

1-1 By: Smithee (Senate Sponsor - Harris) H.B. No. 2157
1-2 (In the Senate - Received from the House May 16, 2005;
1-3 May 17, 2005, read first time and referred to Committee on Business
1-4 and Commerce; May 20, 2005, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 6, Nays 0;
1-6 May 20, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2157 By: Averitt

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the receivership of insurers in this state; providing
1-11 penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Title 1, Insurance Code, is amended by
1-14 adding Chapter 21A to read as follows:

1-15 CHAPTER 21A. INSURER RECEIVERSHIP ACT

1-16 SUBCHAPTER A. GENERAL PROVISIONS

1-17 Sec. 21A.001. CONSTRUCTION AND PURPOSE. (a) This chapter
1-18 may be cited as the Insurer Receivership Act.

1-19 (b) This chapter may not be interpreted to limit the powers
1-20 granted the commissioner under other provisions of law.

1-21 (c) This chapter shall be liberally construed to support the
1-22 purpose stated in Subsection (e).

1-23 (d) All powers and authority of a receiver under this
1-24 chapter are cumulative and are in addition to all powers and
1-25 authority that are available to a receiver under law other than this
1-26 chapter.

1-27 (e) The purpose of this chapter is to protect the interests
1-28 of insureds, claimants, creditors, and the public generally,
1-29 through:

1-30 (1) early detection of any potentially hazardous
1-31 condition in an insurer and prompt application of appropriate
1-32 corrective measures;

1-33 (2) improved methods for conserving and
1-34 rehabilitating insurers;

1-35 (3) enhanced efficiency and economy of liquidation,
1-36 through clarification of the law, to minimize legal uncertainty and
1-37 litigation;

1-38 (4) apportionment of any unavoidable loss in
1-39 accordance with the statutory priorities set out in this chapter;

1-40 (5) lessening the problems of interstate receivership
1-41 by:

1-42 (A) facilitating cooperation between states in
1-43 delinquency proceedings; and

1-44 (B) extending the scope of personal jurisdiction
1-45 over debtors of the insurer located outside this state;

1-46 (6) regulation of the business of insurance by the
1-47 impact of the law relating to delinquency procedures and related
1-48 substantive rules; and

1-49 (7) providing for a comprehensive scheme for the
1-50 receivership of insurers and those subject to this chapter as part
1-51 of the regulation of the business of insurance in this state because
1-52 proceedings in cases of insurer insolvency and delinquency are
1-53 deemed an integral aspect of the business of insurance and are of
1-54 vital public interest and concern.

1-55 Sec. 21A.002. CONFLICTS OF LAW. This chapter and the state
1-56 law governing insurance guaranty associations constitute this
1-57 state's insurer receivership laws and shall be construed together
1-58 in a manner that is consistent. In the event of a conflict between
1-59 the insurer receivership laws and the provisions of any other law,
1-60 the insurer receivership laws prevail.

1-61 Sec. 21A.003. COVERED PERSONS. The provisions of this
1-62 chapter apply to all:

1-63 (1) insurers who are doing or have done an insurance

2-1 business in this state and against whom claims arising from that
2-2 business may exist now or in the future and to all persons subject
2-3 to examination by the commissioner;
2-4 (2) insurers who purport to do an insurance business
2-5 in this state;
2-6 (3) insurers who have insureds resident in this state;
2-7 (4) other persons organized or doing insurance
2-8 business, or in the process of organizing with the intent to do
2-9 insurance business in this state;
2-10 (5) nonprofit health corporations and all fraternal
2-11 benefit societies subject to Chapters 844 and 885, respectively;
2-12 (6) title insurance companies subject to Title 11;
2-13 (7) health maintenance organizations subject to
2-14 Chapter 843; and
2-15 (8) surety and trust companies subject to Chapter 7,
2-16 general casualty companies subject to Chapter 861, statewide mutual
2-17 assessment companies subject to Chapter 881, mutual insurance
2-18 companies subject to Chapter 882 or 883, local mutual aid
2-19 associations subject to Chapter 886, burial associations subject to
2-20 Chapter 888, farm mutual insurance companies subject to Chapter
2-21 911, county mutual insurance companies subject to Chapter 912,
2-22 Lloyd's plans subject to Chapter 941, reciprocal or interinsurance
2-23 exchanges subject to Chapter 942, and fidelity, guaranty, and
2-24 surety companies.
2-25 Sec. 21A.004. DEFINITIONS. (a) For the purposes of this
2-26 chapter:
2-27 (1) "Affiliate," "control," and "subsidiary" have the
2-28 meanings assigned by Chapter 823.
2-29 (2) "Alien insurer" means an insurer incorporated or
2-30 organized under the laws of a jurisdiction that is not a state.
2-31 (3) "Creditor" or "claimant" means a person having any
2-32 claim against an insurer, whether the claim is matured or not,
2-33 liquidated or unliquidated, secured or unsecured, absolute, fixed,
2-34 or contingent.
2-35 (4) "Delinquency proceeding" means any proceeding
2-36 instituted against an insurer for the purpose of liquidating,
2-37 rehabilitating, or conserving the insurer, and any proceeding under
2-38 Section 21A.051.
2-39 (5) "Doing business," including "doing insurance
2-40 business" and the "business of insurance," includes any of the
2-41 following acts, whether effected by mail, electronic means, or
2-42 otherwise:
2-43 (A) the issuance or delivery of contracts of
2-44 insurance, either to persons resident or covering a risk located in
2-45 this state;
2-46 (B) the solicitation of applications for
2-47 contracts described by Paragraph (A) or other negotiations
2-48 preliminary to the execution of the contracts;
2-49 (C) the collection of premiums, membership fees,
2-50 assessments, or other consideration for contracts described by
2-51 Paragraph (A);
2-52 (D) the transaction of matters subsequent to the
2-53 execution of contracts described by Paragraph (A) and arising out
2-54 of those contracts; or
2-55 (E) operating as an insurer under a certificate
2-56 of authority issued by the department.
2-57 (6) "Domiciliary state" means the state in which an
2-58 insurer is incorporated or organized or, in the case of an alien
2-59 insurer, its state of entry.
2-60 (7) "Foreign insurer" means an insurer domiciled in
2-61 another state.
2-62 (8) "Formal delinquency proceeding" means any
2-63 rehabilitation or liquidation proceeding.
2-64 (9) "General assets" includes:
2-65 (A) all property of the estate that is not:
2-66 (i) subject to a secured claim or a valid
2-67 and existing express trust for the security or benefit of specified
2-68 persons or classes of persons; or
2-69 (ii) required by the insurance laws of this

3-1 state or any other state to be held for the benefit of specified
 3-2 persons or classes of persons; and

3-3 (B) all property of the estate and the proceeds
 3-4 of that property in excess of the amount necessary to discharge any
 3-5 secured claims described by Paragraph (A).

3-6 (10) "Good faith" means honesty in fact and intention,
 3-7 and for the purposes of Subchapter F also requires the absence of:

3-8 (A) information that would lead a reasonable
 3-9 person in the same position to know that the insurer is financially
 3-10 impaired or insolvent; and

3-11 (B) knowledge regarding the imminence or
 3-12 pendency of any delinquency proceeding against the insurer.

3-13 (11) "Guaranty association" means any mechanism
 3-14 mandated by Article 21.28-C or 21.28-D, Chapter 2602, or other laws
 3-15 of this state or a similar mechanism in another state that is
 3-16 created for the payment of claims or continuation of policy
 3-17 obligations of financially impaired or insolvent insurers.

3-18 (12) "Impaired" means that an insurer does not have
 3-19 admitted assets at least equal to all its liabilities together with
 3-20 the minimum surplus required to be maintained under this code.

3-21 (13) "Insolvency" or "insolvent" means an insurer:

3-22 (A) is unable to pay its obligations when they
 3-23 are due;

3-24 (B) does not have admitted assets at least equal
 3-25 to all its liabilities; or

3-26 (C) has a total adjusted capital that is less
 3-27 than that required under:

3-28 (i) Chapter 822, 841, or 843, as
 3-29 applicable; or

3-30 (ii) applicable rules or guidelines adopted
 3-31 by the commissioner under Section 822.210, 841.205, or 843.404.

3-32 (14) "Insurer" means any person that has done,
 3-33 purports to do, is doing, or is authorized to do the business of
 3-34 insurance in this state, and is or has been subject to the authority
 3-35 of or to liquidation, rehabilitation, reorganization, supervision,
 3-36 or conservation by any insurance commissioner. For purposes of
 3-37 this chapter, any other persons included under Section 21A.003 are
 3-38 insurers.

3-39 (15) "Netting agreement" means a contract or
 3-40 agreement, including terms and conditions incorporated by
 3-41 reference in a contract or agreement, and a master agreement (which
 3-42 master agreement, together with all schedules, confirmations,
 3-43 definitions, and addenda to the agreement and transactions under
 3-44 the agreement, schedules, confirmations, definitions, or addenda,
 3-45 are to be treated as one netting agreement) that documents one or
 3-46 more transactions between the parties to the contract or agreement
 3-47 for or involving one or more qualified financial contracts and
 3-48 that, among the parties to the netting agreement, provides for the
 3-49 netting or liquidation of qualified financial contracts, present or
 3-50 future payment obligations, or payment entitlements under the
 3-51 contract or agreement, including liquidation or close-out values
 3-52 relating to the obligations or entitlements.

3-53 (16) "New value" means money, money's worth in goods,
 3-54 services, or new credit, or release by a transferee of property
 3-55 previously transferred to the transferee in a transaction that is
 3-56 neither void nor voidable by the insurer or the receiver under any
 3-57 applicable law, including proceeds of the property. The term does
 3-58 not include an obligation substituted for an existing obligation.

3-59 (17) "Party in interest" means the commissioner, a 10
 3-60 percent or greater equity security holder in the insolvent insurer,
 3-61 any affected guaranty association, any nondomiciliary commissioner
 3-62 for a jurisdiction in which the insurer has outstanding claims
 3-63 liabilities, and any of the following parties that have filed a
 3-64 request for inclusion on the service list under Section 21A.007:

3-65 (A) an insurer that ceded to or assumed business
 3-66 from the insolvent insurer; and

3-67 (B) an equity shareholder, policyholder,
 3-68 third-party claimant, creditor, and any other person, including any
 3-69 indenture trustee, with a financial or regulatory interest in the

4-1 receivership proceeding.

4-2 (18) "Person" means individual, aggregation of
 4-3 individuals, partnership, corporation, or other entity.

4-4 (19) "Policy" means a written contract of insurance,
 4-5 written agreement for or effecting insurance, or the certificate
 4-6 for or effecting insurance, by whatever name. The term includes all
 4-7 clauses, riders, endorsements, and papers that are a part of the
 4-8 contract, agreement, or certificate. The term does not include a
 4-9 contract of reinsurance.

4-10 (20) "Property of the insurer" or "property of the
 4-11 estate" includes:

4-12 (A) all right, title, and interest of the insurer
 4-13 in property, whether legal or equitable, tangible or intangible,
 4-14 choate or inchoate, and includes choses in action, contract rights,
 4-15 and any other interest recognized under the laws of this state;

4-16 (B) entitlements that:
 4-17 (i) existed prior to the entry of an order
 4-18 of rehabilitation or liquidation; and

4-19 (ii) may arise by operation of the
 4-20 provisions of this chapter or other provisions of law allowing the
 4-21 receiver to avoid prior transfers or assert other rights; and

4-22 (C) all records and data that are otherwise the
 4-23 property of the insurer, in whatever form maintained, within the
 4-24 possession, custody, or control of a managing general agent,
 4-25 third-party administrator, management company, data processing
 4-26 company, accountant, attorney, affiliate, or other person,
 4-27 including:

4-28 (i) claims and claim files;
 4-29 (ii) policyholder lists;
 4-30 (iii) application files;
 4-31 (iv) litigation files;
 4-32 (v) premium records;
 4-33 (vi) rate books and underwriting manuals;
 4-34 (vii) personnel records; and
 4-35 (viii) financial records or similar
 4-36 records.

4-37 (21) "Qualified financial contract" means a commodity
 4-38 contract, forward contract, repurchase agreement, securities
 4-39 contract, swap agreement, and any similar agreement that the
 4-40 commissioner determines by rule to be a qualified financial
 4-41 contract for the purposes of this chapter.

4-42 (22) "Receiver" means liquidator, rehabilitator, or
 4-43 ancillary conservator, as the context requires.

4-44 (23) "Receivership" means any liquidation,
 4-45 rehabilitation, or ancillary conservation, as the context
 4-46 requires.

4-47 (24) "Receivership court" refers to the court in which
 4-48 a delinquency proceeding is pending, unless the context requires
 4-49 otherwise.

4-50 (25) "Reinsurance" means transactions or contracts by
 4-51 which an assuming insurer agrees to indemnify a ceding insurer
 4-52 against all, or a part, of any loss that the ceding insurer might
 4-53 sustain under the policy or policies that it has issued or will
 4-54 issue.

4-55 (26) "Secured claim" means any claim secured by an
 4-56 asset that is not a general asset. The term includes the right to
 4-57 set off as provided in Section 21A.209. The term does not include a
 4-58 claim arising from a constructive or resulting trust, a special
 4-59 deposit claim, or a claim based on mere possession.

4-60 (27) "Special deposit" means a deposit established
 4-61 pursuant to statute for the security or benefit of a limited class
 4-62 or limited classes of persons.

4-63 (28) "Special deposit claim" means any claim secured
 4-64 by a special deposit. The term does not include any claim secured
 4-65 by the general assets of the insurer.

4-66 (29) "State" means any state, district, or territory
 4-67 of the United States.

4-68 (30) "Transfer" includes the sale and every other and
 4-69 different mode, direct or indirect, of disposing of or of parting

5-1 with property or with an interest in property, including a setoff,
 5-2 or with the possession of property or of fixing a lien upon property
 5-3 or upon an interest in property, absolutely or conditionally,
 5-4 voluntarily or involuntarily, by or without judicial proceedings.
 5-5 The retention of a security title in property delivered to an
 5-6 insurer is deemed a transfer suffered by the insurer.

5-7 (31) "Unauthorized insurer" means an insurer doing the
 5-8 business of insurance in this state that has not received from this
 5-9 state a certificate of authority or some other type of authority
 5-10 that allows for doing the business of insurance in this state.

5-11 (b) For purposes of this chapter, "admitted assets" and
 5-12 "liabilities" have the meanings assigned by the department in rules
 5-13 relating to risk-based capital.

5-14 (c) For purposes of Subsection (a)(21):

5-15 (1) "Commodity contract" means:

5-16 (A) a contract for the purchase or sale of a
 5-17 commodity for future delivery on or subject to the rules of a board
 5-18 of trade designated as a contract market by the Commodity Futures
 5-19 Trading Commission under the Commodity Exchange Act (7 U.S.C.
 5-20 Section 1 et seq.) or a board of trade outside the United States;

5-21 (B) an agreement that is subject to regulation
 5-22 under Section 19, Commodity Exchange Act (7 U.S.C. Section 23), and
 5-23 that is commonly known to the commodities trade as a margin account,
 5-24 margin contract, leverage account, or leverage contract; or

5-25 (C) an agreement or transaction that is subject
 5-26 to regulation under Section 4c(b), Commodity Exchange Act (7 U.S.C.
 5-27 Section 6c(b)), and that is commonly known to the commodities trade
 5-28 as a commodity option.

5-29 (2) "Forward contract" means a contract, other than a
 5-30 commodity contract, with a maturity date more than two days after
 5-31 the date the contract is entered into, that is for the purchase,
 5-32 sale, or transfer of a commodity, as defined by Section 1a,
 5-33 Commodity Exchange Act (7 U.S.C. Section 1a), or any similar good,
 5-34 article, service, right, or interest that is presently or in the
 5-35 future becomes the subject of dealing in the forward contract trade
 5-36 or product or byproduct of the contract. The term includes a
 5-37 repurchase transaction, reverse repurchase transaction,
 5-38 consignment, lease, swap, hedge transaction, deposit, loan,
 5-39 option, allocated transaction, unallocated transaction, or a
 5-40 combination of these or option on any of them.

5-41 (3) "Repurchase agreement" includes a reverse
 5-42 repurchase agreement and means an agreement, including related
 5-43 terms, that provides for the transfer of certificates of deposit,
 5-44 eligible bankers' acceptances, or securities that are direct
 5-45 obligations of or that are fully guaranteed as to principal and
 5-46 interest by the United States against the transfer of funds by the
 5-47 transferee of the certificates of deposit, eligible bankers'
 5-48 acceptances, or securities with a simultaneous agreement by the
 5-49 transferee to transfer to the transferor certificates of deposit,
 5-50 eligible bankers' acceptances, or securities as described in this
 5-51 subdivision, on demand or at a date certain not later than one year
 5-52 after the transfers, against the transfer of funds. For the
 5-53 purposes of this subdivision, the items that may be subject to a
 5-54 repurchase agreement:

5-55 (A) include mortgage-related securities and a
 5-56 mortgage loan and an interest in a mortgage loan; and

5-57 (B) do not include any participation in a
 5-58 commercial mortgage loan unless the commissioner determines by rule
 5-59 to include the participation within the meaning of the term.

5-60 (4) "Securities contract" means a contract for the
 5-61 purchase, sale, or loan of a security, including an option for the
 5-62 repurchase or sale of a security, certificate of deposit, or group
 5-63 or index of securities or an interest in the group or index or based
 5-64 on the value of the group or index, an option entered into on a
 5-65 national securities exchange relating to foreign currencies, or the
 5-66 guarantee of a settlement of cash or securities by or to a
 5-67 securities clearing agency. For the purposes of this subdivision,
 5-68 the term "security" includes a mortgage loan, a mortgage-related
 5-69 security, and an interest in any mortgage loan or mortgage-related

6-1 security.

6-2 (5) "Swap agreement" means an agreement, including the
 6-3 terms and conditions incorporated by reference in an agreement,
 6-4 that is a rate swap agreement, basis swap, commodity swap, forward
 6-5 rate agreement, interest rate future, interest rate option, forward
 6-6 foreign exchange agreement, spot foreign exchange agreement, rate
 6-7 cap agreement, rate floor agreement, rate collar agreement,
 6-8 currency swap agreement, cross-currency rate swap agreement,
 6-9 currency future, or currency option or any other similar agreement.
 6-10 The term includes any combination agreements described by this
 6-11 subdivision and an option to enter into any agreement described by
 6-12 this subdivision.

6-13 (d) The definitions under this section apply only to this
 6-14 chapter unless the context of another law requires otherwise.

6-15 Sec. 21A.005. JURISDICTION AND VENUE. (a) A delinquency
 6-16 proceeding may not be commenced under this chapter by a person other
 6-17 than the commissioner, and a court does not have jurisdiction to
 6-18 entertain, hear, or determine any delinquency proceeding commenced
 6-19 by any other person.

6-20 (b) A court of this state does not have jurisdiction, other
 6-21 than in accordance with this chapter, to entertain, hear, or
 6-22 determine any complaint praying for:

6-23 (1) the liquidation, rehabilitation, seizure,
 6-24 sequestration, conservation, or receivership of any insurer; or

6-25 (2) a stay, injunction, restraining order, or other
 6-26 relief preliminary, incidental, or relating to proceedings
 6-27 described by Subdivision (1).

6-28 (c) The receivership court, as of the commencement of a
 6-29 delinquency proceeding under this chapter, has exclusive
 6-30 jurisdiction of all property of the insurer, wherever located,
 6-31 including property located outside the territorial limits of the
 6-32 state. The receivership court has original but not exclusive
 6-33 jurisdiction of all civil proceedings arising:

6-34 (1) under this chapter; or

6-35 (2) in or related to delinquency proceedings under
 6-36 this chapter.

6-37 (d) In addition to other grounds for jurisdiction provided
 6-38 by the law of this state, a court having jurisdiction of the subject
 6-39 matter has jurisdiction over a person served pursuant to Rules 21
 6-40 and 21a, Texas Rules of Civil Procedure, or other applicable
 6-41 provisions of law in an action brought by the receiver if the person
 6-42 served:

6-43 (1) is or has been an agent, or other person who, at
 6-44 any time, has written policies of insurance for or has acted in any
 6-45 manner on behalf of an insurer against which a delinquency
 6-46 proceeding has been instituted, in any action resulting from or
 6-47 incident to such a relationship with the insurer;

6-48 (2) is or has been an insurer or reinsurer who, at any
 6-49 time, has entered into a contract of reinsurance with an insurer
 6-50 against which a delinquency proceeding has been instituted, or who
 6-51 is an agent of or for the reinsurer, in any action on or incident to
 6-52 the reinsurance contract;

6-53 (3) is or has been an officer, director, manager,
 6-54 trustee, organizer, promoter, or other person in a position of
 6-55 comparable authority or influence over an insurer against which a
 6-56 delinquency proceeding has been instituted, in any action resulting
 6-57 from or incident to such a relationship with the insurer;

6-58 (4) at the time of the institution of the delinquency
 6-59 proceeding against the insurer, is or was holding assets in which
 6-60 the receiver claims an interest on behalf of the insurer in any
 6-61 action concerning the assets; or

6-62 (5) is obligated to the insurer in any way, in any
 6-63 action on or incident to the obligation.

6-64 (e) If, on motion of any party, the receivership court finds
 6-65 that any action, as a matter of substantial justice, should be tried
 6-66 in a forum outside this state, the receivership court may enter an
 6-67 appropriate order to stay further proceedings on the action in this
 6-68 state. Except as to claims against the estate, nothing in this
 6-69 chapter deprives a party of any contractual right to pursue

7-1 arbitration. A party in arbitration may bring a claim or
 7-2 counterclaim against the estate, but the claim or counterclaim is
 7-3 subject to Section 21A.209.

7-4 (f) Service must be made upon the person named in the
 7-5 petition in accordance with Rules 21 and 21a, Texas Rules of Civil
 7-6 Procedure. In lieu of such service, upon application to the
 7-7 receivership court, service may be made in any manner the
 7-8 receivership court directs if it is satisfactorily shown by
 7-9 affidavit:

7-10 (1) in the case of a corporation, that the officers of
 7-11 the corporation cannot be served because they have departed from
 7-12 the state or otherwise concealed themselves with intent to avoid
 7-13 service;

7-14 (2) in the case of a Lloyd's plan or reciprocal or
 7-15 interinsurance exchange, that the individual attorney in fact or
 7-16 the officers of the corporate attorney in fact cannot be served
 7-17 because of departure or concealment; or

7-18 (3) in the case of an individual, that the person
 7-19 cannot be served because of the individual's departure or
 7-20 concealment.

7-21 (g) An action authorized by this section must be brought in
 7-22 a district court in Travis County.

7-23 (h) At any time after an order is entered pursuant to
 7-24 Section 21A.051, 21A.101, or 21A.151, the commissioner or receiver
 7-25 may transfer the case to the county of the principal office of the
 7-26 person proceeded against. In the event of transfer, the court in
 7-27 which the proceeding was commenced, upon application of the
 7-28 commissioner or receiver, shall direct its clerk to transmit the
 7-29 court's file to the clerk of the court to which the case is to be
 7-30 transferred. The proceeding, after transfer, shall be conducted in
 7-31 the same manner as if it had been commenced in the court to which the
 7-32 matter is transferred.

7-33 (i) A person may not intervene in any delinquency proceeding
 7-34 in this state for the purpose of seeking or obtaining payment of any
 7-35 judgment, lien, or other claim of any kind. The claims procedure
 7-36 set forth in this chapter constitutes the exclusive means for
 7-37 obtaining payment of claims from the receivership estate. This
 7-38 provision is not intended to affect the rights conferred on the
 7-39 guaranty associations by Section 21A.008(l).

7-40 (j) The foregoing provisions of this section
 7-41 notwithstanding, the provisions of this chapter do not confer
 7-42 jurisdiction on the receivership court to resolve coverage disputes
 7-43 between guaranty associations and those asserting claims against
 7-44 them resulting from the initiation of a delinquency proceeding
 7-45 under this chapter. The determination of any dispute with respect
 7-46 to the statutory coverage obligations of any guaranty association
 7-47 by a court or administrative agency or body with jurisdiction in the
 7-48 guaranty association's state of domicile is binding and conclusive
 7-49 as to the parties in a delinquency proceeding initiated in the
 7-50 receivership court, including the policyholders of the insurer.
 7-51 With respect to a guaranty association's obligations under a
 7-52 rehabilitation plan, the receivership court has jurisdiction only
 7-53 if the guaranty association expressly consents to the jurisdiction
 7-54 of the court.

7-55 Sec. 21A.006. EXEMPTION FROM FEES. The receiver may not be
 7-56 required to pay any filing, recording, transcript, or
 7-57 authenticating fee to any public officer in this state.

7-58 Sec. 21A.007. NOTICE, HEARING, AND APPEAL ON MATTERS
 7-59 SUBMITTED BY RECEIVER FOR RECEIVERSHIP COURT APPROVAL. (a) Upon
 7-60 written request to the receiver, a person must be placed on the
 7-61 service list to receive notice of matters filed by the receiver. It
 7-62 is the responsibility of the person requesting notice to inform the
 7-63 receiver in writing of any changes in the person's address or to
 7-64 request that the person's name be deleted from the service list.
 7-65 The receiver may require that the persons on the service list
 7-66 provide confirmation that they wish to remain on the service list.
 7-67 Any person who fails to confirm the person's intent to remain on the
 7-68 service list may be purged from the service list. Inclusion on the
 7-69 service list does not confer standing in the delinquency proceeding

8-1 to raise, appear, or be heard on any issue.

8-2 (b) Except as otherwise provided by this chapter, notice and
 8-3 hearing of any matter submitted by the receiver to the receivership
 8-4 court for approval under this chapter must be conducted in
 8-5 accordance with Subsections (c)-(g).

8-6 (c) The receiver shall file an application explaining the
 8-7 proposed action and the basis of the proposed action. The receiver
 8-8 may include any evidence in support of the application. If the
 8-9 receiver determines that any documents supporting the application
 8-10 are confidential, the receiver may submit them to the receivership
 8-11 court under seal for in camera inspection.

8-12 (d) The receiver shall provide notice of the application to
 8-13 all persons on the service list and any other parties as determined
 8-14 by the receiver. Notice may be provided by first class mail postage
 8-15 paid, electronic mail, or facsimile transmission, at the receiver's
 8-16 discretion. For purposes of this section, notice is deemed to be
 8-17 given on the date that it is deposited with the U.S. Postmaster or
 8-18 transmitted, as applicable, to the last known address as shown on
 8-19 the service list.

8-20 (e) Any party in interest objecting to the application must
 8-21 file an objection specifying the grounds for the objection not
 8-22 later than the 20th day after the date of the notice of the filing of
 8-23 the application or within another period as the receivership court
 8-24 may set, and must serve copies on the receiver and any other persons
 8-25 served with the application within the same period. An objecting
 8-26 party has the burden of showing why the receivership court should
 8-27 not authorize the proposed action.

