

By: Representative Stevens

To: Insurance

HOUSE BILL NO. 1162

1 AN ACT TO AMEND SECTION 83-24-7, MISSISSIPPI CODE OF 1972, TO
2 REVISE CERTAIN DEFINITIONS UNDER THE INSURERS REHABILITATION AND
3 LIQUIDATION ACT; TO AMEND SECTION 83-24-19, MISSISSIPPI CODE OF
4 1972, TO PROVIDE FOR THE ENFORCEMENT OF SEIZURES IN FORMAL
5 DELINQUENCY PROCEEDINGS AGAINST AN INSURER UNDER THE INSURERS
6 REHABILITATION AND LIQUIDATION ACT; TO AMEND SECTION 83-24-23,
7 MISSISSIPPI CODE OF 1972, TO PROVIDE GROUNDS TO REHABILITATE OR
8 LIQUIDATE AN INSURER DOMICILED IN THE STATE OF MISSISSIPPI; TO
9 AMEND SECTION 83-24-25, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
10 EXPEDITED APPEAL OF A REHABILITATION ORDER; TO AMEND SECTION
11 83-24-27, MISSISSIPPI CODE OF 1972, TO REVISE THE POWERS AND
12 DUTIES OF THE REHABILITATOR; TO AMEND SECTION 83-24-31,
13 MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO AMEND SECTION
14 83-24-35, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO
15 AMEND SECTION 83-24-37, MISSISSIPPI CODE OF 1972, TO CLARIFY THE
16 CONTINUATION AND TERMINATION OF COVERAGE; TO AMEND SECTION
17 83-24-41, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE DEFENSE OF
18 ACTIONS AGAINST THE INSURER OR INSURED BY THE LIQUIDATOR; TO AMEND
19 SECTION 83-24-43, MISSISSIPPI CODE OF 1972, TO REVISE THE
20 REQUIREMENTS FOR NOTICE OF LIQUIDATION ORDERS; TO AMEND SECTION
21 83-24-47, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE TREATMENT
22 OF JUDGMENTS OR ORDERS TAKEN AGAINST AN INSURER AFTER THE DATE OF
23 LIQUIDATION IN CERTAIN COURTS; TO AMEND SECTION 83-24-59,
24 MISSISSIPPI CODE OF 1972, TO PROHIBIT SETOFFS BY REINSURERS WHERE
25 THE REINSURER BOTH ASSUMED FROM AND CEDED TO THE INSOLVENT INSURER
26 AND TO PROHIBIT SETOFFS BETWEEN AFFILIATED COMPANIES; TO AMEND
27 SECTION 83-24-63, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE
28 CONSTRUCTION OF CERTAIN REINSURANCE CONTRACTS; TO AMEND SECTION
29 83-24-65, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE PAYMENT AND
30 COLLECTION OF PREMIUMS; TO AMEND SECTION 83-24-67, MISSISSIPPI
31 CODE OF 1972, TO PROVIDE FOR DISTRIBUTIONS TO GUARANTY
32 ASSOCIATIONS AND TO PROVIDE FOR THE OFFSET OF CERTAIN DEPOSITS; TO
33 AMEND SECTION 83-24-69, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
34 ALTERNATIVE PROCEDURES FOR FILING PROOFS OF CLAIM; TO AMEND
35 SECTION 83-24-71, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
36 ADDITIONAL INFORMATION TO BE INCLUDED IN PROOFS OF CLAIM; TO AMEND
37 SECTION 83-24-73, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR SPECIAL
38 CLAIMS; TO AMEND SECTION 83-24-75, MISSISSIPPI CODE OF 1972, TO
39 PROVIDE TIME LIMIT FOR THIRD PARTY FILING CLAIM WITH LIQUIDATOR;
40 TO AMEND SECTION 83-24-77, MISSISSIPPI CODE OF 1972, TO PROVIDE
41 PROCEDURES FOR HANDLING DISPUTED CLAIMS; TO AMEND SECTION
42 83-24-79, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO
43 AMEND SECTION 83-24-83, MISSISSIPPI CODE OF 1972, TO REVISE THE
44 PROVISION ESTABLISHING PRIORITY AND ORDER OF DISTRIBUTIONS OF
45 CLAIMS; TO AMEND SECTION 83-24-85, MISSISSIPPI CODE OF 1972, TO
46 PROVIDE FOR REVIEW OF CLAIMS IN LIQUIDATION; TO AMEND SECTION
47 83-24-89, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR AN ALTERNATIVE
48 METHOD OF HANDLING UNCLAIMED FUNDS; TO AMEND SECTION 83-24-99,
49 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR ANCILLARY PROCEEDINGS;
50 TO AMEND SECTION 83-24-103, MISSISSIPPI CODE OF 1972, TO PROVIDE

51 FOR VESTING OF PROPERTY; TO AMEND SECTION 83-24-105, MISSISSIPPI
52 CODE OF 1972, TO PROVIDE FOR ACTIONS OF ANCILLARY RECEIVER; TO
53 AMEND SECTION 83-24-107, MISSISSIPPI CODE OF 1972, IN CONFORMITY
54 THERETO; TO AMEND SECTION 83-24-109, MISSISSIPPI CODE OF 1972, TO
55 PROVIDE FOR THE COORDINATION OF ACTIVITIES WHEN ANCILLARY
56 RECEIVERS ARE APPOINTED; TO AMEND SECTION 83-24-111, MISSISSIPPI
57 CODE OF 1972, TO ALLOW FOR ANCILLARY CLAIM FILING PROCEDURES; TO
58 AMEND SECTION 83-24-115, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
59 SECURED CLAIMS; TO AMEND SECTION 83-24-117, MISSISSIPPI CODE OF
60 1972, IN CONFORMITY THERETO; TO CREATE A NEW SECTION TO BE
61 CODIFIED AS SECTION 83-24-18, MISSISSIPPI CODE OF 1972, TO PROVIDE
62 FOR CERTAIN PROTECTIONS REGARDING RECEIVERS; TO CREATE A NEW
63 SECTION TO BE CODIFIED AS SECTION 83-24-20, MISSISSIPPI CODE OF
64 1972, TO PROVIDE PROCEDURES FOR FORMAL DELINQUENCY PROCEEDINGS; TO
65 CREATE A NEW SECTION TO BE CODIFIED AS SECTION 83-24-36,
66 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR RECORDS OF DELINQUENT
67 INSURERS; TO CREATE A NEW SECTION TO BE CODIFIED AS SECTION
68 83-24-52, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR RECOUPMENT FROM
69 AFFILIATES; TO CREATE A NEW SECTION TO BE CODIFIED AS SECTION
70 83-24-82, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE TREATMENT
71 OF QUALIFIED FINANCIAL CONTRACTS; TO CREATE A NEW SECTION TO BE
72 CODIFIED AS SECTION 83-24-104, MISSISSIPPI CODE OF 1972, TO
73 PROVIDE FOR THE HANDLING OF SPECIAL OR STATUTORY DEPOSITS; TO
74 CREATE A NEW SECTION TO BE CODIFIED AS SECTION 83-24-119,
75 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE SHARING OF
76 INFORMATION; TO REPEAL SECTION 83-24-29, MISSISSIPPI CODE OF 1972,
77 WHICH PROVIDES FOR A STAY OF ACTIONS OR PROCEEDINGS DURING
78 REHABILITATION; TO REPEAL SECTION 83-24-33, MISSISSIPPI CODE OF
79 1972, WHICH AUTHORIZES THE COMMISSIONER OF INSURANCE TO PETITION
80 THE COURT FOR AN ORDER TO LIQUIDATE A DOMESTIC INSURER OR AN ALIEN
81 INSURER DOMICILED IN THIS STATE; TO REPEAL SECTION 83-24-101,
82 MISSISSIPPI CODE OF 1972, WHICH AUTHORIZES THE COMMISSIONER OF
83 INSURANCE TO PETITION THE COURT FOR AN ORDER TO LIQUIDATE THE
84 ASSETS FOUND IN THIS STATE OF A FOREIGN INSURER OR AN ALIEN
85 INSURER NOT DOMICILED IN THIS STATE; AND FOR RELATED PURPOSES.

86 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

87 SECTION 1. Section 83-24-7, Mississippi Code of 1972, is
88 amended as follows:

89 83-24-7. For the purposes of this chapter:

90 (a) "Affiliate" of, or person "affiliated" with, a
91 specific person, means a person that directly or indirectly
92 through one or more intermediaries, controls, or is controlled by,
93 or is under common control with, the person specified.

94 (b) "Ancillary state" means any state other than a
95 domiciliary state.

96 (c) "Commissioner" means the Commissioner of Insurance.

97 (d) "Control" (including the terms "controlling,"
98 "controlled by" and "under common control with") means the
99 possession, direct or indirect, of the power to direct or cause
100 the direction of the management and policies of a person, whether

101 through the ownership of voting securities, by contract other than
102 a commercial contract for goods or non-management services, or
103 otherwise, unless the power is the result of an official position
104 with or corporate office held by the person. Control shall be
105 presumed to exist if any person, directly or indirectly, owns,
106 controls, holds with the power to vote, or holds proxies
107 representing, ten percent (10%) or more of the voting securities
108 of any other person. This presumption may be rebutted by a
109 showing that control does not, in fact, exist.

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

113 (f) "Delinquency proceeding" means any proceeding
114 instituted against an insurer for the purpose of liquidating,
115 rehabilitating, reorganizing or conserving such insurer, and any
116 summary proceeding under Section 83-24-19. "Formal delinquency
117 proceeding" means any liquidation or rehabilitation proceeding.

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

120 (i) The issuance or delivery of contracts of
121 insurance, either to persons resident, or covering risk in this
122 state;

123 (ii) The solicitation of applications for such
124 contracts, or other negotiations preliminary to the execution of
125 such contracts;

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

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

130 (v) Operating under a license or certificate of
131 authority, as an insurer, issued by the Department of Insurance.

132 (h) "Domiciliary state" means the state in which an
133 insurer is incorporated or organized; or, in the case of an alien

134 insurer, its state of entry.

135 (i) "Fair consideration" is given for property or
136 obligation:

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

141 (ii) When such property or obligation is received
142 in good faith to secure a present advance or antecedent debt in
143 amount not disproportionately small as compared to the value of
144 the property or obligation obtained.

145 (j) "Foreign country" means any other jurisdiction not
146 in any state.

147 (k) "General assets" means all property, real,
148 personal, or otherwise, not * * *:

149 (i) Specifically subject to a perfected security
150 interest as defined in the Uniform Commercial Code or its
151 equivalent in this state;

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

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

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

161 As to specifically encumbered property, "general assets"
162 includes all such property or its proceeds in excess of the amount
163 necessary to discharge the sum or sums secured thereby. Assets
164 held in trust and on deposit pursuant to a state statute for the
165 security or benefit of all policyholders or all policyholders and
166 creditors, in more than a single state, shall be treated as

167 general assets.

168 (l) "Guaranty association" means any mechanism mandated
169 by state statute which is created for the payment of claims or
170 continuation of policy obligations of financially impaired or
171 insolvent insurers.

172 (m) "Insolvency" or "insolvent" means:

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

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

177 (B) If an assessment be made within thirty
178 (30) days after such date, the inability to pay such obligation
179 thirty (30) days following the date specified in the first
180 assessment notice issued after the date of loss.

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

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

186 (B) The total par or stated value of its
187 authorized and issued capital stock.

188 * * *

189 (iii) For purposes of this subsection,
190 "liabilities" shall include but not be limited to reserves
191 required by statute or by insurance department general regulations
192 or specific requirements imposed by the commissioner upon a
193 subject company at the time of admission or subsequent thereto.

194 (n) "Insurer" means any person who has done, purports
195 to do, is doing or is licensed to do an insurance business, and is
196 or has been subject to the authority of, or to liquidation,
197 rehabilitation, reorganization, supervision, or conservation by,
198 any insurance commissioner. For purposes of this chapter, any
199 other persons included under Section 83-24-5 shall be deemed to be

200 insurers.

201 (o) "Netting agreement" means a contract or agreement
202 (including terms and conditions incorporated by reference
203 therein), including a master agreement (which master agreement,
204 together with all schedules, confirmations, definitions and
205 addenda thereto and transactions under any thereof, shall be
206 treated as one (1) netting agreement), that documents one or more
207 transactions between the parties to the agreement for or involving
208 one or more qualified financial contracts and that provides for
209 the netting or liquidation of qualified financial contracts or
210 present or future payment obligations or payment entitlements
211 thereunder (including liquidation or close-out values relating to
212 such obligations or entitlements) among the parties to the netting
213 agreement.

214 (p) "Preferred claim" means any claim with respect to
215 which the terms of this chapter accord priority of payment from
216 the general assets of the insurer.

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

222 (i) "Commodity contract" means:

223 (A) A contract for the purchase of a sale of
224 a commodity for future delivery on, or subject to the rules of, a
225 board of trade designated as a contract market by the Commodity
226 Futures Trading Commission under the Commodity Exchange Act (7
227 USCS Section 1 et seq.) or board of trade outside the United
228 States;

229 (B) An agreement that is subject to
230 regulation under Section 19 of the Commodity Exchange Act (7 USCS
231 Section 1 et seq.) and that is commonly known to the commodities
232 trade as a margin account, margin contract, leverage account or

233 leverage contract; or

234 (C) An agreement or transaction that is
235 subject to regulation under Section 4c(b) of the Commodity
236 Exchange Act (7 USCS Section 1 et seq.) and that is commonly known
237 to the commodities trade as a commodity option.

238 (ii) "Forward contract" means a contract (other
239 than a commodity contract) for the purchase, sale or transfer of a
240 commodity, as defined in Section 1 of the Commodity Exchange
241 Act (7 USCS Section 1 et seq.), or any similar good, article,
242 service, right or interest that is presently or in the future
243 becomes the subject of dealing in the forward contract trade, or
244 product or byproduct thereof, with a maturity date more than two
245 (2) days after the date the contract is entered into, including,
246 but not limited to, a repurchase transaction, reverse repurchase
247 transaction, consignment, lease, swap, hedge transaction, deposit,
248 loan, option, allocated transaction, unallocated transaction or a
249 combination of these or option on any of them.

250 (iii) "Repurchase agreement" (which also applies
251 to a reverse repurchase agreement) means an agreement, including
252 related terms, that provides for the transfer of certificates of
253 deposit, eligible bankers' acceptances, or securities that are
254 direct obligations of, or that are fully guaranteed as to
255 principal and interest by, the United States or an agency of the
256 United States against the transfer of funds by the transferee of
257 the certificates of deposit, eligible bankers' acceptances or
258 securities with a simultaneous agreement by the transferee to
259 transfer to the transferor certificates of deposit, eligible
260 bankers' acceptances or securities as described above, at a date
261 certain not later than one (1) year after the transfers or on
262 demand, against the transfer of funds. For the purposes of this
263 definition, the items that may be subject to an agreement include
264 mortgage-related securities, a mortgage loan, and an interest in a
265 mortgage loan, and shall not include any participation in a

266 commercial mortgage loan, unless the commissioner determines by
267 regulation, resolution or order to include the participation
268 within the meaning of the term.

