

By: Smithee

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 the law.

(c) This chapter shall be liberally construed to effect 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 the 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, with minimum interference with the normal prerogatives of the owners and managers of insurers, through:

(1) early detection of any potentially hazardous condition in an insurer and prompt application of appropriate

1 corrective measures;

2 (2) improved methods for rehabilitating insurers,  
3 involving the cooperation and management expertise of the insurance  
4 industry;

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

8 (4) equitable apportionment of any unavoidable loss;

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

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

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

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

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

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

1 the insurer receivership laws and the provisions of any other law,  
2 the insurer receivership laws prevail.

3 Sec. 21A.003. PERSONS COVERED. (a) The provisions of this  
4 chapter apply to all:

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

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

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

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

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

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

19 (7) prepaid health care delivery plans, including  
20 health maintenance organizations subject to Chapter 843; and

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

1 subject to Chapter 941, reciprocal or interinsurance exchanges  
2 subject to Chapter 942, and fidelity, guaranty, and surety  
3 companies.

4 (b) For purposes of this chapter, all persons,  
5 corporations, associations, or entities to which this chapter  
6 applies and that are subject to delinquency proceedings commenced  
7 in this state are "insurers."

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

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

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

14 (3) "Creditor" means a person having any claim against  
15 an insurer subject to a delinquency proceeding, whether matured or  
16 unmatured, liquidated or unliquidated, secured or unsecured,  
17 absolute, fixed, or contingent.

18 (4) "Delinquency proceeding" means any proceeding  
19 instituted against an insurer for the purpose of liquidating,  
20 rehabilitating, or conserving the insurer, and any summary  
21 proceeding under Section 21A.051.

22 (5) "Doing business," including "doing insurance  
23 business" and the "business of insurance," includes any of the  
24 following acts, whether effected by mail or otherwise:

25 (A) the issuance or delivery of contracts of  
26 insurance, either to persons resident or covering a risk located in  
27 this state;

1                   (B) the solicitation of applications for  
2 contracts described by Paragraph (A) or other negotiations  
3 preliminary to the execution of the contracts;

4                   (C) the collection of premiums, membership fees,  
5 assessments, or other consideration for contracts described by  
6 Paragraph (A);

7                   (D) the transaction of matters subsequent to the  
8 execution of contracts described by Paragraph (A) and arising out  
9 of those contracts; or

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

12                   (6) "Domiciliary state" means the state in which an  
13 insurer is incorporated or organized or, in the case of an alien  
14 insurer, its state of entry.

15                   (7) "Foreign insurer" means an insurer domiciled in  
16 another state.

17                   (8) "Formal delinquency proceeding" means any  
18 liquidation or rehabilitation proceeding.

19                   (9) "General assets" includes all property that is not  
20 subject to a secured claim or a valid and existing express trust for  
21 the security or benefit of specified persons or classes of persons  
22 or required by the insurance laws of this state or any other state  
23 to be held for the benefit of specified persons or classes of  
24 persons. The term also includes all property or its proceeds in  
25 excess of the amount necessary to discharge any secured claims  
26 against the property or special deposit claims.

27                   (10) "Good faith" means honesty in fact and intention,

1 together with the absence of:

2 (A) information that would lead a reasonable  
3 person in the same position to know that the insurer is financially  
4 impaired or insolvent; and

5 (B) knowledge regarding the imminence or  
6 pendency of any receivership proceeding against the insurer.

7 (11) "Guaranty association" means any mechanism  
8 mandated by state statute that is created for the payment of claims  
9 or continuation of policy obligations of financially impaired or  
10 insolvent insurers.

11 (12) "Impaired" means that an insurer:

12 (A) is not possessed of admitted assets at least  
13 equal to all its liabilities together with the minimum surplus  
14 required to be maintained under this code; or

15 (B) has a risk-based capital less than or equal  
16 to the authorized control level.

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

18 (A) unable to pay its obligations when they are  
19 due; or

20 (B) not possessed of admitted assets at least  
21 equal to all its liabilities.

22 (14) "Insurer" means any person that has done,  
23 purports to do, is doing, or is authorized to do the business of  
24 insurance in this state, and is or has been subject to the authority  
25 of or to liquidation, rehabilitation, reorganization, supervision,  
26 or conservation by any insurance commissioner. For purposes of  
27 this chapter, any other persons included under Section 21A.003 are

1 insurers.

2 (15) "Liabilities" means all liabilities required to  
3 be reported in financial statements filed with the department.

4 (16) "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 (17) "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 (18) "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 where the insurer has outstanding claims liabilities, and any of

1 the following parties that have filed a request for inclusion on the  
2 service list:

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

11 (20) "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 called. The term  
14 includes all clauses, riders, endorsements, and papers that are a  
15 part of the contract, agreement, or certificate. The term does not  
16 include a contract of reinsurance.

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

19 (A) all right, title, and interest of the  
20 insurer, whether legal or equitable, tangible or intangible, choate  
21 or inchoate, and includes choses in action, contract rights, and  
22 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 conservation, 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, including:

4 (i) claims and claim files;

5 (ii) policyholder lists;

6 (iii) application files;

7 (iv) litigation files;

8 (v) premium records;

9 (vi) rate books and underwriting manuals;

10 (vii) personnel records; and

11 (viii) financial records or similar records

12 within the possession, custody, or control of a managing general  
13 agent, third-party administrator, management company, data  
14 processing company, accountant, attorney, affiliate, or other  
15 person.

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

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

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

26 (25) "Receivership court" refers to the court in which  
27 a receivership proceeding is pending, unless the context requires

1 otherwise.

2 (26) "Reinsurance" means transactions whereby an  
3 assuming insurer agrees to indemnify a ceding insurer against all,  
4 or a part, of any loss that the ceding insurer might sustain under  
5 the policy or policies that it has issued.

6 (27) "Secured claim" means any claim secured by an  
7 asset that is not a general asset. The right to set off as provided  
8 in Section 21A.210 is a secured claim. The term does not include a  
9 claim arising from a constructive or resulting trust, a special  
10 deposit claim, or a claim based on mere possession.

11 (28) "Special deposit" means a deposit established  
12 pursuant to statute for the security or benefit of a limited class  
13 or classes of persons.

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

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

25 (31) "Unauthorized insurer" means an insurer doing the  
26 business of insurance in this state that has not received from this  
27 state a certificate of authority or some other type of authority

1 that allows for doing the business of insurance in this state.

2 (b) For purposes of Subsection (a)(22):

3 (1) "Commodity contract" means:

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

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

14 (C) an agreement or transaction that is subject  
15 to regulation under Section 6c(b) of the Commodity Exchange Act (7  
16 U.S.C. Section 6c(b)) and that is commonly known to the commodities  
17 trade as a commodity option.

18 (2) "Forward contract" means a contract, other than a  
19 commodity contract, with a maturity date more than two days after  
20 the date the contract is entered into, that is for the purchase,  
21 sale, or transfer of a commodity, as defined by Section 1a of the  
22 Commodity Exchange Act (7 U.S.C. Section 1a), or any similar good,  
23 article, service, right, or interest that is presently or in the  
24 future becomes the subject of dealing in the forward contract trade  
25 or product or byproduct of the contract. The term includes a  
26 repurchase transaction, reverse repurchase transaction,  
27 consignment, lease, swap, hedge transaction, deposit, loan,

1 option, allocated transaction, unallocated transaction, or a  
2 combination of these or option on any of them.

3 (3) "Repurchase agreement" includes a reverse  
4 repurchase agreement and means an agreement, including related  
5 terms, that provides for the transfer of certificates of deposit,  
6 eligible bankers' acceptances, or securities that are direct  
7 obligations of or that are fully guaranteed as to principal and  
8 interest by the United States against the transfer of funds by the  
9 transferee of the certificates of deposit, eligible bankers'  
10 acceptances, or securities with a simultaneous agreement by the  
11 transferee to transfer to the transferor certificates of deposit,  
12 eligible bankers' acceptances, or securities as described in this  
13 subdivision, on demand or at a date certain not later than one year  
14 after the transfers, against the transfer of funds. For the  
15 purposes of this subdivision, the items that may be subject to a  
16 repurchase agreement include mortgage-related securities, a  
17 mortgage loan, and an interest in a mortgage loan and do not include  
18 any participation in a commercial mortgage loan, unless the  
19 commissioner determines by rule to include the participation within  
20 the meaning of the term.

21 (4) "Securities contract" means a contract for the  
22 purchase, sale, or loan of a security, including an option for the  
23 repurchase or sale of a security, certificate of deposit, or group  
24 or index of securities or an interest in the group or index or based  
25 on the value of the group or index, an option entered into on a  
26 national securities exchange relating to foreign currencies, or the  
27 guarantee of a settlement of cash or securities by or to a

1 securities clearing agency. For the purposes of this subdivision,  
2 the term "security" includes a mortgage loan, a mortgage-related  
3 security, and an interest in any mortgage loan or mortgage-related  
4 security.

5 (5) "Swap agreement" means an agreement, including the  
6 terms and conditions incorporated by reference in an agreement,  
7 that is a rate swap agreement, basis swap, commodity swap, forward  
8 rate agreement, interest rate future, interest rate option, forward  
9 foreign exchange agreement, spot foreign exchange agreement, rate  
10 cap agreement, rate floor agreement, rate collar agreement,  
11 currency swap agreement, cross-currency rate swap agreement,  
12 currency future, or currency option or any other similar agreement.  
13 The term includes any combination of agreements and an option to  
14 enter into an agreement.

15 Sec. 21A.005. JURISDICTION AND VENUE. (a) No delinquency  
16 proceeding may be commenced under this chapter by a person other  
17 than the commissioner, and no court has jurisdiction to entertain,  
18 hear, or determine any proceeding commenced by any other person.

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

22 (1) the liquidation, rehabilitation, sequestration,  
23 conservation, or receivership of any insurer; or

24 (2) a stay, injunction, restraining order, or other  
25 relief preliminary, incidental, or relating to proceedings  
26 described by Subdivision (1).

27 (c) The receivership court, as of the commencement of a

1 receivership proceeding under this chapter, has exclusive  
2 jurisdiction of all property of the insurer, wherever located,  
3 including property located outside the territorial limits of the  
4 state. The receivership court has original but not exclusive  
5 jurisdiction of all civil proceedings arising:

6 (1) under this chapter; or

7 (2) in or related to receivership proceedings under  
8 this chapter.

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

15 (1) is or has been an agent, or other person who, at  
16 any time, has written policies of insurance for or has acted in any  
17 manner on behalf of an insurer against which a delinquency  
18 proceeding has been instituted, in any action resulting from or  
19 incident to such a relationship with the insurer;

20 (2) is or has been an insurer or reinsurer who, at any  
21 time, has entered into a contract of reinsurance with an insurer  
22 against which a delinquency proceeding has been instituted, or who  
23 is an agent of or for the reinsurer, in any action on or incident to  
24 the reinsurance contract;

25 (3) is or has been an officer, director, manager,  
26 trustee, organizer, promoter, or other person in a position of  
27 comparable authority or influence over an insurer against which a

1 delinquency proceeding has been instituted, in any action resulting  
2 from or incident to such a relationship with the insurer;

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

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

9 (e) If, on motion of any party, the receivership court finds  
10 that any action, as a matter of substantial justice, should be tried  
11 in a forum outside this state, the receivership court may enter an  
12 appropriate order to stay further proceedings on the action in this  
13 state. Except as to claims against the estate, nothing in this  
14 chapter deprives a party of any contractual right to pursue  
15 arbitration. A party in an arbitration under this subsection may  
16 bring a counterclaim against the estate, but the counterclaim is  
17 subject to Section 21A.210.

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

24 (1) in the case of a corporation, that the officers of  
25 the corporation cannot be served because they have departed from  
26 the state or otherwise concealed themselves with intent to avoid  
27 service;

1           (2) in the case of a Lloyd's plan or reciprocal or  
2 interinsurance exchange, that the individual attorney-in-fact or  
3 the officers of the corporate attorney-in-fact cannot be served  
4 because of departure or concealment; or

5           (3) in the case of an individual, that the person  
6 cannot be served because of the individual's departure or  
7 concealment.

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

10           (h) At any time after an order is entered pursuant to  
11 Section 21A.051, 21A.101, or 21A.151, the commissioner or receiver  
12 may transfer the case to the county of the principal office of the  
13 person proceeded against. In the event of transfer, the court in  
14 which the proceeding was commenced, upon application of the  
15 commissioner or receiver, shall direct its clerk to transmit the  
16 court's file to the clerk of the court to which the case is to be  
17 transferred. The proceeding, after transfer, shall be conducted in  
18 the same manner as if it had been commenced in the court to which the  
19 matter is transferred.

20           (i) A person may not intervene in any delinquency proceeding  
21 in this state brought under this chapter for the purpose of seeking  
22 or obtaining payment of any judgment, lien, or other claim of any  
23 kind. The claims procedure set forth in this chapter constitutes  
24 the exclusive means for obtaining payment of claims from the  
25 receivership estate. This provision is not intended to affect the  
26 rights conferred on the guaranty associations by Section  
27 21A.008(k).



1        (j) The foregoing provisions of this section  
2 notwithstanding, the provisions of this chapter do not confer  
3 jurisdiction on the receivership court to resolve coverage disputes  
4 between guaranty associations and those asserting claims against  
5 them resulting from the initiation of a receivership proceeding  
6 under this chapter except to the extent that the guaranty  
7 association has otherwise expressly consented to the jurisdiction  
8 of the receivership court pursuant to a plan of rehabilitation or  
9 liquidation that resolves its obligations to covered  
10 policyholders. The determination of any dispute with respect to  
11 the statutory coverage obligations of any guaranty association by a  
12 court or administrative agency or body with jurisdiction in the  
13 guaranty association's state of domicile is binding and conclusive  
14 as to the parties in a receivership proceeding initiated in the  
15 receivership court, including the policyholders of the insurer.

16        Sec. 21A.006. EXEMPTION FROM FEES. The receiver may not be  
17 required to pay any filing, recording, transcript, or  
18 authenticating fee to any public officer in this state pertaining  
19 to the exercise by the department of any power or duty conferred on  
20 the department under this chapter, regardless of whether the paper  
21 or instrument is executed by the receiver or the receiver's  
22 employees or attorneys of record and whether the document is  
23 connected with the commencement or conduct of any action or  
24 proceeding by or against the receiver.

25        Sec. 21A.007. NOTICE AND HEARING ON MATTERS SUBMITTED BY  
26 THE RECEIVER FOR RECEIVERSHIP COURT APPROVAL. (a) Upon written  
27 request to the receiver, a person must be placed on the service list

1 to receive notice of matters filed by the receiver. It is the  
2 responsibility of the person requesting notice to inform the  
3 receiver in writing of any changes in the person's address or to  
4 request that the person's name be deleted from the service list.  
5 The receiver may require that the persons on the service list  
6 provide confirmation that they wish to remain on the service list.  
7 Any person who fails to confirm their intent to remain on the  
8 service list may be purged from the service list. Inclusion on the  
9 service list does not confer standing in the receivership  
10 proceeding to raise, appear, or be heard on any issue.

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

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

21 (d) The receiver shall provide notice of the application to  
22 all persons on the service list and any other parties as determined  
23 by the receiver. Notice may be provided by first class mail postage  
24 paid, electronic mail, or facsimile transmission, at the receiver's  
25 discretion. Notice is deemed to be given on the date that it is  
26 deposited with the U.S. Postmaster or transmitted, as applicable.

