

BILL ANALYSIS

Senate Research Center

C.S.H.B. 2157
By: Smithee (Harris)
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Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Article 21.28 of the Texas Insurance Code provides for receivership proceedings to rehabilitate or liquidate an insurer. In a receivership, the insurer's assets are collected and distributed its creditors under the supervision of a court. When a receivership is initiated, the court appoints the commissioner of insurance as the receiver. The Receiver can appoint a special deputy receiver to administer the receivership.

Article 21.28 was enacted in 1952. Many of its essential components have not been comprehensively revised since 1955. In 1978, the National Association of Insurance Commissioners ("NAIC") adopted a receivership model act. This model act has been updated by a NAIC working group over the last three years. Interested parties, including insurance trade associations and guaranty funds, have been involved in the drafting process.

C.S.H.B. 2157 adopts the draft NAIC Insurer Receivership Model Act. The model contains procedures that are designed to protect the interest of policyholders, claimants, and creditors by improving the efficiency of insurance receiverships. The adoption of this model will clarify the law, minimize uncertainty and litigation, and promote cooperation in multi-state receiverships. The bill also gives the commissioner of insurance additional authority to act sooner to take control of a failed insurer.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 (21A.016, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 1, Insurance Code, by adding Chapter 21A, as follows:

CHAPTER 21A. INSURER RECEIVERSHIP ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 21A.001. CONSTRUCTION AND PURPOSE. (a) Authorizes this chapter to be cited as the Insurer Receivership Act.

(b) Prohibits this chapter from being interpreted to limit the powers granted the commissioner of insurance (commissioner) under other provisions of law.

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

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

(e) Provides that the purpose of this chapter is to protect the interests of insureds, claimants, creditors, and the public generally, through certain actions.

Sec. 21A.002. CONFLICTS OF LAW. Provides that this chapter and the state law governing insurance guaranty associations constitute this state's insurer receivership laws and requires that they be construed together in a manner that is consistent. Provides that, in the event of a conflict between the insurer receivership laws and the provisions of any other law, the insurer receivership laws prevail.

Sec. 21A.003. COVERED PERSONS. Provides that the provisions of this chapter apply to certain insurers, entities, or persons involved in insurance business.

Sec. 21A.004. DEFINITIONS. (a) Defines "affiliate," "control," "subsidiary," "alien insurer," "creditor," "claimant," "delinquency proceeding," "doing business," "doing insurance business," "business of insurance," "domiciliary state," "foreign insurer," "formal delinquency proceeding," "general assets," "good faith," "guaranty association," "impaired," "insolvency," "insolvent," "insurer," "netting agreement," "new value," "party in interest," "person," "policy," "property of the insurer," "property of the estate," "qualified financial contract," "receiver," "receivership," "receivership court," "reinsurance," "secured claim," "special deposit," "special deposit claim," "state," "transfer," and "unauthorized insurer."

(b) Defines "admitted assets" and "liabilities."

(c) Defines "commodity contract," "forward contract," "repurchase agreement," "securities contract," and "swap agreement."

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

Sec. 21A.005. JURISDICTION AND VENUE. (a) Prohibits a delinquency proceeding from being commenced under this chapter by a person other than the commissioner. Provides that a court does not have jurisdiction to entertain, hear, or determine any delinquency proceeding commenced by any other person.

(b) Provides that a court of this state does not have jurisdiction, other than in accordance with this chapter, to entertain, hear, or determine any complaint praying for certain judicial proceedings.

(c) Provides that the receivership court, as of the commencement of a delinquency proceeding under this chapter, has exclusive jurisdiction of all property of the insurer, wherever located, including property located outside the territorial limits of the state. Provides that the receivership court has original but not exclusive jurisdiction of all civil proceedings arising under this chapter or in or related to delinquency proceedings under this chapter.

(d) Provides that, in addition to other grounds for jurisdiction provided by the law of this state, a court having jurisdiction of the subject matter has jurisdiction over a person served pursuant to Rules 21 and 21a, Texas Rules of Civil Procedure, or other applicable provisions of law in an action brought by the receiver if the person served meets certain criteria.

(e) Authorizes, if, on motion of any party, the receivership court finds that any action, as a matter of substantial justice, should be tried in a forum outside this state, the receivership court to enter an appropriate order to stay further proceedings on the action in this state. Provides that, except as to claims against the estate, nothing in this chapter deprives a party of any contractual right to pursue arbitration. Authorizes a party in arbitration to bring a claim or counterclaim against the estate, but the claim or counterclaim is subject to Section 21A.209.

(f) Requires service to be made upon the person named in the petition in accordance with Rules 21 and 21a, Texas Rules of Civil Procedure. Authorizes service, in lieu of such service, upon application to the receivership court, to be

made in any manner the receivership court directs if it is satisfactorily shown by affidavit in certain cases.

(g) Requires an action authorized by this section to be brought in a district court in Travis County.

(h) Authorizes the commissioner or receiver, at any time after an order is entered pursuant to Section 21A.051, 21A.101, or 21A.151, to transfer the case to the county of the principal office of the person proceeded against. Requires the court in which the proceeding was commenced, in the event of transfer, upon application of the commissioner or receiver, to direct its clerk to transmit the court's file to the clerk of the court to which the case is to be transferred. Requires the proceeding, after transfer, to be conducted in the same manner as if it had been commenced in the court to which the matter is transferred.

(i) Prohibits a person from intervening in any delinquency proceeding in this state for the purpose of seeking or obtaining payment of any judgment, lien, or other claim of any kind. Provides that the claims procedure set forth in this chapter constitutes the exclusive means for obtaining payment of claims from the receivership estate. Provides that this provision is not intended to affect the rights conferred on the guaranty associations by Section 21A.008(1).

(j) Provides that the foregoing provisions of this section notwithstanding, the provisions of this chapter do not confer jurisdiction on the receivership court to resolve coverage disputes between guaranty associations and those asserting claims against them resulting from the initiation of a delinquency proceeding under this chapter. Provides that the determination of any dispute with respect to the statutory coverage obligations of any guaranty association by a court or administrative agency or body with jurisdiction in the guaranty association's state of domicile is binding and conclusive as to the parties in a delinquency proceeding initiated in the receivership court, including the policyholders of the insurer. Provides that, with respect to a guaranty association's obligations under a rehabilitation plan, the receivership court has jurisdiction only if the guaranty association expressly consents to the jurisdiction of the court.

Sec. 21A.006. EXEMPTION FROM FEES. Prohibits the receiver from being required to pay any filing, recording, transcript, or authenticating fee to any public officer in this state.

Sec. 21A.007. NOTICE, HEARING, AND APPEAL ON MATTERS SUBMITTED BY RECEIVER FOR RECEIVERSHIP COURT APPROVAL. (a) Requires a person, upon written request to the receiver, to be placed on the service list to receive notice of matters filed by the receiver. Provides that it is the responsibility of the person requesting notice to inform the receiver in writing of any changes in the person's address or to request that the person's name be deleted from the service list. Authorizes the receiver to require that the persons on the service list provide confirmation that they wish to remain on the service list. Authorizes any person who fails to confirm the person's intent to remain on the service list to be purged from the service list. Provides that inclusion on the service list does not confer standing in the delinquency proceeding to raise, appear, or be heard on any issue.

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

(c) Requires the receiver to file an application explaining the proposed action and the basis of the proposed action. Authorizes the receiver to include any evidence in support of the application. Authorizes the receiver, if the receiver determines that any documents supporting the application are confidential, to submit them to the receivership court under seal for in camera inspection.

(d) Requires the receiver to provide notice of the application to all persons on the service list and any other parties as determined by the receiver. Authorizes notice to be provided by first class mail postage paid, electronic mail, or facsimile transmission, at the receiver's discretion. Provides that, for purposes of this section, notice is deemed to be given on the date that it is deposited with the U.S. Postmaster or transmitted, as applicable, to the last known address as shown on the service list.

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

(f) Authorizes the receivership court, if no objection to the application is timely filed, to enter an order approving the application without a hearing, or hold a hearing to determine if the receiver's application should be approved. Authorizes the receiver to request that the receivership court enter an order or hold a hearing on an expedited basis.

(g) Authorizes the receivership court to hold a hearing if an objection is timely filed. Requires the receivership court, if the receivership court approves the application and, upon a motion by the receiver, determines that the objection was frivolous or filed merely for delay or for another improper purpose, to order the objecting party to pay the receiver's reasonable costs and fees of defending the action.

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

(b) Prohibits this chapter from being construed to limit the ability of the receiver to apply to a court other than the receivership court in any jurisdiction to carry out any provision of this chapter or for the purpose of pursuing claims against any person.

(c) Except as provided by Subsection (e) or as otherwise provided by this chapter and subject to Subsection (g), the commencement of a delinquency proceeding under this chapter operates as a stay, applicable to all persons, of certain judicial proceedings and actions.

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

(e) Notwithstanding Subsection (c), the commencement of a delinquency proceeding under this chapter does not operate as a stay of certain regulatory actions, judicial proceedings, and other acts.

(f) Provides that, except as provided by Subsection (h), the stay of an act against property of the insurer under Subsection (c) continues until the property is no longer property of the receivership estate and the stay of any other act under Subsection (c) continues until the earlier of the time the delinquency proceeding is closed or dismissed.

(g) Authorizes claims against the insurer that arose before the commencement of the delinquency proceeding under this chapter, notwithstanding the provisions of Subsection (c), to be asserted as a counterclaim in any judicial, administrative, or other action or proceeding initiated by or on behalf of the receiver against the holder of the claims.

(h) Authorizes the receivership court, on request of a party in interest and after notice and any hearing the receivership court determines is appropriate, to grant relief from the stay of Subsection (c) or (d), such as by terminating, annulling, modifying, or conditioning the stay for cause as described by Subsection (i) or with respect to a stay of an act against property under Subsection (c) if certain conditions are present.

(i) Defines "cause."

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

(k) Entitles the estate of an insurer that is injured by any wilful violation of a stay provided by this section to actual damages, including costs and attorney's fees. Authorizes the receivership court, in appropriate circumstances, to impose additional sanctions.

(l) Authorizes any guaranty association or its designated representative to intervene as a party as a matter of right or otherwise appear and participate in any court proceeding concerning a delinquency proceeding if the association is or may become liable to act as a result of the rehabilitation or liquidation of the insurer. Provides that exercise by any guaranty association or its designated representative of the right to intervene conferred under this subsection does not constitute grounds to establish general personal jurisdiction by the courts of this state. Provides that the intervening guaranty association or its designated representative are subject to the receivership court's jurisdiction for the limited purpose for which it intervenes.

(m) Prohibits bond being required of the commissioner or receiver in relation to any stay or injunction under this section, notwithstanding any other provision of law.

Sec. 21A.009. STATUTES OF LIMITATIONS. (a) Provides that, if applicable law, an order, or an agreement fixes a period within which the insurer is authorized to commence an action, and this period has not expired before the date of the filing of the initial petition in a delinquency proceeding, the receiver is authorized to commence an action only before the later of certain dates.

