

IC 27-9-3

Chapter 3. Formal Proceedings

IC 27-9-3-0.1

Application of certain amendments to chapter

Sec. 0.1. The amendments made to section 40 of this chapter by P.L.185-1996 apply to and govern the priority of the distribution of assets in any proceeding to liquidate an insurer pending on, commenced on, or commenced after March 21, 1996.

As added by P.L.220-2011, SEC.454.

IC 27-9-3-1

Petition to rehabilitate insurer

Sec. 1. The commissioner may apply by petition to the Marion County circuit court for an order authorizing him to rehabilitate a domestic insurer or an alien insurer domiciled in Indiana on any one (1) of the following grounds:

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

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

(3) The insurer has failed to remove any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, employee, or other person, if the person has been found after notice and hearing by the commissioner under IC 4-21.5-3 to be dishonest or untrustworthy in a way affecting the insurer's business.

(4) Control of the insurer, whether by stock ownership or otherwise, and whether direct or indirect, is in a person found after notice and hearing under IC 4-21.5-3 to be untrustworthy.

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

(6) After demand by the commissioner under this article or IC 27-1-3, the insurer has failed to promptly make available for examination any of its own property, books, accounts, documents, or other records, or those of any subsidiary or related company within the control of the insurer, or those of any person having executive authority in the insurer so far as they concern the insurer.

(7) Without first obtaining the written consent of the commissioner, the insurer has transferred, or attempted to transfer, in a manner contrary to IC 27-1-23 or IC 27-6, substantially all of its entire property or business, or has entered into any transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person.

(8) The insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator, or sequestrator or similar fiduciary of the insurer or its property otherwise than as authorized under this title, and the appointment has been made or is imminent, and the appointment might:

(A) remove the insurer from the jurisdiction of the Indiana courts; or

(B) prejudice orderly delinquency proceedings under this article.

(9) Within the previous four (4) years the insurer has willfully violated its charter or articles of incorporation, its bylaws, this title, or any valid order of the commissioner under IC 27-9-2-1.

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

(11) The insurer has failed to file its annual report or other financial report required by law and, after written demand by the commissioner, has failed to immediately give an adequate explanation.

(12) The board of directors or the holders of a majority of the shares entitled to vote, or a majority of those individuals entitled to the control of those entities, request or consent to rehabilitation under this article.

(13) The insurer is a mutual insurance holding company under IC 27-14 and a reorganized insurance company that is affiliated with the mutual insurance holding company and is or has been the subject of a petition for an order authorizing the commissioner to rehabilitate the reorganized insurance company under this section or to liquidate the reorganized insurance company under section 6 of this chapter, regardless of whether another basis exists for petitioning for rehabilitation of the mutual insurance holding company.

As added by Acts 1979, P.L.255, SEC.1. Amended by P.L.7-1987, SEC.156; P.L.5-2000, SEC.3.

IC 27-9-3-2

Order to rehabilitate insurer

Sec. 2. (a) An order to rehabilitate the business of a domestic insurer, or an alien insurer domiciled in Indiana, must:

- (1) Appoint the commissioner and his successors in office as the rehabilitator.
- (2) Direct the rehabilitator to take possession of the assets of the insurer as soon as possible, and to administer them under the general supervision of the Marion County circuit court.

(b) The filing or recording of the order with the clerk of the Marion County circuit court or recorder of deeds of the county in which the principal business of the company is conducted, or the county in which its principal office or place of business is located, shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds would have imparted. The order to rehabilitate the insurer shall by operation of law vest title to all assets of the insurer in the rehabilitator.

(c) An order issued under this section must require accounting by the rehabilitator to the Marion County circuit court. Accountings shall be at intervals as the Marion County circuit court specifies in its order.

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

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-3

Rehabilitator; personnel; term; compensation; powers; plan

Sec. 3. (a) The commissioner, as rehabilitator, may appoint one (1) or more special deputies, who shall have all the powers and responsibilities of the rehabilitator granted under this section. Also, the commissioner may employ such counsel, clerks, and assistants as he considers necessary.

(b) With the approval of the court, the compensation of the special deputy, counsel, clerks, and assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be:

- (1) fixed by the commissioner; and
- (2) paid out of the funds or assets of the insurer.

(c) The persons appointed under this section shall serve at the pleasure of the commissioner.

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

(e) The rehabilitator may take such action as he considers necessary or appropriate to reform and revitalize the insurer. The commissioner:

- (1) has all the powers of the directors, officers, and managers,

whose authority shall be suspended, except as they are redelegated by the rehabilitator;

(2) may direct, manage, hire, and discharge employees subject to any contract rights they may have; and

(3) may deal with the property and business of the insurer.

(f) The rehabilitator may prosecute any action that exists in behalf of the creditors, members, policyholders, or shareholders of the insurer against any director or officer of the insurer or any other person or entity.

(g) If the rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer is appropriate, he shall prepare a plan to effect those changes.

(h) Upon application of the rehabilitator for approval of the plan, and after such notice and hearings as the Marion County circuit court may prescribe, the court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. Any plan approved under this section must be, in the judgment of the court, fair and equitable to all parties concerned. If the plan is approved, the rehabilitator shall carry out the plan.

(i) In the case of the life insurer, the plan proposed may include the imposition of liens upon the policies of company, if all rights of shareholders are first relinquished. A plan for a life insurer may also propose imposition of a moratorium upon loan and cash surrender rights under policies, for such period and to such an extent as may be necessary.

As added by Acts 1979, P.L.255, SEC.1. Amended by P.L.167-1986, SEC.3.

IC 27-9-3-4

Pending actions; protection of insurer after rehabilitation order

Sec. 4. (a) Any court in Indiana before which any action or proceeding in which the insurer is a party or is obligated to defend a party is pending when a rehabilitation order against the insurer is entered shall stay the action or proceeding for ninety (90) days and for any additional time as is necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The rehabilitator shall take action respecting the pending litigation as he considers necessary in the interests of justice and for the protection of creditors, policyholders, and the public. The rehabilitator shall immediately consider all litigation pending outside Indiana and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer.

