

By: Senator(s) Kirby

To: Insurance; Judiciary

SENATE BILL NO. 2574

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

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

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

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

167 creditors, in more than a single state, shall be treated as
168 general assets.

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

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

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

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

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

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

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

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

189 * * *

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

195 (n) "Insurer" means any person who has done, purports
196 to do, is doing or is licensed to do an insurance business, and is
197 or has been subject to the authority of, or to liquidation,
198 rehabilitation, reorganization, supervision, or conservation by,
199 any insurance commissioner. For purposes of this chapter, any

200 other persons included under Section 83-24-5 shall be deemed to be
201 insurers.

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

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

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

223 (i) "Commodity contract" means:

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

230 (B) An agreement that is subject to
231 regulation under Section 19 of the Commodity Exchange Act (7
232 U.S.C. Section 1 et seq.) and that is commonly known to the

233 commodities trade as a margin account, margin contract, leverage
234 account or leverage contract; or

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

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

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

266 mortgage loan, and shall not include any participation in a
267 commercial mortgage loan, unless the commissioner determines by
268 regulation, resolution or order to include the participation
269 within the meaning of the term.

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

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

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

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

299 avoidance of fraudulent conveyances and preferential transfers.

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

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

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

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

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

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

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

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

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

332 (2) Upon a filing under subsection (1), the court may issue
333 forthwith, ex parte and without a hearing, the requested order
334 which shall direct the commissioner to take possession and control
335 of all or a part of the property, books, accounts, documents and
336 other records of an insurer, and of the premises occupied by it
337 for transaction of its business; and until further order of the
338 court enjoin the insurer and its officers, managers, agents and
339 employees from disposition of its property and from the
340 transaction of its business except with the written consent of the
341 commissioner.

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

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

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

363 (6) If, at any time after the issuance of such an order, it
364 appears to the court that any person whose interest is or will be

365 substantially affected by the order did not appear at the hearing
366 and has not been served, the court may order that notice be given.

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

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

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

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

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

386 (a) The insurer is insolvent;

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

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

398 maintained;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

530 83-24-27. (1) The commissioner as rehabilitator may appoint
531 one or more special deputies, who shall have all the powers and
532 responsibilities of the rehabilitator granted under this section,
533 and the commissioner may employ such counsel, clerks and
534 assistants as deemed necessary. The compensation of the special
535 deputy, counsel, clerks and assistants and all expenses of taking
536 possession of the insurer and of conducting the proceedings shall
537 be fixed by the commissioner, with the approval of the court, and
538 shall be paid out of the funds or assets of the insurer. The
539 persons appointed under this section shall serve at the pleasure
540 of the commissioner. The commissioner, as rehabilitator, may,
541 with the approval of the court, appoint an advisory committee of
542 policyholders, claimants, or other creditors including guaranty
543 associations should such a committee be deemed necessary. Such
544 committee shall serve at the pleasure of the commissioner and
545 shall serve without compensation other than reimbursement for
546 reasonable travel and per diem living expenses. No other
547 committee of any nature shall be appointed by the commissioner or
548 the court in rehabilitation proceedings conducted under this
549 chapter.

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

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

563 manage, to hire and discharge employees subject to any contract
564 rights they may have, and to deal with the property and business
565 of the insurer.

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

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

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

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

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

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

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

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

629 for an order of liquidation * * *.

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

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

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

659 (2) Upon issuance of the order, the rights and liabilities
660 of any such insurer and of its creditors, policyholders,
661 shareholders, members and all other persons interested in its

662 estate shall become fixed as of the date of entry of the order of
663 liquidation, except as provided in Sections 83-24-37 and 83-24-73.

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

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

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

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

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

693 83-24-37. (1) Notwithstanding any policy or contract
694 language or any other statute, all policies, insurance contracts

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

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

701 (b) The expiration of the policy coverage;

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

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

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

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

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

715 (4) Policies of life or health insurance or annuities or any
716 period or coverage of such policies not covered by a * * *
717 guaranty association shall terminate under subsections (1) and
718 (2).

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

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

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

726 83-24-41. (1) The liquidator shall have the power:

727 (a) To appoint a special deputy or deputies to act for

728 him under this chapter, and to determine his reasonable
729 compensation. The special deputy shall have all powers of the
730 liquidator granted by this section. The special deputy shall
731 serve at the pleasure of the liquidator.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

794 effectuate any sale of property or other transaction in connection
795 with the liquidation.

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

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

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

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

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

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

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

826 (s) To file any necessary documents for record in the

827 office of any chancery clerk or record office in this state or
828 elsewhere where property of the insurer is located.

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

837 (u) To exercise and enforce all the rights, remedies
838 and powers of any creditor, shareholder, policyholder or member,
839 including any power to avoid any transfer or lien that may be
840 given by the general law and that is not included with Sections
841 83-24-51 through 83-24-55.

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

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

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

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

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

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

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

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

892 SECTION 10. Section 83-24-43, Mississippi Code of 1972, is

893 amended as follows:

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

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

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

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

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

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

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

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

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

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

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

959 (5) If notice is given in accordance with this section, the
960 distribution of assets of the insurer under this chapter shall be
961 conclusive with respect to all claimants, whether or not they
962 received notice.

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

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

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

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

990 (2) Unless the otherwise applicable stay provisions or
991 injunctive provisions are lifted or modified by the domiciliary

992 receivership court, any judgment or order taken by any person
993 against the insurer after the date of the liquidation in any court
994 other than the domiciliary receivership court or a court in which
995 an ancillary proceeding is pending in a reciprocal state, or in
996 contravention of the terms of the injunctive provisions of the
997 court of this state's order of liquidation or rehabilitation shall
998 automatically place the claim in a priority of Class 6 as
999 described in Section 83-24-83, irrespective of what class the
1000 claim would have been entitled to without such an order or
1001 judgment. Any claimant possessing such a judgment may set aside
1002 the judgment as to the insurer and the claims will not be subject
1003 to this provision.

1004 * * *

1005 SECTION 12. Section 83-24-59, Mississippi Code of 1972, is
1006 amended as follows:

1007 83-24-59. (1) Mutual debts or mutual credits, whether
1008 arising out of one or more contracts between the insurer and
1009 another person in connection with any action or proceeding under
1010 this chapter, shall be set off and the balance only shall be
1011 allowed or paid, except as provided in Section 83-24-65.

1012 (2) No setoff shall be allowed in favor of any person where:

1013 (a) The obligation of the insurer to the person would
1014 not at the date of the filing of a petition for liquidation
1015 entitle the person to share as a claimant in the assets of the
1016 insurer; or

1017 (b) The obligation of the insurer to the person was
1018 purchased by or transferred to the person with a view to its being
1019 used as a setoff; or

1020 (c) The obligation of the insurer is owed to an
1021 affiliate of such person, or any other entity or association other
1022 than the person; or

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

1025 than the insurer; or

1026 (e) The obligation of the person is to pay an
1027 assessment levied against the members or subscribers of the
1028 insurer, or is to pay a balance upon a subscription to the capital
1029 stock of the insurer, or is in any other way in the nature of a
1030 capital contribution; or

1031 (f) The obligations between the person and the insurer
1032 arise from business which is both ceded to and assumed from the
1033 insurer except that the rehabilitator may, with regard to such
1034 business, allow certain setoffs in rehabilitation if he/she shall
1035 find the allowance of said setoffs appropriate.

1036 (3) The liquidator shall provide persons that assumed
1037 business from the insurer with accounting statements identifying
1038 debts which are currently due and payable. Such persons may set
1039 off against such debts only mutual credits which are currently due
1040 and payable by the insurer to such persons for the period covered
1041 by the accounting statement.

1042 (4) A person that ceded business to the insurer may set off
1043 debts due the insurer against only those mutual credits which the
1044 person has paid or which have been allowed in the insurer's
1045 delinquency proceeding.

1046 (5) Notwithstanding the foregoing, a setoff of sums due on
1047 obligations in the nature of those set forth in subsection 2(f)
1048 shall be allowed for those sums accruing from business written
1049 where the contracts were entered into, renewed or extended with
1050 the express written approval of the commissioner of insurance of
1051 the state of domicile of the now solvent insurer, when in the
1052 judgment of such commissioner it was necessary to provide
1053 reinsurance in order to prevent or mitigate a threatened
1054 impairment or insolvency of a domiciliary insurer in connection
1055 with the exercise of the commissioner's regulatory
1056 responsibilities.

1057 (6) These amendments shall become effective six (6) months

1058 from the date of enactment and shall apply to all contracts
1059 entered into, renewed, extended or amended on or after that date,
1060 and to debts or credits arising from any business written or
1061 transactions occurring after the effective date pursuant to any
1062 contract including those in existence prior to the effective date,
1063 and shall supersede any agreements or contractual provisions which
1064 might be construed to enlarge the setoff rights of any person
1065 under any contract with the insurer. For purposes of this section
1066 any change in the terms of, or consideration for, any such
1067 contract shall be deemed an amendment.