(b) Provides that, except as provided by Subsection (a), if applicable law, an order, or an agreement fixes a period within which the insurer is authorized to file any pleading, demand, notice, or proof of claim or loss, cure a default in a case or proceeding, or perform any other similar act, and the period has not expired before the date of the filing of the petition initiating formal delinquency proceedings, the receiver is authorized to file, cure, or perform, as the case may be, only before the later of certain dates.

(c) Provides that, if applicable law, an order, or an agreement fixes a period for commencing or continuing a civil action in a court other than the receivership court on a claim against the insurer, and the period has not expired before the date of the initial filing of the petition in a delinquency proceeding, then the period does not expire until the later of certain dates.

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

Sec. 21A.010. COOPERATION OF OFFICERS, OWNERS, AND EMPLOYEES. (a) Requires any present or former officer, manager, director, trustee, owner, employee, or agent of any insurer, or any other persons with authority over or in charge of any segment of the insurer's affairs, to cooperate with the commissioner or receiver in any proceeding under this chapter or any investigation preliminary to the proceeding. Defines "person" and "cooperate."

(b) Prohibits a person from obstructing or interfering with the commissioner or receiver in the conduct of any delinquency proceeding or any preliminary or incidental investigation.

(c) Prohibits this section from being construed to abridge otherwise existing legal rights, including the right to resist a petition for liquidation or other delinquency proceedings, or other orders.

(d) Provides that any person described by Subsection (a) who fails to cooperate with the commissioner or receiver, or any person who obstructs or interferes with the commissioner or receiver in the conduct of any delinquency proceeding or any preliminary or incidental investigation, or who violates any order validly issued under this chapter commits an offense and is subject to the imposition by the commissioner of an administrative penalty not to exceed \$10,000 and subject to the revocation or suspension of any licenses issued by the commissioner in accordance with Chapters 82 (Sanctions) and 84 (Administrative Penalties), Insurance Code.

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

Sec. 21A.011. ACTIONS BY AND AGAINST RECEIVER. (a) Prohibits an allegation by the receiver of improper or fraudulent conduct against any person from being the basis of a defense to the enforcement of a contractual obligation owed to the insurer by a third party, unless the conduct is found to have been materially and substantially related to the contractual obligation for which enforcement is sought.

(b) Prohibits a prior wrongful or negligent action of any present or former officer, manager, director, trustee, owner, employee, or agent of the insurer from being asserted as a defense to a claim by the receiver under a theory of estoppel, comparative fault, intervening cause, proximate cause, reliance, mitigation of damages, or otherwise, except that the affirmative defense of fraud in the inducement may be asserted against the receiver in a claim based on a contract, and a principal under a surety bond or a surety undertaking is entitled to credit against any reimbursement obligation to the receiver for the value of any property pledged to secure the reimbursement obligation to the extent that the receiver has possession or control of the property or that the insurer or its agents commingled or otherwise misappropriated the property. Provides that evidence of fraud in the inducement is admissible only if the evidence is contained in the records of the insurer.

- (c) Prohibits an action or inaction by the department or the insurance regulatory authorities in any state from being asserted as a defense to a claim by the receiver.
- (d) Prohibits a judgment or order entered against an insured or the insurer in contravention of any stay or injunction under this chapter, or at any time by default or collusion, except as provided by Subsection (e), from being considered as evidence of liability or of the amount of damages in adjudicating claims filed in the estate arising out of the subject matter of the judgment or order.
- (e) Provides that Subsection (d) does not apply to guaranty associations' claims for amounts paid on settlements and judgments in pursuit of their statutory obligations.
- (f) Prohibits the receiver from being deemed a governmental entity for the purposes of any state law awarding fees to a litigant who prevails against a governmental entity.

Sec. 21A.012. UNRECORDED OBLIGATIONS AND DEFENSES OF AFFILIATES.

- (a) Prohibits an affiliate, controlled or controlling person, or present or former officer, manager, director, trustee, or shareholder of the insurer, in any proceeding or claim by the receiver, from asserting any defense, unless evidence of the defense was recorded in the books and records of the insurer at or about the time the events giving rise to the defense occurred and, if required by statutory accounting practices and procedures, was timely reported on the insurer's official financial statements filed with the department.
- (b) Prohibits an affiliate, controlled or controlling person, or present or former officer, manager, director, trustee, or shareholder of the insurer from asserting any claim, unless the obligations were recorded in the books and records of the insurer at or about the time the obligations were incurred and, if required by statutory accounting practices and procedures, were timely reported on the insurer's official financial statements filed with the department.
- (c) Provides that claims by the receiver against any affiliate, controlled or controlling person, or present or former officer, manager, director, trustee, or shareholder of the insurer based on unrecorded or unreported transactions are not barred by this section.

Sec. 21A.013. EXECUTORY CONTRACTS AND UNEXPIRED LEASES. (a) Authorizes the receiver to assume or reject any executory contract or unexpired lease of the insurer.

- (b) Provides that neither the filing of a petition commencing delinquency proceedings under this chapter nor the entry of an order for a delinquency proceeding constitutes a breach or anticipatory breach of any contract or lease of the insurer.
- (c) Prohibits the receiver, if there has been a default in an executory contract or unexpired lease of the insurer, from assuming the contract or lease unless, at the time of the assumption of the contract or lease, the receiver cures or provides adequate assurance that the receiver will promptly cure the default and provides adequate assurance of future performance under the contract or lease.
- (d) Provides that Subsection (c) does not apply to a default that is a breach of a provision relating to certain matters.
- (e) Requires a claim arising from the rejection, under this section or a plan of rehabilitation, of an executory contract or unexpired lease of the insurer that has not been assumed to be determined, treated, and classified as if the claim had arisen before the date of the filing of a successful petition commencing the delinquency proceeding.

Sec. 21A.0135. CONTRACTS FOR SPECIAL DEPUTIES. (a) Requires the receiver to use a competitive bidding process in the selection of any special deputies appointed under Section 21A.102 or 21A.154. Requires the process to include procedures to promote the participation of historically underutilized businesses that have been certified by the Texas Building and Procurement Commission under Section 2161.061 (Commission Certification of Historically Underutilized Businesses), Government Code.

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

Sec. 21A.014. IMMUNITY AND INDEMNIFICATION OF RECEIVER AND ASSISTANTS. (a) Sets forth, for the purposes of this section, the persons entitled to immunity and indemnification and those entitled to immunity only, as applicable.

(b) Provides that the receiver, the receiver's assistants, and the receiver's contractors have immunity under this chapter, as described by Subsections (c) and (d).

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

(d) Provides that any immunity granted by this section is in addition to any immunity granted by other law.

(e) Entitles the receiver and the receiver's assistants to indemnification under this chapter, as described by Subsections (f)-(l).

(f) Provides that, if any legal action is commenced against the receiver or any assistant, whether against the receiver or assistant personally or in their official capacity, alleging property damage, property loss, personal injury, or other civil liability caused by or resulting from any alleged act, error, or omission of the receiver or any assistant arising out of or by reason of their duties or employment, the receiver and any assistant are indemnified from the assets of the insurer for all expenses, attorney's fees, judgments, settlements, decrees, or amounts due and owing or paid in satisfaction of or incurred in the defense of the legal action, unless it is determined upon a final adjudication on the merits that the alleged act, error, or omission of the receiver or assistant giving rise to the claim did not arise out of or by reason of their duties or employment, or was caused by intentional or wilful and wanton misconduct.

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

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

(i) Requires, in the event of any actual or threatened litigation against a receiver or any assistant for whom immunity or indemnity may be available under this section, a reasonable amount of funds, which in the judgment of the receiver may be needed to provide immunity or indemnity, to be segregated and reserved from the assets of the insurer as security for the payment of indemnity until certain conditions are met.

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

(k) Requires the receiver, if any legal action against an assistant for whom indemnity may be available under this section is settled prior to final adjudication on the merits, to pay the settlement amount on behalf of the assistant, or indemnify the assistant for the settlement amount, unless the receiver determines that the claim occurred for certain reasons.

(l) Provides that, in any legal action in which a claim is asserted against the receiver, that portion of any settlement relating to the alleged act, error, or omission of the receiver is subject to the approval of the receivership court. Prohibits the receivership court from approving that portion of the settlement if it determines that the claim occurred for certain reasons.

(m) Prohibits anything contained or implied in this section from operating or being construed or applied to deprive the receiver, the receiver's assistants, or receiver's contractors of any immunity, indemnity, benefits of law, rights, or defense otherwise available.

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

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

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

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

(b) Requires receivership expenses other than those described in Subsection (a) to be paid in accordance with Subsections (c)-(f).

(c) Requires the receiver to submit to the receivership court an application pursuant to Section 21A.007 to approve certain terms of compensation and other expenses.

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

(e) Authorizes the receiver to pay any expenses not requiring receivership court approval and any expenses approved by the rehabilitation or liquidation order as the expenses are incurred.

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

(g) Requires the receiver, on a quarterly basis, or as otherwise provided by the receivership court, to submit to the receivership court a report summarizing the expenses incurred during the period.

(h) Prohibits receivership court approval from being required to pay expenses incurred by the receiver in connection with the appeal of an order of the receivership court.

(i) Requires all expenses of receivership to be paid from the assets of the insurer, except as provided by this subsection. Authorizes the commissioner, in the event that the property of the insurer does not contain sufficient cash or liquid assets to defray the expenses incurred, to advance funds from the account established under Section 21A.304(c). Requires any amounts advanced to be repaid to the account out of the first available money of the insurer.

Sec. 21A.016. FINANCIAL REPORTING. (a) Requires the receiver, not later than the 120th day after the date of entry of an order of receivership by the receivership court, and at least quarterly after that date, to file a financial report with the receivership court. Requires a financial report filed under this subsection at a minimum, to include certain information.

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

(c) Requires each affected guaranty association, not later than the 120th day after the date of entry of an order of liquidation by the receivership court, and at least quarterly after that date, or at other intervals as may be agreed to between the liquidator and the guaranty associations, but in no event less than annually, to file reports with the liquidator. Requires the reports to be in a format compatible with that specified by the National Association of Insurance Commissioners. Requires reports under this subsection to be filed with the receivership court.

Sec. 21A.017. RECORDS. (a) Provides that, upon entry of an order of rehabilitation or liquidation, the receiver is vested with title to all of the books, documents, papers, policy information, and claim files, and all other records of the insurer, of whatever nature, in whatever medium, and wherever located, regardless of whether the records are in the custody and control of a third-party administrator, managing general agent, attorney, or other representative of the insurer. Authorizes the receiver to immediately take possession and control of all of the records of the insurer, and of the premises where the records are located. Requires a third-party administrator, managing general agent, attorney, or other representative of the insurer to release all records described by this subsection to the receiver, or the receiver's designee, at the request of the receiver. Provides that a guaranty association that has or may have obligations under a policy issued by the insurer has the right, with the receiver's approval, to take actions as are necessary to obtain directly from any third-party administrator, managing general agent, attorney, or other representative of the insurer all records described by this section that

pertain to the insurer's business and that are appropriate or necessary for the guaranty association to fulfill the association's statutory obligations.

(b) Provides that the receiver has the authority to certify the records of a delinquent insurer described by Subsection (a) and the records of the receiver's office created and maintained in connection with a delinquent insurer, in a certain manner.