(b) The statute of limitations or the defense of laches shall not run with respect to any action by or against an insurer between the filing of a petition for appointment of a rehabilitator for that insurer and the order granting or denying that petition. Any action by or against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty (60) days after the order of rehabilitation is entered or the petition is denied.

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

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-5

Petition for liquidation; termination of rehabilitation

Sec. 5. (a) Whenever the commissioner believes further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policyholders, or the public, or would be futile, the commissioner may petition the Marion County circuit court for an order of liquidation. A petition under this subsection has the same effect as a petition under section 6 of this chapter. The Marion County circuit court shall permit the directors of the insurer to take actions that are reasonably necessary to defend against the petition and may order payment from the estate of the insurer of such costs and other expenses of defense as justice may require.

(b) The rehabilitator may at any time petition the Marion County circuit court for an order terminating rehabilitation of an insurer. The Marion County circuit court shall also permit the directors of the insurer to petition the court for an order terminating rehabilitation of the insurer and may order payment from the estate of the insurer of such costs and other expenses of the petition as justice may require. If the Marion County circuit court finds that rehabilitation has been accomplished and that grounds for rehabilitation under section 1 of this chapter no longer exist, the court shall order that the insurer be restored to possession of its property and the control of its business. The Marion County circuit court may also make that finding and issue that order at any time upon its own motion.

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-6

Basis for liquidation

Sec. 6. The commissioner may petition the Marion County circuit court for an order directing him to liquidate a domestic insurer or an alien insurer domiciled in Indiana on the basis:

- (1) of any ground for an order of rehabilitation as specified in section 1 of this chapter, whether or not there has been a prior order directing the rehabilitation of the insurer;
- (2) that the insurer is insolvent; or
- (3) that the insurer is in such a condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public.

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-7

Order to liquidate; content; effect; declaration of insolvency; accounting

Sec. 7. (a) An order to liquidate the business of a domestic insurer must:

(1) Appoint the commissioner and his successors in office liquidator.

(2) Direct the liquidator as soon as possible to take possession of the assets of the insurer and to administer them under the general supervision of the Marion County circuit court.

(b) The liquidator shall be vested by operation of law with the title to all of the property, contracts, and rights of action and all of the books and records of the insurer ordered liquidated, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the clerk of the circuit court and the recorder of deeds of the county in which its principal office or place of business is located, or in the case of real estate with the recorder of deeds of the county where the property is located, shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds would have imparted.

(c) Upon issuance of the order, the rights and liabilities of any insurer and of its creditors, policyholders, shareholders, members and all other persons interested in its estate become fixed as of the date of entry of the order of liquidation, except as provided in sections 8 and 35 of this chapter.

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

(e) At the time of petitioning for an order of liquidation, or at any time after petitioning for an order of liquidation, the commissioner, after making appropriate findings of an insurer's insolvency, may petition the Marion County circuit court for a judicial declaration of that insolvency. After providing for a notice and hearing as the Marion County circuit court considers proper, the court may make the declaration.

(f) An order issued under this section shall require accounting by the liquidator to the Marion County circuit court. Accountings shall be at intervals as the court specifies in its order.

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-8

Termination of insurance coverage

Sec. 8. (a) All policies, other than life or health insurance or annuities, in effect at the time of issuance of an order of liquidation shall continue in force only for the lesser of:

(1) a period of thirty (30) days from the date of entry of the liquidation order;

(2) the expiration of the policy coverage;

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

(4) the date when the liquidator has effected a transfer of the policy obligation under section 9(b)(8) of this chapter.

(b) An order of liquidation under section 7 of this chapter shall terminate coverages at the time specified in subsection (a) for purposes of any other law.

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

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

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-9

Dissolution of corporate existence; authorized acts of liquidator

Sec. 9. (a) The commissioner may petition for an order dissolving the corporate existence of a domestic insurer, or the United States branch of an alien insurer domiciled in Indiana, at the time the commissioner applies for a liquidation order. The Marion County circuit court shall order dissolution of the corporation upon petition by the commissioner upon or after the granting of a liquidation order. If the dissolution has not previously been ordered, the dissolution shall be effected by operation of law upon the discharge of the liquidator if the insurer is insolvent but may be ordered by the court upon the discharge of the liquidator if the insurer is under a liquidation order for some other reason.

(b) The liquidator may do all acts necessary or appropriate for the accomplishment of the liquidation, including the following:

(1) Appoint a special deputy to act for the liquidator under this article, and determine a reasonable compensation for that special deputy.

(2) Employ employees and insurance producers, legal counsel, actuaries, accountants, appraisers, consultants, and other personnel as the liquidator considers necessary to assist in the liquidation.

(3) Fix the reasonable compensation of employees and insurance producers, legal counsel, actuaries, accountants, appraisers, and consultants with the approval of the court.

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

(5) Hold hearings, subpoena witnesses to compel their attendance, administer oaths, examine any person under oath, and compel any person to subscribe to the person's testimony after it has been correctly reduced to writing, and in connection with hearings and the examination of witnesses require the production of any books, papers, records, or other documents

which the liquidator deems relevant to the inquiry.

(6) Collect all debts and moneys due and claims belonging to the insurer, wherever located, and for this purpose:

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

(B) do other acts necessary or expedient to collect, conserve, or protect its assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon terms and conditions as the liquidator considers best; and

(C) pursue any creditor's remedies available to enforce the liquidator's claims.

(7) Conduct public and private sales of the property of the insurer.

(8) Use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under section 40 of this chapter.

(9) Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with, any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable.

(10) Borrow money on the security of the insurer's assets or without security and execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation.

(11) Enter into contracts that are necessary to carry out the order to liquidate, and affirm or disavow any contracts to which the insurer is a party.

(12) Continue to prosecute and to institute in the name of the insurer, or in the liquidator's own name, all suits and other legal proceedings, in Indiana or elsewhere, and abandon the prosecution of claims the liquidator considers unprofitable to pursue further.

