

By: West, Royce

S.B. No. 979

A BILL TO BE ENTITLED

AN ACT

1
2 relating to nonsubstantive additions to and corrections in enacted
3 codes, to the nonsubstantive codification or disposition of various
4 laws omitted from enacted codes, and to conforming codifications
5 enacted by the 78th Legislature to other Acts of that legislature.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 ARTICLE 1. GENERAL PROVISIONS

8 SECTION 1.001. This Act is enacted as part of the state's
9 continuing statutory revision program under Chapter 323,
10 Government Code. This Act is a revision for purposes of Section 43,
11 Article III, Texas Constitution, and has the purposes of:

12 (1) codifying without substantive change or providing
13 for other appropriate disposition of various statutes that were
14 omitted from enacted codes;

15 (2) conforming codifications enacted by the 78th
16 Legislature to other Acts of that legislature that amended the laws
17 codified or added new law to subject matter codified;

18 (3) making necessary corrections to enacted
19 codifications; and

20 (4) renumbering titles, chapters, and sections of
21 codes that duplicate title, chapter, or section numbers.

22 SECTION 1.002. (a) The repeal of a statute by this Act does
23 not affect an amendment, revision, or reenactment of the statute by
24 the 79th Legislature, Regular Session, 2005. The amendment,

1 revision, or reenactment is preserved and given effect as part of
2 the code provision that revised the statute so amended, revised, or
3 reenacted.

4 (b) If any provision of this Act conflicts with a statute
5 enacted by the 79th Legislature, Regular Session, 2005, the statute
6 controls.

7 SECTION 1.003. (a) A transition or saving provision of a
8 law codified by this Act applies to the codified law to the same
9 extent as it applied to the original law.

10 (b) The repeal of a transition or saving provision by this
11 Act does not affect the application of the provision to the codified
12 law.

13 (c) In this section, "transition provision" includes any
14 temporary provision providing for a special situation in the
15 transition period between the existing law and the establishment or
16 implementation of the new law.

17 ARTICLE 2. CHANGES RELATING TO BUSINESS & COMMERCE CODE

18 SECTION 2.001. Section 35.53(a), Business & Commerce Code,
19 is amended to correct a reference to read as follows:

20 (a) This section applies to a contract only if:

21 (1) the contract is for the sale, lease, exchange, or
22 other disposition for value of goods for the price, rental, or other
23 consideration of \$50,000 or less;

24 (2) any element of the execution of the contract
25 occurred in this state and a party to the contract is:

26 (A) an individual resident of this state; or

27 (B) an association or corporation created under

1 the laws of this state or having its principal place of business in
2 this state; and

3 (3) Section 1.301 [~~1.105~~] of this code does not apply
4 to the contract.

5 SECTION 2.002. Section 35.531(e), Business & Commerce Code,
6 is amended to correct a reference to read as follows:

7 (e) Sections 1.301 [~~1.105~~] and 35.53 do not apply to a
8 contract to which this section applies. This section does not apply
9 to a contract to which Section 35.51 applies.

10 SECTION 2.003. (a) Chapter 35, Business & Commerce Code, is
11 amended to codify Chapter 405, Acts of the 78th Legislature,
12 Regular Session, 2003, by adding Subchapter K to read as follows:

13 SUBCHAPTER K. INTERNATIONAL MATCHMAKING ORGANIZATIONS

14 Sec. 35.121. DEFINITIONS. In this subchapter:

15 (1) "Basic rights information" means information
16 applicable to a noncitizen, including information about human
17 rights, immigration, and emergency assistance and resources.

18 (2) "Client" means a person who is a resident of the
19 United States and who contracts with an international matchmaking
20 organization to meet recruits.

21 (3) "Criminal history record information" means
22 criminal history record information obtained from the Department of
23 Public Safety under Subchapter F, Chapter 411, Government Code, and
24 from the Federal Bureau of Investigation under Section 411.087,
25 Government Code.

26 (4) "International matchmaking organization" means a
27 corporation, partnership, sole proprietorship, or other legal

1 entity that does business in the United States and offers to Texas
2 residents dating, matrimonial, or social referral services
3 involving recruits by:

4 (A) exchanging names, telephone numbers,
5 addresses, or statistics;

6 (B) selecting photographs; or

7 (C) providing a social environment for
8 introducing clients to recruits in a country other than the United
9 States.

10 (5) "Marital history information" means a declaration
11 of a person's current marital status, the number of times the person
12 has been married, and whether any marriage occurred as a result of
13 receiving services from an international matchmaking organization.

14 (6) "Recruit" means a person who is not a citizen or
15 resident of the United States and who is recruited by an
16 international matchmaking organization for the purpose of
17 providing dating, matrimonial, or social referral services.

18 Sec. 35.122. NOTICE OF AVAILABILITY OF CRIMINAL HISTORY,
19 MARITAL HISTORY, AND BASIC RIGHTS INFORMATION. (a) An
20 international matchmaking organization shall provide each recruit
21 with the criminal history record information and marital history
22 information of its clients and with basic rights information.

23 (b) The information under Subsection (a) must be:

24 (1) in the recruit's native language; and

25 (2) displayed in a manner that:

26 (A) separates the criminal history record
27 information, the marital history information, and the basic rights

1 information from any other information; and

2 (B) is highly noticeable.

3 Sec. 35.123. PROVIDING CRIMINAL HISTORY, MARITAL HISTORY,
4 AND BASIC RIGHTS INFORMATION. (a) An international matchmaking
5 organization shall disseminate to a recruit the criminal history
6 record information and marital history information of a client and
7 the basic rights information not later than the 30th day after the
8 date the international matchmaking organization receives the
9 criminal history record information and the marital history
10 information from the client.

11 (b) The international matchmaking organization shall
12 provide the information to the recruit in the recruit's native
13 language. The international matchmaking organization shall pay the
14 costs incurred to translate the information.

15 Sec. 35.124. OBTAINING CRIMINAL HISTORY RECORD INFORMATION
16 AND MARITAL HISTORY INFORMATION. (a) The client shall:

17 (1) obtain a copy of the person's own criminal history
18 record information;

19 (2) provide the criminal history record information to
20 the international matchmaking organization; and

21 (3) provide to the international matchmaking
22 organization the person's own marital history information.

23 (b) The international matchmaking organization shall
24 require the client to affirm that the marital history information
25 is complete and accurate and includes information regarding
26 marriages, annulments, and dissolutions that occurred in another
27 state or a foreign country.

1 (c) The international matchmaking organization may not
2 provide any further services to the client or the recruit until the
3 organization has:

4 (1) obtained the requested criminal history record
5 information and marital history information; and

6 (2) provided the information to the recruit.

7 Sec. 35.125. CIVIL PENALTY. (a) An international
8 matchmaking organization that violates this subchapter is subject
9 to a civil penalty not to exceed \$20,000 for each violation.

10 (b) In determining the amount of the civil penalty, the
11 court shall consider:

12 (1) any previous violations of this subchapter by the
13 international matchmaking organization;

14 (2) the seriousness of the violation, including the
15 nature, circumstances, extent, and gravity of the violation;

16 (3) the demonstrated good faith of the international
17 matchmaking organization; and

18 (4) the amount necessary to deter future violations.

19 (c) The attorney general or the appropriate district or
20 county attorney may bring an action under this section in the name
21 of the state in a district court of Travis County or of a county in
22 which any part of the violation occurs.

23 (d) A penalty collected under this section by the attorney
24 general or a district or county attorney shall be deposited in the
25 state treasury to the credit of the compensation to victims of crime
26 fund under Article 56.34, Code of Criminal Procedure.

27 (b) Chapter 405, Acts of the 78th Legislature, Regular

1 Session, 2003, is repealed.

2 ARTICLE 3. CHANGES RELATING TO CIVIL PRACTICE AND
3 REMEDIES CODE

4 SECTION 3.001. Section 107.001, Civil Practice and Remedies
5 Code, is amended to correct a redundant reference to read as
6 follows:

7 Sec. 107.001. GRANTS OF PERMISSION COVERED. This chapter
8 applies to resolutions granting permission to sue the state or any
9 of the agencies of government that collectively constitute the
10 government of this state, including agencies, departments,
11 bureaus, boards, commissions, offices, [~~agencies,~~] councils,
12 courts, and institutions of higher education as defined by Section
13 61.003, Education Code.

14 ARTICLE 4. CHANGES RELATED TO CODE OF
15 CRIMINAL PROCEDURE

16 SECTION 4.001. Article 2.12, Code of Criminal Procedure, as
17 amended by Chapters 235, 474, and 930, Acts of the 78th Legislature,
18 Regular Session, 2003, is reenacted and amended to read as follows:

19 Art. 2.12. WHO ARE PEACE OFFICERS. The following are peace
20 officers:

21 (1) sheriffs, their deputies, and those reserve
22 deputies who hold a permanent peace officer license issued under
23 Chapter 1701, Occupations Code;

24 (2) constables, deputy constables, and those reserve
25 deputy constables who hold a permanent peace officer license issued
26 under Chapter 1701, Occupations Code;

27 (3) marshals or police officers of an incorporated

1 city, town, or village, and those reserve municipal police officers
2 who hold a permanent peace officer license issued under Chapter
3 1701, Occupations Code;

4 (4) rangers and officers commissioned by the Public
5 Safety Commission and the Director of the Department of Public
6 Safety;

7 (5) investigators of the district attorneys', criminal
8 district attorneys', and county attorneys' offices;

9 (6) law enforcement agents of the Texas Alcoholic
10 Beverage Commission;

11 (7) each member of an arson investigating unit
12 commissioned by a city, a county, or the state;

13 (8) officers commissioned under Section 37.081,
14 Education Code, or Subchapter E, Chapter 51, Education Code;

15 (9) officers commissioned by the General Services
16 Commission;

17 (10) law enforcement officers commissioned by the
18 Parks and Wildlife Commission;

19 (11) airport police officers commissioned by a city
20 with a population of more than 1.18 million that operates an airport
21 that serves commercial air carriers;

22 (12) airport security personnel commissioned as peace
23 officers by the governing body of any political subdivision of this
24 state, other than a city described by Subdivision (11), that
25 operates an airport that serves commercial air carriers;

26 (13) municipal park and recreational patrolmen and
27 security officers;

1 (14) security officers and investigators commissioned
2 as peace officers by the comptroller;

3 (15) officers commissioned by a water control and
4 improvement district under Section 49.216, Water Code;

5 (16) officers commissioned by a board of trustees
6 under Chapter 54, Transportation Code;

7 (17) investigators commissioned by the Texas State
8 Board of Medical Examiners;

9 (18) officers commissioned by the board of managers of
10 the Dallas County Hospital District, the Tarrant County Hospital
11 District, or the Bexar County Hospital District under Section
12 281.057, Health and Safety Code;

13 (19) county park rangers commissioned under
14 Subchapter E, Chapter 351, Local Government Code;

15 (20) investigators employed by the Texas Racing
16 Commission;

17 (21) officers commissioned under Chapter 554,
18 Occupations Code;

19 (22) officers commissioned by the governing body of a
20 metropolitan rapid transit authority under Section 451.108,
21 Transportation Code, or by a regional transportation authority
22 under Section 452.110, Transportation Code;

23 (23) investigators commissioned by the attorney
24 general under Section 402.009, Government Code;

25 (24) security officers and investigators commissioned
26 as peace officers under Chapter 466, Government Code;

27 (25) an officer employed by the Texas Department of

1 Health under Section 431.2471, Health and Safety Code;

2 (26) officers appointed by an appellate court under
3 Subchapter F, Chapter 53, Government Code;

4 (27) officers commissioned by the state fire marshal
5 under Chapter 417, Government Code;

6 (28) an investigator commissioned by the commissioner
7 of insurance under Article 1.10D, Insurance Code;

8 (29) apprehension specialists commissioned by the
9 Texas Youth Commission as officers under Section 61.0931, Human
10 Resources Code;

11 (30) officers appointed by the executive director of
12 the Texas Department of Criminal Justice under Section 493.019,
13 Government Code;

14 (31) investigators commissioned by the Commission on
15 Law Enforcement Officer Standards and Education under Section
16 1701.160, Occupations Code;

17 (32) commission investigators commissioned by the
18 Texas Commission on Private Security under Section 1702.061(f),
19 Occupations Code;

20 (33) the fire marshal~~[7]~~ and any officers, inspectors,
21 or investigators commissioned by an emergency services district ~~[to~~
22 ~~assist that fire marshal]~~ under ~~[Subchapter F]~~ Chapter 775,
23 Health and Safety Code; and

24 (34) officers commissioned by the State Board of
25 Dental Examiners under Section 254.013, Occupations Code, subject
26 to the limitations imposed by that section.

27 SECTION 4.002. Article 14.03(a), Code of Criminal

1 Procedure, as amended by Chapters 460, 836, 989, and 1164, Acts of
2 the 78th Legislature, Regular Session, 2003, is reenacted and
3 amended to read as follows:

4 (a) Any peace officer may arrest, without warrant:

5 (1) persons found in suspicious places and under
6 circumstances which reasonably show that such persons have been
7 guilty of some felony, violation of Title 9, Chapter 42, Penal Code,
8 breach of the peace, or offense under Section 49.02, Penal Code, or
9 threaten, or are about to commit some offense against the laws;

10 (2) persons who the peace officer has probable cause
11 to believe have committed an assault resulting in bodily injury to
12 another person and the peace officer has probable cause to believe
13 that there is danger of further bodily injury to that person;

14 (3) persons who the peace officer has probable cause
15 to believe have committed an offense defined by Section 25.07,
16 Penal Code (violation of Protective Order), or by Section 38.112,
17 Penal Code (violation of Protective Order issued on basis of sexual
18 assault), if the offense is not committed in the presence of the
19 peace officer; ~~or~~

20 (4) persons who the peace officer has probable cause
21 to believe have committed an assault resulting in bodily injury to a
22 member of the person's family or household; ~~or~~

23 (5) persons who the peace officer has probable cause
24 to believe have prevented or interfered with an individual's
25 ability to place a telephone call in an emergency, as defined by
26 Section 42.062(d), Penal Code, if the offense is not committed in
27 the presence of the peace officer; or ~~or~~

1 (6) [~~5~~] a person who makes a statement to the peace
2 officer that would be admissible against the person under Article
3 38.21 and establishes probable cause to believe that the person has
4 committed a felony.

5 SECTION 4.003. Section 3(g), Article 37.07, Code of
6 Criminal Procedure, is amended to correct a reference to read as
7 follows:

8 (g) On timely request of the defendant, notice of intent to
9 introduce evidence under this article shall be given in the same
10 manner required by Rule 404(b), Texas Rules of [~~Criminal~~] Evidence.
11 If the attorney representing the state intends to introduce an
12 extraneous crime or bad act that has not resulted in a final
13 conviction in a court of record or a probated or suspended sentence,
14 notice of that intent is reasonable only if the notice includes the
15 date on which and the county in which the alleged crime or bad act
16 occurred and the name of the alleged victim of the crime or bad act.
17 The requirement under this subsection that the attorney
18 representing the state give notice applies only if the defendant
19 makes a timely request to the attorney representing the state for
20 the notice.

21 SECTION 4.004. Sections 2 and 3, Article 38.37, Code of
22 Criminal Procedure, are amended to correct a reference to read as
23 follows:

24 Sec. 2. Notwithstanding Rules 404 and 405, Texas Rules of
25 [~~Criminal~~] Evidence, evidence of other crimes, wrongs, or acts
26 committed by the defendant against the child who is the victim of
27 the alleged offense shall be admitted for its bearing on relevant

1 matters, including:

2 (1) the state of mind of the defendant and the child;
3 and

4 (2) the previous and subsequent relationship between
5 the defendant and the child.

6 Sec. 3. On timely request by the defendant, the state shall
7 give the defendant notice of the state's intent to introduce in the
8 case in chief evidence described by Section 2 in the same manner as
9 the state is required to give notice under Rule 404(b), Texas Rules
10 of [~~Criminal~~] Evidence.

11 SECTION 4.005. Section 8(b), Article 42.09, Code of
12 Criminal Procedure, is amended to correct a reference to read as
13 follows:

14 (b) The Texas Department of Criminal Justice shall not take
15 a defendant into custody under this article until the designated
16 officer receives the documents required by Subsections (a) and (c)
17 of this section. The designated officer shall certify under the
18 seal of the department the documents received under Subsections (a)
19 and (c) of this section. A document certified under this subsection
20 is self-authenticated for the purposes of Rules 901 and 902, Texas
21 Rules of [~~Criminal~~] Evidence.

22 SECTION 4.006. Section 2(a), Article 55.02, Code of
23 Criminal Procedure, as amended by Chapters 339 and 1236, Acts of the
24 78th Legislature, Regular Session, 2003, is reenacted to read as
25 follows:

26 (a) A person who is entitled to expunction of records and
27 files under Article 55.01(a) or a person who is eligible for

1 expunction of records and files under Article 55.01(b) may file an
2 ex parte petition for expunction in a district court for the county
3 in which:

4 (1) the petitioner was arrested; or

5 (2) the offense was alleged to have occurred.

6 SECTION 4.007. Article 56.32(a)(9), Code of Criminal
7 Procedure, as amended by Chapters 1286 and 1303, Acts of the 78th
8 Legislature, Regular Session, 2003, is reenacted and amended to
9 read as follows:

10 (9) "Pecuniary loss" means the amount of expense
11 reasonably and necessarily incurred as a result of personal injury
12 or death for:

13 (A) medical, hospital, nursing, or psychiatric
14 care or counseling, or physical therapy;

15 (B) actual loss of past earnings and anticipated
16 loss of future earnings and necessary travel expenses because of:

17 (i) a disability resulting from the
18 personal injury;

19 (ii) the receipt of medically indicated
20 services related to the disability resulting from the personal
21 injury; or

22 (iii) participation in or attendance at
23 investigative, prosecutorial, or judicial processes related to the
24 criminally injurious conduct and participation in or attendance at
25 any postconviction or postadjudication proceeding relating to
26 criminally injurious conduct;

27 (C) care of a child or dependent;

1 (D) funeral and burial expenses, including, for
2 an immediate family member or household member of the victim, the
3 necessary expenses of traveling to and attending the funeral;

4 (E) loss of support to a dependent, consistent
5 with Article 56.41(b)(5);

6 (F) reasonable and necessary costs of cleaning
7 the crime scene;

8 (G) reasonable replacement costs for clothing,
9 bedding, or property of the victim seized as evidence or rendered
10 unusable as a result of the criminal investigation;

11 (H) reasonable and necessary costs, as provided
12 by Article 56.42(d), incurred by a victim of family violence or a
13 victim of sexual assault who is assaulted in the victim's place of
14 residence for relocation and housing rental assistance payments;
15 [~~and~~]

16 (I) for an immediate family member or household
17 member of a deceased victim, bereavement leave of not more than 10
18 work days; and [~~+~~]

19 (J) [~~(I)~~] reasonable and necessary costs of
20 traveling to and from a place of execution for the purpose of
21 witnessing the execution, including one night's lodging near the
22 place at which the execution is conducted.

23 SECTION 4.008. Article 59.01(2), Code of Criminal
24 Procedure, as amended by Chapters 198, 257, and 649, Acts of the
25 78th Legislature, Regular Session, 2003, is reenacted and amended
26 to read as follows:

27 (2) "Contraband" means property of any nature,

1 including real, personal, tangible, or intangible, that is:

2 (A) used in the commission of:

3 (i) any first or second degree felony under
4 the Penal Code;

5 (ii) any felony under Section 15.031(b),
6 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30, 31, 32,
7 33, 33A, or 35, Penal Code; or

8 (iii) any felony under The Securities Act
9 (Article 581-1 et seq., Vernon's Texas Civil Statutes);

10 (B) used or intended to be used in the commission
11 of:

12 (i) any felony under Chapter 481, Health
13 and Safety Code (Texas Controlled Substances Act);

14 (ii) any felony under Chapter 483, Health
15 and Safety Code;

16 (iii) a felony under Chapter 153, Finance
17 Code;

18 (iv) any felony under Chapter 34, Penal
19 Code;

20 (v) a Class A misdemeanor under Subchapter
21 B, Chapter 365, Health and Safety Code, if the defendant has been
22 previously convicted twice of an offense under that subchapter;

23 (vi) any felony under Chapter 152, Finance
24 Code; ~~or~~

25 (vii) any felony under Chapter 31, 32, or
26 37, Penal Code, that involves the state Medicaid program, or any
27 felony under Chapter 36, Human Resources Code; or

1 (viii) [~~(vii)~~] a Class B misdemeanor under
2 Section 35.60 [~~35.58~~], Business & Commerce Code;

3 (C) the proceeds gained from the commission of a
4 felony listed in Paragraph (A) or (B) of this subdivision, a
5 misdemeanor listed in Paragraph (B)(viii) [~~(B)(vii)~~] of this
6 subdivision, or a crime of violence; or

7 (D) acquired with proceeds gained from the
8 commission of a felony listed in Paragraph (A) or (B) of this
9 subdivision, a misdemeanor listed in Paragraph (B)(viii)
10 [~~(B)(vii)~~] of this subdivision, or a crime of violence.

11 ARTICLE 5. CHANGES RELATING TO EDUCATION CODE

12 SECTION 5.001. Section 12.104(b), Education Code, as
13 amended by Chapters 374 and 1212, Acts of the 78th Legislature,
14 Regular Session, 2003, is reenacted and amended to read as follows:

15 (b) An open-enrollment charter school is subject to:

16 (1) a provision of this title establishing a criminal
17 offense; and

18 (2) a prohibition, restriction, or requirement, as
19 applicable, imposed by this title or a rule adopted under this
20 title, relating to:

21 (A) the Public Education Information Management
22 System (PEIMS) to the extent necessary to monitor compliance with
23 this subchapter as determined by the commissioner;

24 (B) criminal history records under Subchapter C,
25 Chapter 22;

26 (C) reading instruments and accelerated reading
27 instruction programs under Section 28.006;

1 (D) satisfactory performance on assessment
2 instruments and to accelerated instruction under Section 28.0211;

3 (E) high school graduation under Section 28.025;

4 (F) special education programs under Subchapter
5 A, Chapter 29;

6 (G) bilingual education under Subchapter B,
7 Chapter 29;

8 (H) prekindergarten programs under Subchapter E,
9 Chapter 29;

10 (I) extracurricular activities under Section
11 33.081;

12 (J) discipline management practices or behavior
13 management techniques under Section 37.0021;

14 (K) health and safety under Chapter 38;

15 (L) public school accountability under
16 Subchapters B, C, D, and G, Chapter 39; ~~and~~

17 (M) the requirement under Section 21.006 to
18 report an educator's misconduct; and

19 (N) intensive programs of instruction under
20 Section 28.0213.

21 SECTION 5.002. Section 21.102(a), Education Code, as
22 amended by Chapters 440 and 1232, Acts of the 78th Legislature,
23 Regular Session, 2003, is reenacted to read as follows:

24 (a) Except as provided by Section 21.202(b), a person who is
25 employed as a teacher by a school district for the first time, or
26 who has not been employed by the district for two consecutive school
27 years subsequent to August 28, 1967, shall be employed under a

1 probationary contract. A person who previously was employed as a
2 teacher by a district and, after at least a two-year lapse in
3 district employment returns to district employment, may be employed
4 under a probationary contract.

5 SECTION 5.003. Section 21.256(d), Education Code, is
6 amended to correct a reference to read as follows:

7 (d) The Texas Rules of [~~Civil~~] Evidence apply at the
8 hearing. A certified shorthand reporter shall record the hearing.

9 SECTION 5.004. Section 37.007(b), Education Code, as
10 amended by Chapters 443 and 1055, Acts of the 78th Legislature,
11 Regular Session, 2003, is reenacted and amended to read as follows:

12 (b) A student may be expelled if the student:

13 (1) engages in conduct involving a public school that
14 contains the elements of the offense of false alarm or report under
15 Section 42.06, Penal Code, or terroristic threat under Section
16 22.07, Penal Code;

17 (2) while on or within 300 feet of school property, as
18 measured from any point on the school's real property boundary
19 line, or while attending a school-sponsored or school-related
20 activity on or off of school property:

21 (A) sells, gives, or delivers to another person
22 or possesses, uses, or is under the influence of any amount of:

23 (i) marihuana or a controlled substance, as
24 defined by Chapter 481, Health and Safety Code, or by 21 U.S.C.
25 Section 801 et seq.;

26 (ii) a dangerous drug, as defined by
27 Chapter 483, Health and Safety Code; or

1 (iii) an alcoholic beverage, as defined by
2 Section 1.04, Alcoholic Beverage Code;

3 (B) engages in conduct that contains the elements
4 of an offense relating to an abusable volatile chemical under
5 Sections 485.031 through 485.034, Health and Safety Code;

6 (C) engages in conduct that contains the elements
7 of an offense under Section 22.01(a)(1), Penal Code, against a
8 school district employee or a volunteer as defined by Section
9 22.053; or

10 (D) engages in conduct that contains the elements
11 of the offense of deadly conduct under Section 22.05, Penal Code;
12 [~~or~~]

13 (3) subject to Subsection (d), while within 300 feet
14 of school property, as measured from any point on the school's real
15 property boundary line:

16 (A) engages in conduct specified by Subsection
17 (a); or

18 (B) possesses a firearm, as defined by 18 U.S.C.
19 Section 921; or

20 (4) [~~(3)~~] engages in conduct that contains the
21 elements of any offense listed in Subsection (a)(2)(A) or (C) or the
22 offense of aggravated robbery under Section 29.03, Penal Code,
23 against another student, without regard to whether the conduct
24 occurs on or off of school property or while attending a
25 school-sponsored or school-related activity on or off of school
26 property.

27 SECTION 5.005. Section 51.306(r), Education Code, as

1 amended by Chapter 71, Acts of the 78th Legislature, Regular
2 Session, 2003, is repealed to conform to the repeal of Section
3 51.306, Education Code, by Chapter 820, Acts of the 78th
4 Legislature, Regular Session, 2003.

5 SECTION 5.006. Section 53.02(14), Education Code, as added
6 by Chapters 1266 and 1310, Acts of the 78th Legislature, Regular
7 Session, 2003, is reenacted to read as follows:

8 (14) "Borrower" means any of the following entities
9 that is the recipient of a loan made under Section 53.34:

10 (A) an institution of higher education;

11 (B) a nonprofit corporation:

12 (i) incorporated by and under the exclusive
13 control of an institution of higher education; or

14 (ii) incorporated and operating for the
15 exclusive benefit of an institution of higher education and
16 authorized by the governing board of the institution to enter into a
17 transaction as a borrower under this chapter;

18 (C) an accredited primary or secondary school; or

19 (D) an accredited or authorized charter school.

20 SECTION 5.007. Section 61.077, Education Code, as amended
21 by Chapters 61, 818, and 820, Acts of the 78th Legislature, Regular
22 Session, 2003, is reenacted to read as follows:

23 Sec. 61.077. P-16 COUNCIL. (a) The P-16 Council shall
24 advise the Texas Higher Education Coordinating Board and the State
25 Board of Education in coordinating postsecondary career and
26 technology activities, career and technology teacher education
27 programs offered or proposed to be offered in the colleges and

1 universities of this state, and other relevant matters, including
2 those listed in Section 61.076.

3 (b) The council is composed of the commissioner of
4 education, the commissioner of higher education, the executive
5 director of the Texas Workforce Commission, and the executive
6 director of the State Board for Educator Certification. Existing
7 members of the council may appoint additional members as the
8 members consider necessary. The position of presiding officer
9 rotates among the members of the council in the order the members
10 are listed in this subsection, with each member serving as the
11 presiding officer for one two-year term.

12 (c) The council shall meet at least once each calendar
13 quarter and may hold other meetings as necessary at the call of the
14 presiding officer. Each member of the council or the member's
15 designee shall make a report of the council's activities at least
16 twice annually to the governing body of the member's agency or, in
17 the case of the commissioner of education, to the State Board of
18 Education.

19 (d) The purposes of this council shall include the
20 following:

21 (1) to advise the two boards on the coordination of
22 postsecondary career and technology education and the articulation
23 between postsecondary career and technology education and
24 secondary career and technology education;

25 (2) to facilitate the transfer of responsibilities for
26 the administration of postsecondary career and technology
27 education from the State Board of Education to the board in

1 accordance with Section 111(a)(I) of the Carl D. Perkins Vocational
2 Education Act, Public Law 98-524;

3 (3) to cooperate with the commissioner of higher
4 education and the State Board of Education, when it acts as the
5 State Board for Career and Technology Education, on the following:

6 (A) the transfer of federal funds to the board
7 for allotment to eligible public postsecondary institutions of
8 higher education;

9 (B) the career and technology education funding
10 for projects and institutions as determined by the board when the
11 State Board for Career and Technology Education is required by
12 federal law to endorse such determinations;

13 (C) the development and updating of the state
14 plan for career and technology education and the evaluation of
15 programs, services, and activities of postsecondary career and
16 technology education and such amendments to the state plan for
17 career and technology education as may relate to postsecondary
18 education;

19 (D) other matters related to postsecondary
20 career and technology education; and

21 (E) the coordination of curricula, instructional
22 programs, research, and other functions as appropriate, including
23 areas listed in Section 61.076, school-to-work and
24 school-to-college transition programs, and professional
25 development activities;

26 (4) to advise the Texas Workforce Investment Council
27 on educational policy issues related to workforce preparation; and

1 (5) to examine and make recommendations regarding the
2 alignment of secondary and postsecondary education:

3 (A) curricula; and

4 (B) testing and assessment.

5 (e) Subsection (d)(5) does not require the council to
6 establish curriculum or testing or assessment standards.

7 ARTICLE 5A. CHANGES RELATING TO ELECTION CODE

8 SECTION 5A.001. Section 84.032(d), Election Code, is
9 amended to correct a reference to read as follows:

10 (d) An applicant may also submit a request by appearing in
11 person and returning the ballot to be voted by mail or presenting a
12 notice received under Section 86.006(h) [~~86.006(e)~~] to:

13 (1) the early voting clerk or deputy early voting
14 clerk at any polling place that is open for early voting by personal
15 appearance; or

16 (2) the presiding election judge on election day at
17 the applicant's precinct polling place.

18 ARTICLE 6. CHANGES RELATING TO FAMILY CODE

19 SECTION 6.001. Section 45.102(a), Family Code, as amended
20 by Chapters 1003 and 1300, Acts of the 78th Legislature, Regular
21 Session, 2003, is reenacted to read as follows:

22 (a) A petition to change the name of an adult must be
23 verified and include:

24 (1) the present name and place of residence of the
25 petitioner;

26 (2) the full name requested for the petitioner;

27 (3) the reason the change in name is requested;

1 (4) whether the petitioner has been the subject of a
2 final felony conviction;

3 (5) whether the petitioner is subject to the
4 registration requirements of Chapter 62, Code of Criminal
5 Procedure; and

6 (6) a legible and complete set of the petitioner's
7 fingerprints on a fingerprint card format acceptable to the
8 Department of Public Safety and the Federal Bureau of
9 Investigation.

10 SECTION 6.002. Section 104.001, Family Code, is amended to
11 correct a reference to read as follows:

12 Sec. 104.001. RULES OF EVIDENCE. Except as otherwise
13 provided, the Texas Rules of [~~Civil~~] Evidence apply as in other
14 civil cases.

15 SECTION 6.003. Section 157.167, Family Code, as amended by
16 Chapters 477 and 1262, Acts of the 78th Legislature, Regular
17 Session, 2003, is reenacted to read as follows:

18 Sec. 157.167. RESPONDENT TO PAY ATTORNEY'S FEES AND COSTS.
19 (a) If the court finds that the respondent has failed to make child
20 support payments, the court shall order the respondent to pay the
21 movant's reasonable attorney's fees and all court costs in addition
22 to the arrearages.

23 (b) If the court finds that the respondent has failed to
24 comply with the terms of an order providing for the possession of or
25 access to a child, the court shall order the respondent to pay the
26 movant's reasonable attorney's fees and all court costs in addition
27 to any other remedy.

1 (c) Except as provided by Subsection (d), for good cause
2 shown, the court may waive the requirement that the respondent pay
3 attorney's fees and costs if the court states the reasons
4 supporting that finding.

5 (d) If the court finds that the respondent is in contempt of
6 court for failure or refusal to pay child support and that the
7 respondent owes \$20,000 or more in child support arrearages, the
8 court may not waive the requirement that the respondent pay
9 attorney's fees and costs unless the court also finds that the
10 respondent:

- 11 (1) is involuntarily unemployed or is disabled; and
12 (2) lacks the financial resources to pay the
13 attorney's fees and costs.

14 (e) Fees and costs ordered under Subsection (a) may be
15 enforced by any means available for the enforcement of child
16 support, including contempt.

17 ARTICLE 7. CHANGES RELATING TO FINANCE CODE

18 SECTION 7.001. Sections 156.204(a) and (c), Finance Code,
19 as amended by Chapters 170 and 171, Acts of the 78th Legislature,
20 Regular Session, 2003, are reenacted and amended to read as
21 follows:

22 (a) To be eligible to be licensed as a mortgage broker a
23 person must:

- 24 (1) be an individual who is at least 18 years of age;
25 (2) be a citizen of the United States or a lawfully
26 admitted alien;
27 (3) maintain a physical office in this state and

1 designate that office in the application;

2 (4) provide the commissioner with satisfactory
3 evidence that the applicant satisfies one of the following:

4 (A) the person has received a bachelor's degree
5 in an area relating to finance, banking, or business administration
6 from an accredited college or university and has 18 months of
7 experience in the mortgage or lending field as evidenced by
8 documentary proof of full-time employment as a mortgage broker or
9 loan officer with a mortgage broker or a person exempt under Section
10 156.202;

11 (B) the person is licensed in this state as:

12 (i) an active real estate broker under
13 Chapter 1101, Occupations Code;

14 (ii) an active attorney; or

15 (iii) a local recording agent or insurance
16 solicitor or agent for a legal reserve life insurance company under
17 Chapter 21, Insurance Code, or holds an equivalent license under
18 Chapter 21, Insurance Code; or

19 (C) the person has three years of experience in
20 the mortgage lending field as evidenced by documentary proof of
21 full-time employment as a loan officer with a mortgage broker or a
22 person exempt under Section 156.202;

23 (5) provide the commissioner with satisfactory
24 evidence of:

25 (A) having passed an examination, offered by a
26 testing service or company approved by the finance commission, that
27 demonstrates knowledge of:

1 (i) the mortgage industry; and
2 (ii) the role and responsibilities of a
3 mortgage broker; and

4 (B) compliance with the financial requirements
5 of this chapter; ~~and~~

6 (6) not have been convicted of a criminal offense that
7 the commissioner determines directly relates to the occupation of a
8 mortgage broker as provided by Chapter 53, Occupations Code;

9 (7) satisfy the commissioner as to the individual's
10 good moral character, including the individual's honesty,
11 trustworthiness, and integrity; and

12 (8) not be in violation of this chapter, a rule adopted
13 under this chapter, or any order previously issued to the
14 individual by the commissioner.

