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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2004

A N A C T

RELATING TO INSURANCE -- INSURERS' REHABILITATION AND LIQUIDATION

Introduced By: Senator David E. Bates

Date Introduced: February 11, 2004

Referred To: Senate Financial, Technology, Regulatory

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 27-14.3-2, 27-14.3-3, 27-14.3-4, 27-14.3-5, 27-14.3-6, 27-14.3-8,
2 27-14.3-9, 27-14.3-10, 27-14.3-15, 27-14.3-16, 27-14.3-17, 27-14.3-18, 27-14.3-20, 27-14.3-22,
3 27-14.3-23, 27-14.3-25, 27-14.3-26, 27-14.3-28, 27-14.3-33, 27-14.3-34, 27-14.3-36, 27-14.3-37,
4 27-14.3-38, 27-14.3-41, 27-14.3-42, 27-14.3-43, 27-14.3-46, 27-14.3-47, 27-14.3-49, 27-14.3-54,
5 27-14.3-56, 27-14.3-57, 27-14.3-58, 27-14.3-59, 27-14.3-60, 27-14.3-62 and 27-14.3-63 of the
6 General Laws in Chapter 27-14.3 entitled "Insurers' Rehabilitation and Liquidation Act" are
7 hereby amended to read as follows:

8 **27-14.3-2. Applicability.** -- The ~~proceedings authorized by~~ provisions of this chapter
9 ~~may~~ shall be applied to:

10 (1) All insurers who are doing, or have done, an insurance business in this state,
11 including a protected cell company organized under the Protected Cell Companies Act, chapter
12 64 of this title, and any of its protected cells established pursuant to that chapter, to the extent not
13 inconsistent with the provisions of that chapter, and against whom claims arising from that
14 business may exist now or in the future and to all persons subject to examination by the
15 commissioner;

16 (2) All insurers who purport to do an insurance business in this state, including a
17 protected cell company organized under the Protected Cell Companies Act, chapter 64 of this
18 title, and any of its protected cells established pursuant to that chapter, to the extent not
19 inconsistent with the provisions of that chapter;

1 (3) All insurers who have insured resident in this state;

2 (4) All other persons organized or doing insurance business, or in the process of
3 organizing with the intent to do an insurance business in this state, including a protected cell
4 company organized under the Protected Cell Companies Act, chapter 64 of this title, and any of
5 its protected cells established pursuant to that chapter, to the extent not inconsistent with the
6 provisions of that chapter;

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

8 (6) All title insurance companies;

9 (7) All prepaid health care delivery plans; and

10 (8) All nonprofit health service corporations, nonprofit hospital service corporations,
11 nonprofit medical service corporations, nonprofit dental service corporations, nonprofit
12 optometric service corporations, nonprofit legal service corporations, health maintenance
13 organizations, and risk retention groups pursuant to chapters 19, 20, 20.1, 20.2, 20.3, 41, and 46
14 of this title. For purposes of this chapter, all persons, corporations, associations or entities to
15 whom this chapter applies and which are subject to delinquency proceedings commenced in this
16 state shall be deemed "insurers."

17 **27-14.3-3. Definitions.** -- For the purposes of this chapter:

18 (1) An "affiliate" of, or person "affiliated" with a specific person means a person that
19 directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under
20 common control with the person specified;

21 ~~(1)~~ (2) "Ancillary state" means any state other than a domiciliary state;

22 ~~(2)~~ (3) "Commissioner" means the director of the department of business regulation;

23 (4) "Control" (including the terms "controlling," "controlled by" and "under common
24 control with") means the possession, direct or indirect, of the power to direct or cause the
25 direction of the management and policies of a person, whether through the ownership of voting
26 securities, by contract other than a commercial contract for goods or nonmanagement services, or
27 otherwise, unless the power is the result of an official position with or corporate office held by the
28 person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls,
29 holds with the power to vote, or holds proxies representing ten percent (10%) or more of the
30 voting securities of any other person. This presumption may be rebutted by a showing that control
31 does not in fact exist;

32 ~~(3)~~ (5) "Creditor" is a person having any claim, whether matured or unmatured,
33 liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent;

34 ~~(4)~~ (6) "Delinquency proceeding" means any proceeding instituted against an insurer for

1 the purpose of liquidating, rehabilitating, reorganizing, or conserving that insurer, and any
2 summary proceeding under section 27-14.3-10. "Formal delinquency proceeding" means any
3 liquidation or rehabilitation proceeding;

4 ~~(5)~~ (7) "Doing business" (including "doing insurance business" and the "business of
5 insurance") includes any of the following acts, whether effected by mail or otherwise:

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

7 (ii) The solicitation of applications for ~~those~~ such contracts, or other negotiations
8 preliminary to the execution of ~~those~~ such contracts;

9 (iii) The collection of premiums, membership fees, assessments, or other consideration
10 for ~~those~~ such contracts;

11 (iv) The transaction of matters subsequent to the execution of ~~those~~ such contracts and
12 arising out of them;

13 (v) Operating under a license, approval, or certificate of authority, as an insurer, issued
14 by the insurance department; or

15 (vi) Those other acts defined in section 27-16-1.2(b);

16 ~~(6)~~ (8) "Domiciliary state" means the state in which an insurer is incorporated or
17 organized; or, in the case of an alien insurer, its state of entry;

18 ~~(7)~~ (9) "Fair consideration" is given for property or obligation:

19 (i) When in exchange for the property or obligation, as a fair equivalent for these, and in
20 good faith, property is conveyed or services are rendered or an obligation is incurred or an
21 antecedent debt is satisfied; or

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

25 ~~(8)~~ (10) "Foreign country" means any other jurisdiction not in any state of the United
26 States;

27 ~~(9)~~ (11) "General assets" means all property, real, personal, or otherwise, which is not;
28 ~~specifically mortgaged, pledged, deposited, or encumbered for the security or benefit of specified~~
29 ~~persons or classes of persons. As to specifically encumbered property, "general assets" includes~~
30 ~~all property or its proceeds in excess of the amount necessary to discharge the sum or sums~~
31 ~~secured by those assets. Assets held in trust and on deposit for the security or benefit of all~~
32 ~~policyholders or all policyholders and creditors in more than a single state, shall be treated as~~
33 ~~general assets;~~

34 (i) Specifically subject to a perfected security interest as defined in the Uniform

1 Commercial Code or its equivalent in this state;

2 (ii) Specifically mortgaged or otherwise subject to a lien and recorded in accordance with
3 applicable real property law;

4 (iii) Specifically subject to a valid and existing express trust for the security or benefit of
5 specified persons or classes of persons; or

6 (iv) Required by the insurance laws of this state or any other state to be held for the
7 benefit of specified persons or classes of persons.

8 As to an encumbered property; as described in this subsection, "general assets" includes
9 all property or its proceeds in excess of the amount necessary to discharge, in accordance with
10 this act, the sum or sums secured thereby. Assets held on deposit pursuant to a state statute for the
11 security or benefit of all policyholders or all policyholders and creditors, in more than a single
12 state, shall be treated as general assets.

13 ~~(10) (12) "Guaranty association" means any mechanism mandated by the state statute~~
14 ~~which is created for the payment of claims or continuation of policy obligations of financially~~
15 ~~impaired or insolvent insurers; the Rhode Island insurers' insolvency fund created by the Rhode~~
16 ~~Island Insurers' Insolvency Fund Act, chapter 34 of this title, and the Rhode Island life and health~~
17 ~~insurance guaranty association, created by the Rhode Island Life and Health Insurance Guaranty~~
18 ~~Association Act, chapter 34.1 of this title, and any other similar entity now or after this created by~~
19 ~~the legislature of this state for the payment of claims of insolvent insurers. "Foreign guaranty~~
20 ~~association" means any similar entities now in existence in or after this created by the legislature~~
21 ~~of any other state;~~

22 ~~(11) (13) "Insolvency" or "insolvent" means:~~

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

24 (A) The inability to pay any obligation within thirty (30) days after it becomes payable;

25 or

26 (B) If an assessment is made within thirty (30) days after that date, the inability to pay
27 the obligation thirty (30) days following the date specified in the first assessment notice issued
28 after the date of loss; .

29 (ii) For any other insurer, including those referenced in section 27-14.3-2(8), that it is
30 unable to pay its obligations when they are due, or when its admitted assets do not exceed its
31 liabilities plus the greater of:

32 (A) Any capital and surplus required by law for its organization and continued operation;

33 or

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

1 (iii) For the purposes of this subdivision, "liabilities" includes, but is not limited to,
2 reserves required by statute or by insurance department general regulations or specific
3 requirements imposed by the commissioner upon a subject company at the time of admission or
4 subsequent thereto; ~~to admission;~~

5 ~~(12)~~ (14) "Insurer" means any person who has done, purports to do, is doing, or is
6 licensed or approved to do an insurance business, and is or has been subject to the authority of, or
7 to liquidation, rehabilitation, reorganization, supervision, or conservation by, any insurance
8 commissioner. For the purposes of this chapter, any other persons included under section 27-14.3-
9 2 shall be deemed to be insurers; ~~and for the purposes of this chapter, guaranty associations shall~~
10 ~~not be deemed to be doing the business of insurance or the insurer;~~

11 (15) "Netting agreement" means a contract or agreement (including terms and conditions
12 incorporated by reference therein), including a master agreement (which master agreement,
13 together with all schedules, confirmations, definitions and addenda thereto and transactions under
14 any thereof, shall be treated as one netting agreement), that documents one or more transactions
15 between the parties to the agreement for or involving one or more qualified financial contracts
16 and that provides for the netting or liquidation of qualified financial contracts or present or future
17 payment obligations or payment entitlements thereunder (including liquidation or close-out
18 values relating to such obligations or entitlements) among the parties to the netting agreement;

19 ~~(13)~~ (16) "Person" includes any natural person, corporation, association, partnership,
20 trust, or other legal entity;

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

25 (a) "Commodity contract" means:

26 (i) A contract for the purchase or sale of a commodity for future delivery on, or subject to
27 the rules of, a board of trade designated as a contract market by the Commodity Futures Trading
28 Commission under the Commodity Exchange Act (7 U.S.C. section 1, et seq.) or board of trade
29 outside the United States.

30 (ii) An agreement that is subject to regulation under section 19 of the Commodity
31 Exchange Act (7 U.S.C. section 1, et seq.) and that is commonly known to the commodities trade
32 as a margin account, margin contract, leverage account or leverage contract; or

33 (iii) An agreement or transaction that is subject to regulation under section 4c(b) of the
34 Commodity Exchange Act (7 U.S.C. section 1, et seq.) and that is commonly known to the

1 commodities trade as a commodity option.

2 (b) “Forward contract” means a contract (other than a commodity contract) for the
3 purchase, sale or transfer of a commodity, as defined in section 1 of the Commodity Exchange
4 Act (7 U.S.C. section 1, et seq.), or any similar good, article, service, right or interest that is
5 presently or in the future becomes the subject of dealing in the forward contract trade, or product
6 or byproduct thereof, with a maturity date more than two (2) days after the date the contract is
7 entered into, including, but not limited to, a repurchase transaction, reverse repurchase
8 transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated
9 transaction, unallocated transaction or a combination of these or option on any of them.

10 (c) “Repurchase agreement” (which also applies to a reverse repurchase agreement)
11 means an agreement, including related terms, that provides for the transfer of certificates of
12 deposit, eligible bankers’ acceptances, or securities that are direct obligations of, or that are fully
13 guaranteed as to principal and interest by the United States or an agency of the United States
14 against the transfer of funds by the transferee of the certificates of deposit, eligible bankers’
15 acceptances or securities with a simultaneous agreement by the transferee to transfer to the
16 transferor certificates of deposit, eligible bankers’ acceptances or securities as described above, at
17 a date certain not later than one (1) year after the transfers or on demand, against the transfer of
18 funds. For the purposes of this definition, the items that may be subject to an agreement include
19 mortgage-related securities, a mortgage loan, and an interest in a mortgage loan, and shall not
20 include any participation in a commercial mortgage loan, unless the commissioner determines by
21 regulation, resolution or order to include the participation within the meaning of the term.

22 (d) “Securities contract” means a contract for the purchase, sale or loan of a security,
23 including an option for the repurchase or sale of a security, certificate of deposit, or group or
24 index of securities (including an interest therein or based on the value thereof), or an option
25 entered into on a national securities exchange relating to foreign currencies, or the guarantee of a
26 settlement of cash or securities by or to a securities clearing agency. For the purposes of this
27 definition, the term “security” includes a mortgage loan, mortgage-related securities, and an
28 interest in any mortgage loan or mortgage-related security.

29 (e) “Swap agreement” means an agreement, including the terms and conditions
30 incorporated by reference in an agreement, that is a rate swap agreement, basis swap, commodity
31 swap, forward rate agreement, interest rate future, interest rate option, forward foreign exchange
32 agreement, spot foreign exchange agreement, rate cap agreement, rate floor agreement, rate
33 collar agreement, currency swap agreement, cross-currency rate swap agreement, currency future,
34 or currency option or any other similar agreement, and includes any combination of agreements

1 and an option to enter into an agreement.

2 ~~(14)~~ (18) "Preferred claim" means any claim with respect to which the terms of this
3 chapter accord priority of payment from the general assets of the insurer;

4 ~~(15)~~ (19) "Receiver" means receiver, liquidator, rehabilitator, or conservator, as the
5 context requires;

6 ~~(16)~~ (20) "Reciprocal state" means any state other than this state in which in substance
7 and effect sections 27-14.3-5, 27-14.3-17, 27-14.3-22(a), 27-14.3-56, 27-14.3-56.5, 27-14.3-57,
8 ~~and 27-14.3-59, 27-14.3-60 and~~ 27-14.3-61 are in force, and in which provisions are in force
9 requiring that the commissioner or equivalent official is the receiver of a delinquent insurer, and
10 in which some provision exists for the avoidance of fraudulent conveyances and preferential
11 transfers;

12 ~~(17)~~ (21) "Secured claim" means any claim secured by ~~mortgage, trust deed, pledge,~~
13 ~~deposit as security, escrow, or otherwise,~~ an asset that is not a general asset, but not including
14 special deposit claims, ~~or claims against general assets.~~ The term also includes claims, which
15 have become liens upon specific assets by reason of judicial process more than four (4) months
16 before the commencement of delinquency proceedings. A secured claim shall not include any
17 claim arising from a constructive or resulting trust;

18 ~~(18)~~ (22) "Special deposit claim" means any claim secured by a deposit made pursuant to
19 statute for the security or benefit of a limited class or classes of persons, but not including any
20 claim secured by general assets;

21 ~~(19)~~ (23) "State" means any state, district, or territory of the United States ~~and the~~
22 ~~Panama canal zone;~~ and

23 ~~(20)~~ (24) "Transfer" includes the sale and every other and different mode, direct or
24 indirect, or disposing of or of parting with property or with an interest ~~in property~~ therein, or with
25 the possession ~~of property~~ thereof or of fixing a lien upon property or upon an interest in it
26 absolutely or conditionally, voluntarily, by or without judicial proceedings. The retention of a
27 security title to property delivered to a debtor shall be deemed a transfer suffered by the debtor.

28 **27-14.3-4. Jurisdiction and venue.** -- (a) ~~A~~ No delinquency proceeding shall be
29 commenced under this chapter by anyone other than the commissioner of this state and no court
30 shall have jurisdiction to entertain, hear or determine any proceeding commenced by any other
31 person, ~~provided, that a Rhode Island trade association or another similar entity or entities~~
32 ~~representing nonprofit hospitals in Rhode Island acting by and through its members shall be~~
33 ~~consulted prior to the commencement of and included as a party to a delinquency proceeding~~
34 ~~brought against nonprofit hospital service corporations, nonprofit medical service corporations, or~~

1 ~~nonprofit dental service corporations; and provided, that a trade association or similar entity or~~
2 ~~entities may request a hearing before the commissioner in order to require the commissioner to~~
3 ~~commence a delinquency proceeding under this chapter against nonprofit hospital service~~
4 ~~corporations, nonprofit medical service corporations, or nonprofit dental service corporations, and~~
5 ~~if the commissioner does not hold the hearing within ten (10) business days of the request or if~~
6 ~~the request is denied after the hearing, the requesting party may petition the superior court for~~
7 ~~Providence County for an order directing the commissioner to commence a delinquency~~
8 ~~proceeding pursuant to this chapter and the court shall hear the petition on an expedited basis.~~
9 ~~The administrative proceeding before the commissioner and the judicial review of those~~
10 ~~proceedings, and all records and other documents or papers relating to the proceedings so far as~~
11 ~~they pertain to or are a part of the record of the proceedings, shall be and remain confidential~~
12 ~~except as is necessary to obtain compliance with the proceedings, unless and until the superior~~
13 ~~court for the county of Providence, after hearing arguments from the parties in chambers, shall~~
14 ~~order otherwise or unless the nonprofit hospital corporation, nonprofit medical corporation, or~~
15 ~~nonprofit dental service corporation request that the matter be made public. All papers shall be~~
16 ~~held in confidential files.~~

17 (b) No court of this state shall have jurisdiction to entertain, hear, or determine any
18 complaint praying for the dissolution, liquidation, rehabilitation, sequestration, conservation, or
19 receivership of any insurer or praying for an injunction or restraining order or other relief
20 preliminary to, incidental to, or relating to those proceedings other than in accordance with this
21 chapter.