(13) Prosecute any action that may exist in behalf of the creditors, members, policyholders, or shareholders of the insurer against any director or officer of the insurer, or any other person.

(14) Remove all records and property of the insurer to the offices of the commissioner or to some other place as may be convenient for the purposes of efficient and orderly execution of the liquidation.

(15) Deposit in one (1) or more banks in Indiana sums required for meeting current administration expenses and dividend distributions.

(16) Invest all sums not currently needed, unless the court orders otherwise.

(17) File any necessary documents for record in the office of any recorder of deeds or record office in Indiana or elsewhere

where property of the insurer is located.

(18) Assert all defenses available to the insurer as against third persons, including statutes of limitation, statutes of frauds, and the defense of usury.

(19) Exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included in sections 14 through 16 of this chapter.

(20) Intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered.

(21) Enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states.

(22) Exercise all powers conferred upon receivers by the laws of Indiana not inconsistent with this article.

As added by Acts 1979, P.L.255, SEC.1. Amended by P.L.167-1986, SEC.4; P.L.178-2003, SEC.75.

IC 27-9-3-10

Notice of liquidation by liquidator

Sec. 10. (a) Unless the Marion County circuit court otherwise directs, the liquidator shall give notice of the liquidation order as soon as possible by:

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

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

(3) first-class mail to all insurance producers of the insurer;

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

(5) first-class mail to the secretary of state's office; and

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

(b) Notice to potential claimants under subsection (a) must require claimants to file with the liquidator their claims, together with proper proof of those claims under section 34 of this chapter, before a date the liquidator specifies in the notice. The liquidator need not require persons claiming cash surrender values or other investment values in life insurance and annuities to file a claim. All claimants must keep the liquidator informed of any changes of address.

(c) If notice is given in accordance with this section, the distribution of assets of the insurer under this chapter shall be

conclusive with respect to all claimants, whether or not they received notice.

As added by Acts 1979, P.L.255, SEC.1. Amended by P.L.178-2003, SEC.76.

IC 27-9-3-11

Notice of liquidation by insurance producers to policyholders

Sec. 11. (a) Every person who receives notice in the form prescribed in section 10 of this chapter that an insurer whom the person represents as an insurance producer is the subject of a liquidation order must, within fifteen (15) days of that notice, give notice of the liquidation order to each policyholder as provided by subsection (b).

(b) The notice must be sent by first class mail to the last address contained in the insurance producer's records to each policyholder or other person named in any policy issued through that insurance producer by the insurer, if the insurance producer has a record of the address of the policyholder or other person.

(c) A policy shall be treated as though it were issued through an insurance producer if the insurance producer has a property interest in the expiration of the policy, or if the insurance producer has had in the insurance producer's possession a copy of the declarations of the policy at any time during the life of the policy, except where the ownership of the expiration of the policy has been transferred to another.

(d) The written notice must include:

- (1) the name and address of the insurer;
- (2) the name and address of the insurance producer; and
- (3) identification of the policy impaired and the nature of the impairment, including termination of coverage as described in section 8 of this chapter.

(e) Notice by a general agent satisfies the notice requirement for any insurance producers under contract to the general agent. Each insurance producer obligated to give notice under this section shall file a report of compliance with the liquidator.

(f) After a hearing under IC 4-21.5-3, an insurance producer failing to give notice or file a report of compliance as required by subsection (e) may be subject to payment of a penalty of not more than one thousand dollars (\$1,000) and may have the insurance producer's license suspended.

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

As added by Acts 1979, P.L.255, SEC.1. Amended by P.L.7-1987, SEC.157; P.L.178-2003, SEC.77.

IC 27-9-3-12

Actions after liquidation orders

Sec. 12. (a) Upon issuance of an order appointing a liquidator of a domestic insurer or of an alien insurer domiciled in Indiana, an

action at law or equity may not be brought against the insurer or liquidator, whether in Indiana or elsewhere, nor shall any existing actions be maintained or further presented after issuance of an order.

(b) The courts of Indiana shall give full faith and credit to injunctions against the liquidator or the company or the continuation of existing actions against the liquidator or the company, when those injunctions are included in an order to liquidate an insurer issued under similar provisions in other states.

(c) Whenever in the liquidator's judgment, protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside Indiana, the liquidator may intervene in the action. The liquidator may defend any action in which he intervenes under this section at the expense of the estate of the insurer.

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

(e) Where, by any agreement, a period of limitation is fixed for instituting a suit or proceeding upon any claim, or for filing any claim, proof of claim, proof of loss, demand, notice, or the like, or where in any proceeding, judicial or otherwise, a period of limitation is fixed, either in the proceeding or by applicable law, for taking any action, filing any claim or pleading, or doing any act, and where in any such case the period had not expired at the date of the filing of the petition. The liquidator may, for the benefit of the estate, take any such action or do any such act, required of or permitted to the insurer, within a period of one hundred eighty (180) days after the entry of an order for liquidation, or within such further period as is shown to the satisfaction of the Marion County circuit court not to be unfairly prejudicial to the other party.

(f) A statute of limitations or defense of laches shall not run with respect to any action against an insurer between the filing of a petition for liquidation against an insurer and the denial of the petition. Any action against the insurer that might have been commenced when the petition was filed may not be commenced for at least sixty (60) days after the petition is denied.

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

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-13

Listing of assets

Sec. 13. (a) As soon as practicable after the liquidation order, but not later than one hundred twenty (120) days after that order, the liquidator shall prepare in duplicate a list of the insurer's assets. The

list shall be amended or supplemented as the liquidator determines necessary. One (1) copy shall be filed in the office of the clerk of the Marion County circuit court and one (1) copy shall be retained for the liquidator's files. All amendments and supplements shall be similarly filed.

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

(c) A submission to the Marion County circuit court for disbursement of assets in accordance with section 32 of this chapter fulfills the requirements of subsection (a).

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-14

Transfers made or obligations incurred as fraudulent

Sec. 14. (a) Every transfer made, or suffered, and every obligation incurred by an insurer within one (1) year before the filing of a successful petition for rehabilitation or liquidation under IC 27-9 is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors.