15 (c) To be eligible to be licensed as a loan officer a person
16 must:

17 (1) be an individual who is at least 18 years of age;

18 (2) be a citizen of the United States or a lawfully
19 admitted alien;

20 (3) designate in the application the name of the
21 mortgage broker sponsoring the loan officer;

22 (4) provide the commissioner with satisfactory
23 evidence that the applicant satisfies one of the following:

24 (A) the person meets one of the requirements
25 described by Subsection (a)(4);

26 (B) the person has successfully completed 15
27 hours of education courses approved by the commissioner under this

1 section;

2 (C) the person has 18 months of experience as a
3 loan officer as evidenced by documentary proof of full-time
4 employment as a loan officer with a mortgage broker or a person
5 exempt under Section 156.202; or

6 (D) for applications received prior to January 1,
7 2000, the mortgage broker that will sponsor the applicant provides
8 a certification under oath that the applicant has been provided
9 necessary and appropriate education and training regarding all
10 applicable state and federal law and regulations relating to
11 mortgage loans;

12 (5) not have been convicted of a criminal offense that
13 the commissioner determines directly relates to the occupation of a
14 loan officer as provided by Chapter 53, Occupations Code;

15 (6) satisfy the commissioner as to the individual's
16 good moral character, including the individual's honesty,
17 trustworthiness, and integrity; ~~and~~

18 (7) ~~[(6)]~~ provide the commissioner with satisfactory
19 evidence of having passed an examination, offered by a testing
20 service or company approved by the finance commission, that
21 demonstrates knowledge of:

22 (A) the mortgage industry; and

23 (B) the role and responsibilities of a loan
24 officer; and ~~[-]~~

25 (8) ~~[(7)]~~ not be in violation of this chapter, a rule
26 adopted under this chapter, or any order previously issued to the
27 individual by the commissioner.

ARTICLE 8. CHANGES RELATED TO

GOVERNMENT CODE

SECTION 8.001. Section 74.024(c), Government Code, as amended by Chapters 204 and 747, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(c) The supreme court may consider the adoption of rules relating to:

(1) nonbinding time standards for pleading, discovery, motions, and dispositions;

(2) nonbinding dismissal of inactive cases from dockets, if the dismissal is warranted;

(3) attorney's accountability for and incentives to avoid delay and to meet time standards;

(4) penalties for filing frivolous motions;

(5) firm trial dates;

(6) restrictive devices on discovery;

(7) a uniform dockets policy;

(8) formalization of settlement conferences or settlement programs;

(9) standards for selection and management of nonjudicial personnel; ~~and~~

(10) transfer of related cases for consolidated or coordinated pretrial proceedings; and

(11) ~~(10)~~ the conducting of proceedings under Rule 11, Rules of Judicial Administration, by a district court outside the county in which the case is pending.

SECTION 8.002. Section 411.114(a)(3), Government Code, as

1 amended by Chapters 144 and 185, Acts of the 78th Legislature,
2 Regular Session, 2003, is reenacted to read as follows:

3 (3) The Department of Protective and Regulatory
4 Services is entitled to obtain from the department criminal history
5 record information maintained by the department that relates to a
6 person who is:

7 (A) a volunteer or applicant volunteer with a
8 local affiliate in this state of Big Brothers/Big Sisters of
9 America;

10 (B) a volunteer or applicant volunteer with the
11 "I Have a Dream/Houston" program;

12 (C) a volunteer or applicant volunteer with an
13 organization that provides court-appointed special advocates for
14 abused or neglected children;

15 (D) a person providing, at the request of the
16 child's parent, in-home care for a child who is the subject of a
17 report alleging the child has been abused or neglected;

18 (E) a volunteer or applicant volunteer with a
19 Texas chapter of the Make-a-Wish Foundation of America;

20 (F) a person providing, at the request of the
21 child's parent, in-home care for a child only if the person gives
22 written consent to the release and disclosure of the information;

23 (G) a child who is related to the caretaker, as
24 determined under Section 42.002, Human Resources Code, and who
25 resides in or is present in a child-care facility, family home, or
26 maternity home, other than a child described by Subdivision (2)(C),
27 or any other person who has unsupervised access to a child in the

1 care of a child-care facility, family home, or maternity home;

2 (H) an applicant for a position with the
3 Department of Protective and Regulatory Services, other than a
4 position described by Subdivision (2)(D), regardless of the duties
5 of the position;

6 (I) a volunteer or applicant volunteer with the
7 Department of Protective and Regulatory Services, other than a
8 registered volunteer, regardless of the duties to be performed;

9 (J) a person providing or applying to provide
10 in-home, adoptive, or foster care for children to the extent
11 necessary to comply with Subchapter B, Chapter 162, Family Code;

12 (K) a Department of Protective and Regulatory
13 Services employee, other than an employee described by Subdivision
14 (2)(H), regardless of the duties of the employee's position;

15 (L) a relative of a child in the care of the
16 Department of Protective and Regulatory Services, to the extent
17 necessary to comply with Section 162.007, Family Code;

18 (M) a person, other than the subject of a report
19 described in Subdivision (2)(I), living in the residence in which
20 the alleged victim of the report resides;

21 (N) a contractor or an employee of a contractor
22 who delivers services to a ward of the Department of Protective and
23 Regulatory Services under a contract with the estate of the ward;

24 (O) a person who seeks unsupervised visits with a
25 ward of the Department of Protective and Regulatory Services,
26 including a relative of the ward; or

27 (P) an employee, volunteer, or applicant

1 volunteer of a children's advocacy center under Subchapter E,
2 Chapter 264, Family Code, including a member of the governing board
3 of a center.

4 SECTION 8.003. Section 431.005(a), Government Code, as
5 amended by Chapters 175 and 971, Acts of the 78th Legislature,
6 Regular Session, 2003, is reenacted to read as follows:

7 (a) Except as provided by Subsection (b), a person who is an
8 officer or employee of the state, a municipality, a county, or
9 another political subdivision of the state and who is a member of
10 the state military forces or a reserve component of the armed forces
11 is entitled to a paid leave of absence from the person's duties on a
12 day on which the person is engaged in authorized training or duty
13 ordered or authorized by proper authority for not more than 15
14 workdays in a federal fiscal year. During a leave of absence the
15 person may not be subjected to loss of time, efficiency rating,
16 personal time, sick leave, or vacation time.

17 SECTION 8.0035. Section 445.011(h), Government Code, is
18 amended to correct a reference to read as follows:

19 (h) Notwithstanding other law, for purposes of Subchapter I
20 [~~H~~], Chapter 659 [~~, as added by Chapter 76, Acts of the 74th~~
21 ~~Legislature, Regular Session, 1995~~]:

22 (1) the museum is considered an eligible charitable
23 organization entitled to participate in a state employee charitable
24 campaign under Subchapter I [~~H~~], Chapter 659; and

25 (2) a state employee is entitled to authorize a
26 deduction for contributions to the museum, including contributions
27 for museum membership, as a charitable contribution under Section

1 659.132, and the museum may use the contributions for museum
2 purposes.

3 SECTION 8.004. Section 469.003, Government Code, as added
4 by Chapter 1276, Acts of the 78th Legislature, Regular Session,
5 2003, is amended by adding Subsection (d) to conform to Chapter 816,
6 Acts of the 78th Legislature, Regular Session, 2003, to read as
7 follows:

8 (d) If any portion of a building described by Subsection
9 (a)(1) is occupied solely for residential use and the remaining
10 occupied portion of the building is occupied for nonresidential
11 use, the executive director shall consider only the nonresidential
12 portion of the building in determining whether the building
13 complies with the standards and specifications adopted under this
14 chapter.

15 SECTION 8.005. Subchapter A, Chapter 469, Government Code,
16 as added by Chapter 1276, Acts of the 78th Legislature, Regular
17 Session, 2003, is amended by adding Section 469.004 to conform to
18 Chapter 816, Acts of the 78th Legislature, Regular Session, 2003,
19 to read as follows:

20 Sec. 469.004. APPLICABILITY OF OTHER LAW. Section 51.404,
21 Occupations Code, does not apply to this chapter.

22 SECTION 8.006. Sections 469.053(a), (b), (d), (e), and (f),
23 Government Code, as added by Chapter 1276, Acts of the 78th
24 Legislature, Regular Session, 2003, are amended to conform to
25 Chapter 816, Acts of the 78th Legislature, Regular Session, 2003,
26 to read as follows:

27 (a) The presiding officer of the commission, with the

1 commission's approval, shall appoint an advisory committee for the
2 architectural barriers program. The committee shall consist of
3 building professionals and persons with disabilities who are
4 familiar with architectural barrier problems and solutions. The
5 committee shall consist of at least eight members. A majority of
6 the members of the committee must be persons with disabilities.

7 (b) A committee member serves at the will of the presiding
8 officer of the commission.

9 (d) The presiding officer of the commission, with the
10 commission's approval, [~~committee~~] shall appoint [~~elect~~] a
11 committee member as presiding officer for two years.

12 (e) The committee shall meet at least twice each calendar
13 year at the call of the presiding officer or the commission
14 [~~commissioner~~].

15 (f) The committee periodically shall review the rules
16 relating to the architectural barriers program and recommend
17 changes in the rules to the commission [~~and commissioner~~].

18 SECTION 8.007. Subchapter B, Chapter 469, Government Code,
19 as added by Chapter 1276, Acts of the 78th Legislature, Regular
20 Session, 2003, is amended by adding Section 469.059 to conform to
21 Chapter 816, Acts of the 78th Legislature, Regular Session, 2003,
22 to read as follows:

23 Sec. 469.059. COMPLAINTS. (a) The department shall
24 continue to monitor a complaint made under Section 51.252,
25 Occupations Code, that alleges that a building or facility is not in
26 compliance with the standards and specifications adopted by the
27 commission under this chapter until the department determines that:

1 (1) the building or facility has been brought into
2 compliance; or

3 (2) the building or facility is not required to be
4 brought into compliance because of a rule or statute, including
5 Section 469.151.

6 (b) If the building or facility is not required to be
7 brought into compliance, the department shall, on final disposition
8 of the complaint, notify in writing the person filing the complaint
9 that the building or facility is not required to be brought into
10 compliance because of a rule or statute and provide a reference to
11 the rule or statute.

12 (c) The department, at least quarterly and for as long as
13 the department continues to monitor the complaint under Subsection
14 (a), shall notify the person filing the complaint of the status of
15 the monitoring.

16 SECTION 8.008. Section 469.203(b), Government Code, as
17 added by Chapter 1276, Acts of the 78th Legislature, Regular
18 Session, 2003, is amended to conform to Chapter 816, Acts of the
19 78th Legislature, Regular Session, 2003, to read as follows:

20 (b) To be eligible for a certificate of registration, an
21 applicant must satisfy any requirements adopted by the commission
22 [~~executive director~~] by rule, including education and examination
23 requirements.

24 SECTION 8.009. Section 469.206, Government Code, as added
25 by Chapter 1276, Acts of the 78th Legislature, Regular Session,
26 2003, is amended to conform to Chapter 816, Acts of the 78th
27 Legislature, Regular Session, 2003, to read as follows:

1 Sec. 469.206. CERTIFICATE TERM. The commission [~~executive~~
2 ~~director~~] by rule shall specify the term of a certificate of
3 registration.

4 SECTION 8.010. Section 469.208(a), Government Code, as
5 added by Chapter 1276, Acts of the 78th Legislature, Regular
6 Session, 2003, is amended to conform to Chapter 816, Acts of the
7 78th Legislature, Regular Session, 2003, to read as follows:

8 (a) A certificate holder shall perform a review or
9 inspection function of the commission in a competent and
10 professional manner and in compliance with:

11 (1) standards and specifications adopted by the
12 commission under this chapter; and

13 (2) rules adopted by the commission [~~executive~~
14 ~~director~~] under this chapter.

15 SECTION 8.011. Section 469.204(b), Government Code, as
16 added by Chapter 1276, Acts of the 78th Legislature, Regular
17 Session, 2003, is repealed to conform to Chapter 816, Acts of the
18 78th Legislature, Regular Session, 2003.

19 SECTION 8.012. Section 469.207, Government Code, as added
20 by Chapter 1276, Acts of the 78th Legislature, Regular Session,
21 2003, is repealed to conform to Section 3.007(2), Chapter 816, Acts
22 of the 78th Legislature, Regular Session, 2003.

23 SECTION 8.013. Article 3, Chapter 816, Acts of the 78th
24 Legislature, Regular Session, 2003, is repealed.

25 SECTION 8.014. Section 552.107, Government Code, is amended
26 to correct a reference to read as follows:

27 Sec. 552.107. EXCEPTION: CERTAIN LEGAL MATTERS.

1 Information is excepted from the requirements of Section 552.021
2 if:

3 (1) it is information that the attorney general or an
4 attorney of a political subdivision is prohibited from disclosing
5 because of a duty to the client under the Texas Rules of [~~Civil~~
6 Evidence[, ~~the Texas Rules of Criminal Evidence,~~] or the Texas
7 Disciplinary Rules of Professional Conduct; or

8 (2) a court by order has prohibited disclosure of the
9 information.

10 SECTION 8.015. Section 772.0031, Government Code, as
11 amended by Chapter 817, Acts of the 78th Legislature, Regular
12 Session, 2003, is repealed to conform to Section 75(1), Chapter
13 785, Acts of the 78th Legislature, Regular Session, 2003.

14 SECTION 8.016. Section 2054.268, Government Code, as added
15 by Chapter 70, Acts of the 78th Legislature, Regular Session, 2003,
16 is repealed as duplicative of Section 2054.270, Government Code.

17 SECTION 8.017. Section 2054.352(a), Government Code, is
18 reenacted and amended to conform to Chapters 553, 1216, and 1275,
19 Acts of the 78th Legislature, Regular Session, 2003, to read as
20 follows:

21 (a) The following licensing entities shall participate in
22 the system established under Section 2054.353[~~, as added by Chapter~~
23 ~~353, Acts of the 77th Legislature, Regular Session, 2001~~]:

- 24 (1) State Board of Barber Examiners;
25 (2) Texas Board of Chiropractic Examiners;
26 (3) Texas Cosmetology Commission;
27 (4) Court Reporters Certification Board;

- 1 (5) State Board of Dental Examiners;
- 2 (6) Texas Funeral Service Commission;
- 3 (7) Texas Board of Professional Land Surveying;
- 4 (8) Texas State Board of Medical Examiners;
- 5 (9) Board of Nurse Examiners;
- 6 (10) Texas Optometry Board;
- 7 (11) Texas Structural Pest Control Board;
- 8 (12) Texas State Board of Pharmacy;
- 9 (13) Executive Council of Physical Therapy and
10 Occupational Therapy Examiners;
- 11 (14) Texas State Board of Plumbing Examiners;
- 12 (15) Texas State Board of Podiatric Medical Examiners;
- 13 (16) Board of Tax Professional Examiners;
- 14 (17) Polygraph Examiners Board;
- 15 (18) Texas State Board of Examiners of Psychologists;
- 16 (19) State Board of Veterinary Medical Examiners;
- 17 (20) Texas Real Estate Commission;
- 18 (21) Texas Appraiser Licensing and Certification
19 Board;
- 20 (22) Texas Department of Licensing and Regulation;
- 21 (23) [~~(24)~~] Texas State Board of Public Accountancy;
- 22 (24) [~~(25)~~] State Board for Educator Certification;
- 23 (25) [~~(26)~~] Texas Board of Professional Engineers;
- 24 (26) [~~(27)~~] Texas Department of Health;
- 25 (27) [~~(28)~~] Texas Board of Architectural Examiners;
- 26 (28) [~~(29)~~] Texas Racing Commission;
- 27 (29) [~~(30)~~] Commission on Law Enforcement Officer

1 Standards and Education; and

2 (30) [~~(31)~~] Texas Commission on Private Security.

3 SECTION 8.018. Section 2054.352(c), Government Code, is
4 reenacted and amended to conform to Chapter 1275, Acts of the 78th
5 Legislature, Regular Session, 2003, to read as follows:

6 (c) A licensing entity other than an entity listed by
7 Subsection (a) may participate in the system established under
8 Section 2054.353 [~~2054.253, as added by Chapter 353, Acts of the~~
9 ~~77th Legislature, Regular Session, 2001~~], subject to the approval
10 of the authority.

11 SECTION 8.019. Sections 2054.354(a) and (b), Government
12 Code, are reenacted and amended to conform to Chapter 1275, Acts of
13 the 78th Legislature, Regular Session, 2003, to read as follows:

14 (a) The steering committee for electronic occupational
15 licensing transactions consists of a representative of each of the
16 following, appointed by its governing body:

17 (1) each licensing entity listed by Section
18 2054.352(a) [~~, as added by Chapter 353, Acts of the 77th~~
19 ~~Legislature, Regular Session, 2001~~]; and

20 (2) the department.

21 (b) The governing body of a licensing entity described by
22 Section 2054.352(c) [~~, as added by Chapter 353, Acts of the 77th~~
23 ~~Legislature, Regular Session, 2001~~], may appoint a representative
24 to the committee.

25 SECTION 8.0195. Sections 2177.0001 and 2177.001,
26 Government Code, are reenacted as Section 2177.001, Government
27 Code, to read as follows:

1 Sec. 2177.001. DEFINITIONS. In this chapter:

2 (1) "Department" means the Department of Information
3 Resources.

4 (2) "Electronic procurement system" means the
5 electronic system for procuring goods and services consisting of
6 the electronic procurement marketplace created under Subchapter B
7 and the electronic commerce network created under Subchapter C.

8 (3) [~~(1)~~] "Institution of higher education" has the
9 meaning assigned by Section 61.003, Education Code.

10 (4) [~~(2)~~] "Political subdivision" includes a school
11 district.

12 (5) [~~(3)~~] "State agency" has the meaning assigned by
13 Section 2054.003, except that the term does not include a
14 university system or institution of higher education or an agency
15 identified in Section 531.001(4).

16 SECTION 8.020. Section 2252.902(b), Government Code, is
17 amended to correct misspellings to read as follows:

18 (b) Except as provided [~~proved~~] by Subsection (c), a
19 covenant, promise, or agreement contained in a construction
20 contract, or in an agreement collateral to or affecting a
21 construction contract, is void and unenforceable to the extent that
22 it indemnifies a person against all or any portion of loss or
23 liability for damage that:

24 (1) is caused by or results from the sole, joint, or
25 concurrent negligence of the indemnitee, its agent, employee, or
26 another independent contractor directly responsible to the
27 indemnitee; and

1 (2) arises from:

2 (A) personal injury or death;

3 (B) property damage;

4 (C) a fine, penalty, administrative action, or
5 other action assessed by a governmental entity directly against the
6 indemnitee, its agent or employee, or an independent contractor
7 directly responsible to the indemnitee; or

8 (D) any other loss, damage, or expense that
9 arises from an occurrence described by Paragraph [~~Paragraphs~~] (A),
10 (B), or (C).

11 SECTION 8.021. Section 2306.6703, Government Code, as
12 amended by Chapters 330 and 1106, Acts of the 78th Legislature,
13 Regular Session, 2003, is reenacted and amended to read as follows:

14 Sec. 2306.6703. INELIGIBILITY FOR CONSIDERATION. (a) An
15 application is ineligible for consideration under the low income
16 housing tax credit program if:

17 (1) at the time of application or at any time during
18 the two-year period preceding the date the application round
19 begins, the applicant or a related party is or has been:

20 (A) a member of the board; or

21 (B) the director, a deputy director, the director
22 of housing programs, the director of compliance, the director of
23 underwriting, or the low income housing tax credit program manager
24 employed by the department;

25 (2) the applicant proposes to replace in less than 15
26 years any private activity bond financing of the development
27 described by the application, unless:

1 (A) the applicant proposes to maintain for a
2 period of 30 years or more 100 percent of the development units
3 supported by housing tax credits as rent-restricted and exclusively
4 for occupancy by individuals and families earning not more than 50
5 percent of the area median income, adjusted for family size; and

6 (B) at least one-third of all the units in the
7 development are public housing units or Section 8 project-based
8 units; ~~or~~

9 (3) the applicant proposes to construct a new
10 development that is located one linear mile or less from a
11 development that:

12 (A) serves the same type of household as the new
13 development, regardless of whether the developments serve
14 families, elderly individuals, or another type of household;

15 (B) has received an allocation of housing tax
16 credits for new construction at any time during the three-year
17 period preceding the date the application round begins; and

18 (C) has not been withdrawn or terminated from the
19 low income housing tax credit program; or

20 (4) the development is located in a municipality or,
21 if located outside a municipality, a county that has more than twice
22 the state average of units per capita supported by housing tax
23 credits or private activity bonds, unless the applicant:

24 (A) has obtained prior approval of the
25 development from the governing body of the appropriate municipality
26 or county containing the development; and

27 (B) has included in the application a written

1 statement of support from that governing body referencing this
2 section and authorizing an allocation of housing tax credits for
3 the development.

4 (b) Subsection (a)(3) does not apply to a development:

5 (1) that is using:

6 (A) federal HOPE VI funds received through the
7 United States Department of Housing and Urban Development;

8 (B) locally approved funds received from a public
9 improvement district or a tax increment financing district;

10 (C) funds provided to the state under the
11 Cranston-Gonzalez National Affordable Housing Act (42 U.S.C.
12 Section 12701 et seq.); or

13 (D) funds provided to the state and participating
14 jurisdictions under the Housing and Community Development Act of
15 1974 (42 U.S.C. Section 5301 et seq.); [~~or~~]

16 (2) that is located in a county with a population of
17 less than one million;

18 (3) [~~(2)~~] that is located outside of a metropolitan
19 statistical area; or

20 (4) [~~(3)~~] that a local government where the project is
21 to be located has by vote specifically allowed the construction of a
22 new development located within one linear mile or less from a
23 development under Subsection (a).

24 SECTION 8.022. Section 9, Chapter 685, Acts of the 69th
25 Legislature, Regular Session, 1985 (Article 1811f, Vernon's Texas
26 Civil Statutes), is repealed as executed.

27 SECTION 8.023. The following retirement system laws are

1 repealed as executed:

2 (1) Chapter 831, Acts of the 66th Legislature, Regular
3 Session, 1979 (Article 6228a.1, Vernon's Texas Civil Statutes);

4 (2) Chapter 3, Acts of the 67th Legislature, Regular
5 Session, 1981 (Article 6228a.2, Vernon's Texas Civil Statutes);

6 (3) Chapter 125, Acts of the 67th Legislature, Regular
7 Session, 1981 (Article 6228b-1, Vernon's Texas Civil Statutes); and

8 (4) Chapter 192, Acts of the 50th Legislature, Regular
9 Session, 1947 (Article 6243g-2, Vernon's Texas Civil Statutes).

10 ARTICLE 9. CHANGES RELATING TO HEALTH
11 AND SAFETY CODE

12 SECTION 9.001. Section 33.034(c), Health and Safety Code,
13 is amended to correct a misspelling to read as follows:

14 (c) Chapter 2001, Government Code, does ~~do~~ not apply to
15 the notice and hearing required by this section.

16 SECTION 9.002. Section 106.026, Health and Safety Code, is
17 repealed to conform to the repeal of Chapter 106, Health and Safety
18 Code, by Chapter 1424, Acts of the 77th Legislature, Regular
19 Session, 2001.

20 SECTION 9.0025. The heading to Subchapter D, Chapter 241,
21 Health and Safety Code, is repealed to conform to the repeal of that
22 subchapter by Chapter 623, Acts of the 75th Legislature, Regular
23 Session, 1997.

24 SECTION 9.003. Section 252.207(c), Health and Safety Code,
25 as amended by Chapters 198 and 1251, Acts of the 78th Legislature,
26 Regular Session, 2003, is reenacted to read as follows:

27 (c) If money in the quality assurance fund is used to

1 increase a reimbursement rate in the Medicaid program, the Health
2 and Human Services Commission shall ensure that the reimbursement
3 methodology used to set that rate describes how the money in the
4 fund will be used to increase the rate and provides incentives to
5 increase direct care staffing and direct care wages and benefits.

6 SECTION 9.0035. (a) Section 382.0215(g), Health and Safety
7 Code, is amended to correct a reference to read as follows:

8 (g) The commission annually shall assess the information
9 received under this section, including actions taken by the
10 commission in response to the emissions events, and shall include
11 the assessment in the report required by Section 5.126 [~~5.123~~],
12 Water Code [~~, as added by Chapters 304 and 1082, Acts of the 75th~~
13 ~~Legislature, Regular Session, 1997~~].

14 (b) Section 382.05184(a), Health and Safety Code, is
15 amended to correct a reference to read as follows:

16 (a) Facilities affected by Section 382.0518(g) that are
17 located at a small business stationary source, as defined by
18 Section 5.135, Water Code [~~382.0365(h)~~], and are not required by
19 commission rule to report to the commission under Section 382.014
20 may apply for a permit under this section before September 1, 2004.

21 (c) Section 382.05191(b), Health and Safety Code, is
22 amended to correct a reference to read as follows:

23 (b) The commission may authorize an applicant for a permit
24 for a facility that constitutes or is part of a small business
25 stationary source as defined in Section 5.135, Water Code,
26 [~~382.0365(h)~~] to provide notice using an alternative means if the
27 commission finds that the proposed method will result in equal or

1 better communication with the public, considering the
2 effectiveness of the notice in reaching potentially affected
3 persons, cost, and consistency with federal requirements.

4 (d) Section 382.05197(b), Health and Safety Code, is
5 amended to correct a reference to read as follows:

6 (b) The commission may authorize an applicant for a permit
7 for an existing facility that constitutes or is part of a small
8 business stationary source as defined in Section 5.135, Water Code,
9 [~~382.0365(h)(2)~~] to provide notice using an alternative means if
10 the commission finds that the proposed method will result in equal
11 or better communication with the public, considering the
12 effectiveness of the notice in reaching potentially affected
13 persons, the cost, and the consistency with federal requirements.

14 (e) Section 382.056(a), Health and Safety Code, is amended
15 to correct a reference to read as follows:

16 (a) Except as provided by Section 382.0518(h), an applicant
17 for a permit or permit amendment under Section 382.0518 or a permit
18 renewal review under Section 382.055 shall publish notice of intent
19 to obtain the permit, permit amendment, or permit review not later
20 than the 30th day after the date the commission determines the
21 application to be administratively complete. The commission by
22 rule shall require an applicant for a federal operating permit
23 under Section 382.054 to publish notice of intent to obtain a
24 permit, permit amendment, or permit review consistent with federal
25 requirements and with the requirements of Subsection (b). The
26 applicant shall publish the notice at least once in a newspaper of
27 general circulation in the municipality in which the facility or

1 federal source is located or is proposed to be located or in the
2 municipality nearest to the location or proposed location of the
3 facility or federal source. If the elementary or middle school
4 nearest to the facility or proposed facility provides a bilingual
5 education program as required by Subchapter B, Chapter 29,
6 Education Code, the applicant shall also publish the notice at
7 least once in an additional publication of general circulation in
8 the municipality or county in which the facility is located or
9 proposed to be located that is published in the language taught in
10 the bilingual education program. This requirement is waived if
11 such a publication does not exist or if the publisher refuses to
12 publish the notice. The commission by rule shall prescribe the form
13 and content of the notice and when notice must be published. The
14 commission may require publication of additional notice. The
15 commission by rule shall prescribe alternative procedures for
16 publication of the notice in a newspaper if the applicant is a small
17 business stationary source as defined by Section 5.135, Water Code,
18 [~~382.0365~~] and will not have a significant effect on air quality.
19 The alternative procedures must be cost-effective while ensuring
20 adequate notice. Notice required to be published under this
21 section shall only be required to be published in the United States.

22 SECTION 9.004. Section 481.135(d), Health and Safety Code,
23 is amended to correct a reference to read as follows:

24 (d) This section does not prevent the prosecution from:

25 (1) introducing or relying on any other evidence or
26 testimony to establish any element of an offense for which
27 punishment is increased under Section 481.134; or

1 (2) using or introducing any other map or diagram
2 otherwise admissible under the Texas Rules of [~~Criminal~~] Evidence.

3 SECTION 9.005. Sections 614.002(a) and (b), Health and
4 Safety Code, as amended by Chapters 856 and 1170, Acts of the 78th
5 Legislature, Regular Session, 2003, are reenacted to read as
6 follows:

7 (a) The Advisory Committee to the Texas Board of Criminal
8 Justice on Offenders with Medical or Mental Impairments is composed
9 of 31 members.

10 (b) The governor shall appoint, with the advice and consent
11 of the senate:

12 (1) four at-large members who have expertise in mental
13 health, mental retardation, or developmental disabilities, three
14 of whom must be forensic psychiatrists or forensic psychologists;

15 (2) one at-large member who is the judge of a district
16 court with criminal jurisdiction;

17 (3) one at-large member who is a prosecuting attorney;

18 (4) one at-large member who is a criminal defense
19 attorney;

20 (5) two at-large members who have expertise in the
21 juvenile justice or criminal justice system; and

22 (6) one at-large member whose expertise can further
23 the mission of the committee.

24 SECTION 9.006. Section 776.052(c), Health and Safety Code,
25 as amended by Chapters 235, 907, and 930, Acts of the 78th
26 Legislature, Regular Session, 2003, is reenacted to read as
27 follows:

1 (c) If a municipality that is not in the district completes
2 all other procedures necessary to annex territory that is included
3 in a district and if the municipality intends to provide emergency
4 services to the territory by the use of municipal personnel or by
5 some method other than by use of the district, the governing body of
6 the municipality shall send written notice of that fact to the
7 board. The municipality must send the notice to the secretary of
8 the board by certified mail, return receipt requested. The
9 territory remains part of the district and does not become part of
10 the municipality until the secretary of the board receives the
11 notice. On receipt of the notice, the board shall immediately
12 change its records to show that the territory has been removed from
13 the district and shall cease to provide further services to the
14 residents of that territory.

15 ARTICLE 10. CHANGES RELATING TO
16 HUMAN RESOURCES CODE

17 SECTION 10.001. Section 32.060, Human Resources Code, as
18 added by Chapter 257, Acts of the 78th Legislature, Regular
19 Session, 2003, is repealed as duplicative of Section 32.063, Human
20 Resources Code.

21 ARTICLE 11. CHANGES RELATING TO
22 INSURANCE CODE

23 PART 1. INSURANCE CODE UPDATE

24 SECTION 11.001. (a) Section 221.006(a), Insurance Code,
25 is amended to conform to Section 4, Chapter 209, Acts of the 78th
26 Legislature, Regular Session, 2003, to read as follows:

27 (a) An [~~Except as provided by Section 803.007, an~~] insurer

1 is entitled to a credit on the amount of tax due under this chapter
2 for all examination and evaluation fees paid to ~~[or for the use of]~~
3 this state during the calendar year for which the tax is due. The
4 limitations provided by Sections 803.007(1) and (2)(B) for a
5 domestic insurance company apply to a foreign insurance company.

6 (b) Section 4, Chapter 209, Acts of the 78th Legislature,
7 Regular Session, 2003, is repealed.

8 SECTION 11.002. (a) Section 222.001, Insurance Code, is
9 amended to conform to Section 2.119(a), Chapter 198, Acts of the
10 78th Legislature, Regular Session, 2003, by amending Subsection (a)
11 and adding Subsection (c) to read as follows:

12 (a) This chapter applies to any ~~[+~~
13 ~~[(1) an]~~ insurer, including a group hospital service
14 corporation, any health maintenance organization, and any managed
15 care organization that receives gross premiums or revenues subject
16 to taxation under Section 222.002, including companies ~~[+~~

17 ~~[(A) a life, health, or accident insurance~~
18 ~~company] operating under Chapter 841, ~~[or 982,~~~~

19 ~~[(B) a group hospital service corporation~~
20 ~~operating under Chapter] 842, 843, ~~[+~~~~

21 ~~[(C) a general casualty company operating under~~
22 ~~Chapter] 861, ~~[+~~~~

23 ~~[(D) a statewide mutual assessment company~~
24 ~~operating under Chapter] 881, ~~[+~~~~

25 ~~[(E) a mutual life insurance company operating~~
26 ~~under Chapter] 882, ~~[+~~~~

27 ~~[(F) a mutual insurance company operating under~~

1 ~~Chapter] 883,~~ ~~[+~~

2 ~~[(C) a stipulated premium company operating~~
3 ~~under Chapter] 884,~~ ~~[+~~

4 ~~[(H) a Lloyd's plan operating under Chapter]~~
5 ~~941,~~ ~~[+~~

6 ~~[(I) a reciprocal or interinsurance exchange~~
7 ~~operating under Chapter] 942, 982, or~~ ~~[+ and~~

8 ~~[(J) a Mexican casualty insurance company~~
9 ~~operating under Chapter] 984, Insurance Code, Chapter 533,~~
10 ~~Government Code, or Title XIX of the federal Social Security Act~~ ~~[+~~
11 ~~and~~

12 ~~[(2) a health maintenance organization operating~~
13 ~~under Chapter 843 that receives gross revenues subject to taxation~~
14 ~~under Section 222.002].~~

15 (c) For purposes of computing the tax imposed by this
16 chapter, a managed care organization is treated in the same manner
17 as a health maintenance organization.

