

By: Smithee

H.B. No. 2157

Substitute the following for H.B. No. 2157:

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C.S.H.B. No. 2157

A BILL TO BE ENTITLED

AN ACT

relating to the receivership of insurers in this state; providing penalties.

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

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

CHAPTER 21A. INSURER RECEIVERSHIP ACT

SUBCHAPTER A. GENERAL PROVISIONS

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

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

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

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

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

(1) early detection of any potentially hazardous condition in an insurer and prompt application of appropriate 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 guaranty 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. Nothing in this provision may
14 be construed to hold the receiver or any assistant or contractor
15 immune from suit or liability for any damage, loss, injury, or
16 liability caused by the intentional or wilful and wanton misconduct
17 of the receiver, any assistant, or contractor.

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

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

23 (f) If any legal action is commenced against the receiver or
24 any assistant, whether against the receiver or assistant personally
25 or in their official capacity, alleging property damage, property
26 loss, personal injury, or other civil liability caused by or
27 resulting from any alleged act, error, or omission of the receiver

1 or any assistant arising out of or by reason of their duties or
2 employment, the receiver and any assistant are indemnified from the
3 assets of the insurer for all expenses, attorney's fees, judgments,
4 settlements, decrees, or amounts due and owing or paid in
5 satisfaction of or incurred in the defense of the legal action,
6 unless it is determined upon a final adjudication on the merits that
7 the alleged act, error, or omission of the receiver or assistant
8 giving rise to the claim:

9 (1) did not arise out of or by reason of their duties
10 or employment; or

11 (2) was caused by intentional or wilful and wanton
12 misconduct.

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

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

27 (i) In the event of any actual or threatened litigation

1 against a receiver or any assistant for whom immunity or indemnity
2 may be available under this section, a reasonable amount of funds,
3 which in the judgment of the receiver may be needed to provide
4 immunity or indemnity, must be segregated and reserved from the
5 assets of the insurer as security for the payment of indemnity
6 until:

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

8 (2) all actual or threatened actions against the
9 receiver or any assistant have been completely and finally
10 resolved; and

11 (3) all obligations under this section have been
12 satisfied.

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

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

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

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

1 (1) In any legal action in which a claim is asserted against
2 the receiver, that portion of any settlement relating to the
3 alleged act, error, or omission of the receiver is subject to the
4 approval of the receivership court. The receivership court may not
5 approve that portion of the settlement if it determines that the
6 claim:

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

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

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

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

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

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

25 Sec. 21A.015. APPROVAL AND PAYMENT OF EXPENSES. (a) The
26 receiver may pay any expenses under contracts, leases, employment
27 agreements, or other arrangements entered into by the insurer prior

1 to receivership, as the receiver deems necessary for the purposes
2 of this chapter. The receiver is not required to pay any expenses
3 that the receiver determines are not necessary, and may reject any
4 contract pursuant to Section 21A.013.

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

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

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

14 (2) any other anticipated expense in excess of
15 \$25,000, or another amount established by the receivership court.

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

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

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

26 (g) On a quarterly basis, or as otherwise provided by the
27 receivership court, the receiver shall submit to the receivership

1 court a report summarizing the expenses incurred during the period.

2 (h) Receivership court approval may not be required to pay
3 expenses incurred by the receiver in connection with the appeal of
4 an order of the receivership court.

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

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

18 (1) a statement of the assets and liabilities of the
19 insurer;

20 (2) the changes in those assets and liabilities; and

21 (3) all funds received or disbursed by the receiver
22 during the period covered by the report.

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

1 (c) Not later than the 120th day after the date of entry of
2 an order of liquidation by the receivership court, and at least
3 quarterly after that date, or at other intervals as may be agreed to
4 between the liquidator and the guaranty associations, but in no
5 event less than annually, each affected guaranty association shall
6 file reports with the liquidator. The reports must be in a format
7 compatible with that specified by the National Association of
8 Insurance Commissioners. Reports under this subsection shall be
9 filed with the receivership court.

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

1 records described by this section that pertain to the insurer's
2 business and that are appropriate or necessary for the guaranty
3 association to fulfill the association's statutory obligations.

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

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

10 (A) are true and correct copies of records of the
11 insurer; and

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

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

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

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

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

26 SUBCHAPTER B. PROCEEDINGS

27 Sec. 21A.051. RECEIVERSHIP COURT'S SEIZURE ORDER. (a) The

1 commissioner may file in a district court of Travis County a
2 petition with respect to an insurer domiciled in this state, an
3 unauthorized insurer, or, pursuant to Section 21A.401, a foreign
4 insurer:

5 (1) alleging that grounds exist that would justify a
6 court order for a formal delinquency proceeding against the insurer
7 under this chapter;

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

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

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

26 (c) A petition that prays for injunctive relief must be
27 verified by the commissioner or the commissioner's designee, but

1 need not plead or prove irreparable harm or inadequate remedy at
2 law. The commissioner shall provide only the notice as the
3 receivership court may require.

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

17 (e) Entry of a seizure order under this section does not
18 constitute a breach or an anticipatory breach of any contract of the
19 insurer.

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

1 (g) If, at any time after the issuance of a seizure order, it
2 appears to the receivership court that any person whose interest is
3 or will be substantially affected by the seizure order did not
4 appear at the hearing and has not been served, the receivership
5 court may order that notice be given to the person. An order that
6 notice be given does not stay the effect of any seizure order
7 previously issued by the receivership court.

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

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

22 (1) the court, after hearing argument in chambers,
23 orders otherwise;

24 (2) the insurer requests that the matter be made
25 public; or

26 (3) the commissioner applies for an order under
27 Section 21A.057.

1 Sec. 21A.052. COMMENCEMENT OF FORMAL DELINQUENCY
2 PROCEEDING. (a) Any formal delinquency proceeding against a
3 person shall be commenced by filing a petition in the name of the
4 commissioner or department.

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

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

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

19 (1) the receivership court may issue an initial order
20 containing the relief requested;

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

26 (3) the order must state the time and date of its
27 issuance; and

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

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

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

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

17 (1) continue the summary hearing not more than 10
18 days;

19 (2) provide for alternative service of summons upon
20 the person; and

21 (3) extend any restraining order.

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

1 that the restraining order has been extended to the continued
2 hearing date.

3 (d) If a person fails to appear for a summary hearing on a
4 petition to commence a formal delinquency proceeding after service
5 of summons, the receivership court shall enter judgment in favor of
6 the commissioner against that person.

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

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

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

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

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

25 (b) Continuances for trial may be granted only in extreme
26 circumstances.

27 (c) The receivership court shall admit into evidence, as

1 self-authenticated, certified copies of any of the following when
2 offered by the commissioner:

3 (1) the financial statements made by the insurer or an
4 affiliate;

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

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

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

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

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

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

26 Sec. 21A.056. CONFIDENTIALITY. (a) The commissioner,
27 rehabilitator, or liquidator may share documents, materials, or

1 other information in the possession, custody, or control of the
2 department without regard to the confidentiality of those
3 documents, materials, or information, pertaining to an insurer that
4 is the subject of a proceeding under this chapter with other state,
5 federal, and international regulatory agencies, with the National
6 Association of Insurance Commissioners and its affiliates and
7 subsidiaries, with state, federal, and international law
8 enforcement authorities, with an auditor appointed by the
9 receivership court in accordance with Section 21A.355, and,
10 pursuant to Section 21A.105, with representatives of guaranty
11 associations that may have statutory obligations as a result of the
12 insolvency of the insurer, provided that the recipient agrees to
13 maintain the confidentiality, if any, of the documents, material,
14 or other information. Nothing in this section limits the power of
15 the commissioner to disclose information under other applicable
16 law.

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

1 protective order imposing additional restrictions on access.

2 (c) The Texas Workers' Compensation Commission shall report
3 to the department any information that a workers' compensation
4 insurer has committed acts that indicate that the insurer is
5 impaired or insolvent. A report made under this subsection is
6 confidential under this section.

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

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

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

20 (1) the insurer is impaired;

21 (2) the insurer is insolvent;

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

26 (4) the insurer has neglected or refused to comply
27 with an order of the commissioner to make good within the time

1 prescribed by law any deficiency, whenever its capital and minimum
2 required surplus, if a stock company, or its surplus, if a company
3 other than stock, has become impaired;

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

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

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

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

1 of the business of the insurer;

2 (9) the insurer is in a condition such that the further
3 transaction of business would be hazardous financially, according
4 to Article 1.32 or otherwise, to its policyholders, creditors, or
5 the public;

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

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

13 (A) dishonest or untrustworthy; or

14 (B) so lacking in insurance company managerial
15 experience or capability as to be hazardous to policyholders,
16 creditors, or the public;

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

26 (13) after demand by the commissioner under Article
27 1.15, 1.15A, or 1.16 or under this chapter, the insurer has failed

1 promptly to make available for examination any of its own property,
2 books, accounts, documents, or other records, or those of any
3 subsidiary or related company within the control of the insurer or
4 of any person having executive authority in the insurer, so far as
5 they pertain to the insurer;

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

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

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

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

1 terminated, whether it is before the commissioner or in the courts;

2 (18) the insurer has systematically engaged in the
3 practice of reaching settlements with and obtaining releases from
4 claimants, and then unreasonably delayed payment, failed to pay the
5 agreed-upon settlements, or systematically attempted to compromise
6 with claimants or other creditors on the ground that it is
7 financially unable to pay its claims or obligations in full;

8 (19) the insurer has failed to file its annual report
9 or other financial report required by statute within the time
10 allowed by law;

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

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

20 (22) when authorized by department rules.

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

25 Sec. 21A.059. EFFECT OF PETITION OR ORDER ON CONTRACT OR
26 LEASE. Neither the filing of a petition under this chapter nor the
27 entry of any order of seizure, rehabilitation, or liquidation

1 constitutes a breach or an anticipatory breach of any contract or
2 lease of the insurer.

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

4 SUBCHAPTER C. REHABILITATION

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

24 (b) Any order issued under this section must require
25 accountings to the receivership court by the rehabilitator.
26 Accountings must be at the intervals specified by the receivership
27 court in its order, but not less frequently than semi-annually.

1 Each accounting must include a report concerning the
2 rehabilitator's opinion as to the likelihood that a plan under
3 Section 21A.103 will be prepared by the rehabilitator and the
4 timetable for doing so.

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

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

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

20 (b) The rehabilitator may take action as the rehabilitator
21 deems necessary or appropriate to reform and revitalize the
22 insurer, including canceling policies, insurance and reinsurance
23 contracts other than life or health insurance or annuities, or
24 surety bonds or surety undertakings or transferring policies,
25 insurance and reinsurance contracts, or surety bonds or surety
26 undertakings to a solvent assuming insurer, with court approval.
27 The rehabilitator has all the powers of the directors, officers,

1 and managers of the insurer, whose authority is suspended, except
2 as redelegated by the rehabilitator. The rehabilitator has full
3 power to direct and manage, hire and discharge employees, and deal
4 with the property and business of the insurer.

