

CHAPTER 1073

S.B. No. 873

AN ACT

relating to the regulation, liquidation, rehabilitation, reorganization, supervision, and conservation of insurers.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Articles 9.29 and 9.48, Insurance Code, are amended to read as follows:

Art. 9.29. SUPERVISION, CONSERVATION AND LIQUIDATION OF TITLE INSURANCE COMPANIES. *Articles 21.28 and 21.28-A of this code apply to title insurance companies, title insurance agents, and other companies doing a title insurance business in this state.*

[Part I

~~[Sec. A. If, upon examination or at any other time, it shall appear to the Board that any of the following conditions exist relative to any company organized under the laws of this state and doing a title insurance business in this state:~~

~~[(1) the minimum surplus requirements of said company are impaired to the extent of fifty (50%) percent and have remained in such state of impairment continuously for at least sixty (60) days; or~~

~~[(2) the capital stock of said company is impaired; or~~

~~[(3) the company is issuing policies of title insurance contrary to law or regulations promulgated by the Board; or~~

~~[(4) the company has refused to permit the examination of its books and records by the Board or by its duly commissioned examiners, and has failed and refused to answer inquiries made by the commissioner; or~~

~~[(5) in the opinion of the Board, the condition of the company is such as to render the continuance of its business hazardous to the public or to its policyholders; or~~

~~[(6) the business of a company is being conducted fraudulently; then the Board shall notify the company of its determination that such condition or conditions exist, and such company shall have thirty (30) days under the supervision of the Board in which to correct such condition in accordance with the requirements of the Board.~~

~~[During the period of supervision, the Board may appoint a supervisor to supervise such company and may provide that the company shall not do any or all of the following things during the period of supervision without the prior approval of the Board or its supervisor:~~

~~[(1) Dispose of, convey or encumber any of its assets;~~

~~[(2) Withdraw any of its bank accounts;~~

~~[(3) Lend any of its funds;~~

~~[(4) Invest any of its funds;~~

~~[(5) Transfer any of its property;~~

~~[(6) Incur any debt, obligation or liability; or~~

~~[(7) Merge or consolidate with another company.~~

[Sec. B.

~~[1. The Board after hearing and notice to any company organized under the laws of this state and doing a title insurance business in this state, may appoint the liquidator designated under the provisions of Article 21.28 of the Texas Insurance Code as conservator of any such company if it finds, based upon substantial evidence, any of the following:~~

~~[(a) The company has failed within the thirty-day time set out in any notice provided under this Article to correct any aforesaid condition set out in the notice in accordance with the requirements of the Board.~~

~~[(b) The company has had its certificate of authority to do business in the State of Texas revoked or suspended or has voluntarily surrendered such certificate of authority.~~

~~[2. The Board may without notice and hearing appoint the liquidator designated under the provisions of Article 21.28 of the Texas Insurance Code as conservator of any company organized under the laws of this state and doing a title insurance business in this state when requested to do so by the board of directors of said company. The board of directors of any such company shall also have the right to waive any notice provision provided in this Article by filing with the Board a written instrument in the form of a resolution passed by them or by an instrument signed by a majority of them specifically stating such waiver of notice.~~

~~[Sec. C. After appointment, the conservator shall immediately take charge of such company and all of the property, books, records and effects thereof, and conduct the business thereof, and take such steps toward the removal of the causes and conditions,~~

~~which have necessitated such order, as the Board may direct. During the pendency of conservatorship, the conservator shall make such reports to the Board from time to time as may be required by the Board, and shall be empowered to take all necessary measures to preserve, protect and recover any assets or property of such title insurance company, and to deal with the same in his own name as conservator including claims or causes of action belonging to or which may be asserted by such title insurance company, and shall be empowered to file, prosecute and defend any suit or suits which have been filed or which may thereafter be filed by or against such title insurance company which are deemed by the conservator to be necessary to protect all of the interested parties or any property affected thereby. If, at the time of appointment of a conservator or at any time during the pendency of such conservatorship, it appears that the interest of the policyholders or certificate holders of such title insurance company can best be protected by reinsuring the same, the conservator may, with the approval of or at the direction of the Board, reinsure all or any part of such company's policies or certificates of insurance with some solvent title insurance company or association authorized to transact title insurance business in this state, and to the extent that such title insurance company in conservatorship is possessed of funds and assets, including reserves and deposits, the conservator may transfer to the reinsuring title company such funds and assets or any portion thereof as may be required to consummate the reinsurance of such policies, and any such funds and assets so transferred shall not be deemed a preference of creditors.~~

~~If, upon the appointment of a conservator or at any time during the pendency of conservatorship, the Board finds that such title insurance company is not in condition to satisfactorily continue business in the interest of its policyholders or certificate holders under a conservatorship as above provided, the Board may proceed to liquidate such title insurance company through such conservator or request the Attorney General of Texas to institute proceedings to liquidate and dissolve the title insurance company.~~

~~Sec. D. The cost incident to the supervisor's or conservator's services shall be fixed and determined by the Board and shall be a charge against the assets and funds of the company to be allowed and paid as the Board may determine.~~

[Part II

~~Sec. A. If, upon examination or at any other time, it shall appear to the Board that any of the conditions enumerated in Section A of Part I of this Article exist relative to any company not organized under the laws of this state and conducting a title insurance business in this state, then the Board shall notify the company of its determination that such condition or conditions exist, and such company shall have thirty (30) days under the supervision of the Board in which to correct such condition in accordance with the requirements of the Board.~~

~~During the period of supervision, the Board may appoint a supervisor to supervise the assets in the State of Texas, and the policy liabilities owed to residents of the State of Texas and may provide, with reference to any of such assets and liabilities that such company shall not do any or all of the following things during the period of supervision without the prior approval of the Board or its supervisor:~~

- ~~(1) Dispose of, convey or encumber any of its assets;~~
- ~~(2) Withdraw any of its bank accounts;~~
- ~~(3) Lend any of its funds;~~
- ~~(4) Invest any of its funds;~~
- ~~(5) Transfer any of its property;~~
- ~~(6) Incur any debt, obligation or liability; or~~
- ~~(7) Merge or consolidate with another company.~~

~~Sec. B.~~

~~1. The Board, after hearing and notice to any company not organized under the laws of this state or any person or noncorporate firm doing a title insurance business in this state, may appoint the liquidator designated under the provisions of Article 21.28 of the~~

~~Texas Insurance Code as conservator of any such company if it finds, based upon substantial evidence, any of the following:~~

~~(a) The company has failed within the thirty day time set out in any notice provided under this Article to correct any aforesaid condition set out in the notice in accordance with the requirements of the Board.~~

~~(b) The company has had its certificate of authority to do business in the State of Texas or the state of its domicile revoked or suspended or has voluntarily surrendered either of such certificates.~~

~~(c) The company, person or noncorporate firm does not have a certificate of authority to do business in this state.~~

~~2. The Board may without notice and hearing appoint the liquidator designated under the provisions of Article 21.28 of the Texas Insurance Code as conservator of any such company, person or noncorporate firm doing a title insurance business in this state when requested to do so by the Board of Directors or the governing body of such noncorporate firm or by the person conducting the business or at the request of any receiver or conservator of such company, noncorporate firm or person.~~

~~[Sec. C. The conservator as to records and assets in the State of Texas of such company, noncorporate firm and person and policyholder liabilities owed to residents of this state shall have the same rights, obligations and duties as provided to a conservator appointed under the provisions of Part I of this Article.~~

~~[Sec. D. The cost incident to the supervisor's or conservator's services shall be fixed and determined by the Board and shall be a charge against the assets and funds in the State of Texas of the company to be allowed and paid as the Board may determine.~~

[Part III]

~~[Sec. A. In all actions and proceedings brought by or against the supervisor or conservator because of or as the result of his being appointed under the provisions of this Article or against assets in his possession or under his control as the result of his being appointed conservator under the provisions of this Article or brought by or against a company while subject to an order of conservatorship, venue shall be in Travis County, Texas.~~

~~[Sec. B. The provisions of this Article shall be cumulative of all other laws, general and special, relating to the subject matter hereof.~~

~~[Sec. C. The provisions of Article 21.28 of the Texas Insurance Code shall apply to all companies subject to Chapter Nine of the Texas Insurance Code and the same shall not be deemed to be restricted in any way by the provisions of this Article.]~~

Art. 9.48. TITLE INSURANCE GUARANTY

Sec. 1. TITLE. This article shall be known and may be cited as the "Texas Title Insurance Guaranty Act."

Sec. 2. PURPOSE. This article is for the purposes and findings set forth in Section 1 of Article 21.28-A of the Insurance Code and in supplementation thereto by providing funds in addition to assets of impaired insurers for the protection of the holders of "covered claims" as defined herein through payment and through contracts of reinsurance or assumption of liabilities or of substitution or otherwise.

Sec. 3. SCOPE. This article shall apply [only] to all title insurance (direct and reinsurance) written by title insurance companies authorized to do business in this state and doing business under and regulated by the provisions of this Chapter 9 and to trust funds or escrow accounts of title insurance companies or title insurance agents authorized to do business in this state and doing business under and regulated under Chapter 9 of this code. This article may not be deemed or construed to expand or diminish any right or obligation existing between or among policyholders, title insurance companies, or title insurance agents and may not be deemed or construed to require any person to assign, waive, or relinquish any claim, right, or cause of action arising under Article 21.21 of this code or under the Deceptive Trade Practices-Consumer Protection Act (Section 17.41 et seq., Business & Commerce Code).

Sec. 4. CONSTRUCTION. This article shall be liberally construed to effect the purpose under Section 2 which shall constitute an aid and guide to interpretation.

Sec. 5. DEFINITIONS. As used in this article:

(1) A. "State Board of Insurance" is the State Board of Insurance of this State.

B. "Commissioner" is the Commissioner of Insurance of this State.

(2) A. "Covered claim" is an unpaid claim:

(i) of an insured which arises out of and is within the coverage and not in excess of the applicable limits of a title insurance policy to which this article applies, issued or assumed (whereby an assumption certificate is issued) by an insurer licensed to do business in this state and covered by this article, if such insurer becomes an "impaired insurer" after the effective date of this article and the insured real property (or lien thereon) is located within this state;

(ii) against trust funds or an escrow account of an impaired insurer which arises due to a shortage of those funds or in that account;

(iii) for which an impaired insurer is liable in connection with the fidelity of any agent of that insurer as authorized by Article 9.49 of this code; or

(iv) against trust funds or an escrow account of an impaired agent which arises due to a shortage of those funds or in that account and which shall be paid only from funds derived from guaranty fees and not from assessments.

Individual "covered claims" under Subparagraphs (i), (ii), (iii), and (iv) of this paragraph shall be limited to \$250,000 [~~\$100,000~~] and shall not include any amount in excess of \$250,000 [~~\$100,000~~]. [~~"Covered claim" shall also include any sum up to \$100,000 for which any insurer is liable in connection with the fidelity or solvency of any title insurance agent of such insurer as authorized by Article 9.49 of this chapter of this code.~~]

B. "Covered claim" shall not include any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise. "Covered claim" shall not include supplementary payment obligations, including but not limited to adjustment fees and expenses, attorneys' fees and expenses, court costs, interest, punitive damages, enhanced damages arising under Article 21.21 of this code or under the Deceptive Trade Practices-Consumer Protection Act (Section 17.41 et seq., Business & Commerce Code), and bond premiums, incurred prior to the determination that an insurer or agent is ~~an~~ "impaired" [~~insurer~~] under this article. "Covered claim" shall also not include any shortage of trust funds or shortage in an escrow account resulting from the insolvency of a financial institution.

C. If the impaired insurer or agent has insufficient assets to pay the expenses of administering the receivership or conservatorship estate, that portion of the expenses of administration incurred in the processing and payment of claims against the estate is also a "covered claim" and shall be paid only from funds derived from guaranty fees and not from assessments.

D. Reasonable and necessary administrative expenses incurred by a conservator appointed by the commissioner or a receiver appointed by a court of competent jurisdiction for an unauthorized insurer operating in this state is a "covered claim" under this article if the commissioner has notified the association or the association has otherwise become aware that:

(i) the unauthorized insurer has insufficient liquid assets to pay the expenses of administering the receivership or conservatorship of the unauthorized insurer;

(ii) insufficient funds are available from abandoned funds as provided by Section 8, Article 21.28 of this code; and

(iii) insufficient funds are available to the State Board of Insurance from appropriations for use in meeting those administrative expenses.

These administrative expenses shall be paid only from funds derived from guaranty fees and not from assessments.

(3) "Insurer" is any title insurance company authorized to do business in this state, and doing business under and regulated by the provisions of this Chapter 9.

(4) "Impaired insurer" is (a) an insurer which, after the effective date of this article, is placed in temporary or permanent receivership under an order of a court of competent jurisdiction based on a finding of insolvency, and which has been designated an "impaired insurer" by the commissioner; or (b) after the effective date of this article, an insurer placed in conservatorship after it has been deemed by the commissioner to be insolvent and which has been designated an "impaired insurer" by the commissioner.

(5) "Payment of covered claims" is actual payment of claims and also is the utilization of funds of the impaired insurer and funds derived from assessments or from guaranty fees as provided by Section 6 of this article for consummation of contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for liabilities arising from covered claims.

(6) "Net direct written premiums" is the gross amount of premiums paid by policyholders for issuance of policies of title insurance insuring risks located in this state and to which this article applies. The term does not include premiums for reinsurance accepted from other licensed insurers, and there shall be no deductions for premiums for reinsurance ceded to other insurers.

(7) "Agent" includes a title insurance agent as defined by Article 9.02(f) of this code, a title attorney as defined by Section 2(d), Article 9.56 of this code, and any insurer's direct operation, wholly owned subsidiary, or affiliate which performs the services usually and customarily performed by a title insurance agent.

(8) "Impaired agent" is:

(A) an agent that is placed in temporary or permanent receivership under an order of a court of competent jurisdiction based on a finding of insolvency, and that has been designated an "impaired agent" by the commissioner; or

(B) an agent placed in conservatorship after it has been deemed by the commissioner to be insolvent and that has been designated an "impaired agent" by the commissioner.

(9) "Association" means the Texas Title Insurance Guaranty Association.

(10) "Account" means one of the three accounts created under Section 14 of this article.

(11) "Board" means the board of directors of the association.

(12) "Unauthorized insurer" means a person, firm, association, or corporation that has engaged in activities prohibited by Section 3, Article 1.14-1 of this code while doing a title insurance business.

(13) "Trust funds" or "escrow account" includes those accounts which are subject to annual audit pursuant to Article 9.39 of this code.

Sec. 6. POLICY GUARANTY FEES. (a) The agent, or the insurer if there is no agent, who is required to report an owner or mortgagee title insurance policy on its statistical report to the State Board of Insurance, shall remit a guaranty fee in an amount not to exceed \$5 for each owner or mortgagee policy which is required to be reported. The board of directors shall determine at least annually the amount and may adjust the amount more frequently. In determining the amount of the guaranty fee, the board of directors shall take into consideration the amount of funds to be maintained in the guaranty fee account which is reasonably necessary for efficient future operation under the terms of this article.

(b) Each agent shall remit to the association on a quarterly basis the guaranty fees to be deposited in the guaranty fee account in accordance with this section. The quarterly payment of guaranty fees must be made for the calendar quarters ending March 31st, June 30th, September 30th, and December 31st on or before May 1st, August 1st, November 1st, and February 1st, respectively.

(c) Funds derived from guaranty fees shall be authorized only for the payment of the following:

(1) "covered claims" as defined by Subparagraph (iv) of Paragraph A and Paragraphs C and D of Subsection (2), Section 5 of this article; and

(2) *audit expenses as provided by Paragraph (8), Subsection (c), Section 14 of this article.*

(d) *The State Board of Insurance shall promulgate rules consistent with this section and conform the program created under this section to applicable statutes, regulations, and rulings.*

(e) *The commissioner may suspend or revoke, after notice and opportunity for hearing, the certificate of authority to transact business in this state of any insurer or agent who fails to comply with this section.*

Sec. 7 [6]. *ADMINISTRATION [ASSESSMENTS].* Whenever the commissioner determines that an insurer or agent has become [an] impaired [insurer], the receiver appointed in accordance with Article 21.28 of the Insurance Code or the conservator appointed under the authority of Article 21.28-A or Article 9.29 of the Insurance Code shall promptly estimate the amount of additional funds needed to supplement the assets of the impaired insurer or agent immediately available to the receiver or the conservator for the purpose of making payment of all covered claims and administrative expenses. *The receiver or conservator shall advise the board of those estimates and the board shall make available from the appropriate account maintained by the association funds sufficient to enable the receiver or conservator to carry out an efficient program of paying the covered claims and administrative expenses of the impaired insurer or agent. The board shall make additional funds available as the actual need for those funds arises for each impaired insurer or agent.*

If the board has determined that additional funds are needed in the administrative or title account it shall advise the commissioner who shall make such assessments as may be needed to produce the necessary funds. [Hereafter, the commissioner shall be empowered to make such assessments as may be necessary to produce the additional funds needed to make payment of all covered claims.] The commissioner may make partial assessments as the actual need for additional funds arises for each impaired insurer. *No assessment shall be made to produce funds for the guaranty fee account but such funds shall be derived solely from guaranty fees as provided by Section 6 of this article.*

The commissioner shall assess individual insurers in proportion to the ratio that the total net direct written premium collected in the State of Texas by the insurer during the next preceding year bears to the total net direct written premium collected by all insurers (except impaired insurers) in the State of Texas. Assessments during a calendar year may be made up to, but not in excess of, two percent of each insurer's net direct written premium for the preceding calendar year. If the maximum assessment in any calendar year does not provide an amount sufficient for payment of covered claims of impaired insurers, assessments may be made in the next successive calendar years.

Insurers designated as impaired insurers by the commissioner shall be exempt from assessment from and after the date of such designation and until the commissioner determines that such insurer is no longer an impaired insurer.

The commissioner shall designate the impaired insurer for which each assessment or partial assessment is made and it shall be the duty of each insurer to pay the amount of its assessment to the association [conservator or receiver, as the case may be,] within 30 days after the commissioner gives notice of the assessment, and assessments may be collected *on behalf of the association* by the conservator or receiver through suits brought for that purpose. Venue for such suits shall lie in Travis County, Texas. Either party to said action may appeal to the appellate court having jurisdiction over said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction over said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. Neither the receiver nor the conservator shall be required to give an appeal bond in any cause arising hereunder.

Funds derived from assessments *or from guaranty fees* under the provisions of this article shall not become assets of the impaired insurer or agent but shall be deemed a special fund loaned to the receiver or the conservator for payment of covered claims *or administrative expenses*, which loan shall be repayable to the extent available from the funds of such impaired insurer or agent, as herein provided.

Income from the investment of any of the funds of the association may be transferred to the administrative account authorized in Section 14(a)(1) of this article. The funds in this account may be used by the association for the purpose of meeting administrative costs and other general expenses of the association. Upon notification by the association of the amount of any additional funds needed for the administrative account, the commissioner shall assess insurers to attain the needed funds in the same manner provided by this section.

No insurer shall be deemed or considered to have or incur any liability, real or contingent, under the provisions of this Article 9.48 of this Chapter 9 until any such assessment shall have been actually made in writing by the commissioner under the provisions of this Article 9.48.

Sec. 8 [7]. PENALTY FOR FAILURE TO PAY ASSESSMENTS. The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact business in this state of any insurer who fails to pay an assessment when due, *and the association shall promptly report the failure to pay to the commissioner.*

Any insurer whose certificate or authority to do business in this state is cancelled or surrendered shall be liable for any unpaid assessments made prior to the date of such cancellation or surrender.

Sec. 9 [8]. ACCOUNTING FOR AND REPAYMENT OF ASSESSMENTS. Upon receipt from an insurer of payment of an assessment or partial assessment, the *association [receiver or conservator]* shall provide the insurer with a participation receipt which shall create a liability against the impaired insurer, and the holder of such participation receipt shall be regarded as a general creditor of the impaired insurer; provided, however, that with reference to the remaining balance of any portions of assessments received by the receiver or conservator and not expended in payment of "covered claims," the holders of such participation receipts shall have preference over other general creditors and shall share pro rata with other holders of participation receipts. The receiver or conservator of any impaired insurer shall adopt accounting procedures reflecting the expenditure and use of all funds received from assessments or partial assessments and shall make a final report of the expenditure and use of such funds to the commissioner, which final report shall set forth the remaining balance, if any, from the funds collected by assessment. The receiver or conservator shall also make any interim reports concerning such accounting as may be required by the commissioner *or requested by the association.* Upon completion of the final report, the receiver or conservator shall, as soon thereafter as is practicable, refund pro rata the remaining balance of such assessments to the holders of the participation receipts.

Should the association at any time determine that money exists in the administrative account or the title account in excess of the amount reasonably necessary for efficient future operation under the terms of this article, it shall cause the excess money to be returned pro rata to the holders of any participation receipts on which there is a balance outstanding after deducting any credits taken against premium taxes as authorized by Section 15 of this article. The amount deducted for those credits shall be deposited with the state treasurer for credit to the general fund of this state. Any excess money remaining after the distribution shall be retained by the association in the guaranty fee account and held pursuant to this article.

Sec. 10 [9]. PAYMENT OF COVERED CLAIMS. When an insurer *or agent* has been designated by the commissioner as ~~[an]~~ impaired ~~[insurer]~~, the receiver or conservator, as the case may be, shall marshal all assets of the impaired insurer *or agent*, including but not limited to those which are designated as or that constitute reserve assets offsetting reserve liabilities for all liabilities falling within the definition of "covered claim" as defined in this article. The receiver or conservator shall apply all of such assets to the payment of covered claims, but may utilize funds received from assessments in the payment of *covered claims as provided by Section 7 of this article*, pending orderly liquidation or disposition of such assets. When all covered claims have been paid or satisfied by the receiver or conservator, any balance remaining from the liquidation or disposition of such assets shall first be applied in repayment of funds expended from assessments *and second in repayment of funds derived from guaranty fees.* Such

repayments of funds expended from assessments shall be credited as remaining balances and be refunded as provided in Section 9 of this article.

In addition to authorization to make actual payment of covered claims, the receiver or conservator is specifically authorized to utilize such marshalled assets and funds derived from assessments for the purpose of negotiating and consummating contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for outstanding liabilities of covered claims. The commissioner shall not require the insurer that reinsures or assumes the policies of the impaired insurer or enters into an agreement to substitute itself in the place of the impaired insurer, to issue assumption certificates or other written evidence of such agreement to the policyholders of the impaired insurer, except to policyholders that have made a claim for loss arising under their policy (issued by the impaired insurer) before the date of such reinsurance, assumption or substitution agreement. The commissioner shall require that the reinsurance, assumption, or substitution agreement be filed as a public record with the State Board of Insurance. The commissioner shall approve such agreement unless, after public hearing held within 30 days following such filing, he determines that such agreement does not effectively protect the policyholders of the insurers to give notice of such hearing to its policyholders. Such notice shall be by publication, not less than seven days in advance of the hearing, in a newspaper of general circulation printed in the State of Texas. No cause of action shall lie against the impaired insurer for breach of contract or refund of premium after the agreement has been approved by the commissioner and the notice of hearing before the commissioner shall so advise the policyholders of the impaired insurer.