18 (b) Section 222.002(c), Insurance Code, is amended to
19 conform to Section 2.119(a), Chapter 198, Acts of the 78th
20 Legislature, Regular Session, 2003, to read as follows:

21 (c) The following are not included in determining an
22 insurer's taxable gross premiums or a health maintenance
23 organization's taxable gross revenues:

24 (1) returned premiums or revenues;

25 (2) dividends applied to purchase paid-up additions to
26 insurance or to shorten the endowment or premium payment period;

27 (3) premiums received from an insurer for reinsurance;

1 (4) premiums or revenues received from the treasury of
2 [~~this state or~~] the United States for insurance or benefits
3 contracted for by [~~this state or~~] the federal government[~~+~~

4 [~~(A)~~] in accordance with or in furtherance of
5 Title XVIII of [~~2, Human Resources Code, or~~] the Social Security Act
6 (42 U.S.C. Section 1395c [~~301~~] et seq.) and its subsequent
7 amendments[~~+, or~~

8 [~~(B) to provide welfare benefits to designated~~
9 ~~welfare recipients~~];

10 (5) premiums or revenues paid on group health,
11 accident, and life policies or contracts in which the group covered
12 by the policy or contract consists of a single nonprofit trust
13 established to provide coverage primarily for employees of:

14 (A) a municipality, county, or hospital district
15 in this state; or

16 (B) a county or municipal hospital, without
17 regard to whether the employees are employees of the county or
18 municipality or of an entity operating the hospital on behalf of the
19 county or municipality; or

20 (6) premiums or revenues excluded by another law of
21 this state.

22 (c) Section 2.119(a), Chapter 198, Acts of the 78th
23 Legislature, Regular Session, 2003, is repealed.

24 SECTION 11.003. (a) Section 222.007(a), Insurance Code, is
25 amended to conform to Section 5, Chapter 209, Acts of the 78th
26 Legislature, Regular Session, 2003, to read as follows:

27 (a) An [~~Except as provided by Section 803.007, an~~] insurer

1 or health maintenance organization is entitled to a credit on the
2 amount of tax due under this chapter for all examination and
3 evaluation [~~valuation~~] fees paid to [~~or for the use of~~] this state
4 during the calendar year for which the tax is due. The limitations
5 provided by Sections 803.007(1) and (2)(B) for a domestic insurance
6 company apply to a foreign insurance company.

7 (b) Section 5, Chapter 209, Acts of the 78th Legislature,
8 Regular Session, 2003, is repealed.

9 SECTION 11.004. (a) Section 223.009(a), Insurance Code,
10 is amended to conform to Section 7, Chapter 209, Acts of the 78th
11 Legislature, Regular Session, 2003, to read as follows:

12 (a) A [~~Except as provided by Section 803.007, a~~] title
13 insurance company is entitled to a credit on the amount of tax due
14 under this chapter for all examination and evaluation fees paid to
15 [~~or for the use of~~] the state during the calendar year for which the
16 tax is due. The limitations provided by Sections 803.007(1) and
17 (2)(B) for a domestic insurance company apply to a foreign
18 insurance company.

19 (b) Section 7, Chapter 209, Acts of the 78th Legislature,
20 Regular Session, 2003, is repealed.

21 SECTION 11.005. (a) Section 226.001, Insurance Code, is
22 amended to conform to Section 76, Chapter 1310, Acts of the 78th
23 Legislature, Regular Session, 2003, to read as follows:

24 Sec. 226.001. DEFINITIONS [~~DEFINITION~~]. In this
25 subchapter:

26 (1) "Insurer" has the meaning assigned by Section
27 101.002 and includes:

1 (A) an insurer that does not hold a certificate
2 of authority in this state;

3 (B) an eligible surplus lines insurer; and

4 (C) an insurer that holds a certificate of
5 authority in this state.

6 (2) "Premium" [~~,"premium"~~] includes any consideration
7 for insurance, including:

8 (A) [~~(1)~~] a premium;

9 (B) [~~(2)~~] a membership fee;

10 (C) [~~(3)~~] an assessment; or

11 (D) [~~(4)~~] dues.

12 (b) Section 226.002, Insurance Code, is amended to conform
13 to Section 76, Chapter 1310, Acts of the 78th Legislature, Regular
14 Session, 2003, to read as follows:

15 Sec. 226.002. APPLICABILITY OF SUBCHAPTER. This
16 subchapter applies to an [~~unauthorized~~] insurer who charges gross
17 premiums for insurance on a subject resident, located, or to be
18 performed in this state.

19 (c) Sections 226.003(a), (b), and (g), Insurance Code, are
20 amended to conform to Section 76, Chapter 1310, Acts of the 78th
21 Legislature, Regular Session, 2003, to read as follows:

22 (a) A tax is imposed on each [~~unauthorized~~] insurer that
23 charges gross premiums subject to taxation under this section. The
24 rate of the tax is 4.85 percent of the gross premiums charged by the
25 [~~unauthorized~~] insurer.

26 (b) Except as otherwise provided by this section, in
27 determining an [~~unauthorized~~] insurer's taxable gross premiums,

1 the insurer shall include any premium for insurance on a subject
2 resident, located, or to be performed in this state.

3 (g) The following premiums are not subject to the tax
4 imposed by this subchapter:

5 (1) premiums on insurance procured by a licensed
6 surplus lines agent from an eligible surplus lines insurer as
7 defined by Chapter 981 on which premium tax is paid in accordance
8 with Chapter 225; ~~and~~

9 (2) premiums on an independently procured contract of
10 insurance on which premium tax is paid in accordance with
11 Subchapter B; and

12 (3) premiums on a contract of insurance written by an
13 insurer that holds a certificate of authority in this state and that
14 is authorized to write the contract.

15 (d) Sections 226.005(b) and (c), Insurance Code, are
16 amended to conform to Section 76, Chapter 1310, Acts of the 78th
17 Legislature, Regular Session, 2003, to read as follows:

18 (b) An ~~unauthorized~~ insurer shall pay the tax imposed by
19 this subchapter using a form prescribed by the comptroller.

20 (c) The ~~[If an unauthorized insurer defaults in payment of~~
21 ~~the]~~ tax imposed by this subchapter, if not paid when due, is a
22 liability of the insurer, the insurer agent, and the insured ~~[is~~
23 ~~responsible for paying the tax]~~.

24 (e) Section 76, Chapter 1310, Acts of the 78th Legislature,
25 Regular Session, 2003, is repealed.

26 SECTION 11.006. (a) Section 257.003(b), Insurance Code,
27 is amended to conform to Section 6, Chapter 209, Acts of the 78th

1 Legislature, Regular Session, 2003, and Section 2.120, Chapter 198,
2 Acts of the 78th Legislature, Regular Session, 2003, to read as
3 follows:

4 (b) The gross premiums on which an assessment is based under
5 this chapter may not include:

6 (1) premiums received from [~~this state or~~] the United
7 States for insurance contracted for by [~~this state or~~] the United
8 States[+]

9 [~~(1)~~] in accordance with or in furtherance of Title
10 XVIII of [2, Human Resources Code, or] the Social Security Act (42
11 U.S.C. Section 1395c [301] et seq.) and its subsequent amendments;
12 or

13 (2) premiums paid on group health, accident, and life
14 policies in which the group covered by the policy consists of a
15 single nonprofit trust established to provide coverage primarily
16 for employees of:

17 (A) a municipality, county, or hospital district
18 in this state; or

19 (B) a county or municipal hospital, without
20 regard to whether the employees are employees of the county or
21 municipality or of an entity operating the hospital on behalf of the
22 county or municipality [to provide welfare benefits to designated
23 welfare recipients].

24 (b) Section 6, Chapter 209, Acts of the 78th Legislature,
25 Regular Session, 2003, and Section 2.120, Chapter 198, Acts of the
26 78th Legislature, Regular Session, 2003, are repealed.

27 SECTION 11.007. (a) Section 258.004(b), Insurance Code,

1 is amended to conform to Section 8, Chapter 209, Acts of the 78th
2 Legislature, Regular Session, 2003, and Section 2.121, Chapter 198,
3 Acts of the 78th Legislature, Regular Session, 2003, to read as
4 follows:

5 (b) The amount of maintenance tax assessed may not be
6 computed based on:

7 (1) enrollees who as individual certificate holders or
8 their dependents are covered by a master group policy paid for by
9 revenues received from [~~this state or~~] the United States for
10 insurance contracted for by [~~this state or~~] the United States[+]

11 [~~(1)~~] in accordance with or in furtherance of Title
12 XVIII of [2, Human Resources Code, or] the Social Security Act (42
13 U.S.C. Section 1395c [301] et seq.) and its subsequent amendments;
14 or

15 (2) revenues paid on group health, accident, and life
16 certificates or contracts in which the group covered by the
17 certificate or contract consists of a single nonprofit trust
18 established to provide coverage primarily for employees of:

19 (A) a municipality, county, or hospital district
20 in this state; or

21 (B) a county or municipal hospital, without
22 regard to whether the employees are employees of the county or
23 municipality or of an entity operating the hospital on behalf of the
24 county or municipality [to provide welfare benefits to designated
25 welfare recipients].

26 (b) Section 8, Chapter 209, Acts of the 78th Legislature,
27 Regular Session, 2003, and Section 2.121, Chapter 198, Acts of the

1 78th Legislature, Regular Session, 2003, are repealed.

2 SECTION 11.008. (a) Section 501.003, Insurance Code, is
3 amended to conform to Section 2.03, Chapter 1112, Acts of the 78th
4 Legislature, Regular Session, 2003, to read as follows:

5 Sec. 501.003. SUNSET PROVISION. The office is subject to
6 Chapter 325, Government Code (Texas Sunset Act). Unless continued
7 in existence as provided by that chapter, the office is abolished
8 September 1, 2007 [~~2005~~].

9 (b) Section 2.03, Chapter 1112, Acts of the 78th
10 Legislature, Regular Session, 2003, is repealed.

11 SECTION 11.009. (a) Section 542.053(a), Insurance Code,
12 is amended to conform to Section 21.35, Chapter 206, Acts of the
13 78th Legislature, Regular Session, 2003, to read as follows:

14 (a) This subchapter does not apply to:

- 15 (1) workers' compensation insurance;
- 16 (2) mortgage guaranty insurance;
- 17 (3) title insurance;
- 18 (4) fidelity, surety, or guaranty bonds;
- 19 (5) marine insurance as defined [~~other than inland~~
20 ~~marine insurance governed~~] by Article 5.53; or
- 21 (6) a guaranty association created and operating under
22 Chapter 2602.

23 (b) Section 21.35, Chapter 206, Acts of the 78th
24 Legislature, Regular Session, 2003, is repealed.

25 SECTION 11.010. (a) Section 542.152, Insurance Code, is
26 amended to conform to Section 21.36, Chapter 206, Acts of the 78th
27 Legislature, Regular Session, 2003, to read as follows:

1 Sec. 542.152. EXCEPTION. This subchapter does not apply
2 to:

3 (1) a casualty insurance policy that requires the
4 insured's consent to settle a claim against the insured;

5 (2) fidelity, surety, or guaranty bonds; or

6 (3) marine insurance as defined [~~other than inland~~
7 ~~marine insurance governed~~] by Article 5.53.

8 (b) Section 21.36, Chapter 206, Acts of the 78th
9 Legislature, Regular Session, 2003, is repealed.

10 SECTION 11.011. (a) Chapter 542, Insurance Code, is
11 amended to conform to the enactment of Article 21.55A, Insurance
12 Code, by Section 2.01, Chapter 207, Acts of the 78th Legislature,
13 Regular Session, 2003, by adding Subchapter F to read as follows:

14 SUBCHAPTER F. WATER DAMAGE CLAIMS

15 Sec. 542.251. PURPOSES. The purposes of this subchapter are
16 to:

17 (1) provide for the prompt, efficient, and effective
18 handling and processing of water damage claims filed under
19 residential property insurance policies, including claims
20 involving losses due to mold;

21 (2) reduce the confusion and inconvenience
22 policyholders experience in filing and resolving water damage
23 claims filed under residential property insurance policies,
24 including claims involving losses due to mold; and

25 (3) reduce claim costs and premiums for residential
26 property insurance issued in this state.

27 Sec. 542.252. APPLICABILITY OF SUBCHAPTER. This subchapter

1 applies to any insurer that handles or processes water damage
2 claims filed under residential property insurance policies.

3 Sec. 542.253. RULES. (a) The commissioner may adopt rules
4 that identify the types of water damage claims that require more
5 prompt, efficient, and effective processing and handling than the
6 processing and handling required under Subchapter B.

7 (b) The commissioner by rule may regulate the following
8 aspects of water damage claims:

9 (1) required notice;

10 (2) acceptance and rejection of a claim;

11 (3) claim handling and processing procedures and time
12 frames;

13 (4) claim investigation requirements, procedures, and
14 time frames;

15 (5) settlement of claims; and

16 (6) any other area of claim processing, handling, and
17 response determined to be relevant and necessary by the
18 commissioner.

19 (c) A rule adopted under this section supersedes the minimum
20 standards described by Subchapter B.

21 (b) Article 21.55A, Insurance Code, as added by Section
22 2.01, Chapter 207, Acts of the 78th Legislature, Regular Session,
23 2003, is repealed.

24 SECTION 11.012. (a) Section 544.004, Insurance Code, is
25 amended to conform to Section 12.01, Chapter 206, Acts of the 78th
26 Legislature, Regular Session, 2003, by amending Subsection (a) and
27 adding Subsection (c) to read as follows:

1 (a) A health maintenance organization or legal entity
2 engaged in the business of insurance [~~or a health maintenance~~
3 ~~organization,~~] that is found to be in violation of or to have failed
4 to comply with this subchapter[~~7~~] is subject to the sanctions
5 provided by Chapter 82 or[~~including~~] administrative penalties
6 authorized under Chapter 84.

7 (c) It is not a defense to an action of the commissioner
8 under this section that the contract giving rise to the alleged
9 violation was entered into before August 28, 1995.

10 (b) Section 12.01, Chapter 206, Acts of the 78th
11 Legislature, Regular Session, 2003, is repealed.

12 SECTION 11.013. (a) Section 544.054(b), Insurance Code, is
13 amended to conform to Section 12.03, Chapter 206, Acts of the 78th
14 Legislature, Regular Session, 2003, to read as follows:

15 (b) An action under this section must be commenced on or
16 before the second [~~first~~] anniversary of:

17 (1) the date on which the plaintiff was denied
18 insurance or the unfair act occurred; or

19 (2) the date the plaintiff, in the exercise of
20 reasonable diligence, should have discovered the occurrence of the
21 unfair act.

22 (b) Section 12.03, Chapter 206, Acts of the 78th
23 Legislature, Regular Session, 2003, is repealed.

24 SECTION 11.014. (a) Chapter 544, Insurance Code, is
25 amended to conform to the enactment of Article 21.21-11, Insurance
26 Code, by Section 2, Chapter 205, Acts of the 78th Legislature,
27 Regular Session, 2003, by adding Subchapter G to read as follows:

1 SUBCHAPTER G. MOLD CLAIM OR DAMAGE

2 Sec. 544.301. DEFINITIONS. In this subchapter:

3 (1) "Insurer" means an insurance company, reciprocal
4 or interinsurance exchange, mutual insurance company, capital
5 stock company, county mutual insurance company, farm mutual
6 insurance company, Lloyd's plan, or other legal entity authorized
7 to write residential property insurance in this state. The term
8 includes an affiliate, as described by Section 823.003(a), if that
9 affiliate is authorized to write and is writing residential
10 property insurance in this state. The term does not include:

11 (A) an eligible surplus lines insurer regulated
12 under Chapter 981;

13 (B) the Texas Windstorm Insurance Association
14 under Article 21.49; or

15 (C) the FAIR Plan Association under Article
16 21.49A.

17 (2) "Mold" means any living or dead fungi or related
18 products or parts, including spores, hyphae, and mycotoxins.

19 (3) "Mold remediation" means the removal, cleaning,
20 sanitizing, demolition, or other treatment, including preventive
21 activities, of mold or mold-contaminated matter that was not
22 purposely grown at that location.

23 (4) "Residential property insurance" means insurance
24 against damage to or loss of real or tangible personal property at a
25 fixed location provided in a homeowners insurance policy or
26 residential fire and allied lines insurance policy.

27 Sec. 544.302. APPLICABILITY OF SUBCHAPTER. This subchapter

1 applies to each insurer that writes residential property insurance
2 in this state.

3 Sec. 544.303. PROHIBITION OF CERTAIN UNDERWRITING
4 DECISIONS BASED ON PREVIOUS MOLD CLAIM OR DAMAGE. An insurer may
5 not make an underwriting decision regarding a residential property
6 insurance policy based on previous mold damage or a claim for mold
7 damage if:

8 (1) the applicant for insurance coverage has property
9 eligible for coverage under a residential property policy;

10 (2) the property has had mold damage;

11 (3) mold remediation has been performed on the
12 property; and

13 (4) the property was:

14 (A) remediated, as evidenced by a certificate of
15 mold remediation issued to the property owner under Section
16 1958.154, Occupations Code, that establishes that the underlying
17 cause of the mold at the property has been remediated; or

18 (B) inspected by an independent assessor or
19 adjustor who determined, based on the inspection, that the property
20 does not contain evidence of mold damage.

21 Sec. 544.304. RULES. The commissioner shall adopt rules as
22 necessary to implement this subchapter.

23 Sec. 544.305. PENALTY. An insurer that violates this
24 subchapter is subject, after notice and opportunity for hearing, to
25 sanctions as provided by Chapters 82, 83, and 84.

26 (b) Article 21.21-11, Insurance Code, as added by Section 2,
27 Chapter 205, Acts of the 78th Legislature, Regular Session, 2003,

1 is repealed.

2 SECTION 11.015. (a) Chapter 544, Insurance Code, is
3 amended to conform to the enactment of Article 5.35-4, Insurance
4 Code, by Section 1.01, Chapter 207, Acts of the 78th Legislature,
5 Regular Session, 2003, by adding Subchapter H to read as follows:

6 SUBCHAPTER H. WATER DAMAGE CLAIMS

7 Sec. 544.351. PURPOSE. The purpose of this subchapter is to
8 protect persons and property from being unfairly stigmatized in
9 obtaining residential property insurance by the filing of a water
10 damage claim or claims under a residential property insurance
11 policy.

12 Sec. 544.352. DEFINITIONS. In this subchapter:

13 (1) "Insurer" means an insurance company, reciprocal
14 or interinsurance exchange, mutual insurance company, capital
15 stock company, county mutual insurance company, farm mutual
16 insurance company, association, Lloyd's plan, or other entity
17 writing residential property insurance in this state. The term
18 includes an affiliate, as described by Section 823.003(a), if that
19 affiliate is authorized to write and is writing residential
20 property insurance in this state. The term does not include:

21 (A) the Texas Windstorm Insurance Association
22 created and operated under Article 21.49; or

23 (B) the FAIR Plan created and operated under
24 Article 21.49A.

25 (2) "Residential property insurance" means insurance
26 against loss to residential real property at a fixed location or
27 tangible personal property provided in a homeowners policy, which

1 includes a tenant policy, a condominium owners policy, or a
2 residential fire and allied lines policy.

3 (3) "Underwriting guideline" means a rule, standard,
4 guideline, or practice, whether written, oral, or electronic, that
5 is used by an insurer or an agent of an insurer to:

6 (A) decide whether to accept or reject an
7 application for a residential property insurance policy; or

8 (B) determine how to classify the risks that are
9 accepted for the purpose of determining a rate.

10 Sec. 544.353. RESTRICTIONS ON USE OF CLAIMS HISTORY FOR
11 WATER DAMAGE. (a) Underwriting guidelines relating to a water
12 damage claim or claims used by an insurer shall be governed by rules
13 adopted by the commissioner in accordance with the purpose of this
14 subchapter. An insurer may not use an underwriting guideline
15 relating to a water damage claim or claims that is not in accordance
16 with the rules adopted by the commissioner under this subchapter.

17 (b) An insurer shall file with the department its
18 underwriting guidelines relating to a water damage claim or claims
19 in accordance with the rules adopted by the commissioner.

20 (c) Except as provided by Subsection (e), an insurer may not
21 use a prior appliance-related claim filed by a person as a basis for
22 determining the rate to be paid by the person for insurance coverage
23 or for determining whether to issue, renew, or cancel an insurance
24 policy to or for the person if the person:

25 (1) properly remediated the prior appliance-related
26 claim; and

27 (2) had the remediation inspected and certified by a

1 person or entity knowledgeable and experienced in the remediation
2 of water damage.

3 (d) Except as provided by Subsection (e), an insurer may not
4 use a prior appliance-related claim filed regarding specific
5 property as a basis for determining the rate to be paid by a person
6 for insurance coverage for that property or for determining whether
7 to issue, renew, or cancel an insurance policy to or for a person
8 seeking insurance coverage for that property if the prior
9 appliance-related claim was properly remediated and was inspected
10 and certified by a person knowledgeable and experienced in
11 remediation of water damage.

12 (e) Subsections (c) and (d) do not apply to:

13 (1) a person who has made and has received payment for
14 three or more appliance-related claims within a three-year period;
15 or

16 (2) specific property that has been the subject of
17 three or more appliance-related claims within a three-year period.

18 Sec. 544.354. RULES. The commissioner shall adopt rules to
19 accomplish the purposes of this subchapter, including rules with
20 regard to the definition of a water damage claim.

21 (b) Article 5.35-4, Insurance Code, as added by Section
22 1.01, Chapter 207, Acts of the 78th Legislature, Regular Session,
23 2003, is repealed.

24 SECTION 11.016. (a) Chapter 544, Insurance Code, is
25 amended to conform to the enactment of Article 21.21-6A, Insurance
26 Code, by Section 12.02, Chapter 206, Acts of the 78th Legislature,
27 Regular Session, 2003, by adding Subchapter I to read as follows:

SUBCHAPTER I. CRIMINAL OFFENSES

Sec. 544.401. OFFENSE: CERTAIN DISCRIMINATION. (a) In this section, "person" means a legal entity listed below and engaged in the business of life insurance or an officer or director of one of those entities:

(1) a capital stock insurance company;

(2) a mutual insurance company;

(3) a local mutual aid association;

(4) a statewide mutual assessment company; or

(5) a stipulated premium company.

(b) A person commits an offense if the person recklessly:

(1) offers insurance coverage at a premium based on a rate that is, because of race, color, religion, ethnicity, or national origin, different from another premium rate offered or used by the person for the same coverage, other than for classifications applicable alike to persons of every race, color, religion, ethnicity, or national origin; or

(2) collects an insurance premium based on a rate that is, because of race, color, religion, ethnicity, or national origin, different from another premium rate offered or used by the person for the same coverage, other than for classifications applicable alike to persons of every race, color, religion, ethnicity, or national origin.

(c) An offense under this section is a state jail felony.

(b) Article 21.21-6A, Insurance Code, as added by Section 12.02, Chapter 206, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

1 SECTION 11.017. (a) Subchapter B, Chapter 549, Insurance
2 Code, is amended to conform to Section 1, Chapter 538, Acts of the
3 78th Legislature, Regular Session, 2003, by adding Section 549.0551
4 to read as follows:

5 Sec. 549.0551. REQUIRING CERTAIN AMOUNTS OF COVERAGE. (a)
6 A lender may not require as a condition of financing a residential
7 mortgage or providing other financing arrangements for residential
8 property, including a mobile or manufactured home, that a borrower
9 purchase homeowners insurance coverage, mobile or manufactured
10 home insurance coverage, or other residential property insurance
11 coverage in an amount that exceeds the replacement value of the
12 dwelling and its contents, regardless of the amount of the mortgage
13 or other financing arrangement entered into by the borrower.

14 (b) For purposes of this section, a lender may not include
15 the fair market value of the land on which a dwelling is located in
16 the replacement value of the dwelling and its contents.

17 (b) Section 1, Chapter 538, Acts of the 78th Legislature,
18 Regular Session, 2003, is repealed.

19 SECTION 11.018. (a) The heading to Chapter 551, Insurance
20 Code, is amended to conform to the enactment of Article 21.49-2V,
21 Insurance Code, by Section 8.02, Chapter 206, Acts of the 78th
22 Legislature, Regular Session, 2003, to read as follows:

23 CHAPTER 551. [~~PROHIBITED~~] PRACTICES RELATING TO DECLINATION,
24 CANCELLATION, AND NONRENEWAL OF INSURANCE POLICIES

25 (b) The heading to Subchapter A, Chapter 551, Insurance
26 Code, is amended to conform to the enactment of Article 21.49-2V,
27 Insurance Code, by Section 8.02, Chapter 206, Acts of the 78th

1 Legislature, Regular Session, 2003, to read as follows:

2 SUBCHAPTER A. GENERAL PROVISIONS [~~REQUIREMENTS~~]

3 (c) Subchapter A, Chapter 551, Insurance Code, is amended to
4 conform to the enactment of Article 21.49-2V, Insurance Code, by
5 Section 8.02, Chapter 206, Acts of the 78th Legislature, Regular
6 Session, 2003, by adding Section 551.004 to read as follows:

7 Sec. 551.004. MEMBERSHIP DUES. (a) In this section,
8 "insurer" includes a county mutual insurance company, a Lloyd's
9 plan, and a reciprocal or interinsurance exchange.

10 (b) Except as otherwise provided by law, an insurer may
11 require that membership dues in its sponsoring organization be paid
12 as a condition for issuance or renewal of a policy.

13 (d) Article 21.49-2V, Insurance Code, as added by Section
14 8.02, Chapter 206, Acts of the 78th Legislature, Regular Session,
15 2003, is repealed.

16 SECTION 11.019. (a) Section 551.104, Insurance Code, is
17 amended to conform to Section 16.01, Chapter 206, Acts of the 78th
18 Legislature, Regular Session, 2003, by amending Subsection (g) and
19 adding Subsection (h) to read as follows:

20 (g) An insurer may cancel any insurance policy other than a
21 personal automobile or homeowners insurance policy if the policy
22 has been in effect less than 90 days. An insurer may cancel a
23 personal automobile insurance policy if the policy has been in
24 effect less than 60 days. An insurer may cancel a homeowners [~~any~~
25 ~~other~~] insurance policy if the policy has been in effect less than
26 60 [~~90~~] days and:

27 (1) the insurer identifies a condition that:

1 (A) creates an increased risk of hazard;
2 (B) was not disclosed in the application for
3 insurance coverage; and

4 (C) is not the subject of a prior claim; or
5 (2) before the effective date of the policy, the
6 insurer does not accept a copy of a required inspection report that:

7 (A) was completed by an inspector who is licensed
8 by the Texas Real Estate Commission or who is otherwise authorized
9 to perform inspections; and

10 (B) is dated not earlier than the 90th day before
11 the effective date of the policy.

12 (h) For purposes of Subsection (g), an inspection report is
13 considered accepted if an insurer does not reject the inspection
14 report given to the insurer under Subsection (g)(2) before the 11th
15 day after the date the inspection report is received by the insurer.

16 (b) Section 16.01, Chapter 206, Acts of the 78th
17 Legislature, Regular Session, 2003, is repealed.

18 SECTION 11.020. (a) Subtitle C, Title 5, Insurance Code, is
19 amended to conform to the enactment of Article 21.49-2U, Insurance
20 Code, by Section 3.01, Chapter 206, Acts of the 78th Legislature,
21 Regular Session, 2003, by adding Chapter 559 to read as follows:

22 CHAPTER 559. CREDIT SCORING AND CREDIT INFORMATION

23 SUBCHAPTER A. GENERAL PROVISIONS

24 Sec. 559.001. DEFINITIONS. In this chapter:

25 (1) "Adverse effect" means an action taken by an
26 insurer in connection with the underwriting of insurance for a
27 consumer that results in the denial of coverage, the cancellation

1 or nonrenewal of coverage, or the offer to and acceptance by a
2 consumer of a policy form, premium rate, or deductible other than
3 the policy form, premium rate, or deductible for which the consumer
4 specifically applied.

5 (2) "Agent" means a person licensed or required to be
6 licensed as a general property and casualty insurance agent under
7 Chapter 4051.

8 (3) "Applicant for insurance coverage" means an
9 individual who has applied to an insurer for coverage under a
10 personal insurance policy.

11 (4) "Consumer" means an individual whose credit
12 information is used or whose credit score is computed in the
13 underwriting or rating of a personal insurance policy. The term
14 includes an applicant for insurance coverage.

15 (5) "Consumer reporting agency" means any person that,
16 for monetary fees or dues or on a cooperative nonprofit basis,
17 regularly engages in the practice of assembling or evaluating
18 consumer credit information or other information on consumers for
19 the purpose of furnishing consumer reports to third parties.

20 (6) "Credit information" means any credit-related
21 information derived from a credit report, found in a credit report
22 itself, or provided in an application for personal insurance. The
23 term does not include information that is not credit-related,
24 regardless of whether that information is contained in a credit
25 report or in an application for insurance coverage or is used to
26 compute a credit score.

27 (7) "Credit report" means any written, oral, or other

1 communication of information by a consumer reporting agency that:

2 (A) bears on a consumer's creditworthiness,
3 credit standing, or credit capacity; and

4 (B) is used or expected to be used or collected in
5 whole or in part to serve as a factor to determine personal
6 insurance premiums, eligibility for coverage, or tier placement.

7 (8) "Credit score" or "insurance score" means a number
8 or rating derived from an algorithm, computer application, model,
9 or other process that is:

10 (A) based on credit information; and

11 (B) used to predict the future insurance loss
12 exposure of a consumer.

13 (9) "Insured" means a consumer who has purchased an
14 insurance policy from an insurer.

15 (10) "Insurer" means an insurer authorized to write
16 property and casualty insurance in this state, including an
17 insurance company, reciprocal or interinsurance exchange, mutual
18 insurance company, capital stock company, county mutual insurance
19 company, association, Lloyd's plan, or other entity writing
20 personal insurance in this state. The term includes an affiliate,
21 as described by this code, if that affiliate is authorized to write
22 personal insurance in this state. The term does not include a farm
23 mutual insurance company or an eligible surplus lines insurer under
24 this code.

25 (11) "Personal insurance" means:

26 (A) a personal automobile insurance policy;

27 (B) a residential property insurance policy;

1 (C) a residential fire and allied lines insurance
2 policy; or

3 (D) a noncommercial insurance policy covering a
4 boat, personal watercraft, snowmobile, or recreational vehicle.

5 Sec. 559.002. APPLICABILITY OF CHAPTER. This chapter
6 applies to an insurer that writes personal insurance coverage and
7 uses credit information or credit reports for the underwriting or
8 rating of that coverage.

9 Sec. 559.003. INFORMATION PROVIDED TO PUBLIC. The
10 department shall:

11 (1) update insurer profiles maintained on the
12 department's Internet website to provide information to consumers
13 stating whether or not an insurer uses credit scoring; and

14 (2) post the report required under former Section 15,
15 Article 21.49-2U, on the department's Internet website.

16 Sec. 559.004. RULES. (a) The commissioner may adopt rules
17 necessary to implement this chapter.

18 (b) The commissioner shall adopt rules that prescribe the
19 allowable differences in rates charged by insurers due solely to
20 the difference in credit scores.

21 [Sections 559.005-559.050 reserved for expansion]

22 SUBCHAPTER B. USE OF CREDIT SCORING AND CREDIT INFORMATION

23 Sec. 559.051. PERMISSIBLE USE OF CREDIT SCORING. An
24 insurer may use credit scoring, except for factors that constitute
25 unfair discrimination, to develop rates, rating classifications,
26 or underwriting criteria regarding lines of insurance subject to
27 this chapter.

1 Sec. 559.052. PROHIBITED USE OF CREDIT INFORMATION. (a) An
2 insurer may not:

3 (1) use a credit score that is computed using factors
4 that constitute unfair discrimination;

5 (2) deny, cancel, or nonrenew a policy of personal
6 insurance solely on the basis of credit information without
7 considering any other applicable underwriting factor independent
8 of credit information; or

9 (3) take an action that results in an adverse effect
10 against a consumer because the consumer does not have a credit card
11 account without considering any other applicable factor
12 independent of credit information.

13 (b) An insurer may not consider an absence of credit
14 information or an inability to determine credit information for an
15 applicant for insurance coverage or for an insured as a factor in
16 underwriting or rating an insurance policy unless the insurer:

17 (1) has statistical, actuarial, or reasonable
18 underwriting information that:

19 (A) is reasonably related to actual or
20 anticipated loss experience; and

21 (B) shows that the absence of credit information
22 could result in actual or anticipated loss differences;

23 (2) treats the consumer as if the applicant for
24 insurance coverage or insured had neutral credit information, as
25 defined by the insurer; or

26 (3) excludes the use of credit information as a factor
27 in underwriting and uses only other underwriting criteria.

1 Sec. 559.053. DISCLOSURE TO CONSUMER REGARDING USE OF
2 CREDIT SCORING. (a) An insurer that uses credit scoring in the
3 underwriting or rating of insurance subject to this chapter shall
4 disclose to each applicant for insurance coverage that the
5 applicant's credit report may be used in the underwriting or rating
6 of the applicant's policy. The disclosure must be provided at the
7 time of application by the insurer or agent and may be given orally,
8 in writing, or electronically.

9 (b) If a policy is issued to the applicant for insurance
10 coverage, an insurer or agent is not required to make the disclosure
11 required under Subsection (a) on any subsequent renewal of the
12 coverage.

13 (c) An insurer or its agent shall disclose to its customers,
14 on a form adopted by the commissioner, whether credit information
15 will be obtained on an applicant for insurance coverage or insured
16 or on any other member or members of the applicant's or insured's
17 household and used as part of the insurance credit scoring process.

18 (d) If credit information is obtained or used on an
19 applicant for insurance coverage or insured, or on any member of the
20 applicant's or insured's household, the insurer shall disclose to
21 the applicant or insured the name of each person on whom credit
22 information was obtained or used and how each person's credit
23 information was used to underwrite or rate the policy.

24 Sec. 559.054. NOTICE OF ACTION RESULTING IN ADVERSE EFFECT.

25 (a) If, based in whole or in part on information contained in a
26 credit report, an insurer takes an action resulting in an adverse
27 effect with respect to an applicant for insurance coverage or

1 insured, the insurer shall provide to the applicant or insured
2 within 30 days:

3 (1) written or electronic notice of the action
4 resulting in an adverse effect and the reasons for that action;

5 (2) the name, address, and telephone number of the
6 consumer reporting agency, including a toll-free number
7 established by the agency and the agency's Internet website, if
8 applicable;

9 (3) written or electronic notice that the consumer
10 reporting agency did not make the decision to take the action
11 resulting in an adverse effect and will be unable to provide the
12 applicant or insured the specific reasons why the action was taken;
13 and

14 (4) written or electronic notice of the applicant's or
15 insured's right to:

16 (A) obtain a free copy of the consumer's credit
17 report from the consumer reporting agency during the 60-day period
18 after the date of the notice; and

19 (B) dispute with the consumer reporting agency
20 the accuracy or completeness of any information in the consumer's
21 credit report furnished by the agency.