27 (e) Any party in interest objecting to the application must

1 file an objection specifying the grounds for the objection not  
2 later than the 20th day after the date of the notice of the filing of  
3 the application or within another time period as the receivership  
4 court may set and must serve copies on the receiver and any other  
5 persons served with the application within the same time period. An  
6 objecting party has the burden of showing why the receivership  
7 court should not authorize the proposed action.

8 (f) If no objection to the application is timely filed, the  
9 receivership court may enter an order approving the application  
10 without a hearing, or hold a hearing to determine if the receiver's  
11 application should be approved. The receiver may request that the  
12 receivership court enter an order or hold a hearing on an expedited  
13 basis.

14 (g) If an objection is timely filed, the receivership court  
15 may hold a hearing. If the receivership court approves the  
16 application and, upon a motion by the receiver, determines that the  
17 objection was frivolous, filed merely for delay, or for other  
18 improper purpose, the receivership court shall order the objecting  
19 party to pay the receiver's reasonable costs and fees of defending  
20 the action.

21 Sec. 21A.008. INJUNCTIONS AND ORDERS. (a) The  
22 receivership court may issue any order, process, or judgment,  
23 including stays, injunctions, or other orders, as is necessary or  
24 appropriate to carry out the provisions of this chapter or an  
25 approved plan.

26 (b) This chapter may not be construed to limit the ability  
27 of the receiver to apply to a court other than the receivership

1 court in any jurisdiction to carry out any provision of this chapter  
2 or for the purpose of pursuing claims against any person.

3 (c) Except as provided in Subsections (e) and (f) or as  
4 otherwise provided in this chapter and subject to Subsection (g),  
5 the commencement of a receivership proceeding under this chapter  
6 operates as a stay, applicable to all persons, of:

7 (1) the commencement or continuation, including the  
8 issuance or employment of process, of a judicial, administrative,  
9 or other action or proceeding against the insurer, including  
10 arbitration proceedings, that was or could have been commenced  
11 before the commencement of the receivership proceeding under this  
12 chapter, or to recover a claim against the insurer that arose before  
13 the commencement of the receivership proceeding under this chapter;

14 (2) the enforcement, against the insurer or against  
15 property of the insurer, of a judgment obtained before the  
16 commencement of the receivership proceeding under this chapter;

17 (3) any act to obtain or retain possession of property  
18 of the insurer or of property from the insurer or to exercise  
19 control over property or records of the insurer;

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

22 (5) any act to collect, assess, or recover a claim  
23 against the insurer that arose before the commencement of a  
24 receivership proceeding under this chapter;

25 (6) the commencement or continuation of an action or  
26 proceeding against a reinsurer of the insurer, by the holder of a  
27 claim against the insurer, seeking reinsurance recoveries that are

1 contractually due to the insurer; and

2 (7) the commencement or continuation of an action or  
3 proceeding by a governmental unit to terminate or revoke an  
4 insurance license.

5 (d) Except as provided in Subsections (e) and (f) or as  
6 otherwise provided in this chapter, the commencement of a  
7 receivership proceeding under this chapter operates as a stay,  
8 applicable to all persons, of the commencement or continuation,  
9 including the issuance or employment of process, of a judicial,  
10 administrative or other action or proceeding, including the  
11 enforcement of any judgment, against any insured that was or could  
12 have been commenced before the commencement of the receivership  
13 proceeding under this chapter, or to recover a claim against the  
14 insured that arose before or after the commencement of the  
15 receivership proceeding under this chapter and for which the  
16 insurer is or may be liable under a policy of insurance or is  
17 obligated to defend a party. The stay provided by this subsection  
18 terminates 90 days after the date of appointment of the receiver,  
19 unless, for good cause shown, the stay is extended by order of the  
20 receivership court after notice to any affected parties and any  
21 hearing the receivership court determines is appropriate. Any  
22 applicable statute of limitation with respect to any claim against  
23 an insured is tolled during the period of the stay and any  
24 extensions provided under this subsection.

25 (e) Notwithstanding Subsections (c) and (d), the  
26 commencement of a receivership proceeding under this chapter does  
27 not operate as a stay of:

1           (1) except as provided by Subsection (c)(7),  
2 regulatory actions by the commissioners of non-domiciliary states,  
3 including the suspension of licenses;

4           (2) criminal proceedings;

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

8           (4) setoff as permitted by Section 21A.210 of this  
9 code;

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

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

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

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

20          (9) discharge by the guaranty association of statutory  
21 responsibilities under, or the pursuit of claims against guaranty  
22 associations to the extent permitted by, any law governing guaranty  
23 associations; or

24          (10) any of the following actions:

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

27               (B) the issuance to the insurer by a governmental

1 unit of a notice of tax deficiency;

2 (C) a demand for tax returns; or

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

5 (f) Except as provided in Subsection (h) of this section:

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

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

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

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

23 (1) for cause; or

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

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

1                   (B) the property is not necessary to an effective  
2 plan.

3                   (i) In any hearing under Subsection (h) of this section, the  
4 party seeking relief from the stay has the burden of proof on each  
5 issue, which must be established by clear and convincing evidence.

6                   (j) The estate of an insurer that is injured by any wilful  
7 violation of a stay provided by this section is entitled to actual  
8 damages, including costs and attorney's fees. In appropriate  
9 circumstances, the receivership court may impose additional  
10 sanctions.

11                   (k) Any guaranty association or its designated  
12 representative may intervene as a party as a matter of right or  
13 otherwise appear and participate in any court proceeding concerning  
14 the rehabilitation or liquidation of an insurer if the association  
15 is or may become liable to act as a result of the rehabilitation or  
16 liquidation. Exercise by any guaranty association or its  
17 designated representative of the right to intervene conferred under  
18 this subsection does not constitute grounds to establish general  
19 personal jurisdiction by the courts of this state. The intervening  
20 guaranty association or its designated representative are subject  
21 to the receivership court's jurisdiction for the limited purpose  
22 for which it intervenes.

23                   (l) Notwithstanding any other provision of law, bond may not  
24 be required of the commissioner or receiver in relation to any stay  
25 or injunction under this section.

26                   Sec. 21A.009. STATUTES OF LIMITATIONS. (a) If applicable  
27 law, an order, or an agreement fixes a period within which the



1 insurer may commence an action, and this period has not expired  
2 before the date of the filing of the initial petition in a  
3 delinquency proceeding, the receiver may commence an action only  
4 before the later of:

5 (1) the end of the period, including any suspension of  
6 the period occurring on or after the filing of the initial petition  
7 in a delinquency proceeding; or

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

10 (b) Except as provided in Subsection (a), if applicable law,  
11 an order, or an agreement fixes a period within which the insurer  
12 may file any pleading, demand, notice, or proof of claim or loss,  
13 cure a default in a case or proceeding, or perform any other similar  
14 act, and the period has not expired before the date of the filing of  
15 the petition initiating formal delinquency proceedings, the  
16 receiver may file, cure, or perform, as the case may be, only before  
17 the later of:

18 (1) the end of the period, including any suspension of  
19 the period occurring on or after the filing of the initial petition  
20 in the delinquency proceeding; or

21 (2) 60 days after the later of the date of entry of an  
22 order for either rehabilitation or liquidation.

23 (c) If applicable law, an order, or an agreement fixes a  
24 period for commencing or continuing a civil action in a court other  
25 than the receivership court on a claim against the insurer, and the  
26 period has not expired before the date of the initial filing of the  
27 petition in a delinquency proceeding, then the period does not

1 expire until the later of:

2 (1) the end of the period, including any suspension of  
3 the period occurring on or after the filing of the initial petition  
4 in the delinquency proceeding; or

5 (2) 30 days after termination or expiration of the  
6 stay pursuant to this section with respect to the claim.

7 (d) Any other action or proceeding filed by a receiver may  
8 be commenced at any time within four years after the date upon which  
9 the cause of action accrues, if the otherwise applicable  
10 limitations period has not expired prior to the initial filing of  
11 the petition in a delinquency proceeding, or four years after the  
12 date on which the receiver is appointed, whichever is later.

13 Sec. 21A.010. COOPERATION OF OFFICERS, OWNERS, AND  
14 EMPLOYEES. (a) Any present or former officer, manager, director,  
15 trustee, owner, employee, or agent of any insurer, or any other  
16 persons with authority over or in charge of any segment of the  
17 insurer's affairs, shall cooperate with the commissioner or  
18 receiver in any proceeding under this chapter or any investigation  
19 preliminary to the proceeding. For purposes of this section:

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

23 (2) "cooperate" includes:

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

26 (B) making available to the commissioner or  
27 receiver any books, accounts, documents, or other records or

1 information or property of or pertaining to the insurer and in the  
2 person's possession, custody, or control.

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

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

9 (d) Any person included within Subsection (a) who fails to  
10 cooperate with the commissioner or receiver, or any person who  
11 obstructs or interferes with the commissioner or receiver in the  
12 conduct of any delinquency proceeding or any preliminary or  
13 incidental investigation, or who violates any order validly issued  
14 under this chapter:

15 (1) commits an offense; and

16 (2) is subject to the imposition by the commissioner  
17 of an administrative penalty not to exceed \$10,000 and subject to  
18 the revocation or suspension of any insurance licenses issued by  
19 the commissioner in accordance with Chapters 82 and 84.

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

23 [Section 21A.011 reserved for expansion]

24 Sec. 21A.012. ACTIONS BY AND AGAINST THE RECEIVER. (a) An  
25 allegation by the receiver of improper or fraudulent conduct  
26 against any person may not be the basis of a defense to the  
27 enforcement of a contractual obligation owed to the insurer by a

1 third party, unless the conduct is found to have been materially and  
2 substantially related to the contractual obligation for which  
3 enforcement is sought.

4 (b) A prior wrongful or negligent action of the insurer's  
5 management may not be asserted as a defense to a claim by the  
6 receiver under a theory of estoppel, comparative fault, intervening  
7 cause, proximate cause, reliance, mitigation of damages, or  
8 otherwise, except that the affirmative defense of fraud in the  
9 inducement may be asserted against the receiver in a claim based on  
10 a contract. Evidence of fraud in the inducement is admissible only  
11 if contained in the records of the insurer.

12 (c) An action or inaction by the department may not be  
13 asserted as a defense to a claim by the receiver.

14 (d) Except as provided by Subsection (e), a judgment or  
15 order entered against an insured or the insurer in contravention of  
16 any stay or injunction under this chapter, or at any time by default  
17 or collusion, may not be considered as evidence of liability or of  
18 the quantum of damages in adjudicating claims filed in the estate  
19 arising out of the subject matter of the judgment or order.

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

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

26 Sec. 21A.013. IMMUNITY AND INDEMNIFICATION OF THE RECEIVER  
27 AND ASSISTANTS. (a) For the purposes of this section, the persons

1 entitled to immunity or indemnification under this section, as  
2 applicable, are:

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

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

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

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

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

14 (3) all of the receiver's present and former  
15 contractors, including all persons with whom the receiver, special  
16 deputies, or assistant special deputies have contracted to assist  
17 in a delinquency proceeding under this chapter, including  
18 attorneys, accountants, auditors, actuaries, investment bankers,  
19 financial advisors, and any other professionals or firms who are  
20 retained or contracted with by the receiver as independent  
21 contractors and all employees of the contractors.

22 (b) The receiver, the receiver's assistants, and the  
23 receiver's contractors, as described in Subsection (a), have  
24 immunity under this chapter, as described by Subsections (c) and  
25 (d).

26 (c) The receiver, the receiver's assistants, and the  
27 receiver's contractors have official immunity and are immune from

1 suit and liability, both personally and in their official  
2 capacities, for any claim for damage to or loss of property or  
3 personal injury or other civil liability caused by or resulting  
4 from any alleged act, error, or omission of the receiver or any  
5 assistant or contractor arising out of or by reason of their duties  
6 or employment. Nothing in this provision shall be construed to hold  
7 the receiver or any assistant or contractor immune from suit or  
8 liability for any damage, loss, injury, or liability caused by the  
9 intentional or wilful and wanton misconduct of the receiver, any  
10 assistant, or contractor.

11 (d) In addition to the immunity described by Subsection (c),  
12 the receiver, the receiver's assistants, and the receiver's  
13 contractors have absolute judicial immunity and are immune from  
14 suit and liability, both personally and in their official  
15 capacities, for any claim for damage to or loss of property or  
16 personal injury or other civil liability caused by or resulting  
17 from any alleged act, error, or omission of the receiver,  
18 assistant, or contractor arising out of or by reason of any matters  
19 that have been subject to review by the receivership court after  
20 notice and opportunity to be heard, provided that the alleged act,  
21 error, or omission was not disapproved or disallowed by the  
22 receivership court.

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

26 (f) If any legal action is commenced against the receiver or  
27 any assistant, whether against the receiver or assistant personally

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

12 (1) did not arise out of or by reason of their duties  
13 or employment; or

14 (2) was caused by intentional or wilful and wanton  
15 misconduct.

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

26 (h) Any indemnification for expense payments, judgments,  
27 settlements, decrees, attorney's fees, surety bond premiums, or

1 other amounts paid or to be paid from the insurer's assets pursuant  
2 to this section are an administrative expense of the insurer.

3 (i) In the event of any actual or threatened litigation  
4 against a receiver or any assistant for whom immunity or indemnity  
5 may be available under this section, a reasonable amount of funds,  
6 which in the judgment of the receiver may be needed to provide  
7 immunity or indemnity, must be segregated and reserved from the  
8 assets of the insurer as security for the payment of indemnity  
9 until:

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

11 (2) all actual or threatened actions against the  
12 receiver or any assistant have been completely and finally  
13 resolved; and

14 (3) all obligations under this section have been  
15 satisfied.

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

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

27 (1) did not arise out of or by reason of the



1 assistant's duties or employment; or

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

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

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

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

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

18 (n) The immunity and indemnification provided to special  
19 deputies, assistant special deputies, and the receiver's  
20 contractors under this section do not apply to any action by the  
21 receiver against that person.

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

25 (p) No legal action shall lie against the receiver or any  
26 assistant based in whole or in part on any alleged act, error, or  
27 omission that took place prior to September 1, 2005, unless suit is

1 filed and valid service of process is obtained not later than August  
2 31, 2006.

3 (g) Subsections (e)-(l) of this section apply to any suit  
4 that is pending on or filed after September 1, 2005, without regard  
5 to when the alleged act, error, or omission took place.

6 Sec. 21A.014. APPROVAL AND PAYMENT OF EXPENSES. (a) The  
7 receiver may pay any expenses under contracts, leases, employment  
8 agreements, or other arrangements entered into by the insurer prior  
9 to receivership, as the receiver deems necessary. The receiver is  
10 not required to pay any such expenses that the receiver determines  
11 are not necessary, and may reject any contract pursuant to Section  
12 21A.155.

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

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

17 (1) the terms of compensation of any special deputies  
18 or contractors with respect to which the total amount of the  
19 compensation is reasonably expected by the receiver to exceed  
20 \$250,000, or another amount established by the receivership court;  
21 and

22 (2) any other anticipated expense in excess of  
23 \$25,000, or another amount established by the receivership court.

24 (d) The receiver may, as the receiver deems appropriate,  
25 submit an application to approve any compensation, anticipated  
26 expenses, or incurred expenses not described in Subsection (c)(1).

27 (e) The receiver may pay any expenses not requiring

1 receivership court approval and any expenses approved in the  
2 rehabilitation or liquidation order.

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

7 (g) On an annual or more frequent basis, the receiver shall  
8 submit to the receivership court a report summarizing the expenses  
9 incurred in the prior period.