(b) A transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under IC 27-9, which is fraudulent under this section, may be avoided by the receiver, except:

- (1) as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value; and
- (2) that any purchaser, lienor, or obligee, who in good faith has given a consideration less than fair for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment.

The court may, on due notice, order any transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

(c) A transfer of property, other than real property, is made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee under section 18 of this chapter.

(d) A transfer of real property is made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(e) A transfer that creates an equitable lien is not perfected if there are available means by which a legal lien could be created.

(f) Any transfer not perfected before the filing of a petition for liquidation shall be treated as if it were made immediately before the filing of the successful petition.

(g) The provisions of subsections (b) through (f) apply whether or not there are or were creditors who might have obtained any liens or persons who might have become bona fide purchasers.

(h) Any transaction of the insurer with a reinsurer is fraudulent and may be avoided by the receiver under section 13 of this chapter if:

- (1) the transaction consists of the termination, adjustment, or settlement of a reinsurance contract in which the reinsurer is released from any part of its duty to pay the originally specified share of losses that had occurred before the time of the transaction, unless the reinsurer gives a present fair equivalent value for the release; and
- (2) any part of the transaction took place within one (1) year before the date of filing of the petition through which the receivership was commenced.

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-15

Transfers after petition; validity

Sec. 15. (a) After a petition for rehabilitation or liquidation has been filed, a transfer of any of the real property of the insurer made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value, or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid for that real property, for which amount the transferee shall have a lien on the property so transferred. The commencement of a proceeding in rehabilitation or liquidation shall be constructive notice upon the recording of a copy of the petition for or order of rehabilitation or liquidation with the recorder of deeds in the county where any real property in question is located. The exercise by a court of the United States or any state with jurisdiction to authorize or effect a judicial sale of real property of the insurer within any county in any state shall not be impaired by the pendency of a proceeding, unless the copy is recorded in the county before the consummation of the judicial sale.

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

- (1) a transfer of any of the property of the insurer, other than real property, made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value, or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid for that real property, for which amount the transferee shall have a lien on the property so transferred;
- (2) a person indebted to the insurer or holding property of the insurer may, if acting in good faith, pay the indebtedness or deliver the property, or any part of the property, to the insurer or upon his order, with the same effect as if the petition were not pending;
- (3) a person having actual knowledge of the pending rehabilitation or liquidation shall be considered not to act in good faith; and

(4) a person asserting the validity of a transfer under this section has the burden of proof.

Except as elsewhere provided in this section, a transfer by or on behalf of the insurer after the date of the petition for liquidation by any person other than the liquidator is not valid against the liquidator.

(c) Nothing in IC 27-9 shall be considered to impair the negotiability of currency or negotiable instruments.

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-16

Preferences

Sec. 16. (a) A preference is a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within one (1) year before the filing of a successful petition for liquidation under IC 27-9, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, then that transfer shall be considered a preference if made or suffered within one (1) year before the filing of the successful petition for rehabilitation, or within two (2) years before the filing of the successful petition for liquidation, whichever time is shorter.

(b) A preference may be avoided by the liquidator if:

- (1) the insurer was insolvent at the time of the transfer;
- (2) the transfer was made within four (4) months before the filing of the petition;
- (3) the creditor receiving it or to be benefited by it or his agent acting with reference to it had, at the time when the transfer was made, reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or
- (4) the creditor receiving it was an officer, or any employee or attorney or other person who was in fact in a position of comparable influence in the insurer to an officer whether or not he held such a position, or any shareholder holding directly or indirectly more than five percent (5%) of any class of any equity security issued by the insurer, or any other person, firm, limited liability company, corporation, association, or aggregation of persons with whom the insurer did not deal at arm's length.

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

As added by Acts 1979, P.L.255, SEC.1. Amended by P.L.8-1993, SEC.433.

IC 27-9-3-17

Transfers; time perfected

Sec. 17. (a) A transfer of property other than real property shall be considered to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee.

(b) A transfer of real property shall be considered to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(c) A transfer that creates an equitable lien shall not be considered to be perfected if there are available means by which a legal lien could be created.

(d) A transfer not perfected before the filing of a petition for liquidation shall be considered to be made immediately before the filing of the successful petition.

(e) This section applies whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-18

Liens

Sec. 18. (a) A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of those proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens that under applicable law are given a special priority over other liens that are prior in time.

(b) A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee, or a purchaser could obtain rights superior to the rights of a transferee within the meaning of section 17 of this chapter, if those consequences would follow only from the lien or purchase itself, or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. A lien could not, however, become superior and a purchase could not create superior rights for the purpose of section 17 of this chapter through any acts after obtaining a lien or after a purchase that requires the agreement or concurrence of any third party or which requires any further judicial action or ruling.

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-19

Transfers on account of new and contemporaneous consideration

Sec. 19. A transfer of property for or on account of a new and contemporaneous consideration that is considered under section 17 of this chapter to be made or suffered after the transfer because of delay in perfecting it does not become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or bona fide purchasers' rights are performed within twenty-one (21) days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan or a transfer that becomes security for a future loan, has the same effect as a transfer for or on account of a new and contemporaneous consideration.

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-20

Liens dissolved by furnishing bond; effect of voidable lien

Sec. 20. If any lien that is voidable under section 16(b) of this chapter has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon any property of an insurer before the filing of a petition under IC 27-9 that results in a liquidation order, the indemnifying transfer or lien shall also be considered voidable.

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-21

Discharge from voidable lien

Sec. 21. The property affected by any lien considered voidable under sections 16 and 20 of this chapter shall be discharged from that lien, and that property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator, except that the court may on due notice order any lien to be preserved for the benefit of the estate and the court may direct that the conveyance be executed as may be proper or adequate to evidence the title of the liquidator.