8-28 (f) If no objection to the application is timely filed, the
 8-29 receivership court may enter an order approving the application
 8-30 without a hearing, or hold a hearing to determine if the receiver's
 8-31 application should be approved. The receiver may request that the
 8-32 receivership court enter an order or hold a hearing on an expedited
 8-33 basis.

8-34 (g) If an objection is timely filed, the receivership court
 8-35 may hold a hearing. If the receivership court approves the
 8-36 application and, upon a motion by the receiver, determines that the
 8-37 objection was frivolous or filed merely for delay or for another
 8-38 improper purpose, the receivership court shall order the objecting
 8-39 party to pay the receiver's reasonable costs and fees of defending
 8-40 the action.

8-41 Sec. 21A.008. INJUNCTIONS AND ORDERS. (a) The
 8-42 receivership court may issue any order, process, or judgment,
 8-43 including stays, injunctions, or other orders, as necessary or
 8-44 appropriate to carry out the provisions of this chapter or an
 8-45 approved rehabilitation plan.

8-46 (b) This chapter may not be construed to limit the ability
 8-47 of the receiver to apply to a court other than the receivership
 8-48 court in any jurisdiction to carry out any provision of this chapter
 8-49 or for the purpose of pursuing claims against any person.

8-50 (c) Except as provided by Subsection (e) or as otherwise
 8-51 provided by this chapter and subject to Subsection (g), the
 8-52 commencement of a delinquency proceeding under this chapter
 8-53 operates as a stay, applicable to all persons, of:

8-54 (1) the commencement or continuation, including the
 8-55 issuance or employment of process, of a judicial, administrative,
 8-56 or other action or proceeding against the insurer, including an
 8-57 arbitration proceeding, that was or could have been commenced
 8-58 before the commencement of the delinquency proceeding under this
 8-59 chapter, or to recover a claim against the insurer that arose before
 8-60 the commencement of the delinquency proceeding under this chapter;

8-61 (2) the enforcement against the insurer or against
 8-62 property of the insurer of a judgment obtained before the
 8-63 commencement of the delinquency proceeding under this chapter;

8-64 (3) any act to obtain or retain possession of property
 8-65 of the insurer or of property from the insurer or to exercise
 8-66 control over property or records of the insurer;

8-67 (4) any act to create, perfect, or enforce any lien
 8-68 against property of the insurer;

8-69 (5) any act to collect, assess, or recover a claim

9-1 against the insurer that arose before the commencement of a
 9-2 delinquency proceeding under this chapter;

9-3 (6) the commencement or continuation of an action or
 9-4 proceeding against a reinsurer of the insurer, by the holder of a
 9-5 claim against the insurer, seeking reinsurance recoveries that are
 9-6 contractually due to the insurer; and

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

9-10 (d) Except as provided in Subsection (e) or as otherwise
 9-11 provided by this chapter, the commencement of a delinquency
 9-12 proceeding under this chapter operates as a stay, applicable to all
 9-13 persons, of any judicial, administrative, or other action or
 9-14 proceeding, including the enforcement of any judgment, against any
 9-15 insured that was or could have been commenced before the
 9-16 commencement of the delinquency proceeding under this chapter, or
 9-17 to recover a claim against the insured that arose before or after
 9-18 the commencement of the delinquency proceeding under this chapter
 9-19 and for which the insurer is or may be liable under a policy of
 9-20 insurance or is obligated to defend a party. The stay provided by
 9-21 this subsection terminates 90 days after the date of appointment of
 9-22 the receiver, unless, for good cause shown, the stay is extended by
 9-23 order of the receivership court after notice to any affected
 9-24 parties and any hearing the receivership court determines is
 9-25 appropriate.

9-26 (e) Notwithstanding Subsection (c), the commencement of a
 9-27 delinquency proceeding under this chapter does not operate as a
 9-28 stay of:

9-29 (1) regulatory actions not described by Subsection
 9-30 (c)(7) that are taken by the commissioners of nondomiciliary
 9-31 states, including the suspension of licenses;

9-32 (2) criminal proceedings;

9-33 (3) any act to perfect or to maintain or continue the
 9-34 perfection of an interest in property to the extent that the act is
 9-35 accomplished within any relation back period under applicable law;

9-36 (4) set off as permitted by Section 21A.209;

9-37 (5) pursuit and enforcement of nonmonetary
 9-38 governmental claims, judgments, and proceedings;

9-39 (6) presentment of a negotiable instrument and the
 9-40 giving of notice and protesting dishonor of the instrument;

9-41 (7) enforcement of rights against single beneficiary
 9-42 trusts established pursuant to and in compliance with laws relating
 9-43 to credit for reinsurance;

9-44 (8) termination, liquidation, and netting of
 9-45 obligations under qualified financial contracts as provided for in
 9-46 Section 21A.261;

9-47 (9) discharge by a guaranty association of statutory
 9-48 responsibilities under any law governing guaranty associations; or

9-49 (10) any of the following actions:

9-50 (A) an audit by a governmental unit to determine
 9-51 tax liability;

9-52 (B) the issuance to the insurer by a governmental
 9-53 unit of a notice of tax deficiency;

9-54 (C) a demand for tax returns; or

9-55 (D) the making of an assessment for any tax and
 9-56 issuance of a notice and demand for payment of the assessment.

9-57 (f) Except as provided by Subsection (h):

9-58 (1) the stay of an act against property of the insurer
 9-59 under Subsection (c) continues until the property is no longer
 9-60 property of the receivership estate; and

9-61 (2) the stay of any other act under Subsection (c)
 9-62 continues until the earlier of the time the delinquency proceeding
 9-63 is closed or dismissed.

9-64 (g) Notwithstanding the provisions of Subsection (c),
 9-65 claims against the insurer that arose before the commencement of
 9-66 the delinquency proceeding under this chapter may be asserted as a
 9-67 counterclaim in any judicial, administrative, or other action or
 9-68 proceeding initiated by or on behalf of the receiver against the
 9-69 holder of the claims.

10-1 (h) On request of a party in interest and after notice and
 10-2 any hearing the receivership court determines is appropriate, the
 10-3 receivership court may grant relief from the stay of Subsection (c)
 10-4 or (d), such as by terminating, annulling, modifying, or
 10-5 conditioning the stay:

10-6 (1) for cause as described by Subsection (i); or
 10-7 (2) with respect to a stay of an act against property
 10-8 under Subsection (c) if:

10-9 (A) the insurer does not have equity in the
 10-10 property; and

10-11 (B) the property is not necessary to an effective
 10-12 rehabilitation plan.

10-13 (i) For purposes of Subsection (h), "cause" includes the
 10-14 receiver canceling a policy, surety bond, or surety undertaking if
 10-15 the creditor is entitled, by contract or by law, to require the
 10-16 insured or the principal to have a policy, surety bond, or surety
 10-17 undertaking and the insured or the principal fails to obtain a
 10-18 replacement policy, surety bond, or surety undertaking not later
 10-19 than the later of:

10-20 (1) the 30th day after the date the receiver cancels
 10-21 the policy, surety bond, or surety undertaking; or

10-22 (2) the time permitted by contract or law.

10-23 (j) In any hearing under Subsection (h), the party seeking
 10-24 relief from the stay has the burden of proof on each issue, which
 10-25 must be established by clear and convincing evidence.

10-26 (k) The estate of an insurer that is injured by any wilful
 10-27 violation of a stay provided by this section is entitled to actual
 10-28 damages, including costs and attorney's fees. In appropriate
 10-29 circumstances, the receivership court may impose additional
 10-30 sanctions.

10-31 (l) Any guaranty association or its designated
 10-32 representative may intervene as a party as a matter of right or
 10-33 otherwise appear and participate in any court proceeding concerning
 10-34 a delinquency proceeding if the association is or may become liable
 10-35 to act as a result of the rehabilitation or liquidation of the
 10-36 insurer. Exercise by any guaranty association or its designated
 10-37 representative of the right to intervene conferred under this
 10-38 subsection does not constitute grounds to establish general
 10-39 personal jurisdiction by the courts of this state. The intervening
 10-40 guaranty association or its designated representative are subject
 10-41 to the receivership court's jurisdiction for the limited purpose
 10-42 for which it intervenes.

10-43 (m) Notwithstanding any other provision of law, bond may not
 10-44 be required of the commissioner or receiver in relation to any stay
 10-45 or injunction under this section.

10-46 Sec. 21A.009. STATUTES OF LIMITATIONS. (a) If applicable
 10-47 law, an order, or an agreement fixes a period within which the
 10-48 insurer may commence an action, and this period has not expired
 10-49 before the date of the filing of the initial petition in a
 10-50 delinquency proceeding, the receiver may commence an action only
 10-51 before the later of:

10-52 (1) the end of the period, including any suspension of
 10-53 the period occurring on or after the filing of the initial petition
 10-54 in a delinquency proceeding; or

10-55 (2) four years after the later of the date of entry of
 10-56 an order for either rehabilitation or liquidation.

10-57 (b) Except as provided by Subsection (a), if applicable law,
 10-58 an order, or an agreement fixes a period within which the insurer
 10-59 may file any pleading, demand, notice, or proof of claim or loss,
 10-60 cure a default in a case or proceeding, or perform any other similar
 10-61 act, and the period has not expired before the date of the filing of
 10-62 the petition initiating formal delinquency proceedings, the
 10-63 receiver may file, cure, or perform, as the case may be, only before
 10-64 the later of:

10-65 (1) the end of the period, including any suspension of
 10-66 the period occurring on or after the filing of the initial petition
 10-67 in the delinquency proceeding; or

10-68 (2) 60 days after the later of the date of entry of an
 10-69 order for either rehabilitation or liquidation.

11-1 (c) If applicable law, an order, or an agreement fixes a
 11-2 period for commencing or continuing a civil action in a court other
 11-3 than the receivership court on a claim against the insurer, and the
 11-4 period has not expired before the date of the initial filing of the
 11-5 petition in a delinquency proceeding, then the period does not
 11-6 expire until the later of:

11-7 (1) the end of the period, including any suspension of
 11-8 the period occurring on or after the filing of the initial petition
 11-9 in the delinquency proceeding; or

11-10 (2) 30 days after termination or expiration of the
 11-11 stay under Section 21A.008 with respect to the claim.

11-12 (d) If the otherwise applicable limitations period has not
 11-13 expired prior to the initial filing of the petition commencing a
 11-14 delinquency proceeding, any other action or proceeding filed by a
 11-15 receiver may be commenced at any time within four years after the
 11-16 date upon which the cause of action accrues or four years after the
 11-17 date on which the receiver is appointed, whichever is later.

11-18 Sec. 21A.010. COOPERATION OF OFFICERS, OWNERS, AND
 11-19 EMPLOYEES. (a) Any present or former officer, manager, director,
 11-20 trustee, owner, employee, or agent of any insurer, or any other
 11-21 persons with authority over or in charge of any segment of the
 11-22 insurer's affairs, shall cooperate with the commissioner or
 11-23 receiver in any proceeding under this chapter or any investigation
 11-24 preliminary to the proceeding. For purposes of this section:

11-25 (1) "person" includes any person who exercises control
 11-26 directly or indirectly over activities of the insurer through any
 11-27 holding company or other affiliate of the insurer; and

11-28 (2) "cooperate" includes:
 11-29 (A) replying promptly in writing to any inquiry
 11-30 from the commissioner or receiver requesting the reply; and

11-31 (B) promptly making available to the
 11-32 commissioner or receiver any books, accounts, documents, or other
 11-33 records or information or property of or pertaining to the insurer
 11-34 and in the person's possession, custody, or control.

11-35 (b) A person may not obstruct or interfere with the
 11-36 commissioner or receiver in the conduct of any delinquency
 11-37 proceeding or any preliminary or incidental investigation.

11-38 (c) This section may not be construed to abridge otherwise
 11-39 existing legal rights, including the right to resist a petition for
 11-40 liquidation or other delinquency proceedings, or other orders.

11-41 (d) Any person described by Subsection (a) who fails to
 11-42 cooperate with the commissioner or receiver, or any person who
 11-43 obstructs or interferes with the commissioner or receiver in the
 11-44 conduct of any delinquency proceeding or any preliminary or
 11-45 incidental investigation, or who violates any order validly issued
 11-46 under this chapter:

11-47 (1) commits an offense; and
 11-48 (2) is subject to the imposition by the commissioner
 11-49 of an administrative penalty not to exceed \$10,000 and subject to
 11-50 the revocation or suspension of any licenses issued by the
 11-51 commissioner in accordance with Chapters 82 and 84.

11-52 (e) An offense under Subsection (d) is punishable by a fine
 11-53 not exceeding \$10,000 or imprisonment for not more than one year, or
 11-54 both fine and imprisonment.

11-55 Sec. 21A.011. ACTIONS BY AND AGAINST RECEIVER. (a) An
 11-56 allegation by the receiver of improper or fraudulent conduct
 11-57 against any person may not be the basis of a defense to the
 11-58 enforcement of a contractual obligation owed to the insurer by a
 11-59 third party, unless the conduct is found to have been materially and
 11-60 substantially related to the contractual obligation for which
 11-61 enforcement is sought.

11-62 (b) A prior wrongful or negligent action of any present or
 11-63 former officer, manager, director, trustee, owner, employee, or
 11-64 agent of the insurer may not be asserted as a defense to a claim by
 11-65 the receiver under a theory of estoppel, comparative fault,
 11-66 intervening cause, proximate cause, reliance, mitigation of
 11-67 damages, or otherwise, except that the affirmative defense of fraud
 11-68 in the inducement may be asserted against the receiver in a claim
 11-69 based on a contract, and a principal under a surety bond or a surety

12-1 undertaking is entitled to credit against any reimbursement
 12-2 obligation to the receiver for the value of any property pledged to
 12-3 secure the reimbursement obligation to the extent that the receiver
 12-4 has possession or control of the property or that the insurer or its
 12-5 agents commingled or otherwise misappropriated the property.
 12-6 Evidence of fraud in the inducement is admissible only if the
 12-7 evidence is contained in the records of the insurer.

12-8 (c) An action or inaction by the department or the insurance
 12-9 regulatory authorities in any state may not be asserted as a defense
 12-10 to a claim by the receiver.

12-11 (d) Except as provided by Subsection (e), a judgment or
 12-12 order entered against an insured or the insurer in contravention of
 12-13 any stay or injunction under this chapter, or at any time by default
 12-14 or collusion, may not be considered as evidence of liability or of
 12-15 the amount of damages in adjudicating claims filed in the estate
 12-16 arising out of the subject matter of the judgment or order.

12-17 (e) Subsection (d) does not apply to guaranty associations'
 12-18 claims for amounts paid on settlements and judgments in pursuit of
 12-19 their statutory obligations.

12-20 (f) The receiver may not be deemed a governmental entity for
 12-21 the purposes of any state law awarding fees to a litigant who
 12-22 prevails against a governmental entity.

12-23 Sec. 21A.012. UNRECORDED OBLIGATIONS AND DEFENSES OF
 12-24 AFFILIATES. (a) In any proceeding or claim by the receiver, an
 12-25 affiliate, controlled or controlling person, or present or former
 12-26 officer, manager, director, trustee, or shareholder of the insurer
 12-27 may not assert any defense, unless evidence of the defense was
 12-28 recorded in the books and records of the insurer at or about the
 12-29 time the events giving rise to the defense occurred and, if required
 12-30 by statutory accounting practices and procedures, was timely
 12-31 reported on the insurer's official financial statements filed with
 12-32 the department.

12-33 (b) An affiliate, controlled or controlling person, or
 12-34 present or former officer, manager, director, trustee, or
 12-35 shareholder of the insurer may not assert any claim, unless the
 12-36 obligations were recorded in the books and records of the insurer at
 12-37 or about the time the obligations were incurred and, if required by
 12-38 statutory accounting practices and procedures, were timely
 12-39 reported on the insurer's official financial statements filed with
 12-40 the department.

12-41 (c) Claims by the receiver against any affiliate,
 12-42 controlled or controlling person, or present or former officer,
 12-43 manager, director, trustee, or shareholder of the insurer based on
 12-44 unrecorded or unreported transactions are not barred by this
 12-45 section.

12-46 Sec. 21A.013. EXECUTORY CONTRACTS AND UNEXPIRED LEASES.
 12-47 (a) The receiver may assume or reject any executory contract or
 12-48 unexpired lease of the insurer.

12-49 (b) Neither the filing of a petition commencing delinquency
 12-50 proceedings under this chapter nor the entry of an order for a
 12-51 delinquency proceeding constitutes a breach or anticipatory breach
 12-52 of any contract or lease of the insurer.

12-53 (c) If there has been a default in an executory contract or
 12-54 unexpired lease of the insurer, the receiver may not assume the
 12-55 contract or lease unless, at the time of the assumption of the
 12-56 contract or lease, the receiver:

12-57 (1) cures or provides adequate assurance that the
 12-58 receiver will promptly cure the default; and

12-59 (2) provides adequate assurance of future performance
 12-60 under the contract or lease.

12-61 (d) Subsection (c) does not apply to a default that is a
 12-62 breach of a provision relating to:

12-63 (1) the insolvency or financial condition of the
 12-64 insurer at any time before the closing of the delinquency
 12-65 proceeding;

12-66 (2) the appointment of or taking possession by a
 12-67 receiver in a case under this chapter or a custodian before the
 12-68 commencement of the delinquency proceeding; or

12-69 (3) the satisfaction of any penalty rate or provision

13-1 relating to a default arising from any failure of the insurer to
 13-2 perform nonmonetary obligations under the executory contract or
 13-3 unexpired lease.

13-4 (e) A claim arising from the rejection, under this section
 13-5 or a plan of rehabilitation, of an executory contract or unexpired
 13-6 lease of the insurer that has not been assumed shall be determined,
 13-7 treated, and classified as if the claim had arisen before the date
 13-8 of the filing of a successful petition commencing the delinquency
 13-9 proceeding.

13-10 Sec. 21A.0135. CONTRACTS FOR SPECIAL DEPUTIES. (a) The
 13-11 receiver shall use a competitive bidding process in the selection
 13-12 of any special deputies appointed under Section 21A.102 or 21A.154.
 13-13 The process must include procedures to promote the participation of
 13-14 historically underutilized businesses that have been certified by
 13-15 the Texas Building and Procurement Commission under Section
 13-16 2161.061, Government Code.

13-17 (b) A proposal submitted in connection with a bid
 13-18 solicitation under Subsection (a) must describe the efforts that
 13-19 have been made to include historically underutilized businesses as
 13-20 subcontractors and the plan for using the historically
 13-21 underutilized businesses in the administration of the receivership
 13-22 estate. A special deputy appointed under Section 21A.102 or
 13-23 21A.154 shall make a good faith effort to implement the plan and
 13-24 shall report to the receiver the special deputy's efforts to
 13-25 identify and subcontract with historically underutilized
 13-26 businesses.

13-27 Sec. 21A.014. IMMUNITY AND INDEMNIFICATION OF RECEIVER AND
 13-28 ASSISTANTS. (a) For the purposes of this section, the persons
 13-29 entitled to immunity and indemnification and those entitled to
 13-30 immunity only, as applicable, are:

13-31 (1) all present and former receivers responsible for
 13-32 the conduct of a delinquency proceeding under this chapter;

13-33 (2) all of the receiver's present and former
 13-34 assistants, including:

13-35 (A) all present and former special deputies and
 13-36 assistant special deputies engaged by contract or otherwise;

13-37 (B) all persons whom the receiver, special
 13-38 deputies, or assistant special deputies have employed to assist in
 13-39 a delinquency proceeding under this chapter; and

13-40 (C) any state employees acting with respect to a
 13-41 delinquency proceeding under this chapter; and

13-42 (3) all of the receiver's present and former
 13-43 contractors, including all persons with whom the receiver, special
 13-44 deputies, or assistant special deputies have contracted to assist
 13-45 in a delinquency proceeding under this chapter, including
 13-46 attorneys, accountants, auditors, actuaries, investment bankers,
 13-47 financial advisors, and any other professionals or firms who are
 13-48 retained or contracted with by the receiver as independent
 13-49 contractors and all employees of the contractors.

13-50 (b) The receiver, the receiver's assistants, and the
 13-51 receiver's contractors have immunity under this chapter, as
 13-52 described by Subsections (c) and (d).

13-53 (c) The receiver, the receiver's assistants, and the
 13-54 receiver's contractors are immune from suit and liability, both
 13-55 personally and in their representative capacities, for any claim
 13-56 for damage to or loss of property or personal injury or other civil
 13-57 liability caused by or resulting from any alleged act, error, or
 13-58 omission of the receiver or any assistant or contractor that arises
 13-59 out of or by reason of their duties or employment or is taken at the
 13-60 direction of the receivership court, providing that the alleged
 13-61 act, error, or omission is performed in good faith.

13-62 (d) Any immunity granted by this section is in addition to
 13-63 any immunity granted by other law.

13-64 (e) The receiver and the receiver's assistants are entitled
 13-65 to indemnification under this chapter, as described by Subsections
 13-66 (f)-(1).

13-67 (f) If any legal action is commenced against the receiver or
 13-68 any assistant, whether against the receiver or assistant personally
 13-69 or in their official capacity, alleging property damage, property

14-1 loss, personal injury, or other civil liability caused by or
 14-2 resulting from any alleged act, error, or omission of the receiver
 14-3 or any assistant arising out of or by reason of their duties or
 14-4 employment, the receiver and any assistant are indemnified from the
 14-5 assets of the insurer for all expenses, attorney's fees, judgments,
 14-6 settlements, decrees, or amounts due and owing or paid in
 14-7 satisfaction of or incurred in the defense of the legal action,
 14-8 unless it is determined upon a final adjudication on the merits that
 14-9 the alleged act, error, or omission of the receiver or assistant
 14-10 giving rise to the claim:

14-11 (1) did not arise out of or by reason of their duties
 14-12 or employment; or

14-13 (2) was caused by intentional or wilful and wanton
 14-14 misconduct.

14-15 (g) Attorney's fees and any and all related expenses
 14-16 incurred in defending a legal action for which immunity or
 14-17 indemnity is available under this section must be paid from the
 14-18 assets of the insurer, as the fees and expenses are incurred, and in
 14-19 advance of the final disposition of the legal action upon receipt of
 14-20 an agreement by or on behalf of the receiver or assistant to repay
 14-21 the attorney's fees and expenses, if it is ultimately determined
 14-22 upon a final adjudication on the merits that the receiver or
 14-23 assistant is not entitled to immunity or indemnity under this
 14-24 section.

14-25 (h) Any indemnification for expense payments, judgments,
 14-26 settlements, decrees, attorney's fees, surety bond premiums, or
 14-27 other amounts paid or to be paid from the insurer's assets pursuant
 14-28 to this section are an administrative expense of the insurer.

14-29 (i) In the event of any actual or threatened litigation
 14-30 against a receiver or any assistant for whom immunity or indemnity
 14-31 may be available under this section, a reasonable amount of funds,
 14-32 which in the judgment of the receiver may be needed to provide
 14-33 immunity or indemnity, must be segregated and reserved from the
 14-34 assets of the insurer as security for the payment of indemnity
 14-35 until:

14-36 (1) all applicable statutes of limitation have run;
 14-37 (2) all actual or threatened actions against the
 14-38 receiver or any assistant have been completely and finally
 14-39 resolved; and

14-40 (3) all obligations under this section have been
 14-41 satisfied.

14-42 (j) Instead of segregating and reserving funds under
 14-43 Subsection (i), the receiver may, in the receiver's discretion,
 14-44 obtain a surety bond or make other arrangements that will enable the
 14-45 receiver to secure fully the payment of all obligations under this
 14-46 section.

14-47 (k) If any legal action against an assistant for whom
 14-48 indemnity may be available under this section is settled prior to
 14-49 final adjudication on the merits, the receiver must pay the
 14-50 settlement amount on behalf of the assistant, or indemnify the
 14-51 assistant for the settlement amount, unless the receiver determines
 14-52 that the claim:

14-53 (1) did not arise out of or by reason of the
 14-54 assistant's duties or employment; or

14-55 (2) was caused by the intentional or wilful and wanton
 14-56 misconduct of the assistant.

14-57 (l) In any legal action in which a claim is asserted against
 14-58 the receiver, that portion of any settlement relating to the
 14-59 alleged act, error, or omission of the receiver is subject to the
 14-60 approval of the receivership court. The receivership court may not
 14-61 approve that portion of the settlement if it determines that the
 14-62 claim:

14-63 (1) did not arise out of or by reason of the receiver's
 14-64 duties or employment; or

14-65 (2) was caused by the intentional or wilful and wanton
 14-66 misconduct of the receiver.

14-67 (m) Nothing contained or implied in this section may operate
 14-68 or be construed or applied to deprive the receiver, the receiver's
 14-69 assistants, or receiver's contractors of any immunity, indemnity,

15-1 benefits of law, rights, or defense otherwise available.

15-2 (n) The immunity and indemnification provided to the
 15-3 receiver's assistants and the immunity provided to the receiver's
 15-4 contractors under this section do not apply to any action by the
 15-5 receiver against that person.

15-6 (o) Subsection (b) applies to any suit based in whole or in
 15-7 part on any alleged act, error, or omission that takes place on or
 15-8 after September 1, 2005.

15-9 (p) Subsections (e)-(l) apply to any suit that is pending on
 15-10 or filed after September 1, 2005, without regard to when the alleged
 15-11 act, error, or omission took place.

15-12 Sec. 21A.015. APPROVAL AND PAYMENT OF EXPENSES. (a) The
 15-13 receiver may pay any expenses under contracts, leases, employment
 15-14 agreements, or other arrangements entered into by the insurer prior
 15-15 to receivership, as the receiver deems necessary for the purposes
 15-16 of this chapter. The receiver is not required to pay any expenses
 15-17 that the receiver determines are not necessary, and may reject any
 15-18 contract pursuant to Section 21A.013.

15-19 (b) Receivership expenses other than those described in
 15-20 Subsection (a) must be paid in accordance with Subsections (c)-(f).

15-21 (c) The receiver shall submit to the receivership court an
 15-22 application pursuant to Section 21A.007 to approve:

15-23 (1) the terms of compensation of each special deputy
 15-24 or contractor with respect to which the total amount of the
 15-25 compensation is reasonably expected by the receiver for the
 15-26 duration of the delinquency proceeding to exceed \$250,000, or
 15-27 another amount established by the receivership court; and

15-28 (2) any other anticipated expense in excess of
 15-29 \$25,000, or another amount established by the receivership court.

15-30 (d) The receiver may, as the receiver deems appropriate,
 15-31 submit an application to approve any compensation, anticipated
 15-32 expenses, or incurred expenses not described by Subsection (c)(1).

15-33 (e) The receiver may pay any expenses not requiring
 15-34 receivership court approval and any expenses approved by the
 15-35 rehabilitation or liquidation order as the expenses are incurred.

15-36 (f) The approval of expenses by the receivership court does
 15-37 not prejudice the right of the receiver to seek any recovery,
 15-38 recoupment, disgorgement, or reimbursement of fees based on
 15-39 contract or causes of action recognized in law or in equity.