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

13 (i) All expenses of receivership shall be paid from the  
14 assets of the insurer, except as provided in this subsection. In  
15 the event that the property of the insurer does not contain  
16 sufficient cash or liquid assets to defray the expenses incurred,  
17 the commissioner may advance funds from the account established  
18 under Section 21A.305. Any amounts advanced shall be repaid to the  
19 account out of the first available money of the insurer.

20 Sec. 21A.015. FINANCIAL REPORTING. (a) Not later than the  
21 120th day after the date of entry of an order of receivership by the  
22 receivership court, and at least annually thereafter, the receiver  
23 shall comply with all requirements for receivership financial  
24 reporting as specified by the National Association of Insurance  
25 Commissioners.

26 (b) Not later than the 120th day after the date of entry of  
27 an order of liquidation by the receivership court, and at least

1 quarterly thereafter, or at other intervals as may be agreed to  
2 between the liquidator and the guaranty associations, but in no  
3 event less than annually, each affected guaranty association shall  
4 file reports with the liquidator. The reports must be in a format  
5 compatible with that specified by the National Association of  
6 Insurance Commissioners.

7 Sec. 21A.016. RECORDS. (a) Upon entry of an order of  
8 rehabilitation or liquidation, the receiver is vested with title to  
9 all of the books, documents, papers, and other records of the  
10 insurer, wherever located. The receiver may immediately take  
11 possession and control of all of the records of the insurer, and of  
12 the premises where the records are located.

13 (b) The receiver has the authority to certify the records of  
14 a delinquent insurer described in Subsection (a) and the records of  
15 the receiver's office created and maintained in connection with a  
16 delinquent insurer, as follows:

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

19 (A) are true and correct copies of records of the  
20 insurer; and

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

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

27 (c) Original books, documents, papers, and other records,

1 or copies of original records certified under Subsection (b), when  
2 admitted in evidence, are prima facie evidence of the facts  
3 disclosed.

4 (d) The records of a delinquent insurer held by the receiver  
5 may not be considered records of the department for any purposes,  
6 and Chapter 552, Government Code, does not apply to these records.

7 [Sections 21A.017-21A.050 reserved for expansion]

8 SUBCHAPTER B. PROCEEDINGS PRIOR TO RECEIVERSHIP ORDER

9 Sec. 21A.051. RECEIVERSHIP COURT'S SEIZURE ORDER. (a) The  
10 commissioner may file in a district court of Travis County a  
11 petition with respect to a domestic insurer or an unauthorized  
12 insurer:

13 (1) alleging that there exist grounds that would  
14 justify a court order for a formal delinquency proceeding against  
15 an insurer under this chapter;

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

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

20 (b) Upon a filing under Subsection (a), the receivership  
21 court may issue, ex parte and without notice or hearing, the  
22 requested seizure order directing the commissioner to take  
23 possession and control of all or a part of the property, books,  
24 accounts, documents, and other records of an insurer, and of the  
25 premises occupied by it for transaction of its business, and until  
26 further order of the receivership court, enjoining the insurer and  
27 its officers, managers, agents, and employees from disposition of

1 its property and from the transaction of its business except with  
2 the written consent of the commissioner. Any person having  
3 possession or control of and refusing to deliver any of the books,  
4 records, or assets of a person against whom a seizure order has been  
5 issued commits an offense. An offense under this subsection is a  
6 misdemeanor punishable by a fine not to exceed \$1,000 or  
7 imprisonment not to exceed one year, or both fine and imprisonment.

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

13 (d) The receivership court shall specify in the seizure  
14 order what its duration is, which shall be a time the receivership  
15 court deems necessary for the commissioner to ascertain the  
16 condition of the insurer. On motion of the commissioner or the  
17 insurer, or the court's own motion, the receivership court may,  
18 from time to time, hold hearings as it deems desirable after notice  
19 as it deems appropriate, and may extend, shorten, or modify the  
20 terms of the seizure order. The receivership court shall vacate the  
21 seizure order if the commissioner fails to commence a formal  
22 proceeding under this chapter after having had a reasonable  
23 opportunity to do so. An order of the receivership court pursuant to  
24 a formal proceeding under this chapter vacates the seizure order.

25 (e) Entry of a seizure order under this section does not  
26 constitute a breach or an anticipatory breach of any contract of the  
27 insurer.

1       (f) An insurer subject to an ex parte seizure order under  
2 this section may petition the receivership court at any time after  
3 the issuance of a seizure order for a hearing and review of the  
4 seizure order. The receivership court shall hold the hearing and  
5 review not later than the 15th day after the date of the request. A  
6 hearing under this subsection may be held privately in chambers,  
7 and a hearing shall be held privately in chambers if the insurer  
8 proceeded against so requests.

9       (g) If, at any time after the issuance of a seizure order, it  
10 appears to the receivership court that any person whose interest is  
11 or will be substantially affected by the seizure order did not  
12 appear at the hearing and has not been served, the receivership  
13 court may order that notice be given to the person. An order that  
14 notice be given does not stay the effect of any seizure order  
15 previously issued by the receivership court.

16       (h) Whenever the commissioner makes any seizure as provided  
17 in Subsection (b), on the demand of the commissioner, the sheriff of  
18 any county and the police department of any municipality shall  
19 furnish the commissioner with the deputies, patrolmen, or officers  
20 as may be necessary to assist the commissioner in making and  
21 enforcing the seizure order.

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

26       (b) The petition must state the grounds upon which the  
27 proceeding is based and the relief requested and may include a

1 prayer for restraining orders and injunctive relief as described in  
2 Section 21A.008. Not later than the 10th day after the date of the  
3 filing of the petition or order, a copy shall be forwarded by first  
4 class mail or electronic communication as permitted by the  
5 receivership court to the commissioners in states where the insurer  
6 did business.

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

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

13 (1) the receivership court may issue an initial order  
14 containing the relief requested;

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

20 (3) the order must state the time and date of its  
21 issuance; and

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

26 (e) If no temporary restraining order is requested, the  
27 receivership court shall cause summons to be issued. The summons



1 must specify a return date not later than the 30th day after the  
2 date of issuance and that an answer must be filed at or before the  
3 return date.

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

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

11 (1) continue the summary hearing not more than 10  
12 days;

13 (2) provide for alternative service of summons upon  
14 the person; and

15 (3) extend any restraining order.

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

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

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

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

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

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

10       Sec. 21A.054. PROCEEDINGS FOR EXPEDITED TRIAL:  
11 CONTINUANCES, DISCOVERY, EVIDENCE. (a) The receivership court,  
12 without a jury and without unnecessary delays, shall proceed to  
13 hear the case on the petition to commence a formal delinquency  
14 proceeding at the time and date set forth for trial. The  
15 receivership court shall give precedence to the matter over all  
16 other matters. To the extent authorized by law, the receivership  
17 court may assign the matter to other judges if necessary to comply  
18 with the need for expedited proceedings under this chapter.

19       (b) Continuances for trial may be granted only in extreme  
20 circumstances.

21       (c) The receivership court shall admit into evidence as  
22 self-authenticated certified copies of any of the following when  
23 offered by the commissioner:

24           (1) the financial statements made by the person or an  
25 affiliate;

26           (2) examination reports of the person or an affiliate  
27 made by or on behalf of the commissioner; and

1           (3) any other document filed with any insurance  
2 department by the person or an affiliate.

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

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

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

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

20           Sec. 21A.056. CONFIDENTIALITY. (a) In all proceedings and  
21 judicial reviews under Section 21A.051, all records of the insurer,  
22 department files, court records and papers, and other documents, so  
23 far as they pertain to or are a part of the record of the  
24 proceedings, are confidential, and all papers filed with the clerk  
25 of the court shall be held by the clerk in a confidential file as  
26 permitted by law, except to the extent necessary to obtain  
27 compliance with any order entered in connection with the

1 proceedings, unless and until:

2 (1) the court, after hearing argument in chambers,  
3 orders otherwise;

4 (2) the insurer requests that the matter be made  
5 public; or

6 (3) the commissioner applies for an order under  
7 Section 21A.057.

8 (b) The commissioner, conservator, or rehabilitator may  
9 share documents, materials, or other information in the possession,  
10 custody, or control of the department pertaining to an insurer that  
11 is the subject of a proceeding under this chapter with other state,  
12 federal, and international regulatory agencies, with the National  
13 Association of Insurance Commissioners and its affiliates and  
14 subsidiaries, with state, federal, and international law  
15 enforcement authorities, with an auditor appointed by the  
16 receivership court in accordance with Section 21A.355, and,  
17 pursuant to Section 21A.105, with representatives of guaranty  
18 associations that may have statutory obligations as a result of the  
19 insolvency of the insurer, provided that the recipient agrees to  
20 maintain the confidentiality of the documents, material, or other  
21 information. Nothing in this section limits the power of the  
22 commissioner to disclose information under other applicable law.

23 (c) A domiciliary receiver shall permit a commissioner of  
24 another state or guaranty association to obtain a listing of  
25 policyholders and certificate holders residing in the requestor's  
26 state, including current addresses and summary policy information,  
27 provided that the commissioner of the other state or guaranty

1 association agrees to maintain the confidentiality of the records  
2 and agrees that the records will be used only for regulatory or  
3 guaranty association purposes. Access to records may be limited to  
4 normal business hours. In the event that the domiciliary receiver  
5 believes that certain information is sensitive and that disclosure  
6 may cause a diminution in recovery, the receiver may apply for a  
7 protective order imposing additional restrictions on access.

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

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

16 Sec. 21A.057. GROUNDS FOR CONSERVATION, REHABILITATION, OR  
17 LIQUIDATION. The commissioner may petition to the court for an  
18 order authorizing the commissioner to conserve, rehabilitate, or  
19 liquidate a domestic insurer, an alien insurer domiciled in this  
20 state, or an unauthorized insurer on any one or more of the  
21 following grounds:

22 (1) the insurer is impaired;

23 (2) the insurer is insolvent;

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

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

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

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

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

25           (8) at any time after the issuance of an order under  
26 Article 1.32 or 21.28A, or at the time of instituting any proceeding  
27 under this chapter, it appears to the commissioner that upon good

1 cause shown, it would not be in the best interest of the  
2 policyholders, creditors, or the public to proceed with the conduct  
3 of the business of the insurer;

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

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

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

15 (A) dishonest or untrustworthy; or

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

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

1           (13) after demand by the commissioner under Article  
2 1.15, 1.15A, or 1.16 or under this chapter, the insurer has failed  
3 promptly to make available for examination any of its own property,  
4 books, accounts, documents, or other records, or those of any  
5 subsidiary or related company within the control of the insurer or  
6 of any person having executive authority in the insurer, so far as  
7 they pertain to the insurer;

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

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

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

24           (17) the insurer has failed to pay within 60 days after  
25 the due date any obligation to any state or political subdivision of  
26 a state or any judgment entered in any state, if the court in which  
27 the judgment was entered had jurisdiction over the subject matter,



1 except that nonpayment is not a ground until 60 days after any good  
2 faith effort by the insurer to contest the obligation has been  
3 terminated, whether it is before the commissioner or in the courts;

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

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

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

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

22 (22) when authorized by department rules.

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

1 [Sections 21A.059-21A.100 reserved for expansion]

2 SUBCHAPTER C. REHABILITATION

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

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

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

4 (c) Neither the filing of a petition under this chapter nor  
5 the entry of any order of seizure, rehabilitation, or liquidation  
6 constitutes a breach or an anticipatory breach of any contract or  
7 lease of the insurer.

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

19 (e) Unless otherwise directed by the receivership court,  
20 the rehabilitator shall, not later than the fifth day after the date  
21 of entry of an order of rehabilitation, give or cause to be given  
22 notice of the order of rehabilitation by first class mail or  
23 electronic communication to the guaranty associations of this state  
24 and any other guaranty association that has or may have obligations  
25 as a result of the receivership proceeding.

26 Sec. 21A.102. POWERS AND DUTIES OF THE REHABILITATOR. (a)  
27 The commissioner as rehabilitator may appoint one or more special

1 deputies, who have all the powers and responsibilities of the  
2 rehabilitator granted under this section. The rehabilitator may  
3 employ or contract with legal counsel, actuaries, accountants,  
4 appraisers, consultants, clerks, assistants, and other personnel  
5 as deemed necessary. Any special deputy or other person with whom  
6 the rehabilitator contracts under this subsection is considered an  
7 agent of the commissioner only in the commissioner's capacity as  
8 rehabilitator, and is not considered an agent of the state. The  
9 provisions of any law governing the procurement of goods and  
10 services by the state does not apply to any contract entered into by  
11 the commissioner as rehabilitator. The compensation of any special  
12 deputies, employees, and contractors and all expenses of taking  
13 possession of the insurer and of conducting the rehabilitation  
14 shall be fixed by the rehabilitator, with the approval of the  
15 receivership court in accordance with Section 21A.014, and shall be  
16 paid out of the property of the insurer. The persons appointed  
17 under this subsection serve at the pleasure of the rehabilitator.  
18 If the rehabilitator deems it necessary to the proper performance  
19 of the rehabilitator's duties under this chapter, the rehabilitator  
20 may appoint an advisory committee of policyholders, claimants, or  
21 other creditors, including guaranty associations. The committee  
22 serves at the pleasure of the rehabilitator and without  
23 compensation or reimbursement for expenses. The rehabilitator or  
24 the receivership court in rehabilitation proceedings conducted  
25 under this chapter may not appoint another committee of any nature.

26 (b) The rehabilitator may take action as the rehabilitator  
27 deems necessary or appropriate to reform and revitalize the

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

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

13 (d) The rehabilitator may assert all defenses available to  
14 the insurer as against third persons, including statutes of  
15 limitations, statutes of frauds, and the defense of usury. A waiver  
16 of any defense by the insurer after a petition pursuant to Sections  
17 21A.051 or 21A.057 has been filed does not bind the rehabilitator.

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

24 Sec. 21A.103. FILING OF REHABILITATION PLANS. (a) The  
25 rehabilitator shall prepare and file a plan to effect  
26 rehabilitation with the receivership court not later than the first  
27 anniversary of the entry of the rehabilitation order or another

1 further time as the receivership court may allow. Upon application  
2 of the rehabilitator for approval of the plan, and after the notice  
3 and hearings the receivership court may prescribe, the receivership  
4 court may approve or disapprove the proposed plan or may modify it  
5 and approve it as modified. Any plan approved under this section  
6 must be, in the judgment of the receivership court, fair and  
7 equitable to all parties concerned. If the plan is approved, the  
8 rehabilitator shall carry out the plan. In the case of a life  
9 insurer, if all rights of shareholders are relinquished, the  
10 proposed plan may include the imposition of liens upon the policies  
11 of the company. A plan for a life insurer may also propose  
12 imposition of a moratorium upon loan and cash surrender rights  
13 under policies, for a period not to exceed one year from the entry  
14 of the rehabilitation order approving the rehabilitation plan,  
15 unless the receivership court, for good cause shown, extends the  
16 moratorium.

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

19 (c) A plan must:

20 (1) except as provided by Subsection (e), provide no  
21 less favorable treatment of a claim or class of claims than would  
22 occur in liquidation, unless the holder of a particular claim or  
23 interest agrees to a less favorable treatment of that particular  
24 claim or interest;

25 (2) provide adequate means for the plan's  
26 implementation;

27 (3) contain information concerning the financial

1 condition of the insurer and the operation and effect of the plan,  
2 as far as is reasonably practicable in light of the nature and  
3 history of the insurer, the condition of the insurer's books and  
4 records, and the nature of the plan; and

5 (4) provide for the disposition of the books, records,  
6 documents, and other information relevant to the duties and  
7 obligations covered by the plan.

