

1 AN ACT  
2 relating to the receivership of insurers in this state; providing  
3 penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Title 1, Insurance Code, is amended by adding  
6 Chapter 21A to read as follows:

7 CHAPTER 21A. INSURER RECEIVERSHIP ACT

8 SUBCHAPTER A. GENERAL PROVISIONS

9 Sec. 21A.001. CONSTRUCTION AND PURPOSE. (a) This chapter  
10 may be cited as the Insurer Receivership Act.

11 (b) This chapter may not be interpreted to limit the powers  
12 granted the commissioner under other provisions of law.

13 (c) This chapter shall be liberally construed to support the  
14 purpose stated in Subsection (e).

15 (d) All powers and authority of a receiver under this  
16 chapter are cumulative and are in addition to all powers and  
17 authority that are available to a receiver under law other than this  
18 chapter.

19 (e) The purpose of this chapter is to protect the interests  
20 of insureds, claimants, creditors, and the public generally,  
21 through:

22 (1) early detection of any potentially hazardous  
23 condition in an insurer and prompt application of appropriate  
24 corrective measures;

1           (2) improved methods for conserving and  
2 rehabilitating insurers;

3           (3) enhanced efficiency and economy of liquidation,  
4 through clarification of the law, to minimize legal uncertainty and  
5 litigation;

6           (4) apportionment of any unavoidable loss in  
7 accordance with the statutory priorities set out in this chapter;

8           (5) lessening the problems of interstate receivership  
9 by:

10           (A) facilitating cooperation between states in  
11 delinquency proceedings; and

12           (B) extending the scope of personal jurisdiction  
13 over debtors of the insurer located outside this state;

14           (6) regulation of the business of insurance by the  
15 impact of the law relating to delinquency procedures and related  
16 substantive rules; and

17           (7) providing for a comprehensive scheme for the  
18 receivership of insurers and those subject to this chapter as part  
19 of the regulation of the business of insurance in this state because  
20 proceedings in cases of insurer insolvency and delinquency are  
21 deemed an integral aspect of the business of insurance and are of  
22 vital public interest and concern.

23           Sec. 21A.002. CONFLICTS OF LAW. This chapter and the state  
24 law governing insurance guaranty associations constitute this  
25 state's insurer receivership laws and shall be construed together  
26 in a manner that is consistent. In the event of a conflict between  
27 the insurer receivership laws and the provisions of any other law,

1 the insurer receivership laws prevail.

2 Sec. 21A.003. COVERED PERSONS. The provisions of this  
3 chapter apply to all:

4 (1) insurers who are doing or have done an insurance  
5 business in this state and against whom claims arising from that  
6 business may exist now or in the future and to all persons subject  
7 to examination by the commissioner;

8 (2) insurers who purport to do an insurance business  
9 in this state;

10 (3) insurers who have insureds resident in this state;

11 (4) other persons organized or doing insurance  
12 business, or in the process of organizing with the intent to do  
13 insurance business in this state;

14 (5) nonprofit health corporations and all fraternal  
15 benefit societies subject to Chapters 844 and 885, respectively;

16 (6) title insurance companies subject to Title 11;

17 (7) health maintenance organizations subject to  
18 Chapter 843; and

19 (8) surety and trust companies subject to Chapter 7,  
20 general casualty companies subject to Chapter 861, statewide mutual  
21 assessment companies subject to Chapter 881, mutual insurance  
22 companies subject to Chapter 882 or 883, local mutual aid  
23 associations subject to Chapter 886, burial associations subject to  
24 Chapter 888, farm mutual insurance companies subject to Chapter  
25 911, county mutual insurance companies subject to Chapter 912,  
26 Lloyd's plans subject to Chapter 941, reciprocal or interinsurance  
27 exchanges subject to Chapter 942, and fidelity, guaranty, and

1 surety companies.

2 Sec. 21A.004. DEFINITIONS. (a) For the purposes of this  
3 chapter:

4 (1) "Affiliate," "control," and "subsidiary" have the  
5 meanings assigned by Chapter 823.

6 (2) "Alien insurer" means an insurer incorporated or  
7 organized under the laws of a jurisdiction that is not a state.

8 (3) "Creditor" or "claimant" means a person having any  
9 claim against an insurer, whether the claim is matured or not,  
10 liquidated or unliquidated, secured or unsecured, absolute, fixed,  
11 or contingent.

12 (4) "Delinquency proceeding" means any proceeding  
13 instituted against an insurer for the purpose of liquidating,  
14 rehabilitating, or conserving the insurer, and any proceeding under  
15 Section 21A.051.

16 (5) "Doing business," including "doing insurance  
17 business" and the "business of insurance," includes any of the  
18 following acts, whether effected by mail, electronic means, or  
19 otherwise:

20 (A) the issuance or delivery of contracts of  
21 insurance, either to persons resident or covering a risk located in  
22 this state;

23 (B) the solicitation of applications for  
24 contracts described by Paragraph (A) or other negotiations  
25 preliminary to the execution of the contracts;

26 (C) the collection of premiums, membership fees,  
27 assessments, or other consideration for contracts described by

1 Paragraph (A);

2 (D) the transaction of matters subsequent to the  
3 execution of contracts described by Paragraph (A) and arising out  
4 of those contracts; or

5 (E) operating as an insurer under a certificate  
6 of authority issued by the department.

7 (6) "Domiciliary state" means the state in which an  
8 insurer is incorporated or organized or, in the case of an alien  
9 insurer, its state of entry.

10 (7) "Foreign insurer" means an insurer domiciled in  
11 another state.

12 (8) "Formal delinquency proceeding" means any  
13 rehabilitation or liquidation proceeding.

14 (9) "General assets" includes:

15 (A) all property of the estate that is not:

16 (i) subject to a secured claim or a valid  
17 and existing express trust for the security or benefit of specified  
18 persons or classes of persons; or

19 (ii) required by the insurance laws of this  
20 state or any other state to be held for the benefit of specified  
21 persons or classes of persons; and

22 (B) all property of the estate and the proceeds  
23 of that property in excess of the amount necessary to discharge any  
24 secured claims described by Paragraph (A).

25 (10) "Good faith" means honesty in fact and intention,  
26 and for the purposes of Subchapter F also requires the absence of:

27 (A) information that would lead a reasonable

1 person in the same position to know that the insurer is financially  
2 impaired or insolvent; and

3 (B) knowledge regarding the imminence or  
4 pendency of any delinquency proceeding against the insurer.

5 (11) "Guaranty association" means any mechanism  
6 mandated by Article 21.28-C or 21.28-D, Chapter 2602, or other laws  
7 of this state or a similar mechanism in another state that is  
8 created for the payment of claims or continuation of policy  
9 obligations of financially impaired or insolvent insurers.

10 (12) "Impaired" means that an insurer does not have  
11 admitted assets at least equal to all its liabilities together with  
12 the minimum surplus required to be maintained under this code.

13 (13) "Insolvency" or "insolvent" means an insurer:

14 (A) is unable to pay its obligations when they  
15 are due;

16 (B) does not have admitted assets at least equal  
17 to all its liabilities; or

18 (C) has a total adjusted capital that is less  
19 than that required under:

20 (i) Chapter 822, 841, or 843, as  
21 applicable; or

22 (ii) applicable rules or guidelines adopted  
23 by the commissioner under Section 822.210, 841.205, or 843.404.

24 (14) "Insurer" means any person that has done,  
25 purports to do, is doing, or is authorized to do the business of  
26 insurance in this state, and is or has been subject to the authority  
27 of or to liquidation, rehabilitation, reorganization, supervision,

1 or conservation by any insurance commissioner. For purposes of  
2 this chapter, any other persons included under Section 21A.003 are  
3 insurers.

4 (15) "Netting agreement" means a contract or  
5 agreement, including terms and conditions incorporated by  
6 reference in a contract or agreement, and a master agreement (which  
7 master agreement, together with all schedules, confirmations,  
8 definitions, and addenda to the agreement and transactions under  
9 the agreement, schedules, confirmations, definitions, or addenda,  
10 are to be treated as one netting agreement) that documents one or  
11 more transactions between the parties to the contract or agreement  
12 for or involving one or more qualified financial contracts and  
13 that, among the parties to the netting agreement, provides for the  
14 netting or liquidation of qualified financial contracts, present or  
15 future payment obligations, or payment entitlements under the  
16 contract or agreement, including liquidation or close-out values  
17 relating to the obligations or entitlements.

18 (16) "New value" means money, money's worth in goods,  
19 services, or new credit, or release by a transferee of property  
20 previously transferred to the transferee in a transaction that is  
21 neither void nor voidable by the insurer or the receiver under any  
22 applicable law, including proceeds of the property. The term does  
23 not include an obligation substituted for an existing obligation.

24 (17) "Party in interest" means the commissioner, a 10  
25 percent or greater equity security holder in the insolvent insurer,  
26 any affected guaranty association, any nondomiciliary commissioner  
27 for a jurisdiction in which the insurer has outstanding claims

1 liabilities, and any of the following parties that have filed a  
2 request for inclusion on the service list under Section 21A.007:

3 (A) an insurer that ceded to or assumed business  
4 from the insolvent insurer; and

5 (B) an equity shareholder, policyholder,  
6 third-party claimant, creditor, and any other person, including any  
7 indenture trustee, with a financial or regulatory interest in the  
8 receivership proceeding.

9 (18) "Person" means individual, aggregation of  
10 individuals, partnership, corporation, or other entity.

11 (19) "Policy" means a written contract of insurance,  
12 written agreement for or effecting insurance, or the certificate  
13 for or effecting insurance, by whatever name. The term includes all  
14 clauses, riders, endorsements, and papers that are a part of the  
15 contract, agreement, or certificate. The term does not include a  
16 contract of reinsurance.

17 (20) "Property of the insurer" or "property of the  
18 estate" includes:

19 (A) all right, title, and interest of the insurer  
20 in property, whether legal or equitable, tangible or intangible,  
21 choate or inchoate, and includes choses in action, contract rights,  
22 and any other interest recognized under the laws of this state;

23 (B) entitlements that:

24 (i) existed prior to the entry of an order  
25 of rehabilitation or liquidation; and

26 (ii) may arise by operation of the  
27 provisions of this chapter or other provisions of law allowing the



1 receiver to avoid prior transfers or assert other rights; and

2 (C) all records and data that are otherwise the  
3 property of the insurer, in whatever form maintained, within the  
4 possession, custody, or control of a managing general agent,  
5 third-party administrator, management company, data processing  
6 company, accountant, attorney, affiliate, or other person,  
7 including:

8 (i) claims and claim files;

9 (ii) policyholder lists;

10 (iii) application files;

11 (iv) litigation files;

12 (v) premium records;

13 (vi) rate books and underwriting manuals;

14 (vii) personnel records; and

15 (viii) financial records or similar  
16 records.

17 (21) "Qualified financial contract" means a commodity  
18 contract, forward contract, repurchase agreement, securities  
19 contract, swap agreement, and any similar agreement that the  
20 commissioner determines by rule to be a qualified financial  
21 contract for the purposes of this chapter.

22 (22) "Receiver" means liquidator, rehabilitator, or  
23 ancillary conservator, as the context requires.

24 (23) "Receivership" means any liquidation,  
25 rehabilitation, or ancillary conservation, as the context  
26 requires.

27 (24) "Receivership court" refers to the court in which

1 a delinquency proceeding is pending, unless the context requires  
2 otherwise.

3 (25) "Reinsurance" means transactions or contracts by  
4 which an assuming insurer agrees to indemnify a ceding insurer  
5 against all, or a part, of any loss that the ceding insurer might  
6 sustain under the policy or policies that it has issued or will  
7 issue.

8 (26) "Secured claim" means any claim secured by an  
9 asset that is not a general asset. The term includes the right to  
10 set off as provided in Section 21A.209. The term does not include a  
11 claim arising from a constructive or resulting trust, a special  
12 deposit claim, or a claim based on mere possession.

13 (27) "Special deposit" means a deposit established  
14 pursuant to statute for the security or benefit of a limited class  
15 or limited classes of persons.

16 (28) "Special deposit claim" means any claim secured  
17 by a special deposit. The term does not include any claim secured  
18 by the general assets of the insurer.

19 (29) "State" means any state, district, or territory  
20 of the United States.

21 (30) "Transfer" includes the sale and every other and  
22 different mode, direct or indirect, of disposing of or of parting  
23 with property or with an interest in property, including a setoff,  
24 or with the possession of property or of fixing a lien upon property  
25 or upon an interest in property, absolutely or conditionally,  
26 voluntarily or involuntarily, by or without judicial proceedings.  
27 The retention of a security title in property delivered to an

1 insurer is deemed a transfer suffered by the insurer.

2 (31) "Unauthorized insurer" means an insurer doing the  
3 business of insurance in this state that has not received from this  
4 state a certificate of authority or some other type of authority  
5 that allows for doing the business of insurance in this state.

6 (b) For purposes of this chapter, "admitted assets" and  
7 "liabilities" have the meanings assigned by the department in rules  
8 relating to risk-based capital.

9 (c) For purposes of Subsection (a)(21):

10 (1) "Commodity contract" means:

11 (A) a contract for the purchase or sale of a  
12 commodity for future delivery on or subject to the rules of a board  
13 of trade designated as a contract market by the Commodity Futures  
14 Trading Commission under the Commodity Exchange Act (7 U.S.C.  
15 Section 1 et seq.) or a board of trade outside the United States;

16 (B) an agreement that is subject to regulation  
17 under Section 19, Commodity Exchange Act (7 U.S.C. Section 23), and  
18 that is commonly known to the commodities trade as a margin account,  
19 margin contract, leverage account, or leverage contract; or

20 (C) an agreement or transaction that is subject  
21 to regulation under Section 4c(b), Commodity Exchange Act (7 U.S.C.  
22 Section 6c(b)), and that is commonly known to the commodities trade  
23 as a commodity option.

24 (2) "Forward contract" means a contract, other than a  
25 commodity contract, with a maturity date more than two days after  
26 the date the contract is entered into, that is for the purchase,  
27 sale, or transfer of a commodity, as defined by Section 1a,

1 Commodity Exchange Act (7 U.S.C. Section 1a), or any similar good,  
2 article, service, right, or interest that is presently or in the  
3 future becomes the subject of dealing in the forward contract trade  
4 or product or byproduct of the contract. The term includes a  
5 repurchase transaction, reverse repurchase transaction,  
6 consignment, lease, swap, hedge transaction, deposit, loan,  
7 option, allocated transaction, unallocated transaction, or a  
8 combination of these or option on any of them.

9           (3) "Repurchase agreement" includes a reverse  
10 repurchase agreement and means an agreement, including related  
11 terms, that provides for the transfer of certificates of deposit,  
12 eligible bankers' acceptances, or securities that are direct  
13 obligations of or that are fully guaranteed as to principal and  
14 interest by the United States against the transfer of funds by the  
15 transferee of the certificates of deposit, eligible bankers'  
16 acceptances, or securities with a simultaneous agreement by the  
17 transferee to transfer to the transferor certificates of deposit,  
18 eligible bankers' acceptances, or securities as described in this  
19 subdivision, on demand or at a date certain not later than one year  
20 after the transfers, against the transfer of funds. For the  
21 purposes of this subdivision, the items that may be subject to a  
22 repurchase agreement:

23           (A) include mortgage-related securities and a  
24 mortgage loan and an interest in a mortgage loan; and

25           (B) do not include any participation in a  
26 commercial mortgage loan unless the commissioner determines by rule  
27 to include the participation within the meaning of the term.

1           (4) "Securities contract" means a contract for the  
2 purchase, sale, or loan of a security, including an option for the  
3 repurchase or sale of a security, certificate of deposit, or group  
4 or index of securities or an interest in the group or index or based  
5 on the value of the group or index, an option entered into on a  
6 national securities exchange relating to foreign currencies, or the  
7 guarantee of a settlement of cash or securities by or to a  
8 securities clearing agency. For the purposes of this subdivision,  
9 the term "security" includes a mortgage loan, a mortgage-related  
10 security, and an interest in any mortgage loan or mortgage-related  
11 security.

12           (5) "Swap agreement" means an agreement, including the  
13 terms and conditions incorporated by reference in an agreement,  
14 that is a rate swap agreement, basis swap, commodity swap, forward  
15 rate agreement, interest rate future, interest rate option, forward  
16 foreign exchange agreement, spot foreign exchange agreement, rate  
17 cap agreement, rate floor agreement, rate collar agreement,  
18 currency swap agreement, cross-currency rate swap agreement,  
19 currency future, or currency option or any other similar agreement.  
20 The term includes any combination agreements described by this  
21 subdivision and an option to enter into any agreement described by  
22 this subdivision.

23           (d) The definitions under this section apply only to this  
24 chapter unless the context of another law requires otherwise.

25           Sec. 21A.005. JURISDICTION AND VENUE. (a) A delinquency  
26 proceeding may not be commenced under this chapter by a person other  
27 than the commissioner, and a court does not have jurisdiction to

1 entertain, hear, or determine any delinquency proceeding commenced  
2 by any other person.

3 (b) A court of this state does not have jurisdiction, other  
4 than in accordance with this chapter, to entertain, hear, or  
5 determine any complaint praying for:

6 (1) the liquidation, rehabilitation, seizure,  
7 sequestration, conservation, or receivership of any insurer; or

8 (2) a stay, injunction, restraining order, or other  
9 relief preliminary, incidental, or relating to proceedings  
10 described by Subdivision (1).

11 (c) The receivership court, as of the commencement of a  
12 delinquency proceeding under this chapter, has exclusive  
13 jurisdiction of all property of the insurer, wherever located,  
14 including property located outside the territorial limits of the  
15 state. The receivership court has original but not exclusive  
16 jurisdiction of all civil proceedings arising:

17 (1) under this chapter; or

18 (2) in or related to delinquency proceedings under  
19 this chapter.

20 (d) In addition to other grounds for jurisdiction provided  
21 by the law of this state, a court having jurisdiction of the subject  
22 matter has jurisdiction over a person served pursuant to Rules 21  
23 and 21a, Texas Rules of Civil Procedure, or other applicable  
24 provisions of law in an action brought by the receiver if the person  
25 served:

26 (1) is or has been an agent, or other person who, at  
27 any time, has written policies of insurance for or has acted in any

1 manner on behalf of an insurer against which a delinquency  
2 proceeding has been instituted, in any action resulting from or  
3 incident to such a relationship with the insurer;

4 (2) is or has been an insurer or reinsurer who, at any  
5 time, has entered into a contract of reinsurance with an insurer  
6 against which a delinquency proceeding has been instituted, or who  
7 is an agent of or for the reinsurer, in any action on or incident to  
8 the reinsurance contract;

9 (3) is or has been an officer, director, manager,  
10 trustee, organizer, promoter, or other person in a position of  
11 comparable authority or influence over an insurer against which a  
12 delinquency proceeding has been instituted, in any action resulting  
13 from or incident to such a relationship with the insurer;

14 (4) at the time of the institution of the delinquency  
15 proceeding against the insurer, is or was holding assets in which  
16 the receiver claims an interest on behalf of the insurer in any  
17 action concerning the assets; or

18 (5) is obligated to the insurer in any way, in any  
19 action on or incident to the obligation.

20 (e) If, on motion of any party, the receivership court finds  
21 that any action, as a matter of substantial justice, should be tried  
22 in a forum outside this state, the receivership court may enter an  
23 appropriate order to stay further proceedings on the action in this  
24 state. Except as to claims against the estate, nothing in this  
25 chapter deprives a party of any contractual right to pursue  
26 arbitration. A party in arbitration may bring a claim or  
27 counterclaim against the estate, but the claim or counterclaim is

1 subject to Section 21A.209.

2 (f) Service must be made upon the person named in the  
3 petition in accordance with Rules 21 and 21a, Texas Rules of Civil  
4 Procedure. In lieu of such service, upon application to the  
5 receivership court, service may be made in any manner the  
6 receivership court directs if it is satisfactorily shown by  
7 affidavit:

8 (1) in the case of a corporation, that the officers of  
9 the corporation cannot be served because they have departed from  
10 the state or otherwise concealed themselves with intent to avoid  
11 service;

12 (2) in the case of a Lloyd's plan or reciprocal or  
13 interinsurance exchange, that the individual attorney in fact or  
14 the officers of the corporate attorney in fact cannot be served  
15 because of departure or concealment; or

16 (3) in the case of an individual, that the person  
17 cannot be served because of the individual's departure or  
18 concealment.

19 (g) An action authorized by this section must be brought in  
20 a district court in Travis County.

21 (h) At any time after an order is entered pursuant to  
22 Section 21A.051, 21A.101, or 21A.151, the commissioner or receiver  
23 may transfer the case to the county of the principal office of the  
24 person proceeded against. In the event of transfer, the court in  
25 which the proceeding was commenced, upon application of the  
26 commissioner or receiver, shall direct its clerk to transmit the  
27 court's file to the clerk of the court to which the case is to be



1 transferred. The proceeding, after transfer, shall be conducted in  
2 the same manner as if it had been commenced in the court to which the  
3 matter is transferred.

4 (i) A person may not intervene in any delinquency proceeding  
5 in this state for the purpose of seeking or obtaining payment of any  
6 judgment, lien, or other claim of any kind. The claims procedure  
7 set forth in this chapter constitutes the exclusive means for  
8 obtaining payment of claims from the receivership estate. This  
9 provision is not intended to affect the rights conferred on the  
10 guaranty associations by Section 21A.008(1).

11 (j) The foregoing provisions of this section  
12 notwithstanding, the provisions of this chapter do not confer  
13 jurisdiction on the receivership court to resolve coverage disputes  
14 between guaranty associations and those asserting claims against  
15 them resulting from the initiation of a delinquency proceeding  
16 under this chapter. The determination of any dispute with respect  
17 to the statutory coverage obligations of any guaranty association  
18 by a court or administrative agency or body with jurisdiction in the  
19 guaranty association's state of domicile is binding and conclusive  
20 as to the parties in a delinquency proceeding initiated in the  
21 receivership court, including the policyholders of the insurer.  
22 With respect to a guaranty association's obligations under a  
23 rehabilitation plan, the receivership court has jurisdiction only  
24 if the guaranty association expressly consents to the jurisdiction  
25 of the court.

26 Sec. 21A.006. EXEMPTION FROM FEES. The receiver may not be  
27 required to pay any filing, recording, transcript, or

1 authenticating fee to any public officer in this state.

2 Sec. 21A.007. NOTICE, HEARING, AND APPEAL ON MATTERS  
3 SUBMITTED BY RECEIVER FOR RECEIVERSHIP COURT APPROVAL. (a) Upon  
4 written request to the receiver, a person must be placed on the  
5 service list to receive notice of matters filed by the receiver. It  
6 is the responsibility of the person requesting notice to inform the  
7 receiver in writing of any changes in the person's address or to  
8 request that the person's name be deleted from the service list.  
9 The receiver may require that the persons on the service list  
10 provide confirmation that they wish to remain on the service list.  
11 Any person who fails to confirm the person's intent to remain on the  
12 service list may be purged from the service list. Inclusion on the  
13 service list does not confer standing in the delinquency proceeding  
14 to raise, appear, or be heard on any issue.

15 (b) Except as otherwise provided by this chapter, notice and  
16 hearing of any matter submitted by the receiver to the receivership  
17 court for approval under this chapter must be conducted in  
18 accordance with Subsections (c)-(g).

19 (c) The receiver shall file an application explaining the  
20 proposed action and the basis of the proposed action. The receiver  
21 may include any evidence in support of the application. If the  
22 receiver determines that any documents supporting the application  
23 are confidential, the receiver may submit them to the receivership  
24 court under seal for in camera inspection.

25 (d) The receiver shall provide notice of the application to  
26 all persons on the service list and any other parties as determined  
27 by the receiver. Notice may be provided by first class mail postage

1 paid, electronic mail, or facsimile transmission, at the receiver's  
2 discretion. For purposes of this section, notice is deemed to be  
3 given on the date that it is deposited with the U.S. Postmaster or  
4 transmitted, as applicable, to the last known address as shown on  
5 the service list.

6 (e) Any party in interest objecting to the application must  
7 file an objection specifying the grounds for the objection not  
8 later than the 20th day after the date of the notice of the filing of  
9 the application or within another period as the receivership court  
10 may set, and must serve copies on the receiver and any other persons  
11 served with the application within the same period. An objecting  
12 party has the burden of showing why the receivership court should  
13 not authorize the proposed action.

14 (f) If no objection to the application is timely filed, the  
15 receivership court may enter an order approving the application  
16 without a hearing, or hold a hearing to determine if the receiver's  
17 application should be approved. The receiver may request that the  
18 receivership court enter an order or hold a hearing on an expedited  
19 basis.

20 (g) If an objection is timely filed, the receivership court  
21 may hold a hearing. If the receivership court approves the  
22 application and, upon a motion by the receiver, determines that the  
23 objection was frivolous or filed merely for delay or for another  
24 improper purpose, the receivership court shall order the objecting  
25 party to pay the receiver's reasonable costs and fees of defending  
26 the action.

27 Sec. 21A.008. INJUNCTIONS AND ORDERS. (a) The

1 receivership court may issue any order, process, or judgment,  
2 including stays, injunctions, or other orders, as necessary or  
3 appropriate to carry out the provisions of this chapter or an  
4 approved rehabilitation plan.

5 (b) This chapter may not be construed to limit the ability  
6 of the receiver to apply to a court other than the receivership  
7 court in any jurisdiction to carry out any provision of this chapter  
8 or for the purpose of pursuing claims against any person.