This article shall not be construed to impose restriction or limitation upon the authority granted or authorized the commissioner, the conservator, or the receiver elsewhere in the Insurance Code and other statutes of this state but shall be construed and authorized for use in conjunction with other portions of the Insurance Code dealing with delinquency proceedings or threatened insolvencies or supervisions or conservatorships.

Sec. 11 [10]. APPROVAL OF COVERED CLAIMS. Covered claims against an impaired insurer or agent placed in temporary or permanent receivership under an order of liquidation, rehabilitation, or conservation by a court of competent jurisdiction shall be processed and acted upon by the receiver or ancillary receiver in the same manner as other claims as provided in Article 21.28 of the Insurance Code and as ordered by the court in which such receivership is pending; provided, however, that funds received from assessments or from guaranty fees shall be liable only for the difference between the amount of the covered claims approved by the receiver and the amount of the assets marshalled by the receiver for payment to holders of covered claims; and provided further that in ancillary receiverships in this state, funds received from assessments shall be liable only for the difference between the amount of the covered claims approved by the ancillary receiver and the amount of assets marshalled by the receivers in other states for application to payment of covered claims within this state. [~~Such funds received from assessments shall not be liable for any amount over and above that approved by the receiver for a covered claim, and any action brought by the holder of such covered claim appealing from the receiver's action shall not increase the liability of such funds; provided, however, that the receiver may review his action in approving a covered claim and for just cause modify such approval at any time during the pendency of the receivership.~~]

If a conservator is appointed to handle the affairs of an impaired insurer or agent, the conservator shall determine whether or not covered claims should or can be provided for in whole or in part by reinsurance, assumption, or substitution. Upon determination by the conservator that actual payment of covered claims should be made, the conservator shall give notice of such determination to claimants falling within the class of "covered claims." The conservator shall mail such notice to the latest address reflected in the records of the impaired insurer or agent. If the records of the impaired insurer or agent do not reflect the address of a claimant, the conservator may give notice by publication in a newspaper of general circulation. Such notice shall state the time within which the claimant must file his claim with the conservator, which time shall in no event be less than 90 days from the date of the mailing or publication of such notice. The conservator may require, in whole or in part, that sworn claim forms be filed and may require that

additional information or evidence be filed as may be reasonably necessary for the conservator to determine the legality or the amount due under a covered claim. When an impaired insurer or agent has been placed in conservatorship, the funds received from assessments or from guaranty fees shall be liable only for the difference between the amount of the covered claim approved by the conservator and the amount of assets marshalled by the conservator for payment to holders of covered claims. ~~[Any action brought by the holder of such covered claim against the impaired insurer shall not increase the liability of such funds; provided, however, that the conservator may review his action in approving a covered claim and may for just cause modify such approval at any time during the pendency of the conservatorship.]~~

Upon determination by the conservator that actual payment of covered claims should be made or upon order of the court to the receiver to give notice for the filing of claims, any person who has a cause of action against an insured of the impaired insurer under a title insurance policy issued or assumed by such insurer shall, if such cause of action meets the definition of "covered claim," have the right to file a claim with the receiver or the conservator, regardless of the fact that such claim may be *unliquidated or undetermined* ~~[contingent]~~, and such claim may be approved as a "covered claim" (1) if it may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such insured; and (2) if such person shall furnish suitable proof that no further valid claims against such insurer arising out of his cause of action other than those already presented can be made; and (3) if the total liability of such insurer to all claimants arising from the same title insurance policy shall be no greater than its total liability would be were it not in liquidation, rehabilitation, or conservation. In the proceedings of considering "covered claims," no judgment against an insured taken after the date of the commencement of the delinquency proceedings or the appointment of a conservator shall be considered as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default or by collusion prior to the commencement of the delinquency proceedings or the appointment of a conservator shall be considered as conclusive evidence either (1) of the liability of such insured to such person upon such cause of action, or (2) of the amount of damages to which such person is therein entitled.

The acceptance of payment from the receiver or conservator by the holder of a covered claim or the acceptance of the benefits of contracts negotiated by the receiver or conservator providing for reinsurance or assumption of liabilities or for substitution shall constitute an assignment to the impaired insurer or agent of any cause of action or right of the holder of such covered claim arising from the occurrence upon which the covered claim is based. Such assignment shall be to the extent of the amount accepted or the value of the benefits provided by such contracts of reinsurance or assumption of liabilities or substitution. Such assignment to the impaired insurer or agent may be assigned to the insurer executing such reinsurance, assumption or substitution agreement.

Sec. 12. NONDUPLICATION OF RECOVERY. (a) A person having a claim against an insurer under law or under any provision in an insurance policy other than a policy of an impaired insurer, which claim is also a covered claim, must first exhaust his rights under law or under the policy, and any amount payable on a covered claim under this article shall be reduced by the amount of any recovery under law or under the policy.

(b) Notwithstanding any provision to the contrary, the receiver or conservator, for the purpose of avoiding undue hardship to a claimant, subject to the approval of the receivership court or the commissioner, as the case may be, may authorize payment of covered claims against an impaired agent without regard to the liability of any insurer or to coverage under any insurance policy. On payment, the receiver or conservator is in all respects subrogated to the rights and claims of the claimant.

Sec. 13 [11]. RELEASE FROM CONSERVATORSHIP OR RECEIVERSHIP. An impaired insurer or agent placed in conservatorship or receivership for which assessments have been made under the provisions of this article, or for which guaranty fees have been provided, shall not be authorized, upon release from conservatorship or receivership, to issue new or renewal insurance policies until such time as the impaired

insurer has repaid pro rata in full to each holder of a participation receipt the assessment amount paid by the receipt holder or its assigns *or the impaired agent has repaid in full the amount of guaranty fees furnished by the association*; provided, however, the commissioner may, upon application of the [advisory] association and after hearing, permit the issuance of new policies in accordance with a plan of operations by the released insurer *or agent for repayment [of assessments]*. The commissioner may, in approving such plan, place such restrictions upon the issuance of new or renewal policies as he deems necessary to the implementation of the plan. The commissioner shall give 10 days notice of such hearing to the insurers to whom the participation receipts were issued for an assessment made for the benefit of the released insurer *and the association*, and the holders of the receipts *and the association* shall be entitled to appear at and participate in such hearing.

Sec. 14 [12]. ~~[CREATION OF ADVISORY]~~ ASSOCIATION. (a) ~~CREATION OF THE ASSOCIATION~~. There is created a nonprofit legal entity [by this article an advisory association] to be known as the "Texas Title Insurance Guaranty [Advisory] Association" [~~herein called the "advisory association"~~]. All insurers must be members of the association as a condition precedent to their authority to transact insurance in this state. The association shall perform its functions under the plan of operation and shall exercise its powers through a board of directors. For the purposes of administration and assessment, the board shall establish three accounts:

- (1) the administrative account;
- (2) the title account; and
- (3) the guaranty fee account.

The association is under the immediate supervision of the commissioner and is subject to the applicable insurance laws of this state.

(b) BOARD OF DIRECTORS. (1) The association shall exercise its powers through a board of directors consisting of seven persons, four of whom must be employees or officers of the insurers, two of whom must be employees or officers of the agents, and one of whom must be a public representative as defined herein. Board members, other than the public representative, shall be chosen to give fair representation to all insurers and agents giving due consideration to the various categories of premium income, geographical location, and segments of the industry represented in Texas. "Public representative" is an individual who (i) has been a resident of Texas for at least five years immediately preceding appointment, (ii) is not licensed by the State Board of Insurance or subject to the regulation of the State Board of Insurance, (iii) is not financially involved in an organization subject to the regulation of the State Board of Insurance other than ownership of a policy or contract of insurance, (iv) is not a member of the immediate family of an individual who is financially involved in an organization subject to the regulation of the State Board of Insurance, (v) is not engaged in or employed by an entity having a contract with an organization subject to the regulation of the State Board of Insurance, (vi) is not employed by, on the board of directors of, or holding elective office by or under the authority of any unit of federal, state, or local government or any organization that receives a significant part of its funding from any such unit of federal, state, or local government, (vii) is not employed by or associated with an organization formed for the purpose of representing licensees of the State Board of Insurance or organizations or individuals subject to the regulation of the State Board of Insurance, or (viii) is not required to register as a lobbyist under Chapter 305, Government Code, by virtue of activities on behalf of an association or other organization representing the regulated industry. "Immediate family" includes parents, spouse, children, brothers, and sisters who reside in the same household. Members of the board shall be appointed by the State Board of Insurance to serve staggered four-year terms, with the term of one, two, or three members expiring each year. Each director shall serve until a successor is appointed. A vacancy on the board shall be filled for the unexpired term by the State Board of Insurance. If any director, other than a public representative, ceases to be an officer or employee of a member insurer or an agent during a term of office, the office is vacant. All directors are eligible to serve more than one term.

(2) *Directors may not receive any remuneration or emolument of office but are entitled to reimbursement for their actual expenses incurred in performing their duties as directors.*

(c) **POWERS AND DUTIES OF ASSOCIATION.** *In addition to the powers and duties provided by other sections of this article, the association:*

(1) *may render assistance and advice to the commissioner, upon his request, concerning rehabilitation, payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired insurer or agent;*

(2) *has standing to appear before any court in this state with jurisdiction over an impaired insurer or agent concerning which the association is or may become obligated under this article;*

(3) *may enter into such contracts that are necessary or proper, including the power to borrow money and to invest funds, and to carry out the provisions and purposes of this article;*

(4) *may sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments;*

(5) *may employ or retain such persons who are necessary to handle the financial transactions of the association, and to perform any other functions that become necessary or proper under this article;*

(6) *may negotiate and contract with any liquidator, rehabilitator, conservator, receiver, or ancillary receiver to carry out the powers and duties of the association;*

(7) *may take legal action as necessary to avoid the payment of improper claims;*

(8) *shall, on the request of the commissioner, authorize the expenditure of funds from the guaranty fee account to retain, compensate, and reimburse for reasonable and necessary expenses, a person or persons who will audit and review agent and insurer escrow and trust accounts and make reports relating to those accounts to the commissioner, solely under the direction of and as assigned by the commissioner; and*

(9) *shall collect, receive, retain, and disburse the income provided by Section 6 of this article solely for the purposes, to the persons, and under the circumstances that are specifically stated in this article.*

(d) **PLAN OF OPERATION.** (1) *The association shall submit to the commissioner a plan of operation and any amendment to the plan of operation necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments to the plan of operation are effective on approval in writing by the commissioner.*

(2) *If the association fails to submit a suitable plan of operation within 180 days following the effective date of this article, or if at any time after this article takes effect the association fails to submit suitable amendments to the plan, the commissioner, after notice and hearing, may promulgate reasonable rules as are necessary or advisable to carry out this article. The rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.*

(3) *All insurers shall comply with the plan of operation.*

(4) *The plan of operation shall, in addition to requirements provided in other parts of this article:*

A. *establish procedures for handling the assets of the association;*

B. *establish the amount and method of reimbursing members of the board;*

C. *establish regular places and times for meetings of the board of directors;*

D. *establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;*

E. *establish any additional procedures for determining the amount of guaranty fees and for collecting guaranty fees under Section 6 of this article;*

F. establish any additional procedures for assessments under Section 7 of this article; and

G. contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(e) PREVENTION OF IMPAIRMENTS. (1) To aid in the detection and prevention of insurer and agent impairments, the board shall carry out the duties and may exercise the authority provided by this subsection.

(2) The board of directors shall notify the commissioner of any information indicating any insurer or agent may be unable or potentially unable to fulfill its contractual obligations and may request appropriate investigation and action by the commissioner who may, in his discretion, make any investigation and take any action as he deems appropriate. [to be composed of four insurers. Within 30 days after the effective date of this article, the State Board of Insurance shall appoint the insurers who will serve as the initial advisory association. Of the initial advisory association members, one shall be appointed to serve for a one-year term of office, one shall be appointed to serve for a two-year term of office, one shall be appointed to serve for a three-year term of office, and one shall be appointed to serve a four-year term of office. Subsequent members of the advisory association shall serve for the term of office as stated above and shall be elected by insurers, subject to the approval by the commissioner.

[The initial members of the advisory association and subsequent members shall be chosen to afford fair representation to all insurers subject to this article, giving due consideration to geographical location and segments of the industry represented in Texas. Vacancies on the advisory association shall be filled for the remaining period of the term in the same manner as the initial appointments.

[The advisory association shall conduct its meetings in Austin, Texas, in the Insurance Building of the State of Texas. Meetings shall be held upon call by the commissioner or upon written request of a majority of the members. Meetings shall not be open to the public, and only members of the advisory association, members of the State Board of Insurance, the commissioner, and persons authorized by the commissioner shall attend such meetings.]

(3) The board [advisory association] shall advise and counsel with the commissioner upon matters relating to the solvency of insurers and agents. The commissioner shall call a meeting of the board [advisory association] when he determines that an insurer or agent is insolvent or impaired and may call a meeting of the board [advisory association] when he determines that a danger of insolvency or impairment of an insurer or agent exists. Such a meeting is not open to the public and only members of the board of directors, members of the State Board of Insurance, the commissioner, and persons authorized by the commissioner shall attend such meetings. The board [advisory association] shall [upon majority vote,] notify the commissioner of any information indicating that an insurer or agent may be unable or potentially unable to fulfill its contractual obligations and request a meeting with the commissioner. At such meetings the commissioner may divulge to the board [advisory association] any information in his possession and any records of the State Board of Insurance, including examination reports or preliminary reports from examiners relating to such insurer or agent. The commissioner may summon officers, directors, and employees of an insolvent or impaired insurer or agent, or an insurer or agent the commissioner considers to be in danger of insolvency or impairment, to appear before the board [advisory association] for conference or for the taking of testimony. Members of the board [advisory association] shall not reveal information received in such meetings to anyone unless authorized by the commissioner or the State Board of Insurance or when required as witness in court. Board [Advisory association] members and all of these meetings shall be subject to the same standard of confidentiality as is imposed upon examiners under Article 1.18 of the Insurance Code, except that no bond shall be required of a board member [advisory association members].

The board [advisory association] shall, upon request by the commissioner, attend hearings before the commissioner and meet with and advise the commissioner, the

liquidator or conservator appointed by the commissioner, on matters relating to the affairs of an impaired insurer *or agent* and relating to action that may be taken by the commissioner, liquidator, or conservator to best protect the interests of persons holding covered claims against an impaired insurer *or agent* and relating to the amount and timing of partial assessments and the marshalling of assets and the processing and handling of covered claims.

(4) *The board may make reports and recommendations to the commissioner relating to any matter germane to the solvency, liquidation, rehabilitation, or conservation of any insurer or agent. Those reports and [Reports or] recommendations [made by the advisory association to the commissioner, liquidator, or conservator] shall not be considered public documents, and there shall be no liability on the part of and no cause of action against a member of the board [advisory association] or the board [advisory association] for any report, individual report, recommendation, or individual recommendation by the board [advisory association] or members to the commissioner, liquidator, or conservator.*

(5) *The board may make recommendations to the commissioner for the detection and prevention of insurer or agent impairments.*

(6) *At the conclusion of any insurer or agent impairment in which the association carried out its duties under this article or exercised any of its powers under this article, the board shall prepare a report on the history and causes of the impairment, based on the information available to the association, and submit a report on these matters to the commissioner. [Members shall serve without pay, but their expenses in attending meetings shall be paid subject to the authorization by the legislature in its appropriations bills or otherwise, and subject to the rules of the State Board of Insurance. Members shall serve until their successors are appointed.]*

(7) Any insurer that has an officer, director, or employee serving as a member of the board [advisory association] shall not lose the right to negotiate for and enter into contracts of reinsurance or assumption of liability or contracts of substitution to provide for liabilities for covered claims with the receiver or conservator of an impaired insurer *or agent*. The entering into any such contract shall not be deemed a conflict of interest.

(8) The [advisory] association or any insurer assessed under this article shall be an interested party under Sections [Section] 3(h) and 12(b) of Article 21.28 of the Insurance Code.

~~[The State Board of Insurance shall within 90 days after the effective date of this article promulgate reasonable organizational rules for the association which shall set forth, among other things, quorum and attendance requirements for meetings, procedural rules to be followed at association meetings and rules concerning the replacement of members.]~~

Sec. 15 [13]. RECOGNITION OF ASSESSMENTS IN RATES AND PREMIUM TAX OFFSET. Insurers shall be entitled to recoup assessments up to one percent of their net direct written premiums from rates promulgated, established, or approved by the State Board of Insurance in the next calendar year. The State Board of Insurance in promulgating, establishing, or approving rates shall take into account assessments and refunds of assessments made in accordance with this article and shall include in the formula forming the basis for promulgating, establishing, or approving rates sums sufficient to provide for [such] recoupment *by the insurers of said assessments of up to one percent.*

Unless the State Board of Insurance has determined that all amounts paid by each insurer on assessments on total net direct written premiums have been included in the rates and premiums as provided above, any amounts not so included shall be allowed to such insurer as a credit against its premium tax under Article 9.59 of this code [7064, Revised Civil Statutes of Texas, 1925, as amended]. The tax credit referred to herein shall be allowed at a rate of 20 percent per year for five successive years following the date of assessment and at the option of the insurer may be taken over an additional number of years, *and the balance of any assessment paid by the insurer and not claimed as a tax credit may be reflected in the books and records of the insurer as an*

admitted asset of the insurer for all purposes, including exhibition in annual statements under Article 6.12 of this code.

Sec. 16 [14]. **ADVERTISEMENT.** It shall be unlawful for an insurer or agent to advertise or refer to this article [Act] in any manner as an inducement to the purchase of title insurance.

Sec. 17 [15]. **IMMUNITY.** There shall be no liability on the part of and no cause of action of any nature shall arise against any insurer subject to this article or its agents or employees, the [advisory] association or its representatives or employees, or the commissioner or his representatives or employees, or the State Board of Insurance or its representatives or employees for any action taken by them in the performance of their powers and duties under this article.

Sec. 18 [16]. **RULES AND REGULATIONS.** The State Board of Insurance is authorized and directed to issue such reasonable rules and regulations as may be necessary to carry out the various purposes and provisions of this article and in augmentation thereof.

Sec. 19. **CERTAIN EVIDENCE NOT ADMISSIBLE; UNFAIR PRACTICES.** (a) *In any lawsuit brought by a conservator or receiver of an impaired insurer or agent for the purpose of recovering assets of the impaired insurer or agent, the fact that claims against the impaired insurer or agent have been or will be paid under this article is not admissible for any purpose and may not be placed before any jury by evidence, argument, or reference in any manner.*

(b) *The use in any manner of the protection afforded by this article by any person in the sale of insurance shall constitute unfair competition and unfair practices under Article 21.21 of this code and that person is subject to that article.*

Sec. 20 [17]. **APPEALS.** Any action or ruling of the commissioner under this article may be appealed as provided in Article 1.04 of the Insurance Code, as amended. The liability of the appealing insurer for an assessment shall be suspended pending appeal by such insurer contesting the amount or legality of such assessment.

Sec. 21 [18]. **CONTROL OVER CONFLICTS.** The provisions of this article and the powers and functions authorized by this article are to be exercised to the end that its purposes are accomplished. This article is cumulative of existing laws, but in the event of conflict between this article and [any] other law relating to the subject matter of this article or its application, the provisions of this article shall control. *However, Articles 21.28 and 21.28-A of this code always prevail over this article.*

Sec. 22 [19]. **UNCONSTITUTIONAL APPLICATION PROHIBITED.** This article and law does not apply to any insurer or other person to whom, under the Constitution of the United States or the Constitution of the State of Texas, it cannot validly apply.

SECTION 2. Section 2, Article 21.28-A, Insurance Code, is amended to read as follows:

Sec. 2. **DEFINITION, APPLICATION AND SCOPE.** As used in this Article, the following words, terms and phrases (in single quotes in this Section of the Article but not in quotes in other Sections) include the meanings, significance or application described in this Section, except as another meaning is clearly requisite from the purposes or is otherwise clearly indicated by the context.

(a) "Insurance Company" (used interchangeably with "insurer") is any person, organization, association or company, (authorized or unauthorized, admitted or non-admitted) acting as an insurer, or as principal or agent of an insurer, including stock companies, reciprocals or interinsurance exchanges, Lloyds associations, fraternal benefit societies, stipulated premium companies, *title insurance companies*, and mutual companies of all kinds, including state-wide mutual assessment corporations, local mutual aids, burial associations, and county mutual insurance companies and farm mutual insurance companies.

(b) In respect of an insurance company or insurer, "insolvent" or "insolvency" and the phrases in further identity of insurer delinquency and threatened insurer delinquency, mean and include, and the conditions to which this Article is applicable include, but are not limited to, any one or more of the following circumstances or conditions.

(1) if an insurance company's required surplus, capital, or capital stock is impaired to an extent prohibited by law, or

(2) if an insurance company continues to write new business when it is not possessed of the surplus, capital or capital stock which is required of it by law to permit it to do so, or

(3) if the business of any such insurance company is being conducted fraudulently, or

(4) if any such insurance company attempts to dissolve or liquidate without first having made provisions, satisfactory to the Commissioner of Insurance, for liabilities arising from policies of insurance issued by such company.

(c) "Exceeded its Powers" includes and means but is not limited to the following circumstances:

(1) if an insurance company has refused to permit examination of its books, papers, accounts, records, or affairs by the Commissioner of Insurance, his deputy, or duly commissioned examiners; or if any insurance company, organized in the State of Texas, has removed from the state such books, papers, accounts or records necessary for an examination of such insurance company, or

(2) if an insurance company has failed to promptly answer inquiries authorized by Article 1.25 of this Code, or

(3) if an insurance company has neglected or refused to observe an order of the Commissioner to make good, within the time prescribed by law, any prohibited deficiency in its capital, capital stock, or surplus, or

(4) if an insurance company without first having obtained written approval of the Commissioner has by contract or otherwise: (i) totally reinsured its entire outstanding business, or (ii) merged or consolidated substantially its entire property or business with another insurer; or

(5) if any insurance company is continuing to write business after its license has been revoked or suspended.

(d) "Consent," as used in this Act, includes and means agreement to either supervision or conservatorship by the insurance company.

SECTION 3. Article 9.02, Insurance Code, as amended, is amended by amending Subdivisions (b) and (g) and by adding Subdivisions (m) through (q) to read as follows:

(b) The "business of title insurance" shall be deemed to be (1) the making as insurer, guarantor or surety, or proposing to make as insurer, guarantor or surety, of any contract or policy of title insurance; (2) the transacting or proposing to transact, any phase of title insurance, including solicitation, *title examination, except when conducted by an attorney, closing the transaction, except when conducted by an attorney* [~~negotiation preliminary to execution~~], execution of a contract of title insurance, insuring and transacting matters subsequent to the execution of the contract and arising out of it, including reinsurance; or (3) the doing, or proposing to do, any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Act.

