposited with the district court and paid by the district court in accordance with section 42 of this act. Any sums remaining which under section 42 of this act would revert to the undistributed assets of the insurer shall be presumed abandoned and shall be subject to the act.

Sec. 46. (1) When all assets justifying the expense of collection and distribution have been collected and distributed under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, the liquidator shall apply to the court for discharge. The court may grant the discharge and make any other orders, including an order to transfer any remaining funds that are uneconomical to distribute, as may be deemed appropriate.

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

Sec. 47. After the liquidation proceeding has been terminated and the liquidator discharged, the director or other interested party may at any time petition the district court of Lancaster County 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.

Sec. 48. Whenever it appears to the director that the records of any insurer in process of liquidation or completely liquidated are no longer useful, he or she may recommend to the court and the court shall direct what records should be retained for future reference and what should be destroyed.

Sec. 49. The district court of Lancaster County may cause audits to be made of the books of the director relating to any receivership established under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, and a report of each audit shall be filed with the director and with the court. The books, records, and other documents of the receivership shall be made available to the auditor at any time without notice. The expense of each audit shall be considered a cost of administration of the receivership.

Sec. 50. (1) If a domiciliary liquidator has not been appointed, the director may apply to the district court of Lancaster County by verified petition for an order directing him or her to act as conservator to conserve the property of an alien insurer not domiciled in this state or a foreign insurer on any one or more of the following grounds:

(a) Any of the grounds in section 12 of this act;

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

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

(d)(i) That its certificate of authority to do business in this state has been revoked or that none was ever issued; and

(ii) That there are residents of this state with outstanding claims against or outstanding policies issued by such insurer.

(2) When an order is sought under subsection (1) of this section, the court shall cause the insurer to be given such notice and time to respond thereto as is reasonable under the circumstances.

(3) The court may issue the order in whatever terms it deems appropriate. The filing or recording of the order with the clerk of the district court or the register of deeds of the county in which the principal business of the company is located shall impart the same

notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that register of deeds would have imparted.

(4) The conservator may at any time petition for and the court may grant an order under section 51 of this act to liquidate assets of a foreign or alien insurer under conservation or, if appropriate, for an order under section 53 of this act to be appointed ancillary receiver.

(5) The conservator may at any time petition the court for an order terminating conservation of an insurer. If the court finds that the conservation is no longer necessary, 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, but if such motion is denied all costs shall be assessed against such party.

Sec. 51. (1) If no domiciliary receiver has been appointed, the director may apply to the district court of Lancaster County by verified petition for an order directing him or her to liquidate the assets found in this state of a foreign insurer or an alien insurer not domiciled in this state on any of the following grounds:

(a) Any of the grounds in section 12 or 17 of this act; or

(b) Any of the grounds specified in subdivisions (1)(b) through (d) of section 50 of this act.

(2) When an order is sought under subsection (1) of this section, the court shall cause the insurer to be given such notice and time to respond thereto as is reasonable under the circumstances.

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

(4) If a domiciliary liquidator is appointed in a reciprocal state while a liquidation is proceeding under this section, the liquidator under this section

shall thereafter act as ancillary receiver under section 53 of this act. 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 53 of this act.

(5) On the same grounds as are specified in subsection (1) of this section, the director 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 director deems desirable for the protection of the policyholders and creditors in this state.

(6) The court may order the director, when he or she has liquidated the assets of a foreign or alien insurer under this section, to pay claims of residents of this state against the insurer under such rules as to the liquidation of insurers under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act as are otherwise compatible with the provisions of this section.

Sec. 52. (1) The domiciliary liquidator of an insurer domiciled in a reciprocal state shall, except as to special deposits and security on secured claims under subsection (3) of section 53 of this act, be vested by operation of law with the title to all of the assets, property, contracts, and rights of action, agents' balances, and all of the books, accounts, and other records of the insurer located in this state. The date of vesting shall be the date of the filing of the petition if that date is specified by the domiciliary law for the vesting of property in the domiciliary state. Otherwise, the date of vesting shall be the date of entry of the order directing possession to be taken. The domiciliary liquidator shall have the immediate right to recover balances due from agents and to obtain possession of the books, accounts, and other records of the insurer located in this state. He or she also shall have the right to recover all other assets of the insurer located in this state subject to section 53 of this act.