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

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

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

22 Sec. 21A.103. REHABILITATION PLANS. (a) The rehabilitator
23 shall prepare and file a plan to effect rehabilitation with the
24 receivership court not later than the first anniversary of the
25 entry of the rehabilitation order or another further time as the
26 receivership court may allow. Upon application of the
27 rehabilitator for approval of the plan, and after the notice and

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

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

14 (c) A plan must:

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

20 (2) provide adequate means for the plan's
21 implementation;

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

27 (4) provide for the disposition of the books, records,

1 documents, and other information relevant to the duties and
2 obligations covered by the plan.

3 (d) A plan may include any other provision not inconsistent
4 with the provisions of this chapter, including:

5 (1) payment of distributions;

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

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

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

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

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

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

1 administrative convenience.

2 Sec. 21A.104. TERMINATION OF REHABILITATION. (a) When the
3 rehabilitator believes further attempts to rehabilitate an insurer
4 would substantially increase the risk of loss to creditors,
5 policyholders, or the public or would be futile, the rehabilitator
6 may move for an order of liquidation. In accordance with Section
7 21A.105, the rehabilitator or the rehabilitator's designated
8 representative shall coordinate with the guaranty associations
9 that may become liable as a result of the liquidation and any
10 national association of guaranty associations to plan for
11 transition to liquidation.

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

20 (c) The rehabilitator or the directors of the insurer may at
21 any time petition the receivership court for, or the receivership
22 court on its own motion may enter, an order terminating
23 rehabilitation of an insurer. Subject to the provisions of Section
24 21A.351, if the receivership court finds that rehabilitation has
25 been accomplished and that grounds for rehabilitation under Section
26 21A.057 no longer exist, it shall order that the insurer be restored
27 to title and possession of its property and the control of the

1 business.

2 Sec. 21A.105. COORDINATION WITH GUARANTY ASSOCIATIONS. (a)

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

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

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

24 (2) claim counts and policy counts by state and by line
25 of business;

26 (3) claim and policy reserves;

27 (4) account values and cash surrender values;

- 1 (5) policy loans;
2 (6) interest crediting history;
3 (7) premiums and mode of payment;
4 (8) unpaid claims and amounts;
5 (9) sample policies and endorsements;
6 (10) a listing of different locations of claim files;
7 (11) if third-party administrators were used, copies
8 of executed contracts and a description of the contractual
9 arrangements; and

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

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

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

27 (e) The list of what appropriate information includes under

1 Subsections (b) and (c) is not necessarily an exclusive list. Other
2 information may be necessary to ensure that an orderly transition
3 to liquidation occurs, and that information may be appropriately
4 provided by the receiver.

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

6 SUBCHAPTER D. LIQUIDATION

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

27 (b) Upon issuance of the order of liquidation, the rights

1 and liabilities of the insurer and of its creditors, policyholders,
2 shareholders, members, and all other persons interested in its
3 estate become fixed as of the date of entry of the order of
4 liquidation, except as provided by Sections 21A.152 and 21A.255,
5 unless otherwise fixed by the court.

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

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

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

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

22 (b) Notwithstanding any policy or contract language or any
23 other statute, all policies, insurance contracts other than
24 reinsurance by which the insurer has ceded insurance obligations to
25 another person, and surety bonds or surety undertakings, other than
26 life or health insurance or annuities, in effect at the time of
27 issuance of an order of liquidation, unless further extended by the

1 receiver with the approval of the receivership court, continue in
2 force only until the earlier of:

3 (1) the 30th day after the date of entry of the
4 liquidation order;

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

6 (3) the date the insured has replaced the insurance
7 coverage with equivalent insurance with another insurer or
8 otherwise terminated the policy;

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

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

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

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

1 reinsurer.

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

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

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

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

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

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

27 (3) authorizing the issuance and sale of new stock or

1 other securities for the purpose of transferring to one or more
2 buyers control and ownership of the corporate entity or charter;
3 and

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

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

23 (d) This section shall be liberally construed to accomplish
24 its purposes to:

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

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

3 (e) If permission to sell the corporate entity or charter is
4 not granted prior to discharge of the liquidator, in accordance
5 with this section or otherwise with receivership court approval:

6 (1) the receivership court may order dissolution of
7 the corporate entity or charter;

8 (2) dissolution shall be deemed complete by operation
9 of law upon the discharge of the liquidator if the insurer is
10 insolvent; or

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

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

1 and services by the state do not apply to any contract entered into
2 by the commissioner as liquidator. This subsection does not waive
3 any immunity granted by Section 21A.014 or create any cause of
4 action against the state.

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

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

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

26 (e) The liquidator may audit the books and records of all
27 agents of the insurer to the extent that those books and records

1 relate to the business activities of the insurer.

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

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

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

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

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

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

1 (i) The liquidator may, subject to Subsection (x), acquire,
2 hypothecate, encumber, lease, improve, sell, transfer, abandon, or
3 otherwise dispose of or deal with any property of the estate at its
4 market value or upon terms and conditions that are fair and
5 reasonable. The liquidator also has the power to execute,
6 acknowledge, and deliver any and all deeds, assignments, releases,
7 and other instruments necessary or proper to effectuate any sale of
8 property or other transaction in connection with the liquidation.

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

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

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

1 (m) The liquidator may prosecute any action that may exist
2 on behalf of the creditors, members, policyholders, shareholders of
3 the insurer, or the public against any person, except to the extent
4 that a claim is personal to a specific creditor, member,
5 policyholder, or shareholder and recovery on such claim would not
6 inure to the benefit of the estate. This subsection does not
7 infringe or impair any of the rights provided to a guaranty
8 association pursuant to its enabling statute or otherwise.

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

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

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

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

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

1 obligation to defend any suit, the liquidator shall defer to the
2 association's obligation and may defend only in cooperation with
3 the guaranty association or in the absence of the defense.

4 (s) The liquidator may exercise and enforce all the rights,
5 remedies, and powers of any creditor, shareholder, policyholder, or
6 member, including any power to avoid any transfer or lien that may
7 be avoidable under this chapter or otherwise.

8 (t) The liquidator may intervene in any proceeding wherever
9 instituted that might lead to the appointment of a receiver or
10 trustee and act as the receiver or trustee whenever the appointment
11 is offered.

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

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

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

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

25 (y) The liquidator may hypothecate, encumber, lease, sell,
26 transfer, abandon, or otherwise dispose of or deal with any
27 property of the insurer, settle or resolve any claim brought by the

1 liquidator on behalf of the insurer, or commute or settle any claim
2 of reinsurance under any contract of reinsurance, as follows:

3 (1) if the property or claim has a market or settlement
4 value that does not exceed the lesser of \$1 million or 10 percent of
5 the general assets of the estate as shown on the receivership's
6 financial statements, the liquidator may take action at the
7 liquidator's discretion, provided that the receivership court may,
8 upon petition of the liquidator, increase the threshold upon a
9 showing that compliance with this requirement is burdensome to the
10 liquidator in administering the estate and is unnecessary to
11 protect the material interests of creditors;

12 (2) in all instances other than those described in
13 Subdivision (1), the liquidator may take the action only after
14 obtaining approval of the receivership court as provided by Section
15 21A.007;

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

22 (4) after obtaining approval of the receivership court
23 as provided in Section 21A.007, the liquidator may, subject to
24 Subsection (z), transfer rights to payment under ceding reinsurance
25 agreements covering policies to a third-party transferee.

26 (z) The transferee of a right to payment under Subsection
27 (y)(4) has the rights to collect and enforce collection of the

1 reinsurance for the amount payable to the ceding insurer or to its
2 receiver, without diminution because of the insolvency or because
3 the receiver has failed to pay all or a portion of the claim, based
4 on the amounts paid or allowed pursuant to Section 21A.211. The
5 transfer of the rights does not give rise to any defense regarding
6 the reinsurer's obligations under the reinsurance agreement
7 regardless of whether an agreement or other applicable law
8 prohibits the transfer of rights under the reinsurance agreement.
9 Except as provided in this subsection, any transfer of rights
10 pursuant to Subsection (y)(4) does not impair any rights or
11 defenses of the reinsurer that existed prior to the transfer or that
12 would have existed in the absence of the transfer. Except as
13 otherwise provided in this subsection, any transfer of rights
14 pursuant to Subsection (y)(4) does not relieve the transferee or
15 the liquidator from obligations owed to the reinsurer pursuant to
16 the reinsurance or other agreement.

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

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

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

3 (A) any guaranty association that is or may
4 become obligated as a result of the liquidation and any national
5 association of guaranty associations;

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

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

15 (2) by publication in a newspaper of general
16 circulation in the county in which the insurer has its principal
17 place of business and in any other locations as the liquidator deems
18 appropriate.

19 (b) The notice of the entry of an order of liquidation must
20 contain or provide directions for obtaining the following
21 information:

22 (1) a statement that the insurer has been placed in
23 liquidation;

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

27 (3) a statement whether, and to what extent, the

1 insurer's policies continue in effect;

2 (4) to the extent applicable, a statement that
3 coverage by state guaranty associations may be available for all or
4 part of policy benefits in accordance with applicable state
5 guaranty laws;

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

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

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

13 (8) any other information the liquidator or the
14 receivership court deems appropriate.

15 (c) If notice is given in accordance with this section, the
16 distribution of property of the insurer under this chapter is
17 conclusive with respect to all claimants, whether or not they
18 received notice.

19 (d) Notwithstanding the other provisions of this section,
20 the liquidator has no duty to locate any persons or entities if no
21 address is found in the records of the insurer or if mailings are
22 returned to the liquidator because of inability to deliver at the
23 address shown in the insurer's books and records. In these
24 circumstances the notice by publication as required by this chapter
25 or actual notice received is sufficient notice. Written
26 certification by the liquidator or other knowledgeable person
27 acting for the liquidator that the notices were deposited in the

1 United States mail, postage prepaid, or that the notices have been
2 electronically transmitted is prima facie evidence of mailing and
3 receipt. All claimants shall keep the liquidator informed of any
4 changes of address.

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

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

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

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

21 Sec. 21A.156. DUTIES OF AGENTS. (a) Every person who
22 represented the insurer as an agent and receives notice in the form
23 prescribed in Section 21A.155 that the insurer is the subject of a
24 liquidation order, not later than the 30th day after the date of the
25 notice, shall provide to the liquidator, in addition to the
26 information the agent may be required to provide pursuant to
27 Section 21A.010, the information in the agent's records related to

1 any policy issued by the insurer through the agent and any policy
2 issued by the insurer through an agent under contract to the agent,
3 including the name and address of any subagent. For purposes of
4 this subsection, a policy is issued through an agent if the agent
5 has a property interest in the expiration of the policy or if the
6 agent has had in the agent's possession a copy of the declarations
7 of the policy at any time during the life of the policy, except
8 where the ownership of the expiration of the policy has been
9 transferred to another.