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-22

Jurisdiction of Marion County circuit court under this chapter

Sec. 22. The Marion County circuit court has summary jurisdiction of any proceeding by the liquidator to hear and determine the rights of any parties under this chapter. Reasonable notice of any hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. Where an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, the court, upon application of any party in interest, shall in the same proceeding ascertain the value of the property or lien, and if the value is less than the amount for which the property is indemnity or than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the

court, to the liquidator, within reasonable times as the court shall fix.
As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-23

Discharge of surety under releasing bond

Sec. 23. The liability of a surety under a releasing bond or other like obligation shall be discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator, or where the property is retained under section 22 of this chapter to the extent of the amount paid to the liquidator.

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-24

Extension of unsecured credit by preferred creditor

Sec. 24. If a creditor has been preferred, and afterward in good faith gives the insurer further credit without security of any kind for property that becomes a part of the insurer's estate, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference that would otherwise be recoverable from him.

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-25

Payment to attorney for services

Sec. 25. If an insurer shall, directly or indirectly:

(1) within four (4) months before the filing of a successful petition for liquidation under IC 27-9; or

(2) at any time in contemplation of a proceeding to liquidate it; pay money or transfer property to an attorney for services, the transaction may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator and shall be held valid only to the extent of a reasonable amount to be determined by the court. The excess may be recovered by the liquidator for the benefit of the estate. However, where the attorney is in a position of influence in the insurer or an affiliate of the insurer payment of any money or the transfer of any property to the attorney for services is governed by section 16(b)(4) of this chapter.

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-26

Personal liability relating to improper preferences

Sec. 26. (a) Every officer, manager, employee, shareholder, member, subscriber, attorney, or any other person acting on behalf of the insurer who knowingly participates in giving any preference when he has reasonable cause to believe the insurer is or is about to become insolvent at the time of the preference is personally liable to the liquidator for the amount of the preference. If the transfer was made within four (4) months before the date of filing a successful petition for liquidation it may be presumed that the person knew of the pending insolvency.

(b) Every person receiving any property from the insurer (or the benefit of any property) as a preference voidable under section 16(a) of this chapter is personally liable for that property and is bound to account to the liquidator.

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

As added by Acts 1979, P.L.255, SEC.1. Amended by P.L.1-1991, SEC.168.

IC 27-9-3-27

Claims by creditors holding voidable preferences

Sec. 27. (a) Claims of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance, voidable under IC 27-9, shall not be allowed unless he surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim shall not be allowed unless the money is paid or the property is delivered to the liquidator within thirty (30) days from the date of entering of the final judgment, except that the Marion County circuit court may allow further time if there is an appeal or other continuation of the proceeding.

(b) A claim allowable under subsection (a) by reason of the avoidance, whether voluntary or involuntary, or a preference, lien, conveyance, transfer, assignment, or encumbrance, may be filed as an excused late filing under section 33 of this chapter if filed within thirty (30) days from the date of the avoidance (or within the further time allowed by the court under subsection (a)).

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-28

Setoff of mutual debts or credits

Sec. 28. (a) Mutual debts or mutual credits between the insurer and another person in connection with any action or proceeding under this article shall be set off and only the balance shall be allowed or paid, except as provided in section 31(a) of this chapter.

(b) A setoff or counterclaim shall not be allowed in favor of any person where:

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

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

(3) the obligation of the person is to pay an assessment levied against the members or subscribers of the insurer, or is to pay a balance upon a subscription to the capital stock of the insurer, or is in any other way in the nature of a capital contribution.

As added by Acts 1979, P.L.255, SEC.1. Amended by P.L.29-1987, SEC.3; P.L.255-1995, SEC.10.

IC 27-9-3-29

Liquidator's report; assessment of members

Sec. 29. (a) As soon as practicable but not more than two (2) years from the date of an order of liquidation under section 7 of this chapter of an insurer issuing assessable policies, the liquidator shall make a report to the Marion County circuit court stating:

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

(b) Upon the basis of the report required by subsection (a), including any supplements and amendments to that report, the Marion County circuit court may levy one (1) or more assessments against all members of the insurer who are subject to assessment.

(c) Subject to any applicable legal limits on assessability, the aggregate assessment must be the amount that:

- (1) the sum of the probable liabilities;
- (2) the expenses of administration; and
- (3) the estimated cost of collection of the assessment;

exceed the value of existing assets, with due regard being given to assessments that cannot be collected economically.

(d) After the levy of assessment under subsections (b) and (c), the liquidator shall issue an order directing each member who has not paid the assessment under the order to show cause why the liquidator should not pursue a judgment for that amount.

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

(f) If a member does not appear and serve duly verified objections upon the liquidator on or before the return day of the order to show cause under subsection (d), the Marion County circuit court shall issue an order adjudging the member liable for the amount of the assessment against him, under subsection (d) together with costs. The liquidator shall have a judgment against the member for that amount.

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

(h) The liquidator may enforce any order or collect any judgment under subsection (f) by any lawful means.

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-30

Repealed

(Repealed by P.L.233-1999, SEC.16.)

IC 27-9-3-30.1

Reinsurance; method of payment upon liquidation

Sec. 30.1. (a) Reinsurance must be payable under a contract reinsured by an assuming insurer on the basis of reported claims allowed in the liquidation proceedings, subject to court approval, without diminution because of the insolvency of the ceding insurer. Payments must be made directly to the ceding insurer or to the ceding insurer's domiciliary liquidator except when:

- (1) the contract or other written agreement specifically provides another payee of the reinsurance in the event of the insolvency of the ceding insurer; or
- (2) before the initiation of the insolvency proceedings, the assuming insurer, with the consent of the direct insured, has assumed the policy obligations of the ceding insurer as direct obligations of the assuming insurer to policy payees and in substitution for the obligations of the ceding insurer to the payees.

(b) During the pendency of a receivership proceeding, an assuming insurer, with the consent of the direct insured and the receiver, subject to court approval, may assume policy obligations of the ceding insurer as direct obligations of the assuming insurer to the policy payees and in substitution for the obligations of the ceding insurer to the payees.

As added by P.L.233-1999, SEC.12.

