

*Subchapter 8. Reorganization; Receivership; Injunctions*

**§ 3591. Construction and definitions**

To promote uniformity in the rehabilitation, reorganization or liquidation of insurers doing business in more than one state, sections 3591-3598 of this title, shall be liberally construed to the end that the assets of such insurers shall be equally and uniformly conserved in all states and that claimants against such insurers shall receive equal and uniform treatment irrespective of residence or place of the acts or contract upon which their claims are based. For purposes of the above named sections, a "reciprocal state" is hereby defined to mean a state where (a) it is provided by law that the insurance supervisory or other administrative agency of the state shall conduct or wind up the affairs of delinquent insurers under judicial supervision and shall be vested with title to all of the assets of any domestic insurer against which a delinquency proceeding has been commenced, and (b) in substance and effect the provisions of such sections are in force. In addition to and notwithstanding any other provisions of law, such sections shall apply to the administration by the commissioner of the affairs of delinquent domestic insurers with respect to matters affecting or

related to reciprocal states and shall also apply to matters affecting or related to this state in the administration by the commissioner of the affairs of delinquent insurers domiciled in reciprocal states and authorized to transact business in this state.—1967, No. 344 (Adj. Sess.), § 1 (ch. 1, subch. 10, § 1).

#### § 3592. Proof of claims

In a proceeding for the rehabilitation, reorganization or liquidation of a domestic insurer begun in this state, claimants who reside, or whose claims are based upon acts or contracts of such insurer, in a reciprocal state shall file their claims in this state pursuant to the laws of this state but shall have the privilege of proving their claims in such reciprocal state. The court in charge of the proceeding in this state shall, if necessary, appoint one or more referees before whom such claims may be proved in such reciprocal state.—1967, No. 344 (Adj. Sess.), § 1 (ch. 1, subch. 10, § 2).

#### § 3593. Preferences

In such proceeding against a domestic insurer, no law of such reciprocal state regulating and providing for preferences against the general assets of such insurer shall be recognized with respect to the distribution of assets of such insurer regardless of where they may be located. However, claimants against such insurer in such reciprocal state shall be entitled to receive all preferences allowed by the laws of this state to residents of this state or to claimants against such insurer in this state.—1967, No. 344 (Adj. Sess.), § 1 (ch. 1, subch. 10, § 3).

#### § 3593a. Claims of insolvency

When a party to any action in the courts of this state claims that an insurer is insolvent, he or she shall serve the commissioner with a copy of all pleadings in the action as soon as practicable.—Added 1979, No. 18, § 1.

#### § 3594. Special deposits and bonds

The purposes of special deposits of delinquent domestic insurers made in reciprocal states or of bonds given in lieu of deposits in such states shall be recognized where legal. The commissioner shall apply to courts of competent jurisdiction in reciprocal states

for permission to administer such deposits or the proceeds of such bonds in accordance with such purposes and shall give such security for faithful performance as shall be required by such courts.— 1967, No. 344 (Adj. Sess.), § 1 (ch. 1, subch. 10, § 4).

### § 3595. Preferences in liquidation

(a) In the liquidation of the general assets of delinquent domestic insurers, unsecured creditors shall be preferred to secured creditors to the extent necessary to equalize the advantage gained by virtue of such security. The following shall be treated as secured claims for the purpose of this section:

(1) Claims secured by adequate process of law or by lien;

(2) Claims secured individually by deposit of money, securities or other property; by money, securities or other property held in escrow or in trust; or by bond;

(3) Claims secured generally by deposit or bond to secure the payment of claims of a particular class. This provision, however, shall not be construed to include claims which are secured by deposit or bond for the benefit of all claimants of the company within the United States;

(4) Claims which have been filed with a receiver or liquidator not ancillary to the proceeding in this state.

Any or all of the above shall be treated as unsecured, provided all rights to the specific security have been surrendered or provided that the assets in the possession of a non-ancillary receiver or liquidator have been transferred to the commissioner in this state.