269 (iv) "Securities contract" means a contract for
270 the purchase, sale or loan of a security, including an option for
271 the repurchase or sale of a security, certificate of deposit, or
272 group or index of securities (including an interest therein or
273 based on the value thereof), or an option entered into on a
274 national securities exchange relating to foreign currencies, or
275 the guarantee of a settlement of cash or securities by or to a
276 securities clearing agency. For the purposes of this definition,
277 the term "security" includes a mortgage loan, mortgage-related
278 securities and an interest in any mortgage loan or
279 mortgage-related security.

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

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

292 (s) "Reciprocal state" means any state other than this
293 state in which in substance and effect Sections 83-24-35,
294 83-24-103, 83-24-105, 83-24-109, 83-24-111 and 83-24-113 are in
295 force, and in which provisions are in force requiring that the
296 commissioner or equivalent official be the receiver of a
297 delinquent insurer, and in which some provision exists for the
298 avoidance of fraudulent conveyances and preferential transfers.

299 (t) "Secured claim" means any claim secured by an asset
300 that is not a general asset, but not including special deposit
301 claims * * *. The term also includes claims which have become
302 liens upon specific assets by reason of judicial process more than
303 four (4) months before the commencement of delinquency
304 proceedings. A secured claim shall not include any claim arising
305 from a constructive or resulting trust.

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

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

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

320 SECTION 2. Section 83-24-19, Mississippi Code of 1972, is
321 amended as follows:

322 83-24-19. (1) The commissioner may file in the chancery
323 court a petition alleging, with respect to a domestic insurer:

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

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

329 (c) The contents of an order deemed necessary by the
330 commissioner.

331 (2) Upon a filing under subsection (1), the court may issue

332 forthwith, ex parte and without a hearing, the requested order
333 which shall direct the commissioner to take possession and control
334 of all or a part of the property, books, accounts, documents and
335 other records of an insurer, and of the premises occupied by it
336 for transaction of its business; and until further order of the
337 court enjoin the insurer and its officers, managers, agents and
338 employees from disposition of its property and from the
339 transaction of its business except with the written consent of the
340 commissioner.

341 (3) The court shall specify in the order what its duration
342 shall be, which shall be such time as the court deems necessary
343 for the commissioner to ascertain the condition of the insurer.
344 On motion of either party or on its own motion, the court may from
345 time to time hold such hearings as it deems desirable after such
346 notice as it deems appropriate, and may extend, shorten or modify
347 the terms of the seizure order. The court shall vacate the
348 seizure order if the commissioner fails to commence a formal
349 proceeding under this chapter after having had a reasonable
350 opportunity to do so. An order of the court pursuant to a formal
351 proceeding under this chapter shall ipso facto vacate the seizure
352 order.

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

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

362 (6) If, at any time after the issuance of such an order, it
363 appears to the court that any person whose interest is or will be
364 substantially affected by the order did not appear at the hearing

365 and has not been served, the court may order that notice be given.

366 An order that notice be given shall not stay the effect of any
367 order previously issued by the court.

368 (7) Whenever the commissioner makes any seizure as provided
369 in subsection (2), it shall, on the demand of the commissioner,
370 be the duty of the sheriff of any county of this state, and of the
371 police department of any municipal corporation therein, to furnish
372 the commissioner with such deputies, patrolmen or officers as may
373 be necessary to assist the commissioner in making and enforcing
374 the seizure.

375 (8) The foregoing provisions of this section shall be
376 applied to insurers not domiciled in this state to the extent of
377 the insurers' assets and activities in this state.

378 SECTION 3. Section 83-24-23, Mississippi Code of 1972, is
379 amended as follows:

380 83-24-23. The commissioner may apply by petition to the
381 chancery court for an order authorizing the commissioner to
382 rehabilitate or liquidate a domestic insurer or an alien insurer
383 domiciled in this state on any one or more of the following
384 grounds:

385 (a) The insurer is insolvent;

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

391 (c) The insured is in such condition that it could not
392 meet the requirements for organization and authorization as
393 required by law, except as to the amount of the original surplus
394 required of a stock company under Section 83-19-31, and except as
395 to the amount of the surplus required of a company other than a
396 stock company in excess of the minimum surplus required to be
397 maintained;

398 (d) The insurer has concealed, removed, altered,
399 destroyed or failed to establish and maintain books, records,
400 documents, accounts, vouchers and other pertinent material
401 adequate for the determination of its financial condition by
402 examination under this section or has failed to properly
403 administer claims or maintain claims records which are adequate
404 for the determination of its outstanding claims liability;

405 (e) At any time after the issuance of an order under
406 this section or at the time of instituting any proceeding under
407 this article, it appears to the commissioner that upon good cause
408 shown, it would not be in the best interest of the policyholders,
409 creditors or the public to proceed with the conduct of the
410 business of the insurer;

411 (f) The insurer is in such condition that the further
412 transaction of business would be hazardous, financially or
413 otherwise, to its policyholders, creditors or the public;

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

420 (h) The insurer has failed to remove any person who in
421 fact has executive authority in the insurer, whether an officer,
422 manager, general agent, employee, or other person; if the person
423 has been found after notice and hearing by the commissioner to be
424 dishonest or untrustworthy in a way affecting the insurer's
425 business;

426 (i) Control of the insurer, whether by stock ownership
427 or otherwise, and whether direct or indirect, is in a person or
428 persons found after notice and hearing to be untrustworthy in a
429 way affecting the insurer's business;

430 (j) Any person who in fact has executive authority in

431 the insurer, whether an officer, manager, general agent, director
432 or trustee, employee, or other person, has refused to be examined
433 under oath by the commissioner concerning its affairs, whether in
434 this state or elsewhere; and after reasonable notice of the fact,
435 the insurer has failed promptly and effectively to terminate the
436 employment and status of the person and all his influence on
437 management;

438 (k) After demand by the commissioner under Sections
439 83-5-201 through 83-5-217, Mississippi Code of 1972, or under this
440 chapter, the insurer has failed to promptly make available for
441 examination any of its own property, books, accounts, documents or
442 other records, or those of any subsidiary or related company
443 within the control of the insurer, or those of any person having
444 executive authority in the insurer so far as they pertain to the
445 insurer;

446 (l) Without first obtaining the written consent of the
447 commissioner, the insurer has transferred, or attempted to
448 transfer, in a manner contrary to Sections 83-6-1 through
449 83-6-43, * * *, Mississippi Code of 1972, or other applicable law,
450 substantially its entire property or business, or has entered into
451 any transaction the effect of which is to merge, consolidate or
452 reinsure substantially its entire property or business in or with
453 the property or business of any other person;

454 (m) The insurer or its property has been or is the
455 subject of an application for the appointment of a receiver,
456 trustee, custodian, conservator or sequestrator or similar
457 fiduciary of the insurer or its property otherwise than as
458 authorized under the insurance laws of this state * * *;

459 (n) Within the previous five (5) years the insurer has
460 willfully and continuously violated its charter or articles of
461 incorporation, its bylaws, any insurance law of this state, or any
462 valid order of the commissioner;

463 (o) The insurer has failed to pay within sixty (60)

464 days after the due date any obligation to any state or any
465 subdivision thereof or any judgment entered in any state, if the
466 court in which the judgment was entered had jurisdiction over the
467 subject matter except that * * * nonpayment shall not be a ground
468 until sixty (60) days after any good faith effort by the insurer
469 to contest the obligation has been terminated, whether it is
470 before the commissioner or in the courts, or the insurer has
471 systematically attempted to compromise or renegotiate previously
472 agreed settlements with its creditors on the ground that it is
473 financially unable to pay its obligations in full;

474 (p) The insurer has failed to file its annual report or
475 other financial report required by statute within the time allowed
476 by law * * *;

477 (q) The board of directors or the holders of a majority
478 of the shares entitled to vote, or a majority of those individuals
479 entitled to the control of those entities specified in Section
480 83-24-5, request or consent to rehabilitation or liquidation under
481 this chapter; or

482 (r) The insurer does not comply with its domiciliary
483 state's requirements for issuance to it of a certificate of
484 authority, or that its certificate of authority has been revoked
485 by its state of domicile.

486 SECTION 4. Section 83-24-25, Mississippi Code of 1972, is
487 amended as follows:

488 83-24-25. (1) An order to rehabilitate the business of a
489 domestic insurer, or an alien insurer domiciled in this state,
490 shall appoint the commissioner and his successors in office the
491 rehabilitator, and shall direct the rehabilitator forthwith to
492 take possession of the assets of the insurer, and to administer
493 them under the general supervision of the court. The filing or
494 recording of the order with the Clerk of the Chancery Court of the
495 First Judicial District of Hinds County or of the county in which
496 the principal business of the company is conducted, or the county

497 in which its principal office or place of business is located,
498 shall impart the same notice as a deed, bill of sale, or other
499 evidence of title duly filed or recorded with that clerk would
500 have imparted. The order to rehabilitate the insurer shall by
501 operation of law vest title to all assets of the insurer in the
502 rehabilitator.

503 (2) Any order issued under this section shall require
504 accountings to the court by the rehabilitator. Accountings shall
505 be at such intervals as the court specifies in its order, but no
506 less frequently than semiannually. Each accounting shall include
507 a report concerning the rehabilitator's opinion as to the
508 likelihood that a plan under Section 83-24-27 will be prepared by
509 the rehabilitator and the timetable for doing so.

510 (3) Entry of an order of rehabilitation shall not constitute
511 an anticipatory breach of any contracts of the insurer nor shall
512 it be grounds for retroactive revocation or retroactive
513 cancellation of any contracts of the insurer, unless such
514 revocation or cancellation is done by the rehabilitator pursuant
515 to Section 83-24-27.

516 (4) In recognition of the need for a prompt and final
517 resolution for all affected by a plan of rehabilitation, any
518 appeal from an order of rehabilitation or an order approving a
519 plan of rehabilitation shall be heard on an expedited basis. A
520 stay of an order of rehabilitation or an order approving a plan of
521 rehabilitation shall not be granted unless the appellant
522 demonstrates that extraordinary circumstances warrant delaying the
523 recovery under the plan of rehabilitation of all other persons,
524 including policyholders. If the plan provides an appropriate
525 mechanism for adjustment in the event of any adverse ruling from
526 an appeal, no stay shall be granted.

527 SECTION 5. Section 83-24-27, Mississippi Code of 1972, is
528 amended as follows:

529 83-24-27. (1) The commissioner as rehabilitator may appoint

530 one or more special deputies, who shall have all the powers and
531 responsibilities of the rehabilitator granted under this section,
532 and the commissioner may employ such counsel, clerks and
533 assistants as deemed necessary. The compensation of the special
534 deputy, counsel, clerks and assistants and all expenses of taking
535 possession of the insurer and of conducting the proceedings shall
536 be fixed by the commissioner, with the approval of the court, and
537 shall be paid out of the funds or assets of the insurer. The
538 persons appointed under this section shall serve at the pleasure
539 of the commissioner. The commissioner, as rehabilitator, may,
540 with the approval of the court, appoint an advisory committee of
541 policyholders, claimants, or other creditors including guaranty
542 associations should such a committee be deemed necessary. Such
543 committee shall serve at the pleasure of the commissioner and
544 shall serve without compensation other than reimbursement for
545 reasonable travel and per diem living expenses. No other
546 committee of any nature shall be appointed by the commissioner or
547 the court in rehabilitation proceedings conducted under this
548 chapter.

549 (2) In the event that the property of the insurer does not
550 contain sufficient cash or liquid assets to defray the costs
551 incurred, the commissioner may advance the costs so incurred out
552 of any appropriation for the maintenance of the insurance
553 department. Any amounts so advanced for expenses of
554 administration shall be repaid to the commissioner for the use of
555 the insurance department out of the first available money of the
556 insurer.

557 (3) The rehabilitator may take such action as he deems
558 necessary or appropriate to reform and revitalize the insurer. He
559 shall have all the powers of the directors, officers and managers,
560 whose authority shall be suspended, except as they are redelegated
561 by the rehabilitator. He shall have full power to direct and
562 manage, to hire and discharge employees subject to any contract

563 rights they may have, and to deal with the property and business
564 of the insurer.

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

570 (5) If the rehabilitator determines that reorganization,
571 consolidation, conversion, reinsurance, merger or other
572 transformation of the insurer is appropriate, the rehabilitator
573 shall prepare a plan to effect such changes and shall file it with
574 the court within six (6) months after the entry of the
575 rehabilitation order or such further time as the court may allow
576 for good cause. Upon application of the rehabilitator for
577 approval of the plan, and after such notice and hearings as the
578 court may prescribe, the court may either approve or disapprove
579 the plan proposed, or may modify it and approve it as modified.
580 Any plan approved under this section shall be, in the judgment of
581 the court, fair and equitable to all parties concerned. If the
582 plan is approved, the rehabilitator shall carry out the plan. In
583 the case of a life insurer, the plan proposed may include the
584 imposition of liens upon the policies of the company, if all
585 rights of shareholders are first relinquished. A plan for a life
586 insurer may also propose imposition of a moratorium upon loan and
587 cash surrender rights under policies, for such period not to
588 exceed six (6) months from the entry of the rehabilitation order,
589 unless the court, for good cause shown, shall extend the
590 moratorium.

591 (6) The rehabilitator shall have the power under Sections
592 83-24-51 and 83-24-53 to avoid fraudulent transfers and may
593 exercise any of the powers under Section 83-24-41, as necessary or
594 appropriate, including, but not limited to, the power to affirm or
595 disaffirm any contract to which the insurer is a party. However,

596 the rehabilitator of an insurer may, as part of a court approved
597 plan of rehabilitation, modify or restructure the policies or
598 contracts of insurance. In the event the rehabilitator proposes
599 to modify or restructure the policies or contracts of insurance,
600 the rehabilitator may, with the concurrence of the court, approve
601 payment of certain expenses incurred by an advisory committee
602 appointed pursuant to subsection (1) of this section, the expenses
603 to be limited to the reasonable and necessary expenses incurred in
604 obtaining an expert evaluation of the effect upon policyholders of
605 any proposed modification or restructuring of policies or
606 contracts of insurance.

607 (7) The enumeration, in this section, of the powers and
608 authority of the rehabilitator shall not be construed as a
609 limitation upon the rehabilitator, nor shall it exclude in any
610 manner the right to do other acts not specifically enumerated or
611 otherwise provided for, as may be necessary or appropriate for the
612 accomplishment of or in aid of the purpose of rehabilitation.

613 SECTION 6. Section 83-24-31, Mississippi Code of 1972, is
614 amended as follows:

615 83-24-31. (1) Whenever the commissioner believes further
616 attempts to rehabilitate an insurer would substantially increase
617 the risk of loss to creditors, policyholders or the public, or
618 would be futile, the commissioner may petition the court for an
619 order of liquidation. A petition under this subsection shall have
620 the same effect as a petition under Section 83-24-23 * * *.