22 (b) In the notice described by Subsection (a)(1), an insurer
23 shall include a description of not more than four factors that were
24 the primary influences of the action resulting in the adverse
25 effect.

26 (c) The use by an insurer of a generalized term such as "poor
27 credit history," "poor credit rating," or "poor credit score" does

1 not constitute sufficient notice under this section of the action
2 resulting in the adverse effect.

3 (d) Standardized credit explanations provided by a consumer
4 reporting agency or other third-party vendor are also sufficient to
5 comply with this section.

6 Sec. 559.055. DISPUTE RESOLUTION; ERROR CORRECTION. (a)
7 If it is determined through the dispute resolution process
8 established under Section 611(a)(5), Fair Credit Reporting Act (15
9 U.S.C. Section 1681i), as amended, that the credit information of a
10 current insured was inaccurate or incomplete or could not be
11 verified and the insurer receives notice of that determination from
12 the consumer reporting agency or from the insured, the insurer
13 shall re-underwrite and re-rate the insured not later than the 30th
14 day after the date the insurer receives the notice.

15 (b) After re-underwriting or re-rating an insured under
16 Subsection (a), an insurer shall make any adjustments necessary
17 within 30 days, consistent with the insurer's underwriting and
18 rating guidelines. If an insurer determines that the insured has
19 overpaid premium, the insurer shall credit the insured the amount
20 of overpayment. The insurer shall compute the overpayment back to
21 the shorter of:

22 (1) the last 12 months of coverage; or

23 (2) the actual policy period.

24 Sec. 559.056. INDEMNIFICATION OF AGENT. (a) An insurer
25 shall indemnify, defend, and hold its agent harmless from and
26 against all liability, fees, and costs that arise out of or relate
27 to the actions, errors, or omissions of an agent who obtains or uses

1 credit information or credit scores for the insurer if the agent:

2 (1) follows the instructions of or procedures
3 established by the insurer; and

4 (2) complies with any applicable law or rule.

5 (b) This section may not be construed to establish a cause
6 of action that does not exist in the absence of this section.

7 Sec. 559.057. SALE OF POLICY TERM INFORMATION BY CONSUMER

8 REPORTING AGENCY PROHIBITED. (a) A consumer reporting agency may

9 not provide or sell data or lists that include any information that,

10 in whole or in part, was submitted in conjunction with an insurance

11 inquiry about a consumer's credit information or a request for a

12 credit report or credit score, including:

13 (1) the expiration dates of an insurance policy or any
14 other information that may identify periods during which a
15 consumer's insurance may expire; and

16 (2) the terms and conditions of the consumer's
17 insurance coverage.

18 (b) The restriction under Subsection (a) does not apply to
19 data or lists that the consumer reporting agency provides to:

20 (1) the agent from whom information was received;

21 (2) the insurer on whose behalf the agent acted; or

22 (3) that insurer's affiliates.

23 (c) This section may not be construed to restrict the
24 ability of an insurer to obtain a claims history report or a report
25 regarding a motor vehicle.

26 [Sections 559.058-559.100 reserved for expansion]

1 SUBCHAPTER C. COMPUTING CREDIT SCORE; EVALUATING CREDIT
2 INFORMATION

3 Sec. 559.101. NEGATIVE FACTORS. An insurer may not use any
4 of the following as a negative factor in any credit scoring
5 methodology or in reviewing credit information to underwrite or
6 rate a policy of personal insurance:

7 (1) a credit inquiry that is not initiated by the
8 consumer;

9 (2) an inquiry relating to insurance coverage, if so
10 identified on a consumer's credit report; or

11 (3) a collection account with a medical industry code,
12 if so identified on the consumer's credit report.

13 Sec. 559.102. MULTIPLE LENDER INQUIRIES. (a) An insurer
14 shall consider multiple lender inquiries made within 30 days of a
15 prior inquiry, if coded by the consumer reporting agency on the
16 consumer's credit report as from the home mortgage industry, as
17 only one inquiry.

18 (b) An insurer shall consider multiple lender inquiries
19 made within 30 days of a prior inquiry, if coded by the consumer
20 reporting agency on the consumer's credit report as from the motor
21 vehicle lending industry, as only one inquiry.

22 Sec. 559.103. EXTRAORDINARY EVENTS. (a) Notwithstanding
23 any other law, an insurer shall, on written request from an
24 applicant for insurance coverage or an insured, provide reasonable
25 exceptions to the insurer's rates, rating classifications, or
26 underwriting rules for a consumer whose credit information has been
27 directly influenced by:

- (1) a catastrophic illness or injury;
- (2) the death of a spouse, child, or parent;
- (3) temporary loss of employment;
- (4) divorce; or
- (5) identity theft.

(b) In a situation described by Subsection (a), an insurer:

(1) may consider only credit information not affected by the event; or

(2) shall assign a neutral credit score.

(c) An insurer may require reasonable written and independently verifiable documentation of the event and the effect of the event on the person's credit before granting an exception. An insurer is not required to consider repeated events or events the insurer reconsidered previously as an extraordinary event.

(d) An insurer may also consider granting an exception to an applicant for insurance coverage or an insured for an extraordinary event not listed in Subsection (a).

(e) An insurer is not out of compliance with any law or rule relating to underwriting, rating, or rate filing as a result of granting an exception under this section.

[Sections 559.104-559.150 reserved for expansion]

SUBCHAPTER D. FILING OF CREDIT SCORING MODELS

Sec. 559.151. FILING REQUIRED. (a) An insurer that uses credit scores to underwrite and rate risks shall file the insurer's credit scoring models or other credit scoring processes with the department.

(b) Another entity may file credit scoring models on behalf

1 of an insurer.

2 (c) A filing that includes credit scoring may include loss
3 experience justifying the use of credit information.

4 Sec. 559.152. PUBLIC INFORMATION. A credit scoring model
5 filed to comply with this chapter, as of the date the filing is
6 received by the department:

7 (1) is public information;

8 (2) is not subject to any exceptions to disclosure
9 under Chapter 552, Government Code; and

10 (3) cannot be withheld from disclosure under any other
11 law.

12 [Sections 559.153-559.200 reserved for expansion]

13 SUBCHAPTER E. ENFORCEMENT

14 Sec. 559.201. VIOLATION. An insurer that violates this
15 chapter or a rule adopted under this chapter commits an unfair
16 practice in violation of Chapter 541 and is subject to sanctions
17 under Chapter 82.

18 (b) Article 21.49-2U, Insurance Code, as added by Section
19 3.01, Chapter 206, Acts of the 78th Legislature, Regular Session,
20 2003, is repealed.

21 SECTION 11.021. Section 841.206(a), Insurance Code, is
22 amended to more accurately reflect the law from which it is derived
23 to read as follows:

24 (a) An [A-domestic] insurance company incorporated or
25 authorized to do the lines of business authorized in this chapter
26 may not have:

27 (1) the company's required capital impaired;

1 (2) more than 90 percent of the company's required
2 minimum surplus impaired; or

3 (3) the surplus required under Section 841.205
4 impaired.

5 SECTION 11.022. Sections 841.257, 841.258, and 841.702,
6 Insurance Code, are amended to more accurately reflect the law from
7 which they are derived to read as follows:

8 Sec. 841.257. KINDS OF BUSINESS LIMITED. An insurance
9 company authorized to engage in the business of insurance under
10 this chapter or in accordance with Section 982.051 may not accept a
11 risk or write an insurance policy in this state or any other state
12 or country other than:

13 (1) a life, accident, or health insurance policy;

14 (2) reinsurance under Article 5.75-1 by a life
15 insurance company authorized to engage in the business of insurance
16 in this state; or

17 (3) reinsurance under Article 5.75-3 by a domestic
18 insurance company.

19 Sec. 841.258. AGENTS FOR COMPANY THAT CEASES WRITING NEW
20 BUSINESS. An [~~A domestic~~] insurance company that ceases to write
21 new business in this state may maintain in this state agents to
22 collect renewal premiums on outstanding policies the company has
23 written under its certificate of authority.

24 Sec. 841.702. APPEAL OF DETERMINATION TO REVOKE
25 CERTIFICATE. An [~~A domestic~~] insurance company aggrieved by an
26 order of the commissioner to revoke the company's certificate of
27 authority under Section 841.701 may file suit in a court in Travis

1 County to vacate the order.

2 SECTION 11.0225. Section 1103.053(a), Insurance Code, is
3 amended to conform more closely to the source law from which the
4 section was derived to read as follows:

5 (a) Except as provided by Subsection (b), a beneficiary or
6 owner of a life insurance policy who is designated in accordance
7 with this subchapter or an entity to which a life insurance policy
8 or an interest, benefit, right, or title in a life insurance policy
9 is transferred or assigned in accordance with this subchapter has,
10 at all times after the designation, an insurable interest in the
11 life of the individual who is insured under the policy.

12 SECTION 11.023. (a) Section 1201.065(a), Insurance Code,
13 is amended to conform to Section 1, Chapter 546, Acts of the 78th
14 Legislature, Regular Session, 2003, to read as follows:

15 (a) An individual or group accident and health insurance
16 policy may contain criteria relating to a maximum age or enrollment
17 in school to establish continued eligibility for coverage of a
18 child [~~younger than~~] 25 years of age or older.

19 (b) Section 1, Chapter 546, Acts of the 78th Legislature,
20 Regular Session, 2003, is repealed.

21 SECTION 11.024. Section 1201.154(a), Insurance Code, is
22 amended to more closely conform to the law from which it was derived
23 to read as follows:

24 (a) In this section, "creditable coverage" has the meaning
25 assigned by Section 1205.004(a) [~~1205.004~~].

26 SECTION 11.025. (a) Section 1207.001, Insurance Code, is
27 amended to conform to Section 3A.01, Chapter 817, Acts of the 78th

1 Legislature, Regular Session, 2003, to read as follows:

2 Sec. 1207.001. APPLICABILITY OF CHAPTER. This chapter
3 applies only to a group health benefit plan, including a small
4 employer health benefit plan written under Chapter 1501, ~~[or]~~ a
5 plan provided under Chapter 1551, 1575, or 1601, or a successor to a
6 plan provided under one of those chapters, or a medical savings
7 account plan or other health reimbursement arrangement authorized
8 by law, that provides benefits for medical or surgical expenses
9 incurred as a result of a health condition, accident, or sickness,
10 including a group, blanket, or franchise insurance policy or
11 insurance agreement, a group hospital service contract, or a group
12 evidence of coverage or similar group coverage document that is
13 offered by:

14 (1) an insurance company;

15 (2) a group hospital service corporation operating
16 under Chapter 842;

17 (3) a fraternal benefit society operating under
18 Chapter 885;

19 (4) a stipulated premium company operating under
20 Chapter 884;

21 (5) a reciprocal exchange operating under Chapter 942;

22 (6) a health maintenance organization operating under
23 Chapter 843;

24 (7) a multiple employer welfare arrangement that holds
25 a certificate of authority under Chapter 846; or

26 (8) an approved nonprofit health corporation that
27 holds a certificate of authority under Chapter 844.

1 (b) Section 3A.01, Chapter 817, Acts of the 78th
2 Legislature, Regular Session, 2003, is repealed.

3 SECTION 11.026. (a) Sections 1207.002-1207.004, Insurance
4 Code, are amended to conform to Section 2, Chapter 11, Acts of the
5 78th Legislature, Regular Session, 2003, and Section 2.122, Chapter
6 198, Acts of the 78th Legislature, Regular Session, 2003, to read as
7 follows:

8 Sec. 1207.002. ENROLLMENT REQUIRED. (a) A group health
9 benefit plan issuer shall permit an individual who is otherwise
10 eligible for enrollment in the plan to enroll in the plan, without
11 regard to any enrollment period restriction, on receipt of written
12 notice from the [~~Texas Department of~~] Health and Human Services
13 Commission or a designee of the commission [~~that department~~]
14 stating that the individual is:

15 (1) a recipient of medical assistance under the state
16 Medicaid program and is a participant in the health insurance
17 premium payment reimbursement program under Section 32.0422, Human
18 Resources Code; or

19 (2) a child enrolled in the state child health plan
20 under Chapter 62, Health and Safety Code, and is a participant in
21 the health insurance premium assistance [~~payment reimbursement~~]
22 program under Section 62.059, Health and Safety Code.

23 (b) A group health benefit plan issuer shall permit an
24 individual who is otherwise eligible for enrollment in the plan to
25 enroll in the plan, without regard to any enrollment period
26 restriction, if the individual:

27 (1) becomes ineligible for medical assistance under

1 the state Medicaid program or enrollment in the state child health
2 plan under Chapter 62, Health and Safety Code, after initially
3 establishing eligibility; and

4 (2) provides a written request for enrollment in the
5 group health benefit plan not later than the 30th day after the date
6 the individual's eligibility for the state Medicaid program or the
7 state child health plan terminated.

8 (c) If an individual described by Subsection (a)(1) or (2)
9 or Subsection (b) is not eligible to enroll in the group health
10 benefit plan unless a family member of the individual is also
11 enrolled in the plan, the plan issuer, on receipt of written notice
12 under Subsection (a) or a written request under Subsection (b),
13 shall enroll both the individual and the family member in the plan.

14 Sec. 1207.003. EFFECTIVE DATE OF ENROLLMENT. Unless
15 enrollment occurs during an established enrollment period,
16 enrollment in a group health benefit plan under Section 1207.002
17 takes effect on the first day of the calendar month that begins at
18 least 30 days after the date written notice or a written request is
19 received by the plan issuer under Section 1207.002(a) or (b), as
20 applicable.

21 Sec. 1207.004. TERMINATION OF ENROLLMENT. (a)
22 Notwithstanding any other requirement of a group health benefit
23 plan, the plan issuer shall permit an individual who is enrolled in
24 the plan under Section 1207.002(a)(1), and any family member of the
25 individual enrolled under Section 1207.002(c) [~~1207.002(b)~~], to
26 terminate enrollment in the plan not later than the 60th day after
27 the date on which the individual provides satisfactory proof to the

1 issuer that the individual is no longer:

2 (1) a recipient of medical assistance under the state
3 Medicaid program; or

4 (2) a participant in the health insurance premium
5 payment reimbursement program under Section 32.0422, Human
6 Resources Code.

7 (b) Notwithstanding any other requirement of a group health
8 benefit plan, the plan issuer shall permit an individual who is
9 enrolled in the plan under Section 1207.002(a)(2), and any family
10 member of the individual enrolled under Section 1207.002(c)
11 [~~1207.002(b)~~], to terminate enrollment in the plan not later than
12 the 60th day after the date on which the individual provides
13 satisfactory proof to the issuer that the child is no longer a
14 participant in the health insurance premium assistance [~~payment~~
15 ~~reimbursement~~] program under Section 62.059, Health and Safety
16 Code.

17 (b) Section 2, Chapter 11, Acts of the 78th Legislature,
18 Regular Session, 2003, and Section 2.122, Chapter 198, Acts of the
19 78th Legislature, Regular Session, 2003, are repealed.

20 SECTION 11.027. (a) Subtitle A, Title 8, Insurance Code,
21 is amended to conform to the enactment of Article 21.30, Insurance
22 Code, by Section 20, Chapter 214, Acts of the 78th Legislature,
23 Regular Session, 2003, by adding Chapter 1211 to read as follows:

24 CHAPTER 1211. WAIVERS REGARDING CERTAIN FEDERAL HEALTH PLANS

25 Sec. 1211.001. WAIVER OF CERTAIN PROVISIONS FOR CERTAIN
26 FEDERAL PLANS. If the commissioner of insurance, in consultation
27 with the commissioner of health and human services, determines that

1 a provision of Section 843.209 or 843.321, Subchapter J, Chapter
2 843, Chapter 1213, Subchapter C or C-1, Chapter 1301, or Section
3 1301.008, 1301.069, or 1301.162 will cause a negative fiscal impact
4 on the state with respect to providing benefits or services under
5 Subchapter XIX, Social Security Act (42 U.S.C. Section 1396 et
6 seq.), as amended, or Subchapter XXI, Social Security Act (42
7 U.S.C. Section 1397aa et seq.), as amended, the commissioner of
8 insurance by rule shall waive the application of that provision to
9 the providing of those benefits or services.

10 (b) Article 21.30, Insurance Code, as added by Section 20,
11 Chapter 214, Acts of the 78th Legislature, Regular Session, 2003,
12 is repealed.

13 SECTION 11.028. (a) Subtitle A, Title 8, Insurance Code,
14 is amended to conform to the enactment of Article 21.52Y, Insurance
15 Code, by Section 21, Chapter 214, Acts of the 78th Legislature,
16 Regular Session, 2003, by adding Chapter 1212 to read as follows:

17 CHAPTER 1212. TECHNICAL ADVISORY COMMITTEE ON
18 CLAIMS PROCESSING

19 Sec. 1212.001. APPOINTMENT OF COMMITTEE. The commissioner
20 shall appoint a technical advisory committee on processing by
21 insurers and health maintenance organizations of claims by
22 physicians and other health care providers for medical care and
23 health care services provided to patients.

24 Sec. 1212.002. COMMITTEE POWERS AND DUTIES. (a) The
25 technical advisory committee shall advise the commissioner on
26 technical aspects of coding of health care services and claims
27 development, submission, processing, adjudication, and payment, as

1 well as the impact on those processes of contractual requirements
2 and relationships, including relationships among employers, health
3 benefit plans, insurers, health maintenance organizations,
4 preferred provider organizations, electronic clearinghouses,
5 physicians and other health care providers, third-party
6 administrators, independent physician associations, and medical
7 groups. The committee shall also advise the commissioner with
8 respect to the implementation of the standardized coding and
9 bundling edits and logic.

10 (b) The commissioner shall consult the technical advisory
11 committee before adopting any rule related to the subjects
12 described by Subsection (a).

13 Sec. 1212.003. COMMITTEE REPORT. On or before September 1
14 of each even-numbered year, the technical advisory committee shall
15 issue a report to the legislature on the committee's activities.

16 Sec. 1212.004. COMMITTEE MEMBER COMPENSATION. Members of
17 the technical advisory committee serve without compensation.

18 Sec. 1212.005. APPLICABILITY OF CERTAIN LAWS. Section
19 39.003(a) and Chapter 2110, Government Code, do not apply to the
20 technical advisory committee established under this chapter.

21 (b) Article 21.52Y, Insurance Code, as added by Section 21,
22 Chapter 214, Acts of the 78th Legislature, Regular Session, 2003,
23 is repealed.

24 SECTION 11.029. (a) Subtitle A, Title 8, Insurance Code, is
25 amended to conform to the enactment of Article 21.52Z, Insurance
26 Code, by Section 21, Chapter 214, Acts of the 78th Legislature,
27 Regular Session, 2003, by adding Chapter 1213 to read as follows:

1 CHAPTER 1213. ELECTRONIC HEALTH CARE TRANSACTIONS

2 Sec. 1213.001. DEFINITION OF HEALTH BENEFIT PLAN. (a) In
3 this chapter, "health benefit plan" means a plan that provides
4 benefits for medical, surgical, or other treatment expenses
5 incurred as a result of a health condition, a mental health
6 condition, an accident, sickness, or substance abuse, including an
7 individual, group, blanket, or franchise insurance policy or
8 insurance agreement, a group hospital service contract, or an
9 individual or group evidence of coverage or similar coverage
10 document that is offered by:

11 (1) an insurance company;

12 (2) a group hospital service corporation operating
13 under Chapter 842;

14 (3) a fraternal benefit society operating under
15 Chapter 885;

16 (4) a stipulated premium insurance company operating
17 under Chapter 884;

18 (5) a Lloyd's plan operating under Chapter 941;

19 (6) an exchange operating under Chapter 942;

20 (7) a health maintenance organization operating under
21 Chapter 843;

22 (8) a multiple employer welfare arrangement that holds
23 a certificate of authority under Chapter 846; or

24 (9) an approved nonprofit health corporation that
25 holds a certificate of authority under Chapter 844.

26 (b) The term includes:

27 (1) a small employer health benefit plan written under

1 Chapter 1501; and

2 (2) a health benefit plan offered under Chapter 1551,
3 1575, 1579, or 1601.

4 Sec. 1213.002. ELECTRONIC SUBMISSION OF CLAIMS. (a) The
5 issuer of a health benefit plan by contract may require that a
6 health care professional licensed or registered under the
7 Occupations Code or a health care facility licensed under the
8 Health and Safety Code electronically submit a health care claim or
9 equivalent encounter information, a referral certification, or an
10 authorization or eligibility transaction. The health benefit plan
11 issuer shall comply with the standards for electronic transactions
12 required by this section and established by the commissioner by
13 rule.

14 (b) The issuer of a health benefit plan by contract shall
15 establish a default method to submit claims in a nonelectronic
16 format if there is a system failure or failures or a catastrophic
17 event substantially interferes with the normal business operations
18 of the physician, provider, or health benefit plan or its agents.
19 The health benefit plan issuer shall comply with the standards for
20 nonelectronic transactions established by the commissioner by
21 rule.

22 Sec. 1213.003. ELECTRONIC SUBMISSION OF CLAIMS: WAIVER.

23 (a) A contract between the issuer of a health benefit plan and a
24 health care professional or health care facility must provide for a
25 waiver of any requirement for electronic submission established
26 under this chapter.

27 (b) The commissioner shall establish circumstances under

1 which a waiver is required, including:

2 (1) circumstances in which no method is available for
3 the submission of claims in electronic form;

4 (2) the operation of small physician practices;

5 (3) the operation of other small health care provider
6 practices;

7 (4) undue hardship, including fiscal or operational
8 hardship; or

9 (5) any other special circumstance that would justify
10 a waiver.

11 (c) Any health care professional or health care facility
12 that is denied a waiver by the issuer of a health benefit plan may
13 appeal the denial to the commissioner. The commissioner shall
14 determine whether a waiver must be granted.

15 (d) The issuer of a health benefit plan may not refuse to
16 contract or renew a contract with a health care professional or
17 health care facility based in whole or in part on the professional
18 or facility requesting or receiving a waiver or appealing a waiver
19 determination.

20 Sec. 1213.004. MODE OF TRANSMISSION. The issuer of a health
21 benefit plan may not by contract limit the mode of electronic
22 transmission that a health care professional or health care
23 facility may use to submit information under this chapter.

24 Sec. 1213.005. CERTAIN CHARGES PROHIBITED. A health
25 benefit plan may not directly or indirectly charge or hold a health
26 care professional, health care facility, or person enrolled in a
27 health benefit plan responsible for a fee for the adjudication of a

1 claim.

2 Sec. 1213.006. RULES. The commissioner may adopt rules as
3 necessary to implement this chapter. The commissioner may not
4 require any data element for electronically filed claims that is
5 not required to comply with federal law.

6 (b) Article 21.52Z, Insurance Code, as added by Section 21,
7 Chapter 214, Acts of the 78th Legislature, Regular Session, 2003,
8 is repealed.

9 SECTION 11.030. (a) Section 1251.201, Insurance Code, is
10 amended to conform to Section 1, Chapter 259, Acts of the 78th
11 Legislature, Regular Session, 2003, by adding Subsection (c) to
12 read as follows:

13 (c) By agreement between the insurer and the policyholder, a
14 certificate may be delivered electronically.

15 (b) Section 1, Chapter 259, Acts of the 78th Legislature,
16 Regular Session, 2003, is repealed.

17 SECTION 11.031. (a) Section 1254.001, Insurance Code, is
18 amended to conform to Section 1, Chapter 222, Acts of the 78th
19 Legislature, Regular Session, 2003, by amending Subsection (b) and
20 adding Subsection (g) to read as follows:

21 (b) Not less [~~later~~] than 60 days [~~the 31st day~~] before the
22 date on which a premium rate increase takes effect on a group policy
23 of health insurance, accident and health insurance, or life,
24 health, and accident insurance delivered or issued for delivery in
25 this state by an insurer, the insurer shall give written notice to
26 the policyholder of:

27 (1) the amount of the increase; and

1 (2) the date on which the increase is to take effect.

2 (g) An insurer may not require a policyholder or trustee
3 entitled to notice under this section to respond to the insurer to
4 renew the policy or take other action relating to the renewal or
5 extension of the policy before the 45th day after the date the
6 notice described by Subsection (b) is given.

7 (b) Section 1, Chapter 222, Acts of the 78th Legislature,
8 Regular Session, 2003, is repealed.

9 SECTION 11.032. (a) Section 1271.002, Insurance Code, is
10 amended to conform to Section 1, Chapter 260, Acts of the 78th
11 Legislature, Regular Session, 2003, and Section 1, Chapter 261,
12 Acts of the 78th Legislature, Regular Session, 2003, by adding
13 Subsection (d) to read as follows:

14 (d) By agreement between the health maintenance
15 organization, insurer, or group hospital service corporation and
16 the subscriber or person entitled to receive the evidence of
17 coverage, policy, or contract, the evidence of coverage required by
18 this section may be delivered electronically.

19 (b) Section 1, Chapter 260, Acts of the 78th Legislature,
20 Regular Session, 2003, and Section 1, Chapter 261, Acts of the 78th
21 Legislature, Regular Session, 2003, are repealed.

22 SECTION 11.033. (a) Section 1301.001, Insurance Code, is
23 amended to conform to Section 1, Chapter 214, Acts of the 78th
24 Legislature, Regular Session, 2003, by adding Subdivisions (7-a)
25 and (11) to read as follows:

26 (7-a) "Preauthorization" means a determination by an
27 insurer that medical care or health care services proposed to be

1 provided to a patient are medically necessary and appropriate.

2 (11) "Verification" means a reliable representation
3 by an insurer to a physician or health care provider that the
4 insurer will pay the physician or provider for proposed medical
5 care or health care services if the physician or provider renders
6 those services to the patient for whom the services are proposed.
7 The term includes precertification, certification,
8 recertification, and any other term that would be a reliable
9 representation by an insurer to a physician or provider.

10 (b) Section 1, Chapter 214, Acts of the 78th Legislature,
11 Regular Session, 2003, is repealed.

12 SECTION 11.034. (a) Section 1301.051, Insurance Code, is
13 amended to conform to Section 1, Chapter 237, Acts of the 78th
14 Legislature, Regular Session, 2003, by adding Subsection (e) to
15 read as follows:

16 (e) An insurer may not withhold a designation to a
17 podiatrist described by Section 1301.0521.

18 (b) Section 1, Chapter 237, Acts of the 78th Legislature,
19 Regular Session, 2003, is repealed.

20 SECTION 11.035. (a) Subchapter B, Chapter 1301, Insurance
21 Code, is amended to conform to Section 2, Chapter 237, Acts of the
22 78th Legislature, Regular Session, 2003, by adding Section
23 1301.0521 to read as follows:

24 Sec. 1301.0521. DESIGNATION OF CERTAIN PODIATRISTS AS
25 PREFERRED PROVIDERS. (a) Notwithstanding Section 1301.051, an
26 insurer may not withhold the designation of preferred provider to a
27 podiatrist licensed by the Texas State Board of Podiatric Medical

1 Examiners who:

2 (1) joins the professional practice of a contracted
3 preferred provider;

4 (2) applies to the insurer for designation as a
5 preferred provider; and

6 (3) complies with the terms and conditions of
7 eligibility to be a preferred provider.

8 (b) A podiatrist designated as a preferred provider under
9 this section must comply with the terms of the preferred provider
10 contract used by the insurer or the insurer's network provider.

11 (b) Section 2, Chapter 237, Acts of the 78th Legislature,
12 Regular Session, 2003, is repealed.

13 SECTION 11.036. (a) Subchapter D, Chapter 1301, Insurance
14 Code, is amended to conform to Section 1, Chapter 1177, Acts of the
15 78th Legislature, Regular Session, 2003, by adding Section
16 1301.1591 to read as follows:

17 Sec. 1301.1591. PREFERRED PROVIDER INFORMATION ON
18 INTERNET. (a) An insurer subject to this chapter that maintains an
19 Internet site shall list on the Internet site the preferred
20 providers, including, if appropriate, mental health providers and
21 substance abuse treatment providers, that insureds may use in
22 accordance with the terms of the insured's preferred provider
23 benefit plan. The listing must identify those preferred providers
24 who continue to be available to provide services to new patients or
25 clients.

26 (b) The insurer shall update at least quarterly an Internet
27 site subject to this section.

1 (c) The commissioner may adopt rules as necessary to
2 implement this section. The rules may govern the form and content
3 of the information required to be provided under Subsection (a).

4 (d) Notwithstanding any other provision of this chapter,
5 this section applies to an entity subject to Chapter 941 or 942 and
6 to a multiple employer welfare arrangement that holds a certificate
7 of authority under Chapter 846.

8 (b) Section 1, Chapter 1177, Acts of the 78th Legislature,
9 Regular Session, 2003, is repealed.

10 SECTION 11.037. (a) Subchapter C, Chapter 1301, Insurance
11 Code, is amended to conform to Sections 2 and 3, Chapter 214, Acts
12 of the 78th Legislature, Regular Session, 2003, to read as follows:

13 SUBCHAPTER C. PROMPT PAYMENT OF CLAIMS [~~TO PROVIDERS~~]

14 Sec. 1301.101. DEFINITION. In this subchapter, "clean
15 claim" means a [~~completed~~] claim that complies with Section
16 1301.131 [~~, as determined under department rules, submitted by a~~
17 ~~preferred provider for medical care or health care services under a~~
18 ~~health insurance policy~~].

19 Sec. 1301.102. SUBMISSION [~~ACKNOWLEDGMENT OF RECEIPT~~] OF
20 CLAIM. (a) A physician or health care [~~preferred~~] provider must
21 submit a claim to an insurer not later than the 95th day after the
22 date the physician or provider provides the medical care or health
23 care services for which the claim is made.

24 (b) Except as provided by Chapter 1213, a physician or
25 health care provider may, as appropriate:

26 (1) mail a claim by United States mail, first class, or
27 by overnight delivery service;

1 (2) submit the claim electronically;

2 (3) fax the claim; or

3 (4) hand deliver the claim.

4 (c) An insurer shall accept as proof of timely filing a
5 claim filed in compliance with Subsection (b) or information from
6 another insurer or health maintenance organization showing that the
7 physician or health care provider submitted the claim to the
8 insurer or health maintenance organization in compliance with
9 Subsection (b).

10 (d) If a physician or health care provider fails to submit a
11 claim in compliance with this section, the physician or provider
12 forfeits the right to payment unless the failure to submit the claim
13 in compliance with this section is a result of a catastrophic event
14 that substantially interferes with the normal business operations
15 of the physician or provider.

16 (e) The period for submitting a claim under this section may
17 be extended by contract.

18 (f) A physician or health care provider may not submit a
19 duplicate claim for payment before the 46th day after the date the
20 original claim was submitted. The commissioner shall adopt rules
21 under which an insurer may determine whether a claim is a duplicate
22 claim ~~[may obtain acknowledgment of receipt of a claim for medical~~
23 ~~care or health care services under a health insurance policy by~~
24 ~~submitting the claim by United States mail, return receipt~~
25 ~~requested.~~

26 ~~[(b) An insurer or the contracted clearinghouse of an~~
27 ~~insurer that receives a claim electronically shall acknowledge~~

1 ~~receipt of the claim by an electronic transmission to the preferred~~
2 ~~provider and is not required to acknowledge receipt of the claim in~~
3 ~~writing].~~

4 Sec. 1301.1021. RECEIPT OF CLAIM. (a) If a claim for
5 medical care or health care services provided to a patient is
6 mailed, the claim is presumed to have been received by the insurer
7 on the fifth day after the date the claim is mailed or, if the claim
8 is mailed using overnight service or return receipt requested, on
9 the date the delivery receipt is signed.

10 (b) If the claim is submitted electronically, the claim is
11 presumed to have been received on the date of the electronic
12 verification of receipt by the insurer or the insurer's
13 clearinghouse. If the insurer or the insurer's clearinghouse does
14 not provide a confirmation within 24 hours of submission by the
15 physician or health care provider, the physician's or provider's
16 clearinghouse shall provide the confirmation. The physician's or
17 provider's clearinghouse must be able to verify that the filing
18 contained the correct payor identification of the entity to receive
19 the filing.

20 (c) If the claim is faxed, the claim is presumed to have been
21 received on the date of the transmission acknowledgment.

22 (d) If the claim is hand delivered, the claim is presumed to
23 have been received on the date the delivery receipt is signed.

24 Sec. 1301.103. DEADLINE FOR ACTION ON CLEAN CLAIMS. Except
25 as provided by Section 1301.1054, not [Not] later than the 45th day
26 after the date [on which] an insurer receives a clean claim from a
27 preferred provider in a nonelectronic format or the 30th day after

1 the date an insurer receives a clean claim from a preferred provider
2 that is electronically submitted, the insurer shall make a
3 determination of whether the claim is payable and:

4 (1) if the insurer determines the entire claim is
5 payable, pay the total amount of the claim in accordance with the
6 contract between the preferred provider and the insurer;

7 (2) if the insurer determines a portion of the claim is
8 payable, pay the portion of the claim that is not in dispute and
9 notify the preferred provider in writing why the remaining portion
10 of the claim will not be paid; or

11 (3) if the insurer determines that the claim is not
12 payable, notify the preferred provider in writing why the claim
13 will not be paid.

14 Sec. 1301.104. DEADLINE FOR ACTION ON CERTAIN PHARMACY
15 [~~PRESCRIPTION BENEFIT~~] CLAIMS. Not later than the 21st day after
16 the date an insurer affirmatively adjudicates a pharmacy claim that
17 is electronically submitted, the insurer shall pay the total amount
18 of the claim [~~If a preferred provider or its designated agent~~
19 ~~authorizes treatment, a prescription benefit claim that is~~
20 ~~electronically adjudicated and electronically paid shall be paid~~
21 ~~not later than the 21st day after the date on which the treatment is~~
22 ~~authorized].~~

23 Sec. 1301.105. AUDITED CLAIMS. (a) Except as provided by
24 Section 1301.1054, an [An] insurer that [~~acknowledges coverage of~~
25 ~~an insured under a health insurance policy but]~~ intends to audit a
26 claim submitted by a preferred provider shall pay the charges
27 submitted at 100 [~~85~~] percent of the contracted rate on the claim

1 not later than:

2 (1) the 30th day after the date the insurer receives
3 the clean claim from the preferred provider if the claim is
4 submitted electronically; or

5 (2) the 45th day after the date [~~on which~~] the insurer
6 receives the clean claim from the preferred provider if the claim is
7 submitted nonelectronically.