22 (c) In addition to other grounds for jurisdiction provided by the law of this state, a court
23 of this state having jurisdiction of the subject matter has jurisdiction over a person served
24 pursuant to Rule 4 of the Superior Court Rules of Civil Procedure or other applicable provisions
25 of law in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in
26 this state:

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

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

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

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

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

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

13 (e) Service shall be made upon the person named in the petition in accordance with the
14 Rhode Island Rules of Civil Procedure. In lieu of such service, upon application to the court,
15 service may be made in such a manner as the court directs whenever it is satisfactorily shown by
16 affidavit;

17 (1) In the case of a corporation, that the officers of the corporation cannot be served
18 because they have departed from the state or otherwise concealed themselves with intent to avoid
19 service; or

20 (2) In the case of a Lloyd's association or interinsurance exchange, that the individual
21 attorney-in-fact or the officers of the corporate attorney-in-fact cannot be served because of their
22 departure or concealment; or

23 (3) In the case of a natural person, that the person cannot be served because of the
24 person's departure or concealment.

25 ~~(e)~~ (f) All action authorized pursuant to this section shall be brought in the superior court
26 for the county of Providence.

27 **27-14.3-5. Injunctions and orders.** -- (a) ~~Any receiver appointed in a proceeding under~~
28 ~~this chapter may at any time apply for, and any court of general jurisdiction may grant, restraining~~
29 ~~orders, preliminary and permanent injunctions, and other orders as may be deemed necessary and~~
30 ~~proper to prevent:~~ The conservation, rehabilitation and liquidation of insurance companies and
31 other persons subject to the provisions of this chapter are a matter of vital public interest affecting
32 the relationships between insureds and their insurers. The efficient administration of such
33 activities requires that a single court have jurisdiction over these persons, their assets, and all
34 claims against these persons. The domiciliary court acquiring jurisdiction over persons subject to

1 the provisions of this chapter may exercise its jurisdiction to the exclusion of all other courts,
2 except as limited by the provisions of this chapter. Upon the issuance of an order under section
3 27-14.3-10, 11, 17 or 24, the court shall have exclusive jurisdiction with respect to assets or any
4 claims against these persons. Except as otherwise provided in this section, the court may issue
5 orders which bar the institution or prosecution of any actions, counterclaims, cross-complaints,
6 proceedings, arbitration proceedings, writs or other dispute resolution proceedings.

7 (1) An application or petition under section 27-14.3-10, 11, 17 or 24 operates as a matter
8 of law as an automatic stay applicable to all persons and entities, other than the receiver, which
9 shall be permanent and survive the entry of an order of conservation, rehabilitation or liquidation,
10 and which shall prohibit:

11 ~~(1)~~ (a) The transaction of further business;

12 ~~(2)~~ (b) The transfer of property;

13 ~~(3)~~ (c) Interference with the receiver or with a proceeding under this chapter;

14 ~~(4)~~ (d) Waste of the insurer's assets;

15 ~~(5)~~ (e) Dissipation and transfer of bank accounts;

16 ~~(6)~~ (f) The institution or further prosecution of any actions or proceedings in which the
17 insurer is a party;

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

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

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

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

25 ~~(11)~~ (k) Any other threatened or contemplated action that might lessen the value of the
26 insurer's assets or prejudice the rights of policyholders, creditors, or shareholders, or the
27 administration of any proceeding under this chapter.

28 ~~-(b) The receiver may apply to any court outside of the state for the relief described in~~
29 ~~section 27-14.3-4(a).~~

30 (2) Notwithstanding any other provision of law, no bond shall be required of the
31 commissioner as a prerequisite for the issuance of any injunction or restraining order pursuant to
32 this section.

33 (3) Upon motion of a person or entity subject to the stay, the court, after notice to the
34 receiver and a hearing, may modify or grant relief from the stay, provided the movant, who shall

1 have the burden of proof, establishes by clear and convincing evidence that such relief should be
2 granted.

3 (4) All matters that may be stayed, enjoined or barred under this section and all matters
4 involving its interpretation or operation shall remain within the exclusive jurisdiction of the
5 domiciliary receivership court.

6 (b) Any court in this state in which any action or proceeding in which the insurer is
7 obligated to defend a party, is pending when a rehabilitation order against the insurer is entered
8 shall stay the action or proceeding for ninety (90) days and such additional time as is necessary
9 for the rehabilitator to obtain proper representation and prepare for further proceedings. The
10 rehabilitator shall take such action respecting the pending litigation as the rehabilitator deems
11 necessary in the interests of justice and for the protection of creditors, policyholders and the
12 public. The rehabilitator may petition the court having jurisdiction over the litigation for a stay
13 whenever necessary to protect the estate of the insurer.

14 (c)(1) An order appointing a liquidator of a domestic insurer or of an alien insurer doing
15 business in this state stays all actions and proceedings at law or equity or in arbitration brought
16 against the insurer or liquidator, whether in this state or elsewhere. Any existing actions and
17 proceedings may not be enforced, perfected, maintained or further presented after issuance of
18 such order. The stay of all actions is automatic and the liquidator may not intervene or defend,
19 except as provided in this section. The stay does not affect an action brought against former
20 policyholders or other creditors of the estate, except to the extent that the insurer is named as a
21 separate defendant in the action or proceeding.

22 (2) The courts of this state shall give full faith and credit to any stay of all new actions
23 against the liquidator or the company or the continuation of existing actions against the liquidator
24 or the company, when such injunctions are pursuant to an order to liquidate an insurer issued in
25 accordance with corresponding provisions in other states.

26 (3) Whenever, in the liquidator's judgment, protection of the estate of the insurer
27 necessitates intervention in an action pending against the insurer, the liquidator may intervene in
28 the action. The liquidator will apply to the court for leave to intervene or defend, or for
29 ratification by the court of intervention, and if the application is granted, the action is not stayed.
30 The liquidator may defend any action in which he or she intervenes under this section at the
31 expense of the estate of the insurer.

32 (d) The rehabilitator or liquidator may institute any action or proceeding on behalf of the
33 estate of the insurer while any statute of limitation is tolled pursuant to this section.

34 (1) Unless an applicable limitation period has expired before a successful petition for

1 rehabilitation or liquidation was filed, any applicable statute of limitation is tolled for two (2)
2 years. Tolling any applicable statute of limitation shall begin with the entry of an order of
3 rehabilitation or liquidation. This shall be in addition to any other applicable tolling or such other
4 longer time as applicable law may permit.

5 (2) For actions not covered by paragraph (1), where any expired time period is fixed, by
6 any agreement or in any proceeding, for doing any act for the benefit of the estate, the
7 rehabilitator or liquidator shall have one hundred and eighty (180) days or such longer period as
8 the court may allow for good cause shown, from the entry of the order of rehabilitation or
9 liquidation to perform the act.

10 (e) No statute of limitations shall run or defense of laches apply with respect to any action
11 by or against an insurer between the filing of a petition for rehabilitation or liquidation against an
12 insurer and the order granting or denying that petition. Any action against the insurer that might
13 have been commenced when the petition was filed may be commenced for at least sixty (60) days
14 after an order of rehabilitation or liquidation is entered or the petition is denied.

15 (f) Any guaranty association or its designated representative shall have standing to appear
16 in any court proceeding concerning the rehabilitation or liquidation of an insurer if the association
17 is or may become liable to act as a result of the rehabilitation or liquidation.

18 **27-14.3-6. Cooperation of officers, owners, and employees.** -- (a) Any present or
19 former officer, manager, director, trustee, owner, employee, insurance producer, or agent of any
20 insurer, or any other persons with authority over or in charge of any segment of the insurer's
21 affairs, shall cooperate with the commissioner in any proceeding under this chapter or any
22 investigation preliminary to the proceeding. The term "person" as used in this section shall
23 includes any person who exercises control directly or indirectly over activities of the insurer
24 through any holding company or other affiliate of the insurer. ~~The term "cooperate"~~ "To
25 cooperate" shall includes, but is ~~shall~~ not ~~be~~ limited to, the following:

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

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

31 (b) No person shall obstruct or interfere with the commissioner in the conduct of any
32 delinquency proceeding or any ~~investigation~~ preliminary or incidental ~~to that proceeding.~~
33 investigation.

34 (c) This section shall not be construed to abridge otherwise existing legal rights,

1 including the right to resist a petition for liquidation or other delinquency proceedings, or other
2 orders.

3 (d) Any person included within subsection (a) ~~of this section~~ who fails to cooperate with
4 the commissioner, or any person who obstructs or interferes with the commissioner in the conduct
5 of any delinquency proceedings or any ~~investigation~~ preliminary or incidental ~~to that proceeding,~~
6 investigation, or who violates any order the commissioner issued validly under this chapter may:

7 (1) Be sentenced to pay a fine not exceeding ten thousand dollars (\$10,000) or to
8 undergo imprisonment for a term of not more than one year, or both; or

9 (2) After a hearing, be subject to the imposition by the commissioner of a civil penalty
10 not to exceed ten thousand dollars (\$10,000) and shall ~~also~~ be subject further to the revocation or
11 suspension of any insurance licenses issued by the commissioner.

12 **27-14.3-8. Condition on release from delinquency proceedings.** -- No insurer that is
13 subject to any formal delinquency proceedings, ~~whether formal or informal, administrative or~~
14 ~~judicial~~, shall:

15 ~~(1) Be released from the proceeding, unless the proceeding is converted into a judicial~~
16 ~~rehabilitation or liquidation proceeding;~~

17 ~~(2)~~ (1) Be permitted to solicit or accept new business or request or accept the restoration
18 of any suspended or revoked license or certificate of authority;

19 ~~(3)~~ (2) Be returned to the control of its shareholders or private management; or

20 ~~(4)~~ (3) Have any of its assets returned to the control of its shareholders or private
21 management until all payments of or on account of the insurer's contractual obligations by all
22 guaranty associations, along with all expenses thereof and interest on all the payments and
23 expenses, shall have been repaid to the guaranty associations or a plan of repayment by the
24 insurer shall have been approved by the guaranty association.

25 **27-14.3-9. Immunity and indemnification of the receiver and employees.** -- (a) For
26 the purposes of this section, the persons entitled to protection under this section are:

27 (1) All receivers responsible for the conduct of a delinquency proceeding under this
28 chapter including present and former receivers; and

29 (2) Their employees, meaning all present and former special deputies and assistant
30 special deputies appointed by the commissioner, and all persons whom the commissioner, special
31 deputies, or assistant special deputies have employed to assist in a delinquency proceeding under
32 this chapter. Attorneys, accountants, auditors, and other professional persons or firms who are
33 retained by the receiver as independent contractors and their employees shall not be considered
34 employees of the receiver for the purposes of this section.

1 (b) The receiver and his or her employees shall have official immunity and shall be
2 immune from suit and liability, both personally and in their official capacities, for any claim for
3 damage to or loss of property or personal injury or other civil liability caused by or resulting from
4 any alleged act, error, or omission of the receiver or any employee arising out of or by reason of
5 their duties or employment; provided, that nothing in this provision shall be construed to hold the
6 receiver or any employee immune from suit and/or liability for any damage, loss, injury, or
7 liability caused by the intentional or willful and wanton misconduct of the receiver or any
8 employee.

9 (c) (1) If any legal action is commenced against the receiver or any employee, whether
10 against him or her personally or in his or her official capacity, alleging property damage, property
11 loss, personal injury, or other civil liability caused by or resulting from any alleged act, error, or
12 omission of the receiver or any employee arising out of or by reason of their duties or
13 employment, the receiver and any employee shall be indemnified from the assets of the insurer
14 for all expenses, attorneys' fees, judgments, settlements, decrees, or amounts due and owing or
15 paid in satisfaction of or incurred in the defense of the legal action unless it is determined upon a
16 final adjudication on the merits that the alleged act, error, or omission of the receiver or employee
17 giving rise to the claim did not arise out of or by reason of his or her duties or employment, or
18 was caused by intentional or willful and wanton misconduct.

19 (2) Attorneys' fees and any and all related expenses incurred in defending a legal action
20 for which immunity or indemnity is available under this section shall be paid from the assets of
21 the insurer, as they are incurred, in advance of the final disposition of the action upon receipt of
22 an undertaking by or on behalf of the receiver or employee to repay the attorneys' fees and
23 expenses if it shall ultimately be determined upon a final adjudication on the merits that the
24 receiver or employee is not entitled to immunity or indemnity under this section;

25 (3) Any indemnification for expense payments, judgments, settlements, decrees,
26 attorneys' fees, surety bond premiums, or other amounts paid or to be paid from the insurer's
27 assets pursuant to this section shall be an administrative expense of the insurer;

28 (4) In the event of any actual or threatened litigation against a receiver or any employee
29 for which immunity or indemnity may be available under this section, a reasonable amount of
30 funds which in the judgment of the commissioner may be needed to provide immunity or
31 indemnity shall be segregated and reserved from the assets of the insurer as security for the
32 payment of indemnity until that time as all applicable statutes of limitation shall have run and all
33 actual or threatened actions against the receiver or any employee have been completely and
34 finally resolved, and all obligations of the insurer and the commissioner under this section shall

1 have been satisfied;

2 (5) In lieu of segregation and reserving of funds, the commissioner may, in his or her
3 discretion, obtain a surety bond or make other arrangements, which will enable the commissioner
4 to fully secure the payment of all obligations under this section.

5 (d) If any legal action against an employee for which indemnity may be available under
6 this section is settled prior to final adjudication on the merits, the insurer must pay the settlement
7 amount on behalf of the employee, or indemnify the employee for the settlement amount, unless
8 the commissioner determines:

9 (1) That the claim did not arise out of or by reason of the employee's duties or
10 employment; or

11 (2) That the claim was caused by the intentional or willful and wanton misconduct of the
12 employee.

13 (e) In any legal action in which the receiver is a defendant, that portion of any settlement
14 relating to the alleged act, error, or omission of the receiver shall be subject to the approval of the
15 court before which the delinquency proceeding is pending. The court shall not approve that
16 portion of the settlement if it determines:

17 (1) That the claim did not arise out of or by reason of the receiver's duties or
18 employment; or

19 (2) That the claim was caused by the intentional or willful and wanton misconduct of the
20 receiver.

21 (f) Nothing contained or implied in this section shall operate, or be construed or applied,
22 to deprive the receiver or any employee of any immunity, indemnity, benefits of law, rights, or
23 any ~~available~~ defense otherwise available.

24 (g) (1) Subsection (b) of this section shall apply to any suit based in whole or in part on
25 any alleged act, error, or omission which takes place on or after ~~July 23, 1993~~ the effective date
26 of this chapter;

27 (2) No legal action shall lie against the receiver or any employee based in whole or in
28 part on any alleged act, error or omission which took place prior to the effective date of this
29 chapter, unless suit is filed and valid service of process is obtained within twelve (12) months
30 after the effective date of this chapter.

31 ~~(2)~~ (3) Subsections (c), (d), and (e) of this section shall apply to any suit which is
32 pending on or filed after ~~July 23, 1993~~ the effective date of this chapter without regard to when
33 the alleged act, error, or omission took place.

34 **27-14.3-10. Court's seizure order.** -- (a) The commissioner may file in the superior

1 court for the county of Providence a petition alleging, with respect to a domestic insurer:

2 (1) That there exists any grounds that would justify a court order for a formal
3 delinquency proceeding against an insurer under this chapter;

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

6 (3) The contents of an order deemed necessary by the commissioner.

7 (b) Upon a filing under subsection (a) of this section, the court may issue ex parte and
8 without a hearing the requested order which shall direct the commissioner to take possession and
9 control of all or a part of the property, books, accounts, documents, and other records of an
10 insurer, and of the premises occupied by it for transaction of its business, and until further order
11 of the court enjoin the insurer and its officers, managers, agents and employees from disposition
12 of its property and from the transaction of its business except with the written consent of the
13 commissioner.