10 (b) Any agent failing to provide information to the
11 liquidator as required in Subsection (a) may be subject to payment
12 of an administrative penalty under Chapter 84 of not more than
13 \$1,000. In addition, the agent's license may be suspended under
14 Chapter 4005.

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

16 SUBCHAPTER E. ASSET RECOVERY

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

1 other property to the receiver on demand. Should the person allege
2 any right to retain the funds or other property, the person, not
3 later than the 20th day after the date of receipt of the demand that
4 the funds or property be delivered to the receiver, shall file with
5 the receivership court a pleading setting out that right. The
6 person shall serve a copy of the pleading on the receiver. The
7 pleading must inform the receivership court as to the nature of the
8 claim to the funds or property, the alleged value of the property or
9 amount of funds held, and what action, pending determination of the
10 dispute, has been taken by the person to preserve and protect the
11 property or to preserve any funds. The relinquishment of
12 possession of funds or property by any person who has received a
13 demand pursuant to this section does not constitute a waiver of a
14 right to make a claim in the receivership.

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

26 (c) If a person has filed a pleading alleging any right to
27 retain funds or property as provided by Subsection (a), the

1 receivership court shall hold a subsequent hearing to determine the
2 entitlement of the person to the funds or property claimed by the
3 receiver.

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

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

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

19 (1) the insurer was solvent;

20 (2) the transfer was lawful; and

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

24 (A) place the insurer:

25 (i) in violation of applicable capital or
26 surplus requirements;

27 (ii) below the applicable minimum

1 risk-based capital level; or

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

4 (B) cause the insurer's filed financial
5 statements not to present fairly the capital and surplus of the
6 insurer.

7 Sec. 21A.203. UNAUTHORIZED POST-PETITION TRANSFERS. (a)

8 Except as provided by this section, the receiver may avoid any
9 transfer of an interest of the insurer in property or any obligation
10 incurred by the insurer that:

11 (1) was made or occurred after the petition for
12 receivership was filed; and

13 (2) is not authorized by the receiver and approved by
14 the receivership court or otherwise authorized in accordance with
15 this chapter.

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

24 Sec. 21A.204. VOIDABLE PREFERENCES AND LIENS. (a) A

25 "preference" is a transfer of any interest in property of an insurer
26 that:

27 (1) is made to or for the benefit of a creditor and for

1 or on account of an antecedent debt and is made or suffered by the
2 insurer within two years preceding the filing of a successful
3 petition commencing delinquency proceedings; and

4 (2) enables the creditor to receive more than the
5 creditor would receive if the insurer were liquidated under this
6 chapter, the transfer had not been made, and the creditor was
7 entitled to receive payment of the debt to the extent provided by
8 this chapter.

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

10 (1) the insurer was insolvent at the time of the
11 transfer;

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

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

19 (4) the creditor receiving the transfer was:

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

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

26 (C) an affiliate.

27 (c) The receiver may not avoid a transfer under this

1 section:

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

3 (A) intended by the insurer and the creditor to
4 or for whose benefit the transfer was made to be a contemporaneous
5 exchange for new value given to the insurer and in fact was a
6 substantially contemporaneous exchange; or

7 (B) made in the ordinary course of business or
8 financial affairs between the insurer and the transferee and made
9 according to ordinary business terms in payment of a debt incurred
10 by the insurer in the ordinary course of business or financial
11 affairs of the insurer and the transferee; or

12 (2) to or for the benefit of a creditor, to the extent
13 that, after the transfer, the creditor gave new value to or for the
14 benefit of the insurer that was:

15 (A) not secured by an otherwise unavoidable
16 security interest; and

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

20 (d) For purposes of this section:

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

26 (2) a transfer of real property is deemed to be made or
27 suffered when the transfer is so far perfected that a subsequent

1 bona fide purchaser from the insurer could not obtain rights
2 superior to the rights of the transferee;

3 (3) a transfer that creates an equitable lien is not
4 deemed to be perfected if there are available means by which a legal
5 lien could be created; and

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

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

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

20 (g) Within the meaning of Subsection (d), a lien obtainable
21 by legal or equitable proceedings could become superior to the
22 rights of a transferee, or a purchaser could obtain rights superior
23 to the rights of a transferee if the consequences would follow only
24 from the lien or purchase itself, or from the lien or purchase
25 followed by any step wholly within the control of the respective
26 lienholder or purchaser, with or without the aid of ministerial
27 action by public officials. A lien could not, however, become

1 superior and a purchase could not create superior rights for the
2 purpose of Subsection (d) through any acts subsequent to the
3 obtaining of the lien or subsequent to the purchase that require the
4 agreement or concurrence of any third party or that require any
5 further judicial action or ruling.

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

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

25 (2) The property affected by any lien deemed voidable
26 under Subsection (b) and Subdivision (1) is discharged from the
27 lien, and that property and any of the indemnifying property

1 transferred to or for the benefit of a surety passes to the
2 receiver, except that the receivership court may on due notice
3 order any lien deemed voidable under this section to be preserved
4 for the benefit of the estate and may direct that a conveyance be
5 executed as may be proper or adequate to evidence the title of the
6 receiver.

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

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

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

27 Sec. 21A.205. FRAUDULENT TRANSFERS AND OBLIGATIONS. (a)

1 The receiver may avoid any transfer of an interest of the insurer in
2 property, any reinsurance transaction, or any obligation incurred
3 by an insurer that was made or incurred on or within two years
4 before the date of the initial filing of a petition commencing
5 delinquency proceedings under this chapter, if the insurer
6 voluntarily or involuntarily:

7 (1) made the transfer or incurred the obligation with
8 actual intent to hinder, delay, or defraud any person to which it
9 was or became indebted on or after the date that the transfer was
10 made or the obligation was incurred; or

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

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

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

1 of the petition commencing delinquency proceedings.

2 (d) For purposes of this section, "value" means property or
3 satisfaction or securing of a present or antecedent debt of the
4 insurer.

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

13 (b) The receiver is deemed a creditor without knowledge for
14 purposes of pursuing claims under the Uniform Fraudulent Transfer
15 Act, the Uniform Fraudulent Conveyance Act, or similar provisions
16 of state or federal law.

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

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

25 (2) any immediate or mediate transferee of the initial
26 transferee.

27 (b) The receiver may not recover under Subsection (a)(2)

1 from:

2 (1) a transferee that takes for value, including
3 satisfaction or securing of a present or antecedent debt, in good
4 faith, and without knowledge of the voidability of the transfer
5 avoided; or

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

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

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

15 (1) rental for the use of the tangible property from
16 the later of the entry of the receivership order or the date of the
17 transfer;

18 (2) in the case of funds or intangible property, the
19 greater of:

20 (A) the actual interest or income earned by the
21 property; or

22 (B) interest at the statutory rate for judgments
23 from the later of the date of the entry of the receivership order or
24 the date of the transfer; and

25 (3) except as to recoveries from guaranty
26 associations, all costs, including investigative costs and other
27 expenses necessary to the recovery of the property or funds, and

1 reasonable attorney's fees.

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

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

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

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

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

1 Sec. 21A.209. SETOFFS. (a) All mutual debts or mutual
2 credits, whether arising out of one or more contracts between the
3 insurer and another person in connection with any action or
4 proceeding under this chapter, must be set off and only the balance
5 shall be allowed or paid, except as provided by Subsection (b).

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

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

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

11 (B) was purchased by or transferred to the
12 person:

13 (i) after the commencement of the
14 delinquency proceeding; or

15 (ii) for the purpose of increasing setoff
16 rights;

17 (2) the obligation of the insurer is owed to an
18 affiliate of the person, or any other entity or association other
19 than the person;

20 (3) the obligation of the person:

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

22 (B) is to pay:

23 (i) an assessment levied against the
24 members of a mutual insurer, reciprocal or interinsurance exchange,
25 or Lloyd's plan; or

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

1 (4) the obligations between the person and the insurer
2 arise from reinsurance transactions in which either the person or
3 the insurer has assumed risks and obligations from the other party
4 and then has ceded back to that party substantially the same risks
5 and obligations.

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

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

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

27 (4) a recommendation as to whether an assessment

1 should be made and in what amount.

2 (b) Upon the basis of the report provided in Subsection (a),
3 including any supplements and amendments to the report, the
4 receivership court may approve, solely on application by the
5 receiver, one or more assessments against all members of the
6 insurer who are subject to assessment. The order approving the
7 assessment shall provide instructions regarding notice of the
8 assessment, deadlines for payment, and other instructions to the
9 receiver regarding collection of the assessment.

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

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

21 (e) At least 20 days before the return day of the order to
22 show cause, the receiver shall give notice of the order to show
23 cause to each member liable on the assessment. Notice must be given
24 by first class mail mailed to the member's last known address as it
25 appears on the insurer's records, by publication, or by another
26 method of notification as directed by the receivership court.
27 Failure of the member or subscriber to receive the notice of the

1 assessment or of the order, within the time specified in the
2 assessment or order or at all, is not a defense in a proceeding to
3 collect the assessment.

4 (f) If a member does not appear and serve verified
5 objections upon the receiver on or before the return day of the
6 order to show cause under Subsection (d), the receivership court
7 shall make an order adjudging the member liable for the amount of
8 the assessment against the member under Subsection (d) together
9 with costs, and the receiver shall have a judgment against the
10 member for the amount of the assessment and costs in the order.

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

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

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

26 (j) Any claim filed by an assessee who fails to pay an
27 assessment, after the conclusion of any legal action by the

1 assessee objecting to the assessment, is deemed a late filed claim
2 under Section 21A.251.

3 Sec. 21A.211. REINSURER'S LIABILITY. (a) If the receiver
4 has claims under policies covered by reinsurance, the liability of
5 the reinsurer to the receiver under the policies reinsured may not
6 be diminished because of the delinquency proceeding against the
7 insurer, regardless of any provisions in the reinsurance contract
8 to the contrary, except under the following circumstances:

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

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

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

26 (b) Except as provided by Subsection (a), any reinsurance
27 shall be payable to the receiver under a policy reinsured by the

1 assuming insurer on the basis of claims:

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

3 (2) paid under:

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

5 (B) Chapter 2602; or

6 (C) the guaranty associations of other states.

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

12 (1) investigate the claim; and

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

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

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

1 the expense had been incurred by the ceding insurer.

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

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

20 (c) Any person, other than the insured, responsible for the
21 remittance of a premium, shall turn over to the receiver any
22 unearned commission of the person based on the termination of
23 coverage under Section 21A.152. Credits, setoffs, or both may not
24 be allowed to an agent, broker, premium finance company, or any
25 other person for any amounts advanced to the insurer by the person
26 on behalf of, but in the absence of a payment by, the insured, or for
27 any other amount paid by the person to any other person after the

1 entry of the order of receivership.

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

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

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

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

19 (2) impose:

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

23 (B) any other sanction or penalty authorized by
24 Chapter 82.