621 (2) The protection of the interests of insureds, claimants
622 and the public requires the timely performance of all insurance
623 policy obligations. If the payment of policy obligations is
624 suspended in substantial part for a period of six (6) months at
625 any time after the appointment of the rehabilitator and the
626 rehabilitator has not filed an application for approval of a plan
627 under Section 83-24-27, the rehabilitator shall petition the court
628 for an order of liquidation * * *.

629 (3) The rehabilitator may at any time petition the court for
630 an order terminating rehabilitation of an insurer. The court
631 shall also permit the directors of the insurer to petition the
632 court for an order terminating rehabilitation of the insurer and
633 may order payment from the estate of the insurer of such costs and
634 other expenses of such petition as justice may require. If the
635 court finds that rehabilitation has been accomplished and that
636 grounds for rehabilitation under Section 83-24-23 no longer exist,
637 it shall order that the insurer be restored to possession of its
638 property and the control of the business. The court may also make
639 that finding and issue that order at any time upon its own motion.

640 SECTION 7. Section 83-24-35, Mississippi Code of 1972, is
641 amended as follows:

642 83-24-35. (1) An order to liquidate the business of a
643 domestic insurer shall appoint the commissioner and his successors
644 in office as liquidator, and shall direct the liquidator forthwith
645 to take possession of the assets of the insurer and to administer
646 them under the general supervision of the court. The liquidator
647 shall be vested by operation of law with the title to all of the
648 property, contracts and rights of action, and all of the books and
649 records of the insurer ordered liquidated, wherever located, as of
650 the entry of the final order of liquidation. The filing or
651 recording of the order with the Clerk of the Chancery Court of the
652 First Judicial District of Hinds County and of the county in which
653 its principal office or place of business is located, or, in the
654 case of real estate, of the county where the property is located,
655 shall impart the same notice as a deed, bill of sale or other
656 evidence of title duly filed or recorded with that chancery court
657 would have imparted.

658 (2) Upon issuance of the order, the rights and liabilities
659 of any such insurer and of its creditors, policyholders,
660 shareholders, members and all other persons interested in its
661 estate shall become fixed as of the date of entry of the order of

662 liquidation, except as provided in Sections 83-24-37 and 83-24-73.

663 (3) An order to liquidate the business of an alien insurer
664 domiciled in this state shall be in the same terms and have the
665 same legal effect as an order to liquidate a domestic
666 insurer * * *.

667 (4) At the time of petitioning for an order of liquidation,
668 or at any time thereafter, the commissioner, after making
669 appropriate findings of an insurer's insolvency, may petition the
670 court for a judicial declaration of such insolvency. After
671 providing such notice and hearing as it deems proper, the court
672 may make the declaration.

673 (5) Any order issued under this section shall require the
674 liquidator to submit financial reports to the court. Financial
675 reports shall include (at a minimum) the assets and liabilities of
676 the insurer and all funds received or disbursed by the liquidator
677 during the current period. Financial reports shall be filed
678 within one (1) year of the liquidation order and at least annually
679 thereafter, unless the court for good cause allows a longer
680 reporting period.

681 (6) * * * In the event an order of liquidation is set aside
682 upon any appeal, the company shall not be released from
683 delinquency proceedings unless and until all funds advanced by any
684 guaranty association, including reasonable administrative expenses
685 in connection therewith relating to obligations of the company,
686 shall be repaid in full, together with interest at the judgment
687 rate of interest or unless an arrangement for repayment thereof
688 has been made with the consent of all applicable guaranty
689 associations.

690 SECTION 8. Section 83-24-37, Mississippi Code of 1972, is
691 amended as follows:

692 83-24-37. (1) Notwithstanding any policy or contract
693 language or any other statute, all policies, insurance contracts
694 (other than reinsurance), surety bonds or surety undertakings,

695 other than life or health insurance or annuities, in effect at the
696 time of issuance of an order of liquidation shall continue in
697 force only for the lesser of:

698 (a) A period of thirty (30) days from the date of entry
699 of the liquidation order;

700 (b) The expiration of the policy coverage;

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

704 (d) The liquidator has effected a transfer of the
705 policy obligation pursuant to Section 83-24-41; or

706 (e) The date proposed by the liquidator and approved by
707 the court to cancel coverage.

708 (2) An order for liquidation under Section 83-24-39 shall
709 terminate coverages at the time specified in subsection (1) of
710 this section for purposes of any other statute.

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

714 (4) Policies of life or health insurance or annuities or any
715 period or coverage of such policies not covered by a * * *
716 guaranty association shall terminate under subsections (1) and
717 (2).

718 (5) The cancellation of any bond or surety undertaking shall
719 not release any co-surety or guarantor.

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

723 SECTION 9. Section 83-24-41, Mississippi Code of 1972, is
724 amended as follows:

725 83-24-41. (1) The liquidator shall have the power:

726 (a) To appoint a special deputy or deputies to act for
727 him under this chapter, and to determine his reasonable

728 compensation. The special deputy shall have all powers of the
729 liquidator granted by this section. The special deputy shall
730 serve at the pleasure of the liquidator.

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

734 (c) To appoint, with the approval of the court, an
735 advisory committee of policyholders, claimants or other creditors
736 including guaranty associations should such a committee be deemed
737 necessary. Such committee shall serve at the pleasure of the
738 commissioner and the decision to appoint an advisory committee
739 shall be at the sole discretion of the commissioner. Such
740 committee shall serve without compensation other than
741 reimbursement for reasonable travel and per diem living expenses.

742 No other committee of any nature shall be appointed by the
743 commissioner or the court in liquidation proceedings conducted
744 under this chapter.

745 (d) To fix the reasonable compensation of employees and
746 agents, legal counsel, actuaries, accountants, appraisers and
747 consultants with the approval of the court.

748 (e) To pay reasonable compensation to persons appointed
749 and to defray from the funds or assets of the insurer all expenses
750 of taking possession of, conserving, conducting, liquidating,
751 disposing of, or otherwise dealing with the business and property
752 of the insurer. In the event that the property of the insurer
753 does not contain sufficient cash or liquid assets to defray the
754 costs incurred, the commissioner may advance the costs so incurred
755 out of any appropriation for the maintenance of the insurance
756 department. Any amounts so advanced for expenses of
757 administration shall be repaid to the commissioner for the use of
758 the insurance department out of the first available monies of the
759 insurer.

760 (f) To hold hearings, to subpoena witnesses to compel

761 their attendance, to administer oaths, to examine any person under
762 oath, and to compel any person to subscribe to his testimony after
763 it has been correctly reduced to writing; and in connection
764 therewith to require the production of any books, papers, records
765 or other documents which he deems relevant to the inquiry.

766 (g) To audit the books and records of all agents of the
767 insurer insofar as those records relate to the business activities
768 of the insurer.

769 (h) To collect all debts and monies due and claims
770 belonging to the insurer, wherever located, and for this purpose:

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

774 (ii) To do such other acts as are necessary or
775 expedient to collect, conserve or protect its assets or property,
776 including the power to sell, compound, compromise or assign debts
777 for purposes of collection upon such terms and conditions as he
778 deems best; and

779 (iii) To pursue any creditor's remedies available
780 to enforce his claims.

781 (i) To conduct public and private sales of the property
782 of the insurer.

783 (j) To use assets of the estate of an insurer under a
784 liquidation order to transfer policy obligations to a solvent
785 assuming insurer, if the transfer can be arranged without
786 prejudice to applicable priorities under Section 83-24-83.

787 (k) To acquire, hypothecate, encumber, lease, improve,
788 sell, transfer, abandon or otherwise dispose of or deal with, any
789 property of the insurer at its market value or upon such terms and
790 conditions as are fair and reasonable. He shall also have power
791 to execute, acknowledge and deliver any and all deeds,
792 assignments, releases and other instruments necessary or proper to
793 effectuate any sale of property or other transaction in connection

794 with the liquidation.

795 (1) To borrow money on the security of the insurer's
796 assets or without security and to execute and deliver all
797 documents necessary to that transaction for the purpose of
798 facilitating the liquidation. Any such funds borrowed may be
799 repaid as an administrative expense and have priority over any
800 other claims in Class 1 under the priority of distribution.

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

804 (n) To continue to prosecute and to institute in the
805 name of the insurer or in his own name any and all suits and other
806 legal proceedings in this state or elsewhere, and to abandon the
807 prosecution of claims he deems unprofitable to pursue further. If
808 the insurer is dissolved under Section 83-24-39, he shall have the
809 power to apply to any court in this state or elsewhere for leave
810 to substitute himself for the insurer as plaintiff.

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

814 (p) To remove any or all records and property of the
815 insurer to the offices of the commissioner or to such other place
816 as may be convenient for the purposes of efficient and orderly
817 execution of the liquidation. Guaranty associations * * * shall
818 have such reasonable access to the records of the insurer as is
819 necessary for them to carry out their statutory obligations.

820 (q) To deposit in one or more banks in this state such
821 sums as are required for meeting current administration expenses
822 and dividend distributions.

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

825 (s) To file any necessary documents for record in the
826 office of any chancery clerk or record office in this state or

827 elsewhere where property of the insurer is located.

828 (t) To assert all defenses available to the insurer as
829 against third persons, including statutes of limitation, statutes
830 of frauds, and the defense of usury. A waiver of any defense by
831 the insurer after a petition in liquidation has been filed shall
832 not bind the liquidator. Whenever a guaranty association * * *
833 has an obligation to defend any suit, the liquidator shall give
834 precedence to such obligation and may defend only in the absence
835 of a defense by such guaranty associations.

836 (u) To exercise and enforce all the rights, remedies
837 and powers of any creditor, shareholder, policyholder or member,
838 including any power to avoid any transfer or lien that may be
839 given by the general law and that is not included with Sections
840 83-24-51 through 83-24-55.

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

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

849 (x) To exercise all powers now held or hereafter
850 conferred upon receivers by the laws of this state not
851 inconsistent with the provisions of this chapter.

852 (2) (a) If a company placed in liquidation issued liability
853 policies on a claims-made basis, which provided an option to
854 purchase an extended period to report claims, then the liquidator
855 may make available to holders of such policies, for a charge, an
856 extended period to report claims as stated herein. The extended
857 reporting period shall be made available only to those insureds
858 who have not secured substitute coverage. The extended period
859 made available by the liquidator shall begin upon termination of

860 any extended period to report claims in the basic policy and shall
861 end at the earlier of the final date for filing of claims in the
862 liquidation proceeding or eighteen (18) months from the order of
863 liquidation.

864 (b) The extended period to report claims made available
865 by the liquidator shall be subject to the terms of the policy to
866 which it relates. The liquidator shall make available such
867 extended period within sixty (60) days after the order of
868 liquidation at a charge to be determined by the liquidator subject
869 to approval of the court. Such offer shall be deemed rejected
870 unless the offer is accepted in writing and the charge is paid
871 within ninety (90) days after the order of liquidation. No
872 commissions, premium taxes, assessments or other fees shall be due
873 on the charge pertaining to the extended period to report claims.

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

880 (4) The liquidator shall not be obligated to defend any
881 action against the insurer or insured and may enforce injunctions,
882 stays and the claims procedure set forth in this chapter. The
883 liquidator may elect to defend any actions against the insurer or
884 insureds if it is in the best interest of the estate. Otherwise
885 any insureds not defended by a guaranty association shall provide
886 their own defense, and include the cost of the defense as part of
887 their claims, if the defense was an obligation of the insurer.
888 The right of the liquidator to contest coverage on a particular
889 claim shall be deemed preserved without the necessity for an
890 express reservation of rights.

891 SECTION 10. Section 83-24-43, Mississippi Code of 1972, is
892 amended as follows:

893 83-24-43. (1) Unless the court otherwise directs, the
894 liquidator shall give or cause to be given notice of the
895 liquidation order as soon as possible:

896 (a) By first class mail and electronic communication to
897 the insurance commissioner of each jurisdiction in which the
898 insurer is doing business;

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

902 (c) By first class mail to all the insurer's agents,
903 brokers, or producers of record, with current appointments or
904 current licenses to represent the insurer, and to all other
905 agents, brokers or producers as the liquidator deems appropriate
906 at their last known address;

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

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

915 (2) Whenever the commissioner of this state is appointed
916 receiver for an insurer domiciled in another state, the notice of
917 the liquidation order given by the domiciliary liquidator in
918 compliance with the laws of that state shall be sufficient notice,
919 and the ancillary receiver shall not be required to give any
920 notice unless the domiciliary liquidator fails to give notice.
921 The ancillary receiver may request that the domiciliary
922 liquidators notice mention the existence of any applicable
923 guaranty association laws in this state, and inform claimants that
924 any claims which the guaranty association of this state may cover
925 may be filed with the domiciliary liquidator and will be forwarded

926 to the applicable guaranty association. If notice by the
927 domiciliary liquidator in another state does not mention the
928 possibility of guaranty association coverage in this state, then
929 the ancillary receiver shall arrange to give notice to those who
930 may have rights under applicable guaranty association laws in this
931 state, together with a citation to the guaranty association
932 statute in this state. The notice may include a brief summary of
933 claimants' rights under the guaranty association laws in this
934 state and any other information deemed appropriate.

935 (3) Except as otherwise established by the liquidator with
936 approval of the court, notice to potential claimants under
937 subsection (1) shall require claimants to file with the liquidator
938 their claims, together with proper proofs thereof under Section
939 83-24-71, on or before a date the liquidator shall specify in the
940 notice. The liquidator need not require persons claiming cash
941 surrender values or other investment values in life insurance and
942 annuities to file a claim. All claimants shall have a duty to
943 keep the liquidator informed of any changes of address.

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

949 (b) The liquidator shall promptly provide to the
950 guaranty associations such information concerning the identities
951 and addresses of such policyholders and their policy coverages as
952 may be within the liquidator's possession or control, and
953 otherwise cooperate with guaranty associations to assist them in
954 providing to such policyholders timely notice of the guaranty
955 associations' coverage of policy benefits, including, as
956 applicable, coverage of claims and continuation or termination of
957 coverages.

958 (5) If notice is given in accordance with this section, the

959 distribution of assets of the insurer under this chapter shall be
960 conclusive with respect to all claimants, whether or not they
961 received notice.

962 (6) Notwithstanding the foregoing, the liquidator shall have
963 no duty to locate any persons or entities if no address is found
964 in the records of the insurer, or if mailings are returned to the
965 liquidator because of inability to deliver at the address shown in
966 the company's books and records. In such circumstances the notice
967 by publication as required by this chapter or actual notice
968 received is sufficient notice. Written certification by the
969 liquidator, or other knowledgeable person acting for the
970 liquidator, that the notices were deposited in the United States
971 mail, postage prepaid, shall be prima facie evidence of mailing
972 and receipt.

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

980 SECTION 11. Section 83-24-47, Mississippi Code of 1972, is
981 amended as follows:

982 83-24-47. (1) An allegation by the receiver of improper or
983 fraudulent conduct against an officer of the insurer, or any other
984 person, shall not be the basis of a defense to the enforcement of
985 a contractual obligation owed to the insurer by a third party,
986 unless the conduct is found to have been materially and
987 substantially related to the contractual obligation for which
988 enforcement is sought.