(2) If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal state, the director 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 state at the same time that the domiciliary liquidator is vested with title in

the domicile. The director may petition for a conservation or liquidation order under section 50 or 51 of this act or for an ancillary receivership under section 53 of this act or, after approval by the district court of Lancaster County, may transfer title to the domiciliary liquidator as the interests of justice and the equitable distribution of the assets require.

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

Sec. 53. (1) If a domiciliary liquidator has been appointed for an insurer not domiciled in this state, the director may file a petition with the district court of Lancaster County requesting appointment as ancillary receiver in this state:

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

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

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

(3) When a domiciliary liquidator has been appointed in a reciprocal state, then the ancillary receiver appointed in this state may, whenever necessary, aid and assist the domiciliary liquidator in recovering assets of the insurer located in this state. 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 state and shall pay the necessary expenses of the proceedings. He or she shall promptly transfer all remaining assets, books, accounts, and records to the domiciliary liquidator. Subject to this section, the ancillary receiver and his or her deputies shall have the same powers and be subject to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in this state.

(4) When a domiciliary liquidator has been

appointed in this state, ancillary receivers appointed in reciprocal states shall have, as to assets and books, accounts, and other records in their respective states, corresponding rights, duties, and powers to those provided in subsection (3) of this section for ancillary receivers appointed in this state.

Sec. 54. The director may institute proceedings under sections 9 to 11 of this act at the request of the director, commissioner, or equivalent official of the regulatory entity of the domiciliary state of any foreign or alien insurer having property located in this state.

Sec. 55. (1) In a liquidation proceeding begun in this state against an insurer domiciled in this state, claimants residing in foreign countries or in states which are not reciprocal states shall file claims in this state and claimants residing in reciprocal states may file claims either with the ancillary receivers, if any, in their respective states or with the domiciliary liquidator. Claims shall be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceeding.

(2) Claims belonging to claimants residing in reciprocal states may be proved either in the liquidation proceeding in this state as provided in the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act or in ancillary proceedings, if any, in the reciprocal states. If notice of the claims and opportunity to appear and be heard is afforded the domiciliary liquidator of this state as provided in subsection (2) of section 56 of this act with respect to ancillary proceedings, the final allowance of claims by the courts in ancillary proceedings in reciprocal states shall be conclusive as to amount and as to priority against special deposits or other security located in such ancillary states but shall not be conclusive with respect to priorities against general assets under section 42 of this act.

Sec. 56. (1) In a liquidation proceeding in a reciprocal state against an insurer domiciled in that state, claimants against the insurer who reside within this state may file claims either with the ancillary receiver, if any, in this state or with the domiciliary liquidator. Claims shall be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceeding.

(2) Claims belonging to claimants residing in this state may be proved either in the domiciliary state under the law of that state or in ancillary proceedings.

if any, in this state. If a claimant elects to prove his or her claim in this state, he or she shall file his or her claim with the liquidator in the manner provided in sections 35 and 36 of this act. The ancillary receiver shall make his or her recommendation to the court as under section 43 of this act. He or she shall also arrange a date for hearing if necessary under section 39 of this act 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 or her intention to contest the claim, he or she shall be entitled to appear or to be represented in any proceeding in this state involving the adjudication of the claim.

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

Sec. 57. 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 state against the delinquent insurer or its assets.

Sec. 58. (1) In a liquidation proceeding in this state 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. All claims of residents of reciprocal states shall be given equal priority of payment from general assets regardless of where such assets are located.

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

from the special deposit.

(3) The owner of a secured claim against an insurer for which a liquidator has been appointed in this or any other state may surrender his or her security and file his or her claim as a general creditor or the claim may be discharged by resort to the security in accordance with section 41 of this act, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors.

Sec. 59. If an ancillary receiver in another state or foreign country, whether called by that name or not, fails to transfer to the domiciliary liquidator in this state any assets within his or her control other than special deposits, diminished only by the expenses of the ancillary receivership, if any, the claims filed in the ancillary receivership, other than special deposit claims or secured claims, shall be placed in the class of claims under subdivision (7) of section 42 of this act.

Sec. 60. Every proceeding commenced under the laws in effect before the effective date of this act shall be deemed to have commenced under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act for the purpose of conducting the proceeding henceforth, except that in the discretion of the director the proceeding may be continued, in whole or in part, as it would have been continued had the act not been enacted.

