

ENROLLMENT(S)



COUNCIL OF THE DISTRICT OF COLUMBIA

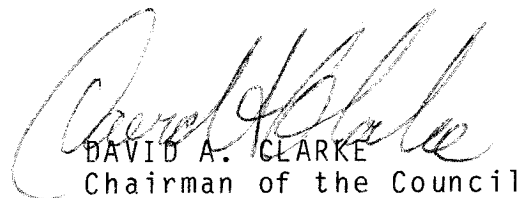
NOTICE

D.C. LAW 10-35

"Insurers Rehabilitation and Liquidation
Act of 1993".

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P. L. 93-198, "the Act", the Council of the District of Columbia adopted Bill No. 10-123 on first and second readings, June 29, 1993, and July 13, 1993, respectively. Following the signature of the Mayor on July 29, 1993, this legislation was assigned Act No. 10-68, published in the August 13, 1993, edition of the D.C. Register, (Vol. 40 page 5773) and transmitted to Congress on August 3, 1993 for a 30-day review, in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 10-35, effective October 15, 1993.


DAVID A. CLARKE
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

August 3,4,5,6

September 7,8,9,10,13,14,15,16,17,20,21,22,23,24,27,28,29,30

October 1,4,5,6,7,12,13,14

AN ACT

Codification

D.C. ACT 10-68

District of Columbia Code

(1994 Supplement)

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

New Chapter 28
Title 35

JULY 29, 1993

To set forth standards to authorize the Superintendent to take over companies for the protection of the interests of insureds, claimants, creditors, and the general public.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Insurers Rehabilitation and Liquidation Act of 1993".

Sec. 2. Definitions.

For the purposes of this act, the term:

New Section
35-2801

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

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

(3) "Delinquency proceeding" means any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving the insurer, and any summary proceeding under section 9.

(4) "District" means the District of Columbia.

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

(A) The issuance or delivery of contracts of insurance to persons resident in the District;

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

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

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

(E) Operating under a license or certificate of authority, as an insurer, issued by the District.

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

(7) "Fair consideration" is given for property or obligation:

(A) When, in exchange for the property or obligation, as a fair equivalent therefore and in good faith, property is conveyed,

services are rendered, an obligation is incurred, or an antecedent debt is satisfied; or

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

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

(9) "Formal delinquency proceeding" means any liquidation or rehabilitation proceeding.

(10) "General assets" means all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, the term "general assets" includes all the 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.

(11) "Guaranty association" means the District of Columbia Property and Casualty Insurance Guaranty Association, and any other similar entity now or hereafter created by the Council of the District of Columbia for the payment of claims of insolvent insurers. The term "foreign guaranty association" means any similar entities now in existence in or hereafter created by the legislature of any other state.

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

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

(i) The inability to pay any obligation within 30 days after it becomes payable; or

(ii) If an assessment be made within 30 days after the date, the inability to pay the obligation 30 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 for its organization; or

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

(C) As to any insurer licensed to do business in the District as of the effective date of this act which does not meet the standard established under subparagraph (B) of this paragraph for a period not to exceed 3 years from the effective date of this act, that it is unable to pay its obligations when they are due or that its admitted assets do not exceed its liabilities plus any required capital contribution ordered by the Superintendent under provisions of the insurance law; and

(D) For purposes of this paragraph, the term "liabilities" shall include, but not be limited to, capital, surplus, or other reserves required by statute or by insurance administration general regulations, or specific requirements imposed by the Superintendent upon a subject company at the time of admission or subsequent thereto.

(13) "Insurer" means 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, any insurance superintendent.

(14) "Person" means corporations, partnerships, associations, trusts, and individual natural persons.

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

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

(17) "Reciprocal state" means any state other than the District in which in substance and effect sections 17a, 51, 52, and 54 through 56 are in force, and in which provisions are in force requiring that the Superintendent or equivalent official be the receiver of a delinquent insurer, and in which fraudulent conveyances and preferential transfers by a delinquent insurer may be avoided.

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

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

(20) "State" means any state, district, or territory of the United States and the Panama Canal Zone.

(21) "Superintendent" or "Superintendent of Insurance" means the Superintendent of Insurance of the District of Columbia.

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

Sec. 3. Applicability.

The proceedings authorized by this act may be applied to:

New Section
35-2802

(1) All insurers who are doing, or have done, an insurance business in the District, 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 the District;

(3) All insurers who have insureds resident in the District;

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

(5) All title insurance companies subject to the laws of the District;

(6) All prepaid health care delivery plans;

(7) All nonprofit service plans and all fraternal benefit societies and beneficial societies; and

(8) All insurers making contracts of fidelity or surety contracts or other negotiations preliminary to the executions of the contracts.

Sec. 4. Jurisdiction and venue.

New Section
35-2803

(a) No delinquency proceeding shall be commenced under this act by anyone other than the Superintendent of Insurance of the District of Columbia and no court shall have jurisdiction to entertain, hear, or determine any proceeding commenced by any other person.

(b) No court of the District of Columbia 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 these proceedings other than in accordance with this act.

(c) In addition to other grounds for jurisdiction provided by law of the District, the Superior Court of the District of Columbia has jurisdiction over a person served pursuant to the Superior Court Rules of Civil Procedure or other applicable provisions of law in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in the District:

(1) If the person served is an agent, broker, or other person who has at any time written policies of insurance for or has acted in any manner whatsoever on behalf of an insurer against which a delinquency proceeding has been instituted, in any action resulting from or incident to such a relationship with the insurer;

(2) If the person served is a reinsurer who has at any time entered into a contract of reinsurance with an insurer against which a delinquency proceeding has been instituted, or is an agent or broker of or for the reinsurer, in any action on or incident to the reinsurance contract;

(3) If the person served is or has been an officer, director, manager, trustee, organizer, promoter, or other person in a position of comparable authority or influence over an insurer against which a delinquency proceeding has been instituted, in any action resulting from or incident to such a relationship with the insurer;

(4) If the person served is or was at the time of the institution of the delinquency proceeding against the insurer holding assets in which the receiver claims an interest on behalf of the insurer, in any action concerning the assets; or

(5) If the person served is obligated to the insurer, in any way whatsoever, in any action on or incident to the obligation.

(d) 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 the District, the court may enter an appropriate order to stay further proceedings on the action in the District.

(e) All action authorized in this section shall be brought in the Superior Court of the District of Columbia.

Sec. 5. Injunctions and orders.