(g) "Escrow Officer" means an *attorney, or bona fide employee of either an attorney licensed as an escrow officer, bona fide employee of a direct operation, or bona fide employee of a* [~~officer or employee of a~~] title insurance agent whose duties include any or all of the following: (1) countersigning title insurance *forms* [~~policies, commitments and binders~~]; or (2) supervising the preparation and *supervising the* delivery of title insurance *forms* [~~policies, commitments and binders~~]; or (3) *signing escrow checks; or (4) closing the transaction* [~~receiving, handling, or disbursing escrow funds; provided that no clerical employees who perform any of the above duties under the direction and control of an escrow officer shall be included in this definition~~].

(m) "Title Examination" means the search and examination of a title to determine the conditions of the title to be insured and to evaluate the risk to be undertaken in the issuance of a title insurance policy.

(n) "Closing the Transaction" means the investigation made on behalf of a title insurance company, title insurance agent, or direct operation before the actual issuance of the title policy to determine proper execution, acknowledgment, and delivery of all conveyances, mortgage papers, and other title instruments which may be necessary to the consummation of the transaction and includes the determination that all delinquent taxes are paid, all current taxes, based on the latest available information, have been properly prorated between the purchaser and seller in the case of an owner policy, the consideration has been passed, all proceeds have been properly disbursed, a final search of the title has been made, and all necessary papers have been filed for record.

(o) "Premium" means the premium rates promulgated by the Board pursuant to Article 9.07 of this Code and includes the charges for title examination and for closing the transaction, whether or not performed by an attorney, and for issuance of a policy.

(p) "Attorney" means a person licensed to practice law and a member of the State Bar of Texas and includes a Texas professional corporation organized for the purpose of rendering professional legal services.

(q) "Direct Operation" means the operations of a title insurance company under the authority of a license issued under Article 9.36A of this Code. Whenever the term "title insurance agent" is used in this Chapter, it shall be construed to include "direct operation" unless the context indicates to the contrary.

SECTION 4. Article 9.06, Insurance Code, is amended to read as follows:

Art. 9.06. CAPITAL STOCK AND SURPLUS REQUIRED. Except as provided by Article 9.56, Section 4A of this Chapter 9, all title insurance companies created and operating under the provisions of this Chapter must have a paid up capital of not less than One Million Dollars (\$1,000,000) and a surplus of not less than ~~Four Hundred Thousand Dollars (\$400,000)~~, provided, however, that the minimum unimpaired capital and surplus for a corporation which was authorized to transact title insurance business on the effective date of this Chapter and which on that date had an unimpaired capital of less than One Million Dollars (\$1,000,000) ~~and a surplus of less than Four Hundred Thousand Dollars (\$400,000)~~ shall be as follows:

~~[(a) Two Hundred Fifty Thousand Dollars (\$250,000) capital and One Hundred Thousand Dollars (\$100,000) surplus until July 1, 1976;~~

~~[(b) From July 1, 1976, to July 1, 1977, Five Hundred Twenty-Five Thousand Dollars (\$525,000) capital and One Hundred Sixty Thousand Dollars (\$160,000) surplus;~~

~~[(c) From July 1, 1977, to July 1, 1978, Six Hundred Fifty Thousand Dollars (\$650,000) capital and Two Hundred Twenty Thousand Dollars (\$220,000) surplus;~~

~~[(d) From July 1, 1978, to July 1, 1979, Seven Hundred Seventy-Five Thousand Dollars (\$775,000) capital and Two Hundred Eighty Thousand Dollars (\$280,000) surplus;~~

~~[(e) From July 1, 1979, to July 1, 1980, Nine Hundred Thousand Dollars (\$900,000) capital and Three Hundred Forty Thousand Dollars (\$340,000) surplus; and~~

~~[(f) After July 1, 1980, every such corporation shall be required to have and maintain unimpaired capital of not less than One Million Dollars (\$1,000,000) and surplus of not less than Four Hundred Thousand Dollars (\$400,000) as otherwise required by this Chapter].~~

SECTION 5. Chapter 9, Insurance Code, as amended, is amended by adding Article 9.06A to read as follows:

Art. 9.06A. PURCHASE BY CORPORATION OF OWN SHARES. (a) Subject to Article 9.06 of this Code and the Texas Business Corporation Act, a title insurance company may purchase its own shares. A purchase of its own shares is not considered an investment and does not constitute a violation of the provisions of this Code relating to admissible investments.

(b) A company that purchases its own shares shall, not later than the 10th (tenth) day after the date of purchase, file a statement with the Commissioner of Insurance listing the name of each shareholder from whom the shares have been purchased and the sum of money paid for those shares.

SECTION 6. Article 9.07, Insurance Code, is amended to read as follows:

Art. 9.07. POLICY FORMS AND PREMIUMS. Corporations organized under this Chapter, as well as foreign corporations and those created under Subdivision 57, Article 1302, of the Revised Civil Statutes of 1925, or under Chapter 8 of this Code, or any other law insofar as the business of either may be the business of title insurance, shall operate in Texas under the control and supervision and under such uniform rules and regulations as to forms of policies and underwriting contracts and premiums therefor, and such underwriting standards and practices as may be from time to time prescribed by the Board; and no Texas or foreign corporation, whether incorporated under this Chapter or any other law of the State of Texas, shall be permitted to issue any title policy of any character, or underwriting contract, or reinsure any portion of the risk assumed by any title policy, on Texas real property other than under this Chapter and under such rules and regulations. No policy of title insurance, reinsurance of any risk assumed under any policy of title insurance, or any guarantee of any character on Texas titles shall be issued or valid unless written by a corporation complying with *the* [all] provisions of and authorized or qualified under this Chapter, except as is provided in Article 9.19D. Before any premium rate provided for herein shall be fixed or charged, reasonable notice shall issue, and a hearing afforded to the title insurance companies and title insurance agents authorized or qualified under this Chapter and the public. Under no circumstances may any title insurance company or title insurance agent use any form which is required under the provisions of this Chapter 9 to be promulgated or approved until the same shall have been so promulgated or approved by the Board.

The Board shall have the duty to fix and promulgate the premium rates to be charged by title insurance companies and title insurance agents created or operating under this Chapter for policies of title insurance or other promulgated or approved forms, and the premiums therefor shall be paid in the due and ordinary course of business. Premium rates for reinsurance as between title insurance companies qualified under this Chapter shall not be fixed or promulgated by the Board, and title insurance companies may set such premium rates for reinsurance as such title insurance companies shall agree upon. Under no circumstance shall any premium be charged for any policy of title insurance or other promulgated or approved forms different from those fixed and promulgated by the Board, except for premiums charged for reinsurance. The premium rates fixed by the Board shall be reasonable to the public and nonconfiscatory as to the title insurance companies and title insurance agents. For the purpose of collecting data on which to determine the proper rates to be fixed, the Board shall require all title insurance companies and all title insurance agents operating in Texas to submit such information in such form as it may deem proper, all information as to loss experience, expense of operation, and other material matter for the Board's consideration.

The Board shall hold an annual hearing *not earlier than October 1* [~~during November~~] of each calendar year, [~~commencing in 1975,~~] to consider adoption of premium rates and such other matters and subjects relative to the regulation of the business of title insurance as may be requested by any title insurance company, any title insurance agent, any member of the public, or as the Board may determine necessary to consider. Proper notice of such public hearing and the items to be considered shall be made to the public and shall be sent direct to all title insurance companies and title insurance agents qualified or authorized to do business under this Chapter for at least four (4) weeks in advance of such hearing.

Premium rates when once fixed shall not be changed until after a public hearing shall be had by the Board, after proper notice sent direct to all title insurance companies and title insurance agents qualified or authorized to do business under this Chapter, and after public notice in such manner as to give fair publicity thereto for at least four (4) weeks in advance. The Board must call such additional *hearings* [~~hearing~~] to consider premium rate changes at the request of a title insurance company.

The Board may, on its own motion, following notice as required for the annual hearing hold at any time a public hearing to consider adoption of premium rates and such other matters and subjects relative to the regulation of the business of title insurance as the Board shall determine necessary or proper.

Any title insurance company, any title insurance agent, or other person interested, feeling injured by any action of the Board with regard to premium rates or other action taken by the Board, shall have the right to file a suit in the District Court of Travis County, within thirty (30) days after the Board has made such order, to review the action. Such cases shall be tried de novo in the District Court in accordance with the provisions of Article 21.80 [21.44] of the Insurance Code and shall be governed by the same rules of evidence and procedure as other civil cases in said court; in which suit the court may enter a judgment setting aside the Board's order, or affirming, the action of the Board.

SECTION 7. Subdivisions (2) and (4), Article 9.16, Insurance Code, as amended, are amended to read as follows:

(2) Such reserve shall be cumulative and shall be established and shall consist of the following:

(a) The reserve which has been established [~~as has been required to be established by such companies up to the effective date of this Act,~~] pursuant to Article 9.11 of the Insurance Code [~~Acts of the 52nd Legislature, Regular Session, 1951, Chapter 491 as amended by the Acts of the 54th Legislature, Regular Session, 1955, Chapter 489, and the Acts of the 56th Legislature, 1959, Chapter 219;~~] and

(b) *Each* [~~Beginning on January 1, 1959, each~~] insurer which has accumulated the maximum unearned premium reserve of One Hundred Thousand Dollars (\$100,000) required by Article 9.11 [~~Chapter 9~~] of the Insurance Code [~~as amended by Acts of the 54th Legislature, Regular Session, 1955, and Acts of the 56th Legislature, 1959,~~] shall reserve a sum equal to three (3%) percent of the premiums charged for title insurance contracts; and

(c) *Each* [~~Beginning on January 1, 1959, each~~] insurer which has not accumulated the maximum unearned premium reserve of One Hundred Thousand Dollars (\$100,000) required by Article 9.11 [~~Chapter 9~~] of the Insurance Code [~~as amended by Acts of the 54th Legislature, Regular Session, 1955, and Acts of the 56th Legislature, 1959,~~] shall reserve a sum equal to five (5%) percent of the premiums charged for title insurance contracts until the unearned premium reserve shall have reached a total of One Hundred Thousand Dollars (\$100,000) and thereafter such insurer shall reserve a sum equal to three (3%) percent of the premium charged for title insurance contracts; and

(d) *Each* [~~Beginning on January 1, 1959, each~~] domestic insurer shall reserve a sum equal to ten (10%) percent of the risk rate charged for title insurance contracts on property outside the State of Texas. This requirement shall be cumulative of, and not in addition to, the reserve requirement that might be imposed upon such insurer in such other state or states.

(4) The reserves as provided in Subdivision (2) of this Article shall be reduced in the following manner, which reduction may be used for any corporate purpose:

(a) As to insurers which have accumulated the maximum unearned premium reserve of One Hundred Thousand Dollars (\$100,000) under the provisions of (2)(a) above, as of the effective date of this act, such unearned premium shall be reduced at the rate of one-twentieth ($\frac{1}{20}$) thereof per year [~~beginning at the end of calendar year 1959 and a like amount at the end of each calendar year thereafter for nineteen (19) consecutive years.~~]

(b) As to insurers which have accumulated reserves as provided in (2)(b) and (2)(d) above, such unearned premium shall be reduced at the end of each calendar year in which the title insurance contract was issued at the rate of one-twentieth ($\frac{1}{20}$) of such sum for the first year and a like amount at the end of each calendar year thereafter for nineteen (19) consecutive years.

(c) As to insurers which have accumulated reserves as provided in (2)(c) above, such unearned premium shall be reduced at the rate of one-twentieth ($\frac{1}{20}$) of such sum per year beginning at the end of the calendar year in which such One Hundred Thousand Dollars (\$100,000) shall have been accumulated and a like amount at the end of each calendar year hereafter for nineteen (19) consecutive years.

SECTION 8. Articles 9.18, 9.25, 9.30, and 9.34, Insurance Code, as amended, are amended to read as follows:

Art. 9.18. **ADMISSIBLE INVESTMENTS FOR TITLE INSURANCE COMPANIES.** Investments of all title insurance companies operating under the provisions of this Act shall be held in cash or may be invested in the following:

(a) Any corporation organized under this Act having the right to do a title insurance business may invest as much as fifty (50%) percent of its capital stock in an abstract plant or plants, provided that the valuation to be placed upon such plant or plants shall be approved by the Board; provided, however, that if such corporation maintains with the Board the deposit of One Hundred Thousand Dollars (\$100,000) in securities as provided in Article 9.12 of this Act, such of its capital in excess of fifty (50%) percent, as deemed necessary to its business by its board of directors may be invested in abstract plants; and provided further, that a ~~[no such]~~ corporation created or operating under the provisions of this Act may ~~[either directly or through ownership of a portion of the capital stock of another corporation, or otherwise, hereafter]~~ own or acquire more than one abstract plant in any one county *but only one abstract plant in any one county is admissible as an investment.*

(b) Those securities set forth in Article 3.39, Insurance Code, as authorized investments for life insurance companies and in authorized investments for title insurance companies under the laws of any other state in which the affected company may be authorized to do business from time to time.

(c) Real estate or any interest therein which may be:

(1) required for its convenient accommodation in the transaction of its business with reasonable regard to future needs;

(2) acquired in connection with a claim under a policy of title insurance;

(3) acquired in satisfaction or on account of loans, mortgages, liens, judgments or decrees, previously owing to it in the course of its business;

(4) acquired in part payment of the consideration of the sale of real property owned by it if the transaction shall result in a net reduction in the company's investment in real estate;

(5) reasonably necessary for the purpose of maintaining or enhancing the sale value of real property previously acquired or held by it under Subparagraphs (1), (2), (3) or (4) of this Section; provided, however, that no title insurance company shall hold any real estate acquired under Subparagraphs (2), (3) or (4) for more than ten (10) years without written approval of the Board.

(d) First mortgage notes secured by:

(1) abstract plants and connected personalty *within or without the State of Texas;*

(2) stock of title insurance agents *within or without the State of Texas;*

(3) construction contract or contracts for the purpose of building an abstract plant and connected personalty;

(4) any combination of two or more of items (1), (2), and (3).

In no event shall the amount of any first mortgage note exceed eighty (80%) percent of the appraised value of the security for such note as set out above.

Any investments which do not now qualify under the provisions of Subsections (a), (b), (c), or (d) above and which are owned as of the effective date of this Act shall continue to qualify.

If any otherwise valid investment which qualifies under the provisions of this Article shall exceed in amount any of the limitations on investment contained in this Article, it shall be inadmissible only to the extent that it exceeds such limitation.

Art. 9.25. **CAPITAL AND SURPLUS REQUIRED; FOREIGN CORPORATIONS.** No foreign corporation shall conduct the business of title insurance in this state unless it shall show from its financial statement and such other examination as the Board may desire to make, an unimpaired capital of not less than One Million Dollars (\$1,000,000.00) and surplus of not less than ~~[Four Hundred Thousand Dollars (\$400,000.00), provided, however, that the minimum unimpaired capital and surplus requirements for a foreign corporation operating under a certificate of authority on the effective date of this~~

~~Chapter, which corporation on such date had an unimpaired capital of less than] One Million Dollars (\$1,000,000.00) [and surplus of less than Four Hundred Thousand Dollars (\$400,000.00) shall be as follows:~~

~~[(a) Two Hundred Fifty Thousand Dollars (\$250,000.00) capital and One Hundred Thousand Dollars (\$100,000.00) surplus until July 1, 1976;~~

~~[(b) From July 1, 1976, to July 1, 1977, Five Hundred Twenty-five Thousand Dollars (\$525,000.00) capital and One Hundred Sixty Thousand Dollars (\$160,000.00) surplus;~~

~~[(c) From July 1, 1977, to July 1, 1978, Six Hundred Fifty Thousand Dollars (\$650,000.00) capital and Two Hundred Twenty Thousand Dollars (\$220,000.00) surplus;~~

~~[(d) From July 1, 1978, to July 1, 1979, Seven Hundred Seventy-five Thousand Dollars (\$775,000.00) capital and Two Hundred Eighty Thousand Dollars (\$280,000.00) surplus;~~

~~[(e) From July 1, 1979, to July 1, 1980, Nine Hundred Thousand Dollars (\$900,000.00) capital and Three Hundred Forty Thousand Dollars (\$340,000.00) surplus; and~~

~~[(f) After July 1, 1980, every such corporation shall be required to have and maintain unimpaired capital of not less than One Million Dollars (\$1,000,000.00) and surplus of not less than Four Hundred Thousand Dollars (\$400,000.00) as otherwise required by this Chapter].~~

Art. 9.30. REBATES AND DISCOUNTS. A. No commission, rebate, discount, portion of any title insurance premium, or other thing of value shall be *directly or indirectly* paid, allowed or permitted by any person [title insurance company, domestic or foreign, or by any title insurance agent] doing the business of title insurance or received or accepted by any person for doing the business of title insurance or for soliciting or referring title insurance business.

B. This Article may not be construed as prohibiting:

(1) a foreign or domestic title insurance company doing business in this state under this Chapter, from appointing as its title insurance agent pursuant to this Chapter a person owning or leasing and operating an abstract plant of such county and making the arrangement for division of premiums with the agent as shall be set by the Board;

(2) payments for services actually performed by a title insurance company, a title insurance agent, or a direct operation, in connection with closing the transaction, furnishing of title evidence, or title examination, which payment may not exceed the percentages of the premium or amounts established by the Board for those payments; or

(3) payment of bona fide compensation to a bona fide employee principally employed by a title insurance company, direct operation, title insurance agent, or other reasonable payment for goods or facilities actually furnished and received; or

(4) payments for services actually performed by an attorney in connection with title examination or closing a transaction, which payment may not exceed a reasonable charge for such services.

C. A person receiving any form of compensation under Section B(2) of this Article must be licensed as provided for under this Chapter.

D. The payment or receipt of a commission, rebate, discount, or other thing of value to or by any person for soliciting or referring title insurance business in violation of this Article is engaging in the unauthorized business of insurance, and in addition to any other penalty, after notice and opportunity for hearing, is subject to a monetary forfeiture not less than the value nor more than three times the value of the commission, rebate, discount, or other thing of value [provided for in this Chapter, relating to title policies or underwriting contracts and no portion of any premium shall be paid to any person for soliciting or referring title insurance business; provided this Article 9.30 shall not prevent any title insurance company, domestic or foreign, doing business under this Chapter, from appointing as its title insurance agent in any county any person, firm, or corporation owning and operating an abstract plant of such county as its title insurance agent and making such arrangements for division of premiums as may be approved by the Board].

E [B]. No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement or closing in connection with a transaction involving the conveyance or mortgaging of real estate located in the State of Texas other than for services actually performed.

~~[C. Nothing in this Article 9.30 shall, however, be construed as prohibiting (a) the payment of a fee to attorneys at law for services actually rendered or (b) the payment to any person of a bona fide salary, compensation or other payment for goods or facilities actually furnished or for services actually performed.]~~

Art. 9.34. DETERMINATION OF INSURABILITY. No policy or contract of title insurance shall be written unless (1) *there has been compliance with the provisions of Article 9.30(B), (2) said policy or contract of title insurance is based on an examination of title made from title evidence prepared from an abstract plant owned, or leased and operated by a licensed Texas title insurance agent or direct operation for the county in which the real property is located, (3) there has been made a determination of insurability of title in accordance with sound title underwriting practices, and (4) evidence thereof shall be preserved and retained in the files of the title insurance company, direct operation, or title insurance agent for a period of not less than fifteen (15) years after the policy or contract of title insurance has been issued. If no licensed title insurance agent or direct operation exists for the county in which the real property is located, a title insurance company may directly issue its policy of title insurance based on the best title evidence available. If all licensed title insurance agents and direct operations for the county refuse to provide the title evidence within such reasonable time as determined by the Board, and in compliance with the provisions of Article 9.30(B)(2), the title insurance company may directly issue its policy if the title insurance company obtains the best title evidence available. The licensed Texas title insurance agent or direct operation which provided the title evidence on which the policies or contracts of title insurance are issued shall be provided with legible complete copies of all policies or contracts of title insurance actually issued in the transactions within a reasonable period of time as determined by the Board* ~~[and until the title insurance company (a) has caused a search of title to be made from the title evidence prepared from an abstract plant as herein defined, or if no such abstract plant of the county exists, or the owner of such plant refuses to furnish to the title insurance company desiring to insure, such title evidence at such charge and within such reasonable period of time as determined by the board, then such policy or contract of title insurance shall be based upon the best title evidence available, and (b) has caused to be made a determination of insurability of title in accordance with sound title underwriting practices. Evidence thereof shall be preserved and retained in the files of the title insurance company or its agent for a period of not less than fifteen (15) years after the policy or contract of title insurance has been issued. In lieu of retaining the original copy, the title insurance company or the agent of the title insurance company, may in the regular course of business establish a system whereby all or part of these writings are recorded, copied or reproduced by any photographic, photostatic, microfilm, micro-card, miniature photographic, or other process which accurately reproduces or forms a durable medium for reproducing the original].~~ This Article shall not apply to (a) a company assuming no primary liability in a contract of reinsurance, or (b) a company acting as a co-insurer if one of the other co-insuring companies has complied with this Article.

SECTION 9. Section C, Article 9.36, Insurance Code, as amended, is amended to read as follows:

C. A licensed title insurance agent may be licensed to represent additional title insurance companies upon application by such additional title insurance company for agent's license, on forms to be provided by the Board, and upon payment of a license fee. *The licensed title insurance agent shall be deemed licensed for the additional title insurance company on the twenty-first day following the date of filing such completed application and license fee unless such completed application is denied for cause in writing within 20 days, with cause indicated in the written denial.* The application shall be signed and duly sworn to by such additional title insurance company. Such application shall contain the following:

(1) That the proposed agent, if an individual, is a bona fide resident of Texas; or if a firm or association, that it is composed wholly of Texas residents; or if a corporation, that it is a Texas corporation or a foreign corporation which has been authorized to do business in Texas; and

(2) That the proposed agent (and if a corporation, its managerial personnel) has reasonable experience or instruction in the field of title insurance; and

(3) That the proposed agent is known to the title insurance company to have a good business reputation and is worthy of the public trust and said title insurance company knows of no fact or condition which would disqualify him from receiving a license; and

(4) That the proposed agent qualified as a title insurance agent as defined in this Act; and

(5) That the proposed agent is currently licensed by a title insurance company.

SECTION 10. Chapter 9, Insurance Code, as amended, is amended by adding Article 9.36A to read as follows:

Art. 9.36A. DIRECT OPERATION LICENSE. A. A title insurance company owning or leasing and operating an abstract plant or participating in a bona fide joint abstract plant operation in any county in this state must be licensed by the Board for that county.