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

10 (1) payment of distributions;

11 (2) assumption or reinsurance of all or a portion of  
12 the insurer's remaining liabilities by, and transfer of assets and  
13 related books and records to, an authorized insurer or other  
14 entity;

15 (3) to the extent appropriate, application of  
16 insurance company regulatory market conduct standards to any entity  
17 administering claims on behalf of the receiver or assuming direct  
18 liabilities of the insurer;

19 (4) contracting with a state guaranty association or  
20 any other qualified entity to perform the administration of claims  
21 covered or not covered by guaranty associations;

22 (5) annual independent financial and performance  
23 audits of any entity administering claims on behalf of the receiver  
24 that is not otherwise subject to examination pursuant to state  
25 insurance law; and

26 (6) termination of the insurer's liabilities as of a  
27 date certain.

1       (e) A plan may designate and separately treat one or more  
2 separate subclasses of claims consisting only of claims within the  
3 subclasses that are for or reduced to de minimis amounts. For  
4 purposes of this subsection, a "de minimis amount" means any amount  
5 equal to or less than a maximum de minimis amount approved by the  
6 receivership court as being reasonable and necessary for  
7 administrative convenience.

8       Sec. 21A.104. TERMINATION OF REHABILITATION. (a) When the  
9 rehabilitator believes further attempts to rehabilitate an insurer  
10 would substantially increase the risk of loss to creditors,  
11 policyholders, or the public or would be futile, the rehabilitator  
12 may move for an order of liquidation. In accordance with Section  
13 21A.105, the rehabilitator or the rehabilitator's designated  
14 representative shall coordinate with the guaranty associations  
15 that may become liable as a result of the liquidation and any  
16 national association of guaranty associations to plan for  
17 transition to liquidation.

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

26       (c) The rehabilitator or the directors of the insurer may at  
27 any time petition the receivership court for, or the receivership



1 court on its own motion may enter, an order terminating  
2 rehabilitation of an insurer. Subject to the provisions of Section  
3 21A.351, if the receivership court finds that rehabilitation has  
4 been accomplished and that grounds for rehabilitation under Section  
5 21A.057 no longer exist, it shall order that the insurer be restored  
6 to possession of its property and the control of the business.

7 Sec. 21A.105. ORDERLY TRANSITION TO LIQUIDATION. (a) Upon  
8 a determination by the rehabilitator that rehabilitation efforts  
9 may not be successful, the rehabilitator shall participate in  
10 cooperative efforts with the potentially obligated guaranty  
11 associations. To ensure that an orderly transition to liquidation  
12 occurs, the rehabilitator shall make available to the guaranty  
13 associations the information necessary to discharge their  
14 responsibilities upon becoming statutorily obligated. To the  
15 extent that information is available, or as it becomes available,  
16 the rehabilitator shall provide appropriate information to  
17 guaranty associations in the states where the insurer transacted  
18 business.

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

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

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

27 (3) claim and policy reserves;

- 1           (4) account values and cash surrender values;  
2           (5) policy loans;  
3           (6) interest crediting history;  
4           (7) premiums and mode of payment;  
5           (8) unpaid claims and amounts;  
6           (9) sample policies and endorsements;  
7           (10) a listing of different locations of claim files;  
8           (11) if third-party administrators were used, copies  
9 of executed contracts and a description of the contractual  
10 arrangements; and  
11           (12) information concerning claims in litigation or  
12 dispute, including a listing of claims with assigned defense  
13 counsel for those claims going to trial in the near future after a  
14 possible liquidation date.

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

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

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

2 SUBCHAPTER D. LIQUIDATION

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

23 (b) Upon issuance of the order of liquidation, the rights  
24 and liabilities of the insurer and of its creditors, policyholders,  
25 shareholders, members, and all other persons interested in its  
26 estate become fixed as of the date of entry of the order of  
27 liquidation, except as provided in Sections 21A.152 and 21A.255,

1 unless otherwise fixed by the court.

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

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

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

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

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

26 (1) the 30th day after the date of entry of the  
27 liquidation order;

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

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

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

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

9           (c) An order of liquidation under Section 21A.151 must  
10 terminate coverages at the time specified in Subsection (b) for  
11 purposes of any other statute.

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

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

27           (f) The obligations of the insolvent insurer's reinsurers

1 are released or discharged by a cancellation under this section.

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

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

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

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

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

25 (4) authorizing the sale of the corporate entity or  
26 charter, together with any of its authorizations or licenses to do  
27 business and the assets the liquidator deems appropriate to the

1 transaction, free and clear from the claims or interest of all  
2 claimants, creditors, policyholders, and stockholders.

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

17 (d) This section shall be liberally construed to accomplish  
18 its purposes to:

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

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

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

27 (1) the receivership court may order dissolution of

1 the corporate entity or charter;

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

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

8 Sec. 21A.154. POWERS OF THE LIQUIDATOR. (a) The liquidator  
9 may appoint a special deputy or deputies to act for the liquidator  
10 under this chapter and employ or contract with legal counsel,  
11 actuaries, accountants, appraisers, consultants, clerks,  
12 assistants, and other personnel the liquidator may deem necessary  
13 to assist in the liquidation. A special deputy has all powers of  
14 the liquidator granted by this section, unless specifically limited  
15 by the liquidator, and serves at the pleasure of the liquidator. A  
16 special deputy is considered to be an agent of the commissioner only  
17 in the commissioner's capacity as liquidator, and is not considered  
18 to be an agent of the state. The provisions of any law governing the  
19 procurement of goods and services by the state do not apply to any  
20 contract entered into by the commissioner as liquidator.

21 (b) The liquidator may determine the reasonable  
22 compensation for any special deputies, employees, or contractors  
23 retained by the liquidator as provided in Subsection (a) and pay  
24 compensation in accordance with Section 21A.014.

25 (c) The liquidator may appoint, with the approval of the  
26 receivership court, an advisory committee of policyholders,  
27 claimants, or other creditors, including guaranty associations, if



1 the committee be deemed necessary. The committee serves at the  
2 pleasure of the liquidator, and the decision to appoint an advisory  
3 committee is at the sole discretion of the liquidator. The  
4 committee serves without compensation or reimbursement for  
5 expenses. The liquidator or the receivership court in liquidation  
6 proceedings conducted under this chapter may not appoint another  
7 committee of any nature.

8 (d) The liquidator may hold hearings, subpoena witnesses to  
9 compel their attendance, administer oaths, examine any person under  
10 oath, compel any persons to subscribe to their testimony after it  
11 has been correctly reduced to writing, and, in connection with a  
12 power under this subdivision, require the production of any books,  
13 papers, records, or other documents that the liquidator deems  
14 relevant to the inquiry.

15 (e) The liquidator may audit the books and records of all  
16 agents of the insurer to the extent that those records relate to the  
17 business activities of the insurer.

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

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

23 (2) do other acts as necessary or expedient to  
24 collect, conserve, or protect the insurer's property, including the  
25 power to sell, compound, compromise, or assign debts for purposes  
26 of collection upon such terms and conditions as the liquidator  
27 deems consistent with this chapter; and

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

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

5           (h) The liquidator may use property of the estate of an  
6 insurer under a liquidation order to transfer policy obligations to  
7 a solvent assuming insurer, if the transfer can be arranged without  
8 prejudice to applicable priorities under Section 21A.301.

9           (i) The liquidator may, subject to Subsection (x), acquire,  
10 hypothecate, encumber, lease, improve, sell, transfer, abandon, or  
11 otherwise dispose of or deal with any property of the estate at its  
12 market value or upon terms and conditions that are fair and  
13 reasonable. The liquidator also has power to execute, acknowledge,  
14 and deliver any and all deeds, assignments, releases, and other  
15 instruments necessary or proper to effectuate any sale of property  
16 or other transaction in connection with the liquidation.

17           (j) The liquidator may borrow money on the security of the  
18 property of the estate or without security and execute and deliver  
19 all documents necessary to that transaction for the purpose of  
20 facilitating the liquidation. Any funds borrowed under this  
21 subsection may be repaid as an administrative expense and have  
22 priority over any other claims in Class 1 under the priority of  
23 distribution.

24           (k) The liquidator may enter into contracts as necessary to  
25 carry out the order to liquidate and, subject to the provisions of  
26 Section 21A.155, may assume or reject any executory contract or  
27 unexpired lease to which the insurer is a party.

1       (l) The liquidator may continue to prosecute and institute  
2 in the name of the insurer or in the liquidator's own name any and  
3 all suits and other legal proceedings, in this state or elsewhere,  
4 and abandon the prosecution of claims the liquidator deems  
5 unprofitable to pursue further. If the insurer is dissolved under  
6 Section 21A.153, the liquidator has the power to apply to any court  
7 in this state or elsewhere for leave to substitute the liquidator  
8 for the insurer as a party.

9       (m) The liquidator may prosecute any action that may exist  
10 on behalf of the creditors, members, policyholders, shareholders of  
11 the insurer, or the public against any person, except to the extent  
12 that a claim is personal to a specific creditor, member,  
13 policyholder, or shareholder and recovery on such claim would not  
14 inure to the benefit of the estate. This subsection does not  
15 infringe or impair any of the rights provided to a guaranty  
16 association pursuant to its enabling statute or otherwise.

17       (n) The liquidator may take possession of any or all records  
18 and property of the insurer as may be convenient for the purposes of  
19 efficient and orderly execution of the liquidation. Guaranty  
20 associations must be allowed reasonable access to the records of  
21 the insurer as is necessary for the guaranty associations to carry  
22 out their statutory obligations.

23       (o) The liquidator may deposit in one or more banks in this  
24 state the sums that are required for meeting current administration  
25 expenses and dividend distributions.

26       (p) The liquidator may invest all sums not currently needed,  
27 unless the receivership court orders otherwise.

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

4       (r) The liquidator may assert all defenses available to the  
5 insurer as against third persons, including statutes of limitation,  
6 statutes of frauds, and the defense of usury. A waiver of any  
7 defense by the insurer after a petition pursuant to Section 21A.051  
8 or 21A.057 has been filed does not bind the liquidator. When a  
9 guaranty association has an obligation to defend any suit, the  
10 liquidator shall defer to the association's obligation and may  
11 defend only in cooperation with the guaranty association or in the  
12 absence of the defense.

13       (s) The liquidator may exercise and enforce all the rights,  
14 remedies, and powers of any creditor, shareholder, policyholder, or  
15 member, including any power to avoid any transfer or lien that may  
16 be given under this chapter or otherwise.

17       (t) The liquidator may intervene in any proceeding wherever  
18 instituted that might lead to the appointment of a receiver or  
19 trustee and act as the receiver or trustee whenever the appointment  
20 is offered.

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

23       (v) The liquidator may exercise all powers now held or  
24 hereafter conferred upon receivers by the laws of this state not  
25 inconsistent with the provisions of this chapter.

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

1       (x) The enumeration, in this section, of the powers and  
2 authority of the liquidator may not be construed as a limitation  
3 upon the liquidator, nor may it exclude in any manner the right to  
4 do other acts not specifically enumerated or otherwise provided  
5 for, as may be necessary or appropriate for the accomplishment of or  
6 in aid of the purpose of liquidation.

7       (y) The liquidator may hypothecate, encumber, lease, sell,  
8 transfer, abandon, or otherwise dispose of or deal with any  
9 property of the insurer, settle or resolve any claim brought by the  
10 liquidator on behalf of the insurer, or commute or settle any claim  
11 of reinsurance under any contract of reinsurance, as follows:

12           (1) if the property or claim has a market or settlement  
13 value that does not exceed the lesser of \$1,000,000 or 10 percent of  
14 the general assets of the estate as shown on the receivership's  
15 financial statements, the liquidator may take action at the  
16 liquidator's discretion, provided that the receivership court may,  
17 upon petition of the liquidator, increase the threshold upon a  
18 showing that compliance with this requirement is burdensome to the  
19 liquidator in administering the estate and is unnecessary to  
20 protect the material interests of creditors;

21           (2) in all instances other than those described in  
22 Subdivision (1), the liquidator may take the action only after  
23 obtaining approval of the receivership court as provided in Section  
24 21A.007;

25           (3) the liquidator may, at the liquidator's  
26 discretion, request the receivership court to approve a proposed  
27 action as provided in Section 21A.007 if the value of the property

1 or claim appears to be less than the threshold provided in  
2 Subdivision (1) but cannot be ascertained with certainty, or for  
3 any other reason as determined by the liquidator; and

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

8 (z) The transferee of a right to payment under Subsection  
9 (d)(4) has the rights to collect and enforce collection of the  
10 reinsurance for the amount payable to the ceding insurer or to its  
11 receiver, without diminution because of the insolvency or because  
12 the receiver has failed to pay all or a portion of the claim, based  
13 on the amounts paid or allowed pursuant to Section 21A.212(c). The  
14 transfer of the rights does not give rise to any defense regarding  
15 the reinsurer's obligations under the reinsurance agreement  
16 regardless of whether an agreement or other applicable law  
17 prohibits the transfer of rights under the reinsurance agreement.  
18 Except as provided in this subsection, any transfer of rights  
19 pursuant to Subsection (d)(4) does not impair any rights or  
20 defenses of the reinsurer that existed prior to the transfer or  
21 would have existed in the absence of the transfer. Except as  
22 otherwise provided in this subsection, any transfer of rights  
23 pursuant to Subsection (d)(4) does not relieve the transferee or  
24 the liquidator from obligations owed to the reinsurer pursuant to  
25 the reinsurance or other agreement.

26 (aa) The liquidator is not obligated to defend any action  
27 against the insurer or insured. Any insureds not defended by a

1 guaranty association may provide their own defense, and include the  
2 cost of the defense as part of their claims, if the defense was an  
3 obligation of the insurer. The right of the liquidator to contest  
4 coverage on a particular claim is preserved without the necessity  
5 for an express reservation of rights.

6 Sec. 21A.155. EXECUTORY CONTRACTS. (a) The liquidator may  
7 assume or reject any executory contract or unexpired lease of the  
8 insurer.

9 (b) Neither the filing of a petition under this chapter nor  
10 the entry of an order of seizure, rehabilitation, or liquidation  
11 constitutes a breach or anticipatory breach of any contract or  
12 lease of the insurer.

13 (c) If there has been a default in an executory contract or  
14 unexpired lease of the insurer, the liquidator may not assume the  
15 contract or lease unless, at the time of the assumption of the  
16 contract or lease, the liquidator:

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

19 (2) provides adequate assurance of future performance  
20 under the contract or lease.

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

23 (1) the insolvency or financial condition of the  
24 insurer at any time before the closing of the receivership  
25 proceeding;

26 (2) the appointment of or taking possession by a  
27 receiver in a case under this chapter or a custodian before the

1 commencement of the receivership proceeding; or

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

6 Sec. 21A.156. NOTICE TO CREDITORS AND OTHERS. (a) Unless  
7 the receivership court otherwise directs, the liquidator shall give  
8 or cause to be given notice of the liquidation order as soon as  
9 possible:

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

12 (A) any guaranty association that is or may  
13 become obligated as a result of the liquidation and any national  
14 association of guaranty associations;

15 (B) all the insurer's agents, brokers, or  
16 producers of record with current appointments or current licenses  
17 to represent the insurer and all other agents, brokers, or  
18 producers as the liquidator deems appropriate at their last known  
19 address; and

20 (C) all persons or entities known or reasonably  
21 expected to have claims against the insurer, including all  
22 policyholders and reinsurers, at their last known address as  
23 indicated by the records of the insurer, and all state and federal  
24 agencies with an interest in the proceeding; and

25 (2) by publication in a newspaper of general  
26 circulation in the county in which the insurer has its principal  
27 place of business and in any other locations as the liquidator deems



1 appropriate.