New Section
35-2804

(a) Any receiver appointed in a proceeding under this act may at any time apply for, and any court of general jurisdiction may grant, restraining orders, preliminary and permanent injunctions, and other orders deemed necessary and proper to prevent:

- (1) The transaction of further business;
- (2) The transfer of property;
- (3) Interference with the receiver or with a proceeding under this act;
- (4) Waste of the insurer's assets;
- (5) Dissipation and transfer of bank accounts;
- (6) The institution or further prosecution of any actions or proceedings;
- (7) The obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets or its policyholders;
- (8) The levying of execution against the insurer, its assets, or its policyholders;
- (9) The making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer;
- (10) The withholding from the receiver of books, accounts, documents, or other records relating to the business of the insurer; or
- (11) 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 this act.

(b) The receiver may apply to any court outside of the jurisdiction for the relief described in subsection (a) of this section.

Sec. 6. Cooperation of officers, owners, and employees.

New Section
35-2805

(a) 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 Superintendent in any proceeding under this act or any investigation preliminary to the proceeding. For the purposes of this section, the term "person" shall include any person who exercises control directly or indirectly over activities of the insurer through any holding company or other affiliate of the insurer. The term "to cooperate" shall include, but shall not be limited to, the following:

- (1) To reply promptly in writing to any inquiry from the Superintendent requesting such a reply; and
- (2) To make available to the Superintendent any books, accounts, documents, or other records or information or property of or pertaining to the insurer and in his possession, custody, or control.

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

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

(d) Any person included within subsection (a) of this section who fails to cooperate with the Superintendent, or any person who obstructs or interferes with the Superintendent in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto, or who

violates any order of the Superintendent issued validly under this act may:

- (1) Be sentenced to pay a fine not exceeding \$10,000, or imprisonment for a term of not more than 1 year, or both; or
- (2) After a hearing, be subject to the imposition by the Superintendent of a civil penalty not to exceed \$10,000 and be subject further to the revocation or suspension of any insurance license issued by the Superintendent.

Sec. 7. Continuation of delinquency proceedings.

New Section
35-2806

Every proceeding commenced under sections 20, 21, and 22 of chapter II of the Life Insurance Act, approved June 19, 1934 (48 Stat. 1135; D.C. Code §§ 35-419 through 35-421), and sections 5, 6, and 7 of chapter II of the Fire and Casualty Act, approved October 9, 1940 (54 Stat. 1067; D.C. Code §§ 35-1508 through 35-1510), shall be deemed to have commenced under this act for the purpose of continuing the proceeding, except that in the discretion of the Superintendent the proceeding may be continued, in whole or in part, as it would have been continued had this act not been enacted.

Sec. 8. Condition on release from delinquency proceedings.

New Section
35-2807

No insurer that is subject to any delinquency proceedings, whether formal or informal (administrative or judicial), shall:

- (1) Be released from the proceeding, unless the proceeding is converted into a judicial rehabilitation or liquidation proceeding;
- (2) Be permitted to solicit or accept new business, or request or accept the restoration of any suspended or revoked license or certificate of authority;
- (3) Be returned to the control of its shareholders or private management; or
- (4) 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 and interest on all payments and expenses, shall have been repaid to the guaranty associations or a plan of repayment by the insurer shall have been approved by the guaranty association.

Sec. 9. Court's temporary seizure order.

New Section
35-2808

(a) The Superintendent may file in the Superior Court of the District of Columbia a petition alleging, with respect to a domestic insurer, that there exists grounds that would justify a court order for a formal delinquency proceeding against an insurer under this act, and that the interests of policyholders, creditors, or the public will be endangered by delay in the Superintendent's determination of the financial condition of the insurer.

(b) Upon a filing under subsection (a) of this section, the court may issue, ex parte and without a hearing, the requested order which shall direct the Superintendent to take possession and control of all or 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 enjoins 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 Superintendent.

(c) The court shall specify in the order its duration, which shall be the time the court deems necessary for the Superintendent 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 hearings it deems desirable after notice it deems appropriate, and may extend, shorten, or modify the terms of the seizure order. The court shall vacate the seizure order if the Superintendent fails to commence a formal proceeding under this act after having had a reasonable opportunity to do so. An order of the court pursuant to a formal proceeding under this act shall ipso facto vacate the seizure order.

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

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

(f) 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. An order that notice be given shall not stay the effect of any order previously issued by the court.

Sec. 10. Confidentiality of records.

New Section
35-2809

In all proceedings and judicial reviews under section 9, all records of the insurer, other documents, all Insurance Administration files, 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, unless and until the Superior Court of the District of Columbia, after hearing arguments from the parties in chambers, shall order otherwise, or unless the insurer requests that the matter be made public. Until such a court order, all papers filed with the clerk of the Superior Court of the District of Columbia shall be held in a confidential file.

Sec. 11. Grounds for rehabilitation.

New Section
35-2810

The Superintendent may apply by petition to the Superior Court of the District of Columbia for an order authorizing him or her to rehabilitate a domestic insurer or an alien insurer domiciled in the District based on any 1 or more of the following grounds:

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

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

(3) The insurer has failed to remove any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, employee, or other person, if the person has been found after notice and hearing by the Superintendent 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 in any way that affects the insurer's business.

(5) Any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, director or trustee, employee, or other person, has refused to be examined under oath by the Superintendent concerning its affairs, whether in the District or elsewhere, and after reasonable notice of the fact, the insurer has failed promptly and effectively to terminate its relationship with that person, or to prevent that person from influencing the insurer's management.

(6) After demand by the Superintendent under this act, or any law authorizing the Superintendent to examine the operations of an insurer, the insurer has failed to promptly make available for examination any of its own property, books, accounts, documents, or other records, or those of any subsidiary or related company within the control of the insurer, or those of any person having executive authority in the insurer so far as they pertain to the insurer.

(7) Without first obtaining the written consent of the Superintendent, the insurer has transferred, or attempted to transfer, in a manner contrary to the Holding Company System Act of 1993, 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 other than as authorized under the insurance laws of the District, and the appointment has been made or is imminent, and the appointment would deprive the courts of the District of Columbia of jurisdiction or might prejudice the orderly delinquency proceedings under this act.

(9) The insurer, within the previous 4 years, willfully violated its charter or articles of incorporation, its bylaws, any insurance law of the District, or any valid order of the Superintendent.

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

(11) The insurer has failed to file its annual report or other financial report required by statute within the time allowed by law, and,

after written demand by the Superintendent, has failed to give an adequate explanation immediately.

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

Sec. 12. Rehabilitation orders.

New Section
35-2811

(a) An order to rehabilitate the business of a domestic insurer, or an alien insurer domiciled in the District, shall appoint the Superintendent 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 Superior Court of the District of Columbia shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with the recorder 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.

(b) Any order issued under this section shall require accountings to the court by the rehabilitator. Accountings shall be at intervals the court specifies in its order, but no less frequently than semiannually. Each accounting shall include a report concerning the rehabilitator's opinion as to the likelihood that a plan under section 13(d) will be prepared by the rehabilitator and the timetable for doing so.