IC 27-9-3-31

Liability for payment of premiums by insured and person other than insured; penalties

Sec. 31. (a) An insurance producer, a broker, an agency, a premium finance company, an insured, or any other person responsible for the payment of a premium shall be obligated to pay any earned but unpaid premium for any policy that is due the insurer for coverage provided before the declaration of insolvency. However, an insurance producer, a broker, an agency, a premium finance company, an insured, or any other person responsible for the payment of a premium shall not be responsible for any unpaid premium unearned as of the time of the declaration of insolvency.

(b) In addition to the obligation owed under subsection (a), an insurance producer, broker, agency, premium finance company, or any other person, other than the insured, responsible for the payment of a premium to the insurance company or any holding company shall pay any unearned premium collected from the insured before the declaration of insolvency. The commissioner may also recover from that person any part of an unearned premium that represents a commission of that person.

(c) Credits or setoffs or both may not be allowed to an insurance

producer, broker, or premium finance company for any amounts advanced to the insurer by the insurance producer, broker, or premium finance company on behalf of, but in the absence of a payment by, the insured.

(d) Upon satisfactory evidence of a violation of this section, the commissioner may pursue the following courses of action against those parties licensed by the department of insurance:

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

(2) Impose a penalty of not more than one thousand dollars (\$1,000) for each and every act in violation of this article by the party.

These penalties are in addition to and not in lieu of the obligations owed under subsections (a) and (b).

(e) Before the commissioner may take any action as provided in subsection (d), the commissioner shall give written notice to the person accused of violating the law, stating specifically the nature of the alleged violation, and fixing a time (at least ten (10) days after the notice is sent) and place when a hearing on the matter is to be held. After the hearing, if the commissioner finds a violation, or upon failure of the accused to appear at the hearing, the commissioner shall impose whatever penalties allowed under subsection (d) as the commissioner considers advisable.

(f) Subsection (a) does not relieve an insured of any obligation that may exist to reimburse any agency, insurance producer, broker, premium finance company, or other person for amounts advanced to the insurer on behalf of the insured.

As added by Acts 1979, P.L.255, SEC.1. Amended by P.L.29-1987, SEC.4; P.L.255-1995, SEC.11; P.L.178-2003, SEC.78.

IC 27-9-3-32

Proposal to disburse assets

Sec. 32. (a) Within one hundred twenty (120) days of a final determination of insolvency of an insurer by the Marion County circuit court, the liquidator shall make application to that court for approval of a proposal to disburse assets out of marshalled assets, from time to time as those assets become available, to a guaranty association or foreign guaranty association having obligations because of the insolvency. If the liquidator determines that there are insufficient assets to disburse, the application required by this section shall be considered satisfied by the liquidator filing a statement setting forth the reasons for this determination.

(b) The proposal to disburse assets must include:

(1) Reserving amounts for the payment of expenses of administration and the payment of claims of secured creditors, to the extent of the value of the security held, and claims falling within the priorities established in section 40 of this chapter (Classes 1 and 2).

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

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

(4) The securing by the liquidator from each of the associations entitled to disbursements under this section of an agreement to return to the liquidator those assets, together with income earned on assets previously disbursed, as may be required to pay claims of secured creditors and claims falling within the priorities established in section 40 of this chapter in accordance with those priorities. A bond may not be required of any guaranty association or foreign guaranty association.

(5) A full report to be made by each association to the liquidator accounting for all assets so disbursed to the association, all disbursements made therefrom, any interest earned by the association on those assets and any other matter as the court may direct.

(c) The liquidator's proposal must provide:

(1) for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made by disbursements for which those associations could assert a claim against the liquidator; and

(2) that if the assets available for disbursement from time to time do not equal or exceed the amount of the claim payments made or to be made by the association then disbursements shall be in the amount of available assets.

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

(e) Notice of application must be given to the association in and to the commissioners of insurance of each of the states. The notice shall be considered to have been given when deposited in the United States certified mails, first-class postage prepaid, at least thirty (30) days before submission of the application to the Marion County circuit court. Action on the application may be taken by the Marion County circuit court provided that:

(1) the required notice has been given; and

(2) the liquidator's proposal complies with subsections (b)(1) and (b)(2).

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-33

Filing proof of claims

Sec. 33. (a) Proof of all claims must be filed with the liquidator in the form required by section 34 of this chapter on or before the last day for filing specified in the notice required by section 10 of this chapter, except that proof of claims for cash surrender values or other

investment values in life insurance and annuities need not be filed unless the liquidator expressly requires it.

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

- (1) the existence of the claim was not known to the claimant but that after learning of it he filed his claim as promptly as is reasonably possible;
- (2) a transfer to a creditor was avoided under sections 14 through 16 of this chapter, or was voluntarily surrendered under section 27 of this chapter and that the filing satisfies the conditions of section 27 of this chapter; and
- (3) the valuation under section 39 of this chapter, of security held by a secured creditor shows a deficiency, which is filed within thirty (30) days after the valuation.

(c) The liquidator shall permit late filing claims to share in distributions, whether past or future, as if they were not late, if those claims are claims of a guaranty association or foreign guaranty association for reimbursement of covered claims paid or expenses after the last day for filing where the payments were made and expenses incurred as provided by law.

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

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-34

Content of proof of claim

Sec. 34. (a) Proof of a claim shall consist of a statement signed by the claimant that includes all of the following that are applicable:

- (1) The particulars of the claim including the consideration given for it.
- (2) The identity and amount of the security on the claim.
- (3) The payments made on the debt, if any.
- (4) That the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to the claim.
- (5) Any right of priority of payment or other specific right asserted by the claimants.
- (6) A copy of written instrument that is the foundation of the claim.
- (7) The name and address of the claimant and the attorney who represents him, if any.

(b) A claim need not be considered or allowed if it does not contain all the information in subsection (a) that is applicable. The

liquidator may require that a prescribed form be used, and may require that other information and documents be included.

(c) At any time, the liquidator may:

- (1) request the claimant to present information or evidence supplementary to that required by subsection (a);
- (2) take testimony under oath;
- (3) require production of affidavits or depositions; or
- (4) obtain additional information or evidence necessary.