25 Sec. 21A.213. ADMINISTRATION OF DEDUCTIBLE AGREEMENTS AND
26 POLICYHOLDER COLLATERAL. (a) Any collateral held to secure the
27 obligations of a policyholder under a deductible agreement with an

1 insurer subject to a delinquency proceeding under this chapter must
2 be maintained and administered as provided in this section. For
3 purposes of this section, a "deductible agreement" is any
4 combination of one or more policies, endorsements, contracts, or
5 security agreements that:

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

9 (2) may be subject to an aggregate limit of
10 policyholder reimbursement obligations.

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

17 (c) If the contract between the policyholder and the insurer
18 allows the policyholder to fund claims within the deductible amount
19 through a third-party administrator or otherwise, the receiver
20 shall allow that funding arrangement to continue, except as
21 prohibited by Title 5, Labor Code. If a policyholder funds claims
22 within the deductible amount, the receiver or any guaranty
23 association has no obligation to pay claims for the amount funded by
24 the policyholder, and the policyholder or its third-party
25 administrator is not obligated to reimburse a guaranty association
26 for any amount funded. A charge of any kind may not be made against
27 a guaranty association based on the funding of claims payments by a

1 policyholder under this subsection.

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

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

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

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

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

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

23 (h) To the extent a guaranty association is required by
24 applicable law to pay any claims for which the insurer would have
25 been entitled to reimbursement from the policyholder, the following
26 provisions apply:

27 (1) The receiver shall promptly invoice the

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

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

19 (3) The receiver is entitled to deduct from
20 reimbursements owed to a guaranty association or collateral to be
21 returned to a policyholder reasonable actual expenses incurred in
22 fulfilling the receiver's responsibilities under this section.
23 Expenses incurred to collect reimbursements for the benefit of a
24 guaranty association are subject to the approval of the guaranty
25 association. Any remaining expenses that are not deducted from the
26 reimbursements are payable subject to Section 21A.015.

27 (4) The receiver shall provide any affected guaranty

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

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

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

23 (7) Reimbursements received or collected by a guaranty
24 association under this section may not be considered a distribution
25 of the insurer's assets. A guaranty association shall provide the
26 receiver with an accounting of any amounts it has received or
27 collected under this section and any expenses incurred in

1 connection with that receipt or collection. The amounts received,
2 net of any expenses incurred in connection with collection of the
3 amounts, must be set off against the guaranty association's claim
4 filed under Section 21A.251 for the payments that were reimbursed.

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

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

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

17 (1) The receiver is entitled to retain as an asset of
18 the estate any collateral or deductible reimbursements obtained by
19 the receiver.

20 (2) If a policyholder fails to assume an obligation
21 under a deductible agreement to pay a claim, the receiver shall use
22 the collateral to adjust and pay the claim to the extent that the
23 available collateral, after any allocation under Subsection (d),
24 (e), or (f), is sufficient to pay all outstanding and anticipated
25 claims within the deductible. If the collateral is exhausted and
26 all reasonable means of collection against the insured have been
27 exhausted, the remaining claims shall be subject to the provisions

1 of Sections 21A.251 and 21A.301.

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

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

8 SUBCHAPTER F. CLAIMS

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

1 coverage determinations to the extent the guaranty fund statute or
2 filing requirements are inconsistent with the receivership court's
3 waiver of proof.

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

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

13 (2) a transfer to a creditor was avoided under Section
14 21A.202, 21A.203, 21A.204, or 21A.206, or was voluntarily
15 surrendered under Section 21A.208, and the filing satisfies the
16 conditions of Section 21A.208; or

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

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

23 (d) The liquidator shall permit guaranty associations to
24 file claims late and to receive a ratable share of distributions,
25 whether past or future, as if the claims were not late.

26 Sec. 21A.252. PROOF OF CLAIM. (a) Proof of claim consists
27 of a statement signed by the claimant or on behalf of the claimant

1 that includes all of the following, as applicable:

2 (1) the particulars of the claim, including the
3 consideration given for it;

4 (2) the identity and amount of the security on the
5 claim;

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

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

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

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

13 (7) the claimant's social security or federal employer
14 identification number.

15 (b) The liquidator may require that:

16 (1) a prescribed form be used; and

17 (2) other information and documents be included.

18 (c) At any time the liquidator may:

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

21 (2) take testimony under oath, require production of
22 affidavits or depositions, or otherwise obtain additional
23 information or evidence.

24 (d) Any guaranty association must be permitted to file a
25 single omnibus proof of claim for all claims of the association in
26 connection with payment of claims of the insurer. The omnibus proof
27 of claim may be periodically updated by the association, and the

1 association may be required to submit a reasonable amount of
2 documentation in support of the claim.

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

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

22 (c) Not later than the 45th day after the mailing of the
23 notice as set forth in Subsection (b), those noticed may submit
24 written objections to the liquidator. Any submitted objections
25 must clearly set out all facts and the legal basis, if any, for the
26 objections and the reasons why the claim should be allowed at a
27 different amount or in a different priority class. If no timely

1 objection is filed, the determination is final.

2 (d) A claim that has not become mature as of the coverage
3 termination date established under Section 21A.201 because payment
4 on the claim is not yet due may be allowed as if it were mature,
5 except the claim must be discounted to present value.

6 (e) A judgment or order against an insured or the insurer
7 entered after the date of the initial filing of a successful
8 petition for receivership, or within 120 days before the initial
9 filing of the petition, and a judgment or order against an insured
10 or the insurer entered at any time by default or by collusion need
11 not be considered as evidence of liability or of the amount of
12 damages.

13 (f) Claims under employment contracts by directors,
14 officers, or persons in fact performing similar functions or having
15 similar powers are limited to payment for services rendered prior
16 to any order of receivership, unless explicitly approved in writing
17 by:

18 (1) the commissioner prior to an order of
19 receivership;

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

22 (3) the liquidator after the entry of an order of
23 liquidation.

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

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

4 (i) A claim that does not contain all the applicable
5 information required by Section 21A.252 need not be further
6 reviewed or adjudicated, and may be denied or disallowed by the
7 liquidator subject to the notice and objection procedures in this
8 section.

9 (j) The liquidator may reconsider a claim on the basis of
10 additional information and amend the recommendation to the
11 receivership court. The claimant must be afforded the same notice
12 and opportunity to be heard on all changes in the recommendation as
13 in its initial determination. The receivership court may amend its
14 allowance or disallowance as appropriate.

15 (k) The liquidator is not required to process claims for any
16 class until it appears reasonably likely that property will be
17 available for a distribution to that class. If there are
18 insufficient assets to justify processing all claims for any class
19 listed in Section 21A.301, the liquidator shall report the facts to
20 the receivership court and make such recommendations as may be
21 appropriate for handling the remainder of the claims.

22 (l) Any claim by a lessor for damages resulting from the
23 termination of a lease of real property shall be disallowed to the
24 extent that the claim exceeds:

25 (1) the rent reserved by the lease, without
26 acceleration, for the longer of one year or 15 percent of the
27 remaining term of the lease, not to exceed three years, following

1 the earlier of:

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

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

5 (2) any unpaid rent due under the lease, without
6 acceleration, on the earlier of the dates described by Subdivision
7 (1).

8 (m) If a claim is fully covered by a guaranty association,
9 the liquidator has no obligation to process the claim in accordance
10 with this section and may refuse to process the claim in accordance
11 with this section.

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

18 (b) Subject to the provisions of Section 21A.253, an obligee
19 under a surety bond or surety undertaking has the right to file a
20 claim for the protection afforded under the surety bond or surety
21 undertaking issued by the insurer under which the obligee is the
22 beneficiary, regardless of whether a claim is known at the time of
23 filing.

24 (c) After a claim is filed under Subsection (a) or (b), at
25 the time that a specific claim is made by or against the insured or
26 by the obligee, the insured or the obligee shall supplement the
27 claim, and the receiver shall treat the claim as a contingent or

1 unliquidated claim under Section 21A.255.

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

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

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

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

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

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

26 (c) The liquidator may petition the receivership court to
27 set a date before which all claims under this section are final. In

1 addition to the notice requirements of Section 21A.007, the
2 liquidator shall give notice of the filing of the petition to all
3 claimants with claims that remain contingent or unliquidated under
4 this section.

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

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

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

13 (c) The liquidator may make recommendations to the
14 receivership court for the allowance of an insured's claim after
15 consideration of the probable outcome of any pending action against
16 the insured on which the claim is based, the probable damages
17 recoverable in the action, and the probable costs and expenses of
18 defense. After allowance by the receivership court, the liquidator
19 shall withhold any distribution payable on the claim, pending the
20 outcome of litigation and negotiation between the insured and the
21 third party. The liquidator may reconsider the claim as provided in
22 Section 21A.253(j). As claims against the insured are settled or
23 barred, the insured or third party, as appropriate, shall be paid
24 from the amount withheld the same percentage distribution as was
25 paid on other claims of like priority, based on the lesser of the
26 amount actually due from the insured by action or paid by agreement
27 plus the reasonable costs and expense of defense, or the amount

1 allowed on the claims by the receivership court. After all claims
2 are settled or barred, any sum remaining from the amount withheld
3 shall revert to the undistributed property of the insurer.

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

8 (1) apportion the policy limits ratably among the
9 timely filed allowed claims; or

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

16 (e) Claims by the insured under Subsection (d) must be
17 evaluated as described by Subsection (c). If any insured's claim is
18 subsequently reduced under Subsection (c), the amount freed by the
19 reduction must be apportioned ratably among the claims which have
20 been reduced under Subsection (d).

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

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

27 (h) The filing of a proof of claim in connection with a claim

1 against an insured has the following effect on the rights of the
2 claimant and the insured:

3 (1) By filing a proof of claim, a claimant waives any
4 right to pursue the personal assets of the insured with respect to
5 the claim, to the extent of the coverage or policy limits provided
6 by the insurer, and agrees that to the extent of the coverage or
7 policy limits provided by the insurer, the claimant will seek
8 satisfaction of the claim against the insured solely from
9 distributions paid by the liquidator on the claim and from any
10 payments that a guaranty association may pay on account of the
11 claim, except as provided in this section.

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

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

18 (B) release the insured with respect to any claim
19 in excess of the coverage or policy limits provided by the insurer
20 or any other responsible party; or

21 (C) release the insured with respect to any claim
22 by a guaranty association for reimbursement under the law
23 applicable to the guaranty association.

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

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

27 (B) the liquidator avoids insurance coverage in

1 connection with a proof of the claim.

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

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

18 (b) The provisions of this section are not applicable to
19 disputes with respect to coverage determinations by a guaranty
20 association as part of the association's statutory obligations.

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

23 Sec. 21A.258. LIQUIDATOR'S RECOMMENDATIONS TO RECEIVERSHIP
24 COURT. The liquidator shall present to the receivership court, for
25 approval, reports of claims settled or determined by the liquidator
26 under Section 21A.253. The reports must be presented from time to
27 time as determined by the liquidator and must include information

1 identifying the claim and the amount and priority class of the
2 claim.

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

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

10 (1) by converting the same into money according to the
11 terms of the agreement pursuant to which the security was delivered
12 to the creditor; or

13 (2) by agreement or litigation between the creditor
14 and the liquidator.

