

**SUBCHAPTER B. AUDIT COVERAGES REQUIRED FOR THE RECEIVER  
AND SPECIAL DEPUTY RECEIVERS  
28 TAC §§31.101 – 31.107**

**1. INTRODUCTION.** The Texas Department of Insurance (Department) proposes the repeal of Subchapter B, §§31.101 – 31.107, concerning Audit Coverages Required for the Receiver and Special Deputy Receivers. These rules were adopted under the authority of the Insurance Code Article 21.28; this proposed repeal is necessary to implement legislative changes as a result of the enactment of revisions to the Insurance Code. The Insurance Code Article 21.28 §12(j) required the State Board of Insurance to adopt rules prescribing the audit coverage required for the receiver, special deputy receivers, and guaranty associations under specified provisions of the Insurance Code. Article 21.28 §12(j) required such rules to include provisions relating to scope, frequency, reporting requirements and costs of audits. Article 21.28 was repealed in the nonsubstantive Insurance Code revision, Acts 2005, 79th Legislature, Chapter 995, §9, effective September 1, 2005. Article 21.28 §12(j) was re-adopted as §442.451 in the nonsubstantive Insurance Code revision, Acts 2005, 79th Legislature, Chapter 727, §1, effective April 1, 2007, but §442.451 was later repealed by Acts 2007, 80th Legislature, Chapter 730, §3B.003, effective September 1, 2007.

House Bill (HB) 2157, enacted by the 79th Legislature, Regular Session, effective September 1, 2005, effectuated the Insurance Code §21A.355 which

provides for an external audit of a receiver's books, which is similar to former Insurance Code Article 21.28 §12(g). Section 21A.355 was redesignated as §443.355 in the nonsubstantive Insurance Code revision, Acts 2007, 80th Legislature, Chapter 730, §3B.004(a)(1)(H), effective September 1, 2007. The Insurance Code §443.355 provides that the receivership court may, as it deems desirable, order audits to be made of the books of the receiver and a report of each audit shall be filed with the Commissioner of Insurance (Commissioner) and with the receivership court.

Under HB 2157, the authority to appoint a special deputy was retained under the Insurance Code Chapter 21A. Chapter 21A was redesignated as Chapter 443 in the nonsubstantive Insurance Code revision, Acts 2007, 80th Legislature, Chapters 730, §3B.004(a)(1), effective September 1, 2007. The Insurance Code §443.102(a) and §443.154(a) provides that the Commissioner, in his capacity as rehabilitator or liquidator, may appoint a special deputy to act on his behalf, and the special deputy serves at his pleasure. In accordance with the Insurance Code §443.102(e) and §443.154(x), the enumeration of the powers and authority of the Commissioner as rehabilitator or liquidator in these sections may not be construed as a limitation upon the rehabilitator or liquidator, nor may it exclude in any manner the right to do other acts not specifically enumerated or otherwise provided for, to the extent necessary or appropriate.

Pursuant to the Insurance Code Chapter 443, the Commissioner, as rehabilitator or liquidator, has the inherent authority to audit a special deputy

receiver acting on his behalf. Sections 31.101 – 31.107 are not needed to administer audits of special deputy receivers, and contain conditions that can restrict the ability of the rehabilitator or liquidator to conduct effective audits. Therefore, these rules should be repealed.

**2. FISCAL NOTE.** Angel Garrett, Director of Rehabilitation and Liquidation Oversight, has determined that for each year of the first five years the proposed repeal will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

**3. PUBLIC BENEFIT/COST NOTE.** Ms. Garrett also has determined that for each year of the first five years the proposed repeal is in effect, the public benefits anticipated as a result of the proposal will be that the rehabilitator or liquidator will have increased flexibility to conduct more effective audits. There are no anticipated economic costs to persons who are required to comply with the proposed repeal. There will be no effect on small or micro businesses.

**4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESS.** The Government Code §2006.002(c) requires that if a proposed rule may have an economic impact on

small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule.

There will be no new costs to any person to comply with the repeal. There is no anticipated adverse economic effect on small or micro businesses regarding the regulatory cost of compliance with the repeal; therefore, preparation of an economic impact statement and regulatory flexibility analysis is not statutorily required.

**5. TAKINGS IMPACT STATEMENT.** The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

**6. REQUEST FOR PUBLIC COMMENT.** To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on January \_\_, 2011, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Angel Garrett, Director of Rehabilitation and Liquidation Oversight, Mail Code 305-1C,

Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

**7. STATUTORY AUTHORITY.** The repeal of these sections is proposed pursuant to the Insurance Code §36.001, which authorizes the Commissioner of Insurance to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

**8. CROSS REFERENCE TO STATUTE.** No statute is affected by this proposal.

**9. TEXT.**

**SUBCHAPTER B. AUDIT COVERAGES REQUIRED FOR THE RECEIVER  
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**§31.101. Purpose.**

**§31.102. Applicability.**

**§31.103. Nature of Audits.**

**§31.104. Scope and Frequency of Audits.**

**§31.105. Audit Reporting Requirements.**

**§31.106. Cost of Audits.**

**§31.107. Severability.**