14 (c) The court shall specify in the order what its duration shall be, which shall be that time
15 as the court deems necessary for the commissioner to ascertain the condition of the insurer. On
16 the motion of either party or on its own motion, the court may hold hearings as it deems desirable
17 after providing notice as it deems appropriate, and may extend, shorten, or modify the terms of
18 the seizure order. The court shall vacate the seizure order if the commissioner fails to commence
19 a formal proceeding under this chapter after having had a reasonable opportunity to do so. An
20 order of the court pursuant to a formal proceeding under this chapter shall by itself vacate the
21 seizure order.

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

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

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

33 (g) Whenever the commissioner makes any seizure as provided in subsection (b), it shall,
34 on the demand of the commissioner, be the duty of the sheriff of any county of this state, and of

1 the police department of any municipal corporation therein, to furnish the commissioner with
2 such deputies, patrolmen or officers as may be necessary to assist the commissioner in making
3 and enforcing the seizure.

4 (h) The foregoing provisions of this section shall be applied to insurers not domiciled in
5 this state to the extent of the insurers' assets and activities in this state.

6 **~~27-14.3-15. Confidentiality of hearings.—Confidentiality.~~** (a) In all proceedings and
7 judicial reviews under section 27-14.3-10, all records of the insurer, other documents, and all
8 insurance department files and court records and papers, so far as they pertain to or are a part of
9 the record of the proceedings, shall be and remain confidential, and all papers filed with the clerk
10 of the Providence County Superior Court shall be held by the clerk in a confidential file, except as
11 is necessary to obtain compliance with any order entered in connection with the proceedings,
12 unless and until: ~~the superior court for the county of Providence, after hearing arguments from the~~
13 parties.

14 (1) The Providence County Superior Court, after hearing arguments in chambers, shall
15 order otherwise; ~~or unless the.~~

16 (2) The insurer requests that the matter be made public. ~~Until that court order, all papers~~
17 ~~filed with the clerk of the superior court for the county of Providence shall be held by him or her~~
18 ~~in a confidential file.~~

19 (3) The commissioner applies for an order under section 27-14.3-16.

20 (b) The commissioner may share documents, materials or other information in the
21 possession or control of the department of insurance pertaining to an insurer that is the subject of
22 a proceeding under this chapter with other state, federal and international regulatory agencies,
23 with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and
24 with state, federal and international law enforcement authorities, provided that the recipient
25 agrees to maintain the confidentiality of the documents, material or other information. No waiver
26 of any applicable privilege or claim of confidentiality shall occur as a result of disclosure to the
27 commissioner under this section or as a result of sharing documents, materials or other
28 information pursuant to this subsection.

29 **~~27-14.3-16. Grounds for rehabilitation.—Grounds for rehabilitation or liquidation.~~** --
30 The commissioner may apply by petition to the superior court for the county of Providence for an
31 order authorizing him or her to rehabilitate a domestic insurer or an alien insurer domiciled in this
32 state on any one or more of the following grounds:

33 (1) The insurer is insolvent; ~~in a condition that the further transaction of business would~~
34 ~~be hazardous financially to its policyholders, creditors, or the public;~~

1 (2) The insurer has neglected or refused to observe an order of the commissioner to make
2 good within the time prescribed by law any deficiency, whenever its capital and minimum
3 required surplus, if a stock company, or its surplus, if a company other than stock, has become
4 impaired;

5 (3) The insurer is in such condition that it could not meet the requirements for
6 organization and authorization as required by law, except as to the amount of the original surplus
7 required of a stock company under section 27-1-37, and except as to the amount of the surplus
8 required of a company other than a stock company in excess of the minimum surplus required to
9 be maintained;

10 (4) The insurer has concealed, removed, altered, destroyed or failed to establish and
11 maintain books, records, documents, accounts, vouchers and other pertinent material adequate for
12 the determination of its financial condition by examination under section 27-13.1-1 et seq., or has
13 failed to properly administer claims or maintain claims records which are adequate for the
14 determination of its outstanding claims liability;

15 (5) At any time after the issuance of an order under section 27-13.1-1 et seq., or at the
16 time of instituting any proceeding under this chapter, it appears to the commissioner that upon
17 good cause shown, it would not be in the best interest of the policyholders, creditors or the public
18 to proceed with the conduct of the business of the insurer;

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

21 ~~(7)~~ (7) There is reasonable cause to believe that there has been embezzlement from the
22 insurer, wrongful sequestration or diversion of the insurer's assets, forgery or fraud affecting the
23 insurer, or other illegal conduct in, by, or with respect to the insurer that if established would
24 endanger assets in an amount threatening the solvency of the insurer;

25 ~~(8)~~ (8) The insurer has failed to remove any person who in fact has executive authority in
26 the insurer, whether an officer, manager, general agent, employee, or other person if the person
27 has been found after notice and ~~opportunity for~~ a hearing by the commissioner to be dishonest or
28 untrustworthy in a way affecting the insurer's business;

29 ~~(9)~~ (9) Control of the insurer, whether by stock ownership or otherwise, and whether
30 direct or indirect, is in a person or persons found after notice and opportunity for a hearing to be
31 untrustworthy in any way affecting the insurer's business;

32 ~~(10)~~ (10) Any person who in fact has executive authority in the insurer, whether an
33 officer, manager, general agent, director or trustee, employee, or other person, has refused to be
34 examined under oath by the commissioner concerning its affairs, whether in this state or

1 ~~elsewhere in another place~~, and after reasonable notice of the fact, the insurer has failed promptly
2 and effectively to terminate the employment and status of the person and all of his or her
3 influence on management;

4 ~~(6)~~ (11) After demand by the commissioner under section 27-1-11 and chapter 13.1 of
5 this title or under this chapter, the insurer has failed to promptly make available for examination
6 any of its own property, books, accounts, documents, or other records, or those of any subsidiary
7 or related company within the control of the insurer, or those of any person having executive
8 authority in the insurer so far as they pertain to the insurer;

9 ~~(7)~~ (12) Without first obtaining the written consent of the commissioner, the insurer has
10 transferred, or attempted to transfer, in a manner contrary to chapter 35 or chapter 53 of this title,
11 ~~a material amount of~~ substantially its entire property or business, or has entered into any
12 transaction the effect of which is to merge, consolidate, or reinsure ~~a material amount of~~
13 substantially its entire property or business in or with the property or businesses of any other
14 person;

15 ~~(8)~~ (13) The insurer or its property has been or is the subject of an application for the
16 appointment of a receiver, trustee, custodian, conservator, or sequestrator or similar fiduciary of
17 the insurer or its property otherwise than as authorized under the insurance laws of this state, ~~and~~
18 ~~that appointment has been made or is imminent, and that appointment might oust the courts of~~
19 ~~this state of jurisdiction or might prejudice orderly delinquency proceedings under this chapter;~~

20 ~~(9)~~ (14) Within the previous ~~four~~ ~~(4)~~ five (5) years the insurer has willfully and
21 continuously violated its charter or articles of incorporation, its bylaws, any insurance law of this
22 state, or any valid order of the commissioner;

23 ~~(10)~~ (15) The insurer has failed to pay within sixty (60) days after due date any
24 obligation to any state or any subdivision of the state or any judgment entered in any state, if the
25 court in which the judgment was entered had jurisdiction over the subject matter, except that the
26 nonpayment shall not be a ground until sixty (60) days after any good faith effort by the insurer to
27 contest the obligation has been terminated, whether it is before the commissioner or in the courts,
28 or the insurer has systematically attempted to compromise or renegotiate previously agreed
29 settlements with its creditors on the ground that it is financially unable to pay its obligations in
30 full;

31 ~~(11)~~ (16) The insurer has failed to file its annual report or other financial report required
32 by statute within the time allowed by law; ~~and, after written demand by the commissioner, has~~
33 ~~failed to give an adequate explanation immediately; and/or~~

34 ~~(12)~~ (17) The board of directors or the holders of a majority of the shares entitled to vote,

1 or a majority of those individuals entitled to the control of those entities specified in section 27-
2 35-1, request or consent to rehabilitation under this chapter; and/or

3 (18) The insurer does not comply with its domiciliary state's requirements for issuance to
4 it of a certificate of authority, or that its certificate of authority has been revoked by its state of
5 domicile.

6 **27-14.3-17. Rehabilitation order.** -- (a) An order to rehabilitate the business of a
7 domestic insurer, or an alien insurer domiciled in this state, shall appoint the commissioner and
8 his or her successors in office the rehabilitator, and shall direct the rehabilitator to take possession
9 of the assets of the insurer, and to administer them under the general supervision of the court. The
10 filing or recording of the order with the clerk of the superior court for the county of Providence or
11 recorder of deeds of the city or town in which the principal business of the company is conducted,
12 or the city or town in which its principal office or place of business is located, shall impart the
13 same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that
14 recorder of deeds would have imparted. The order to rehabilitate the insurer shall by operation of
15 law vest title to all assets of the insurer in the rehabilitator.

16 (b) Any order issued under this section shall require accountings to the court by the
17 rehabilitator. Accountings shall be at ~~these~~ such intervals as the court specifies in its order, but no
18 less frequently than semi-annually. Each accounting shall include a report concerning the
19 rehabilitator's opinion as to the likelihood that a plan under section 27-14.3-18(f) will be prepared
20 by the rehabilitator and the timetable for doing so.

21 (c) Entry of an order of rehabilitation shall not constitute an anticipatory breach of any
22 contracts of the insurer nor shall it be grounds for retroactive revocation or retroactive
23 cancellation of any contracts of the insurer, unless the revocation or cancellation is done by the
24 rehabilitator pursuant to section 27-14.3-18.

25 (d) In recognition of the need for a prompt and final resolution for all affected by a plan
26 of rehabilitation, any appeal from an order of rehabilitation or an order approving a plan of
27 rehabilitation shall be heard on an expedited basis. A stay of an order of rehabilitation or an order
28 approving a plan of rehabilitation shall not be granted unless the appellant demonstrates that
29 extraordinary circumstances warrant delaying the recovery under the plan of rehabilitation of all
30 other persons, including policyholders. If the plan provides an appropriate mechanism for
31 adjustment in the event of any adverse ruling from an appeal, no stay shall be granted.

32 **27-14.3-18. Powers and duties of rehabilitator.** -- (a) The commissioner as rehabilitator
33 may appoint one or more special deputies who shall have all ~~of~~ the powers and responsibilities of
34 the rehabilitator granted under this section, and the commissioner may employ such counsel,

1 clerks and assistants as deemed necessary. The compensation of the special deputy, counsel,
2 clerks, and assistants and all ~~of the~~ expenses of taking possession of the insurer and of conducting
3 the proceedings shall be fixed by the commissioner, with the approval of the court, and shall be
4 paid out of the funds or assets of the insurer. The persons appointed under this section shall serve
5 at the pleasure of the commissioner. The commissioner, as rehabilitator, may, with the approval
6 of the court, appoint an advisory committee of policyholders, claimants, or other creditors
7 including guaranty associations should ~~an advisory~~ such a committee be deemed ~~necessary;~~
8 ~~provided, that if a nonprofit hospital service corporation, nonprofit medical service corporation,~~
9 ~~or nonprofit dental service corporation is subject to an order of rehabilitation, the commissioner~~
10 ~~shall necessary.~~ The decision to appoint an advisory committee shall be at the sole discretion of
11 the commissioner and the ~~of creditors to include Rhode Island nonprofit hospitals.~~ ~~The~~
12 committee shall serve at the pleasure of the commissioner and shall serve without compensation
13 ~~other than~~ and without reimbursement for ~~reasonable travel and per diem living~~ expenses. No
14 other committee of any nature shall be appointed by the commissioner or the court in
15 rehabilitation proceedings conducted under this chapter.

16 (b) In the event that the property of the insurer does not contain sufficient cash or liquid
17 assets to defray the costs incurred, the commissioner may advance the costs so incurred ~~costs~~ out
18 of any appropriation for the maintenance of the division of insurance. Any ~~advanced~~ amounts so
19 advanced for expenses of administration shall be repaid to the commissioner for the use of the
20 insurance department out of the first available money of the insurer.

21 ~~(c) The commissioner may reimburse the division of insurance and its agents and~~
22 ~~consultants at its statutory examination rate and/or reasonable consultants' rate for reasonable~~
23 ~~costs incurred in the examination and the investigation in anticipation of the rehabilitation of the~~
24 ~~insurer and in the rehabilitation of the insurer, from the funds or assets of the insurer, those fees to~~
25 ~~be class one expenses of administration pursuant to section 27-14.3-46.~~

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

32 ~~(e)~~ (d) If it appears to the rehabilitator that there has been criminal or tortious conduct, or
33 breach of any contractual or fiduciary obligation detrimental to the insurer by any officer,
34 manager, agent, ~~insurance producer,~~ broker, employee, or other person, ~~he or she~~ the rehabilitator

1 may pursue all appropriate legal remedies on behalf of the insurer.

2 ~~(f)~~ (e) If the rehabilitator determines that reorganization, consolidation, conversion,
3 reinsurance, merger, or other transformation of the insurer is appropriate, ~~he or she~~ the
4 rehabilitator shall prepare a plan to effect ~~those~~ such changes and shall file it with the court
5 within six (6) months after the entry of the rehabilitation order or such further time as the court
6 may allow for good cause. Upon application of the rehabilitator for approval of the plan, and after
7 ~~any such~~ notice and hearings as the court may prescribe, the court may either approve or
8 disapprove the plan proposed ~~plan~~, or may modify it and approve it as modified. Any plan
9 approved under this section shall be, in the judgment of the court, fair and equitable to all parties
10 concerned. If the plan is approved, the rehabilitator shall carry out the plan. In the case of a life
11 insurer, the plan proposed ~~plan~~ may include the imposition of liens upon the policies of the
12 company, if all ~~of the~~ rights of the shareholders are first relinquished. A plan for a life insurer
13 may also propose imposition of a moratorium upon loan and cash surrender rights under policies
14 for a period ~~and to an extent as may be necessary~~ not to exceed six (6) months from the entry of
15 the rehabilitation order, unless the court, for good cause shown, shall extend the moratorium.

16 ~~(g)~~ (e) The rehabilitator shall have the power under sections 27-14.3-30 and 27-14.3-31
17 to avoid fraudulent transfer, and may exercise any of the powers under section 27-14.3-25, as
18 necessary or appropriate, including, but not limited to, the power to affirm or disaffirm any
19 contract to which the insurer is a party. However, the rehabilitator of an insurer may, as part of a
20 court approved plan of rehabilitation, modify or restructure the policies or contracts of insurance.
21 In the event the rehabilitator proposes to modify or restructure the policies or contracts of
22 insurance, the rehabilitator may, with the concurrence of the court, approve payment of certain
23 expenses incurred by an advisory committee appointed pursuant to subsection 27-14.3-18(a), the
24 expenses to be limited to the reasonable and necessary expenses incurred in obtaining an expert
25 evaluation of the effect upon policyholders of any proposed modification or restructuring of
26 policies or contracts of insurance.

27 (g) The enumeration, in this section, of the powers and authority of the rehabilitator shall
28 not be construed as a limitation upon the rehabilitator, nor shall it exclude in any manner the right
29 to do other acts not specifically enumerated or otherwise provided for, as may be necessary or
30 appropriate for the accomplishment of or in aid of the purpose of rehabilitation.

31 **27-14.3-20. Termination of rehabilitation.** -- (a) Whenever the commissioner believes
32 further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors,
33 policyholders, or the public, or would be futile, the commissioner may petition the superior court
34 for the county of Providence for an order of liquidation. A petition under this subsection shall

1 have the same effect as a petition under section ~~27-14.3-21~~ 27-14.3-16. ~~The superior court for the~~
2 ~~county of Providence shall permit the directors of the insurer to take any actions as are reasonably~~
3 ~~necessary to defend against the petition and may order payment from the estate of the insurer of~~
4 ~~any costs and other expenses of defense as justice may require.~~

5 (b) The protection of the interests of insureds ~~the insured~~, claimants, and the public
6 requires the timely performance of all insurance policy obligations. If the payment of policy
7 obligations is suspended in substantial part for a period of six (6) months at any time after the
8 appointment of the rehabilitator and the rehabilitator has not filed an application for approval of a
9 plan under section 27-14.3-18(f), the rehabilitator shall petition the court for an order of
10 liquidation on the grounds of insolvency.

11 (c) The rehabilitator or the directors of the insurer may at any time petition the superior
12 court for the county of Providence for or the court on its own motion may enter an order
13 terminating rehabilitation of an insurer. The court shall also permit the directors of the insurer to
14 petition the court for an order terminating rehabilitation of the insurer. ~~and may order payment~~
15 ~~from the estate of the insurer of any costs and other expenses of the petition as justice may~~
16 ~~require.~~ If the superior court ~~for the county of Providence~~ finds that rehabilitation has been
17 accomplished and that grounds for rehabilitation under section 27-14.3-16 no longer exist, it shall
18 order that the insurer be restored to possession of its property and the control of the business. The
19 superior court for the county of Providence may also make that finding and issue that order at any
20 time upon its own motion.