15-40 (g) On a quarterly basis, or as otherwise provided by the
 15-41 receivership court, the receiver shall submit to the receivership
 15-42 court a report summarizing the expenses incurred during the period.

15-43 (h) Receivership court approval may not be required to pay
 15-44 expenses incurred by the receiver in connection with the appeal of
 15-45 an order of the receivership court.

15-46 (i) All expenses of receivership shall be paid from the
 15-47 assets of the insurer, except as provided by this subsection. In
 15-48 the event that the property of the insurer does not contain
 15-49 sufficient cash or liquid assets to defray the expenses incurred,
 15-50 the commissioner may advance funds from the account established
 15-51 under Section 21A.304(c). Any amounts advanced shall be repaid to
 15-52 the account out of the first available money of the insurer.

15-53 Sec. 21A.016. FINANCIAL REPORTING. (a) Not later than the
 15-54 120th day after the date of entry of an order of receivership by the
 15-55 receivership court, and at least quarterly after that date, the
 15-56 receiver shall file a financial report with the receivership court.
 15-57 A financial report filed under this subsection at a minimum, must
 15-58 include:

15-59 (1) a statement of the assets and liabilities of the
 15-60 insurer;

15-61 (2) the changes in those assets and liabilities; and

15-62 (3) all funds received or disbursed by the receiver
 15-63 during the period covered by the report.

15-64 (b) The receivership court shall require a financial report
 15-65 filed under Subsection (a) to comply with all receivership
 15-66 financial reporting requirements specified by the National
 15-67 Association of Insurance Commissioners and adopted in this state by
 15-68 rule by the commissioner.

15-69 (c) Not later than the 120th day after the date of entry of

16-1 an order of liquidation by the receivership court, and at least
 16-2 quarterly after that date, or at other intervals as may be agreed to
 16-3 between the liquidator and the guaranty associations, but in no
 16-4 event less than annually, each affected guaranty association shall
 16-5 file reports with the liquidator. The reports must be in a format
 16-6 compatible with that specified by the National Association of
 16-7 Insurance Commissioners. Reports under this subsection shall be
 16-8 filed with the receivership court.

16-9 Sec. 21A.017. RECORDS. (a) Upon entry of an order of
 16-10 rehabilitation or liquidation, the receiver is vested with title to
 16-11 all of the books, documents, papers, policy information, and claim
 16-12 files, and all other records of the insurer, of whatever nature, in
 16-13 whatever medium, and wherever located, regardless of whether the
 16-14 records are in the custody and control of a third-party
 16-15 administrator, managing general agent, attorney, or other
 16-16 representative of the insurer. The receiver may immediately take
 16-17 possession and control of all of the records of the insurer, and of
 16-18 the premises where the records are located. A third-party
 16-19 administrator, managing general agent, attorney, or other
 16-20 representative of the insurer shall release all records described
 16-21 by this subsection to the receiver, or the receiver's designee, at
 16-22 the request of the receiver. A guaranty association that has or may
 16-23 have obligations under a policy issued by the insurer has the right,
 16-24 with the receiver's approval, to take actions as are necessary to
 16-25 obtain directly from any third-party administrator, managing
 16-26 general agent, attorney, or other representative of the insurer all
 16-27 records described by this section that pertain to the insurer's
 16-28 business and that are appropriate or necessary for the guaranty
 16-29 association to fulfill the association's statutory obligations.

16-30 (b) The receiver has the authority to certify the records of
 16-31 a delinquent insurer described by Subsection (a) and the records of
 16-32 the receiver's office created and maintained in connection with a
 16-33 delinquent insurer, as follows:

16-34 (1) records of a delinquent insurer may be certified
 16-35 by the receiver in an affidavit stating that the records:

16-36 (A) are true and correct copies of records of the
 16-37 insurer; and

16-38 (B) were received from the custody of the insurer
 16-39 or found among its effects; and

16-40 (2) records created by or filed with the receiver's
 16-41 office in connection with a delinquent insurer may be certified by
 16-42 the receiver's affidavit stating that the records are true and
 16-43 correct copies of records maintained by the receiver's office.

16-44 (c) Original books, documents, papers, and other records,
 16-45 or copies of original records certified under Subsection (b), when
 16-46 admitted in evidence, are prima facie evidence of the facts
 16-47 disclosed.

16-48 (d) The records of a delinquent insurer held by the receiver
 16-49 may not be considered records of the department for any purposes,
 16-50 and Chapter 552, Government Code, does not apply to those records.

16-51 [Sections 21A.018-21A.050 reserved for expansion]

16-52 SUBCHAPTER B. PROCEEDINGS

16-53 Sec. 21A.051. RECEIVERSHIP COURT'S SEIZURE ORDER. (a) The
 16-54 commissioner may file in a district court of Travis County a
 16-55 petition with respect to an insurer domiciled in this state, an
 16-56 unauthorized insurer, or, pursuant to Section 21A.401, a foreign
 16-57 insurer:

16-58 (1) alleging that grounds exist that would justify a
 16-59 court order for a formal delinquency proceeding against the insurer
 16-60 under this chapter;

16-61 (2) alleging that the interests of policyholders,
 16-62 creditors, or the public will be endangered by delay; and

16-63 (3) setting forth the contents of a seizure order
 16-64 deemed to be necessary by the commissioner.

16-65 (b) Upon a filing under Subsection (a), the receivership
 16-66 court may issue, ex parte and without notice or hearing, the
 16-67 requested seizure order directing the commissioner to take
 16-68 possession and control of all or a part of the property, books,
 16-69 accounts, documents, and other records of an insurer, and of the

17-1 premises occupied by it for transaction of its business, and until
 17-2 further order of the receivership court, enjoining the insurer and
 17-3 its officers, managers, agents, and employees from disposition of
 17-4 its property and from the transaction of its business except with
 17-5 the written consent of the commissioner. Any person having
 17-6 possession or control of and refusing to deliver any of the books,
 17-7 records, or assets of a person against whom a seizure order has been
 17-8 issued commits an offense. An offense under this subsection is
 17-9 punishable in the manner described by Section 21A.010(e).

17-10 (c) A petition that prays for injunctive relief must be
 17-11 verified by the commissioner or the commissioner's designee, but
 17-12 need not plead or prove irreparable harm or inadequate remedy at
 17-13 law. The commissioner shall provide only the notice as the
 17-14 receivership court may require.

17-15 (d) The receivership court shall specify in the seizure
 17-16 order the duration of the seizure order, which shall be a period the
 17-17 receivership court deems necessary for the commissioner to
 17-18 ascertain the condition of the insurer. On motion of the
 17-19 commissioner or the insurer, or the court's own motion, the
 17-20 receivership court may, from time to time, hold hearings as it deems
 17-21 desirable after notice as it deems appropriate, and may extend,
 17-22 shorten, or modify the terms of the seizure order. The receivership
 17-23 court shall vacate the seizure order if the commissioner fails to
 17-24 commence a formal delinquency proceeding under this chapter after
 17-25 having had a reasonable opportunity to do so. An order of the
 17-26 receivership court pursuant to a formal proceeding under this
 17-27 chapter vacates the seizure order.

17-28 (e) Entry of a seizure order under this section does not
 17-29 constitute a breach or an anticipatory breach of any contract of the
 17-30 insurer.

17-31 (f) An insurer subject to an ex parte seizure order under
 17-32 this section may petition the receivership court at any time after
 17-33 the issuance of a seizure order for a hearing and review of the
 17-34 seizure order. The receivership court shall hold the hearing and
 17-35 conduct the review not later than the 15th day after the date of the
 17-36 request. A hearing under this subsection may be held privately in
 17-37 chambers, and a hearing shall be held privately in chambers if the
 17-38 insurer proceeded against so requests.

17-39 (g) If, at any time after the issuance of a seizure order, it
 17-40 appears to the receivership court that any person whose interest is
 17-41 or will be substantially affected by the seizure order did not
 17-42 appear at the hearing and has not been served, the receivership
 17-43 court may order that notice be given to the person. An order that
 17-44 notice be given does not stay the effect of any seizure order
 17-45 previously issued by the receivership court.

17-46 (h) Whenever the commissioner makes any seizure as provided
 17-47 by Subsection (b), on the demand of the commissioner, the sheriff of
 17-48 any county and the police department of any municipality shall
 17-49 furnish the commissioner with the deputies, patrolmen, or officers
 17-50 as may be necessary to assist the commissioner in making and
 17-51 enforcing the seizure order.

17-52 (i) In all proceedings and judicial reviews under this
 17-53 section, all records of the insurer, department files, court
 17-54 records and papers, and other documents, so far as they pertain to
 17-55 or are a part of the record of the proceedings, are confidential,
 17-56 and all papers filed with the clerk of the court shall be held by the
 17-57 clerk in a confidential file as permitted by law, except to the
 17-58 extent necessary to obtain compliance with any order entered in
 17-59 connection with the proceedings, unless and until:

17-60 (1) the court, after hearing argument in chambers,
 17-61 orders otherwise;

17-62 (2) the insurer requests that the matter be made
 17-63 public; or

17-64 (3) the commissioner applies for an order under
 17-65 Section 21A.057.

17-66 Sec. 21A.052. COMMENCEMENT OF FORMAL DELINQUENCY
 17-67 PROCEEDING. (a) Any formal delinquency proceeding against a
 17-68 person shall be commenced by filing a petition in the name of the
 17-69 commissioner or department.

18-1 (b) The petition must state the grounds upon which the
 18-2 proceeding is based and the relief requested and may include a
 18-3 prayer for restraining orders and injunctive relief as described in
 18-4 Section 21A.008. On the filing of the petition or order, a copy
 18-5 shall be forwarded by first class mail or electronic communication
 18-6 as permitted by the receivership court to the insurance regulatory
 18-7 officials and guaranty associations in states in which the insurer
 18-8 did business.

18-9 (c) Any petition that prays for injunctive relief must be
 18-10 verified by the commissioner or the commissioner's designee, but
 18-11 need not plead or prove irreparable harm or inadequate remedy at
 18-12 law. The commissioner shall provide only the notice as the
 18-13 receivership court may require.

18-14 (d) If any temporary restraining order is prayed for:
 18-15 (1) the receivership court may issue an initial order
 18-16 containing the relief requested;

18-17 (2) the receivership court shall set a time and date
 18-18 for the return of summons, not later than 10 days after the time and
 18-19 date of the issuance of the initial order, at which time the person
 18-20 proceeded against may appear before the receivership court for a
 18-21 summary hearing;

18-22 (3) the order must state the time and date of its
 18-23 issuance; and

18-24 (4) the order may not continue in effect beyond the
 18-25 time and date set for the return of summons, unless the receivership
 18-26 court expressly enters one or more orders extending the restraining
 18-27 order.

18-28 (e) If a temporary restraining order is not requested, the
 18-29 receivership court shall cause summons to be issued. The summons
 18-30 must specify a return date not later than the 30th day after the
 18-31 date of issuance and that an answer must be filed at or before the
 18-32 return date.

18-33 Sec. 21A.053. RETURN OF SUMMONS AND SUMMARY HEARING. (a)
 18-34 The receivership court shall hold a summary hearing at the time and
 18-35 date for the return of summons on a petition to commence a formal
 18-36 delinquency proceeding.

18-37 (b) If a person is not served with summons on a petition to
 18-38 commence a formal delinquency proceeding and fails to appear for
 18-39 the summary hearing, the receivership court shall:

18-40 (1) continue the summary hearing not more than 10
 18-41 days;

18-42 (2) provide for alternative service of summons upon
 18-43 the person; and

18-44 (3) extend any restraining order.

18-45 (c) Upon a showing of good faith efforts to effect personal
 18-46 service upon a person who has failed to appear for a continued
 18-47 summary hearing, the receivership court shall order notice of the
 18-48 petition to commence a formal delinquency proceeding to be
 18-49 published. The order and notice shall specify a return date not
 18-50 less than 10 or later than 20 days after the date of publication and
 18-51 that the restraining order has been extended to the continued
 18-52 hearing date.

18-53 (d) If a person fails to appear for a summary hearing on a
 18-54 petition to commence a formal delinquency proceeding after service
 18-55 of summons, the receivership court shall enter judgment in favor of
 18-56 the commissioner against that person.

18-57 (e) A person who appears for the summary hearing on a
 18-58 petition to commence a formal delinquency proceeding shall file the
 18-59 person's answer at the hearing, and the receivership court shall:

18-60 (1) determine whether to extend any temporary
 18-61 restraining orders pending final judgment; and

18-62 (2) set the case for trial on a date not later than 10
 18-63 days after the date of the summary hearing.

18-64 (f) The receivership court may not grant a continuance for
 18-65 filing an answer.

18-66 Sec. 21A.054. PROCEEDINGS FOR EXPEDITED TRIAL:
 18-67 CONTINUANCES, DISCOVERY, EVIDENCE. (a) The receivership court
 18-68 shall proceed to hear the case on the petition to commence a formal
 18-69 delinquency proceeding at the time and date set forth for trial. To

19-1 the extent practicable, the receivership court shall give
 19-2 precedence to the matter over all other matters. To the extent
 19-3 authorized by law, the receivership court may assign the matter to
 19-4 other judges if necessary to comply with the need for expedited
 19-5 proceedings under this chapter.

19-6 (b) Continuances for trial may be granted only in extreme
 19-7 circumstances.

19-8 (c) The receivership court shall admit into evidence, as
 19-9 self-authenticated, certified copies of any of the following when
 19-10 offered by the commissioner:

19-11 (1) the financial statements made by the insurer or an
 19-12 affiliate;

19-13 (2) examination reports of the insurer or an affiliate
 19-14 made by or on behalf of the commissioner; and

19-15 (3) any other document filed with any insurance
 19-16 department by the insurer or an affiliate.

19-17 (d) The facts contained in any examination report of the
 19-18 insurer or an affiliate made by or on behalf of the commissioner are
 19-19 presumed to be true as of the date of the hearing if the examination
 19-20 was made as of a date not more than 270 days before the date the
 19-21 petition was filed. The presumption is rebuttable, and shifts the
 19-22 burden of production and persuasion to the insurer.

19-23 (e) Discovery is limited to grounds alleged in the petition
 19-24 and shall be concluded on an expedited basis.

19-25 Sec. 21A.055. DECISION AND APPEALS. (a) The receivership
 19-26 court shall enter judgment on the petition to commence formal
 19-27 delinquency proceedings not later than the 15th day after the date
 19-28 of conclusion of the evidence.

19-29 (b) The judgment is final when entered. Any appeal must be
 19-30 prosecuted on an expedited basis and must be taken not later than
 19-31 the fifth day after the date of entry of the judgment. A request for
 19-32 reconsideration, review, or appeal, or posting of a bond does not
 19-33 dissolve or stay the judgment.

19-34 Sec. 21A.056. CONFIDENTIALITY. (a) The commissioner,
 19-35 rehabilitator, or liquidator may share documents, materials, or
 19-36 other information in the possession, custody, or control of the
 19-37 department without regard to the confidentiality of those
 19-38 documents, materials, or information, pertaining to an insurer that
 19-39 is the subject of a proceeding under this chapter with other state,
 19-40 federal, and international regulatory agencies, with the National
 19-41 Association of Insurance Commissioners and its affiliates and
 19-42 subsidiaries, with state, federal, and international law
 19-43 enforcement authorities, with an auditor appointed by the
 19-44 receivership court in accordance with Section 21A.355, and,
 19-45 pursuant to Section 21A.105, with representatives of guaranty
 19-46 associations that may have statutory obligations as a result of the
 19-47 insolvency of the insurer, provided that the recipient agrees to
 19-48 maintain the confidentiality, if any, of the documents, material,
 19-49 or other information. Nothing in this section limits the power of
 19-50 the commissioner to disclose information under other applicable
 19-51 law.

19-52 (b) A domiciliary receiver shall permit a commissioner of
 19-53 another state or a guaranty association to obtain a listing of
 19-54 policyholders and certificate holders residing in the requestor's
 19-55 state, including current addresses and summary policy information,
 19-56 provided that the commissioner of the other state or the guaranty
 19-57 association agrees to maintain the confidentiality of the records
 19-58 and agrees that the records will be used only for regulatory or
 19-59 guaranty association purposes. Access to records may be limited to
 19-60 normal business hours. In the event that the domiciliary receiver
 19-61 believes that certain information is sensitive and that disclosure
 19-62 may cause a diminution in recovery, the receiver may apply for a
 19-63 protective order imposing additional restrictions on access.

19-64 (c) The Texas Workers' Compensation Commission shall report
 19-65 to the department any information that a workers' compensation
 19-66 insurer has committed acts that indicate that the insurer is
 19-67 impaired or insolvent. A report made under this subsection is
 19-68 confidential under this section.

19-69 (d) The confidentiality obligations imposed by this section

20-1 end upon the entry of an order of liquidation against the insurer,
 20-2 unless otherwise agreed to by the parties or pursuant to an order of
 20-3 the receivership court.

20-4 (e) A waiver of any applicable privilege or claim of
 20-5 confidentiality does not occur as a result of any disclosure, or any
 20-6 sharing of documents, materials, or other information, made
 20-7 pursuant to this section.

20-8 Sec. 21A.057. GROUNDS FOR CONSERVATION, REHABILITATION, OR
 20-9 LIQUIDATION. The commissioner may file with a court in this state a
 20-10 petition with respect to an insurer domiciled in this state or an
 20-11 unauthorized insurer for an order of rehabilitation or liquidation
 20-12 on any one or more of the following grounds:

20-13 (1) the insurer is impaired;

20-14 (2) the insurer is insolvent;

20-15 (3) the insurer is about to become insolvent, with
 20-16 "about to become insolvent" being defined as reasonably anticipated
 20-17 that the insurer will not have liquid assets to meet its next 90
 20-18 days' current obligations;

20-19 (4) the insurer has neglected or refused to comply
 20-20 with an order of the commissioner to make good within the time
 20-21 prescribed by law any deficiency, whenever its capital and minimum
 20-22 required surplus, if a stock company, or its surplus, if a company
 20-23 other than stock, has become impaired;

20-24 (5) the insurer, its parent company, its subsidiaries,
 20-25 or its affiliates have converted, wasted, or concealed property of
 20-26 the insurer or have otherwise improperly disposed of, dissipated,
 20-27 used, released, transferred, sold, assigned, hypothecated, or
 20-28 removed the property of the insurer;

20-29 (6) the insurer is in a condition such that it could
 20-30 not meet the requirements for organization and authorization as
 20-31 required by law, except as to the amount of the original surplus
 20-32 required of a stock company under Title 6, and except as to the
 20-33 amount of the surplus required of a company other than a stock
 20-34 company in excess of the minimum surplus required to be maintained;

20-35 (7) the insurer, its parent company, its subsidiaries,
 20-36 or its affiliates have concealed, removed, altered, destroyed, or
 20-37 failed to establish and maintain books, records, documents,
 20-38 accounts, vouchers, and other pertinent material adequate for the
 20-39 determination of the financial condition of the insurer by
 20-40 examination under Article 1.15, 1.15A, or 1.16 or has failed to
 20-41 properly administer claims or maintain claims records that are
 20-42 adequate for the determination of its outstanding claims liability;

20-43 (8) at any time after the issuance of an order under
 20-44 Article 1.32 or 21.28-A, or at the time of instituting any
 20-45 proceeding under this chapter, it appears to the commissioner that,
 20-46 upon good cause shown, it would not be in the best interest of the
 20-47 policyholders, creditors, or the public to proceed with the conduct
 20-48 of the business of the insurer;

20-49 (9) the insurer is in a condition such that the further
 20-50 transaction of business would be hazardous financially, according
 20-51 to Article 1.32 or otherwise, to its policyholders, creditors, or
 20-52 the public;

20-53 (10) there is reasonable cause to believe that there
 20-54 has been embezzlement from the insurer, wrongful sequestration or
 20-55 diversion of the insurer's property, forgery or fraud affecting the
 20-56 insurer, or other illegal conduct in, by, or with respect to the
 20-57 insurer that, if established, would endanger assets in an amount
 20-58 threatening the solvency of the insurer;

20-59 (11) control of the insurer is in a person who is:

20-60 (A) dishonest or untrustworthy; or

20-61 (B) so lacking in insurance company managerial
 20-62 experience or capability as to be hazardous to policyholders,
 20-63 creditors, or the public;

20-64 (12) any person who in fact has executive authority in
 20-65 the insurer, whether an officer, manager, general agent, director,
 20-66 trustee, employee, shareholder, or other person, has refused to be
 20-67 examined under oath by the commissioner concerning the insurer's
 20-68 affairs, whether in this state or elsewhere or if examined under
 20-69 oath, refuses to divulge pertinent information reasonably known to

21-1 the person; and after reasonable notice of the fact, the insurer has
 21-2 failed promptly and effectively to terminate the employment and
 21-3 status of the person and all the person's influence on management;

21-4 (13) after demand by the commissioner under Article
 21-5 1.15, 1.15A, or 1.16 or under this chapter, the insurer has failed
 21-6 promptly to make available for examination any of its own property,
 21-7 books, accounts, documents, or other records, or those of any
 21-8 subsidiary or related company within the control of the insurer or
 21-9 of any person having executive authority in the insurer, so far as
 21-10 they pertain to the insurer;

21-11 (14) without first obtaining the written consent of
 21-12 the commissioner, the insurer has transferred, or attempted to
 21-13 transfer, in a manner contrary to Chapter 823 or any law relating to
 21-14 bulk reinsurance, substantially its entire property or business, or
 21-15 has entered into any transaction the effect of which is to merge,
 21-16 consolidate, or reinsure substantially its entire property or
 21-17 business in or with the property or business of any other person;

21-18 (15) the insurer or its property has been or is the
 21-19 subject of an application for the appointment of a receiver,
 21-20 trustee, custodian, conservator, sequestrator, or similar
 21-21 fiduciary of the insurer or its property otherwise than as
 21-22 authorized under the insurance laws of this state;

21-23 (16) within the previous five years, the insurer has
 21-24 wilfully and continuously violated its charter, articles of
 21-25 incorporation or bylaws, any insurance law of this state, or any
 21-26 valid order of the commissioner;

21-27 (17) the insurer has failed to pay within 60 days after
 21-28 the due date any obligation to any state or political subdivision of
 21-29 a state or any judgment entered in any state, if the court in which
 21-30 the judgment was entered had jurisdiction over the subject matter,
 21-31 except that nonpayment is not a ground until 60 days after any good
 21-32 faith effort by the insurer to contest the obligation has been
 21-33 terminated, whether it is before the commissioner or in the courts;

21-34 (18) the insurer has systematically engaged in the
 21-35 practice of reaching settlements with and obtaining releases from
 21-36 claimants, and then unreasonably delayed payment, failed to pay the
 21-37 agreed-upon settlements, or systematically attempted to compromise
 21-38 with claimants or other creditors on the ground that it is
 21-39 financially unable to pay its claims or obligations in full;

21-40 (19) the insurer has failed to file its annual report
 21-41 or other financial report required by statute within the time
 21-42 allowed by law;

21-43 (20) the board of directors or the holders of a
 21-44 majority of the shares entitled to vote, or a majority of those
 21-45 individuals entitled to the control of those entities specified by
 21-46 Section 21A.003, request or consent to rehabilitation or
 21-47 liquidation under this chapter;

21-48 (21) the insurer does not comply with its domiciliary
 21-49 state's requirements for issuance to it of a certificate of
 21-50 authority, or its certificate of authority has been revoked by its
 21-51 state of domicile; or

21-52 (22) when authorized by department rules.

21-53 Sec. 21A.058. ENTRY OF ORDER. If the commissioner
 21-54 establishes any of the grounds provided in Section 21A.057, the
 21-55 receivership court shall grant the petition and issue the order of
 21-56 rehabilitation or liquidation requested in the petition.

21-57 Sec. 21A.059. EFFECT OF PETITION OR ORDER ON CONTRACT OR
 21-58 LEASE. Neither the filing of a petition under this chapter nor the
 21-59 entry of any order of seizure, rehabilitation, or liquidation
 21-60 constitutes a breach or an anticipatory breach of any contract or
 21-61 lease of the insurer.

21-62 [Sections 21A.060-21A.100 reserved for expansion]

21-63 SUBCHAPTER C. REHABILITATION

21-64 Sec. 21A.101. REHABILITATION ORDERS. (a) An order to
 21-65 rehabilitate the business of an insurer must appoint the
 21-66 commissioner and the commissioner's successors in office as the
 21-67 rehabilitator and must direct the rehabilitator to take possession
 21-68 of the property of the insurer wherever located and to administer it
 21-69 subject to this chapter. The rehabilitator is entitled to request

22-1 the receivership court to appoint a single judge to supervise the
 22-2 rehabilitation and hear any cases or controversies arising out of
 22-3 or related to the rehabilitation. Rehabilitation proceedings are
 22-4 exempt from any dormancy or similar program maintained by the
 22-5 receivership court for the early closure of civil actions. The
 22-6 filing or recording of the order with the clerk of the court or
 22-7 recorder of deeds of the county in which the principal business of
 22-8 the company is conducted, or, in the case of real estate, the county
 22-9 in which its principal office or place of business is located,
 22-10 imparts the same notice as a deed, bill of sale, or other evidence
 22-11 of title filed or recorded with the recorder of deeds would impart.
 22-12 The order to rehabilitate the insurer must, by operation of law,
 22-13 vest title to all property of the insurer in the rehabilitator.

22-14 (b) Any order issued under this section must require
 22-15 accountings to the receivership court by the rehabilitator.
 22-16 Accountings must be at the intervals specified by the receivership
 22-17 court in its order, but not less frequently than semi-annually.
 22-18 Each accounting must include a report concerning the
 22-19 rehabilitator's opinion as to the likelihood that a plan under
 22-20 Section 21A.103 will be prepared by the rehabilitator and the
 22-21 timetable for doing so.

22-22 (c) In recognition of the need for a prompt and final
 22-23 resolution for all persons affected by a plan of rehabilitation,
 22-24 any appeal from an order of rehabilitation or an order approving a
 22-25 plan of rehabilitation must be heard on an expedited basis. A stay
 22-26 of an order of rehabilitation or an order approving a plan of
 22-27 rehabilitation may not be granted unless the appellant demonstrates
 22-28 that extraordinary circumstances warrant delaying the recovery
 22-29 under the plan of rehabilitation of all other persons, including
 22-30 policyholders. If the plan provides an appropriate mechanism for
 22-31 adjustment in the event of any adverse ruling from an appeal, a stay
 22-32 may not be granted.