Sec. 61. Sections 1 to 61 of this act shall be known and may be cited as the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act.

Sec. 62. That section 44-120, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-120. Whenever it appears to the Department of Insurance from any proper showing or from any examination made, that the capital stock of any domestic stock insurance company is impaired, or that its assets are insufficient to justify its continuance in business, the department, in lieu of proceeding immediately in the manner authorized by sections 44-125 to 44-132 the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, may at once determine the amount of such impairment or deficiency, and thereupon issue a written notice to the company, requiring its stockholders to make good the amount of the impairment or deficiency with cash or authorized investments, or to reduce its capital stock, not below statutory

requirements, within a reasonable time, not to exceed ninety days from the service of the notice.

Sec. 63. That section 44-121, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-121. If the amount of any such impairment or deficiency shall not be made good within the time specified in such notice and proof thereof filed with the Department of Insurance, the company shall be deemed insolvent, and shall be proceeded against as an insolvent company in the manner authorized and directed by sections 44-125 to 44-132 the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act.

Sec. 64. That section 44-124, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-124. Such notice and requisition may be served by either registered or certified letter, having affixed the proper postage, and directed to the company at its principal place of business in this state. Upon the service of such notice and requisition, the directors and officers thereof shall forthwith cause such deficiency to be made good, and proof thereof to be filed in the office of the Department of Insurance, within the time specified in the notice and requisition. If such deficiency shall not be made good within the time specified in the notice and requisition, and satisfactory proof thereof filed with the department, such company shall be deemed insolvent, and shall be proceeded against as an insolvent company in the manner authorized and directed by sections 44-125 to 44-132 the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act.

Sec. 65. That section 44-133, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-133. Whenever any of the grounds mentioned in section 9, 12, or 17 of this act 44-125 are shown to exist as to a domestic company, after a hearing upon notice to the company, the Department of Insurance may suspend or revoke the certificate of authority of such company to do business, instead of applying to the court, which order of suspension or revocation shall be subject to appeal, and the appeal shall be in accordance with the Administrative Procedure Act.

Sec. 66. That section 44-134, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-134. Whenever the authority of a foreign

or alien company to do business is suspended or revoked by its state of domicile or state of entry into the United States or whenever any of the grounds mentioned in section 9, 12, or 17 of this act 44-125 exist as to a foreign or alien companies company, the Department of Insurance shall may suspend or revoke the certificate of authority of such company to do business in this state, which order of suspension or revocation shall be subject to appeal, and the appeal shall be in accordance with the Administrative Procedure Act.

Sec. 67. That section 44-208.05, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-208.05. If a corporation does not qualify for a certificate of authority within one year from the date it receives its permit to complete its organization or if an agent of the corporation employed to solicit subscriptions or applications has violated the insurance laws of the state, the Director of Insurance may revoke such permit and order the assets of the corporation to be distributed to the persons or legal entities entitled thereto or proceed against the corporation as an insolvent insurance company in the manner authorized and directed by ~~sections 44-125 to 44-132~~ the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act. If any corporation hereafter organized does not qualify to receive its certificate of authority within two years from the date it receives its permit to complete organization, its corporate existence shall automatically terminate. In such event the Director of Insurance shall order the assets of the corporation to be distributed to the persons or legal entities entitled thereto or proceed against the corporation as an insolvent insurance company in the manner authorized and directed by ~~sections 44-125 to 44-132~~ the act.

Sec. 68. That section 44-3,123, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-3,123. If any insurance company or association is found in possession of stocks, bonds, debentures, notes, investment certificates, securities, or other obligations or evidences of indebtedness acquired in violation of section 44-3,119; or if any of its officers, directors, members, or attorneys in fact have been convicted under section 44-3,119, such company or association may be subject to suspension of its certificate of authority by the Director of Insurance. Nothing in this section shall be construed to prevent the Director of Insurance from proceeding against such

insurance company or association in the manner authorized and directed by ~~sections 44-125 to 44-132~~ the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act.