989 (2) Unless the otherwise applicable stay provisions or
990 injunctive provisions are lifted or modified by the domiciliary
991 receivership court, any judgment or order taken by any person

992 against the insurer after the date of the liquidation in any court
993 other than the domiciliary receivership court or a court in which
994 an ancillary proceeding is pending in a reciprocal state, or in
995 contravention of the terms of the injunctive provisions of the
996 court of this state's order of liquidation or rehabilitation shall
997 automatically place the claim in a priority of Class 6 as
998 described in Section 83-24-83, irrespective of what class the
999 claim would have been entitled to without such an order or
1000 judgment. Any claimant possessing such a judgment may set aside
1001 the judgment as to the insurer and the claims will not be subject
1002 to this provision.

1003 * * *

1004 SECTION 12. Section 83-24-59, Mississippi Code of 1972, is
1005 amended as follows:

1006 83-24-59. (1) Mutual debts or mutual credits, whether
1007 arising out of one or more contracts between the insurer and
1008 another person in connection with any action or proceeding under
1009 this chapter, shall be set off and the balance only shall be
1010 allowed or paid, except as provided in Section 83-24-65.

1011 (2) No setoff shall be allowed in favor of any person where:

1012 (a) The obligation of the insurer to the person would
1013 not at the date of the filing of a petition for liquidation
1014 entitle the person to share as a claimant in the assets of the
1015 insurer; or

1016 (b) The obligation of the insurer to the person was
1017 purchased by or transferred to the person with a view to its being
1018 used as a setoff; or

1019 (c) The obligation of the insurer is owed to an
1020 affiliate of such person, or any other entity or association other
1021 than the person; or

1022 (d) The obligation of the person is owed to an
1023 affiliate of the insurer, or any other entity or association other
1024 than the insurer; or

1025 (e) The obligation of the person is to pay an
1026 assessment levied against the members or subscribers of the
1027 insurer, or is to pay a balance upon a subscription to the capital
1028 stock of the insurer, or is in any other way in the nature of a
1029 capital contribution; or

1030 (f) The obligations between the person and the insurer
1031 arise from business which is both ceded to and assumed from the
1032 insurer except that the rehabilitator may, with regard to such
1033 business, allow certain setoffs in rehabilitation if he/she shall
1034 find the allowance of said setoffs appropriate.

1035 (3) The liquidator shall provide persons that assumed
1036 business from the insurer with accounting statements identifying
1037 debts which are currently due and payable. Such persons may set
1038 off against such debts only mutual credits which are currently due
1039 and payable by the insurer to such persons for the period covered
1040 by the accounting statement.

1041 (4) A person that ceded business to the insurer may set off
1042 debts due the insurer against only those mutual credits which the
1043 person has paid or which have been allowed in the insurer's
1044 delinquency proceeding.

1045 (5) Notwithstanding the foregoing, a setoff of sums due on
1046 obligations in the nature of those set forth in subsection 2(f)
1047 shall be allowed for those sums accruing from business written
1048 where the contracts were entered into, renewed or extended with
1049 the express written approval of the commissioner of insurance of
1050 the state of domicile of the now solvent insurer, when in the
1051 judgment of such commissioner it was necessary to provide
1052 reinsurance in order to prevent or mitigate a threatened
1053 impairment or insolvency of a domiciliary insurer in connection
1054 with the exercise of the commissioner's regulatory
1055 responsibilities.

1056 (6) These amendments shall become effective six (6) months
1057 from the date of enactment and shall apply to all contracts

1058 entered into, renewed, extended or amended on or after that date,
1059 and to debts or credits arising from any business written or
1060 transactions occurring after the effective date pursuant to any
1061 contract including those in existence prior to the effective date,
1062 and shall supersede any agreements or contractual provisions which
1063 might be construed to enlarge the setoff rights of any person
1064 under any contract with the insurer. For purposes of this section
1065 any change in the terms of, or consideration for, any such
1066 contract shall be deemed an amendment.

1067 SECTION 13. Section 83-24-63, Mississippi Code of 1972, is
1068 amended as follows:

1069 83-24-63. (1) The amount recoverable by the liquidator from
1070 reinsurers shall not be reduced as a result of the delinquency
1071 proceedings, regardless of any provision in the reinsurance
1072 contract or other agreement. * * *

1073 (2) All reinsurance contracts to which an insurer domiciled
1074 in this state is a party that do not contain the provisions
1075 required with respect to the obligation of reinsurers in the event
1076 of insolvency of the reinsured in order to obtain credit for
1077 reinsurance or other applicable statutes, shall be construed to
1078 contain the following provisions:

1079 (a) In the event of insolvency and the appointment of a
1080 receiver, the reinsurance obligation shall be payable to the
1081 receiver upon demand, with reasonable provision for verification,
1082 on the basis of claims allowed pursuant to Section 83-24-85 of
1083 this chapter, without diminution because of the insolvency or
1084 because the receiver has failed to pay all or a portion of any
1085 claims. Payments by the reinsurer as set forth above shall be
1086 made directly to the ceding insurer or to its receiver; and

1087 (b) The receiver of a reinsured company shall give
1088 written notice of the pendency of a claim against the reinsured
1089 company indicating the policy or bond reinsured, within a
1090 reasonable time after the claim is filed. The receiver of a

1091 reinsured company may arrange for the giving of notice of the
1092 pendency of claims on reinsured policies by guaranty funds or by
1093 other persons responsible for the adjustment and settlement of the
1094 reinsured company's claims. Failure to give notice shall not
1095 excuse the obligation of the reinsurer unless it is substantially
1096 prejudiced thereby. The reinsurer may interpose, at its own
1097 expense, in the proceeding where the claim is to be adjudicated,
1098 any defense or defenses which it may deem available to the
1099 reinsured company or its receiver.

1100 (3) Payments by the reinsurer as set forth shall be made
1101 directly to the ceding insurer or its receiver, except where the
1102 contract of insurance or reinsurance specifically provides for
1103 another payee in the event of insolvency of the ceding insurer in
1104 accordance with any applicable requirements of statutes, rules or
1105 orders of the domiciliary state of the ceding insurer. The
1106 receiver shall be entitled to recover from any person, who
1107 unsuccessfully makes a claim directly against the reinsurer, the
1108 receiver's attorney's fees and expenses incurred in preventing any
1109 collection by such person.

1110 (4) These amendments shall become effective six (6) months
1111 from the date of enactment and shall apply to all contracts
1112 entered into, renewed, extended or amended on or after that date,
1113 and to obligations arising from any business written or
1114 transaction occurring covered by reinsurance after the effective
1115 date pursuant to any contract including those in existence prior
1116 to the effective date.

1117 SECTION 14. Section 83-24-65, Mississippi Code of 1972, is
1118 amended as follows:

1119 83-24-65. (1) (a) An insured is obligated to pay, either
1120 directly to the liquidator or to any agent that has paid or is
1121 obligated to pay the liquidator on behalf of the insured, any
1122 unpaid earned premium or retrospectively rated premium due the
1123 insurer based on the termination of coverage under Section

1124 83-24-37 of this chapter. Premium on surety business is deemed
1125 earned at inception if no policy term can be determined. All
1126 other premium will be deemed earned and will be prorated over the
1127 determined policy term, regardless of any provision in the bond,
1128 guaranty, contract or other agreement. If a claim for losses
1129 incurred under a policy is approved by the court under Section
1130 83-24-85(2), then all premium for the full policy term is deemed
1131 earned.

1132 (b) Any person, other than the insured, responsible for
1133 the payment of a premium is obligated to pay any unpaid premium,
1134 including any amount representing commissions, for the full policy
1135 term due the insurer at the time of the entry of the liquidation
1136 order, whether earned or unearned, based on the termination of
1137 coverage under Section 83-24-37, as shown on the records of the
1138 insurer. The unpaid premium due the insurer from any person other
1139 than the insured excludes any premium not collected from the
1140 insured and not earned based on the termination of coverage under
1141 Section 83-24-37 of this chapter.

1142 (c) The liquidator shall also have the right to recover
1143 from any person, other than the insured, responsible for the
1144 payment of a premium, any * * * unearned * * * commission of such
1145 person based on the termination of coverage under Section
1146 83-24-37. Credits or setoffs or both shall not be allowed to an
1147 agent, broker, or premium finance company or any other person
1148 against unpaid premium due the insurer for any amounts advanced to
1149 the insurer by such person on behalf of, but in the absence of a
1150 payment by, the insured, or for any other amount paid by such
1151 person to any other person after the entry of the order of
1152 liquidation.

1153 (d) Persons that collect premium, or finance premium
1154 under a premium finance contract, that is due the insurer in
1155 liquidation are deemed to hold that premium in trust as a
1156 fiduciary for the benefit of the insurer and to have availed

1157 themselves of the laws of this state, regardless of any provision
1158 in any agency contract or other agreement.

1159 (e) Any premium finance company is obligated to pay any
1160 amounts due the insurer from premium finance contracts, whether
1161 the premium is earned or unearned. The liquidator has the right
1162 to collect any unpaid financed premium directly from the premium
1163 finance company by taking an assignment of the underlying premium
1164 finance contracts, or directly from the insured that is a party to
1165 the premium finance contract.

1166 (2) Upon satisfactory evidence of a violation of this
1167 section, by a person other than an insured, the commissioner may
1168 pursue either one or all of the following courses of action:

1169 (a) Suspend or revoke or refuse to renew the licenses
1170 of such offending party or parties.

1171 (b) Impose a penalty of not more than One Thousand
1172 Dollars (\$1,000.00) for each and every act in violation of this
1173 section by the party or parties.

1174 (c) Impose any other sanction or penalty allowed for by
1175 the commissioner.

1176 (3) Before the commissioner shall take any action as set
1177 forth in subsection (2), he shall give written notice to the
1178 person, company, association or exchange accused of violating the
1179 law, stating specifically the nature of the alleged violation;
1180 and fixing a time and place, at least ten (10) days thereafter,
1181 when a hearing on the matter shall be held. After such hearing,
1182 or upon failure of the accused to appear at such hearing, the
1183 commissioner, if he shall find such violation, shall impose such
1184 of the penalties under subsection (2) as he deems advisable.

1185 (4) When the commissioner shall take action in any or all of
1186 the ways set out in subsection (2), the party aggrieved may appeal
1187 the action to the court.

1188 SECTION 15. Section 83-24-67, Mississippi Code of 1972, is
1189 amended as follows:

1190 83-24-67. (1) Within one hundred twenty (120) days of a
1191 final determination of insolvency of an insurer by a court of
1192 competent jurisdiction of this state, the liquidator shall apply
1193 to the court for approval of a proposal to disburse assets out of
1194 marshalled assets, from time to time as such assets become
1195 available, to a guaranty association or foreign guaranty
1196 association having obligations because of such insolvency. If the
1197 liquidator determines that there are insufficient assets to
1198 disburse, the application required by this section shall be
1199 considered satisfied by a filing by the liquidator stating the
1200 reasons for this determination.

1201 (2) Such proposal shall at least include provisions for:

1202 (a) Reserving amounts for the payment of expenses of
1203 administration and the payment of claims of secured creditors, to
1204 the extent of the value of the security held, and claims falling
1205 within the priorities established in Classes 1 and 2 in Section
1206 83-24-83;

1207 (b) Disbursement of the assets marshalled to date and
1208 subsequent disbursement of assets as they become available;

1209 (c) Equitable allocation of disbursements to each of
1210 the guaranty associations * * * entitled thereto;

1211 (d) The securing by the liquidator from each of the
1212 associations entitled to disbursements pursuant to this section of
1213 an agreement to return to the liquidator such assets, together
1214 with income earned on assets previously disbursed, as may be
1215 required to pay claims of secured creditors and claims falling
1216 within the priorities established in Section 83-24-83 in
1217 accordance with such priorities. No bond shall be required of any
1218 such association; and

1219 (e) A full report to be made by each association to the
1220 liquidator accounting for all assets so disbursed to the
1221 association, all disbursements made therefrom, any interest earned
1222 by the association on such assets, and any other matter as the

1223 court may direct.

1224 (3) The liquidator's proposal shall provide for
1225 disbursements to the associations in amounts estimated at least
1226 equal to the claim payments and allocated loss adjustment expenses
1227 made or to be made thereby for which such associations could
1228 assert a claim against the liquidator, and shall further provide
1229 that if the assets available for disbursement from time to time do
1230 not equal or exceed the amount of * * * claim payments made or to
1231 be made by the association, then disbursements shall be in the
1232 amount of available assets. The liquidator shall annually make
1233 disbursements to the associations to the extent of available
1234 assets subject to the provisions of subsection (2)(a). The
1235 liquidator shall liquidate the assets of the insurer in an
1236 expeditious manner, but is not required to make forced or quick
1237 sales that would result in obtaining less than market value for
1238 assets. Unless otherwise provided for by the court, the reserves
1239 of the insolvent insurer as reflected in its records on the date
1240 of the order of liquidation shall be used for purposes of
1241 determining the pro rata allocations of funds among eligible
1242 associations.

1243 (4) The liquidator's proposal shall, with respect to an
1244 insolvent insurer writing life or health insurance or annuities,
1245 provide for disbursements of assets to any guaranty
1246 association * * * covering life or health insurance or annuities
1247 or to any other entity or organization reinsuring, assuming or
1248 guaranteeing policies or contracts of insurance under the acts
1249 creating such associations.

1250 (5) Notice of such application shall be given to the
1251 association in and to the commissioners of insurance of each of
1252 the states. Any such notice shall be deemed to have been given
1253 when deposited in the United States certified mail, first class
1254 postage prepaid, at least thirty (30) days prior to submission of
1255 such application to the court. Action on the application may be

1256 taken by the court, provided the above required notice has been
1257 given and provided further that the liquidator's proposal complies
1258 with subsections (2)(a) and (b).

1259 (6) The liquidator may offset the amount to be disbursed to
1260 the applicable guaranty association and any entity or person
1261 performing a function in any state similar to that function
1262 performed by Mississippi Life and Health Insurance Guaranty
1263 Association by the amount of any "special deposit" and any other
1264 statutory deposit or asset of the insolvent insurer held in that
1265 state unless the state or ancillary receiver agrees to promptly
1266 return the asset to the domiciliary liquidator in this state.

1267 SECTION 16. Section 83-24-69, Mississippi Code of 1972, is
1268 amended as follows:

1269 83-24-69. (1) Proof of all claims shall be filed with the
1270 liquidator in the form required by Section 83-24-71 on or before
1271 the last day for filing specified in the notice required under
1272 Section 83-24-43, except that proof of claims for cash surrender
1273 values or other investment values in life insurance and annuities
1274 need not be filed unless the liquidator expressly so requires.
1275 Provided, however, only upon application of the liquidator, the
1276 court may allow alternative procedures and requirements for the
1277 filing of proofs of claim or for allowing or proving claims. Upon
1278 such application, if the court dispenses with the requirements of
1279 filing a proof of claim by a person, class or group of persons, a
1280 proof of claim for such persons shall be deemed as having been
1281 filed for all purposes, including the application of guaranty
1282 association or foreign guaranty association laws.