22-33 Sec. 21A.102. POWERS AND DUTIES OF REHABILITATOR. (a) The
 22-34 rehabilitator may appoint one or more special deputies. A special
 22-35 deputy serves at the pleasure of the rehabilitator and has all the
 22-36 powers and responsibilities of the rehabilitator granted under this
 22-37 section, unless specifically limited by the rehabilitator. The
 22-38 rehabilitator may employ or contract with legal counsel, actuaries,
 22-39 accountants, appraisers, consultants, clerks, assistants, and
 22-40 other personnel as may be deemed necessary. Any special deputy or
 22-41 any other person with whom the rehabilitator contracts under this
 22-42 subsection may act on behalf of the commissioner only in the
 22-43 commissioner's capacity as rehabilitator. Any person with whom the
 22-44 rehabilitator contracts under this subsection is not considered an
 22-45 agent of the state, and any contract entered into under this
 22-46 subsection does not constitute a contract with the state. The
 22-47 provisions of any law governing the procurement of goods and
 22-48 services by the state does not apply to any contract entered into by
 22-49 the commissioner as rehabilitator. The compensation of any special
 22-50 deputies, employees, and contractors and all expenses of taking
 22-51 possession of the insurer and of conducting the rehabilitation
 22-52 shall be fixed by the rehabilitator, with the approval of the
 22-53 receivership court in accordance with Section 21A.015, and shall be
 22-54 paid out of the property of the insurer. The persons appointed
 22-55 under this subsection serve at the pleasure of the rehabilitator.
 22-56 If the rehabilitator deems it necessary to the proper performance
 22-57 of the rehabilitator's duties under this chapter, the rehabilitator
 22-58 may appoint an advisory committee of policyholders, claimants, or
 22-59 other creditors, including guaranty associations. The advisory
 22-60 committee serves at the pleasure of the rehabilitator and without
 22-61 compensation or reimbursement for expenses. The rehabilitator or
 22-62 the receivership court in rehabilitation proceedings conducted
 22-63 under this chapter may not appoint another committee of any nature.

22-64 (b) The rehabilitator may take action as the rehabilitator
 22-65 deems necessary or appropriate to reform and revitalize the
 22-66 insurer, including canceling policies, insurance and reinsurance
 22-67 contracts other than life or health insurance or annuities, or
 22-68 surety bonds or surety undertakings or transferring policies,
 22-69 insurance and reinsurance contracts, or surety bonds or surety

23-1 undertakings to a solvent assuming insurer, with court approval.
 23-2 The rehabilitator has all the powers of the directors, officers,
 23-3 and managers of the insurer, whose authority is suspended, except
 23-4 as redelegated by the rehabilitator. The rehabilitator has full
 23-5 power to direct and manage, hire and discharge employees, and deal
 23-6 with the property and business of the insurer.

23-7 (c) If it appears to the rehabilitator that there has been
 23-8 criminal or tortious conduct or breach of any contractual or
 23-9 fiduciary obligation detrimental to the insurer by any officer,
 23-10 manager, agent, broker, employee, affiliate or other person, the
 23-11 rehabilitator may pursue all appropriate legal remedies on behalf
 23-12 of the insurer.

23-13 (d) The rehabilitator may assert all defenses available to
 23-14 the insurer as against third persons, including statutes of
 23-15 limitations, statutes of frauds, and the defense of usury. A waiver
 23-16 of any defense by the insurer after a petition under this chapter
 23-17 has been filed does not bind the rehabilitator.

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

23-24 Sec. 21A.103. REHABILITATION PLANS. (a) The rehabilitator
 23-25 shall prepare and file a plan to effect rehabilitation with the
 23-26 receivership court not later than the first anniversary of the
 23-27 entry of the rehabilitation order or another further time as the
 23-28 receivership court may allow. Upon application of the
 23-29 rehabilitator for approval of the plan, and after the notice and
 23-30 hearings the receivership court may prescribe, the receivership
 23-31 court may approve or disapprove the proposed plan or may modify it
 23-32 and approve it as modified. Any plan approved under this section
 23-33 must be, in the judgment of the receivership court, fair and
 23-34 equitable to all parties concerned. If the plan is approved, the
 23-35 rehabilitator shall carry out the plan. A plan for a life insurer
 23-36 may propose imposition of a moratorium upon loan and cash surrender
 23-37 rights under policies, for a period not to exceed one year from the
 23-38 entry of the rehabilitation order approving the rehabilitation
 23-39 plan, unless the receivership court, for good cause shown, extends
 23-40 the moratorium.

23-41 (b) Once a plan has been filed, any party in interest may
 23-42 object to the plan.

23-43 (c) A plan must:

23-44 (1) except as provided by Subsection (e), provide no
 23-45 less favorable treatment of a claim or class of claims than would
 23-46 occur in liquidation, unless the holder of a particular claim or
 23-47 interest agrees to a less favorable treatment of that particular
 23-48 claim or interest;

23-49 (2) provide adequate means for the plan's
 23-50 implementation;

23-51 (3) contain information concerning the financial
 23-52 condition of the insurer and the operation and effect of the plan,
 23-53 as far as is reasonably practicable in light of the nature and
 23-54 history of the insurer, the condition of the insurer's books and
 23-55 records, and the nature of the plan; and

23-56 (4) provide for the disposition of the books, records,
 23-57 documents, and other information relevant to the duties and
 23-58 obligations covered by the plan.

23-59 (d) A plan may include any other provision not inconsistent
 23-60 with the provisions of this chapter, including:

23-61 (1) payment of distributions;

23-62 (2) assumption or reinsurance of all or a portion of
 23-63 the insurer's remaining liabilities by, and transfer of assets and
 23-64 related books and records to, an authorized insurer or other
 23-65 entity;

23-66 (3) to the extent appropriate, application of
 23-67 insurance company regulatory market conduct standards to any entity
 23-68 administering claims on behalf of the receiver or assuming direct
 23-69 liabilities of the insurer;

24-1 (4) contracting with a state guaranty association or
 24-2 any other qualified entity to perform the administration of claims;

24-3 (5) annual independent financial and performance
 24-4 audits of any entity administering claims on behalf of the receiver
 24-5 that is not otherwise subject to examination pursuant to state
 24-6 insurance law; and

24-7 (6) termination of the insurer's liabilities other
 24-8 than those under policies of insurance as of a date certain.

24-9 (e) A plan may designate and separately treat one or more
 24-10 separate subclasses of claims consisting only of claims within the
 24-11 subclasses that are for or reduced to de minimis amounts. For
 24-12 purposes of this subsection, a "de minimis amount" means any amount
 24-13 equal to or less than a maximum de minimis amount approved by the
 24-14 receivership court as being reasonable and necessary for
 24-15 administrative convenience.

24-16 Sec. 21A.104. TERMINATION OF REHABILITATION. (a) When the
 24-17 rehabilitator believes further attempts to rehabilitate an insurer
 24-18 would substantially increase the risk of loss to creditors,
 24-19 policyholders, or the public or would be futile, the rehabilitator
 24-20 may move for an order of liquidation. In accordance with Section
 24-21 21A.105, the rehabilitator or the rehabilitator's designated
 24-22 representative shall coordinate with the guaranty associations
 24-23 that may become liable as a result of the liquidation and any
 24-24 national association of guaranty associations to plan for
 24-25 transition to liquidation.

24-26 (b) Because the protection of the interests of insureds,
 24-27 claimants, and the public requires the timely performance of all
 24-28 insurance policy obligations, if the payment of policy obligations
 24-29 is suspended in substantial part for a period of six months at any
 24-30 time after the appointment of the rehabilitator and the
 24-31 rehabilitator has not filed an application for approval of a plan
 24-32 under Section 21A.103, the rehabilitator shall petition the
 24-33 receivership court for an order of liquidation.

24-34 (c) The rehabilitator or the directors of the insurer may at
 24-35 any time petition the receivership court for, or the receivership
 24-36 court on its own motion may enter, an order terminating
 24-37 rehabilitation of an insurer. Subject to the provisions of Section
 24-38 21A.351, if the receivership court finds that rehabilitation has
 24-39 been accomplished and that grounds for rehabilitation under Section
 24-40 21A.057 no longer exist, it shall order that the insurer be restored
 24-41 to title and possession of its property and the control of the
 24-42 business.

24-43 Sec. 21A.105. COORDINATION WITH GUARANTY ASSOCIATIONS. (a)
 24-44 The receiver shall notify any potentially obligated guaranty
 24-45 association or the guaranty association's representative
 24-46 concerning the entry of a rehabilitation order and shall update the
 24-47 guaranty association or its representative regarding significant
 24-48 developments that impact efforts to rehabilitate the insurer. On a
 24-49 determination by the rehabilitator that rehabilitation efforts may
 24-50 not be successful, the rehabilitator shall participate in
 24-51 cooperative efforts with the potentially obligated guaranty
 24-52 associations. To facilitate an orderly transition to liquidation,
 24-53 the rehabilitator shall make available to the guaranty associations
 24-54 the information necessary to discharge their responsibilities upon
 24-55 becoming statutorily obligated. To the extent that information is
 24-56 available, or as it becomes available, the rehabilitator shall
 24-57 provide appropriate information to guaranty associations in the
 24-58 states in which the insurer transacted business.

24-59 (b) For the purposes of Subsection (a), "appropriate
 24-60 information" may include the following for lines of business
 24-61 written by the insurer, whether covered or not covered by guaranty
 24-62 associations:

24-63 (1) a general description of the different types of
 24-64 business written or assumed by the insurer;

24-65 (2) claim counts and policy counts by state and by line
 24-66 of business;

24-67 (3) claim and policy reserves;

24-68 (4) account values and cash surrender values;

24-69 (5) policy loans;

25-1 (6) interest crediting history;
 25-2 (7) premiums and mode of payment;
 25-3 (8) unpaid claims and amounts;
 25-4 (9) sample policies and endorsements;
 25-5 (10) a listing of different locations of claim files;
 25-6 (11) if third-party administrators were used, copies
 25-7 of executed contracts and a description of the contractual
 25-8 arrangements; and
 25-9 (12) information concerning claims in litigation or
 25-10 dispute, including a listing of claims with assigned defense
 25-11 counsel for those claims going to trial in the near future after a
 25-12 possible liquidation date.

25-13 (c) For the purposes of Subsection (a), "appropriate
 25-14 information" also includes information concerning states in which
 25-15 the insurer is or was licensed and periods for which the insurer is
 25-16 or was licensed and other information reasonably requested by a
 25-17 guaranty association necessary for the guaranty association to
 25-18 fulfill its statutory duties.

25-19 (d) In the case of a property and casualty insurer, the
 25-20 rehabilitator, in cooperation with the guaranty associations,
 25-21 shall make all reasonable efforts to prepare the insurer's
 25-22 electronic policy and claims data so that, upon the entry of an
 25-23 order of liquidation, the data will be ready for transmission using
 25-24 the Uniform Data Standards as promulgated by the National
 25-25 Association of Insurance Commissioners.

25-26 (e) The list of what appropriate information includes under
 25-27 Subsections (b) and (c) is not necessarily an exclusive list. Other
 25-28 information may be necessary to ensure that an orderly transition
 25-29 to liquidation occurs, and that information may be appropriately
 25-30 provided by the receiver.

25-31 [Sections 21A.106-21A.150 reserved for expansion]

25-32 SUBCHAPTER D. LIQUIDATION

25-33 Sec. 21A.151. LIQUIDATION ORDERS. (a) An order to
 25-34 liquidate the business of an insurer shall appoint the commissioner
 25-35 and any successor in office as the liquidator and shall direct the
 25-36 liquidator to take possession of the property of the insurer and to
 25-37 administer it subject to this chapter. The liquidator is entitled
 25-38 to request the receivership court to appoint a single judge to
 25-39 supervise the liquidation and to hear any cases or controversies
 25-40 arising out of or related to the liquidation. Liquidation
 25-41 proceedings are exempt from any dormancy or similar program
 25-42 maintained by the receivership court for the early closure of civil
 25-43 actions. As of the entry of the final order of liquidation, the
 25-44 liquidator is vested by operation of law with the title to all of
 25-45 the property, contracts, rights of action, and books and records of
 25-46 the insurer ordered liquidated, wherever located. The filing or
 25-47 recording of the order with the clerk of the court and the recorder
 25-48 of deeds of the county in which the insurer's principal office or
 25-49 place of business is located or, in the case of real estate, the
 25-50 county where the property is located, imparts the same notice as a
 25-51 deed, bill of sale, or other evidence of title filed or recorded
 25-52 with that recorder of deeds would impart.

25-53 (b) Upon issuance of the order of liquidation, the rights
 25-54 and liabilities of the insurer and of its creditors, policyholders,
 25-55 shareholders, members, and all other persons interested in its
 25-56 estate become fixed as of the date of entry of the order of
 25-57 liquidation, except as provided by Sections 21A.152 and 21A.255,
 25-58 unless otherwise fixed by the court.

25-59 (c) An order to liquidate the business of an alien insurer
 25-60 in this state must be in the same terms and has the same legal effect
 25-61 as an order to liquidate a domestic insurer.

25-62 (d) At the time of petitioning for an order of liquidation,
 25-63 or at any time after petitioning, the commissioner may petition the
 25-64 receivership court for a judicial declaration of insolvency. After
 25-65 providing the notice and hearing as it deems proper, the
 25-66 receivership court may make the declaration of insolvency.

25-67 (e) In the event an order of liquidation is set aside on
 25-68 appeal, the company may not be released from delinquency
 25-69 proceedings except in accordance with Section 21A.351.

Sec. 21A.152. CONTINUANCE OF COVERAGE. (a)

Notwithstanding any policy or contract language or any other statute, all reinsurance contracts by which the insurer has assumed the insurance obligations of another insurer are canceled upon entry of an order of liquidation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) authorizing the sale of the corporate entity or

27-1 charter, together with any of its authorizations or licenses to do
 27-2 business and the general assets of the estate the liquidator deems
 27-3 to be appropriate to the transaction, free and clear from the claims
 27-4 or interest of all claimants, creditors, policyholders, and
 27-5 stockholders.

27-6 (c) The sale of the corporate entity or charter may be made
 27-7 in the manner and on the terms and conditions applied for by the
 27-8 liquidator and ordered by the receivership court. Any sale is
 27-9 subject to the domiciliary state's laws regarding acquisition of an
 27-10 insurer, Chapter 823, and any other law regarding the transfer of
 27-11 control of insurers. The proceeds from the sale of the corporate
 27-12 entity or charter become a part of the property of the estate in
 27-13 liquidation. The separate corporate entity or charter, together
 27-14 with any of its authorizations or licenses to do business and such
 27-15 assets as the liquidator deems appropriate to the transaction, are,
 27-16 following the sale of the corporate entity or charter, free and
 27-17 clear from the claims or interest of all claimants, creditors,
 27-18 policyholders, and stockholders of the corporation in liquidation.

27-19 (d) This section shall be liberally construed to accomplish
 27-20 its purposes to:

27-21 (1) provide an expeditious and effective procedure to
 27-22 realize the maximum proceeds possible from the sale of a corporate
 27-23 entity or charter separated from an estate in liquidation; and

27-24 (2) ensure that the purchasers receive clear and
 27-25 marketable titles.

27-26 (e) If permission to sell the corporate entity or charter is
 27-27 not granted prior to discharge of the liquidator, in accordance
 27-28 with this section or otherwise with receivership court approval:

27-29 (1) the receivership court may order dissolution of
 27-30 the corporate entity or charter;

27-31 (2) dissolution shall be deemed complete by operation
 27-32 of law upon the discharge of the liquidator if the insurer is
 27-33 insolvent; or

27-34 (3) dissolution may be ordered by the receivership
 27-35 court upon the discharge of the liquidator if the insurer is under a
 27-36 liquidation order for some other reason.

27-37 Sec. 21A.154. POWERS OF LIQUIDATOR. (a) The liquidator may
 27-38 appoint a special deputy or deputies to act for the liquidator under
 27-39 this chapter and employ or contract with legal counsel, actuaries,
 27-40 accountants, appraisers, consultants, clerks, assistants, and
 27-41 other personnel the liquidator may deem necessary to assist in the
 27-42 liquidation. A special deputy has all powers of the liquidator
 27-43 granted by this section, unless specifically limited by the
 27-44 liquidator, and serves at the pleasure of the liquidator. A special
 27-45 deputy or any other person with whom the liquidator contracts under
 27-46 this subsection may act on behalf of the commissioner only in the
 27-47 commissioner's capacity as liquidator. Any person with whom the
 27-48 liquidator contracts is not considered to be an agent of the state
 27-49 and any contract under this subsection is not a contract with the
 27-50 state. The provisions of any law governing the procurement of goods
 27-51 and services by the state do not apply to any contract entered into
 27-52 by the commissioner as liquidator. This subsection does not waive
 27-53 any immunity granted by Section 21A.014 or create any cause of
 27-54 action against the state.

27-55 (b) The liquidator may determine the reasonable
 27-56 compensation for any special deputies, employees, or contractors
 27-57 retained by the liquidator as provided in Subsection (a) and pay
 27-58 compensation in accordance with Section 21A.015.

27-59 (c) The liquidator may appoint, with the approval of the
 27-60 receivership court, an advisory committee of policyholders,
 27-61 claimants, or other creditors, including guaranty associations, if
 27-62 the committee be deemed necessary. The advisory committee serves
 27-63 at the pleasure of the liquidator, and the decision to appoint an
 27-64 advisory committee is at the sole discretion of the liquidator. The
 27-65 advisory committee serves without compensation or reimbursement
 27-66 for expenses. The liquidator or the receivership court in
 27-67 liquidation proceedings conducted under this chapter may not
 27-68 appoint another committee of any nature.

27-69 (d) The liquidator may hold hearings, subpoena witnesses to

28-1 compel their attendance, administer oaths, examine any person under
28-2 oath, compel any persons to subscribe to their testimony after it
28-3 has been correctly reduced to writing, and, in connection with a
28-4 power under this subsection, require the production of any books,
28-5 papers, records, or other documents that the liquidator deems
28-6 relevant to the inquiry.

28-7 (e) The liquidator may audit the books and records of all
28-8 agents of the insurer to the extent that those books and records
28-9 relate to the business activities of the insurer.

28-10 (f) The liquidator may collect all debts and moneys due and
28-11 claims belonging to the insurer, wherever located, and may:

28-12 (1) institute action in other jurisdictions, in order
28-13 to forestall garnishment and attachment proceedings against the
28-14 debts;

28-15 (2) do other acts as necessary or expedient to
28-16 collect, conserve, or protect the insurer's property, including the
28-17 power to sell, compromise, or assign debts for purposes of
28-18 collection upon such terms and conditions as the liquidator deems
28-19 consistent with this chapter; and

28-20 (3) pursue any creditor's remedies available to
28-21 enforce the insurer's claims.

28-22 (g) The liquidator may conduct public and private sales of
28-23 the property of the insurer.

28-24 (h) The liquidator may use property of the estate of an
28-25 insurer under a liquidation order to transfer to a solvent assuming
28-26 insurer policy obligations or the insurer's obligations under
28-27 surety bonds and surety undertakings as well as collateral held by
28-28 the insurer with respect to the reimbursement obligations of the
28-29 principals under those surety bonds and surety undertakings, if the
28-30 transfer can be arranged without prejudice to applicable priorities
28-31 under Section 21A.301. If all insureds, principals, third-party
28-32 claimants, and obligees under the policies, surety bonds, and
28-33 surety undertakings consent or if the receivership court so orders,
28-34 the estate has no further liability under the transferred policies,
28-35 surety bonds, or surety undertakings after the transfer is made.

28-36 (i) The liquidator may, subject to Subsection (x), acquire,
28-37 hypothecate, encumber, lease, improve, sell, transfer, abandon, or
28-38 otherwise dispose of or deal with any property of the estate at its
28-39 market value or upon terms and conditions that are fair and
28-40 reasonable. The liquidator also has the power to execute,
28-41 acknowledge, and deliver any and all deeds, assignments, releases,
28-42 and other instruments necessary or proper to effectuate any sale of
28-43 property or other transaction in connection with the liquidation.

28-44 (j) The liquidator may borrow money on the security of the
28-45 property of the estate or without security and execute and deliver
28-46 all documents necessary to that transaction for the purpose of
28-47 facilitating the liquidation. Any funds borrowed under this
28-48 subsection may be repaid as an administrative expense and have
28-49 priority over any other claims in Class 1 under the priority of
28-50 distribution.

28-51 (k) The liquidator may enter into contracts as necessary to
28-52 carry out the order to liquidate and, subject to the provisions of
28-53 Section 21A.013, may assume or reject any executory contract or
28-54 unexpired lease to which the insurer is a party.

28-55 (l) The liquidator may continue to prosecute and institute
28-56 in the name of the insurer or in the liquidator's own name any and
28-57 all suits and other legal proceedings, in this state or elsewhere,
28-58 and abandon the prosecution of claims the liquidator deems
28-59 unprofitable to pursue further. If the insurer is dissolved under
28-60 Section 21A.153, the liquidator has the power to apply to any court
28-61 in this state or elsewhere for leave to substitute the liquidator
28-62 for the insurer as a party.

28-63 (m) The liquidator may prosecute any action that may exist
28-64 on behalf of the creditors, members, policyholders, shareholders of
28-65 the insurer, or the public against any person, except to the extent
28-66 that a claim is personal to a specific creditor, member,
28-67 policyholder, or shareholder and recovery on such claim would not
28-68 inure to the benefit of the estate. This subsection does not
28-69 infringe or impair any of the rights provided to a guaranty

29-1 association pursuant to its enabling statute or otherwise.

29-2 (n) The liquidator may take possession of the records and
29-3 property of the insurer as may be convenient for the purposes of
29-4 efficient and orderly execution of the liquidation. Guaranty
29-5 associations must be allowed reasonable access to the records of
29-6 the insurer as is necessary for the guaranty associations to carry
29-7 out their statutory obligations.

29-8 (o) The liquidator may deposit in one or more banks in this
29-9 state the amounts that are required for meeting current
29-10 administration expenses and dividend distributions.

29-11 (p) The liquidator may invest all amounts not currently
29-12 needed, unless the receivership court orders otherwise.

29-13 (q) The liquidator may file any necessary documents for
29-14 record in the office of any recorder of deeds or record office in
29-15 this state or elsewhere where property of the insurer is located.

29-16 (r) The liquidator may assert all defenses available to the
29-17 insurer as against third persons, including statutes of limitation,
29-18 statutes of frauds, and the defense of usury. A waiver of any
29-19 defense by the insurer after a petition is filed under this chapter
29-20 does not bind the liquidator. When a guaranty association has an
29-21 obligation to defend any suit, the liquidator shall defer to the
29-22 association's obligation.

29-23 (s) The liquidator may exercise and enforce all the rights,
29-24 remedies, and powers of any creditor, shareholder, policyholder, or
29-25 member, including any power to avoid any transfer or lien that may
29-26 be avoidable under this chapter or otherwise.

29-27 (t) The liquidator may intervene in any proceeding wherever
29-28 instituted that might lead to the appointment of a receiver or
29-29 trustee and act as the receiver or trustee whenever the appointment
29-30 is offered.

29-31 (u) The liquidator may enter into agreements with any
29-32 receivers or commissioners of any other states.

29-33 (v) The liquidator may exercise all powers held by receivers
29-34 on August 31, 2005, or conferred on receivers after that date by the
29-35 laws of this state not inconsistent with this chapter.

29-36 (w) The liquidator is vested with all the rights of the
29-37 entity or entities in receivership.

29-38 (x) The enumeration, in this section, of the powers and
29-39 authority of the liquidator may not be construed as a limitation
29-40 upon the liquidator, nor may it exclude in any manner the right to
29-41 do other acts not specifically enumerated or otherwise provided
29-42 for, to the extent necessary or appropriate for the accomplishment
29-43 of or in aid of the purpose of liquidation.

29-44 (y) The liquidator may hypothecate, encumber, lease, sell,
29-45 transfer, abandon, or otherwise dispose of or deal with any
29-46 property of the insurer, settle or resolve any claim brought by the
29-47 liquidator on behalf of the insurer, or commute or settle any claim
29-48 of reinsurance under any contract of reinsurance, as follows:

29-49 (1) if the property or claim has a market or settlement
29-50 value that does not exceed the lesser of \$1 million or 10 percent of
29-51 the general assets of the estate as shown on the receivership's
29-52 financial statements, the liquidator may take action at the
29-53 liquidator's discretion, provided that the receivership court may,
29-54 upon petition of the liquidator, increase the threshold upon a
29-55 showing that compliance with this requirement is burdensome to the
29-56 liquidator in administering the estate and is unnecessary to
29-57 protect the material interests of creditors;

29-58 (2) in all instances other than those described in
29-59 Subdivision (1), the liquidator may take the action only after
29-60 obtaining approval of the receivership court as provided by Section
29-61 21A.007;

29-62 (3) the liquidator may, at the liquidator's
29-63 discretion, request the receivership court to approve a proposed
29-64 action as provided by Section 21A.007 if the value of the property
29-65 or claim appears to be less than the threshold provided by
29-66 Subdivision (1) but cannot be ascertained with certainty, or for
29-67 any other reason as determined by the liquidator; and

29-68 (4) after obtaining approval of the receivership court
29-69 as provided in Section 21A.007, the liquidator may, subject to

30-1 Subsection (z), transfer rights to payment under ceding reinsurance
 30-2 agreements covering policies to a third-party transferee.

30-3 (z) The transferee of a right to payment under Subsection
 30-4 (y)(4) has the rights to collect and enforce collection of the
 30-5 reinsurance for the amount payable to the ceding insurer or to its
 30-6 receiver, without diminution because of the insolvency or because
 30-7 the receiver has failed to pay all or a portion of the claim, based
 30-8 on the amounts paid or allowed pursuant to Section 21A.211. The
 30-9 transfer of the rights does not give rise to any defense regarding
 30-10 the reinsurer's obligations under the reinsurance agreement
 30-11 regardless of whether an agreement or other applicable law
 30-12 prohibits the transfer of rights under the reinsurance agreement.
 30-13 Except as provided in this subsection, any transfer of rights
 30-14 pursuant to Subsection (y)(4) does not impair any rights or
 30-15 defenses of the reinsurer that existed prior to the transfer or that
 30-16 would have existed in the absence of the transfer. Except as
 30-17 otherwise provided in this subsection, any transfer of rights
 30-18 pursuant to Subsection (y)(4) does not relieve the transferee or
 30-19 the liquidator from obligations owed to the reinsurer pursuant to
 30-20 the reinsurance or other agreement.

30-21 (aa) The liquidator is not obligated to defend any action
 30-22 against the insurer or insured. Any insureds not defended by a
 30-23 guaranty association may provide their own defense, and include the
 30-24 cost of the defense as part of their claims, if the defense was an
 30-25 obligation of the insurer. The right of the liquidator to contest
 30-26 coverage on a particular claim is preserved without the necessity
 30-27 for an express reservation of rights.

30-28 Sec. 21A.155. NOTICE TO CREDITORS AND OTHERS. (a) Unless
 30-29 the receivership court otherwise directs, the liquidator shall give
 30-30 or cause to be given notice of the liquidation order as soon as
 30-31 possible:

30-32 (1) by first class mail or electronic communication as
 30-33 permitted by the receivership court to:

30-34 (A) any guaranty association that is or may
 30-35 become obligated as a result of the liquidation and any national
 30-36 association of guaranty associations;

30-37 (B) all the insurer's agents, brokers, or
 30-38 producers of record with current appointments or current licenses
 30-39 to represent the insurer and all other agents, brokers, or
 30-40 producers as the liquidator deems appropriate at their last known
 30-41 address; and

30-42 (C) all persons or entities known or reasonably
 30-43 expected to have claims against the insurer, at their last known
 30-44 address as indicated by the records of the insurer, and all state
 30-45 and federal agencies with an interest in the proceeding; and

30-46 (2) by publication in a newspaper of general
 30-47 circulation in the county in which the insurer has its principal
 30-48 place of business and in any other locations as the liquidator deems
 30-49 appropriate.