15 (b) If a surety has paid any losses or loss adjustment
16 expenses under its own surety instrument before any petition
17 initiating a delinquency proceeding is filed and the principal to
18 the instrument has posted collateral that remains available to
19 reimburse the losses or loss adjustment expenses at the time the
20 petition is filed and that collateral has not been credited against
21 the payments made, then the receiver has the first priority to use
22 the collateral to reimburse the surety for any pre-petition losses
23 and expenses.

24 (c) If the principal under a surety bond or surety
25 undertaking has pledged any collateral, including a guaranty or
26 letter of credit, to secure the principal's reimbursement
27 obligation to the insurer issuing the bond or undertaking, the

1 claim of any obligee, or subject to the discretion of the receiver,
2 of any completion contractor under the surety bond or surety
3 undertaking must be satisfied first out of the collateral or its
4 proceeds.

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

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

15 (f) If the time to assert claims against a surety bond or a
16 surety undertaking has expired, and all claims described by this
17 section have been satisfied in full, any remaining collateral
18 pledged under the surety bond or surety undertaking must be
19 returned to the principal under the bond or undertaking.

20 (g) To the extent that a guaranty association has made a
21 payment relating to a claim against a surety bond, the guaranty
22 association shall first be reimbursed for that payment and related
23 expenses out of the available collateral or proceeds related to the
24 surety bond. To the extent that the collateral is sufficient, the
25 guaranty association shall be reimbursed 100 percent of its
26 payment. If the collateral is insufficient to satisfy in full all
27 potential claims against the collateral under Subsection (c) and

1 this subsection, a guaranty association that has paid claims on the
2 surety bond is entitled to a pro rata share of the available
3 collateral in accordance with Subsection (e), and the guaranty
4 association has claims against the general assets of the estate in
5 accordance with Section 21A.253 for any deficiency. Any payment
6 made to a guaranty association under this subsection from
7 collateral may not be deemed early access or otherwise deemed a
8 distribution out of the general assets or property of the estate,
9 and the guaranty association receiving payment shall subtract any
10 payment from the collateral from the association's final claims
11 against the estate.

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

18 (i) The liquidator may recover from property securing an
19 allowed secured claim the reasonable, necessary costs and expenses
20 of preserving or disposing of the property to the extent of any
21 benefit to the holder of such claim.

22 Sec. 21A.261. QUALIFIED FINANCIAL CONTRACTS. (a)
23 Notwithstanding any other provision of this chapter, including any
24 other provision of this chapter permitting the modification of
25 contracts, or other law of this state, a person may not be stayed or
26 prohibited from exercising:

27 (1) a contractual right to terminate, liquidate, or

1 close out any netting agreement or qualified financial contract
2 with an insurer because of:

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

6 (B) the commencement of a formal delinquency
7 proceeding under this chapter;

8 (2) any right under a pledge, security, collateral, or
9 guarantee agreement, or any other similar security arrangement or
10 credit support document, relating to a netting agreement or
11 qualified financial contract; or

12 (3) subject to any provision of Section 21A.209(b),
13 any right to set off or net out any termination value, payment
14 amount, or other transfer obligation arising under or in connection
15 with a netting agreement or qualified financial contract where the
16 counterparty or its guarantor is organized under the laws of the
17 United States or a state or foreign jurisdiction approved by the
18 Securities Valuation Office of the National Association of
19 Insurance Commissioners as eligible for netting.

20 (b) Upon termination of a netting agreement, the net or
21 settlement amount, if any, owed by a nondefaulting party to an
22 insurer against which an application or petition has been filed
23 under this chapter shall be transferred to, or on the order of the
24 receiver for, the insurer, even if the insurer is the defaulting
25 party and notwithstanding any provision in the netting agreement
26 that may provide that the nondefaulting party is not required to pay
27 any net or settlement amount due to the defaulting party upon

1 termination. Any limited two-way payment provision in a netting
2 agreement with an insurer that has defaulted is deemed to be a full
3 two-way payment provision as against the defaulting insurer. Any
4 such property or amount is, except to the extent it is subject to
5 one or more secondary liens or encumbrances, a general asset of the
6 insurer.

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

10 (1) transfer to one party, other than an insurer
11 subject to a proceeding under this chapter, all netting agreements
12 and qualified financial contracts between a counterparty or any
13 affiliate of the counterparty and the insurer that is the subject of
14 the proceeding, including:

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

17 (B) all property, including any guarantees or
18 credit support documents, securing any claims of each party under
19 each netting agreement and qualified financial contract; or

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

24 (d) If a receiver for an insurer makes a transfer of one or
25 more netting agreements or qualified financial contracts, the
26 receiver shall use its best efforts to notify any person who is
27 party to the netting agreements or qualified financial contracts of

1 the transfer not later than noon, the receiver's local time, on the
2 business day following the transfer. For purposes of this
3 subsection, "business day" means a day other than a Saturday, a
4 Sunday, or any day on which either the New York Stock Exchange or
5 the Federal Reserve Bank of New York is closed.

6 (e) Notwithstanding any other provision of this chapter, a
7 receiver may not avoid a transfer of money or other property arising
8 under or in connection with a netting agreement or qualified
9 financial contract, or any pledge, security, or collateral or
10 guarantee agreement or any other similar security arrangement or
11 credit support document relating to a netting agreement or
12 qualified financial contract, that is made before the commencement
13 of a formal delinquency proceeding under this chapter. However, a
14 transfer may be avoided under Subsection 21A.205(a) if the transfer
15 was made with actual intent to hinder, delay, or defraud the
16 insurer, a receiver appointed for the insurer, or existing or
17 future creditors.

18 (f) In exercising any of the receiver's powers under this
19 chapter to disaffirm or repudiate a netting agreement or qualified
20 financial contract, the receiver shall take action with respect to
21 each netting agreement or qualified financial contract and all
22 transactions entered into in connection with the agreement or
23 contract in its entirety. Notwithstanding any other provision of
24 this chapter, any claim of a counterparty against the estate
25 arising from the receiver's disaffirmance or repudiation of a
26 netting agreement or qualified financial contract that has not been
27 previously affirmed in the liquidation or immediately preceding

1 rehabilitation case must be determined and must be allowed or
2 disallowed as if the claim had arisen before the date of the filing
3 of the petition for liquidation or, if a rehabilitation proceeding
4 is converted to a liquidation proceeding, as if the claim had arisen
5 before the date of the filing of the petition for rehabilitation.
6 The amount of the claim must be the actual direct compensatory
7 damages determined as of the date of the disaffirmance or
8 repudiation of the netting agreement or qualified financial
9 contract. For purposes of this subsection, the term "actual direct
10 compensatory damages" does not include punitive or exemplary
11 damages, damages for lost profit or lost opportunity, or damages
12 for pain and suffering but does include normal and reasonable costs
13 of cover or other reasonable measures of damages utilized in the
14 derivatives market for the contract and agreement claims.

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

18 (1) statutory or common law;

19 (2) a rule or bylaw of a national securities exchange,
20 national securities clearing organization, or securities clearing
21 agency;

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

24 (4) law merchant.

25 (h) The provisions of this section do not apply to persons
26 who are affiliates of the insurer that is the subject of the
27 proceeding.

1 (i) All rights of counterparties under this chapter apply to
2 netting agreements and qualified financial contracts entered into
3 on behalf of the general account or separate accounts if the assets
4 of each separate account are available only to counterparties to
5 netting agreements and qualified financial contracts entered into
6 on behalf of that separate account.

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

8 SUBCHAPTER G. DISTRIBUTIONS

9 Sec. 21A.301. PRIORITY OF DISTRIBUTION. The priority of
10 payment of distributions on unsecured claims must be in accordance
11 with the order in which each class of claims is set forth in this
12 section. Every claim in each class shall be paid in full, or
13 adequate funds retained for their payment, before the members of
14 the next class receive payment, and all claims within a class must
15 be paid substantially the same percentage of the amount of the
16 claim. Except as provided by Subsections (a)(2), (j), and (l),
17 subclasses may not be established within a class. No claim by a
18 shareholder, policyholder, or other creditor shall be permitted to
19 circumvent the priority classes through the use of equitable
20 remedies. The order of distribution of claims shall be:

21 (a)(1) Class 1. The costs and expenses of administration
22 expressly approved or ratified by the liquidator, including the
23 following:

24 (A) the actual and necessary costs of preserving
25 or recovering the property of the insurer;

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

- 1 (C) any necessary filing fees;
2 (D) the fees and mileage payable to witnesses;
3 (E) unsecured loans obtained by the receiver; and
4 (F) expenses, if any, approved by the
5 rehabilitator of the insurer and incurred in the course of the
6 rehabilitation that are unpaid at the time of the entry of the order
7 of liquidation.

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

13 (3) Except as expressly approved by the receiver, any
14 expenses arising from a duty to indemnify the directors, officers,
15 or employees of the insurer are excluded from this class and, if
16 allowed, are Class 6 claims.

17 (b) Class 2. The reasonable expenses of a guaranty
18 association, including overhead, salaries, and other general
19 administrative expenses, allocable to the receivership, including
20 administrative and claims handling expenses and expenses in
21 connection with arrangements for ongoing coverage, other than
22 expenses incurred in the performance of duties under Section
23 2602.113, Sections 2(3) and 13, Article 21.28-C, and Section 12,
24 Article 21.28-D, or similar duties under the statute governing a
25 similar organization in another state. In the case of the Texas
26 Property and Casualty Insurance Guaranty Association and other
27 property and casualty guaranty associations, the expenses shall

1 include loss adjustment expenses, including adjusting and other
2 expenses and defense and cost containment expenses.

3 (c) Class 3. All claims under policies of insurance,
4 including third-party claims, claims under nonassessable policies
5 for unearned premium, claims of obligees and, subject to the
6 discretion of the receiver, completion contractors under surety
7 bonds and surety undertakings other than bail bonds, mortgage or
8 financial guaranties, or other forms of insurance offering
9 protection against investment risk, claims by principals under
10 surety bonds and surety undertakings for wrongful dissipation of
11 collateral by the insurer or its agents, and claims incurred during
12 the extension of coverage provided for in Section 21A.152. All
13 other claims incurred in fulfilling the statutory obligations of a
14 guaranty association not included in Class 2, including indemnity
15 payments on covered claims and, in the case of the Life, Accident,
16 Health, and Hospital Service Insurance Guaranty Association or
17 another life and health guaranty association, all claims as a
18 creditor of the impaired or insolvent insurer for all payments of
19 and liabilities incurred on behalf of covered claims or covered
20 obligations of the insurer and for the funds needed to reinsure
21 those obligations with a solvent insurer. Notwithstanding any
22 provision of this chapter, the following claims are excluded from
23 Class 3 priority:

24 (1) obligations of the insolvent insurer arising out
25 of reinsurance contracts;

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

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

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

4 (C) the policy has been canceled as provided by
5 this chapter;

6 (3) obligations to insurers, insurance pools, or
7 underwriting associations and their claims for contribution,
8 indemnity, or subrogation, equitable or otherwise;

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

11 (5) any amount accrued as punitive or exemplary
12 damages unless expressly covered under the terms of the policy;

13 (6) tort claims of any kind against the insurer and
14 claims against the insurer for bad faith or wrongful settlement
15 practices; and

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

19 (d) Class 4. Claims of the federal government not included
20 in Class 3.