(d) The following do not need to be considered as evidence of liability or the measure of damages:

- (1) A judgment or order against an insured or the insurer entered after the date of filing a successful petition for liquidation.
- (2) A judgment or order against an insured or the insurer entered at any time by default or by collusion.
- (3) A judgment or order against an insured or the insurer entered not more than four (4) months before the filing of the petition.

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

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-35

Claims subject to contingencies

Sec. 35. (a) The claim of a third party that is contingent only on his first obtaining a judgment against the insured must be considered and allowed as if there were no contingency.

(b) If a claim is filed in accordance with section 33 of this chapter, it may be allowed even if contingent. A contingent claim may be allowed and may participate in all distributions declared after it is filed to the extent that it does not prejudice the orderly administration of the liquidation.

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

(d) Claims made under employment contracts by directors or principal officers (or persons performing similar functions or having similar powers) are limited to payment for services provided before the issuance of any order of rehabilitation or liquidation under sections 2 or 7 of this chapter.

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-36

Claims by insured or by third party

Sec. 36. (a) Whenever a third party asserts a cause of action against an insured of an insurer in liquidation, the third party may file a claim with the liquidator.

(b) Whether or not the third party files a claim, the insured may file a claim on his own behalf in the liquidation. If the insured fails

to file a claim by the date for filing claims specified in the order of liquidation, or within sixty (60) days after mailing of the notice required by section 10 of this chapter, whichever is later, the insured is an unexcused late filer.

(c) The liquidator shall make his recommendations to the Marion County circuit court under section 40 of this chapter, for the allowance of an insured's claim under subsection (b), after consideration of:

- (1) the probable outcome of any pending action against the insured on which the claim is based;
- (2) the probable damages recoverable in the action; and
- (3) the probable costs and expenses of defense.

(d) After allowance by the court, the liquidator shall withhold any dividends payable on the claim, pending the outcome of litigation and negotiation with the insured. Whenever it seems appropriate, the liquidator shall reconsider the claim on the basis of additional information and amend his recommendations to the Marion County circuit court. The insured shall be afforded the same notice and opportunity to be heard on all changes in the recommendation as in its initial determination. The Marion County circuit court may amend its allowance as it thinks appropriate.

(e) As claims against the insured are settled or barred, the insured shall be paid from the amount withheld the same percentage dividend as was paid on other claims of like property, based on the lesser of:

- (1) the amount actually recovered from the insured by action or paid by agreement, plus the reasonable costs and expenses of defense; or
- (2) the amount allowed on the claims by the court.

(f) After all claims are settled or barred, any sum remaining from the amount withheld shall revert to the undistributed assets of the insurer. Delay in final payment under this subsection is not a ground for unreasonable delay of final distribution and discharge of the liquidator.

(g) If several claims founded upon one (1) policy are filed, whether by third parties or as claims by the insured under this section, and the aggregate allowed amount of the claims to which the same limit of liability in the policy is applicable exceeds that limit, each claim as allowed shall be reduced in the same proportion so that the total equals the policy limit. Claims by the insured shall be evaluated as required in subsections (c) through (f). If any insured's claim is subsequently reduced under subsections (c) through (f) the amount freed shall be apportioned ratably among the claims that have been reduced under this subsection.

(h) A claim may not be presented under this section if it is or may be covered by any guaranty association or foreign guaranty association.

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-37

Denial of claim; objections; hearing

Sec. 37. (a) When a claim is denied in whole or in part by the liquidator, written notice of the determination must be given to the claimant or his attorney by first-class mail at the address shown in the proof of claim. Within sixty (60) days from the mailing of the notice, the claimant may file his objections with the liquidator. If no filing is made, the claimant may not further object to the determination.

(b) Whenever objections are filed with the liquidator and the liquidator does not alter his denial of the claim as a result of the objections, the liquidator shall ask the Marion County circuit court for a hearing as soon as practicable and give notice of the hearing by first-class mail to the claimant or his attorney and to any other persons directly affected, not less than ten (10) nor more than thirty (30) days before the date of the hearing. The matter may be heard by the court or by a court appointed referee who shall submit findings of fact along with his recommendation.

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-38

Claims in name of secured creditors

Sec. 38. Whenever a creditor whose claim against an insurer is secured, in whole or in part, by the undertaking of another person, fails to prove and file that claim, the other person may do so in the creditor's name, and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name, to the extent that he discharges the undertaking. However, in the absence of an agreement with the creditor to the contrary, the other person is not entitled to any distribution until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the insurer's estate to the creditor equals the amount of the entire claim of the creditor. Any excess received by the creditor shall be held by him in trust for the other person. As used in this section, the term "other person" is not intended to apply to a guaranty association or foreign guaranty association.

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-39

Valuation of security held by secured creditor

Sec. 39. (a) The value of any security held by a secured creditor shall be determined in one (1) of the following ways, as the Marion County circuit court may direct:

- (1) By converting the security into money according to the terms of the agreement under which the security was delivered to the creditors.
- (2) By agreement, arbitration, compromise, or litigation between the creditor and the liquidator.

(b) The valuation determination shall be under the supervision and control of the Marion County circuit court with due regard for the recommendation of the liquidator. The amount determined shall be

credited upon the secured claim, and any deficiency shall be treated as an unsecured claim. If the claimant surrenders his security to the liquidator, the entire claim shall be allowed as if unsecured.

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-40

Priority of distribution of claims

Sec. 40. (a) The priority of distribution of claims from the insurer's estate must be in accordance with the order in which each class of claims is set forth in this section. Every claim in each class must be paid in full (or adequate funds retained for payment) before the members of the next class receive any payment. Subclasses may not be established within any class. The order of distribution of claims shall be:

(1) Class 1. The costs and expenses of administration, including:

(A) The actual and necessary costs of preserving or recovering the assets of the insurer.

(B) Compensation for all services rendered in the liquidation.

(C) Any necessary filing fees.

(D) The fees and mileage payable to witnesses.