8 (b) The insurer shall clearly indicate on the explanation of
9 payment statement in the manner prescribed by the commissioner by
10 rule that the clean claim is being paid at 100 percent of the
11 contracted rate, subject to completion of the audit.

12 (c) If the insurer requests additional information to
13 complete the audit, the request must describe with specificity the
14 clinical information requested and relate only to information the
15 insurer in good faith can demonstrate is specific to the claim or
16 episode of care. The insurer may not request as a part of the audit
17 information that is not contained in, or is not in the process of
18 being incorporated into, the patient's medical or billing record
19 maintained by a preferred provider.

20 (d) If the preferred provider does not supply information
21 reasonably requested by the insurer in connection with the audit,
22 the insurer may:

23 (1) notify the provider in writing that the provider
24 must provide the information not later than the 45th day after the
25 date of the notice or forfeit the amount of the claim; and

26 (2) if the provider does not provide the information
27 required by this section, recover the amount of the claim.

1 Sec. 1301.1051. COMPLETION OF AUDIT. The insurer must
2 complete an [~~Following completion of the~~] audit under Section
3 1301.105 on or before the 180th day after the date the clean claim
4 is received by the insurer, and any additional payment due a
5 preferred provider or any refund due the insurer shall be made not
6 later than the 30th day after the completion of the audit.

7 Sec. 1301.1052. PREFERRED PROVIDER APPEAL AFTER AUDIT. If
8 a preferred provider disagrees with a refund request made by an
9 insurer based on an audit under Section 1301.105, the insurer shall
10 provide the provider with an opportunity to appeal, and the insurer
11 may not attempt to recover the payment until all appeal rights are
12 exhausted [~~later of the date that:~~

13 [~~(1) the preferred provider receives notice of the~~
14 ~~audit results; or~~

15 [~~(2) any appeal rights of the insured are exhausted~~].

16 Sec. 1301.1053. DEADLINES NOT EXTENDED. The investigation
17 and determination of payment, including any coordination of other
18 payments, does not extend the period for determining whether a
19 claim is payable under Section 1301.103 or 1301.104 or for auditing
20 a claim under Section 1301.105.

21 Sec. 1301.1054. REQUESTS FOR ADDITIONAL INFORMATION. (a)
22 If an insurer needs additional information from a treating
23 preferred provider to determine payment, the insurer, not later
24 than the 30th calendar day after the date the insurer receives a
25 clean claim, shall request in writing that the preferred provider
26 provide an attachment to the claim that is relevant and necessary
27 for clarification of the claim. The request must describe with

1 specificity the clinical information requested and relate only to
2 information the insurer can demonstrate is specific to the claim or
3 the claim's related episode of care. The preferred provider is not
4 required to provide an attachment that is not contained in, or is
5 not in the process of being incorporated into, the patient's
6 medical or billing record maintained by a preferred provider.

7 (b) An insurer that requests an attachment under Subsection
8 (a) shall determine whether the claim is payable on or before the
9 later of the 15th day after the date the insurer receives the
10 requested attachment or the latest date for determining whether the
11 claim is payable under Section 1301.103 or 1301.104.

12 (c) An insurer may not make more than one request under
13 Subsection (a) in connection with a claim. Sections 1301.102(b)
14 and 1301.1021 apply to a request for and submission of an attachment
15 under Subsection (a).

16 (d) If an insurer requests an attachment or other
17 information from a person other than the preferred provider who
18 submitted the claim, the insurer shall provide notice containing
19 the name of the physician or health care provider from whom the
20 insurer is requesting information to the preferred provider who
21 submitted the claim. The insurer may not withhold payment pending
22 receipt of an attachment or information requested under this
23 subsection. If on receiving an attachment or information requested
24 under this subsection the insurer determines that there was an
25 error in payment of the claim, the insurer may recover any
26 overpayment under Section 1301.132.

27 (e) The commissioner shall adopt rules under which an

1 insurer can easily identify attachments or other information
2 submitted by a physician or health care provider under this
3 section.

4 Sec. 1301.106. CLAIMS PROCESSING PROCEDURES AND CLAIMS
5 PAYMENT PROCESSES. (a) An insurer shall provide a preferred
6 provider with copies of all applicable utilization review policies
7 and claim processing policies or procedures [~~, including required~~
8 ~~data elements and claim formats~~].

9 (b) An insurer's claims payment processes shall:

10 (1) use nationally recognized, generally accepted
11 Current Procedural Terminology codes, notes, and guidelines,
12 including all relevant modifiers; and

13 (2) be consistent with nationally recognized,
14 generally accepted bundling edits and logic [~~An insurer may, by~~
15 ~~contract with a preferred provider, add or change the data elements~~
16 ~~that must be submitted with a claim~~].

17 [~~(c) Not later than the 60th day before the date of an~~
18 ~~addition or change in the data elements that must be submitted with~~
19 ~~a claim or any other change in an insurer's claim processing and~~
20 ~~payment procedures, the insurer shall provide written notice of the~~
21 ~~addition or change to each preferred provider.~~]

22 Sec. 1301.107. CONTRACTUAL WAIVER AND OTHER ACTIONS
23 PROHIBITED. Except as provided by Section 1301.102(e), the
24 provisions of this subchapter may not be waived, voided, or
25 nullified by contract [~~VIOLATION OF CLAIMS PAYMENT PROVISIONS,~~
26 ~~ADMINISTRATIVE PENALTY.~~ (a) ~~An insurer that violates Section~~
27 ~~1301.103 or 1301.105 is liable to a preferred provider for the full~~

1 ~~amount of billed charges submitted on the claim or the amount~~
2 ~~payable under the contracted penalty rate, less any amount~~
3 ~~previously paid or any charge for a service that is not covered by~~
4 ~~the health insurance policy.~~

5 ~~[(b) In addition to any other penalty or remedy authorized~~
6 ~~by this code or another insurance law of this state, an insurer that~~
7 ~~violates Section 1301.103 or 1301.105 is subject to an~~
8 ~~administrative penalty under Chapter 84. The administrative~~
9 ~~penalty imposed under that chapter may not exceed \$1,000 for each~~
10 ~~day the claim remains unpaid in violation of Section 1301.103 or~~
11 ~~1301.105].~~

12 Sec. 1301.108. ATTORNEY'S FEES. A preferred provider may
13 recover reasonable attorney's fees and court costs in an action to
14 recover payment under this subchapter.

15 Sec. 1301.109. APPLICABILITY TO ENTITIES CONTRACTING WITH
16 INSURER. This subchapter applies to a person with whom an insurer
17 contracts to:

- 18 (1) process or pay claims; ~~[or]~~
19 (2) obtain the services of physicians and health care
20 providers ~~[a preferred provider]~~ to provide health care services
21 ~~[medical care or health care]~~ to insureds; or
22 (3) issue verifications or preauthorizations ~~[an~~
23 ~~insured under a health insurance policy].~~

24 ~~[Sec. 1301.110. EXCEPTION. This subchapter does not apply~~
25 ~~to a claim submitted by a preferred provider who is a member of the~~
26 ~~legislature.]~~

27 (b) Chapter 1301, Insurance Code, is amended to conform to

1 Section 3, Chapter 214, Acts of the 78th Legislature, Regular
2 Session, 2003, by adding Subchapter C-1 to read as follows:

3 SUBCHAPTER C-1. OTHER PROVISIONS RELATING TO PAYMENT OF CLAIMS

4 Sec. 1301.131. ELEMENTS OF CLEAN CLAIM. (a) A

5 nonelectronic claim by a physician or health care provider, other
6 than an institutional provider, is a "clean claim" if the claim is
7 submitted using the Centers for Medicare and Medicaid Services Form
8 1500 or, if adopted by the commissioner by rule, a successor to that
9 form developed by the National Uniform Claim Committee or the
10 committee's successor. An electronic claim by a physician or
11 provider, other than an institutional provider, is a "clean claim"
12 if the claim is submitted using the Professional 837 (ASC X12N 837)
13 format or, if adopted by the commissioner by rule, a successor to
14 that format adopted by the Centers for Medicare and Medicaid
15 Services or the center's successor.

16 (b) A nonelectronic claim by an institutional provider is a
17 "clean claim" if the claim is submitted using the Centers for
18 Medicare and Medicaid Services Form UB-92 or, if adopted by the
19 commissioner by rule, a successor to that form developed by the
20 National Uniform Billing Committee or the committee's successor.
21 An electronic claim by an institutional provider is a "clean claim"
22 if the claim is submitted using the Institutional 837 (ASC X12N 837)
23 format or, if adopted by the commissioner by rule, a successor to
24 that format adopted by the Centers for Medicare and Medicaid
25 Services or the centers' successor.

26 (c) The commissioner may adopt rules that specify the
27 information that must be entered into the appropriate fields on the

1 applicable claim form for a claim to be a clean claim.

2 (d) The commissioner may not require any data element for an
3 electronic claim that is not required in an electronic transaction
4 set needed to comply with federal law.

5 (e) An insurer and a preferred provider may agree by
6 contract to use fewer data elements than are required in an
7 electronic transaction set needed to comply with federal law.

8 (f) An otherwise clean claim submitted by a physician or
9 health care provider that includes additional fields, data
10 elements, attachments, or other information not required under this
11 section is considered to be a clean claim for the purposes of this
12 chapter.

13 (g) Except as provided by Subsection (e), the provisions of
14 this section may not be waived, voided, or nullified by contract.

15 Sec. 1301.132. OVERPAYMENT. (a) An insurer may recover an
16 overpayment to a physician or health care provider if:

17 (1) not later than the 180th day after the date the
18 physician or provider receives the payment, the insurer provides
19 written notice of the overpayment to the physician or provider that
20 includes the basis and specific reasons for the request for
21 recovery of funds; and

22 (2) the physician or provider does not make
23 arrangements for repayment of the requested funds on or before the
24 45th day after the date the physician or provider receives the
25 notice.

26 (b) If a physician or health care provider disagrees with a
27 request for recovery of an overpayment, the insurer shall provide

1 the physician or provider with an opportunity to appeal, and the
2 insurer may not attempt to recover the overpayment until all appeal
3 rights are exhausted.

4 Sec. 1301.133. VERIFICATION. (a) In this section,
5 "verification" includes preauthorization only when
6 preauthorization is a condition for the verification.

7 (b) On the request of a preferred provider for verification
8 of a particular medical care or health care service the preferred
9 provider proposes to provide to a particular patient, the insurer
10 shall inform the preferred provider without delay whether the
11 service, if provided to that patient, will be paid by the insurer
12 and shall specify any deductibles, copayments, or coinsurance for
13 which the insured is responsible.

14 (c) An insurer shall have appropriate personnel reasonably
15 available at a toll-free telephone number to provide a verification
16 under this section between 6 a.m. and 6 p.m. central time Monday
17 through Friday on each day that is not a legal holiday and between 9
18 a.m. and noon central time on Saturday, Sunday, and legal holidays.
19 An insurer must have a telephone system capable of accepting or
20 recording incoming phone calls for verifications after 6 p.m.
21 central time Monday through Friday and after noon central time on
22 Saturday, Sunday, and legal holidays and responding to each of
23 those calls on or before the second calendar day after the date the
24 call is received.

25 (d) An insurer may decline to determine eligibility for
26 payment if the insurer notifies the physician or preferred provider
27 who requested the verification of the specific reason the

1 determination was not made.

2 (e) An insurer may establish a specific period during which
3 the verification is valid of not less than 30 days.

4 (f) An insurer that declines to provide a verification shall
5 notify the physician or provider who requested the verification of
6 the specific reason the verification was not provided.

7 (g) If an insurer has provided a verification for proposed
8 medical care or health care services, the insurer may not deny or
9 reduce payment to the physician or provider for those medical care
10 or health care services if provided to the insured on or before the
11 30th day after the date the verification was provided unless the
12 physician or provider has materially misrepresented the proposed
13 medical care or health care services or has substantially failed to
14 perform the proposed medical care or health care services.

15 (h) The provisions of this section may not be waived,
16 voided, or nullified by contract.

17 Sec. 1301.134. COORDINATION OF PAYMENT. (a) An insurer may
18 require a physician or health care provider to retain in the
19 physician's or provider's records updated information concerning
20 other health benefit plan coverage and to provide the information
21 to the insurer on the applicable form described by Section
22 1301.131. Except as provided by this subsection, an insurer may not
23 require a physician or provider to investigate coordination of
24 other health benefit plan coverage.

25 (b) Coordination of payment under this section does not
26 extend the period for determining whether a service is eligible for
27 payment under Section 1301.103 or 1301.104 or for auditing a claim

1 under Section 1301.105.

2 (c) A physician or health care provider who submits a claim
3 for particular medical care or health care services to more than one
4 health maintenance organization or insurer shall provide written
5 notice on the claim submitted to each health maintenance
6 organization or insurer of the identity of each other health
7 maintenance organization or insurer with which the same claim is
8 being filed.

9 (d) On receipt of notice under Subsection (c), an insurer
10 shall coordinate and determine the appropriate payment for each
11 health maintenance organization or insurer to make to the physician
12 or health care provider.

13 (e) Except as provided by Subsection (f), if an insurer is a
14 secondary payor and pays a portion of a claim that should have been
15 paid by the insurer or health maintenance organization that is the
16 primary payor, the overpayment may only be recovered from the
17 health maintenance organization or insurer that is primarily
18 responsible for that amount.

19 (f) If the portion of the claim overpaid by the secondary
20 insurer was also paid by the primary health maintenance
21 organization or insurer, the secondary insurer may recover the
22 amount of overpayment under Section 1301.132 from the physician or
23 health care provider who received the payment. An insurer
24 processing an electronic claim as a secondary payor shall rely on
25 the primary payor information submitted on the claim by the
26 physician or provider. Primary payor information may be submitted
27 electronically by the primary payor to the secondary payor.

1 (g) An insurer may share information with a health
2 maintenance organization or another insurer to the extent necessary
3 to coordinate appropriate payment obligations on a specific claim.

4 (h) The provisions of this section may not be waived,
5 voided, or nullified by contract.

6 Sec. 1301.135. PREAUTHORIZATION OF MEDICAL AND HEALTH CARE
7 SERVICES. (a) An insurer that uses a preauthorization process for
8 medical care and health care services shall provide to each
9 preferred provider, not later than the 10th business day after the
10 date a request is made, a list of medical care and health care
11 services that require preauthorization and information concerning
12 the preauthorization process.

13 (b) If proposed medical care or health care services require
14 preauthorization as a condition of the insurer's payment to a
15 preferred provider under a health insurance policy, the insurer
16 shall determine whether the medical care or health care services
17 proposed to be provided to the insured are medically necessary and
18 appropriate.

19 (c) On receipt of a request from a preferred provider for
20 preauthorization, the insurer shall review and issue a
21 determination indicating whether the proposed medical care or
22 health care services are preauthorized. The determination must be
23 issued and transmitted not later than the third calendar day after
24 the date the request is received by the insurer.

25 (d) If the proposed medical care or health care services
26 involve inpatient care and the insurer requires preauthorization as
27 a condition of payment, the insurer shall review the request and

1 issue a length of stay for the admission into a health care facility
2 based on the recommendation of the patient's physician or health
3 care provider and the insurer's written medically accepted
4 screening criteria and review procedures. If the proposed medical
5 or health care services are to be provided to a patient who is an
6 inpatient in a health care facility at the time the services are
7 proposed, the insurer shall review the request and issue a
8 determination indicating whether proposed services are
9 preauthorized within 24 hours of the request by the physician or
10 provider.

11 (e) An insurer shall have appropriate personnel reasonably
12 available at a toll-free telephone number to respond to requests
13 for a preauthorization between 6 a.m. and 6 p.m. central time Monday
14 through Friday on each day that is not a legal holiday and between 9
15 a.m. and noon central time on Saturday, Sunday, and legal holidays.
16 An insurer must have a telephone system capable of accepting or
17 recording incoming phone calls for preauthorizations after 6 p.m.
18 central time Monday through Friday and after noon central time on
19 Saturday, Sunday, and legal holidays and responding to each of
20 those calls not later than 24 hours after the call is received.

21 (f) If an insurer has preauthorized medical care or health
22 care services, the insurer may not deny or reduce payment to the
23 physician or health care provider for those services based on
24 medical necessity or appropriateness of care unless the physician
25 or provider has materially misrepresented the proposed medical or
26 health care services or has substantially failed to perform the
27 proposed medical or health care services.

1 (g) This section applies to an agent or other person with
2 whom an insurer contracts to perform, or to whom the insurer
3 delegates the performance of, preauthorization of proposed medical
4 or health care services.

5 (h) The provisions of this section may not be waived,
6 voided, or nullified by contract.

7 Sec. 1301.136. AVAILABILITY OF CODING GUIDELINES. (a) A
8 contract between an insurer and a preferred provider must provide
9 that:

10 (1) the preferred provider may request a description
11 and copy of the coding guidelines, including any underlying
12 bundling, recoding, or other payment process and fee schedules
13 applicable to specific procedures that the preferred provider will
14 receive under the contract;

15 (2) the insurer or the insurer's agent will provide the
16 coding guidelines and fee schedules not later than the 30th day
17 after the date the insurer receives the request;

18 (3) the insurer or the insurer's agent will provide
19 notice of changes to the coding guidelines and fee schedules that
20 will result in a change of payment to the preferred provider not
21 later than the 90th day before the date the changes take effect and
22 will not make retroactive revisions to the coding guidelines and
23 fee schedules; and

24 (4) the contract may be terminated by the preferred
25 provider on or before the 30th day after the date the preferred
26 provider receives information requested under this subsection
27 without penalty or discrimination in participation in other health

1 care products or plans.

2 (b) A preferred provider who receives information under
3 Subsection (a) may only:

4 (1) use or disclose the information for the purpose of
5 practice management, billing activities, and other business
6 operations; and

7 (2) disclose the information to a governmental agency
8 involved in the regulation of health care or insurance.

9 (c) The insurer shall, on request of the preferred provider,
10 provide the name, edition, and model version of the software that
11 the insurer uses to determine bundling and unbundling of claims.

12 (d) The provisions of this section may not be waived,
13 voided, or nullified by contract.

14 Sec. 1301.137. VIOLATION OF CLAIMS PAYMENT REQUIREMENTS;
15 PENALTY. (a) Except as provided by this section, if a clean claim
16 submitted to an insurer is payable and the insurer does not
17 determine under Subchapter C that the claim is payable and pay the
18 claim on or before the date the insurer is required to make a
19 determination or adjudication of the claim, the insurer shall pay
20 the preferred provider making the claim the contracted rate owed on
21 the claim plus a penalty in the amount of the lesser of:

22 (1) 50 percent of the difference between the billed
23 charges, as submitted on the claim, and the contracted rate; or

24 (2) \$100,000.

25 (b) If the claim is paid on or after the 46th day and before
26 the 91st day after the date the insurer is required to make a
27 determination or adjudication of the claim, the insurer shall pay a

1 penalty in the amount of the lesser of:

2 (1) 100 percent of the difference between the billed
3 charges, as submitted on the claim, and the contracted rate; or

4 (2) \$200,000.

5 (c) If the claim is paid on or after the 91st day after the
6 date the insurer is required to make a determination or
7 adjudication of the claim, the insurer shall pay a penalty computed
8 under Subsection (b) plus 18 percent annual interest on that
9 amount. Interest under this subsection accrues beginning on the
10 date the insurer was required to pay the claim and ending on the
11 date the claim and the penalty are paid in full.

12 (d) Except as provided by this section, an insurer that
13 determines under Subchapter C that a claim is payable, pays only a
14 portion of the amount of the claim on or before the date the insurer
15 is required to make a determination or adjudication of the claim,
16 and pays the balance of the contracted rate owed for the claim after
17 that date shall pay to the preferred provider, in addition to the
18 contracted amount owed, a penalty on the amount not timely paid in
19 the amount of the lesser of:

20 (1) 50 percent of the underpaid amount; or

21 (2) \$100,000.

22 (e) If the balance of the claim is paid on or after the 46th
23 day and before the 91st day after the date the insurer is required
24 to make a determination or adjudication of the claim, the insurer
25 shall pay a penalty on the balance of the claim in the amount of the
26 lesser of:

27 (1) 100 percent of the underpaid amount; or

1 (2) \$200,000.

2 (f) If the balance of the claim is paid on or after the 91st
3 day after the date the insurer is required to make a determination
4 or adjudication of the claim, the insurer shall pay a penalty on the
5 balance of the claim computed under Subsection (e) plus 18 percent
6 annual interest on that amount. Interest under this subsection
7 accrues beginning on the date the insurer was required to pay the
8 claim and ending on the date the claim and the penalty are paid in
9 full.

10 (g) For the purposes of Subsections (d) and (e), the
11 underpaid amount is computed on the ratio of the amount underpaid on
12 the contracted rate to the contracted rate as applied to the billed
13 charges as submitted on the claim.

14 (h) An insurer is not liable for a penalty under this
15 section:

16 (1) if the failure to pay the claim in accordance with
17 Subchapter C is a result of a catastrophic event that substantially
18 interferes with the normal business operations of the insurer; or

19 (2) if the claim was paid in accordance with
20 Subchapter C, but for less than the contracted rate, and:

21 (A) the preferred provider notifies the insurer
22 of the underpayment after the 180th day after the date the
23 underpayment was received; and

24 (B) the insurer pays the balance of the claim on
25 or before the 45th day after the date the insurer receives the
26 notice.

27 (i) Subsection (h) does not relieve the insurer of the

1 obligation to pay the remaining unpaid contracted rate owed the
2 preferred provider.

3 (j) An insurer that pays a penalty under this section shall
4 clearly indicate on the explanation of payment statement in the
5 manner prescribed by the commissioner by rule the amount of the
6 contracted rate paid and the amount paid as a penalty.

7 (k) In addition to any other penalty or remedy authorized by
8 this code, an insurer that violates Section 1301.103, 1301.104, or
9 1301.105 in processing more than two percent of clean claims
10 submitted to the insurer is subject to an administrative penalty
11 under Chapter 84. For each day an administrative penalty is imposed
12 under this subsection, the penalty may not exceed \$1,000 for each
13 claim that remains unpaid in violation of Section 1301.103,
14 1301.104, or 1301.105. In determining whether an insurer has
15 processed preferred provider claims in compliance with Section
16 1301.103, 1301.104, or 1301.105, the commissioner shall consider
17 paid claims, other than claims that have been paid under Section
18 1301.105, and shall compute a compliance percentage for physician
19 and provider claims, other than institutional provider claims, and
20 a compliance percentage for institutional provider claims.

21 Sec. 1301.138. APPLICABILITY TO ENTITIES CONTRACTING WITH
22 INSURER. This subchapter applies to a person described by Section
23 1301.109.

24 (c) Subchapter A, Chapter 1301, Insurance Code, is amended
25 to conform to Section 3, Chapter 214, Acts of the 78th Legislature,
26 Regular Session, 2003, by adding Section 1301.008 to read as
27 follows:

1 Sec. 1301.008. CONFLICT WITH OTHER LAW. To the extent of
2 any conflict between this chapter and Subchapter C, Chapter 1204,
3 this chapter controls.

4 (d) Subchapter B, Chapter 1301, Insurance Code, is amended
5 to conform to Section 3, Chapter 214, Acts of the 78th Legislature,
6 Regular Session, 2003, by adding Section 1301.069 to read as
7 follows:

8 Sec. 1301.069. SERVICES PROVIDED BY CERTAIN PHYSICIANS AND
9 HEALTH CARE PROVIDERS. The provisions of this chapter relating to
10 prompt payment by an insurer of a physician or health care provider
11 and to verification of medical care or health care services apply to
12 a physician or provider who:

13 (1) is not a preferred provider included in the
14 preferred provider network; and

15 (2) provides to an insured:

16 (A) care related to an emergency or its attendant
17 episode of care as required by state or federal law; or

18 (B) specialty or other medical care or health
19 care services at the request of the insurer or a preferred provider
20 because the services are not reasonably available from a preferred
21 provider who is included in the preferred delivery network.

22 (e) Subchapter D, Chapter 1301, Insurance Code, is amended
23 to conform to Section 3, Chapter 214, Acts of the 78th Legislature,
24 Regular Session, 2003, by adding Section 1301.162 to read as
25 follows:

26 Sec. 1301.162. IDENTIFICATION CARD. An identification card
27 or other similar document issued by an insurer regulated by this

1 code and subject to this chapter to an individual insured must
2 display:

3 (1) the first date on which the individual became
4 insured under the plan; or

5 (2) a toll-free number a physician or health care
6 provider may use to obtain that date.

7 (f) Sections 2 and 3, Chapter 214, Acts of the 78th
8 Legislature, Regular Session, 2003, are repealed.

9 SECTION 11.038. (a) Section 1358.051(1), Insurance Code,
10 is amended to conform to Section 8, Chapter 782, Acts of the 78th
11 Legislature, Regular Session, 2003, to read as follows:

12 (1) "Diabetes equipment" means:

13 (A) blood glucose monitors, including
14 noninvasive glucose monitors and glucose monitors designed to be
15 used by blind individuals;

16 (B) insulin pumps and associated appurtenances;

17 (C) insulin infusion devices; and

18 (D) podiatric appliances for the prevention of
19 complications associated with diabetes.

20 (b) Section 8, Chapter 782, Acts of the 78th Legislature,
21 Regular Session, 2003, is repealed.

22 SECTION 11.039. Section 1367.055, Insurance Code, is
23 amended to conform more closely to the source law from which the
24 section was derived to read as follows:

25 Sec. 1367.055. RULES. The commissioner may adopt
26 ~~[reasonable]~~ rules necessary to implement this subchapter.

27 SECTION 11.040. (a) Chapter 1367, Insurance Code, is

1 amended to conform to Section 2.123, Chapter 198, Acts of the 78th
2 Legislature, Regular Session, 2003, by adding Subchapter E to read
3 as follows:

4 SUBCHAPTER E. DEVELOPMENTAL DELAYS

5 Sec. 1367.201. DEFINITION. In this subchapter,
6 rehabilitative and habilitative therapies include:

- 7 (1) occupational therapy evaluations and services;
8 (2) physical therapy evaluations and services;
9 (3) speech therapy evaluations and services; and
10 (4) dietary or nutritional evaluations.

11 Sec. 1367.202. APPLICABILITY OF SUBCHAPTER. This
12 subchapter applies only to a health benefit plan that:

- 13 (1) provides benefits for medical or surgical expenses
14 incurred as a result of a health condition, accident, or sickness,
15 including an individual, group, blanket, or franchise insurance
16 policy or insurance agreement, a group hospital service contract,
17 or an individual or group evidence of coverage that is offered by:

18 (A) an insurance company;
19 (B) a group hospital service corporation
20 operating under Chapter 842;

21 (C) a fraternal benefit society operating under
22 Chapter 885;

23 (D) a stipulated premium company operating under
24 Chapter 884;

25 (E) a health maintenance organization operating
26 under Chapter 843; or

27 (F) a multiple employer welfare arrangement

1 subject to regulation under Chapter 846;

2 (2) is offered by an approved nonprofit health
3 corporation that holds a certificate of authority under Chapter
4 844; or

5 (3) provides health and accident coverage through a
6 risk pool created under Chapter 172, Local Government Code,
7 notwithstanding Section 172.014, Local Government Code, or any
8 other law.

9 Sec. 1367.203. EXCEPTION. This subchapter does not apply
10 to:

11 (1) a plan that provides coverage:

12 (A) only for a specified disease or for another
13 limited benefit;

14 (B) only for accidental death or dismemberment;

15 (C) for wages or payments in lieu of wages for a
16 period during which an employee is absent from work because of
17 sickness or injury;

18 (D) as a supplement to a liability insurance
19 policy;

20 (E) for credit insurance;

21 (F) only for dental or vision care; or

22 (G) only for indemnity for hospital confinement;

23 (2) a small employer health benefit plan written under
24 Chapter 1501;

25 (3) a Medicare supplemental policy as defined by
26 Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

27 (4) a workers' compensation insurance policy;

1 (5) medical payment insurance coverage provided under
2 a motor vehicle insurance policy; or

3 (6) a long-term care insurance policy, including a
4 nursing home fixed indemnity policy, unless the commissioner
5 determines that the policy provides benefit coverage so
6 comprehensive that the policy is a health benefit plan as described
7 by Section 1367.202.

8 Sec. 1367.204. OFFER OF COVERAGE REQUIRED. (a) A health
9 benefit plan issuer must offer coverage that complies with this
10 subchapter.

11 (b) The individual or group policy or contract holder may
12 reject coverage required to be offered under this section.

13 Sec. 1367.205. COVERAGE OF CERTAIN THERAPIES. (a) A health
14 benefit plan that provides coverage for rehabilitative and
15 habilitative therapies under this subchapter may not prohibit or
16 restrict payment for covered services provided to a child and
17 determined to be necessary to and provided in accordance with an
18 individualized family service plan issued by the Interagency
19 Council on Early Childhood Intervention under Chapter 73, Human
20 Resources Code.

21 (b) Rehabilitative and habilityative therapies described by
22 Subsection (a) must be covered in the amount, duration, scope, and
23 service setting established in the child's individualized family
24 service plan.

25 (c) A child is entitled to benefits under this subchapter if
26 the child, as a result of the child's relationship to an insured or
27 enrollee in a health benefit plan, would be entitled to coverage

1 under an accident and health insurance policy under Section
2 1201.061, 1201.062, 1201.063, or 1201.064.

3 Sec. 1367.206. PROHIBITED ACTIONS. Under the coverage
4 required to be offered under this subchapter, a health benefit plan
5 issuer may not:

6 (1) apply the cost of rehabilitative and habilitative
7 therapies described by Section 1367.205(a) to an annual or lifetime
8 maximum plan benefit or similar provision under the plan; or

9 (2) use the cost of rehabilitative or habilitative
10 therapies described by Section 1367.205(a) as the sole
11 justification for:

12 (A) increasing plan premiums; or

13 (B) terminating the insured's or enrollee's
14 participation in the plan.

15 Sec. 1367.207. RULES. The commissioner may adopt rules
16 necessary to implement this subchapter.

17 (b) Section 2.123, Chapter 198, Acts of the 78th
18 Legislature, Regular Session, 2003, is repealed.

19 SECTION 11.041. (a) Section 1451.001(9), Insurance Code,
20 is amended to conform to Sections 28 and 29, Chapter 892, Acts of
21 the 78th Legislature, Regular Session, 2003, to read as follows:

22 (9) "Licensed clinical [~~master~~] social worker
23 [~~worker--advanced clinical practitioner~~]" means an individual
24 licensed by the Texas State Board of Social Worker Examiners as a
25 licensed clinical [~~master~~] social worker [~~with the order of~~
26 ~~recognition of advanced clinical practitioner~~].

27 (b) Sections 28 and 29, Chapter 892, Acts of the 78th

1 Legislature, Regular Session, 2003, are repealed.

2 SECTION 11.042. (a) Section 1451.113, Insurance Code, is
3 amended to conform to Sections 30 and 31, Chapter 892, Acts of the
4 78th Legislature, Regular Session, 2003, to read as follows:

5 Sec. 1451.113. SELECTION OF LICENSED CLINICAL [~~MASTER~~]
6 SOCIAL WORKER [~~WORKER--ADVANCED CLINICAL PRACTITIONER~~]. [~~(a)~~] An
7 insured may select a licensed clinical [~~master~~] social worker
8 [~~worker--advanced clinical practitioner~~] to provide the services
9 or procedures scheduled in the health insurance policy that:

10 (1) are within the scope of the social worker's
11 license, including the provision of direct, diagnostic,
12 preventive, or clinical services to individuals, families, and
13 groups whose functioning is threatened or affected by social or
14 psychological stress or health impairment; and

15 (2) are specified as services under the terms of the
16 health insurance policy.

17 [~~(b) The health insurance policy may require that services
18 of a licensed master social worker--advanced clinical practitioner
19 must be recommended by a physician.~~]

20 (b) Sections 30 and 31, Chapter 892, Acts of the 78th
21 Legislature, Regular Session, 2003, are repealed.

22 SECTION 11.043. Section 1451.153(b), Insurance Code, is
23 amended to conform more closely to the source law from which the
24 section was derived to read as follows:

25 (b) A managed [~~health~~] care plan shall:

26 (1) include optometrists, therapeutic optometrists,
27 and ophthalmologists as participating health care practitioners in

1 the plan; and

2 (2) include the name of a participating optometrist,
3 therapeutic optometrist, or ophthalmologist in any list of
4 participating health care practitioners and give equal prominence
5 to each name.

6 SECTION 11.044. (a) Subchapter D, Chapter 1451, Insurance
7 Code, is amended to conform to Section 1, Chapter 34, Acts of the
8 78th Legislature, Regular Session, 2003, by adding Section 1451.154
9 to read as follows:

10 Sec. 1451.154. PARTICIPATION OF THERAPEUTIC OPTOMETRIST.

11 (a) In this section:

12 (1) "Medical panel" means the health care
13 practitioners who are listed as participating providers in a
14 managed care plan or who a patient seeking diagnosis or treatment of
15 a medical disease, disorder, or condition is encouraged or required
16 to use under a managed care plan.

17 (2) "Vision panel" means the optometrists,
18 therapeutic optometrists, and ophthalmologists who are listed as
19 participating providers for routine eye examinations under a
20 managed care plan or who a patient seeking a routine eye examination
21 is encouraged or required to use under a managed care plan.

22 (b) A managed care plan must allow a therapeutic optometrist
23 who is on one or more of the plan's vision panels to be a fully
24 participating provider on the plan's medical panels to the full
25 extent of the therapeutic optometrist's license to practice
26 therapeutic optometry.

27 (c) A therapeutic optometrist who is included in a managed

1 care plan's medical panels under Subsection (b) must:

2 (1) abide by the terms and conditions of the managed
3 care plan;

4 (2) satisfy the managed care plan's credentialing
5 standards for therapeutic optometrists;

6 (3) provide proof that the Texas Optometry Board
7 considers the therapeutic optometrist's license to practice
8 therapeutic optometry to be in good standing; and

9 (4) comply with the requirements of the Controlled
10 Substances Registration Program operated by the Department of
11 Public Safety.