21 **27-14.3-22. Liquidation orders.** -- (a) An order to liquidate the business of a domestic
22 insurer shall appoint the commissioner and ~~his or her successors~~ any successor in office
23 liquidator, and shall direct the liquidator to take possession of the assets of the insurer and to
24 administer them under the general supervision of the court. The liquidator shall be vested by
25 operation of law with the title to all of the property, contracts, and rights of action, and all of the
26 books and records of the insurer ordered liquidated, wherever located, as of the entry of the final
27 order of liquidation. The filing or recording of the order with the clerk of the superior court for
28 the county of Providence and the recorder of deeds of the city or town in which its principal
29 office or place of business is located or, in the case of real estate, with the recorder of deeds of the
30 city or town where the property is located, shall impart the same notice as a deed, bill of sale, or
31 other evidence of title duly filed or recorded with that recorder of deeds would have imparted.

32 (b) Upon issuance of the order, the rights and liabilities of any such insurer and of its
33 creditors, policyholders, shareholders, members, and all other persons interested in its estate shall
34 become fixed as of the date of entry of the order of liquidation, except as provided in sections 27-

1 14.3-23 and 27-14.3-41, unless otherwise fixed by the superior court.

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

6 (d) At the time of petitioning for an order of liquidation, or at any time ~~after this~~
7 thereafter, the commissioner, after making appropriate findings of an insurer's insolvency, may
8 petition the court for a judicial declaration of insolvency. After providing ~~any~~ such notice and
9 hearing ~~that~~ as it deems proper, the court may make the declaration.

10 (e) Any order issued under this section shall require financial reports to the court by the
11 liquidator. Financial reports shall include (at a minimum) a statement the assets and liabilities of
12 the insurer and all funds received or disbursed by the liquidator during the current period.
13 Financial reports shall be filed within one year of the liquidation order and at least annually ~~after~~
14 ~~this~~ thereafter, unless the court for good cause allows a longer reporting period.

15 ~~(f) Within five (5) days after the initiation of an appeal of an order of liquidation, which~~
16 ~~order has been stayed, the commissioner shall present for the court's approval a plan for the~~
17 ~~continued performance of the defendant company's policy claims obligations, including the duty~~
18 ~~to defend insured under liability insurance policies, during the pendency of an appeal. The plan~~
19 ~~shall provide for the continued performance and payment of policy claims obligations in the~~
20 ~~normal course of events, notwithstanding the grounds alleged in support of the order of~~
21 ~~liquidation, including the ground of insolvency. In the event the defendant company's financial~~
22 ~~condition will not, in the judgment of the commissioner, support the full performance of all~~
23 ~~policy claims obligations during the appeal pendency period, the plan may prefer the claims of~~
24 ~~certain policyholders and claimants over creditors and interested parties and other policyholders~~
25 ~~and claimants, as the commissioner finds to be fair and equitable considering the relative~~
26 ~~circumstances of the policyholders and claimants. The court shall examine the plan submitted by~~
27 ~~the commissioner and if it finds the plan to be in the best interests of the parties, the court shall~~
28 ~~approve the plan. No action shall lie against the commissioner or any of his or her deputies,~~
29 ~~agents, clerks, assistants, or attorneys by any party based on preference in an appeal pendency~~
30 ~~plan approved by the court. In the event the order of liquidation is set aside upon appeal, the~~
31 ~~company shall not be released from delinquency proceedings unless and until all funds advanced~~
32 ~~by any guaranty association, including reasonable administrative expenses in connection~~
33 ~~therewith relating to obligations of the company, shall be repaid in full, together with interest at~~
34 ~~the judgment rate of interest or unless an arrangement for repayment thereof has been made with~~

1 the consent of all applicable guaranty associations.

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

4 ~~(h) Any appeal pendency plan shall provide for equitable adjustments to be made by the~~
5 ~~liquidator to any distributions of assets to guaranty associations, in the event that the liquidator~~
6 ~~pays claims from the assets of the estate, which would be the obligations of any particular~~
7 ~~guaranty association but for the appeal of the order of liquidation, so that all guaranty associations~~
8 ~~equally benefit on a pro rata basis from the assets of the estate. In the event an order of liquidation~~
9 ~~is set aside upon any appeal, the company shall not be released from delinquency proceedings~~
10 ~~unless and until all funds advanced by any guaranty association, including reasonable~~
11 ~~administrative expenses in connection with the proceedings relating to obligations of the~~
12 ~~company, shall be repaid in full, together with interest at the judgment rate of interest or unless an~~
13 ~~arrangement for repayment has been made with the consent of all applicable guaranty~~
14 ~~associations.~~

15 **27-14.3-23. Continuance of coverage.** -- (a) ~~All policies, including bonds and other~~
16 ~~noncancellable business;~~ Notwithstanding any policy or contract language or any other statute, all
17 policies, insurance contracts (other than reinsurance), surety bonds or surety undertakings, other
18 than life or health insurance or annuities, in effect at the time of the issuance of an order of
19 liquidation shall continue in force only for the lesser of:

20 (1) ~~The greater of a~~ A period of thirty (30) days from the date of entry of the liquidation
21 order ~~or a time as coverage is~~ provided for by a responsible guaranty association, if any is
22 applicable;

23 (2) The expiration of the policy coverage;

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

26 (4) The liquidator has effected a transfer of the policy obligation pursuant to subsection
27 27-14.3-25(a)(10); or

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

29 (b) An order or liquidation under section 27-14.3-22 shall terminate coverage at the time
30 specified in subsection (a) ~~of this section~~ for ~~the~~ purposes of any other statute.

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

34 (d) Policies of life or health insurance or annuities or any period or coverage of those

1 policies not covered by a guaranty association ~~or foreign guaranty association~~ shall terminate
2 under subsections (a) and (b) ~~of this section~~.

3 (e) The cancellation of any bond or surety undertaking shall not release any co-surety or
4 guarantor.

5 (f) The obligations of the insolvent insurer's reinsurers shall not be affected by a
6 cancellation, under this section, of the insurance ceded to the reinsurers.

7 **27-14.3-25. Powers of liquidator.** -- (a) The liquidator shall have the power:

8 (1) To appoint a special deputy or deputies to act for ~~him or her~~ the liquidator under this
9 chapter, and to determine ~~his or her~~ any reasonable compensation. The special deputy shall have
10 all of the powers of the liquidator granted by this section. The special deputy shall serve at the
11 pleasure of the liquidator;

12 (2) To employ employees and agents, legal counsel, actuaries, accountants, appraisers,
13 consultants, and any other personnel as ~~he or she~~ the liquidator may deem necessary to assist in
14 the liquidation;

15 (3) To appoint, with the approval of the court, an advisory committee of policyholders,
16 claimants, or other creditors including guaranty associations should a committee be deemed
17 necessary; ~~provided, that if a nonprofit hospital service corporation, nonprofit medical service~~
18 ~~corporation, or nonprofit dental service corporation is subject to an order of liquidation, the~~
19 ~~commissioner shall appoint an advisory committee of creditors to include Rhode Island nonprofit~~
20 ~~hospitals.~~ The committee shall serve at the pleasure of the commissioner ~~and shall serve~~ and the
21 decision to appoint an advisory committee shall be at the sole discretion of the commissioner. The
22 committee shall serve without compensation and without reimbursement for ~~reasonable travel and~~
23 ~~per diem living~~ expenses. No other committee of any nature shall be appointed by the
24 commissioner or the court in liquidation proceedings conducted under this chapter;

25 (4) To fix the reasonable compensation of employees and agents, legal counsel,
26 actuaries, accountants, appraisers, and consultants with the approval of the court; ~~and may~~
27 ~~reimburse from the assets of the insurer the division of insurance and its agents and consultants at~~
28 ~~the statutory examination rate and/or reasonable agents' or consultants' rates for reasonable costs~~
29 ~~incurred in the examination and investigation in anticipation of liquidation, and in the liquidation~~
30 ~~of the insurer, those fees are to be Class 1 expenses of administration pursuant to section 27-14.3-~~
31 ~~46;~~

32 (5) To pay reasonable compensation to persons appointed and to defray from the funds
33 or assets of the insurer all of the expenses of taking possession of, conserving, conducting,
34 liquidating, disposing of, or dealing with the business and property of the insurer. The liquidator

1 shall have the power to pay reasonable compensation to such persons on an interim basis. All
2 such interim payments shall be subject to the approval of the court upon submission by the
3 liquidator. Approvals or payments provided for herein shall not prejudice the right of the
4 liquidator to seek any recovery, recoupment, disgorgement or reimbursement of fees where
5 recovery would otherwise be allowed by causes of action recognized in law or in equity. In the
6 event that the property of the insurer does not contain sufficient cash or liquid assets to defray the
7 costs incurred ~~costs~~, the commissioner may advance the incurred costs out of any appropriation
8 for the maintenance of the insurance department. Any advanced amounts for the expenses of
9 administration shall be repaid to the commissioner for the use of the insurance department out of
10 the first available moneys of the insurer;

11 (6) To hold hearings, to subpoena witnesses to compel their attendance, to administer
12 oaths, to examine any person under oath, and to compel any person to subscribe to his or her
13 testimony after it has been correctly reduced to writing, and in connection with this to require the
14 production of any books, papers, records or other documents which he or she deems relevant to
15 the inquiry;

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

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

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

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

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

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

27 (10) To use assets of the estate of an insurer under a liquidation order to transfer policy
28 obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to
29 applicable priorities under section 27-14.3-46;

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

1 liquidation;

2 (12) To borrow money on the security of the insurer's assets or without security and to
3 execute and deliver all documents necessary to that transaction for the purpose of facilitating the
4 liquidation. Any funds borrowed may be repaid as an administrative expense and have priority
5 over any other claims in section 27-14.3-46(1), Class 1, under the priority of distribution;

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

8 (14) To continue to prosecute and to institute in the name of the insurer or in his or her
9 own name any and all suits and other legal proceedings, in this state or elsewhere ~~another place~~,
10 and to abandon the prosecution of claims he or she deems unprofitable to pursue further. If the
11 insurer is dissolved under section 27-14.3-24, ~~he or she~~ the liquidator shall have the power to
12 apply to any court in this state or elsewhere ~~another place~~ for leave to substitute himself for the
13 insurer as plaintiff;

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

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

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

24 (18) To invest all sums not currently needed, unless the court orders otherwise;

25 (19) To file any necessary documents for record in the office of any recorder of deeds or
26 record office in this state or another place where property of the insurer is located;

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

33 (21) To exercise and enforce all of the rights, remedies, and powers of any creditor,
34 shareholder, policyholder, or member including any power to avoid any transfer or lien that may

1 be given by the general laws and that is not included with sections 27-14.3-30 -- 27-14.3-32;

2 (22) To intervene in any proceeding wherever instituted that might lead to the
3 appointment of a receiver or trustee, and to act as the receiver or trustee whenever the
4 appointment is offered;

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

8 (24) To exercise all of the powers now held or after this conferred upon receivers by the
9 laws of this state not inconsistent with the provisions of this chapter.

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

15 (c) ~~Notwithstanding the powers of the liquidator as stated in subsections (a) and (b) of~~
16 ~~this section, the liquidator shall have no obligation to defend claims or to continue to defend~~
17 ~~claims subsequent to the entry of a liquidation order.~~ The liquidator shall not be obligated to
18 defend any action against the insurer or insured and may enforce injunctions, stays and the claims
19 procedure set forth in this chapter. The liquidator may elect to defend any actions against the
20 insurer or insureds if it is in the best interest of the estate. Otherwise any insureds not defended by
21 a guaranty association shall provide their own defense, and include the cost of the defense as part
22 of their claims, if the defense was an obligation of the insurer. The right of the liquidator to
23 contest coverage on a particular claim shall be deemed preserved without the necessity for an
24 express reservation of rights.

25 **27-14.3-26. Notice to creditors and others.** -- (a) Unless the court otherwise directs, the
26 liquidator shall give or cause to be given notice of the liquidation order as soon as possible:

27 (1) By first class mail and ~~either by facsimile or telegraph~~ electronic communication to
28 the insurance commissioner of each jurisdiction in which the insurer is doing business;

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

31 (3) By first class mail to ~~all insurance agents or insurance~~ the insurer's agents, brokers or
32 producers of the insurer record, with current appointments or current licenses to represent the
33 insurer, and to all other agents, brokers or producers as the liquidator deems appropriate at their
34 last known address;

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

4 ~~(5) By first class mail to federal, state, and local governmental agencies and~~
5 ~~instrumentalities as their interests may arise; and~~

6 ~~(6)~~ By publication in a newspaper of general circulation in the state in which the insurer
7 has its principal place of business and in ~~these~~ such other locations ~~that~~ as the liquidator deems
8 appropriate.

9 (b) Whenever the commissioner of this state is appointed receiver for an insurer
10 domiciled in another state, the notice of the liquidation order given by the domiciliary liquidator
11 in compliance with the laws of that state shall be sufficient notice, and the ancillary receiver shall
12 not be required to give any notice unless the domiciliary liquidator fails to give notice. The
13 ancillary receiver may request that the domiciliary liquidator's notice mention the existence of
14 any applicable guaranty association laws in this state, and inform claimants that any claims which
15 the guaranty association of this state may cover may be filed with the domiciliary liquidator and
16 will be forwarded to the applicable guaranty association. If notice by the domiciliary liquidator in
17 another state does not mention the possibility of guaranty association coverage in this state, then
18 the ancillary receiver shall arrange to give notice to those who may have rights under applicable
19 guaranty association laws in this state, together with a citation to the guaranty association statute
20 in this state. The notice may include a brief summary of claimants' rights under the guaranty
21 association laws in this state and any other information deemed appropriate.

22 ~~(b)~~ (c) Except as otherwise established by the liquidator with the approval of the court,
23 notice to potential claimants under subsection (a) ~~of this section~~ shall require claimants to file
24 with the liquidator their claims together with proper proofs ~~of their claims under~~ specified in
25 section 27-14.3-40, on or before a date the liquidator shall specify in the notice. The liquidator
26 need not require persons claiming cash surrender values or other investment values in life
27 insurance and annuities to file a claim. All claimants shall have a duty to keep the liquidator
28 informed of any changes of address.

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

33 (2) The liquidator shall promptly provide to the guaranty associations ~~any~~ such
34 information concerning the identities and addresses of ~~the~~ such policyholders and their policy

1 coverages as may be within the liquidator's possession or control, and otherwise cooperate with
2 guaranty associations to assist them in providing to ~~the~~ such policyholders timely notice of the
3 guaranty associations' coverage of policy benefits, including, as applicable, coverage of claims
4 and continuation or termination of coverages.

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

8 (f) Notwithstanding the foregoing, the liquidator shall have no duty to locate any persons
9 or entities if no address is found in the records of the insurer, or if mailings are returned to the
10 liquidator because of inability to deliver at the address shown in the company's books and
11 records. In such circumstances the notice by publication as required by this chapter or actual
12 notice received is sufficient notice. Written certification by the liquidator or other knowledgeable
13 person acting for the liquidator, that the notices were deposited in the United States mail, postage
14 prepaid, shall be prima facie evidence of mailing and receipt.

15 (g) Upon application of the liquidator and for good cause shown, the court may find that
16 notice by publication as required in this section is sufficient notice to those persons holding an
17 occurrence policy which expired more than four (4) years prior to the entry of the order of
18 liquidation, and under which there are no pending claims; or the court may order such other
19 notice to those persons as it deems appropriate.

20 **27-14.3-28. Actions by and against liquidator.** -- (a) An allegation by the receiver of
21 improper or fraudulent conduct against an officer of the insurer, or any other person, shall not be
22 the basis of a defense to the enforcement of a contractual obligation owed to the insurer by a third
23 party, unless the conduct is found to have been materially and substantially related to the
24 contractual obligation for which enforcement is sought.

25 (b) Unless the otherwise applicable stay provisions or injunctive provisions are lifted or
26 modified by the domiciliary receivership court, any judgment or order taken by any person
27 against the insurer after the date of the liquidation in any court other than the domiciliary
28 receivership court or a court in which an ancillary proceeding is pending in a reciprocal state, or
29 in contravention of the terms of the injunctive provisions of the court of this state's order of
30 liquidation or rehabilitation shall automatically place the claim in a priority of Class 6 as
31 described in section 27-14.3-46, irrespective of what class the claim would have been entitled to
32 without such an order or judgment. Any claimant possessing such a judgment may set aside the
33 judgment as to the insurer and the claims will not be subject to this provision.