2 (b) When the commissioner is appointed liquidator for an  
3 insurer domiciled in another state, the notice of the liquidation  
4 order given by the domiciliary liquidator in compliance with the  
5 laws of that state is sufficient notice, and the ancillary receiver  
6 shall not be required to give any notice unless the domiciliary  
7 liquidator fails to give notice. The ancillary receiver may  
8 request that the domiciliary liquidator's notice to potential  
9 policyholder claimants mention the existence of any applicable  
10 guaranty association laws in this state. If notice by the  
11 domiciliary liquidator in another state does not mention the  
12 existence of guaranty association laws in this state, the ancillary  
13 receiver may arrange to give notice to those who may have rights  
14 under applicable guaranty association laws in this state, together  
15 with a citation to the guaranty association statute in this state.

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

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

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

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

26 (4) to the extent applicable, a statement that  
27 coverage by state guaranty associations may be available for all or

1 part of policy benefits in accordance with applicable state  
2 guaranty laws;

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

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

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

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

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

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

1 keep the liquidator informed of any changes of address.

2 (f) Upon application of the liquidator and for good cause  
3 shown, the receivership court may:

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

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

11 Sec. 21A.157. DUTIES OF AGENTS. (a) Every person who  
12 represented the insurer as an agent and receives notice in the form  
13 prescribed in Section 21A.156 that the insurer is the subject of a  
14 liquidation order, not later than the 30th day after the date of the  
15 notice, shall provide to the liquidator, in addition to the  
16 information the agent may be required to provide pursuant to  
17 Section 21A.010, the information in the agent's records related to  
18 any policy issued by the insurer through the agent and, if the agent  
19 is a general agent, the information in the general agent's records  
20 related to any policy issued by the insurer through an agent under  
21 contract to the general agent, including the name and address of the  
22 subagent. For purposes of this subsection, a policy is issued  
23 through an agent if the agent has a property interest in the  
24 expiration of the policy or if the agent has had in the agent's  
25 possession a copy of the declarations of the policy at any time  
26 during the life of the policy, except where the ownership of the  
27 expiration of the policy has been transferred to another.

1       (b) Any agent failing to provide information to the  
2 liquidator as required in Subsection (a) may be subject to payment  
3 of a penalty of not more than \$1,000, and the agent's license may be  
4 suspended after a hearing held by the commissioner.

5           [Sections 21A.158-21A.200 reserved for expansion]

6                   SUBCHAPTER E. ASSET RECOVERY

7       Sec. 21A.201. TURNOVER OF ASSETS. (a) If the receiver  
8 determines that funds or property in the possession of another  
9 person are rightfully the property of the estate, the receiver  
10 shall deliver to the person a written demand for immediate delivery  
11 of the funds or property, referencing this section by number and the  
12 court and docket number of the receivership action, and notifying  
13 the person that any claim of right to the funds or property by the  
14 person must be presented to the receivership court not later than  
15 the 20th day after the date of the written demand. Any person who  
16 holds funds or other property belonging to an entity subject to an  
17 order of receivership under this chapter shall deliver the funds or  
18 other property to the receiver on demand. Should the person allege  
19 any right to retain the funds or other property, the person, not  
20 later than the 20th day after the date of receipt of the demand that  
21 the funds or property be delivered to the receiver, shall file with  
22 the receivership court a pleading setting out the right. The person  
23 shall serve a copy of the pleading on the receiver. The pleading  
24 must inform the receivership court as to the nature of the claim to  
25 the funds or property, the alleged value of the property or amount  
26 of funds held, and what action, pending determination of the  
27 dispute, has been taken by the person to preserve and protect the

1 property or to preserve any funds. The relinquishment of  
2 possession of funds or property by any person who has received a  
3 demand pursuant to this section does not constitute a waiver of a  
4 right to make a claim in the receivership.

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

16 (c) If a person has filed a pleading alleging any right to  
17 retain funds or property as provided in Subsection (a), the  
18 receivership court shall hold a subsequent hearing to determine the  
19 entitlement of the person to the funds or property claimed by the  
20 receiver.

21 (d) If a person fails to deliver the funds or property or  
22 file the pleading described by Subsection (a) within the period  
23 described by Subsection (a), the receivership court may, upon  
24 petition of the receiver and upon a copy of the petition being  
25 served by the receiver to that person, issue its summary order  
26 directing the immediate delivery of the funds or property to the  
27 receiver and finding that the person has waived all claims of right

1 to the funds or property.

2 (e) If the receiver is successful in establishing the  
3 receiver's claim to the funds or property or any part of the funds  
4 or property, the receiver is entitled to recover judgment for the  
5 following:

6 (1) at the election of the receiver, the property or  
7 its cash value as of the date of the initial order of receivership;

8 (2) rental for the use of tangible property from the  
9 date of the order of receivership to the date the property is  
10 delivered to the receiver;

11 (3) in the case of funds or intangible property, the  
12 greater of the actual interest or income earned by the funds or  
13 property or interest at the statutory rate for judgments from the  
14 date of the order of receivership to the date the funds are  
15 delivered or the intangible property is transferred to the  
16 receiver; and

17 (4) except as to recoveries from guaranty  
18 associations, all costs, including investigative costs and other  
19 expenses necessary to the recovery of the property or funds, and  
20 reasonable attorney's fees.

21 Sec. 21A.202. RECOVERY FROM AFFILIATES. (a) The receiver  
22 has a right to recover from any affiliate of the insurer any asset  
23 transferred to or for the benefit of the affiliate, or the asset's  
24 value, if the transfer was made within the five years preceding the  
25 initial petition for receivership.

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

1           (1) the insurer was solvent;  
2           (2) the transfer was lawful; and  
3           (3) neither the insurer nor the affiliate knew or  
4 reasonably should have known that the transfer, under  
5 then-applicable statutory accounting standards, would:

6                   (A) place the insurer:  
7                           (i) in violation of applicable capital or  
8 surplus requirements;  
9                           (ii) below the applicable minimum  
10 risk-based capital level; or  
11                           (iii) in violation of statutory writing  
12 ratios; or

13                   (B) cause the insurer's filed financial  
14 statements not to fairly present the capital and surplus of the  
15 insurer.

16           (c) If the receiver is successful in establishing the  
17 receiver's claim or any part of the claim, the receiver is entitled  
18 to recover judgment for the following:

19                   (1) at the election of the receiver, the property or  
20 its cash value as of the date of the initial order of receivership;

21                   (2) rental for the use of tangible property from the  
22 date of the order of receivership to the date the property is  
23 delivered to the receiver;

24                   (3) in the case of funds or intangible property, the  
25 greater of the actual interest or income earned by the funds or  
26 property or interest at the statutory rate for judgments from the  
27 date of the order of receivership to the date the funds are

1 delivered or the intangible property is transferred to the  
2 receiver; and

3 (4) all costs, including investigative costs and other  
4 expenses necessary to the recovery of the property or funds, and  
5 reasonable attorney fees.

6 Sec. 21A.203. UNRECORDED OBLIGATIONS AND DEFENSES OF  
7 AFFILIATES. (a) In any proceeding or claim by the receiver, an  
8 affiliate, controlled or controlling person, or present or former  
9 officer, manager, director, trustee, or shareholder of the insurer  
10 may not assert any defense, unless evidence of the defense was  
11 recorded in the books and records of the insurer at or about the  
12 time the events giving rise to the defense occurred and, if required  
13 by statutory accounting practices and procedures, were timely  
14 reported on the insurer's official financial statements filed with  
15 the department.

16 (b) An affiliate, controlled or controlling person, or  
17 present or former officer, manager, director, trustee, or  
18 shareholder of the insurer may not assert any claim, unless the  
19 obligations were recorded in the books and records of the insurer at  
20 or about the time the obligations were incurred and, if required by  
21 statutory accounting practices and procedures, were timely  
22 reported on the insurer's official financial statements filed with  
23 the department.

24 (c) Claims by the receiver against any affiliate,  
25 controlled or controlling person, or present or former officer,  
26 manager, director, trustee, or shareholder of the insurer based on  
27 unrecorded or unreported transactions are not affected by this



1 section.

2 Sec. 21A.204. UNAUTHORIZED POST-PETITION TRANSFERS. (a)  
3 After a petition for receivership has been filed, a transfer of an  
4 interest in property of an insurer made to a person acting in good  
5 faith is valid against the receiver to the extent of the new value  
6 given for the property, for which amount the transferee shall have a  
7 lien on the transferred property.

8 (b) After a petition for receivership has been filed, a  
9 person indebted to the insurer or holding property of the insurer  
10 may, if acting in good faith, pay the indebtedness or deliver the  
11 property, or any part of the indebtedness or property, to the  
12 insurer or upon the insurer's order, with the same effect as if the  
13 petition were not pending.

14 (c) A person asserting the validity of a transfer under this  
15 section has the burden of proof.

16 (d) Except as provided in this section, a transfer by or on  
17 behalf of the insurer after the date of the petition for  
18 receivership by any person other than the receiver is not valid  
19 against the receiver.

20 (e) If the receiver is successful in establishing the  
21 receiver's claim or any part of the claim, the receiver is entitled  
22 to recover judgment from each person receiving any property or  
23 funds from the insurer or any benefit of the property or funds for  
24 the following:

25 (1) at the election of the receiver, the property or  
26 its cash value as of the date of the transfer;

27 (2) rental for the use of tangible property from the

1 date of the transfer to the date the property is delivered to the  
2 receiver;

3 (3) in the case of funds or intangible property, the  
4 greater of the actual interest or income earned by the property or  
5 interest at the statutory rate for judgments from the date of the  
6 transfer to the date the funds are delivered to the receiver; and

7 (4) all costs, including investigative costs and other  
8 expenses necessary to the recovery of the property or funds, and  
9 reasonable attorney fees.

10 Sec. 21A.205. VOIDABLE PREFERENCES AND LIENS. (a) A  
11 "preference" is a transfer of any interest in property of an insurer  
12 that:

13 (1) is made to or for the benefit of a creditor and for  
14 or on account of an antecedent debt and is made or suffered by the  
15 insurer within two years preceding the filing of a successful  
16 petition for receivership under this chapter; and

17 (2) enables the creditor to receive more than the  
18 creditor would receive if the insurer were liquidated under this  
19 chapter, the transfer had not been made, and the creditor were  
20 entitled to receive payment of the debt to the extent provided by  
21 this chapter.

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

23 (1) the insurer was insolvent at the time of the  
24 transfer;

25 (2) the transfer was made within 120 days before the  
26 date of filing of the petition;

27 (3) the creditor receiving the transfer or to be

1 benefited by the transfer, or the creditor's agent acting with  
2 reference to the transfer, had, at the time the transfer was made,  
3 reasonable cause to believe that the insurer was insolvent or was  
4 about to become insolvent; or

5 (4) the creditor receiving the transfer was:

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

7 (B) an employee, attorney, or other person who  
8 was in fact in a position to effect a level of control or influence  
9 over the actions of the insurer comparable to that of an officer or  
10 director, without regard to whether the person held that position;  
11 or

12 (C) an affiliate.

13 (c) The receiver may not avoid a transfer under this  
14 section:

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

16 (A) intended by the insurer and the creditor to  
17 or for whose benefit the transfer was made to be a contemporaneous  
18 exchange for new value given to the insurer and in fact was a  
19 substantially contemporaneous exchange; or

20 (B) made in the ordinary course of business or  
21 financial affairs of the insurer and the transferee or made  
22 according to ordinary business terms in payment of a debt incurred  
23 by the insurer in the ordinary course of business or financial  
24 affairs of the insurer and the transferee; or

25 (2) to or for the benefit of a creditor, to the extent  
26 that, after the transfer, the creditor gave new value to or for the  
27 benefit of the insurer that was:

1                   (A) not secured by an otherwise unavoidable  
2 security interest; and

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

6           (d) For purposes of this section:

7                   (1) a transfer of property other than real property is  
8 deemed to be made or suffered when it becomes so far perfected that  
9 any subsequent lien obtainable by legal or equitable proceedings on  
10 a simple contract could not become superior to the rights of the  
11 transferee;

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

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

19                   (4) a transfer not perfected prior to the filing of a  
20 petition for receivership is deemed to be made immediately before  
21 the filing of the successful petition.

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

25           (f) Within the meaning of Subsection (d), "a lien obtainable  
26 by legal or equitable proceedings upon a simple contract" is a lien  
27 arising in the ordinary course of proceedings upon the entry or

1 docketing of a judgment or decree, or upon attachment, garnishment,  
2 execution, or similar process, whether before, upon, or after  
3 judgment or decree and whether before or upon levy. The term does  
4 not include liens that under applicable law are given a special  
5 priority over other liens that are prior in time.

6 (g) Within the meaning of Subsection (d), a lien obtainable  
7 by legal or equitable proceedings could become superior to the  
8 rights of a transferee, or a purchaser could obtain rights superior  
9 to the rights of a transferee if the consequences would follow only  
10 from the lien or purchase itself, or from the lien or purchase  
11 followed by any step wholly within the control of the respective  
12 lienholder or purchaser, with or without the aid of ministerial  
13 action by public officials. A lien could not, however, become  
14 superior and a purchase could not create superior rights for the  
15 purpose of Subsection (d) through any acts subsequent to the  
16 obtaining of the lien or subsequent to the purchase that require the  
17 agreement or concurrence of any third party or that require any  
18 further judicial action or ruling.

19 (h) A transfer of property for or on account of a new and  
20 contemporaneous consideration that is deemed under Subsection (d)  
21 to be made or suffered after the transfer because of delay in  
22 perfecting the transfer does not become a transfer for or on account  
23 of an antecedent debt if any acts required by the applicable law to  
24 be performed to perfect the transfer against liens or bona fide  
25 purchasers' rights are performed within 21 days or any period  
26 expressly allowed by the law, whichever is less. A transfer to  
27 secure a future loan, if the loan is actually made, or a transfer

1 that becomes security for a future loan, has the same effect as a  
2 transfer for or on account of a new and contemporaneous  
3 consideration.

4 (i)(1) If any lien deemed voidable under Subsection (b)(2)  
5 has been dissolved by the furnishing of a bond or other obligation,  
6 the surety on which has been indemnified directly or indirectly by  
7 the transfer of or the creation of a lien upon any property of an  
8 insurer before the filing of a petition under this chapter that  
9 results in a receivership order, the indemnifying transfer or lien  
10 is also deemed voidable.

11 (2) The property affected by any lien deemed voidable  
12 under this section is discharged from the lien, and that property  
13 and any of the indemnifying property transferred to or for the  
14 benefit of a surety passes to the receiver, except that the  
15 receivership court may on due notice order any lien deemed voidable  
16 under this section to be preserved for the benefit of the estate and  
17 may direct that a conveyance be executed as may be proper or  
18 adequate to evidence the title of the receiver.

19 (3) Reasonable notice of any hearing in the proceeding  
20 shall be given to all parties as required by law, including the  
21 obligee of a releasing bond or other like obligation. If an order  
22 is entered for the recovery of indemnifying property in kind or for  
23 the avoidance of an indemnifying lien, the receivership court may  
24 in the same proceeding ascertain the value of the property or lien,  
25 and if the value is less than the amount for which the property is  
26 indemnity or than the amount of the lien, the transferee or  
27 lienholder may elect to retain the property or lien upon payment of

1 its value, as ascertained by the receivership court, to the  
2 receiver, within a reasonable time set by the receivership court.