B. Before a license for a county is issued, an application must be filed for a direct operation license, on forms to be provided by the Board, accompanied by a nonrefundable license fee in an amount not to exceed \$50 as determined by the Board. The license fee and renewal fees shall be deposited in the state treasury to the credit of the State Board of Insurance operating fund to be used by the Board to enforce this Article and all laws of this state governing and regulating title insurance agents and title insurance companies.

The application shall be signed and duly sworn to by the title insurance company. The applicant must comply with and must include in the application the following:

(1) that the title insurance company is a Texas corporation or a foreign corporation holding a certificate of authority to insure titles to real estate within this state and meets the requirements of this chapter; and

(2) that the abstract plant to be licensed complies with requirements made by the Board pertaining to abstract plants and has been approved by the Board.

C. Unless a staggered renewal system is adopted, on or before the first day of June of each year, every foreign or domestic title insurance company operating under this Article shall certify to the Board, on forms provided by the Board, the counties and addresses of each location within the state at which the title insurance company operates an abstract plant for which a license is to be renewed and shall apply for and pay a license renewal fee in an amount not to exceed \$50, as determined by the Board, for a license in each county. If any company ceases to operate a licensed abstract plant, it shall immediately notify the Board in writing and request cancellation of the license. A title insurance company may not write, sign, or deliver title insurance in any county in which it operates an abstract plant until the Board has issued a license. This Article may not be construed to prohibit the issuance of title insurance by a title insurance company by and through a duly licensed title insurance agent.

Unless a staggered renewal system is adopted, a license continues in force until the second June following its issuance, unless previously cancelled. If a title insurance company surrenders or has its certificate of authority revoked by the Board, all existing licenses of its abstract plants automatically terminate.

The Board shall keep a record of the counties and addresses of each location in which the title insurance company operates an abstract plant in such a manner that the plants may be conveniently ascertained and inspected by any person on request.

SECTION 11. Sections A, B, C, and D, Article 9.37, Insurance Code, are amended to read as follows:

A. Any title insurance agent *or direct operation* may voluntarily surrender his license at any time by giving notice to the Board and to the title insurance company concerned. Any agent *or direct operation* shall automatically forfeit the license under the title insurance company represented if he shall terminate his agency contract with such company.

B. The license of any agent *or direct operation* may be denied, or a license duly issued may be suspended or revoked or a renewal thereof refused by the Board, if, after notice and hearing as hereafter provided, it finds that the applicant for or holder of such license:

- (1) Has wilfully violated any provision of this Act; or
- (2) Has intentionally made a material misstatement in the application for such license; or
- (3) Has obtained, or attempted to obtain, such license by fraud or misrepresentation; or
- (4) Has misappropriated or converted to his own use or illegally withheld money belonging to a title insurance company, an insured or any other person; or
- (5) Has otherwise demonstrated lack of trustworthiness or competence to act as an agent *or direct operation*; or
- (6) Has been guilty of fraudulent or dishonest practices; or
- (7) Has materially misrepresented the terms and conditions of title insurance policies or contracts; or
- (8) Is not of good character or reputation; or
- (9) Has failed to maintain a separate and distinct accounting of escrow funds, and has failed to maintain an escrow bank account or accounts separate and apart from all other accounts.

C. Before the license of any title insurance agent *or direct operation* shall be denied, or suspended or revoked, or the renewal thereof refused hereunder, the Board shall give notice of its intention so to do, by registered mail, to the applicant for, or holder of such license and to the title insurance company or companies who desire that such license be granted or continued in effect, and shall set a date not less than twenty (20) days from the date of mailing such notice when the applicant or licensee and a duly authorized representative of the title insurance company may appear to be heard and produce evidence. In the conduct of such hearing, the Commissioner or any regular salaried employee specially designated by him for such purpose shall have power to administer oaths, to require the appearance of and examine any person under oath, and to require the production of books, records or papers relevant to the inquiry upon his own initiative or upon the request of the applicant or licensee. Upon termination of such hearing, findings shall be reduced to writing and, upon approval by the Commissioner, shall be filed in his office and notice of the findings sent by registered mail to the applicant or licensee and the title company or companies concerned.

D. No applicant or licensee whose license has been denied, refused or revoked hereunder shall be entitled to file another application for a license as an agent *or direct operation* within one year from the effective date of such denial, refusal or revocation, or, if judicial review of such denial, refusal or revocation is sought, within one year from the date of final court order or decree affirming such action. Such application, when filed after one year, may be refused by the Board unless the applicant shows good cause why the denial, refusal or revocation of his license shall not be deemed a bar to the issuance of a new license.

SECTION 12. Article 9.38, Insurance Code, is amended to read as follows:

Art. 9.38. BONDS FOR AGENTS AND DIRECT OPERATIONS. (a) Every person, firm, association, or corporation which has been licensed as a title insurance agent *or direct operation* shall make, file, and pay for a surety bond with a corporate surety company authorized to write surety bonds in this state, payable to the State Board of Insurance in the sum of *the greater of Ten Thousand Dollars (\$10,000) or an amount equal to ten percent (10%) of the gross premium written by the agent or direct*

operation in accordance with the latest statistical report to the Board, but not to exceed One Hundred Thousand Dollars (\$100,000). The ~~[Seven Thousand Five Hundred Dollars (\$7,500) which]~~ bond shall obligate the principal and surety to pay such pecuniary losses as may result to any participant in an insured real estate transaction which shall be sustained through acts of fraud, dishonesty, theft, embezzlement, or wilful misapplication on the part of a ~~[any]~~ title insurance agent or direct operation, or which may result to the Board due to administrative expenses incurred in a receivership of a title insurance agent or direct operation. In lieu of such bond any title insurance agent or direct operation may deposit with the Board cash or irrevocable letters of credit issued by a financial institution in this state insured by an agency of the United States government (or securities approved by the Board) which deposits shall be ~~[cash and securities shall be in the amount of Seven Thousand Five Hundred Dollars (\$7,500) and]~~ subject to the same conditions as provided for in said bond.

(b) If at any time it appears to the Board that a loss covered by the bond or deposit has been suffered ~~[the terms of any agent's bond may have been violated]~~, the Board may require the title insurance agent or direct operation to appear in Travis County with such records as the Board deems proper on a named date not earlier than ten (10) days nor later than fifteen (15) days from service of notice, and there conduct an examination into the matter. If upon such examination the Board is satisfied that a loss covered by the bond or deposit has been suffered ~~[the terms of said bond have been violated]~~, the Board shall immediately notify the surety and prepare a written statement covering the facts and deliver it to the Attorney General of Texas, whose duty it shall be to investigate the charges, and if satisfied that a loss covered by the bond or deposit has been suffered ~~[the terms of said bond have been violated]~~, then to enforce the liability against cash or securities, or by suit on said bond in Travis County in the name of the Board for the benefit of all parties who have suffered any loss covered by the bond or deposit ~~[because of breach of the terms of said bond]~~.

SECTION 13. Article 9.39, Insurance Code, as amended, is amended to read as follows:

Art. 9.39. ANNUAL AUDIT. Every title insurance agent and direct operation shall have an annual audit, at its or his expense, made of trust fund accounts, and within ninety (90) days from the termination of its fiscal year, shall send by certified mail, postage prepaid, to the Board one copy of such audit report with a letter of transmittal, and each such agent, shall also send a copy of such letter of transmittal and audit report to every title insurance company which it represents.

Every title insurance company shall have an annual audit, at its expense, made of trust fund accounts for each county in which it operates in its own name and within ninety (90) days from the termination of its fiscal year shall send by certified mail, postage prepaid, to the Board one copy of such audit report.

The Board shall promulgate regulations setting forth the standards of audit and the form of audit report required.

Said audit shall be made by an independent certified public accountant or licensed public accountant, or a firm composed of either.

Each title insurance company shall examine and analyze the audit report furnished by each of its agents and direct operations, and shall within three (3) months of receipt of same report to the Board on forms to be furnished by the Board the findings and results of its examination and analysis of such audit report. If a title insurance company fails to receive an audit report from any of its agents or direct operations within the time specified above, it shall forthwith report such omission to the Board.

All such reports and analyses furnished by the title insurance company to the Board shall, at the election of the Commissioner, be classed as confidential and privileged after having been filed with the Board.

If any agent, direct operation, or title insurance company shall fail or refuse to furnish an audit report within the time required, or shall furnish an audit report which reveals any shortage or other irregularity, or any practice not in keeping with sound, honest business practices, the Board may, after notice to the agent, direct operation, or each

title insurance company involved and after a hearing at which the agent, *direct operation*, or title insurance company may offer evidence explaining or excusing such omissions or irregularity, revoke the license of such agent or *direct operation* or revoke the certificate of authority of such title insurance company.

Any agent, *direct operation*, or title insurance company feeling aggrieved by any action of the Board hereunder shall have the right to file a suit in the District Court of Travis County in the time and manner provided in Article 9.37.

SECTION 14. Chapter 9, Insurance Code, as amended, is amended by adding Article 9.39A to read as follows:

Art. 9.39A. DISBURSEMENT FROM TRUST FUND ACCOUNTS. (a) A title insurance company, title insurance agent, direct operation, or escrow officer shall not disburse funds from a trust fund account until good funds related to the transaction in amounts sufficient to fund any disbursements from the transaction have been received and deposited to the trust fund account.

(b) The State Board of Insurance shall adopt rules and definitions to implement this Article.

(c) A title insurance company, title insurance agent, direct operation, or escrow officer is not liable for a violation of this Article if the violation was not intentional and if it resulted from a bona fide error notwithstanding the maintenance of procedure reasonably adopted to avoid the error.

SECTION 15. Article 9.41, Insurance Code, is amended to read as follows:

Art. 9.41. REQUIREMENTS FOR ESCROW OFFICERS. A. No person shall act in the capacity of escrow officer without (1) being licensed by the Board, and (2) obtaining and maintaining a surety bond as required by Article 9.45; and no title insurance agent or direct operation shall employ any person as escrow officer who is not licensed and bonded in accordance with the provisions of this Act.

B. No attorney shall be required to be licensed as an escrow officer in order to perform the duties of an escrow officer as defined in Article 9.02(g) of this Chapter. However, an attorney may become licensed as an escrow officer, and the employees of an attorney licensed as an escrow officer may become licensed escrow officers, in which case the attorney shall comply with all requirements of this Code with regard to escrow officers and trust funds, as if the attorney were a title insurance agent.

C. Notwithstanding any provision in this Chapter to the contrary, no title insurance company or title insurance agent shall permit an attorney to conduct the attorney's business in the name of such title insurance company or title insurance agent unless the attorney and the attorney's bona fide employees who close transactions are licensed as escrow officers.

D. All escrow accounts utilized by licensed escrow officers for closing transactions shall be subject to the audit requirements contained in Article 9.39 of this Code.

SECTION 16. Section A, Article 9.42, Insurance Code, as amended, is amended to read as follows:

A. Unless a system of staggered renewal is adopted under Section B of this article, every title insurance agent and direct operation licensed and operating under the provisions of this Act shall on or before the first day of June of each year, certify to the Board on forms provided by the Board the names and addresses of every person employed by it to serve in the capacity of escrow officer within the state, whose license is to be renewed, and shall apply for and pay a license renewal fee in an amount not to exceed Fifty Dollars (\$50) as determined by the Board for each person included in said list. If it shall terminate any licensed escrow officer, it shall immediately notify the Board in writing of such act and request cancellation of the license, notifying such escrow officer of such action. No title insurance agent or direct operation shall permit any person to act as escrow officer within the state until the foregoing conditions have been complied with, and the Board has granted the said license.

Unless a system of staggered renewal is adopted under Section B of this article, a license shall continue in force until the second June first following its issuance, unless

previously cancelled. Provided, however, that if any title insurance agent *or direct operation* surrenders all its licenses, or has all its licenses revoked by the Board, all existing licenses of its escrow officers shall automatically terminate without notice.

The Board shall keep a record of the names and addresses of all escrow officers licensed by it in such manner that the escrow officers employed by any title insurance agent *or direct operation* within the state may be conveniently determined.

SECTION 17. Article 9.43, Insurance Code, is amended to read as follows:

Art. 9.43. APPLICATION FOR ESCROW OFFICER'S LICENSE. A. Before an initial license is issued to any person to act as escrow officer within the State of Texas for any title insurance agent *or direct operation*, there shall be first filed by such title insurance agent *or direct operation* with the Board an application for an escrow officer's license on forms provided by the Board, accompanied by a nonrefundable license fee in an amount not to exceed Fifty Dollars (\$50) as determined by the Board, which fees including license renewal fees under Article 9.42 shall be deposited in the state treasury to the credit of the State Board of Insurance operating fund to be used by the State Board of Insurance to enforce the provisions of this article and all laws of this state governing and regulating escrow officers for such title insurance agents *or direct operation*. The application shall be signed and duly sworn to by such title insurance agent *or direct operation* and by the proposed escrow officer.

B. Such application shall contain the following:

(1) that the proposed escrow officer is a natural person, ~~and~~ a bona fide resident of the State of Texas, *and either an attorney or a bona fide employee of an attorney licensed as an escrow officer, a bona fide employee of a title insurance agent, or a bona fide employee of a direct operation;*

(2) that the proposed escrow officer has reasonable experience or instruction in the field of title insurance;

(3) that the proposed escrow officer is known to the *direct operation or title insurance* agent to have a good business reputation and is worthy of the public trust and the *direct operation or title insurance* agent knows of no fact or condition which would disqualify *the proposed escrow officer* ~~him~~ from receiving a license;

~~[(4) that the proposed escrow officer qualifies as an escrow officer as defined in this Act].~~

C. The Board shall grant such license, if it determines from the application and its own investigation that the foregoing requirements have been met.

D. The Commissioner of Insurance shall collect in advance from agents requesting duplicate licenses a fee not to exceed \$20. The State Board of Insurance shall determine the amount of the fee.

SECTION 18. Sections B and C, Article 9.44, Insurance Code, are amended to read as follows:

B. The license of any escrow officer may be denied, or a license duly issued may be suspended or revoked or a renewal thereof refused by the Board, if, after notice and hearing as hereafter provided, it finds that the applicant for or holder of such license:

(1) has wilfully violated any provision of this Act; or
(2) has intentionally made a material misstatement in the application for such license;
or

(3) has obtained, or attempted to obtain, such license by fraud or misrepresentation; or
(4) has misappropriated or converted to *the escrow officer's* ~~his~~ own use or illegally withheld money belonging to a *direct operation*, title insurance ~~company,~~ agent, or any other person; or

(5) has otherwise demonstrated lack of trustworthiness or competence to act as escrow officer; or

(6) has been guilty of fraudulent or dishonest practices; or

(7) has materially misrepresented the terms and conditions of title insurance policies or contracts; or

(8) is not of good character or reputation; or

(9) *has failed to complete all educational requirements.*

C. Before the license of any escrow officer shall be denied, or suspended or revoked, or the renewal thereof refused hereunder, the Board shall give notice of its intention so to do, by registered mail, to the applicant for, or holder of such license and to the title insurance agent *or direct operation* which is either the employer of the holder of such license or desires that such license be granted, continued or renewed and shall set a date not less than twenty (20) days from the date of mailing such notice when the applicant or licensee and a duly authorized representative of the title insurance agent *or direct operation* may appear to be heard and produce evidence. In the conduct of such hearing, the Commissioner or any regular salaried employee specially designated by him for such purpose shall have power to administer oaths, to require the appearance of and examine any person under oath, and to require the production of books, records or papers relevant to the inquiry upon his own initiative or upon the request of the applicant or licensee. Upon termination of such hearing, findings shall be reduced to writing and, upon approval by the Commissioner shall be filed in his office and notice of the findings sent by registered mail to the applicant or licensee and the *title insurance agent or direct operation* concerned.

SECTION 19. Article 9.45, Insurance Code, is amended to read as follows:

Art. 9.45. BONDS FOR ESCROW OFFICERS. (a) Every title insurance agent *and direct operation* shall procure at its expense for its escrow officers, a bond of such type as may be approved by the State Board of Insurance with a surety licensed by the Board to do business in Texas, in an amount to be determined by multiplying the number of escrow officers by Five Thousand Dollars (\$5,000) but not exceeding Fifty Thousand Dollars (\$50,000) payable to the State Board of Insurance, which bond shall obligate the principal and surety to pay such pecuniary loss as the *title insurance agent or direct operation* shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, or wilful misapplication on the part of such escrow officer, either directly and alone, or in connivance with others. In lieu of such bond, cash *or irrevocable letters of credit issued by a financial institution insured by an agency of the United States government* (or securities approved by the Board) in multiples of Five Thousand Dollars (\$5,000) per escrow officer employed but not exceeding Fifty Thousand Dollars (\$50,000) may be deposited by the *title insurance agent or direct operation* with the Board, subject to the same conditions as provided for in said bond.

(b) If at any time it appears to the Board that *a loss covered by the bond or deposit has been suffered* [~~the terms of any such bond as provided in Paragraph (a) of this Article 9.45 may have been violated~~], the Board may require the escrow officer to appear in Travis County with such records as the Board deems proper on a named date not earlier than ten (10) days nor later than fifteen (15) days from service of notice, copies of which notice shall also be sent to any title insurance agent *or direct operation* concerned, and there conduct an examination into the matter. If upon such examination the Board is satisfied that *a loss covered by the bond or deposit has been suffered* [~~the terms of said bond have been violated by an escrow officer~~], the Board shall immediately notify the surety and *title insurance agent or direct operation* concerned and prepare a written statement covering the facts and deliver it to the Attorney General of Texas, whose duty it shall be to investigate the charges, and if satisfied that *a loss covered by the bond or deposit has been suffered* [~~the terms of said bond have been violated~~], then to enforce the liability against cash or securities, or by suit on said bond in Travis County in the name of the Board for the benefit of all parties who have suffered any loss *covered by the bond or deposit* [~~because of breach of the terms of said bond~~].

SECTION 20. Article 9.47, Insurance Code, is amended by adding Section 3 to read as follows:

Sec. 3. The provisions of this Chapter shall not be interpreted as regulating the practice of law by attorneys, and it is expressly provided that the actions of an attorney in examining title or closing a real estate transaction, whether or not a title

insurance policy is issued, shall not constitute the business of title insurance, unless the attorney elects to be licensed as an escrow officer. Nothing in this section shall be construed as prohibiting the State Board of Insurance from promulgating a premium for title insurance.

SECTION 21. Chapter 9, Insurance Code, as amended, is amended by adding Article 9.58 to read as follows:

Art. 9.58. CONTINUING EDUCATION. A. For protection of the public and to preserve and improve competence of licensees, the board may in its sole discretion require as a condition to continuation of license as a title insurance agent or escrow officer that during the 24 months next preceding expiration of the current license period the licensee has enrolled in and attended or taught up to 15 hours of class instruction, lectures, seminars, or other forms of education approved by the board for the particular license.

B. The instruction shall be designed to refresh the licensee's understanding of basic principles and coverages involved, recent and prospective changes in those principles and coverages, applicable laws and rules and regulations of the board, proper conduct of the licensee's business, and duties and responsibilities of the licensee.

C. The board may permit licensees who because of remoteness of residence or business cannot with reasonable convenience attend these educational sessions to take and successfully complete an equivalent course of study and instruction by mail.

D. The board may promulgate rules and regulations to carry out the purposes and requirements of this article.

SECTION 22. Chapter 9, Insurance Code, as amended, is amended by adding Article 9.59 to read as follows:

Art. 9.59. TITLE INSURANCE COMPANIES; TAX ON PREMIUMS

Sec. 1. PAYMENT OF TAX. Each title insurance company receiving premiums from the business of title insurance shall pay to the commissioner of insurance for transmittal to the state treasurer an annual tax on those premiums as provided in this article.

Sec. 2. PREMIUM DEFINED. In this article premium means the total amount of premiums received for the taxable year on title insurance written on property located in this state except premiums received from other licensed title insurance companies for reinsurance, less return premiums paid policyholders with no deduction for premiums paid for reinsurance.

Sec. 3. TIME OF FILING AND PAYMENT. (a) A premium tax return for each taxable year ending on December 31 of the preceding year shall be filed and the total amount of the tax due under this article shall be paid on or before March 1 of each year.

(b) A quarterly prepayment of premium tax must be made on March 1, May 15, August 15, and November 15 by all insurers with net tax liability for the previous calendar year of more than \$1,000. The tax paid on each date must equal one-fourth of the total premium tax paid for the previous calendar year. If no premium tax has been paid during the previous calendar year, the quarterly payment shall equal the tax that would be owed on the gross premium receipts during the previous calendar quarter ending March 31, June 30, September 30, or December 31 at the minimum tax rate specified by law. The commissioner may certify for refund to the state treasurer any overpayment of premium taxes that results from the quarterly prepayment system established by this subsection.

(c) The State Board of Insurance may adopt rules, regulations, minimum standards, and limitations that are fair and reasonable as may be appropriate for the augmentation and implementation of this article.

Sec. 4. RATE OF TAX. There is imposed on all premium on title insurance an annual tax equal to two percent (2.0%).

Any title insurance company may remit on a tax rate lower than the two percent (2.0%) imposed by this article. If such title insurance company as of the preceding December 31 owns Texas investments in an amount in total value which is in excess of ninety percent (90%) of the amount such title insurance company owned in the comparison state in similar investments as herein defined, the tax imposed shall be equal to 1.3 percent (1.3%) of premium.

Sec. 5. ANNUAL TAX RETURN. Each title insurance company that is liable under this article to remit tax on premium shall file a tax return annually, under oath by two officers of the title insurance company, on forms prescribed by the State Board of Insurance.

Sec. 6. CERTIFICATION OF TAX PAYMENTS; TRANSFER OF FUNDS. After receipt by the commissioner of insurance of each title insurance company's tax return and the premium tax, the commissioner shall certify to the state treasurer the amount of taxes remitted by each title insurance company. The commissioner's certification is authorization for the state treasurer to transfer the certified amounts from the insurance suspense account to the general revenue fund unless there is a legal reason for maintaining the payment in the insurance suspense account.

Sec. 7. EXAMINATION AND EVALUATION FEE CREDITS. The amount of all examination and evaluation fees paid in each taxable year to or for the use of the State of Texas by a title insurance company shall be allowed as a credit on the amount of premium taxes due under this article except as provided by Article 1.28 of this code. Any credit allowed by this section is in addition to any other credits allowed by law.

Sec. 8. NO OTHER TAXES TO BE LEVIED OR COLLECTED; EXCEPTIONS. (a) An occupational tax may not be levied on title insurance companies or title insurance agents who are subject to this premium tax by any county, city, or town. The taxes in this article constitute all taxes collectible under the laws of this state against any title insurance company or title insurance agent, except maintenance taxes specifically levied under the laws of this state and assessed by the State Board of Insurance to support the various activities of the divisions of the State Board of Insurance.