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

(d) Prohibits the records of a delinquent insurer held by the receiver from being considered records of the department for any purposes, and Chapter 552 (Public Information), Government Code, does not apply to those records.

[Reserves Sections 21A.018-21A.050 for expansion.]

SUBCHAPTER B. PROCEEDINGS

Sec. 21A.051. RECEIVERSHIP COURT'S SEIZURE ORDER. (a) Authorizes the commissioner to file in a district court of Travis County a petition with respect to an insurer domiciled in this state, an unauthorized insurer, or, pursuant to Section 21A.401, a foreign insurer making certain allegations and setting forth the contents of a seizure order deemed to be necessary by the commissioner.

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

(c) Requires a petition that prays for injunctive relief to be verified by the commissioner or the commissioner's designee, but provides that said petition need not plead or prove irreparable harm or inadequate remedy at law. Requires the commissioner to provide only the notice as the receivership court may require.

(d) Requires the receivership court to specify in the seizure order the duration of the seizure order, which will be a period the receivership court deems necessary for the commissioner to ascertain the condition of the insurer. Authorizes the receivership court, on motion of the commissioner or the insurer, or the court's own motion, from time to time, to hold hearings as it deems desirable after notice as it deems appropriate, and may extend, shorten, or modify the terms of the seizure order. Requires the receivership court to vacate the seizure order if the commissioner fails to commence a formal delinquency proceeding under this chapter after having had a reasonable opportunity to do so. Provides that an order of the receivership court pursuant to a formal proceeding under this chapter vacates the seizure order.

(e) Provides that entry of a seizure order under this section does not constitute a breach or an anticipatory breach of any contract of the insurer.

(f) Authorizes an insurer subject to an ex parte seizure order under this section to petition the receivership court at any time after the issuance of a seizure order for

a hearing and review of the seizure order. Requires the receivership court to hold the hearing and conduct the review not later than the 15th day after the date of the request. Authorizes a hearing under this subsection to be held privately in chambers, and requires a hearing to be held privately in chambers if the insurer proceeded against so requests.

(g) Authorizes the receivership court, if, at any time after the issuance of a seizure order, it appears to the receivership court that any person whose interest is or will be substantially affected by the seizure order did not appear at the hearing and has not been served, to order that notice be given to the person. Provides that an order that notice be given does not stay the effect of any seizure order previously issued by the receivership court.

(h) Requires, whenever the commissioner makes any seizure as provided by Subsection (b), on the demand of the commissioner, the sheriff of any county and the police department of any municipality to furnish the commissioner with the deputies, patrolmen, or officers as may be necessary to assist the commissioner in making and enforcing the seizure order.

(i) Provides that, in all proceedings and judicial reviews under this section, all records of the insurer, department files, court records and papers, and other documents, so far as they pertain to or are a part of the record of the proceedings, are confidential, and requires all papers filed with the clerk of the court to be held by the clerk in a confidential file as permitted by law, except to the extent necessary to obtain compliance with any order entered in connection with the proceedings, unless and until certain actions occur.

Sec. 21A.052. COMMENCEMENT OF FORMAL DELINQUENCY PROCEEDING.

(a) Requires any formal delinquency proceeding against a person to be commenced by filing a petition in the name of the commissioner or department.

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

(c) Requires any petition that prays for injunctive relief to be verified by the commissioner or the commissioner's designee, but provides that said petition need not plead or prove irreparable harm or inadequate remedy at law. Requires the commissioner to provide only the notice as the receivership court may require.

(d) Sets forth the actions that may occur if any temporary restraining order is prayed for.

(e) Requires the receivership court to cause summons to be issued if a temporary restraining order is not requested. Requires the summons to specify a return date not later than the 30th day after the date of issuance and that an answer must be filed at or before the return date.

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

(b) Requires the receivership court, if a person is not served with summons on a petition to commence a formal delinquency proceeding and fails to appear for the summary hearing, to continue the summary hearing not more than 10 days, provide for alternative service of summons upon the person, and extend any restraining order.

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

(d) Requires the receivership court to enter judgment in favor of the commissioner against that person if a person fails to appear for a summary hearing on a petition to commence a formal delinquency proceeding after service of summons.

(e) Requires a person who appears for the summary hearing on a petition to commence a formal delinquency proceeding to file the person's answer at the hearing, and requires the receivership court to determine whether to extend any temporary restraining orders pending final judgment and set the case for trial on a date not later than 10 days after the date of the summary hearing.

(f) Prohibits the receivership court from granting a continuance for filing an answer.

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

(b) Authorizes continuances for trial to be granted only in extreme circumstances.

(c) Requires the receivership court to admit into evidence, as self-authenticated, certified copies of certain documents when offered by the commissioner.

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

(e) Provides that discovery is limited to grounds alleged in the petition and is required to be concluded on an expedited basis.

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

(b) Provides that the judgment is final when entered. Requires any appeal to be prosecuted on an expedited basis and to be taken not later than the fifth day after the date of entry of the judgment. Provides that a request for reconsideration, review, or appeal, or posting of a bond does not dissolve or stay the judgment.

Sec. 21A.056. CONFIDENTIALITY. (a) Authorizes the commissioner, rehabilitator, or liquidator to share documents, materials, or other information in the possession, custody, or control of the department without regard to the confidentiality of those documents, materials, or information, pertaining to an insurer that is the subject of a proceeding under this chapter with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, with state, federal, and international law enforcement authorities, with an auditor appointed by the receivership court in accordance with Section 21A.355, and, pursuant to Section 21A.105, with representatives of guaranty associations that may have statutory

obligations as a result of the insolvency of the insurer, provided that the recipient agrees to maintain the confidentiality, if any, of the documents, material, or other information. Provides that nothing in this section limits the power of the commissioner to disclose information under other applicable law.

(b) Requires a domiciliary receiver to permit a commissioner of another state or a guaranty association to obtain a listing of policyholders and certificate holders residing in the requestor's state, including current addresses and summary policy information, provided that the commissioner of the other state or the guaranty association agrees to maintain the confidentiality of the records and agrees that the records will be used only for regulatory or guaranty association purposes. Authorizes access to records to be limited to normal business hours. Authorizes the receiver, in the event that the domiciliary receiver believes that certain information is sensitive and that disclosure may cause a diminution in recovery, to apply for a protective order imposing additional restrictions on access.

(c) Requires the Texas Workers' Compensation Commission (TWCC) to report to the department any information that a workers' compensation insurer has committed acts that indicate that the insurer is impaired or insolvent. Provides that a report made under this subsection is confidential under this section.

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

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

Sec. 21A.057. GROUND FOR CONSERVATION, REHABILITATION, OR LIQUIDATION. Authorizes the commissioner to file with a court in this state a petition with respect to an insurer domiciled in this state or an unauthorized insurer for an order of rehabilitation or liquidation on certain grounds.

Sec. 21A.058. ENTRY OF ORDER. Requires the receivership court, if the commissioner establishes any of the grounds provided in Section 21A.057, to grant the petition and issue the order of rehabilitation or liquidation requested in the petition.

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

[Reserves Sections 21A.060-21A.100 for expansion.]

SUBCHAPTER C. REHABILITATION

Sec. 21A.101. REHABILITATION ORDERS. (a) Requires an order to rehabilitate the business of an insurer to appoint the commissioner and the commissioner's successors in office as the rehabilitator and to direct the rehabilitator to take possession of the property of the insurer wherever located and to administer it subject to this chapter. Entitles the rehabilitator to request the receivership court to appoint a single judge to supervise the rehabilitation and hear any cases or controversies arising out of or related to the rehabilitation. Provides that rehabilitation proceedings are exempt from any dormancy or similar program maintained by the receivership court for the early closure of civil actions. Provides that the filing or recording of the order with the clerk of the court or recorder of deeds of the county in which the principal business of the company is conducted, or, in the case of real estate, the county in which its principal office or place of business is located, imparts the same notice as a deed, bill of sale, or other evidence of title filed or recorded with the recorder of deeds would impart. Requires the order to rehabilitate the insurer, by operation of law, to vest title to all property of the insurer in the rehabilitator.

(b) Requires any order issued under this section to require accountings to the receivership court by the rehabilitator. Requires accountings to be at the intervals specified by the receivership court in its order, but not less frequently than semi-annually. Requires each accounting to include a report concerning the rehabilitator's opinion as to the likelihood that a plan under Section 21A.103 will be prepared by the rehabilitator and the timetable for doing so.

(c) Requires, in recognition of the need for a prompt and final resolution for all persons affected by a plan of rehabilitation, any appeal from an order of rehabilitation or an order approving a plan of rehabilitation to be heard on an expedited basis. Prohibits a stay of an order of rehabilitation or an order approving a plan of rehabilitation from being granted unless the appellant demonstrates that extraordinary circumstances warrant delaying the recovery under the plan of rehabilitation of all other persons, including policyholders. Prohibits a stay from being granted if the plan provides an appropriate mechanism for adjustment in the event of any adverse ruling from an appeal.

Sec. 21A.102. POWERS AND DUTIES OF REHABILITATOR. (a) Authorizes the rehabilitator to appoint one or more special deputies. Provides that a special deputy serves at the pleasure of the rehabilitator and has all the powers and responsibilities of the rehabilitator granted under this section, unless specifically limited by the rehabilitator. Authorizes the rehabilitator to employ or contract with legal counsel, actuaries, accountants, appraisers, consultants, clerks, assistants, and other personnel as may be deemed necessary. Authorizes any special deputy or any other person with whom the rehabilitator contracts under this subsection to act on behalf of the commissioner only in the commissioner's capacity as rehabilitator. Provides that any person with whom the rehabilitator contracts under this subsection is not considered an agent of the state, and any contract entered into under this subsection does not constitute a contract with the state. Provides that the provisions of any law governing the procurement of goods and services by the state does not apply to any contract entered into by the commissioner as rehabilitator. Requires the compensation of any special deputies, employees, and contractors and all expenses of taking possession of the insurer and of conducting the rehabilitation to be fixed by the rehabilitator, with the approval of the receivership court in accordance with Section 21A.015, and to be paid out of the property of the insurer. Provides that the persons appointed under this subsection serve at the pleasure of the rehabilitator. Authorizes the rehabilitator, if the rehabilitator deems it necessary to the proper performance of the rehabilitator's duties under this chapter, to appoint an advisory committee of policyholders, claimants, or other creditors, including guaranty associations. Provides that the advisory committee serves at the pleasure of the rehabilitator and without compensation or reimbursement for expenses. Prohibits the rehabilitator or the receivership court in rehabilitation proceedings conducted under this chapter from appointing another committee of any nature.

(b) Authorizes the rehabilitator to take action as the rehabilitator deems necessary or appropriate to reform and revitalize the insurer, including canceling policies, insurance and reinsurance contracts other than life or health insurance or annuities, or surety bonds or surety undertakings or transferring policies, insurance and reinsurance contracts, or surety bonds or surety undertakings to a solvent assuming insurer, with court approval. Provides that the rehabilitator has all the powers of the directors, officers, and managers of the insurer, whose authority is suspended, except as redelegated by the rehabilitator. Provides that the rehabilitator has full power to direct and manage, hire and discharge employees, and deal with the property and business of the insurer.