3 (4) The liability of the surety under a releasing bond  
4 or other like obligation shall be discharged to the extent of the  
5 value of the indemnifying property recovered or the indemnifying  
6 lien nullified and avoided by the receiver, or if the property is  
7 retained to the extent of the amount paid to the receiver.

8 (j) If the receiver is successful in establishing the  
9 receiver's claim or any part of the claim, the receiver is entitled  
10 to recover judgment for the following:

11 (1) at the election of the receiver, the property or  
12 its cash value as of the date of the demand by the receiver;

13 (2) rental for the use of tangible property from the  
14 date of the demand by the receiver to the date the property is  
15 delivered to the receiver;

16 (3) in the case of funds or intangible property, the  
17 greater of the actual interest or income earned by the property or  
18 interest at the statutory rate for judgments from the date of the  
19 demand by the receiver to the date the funds are delivered to the  
20 receiver; and

21 (4) all costs, including investigative costs and other  
22 expenses necessary to the recovery of the property or funds, and  
23 reasonable attorney's fees.

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

26 (l) The receiver has the burden of proving the avoidability  
27 of a transfer under Subsection (b), and the person against whom

1 recovery or avoidance is sought has the burden of proving the  
2 nonavoidability of a transfer under Subsection (c).

3 Sec. 21A.206. FRAUDULENT TRANSFERS AND OBLIGATIONS. (a)  
4 The receiver may avoid any transfer of an interest of the insurer in  
5 property, any reinsurance transaction, or any obligation incurred  
6 by an insurer that was made or incurred on or within two years  
7 before the date of the filing of a petition for receivership  
8 proceedings under this chapter, if the insurer voluntarily or  
9 involuntarily:

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

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

16 (b) Except to the extent that a transfer or obligation  
17 voidable under this section is voidable under other provisions of  
18 this chapter, a transferee or obligee that takes for value and in  
19 good faith a voidable transfer or obligation has a lien on or may  
20 retain any interest transferred or may enforce any obligation  
21 incurred, as the case may be, to the extent that the transferee or  
22 obligee gave value to the insurer in exchange for the transfer or  
23 obligation. For purposes of this section, a transfer is made when  
24 the transfer is so perfected that a subsequent bona fide purchaser  
25 from the insurer cannot acquire an interest in the property  
26 transferred that is superior to the interest in the property of the  
27 transferee, but if the transfer is not so perfected before the



1 commencement of the receivership proceeding, the transfer is made  
2 immediately before the date of the filing of the petition.

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

6 (d) The receiver has the burden of proving the avoidability  
7 of a transfer under Subsection (a), and the person asserting a lien  
8 under Subsection (b) has the burden of proving entitlement to the  
9 lien.

10 Sec. 21A.207. RECEIVER AS LIEN CREDITOR. (a) The receiver  
11 may avoid any transfer of or lien upon the property of, or  
12 obligation incurred by, an insurer that the insurer or a  
13 policyholder, creditor, member, or stockholder of the insurer may  
14 have avoided without regard to any knowledge of the receiver, the  
15 commissioner, the insurer, or any policyholder, creditor, member,  
16 or stockholder of the insurer regardless of whether such a  
17 policyholder, creditor, member, or stockholder exists.

18 (b) The receiver is deemed a creditor without knowledge for  
19 purposes of pursuing claims under the Uniform Fraudulent Transfer  
20 Act, the Uniform Fraudulent Conveyance Act, or similar provisions  
21 of state or federal law.

22 Sec. 21A.208. EFFECT OF AVOIDANCE OF TRANSFERS. (a) Except  
23 as otherwise provided in this section, to the extent that a transfer  
24 is avoided under Sections 21A.204, 21A.205, or 21A.206, the  
25 receiver may recover the property transferred, or the value of the  
26 property, from:

27 (1) the initial transferee of the transfer or the

1 entity for whose benefit the transfer was made; or

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

4 (b) The receiver may not recover under Subsection (a)(2)  
5 from:

6 (1) a transferee that takes for value, including  
7 satisfaction or securing of a present or antecedent debt, in good  
8 faith, and without knowledge of the voidability of the transfer  
9 avoided; or

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

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

15 Sec. 21A.209. CLAIMS OF HOLDERS OF VOID OR VOIDABLE RIGHTS.

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

27 (b) A claim allowable under Subsection (a) by reason of the

1 avoidance, whether voluntary or involuntary, or a preference, lien,  
2 conveyance, transfer, assignment, or encumbrance, may be filed as  
3 an excused late filing under Section 21A.251(b) if filed not later  
4 than the 30th day after the date of the avoidance, or within the  
5 further time allowed by the receivership court under Subsection  
6 (a).

7 Sec. 21A.210. SETOFFS. (a) Mutual debts or mutual credits,  
8 whether arising out of one or more contracts between the insurer and  
9 another person in connection with any action or proceeding under  
10 this chapter, must be set off and the balance only may be allowed or  
11 paid, except as provided by Subsection (b) and Section 21A.214.

12 (b) A setoff may not be allowed after the commencement of a  
13 delinquency proceeding under this chapter in favor of any person  
14 if:

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

16 (A) would not, at the date of the filing of a  
17 petition for liquidation, entitle the person to a distribution of  
18 the property of the insurer; or

19 (B) was purchased by or transferred to the person  
20 with a view to its being used as a setoff;

21 (2) the obligation of the insurer is owed to an  
22 affiliate of the person, or any other entity or association other  
23 than the person; or

24 (3) the obligation of the person:

25 (A) is owed to an affiliate of the insurer, or any  
26 other entity or association other than the insurer;

27 (B) is to pay an assessment levied against the

1 members or subscribers of the insurer or a balance upon a  
2 subscription to the capital stock of the insurer or is in any other  
3 way in the nature of a capital contribution; or

4 (C) arises out of any avoidance action taken by  
5 the receiver; or

6 (4) the obligations between the person and the insurer  
7 arise out of transactions by which either the person or the insurer  
8 has assumed risks and obligations from the other party and then has  
9 ceded back to that party substantially the same risks and  
10 obligations.

11 (c) Notwithstanding the provisions of Subsection (b), the  
12 receiver may permit setoffs if in the receiver's discretion a  
13 setoff is appropriate because of specific circumstances relating to  
14 a transaction.

15 (d) The receiver may avoid pursuant to Sections 21A.202,  
16 21A.203, and 21A.206 any setoff that occurred prior to the  
17 commencement of a delinquency proceeding under this chapter in  
18 which:

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

20 (A) would not, at the date of the filing of a  
21 petition for liquidation, entitle the person to a distribution of  
22 the property of the insurer; or

23 (B) was purchased by or transferred to the person  
24 with a view to its being used as a setoff;

25 (2) the obligation of the insurer is owed to an  
26 affiliate of the person, or any other entity or association other  
27 than the person;

1           (3) the obligation of the person:

2                   (A) is owed to an affiliate of the insurer, or any  
3 other entity or association other than the insurer; or

4                   (B) is to pay an assessment levied against the  
5 members or subscribers of the insurer or a balance upon a  
6 subscription to the capital stock of the insurer or is in any other  
7 way in the nature of a capital contribution;

8           (4) the obligations between the person and the insurer  
9 arise out of transactions by which either the person or the insurer  
10 has assumed risks and obligations from the other party and then has  
11 ceded back to that party substantially the same risks and  
12 obligations, unless the regulatory authority approved the  
13 transactions; or

14           (5) the setoff was not recorded in the books and  
15 records of the person and the insurer at or about the time the  
16 setoff was taken, or, if required by statutory accounting practices  
17 and procedures, was not timely reported on the person's and the  
18 insurer's official financial statements filed with the department.

19           (e) The person against whom the receiver seeks to preclude  
20 or avoid a setoff has the burden of proof that the setoff is of the  
21 type described in Subsections (b)(1)-(4) or is not of the type  
22 described in Subsections (d)(1)-(5), as the case may be.

23           Sec. 21A.211. ASSESSMENTS. (a) As soon as practicable, but  
24 not later than the fourth anniversary of the date of an order of  
25 liquidation of an insurer issuing assessable policies, the  
26 liquidator shall make a report to the receivership court setting  
27 forth:

1           (1) the reasonable value of the assets of the insurer;  
2           (2) the insurer's probable total liabilities;  
3           (3) the probable aggregate amount of the assessment  
4 necessary to pay all claims of creditors and expenses in full,  
5 including expenses of administration and costs of collecting the  
6 assessment; and  
7           (4) a recommendation as to whether an assessment  
8 should be made and in what amount.

9           (b) Upon the basis of the report provided in Subsection (a),  
10 including any supplements and amendments to the report, the  
11 receivership court may approve, solely on application by the  
12 liquidator, one or more assessments against all members of the  
13 insurer who are subject to assessment. The order approving the  
14 assessment shall provide instructions regarding notice of the  
15 assessment, deadlines for payment, and other instructions to the  
16 receiver regarding collection of the assessment.

17           (c) Subject to any applicable legal limits on ability to  
18 assess, the aggregate assessment must be for the amount that the sum  
19 of the probable liabilities, the expenses of administration, and  
20 the estimated cost of collection of the assessment, exceeds the  
21 value of existing assets, with due regard being given to  
22 assessments that cannot be collected economically.

23           (d) After levy of assessment under Subsection (b), the  
24 receiver shall petition the receivership court for an order  
25 directing each member who has not paid the assessment pursuant to  
26 the levy to show cause why a judgment for the assessment should not  
27 be entered.

1       (e) At least 20 days before the return day of the order to  
2 show cause, the receiver shall give notice of the order to show  
3 cause to each member liable on the assessment. Notice must be given  
4 by first class mail mailed to the member's last known address as it  
5 appears on the insurer's records, by publication, or by another  
6 method of notification as directed by the receivership court.  
7 Failure of the member or subscriber to receive the notice of the  
8 assessment or of the order, within the time specified in the  
9 assessment or order or at all, is not a defense in a proceeding to  
10 collect the assessment.

11       (f) If a member does not appear and serve verified  
12 objections upon the receiver on or before the return day of the  
13 order to show cause under Subsection (d), the receivership court  
14 shall make an order adjudging the member liable for the amount of  
15 the assessment against the member pursuant to Subsection (d)  
16 together with costs, and the receiver shall have a judgment against  
17 the member for the amount of the assessment and costs in the order.

18       (g) If on or before the return day of the order to show  
19 cause, the member appears and serves verified objections upon the  
20 receiver, the receivership court may hear and determine the matter  
21 or may appoint a referee to hear it and make an order as the facts  
22 warrant. In the event that the receiver determines that the  
23 objections do not warrant relief from assessment, the member may  
24 request the receivership court to review the matter and vacate the  
25 order to show cause.

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

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

6       (j) Any claim filed by an assessee who fails to pay an  
7 assessment, after the conclusion of any legal action by the  
8 assessee objecting to the assessment, is deemed a late filed claim  
9 under Section 21A.301.

10       Sec. 21A.212. REINSURER'S LIABILITY. (a) The amount  
11 recoverable by the liquidator from reinsurers may not be reduced as  
12 a result of the delinquency proceedings, regardless of any  
13 provision in the reinsurance contract or any other agreement.

14       (b) If an insurer takes credit for a reinsurance contract in  
15 any filing or submission made to the commissioner, that reinsurance  
16 contract is deemed to contain the provisions required with respect  
17 to the obligations of reinsurers in the event of insolvency of the  
18 reinsured in order to obtain credit for reinsurance or under other  
19 applicable statutes.

20       (c) All reinsurance contracts to which an insurer is a party  
21 that contain the provisions required to obtain credit for  
22 reinsurance or under other applicable statutes, and all reinsurance  
23 contracts which are presumed or construed to contain provisions  
24 pursuant to Subsection (b), must be construed to contain the  
25 following provision: "In the event of insolvency and the  
26 appointment of a receiver, the reinsurance obligation shall be  
27 payable to the ceding insurer or to its receiver without diminution



1 because of the insolvency or because the receiver has failed to pay  
2 all or a portion of the claim. Payment shall be made upon either:

3 (1) proof of payment of the insured claim by a guaranty  
4 association to the extent of the payment; or

5 (2) the allowance of the claim pursuant to Section  
6 21A.258 of the Insurer Receivership Act."

7 (d) The receiver of a reinsured company shall give written  
8 notice of the pendency of a claim against the reinsured company in  
9 accordance with the terms of the contract. Failure of a reinsured  
10 company to give notice of a pending claim pursuant to a provision in  
11 the reinsurance contract does not excuse the obligation of the  
12 reinsurer unless it is prejudiced by the failure, and if it is  
13 prejudiced, its obligations shall be reduced only to the extent of  
14 the prejudice. The reinsurer may interpose, at its own expense, in  
15 the proceeding where the claim is to be adjudicated, any defense or  
16 defenses that it may deem available to the reinsured company or its  
17 receiver.

18 (e) The entry of an order of conservation, rehabilitation,  
19 or liquidation may not be deemed a breach or an anticipatory breach  
20 of any reinsurance contract, nor shall it be grounds for  
21 retroactive revocation or retroactive cancellation of any  
22 reinsurance contracts by the reinsurer.

23 (f) If reinsurance payments to a receiver of a ceding  
24 insurer are later determined to be payments in excess of the amounts  
25 actually due to the receiver, the excess must be credited against  
26 future payments due to the receiver or must be repaid to the  
27 reinsurer as an administrative expense of the estate pursuant to

1 Section 21A.301(a). Any such repayment may be limited based on the  
2 property remaining in the estate.

3 (g) Payments by the reinsurer must be made directly to the  
4 ceding insurer or its receiver, except if:

5 (1) the reinsurance contract or other written  
6 agreement to which the insured, ceding insurer, and reinsurer are  
7 all parties specifically provides another payee, other than an  
8 affiliate of the ceding insurer or reinsurer, of the reinsurance in  
9 the event of the insolvency or receivership of the ceding insurer;

10 (2) the assuming insurer, with the consent of the  
11 direct insured and the ceding insurer, has assumed the policy  
12 obligations of the ceding insurer as direct obligations of the  
13 assuming insurer to the payees under the policies and in  
14 substitution for the entire obligations of the ceding insurer to  
15 the payees;

16 (3) a life and health insurance guaranty association  
17 has made the election to succeed to the rights and obligations of  
18 the insolvent insurer under a contract of reinsurance in accordance  
19 with Section 21A.213 or the life and health guaranty association  
20 laws of its domiciliary state, or pursuant to other applicable law,  
21 rule, order or assignment contract, in which case payments must be  
22 made directly to or at the direction of the guaranty association; or

23 (4) with the approval of the receivership court  
24 pursuant to Section 21A.007, the receiver directs payment to  
25 another party.

26 (h) For purposes of Subsection (g), both the receiver and  
27 the reinsurer are entitled to recover from any person, other than

1 the receiver or a guaranty association, who unsuccessfully makes a  
2 claim directly against the reinsurer the receiver's and reinsurer's  
3 attorney's fees and expenses incurred in preventing any collection  
4 by the person.

5 (i) This chapter may not be construed to authorize the  
6 liquidator or any other entity to compel payment from a non-life  
7 reinsurer on the basis of estimated incurred but not reported  
8 losses or loss expenses or case reserves for unpaid losses and loss  
9 expenses, except with respect to case reserves for unpaid losses  
10 and loss expenses allowed pursuant to Section 21A.255. The  
11 obligation of reinsurers to make payments to the insurer must be  
12 determined on the basis of reported claims that have been allowed  
13 pursuant to Section 21A.258 or upon proof of payment of the insured  
14 claim by a guaranty association, to the extent of that payment.  
15 Likewise, this chapter may not be construed to authorize the  
16 liquidator or any other entity to compel payment from a life  
17 reinsurer on the basis of valuation reserves as established  
18 pursuant to this state's Standard Valuation Law.