34 ~~Upon issuance of an order appointing a liquidator of a domestic insurer or of an alien~~

1 ~~insurer domiciled in this state, no action at law or equity or in arbitration shall be brought against~~
2 ~~the insurer or liquidator, whether in this state or another place, nor shall any existing actions be~~
3 ~~maintained or further presented after the issuance of the order. The courts of this state shall give~~
4 ~~full faith and credit to injunctions against new actions against the liquidator or the company or the~~
5 ~~continuation of existing actions against the liquidator or the company, when the injunctions are~~
6 ~~included in an order to liquidate an insurer issued pursuant to corresponding provisions in other~~
7 ~~states. Whenever, in the liquidator's judgment, protection of the estate of the insurer necessitates~~
8 ~~intervention in an action against the insurer that is pending outside of this state, he or she may~~
9 ~~intervene in the action. The liquidator may defend any action in which he or she intervenes under~~
10 ~~this section at the expense of the estate of the insurer.~~

11 ~~(b) The liquidator may, upon or after an order for liquidation, within two (2) years or a~~
12 ~~longer time as applicable law may permit, institute an action or proceeding on behalf of the estate~~
13 ~~of the insurer upon any cause of action against which the period of limitation fixed by applicable~~
14 ~~law has not expired at the time of the filing of the petition upon which the order is entered. When,~~
15 ~~by any agreement, a period of limitation is fixed for instituting a suit or proceeding upon any~~
16 ~~claim, or for filing any claim, proof of claim, proof of loss, demand, notice, or the like, or when in~~
17 ~~any proceeding, judicial or otherwise, a period of limitation is fixed, either in the proceeding or~~
18 ~~by applicable law, for taking any action, filing any claim or pleading, or doing any act, and when~~
19 ~~in this case the period had not expired at the date of the filing of the petition the liquidator may,~~
20 ~~for the benefit of the estate, take any action or do any act, required of or permitted to the insurer,~~
21 ~~within a period of one hundred eighty (180) days subsequent to the entry of an order for~~
22 ~~liquidation, or within a further period that is shown to the satisfaction of the court not to be~~
23 ~~unfairly prejudicial to the other party.~~

24 ~~(c) No statute of limitations or defense of laches shall run with respect to any action~~
25 ~~against an insurer between the filing of a petition for liquidation against an insurer and the denial~~
26 ~~of the petition. Any action against the insurer that might have been commenced when the petition~~
27 ~~was filed may be commenced for at least sixty (60) days after the petition is denied.~~

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

31 **27-14.3-33. Claims of holders of void or voidable rights.** -- (a) No claims of a creditor
32 who has received or acquired a preference, lien, conveyance, transfer, assignment, or
33 encumbrance voidable under this chapter shall be allowed unless ~~he or she~~ [the creditor](#) surrenders
34 the preference, lien, conveyance, transfer, assignment, or encumbrance. If the avoidance is

1 effected by a proceeding in which a final judgment has been entered, the claim shall not be
2 allowed unless the money is paid or the property is delivered to the liquidator within thirty (30)
3 days from the date of the entering of the final judgment, except that the court having jurisdiction
4 over the liquidation may allow further time if there is an appeal or other continuation of the
5 proceeding.

6 (b) A claim allowable under ~~section 27-14.3-32(a)~~ subsection (a) by reason of the
7 avoidance, whether voluntary or involuntary, or a preference, lien, conveyance, transfer,
8 assignment, or encumbrance, may be filed as an excused ~~last~~ late filing under section 27-14.3-39
9 if filed within thirty (30) days from the date of the avoidance, or within the further time allowed
10 by the court under ~~section 27-14.3-32(a)~~ subsection (a).

11 **27-14.3-34. Setoffs.** -- (a) Mutual debts or mutual credits, whether arising out of one or
12 more contracts between the insurer and another person in connection with any action or
13 proceeding under this chapter, shall be set off and the balance only shall be allowed or paid,
14 except as provided in subsections (b), (c) and (d) of this section and section 27-14.3-37.

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

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

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

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

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

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

27 (6) The obligations between the person and the insurer arise from business ~~where either~~
28 ~~the person or the insurer has assumed risks and obligations from the other party and then has~~
29 ~~ceded back to that party substantially the same risks and obligations.~~ which is both ceded to and
30 assumed from the insurer except that the rehabilitator may, with regard to such business, allow
31 certain setoffs in rehabilitation if the rehabilitator shall find the allowance of said setoffs
32 appropriate.

33 (c) The liquidator shall provide persons that assumed business from the insurer with
34 accounting statements identifying debts which are currently due and payable. Such persons may

1 set off against such debts only mutual credits which are currently due and payable by the insurer
2 to such persons for the period covered by the accounting statement.

3 (d) A person that ceded business to the insurer may set off debts due the insurer against
4 only those mutual credits which the person has paid or which have been allowed in the insurer's
5 delinquency proceeding.

6 (e) Notwithstanding the foregoing, a setoff of sums due on obligations in the nature of
7 those set forth in subsection (b)(6) shall be allowed for those sums accruing from business written
8 where the contracts were entered into, renewed or extended with the express written approval of
9 the commissioner of insurance of the state of domicile of the now insolvent insurer, when in the
10 judgment of such commissioner it was necessary to provide reinsurance in order to prevent or
11 mitigate a threatened impairment or insolvency of a domiciliary insurer in connection with the
12 exercise of the commissioner's regulatory responsibilities.

13 (f) These amendments shall become effective six (6) months from the date of enactment
14 and shall apply to all contracts entered into, renewed, extended or amended on or after that date,
15 and to debts or credits arising from any business written or transactions occurring after the
16 effective date pursuant to any contract including those in existence prior to the effective date, and
17 shall supersede any agreements or contractual provisions which might be construed to enlarge the
18 setoff rights of any person under any contract with the insurer. For purposes of this section any
19 change in the terms of, or consideration for, any such contract shall be deemed an amendment.

20 **27-14.3-36. Reinsurer's liability.** – (a) The amount recoverable by the liquidator from
21 ~~reinsurance reinsurers~~ shall not be reduced as a result of the delinquency proceedings, regardless
22 of any provision in the reinsurance contract or other agreement. ~~Payment made directly to an~~
23 ~~insured or other creditor shall not diminish the reinsurer's obligation to the insurer's estate except~~
24 ~~when the reinsurance contract provided for direct coverage of a named insured and the payment~~
25 ~~was made in discharge of that obligation.~~

26 (b) All reinsurance contracts to which an insurer domiciled in this state is a party that do
27 not contain the provisions required with respect to the obligation of reinsurers in the event of
28 insolvency of the reinsured in order to obtain credit for reinsurance or other applicable statutes,
29 shall be construed to contain the following provisions:

30 (1) In the event of insolvency and the appointment of a receiver, the reinsurance
31 obligation shall be payable to the receiver upon demand, with reasonable provision for
32 verification, on the basis of claims allowed pursuant to section 27-14.3-47, without diminution
33 because of the insolvency or because the receiver has failed to pay all or a portion of any claims.
34 Payments by the reinsurer as set forth above shall be made directly to the ceding insurer or to its

1 receiver; and

2 (2) The receiver of a reinsured company shall give written notice of the pendency of a
3 claim against the reinsured company indicating the policy or bond reinsured, without a reasonable
4 time after the claim is filed. The receiver of a reinsured company may arrange for the giving of
5 notice of the pendency of claims on reinsured policies by guaranty funds or by other persons
6 responsible for the adjustment and settlement of the reinsured company's claims. Failure to give
7 notice shall not excuse the obligation of the reinsurer unless it is substantially prejudiced thereby.
8 The reinsurer may interpose, at its own expense, in the proceeding where the claim is to be
9 adjudicated, any defense or defenses which it may deem available to the reinsured company or its
10 receiver.

11 (c) Payments by the reinsurer as set forth shall be made directly to the ceding insurer or
12 its receiver, except where the contract of insurance or reinsurance specifically provides for
13 another payee in the event of insolvency of the ceding insurer in accordance with any applicable
14 requirements of statutes, rules or orders of the domiciliary state of the ceding insurer. The
15 receiver shall be entitled to recover from any person, who unsuccessfully makes a claim directly
16 against the reinsurer, the receiver's attorneys' fees and expenses incurred in preventing any
17 collection by such person.

18 (d) These amendments shall become effective six (6) months from the date of enactment
19 and shall apply to all contracts entered into, renewed, extended or amended on or after that date,
20 and to obligations arising from any business written or transaction occurring covered by
21 reinsurance after the effective date pursuant to any contract including those in existence prior to
22 the effective date.

23 **27-14.3-37. Recovery of premiums owed.** – (a) (1) An insured is obligated to pay, either
24 directly to the liquidator or to any agent that has paid or is obligated to pay the liquidator on
25 behalf of the insured, any unpaid earned premium or retrospectively rated premium due to the
26 insurer based on the termination of coverage under section 27-14.3-23, premium on surety
27 business is deemed earned at inception if no policy term can be determined. All other premium
28 will be deemed earned and will be prorated over the determined policy term, regardless of any
29 provision in the bond, guaranty, contract or other agreement. If a claim for losses incurred under a
30 policy is approved by the court under subsection 27-14.3-47(b), then all premium for the full
31 policy term is deemed earned.

32 ~~(a) (1) (2) An agent or insurance producer, broker, premium finance company, or any~~
33 Any other person, other than the insured, responsible for the payment of a premium shall be
34 obligated to pay any ~~collected-earned~~ unpaid premiums ~~and any unearned~~ including any amount

1 representing commissions for the full policy term due the insurer at the time of the ~~declaration of~~
2 ~~insolvency~~ entry of the liquidation order, whether earned or unearned based on the coverage
3 under section 27-14.3-23 as shown on the records of the insurer. The unpaid premium due to the
4 insurer from any person other than the insured excludes any premium not collected from the
5 insured and not earned based on the termination of coverage under section 27-14.3-23. ~~The agent~~
6 ~~or insurance producer, broker, solicitor or other person responsible for the payment of a premium~~
7 ~~shall remit unearned premiums in his or her possession to the insured who paid them, or with the~~
8 ~~written approval of the insured, purchase new coverage for the insured with a different insurer.~~
9 ~~Credits or setoffs or both shall not be allowed to an agent or insurance producer, broker or~~
10 ~~premium finance company for any amounts advanced to the insurer by the agent or insurance~~
11 ~~producer, broker, or premium finance company on behalf of, but in the absence of a payment by,~~
12 ~~the insured;~~

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

15 (3) The liquidator shall also have the right to recover from any person, other than the
16 insured, responsible for the payment of a premium, any unearned commission of such person
17 based on the termination of coverage under section 27-14.3-23. Credits or setoffs or both shall not
18 be allowed to an agent, broker, premium finance company, or any other person against unpaid
19 premium due to the insurer for any amounts advanced to the insurer by such person on behalf of,
20 but in the absence of a payment by, the insured, or for any other amount paid by such person to
21 any other person after the entry of the order of liquidation.

22 (4) Persons that collect premium, or finance premium under a premium finance contract,
23 that is due to the insurer in liquidation are deemed to hold that premium in trust as a fiduciary for
24 the benefit of the insurer and to have availed themselves of the laws of this state, regardless of
25 any provision in any agency contract or other agreement.

26 (5) Any premium finance company is obligated to pay any amounts due to the insurer
27 from premium finance contracts, whether the premium is earned or unearned. The liquidator has
28 the right to collect any unpaid finance premium directly from the premium finance company by
29 taking an assignment of the underlying premium finance contracts, or directly from the insured
30 that is a party to the premium finance contract.

31 (b) Upon satisfactory evidence of a violation of this section, by a person other than the
32 insured, the commissioner may pursue either one or ~~both~~ all of the following courses of action:

33 (1) Suspend or revoke or refuse to renew the licenses of ~~the~~ such offending party or
34 parties; ~~and/or~~

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

3 (3) Impose any other sanction or penalty allowed for by the commissioner.

4 (c) Before the commissioner shall take any action as set forth in subsection (b) of this
5 section, ~~he or she shall give~~ written notice shall be given to the person, company, association, or
6 exchange accused of violating the law, stating specifically the nature of the alleged violation and
7 fixing a time and place, at least ten (10) days ~~after this~~ thereafter, when a hearing on the matter
8 shall be held. After ~~the~~ a hearing, or upon the failure of the accused to appear at the hearing, the
9 commissioner, if ~~he or she shall find~~ a violation is found, shall impose such any of the penalties
10 under subsection (b) of this section as ~~he or she deems~~ deemed advisable.

11 (d) When the commissioner shall take action in any or all of the ways set out in
12 subsection (b) of this section, the party aggrieved may appeal from the action to the superior court
13 for the county of Providence pursuant to section 42-35-15.

14 **27-14.3-38. Domiciliary liquidator's proposal to distribute assets.** -- (a) Within one
15 hundred twenty (120) days of a final determination of insolvency of an insurer by a court of
16 competent jurisdiction of this state, the liquidator shall make application to the court for approval
17 of a proposal to disburse assets out of marshaled assets ~~as those~~ from time to time as such assets
18 become available, to a guaranty association ~~or foreign guaranty association~~ having obligations
19 because of the insolvency. If the liquidator determines that there are insufficient assets to
20 disburse, the application required by this section shall be considered satisfied by a filing by the
21 liquidator stating the reasons for this determination.

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

23 (1) Reserving amounts for the payment of the expenses of administration and the
24 payment of claims of secured creditors, to the extent of the value of the security held, and claims
25 falling within the priorities established in section 27-14.3-46, Classes 1 and 2;

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

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

30 (4) The securing by the liquidator from each of the guaranty associations entitled to
31 disbursements pursuant to this section of an agreement to return to the liquidator any assets,
32 together with investment income actually earned on assets previously disbursed, as may be
33 required to pay the claims of secured creditors and claims falling within the priorities established
34 in section 27-14.3-46 in accordance with ~~those~~ such priorities. No bond shall be required of the

1 ~~guaranty~~ association; and

2 (5) A full report to be made by each guaranty association to the liquidator accounting for
3 all assets disbursed in this manner to the guaranty association, all disbursements made ~~from them~~
4 therefrom, any interest earned by the association on the assets, and any other matter as the court
5 may direct.

6 (c) The liquidator's proposal shall provide for disbursements to the ~~guaranty~~ associations
7 in amounts estimated at least equal to the claim payments and allocated expenses made or to be
8 made ~~by them therefrom~~ for which ~~the guaranty such~~ associations could assert a claim against the
9 liquidator, and shall provide that if the assets available for disbursement from time to time do not
10 equal or exceed the amount of the claim payments made or to be made by the ~~guaranty~~
11 associations then disbursements shall be in the amount of available assets. The liquidator shall
12 annually make disbursements to the associations to the extent of available assets subject to the
13 provisions of subsection (b)(1). The liquidator shall liquidate the assets of the insurer in an
14 expeditious manner, but is not required to make forced or quick sales that would result in
15 obtaining less than market value for assets. Unless otherwise provided for by the court, the
16 reserves of the insolvent insurer as reflected in its records on the date of the order of liquidation
17 shall be used for purposes of determining the pro rata allocations of funds among eligible
18 associations.

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

24 (e) Notice of the application shall be given to the ~~guaranty~~ association in and to the
25 commissioners of insurance of each of the states. Any notice shall be deemed to have been given
26 when deposited in the United States certified mail, first class postage prepaid, at least thirty (30)
27 days prior to submission of the application to the court. Action on the application may be taken
28 by the court provided ~~this~~ the above required notice has been given and provided further that the
29 liquidator's proposal complies with subdivisions (b)(1) and (b)(2) of this section.

30 (f) The liquidator may offset the amount to be disbursed to Rhode Island guaranty
31 association and any entity or person performing a function in any state similar to that function
32 performed by Rhode Island guaranty association by the amount of any "special deposit" and any
33 other statutory deposit or asset of the insolvent insurer held in that state unless the state or
34 ancillary receiver agrees to promptly return the asset to the domiciliary liquidator in this state.

1 **27-14.3-41. Special claims.** -- (a) ~~The claim of a third party which is contingent only on~~
2 ~~his or her first obtaining a judgment against the insured shall be considered and allowed as if~~
3 ~~there were no contingency.~~

4 ~~(b) A claim may be allowed even if contingent if it is filed in accordance with section~~
5 ~~27-14.3-39. It may be allowed and may participate in all distributions declared after it is filed to~~
6 ~~the extent that it does not prejudice the orderly administration of the liquidation.~~

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

9 (d) Claims made under employment contracts by directors, principal officers, or persons
10 in fact performing similar functions or having similar powers are limited to payment for services
11 rendered prior to the issuance of any order of rehabilitation or liquidation under section 27-14.3-
12 17 or 27-14.3-22.