Sec. 69. That section 44-1206.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-1206.01. Whenever it shall appear from any proper showing, or from any examination made, that the assets and resources of any domestic reciprocal insurance exchange are insufficient to meet the minimum conditions prescribed in section 44-1206, the department may promptly determine the amount of such deficiency, and thereupon issue a written notice and requisition to the attorney of such reciprocal exchange requiring that such deficiency be removed within a reasonable time not to exceed one hundred eighty days from the service of such notice and requisition. If such deficiency shall not be made good within the time specified in the notice and requisition, and satisfactory proof thereof filed with the department, such reciprocal exchange shall be deemed insolvent and shall be proceeded against as an insolvent company in the manner authorized and directed by ~~sections 44-125 to 44-132~~ the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act.

Sec. 70. That section 44-1525, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-1525. The following shall be unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(1) Making, issuing, circulating, or causing to be made, issued, or circulated any estimate, illustration, circular, statement, sales presentation, omission, or comparison which:

(a) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy;

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

(c) Makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy;

(d) Misleads or misrepresents the financial condition of any person or the legal reserve system upon which any life insurer operates;

(e) Uses any name or title of any insurance policy or class of insurance policies which misrepresents the true nature thereof;

(f) Misrepresents for the purpose of inducing

or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy;

(g) Misrepresents for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy; or

(h) Misrepresents any insurance policy as being shares of stock;

(2) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of his or her insurance business, which is untrue, deceptive, or misleading;

(3) Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of any person, and which is calculated to injure such person;

(4) Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of or monopoly in the business of insurance;

(5)(a) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of a person; or

(b) Making any false entry of a material fact in any book, report, or statement of any person or omitting to make a true entry of any material fact pertaining to the business of such person in any book, report, or statement of such person;

(6) Issuing or delivering or permitting agents, officers, or employees to issue or deliver agency company stock or other capital stock, or benefit

certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance;

(7)(a) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract;

(b) Making or permitting any unfair discrimination between individuals of the same class involving essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner, except that this subdivision shall not limit the negotiation of preferred provider policies and contracts under sections 44-4101 to 44-4113; or

(c) Making or permitting any unfair discrimination between individuals, risks, or insurance policies of the same class involving essentially the same hazards in the amount of premium, policy fees, or rates charged for any risks or insurance policies as described in section 44-1402, 44-1444, or 44-1901 or in the coverages provided, or in any of the terms or conditions of such contracts, or in any other manner. Any rate or classification approved by the Director of Insurance shall be presumed to be nondiscriminatory;

(8)(a) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity, or accident and health insurance, or agreement as to any such contract other than as plainly expressed in the insurance contract issued thereon, or paying, allowing, or giving, or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, selling, purchasing, or offering to give, sell, or purchase as inducement to such insurance contract or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value not specified in the contract.

(b) Nothing in subdivision (7)(a) or (b) or (8)(a) of this section shall be construed as including within the definition of discrimination or rebates any of the following practices: (i) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance if such bonuses or abatement of premiums are fair and equitable to policyholders and for the best interests of the company and its policyholders; (ii) in the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses; or (iii) readjustment of the rate of premium for a group insurance policy based on the loss or expense thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year;

(9) Committing or performing with such frequency as to indicate a general business practice any act which:

(a) Misrepresents pertinent facts or insurance policy provisions relating to coverage at issue;

(b) Fails to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(c) Fails to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(d) Refuses to pay claims without conducting a reasonable investigation based upon all available information;

(e) Fails to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(f) Does not attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;

(g) Compels an insured to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by insureds;

(h) Attempts to settle a claim for less than the amount to which a reasonable person would have believed he or she was entitled by reference to written or printed advertising material accompanying or made

part of an application;

(i) Attempts to settle claims on the basis of an application which was altered without notice to or knowledge or consent of the insured;

(j) Makes claims payments to an insured or beneficiary not accompanied by a statement setting forth the coverage under which the payments are being made;

(k) Makes known to an insured or claimant a policy of appealing from arbitration awards in favor of the insured or claimant for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(l) Delays the investigation or payment of claims by requiring an insured or claimant or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(m) Fails to promptly settle claims, when liability has become clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or

(n) Fails to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement;

(10) Failing of any person to maintain a complete record of all the complaints received since the date of its last examination pursuant to section 44-107. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition thereof, and the time it took to process each complaint. For purposes of this subdivision, complaint shall mean any written communication primarily expressing a grievance;

(11) Making false or fraudulent statements or representations on or relative to an application for an insurance policy for the purpose of obtaining a fee, commission, money, or other benefit from any insurers, agent, broker, or individual; and

(12) Violating any provision of section 44-125, 44-348, 44-360, 44-361, 44-362 to 44-365, 44-369, 44-392, 44-393, 44-1412, 44-1455, or 44-1498 or section 9, 12, or 17 of this act.