(b) No other tax may be levied or collected from any title insurance company or title insurance agent by the state or any county or city, but this law may not be construed to prohibit the levy and collection of state, county, and municipal taxes on the real and personal property of the title insurance company or title insurance agent. The premium tax is levied on all amounts defined to be premium in this Chapter, whether paid to the title insurance company or retained by the title insurance agent, such tax being in lieu of the tax on the premium retained by the agent. The State of Texas facilitates the collection of the premium tax on the premium retained by the agent by setting the division of the premium between insurer and agent so that the insurer receives the premium tax due on the agent's portion of the premium and remits it to the State.

Sec. 9. FAILURE TO PAY TAXES. A title insurance company failing to pay all taxes imposed by this article is also subject to Article 4.05 of this code.

Sec. 10. CERTIFICATE SHOWING AMOUNT OF TAXES DUE; TIME PERIOD; COLLECTION PROCEEDINGS. (a) Except as otherwise provided in this article, the amount of any tax imposed by this article on examination of any title insurance company or in any other manner shall be filed by the commissioner of insurance with the state treasurer by supplemental certificate showing the amount of any taxes due by that title insurance company within four years after the return was filed, regardless of whether the return was filed on or after the date due.

(b) If an administrative review or a judicial proceeding is pending in a court of competent jurisdiction before the expiration of the period prescribed by Subsection (a) of this section, that period is suspended with respect to the amount of tax in issue in that proceeding until those matters are fully determined, at which time the running of the period shall resume until finally expired.

(c) *In the case of failure to file a return, the commissioner of insurance may notify the state treasurer of the taxes due and the commissioner of insurance may proceed in a court of competent jurisdiction for collection of that tax at any time.*

Sec. 11. SUIT AFTER PROTEST PAYMENT. Any title insurance company that believes or contends that the tax on premium receipts imposed under this article is being paid in error or under unlawful requirements is nevertheless required to pay the amount considered to be due under written protest as provided by Section 112.051, Tax Code, and maintain an action under Subchapter B, Chapter 112, Tax Code, to recover the amount paid under protest. This article does not limit administrative determinations by the State Board of Insurance of refunds with respect to premium taxes paid due to mistake of law or fact. The courts of Travis County have exclusive original jurisdiction of an action brought under Subchapter B, Chapter 112, Tax Code.

Sec. 12. STATUTE OF LIMITATION. A suit for refund must be filed in accordance with law not later than four years after the due date for taxes in question. Any claim for refund filed after that date is barred except that on request of the title insurance company, the limitation provided by this section may be extended by written order of the State Board of Insurance for a period not to exceed 90 days from the expiration of the four-year period. The board's order must be entered before the expiration of the four-year period.

Sec. 13. TEXAS INVESTMENTS DEFINED. For purposes of this article, Texas investments include only the following:

(1) bonds, warrants, and interest-bearing indebtedness of any kind issued by the State of Texas, any county, city, school district, or any municipality or subdivision hereof which is now or may hereafter be constituted or organized and authorized to issue such bonds, warrants, and interest-bearing indebtedness by the constitution or statutes of the State of Texas. The value of such bonds, warrants, or interest-bearing indebtedness for purposes of this article shall be their amortized value.

(2) notes and bonds secured by mortgage or deeds of trust on real property located solely in this state including deeds of trust on residential property located in the State of Texas. The value of such notes or bonds for purposes of this article shall be their unpaid principal balance.

(3) the average daily balance of cash on deposit, including both negotiable and nonnegotiable certificates of deposit and accounts in state banks and national banks insured by the Federal Deposit Insurance Corporation and in state and federal savings and loan associations insured by the Federal Savings and Loan Insurance Corporation located in the State of Texas. The value of such deposits shall be determined on the basis of the sum of the balance in such accounts and such certificates of deposit as shown on the books of the insurance carrier on the close of each day including Saturdays, Sundays, and holidays, divided by 365.

Sec. 14. SIMILAR INVESTMENTS DEFINED. For purposes of this article, "similar investments" is defined as the same character of property and investments described in Section 13 hereof, located in a state other than Texas and originating and existing with the same relationship to such state as the location and relationship of such property to the State of Texas.

Sec. 15. OTHER LAWS TO GOVERN. Articles 4.12, 4.13, 4.14, 4.15, and 4.16, Insurance Code, apply to title insurance companies which are subject to this article.

SECTION 23. Section 1, Article 4.10, Insurance Code, as amended, is amended to read as follows:

Sec. 1. PAYMENT OF TAX. Every insurance carrier, including Lloyd's and reciprocal exchanges and any other organization or concern receiving gross premiums from the business of fire, marine, marine inland, accident, credit, [title,] livestock, fidelity, guarantee, surety, casualty, workers' compensation, employers' liability, or any other kind or character of insurance, *except title insurance and except as provided in Sections 2, 3, and 4 of this article, shall pay to the commissioner of insurance for transmittal to the state treasurer an annual tax upon such gross premium receipts as provided in this*

article. Any such insurance carrier doing other kinds of insurance business shall pay the tax levied upon its gross premiums received from such other kinds of business as provided in Article 4769 and Article 7064a, Revised Civil Statutes of Texas, 1925.

SECTION 24. Section 2 of Article 9.05, Insurance Code, is repealed.

SECTION 25. The initial membership of the board of directors of the Texas Title Insurance Guaranty Association created by Section 14, Article 9.48, Insurance Code, shall consist of the four members of the Texas Title Advisory Association serving immediately before this Act takes effect, two members chosen by the State Board of Insurance from employees or officers of the agents and one member who is a public representative. The terms of the four members who served as members of the advisory association expire on the day on which their terms as advisory association members would have expired. The State Board of Insurance shall designate the terms of the additional members to expire so that the scheme for the terms of members is established as provided by Section 14, Article 9.48, Insurance Code.

SECTION 26. "Covered claim" as defined by Paragraphs C and D, Subdivision (2), Section 5, Article 9.48, Insurance Code, with respect to administrative expenses of a receivership or conservatorship estate of an impaired insurer, agent, or unauthorized insurer operating in this state, applies to all impaired insurers, agents, or unauthorized insurers which are in conservatorship or receivership on or after the effective date of this Act.

SECTION 27. The first payment of guaranty fees provided by Section 6, Article 9.48, Insurance Code, is due for the period beginning on the effective date of this Act and ending on December 31, 1987, and must be made on or before February 1, 1988.

SECTION 28. Section 5, Texas Property and Casualty Insurance Guaranty Act (Article 21.28-C, Insurance Code), is amended by adding Subdivisions (11) and (12) to read as follows:

(11) *"Unauthorized insurer" means a person or insurer that has engaged in activities prohibited by Section 3, Article 1.14-1 of this code.*

(12) *"Nonmember of the association" includes farm mutual insurance companies, mortgage guaranty insurance companies, Mexican casualty insurance companies, risk retention groups, and all persons and entities authorized to act as agents under this code including without limitation managing general agents, local recording agents, surplus lines agents, and agents subject to Article 21.07 of this code who participated in transactions involving lines of insurance within the scope of this Act.*

SECTION 29. Section 7, Texas Property and Casualty Insurance Guaranty Act (Article 21.28-C, Insurance Code), is amended to read as follows:

Section 7. ASSESSMENTS. Whenever the Commissioner determines that an insurer has become an impaired insurer the receiver appointed in accordance with Article 21.28 of the Insurance Code or the conservator appointed under the authority of Article 21.28-A of the Insurance Code shall promptly estimate the amount of additional funds, by lines of business, needed to supplement the assets of the impaired insurer immediately available to the receiver or the conservator for the purpose of making payment of all covered claims. The receiver or conservator shall advise the board of directors of the association of such estimates, and the board shall make available from the account maintained by the association for each line of business funds sufficient to enable the receiver or conservator to carry out an efficient program of paying the covered claims of the impaired insurer. The board shall make additional funds available as the actual need therefor arises for each impaired insurer.

When the board of directors shall determine that additional funds are needed in any of the three accounts, they shall advise the Commissioner who shall make such assessments as may be needed to produce the necessary funds. The Commissioner in determining the proportionate amount to be paid by individual insurers under an assessment shall take into consideration the lines of business written by the impaired insurer and shall assess individual insurers in proportion to the ratio that the total net direct written premium collected in the State of Texas by the insurer for such or lines of business during the next preceding year bears to the total net direct written premium collected by all insurers

(except impaired insurers) in the State of Texas for such lines of business. Assessments during a calendar year may be made up to, but not in excess of, two percent (2%) of each insurer's net direct written premium for the preceding calendar year in the lines of business for which the assessments are being made. If the maximum assessment in any calendar year does not provide an amount sufficient for payment of covered claims of impaired insurers, assessments may be made in the next and successive calendar years.

Insurers designated as impaired insurers by the Commissioner shall be exempt from assessment from and after the date of such designation and until the Commissioner determines that such insurer is no longer an impaired insurer.

It shall be the duty of each insurer to pay the amount of its assessment to the association within thirty (30) days after the Commissioner gives notice of the assessment, and assessments may be collected on behalf of the association by the conservator or receiver through suits brought for that purpose. Venue for such suits shall lie in Travis County, Texas. Either party to said action may appeal to the appellate court having jurisdiction over said cause and said appeal shall be at once returnable to said appellate court having jurisdiction over said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. Neither the receiver, the conservator, nor the association shall be required to give an appeal bond in any cause arising hereunder.

Funds advanced by the association under the provisions of this Act shall not become assets of the impaired insurer but shall be deemed a special fund loaned to the receiver or the conservator for payment of covered claims, which loan shall be repayable to the extent available from the funds of such impaired insurer, as herein provided.

Income from the investment of any of the funds of the association may be transferred to the administrative account authorized in Section 14A(1) of this article. The funds in this account may be used by the association for the purpose of meeting administrative costs and other general expenses of the association. Upon notification by the association of the amount of any additional funds needed for the administrative account the Commissioner shall assess member insurers to obtain the needed funds in the same manner as hereinbefore set out, provided, that he shall take into consideration the net direct written premium collected in the State of Texas for all lines of business covered by this article, *and provided further that no assessment for administrative expenses incurred by a supervisor or conservator appointed by the Commissioner or a receiver appointed by a court of competent jurisdiction for a nonmember of the association or unauthorized insurer operating in this state shall exceed \$1,000,000 each calendar year.*

SECTION 30. Subsection E, Section 14, Texas Property and Casualty Insurance Guaranty Act (Article 21.28-C, Insurance Code), is amended to read as follows:

E. Prevention of *Insolvencies and Impairments and Administration of Estates*. To aid in the detection and prevention of insurer *insolvencies and impairments and in the administration of receivership and conservatorship estates*:

(1) The board of directors shall ~~[upon majority vote,]~~ notify the Commissioner of any information indicating any member, *unauthorized insurer, or nonmember of the association* may be unable or potentially unable to fulfill its *contracts, policies, or contractual obligations* and may request appropriate investigation and action by the Commissioner who may, in his discretion, make such investigation and take such action as he deems appropriate. *In carrying out its duties under this Act and on written request by the Commissioner, the board of directors shall authorize expenditure of funds from the administrative account for reasonable and necessary administrative expenses incurred by a supervisor or conservator appointed by the Commissioner or a receiver appointed by a court of competent jurisdiction for a nonmember of the association or unauthorized insurer operating in this state in those instances in which the Commissioner has notified the board of directors or the board of directors has otherwise become aware that:*

(a) the nonmember of the association or unauthorized insurer has insufficient liquid assets to pay the expenses of administering the receivership or conservatorship of the nonmember of the association or unauthorized insurer;

(b) *insufficient funds are available from abandoned funds as provided by Section 8 of Article 21.28 of the Insurance Code; and*

(c) *insufficient funds are available to the State Board of Insurance from appropriations for use in meeting those administrative expenses.*

Funds spent by the association under this provision shall not become assets of the nonmember of the association or unauthorized insurer but are considered a special fund loaned to the receiver or the conservator for payment of administrative expenses, which loan is repayable to the extent available from the funds of the nonmember of the association or unauthorized insurer.

(2) The board of directors shall advise and counsel with the Commissioner upon matters relating to the solvency of insurers. The Commissioner shall call a meeting of the board of directors when he determines that an insurer is insolvent or impaired and may call a meeting of the board of directors when he determines that a danger of insolvency or impairment of an insurer exists. Such meetings shall not be open to the public and only members of the board of directors, members of the State Board of Insurance, the Commissioner, and persons authorized by the Commissioner shall attend such meetings. The board of directors shall, upon majority vote, notify the Commissioner of any information indicating that an insurer may be unable or potentially unable to fulfill its contractual obligations and request a meeting with the Commissioner. At such meetings the Commissioner may divulge to the board of directors any information in his possession and any records of the State Board of Insurance, including examination reports or preliminary reports from examiners relating to such insurer. The Commissioner may summon officers, directors, and employees of an insolvent or impaired insurer (or an insurer the Commissioner considers to be in danger of insolvency or impairment) to appear before the board of directors for conference or for the taking of testimony. Members of the board of directors shall not reveal information received in such meetings to anyone unless authorized by the Commissioner or the State Board of Insurance or when required as witness in court. Board members and all of such meetings and proceedings under this section shall be subject to the same standard of confidentiality as is imposed upon examiners under Article 1.18 of the Insurance Code, as amended, except that no bond shall be required of a board member.

The board of directors shall, upon request by the Commissioner, attend hearings before the Commissioner and meet with and advise the Commissioner, liquidator, or conservator appointed by the Commissioner, on matters relating to the affairs of an impaired insurer and relating to action that may be taken by the Commissioner, liquidator, or conservator appointed by the Commissioner to best protect the interests of persons holding covered contractual obligations against an impaired insurer and relating to the amount and timing of partial assessments and the marshalling of assets and the processing and handling of contractual obligations.

(3) The board of directors may, upon majority vote, make reports and recommendations to the Commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer. Such reports and recommendations shall not be considered public documents. Reports or recommendations made by the board of directors to the Commissioner, liquidator, or conservator shall not be considered public documents, and there shall be no liability on the part of and no cause of action against a member of the board of directors or the board of directors for any report, individual report, recommendation, or individual recommendation by the board of directors or members to the Commissioner, liquidator, or conservator.

(4) The board of directors may, upon majority vote, make recommendations to the Commissioner for the detection and prevention of member insurer impairments.

(5) The board of directors shall, at the conclusion of any member insurer impairment in which the association carried out its duties under this article or exercised any of its powers under this article, prepare a report on the history and causes of such impairment, based on the information available to the association, and submit a report on same to the Commissioner.

(6) Any insurer that has an officer, director, or employee serving as a member of the board of directors shall not lose the right to negotiate for and enter into contracts of

reinsurance or assumption of liability or contracts of substitution to provide for liabilities for contractual obligations with the receiver or conservator of an impaired insurer. The entering into any such contract shall not be deemed a conflict of interest.

(7) The association or any insurer assessed under this article shall be an interested party under Section 3(h) of Article 21.28 of the Insurance Code, as amended.

SECTION 31. The authority granted in Subsection E, Section 14, Texas Property and Casualty Insurance Guaranty Act (Article 21.28-C, Insurance Code), to the board of directors of the association to expend funds from the administrative account for administrative expenses incurred by a supervisor or conservator appointed by the commissioner or a receiver appointed by a court of competent jurisdiction for a nonmember of the association or unauthorized insurer operating in this state in certain instances expires on September 1, 1991.

SECTION 32. The authority granted by Subsection E, Section 14, Texas Property and Casualty Insurance Guaranty Act (Article 21.28-C, Insurance Code), to the board of directors of the association to expend funds from the administrative account in certain instances for administrative expenses incurred by a supervisor or conservator appointed by the commissioner or a receiver appointed by a court of competent jurisdiction for a nonmember of the association or unauthorized insurer operating in this state applies to all nonmembers of the association and unauthorized insurers which are in supervision, conservatorship, or receivership on or after the effective date of this Act.

SECTION 33. Sections 1, 2, 3, 4, 8, 8A, 11, 12, and 13, Article 21.28, Insurance Code, as amended, are amended to read as follows:

Sec. 1. DEFINITIONS. For the purposes of this Article:

(a) "Insurer" means and includes capital stock companies, reciprocal or interinsurance exchanges, Lloyd's associations, fraternal benefit societies, mutual and mutual assessment companies of all kinds and types, state-wide assessment associations, local mutual aids, burial associations, county and farm mutual associations, fidelity, guaranty and surety companies, trust companies organized under the provisions of Chapter 7 of Texas Insurance Code of 1951, and all other organizations, corporations, or persons transacting an insurance business, unless such insurers are by statute specifically, by naming this Article, exempted from the operation of this Article.

(b) "Delinquency proceeding" means any proceeding commenced in any court of this State against an insurer for the purpose of liquidating, rehabilitating, reorganizing or conserving such insurer.

(c) "Assets" means all property, real or personal, whether specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons, or a limited class or classes of persons. The word "assets," as used in this Article, includes all deposits and funds of a special or trust nature.

(d) "Liquidator" means the person designated by the State Board of Insurance [Commissioners] as [receiver,] liquidator[, rehabilitator, or conservator of all insurers as defined herein].

(e) "Board" means the State Board of Insurance [Commissioners] of the State of Texas, or the Commissioner of Insurance as applicable under Article 1.02 of this code.

(f) "Court," unless the same clearly appears to the contrary from the text of this article, means the court in which the delinquency proceeding is pending.

Sec. 2. GENERAL PROCEDURES. (a) Receiver Taking Charge. Whenever under the law of this State a court of competent jurisdiction finds that a receiver should take charge of the assets of an insurer domiciled in this State, the liquidator designated by the State Board of Insurance [Commissioners] as hereinafter provided for shall be such receiver. The liquidator so appointed receiver shall forthwith take possession of the assets of such insurer and deal with the same in his own name as receiver or in the name of the insurer as the court may direct.

(b) Title in Receiver. The property and assets of such insurer shall be in the custody of the court as of the date of the commencement of such delinquency proceedings. The said receiver and his successors in office shall be vested by operation of law with the title

to all of the property, contracts, and rights of action of such insurer, wherever located, as of the date of entry of the order directing possession to be taken. Such title of the receiver shall relate back to the date of the commencement of the delinquency proceedings unless the court shall otherwise provide. The filing or recording of such an order in any record office of the State shall impart the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly filed or recorded by such insurer.

(c) Rights Fixed. The rights and liabilities of any such insurer and of its creditors, policyholders, members, officers, directors, stockholders, agents, and all other persons interested in its estate, shall, unless otherwise directed by the court, be fixed as of the date of the commencement of the delinquency proceedings, subject, however, to the provisions of Section 3 with respect to the rights of claimants holding *unliquidated or undetermined claims or demands* [~~contingent claims~~], and as otherwise expressly provided in this Article.

(d) Bonds. The receiver shall be responsible, on his official bond hereinafter provided for, for all assets coming into his possession. The court may require an additional bond, or bonds, from the said receiver, and, if deemed desirable for the protection of the assets, may require a bond, or bonds, of any special deputy liquidator, or other assistant or employee appointed by or under the authority of this Article.

(e) Conducting of Business. Upon taking possession of the assets of a delinquent insurer the receiver shall, subject to the direction of the court, immediately proceed to conduct the business of the insurer, or to take such steps as may be necessary to conserve the assets and protect the rights of policyholders and claimants for the purpose of liquidating, rehabilitating, reinsuring, reorganizing or conserving the affairs of the insurer.

(f) Inventory. An inventory in duplicate of the insurer's assets shall be prepared forthwith by the receiver, one of which shall be filed in the office of the Board and one in the office of the clerk of the court having jurisdiction, which inventories shall be open to inspection.

(g) Disposal of Property; Settling Claims. The receiver may, subject to the approval of the court, (1) sell or otherwise dispose of the real and personal property, or any part thereof, of an insurer against whom a proceeding has been brought under this Article, and (2) sell or compound all doubtful or uncollectible debts, or claims owed by or owing to such insurer, including claims based upon an assessment levied against a member of a mutual insurer, reciprocal exchange, or an underwriter at Lloyds. Whenever the amount of any such debt or claim owed by or owing to such insurer or the value of any item of property of the insurer does not exceed *One Thousand Dollars (\$1,000)* [~~Five Hundred Dollars (\$500)~~], exclusive of interest, the receiver may compromise or compound such debt or claim or sell such property upon such terms as he may deem for the best interests of said insurer without obtaining the approval of the court. The receiver may, subject to the approval of the court, sell or agree to sell, or offer to sell, any assets of such an insurer to such of its creditors who may desire to participate in the purchase thereof, to be paid for, in all or in part, out of dividends payable to such creditors, and, upon the application of the receiver, the court may designate representatives to act for such creditors in the purchase, holding and/or management of such assets, and the receiver may, subject to the approval of the court, advance the expenses of such representatives against the security of the claims of such creditors.

(h) Depositories. All money collected by the receiver shall be forthwith deposited in any bank, [~~or~~] banks, or *savings and loan association or associations* in this State which are members of the Federal Deposit Insurance Corporation or *Federal Savings and Loan Insurance Corporation*. The funds collected or realized from the assets of each insurer shall be kept separate and apart from all other funds. Whenever any account in any such bank or *savings and loan association* exceeds the maximum amount insured by said Federal Deposit Insurance Corporation or *Federal Savings and Loan Insurance Corporation*, the receiver is hereby authorized and directed to make such contracts and require such security as it may deem proper for the safeguarding of such deposit upon approval of the court [~~Board~~].

(i) *Venue. Exclusive venue of delinquency proceedings shall be in Travis County, Texas.*

Sec. 3. CLAIMS. (a) Time for Filing. Where a liquidation, rehabilitation, or conservation order has been entered in a proceeding against an insurer under this Article, all persons who may have claims against such insurer shall present proof of the same to the receiver at a place specified by him within a period of time to be specified by the court, in no event, however, less than ninety (90) days nor more than one (1) year after the date of the entry of the order specifying such time. The receiver shall notify all persons who may have claims against such insurer as disclosed by its books and records, to present proof of the same to him within the time as fixed. The last day for the filing of proofs of claim shall be specified in the notice. Such notice shall be given in a manner determined by the court.

(b) Late Filing. Proofs of claims may be filed subsequent to the date specified but in no event later than one (1) year after the entry of the court's order specifying the time for filing claims. Claims filed subsequent to the date specified in the court's order, but prior to the expiration of one (1) year after the entry of such order, may participate only in future dividends. Claims which are not filed within the expiration of such one-year period shall not participate in any distribution of the assets by the receiver.