13 **(b) When a liquidation order has been entered in a proceeding against an insurer, any**
14 **insured, reinsured, reinsurer, third party person who has a cause of action against an insured of**
15 **the insurer, or any other person or entity that has a claim or cause of action against the insurer,**
16 **shall have the right to file a claim in the proceeding, regardless of the fact that the claim may be**
17 **contingent, unliquidated or immature. For purposes of this section:**

18 **(1) A claim is contingent if the accident, casualty, disaster or loss insured or reinsured**
19 **against occurred on or before the date fixed under section 27-14.3-22, but the act or event**
20 **triggering the company's obligation to pay has not occurred as of that date;**

21 **(2) A claim is unliquidated if the amount of the claim has not been determined;**

22 **(3) A claim is immature if payment on the claim is not yet due.**

23 **(c) A contingent, unliquidated or immature claim may share in a distribution of assets**
24 **provided that, as of the time of the allowance or disallowance of the claim by the court:**

25 **(1) If the claim was a contingent claim against the insurer as of the date established under**
26 **section 27-14.3-22, the claimant has presented proof of the insurer's obligation to pay reasonably**
27 **satisfactory to the receiver.**

28 **(2) If the claim was a contingent claim as of the date established under section 27-14.3-22**
29 **and was based upon a cause of action against an insured of the insurer:**

30 **(a) It may be reasonably inferred from proof presented upon the claim that the claimant**
31 **would be able to obtain a judgment;**

32 **(b) The person has furnished suitable proof, unless the court for good cause shown shall**
33 **otherwise direct that no further valid claims can be made against the insurer arising out of the**
34 **cause of action other than those already presented; and**

1 (c) The total liability of the insurer to all claimants arising out of the same act shall be no
2 greater than its total liability would be were it not in liquidation. In those cases, insureds may
3 include in contingent claims reasonable attorneys' fees for services rendered after the date of
4 liquidation, in defense of claims or suits covered by the insured's policy, provided the attorneys'
5 fees have been paid by the insured and evidence of payment is presented to the receiver.

6 (3) If the claim was unliquidated as of the date established under section 27-14.3-22, its
7 amount has been determined. In those cases, the determination and allowance of unliquidated
8 claims may be made by estimate whenever the receiver determines that either liquidation of the
9 claim would unduly delay the administration of the liquidation proceeding, or that the
10 administrative expenses of processing and adjudicating the claims or group of claims of a similar
11 type would be unduly excessive when compared with the assets that are estimated to be available
12 for distribution with respect to the claim. Any estimate shall be based upon an accepted method
13 of valuing claims with reasonable certainty, such as actuarial evaluation; or

14 (4) If the claim was immature as of the date established under section 27-14.3-22, it shall
15 be discounted at the higher or the legal rate of interest accruing on judgments or the rate of
16 interest available on United States Treasury securities of approximately the same maturity.

17 (d) Notwithstanding the foregoing, any insured shall have the right to file a claim for the
18 protection afforded under the insured's policy, irrespective of whether a claim is then known, if
19 the policy is an occurrence policy. Thereafter, at such time that a specific claim is made by or
20 against the insurer, the insured shall supplement his/her claim and the receiver shall treat the same
21 as a contingent, unliquidated or immature claim. Any such claims of policyholders for the
22 protection under an occurrence policy remaining at or near the closing of the estate, shall be
23 disposed of in accordance with subsection 27-14.3-47(c).

24 **27-14.3-42. Special provisions for third party claims.** -- (a) Whenever any third party
25 asserts a cause of action against an insured of an insurer in liquidation, the third party may file a
26 claim with the liquidator on or before the last day for filing claims.

27 (b) Whether or not the third party files a claim, the insured may file a claim on ~~his or her~~
28 the insured's own behalf in the liquidation. To the extent the insured files a claim, it is sufficient
29 to cover all related third party claims. If the insured fails to file a claim by the date for filing
30 claims specified in the order of liquidation or within sixty (60) days after the mailing of the notice
31 required by section 27-14.3-26, whichever is later, ~~he or she~~ the insured is an unexcused late filer.

32 (c) The liquidator shall make ~~his or her~~ recommendations to the court under section 27-
33 14.3-46 for the allowance of an insured's claim under subsection (b) of this section after
34 consideration of the probable outcome of any pending action against the insured on which the

1 claim is based, the probable damages recoverable in the action, and the probable costs and
2 expenses of defense. After allowance by the court, the liquidator shall withhold any dividends
3 payable on the claim, pending the outcome of litigation and negotiation with the insured.
4 Whenever it seems appropriate, ~~he or she~~ the liquidator shall reconsider the claim on the basis of
5 additional information and amend ~~his or her~~ the recommendations to the court. The insured shall
6 be afforded the same notice and opportunity to be heard on all changes in the recommendation as
7 in its initial determination. The court may amend its allowance as it thinks appropriate. As claims
8 against the insured are settled or barred, the insured shall be paid from the amount withheld the
9 same percentage dividend as was paid on other claims of ~~similar~~ like property, based on the lesser
10 of: ~~(1)~~ the amount actually recovered from the insured by action or paid by agreement plus the
11 reasonable costs and expense of defense, or ~~(2)~~ the amount allowed on the claims by the court.
12 After all claims are settled or barred, any sum remaining from the amount withheld shall revert to
13 the undistributed assets of the insurer. Delay in final payment under this subsection shall not be a
14 reason for unreasonable delay of ~~the~~ final distribution and discharge of the liquidator.

15 (d) If several claims founded upon one policy are filed, whether by third parties or as
16 claims by the insured under this section, and the aggregate allowed amount of the claims ~~to which~~
17 ~~the same limit of liability in the policy is applicable exceeds that limit, each claim as allowed~~
18 ~~shall be reduced in the same proportion so that the total equals the policy limit.~~ is equal to the
19 aggregate policy limits, no further amounts may be allowed and any additional claims may be
20 rejected. Claims by the insured shall be evaluated as in subsection (c) of this section. If any
21 insured's claim is subsequently reduced under subsection (c) of this section, the ~~freed~~ amount thus
22 freed shall be apportioned ratably among the claims which have been reduced under this
23 subsection.

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

26 **27-14.3-43. Disputed claims.** -- (a) When a claim is denied in whole or in part by the
27 liquidator, written notice of the determination shall be given to the claimant or ~~his or her~~ the
28 claimant's attorney by first class mail at the address shown in the proof of claim. Within ~~sixty~~
29 ~~(60)~~ thirty (30) days from the mailing of the notice, the claimant may file ~~his or her~~ objection
30 with the liquidator. Any filed objections shall clearly set out all facts and legal basis, if any, for
31 the objections and the reasons why the claim should be allowed. If no such filing is made, the
32 claimant may not further object to the determination is final

33 (b) Whenever objections are filed with the liquidator and the liquidator does not alter ~~his~~
34 ~~or her denial~~ the determination of the claim as a result of the objections, the ~~claimant~~ liquidator

1 shall ~~petition for relief from any injunction in effect against the insurer and~~ ask the court for a
2 hearing as soon as practicable and give notice of the hearing by first class mail to the ~~liquidator or~~
3 ~~his or her~~ claimant or the claimant's attorney and to any other persons directly affected, not less
4 than ten (10) nor more than thirty (30) days before the date of the hearing. The matter may be
5 heard by the court or by a court-appointed referee. The hearing shall be conducted on the record
6 in an informal manner and the formal rules of evidence and civil procedure need not be strictly
7 applied. Hearings shall be held without a jury. Prehearing discovery shall be limited to such
8 pretrial discovery as expressly permitted in arbitration proceedings under section 10-3-1 et seq.

9 (c) When a disputed claim is heard by a referee, the referee ~~who~~ shall submit written
10 findings of fact ~~along with his or her recommendation.~~ and conclusions of law along with the
11 recommendation for disposition to the court. The referee's recommendation shall become the
12 final judgment of the court, unless objections to the referee's recommendation are filed by the
13 liquidator or claimant with the court within fifteen (15) days after the recommendation is mailed
14 to the liquidator and claimant.

15 (d) The final disposition by the court of a disputed claim, whether after a hearing by the
16 court or after a recommendation by a referee, shall be deemed a final judgment for purposes of
17 appeal.

18 (e) The courts of this state may make special rules of civil procedure for disputed claims,
19 provided that the rules are not inconsistent with this chapter.

20 **27-14.3-46. Priority of distribution.** -- The priority of distribution of claims from the
21 insurer's estate shall be in accordance with the order in which each class of claims is set forth in
22 this section. Every claim in each class shall be paid in full or adequate funds retained for such
23 payment before the members of the next class receive any payment. Once such funds are retained
24 by the liquidator and approved by the court, the insurer's estate shall have no further liability to
25 members of that class except to the extent of the retained funds and any other undistributed funds.
26 No subclasses shall be established within any class except as provided in section 27-14.3-25(12).
27 No claim by a shareholder, policyholder, or other creditor shall be permitted to circumvent the
28 priority classes through the use of equitable remedies. The order of distribution of claims shall be:

29 (1) Class 1. - The costs and expenses of administration expressly approved by the
30 receiver, including, but not limited to, the following:

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

32 (ii) Compensation for all authorized services rendered in the conservation, rehabilitation
33 or liquidation;

34 (iii) Any necessary filing fees;

1 (iv) The fees and mileage payable to witnesses; and

2 (v) Authorized reasonable attorney's fees and other professional services rendered in the
3 conservation, rehabilitation or liquidation.

4 (2) Class 2. - The administrative expenses of guaranty associations. For purposes of this
5 section these expenses shall be the reasonable expenses incurred by guaranty associations where
6 the expenses are not payments or expenses which are required to be incurred as direct policy
7 benefits in fulfillment of the terms of the insurance contract or policy, and that are of the type and
8 nature that, but for the activities of the guaranty association otherwise would have been incurred
9 by the receiver, including, but not limited to, evaluations of policy coverage, activities involved in
10 the adjustment and settlement of claims under policies, including those of in-house or outside
11 adjusters, and the reasonable expenses incurred in connection with the arrangements for ongoing
12 coverage through transfer to other insurers, policy exchanges or maintaining policies in force.
13 The receiver may in his or her sole discretion approve as an administrative expense under this
14 section any other reasonable expenses of the guaranty association if the receiver finds:

15 (i) The expenses are not expenses required to be paid or incurred as direct policy benefits
16 by the terms of the policy; and

17 (ii) The expenses were incurred in furtherance of activities that provided a material
18 economic benefit to the estate as a whole, irrespective of whether the activities resulted in
19 additional benefits to covered claimants. The court shall approve such expenses unless it finds the
20 receiver abused his or her discretion in approving the expenses.

21 If the receiver determines that the assets of the estate will be sufficient to pay all Class 1
22 claims in full, Class 2 claims shall be paid currently, provided that the liquidator shall secure from
23 each of the associations receiving disbursements pursuant to this section and agreement to return
24 to the liquidator such disbursements, together with investment income actually earned on such
25 disbursements, as may be required to pay Class 1 claims. No bond shall be required of any such
26 association.

27 (3) Class 3. - All claims under policies including claims of the federal or any state or
28 local government for losses incurred, ("loss claims") including third party claims, claims for
29 unearned premiums, and all claims of guaranty association for reasonable expenses other than
30 those included in Class 2. All claims under life and health insurance and annuity policies, whether
31 for death proceeds, health benefits, annuity proceeds, or investment values shall be treated as loss
32 claims. That portion of any loss, indemnification for which is provided by other benefits or
33 advantages recovered by the claimant, shall not be included in this class, other than benefits or
34 advantages recovered or recoverable in discharge of familial obligation of support or by way of

1 succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer
2 to his or her employee shall be treated as a gratuity;

3 Notwithstanding the foregoing, the following claims shall be excluded from Class 3
4 priority:

5 (i) Obligations of the insolvent insurer arising out of reinsurance contracts;

6 (ii) Obligations incurred after the expiration date of the insurance policy or after the
7 policy has been replaced by the insured or canceled at the insured's request or after the policy has
8 been canceled as provided in this chapter;

9 (iii) Obligations to insurers, insurance pools or underwriting associations and their
10 claims for contribution, indemnity or subrogation, equitable or otherwise;

11 (iv) Any claim which is in excess of any applicable limits provided in the insurance
12 policy issued by the insolvent insurer;

13 (v) Any amount accrued as punitive or exemplary damages unless expressly covered
14 under the terms of the policy; and

15 (vi) Tort claims of any kind against the insurer, and claims against the insurer for bad
16 faith or wrongful settlement practices.

17 (4) Class 4. - Claims of the federal government other than those claims included in Class
18 3.

19 (5) Class 5. - Debts due to employees for services, benefits, contractual or otherwise due
20 arising out of such reasonable compensation to employees for services performed to the extent
21 that they do not exceed two (2) months of monetary compensation and represent payment for
22 services performed within six (6) months before the filing of the petition for liquidation or, if
23 rehabilitation preceded liquidation within one year before the filing of the petition for
24 rehabilitation. Principal officers and directors shall not be entitled to the benefit of this priority
25 except as otherwise approved by the liquidator and the court. This priority shall be in lieu of any
26 other similar priority which may be authorized by law as to wages or compensation of employees.

27 (6) Class 6. - Claims of any person, including claims of state or local governments,
28 except those specifically classified elsewhere in this section. Claims of attorneys for fees and
29 expenses owed them by a person for services rendered in opposing a formal delinquency
30 proceeding. In order to prove the claim, the claimant must show that the insurer which is the
31 subject of the delinquency proceeding incurred such fees and expenses based on its best
32 knowledge, information and belief, formed after reasonable inquiry indicating opposition was in
33 the best interests of the person, was well grounded in fact and was warranted by existing law or a
34 good faith argument for the extension, modification or reversal of existing law, and that

1 opposition was not pursued for any improper purpose, such as to harass or to cause unnecessary
2 delay or needless increase in the cost of the litigation.

3 (7) Class 7. - Surplus claims of any state or local government for a penalty or forfeiture,
4 but only to the extent of the pecuniary loss sustained from the act, transaction or proceeding out
5 of which the penalty or forfeiture arose with reasonable and actual costs occasioned thereby. The
6 remainder of such claims shall be postponed to the class of claims under subdivision 8.

7 (8) Class 8. - Surplus or contribution notes or similar obligations, premium refunds on
8 assessable policies, interest on claims of Classes 1 through 7 and any other claims specifically
9 subordinated to this class.

10 (9) Class 9. - Claims of shareholders or other owners arising out of their capacity as
11 shareholders or other owners, or any other capacity except as they may be qualified in Class 3 or
12 6 above.

13 If any claimant of this state, another state or foreign country shall be entitled to or shall
14 receive a dividend upon his or her claim out of a statutory deposit or the proceeds of any bond or
15 other asset located in another state or foreign country, unless such deposit or proceeds shall have
16 been delivered to the domiciliary liquidator [pursuant to section 27-14.3-56.5](#), then the claimants
17 shall not be entitled to any further dividend from the receiver until and unless all other claimants
18 of the same class, irrespective of residence or place of the acts or contracts upon which their
19 claims are based, shall have received an equal dividend upon their claims, and after such
20 equalization, such claimants shall be entitled to share in the distribution of further dividends by
21 the receiver, along with and like all other creditors of the same class, wheresoever residing.

22 Upon the declaration of a dividend, the receiver shall apply the amount of the dividend
23 against any indebtedness owed to the insurer by the person entitled to the dividend. There shall be
24 no claim allowed for any deductible charged by a guaranty association or entity performing a
25 similar function.

26 **27-14.3-47. Liquidator's recommendations to the court.** -- (a) The liquidator shall
27 review all claims duly filed in the liquidation and shall make ~~any~~ [such](#) further investigation as ~~he~~
28 ~~or she shall deem~~ [deemed](#) necessary. ~~He or she~~ [The liquidator](#) may compound, compromise, or in
29 any other manner negotiate the amount for which claims will be recommended to the court except
30 where the liquidator is required by law to accept claims as settled by any person or organization,
31 including any guaranty association ~~or foreign guaranty association~~. Unresolved disputes shall be
32 determined under section 27-14.3-43. As soon as practicable, ~~he or she~~ [the liquidator](#) shall present
33 to the court a report of the claims against the insurer with his or her recommendations. The report
34 shall include the name and address of each claimant and the amount of the claim finally

1 recommended, if any. If the insurer has issued annuities or life insurance policies, the liquidator
2 shall report the persons to whom, according to the records of the insurer, amounts are owed as
3 cash surrender values or other investment value and the amounts owed.