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

(d) Authorizes the rehabilitator to assert all defenses available to the insurer as against third persons, including statutes of limitations, statutes of frauds, and the defense of usury. Provides that a waiver of any defense by the insurer after a petition under this chapter has been filed does not bind the rehabilitator.

(e) Prohibits the enumeration, in this section, of the powers and authority of the rehabilitator from being construed as a limitation upon the rehabilitator, nor excluding in any manner the right to do other acts not specifically enumerated or otherwise provided for, as may be necessary or appropriate for the accomplishment of or in aid of the purpose of rehabilitation.

Sec. 21A.103. REHABILITATION PLANS. (a) Requires the rehabilitator to prepare and file a plan to effect rehabilitation with the receivership court not later than the first anniversary of the entry of the rehabilitation order or another further time as the receivership court may allow. Authorizes the receivership court approve, upon application of the rehabilitator for approval of the plan, and after the notice and hearings the receivership court may prescribe, to approve or disapprove the proposed plan or may modify it and approve it as modified. Requires any plan approved under this section to be, in the judgment of the receivership court, fair and equitable to all parties concerned. Requires the rehabilitator to carry out the plan if the plan is approved. Authorizes a plan for a life insurer to propose imposition of a moratorium upon loan and cash surrender rights under policies, for a period not to exceed one year from the entry of the rehabilitation order approving the rehabilitation plan, unless the receivership court, for good cause shown, extends the moratorium.

(b) Authorizes any party in interest to object to the plan once a plan has been filed.

(c) Requires a plan to serve certain functions.

(d) Authorizes a plan to include certain provisions not inconsistent with the provisions of this chapter.

(e) Authorizes a plan to designate and separately treat one or more separate subclasses of claims consisting only of claims within the subclasses that are for or reduced to de minimis amounts. Defines "de minimis amount."

Sec. 21A.104. TERMINATION OF REHABILITATION. (a) Authorizes the rehabilitator, when the rehabilitator believes further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policyholders, or the public or would be futile, to move for an order of liquidation. Requires the rehabilitator or the rehabilitator's designated representative, in accordance with Section 21A.105, to coordinate with the guaranty associations that may become liable as a result of the liquidation and any national association of guaranty associations to plan for transition to liquidation.

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

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

Sec. 21A.105. COORDINATION WITH GUARANTY ASSOCIATIONS. (a) Requires the receiver to notify any potentially obligated guaranty association or the guaranty association's representative concerning the entry of a rehabilitation order and to update the guaranty association or its representative regarding significant developments that impact efforts to rehabilitate the insurer. Requires the rehabilitator, on a determination by the rehabilitator that rehabilitation efforts may not be successful, to participate in cooperative efforts with the potentially obligated guaranty associations. Requires the rehabilitator, to facilitate an orderly transition to liquidation, to make available to the guaranty associations the information necessary to discharge their responsibilities upon becoming statutorily obligated. Requires the rehabilitator, to the extent that information is available, or as it becomes available, to provide appropriate information to guaranty associations in the states in which the insurer transacted business.

(b) Defines "appropriate information."

(c) Defines "appropriate information."

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

(e) Provides that the list of what appropriate information includes under Subsections (b) and (c) is not necessarily an exclusive list. Provides that other information may be necessary to ensure that an orderly transition to liquidation occurs, and authorizes that information to be appropriately provided by the receiver.

[Reserves Sections 21A.106-21A.150 for expansion.]

SUBCHAPTER D. LIQUIDATION

Sec. 21A.151. LIQUIDATION ORDERS. (a) Requires an order to liquidate the business of an insurer to appoint the commissioner and any successor in office as the liquidator and to direct the liquidator to take possession of the property of the insurer and to administer it subject to this chapter. Entitles the liquidator to request the receivership court to appoint a single judge to supervise the liquidation and to hear any cases or controversies arising out of or related to the liquidation. Provides that liquidation proceedings are exempt from any dormancy or similar program maintained by the receivership court for the early closure of civil actions. Provides that, as of the entry of the final order of liquidation, the liquidator is vested by operation of law with the title to all of the property, contracts, rights of action, and books and records of the insurer ordered liquidated, wherever located. Provides that the filing or recording of the order with the clerk of the court and the recorder of deeds of the county in which the insurer's principal office or place of business is located or, in the case of real estate, the county where the property is located, imparts the same notice as a deed, bill of sale, or other evidence of title filed or recorded with that recorder of deeds would impart.

(b) Provides that, upon issuance of the order of liquidation, the rights and liabilities of the insurer and of its creditors, policyholders, shareholders, members, and all other persons interested in its estate become fixed as of the date of entry of the order of liquidation, except as provided by Sections 21A.152 and 21A.255, unless otherwise fixed by the court.

(c) Requires an order to liquidate the business of an alien insurer in this state to be in the same terms and have the same legal effect as an order to liquidate a domestic insurer.

(d) Authorizes the commissioner, at the time of petitioning for an order of liquidation, or at any time after petitioning, to petition the receivership court for a judicial declaration of insolvency. Authorizes the receivership court, after providing the notice and hearing as it deems property, to make the declaration of insolvency.

(e) Prohibits the company, in the event an order of liquidation is set aside on appeal, from being released from delinquency proceedings except in accordance with Section 21A.351.

Sec. 21A.152. CONTINUANCE OF COVERAGE. (a) Provides that, 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) Provides that, 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 a certain date.

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

(d) Provides that 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. Provides that 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) Provides that the cancellation of any bond or surety undertaking does not release any cosurety or guarantor.

(f) Provides that 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) Authorizes the liquidator, notwithstanding the entry of a liquidation order, to 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) Authorizes the receivership court to enter an order which serves certain functions upon an application to sell the corporate entity or charter, with notice as prescribed in this chapter.

(c) Authorizes the sale of the corporate entity or charter to be made in the manner and on the terms and conditions applied for by the liquidator and ordered by the receivership court. Provides that any sale is subject to the domiciliary state's laws regarding acquisition of an insurer, Chapter 823, and any other law regarding the transfer of control of insurers. Provides that the proceeds from the sale of the corporate entity or charter become a part of the property of the estate in

liquidation. Provides that the separate corporate entity or charter, together with any of its authorizations or licenses to do business and such assets as the liquidator deems appropriate to the transaction, are, following the sale of the corporate entity or charter, free and clear from the claims or interest of all claimants, creditors, policyholders, and stockholders of the corporation in liquidation.

(d) Requires this section to be liberally construed to accomplish certain purposes.

(e) Provides that, if permission to sell the corporate entity or charter is not granted prior to discharge of the liquidator, in accordance with this section or otherwise with receivership court approval, certain actions occur relating to the dissolution of the corporate entity or charter.

Sec. 21A.154. POWERS OF LIQUIDATOR. (a) Authorizes the liquidator to appoint a special deputy or deputies to act for the liquidator under this chapter and employ or contract with legal counsel, actuaries, accountants, appraisers, consultants, clerks, assistants, and other personnel the liquidator may deem necessary to assist in the liquidation. Provides that a special deputy has all powers of the liquidator granted by this section, unless specifically limited by the liquidator, and serves at the pleasure of the liquidator. Authorizes a special deputy or any other person with whom the liquidator contracts under this subsection to act on behalf of the commissioner only in the commissioner's capacity as liquidator. Provides that any person with whom the liquidator contracts is not considered to be an agent of the state and any contract under this subsection is not a contract with the state. Provides that the provisions of any law governing the procurement of goods and services by the state do not apply to any contract entered into by the commissioner as liquidator. Provides that this subsection does not waive any immunity granted by Section 21A.014 or create any cause of action against the state.

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

(c) Authorizes the liquidator to appoint, with the approval of the receivership court, an advisory committee of policyholders, claimants, or other creditors, including guaranty associations, if the committee be deemed necessary. Provides that the advisory committee serves at the pleasure of the liquidator, and the decision to appoint an advisory committee is at the sole discretion of the liquidator. Provides that the advisory committee serves without compensation or reimbursement for expenses. Prohibits the liquidator or the receivership court in liquidation proceedings conducted under this chapter from appointing another committee of any nature.

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

(e) Authorizes the liquidator to audit the books and records of all agents of the insurer to the extent that those books and records relate to the business activities of the insurer.

(f) Authorizes the liquidator to collect all debts and moneys due and claims belonging to the insurer, wherever located, and to take certain actions to protect the insurer's property and claims.

(g) Authorizes the liquidator to conduct public and private sales of the property of the insurer.

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

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

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

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

(l) Authorizes the liquidator to continue to prosecute and institute in the name of the insurer or in the liquidator's own name any and all suits and other legal proceedings, in this state or elsewhere, and abandon the prosecution of claims the liquidator deems unprofitable to pursue further. Provides that, if the insurer is dissolved under Section 21A.153, the liquidator has the power to apply to any court in this state or elsewhere for leave to substitute the liquidator for the insurer as a party.

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

(n) Authorizes the liquidator to take possession of the records and property of the insurer as may be convenient for the purposes of efficient and orderly execution of the liquidation. Requires guaranty associations to be allowed reasonable access to the records of the insurer as is necessary for the guaranty associations to carry out their statutory obligations.

(o) Authorizes the liquidator to deposit in one or more banks in this state the amounts that are required for meeting current administration expenses and dividend distributions.

(p) Authorizes the liquidator to invest all amounts not currently needed, unless the receivership court orders otherwise.

(q) Authorizes the liquidator to file any necessary documents for record in the office of any recorder of deeds or record office in this state or elsewhere where property of the insurer is located.

(r) Authorizes the liquidator to assert all defenses available to the insurer as against third persons, including statutes of limitation, statutes of frauds, and the defense of usury. Provides that a waiver of any defense by the insurer after a petition is filed under this chapter does not bind the liquidator. Requires the liquidator, when a guaranty association has an obligation to defend any suit, to defer to the association's obligation.

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

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

(u) Authorizes the liquidator to enter into agreements with any receivers or commissioners of any other states.

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

(w) Provides that the liquidator is vested with all the rights of the entity or entities in receivership.

(x) Prohibits the enumeration, in this section, of the powers and authority of the liquidator from being construed as a limitation upon the liquidator, or as excluding in any manner the right to do other acts not specifically enumerated or otherwise provided for, to the extent necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation.

(y) Authorizes the liquidator to hypothecate, encumber, lease, sell, transfer, abandon, or otherwise dispose of or deal with any property of the insurer, settle or resolve any claim brought by the liquidator on behalf of the insurer, or commute or settle any claim of reinsurance under any contract of reinsurance, in a certain manner and under certain circumstances.

(z) Provides that the transferee of a right to payment under Subsection (y)(4) has the rights to collect and enforce collection of the reinsurance for the amount payable to the ceding insurer or to its receiver, without diminution because of the insolvency or because the receiver has failed to pay all or a portion of the claim, based on the amounts paid or allowed pursuant to Section 21A.211. Provides that the transfer of the rights does not give rise to any defense regarding the reinsurer's obligations under the reinsurance agreement regardless of whether an agreement or other applicable law prohibits the transfer of rights under the reinsurance agreement. Provides that, except as provided in this subsection, any transfer of rights pursuant to Subsection (y)(4) does not impair any rights or defenses of the reinsurer that existed prior to the transfer or that would have existed in the absence of the transfer. Provides that, except as otherwise provided in this subsection, any transfer of rights pursuant to Subsection (y)(4) does not relieve the transferee or the liquidator from obligations owed to the reinsurer pursuant to the reinsurance or other agreement.