9 (c) Except as provided by Subsection (e) or as otherwise  
10 provided by this chapter and subject to Subsection (g), the  
11 commencement of a delinquency proceeding under this chapter  
12 operates as a stay, applicable to all persons, of:

13 (1) the commencement or continuation, including the  
14 issuance or employment of process, of a judicial, administrative,  
15 or other action or proceeding against the insurer, including an  
16 arbitration proceeding, that was or could have been commenced  
17 before the commencement of the delinquency proceeding under this  
18 chapter, or to recover a claim against the insurer that arose before  
19 the commencement of the delinquency proceeding under this chapter;

20 (2) the enforcement against the insurer or against  
21 property of the insurer of a judgment obtained before the  
22 commencement of the delinquency proceeding under this chapter;

23 (3) any act to obtain or retain possession of property  
24 of the insurer or of property from the insurer or to exercise  
25 control over property or records of the insurer;

26 (4) any act to create, perfect, or enforce any lien  
27 against property of the insurer;

1           (5) any act to collect, assess, or recover a claim  
2 against the insurer that arose before the commencement of a  
3 delinquency proceeding under this chapter;

4           (6) the commencement or continuation of an action or  
5 proceeding against a reinsurer of the insurer, by the holder of a  
6 claim against the insurer, seeking reinsurance recoveries that are  
7 contractually due to the insurer; and

8           (7) except as provided by Subsection (e)(1), the  
9 commencement or continuation of an action or proceeding by a  
10 governmental unit to terminate or revoke an insurance license.

11         (d) Except as provided in Subsection (e) or as otherwise  
12 provided by this chapter, the commencement of a delinquency  
13 proceeding under this chapter operates as a stay, applicable to all  
14 persons, of any judicial, administrative, or other action or  
15 proceeding, including the enforcement of any judgment, against any  
16 insured that was or could have been commenced before the  
17 commencement of the delinquency proceeding under this chapter, or  
18 to recover a claim against the insured that arose before or after  
19 the commencement of the delinquency proceeding under this chapter  
20 and for which the insurer is or may be liable under a policy of  
21 insurance or is obligated to defend a party. The stay provided by  
22 this subsection terminates 90 days after the date of appointment of  
23 the receiver, unless, for good cause shown, the stay is extended by  
24 order of the receivership court after notice to any affected  
25 parties and any hearing the receivership court determines is  
26 appropriate.

27         (e) Notwithstanding Subsection (c), the commencement of a

1 delinquency proceeding under this chapter does not operate as a  
2 stay of:

3 (1) regulatory actions not described by Subsection  
4 (c)(7) that are taken by the commissioners of nondomiciliary  
5 states, including the suspension of licenses;

6 (2) criminal proceedings;

7 (3) any act to perfect or to maintain or continue the  
8 perfection of an interest in property to the extent that the act is  
9 accomplished within any relation back period under applicable law;

10 (4) set off as permitted by Section 21A.209;

11 (5) pursuit and enforcement of nonmonetary  
12 governmental claims, judgments, and proceedings;

13 (6) presentment of a negotiable instrument and the  
14 giving of notice and protesting dishonor of the instrument;

15 (7) enforcement of rights against single beneficiary  
16 trusts established pursuant to and in compliance with laws relating  
17 to credit for reinsurance;

18 (8) termination, liquidation, and netting of  
19 obligations under qualified financial contracts as provided for in  
20 Section 21A.261;

21 (9) discharge by a guaranty association of statutory  
22 responsibilities under any law governing guaranty associations; or

23 (10) any of the following actions:

24 (A) an audit by a governmental unit to determine  
25 tax liability;

26 (B) the issuance to the insurer by a governmental  
27 unit of a notice of tax deficiency;

1           (C) a demand for tax returns; or

2           (D) the making of an assessment for any tax and  
3 issuance of a notice and demand for payment of the assessment.

4           (f) Except as provided by Subsection (h):

5                 (1) the stay of an act against property of the insurer  
6 under Subsection (c) continues until the property is no longer  
7 property of the receivership estate; and

8                 (2) the stay of any other act under Subsection (c)  
9 continues until the earlier of the time the delinquency proceeding  
10 is closed or dismissed.

11           (g) Notwithstanding the provisions of Subsection (c),  
12 claims against the insurer that arose before the commencement of  
13 the delinquency proceeding under this chapter may be asserted as a  
14 counterclaim in any judicial, administrative, or other action or  
15 proceeding initiated by or on behalf of the receiver against the  
16 holder of the claims.

17           (h) On request of a party in interest and after notice and  
18 any hearing the receivership court determines is appropriate, the  
19 receivership court may grant relief from the stay of Subsection (c)  
20 or (d), such as by terminating, annulling, modifying, or  
21 conditioning the stay:

22                 (1) for cause as described by Subsection (i); or

23                 (2) with respect to a stay of an act against property  
24 under Subsection (c) if:

25                         (A) the insurer does not have equity in the  
26 property; and

27                         (B) the property is not necessary to an effective

1 rehabilitation plan.

2 (i) For purposes of Subsection (h), "cause" includes the  
3 receiver canceling a policy, surety bond, or surety undertaking if  
4 the creditor is entitled, by contract or by law, to require the  
5 insured or the principal to have a policy, surety bond, or surety  
6 undertaking and the insured or the principal fails to obtain a  
7 replacement policy, surety bond, or surety undertaking not later  
8 than the later of:

9 (1) the 30th day after the date the receiver cancels  
10 the policy, surety bond, or surety undertaking; or

11 (2) the time permitted by contract or law.

12 (j) In any hearing under Subsection (h), the party seeking  
13 relief from the stay has the burden of proof on each issue, which  
14 must be established by clear and convincing evidence.

15 (k) The estate of an insurer that is injured by any wilful  
16 violation of a stay provided by this section is entitled to actual  
17 damages, including costs and attorney's fees. In appropriate  
18 circumstances, the receivership court may impose additional  
19 sanctions.

20 (l) Any guaranty association or its designated  
21 representative may intervene as a party as a matter of right or  
22 otherwise appear and participate in any court proceeding concerning  
23 a delinquency proceeding if the association is or may become liable  
24 to act as a result of the rehabilitation or liquidation of the  
25 insurer. Exercise by any guaranty association or its designated  
26 representative of the right to intervene conferred under this  
27 subsection does not constitute grounds to establish general



1 personal jurisdiction by the courts of this state. The intervening  
2 quaranty association or its designated representative are subject  
3 to the receivership court's jurisdiction for the limited purpose  
4 for which it intervenes.

5 (m) Notwithstanding any other provision of law, bond may not  
6 be required of the commissioner or receiver in relation to any stay  
7 or injunction under this section.

8 Sec. 21A.009. STATUTES OF LIMITATIONS. (a) If applicable  
9 law, an order, or an agreement fixes a period within which the  
10 insurer may commence an action, and this period has not expired  
11 before the date of the filing of the initial petition in a  
12 delinquency proceeding, the receiver may commence an action only  
13 before the later of:

14 (1) the end of the period, including any suspension of  
15 the period occurring on or after the filing of the initial petition  
16 in a delinquency proceeding; or

17 (2) four years after the later of the date of entry of  
18 an order for either rehabilitation or liquidation.

19 (b) Except as provided by Subsection (a), if applicable law,  
20 an order, or an agreement fixes a period within which the insurer  
21 may file any pleading, demand, notice, or proof of claim or loss,  
22 cure a default in a case or proceeding, or perform any other similar  
23 act, and the period has not expired before the date of the filing of  
24 the petition initiating formal delinquency proceedings, the  
25 receiver may file, cure, or perform, as the case may be, only before  
26 the later of:

27 (1) the end of the period, including any suspension of

1 the period occurring on or after the filing of the initial petition  
2 in the delinquency proceeding; or

3 (2) 60 days after the later of the date of entry of an  
4 order for either rehabilitation or liquidation.

5 (c) If applicable law, an order, or an agreement fixes a  
6 period for commencing or continuing a civil action in a court other  
7 than the receivership court on a claim against the insurer, and the  
8 period has not expired before the date of the initial filing of the  
9 petition in a delinquency proceeding, then the period does not  
10 expire until the later of:

11 (1) the end of the period, including any suspension of  
12 the period occurring on or after the filing of the initial petition  
13 in the delinquency proceeding; or

14 (2) 30 days after termination or expiration of the  
15 stay under Section 21A.008 with respect to the claim.

16 (d) If the otherwise applicable limitations period has not  
17 expired prior to the initial filing of the petition commencing a  
18 delinquency proceeding, any other action or proceeding filed by a  
19 receiver may be commenced at any time within four years after the  
20 date upon which the cause of action accrues or four years after the  
21 date on which the receiver is appointed, whichever is later.

22 Sec. 21A.010. COOPERATION OF OFFICERS, OWNERS, AND  
23 EMPLOYEES. (a) Any present or former officer, manager, director,  
24 trustee, owner, employee, or agent of any insurer, or any other  
25 persons with authority over or in charge of any segment of the  
26 insurer's affairs, shall cooperate with the commissioner or  
27 receiver in any proceeding under this chapter or any investigation

1 preliminary to the proceeding. For purposes of this section:

2 (1) "person" includes any person who exercises control  
3 directly or indirectly over activities of the insurer through any  
4 holding company or other affiliate of the insurer; and

5 (2) "cooperate" includes:

6 (A) replying promptly in writing to any inquiry  
7 from the commissioner or receiver requesting the reply; and

8 (B) promptly making available to the  
9 commissioner or receiver any books, accounts, documents, or other  
10 records or information or property of or pertaining to the insurer  
11 and in the person's possession, custody, or control.

12 (b) A person may not obstruct or interfere with the  
13 commissioner or receiver in the conduct of any delinquency  
14 proceeding or any preliminary or incidental investigation.

15 (c) This section may not be construed to abridge otherwise  
16 existing legal rights, including the right to resist a petition for  
17 liquidation or other delinquency proceedings, or other orders.

18 (d) Any person described by Subsection (a) who fails to  
19 cooperate with the commissioner or receiver, or any person who  
20 obstructs or interferes with the commissioner or receiver in the  
21 conduct of any delinquency proceeding or any preliminary or  
22 incidental investigation, or who violates any order validly issued  
23 under this chapter:

24 (1) commits an offense; and

25 (2) is subject to the imposition by the commissioner  
26 of an administrative penalty not to exceed \$10,000 and subject to  
27 the revocation or suspension of any licenses issued by the

1 commissioner in accordance with Chapters 82 and 84.

2 (e) An offense under Subsection (d) is punishable by a fine  
3 not exceeding \$10,000 or imprisonment for not more than one year, or  
4 both fine and imprisonment.

5 Sec. 21A.011. ACTIONS BY AND AGAINST RECEIVER. (a) An  
6 allegation by the receiver of improper or fraudulent conduct  
7 against any person may not be the basis of a defense to the  
8 enforcement of a contractual obligation owed to the insurer by a  
9 third party, unless the conduct is found to have been materially and  
10 substantially related to the contractual obligation for which  
11 enforcement is sought.

12 (b) A prior wrongful or negligent action of any present or  
13 former officer, manager, director, trustee, owner, employee, or  
14 agent of the insurer may not be asserted as a defense to a claim by  
15 the receiver under a theory of estoppel, comparative fault,  
16 intervening cause, proximate cause, reliance, mitigation of  
17 damages, or otherwise, except that the affirmative defense of fraud  
18 in the inducement may be asserted against the receiver in a claim  
19 based on a contract, and a principal under a surety bond or a surety  
20 undertaking is entitled to credit against any reimbursement  
21 obligation to the receiver for the value of any property pledged to  
22 secure the reimbursement obligation to the extent that the receiver  
23 has possession or control of the property or that the insurer or its  
24 agents commingled or otherwise misappropriated the property.  
25 Evidence of fraud in the inducement is admissible only if the  
26 evidence is contained in the records of the insurer.

27 (c) An action or inaction by the department or the insurance

1 regulatory authorities in any state may not be asserted as a defense  
2 to a claim by the receiver.

3 (d) Except as provided by Subsection (e), a judgment or  
4 order entered against an insured or the insurer in contravention of  
5 any stay or injunction under this chapter, or at any time by default  
6 or collusion, may not be considered as evidence of liability or of  
7 the amount of damages in adjudicating claims filed in the estate  
8 arising out of the subject matter of the judgment or order.

9 (e) Subsection (d) does not apply to guaranty associations'  
10 claims for amounts paid on settlements and judgments in pursuit of  
11 their statutory obligations.

12 (f) The receiver may not be deemed a governmental entity for  
13 the purposes of any state law awarding fees to a litigant who  
14 prevails against a governmental entity.

15 Sec. 21A.012. UNRECORDED OBLIGATIONS AND DEFENSES OF  
16 AFFILIATES. (a) In any proceeding or claim by the receiver, an  
17 affiliate, controlled or controlling person, or present or former  
18 officer, manager, director, trustee, or shareholder of the insurer  
19 may not assert any defense, unless evidence of the defense was  
20 recorded in the books and records of the insurer at or about the  
21 time the events giving rise to the defense occurred and, if required  
22 by statutory accounting practices and procedures, was timely  
23 reported on the insurer's official financial statements filed with  
24 the department.

25 (b) An affiliate, controlled or controlling person, or  
26 present or former officer, manager, director, trustee, or  
27 shareholder of the insurer may not assert any claim, unless the

1 obligations were recorded in the books and records of the insurer at  
2 or about the time the obligations were incurred and, if required by  
3 statutory accounting practices and procedures, were timely  
4 reported on the insurer's official financial statements filed with  
5 the department.

6 (c) Claims by the receiver against any affiliate,  
7 controlled or controlling person, or present or former officer,  
8 manager, director, trustee, or shareholder of the insurer based on  
9 unrecorded or unreported transactions are not barred by this  
10 section.

11 Sec. 21A.013. EXECUTORY CONTRACTS AND UNEXPIRED LEASES.

12 (a) The receiver may assume or reject any executory contract or  
13 unexpired lease of the insurer.

14 (b) Neither the filing of a petition commencing delinquency  
15 proceedings under this chapter nor the entry of an order for a  
16 delinquency proceeding constitutes a breach or anticipatory breach  
17 of any contract or lease of the insurer.

18 (c) If there has been a default in an executory contract or  
19 unexpired lease of the insurer, the receiver may not assume the  
20 contract or lease unless, at the time of the assumption of the  
21 contract or lease, the receiver:

22 (1) cures or provides adequate assurance that the  
23 receiver will promptly cure the default; and

24 (2) provides adequate assurance of future performance  
25 under the contract or lease.

26 (d) Subsection (c) does not apply to a default that is a  
27 breach of a provision relating to:

1           (1) the insolvency or financial condition of the  
2 insurer at any time before the closing of the delinquency  
3 proceeding;

4           (2) the appointment of or taking possession by a  
5 receiver in a case under this chapter or a custodian before the  
6 commencement of the delinquency proceeding; or

7           (3) the satisfaction of any penalty rate or provision  
8 relating to a default arising from any failure of the insurer to  
9 perform nonmonetary obligations under the executory contract or  
10 unexpired lease.

11           (e) A claim arising from the rejection, under this section  
12 or a plan of rehabilitation, of an executory contract or unexpired  
13 lease of the insurer that has not been assumed shall be determined,  
14 treated, and classified as if the claim had arisen before the date  
15 of the filing of a successful petition commencing the delinquency  
16 proceeding.

17           Sec. 21A.0135. CONTRACTS FOR SPECIAL DEPUTIES. (a) The  
18 receiver shall use a competitive bidding process in the selection  
19 of any special deputies appointed under Section 21A.102 or 21A.154.  
20 The process must include procedures to promote the participation of  
21 historically underutilized businesses that have been certified by  
22 the Texas Building and Procurement Commission under Section  
23 2161.061, Government Code.

24           (b) A proposal submitted in connection with a bid  
25 solicitation under Subsection (a) must describe the efforts that  
26 have been made to include historically underutilized businesses as  
27 subcontractors and the plan for using the historically

1 underutilized businesses in the administration of the receivership  
2 estate. A special deputy appointed under Section 21A.102 or  
3 21A.154 shall make a good faith effort to implement the plan and  
4 shall report to the receiver the special deputy's efforts to  
5 identify and subcontract with historically underutilized  
6 businesses.

7 Sec. 21A.014. IMMUNITY AND INDEMNIFICATION OF RECEIVER AND  
8 ASSISTANTS. (a) For the purposes of this section, the persons  
9 entitled to immunity and indemnification and those entitled to  
10 immunity only, as applicable, are:

11 (1) all present and former receivers responsible for  
12 the conduct of a delinquency proceeding under this chapter;

13 (2) all of the receiver's present and former  
14 assistants, including:

15 (A) all present and former special deputies and  
16 assistant special deputies engaged by contract or otherwise;

17 (B) all persons whom the receiver, special  
18 deputies, or assistant special deputies have employed to assist in  
19 a delinquency proceeding under this chapter; and

20 (C) any state employees acting with respect to a  
21 delinquency proceeding under this chapter; and

22 (3) all of the receiver's present and former  
23 contractors, including all persons with whom the receiver, special  
24 deputies, or assistant special deputies have contracted to assist  
25 in a delinquency proceeding under this chapter, including  
26 attorneys, accountants, auditors, actuaries, investment bankers,  
27 financial advisors, and any other professionals or firms who are



1 retained or contracted with by the receiver as independent  
2 contractors and all employees of the contractors.

3 (b) The receiver, the receiver's assistants, and the  
4 receiver's contractors have immunity under this chapter, as  
5 described by Subsections (c) and (d).

6 (c) The receiver, the receiver's assistants, and the  
7 receiver's contractors are immune from suit and liability, both  
8 personally and in their representative capacities, for any claim  
9 for damage to or loss of property or personal injury or other civil  
10 liability caused by or resulting from any alleged act, error, or  
11 omission of the receiver or any assistant or contractor that arises  
12 out of or by reason of their duties or employment or is taken at the  
13 direction of the receivership court, providing that the alleged  
14 act, error, or omission is performed in good faith.

15 (d) Any immunity granted by this section is in addition to  
16 any immunity granted by other law.

17 (e) The receiver and the receiver's assistants are entitled  
18 to indemnification under this chapter, as described by Subsections  
19 (f)-(1).

20 (f) If any legal action is commenced against the receiver or  
21 any assistant, whether against the receiver or assistant personally  
22 or in their official capacity, alleging property damage, property  
23 loss, personal injury, or other civil liability caused by or  
24 resulting from any alleged act, error, or omission of the receiver  
25 or any assistant arising out of or by reason of their duties or  
26 employment, the receiver and any assistant are indemnified from the  
27 assets of the insurer for all expenses, attorney's fees, judgments,

1 settlements, decrees, or amounts due and owing or paid in  
2 satisfaction of or incurred in the defense of the legal action,  
3 unless it is determined upon a final adjudication on the merits that  
4 the alleged act, error, or omission of the receiver or assistant  
5 giving rise to the claim:

6 (1) did not arise out of or by reason of their duties  
7 or employment; or

8 (2) was caused by intentional or wilful and wanton  
9 misconduct.

10 (g) Attorney's fees and any and all related expenses  
11 incurred in defending a legal action for which immunity or  
12 indemnity is available under this section must be paid from the  
13 assets of the insurer, as the fees and expenses are incurred, and in  
14 advance of the final disposition of the legal action upon receipt of  
15 an agreement by or on behalf of the receiver or assistant to repay  
16 the attorney's fees and expenses, if it is ultimately determined  
17 upon a final adjudication on the merits that the receiver or  
18 assistant is not entitled to immunity or indemnity under this  
19 section.

20 (h) Any indemnification for expense payments, judgments,  
21 settlements, decrees, attorney's fees, surety bond premiums, or  
22 other amounts paid or to be paid from the insurer's assets pursuant  
23 to this section are an administrative expense of the insurer.

24 (i) In the event of any actual or threatened litigation  
25 against a receiver or any assistant for whom immunity or indemnity  
26 may be available under this section, a reasonable amount of funds,  
27 which in the judgment of the receiver may be needed to provide

1 immunity or indemnity, must be segregated and reserved from the  
2 assets of the insurer as security for the payment of indemnity  
3 until:

4 (1) all applicable statutes of limitation have run;

5 (2) all actual or threatened actions against the  
6 receiver or any assistant have been completely and finally  
7 resolved; and

8 (3) all obligations under this section have been  
9 satisfied.

10 (j) Instead of segregating and reserving funds under  
11 Subsection (i), the receiver may, in the receiver's discretion,  
12 obtain a surety bond or make other arrangements that will enable the  
13 receiver to secure fully the payment of all obligations under this  
14 section.

15 (k) If any legal action against an assistant for whom  
16 indemnity may be available under this section is settled prior to  
17 final adjudication on the merits, the receiver must pay the  
18 settlement amount on behalf of the assistant, or indemnify the  
19 assistant for the settlement amount, unless the receiver determines  
20 that the claim:

21 (1) did not arise out of or by reason of the  
22 assistant's duties or employment; or

23 (2) was caused by the intentional or wilful and wanton  
24 misconduct of the assistant.

25 (l) In any legal action in which a claim is asserted against  
26 the receiver, that portion of any settlement relating to the  
27 alleged act, error, or omission of the receiver is subject to the

1 approval of the receivership court. The receivership court may not  
2 approve that portion of the settlement if it determines that the  
3 claim:

4 (1) did not arise out of or by reason of the receiver's  
5 duties or employment; or

6 (2) was caused by the intentional or wilful and wanton  
7 misconduct of the receiver.

8 (m) Nothing contained or implied in this section may operate  
9 or be construed or applied to deprive the receiver, the receiver's  
10 assistants, or receiver's contractors of any immunity, indemnity,  
11 benefits of law, rights, or defense otherwise available.

12 (n) The immunity and indemnification provided to the  
13 receiver's assistants and the immunity provided to the receiver's  
14 contractors under this section do not apply to any action by the  
15 receiver against that person.

16 (o) Subsection (b) applies to any suit based in whole or in  
17 part on any alleged act, error, or omission that takes place on or  
18 after September 1, 2005.

19 (p) Subsections (e)-(1) apply to any suit that is pending on  
20 or filed after September 1, 2005, without regard to when the alleged  
21 act, error, or omission took place.

22 Sec. 21A.015. APPROVAL AND PAYMENT OF EXPENSES. (a) The  
23 receiver may pay any expenses under contracts, leases, employment  
24 agreements, or other arrangements entered into by the insurer prior  
25 to receivership, as the receiver deems necessary for the purposes  
26 of this chapter. The receiver is not required to pay any expenses  
27 that the receiver determines are not necessary, and may reject any

1 contract pursuant to Section 21A.013.

2 (b) Receivership expenses other than those described in  
3 Subsection (a) must be paid in accordance with Subsections (c)-(f).

4 (c) The receiver shall submit to the receivership court an  
5 application pursuant to Section 21A.007 to approve:

6 (1) the terms of compensation of each special deputy  
7 or contractor with respect to which the total amount of the  
8 compensation is reasonably expected by the receiver for the  
9 duration of the delinquency proceeding to exceed \$250,000, or  
10 another amount established by the receivership court; and

11 (2) any other anticipated expense in excess of  
12 \$25,000, or another amount established by the receivership court.

13 (d) The receiver may, as the receiver deems appropriate,  
14 submit an application to approve any compensation, anticipated  
15 expenses, or incurred expenses not described by Subsection (c)(1).

16 (e) The receiver may pay any expenses not requiring  
17 receivership court approval and any expenses approved by the  
18 rehabilitation or liquidation order as the expenses are incurred.

19 (f) The approval of expenses by the receivership court does  
20 not prejudice the right of the receiver to seek any recovery,  
21 recoupment, disgorgement, or reimbursement of fees based on  
22 contract or causes of action recognized in law or in equity.

23 (g) On a quarterly basis, or as otherwise provided by the  
24 receivership court, the receiver shall submit to the receivership  
25 court a report summarizing the expenses incurred during the period.

26 (h) Receivership court approval may not be required to pay  
27 expenses incurred by the receiver in connection with the appeal of

1 an order of the receivership court.

2 (i) All expenses of receivership shall be paid from the  
3 assets of the insurer, except as provided by this subsection. In  
4 the event that the property of the insurer does not contain  
5 sufficient cash or liquid assets to defray the expenses incurred,  
6 the commissioner may advance funds from the account established  
7 under Section 21A.304(c). Any amounts advanced shall be repaid to  
8 the account out of the first available money of the insurer.

9 Sec. 21A.016. FINANCIAL REPORTING. (a) Not later than the  
10 120th day after the date of entry of an order of receivership by the  
11 receivership court, and at least quarterly after that date, the  
12 receiver shall file a financial report with the receivership court.  
13 A financial report filed under this subsection at a minimum, must  
14 include:

15 (1) a statement of the assets and liabilities of the  
16 insurer;  
17 (2) the changes in those assets and liabilities; and  
18 (3) all funds received or disbursed by the receiver  
19 during the period covered by the report.

20 (b) The receivership court shall require a financial report  
21 filed under Subsection (a) to comply with all receivership  
22 financial reporting requirements specified by the National  
23 Association of Insurance Commissioners and adopted in this state by  
24 rule by the commissioner.

25 (c) Not later than the 120th day after the date of entry of  
26 an order of liquidation by the receivership court, and at least  
27 quarterly after that date, or at other intervals as may be agreed to

1 between the liquidator and the guaranty associations, but in no  
2 event less than annually, each affected guaranty association shall  
3 file reports with the liquidator. The reports must be in a format  
4 compatible with that specified by the National Association of  
5 Insurance Commissioners. Reports under this subsection shall be  
6 filed with the receivership court.

7 Sec. 21A.017. RECORDS. (a) Upon entry of an order of  
8 rehabilitation or liquidation, the receiver is vested with title to  
9 all of the books, documents, papers, policy information, and claim  
10 files, and all other records of the insurer, of whatever nature, in  
11 whatever medium, and wherever located, regardless of whether the  
12 records are in the custody and control of a third-party  
13 administrator, managing general agent, attorney, or other  
14 representative of the insurer. The receiver may immediately take  
15 possession and control of all of the records of the insurer, and of  
16 the premises where the records are located. A third-party  
17 administrator, managing general agent, attorney, or other  
18 representative of the insurer shall release all records described  
19 by this subsection to the receiver, or the receiver's designee, at  
20 the request of the receiver. A guaranty association that has or may  
21 have obligations under a policy issued by the insurer has the right,  
22 with the receiver's approval, to take actions as are necessary to  
23 obtain directly from any third-party administrator, managing  
24 general agent, attorney, or other representative of the insurer all  
25 records described by this section that pertain to the insurer's  
26 business and that are appropriate or necessary for the guaranty  
27 association to fulfill the association's statutory obligations.