1068 SECTION 13. Section 83-24-63, Mississippi Code of 1972, is
1069 amended as follows:

1070 83-24-63. (1) The amount recoverable by the liquidator from
1071 reinsurers shall not be reduced as a result of the delinquency
1072 proceedings, regardless of any provision in the reinsurance
1073 contract or other agreement. * * *

1074 (2) All reinsurance contracts to which an insurer domiciled
1075 in this state is a party that do not contain the provisions
1076 required with respect to the obligation of reinsurers in the event
1077 of insolvency of the reinsured in order to obtain credit for
1078 reinsurance or other applicable statutes, shall be construed to
1079 contain the following provisions:

1080 (a) In the event of insolvency and the appointment of a
1081 receiver, the reinsurance obligation shall be payable to the
1082 receiver upon demand, with reasonable provision for verification,
1083 on the basis of claims allowed pursuant to Section 83-24-85 of
1084 this chapter, without diminution because of the insolvency or
1085 because the receiver has failed to pay all or a portion of any
1086 claims. Payments by the reinsurer as set forth above shall be
1087 made directly to the ceding insurer or to its receiver; and

1088 (b) The receiver of a reinsured company shall give
1089 written notice of the pendency of a claim against the reinsured
1090 company indicating the policy or bond reinsured, within a

1091 reasonable time after the claim is filed. The receiver of a
1092 reinsured company may arrange for the giving of notice of the
1093 pendency of claims on reinsured policies by guaranty funds or by
1094 other persons responsible for the adjustment and settlement of the
1095 reinsured company's claims. Failure to give notice shall not
1096 excuse the obligation of the reinsurer unless it is substantially
1097 prejudiced thereby. The reinsurer may interpose, at its own
1098 expense, in the proceeding where the claim is to be adjudicated,
1099 any defense or defenses which it may deem available to the
1100 reinsured company or its receiver.

1101 (3) Payments by the reinsurer as set forth shall be made
1102 directly to the ceding insurer or its receiver, except where the
1103 contract of insurance or reinsurance specifically provides for
1104 another payee in the event of insolvency of the ceding insurer in
1105 accordance with any applicable requirements of statutes, rules or
1106 orders of the domiciliary state of the ceding insurer. The
1107 receiver shall be entitled to recover from any person, who
1108 unsuccessfully makes a claim directly against the reinsurer, the
1109 receiver's attorney's fees and expenses incurred in preventing any
1110 collection by such person.

1111 (4) These amendments shall become effective six (6) months
1112 from the date of enactment and shall apply to all contracts
1113 entered into, renewed, extended or amended on or after that date,
1114 and to obligations arising from any business written or
1115 transaction occurring covered by reinsurance after the effective
1116 date pursuant to any contract including those in existence prior
1117 to the effective date.

1118 SECTION 14. Section 83-24-65, Mississippi Code of 1972, is
1119 amended as follows:

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

1124 insurer based on the termination of coverage under Section
1125 83-24-37 of this chapter. Premium on surety business is deemed
1126 earned at inception if no policy term can be determined. All
1127 other premium will be deemed earned and will be prorated over the
1128 determined policy term, regardless of any provision in the bond,
1129 guaranty, contract or other agreement. If a claim for losses
1130 incurred under a policy is approved by the court under Section
1131 83-24-85(2), then all premium for the full policy term is deemed
1132 earned.

1133 (b) Any person, other than the insured, responsible for
1134 the payment of a premium is obligated to pay any unpaid premium,
1135 including any amount representing commissions, for the full policy
1136 term due the insurer at the time of the entry of the liquidation
1137 order, whether earned or unearned, based on the termination of
1138 coverage under Section 83-24-37, as shown on the records of the
1139 insurer. The unpaid premium due the insurer from any person other
1140 than the insured excludes any premium not collected from the
1141 insured and not earned based on the termination of coverage under
1142 Section 83-24-37 of this chapter.

1143 (c) The liquidator shall also have the right to recover
1144 from any person, other than the insured, responsible for the
1145 payment of a premium, any * * * unearned * * * commission of such
1146 person based on the termination of coverage under Section
1147 83-24-37. Credits or setoffs or both shall not be allowed to an
1148 agent, broker, or premium finance company or any other person
1149 against unpaid premium due the insurer for any amounts advanced to
1150 the insurer by such person on behalf of, but in the absence of a
1151 payment by, the insuree, or for any other amount paid by such
1152 person to any other person after the entry of the order of
1153 liquidation.

1154 (d) Persons that collect premium, or finance premium
1155 under a premium finance contract, that is due the insurer in
1156 liquidation are deemed to hold that premium in trust as a

1157 fiduciary for the benefit of the insurer and to have availed
1158 themselves of the laws of this state, regardless of any provision
1159 in any agency contract or other agreement.

1160 (e) Any premium finance company is obligated to pay any
1161 amounts due the insurer from premium finance contracts, whether
1162 the premium is earned or unearned. The liquidator has the right
1163 to collect any unpaid financed premium directly from the premium
1164 finance company by taking an assignment of the underlying premium
1165 finance contracts, or directly from the insured that is a party to
1166 the premium finance contract.

1167 (2) Upon satisfactory evidence of a violation of this
1168 section, by a person other than an insured, the commissioner may
1169 pursue either one or all of the following courses of action:

1170 (a) Suspend or revoke or refuse to renew the licenses
1171 of such offending party or parties.

1172 (b) Impose a penalty of not more than One Thousand
1173 Dollars (\$1,000.00) for each and every act in violation of this
1174 section by the party or parties.

1175 (c) Impose any other sanction or penalty allowed for by
1176 the commissioner.

1177 (3) Before the commissioner shall take any action as set
1178 forth in subsection (2), he shall give written notice to the
1179 person, company, association or exchange accused of violating the
1180 law, stating specifically the nature of the alleged violation;
1181 and fixing a time and place, at least ten (10) days thereafter,
1182 when a hearing on the matter shall be held. After such hearing,
1183 or upon failure of the accused to appear at such hearing, the
1184 commissioner, if he shall find such violation, shall impose such
1185 of the penalties under subsection (2) as he deems advisable.

1186 (4) When the commissioner shall take action in any or all of
1187 the ways set out in subsection (2), the party aggrieved may appeal
1188 the action to the court.

1189 SECTION 15. Section 83-24-67, Mississippi Code of 1972, is

1190 amended as follows:

1191 83-24-67. (1) Within one hundred twenty (120) days of a
1192 final determination of insolvency of an insurer by a court of
1193 competent jurisdiction of this state, the liquidator shall apply
1194 to the court for approval of a proposal to disburse assets out of
1195 marshalled assets, from time to time as such assets become
1196 available, to a guaranty association or foreign guaranty
1197 association having obligations because of such insolvency. If the
1198 liquidator determines that there are insufficient assets to
1199 disburse, the application required by this section shall be
1200 considered satisfied by a filing by the liquidator stating the
1201 reasons for this determination.

1202 (2) Such proposal shall at least include provisions for:

1203 (a) Reserving amounts for the payment of expenses of
1204 administration and the payment of claims of secured creditors, to
1205 the extent of the value of the security held, and claims falling
1206 within the priorities established in Classes 1 and 2 in Section
1207 83-24-83;

1208 (b) Disbursement of the assets marshalled to date and
1209 subsequent disbursement of assets as they become available;

1210 (c) Equitable allocation of disbursements to each of
1211 the guaranty associations * * * entitled thereto;

1212 (d) The securing by the liquidator from each of the
1213 associations entitled to disbursements pursuant to this section of
1214 an agreement to return to the liquidator such assets, together
1215 with income earned on assets previously disbursed, as may be
1216 required to pay claims of secured creditors and claims falling
1217 within the priorities established in Section 83-24-83 in
1218 accordance with such priorities. No bond shall be required of any
1219 such association; and

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

1223 by the association on such assets, and any other matter as the
1224 court may direct.

1225 (3) The liquidator's proposal shall provide for
1226 disbursements to the associations in amounts estimated at least
1227 equal to the claim payments and allocated loss adjustment expenses
1228 made or to be made thereby for which such associations could
1229 assert a claim against the liquidator, and shall further provide
1230 that if the assets available for disbursement from time to time do
1231 not equal or exceed the amount of * * * claim payments made or to
1232 be made by the association, then disbursements shall be in the
1233 amount of available assets. The liquidator shall annually make
1234 disbursements to the associations to the extent of available
1235 assets subject to the provisions of subsection (2)(a). The
1236 liquidator shall liquidate the assets of the insurer in an
1237 expeditious manner, but is not required to make forced or quick
1238 sales that would result in obtaining less than market value for
1239 assets. Unless otherwise provided for by the court, the reserves
1240 of the insolvent insurer as reflected in its records on the date
1241 of the order of liquidation shall be used for purposes of
1242 determining the pro rata allocations of funds among eligible
1243 associations.