(aa) Provides that the liquidator is not obligated to defend any action against the insurer or insured. Authorizes any insureds not defended by a guaranty association to provide their own defense, and include the cost of the defense as

part of their claims, if the defense was an obligation of the insurer. Provides that the right of the liquidator to contest coverage on a particular claim is preserved without the necessity for an express reservation of rights.

Sec. 21A.155. NOTICE TO CREDITORS AND OTHERS. (a) Requires the liquidator, unless the receivership court otherwise directs, to give or cause to be given notice of the liquidation order as soon as possible in a certain manner.

(b) Requires the notice of the entry of an order of liquidation to contain or provide directions for obtaining certain information.

(c) Provides that, if notice is given in accordance with this section, the distribution of property of the insurer under this chapter is conclusive with respect to all claimants, whether or not they received notice.

(d) Provides that, notwithstanding other provisions of this section, the liquidator has no duty to locate any persons or entities if no address is found in the records of the insurer or if mailings are returned to the liquidator because of inability to deliver at the address shown in the insurer's books and records. Provides that, in these circumstances the notice by publication as required by this chapter or actual notice received is sufficient notice. Provides that written certification by the liquidator or other knowledgeable person acting for the liquidator that the notices were deposited in the United States mail, postage prepaid, or that the notices have been electronically transmitted is prima facie evidence of mailing and receipt. Requires all claimants to keep the liquidator informed of any changes of address.

(e) Authorizes the receivership court, notwithstanding Subsection (a)(1)(C), upon application of the liquidator, to take certain actions relating to the notice.

(f) Requires the liquidator to notify TWCC upon the entry of the liquidation order if the insurer has issued workers' compensation coverage in effect in this state. Requires TWCC, upon request of the liquidator, to submit a list of active cases pending before the commission that relate to workers' compensation coverage issued by the insurer.

Sec. 21A.156. DUTIES OF AGENTS. (a) Requires every person who represented the insurer as an agent and receives notice in the form prescribed in Section 21A.155 that the insurer is the subject of a liquidation order, not later than the 30th day after the date of the notice, to provide to the liquidator, in addition to the information the agent may be required to provide pursuant to Section 21A.010, the information in the agent's records related to any policy issued by the insurer through the agent and any policy issued by the insurer through an agent under contract to the agent, including the name and address of any subagent. Provides that, for purposes of this subsection, a policy is issued through an agent if the agent has a property interest in the expiration of the policy or if the agent has had in the agent's possession a copy of the declarations of the policy at any time during the life of the policy, except where the ownership of the expiration of the policy has been transferred to another.

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

[Reserves Sections 21A.157-21A.200 for expansion.]

SUBCHAPTER E. ASSET RECOVERY

Sec. 21A.201. TURNOVER OF ASSETS. (a) Requires the receiver, if the receiver determines that funds or property in the possession of another person are rightfully the property of the estate, to deliver to the person a written demand for immediate delivery of the funds or property, referencing this section by number and the court and docket

number of the receivership action, and notifying the person that any claim of right to the funds or property by the person must be presented to the receivership court not later than the 20th day after the date of the written demand. Requires any person who holds funds or other property belonging to an entity subject to an order of receivership under this chapter to deliver the funds or other property to the receiver on demand. Requires, should the person allege any right to retain the funds or other property, the person, not later than the 20th day after the date of receipt of the demand that the funds or property be delivered to the receiver, to file with the receivership court a pleading setting out that right. Requires the person to serve a copy of the pleading on the receiver. Requires the pleading to inform the receivership court as to the nature of the claim to the funds or property, the alleged value of the property or amount of funds held, and what action, pending determination of the dispute, has been taken by the person to preserve and protect the property or to preserve any funds. Provides that the relinquishment of possession of funds or property by any person who has received a demand pursuant to this section does not constitute a waiver of a right to make a claim in the receivership.

(b) Requires the receivership court, if requested by the receiver, to hold a hearing to determine where and under what conditions the person shall hold the property or funds pending determination of the dispute. Authorizes the receivership court to impose conditions as it may deem necessary or appropriate for the preservation of the property or funds until the receivership court can determine the validity of the person's claim to the property or funds. Provides that if any property or funds are allowed to remain in the possession of the person after demand made by the receiver, that person is strictly liable to the estate for any waste, loss, or damage to or diminution of value of the property or funds retained.

(c) Requires the receivership court, if a person has filed a pleading alleging any right to retain funds or property as provided by Subsection (a), to hold a subsequent hearing to determine the entitlement of the person to the funds or property claimed by the receiver.

(d) Authorizes the receivership court, if a person fails to deliver the funds or property or to file the pleading described by Subsection (a) within the period described by Subsection (a), upon petition of the receiver and upon a copy of the petition being served by the receiver to that person, to issue its summary order directing the immediate delivery of the funds or property to the receiver and finding that the person has waived all claims of right to the funds or property.

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

(b) Provides transfer is not recoverable under Subsection (a) if the affiliate shows that, when the transfer was made, certain circumstances were present.

Sec. 21A.203. UNAUTHORIZED POST-PETITION TRANSFERS. (a) Authorizes the receiver, except as provided by this section, to avoid any transfer of an interest of the insurer in property or any obligation incurred by the insurer that meets certain criteria.

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

Sec. 21A.204. VOIDABLE PREFERENCES AND LIENS. (a) Defines "preference."

- (b) Authorizes any preference to be avoided by the receiver if certain circumstances were present.
- (c) Prohibits the receiver from avoiding a transfer under this section for certain reasons.
- (d) Provides that, for purposes of this section, a transfer of certain properties serves certain functions.
- (e) Provides that the provisions of this section apply without regard to whether there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.
- (f) Defines "a lien obtainable by legal or equitable proceedings on a simple contract." Provides that the term does not include liens that under applicable law are given a special priority over other liens that are prior in time.
- (g) Provides that, within the meaning of Subsection (d), a lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee, or a purchaser could obtain rights superior to the rights of a transferee if the consequences would follow only from the lien or purchase itself, or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. Provides that a lien could not, however, become superior and a purchase could not create superior rights for the purpose of Subsection (d) through any acts subsequent to the obtaining of the lien or subsequent to the purchase that require the agreement or concurrence of any third party or that require any further judicial action or ruling.
- (h) Provides that a transfer of property for or on account of a new and contemporaneous consideration that is deemed under Subsection (d) to be made or suffered after the transfer because of delay in perfecting the transfer does not become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed to perfect the transfer against liens or bona fide purchasers' rights are performed within 21 days or any period expressly allowed by the law, whichever is less. Provides that a transfer to secure a future loan, if the loan is actually made, or a transfer that becomes security for a future loan, has the same effect as a transfer for or on account of a new and contemporaneous consideration.
- (i)(1) Provides that, if any lien deemed voidable under Subsection (b) has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon any property of an insurer before the filing of a petition commencing delinquency proceedings under this chapter, the indemnifying transfer or lien is also deemed voidable.
- (2) Provides that the property affected by any lien deemed voidable under Subsection (b) and Subdivision (1) is discharged from the lien, and that property and any of the indemnifying property transferred to or for the benefit of a surety passes to the receiver, except that the receivership court may on due notice order any lien deemed voidable under this section to be preserved for the benefit of the estate and may direct that a conveyance be executed as may be proper or adequate to evidence the title of the receiver.
- (3) Requires reasonable notice of any hearing in the proceeding shall be given to all parties as required by law, including the obligee of a releasing bond or other like obligation. Authorizes the receivership court, if an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, in the same proceeding to ascertain the value of the property or lien. Authorizes, if the value of the property

or lien is less than the amount for which the property is indemnified or than the amount of the lien, the transferee or lienholder to elect to retain the property or lien upon payment to the receiver of its value, as determined by the receivership court, within a reasonable time determined by the receivership court.

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

(j) Prohibits this section from being construed to prejudice any other claim by the receiver against any person.

Sec. 21A.205. FRAUDULENT TRANSFERS AND OBLIGATIONS. (a) Authorizes the receiver to avoid any transfer of an interest of the insurer in property, any reinsurance transaction, or any obligation incurred by an insurer that was made or incurred on or within two years before the date of the initial filing of a petition commencing delinquency proceedings under this chapter, if the insurer voluntarily or involuntarily took certain actions relating to the transfer.

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

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

(d) Defines "value."

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

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

Sec. 21A.207. LIABILITY OF TRANSFEREE. (a) Authorizes the receiver, except as otherwise provided in this section, to the extent that the receiver obtains an order under Section 21A.201 or avoids a transfer under Sections 21A.202, 21A.203, 21A.204, 21A.205, or 21A.206, to recover the property transferred, or the value of the property, from certain transferees.

(b) Prohibits the receiver from recovering under Subsection (a)(2) from certain transferees.

(c) Provides that any transfer avoided in accordance with this chapter is preserved for the benefit of the receivership estate, but only with respect to property of the insurer.

(d) Entitles the receiver, in addition to the remedies specifically provided under Sections 21A.201-21A.206 and Subsection (a), if the receiver is successful in establishing a claim to the property or any part of the property, to recover judgment for certain costs.

(e) Authorizes the receivership court, in any action under this section, to allow the receiver to seek recovery of the property involved or the property's value.

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

Sec. 21A.208. CLAIMS OF HOLDERS OF VOID OR VOIDABLE RIGHTS. (a) Prohibits a claim of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance voidable under this chapter from being allowed unless the creditor surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance. Prohibits the claim, if the avoidance is effected by a proceeding in which a final judgment has been entered, from being allowed unless the money is paid or the property is delivered to the receiver not later than the 30th day after the date of the entering of the final judgment, except that the receivership court is authorized to allow further time if there is an appeal or other continuation of the proceeding.

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

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

(b) Prohibits a setoff from being allowed in favor of any person if the obligation of the insurer or person satisfies certain conditions.

(c) Requires the receiver to provide an interested person with accounting statements identifying all debts that are due and payable. Requires a person, if the person owes the insurer amounts that are due and payable against which the person asserts a setoff of mutual credits that, in the future, may become due and payable from the insurer, to promptly pay the amounts due and payable to the receiver. Requires the receiver, notwithstanding any other provision of this chapter, to promptly and fully refund, to the extent of a person's prior payments under this section, any mutual credits that become due and payable to the person by the insurer.

Sec. 21A.210. ASSESSMENTS. (a) Requires the receiver, as soon as practicable, but not later than the fourth anniversary of the date of an order of receivership of an insurer issuing assessable policies, to make a report to the receivership court setting forth certain information.

(b) Authorizes the receivership court, upon the basis of the report provided in Subsection (a), including any supplements and amendments to the report, to approve, solely on application by the receiver, one or more assessments against all

members of the insurer who are subject to assessment. Requires the order approving the assessment to provide instructions regarding notice of the assessment, deadlines for payment, and other instructions to the receiver regarding collection of the assessment.

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

(d) Requires the receiver to petition the receivership court for an order directing each member who has not paid the assessment pursuant to the levy to show cause why a judgment for the assessment should not be entered after levy of assessment under Subsection (b).