21 (e) Class 5. Debts due employees for services or benefits
22 to the extent that the debts do not exceed \$5,000 or two months
23 salary, whichever is the lesser, and represent payment for services
24 performed within one year before the entry of the initial order of
25 receivership. This priority is in lieu of any other similar
26 priority that may be authorized by law as to wages or compensation
27 of employees.

1 (f) Class 6. Claims of other unsecured creditors not
2 included in Classes 1 through 5, including claims under reinsurance
3 contracts, claims of guaranty associations for assessments not paid
4 by the insurer, and other claims excluded from Class 3.

5 (g) Class 7. Claims of any state or local governments,
6 except those specifically classified elsewhere in this section.
7 Claims of attorneys for fees and expenses owed them by an insurer
8 for services rendered in opposing a formal delinquency proceeding.
9 In order to prove the claim, the claimant must show that the insurer
10 that is the subject of the delinquency proceeding incurred the fees
11 and expenses based on its best knowledge, information, and belief,
12 formed after reasonable inquiry, indicating opposition was in the
13 best interests of the insurer, was well grounded in fact, and was
14 warranted by existing law or a good faith argument for the
15 extension, modification, or reversal of existing law, and that
16 opposition was not pursued for any improper purpose, such as to
17 harass or to cause unnecessary delay or needless increase in the
18 cost of the litigation.

19 (h) Class 8. Claims of any state or local government for a
20 penalty or forfeiture, but only to the extent of the pecuniary loss
21 sustained from the act, transaction, or proceeding out of which the
22 penalty or forfeiture arose, with reasonable and actual costs
23 occasioned thereby. The balance of the claims must be treated as
24 Class 10 claims under Subsection (j).

25 (i) Class 9. Except as provided in Sections 21A.251(b) and
26 (d), late filed claims that would otherwise be classified in
27 Classes 3 through 8.

1 (j) Class 10. Surplus notes, capital notes or contribution
2 notes or similar obligations, premium refunds on assessable
3 policies, and any other claims specifically assigned to this class.
4 Claims in this class are subject to any subordination agreements
5 related to other claims in this class that existed before the entry
6 of the liquidation order.

7 (k) Class 11. Interest on allowed claims of Classes 1
8 through 10, according to the terms of a plan proposed by the
9 liquidator and approved by the receivership court.

10 (l) Class 12. Claims of shareholders or other owners
11 arising out of their capacity as shareholders or other owners, or
12 any other capacity, except as they may be qualified in Class 3, 6,
13 or 11. Claims in this class are subject to any subordination
14 agreements related to other claims in this class that existed
15 before the entry of the liquidation order.

16 Sec. 21A.302. PARTIAL AND FINAL DISTRIBUTIONS OF ASSETS.

17 (a) With the approval of the receivership court, the liquidator may
18 declare and pay one or more distributions to claimants whose claims
19 have been allowed. Distributions paid under this subsection must
20 be paid at substantially the same percentage of the amount of the
21 claim.

22 (b) In determining the percentage of distributions to be
23 paid on these claims, the liquidator may consider the estimated
24 value of the insurer's property, including estimated reinsurance
25 recoverables in connection with the insurer's estimated
26 liabilities for unpaid losses and loss expenses and for incurred
27 but not reported losses and loss expenses, and the estimated value

1 of the insurer's liabilities, including estimated liabilities for
2 unpaid losses and loss expenses and for incurred but not reported
3 losses and loss expenses.

4 (c) Distribution of property in kind may be made at
5 valuations set by agreement between the liquidator and the creditor
6 and approved by the receivership court.

7 (d) Notwithstanding the provisions of Subsection (a) and
8 Subchapter D, the liquidator is authorized to pay benefits under a
9 workers' compensation policy after the entry of the liquidation
10 order if:

11 (1) the insurer has accepted liability and no bona
12 fide dispute exists;

13 (2) payments under the policy commenced before the
14 entry of the liquidation order; and

15 (3) future or past indemnity or medical payments are
16 due under the policy.

17 (e) Claim payments made under Subsection (d) may continue
18 until the date that a guaranty association assumes responsibility
19 for claim payments under the policy.

20 (f) Any claim payments made under Subsection (d) and any
21 related expenses must be treated as early access payments under
22 Section 21A.303 to the guaranty association responsible for the
23 claims.

24 Sec. 21A.303. EARLY ACCESS PAYMENTS. (a) For purposes of
25 this section, "distributable assets" means all general assets of
26 the liquidation estate less:

27 (1) amounts reserved, to the extent necessary and

1 appropriate, for the entire Section 21A.301(a) expenses of the
2 liquidation through and after its closure; and

3 (2) to the extent necessary and appropriate, reserves
4 for distributions on claims other than those of the guaranty
5 associations falling within the priority classes of claims
6 established in Section 21A.301(c).

7 (b) Early access payments to guaranty associations must be
8 made as soon as possible after the entry of a liquidation order and
9 as frequently as possible after the entry of the order, but at least
10 annually if distributable assets are available to be distributed to
11 the guaranty associations, and must be in amounts consistent with
12 this section. Amounts advanced to an affected guaranty association
13 pursuant to this section shall be accounted for as advances against
14 distributions to be made under Section 21A.302. Where sufficient
15 distributable assets are available, amounts advanced are not
16 limited to the claims and expenses paid to date by the guaranty
17 associations; however, the liquidator may not distribute
18 distributable assets to the guaranty associations in excess of the
19 anticipated entire claims of the guaranty associations falling
20 within the priority classes of claims established in Sections
21 21A.301(b) and (c).

22 (c) Within 120 days after the entry of an order of
23 liquidation by the receivership court, and at least annually after
24 the entry of the order, the liquidator shall apply to the
25 receivership court for approval to make early access payments out
26 of the general assets of the insurer to any guaranty associations
27 having obligations arising in connection with the liquidation or

1 shall report that there are no distributable assets at that time
2 based on financial reporting as required in Section 21A.016. The
3 liquidator may apply to the receivership court for approval to make
4 early access payments more frequently than annually based on
5 additional information or the recovery of material assets.

6 (d) Within 60 days after approval by the receivership court
7 of the applications in Subsection (c), the liquidator shall make
8 any early access payments to the affected guaranty associations as
9 indicated in the approved application.

10 (e) Notice of each application for early access payments, or
11 of any report required pursuant to this section, must be given in
12 accordance with Section 21A.007 to the guaranty associations that
13 may have obligations arising from the liquidation. Notwithstanding
14 the provisions of Section 21A.007, the liquidator shall provide
15 these guaranty associations with at least 30 days' actual notice of
16 the filing of the application and with a complete copy of the
17 application prior to any action by the receivership court. Any
18 guaranty association that may have obligations arising in
19 connection with the liquidation has:

20 (1) the right to request additional information from
21 the liquidator, who may not unreasonably deny such request; and

22 (2) the right to object as provided by Section 21A.007
23 to any part of each application or to any report filed by the
24 liquidator pursuant to this section.

25 (f) In each application regarding early access payments,
26 the liquidator shall, based on the best information available to
27 the liquidator at the time, provide, at a minimum, the following:

1 (1) to the extent necessary and appropriate, the
2 amount reserved for the entire expenses of the liquidation through
3 and after its closure and for distributions on claims falling
4 within the priority classes of claims established in Sections
5 21A.301(b) and (c);

6 (2) the computation of distributable assets and the
7 amount and method of equitable allocation of early access payments
8 to each of the guaranty associations; and

9 (3) the most recent financial information filed with
10 the National Association of Insurance Commissioners by the
11 liquidator.

12 (g) Each guaranty association that receives any payments
13 pursuant to this section agrees, upon depositing the payment in any
14 account to its benefit, to return to the liquidator any amount of
15 these payments that may be required to pay claims of secured
16 creditors and claims falling within the priority classes of claims
17 established in Section 21A.301(a), (b), or (c). No bond may be
18 required of any guaranty association.

19 (h) Nothing in this section affects the method by which a
20 guaranty association determines the association's statutory
21 coverage obligations.

22 (i) Without the consent of the affected guaranty
23 associations or an order of the receivership court, the liquidator
24 may not offset the amount to be dispersed to any guaranty
25 association by the amount of any specific deposit or any other
26 statutory deposit or asset of the insolvent insurer held in that
27 state unless the association has actually received the deposit.

1 Sec. 21A.304. UNCLAIMED AND WITHHELD FUNDS. (a) If any
2 funds of the receivership estate remain unclaimed after the final
3 distribution under Section 21A.302, the funds must be placed in a
4 segregated unclaimed funds account held by the commissioner. If
5 the owner of any of the unclaimed funds presents proof of ownership
6 satisfactory to the commissioner before the second anniversary of
7 the date of the termination of the delinquency proceeding, the
8 commissioner shall remit the funds to the owner. The interest
9 earned on funds held in the unclaimed funds account may be used to
10 pay any administrative costs related to the handling or return of
11 unclaimed funds.

12 (b) If any amounts held in the unclaimed funds account
13 remain unclaimed on or after the second anniversary of the date of
14 the termination of the delinquency proceeding, the commissioner may
15 file a motion for an order directing the disposition of the funds in
16 the court in which the delinquency proceeding was pending. Any
17 costs incurred in connection with the motion may be paid from the
18 unclaimed funds account. The motion shall identify the name of the
19 insurer, the names and last known addresses of the persons entitled
20 to the unclaimed funds, if known, and the amount of the funds.
21 Notice of the motion shall be given as directed by the court. Upon a
22 finding by the court that the funds have not been claimed before the
23 second anniversary of the date of the termination of the
24 delinquency proceeding, the court shall order that any claims for
25 unclaimed funds and any interest earned on the unclaimed funds that
26 has not been expended under Subsection (a) are abandoned and that
27 the funds must be disbursed under one of the following methods:

1 (1) the amounts may be deposited in the general
2 receivership expense account under Subsection (c);

3 (2) the amounts may be transferred to the comptroller,
4 and deposited into the general revenue fund; or

5 (3) the amounts may be used to reopen the receivership
6 in accordance with Section 21A.353 and be distributed to the known
7 claimants with approved claims.

8 (c) The commissioner may establish an account for the
9 following purposes:

10 (1) to pay general expenses related to the
11 administration of receiverships; and

12 (2) to advance funds to any receivership that does not
13 have sufficient cash to pay its operating expenses.

14 (d) Any advance to a receivership under Subsection (c)(2)
15 may be treated as a claim under Section 21A.301 as agreed at the
16 time the advance is made or, in the absence of an agreement, in the
17 priority determined to be appropriate by the court.