12 (d) A managed care plan may charge a participating
13 therapeutic optometrist:

14 (1) any reasonable credentialing costs associated
15 with the therapeutic optometrist's being included in the managed
16 care plan's medical panel; and

17 (2) a one-time administrative fee not to exceed \$200
18 for expenses incurred in adding the therapeutic optometrist to the
19 managed care plan's medical panel.

20 (b) Section 1, Chapter 34, Acts of the 78th Legislature,
21 Regular Session, 2003, is repealed.

22 SECTION 11.045. (a) Sections 1452.051 and 1452.052,
23 Insurance Code, are amended to conform to Section 11, Chapter 88,
24 Acts of the 78th Legislature, Regular Session, 2003, to read as
25 follows:

26 Sec. 1452.051. DEFINITIONS [~~DEFINITION~~]. In this
27 subchapter:

1 (1) "Advanced practice nurse" has the meaning assigned
2 by Section 301.152, Occupations Code.

3 (2) "Physician"~~[, "physician"]~~ means an individual
4 licensed to practice medicine in this state.

5 (3) "Physician assistant" means an individual who
6 holds a license issued under Chapter 204, Occupations Code.

7 Sec. 1452.052. STANDARDIZED FORM FOR VERIFICATION OF
8 [~~PHYSICIAN~~] CREDENTIALS. (a) The commissioner by rule shall:

9 (1) prescribe a standardized form for the verification
10 of the [a ~~physician's~~] credentials of a physician, advanced
11 practice nurse, or physician assistant; and

12 (2) require a public or private hospital, a health
13 maintenance organization operating under Chapter 843, or the issuer
14 of a preferred provider benefit plan under Chapter 1301 to use the
15 form for verification of [~~physician~~] credentials.

16 (b) In prescribing a form under this section, the
17 commissioner shall consider any credentialing application form
18 that is widely used in this state or any form currently used by the
19 department.

20 (b) Section 11, Chapter 88, Acts of the 78th Legislature,
21 Regular Session, 2003, is repealed.

22 SECTION 11.046. (a) Section 1501.002, Insurance Code, is
23 amended to conform to Section 1, Chapter 231, Acts of the 78th
24 Legislature, Regular Session, 2003, by adding Subdivision (16-a) to
25 read as follows:

26 (16-a) "Small employer health coalition" means a
27 private purchasing cooperative composed solely of small employers

1 that is formed under Subchapter B.

2 (b) Section 1, Chapter 231, Acts of the 78th Legislature,
3 Regular Session, 2003, is repealed.

4 SECTION 11.047. (a) The heading to Subchapter B, Chapter
5 1501, Insurance Code, is amended to conform to Section 2, Chapter
6 231, Acts of the 78th Legislature, Regular Session, 2003, and
7 Chapter 782, Acts of the 78th Legislature, Regular Session, 2003,
8 to read as follows:

9 SUBCHAPTER B. COALITIONS AND [~~PURCHASING~~] COOPERATIVES

10 (b) Section 2, Chapter 231, Acts of the 78th Legislature,
11 Regular Session, 2003, is repealed.

12 SECTION 11.048. (a) Section 1501.051, Insurance Code, is
13 amended to conform to Section 1, Chapter 782, Acts of the 78th
14 Legislature, Regular Session, 2003, by amending Subdivisions (1)
15 and (3) and adding Subdivision (3-a) to read as follows:

16 (1) "Board of directors" means the board of directors
17 elected by a private purchasing cooperative or a health group
18 cooperative.

19 (3) "Cooperative" means a private purchasing
20 cooperative or a health group cooperative established under this
21 subchapter.

22 (3-a) "Expanded service area" means any area larger
23 than one county in which a health group cooperative offers
24 coverage.

25 (b) Section 1, Chapter 782, Acts of the 78th Legislature,
26 Regular Session, 2003, is repealed.

27 SECTION 11.049. (a) Sections 1501.052(b) and (c),

1 Insurance Code, are amended to conform to Section 17.01, Chapter
2 1170, Acts of the 78th Legislature, Regular Session, 2003, to read
3 as follows:

4 (b) The Texas cooperative is administered by a board of
5 trustees of five [~~six~~] members appointed by the governor with the
6 advice and consent of the senate. Two [~~Three~~] members must
7 represent employers, two members must represent employees, and one
8 member must represent the public.

9 (c) Members of the board of trustees serve staggered
10 six-year terms, with the terms of one or two members expiring
11 February 1 of each odd-numbered year.

12 (b) Section 17.01, Chapter 1170, Acts of the 78th
13 Legislature, Regular Session, 2003, is repealed.

14 SECTION 11.050. (a) The heading to Section 1501.056,
15 Insurance Code, is amended to conform to Section 2, Chapter 782,
16 Acts of the 78th Legislature, Regular Session, 2003, to read as
17 follows:

18 Sec. 1501.056. PRIVATE PURCHASING COOPERATIVES AND HEALTH
19 GROUP COOPERATIVES.

20 (b) Section 1501.056, Insurance Code, is amended to conform
21 to Section 3, Chapter 782, Acts of the 78th Legislature, Regular
22 Session, 2003, by amending Subsection (a) and adding Subsection (d)
23 to read as follows:

24 (a) Two or more small or large employers may form a private
25 purchasing cooperative to purchase small or large employer health
26 benefit plans. Subject to Subsection (d), a person may form a
27 health group cooperative to purchase employer health benefit plans.

1 A [~~The~~] cooperative must be organized as a nonprofit corporation
2 and has the rights and duties provided by the Texas Non-Profit
3 Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil
4 Statutes).

5 (d) A health benefit plan issuer may not form, or be a member
6 of, a health group cooperative. A health benefit plan issuer may
7 associate with a sponsoring entity, such as a business association,
8 chamber of commerce, or other organization representing employers
9 or serving an analogous function, to assist the sponsoring entity
10 in forming a health group cooperative.

11 (c) Section 1501.057, Insurance Code, is amended to conform
12 to Section 3, Chapter 782, Acts of the 78th Legislature, Regular
13 Session, 2003, by amending Subsection (b) and adding Subsection (c)
14 to read as follows:

15 (b) A private purchasing cooperative, a health group
16 cooperative, or a member of the board of directors, the executive
17 director, or an employee or agent of the private purchasing or
18 health group cooperative is not liable for:

19 (1) an act performed in good faith in the execution of
20 duties in connection with the private purchasing or health group
21 cooperative; or

22 (2) an independent action of a small or large employer
23 health benefit plan issuer or a person who provides health care
24 services under a health benefit plan.

25 (c) A health group cooperative or a member of the board of
26 directors, the executive director, or an employee or agent of the
27 health group cooperative is not liable for failure to arrange for

1 coverage of any particular illness, disease, or health condition.

2 (d) Sections 2 and 3, Chapter 782, Acts of the 78th
3 Legislature, Regular Session, 2003, are repealed.

4 SECTION 11.051. (a) Subchapter B, Chapter 1501, Insurance
5 Code, is amended to conform to the enactment of Article 26.14A,
6 Insurance Code, by Section 4, Chapter 782, Acts of the 78th
7 Legislature, Regular Session, 2003, by adding Section 1501.0581 to
8 read as follows:

9 Sec. 1501.0581. SPECIAL PROVISIONS RELATING TO HEALTH GROUP
10 COOPERATIVES. (a) The membership of a health group cooperative may
11 consist only of small employers or may, at the option of the health
12 group cooperative, consist of both small and large employers. To
13 participate as a member of a health group cooperative, an employer
14 must be a small or large employer as described by this chapter.

15 (b) Subject to the requirements imposed on small employer
16 health benefit plan issuers under Section 1501.101, a health group
17 cooperative:

18 (1) shall allow a small employer to join the health
19 group cooperative and enroll in health benefit plan coverage; and

20 (2) may allow a large employer to join the health group
21 cooperative and enroll in health benefit plan coverage.

22 (c) A health group cooperative shall allow any small
23 employer to join the health group cooperative and enroll in the
24 cooperative's health benefit plan coverage during the initial
25 enrollment and annual open enrollment periods.

26 (d) A sponsoring entity of a health group cooperative may
27 inform the members of the entity about the cooperative and the

1 health benefit plans offered by the cooperative. Coverage issued
2 through the cooperative must be issued through a licensed agent
3 marketing the coverage in accordance with Section 1501.058(b)(1).

4 (e) The commissioner shall adopt rules that govern the
5 manner in which an employer may terminate, because of a financial
6 hardship affecting the employer, participation in a health group
7 cooperative.

8 (f) An employer's participation in a health group
9 cooperative is voluntary, but an employer electing to participate
10 in a health group cooperative must commit to purchasing coverage
11 through the health group cooperative for two years, except as
12 provided by Subsection (e).

13 (g) A health benefit plan issuer issuing coverage to a
14 health group cooperative:

15 (1) shall use a standard presentation form, prescribed
16 by the commissioner by rule, to market health benefit plan coverage
17 through the health group cooperative;

18 (2) may contract to provide health benefit plan
19 coverage with only one health group cooperative in any county,
20 except that a health benefit plan issuer may contract with
21 additional health group cooperatives if it is providing health
22 benefit plan coverage in an expanded service area in accordance
23 with Subsection (1);

24 (3) shall allow enrollment in health benefit plan
25 coverage in compliance with Subsection (c) and with the health
26 benefit plan issuer's agreement with the health group cooperative;

27 (4) is exempt from the premium tax or tax on revenues

1 imposed by Chapter 222, and the retaliatory tax under Chapter 281
2 for two years, with respect to the premiums or revenues received for
3 coverage provided to each uninsured employee or dependent as
4 defined by the commissioner in accordance with Subsection (h); and

5 (5) shall maintain documentation to be provided by
6 health group cooperatives to ensure compliance with the rules
7 adopted by the commissioner under Subsection (h) with respect to
8 uninsured employees or dependents.

9 (h) The commissioner by rule shall determine who
10 constitutes an uninsured employee or dependent for purposes of
11 Subsection (g)(4).

12 (i) Notwithstanding any other law, and except as provided by
13 Subsection (n), a health benefit plan issued by a health benefit
14 plan issuer to provide coverage with a health group cooperative is
15 not subject to a state law, including a rule, that:

16 (1) relates to a particular illness, disease, or
17 treatment; or

18 (2) regulates the differences in rates applicable to
19 services provided within a health benefit plan network or outside
20 the network.

21 (j) The commissioner by rule shall implement the exemption
22 authorized by Subsection (i).

23 (k) A health group cooperative may offer more than one
24 health benefit plan, but each plan offered must be made available to
25 all employees covered by the cooperative.

26 (l) A health benefit plan issuer may, with notice to the
27 commissioner, provide health benefit plan coverage to an expanded

1 service area that includes the entire state. A health benefit plan
2 issuer may apply for approval of an expanded service area that
3 comprises less than the entire state by filing with the
4 commissioner an application, in a form and manner prescribed by the
5 commissioner, at least 60 days before the date the health benefit
6 plan issuer issues coverage to the health group cooperative in the
7 expanded service area. At the expiration of 60 days after the date
8 of receipt by the department of a filed application, the
9 application is considered approved by the department unless, before
10 that date, the application was either affirmatively approved or
11 disapproved by written order of the commissioner. The
12 commissioner, after notice and opportunity for hearing, may rescind
13 an approval granted to a health benefit plan issuer under this
14 subsection if the commissioner finds that the health benefit plan
15 issuer has failed to market fairly to all eligible employers in the
16 state or the expanded service area.

17 (m) The provisions of this section do not limit or restrict
18 a small or large employer's access to health benefit plans under
19 this chapter.

20 (n) A health benefit plan provided through a health group
21 cooperative must provide coverage for diabetes equipment,
22 supplies, and services as required by Subchapter B, Chapter 1358.

23 (b) Article 26.14A, Insurance Code, as added by Section 4,
24 Chapter 782, Acts of the 78th Legislature, Regular Session, 2003,
25 is repealed.

26 SECTION 11.052. (a) Subchapter B, Chapter 1501, Insurance
27 Code, is amended to conform to Section 7, Chapter 782, Acts of the

1 78th Legislature, Regular Session, 2003, by adding Section
2 1501.0582 to read as follows:

3 Sec. 1501.0582. HEALTH GROUP COOPERATIVE: EXPEDITED
4 APPROVAL PROCESS. The department shall develop an expedited
5 approval process for health benefit plan coverage arranged by a
6 health group cooperative.

7 (b) Sections 1501.062(a) and (c), Insurance Code, are
8 amended to conform to Section 7, Chapter 782, Acts of the 78th
9 Legislature, Regular Session, 2003, to read as follows:

10 (a) A cooperative is not an insurer and the employees of the
11 cooperative are not required to be licensed under Title 13. This
12 exemption from licensure includes a health group cooperative that
13 acts to provide information about and to solicit membership in the
14 cooperative, subject to Section 1501.0581(d).

15 (c) An agent used and compensated by a cooperative may
16 market the products and services sponsored by the cooperative
17 without being appointed by each small or large employer health
18 benefit plan issuer participating in the cooperative. The agent
19 may not market any other product or service of a participating small
20 or large employer health benefit plan issuer that is not sponsored
21 by the cooperative unless the agent has been appointed by that
22 issuer.

23 (c) Section 1501.063, Insurance Code, is amended to conform
24 to Section 4, Chapter 231, Acts of the 78th Legislature, Regular
25 Session, 2003, and Section 7, Chapter 782, Acts of the 78th
26 Legislature, Regular Session, 2003, to read as follows:

27 Sec. 1501.063. STATUS [~~COOPERATIVE~~] AS EMPLOYER. (a) A

1 small employer health coalition that otherwise meets the
2 description of a small employer is considered a single small
3 employer for all purposes under this chapter.

4 (b) A health group cooperative that is composed only of
5 small employers is considered a single employer under this code and
6 shall be treated in the same manner as a small employer for the
7 purposes of this chapter, including for the purposes of any
8 provision relating to premium rates and issuance and renewal of
9 coverage. A health group cooperative that is composed of small and
10 large employers is considered a single employer under this code
11 and, in relation to the small employers that are members of the
12 cooperative, shall be treated in the same manner as a small
13 employer. A health group cooperative that is composed of small and
14 large employers may elect to extend the protections of this chapter
15 that are applicable to small employer groups to the large employer
16 groups that participate in the cooperative. A health group
17 cooperative shall have sole authority to make benefit elections and
18 perform other administrative functions under this code for the
19 cooperative's participating employers.

20 (c) Any other [A] cooperative formed under this subchapter
21 is considered an employer solely for the purposes of benefit
22 elections under this code.

23 (d) Section 4, Chapter 231, Acts of the 78th Legislature,
24 Regular Session, 2003, and Section 7, Chapter 782, Acts of the 78th
25 Legislature, Regular Session, 2003, are repealed.

26 SECTION 11.053. (a) Section 1501.058, Insurance Code, is
27 amended to conform to Section 6, Chapter 782, Acts of the 78th

1 Legislature, Regular Session, 2003, by adding Subsection (d) to
2 read as follows:

3 (d) To be eligible to exercise the authority granted under
4 Subsection (a)(1), a health group cooperative must have at least 10
5 participating employers.

6 (b) Section 1501.061, Insurance Code, is amended to conform
7 to Section 3, Chapter 231, Acts of the 78th Legislature, Regular
8 Session, 2003, to read as follows:

9 Sec. 1501.061. REQUIREMENTS APPLICABLE TO HEALTH BENEFIT
10 PLAN ISSUERS WITH WHICH COOPERATIVE MAY CONTRACT. A cooperative
11 may contract only with a small or large employer health benefit plan
12 issuer that [~~desires to offer coverage through the cooperative and~~
13 ~~that~~] demonstrates that the issuer:

14 (1) is in good standing with the department;

15 (2) has the capacity to administer health benefit
16 plans;

17 (3) is able to monitor and evaluate the quality and
18 cost-effectiveness of care and applicable procedures;

19 (4) is able to conduct utilization management and
20 establish applicable procedures and policies;

21 (5) is able to ensure that enrollees have adequate
22 access to health care providers, including adequate numbers and
23 types of providers;

24 (6) has a satisfactory grievance procedure and is able
25 to respond to enrollees' calls, questions, and complaints; and

26 (7) has financial capacity, either through satisfying
27 financial solvency standards, as applied by the commissioner, or

1 through appropriate reinsurance or other risk-sharing mechanisms.

2 (c) Subchapter B, Chapter 1501, Insurance Code, is amended
3 to conform to Section 3, Chapter 231, Acts of the 78th Legislature,
4 Regular Session, 2003, and Section 6, Chapter 782, Acts of the 78th
5 Legislature, Regular Session, 2003, by adding Section 1501.065 to
6 read as follows:

7 Sec. 1501.065. CERTAIN ACTIONS BASED ON RISK
8 CHARACTERISTICS OR HEALTH STATUS PROHIBITED. A cooperative may not
9 limit, restrict, or condition an employer's or employee's
10 membership in a cooperative or choice among benefit plans based on:

11 (1) risk characteristics of a group or of any member of
12 a group; or

13 (2) health status related factors, duration of
14 coverage, or any similar characteristic related to the health
15 status or experience of a group or of any member of a group.

16 (d) Section 3, Chapter 231, Acts of the 78th Legislature,
17 Regular Session, 2003, and Section 6, Chapter 782, Acts of the 78th
18 Legislature, Regular Session, 2003, are repealed.

19 SECTION 11.054. (a) Section 1501.154(c), Insurance Code,
20 is amended to conform to Section 5, Chapter 231, Acts of the 78th
21 Legislature, Regular Session, 2003, to read as follows:

22 (c) A small employer health benefit plan issuer may elect
23 not to offer a health benefit plan to a small employer that offers
24 multiple health benefit plans if:

25 (1) the plans are provided by more than one issuer; and

26 (2) the issuer would have less than 75 percent of the
27 employer's eligible employees enrolled in the issuer's plan[~~, and~~

1 ~~[(3) the issuer's plan is not provided through a~~
2 ~~purchasing cooperative].~~

3 (b) Section 5, Chapter 231, Acts of the 78th Legislature,
4 Regular Session, 2003, is repealed.

5 SECTION 11.055. (a) Section 1501.213(b), Insurance Code,
6 is amended to conform to Section 3, Chapter 1179, Acts of the 78th
7 Legislature, Regular Session, 2003, to read as follows:

8 (b) A health maintenance organization that participates in
9 a purchasing cooperative that provides employees of small employers
10 a choice of health benefit plans may use rating methods in
11 accordance with this subchapter that are used by other small
12 employer health benefit plan issuers participating in the same
13 cooperative, including rating by age and gender, if the health
14 maintenance organization has established:

15 (1) a separate class of business, as provided by
16 Section 1501.202; and

17 (2) a separate line of business, as provided under
18 Section 1501.255(b) ~~[and Title XIII, Public Health Service Act (42~~
19 ~~U.S.C. Section 300e et seq.)].~~

20 (b) Section 3, Chapter 1179, Acts of the 78th Legislature,
21 Regular Session, 2003, is repealed.

22 SECTION 11.056. (a) Section 1501.252, Insurance Code, is
23 amended to conform to Section 4, Chapter 1179, Acts of the 78th
24 Legislature, Regular Session, 2003, to read as follows:

25 Sec. 1501.252. HEALTH BENEFIT PLANS. (a) A small employer
26 health benefit plan issuer shall offer a standard health benefit
27 plan as authorized by Chapter 1507 ~~[the following two health~~

1 ~~benefit plans as adopted by the commissioner:~~

2 ~~(1) the catastrophic care health benefit plan; and~~

3 ~~(2) the basic coverage health benefit plan].~~

4 (b) A small employer health benefit plan issuer may offer to
5 a small employer additional benefit riders to the standard health
6 benefit plan or may design and offer standard health benefit plans
7 with additional mandatory benefits ~~[either of the health benefit~~
8 ~~plans required by Subsection (a)].~~

9 (c) Subject to this chapter, a small employer health benefit
10 plan issuer shall ~~may~~ also offer to a small employer at least one
11 ~~any~~ other health benefit plan authorized under this code that
12 provides state-mandated health benefits. Section 1501.251 does not
13 apply to a health benefit plan offered to a small employer under
14 this subsection.

15 (b) Section 4, Chapter 1179, Acts of the 78th Legislature,
16 Regular Session, 2003, is repealed.

17 SECTION 11.057. (a) Section 1501.255(b), Insurance Code,
18 is amended to conform to Section 6, Chapter 1179, Acts of the 78th
19 Legislature, Regular Session, 2003, to read as follows:

20 (b) A health maintenance organization ~~may offer~~:

21 (1) shall offer at least one ~~a~~ state-approved basic
22 health care ~~benefit~~ plan that complies with this chapter,
23 Chapters 843, 1271, 1272, and 1367, Subchapter A, Chapter 1452,
24 Title XIII, Public Health Service Act (42 U.S.C. Section 300e et
25 seq.), and its subsequent amendments, and rules adopted under those
26 laws and may offer additional such plans;

27 (2) shall offer a standard health benefit plan under

1 Subchapter B, Chapter 1507, and may offer additional benefit riders
2 to the standard health benefit plan or offer standard health
3 benefit plans with additional mandatory benefits [~~developed by the~~
4 ~~commissioner under Section 1501.253 and additional benefit riders~~
5 ~~to the plan~~]; and [~~or~~]

6 (3) may offer a point-of-service contract in
7 connection with an insurer that includes optional coverage for
8 out-of-area services, emergency care, or out-of-network care.

9 (b) Section 6, Chapter 1179, Acts of the 78th Legislature,
10 Regular Session, 2003, is repealed.

11 SECTION 11.058. (a) Section 1501.253, Insurance Code, is
12 repealed to conform to the repeal of Article 26.44A, Insurance
13 Code, by Section 9, Chapter 1179, Acts of the 78th Legislature,
14 Regular Session, 2003.

15 (b) Section 1501.258, Insurance Code, is amended to conform
16 to Section 5, Chapter 1179, Acts of the 78th Legislature, Regular
17 Session, 2003, and to the repeal of Article 26.44A, Insurance Code,
18 by Section 9, Chapter 1179, Acts of the 78th Legislature, Regular
19 Session, 2003, to read as follows:

20 Sec. 1501.258. FORMS. (a) A [~~The commissioner shall:~~

21 [~~(1) prescribe the benefits section of the~~
22 ~~catastrophic care health benefit plan and the basic coverage health~~
23 ~~benefit plan policy forms in accordance with Section 1501.253, and~~

24 [~~(2) develop prototype policies for each of the health~~
25 ~~benefit plans that include all contractual provisions required to~~
26 ~~produce an entire contract in accordance with this code.~~

27 [~~(b) With regard to each portion of the policy form for the~~

1 ~~catastrophic care health benefit plan or the basic coverage health~~
2 ~~benefit plan, other than the benefits section, a]~~ small employer
3 health benefit plan issuer shall comply with:

4 (1) Chapter 1701 as it relates to policy form
5 approval; and

6 (2) Chapter 1271 as it relates to evidence of coverage
7 approval.

8 (b) [~~(c)~~] A small employer health benefit plan issuer may
9 not offer [~~the catastrophic care health~~] benefit plans [~~plan or the~~
10 ~~basic coverage health benefit plan~~] through a policy form or
11 evidence of coverage that does not comply with this chapter.

12 (c) Section 5, Chapter 1179, Acts of the 78th Legislature,
13 Regular Session, 2003, is repealed.

14 SECTION 11.059. (a) Sections 1501.352(a) and (c),
15 Insurance Code, are amended to conform to Section 6, Chapter 231,
16 Acts of the 78th Legislature, Regular Session, 2003, and Section 7,
17 Chapter 1179, Acts of the 78th Legislature, Regular Session, 2003,
18 to read as follows:

19 (a) A small employer health benefit plan issuer or agent may
20 not, because of the health status or claims experience of the
21 eligible employees of a small employer and those employees'
22 dependents, directly or indirectly encourage or direct the employer
23 to:

24 (1) refrain from applying for coverage with the
25 issuer;

26 (2) seek coverage from another issuer; [~~or~~]

27 (3) apply for a particular small employer health

1 benefit plan; or

2 (4) become or not become a member of a particular small
3 employer health coalition.

4 (c) Subsection (b) does not apply to an arrangement that
5 provides compensation to an agent based on a percentage of premium,
6 provided [except] that:

7 (1) the percentage may not vary because of health
8 status or claims experience; and

9 (2) the small employer health benefit plan issuer does
10 not:

11 (A) exclude any additional premium charged to the
12 small employer because of health status or claims experience from
13 the premium amount to which the percentage is applied; or

14 (B) apply a smaller percentage to any additional
15 premium charged to the small employer because of health status or
16 claims experience than is applied to other premiums charged to the
17 small employer.

18 (b) Section 1501.353, Insurance Code, is amended to conform
19 to Section 7, Chapter 1179, Acts of the 78th Legislature, Regular
20 Session, 2003, by adding Subsection (d) to read as follows:

21 (d) A small employer health benefit plan issuer may not use
22 an agent compensation schedule that provides compensation in a
23 specific dollar amount for each individual covered during a
24 specified period or for each group of individuals covered during a
25 specified period.

26 (c) Section 6, Chapter 231, Acts of the 78th Legislature,
27 Regular Session, 2003, and Section 7, Chapter 1179, Acts of the 78th

1 Legislature, Regular Session, 2003, are repealed.

2 SECTION 11.060. Section 5, Chapter 782, Acts of the 78th
3 Legislature, Regular Session, 2003, is repealed.

4 SECTION 11.061. (a) Subchapter A, Chapter 1502, Insurance
5 Code, is amended to conform to the enactment of Article 27.07,
6 Insurance Code, by Section 2.125, Chapter 198, Acts of the 78th
7 Legislature, Regular Session, 2003, by adding Section 1502.0011 to
8 read as follows:

9 Sec. 1502.0011. EXCEPTION. This chapter does not apply to a
10 health benefit plan provided under the state Medicaid program or
11 the state child health plan.

12 (b) Article 27.07, Insurance Code, as added by Section
13 2.125, Chapter 198, Acts of the 78th Legislature, Regular Session,
14 2003, is repealed.

15 SECTION 11.062. (a) Section 1502.053, Insurance Code, is
16 amended to conform to Section 2.124, Chapter 198, Acts of the 78th
17 Legislature, Regular Session, 2003, to read as follows:

18 Sec. 1502.053. EXEMPTION FROM CERTAIN TAXES. The issuer of
19 a [A] children's health benefit plan approved under Section
20 1502.051 [issuer] is not subject to the premium tax or the tax on
21 revenues imposed under Chapter 222 with respect to money received
22 for coverage provided under that plan.

23 (b) Section 2.124, Chapter 198, Acts of the 78th
24 Legislature, Regular Session, 2003, is repealed.

25 SECTION 11.063. (a) Section 1503.003(b), Insurance Code,
26 is amended to conform to Section 2, Chapter 546, Acts of the 78th
27 Legislature, Regular Session, 2003, to read as follows:

1 (b) A health benefit plan that requires as a condition of
2 coverage for a child [~~up to~~] 25 years of age or older that the child
3 be a full-time student at an educational institution must provide
4 the coverage:

5 (1) for the entire academic term during which the
6 child begins as a full-time student and remains enrolled,
7 regardless of whether the number of hours of instruction for which
8 the child is enrolled is reduced to a level that changes the child's
9 academic status to less than that of a full-time student; and

10 (2) continuously until the 10th day of instruction of
11 the subsequent academic term, on which date the health benefit plan
12 may terminate coverage for the child if the child does not return to
13 full-time student status before that date.

14 (b) Section 2, Chapter 546, Acts of the 78th Legislature,
15 Regular Session, 2003, is repealed.

16 SECTION 11.064. (a) Section 1506.002, Insurance Code, is
17 amended to conform to Section 1, Chapter 840, Acts of the 78th
18 Legislature, Regular Session, 2003, to read as follows:

19 Sec. 1506.002. DEFINITION OF HEALTH BENEFIT PLAN. (a) In
20 this chapter, "health benefit plan" means an individual or group
21 health benefit plan and includes:

22 (1) a hospital or medical expense incurred policy;

23 (2) coverage of medical or health care services
24 offered by:

25 (A) a group hospital service corporation
26 operating under Chapter 842;

27 (B) a fraternal benefit society operating under

1 Chapter 885;

2 (C) a stipulated premium company operating under
3 Chapter 884;

4 (D) a health maintenance organization;

5 (E) a multiple employer welfare arrangement
6 subject to Chapter 846; or

7 (F) an approved nonprofit health corporation
8 that holds a certificate of authority under Chapter 844; and

9 (3) any other health care plan or arrangement that
10 pays for or furnishes medical or health care services by insurance
11 or otherwise, including stop-loss insurance or excess loss
12 insurance or reinsurance for individual or group health insurance
13 or for any other health care plan or arrangement.

14 (b) In this chapter, "health benefit plan" does not include:

15 (1) ~~[short-term insurance;~~

16 ~~[(2) accident insurance;~~

17 ~~[(3)] a plan providing coverage only for dental or~~
18 vision care;

19 (2) ~~[(4) fixed indemnity insurance, including~~
20 ~~hospital indemnity insurance;~~

21 ~~[(5)] credit insurance;~~

22 (3) ~~[(6)] long-term care insurance;~~

23 (4) ~~[(7)] disability income insurance;~~

24 (5) ~~[(8) other limited benefit coverage, including~~
25 ~~specified disease coverage;~~

26 ~~[(9)] coverage issued as a supplement to liability~~
27 insurance;

1 (6) [~~(10)~~] insurance arising out of a workers'
2 compensation law or similar law;

3 (7) [~~(11)~~] automobile medical payment insurance; or

4 (8) [~~(12)~~] insurance coverage under which benefits
5 are payable with or without regard to fault and that is statutorily
6 required to be contained in a liability insurance policy or
7 equivalent self-insurance.

8 (b) Section 1, Chapter 840, Acts of the 78th Legislature,
9 Regular Session, 2003, is repealed.

10 SECTION 11.065. (a) Section 1506.004(a), Insurance Code,
11 is amended to conform to Section 12, Chapter 840, Acts of the 78th
12 Legislature, Regular Session, 2003, to read as follows:

13 (a) Annually, the state auditor may [~~shall~~] conduct a
14 special audit of the pool under Chapter 321, Government Code. The
15 special audit may [~~must~~] include a financial audit and an economy
16 and efficiency audit.

17 (b) Section 12, Chapter 840, Acts of the 78th Legislature,
18 Regular Session, 2003, is repealed.

19 SECTION 11.066. (a) Sections 1506.051(b) and (d),
20 Insurance Code, are amended to conform to Section 2, Chapter 840,
21 Acts of the 78th Legislature, Regular Session, 2003, to read as
22 follows:

23 (b) The board consists of nine members appointed by the
24 commissioner as follows:

25 (1) at least two, but not more than four, members must
26 be individuals who are affiliated with a health benefit plan issuer
27 authorized to write health benefit plans in this state;

1 (2) at least two of the members must be individuals or
2 the parents of individuals who are covered by the pool or are
3 reasonably expected to qualify for coverage by the pool; and

4 (3) the other members of the board may be selected from
5 individuals such as:

6 (A) a physician licensed to practice in this
7 state by the Texas State Board of Medical Examiners;

8 (B) a hospital administrator;

9 (C) an advanced nurse practitioner; or

10 (D) a representative of the public who is not~~+~~

11 ~~[(i)]~~ employed by or affiliated with an
12 insurance company or insurance plan, group hospital service
13 corporation, or health maintenance organization~~+, or~~

14 ~~[(ii) licensed as, employed by, or~~
15 ~~affiliated with a physician, hospital, or other health care~~
16 ~~provider].~~

17 (d) An individual is not disqualified under Subsection
18 (b)(3)(D) ~~[(b)(3)(D)(i)]~~ from representing the public if the
19 individual's only affiliation with an insurance company or
20 insurance plan, group hospital service corporation, or health
21 maintenance organization is as an insured or as an individual who
22 has coverage through a plan provided by the corporation or
23 organization.

24 (b) Section 2, Chapter 840, Acts of the 78th Legislature,
25 Regular Session, 2003, is repealed.

26 SECTION 11.067. (a) Section 1506.103(c), Insurance Code,
27 is amended to conform to Section 3, Chapter 840, Acts of the 78th

1 Legislature, Regular Session, 2003, to read as follows:

2 (c) The pool may issue additional types of health benefit
3 coverage to provide optional coverages that comply with applicable
4 provisions of state and federal law, including a Medicare
5 supplement benefit plan for individuals 65 years of age or older who
6 are eligible for Medicare.

7 (b) Section 3, Chapter 840, Acts of the 78th Legislature,
8 Regular Session, 2003, is repealed.

9 SECTION 11.068. (a) Section 1506.105(e), Insurance Code,
10 is amended to conform to Section 5, Chapter 840, Acts of the 78th
11 Legislature, Regular Session, 2003, to read as follows:

12 (e) Premium [~~Initial pool premium rates may not be less than~~
13 ~~125 percent or greater than 150 percent of rates established as~~
14 ~~applicable for individual standard rates. Subsequent premium~~]
15 rates shall be established to provide fully for all of the expected
16 costs of claims, including recovery of prior losses, expenses of
17 operation, investment income from claim reserves, and any other
18 cost factors, subject to the limitation [~~limitations~~] described in
19 this subsection. In no event may pool premium rates exceed 200
20 percent of rates applicable to individual standard risks.

21 (b) Section 5, Chapter 840, Acts of the 78th Legislature,
22 Regular Session, 2003, is repealed.

23 SECTION 11.069. (a) Section 1506.151(a), Insurance Code,
24 is amended to conform to Section 9, Chapter 840, Acts of the 78th
25 Legislature, Regular Session, 2003, to read as follows:

26 (a) The pool shall offer coverage consistent with major
27 medical expense coverage to each eligible individual who is under

1 the age of 65 [~~not eligible for Medicare~~].

2 (b) Section 9, Chapter 840, Acts of the 78th Legislature,
3 Regular Session, 2003, is repealed.