1283 (2) The liquidator may permit a claimant making a late
1284 filing to share in distributions, whether past or future, as if he
1285 were not late, to the extent that any such payment will not
1286 prejudice the orderly administration of the liquidation, under the
1287 following circumstances:

1288 (a) The existence of the claim was not known to the

1289 claimant and that he filed his claim as promptly thereafter as
1290 reasonably possible after learning of it;

1291 (b) A transfer to a creditor was avoided under Sections
1292 83-24-51 through 83-24-55, or was voluntarily surrendered under
1293 Section 83-24-57, and that the filing satisfies the conditions of
1294 Section 83-24-57; or

1295 (c) The valuation under Section 83-24-81, of security
1296 held by a secured creditor shows a deficiency, which is filed
1297 within thirty (30) days after the valuation.

1298 * * *

1299 (3) The liquidator may consider any claim filed late which
1300 is not covered by subsection (2), and permit it to receive
1301 distributions which are subsequently declared on any claims of the
1302 same or lower priority if the payment does not prejudice the
1303 orderly administration of the liquidation. The late-filing
1304 claimant shall receive, at each distribution, the same percentage
1305 of the amount allowed on his claim as is then being paid to
1306 claimants of any lower priority. This shall continue until his
1307 claim has been paid in full.

1308 SECTION 17. Section 83-24-71, Mississippi Code of 1972, is
1309 amended as follows:

1310 83-24-71. (1) Proof of claim shall consist of a statement
1311 signed by the claimant that includes all of the following that are
1312 applicable:

1313 (a) The particulars of the claim including the
1314 consideration given for it;

1315 (b) The identity and amount of the security on the
1316 claim;

1317 (c) The payments made on the debt, if any;

1318 (d) That the sum claimed is justly owing and that there
1319 is no setoff, counterclaim or defense to the claim;

1320 (e) Any right of priority of payment or other specific
1321 right asserted by the claimants;

1322 (f) A copy of the written instrument which is the
1323 foundation of the claim; * * *

1324 (g) The name and address of the claimant and the
1325 attorney who represents him, if any; and

1326 (h) The Social Security or federal employer
1327 identification number of the claimant.

1328 (2) No claim need be considered or allowed if it does not
1329 contain all the information in subsection (1) which may be
1330 applicable. The liquidator may require that a prescribed form be
1331 used, and may require that other information and documents be
1332 included.

1333 (3) At any time the liquidator may request the claimant to
1334 present information or evidence supplementary to that required
1335 under subsection (1) and may take testimony under oath, require
1336 production of affidavits or depositions, or otherwise obtain
1337 additional information or evidence.

1338 (4) No judgment or order against an insured or the insurer
1339 entered after the date of filing of a successful petition for
1340 liquidation, and no judgment or order against an insured or the
1341 insurer entered at any time by default or by collusion, need be
1342 considered as evidence of liability or of quantum of damages. No
1343 judgment or order against an insured or the insurer entered within
1344 four (4) months before the filing of the petition need be
1345 considered as evidence of liability or of the quantum of damages.

1346 (5) * * * A guaranty association shall be permitted to file
1347 a single omnibus proof of claim for all claims of the association
1348 in connection with payment of claims of the insolvent insurer.
1349 The omnibus proof of claim may be periodically updated by the
1350 association, and the association may be required to submit a
1351 reasonable amount of documentation in support of the claim.

1352 SECTION 18. Section 83-24-73, Mississippi Code of 1972, is
1353 amended as follows:

1354 83-24-73.

1355 * * *

1356 (1) Claims made under employment contracts by directors,
1357 principal officers, or persons in fact performing similar
1358 functions or having similar powers are limited to payment for
1359 services rendered prior to the issuance of any order of
1360 rehabilitation or liquidation under Section 83-24-25 or Section
1361 83-24-35.

1362 (2) When a liquidation order has been entered in a
1363 proceeding against an insurer, any insured, reinsured, reinsurer,
1364 third party person who has a cause of action against an insured of
1365 the insurer, or any other person or entity that has a claim or
1366 cause of action against the insurer, shall have the right to file
1367 a claim in the proceeding, regardless of the fact that the claim
1368 may be contingent, unliquidated or immature. For purposes of this
1369 section:

1370 (a) A claim is contingent if the accident, casualty,
1371 disaster or loss insured or reinsured against occurred on or
1372 before the date fixed under Section 83-24-35, but the act or event
1373 triggering the company's obligation to pay has not occurred as of
1374 that date;

1375 (b) A claim is unliquidated if the amount of the claim
1376 has not been determined;

1377 (c) A claim is immature if payment on the claim is not
1378 yet due.

1379 (3) A contingent, unliquidated or immature claim may share
1380 in a distribution of assets provided that, as of the time of the
1381 allowance or disallowance of the claim by the court:

1382 (a) If the claim was a contingent claim against the
1383 insurer as of the date established under Section 83-24-35, the
1384 claimant has presented proof of the insurer's obligation to pay
1385 reasonably satisfactory to the receiver.

1386 (b) If the claim was a contingent claim as of the date
1387 established under Section 83-24-35 of this chapter and was based

1388 upon a cause of action against an insured of the insurer,
1389 1. It may be reasonably inferred from proof
1390 presented upon the claim that the claimant would be able to obtain
1391 a judgment;

1392 2. The person has furnished suitable proof, unless
1393 the court for good cause shown shall otherwise direct, that no
1394 further valid claims can be made against the insurer arising out
1395 of the cause of action other than those already presented; and

1396 3. The total liability of the insurer to all
1397 claimants arising out of the same act shall be no greater than its
1398 total liability would be were it not in liquidation. In those
1399 cases, insureds may include in contingent claims reasonable
1400 attorney fees for services rendered after the date of liquidation,
1401 in defense of claims or suits covered by the insured's policy,
1402 provided the attorney fees have been paid by the insured and
1403 evidence of payment is presented to the receiver.

1404 (c) If the claim was unliquidated as of the date
1405 established under Section 83-24-35, its amount has been
1406 determined. In those cases, the determination and allowance of
1407 unliquidated claims may be made by estimate whenever the receiver
1408 determines that either liquidation of the claim would unduly delay
1409 the administration of the liquidation proceeding, or that the
1410 administrative expenses of processing and adjudicating the claims
1411 or group of claims of a similar type would be unduly excessive
1412 when compared with the assets that are estimated to be available
1413 for distribution with respect to the claim. Any estimate shall be
1414 based upon an accepted method of valuing claims with reasonable
1415 certainty, such as actuarial evaluation; or

1416 (d) If the claim was immature as of the date
1417 established under Section 83-24-35, it shall be discounted at the
1418 higher of the legal rate of interest accruing on judgments or the
1419 rate of interest available on United States Treasury securities of
1420 approximately the same maturity.

1421 (4) Notwithstanding the foregoing, any insured shall have
1422 the right to file a claim for the protection afforded under the
1423 insured's policy, irrespective of whether a claim is then known,
1424 if the policy is an occurrence policy. Thereafter, at such time
1425 that a specific claim is made by or against the insurer, the
1426 insured shall supplement his claim and the receiver shall treat
1427 the same as a contingent, unliquidated or immature claim. Any
1428 such claims of policyholders for the protection under an
1429 occurrence policy remaining at or near the closing of the estate
1430 shall be disposed of in accordance with Section 83-24-85(3).

1431 SECTION 19. Section 83-24-75, Mississippi Code of 1972, is
1432 amended as follows:

1433 83-24-75. (1) Whenever any third party asserts a cause of
1434 action against an insured of an insurer in liquidation, the third
1435 party may file a claim with the liquidator on or before the last
1436 day for filing claims.

1437 (2) Whether or not the third party files a claim, the
1438 insured may file a claim on his own behalf in the liquidation. To
1439 the extent the insured files a claim, it is sufficient to cover
1440 all related third party claims. If the insured fails to file a
1441 claim by the date for filing claims specified in the order of
1442 liquidation or within sixty (60) days after mailing of the notice
1443 required by Section 83-24-43, whichever is later, he is an
1444 unexcused late filer.

1445 (3) The liquidator shall make his recommendations to the
1446 court under Section 83-24-83, for the allowance of an insured's
1447 claim under subsection (2) after consideration of the probable
1448 outcome of any pending action against the insured on which the
1449 claim is based, the probable damages recoverable in the action and
1450 the probable costs and expenses of defense. After allowance by
1451 the court, the liquidator shall withhold any dividends payable on
1452 the claim, pending the outcome of litigation and negotiation with
1453 the insured. Whenever it seems appropriate, he shall reconsider

1454 the claim on the basis of additional information and amend his
1455 recommendations to the court. The insured shall be afforded the
1456 same notice and opportunity to be heard on all changes in the
1457 recommendation as in its initial determination. The court may
1458 amend its allowance as it thinks appropriate. As claims against
1459 the insured are settled or barred, the insured shall be paid from
1460 the amount withheld the same percentage dividend as was paid on
1461 other claims of like property, based on the lesser of (a) the
1462 amount actually recovered from the insured by action or paid by
1463 agreement plus the reasonable costs and expense of defense, or (b)
1464 the amount allowed on the claims by the court. After all claims
1465 are settled or barred, any sum remaining from the amount withheld
1466 shall revert to the undistributed assets of the insurer. Delay in
1467 final payment under this subsection shall not be a reason for
1468 unreasonable delay of final distribution and discharge of the
1469 liquidator.

1470 (4) If several claims founded upon one (1) policy are filed,
1471 whether by third parties or as claims by the insured under this
1472 section, and the aggregate allowed amount of the claims to which
1473 the same limit of liability in the policy is applicable exceeds
1474 that limit, each claim as allowed shall be reduced in the same
1475 proportion so that the total equals the policy limit. Claims by
1476 the insured shall be evaluated as in subsection (3). If any
1477 insured's claim is subsequently reduced under subsection (3), the
1478 amount thus freed shall be apportioned ratably among the claims
1479 which have been reduced under this subsection.

1480 (5) No claim may be presented under this section if it is or
1481 may be covered by any guaranty association * * *.

1482 SECTION 20. Section 83-24-77, Mississippi Code of 1972, is
1483 amended as follows:

1484 83-24-77. (1) When a claim is denied in whole or in part by
1485 the liquidator, written notice of the determination shall be given
1486 to the claimant or his attorney by first class mail at the address

1487 shown in the proof of claim. Within sixty (60) days from the
1488 mailing of the notice, the claimant may file his objections with
1489 the liquidator. Any filed objections shall clearly set out all
1490 facts and the legal basis, if any, for the objections and the
1491 reasons why the claim should be allowed. If no such filing is
1492 made, the claimant may not further object to the determination.

1493 (2) Whenever objections are filed with the liquidator and
1494 the liquidator does not alter the determination of the claim as a
1495 result of the objections, the liquidator shall ask the court for a
1496 hearing as soon as practicable and give notice of the hearing by
1497 first class mail to the claimant or the claimant's attorney and to
1498 any other persons directly affected not less than ten (10) nor
1499 more than thirty (30) days before the date of the hearing. The
1500 matter may be heard by the court or by a court-appointed
1501 referee * * *. The hearing shall be conducted on the record in an
1502 informal manner and the formal rules of evidence and civil
1503 procedure need not be strictly applied. Hearings shall be held
1504 without a jury. Prehearing discovery shall be limited to such
1505 pretrial discovery as expressly permitted in arbitration
1506 proceedings.

1507 (3) When a disputed claim is heard by a referee, the referee
1508 shall submit written findings of fact and conclusions of law along
1509 with the recommendation for disposition to the court. The
1510 referee's recommendation shall become the final judgment of the
1511 court, unless objections to the referee's recommendation are filed
1512 by the liquidator or claimant with the court within fifteen (15)
1513 days after the recommendation is mailed to the liquidator and
1514 claimant.

1515 (4) The final disposition by the court of a disputed claim,
1516 whether after a hearing by the court or after a recommendation by
1517 a referee, shall be deemed a final judgment for purposes of
1518 appeal.

1519 (5) The courts of this state may make special rules of civil

1520 procedure for disputed claims, provided that the rules are not
1521 inconsistent with this chapter.

1522 SECTION 21. Section 83-24-79, Mississippi Code of 1972, is
1523 amended as follows:

1524 83-24-79. Whenever an obligee whose claim against an insurer
1525 is secured, in whole or in part, by the undertaking of another
1526 person, fails to prove and file that claim, the other person may
1527 do so in the obligee's name, and shall be subrogated to the rights
1528 of the obligee, whether the claim has been filed by the obligee or
1529 by the other person in the obligee's name, to the extent that the
1530 obligee discharges the undertaking. In the absence of an
1531 agreement with the obligee to the contrary, the other person shall
1532 not be entitled to any distribution; however, until the amount
1533 paid to the obligee on the undertaking plus the distributions paid
1534 on the claim from the insurer's estate to the obligee equals the
1535 amount of the entire claim of the obligee. Any excess received by
1536 the obligee shall be held by the obligee in trust for such other
1537 person. The term "other person," as used in this section is not
1538 intended to apply to a guaranty association * * *.

1539 SECTION 22. Section 83-24-83, Mississippi Code of 1972, is
1540 amended as follows:

1541 83-24-83. The priority of distribution of claims from the
1542 insurer's estate shall be in accordance with the order in which
1543 each class of claims is * * * set forth in this section. Every
1544 claim in each class shall be paid in full or adequate funds
1545 retained for such payment before the members of the next class
1546 receive any payment. Once such funds are retained by the
1547 liquidator and approved by the court, the insurer's estate shall
1548 have no further liability to members of that class except to the
1549 extent of the retained funds and any other undistributed funds.
1550 No subclasses shall be established within any class except as
1551 provided in Section 83-24-41(1). No claim by a shareholder,
1552 policyholder or other creditor shall be permitted to circumvent

1553 the priority classes through the use of equitable remedies. The
1554 order of distribution of claims shall be:

1555 (1) Class 1. The costs and expenses of administration
1556 expressly approved by the receiver, including but not limited to
1557 the following:

1558 (a) The actual and necessary costs of preserving or
1559 recovering the assets of the insurer;

1560 (b) Compensation for all authorized services rendered
1561 in the conservation, rehabilitation or liquidation;

1562 (c) Any necessary filing fees;

1563 (d) The fees and mileage payable to witnesses; and

1564 (e) Authorized reasonable attorney's fees and other
1565 professional services rendered in the conservation, rehabilitation
1566 or liquidation.