1        (b) The receiver has the authority to certify the records of  
2 a delinquent insurer described by Subsection (a) and the records of  
3 the receiver's office created and maintained in connection with a  
4 delinquent insurer, as follows:

5            (1) records of a delinquent insurer may be certified  
6 by the receiver in an affidavit stating that the records:

7                    (A) are true and correct copies of records of the  
8 insurer; and

9                    (B) were received from the custody of the insurer  
10 or found among its effects; and

11            (2) records created by or filed with the receiver's  
12 office in connection with a delinquent insurer may be certified by  
13 the receiver's affidavit stating that the records are true and  
14 correct copies of records maintained by the receiver's office.

15            (c) Original books, documents, papers, and other records,  
16 or copies of original records certified under Subsection (b), when  
17 admitted in evidence, are prima facie evidence of the facts  
18 disclosed.

19            (d) The records of a delinquent insurer held by the receiver  
20 may not be considered records of the department for any purposes,  
21 and Chapter 552, Government Code, does not apply to those records.

22            [Sections 21A.018-21A.050 reserved for expansion]

23                    SUBCHAPTER B. PROCEEDINGS

24            Sec. 21A.051. RECEIVERSHIP COURT'S SEIZURE ORDER. (a) The  
25 commissioner may file in a district court of Travis County a  
26 petition with respect to an insurer domiciled in this state, an  
27 unauthorized insurer, or, pursuant to Section 21A.401, a foreign



1 insurer:

2 (1) alleging that grounds exist that would justify a  
3 court order for a formal delinquency proceeding against the insurer  
4 under this chapter;

5 (2) alleging that the interests of policyholders,  
6 creditors, or the public will be endangered by delay; and

7 (3) setting forth the contents of a seizure order  
8 deemed to be necessary by the commissioner.

9 (b) Upon a filing under Subsection (a), the receivership  
10 court may issue, ex parte and without notice or hearing, the  
11 requested seizure order directing the commissioner to take  
12 possession and control of all or a part of the property, books,  
13 accounts, documents, and other records of an insurer, and of the  
14 premises occupied by it for transaction of its business, and until  
15 further order of the receivership court, enjoining the insurer and  
16 its officers, managers, agents, and employees from disposition of  
17 its property and from the transaction of its business except with  
18 the written consent of the commissioner. Any person having  
19 possession or control of and refusing to deliver any of the books,  
20 records, or assets of a person against whom a seizure order has been  
21 issued commits an offense. An offense under this subsection is  
22 punishable in the manner described by Section 21A.010(e).

23 (c) A petition that prays for injunctive relief must be  
24 verified by the commissioner or the commissioner's designee, but  
25 need not plead or prove irreparable harm or inadequate remedy at  
26 law. The commissioner shall provide only the notice as the  
27 receivership court may require.

1       (d) The receivership court shall specify in the seizure  
2 order the duration of the seizure order, which shall be a period the  
3 receivership court deems necessary for the commissioner to  
4 ascertain the condition of the insurer. On motion of the  
5 commissioner or the insurer, or the court's own motion, the  
6 receivership court may, from time to time, hold hearings as it deems  
7 desirable after notice as it deems appropriate, and may extend,  
8 shorten, or modify the terms of the seizure order. The receivership  
9 court shall vacate the seizure order if the commissioner fails to  
10 commence a formal delinquency proceeding under this chapter after  
11 having had a reasonable opportunity to do so. An order of the  
12 receivership court pursuant to a formal proceeding under this  
13 chapter vacates the seizure order.

14       (e) Entry of a seizure order under this section does not  
15 constitute a breach or an anticipatory breach of any contract of the  
16 insurer.

17       (f) An insurer subject to an ex parte seizure order under  
18 this section may petition the receivership court at any time after  
19 the issuance of a seizure order for a hearing and review of the  
20 seizure order. The receivership court shall hold the hearing and  
21 conduct the review not later than the 15th day after the date of the  
22 request. A hearing under this subsection may be held privately in  
23 chambers, and a hearing shall be held privately in chambers if the  
24 insurer proceeded against so requests.

25       (g) If, at any time after the issuance of a seizure order, it  
26 appears to the receivership court that any person whose interest is  
27 or will be substantially affected by the seizure order did not

1 appear at the hearing and has not been served, the receivership  
2 court may order that notice be given to the person. An order that  
3 notice be given does not stay the effect of any seizure order  
4 previously issued by the receivership court.

5 (h) Whenever the commissioner makes any seizure as provided  
6 by Subsection (b), on the demand of the commissioner, the sheriff of  
7 any county and the police department of any municipality shall  
8 furnish the commissioner with the deputies, patrolmen, or officers  
9 as may be necessary to assist the commissioner in making and  
10 enforcing the seizure order.

11 (i) In all proceedings and judicial reviews under this  
12 section, all records of the insurer, department files, court  
13 records and papers, and other documents, so far as they pertain to  
14 or are a part of the record of the proceedings, are confidential,  
15 and all papers filed with the clerk of the court shall be held by the  
16 clerk in a confidential file as permitted by law, except to the  
17 extent necessary to obtain compliance with any order entered in  
18 connection with the proceedings, unless and until:

19 (1) the court, after hearing argument in chambers,  
20 orders otherwise;

21 (2) the insurer requests that the matter be made  
22 public; or

23 (3) the commissioner applies for an order under  
24 Section 21A.057.

25 Sec. 21A.052. COMMENCEMENT OF FORMAL DELINQUENCY  
26 PROCEEDING. (a) Any formal delinquency proceeding against a  
27 person shall be commenced by filing a petition in the name of the

1 commissioner or department.

2 (b) The petition must state the grounds upon which the  
3 proceeding is based and the relief requested and may include a  
4 prayer for restraining orders and injunctive relief as described in  
5 Section 21A.008. On the filing of the petition or order, a copy  
6 shall be forwarded by first class mail or electronic communication  
7 as permitted by the receivership court to the insurance regulatory  
8 officials and guaranty associations in states in which the insurer  
9 did business.

10 (c) Any petition that prays for injunctive relief must be  
11 verified by the commissioner or the commissioner's designee, but  
12 need not plead or prove irreparable harm or inadequate remedy at  
13 law. The commissioner shall provide only the notice as the  
14 receivership court may require.

15 (d) If any temporary restraining order is prayed for:

16 (1) the receivership court may issue an initial order  
17 containing the relief requested;

18 (2) the receivership court shall set a time and date  
19 for the return of summons, not later than 10 days after the time and  
20 date of the issuance of the initial order, at which time the person  
21 proceeded against may appear before the receivership court for a  
22 summary hearing;

23 (3) the order must state the time and date of its  
24 issuance; and

25 (4) the order may not continue in effect beyond the  
26 time and date set for the return of summons, unless the receivership  
27 court expressly enters one or more orders extending the restraining

1 order.

2 (e) If a temporary restraining order is not requested, the  
3 receivership court shall cause summons to be issued. The summons  
4 must specify a return date not later than the 30th day after the  
5 date of issuance and that an answer must be filed at or before the  
6 return date.

7 Sec. 21A.053. RETURN OF SUMMONS AND SUMMARY HEARING. (a)  
8 The receivership court shall hold a summary hearing at the time and  
9 date for the return of summons on a petition to commence a formal  
10 delinquency proceeding.

11 (b) If a person is not served with summons on a petition to  
12 commence a formal delinquency proceeding and fails to appear for  
13 the summary hearing, the receivership court shall:

14 (1) continue the summary hearing not more than 10  
15 days;

16 (2) provide for alternative service of summons upon  
17 the person; and

18 (3) extend any restraining order.

19 (c) Upon a showing of good faith efforts to effect personal  
20 service upon a person who has failed to appear for a continued  
21 summary hearing, the receivership court shall order notice of the  
22 petition to commence a formal delinquency proceeding to be  
23 published. The order and notice shall specify a return date not  
24 less than 10 or later than 20 days after the date of publication and  
25 that the restraining order has been extended to the continued  
26 hearing date.

27 (d) If a person fails to appear for a summary hearing on a

1 petition to commence a formal delinquency proceeding after service  
2 of summons, the receivership court shall enter judgment in favor of  
3 the commissioner against that person.

4 (e) A person who appears for the summary hearing on a  
5 petition to commence a formal delinquency proceeding shall file the  
6 person's answer at the hearing, and the receivership court shall:

7 (1) determine whether to extend any temporary  
8 restraining orders pending final judgment; and

9 (2) set the case for trial on a date not later than 10  
10 days after the date of the summary hearing.

11 (f) The receivership court may not grant a continuance for  
12 filing an answer.

13 Sec. 21A.054. PROCEEDINGS FOR EXPEDITED TRIAL:  
14 CONTINUANCES, DISCOVERY, EVIDENCE. (a) The receivership court  
15 shall proceed to hear the case on the petition to commence a formal  
16 delinquency proceeding at the time and date set forth for trial. To  
17 the extent practicable, the receivership court shall give  
18 precedence to the matter over all other matters. To the extent  
19 authorized by law, the receivership court may assign the matter to  
20 other judges if necessary to comply with the need for expedited  
21 proceedings under this chapter.

22 (b) Continuances for trial may be granted only in extreme  
23 circumstances.

24 (c) The receivership court shall admit into evidence, as  
25 self-authenticated, certified copies of any of the following when  
26 offered by the commissioner:

27 (1) the financial statements made by the insurer or an

1 affiliate;

2 (2) examination reports of the insurer or an affiliate  
3 made by or on behalf of the commissioner; and

4 (3) any other document filed with any insurance  
5 department by the insurer or an affiliate.

6 (d) The facts contained in any examination report of the  
7 insurer or an affiliate made by or on behalf of the commissioner are  
8 presumed to be true as of the date of the hearing if the examination  
9 was made as of a date not more than 270 days before the date the  
10 petition was filed. The presumption is rebuttable, and shifts the  
11 burden of production and persuasion to the insurer.

12 (e) Discovery is limited to grounds alleged in the petition  
13 and shall be concluded on an expedited basis.

14 Sec. 21A.055. DECISION AND APPEALS. (a) The receivership  
15 court shall enter judgment on the petition to commence formal  
16 delinquency proceedings not later than the 15th day after the date  
17 of conclusion of the evidence.

18 (b) The judgment is final when entered. Any appeal must be  
19 prosecuted on an expedited basis and must be taken not later than  
20 the fifth day after the date of entry of the judgment. A request for  
21 reconsideration, review, or appeal, or posting of a bond does not  
22 dissolve or stay the judgment.

23 Sec. 21A.056. CONFIDENTIALITY. (a) The commissioner,  
24 rehabilitator, or liquidator may share documents, materials, or  
25 other information in the possession, custody, or control of the  
26 department without regard to the confidentiality of those  
27 documents, materials, or information, pertaining to an insurer that

1 is the subject of a proceeding under this chapter with other state,  
2 federal, and international regulatory agencies, with the National  
3 Association of Insurance Commissioners and its affiliates and  
4 subsidiaries, with state, federal, and international law  
5 enforcement authorities, with an auditor appointed by the  
6 receivership court in accordance with Section 21A.355, and,  
7 pursuant to Section 21A.105, with representatives of guaranty  
8 associations that may have statutory obligations as a result of the  
9 insolvency of the insurer, provided that the recipient agrees to  
10 maintain the confidentiality, if any, of the documents, material,  
11 or other information. Nothing in this section limits the power of  
12 the commissioner to disclose information under other applicable  
13 law.

14 (b) A domiciliary receiver shall permit a commissioner of  
15 another state or a guaranty association to obtain a listing of  
16 policyholders and certificate holders residing in the requestor's  
17 state, including current addresses and summary policy information,  
18 provided that the commissioner of the other state or the guaranty  
19 association agrees to maintain the confidentiality of the records  
20 and agrees that the records will be used only for regulatory or  
21 guaranty association purposes. Access to records may be limited to  
22 normal business hours. In the event that the domiciliary receiver  
23 believes that certain information is sensitive and that disclosure  
24 may cause a diminution in recovery, the receiver may apply for a  
25 protective order imposing additional restrictions on access.

26 (c) The Texas Workers' Compensation Commission shall report  
27 to the department any information that a workers' compensation



1 insurer has committed acts that indicate that the insurer is  
2 impaired or insolvent. A report made under this subsection is  
3 confidential under this section.

4 (d) The confidentiality obligations imposed by this section  
5 end upon the entry of an order of liquidation against the insurer,  
6 unless otherwise agreed to by the parties or pursuant to an order of  
7 the receivership court.

8 (e) A waiver of any applicable privilege or claim of  
9 confidentiality does not occur as a result of any disclosure, or any  
10 sharing of documents, materials, or other information, made  
11 pursuant to this section.

12 Sec. 21A.057. GROUNDS FOR CONSERVATION, REHABILITATION, OR  
13 LIQUIDATION. The commissioner may file with a court in this state a  
14 petition with respect to an insurer domiciled in this state or an  
15 unauthorized insurer for an order of rehabilitation or liquidation  
16 on any one or more of the following grounds:

17 (1) the insurer is impaired;

18 (2) the insurer is insolvent;

19 (3) the insurer is about to become insolvent, with  
20 "about to become insolvent" being defined as reasonably anticipated  
21 that the insurer will not have liquid assets to meet its next 90  
22 days' current obligations;

23 (4) the insurer has neglected or refused to comply  
24 with an order of the commissioner to make good within the time  
25 prescribed by law any deficiency, whenever its capital and minimum  
26 required surplus, if a stock company, or its surplus, if a company  
27 other than stock, has become impaired;

1           (5) the insurer, its parent company, its subsidiaries,  
2 or its affiliates have converted, wasted, or concealed property of  
3 the insurer or have otherwise improperly disposed of, dissipated,  
4 used, released, transferred, sold, assigned, hypothecated, or  
5 removed the property of the insurer;

6           (6) the insurer is in a condition such that it could  
7 not meet the requirements for organization and authorization as  
8 required by law, except as to the amount of the original surplus  
9 required of a stock company under Title 6, and except as to the  
10 amount of the surplus required of a company other than a stock  
11 company in excess of the minimum surplus required to be maintained;

12           (7) the insurer, its parent company, its subsidiaries,  
13 or its affiliates have concealed, removed, altered, destroyed, or  
14 failed to establish and maintain books, records, documents,  
15 accounts, vouchers, and other pertinent material adequate for the  
16 determination of the financial condition of the insurer by  
17 examination under Article 1.15, 1.15A, or 1.16 or has failed to  
18 properly administer claims or maintain claims records that are  
19 adequate for the determination of its outstanding claims liability;

20           (8) at any time after the issuance of an order under  
21 Article 1.32 or 21.28-A, or at the time of instituting any  
22 proceeding under this chapter, it appears to the commissioner that,  
23 upon good cause shown, it would not be in the best interest of the  
24 policyholders, creditors, or the public to proceed with the conduct  
25 of the business of the insurer;

26           (9) the insurer is in a condition such that the further  
27 transaction of business would be hazardous financially, according

1 to Article 1.32 or otherwise, to its policyholders, creditors, or  
2 the public;

3 (10) there is reasonable cause to believe that there  
4 has been embezzlement from the insurer, wrongful sequestration or  
5 diversion of the insurer's property, forgery or fraud affecting the  
6 insurer, or other illegal conduct in, by, or with respect to the  
7 insurer that, if established, would endanger assets in an amount  
8 threatening the solvency of the insurer;

9 (11) control of the insurer is in a person who is:

10 (A) dishonest or untrustworthy; or

11 (B) so lacking in insurance company managerial  
12 experience or capability as to be hazardous to policyholders,  
13 creditors, or the public;

14 (12) any person who in fact has executive authority in  
15 the insurer, whether an officer, manager, general agent, director,  
16 trustee, employee, shareholder, or other person, has refused to be  
17 examined under oath by the commissioner concerning the insurer's  
18 affairs, whether in this state or elsewhere or if examined under  
19 oath, refuses to divulge pertinent information reasonably known to  
20 the person; and after reasonable notice of the fact, the insurer has  
21 failed promptly and effectively to terminate the employment and  
22 status of the person and all the person's influence on management;

23 (13) after demand by the commissioner under Article  
24 1.15, 1.15A, or 1.16 or under this chapter, the insurer has failed  
25 promptly to make available for examination any of its own property,  
26 books, accounts, documents, or other records, or those of any  
27 subsidiary or related company within the control of the insurer or

1 of any person having executive authority in the insurer, so far as  
2 they pertain to the insurer;

3 (14) without first obtaining the written consent of  
4 the commissioner, the insurer has transferred, or attempted to  
5 transfer, in a manner contrary to Chapter 823 or any law relating to  
6 bulk reinsurance, substantially its entire property or business, or  
7 has entered into any transaction the effect of which is to merge,  
8 consolidate, or reinsure substantially its entire property or  
9 business in or with the property or business of any other person;

10 (15) the insurer or its property has been or is the  
11 subject of an application for the appointment of a receiver,  
12 trustee, custodian, conservator, sequestrator, or similar  
13 fiduciary of the insurer or its property otherwise than as  
14 authorized under the insurance laws of this state;

15 (16) within the previous five years, the insurer has  
16 wilfully and continuously violated its charter, articles of  
17 incorporation or bylaws, any insurance law of this state, or any  
18 valid order of the commissioner;

19 (17) the insurer has failed to pay within 60 days after  
20 the due date any obligation to any state or political subdivision of  
21 a state or any judgment entered in any state, if the court in which  
22 the judgment was entered had jurisdiction over the subject matter,  
23 except that nonpayment is not a ground until 60 days after any good  
24 faith effort by the insurer to contest the obligation has been  
25 terminated, whether it is before the commissioner or in the courts;

26 (18) the insurer has systematically engaged in the  
27 practice of reaching settlements with and obtaining releases from

1 claimants, and then unreasonably delayed payment, failed to pay the  
2 agreed-upon settlements, or systematically attempted to compromise  
3 with claimants or other creditors on the ground that it is  
4 financially unable to pay its claims or obligations in full;

5 (19) the insurer has failed to file its annual report  
6 or other financial report required by statute within the time  
7 allowed by law;

8 (20) the board of directors or the holders of a  
9 majority of the shares entitled to vote, or a majority of those  
10 individuals entitled to the control of those entities specified by  
11 Section 21A.003, request or consent to rehabilitation or  
12 liquidation under this chapter;

13 (21) the insurer does not comply with its domiciliary  
14 state's requirements for issuance to it of a certificate of  
15 authority, or its certificate of authority has been revoked by its  
16 state of domicile; or

17 (22) when authorized by department rules.

18 Sec. 21A.058. ENTRY OF ORDER. If the commissioner  
19 establishes any of the grounds provided in Section 21A.057, the  
20 receivership court shall grant the petition and issue the order of  
21 rehabilitation or liquidation requested in the petition.

22 Sec. 21A.059. EFFECT OF PETITION OR ORDER ON CONTRACT OR  
23 LEASE. Neither the filing of a petition under this chapter nor the  
24 entry of any order of seizure, rehabilitation, or liquidation  
25 constitutes a breach or an anticipatory breach of any contract or  
26 lease of the insurer.

27 [Sections 21A.060-21A.100 reserved for expansion]

SUBCHAPTER C. REHABILITATION

1                   Sec. 21A.101. REHABILITATION ORDERS. (a) An order to  
2 rehabilitate the business of an insurer must appoint the  
3 commissioner and the commissioner's successors in office as the  
4 rehabilitator and must direct the rehabilitator to take possession  
5 of the property of the insurer wherever located and to administer it  
6 subject to this chapter. The rehabilitator is entitled to request  
7 the receivership court to appoint a single judge to supervise the  
8 rehabilitation and hear any cases or controversies arising out of  
9 or related to the rehabilitation. Rehabilitation proceedings are  
10 exempt from any dormancy or similar program maintained by the  
11 receivership court for the early closure of civil actions. The  
12 filing or recording of the order with the clerk of the court or  
13 recorder of deeds of the county in which the principal business of  
14 the company is conducted, or, in the case of real estate, the county  
15 in which its principal office or place of business is located,  
16 imparts the same notice as a deed, bill of sale, or other evidence  
17 of title filed or recorded with the recorder of deeds would impart.  
18 The order to rehabilitate the insurer must, by operation of law,  
19 vest title to all property of the insurer in the rehabilitator.

20                   (b) Any order issued under this section must require  
21 accountings to the receivership court by the rehabilitator.  
22 Accountings must be at the intervals specified by the receivership  
23 court in its order, but not less frequently than semi-annually.  
24 Each accounting must include a report concerning the  
25 rehabilitator's opinion as to the likelihood that a plan under  
26 Section 21A.103 will be prepared by the rehabilitator and the  
27

1 timetable for doing so.

2 (c) In recognition of the need for a prompt and final  
3 resolution for all persons affected by a plan of rehabilitation,  
4 any appeal from an order of rehabilitation or an order approving a  
5 plan of rehabilitation must be heard on an expedited basis. A stay  
6 of an order of rehabilitation or an order approving a plan of  
7 rehabilitation may not be granted unless the appellant demonstrates  
8 that extraordinary circumstances warrant delaying the recovery  
9 under the plan of rehabilitation of all other persons, including  
10 policyholders. If the plan provides an appropriate mechanism for  
11 adjustment in the event of any adverse ruling from an appeal, a stay  
12 may not be granted.

13 Sec. 21A.102. POWERS AND DUTIES OF REHABILITATOR. (a) The  
14 rehabilitator may appoint one or more special deputies. A special  
15 deputy serves at the pleasure of the rehabilitator and has all the  
16 powers and responsibilities of the rehabilitator granted under this  
17 section, unless specifically limited by the rehabilitator. The  
18 rehabilitator may employ or contract with legal counsel, actuaries,  
19 accountants, appraisers, consultants, clerks, assistants, and  
20 other personnel as may be deemed necessary. Any special deputy or  
21 any other person with whom the rehabilitator contracts under this  
22 subsection may act on behalf of the commissioner only in the  
23 commissioner's capacity as rehabilitator. Any person with whom the  
24 rehabilitator contracts under this subsection is not considered an  
25 agent of the state, and any contract entered into under this  
26 subsection does not constitute a contract with the state. The  
27 provisions of any law governing the procurement of goods and

1 services by the state does not apply to any contract entered into by  
2 the commissioner as rehabilitator. The compensation of any special  
3 deputies, employees, and contractors and all expenses of taking  
4 possession of the insurer and of conducting the rehabilitation  
5 shall be fixed by the rehabilitator, with the approval of the  
6 receivership court in accordance with Section 21A.015, and shall be  
7 paid out of the property of the insurer. The persons appointed  
8 under this subsection serve at the pleasure of the rehabilitator.  
9 If the rehabilitator deems it necessary to the proper performance  
10 of the rehabilitator's duties under this chapter, the rehabilitator  
11 may appoint an advisory committee of policyholders, claimants, or  
12 other creditors, including guaranty associations. The advisory  
13 committee serves at the pleasure of the rehabilitator and without  
14 compensation or reimbursement for expenses. The rehabilitator or  
15 the receivership court in rehabilitation proceedings conducted  
16 under this chapter may not appoint another committee of any nature.

17 (b) The rehabilitator may take action as the rehabilitator  
18 deems necessary or appropriate to reform and revitalize the  
19 insurer, including canceling policies, insurance and reinsurance  
20 contracts other than life or health insurance or annuities, or  
21 surety bonds or surety undertakings or transferring policies,  
22 insurance and reinsurance contracts, or surety bonds or surety  
23 undertakings to a solvent assuming insurer, with court approval.  
24 The rehabilitator has all the powers of the directors, officers,  
25 and managers of the insurer, whose authority is suspended, except  
26 as redelegated by the rehabilitator. The rehabilitator has full  
27 power to direct and manage, hire and discharge employees, and deal



1 with the property and business of the insurer.

2 (c) If it appears to the rehabilitator that there has been  
3 criminal or tortious conduct or breach of any contractual or  
4 fiduciary obligation detrimental to the insurer by any officer,  
5 manager, agent, broker, employee, affiliate or other person, the  
6 rehabilitator may pursue all appropriate legal remedies on behalf  
7 of the insurer.

8 (d) The rehabilitator may assert all defenses available to  
9 the insurer as against third persons, including statutes of  
10 limitations, statutes of frauds, and the defense of usury. A waiver  
11 of any defense by the insurer after a petition under this chapter  
12 has been filed does not bind the rehabilitator.

13 (e) The enumeration, in this section, of the powers and  
14 authority of the rehabilitator may not be construed as a limitation  
15 upon the rehabilitator, nor shall it exclude in any manner the right  
16 to do other acts not specifically enumerated or otherwise provided  
17 for, as may be necessary or appropriate for the accomplishment of or  
18 in aid of the purpose of rehabilitation.

19 Sec. 21A.103. REHABILITATION PLANS. (a) The rehabilitator  
20 shall prepare and file a plan to effect rehabilitation with the  
21 receivership court not later than the first anniversary of the  
22 entry of the rehabilitation order or another further time as the  
23 receivership court may allow. Upon application of the  
24 rehabilitator for approval of the plan, and after the notice and  
25 hearings the receivership court may prescribe, the receivership  
26 court may approve or disapprove the proposed plan or may modify it  
27 and approve it as modified. Any plan approved under this section

1 must be, in the judgment of the receivership court, fair and  
2 equitable to all parties concerned. If the plan is approved, the  
3 rehabilitator shall carry out the plan. A plan for a life insurer  
4 may propose imposition of a moratorium upon loan and cash surrender  
5 rights under policies, for a period not to exceed one year from the  
6 entry of the rehabilitation order approving the rehabilitation  
7 plan, unless the receivership court, for good cause shown, extends  
8 the moratorium.

9 (b) Once a plan has been filed, any party in interest may  
10 object to the plan.