(c) Entry of an order of rehabilitation shall not constitute an anticipatory breach of any contracts of the insurer nor shall it be grounds for retroactive revocation or retroactive cancellation of any contracts of the insurer, unless the revocation or cancellation is done by the rehabilitator pursuant to section 13.

Sec. 13. Powers and duties of the rehabilitator.

New Section
35-2812

(a) The Superintendent as rehabilitator may appoint 1 or more special deputies, who shall have all the powers and responsibilities of the rehabilitator granted under this section, and the Superintendent may employ any counsel, clerks, and assistants 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 Superintendent, 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 Superintendent. The Superintendent, as rehabilitator, may, with the approval of the court, appoint an advisory committee of policyholders, claimants, or other creditors, including guaranty associations, should that committee be deemed necessary. The advisory committee shall serve at the pleasure of the Superintendent and shall serve without compensation other than reimbursement for reasonable travel and per diem living expenses. No other committee of any nature shall be appointed by the Superintendent or the court in rehabilitation proceedings conducted under this act.

(b) In the event that the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the Superintendent may advance the costs so incurred out of any

appropriation for the maintenance of the insurance administration. Any amounts so advanced for expenses of administration shall be repaid to the Superintendent for the use of the Insurance Administration out of the first available money of the insurer.

(c) The rehabilitator may take such action as deemed necessary or appropriate to reform and revitalize the insurer. The rehabilitator shall have all the powers of the directors, officers, and managers, whose authority shall be suspended, except as they are redelegated by the rehabilitator. The rehabilitator 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.

(d) 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.

(e) If the rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer is appropriate, the rehabilitator shall prepare a plan to effect the changes. Upon application of the rehabilitator for approval of the plan, and after any notice and hearings 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 imposition of a moratorium upon loan and cash surrender rights under policies, for such a period and to such an extent as may be necessary.

(f) The rehabilitator shall have the power under sections 25 and 26 to avoid fraudulent transfers.

Sec. 14. Actions by and against the rehabilitator.

New Section
35-2813

(a) Any court in the District 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 90 days and any additional time necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The rehabilitator shall take any action respecting the pending litigation deemed 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 the District and shall petition the court having jurisdiction over that litigation for a stay whenever necessary to protect the estate of the insurer.

(b) 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 against the insurer that might have been commenced when the petition was filed may be commenced

for at least 60 days after the order of rehabilitation is entered or the petition is denied. The rehabilitator may, upon an order for rehabilitation, within 1 year or any other longer time as applicable law may permit, institute an action or proceeding on behalf of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which the order is entered.

(c) 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 the association is or may become liable to act as a result of the rehabilitation.

Sec. 15. Termination of rehabilitation.

New Section
35-2814

(a) Whenever the Superintendent 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 Superintendent may petition the Superior Court of the District of Columbia for an order of liquidation. A petition under this subsection shall have the same effect as a petition under section 16. The Superior Court of the District of Columbia shall permit the directors of the insurer to take any action reasonably necessary to defend against the petition and may order payment from the estate of the insurer of the costs and other expenses of defense as justice may require.

(b) The protection of the interests of insureds, claimants, and the public requires the timely performance of all insurance policy obligations. If the payment of policy obligations is suspended in substantial part for a period of 6 months at any time after the appointment of the rehabilitator and the rehabilitator has not filed an application for approval of a plan under section 13(d), the rehabilitator shall petition the court for an order of liquidation on grounds of insolvency.

(c) The rehabilitator may at any time petition the Superior Court of the District of Columbia 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 the costs and other expenses of the petition as justice may require. If the Superior Court of the District of Columbia finds that rehabilitation has been accomplished and that grounds for rehabilitation under section 11 no longer exist, it shall order that the insurer be restored to possession of its property and the control of the business. The Superior Court of the District of Columbia may also make that finding and issue that order at any time upon its own motion.

Sec. 16. Grounds for liquidation.

New Section
35-2815

The Superintendent may petition the Superior Court of the District of Columbia for an order directing him or her to liquidate a domestic insurer or an alien insurer domiciled in the District on the basis:

- (1) Of any ground for an order of rehabilitation as specified in section 11, 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 a condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public.

Sec. 17. Liquidation orders.

New Section

(a) An order to liquidate the business of a domestic insurer shall appoint the Superintendent and his or her successors in office liquidator and shall direct the liquidator 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 Superior Court of the District of Columbia, or, in the case of real estate, with the recorder 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 recorder of deeds would have imparted.

35-2816

(b) Upon issuance of the order, the rights and liabilities of any insurer and of its creditors, policyholders, shareholders, members and all other persons interested in its estate shall become fixed as of the date of entry of the order of liquidation, except as provided in sections 18 and 36.

(c) An order to liquidate the business of an alien insurer domiciled in the District 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.

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

(e) Any order issued under this section shall require financial reports to the court by the liquidator. Financial reports shall include, at a minimum, the assets and liabilities of the insurer and all funds received or disbursed by the liquidator during the current period. Financial reports shall be filed within 1 year of the liquidation order and at least annually thereafter.

(f)(1) Within 5 days of the effective date of this act, or, if later, within 5 days after the initiation of an appeal of an order of liquidation, which order has not been stayed, the Superintendent shall present for the court's approval a plan for the continued performance of the defendant company's policy claims obligations, including the duty to defend insureds under liability insurance policies, during the pendency of an appeal. Such a plan shall provide for the continued performance and payment of policy claims obligations in the normal course of events, notwithstanding the grounds alleged in support of the order of liquidation including the ground of insolvency. In the event the defendant company's financial condition will not, in the judgment of the Superintendent, support the full performance of all policy claims obligations during the appeal pendency period, the plan may prefer the claims of certain policyholders and claimants over creditors and interested

parties as well as other policyholders and claimants, as the Superintendent finds to be fair and equitable considering the relative circumstances of the policyholders and claimants. The court shall examine the plan submitted by the Superintendent, and, if it finds the plan to be in the best interests of the parties, the court shall approve the plan. No action shall lie against the Superintendent or any of his deputies, agents, clerks, assistants, or attorneys by any party based on preference in an appeal pendency plan approved by the court.

(2) The appeal pendency plan shall not supersede or affect the obligations of any insurance guaranty association.

(3) Any plans shall provide for equitable adjustments to be made by the liquidator to any distributions of assets to guaranty associations, in the event that the liquidator pays claims from assets of the estate, which would otherwise be the obligations of any particular guaranty association but for the appeal of the order of liquidation, so that all guaranty associations equally benefit on a pro rata basis from the assets of the estate. Further, in the event an order of liquidation is set aside upon any appeal, the company shall not be released from delinquency proceedings unless and until all funds advanced by any guaranty association, including reasonable administrative expenses in connection therewith relating to obligations of the company, shall be repaid in full, together with interest at the judgment rate of interest, or unless an arrangement for repayment has been made with the consent of all applicable guaranty associations.