30-50 (b) The notice of the entry of an order of liquidation must
 30-51 contain or provide directions for obtaining the following
 30-52 information:

30-53 (1) a statement that the insurer has been placed in
 30-54 liquidation;

30-55 (2) a statement that certain acts are stayed under
 30-56 Section 21A.008 and describe any additional injunctive relief
 30-57 ordered by the receivership court;

30-58 (3) a statement whether, and to what extent, the
 30-59 insurer's policies continue in effect;

30-60 (4) to the extent applicable, a statement that
 30-61 coverage by state guaranty associations may be available for all or
 30-62 part of policy benefits in accordance with applicable state
 30-63 guaranty laws;

30-64 (5) a statement of the deadline for filing claims, if
 30-65 established, and the requirements for filing a proof of claim
 30-66 pursuant to Section 21A.251 on or before that date;

30-67 (6) a statement of the date, time, and location of any
 30-68 initial status hearing scheduled at the time the notice is sent;

30-69 (7) a description of the process for obtaining notice

31-1 of matters before the receivership court; and

31-2 (8) any other information the liquidator or the
 31-3 receivership court deems appropriate.

31-4 (c) If notice is given in accordance with this section, the
 31-5 distribution of property of the insurer under this chapter is
 31-6 conclusive with respect to all claimants, whether or not they
 31-7 received notice.

31-8 (d) Notwithstanding the other provisions of this section,
 31-9 the liquidator has no duty to locate any persons or entities if no
 31-10 address is found in the records of the insurer or if mailings are
 31-11 returned to the liquidator because of inability to deliver at the
 31-12 address shown in the insurer's books and records. In these
 31-13 circumstances the notice by publication as required by this chapter
 31-14 or actual notice received is sufficient notice. Written
 31-15 certification by the liquidator or other knowledgeable person
 31-16 acting for the liquidator that the notices were deposited in the
 31-17 United States mail, postage prepaid, or that the notices have been
 31-18 electronically transmitted is prima facie evidence of mailing and
 31-19 receipt. All claimants shall keep the liquidator informed of any
 31-20 changes of address.

31-21 (e) Notwithstanding Subsection (a)(1)(C), upon application
 31-22 of the liquidator, the receivership court may:

31-23 (1) find that notice by publication as required in
 31-24 this section is sufficient notice to those persons holding an
 31-25 occurrence policy that expired more than four years prior to the
 31-26 entry of the order of liquidation and under which there are no
 31-27 pending claims; or

31-28 (2) order other notice to persons described by
 31-29 Subdivision (1) as it deems appropriate.

31-30 (f) The liquidator shall notify the Texas Workers'
 31-31 Compensation Commission upon the entry of the liquidation order if
 31-32 the insurer has issued workers' compensation coverage in effect in
 31-33 this state. Upon request of the liquidator, the Texas Workers'
 31-34 Compensation Commission shall submit a list of active cases pending
 31-35 before the commission that relate to workers' compensation coverage
 31-36 issued by the insurer.

31-37 Sec. 21A.156. DUTIES OF AGENTS. (a) Every person who
 31-38 represented the insurer as an agent and receives notice in the form
 31-39 prescribed in Section 21A.155 that the insurer is the subject of a
 31-40 liquidation order, not later than the 30th day after the date of the
 31-41 notice, shall provide to the liquidator, in addition to the
 31-42 information the agent may be required to provide pursuant to
 31-43 Section 21A.010, the information in the agent's records related to
 31-44 any policy issued by the insurer through the agent and any policy
 31-45 issued by the insurer through an agent under contract to the agent,
 31-46 including the name and address of any subagent. For purposes of
 31-47 this subsection, a policy is issued through an agent if the agent
 31-48 has a property interest in the expiration of the policy or if the
 31-49 agent has had in the agent's possession a copy of the declarations
 31-50 of the policy at any time during the life of the policy, except
 31-51 where the ownership of the expiration of the policy has been
 31-52 transferred to another.

31-53 (b) Any agent failing to provide information to the
 31-54 liquidator as required in Subsection (a) may be subject to payment
 31-55 of an administrative penalty under Chapter 84 of not more than
 31-56 \$1,000. In addition, the agent's license may be suspended under
 31-57 Chapter 4005.

31-58 [Sections 21A.157-21A.200 reserved for expansion]

31-59 SUBCHAPTER E. ASSET RECOVERY

31-60 Sec. 21A.201. TURNOVER OF ASSETS. (a) If the receiver
 31-61 determines that funds or property in the possession of another
 31-62 person are rightfully the property of the estate, the receiver
 31-63 shall deliver to the person a written demand for immediate delivery
 31-64 of the funds or property, referencing this section by number and the
 31-65 court and docket number of the receivership action, and notifying
 31-66 the person that any claim of right to the funds or property by the
 31-67 person must be presented to the receivership court not later than
 31-68 the 20th day after the date of the written demand. Any person who
 31-69 holds funds or other property belonging to an entity subject to an

32-1 order of receivership under this chapter shall deliver the funds or
 32-2 other property to the receiver on demand. Should the person allege
 32-3 any right to retain the funds or other property, the person, not
 32-4 later than the 20th day after the date of receipt of the demand that
 32-5 the funds or property be delivered to the receiver, shall file with
 32-6 the receivership court a pleading setting out that right. The
 32-7 person shall serve a copy of the pleading on the receiver. The
 32-8 pleading must inform the receivership court as to the nature of the
 32-9 claim to the funds or property, the alleged value of the property or
 32-10 amount of funds held, and what action, pending determination of the
 32-11 dispute, has been taken by the person to preserve and protect the
 32-12 property or to preserve any funds. The relinquishment of
 32-13 possession of funds or property by any person who has received a
 32-14 demand pursuant to this section does not constitute a waiver of a
 32-15 right to make a claim in the receivership.

32-16 (b) If requested by the receiver, the receivership court
 32-17 shall hold a hearing to determine where and under what conditions
 32-18 the person shall hold the property or funds pending determination
 32-19 of the dispute. The receivership court may impose conditions as it
 32-20 may deem necessary or appropriate for the preservation of the
 32-21 property or funds until the receivership court can determine the
 32-22 validity of the person's claim to the property or funds. If any
 32-23 property or funds are allowed to remain in the possession of the
 32-24 person after demand made by the receiver, that person is strictly
 32-25 liable to the estate for any waste, loss, or damage to or diminution
 32-26 of value of the property or funds retained.

32-27 (c) If a person has filed a pleading alleging any right to
 32-28 retain funds or property as provided by Subsection (a), the
 32-29 receivership court shall hold a subsequent hearing to determine the
 32-30 entitlement of the person to the funds or property claimed by the
 32-31 receiver.

32-32 (d) If a person fails to deliver the funds or property or to
 32-33 file the pleading described by Subsection (a) within the period
 32-34 described by Subsection (a), the receivership court may, upon
 32-35 petition of the receiver and upon a copy of the petition being
 32-36 served by the receiver to that person, issue its summary order
 32-37 directing the immediate delivery of the funds or property to the
 32-38 receiver and finding that the person has waived all claims of right
 32-39 to the funds or property.

32-40 Sec. 21A.202. RECOVERY FROM AFFILIATES. (a) The receiver
 32-41 has a right to recover from any affiliate of the insurer any
 32-42 property of the insurer transferred to or for the benefit of the
 32-43 affiliate, or the property's value, if the transfer was made within
 32-44 the two years preceding the initial petition for receivership.

32-45 (b) A transfer is not recoverable under Subsection (a) if
 32-46 the affiliate shows that, when the transfer was made:

32-47 (1) the insurer was solvent;
 32-48 (2) the transfer was lawful; and
 32-49 (3) neither the insurer nor the affiliate knew or
 32-50 reasonably should have known that the transfer, under
 32-51 then-applicable statutory accounting standards, would:

32-52 (A) place the insurer:
 32-53 (i) in violation of applicable capital or
 32-54 surplus requirements;
 32-55 (ii) below the applicable minimum
 32-56 risk-based capital level; or

32-57 (iii) in violation of writing ratios under
 32-58 Article 1.32 or analogous requirements under Section 843.406; or

32-59 (B) cause the insurer's filed financial
 32-60 statements not to present fairly the capital and surplus of the
 32-61 insurer.

32-62 Sec. 21A.203. UNAUTHORIZED POST-PETITION TRANSFERS. (a)
 32-63 Except as provided by this section, the receiver may avoid any
 32-64 transfer of an interest of the insurer in property or any obligation
 32-65 incurred by the insurer that:

32-66 (1) was made or occurred after the petition for
 32-67 receivership was filed; and

32-68 (2) is not authorized by the receiver and approved by
 32-69 the receivership court or otherwise authorized in accordance with

33-1 this chapter.

33-2 (b) Except to the extent that a transfer or obligation
 33-3 avoidable under Subsection (a) is otherwise avoidable under this
 33-4 chapter, a transferee or obligee of a transfer or obligation
 33-5 avoided under Subsection (a) that takes for value and in good faith,
 33-6 at the option of the receivership court, has a lien or may retain
 33-7 any interest transferred or enforce any obligation incurred, as
 33-8 applicable, to the extent that the transferee or obligee gave value
 33-9 to the insurer in exchange for the transfer or obligation.

33-10 Sec. 21A.204. VOIDABLE PREFERENCES AND LIENS. (a) A
 33-11 "preference" is a transfer of any interest in property of an insurer
 33-12 that:

33-13 (1) is made to or for the benefit of a creditor and for
 33-14 or on account of an antecedent debt and is made or suffered by the
 33-15 insurer within two years preceding the filing of a successful
 33-16 petition commencing delinquency proceedings; and

33-17 (2) enables the creditor to receive more than the
 33-18 creditor would receive if the insurer were liquidated under this
 33-19 chapter, the transfer had not been made, and the creditor was
 33-20 entitled to receive payment of the debt to the extent provided by
 33-21 this chapter.

33-22 (b) Any preference may be avoided by the receiver if:

33-23 (1) the insurer was insolvent at the time of the
 33-24 transfer;

33-25 (2) the transfer was made within 120 days before the
 33-26 date of filing of the petition commencing delinquency proceedings;

33-27 (3) the creditor receiving the transfer or to be
 33-28 benefited by the transfer, or the creditor's agent acting with
 33-29 reference to the transfer, had, at the time the transfer was made,
 33-30 reasonable cause to believe that the insurer was insolvent or was
 33-31 about to become insolvent; or

33-32 (4) the creditor receiving the transfer was:

33-33 (A) an officer or director of the insurer;

33-34 (B) an employee, attorney, or other person who
 33-35 was in fact in a position to effect a level of control or influence
 33-36 over the actions of the insurer comparable to that of an officer or
 33-37 director, without regard to whether the person held that position;
 33-38 or

33-39 (C) an affiliate.

33-40 (c) The receiver may not avoid a transfer under this
 33-41 section:

33-42 (1) to the extent that the transfer was:

33-43 (A) intended by the insurer and the creditor to
 33-44 or for whose benefit the transfer was made to be a contemporaneous
 33-45 exchange for new value given to the insurer and in fact was a
 33-46 substantially contemporaneous exchange; or

33-47 (B) made in the ordinary course of business or
 33-48 financial affairs between the insurer and the transferee and made
 33-49 according to ordinary business terms in payment of a debt incurred
 33-50 by the insurer in the ordinary course of business or financial
 33-51 affairs of the insurer and the transferee; or

33-52 (2) to or for the benefit of a creditor, to the extent
 33-53 that, after the transfer, the creditor gave new value to or for the
 33-54 benefit of the insurer that was:

33-55 (A) not secured by an otherwise unavoidable
 33-56 security interest; and

33-57 (B) on account of which new value the insurer did
 33-58 not make an otherwise unavoidable transfer to or for the benefit of
 33-59 the creditor.

33-60 (d) For purposes of this section:

33-61 (1) a transfer of property other than real property is
 33-62 deemed to be made or suffered at the time the transfer becomes so
 33-63 far perfected that any subsequent lien obtainable by legal or
 33-64 equitable proceedings on a simple contract could not become
 33-65 superior to the rights of the transferee;

33-66 (2) a transfer of real property is deemed to be made or
 33-67 suffered when the transfer is so far perfected that a subsequent
 33-68 bona fide purchaser from the insurer could not obtain rights
 33-69 superior to the rights of the transferee;

34-1 (3) a transfer that creates an equitable lien is not
34-2 deemed to be perfected if there are available means by which a legal
34-3 lien could be created; and

34-4 (4) a transfer not perfected prior to the filing of a
34-5 petition for receivership is deemed to be made immediately before
34-6 the filing commencing delinquency proceedings.

34-7 (e) The provisions of this section apply without regard to
34-8 whether there are or were creditors who might have obtained liens or
34-9 persons who might have become bona fide purchasers.

34-10 (f) Within the meaning of Subsection (d), "a lien obtainable
34-11 by legal or equitable proceedings on a simple contract" is a lien
34-12 arising in the ordinary course of proceedings upon the entry or
34-13 docketing of a judgment or decree, or upon attachment, garnishment,
34-14 execution, or similar process, whether before, upon, or after
34-15 judgment or decree and whether before or upon levy. The term does
34-16 not include liens that under applicable law are given a special
34-17 priority over other liens that are prior in time.

34-18 (g) Within the meaning of Subsection (d), a lien obtainable
34-19 by legal or equitable proceedings could become superior to the
34-20 rights of a transferee, or a purchaser could obtain rights superior
34-21 to the rights of a transferee if the consequences would follow only
34-22 from the lien or purchase itself, or from the lien or purchase
34-23 followed by any step wholly within the control of the respective
34-24 lienholder or purchaser, with or without the aid of ministerial
34-25 action by public officials. A lien could not, however, become
34-26 superior and a purchase could not create superior rights for the
34-27 purpose of Subsection (d) through any acts subsequent to the
34-28 obtaining of the lien or subsequent to the purchase that require the
34-29 agreement or concurrence of any third party or that require any
34-30 further judicial action or ruling.

34-31 (h) A transfer of property for or on account of a new and
34-32 contemporaneous consideration that is deemed under Subsection (d)
34-33 to be made or suffered after the transfer because of delay in
34-34 perfecting the transfer does not become a transfer for or on account
34-35 of an antecedent debt if any acts required by the applicable law to
34-36 be performed to perfect the transfer against liens or bona fide
34-37 purchasers' rights are performed within 21 days or any period
34-38 expressly allowed by the law, whichever is less. A transfer to
34-39 secure a future loan, if the loan is actually made, or a transfer
34-40 that becomes security for a future loan, has the same effect as a
34-41 transfer for or on account of a new and contemporaneous
34-42 consideration.

34-43 (i)(1) If any lien deemed voidable under Subsection (b) has
34-44 been dissolved by the furnishing of a bond or other obligation, the
34-45 surety on which has been indemnified directly or indirectly by the
34-46 transfer of or the creation of a lien upon any property of an
34-47 insurer before the filing of a petition commencing delinquency
34-48 proceedings under this chapter, the indemnifying transfer or lien
34-49 is also deemed voidable.

34-50 (2) The property affected by any lien deemed voidable
34-51 under Subsection (b) and Subdivision (1) is discharged from the
34-52 lien, and that property and any of the indemnifying property
34-53 transferred to or for the benefit of a surety passes to the
34-54 receiver, except that the receivership court may on due notice
34-55 order any lien deemed voidable under this section to be preserved
34-56 for the benefit of the estate and may direct that a conveyance be
34-57 executed as may be proper or adequate to evidence the title of the
34-58 receiver.

34-59 (3) Reasonable notice of any hearing in the proceeding
34-60 shall be given to all parties as required by law, including the
34-61 obligee of a releasing bond or other like obligation. If an order
34-62 is entered for the recovery of indemnifying property in kind or for
34-63 the avoidance of an indemnifying lien, the receivership court may
34-64 in the same proceeding ascertain the value of the property or lien.
34-65 If the value of the property or lien is less than the amount for
34-66 which the property is indemnified or than the amount of the lien,
34-67 the transferee or lienholder may elect to retain the property or
34-68 lien upon payment to the receiver of its value, as determined by the
34-69 receivership court, within a reasonable time determined by the

35-1 receivership court.

35-2 (4) The liability of the surety under a releasing bond
 35-3 or other similar obligation shall be discharged to the extent of the
 35-4 value of the indemnifying property recovered or the indemnifying
 35-5 lien nullified and avoided by the receiver, or if the property is
 35-6 retained under Subdivision (3) to the extent of the amount paid to
 35-7 the receiver.

35-8 (j) This section may not be construed to prejudice any other
 35-9 claim by the receiver against any person.

35-10 Sec. 21A.205. FRAUDULENT TRANSFERS AND OBLIGATIONS. (a)
 35-11 The receiver may avoid any transfer of an interest of the insurer in
 35-12 property, any reinsurance transaction, or any obligation incurred
 35-13 by an insurer that was made or incurred on or within two years
 35-14 before the date of the initial filing of a petition commencing
 35-15 delinquency proceedings under this chapter, if the insurer
 35-16 voluntarily or involuntarily:

35-17 (1) made the transfer or incurred the obligation with
 35-18 actual intent to hinder, delay, or defraud any person to which it
 35-19 was or became indebted on or after the date that the transfer was
 35-20 made or the obligation was incurred; or

35-21 (2) received less than a reasonably equivalent value
 35-22 in exchange for the transfer or obligation.

35-23 (b) Except to the extent that a transfer or obligation
 35-24 voidable under this section is voidable under other provisions of
 35-25 this chapter, a transferee or obligee that takes for value and in
 35-26 good faith a voidable transfer or obligation has a lien on or may
 35-27 retain any interest transferred or may enforce any obligation
 35-28 incurred, as the case may be, to the extent that the transferee or
 35-29 obligee gave value to the insurer in exchange for the transfer or
 35-30 obligation.

35-31 (c) For purposes of this section, a transfer is made when
 35-32 the transfer is so perfected that a subsequent bona fide purchaser
 35-33 from the insurer cannot acquire an interest in the property
 35-34 transferred that is superior to the interest in the property of the
 35-35 transferee, but if the transfer is not so perfected before the
 35-36 commencement of the delinquency proceeding, the transfer is deemed
 35-37 to have been made immediately before the date of the initial filing
 35-38 of the petition commencing delinquency proceedings.

35-39 (d) For purposes of this section, "value" means property or
 35-40 satisfaction or securing of a present or antecedent debt of the
 35-41 insurer.

35-42 Sec. 21A.206. RECEIVER AS LIEN CREDITOR. (a) The receiver
 35-43 may avoid any transfer of or lien upon the property of, or
 35-44 obligation incurred by, an insurer that the insurer or a
 35-45 policyholder, creditor, member, or stockholder of the insurer may
 35-46 have avoided without regard to any knowledge of the receiver, the
 35-47 commissioner, the insurer, or any policyholder, creditor, member,
 35-48 or stockholder of the insurer regardless of whether such a
 35-49 policyholder, creditor, member, or stockholder exists.

35-50 (b) The receiver is deemed a creditor without knowledge for
 35-51 purposes of pursuing claims under the Uniform Fraudulent Transfer
 35-52 Act, the Uniform Fraudulent Conveyance Act, or similar provisions
 35-53 of state or federal law.

35-54 Sec. 21A.207. LIABILITY OF TRANSFEREE. (a) Except as
 35-55 otherwise provided in this section, to the extent that the receiver
 35-56 obtains an order under Section 21A.201 or avoids a transfer under
 35-57 Sections 21A.202, 21A.203, 21A.204, 21A.205, or 21A.206, the
 35-58 receiver may recover the property transferred, or the value of the
 35-59 property, from:

35-60 (1) the initial transferee of the transfer or the
 35-61 entity for whose benefit the transfer was made; or

35-62 (2) any immediate or mediate transferee of the initial
 35-63 transferee.

35-64 (b) The receiver may not recover under Subsection (a)(2)
 35-65 from:

35-66 (1) a transferee that takes for value, including
 35-67 satisfaction or securing of a present or antecedent debt, in good
 35-68 faith, and without knowledge of the voidability of the transfer
 35-69 avoided; or

36-1 (2) any immediate or mediate good faith transferee of
 36-2 the transferee.

36-3 (c) Any transfer avoided in accordance with this chapter is
 36-4 preserved for the benefit of the receivership estate, but only with
 36-5 respect to property of the insurer.

36-6 (d) In addition to the remedies specifically provided under
 36-7 Sections 21A.201-21A.206 and Subsection (a), if the receiver is
 36-8 successful in establishing a claim to the property or any part of
 36-9 the property, the receiver is entitled to recover judgment for:

36-10 (1) rental for the use of the tangible property from
 36-11 the later of the entry of the receivership order or the date of the
 36-12 transfer;

36-13 (2) in the case of funds or intangible property, the
 36-14 greater of:

36-15 (A) the actual interest or income earned by the
 36-16 property; or

36-17 (B) interest at the statutory rate for judgments
 36-18 from the later of the date of the entry of the receivership order or
 36-19 the date of the transfer; and

36-20 (3) except as to recoveries from guaranty
 36-21 associations, all costs, including investigative costs and other
 36-22 expenses necessary to the recovery of the property or funds, and
 36-23 reasonable attorney's fees.

36-24 (e) In any action under this section, the receivership court
 36-25 may allow the receiver to seek recovery of the property involved or
 36-26 the property's value.

36-27 (f) In any action under Sections 21A.201-21A.206, the
 36-28 receiver has the burden of proving the avoidability of a transfer,
 36-29 and the person against whom recovery or avoidance is sought has the
 36-30 burden of proving the nature and extent of any affirmative defense.

36-31 Sec. 21A.208. CLAIMS OF HOLDERS OF VOID OR VOIDABLE RIGHTS.

36-32 (a) A claim of a creditor who has received or acquired a
 36-33 preference, lien, conveyance, transfer, assignment, or encumbrance
 36-34 voidable under this chapter may not be allowed unless the creditor
 36-35 surrenders the preference, lien, conveyance, transfer, assignment,
 36-36 or encumbrance. If the avoidance is effected by a proceeding in
 36-37 which a final judgment has been entered, the claim may not be
 36-38 allowed unless the money is paid or the property is delivered to the
 36-39 receiver not later than the 30th day after the date of the entering
 36-40 of the final judgment, except that the receivership court may allow
 36-41 further time if there is an appeal or other continuation of the
 36-42 proceeding.

36-43 (b) A claim allowable under Subsection (a) by reason of the
 36-44 avoidance, whether voluntary or involuntary, or a preference, lien,
 36-45 conveyance, transfer, assignment, or encumbrance, may be filed as
 36-46 an excused late filing under Section 21A.251(b) if filed not later
 36-47 than the 30th day after the date of the avoidance, or within the
 36-48 further time allowed by the receivership court under Subsection
 36-49 (a).

36-50 Sec. 21A.209. SETOFFS. (a) All mutual debts or mutual
 36-51 credits, whether arising out of one or more contracts between the
 36-52 insurer and another person in connection with any action or
 36-53 proceeding under this chapter, must be set off and only the balance
 36-54 shall be allowed or paid, except as provided by Subsection (b).

36-55 (b) A setoff may not be allowed in favor of any person if:

36-56 (1) the obligation of the insurer to the person:

36-57 (A) would not, at the date of the commencement of
 36-58 the delinquency proceeding, entitle the person to share as a
 36-59 claimant in the assets of the insurer; or

36-60 (B) was purchased by or transferred to the
 36-61 person:

36-62 (i) after the commencement of the
 36-63 delinquency proceeding; or

36-64 (ii) for the purpose of increasing setoff
 36-65 rights;

36-66 (2) the obligation of the insurer is owed to an
 36-67 affiliate of the person, or any other entity or association other
 36-68 than the person;

36-69 (3) the obligation of the person:

37-1 (A) is as a trustee or fiduciary; or

37-2 (B) is to pay:

37-3 (i) an assessment levied against the
37-4 members of a mutual insurer, reciprocal or interinsurance exchange,
37-5 or Lloyd's plan; or

37-6 (ii) a balance upon a subscription to the
37-7 capital stock of a capital stock insurance company; or

37-8 (4) the obligations between the person and the insurer
37-9 arise from reinsurance transactions in which either the person or
37-10 the insurer has assumed risks and obligations from the other party
37-11 and then has ceded back to that party substantially the same risks
37-12 and obligations.

37-13 (c) The receiver shall provide an interested person with
37-14 accounting statements identifying all debts that are due and
37-15 payable. If a person owes the insurer amounts that are due and
37-16 payable against which the person asserts a setoff of mutual credits
37-17 that, in the future, may become due and payable from the insurer,
37-18 the person shall promptly pay the amounts due and payable to the
37-19 receiver. Notwithstanding any other provision of this chapter, the
37-20 receiver shall promptly and fully refund, to the extent of a
37-21 person's prior payments under this section, any mutual credits that
37-22 become due and payable to the person by the insurer.

37-23 Sec. 21A.210. ASSESSMENTS. (a) As soon as practicable, but
37-24 not later than the fourth anniversary of the date of an order of
37-25 receivership of an insurer issuing assessable policies, the
37-26 receiver shall make a report to the receivership court setting
37-27 forth:

37-28 (1) the reasonable value of the assets of the insurer;

37-29 (2) the insurer's probable total liabilities;

37-30 (3) the probable aggregate amount of the assessment
37-31 necessary to pay all claims of creditors and expenses in full,
37-32 including expenses of administration and costs of collecting the
37-33 assessment; and

37-34 (4) a recommendation as to whether an assessment
37-35 should be made and in what amount.

37-36 (b) Upon the basis of the report provided in Subsection (a),
37-37 including any supplements and amendments to the report, the
37-38 receivership court may approve, solely on application by the
37-39 receiver, one or more assessments against all members of the
37-40 insurer who are subject to assessment. The order approving the
37-41 assessment shall provide instructions regarding notice of the
37-42 assessment, deadlines for payment, and other instructions to the
37-43 receiver regarding collection of the assessment.

37-44 (c) Subject to any applicable legal limits on ability to
37-45 assess, the aggregate assessment must be for the amount that the sum
37-46 of the probable liabilities, the expenses of administration, and
37-47 the estimated cost of collection of the assessment, exceeds the
37-48 value of existing assets, with due regard being given to
37-49 assessments that cannot be collected economically.

37-50 (d) After levy of assessment under Subsection (b), the
37-51 receiver shall petition the receivership court for an order
37-52 directing each member who has not paid the assessment pursuant to
37-53 the levy to show cause why a judgment for the assessment should not
37-54 be entered.