Sec. 71. That section 44-2403, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2403. As used in the Nebraska Property and

Liability Insurance Guaranty Association Act, unless the context otherwise requires:

(1) Account shall mean any one of the three accounts created by section 44-2404;

(2) Director shall mean the Director of Insurance or his or her duly authorized representative;

(3) Association shall mean the Nebraska Property and Liability Insurance Guaranty Association created by section 44-2404;

(4)(a) Covered claim shall mean an unpaid claim which has been timely filed with the liquidator as provided for in ~~section 44-127-01~~ the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act and which arises out of and is within the coverage of an insurance policy to which the Nebraska Property and Liability Insurance Guaranty Association Act applies issued by a member insurer that becomes insolvent after May 26, 1971, and (i) the claimant or insured is a resident of this state at the time of the insured event or (ii) the property from which the claim arises is permanently located in this state. Covered claim shall also include the policyholder's unearned premiums paid by the policyholder on an insurance policy to which the act applies issued by a member insurer that becomes insolvent on or after July 9, 1988. Nothing in this section shall be construed to supersede, abrogate, or limit the common-law ownership of accounts receivable for earned premium, unearned premium, or unearned commission.

(b) Covered claim shall not include any amount due any reinsurer, insurer, liquidator, insurance pool, or underwriting association, as subrogation recoveries or otherwise, a policy deductible or self-insured portion of the claim, a claim for any premium calculated on a retrospective basis, any premiums subject to adjustment after the date of liquidation, or any amount due an attorney or adjuster as fees for services rendered to the insolvent insurer. Subdivision (4)(b) of this section shall not prevent a person from presenting the excluded claim to the insolvent insurer or its liquidator, but the claim shall not be asserted against any other person, including the person to whom benefits were paid or the insured of the insolvent insurer, except to the extent that the claim is outside the coverage or is in excess of the limits of the policy issued by the insolvent insurer;

(5) Insolvent insurer shall mean a member insurer licensed to transact the business of insurance in this state, either at the time the policy was issued

or when the insured event occurred, and against whom a final order of liquidation, with a finding of insolvency, has been entered by a court of competent jurisdiction in the company's state of domicile after September 2, 1977;

(6) Member insurer shall mean any person licensed to write any kind of insurance to which the Nebraska Property and Liability Insurance Guaranty Association Act applies by the provisions of section 44-2402, including the exchange of reciprocal or interinsurance contracts, that is licensed to transact insurance in this state, except assessment associations operating under Chapter 44, article 8, and also excepting unincorporated mutuals;

(7) Net direct written premiums shall mean direct gross premiums written in this state on insurance policies to which the Nebraska Property and Liability Insurance Guaranty Association Act applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. Net direct written premiums shall not include premiums on contracts between insurers or reinsurers;

(8) Person shall mean any individual, corporation, partnership, association, voluntary organization, or reciprocal insurance exchange; and

(9) Insurance shall mean those contracts defined in section 44-102.

Sec. 72. That section 44-2406, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2406. (1) The association shall be obligated only to the extent of the covered claims existing prior to the date a member company becomes an insolvent insurer or arising within thirty days after it has been determined that the insurer is an insolvent insurer, before the policy expiration date, if less than thirty days after such determination, or before the insured replaces the policy or on request effects cancellation, if he or she does so within thirty days of such dates, but such obligation shall include only that amount of each covered claim which is in excess of one hundred dollars and is less than three hundred thousand dollars, except that the association shall pay the amount required by law on any covered claim arising out of a workers' compensation policy. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the face amount of the policy from which the claim arises. The association shall be obligated on covered claims, including those

under a workers' compensation policy, for unearned premiums only for that amount of each covered claim which is in excess of one hundred dollars and is less than ten thousand dollars per policy.