1244 (4) The liquidator's proposal shall, with respect to an
1245 insolvent insurer writing life or health insurance or annuities,
1246 provide for disbursements of assets to any guaranty
1247 association * * * covering life or health insurance or annuities
1248 or to any other entity or organization reinsuring, assuming or
1249 guaranteeing policies or contracts of insurance under the acts
1250 creating such associations.

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

1256 such application to the court. Action on the application may be
1257 taken by the court, provided the above required notice has been
1258 given and provided further that the liquidator's proposal complies
1259 with subsections (2)(a) and (b).

1260 (6) The liquidator may offset the amount to be disbursed to
1261 the applicable guaranty association and any entity or person
1262 performing a function in any state similar to that function
1263 performed by Mississippi Life and Health Insurance Guaranty
1264 Association by the amount of any "special deposit" and any other
1265 statutory deposit or asset of the insolvent insurer held in that
1266 state unless the state or ancillary receiver agrees to promptly
1267 return the asset to the domiciliary liquidator in this state.

1268 SECTION 16. Section 83-24-69, Mississippi Code of 1972, is
1269 amended as follows:

1270 83-24-69. (1) Proof of all claims shall be filed with the
1271 liquidator in the form required by Section 83-24-71 on or before
1272 the last day for filing specified in the notice required under
1273 Section 83-24-43, except that proof of claims for cash surrender
1274 values or other investment values in life insurance and annuities
1275 need not be filed unless the liquidator expressly so requires.
1276 Provided, however, only upon application of the liquidator, the
1277 court may allow alternative procedures and requirements for the
1278 filing of proofs of claim or for allowing or proving claims. Upon
1279 such application, if the court dispenses with the requirements of
1280 filing a proof of claim by a person, class or group of persons, a
1281 proof of claim for such persons shall be deemed as having been
1282 filed for all purposes, including the application of guaranty
1283 association or foreign guaranty association laws.

1284 (2) The liquidator may permit a claimant making a late
1285 filing to share in distributions, whether past or future, as if he
1286 were not late, to the extent that any such payment will not
1287 prejudice the orderly administration of the liquidation, under the
1288 following circumstances:

1289 (a) The existence of the claim was not known to the
1290 claimant and that he filed his claim as promptly thereafter as
1291 reasonably possible after learning of it;

1292 (b) A transfer to a creditor was avoided under Sections
1293 83-24-51 through 83-24-55, or was voluntarily surrendered under
1294 Section 83-24-57, and that the filing satisfies the conditions of
1295 Section 83-24-57; or

1296 (c) The valuation under Section 83-24-81, of security
1297 held by a secured creditor shows a deficiency, which is filed
1298 within thirty (30) days after the valuation.

1299 * * *

1300 (3) The liquidator may consider any claim filed late which
1301 is not covered by subsection (2), and permit it to receive
1302 distributions which are subsequently declared on any claims of the
1303 same or lower priority if the payment does not prejudice the
1304 orderly administration of the liquidation. The late-filing
1305 claimant shall receive, at each distribution, the same percentage
1306 of the amount allowed on his claim as is then being paid to
1307 claimants of any lower priority. This shall continue until his
1308 claim has been paid in full.

1309 SECTION 17. Section 83-24-71, Mississippi Code of 1972, is
1310 amended as follows:

1311 83-24-71. (1) Proof of claim shall consist of a statement
1312 signed by the claimant that includes all of the following that are
1313 applicable:

1314 (a) The particulars of the claim including the
1315 consideration given for it;

1316 (b) The identity and amount of the security on the
1317 claim;

1318 (c) The payments made on the debt, if any;

1319 (d) That the sum claimed is justly owing and that there
1320 is no setoff, counterclaim or defense to the claim;

1321 (e) Any right of priority of payment or other specific

1322 right asserted by the claimants;

1323 (f) A copy of the written instrument which is the
1324 foundation of the claim; * * *

1325 (g) The name and address of the claimant and the
1326 attorney who represents him, if any; and

1327 (h) The Social Security or federal employer
1328 identification number of the claimant.

1329 (2) No claim need be considered or allowed if it does not
1330 contain all the information in subsection (1) which may be
1331 applicable. The liquidator may require that a prescribed form be
1332 used, and may require that other information and documents be
1333 included.

1334 (3) At any time the liquidator may request the claimant to
1335 present information or evidence supplementary to that required
1336 under subsection (1) and may take testimony under oath, require
1337 production of affidavits or depositions, or otherwise obtain
1338 additional information or evidence.

1339 (4) No judgment or order against an insured or the insurer
1340 entered after the date of filing of a successful petition for
1341 liquidation, and no judgment or order against an insured or the
1342 insurer entered at any time by default or by collusion, need be
1343 considered as evidence of liability or of quantum of damages. No
1344 judgment or order against an insured or the insurer entered within
1345 four (4) months before the filing of the petition need be
1346 considered as evidence of liability or of the quantum of damages.

1347 (5) * * * A guaranty association shall be permitted to file
1348 a single omnibus proof of claim for all claims of the association
1349 in connection with payment of claims of the insolvent insurer.
1350 The omnibus proof of claim may be periodically updated by the
1351 association, and the association may be required to submit a
1352 reasonable amount of documentation in support of the claim.

1353 SECTION 18. Section 83-24-73, Mississippi Code of 1972, is
1354 amended as follows:

1355 83-24-73.

1356 * * *

1357 (1) Claims made under employment contracts by directors,
1358 principal officers, or persons in fact performing similar
1359 functions or having similar powers are limited to payment for
1360 services rendered prior to the issuance of any order of
1361 rehabilitation or liquidation under Section 83-24-25 or Section
1362 83-24-35.

1363 (2) When a liquidation order has been entered in a
1364 proceeding against an insurer, any insured, reinsured, reinsurer,
1365 third party person who has a cause of action against an insured of
1366 the insurer, or any other person or entity that has a claim or
1367 cause of action against the insurer, shall have the right to file
1368 a claim in the proceeding, regardless of the fact that the claim
1369 may be contingent, unliquidated or immature. For purposes of this
1370 section:

1371 (a) A claim is contingent if the accident, casualty,
1372 disaster or loss insured or reinsured against occurred on or
1373 before the date fixed under Section 83-24-35, but the act or event
1374 triggering the company's obligation to pay has not occurred as of
1375 that date;

1376 (b) A claim is unliquidated if the amount of the claim
1377 has not been determined;

1378 (c) A claim is immature if payment on the claim is not
1379 yet due.

1380 (3) A contingent, unliquidated or immature claim may share
1381 in a distribution of assets provided that, as of the time of the
1382 allowance or disallowance of the claim by the court:

1383 (a) If the claim was a contingent claim against the
1384 insurer as of the date established under Section 83-24-35, the
1385 claimant has presented proof of the insurer's obligation to pay
1386 reasonably satisfactory to the receiver.

1387 (b) If the claim was a contingent claim as of the date

1388 established under Section 83-24-35 of this chapter and was based
1389 upon a cause of action against an insured of the insurer,

1390 1. It may be reasonably inferred from proof
1391 presented upon the claim that the claimant would be able to obtain
1392 a judgment;

1393 2. The person has furnished suitable proof, unless
1394 the court for good cause shown shall otherwise direct, that no
1395 further valid claims can be made against the insurer arising out
1396 of the cause of action other than those already presented; and

1397 3. The total liability of the insurer to all
1398 claimants arising out of the same act shall be no greater than its
1399 total liability would be were it not in liquidation. In those
1400 cases, insureds may include in contingent claims reasonable
1401 attorney fees for services rendered after the date of liquidation,
1402 in defense of claims or suits covered by the insured's policy,
1403 provided the attorney fees have been paid by the insured and
1404 evidence of payment is presented to the receiver.

1405 (c) If the claim was unliquidated as of the date
1406 established under Section 83-24-35, its amount has been
1407 determined. In those cases, the determination and allowance of
1408 unliquidated claims may be made by estimate whenever the receiver
1409 determines that either liquidation of the claim would unduly delay
1410 the administration of the liquidation proceeding, or that the
1411 administrative expenses of processing and adjudicating the claims
1412 or group of claims of a similar type would be unduly excessive
1413 when compared with the assets that are estimated to be available
1414 for distribution with respect to the claim. Any estimate shall be
1415 based upon an accepted method of valuing claims with reasonable
1416 certainty, such as actuarial evaluation; or

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

1421 approximately the same maturity.

1422 (4) Notwithstanding the foregoing, any insured shall have
1423 the right to file a claim for the protection afforded under the
1424 insured's policy, irrespective of whether a claim is then known,
1425 if the policy is an occurrence policy. Thereafter, at such time
1426 that a specific claim is made by or against the insurer, the
1427 insured shall supplement his claim and the receiver shall treat
1428 the same as a contingent, unliquidated or immature claim. Any
1429 such claims of policyholders for the protection under an
1430 occurrence policy remaining at or near the closing of the estate
1431 shall be disposed of in accordance with Section 83-24-85(3).

1432 SECTION 19. Section 83-24-75, Mississippi Code of 1972, is
1433 amended as follows:

1434 83-24-75. (1) Whenever any third party asserts a cause of
1435 action against an insured of an insurer in liquidation, the third
1436 party may file a claim with the liquidator on or before the last
1437 day for filing claims.