4 SECTION 11.070. (a) Section 1506.152, Insurance Code, is
5 amended to conform to Sections 6 and 8, Chapter 840, Acts of the
6 78th Legislature, Regular Session, 2003, by amending Subsection (a)
7 and adding Subsection (e) to read as follows:

8 (a) An individual who is a legally domiciled resident of
9 this state is eligible for coverage from the pool if the individual:

10 (1) provides to the pool evidence that the individual
11 maintained health benefit plan coverage for the preceding 18 months
12 with no gap in coverage longer than 63 days and with the most recent
13 coverage being provided through an employer-sponsored plan, church
14 plan, or government plan;

15 (2) provides to the pool evidence that the individual
16 maintained health benefit plan coverage under another state's
17 qualified Health Insurance Portability and Accountability Act
18 health program that was terminated because the individual did not
19 reside in that state and submits an application for pool coverage
20 not later than the 63rd day after the date the coverage described by
21 this subdivision was terminated; [~~or~~]

22 (3) has been a legally domiciled resident of this
23 state for the preceding 30 days, is a citizen of the United States
24 or has been a permanent resident of the United States for at least
25 three continuous years, and provides to the pool:

26 (A) a notice of rejection of, or refusal to
27 issue, substantially similar individual health benefit plan

1 coverage from a health benefit plan issuer, other than an insurer
2 that offers only stop-loss, excess loss, or reinsurance coverage,
3 if the rejection or refusal was for health reasons;

4 (B) certification from an agent or salaried
5 representative of a health benefit plan issuer that states that the
6 agent or salaried representative cannot obtain substantially
7 similar individual coverage for the individual from any health
8 benefit plan issuer that the agent or salaried representative
9 represents because, under the underwriting guidelines of the health
10 benefit plan issuer, the individual will be denied coverage as a
11 result of a medical condition of the individual;

12 (C) an offer to issue substantially similar
13 individual coverage only with conditional riders;

14 (D) a notice of refusal by a health benefit plan
15 issuer to issue substantially similar individual coverage except at
16 a rate exceeding the pool rate; or

17 (E) a diagnosis of the individual with one of the
18 medical or health conditions on the list adopted under Section
19 1506.154; or

20 (4) provides to the pool evidence that, on the date of
21 application to the pool, the individual is certified as eligible
22 for trade adjustment assistance or for pension benefit guaranty
23 corporation assistance, as provided by the Trade Adjustment
24 Assistance Reform Act of 2002 (Pub. L. No. 107-210).

25 (e) Notwithstanding Sections 1506.153(1)-(6), an
26 individual who is certified as eligible for trade adjustment
27 assistance or for pension benefit guaranty corporation assistance,

1 as provided by the Trade Adjustment Assistance Reform Act of 2002
2 (Pub. L. No. 107-210), and who has at least three months of prior
3 health benefit plan coverage, as described by Section 1506.155(d),
4 is not required to exhaust any benefits from the continuation of
5 coverage under Title X, Consolidated Omnibus Budget Reconciliation
6 Act of 1985 (29 U.S.C. Section 1161 et seq.), as amended (COBRA), or
7 state continuation benefits to be eligible for coverage from the
8 pool.

9 (b) Sections 6 and 8, Chapter 840, Acts of the 78th
10 Legislature, Regular Session, 2003, are repealed.

11 SECTION 11.071. (a) Section 1506.153, Insurance Code, is
12 amended to conform to Section 7, Chapter 840, Acts of the 78th
13 Legislature, Regular Session, 2003, to read as follows:

14 Sec. 1506.153. INELIGIBILITY FOR COVERAGE.
15 Notwithstanding Sections 1506.152(a)-(d) [Section 1506.152], an
16 individual is not eligible for coverage from the pool if:

17 (1) on the date pool coverage is to take effect, the
18 individual has health benefit plan coverage from a health benefit
19 plan issuer or health benefit arrangement in effect;

20 (2) at the time the individual applies to the pool, the
21 individual is eligible for other health care benefits, including
22 benefits from the continuation of coverage under Title X,
23 Consolidated Omnibus Budget Reconciliation Act of 1985 (29 U.S.C.
24 Section 1161 et seq.), as amended (COBRA), other than:

25 (A) coverage, including COBRA or other
26 continuation coverage or conversion coverage, maintained for any
27 preexisting condition waiting period under a pool policy;

1 (B) employer group coverage conditioned by a
2 limitation of the kind described by Section 1506.152(a)(3)(A) or
3 (C); or

4 (C) individual coverage conditioned by a
5 limitation described by Section 1506.152(a)(3)(C) or (D);

6 (3) within 12 months before the date the individual
7 applies to the pool, the individual terminated coverage in the
8 pool, unless the individual demonstrates a good faith reason for
9 the termination;

10 (4) the individual is confined in a county jail or
11 imprisoned in a state or federal prison;

12 (5) any of the individual's premiums are paid for or
13 reimbursed under a government-sponsored program or by a government
14 agency or health care provider, other than as an otherwise
15 qualifying full-time employee of a government agency or health care
16 provider or as a dependent of such an employee;

17 (6) the individual's prior coverage with the pool was
18 terminated:

19 (A) during the 12-month period preceding the date
20 of application for nonpayment of premiums; or

21 (B) for fraud; or

22 (7) the individual is eligible for health benefit plan
23 coverage provided in connection with a policy, plan, or program
24 paid for or sponsored by an employer, even though the employer
25 coverage is declined.

26 (b) Section 1506.155, Insurance Code, is amended to conform
27 to Section 10, Chapter 840, Acts of the 78th Legislature, Regular

1 Session, 2003, by adding Subsection (d) to read as follows:

2 (d) A preexisting condition provision may not be applied to
3 an individual who has been certified as eligible for trade
4 adjustment assistance or for pension benefit guaranty corporation
5 assistance, as provided by the Trade Adjustment Assistance Reform
6 Act of 2002 (Pub. L. No. 107-210), if the individual:

7 (1) was continuously covered by a health benefit plan
8 for a period of three months before the individual's separation
9 from employment; and

10 (2) applies for coverage from the pool not later than
11 the 63rd day after the date on which the prior coverage was
12 terminated.

13 (c) Section 1506.158(a), Insurance Code, is amended to
14 conform to Section 7, Chapter 840, Acts of the 78th Legislature,
15 Regular Session, 2003, to read as follows:

16 (a) An individual's pool coverage ends:

17 (1) on the date the individual ceases to be a legally
18 domiciled resident of this state, unless the individual:

19 (A) is a student younger than 25 years of age and
20 is financially dependent on a ~~the~~ parent covered by the pool;

21 (B) is a child for whom an individual covered by
22 the pool may be obligated to pay child support; or

23 (C) is a child who is disabled and dependent on a
24 ~~the~~ parent covered by the pool, regardless of the age of the
25 child;

26 (2) on the first day of the month following the date
27 the individual requests coverage to end;

1 (3) on the date the individual covered by the pool
2 dies;

3 (4) on the date state law requires cancellation of the
4 coverage;

5 (5) at the option of the pool, on the 31st day after
6 the date the pool sends to the individual any inquiry concerning the
7 individual's eligibility, including an inquiry concerning the
8 individual's residence, to which the individual does not reply;

9 (6) on the 31st day after the date a premium payment
10 for pool coverage becomes due if the payment is not made before that
11 day; ~~or~~

12 (7) on the date the individual is 65 years of age and
13 eligible for coverage under Medicare, unless the coverage received
14 from the pool is Medicare supplement coverage issued by the pool; or

15 (8) at the time the individual ceases to meet the
16 eligibility requirements for coverage.

17 (d) Sections 7 and 10, Chapter 840, Acts of the 78th
18 Legislature, Regular Session, 2003, are repealed.

19 SECTION 11.072. (a) Subchapter F, Chapter 1506, Insurance
20 Code, is amended to conform to Section 11, Chapter 840, Acts of the
21 78th Legislature, Regular Session, 2003, by adding Section
22 1506.2521 to read as follows:

23 Sec. 1506.2521. ANNUAL REPORT TO BOARD. Each health
24 benefit plan issuer shall report to the board the information
25 requested by the board, as of December 31 of the preceding year.

26 (b) Sections 1506.253(a) and (c), Insurance Code, are
27 amended to conform to Section 11, Chapter 840, Acts of the 78th

1 Legislature, Regular Session, 2003, to read as follows:

2 (a) The board shall recover any net loss of the pool by
3 assessing each health benefit plan issuer an amount determined
4 annually by the board based on information in annual statements,
5 the health benefit plan issuer's annual report to the board under
6 Section 1506.2521, and any other reports required by and filed with
7 the board.

8 (c) For purposes of the assessment under this subchapter
9 ~~[Subsection (b)]~~, gross health benefit plan premiums do not include
10 premiums collected for:

11 (1) coverage under a Medicare supplement benefit plan
12 ~~[premiums]~~ subject to Chapter 1652;i

13 (2) coverage under a ~~[or]~~ small employer health
14 benefit plan ~~[premiums]~~ subject to Subchapters A-H, Chapter 1501;i
15 or

16 (3) coverage or insurance listed in Section
17 1506.002(b).

18 (c) Section 11, Chapter 840, Acts of the 78th Legislature,
19 Regular Session, 2003, is repealed.

20 SECTION 11.073. Section 4, Chapter 840, Acts of the 78th
21 Legislature, Regular Session, 2003, is repealed.

22 SECTION 11.074. (a) Subtitle G, Title 8, Insurance Code, is
23 amended to conform to the enactment of Article 3.80, Insurance
24 Code, by Section 1, Chapter 1179, Acts of the 78th Legislature,
25 Regular Session, 2003, and to conform to the enactment of Section
26 9N, Texas Health Maintenance Act (Chapter 20A, Vernon's Texas
27 Insurance Code), by Section 2, Chapter 1179, Acts of the 78th

1 Legislature, Regular Session, 2003, by adding Chapter 1507 to read
2 as follows:

3 CHAPTER 1507. CONSUMER CHOICE OF BENEFITS PLANS

4 SUBCHAPTER A. CONSUMER CHOICE OF BENEFITS HEALTH INSURANCE PLANS

5 Sec. 1507.001. PURPOSE. The legislature recognizes the
6 need for individuals, employers, and other purchasers of coverage
7 in this state to have the opportunity to choose health insurance
8 plans that are more affordable and flexible than existing market
9 policies offering accident and sickness insurance coverage. The
10 legislature, therefore, seeks to increase the availability of
11 health insurance coverage by allowing insurers authorized to engage
12 in the business of insurance in this state to issue accident and
13 sickness policies that, in whole or in part, do not offer or provide
14 state-mandated health benefits.

15 Sec. 1507.002. DEFINITIONS. In this subchapter:

16 (1) "Health carrier" means any entity authorized under
17 this code or another insurance law of this state that provides
18 health insurance or health benefits in this state. The term
19 includes an insurance company, a group hospital service corporation
20 under Chapter 842, and a stipulated premium company under Chapter
21 884.

22 (2) "Standard health benefit plan" means an accident
23 or sickness insurance policy that, in whole or in part, does not
24 offer or provide state-mandated health benefits, but that provides
25 creditable coverage as defined by Section 1205.004(a) or
26 1501.102(a).

27 Sec. 1507.003. STATE-MANDATED HEALTH BENEFITS. (a) For

1 purposes of this subchapter, "state-mandated health benefits"
2 means coverage required under this code or other laws of this state
3 to be provided in an individual, blanket, or group policy for
4 accident and health insurance or a contract for a health-related
5 condition that:

6 (1) includes coverage for specific health care
7 services or benefits;

8 (2) places limitations or restrictions on
9 deductibles, coinsurance, copayments, or any annual or lifetime
10 maximum benefit amounts; or

11 (3) includes a specific category of licensed health
12 care practitioner from whom an insured is entitled to receive care.

13 (b) For purposes of this subchapter, "state-mandated health
14 benefits" does not include benefits that are mandated by federal
15 law or standard provisions or rights required under this code or
16 other laws of this state to be provided in an individual, blanket,
17 or group policy for accident and health insurance that are
18 unrelated to a specific health illness, injury, or condition of an
19 insured, including provisions related to:

20 (1) continuation of coverage under:

21 (A) Subchapters F and G, Chapter 1251;

22 (B) Section 1201.059; and

23 (C) Subchapter B, Chapter 1253;

24 (2) termination of coverage under Sections 1202.051
25 and 1501.108;

26 (3) preexisting conditions under Subchapter D,
27 Chapter 1201, and Sections 1501.102-1501.105;

1 (4) coverage of children, including newborn or adopted
2 children, under:

3 (A) Subchapter D, Chapter 1251;

4 (B) Sections 1201.053, 1201.061,
5 1201.063-1201.065, and Subchapter A, Chapter 1367;

6 (C) Chapter 1504;

7 (D) Chapter 1503;

8 (E) Section 1501.157;

9 (F) Section 1501.158; and

10 (G) Sections 1501.607-1501.609;

11 (5) services of practitioners under:

12 (A) Subchapters A, B, and C, Chapter 1451; or

13 (B) Section 1301.052;

14 (6) supplies and services associated with the
15 treatment of diabetes under Subchapter B, Chapter 1358;

16 (7) coverage for serious mental illness under
17 Subchapter A, Chapter 1355, if the standard health benefit plan is
18 issued to a large employer as defined by Section 1501.002;

19 (8) coverage for childhood immunizations and hearing
20 screening as required by Subchapters B and C, Chapter 1367, other
21 than Section 1367.053(c) and Chapter 1353;

22 (9) coverage for reconstructive surgery for certain
23 craniofacial abnormalities of children as required by Subchapter D,
24 Chapter 1367;

25 (10) coverage for the dietary treatment of
26 phenylketonuria as required by Chapter 1359;

27 (11) coverage for referral to a non-network physician

1 or provider when medically necessary covered services are not
2 available through network physicians or providers, as required by
3 Section 1271.055; and

4 (12) coverage for cancer screenings under:

5 (A) Chapter 1356;

6 (B) Chapter 1362; and

7 (C) Chapter 1363.

8 Sec. 1507.004. STANDARD HEALTH BENEFIT PLANS AUTHORIZED;
9 MINIMUM REQUIREMENT. (a) A health carrier may offer one or more
10 standard health benefit plans.

11 (b) Any standard health benefit plan must include coverage
12 for direct services to an obstetrical or gynecological care
13 provider as required by Subchapter F, Chapter 1451.

14 Sec. 1507.005. NOTICE TO POLICYHOLDER. (a) Each written
15 application for participation in a standard health benefit plan
16 must contain the following language at the beginning of the
17 document in bold type:

18 "You have the option to choose this Consumer Choice of
19 Benefits Health Insurance Plan that, either in whole or in
20 part, does not provide state-mandated health benefits
21 normally required in accident and sickness insurance
22 policies in Texas. This standard health benefit plan may
23 provide a more affordable health insurance policy for you,
24 although, at the same time, it may provide you with fewer
25 health benefits than those normally included as
26 state-mandated health benefits in policies in Texas. If you
27 choose this standard health benefit plan, please consult with

1 your insurance agent to discover which state-mandated health
2 benefits are excluded in this policy."

3 (b) Each standard health benefit plan must contain the
4 following language at the beginning of the document in bold type:

5 "This Consumer Choice of Benefits Health Insurance
6 Plan, either in whole or in part, does not provide
7 state-mandated health benefits normally required in accident
8 and sickness insurance policies in Texas. This standard
9 health benefit plan may provide a more affordable health
10 insurance policy for you, although, at the same time, it may
11 provide you with fewer health benefits than those normally
12 included as state-mandated health benefits in policies in
13 Texas. Please consult with your insurance agent to discover
14 which state-mandated health benefits are excluded in this
15 policy."

16 Sec. 1507.006. DISCLOSURE STATEMENT. (a) A health carrier
17 providing a standard health benefit plan must provide a proposed
18 policyholder or policyholder with a written disclosure statement
19 that:

20 (1) acknowledges that the standard health benefit plan
21 being purchased does not provide some or all state-mandated health
22 benefits;

23 (2) lists those state-mandated health benefits not
24 included in the standard health benefit plan; and

25 (3) if the standard health benefit plan is issued to an
26 individual policyholder, provides a notice that purchase of the
27 plan may limit the policyholder's future coverage options in the

1 event the policyholder's health changes and needed benefits are not
2 available under the standard health benefit plan.

3 (b) Each applicant for initial coverage and each
4 policyholder on renewal of coverage must sign the disclosure
5 statement provided by the health carrier under Subsection (a) and
6 return the statement to the health carrier. Under a group policy or
7 contract, the term "applicant" means the employer.

8 (c) A health carrier must:

9 (1) retain the signed disclosure statement in the
10 health carrier's records; and

11 (2) on request from the commissioner, provide the
12 signed disclosure statement to the department.

13 Sec. 1507.007. ADDITIONAL POLICIES. A health carrier that
14 offers one or more standard health benefit plans under this
15 subchapter must also offer at least one accident or sickness
16 insurance policy that provides state-mandated health benefits and
17 is otherwise authorized by this code.

18 Sec. 1507.008. RATES. A health carrier shall file for
19 informational purposes the rates to be used with a standard health
20 benefit plan. Nothing in this section shall be construed as
21 granting the commissioner any power or authority to determine, fix,
22 prescribe, or promulgate the rates to be charged for any individual
23 accident and sickness insurance policy or policies.

24 Sec. 1507.009. RULES. The commissioner shall adopt rules
25 necessary to implement this subchapter.

26 [Sections 1507.010-1507.050 reserved for expansion]

1 SUBCHAPTER B. CONSUMER CHOICE OF BENEFITS HEALTH MAINTENANCE

2 ORGANIZATION PLANS

3 Sec. 1507.051. PURPOSE. The legislature recognizes the
4 need for individuals and employers in this state to have the
5 opportunity to choose health maintenance organization plans that
6 are more affordable and flexible than existing market health care
7 plans offered by health maintenance organizations. The
8 legislature, therefore, seeks to increase the availability of
9 health care plans by allowing health maintenance organizations
10 authorized to operate health maintenance organizations in this
11 state to issue group or individual evidences of coverage that, in
12 whole or in part, do not offer or provide state-mandated health
13 benefits.

14 Sec. 1507.052. DEFINITIONS. (a) In this subchapter,
15 "standard health benefit plan" means a group or individual evidence
16 of coverage that, in whole or in part, does not offer or provide
17 state-mandated health benefits but that provides creditable
18 coverage as defined by Section 1205.004(a) or 1501.102(a).

19 (b) In this subchapter, terms defined by Section 843.002
20 have the meanings assigned by that section.

21 Sec. 1507.053. STATE-MANDATED HEALTH BENEFITS. (a) For
22 purposes of this subchapter, "state-mandated health benefits"
23 means coverage required under this code or other laws of this state
24 to be provided in an evidence of coverage that:

25 (1) includes coverage for specific health care
26 services or benefits;

27 (2) places limitations or restrictions on

1 deductibles, coinsurance, copayments, or any annual or lifetime
2 maximum benefit amounts, including limitations provided in Section
3 1271.151; or

4 (3) includes a specific category of licensed health
5 care practitioner from whom an enrollee is entitled to receive
6 care.

7 (b) For purposes of this subchapter, "state-mandated health
8 benefits" does not include coverage that is mandated by federal law
9 or standard provisions or rights required under this code or other
10 laws of this state to be provided in an evidence of coverage that
11 are unrelated to a specific health illness, injury, or condition of
12 an enrollee, including provisions related to:

13 (1) continuation of coverage under Subchapter G,
14 Chapter 1251;

15 (2) termination of coverage under Sections 1202.051
16 and 1501.108;

17 (3) preexisting conditions under Subchapter D,
18 Chapter 1201, and Sections 1501.102-1501.105;

19 (4) coverage of children, including newborn or adopted
20 children, under:

21 (A) Chapter 1504;

22 (B) Chapter 1503;

23 (C) Section 1501.157;

24 (D) Section 1501.158; and

25 (E) Sections 1501.607-1501.609;

26 (5) services of providers under Section 843.304;

27 (6) coverage for serious mental health illness under

1 Subchapter A, Chapter 1355, if the standard health benefit plan is
2 issued to a large employer as defined by Section 1501.002; and

3 (7) coverage for cancer screenings under:

4 (A) Chapter 1356;

5 (B) Chapter 1362; and

6 (C) Chapter 1363.

7 Sec. 1507.054. STANDARD HEALTH BENEFIT PLANS AUTHORIZED. A
8 health maintenance organization authorized to issue an evidence of
9 coverage in this state may offer one or more standard health benefit
10 plans.

11 Sec. 1507.055. NOTICE TO ENROLLEES. (a) Each written
12 application for enrollment in a standard health benefit plan must
13 contain the following language at the beginning of the document in
14 bold type:

15 "You have the option to choose this Consumer Choice of
16 Benefits Health Maintenance Organization health care plan
17 that, either in whole or in part, does not provide
18 state-mandated health benefits normally required in
19 evidences of coverage in Texas. This standard health benefit
20 plan may provide a more affordable health plan for you,
21 although, at the same time, it may provide you with fewer
22 health plan benefits than those normally included as
23 state-mandated health benefits in Texas. If you choose this
24 standard health benefit plan, please consult with your
25 insurance agent to discover which state-mandated health
26 benefits are excluded in this evidence of coverage."

27 (b) Each standard health benefit plan must contain the

1 following language at the beginning of the document in bold type:

2 "This Consumer Choice of Benefits Health Maintenance
3 Organization health care plan, either in whole or in part,
4 does not provide state-mandated health benefits normally
5 required in evidences of coverage in Texas. This standard
6 health benefit plan may provide a more affordable health plan
7 for you, although, at the same time, it may provide you with
8 fewer health plan benefits than those normally included as
9 state-mandated health benefits in Texas. Please consult with
10 your insurance agent to discover which state-mandated health
11 benefits are excluded in this evidence of coverage."

12 Sec. 1570.056. DISCLOSURE STATEMENT. (a) A health
13 maintenance organization providing a standard health benefit plan
14 must provide a proposed contract holder or a contract holder with a
15 written disclosure statement that:

16 (1) acknowledges that the standard health benefit plan
17 being purchased does not provide some or all state-mandated health
18 benefits;

19 (2) lists those state-mandated health benefits not
20 included in the standard health benefit plan; and

21 (3) if the standard health benefit plan is issued to an
22 individual certificate holder, provides a notice that purchase of
23 the plan may limit the certificate holder's future coverage options
24 in the event the certificate holder's health changes and needed
25 benefits are not available under the standard health benefit plan.

26 (b) Each applicant for initial enrollment and each contract
27 holder on renewal must sign the disclosure statement provided by

1 the health maintenance organization under Subsection (a) and return
2 the statement to the health maintenance organization. Under a
3 group evidence of coverage, the term "applicant" means the
4 employer.

5 (c) A health maintenance organization must:

6 (1) retain the signed disclosure statement in the
7 organization's records; and

8 (2) on request from the commissioner, provide the
9 signed disclosure statement to the department.

10 Sec. 1507.057. ADDITIONAL EVIDENCES OF COVERAGE. A health
11 maintenance organization that offers one or more standard health
12 benefit plans under this subchapter must also offer at least one
13 evidence of coverage that provides state-mandated health benefits
14 and is otherwise authorized by this code.

15 Sec. 1507.058. RATES. A health maintenance organization
16 shall file for informational purposes the rates to be used with a
17 standard health benefit plan. Nothing in this section shall be
18 construed as granting the commissioner any power or authority to
19 determine, fix, prescribe, or promulgate the rates to be charged
20 for any evidence of coverage.

21 Sec. 1507.059. RULES. The commissioner shall adopt rules
22 necessary to implement this subchapter.

23 (b) Section 1271.005(b), Insurance Code, is amended to
24 conform to Section 2, Chapter 1179, Acts of the 78th Legislature,
25 Regular Session, 2003, to read as follows:

26 (b) Subchapter B, Chapter 1355, applies to a health
27 maintenance organization providing benefits for mental health

1 treatment in a residential treatment center for children and
2 adolescents or crisis stabilization unit to the extent that:

3 (1) Subchapter B, Chapter 1355, does not conflict with
4 this chapter, Chapter 843, [~~or~~] Subchapter A, Chapter 1452, or
5 Subchapter B, Chapter 1507; and

6 (2) the residential treatment center for children and
7 adolescents or crisis stabilization unit is located within the
8 service area of the health maintenance organization and is subject
9 to inspection and review as required by this chapter, Chapter 843,
10 [~~or~~] Subchapter A, Chapter 1452, or Subchapter B, Chapter 1507, or
11 rules adopted under this chapter, Chapter 843, [~~or~~] Subchapter A,
12 Chapter 1452, or Subchapter B, Chapter 1507.

13 (c) Section 1271.007(a), Insurance Code, is amended to
14 conform to Section 2, Chapter 1179, Acts of the 78th Legislature,
15 Regular Session, 2003, to read as follows:

16 (a) This chapter, Chapters 843, 1272, and 1367, [~~and~~]
17 Subchapter A, Chapter 1452, and Subchapter B, Chapter 1507, do not
18 require a health maintenance organization, physician, or provider
19 to recommend, offer advice concerning, pay for, provide, assist in,
20 perform, arrange, or participate in providing or performing any
21 health care service that violates the religious convictions of the
22 health maintenance organization, physician, or provider.

23 (d) Section 1271.103(a), Insurance Code, is amended to
24 conform to Section 2, Chapter 1179, Acts of the 78th Legislature,
25 Regular Session, 2003, to read as follows:

26 (a) After notice and opportunity for hearing, the
27 commissioner may withdraw approval of the form of an evidence of

1 coverage or group contract or an amendment to one of those forms if
2 the commissioner determines that the form violates this chapter,
3 Chapter 843, 1272, or 1367, [~~or~~] Subchapter A, Chapter 1452, or
4 Subchapter B, Chapter 1507, or a rule adopted by the commissioner.

5 (e) Sections 1272.001(a)(1), (3), and (4), Insurance Code,
6 are amended to conform to Section 2, Chapter 1179, Acts of the 78th
7 Legislature, Regular Session, 2003, to read as follows:

8 (1) "Delegated entity" means an entity, other than a
9 health maintenance organization authorized to engage in business
10 under Chapter 843, that by itself, or through subcontracts with one
11 or more entities, undertakes to arrange for or provide medical care
12 or health care to an enrollee in exchange for a predetermined
13 payment on a prospective basis and that accepts responsibility for
14 performing on behalf of the health maintenance organization a
15 function regulated by this chapter, Chapter 843, 1271, or 1367,
16 [~~or~~] Subchapter A, Chapter 1452, or Subchapter B, Chapter 1507. The
17 term does not include:

18 (A) an individual physician; or

19 (B) a group of employed physicians, practicing
20 medicine under one federal tax identification number, whose total
21 claims paid to providers not employed by the group constitute less
22 than 20 percent of the group's total collected revenue computed on a
23 calendar year basis.

24 (3) "Delegated third party" means a third party other
25 than a delegated entity that contracts with a delegated entity,
26 either directly or through another third party, to:

27 (A) accept responsibility for performing a

1 function regulated by this chapter, Chapter 843, 1271, or 1367,
2 [~~or~~] Subchapter A, Chapter 1452, or Subchapter B, Chapter 1507; or

3 (B) receive, handle, or administer funds, if the
4 receipt, handling, or administration is directly or indirectly
5 related to a function regulated by this chapter, Chapter 843, 1271,
6 or 1367, [~~or~~] Subchapter A, Chapter 1452, or Subchapter B, Chapter
7 1507.

8 (4) "Delegation agreement" means an agreement by which
9 a health maintenance organization assigns the responsibility for a
10 function regulated by this chapter, Chapter 843, 1271, or 1367,
11 [~~or~~] Subchapter A, Chapter 1452, or Subchapter B, Chapter 1507.

12 (f) Section 1272.052(a), Insurance Code, is amended to
13 conform to Section 2, Chapter 1179, Acts of the 78th Legislature,
14 Regular Session, 2003, to read as follows:

15 (a) A health maintenance organization that delegates a
16 function required by this chapter, Chapter 843, 1271, or 1367, [~~or~~]
17 Subchapter A, Chapter 1452, or Subchapter B, Chapter 1507, shall
18 execute a written delegation agreement with the entity to which the
19 function is delegated.

20 (g) Section 1272.059, Insurance Code, is amended to conform
21 to Section 2, Chapter 1179, Acts of the 78th Legislature, Regular
22 Session, 2003, to read as follows:

23 Sec. 1272.059. CONTRACTS WITH DELEGATED THIRD PARTY. A
24 delegation agreement required by Section 1272.052 must provide
25 that:

26 (1) any agreement under which the delegated entity
27 directly or indirectly delegates a function required by this

1 chapter, Chapter 843, 1271, or 1367, [~~or~~] Subchapter A, Chapter
2 1452, or Subchapter B, Chapter 1507, including the handling of
3 funds, if applicable, to a delegated third party must be in writing;
4 and

5 (2) the delegated entity, in contracting with a
6 delegated third party directly or through a third party, shall
7 require the delegated third party to comply with the requirements
8 of Section 1272.057 and any rules adopted by the commissioner
9 implementing that section.

10 (h) Section 1272.208(a), Insurance Code, is amended to
11 conform to Section 2, Chapter 1179, Acts of the 78th Legislature,
12 Regular Session, 2003, to read as follows:

13 (a) Regardless of whether a delegated entity complies with a
14 request for corrective action under Section 1272.207, the
15 commissioner may order a health maintenance organization with which
16 the entity has entered into a delegation agreement to take any
17 action the commissioner determines is necessary to ensure that the
18 health maintenance organization is complying with this chapter,
19 Chapter 843, 1271, or 1367, [~~or~~] Subchapter A, Chapter 1452, or
20 Subchapter B, Chapter 1507.

21 (i) Section 1501.255(b), Insurance Code, is amended to
22 conform to Section 2, Chapter 1179, Acts of the 78th Legislature,
23 Regular Session, 2003, to read as follows:

24 (b) A health maintenance organization may offer:

25 (1) a state-approved health benefit plan that complies
26 with this chapter, Chapters 843, 1271, 1272, and 1367, Subchapter
27 A, Chapter 1452, Subchapter B, Chapter 1507, Title XIII, Public

1 Health Service Act (42 U.S.C. Section 300e et seq.), and its
2 subsequent amendments, and rules adopted under those laws;

3 (2) a health benefit plan developed by the
4 commissioner under Section 1501.253 and additional benefit riders
5 to the plan; or

6 (3) a point-of-service contract in connection with an
7 insurer that includes optional coverage for out-of-area services,
8 emergency care, or out-of-network care.

9 (j) Section 4151.002, Insurance Code, is amended to conform
10 to Section 2, Chapter 1179, Acts of the 78th Legislature, Regular
11 Session, 2003, to read as follows:

12 Sec. 4151.002. EXEMPTIONS. A person is not an
13 administrator if the person is:

14 (1) an employer acting on behalf of its employees or
15 the employees of one or more subsidiaries or affiliated
16 corporations of the employer;

17 (2) a union acting on behalf of its members;

18 (3) an insurer or a group hospital service corporation
19 subject to Chapter 842 acting with respect to a policy lawfully
20 issued and delivered by the insurer or corporation in and under the
21 law of a state in which the insurer or corporation was authorized to
22 engage in the business of insurance;

23 (4) a health maintenance organization that is
24 authorized to operate in this state under Chapter 843 with respect
25 to any activity that is specifically regulated under that chapter,
26 Chapter 1271, 1272, or 1367, ~~[or]~~ Subchapter A, Chapter 1452, or
27 Subchapter B, Chapter 1507;

1 (5) an agent licensed under Subchapter B, Chapter
2 4054, who receives commissions as an agent and is acting:

3 (A) under appointment on behalf of an insurer
4 authorized to engage in the business of insurance in this state; and

5 (B) in the customary scope and duties of the
6 person's authority as an agent;

7 (6) a creditor acting on behalf of its debtor with
8 respect to insurance that covers a debt between the creditor and its
9 debtor, if the creditor performs only the functions of a group
10 policyholder or a creditor;

11 (7) a trust established in conformity with 29 U.S.C.
12 Section 186 or a trustee or employee who is acting under the trust;

13 (8) a trust that is exempt from taxation under Section
14 501(a), Internal Revenue Code of 1986, or a trustee or employee
15 acting under the trust;

16 (9) a custodian or a custodian's agent or employee who
17 is acting under a custodian account that complies with Section
18 401(f), Internal Revenue Code of 1986;

19 (10) a bank, credit union, savings and loan
20 association, or other financial institution that is subject to
21 supervision or examination under federal or state law by a federal
22 or state regulatory authority, if the institution is performing
23 only those functions for which the institution holds a license
24 under federal or state law;

25 (11) a company that advances and collects a premium or
26 charge from its credit card holders on their authorization, if the
27 company does not adjust or settle claims and acts only in the

1 company's debtor-creditor relationship with its credit card
2 holders;

3 (12) a person who adjusts or settles claims in the
4 normal course of the person's practice or employment as a licensed
5 attorney and who does not collect any premium or charge in
6 connection with annuities or with life, health, or accident
7 benefits, including pharmacy benefits;

8 (13) an adjuster licensed by the department who is
9 engaged in the performance of the person's powers and duties as an
10 adjuster in the scope of the person's license;

11 (14) a person who provides technical, advisory,
12 utilization review, precertification, or consulting services to an
13 insurer, plan, or plan sponsor but does not make any management or
14 discretionary decisions on behalf of the insurer, plan, or plan
15 sponsor;

16 (15) an attorney in fact for a Lloyd's plan operating
17 under Chapter 941 or for a reciprocal or interinsurance exchange
18 operating under Chapter 942 who is acting in the capacity of
19 attorney in fact under the applicable chapter;

20 (16) a joint fund, risk management pool, or
21 self-insurance pool composed of political subdivisions of this
22 state that participate in a fund or pool through interlocal
23 agreements, any nonprofit administrative agency or governing body
24 or other nonprofit entity that acts solely on behalf of a fund,
25 pool, agency, or body, or any other fund, pool, agency, or body
26 established under or for the purpose of implementing an interlocal
27 governmental agreement;

1 (17) a self-insured political subdivision;

2 (18) a plan under which insurance benefits are
3 provided exclusively by an insurer authorized to engage in the
4 business of insurance in this state and the administrator of which
5 is:

6 (A) a full-time employee of the plan's organizing
7 or sponsoring association, trust, or other entity; or

8 (B) a trustee of the organizing or sponsoring
9 trust; or

10 (19) a parent of a wholly owned direct or indirect
11 subsidiary insurer authorized to engage in the business of
12 insurance in this state or a wholly owned direct or indirect
13 subsidiary insurer that is a part of the parent's holding company
14 system that, under an agreement regulated and approved under
15 Chapter 823 or a similar statute of the domiciliary state if the
16 parent or subsidiary insurer is a foreign insurer engaged in
17 business in this state, on behalf of only itself or an affiliated
18 insurer:

19 (A) collects premiums or contributions, if the
20 parent or subsidiary insurer:

21 (i) prepares only billing statements and
22 places those statements in the United States mail; and

23 (ii) causes all collected premiums to be
24 deposited directly in a depository account of the particular
25 affiliated insurer; or

26 (B) furnishes proof-of-loss forms, reviews
27 claims, determines the amount of the liability for those claims,

1 and negotiates settlements, if the parent or subsidiary insurer
2 pays claims only from the funds of the particular subsidiary by
3 checks or drafts of that subsidiary.