19 Sec. 21A.213. LIFE AND HEALTH REINSURANCE. (a) Except as  
20 provided by this subsection, at any time within one year after the  
21 coverage date, meaning the date on which any life or health guaranty  
22 association becomes responsible for the obligations of a member  
23 insurer, the guaranty association may elect to succeed to the  
24 rights and obligations of the member insurer that accrue on or after  
25 the coverage date and that relate to contracts covered, in whole or  
26 in part, by the guaranty association, under any one or more  
27 indemnity reinsurance agreements entered into by the member insurer

1 as a ceding insurer and selected by the guaranty association. The  
2 guaranty association may not exercise this election with respect to  
3 a reinsurance agreement if the receiver of the member insurer has  
4 previously and expressly rejected the reinsurance agreement. The  
5 election must be effected by a notice to the receiver and to the  
6 affected reinsurers. If the guaranty association makes an  
7 election, the following provisions apply with respect to the  
8 agreements selected by the guaranty association:

9       (1) The guaranty association is responsible for all  
10 unpaid premiums due under the agreements, for periods both before  
11 and after the coverage date, and is responsible for the performance  
12 of all other obligations to be performed after the coverage date, in  
13 each case which relates to contracts covered, in whole or in part,  
14 by the guaranty association. The guaranty association may charge  
15 contracts covered in part by the guaranty association, through  
16 reasonable allocation methods, the costs for reinsurance in excess  
17 of the obligations of the guaranty association.

18       (2) The guaranty association is entitled to any  
19 amounts payable by the reinsurer under the agreements with respect  
20 to losses or events that occur in periods after the coverage date  
21 and that relate to contracts covered, in whole or in part, by the  
22 guaranty association, provided that, upon receipt of any such  
23 amounts, the guaranty association shall pay to the beneficiary  
24 under the policy or contract on account of which the amounts were  
25 paid a portion of the amount equal to the excess of (i) the amount  
26 received by the guaranty association, over (ii) the benefits paid  
27 by the guaranty association on account of the policy or contract

1 less the retention of the impaired or insolvent member insurer  
2 applicable to the loss or event.

3 (3) Within 30 days following the guaranty  
4 association's election, the guaranty association and each  
5 indemnity reinsurer shall calculate the net balance due to or from  
6 the guaranty association under each reinsurance agreement as of the  
7 date of the guaranty association's election, which calculation must  
8 give full credit to all items paid by either the member insurer or  
9 its receiver or the indemnity reinsurer during the period between  
10 the coverage date and the date of the guaranty association's  
11 election. Either the guaranty association or indemnity reinsurer  
12 shall pay the net balance due the other not later than the fifth day  
13 after the date of the completion of the calculation under this  
14 subdivision. If the receiver, rehabilitator, or liquidator has  
15 received any amounts due the guaranty association pursuant to  
16 Subdivision (2), the receiver shall remit those amounts to the  
17 guaranty association as promptly as practicable.

18 (4) If the guaranty association, within 60 days of the  
19 election, pays the premiums due for periods both before and after  
20 the coverage date that relate to contracts covered, in whole or in  
21 part, by the guaranty association, the reinsurer is not entitled to  
22 terminate the reinsurance agreements, insofar as the agreements  
23 relate to contracts covered, in whole or in part, by the guaranty  
24 association and is not entitled to set off any unpaid premium due  
25 for periods prior to the coverage date against amounts due the  
26 guaranty association.

27 (b) In the event the guaranty association transfers its

1 obligations to another insurer, and if the guaranty association and  
2 the other insurer agree, the other insurer shall succeed to the  
3 rights and obligations of the guaranty association under Subsection  
4 (a) effective as of the date agreed upon by the guaranty association  
5 and the other insurer, regardless of whether the guaranty  
6 association has made the election referred to in Subsection (a),  
7 provided that:

8 (1) the indemnity reinsurance agreements  
9 automatically terminate for new reinsurance, unless the indemnity  
10 reinsurer and the other insurer agree to the contrary; and

11 (2) the obligations described in the proviso to  
12 Subsection (a)(2) no longer apply on and after the date the  
13 indemnity reinsurance agreement is transferred to the third party  
14 insurer.

15 (c) Subsection (b) does not apply if the guaranty  
16 association has previously expressly determined in writing that it  
17 will not exercise the election referred to in Subsection (a).

18 (d) The provisions of this section supersede the provisions  
19 of any law of this state or of any affected reinsurance agreements  
20 that provide for or require any payment of reinsurance proceeds, on  
21 account of losses or events that occur in periods after the coverage  
22 date, to the receiver of the insolvent member insurer. Subject to  
23 applicable setoff provisions, the receiver remains entitled to any  
24 amounts payable by the reinsurer under the reinsurance agreements  
25 with respect to losses or events that occur in periods prior to the  
26 coverage date.

27 (e) Except as otherwise expressly provided in this section,

1 nothing in this section alters or modifies the terms and conditions  
2 of the indemnity reinsurance agreements of the insolvent member  
3 insurer. Nothing in this section abrogates or limits any rights of  
4 any reinsurer to claim that it is entitled to rescind a reinsurance  
5 agreement. Nothing in this section gives a policy owner or  
6 beneficiary an independent cause of action against an indemnity  
7 reinsurer that is not otherwise set forth in the indemnity  
8 reinsurance agreement. Nothing in this section applies to  
9 reinsurance agreements covering property or casualty risks.

10 Sec. 21A.214. RECOVERY OF PREMIUMS OWED. (a) An insured  
11 shall pay, either directly to the liquidator or to any agent that  
12 has paid or is obligated to pay the liquidator on behalf of the  
13 insured, any unpaid earned premium or retrospectively rated premium  
14 due the insurer based on the termination of coverage under Section  
15 21A.152. Premium on surety business is deemed earned at inception  
16 if a policy term cannot be determined. All other premium is deemed  
17 earned and is prorated equally over the determined policy term,  
18 regardless of any provision in the bond, guaranty, contract or  
19 other agreement.

20 (b) Any person, other than the insured, shall turn over to  
21 the liquidator any unpaid premium due and owing as shown on the  
22 records of the insurer, including any amount representing  
23 commissions, for the full policy term due the insurer at the time of  
24 the entry of the liquidation order, whether earned or unearned,  
25 based on the termination of coverage under Section 21A.152. The  
26 unpaid premium due the liquidator from any person other than the  
27 insured excludes any premium not collected from the insured and not

1 earned based on the termination of coverage under Section 21A.152.

2 (c) Any person, other than the insured, responsible for the  
3 remittance of a premium, shall turn over to the liquidator any  
4 unearned commission of the person based on the termination of  
5 coverage under Section 21A.152. Credits, setoffs, or both may not  
6 be allowed to an agent, broker, premium finance company, or any  
7 other person for any amounts advanced to the insurer by the person  
8 on behalf of, but in the absence of a payment by, the insured, or for  
9 any other amount paid by the person to any other person after the  
10 entry of the order of liquidation.

11 (d) Persons that collect premium or finance premium under a  
12 premium finance contract that is due the insurer in liquidation are  
13 deemed to hold that premium in trust as a fiduciary for the benefit  
14 of the insurer and to have availed themselves of the laws of this  
15 state, regardless of any provision in any agency contract or other  
16 agreement.

17 (e) Any premium finance company is obligated to pay any  
18 amounts due the insurer from premium finance contracts, whether the  
19 premium is earned or unearned. The liquidator has the right to  
20 collect any unpaid financed premium directly from the premium  
21 finance company, by taking an assignment of the underlying premium  
22 finance contracts, or directly from the insured that is a party to  
23 the premium finance contract.

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

27 (1) suspend, revoke, or refuse to renew the licenses



1 of the offending party or parties; and

2 (2) impose:

3 (A) a penalty of not more than \$1,000 for each act  
4 in violation of this section by the party or parties; and

5 (B) any other sanction or penalty allowed for by  
6 the commissioner.

7 (g) Before the commissioner may take any action as set forth  
8 in Subsection (f), written notice must be given to the person,  
9 company, association, or exchange accused of violating the law,  
10 stating specifically the nature of the alleged violation and fixing  
11 a time and place, at least 10 days after the date of the notice,  
12 when a hearing on the matter will be held. After a hearing or upon  
13 failure of the accused to appear at a hearing, the commissioner, if  
14 a violation is found, shall impose any of the penalties under  
15 Subsection (f) as deemed advisable. If the commissioner takes  
16 action under this subsection, the party aggrieved may appeal from  
17 that action to the receivership court.

18 [Sections 21A.215-21A.250 reserved for expansion]

19 SUBCHAPTER F. CLAIMS

20 Sec. 21A.251. FILING OF CLAIMS. (a) Except as provided by  
21 this subsection, proof of all claims must be filed with the  
22 liquidator in the form required by Section 21A.252 on or before the  
23 last day for filing specified in the notice required under Section  
24 21A.156, which date may not be later than 18 months after entry of  
25 the order of liquidation, unless the receivership court, for good  
26 cause shown, extends the time, except that proof of claims for cash  
27 surrender values or other investment values in life insurance and

1 annuities and for any other policies insuring the lives of persons  
2 need not be filed unless the liquidator expressly so requires. The  
3 receivership court, only upon application of the liquidator, may  
4 allow alternative procedures and requirements for the filing of  
5 proofs of claim or for allowing or proving claims. Upon  
6 application, if the receivership court dispenses with the  
7 requirements of filing a proof of claim by a person or a class or  
8 group of persons, a proof of claim for the person, class, or group  
9 is deemed to have been filed for all purposes, except that the  
10 receivership court's waiver of proof of claims requirements does  
11 not impact guaranty association proof of claim filing requirements  
12 or coverage determinations to the extent the guaranty fund statute  
13 or filing requirements are inconsistent with the receivership  
14 court's waiver of proof.

15 (b) The liquidator shall permit a claimant making a late  
16 filing to share ratably in distributions, whether past or future,  
17 as if the claim were not filed late, to the extent that the payment  
18 will not prejudice the orderly administration of the liquidation,  
19 under the following circumstances:

20 (1) the eligibility to file a proof of claim was not  
21 known to the claimant, and the claimant filed a proof of claim not  
22 later than the 90th day after the date of first learning of the  
23 eligibility;

24 (2) a transfer to a creditor was avoided under Section  
25 21A.204, 21A.205, or 21A.206, or was voluntarily surrendered under  
26 Section 21A.209, and the filing satisfies the conditions of Section  
27 21A.209; or

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

4           (c) The liquidator shall permit guaranty associations to  
5 file claims late and to receive a ratable share of distributions,  
6 whether past or future, as if such claims were not late.

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

10           (1) the particulars of the claim, including the  
11 consideration given for it;

12           (2) the identity and amount of the security on the  
13 claim;

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

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

17           (5) any right of priority of payment or other specific  
18 right asserted by the claimants;

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

21           (7) the claimant's social security or federal employer  
22 identification number.

23           (b) The liquidator may require that:

24           (1) a prescribed form be used; and

25           (2) other information and documents be included.

26           (c) At any time the liquidator may:

27           (1) require the claimant to present information or

1 evidence supplementary to that required under Subsection (a); and  
2 (2) take testimony under oath, require production of  
3 affidavits or depositions, or otherwise obtain additional  
4 information or evidence.

5 (d) Any guaranty association must be permitted to file a  
6 single omnibus proof of claim for all claims of the association in  
7 connection with payment of claims of the insurer. The omnibus proof  
8 of claim may be periodically updated by the association, and the  
9 association may be required to submit a reasonable amount of  
10 documentation in support of the claim.

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

24 (b) Pursuant to the review, the liquidator shall provide  
25 written notice of the claim evaluation to the claimant or the  
26 claimant's attorney and may provide notice to any reinsurer that is  
27 or may be liable in respect of the claim, by any means authorized

1 under this chapter. The notice must set forth the amount of the  
2 claim allowed by the liquidator, if any, and the priority class of  
3 the claim as established in Section 21A.301.

4 (c) Not later than the 30th day after the mailing of the  
5 notice as set forth in Subsection (b), those noticed may file  
6 objections with the liquidator. Any filed objections must clearly  
7 set out all facts and the legal basis, if any, for the objections  
8 and the reasons why the claim should be allowed at a different  
9 amount or in a different priority class. If no timely objection is  
10 filed, the determination is final and binding on all persons that  
11 were provided notice. Objections filed with the receivership court,  
12 but not the liquidator, do not comply with this requirement.

13 (d) Except as provided in Section 21A.255, a contingent or  
14 unliquidated claim may not be allowed unless the claim becomes  
15 absolute on or before the coverage termination date established by  
16 the liquidation order. For purposes of this subsection, a claim:

17 (1) is contingent if the accident, casualty, disaster,  
18 or loss insured or reinsured against occurred on or before the event  
19 triggering the company's obligation to pay has not occurred as of  
20 the coverage termination date; and

21 (2) is unliquidated if the amount of the claim has not  
22 been determined.

23 (e) A claim that is unmature as of the coverage termination  
24 date established by the liquidation order may be allowed as if it  
25 were mature, except the claim must be discounted at the higher of  
26 the legal rate of interest accruing on judgments or the rate of  
27 interest available on U.S. Treasury securities of approximately the

1 same maturity. A claim is unmature if payment on the claim is not  
2 yet due.

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

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

15 (1) the commissioner prior to an order of  
16 receivership;

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

19 (3) the liquidator after the entry of an order of  
20 liquidation.

21 (h) The total liability of the insurer to all claimants  
22 arising out of the same act or policy may not be greater than the  
23 insurer's total liability would be were the insurer not in  
24 liquidation.

25 (i) The liquidator shall disallow claims that are for or  
26 determined to be for de minimis amounts. For purposes of this  
27 subsection, a "de minimis amount" means any amount equal to or less

1 than a maximum de minimis amount approved by the receivership court  
2 as being reasonable and necessary for administrative convenience.

3 (j) No claim need be allowed if it does not contain all the  
4 applicable information required by Section 21A.252.

5 (k) The liquidator may reconsider a claim on the basis of  
6 additional information and amend the recommendation to the  
7 receivership court. The claimant must be afforded the same notice  
8 and opportunity to be heard on all changes in the recommendation as  
9 in its initial determination. The receivership court may amend its  
10 allowance as appropriate.

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

18 Sec. 21A.254. CLAIMS UNDER OCCURRENCE POLICIES. Subject to  
19 the provisions of Section 21A.253, any insured has the right to file  
20 a claim for the protection afforded under the insured's policy,  
21 regardless of whether a claim is then known, if the policy is an  
22 occurrence policy. After filing a claim for protection under this  
23 section, at the time that a specific claim is made by or against the  
24 insured, the insured shall supplement the claim, and the receiver  
25 shall treat the claim as a contingent, unliquidated, or unmature  
26 claim. Any claims of policyholders for protection under occurrence  
27 policies remaining at or near the closing of the estate shall be

1 disposed of in accordance with this section.

2 Sec. 21A.255. ALLOWANCE OF CONTINGENT AND UNLIQUIDATED  
3 CLAIMS. (a) A claim of an insured or third party may be allowed,  
4 regardless of the fact that it was contingent or unliquidated as of  
5 the date provided in Section 21A.253(d), if:

6 (1) any contingency is removed in accordance with  
7 Subsection (b); and

8 (2) the value of the claim is determined in accordance  
9 with Subsection (c).

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

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

18 (2) the person has furnished suitable proof, unless  
19 the receivership court for good cause shown shall otherwise direct,  
20 that no further valid claims can be made against the insurer arising  
21 out of the cause of action other than those already presented.