(E) Reasonable attorney's fees.

(F) The reasonable expenses of a guaranty association or foreign guaranty association in handling claims.

(2) Class 2. All claims under policies for losses incurred, including third party claims, all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies, and all claims of a guaranty association or foreign guaranty association. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. Payment by an employer to his employee may not be treated as gratuity.

(3) Class 3. Claims of the federal government.

(4) Class 4. Debts owed to employees for services performed, to the extent that they do not exceed one thousand dollars (\$1,000) and represent payment for services performed within one (1) year before the filing of the petition for liquidation. Officers and directors are not entitled to the benefit of this priority. This priority is in place of any other similar priority that may be authorized by law as to wages or compensation of employees.

(5) Class 5. Claims under nonassessable policies for unearned premium or other premium refunds and claims of general

creditors.

(6) Class 6. Claims of any state or local government. Claims, including those of any governmental body for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of these claims shall be postponed to the class of claims under subdivision (9).

(7) Class 7. Claims filed late or any other claims other than claims under subdivisions (8) and (9).

(8) Class 8. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies shall be limited in accordance with law.

(9) Class 9. The claims of shareholders or other owners.

(b) This section is severable in the manner provided in IC 1-1-1-8(b). If:

(1) any provision of this section; or

(2) the application of any provision of this section to any person or circumstance;

is held invalid, the invalidity does not affect the other provisions or applications of this section.

As added by Acts 1979, P.L.255, SEC.1. Amended by P.L.185-1996, SEC.15.

IC 27-9-3-40.5

Segregated investment accounts

Sec. 40.5. (a) A claim under a contract that is funded by an account established under IC 27-1-5-1 as a segregated investment account must be satisfied from the assets maintained in the account. The segregated investment account is not chargeable with a liability arising out of other business that the insurer conducts that has no specific relation to or dependence on the account.

(b) Surplus remaining in a segregated investment account by virtue of a guarantee by the insurer as described in IC 27-1-5-1 must be included in the assets of the insurer's estate.

(c) A deficit in a segregated investment account by virtue of a guarantee by an insurer as described in IC 27-1-5-1 must be treated as a Class 2 claim under section 40 of this chapter.

As added by P.L.130-2002, SEC.4.

IC 27-9-3-41

Settlement of claims; report of unresolved claims; action of court on report

Sec. 41. (a) The liquidator shall review all claims duly filed in the liquidation and shall make further investigation as he considers necessary. He may compound, compromise, or in any other manner negotiate the amount for which claims will be recommended to the Marion County circuit court except where the liquidator is required by law to accept claims as settled by any person or organization,

including any guaranty association or foreign guaranty association. Unresolved disputes shall be determined under section 37 of this chapter. As soon as practicable, the liquidator shall present to the Marion County circuit court a report of the claims against the insurer with his recommendations. The report must include the name and address of each claimant and the amount of the claim finally recommended, if any. If the insurer has issued annuities or life insurance policies, the liquidator shall report the persons to whom, according to the records of the insurer, amounts are owed as cash surrender values or other investment value and the amounts owed.

(b) The Marion County circuit court may approve, disapprove, or modify the report on claims by the liquidator. Reports that are not modified by the court within a period of sixty (60) days following submission by the liquidator shall be treated by the liquidator as allowed claims, subject to later modification or to rulings made by the court under to section 37 of this chapter. A claim under a policy of insurance may not be allowed for an amount in excess of the applicable policy limits.

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-42

Payment of distributions

Sec. 42. Under the direction of the Marion County circuit court, the liquidator shall pay distributions in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the Marion County circuit court.

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-43

Deposit of unclaimed funds

Sec. 43. (a) All unclaimed funds subject to distribution remaining in the liquidator's hands when the liquidator is ready to apply to the Marion County circuit court for discharge, including the amount distributable to any creditor, shareholder, member, or other person who is unknown or cannot be found, shall be deposited with the treasurer of state, and shall be paid without interest except in accordance with section 40 of this chapter to the person entitled to it or his legal representative upon proof satisfactory to the treasurer of state of his right to it. Any amount on deposit that is not claimed within six (6) years from the discharge of the liquidator shall be treated as if abandoned and shall be escheated without formal escheat proceedings and be deposited in the state general fund.

(b) All funds withheld under section 35 of this chapter and not distributed shall upon discharge of the liquidator be deposited with the treasurer of state and paid by him as required by section 40 of this chapter. Any sums remaining, which under section 40 of this

chapter would revert to the undistributed assets of the insurer, shall be transferred to the treasurer of state and become the property of the state as provided by subsection (a), unless the commissioner in his discretion petitions the Marion County circuit court to reopen the liquidation under section 45 of this chapter.

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-44

Discharge of liquidator

Sec. 44. (a) When all assets justifying the expense of collection and distribution have been collected and distributed under IC 27-9, the liquidator shall apply to the Marion County circuit court for discharge. The court may grant the discharge and make any other orders, including an order to transfer any remaining funds that are uneconomic to distribute, as may be considered appropriate.

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

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-45

Reopening of proceedings

Sec. 45. After the liquidation proceeding has been terminated and the liquidator discharged, the commissioner or other interested party may at any time petition the Marion County circuit court to reopen the proceedings for good cause, including the discovery of additional assets. If the court is satisfied that there is justification for reopening, the court shall order it.

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-46

Destruction of records

Sec. 46. Whenever it appears to the commissioner that the records of any insurer in process of liquidation or completely liquidated are no longer useful, he may recommend to the Marion County circuit court that certain records be destroyed. The court shall direct what records should be retained for future reference and what should be destroyed.

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-3-47

Audit of books of commissioner relating to receivership

Sec. 47. The Marion County circuit court may, as the court considers desirable, cause audits to be made of the books of the commissioner relating to any receivership established under IC 27-9, and a report of each audit must be filed with the commissioner and with the court. The books, records, and other documents of the receivership must be made available to the auditor at any time

without notice. The expense of each audit shall be considered a cost of the administration of the receivership.
As added by Acts 1979, P.L.255, SEC.1.