11 (c) A plan must:

12 (1) except as provided by Subsection (e), provide no  
13 less favorable treatment of a claim or class of claims than would  
14 occur in liquidation, unless the holder of a particular claim or  
15 interest agrees to a less favorable treatment of that particular  
16 claim or interest;

17 (2) provide adequate means for the plan's  
18 implementation;

19 (3) contain information concerning the financial  
20 condition of the insurer and the operation and effect of the plan,  
21 as far as is reasonably practicable in light of the nature and  
22 history of the insurer, the condition of the insurer's books and  
23 records, and the nature of the plan; and

24 (4) provide for the disposition of the books, records,  
25 documents, and other information relevant to the duties and  
26 obligations covered by the plan.

27 (d) A plan may include any other provision not inconsistent

1 with the provisions of this chapter, including:

2 (1) payment of distributions;

3 (2) assumption or reinsurance of all or a portion of  
4 the insurer's remaining liabilities by, and transfer of assets and  
5 related books and records to, an authorized insurer or other  
6 entity;

7 (3) to the extent appropriate, application of  
8 insurance company regulatory market conduct standards to any entity  
9 administering claims on behalf of the receiver or assuming direct  
10 liabilities of the insurer;

11 (4) contracting with a state guaranty association or  
12 any other qualified entity to perform the administration of claims;

13 (5) annual independent financial and performance  
14 audits of any entity administering claims on behalf of the receiver  
15 that is not otherwise subject to examination pursuant to state  
16 insurance law; and

17 (6) termination of the insurer's liabilities other  
18 than those under policies of insurance as of a date certain.

19 (e) A plan may designate and separately treat one or more  
20 separate subclasses of claims consisting only of claims within the  
21 subclasses that are for or reduced to de minimis amounts. For  
22 purposes of this subsection, a "de minimis amount" means any amount  
23 equal to or less than a maximum de minimis amount approved by the  
24 receivership court as being reasonable and necessary for  
25 administrative convenience.

26 Sec. 21A.104. TERMINATION OF REHABILITATION. (a) When the  
27 rehabilitator believes further attempts to rehabilitate an insurer

1 would substantially increase the risk of loss to creditors,  
2 policyholders, or the public or would be futile, the rehabilitator  
3 may move for an order of liquidation. In accordance with Section  
4 21A.105, the rehabilitator or the rehabilitator's designated  
5 representative shall coordinate with the guaranty associations  
6 that may become liable as a result of the liquidation and any  
7 national association of guaranty associations to plan for  
8 transition to liquidation.

9 (b) Because the protection of the interests of insureds,  
10 claimants, and the public requires the timely performance of all  
11 insurance policy obligations, if the payment of policy obligations  
12 is suspended in substantial part for a period of six months at any  
13 time after the appointment of the rehabilitator and the  
14 rehabilitator has not filed an application for approval of a plan  
15 under Section 21A.103, the rehabilitator shall petition the  
16 receivership court for an order of liquidation.

17 (c) The rehabilitator or the directors of the insurer may at  
18 any time petition the receivership court for, or the receivership  
19 court on its own motion may enter, an order terminating  
20 rehabilitation of an insurer. Subject to the provisions of Section  
21 21A.351, if the receivership court finds that rehabilitation has  
22 been accomplished and that grounds for rehabilitation under Section  
23 21A.057 no longer exist, it shall order that the insurer be restored  
24 to title and possession of its property and the control of the  
25 business.

26 Sec. 21A.105. COORDINATION WITH GUARANTY ASSOCIATIONS. (a)  
27 The receiver shall notify any potentially obligated guaranty

1 association or the guaranty association's representative  
2 concerning the entry of a rehabilitation order and shall update the  
3 guaranty association or its representative regarding significant  
4 developments that impact efforts to rehabilitate the insurer. On a  
5 determination by the rehabilitator that rehabilitation efforts may  
6 not be successful, the rehabilitator shall participate in  
7 cooperative efforts with the potentially obligated guaranty  
8 associations. To facilitate an orderly transition to liquidation,  
9 the rehabilitator shall make available to the guaranty associations  
10 the information necessary to discharge their responsibilities upon  
11 becoming statutorily obligated. To the extent that information is  
12 available, or as it becomes available, the rehabilitator shall  
13 provide appropriate information to guaranty associations in the  
14 states in which the insurer transacted business.

15 (b) For the purposes of Subsection (a), "appropriate  
16 information" may include the following for lines of business  
17 written by the insurer, whether covered or not covered by guaranty  
18 associations:

19 (1) a general description of the different types of  
20 business written or assumed by the insurer;

21 (2) claim counts and policy counts by state and by line  
22 of business;

23 (3) claim and policy reserves;

24 (4) account values and cash surrender values;

25 (5) policy loans;

26 (6) interest crediting history;

27 (7) premiums and mode of payment;

1           (8) unpaid claims and amounts;

2           (9) sample policies and endorsements;

3           (10) a listing of different locations of claim files;

4           (11) if third-party administrators were used, copies  
5 of executed contracts and a description of the contractual  
6 arrangements; and

7           (12) information concerning claims in litigation or  
8 dispute, including a listing of claims with assigned defense  
9 counsel for those claims going to trial in the near future after a  
10 possible liquidation date.

11           (c) For the purposes of Subsection (a), "appropriate  
12 information" also includes information concerning states in which  
13 the insurer is or was licensed and periods for which the insurer is  
14 or was licensed and other information reasonably requested by a  
15 guaranty association necessary for the guaranty association to  
16 fulfill its statutory duties.

17           (d) In the case of a property and casualty insurer, the  
18 rehabilitator, in cooperation with the guaranty associations,  
19 shall make all reasonable efforts to prepare the insurer's  
20 electronic policy and claims data so that, upon the entry of an  
21 order of liquidation, the data will be ready for transmission using  
22 the Uniform Data Standards as promulgated by the National  
23 Association of Insurance Commissioners.

24           (e) The list of what appropriate information includes under  
25 Subsections (b) and (c) is not necessarily an exclusive list. Other  
26 information may be necessary to ensure that an orderly transition  
27 to liquidation occurs, and that information may be appropriately

1 provided by the receiver.

2 [Sections 21A.106-21A.150 reserved for expansion]

3 SUBCHAPTER D. LIQUIDATION

4 Sec. 21A.151. LIQUIDATION ORDERS. (a) An order to  
5 liquidate the business of an insurer shall appoint the commissioner  
6 and any successor in office as the liquidator and shall direct the  
7 liquidator to take possession of the property of the insurer and to  
8 administer it subject to this chapter. The liquidator is entitled  
9 to request the receivership court to appoint a single judge to  
10 supervise the liquidation and to hear any cases or controversies  
11 arising out of or related to the liquidation. Liquidation  
12 proceedings are exempt from any dormancy or similar program  
13 maintained by the receivership court for the early closure of civil  
14 actions. As of the entry of the final order of liquidation, the  
15 liquidator is vested by operation of law with the title to all of  
16 the property, contracts, rights of action, and books and records of  
17 the insurer ordered liquidated, wherever located. The filing or  
18 recording of the order with the clerk of the court and the recorder  
19 of deeds of the county in which the insurer's principal office or  
20 place of business is located or, in the case of real estate, the  
21 county where the property is located, imparts the same notice as a  
22 deed, bill of sale, or other evidence of title filed or recorded  
23 with that recorder of deeds would impart.

24 (b) Upon issuance of the order of liquidation, the rights  
25 and liabilities of the insurer and of its creditors, policyholders,  
26 shareholders, members, and all other persons interested in its  
27 estate become fixed as of the date of entry of the order of

1 liquidation, except as provided by Sections 21A.152 and 21A.255,  
2 unless otherwise fixed by the court.

3 (c) An order to liquidate the business of an alien insurer  
4 in this state must be in the same terms and has the same legal effect  
5 as an order to liquidate a domestic insurer.

6 (d) At the time of petitioning for an order of liquidation,  
7 or at any time after petitioning, the commissioner may petition the  
8 receivership court for a judicial declaration of insolvency. After  
9 providing the notice and hearing as it deems proper, the  
10 receivership court may make the declaration of insolvency.

11 (e) In the event an order of liquidation is set aside on  
12 appeal, the company may not be released from delinquency  
13 proceedings except in accordance with Section 21A.351.

14 Sec. 21A.152. CONTINUANCE OF COVERAGE. (a)  
15 Notwithstanding any policy or contract language or any other  
16 statute, all reinsurance contracts by which the insurer has assumed  
17 the insurance obligations of another insurer are canceled upon  
18 entry of an order of liquidation.

19 (b) Notwithstanding any policy or contract language or any  
20 other statute, all policies, insurance contracts other than  
21 reinsurance by which the insurer has ceded insurance obligations to  
22 another person, and surety bonds or surety undertakings, other than  
23 life or health insurance or annuities, in effect at the time of  
24 issuance of an order of liquidation, unless further extended by the  
25 receiver with the approval of the receivership court, continue in  
26 force only until the earlier of:

27 (1) the 30th day after the date of entry of the



1 liquidation order;

2 (2) the date of expiration of the policy coverage;

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

6 (4) the date the liquidator has effected a transfer of  
7 the policy obligation pursuant to Section 21A.154(h); or

8 (5) the date proposed by the liquidator and approved  
9 by the receivership court to cancel coverage.

10 (c) An order of liquidation under Section 21A.151 must  
11 terminate coverages at the time specified by Subsections (a) and  
12 (b) for purposes of any other statute.

13 (d) Policies of life or health insurance or annuities  
14 covered by a guaranty association and any portion of policies of  
15 life or health insurance or annuities covered by a guaranty  
16 association continue in force for the period and under the terms  
17 provided for by any applicable guaranty association law. Policies  
18 of life or health insurance or annuities not covered by a guaranty  
19 association and any portion of policies of life or health insurance  
20 or annuities not covered by a guaranty association terminate under  
21 Subsection (b), except to the extent the liquidator proposes and  
22 the receivership court approves the use of property of the estate,  
23 consistent with Section 21A.301, for the purpose of continuing the  
24 contracts or coverage by transferring them to an assuming  
25 reinsurer.

26 (e) The cancellation of any bond or surety undertaking does  
27 not release any cosurety or guarantor.

1        (f) The obligations of the insolvent insurer's reinsurers  
2 are not released or discharged by a cancellation under this  
3 section.

4        Sec. 21A.153. SALE OR DISSOLUTION OF INSURER'S CORPORATE  
5 ENTITY. (a) Notwithstanding the entry of a liquidation order, the  
6 liquidator may apply for an order to sell or dissolve the corporate  
7 entity or charter of a domestic insurer or the United States branch  
8 of an alien insurer domiciled in this state at any time after an  
9 order of liquidation of the insurer has been granted, consistent  
10 with the provisions of this section.

11        (b) Upon an application to sell the corporate entity or  
12 charter, with notice as prescribed in this chapter, the  
13 receivership court may enter an order:

14            (1) separating the corporate entity or charter,  
15 together with any of its licenses to do business and the assets the  
16 liquidator deems appropriate to the transaction, from the remaining  
17 estate in liquidation and all of the remaining estate's assets and  
18 the claims or interests of all claimants, creditors, policyholders,  
19 and stockholders;

20            (2) canceling all outstanding stock and other  
21 securities of and other equity interests in the corporate entity or  
22 charter, provided that the cancellation may not affect any claim  
23 against the estate by a holder of an equity interest;

24            (3) authorizing the issuance and sale of new stock or  
25 other securities for the purpose of transferring to one or more  
26 buyers control and ownership of the corporate entity or charter;  
27 and

1           (4) authorizing the sale of the corporate entity or  
2 charter, together with any of its authorizations or licenses to do  
3 business and the general assets of the estate the liquidator deems  
4 to be appropriate to the transaction, free and clear from the claims  
5 or interest of all claimants, creditors, policyholders, and  
6 stockholders.

7           (c) The sale of the corporate entity or charter may be made  
8 in the manner and on the terms and conditions applied for by the  
9 liquidator and ordered by the receivership court. Any sale is  
10 subject to the domiciliary state's laws regarding acquisition of an  
11 insurer, Chapter 823, and any other law regarding the transfer of  
12 control of insurers. The proceeds from the sale of the corporate  
13 entity or charter become a part of the property of the estate in  
14 liquidation. The separate corporate entity or charter, together  
15 with any of its authorizations or licenses to do business and such  
16 assets as the liquidator deems appropriate to the transaction, are,  
17 following the sale of the corporate entity or charter, free and  
18 clear from the claims or interest of all claimants, creditors,  
19 policyholders, and stockholders of the corporation in liquidation.

20           (d) This section shall be liberally construed to accomplish  
21 its purposes to:

22           (1) provide an expeditious and effective procedure to  
23 realize the maximum proceeds possible from the sale of a corporate  
24 entity or charter separated from an estate in liquidation; and

25           (2) ensure that the purchasers receive clear and  
26 marketable titles.

27           (e) If permission to sell the corporate entity or charter is

1 not granted prior to discharge of the liquidator, in accordance  
2 with this section or otherwise with receivership court approval:

3 (1) the receivership court may order dissolution of  
4 the corporate entity or charter;

5 (2) dissolution shall be deemed complete by operation  
6 of law upon the discharge of the liquidator if the insurer is  
7 insolvent; or

8 (3) dissolution may be ordered by the receivership  
9 court upon the discharge of the liquidator if the insurer is under a  
10 liquidation order for some other reason.

11 Sec. 21A.154. POWERS OF LIQUIDATOR. (a) The liquidator may  
12 appoint a special deputy or deputies to act for the liquidator under  
13 this chapter and employ or contract with legal counsel, actuaries,  
14 accountants, appraisers, consultants, clerks, assistants, and  
15 other personnel the liquidator may deem necessary to assist in the  
16 liquidation. A special deputy has all powers of the liquidator  
17 granted by this section, unless specifically limited by the  
18 liquidator, and serves at the pleasure of the liquidator. A special  
19 deputy or any other person with whom the liquidator contracts under  
20 this subsection may act on behalf of the commissioner only in the  
21 commissioner's capacity as liquidator. Any person with whom the  
22 liquidator contracts is not considered to be an agent of the state  
23 and any contract under this subsection is not a contract with the  
24 state. The provisions of any law governing the procurement of goods  
25 and services by the state do not apply to any contract entered into  
26 by the commissioner as liquidator. This subsection does not waive  
27 any immunity granted by Section 21A.014 or create any cause of

1 action against the state.

2 (b) The liquidator may determine the reasonable  
3 compensation for any special deputies, employees, or contractors  
4 retained by the liquidator as provided in Subsection (a) and pay  
5 compensation in accordance with Section 21A.015.

6 (c) The liquidator may appoint, with the approval of the  
7 receivership court, an advisory committee of policyholders,  
8 claimants, or other creditors, including guaranty associations, if  
9 the committee be deemed necessary. The advisory committee serves  
10 at the pleasure of the liquidator, and the decision to appoint an  
11 advisory committee is at the sole discretion of the liquidator. The  
12 advisory committee serves without compensation or reimbursement  
13 for expenses. The liquidator or the receivership court in  
14 liquidation proceedings conducted under this chapter may not  
15 appoint another committee of any nature.

16 (d) The liquidator may hold hearings, subpoena witnesses to  
17 compel their attendance, administer oaths, examine any person under  
18 oath, compel any persons to subscribe to their testimony after it  
19 has been correctly reduced to writing, and, in connection with a  
20 power under this subsection, require the production of any books,  
21 papers, records, or other documents that the liquidator deems  
22 relevant to the inquiry.

23 (e) The liquidator may audit the books and records of all  
24 agents of the insurer to the extent that those books and records  
25 relate to the business activities of the insurer.

26 (f) The liquidator may collect all debts and moneys due and  
27 claims belonging to the insurer, wherever located, and may:

1           (1) institute action in other jurisdictions, in order  
2 to forestall garnishment and attachment proceedings against the  
3 debts;

4           (2) do other acts as necessary or expedient to  
5 collect, conserve, or protect the insurer's property, including the  
6 power to sell, compromise, or assign debts for purposes of  
7 collection upon such terms and conditions as the liquidator deems  
8 consistent with this chapter; and

9           (3) pursue any creditor's remedies available to  
10 enforce the insurer's claims.

11           (g) The liquidator may conduct public and private sales of  
12 the property of the insurer.

13           (h) The liquidator may use property of the estate of an  
14 insurer under a liquidation order to transfer to a solvent assuming  
15 insurer policy obligations or the insurer's obligations under  
16 surety bonds and surety undertakings as well as collateral held by  
17 the insurer with respect to the reimbursement obligations of the  
18 principals under those surety bonds and surety undertakings, if the  
19 transfer can be arranged without prejudice to applicable priorities  
20 under Section 21A.301. If all insureds, principals, third-party  
21 claimants, and obligees under the policies, surety bonds, and  
22 surety undertakings consent or if the receivership court so orders,  
23 the estate has no further liability under the transferred policies,  
24 surety bonds, or surety undertakings after the transfer is made.

25           (i) The liquidator may, subject to Subsection (x), acquire,  
26 hypothecate, encumber, lease, improve, sell, transfer, abandon, or  
27 otherwise dispose of or deal with any property of the estate at its

1 market value or upon terms and conditions that are fair and  
2 reasonable. The liquidator also has the power to execute,  
3 acknowledge, and deliver any and all deeds, assignments, releases,  
4 and other instruments necessary or proper to effectuate any sale of  
5 property or other transaction in connection with the liquidation.

6 (j) The liquidator may borrow money on the security of the  
7 property of the estate or without security and execute and deliver  
8 all documents necessary to that transaction for the purpose of  
9 facilitating the liquidation. Any funds borrowed under this  
10 subsection may be repaid as an administrative expense and have  
11 priority over any other claims in Class 1 under the priority of  
12 distribution.

13 (k) The liquidator may enter into contracts as necessary to  
14 carry out the order to liquidate and, subject to the provisions of  
15 Section 21A.013, may assume or reject any executory contract or  
16 unexpired lease to which the insurer is a party.

17 (l) The liquidator may continue to prosecute and institute  
18 in the name of the insurer or in the liquidator's own name any and  
19 all suits and other legal proceedings, in this state or elsewhere,  
20 and abandon the prosecution of claims the liquidator deems  
21 unprofitable to pursue further. If the insurer is dissolved under  
22 Section 21A.153, the liquidator has the power to apply to any court  
23 in this state or elsewhere for leave to substitute the liquidator  
24 for the insurer as a party.

25 (m) The liquidator may prosecute any action that may exist  
26 on behalf of the creditors, members, policyholders, shareholders of  
27 the insurer, or the public against any person, except to the extent

1 that a claim is personal to a specific creditor, member,  
2 policyholder, or shareholder and recovery on such claim would not  
3 inure to the benefit of the estate. This subsection does not  
4 infringe or impair any of the rights provided to a guaranty  
5 association pursuant to its enabling statute or otherwise.

6 (n) The liquidator may take possession of the records and  
7 property of the insurer as may be convenient for the purposes of  
8 efficient and orderly execution of the liquidation. Guaranty  
9 associations must be allowed reasonable access to the records of  
10 the insurer as is necessary for the guaranty associations to carry  
11 out their statutory obligations.

12 (o) The liquidator may deposit in one or more banks in this  
13 state the amounts that are required for meeting current  
14 administration expenses and dividend distributions.

15 (p) The liquidator may invest all amounts not currently  
16 needed, unless the receivership court orders otherwise.

17 (q) The liquidator may file any necessary documents for  
18 record in the office of any recorder of deeds or record office in  
19 this state or elsewhere where property of the insurer is located.

20 (r) The liquidator may assert all defenses available to the  
21 insurer as against third persons, including statutes of limitation,  
22 statutes of frauds, and the defense of usury. A waiver of any  
23 defense by the insurer after a petition is filed under this chapter  
24 does not bind the liquidator. When a guaranty association has an  
25 obligation to defend any suit, the liquidator shall defer to the  
26 association's obligation.

27 (s) The liquidator may exercise and enforce all the rights,



1 remedies, and powers of any creditor, shareholder, policyholder, or  
2 member, including any power to avoid any transfer or lien that may  
3 be avoidable under this chapter or otherwise.

4 (t) The liquidator may intervene in any proceeding wherever  
5 instituted that might lead to the appointment of a receiver or  
6 trustee and act as the receiver or trustee whenever the appointment  
7 is offered.

8 (u) The liquidator may enter into agreements with any  
9 receivers or commissioners of any other states.

10 (v) The liquidator may exercise all powers held by receivers  
11 on August 31, 2005, or conferred on receivers after that date by the  
12 laws of this state not inconsistent with this chapter.

13 (w) The liquidator is vested with all the rights of the  
14 entity or entities in receivership.

15 (x) The enumeration, in this section, of the powers and  
16 authority of the liquidator may not be construed as a limitation  
17 upon the liquidator, nor may it exclude in any manner the right to  
18 do other acts not specifically enumerated or otherwise provided  
19 for, to the extent necessary or appropriate for the accomplishment  
20 of or in aid of the purpose of liquidation.

21 (y) The liquidator may hypothecate, encumber, lease, sell,  
22 transfer, abandon, or otherwise dispose of or deal with any  
23 property of the insurer, settle or resolve any claim brought by the  
24 liquidator on behalf of the insurer, or commute or settle any claim  
25 of reinsurance under any contract of reinsurance, as follows:

26 (1) if the property or claim has a market or settlement  
27 value that does not exceed the lesser of \$1 million or 10 percent of

1 the general assets of the estate as shown on the receivership's  
2 financial statements, the liquidator may take action at the  
3 liquidator's discretion, provided that the receivership court may,  
4 upon petition of the liquidator, increase the threshold upon a  
5 showing that compliance with this requirement is burdensome to the  
6 liquidator in administering the estate and is unnecessary to  
7 protect the material interests of creditors;

8 (2) in all instances other than those described in  
9 Subdivision (1), the liquidator may take the action only after  
10 obtaining approval of the receivership court as provided by Section  
11 21A.007;

12 (3) the liquidator may, at the liquidator's  
13 discretion, request the receivership court to approve a proposed  
14 action as provided by Section 21A.007 if the value of the property  
15 or claim appears to be less than the threshold provided by  
16 Subdivision (1) but cannot be ascertained with certainty, or for  
17 any other reason as determined by the liquidator; and

18 (4) after obtaining approval of the receivership court  
19 as provided in Section 21A.007, the liquidator may, subject to  
20 Subsection (z), transferrights to payment under ceding reinsurance  
21 agreements covering policies to a third-party transferee.

22 (z) The transferee of a right to payment under Subsection  
23 (y)(4) has the rights to collect and enforce collection of the  
24 reinsurance for the amount payable to the ceding insurer or to its  
25 receiver, without diminution because of the insolvency or because  
26 the receiver has failed to pay all or a portion of the claim, based  
27 on the amounts paid or allowed pursuant to Section 21A.211. The

1 transfer of the rights does not give rise to any defense regarding  
2 the reinsurer's obligations under the reinsurance agreement  
3 regardless of whether an agreement or other applicable law  
4 prohibits the transfer of rights under the reinsurance agreement.  
5 Except as provided in this subsection, any transfer of rights  
6 pursuant to Subsection (y)(4) does not impair any rights or  
7 defenses of the reinsurer that existed prior to the transfer or that  
8 would have existed in the absence of the transfer. Except as  
9 otherwise provided in this subsection, any transfer of rights  
10 pursuant to Subsection (y)(4) does not relieve the transferee or  
11 the liquidator from obligations owed to the reinsurer pursuant to  
12 the reinsurance or other agreement.

13 (aa) The liquidator is not obligated to defend any action  
14 against the insurer or insured. Any insureds not defended by a  
15 guaranty association may provide their own defense, and include the  
16 cost of the defense as part of their claims, if the defense was an  
17 obligation of the insurer. The right of the liquidator to contest  
18 coverage on a particular claim is preserved without the necessity  
19 for an express reservation of rights.

20 Sec. 21A.155. NOTICE TO CREDITORS AND OTHERS. (a) Unless  
21 the receivership court otherwise directs, the liquidator shall give  
22 or cause to be given notice of the liquidation order as soon as  
23 possible:

24 (1) by first class mail or electronic communication as  
25 permitted by the receivership court to:

26 (A) any guaranty association that is or may  
27 become obligated as a result of the liquidation and any national

1 association of guaranty associations;

2 (B) all the insurer's agents, brokers, or  
3 producers of record with current appointments or current licenses  
4 to represent the insurer and all other agents, brokers, or  
5 producers as the liquidator deems appropriate at their last known  
6 address; and

7 (C) all persons or entities known or reasonably  
8 expected to have claims against the insurer, at their last known  
9 address as indicated by the records of the insurer, and all state  
10 and federal agencies with an interest in the proceeding; and

11 (2) by publication in a newspaper of general  
12 circulation in the county in which the insurer has its principal  
13 place of business and in any other locations as the liquidator deems  
14 appropriate.

15 (b) The notice of the entry of an order of liquidation must  
16 contain or provide directions for obtaining the following  
17 information:

18 (1) a statement that the insurer has been placed in  
19 liquidation;

20 (2) a statement that certain acts are stayed under  
21 Section 21A.008 and describe any additional injunctive relief  
22 ordered by the receivership court;

23 (3) a statement whether, and to what extent, the  
24 insurer's policies continue in effect;

25 (4) to the extent applicable, a statement that  
26 coverage by state guaranty associations may be available for all or  
27 part of policy benefits in accordance with applicable state

1 guaranty laws;

2 (5) a statement of the deadline for filing claims, if  
3 established, and the requirements for filing a proof of claim  
4 pursuant to Section 21A.251 on or before that date;

5 (6) a statement of the date, time, and location of any  
6 initial status hearing scheduled at the time the notice is sent;

7 (7) a description of the process for obtaining notice  
8 of matters before the receivership court; and

9 (8) any other information the liquidator or the  
10 receivership court deems appropriate.

11 (c) If notice is given in accordance with this section, the  
12 distribution of property of the insurer under this chapter is  
13 conclusive with respect to all claimants, whether or not they  
14 received notice.