37-55 (e) At least 20 days before the return day of the order to
37-56 show cause, the receiver shall give notice of the order to show
37-57 cause to each member liable on the assessment. Notice must be given
37-58 by first class mail mailed to the member's last known address as it
37-59 appears on the insurer's records, by publication, or by another
37-60 method of notification as directed by the receivership court.
37-61 Failure of the member or subscriber to receive the notice of the
37-62 assessment or of the order, within the time specified in the
37-63 assessment or order or at all, is not a defense in a proceeding to
37-64 collect the assessment.

37-65 (f) If a member does not appear and serve verified
37-66 objections upon the receiver on or before the return day of the
37-67 order to show cause under Subsection (d), the receivership court
37-68 shall make an order adjudging the member liable for the amount of
37-69 the assessment against the member under Subsection (d) together

38-1 with costs, and the receiver shall have a judgment against the
 38-2 member for the amount of the assessment and costs in the order.

38-3 (g) If on or before the return day of the order to show
 38-4 cause, the member appears and serves verified objections upon the
 38-5 receiver, the receivership court may hear and determine the matter
 38-6 or may appoint a referee to hear it and make an order as the facts
 38-7 warrant. In the event that the receiver determines that the
 38-8 objections do not warrant relief from assessment, the member may
 38-9 request the receivership court to review the matter and vacate the
 38-10 order to show cause.

38-11 (h) The receiver may enforce any order or collect any
 38-12 judgment under Subsection (f) by any lawful means.

38-13 (i) Any assessment of a subscriber or member of an insurer
 38-14 made by the receiver pursuant to the order of receivership court
 38-15 fixing the aggregate amount of the assessment against all members
 38-16 or subscribers and approving the classification and formula made by
 38-17 the receiver under this section is prima facie correct.

38-18 (j) Any claim filed by an assessee who fails to pay an
 38-19 assessment, after the conclusion of any legal action by the
 38-20 assessee objecting to the assessment, is deemed a late filed claim
 38-21 under Section 21A.251.

38-22 Sec. 21A.211. REINSURER'S LIABILITY. (a) If the receiver
 38-23 has claims under policies covered by reinsurance, the liability of
 38-24 the reinsurer to the receiver under the policies reinsured may not
 38-25 be diminished because of the insolvency of the insurer, regardless
 38-26 of any provisions in the reinsurance contract to the contrary,
 38-27 except under the following circumstances:

38-28 (1) a contract or other written agreement entered into
 38-29 before the delinquency proceeding that is otherwise permitted by
 38-30 law specifically provides another payee of the reinsurance in the
 38-31 event of the insolvency of the ceding insurer;

38-32 (2) the assuming insurer, under an assumption
 38-33 reinsurance agreement and with the consent of the direct insured,
 38-34 has assumed, as direct obligations of the assuming insurer, the
 38-35 policy obligations of the ceding insurer to the payees under
 38-36 policies and in substitution for the obligations of the ceding
 38-37 insurer to those payees; or

38-38 (3) a life and health insurance guaranty association
 38-39 has made the election to succeed to the rights and obligations of
 38-40 the insolvent insurer under a contract of reinsurance in accordance
 38-41 with the life and health guaranty association laws of this state or
 38-42 its domiciliary state or another applicable law, rule, order, or
 38-43 assignment contract, in which case payments shall be made directly
 38-44 to or at the direction of the guaranty association.

38-45 (b) Except as provided by Subsection (a), any reinsurance
 38-46 shall be payable to the receiver under a policy reinsured by the
 38-47 assuming insurer on the basis of claims:

38-48 (1) allowed under Section 21A.253; and

38-49 (2) paid under:

38-50 (A) Article 21.28-C or 21.28-D;

38-51 (B) Chapter 2602; or

38-52 (C) the guaranty associations of other states.

38-53 (c) The liquidator or receiver, as applicable, shall give
 38-54 written notice to affected reinsurers of the pendency of a claim
 38-55 against the receiver under a reinsured policy within a reasonable
 38-56 time after the claim is filed in the delinquency proceeding. During
 38-57 the pendency of the claim any affected reinsurer may:

38-58 (1) investigate the claim; and

38-59 (2) intervene, at the reinsurer's own expense, in any
 38-60 proceeding where the claim is to be adjusted and assert any defense
 38-61 or defenses which it may deem available to the delinquent company,
 38-62 the liquidator, or the receiver.

38-63 (d) Subject to court approval, an expense incurred under
 38-64 Subsection (c)(1) or (2) shall be chargeable against the delinquent
 38-65 company as part of the expense of liquidation, to the extent of a
 38-66 proportionate share of the benefit which may accrue to the
 38-67 delinquent company solely as a result of the defense undertaken by
 38-68 the assuming insurer.

38-69 (e) If two or more assuming insurers are involved in the

39-1 same claim and a majority in interest elect to intervene and assert
 39-2 a defense to a claim described by Subsection (c), an expense
 39-3 incurred under Subsection (c)(1) or (2) shall be apportioned in
 39-4 accordance with the terms of the reinsurance agreement as though
 39-5 the expense had been incurred by the ceding insurer.

39-6 (f) Nothing in this Chapter shall be construed as
 39-7 authorizing the receiver, or other entity, to compel payment from a
 39-8 non-life reinsurer on the basis of estimated incurred but not
 39-9 reported losses or outstanding reserves, except outstanding
 39-10 reserves with respect to claims made pursuant to section 21A.255
 39-11 and approved workers compensation claims filed under section
 39-12 21A.252(d).

39-13 Sec. 21A.212. RECOVERY OF PREMIUMS OWED. (a) An insured
 39-14 shall pay, either directly to the receiver or to any agent that has
 39-15 paid or is obligated to pay the receiver on behalf of the insured,
 39-16 any unpaid earned premium or retrospectively rated premium due the
 39-17 insurer based on the termination of coverage under Section 21A.152.
 39-18 Premium on surety business is deemed earned at inception if a policy
 39-19 term cannot be determined. All other premium is deemed earned and
 39-20 is prorated equally over the determined policy term, regardless of
 39-21 any provision in the bond, guaranty, contract or other agreement.

39-22 (b) Any person, other than the insured, shall turn over to
 39-23 the receiver any unpaid premium due and owing as shown on the
 39-24 records of the insurer, including any amount representing
 39-25 commissions, for the full policy term due the insurer at the time of
 39-26 the entry of the receivership order, whether earned or unearned,
 39-27 based on the termination of coverage under Section 21A.152. The
 39-28 unpaid premium due the receiver from any person other than the
 39-29 insured excludes any premium not collected from the insured and not
 39-30 earned based on the termination of coverage under Section 21A.152.

39-31 (c) Any person, other than the insured, responsible for the
 39-32 remittance of a premium, shall turn over to the receiver any
 39-33 unearned commission of the person based on the termination of
 39-34 coverage under Section 21A.152. Credits, setoffs, or both may not
 39-35 be allowed to an agent, broker, premium finance company, or any
 39-36 other person for any amounts advanced to the insurer by the person
 39-37 on behalf of, but in the absence of a payment by, the insured, or for
 39-38 any other amount paid by the person to any other person after the
 39-39 entry of the order of receivership.

39-40 (d) Persons that collect premium or finance premium under a
 39-41 premium finance contract that is due the insurer in receivership
 39-42 are deemed to hold that premium in trust as fiduciaries for the
 39-43 benefit of the insurer and to have availed themselves of the laws of
 39-44 this state, regardless of any provision to the contrary in any
 39-45 agency contract or other agreement.

39-46 (e) Any premium finance company is obligated to pay any
 39-47 amounts due the insurer from premium finance contracts, whether the
 39-48 premium is earned or unearned. The receiver has the right to
 39-49 collect any unpaid financed premium directly from the premium
 39-50 finance company or directly from the insured that is a party to the
 39-51 premium finance contract.

39-52 (f) Upon satisfactory evidence of a violation of this
 39-53 section by a person other than an insured, the commissioner may
 39-54 pursue one or more of the following courses of action:

39-55 (1) suspend, revoke, or refuse to renew the licenses
 39-56 of the offending party or parties; and

39-57 (2) impose:

39-58 (A) an administrative penalty under Chapter 84 of
 39-59 not more than \$1,000 for each act in violation of this section by
 39-60 the party or parties; and

39-61 (B) any other sanction or penalty authorized by
 39-62 Chapter 82.

39-63 Sec. 21A.213. ADMINISTRATION OF DEDUCTIBLE AGREEMENTS AND
 39-64 POLICYHOLDER COLLATERAL. (a) Any collateral held to secure the
 39-65 obligations of a policyholder under a deductible agreement with an
 39-66 insurer subject to a delinquency proceeding under this chapter must
 39-67 be maintained and administered as provided in this section. For
 39-68 purposes of this section, a "deductible agreement" is any
 39-69 combination of one or more policies, endorsements, contracts, or

40-1 security agreements that:

40-2 (1) provide for the policyholder to bear the risk of
 40-3 loss within a specified amount per claim or occurrence covered
 40-4 under a policy of insurance; and

40-5 (2) may be subject to an aggregate limit of
 40-6 policyholder reimbursement obligations.

40-7 (b) This section applies to any collateral described by
 40-8 Subsection (a), regardless of whether the collateral is held by,
 40-9 for the benefit of, or assigned to the insurer under a deductible
 40-10 agreement. The collateral shall be used to secure the
 40-11 policyholder's obligation to fund or reimburse claims payments
 40-12 within the agreed deductible amount, subject to this section.

40-13 (c) If the contract between the policyholder and the insurer
 40-14 allows the policyholder to fund claims within the deductible amount
 40-15 through a third-party administrator or otherwise, the receiver
 40-16 shall allow that funding arrangement to continue, except as
 40-17 prohibited by Title 5, Labor Code. If a policyholder funds claims
 40-18 within the deductible amount, the receiver or any guaranty
 40-19 association has no obligation to pay claims for the amount funded by
 40-20 the policyholder, and the policyholder or its third-party
 40-21 administrator is not obligated to reimburse a guaranty association
 40-22 for any amount funded. A charge of any kind may not be made against
 40-23 a guaranty association based on the funding of claims payments by a
 40-24 policyholder under this subsection.

40-25 (d) If the receiver is holding collateral provided by a
 40-26 policyholder to secure both a deductible agreement and other
 40-27 obligations of the policyholder, the receiver shall:

40-28 (1) allocate the collateral among these obligations in
 40-29 accordance with the deductible agreement; or

40-30 (2) in the absence of an allocation provision in the
 40-31 deductible agreement and with the approval of the receivership
 40-32 court, allocate the collateral equitably among these obligations.

40-33 (e) If, under Subsection (d), the collateral secures
 40-34 reimbursement obligations under more than one line of insurance,
 40-35 the receiver shall equitably allocate the collateral among the
 40-36 various lines based on the estimated ultimate exposure within the
 40-37 deductible amount for each line.

40-38 (f) If a guaranty association is obligated to pay claims
 40-39 under a policy under Subsection (d), the receiver shall give notice
 40-40 to the guaranty associations of any allocation under this section.

40-41 (g) Once all claims covered by the collateral have been paid
 40-42 and the receiver is satisfied that no new claims may be presented,
 40-43 the receiver shall release any remaining collateral to the
 40-44 policyholder in accordance with the provisions of the contract and
 40-45 of this chapter.

40-46 (h) To the extent a guaranty association is required by
 40-47 applicable law to pay any claims for which the insurer would have
 40-48 been entitled to reimbursement from the policyholder, the following
 40-49 provisions apply:

40-50 (1) The receiver shall promptly invoice the
 40-51 policyholder for the reimbursement due under the agreement, and the
 40-52 policyholder is obligated to pay the amount invoiced to the
 40-53 receiver for the benefit of the guaranty associations that paid the
 40-54 claims. Neither the insolvency of the insurer nor the insurer's
 40-55 inability to perform any obligations under the deductible agreement
 40-56 is a defense to the policyholder's reimbursement obligation under
 40-57 the deductible agreement. At the time the policyholder
 40-58 reimbursements are collected, the receiver shall promptly forward
 40-59 those amounts to the guaranty association, based on the claims paid
 40-60 by the guaranty association that were subject to the deductible.

40-61 (2) If the collateral is insufficient to reimburse the
 40-62 guaranty association for claims paid within the deductible, the
 40-63 receiver shall use any existing collateral to make a partial
 40-64 reimbursement to the guaranty association, subject to any
 40-65 allocation under Subsection (d), (e), or (f). If more than one
 40-66 guaranty association has a claim against the same collateral, the
 40-67 receiver shall prorate payments to each guaranty association based
 40-68 on the amount of the claims each guaranty association has paid.

40-69 (3) The receiver is entitled to deduct from

41-1 reimbursements owed to a guaranty association or collateral to be
 41-2 returned to a policyholder reasonable actual expenses incurred in
 41-3 fulfilling the receiver's responsibilities under this section.
 41-4 Expenses incurred to collect reimbursements for the benefit of a
 41-5 guaranty association are subject to the approval of the guaranty
 41-6 association. Any remaining expenses that are not deducted from the
 41-7 reimbursements are payable subject to Section 21A.015.

41-8 (4) The receiver shall provide any affected guaranty
 41-9 associations with a complete accounting of the receiver's
 41-10 deductible billing and collection activities on a quarterly basis,
 41-11 or at other intervals as may be agreed to between the receiver and
 41-12 the guaranty associations. Accountings under this subdivision must
 41-13 include copies of the policyholder billings, the reimbursements
 41-14 collected, the available amounts and use of collateral for each
 41-15 account, and any prorating of payments.

41-16 (5) If the receiver fails to make a good faith effort
 41-17 to collect reimbursements due from a policyholder under a
 41-18 deductible agreement within 120 days of receipt of claims payment
 41-19 reports from a guaranty association, the guaranty association may,
 41-20 after notice to the receiver, collect the reimbursements that are
 41-21 due, and, in so doing, the guaranty association shall have the same
 41-22 rights and remedies as the receiver. A guaranty association shall
 41-23 report any amounts collected under this subdivision and expenses
 41-24 incurred in collecting those amounts to the receiver.

41-25 (6) The receiver shall periodically adjust the
 41-26 collateral held as the claims subject to the deductible agreement
 41-27 are paid, provided that adequate collateral is maintained. The
 41-28 receiver is not required to adjust the collateral more than once a
 41-29 year. The receiver shall inform the guaranty associations of all
 41-30 collateral reviews, including the basis for the adjustment.

41-31 (7) Reimbursements received or collected by a guaranty
 41-32 association under this section may not be considered a distribution
 41-33 of the insurer's assets. A guaranty association shall provide the
 41-34 receiver with an accounting of any amounts it has received or
 41-35 collected under this section and any expenses incurred in
 41-36 connection with that receipt or collection. The amounts received,
 41-37 net of any expenses incurred in connection with collection of the
 41-38 amounts, must be set off against the guaranty association's claim
 41-39 filed under Section 21A.251 for the payments that were reimbursed.

41-40 (8) To the extent that a guaranty association pays a
 41-41 claim within the deductible amount that is not reimbursed by either
 41-42 the receiver or by policyholder payments, the guaranty association
 41-43 has a claim for those amounts in the delinquency proceeding in
 41-44 accordance with Section 21A.251.

41-45 (9) Nothing in this section limits any rights of a
 41-46 guaranty association under applicable law to obtain reimbursement
 41-47 for claims payments made by the guaranty association under policies
 41-48 of the insurer or for the association's related expenses.

41-49 (i) If a claim that is subject to a deductible agreement and
 41-50 secured by collateral is not covered by any guaranty association,
 41-51 the following provisions apply:

41-52 (1) The receiver is entitled to retain as an asset of
 41-53 the estate any collateral or deductible reimbursements obtained by
 41-54 the receiver.

41-55 (2) If a policyholder fails to assume an obligation
 41-56 under a deductible agreement to pay a claim, the receiver shall use
 41-57 the collateral to adjust and pay the claim to the extent that the
 41-58 available collateral, after any allocation under Subsection (d),
 41-59 (e), or (f), is sufficient to pay all outstanding and anticipated
 41-60 claims within the deductible. If the collateral is exhausted and
 41-61 all reasonable means of collection against the insured have been
 41-62 exhausted, the remaining claims shall be subject to the provisions
 41-63 of Sections 21A.251 and 21A.301.

41-64 (3) The receiver is entitled to deduct from collateral
 41-65 reasonable actual expenses incurred in fulfilling the receiver's
 41-66 responsibilities under this section. Any remaining expenses that
 41-67 are not deducted from the reimbursements are payable subject to
 41-68 Section 21A.015.

41-69 [Sections 21A.214-21A.250 reserved for expansion]

43-1 information or evidence.

43-2 (d) Any guaranty association must be permitted to file a
 43-3 single omnibus proof of claim for all claims of the association in
 43-4 connection with payment of claims of the insurer. The omnibus proof
 43-5 of claim may be periodically updated by the association, and the
 43-6 association may be required to submit a reasonable amount of
 43-7 documentation in support of the claim. A guaranty association's
 43-8 claim under this Subsection may include amounts for anticipated
 43-9 payments after the closing of the receivership including incurred
 43-10 but not reported claims.

43-11 Sec. 21A.253. ALLOWANCE OF CLAIMS. (a) Except as provided
 43-12 in Subsections (i) and (l), the liquidator shall review all claims
 43-13 duly filed in the liquidation proceeding and shall further
 43-14 investigate as the liquidator considers necessary. Consistent with
 43-15 the provisions of this chapter, the liquidator may allow, disallow,
 43-16 or compromise the amount for which claims will be recommended to the
 43-17 receivership court, unless the liquidator is required by law to
 43-18 accept claims as settled by a person or organization, including a
 43-19 guaranty association, subject to any statutory or contractual
 43-20 rights of the affected reinsurers to participate in the claims
 43-21 allowance process. No claim under a policy of insurance may be
 43-22 allowed for an amount in excess of the applicable policy limits.

43-23 (b) Pursuant to the review, the liquidator shall provide
 43-24 written notice of the claim determination by any means authorized
 43-25 by Section 21A.007 to the claimant or the claimant's attorney and
 43-26 may provide notice to any reinsurer that is or may be liable in
 43-27 respect of the claim. The notice must set forth the amount of the
 43-28 claim allowed by the liquidator, if any, and the priority class of
 43-29 the claim as established in Section 21A.301.

43-30 (c) Not later than the 45th day after the mailing of the
 43-31 notice as set forth in Subsection (b), those noticed may submit
 43-32 written objections to the liquidator. Any submitted objections
 43-33 must clearly set out all facts and the legal basis, if any, for the
 43-34 objections and the reasons why the claim should be allowed at a
 43-35 different amount or in a different priority class. If no timely
 43-36 objection is filed, the determination is final.

43-37 (d) A claim that has not become mature as of the coverage
 43-38 termination date established under Section 21A.201 because payment
 43-39 on the claim is not yet due may be allowed as if it were mature. A
 43-40 claim that is allowed under this Subsection may be discounted to
 43-41 present value based upon a reasonable estimated date of the
 43-42 payment, if the liquidator determines that the present value of the
 43-43 payment is materially less than the amount of the payment.

43-44 (e) A judgment or order against an insured or the insurer
 43-45 entered after the date of the initial filing of a successful
 43-46 petition for receivership, or within 120 days before the initial
 43-47 filing of the petition, and a judgment or order against an insured
 43-48 or the insurer entered at any time by default or by collusion need
 43-49 not be considered as evidence of liability or of the amount of
 43-50 damages.

43-51 (f) Claims under employment contracts by directors,
 43-52 officers, or persons in fact performing similar functions or having
 43-53 similar powers are limited to payment for services rendered prior
 43-54 to any order of receivership, unless explicitly approved in writing
 43-55 by:

43-56 (1) the commissioner prior to an order of
 43-57 receivership;

43-58 (2) the rehabilitator before the entry of an order of
 43-59 liquidation; or

43-60 (3) the liquidator after the entry of an order of
 43-61 liquidation.

43-62 (g) The total liability of the insurer to all claimants
 43-63 arising out of the same act or policy may not be greater than the
 43-64 insurer's total liability would have been were the insurer not in
 43-65 liquidation.

43-66 (h) The liquidator shall disallow claims for de minimis
 43-67 amounts as determined by the receivership court as being reasonable
 43-68 and necessary for administrative convenience.

43-69 (i) A claim that does not contain all the applicable

44-1 information required by Section 21A.252 need not be further
 44-2 reviewed or adjudicated, and may be denied or disallowed by the
 44-3 liquidator subject to the notice and objection procedures in this
 44-4 section.

44-5 (j) The liquidator may reconsider a claim on the basis of
 44-6 additional information and amend the recommendation to the
 44-7 receivership court. The claimant must be afforded the same notice
 44-8 and opportunity to be heard on all changes in the recommendation as
 44-9 in its initial determination. The receivership court may amend its
 44-10 allowance or disallowance as appropriate.

44-11 (k) The liquidator is not required to process claims for any
 44-12 class until it appears reasonably likely that property will be
 44-13 available for a distribution to that class. If there are
 44-14 insufficient assets to justify processing all claims for any class
 44-15 listed in Section 21A.301, the liquidator shall report the facts to
 44-16 the receivership court and make such recommendations as may be
 44-17 appropriate for handling the remainder of the claims.

44-18 (l) Any claim by a lessor for damages resulting from the
 44-19 termination of a lease of real property shall be disallowed to the
 44-20 extent that the claim exceeds:

44-21 (1) the rent reserved by the lease, without
 44-22 acceleration, for the longer of one year or 15 percent of the
 44-23 remaining term of the lease, not to exceed three years, following
 44-24 the earlier of:

44-25 (A) the date of the filing of the petition; or

44-26 (B) the date on which the lessor repossessed or
 44-27 the lessee surrendered the leased property; and

44-28 (2) any unpaid rent due under the lease, without
 44-29 acceleration, on the earlier of the dates described by Subdivision
 44-30 (1).

44-31 (m) If a claim is fully covered by a guaranty association,
 44-32 the liquidator has no obligation to process the claim in accordance
 44-33 with this section and may refuse to process the claim in accordance
 44-34 with this section.

44-35 Sec. 21A.254. CLAIMS UNDER OCCURRENCE POLICIES, SURETY
 44-36 BONDS, AND SURETY UNDERTAKINGS. (a) Subject to the provisions of
 44-37 Section 21A.253, any insured has the right to file a claim for the
 44-38 protection afforded under the insured's policy, regardless of
 44-39 whether a claim is known at the time of filing, if the policy is an
 44-40 occurrence policy.

44-41 (b) Subject to the provisions of Section 21A.253, an obligee
 44-42 under a surety bond or surety undertaking has the right to file a
 44-43 claim for the protection afforded under the surety bond or surety
 44-44 undertaking issued by the insurer under which the obligee is the
 44-45 beneficiary, regardless of whether a claim is known at the time of
 44-46 filing.

44-47 (c) After a claim is filed under Subsection (a) or (b), at
 44-48 the time that a specific claim is made by or against the insured or
 44-49 by the obligee, the insured or the obligee shall supplement the
 44-50 claim, and the receiver shall treat the claim as a contingent or
 44-51 unliquidated claim under Section 21A.255.

44-52 Sec. 21A.255. ALLOWANCE OF CONTINGENT AND UNLIQUIDATED
 44-53 CLAIMS. (a) A claim of an insured or third party may be allowed
 44-54 under Section 21A.253, regardless of the fact that the claim was
 44-55 contingent or unliquidated, if any contingency is removed in
 44-56 accordance with Subsection (b) and the value of the claim is
 44-57 determined. For purposes of this section, a claim is contingent if:

44-58 (1) the accident, casualty, disaster, loss, event, or
 44-59 occurrence insured, reinsured, or bonded or reinsured against
 44-60 occurred on or before the date fixed under Section 21A.151; and

44-61 (2) the act or event triggering the insurer's
 44-62 obligation to pay has not occurred as of the date fixed under
 44-63 Section 21A.151.

44-64 (b) Unless the receivership court directs otherwise, a
 44-65 contingent claim may be allowed if the claimant has presented proof
 44-66 reasonably satisfactory to the liquidator of the insurer's
 44-67 obligation to pay or the claim was based on a cause of action
 44-68 against an insured of the insurer and:

44-69 (1) it may be reasonably inferred from proof presented

45-1 upon the claim that the claimant would be able to obtain a judgment;
45-2 and

45-3 (2) the person has furnished suitable proof, unless
45-4 the receivership court for good cause shown otherwise directs, that
45-5 no further valid claims can be made against the insurer arising out
45-6 of the cause of action other than those already presented.

45-7 (c) The liquidator may petition the receivership court to
45-8 set a date before which all claims under this section are final. In
45-9 addition to the notice requirements of Section 21A.007, the
45-10 liquidator shall give notice of the filing of the petition to all
45-11 claimants with claims that remain contingent or unliquidated under
45-12 this section.

45-13 Sec. 21A.256. SPECIAL PROVISIONS FOR THIRD-PARTY CLAIMS.

45-14 (a) When any third party asserts a cause of action against an
45-15 insured of an insurer in liquidation, the third party may file a
45-16 claim with the liquidator on or before the last day for filing
45-17 claims.

45-18 (b) Whether or not the third party files a claim, the
45-19 insured may file a claim on the insured's own behalf in the
45-20 liquidation.

45-21 (c) The liquidator may make recommendations to the
45-22 receivership court for the allowance of an insured's claim after
45-23 consideration of the probable outcome of any pending action against
45-24 the insured on which the claim is based, the probable damages
45-25 recoverable in the action, and the probable costs and expenses of
45-26 defense. After allowance by the receivership court, the liquidator
45-27 shall withhold any distribution payable on the claim, pending the
45-28 outcome of litigation and negotiation between the insured and the
45-29 third party. The liquidator may reconsider the claim as provided in
45-30 Section 21A.253(j). As claims against the insured are settled or
45-31 barred, the insured or third party, as appropriate, shall be paid
45-32 from the amount withheld the same percentage distribution as was
45-33 paid on other claims of like priority, based on the lesser of the
45-34 amount actually due from the insured by action or paid by agreement
45-35 plus the reasonable costs and expense of defense, or the amount
45-36 allowed on the claims by the receivership court. After all claims
45-37 are settled or barred, any sum remaining from the amount withheld
45-38 shall revert to the undistributed property of the insurer.

45-39 (d) If several claims founded upon one policy are timely
45-40 filed under this section, whether by third parties or as claims by
45-41 the insured, and the aggregate amount of the timely filed allowed
45-42 claims exceeds the aggregate policy limits, the liquidator may:

45-43 (1) apportion the policy limits ratably among the
45-44 timely filed allowed claims; or

45-45 (2) give notice to the insured, known third parties,
45-46 and affected guaranty associations that the aggregate policy limits
45-47 have been exceeded. On and after the 30th day after the date of the
45-48 liquidator's notice, further amounts may not be allowed, the policy
45-49 limits shall be apportioned ratably among the timely filed allowed
45-50 claims, and any additional claims shall be rejected.

45-51 (e) Claims by the insured under Subsection (d) must be
45-52 evaluated as described by Subsection (c). If any insured's claim is
45-53 subsequently reduced under Subsection (c), the amount freed by the
45-54 reduction must be apportioned ratably among the claims which have
45-55 been reduced under Subsection (d).