(c) Proof Necessary. A proof of claim shall consist of a written statement under oath signed by the claimant, setting forth the claim, the consideration therefor, and whether any, and if so, what securities are held therefor, and any right of priority of payment or other specific rights asserted by the claimant, and whether any, and if so, what payments have been made thereon, and such other matters as may be required by the court, and that the sum claimed is justly owing from the insurer to the claimant. *A proof of claim shall be in the form designated by the receiver.* Whenever a claim is founded upon an instrument in writing, such instrument, unless lost or destroyed, shall be filed with the proof of claim. After the filing of such instrument, the receiver may in his discretion permit the claimant to substitute a true copy of such instrument, until the final disposition of the claim. If such instrument is lost or destroyed, a statement of such fact and of the circumstances of such loss or destruction shall be filed under oath with the claim. *It is proper for the receiver to accept a single proof of claim from each properly authorized insurance guaranty association combining all claims and related administrative expenses assigned to that association, and such a proof of claim shall set forth such other information as the receiver may require.*

(d) *Unliquidated or Undetermined Claims or Demands. Claims based on unliquidated or undetermined demands must be filed within the time limit provided in this Article for the filing of claims, but claims based on those demands shall not share in any distribution to claimants until those claims are definitely liquidated, determined, and allowed. Thereafter, the claims shall share ratably with the claims of the same class in all subsequent distributions. An unliquidated or undetermined claim or demand under this Article is any claim or demand on which a right of action has accrued at the date of the commencement of the delinquency proceedings, or the insurance policy cancellation date if applicable, and on which the liability has not been determined or the amount of the claim or demand liquidated. If the receiver in all other respects is in a position to close the receivership proceedings, the proposed closing is sufficient grounds for the rejection of any remaining unliquidated or undetermined claim or demand. The receiver shall notify those claimants of his intention to close the proceedings and shall allow a 60-day period for liquidation and determination of those claims. If the remaining claims are not liquidated or determined within the 60-day period, the receiver may reject the claims and the provisions of Subsection (h) of this section apply.*

~~[(d) Contingent Claims. No contingent claim shall share in a distribution of the assets of an insurer in liquidation except that such claim shall be considered if properly presented, and may be allowed to share where (1) such claim becomes absolute against the insurer on or before the last day fixed for filing of proof of claims against the assets of such insurer, or (2) there is a surplus and the liquidation is thereafter conducted upon the basis that such insurer is solvent. For the purposes of this Article, "contingent~~

~~claim" means a claim for which the right of action is dependent upon the occurrence or nonoccurrence of some future event which may or may not happen.]~~

(e) Third Party Claims. Where a liquidation, rehabilitation or conservation order has been entered in a proceeding against an insurer under this Article, any person who has a cause of action against an insured of such insurer under a liability insurance policy issued by such insurer, shall have the right to file a claim with the receiver, regardless of the fact that such claim may be *unliquidated or undetermined* [~~contingent~~], and such claim may be approved (1) if it may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such insured; and (2) if such persons shall furnish suitable proof that no further valid claims against such insurer arising out of his cause of action other than those already presented can be made; and (3) if the total liability of such insurer to all claimants arising out of the same act of its insured shall be no greater than its total liability would be were it not in liquidation, rehabilitation or conservation. No judgment against an insured taken after the date of the commencement of the delinquency proceedings shall be considered in the proceedings as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default or by collusion prior to the commencement of the delinquency proceedings shall be considered as conclusive evidence in the proceeding, either of the liability of such insured to such person upon such cause of action, or of the amount of damages to which such person is therein entitled.

(f) Offsets. In all cases of mutual debts or mutual credits between the insurer and another person in connection with any claim or proceeding under this Article, such credits and debts shall be set off and the balance only shall be allowed or paid, except as provided in subsection (g).

(g) No Offsets. No offsets shall be allowed in favor of any person [~~however~~] where (1) the obligation of the insurer to such person would not at the date of the commencement of the delinquency proceedings or as otherwise provided in Section 2(c), entitle him to share as a claimant in the assets of such insurer, or (2) the obligation of the insurer to such person was purchased by or transferred to such person subsequent to the commencement of the delinquency proceedings or with a view of its being used as an offset, or (3) the obligation of such person is to pay an assessment levied against the members of a mutual insurer, or reciprocal exchange, or underwriters at Lloyds, or to pay a balance upon a subscription to the capital stock of a stock insurance corporation, or (4) the obligation of such person is as a trustee or fiduciary.

(h) Action on Claims. The receiver shall have the discretion to approve or reject any claim filed against the insurer. Objections to any claim not rejected may be made by any party interested, by filing the objections with the receiver, who shall forthwith present them to the court for determination after notice and hearing. Upon the rejection of each claim either in whole or in part, the receiver shall notify the claimant of such rejection by written notice. Action upon a claim so rejected must be brought in the court in which the delinquency proceeding is pending within three (3) months after service of notice; otherwise, the action of the receiver shall be final and not subject to review. Such action shall be de novo as if originally filed in said court and subject to the rules of procedure and appeal applicable to civil cases. *This action shall be a separate action from the delinquency proceeding, and a claimant's attempt to appeal the action of the receiver by way of intervening in the delinquency proceeding does not comply with this subsection.*

Sec. 4. ACTIONS. (a) Injunctions. Upon an application by the receiver, the receivership court may, with or without notice, issue an injunction restraining the insurer named in the order, its officers, directors, stockholders, members, trustees, agents, servants, employees, policyholders, attorneys, managers, attorneys-in-fact, associate, deputy, substitute attorneys-in-fact, and all other persons from the transaction of its business or the waste or disposition of its property, or requiring the delivery of its property and/or assets to the receiver subject to the further order of the court.

(b) Other Orders. Such court may at any time during a proceeding under this Article issue such other injunctions or orders as may be deemed necessary to prevent interference with the receiver or the proceeding, or waste of the assets of the insurer, or the

commencement or prosecution of any actions, or the obtaining of preferences, judgments, attachments, garnishments, or other liens, or the making of any levy against the insurer or against its assets or any part thereof.

(c) **No Preferences.** Any claim, judgment, lien or preference against the insurer or its receiver obtained, after the date of receivership, in derogation of the terms of any such injunction or order of the receivership court may be denied by the receiver until proof of the justness of such claim, judgment, lien, preference or demand is made before and approved by the receivership court.

(d) **Subpoenas.** *In addition to the authority granted by law to the receiver relating to the taking of depositions of witnesses in civil actions, the receiver may request the court ex parte to issue a subpoena to compel the attendance and testimony of witnesses before the receiver and the production of any books, accounts, records, papers, and correspondence or other records relating to any matter that pertains to a receivership estate, and for this purpose the receiver or his designated representative may administer oaths and affirmations, examine witnesses, and receive evidence. In his connection the court has statewide subpoena power and may compel attendance and production of records before the receiver at his offices in Austin, Texas. Any person served with a subpoena under this subsection may file a motion with the court for a protective order as provided by Rule 166b of the Texas Rules of Civil Procedure. In a case of disobedience of a subpoena, or of the contumacy of a witness appearing before the receiver or his designated representative, the receiver may invoke the aid of the court, and the court may issue an order requiring the person subpoenaed to obey the subpoena or give evidence or produce books, accounts, records, papers, and correspondence or other records respecting the matter in question. Any failure to obey such an order of the court may be punished as contempt by the court.*

Each witness who is not a party and who is required to attend before the receiver is entitled to receive:

(1) *reimbursement for travel in the same amount per mile as the mileage travel allowance for state employees for going to and returning from the place where his residence is required, if the place is more than 25 miles from the witness's place of residence; and*

(2) *a fee of not less than Ten Dollars (\$10) a day for each day or part of a day the witness is necessarily present as a witness, but in lieu of such Ten Dollar (\$10) fee, a witness will receive a fee equal to the per diem travel allowance of a state employee if the amount exceeds Ten Dollars (\$10). All disbursements made in the payment of these fees shall be included and paid in the same manner as provided for the payment of other expenses in Section 12 of this Article.*

The sheriff's or constable's fee for serving the subpoena shall be the same as those paid the sheriff or constable for similar services. Any subpoena issued under this subsection may be served, at the receiver's discretion, by the receiver, his authorized agent, a sheriff, or a constable.

(e) **Records with Third Parties.** *All officers, directors, stockholders, members, trustees, managing general agents, agents, administrators, claims adjusters, managers, attorneys-in-fact, or associate, deputy, or substitute attorneys-in-fact of the delinquent insurer shall immediately deliver to the possession of the receiver all properties, books, records, accounts, documents, and other writings of the delinquent insurer or that relate to the business of the delinquent insurer without cost to the receiver; however, if by contract or otherwise any of the properties, books, records, accounts, documents, and other writings belong to or are the property of those persons, they shall be copied, the copy delivered to the receiver, and the original retained by the owner until notification that it is no longer required in the administration of the insurer's estate or at any other time as the court, after notice and hearing, shall direct. The copies are deemed to be records of the delinquent insurer under Section 11 of this Article.*

(f) **Pending Lawsuits.** *No judgment or order rendered by any court of this State or of any other jurisdiction in any action pending by or against the delinquent insurer after*

the commencement of delinquency proceedings shall be binding upon the receiver unless the receiver shall have been made a party to such suit.

(g) [(e)] One Year Extension. The receiver shall not be required to plead to any suit in which he may be a proper party plaintiff or defendant, in any of the courts in this State until one (1) year after the date of his appointment as receiver, and the provisions of Sections 64.033, 64.052, 64.053, and 64.076, Civil Practice and Remedies Code [Articles 2310 and 2311 of the Revised Civil Statutes of Texas of 1925], as amended, shall not apply to insolvent insurance companies being administered under this Article.

(h) [(f)] New Lawsuits. The court of competent jurisdiction of the county in which the delinquency proceedings are pending under this Article shall have *exclusive* venue to hear and determine all *actions* [action] or proceedings instituted after the commencement of delinquency proceedings by or against the insurer or receiver.

Sec. 8. DISTRIBUTION OF ASSETS. (a) *Priority of Distribution of General Assets. Notwithstanding any other provision of law, the priority of distribution of general assets from the insurer's estate shall be in accordance with the order of each class as provided by this subsection. Additional subclasses may not be established within any class.*

Class 1.

(1) *All of the receiver's costs and expenses of administration, including repayment of funds advanced to the receiver from the abandoned property fund of the State Board of Insurance.*

(2) *All of the expenses of an insurance guaranty association or foreign insurance guaranty association in handling claims.*

(3) *Wages owed to employees of the insurer as provided for in Section 6 of this Article.*

(4) *Secured creditors to the extent of the value of the security as provided by Section 8(c) of this Article.*

Class 2.

(1) *All claims by policyholders, beneficiaries, insureds, and liability claims against insureds covered under insurance policies and insurance contracts issued by the insurer.*

(2) *All claims by an insurance guaranty association or a foreign insurance guaranty association that are payments of proper policyholder claims.*

Class 3.

All other claims of general creditors not falling within any other priority under this section including claims for taxes and debts due the federal government or any state or local government which are not secured claims.

Class 4.

Claims of surplus or contribution note holders, holders of debentures or holders of similar obligations and proprietary claims of shareholders, members, or other owners according to the terms of the instruments.

(b) *Dividend Payments. On direction and approval of the court and pursuant to the priorities provided by this section, the receiver may make periodic dividend payments, including payments of policyholder claims, for the purpose of facilitating the rehabilitation, liquidation, conservation, or dissolution of an insurer. The receiver at all times shall reserve sufficient assets for the payment of the expenses of administration.*

(c) *Secured Creditor.*

(1) *The owner of a secured claim against an insurer for which a receiver has been appointed in this or any other state may surrender his security and file his claim as a general creditor, or the claim may be discharged by resort to the security, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors. If the amount of the deficiency has been adjudicated in ancillary proceedings as provided in this chapter,*

or if it has been adjudicated by a court of competent jurisdiction in a proceeding in which the domiciliary receiver has had notice and an opportunity to be heard, such amount shall be conclusive; otherwise the amount shall be determined in the delinquency proceeding in the domiciliary state.

(2) The value of any security held by a secured creditor shall be determined under supervision of the court by:

(A) converting the security into money according to the terms of the agreement pursuant to which the security was delivered to the creditor; or

(B) by agreement, arbitration, compromise, or litigation between the creditor and the receiver. ~~[Payments to Creditors. Under the direction of the court the receiver shall make payments and dividends to the creditors.]~~

(d) ~~[(b)]~~ Interest. Interest shall not accrue on any claim subsequent to the date of the commencement of delinquency proceedings.

(e) ~~[(c)]~~ Foreign Claimants. If any claimant of another state or foreign country shall be entitled to or shall receive a dividend upon his claim out of a statutory deposit or the proceeds of any bond or other asset located in such other state or foreign country, then such claimants shall not be entitled to any further dividend from the receiver until and unless all other claimants of the same class, irrespective of residence or place of the acts or contracts upon which their claims are based, shall have received an equal dividend upon their claims; and after such equalization, such claimants shall be entitled to share in the distribution of further dividends by the receiver, along with and like all other creditors of the same class, wheresoever residing.

(f) ~~[(d)]~~ Setoff by Receiver. Upon the declaration of a dividend, the receiver shall apply the amount of such dividend against any indebtedness owed to the insurer by the person entitled to such dividend.

(g) ~~[(e)]~~ Unclaimed Funds. Unclaimed dividends on approved claims, unclaimed returned assessments, and all other unclaimed funds subject to distribution to claimants, policyholders or other persons, remaining in the receiver's hands after payment of the final dividend shall be delivered to the Board at the time the receivership is closed, or in the event a final dividend is paid less than ninety (90) days prior to the closing of the receivership, the receiver may continue the bank account or accounts of such receivership from which such funds might be paid, for a period of time not to exceed ninety (90) days from the date of the closing of said receivership, before the same are so delivered to the Board. Such funds shall be deposited by the Board in trust in a special account to be maintained with the State Treasurer.

(h) ~~[(f)]~~ Recovery by Owner. On receipt of satisfactory written and verified proof of ownership within two (2) years from the date such funds are so deposited with the State Treasurer, the Board shall certify such facts to the Comptroller of Public Accounts, who shall issue proper warrant therefor in favor of the parties respectively entitled thereto, drawn on the State Treasurer.

(i) ~~[(g)]~~ Declaration of Abandonment. After such funds have remained unclaimed for two (2) years, the Liquidator may initiate action to have them declared to be abandoned, and the property of the State Board of Insurance. Such action shall be commenced by the filing by the Liquidator, in the court of competent jurisdiction in the county in which the delinquency proceeding is, or was pending, of a notice of his intention to declare such funds to be abandoned, and that he is claiming the same as the property of the State Board of Insurance. Such action may be for all or any part of such funds accumulated in any one particular receivership. Such notice shall state the name or names of the person or persons entitled thereto, his or their last known address, and the nature or source and amount of the fund or funds. Upon the filing of such notice by the Liquidator, the court shall set a date for the hearing of the application, and shall make notation thereon of the date of such hearing, which date shall be at least twenty (20) days subsequent to the date of the filing of said notice. A copy of said notice, with the judge's notation thereon shall be posted on the courthouse door of said court for at least twenty (20) days before a hearing is had thereon. Notice of the filing of the application shall be published at least once, and at least ten (10) days prior to the date set for such hearing, in a newspaper of

general circulation in the county where the application is pending. Such notice shall be addressed to the true owners of unclaimed funds in the particular receivership involved in the application and shall state generally that a hearing shall be had on the date specified for the purpose of declaring such funds to be abandoned and the property of the State Board of Insurance. Upon the hearing on such application of the Liquidator, proof to the satisfaction of the court:

- (1) That such funds, or the checks therefor, had previously been sent by the Receiver to the last known address of the person or persons entitled thereto;
- (2) That such funds, or the checks therefor, had been returned unclaimed or that the check or checks therefor had not been cashed;
- (3) That the funds had been delivered to the Board as required by Subsection (g) [(e)] above;
- (4) That such money remained unclaimed with the Board for two (2) years; and
- (5) That notice of the filing of the application has been published as herein provided, shall be prima facie evidence of the intention of the person or persons entitled thereto to abandon the same, and that the Board is the rightful owner thereof. Upon such finding by the court, the court shall be authorized to render judgment accordingly. Upon receipt of such judgment, the Board shall certify such fact to the Comptroller of Public Accounts, who shall issue proper warrant therefor to the State Board of Insurance. The Board shall forthwith deposit such funds in accordance with the provisions of Section 2(h) of this Article, except that such funds derived through any one insurer need not be kept separate from such funds derived through any other insurer.

(j) [(h)] Use of Abandoned Funds. Such funds so deposited by the Board in accordance with Subsection (i) [(g)] above may be expended by the Liquidator, with the consent of the Board, for the purpose of paying expenses of the office of the Liquidator and/or Receiver that are not properly chargeable to any one receivership or conservatorship estate, and for the purpose of financing continued operation of any receivership or conservatorship then being administered by the Liquidator as Receiver or Conservator, when in the discretion of the Board it appears to be in the best interest of such receivership or conservatorship estate that it not be closed, and that additional administration be had thereon. Any funds so applied from this source to another receivership or conservatorship estate are to be repaid from the assets of the receivership or conservatorship estate to which they were applied before additional dividends, *including policyholder and other claims*, are paid in any such receivership, or before the conservatorship is released for continued operation.

Sec. 8A. SETTLEMENT OF CLAIMS; ABANDONED FUNDS; RE-OPENING OF RECEIVERSHIPS. Any and all assets other than cash remaining in the receiver's hands after payment of the final dividend may be conveyed, transferred or assigned to the State Insurance Liquidator and his successors in office, to be handled as a trust. The State Insurance Liquidator shall have authority to convey, transfer, and assign any assets, including causes of action, judgments, and claims, and to settle or release causes of action, judgments, claims, and liens on such terms and for such amounts as he deems for the best interest of such trust, whether such assets have heretofore or may hereafter come into his hands. From proceeds derived from any such assets the Liquidator shall defray the costs incident to the sale, settlement, release or other transaction whereby such proceeds are obtained, and deliver the remainder to the Board to be deposited by it in trust in a special account to be maintained with the State Treasurer to be handled, disposed of and used as follows:

An order directing disposition of such funds may be made by a court of competent jurisdiction of Travis County, Texas, upon application of the Liquidator, after notice and hearing. Notice shall be posted on the courthouse door of said court for at least twenty (20) days before a hearing is had on the Liquidator's application, and notice shall be published at least once, and at least ten (10) days prior to the date set for such hearing, in a newspaper of general circulation in Travis County. Such notice shall state the amount of the funds and the receivership from which they were derived. It shall be addressed to all persons having an interest, as claimant or otherwise, in the assets of the particular receivership involved in the application, and shall state generally that a hearing shall be

ad on the date specified for the purpose of determining the disposition to be made of such funds, including a declaration that such funds are abandoned and the property of the State Board of Insurance.

If the court finds that funds derived from any receivership are sufficient to justify re-opening of the receivership and payment of a dividend, then such may be ordered, but otherwise, if such funds are insufficient for that purpose, the court may declare such funds abandoned and a certified copy of such judgment will be authority for the Comptroller of Public Accounts to issue a Warrant therefor to the State Board of Insurance. The Board shall forthwith deposit such funds in accordance with the provisions of Section 2(h) of this Article, except that funds derived from one insurer need not be kept separate from funds derived through any other insurer.

Such funds may be used as provided in Section 8(j) [(h)] of this Article.

Sec. 11. EVIDENCE IN RECORDS. (a) Records Admitted. All books, records, documents and papers of any delinquent insurer received by the liquidator and held by him in the course of the delinquency proceedings, or certified copies thereof, under the hand and official seal of the Board and/or liquidator, shall be received in evidence in all cases without proof of the correctness of the same and without other proof, except the certificate of the Board and/or liquidator that the same was received from the custody of the delinquent insurer or found among its effects.

(b) Certificates. The liquidator shall have the authority to certify to the correctness of any paper, document or record of his office, including those described in (a) of this section, and to make certificates under seal of the Board and certified by the liquidator certifying to any fact contained in the papers, documents or records of the Liquidation Division of the State Board of Insurance; and the same shall be received in evidence in all cases in which the originals would be evidence.

(c) Prima-facie Evidence. Such original books, records, documents and papers, or certified copies thereof, or any part thereof, when received in evidence shall be prima-facie evidence of the facts disclosed thereby.

(d) Maintenance of Records. *The receiver may devise a method for the effective, efficient, and economical maintenance of the records of the delinquent insurer and of the liquidator's office including maintaining those records on any medium approved by the Records Management Division of the Texas State Library. A copy of an original record or any other record that is maintained on any medium approved by the Records Management Division of the Texas State Library within the scope of this section that is produced by the receiver or his authorized representative under this article shall have the same force and effect as the original record and may be used the same as the original record in any judicial or administrative proceeding in this state.*

If the need exists for the continued maintenance of any records of a delinquent insurer after the closing of the receivership proceedings, the receiver may reserve sufficient assets, including cash, to be transferred to the liquidator on closing of the receivership for the specific purpose of meeting the reasonable cost of maintaining those records.

(e) Disposition of Records. *On approval by the court, the receiver may dispose of any records of the delinquent insurer that are obsolete and unnecessary to the continued administration of the receivership proceedings.*

Sec. 12. LIQUIDATOR, ASSISTANTS, EXPENSE ACCOUNTS. (a) Liquidator, Bond. The liquidator herein named shall be appointed by ~~a majority of~~ the State Board of Insurance ~~Commissioners~~, and shall be subject to removal by ~~a majority of~~ said Board, and before entering upon the duties of said office, shall file with the Board ~~of Insurance Commissioners~~ a bond in the sum of Ten Thousand Dollars (\$10,000), payable to the Board ~~of Insurance Commissioners~~ for the benefit of injured parties, and conditioned upon the faithful performance of his duties and the proper accounting for all moneys and properties received or administered by him.

(b) Appointments, Expenses. The Board shall have the power to appoint and fix the compensation of the liquidator and of such special deputy liquidators, counsel, clerks, or assistants, as it may deem necessary. The payment of such compensation and all

expenses of liquidation shall be made by the liquidator out of funds or assets of the insurer on approval of the Board. An itemized report of such expenses, sworn to by the liquidator and approved by the Board, shall be presented to the court from time to time, which account shall be approved by the court unless objection is filed thereto within ten (10) days after the presentation of the account. The objection, if any, must be made by a party at interest and shall specify the item or items objected to and the ground of such objection. The court shall set the objection down for hearing, notifying the parties of the setting. The burden of proof shall be upon the party objecting to show that the items objected to are improper, unnecessary or excessive.

(c) Filing Reports. Said liquidator shall file reports with the Board [~~of Insurance Commissioners~~] upon its request showing the operation, receipts, expenditures, and general condition of any organization of which he may have charge at that time, and, upon request, shall file a copy of said report with the court in which said receivership proceeding is pending. He shall also file a final report of each organization which he has liquidated or handled showing all receipts and expenditures, and giving a full explanation of the same and a true statement of the disposition of all of the assets of each organization.