15 (d) Notwithstanding the other provisions of this section,  
16 the liquidator has no duty to locate any persons or entities if no  
17 address is found in the records of the insurer or if mailings are  
18 returned to the liquidator because of inability to deliver at the  
19 address shown in the insurer's books and records. In these  
20 circumstances the notice by publication as required by this chapter  
21 or actual notice received is sufficient notice. Written  
22 certification by the liquidator or other knowledgeable person  
23 acting for the liquidator that the notices were deposited in the  
24 United States mail, postage prepaid, or that the notices have been  
25 electronically transmitted is prima facie evidence of mailing and  
26 receipt. All claimants shall keep the liquidator informed of any  
27 changes of address.

1           (e) Notwithstanding Subsection (a)(1)(C), upon application  
2 of the liquidator, the receivership court may:

3           (1) find that notice by publication as required in  
4 this section is sufficient notice to those persons holding an  
5 occurrence policy that expired more than four years prior to the  
6 entry of the order of liquidation and under which there are no  
7 pending claims; or

8           (2) order other notice to persons described by  
9 Subdivision (1) as it deems appropriate.

10          (f) The liquidator shall notify the Texas Workers'  
11 Compensation Commission upon the entry of the liquidation order if  
12 the insurer has issued workers' compensation coverage in effect in  
13 this state. Upon request of the liquidator, the Texas Workers'  
14 Compensation Commission shall submit a list of active cases pending  
15 before the commission that relate to workers' compensation coverage  
16 issued by the insurer.

17          Sec. 21A.156. DUTIES OF AGENTS. (a) Every person who  
18 represented the insurer as an agent and receives notice in the form  
19 prescribed in Section 21A.155 that the insurer is the subject of a  
20 liquidation order, not later than the 30th day after the date of the  
21 notice, shall provide to the liquidator, in addition to the  
22 information the agent may be required to provide pursuant to  
23 Section 21A.010, the information in the agent's records related to  
24 any policy issued by the insurer through the agent and any policy  
25 issued by the insurer through an agent under contract to the agent,  
26 including the name and address of any subagent. For purposes of  
27 this subsection, a policy is issued through an agent if the agent

1 has a property interest in the expiration of the policy or if the  
2 agent has had in the agent's possession a copy of the declarations  
3 of the policy at any time during the life of the policy, except  
4 where the ownership of the expiration of the policy has been  
5 transferred to another.

6 (b) Any agent failing to provide information to the  
7 liquidator as required in Subsection (a) may be subject to payment  
8 of an administrative penalty under Chapter 84 of not more than  
9 \$1,000. In addition, the agent's license may be suspended under  
10 Chapter 4005.

11 [Sections 21A.157-21A.200 reserved for expansion]

12 SUBCHAPTER E. ASSET RECOVERY

13 Sec. 21A.201. TURNOVER OF ASSETS. (a) If the receiver  
14 determines that funds or property in the possession of another  
15 person are rightfully the property of the estate, the receiver  
16 shall deliver to the person a written demand for immediate delivery  
17 of the funds or property, referencing this section by number and the  
18 court and docket number of the receivership action, and notifying  
19 the person that any claim of right to the funds or property by the  
20 person must be presented to the receivership court not later than  
21 the 20th day after the date of the written demand. Any person who  
22 holds funds or other property belonging to an entity subject to an  
23 order of receivership under this chapter shall deliver the funds or  
24 other property to the receiver on demand. Should the person allege  
25 any right to retain the funds or other property, the person, not  
26 later than the 20th day after the date of receipt of the demand that  
27 the funds or property be delivered to the receiver, shall file with

1 the receivership court a pleading setting out that right. The  
2 person shall serve a copy of the pleading on the receiver. The  
3 pleading must inform the receivership court as to the nature of the  
4 claim to the funds or property, the alleged value of the property or  
5 amount of funds held, and what action, pending determination of the  
6 dispute, has been taken by the person to preserve and protect the  
7 property or to preserve any funds. The relinquishment of  
8 possession of funds or property by any person who has received a  
9 demand pursuant to this section does not constitute a waiver of a  
10 right to make a claim in the receivership.

11 (b) If requested by the receiver, the receivership court  
12 shall hold a hearing to determine where and under what conditions  
13 the person shall hold the property or funds pending determination  
14 of the dispute. The receivership court may impose conditions as it  
15 may deem necessary or appropriate for the preservation of the  
16 property or funds until the receivership court can determine the  
17 validity of the person's claim to the property or funds. If any  
18 property or funds are allowed to remain in the possession of the  
19 person after demand made by the receiver, that person is strictly  
20 liable to the estate for any waste, loss, or damage to or diminution  
21 of value of the property or funds retained.

22 (c) If a person has filed a pleading alleging any right to  
23 retain funds or property as provided by Subsection (a), the  
24 receivership court shall hold a subsequent hearing to determine the  
25 entitlement of the person to the funds or property claimed by the  
26 receiver.

27 (d) If a person fails to deliver the funds or property or to



1 file the pleading described by Subsection (a) within the period  
2 described by Subsection (a), the receivership court may, upon  
3 petition of the receiver and upon a copy of the petition being  
4 served by the receiver to that person, issue its summary order  
5 directing the immediate delivery of the funds or property to the  
6 receiver and finding that the person has waived all claims of right  
7 to the funds or property.

8 Sec. 21A.202. RECOVERY FROM AFFILIATES. (a) The receiver  
9 has a right to recover from any affiliate of the insurer any  
10 property of the insurer transferred to or for the benefit of the  
11 affiliate, or the property's value, if the transfer was made within  
12 the two years preceding the initial petition for receivership.

13 (b) A transfer is not recoverable under Subsection (a) if  
14 the affiliate shows that, when the transfer was made:

15 (1) the insurer was solvent;

16 (2) the transfer was lawful; and

17 (3) neither the insurer nor the affiliate knew or  
18 reasonably should have known that the transfer, under  
19 then-applicable statutory accounting standards, would:

20 (A) place the insurer:

21 (i) in violation of applicable capital or  
22 surplus requirements;

23 (ii) below the applicable minimum  
24 risk-based capital level; or

25 (iii) in violation of writing ratios under  
26 Article 1.32 or analogous requirements under Section 843.406; or

27 (B) cause the insurer's filed financial

1 statements not to present fairly the capital and surplus of the  
2 insurer.

3 Sec. 21A.203. UNAUTHORIZED POST-PETITION TRANSFERS. (a)  
4 Except as provided by this section, the receiver may avoid any  
5 transfer of an interest of the insurer in property or any obligation  
6 incurred by the insurer that:

7 (1) was made or occurred after the petition for  
8 receivership was filed; and

9 (2) is not authorized by the receiver and approved by  
10 the receivership court or otherwise authorized in accordance with  
11 this chapter.

12 (b) Except to the extent that a transfer or obligation  
13 avoidable under Subsection (a) is otherwise voidable under this  
14 chapter, a transferee or obligee of a transfer or obligation  
15 avoided under Subsection (a) that takes for value and in good faith,  
16 at the option of the receivership court, has a lien or may retain  
17 any interest transferred or enforce any obligation incurred, as  
18 applicable, to the extent that the transferee or obligee gave value  
19 to the insurer in exchange for the transfer or obligation.

20 Sec. 21A.204. VOIDABLE PREFERENCES AND LIENS. (a) A  
21 "preference" is a transfer of any interest in property of an insurer  
22 that:

23 (1) is made to or for the benefit of a creditor and for  
24 or on account of an antecedent debt and is made or suffered by the  
25 insurer within two years preceding the filing of a successful  
26 petition commencing delinquency proceedings; and

27 (2) enables the creditor to receive more than the

1 creditor would receive if the insurer were liquidated under this  
2 chapter, the transfer had not been made, and the creditor was  
3 entitled to receive payment of the debt to the extent provided by  
4 this chapter.

5 (b) Any preference may be avoided by the receiver if:

6 (1) the insurer was insolvent at the time of the  
7 transfer;

8 (2) the transfer was made within 120 days before the  
9 date of filing of the petition commencing delinquency proceedings;

10 (3) the creditor receiving the transfer or to be  
11 benefited by the transfer, or the creditor's agent acting with  
12 reference to the transfer, had, at the time the transfer was made,  
13 reasonable cause to believe that the insurer was insolvent or was  
14 about to become insolvent; or

15 (4) the creditor receiving the transfer was:

16 (A) an officer or director of the insurer;

17 (B) an employee, attorney, or other person who  
18 was in fact in a position to effect a level of control or influence  
19 over the actions of the insurer comparable to that of an officer or  
20 director, without regard to whether the person held that position;  
21 or

22 (C) an affiliate.

23 (c) The receiver may not avoid a transfer under this  
24 section:

25 (1) to the extent that the transfer was:

26 (A) intended by the insurer and the creditor to  
27 or for whose benefit the transfer was made to be a contemporaneous

1 exchange for new value given to the insurer and in fact was a  
2 substantially contemporaneous exchange; or

3 (B) made in the ordinary course of business or  
4 financial affairs between the insurer and the transferee and made  
5 according to ordinary business terms in payment of a debt incurred  
6 by the insurer in the ordinary course of business or financial  
7 affairs of the insurer and the transferee; or

8 (2) to or for the benefit of a creditor, to the extent  
9 that, after the transfer, the creditor gave new value to or for the  
10 benefit of the insurer that was:

11 (A) not secured by an otherwise unavoidable  
12 security interest; and

13 (B) on account of which new value the insurer did  
14 not make an otherwise unavoidable transfer to or for the benefit of  
15 the creditor.

16 (d) For purposes of this section:

17 (1) a transfer of property other than real property is  
18 deemed to be made or suffered at the time the transfer becomes so  
19 far perfected that any subsequent lien obtainable by legal or  
20 equitable proceedings on a simple contract could not become  
21 superior to the rights of the transferee;

22 (2) a transfer of real property is deemed to be made or  
23 suffered when the transfer is so far perfected that a subsequent  
24 bona fide purchaser from the insurer could not obtain rights  
25 superior to the rights of the transferee;

26 (3) a transfer that creates an equitable lien is not  
27 deemed to be perfected if there are available means by which a legal

1 lien could be created; and

2 (4) a transfer not perfected prior to the filing of a  
3 petition for receivership is deemed to be made immediately before  
4 the filing commencing delinquency proceedings.

5 (e) The provisions of this section apply without regard to  
6 whether there are or were creditors who might have obtained liens or  
7 persons who might have become bona fide purchasers.

8 (f) Within the meaning of Subsection (d), "a lien obtainable  
9 by legal or equitable proceedings on a simple contract" is a lien  
10 arising in the ordinary course of proceedings upon the entry or  
11 docketing of a judgment or decree, or upon attachment, garnishment,  
12 execution, or similar process, whether before, upon, or after  
13 judgment or decree and whether before or upon levy. The term does  
14 not include liens that under applicable law are given a special  
15 priority over other liens that are prior in time.

16 (g) Within the meaning of Subsection (d), a lien obtainable  
17 by legal or equitable proceedings could become superior to the  
18 rights of a transferee, or a purchaser could obtain rights superior  
19 to the rights of a transferee if the consequences would follow only  
20 from the lien or purchase itself, or from the lien or purchase  
21 followed by any step wholly within the control of the respective  
22 lienholder or purchaser, with or without the aid of ministerial  
23 action by public officials. A lien could not, however, become  
24 superior and a purchase could not create superior rights for the  
25 purpose of Subsection (d) through any acts subsequent to the  
26 obtaining of the lien or subsequent to the purchase that require the  
27 agreement or concurrence of any third party or that require any

1 further judicial action or ruling.

2 (h) A transfer of property for or on account of a new and  
3 contemporaneous consideration that is deemed under Subsection (d)  
4 to be made or suffered after the transfer because of delay in  
5 perfecting the transfer does not become a transfer for or on account  
6 of an antecedent debt if any acts required by the applicable law to  
7 be performed to perfect the transfer against liens or bona fide  
8 purchasers' rights are performed within 21 days or any period  
9 expressly allowed by the law, whichever is less. A transfer to  
10 secure a future loan, if the loan is actually made, or a transfer  
11 that becomes security for a future loan, has the same effect as a  
12 transfer for or on account of a new and contemporaneous  
13 consideration.

14 (i)(1) If any lien deemed voidable under Subsection (b) has  
15 been dissolved by the furnishing of a bond or other obligation, the  
16 surety on which has been indemnified directly or indirectly by the  
17 transfer of or the creation of a lien upon any property of an  
18 insurer before the filing of a petition commencing delinquency  
19 proceedings under this chapter, the indemnifying transfer or lien  
20 is also deemed voidable.

21 (2) The property affected by any lien deemed voidable  
22 under Subsection (b) and Subdivision (1) is discharged from the  
23 lien, and that property and any of the indemnifying property  
24 transferred to or for the benefit of a surety passes to the  
25 receiver, except that the receivership court may on due notice  
26 order any lien deemed voidable under this section to be preserved  
27 for the benefit of the estate and may direct that a conveyance be

1 executed as may be proper or adequate to evidence the title of the  
2 receiver.

3 (3) Reasonable notice of any hearing in the proceeding  
4 shall be given to all parties as required by law, including the  
5 obligee of a releasing bond or other like obligation. If an order  
6 is entered for the recovery of indemnifying property in kind or for  
7 the avoidance of an indemnifying lien, the receivership court may  
8 in the same proceeding ascertain the value of the property or lien.  
9 If the value of the property or lien is less than the amount for  
10 which the property is indemnified or than the amount of the lien,  
11 the transferee or lienholder may elect to retain the property or  
12 lien upon payment to the receiver of its value, as determined by the  
13 receivership court, within a reasonable time determined by the  
14 receivership court.

15 (4) The liability of the surety under a releasing bond  
16 or other similar obligation shall be discharged to the extent of the  
17 value of the indemnifying property recovered or the indemnifying  
18 lien nullified and avoided by the receiver, or if the property is  
19 retained under Subdivision (3) to the extent of the amount paid to  
20 the receiver.

21 (j) This section may not be construed to prejudice any other  
22 claim by the receiver against any person.

23 Sec. 21A.205. FRAUDULENT TRANSFERS AND OBLIGATIONS. (a)  
24 The receiver may avoid any transfer of an interest of the insurer in  
25 property, any reinsurance transaction, or any obligation incurred  
26 by an insurer that was made or incurred on or within two years  
27 before the date of the initial filing of a petition commencing

1 delinquency proceedings under this chapter, if the insurer  
2 voluntarily or involuntarily:

3 (1) made the transfer or incurred the obligation with  
4 actual intent to hinder, delay, or defraud any person to which it  
5 was or became indebted on or after the date that the transfer was  
6 made or the obligation was incurred; or

7 (2) received less than a reasonably equivalent value  
8 in exchange for the transfer or obligation.

9 (b) Except to the extent that a transfer or obligation  
10 voidable under this section is voidable under other provisions of  
11 this chapter, a transferee or obligee that takes for value and in  
12 good faith a voidable transfer or obligation has a lien on or may  
13 retain any interest transferred or may enforce any obligation  
14 incurred, as the case may be, to the extent that the transferee or  
15 obligee gave value to the insurer in exchange for the transfer or  
16 obligation.

17 (c) For purposes of this section, a transfer is made when  
18 the transfer is so perfected that a subsequent bona fide purchaser  
19 from the insurer cannot acquire an interest in the property  
20 transferred that is superior to the interest in the property of the  
21 transferee, but if the transfer is not so perfected before the  
22 commencement of the delinquency proceeding, the transfer is deemed  
23 to have been made immediately before the date of the initial filing  
24 of the petition commencing delinquency proceedings.

25 (d) For purposes of this section, "value" means property or  
26 satisfaction or securing of a present or antecedent debt of the  
27 insurer.



1       Sec. 21A.206. RECEIVER AS LIEN CREDITOR. (a) The receiver  
2 may avoid any transfer of or lien upon the property of, or  
3 obligation incurred by, an insurer that the insurer or a  
4 policyholder, creditor, member, or stockholder of the insurer may  
5 have avoided without regard to any knowledge of the receiver, the  
6 commissioner, the insurer, or any policyholder, creditor, member,  
7 or stockholder of the insurer regardless of whether such a  
8 policyholder, creditor, member, or stockholder exists.

9       (b) The receiver is deemed a creditor without knowledge for  
10 purposes of pursuing claims under the Uniform Fraudulent Transfer  
11 Act, the Uniform Fraudulent Conveyance Act, or similar provisions  
12 of state or federal law.

13       Sec. 21A.207. LIABILITY OF TRANSFEREE. (a) Except as  
14 otherwise provided in this section, to the extent that the receiver  
15 obtains an order under Section 21A.201 or avoids a transfer under  
16 Sections 21A.202, 21A.203, 21A.204, 21A.205, or 21A.206, the  
17 receiver may recover the property transferred, or the value of the  
18 property, from:

19           (1) the initial transferee of the transfer or the  
20 entity for whose benefit the transfer was made; or

21           (2) any immediate or mediate transferee of the initial  
22 transferee.

23       (b) The receiver may not recover under Subsection (a)(2)  
24 from:

25           (1) a transferee that takes for value, including  
26 satisfaction or securing of a present or antecedent debt, in good  
27 faith, and without knowledge of the voidability of the transfer

1 avoided; or

2 (2) any immediate or mediate good faith transferee of  
3 the transferee.

4 (c) Any transfer avoided in accordance with this chapter is  
5 preserved for the benefit of the receivership estate, but only with  
6 respect to property of the insurer.

7 (d) In addition to the remedies specifically provided under  
8 Sections 21A.201-21A.206 and Subsection (a), if the receiver is  
9 successful in establishing a claim to the property or any part of  
10 the property, the receiver is entitled to recover judgment for:

11 (1) rental for the use of the tangible property from  
12 the later of the entry of the receivership order or the date of the  
13 transfer;

14 (2) in the case of funds or intangible property, the  
15 greater of:

16 (A) the actual interest or income earned by the  
17 property; or

18 (B) interest at the statutory rate for judgments  
19 from the later of the date of the entry of the receivership order or  
20 the date of the transfer; and

21 (3) except as to recoveries from guaranty  
22 associations, all costs, including investigative costs and other  
23 expenses necessary to the recovery of the property or funds, and  
24 reasonable attorney's fees.

25 (e) In any action under this section, the receivership court  
26 may allow the receiver to seek recovery of the property involved or  
27 the property's value.

1        (f) In any action under Sections 21A.201-21A.206, the  
2 receiver has the burden of proving the avoidability of a transfer,  
3 and the person against whom recovery or avoidance is sought has the  
4 burden of proving the nature and extent of any affirmative defense.

5        Sec. 21A.208. CLAIMS OF HOLDERS OF VOID OR VOIDABLE RIGHTS.

6        (a) A claim of a creditor who has received or acquired a  
7 preference, lien, conveyance, transfer, assignment, or encumbrance  
8 voidable under this chapter may not be allowed unless the creditor  
9 surrenders the preference, lien, conveyance, transfer, assignment,  
10 or encumbrance. If the avoidance is effected by a proceeding in  
11 which a final judgment has been entered, the claim may not be  
12 allowed unless the money is paid or the property is delivered to the  
13 receiver not later than the 30th day after the date of the entering  
14 of the final judgment, except that the receivership court may allow  
15 further time if there is an appeal or other continuation of the  
16 proceeding.

17        (b) A claim allowable under Subsection (a) by reason of the  
18 avoidance, whether voluntary or involuntary, or a preference, lien,  
19 conveyance, transfer, assignment, or encumbrance, may be filed as  
20 an excused late filing under Section 21A.251(b) if filed not later  
21 than the 30th day after the date of the avoidance, or within the  
22 further time allowed by the receivership court under Subsection  
23 (a).

24        Sec. 21A.209. SETOFFS. (a) All mutual debts or mutual  
25 credits, whether arising out of one or more contracts between the  
26 insurer and another person in connection with any action or  
27 proceeding under this chapter, must be set off and only the balance

1 shall be allowed or paid, except as provided by Subsection (b).

2 (b) A setoff may not be allowed in favor of any person if:

3 (1) the obligation of the insurer to the person:

4 (A) would not, at the date of the commencement of  
5 the delinquency proceeding, entitle the person to share as a  
6 claimant in the assets of the insurer; or

7 (B) was purchased by or transferred to the  
8 person:

9 (i) after the commencement of the  
10 delinquency proceeding; or

11 (ii) for the purpose of increasing setoff  
12 rights;

13 (2) the obligation of the insurer is owed to an  
14 affiliate of the person, or any other entity or association other  
15 than the person;

16 (3) the obligation of the person:

17 (A) is as a trustee or fiduciary; or

18 (B) is to pay:

19 (i) an assessment levied against the  
20 members of a mutual insurer, reciprocal or interinsurance exchange,  
21 or Lloyd's plan; or

22 (ii) a balance upon a subscription to the  
23 capital stock of a capital stock insurance company; or

24 (4) the obligations between the person and the insurer  
25 arise from reinsurance transactions in which either the person or  
26 the insurer has assumed risks and obligations from the other party  
27 and then has ceded back to that party substantially the same risks

1 and obligations.

2 (c) The receiver shall provide an interested person with  
3 accounting statements identifying all debts that are due and  
4 payable. If a person owes the insurer amounts that are due and  
5 payable against which the person asserts a setoff of mutual credits  
6 that, in the future, may become due and payable from the insurer,  
7 the person shall promptly pay the amounts due and payable to the  
8 receiver. Notwithstanding any other provision of this chapter, the  
9 receiver shall promptly and fully refund, to the extent of a  
10 person's prior payments under this section, any mutual credits that  
11 become due and payable to the person by the insurer.

12 Sec. 21A.210. ASSESSMENTS. (a) As soon as practicable, but  
13 not later than the fourth anniversary of the date of an order of  
14 receivership of an insurer issuing assessable policies, the  
15 receiver shall make a report to the receivership court setting  
16 forth:

17 (1) the reasonable value of the assets of the insurer;  
18 (2) the insurer's probable total liabilities;  
19 (3) the probable aggregate amount of the assessment  
20 necessary to pay all claims of creditors and expenses in full,  
21 including expenses of administration and costs of collecting the  
22 assessment; and

23 (4) a recommendation as to whether an assessment  
24 should be made and in what amount.

25 (b) Upon the basis of the report provided in Subsection (a),  
26 including any supplements and amendments to the report, the  
27 receivership court may approve, solely on application by the

1 receiver, one or more assessments against all members of the  
2 insurer who are subject to assessment. The order approving the  
3 assessment shall provide instructions regarding notice of the  
4 assessment, deadlines for payment, and other instructions to the  
5 receiver regarding collection of the assessment.

6 (c) Subject to any applicable legal limits on ability to  
7 assess, the aggregate assessment must be for the amount that the sum  
8 of the probable liabilities, the expenses of administration, and  
9 the estimated cost of collection of the assessment, exceeds the  
10 value of existing assets, with due regard being given to  
11 assessments that cannot be collected economically.

12 (d) After levy of assessment under Subsection (b), the  
13 receiver shall petition the receivership court for an order  
14 directing each member who has not paid the assessment pursuant to  
15 the levy to show cause why a judgment for the assessment should not  
16 be entered.

17 (e) At least 20 days before the return day of the order to  
18 show cause, the receiver shall give notice of the order to show  
19 cause to each member liable on the assessment. Notice must be given  
20 by first class mail mailed to the member's last known address as it  
21 appears on the insurer's records, by publication, or by another  
22 method of notification as directed by the receivership court.  
23 Failure of the member or subscriber to receive the notice of the  
24 assessment or of the order, within the time specified in the  
25 assessment or order or at all, is not a defense in a proceeding to  
26 collect the assessment.

27 (f) If a member does not appear and serve verified

1 objections upon the receiver on or before the return day of the  
2 order to show cause under Subsection (d), the receivership court  
3 shall make an order adjudging the member liable for the amount of  
4 the assessment against the member under Subsection (d) together  
5 with costs, and the receiver shall have a judgment against the  
6 member for the amount of the assessment and costs in the order.

7 (g) If on or before the return day of the order to show  
8 cause, the member appears and serves verified objections upon the  
9 receiver, the receivership court may hear and determine the matter  
10 or may appoint a referee to hear it and make an order as the facts  
11 warrant. In the event that the receiver determines that the  
12 objections do not warrant relief from assessment, the member may  
13 request the receivership court to review the matter and vacate the  
14 order to show cause.

15 (h) The receiver may enforce any order or collect any  
16 judgment under Subsection (f) by any lawful means.

17 (i) Any assessment of a subscriber or member of an insurer  
18 made by the receiver pursuant to the order of receivership court  
19 fixing the aggregate amount of the assessment against all members  
20 or subscribers and approving the classification and formula made by  
21 the receiver under this section is prima facie correct.

22 (j) Any claim filed by an assessee who fails to pay an  
23 assessment, after the conclusion of any legal action by the  
24 assessee objecting to the assessment, is deemed a late filed claim  
25 under Section 21A.251.

26 Sec. 21A.211. REINSURER'S LIABILITY. (a) If the receiver  
27 has claims under policies covered by reinsurance, the liability of

1 the reinsurer to the receiver under the policies reinsured may not  
2 be diminished because of the insolvency of the insurer, regardless  
3 of any provisions in the reinsurance contract to the contrary,  
4 except under the following circumstances:

5 (1) a contract or other written agreement entered into  
6 before the delinquency proceeding that is otherwise permitted by  
7 law specifically provides another payee of the reinsurance in the  
8 event of the insolvency of the ceding insurer;

9 (2) the assuming insurer, under an assumption  
10 reinsurance agreement and with the consent of the direct insured,  
11 has assumed, as direct obligations of the assuming insurer, the  
12 policy obligations of the ceding insurer to the payees under  
13 policies and in substitution for the obligations of the ceding  
14 insurer to those payees; or

15 (3) a life and health insurance guaranty association  
16 has made the election to succeed to the rights and obligations of  
17 the insolvent insurer under a contract of reinsurance in accordance  
18 with the life and health guaranty association laws of this state or  
19 its domiciliary state or another applicable law, rule, order, or  
20 assignment contract, in which case payments shall be made directly  
21 to or at the direction of the guaranty association.