Sec. 18. Continuance of coverage.

New Section
35-2817

(a) All policies, including bonds and other noncancellable business, 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:

(1) A period of 30 days from the date of entry of the liquidation orders;

(2) The expiration of the policy coverage;

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

(4) The liquidator has effected a transfer of the policy obligation pursuant to section 20(a)(9); or

(5) The date proposed by the liquidator and approved by the court to cancel coverage.

(b) An order or liquidation under section 17 shall terminate coverages at the time specified in subsection (a) of this section for purposes of any other statute.

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

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

Sec. 19. Dissolution of insurer.

New Section
35-2818

The Superintendent may petition for an order dissolving the corporate existence of a domestic insurer or the United States branch of an alien insurer domiciled in the District at the time he or she applies for a liquidation order. The court shall order dissolution of the corporation upon petition by the Superintendent 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. 20. Powers of liquidator.

New Section
35-2819

(a) The liquidator shall have the power:

(1) To appoint a special deputy or deputies to act for him or her under this 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;

(2) To hire employees, agents, legal counsel, actuaries, accountants, appraisers, consultants, and other personnel he or she deems necessary to assist in the liquidation;

(3) To appoint, with the approval of the court, an advisory committee of policyholders, claimants, or other creditors, including guaranty associations, should such a committee be deemed necessary. The committee shall serve at the pleasure of the Superintendent and shall serve without compensation other than reimbursement for reasonable travel and per diem living expenses. No other committee of any nature shall be appointed by the Superintendent or the court in liquidation proceedings conducted under this act;

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

(5) 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. In the event that the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the Superintendent may advance the costs incurred out of any appropriation for the maintenance of the Insurance Administration. Any amounts advanced for expenses of administration shall be repaid to the Superintendent for the use of the Insurance Administration out of the first available moneys of the insurer;

(6) To hold hearings, subpoena witnesses to compel their attendance, administer oaths, examine any person under oath, and 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 the liquidator deems relevant to the inquiry;

(7) To audit the books and records of all agents of the insurer insofar as those records relate to the business activities of the insurer;

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

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

(B) To do any other acts necessary or expedient to collect, conserve, or protect assets or property of the insurer, including the power to sell, compound, compromise, or assign debts for purposes of collection upon terms and conditions as he or she deems best; and

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

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

(10) 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 41;

(11) 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 terms and conditions that are fair and reasonable. The liquidator shall also have power to execute, acknowledge, and deliver all deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation;

(12) 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. Any funds borrowed may be repaid as an administrative expense and have priority over any other claims in Class 1 under the priority of distribution;

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

(14) 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 the District or elsewhere, and to abandon the prosecution of claims he or she deems unprofitable to pursue further. If the insurer is dissolved under section 19, the liquidator shall have the power to apply to any court in the District or elsewhere for leave to substitute himself or herself for the insurer as plaintiff;

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

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

(17) To deposit in 1 or more banks in the District the sums required for meeting current administration expenses and dividend distributions;

(18) To invest all sums not currently needed, subject to the same standards that would apply if those sums were invested by the insurer, unless the court orders otherwise;

(19) To file any necessary documents for record in the office of any recorder of deeds or record office in the District or elsewhere where property of the insurer is located;

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

(21) 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 25 through 27;

(22) 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;

(23) To enter into agreements with any receiver or superintendent of insurance of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states; and

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

(b)(1) If a company placed in liquidation issued liability policies on a claims-made basis, which provided an option to purchase an extended period to report claims, the liquidator may make available to holders of the policies, for a charge, an extended period to report claims as stated herein. 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 18 months from the order of liquidation.

(2) 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 an extended period within 60 days after the order of liquidation at a charge to be determined by the liquidator subject to approval of the court. The offer shall be deemed rejected unless the offer is accepted in writing and the charge is paid within 90 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 reports claims.

(c) 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 other acts not specifically enumerated or otherwise provided for, necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation.

(d) Notwithstanding the powers of the liquidator stated in subsections (a) and (b) of this section, the liquidator shall have no

obligation to defend claims or to continue to defend claims subsequent to the entry of a liquidation order.

Sec. 21. Notice to creditors and others.

New Section

(a) Unless the court otherwise directs, the liquidator shall give, or cause to be given, notice of the liquidation order as soon as possible: 35-2820

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

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

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

(4) 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

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

(b) Notice to potential claimants under subsection (a) of this section shall require claimants to file with the liquidator their claims, together with proper proofs under section 35, 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 18 months following the order of liquidation. The liquidator need not require persons claiming cash surrender values or other investment values in life insurance and annuities to file a claim. All claimants shall have a duty to keep the liquidator informed of any changes of address.

(c)(1) Notice under subsection (a) of this section to agents of the insurer and to potential claimants who are policyholders shall include, where applicable, notice that coverage by state guaranty associations may be available for all or part of policy benefits in accordance with applicable state guaranty laws.

(2) The liquidator shall promptly provide to the guaranty associations any information concerning the identities and addresses of the policyholders and their policy coverages as may be within the liquidator's possession or control, and otherwise cooperate with guaranty associations to assist them in providing to the policyholders timely notice of the guaranty associations' coverage of policy benefits, including, as applicable, coverage of claims and continuation or termination of coverages.

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

Sec. 22. Duties of agents.

New Section

(a) Every person who receives notice in the form prescribed in section 21 that an insurer which he represents as an agent is the subject of a liquidation order shall, within 30 days of the notice, provide to the liquidator (in addition to the information he may be required to provide pursuant to section 6) the information in the agent's records related to any policy issued by the insurer through the agent, and, if the agent

35-2821

is a general agent, the information in the general agent's records related to any policy issued by the insurer through an agent under contract to him or her, including the name and address of such subagent. 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 where the ownership of the expiration of the policy has been transferred to another.

(b) Any agent failing to provide information to the liquidator as required in subsection (a) of this section may be subject to payment of a penalty of not more than \$1,000 and may have his or her licenses suspended, the penalty to be imposed after a hearing held by the Superintendent.

Sec. 23. Actions by and against liquidator.

New Section
35-2822

(a) Upon issuance of an order appointing a liquidator of a domestic insurer or of an alien insurer domiciled in the District, no action at law or equity or in arbitration shall be brought against the insurer or liquidator, whether in the District or elsewhere, nor shall any existing actions be maintained or further presented after issuance of the order. The courts of the District 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 the 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 the District, 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.

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

(c) No statute of limitation 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 60 days after the petition is denied.

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

Sec. 24. Collection and list of assets.

New Section
35-2823

(a) As soon as practicable after the liquidation order, but not later than 120 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 Superior Court of the District of Columbia, and 1 copy shall be retained for the liquidator's files. All amendments and supplements shall be similarly filed.