1567 * * *

1568 (2) Class 2. The administrative expenses of guaranty
1569 associations. For purposes of this section these expenses shall
1570 be the reasonable expenses incurred by guaranty associations where
1571 the expenses are not payments or expenses which are required to be
1572 incurred as direct policy benefits in fulfillment of the terms of
1573 the insurance contract or policy, and that are of the type and
1574 nature that, but for the activities of the guaranty association
1575 otherwise would have been incurred by the receiver, including, but
1576 not limited to, evaluations of policy coverage, activities
1577 involved in the adjustment and settlement of claims under
1578 policies, including those of in-house or outside adjusters, and
1579 the reasonable expenses incurred in connection with the
1580 arrangements for ongoing coverage through transfer to other
1581 insurers, policy exchanges or maintaining policies in force. The
1582 receiver may, in his or her sole discretion, approve as an
1583 administrative expense under this section any other reasonable
1584 expenses of the guaranty association if the receiver finds:

1585 (a) The expenses are not expenses required to be paid

1586 or incurred as direct policy benefits by the terms of the policy,
1587 and

1588 (b) The expenses were incurred in furtherance of
1589 activities that provided a material economic benefit to the estate
1590 as a whole, irrespective of whether the activities resulted in
1591 additional benefits to covered claimants. The court shall approve
1592 such expenses unless it finds the receiver abused his or her
1593 discretion in approving the expenses.

1594 If the receiver determines that the assets of the estate will
1595 be sufficient to pay all Class 1 claims in full, Class 2 claims
1596 shall be paid currently, provided that the liquidator shall secure
1597 from each of the associations receiving disbursements pursuant to
1598 this section an agreement to return to the liquidator such
1599 disbursements, together with investment income actually earned on
1600 such disbursements, as may be required to pay Class 1 claims. No
1601 bond shall be required of any such association.

1602 (3) Class 3. All claims under policies including * * *
1603 claims of the federal or any state or local government for losses
1604 incurred, ("loss claims") including third party claims, claims for
1605 unearned premiums, and all claims of a guaranty association * * *,
1606 for payment of covered claims or covered obligations of the
1607 insurer. All claims of a guaranty association for reasonable
1608 expenses other than those included in Class 2. All claims under
1609 life and health insurance and annuity policies, whether for death
1610 proceeds, health benefits, annuity proceeds, or investment values
1611 shall be treated as loss claims. That portion of any loss,
1612 indemnification for which is provided by other benefits or
1613 advantages recovered by the claimant, shall not be included in
1614 this class, other than benefits or advantages recovered or
1615 recoverable in discharge of familial obligation of support or by
1616 way of succession at death or as proceeds of life insurance, or as
1617 gratuities. No payment by an employer to his employee shall be
1618 treated as a gratuity.

1619 Notwithstanding the foregoing, the following claims shall be
1620 excluded from Class 3 priority:

1621 (a) Obligations of the insolvent insurer arising out of
1622 reinsurance contracts;

1623 (b) Obligations incurred after the expiration date of
1624 the insurance policy or after the policy has been replaced by the
1625 insured or canceled at the insured's request or after the policy
1626 has been cancelled as provided in this chapter;

1627 (c) Obligations to insurers, insurance pools or
1628 underwriting associations and their claims for contribution,
1629 indemnity or subrogation, equitable or otherwise;

1630 (d) Any claim which is in excess of any applicable
1631 limits provided in the insurance policy issued by the insolvent
1632 insurer;

1633 (e) Any amount accrued as punitive or exemplary damages
1634 unless expressly covered under the terms of the policy; and

1635 (f) Tort claims of any kind against the insurer, and
1636 claims against the insurer for bad faith or wrongful settlement
1637 practices.

1638 (4) Class 4. * * * Claims of the federal government other
1639 than those claims included in Class 3.

1640 (5) Class 5. Debts due employees for services, benefits,
1641 contractual or otherwise due arising out of such reasonable
1642 compensation to employees for services performed to the extent
1643 that they do not exceed two (2) months of monetary compensation
1644 and represent payment for services performed within six (6) months
1645 before the filing of the petition for liquidation or, if
1646 rehabilitation preceded liquidation, within one (1) year before
1647 the filing of the petition for rehabilitation. Principal officers
1648 and directors shall not be entitled to the benefit of this
1649 priority except as otherwise approved by the liquidator and the
1650 court. This priority shall be in lieu of any other similar
1651 priority which may be authorized by law as to wages or

1652 compensation of employees.

1653 (6) Class 6. Claims of any person, including claims of
1654 state or local governments, except those specifically classified
1655 elsewhere in this section. Claims of attorneys for fees and
1656 expenses owed them by a person for services rendered in opposing a
1657 formal delinquency proceeding. In order to prove the claim, the
1658 claimant must show that the insurer which is the subject of the
1659 delinquency proceeding incurred such fees and expenses based on
1660 its best knowledge, information and belief, formed after
1661 reasonable inquiry indicating opposition was in the best interests
1662 of the person, was well grounded in fact and was warranted by
1663 existing law or a good faith argument for the extension,
1664 modification or reversal of existing law, and that opposition was
1665 not pursued for any improper purpose, such as to harass or to
1666 cause unnecessary delay or needless increase in the cost of the
1667 litigation.

1668 (7) Class 7. Claims, of * * * any state or local
1669 government * * * for a penalty or forfeiture but only to the
1670 extent of the pecuniary loss sustained from the act, transaction,
1671 or proceeding out of which the penalty or forfeiture arose, with
1672 reasonable and actual costs occasioned thereby. The remainder of
1673 such claims shall be postponed to the class of claims under
1674 subsection (8) of this section.

1675 (8) Class 8. Surplus or contribution notes, or similar
1676 obligations, * * * premium refunds on assessable policies,
1677 interest on claims of Classes 1 through 7 and any other claims
1678 specifically subordinated to this class.

1679 (9) Class 9. * * * Claims of shareholders or other owners
1680 arising out of their capacity as shareholders or other owners, or
1681 any other capacity except as they may be qualified in Class 3 or 6
1682 above.

1683 If any claimant of this state, another state or foreign
1684 country shall be entitled to or shall receive a dividend upon his

1685 or her claim out of a statutory deposit or the proceeds of any
1686 bond or other asset located in another state or foreign country,
1687 unless such deposit or proceeds shall have been delivered to the
1688 domiciliary liquidator pursuant to Section 83-24-104, then the
1689 claimants shall not be entitled to any further dividend from the
1690 receiver until and unless all other claimants of the same class,
1691 irrespective of residence or place of the acts or contracts upon
1692 which their claims are based, shall have received an equal
1693 dividend upon their claims, and after such equalization, such
1694 claimants shall be entitled to share in the distribution of
1695 further dividends by the receiver, along with and like all other
1696 creditors of the same class, wheresoever residing.

1697 Upon the declaration of a dividend, the receiver shall apply
1698 the amount of the dividend against any indebtedness owed to the
1699 insurer by the person entitled to the dividend. There shall be no
1700 claim allowed for any deductible charged by a guaranty association
1701 or entity performing a similar function.

1702 SECTION 23. Section 83-24-85, Mississippi Code of 1972, is
1703 amended as follows:

1704 83-24-85. (1) The liquidator shall review all claims duly
1705 filed in the liquidation and shall make such further investigation
1706 as deemed necessary. The liquidator may compound, compromise or
1707 in any other manner negotiate the amount for which claims will be
1708 recommended to the court except when the liquidator is required by
1709 law to accept claims as settled by any person or organization,
1710 including any guaranty association * * *. Unresolved disputes
1711 shall be determined under Section 83-24-77. As soon as
1712 practicable, the liquidator shall present to the court a report of
1713 the claims against the insurer with his recommendations. The
1714 report shall include the name and address of each claimant and the
1715 amount of the claim finally recommended, if any. If the insurer
1716 has issued annuities or life insurance policies, the liquidator
1717 shall report the persons to whom, according to the records of the

1718 insurer, amounts are owed as cash surrender values or other
1719 investment value and the amounts owed.

1720 (2) The court may approve, disapprove or modify the report
1721 on claims by the liquidator. * * * Reports * * * not modified by
1722 the court within a period of sixty (60) days following submission
1723 by the liquidator shall be treated by the liquidator as allowed
1724 claims, subject * * * to later modification or to rulings made by
1725 the court pursuant to Section 83-24-77. No claim under a policy
1726 of insurance shall be allowed for an amount in excess of the
1727 applicable policy limits.

1728 (3) After giving due consideration to the nature of the
1729 policies that were sold by the insurer, and the number of claims
1730 by policyholders for protection under their policies, and having
1731 considered actuarial estimates that substantial amounts of
1732 incurred-but-not-reported losses exist, the liquidator may, but
1733 need not, formulate a proposal, subject to approval of the court
1734 to allow such claims. The proposal may allocate or attribute all
1735 or a portion of the incurred-but-not-reported losses to individual
1736 policyholder claimants on a basis of reasonable expert opinion.
1737 The court shall approve the proposal and the allowance of the
1738 claims unless it finds that the basis of allocation is arbitrary
1739 or capricious.

1740 (4) The liquidator is not required to process claims for any
1741 class until it appears reasonably likely that assets will be
1742 available for a distribution to that class. If there are
1743 insufficient assets to justify processing all claims for any class
1744 listed in Section 83-24-83, the liquidator shall report the facts
1745 to the court and make such recommendations as may be appropriate
1746 for handling the remainder of the claims.

1747 SECTION 24. Section 83-24-89, Mississippi Code of 1972, is
1748 amended as follows:

1749 83-24-89. (1) All unclaimed funds subject to distribution
1750 remaining in the liquidator's hands when the liquidator is ready

1751 to apply to the court for discharge, including the amount
1752 distributable to any creditor, shareholder, member or other person
1753 who is unknown or cannot be found, shall be deposited with the
1754 State Treasurer, and shall be paid without interest except in
1755 accordance with Section 83-24-83 to the person entitled thereto or
1756 that person's legal representative upon proof satisfactory to the
1757 State Treasurer of his right thereto. Any amount on deposit not
1758 claimed within six (6) years from the discharge of the liquidator
1759 shall be deemed to have been abandoned and shall be escheated
1760 without formal escheat proceedings and shall be deposited into the
1761 General Fund. Alternatively, the liquidator may elect to apply to
1762 the court for authority to hold the unclaimed funds subject to
1763 distribution for a period of two (2) years. Thereafter, any
1764 unclaimed funds may be distributed to approved claimants who have
1765 previously received a distribution, if it is economically feasible
1766 for the liquidator to make the distribution, or the liquidator may
1767 apply to the court for permission for the funds to be held by the
1768 commissioner for the purpose of defraying the costs and expenses
1769 of administration of other insolvent insurers for which there are
1770 insufficient assets to fund the costs and expenses of
1771 administration. With the approval of the supervising court, the
1772 liquidator may deposit unclaimed and withheld funds into a
1773 segregated account to be known as the Closed Estate Fund. The
1774 commissioner may thereafter use monies held in the account to fund
1775 the administrative expenses of proceedings against persons subject
1776 to this chapter that lack sufficient assets to fund
1777 administration. The commissioner shall maintain complete records
1778 with respect to all transactions involving the Closed Estate Fund
1779 and shall prepare an annual accounting of the Closed Estate Fund.
1780 If subsequent to disbursement of monies from the Closed Estate
1781 Fund, assets of the person become available to fund
1782 administration, the Closed Estate Fund shall be reimbursed before
1783 other administrative expenses are paid.

1784 (2) All funds withheld under Section 83-24-73 and not
1785 distributed shall upon discharge of the liquidator be deposited
1786 with the State Treasurer and paid * * * in accordance with Section
1787 83-24-83. Any sums remaining which under Section 83-24-85 would
1788 revert to the undistributed assets of the insurer shall be
1789 transferred to the State Treasurer and become the property of the
1790 state under subsection (1), unless the commissioner, in his
1791 discretion, petitions the court to reopen the liquidation under
1792 Section 83-24-93.

1793 SECTION 25. Section 83-24-99, Mississippi Code of 1972, is
1794 amended as follows:

1795 83-24-99. (1) If a domiciliary liquidator has not been
1796 appointed, the commissioner may apply to the court by verified
1797 petition for an order directing the commissioner to act as
1798 conservator to conserve the property found in this state of an
1799 alien insurer not domiciled in this state or property found in
1800 this state of a foreign insurer on any one or more of the
1801 following grounds:

1802 (a) Any of the grounds in Section 83-24-23;

1803 (b) That any of the insurer's property has been
1804 sequestered by official action in its domiciliary state, or in any
1805 other state;

1806 (c) That enough of the insurer's property has been
1807 sequestered in a foreign country to give reasonable cause to fear
1808 that the insurer is or may become insolvent;

1809 (d) (i) That the insurer's certificate of authority to
1810 do business in this state has been revoked or that none was ever
1811 issued; and

1812 (ii) That there are residents of this state with
1813 outstanding claims or outstanding policies.

1814 (2) When an order is sought under subsection (1), the court
1815 shall cause the insurer to be given such notice and time to
1816 respond thereto as is reasonable under the circumstances.

1817 (3) The court may issue the order in whatever terms it shall
1818 deem appropriate. The filing or recording of the order with the
1819 Clerk of the Chancery Court of the First Judicial District of
1820 Hinds County or of the county in which the principal business of
1821 the company is located shall impart the same notice as a deed,
1822 bill of sale or other evidence of title duly filed or recorded
1823 with that chancery court would have imparted.

1824 (4) The conservator shall hold and conserve the assets until
1825 such time as the commissioner in the domiciliary state begins
1826 formal delinquency proceedings against the insurer or until an
1827 order terminating conservation is entered under subsection (5).
1828 Once a delinquency proceeding is instituted in the domiciliary
1829 state, the conservator may either turn the property over to the
1830 domiciliary commissioner or petition for an order under Section
1831 83-24-105 to be appointed ancillary receiver. In the event the
1832 insurer is an alien insurer that has not established a domicile in
1833 the United States under an appropriate port of entry statute, the
1834 conservator may petition the court for an order of liquidation
1835 under any ground specified in Section 83-24-83. The application
1836 may seek, and the order of liquidation shall provide, that all
1837 property and assets, affairs and claims against the alien insurer
1838 shall be vested in the liquidator in this state as if the insurer
1839 was domiciled in this state. Provided, however, that if an order
1840 of liquidation of the alien insurer has been entered by a court of
1841 competent jurisdiction in a reciprocal state, which provides for
1842 the reciprocal state's receiver to be treated as if it is the
1843 domiciliary liquidator, then the order of liquidation in this
1844 state shall be issued as an order appointing an ancillary
1845 receiver.

1846 (5) The conservator may at any time petition the court for
1847 an order terminating conservation of the property of an insurer.
1848 If the court finds that the conservation is no longer necessary,
1849 it shall order that the insurer be restored to possession of its

1850 property and the control of its business. The court may also make
1851 such finding and issue such order at any time upon motion of any
1852 interested party, but if such motion is denied all costs shall be
1853 assessed against such party.

1854 SECTION 26. Section 83-24-103, Mississippi Code of 1972, is
1855 amended as follows:

1856 83-24-103. (1) The domiciliary liquidator of an insurer
1857 domiciled in a reciprocal state shall * * * be vested by operation
1858 of law with the title to all of the assets, property, contracts
1859 and rights of action, agents' balances, and all of the books,
1860 accounts and other records of the insurer located in this state.
1861 The date of vesting shall be the date of the filing of the
1862 petition, if that date is specified by the domiciliary law for the
1863 vesting of property in the domiciliary state. Otherwise, the date
1864 of vesting shall be the date of entry of the order directing
1865 possession to be taken. The domiciliary liquidator shall have the
1866 immediate right to recover all such vested property, assets and
1867 causes of action * * * of the insurer located in this state,
1868 subject to Section 83-24-105.