22 (b) Except as provided by Subsection (a), any reinsurance  
23 shall be payable to the receiver under a policy reinsured by the  
24 assuming insurer on the basis of claims:

25 (1) allowed under Section 21A.253; and

26 (2) paid under:

27 (A) Article 21.28-C or 21.28-D;



1                   (B) Chapter 2602; or

2                   (C) the guaranty associations of other states.

3           (c) The liquidator or receiver, as applicable, shall give  
4 written notice to affected reinsurers of the pendency of a claim  
5 against the receiver under a reinsured policy within a reasonable  
6 time after the claim is filed in the delinquency proceeding. During  
7 the pendency of the claim any affected reinsurer may:

8                   (1) investigate the claim; and

9                   (2) intervene, at the reinsurer's own expense, in any  
10 proceeding where the claim is to be adjusted and assert any defense  
11 or defenses which it may deem available to the delinquent company,  
12 the liquidator, or the receiver.

13           (d) Subject to court approval, an expense incurred under  
14 Subsection (c)(1) or (2) shall be chargeable against the delinquent  
15 company as part of the expense of liquidation, to the extent of a  
16 proportionate share of the benefit which may accrue to the  
17 delinquent company solely as a result of the defense undertaken by  
18 the assuming insurer.

19           (e) If two or more assuming insurers are involved in the  
20 same claim and a majority in interest elect to intervene and assert  
21 a defense to a claim described by Subsection (c), an expense  
22 incurred under Subsection (c)(1) or (2) shall be apportioned in  
23 accordance with the terms of the reinsurance agreement as though  
24 the expense had been incurred by the ceding insurer.

25           (f) Nothing in this chapter shall be construed as  
26 authorizing the receiver, or other entity, to compel payment from a  
27 non-life reinsurer on the basis of estimated incurred but not

1 reported losses or outstanding reserves, except outstanding  
2 reserves with respect to claims made pursuant to Section 21A.255  
3 and approved workers compensation claims filed under Section  
4 21A.252(d).

5 Sec. 21A.212. RECOVERY OF PREMIUMS OWED. (a) An insured  
6 shall pay, either directly to the receiver or to any agent that has  
7 paid or is obligated to pay the receiver on behalf of the insured,  
8 any unpaid earned premium or retrospectively rated premium due the  
9 insurer based on the termination of coverage under Section 21A.152.  
10 Premium on surety business is deemed earned at inception if a policy  
11 term cannot be determined. All other premium is deemed earned and  
12 is prorated equally over the determined policy term, regardless of  
13 any provision in the bond, guaranty, contract or other agreement.

14 (b) Any person, other than the insured, shall turn over to  
15 the receiver any unpaid premium due and owing as shown on the  
16 records of the insurer, including any amount representing  
17 commissions, for the full policy term due the insurer at the time of  
18 the entry of the receivership order, whether earned or unearned,  
19 based on the termination of coverage under Section 21A.152. The  
20 unpaid premium due the receiver from any person other than the  
21 insured excludes any premium not collected from the insured and not  
22 earned based on the termination of coverage under Section 21A.152.

23 (c) Any person, other than the insured, responsible for the  
24 remittance of a premium, shall turn over to the receiver any  
25 unearned commission of the person based on the termination of  
26 coverage under Section 21A.152. Credits, setoffs, or both may not  
27 be allowed to an agent, broker, premium finance company, or any

1 other person for any amounts advanced to the insurer by the person  
2 on behalf of, but in the absence of a payment by, the insured, or for  
3 any other amount paid by the person to any other person after the  
4 entry of the order of receivership.

5 (d) Persons that collect premium or finance premium under a  
6 premium finance contract that is due the insurer in receivership  
7 are deemed to hold that premium in trust as fiduciaries for the  
8 benefit of the insurer and to have availed themselves of the laws of  
9 this state, regardless of any provision to the contrary in any  
10 agency contract or other agreement.

11 (e) Any premium finance company is obligated to pay any  
12 amounts due the insurer from premium finance contracts, whether the  
13 premium is earned or unearned. The receiver has the right to  
14 collect any unpaid financed premium directly from the premium  
15 finance company or directly from the insured that is a party to the  
16 premium finance contract.

17 (f) Upon satisfactory evidence of a violation of this  
18 section by a person other than an insured, the commissioner may  
19 pursue one or more of the following courses of action:

20 (1) suspend, revoke, or refuse to renew the licenses  
21 of the offending party or parties; and

22 (2) impose:

23 (A) an administrative penalty under Chapter 84 of  
24 not more than \$1,000 for each act in violation of this section by  
25 the party or parties; and

26 (B) any other sanction or penalty authorized by  
27 Chapter 82.

1           Sec. 21A.213. ADMINISTRATION OF DEDUCTIBLE AGREEMENTS AND  
2 POLICYHOLDER COLLATERAL. (a) Any collateral held to secure the  
3 obligations of a policyholder under a deductible agreement with an  
4 insurer subject to a delinquency proceeding under this chapter must  
5 be maintained and administered as provided in this section. For  
6 purposes of this section, a "deductible agreement" is any  
7 combination of one or more policies, endorsements, contracts, or  
8 security agreements that:

9           (1) provide for the policyholder to bear the risk of  
10 loss within a specified amount per claim or occurrence covered  
11 under a policy of insurance; and

12           (2) may be subject to an aggregate limit of  
13 policyholder reimbursement obligations.

14           (b) This section applies to any collateral described by  
15 Subsection (a), regardless of whether the collateral is held by,  
16 for the benefit of, or assigned to the insurer under a deductible  
17 agreement. The collateral shall be used to secure the  
18 policyholder's obligation to fund or reimburse claims payments  
19 within the agreed deductible amount, subject to this section.

20           (c) If the contract between the policyholder and the insurer  
21 allows the policyholder to fund claims within the deductible amount  
22 through a third-party administrator or otherwise, the receiver  
23 shall allow that funding arrangement to continue, except as  
24 prohibited by Title 5, Labor Code. If a policyholder funds claims  
25 within the deductible amount, the receiver or any guaranty  
26 association has no obligation to pay claims for the amount funded by  
27 the policyholder, and the policyholder or its third-party

1 administrator is not obligated to reimburse a guaranty association  
2 for any amount funded. A charge of any kind may not be made against  
3 a guaranty association based on the funding of claims payments by a  
4 policyholder under this subsection.

5 (d) If the receiver is holding collateral provided by a  
6 policyholder to secure both a deductible agreement and other  
7 obligations of the policyholder, the receiver shall:

8 (1) allocate the collateral among these obligations in  
9 accordance with the deductible agreement; or

10 (2) in the absence of an allocation provision in the  
11 deductible agreement and with the approval of the receivership  
12 court, allocate the collateral equitably among these obligations.

13 (e) If, under Subsection (d), the collateral secures  
14 reimbursement obligations under more than one line of insurance,  
15 the receiver shall equitably allocate the collateral among the  
16 various lines based on the estimated ultimate exposure within the  
17 deductible amount for each line.

18 (f) If a guaranty association is obligated to pay claims  
19 under a policy under Subsection (d), the receiver shall give notice  
20 to the guaranty associations of any allocation under this section.

21 (g) Once all claims covered by the collateral have been paid  
22 and the receiver is satisfied that no new claims may be presented,  
23 the receiver shall release any remaining collateral to the  
24 policyholder in accordance with the provisions of the contract and  
25 of this chapter.

26 (h) To the extent a guaranty association is required by  
27 applicable law to pay any claims for which the insurer would have

1 been entitled to reimbursement from the policyholder, the following  
2 provisions apply:

3 (1) The receiver shall promptly invoice the  
4 policyholder for the reimbursement due under the agreement, and the  
5 policyholder is obligated to pay the amount invoiced to the  
6 receiver for the benefit of the guaranty associations that paid the  
7 claims. Neither the insolvency of the insurer nor the insurer's  
8 inability to perform any obligations under the deductible agreement  
9 is a defense to the policyholder's reimbursement obligation under  
10 the deductible agreement. At the time the policyholder  
11 reimbursements are collected, the receiver shall promptly forward  
12 those amounts to the guaranty association, based on the claims paid  
13 by the guaranty association that were subject to the deductible.

14 (2) If the collateral is insufficient to reimburse the  
15 guaranty association for claims paid within the deductible, the  
16 receiver shall use any existing collateral to make a partial  
17 reimbursement to the guaranty association, subject to any  
18 allocation under Subsection (d), (e), or (f). If more than one  
19 guaranty association has a claim against the same collateral, the  
20 receiver shall prorate payments to each guaranty association based  
21 on the amount of the claims each guaranty association has paid.

22 (3) The receiver is entitled to deduct from  
23 reimbursements owed to a guaranty association or collateral to be  
24 returned to a policyholder reasonable actual expenses incurred in  
25 fulfilling the receiver's responsibilities under this section.  
26 Expenses incurred to collect reimbursements for the benefit of a  
27 guaranty association are subject to the approval of the guaranty

1 association. Any remaining expenses that are not deducted from the  
2 reimbursements are payable subject to Section 21A.015.

3 (4) The receiver shall provide any affected guaranty  
4 associations with a complete accounting of the receiver's  
5 deductible billing and collection activities on a quarterly basis,  
6 or at other intervals as may be agreed to between the receiver and  
7 the guaranty associations. Accountings under this subdivision must  
8 include copies of the policyholder billings, the reimbursements  
9 collected, the available amounts and use of collateral for each  
10 account, and any prorating of payments.

11 (5) If the receiver fails to make a good faith effort  
12 to collect reimbursements due from a policyholder under a  
13 deductible agreement within 120 days of receipt of claims payment  
14 reports from a guaranty association, the guaranty association may,  
15 after notice to the receiver, collect the reimbursements that are  
16 due, and, in so doing, the guaranty association shall have the same  
17 rights and remedies as the receiver. A guaranty association shall  
18 report any amounts collected under this subdivision and expenses  
19 incurred in collecting those amounts to the receiver.

20 (6) The receiver shall periodically adjust the  
21 collateral held as the claims subject to the deductible agreement  
22 are paid, provided that adequate collateral is maintained. The  
23 receiver is not required to adjust the collateral more than once a  
24 year. The receiver shall inform the guaranty associations of all  
25 collateral reviews, including the basis for the adjustment.

26 (7) Reimbursements received or collected by a guaranty  
27 association under this section may not be considered a distribution

1 of the insurer's assets. A guaranty association shall provide the  
2 receiver with an accounting of any amounts it has received or  
3 collected under this section and any expenses incurred in  
4 connection with that receipt or collection. The amounts received,  
5 net of any expenses incurred in connection with collection of the  
6 amounts, must be set off against the guaranty association's claim  
7 filed under Section 21A.251 for the payments that were reimbursed.

8 (8) To the extent that a guaranty association pays a  
9 claim within the deductible amount that is not reimbursed by either  
10 the receiver or by policyholder payments, the guaranty association  
11 has a claim for those amounts in the delinquency proceeding in  
12 accordance with Section 21A.251.

13 (9) Nothing in this section limits any rights of a  
14 guaranty association under applicable law to obtain reimbursement  
15 for claims payments made by the guaranty association under policies  
16 of the insurer or for the association's related expenses.

17 (i) If a claim that is subject to a deductible agreement and  
18 secured by collateral is not covered by any guaranty association,  
19 the following provisions apply:

20 (1) The receiver is entitled to retain as an asset of  
21 the estate any collateral or deductible reimbursements obtained by  
22 the receiver.

23 (2) If a policyholder fails to assume an obligation  
24 under a deductible agreement to pay a claim, the receiver shall use  
25 the collateral to adjust and pay the claim to the extent that the  
26 available collateral, after any allocation under Subsection (d),  
27 (e), or (f), is sufficient to pay all outstanding and anticipated



1 claims within the deductible. If the collateral is exhausted and  
2 all reasonable means of collection against the insured have been  
3 exhausted, the remaining claims shall be subject to the provisions  
4 of Sections 21A.251 and 21A.301.

5 (3) The receiver is entitled to deduct from collateral  
6 reasonable actual expenses incurred in fulfilling the receiver's  
7 responsibilities under this section. Any remaining expenses that  
8 are not deducted from the reimbursements are payable subject to  
9 Section 21A.015.

10 [Sections 21A.214-21A.250 reserved for expansion]

11 SUBCHAPTER F. CLAIMS

12 Sec. 21A.251. FILING OF CLAIMS. (a) Except as provided by  
13 this subsection, proof of all claims must be filed with the  
14 liquidator in the form required by Section 21A.252 on or before the  
15 last day for filing specified in the notice required under Section  
16 21A.155, which date may not be later than 18 months after entry of  
17 the order of liquidation, unless the receivership court, for good  
18 cause shown, extends the time, except that proofs of claims for cash  
19 surrender values or other investment values in life insurance and  
20 annuities and for any other policies insuring the lives of persons  
21 need not be filed unless the liquidator expressly so requires. The  
22 receivership court, only upon application of the liquidator, may  
23 allow alternative procedures and requirements for the filing of  
24 proofs of claim or for allowing or proving claims. Upon  
25 application, if the receivership court dispenses with the  
26 requirements of filing a proof of claim by a person or a class or  
27 group of persons, a proof of claim for the person, class, or group

1 is deemed to have been filed for all purposes, except that the  
2 receivership court's waiver of proof of claim requirements does not  
3 impact guaranty association proof of claim filing requirements or  
4 coverage determinations to the extent the guaranty fund statute or  
5 filing requirements are inconsistent with the receivership court's  
6 waiver of proof.

7 (b) The liquidator shall permit a claimant that makes a late  
8 filing to share ratably in distributions, whether past or future,  
9 as if the claim were not filed late, to the extent that the payment  
10 will not prejudice the orderly administration of the liquidation,  
11 under the following circumstances:

12 (1) the eligibility to file a proof of claim was not  
13 known to the claimant, and the claimant filed a proof of claim not  
14 later than the 90th day after the date of first learning of the  
15 eligibility;

16 (2) a transfer to a creditor was avoided under Section  
17 21A.202, 21A.203, 21A.204, or 21A.206, or was voluntarily  
18 surrendered under Section 21A.208, and the filing satisfies the  
19 conditions of Section 21A.208; or

20 (3) the valuation under Section 21A.260, of security  
21 held by a secured creditor shows a deficiency, and the claim for the  
22 deficiency is filed not later than the 30th day after the valuation.

23 (c) The liquidator may petition the receivership court to  
24 set a date before which all late claims under Subsection (b) must be  
25 filed.

26 (d) The liquidator shall permit guaranty associations to  
27 file claims late and to receive a ratable share of distributions,

1 whether past or future, as if the claims were not late.

2 Sec. 21A.252. PROOF OF CLAIM. (a) Proof of claim consists  
3 of a statement signed by the claimant or on behalf of the claimant  
4 that includes all of the following, as applicable:

5 (1) the particulars of the claim, including the  
6 consideration given for it;

7 (2) the identity and amount of the security on the  
8 claim;

9 (3) the payments, if any, made on the debt;

10 (4) that the sum claimed is justly owing and that there  
11 is no setoff, counterclaim, or defense to the claim;

12 (5) any right of priority of payment or other specific  
13 right asserted by the claimant;

14 (6) the name and address of the claimant and the  
15 attorney, if any, who represents the claimant; and

16 (7) the claimant's social security or federal employer  
17 identification number.

18 (b) The liquidator may require that:

19 (1) a prescribed form be used; and

20 (2) other information and documents be included.

21 (c) At any time the liquidator may:

22 (1) require the claimant to present information or  
23 evidence supplementary to that required under Subsection (a); and

24 (2) take testimony under oath, require production of  
25 affidavits or depositions, or otherwise obtain additional  
26 information or evidence.

27 (d) Any guaranty association must be permitted to file a

1 single omnibus proof of claim for all claims of the association in  
2 connection with payment of claims of the insurer. The omnibus proof  
3 of claim may be periodically updated by the association, and the  
4 association may be required to submit a reasonable amount of  
5 documentation in support of the claim. A guaranty association's  
6 claim under this subsection may include amounts for anticipated  
7 payments after the closing of the receivership including incurred  
8 but not reported claims.

9 Sec. 21A.253. ALLOWANCE OF CLAIMS. (a) Except as provided  
10 in Subsections (i) and (l), the liquidator shall review all claims  
11 duly filed in the liquidation proceeding and shall further  
12 investigate as the liquidator considers necessary. Consistent with  
13 the provisions of this chapter, the liquidator may allow, disallow,  
14 or compromise the amount for which claims will be recommended to the  
15 receivership court, unless the liquidator is required by law to  
16 accept claims as settled by a person or organization, including a  
17 guaranty association, subject to any statutory or contractual  
18 rights of the affected reinsurers to participate in the claims  
19 allowance process. No claim under a policy of insurance may be  
20 allowed for an amount in excess of the applicable policy limits.

21 (b) Pursuant to the review, the liquidator shall provide  
22 written notice of the claim determination by any means authorized  
23 by Section 21A.007 to the claimant or the claimant's attorney and  
24 may provide notice to any reinsurer that is or may be liable in  
25 respect of the claim. The notice must set forth the amount of the  
26 claim allowed by the liquidator, if any, and the priority class of  
27 the claim as established in Section 21A.301.

1        (c) Not later than the 45th day after the mailing of the  
2 notice as set forth in Subsection (b), those noticed may submit  
3 written objections to the liquidator. Any submitted objections  
4 must clearly set out all facts and the legal basis, if any, for the  
5 objections and the reasons why the claim should be allowed at a  
6 different amount or in a different priority class. If no timely  
7 objection is filed, the determination is final.

8        (d) A claim that has not become mature as of the coverage  
9 termination date established under Section 21A.201 because payment  
10 on the claim is not yet due may be allowed as if it were mature. A  
11 claim that is allowed under this subsection may be discounted to  
12 present value based upon a reasonable estimated date of the  
13 payment, if the liquidator determines that the present value of the  
14 payment is materially less than the amount of the payment.

15        (e) A judgment or order against an insured or the insurer  
16 entered after the date of the initial filing of a successful  
17 petition for receivership, or within 120 days before the initial  
18 filing of the petition, and a judgment or order against an insured  
19 or the insurer entered at any time by default or by collusion need  
20 not be considered as evidence of liability or of the amount of  
21 damages.

22        (f) Claims under employment contracts by directors,  
23 officers, or persons in fact performing similar functions or having  
24 similar powers are limited to payment for services rendered prior  
25 to any order of receivership, unless explicitly approved in writing  
26 by:

27        (1) the commissioner prior to an order of

1 receivership;

2 (2) the rehabilitator before the entry of an order of  
3 liquidation; or

4 (3) the liquidator after the entry of an order of  
5 liquidation.

6 (g) The total liability of the insurer to all claimants  
7 arising out of the same act or policy may not be greater than the  
8 insurer's total liability would have been were the insurer not in  
9 liquidation.

10 (h) The liquidator shall disallow claims for de minimis  
11 amounts as determined by the receivership court as being reasonable  
12 and necessary for administrative convenience.

13 (i) A claim that does not contain all the applicable  
14 information required by Section 21A.252 need not be further  
15 reviewed or adjudicated, and may be denied or disallowed by the  
16 liquidator subject to the notice and objection procedures in this  
17 section.

18 (j) The liquidator may reconsider a claim on the basis of  
19 additional information and amend the recommendation to the  
20 receivership court. The claimant must be afforded the same notice  
21 and opportunity to be heard on all changes in the recommendation as  
22 in its initial determination. The receivership court may amend its  
23 allowance or disallowance as appropriate.

24 (k) The liquidator is not required to process claims for any  
25 class until it appears reasonably likely that property will be  
26 available for a distribution to that class. If there are  
27 insufficient assets to justify processing all claims for any class

1 listed in Section 21A.301, the liquidator shall report the facts to  
2 the receivership court and make such recommendations as may be  
3 appropriate for handling the remainder of the claims.

4 (1) Any claim by a lessor for damages resulting from the  
5 termination of a lease of real property shall be disallowed to the  
6 extent that the claim exceeds:

7 (1) the rent reserved by the lease, without  
8 acceleration, for the longer of one year or 15 percent of the  
9 remaining term of the lease, not to exceed three years, following  
10 the earlier of:

11 (A) the date of the filing of the petition; or

12 (B) the date on which the lessor repossessed or  
13 the lessee surrendered the leased property; and

14 (2) any unpaid rent due under the lease, without  
15 acceleration, on the earlier of the dates described by Subdivision  
16 (1).

17 (m) If a claim is fully covered by a guaranty association,  
18 the liquidator has no obligation to process the claim in accordance  
19 with this section and may refuse to process the claim in accordance  
20 with this section.

21 Sec. 21A.254. CLAIMS UNDER OCCURRENCE POLICIES, SURETY  
22 BONDS, AND SURETY UNDERTAKINGS. (a) Subject to the provisions of  
23 Section 21A.253, any insured has the right to file a claim for the  
24 protection afforded under the insured's policy, regardless of  
25 whether a claim is known at the time of filing, if the policy is an  
26 occurrence policy.

27 (b) Subject to the provisions of Section 21A.253, an obligee

1 under a surety bond or surety undertaking has the right to file a  
2 claim for the protection afforded under the surety bond or surety  
3 undertaking issued by the insurer under which the obligee is the  
4 beneficiary, regardless of whether a claim is known at the time of  
5 filing.

6 (c) After a claim is filed under Subsection (a) or (b), at  
7 the time that a specific claim is made by or against the insured or  
8 by the obligee, the insured or the obligee shall supplement the  
9 claim, and the receiver shall treat the claim as a contingent or  
10 unliquidated claim under Section 21A.255.

11 Sec. 21A.255. ALLOWANCE OF CONTINGENT AND UNLIQUIDATED  
12 CLAIMS. (a) A claim of an insured or third party may be allowed  
13 under Section 21A.253, regardless of the fact that the claim was  
14 contingent or unliquidated, if any contingency is removed in  
15 accordance with Subsection (b) and the value of the claim is  
16 determined. For purposes of this section, a claim is contingent if:

17 (1) the accident, casualty, disaster, loss, event, or  
18 occurrence insured, reinsured, or bonded or reinsured against  
19 occurred on or before the date fixed under Section 21A.151; and

20 (2) the act or event triggering the insurer's  
21 obligation to pay has not occurred as of the date fixed under  
22 Section 21A.151.

23 (b) Unless the receivership court directs otherwise, a  
24 contingent claim may be allowed if the claimant has presented proof  
25 reasonably satisfactory to the liquidator of the insurer's  
26 obligation to pay or the claim was based on a cause of action  
27 against an insured of the insurer and:



1           (1) it may be reasonably inferred from proof presented  
2 upon the claim that the claimant would be able to obtain a judgment;  
3 and

4           (2) the person has furnished suitable proof, unless  
5 the receivership court for good cause shown otherwise directs, that  
6 no further valid claims can be made against the insurer arising out  
7 of the cause of action other than those already presented.

8           (c) The liquidator may petition the receivership court to  
9 set a date before which all claims under this section are final. In  
10 addition to the notice requirements of Section 21A.007, the  
11 liquidator shall give notice of the filing of the petition to all  
12 claimants with claims that remain contingent or unliquidated under  
13 this section.

14           Sec. 21A.256. SPECIAL PROVISIONS FOR THIRD-PARTY CLAIMS.

15           (a) When any third party asserts a cause of action against an  
16 insured of an insurer in liquidation, the third party may file a  
17 claim with the liquidator on or before the last day for filing  
18 claims.

19           (b) Whether or not the third party files a claim, the  
20 insured may file a claim on the insured's own behalf in the  
21 liquidation.

22           (c) The liquidator may make recommendations to the  
23 receivership court for the allowance of an insured's claim after  
24 consideration of the probable outcome of any pending action against  
25 the insured on which the claim is based, the probable damages  
26 recoverable in the action, and the probable costs and expenses of  
27 defense. After allowance by the receivership court, the liquidator

1 shall withhold any distribution payable on the claim, pending the  
2 outcome of litigation and negotiation between the insured and the  
3 third party. The liquidator may reconsider the claim as provided in  
4 Section 21A.253(j). As claims against the insured are settled or  
5 barred, the insured or third party, as appropriate, shall be paid  
6 from the amount withheld the same percentage distribution as was  
7 paid on other claims of like priority, based on the lesser of the  
8 amount actually due from the insured by action or paid by agreement  
9 plus the reasonable costs and expense of defense, or the amount  
10 allowed on the claims by the receivership court. After all claims  
11 are settled or barred, any sum remaining from the amount withheld  
12 shall revert to the undistributed property of the insurer.

13 (d) If several claims founded upon one policy are timely  
14 filed under this section, whether by third parties or as claims by  
15 the insured, and the aggregate amount of the timely filed allowed  
16 claims exceeds the aggregate policy limits, the liquidator may:

17 (1) apportion the policy limits ratably among the  
18 timely filed allowed claims; or

19 (2) give notice to the insured, known third parties,  
20 and affected guaranty associations that the aggregate policy limits  
21 have been exceeded. On and after the 30th day after the date of the  
22 liquidator's notice, further amounts may not be allowed, the policy  
23 limits shall be apportioned ratably among the timely filed allowed  
24 claims, and any additional claims shall be rejected.

25 (e) Claims by the insured under Subsection (d) must be  
26 evaluated as described by Subsection (c). If any insured's claim is  
27 subsequently reduced under Subsection (c), the amount freed by the

1 reduction must be apportioned ratably among the claims which have  
2 been reduced under Subsection (d).

3 (f) A claim may not be allowed under this section to the  
4 extent the claim is covered by any guaranty association.

5 (g) A claimant may withdraw a proof of claim with the  
6 liquidator's approval. The liquidator may approve the withdrawal  
7 only upon a showing of good cause and after giving notice of the  
8 withdrawal to the insured.