(2) The director shall transmit to the association all covered claims timely filed with him or her pursuant to ~~sections 44-127-01 to 44-127-05~~ the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act. The association shall thereupon be considered to have been designated the director's representative pursuant to ~~section 44-127-07~~ the act, and it shall proceed to investigate, hear, settle, and determine such claims unless the claimant shall, within thirty days from the date the claim is filed with the director, file with the director a written demand that the claim be processed in the liquidation proceedings as a claim not covered by the Nebraska Property and Liability Insurance Guaranty Association Act. In regard to those claims transmitted to the association by the director, the association and claimants shall have all of the rights and obligations and be subject to the same limitations and procedures as are specified in ~~sections 44-127-05 to 44-127-10~~ the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act for the determination of claims.

(3) In the case of claims arising from bodily injury, sickness, or disease, including death resulting therefrom, the amount of any such award shall not exceed the claimant's reasonable expenses incurred for necessary medical, surgical, X-ray, and dental services, including prosthetic devices and necessary ambulance, hospital, professional nursing, and funeral services, and any amounts actually lost by reason of claimant's inability to work and earn wages or salary or their equivalent, but not other income, that would otherwise have been earned in the normal course of such injured claimant's employment. Such award may also include payments in fact made to others, not members of claimant's household, which were reasonably incurred to obtain from such other persons ordinary and necessary services for the production of income in lieu of those services the claimant would have performed for himself or herself had he or she not been injured. The amount of any such award under this subsection shall be reduced by the amount the claimant is entitled to receive as the beneficiary under any health, accident, or disability insurance, under any salary or wage continuation program under which he or she is entitled to benefits, or from his or her employer in the form of workers' compensation

benefits, or any other such benefits to which the claimant is legally entitled, and any claimant who intentionally fails to correctly disclose his or her rights to any such benefits shall forfeit all rights which he or she may have by the provisions of the Nebraska Property and Liability Insurance Guaranty Association Act.

(4) A third party having a covered claim against any insured of an insolvent member insurer may file such claim with the director pursuant to ~~sections 44-127-01 to 44-127-05~~ the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, and the association shall process such claim in the manner specified in subsections (2) and (3) of this section. The filing of such claim shall constitute an unconditional general release of all liability of such insured in connection with the claim unless the association thereafter denies the claim for the reason that the insurance policy issued by the insolvent member company does not afford coverage or unless the claimant, within thirty days from the date of filing his or her claim with the director, files with the director a written demand that the claim be processed in the liquidation proceedings as a claim not covered by the Nebraska Property and Liability Insurance Guaranty Association Act.

Sec. 73. That section 44-2409, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2409. (1) The director shall:

(a) Notify the association of the existence of any insolvent insurer, ~~as defined in section 44-2403,~~ not later than three days after he or she receives notice of the determination of the insolvency and order of liquidation pursuant to ~~section 44-127~~ the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act; and

(b) Upon request of the board of directors of the association, provide the association with a statement of the net direct written premiums of each member insurer.

(2) The director may:

(a) Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer that fails to pay an assessment when due, unless such payment was deferred by the association in the manner provided in ~~sections 44-2401 to 44-2418~~ the Nebraska Property and Liability Insurance Guaranty Association Act, or fails

to comply with the plan of operation; and

(b) Revoke the designation of any servicing facility if he or she finds the claims are not being handled in good faith. Designation of a new servicing agency shall be accomplished in the manner set out in subdivision (1)(b) of section 44-2407, ~~(1)(b)~~

Sec. 74. That section 44-2710, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2710. In addition to the powers and duties enumerated in the Nebraska Life and Health Insurance Guaranty Association Act:

(1) The director shall:

(a) Notify the board of directors of the existence of an impaired or insolvent insurer not later than three days after a determination of impairment or insolvency is made or he or she receives notice of impairment or insolvency;

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

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

(d) In any liquidation or rehabilitation proceeding under Nebraska law involving a domestic insurer, be appointed as the liquidator or rehabilitator. If a foreign or alien member insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or state of entry, the director shall be appointed conservator; and

(e) Transmit to the association all claims on covered policies timely filed with him or her pursuant to sections 44-127-01 to 44-127-05 the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act. The association shall then be considered to have been designated as the director's representative pursuant to section 44-127-07 the act, and it shall proceed to investigate, hear, settle, and determine such claims unless the claimant shall, within thirty days from the date the claim is filed with the director, file with the director a written demand that the claim be processed in the liquidation proceedings as a claim not covered by the act Nebraska Life and Health Insurance Guaranty