1438 (2) Whether or not the third party files a claim, the
1439 insured may file a claim on his own behalf in the liquidation. To
1440 the extent the insured files a claim, it is sufficient to cover
1441 all related third party claims. If the insured fails to file a
1442 claim by the date for filing claims specified in the order of
1443 liquidation or within sixty (60) days after mailing of the notice
1444 required by Section 83-24-43, whichever is later, he is an
1445 unexcused late filer.

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

1454 the insured. Whenever it seems appropriate, he shall reconsider
1455 the claim on the basis of additional information and amend his
1456 recommendations to the court. The insured shall be afforded the
1457 same notice and opportunity to be heard on all changes in the
1458 recommendation as in its initial determination. The court may
1459 amend its allowance as it thinks appropriate. As claims against
1460 the insured are settled or barred, the insured shall be paid from
1461 the amount withheld the same percentage dividend as was paid on
1462 other claims of like property, based on the lesser of (a) the
1463 amount actually recovered from the insured by action or paid by
1464 agreement plus the reasonable costs and expense of defense, or (b)
1465 the amount allowed on the claims by the court. After all claims
1466 are settled or barred, any sum remaining from the amount withheld
1467 shall revert to the undistributed assets of the insurer. Delay in
1468 final payment under this subsection shall not be a reason for
1469 unreasonable delay of final distribution and discharge of the
1470 liquidator.

1471 (4) If several claims founded upon one (1) policy are filed,
1472 whether by third parties or as claims by the insured under this
1473 section, and the aggregate allowed amount of the claims to which
1474 the same limit of liability in the policy is applicable exceeds
1475 that limit, each claim as allowed shall be reduced in the same
1476 proportion so that the total equals the policy limit. Claims by
1477 the insured shall be evaluated as in subsection (3). If any
1478 insured's claim is subsequently reduced under subsection (3), the
1479 amount thus freed shall be apportioned ratably among the claims
1480 which have been reduced under this subsection.

1481 (5) No claim may be presented under this section if it is or
1482 may be covered by any guaranty association * * *.

1483 SECTION 20. Section 83-24-77, Mississippi Code of 1972, is
1484 amended as follows:

1485 83-24-77. (1) When a claim is denied in whole or in part by
1486 the liquidator, written notice of the determination shall be given

1487 to the claimant or his attorney by first class mail at the address
1488 shown in the proof of claim. Within sixty (60) days from the
1489 mailing of the notice, the claimant may file his objections with
1490 the liquidator. Any filed objections shall clearly set out all
1491 facts and the legal basis, if any, for the objections and the
1492 reasons why the claim should be allowed. If no such filing is
1493 made, the claimant may not further object to the determination.

1494 (2) Whenever objections are filed with the liquidator and
1495 the liquidator does not alter the determination of the claim as a
1496 result of the objections, the liquidator shall ask the court for a
1497 hearing as soon as practicable and give notice of the hearing by
1498 first class mail to the claimant or the claimant's attorney and to
1499 any other persons directly affected not less than ten (10) nor
1500 more than thirty (30) days before the date of the hearing. The
1501 matter may be heard by the court or by a court-appointed
1502 referee * * *. The hearing shall be conducted on the record in an
1503 informal manner and the formal rules of evidence and civil
1504 procedure need not be strictly applied. Hearings shall be held
1505 without a jury. Prehearing discovery shall be limited to such
1506 pretrial discovery as expressly permitted in arbitration
1507 proceedings.

1508 (3) When a disputed claim is heard by a referee, the referee
1509 shall submit written findings of fact and conclusions of law along
1510 with the recommendation for disposition to the court. The
1511 referee's recommendation shall become the final judgment of the
1512 court, unless objections to the referee's recommendation are filed
1513 by the liquidator or claimant with the court within fifteen (15)
1514 days after the recommendation is mailed to the liquidator and
1515 claimant.

1516 (4) The final disposition by the court of a disputed claim,
1517 whether after a hearing by the court or after a recommendation by
1518 a referee, shall be deemed a final judgment for purposes of
1519 appeal.

1520 (5) The courts of this state may make special rules of civil
1521 procedure for disputed claims, provided that the rules are not
1522 inconsistent with this chapter.

1523 SECTION 21. Section 83-24-79, Mississippi Code of 1972, is
1524 amended as follows:

1525 83-24-79. Whenever an obligee whose claim against an insurer
1526 is secured, in whole or in part, by the undertaking of another
1527 person, fails to prove and file that claim, the other person may
1528 do so in the obligee's name, and shall be subrogated to the rights
1529 of the obligee, whether the claim has been filed by the obligee or
1530 by the other person in the obligee's name, to the extent that the
1531 obligee discharges the undertaking. In the absence of an
1532 agreement with the obligee to the contrary, the other person shall
1533 not be entitled to any distribution; however, until the amount
1534 paid to the obligee on the undertaking plus the distributions paid
1535 on the claim from the insurer's estate to the obligee equals the
1536 amount of the entire claim of the obligee. Any excess received by
1537 the obligee shall be held by the obligee in trust for such other
1538 person. The term "other person," as used in this section is not
1539 intended to apply to a guaranty association * * *.

1540 SECTION 22. Section 83-24-83, Mississippi Code of 1972, is
1541 amended as follows:

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

1553 policyholder or other creditor shall be permitted to circumvent
1554 the priority classes through the use of equitable remedies. The
1555 order of distribution of claims shall be:

1556 (1) Class 1. The costs and expenses of administration
1557 expressly approved by the receiver, including but not limited to
1558 the following:

1559 (a) The actual and necessary costs of preserving or
1560 recovering the assets of the insurer;

1561 (b) Compensation for all authorized services rendered
1562 in the conservation, rehabilitation or liquidation;

1563 (c) Any necessary filing fees;

1564 (d) The fees and mileage payable to witnesses; and

1565 (e) Authorized reasonable attorney's fees and other
1566 professional services rendered in the conservation, rehabilitation
1567 or liquidation.

1568 * * *

1569 (2) Class 2. The administrative expenses of guaranty
1570 associations. For purposes of this section these expenses shall
1571 be the reasonable expenses incurred by guaranty associations where
1572 the expenses are not payments or expenses which are required to be
1573 incurred as direct policy benefits in fulfillment of the terms of
1574 the insurance contract or policy, and that are of the type and
1575 nature that, but for the activities of the guaranty association
1576 otherwise would have been incurred by the receiver, including, but
1577 not limited to, evaluations of policy coverage, activities
1578 involved in the adjustment and settlement of claims under
1579 policies, including those of in-house or outside adjusters, and
1580 the reasonable expenses incurred in connection with the
1581 arrangements for ongoing coverage through transfer to other
1582 insurers, policy exchanges or maintaining policies in force. The
1583 receiver may, in his or her sole discretion, approve as an
1584 administrative expense under this section any other reasonable
1585 expenses of the guaranty association if the receiver finds:

1586 (a) The expenses are not expenses required to be paid
1587 or incurred as direct policy benefits by the terms of the policy,
1588 and

1589 (b) The expenses were incurred in furtherance of
1590 activities that provided a material economic benefit to the estate
1591 as a whole, irrespective of whether the activities resulted in
1592 additional benefits to covered claimants. The court shall approve
1593 such expenses unless it finds the receiver abused his or her
1594 discretion in approving the expenses.

1595 If the receiver determines that the assets of the estate will
1596 be sufficient to pay all Class 1 claims in full, Class 2 claims
1597 shall be paid currently, provided that the liquidator shall secure
1598 from each of the associations receiving disbursements pursuant to
1599 this section an agreement to return to the liquidator such
1600 disbursements, together with investment income actually earned on
1601 such disbursements, as may be required to pay Class 1 claims. No
1602 bond shall be required of any such association.

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

1619 treated as a gratuity.

1620 Notwithstanding the foregoing, the following claims shall be
1621 excluded from Class 3 priority:

1622 (a) Obligations of the insolvent insurer arising out of
1623 reinsurance contracts;

1624 (b) Obligations incurred after the expiration date of
1625 the insurance policy or after the policy has been replaced by the
1626 insured or canceled at the insured's request or after the policy
1627 has been cancelled as provided in this chapter;

1628 (c) Obligations to insurers, insurance pools or
1629 underwriting associations and their claims for contribution,
1630 indemnity or subrogation, equitable or otherwise;

1631 (d) Any claim which is in excess of any applicable
1632 limits provided in the insurance policy issued by the insolvent
1633 insurer;

1634 (e) Any amount accrued as punitive or exemplary damages
1635 unless expressly covered under the terms of the policy; and

1636 (f) Tort claims of any kind against the insurer, and
1637 claims against the insurer for bad faith or wrongful settlement
1638 practices.

1639 (4) Class 4. * * * Claims of the federal government other
1640 than those claims included in Class 3.

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

1652 priority which may be authorized by law as to wages or
1653 compensation of employees.