18 (e) If the commissioner determines at any time that the
19 funds in the account exceed the amount required, the commissioner
20 may transfer the funds or any part of the funds to the comptroller,
21 and the transferred funds must be deposited into the general
22 revenue fund.

23 [Sections 21A.305-21A.350 reserved for expansion]

24 SUBCHAPTER H. DISCHARGE

25 Sec. 21A.351. CONDITION ON RELEASE FROM DELINQUENCY
26 PROCEEDINGS. Until all payments of or on account of the insurer's
27 contractual obligations by all guaranty associations, along with

1 all expenses of the obligations and interest on all the payments and
2 expenses, are repaid to the guaranty associations, unless otherwise
3 provided in a plan approved by the guaranty association, an insurer
4 that is subject to any formal delinquency proceedings may not:

5 (1) solicit or accept new business or request or
6 accept the restoration of any suspended or revoked license or
7 certificate of authority;

8 (2) be returned to the control of its shareholders or
9 private management; or

10 (3) have any of its assets returned to the control of
11 its shareholders or private management.

12 Sec. 21A.352. TERMINATION OF LIQUIDATION PROCEEDINGS. When
13 all property justifying the expense of collection and distribution
14 has been collected and distributed under this chapter, the
15 liquidator shall apply to the receivership court for an order
16 discharging the liquidator and terminating the proceeding. The
17 receivership court may grant the application and make any other
18 orders, including orders to transfer any remaining funds that are
19 uneconomic to distribute, or pursuant to Section 21A.302(c), assign
20 any assets that remain unliquidated, including claims and causes of
21 action, as may be deemed appropriate.

22 Sec. 21A.353. REOPENING RECEIVERSHIP. After the
23 liquidation proceeding has been terminated and the liquidator
24 discharged, the commissioner or other interested party may at any
25 time petition the court to reopen the delinquency proceeding for
26 good cause, including the discovery of additional property. If the
27 court is satisfied that there is justification for reopening, it

1 shall so order.

2 Sec. 21A.354. DISPOSITION OF RECORDS DURING AND AFTER
3 TERMINATION OF RECEIVERSHIP. (a) When it appears to the receiver
4 that the records of the insurer in receivership are no longer
5 useful, the receiver may recommend to the receivership court and
6 the receivership court shall direct what records should be
7 destroyed.

8 (b) If the receiver determines that any records should be
9 maintained after the closing of the delinquency proceeding, the
10 receiver may reserve property from the receivership estate for the
11 maintenance of the records, and any amounts so retained are
12 administrative expenses of the estate under Section 21A.301(a).
13 Any records retained pursuant to this subsection must be
14 transferred to the custody of the commissioner, and the
15 commissioner may retain or dispose of the records as appropriate,
16 at the commissioner's discretion. Any records of a delinquent
17 insurer that are transferred to the commissioner may not be
18 considered records of the department for any purposes, and Chapter
19 552, Government Code, does not apply to those records.

20 Sec. 21A.355. EXTERNAL AUDIT OF THE RECEIVER'S BOOKS. (a)
21 The receivership court may, as it deems desirable, order audits to
22 be made of the books of the receiver relating to any receivership
23 established under this chapter. A report of each audit shall be
24 filed with the commissioner and with the receivership court.

25 (b) The books, records, and other documents of the
26 receivership must be made available to the auditor at any time
27 without notice.

1 (c) The expense of each audit shall be considered a cost of
2 administration of the receivership.

3 [Sections 21A.356-21A.400 reserved for expansion]

4 SUBCHAPTER I. INTERSTATE RELATIONS

5 Sec. 21A.401. ANCILLARY CONSERVATION OF FOREIGN INSURERS.

6 (a) The commissioner may initiate an action against a foreign
7 insurer pursuant to Section 21A.051 on any of the grounds stated in
8 that section or on the basis that:

9 (1) any of the foreign insurer's property has been
10 sequestered, garnished, or seized by official action in its
11 domiciliary state or in any other state;

12 (2) the foreign insurer's certificate of authority to
13 do business in this state has been revoked or was never issued and
14 there are residents of this state with unpaid claims or in-force
15 policies; or

16 (3) initiation of the action is necessary to enforce a
17 stay under Section 17, Article 21.28-C, Section 18, Article
18 21.28-D, or Section 2602.259.

19 (b) If a domiciliary receiver has been appointed, the
20 commissioner may initiate an action against a foreign insurer under
21 Subsection (a)(1) or (a)(2) only with the consent of the
22 domiciliary receiver.

23 (c) An order entered pursuant to this section must appoint
24 the commissioner as conservator. The conservator's title to assets
25 must be limited to the insurer's property and records located in
26 this state.

27 (d) Notwithstanding Section 21A.201(c), the conservator

1 shall hold and conserve the assets located in this state until the
2 commissioner in the insurer's domiciliary state is appointed its
3 receiver or until an order terminating conservation is entered
4 under Subsection (g). Once a domiciliary receiver is appointed,
5 the conservator shall turn over to the domiciliary receiver all
6 property subject to an order under this section.

7 (e) The conservator may liquidate property of the insurer as
8 necessary to cover the costs incurred in the initiation or
9 administration of a proceeding under this section.

10 (f) The court in which an action under this section is
11 pending may issue a finding of insolvency or an ancillary
12 liquidation order. The court may enter an ancillary liquidation
13 order only for the limited purposes of:

14 (1) liquidating assets in this state to pay costs
15 under Subsection (e); or

16 (2) activating relevant laws applicable to guaranty
17 associations to pay valid claims that are not being paid by the
18 insurer.

19 (g) The conservator may at any time petition the
20 receivership court for an order terminating an order entered under
21 this section.

22 Sec. 21A.402. DOMICILIARY RECEIVERS APPOINTED IN OTHER
23 STATES. (a) A domiciliary receiver appointed in another state is
24 vested by operation of law with title to, and may summarily take
25 possession of, all property and records of the insurer in this
26 state. Notwithstanding any other provision of law regarding
27 special deposits, special deposits held in this state shall be,

1 upon the entry of an order of liquidation with a finding of
2 insolvency, distributed to the guaranty associations in this state
3 as early access payments subject to Section 21A.303, in relation to
4 the lines of business for which the special deposits were made. The
5 holder of any special deposit shall account to the domiciliary
6 receiver for all distributions from the special deposit at the time
7 of the distribution. The statutory provisions of another state and
8 all orders entered by courts of competent jurisdiction in relation
9 to the appointment of a domiciliary receiver of an insurer and any
10 related proceedings in another state must be given full faith and
11 credit in this state. For purposes of this section, "another state"
12 means any state other than this state. This state shall treat any
13 other state than this state as a reciprocal state.

14 (b) Upon appointment of a domiciliary receiver in another
15 state, the commissioner shall, unless otherwise agreed by the
16 receiver, immediately transfer title to and possession of all
17 property of the insurer under the commissioner's control, including
18 all statutory general or special deposits, to the receiver.

19 (c) Except as provided in Subsection (a), the domiciliary
20 receiver shall handle special deposits and special deposit claims
21 in accordance with federal law and the statutes pursuant to which
22 the special deposits are required. All amounts in excess of the
23 estimated amount necessary to administer the special deposit and
24 pay the unpaid special deposit claims are deemed general assets of
25 the estate. If there is a deficiency in any special deposit so that
26 the claims secured by the special deposit are not fully discharged
27 from the deposit, the claimants may share in the general assets of

1 the insurer to the extent of the deficiency at the same priority as
2 other claimants in their class of priority under Section 21A.301,
3 but the sharing must be deferred until the other claimants of their
4 class have been paid percentages of their claims equal to the
5 percentage paid from the special deposit. The intent of this
6 provision is to equalize to this extent the advantage gained by the
7 security provided by the special deposits.

8 SECTION 2. Section 3(a), Article 21.28-C, Insurance Code,
9 is amended to read as follows:

10 (a) This Act applies to all kinds of direct insurance, and
11 except as provided in Section 12 of this Act, is not applicable to
12 the following:

- 13 (1) life, annuity, health, or disability insurance;
- 14 (2) mortgage guaranty, financial guaranty, or other
15 forms of insurance offering protection against investment risks;
- 16 (3) fidelity or surety bonds, or any other bonding
17 obligations;
- 18 (4) credit insurance, vendors' single-interest
19 insurance, collateral protection insurance, or any similar
20 insurance protecting the interests of a creditor arising out of a
21 creditor-debtor transaction;
- 22 (5) insurance of warranties or service contracts;
- 23 (6) title insurance;
- 24 (7) ocean marine insurance;
- 25 (8) any transaction or combination of transactions
26 between a person, including an affiliate of such a person, and an
27 insurer, including an affiliate of such an insurer, that involves

1 the transfer of investment or credit risk unaccompanied by the
2 transfer of insurance risk, including transactions involving
3 captive insurers, policies in which deductible or self-insured
4 retention is substantially equal in amount to the limit of the
5 liability under the policy, and transactions in which the insured
6 retains a substantial portion of the risk; or

7 (9) any insurance provided by or guaranteed by
8 government.

9 SECTION 3. Section 5(8), Article 21.28-C, Insurance Code,
10 is amended to read as follows:

11 (8) "Covered claim" means an unpaid claim of an
12 insured or third-party liability claimant that arises out of and is
13 within the coverage and not in excess of the applicable limits of an
14 insurance policy to which this Act applies, issued or assumed
15 (whereby an assumption certificate is issued to the insured) by an
16 insurer licensed to do business in this state, if that insurer
17 becomes an impaired insurer and the third-party claimant or
18 liability claimant or insured is a resident of this state at the
19 time of the insured event, or the claim is a first-party claim for
20 damage to property that is permanently located in this state. A
21 corporation or other entity that is not an individual is considered
22 to be a resident of the state in which the entity's principal place
23 of business is located. "Covered claim" shall also include
24 unearned premiums, but in no event shall a covered claim for
25 unearned premiums exceed \$25,000. Individual covered claims
26 (including any and all derivative claims by more than one person
27 which arise from the same occurrence, which shall be considered

1 collectively as a single claim under this Act) shall be limited to
2 \$300,000, except that the association shall pay the full amount of
3 any covered claim arising out of a workers' compensation claim made
4 under a workers' compensation policy. "Covered claim" shall not
5 include any amount sought as a return of premium under a
6 retrospective rating plan or any amount that is directly or
7 indirectly due any reinsurer, insurer, self-insurer, insurance
8 pool, or underwriting association, as subrogation recoveries,
9 reinsurance recoveries, contribution, indemnification, or
10 otherwise, and the insured of an impaired insurer is not liable, and
11 the reinsurer, insurer, self-insurer, insurance pool, or
12 underwriting association is not entitled to sue or continue a suit
13 against that insured, for any subrogation recovery, reinsurance
14 recovery, contribution, ~~or~~ indemnity, or any other claim asserted
15 directly or indirectly by a reinsurer, insurer, insurance pool, or
16 underwriting association to the extent of the applicable liability
17 limits of the policy written and issued to the insured by the
18 insolvent insurer. "Covered claim" shall not include supplementary
19 payment obligations, including adjustment fees and expenses,
20 attorney's fees and expenses, court costs, interest and penalties,
21 and interest and bond premiums incurred prior to the determination
22 that an insurer is an impaired insurer under this Act. "Covered
23 claim" shall not include any prejudgment or postjudgment interest
24 that accrues subsequent to the determination that an insurer is an
25 impaired insurer under this Act. "Covered claim" shall not include
26 any claim for recovery of punitive, exemplary, extracontractual, or
27 bad-faith damages, whether sought as a recovery against the