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

(c) A submission to the court for disbursement of assets in accordance with section 33 fulfills the requirements of subsection (a) of this section.

Sec. 25. Fraudulent transfer prior to petition.

New Section
35-2824

(a) Every transfer made or suffered and every obligation incurred by an insurer within 1 year prior to the filing of a successful petition for rehabilitation or liquidation under this act is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors. A transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under this 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 the transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment. The court may, on due notice, order such a transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

(b)(1) A transfer of property other than real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee under section 27(c).

(2) 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.

(3) 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.

(4) 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.

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

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

(1) 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

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

(d) Every person receiving any property from the insurer, or any benefit thereof, which is a fraudulent transfer under subsection (a) of this section shall be personally liable therefore and shall be bound to account to the liquidator.

Sec. 26. Fraudulent transfer after petition.

New Section
35-2825

(a) 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, for which amount the transferee shall have a lien on the property so transferred. The commencement of a proceeding in rehabilitation or liquidation shall be constructive notice upon the recording of a copy of the petition for or order of rehabilitation or liquidation with the recorder of deeds in the county where any real property in question is located. The exercise by a court of the United States or any state or jurisdiction to authorize or effect a judicial sale of real property of the insurer within any county in any state shall not be impaired by the pendency of such a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

(b) After a petition for rehabilitation or liquidation 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:

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

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

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

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

(c) Every person receiving any property from the insurer or any benefit thereof which is a fraudulent transfer under subsection (a) of this section shall be personally liable therefore and shall be bound to account to the liquidator.

(d) Nothing in this act shall impair the negotiability of currency or negotiable instruments.

Sec. 27. Voidable preferences and liens.

New Section
35-2826

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

(2) Any preference may be avoided by the liquidator if:

(A) The insurer was insolvent at the time of the transfer;

(B) The transfer was made within 4 months before the filing of the petition;

(C) The creditor receiving it or to be benefited thereby or his agent acting with reference thereto had, at the time when the transfer was made, reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or

(D) The creditor receiving it was an officer, or any employee or attorney or other person who was in fact in a position of comparable influence in the insurer to an officer whether or not he or she held such a position, or any shareholder holding directly or indirectly more than 5% 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.

(3) Where the preference is voidable, the liquidator may recover the property or, if it has been converted, its value from any person who has received or converted the property, except where a bona fide purchaser or lienor has given less than fair equivalent value, he or she shall have a lien upon the property to the extent of the consideration actually given by him or her. Where a preference by way of lien or security title is voidable, the court may on due notice order the lien or title to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

(b)(1) 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.

(2) 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.

(3) 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.

(4) 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.

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

(c)(1) A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of the proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.

(2) A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee, or a purchaser could obtain rights superior to the rights of a transferee within the meaning of subsection (b) of this section, if the consequences would follow only from the lien or purchase itself, or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. Such a lien could not, however, become superior and such a purchase could not create superior rights for the purpose of subsection (b) 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.

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

(e) If any lien deemed voidable under subsection (a)(2) 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 this act which results in a liquidation order, the indemnifying transfer or lien shall also be deemed voidable.

(f) The property affected by any lien deemed voidable under subsections (a) and (e) of this section shall be discharged from the lien, and that property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator, except that the court may on due notice order such a lien to be preserved for the benefit of the estate and the court may direct that such a conveyance

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be executed as may be proper or adequate to evidence the title of the liquidator.

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

(h) 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, where the property is retained under subsection (g) of this section, to the extent of the amount paid to the liquidator.

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

(j) If an insurer, directly or indirectly, within 4 months before the filing of a successful petition for liquidation under this act, or at any time in contemplation of a proceeding to liquidate it, pays money or transfers property to an attorney-at-law 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 provided that where the attorney is in a position of influence in the insurer or an affiliate payment of any money or the transfer of any property to the attorney-at-law for services rendered or to be rendered shall be governed by the provisions of subsection (a)(2)(d) of this section.

(k)(1) 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 is permissible to infer that there is a reasonable cause to so believe if the transfer was made within 4 months before the date of filing of this successful petition for liquidation.

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

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

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Sec. 28. Claims of holders of void or voidable rights.

New Section
35-2827

(a) No claims of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance voidable under this 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 30 days from the date of the entering of the final judgment, except that the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

(b) A claim allowable under subsection (a) of this section by reason of the avoidance, whether voluntary or involuntary, or a preference, lien, conveyance, transfer, assignment, or encumbrance, may be filed as an excused last filing under section 34 if filed within 30 days from the date of the avoidance, or within the further time allowed by the court under subsection (a) of this section.

Sec. 29. Setoffs.

New Section
35-2828

(a) Mutual debts or mutual credits, whether arising out of 1 or more contracts between the insurer and another person in connection with any action or proceeding under this act, shall be set off and the balance only shall be allowed or paid, except as provided in subsection (b) of this section and section 32.

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

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

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

(3) The obligation of the insurer is owed to an affiliate of the person, or any other entity or association other than the person;

(4) The obligation of the person is owed to an affiliate of the insurer, or any other entity or association other than the insurer;

(5) The obligation of the person is to pay an assessment levied against the members or subscribers of the insurer, or is in any other way in the nature of a capital contribution; or

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

(c) The receiver shall provide persons with accounting statements identifying all debts which are due and payable. Where a person owes to the insurer amounts which are due and payable, against which the person asserts setoff of mutual credits which may become due and payable from the insurer in the future, the person shall promptly pay to the receiver the amounts due and payable; provided that, notwithstanding section 41 or any other provision of this act, the receiver shall promptly and fully refund, to the extent of the person's prior payments, any mutual credits that become due and payable to the person by the insurer. Prior to the termination of any proceeding under this act, the amount due the person shall be determined for the purpose of the receiver making a final refund, if any.

(d) These amendments shall be effective 1 year from the date of enactment and shall apply to all contracts entered into, renewed, extended, or amended on or after that date, and to debts or credits arising from any business written or transactions occurring after the effective date pursuant to any such contract. For purposes of this section, any change in the terms of, or consideration for, any such contract shall be deemed an amendment.

Sec. 30. Assessments.

New Section
35-2829

(a) As soon as practicable but not more than 2 years from the date of an order of liquidation under section 17 of an insurer issuing assessable policies, the liquidator shall make a report to the court setting forth:

- (1) The reasonable value of the assets of the insurer;
- (2) The insurer's probable total liabilities;
- (3) The probable aggregate amount of the assessment necessary to pay all claims of creditors and expenses in full, including expenses of administration and costs of collecting the assessment; and
- (4) A recommendation as to whether or not an assessment should be made and in what amount.