1869 (2) If a domiciliary liquidator is appointed for an insurer
1870 not domiciled in a reciprocal state, the commissioner of this
1871 state shall be vested by operation of law with the title to all of
1872 the property, contracts and right of action, and all of the books,
1873 accounts and other records of the insurer located in this state,
1874 at the same time that the domiciliary liquidator is vested with
1875 title in the domicile. The commissioner of this state may
1876 petition for an order under Section 83-24-99 * * *, or for an
1877 ancillary receivership under Section 83-24-105 or after approval
1878 by the court may transfer title to the domiciliary liquidator, as
1879 the interests of justice and the equitable distribution of the
1880 assets require.

1881 (3) When a domiciliary liquidator is appointed in a
1882 reciprocal state, claimants residing in this state must file in

1883 the domiciliary proceeding subject to its deadlines, and may have
1884 claims contested under Section 83-24-111 or a similar section of
1885 the domiciliary state's laws. When a domiciliary liquidator is
1886 appointed in a nonreciprocal state, claimants residing in this
1887 state may file and contest claims with the liquidator or ancillary
1888 receiver, if any, in this state or with the domiciliary
1889 liquidator, if the domiciliary law permits. * * *

1890 SECTION 27. Section 83-24-105, Mississippi Code of 1972, is
1891 amended as follows:

1892 83-24-105. (1) If a domiciliary liquidator has been
1893 appointed for an insurer not domiciled in this state, the
1894 commissioner may file a petition with the court requesting
1895 appointment as ancillary receiver in this state:

1896 (a) If he finds that there are sufficient assets of the
1897 insurer located in this state to justify the appointment of an
1898 ancillary receiver;

1899 (b) If the protection of creditors or policyholders in
1900 this state so requires; or

1901 (c) If the domiciliary liquidator requests the
1902 commissioner to file for appointment as ancillary receiver.

1903 (2) The court may issue an order appointing an ancillary
1904 receiver in whatever terms it shall deem appropriate in accordance
1905 with the domiciliary liquidation order. The filing or recording
1906 of the order with the chancery court in this state imparts the
1907 same notice as a deed, bill of sale or other evidence of title
1908 duly filed or recorded with that chancery court.

1909 (3) When a domiciliary liquidator has been appointed in a
1910 reciprocal state, then the ancillary receiver appointed in this
1911 state may, whenever necessary, aid and assist the domiciliary
1912 liquidator in recovering assets of the insurer located in this
1913 state. The ancillary receiver shall render only such assistance
1914 as is requested from the domiciliary liquidator or rehabilitator.
1915 Any action taken by the ancillary receiver at the request of the

1916 domiciliary liquidator shall entitle the ancillary receiver to
1917 payment of his or her costs or expenses in connection with such
1918 activities from the domiciliary liquidator. The domiciliary
1919 liquidator and ancillary receiver may enter into agreements
1920 regarding the payment or advancement of expenses. When acting at
1921 the request of the domiciliary liquidator, the ancillary receiver
1922 and his or her deputies shall have the same powers and be subject
1923 to the same duties with respect to the administration of assets as
1924 a liquidator of an insurer domiciled in this state.

1925 (4) When a domiciliary liquidator has been appointed in this
1926 state, ancillary receivers appointed in reciprocal states shall
1927 have, as to assets and books, accounts, and other records in their
1928 respective states, corresponding rights, duties and powers to
1929 those provided in subsection (3) for ancillary receivers appointed
1930 in this state.

1931 SECTION 28. Section 83-24-107, Mississippi Code of 1972, is
1932 amended as follows:

1933 83-24-107. The commissioner in his sole discretion may
1934 institute proceedings under Sections 83-24-19 through 83-24-21 at
1935 the request of the commissioner or other appropriate insurance
1936 official of the domiciliary state of any foreign or alien insurer
1937 having property located in this state.

1938 SECTION 29. Section 83-24-109, Mississippi Code of 1972, is
1939 amended as follows:

1940 83-24-109. (1) * * * All claimants * * * must file their
1941 claims in * * * the domiciliary liquidation * * * on or before the
1942 last date fixed for the filing of claims in the domiciliary
1943 liquidation proceeding.

1944 (2) Controverted claims * * * shall be proved * * * or
1945 determined in the domiciliary state unless the claimant notifies
1946 the domiciliary liquidator in writing that the claimant elects to
1947 determine or prove the claim in the claimant's respective
1948 reciprocal state where an ancillary receiver has been appointed.

1949 An election by an insured shall be binding on all claimants
1950 interested in the claim as to the place of determining or proving
1951 the claim. In the event a claimant elects to prove the claimant's
1952 claim in ancillary proceedings, * * * if at least thirty (30)
1953 days' notice of the claim and an opportunity to appear and be
1954 heard is afforded the domiciliary liquidator of this state * * *,
1955 the final allowance of the claim by the courts of the ancillary
1956 state shall be accepted in this state as conclusive as to its
1957 amount and validity but not as to the priority of distribution,
1958 which shall be determined in the domiciliary proceeding. The
1959 domiciliary liquidator is not required to notify claimants of
1960 their right to make such an election.

1961 SECTION 30. Section 83-24-111, Mississippi Code of 1972, is
1962 amended as follows:

1963 83-24-111. (1) Promptly after the appointment of the
1964 commissioner as ancillary receiver for an insurer not domiciled in
1965 this state, the commissioner shall determine whether there are
1966 claimants residing in this state who are not protected by guaranty
1967 funds and, if so, whether the protection of the claimants requires
1968 the establishing of a controverted claim procedure in the
1969 ancillary proceeding. If a controverted claim procedure is
1970 established, claimants who have made the election provided for in
1971 Section 83-24-109(2) who reside within this state may controvert
1972 denied claims either with the ancillary controverted claim
1973 procedure, if any, in this state, or with the domiciliary
1974 liquidator. * * *

1975 (2) Claims belonging to claimants who have made the election
1976 in Section 83-24-109(2) residing in this state may be controverted
1977 either in the domiciliary state under the law of that state, or in
1978 ancillary proceedings, if any, in this state, provided a
1979 controverted claim procedure is established in the ancillary
1980 proceeding.

1981 (3) The final allowance of the claim by the courts of this

1982 state shall be accepted as conclusive as to validity and amount.
1983 All issues of priority shall be determined in the domiciliary
1984 state.

1985 SECTION 31. Section 83-24-115, Mississippi Code of 1972, is
1986 amended as follows:

1987 83-24-115. (1) In a liquidation proceeding in this state
1988 involving one or more reciprocal states, the order of distribution
1989 of the domiciliary state shall control as to all claims of
1990 residents of this and reciprocal states. All claims of residents
1991 of reciprocal states shall be given equal priority of payment from
1992 general assets regardless of where such assets are located.

1993 (2) The owners of secured claims * * * against an insurer
1994 for which a liquidator has been appointed in this or any other
1995 state may surrender their security and file their claims as * * *
1996 general creditors, or the claims may be discharged by resort to
1997 the security in accordance with Section 83-24-81, in which case
1998 the deficiency, if any, shall be treated as a claim against the
1999 general assets of the insurer on the same basis as claims of
2000 unsecured creditors in the same class.

2001 SECTION 32. Section 83-24-117, Mississippi Code of 1972, is
2002 amended as follows:

2003 83-24-117. If an ancillary receiver in another state or
2004 foreign country, whether called by that name or not, fails to
2005 transfer to the domiciliary liquidator in this state any assets
2006 within his control * * * diminished only by the expenses of the
2007 ancillary receivership in accordance with Section 83-24-105, if
2008 any, the claims filed by residents of the ancillary receiver's
2009 state or foreign country, including those contested in the
2010 ancillary receivership contested claims proceeding, shall be
2011 placed in the class of claims under Section 83-24-83(7).

2012 SECTION 33. This section shall be codified as Section
2013 83-24-18, Mississippi Code of 1972:

2014 83-24-18. (1) For the purposes of this section, the persons

2015 entitled to protection under this section are:

2016 (a) All receivers responsible for the conduct of a
2017 delinquency proceeding under this chapter including present and
2018 former receivers; and

2019 (b) Their employees meaning all present and former
2020 special deputies and assistant special deputies appointed by the
2021 commissioner and all persons whom the commissioner, special
2022 deputies, or assistant special deputies have employed to assist in
2023 a delinquency proceeding under this chapter. Attorneys,
2024 accountants, auditors and other professional persons or firms, who
2025 are retained by the receiver as independent contractors and their
2026 employees, shall not be considered employees of the receiver for
2027 purposes of this section.

2028 (2) The receiver and his employees shall have official
2029 immunity and shall be immune from suit and liability, both
2030 personally and in their official capacities, for any claim for
2031 damage to or loss of property or personal injury or other civil
2032 liability caused by or resulting from any alleged act, error or
2033 omission of the receiver or any employee arising out of or by
2034 reason of their duties or employment; provided that nothing in
2035 this provision shall be construed to hold the receiver or any
2036 employee immune from suit and/or liability for any damage, loss,
2037 injury or liability caused by the intentional or willful and
2038 wanton misconduct of the receiver or any employee.

2039 (3) If any legal action is commenced against the receiver or
2040 any employee, whether against him personally or in his official
2041 capacity, alleging property damage, property loss, personal injury
2042 or other civil liability caused by or resulting from any alleged
2043 act, error or omission of the receiver or any employee arising out
2044 of or by reason of their duties or employment, the receiver and
2045 any employee shall be indemnified from the assets of the insurer
2046 for all expenses, attorneys' fees, judgments, settlements, decrees
2047 or amounts due and owing or paid in satisfaction of or incurred in

2048 the defense of such legal action unless it is determined upon a
2049 final adjudication on the merits that the alleged act, error or
2050 omission of the receiver or employee giving rise to the claim did
2051 not arise out of or by reason of his duties or employment, or was
2052 caused by intentional or willful and wanton misconduct.

2053 (a) Attorneys' fees and any and all related expenses
2054 incurred in defending a legal action for which immunity or
2055 indemnity is available under this section shall be paid from the
2056 assets of the insurer, as they are incurred, in advance of the
2057 final disposition of such action upon receipt of an undertaking by
2058 or on behalf of the receiver or employee to repay the attorneys'
2059 fees and expenses if it shall ultimately be determined upon a
2060 final adjudication on the merits that the receiver or employee is
2061 not entitled to immunity or indemnity under this section.

2062 (b) Any indemnification for expense payments,
2063 judgments, settlements, decrees, attorneys' fees, surety bond
2064 premiums or other amounts paid or to be paid from the insurer's
2065 assets pursuant to this section shall be an administrative expense
2066 of the insurer.

2067 (c) In the event of any actual or threatened litigation
2068 against a receiver or any employee for which immunity or indemnity
2069 may be available under this section, a reasonable amount of funds
2070 which in the judgment of the commissioner may be needed to provide
2071 immunity or indemnity shall be segregated and reserved from the
2072 assets of the insurer as security for the payment of indemnity
2073 until such time as all applicable statutes of limitation shall
2074 have run and all actual or threatened actions against the receiver
2075 or any employee have been completely and finally resolved, and all
2076 obligations of the insurer and the commissioner under this section
2077 shall have been satisfied.

2078 (d) In lieu of segregation and reserving of funds, the
2079 commissioner may, in his discretion, obtain a surety bond or make
2080 other arrangements which will enable the commissioner to fully

2081 secure the payment of all obligations under this section.

2082 (4) If any legal action against an employee for which
2083 indemnity may be available under this section is settled prior to
2084 final adjudication on the merits, the insurer must pay the
2085 settlement amount on behalf of the employee, or indemnify the
2086 employee for the settlement amount, unless the commissioner
2087 determines:

2088 (a) That the claim did not arise out of or by reason of
2089 the employee's duties or employment; or

2090 (b) That the claim was caused by the intentional or
2091 willful and wanton misconduct of the employee.

2092 (5) In any legal action in which the receiver is a
2093 defendant, that portion of any settlement relating to the alleged
2094 act, error or omission of the receiver shall be subject to the
2095 approval of the court before which the delinquency proceeding is
2096 pending. The court shall not approve that portion of the
2097 settlement if it determines:

2098 (a) That the claim did not arise out of or by reason of
2099 the receiver's duties or employment; or

2100 (b) That the claim was caused by the intentional or
2101 willful and wanton misconduct of the receiver.

2102 (6) Nothing contained or implied in this section shall
2103 operate, or be construed or applied to deprive the receiver or any
2104 employee of any immunity, indemnity, benefits of law, rights or
2105 any defense otherwise available.

2106 (7) (a) Subsection (2) of this section shall apply to any
2107 suite based in whole or in part on any alleged act, error or
2108 omission which takes place on or after the effective date of this
2109 chapter.

2110 (b) No legal action shall lie against the receiver or
2111 any employee based in whole or in part on any alleged act, error
2112 or omission which took place prior to the effective date of this
2113 chapter, unless suit is filed and valid service of process if

2114 obtained within twelve (12) months after the effective date of
2115 this chapter.

2116 (c) Subsections (3), (4) and (5) of this section shall
2117 apply to any suit which is pending on or filed after the effective
2118 date of this chapter without regard to when the alleged act, error
2119 or omission took place.

2120 SECTION 34. The following section shall be codified as
2121 Section 83-24-20, Mississippi Code of 1972:

2122 83-24-20. (1) Any formal delinquency proceeding against a
2123 person shall be commenced by filing a petition in the name of the
2124 commissioner.

2125 (2) The petition shall state the grounds upon which the
2126 proceeding is based and the relief requested, and may include a
2127 prayer for restraining orders and injunctive relief as described
2128 in Section 83-24-11.

2129 (3) Any petition that prays for a temporary restraining
2130 order must be verified by the commissioner or his designee, but
2131 need not plead or prove irreparable harm or inadequate remedy by
2132 law. The commissioner shall provide only such notice as the court
2133 may require.

2134 (4) If any temporary restraining order is prayed for:

2135 (a) The court may issue an initial order containing the
2136 relief requested;

2137 (b) The order shall state the time and date of its
2138 issuance;

2139 (c) The court shall set a time and date for the return
2140 of summons, not more than ten (10) days from the time and date of
2141 the issuance of the initial order, at which time the person
2142 proceeded against may appear before the court for a summary
2143 hearing;

2144 (d) The order shall not continue in effect beyond the
2145 time and date set for the return of summons, unless the court
2146 shall expressly enter one or more orders extending such

2147 restraining order; and

2148 (e) The verified petition and the initial order shall
2149 be filed with the clerk of the court and maintained as
2150 confidential, except for good cause shown, until personal service
2151 is made.

2152 (5) If no temporary restraining order is requested, the
2153 court shall cause summons to be issued. The summons shall specify
2154 a return date not more than thirty (30) days after issuance and
2155 that an answer must be filed at or before the return date.

2156 (6) The court shall hold a summary hearing at the time and
2157 date for the return of summons.

2158 (7) If a person is not served with summons and fails to
2159 appear for the summary hearing, the court shall:

2160 (a) Continue the summary hearing not more than ten (10)
2161 days;

2162 (b) Provide for alternative service of summons upon the
2163 person; and

2164 (c) Extend any restraining order.