1 insured, insurer, guaranty association, receiver, special deputy
2 receiver, or commissioner, awarded in a court judgment against an
3 insured or insurer. Notwithstanding any other provision of this
4 Act, the association's liability for shareholder derivative
5 actions or other claims for economic loss incurred by a claimant in
6 the claimant's capacity as a shareholder under an insurance policy
7 placed in force on or after January 1, 1992, is limited to \$300,000
8 for each policy, inclusive of defense costs, regardless of the
9 number of claimants under each policy. "Covered claim" shall not
10 include, and the association shall not have any liability to an
11 insured or third-party liability claimant, for its failure to
12 settle a liability claim within the limits of a covered claim under
13 this Act. With respect to a covered claim for unearned premiums,
14 both persons who were residents of this state at the time the policy
15 was issued and persons who are residents of this state at the time
16 the company is found to be an impaired insurer shall be considered
17 to have covered claims under this Act. If the impaired insurer has
18 insufficient assets to pay the expenses of administering the
19 receivership or conservatorship estate, that portion of the
20 expenses of administration incurred in the processing and payment
21 of claims against the estate shall also be a covered claim under
22 this Act.

23 SECTION 4. Section 8, Article 21.28-C, Insurance Code, is
24 amended by amending Subsection (d) and adding Subsection (i) to
25 read as follows:

26 (d) The association shall investigate and adjust,
27 compromise, settle, and pay covered claims to the extent of the

1 association's obligation and deny all other claims. The
2 association may review settlements, releases, and judgments to
3 which the impaired insurer or its insureds were parties to
4 determine the extent to which those settlements, releases, and
5 judgments may be properly contested. Any judgment taken before the
6 designation of impairment in which an insured under a liability
7 policy or the insurer failed to exhaust all appeals, any judgment
8 taken by default or consent against an insured or the impaired
9 insurer, and any settlement, release, or judgment entered into by
10 the insured or the impaired insurer, is not binding on the
11 association, and may not be considered as evidence of liability or
12 of damages in connection with any claim brought against the
13 association or any other party under this Act. Notwithstanding any
14 other provision of this Act or any other law to the contrary, a
15 covered claim shall not include any claim filed with the guaranty
16 association on a date that is later than eighteen months after the
17 date of the order of liquidation and also shall not include claims
18 that are unknown and unreported as of the date, provided, however,
19 [except] that the time for filing a claim for workers' compensation
20 benefits is governed by Title 5, Labor Code, and the applicable
21 rules of the Texas Workers' Compensation Commission.

22 (i) The association may bring an action against any
23 third-party administrator, agent, attorney, or other
24 representative of an insurer for which a receiver has been
25 appointed to obtain custody and control of all information,
26 including files, records, and electronic data, related to the
27 insurer that is appropriate or necessary for the association, or a

1 similar association in other states, to carry out its duties under
2 this Act or a similar law of another state. The association has the
3 absolute right to obtain information under this subsection through
4 emergency equitable relief, regardless of where the information is
5 physically located. In bringing an action under this subsection,
6 the association is not subject to any defense, possessory lien or
7 other type of lien, or other legal or equitable ground for refusal
8 to surrender the information that may be asserted against the
9 receiver of the insurer. The association is entitled to an award of
10 reasonable attorney's fees and costs incurred by the association in
11 any action to obtain information under this subsection. The rights
12 granted to the association under this subsection do not affect the
13 receiver's title to information, and information obtained under
14 this subsection remains the property of the receiver while in the
15 custody of the association.

16 SECTION 5. Section 10(g), Article 21.28-C, Insurance Code,
17 is amended to read as follows:

18 (g) Venue in a suit by or against the association or
19 commissioner relating to any action or ruling of the association or
20 commissioner made under this Act is in Travis County. The
21 association or commissioner is not required to give an appeal bond
22 in an appeal of a cause of action arising under this Act.

23 SECTION 6. Section 11(b), Article 21.28-C, Insurance Code,
24 is amended to read as follows:

25 (b) The association is entitled to recover [~~from the~~
26 ~~following persons the amount of any covered claim and costs of~~
27 ~~defense paid on behalf of that person under this Act] :~~

1 (1) the amount of any covered claim for workers'
2 compensation insurance benefits and the costs of administration and
3 defense of those claims paid under this Act from any insured
4 employer, other than an insured who is exempt from federal income
5 tax under Section 501(a) of the Internal Revenue Code of 1986 (26
6 U.S.C. Section 501(a)) by being described by Section 501(c)(3) of
7 that code, whose net worth on December 31 of the year next preceding
8 the date the insurer becomes an impaired insurer exceeds \$50
9 million, provided that an insured's net worth on that date shall be
10 deemed [~~is considered~~] to include the aggregate net worth of the
11 insured and all of the insured's parent, subsidiary, and affiliated
12 companies as computed on a consolidated basis[~~, and whose~~
13 ~~obligations under a liability policy or contract of insurance~~
14 ~~written, issued, and placed in force after January 1, 1992, are~~
15 ~~satisfied in whole or in part by payments made under this Act~~]; and

16 (2) the amount of any covered claim and the costs of
17 defense paid on behalf of any person who is an affiliate of the
18 impaired insurer and whose liability obligations to other persons
19 are satisfied in whole or in part by payments made under this Act.

20 SECTION 7. Section 11A, Article 21.28-C, Insurance Code, is
21 amended to read as follows:

22 Sec. 11A. NET WORTH EXCLUSION. (a) A covered claim does
23 not include and the association is not liable for any claim arising
24 from a policy of insurance of any [~~The association is not liable to~~
25 ~~pay a first-party claim of an~~] insured whose net worth on December
26 31 of the year next preceding the date the insurer becomes an
27 impaired insurer exceeds \$50 million.

1 (b) The net worth of an insured for purposes of this section
2 includes the aggregate net worth of the insured and all of the
3 insured's parent, subsidiary, and affiliated companies computed on
4 a consolidated basis.

5 (c) This section does not apply:

6 (1) to third-party claims against an insured that has:

7 (A) applied for or consented to the appointment
8 of a receiver, trustee, or liquidator for all or a substantial part
9 of the insurer's assets;

10 (B) filed a voluntary petition in bankruptcy; or

11 (C) filed a petition or an answer seeking a
12 reorganization or arrangement with creditors or to take advantage
13 of any insolvency law; or

14 (2) if an order, judgment, or decree is entered by a
15 court of competent jurisdiction, on the application of a creditor,
16 adjudicating the insured bankrupt or insolvent or approving a
17 petition seeking reorganization of the insured or of all or
18 substantial part of its assets.

19 (d) In an instance described by Subsection (c) of this
20 section, the association is entitled to assert a claim in the
21 bankruptcy or receivership proceeding to recover the amount of any
22 covered claim and costs of defense paid on behalf of the insured
23 ~~[This section does not exclude the payment of a covered claim for~~
24 ~~workers' compensation benefits otherwise payable under this Act].~~

25 (e) The association may establish procedures for requesting
26 financial information from an insured or claimant on a confidential
27 basis for the purpose of applying sections concerning the net worth

1 of first-party and third-party claimants, subject to any
2 information requested under this subsection being shared with any
3 other association similar to the association and with the
4 liquidator for the impaired insurer on the same confidential basis.
5 If the insured or claimant refuses to provide the requested
6 financial information, the association requests an auditor's
7 certification of that information, and the auditor's certification
8 is available but not provided, the association may deem the net
9 worth of the insured or claimant to be in excess of \$50 million at
10 the relevant time.

11 (f) In any lawsuit contesting the applicability of Section
12 11(b) of this article or this section when the insured or claimant
13 has declined to provide financial information under the procedure
14 provided in the plan of operation pursuant to Section 9 of this Act,
15 the insured or claimant bears the burden of proof concerning its net
16 worth at the relevant time. If the insured or claimant fails to
17 prove that its net worth at the relevant time was less than the
18 applicable amount, the court shall award the association its full
19 costs, expenses, and reasonable attorney's fees in contesting the
20 claim.

21 SECTION 8. Section 17(a), Article 21.28-C, Insurance Code,
22 is amended to read as follows:

23 (a) All proceedings in which an impaired insurer is a party
24 or is obligated to defend a party in any court in this state, except
25 proceedings directly related to the receivership or instituted by
26 the receiver, shall be stayed as to all parties and for all purposes
27 for six months and any additional time thereafter as may be

1 determined by the court from the date of the designation of
2 impairment or an ancillary proceeding is instituted in the state,
3 whichever is later, to permit proper defense by the association of
4 all pending causes of action. A deadline imposed under the Texas
5 Rules of Civil Procedure or the Texas Rules of Appellate Procedure
6 is tolled during the stay. Statutes of limitation or repose are not
7 tolled during the stay, and any action filed during the stay is
8 stayed upon the filing of the action. The court in which the
9 delinquency proceeding is pending has exclusive jurisdiction
10 regarding the application, enforcement, and extension of the stay
11 and may issue injunctions or other similar orders to enforce the
12 stay. If the impaired insurer is not domiciled in this state, the
13 commissioner may bring an ancillary conservation [~~delinquency~~]
14 proceeding under Section 21A.401 [~~13, Article 21.28~~] of this code,
15 for the [~~limited~~] purpose of determining the application,
16 enforcement, and extension of the stay.

17 SECTION 9. Article 21.28, Insurance Code, is repealed.

18 SECTION 10. (a) The changes in law made by this Act apply
19 only to a receivership proceeding brought against an insurer under
20 Section 2, Article 21.28, Insurance Code, that is pending on the
21 effective date of this Act and to a receivership proceeding
22 initiated on or after the effective date of this Act. A
23 receivership proceeding that has terminated before the effective
24 date of this Act is governed by the law in effect at the time the
25 receivership proceeding terminated, and that law is continued in
26 effect for that purpose.

27 (b) Except as provided by Subsection (a) of this section,

1 the changes in law made by this Act apply only to a proceeding or
2 cause of action brought under Chapter 21A, Insurance Code, as added
3 by this Act, that is filed or commenced on or after the effective
4 date of this Act. A proceeding or cause of action brought under
5 Article 21.28, Insurance Code, as it existed before its repeal by
6 this Act, other than a receivership proceeding brought against an
7 insurer, that was filed or commenced before the effective date of
8 this Act is governed by the law in effect at the time the proceeding
9 or cause of action was filed or commenced, and that law is continued
10 in effect for that purpose.

11 SECTION 11. This Act takes effect September 1, 2005.