(b) Among unsecured creditors, the priorities of distribution shall be:

(1) first priority: expenses of administration;

(2) second priority: compensation actually owing to employees other than officers of an insurer for services rendered within three months prior to the commencement of a proceeding against the insurer under this chapter, but not exceeding \$1,000.00 for each employee. In the discretion of the receiver, employees may be paid as soon as practicable after the proceeding has been commenced; except that at all times the receiver shall reserve funds sufficient, in his opinion, to cover the expenses of administration. This priority shall be in lieu of any other similar priority which may be authorized by law as to the wages or compensation of those employees;

(3) third priority: claims for taxes and debts due to federal or any state or local government which are secured by liens perfected prior to the commencement of delinquency proceedings;

(4) fourth priority: claims by policyholders, beneficiaries and insureds arising from and within the coverage of insurance policies and insurance contracts issued by the company, liability claims against insurers which are within the coverage of insurance policies and insurance contracts issued by the company, and claims presented by the Vermont Property and Casualty Insurance Guaranty Association or any similar organization in another state which represents covered claims as defined in subdivision (4) of section 3612 of this title; and

(5) fifth priority: all other claims.—1967, No. 344 (Adj. Sess.), § 1 (ch. 1, subch. 10, § 5); amended 1979, No. 18, § 2.

#### HISTORY

**Revision note.** In subdiv. (b)(4), substituted "subdivision (4)" for "division 4" preceding "of section 3612" to conform the reference to V.S.A. style.

**Amendments—1979.** Designated existing section as subsec. (a) and added subsec. (b).

#### § 3596. Title to assets of foreign insurer

Whenever a proceeding for rehabilitation, reorganization or liquidation shall be commenced in a reciprocal state against an insurer domiciled in such state and doing business in this state, title to all of the assets of such insurer, except special deposits as hereinafter provided, then located in this state shall vest in the insurance supervisory or other administrative agency of such reciprocal state. Thereafter no action or proceeding against such insurer or such assets, except such special deposits, shall be commenced or continued in the courts of this state unless initiated, or consented to, by such insurance supervisory or other administrative agency of such reciprocal state.—1967, No. 344 (Adj. Sess.), § 1 (ch. 1, subch. 10, § 6).

#### § 3597. Transfer of special deposits to agency of reciprocal state

Except where it is expressly contrary to the terms of a special deposit or of a bond made in lieu of a deposit in this state of a delinquent insurer domiciled in a reciprocal state, on proper appli-

cation depositaries shall be directed by a court of competent jurisdiction of this state to transfer the deposit or the proceeds of any bond given in lieu of deposit and all rights thereunder to the insurance supervisory or other administrative agency of the reciprocal state; provided that such insurance supervisory or other administrative agency gives proper security for the faithful administration of such funds in accordance with the terms of the trust.—1967, No. 344 (Adj. Sess.), § 1 (ch. 1, subch. 10, § 7).

#### § 3598. Administration of assets

The general assets located in this state of a delinquent insurer domiciled in a reciprocal state shall be administered by the insurance supervisory or other administrative agency of such reciprocal state as if such assets were located in such reciprocal state.—1967, No. 344 (Adj. Sess.), § 1 (ch. 1, subch. 10, § 8).

#### § 3599. Application for injunction

If the commissioner ascertains that a foreign or domestic insurer doing business in this state is insolvent or has violated the law, or if it appears to him that it is unsafe or inexpedient for such insurer to continue to transact business, or if the insurer or an officer thereof refuses to submit its books, papers and affairs for inspection, or if such officers refuse to be examined on oath by him as to the affairs of the insurer, he shall apply to the superior court for an injunction against such insurer and its officers.—1967, No. 344 (Adj. Sess.), § 1 (ch. 1, subch. 10, § 9).

#### HISTORY

**Revision note.** Reference to "court of chancery" changed to "superior court" pursuant to 1971, No. 185 (Adj. Sess.), § 236(d) and 1973, No. 193 (Adj. Sess.), § 3. See notes under §§ 71 and 219 of Title 4.

#### § 3600. Issuance of injunction; receiver

Upon such application, the court may forthwith issue an injunction, and thereupon similar proceedings may be had as provided in case the commissioner applies for an injunction against a banking association, or the court, before issuing an injunction, may hear the insurer, and, in its discretion, allow it to continue business in conformity with law, subject to such orders, conditions and restrictions as the evidence in the case, the situation of the parties and the interests involved require. The commissioner shall be appointed

receiver to wind up the affairs of any delinquent domestic insurer doing business in more than one state and shall be vested with title to all of the assets of any such insurer against which delinquency proceedings have been commenced.—1967, No. 344 (Adj. Sess.), § 1 (ch. 1, subch. 10, § 10).