4 (b) The court may approve, disapprove, or modify the report on claims by the liquidator.
5 ~~Those reports~~ Reports not modified by the court within a period of sixty (60) days following
6 submission by the liquidator shall be treated by the liquidator as allowed claims, subject after this
7 to later modification or to rulings made by the court pursuant to section 27-14.3-43. No claim
8 under a policy of insurance shall be allowed for an amount in excess of the applicable policy
9 limits.

10 (c) After giving due consideration to the nature of the policies that were sold by the
11 insurer, and the number of claims by policyholders for protection under their policies, and having
12 considered actuarial estimates that substantial amounts of incurred-but-not-reported losses exist,
13 the liquidator may, but shall not be required to, formulate a proposal, subject to approval of the
14 court, to allow such claims. The proposal may allocate or attribute all or a portion of the incurred-
15 but-not-reported losses to individual policyholder claimants on a basis of reasonable expert
16 opinion. The court shall approve the proposal and the allowance of the claims unless it finds the
17 basis of the allocation is arbitrary and/or capricious.

18 (d) The liquidator shall not be required to process claims for any class until it appears
19 reasonably likely that the assets will be available for a distribution to that class. If there are
20 insufficient assets to justify processing all claims for any class listed in section 27-14.3-46, the
21 liquidator shall report the facts to the court and make such recommendations as may be
22 appropriate for handling the remainder of the claims.

23 **27-14.3-49. Unclaimed and withheld funds.** -- (a) All unclaimed funds subject to
24 distribution ~~in accordance with section 27-14.3-46~~ remaining in the liquidator's hands when ~~he or~~
25 ~~she~~ the liquidator is ready to apply to the court for discharge, including the amount distributable
26 to any creditor, shareholder, member, or other person who is unknown or cannot be found, shall
27 be deposited with the general state treasurer, and shall be paid without interest except in
28 accordance with section 27-14.3-46.5 to the person entitled ~~to the funds or his or her~~ thereto or
29 that person's legal representative upon proof satisfactory ~~proof~~ to the general state treasurer of his
30 or her right ~~to the funds~~ thereto. Any amount on deposit not claimed within ~~one year~~ six (6) years
31 from the discharge of the liquidator shall be deemed to have been abandoned and shall be
32 escheated without formal escheat proceedings and be deposited with the general ~~treasurer~~ fund.

33 Alternatively, the liquidator may elect to apply to the court for authority to hold the
34 unclaimed funds subject to distribution for a period of two (2) years. Thereafter, any unclaimed

1 funds may be distributed to approved claimants who have previously received a distribution, if it
2 is economically feasible for the liquidator to make the distribution, or the liquidator may apply to
3 the court for permission for the funds to be held by the commissioner for the purpose of defraying
4 the costs and expenses of administration of other insolvent insurers for which there are
5 insufficient assets to fund the costs and expenses of administration. With the approval of the
6 supervising court, the liquidator may deposit unclaimed and withheld funds into a segregated
7 account to be known as the “Closed Estate Fund.” The commissioner may thereafter use monies
8 held in the account to fund the administrative expenses of proceedings against persons subject to
9 this chapter that lack sufficient assets to fund administration. The commissioner shall maintain
10 complete records with respect to all transactions involving the Close Estate Fund and shall
11 prepare an annual accounting of the Closed Estate Fund subject to audit by the Providence
12 County Superior Court. If subsequent to disbursement of monies from the Closed Estate Fund,
13 assets of the person become available to fund administration, the Closed Estate Fund shall be
14 reimbursed before other administrative expenses are paid.

15 (b) All funds withheld under section 27-14.3-41 and not distributed shall upon discharge
16 of the liquidator be deposited with the general state treasurer and paid ~~by him or her~~ in
17 accordance with section 27-14.3-46. Any sums remaining which under section 27-14.3-46 would
18 revert to the undistributed assets of the insurer shall be transferred to the general state treasurer
19 and become the property of the state under ~~subsection (a) of this section, unless the~~
20 ~~commissioner, in his or her discretion,~~ subsection (a), unless the commissioner in his or her
21 discretion petitions the court to reopen the liquidation under section 27-14.3-51.

22 **27-14.3-54. Conservation of property of foreign or alien insurers found in this state.**

23 -- (a) If a domiciliary liquidator has not been appointed, the commissioner may apply to the
24 superior court for the county of Providence by verified petition for an order directing ~~him or her~~
25 the commissioner to act as conservator to conserve the property found in this state of an alien
26 insurer not domiciled in this state or property found in this state of a foreign insurer on any one or
27 more of the following grounds:

28 (1) Any of the grounds in section 27-14.3-16;

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

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

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

1 (ii) That there are residents of this state with outstanding claims or outstanding policies.

2 (b) When an order is sought under subsection (a) of this section the court shall cause the
3 insurer to be given notice and time to respond ~~to it~~ thereto as is reasonable under the
4 circumstances.

5 (c) The court may issue the order in whatever terms it shall deem appropriate. The filing
6 or recording of the order with the clerk of superior court for the county of Providence or the
7 recorder of deeds of the city or town in which the principal business of the company is located
8 shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded
9 with that recorder of deeds would have imparted.

10 (d) ~~The conservator may at any time petition for, and the court may grant, an order under~~
11 ~~section 27-14.3-55 to liquidate the assets of a foreign or alien insurer under conservation, or, if~~
12 ~~appropriate, for an order under section 27-14.3-57, to be appointed ancillary receiver. The~~
13 conservator shall hold and conserve the assets until such time as the commissioner in the
14 domiciliary state begins formal delinquency proceedings against the insurer or until an order
15 terminating conservation is entered under subsection (e). Once a delinquency proceeding is
16 instituted in the domiciliary state, the conservator may either turn the property over to the
17 domiciliary commissioner or petition for an order under section 27-14.3-57 to be appointed
18 ancillary receiver. In the event the insurer is an alien insurer that has not established a domicile in
19 the United States under an appropriate port of entry statute, the conservator may petition the court
20 for an order of liquidation under any ground specified in section 27-14.3-16. The application may
21 seek, and the order of liquidation shall provide, that all property and assets, affairs and claims
22 against the alien insurer shall be vested in the liquidator in this state as if the insurer was
23 domiciled in this state. Provided, however, that if an order of liquidation of the alien insurer has
24 been entered by a court of competent jurisdiction in a reciprocal state, which provides for the
25 reciprocal state's receiver to be treated as if it is the domiciliary liquidator, then the order of
26 liquidation in this state shall be issued as an order appointing an ancillary receiver.

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

32 **27-14.3-56. Domiciliary liquidators in other states.** -- (a) The domiciliary liquidator of
33 an insurer domiciled in a reciprocal state shall, ~~except as to special deposits and security on~~
34 ~~secured claims under section 27-14.3-57(e),~~ be vested by operation of law with the title to all of

1 the assets, property, contracts, and rights of action, agents' ~~or insurance producers'~~ balances, and
2 all of the books, accounts and other records of the insurer located in this state. The date of vesting
3 shall be the date of the filing of the petition, if that date is specified by the domiciliary law for the
4 vesting of property in the domiciliary state. Otherwise, the ~~The~~ date of vesting shall be the date of
5 entry of the order directing possession to be taken. The domiciliary liquidator shall have the
6 immediate right to recover ~~balances due from agents or insurance producers and to obtain~~
7 ~~possession of the books, accounts, and other records of the insurer located in this state. He or she~~
8 ~~also shall have the right to recover all of the other assets~~ all such vested property, assets, and
9 causes of action of the insurer located in this state, subject to section 27-14.3-57.

10 (b) If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal
11 state, the commissioner of this state shall be vested by operation of law with the title to all of the
12 property, contracts, and right of action, and all of the books, accounts, and other records of the
13 insurer located in this state, at the same time that the domiciliary liquidator is vested with the title
14 in the domicile. The commissioner of this state may petition for ~~a conservation or liquidation~~ an
15 order under section ~~27-14.3-54 or~~ 27-14.3-55; or for an ancillary receivership under section 27-
16 14.3-57, or after approval by the superior court for the county of Providence may transfer ~~the~~ title
17 to the domiciliary liquidator, as the interests of justice and the equitable distribution of the assets
18 require.

19 (c) When a domiciliary liquidator is appointed in a reciprocal state, claimants residing in
20 this state must file in the domiciliary proceeding subject to its deadlines, and may have claims
21 contested pursuant to the provisions of section 27-14.3-60 or a similar section of the domiciliary
22 state's laws. When a domiciliary liquidator is appointed in a nonreciprocal state, claimants
23 ~~Claimants~~ residing in this state may file and contest claims with the liquidator or ancillary
24 receiver, if any, in this state or with the domiciliary liquidator, if the domiciliary law permits. ~~The~~
25 ~~claims must be filed on or before the last date fixed for the filing of claims in the domiciliary~~
26 ~~liquidation proceedings.~~

27 **27-14.3-57. Ancillary formal proceedings.** -- (a) If a domiciliary liquidator has been
28 appointed for an insurer not domiciled in this state, the commissioner may file a petition with the
29 superior court for the county of Providence requesting appointment as ancillary receiver in this
30 state:

31 (1) If ~~he or she~~ the commissioner finds that there are sufficient assets of the insurer
32 located in this state to justify the appointment of an ancillary receiver; ~~and~~

33 (2) If the protection of creditors or policyholders in this state ~~requires this.~~ so requires; or

34 (3) If the domiciliary liquidator requests the commissioner to file for appointment as

1 [ancillary receiver.](#)

2 (b) The court may issue an order appointing an ancillary receiver in whatever terms it
3 shall deem appropriate, [in accordance with the domiciliary liquidation order.](#) The filing or
4 recording of the order with the recorders of deeds in this state imparts the same notice as a deed,
5 bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds.

6 (c) When a domiciliary liquidator has been appointed in a reciprocal state, then the
7 ancillary receiver appointed in this state may, whenever necessary, aid and assist the domiciliary
8 liquidator in recovering assets of the insurer located in this state. The ancillary receiver shall, ~~as~~
9 ~~soon as practicable, liquidate from their respective securities those special deposit claims and~~
10 ~~secured claims which are proved and allowed in the ancillary proceedings in this state, and shall~~
11 ~~pay the necessary expenses of the proceedings. He or she shall promptly transfer all remaining~~
12 ~~assets, books, accounts, and records to the domiciliary liquidator. Subject to this section, render~~
13 ~~only such assistance as is requested from the domiciliary liquidator or rehabilitator. Any action~~
14 ~~taken by the ancillary receiver at the request of the domiciliary liquidator shall entitle the~~
15 ~~ancillary receiver to payment of his or her costs or expenses in connection with such activities~~
16 ~~from the domiciliary liquidator. The domiciliary liquidator and ancillary receiver may enter into~~
17 ~~agreements regarding the payment or advancement of expenses. When acting at the request of the~~
18 ~~domiciliary liquidator,~~ the ancillary receiver and his or her deputies shall have the same powers
19 and be subject to the same duties with respect to the administration of assets as a liquidator of an
20 insurer domiciled in this state.

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

25 **27-14.3-58. Ancillary summary proceedings.** -- The commissioner in his or her sole
26 discretion may institute proceedings under section 27-14.3-10 [through section 27-14.3-15](#) at the
27 request of the commissioner or other appropriate insurance official of the domiciliary state of any
28 foreign or alien insurer having property located in this state.

29 **27-14.3-59. Claims of nonresidents against insurers domiciled in this state.** -- ~~(a) In a~~
30 ~~liquidation proceeding begun in this state against an insurer domiciled in this state, claimants~~
31 ~~residing in foreign countries or in states not reciprocal states must file claims in this state, and~~
32 ~~claimants residing in reciprocal states may file claims either with the ancillary receivers, if any, in~~
33 ~~their respective states, provided a claim filing procedure is established in the ancillary~~
34 ~~proceeding, or with the domiciliary liquidator. Claims must be filed on or before the last date~~

1 ~~fixed for the filing of claims in the domiciliary liquidation proceeding.~~

2 ~~-(b) Claims belonging to claimants residing in reciprocal states may be proved either in~~
3 ~~the liquidation proceeding in this state as provided in this chapter, or in ancillary proceedings, if~~
4 ~~any, in the reciprocal states, provided a claim filing procedure is established in the ancillary~~
5 ~~proceeding. If notice of the claims and opportunity to appear and be heard is afforded the~~
6 ~~domiciliary liquidator of this state as provided in section 27-14.3-60(b) with respect to ancillary~~
7 ~~proceedings, the final allowance of claims by the courts in ancillary proceedings in reciprocal~~
8 ~~states shall be conclusive as to amount and as to priority against special deposits or other security~~
9 ~~located in the ancillary states, but shall not be conclusive with respect to priorities against general~~
10 ~~assets under section 27-14.3-46. (a) All claimants must file their claims in the domiciliary~~
11 ~~liquidation on or before the last date fixed for filing claims in the domiciliary liquidation~~
12 ~~proceeding.~~

13 (b) Controverted claims shall be proved or determined in the domiciliary state unless the
14 claimant notifies the domiciliary liquidator in writing that the claimant elects to determine or
15 prove the claim in the claimant's respective reciprocal state where an ancillary receiver has been
16 appointed. An election by an insured shall be binding on all claimants interested in the claim as to
17 the place of determining or proving the claim. In the event a claimant elects to prove the
18 claimant's claim in ancillary proceedings, if at least thirty (30) days notice of the claim and an
19 opportunity to appear and be heard is afforded the domiciliary liquidator of this state, the final
20 allowance of the claim by the courts of the ancillary state shall be accepted in this state as
21 conclusive as to its amount and validity but not as to the priority of distribution, which shall be
22 determined in the domiciliary proceeding. The domiciliary liquidator is not required to notify
23 claimants of their right to make such an election.

24 **27-14.3-60. Claims of residents against insurers domiciled in reciprocal states. --** (a)

25 Promptly after the appointment of the commissioner as ancillary receiver for an insurer not
26 domiciled in this state, the commissioner shall determine whether there are claimants residing in
27 this state who are not protected by guaranty funds, and if so, whether the protection of ~~those~~ the
28 claimants requires the establishing of a controverted claim ~~filing~~ procedure in the ancillary
29 proceeding. If a controverted claim ~~filing~~ procedure is established, claimants ~~against the insurer~~
30 who have made the election provided for in subsection 27-14.3-59(b) who reside within this state
31 may controvert denied claims either under ~~file claims with either~~ the ancillary ~~receiver,~~
32 controverted claim procedure, if any, in this state, or with the domiciliary liquidator. ~~Claims must~~
33 ~~be filed on or before the last dates fixed for the filing of claims in the domiciliary liquidation~~
34 ~~proceeding.~~

1 (b) Claims belonging to claimants who have made the election in subsection 27-14.3-
2 59(b) residing in this state may be ~~proved~~ controverted either in the domiciliary state under the
3 law of that state, or in ancillary proceedings, if any, in this state, provided a controverted claim
4 ~~filing~~ procedure is established in the ancillary proceeding. ~~If a claimant elects to prove his or her~~
5 ~~claim in this state, he or she shall file his or her claim with the liquidator in the manner provided~~
6 ~~in sections 27-14.3-39 and 27-14.3-40. The ancillary receiver shall make his or her~~
7 ~~recommendation to the court as under section 27-14.3-47. He or she shall also arrange a date for a~~
8 ~~hearing if necessary under section 27-14.3-43 and shall give notice to the liquidator in the~~
9 ~~domiciliary state, either by certified mail or by personal service, at least forty (40) days prior to~~
10 ~~the date set for the hearing. If the domiciliary liquidator, within thirty (30) days after the giving of~~
11 ~~the notice, gives notice in writing to the ancillary receiver and to the claimant, either by certified~~
12 ~~mail or by personal service, of his or her intention to contest the claim, he or she shall be entitled~~
13 ~~to appear or to be represented in any proceeding in this state involving the adjudication of the~~
14 ~~claim.~~

15 (c) The final allowance of the claim by the courts of this state shall be accepted as
16 conclusive as to ~~amount and as to priority against special deposits or other security located in this~~
17 ~~state.~~ validity and amount. All issues of priority shall be determined in the domiciliary state.

18 **27-14.3-62. Interstate priorities.** -- (a) In a liquidation proceeding in this state involving
19 one or more reciprocal states, the order of distribution of the domiciliary state shall control as to
20 all claims of residents of this and reciprocal states. All claims of residents of reciprocal states
21 shall be given equal priority of payment from general assets regardless of where ~~those~~ such
22 assets are located.