9 (h) The filing of a proof of claim in connection with a claim  
10 against an insured has the following effect on the rights of the  
11 claimant and the insured:

12 (1) By filing a proof of claim, a claimant waives any  
13 right to pursue the personal assets of the insured with respect to  
14 the claim, to the extent of the coverage or policy limits provided  
15 by the insurer, and agrees that to the extent of the coverage or  
16 policy limits provided by the insurer, the claimant will seek  
17 satisfaction of the claim against the insured solely from  
18 distributions paid by the liquidator on the claim and from any  
19 payments that a guaranty association may pay on account of the  
20 claim, except as provided in this section.

21 (2) The waiver provided under this section is  
22 conditioned upon the cooperation of the insured with the liquidator  
23 and any applicable guaranty association in the defense of the  
24 claim. The waiver provided under this section does not operate to:

25 (A) discharge the guaranty association from any  
26 of the association's responsibilities and duties;

27 (B) release the insured with respect to any claim

1 in excess of the coverage or policy limits provided by the insurer  
2 or any other responsible party; or

3 (C) release the insured with respect to any claim  
4 by a guaranty association for reimbursement under the law  
5 applicable to the guaranty association.

6 (3) The waiver provided under this section is void if:

7 (A) a claimant withdraws the claimant's proof of  
8 claim under Subsection (g); or

9 (B) the liquidator avoids insurance coverage in  
10 connection with a proof of the claim.

11 (4) The liquidator shall provide, where applicable,  
12 notice of the election of remedies provision in this section on any  
13 proof of claim form the liquidator distributes. The notice must be  
14 inserted above the claimant's signature line in typeface not  
15 smaller than the typeface of the rest of the notice and, in any  
16 event not smaller than a 14-point font, and must include a statement  
17 substantially similar to the following: "I understand by filing  
18 this claim in the estate of the insurer I am waiving any right to  
19 pursue the personal assets of the insured to the extent that there  
20 are policy limits or coverage provided by the now insolvent  
21 insurer."

22 Sec. 21A.257. DISPUTED CLAIMS. (a) When objections to the  
23 liquidator's proposed treatment of a claim are filed and the  
24 liquidator does not alter the determination of the claim as a result  
25 of the objections, the liquidator shall ask the receivership court  
26 for a hearing pursuant to Section 21A.007.

27 (b) The provisions of this section are not applicable to

1 disputes with respect to coverage determinations by a guaranty  
2 association as part of the association's statutory obligations.

3 (c) The final disposition by the receivership court of a  
4 disputed claim is deemed a final judgment for purposes of appeal.

5 Sec. 21A.258. LIQUIDATOR'S RECOMMENDATIONS TO RECEIVERSHIP  
6 COURT. The liquidator shall present to the receivership court, for  
7 approval, reports of claims settled or determined by the liquidator  
8 under Section 21A.253. The reports must be presented from time to  
9 time as determined by the liquidator and must include information  
10 identifying the claim and the amount and priority class of the  
11 claim.

12 Sec. 21A.259. CLAIMS OF CODEBTORS. If a creditor does not  
13 timely file a proof of the creditor's claim, an entity that is  
14 liable to the creditor together with the insurer, or that has  
15 secured the creditor, may file a proof of the claim.

16 Sec. 21A.260. SECURED CREDITORS' CLAIMS. (a) The value of  
17 any security held by a secured creditor must be determined in one of  
18 the following ways:

19 (1) by converting the same into money according to the  
20 terms of the agreement pursuant to which the security was delivered  
21 to the creditor; or

22 (2) by agreement or litigation between the creditor  
23 and the liquidator.

24 (b) If a surety has paid any losses or loss adjustment  
25 expenses under its own surety instrument before any petition  
26 initiating a delinquency proceeding is filed and the principal to  
27 the instrument has posted collateral that remains available to

1 reimburse the losses or loss adjustment expenses at the time the  
2 petition is filed and that collateral has not been credited against  
3 the payments made, then the receiver has the first priority to use  
4 the collateral to reimburse the surety for any pre-petition losses  
5 and expenses.

6 (c) If the principal under a surety bond or surety  
7 undertaking has pledged any collateral, including a guaranty or  
8 letter of credit, to secure the principal's reimbursement  
9 obligation to the insurer issuing the bond or undertaking, the  
10 claim of any obligee, or subject to the discretion of the receiver,  
11 of any completion contractor under the surety bond or surety  
12 undertaking must be satisfied first out of the collateral or its  
13 proceeds.

14 (d) In making any distribution to an obligee or completion  
15 contractor under Subsection (c), the receiver shall retain a  
16 sufficient reserve for any other potential claim against that  
17 collateral.

18 (e) If collateral is insufficient to satisfy in full all  
19 potential claims against it under Subsections (c) and (g), the  
20 claims against the collateral must be paid on a pro rata basis, and  
21 an obligee or completion contractor under Subsection (c) has a  
22 claim, subject to allowance under Section 21A.253, for any  
23 deficiency.

24 (f) If the time to assert claims against a surety bond or a  
25 surety undertaking has expired, and all claims described by this  
26 section have been satisfied in full, any remaining collateral  
27 pledged under the surety bond or surety undertaking must be

1 returned to the principal under the bond or undertaking.

2 (g) To the extent that a guaranty association has made a  
3 payment relating to a claim against a surety bond, the guaranty  
4 association shall first be reimbursed for that payment and related  
5 expenses out of the available collateral or proceeds related to the  
6 surety bond. To the extent that the collateral is sufficient, the  
7 guaranty association shall be reimbursed 100 percent of its  
8 payment. If the collateral is insufficient to satisfy in full all  
9 potential claims against the collateral under Subsection (c) and  
10 this subsection, a guaranty association that has paid claims on the  
11 surety bond is entitled to a pro rata share of the available  
12 collateral in accordance with Subsection (e), and the guaranty  
13 association has claims against the general assets of the estate in  
14 accordance with Section 21A.253 for any deficiency. Any payment  
15 made to a guaranty association under this subsection from  
16 collateral may not be deemed early access or otherwise deemed a  
17 distribution out of the general assets or property of the estate,  
18 and the guaranty association receiving payment shall subtract any  
19 payment from the collateral from the association's final claims  
20 against the estate.

21 (h) An amount determined under Subsection (a) shall be  
22 credited upon the secured claim, and the claimant may file a proof  
23 of claim, subject to all other provisions of this chapter for any  
24 deficiency, which must be treated as an unsecured claim. If the  
25 claimant surrenders the claimant's security to the liquidator, the  
26 entire claim is treated as if unsecured.

27 (i) The liquidator may recover from property securing an

1 allowed secured claim the reasonable, necessary costs and expenses  
2 of preserving or disposing of the property to the extent of any  
3 benefit to the holder of such claim.

4 Sec. 21A.261. QUALIFIED FINANCIAL CONTRACTS. (a)

5 Notwithstanding any other provision of this chapter, including any  
6 other provision of this chapter permitting the modification of  
7 contracts, or other law of this state, a person may not be stayed or  
8 prohibited from exercising:

9 (1) a contractual right to terminate, liquidate, or  
10 close out any netting agreement or qualified financial contract  
11 with an insurer because of:

12 (A) the insolvency, financial condition, or  
13 default of the insurer at any time, provided that the right is  
14 enforceable under applicable law other than this chapter; or

15 (B) the commencement of a formal delinquency  
16 proceeding under this chapter;

17 (2) any right under a pledge, security, collateral, or  
18 guarantee agreement, or any other similar security arrangement or  
19 credit support document, relating to a netting agreement or  
20 qualified financial contract; or

21 (3) subject to any provision of Section 21A.209(b),  
22 any right to set off or net out any termination value, payment  
23 amount, or other transfer obligation arising under or in connection  
24 with a netting agreement or qualified financial contract where the  
25 counterparty or its guarantor is organized under the laws of the  
26 United States or a state or foreign jurisdiction approved by the  
27 Securities Valuation Office of the National Association of



1 Insurance Commissioners as eligible for netting.

2 (b) Upon termination of a netting agreement, the net or  
3 settlement amount, if any, owed by a nondefaulting party to an  
4 insurer against which an application or petition has been filed  
5 under this chapter shall be transferred to, or on the order of the  
6 receiver for, the insurer, even if the insurer is the defaulting  
7 party and notwithstanding any provision in the netting agreement  
8 that may provide that the nondefaulting party is not required to pay  
9 any net or settlement amount due to the defaulting party upon  
10 termination. Any limited two-way payment provision in a netting  
11 agreement with an insurer that has defaulted is deemed to be a full  
12 two-way payment provision as against the defaulting insurer. Any  
13 such property or amount is, except to the extent it is subject to  
14 one or more secondary liens or encumbrances, a general asset of the  
15 insurer.

16 (c) In making any transfer of a netting agreement or  
17 qualified financial contract of an insurer subject to a proceeding  
18 under this chapter, the receiver shall either:

19 (1) transfer to one party, other than an insurer  
20 subject to a proceeding under this chapter, all netting agreements  
21 and qualified financial contracts between a counterparty or any  
22 affiliate of the counterparty and the insurer that is the subject of  
23 the proceeding, including:

24 (A) all rights and obligations of each party  
25 under each netting agreement and qualified financial contract; and

26 (B) all property, including any guarantees or  
27 credit support documents, securing any claims of each party under

1 each netting agreement and qualified financial contract; or

2 (2) transfer none of the netting agreements, qualified  
3 financial contracts, rights, obligations, or property referred to  
4 in Subdivision (1), with respect to the counterparty and any  
5 affiliate of the counterparty.

6 (d) If a receiver for an insurer makes a transfer of one or  
7 more netting agreements or qualified financial contracts, the  
8 receiver shall use its best efforts to notify any person who is  
9 party to the netting agreements or qualified financial contracts of  
10 the transfer not later than noon, the receiver's local time, on the  
11 business day following the transfer. For purposes of this  
12 subsection, "business day" means a day other than a Saturday, a  
13 Sunday, or any day on which either the New York Stock Exchange or  
14 the Federal Reserve Bank of New York is closed.

15 (e) Notwithstanding any other provision of this chapter, a  
16 receiver may not avoid a transfer of money or other property arising  
17 under or in connection with a netting agreement or qualified  
18 financial contract, or any pledge, security, or collateral or  
19 guarantee agreement or any other similar security arrangement or  
20 credit support document relating to a netting agreement or  
21 qualified financial contract, that is made before the commencement  
22 of a formal delinquency proceeding under this chapter. However, a  
23 transfer may be avoided under Section 21A.205(a) if the transfer  
24 was made with actual intent to hinder, delay, or defraud the  
25 insurer, a receiver appointed for the insurer, or existing or  
26 future creditors.

27 (f) In exercising any of the receiver's powers under this

1 chapter to disaffirm or repudiate a netting agreement or qualified  
2 financial contract, the receiver shall take action with respect to  
3 each netting agreement or qualified financial contract and all  
4 transactions entered into in connection with the agreement or  
5 contract in its entirety. Notwithstanding any other provision of  
6 this chapter, any claim of a counterparty against the estate  
7 arising from the receiver's disaffirmance or repudiation of a  
8 netting agreement or qualified financial contract that has not been  
9 previously affirmed in the liquidation or immediately preceding  
10 rehabilitation case must be determined and must be allowed or  
11 disallowed as if the claim had arisen before the date of the filing  
12 of the petition for liquidation or, if a rehabilitation proceeding  
13 is converted to a liquidation proceeding, as if the claim had arisen  
14 before the date of the filing of the petition for rehabilitation.  
15 The amount of the claim must be the actual direct compensatory  
16 damages determined as of the date of the disaffirmance or  
17 repudiation of the netting agreement or qualified financial  
18 contract. For purposes of this subsection, the term "actual direct  
19 compensatory damages" does not include punitive or exemplary  
20 damages, damages for lost profit or lost opportunity, or damages  
21 for pain and suffering but does include normal and reasonable costs  
22 of cover or other reasonable measures of damages utilized in the  
23 derivatives market for the contract and agreement claims.

24 (g) For purposes of this section, the term "contractual  
25 right" includes any right, whether or not evidenced in writing,  
26 arising under:

27 (1) statutory or common law;

1           (2) a rule or bylaw of a national securities exchange,  
2 national securities clearing organization, or securities clearing  
3 agency;

4           (3) a rule, bylaw, or resolution of the governing body  
5 of a contract market or its clearing organization; or

6           (4) law merchant.

7           (h) The provisions of this section do not apply to persons  
8 who are affiliates of the insurer that is the subject of the  
9 proceeding.

10           (i) All rights of counterparties under this chapter apply to  
11 netting agreements and qualified financial contracts entered into  
12 on behalf of the general account or separate accounts if the assets  
13 of each separate account are available only to counterparties to  
14 netting agreements and qualified financial contracts entered into  
15 on behalf of that separate account.

16           [Sections 21A.262-21A.300 reserved for expansion]

17                           SUBCHAPTER G. DISTRIBUTIONS

18           Sec. 21A.301. PRIORITY OF DISTRIBUTION. The priority of  
19 payment of distributions on unsecured claims must be in accordance  
20 with the order in which each class of claims is set forth in this  
21 section. Every claim in each class shall be paid in full, or  
22 adequate funds retained for their payment, before the members of  
23 the next class receive payment, and all claims within a class must  
24 be paid substantially the same percentage of the amount of the  
25 claim. Except as provided by Subsections (a)(2), (a)(3), (i), and  
26 (k), subclasses may not be established within a class. No claim by  
27 a shareholder, policyholder, or other creditor shall be permitted

1 to circumvent the priority classes through the use of equitable  
2 remedies. The order of distribution of claims shall be:

3 (a) Class 1. (1) The costs and expenses of administration  
4 expressly approved or ratified by the liquidator, including the  
5 following:

6 (A) the actual and necessary costs of preserving  
7 or recovering the property of the insurer;

8 (B) reasonable compensation for all services  
9 rendered on behalf of the administrative supervisor or receiver;

10 (C) any necessary filing fees;

11 (D) the fees and mileage payable to witnesses;

12 (E) unsecured loans obtained by the receiver; and

13 (F) expenses, if any, approved by the  
14 rehabilitator of the insurer and incurred in the course of the  
15 rehabilitation that are unpaid at the time of the entry of the order  
16 of liquidation.

17 (2) The reasonable expenses of a guaranty association,  
18 including overhead, salaries and other general administrative  
19 expenses allocable to the receivership to include administrative  
20 and claims handling expenses and expenses in connection with  
21 arrangements for ongoing coverage, other than expenses incurred in  
22 the performance of duties under Section 2602.113, Section 2(3) of  
23 Article 21.28-C, and Section 12 of Article 21.28-D or similar  
24 duties under the statute governing a similar organization in  
25 another state. In the case of the Texas Property and Casualty  
26 Insurance Guaranty Association and other property and casualty  
27 guaranty associations, the expenses shall include loss adjustment

1 expenses, including adjusting and other expenses and defense and  
2 cost containment expenses. In the event that there are  
3 insufficient assets to pay all of the costs and expenses of  
4 administration under Subsection (a)(1) and the expenses of a  
5 guaranty association, the costs and expenses under Subsection  
6 (a)(1) shall have priority over the expenses of a guaranty  
7 association. In this event, the expenses of a guaranty association  
8 shall be paid on a pro rata basis after the payment of costs and  
9 expenses under Subsection (a)(1) in full.

10 (3) For purposes of Subsection (a)(1)(E), any  
11 unsecured loan obtained by the receiver, unless by its terms it  
12 otherwise provides, has priority over all other costs of  
13 administration. Absent agreement to the contrary, all claims in  
14 this subclass share pro rata.

15 (4) Except as expressly approved by the receiver, any  
16 expenses arising from a duty to indemnify the directors, officers,  
17 or employees of the insurer are excluded from this class and, if  
18 allowed, are Class 5 claims.

19 (b) Class 2. All claims under policies of insurance,  
20 including third-party claims, claims under nonassessable policies  
21 for unearned premium, claims of obligees and, subject to the  
22 discretion of the receiver, completion contractors under surety  
23 bonds and surety undertakings other than bail bonds, mortgage or  
24 financial guaranties, or other forms of insurance offering  
25 protection against investment risk, claims by principals under  
26 surety bonds and surety undertakings for wrongful dissipation of  
27 collateral by the insurer or its agents, and claims incurred during

1 the extension of coverage provided for in Section 21A.152. All  
2 other claims incurred in fulfilling the statutory obligations of a  
3 guaranty association not included in Class 1, including indemnity  
4 payments on covered claims and, in the case of the Life, Accident,  
5 Health, and Hospital Service Insurance Guaranty Association or  
6 another life and health guaranty association, all claims as a  
7 creditor of the impaired or insolvent insurer for all payments of  
8 and liabilities incurred on behalf of covered claims or covered  
9 obligations of the insurer and for the funds needed to reinsure  
10 those obligations with a solvent insurer. Notwithstanding any  
11 provision of this chapter, the following claims are excluded from  
12 Class 2 priority:

13 (1) obligations of the insolvent insurer arising out  
14 of reinsurance contracts;

15 (2) obligations, excluding unearned premium claims on  
16 policies other than reinsurance agreements, incurred after:

17 (A) the expiration date of the insurance policy;

18 (B) the policy has been replaced by the insured  
19 or canceled at the insured's request; or

20 (C) the policy has been canceled as provided by  
21 this chapter;

22 (3) obligations to insurers, insurance pools, or  
23 underwriting associations and their claims for contribution,  
24 indemnity, or subrogation, equitable or otherwise;

25 (4) any claim that is in excess of any applicable  
26 limits provided in the insurance policy issued by the insurer;

27 (5) any amount accrued as punitive or exemplary

1 damages unless expressly covered under the terms of the policy;

2 (6) tort claims of any kind against the insurer and  
3 claims against the insurer for bad faith or wrongful settlement  
4 practices; and

5 (7) claims of the guaranty associations for  
6 assessments not paid by the insurer, which must be paid as claims in  
7 Class 5.

8 (c) Class 3. Claims of the federal government not included  
9 in Class 3.

10 (d) Class 4. Debts due employees for services or benefits  
11 to the extent that the debts do not exceed \$5,000 or two months  
12 salary, whichever is the lesser, and represent payment for services  
13 performed within one year before the entry of the initial order of  
14 receivership. This priority is in lieu of any other similar  
15 priority that may be authorized by law as to wages or compensation  
16 of employees.

17 (e) Class 5. Claims of other unsecured creditors not  
18 included in Classes 1 through 4, including claims under reinsurance  
19 contracts, claims of guaranty associations for assessments not paid  
20 by the insurer, and other claims excluded from Class 2.

21 (f) Class 6. Claims of any state or local governments,  
22 except those specifically classified elsewhere in this section.  
23 Claims of attorneys for fees and expenses owed them by an insurer  
24 for services rendered in opposing a formal delinquency proceeding.  
25 In order to prove the claim, the claimant must show that the insurer  
26 that is the subject of the delinquency proceeding incurred the fees  
27 and expenses based on its best knowledge, information, and belief,



1 formed after reasonable inquiry, indicating opposition was in the  
2 best interests of the insurer, was well grounded in fact, and was  
3 warranted by existing law or a good faith argument for the  
4 extension, modification, or reversal of existing law, and that  
5 opposition was not pursued for any improper purpose, such as to  
6 harass or to cause unnecessary delay or needless increase in the  
7 cost of the litigation.

8 (g) Class 7. Claims of any state or local government for a  
9 penalty or forfeiture, but only to the extent of the pecuniary loss  
10 sustained from the act, transaction, or proceeding out of which the  
11 penalty or forfeiture arose, with reasonable and actual costs  
12 occasioned thereby. The balance of the claims must be treated as  
13 Class 9 claims under Subsection (i).

14 (h) Class 8. Except as provided in Sections 21A.251(b) and  
15 (d), late filed claims that would otherwise be classified in  
16 Classes 2 through 7.

17 (i) Class 9. Surplus notes, capital notes or contribution  
18 notes or similar obligations, premium refunds on assessable  
19 policies, and any other claims specifically assigned to this class.  
20 Claims in this class are subject to any subordination agreements  
21 related to other claims in this class that existed before the entry  
22 of the liquidation order.

23 (j) Class 10. Interest on allowed claims of Classes 1  
24 through 9, according to the terms of a plan proposed by the  
25 liquidator and approved by the receivership court.

26 (k) Class 11. Claims of shareholders or other owners  
27 arising out of their capacity as shareholders or other owners, or

1 any other capacity, except as they may be qualified in Class 2, 5,  
2 or 10. Claims in this class are subject to any subordination  
3 agreements related to other claims in this class that existed  
4 before the entry of the liquidation order.

5 Sec. 21A.302. PARTIAL AND FINAL DISTRIBUTIONS OF ASSETS.

6 (a) With the approval of the receivership court, the liquidator may  
7 declare and pay one or more distributions to claimants whose claims  
8 have been allowed. Distributions paid under this subsection must  
9 be paid at substantially the same percentage of the amount of the  
10 claim.

11 (b) In determining the percentage of distributions to be  
12 paid on these claims, the liquidator may consider the estimated  
13 value of the insurer's property, including estimated reinsurance  
14 recoverables in connection with the insurer's estimated  
15 liabilities for unpaid losses and loss expenses and for incurred  
16 but not reported losses and loss expenses, and the estimated value  
17 of the insurer's liabilities, including estimated liabilities for  
18 unpaid losses and loss expenses and for incurred but not reported  
19 losses and loss expenses.

20 (c) Distribution of property in kind may be made at  
21 valuations set by agreement between the liquidator and the creditor  
22 and approved by the receivership court.

23 (d) Notwithstanding the provisions of Subsection (a) and  
24 Subchapter D, the liquidator is authorized to pay benefits under a  
25 workers' compensation policy after the entry of the liquidation  
26 order if:

27 (1) the insurer has accepted liability and no bona

1 vide dispute exists;

2 (2) payments under the policy commenced before the  
3 entry of the liquidation order; and

4 (3) future or past indemnity or medical payments are  
5 due under the policy.

6 (e) Claim payments made under Subsection (d) may continue  
7 until the date that a guaranty association assumes responsibility  
8 for claim payments under the policy.

9 (f) Any claim payments made under Subsection (d) and any  
10 related expenses must be treated as early access payments under  
11 Section 21A.303 to the guaranty association responsible for the  
12 claims.

13 Sec. 21A.303. EARLY ACCESS PAYMENTS. (a) For purposes of  
14 this section, "distributable assets" means all general assets of  
15 the liquidation estate less:

16 (1) amounts reserved, to the extent necessary and  
17 appropriate, for the entire Section 21A.301(a) expenses of the  
18 liquidation through and after its closure; and

19 (2) to the extent necessary and appropriate, reserves  
20 for distributions on claims other than those of the guaranty  
21 associations falling within the priority classes of claims  
22 established in Section 21A.301(c).

23 (b) Early access payments to guaranty associations must be  
24 made as soon as possible after the entry of a liquidation order and  
25 as frequently as possible after the entry of the order, but at least  
26 annually if distributable assets are available to be distributed to  
27 the guaranty associations, and must be in amounts consistent with

1 this section. Amounts advanced to an affected guaranty association  
2 pursuant to this section shall be accounted for as advances against  
3 distributions to be made under Section 21A.302. Where sufficient  
4 distributable assets are available, amounts advanced are not  
5 limited to the claims and expenses paid to date by the guaranty  
6 associations; however, the liquidator may not distribute  
7 distributable assets to the guaranty associations in excess of the  
8 anticipated entire claims of the guaranty associations falling  
9 within the priority classes of claims established in Sections  
10 21A.301(b) and (c).

11 (c) Within 120 days after the entry of an order of  
12 liquidation by the receivership court, and at least annually after  
13 the entry of the order, the liquidator shall apply to the  
14 receivership court for approval to make early access payments out  
15 of the general assets of the insurer to any guaranty associations  
16 having obligations arising in connection with the liquidation or  
17 shall report that there are no distributable assets at that time  
18 based on financial reporting as required in Section 21A.016. The  
19 liquidator may apply to the receivership court for approval to make  
20 early access payments more frequently than annually based on  
21 additional information or the recovery of material assets.

22 (d) Within 60 days after approval by the receivership court  
23 of the applications in Subsection (c), the liquidator shall make  
24 any early access payments to the affected guaranty associations as  
25 indicated in the approved application.

26 (e) Notice of each application for early access payments, or  
27 of any report required pursuant to this section, must be given in

1 accordance with Section 21A.007 to the guaranty associations that  
2 may have obligations arising from the liquidation. Notwithstanding  
3 the provisions of Section 21A.007, the liquidator shall provide  
4 these guaranty associations with at least 30 days' actual notice of  
5 the filing of the application and with a complete copy of the  
6 application prior to any action by the receivership court. Any  
7 guaranty association that may have obligations arising in  
8 connection with the liquidation has:

9 (1) the right to request additional information from  
10 the liquidator, who may not unreasonably deny such request; and

11 (2) the right to object as provided by Section 21A.007  
12 to any part of each application or to any report filed by the  
13 liquidator pursuant to this section.

14 (f) In each application regarding early access payments,  
15 the liquidator shall, based on the best information available to  
16 the liquidator at the time, provide, at a minimum, the following:

17 (1) to the extent necessary and appropriate, the  
18 amount reserved for the entire expenses of the liquidation through  
19 and after its closure and for distributions on claims falling  
20 within the priority classes of claims established in Sections  
21 21A.301(b) and (c);

22 (2) the computation of distributable assets and the  
23 amount and method of equitable allocation of early access payments  
24 to each of the guaranty associations; and

25 (3) the most recent financial information filed with  
26 the National Association of Insurance Commissioners by the  
27 liquidator.

1        (g) Each guaranty association that receives any payments  
2 pursuant to this section agrees, upon depositing the payment in any  
3 account to its benefit, to return to the liquidator any amount of  
4 these payments that may be required to pay claims of secured  
5 creditors and claims falling within the priority classes of claims  
6 established in Section 21A.301(a), (b), or (c). No bond may be  
7 required of any guaranty association.

8        (h) Nothing in this section affects the method by which a  
9 guaranty association determines the association's statutory  
10 coverage obligations.