(e) Requires the receiver to give notice of the order to show cause to each member liable on the assessment at least 20 days before the return day of the order to show cause. Requires notice to be given by first class mail mailed to the member's last known address as it appears on the insurer's records, by publication, or by another method of notification as directed by the receivership court. Provides that failure of the member or subscriber to receive the notice of the assessment or of the order, within the time specified in the assessment or order or at all, is not a defense in a proceeding to collect the assessment.

(f) Requires receivership court, if a member does not appear and serve verified objections upon the receiver on or before the return day of the order to show cause under Subsection (d), to make an order adjudging the member liable for the amount of the assessment against the member under Subsection (d) together with costs, and requires the receiver to have a judgment against the member for the amount of the assessment and costs in the order.

(g) Authorizes the receivership court, if on or before the return day of the order to show cause, the member appears and serves verified objections upon the receiver, to hear and determine the matter or may appoint a referee to hear it and make an order as the facts warrant. Authorizes the member, in the event that the receiver determines that the objections do not warrant relief from assessment, to request the receivership court to review the matter and vacate the order to show cause.

(h) Authorizes the receiver to enforce any order or collect any judgment under Subsection (f) by any lawful means.

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

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

Sec. 21A.211. REINSURER'S LIABILITY. (a) Prohibits, if the receiver has claims under policies covered by reinsurance, the liability of the reinsurer to the receiver under the policies reinsured from being diminished because of the insolvency of the insurer, regardless of any provisions in the reinsurance contract to the contrary, except under certain circumstances.

(b) Requires any reinsurance to be payable to the receiver under a policy reinsured by the assuming insurer on the basis of certain claims except as provided by Subsection (a).

(c) Requires the liquidator or receiver, as applicable, to give written notice to affected reinsurers of the pendency of a claim against the receiver under a reinsured policy within a reasonable time after the claim is filed in the delinquency proceeding. Authorizes any affected reinsurer, during the pendency of the claim, to take certain actions relating to the claim.

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

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

(f) Requires nothing in this chapter to be construed as authorizing the receiver, or other entity, to compel payment from a non-life reinsurer on the basis of estimated incurred but not reported losses or outstanding reserves, except outstanding reserves with respect to claims made pursuant to Section 21A.255 and approved workers compensation claims filed under Section 21A.252(d).

Sec. 21A.212. RECOVERY OF PREMIUMS OWED. (a) Requires an insured to pay, either directly to the receiver or to any agent that has paid or is obligated to pay the receiver on behalf of the insured, any unpaid earned premium or retrospectively rated premium due the insurer based on the termination of coverage under Section 21A.152. Provides that premium on surety business is deemed earned at inception if a policy term cannot be determined. Provides that all other premium is deemed earned and is prorated equally over the determined policy term, regardless of any provision in the bond, guaranty, contract or other agreement.

(b) Requires any person, other than the insured, to turn over to the receiver any unpaid premium due and owing as shown on the records of the insurer, including any amount representing commissions, for the full policy term due the insurer at the time of the entry of the receivership order, whether earned or unearned, based on the termination of coverage under Section 21A.152. Provides that the unpaid premium due the receiver from any person other than the insured excludes any premium not collected from the insured and not earned based on the termination of coverage under Section 21A.152.

(c) Requires any person, other than the insured, responsible for the remittance of a premium, to turn over to the receiver any unearned commission of the person based on the termination of coverage under Section 21A.152. Prohibits, credits, setoffs, or both from being allowed to an agent, broker, premium finance company, or any other person for any amounts advanced to the insurer by the person on behalf of, but in the absence of a payment by, the insured, or for any other amount paid by the person to any other person after the entry of the order of receivership.

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

(e) Provides that any premium finance company is obligated to pay any amounts due the insurer from premium finance contracts, whether the premium is earned or unearned. Provides that the receiver has the right to collect any unpaid

financed premium directly from the premium finance company or directly from the insured that is a party to the premium finance contract.

(f) Authorizes the commissioner to pursue one or more of certain courses of action upon satisfactory evidence of a violation of this section by a person other than an insured.

Sec. 21A.213. ADMINISTRATION OF DEDUCTIBLE AGREEMENTS AND POLICYHOLDER COLLATERAL. (a) Requires any collateral held to secure the obligations of a policyholder under a deductible agreement with an insurer subject to a delinquency proceeding under this chapter to be maintained and administered as provided in this section. Defines "deductible agreement."

(b) Provides that this section applies to any collateral described by Subsection (a), regardless of whether the collateral is held by, for the benefit of, or assigned to the insurer under a deductible agreement. Requires the collateral to be used to secure the policyholder's obligation to fund or reimburse claims payments within the agreed deductible amount, subject to this section.

(c) Requires the receiver, if the contract between the policyholder and the insurer allows the policyholder to fund claims within the deductible amount through a third-party administrator or otherwise, to allow that funding arrangement to continue, except as prohibited by Title 5, Labor Code. Provides that, if a policyholder funds claims within the deductible amount, the receiver or any guaranty association has no obligation to pay claims for the amount funded by the policyholder, and the policyholder or its third-party administrator is not obligated to reimburse a guaranty association for any amount funded. Prohibits a charge of any kind from being made against a guaranty association based on the funding of claims payments by a policyholder under this subsection.

(d) Requires the receiver to make certain allocations if the receiver is holding collateral provided by a policyholder to secure both a deductible agreement and other obligations of the policyholder.

(e) Requires the receiver, if, under Subsection (d), the collateral secures reimbursement obligations under more than one line of insurance, to equitably allocate the collateral among the various lines based on the estimated ultimate exposure within the deductible amount for each line.

(f) Requires the receiver, if a guaranty association is obligated to pay claims under a policy under Subsection (d), to give notice to the guaranty associations of any allocation under this section.

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

(h) Sets forth certain provisions that apply to the extent a guaranty association is required by applicable law to pay any claims for which the insurer would have been entitled to reimbursement from the policyholder.

(i) Sets forth certain provisions that apply if a claim that is subject to a deductible agreement and secured by collateral is not covered by any guaranty association.

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

SUBCHAPTER F. CLAIMS

Sec. 21A.251. FILING OF CLAIMS. (a) Requires proof of all claims, except as provided by this subsection, to be filed with the liquidator in the form required by Section

21A252 on or before the last day for filing specified in the notice required under Section 21A.155, which date may not be later than 18 months after entry of the order of liquidation, with certain exceptions. Authorizes the receivership court, only upon application of the liquidator, to allow alternative procedures and requirements for filing of proofs of claim or for allowing or proving claims. Provides that upon application, if the receivership court dispenses with the requirements of filing a proof of claim by a person or a class or group of persons, a proof of claim for the person, class, or group is deemed to have been filed for all purposes, except that the receivership court's waiver of proof of claim requirement does not impact guaranty association proof of claim filing requirements or coverage determinations to the extent the guaranty fund statute or filing requirements are inconsistent with the receivership court's waiver of proof.

(b) Requires the liquidator to permit a claimant that makes a late claim filing to share ratably in distributions, whether past or future, as if the claim were not filed late, to the extent the payment will not prejudice the orderly administration of the liquidation, under certain circumstances.

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

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

Sec. 21A.252. PROOF OF CLAIM. (a) Provides that proof of claim consists of a statement signed by the claimant or on behalf of the claimant that includes certain information, as applicable.

(b) Authorizes the liquidator to require that a prescribed form be used and that other information and documents be included.

(c) Authorizes the liquidator at any time to require the claimant to present information or evidence supplementary to that required under Subsection (a) or take testimony under oath, require production of affidavits or depositions, or otherwise obtain additional information or evidence.

(d) Requires any guaranty association to be permitted to file a single omnibus proof of claim for all claims of the association in connection with payment of claims of the insurer. Authorizes the omnibus proof of claim to be periodically updated by the association, and authorizes the association to be required to submit a reasonable amount of documentation in support of the claim. Authorizes a guaranty association's claim under this subsection to include amounts for anticipated payments after the closing of the receivership including incurred but not reported claims.

Sec. 21A.253. ALLOWANCE OF CLAIMS. (a) Requires the liquidator, except as provided in Subsections (i) and (l), to review all claims duly filed in the liquidation proceeding and to further investigate as the liquidator considers necessary. Authorizes the liquidator, consistent with the provisions of this chapter, to allow, disallow, or compromise the amount for which claims will be recommended to the receivership court, unless certain conditions apply. Prohibits a claim under a policy of insurance to be allowed for an amount in excess of the applicable policy limits.

(b) Requires the liquidator, pursuant to the review, to provide written notice of the claim determination by any means authorized by Section 21A.007 to the claimant or the claimant's attorney. Authorizes the liquidator to provide notice to any reinsurer that is or may be liable in respect of the claim. Requires the notice to set forth the amount of the claim allowed by the liquidator, if any, and the priority class of the claim as established in Section 21A.301.

(c) Authorized those noticed, not later than the 45th day after the mailing of the notice, to submit written objections to the liquidator. Requires any submitted objections to clearly set out all facts and the legal basis, if any, for the objections and the reasons why the claim should be allowed at a different amount or in a different priority class. Provides that if no timely objection is filed, the determination is final.

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

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

(f) Provides that claims under employment contracts by directors, officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to any order of receivership, unless explicitly approved in writing by certain persons at certain times.

(g) Sets a cap on the total liability of the insurer to all claimants arising out of the same act or policy.

(h) Requires the liquidator to disallow claims for de minimis amounts as determined by the receivership court as being reasonable and necessary for administrative convenience.

(i) Provides that a claim that does not contain all the applicable information required by Section 21A.252 need not be further reviewed or adjudicated and authorized the claim to be denied or disallowed by the liquidator subject to the notice and objection procedures in this section.

(j) Authorizes the liquidator to reconsider a claim on the basis of additional information and amend the recommendation to the receivership court. Requires the claimant to be afforded the same notice and opportunity to be heard on all changes in the recommendation as in its initial determination. Authorizes the receivership court to amend its allowance or disallowance as appropriate.

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

(l) Requires any claim by a lessor for damages resulting from the termination of a lease of real property to be disallowed to the extent the claim exceeds a certain amount.

(m) Provides that if a claim is fully covered by a guaranty association, the liquidator has no obligation to process the claim in accordance with this section and may refuse to process the claim in accordance with this section.

Sec. 21A.254. CLAIMS UNDER OCCURRENCE POLICIES, SURETY BONDS, AND SURETY UNDERTAKINGS. (a) Provides that subject to the provisions of Section 21A.253, any insured has the right to file a claim for the protection afforded under the

insured's policy, regardless of whether a claim is known at the time of filing, if the policy is an occurrence policy.

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

(c) Requires the insured or the obligee, after a claim is filed under Subsection (a) or (b), at the time that a specific claim is made by or against the insured or by the obligee, to supplement the claim, and requires the receiver to treat the claim as a contingent or unliquidated claim under Section 21A.255.

Sec. 21A.255. ALLOWANCE OF CONTINGENT AND UNLIQUIDATED CLAIMS.

(a) Authorizes a claim of an insured or third party to be allowed under Section 21A.253, regardless of the fact that the claim was contingent or unliquidated, if any contingency is removed in accordance with Subsection (b) and the value of the claim is determined. Sets forth the circumstances under which a claim is contingent.