Sec. 13. ANCILLARY DELINQUENCY PROCEEDINGS. A [~~Whenever under the laws of this State, a receiver is to be appointed in delinquency proceedings for an insurer domiciliary in another state, a~~] court of competent jurisdiction in this State shall, on the petition of the State Board of Insurance [~~Commissioners of this State~~], appoint the liquidator herein provided as ancillary receiver in this State of an [~~such~~] insurer *domiciliary in another state or jurisdiction when under the laws of this State a receiver should be appointed*. The Board shall file such petition *on its own initiative or* [~~(a) if it finds that there are sufficient assets of such insurer located in this State to justify the appointment of an ancillary receiver, or (b)~~] if ten (10) or more persons resident in this State, having claims against such insurer, file a petition or petitions in writing with the Board, requesting the appointment of such ancillary receiver. Such ancillary receiver shall have the right to sue for and reduce to possession the assets of such insurer in this State, and shall have the same powers and be subject to the same duties with respect to such assets, as are possessed by a receiver of a domiciliary insurer under the laws of this State. *On commencement of the delinquency proceedings in this State, the ancillary receiver in this State immediately is entitled to possession and control of any special or statutory deposits of the delinquent insurer located within this State. The ancillary receiver may use those special or statutory deposits first towards the payment of expenses of the administration of the receivership proceedings then towards the payment of approved claims against the deposits.* The remaining provisions of this Article shall be applicable to the conduct of such ancillary proceedings.

SECTION 34. Article 21.28-A, Insurance Code, is amended by amending Sections 3, 4, 5, 6, and 12, and by adding Section 3A to read as follows:

Sec. 3. NOTICE TO COMPLY WITH WRITTEN REQUIREMENTS OF COMMISSIONER; NONCOMPLIANCE; TAKING CHARGE AS CONSERVATOR. If upon examination or at any other time it appears to or is the opinion of the Commissioner of Insurance that any insurance company is insolvent, or its condition is such as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance, or if such company appears to have exceeded its powers (as defined herein) or has failed to comply with the law, or if such insurance company gives its consent (as defined herein), then the Commissioner of Insurance shall upon his determination (a) notify the insurance company of his determination, and (b) furnish to the insurance company a written list of the Commissioner's requirements to abate his determination, and (c) if the Commissioner makes a further determination to supervise he shall notify the insurance company that it is under the supervision of the Commissioner of Insurance and that the Commissioner is applying and effecting the provisions of this Article. Such insurance company shall comply with the lawful requirements of the Commissioner of Insurance and if placed under supervision shall under supervision have sixty (60) days, *or another period of time designated by the Commissioner*, from the date of notice within which to comply with the requirements of the Commissioner, subject however to the provisions of this Article. *During the pendency of the supervision, the*

Commissioner may schedule a hearing relating to the insurance company in supervision with not less than ten (10) days' written notice to all parties of record on his own motion or that of any party of record. However, notice may be waived by the parties of record. If after hearing it is determined that the insurance company has failed to comply with the lawful requirements of the Commissioner, it has not been rehabilitated, it is insolvent, or it is otherwise in such a condition as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance, or if the company appears to have exceeded its powers as defined in this Article, [In the event of such insurance company's failure to comply within such time,] the Commissioner of Insurance in his discretion may continue the period of supervision or, if it is determined that supervision is inadequate to accomplish the rehabilitation of the company, acting for himself, or through a conservator appointed by the Commissioner of Insurance for that purpose, [shall immediately, after due and proper notice and hearing,] take charge as conservator of the insurance company and all of the property and effects thereof. If after hearing it is determined that the insurance company has been rehabilitated or its condition has otherwise been remedied such that the continuance of its business is no longer hazardous to the public or to holders of its policies or certificates of insurance, the Commissioner may release that insurance company from supervision. Section 15, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), does not apply to hearings held by the Commissioner or his representative under this Article.

Sec. 3A. CONFIDENTIALITY OF CERTAIN PROCEEDINGS AND RECORDS. (a) *Notwithstanding any other provision of law, hearings, orders, notices, correspondence, reports, records, and other information in the possession of the State Board of Insurance relating to the supervision or conservatorship of any insurance company are confidential except as provided by this section.*

(b) *The personnel of the State Board of Insurance have access to such proceedings or information as permitted by the Commissioner of Insurance or the State Board of Insurance.*

(c) *The provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) relating to discovery apply to the parties of record in these proceedings.*

(d) *The Commissioner of Insurance or the State Board of Insurance may open the proceedings or disclose the information to a department, agency, or instrumentality of this or another state or the United States if the Commissioner of Insurance or the State Board of Insurance determines that the disclosure is necessary or proper for the enforcement of the laws of this or another state or the United States.*

(e) *The Commissioner of Insurance or the State Board of Insurance may open the hearings or make public the orders, notices, correspondence, reports, records, or other information if the Commissioner of Insurance or the State Board of Insurance deems it in the best interest of the public or in the best interest of the insurer in supervision or conservatorship or the holders of its policies or certificates of insurance.*

(f) *An officer or employee of the State Board of Insurance is not liable for release of information without a showing that release of information was accomplished with actual malice.*

This section does not apply to information (1) if the insureds of the insurance company are not protected by Article 9.48, 21.28-C, or 21.28-D of this code or by statutes substantially similar to those Articles, or (2) on the appointment of a receiver for the insurance company by a court of competent jurisdiction.

Sec. 4. PROHIBITED ACTS DURING [SIXTY (60) DAY] PERIOD OF SUPERVISION. (a) *During the period of supervision, the Commissioner may appoint a supervisor to supervise such insurance company and may provide that the insurance company may not do any of the following things, during the period of supervision, without the prior approval of the Commissioner or his supervisor:*

- (1) *Dispose of, convey or encumber any of its assets or its business in force;*
- (2) *Withdraw any of its bank accounts;*

- (3) Lend any of its funds;
- (4) Invest any of its funds;
- (5) Transfer any of its property;
- (6) Incur any debt, obligation or liability;
- (7) Merge or consolidate with another company; ~~or~~
- (8) Enter into any new reinsurance contract or treaty; or
- (9) *Terminate, surrender, forfeit, convert, or lapse any policy or contract of insurance, except for nonpayment of premiums due, or to release, pay, or refund premium deposits, accrued cash or loan values, unearned premiums, or other reserves on any insurance policy or contract.*

(b) The Liquidator of the State Board of Insurance, or his duly appointed deputy, may be appointed to serve as the supervisor.

Sec. 5. **CONSERVATORSHIP OR LIQUIDATION.** If, after notice~~,~~ and *opportunity for [after] hearing, [at the conclusion of said sixty (60) day period, it is determined that such insurance company is insolvent, or its condition is such as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance, or if the company appears to have exceeded its powers as defined in this Article, or has failed to comply with any ~~the~~ lawful requirements of the Commissioner, or upon consent by an insurance company, and if it is determined that supervision is inadequate to accomplish the rehabilitation of the company, the Commissioner in his discretion may appoint a conservator, who shall immediately take charge of such insurance company and all of the property, books, records, and effects thereof, and conduct the business thereof, and take such steps toward the removal of the causes and conditions, which have necessitated such order, as the Commissioner may direct. During the pendency of conservatorship, the conservator shall make such reports to the Commissioner from time to time as may be required by the Commissioner, and shall be empowered to take all necessary measures to preserve, protect, and recover any assets or property of such insurance company, including claims or causes of action belonging to or which may be asserted by such insurance company, and to deal with the same in his own name as conservator, and shall be empowered to file, prosecute, and defend any suit or suits which have been filed or which may thereafter be filed by or against such insurance company which are deemed by the conservator to be necessary to protect all of the interested parties or any property affected thereby. If at the time of appointment of a conservator or at any time during the pendency of such conservatorship it appears that the interest of the policy holders or certificate holders of such insurance company can best be protected by reinsuring the same, the conservator may, with the approval of or at the direction of the Commissioner: (1) reinsure all or any part of such insurance company's policies or certificates of insurance with some solvent insurance company authorized to transact business in this state, and (2) to the extent that such insurance company in conservatorship is possessed of reserves attributable to such policies or certificates of insurance, the conservator may transfer to the reinsuring company such reserves or any portion thereof as may be required to consummate the reinsurance of such policies, and any such reserves so transferred shall not be deemed a preference of creditors. The liquidator of the State Board of Insurance, or his duly appointed deputy, may be appointed to serve as the conservator. *During the pendency of a conservatorship, the Commissioner may schedule a hearing relating to the insurance company in conservatorship with not less than ten (10) days' written notice to all parties of record on his own motion or that of any party of record; provided, however, that notice may be waived by the parties of record.* If the Commissioner of Insurance~~—however,~~ is satisfied at any time and regardless of the presence or absence of any state of supervision or conservatorship, that such insurance company is not in condition to continue business in the interest of its policy or certificate holders, ~~under the conservator as above provided,~~ the Commissioner of Insurance shall give notice to the Attorney General who shall thereupon apply to any Court in Travis County, Texas, having jurisdiction thereof for leave to file a suit in the nature of quo warranto to forfeit the charter of such insurance company or to require it to comply with the law or to satisfy the Commissioner of Insurance as to its solvency, and to satisfy the requirement that its*

condition is such as to render the continuance of its business not hazardous to the public or to the holders of its policies or certificates of insurance. It shall be in the discretion of the Commissioner of Insurance to determine *at any time* whether or not *the insurance company is placed in supervision* or he will operate the insurance company through a conservator, as provided above, or report it to the Attorney General *for the purpose of taking any remedial action including, without limitation, applying for appointment of a receiver under Article 21.28 of this code. No period of supervision or conservatorship is necessary as a prerequisite for the Attorney General to take that remedial action*[~~, as herein provided~~]. When all the policies of an insurance company are reinsured or terminated, and all of its affairs concluded, as herein provided, the Commissioner of Insurance shall report the same to the Attorney General, who shall take such action as may be necessary to effect the forfeiture or cancellation of the charter of the insurance company so reinsured and liquidated. Where the Commissioner of Insurance lends his approval to the merger, consolidation or reinsurance of all the policies of one insurance company with that of another, the same shall be reported to the Attorney General who shall proceed to effect the forfeiture or cancellation of the charter of the insurance company from which the policies were merged, consolidated or reinsured, in the same manner as is provided for the charters of companies totally reinsured or liquidated. The cost incident to the supervisor's and conservator's service shall be fixed and determined by the Commissioner of Insurance and shall be a charge against the assets and funds of the insurance company to be allowed and paid as the Commissioner of Insurance may determine.

Sec. 6. OUT OF STATE COMPANIES. This Article shall apply to insurance companies doing an insurance business but not domiciled in the State of Texas, whether authorized to do business in this state or not. In the event that the Commissioner of Insurance makes any of the findings provided for in Section 3 of this Article concerning any such insurance company or finds that any such insurance company is not possessed of the minimum surplus or capital or capital stock required by the Insurance Code of the State of Texas for similar type domestic companies, [~~or if a conservator, rehabilitator, receiver, or liquidator has been appointed in the state of domicile,~~] or if the insurance company gives its consent as defined herein, the Commissioner of Insurance shall have the same power and jurisdiction to appoint *an ancillary* [a] supervisor or *ancillary* conservator as to the assets of such out of state insurer located in this state as provided herein for domestic insurance companies. In the event that any such out of state insurance company shall fail to comply with the provisions of Section 4 of this Article with respect to any of its assets or policies located within this state during any [~~sixty (60) day~~] period of supervision, such act or violation shall constitute sufficient grounds for the immediate revocation of its certificate of authority to do business in this state and for the immediate appointment of *an ancillary* [a] conservator to take charge of its assets located within this state. *In addition, if a conservator, rehabilitator, receiver, or liquidator or his equivalent has been appointed in the state of domicile with respect to the insurance company, the Commissioner of Insurance in his discretion may immediately and without prior notice and hearing appoint an ancillary conservator for the assets, property, and books and records of the out of state insurer located in this state subject to Section 7 of this Article.* Any *ancillary* supervisor or *ancillary* conservator appointed with respect to assets, *property, and books and records* located in this state belonging to an out of state insurance company shall have all of the powers and authority provided for in Section 5 of this Article with respect to such assets, *property, and books and records* located in this state and, in addition, *any ancillary conservator so appointed* may reinsure all or any part of such insurance company's policyholders or certificate holders located within this state with some solvent insurance company authorized to transact business in this state and may transfer to the reinsuring company, as reserve funds, assets or any portion thereof in his possession as may be required to consummate the reinsurance of such policies and any of such assets transferred as reserve funds shall not be deemed a preference of creditors. *The Commissioner of Insurance, on any grounds permitting referral to the Attorney General for remedial action against a domestic insurance company, may at any time and without prior action having been taken in the state of domicile, report an out of state insurance*

company for remedial action including, without limitation, making application for appointment of a receiver under Article 21.28 of this code.

Sec. 12. OTHER LAWS; CONFLICTS; *MEETINGS BETWEEN THE COMMISSIONER AND THE SUPERVISOR OR CONSERVATOR.* (a) Other statutes authorized for use and application in conjunction with this Article are Section 14 of Article 17.25, and Articles 14.33 and 22.22 of the Insurance Code. Also authorized for use, in conjunction with this Article, in delinquency proceedings or threatened insolvencies of insurers, *are* [or] any other statutes or laws possible of application with this Act or in the procedures of this Act, or in augmentation of this Act whether or not directed as applicable by such other statute; but in the event of conflict between this Article and any other Article, the provisions of this Article shall govern. *Section 32.35, Penal Code, does not apply to the Commissioner of Insurance acting under this Article or to a supervisor or conservator appointed pursuant to this Article.*

(b) *Notwithstanding any other provision of law, the Commissioner may meet with a supervisor or conservator appointed under this Article and with the attorney or other representative of the supervisor or conservator, without the presence of any other person, at the time of any proceeding or during the pendency of any proceeding held under authority of this Article to carry out his duties under this Article or for the supervisor or conservator to carry out his duties under this Article.*

SECTION 35. Section 3, Article 21.28-C, Insurance Code, is amended to read as follows:

Sec. 3. SCOPE. This Act shall apply to all kinds of insurance, including workers' compensation insurance, written by stock and mutual fire insurance companies, casualty insurance companies and fire and casualty insurance companies licensed to do business in this State; and shall also include all kinds of insurance written by county mutual insurance companies, Lloyd's and reciprocal exchanges licensed to do business in this State; but shall not apply to insurance written by farm mutual insurance companies or title insurance companies or title insurance written by any insurer; and shall not apply to mortgage guaranty insurance companies or mortgage guaranty insurance, nor to ocean marine insurance, nor to credit insurance that insures a lender against loss due to default by a borrower in the repayment of a loan secured by a second or junior lien mortgage, nor to insurance that insures a municipal bond holder against loss due to default of a political subdivision in the repayment of a municipal bond, nor to fidelity, surety, and guaranty bonds, nor to home warranty insurance; and shall not apply to Mexican casualty insurance companies or to policies of insurance issued by Mexican casualty insurance companies; *and shall not apply to crop insurance reinsured by the Federal Crop Insurance Corporation, to flood insurance reinsured, guaranteed or conditionally assumed by the Federal Insurance Administration, to coverages issued by risk retention groups, to financial guaranty or other forms of insurance offering protection against investment risks.*

SECTION 36. Subdivisions (2) and (7), Section 5, Article 21.28-C, Insurance Code, are amended to read as follows:

(2) "Covered claim" is an unpaid claim of an insured or third party liability claimant which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this Act applies, issued or assumed (whereby an assumption certificate is issued to the insured) by an insurer licensed to do business in this State, if such insurer becomes an "impaired insurer" after the effective date of this Act and (a) the third party claimant or liability claimant or insured is a resident of this State at the time of the insured event; or (b) the property from which the claim arises is permanently located in this State. "Covered claim" shall also include seventy-five percent (75%) of unearned premiums but in no event shall a "covered claim" for unearned premiums exceed One Thousand Dollars (\$1,000). Individual "covered claims" shall be limited to One Hundred Thousand Dollars (\$100,000), except that the association shall pay the full amount of any "covered claim" arising out of a workers' compensation policy. "Covered claim" shall not include any amount due any reinsurer, insurer, insurance pool or underwriting association, as subrogation recoveries or otherwise. "Covered claim" shall not include supplementary payment obligations, including but not limited to adjustment

fees and expenses, attorneys fees and expenses, court costs, interest and bond premiums, incurred prior to the determination that an insurer is an "impaired insurer" under this Act. With respect to a "covered claim" for unearned premiums, both persons who were residents of this State at the time the policy was issued and persons who are residents of this State at the time the company is found to be an "impaired insurer" shall be considered to have "covered claims" under this Act. Where the impaired insurer has ~~no assets within the State of Texas, or has~~ insufficient assets to pay the expenses of administering the receivership or conservatorship estate, that portion of the expenses of administration incurred in the processing and payment of claims against the estate shall also be a "covered claim" under this Act.

(7) "Lines of business" is policies of insurance falling within one of the three following categories:

1. *Workers'* ~~[Workmen's]~~ Compensation insurance.
2. Automobile insurance.
3. All other insurance to which this Act applies.

SECTION 37. Sections 14 and 20, Article 21.28-C, Insurance Code, are amended to read as follows:

Sec. 14. ADVISORY ASSOCIATION. A. Creation of the Association. (1) There is hereby created a nonprofit legal entity to be known as the Texas Property and Casualty Insurance Guaranty Association. All member insurers shall be and remain members of the association as a condition precedent to their authority to transact insurance in this State. The association shall perform its functions under the plan of operation established and approved as set out below and shall exercise its powers through a board of directors established as set out below. For the purposes of administration and assessment, the board shall establish four accounts:

- (a) the administrative account;
- (b) the *workers'* ~~[workmen's]~~ compensation account;
- (c) the automobile account; and
- (d) the other lines of insurance account.

(2) The association shall come under the immediate supervision of the Commissioner and shall be subject to the applicable provisions of the insurance laws of this State.

B. Board of Directors. (1) The association shall exercise its powers through a board of directors consisting of eight (8) persons who shall be *appointed* ~~[elected]~~ from employees or officers of the member insurers and who shall be chosen to give fair representation to all member insurers giving due consideration to the various categories of premium income, geographical location, and segments of the industry represented in Texas. Members of the board shall be *appointed by the State Board of Insurance to serve* ~~[elected for]~~ overlapping four-year terms, with the terms of two of the members expiring each year. The initial membership of the board of directors shall consist of the industry representatives in the Texas Property and Casualty Advisory Association as it exists under this Act prior to the time this amendment takes effect, and those members shall serve out the terms for which they were *appointed* ~~[elected]~~ to the advisory association. Their replacements shall be *appointed by the State Board of Insurance*. *All directors shall serve until their successors are appointed, except that in the case of any vacancy, the unexpired term of office shall be filled by the appointment of a director by the State Board of Insurance. If any director ceases to be an officer or employee of a member insurer during the term of office, that office becomes vacant until a successor is appointed* ~~[elected by the member insurers under procedures to be established in the plan of operation]~~. All directors shall be eligible to succeed themselves in office.

(2) Directors shall not receive any remuneration or emolument of office, but they shall be entitled to reimbursement for their actual expenses incurred in performing their duties as directors.

C. Powers and Duties of Association. In addition to the powers and duties enumerated in other sections of this article, the association:

(1) May render assistance and advice to the Commissioner, upon his request, concerning rehabilitation, payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired insurer;

(2) Shall have the standing to appear before any court in this State with jurisdiction over an impaired insurer concerning which the association is or may become obligated under this Act;

(3) May enter into such contracts as are necessary or proper, including the power to borrow money, to carry out the provisions and purposes of this article;

(4) May sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments;

(5) May employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this Act;

(6) May negotiate and contract with any liquidator, rehabilitator, conservator, receiver, or ancillary receiver to carry out the powers and duties of the association; and

(7) May take such legal action as may be necessary to avoid the payment of improper claims.

D. Plan of Operation. (1)(a) The association shall submit to the Commissioner a plan of operation and any amendment thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the Commissioner.

(b) If the association fails to submit a suitable plan of operation within one hundred and eighty (180) days following the effective date of this Act, or if at any time thereafter the association fails to submit suitable amendments to the plan, the Commissioner may, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this Act. Such rules shall continue in force until modified by the Commissioner or superseded by a plan submitted by the association and approved by the Commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall, in addition to requirements enumerated elsewhere in this Act:

(a) establish procedures for handling the assets of the association;

(b) establish the amount and method of reimbursing members of the board of directors under this section;

(c) establish regular places and times for meetings of the board of directors;

(d) establish procedures for records to be kept of all financial transactions of the association, its agents and the board of directors;

(e) establish any additional procedures for assessments under Section 7 of this article; and

(f) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

E. Prevention of Impairments. To aid in the detection and prevention of insurer impairments:

(1) The board of directors shall ~~upon majority vote,~~ notify the Commissioner of any information indicating any member insurer may be unable or potentially unable to fulfill its contractual obligations and may request appropriate investigation and action by the Commissioner who may, in his discretion, make such investigation and take such action as he deems appropriate.

(2) The board of directors shall advise and counsel with the Commissioner upon matters relating to the solvency of insurers. The Commissioner shall call a meeting of the board of directors when he determines that an insurer is insolvent or impaired and may call a meeting of the board of directors when he determines that a danger of

insolvency or impairment of an insurer exists. Such meetings shall not be open to the public and only members of the board of directors, members of the State Board of Insurance, the Commissioner, and persons authorized by the Commissioner shall attend such meetings. The board of directors shall ~~upon majority vote,~~ notify the Commissioner of any information indicating that an insurer may be unable or potentially unable to fulfill its contractual obligations and request a meeting with the Commissioner. At such meetings the Commissioner may divulge to the board of directors any information in his possession and any records of the State Board of Insurance, including examination reports or preliminary reports from examiners relating to such insurer. The Commissioner may summon officers, directors, and employees of an insolvent or impaired insurer (or an insurer the Commissioner considers to be in danger of insolvency or impairment) to appear before the board of directors for conference or for the taking of testimony. Members of the board of directors shall not reveal information received in such meetings to anyone unless authorized by the Commissioner or the State Board of Insurance or when required as witness in court. Board members and all of such meetings and proceedings under this section shall be subject to the same standard of confidentiality as is imposed upon examiners under Article 1.18 of the Insurance Code, as amended, except that no bond shall be required of a board member.

The board of directors shall, upon request by the Commissioner, attend hearings before the Commissioner and meet with and advise the Commissioner, liquidator, or conservator appointed by the Commissioner, on matters relating to the affairs of an impaired insurer and relating to action that may be taken by the Commissioner, liquidator, or conservator appointed by the Commissioner to best protect the interests of persons holding covered contractual obligations against an impaired insurer and relating to the amount and timing of partial assessments and the marshalling of assets and the processing and handling of contractual obligations.

(3) The board of directors may ~~upon majority vote,~~ make reports and recommendations to the Commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer. Such reports and recommendations shall not be considered public documents. Reports or recommendations made by the board of directors to the Commissioner, liquidator, or conservator shall not be considered public documents, and there shall be no liability on the part of and no cause of action against a member of the board of directors or the board of directors for any report, individual report, recommendation, or individual recommendation by the board of directors or members to the Commissioner, liquidator, or conservator.

(4) The board of directors may ~~upon majority vote,~~ make recommendations to the Commissioner for the detection and prevention of member insurer impairments.