(b)(1) Upon the basis of the report provided in subsection (a) of this section, including any supplements and amendments, the Superior Court of the District of Columbia may levy 1 or more assessments against all members of the insurer who are subject to assessment.

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

(c) After the levy of assessment under subsection (b) 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.

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

(e)(1) If a member does not appear and serve duly verified objections upon the liquidator on or before the return date of the order to show cause under subsection (c) of this section, the court shall issue an order adjudging the member liable for the amount of the assessment against him or her pursuant to subsection (c) of this section, together with costs, and the liquidator shall have a judgment against the member.

(2) If on or before the return date, the member appears and serves duly verified objections upon the liquidator, the Superintendent may hear and determine the matter, or may appoint a referee to hear it, and issue such an order as the facts warrant. In the event that the Superintendent determines that the objections do not warrant relief from assessment, the member may request that the court review the matter and vacate the order to show cause.

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

Sec. 31. Reinsurer's liability.

New Section
35-3830

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. 32. Recovery of premiums owed.

New Section
35-2831

(a)(1) 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 premium for the full policy term due the insurer at the time of the declaration of insolvency, whether earned or unearned, as shown on the records of the insurer. The liquidator shall also have the right to recover from such a person any part of an unearned premium that represents the commission of such a person. 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.

(2) 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.

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

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

(2) Impose a penalty of not more than \$1,000 for each act in violation of this section by the party or parties.

(c) Before the Superintendent takes any action as set forth in subsection (b) 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 10 days thereafter, when a hearing on the matter shall be held. After the hearing, or upon failure of the accused to appear at the hearing, the Superintendent, if he or she finds the violation, shall impose any of the penalties under subsection (b) of this section as he or she deems advisable.

(d) When the Superintendent takes action in any or all of the ways set out in subsection (b) of this section, the party aggrieved may appeal from the action to the Superior Court of the District of Columbia.

Sec. 33. Domiciliary liquidator's proposal to distribute assets.

New Section
35-2832

(a) Within 120 days of a final determination of insolvency of an insurer by a court of competent jurisdiction of the District of Columbia, 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 the assets become available, to a guaranty association or foreign guaranty association having obligations because of the insolvency. If the liquidator determines that there are insufficient assets to disburse, the

application required by this section shall be considered satisfied by a filing by the liquidator stating the reasons for this determination.

(b) The proposal required by subsection (a) of this section shall at least include provisions for:

(1) Reserving amounts for the payment of expenses of administration and the payment of claims of secured creditors, to the extent of the value of the security held, and claims falling within the priorities established in section 41, classes 1 and 2;

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

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

(4) The securing by the liquidator, from each of the associations entitled to disbursements pursuant to this section, of an agreement to return to the liquidator those assets, together with income earned on assets previously disbursed, required to pay claims of secured creditors and claims falling within the priorities established in section 41 in accordance with those priorities. No bond shall be required of such an association; and

(5) 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 the assets, and any other matter the court may direct.

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

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

(e) Notice of the application shall be given to the association in and to the commissioners of insurance of each of the states. Such a notice shall be deemed to have been given when deposited in the United States certified mails, first class postage prepaid, at least 30 days prior to submission of the application to the court. Action on the application may be taken by the court provided the above required notice has been given, and, provided further, that the liquidator's proposal complies with subsection (b)(1) and (2) of this section.

Sec. 34. Filing of claims.

(a) Proof of all claims shall be filed with the liquidator in the form required by section 35 on or before the last day for filing specified in the notice required under section 21, 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.

New Section
35-2833

(b) 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 such a payment will not prejudice the orderly administration of the liquidation, under the following circumstances:

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

(2) A transfer to a creditor was avoided under sections 25 through 27, or was voluntarily surrendered under section 28, and that the filing satisfies the conditions of section 28; or

(3) The valuation under section 40 of security held by a secured creditor shows a deficiency, which is filed within 30 days after the valuation.

(c) The liquidator shall permit late filing claims to share in distributions, whether past or future, as if they were not late, if the 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 where the payments were made and expenses incurred as provided by law.

(d) The liquidator may consider any claim filed late, which is not covered by subsection (b) 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. 35. Proof of claim.

New Section
35-2834

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

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

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

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

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

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

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

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

(b) No claim need be considered or allowed if it does not contain all the information in subsection (a) 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.

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

(d) 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 4 months before the filing of the petition need be considered as evidence of liability or of the quantum of damages.

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

Sec. 36. Special claims.

New Section
35-2835

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

(b) A claim may be allowed even if contingent, if it is filed in accordance with section 34. 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.

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

(d) Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to the issuance of any order of rehabilitation or liquidation under section 12 or 17.

Sec. 37. Special provisions for third party claims.

New Section
35-2836

(a) Whenever any third party asserts a cause of action against an insured of an insurer in liquidation, the third party may file a claim with the liquidator.

(b) Whether or not the third party files a claim, the insured may file a claim on his or her own behalf in the liquidation. If the insured fails to file a claim by the date for filing claims specified in the order of liquidation or within 60 days after mailing of the notice required by section 21, whichever is later, he or she is an unexcused late filer.

(c) The liquidator shall make his or her recommendations to the court under section 41 for the allowance of an insured's claim under subsection (b) 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, he or she 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 the amount actually recovered from the insured by action, or paid by agreement, plus the reasonable

costs and expense of defense, or the amount allowed on the claims by the court. After all claims are settled or barred, any sum remaining from the amount withheld shall revert to the undistributed assets of the insurer. Delay in final payment under this subsection shall not be a reason for unreasonable delay of final distribution and discharge of the liquidator.

(d) 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 (c) of this section. If any insured's claim is subsequently reduced under subsection (c) of this section, the amount thus freed shall be apportioned ratably among the claims which have been reduced under this subsection.

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

Sec. 38. Disputed claims.

New Section
35-2837

(a) When a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant, or his or her attorney, by first class mail at the address shown in the proof of claim. Within 60 days from the mailing of the notice, the claimant may file his or her objections with the liquidator. If no filing is made, the claimant may not further object to the determination.

(b) 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 10 nor more than 30 days before the date of the hearing. The matter may be heard by the court or by a court-appointed referee who shall submit findings of fact along with his or her recommendation.

Sec. 39. Claims of surety.

New Section
35-2838

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

Sec. 40. Secured creditor's claims.

New Section
35-2839

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

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

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

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

Sec. 41. Priority of distribution.

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 act. Every claim in each class shall be paid in full or adequate funds retained for the 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:

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

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

(2) Compensation for all authorized services rendered in the rehabilitation and liquidation;

(3) Any necessary filing fees;

(4) The fees and mileage payable to witnesses;

(5) Authorized reasonable attorney's fees and other professional services rendered in the rehabilitation and liquidation; and

(6) The reasonable expenses of a guaranty association or foreign guaranty association for unallocated loss adjustment expenses.