22 (c) An unliquidated claim may be allowed if the amount of  
23 the claim has been determined or the amount of the claim remains  
24 undetermined. The valuation of the unliquidated claim may be made  
25 by estimate when the liquidator determines that liquidation of the  
26 claim would unduly delay the administration of the liquidation  
27 proceeding or that the administrative expense of processing and



1 adjudicating the claim or group of claims of a similar type would be  
2 unduly excessive when compared with the property that is estimated  
3 to be available for distribution with respect to the claim. Any  
4 estimate must be based on an accepted method of valuing claims with  
5 reasonable certainty, such as actuarial evaluation.

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

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

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

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

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

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

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

11 (2) give notice to the insured, known third parties,  
12 and affected guaranty associations that such aggregate policy  
13 limits have been exceeded. From and after the 30th day after the  
14 date of the liquidator's notice, no further amounts shall be  
15 allowed, the policy limits shall be apportioned ratably among the  
16 timely filed allowed claims, and any additional claims shall be  
17 rejected.

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

23 (f) No claim may be allowed under this section to the extent  
24 it is covered by any guaranty association.

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

1 withdrawal to the insured.

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

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

14 (2) The waiver provided under this section is  
15 conditioned upon the cooperation of the insured with the liquidator  
16 and any applicable guaranty association in the defense of the  
17 claim. The waiver provided under this section does not operate to  
18 discharge the guaranty association from any of its responsibilities  
19 and duties or to release the insured with respect to any claim in  
20 excess of the coverage or policy limits provided by the insurer or  
21 any other responsible party.

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

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

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

27 (4) The liquidator shall provide, where applicable,

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

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

15 (b) The provisions of this section are not applicable to  
16 disputes with respect to coverage determinations by guaranty  
17 associations as part of their statutory obligations.

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

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

27 Sec. 21A.259. CLAIMS OF CODEBTORS. If a creditor does not

1 timely file a proof of the creditor's claim, an entity that is  
2 liable to the creditor together with the insurer, or that has  
3 secured the creditor, may file a proof of the claim.

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

7 (1) by converting the same into money according to the  
8 terms of the agreement pursuant to which the security was delivered  
9 to the creditor; or

10 (2) by agreement or litigation between the creditor  
11 and the liquidator.

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

18 (c) 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.210(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.206(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 from the insurer's  
11 property must be in accordance with the order in which each class of  
12 claims is set forth in this section. Every claim in each class  
13 shall be paid in full, or adequate funds retained for their payment,  
14 before the members of the next class receive payment. Except as  
15 provided in Subsection (a)(2), subclasses may not be established  
16 within a class. No claim by a shareholder, policyholder, or other  
17 creditor shall be permitted to circumvent the priority classes  
18 through the use of equitable remedies. The order of distribution of  
19 claims shall be:

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

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

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

27                   (C) any necessary filing fees;

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

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

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

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

1       (c) Class 3. All claims under policies of insurance,  
2 including third-party claims, claims under nonassessable policies  
3 for unearned premium, and claims incurred during the extension of  
4 coverage provided for in Section 21A.152. All other claims  
5 incurred in fulfilling the statutory obligations of a guaranty  
6 association not included in Class 2, including indemnity payments  
7 on covered claims and, in the case of a life, health, and annuity  
8 guaranty association, all claims as a creditor of the impaired or  
9 insolvent insurer for all payments of and liabilities incurred on  
10 behalf of covered claims or covered obligations of the insurer and  
11 for the funds needed to reinsure those obligations with a solvent  
12 insurer. Notwithstanding the foregoing, the following claims are  
13 excluded from Class 3 priority:

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

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

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

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

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

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

26               (4) any claim that is in excess of any applicable  
27 limits provided in the insurance policy issued by the insolvent

1 insurer;

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

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

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

10 (d) Class 4. Claims of the federal government not included  
11 in Class 3.

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

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

23 (g) Class 7. Claims of any state or local governments,  
24 except those specifically classified elsewhere in this section.  
25 Claims of attorneys for fees and expenses owed them by an insurer  
26 for services rendered in opposing a formal delinquency proceeding.  
27 In order to prove the claim, the claimant must show that the insurer

1 that is the subject of the delinquency proceeding incurred the fees  
2 and expenses based on its best knowledge, information, and belief,  
3 formed after reasonable inquiry, indicating opposition was in the  
4 best interests of the insurer, was well grounded in fact, and was  
5 warranted by existing law or a good faith argument for the  
6 extension, modification, or reversal of existing law, and that  
7 opposition was not pursued for any improper purpose, such as to  
8 harass or to cause unnecessary delay or needless increase in the  
9 cost of the litigation.

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

16 (i) Class 9. Except as provided in Sections 21A.251(b) and  
17 (c), late filed claims that would otherwise be classified in  
18 Classes 3 through 8.

19 (j) Class 10. Surplus notes, capital notes or contribution  
20 notes or similar obligations, premium refunds on assessable  
21 policies, and any other claims specifically subordinated to this  
22 class.

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

26 (l) Class 12. Claims of shareholders or other owners  
27 arising out of their capacity as shareholders or other owners, or

1 any other capacity, except as they may be qualified in Class 3, 6,  
2 or 11.

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

4 (a) With the approval of the receivership court, a liquidator may  
5 declare and pay a partial or final distribution to claimants whose  
6 claims have been allowed.

7 (b) In determining the percentage of distributions to be  
8 paid on these claims, the liquidator may consider the estimated  
9 value of the insurer's property, including estimated reinsurance  
10 recoverables in connection with the insurer's estimated  
11 liabilities for unpaid losses and loss expenses and for incurred  
12 but not reported losses and loss expenses, and the estimated value  
13 of the insurer's liabilities, including estimated liabilities for  
14 unpaid losses and loss expenses and for incurred but not reported  
15 losses and loss expenses.

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

19 Sec. 21A.303. EARLY ACCESS DISBURSEMENTS. (a) For  
20 purposes of this section, "distributable assets" means all general  
21 assets of the liquidation estate less:

22 (1) amounts reserved, to the extent necessary and  
23 appropriate, for the entire Subsection 21A.301(a) expenses of the  
24 liquidation through and after its closure; and

25 (2) to the extent necessary and appropriate, reserves  
26 for distributions on claims other than those of the guaranty  
27 associations falling within the priority classes of claims

1 established in Subsection 21A.301(c).

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

17 (c) Within 120 days after the entry of an order of  
18 liquidation by the receivership court, and at least annually after  
19 the entry of the order, the liquidator shall apply to the  
20 receivership court for approval to make early access payments out  
21 of the general assets of the insurer to any guaranty associations  
22 having obligations arising in connection with the liquidation or  
23 shall report that there are no distributable assets at that time  
24 based on financial reporting as required in Section 21A.015. The  
25 liquidator may apply to the receivership court for approval to make  
26 early access payments more frequently than annually based on  
27 additional information or the recovery of material assets.



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

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

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

17               (2) the right to object as provided in Section 21A.007  
18 to any part of each application or to any report filed by the  
19 liquidator pursuant to this section.

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

23               (1) to the extent necessary and appropriate, the  
24 amount reserved for the entire expenses of the liquidation through  
25 and after its closure and for distributions on claims falling  
26 within the priority classes of claims established in Subsections  
27 21A.301(b) and (c);

1           (2) the calculation of distributable assets and the  
2 amount and method of equitable allocation of early access payments  
3 to each of the guaranty associations; and

4           (3) the most recent financial information filed with  
5 the National Association of Insurance Commissioners by the  
6 liquidator.

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

14           (h) Nothing in this section affects the method in which  
15 guaranty associations determine their statutory coverage  
16 obligations.

17           Sec. 21A.304. UNCLAIMED AND WITHHELD FUNDS. (a) If any  
18 funds of the receivership estate remain unclaimed after the final  
19 distribution under Section 21A.302, the funds must be placed in a  
20 segregated unclaimed funds account held by the commissioner. If  
21 the owner of any of the unclaimed funds presents proof of ownership  
22 satisfactory to the commissioner before the second anniversary of  
23 the date of the termination of the receivership proceeding, the  
24 commissioner shall remit the funds to the owner. The interest  
25 earned on funds held in the unclaimed funds account may be used to  
26 pay any administrative costs related to the handling or return of  
27 unclaimed funds.

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

18               (1) the amounts may be deposited in the general  
19 receivership expense account under Section 21A.305;

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

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

25       Sec. 21A.305. GENERAL RECEIVERSHIP EXPENDITURES. (a) The  
26 commissioner may establish an account for the following purposes:

27               (1) to pay general expenses related to the

1 administration of receiverships; and

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

4 (b) Any advance to a receivership under Subsection (a)(2)  
5 must be treated as a Class 1 claim under Subsection  
6 21A.301(a)(1)(E), payable to the account.

7 (c) If the commissioner determines at any time that the  
8 funds in the account exceed the amount required, the commissioner  
9 may transfer the funds or any part of the funds to the comptroller,  
10 and the transferred funds must be deposited into the general  
11 revenue fund.

12 [Sections 21A.306-21A.350 reserved for expansion]

13 SUBCHAPTER H. DISCHARGE

14 Sec. 21A.351. CONDITION ON RELEASE FROM DELINQUENCY  
15 PROCEEDINGS. Until all payments of or on account of the insurer's  
16 contractual obligations by all guaranty associations, along with  
17 all expenses of the obligations and interest on all the payments and  
18 expenses, are repaid to the guaranty associations, unless otherwise  
19 provided in a plan approved by the guaranty association, an insurer  
20 that is subject to any formal delinquency proceedings may not:

21 (1) solicit or accept new business or request or  
22 accept the restoration of any suspended or revoked license or  
23 certificate of authority;

24 (2) be returned to the control of its shareholders or  
25 private management; or

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

1       Sec. 21A.352. TERMINATION OF PROCEEDINGS. (a) When all  
2 property justifying the expense of collection and distribution has  
3 been collected and distributed under this chapter, the liquidator  
4 shall apply to the receivership court for discharge. The  
5 receivership court may grant the discharge and make any other  
6 orders, including orders to transfer any remaining funds that are  
7 uneconomic to distribute, or pursuant to Subsection 21A.302(c),  
8 assign any assets that remain unliquidated, including claims and  
9 causes of action, as may be deemed appropriate.

10       (b) Any other person may apply to the receivership court at  
11 any time for an order under Subsection (a). If the application is  
12 denied, the applicant shall pay the costs and expenses of the  
13 liquidator in resisting the application, including reasonable  
14 attorney's fees.

15       Sec. 21A.353. REOPENING LIQUIDATION. After the liquidation  
16 proceeding has been terminated and the liquidator discharged, the  
17 commissioner or other interested party may at any time petition the  
18 court to reopen the proceedings for good cause, including the  
19 discovery of additional property. If the court is satisfied that  
20 there is justification for reopening, it shall so order.

21       Sec. 21A.354. DISPOSITION OF RECORDS DURING AND AFTER  
22 TERMINATION OF LIQUIDATION. (a) When it appears to the receiver  
23 that the records of the insurer in receivership are no longer  
24 useful, the receiver may recommend to the receivership court and  
25 the receivership court shall direct what records should be  
26 destroyed.

27       (b) If the receiver determines that any records should be

1 maintained after the closing of the receivership proceeding, the  
2 receiver may reserve property from the receivership estate for the  
3 maintenance of the records, and any amounts so retained are  
4 administrative expenses of the estate under Section 21A.301(a).  
5 Any records retained pursuant to this subsection must be  
6 transferred to the custody of the commissioner, and the  
7 commissioner may retain or dispose of the records as appropriate,  
8 at the commissioner's discretion. Any records of a delinquent  
9 insurer that are transferred to the commissioner may not be  
10 considered records of the department for any purposes, and Chapter  
11 552, Government Code, does not apply to those records.

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

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

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

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

23 SUBCHAPTER I. INTERSTATE RELATIONS

24 Sec. 21A.401. CONSERVATION OF PROPERTY OF FOREIGN INSURERS.

25 (a) If no domiciliary receiver has been appointed, the  
26 commissioner may initiate an action against a foreign insurer  
27 pursuant to Section 21A.051 on any of the grounds stated in that

1 section or on the basis that:

2 (1) any of the foreign insurer's property has been  
3 sequestered by official action in its domiciliary state or in any  
4 other state; or

5 (2) the foreign insurer's certificate of authority to  
6 do business in this state has been revoked or was never issued and  
7 there are residents of this state with unpaid claims or in-force  
8 policies.

9 (b) If a domiciliary receiver has been appointed, the  
10 commissioner may initiate an action against a foreign insurer under  
11 this section only with the consent of the domiciliary receiver.

12 (c) An order entered pursuant to this section must appoint  
13 the commissioner as conservator and must be limited to the  
14 insurer's property and records located in this state.

15 (d) The provisions of Section 21A.201(c) notwithstanding,  
16 the conservator shall hold and conserve the assets until the  
17 commissioner in the insurer's domiciliary state is appointed its  
18 receiver or until an order terminating conservation is entered  
19 under Subsection (f). Once a domiciliary receiver is appointed, the  
20 conservator shall turn over all property subject to an order under  
21 this section to the domiciliary receiver.

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

25 (f) The conservator may at any time petition the  
26 receivership court for an order terminating an order entered under  
27 this section.

1       Sec. 21A.402. DOMICILIARY RECEIVERS APPOINTED IN OTHER  
2 STATES. (a) A domiciliary receiver appointed in a foreign state is  
3 vested by operation of law with title to, and may summarily take  
4 possession of, all property and records of the insurer in this state  
5 except special deposits, if any. The statutory provisions of a  
6 foreign state and all orders entered by courts of competent  
7 jurisdiction in relation to the appointment of a domiciliary  
8 receiver and any related proceedings in a foreign state must be  
9 given full faith and credit in this state. This state shall treat  
10 all foreign states as reciprocal states. For purposes of this  
11 section, "foreign state" means any state other than this state.

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

17       (c) Special deposits must be administered in accordance  
18 with the statutes pursuant to which they are deposited. All amounts  
19 in excess of the estimated amount necessary to administer the  
20 deposit and pay the unpaid special deposit claims must be turned  
21 over to the domiciliary receiver. If there is a deficiency in any  
22 special deposit so that the claims secured by the special deposit  
23 are not fully discharged from the deposit, the claimants may share  
24 in the general assets of the insurer to the extent of the deficiency  
25 at the same priority as other claimants in their class of priority  
26 under Section 21A.301, but the sharing must be deferred until the  
27 other claimants of their class have been paid percentages of their



1 claims equal to the percentage paid from the special deposit. The  
2 purpose and intent of this subsection is to equalize to this extent  
3 the advantage gained by the security provided by the special  
4 deposits.

5 SECTION 2. Article 21.28, Insurance Code, is repealed.

6 SECTION 3. (a) The changes in law made by this Act apply  
7 only to a receivership proceeding that is pending or the initial  
8 petition for which is filed on or after the effective date of this  
9 Act. A receivership that has closed or terminated before the  
10 effective date of this Act is governed by the law in effect at the  
11 time the receivership closed or terminated and that law is  
12 continued in effect for that purpose.

13 (b) The changes in law made by this Act apply only to a  
14 proceeding or cause of action related to but not part of a  
15 receivership that is filed or commences on or after the effective  
16 date of this Act. A proceeding or cause of action related to but not  
17 part of a receivership that was filed or commenced before the  
18 effective date of this Act is governed by the law in effect at the  
19 time the proceeding or cause of action was filed or commenced, and  
20 that law is continued in effect for that purpose.

21 SECTION 4. This Act takes effect September 1, 2005.