(b) Authorizes a contingent claim, unless the receivership court directs otherwise, to be allowed if the claimant has presented proof reasonably satisfactory to the liquidator of the insurer's obligation to pay or the claim was based on a cause of action against an insured of the insurer and certain other conditions apply.

(c) Authorizes the liquidator to petition the receivership court to set a date before which all claims under this section are final. Requires the liquidator, in addition to the notice requirements of Section 21A.007, to give notice of the filing of the petition to all claimants with claims that remain contingent or unliquidated under this section.

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

(a) Authorizes any third party, when the third party asserts a cause of action against an insured of an insurer in liquidation, to file a claim with the liquidator on or before the last day for filing claims.

(b) Authorizes the insured, whether or not the third party files a claim, to file a claim on the insured's own behalf in the liquidation.

(c) Authorizes the liquidator to make recommendations to the receivership court for the allowance of an insured's claim after consideration of the probable outcome of any pending action against the insured on which the claim is based, the probable damages recoverable in the action, and the probable costs and expenses of defense. Requires the liquidator, after allowance by the receivership court, to withhold any distribution payable on the claim, pending the outcome of litigation and negotiation between the insured and the third party. Authorizes the liquidator to reconsider the claim as provided in Section 21A.253(j). Requires the insured or the third party, as appropriate, as claims against the insured are settled or barred, to be paid from the amount withheld the same percentage distribution as was paid on other claims of like priority, based on the lesser of the amount actually due from the insured by action or paid by agreement plus the reasonable costs and expense of defense, or the amount allowed on the claims by the receivership court. Requires any sum remaining from the amount withheld, after all claims are settled or barred, to revert to the undistributed property of the insurer.

(d) Authorizes the liquidator, if several claims founded upon one policy are timely filed under this section, whether by third parties or as claims by the insured, and the aggregate amount of the timely filed allowed claims exceeds the aggregate policy limits, to apportion the policy limits ratably among the timely filed allowed claims, or give notice to the insured, known third parties, and

affected guaranty associations that the aggregate policy limits have been exceeded. Prohibits further amounts to be allowed, on and after the 30th day after the date of the liquidator's notice, and requires policy limits to be apportioned ratably among the timely filed allowed claims, and requires any additional claims to be rejected.

(e) Requires claims by the insured under Subsection (d) to be evaluated as described by Subsection (c). Requires the amount freed by the reduction, if any insured's claim is subsequently reduced under Subsection (c), to be apportioned ratably among the claims which have been reduced under Subsection (d).

(f) Prohibits a claim from being allowed under this section to the extent the claim is covered by any guaranty association.

(g) Authorizes a claimant to withdraw a proof of claim with the liquidator's approval. Authorizes the liquidator to approve the withdrawal only upon a showing of good cause and after giving notice of the withdrawal to the insured.

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

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

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

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

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

Sec. 21A.260. SECURED CREDITORS' CLAIMS. (a) Sets forth the ways in which the value of any security held by a secured creditor must be determined.

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

(c) Provides that if the principal under a surety bond or surety undertaking has pledged any collateral, including a guaranty or letter of credit, to secure the principal's reimbursement obligation to the insurer issuing the bond or undertaking, the claim of any obligee, or subject to the discretion of the receiver, of any completion contractor under the surety bond or surety undertaking must be satisfied first out of the collateral or its proceeds.

(d) Requires the receiver, in making any distribution to an obligee or completion contractor under Subsection (c), to retain a sufficient reserve for any other potential claim against that collateral.

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

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

(g) Requires a guaranty association, to the extent that the guaranty association has made a payment relating to a claim against a surety bond, to first be reimbursed for that payment and related expenses out of the available collateral or proceeds related to the surety bond. Requires the guaranty association, to the extent that the collateral is sufficient, to be reimbursed 100 percent of its payment. Entitles a guaranty association that has paid claims on the surety bond to a pro rata share of the available collateral in accordance with Subsection (e), if the collateral is insufficient to satisfy in full all potential claims against the collateral under Subsection (c) and this subsection, and provides that the guaranty association has claims against the general assets of the estate in accordance with Section 21A.253 for any deficiency. Prohibits any payment made to a guaranty association under this subsection from collateral from being deemed early access or otherwise deemed a distribution out of the general assets or property of the estate, and requires the guaranty association receiving payment to subtract any payment from the collateral from the association's final claims against the estate.

(h) Requires an amount determined under Subsection (a) to be credited upon the secured claim, and authorizes the claimant to file a proof of claim, subject to all other provisions of this chapter for any deficiency, which is required to be treated as an unsecured claim. Provides that if the claimant surrenders the claimant's security to the liquidator, the entire claim is treated as if unsecured.

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

Sec. 21A.261. QUALIFIED FINANCIAL CONTRACTS. (a) Prohibits a person from being stayed or prohibited from exercising certain rights, notwithstanding any other provision of this chapter, including any other provision of this chapter permitting the modification of contracts, or other law of this state.

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

(c) Sets forth the required actions of the receiver in making any transfer of a netting agreement or qualified financial contract of an insurer subject to a proceeding under this chapter.

(d) Requires a receiver for an insurer, if the receiver makes a transfer of one or more netting agreements or qualified financial contracts, to use its best efforts to

notify any person who is party to the netting agreements or qualified financial contracts of the transfer not later than noon, the receiver's local time, on the business day following the transfer. Defines "business day."

(e) Prohibits the receiver, notwithstanding any other provision of this chapter, from avoiding a transfer of money or other property arising under or in connection with a netting agreement or qualified financial contract, or any pledge, security, or collateral or guarantee agreement or any other similar security arrangement or credit support document relating to a netting agreement or qualified financial contract, that is made before the commencement of a formal delinquency proceeding under this chapter. Authorizes a transfer to be avoided under Section 21A.205(a) if the transfer was made with actual intent to hinder, delay, or defraud the insurer, a receiver appointed for the insurer, or existing or future creditors.

(f) Requires the receiver, in exercising any of the receiver's powers under this chapter to disaffirm or repudiate a netting agreement or qualified financial contract, to take action with respect to each netting agreement or qualified financial contract and all transactions entered into in connection with the agreement or contract in its entirety. Requires any claim of a counterparty against the estate arising from the receiver's disaffirmance or repudiation of a netting agreement or qualified financial contract that has not been previously affirmed in the liquidation or immediately preceding rehabilitation case to be determined and to be allowed or disallowed as if the claim had arisen before the date of the filing of the petition for liquidation or, if a rehabilitation proceeding is converted to a liquidation proceeding, as if the claim had arisen before the date of the filing of the petition for rehabilitation, notwithstanding any other provision of this chapter. Requires the amount of the claim to be the actual direct compensatory damages determined as of the date of the disaffirmance or repudiation of the netting agreement or qualified financial contract. Defines "actual direct compensatory damages."

(g) Defines "contractual right."

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

(i) Provides that all rights of counterparties under this chapter apply to netting agreements and qualified financial contracts entered into on behalf of the general account or separate accounts if the assets of each separate account are available only to counterparties to netting agreements and qualified financial contracts entered into on behalf of that separate account.

[Reserves Sections 21A.262-21A.300 for expansion.]

SUBCHAPTER G. DISTRIBUTIONS

Sec. 21A.301. PRIORITY OF DISTRIBUTION. Requires the priority of payment of distributions on unsecured claims to be in accordance with the order in which each class of claims is set forth in this section. Requires every claim in each class to be paid in full, or adequate funds retained for their payment, before the members of the next class receive payment, and requires all claims within a class to be paid substantially the same percentage of the amount of the claim. Prohibits subclasses from being established within a class, with certain exceptions. Prohibits a claim by a shareholder, policyholder, or other creditor from being permitted to circumvent the priority classes through the use of equitable remedies. Sets forth the order of distribution of claims.

Sec. 21A.302. PARTIAL AND FINAL DISTRIBUTIONS OF ASSETS. (a) Authorizes the liquidator, with the approval of the receivership court, to declare and pay one or more distributions to claimants whose claims have been allowed. Requires distributions paid

under this subsection to be paid at substantially the same percentage of the amount of the claim.

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

(c) Authorizes distribution of property in kind to be made at valuations set by agreement between the liquidator and the creditor and approved by the receivership court.

(d) Authorizes the liquidator, notwithstanding the provisions of Subsection (a) and Subchapter D, to pay benefits under a workers' compensation policy after the entry of the liquidation order under certain conditions.

(e) Authorizes claim payments made under Subsection (d) to continue until the date that a guaranty association assumes responsibility for claim payments under the policy.

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

Sec. 21A.303. EARLY ACCESS PAYMENTS. (a) Defines "distributable assets."

(b) Requires early access payments to guaranty associations to be made as soon as possible after the entry of a liquidation order and as frequently as possible after the entry of the order, but at least annually if distributable assets are available to be distributed to the guaranty associations, and must be in amounts consistent with this section. Requires amounts advanced to an affected guaranty association pursuant to this section to be accounted for as advances against distributions to be made under Section 21A.302. Provides that where sufficient distributable assets are available, amounts advanced are not limited to the claims and expenses paid to date by the guaranty associations. Prohibits the liquidator from distributing distributable assets to the guaranty associations in excess of the anticipated entire claims of the guaranty associations falling within the priority classes of claims established in Sections 21A.301(b) and (c).

(c) Requires the liquidator, within 120 days after the entry of an order of liquidation by the receivership court, and at least annually after the entry of the order, to apply to the receivership court for approval to make early access payments out of the general assets of the insurer to any guaranty associations having obligations arising in connection with the liquidation or to report that there are no distributable assets at that time based on financial reporting as required in Section 21A.016. Authorizes the liquidator to apply to the receivership court for approval to make early access payments more frequently than annually based on additional information or the recovery of material assets.

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

(e) Requires notice of each application for early access payments, or of any report required pursuant to this section, to be given in accordance with Section 21A.007 to the guaranty associations that may have obligations arising from the liquidation. Requires the liquidator, notwithstanding the provisions of Section 21A.007, to provide these guaranty associations with at least 30 days' actual

notice of the filing of the application and with a complete copy of the application prior to any action by the receivership court. Provides that any guaranty association that may have obligations arising in connection with the liquidation has certain rights.

(f) Requires the liquidator, in each application regarding early access payments, based on the best information available to the liquidator at the time, to provide certain information at a minimum.

(g) Provides that each guaranty association that receives any payments pursuant to this section agrees, upon depositing the payment in any account to its benefit, to return to the liquidator any amount of these payments that may be required to pay claims of secured creditors and claims falling within the priority classes of claims established in Section 21A.301(a), (b), or (c). Prohibits a bond from being required of any guaranty association.

(h) Provides that nothing in this section affects the method by which a guaranty association determines the association's statutory coverage obligations.

(i) Prohibits the liquidator, without the consent of the affected guaranty associations or an order of the receivership court, from offsetting the amount to be dispersed to any guaranty association by the amount of any specific deposit or any other statutory deposit or asset of the insolvent insurer held in that state unless the association has actually received the deposit.