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

31 ~~(e)~~ (b) The owner of a secured claim against an insurer for which a liquidator has been
32 appointed in this or any other state may surrender ~~his or her~~ their security and file ~~his or her claim~~
33 ~~as a general creditor, or the claim~~ their claims as general creditors, or the claims may be
34 discharged by resort to the security in accordance with section 27-14.3-45, in which case the

1 deficiency, if any, shall be treated as a claim against the general assets of the insurer ~~of~~ on the
2 same basis as claims of unsecured creditors in the same class.

3 **27-14.3-63. Subordination of claims for noncooperation.** -- If an ancillary receiver in
4 another state or foreign country, whether called by that name or not, fails to transfer to the
5 domiciliary liquidator in this state any assets within ~~his or her~~ their control ~~other than special~~
6 ~~deposits~~, diminished only by the expenses of the ancillary receivership in accordance with the
7 provisions of section 27-14.3-57, if any, the claims filed by residents of the ancillary receiver's
8 state or foreign country, including those contested in the ancillary receivership ~~other than special~~
9 ~~deposit claims~~ contested claims proceeding, ~~or secured claims~~ shall be placed in the class of
10 claims under section 27-14.3-46(8).

11 SECTION 2. Sections 27-14.3-19, 27-14.3-21 and 27-14.3-55 of the General Laws in
12 Chapter 27-14.3 entitled "Insurers' Rehabilitation and Liquidation Act" are hereby repealed.

13 ~~**27-14.3-19. Actions by and against rehabilitator.** -- (a) Any court in this state before~~
14 ~~which any action or proceeding in which the insurer is a party, or is obligated to defend a party, is~~
15 ~~pending when a rehabilitative order against the insurer is entered shall stay the action or~~
16 ~~proceeding for ninety (90) days and any additional time as is necessary for the rehabilitator to~~
17 ~~obtain proper representation and prepare for further proceedings. The rehabilitator shall take any~~
18 ~~action respecting the pending litigation as he or she deems necessary in the interests of justice and~~
19 ~~for the protection of creditors, policyholders, and the public. The rehabilitator shall immediately~~
20 ~~consider all litigation pending outside of this state and shall petition the courts having jurisdiction~~
21 ~~over that litigation for injunctions and stays whenever necessary to protect the estate of the~~
22 ~~insurer.~~

23 ~~-(b) No statute of limitations or defense of laches shall run with respect to any action by~~
24 ~~or against an insurer between the filing of a petition for appointment of a rehabilitator for that~~
25 ~~insurer and the order granting or denying that petition. Any action against the insurer that might~~
26 ~~have been commenced when the petition was filed may be commenced for at least sixty (60) days~~
27 ~~after the order of rehabilitation is entered or the petition is denied. The rehabilitator may, upon an~~
28 ~~order for rehabilitation, within one year or other longer time as applicable law may permit,~~
29 ~~institute an action or proceeding on behalf of the insurer upon any cause of action against which~~
30 ~~the period of limitation fixed by applicable law has not expired at the time of the filing of the~~
31 ~~petition upon which the order is entered.~~

32 ~~-(c) Any guaranty association or foreign guaranty association covering life or health~~
33 ~~insurance or annuities shall have standing to appear in any court proceeding concerning the~~
34 ~~rehabilitation of a life or health insurer if the association is or may become liable to act as a result~~

1 ~~of the rehabilitation.~~

2 ~~**27-14.3-21. Grounds for liquidation.** --- The commissioner may petition the superior~~
3 ~~court for the county of Providence for an order directing him or her to liquidate a domestic~~
4 ~~insurer or an alien insurer domiciled in this state on the basis:~~

5 ~~-(1) Of any ground for an order of rehabilitation as specified in section 27-14.3-16,~~
6 ~~whether or not there has been a prior order directing the rehabilitation of the insurer;~~

7 ~~-(2) That the insurer is insolvent; or~~

8 ~~-(3) That the insurer is in a condition that would make the further transaction of business~~
9 ~~hazardous, financially or otherwise, to its policyholders, its creditors, or the public.~~

10 ~~**27-14.3-55. Liquidation of property of foreign or alien insurers found in this state.** ---~~

11 ~~(a) If no domiciliary receiver has been appointed, the commissioner may apply to the superior~~
12 ~~court for the county of Providence by verified petition for an order directing him or her to~~
13 ~~liquidate the assets found in this state of a foreign insurer or an alien insurer not domiciled in this~~
14 ~~state, on any of the following grounds:~~

15 ~~-(1) Any of the grounds in section 27-14.3-16 or 27-14.3-21; or~~

16 ~~-(2) Any of the grounds specified in section 27-14.3-54(a)(2) through (4).~~

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

19 ~~-(c) If it shall appear to the court that the best interests of creditors, policyholders, and the~~
20 ~~public require, the court may issue an order to liquidate in whatever terms it shall deem~~
21 ~~appropriate. The filing or recording of the order with the clerk of the superior court for the county~~
22 ~~of Providence, or the recorder of deeds of the city or town in which the principal business of the~~
23 ~~company is located or the city or town in which its principal office or place of business is located,~~
24 ~~shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded~~
25 ~~with that recorder of deeds would have imparted.~~

26 ~~-(d) If a domiciliary liquidator is appointed in a reciprocal state while a liquidation is~~
27 ~~proceeding under this section, the liquidator under this section shall after this act as ancillary~~
28 ~~receiver under section 27-14.3-57. If a domiciliary liquidator is appointed in a nonreciprocal state~~
29 ~~while a liquidation is proceeding under this section, the liquidator under this section may petition~~
30 ~~the court for permission to act as ancillary receiver under section 27-14.3-57.~~

31 ~~-(e) On the same grounds as are specified in subsection (a) of this section, the~~
32 ~~commissioner may petition any appropriate federal district court to be appointed receiver to~~
33 ~~liquidate that portion of the insurer's assets and business over which the court will exercise~~
34 ~~jurisdiction, or any lesser of the assets and business that the commissioner deems desirable for the~~

1 ~~protection of the policyholders and creditors in this state.~~

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

6 SECTION 3. Chapter 27-14.3 of the General Laws entitled "Insurers' Rehabilitation and
7 Liquidation Act" is hereby amended by adding thereto the following sections:

8 **27-14.3-7.1. Continuation of delinquency proceedings.** --Every proceeding
9 commenced under the laws in effect before the amendment of this chapter shall be deemed to
10 have commenced under this chapter for the purpose of conducting the proceeding henceforth,
11 except that in the discretion of the commissioner the proceeding may be continued, in whole or in
12 part, as it would have been continued had this chapter not been enacted.

13 **27-14.3-72.1. Records.** -- (a) All books, records, documents and papers of any delinquent
14 insurer which come into the possession of the receiver and are held by the receiver in the course
15 of the delinquency proceedings, or certified copies thereof, shall be received in evidence in all
16 cases without proof of the correctness of the same and without other proof, except the certificate
17 of the receiver that the same were received from the custody of the delinquent insurer or found
18 among its effects.

19 (b) The receiver shall have the authority to certify to the correctness of any paper,
20 document or record of his/her office and to make certificates of the receiver certifying any fact
21 contained in the papers, documents or records of the office of the receiver; and the same shall be
22 received in evidence in all cases in which the original would be evidence.

23 (c) Original books, records, documents and papers, or certified copies thereof, when
24 received in evidence shall be prima facie evidence of the facts disclosed.

25 (d) The appointment of the commissioner as receiver shall in no way operate to bring
26 records of a delinquent insurer under section 42-35-1 et seq., in the event a third party
27 successfully pursues a records request in the receivership court, the receiver shall be reimbursed
28 for the reasonable cost of producing such records.

29 **27-14.3-30.5. Recoupment from affiliates.** -- (a) If an order instituting a delinquency
30 proceeding against an insurer authorized to do business in this state is entered under this chapter,
31 the receiver appointed under the order has a right to recover on behalf of the insurer from any
32 affiliate that controlled the insurer the amount of distributions, other than stock dividends paid by
33 the insurer on its capital stock, made at any time during the five (5) years preceding the petition
34 for liquidation, rehabilitation or conservation. This recovery is subject to the limitations of

1 subsections (b) through (g).

2 (b) No dividend is recoverable if the recipient shows that, when paid, the distribution was
3 lawful and reasonable, and that the insurer did not know and could not reasonably have known
4 that the distribution might adversely affect its solvency.

5 (c) The maximum amount recoverable under this section is the amount needed, in excess
6 of all other available assets, to pay all claims under the receivership, reduced for each recipient by
7 any amount the recipient has already paid to receivers under similar laws of other states.

8 (d) Any person who was an affiliate that controlled the insurer at the time the
9 distributions were paid is liable up to the amount of distributions received. Any person who was
10 an affiliate that controlled the insurer at the time the distributions were declared is liable up to the
11 amount of distributions the person would have received if the distributions had been paid
12 immediately. If two (2) or more persons are liable regarding the same distributions, they are
13 jointly and severally liable.

14 (e) If any person liable under subsection (d) is insolvent, all affiliates that controlled that
15 person at the time the dividend was declared or paid are jointly and severally liable for any
16 resulting deficiency in the amount recovered from the insolvent affiliate.

17 (f) This section does not enlarge the personal liability of a director under existing law.

18 (g) An action or proceeding under this section may not be commenced after the earlier of:

19 (1) Two (2) years after the appointment of a rehabilitator under section 27-14.3-17 or a
20 liquidator under section 27-14.3-22; or

21 (2) The date the rehabilitation is terminated under subsection 27-14.3-20(c) or the
22 liquidation is terminated under section 27-14.3-50.

23 **27-14.3-45.5. Qualified financial contracts.** – (a) Notwithstanding any other provision
24 of this chapter, including any other provision of this chapter permitting the modification of
25 contracts, or other law of a state, no person shall be stayed or prohibited from exercising:

26 (1) A contractual right to terminate, liquidate or close out any netting agreement or
27 qualified financial contract with an insurer because of:

28 (i) The insolvency, financial condition or default of the insurer at any time, provided that
29 the right is enforceable under applicable law other than this chapter; or

30 (ii) The commencement of a formal delinquency proceeding under this chapter.

31 (2) Any right under a pledge, security, collateral or guarantee agreement or any other
32 similar security arrangement or credit support document relating to netting agreement or qualified
33 financial contract.

34 (3) Subject to any provision of subsection 27-14.3-34(b), any right to set off or net out

1 any termination value, payment amount, or other transfer obligation arising under or in
2 connection with a netting agreement or qualified financial contract where the counterparty or its
3 guarantor is organized under the laws of the United States or a state or foreign jurisdiction
4 approved by the Securities Valuation Office (SVO) of the National Association of Insurance
5 Commissioners as eligible for netting.

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

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

18 (1) Transfer to one party (other than an insurer subject to a proceeding under this chapter)
19 all netting agreements and qualified financial contracts between a counterparty or any affiliate of
20 the counterparty and the insurer that is the subject of the proceeding, including:

21 (i) All rights and obligations of each party under each such netting agreement and
22 qualified financial contract; and

23 (ii) All property, including any guarantees or credit support documents, securing any
24 claims of each party under each such netting agreement and qualified financial contract; or

25 (2) Transfer none of the netting agreements, qualified financial contracts, rights,
26 obligations or property referred to in subparagraph (1) (with respect to the counterparty and any
27 affiliate of the counterparty).

28 (d) If a receiver for an insurer makes a transfer of one or more netting agreements or
29 qualified financial contracts, then the receiver shall use its best efforts to notify any person who is
30 party to the netting agreements or qualified financial contracts of the transfer by 12:00 noon (the
31 receiver's local time) on the business day following the transfer. For purposes of this subsection,
32 "business day" means a day other than a Saturday, Sunday or any day on which either the New
33 York Stock Exchange or the Federal Reserve Bank of New York is closed.

34 (e) Notwithstanding any other provision of this chapter, a receiver may not avoid a

1 transfer of money or other property arising under or in connection with a netting agreement or
2 qualified financial contract (or any pledge, security, collateral or guarantee agreement or any
3 other similar security arrangement or credit support document relating to a netting agreement or
4 qualified financial contract) that is made before the commencement of a formal delinquency
5 proceeding under this chapter. However, a transfer may be avoided under subsection 27-14.3-
6 30(a) if the transfer was made with actual intent to hinder, delay or defraud the insurer, a receiver
7 appointed for the insurer, or existing or future creditors.

8 (f) In exercising any of its powers under this chapter to disaffirm or repudiate a netting
9 agreement or qualified financial contract, the receiver must take action with respect to each
10 netting agreement or qualified financial contract and all transactions entered into in connection
11 therewith, in its entirety. Notwithstanding any other provision of this chapter, any claim of a
12 counterparty against the state arising from the receiver's disaffirmance or repudiation of a netting
13 agreement or qualified financial contract that has not been previously affirmed in the liquidation
14 or immediately preceding rehabilitation case shall be determined and shall be allowed or
15 disallowed as if the claim had arisen before the date of the filing of the petition for liquidation or,
16 if a rehabilitation proceeding is converted to a liquidation proceeding, as if the claim had arisen
17 before the date of the filing of the petition for rehabilitation. The amount of the claim shall be the
18 actual direct compensatory damages determined as of the date of the disaffirmance or repudiation
19 of the netting agreement or qualified financial contract. The term "actual direct compensatory
20 damages" does not include punitive or exemplary damages, damages for lost profit or lost
21 opportunity or damages for pain or suffering, but does include normal and reasonable cost of
22 cover or other reasonable measures of damages utilized in the derivatives market for the contract
23 and agreement claims.

24 (g) The term "contractual right" as used in this section includes any right, whether or not
25 evidenced in writing, arising under statutory or common law, a rule or bylaw of a national
26 securities exchange, national securities clearing organization or securities clearing agency, a rule
27 or bylaw, or a resolution of the governing body, of a contract market or its clearing organization,
28 or under law merchant.

29 (h) The provisions of this section shall not apply to persons who are affiliates of the
30 insurer that is the subject of the proceeding.

31 (i) All rights of counterparties under this chapter shall apply to netting agreements and
32 qualified financial contracts entered into on behalf of the general account or separate accounts if
33 the assets of each separate account are available only to counterparties to netting agreements and
34 qualified financial contracts entered into on behalf of that separate account.

1 **27-14.3-56.5. Special or statutory deposits.** – Notwithstanding any other provision of
2 this chapter, or any other law of this state, upon the entry of a final order of liquidation or order
3 approving a rehabilitation plan of an insurer domiciled in this state or in a reciprocal state, any
4 deposit held in this state, which is a special or statutory deposit held pursuant to any statute, or as
5 required by any order of the commissioner, for the benefit of any creditors, including
6 policyholders, of the insurer shall be delivered to the domiciliary liquidator. The proceeds of the
7 deposit shall then be held by the domiciliary liquidator as a general asset for the benefit of all
8 creditors no matter where they reside in accordance with the priorities set by the laws of the
9 domiciliary state. The holder of the deposit in this state shall, upon the receipt of a certified copy
10 of an order approving the plan of rehabilitation or liquidation, deliver the deposit to the
11 domiciliary state’s conservator, rehabilitator or liquidator, and when so delivered shall become
12 part of the general assets of the insurer.

13 **27-14.3-63.5. Duty to provide information to other insurance regulators and**
14 **guaranty associations.** – The domiciliary receiver shall provide information to other state
15 insurance regulators and guaranty associations, including reports and analyses of financial
16 condition and the status of development of a plan of rehabilitation. The domiciliary receiver shall
17 also permit a state insurance regulator or guaranty association to obtain a listing of policyholders
18 and certificate holders residing in the requestor’s state, including current addresses and summary
19 policy information, provided that the regulator or guaranty association agrees to maintain the
20 confidentiality of the records, and that the records will be used only for regulatory or guaranty
21 association purposes. Access of financial records shall be at least equivalent to that to which a
22 state insurance regulator was entitled prior to the commencement of a formal delinquency
23 proceeding. Access to records may be limited to normal business hours. In the event that the
24 domiciliary receiver believes that certain information is sensitive, and disclosure might cause a
25 diminution in recovery, the receiver may apply for a protective order imposing additional
26 restrictions on access. No waiver of any applicable privilege shall occur as a result of disclosure
27 to the commissioner or receiver under this section or as a result of sharing documents, materials
28 or other information pursuant to this section.

29 SECTION 4. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO INSURANCE -- INSURERS' REHABILITATION AND LIQUIDATION

1 This act would update the Insurers' Rehabilitation and Liquidation Act to the current
2 model act of the National Association of Insurance Commissioners. In the 2003 session, sections
3 39, 40 and 46 were updated. The act would amend the remaining sections by adding new
4 definitions as well as new sections on matters such as receivership, recoupment from affiliates,
5 review of deposits and the duty to provide information to the regulators.

6 This act would take effect upon passage.

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