1654 (6) Class 6. Claims of any person, including claims of
1655 state or local governments, except those specifically classified
1656 elsewhere in this section. Claims of attorneys for fees and
1657 expenses owed them by a person for services rendered in opposing a
1658 formal delinquency proceeding. In order to prove the claim, the
1659 claimant must show that the insurer which is the subject of the
1660 delinquency proceeding incurred such fees and expenses based on
1661 its best knowledge, information and belief, formed after
1662 reasonable inquiry indicating opposition was in the best interests
1663 of the person, was well grounded in fact and was warranted by
1664 existing law or a good faith argument for the extension,
1665 modification or reversal of existing law, and that opposition was
1666 not pursued for any improper purpose, such as to harass or to
1667 cause unnecessary delay or needless increase in the cost of the
1668 litigation.

1669 (7) Class 7. Claims, of * * * any state or local
1670 government * * * for a penalty or forfeiture but only to the
1671 extent of the pecuniary loss sustained from the act, transaction,
1672 or proceeding out of which the penalty or forfeiture arose, with
1673 reasonable and actual costs occasioned thereby. The remainder of
1674 such claims shall be postponed to the class of claims under
1675 subsection (8) of this section.

1676 (8) Class 8. Surplus or contribution notes, or similar
1677 obligations, * * * premium refunds on assessable policies,
1678 interest on claims of Classes 1 through 7 and any other claims
1679 specifically subordinated to this class.

1680 (9) Class 9. * * * Claims of shareholders or other owners
1681 arising out of their capacity as shareholders or other owners, or
1682 any other capacity except as they may be qualified in Class 3 or 6
1683 above.

1684 If any claimant of this state, another state or foreign

1685 country shall be entitled to or shall receive a dividend upon his
1686 or her claim out of a statutory deposit or the proceeds of any
1687 bond or other asset located in another state or foreign country,
1688 unless such deposit or proceeds shall have been delivered to the
1689 domiciliary liquidator pursuant to Section 83-24-104, then the
1690 claimants shall not be entitled to any further dividend from the
1691 receiver until and unless all other claimants of the same class,
1692 irrespective of residence or place of the acts or contracts upon
1693 which their claims are based, shall have received an equal
1694 dividend upon their claims, and after such equalization, such
1695 claimants shall be entitled to share in the distribution of
1696 further dividends by the receiver, along with and like all other
1697 creditors of the same class, wheresoever residing.

1698 Upon the declaration of a dividend, the receiver shall apply
1699 the amount of the dividend against any indebtedness owed to the
1700 insurer by the person entitled to the dividend. There shall be no
1701 claim allowed for any deductible charged by a guaranty association
1702 or entity performing a similar function.

1703 SECTION 23. Section 83-24-85, Mississippi Code of 1972, is
1704 amended as follows:

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

1718 shall report the persons to whom, according to the records of the
1719 insurer, amounts are owed as cash surrender values or other
1720 investment value and the amounts owed.

1721 (2) The court may approve, disapprove or modify the report
1722 on claims by the liquidator. * * * Reports * * * not modified by
1723 the court within a period of sixty (60) days following submission
1724 by the liquidator shall be treated by the liquidator as allowed
1725 claims, subject * * * to later modification or to rulings made by
1726 the court pursuant to Section 83-24-77. No claim under a policy
1727 of insurance shall be allowed for an amount in excess of the
1728 applicable policy limits.

1729 (3) After giving due consideration to the nature of the
1730 policies that were sold by the insurer, and the number of claims
1731 by policyholders for protection under their policies, and having
1732 considered actuarial estimates that substantial amounts of
1733 incurred-but-not-reported losses exist, the liquidator may, but
1734 need not, formulate a proposal, subject to approval of the court
1735 to allow such claims. The proposal may allocate or attribute all
1736 or a portion of the incurred-but-not-reported losses to individual
1737 policyholder claimants on a basis of reasonable expert opinion.
1738 The court shall approve the proposal and the allowance of the
1739 claims unless it finds that the basis of allocation is arbitrary
1740 or capricious.

1741 (4) The liquidator is not required to process claims for any
1742 class until it appears reasonably likely that assets will be
1743 available for a distribution to that class. If there are
1744 insufficient assets to justify processing all claims for any class
1745 listed in Section 83-24-83, the liquidator shall report the facts
1746 to the court and make such recommendations as may be appropriate
1747 for handling the remainder of the claims.

1748 SECTION 24. Section 83-24-89, Mississippi Code of 1972, is
1749 amended as follows:

1750 83-24-89. (1) All unclaimed funds subject to distribution

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

1784 other administrative expenses are paid.

1785 (2) All funds withheld under Section 83-24-73 and not
1786 distributed shall upon discharge of the liquidator be deposited
1787 with the State Treasurer and paid * * * in accordance with Section
1788 83-24-83. Any sums remaining which under Section 83-24-85 would
1789 revert to the undistributed assets of the insurer shall be
1790 transferred to the State Treasurer and become the property of the
1791 state under subsection (1), unless the commissioner, in his
1792 discretion, petitions the court to reopen the liquidation under
1793 Section 83-24-93.

1794 SECTION 25. Section 83-24-99, Mississippi Code of 1972, is
1795 amended as follows:

1796 83-24-99. (1) If a domiciliary liquidator has not been
1797 appointed, the commissioner may apply to the court by verified
1798 petition for an order directing the commissioner to act as
1799 conservator to conserve the property found in this state of an
1800 alien insurer not domiciled in this state or property found in
1801 this state of a foreign insurer on any one or more of the
1802 following grounds:

1803 (a) Any of the grounds in Section 83-24-23;

1804 (b) That any of the insurer's property has been
1805 sequestered by official action in its domiciliary state, or in any
1806 other state;

1807 (c) That enough of the insurer's property has been
1808 sequestered in a foreign country to give reasonable cause to fear
1809 that the insurer is or may become insolvent;

1810 (d) (i) That the insurer's certificate of authority to
1811 do business in this state has been revoked or that none was ever
1812 issued; and

1813 (ii) That there are residents of this state with
1814 outstanding claims or outstanding policies.

1815 (2) When an order is sought under subsection (1), the court
1816 shall cause the insurer to be given such notice and time to

1817 respond thereto as is reasonable under the circumstances.

1818 (3) The court may issue the order in whatever terms it shall
1819 deem appropriate. The filing or recording of the order with the
1820 Clerk of the Chancery Court of the First Judicial District of
1821 Hinds County or of the county in which the principal business of
1822 the company is located shall impart the same notice as a deed,
1823 bill of sale or other evidence of title duly filed or recorded
1824 with that chancery court would have imparted.

1825 (4) The conservator shall hold and conserve the assets until
1826 such time as the commissioner in the domiciliary state begins
1827 formal delinquency proceedings against the insurer or until an
1828 order terminating conservation is entered under subsection (5).
1829 Once a delinquency proceeding is instituted in the domiciliary
1830 state, the conservator may either turn the property over to the
1831 domiciliary commissioner or petition for an order under Section
1832 83-24-105 to be appointed ancillary receiver. In the event the
1833 insurer is an alien insurer that has not established a domicile in
1834 the United States under an appropriate port of entry statute, the
1835 conservator may petition the court for an order of liquidation
1836 under any ground specified in Section 83-24-83. The application
1837 may seek, and the order of liquidation shall provide, that all
1838 property and assets, affairs and claims against the alien insurer
1839 shall be vested in the liquidator in this state as if the insurer
1840 was domiciled in this state. Provided, however, that if an order
1841 of liquidation of the alien insurer has been entered by a court of
1842 competent jurisdiction in a reciprocal state, which provides for
1843 the reciprocal state's receiver to be treated as if it is the
1844 domiciliary liquidator, then the order of liquidation in this
1845 state shall be issued as an order appointing an ancillary
1846 receiver.

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

1850 it shall order that the insurer be restored to possession of its
1851 property and the control of its business. The court may also make
1852 such finding and issue such order at any time upon motion of any
1853 interested party, but if such motion is denied all costs shall be
1854 assessed against such party.

1855 SECTION 26. Section 83-24-103, Mississippi Code of 1972, is
1856 amended as follows:

1857 83-24-103. (1) The domiciliary liquidator of an insurer
1858 domiciled in a reciprocal state shall * * * be vested by operation
1859 of law with the title to all of the assets, property, contracts
1860 and rights of action, agents' balances, and all of the books,
1861 accounts and other records of the insurer located in this state.
1862 The date of vesting shall be the date of the filing of the
1863 petition, if that date is specified by the domiciliary law for the
1864 vesting of property in the domiciliary state. Otherwise, the date
1865 of vesting shall be the date of entry of the order directing
1866 possession to be taken. The domiciliary liquidator shall have the
1867 immediate right to recover all such vested property, assets and
1868 causes of action * * * of the insurer located in this state,
1869 subject to Section 83-24-105.