(b) Class 2. Reasonable compensation to employees for services performed to the extent that they do not exceed 2 months of monetary compensation and represent payment for services performed within 1 year before the filing of the petition for liquidation, or, if rehabilitation preceded liquidation, within 1 year before the filing of the petition for rehabilitation. Principal officers and directors shall not be entitled to the benefit of this priority except as otherwise approved by the liquidator and the court. Such a priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees.

(c) Class 3. All claims under policies including the claims of the federal or any state or local government for losses incurred ("loss claims"), including third party claims 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

New Section
35-2840

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.

(d) Class 4. Claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors, including claims of ceding and assuming companies in their capacity as general creditors.

(e) Class 5. Claims of the federal or any state or local government, except those under Class 3. 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 the claims shall be postponed to the class of claims under subsection (h) of this section.

(f) Class 6. Claims filed late or any other claims other than claims under subsection (g) and (h) of this section.

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

(h) Class 8. The claims of shareholders or other owners in their capacity as shareholders.

Sec. 42. Liquidator's recommendations to the court.

New Section
38-2841

(a) The liquidator shall review all claims duly filed in the liquidation and shall make any further investigation 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 where 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 38. 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.

(b) The court may approve, disapprove, or modify the report on claims by the liquidator. The reports not modified by the court within a period of 60 days following submission by the liquidator shall be treated by the liquidator as allowed claims, subject to later modification or to rulings made by the court pursuant to section 38. No claim under a policy of insurance shall be allowed for an amount in excess of the applicable policy limits.

Sec. 43. Distribution of assets.

New Section
38-2842

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. 44. Unclaimed and withheld funds.

New Section
35-2843

(a) 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 of Columbia, and shall be paid without interest, except in accordance with section 41, to the person entitled thereto or his or her legal representative upon proof satisfactory to the District of Columbia Treasurer of his or her right thereto. Any amount on deposit and not claimed at the time of the discharge of the liquidator shall be distributed in accordance with the Uniform Disposition of Unclaimed Property Act of 1980, effective March 5, 1981 (D.C. Law 3-160; D.C. Code § 42-201 *et seq.*).

(b) All funds withheld under section 36 and not distributed shall, upon discharge of the liquidator, be deposited with the District of Columbia Treasurer and paid by him or her in accordance with section 41. Any sums remaining, which under section 41 would revert to the undistributed assets of the insurer, shall be transferred to the District of Columbia Treasurer and become the property of the District under subsection (a) of this section, unless the Superintendent in his or her discretion petitions the court to reopen the liquidation under section 46.

Sec. 45. Termination of proceedings.

New Section
35-2844

(a) When all assets justifying the expense of collection and distribution have been collected and distributed under this 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 uneconomic to distribute, deemed appropriate.

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

Sec. 46. Reopening liquidation.

New Section
35-2845

After the liquidation proceeding has been terminated and the liquidator discharged, the Superintendent or other interested party may at any time petition the Superior Court of the District of Columbia 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. 47. Disposition of records during and after termination of liquidation

New Section
35-2846

Whenever it shall appear to the Superintendent 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 records should be destroyed.

Sec. 48. External audit of the receiver's books.

New Section
35-2847

The Superior Court of the District of Columbia may, as it deems desirable, order audits to be made of the books of the Superintendent relating to any receivership established under this act, and a report of each audit shall be filed with the Superintendent 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. 49. Conservation of property of foreign or alien insurers found in the District of Columbia.

New Section
35-2848

(a) If a domiciliary liquidator has not been appointed, the Superintendent may apply to the Superior Court of the District of Columbia 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 the District, or a foreign insurer, on any one or more of the following grounds:

- (1) Any of the grounds in section 11;
- (2) That any of its property has been sequestered by official action in its domiciliary state, or in any other state;
- (3) That enough of its property has been sequestered in a foreign country to give reasonable cause to fear that the insurer is or may become insolvent; or
- (4)(A) That its certificate of authority to do business in the District has been revoked or that none was ever issued; and
(B) That there are residents of the District with outstanding claims or outstanding policies.

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

(c) The court may issue the order in whatever terms it deems appropriate. The filing or recording of the order with the Clerk of the Superior Court of the District of Columbia shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds would have imparted.

(d) The conservator may at any time petition for, and the court may grant, an order under section 50 to liquidate assets of a foreign or alien insurer under conservation, or, if appropriate, for an order under section 52 to be appointed ancillary receiver.

(e) 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 control of its business. The court may also make such a finding and issue such an order at any time upon motion of any interested party, but, if the motion is denied, all costs shall be assessed against the interested party.

Sec. 50. Liquidation of property of foreign or alien insurers found in the District of Columbia.

New Section
35-2849

(a) If no domiciliary receiver has been appointed, the Superintendent may apply to the Superior Court of the District of Columbia by verified petition for an order directing him or her to

liquidate the assets, found in the District, of a foreign insurer or an alien insurer not domiciled in the District, on any of the following grounds:

- (1) Any of the grounds in section 11 or 16; or
- (2) Any of the grounds specified in section 49(a)(2) through (4).

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

(c) If it appears to the court that the best interests of creditors, policyholders, and the public so require, the court may issue an order to liquidate in whatever terms it shall deem appropriate. The filing or recording of the order with the Clerk of the Superior Court of the District of Columbia or the recorder 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 recorder of deeds would have imparted.

(d) 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 52. 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 52.

(e) On the same grounds as are specified in subsection (a) of this section, the Superintendent 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 Superintendent deems desirable for the protection of the policyholders and creditors in the District.

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

Sec. 51. Domiciliary liquidators in other states.

(a) The domiciliary liquidator of an insurer domiciled in a reciprocal state shall, except as to special deposits and security on secured claims under section 52(c), 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 the District. 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 also shall have the right to recover all other assets of the insurer located in this state, subject to section 52.

New Section
35-2850

(b) If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal state, the Superintendent shall be vested by operation of law with the title to all of the property, contracts, and right of action, and all of the books, accounts and other records of the insurer located in the District, at the same time that the domiciliary liquidator is vested with title in the domicile. The Superintendent may petition for a conservation or liquidation order under section 49 or 50, or for an ancillary receivership under section 52, or, after approval by the Superior Court of the District of Columbia, may transfer title to the domiciliary liquidator, as the interests of justice and the equitable distribution of the assets require.

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

Sec. 52. Ancillary formal proceedings.

New Section
38-2851

(a) If a domiciliary liquidator has been appointed for an insurer not domiciled in the District, the Superintendent may file a petition with the Superior Court of the District of Columbia requesting appointment as ancillary receiver in the District:

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

(2) If the protection of creditors or policyholders in the District so requires.

(b) 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 recorder of deeds in the District imparts the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds.