(5) The board of directors shall, at the conclusion of any member insurer impairment in which the association carried out its duties under this article or exercised any of its powers under this article, prepare a report on the history and causes of such impairment, based on the information available to the association, and submit a report on same to the Commissioner.

(6) Any insurer that has an officer, director, or employee serving as a member of the board of directors shall not lose the right to negotiate for and enter into contracts of reinsurance or assumption of liability or contracts of substitution to provide for liabilities for contractual obligations with the receiver or conservator of an impaired insurer. The entering into any such contract shall not be deemed a conflict of interest.

(7) The association or any insurer assessed under this article shall be an interested party under Section 3(h) of Article 21.28 of the Insurance Code, as amended.

Sec. 20. CONTROL OVER CONFLICTS. The provisions of this Act and the powers and functions authorized by this Act are to be exercised to the end that its purposes are accomplished. This Act is cumulative of existing laws, but in the event of conflict between this Act and ~~any~~ other law relating to the subject matter of this Act or its application, the provisions of this Act shall control, *except Articles 21.28 and 21.28-A of this code always prevail over the provisions of this Act.*

SECTION 38. Section 3, Article 21.28-D, Insurance Code, is amended to read as follows:

Sec. 3. SCOPE. (1) This Act shall apply:

(a) to direct life insurance policies, accident insurance policies, health insurance policies, annuity contracts *including unallocated annuity contracts except those specifically excluded in this Act*, and contracts supplemental to life, accident or health insurance policies, group hospital service contracts and annuity contracts issued by any domestic member insurer and all such policies and contracts issued by a foreign or alien member insurer and *all of those insurance policies and annuity contracts and all other insurance coverages written by mutual assessment corporations, local mutual aid associations, local mutual burial associations, statewide mutual assessment companies, and stipulated premium insurance companies licensed to do business in this state; and*

(b) *with respect to such policies and contracts:*

(i) *to those persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees of the persons covered under Paragraph (ii) or (iii); and*

(ii) *to those persons who are owners of or certificate holders under those policies or contracts and who are [or] residents of this state at the time such insurer becomes an impaired insurer as defined in this Act; or*

(iii) *to those persons who are not residents of this state at that time but who meet all of the following conditions:*

(A) *the policies or contracts are issued by insurers domiciled in this state;*

(B) *at the time the policies or contracts were issued, the persons were residents of this state;*

(C) *the insurers did not hold a license or certificate of authority in the states in which the persons reside at the time a delinquency proceeding as defined by Article 21.28 of this code is commenced against those insurers;*

(D) *the other states have associations similar to the association created by this Act; and*

(E) *the persons are not eligible for coverage by those associations in the other state.*

(2) This Act shall not apply to:

(a) Any such policies or contracts, or any part of such policies or contracts, under which the risk is borne by the policyholder;

(b) Any kind of reinsurance contract or agreement between insurers, the terms of which do not create a direct liability of the assuming insurer, or the terms of which do not require the creation of a direct liability to the policyholder through issuance of an assumption certificate, or other written instrument;

(c) Any kind of insurance or annuities, the benefits of which are exclusively payable or determined by a separate account required by the terms of such insurance policy to be maintained by the insurer or by a separate entity;

(d) Any such policies or contracts issued by a foreign or alien insurer on nonresidents of this state at the time such insurer becomes an impaired insurer as defined in this Act;

(e) Any such policy or contracts of a foreign or alien insurer whose domiciliary jurisdiction or state of entry provides by statutes or regulations for residents of this state protection substantially similar to that provided by this Act for residents of other states;

(f) Any such policies or contracts issued by ~~[mutual assessment companies, local mutual aid associations, statewide mutual assessment companies, local mutual burial associations, stipulated premium insurance companies,]~~ fraternal benefit societies and assessment-as-needed companies, nor to such policies or contracts issued by insurers subject to the provisions of Chapter 360, Acts of the 62nd Legislature, Regular Session, 1971 (Article 21.28-C, Vernon's Texas Insurance Code);

(g) *Subject to Section 12 of this Act pertaining to the payment of expenses of administration, any plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees or members to the extent*

that such plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association, or similar entity under:

(i) a multiple employer welfare arrangement as defined by Section 514 of the Employee Retirement Income Security Act of 1974;

(ii) a minimum premium group insurance plan;

(iii) a stop-loss group insurance plan; or

(iv) an administrative services only contract;

(h) Any policy or contract issued in this state by a member, nonmember, or unauthorized insurer when the insurer was not licensed or did not have a certificate of authority to do insurance business in this state subject to Section 12 of this Act pertaining to the payment of expenses of administration;

(i) Any portion of a policy or contract to the extent that the rate of interest on which it is based:

(i) averaged over the period of four years prior to the date on which the association becomes obligated with respect to such policy or contract, exceeds a rate of interest determined by subtracting two percentage points from Moody's Corporate Bond Yield Average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the association became obligated; and

(ii) on and after the date on which the association becomes obligated with respect to such policy or contract, exceeds the rate of interest determined by subtracting three percentage points from Moody's Corporate Bond Yield Average as most recently available;

(j) Any portion of a policy or contract that constitutes an unallocated annuity contract issued to an employee pension benefit plan which provides fixed benefits and which is not an individual account plan;

(k) Any portion of a financial guarantee, funding agreement, or guaranteed investment contract which (1) contains no mortality guarantees and (2) is not issued to or in connection with a specific employee benefit plan or a governmental lottery.

SECTION 39. Section 5, Article 21.28-D, Insurance Code, is amended by amending Subdivisions (1), (4), and (9) and by adding Subdivisions (11), (12), (13), and (14) to read as follows:

(1) "Account" means any of the *four* [~~three~~] accounts created under Section 6 of this Act.

(4) "Contractual obligation" means any policy or contract benefit (including but not limited to death, disability, hospitalization, medical, premium deposits, advance premiums, supplemental contracts, cash surrender, loan, nonforfeiture, extended coverage, annuities, and coupon and dividend accumulations to the owner, beneficiary, assignee, certificate holder, or third-party beneficiary), arising from an insurance policy or annuity contract to which this Act applies, issued or assumed by an insurer who becomes an impaired insurer. A contractual obligation shall not include:

(a) death benefits in an amount in excess of \$300,000 or a net cash surrender or net cash withdrawal value in an amount in excess of \$100,000 in the aggregate under one or more covered policies on any one life; [~~nor shall a contractual obligation include~~]

(b) an amount in excess of \$100,000 [~~\$300,000~~] in the aggregate under one or more annuity contracts within the scope of this Act issued to the same holder of individual annuity policies or to the same annuitant or participant under group annuity policies or an amount in excess of \$5,000,000 in unallocated annuity contract benefits with respect to any one contract holder irrespective of the number of such contracts;

(c) an amount in excess of \$200,000 in the aggregate under one or more accident and health, accident, or health insurance policies on any one life;

(d) any benefits that would have been payable under any group life, accident, or health policies or contracts of the impaired insurer for claims incurred after the next renewal date under those policies or contracts or 90 days, but in no event less than 60

...s, after the date that a permanent receiver has been appointed for the insurer by a court of competent jurisdiction, whichever occurs first.

If the impaired insurer has no assets within the State of Texas, or has insufficient assets to pay the expenses of administering the receivership or conservatorship of the impaired insurer, that portion of the expenses of administration incurred in the processing and payment of claims against the impaired insurer shall also be a contractual obligation under this Act.

9) "Premiums" means direct gross insurance premiums and annuity considerations collected from persons residing or domiciled in the State of Texas on covered contracts and policies, less return premiums and considerations thereon and dividends paid or credited to policyholders on such direct business. "Premiums" do not include premiums and considerations on contracts between insurers and reinsurers nor do "premiums" include any premiums in excess of \$5,000,000 on any covered unallocated annuity contract. As used in Section 9, "premiums" are those for the calendar year preceding the determination of insolvency or impairment.

(11) "Moody's Corporate Bond Yield Average" means the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto.

(12) "Unauthorized insurer" means a person or insurer that has engaged in activities prohibited by Section 3, Article 1.14-1 of this code.

(13) "Nonmember of the association" includes, for the purposes of Section 12 of this Act, fraternal benefit societies, assessment-as-needed companies, and all persons and entities authorized to act as agents under this code who solicit policies and contracts to which this Act applies including, without limitation, legal reserve life insurance agents, and agents subject to Article 21.07 of this code and who participated in transactions involving types of insurance within the scope of this Act.

(14) "Unallocated annuity contract" means any annuity contract or group annuity certificate that is not issued to and owned by an individual person including guaranteed interest contracts and deposit administration contracts, except to the extent any annuity benefits under that contract or certificate are guaranteed to an individual person by an insurer.

SECTION 40. Subsection (1), Section 6, Article 21.28-D, Insurance Code, is amended to read as follows:

(1) There is created hereby a nonprofit legal entity to be known as the Life, Accident, Health and Hospital Service Insurance Guaranty Association. All member insurers shall remain members of the association as a condition precedent to their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under Section 10 below, and shall exercise its powers through a board of directors established under Section 7 below. For purposes of administration and assessment, the association shall establish *four* [~~three~~] accounts:

- (a) The accident, health and hospital services account;
- (b) The life insurance account; [and]
- (c) The annuity account; and
- (d) The administrative account.

SECTION 41. Subsections (1), (2), and (3), Section 9, Article 21.28-D, Insurance Code, are amended to read as follows:

(1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall determine the amount necessary and the commissioner shall assess the member insurers, separately for each account established by Section 6 of this Act, at such times and for such amounts as the board of directors finds necessary. All assessments ordered by the commissioner shall be payable to the association and the board of directors shall collect the assessments after 30 days' written notice to the member insurers before payment is due.

(2) There shall be two classes of assessments, as follows:

(a) Class A assessments shall be made for the purpose of meeting administrative costs of the association, the administrative expenses properly incurred under Subsection (1) of Section 12 of this Act relating to any unauthorized insurer or nonmember of the association, and other general expenses not related to a particular insolvent or impaired insurer;

(b) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under Section 8 with regard to an insolvent or impaired insurer.

(3)(a) The amount of any Class A assessment for each account shall be determined by the board of directors taking into consideration one or more of the following: annual premium receipts, admitted assets, or insurance in force. The amount of any Class B assessment shall be divided among the separate accounts in the same proportion that the premiums from the policies covered by each account were received by such insolvent or impaired insurer from ~~an~~ all covered policies during the preceding calendar year;

(b) Class A assessments shall be allowed as a credit on the amount of premium taxes in the manner provided by Article 1.16 of this code. ~~and~~ Class B assessments against member insurers for each account shall be in the proportion that premiums received on all business by each assessed member insurer on policies covered by each account bears to such premiums received on all business by all assessed member insurers;

(c) Assessments for funds to meet the requirements of the association with respect to an insolvent or impaired insurer shall not be made until necessary to implement the purposes of this Act. Classification of assessments under Paragraph (2), above, and computation of assessments under this paragraph shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

SECTION 42. Subsections (1) and (4), Section 10, Article 21.28-D, Insurance Code, are amended to read as follows:

(1)(a) The association shall submit to the commissioner a plan of operation and any amendment thereto necessary or suitable to assure the fair, reasonable and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the *State Board of Insurance* ~~commissioner~~;

(b) If the association fails to submit a suitable plan of operation within 180 days following the effective date of this Act, or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner may, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this Act. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under Paragraph (8)(c) of Section 8 and Section 9, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of the association, or its equivalent, in two or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this paragraph shall take effect only with the approval of ~~both~~ the board of directors, ~~and~~ the commissioner, *and the court in which the delinquency proceeding, if any, is pending* and may be made only to a corporation, association, or organization which extends protection not less favorably and *effectively* ~~effective~~ than that provided by this Act.

SECTION 43. Sections 11 and 12, Article 21.28-D, Insurance Code, are amended to read as follows:

Sec. 11. DUTIES AND POWERS OF THE COMMISSIONER. In addition to the duties and powers enumerated elsewhere in this Act,

(1) The commissioner shall:

(a) notify the board of directors of the existence of an insolvent or an impaired insurer not later than three days after a determination of impairment is made or after receipt of notice of impairment, whichever is earlier. The commissioner shall within three days notify the association of a member insurer placed under supervision pursuant to Article 21.28, Insurance Code, as amended, and Chapter 281, Acts of the 60th Legislature, Regular Session, 1967 (Article 21.28-A, Vernon's Texas Insurance Code);

(b) upon request of the board of directors provide the association with a statement of the premiums for each member insurer;

~~[(c) when an impairment is declared and the amount of the impairment is determined, serve a demand upon the insolvent or impaired insurer to make good the impairment within a reasonable time. Notice to such insurer shall constitute notice to its shareholders, if any. The failure of such insurer to promptly comply with such demand shall not excuse the association from the performance of its powers and duties under this Act].~~

(2) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to comply with the plan of operation. As an alternative the commissioner may levy a forfeiture upon any member insurer which fails to pay an assessment when due. Such forfeiture shall not exceed five percent of the unpaid assessment per month, but no forfeiture shall be less than \$100 per month. Any forfeiture paid under this section shall be paid by the member insurer to the commissioner and by him deposited with the state treasurer for credit to the general fund of this state.

(3) Any action of the board of directors or the association may be appealed to the commissioner by any member insurer if such appeal is taken within 30 days of the action being appealed. Any final action or order of the commissioner shall be subject to appeal to the State Board of Insurance and to judicial review as provided in Sections (d) and (f), Article 1.04, Insurance Code, as amended.

Sec. 12. PREVENTION OF *INSOLVENCIES AND IMPAIRMENTS; ADMINISTRATION OF ESTATES*. To aid in the detection and prevention of insurer *insolvencies and impairments and in the administration of receivership and conservatorship estates*:

(1) The board of directors shall~~, upon majority vote,~~ notify the commissioner of any information indicating any member or *unauthorized insurer or nonmember of the association* may be unable or potentially unable to fulfill its *contracts, policies, or contractual obligations* and may request appropriate investigation and action by the commissioner who may, in his discretion, make such investigation and take such action as he deems appropriate. *In carrying out its duties under this Act, upon written request by the commissioner, the board of directors shall authorize expenditure of funds from the administrative account for reasonable and necessary administrative expenses incurred by a supervisor or conservator appointed by the commissioner or a receiver appointed by a court of competent jurisdiction for a nonmember of the association or unauthorized insurer operating in this state in those instances in which the commissioner has notified the board of directors or the board of directors has otherwise become aware that:*

(A) the nonmember of the association or unauthorized insurer has insufficient liquid assets to pay the expenses of administering the receivership or conservatorship of the nonmember of the association or unauthorized insurer;

(B) insufficient funds are available from abandoned funds as provided by Section 8, Article 21.28, of this code; and

(C) insufficient funds are available to the State Board of Insurance from appropriations for use in meeting the administrative expenses.

Funds spent by the association pursuant to this subsection do not become assets of the nonmember of the association or unauthorized insurer but are a special fund loaned to the receiver or the conservator for payment of administrative expenses, which loan shall be repayable to the extent available from the funds of such nonmember of the association or unauthorized insurer.

(2) The board of directors shall advise and counsel with the commissioner upon matters relating to the solvency of insurers. The commissioner shall call a meeting of the board of directors when he determines that an insurer is insolvent or impaired and may call a meeting of the board of directors when he determines that a danger of insolvency or impairment of an insurer exists. The board of directors shall ~~[, upon majority vote,]~~ notify the commissioner of any information indicating that an insurer may be unable or potentially unable to fulfill its contractual obligations and request a meeting with the commissioner. At such meetings the commissioner may divulge to the board of directors any information in his possession and any records of the State Board of Insurance, including examination reports or preliminary reports from examiners relating to such insurer. The commissioner may summon officers, directors and employees of an insolvent or impaired insurer (or an insurer the commissioner considers to be in danger of insolvency or impairment) to appear before the board of directors for conference or for the taking of testimony. Members of the board of directors shall not reveal information received in such meetings to anyone unless authorized by the commissioner or the State Board of Insurance or when required as witness in court. Board members and all of such meetings and proceedings under this section shall be subject to the same standard of confidentiality as is imposed upon examiners under Article 1.18 of the Insurance Code, as amended, except that no bond shall be required of a board member.

The board of directors shall, upon request by the commissioner, attend hearings before the commissioner and meet with and advise the commissioner, liquidator or conservator appointed by the commissioner, on matters relating to the affairs of an impaired insurer and relating to action that may be taken by the commissioner, liquidator or conservator appointed by the commissioner to best protect the interests of persons holding covered contractual obligations against an impaired insurer and relating to the amount and timing of partial assessments and the marshalling of assets and the processing and handling of contractual obligations.

(3) The board of directors may ~~[, upon majority vote,]~~ make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer. Such reports and recommendations shall not be considered public documents. Reports or recommendations made by the board of directors to the commissioner, liquidator or conservator shall not be considered public documents and there shall be no liability on the part of and no cause of action against a member of the board of directors or the board of directors for any report, individual report, recommendation or individual recommendation by the board of directors or members to the commissioner, liquidator or conservator.

(4) The board of directors may ~~[, upon majority vote,]~~ make recommendations to the commissioner for the detection and prevention of member insurer impairments.

(5) The board of directors shall, at the conclusion of any member insurer impairment in which the association carried out its duties under this Act or exercised any of its powers under this Act, prepare a report on the history and causes of such impairment, based on the information available to the association, and submit a report on same to the commissioner.

(6) Any insurer that has an officer, director or employee serving as a member of the board of directors shall not lose the right to negotiate for and enter into contracts of reinsurance or assumption of liability or contracts of substitution to provide for liabilities for contractual obligations with the receiver or conservator of an impaired insurer. The entering into any such contract shall not be deemed a conflict of interest.

(7) The association or any insurer assessed under this Act shall be an interested party under Section 3(h) of Article 21.28 of the Insurance Code, as amended.

SECTION 44. Subsections (2) and (3), Section 13, Article 21.28-D, Insurance Code, are amended to read as follows:

(2) For the purpose of carrying out its obligations under this Act, the association shall be deemed to be a creditor of the insolvent insurer or impaired insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to Paragraph (6) of Section 8. ~~[All assets of the insolvent insurer or impaired insurer attributable to covered policies and all assets to which covered~~

policyholders are given a right of priority shall be used to continue all covered policies and to pay all contractual obligations of such insurer as required by this Act.

~~[(3) (a) Prior to the termination of any receivership, liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders and policyowners of the insolvent insurer or impaired insurer, and any other party with a bona fide interest in making an equitable distribution of the ownership rights of such insurer. In such a determination, consideration shall be given the welfare of the policyholders of the continuing or successor insurer.]~~

(3) [(b)] No distribution to stockholders, if any, of an insolvent or impaired insurer shall be made until and unless the total amount of assessments levied by the commissioner with respect to such insurer has been fully recovered by the association.

SECTION 45. Section 17, Article 21.28-D, Insurance Code, is amended to read as follows:

Sec. 17. CONTINUING TO WRITE INSURANCE POLICIES. Companies subject to the provisions of this Act shall not be liable for assessments for contractual obligations arising from insurance policies issued *or renewed* after the effective date of and while an impaired insurer is subject to an order by the commissioner of insurance placing an impaired insurer in conservatorship unless the commissioner, in his order appointing the conservator, directs the conservator to continue the issuance *or renewal* of insurance policies, under such terms and conditions as the commissioner may prescribe. The commissioner shall furnish a copy of such order to the board of directors of the association. In the event that the commissioner, in his original order appointing the conservator, directs the conservator to continue the issuance *or renewal* of insurance policies in the impaired insurer, companies subject to the provisions of this Act shall not be liable for assessments for claims arising from insurance policies issued *or renewed* more than 90 days after the date of the commissioner's order appointing the conservator unless the commissioner, prior to the expiration of such 90 day period, determines, after public hearing, that it is in the best interests of the policyholders of the impaired insurer or in the public interest for the impaired insurer to continue the issuance *or renewal* of insurance policies. At least 10 days notice of such hearing shall be given to the board of directors of the association. The board of directors shall have the right to appear at and participate in the hearing. The conservator or his representative shall appear at such hearing and present evidence why it would be in the best interest of the policyholders of the impaired insurer to continue the issuance *or renewal* of policies. *Nothing in this section limits the liability of companies subject to this Act for assessments for claims presented after an impaired insurer is placed in receivership.*

~~[Companies subject to the provisions of this Act shall not be liable for assessments for contractual obligations arising from insurance policies issued after the effective date of and while an impaired insurer is subject to an order by a court of competent jurisdiction placing an impaired insurer in temporary or permanent receivership.]~~

SECTION 46. Article 21.28-D, Insurance Code, is amended by adding Section 20A to read as follows:

Sec. 20A. *CONFLICTS OF LAW. In the event of conflict between this Act and other law relating to the subject matter of this Act or its application, this Act controls, except that Articles 21.28 and 21.28-A of this code always prevail over this Act.*

SECTION 47. Section 2, Article 22.13, Insurance Code, is amended by adding Subsection (d) to read as follows:

(d) *Until the issued, outstanding, and stated capital of a stipulated premium company becomes \$100,000, the stipulated premium company shall not assume liability on or indemnify any one person for any risk under any health, accident, sickness, or hospitalization policy, or any combination of those policies, in an amount in excess of \$10,000.*

SECTION 48. Articles 21.28-E and 21.39C, Insurance Code, are repealed.

SECTION 49. (a) Except as provided by Subsections (c) and (e) of this section, this Act takes effect September 1, 1987.

(b) The requirement under Article 9.36A, Insurance Code, that direct operations be licensed, and the requirement under Article 9.43, Insurance Code, that escrow officers for title insurance companies be licensed, applies only to direct operations and escrow officers for title insurance companies acting in those capacities on and after January 1, 1988. Direct operations and escrow officers for title insurance companies acting in those capacities before January 1, 1988, may continue to operate in those capacities until January 1, 1988, under the law that existed before September 1, 1987, and that law is continued in effect for that purpose.

(c) Subsection (d), Section 2, Article 22.13, Insurance Code, as added by this Act, takes effect January 1, 1989.

(d) A title insurance agent or direct operation required to file a surety bond under Article 9.38, Insurance Code, is not required to be in compliance with Article 9.38, as amended by this Act, until January 1, 1988.

(e) Section 22 of this Act takes effect January 1, 1988. The State Board of Insurance shall collect the tax owed by title insurers under Article 4.10, Insurance Code, for the calendar year 1987 and any previous years for which the tax is owed as provided by that article and that article continues to apply to title insurers for that limited purpose.

SECTION 50. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and the rule is hereby suspended.

Passed the Senate on May 7, 1987, by a viva-voce vote; and that the Senate concurred in House amendments on June 1, 1987, by the following vote: Yeas 31, Nays 0.

Passed the House, with amendments, on May 30, 1987, by the following vote: Yeas 114, Nays 16, two present not voting.

Approved June 17, 1987.

Effective Sept. 1, 1987, except § 22 effective Jan. 1, 1988.