1870 (2) If a domiciliary liquidator is appointed for an insurer
1871 not domiciled in a reciprocal state, the commissioner of this
1872 state shall be vested by operation of law with the title to all of
1873 the property, contracts and right of action, and all of the books,
1874 accounts and other records of the insurer located in this state,
1875 at the same time that the domiciliary liquidator is vested with
1876 title in the domicile. The commissioner of this state may
1877 petition for an order under Section 83-24-99 * * *, or for an
1878 ancillary receivership under Section 83-24-105 or after approval
1879 by the court may transfer title to the domiciliary liquidator, as
1880 the interests of justice and the equitable distribution of the
1881 assets require.

1882 (3) When a domiciliary liquidator is appointed in a

1883 reciprocal state, claimants residing in this state must file in
1884 the domiciliary proceeding subject to its deadlines, and may have
1885 claims contested under Section 83-24-111 or a similar section of
1886 the domiciliary state's laws. When a domiciliary liquidator is
1887 appointed in a non-reciprocal state, claimants residing in this
1888 state may file and contest claims with the liquidator or ancillary
1889 receiver, if any, in this state or with the domiciliary
1890 liquidator, if the domiciliary law permits. * * *

1891 SECTION 27. Section 83-24-105, Mississippi Code of 1972, is
1892 amended as follows:

1893 83-24-105. (1) If a domiciliary liquidator has been
1894 appointed for an insurer not domiciled in this state, the
1895 commissioner may file a petition with the court requesting
1896 appointment as ancillary receiver in this state:

1897 (a) If he finds that there are sufficient assets of the
1898 insurer located in this state to justify the appointment of an
1899 ancillary receiver;

1900 (b) If the protection of creditors or policyholders in
1901 this state so requires; or

1902 (c) If the domiciliary liquidator requests the
1903 commissioner to file for appointment as ancillary receiver.

1904 (2) The court may issue an order appointing an ancillary
1905 receiver in whatever terms it shall deem appropriate in accordance
1906 with the domiciliary liquidation order. The filing or recording
1907 of the order with the chancery court in this state imparts the
1908 same notice as a deed, bill of sale or other evidence of title
1909 duly filed or recorded with that chancery court.

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

1916 Any action taken by the ancillary receiver at the request of the
1917 domiciliary liquidator shall entitle the ancillary receiver to
1918 payment of his or her costs or expenses in connection with such
1919 activities from the domiciliary liquidator. The domiciliary
1920 liquidator and ancillary receiver may enter into agreements
1921 regarding the payment or advancement of expenses. When acting at
1922 the request of the domiciliary liquidator, the ancillary receiver
1923 and his or her deputies shall have the same powers and be subject
1924 to the same duties with respect to the administration of assets as
1925 a liquidator of an insurer domiciled in this state.

1926 (4) When a domiciliary liquidator has been appointed in this
1927 state, ancillary receivers appointed in reciprocal states shall
1928 have, as to assets and books, accounts, and other records in their
1929 respective states, corresponding rights, duties and powers to
1930 those provided in subsection (3) for ancillary receivers appointed
1931 in this state.

1932 SECTION 28. Section 83-24-107, Mississippi Code of 1972, is
1933 amended as follows:

1934 83-24-107. The commissioner in his sole discretion may
1935 institute proceedings under Sections 83-24-19 through 83-24-21 at
1936 the request of the commissioner or other appropriate insurance
1937 official of the domiciliary state of any foreign or alien insurer
1938 having property located in this state.

1939 SECTION 29. Section 83-24-109, Mississippi Code of 1972, is
1940 amended as follows:

1941 83-24-109. (1) * * * All claimants * * * must file their
1942 claims in * * * the domiciliary liquidation * * * on or before the
1943 last date fixed for the filing of claims in the domiciliary
1944 liquidation proceeding.

1945 (2) Controverted claims * * * shall be proved * * * or
1946 determined in the domiciliary state unless the claimant notifies
1947 the domiciliary liquidator in writing that the claimant elects to
1948 determine or prove the claim in the claimant's respective

1949 reciprocal state where an ancillary receiver has been appointed.
1950 An election by an insured shall be binding on all claimants
1951 interested in the claim as to the place of determining or proving
1952 the claim. In the event a claimant elects to prove the claimant's
1953 claim in ancillary proceedings, * * * if at least thirty (30)
1954 days' notice of the claim and an opportunity to appear and be
1955 heard is afforded the domiciliary liquidator of this state * * *,
1956 the final allowance of the claim by the courts of the ancillary
1957 state shall be accepted in this state as conclusive as to its
1958 amount and validity but not as to the priority of distribution,
1959 which shall be determined in the domiciliary proceeding. The
1960 domiciliary liquidator is not required to notify claimants of
1961 their right to make such an election.

1962 SECTION 30. Section 83-24-111, Mississippi Code of 1972, is
1963 amended as follows:

1964 83-24-111. (1) Promptly after the appointment of the
1965 commissioner as ancillary receiver for an insurer not domiciled in
1966 this state, the commissioner shall determine whether there are
1967 claimants residing in this state who are not protected by guaranty
1968 funds and, if so, whether the protection of the claimants requires
1969 the establishing of a controverted claim procedure in the
1970 ancillary proceeding. If a controverted claim procedure is
1971 established, claimants who have made the election provided for in
1972 Section 83-24-109(2) who reside within this state may controvert
1973 denied claims either with the ancillary controverted claim
1974 procedure, if any, in this state, or with the domiciliary
1975 liquidator. * * *

1976 (2) Claims belonging to claimants who have made the election
1977 in Section 83-24-109(2) residing in this state may be controverted
1978 either in the domiciliary state under the law of that state, or in
1979 ancillary proceedings, if any, in this state, provided a
1980 controverted claim procedure is established in the ancillary
1981 proceeding.

1982 (3) The final allowance of the claim by the courts of this
1983 state shall be accepted as conclusive as to validity and amount.
1984 All issues of priority shall be determined in the domiciliary
1985 state.

1986 SECTION 31. Section 83-24-115, Mississippi Code of 1972, is
1987 amended as follows:

1988 83-24-115. (1) In a liquidation proceeding in this state
1989 involving one or more reciprocal states, the order of distribution
1990 of the domiciliary state shall control as to all claims of
1991 residents of this and reciprocal states. All claims of residents
1992 of reciprocal states shall be given equal priority of payment from
1993 general assets regardless of where such assets are located.

1994 (2) The owners of secured claims * * * against an insurer
1995 for which a liquidator has been appointed in this or any other
1996 state may surrender their security and file their claims as * * *
1997 general creditors, or the claims may be discharged by resort to
1998 the security in accordance with Section 83-24-81, in which case
1999 the deficiency, if any, shall be treated as a claim against the
2000 general assets of the insurer on the same basis as claims of
2001 unsecured creditors in the same class.

2002 SECTION 32. Section 83-24-117, Mississippi Code of 1972, is
2003 amended as follows:

2004 83-24-117. If an ancillary receiver in another state or
2005 foreign country, whether called by that name or not, fails to
2006 transfer to the domiciliary liquidator in this state any assets
2007 within his control * * * diminished only by the expenses of the
2008 ancillary receivership in accordance with Section 83-24-105, if
2009 any, the claims filed by residents of the ancillary receiver's
2010 state or foreign country, including those contested in the
2011 ancillary receivership contested claims proceeding, shall be
2012 placed in the class of claims under Section 83-24-83(8).

2013 SECTION 33. This section shall be codified as Section
2014 83-24-18, Mississippi Code of 1972:

2015 83-24-18. (1) For the purposes of this section, the persons
2016 entitled to protection under this section are:

2017 (a) All receivers responsible for the conduct of a
2018 delinquency proceeding under this chapter including present and
2019 former receivers; and

2020 (b) Their employees meaning all present and former
2021 special deputies and assistant special deputies appointed by the
2022 commissioner and all persons whom the commissioner, special
2023 deputies, or assistant special deputies have employed to assist in
2024 a delinquency proceeding under this chapter. Attorneys,
2025 accountants, auditors and other professional persons or firms, who
2026 are retained by the receiver as independent contractors and their
2027 employees, shall not be considered employees of the receiver for
2028 purposes of this section.

2029 (2) The receiver and his employees shall have official
2030 immunity and shall be immune from suit and liability, both
2031 personally and in their official capacities, for any claim for
2032 damage to or loss of property or personal injury or other civil
2033 liability caused by or resulting from any alleged act, error or
2034 omission of the receiver or any employee arising out of or by
2035 reason of their duties or employment; provided that nothing in
2036 this provision shall be construed to hold the receiver or any
2037 employee immune from suit and/or liability for any damage, loss,
2038 injury or liability caused by the intentional or willful and
2039 wanton misconduct of the receiver or any employee.

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

2048 or amounts due and owing or paid in satisfaction of or incurred in
2049 the defense of such legal action unless it is determined upon a
2050 final adjudication on the merits that the alleged act, error or
2051 omission of the receiver or employee giving rise to the claim did
2052 not arise out of or by reason of his duties or employment, or was
2053 caused by intentional or willful and wanton misconduct.