2165 (8) Upon a showing of good faith efforts to effect personal
2166 service upon a person who has failed to appear for a continued
2167 summary hearing, the court shall order notice of the petition to
2168 be published. The order and notice shall specify a return date
2169 not less than ten (10) nor more than twenty (20) days after the
2170 publication and that the restraining order has been extended to
2171 the continued hearing date.

2172 (9) If a person fails to appear for a summary hearing after
2173 service of summons, the court shall enter judgment in favor of the
2174 commissioner against that person.

2175 (10) A person who appears for the summary hearing shall file
2176 its answer at the hearing and the court shall: (a) determine
2177 whether to extend any temporary restraining orders pending final
2178 judgment; and (b) set the case for trial on a date not more than
2179 ten (10) days from the summary hearing. The court shall grant no

2180 continuance for filing an answer.

2181 (11) The court shall proceed to hear the case at the time
2182 and date set forth for trial without a jury and without
2183 unnecessary delays. To the extent not inconsistent with other
2184 laws, the court shall give precedence to the matter over all other
2185 matters. To the extent otherwise authorized by law, the court may
2186 assign the matter to other judges if necessary to comply with the
2187 need for expedited proceedings under this chapter.

2188 (12) Continuances for trial shall be granted only in extreme
2189 circumstances.

2190 (13) The court shall receive as self-authenticated any of
2191 the following when offered by the commissioner:

2192 (a) Certified copies of the financial statements made
2193 by the person; and

2194 (b) Certified copies of examination reports of the
2195 person made by or on behalf of the commissioner.

2196 (14) The facts contained in any such examination report
2197 shall be presumed to be true as of the date of the hearing if such
2198 examination was made as of a date not more than two hundred
2199 seventy (270) days before the petition was filed. The presumption
2200 shall be rebuttable and shall shift the burden of production and
2201 persuasion.

2202 (15) Discovery shall be limited to grounds alleged in the
2203 petition, and shall be concluded on an expedited basis.

2204 (16) The court shall enter judgment within fifteen (15) days
2205 after the conclusion of the evidence.

2206 (17) The judgment shall be final when entered. Any appeal
2207 shall be prosecuted on an expedited basis and must be taken within
2208 five (5) days of entry. No request for reconsideration, review or
2209 appeal, and no posting of a bond shall dissolve or stay the
2210 judgment.

2211 SECTION 35. The following section shall be codified as
2212 Section 83-24-36, Mississippi Code of 1972:

2213 83-24-36. (1) All books, records, documents and papers of
2214 any delinquent insurer which come into the possession of the
2215 receiver and are held by the receiver in the course of the
2216 delinquency proceedings, or certified copies thereof, shall be
2217 received in evidence in all cases without proof of the correctness
2218 of the same and without other proof, except the certificate of the
2219 receiver that the same were received from the custody of the
2220 delinquent insurer or found among its effects.

2221 (2) The receiver shall have the authority to certify to the
2222 correctness of any paper, document or record of his office and to
2223 make certificates of the receiver certifying any fact contained in
2224 the papers, documents or records of the office of the receiver;
2225 and the same shall be received in evidence in all cases in which
2226 the original would be evidence.

2227 (3) Original books, records, documents and papers, or
2228 certified copies thereof, when received in evidence shall be prima
2229 facie evidence of the facts disclosed.

2230 (4) The appointment of the commissioner as receiver shall in
2231 no way operate to bring records of a delinquent insurer under the
2232 Mississippi Public Records Act of 1983. In the event a third
2233 party successfully pursues a records request in the receivership
2234 court, the receiver shall be reimbursed for the reasonable cost of
2235 producing such records.

2236 SECTION 36. The following section shall be codified as
2237 Section 83-24-52, Mississippi Code of 1972:

2238 83-24-52. (1) If an order instituting a delinquency
2239 proceeding against an insurer authorized to do business in this
2240 state is entered under this chapter, the receiver appointed under
2241 the order has a right to recover on behalf of the insurer from any
2242 affiliate that controlled the insurer the amount of distributions,
2243 other than stock dividends paid by the insurer on its capital
2244 stock, made at any time during the five (5) years preceding the
2245 petition for liquidation, rehabilitation or conservation. This

2246 recovery is subject to the limitations of subsections (2) through
2247 (7).

2248 (2) No dividend is recoverable if the recipient shows that,
2249 when paid, the distribution was lawful and reasonable, and that
2250 the insurer did not know and could not reasonably have known that
2251 the distribution might adversely affect its solvency.

2252 (3) The maximum amount recoverable under this section is the
2253 amount needed, in excess of all other available assets, to pay all
2254 claims under the receivership, reduced for each recipient by any
2255 amount the recipient has already paid to receivers under similar
2256 laws of other states.

2257 (4) Any person who was an affiliate that controlled the
2258 insurer at the time the distributions were paid is liable up to
2259 the amount of distributions received. Any person who was an
2260 affiliate that controlled the insurer at the time the
2261 distributions were declared is liable up to the amount of
2262 distributions the person would have received if the distributions
2263 had been paid immediately. If two (2) or more persons are liable
2264 regarding the same distributions, they are jointly and severally
2265 liable.

2266 (5) If any person liable under subsection (4) is insolvent,
2267 all affiliates that controlled that person at the time the
2268 dividend was declared or paid are jointly and severally liable for
2269 any resulting deficiency in the amount recovered from the
2270 insolvent affiliate.

2271 (6) This section does not enlarge the personal liability of
2272 a director under existing law.

2273 (7) An action or proceeding under this section may not be
2274 commenced after the earlier of:

2275 (a) Two (2) years after the appointment of a
2276 rehabilitator under Section 83-24-25 or a liquidator under Section
2277 83-24-35; or

2278 (b) The date the rehabilitation is terminated under

2279 Section 83-24-31(3) or the liquidation is terminated under Section
2280 83-24-91.

2281 SECTION 37. The following section shall be codified as
2282 Section 83-24-82, Mississippi Code of 1972:

2283 83-24-82. (1) Notwithstanding any other provision of this
2284 chapter, including any other provision of this chapter permitting
2285 the modification of contracts, or other law of a state, no person
2286 shall be stayed or prohibited from exercising:

2287 (a) A contractual right to terminate, liquidate or
2288 close out any netting agreement or qualified financial contract
2289 with an insurer because of:

2290 (i) The insolvency, financial condition or default
2291 of the insurer at any time, provided that the right is enforceable
2292 under applicable law other than this chapter; or

2293 (ii) The commencement of a formal delinquency
2294 proceeding under this chapter.

2295 (b) Any right under a pledge, security, collateral or
2296 guarantee agreement or any other similar security arrangement or
2297 credit support document relating to a netting agreement or
2298 qualified financial contract.

2299 (c) Subject to any provision of Section 83-24-59(2) of
2300 this chapter, any right to set off or net out any termination
2301 value, payment amount, or other transfer obligation arising under
2302 or in connection with a netting agreement or qualified financial
2303 contract where the counterparty or its guarantor is organized
2304 under the laws of the United States or a state or foreign
2305 jurisdiction approved by the Securities Valuation Office (SVO) of
2306 the NAIC as eligible for netting.

2307 (2) Upon termination of a netting agreement, the net or
2308 settlement amount, if any, owed by a nondefaulting party to an
2309 insurer against which an application or petition has been filed
2310 under this chapter shall be transferred to or on the order of the
2311 receiver for the insurer, even if the insurer is the defaulting

2312 party, notwithstanding any provision in the netting agreement that
2313 may provide that the nondefaulting party is not required to pay
2314 any net or settlement amount due to the defaulting party upon
2315 termination. Any limited two-way payment provision in a netting
2316 agreement with an insurer that has defaulted shall be deemed to be
2317 a full two-way payment provision as against the defaulting
2318 insurer. Any such property or amount shall, except to the extent
2319 it is subject to one or more secondary liens or encumbrances, be a
2320 general asset of the insurer.

2321 (3) In making any transfer of a netting agreement or
2322 qualified financial contract of an insurer subject to a proceeding
2323 under this chapter, the receiver shall either:

2324 (a) Transfer to one (1) party (other than an insurer
2325 subject to a proceeding under this chapter) all netting agreements
2326 and qualified financial contracts between a counterparty or any
2327 affiliate of the counterparty and the insurer that is the subject
2328 of the proceeding, including:

2329 (i) All rights and obligations of each party under
2330 each such netting agreement and qualified financial contract; and

2331 (ii) All property, including any guarantees or
2332 credit support documents, securing any claims of each party under
2333 each such netting agreement and qualified financial contract; or

2334 (b) Transfer none of the netting agreements, qualified
2335 financial contracts, rights, obligations or property referred to
2336 in subparagraph (a) (with respect to the counterparty and any
2337 affiliate of the counterparty).

2338 (4) If a receiver for an insurer makes a transfer of one or
2339 more netting agreements or qualified financial contracts, then the
2340 receiver shall use its best efforts to notify any person who is
2341 party to the netting agreements or qualified financial contracts
2342 of the transfer by 12:00 noon (the receiver's local time) on the
2343 business day following the transfer. For purposes of this
2344 subsection, "business day" means a day other than a Saturday,

2345 Sunday or any day on which either the New York Stock Exchange or
2346 the Federal Reserve Bank of New York is closed.

2347 (5) Notwithstanding any other provision of this chapter, a
2348 receiver may not avoid a transfer of money or other property
2349 arising under or in connection with a netting agreement or
2350 qualified financial contract (or any pledge, security, collateral
2351 or guarantee agreement or any other similar security arrangement
2352 or credit support document relating to a netting agreement or
2353 qualified financial contract) that is made before the commencement
2354 of a formal delinquency proceeding under this chapter. However, a
2355 transfer may be avoided under Section 83-24-51 of this chapter if
2356 the transfer was made with actual intent to hinder, delay or
2357 defraud the insurer, a receiver appointed for the insurer, or
2358 existing or future creditors.

2359 (6) In exercising any of its powers under this chapter to
2360 disaffirm or repudiate a netting agreement or qualified financial
2361 contract, the receiver must take action with respect to each
2362 netting agreement or qualified financial contract and all
2363 transactions entered into in connection therewith, in its
2364 entirety. Notwithstanding any other provision of this chapter,
2365 any claim of a counterparty against the estate arising from the
2366 receiver's disaffirmance or repudiation of a netting agreement or
2367 qualified financial contract that has not been previously affirmed
2368 in the liquidation or immediately preceding rehabilitation case
2369 shall be determined and shall be allowed or disallowed as if the
2370 claim had arisen before the date of the filing of the petition for
2371 liquidation or, if a rehabilitation proceeding is converted to a
2372 liquidation proceeding, as if the claim had arisen before the date
2373 of the filing of the petition for rehabilitation. The amount of
2374 the claim shall be the actual direct compensatory damages
2375 determined as of the date of the disaffirmance or repudiation of
2376 the netting agreement or qualified financial contract. The term
2377 "actual direct compensatory damages" does not include punitive or

2378 exemplary damages, damages for lost profit or lost opportunity or
2379 damages for pain and suffering, but does include normal and
2380 reasonable costs of cover or other reasonable measures of damages
2381 utilized in the derivatives market for the contract and agreement
2382 claims.

2383 (7) The term "contractual right" as used in this section
2384 includes any right, whether or not evidenced in writing, arising
2385 under statutory or common law, a rule or bylaw of a national
2386 securities exchange, national securities clearing organization or
2387 securities clearing agency, a rule or bylaw, or a resolution of
2388 the governing body, of a contract market or its clearing
2389 organization, or under law merchant.

2390 (8) The provisions of this section shall not apply to
2391 persons who are affiliates of the insurer that is the subject of
2392 the proceeding.

2393 (9) All rights of counter parties under this chapter shall
2394 apply to netting agreements and qualified financial contracts
2395 entered into on behalf of the general account or separate accounts
2396 if the assets of each separate account are available only to
2397 counterparties to netting agreements and qualified financial
2398 contracts entered into on behalf of that separate account.

2399 SECTION 38. The following section shall be codified as
2400 Section 83-24-104, Mississippi Code of 1972:

2401 83-24-104. Notwithstanding any other provision of this
2402 chapter, or any other law of this state, upon the entry of a final
2403 order of liquidation or order approving a rehabilitation plan of
2404 an insurer domiciled in this state or in a reciprocal state, any
2405 deposit held in this state, which is a special or statutory
2406 deposit held pursuant to any statute, or as required by any order
2407 of the commissioner, for the benefit of any creditors, including
2408 policyholders, of the insurer shall be delivered to the
2409 domiciliary liquidator. The proceeds of the deposit shall then be
2410 held by the domiciliary liquidator as a general asset for the

2411 benefit of all creditors no matter where they reside, in
2412 accordance with the priorities set by the laws of the domiciliary
2413 state. The holder of the deposit in this state shall, upon the
2414 receipt of a certified copy of an order approving the plan of
2415 rehabilitation or liquidation, deliver the deposit to the
2416 domiciliary state's conservator, rehabilitator or liquidator, and
2417 when so delivered shall become part of the general assets of the
2418 insurer.

2419 SECTION 39. The following section shall be codified as
2420 Section 83-24-119, Mississippi Code of 1972:

2421 83-24-119. The domiciliary receiver shall provide
2422 information to other state insurance regulators and guaranty
2423 associations, including reports and analyses of financial
2424 condition and the status of development of a plan of
2425 rehabilitation. The domiciliary receiver shall also permit a
2426 state insurance regulator or guaranty association to obtain a
2427 listing of policyholders and certificate holders residing in the
2428 requestor's state, including current addresses and summary policy
2429 information, provided that the regulator or guaranty association
2430 agrees to maintain the confidentiality of the records, and that
2431 the records will be used only for regulatory or guaranty
2432 association purposes. Access to financial records shall be at
2433 least equivalent to that to which a state insurance regulator was
2434 entitled prior to the commencement of a formal delinquency
2435 proceeding. Access to records may be limited to normal business
2436 hours. In the event that the domiciliary receiver believes that
2437 certain information is sensitive, and disclosure might cause a
2438 diminution in recovery, the receiver may apply for a protective
2439 order imposing additional restrictions on access.

2440 SECTION 40. Section 83-24-29, Mississippi Code of 1972,
2441 which provides for a stay of actions or proceedings during
2442 rehabilitation, is hereby repealed.

2443 SECTION 41. Section 83-24-33, Mississippi Code of 1972,

2444 which authorizes the Commissioner of Insurance to petition the
2445 court for an order to liquidate a domestic insurer or an alien
2446 insurer domiciled in this state and provides grounds for the
2447 petition, is hereby repealed.

2448 SECTION 42. Section 83-24-101, Mississippi Code of 1972,
2449 which authorizes the Commissioner of Insurance to petition the
2450 court for an order to liquidate the assets found in this state of
2451 a foreign insurer or an alien insurer not domiciled in this state
2452 and provides grounds for the petition, is hereby repealed.

2453 SECTION 43. This act shall take effect and be in force from
2454 and after its passage.