11        (i) Without the consent of the affected guaranty  
12 associations or an order of the receivership court, the liquidator  
13 may not offset the amount to be dispersed to any guaranty  
14 association by the amount of any specific deposit or any other  
15 statutory deposit or asset of the insolvent insurer held in that  
16 state unless the association has actually received the deposit.

17        Sec. 21A.304. UNCLAIMED AND WITHHELD FUNDS. (a) If any  
18 funds of the receivership estate remain unclaimed after the final  
19 distribution under Section 21A.302, the funds must be placed in a  
20 segregated unclaimed funds account held by the commissioner. If  
21 the owner of any of the unclaimed funds presents proof of ownership  
22 satisfactory to the commissioner before the second anniversary of  
23 the date of the termination of the delinquency proceeding, the  
24 commissioner shall remit the funds to the owner. The interest  
25 earned on funds held in the unclaimed funds account may be used to  
26 pay any administrative costs related to the handling or return of  
27 unclaimed funds.

1        (b) If any amounts held in the unclaimed funds account  
2 remain unclaimed on or after the second anniversary of the date of  
3 the termination of the delinquency proceeding, the commissioner may  
4 file a motion for an order directing the disposition of the funds in  
5 the court in which the delinquency proceeding was pending. Any  
6 costs incurred in connection with the motion may be paid from the  
7 unclaimed funds account. The motion shall identify the name of the  
8 insurer, the names and last known addresses of the persons entitled  
9 to the unclaimed funds, if known, and the amount of the funds.  
10 Notice of the motion shall be given as directed by the court. Upon a  
11 finding by the court that the funds have not been claimed before the  
12 second anniversary of the date of the termination of the  
13 delinquency proceeding, the court shall order that any claims for  
14 unclaimed funds and any interest earned on the unclaimed funds that  
15 has not been expended under Subsection (a) are abandoned and that  
16 the funds must be disbursed under one of the following methods:

17            (1) the amounts may be deposited in the general  
18 receivership expense account under Subsection (c);

19            (2) the amounts may be transferred to the comptroller,  
20 and deposited into the general revenue fund; or

21            (3) the amounts may be used to reopen the receivership  
22 in accordance with Section 21A.353 and be distributed to the known  
23 claimants with approved claims.

24        (c) The commissioner may establish an account for the  
25 following purposes:

26            (1) to pay general expenses related to the  
27 administration of receiverships; and

1           (2) to advance funds to any receivership that does not  
2 have sufficient cash to pay its operating expenses.

3           (d) Any advance to a receivership under Subsection (c)(2)  
4 may be treated as a claim under Section 21A.301 as agreed at the  
5 time the advance is made or, in the absence of an agreement, in the  
6 priority determined to be appropriate by the court.

7           (e) If the commissioner determines at any time that the  
8 funds in the account exceed the amount required, the commissioner  
9 may transfer the funds or any part of the funds to the comptroller,  
10 and the transferred funds must be deposited into the general  
11 revenue fund.

12           [Sections 21A.305-21A.350 reserved for expansion]

13                           SUBCHAPTER H. DISCHARGE

14           Sec. 21A.351. CONDITION ON RELEASE FROM DELINQUENCY  
15 PROCEEDINGS. Until all payments of or on account of the insurer's  
16 contractual obligations by all guaranty associations, along with  
17 all expenses of the obligations and interest on all the payments and  
18 expenses, are repaid to the guaranty associations, unless otherwise  
19 provided in a plan approved by the guaranty association, an insurer  
20 that is subject to any formal delinquency proceedings may not:

21           (1) solicit or accept new business or request or  
22 accept the restoration of any suspended or revoked license or  
23 certificate of authority;

24           (2) be returned to the control of its shareholders or  
25 private management; or

26           (3) have any of its assets returned to the control of  
27 its shareholders or private management.



1       Sec. 21A.352. TERMINATION OF LIQUIDATION PROCEEDINGS. When  
2 all property justifying the expense of collection and distribution  
3 has been collected and distributed under this chapter, the  
4 liquidator shall apply to the receivership court for an order  
5 discharging the liquidator and terminating the proceeding. The  
6 receivership court may grant the application and make any other  
7 orders, including orders to transfer any remaining funds that are  
8 uneconomic to distribute, or pursuant to Section 21A.302(c), assign  
9 any assets that remain unliquidated, including claims and causes of  
10 action, as may be deemed appropriate.

11       Sec. 21A.353. REOPENING RECEIVERSHIP. After the  
12 liquidation proceeding has been terminated and the liquidator  
13 discharged, the commissioner or other interested party may at any  
14 time petition the court to reopen the delinquency proceeding for  
15 good cause, including the discovery of additional property. If the  
16 court is satisfied that there is justification for reopening, it  
17 shall so order.

18       Sec. 21A.354. DISPOSITION OF RECORDS DURING AND AFTER  
19 TERMINATION OF RECEIVERSHIP. (a) When it appears to the receiver  
20 that the records of the insurer in receivership are no longer  
21 useful, the receiver may recommend to the receivership court and  
22 the receivership court shall direct what records should be  
23 destroyed.

24       (b) If the receiver determines that any records should be  
25 maintained after the closing of the delinquency proceeding, the  
26 receiver may reserve property from the receivership estate for the  
27 maintenance of the records, and any amounts so retained are

1 administrative expenses of the estate under Section 21A.301(a).  
2 Any records retained pursuant to this subsection must be  
3 transferred to the custody of the commissioner, and the  
4 commissioner may retain or dispose of the records as appropriate,  
5 at the commissioner's discretion. Any records of a delinquent  
6 insurer that are transferred to the commissioner may not be  
7 considered records of the department for any purposes, and Chapter  
8 552, Government Code, does not apply to those records.

9 Sec. 21A.355. EXTERNAL AUDIT OF THE RECEIVER'S BOOKS. (a)  
10 The receivership court may, as it deems desirable, order audits to  
11 be made of the books of the receiver relating to any receivership  
12 established under this chapter. A report of each audit shall be  
13 filed with the commissioner and with the receivership court.

14 (b) The books, records, and other documents of the  
15 receivership must be made available to the auditor at any time  
16 without notice.

17 (c) The expense of each audit shall be considered a cost of  
18 administration of the receivership.

19 [Sections 21A.356-21A.400 reserved for expansion]

#### 20 SUBCHAPTER I. INTERSTATE RELATIONS

21 Sec. 21A.401. ANCILLARY CONSERVATION OF FOREIGN INSURERS.

22 (a) The commissioner may initiate an action against a foreign  
23 insurer pursuant to Section 21A.051 on any of the grounds stated in  
24 that section or on the basis that:

25 (1) any of the foreign insurer's property has been  
26 sequestered, garnished, or seized by official action in its  
27 domiciliary state or in any other state;

1           (2) the foreign insurer's certificate of authority to  
2 do business in this state has been revoked or was never issued and  
3 there are residents of this state with unpaid claims or in-force  
4 policies; or

5           (3) initiation of the action is necessary to enforce a  
6 stay under Section 17, Article 21.28-C, Section 18, Article  
7 21.28-D, or Section 2602.259.

8           (b) If a domiciliary receiver has been appointed, the  
9 commissioner may initiate an action against a foreign insurer under  
10 Subsection (a)(1) or (a)(2) only with the consent of the  
11 domiciliary receiver.

12           (c) An order entered pursuant to this section must appoint  
13 the commissioner as conservator. The conservator's title to assets  
14 must be limited to the insurer's property and records located in  
15 this state.

16           (d) Notwithstanding Section 21A.201(c), the conservator  
17 shall hold and conserve the assets located in this state until the  
18 commissioner in the insurer's domiciliary state is appointed its  
19 receiver or until an order terminating conservation is entered  
20 under Subsection (g). Once a domiciliary receiver is appointed,  
21 the conservator shall turn over to the domiciliary receiver all  
22 property subject to an order under this section.

23           (e) The conservator may liquidate property of the insurer as  
24 necessary to cover the costs incurred in the initiation or  
25 administration of a proceeding under this section.

26           (f) The court in which an action under this section is  
27 pending may issue a finding of insolvency or an ancillary

1 liquidation order. The court may enter an ancillary liquidation  
2 order only for the limited purposes of:

3 (1) liquidating assets in this state to pay costs  
4 under Subsection (e); or

5 (2) activating relevant laws applicable to guaranty  
6 associations to pay valid claims that are not being paid by the  
7 insurer.

8 (g) The conservator may at any time petition the  
9 receivership court for an order terminating an order entered under  
10 this section.

11 Sec. 21A.402. DOMICILIARY RECEIVERS APPOINTED IN OTHER  
12 STATES. (a) A domiciliary receiver appointed in another state is  
13 vested by operation of law with title to, and may summarily take  
14 possession of, all property and records of the insurer in this  
15 state. Notwithstanding any other provision of law regarding  
16 special deposits, special deposits held in this state shall be,  
17 upon the entry of an order of liquidation with a finding of  
18 insolvency, distributed to the guaranty associations in this state  
19 as early access payments subject to Section 21A.303, in relation to  
20 the lines of business for which the special deposits were made. The  
21 holder of any special deposit shall account to the domiciliary  
22 receiver for all distributions from the special deposit at the time  
23 of the distribution. The statutory provisions of another state and  
24 all orders entered by courts of competent jurisdiction in relation  
25 to the appointment of a domiciliary receiver of an insurer and any  
26 related proceedings in another state must be given full faith and  
27 credit in this state. For purposes of this section, "another state"

1 means any state other than this state. This state shall treat any  
2 other state than this state as a reciprocal state.

3 (b) Upon appointment of a domiciliary receiver in another  
4 state, the commissioner shall, unless otherwise agreed by the  
5 receiver, immediately transfer title to and possession of all  
6 property of the insurer under the commissioner's control, including  
7 all statutory general or special deposits, to the receiver.

8 (c) Except as provided in Subsection (a), the domiciliary  
9 receiver shall handle special deposits and special deposit claims  
10 in accordance with federal law and the statutes pursuant to which  
11 the special deposits are required. All amounts in excess of the  
12 estimated amount necessary to administer the special deposit and  
13 pay the unpaid special deposit claims are deemed general assets of  
14 the estate. If there is a deficiency in any special deposit so that  
15 the claims secured by the special deposit are not fully discharged  
16 from the deposit, the claimants may share in the general assets of  
17 the insurer to the extent of the deficiency at the same priority as  
18 other claimants in their class of priority under Section 21A.301,  
19 but the sharing must be deferred until the other claimants of their  
20 class have been paid percentages of their claims equal to the  
21 percentage paid from the special deposit. The intent of this  
22 provision is to equalize to this extent the advantage gained by the  
23 security provided by the special deposits.

24 SECTION 2. Section 3(a), Article 21.28-C, Insurance Code,  
25 is amended to read as follows:

26 (a) This Act applies to all kinds of direct insurance, and  
27 except as provided in Section 12 of this Act, is not applicable to

1 the following:

2 (1) life, annuity, health, or disability insurance;

3 (2) mortgage guaranty, financial guaranty, or other  
4 forms of insurance offering protection against investment risks;

5 (3) fidelity or surety bonds, or any other bonding  
6 obligations;

7 (4) credit insurance, vendors' single-interest  
8 insurance, collateral protection insurance, or any similar  
9 insurance protecting the interests of a creditor arising out of a  
10 creditor-debtor transaction;

11 (5) insurance of warranties or service contracts;

12 (6) title insurance;

13 (7) ocean marine insurance;

14 (8) any transaction or combination of transactions  
15 between a person, including an affiliate of such a person, and an  
16 insurer, including an affiliate of such an insurer, that involves  
17 the transfer of investment or credit risk unaccompanied by the  
18 transfer of insurance risk, including transactions, except for  
19 workers' compensation insurance, involving captive insurers,  
20 policies in which deductible or self-insured retention is  
21 substantially equal in amount to the limit of the liability under  
22 the policy, and transactions in which the insured retains a  
23 substantial portion of the risk; or

24 (9) any insurance provided by or guaranteed by  
25 government.

26 SECTION 3. Section 5(8), Article 21.28-C, Insurance Code,  
27 is amended to read as follows:

1           (8) "Covered claim" means an unpaid claim of an  
2 insured or third-party liability claimant that arises out of and is  
3 within the coverage and not in excess of the applicable limits of an  
4 insurance policy to which this Act applies, issued or assumed  
5 (whereby an assumption certificate is issued to the insured) by an  
6 insurer licensed to do business in this state, if that insurer  
7 becomes an impaired insurer and the third-party claimant or  
8 liability claimant or insured is a resident of this state at the  
9 time of the insured event, or the claim is a first-party claim for  
10 damage to property that is permanently located in this state. A  
11 corporation or other entity that is not an individual is considered  
12 to be a resident of the state in which the entity's principal place  
13 of business is located. "Covered claim" shall also include  
14 unearned premiums, but in no event shall a covered claim for  
15 unearned premiums exceed \$25,000. Individual covered claims  
16 (including any and all derivative claims by more than one person  
17 which arise from the same occurrence, which shall be considered  
18 collectively as a single claim under this Act) shall be limited to  
19 \$300,000, except that the association shall pay the full amount of  
20 any covered claim arising out of a workers' compensation claim made  
21 under a workers' compensation policy. "Covered claim" shall not  
22 include any amount sought as a return of premium under a  
23 retrospective rating plan or any amount that is directly or  
24 indirectly due any reinsurer, insurer, self-insurer, insurance  
25 pool, or underwriting association, as subrogation recoveries,  
26 reinsurance recoveries, contribution, indemnification, or  
27 otherwise, and the insured of an impaired insurer is not liable, and

1 the reinsurer, insurer, self-insurer, insurance pool, or  
2 underwriting association is not entitled to sue or continue a suit  
3 against that insured, for any subrogation recovery, reinsurance  
4 recovery, contribution, ~~or~~ indemnity, or any other claim asserted  
5 directly or indirectly by a reinsurer, insurer, insurance pool, or  
6 underwriting association to the extent of the applicable liability  
7 limits of the policy written and issued to the insured by the  
8 insolvent insurer. "Covered claim" shall not include supplementary  
9 payment obligations, including adjustment fees and expenses,  
10 attorney's fees and expenses, court costs, interest and penalties,  
11 and interest and bond premiums incurred prior to the determination  
12 that an insurer is an impaired insurer under this Act. "Covered  
13 claim" shall not include any prejudgment or postjudgment interest  
14 that accrues subsequent to the determination that an insurer is an  
15 impaired insurer under this Act. "Covered claim" shall not include  
16 any claim for recovery of punitive, exemplary, extracontractual, or  
17 bad-faith damages, whether sought as a recovery against the  
18 insured, insurer, guaranty association, receiver, special deputy  
19 receiver, or commissioner, awarded in a court judgment against an  
20 insured or insurer. Notwithstanding any other provision of this  
21 Act, the association's liability for shareholder derivative  
22 actions or other claims for economic loss incurred by a claimant in  
23 the claimant's capacity as a shareholder under an insurance policy  
24 placed in force on or after January 1, 1992, is limited to \$300,000  
25 for each policy, inclusive of defense costs, regardless of the  
26 number of claimants under each policy. "Covered claim" shall not  
27 include, and the association shall not have any liability to an



1 insured or third-party liability claimant, for its failure to  
2 settle a liability claim within the limits of a covered claim under  
3 this Act. With respect to a covered claim for unearned premiums,  
4 both persons who were residents of this state at the time the policy  
5 was issued and persons who are residents of this state at the time  
6 the company is found to be an impaired insurer shall be considered  
7 to have covered claims under this Act. If the impaired insurer has  
8 insufficient assets to pay the expenses of administering the  
9 receivership or conservatorship estate, that portion of the  
10 expenses of administration incurred in the processing and payment  
11 of claims against the estate shall also be a covered claim under  
12 this Act.

13 SECTION 4. Section 8, Article 21.28-C, Insurance Code, is  
14 amended by amending Subsection (d) and adding Subsection (i) to  
15 read as follows:

16 (d) The association shall investigate and adjust,  
17 compromise, settle, and pay covered claims to the extent of the  
18 association's obligation and deny all other claims. The  
19 association may review settlements, releases, and judgments to  
20 which the impaired insurer or its insureds were parties to  
21 determine the extent to which those settlements, releases, and  
22 judgments may be properly contested. Any judgment taken before the  
23 designation of impairment in which an insured under a liability  
24 policy or the insurer failed to exhaust all appeals, any judgment  
25 taken by default or consent against an insured or the impaired  
26 insurer, and any settlement, release, or judgment entered into by  
27 the insured or the impaired insurer, is not binding on the

1 association, and may not be considered as evidence of liability or  
2 of damages in connection with any claim brought against the  
3 association or any other party under this Act. Notwithstanding any  
4 other provision of this Act or any other law to the contrary, a  
5 covered claim shall not include any claim filed with the guaranty  
6 association on a date that is later than eighteen months after the  
7 date of the order of liquidation and also shall not include claims  
8 that are unknown and unreported as of the date, provided, however,  
9 ~~[except]~~ that a claim for workers' compensation benefits is  
10 governed by Title 5, Labor Code, and the applicable rules of the  
11 Texas Workers' Compensation Commission.

12 (i) The association may bring an action against any  
13 third-party administrator, agent, attorney, or other  
14 representative of an insurer for which a receiver has been  
15 appointed to obtain custody and control of all information,  
16 including files, records, and electronic data, related to the  
17 insurer that is appropriate or necessary for the association, or a  
18 similar association in other states, to carry out its duties under  
19 this Act or a similar law of another state. The association has the  
20 absolute right to obtain information under this subsection through  
21 emergency equitable relief, regardless of where the information is  
22 physically located. In bringing an action under this subsection,  
23 the association is not subject to any defense, possessory lien or  
24 other type of lien, or other legal or equitable ground for refusal  
25 to surrender the information that may be asserted against the  
26 receiver of the insurer. The association is entitled to an award of  
27 reasonable attorney's fees and costs incurred by the association in

1 any action to obtain information under this subsection. The rights  
2 granted to the association under this subsection do not affect the  
3 receiver's title to information, and information obtained under  
4 this subsection remains the property of the receiver while in the  
5 custody of the association.

6 SECTION 5. Section 10(g), Article 21.28-C, Insurance Code,  
7 is amended to read as follows:

8 (g) Venue in a suit by or against the association or  
9 commissioner relating to any action or ruling of the association or  
10 commissioner made under this Act is in Travis County. The  
11 association or commissioner is not required to give an appeal bond  
12 in an appeal of a cause of action arising under this Act.

13 SECTION 6. Section 11(b), Article 21.28-C, Insurance Code,  
14 is amended to read as follows:

15 (b) The association is entitled to recover [~~from the~~  
16 ~~following persons the amount of any covered claim and costs of~~  
17 ~~defense paid on behalf of that person under this Act]:~~

18 (1) the amount of any covered claim for workers'  
19 compensation insurance benefits and the costs of administration and  
20 defense of those claims paid under this Act from any insured  
21 employer, other than an insured who is exempt from federal income  
22 tax under Section 501(a) of the Internal Revenue Code of 1986 (26  
23 U.S.C. Section 501(a)) by being described by Section 501(c)(3) of  
24 that code, whose net worth on December 31 of the year next preceding  
25 the date the insurer becomes an impaired insurer exceeds \$50  
26 million, provided that an insured's net worth on that date shall be  
27 deemed [~~is considered~~] to include the aggregate net worth of the

1 insured and all of the insured's parent, subsidiary, and affiliated  
2 companies as computed on a consolidated basis[~~, and whose~~  
3 ~~obligations under a liability policy or contract of insurance~~  
4 ~~written, issued, and placed in force after January 1, 1992, are~~  
5 ~~satisfied in whole or in part by payments made under this Act~~]; and

6 (2) the amount of any covered claim and the costs of  
7 defense paid on behalf of any person who is an affiliate of the  
8 impaired insurer and whose liability obligations to other persons  
9 are satisfied in whole or in part by payments made under this Act.

10 SECTION 7. Section 11A, Article 21.28-C, Insurance Code, is  
11 amended to read as follows:

12 Sec. 11A. NET WORTH EXCLUSION. (a) Except for a workers'  
13 compensation claim governed by Title 5, Labor Code, a covered claim  
14 does not include and the association is not liable for any claim  
15 arising from a policy of insurance of any [~~The association is not~~  
16 ~~liable to pay a first-party claim of an~~] insured whose net worth on  
17 December 31 of the year next preceding the date the insurer becomes  
18 an impaired insurer exceeds \$50 million.

19 (b) The net worth of an insured for purposes of this section  
20 includes the aggregate net worth of the insured and all of the  
21 insured's parent, subsidiary, and affiliated companies computed on  
22 a consolidated basis.

23 (c) This section does not apply:

24 (1) to third-party claims against an insured that has:  
25 (A) applied for or consented to the appointment  
26 of a receiver, trustee, or liquidator for all or a substantial part  
27 of the insurer's assets;

1           (B) filed a voluntary petition in bankruptcy; or

2           (C) filed a petition or an answer seeking a  
3 reorganization or arrangement with creditors or to take advantage  
4 of any insolvency law; or

5           (2) if an order, judgment, or decree is entered by a  
6 court of competent jurisdiction, on the application of a creditor,  
7 adjudicating the insured bankrupt or insolvent or approving a  
8 petition seeking reorganization of the insured or of all or a  
9 substantial part of its assets.

10           (d) In an instance described by Subsection (c) of this  
11 section, the association is entitled to assert a claim in the  
12 bankruptcy or receivership proceeding to recover the amount of any  
13 covered claim and costs of defense paid on behalf of the insured  
14 [This section does not exclude the payment of a covered claim for  
15 workers' compensation benefits otherwise payable under this Act].

16           (e) The association may establish procedures for requesting  
17 financial information from an insured or claimant on a confidential  
18 basis for the purpose of applying sections concerning the net worth  
19 of first-party and third-party claimants, subject to any  
20 information requested under this subsection being shared with any  
21 other association similar to the association and with the  
22 liquidator for the impaired insurer on the same confidential basis.  
23 If the insured or claimant refuses to provide the requested  
24 financial information, the association requests an auditor's  
25 certification of that information, and the auditor's certification  
26 is available but not provided, the association may deem the net  
27 worth of the insured or claimant to be in excess of \$50 million at

1 the relevant time.

2 (f) In any lawsuit contesting the applicability of Section  
3 11(b) of this article or this section when the insured or claimant  
4 has declined to provide financial information under the procedure  
5 provided in the plan of operation pursuant to Section 9 of this  
6 article, the insured or claimant bears the burden of proof  
7 concerning its net worth at the relevant time. If the insured or  
8 claimant fails to prove that its net worth at the relevant time was  
9 less than the applicable amount, the court shall award the  
10 association its full costs, expenses, and reasonable attorney's  
11 fees in contesting the claim.

12 SECTION 8. Section 17(a), Article 21.28-C, Insurance Code,  
13 is amended to read as follows:

14 (a) All proceedings in which an impaired insurer is a party  
15 or is obligated to defend a party in any court in this state, except  
16 proceedings directly related to the receivership or instituted by  
17 the receiver, shall be stayed as to all parties and for all purposes  
18 for six months and any additional time thereafter as may be  
19 determined by the court from the date of the designation of  
20 impairment or an ancillary proceeding is instituted in the state,  
21 whichever is later, to permit proper defense by the association of  
22 all pending causes of action. A deadline imposed under the Texas  
23 Rules of Civil Procedure or the Texas Rules of Appellate Procedure  
24 is tolled during the stay. Statutes of limitation or repose are not  
25 tolled during the stay, and any action filed during the stay is  
26 stayed upon the filing of the action. The court in which the  
27 delinquency proceeding is pending has exclusive jurisdiction

1 regarding the application, enforcement, and extension of the stay  
2 and may issue injunctions or other similar orders to enforce the  
3 stay. If the impaired insurer is not domiciled in this state, the  
4 commissioner may bring an ancillary conservation [~~delinquency~~]  
5 proceeding under Section 21A.401 [~~13, Article 21.28~~] of this code,  
6 for the [~~limited~~] purpose of determining the application,  
7 enforcement, and extension of the stay.

8 SECTION 9. Article 21.28, Insurance Code, is repealed.

9 SECTION 10. (a) The changes in law made by this Act apply  
10 only to a receivership proceeding brought against an insurer under  
11 Section 2, Article 21.28, Insurance Code, that is pending on the  
12 effective date of this Act and to a receivership proceeding  
13 initiated on or after the effective date of this Act. A  
14 receivership proceeding that has terminated before the effective  
15 date of this Act is governed by the law in effect at the time the  
16 receivership proceeding terminated, and that law is continued in  
17 effect for that purpose.

18 (b) Except as provided by Subsection (a) of this section,  
19 the changes in law made by this Act apply only to a proceeding or  
20 cause of action brought under Chapter 21A, Insurance Code, as added  
21 by this Act, that is filed or commenced on or after the effective  
22 date of this Act. A proceeding or cause of action brought under  
23 Article 21.28, Insurance Code, as it existed before its repeal by  
24 this Act, other than a receivership proceeding brought against an  
25 insurer, that was filed or commenced before the effective date of  
26 this Act is governed by the law in effect at the time the proceeding  
27 or cause of action was filed or commenced, and that law is continued

1 in effect for that purpose.

2 SECTION 11. This Act takes effect September 1, 2005.



David Beuhurst

President of the Senate

Jim Coakley

Speaker of the House

I certify that H.B. No. 2157 was passed by the House on May 13, 2005, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 2157 on May 27, 2005, by a non-record vote; and that the House adopted H.C.R. No. 234 authorizing certain corrections in H.B. No. 2157 on May 30, 2005, by a non-record vote.

Robert Haney

Chief Clerk of the House

I certify that H.B. No. 2157 was passed by the Senate, with amendments, on May 25, 2005, by the following vote: Yeas 31, Nays 0; and that the Senate adopted H.C.R. No. 234 authorizing certain corrections in H.B. No. 2157 on May 30, 2005, by a viva-voce vote.

Letsy Spaw

Secretary of the Senate

APPROVED: 18 JUNE '05

Date

RICK PERRY

Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE

9:15 AM O'CLOCK

JUN 18 2005

Roger Williams

Secretary of State