2054 (a) Attorneys' fees and any and all related expenses
2055 incurred in defending a legal action for which immunity or
2056 indemnity is available under this section shall be paid from the
2057 assets of the insurer, as they are incurred, in advance of the
2058 final disposition of such action upon receipt of an undertaking by
2059 or on behalf of the receiver or employee to repay the attorneys'
2060 fees and expenses if it shall ultimately be determined upon a
2061 final adjudication on the merits that the receiver or employee is
2062 not entitled to immunity or indemnity under this section.

2063 (b) Any indemnification for expense payments,
2064 judgments, settlements, decrees, attorneys' fees, surety bond
2065 premiums or other amounts paid or to be paid from the insurer's
2066 assets pursuant to this section shall be an administrative expense
2067 of the insurer.

2068 (c) In the event of any actual or threatened litigation
2069 against a receiver or any employee for which immunity or indemnity
2070 may be available under this section, a reasonable amount of funds
2071 which in the judgment of the commissioner may be needed to provide
2072 immunity or indemnity shall be segregated and reserved from the
2073 assets of the insurer as security for the payment of indemnity
2074 until such time as all applicable statutes of limitation shall
2075 have run and all actual or threatened actions against the receiver
2076 or any employee have been completely and finally resolved, and all
2077 obligations of the insurer and the commissioner under this section
2078 shall have been satisfied.

2079 (d) In lieu of segregation and reserving of funds, the
2080 commissioner may, in his discretion, obtain a surety bond or make

2081 other arrangements which will enable the commissioner to fully
2082 secure the payment of all obligations under this section.

2083 (4) If any legal action against an employee for which
2084 indemnity may be available under this section is settled prior to
2085 final adjudication on the merits, the insurer must pay the
2086 settlement amount on behalf of the employee, or indemnify the
2087 employee for the settlement amount, unless the commissioner
2088 determines:

2089 (a) That the claim did not arise out of or by reason of
2090 the employee's duties or employment; or

2091 (b) That the claim was caused by the intentional or
2092 willful and wanton misconduct of the employee.

2093 (5) In any legal action in which the receiver is a
2094 defendant, that portion of any settlement relating to the alleged
2095 act, error or omission of the receiver shall be subject to the
2096 approval of the court before which the delinquency proceeding is
2097 pending. The court shall not approve that portion of the
2098 settlement if it determines:

2099 (a) That the claim did not arise out of or by reason of
2100 the receiver's duties or employment; or

2101 (b) That the claim was caused by the intentional or
2102 willful and wanton misconduct of the receiver.

2103 (6) Nothing contained or implied in this section shall
2104 operate, or be construed or applied to deprive the receiver or any
2105 employee of any immunity, indemnity, benefits of law, rights or
2106 any defense otherwise available.

2107 (7) (a) Subsection (2) of this section shall apply to any
2108 suite based in whole or in part on any alleged act, error or
2109 omission which takes place on or after the effective date of this
2110 chapter.

2111 (b) No legal action shall lie against the receiver or
2112 any employee based in whole or in part on any alleged act, error
2113 or omission which took place prior to the effective date of this

2114 chapter, unless suit is filed and valid service of process if
2115 obtained within twelve (12) months after the effective date of
2116 this chapter.

2117 (c) Subsections (3), (4) and (5) of this section shall
2118 apply to any suit which is pending on or filed after the effective
2119 date of this chapter without regard to when the alleged act, error
2120 or omission took place.

2121 SECTION 34. The following section shall be codified as
2122 Section 83-24-20, Mississippi Code of 1972:

2123 83-24-20. (1) Any formal delinquency proceeding against a
2124 person shall be commenced by filing a petition in the name of the
2125 commissioner.

2126 (2) The petition shall state the grounds upon which the
2127 proceeding is based and the relief requested, and may include a
2128 prayer for restraining orders and injunctive relief as described
2129 in Section 83-24-11.

2130 (3) Any petition that prays for a temporary restraining
2131 order must be verified by the commissioner or his designee, but
2132 need not plead or prove irreparable harm or inadequate remedy by
2133 law. The commissioner shall provide only such notice as the court
2134 may require.

2135 (4) If any temporary restraining order is prayed for:

2136 (a) The court may issue an initial order containing the
2137 relief requested;

2138 (b) The order shall state the time and date of its
2139 issuance;

2140 (c) The court shall set a time and date for the return
2141 of summons, not more than ten (10) days from the time and date of
2142 the issuance of the initial order, at which time the person
2143 proceeded against may appear before the court for a summary
2144 hearing;

2145 (d) The order shall not continue in effect beyond the
2146 time and date set for the return of summons, unless the court

2147 shall expressly enter one or more orders extending such
2148 restraining order; and

2149 (e) The verified petition and the initial order shall
2150 be filed with the clerk of the court and maintained as
2151 confidential, except for good cause shown, until personal service
2152 is made.

2153 (5) If no temporary restraining order is requested, the
2154 court shall cause summons to be issued. The summons shall specify
2155 a return date not more than thirty (30) days after issuance and
2156 that an answer must be filed at or before the return date.

2157 (6) The court shall hold a summary hearing at the time and
2158 date for the return of summons.

2159 (7) If a person is not served with summons and fails to
2160 appear for the summary hearing, the court shall:

2161 (a) Continue the summary hearing not more than ten (10)
2162 days;

2163 (b) Provide for alternative service of summons upon the
2164 person; and

2165 (c) Extend any restraining order.

2166 (8) Upon a showing of good faith efforts to effect personal
2167 service upon a person who has failed to appear for a continued
2168 summary hearing, the court shall order notice of the petition to
2169 be published. The order and notice shall specify a return date
2170 not less than ten (10) nor more than twenty (20) days after the
2171 publication and that the restraining order has been extended to
2172 the continued hearing date.

2173 (9) If a person fails to appear for a summary hearing after
2174 service of summons, the court shall enter judgment in favor of the
2175 commissioner against that person.

2176 (10) A person who appears for the summary hearing shall file
2177 its answer at the hearing and the court shall: (a) determine
2178 whether to extend any temporary restraining orders pending final
2179 judgment; and (b) set the case for trial on a date not more than

2180 ten (10) days from the summary hearing. The court shall grant no
2181 continuance for filing an answer.

2182 (11) The court shall proceed to hear the case at the time
2183 and date set forth for trial without a jury and without
2184 unnecessary delays. To the extent not inconsistent with other
2185 laws, the court shall give precedence to the matter over all other
2186 matters. To the extent otherwise authorized by law, the court may
2187 assign the matter to other judges if necessary to comply with the
2188 need for expedited proceedings under this chapter.

2189 (12) Continuances for trial shall be granted only in extreme
2190 circumstances.

2191 (13) The court shall receive as self-authenticated any of
2192 the following when offered by the commissioner:

2193 (a) Certified copies of the financial statements made
2194 by the person; and

2195 (b) Certified copies of examination reports of the
2196 person made by or on behalf of the commissioner.

2197 (14) The facts contained in any such examination report
2198 shall be presumed to be true as of the date of the hearing if such
2199 examination was made as of a date not more than two hundred
2200 seventy (270) days before the petition was filed. The presumption
2201 shall be rebuttable and shall shift the burden of production and
2202 persuasion.

2203 (15) Discovery shall be limited to grounds alleged in the
2204 petition, and shall be concluded on an expedited basis.

2205 (16) The court shall enter judgment within fifteen (15) days
2206 after the conclusion of the evidence.

2207 (17) The judgment shall be final when entered. Any appeal
2208 shall be prosecuted on an expedited basis and must be taken within
2209 five (5) days of entry. No request for reconsideration, review or
2210 appeal, and no posting of a bond shall dissolve or stay the
2211 judgment.

2212 SECTION 35. The following section shall be codified as

2213 Section 83-24-36, Mississippi Code of 1972:

2214 83-24-36. (1) All books, records, documents and papers of
2215 any delinquent insurer which come into the possession of the
2216 receiver and are held by the receiver in the course of the
2217 delinquency proceedings, or certified copies thereof, shall be
2218 received in evidence in all cases without proof of the correctness
2219 of the same and without other proof, except the certificate of the
2220 receiver that the same were received from the custody of the
2221 delinquent insurer or found among its effects.

2222 (2) The receiver shall have the authority to certify to the
2223 correctness of any paper, document or record of his office and to
2224 make certificates of the receiver certifying any fact contained in
2225 the papers, documents or records of the office of the receiver;
2226 and the same shall be received in evidence in all cases in which
2227 the original would be evidence.

2228 (3) Original books, records, documents and papers, or
2229 certified copies thereof, when received in evidence shall be prima
2230 facie evidence of the facts disclosed.

2231 (4) The appointment of the commissioner as receiver shall in
2232 no way operate to bring records of a delinquent insurer under the
2233 Mississippi Public Records Act of 1983. In the event a third
2234 party successfully pursues a records request in the receivership
2235 court, the receiver shall be reimbursed for the reasonable cost of
2236 producing such records.