#### § 3601. Distribution of assets by receiver

If a receiver is appointed upon such proceedings he or she shall distribute the assets of the insurer subject to approval by the court.—1967, No. 344 (Adj. Sess.), § 1 (ch. 1, subch. 10, § 11); amended 1979, No. 18, § 3.

#### HISTORY

**Amendments—1979.** Inserted “or she” preceding “shall distribute” and substituted “subject to approval by the court” for “according to the direction of the chancellor” at the end of the sentence.

#### § 3602. Report of receiver

The receiver of an insolvent insurance company, annually, on or before July 10, and at such other time as may be required by the commissioner, so long as the receivership is continued, shall make and transmit to the commissioner a full statement of the affairs of such insolvent institution, showing the nature and amount of the assets and liabilities, also a true account of the expenses incurred by such receivership, and not previously reported, giving the items thereof. Such report shall be printed as a part of the annual report of the commissioner.—1967, No. 344 (Adj. Sess.), § 1 (ch. 1, subch. 10, § 12).

#### § 3603. Plan of distribution

(a) Within 120 days of a final determination of insolvency of an insurance company by a court of competent jurisdiction, and before final distribution of assets is ordered the receiver shall make application to the court for approval of a proposal to disburse the company's marshalled assets, and its other assets from time to time as they become available, to the Vermont Property and Casualty Insurance Guaranty Association, to the Vermont Life and Health Guaranty Association and to any entity performing a similar function in another state, hereafter referred to collectively as the associations.

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

(1) reserving amounts for payment of expenses and claims which are third or higher priority;

(2) disbursement to all associations of the assets marshalled to date and subsequent disbursement as assets become available, provided that disbursements shall be allocated to each association based on claims and expenses paid or to be paid by the association;

(3) the receiver to obtain an agreement, from each of the associations entitled to disbursement pursuant to this section, to return to the receiver all assets previously disbursed as are required to pay claims of secured creditors and fourth and higher priority claims provided that bonds shall not be required of any association; and

(4) notice of the receiver's application to the court to be given to the associations in and to the commissioners of insurance of each of the states. Notice shall be given if deposited in the United States mails, first-class postage prepaid, at least thirty days prior to submission of the application to the court.

(c) The receiver shall distribute assets in accordance with the plan, as approved by the court.—Added 1979, No. 18, § 4.

#### HISTORY

**Cross references.** Vermont Life and Health Guaranty Association generally, see § 4151 et seq. of this title.

Vermont Property and Casualty Insurance Guaranty Association generally, see § 3611 et seq. of this title.

[Section 3604 repealed by 1991, No. 45, § 3; see note set out below.]

§ 3604. Offset

(a) In all cases of mutual debts or mutual credits between the insurer and another person in connection with any action or proceeding under this chapter, such credits and debits shall be set off and the balance only shall be allowed or paid, except as provided in subsection (b) of this section. Any remaining debit of the insolvent insurer after offset under this section shall be treated as provided by section 3595 of this title.

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

(1) the obligation of the insurer to such person would not at the date of the entry of any liquidation order or otherwise entitle him to share as a claimant in the assets of the insurer;

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

(3) the obligation of such person is to pay an assessment levied against the members of a mutual insurer, or against the subscribers of a reciprocal insurer, or is to pay a balance upon the subscription to the capital stock of a stock insurer; or

(4) the obligation of the person is to pay premiums whether earned or unearned, to the insurer, unless provided for otherwise in a final order for liquidation issued by the commissioner or approved by a court of competent jurisdiction.—Added 1985, No. 145 (Adj. Sess.), § 6.

HISTORY

**Revision note.** In subsec. (a), substituted “subsection (b) of this section” for “subsection (b)” at the end of the first sentence and “section 3595 of this title” for “section 3595” at the end of the second sentence to conform references to V.S.A. style.

**Prospective repeal of section.** 1991, No. 45, § 3, eff. May 29, 1991, provided for the repeal of this section except that the provisions of this section shall remain in effect as to contracts for which the provisions of section 7069(b)(1) and (c), as added by section 1 of the act, have not taken effect by reason of section 4 of the act, which is set out as a note under 7069 of this title, and further excepting that the provisions of this section shall remain in effect as to contracts relating to obligations between a person and an insurer that arise from business which is both ceded to and assumed from the insurer.