Sec. 21A.304. UNCLAIMED AND WITHHELD FUNDS. (a) Requires any funds of the receivership estate that remain unclaimed after the final distribution under Section 21A.302 to be placed in a segregated unclaimed funds account held by the commissioner. Requires the commissioner, if the owner of any of the unclaimed funds presents proof of ownership satisfactory to the commissioner before the second anniversary of the date of the termination of the delinquency proceeding, to remit the funds to the owner. Authorizes the interest earned on funds held in the unclaimed funds account to be used to pay any administrative costs related to the handling or return of unclaimed funds.

(b) Authorizes the commissioner, if any amounts held in the unclaimed funds account remain unclaimed on or after the second anniversary of the date of the termination of the delinquency proceeding, to file a motion for an order directing the disposition of the funds in the court in which the delinquency proceeding was pending. Authorizes any costs incurred in connection with the motion to be paid from the unclaimed funds account. Requires the motion identify the name of the insurer, the names and last known addresses of the persons entitled to the unclaimed funds, if known, and the amount of the funds. Requires notice of the motion to be given as directed by the court. Requires the court, upon a finding by the court that the funds have not been claimed before the second anniversary of the date of the termination of the delinquency proceeding, to order that any claims for unclaimed funds and any interest earned on the unclaimed funds that has not been expended under Subsection (a) are abandoned and that the funds be disbursed under one certain specified methods.

(c) Authorizes the commissioner may establish an account to pay general expenses related to the administration of receiverships and to advance funds to any receivership that does not have sufficient cash to pay its operating expenses.

(d) Authorizes any advance to a receivership to be treated as a claim under Section 21A.301 as agreed at the time the advance is made or, in the absence of an agreement, in the priority determined to be appropriate by the court.

(e) Authorizes the commissioner, if the commissioner determines at any time that the funds in the account exceed the amount required, to transfer the funds or any part of the funds to the comptroller, and requires the transferred funds to be deposited into the general revenue fund.

[Reserves Sections 21A.305-21A.350 for expansion.]

SUBCHAPTER H. DISCHARGE

Sec. 21A.351. **CONDITION ON RELEASE FROM DELINQUENCY PROCEEDINGS.** Prohibits certain actions by an insurer that are subject to any formal delinquency procedures until all payments of or on account of the insurer's contractual obligations by all guaranty associations, along with all expenses of the obligations and interest on all the payments and expenses, are repaid to the guaranty associations, unless otherwise provided in a plan approved by the guaranty association.

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

Sec. 21A.353. **REOPENING RECEIVERSHIP.** Authorizes the commissioner or other interested party, after the liquidation proceeding has been terminated and the liquidator discharged, to at any time petition the court to reopen the delinquency proceeding for good cause, including the discovery of additional property. Requires the court to order a reopening, if the court is satisfied that there is justification for it.

Sec. 21A.354. **DISPOSITION OF RECORDS DURING AND AFTER TERMINATION OF RECEIVERSHIP.** (a) Authorizes the receiver, when it appears to the receiver that the records of the insurer in receivership are no longer useful, to recommend to the receivership court and requires the receivership court to direct what records should be destroyed.

(b) Authorizes the receiver, if the receiver determines that any records should be maintained after the closing of the delinquency proceeding, to reserve property from the receivership estate for the maintenance of the records, and provides that any amounts so retained are administrative expenses of the estate under Section 21A.301(a). Requires any records retained pursuant to this subsection to be transferred to the custody of the commissioner, and authorizes the commissioner to retain or dispose of the records as appropriate, at the commissioner's discretion. Prohibits any records of a delinquent insurer that are transferred to the commissioner from being considered records of the department for any purposes, and Chapter 552, Government Code, does not apply to those records.

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

(b) Requires the books, records, and other documents of the receivership to be made available to the auditor at any time without notice.

(c) Requires the expense of each audit to be considered a cost of administration of the receivership.

[Reserves Sections 21A.356-21A.400 for expansion.]

SUBCHAPTER I. INTERSTATE RELATIONS

Sec. 21A.401. ANCILLARY CONSERVATION OF FOREIGN INSURERS. (a) Authorizes the commissioner to initiate an action against a foreign insurer pursuant to Section 21A.051 on certain grounds.

(b) Authorizes the commissioner, if a domiciliary receiver has been appointed, to initiate an action against a foreign insurer under certain grounds only with the consent of the domiciliary receiver.

(c) Requires an order entered pursuant to this section to appoint the commissioner as conservator. Requires the conservator's title to assets to be limited to the insurer's property and records located in this state.

(d) Requires the conservator, notwithstanding Section 21A.201(c), to hold and conserve the assets located in this state until the commissioner in the insurer's domiciliary state is appointed its receiver or until an order terminating conservation is entered under Subsection (g). Requires the conservator, once a domiciliary receiver is appointed, the conservator to turn over to the domiciliary receiver all property subject to an order under this section.

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

(f) Authorizes the court in which an action under this section is pending to issue a finding of insolvency or an ancillary liquidation order. Authorizes the court to enter an ancillary liquidation order only for certain limited purposes.

(g) Authorizes the conservator at any time to petition the receivership court for an order terminating an order entered under this section.

Sec. 21A.402. DOMICILIARY RECEIVERS APPOINTED IN OTHER STATES. (a) Provides that a domiciliary receiver appointed in another state is vested by operation of law with title to, and is authorized to summarily take possession of, all property and records of the insurer in this state. Requires special deposits held in this state, upon the entry of an order of liquidation with a finding of insolvency, to be distributed to the guaranty associations in this state as early access payments subject to Section 21A.303, in relation to the lines of business for which the special deposits were made, notwithstanding any other provision of law regarding special deposits. Requires the holder of any special deposit to account to the domiciliary receiver for all distributions from the special deposit at the time of the distribution. Requires the statutory provisions of another state and all orders entered by courts of competent jurisdiction in relation to the appointment of a domiciliary receiver of an insurer and any related proceedings in another state to be given full faith and credit in this state. Defines "another state." Requires this state to treat any other state as a reciprocal state.

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

(c) Requires the domiciliary receiver, except as provided in Subsection (a), to handle special deposits and special deposit claims in accordance with federal law and the statutes pursuant to which the special deposits are required. Provides that all amounts in excess of the estimated amount necessary to administer the special deposit and pay the unpaid special deposit claims are deemed general assets of the estate. Authorizes the claimants, if there is a deficiency in any special deposit so that the claims secured by the special deposit are not fully discharged from the deposit, to share in the general assets of the insurer to the extent of the deficiency at the same priority as other claimants in their class of priority under Section 21A.301, but requires the sharing be deferred until the other claimants of their class have been paid percentages of their claims equal to the percentage paid from

the special deposit. Provides that the intent of this provision is to equalize to this extent the advantage gained by the security provided by the special deposits.

SECTION 2. Amends Section 3(a), Article 21.28-C, Insurance Code, to provide that this Act (Property and Casualty Insurance Guaranty Act) does not apply to transactions, except for workers' compensation insurance, involving captive insurers, policies in which deductible or self-insured retention is substantially equal in amount to the limit of the liability under the policy, and transactions in which the insured retains a substantial portion of the risk.

SECTION 3. Amends Section 5(8), Article 21.28-C, Insurance Code, to redefine "covered claim."

SECTION 4. Amends Section 8, Article 21.28-C, Insurance Code, by amending Subsection (d), and adding Subsection (i), as follows:

(d) Prohibits a covered claim, notwithstanding any other law to the contrary, from including claims that are unknown and unreported as of a date later than eighteen months after the date of the order of liquidation, provided, however, that a claim for workers' compensation benefits is governed by Title 5, Labor Code, and the applicable rules of the Texas Workers' Compensation Commission.

(i) Authorizes the Texas Property and Casualty Insurance Guaranty Association to bring an action against any third-party administrator, agent, attorney, or other representative of an insurer for which a receiver has been appointed to obtain custody and control of all information, including files, record, and electronic data, related to the insurer that is appropriate or necessary for the association, or a similar association in other states, to carry out its duties under this Act or a similar law or another state. Provides that the Texas Property and Casualty Insurance Guaranty Association has the absolute right to obtain information under this subsection through emergency equitable relief, regardless of where the information is physically located. Provides that in bringing an action under this subsection, the Texas Property and Casualty Insurance Guaranty Association is not subject to any defense, possessory lien, or other type of lien, or other legal or equitable ground for refusal to surrender the information that may be asserted against the receiver of the insurer. Entitles the Texas Property and Casualty Insurance Guaranty Association to an award of reasonable attorney's fees and costs incurred by the Texas Property and Casualty Insurance Guaranty Association in any action to obtain information under this subsection. Provides that the rights granted to the Texas Property and Casualty Insurance Guaranty Association under this subsection do not affect the receiver's title to information, and information obtained under this subsection remains the property of the receiver while in the custody of the Texas Property and Casualty Insurance Guaranty Association.

SECTION 5. Amends Section 10(g), Article 21.28-C, Insurance Code, to provide that venue in a suit by the Texas Property and Casualty Insurance Guaranty Association or commissioner relating to any action or ruling of the Texas Property and Casualty Insurance Guaranty Association or commissioner made under this Act is Travis County.

SECTION 6. Amends Section 11(b), Article 21.28-C, Insurance Code, to entitle the Texas Property and Casualty Insurance Guaranty Association to recover the amount of any covered claim for workers' compensation insurance benefits and the costs of administration and defense of those claims paid under this Act from any insured employer. Deletes existing text relating to obligations under a liability policy or contract of insurance written, issued, and placed in force after January 1, 1992. Makes nonsubstantive changes.

SECTION 7. Amends Section 11A, Article 21.28-C, as follows:

(a) Provides that, except for a workers' compensation claim governed by Title 5 (Workers' Compensation), Labor Code, a covered claim does not include and the Texas Property and Casualty Insurance Guaranty Association is not liable for any claim arising from a policy of insurance of certain insured. Deletes existing text relating to the liability to pay a first-party claim.

(b) Makes a nonsubstantive change.

(c) Sets forth the situations to which this section does not apply.

(d) Entitles the Texas Property and Casualty Insurance Guaranty Association, in an instance described by Subsection (c), 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. Deletes existing text providing that this section does not exclude the payment of certain covered claims.

(e) Authorizes the Texas Property and Casualty Insurance Guaranty Association to 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. Authorizes the Texas Property and Casualty Insurance Guaranty Association, under certain circumstances, to deem the net worth of the claimant to be at excess of \$50 million at the relevant time.

(f) Provides that 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. Requires the court, if the insured or claimant fails to prove that its net worth at the relevant time was less than the applicable amount, to award the Texas Property and Casualty Insurance Guaranty Association its full costs, expenses, and reasonable attorney's fees in contesting the claim.

SECTION 8. Amends Section 17(a), Article 21.28-C, Insurance Code, to provide that statutes of limitation or repose are not tolled during the stay and any action filed during the stay is stayed until the filing of the action. Authorizes the commissioner or bring an ancillary conservation proceeding under Section 21A.401 rather than Section 13, Article 21.28.

SECTION 9. Repealer: Article 21.28 (Liquidation, Rehabilitation, Reorganization, or Conservation of Insurance), Insurance Code.

SECTION 10. Makes application of this Act prospective.

SECTION 11. Effective date: September 1, 2005.