(c) When a domiciliary liquidator has been appointed in a reciprocal state, then the ancillary receiver appointed in the District may, whenever necessary, aid and assist the domiciliary liquidator in recovering assets of the insurer located in the District. 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 the District, 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 the District.

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

Sec. 53. Ancillary summary proceedings.

New Section
35-2852

The Superintendent, in his or her sole discretion, may institute proceedings under sections 9 and 10 at the request of the commissioner or other appropriate insurance official of the domiciliary state of any foreign or alien insurer having property located in the District.

Sec. 54. Claims of nonresidents against insurers domiciled in the District of Columbia.

New Section
35-2853

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

(b) Claims belonging to claimants residing in reciprocal states may be proved either in the liquidation proceeding in the District as provided in this 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 the District as provided in section 55(b) 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 priority against special deposits or other security located in ancillary states, but shall not be conclusive with respect to priorities against general assets under section 41.

Sec. 55. Claims of residents against insurers domiciled in reciprocal states.

New Section
35-2854

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

(b) Claims belonging to claimants residing in the District may be proved either in the domiciliary state under the law of that state, or in ancillary proceedings, if any, in the District. If a claimant elects to prove his or her claim in the District, the claimant shall file his or her claim with the liquidator in the manner provided in sections 34 and 35. The ancillary receiver shall make his or her recommendation to the court as under section 42. He or she shall also arrange a date for hearing if necessary under section 38 and shall give notice to the liquidator in the domiciliary state, either by certified mail or by personal service at least 40 days prior to the date set for hearing. If the domiciliary liquidator, within 30 days after the giving of 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 the District involving the adjudication of the claim.

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

Sec. 56. Attachment, garnishment, and levy of execution. New Section
35-2855
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 the District against the delinquent insurer or its assets.

Sec. 57. Interstate priorities. New Section
35-2956
(a) In a liquidation proceeding in the District involving 1 or more reciprocal states, the order of distribution of the domiciliary state shall control as to all claims of residents of this and reciprocal states. All claims of residents of reciprocal states shall be given equal priority of payment from general assets regardless of where the assets are located.

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

(c) The owner of a secure claim against an insurer for which a liquidator has been appointed in this or any other state may surrender his or her security and file his or her claim as a general creditor, or the claim may be discharged by resort to the security in accordance with section 40, 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. 58. Subordination of claims for noncooperation. New Section
35-2857
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 the District any assets within his or her control other than special deposits, diminished only by the expenses of the ancillary receivership, if any, the claims filed in the ancillary receivership, other than special deposit claims or secured claims, shall be placed in the class of claims under section 41(g).

Sec. 59. Repealers Sections
35-419 thru
35-421
(a) Sections 20, 21, and 22 of chapter II of the Life Insurance Act, approved June 19, 1934 (48 Stat. 1135; D.C. Code §§ 35-419 through 35-421), are repealed.

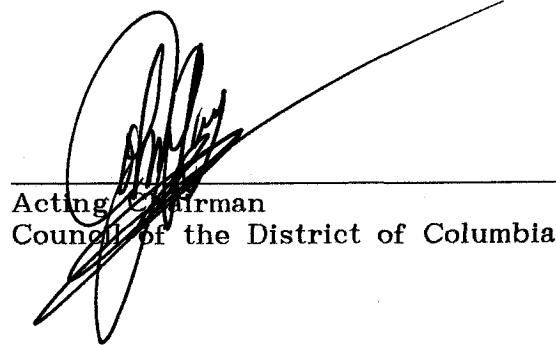
(b) Sections 5, 6, and 7 of chapter II of the Fire and Casualty Act, approved October 9, 1940 (54 Stat. 1067; D.C. Code §§ 35-1508 through 35-1510), are repealed. Sections
35-1508 thr
35-1510

Sec. 60. Delayed applicability. Note,
New Section
35-2828
Section 29 shall apply 6 months from the effective date of this act and shall apply to all contracts entered into, renewed, extended, or amended, including any change in the terms of, or consideration for, such a contract on or after that date, and to debts or credits arising from

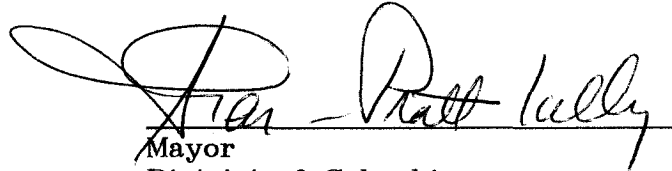
any business written or transactions occurring after the effective date pursuant to any contract, including those in existence prior to the effective date, and shall supersede any agreements or contractual provisions which might be construed to enlarge the setoff rights of any person under any contract with the insurer.

Sec. 61. Effective date.

This act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1)), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations.



Acting Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED: July 29, 1993



COUNCIL OF THE DISTRICT OF COLUMBIA

COUNCIL PERIOD TEN

RECORD OF OFFICIAL COUNCIL VOTE

B10-123

DOCKET NO: _____

Item on Consent Calendar:

ACTION & DATE: Adopted First Reading, 6-29-93

VOICE VOTE: Approved

Recorded vote on request

Absent: Barry and Chavous

ROLL CALL VOTE: — RESULT _____ (___/___/___)

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. RAY					EVANS					SMITH, JR.				
BARRY					JARVIS					THOMAS, SR.				
BRAZIL					LIGHTFOOT									
CHAVOUS					MASON									
CROPP					NATHANSON									

X — Indicates Vote A.B. — Absent N.V. — Present, not voting

CERTIFICATION RECORD

Quyle /md
Secretary to the Council

July 15, 1993
Date

Item on Consent Calendar

ACTION & DATE: Adopted Final Reading, 7-13-93

VOICE VOTE: Approved

Recorded vote on request

Absent: Chavous

ROLL CALL VOTE: — RESULT _____ (___/___/___)

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. RAY					EVANS					SMITH, JR.				
BARRY					JARVIS					THOMAS, SR.				
BRAZIL					LIGHTFOOT									
CHAVOUS					MASON									
CROPP					NATHANSON									

X — Indicates Vote A.B. — Absent N.V. — Present, not voting

CERTIFICATION RECORD

Quyle /md
Secretary to the Council

July 15, 1993
Date

Item on Consent Calendar

ACTION & DATE: _____

VOICE VOTE: _____

Recorded vote on request

Absent: _____

ROLL CALL VOTE: — RESULT _____ (___/___/___)

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. RAY					EVANS					SMITH, JR.				
BARRY					JARVIS					THOMAS, SR.				
BRAZIL					LIGHTFOOT									
CHAVOUS					MASON									
CROPP					NATHANSON									

X — Indicates Vote A.B. — Absent N.V. — Present, not voting

CERTIFICATION RECORD

Secretary to the Council

Date