Association Act. In regard to those claims transmitted to the association by the director, the association and claimants shall have all of the rights and obligations and be subject to the same limitations and procedures as are specified in sections 44-127-05 to 44-127-10 the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act for the determination of claims;

(2) The director may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the director may levy a forfeiture on any member insurer which fails to pay an assessment when due. Such forfeiture shall not exceed five percent of the unpaid assessment per month, but no forfeiture shall be less than one hundred dollars per month;

(3) Any action of the board of directors or the association may be appealed to the director by any member insurer if such appeal is taken within thirty days of the action being appealed. Any final action or order of the director may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act; and

(4) The liquidator, rehabilitator, or conservator of any impaired or insolvent insurer may notify all interested persons of the effect of the Nebraska Life and Health Insurance Guaranty Association Act.

Sec. 75. That section 44-3276, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-3276. Any supervision, rehabilitation, liquidation, or conservation of a health maintenance organization shall be deemed to be the supervision, rehabilitation, liquidation, or conservation of an insurance company and shall be conducted under the supervision of the director pursuant to the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act. ~~law governing the rehabilitation, liquidation, or conservation of insurance companies. The director may apply for an order directing him to rehabilitate, liquidate, or conserve a health maintenance organization upon any one or more grounds set out in section 44-125, or when in his opinion the continued operation of the health maintenance organization would be hazardous either to the enrollees or to the people of this state.~~

Sec. 76. That section 44-3323, Reissue Revised Statutes of Nebraska, 1943, be amended to read

as follows:

44-3323. Any supervision, rehabilitation, conservation, dissolution, or liquidation of a corporation organized under sections 44-3312 and 44-3313 shall be conducted pursuant to the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act. under the supervision of the department which shall have all powers with respect thereto under the provisions of law with respect to the dissolution and liquidation of an insurance company. Provisions of section 44-127-25 shall be applicable to the liquidation of a corporation organized under sections 44-3312 and 44-3313.

Sec. 77. That section 44-3519, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-3519. Any supervision, rehabilitation, conservation, dissolution, or liquidation of a service company subject to the provisions of sections 44-3501 to 44-3519 shall be under the supervision of the department, which shall have all powers with respect to such dissolution or liquidation granted to it under the laws of this state with respect to the dissolution and liquidation of property and casualty insurance companies conducted pursuant to the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act.

Sec. 78. That section 44-3822, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-3822. Any supervision, rehabilitation, conservation, dissolution, or liquidation of a corporation organized under sections 44-3801 to 44-3826 shall be conducted pursuant to the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act. under the supervision of the department which shall have all powers with respect thereto under the provisions of law with respect to the dissolution and liquidation of an insurance company. Provisions of section 44-127-25 shall be applicable to the liquidation of a corporation organized under sections 44-3801 to 44-3826.

Sec. 79. That section 23, Legislative Bill 320, Ninety-first Legislature, First Session, 1989, be amended to read as follows:

Sec. 23. Any supervision, rehabilitation, conservation, or liquidation of a prepaid limited health service organization shall be deemed to be the supervision, rehabilitation, conservation, or liquidation of an insurance company and shall be conducted pursuant to Chapter 44, article 1 the Nebraska Insurers Supervision, Rehabilitation, and Liquidation

Act. No prepaid limited health service organization shall be subject to the insurance laws, rules, and regulations governing insurance insolvency guaranty funds, nor shall any insurance insolvency guaranty fund provide protection to any individuals entitled to receive limited health services from a prepaid limited health service organization.

Sec. 80. Sections 79 and 83 of this act shall become operative three calendar months after the adjournment of the legislative session. The other sections of this act shall become operative on their effective date.

Sec. 81. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 82. That original sections 44-120, 44-121, 44-124, 44-133, 44-134, 44-134, 44-208.05, 44-3,123, 44-1206.01, 44-1525, 44-2403, 44-2406, 44-2409, 44-2710, 44-3276, 44-3323, 44-3519, and 44-3822, Reissue Revised Statutes of Nebraska, 1943, and also sections 44-125 to 44-127.10 and 44-127.13 to 44-132, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 83. That original section 23, Legislative Bill 320, Ninety-first Legislature, First Session, 1989, is repealed.

Sec. 84. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.