§ 7403. Order of rehabilitation; advances from property/casualty insurance security fund; termination. (a) An order to rehabilitate a domestic insurer shall direct the superintendent and his successors in office, as rehabilitator, forthwith to take possession of the property of such insurer and to conduct the business thereof, and to take such steps toward the removal of the causes and conditions which have made such proceeding necessary as the court shall direct.

* (b) (1) If: (i) provision is made therefor in an order to rehabilitate a domestic insurer, (ii) more than fifty percent of the insurer's net direct premiums in the preceding three calendar years were derived from business in this state which is protected by the property/casualty insurance security fund, and (iii) such insurer has consented to rehabilitation, the commissioner of taxation and finance shall advance monies of such fund, in such amounts as specified in the court's order, to the rehabilitator to enable the insurer to comply with any surplus requirement or other requirement of this chapter.

(2) Before issuing such order, the court shall determine that the insurer has the potential and capability, pursuant to a plan submitted by the rehabilitator, of complying with all surplus and other requirements of this chapter and repaying such advance to the fund within two years after termination of the rehabilitation proceeding, at a rate of interest approved by the superintendent to be determined annually which shall not be less than the average rate of return of the fund as determined by the superintendent for the preceding calendar year.

(3) The plan shall include: (i) an explanation of the factors leading to the insurer's condition requiring rehabilitation and the procedures proposed to improve its condition, and (ii) a provision for posting collateral with the rehabilitator as security for the advance, to the extent that the insurer's assets permit.

(4) The court shall not order any advance to the rehabilitator without his specific request or if the insurer's required capital or surplus is impaired in an amount exceeding the greater of thirty million dollars or fifteen percent of the insurer's net direct premium writings in the previous calendar year. Total advances to an insurer shall not exceed the greater of forty million dollars or twenty percent of such net direct premium writings. No advance shall be made on or after July

first, two thousand which would lower the amount of assets in the fund below one hundred ninety-five million dollars.

(5) Advances shall, in all respects except as to rate of interest, be subject to the provisions of section one thousand three hundred seven of this chapter, provided that in the event that an insurer which has received an advance pursuant to this subsection is subsequently the subject of an order of liquidation, the claim of the fund for the advance and any accrued interest shall be paid to the fund in accordance with the provisions of section seven thousand four hundred thirty-four of this article.

(6) This subsection shall expire July first, two thousand, provided that the insurer's obligation to repay to the fund moneys advanced to it under this subsection, and the fund's claim for the advance, and any accrued interest, as a priority over all non-secured creditors, shall survive such expiration date.

* NB Expired July 1, 2000

(c) If at any time the superintendent deems further efforts to rehabilitate such insurer would be futile, he may apply to the court under this article for an order of liquidation.

(d) The rehabilitator or any interested person upon due notice to the superintendent, at any time, may apply for an order terminating any rehabilitation proceeding and permitting such insurer to resume possession of its property and the conduct of its business, but no such order shall be granted except when, after a full hearing, the court shall determine that the purposes of the proceeding have been fully accomplished.