45-56 (f) A claim may not be allowed under this section to the
45-57 extent the claim is covered by any guaranty association.

45-58 (g) A claimant may withdraw a proof of claim with the
45-59 liquidator's approval. The liquidator may approve the withdrawal
45-60 only upon a showing of good cause and after giving notice of the
45-61 withdrawal to the insured.

45-62 (h) The filing of a proof of claim in connection with a claim
45-63 against an insured has the following effect on the rights of the
45-64 claimant and the insured:

45-65 (1) By filing a proof of claim, a claimant waives any
45-66 right to pursue the personal assets of the insured with respect to
45-67 the claim, to the extent of the coverage or policy limits provided
45-68 by the insurer, and agrees that to the extent of the coverage or
45-69 policy limits provided by the insurer, the claimant will seek

46-1 satisfaction of the claim against the insured solely from
 46-2 distributions paid by the liquidator on the claim and from any
 46-3 payments that a guaranty association may pay on account of the
 46-4 claim, except as provided in this section.

46-5 (2) The waiver provided under this section is
 46-6 conditioned upon the cooperation of the insured with the liquidator
 46-7 and any applicable guaranty association in the defense of the
 46-8 claim. The waiver provided under this section does not operate to:

46-9 (A) discharge the guaranty association from any
 46-10 of the association's responsibilities and duties;

46-11 (B) release the insured with respect to any claim
 46-12 in excess of the coverage or policy limits provided by the insurer
 46-13 or any other responsible party; or

46-14 (C) release the insured with respect to any claim
 46-15 by a guaranty association for reimbursement under the law
 46-16 applicable to the guaranty association.

46-17 (3) The waiver provided under this section is void if:

46-18 (A) a claimant withdraws the claimant's proof of
 46-19 claim under Subsection (g); or

46-20 (B) the liquidator avoids insurance coverage in
 46-21 connection with a proof of the claim.

46-22 (4) The liquidator shall provide, where applicable,
 46-23 notice of the election of remedies provision in this section on any
 46-24 proof of claim form the liquidator distributes. The notice must be
 46-25 inserted above the claimant's signature line in typeface not
 46-26 smaller than the typeface of the rest of the notice and, in any
 46-27 event not smaller than a 14-point font, and must include a statement
 46-28 substantially similar to the following: "I understand by filing
 46-29 this claim in the estate of the insurer I am waiving any right to
 46-30 pursue the personal assets of the insured to the extent that there
 46-31 are policy limits or coverage provided by the now insolvent
 46-32 insurer."

46-33 Sec. 21A.257. DISPUTED CLAIMS. (a) When objections to the
 46-34 liquidator's proposed treatment of a claim are filed and the
 46-35 liquidator does not alter the determination of the claim as a result
 46-36 of the objections, the liquidator shall ask the receivership court
 46-37 for a hearing pursuant to Section 21A.007.

46-38 (b) The provisions of this section are not applicable to
 46-39 disputes with respect to coverage determinations by a guaranty
 46-40 association as part of the association's statutory obligations.

46-41 (c) The final disposition by the receivership court of a
 46-42 disputed claim is deemed a final judgment for purposes of appeal.

46-43 Sec. 21A.258. LIQUIDATOR'S RECOMMENDATIONS TO RECEIVERSHIP
 46-44 COURT. The liquidator shall present to the receivership court, for
 46-45 approval, reports of claims settled or determined by the liquidator
 46-46 under Section 21A.253. The reports must be presented from time to
 46-47 time as determined by the liquidator and must include information
 46-48 identifying the claim and the amount and priority class of the
 46-49 claim.

46-50 Sec. 21A.259. CLAIMS OF CODEBTORS. If a creditor does not
 46-51 timely file a proof of the creditor's claim, an entity that is
 46-52 liable to the creditor together with the insurer, or that has
 46-53 secured the creditor, may file a proof of the claim.

46-54 Sec. 21A.260. SECURED CREDITORS' CLAIMS. (a) The value of
 46-55 any security held by a secured creditor must be determined in one of
 46-56 the following ways:

46-57 (1) by converting the same into money according to the
 46-58 terms of the agreement pursuant to which the security was delivered
 46-59 to the creditor; or

46-60 (2) by agreement or litigation between the creditor
 46-61 and the liquidator.

46-62 (b) If a surety has paid any losses or loss adjustment
 46-63 expenses under its own surety instrument before any petition
 46-64 initiating a delinquency proceeding is filed and the principal to
 46-65 the instrument has posted collateral that remains available to
 46-66 reimburse the losses or loss adjustment expenses at the time the
 46-67 petition is filed and that collateral has not been credited against
 46-68 the payments made, then the receiver has the first priority to use
 46-69 the collateral to reimburse the surety for any pre-petition losses

47-1 and expenses.

47-2 (c) If the principal under a surety bond or surety
 47-3 undertaking has pledged any collateral, including a guaranty or
 47-4 letter of credit, to secure the principal's reimbursement
 47-5 obligation to the insurer issuing the bond or undertaking, the
 47-6 claim of any obligee, or subject to the discretion of the receiver,
 47-7 of any completion contractor under the surety bond or surety
 47-8 undertaking must be satisfied first out of the collateral or its
 47-9 proceeds.

47-10 (d) In making any distribution to an obligee or completion
 47-11 contractor under Subsection (c), the receiver shall retain a
 47-12 sufficient reserve for any other potential claim against that
 47-13 collateral.

47-14 (e) If collateral is insufficient to satisfy in full all
 47-15 potential claims against it under Subsections (c) and (g), the
 47-16 claims against the collateral must be paid on a pro rata basis, and
 47-17 an obligee or completion contractor under Subsection (c) has a
 47-18 claim, subject to allowance under Section 21A.253, for any
 47-19 deficiency.

47-20 (f) If the time to assert claims against a surety bond or a
 47-21 surety undertaking has expired, and all claims described by this
 47-22 section have been satisfied in full, any remaining collateral
 47-23 pledged under the surety bond or surety undertaking must be
 47-24 returned to the principal under the bond or undertaking.

47-25 (g) To the extent that a guaranty association has made a
 47-26 payment relating to a claim against a surety bond, the guaranty
 47-27 association shall first be reimbursed for that payment and related
 47-28 expenses out of the available collateral or proceeds related to the
 47-29 surety bond. To the extent that the collateral is sufficient, the
 47-30 guaranty association shall be reimbursed 100 percent of its
 47-31 payment. If the collateral is insufficient to satisfy in full all
 47-32 potential claims against the collateral under Subsection (c) and
 47-33 this subsection, a guaranty association that has paid claims on the
 47-34 surety bond is entitled to a pro rata share of the available
 47-35 collateral in accordance with Subsection (e), and the guaranty
 47-36 association has claims against the general assets of the estate in
 47-37 accordance with Section 21A.253 for any deficiency. Any payment
 47-38 made to a guaranty association under this subsection from
 47-39 collateral may not be deemed early access or otherwise deemed a
 47-40 distribution out of the general assets or property of the estate,
 47-41 and the guaranty association receiving payment shall subtract any
 47-42 payment from the collateral from the association's final claims
 47-43 against the estate.

47-44 (h) An amount determined under Subsection (a) shall be
 47-45 credited upon the secured claim, and the claimant may file a proof
 47-46 of claim, subject to all other provisions of this chapter for any
 47-47 deficiency, which must be treated as an unsecured claim. If the
 47-48 claimant surrenders the claimant's security to the liquidator, the
 47-49 entire claim is treated as if unsecured.

47-50 (i) The liquidator may recover from property securing an
 47-51 allowed secured claim the reasonable, necessary costs and expenses
 47-52 of preserving or disposing of the property to the extent of any
 47-53 benefit to the holder of such claim.

47-54 Sec. 21A.261. QUALIFIED FINANCIAL CONTRACTS. (a)
 47-55 Notwithstanding any other provision of this chapter, including any
 47-56 other provision of this chapter permitting the modification of
 47-57 contracts, or other law of this state, a person may not be stayed or
 47-58 prohibited from exercising:

47-59 (1) a contractual right to terminate, liquidate, or
 47-60 close out any netting agreement or qualified financial contract
 47-61 with an insurer because of:

47-62 (A) the insolvency, financial condition, or
 47-63 default of the insurer at any time, provided that the right is
 47-64 enforceable under applicable law other than this chapter; or

47-65 (B) the commencement of a formal delinquency
 47-66 proceeding under this chapter;

47-67 (2) any right under a pledge, security, collateral, or
 47-68 guarantee agreement, or any other similar security arrangement or
 47-69 credit support document, relating to a netting agreement or

48-1 qualified financial contract; or

48-2 (3) subject to any provision of Section 21A.209(b),
48-3 any right to set off or net out any termination value, payment
48-4 amount, or other transfer obligation arising under or in connection
48-5 with a netting agreement or qualified financial contract where the
48-6 counterparty or its guarantor is organized under the laws of the
48-7 United States or a state or foreign jurisdiction approved by the
48-8 Securities Valuation Office of the National Association of
48-9 Insurance Commissioners as eligible for netting.

48-10 (b) Upon termination of a netting agreement, the net or
48-11 settlement amount, if any, owed by a nondefaulting party to an
48-12 insurer against which an application or petition has been filed
48-13 under this chapter shall be transferred to, or on the order of the
48-14 receiver for, the insurer, even if the insurer is the defaulting
48-15 party and notwithstanding any provision in the netting agreement
48-16 that may provide that the nondefaulting party is not required to pay
48-17 any net or settlement amount due to the defaulting party upon
48-18 termination. Any limited two-way payment provision in a netting
48-19 agreement with an insurer that has defaulted is deemed to be a full
48-20 two-way payment provision as against the defaulting insurer. Any
48-21 such property or amount is, except to the extent it is subject to
48-22 one or more secondary liens or encumbrances, a general asset of the
48-23 insurer.

48-24 (c) In making any transfer of a netting agreement or
48-25 qualified financial contract of an insurer subject to a proceeding
48-26 under this chapter, the receiver shall either:

48-27 (1) transfer to one party, other than an insurer
48-28 subject to a proceeding under this chapter, all netting agreements
48-29 and qualified financial contracts between a counterparty or any
48-30 affiliate of the counterparty and the insurer that is the subject of
48-31 the proceeding, including:

48-32 (A) all rights and obligations of each party
48-33 under each netting agreement and qualified financial contract; and

48-34 (B) all property, including any guarantees or
48-35 credit support documents, securing any claims of each party under
48-36 each netting agreement and qualified financial contract; or

48-37 (2) transfer none of the netting agreements, qualified
48-38 financial contracts, rights, obligations, or property referred to
48-39 in Subdivision (1), with respect to the counterparty and any
48-40 affiliate of the counterparty.

48-41 (d) If a receiver for an insurer makes a transfer of one or
48-42 more netting agreements or qualified financial contracts, the
48-43 receiver shall use its best efforts to notify any person who is
48-44 party to the netting agreements or qualified financial contracts of
48-45 the transfer not later than noon, the receiver's local time, on the
48-46 business day following the transfer. For purposes of this
48-47 subsection, "business day" means a day other than a Saturday, a
48-48 Sunday, or any day on which either the New York Stock Exchange or
48-49 the Federal Reserve Bank of New York is closed.

48-50 (e) Notwithstanding any other provision of this chapter, a
48-51 receiver may not avoid a transfer of money or other property arising
48-52 under or in connection with a netting agreement or qualified
48-53 financial contract, or any pledge, security, or collateral or
48-54 guarantee agreement or any other similar security arrangement or
48-55 credit support document relating to a netting agreement or
48-56 qualified financial contract, that is made before the commencement
48-57 of a formal delinquency proceeding under this chapter. However, a
48-58 transfer may be avoided under Section 21A.205(a) if the transfer
48-59 was made with actual intent to hinder, delay, or defraud the
48-60 insurer, a receiver appointed for the insurer, or existing or
48-61 future creditors.

48-62 (f) In exercising any of the receiver's powers under this
48-63 chapter to disaffirm or repudiate a netting agreement or qualified
48-64 financial contract, the receiver shall take action with respect to
48-65 each netting agreement or qualified financial contract and all
48-66 transactions entered into in connection with the agreement or
48-67 contract in its entirety. Notwithstanding any other provision of
48-68 this chapter, any claim of a counterparty against the estate
48-69 arising from the receiver's disaffirmance or repudiation of a

49-1 netting agreement or qualified financial contract that has not been
 49-2 previously affirmed in the liquidation or immediately preceding
 49-3 rehabilitation case must be determined and must be allowed or
 49-4 disallowed as if the claim had arisen before the date of the filing
 49-5 of the petition for liquidation or, if a rehabilitation proceeding
 49-6 is converted to a liquidation proceeding, as if the claim had arisen
 49-7 before the date of the filing of the petition for rehabilitation.
 49-8 The amount of the claim must be the actual direct compensatory
 49-9 damages determined as of the date of the disaffirmance or
 49-10 repudiation of the netting agreement or qualified financial
 49-11 contract. For purposes of this subsection, the term "actual direct
 49-12 compensatory damages" does not include punitive or exemplary
 49-13 damages, damages for lost profit or lost opportunity, or damages
 49-14 for pain and suffering but does include normal and reasonable costs
 49-15 of cover or other reasonable measures of damages utilized in the
 49-16 derivatives market for the contract and agreement claims.

49-17 (g) For purposes of this section, the term "contractual
 49-18 right" includes any right, whether or not evidenced in writing,
 49-19 arising under:

49-20 (1) statutory or common law;

49-21 (2) a rule or bylaw of a national securities exchange,
 49-22 national securities clearing organization, or securities clearing
 49-23 agency;

49-24 (3) a rule, bylaw, or resolution of the governing body
 49-25 of a contract market or its clearing organization; or

49-26 (4) law merchant.

49-27 (h) The provisions of this section do not apply to persons
 49-28 who are affiliates of the insurer that is the subject of the
 49-29 proceeding.

49-30 (i) All rights of counterparties under this chapter apply to
 49-31 netting agreements and qualified financial contracts entered into
 49-32 on behalf of the general account or separate accounts if the assets
 49-33 of each separate account are available only to counterparties to
 49-34 netting agreements and qualified financial contracts entered into
 49-35 on behalf of that separate account.

49-36 [Sections 21A.262-21A.300 reserved for expansion]

49-37 SUBCHAPTER G. DISTRIBUTIONS

49-38 Sec. 21A.301. PRIORITY OF DISTRIBUTION. The priority of
 49-39 payment of distributions on unsecured claims must be in accordance
 49-40 with the order in which each class of claims is set forth in this
 49-41 section. Every claim in each class shall be paid in full, or
 49-42 adequate funds retained for their payment, before the members of
 49-43 the next class receive payment, and all claims within a class must
 49-44 be paid substantially the same percentage of the amount of the
 49-45 claim. Except as provided by Subsections (a)(2), (a)(3), (i), and
 49-46 (k), subclasses may not be established within a class. No claim by
 49-47 a shareholder, policyholder, or other creditor shall be permitted
 49-48 to circumvent the priority classes through the use of equitable
 49-49 remedies. The order of distribution of claims shall be:

49-50 (a) Class 1. (1) The costs and expenses of administration
 49-51 expressly approved or ratified by the liquidator, including the
 49-52 following:

49-53 (A) the actual and necessary costs of preserving
 49-54 or recovering the property of the insurer;

49-55 (B) reasonable compensation for all services
 49-56 rendered on behalf of the administrative supervisor or receiver;

49-57 (C) any necessary filing fees;

49-58 (D) the fees and mileage payable to witnesses;

49-59 (E) unsecured loans obtained by the receiver; and

49-60 (F) expenses, if any, approved by the
 49-61 rehabilitator of the insurer and incurred in the course of the
 49-62 rehabilitation that are unpaid at the time of the entry of the order
 49-63 of liquidation.

49-64 (2) The reasonable expenses of a guaranty association,
 49-65 including overhead, salaries and other general administrative
 49-66 expenses allocable to the receivership to include administrative
 49-67 and claims handling expenses and expenses in connection with
 49-68 arrangements for ongoing coverage, other than expenses incurred in
 49-69 the performance of duties under Section 2602.113, Section 2(3) of

50-1 Article 21.28-C, and Section 12 of Article 21.28-D or similar
 50-2 duties under the statute governing a similar organization in
 50-3 another state. In the case of the Texas Property and Casualty
 50-4 Insurance Guaranty Association and other property and casualty
 50-5 guaranty associations, the expenses shall include loss adjustment
 50-6 expenses, including adjusting and other expenses and defense and
 50-7 cost containment expenses. In the event that there are
 50-8 insufficient assets to pay all of the costs and expenses of
 50-9 administration under Subsection (a) (1) and the expenses of a
 50-10 guaranty association, the costs and expenses under Subsection (a)
 50-11 (1) shall have priority over the expenses of a guaranty
 50-12 association. In this event, the expenses of a guaranty association
 50-13 shall be paid on a pro rata basis after the payment of costs and
 50-14 expenses under Subsection (a) (1) in full.

50-15 (3) For purposes of Subsection (a)(1)(E), any
 50-16 unsecured loan obtained by the receiver, unless by its terms it
 50-17 otherwise provides, has priority over all other costs of
 50-18 administration. Absent agreement to the contrary, all claims in
 50-19 this subclass share pro rata.

50-20 (4) Except as expressly approved by the receiver, any
 50-21 expenses arising from a duty to indemnify the directors, officers,
 50-22 or employees of the insurer are excluded from this class and, if
 50-23 allowed, are Class 5 claims.

50-24 (b) Class 2. All claims under policies of insurance,
 50-25 including third-party claims, claims under nonassessable policies
 50-26 for unearned premium, claims of obligees and, subject to the
 50-27 discretion of the receiver, completion contractors under surety
 50-28 bonds and surety undertakings other than bail bonds, mortgage or
 50-29 financial guaranties, or other forms of insurance offering
 50-30 protection against investment risk, claims by principals under
 50-31 surety bonds and surety undertakings for wrongful dissipation of
 50-32 collateral by the insurer or its agents, and claims incurred during
 50-33 the extension of coverage provided for in Section 21A.152. All
 50-34 other claims incurred in fulfilling the statutory obligations of a
 50-35 guaranty association not included in Class 1, including indemnity
 50-36 payments on covered claims and, in the case of the Life, Accident,
 50-37 Health, and Hospital Service Insurance Guaranty Association or
 50-38 another life and health guaranty association, all claims as a
 50-39 creditor of the impaired or insolvent insurer for all payments of
 50-40 and liabilities incurred on behalf of covered claims or covered
 50-41 obligations of the insurer and for the funds needed to reinsure
 50-42 those obligations with a solvent insurer. Notwithstanding any
 50-43 provision of this chapter, the following claims are excluded from
 50-44 Class 2 priority:

50-45 (1) obligations of the insolvent insurer arising out
 50-46 of reinsurance contracts;

50-47 (2) obligations, excluding unearned premium claims on
 50-48 policies other than reinsurance agreements, incurred after:

50-49 (A) the expiration date of the insurance policy;

50-50 (B) the policy has been replaced by the insured
 50-51 or canceled at the insured's request; or

50-52 (C) the policy has been canceled as provided by
 50-53 this chapter;

50-54 (3) obligations to insurers, insurance pools, or
 50-55 underwriting associations and their claims for contribution,
 50-56 indemnity, or subrogation, equitable or otherwise;

50-57 (4) any claim that is in excess of any applicable
 50-58 limits provided in the insurance policy issued by the insurer;

50-59 (5) any amount accrued as punitive or exemplary
 50-60 damages unless expressly covered under the terms of the policy;

50-61 (6) tort claims of any kind against the insurer and
 50-62 claims against the insurer for bad faith or wrongful settlement
 50-63 practices; and

50-64 (7) claims of the guaranty associations for
 50-65 assessments not paid by the insurer, which must be paid as claims in
 50-66 Class 5.

50-67 (c) Class 3. Claims of the federal government not included
 50-68 in Class 3.

50-69 (d) Class 4. Debts due employees for services or benefits

51-1 to the extent that the debts do not exceed \$5,000 or two months
 51-2 salary, whichever is the lesser, and represent payment for services
 51-3 performed within one year before the entry of the initial order of
 51-4 receivership. This priority is in lieu of any other similar
 51-5 priority that may be authorized by law as to wages or compensation
 51-6 of employees.

51-7 (e) Class 5. Claims of other unsecured creditors not
 51-8 included in Classes 1 through 4, including claims under reinsurance
 51-9 contracts, claims of guaranty associations for assessments not paid
 51-10 by the insurer, and other claims excluded from Class 2.

51-11 (f) Class 6. Claims of any state or local governments,
 51-12 except those specifically classified elsewhere in this section.
 51-13 Claims of attorneys for fees and expenses owed them by an insurer
 51-14 for services rendered in opposing a formal delinquency proceeding.
 51-15 In order to prove the claim, the claimant must show that the insurer
 51-16 that is the subject of the delinquency proceeding incurred the fees
 51-17 and expenses based on its best knowledge, information, and belief,
 51-18 formed after reasonable inquiry, indicating opposition was in the
 51-19 best interests of the insurer, was well grounded in fact, and was
 51-20 warranted by existing law or a good faith argument for the
 51-21 extension, modification, or reversal of existing law, and that
 51-22 opposition was not pursued for any improper purpose, such as to
 51-23 harass or to cause unnecessary delay or needless increase in the
 51-24 cost of the litigation.

51-25 (g) Class 7. Claims of any state or local government for a
 51-26 penalty or forfeiture, but only to the extent of the pecuniary loss
 51-27 sustained from the act, transaction, or proceeding out of which the
 51-28 penalty or forfeiture arose, with reasonable and actual costs
 51-29 occasioned thereby. The balance of the claims must be treated as
 51-30 Class 9 claims under Subsection (j).

51-31 (h) Class 8. Except as provided in Sections 21A.251(b) and
 51-32 (d), late filed claims that would otherwise be classified in
 51-33 Classes 2 through 7.

51-34 (i) Class 9. Surplus notes, capital notes or contribution
 51-35 notes or similar obligations, premium refunds on assessable
 51-36 policies, and any other claims specifically assigned to this class.
 51-37 Claims in this class are subject to any subordination agreements
 51-38 related to other claims in this class that existed before the entry
 51-39 of the liquidation order.

51-40 (j) Class 10. Interest on allowed claims of Classes 1
 51-41 through 9, according to the terms of a plan proposed by the
 51-42 liquidator and approved by the receivership court.

51-43 (k) Class 11. Claims of shareholders or other owners
 51-44 arising out of their capacity as shareholders or other owners, or
 51-45 any other capacity, except as they may be qualified in Class 2, 5,
 51-46 or 10. Claims in this class are subject to any subordination
 51-47 agreements related to other claims in this class that existed
 51-48 before the entry of the liquidation order.

51-49 Sec. 21A.302. PARTIAL AND FINAL DISTRIBUTIONS OF ASSETS.
 51-50 (a) With the approval of the receivership court, the liquidator may
 51-51 declare and pay one or more distributions to claimants whose claims
 51-52 have been allowed. Distributions paid under this subsection must
 51-53 be paid at substantially the same percentage of the amount of the
 51-54 claim.

51-55 (b) In determining the percentage of distributions to be
 51-56 paid on these claims, the liquidator may consider the estimated
 51-57 value of the insurer's property, including estimated reinsurance
 51-58 recoverables in connection with the insurer's estimated
 51-59 liabilities for unpaid losses and loss expenses and for incurred
 51-60 but not reported losses and loss expenses, and the estimated value
 51-61 of the insurer's liabilities, including estimated liabilities for
 51-62 unpaid losses and loss expenses and for incurred but not reported
 51-63 losses and loss expenses.

51-64 (c) Distribution of property in kind may be made at
 51-65 valuations set by agreement between the liquidator and the creditor
 51-66 and approved by the receivership court.

51-67 (d) Notwithstanding the provisions of Subsection (a) and
 51-68 Subchapter D, the liquidator is authorized to pay benefits under a
 51-69 workers' compensation policy after the entry of the liquidation

52-1 order if:

52-2 (1) the insurer has accepted liability and no bona
52-3 fide dispute exists;

52-4 (2) payments under the policy commenced before the
52-5 entry of the liquidation order; and

52-6 (3) future or past indemnity or medical payments are
52-7 due under the policy.

52-8 (e) Claim payments made under Subsection (d) may continue
52-9 until the date that a guaranty association assumes responsibility
52-10 for claim payments under the policy.

52-11 (f) Any claim payments made under Subsection (d) and any
52-12 related expenses must be treated as early access payments under
52-13 Section 21A.303 to the guaranty association responsible for the
52-14 claims.

52-15 Sec. 21A.303. EARLY ACCESS PAYMENTS. (a) For purposes of
52-16 this section, "distributable assets" means all general assets of
52-17 the liquidation estate less:

52-18 (1) amounts reserved, to the extent necessary and
52-19 appropriate, for the entire Section 21A.301(a) expenses of the
52-20 liquidation through and after its closure; and

52-21 (2) to the extent necessary and appropriate, reserves
52-22 for distributions on claims other than those of the guaranty
52-23 associations falling within the priority classes of claims
52-24 established in Section 21A.301(c).

52-25 (b) Early access payments to guaranty associations must be
52-26 made as soon as possible after the entry of a liquidation order and
52-27 as frequently as possible after the entry of the order, but at least
52-28 annually if distributable assets are available to be distributed to
52-29 the guaranty associations, and must be in amounts consistent with
52-30 this section. Amounts advanced to an affected guaranty association
52-31 pursuant to this section shall be accounted for as advances against
52-32 distributions to be made under Section 21A.302. Where sufficient
52-33 distributable assets are available, amounts advanced are not
52-34 limited to the claims and expenses paid to date by the guaranty
52-35 associations; however, the liquidator may not distribute
52-36 distributable assets to the guaranty associations in excess of the
52-37 anticipated entire claims of the guaranty associations falling
52-38 within the priority classes of claims established in Sections
52-39 21A.301(b) and (c).

52-40 (c) Within 120 days after the entry of an order of
52-41 liquidation by the receivership court, and at least annually after
52-42 the entry of the order, the liquidator shall apply to the
52-43 receivership court for approval to make early access payments out
52-44 of the general assets of the insurer to any guaranty associations
52-45 having obligations arising in connection with the liquidation or
52-46 shall report that there are no distributable assets at that time
52-47 based on financial reporting as required in Section 21A.016. The
52-48 liquidator may apply to the receivership court for approval to make
52-49 early access payments more frequently than annually based on
52-50 additional information or the recovery of material assets.

52-51 (d) Within 60 days after approval by the receivership court
52-52 of the applications in Subsection (c), the liquidator shall make
52-53 any early access payments to the affected guaranty associations as
52-54 indicated in the approved application.