2237 SECTION 36. The following section shall be codified as
2238 Section 83-24-52, Mississippi Code of 1972:

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

2246 petition for liquidation, rehabilitation or conservation. This
2247 recovery is subject to the limitations of subsections (2) through
2248 (7).

2249 (2) No dividend is recoverable if the recipient shows that,
2250 when paid, the distribution was lawful and reasonable, and that
2251 the insurer did not know and could not reasonably have known that
2252 the distribution might adversely affect its solvency.

2253 (3) The maximum amount recoverable under this section is the
2254 amount needed, in excess of all other available assets, to pay all
2255 claims under the receivership, reduced for each recipient by any
2256 amount the recipient has already paid to receivers under similar
2257 laws of other states.

2258 (4) Any person who was an affiliate that controlled the
2259 insurer at the time the distributions were paid is liable up to
2260 the amount of distributions received. Any person who was an
2261 affiliate that controlled the insurer at the time the
2262 distributions were declared is liable up to the amount of
2263 distributions the person would have received if the distributions
2264 had been paid immediately. If two (2) or more persons are liable
2265 regarding the same distributions, they are jointly and severally
2266 liable.

2267 (5) If any person liable under subsection (4) is insolvent,
2268 all affiliates that controlled that person at the time the
2269 dividend was declared or paid are jointly and severally liable for
2270 any resulting deficiency in the amount recovered from the
2271 insolvent affiliate.

2272 (6) This section does not enlarge the personal liability of
2273 a director under existing law.

2274 (7) An action or proceeding under this section may not be
2275 commenced after the earlier of:

2276 (a) Two (2) years after the appointment of a
2277 rehabilitator under Section 83-24-25 or a liquidator under Section
2278 83-24-35; or

2279 (b) The date the rehabilitation is terminated under
2280 Section 83-24-31(3) or the liquidation is terminated under Section
2281 83-24-91.

2282 SECTION 37. The following section shall be codified as
2283 Section 83-24-82, Mississippi Code of 1972:

2284 83-24-82. (1) Notwithstanding any other provision of this
2285 chapter, including any other provision of this chapter permitting
2286 the modification of contracts, or other law of a state, no person
2287 shall be stayed or prohibited from exercising:

2288 (a) A contractual right to terminate, liquidate or
2289 close out any netting agreement or qualified financial contract
2290 with an insurer because of:

2291 (i) The insolvency, financial condition or default
2292 of the insurer at any time, provided that the right is enforceable
2293 under applicable law other than this chapter; or

2294 (ii) The commencement of a formal delinquency
2295 proceeding under this chapter.

2296 (b) Any right under a pledge, security, collateral or
2297 guarantee agreement or any other similar security arrangement or
2298 credit support document relating to a netting agreement or
2299 qualified financial contract.

2300 (c) Subject to any provision of Section 83-24-59(2) of
2301 this chapter, any right to set off or net out any termination
2302 value, payment amount, or other transfer obligation arising under
2303 or in connection with a netting agreement or qualified financial
2304 contract where the counterparty or its guarantor is organized
2305 under the laws of the United States or a state or foreign
2306 jurisdiction approved by the Securities Valuation Office (SVO) of
2307 the NAIC as eligible for netting.

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

2312 receiver for the insurer, even if the insurer is the defaulting
2313 party, notwithstanding any provision in the netting agreement that
2314 may provide that the non-defaulting party is not required to pay
2315 any net or settlement amount due to the defaulting party upon
2316 termination. Any limited two-way payment provision in a netting
2317 agreement with an insurer that has defaulted shall be deemed to be
2318 a full two-way payment provision as against the defaulting
2319 insurer. Any such property or amount shall, except to the extent
2320 it is subject to one or more secondary liens or encumbrances, be a
2321 general asset of the insurer.

2322 (3) In making any transfer of a netting agreement or
2323 qualified financial contract of an insurer subject to a proceeding
2324 under this chapter, the receiver shall either:

2325 (a) Transfer to one (1) party (other than an insurer
2326 subject to a proceeding under this chapter) all netting agreements
2327 and qualified financial contracts between a counterparty or any
2328 affiliate of the counterparty and the insurer that is the subject
2329 of the proceeding, including:

2330 (i) All rights and obligations of each party under
2331 each such netting agreement and qualified financial contract; and

2332 (ii) All property, including any guarantees or
2333 credit support documents, securing any claims of each party under
2334 each such netting agreement and qualified financial contract; or

2335 (b) Transfer none of the netting agreements, qualified
2336 financial contracts, rights, obligations or property referred to
2337 in subparagraph (a) (with respect to the counterparty and any
2338 affiliate of the counterparty).

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

2345 subsection, "business day" means a day other than a Saturday,
2346 Sunday or any day on which either the New York Stock Exchange or
2347 the Federal Reserve Bank of New York is closed.

2348 (5) Notwithstanding any other provision of this chapter, a
2349 receiver may not avoid a transfer of money or other property
2350 arising under or in connection with a netting agreement or
2351 qualified financial contract (or any pledge, security, collateral
2352 or guarantee agreement or any other similar security arrangement
2353 or credit support document relating to a netting agreement or
2354 qualified financial contract) that is made before the commencement
2355 of a formal delinquency proceeding under this chapter. However, a
2356 transfer may be avoided under Section 83-24-51 of this chapter if
2357 the transfer was made with actual intent to hinder, delay or
2358 defraud the insurer, a receiver appointed for the insurer, or
2359 existing or future creditors.

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

2378 "actual direct compensatory damages" does not include punitive or
2379 exemplary damages, damages for lost profit or lost opportunity or
2380 damages for pain and suffering, but does include normal and
2381 reasonable costs of cover or other reasonable measures of damages
2382 utilized in the derivatives market for the contract and agreement
2383 claims.

2384 (7) The term "contractual right" as used in this section
2385 includes any right, whether or not evidenced in writing, arising
2386 under statutory or common law, a rule or bylaw of a national
2387 securities exchange, national securities clearing organization or
2388 securities clearing agency, a rule or bylaw, or a resolution of
2389 the governing body, of a contract market or its clearing
2390 organization, or under law merchant.

2391 (8) The provisions of this section shall not apply to
2392 persons who are affiliates of the insurer that is the subject of
2393 the proceeding.

2394 (9) All rights of counter parties under this chapter shall
2395 apply to netting agreements and qualified financial contracts
2396 entered into on behalf of the general account or separate accounts
2397 if the assets of each separate account are available only to
2398 counterparties to netting agreements and qualified financial
2399 contracts entered into on behalf of that separate account.

2400 SECTION 38. The following section shall be codified as
2401 Section 83-24-104, Mississippi Code of 1972:

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

2411 held by the domiciliary liquidator as a general asset for the
2412 benefit of all creditors no matter where they reside, in
2413 accordance with the priorities set by the laws of the domiciliary
2414 state. The holder of the deposit in this state shall, upon the
2415 receipt of a certified copy of an order approving the plan of
2416 rehabilitation or liquidation, deliver the deposit to the
2417 domiciliary state's conservator, rehabilitator or liquidator, and
2418 when so delivered shall become part of the general assets of the
2419 insurer.

2420 SECTION 39. The following section shall be codified as
2421 Section 83-24-119, Mississippi Code of 1972:

2422 83-24-119. The domiciliary receiver shall provide
2423 information to other state insurance regulators and guaranty
2424 associations, including reports and analyses of financial
2425 condition and the status of development of a plan of
2426 rehabilitation. The domiciliary receiver shall also permit a
2427 state insurance regulator or guaranty association to obtain a
2428 listing of policyholders and certificate holders residing in the
2429 requestor's state, including current addresses and summary policy
2430 information, provided that the regulator or guaranty association
2431 agrees to maintain the confidentiality of the records, and that
2432 the records will be used only for regulatory or guaranty
2433 association purposes. Access to financial records shall be at
2434 least equivalent to that to which a state insurance regulator was
2435 entitled prior to the commencement of a formal delinquency
2436 proceeding. Access to records may be limited to normal business
2437 hours. In the event that the domiciliary receiver believes that
2438 certain information is sensitive, and disclosure might cause a
2439 diminution in recovery, the receiver may apply for a protective
2440 order imposing additional restrictions on access.

2441 SECTION 40. Section 83-24-29, Mississippi Code of 1972,
2442 which provides for a stay of actions or proceedings during
2443 rehabilitation, is hereby repealed.

2444 SECTION 41. Section 83-24-33, Mississippi Code of 1972,
2445 which authorizes the Commissioner of Insurance to petition the
2446 court for an order to liquidate a domestic insurer or an alien
2447 insurer domiciled in this state and provides grounds for the
2448 petition, is hereby repealed.

2449 SECTION 42. Section 83-24-101, Mississippi Code of 1972,
2450 which authorizes the Commissioner of Insurance to petition the
2451 court for an order to liquidate the assets found in this state of
2452 a foreign insurer or an alien insurer not domiciled in this state
2453 and provides grounds for the petition, is hereby repealed.

2454 SECTION 43. This act shall take effect and be in force from
2455 and after its passage.