52-55 (e) Notice of each application for early access payments, or
52-56 of any report required pursuant to this section, must be given in
52-57 accordance with Section 21A.007 to the guaranty associations that
52-58 may have obligations arising from the liquidation. Notwithstanding
52-59 the provisions of Section 21A.007, the liquidator shall provide
52-60 these guaranty associations with at least 30 days' actual notice of
52-61 the filing of the application and with a complete copy of the
52-62 application prior to any action by the receivership court. Any
52-63 guaranty association that may have obligations arising in
52-64 connection with the liquidation has:

52-65 (1) the right to request additional information from
52-66 the liquidator, who may not unreasonably deny such request; and

52-67 (2) the right to object as provided by Section 21A.007
52-68 to any part of each application or to any report filed by the
52-69 liquidator pursuant to this section.

53-1 (f) In each application regarding early access payments,
 53-2 the liquidator shall, based on the best information available to
 53-3 the liquidator at the time, provide, at a minimum, the following:

53-4 (1) to the extent necessary and appropriate, the
 53-5 amount reserved for the entire expenses of the liquidation through
 53-6 and after its closure and for distributions on claims falling
 53-7 within the priority classes of claims established in Sections
 53-8 21A.301(b) and (c);

53-9 (2) the computation of distributable assets and the
 53-10 amount and method of equitable allocation of early access payments
 53-11 to each of the guaranty associations; and

53-12 (3) the most recent financial information filed with
 53-13 the National Association of Insurance Commissioners by the
 53-14 liquidator.

53-15 (g) Each guaranty association that receives any payments
 53-16 pursuant to this section agrees, upon depositing the payment in any
 53-17 account to its benefit, to return to the liquidator any amount of
 53-18 these payments that may be required to pay claims of secured
 53-19 creditors and claims falling within the priority classes of claims
 53-20 established in Section 21A.301(a), (b), or (c). No bond may be
 53-21 required of any guaranty association.

53-22 (h) Nothing in this section affects the method by which a
 53-23 guaranty association determines the association's statutory
 53-24 coverage obligations.

53-25 (i) Without the consent of the affected guaranty
 53-26 associations or an order of the receivership court, the liquidator
 53-27 may not offset the amount to be dispersed to any guaranty
 53-28 association by the amount of any specific deposit or any other
 53-29 statutory deposit or asset of the insolvent insurer held in that
 53-30 state unless the association has actually received the deposit.

53-31 Sec. 21A.304. UNCLAIMED AND WITHHELD FUNDS. (a) If any
 53-32 funds of the receivership estate remain unclaimed after the final
 53-33 distribution under Section 21A.302, the funds must be placed in a
 53-34 segregated unclaimed funds account held by the commissioner. If
 53-35 the owner of any of the unclaimed funds presents proof of ownership
 53-36 satisfactory to the commissioner before the second anniversary of
 53-37 the date of the termination of the delinquency proceeding, the
 53-38 commissioner shall remit the funds to the owner. The interest
 53-39 earned on funds held in the unclaimed funds account may be used to
 53-40 pay any administrative costs related to the handling or return of
 53-41 unclaimed funds.

53-42 (b) If any amounts held in the unclaimed funds account
 53-43 remain unclaimed on or after the second anniversary of the date of
 53-44 the termination of the delinquency proceeding, the commissioner may
 53-45 file a motion for an order directing the disposition of the funds in
 53-46 the court in which the delinquency proceeding was pending. Any
 53-47 costs incurred in connection with the motion may be paid from the
 53-48 unclaimed funds account. The motion shall identify the name of the
 53-49 insurer, the names and last known addresses of the persons entitled
 53-50 to the unclaimed funds, if known, and the amount of the funds.
 53-51 Notice of the motion shall be given as directed by the court. Upon a
 53-52 finding by the court that the funds have not been claimed before the
 53-53 second anniversary of the date of the termination of the
 53-54 delinquency proceeding, the court shall order that any claims for
 53-55 unclaimed funds and any interest earned on the unclaimed funds that
 53-56 has not been expended under Subsection (a) are abandoned and that
 53-57 the funds must be disbursed under one of the following methods:

53-58 (1) the amounts may be deposited in the general
 53-59 receivership expense account under Subsection (c);

53-60 (2) the amounts may be transferred to the comptroller,
 53-61 and deposited into the general revenue fund; or

53-62 (3) the amounts may be used to reopen the receivership
 53-63 in accordance with Section 21A.353 and be distributed to the known
 53-64 claimants with approved claims.

53-65 (c) The commissioner may establish an account for the
 53-66 following purposes:

53-67 (1) to pay general expenses related to the
 53-68 administration of receiverships; and

53-69 (2) to advance funds to any receivership that does not

54-1 have sufficient cash to pay its operating expenses.

54-2 (d) Any advance to a receivership under Subsection (c)(2)
 54-3 may be treated as a claim under Section 21A.301 as agreed at the
 54-4 time the advance is made or, in the absence of an agreement, in the
 54-5 priority determined to be appropriate by the court.

54-6 (e) If the commissioner determines at any time that the
 54-7 funds in the account exceed the amount required, the commissioner
 54-8 may transfer the funds or any part of the funds to the comptroller,
 54-9 and the transferred funds must be deposited into the general
 54-10 revenue fund.

54-11 [Sections 21A.305-21A.350 reserved for expansion]

54-12 SUBCHAPTER H. DISCHARGE

54-13 Sec. 21A.351. CONDITION ON RELEASE FROM DELINQUENCY
 54-14 PROCEEDINGS. Until all payments of or on account of the insurer's
 54-15 contractual obligations by all guaranty associations, along with
 54-16 all expenses of the obligations and interest on all the payments and
 54-17 expenses, are repaid to the guaranty associations, unless otherwise
 54-18 provided in a plan approved by the guaranty association, an insurer
 54-19 that is subject to any formal delinquency proceedings may not:

54-20 (1) solicit or accept new business or request or
 54-21 accept the restoration of any suspended or revoked license or
 54-22 certificate of authority;

54-23 (2) be returned to the control of its shareholders or
 54-24 private management; or

54-25 (3) have any of its assets returned to the control of
 54-26 its shareholders or private management.

54-27 Sec. 21A.352. TERMINATION OF LIQUIDATION PROCEEDINGS. When
 54-28 all property justifying the expense of collection and distribution
 54-29 has been collected and distributed under this chapter, the
 54-30 liquidator shall apply to the receivership court for an order
 54-31 discharging the liquidator and terminating the proceeding. The
 54-32 receivership court may grant the application and make any other
 54-33 orders, including orders to transfer any remaining funds that are
 54-34 uneconomic to distribute, or pursuant to Section 21A.302(c), assign
 54-35 any assets that remain unliquidated, including claims and causes of
 54-36 action, as may be deemed appropriate.

54-37 Sec. 21A.353. REOPENING RECEIVERSHIP. After the
 54-38 liquidation proceeding has been terminated and the liquidator
 54-39 discharged, the commissioner or other interested party may at any
 54-40 time petition the court to reopen the delinquency proceeding for
 54-41 good cause, including the discovery of additional property. If the
 54-42 court is satisfied that there is justification for reopening, it
 54-43 shall so order.

54-44 Sec. 21A.354. DISPOSITION OF RECORDS DURING AND AFTER
 54-45 TERMINATION OF RECEIVERSHIP. (a) When it appears to the receiver
 54-46 that the records of the insurer in receivership are no longer
 54-47 useful, the receiver may recommend to the receivership court and
 54-48 the receivership court shall direct what records should be
 54-49 destroyed.

54-50 (b) If the receiver determines that any records should be
 54-51 maintained after the closing of the delinquency proceeding, the
 54-52 receiver may reserve property from the receivership estate for the
 54-53 maintenance of the records, and any amounts so retained are
 54-54 administrative expenses of the estate under Section 21A.301(a).
 54-55 Any records retained pursuant to this subsection must be
 54-56 transferred to the custody of the commissioner, and the
 54-57 commissioner may retain or dispose of the records as appropriate,
 54-58 at the commissioner's discretion. Any records of a delinquent
 54-59 insurer that are transferred to the commissioner may not be
 54-60 considered records of the department for any purposes, and Chapter
 54-61 552, Government Code, does not apply to those records.

54-62 Sec. 21A.355. EXTERNAL AUDIT OF THE RECEIVER'S BOOKS. (a)
 54-63 The receivership court may, as it deems desirable, order audits to
 54-64 be made of the books of the receiver relating to any receivership
 54-65 established under this chapter. A report of each audit shall be
 54-66 filed with the commissioner and with the receivership court.

54-67 (b) The books, records, and other documents of the
 54-68 receivership must be made available to the auditor at any time
 54-69 without notice.

55-1 (c) The expense of each audit shall be considered a cost of
 55-2 administration of the receivership.

55-3 [Sections 21A.356-21A.400 reserved for expansion]

55-4 SUBCHAPTER I. INTERSTATE RELATIONS

55-5 Sec. 21A.401. ANCILLARY CONSERVATION OF FOREIGN INSURERS.

55-6 (a) The commissioner may initiate an action against a foreign
 55-7 insurer pursuant to Section 21A.051 on any of the grounds stated in
 55-8 that section or on the basis that:

55-9 (1) any of the foreign insurer's property has been
 55-10 sequestered, garnished, or seized by official action in its
 55-11 domiciliary state or in any other state;

55-12 (2) the foreign insurer's certificate of authority to
 55-13 do business in this state has been revoked or was never issued and
 55-14 there are residents of this state with unpaid claims or in-force
 55-15 policies; or

55-16 (3) initiation of the action is necessary to enforce a
 55-17 stay under Section 17, Article 21.28-C, Section 18, Article
 55-18 21.28-D, or Section 2602.259.

55-19 (b) If a domiciliary receiver has been appointed, the
 55-20 commissioner may initiate an action against a foreign insurer under
 55-21 Subsection (a)(1) or (a)(2) only with the consent of the
 55-22 domiciliary receiver.

55-23 (c) An order entered pursuant to this section must appoint
 55-24 the commissioner as conservator. The conservator's title to assets
 55-25 must be limited to the insurer's property and records located in
 55-26 this state.

55-27 (d) Notwithstanding Section 21A.201(c), the conservator
 55-28 shall hold and conserve the assets located in this state until the
 55-29 commissioner in the insurer's domiciliary state is appointed its
 55-30 receiver or until an order terminating conservation is entered
 55-31 under Subsection (g). Once a domiciliary receiver is appointed,
 55-32 the conservator shall turn over to the domiciliary receiver all
 55-33 property subject to an order under this section.

55-34 (e) The conservator may liquidate property of the insurer as
 55-35 necessary to cover the costs incurred in the initiation or
 55-36 administration of a proceeding under this section.

55-37 (f) The court in which an action under this section is
 55-38 pending may issue a finding of insolvency or an ancillary
 55-39 liquidation order. The court may enter an ancillary liquidation
 55-40 order only for the limited purposes of:

55-41 (1) liquidating assets in this state to pay costs
 55-42 under Subsection (e); or

55-43 (2) activating relevant laws applicable to guaranty
 55-44 associations to pay valid claims that are not being paid by the
 55-45 insurer.

55-46 (g) The conservator may at any time petition the
 55-47 receivership court for an order terminating an order entered under
 55-48 this section.

55-49 Sec. 21A.402. DOMICILIARY RECEIVERS APPOINTED IN OTHER
 55-50 STATES. (a) A domiciliary receiver appointed in another state is
 55-51 vested by operation of law with title to, and may summarily take
 55-52 possession of, all property and records of the insurer in this
 55-53 state. Notwithstanding any other provision of law regarding
 55-54 special deposits, special deposits held in this state shall be,
 55-55 upon the entry of an order of liquidation with a finding of
 55-56 insolvency, distributed to the guaranty associations in this state
 55-57 as early access payments subject to Section 21A.303, in relation to
 55-58 the lines of business for which the special deposits were made. The
 55-59 holder of any special deposit shall account to the domiciliary
 55-60 receiver for all distributions from the special deposit at the time
 55-61 of the distribution. The statutory provisions of another state and
 55-62 all orders entered by courts of competent jurisdiction in relation
 55-63 to the appointment of a domiciliary receiver of an insurer and any
 55-64 related proceedings in another state must be given full faith and
 55-65 credit in this state. For purposes of this section, "another state"
 55-66 means any state other than this state. This state shall treat any
 55-67 other state than this state as a reciprocal state.

55-68 (b) Upon appointment of a domiciliary receiver in another
 55-69 state, the commissioner shall, unless otherwise agreed by the

56-1 receiver, immediately transfer title to and possession of all
 56-2 property of the insurer under the commissioner's control, including
 56-3 all statutory general or special deposits, to the receiver.

56-4 (c) Except as provided in Subsection (a), the domiciliary
 56-5 receiver shall handle special deposits and special deposit claims
 56-6 in accordance with federal law and the statutes pursuant to which
 56-7 the special deposits are required. All amounts in excess of the
 56-8 estimated amount necessary to administer the special deposit and
 56-9 pay the unpaid special deposit claims are deemed general assets of
 56-10 the estate. If there is a deficiency in any special deposit so that
 56-11 the claims secured by the special deposit are not fully discharged
 56-12 from the deposit, the claimants may share in the general assets of
 56-13 the insurer to the extent of the deficiency at the same priority as
 56-14 other claimants in their class of priority under Section 21A.301,
 56-15 but the sharing must be deferred until the other claimants of their
 56-16 class have been paid percentages of their claims equal to the
 56-17 percentage paid from the special deposit. The intent of this
 56-18 provision is to equalize to this extent the advantage gained by the
 56-19 security provided by the special deposits.

56-20 SECTION 2. Section 3(a), Article 21.28-C, Insurance Code,
 56-21 is amended to read as follows:

56-22 (a) This Act applies to all kinds of direct insurance, and
 56-23 except as provided in Section 12 of this Act, is not applicable to
 56-24 the following:

- 56-25 (1) life, annuity, health, or disability insurance;
- 56-26 (2) mortgage guaranty, financial guaranty, or other
 56-27 forms of insurance offering protection against investment risks;
- 56-28 (3) fidelity or surety bonds, or any other bonding
 56-29 obligations;
- 56-30 (4) credit insurance, vendors' single-interest
 56-31 insurance, collateral protection insurance, or any similar
 56-32 insurance protecting the interests of a creditor arising out of a
 56-33 creditor-debtor transaction;
- 56-34 (5) insurance of warranties or service contracts;
- 56-35 (6) title insurance;
- 56-36 (7) ocean marine insurance;
- 56-37 (8) any transaction or combination of transactions
 56-38 between a person, including an affiliate of such a person, and an
 56-39 insurer, including an affiliate of such an insurer, that involves
 56-40 the transfer of investment or credit risk unaccompanied by the
 56-41 transfer of insurance risk, including transactions, except for
 56-42 workers' compensation insurance, involving captive insurers,
 56-43 policies in which deductible or self-insured retention is
 56-44 substantially equal in amount to the limit of the liability under
 56-45 the policy, and transactions in which the insured retains a
 56-46 substantial portion of the risk; or
- 56-47 (9) any insurance provided by or guaranteed by
 56-48 government.

56-49 SECTION 3. Section 5(8), Article 21.28-C, Insurance Code,
 56-50 is amended to read as follows:

56-51 (8) "Covered claim" means an unpaid claim of an
 56-52 insured or third-party liability claimant that arises out of and is
 56-53 within the coverage and not in excess of the applicable limits of an
 56-54 insurance policy to which this Act applies, issued or assumed
 56-55 (whereby an assumption certificate is issued to the insured) by an
 56-56 insurer licensed to do business in this state, if that insurer
 56-57 becomes an impaired insurer and the third-party claimant or
 56-58 liability claimant or insured is a resident of this state at the
 56-59 time of the insured event, or the claim is a first-party claim for
 56-60 damage to property that is permanently located in this state. A
 56-61 corporation or other entity that is not an individual is considered
 56-62 to be a resident of the state in which the entity's principal place
 56-63 of business is located. "Covered claim" shall also include
 56-64 unearned premiums, but in no event shall a covered claim for
 56-65 unearned premiums exceed \$25,000. Individual covered claims
 56-66 (including any and all derivative claims by more than one person
 56-67 which arise from the same occurrence, which shall be considered
 56-68 collectively as a single claim under this Act) shall be limited to
 56-69 \$300,000, except that the association shall pay the full amount of

57-1 any covered claim arising out of a workers' compensation claim made
 57-2 under a workers' compensation policy. "Covered claim" shall not
 57-3 include any amount sought as a return of premium under a
 57-4 retrospective rating plan or any amount that is directly or
 57-5 indirectly due any reinsurer, insurer, self-insurer, insurance
 57-6 pool, or underwriting association, as subrogation recoveries,
 57-7 reinsurance recoveries, contribution, indemnification, or
 57-8 otherwise, and the insured of an impaired insurer is not liable, and
 57-9 the reinsurer, insurer, self-insurer, insurance pool, or
 57-10 underwriting association is not entitled to sue or continue a suit
 57-11 against that insured, for any subrogation recovery, reinsurance
 57-12 recovery, contribution, [~~or~~] indemnity, or any other claim asserted
 57-13 directly or indirectly by a reinsurer, insurer, insurance pool, or
 57-14 underwriting association to the extent of the applicable liability
 57-15 limits of the policy written and issued to the insured by the
 57-16 insolvent insurer. "Covered claim" shall not include supplementary
 57-17 payment obligations, including adjustment fees and expenses,
 57-18 attorney's fees and expenses, court costs, interest and penalties,
 57-19 and interest and bond premiums incurred prior to the determination
 57-20 that an insurer is an impaired insurer under this Act. "Covered
 57-21 claim" shall not include any prejudgment or postjudgment interest
 57-22 that accrues subsequent to the determination that an insurer is an
 57-23 impaired insurer under this Act. "Covered claim" shall not include
 57-24 any claim for recovery of punitive, exemplary, extracontractual, or
 57-25 bad-faith damages, whether sought as a recovery against the
 57-26 insured, insurer, guaranty association, receiver, special deputy
 57-27 receiver, or commissioner, awarded in a court judgment against an
 57-28 insured or insurer. Notwithstanding any other provision of this
 57-29 Act, the association's liability for shareholder derivative
 57-30 actions or other claims for economic loss incurred by a claimant in
 57-31 the claimant's capacity as a shareholder under an insurance policy
 57-32 placed in force on or after January 1, 1992, is limited to \$300,000
 57-33 for each policy, inclusive of defense costs, regardless of the
 57-34 number of claimants under each policy. "Covered claim" shall not
 57-35 include, and the association shall not have any liability to an
 57-36 insured or third-party liability claimant, for its failure to
 57-37 settle a liability claim within the limits of a covered claim under
 57-38 this Act. With respect to a covered claim for unearned premiums,
 57-39 both persons who were residents of this state at the time the policy
 57-40 was issued and persons who are residents of this state at the time
 57-41 the company is found to be an impaired insurer shall be considered
 57-42 to have covered claims under this Act. If the impaired insurer has
 57-43 insufficient assets to pay the expenses of administering the
 57-44 receivership or conservatorship estate, that portion of the
 57-45 expenses of administration incurred in the processing and payment
 57-46 of claims against the estate shall also be a covered claim under
 57-47 this Act.

57-48 SECTION 4. Section 8, Article 21.28-C, Insurance Code, is
 57-49 amended by amending Subsection (d) and adding Subsection (i) to
 57-50 read as follows:

57-51 (d) The association shall investigate and adjust,
 57-52 compromise, settle, and pay covered claims to the extent of the
 57-53 association's obligation and deny all other claims. The
 57-54 association may review settlements, releases, and judgments to
 57-55 which the impaired insurer or its insureds were parties to
 57-56 determine the extent to which those settlements, releases, and
 57-57 judgments may be properly contested. Any judgment taken before the
 57-58 designation of impairment in which an insured under a liability
 57-59 policy or the insurer failed to exhaust all appeals, any judgment
 57-60 taken by default or consent against an insured or the impaired
 57-61 insurer, and any settlement, release, or judgment entered into by
 57-62 the insured or the impaired insurer, is not binding on the
 57-63 association, and may not be considered as evidence of liability or
 57-64 of damages in connection with any claim brought against the
 57-65 association or any other party under this Act. Notwithstanding any
 57-66 other provision of this Act or any other law to the contrary, a
 57-67 covered claim shall not include any claim filed with the guaranty
 57-68 association on a date that is later than eighteen months after the
 57-69 date of the order of liquidation and also shall not include claims

58-1 that are unknown and unreported as of the date, provided, however,
 58-2 ~~[except]~~ that a claim for workers' compensation benefits is
 58-3 governed by Title 5, Labor Code, and the applicable rules of the
 58-4 Texas Workers' Compensation Commission.

58-5 (i) The association may bring an action against any
 58-6 third-party administrator, agent, attorney, or other
 58-7 representative of an insurer for which a receiver has been
 58-8 appointed to obtain custody and control of all information,
 58-9 including files, records, and electronic data, related to the
 58-10 insurer that is appropriate or necessary for the association, or a
 58-11 similar association in other states, to carry out its duties under
 58-12 this Act or a similar law of another state. The association has the
 58-13 absolute right to obtain information under this subsection through
 58-14 emergency equitable relief, regardless of where the information is
 58-15 physically located. In bringing an action under this subsection,
 58-16 the association is not subject to any defense, possessory lien or
 58-17 other type of lien, or other legal or equitable ground for refusal
 58-18 to surrender the information that may be asserted against the
 58-19 receiver of the insurer. The association is entitled to an award of
 58-20 reasonable attorney's fees and costs incurred by the association in
 58-21 any action to obtain information under this subsection. The rights
 58-22 granted to the association under this subsection do not affect the
 58-23 receiver's title to information, and information obtained under
 58-24 this subsection remains the property of the receiver while in the
 58-25 custody of the association.

58-26 SECTION 5. Section 10(g), Article 21.28-C, Insurance Code,
 58-27 is amended to read as follows:

58-28 (g) Venue in a suit by or against the association or
 58-29 commissioner relating to any action or ruling of the association or
 58-30 commissioner made under this Act is in Travis County. The
 58-31 association or commissioner is not required to give an appeal bond
 58-32 in an appeal of a cause of action arising under this Act.

58-33 SECTION 6. Section 11(b), Article 21.28-C, Insurance Code,
 58-34 is amended to read as follows:

58-35 (b) The association is entitled to recover ~~[from the~~
 58-36 ~~following persons the amount of any covered claim and costs of~~
 58-37 ~~defense paid on behalf of that person under this Act]:~~

58-38 (1) the amount of any covered claim for workers'
 58-39 compensation insurance benefits and the costs of administration and
 58-40 defense of those claims paid under this Act from any insured
 58-41 employer, other than an insured who is exempt from federal income
 58-42 tax under Section 501(a) of the Internal Revenue Code of 1986 (26
 58-43 U.S.C. Section 501(a)) by being described by Section 501(c)(3) of
 58-44 that code, whose net worth on December 31 of the year next preceding
 58-45 the date the insurer becomes an impaired insurer exceeds \$50
 58-46 million, provided that an insured's net worth on that date shall be
 58-47 deemed ~~[is considered]~~ to include the aggregate net worth of the
 58-48 insured and all of the insured's parent, subsidiary, and affiliated
 58-49 companies as computed on a consolidated basis~~[, and whose~~
 58-50 obligations under a liability policy or contract of insurance
 58-51 written, issued, and placed in force after January 1, 1992, are
 58-52 satisfied in whole or in part by payments made under this Act]; and

58-53 (2) the amount of any covered claim and the costs of
 58-54 defense paid on behalf of any person who is an affiliate of the
 58-55 impaired insurer and whose liability obligations to other persons
 58-56 are satisfied in whole or in part by payments made under this Act.

58-57 SECTION 7. Section 11A, Article 21.28-C, Insurance Code, is
 58-58 amended to read as follows:

58-59 Sec. 11A. NET WORTH EXCLUSION. (a) Except for a workers'
 58-60 compensation claim governed by Title 5, Labor Code, a covered claim
 58-61 does not include and the association is not liable for any claim
 58-62 arising from a policy of insurance of any ~~[The association is not~~
 58-63 liable to pay a first-party claim of an] insured whose net worth on
 58-64 December 31 of the year next preceding the date the insurer becomes
 58-65 an impaired insurer exceeds \$50 million.

58-66 (b) The net worth of an insured for purposes of this section
 58-67 includes the aggregate net worth of the insured and all of the
 58-68 insured's parent, subsidiary, and affiliated companies computed on
 58-69 a consolidated basis.

(c) This section does not apply:

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

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

(B) filed a voluntary petition in bankruptcy; or

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

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

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

(e) The association may establish procedures for requesting financial information from an insured or claimant on a confidential basis for the purpose of applying sections concerning the net worth of first-party and third-party claimants, subject to any information requested under this subsection being shared with any other association similar to the association and with the liquidator for the impaired insurer on the same confidential basis. If the insured or claimant refuses to provide the requested financial information, the association requests an auditor's certification of that information, and the auditor's certification is available but not provided, the association may deem the net worth of the insured or claimant to be in excess of \$50 million at the relevant time.

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

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

(a) All proceedings in which an impaired insurer is a party or is obligated to defend a party in any court in this state, except proceedings directly related to the receivership or instituted by the receiver, shall be stayed as to all parties and for all purposes for six months and any additional time thereafter as may be determined by the court from the date of the designation of impairment or an ancillary proceeding is instituted in the state, whichever is later, to permit proper defense by the association of all pending causes of action. A deadline imposed under the Texas Rules of Civil Procedure or the Texas Rules of Appellate Procedure is tolled during the stay. Statutes of limitation or repose are not tolled during the stay, and any action filed during the stay is stayed upon the filing of the action. The court in which the delinquency proceeding is pending has exclusive jurisdiction regarding the application, enforcement, and extension of the stay and may issue injunctions or other similar orders to enforce the stay. If the impaired insurer is not domiciled in this state, the commissioner may bring an ancillary conservation [~~delinquency~~] proceeding under Section 21A.401 [~~13, Article 21.28~~] of this code, for the [~~limited~~] purpose of determining the application, enforcement, and extension of the stay.

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

SECTION 10. (a) The changes in law made by this Act apply only to a receivership proceeding brought against an insurer under

60-1 Section 2, Article 21.28, Insurance Code, that is pending on the
60-2 effective date of this Act and to a receivership proceeding
60-3 initiated on or after the effective date of this Act. A
60-4 receivership proceeding that has terminated before the effective
60-5 date of this Act is governed by the law in effect at the time the
60-6 receivership proceeding terminated, and that law is continued in
60-7 effect for that purpose.

60-8 (b) Except as provided by Subsection (a) of this section,
60-9 the changes in law made by this Act apply only to a proceeding or
60-10 cause of action brought under Chapter 21A, Insurance Code, as added
60-11 by this Act, that is filed or commenced on or after the effective
60-12 date of this Act. A proceeding or cause of action brought under
60-13 Article 21.28, Insurance Code, as it existed before its repeal by
60-14 this Act, other than a receivership proceeding brought against an
60-15 insurer, that was filed or commenced before the effective date of
60-16 this Act is governed by the law in effect at the time the proceeding
60-17 or cause of action was filed or commenced, and that law is continued
60-18 in effect for that purpose.

60-19 SECTION 11. This Act takes effect September 1, 2005.

60-20 * * * * *