4 (k) Article 3.80, Insurance Code, as added by Section 1,
5 Chapter 1179, Acts of the 78th Legislature, Regular Session, 2003,
6 and Section 9N, Texas Health Maintenance Organization Act (Chapter
7 20A, Vernon's Texas Insurance Code), as added by Section 2, Chapter
8 1179, Acts of the 78th Legislature, Regular Session, 2003, are
9 repealed.

10 SECTION 11.075. (a) Chapter 1652, Insurance Code, is
11 amended to conform to Section 1, Chapter 530, Acts of the 78th
12 Legislature, Regular Session, 2003, by adding Subchapter F to read
13 as follows:

14 SUBCHAPTER F. OUTPATIENT PRESCRIPTION DRUGS

15 Sec. 1652.251. OUTPATIENT PRESCRIPTION DRUG BENEFIT PLANS.

16 (a) An entity described by Section 1652.003 that issues a Medicare
17 supplement benefit plan in this state may offer a group or
18 individual policyholder:

19 (1) an outpatient prescription drug benefit plan
20 authorized under 42 U.S.C. Section 1395ss; or

21 (2) a new or innovative outpatient prescription drug
22 benefit plan filed with and approved by the commissioner under
23 Section 1652.055.

24 (b) The commissioner shall approve or disapprove an
25 outpatient drug benefit plan described by Subsection (a) that is
26 filed for approval under Section 1652.055 not later than the 60th
27 day after the date the entity files the plan with the department. A

1 drug benefit plan that has not been approved or disapproved by the
2 commissioner before the 61st day after the date the plan is filed
3 with the department is considered approved on that day.

4 Sec. 1652.252. PRESCRIPTION DRUG DISCOUNT PROGRAMS. (a)

5 In this section, "prescription drug discount program" means any
6 program that entitles a participant to purchase prescription drugs
7 or other medical supplies and services from vendors at a discount
8 under an agreement made with a participating pharmacy.

9 (b) An entity described by Section 1652.003 may offer
10 participation in a prescription drug discount program in connection
11 with the solicitation of an application for issuance of a Medicare
12 supplement benefit plan.

13 (c) An offer of participation in a prescription drug
14 discount program described by this section is not a violation of
15 Chapter 541 or any other law prohibiting the offer of rebates in the
16 solicitation of insurance policies.

17 (b) Section 1, Chapter 530, Acts of the 78th Legislature,
18 Regular Session, 2003, is repealed.

19 SECTION 11.076. (a) Section 1701.060, Insurance Code, is
20 amended to conform to Section 15.04, Chapter 206, Acts of the 78th
21 Legislature, Regular Session, 2003, to read as follows:

22 Sec. 1701.060. GENERAL RULEMAKING AUTHORITY. (a) The
23 commissioner may~~[, within the standards and purposes of this~~
24 ~~chapter,~~] adopt reasonable rules necessary to implement the
25 purposes of this chapter, including, after notice and hearing,
26 rules that establish procedures and criteria under which:

27 (1) each type of form submitted to the department

1 under this chapter will be reviewed and approved by the
2 commissioner or exempted under Section 1701.005(b); and

3 (2) particular types of forms designated by the
4 commissioner may be given a summary review and approval if
5 considered appropriate by the commissioner to expedite review and
6 approval of those forms.

7 (b) A rule adopted under this chapter may not be repealed or
8 amended until after [~~before~~] the first anniversary of the date the
9 rule was adopted unless the commissioner determines [~~after notice~~
10 ~~and in a public hearing~~] that repeal or amendment is in the
11 significant and material interests of the citizens of this state or
12 is necessary as a result of legislative enactment [~~there is a~~
13 ~~compelling public need for the rule to be repealed or amended~~].

14 (b) Section 15.04, Chapter 206, Acts of the 78th
15 Legislature, Regular Session, 2003, is repealed.

16 SECTION 11.077. Section 2501.007, Insurance Code, is
17 amended to conform to Sections 51 and 59, Chapter 209, Acts of the
18 78th Legislature, Regular Session, 2003, to read as follows:

19 Sec. 2501.007. REFERENCES TO TITLE. In this title, a
20 reference to this title includes a reference to:

- 21 (1) Chapter 223;
22 (2) Chapter 271; and
23 (3) [~~Section 171.0527, Tax Code, and~~
24 [~~4~~] Subchapter U, Chapter 171, Tax Code.

25 SECTION 11.078. Section 171.0527, Tax Code, is repealed to
26 conform to Sections 51 and 59, Chapter 209, Acts of the 78th
27 Legislature, Regular Session, 2003.

1 SECTION 11.079. Section 2602.402(b), Insurance Code, is
2 amended to more closely conform to the source law from which it was
3 derived to read as follows:

4 (b) Except as otherwise provided by this section, the
5 receiver appointed under an order of receivership of a title
6 insurance company domiciled in this state may recover on behalf of
7 the company from an affiliate that controlled the company the
8 amount of a distribution, other than a stock dividend the company
9 paid on its capital [~~common~~] stock, made during the five years
10 preceding the date of the petition for liquidation or
11 rehabilitation.

12 SECTION 11.080. Section 4001.009(a), Insurance Code, is
13 amended to conform to the enactment of Articles 21.07-5, 21.21-6A,
14 21.21-11, 21.30, 21.49-2U, 21.49-2V, 21.52Y, 21.52Z, and 21.55A,
15 Insurance Code, by Section 3.02 of Chapter 207, Section 12.02 of
16 Chapter 206, Section 2 of Chapter 205, Section 20 of Chapter 214,
17 Section 3.01 of Chapter 206, Section 8.02 of Chapter 206, Section 21
18 of Chapter 214, and Section 2.01 of Chapter 207, Acts of the 78th
19 Legislature, Regular Session, 2003, to read as follows:

20 (a) As referenced in Section 4001.003(9), a reference to an
21 agent in the following laws includes a subagent without regard to
22 whether a subagent is specifically mentioned:

23 (1) Chapters 281, 523, 541-556, 558, 559, 702, 703,
24 705, 821, 823-825, 827, 828, 844, 1108, 1205-1209, 1211-1213, 1352,
25 1353, 1357, 1358, 1360-1363, 1369, 1453-1455, [~~and~~] 1503, and 4102;

26 (2) Subchapter C, Chapter 521;

27 (3) Subchapter F, Chapter 542;

- 1 (4) ~~Subchapters G and I, Chapter 544;~~
2 (5) Subchapter A, Chapter 557;
3 (6) [~~4~~] Subchapter B, Chapter 805;
4 (7) [~~5~~] Subchapter D, Chapter 1103;
5 (8) [~~6~~] Subchapters B, C, D, and E, Chapter 1204,
6 excluding Sections 1204.153 and 1204.154;
7 (9) [~~7~~] Subchapter B, Chapter 1366;
8 (10) [~~8~~] Subchapters B, C, and D, Chapter 1367,
9 excluding Section 1367.053(c);
10 (11) [~~9~~] Subchapters A, C, D, E, F, H, and I, Chapter
11 1451;
12 (12) [~~10~~] Subchapter B, Chapter 1452;
13 (13) [~~11~~] Sections 551.004, 982.001, 982.002,
14 982.004, 982.052, 982.102, 982.103, 982.104, 982.106, 982.107,
15 982.108, 982.110, 982.111, and 982.112;
16 (14) [~~12~~] Subchapters D, E, and F, Chapter 982;
17 (15) [~~13~~] Section 1101.003(a); and
18 (16) [~~14~~] Chapter 107, Occupations Code.

19 SECTION 11.081. (a) Section 4101.002(a), Insurance Code,
20 is amended to conform to Section 3.01, Chapter 207, Acts of the 78th
21 Legislature, Regular Session, 2003, to read as follows:

- 22 (a) This chapter does not apply to:
23 (1) an attorney who:
24 (A) adjusts insurance losses periodically and
25 incidentally to the practice of law; and
26 (B) does not represent that the attorney is an
27 adjuster;

1 (2) a salaried employee of an insurer who is not
2 regularly engaged in the adjustment, investigation, or supervision
3 of insurance claims;

4 (3) a person employed only to furnish technical
5 assistance to a licensed adjuster, including:

- 6 (A) an attorney;
- 7 (B) an engineer;
- 8 (C) an estimator;
- 9 (D) a handwriting expert;
- 10 (E) a photographer; and
- 11 (F) a private detective;

12 (4) an agent or general agent of an authorized insurer
13 who processes an undisputed or uncontested loss for the insurer
14 under a policy issued by the agent or general agent;

15 (5) a person who performs clerical duties and does not
16 negotiate with parties to disputed or contested claims;

17 (6) a person who handles claims arising under life,
18 accident, and health insurance policies;

19 (7) a person:

20 (A) who is employed principally as:

- 21 (i) a right-of-way agent; or
- 22 (ii) a right-of-way and claims agent;

23 (B) whose primary responsibility is the
24 acquisition of easements, leases, permits, or other real property
25 rights; and

26 (C) who handles only claims arising out of
27 operations under those easements, leases, permits, or other

1 contracts or contractual obligations; [~~or~~]

2 (8) an individual who is employed to investigate
3 suspected fraudulent insurance claims but who does not adjust
4 losses or determine claims payments; or

5 (9) a public insurance adjuster licensed under Chapter
6 4102.

7 (b) Section 3.01, Chapter 207, Acts of the 78th Legislature,
8 Regular Session, 2003, is repealed.

9 SECTION 11.082. (a) Subtitle C, Title 13, Insurance Code,
10 is amended to conform to the enactment of Article 21.07-5,
11 Insurance Code, by Section 3.02, Chapter 207, Acts of the 78th
12 Legislature, Regular Session, 2003, by adding Chapter 4102 to read
13 as follows:

14 CHAPTER 4102. PUBLIC INSURANCE ADJUSTERS

15 SUBCHAPTER A. GENERAL PROVISIONS

16 Sec. 4102.001. DEFINITIONS. In this chapter:

17 (1) "License holder" means a person licensed under
18 this chapter as a public insurance adjuster.

19 (2) "Person" includes an individual, firm, company,
20 association, organization, partnership, limited liability company,
21 or corporation.

22 (3) "Public insurance adjuster" means:

23 (A) a person who, for direct, indirect, or any
24 other compensation:

25 (i) acts on behalf of an insured in
26 negotiating for or effecting the settlement of a claim or claims for
27 loss or damage under any policy of insurance covering real or

1 personal property; or

2 (ii) on behalf of any other public
3 insurance adjuster, investigates, settles, or adjusts or advises or
4 assists an insured with a claim or claims for loss or damage under
5 any policy of insurance covering real or personal property; or

6 (B) a person who advertises, solicits business,
7 or holds himself or herself out to the public as an adjuster of
8 claims for loss or damage under any policy of insurance covering
9 real or personal property.

10 Sec. 4102.002. GENERAL EXEMPTIONS. This chapter does not
11 apply to:

12 (1) an officer or employee of the federal or state
13 government or of a political subdivision of the state government
14 while the officer or employee is engaged in the performance of
15 official duties;

16 (2) an attorney engaged in the performance of the
17 attorney's professional duties;

18 (3) insurers admitted to do business in the state and
19 agents licensed by this state, engaged in the performance of their
20 duties in connection with insurance transactions;

21 (4) the legal owner of personal property that has been
22 sold under a conditional sales agreement or a mortgagee under the
23 terms of a chattel mortgage;

24 (5) a salaried office employee who performs
25 exclusively clerical or administrative duties attendant to the
26 disposition of the business regulated by this chapter;

27 (6) a photographer, estimator, appraiser, engineer,

1 or arbitrator employed by a public insurance adjuster exclusively
2 for the purpose of furnishing technical assistance to the licensed
3 public insurance adjuster;

4 (7) a private investigator licensed under Chapter
5 1702, Occupations Code, while acting within the scope of that
6 license; or

7 (8) a full-time salaried employee of a property owner
8 or a property management company retained by a property owner who:

9 (A) does not hold the employee out as:

10 (i) a public insurance adjuster; or

11 (ii) a building, roofing, or other
12 restoration contractor;

13 (B) has not been hired to handle a specific claim
14 resulting from a fire or casualty loss; and

15 (C) acts at the sole discretion of the property
16 owner or management company regarding a claim related to the
17 owner's property.

18 Sec. 4102.003. CERTAIN CONSTRUCTION REGARDING PRACTICE OF
19 LAW PROHIBITED. This chapter may not be construed as entitling a
20 person who is not licensed by the Supreme Court of Texas to practice
21 law in this state.

22 Sec. 4102.004. RULES. The commissioner may adopt
23 reasonable and necessary rules to implement this chapter, including
24 rules regarding:

25 (1) the qualifications of license holders, in addition
26 to those prescribed by this chapter, that are necessary to promote
27 and protect the public interest;

- 1 (2) the regulation of the conduct of license holders;
2 (3) the prescription of fees required by Section
3 4102.066; and
4 (4) the regulation of advertisements under Section
5 4102.113 and the definition of "advertisement" as the term is used
6 in that section.

7 Sec. 4102.005. CODE OF ETHICS. The commissioner, with
8 guidance from the public insurance adjusters examination advisory
9 committee, by rule shall adopt:

10 (1) a code of ethics for public insurance adjusters
11 that fosters the education of public insurance adjusters concerning
12 the ethical, legal, and business principles that should govern
13 their conduct;

14 (2) recommendations regarding the solicitation of the
15 adjustment of losses by public insurance adjusters; and

16 (3) any other principles of conduct or procedures that
17 the commissioner considers necessary and reasonable.

18 Sec. 4102.006. NOTICE TO LAST ADDRESS. Notice by
19 registered mail, return receipt requested, sent to the last known
20 address of an applicant for a license, a license holder, or another
21 person to whom notice is required to be sent under this chapter, as
22 reflected by the records of the department, constitutes sufficient
23 notice under this chapter.

24 [Sections 4102.007-4102.050 reserved for expansion]

25 SUBCHAPTER B. LICENSE REQUIREMENTS

26 Sec. 4102.051. LICENSE REQUIRED; EXEMPTION. (a) A person
27 may not act as a public insurance adjuster in this state or hold

1 himself or herself out to be a public insurance adjuster in this
2 state unless the person holds a license or certificate issued by the
3 commissioner under Section 4102.053, 4102.054, or 4102.069.

4 (b) A license is not required for:

5 (1) an attorney licensed to practice law in this state
6 who has complied with Section 4102.053(a)(6); or

7 (2) a person licensed as a general property and
8 casualty agent under Chapter 4051 while acting for an insured
9 concerning a loss under a policy issued by that agent.

10 Sec. 4102.052. APPLICATION. (a) An application for a
11 license under this chapter must be on a form prescribed by the
12 commissioner.

13 (b) The completed application must be notarized and be
14 accompanied by a nonrefundable license application fee, as provided
15 by Section 4102.066, for each application submitted.

16 Sec. 4102.053. ISSUANCE OF LICENSE TO RESIDENT. (a) The
17 commissioner shall issue a public insurance adjuster license to an
18 applicant on determining that the application meets the
19 requirements of this chapter, the license application fee has been
20 paid, and the applicant is an individual who:

21 (1) is at least 18 years of age;

22 (2) is a citizen of the United States or has complied
23 with all federal laws pertaining to employment or to the
24 transaction of business in the United States;

25 (3) is a resident of this state;

26 (4) is trustworthy and of a moral character that
27 reasonably ensures that the applicant will conduct the business of

1 a public insurance adjuster fairly and in good faith without
2 detriment to the public;

3 (5) has not been convicted of a felony in the 10 years
4 preceding filing an application under this chapter or, if convicted
5 of a felony in the 10 years preceding filing an application under
6 this chapter, has received a full pardon from that conviction and is
7 otherwise relieved from any disabilities connected with that
8 conviction;

9 (6) has sufficient experience or training relating to
10 the assessment of:

11 (A) real and personal property values; and

12 (B) physical loss of or damage to real or
13 personal property that may be the subject of insurance and claims
14 under insurance;

15 (7) is sufficiently informed as to the terms and
16 effects of the types of insurance contracts that provide coverage
17 on real and personal property;

18 (8) possesses knowledge and experience adequate to
19 enable the applicant to engage in the business of a public insurance
20 adjuster fairly and without injury to the public or any member of
21 the public with whom the applicant may have business as a public
22 insurance adjuster;

23 (9) has successfully passed the license examination
24 prescribed under Section 4102.057 or is exempt from the examination
25 requirement under this chapter;

26 (10) has complied with the financial responsibility
27 requirements imposed under Section 4102.105; and

1 (11) has complied with any other requirements under
2 applicable state law, including provision of a complete set of
3 fingerprints on request, as provided by Section 4001.103.

4 (b) The commissioner may issue a resident public insurance
5 adjuster license to an applicant who has been convicted of a felony
6 11 or more years before filing an application under this chapter if
7 the commissioner determines that the applicant is qualified to act
8 as a public insurance adjuster and that the circumstances
9 surrounding the applicant's conviction do not warrant the denial of
10 a license issued under this chapter.

11 Sec. 4102.054. ISSUANCE OF LICENSE TO NONRESIDENT. (a) The
12 commissioner may issue a nonresident license to an applicant for a
13 public insurance adjuster license who is not a permanent resident
14 of this state on determining that the application meets the
15 requirements of this chapter, the nonresident license application
16 fee has been paid, and the applicant is an individual who:

17 (1) is at least 18 years of age;

18 (2) except as provided by Section 4102.058, has
19 passed, to the satisfaction of the commissioner, an examination
20 approved by the commissioner and of sufficient scope as prescribed
21 by Section 4102.057;

22 (3) is self-employed as a public insurance adjuster or
23 associated with or employed by a public insurance adjusting firm or
24 other public insurance adjuster;

25 (4) is trustworthy and of a moral character that
26 reasonably ensures that the applicant will conduct the business of
27 a public insurance adjuster fairly and in good faith without

1 detriment to the public;

2 (5) has never been convicted of a felony or, if
3 convicted of a felony, has received a full pardon from that
4 conviction and is otherwise relieved from any disabilities
5 connected with that conviction;

6 (6) has sufficient experience or training relating to
7 the assessment of:

8 (A) real and personal property values; and

9 (B) physical loss of or damage to real or
10 personal property that may be the subject of insurance and claims
11 under insurance;

12 (7) is sufficiently informed as to the terms and
13 effects of the types of insurance contracts that provide coverage
14 on real and personal property;

15 (8) possesses knowledge and experience adequate to
16 enable the applicant to engage in the business of a public insurance
17 adjuster fairly and without injury to the public or any member of
18 the public with whom the applicant may have business as a public
19 insurance adjuster;

20 (9) if currently licensed as a resident public
21 insurance adjuster in the applicant's state of residence, provides
22 with the application a certificate or letter of authorization from
23 the licensing authority of the applicant's state of residence that:

24 (A) states that the applicant holds a current or
25 comparable license to act as a public insurance adjuster; and

26 (B) meets the requirements of Subsection (b);

27 (10) if the applicant's state of residence does not

1 require licensure as a resident public insurance adjuster and the
2 applicant has been licensed as an adjuster, agent, broker, or other
3 insurance representative in the applicant's state of residence or
4 any other state within the past three years, provides with the
5 application a certificate or letter of authorization from the
6 licensing authority that:

7 (A) states that the applicant holds or has held a
8 license to act as an adjuster, agent, broker, or other insurance
9 representative; and

10 (B) meets the requirements of Subsection (c);

11 (11) files proof of financial responsibility in
12 accordance with Section 4102.105; and

13 (12) complies with any other requirements under
14 applicable state law, including provision of a complete set of
15 fingerprints on request, as provided by Section 4001.103.

16 (b) A certificate or letter required by Subsection (a)(9)
17 must:

18 (1) be signed by the appropriate licensing official of
19 the applicant's state of residence; and

20 (2) disclose whether the applicant has ever had any
21 license or eligibility to hold any license declined, denied,
22 suspended, or revoked and whether the applicant has ever been
23 placed on probation and whether an administrative fine or penalty
24 has been levied against the applicant and, if so, the reason for the
25 action.

26 (c) A certificate or letter required by Subsection (a)(10)
27 must:

1 (1) be signed by the appropriate licensing official;

2 and

3 (2) disclose whether the applicant has ever had any
4 license or eligibility to hold any license declined, denied,
5 suspended, or revoked and whether the applicant has ever been
6 placed on probation and whether an administrative fine or penalty
7 has been levied against the applicant and, if so, the reason for the
8 action.

9 Sec. 4102.055. ISSUANCE OF LICENSE TO BUSINESS ENTITY
10 ORGANIZED IN THIS STATE. (a) The commissioner shall adopt rules
11 necessary to issue a public insurance adjuster license to a
12 business entity organized under the laws of this state.

13 (b) Rules adopted by the commissioner under Subsection (a)
14 must:

15 (1) be analogous to the provisions of Chapter 4001
16 that relate to licensure of corporations and partnerships; and

17 (2) contain qualifications for the issuance of a
18 public insurance adjuster license analogous to the qualifications
19 described by Section 4102.053.

20 (c) The commissioner may not issue a public insurance
21 adjuster license to a business entity described by Subsection (a)
22 unless at least one officer, active partner, or other managing
23 individual of the business entity, and each individual performing
24 acts of a public insurance adjuster on behalf of the business entity
25 in this state, are individually licensed by the department under
26 Section 4102.053 separately from the business entity.

27 Sec. 4102.056. ISSUANCE OF LICENSE TO BUSINESS ENTITY NOT

1 ORGANIZED IN THIS STATE. (a) The commissioner shall adopt rules
2 necessary to issue a public insurance adjuster license to a
3 business entity organized under the laws of another state or the
4 United States.

5 (b) Rules adopted by the commissioner under Subsection (a)
6 must:

7 (1) be analogous to the provisions of Chapter 4001
8 that relate to issuance of licenses to business entities; and

9 (2) contain:

10 (A) qualifications for the issuance of a public
11 insurance adjuster license analogous to the qualifications
12 described by Section 4102.054; and

13 (B) requirements for the performance of the
14 duties and powers of a public insurance adjuster analogous to the
15 requirements described by Section 4102.054.

16 (c) The department may not issue a public insurance adjuster
17 license to a business entity described by Subsection (a) unless at
18 least one officer, active partner, or other managing individual of
19 the business entity, and each individual performing acts of a
20 public insurance adjuster on behalf of the business entity in this
21 state, are individually licensed by the department under Section
22 4102.054 separately from the business entity.

23 Sec. 4102.057. EXAMINATION REQUIRED. (a) Except as
24 otherwise provided by this chapter, each applicant for a license as
25 a public insurance adjuster must, before the issuance of the
26 license, take and pass an examination to the satisfaction of the
27 commissioner.

1 (b) The examination required by this section must be
2 prescribed by the commissioner and must be of sufficient scope to
3 reasonably test the applicant's:

4 (1) knowledge of basic insurance theory, essential
5 elements of contracts, and claims ethics;

6 (2) technical competence in the handling of the types
7 of claims for which the applicant is being tested; and

8 (3) knowledge of:

9 (A) Chapter 541;

10 (B) Subchapters A and B, Chapter 542;

11 (C) Chapter 547;

12 (D) the Deceptive Trade Practices-Consumer
13 Protection Act (Subchapter E, Chapter 17, Business & Commerce
14 Code);

15 (E) analogous laws as specified by the
16 commissioner;

17 (F) statutory provisions related to the
18 unauthorized practice of law contained in Subchapter G, Chapter 81,
19 Government Code; and

20 (G) the duties and responsibilities of public
21 insurance adjusters under the law.

22 (c) The commissioner shall, within a reasonable period not
23 to exceed 30 days after the date of the examination, transmit the
24 results of the examination and the action taken on the application
25 to the applicant.

26 (d) An examination is not required for the renewal of a
27 license issued under this chapter.

1 Sec. 4102.058. EXEMPTION FROM EXAMINATION REQUIREMENT. The
2 examination requirement imposed by Section 4102.057 does not apply
3 to:

4 (1) an applicant who is licensed as a resident public
5 insurance adjuster in the applicant's state of residence, if the
6 state requires the passing of a written examination in order to
7 obtain the license and a reciprocal agreement with the appropriate
8 official of that state has been entered into by the department; or

9 (2) an applicant who is licensed as a nonresident
10 public insurance adjuster in a state other than the applicant's
11 state of residence, if the state of licensure requires the passing
12 of a written examination in order to obtain the license and a
13 reciprocal agreement with the appropriate official of the state of
14 licensure has been entered into by the department.

15 Sec. 4102.059. EXAMINATION ADVISORY COMMITTEE. (a) The
16 commissioner may appoint a public insurance adjusters examination
17 advisory committee composed of at least five members to assist in
18 developing the examination required by Section 4102.057. At least
19 three members must be eligible for licensure as public insurance
20 adjusters. At least one member must be a person from the insurance
21 industry who is not a public insurance adjuster, and at least one
22 member must represent consumer interests.

23 (b) A member of the advisory committee is not entitled to
24 compensation for service on the committee. A member is entitled to
25 reimbursement for reasonable and necessary expenses incurred in
26 performing services for the committee, subject to any limitation in
27 the General Appropriations Act.

1 Sec. 4102.060. EXAMINATION FORM AND TIME. (a) The answers
2 of an examinee to an examination required under this chapter shall
3 be made by the examinee in writing. A written examination may be
4 supplemented by oral examination.

5 (b) The examination shall be given at times and places
6 within the state as the commissioner considers necessary to
7 reasonably serve the convenience of both the commissioner and
8 examinees.

9 (c) The commissioner may require a waiting period of
10 reasonable duration before an examinee who fails the examination,
11 but who is otherwise qualified, may be reexamined.

12 (d) The scheduling and administration of examinations
13 required under Section 4102.057 shall be effected by persons
14 approved by the commissioner.

15 Sec. 4102.061. LICENSE FORM. The commissioner shall
16 prescribe the form of the licenses issued under this chapter. Each
17 license must contain:

18 (1) the name of the public insurance adjuster and the
19 address of the public insurance adjuster's place of business;

20 (2) the date of issuance and the date of expiration of
21 the license; and

22 (3) if applicable, the name of the firm with which the
23 public insurance adjuster is employed at the time the license is
24 issued.

25 Sec. 4102.062. EXPIRATION. A license issued under this
26 chapter expires on the second anniversary of the date of issuance
27 unless suspended or revoked by the commissioner.

1 Sec. 4102.063. NOTICE OF EXPIRATION. At least 30 days
2 before the expiration of a license, the department shall send
3 written notice of the impending license expiration to the license
4 holder at the license holder's last known mailing address according
5 to the records of the department.

6 Sec. 4102.064. RENEWAL OF UNEXPIRED LICENSE. (a) A license
7 holder may renew a license that has not expired and has not been
8 suspended or revoked by filing with the department a properly
9 completed renewal application, in the form prescribed by the
10 commissioner, that demonstrates continued compliance with the
11 license requirements imposed under this chapter or adopted by rule
12 by the commissioner. The completed renewal application must be
13 accompanied by:

14 (1) a renewal fee in the amount determined by the
15 commissioner under Section 4102.066(b); and

16 (2) evidence of compliance with the continuing
17 education requirements imposed under Section 4102.109.

18 (b) A license holder must submit the completed renewal
19 application, evidence of compliance with the continuing education
20 requirements, and the renewal fee to the commissioner not later
21 than the 30th day before the second anniversary date of the license.

22 (c) On the filing of a completed renewal application,
23 renewal fee, and, if applicable, evidence of compliance with the
24 continuing education requirements, the original license continues
25 in force until:

26 (1) the department issues the renewal license; or

27 (2) the commissioner issues an order revoking the

1 license.

2 Sec. 4102.065. RENEWAL OF EXPIRED LICENSE. (a) A person
3 whose license has been expired for 90 days or less may renew the
4 license by:

5 (1) submitting to the department:

6 (A) a completed renewal application in the form
7 prescribed by the commissioner; and

8 (B) evidence of compliance with the continuing
9 education requirements; and

10 (2) paying to the department the required renewal fee
11 and an additional fee that is equal to one-half of the renewal fee
12 for the license.

13 (b) A person whose license has been expired for more than 90
14 days but less than one year may not renew the license but is
15 entitled to a new license without taking the applicable examination
16 if the person submits to the department:

17 (1) a new application;

18 (2) evidence of compliance with the continuing
19 education requirements;

20 (3) the license fee; and

21 (4) an additional fee equal to one-half of the license
22 fee.

23 (c) A person whose license has been expired for one year or
24 more may not renew the license. The person may obtain a new license
25 by submitting to reexamination, if examination is required for
26 original issuance of the license, and by complying with the
27 requirements and procedures for obtaining an original license.

1 (d) The department may renew without reexamination an
2 expired license of a person who was licensed in this state, moved to
3 another state, and is currently licensed and has been in continual
4 practice in the other state up to and including the date of the
5 application. The person must pay to the department a fee that is
6 equal to the license fee.

7 Sec. 4102.066. FEES. (a) The commissioner shall collect in
8 advance the following nonrefundable fees:

9 (1) for a public insurance adjuster license, an
10 application fee in an amount to be determined by rule by the
11 commissioner;

12 (2) for a nonresident public insurance adjuster
13 license, an application fee in an amount to be determined by rule by
14 the commissioner;

15 (3) for each public insurance adjuster examination, a
16 fee in an amount to be determined by rule by the commissioner; and

17 (4) for a public insurance adjuster trainee
18 certificate under Section 4102.069, a registration fee in an amount
19 to be determined by rule by the commissioner.

20 (b) The amount of the fee for the renewal of a license or a
21 certificate issued under this chapter shall be determined by rule
22 by the commissioner.

23 (c) The commissioner shall set the fees in amounts
24 reasonable and necessary to implement this chapter.

25 Sec. 4102.067. USE OF FEES. (a) When collected, the fees
26 authorized by this chapter shall be deposited with the comptroller
27 to the credit of the Texas Department of Insurance operating

1 account.

2 (b) The department may use any portion of the fees collected
3 to:

4 (1) enforce this chapter;

5 (2) employ persons as the department considers
6 necessary to investigate and make reports regarding alleged
7 violations of this code and misconduct on the part of public
8 insurance adjusters; and

9 (3) pay the salaries and expenses of persons and
10 office employees and other expenses necessary to enforce this
11 chapter.

12 (c) A person employed by the department under this section
13 may examine under oath any person for the purpose of gathering
14 information and evidence and may have the information and evidence
15 reduced to writing.

16 (d) All expenses incurred under this section shall be paid
17 from the fees collected under this chapter.

18 Sec. 4102.068. LICENSE NOT ASSIGNABLE. A license issued
19 under this chapter is not assignable.

20 Sec. 4102.069. REGISTRATION PROGRAM FOR TRAINEES. (a) A
21 public insurance adjuster trainee must register with the department
22 for a temporary certificate under this section. An applicant for a
23 temporary certificate as a trainee must apply to the commissioner
24 on a form prescribed by the commissioner. The form must be
25 accompanied by a nonrefundable registration fee as prescribed by
26 Section 4102.066(a)(4).

27 (b) A temporary certificate may be issued under this section

1 only for educational and training purposes. The holder of a
2 temporary certificate may practice only under the direction and
3 sponsorship of a license holder of this state.

4 (c) The sponsor of a public insurance adjuster trainee shall
5 attest, on a form prescribed by the commissioner, that the trainee
6 is under the supervision and control of the sponsor and that the
7 sponsor has met the financial responsibility requirements of
8 Section 4102.105.

9 (d) A temporary certificate expires on the 180th day after
10 the date of issuance and may be renewed once on application to the
11 commissioner. An individual is not entitled to hold more than two
12 consecutive temporary certificates.

13 (e) Each individual who holds a temporary certificate under
14 this section must comply with the financial responsibility
15 requirements imposed under Section 4102.105.

16 [Sections 4102.070-4102.100 reserved for expansion]

17 SUBCHAPTER C. POWERS AND DUTIES

18 Sec. 4102.101. GENERAL AUTHORITY. (a) A license issued
19 under this chapter authorizes the adjusting of claims on behalf of
20 insureds for fire and allied coverages, burglary, flood, and all
21 other property claims, both real and personal, including loss of
22 income, but only when the client is an insured under the insurance
23 policy.

24 (b) This chapter does not limit or diminish the authority of
25 a license holder to investigate or adjust a loss to less than the
26 authority for that purpose that may be exercised by an adjuster
27 licensed under Chapter 4101.

1 Sec. 4102.102. COMPLIANCE WITH INSURANCE CONTRACT. A
2 license holder shall prepare each claim for an insured represented
3 by the license holder in accordance with the terms and conditions of
4 the contract of insurance under which recovery is sought.

5 Sec. 4102.103. CONTRACT FOR SERVICES REQUIRED. (a) A
6 license holder may not, directly or indirectly, act within this
7 state as a public insurance adjuster without having first entered
8 into a contract, in writing, on a form approved by the commissioner,
9 executed in duplicate by the license holder and the insured or the
10 insured's duly authorized representative. A license holder may not
11 use any form of contract that is not approved by the commissioner.

12 (b) The contract must contain a provision allowing the
13 client to rescind the contract by written notice to the license
14 holder within 72 hours of signature, and must include a prominently
15 displayed notice in 12-point boldface type that states "WE
16 REPRESENT THE INSURED ONLY." The commissioner by rule may require
17 additional prominently displayed notice requirements in the
18 contract as the commissioner considers necessary.

19 (c) One copy of the contract shall be kept on file in this
20 state by the license holder and must be available at all times for
21 inspection, without notice, by the commissioner or the
22 commissioner's duly authorized representative.

23 Sec. 4102.104. COMMISSIONS. (a) Except as provided by
24 Subsection (b), a license holder may receive a commission for
25 service provided under this chapter consisting of an hourly fee, a
26 flat rate, a percentage of the total amount paid by an insurer to
27 resolve a claim, or another method of compensation. The total

1 commission received may not exceed 10 percent of the amount of the
2 insurance settlement on the claim.

3 (b) A license holder may not receive a commission consisting
4 of a percentage of the total amount paid by an insurer to resolve a
5 claim on a claim on which the insurer, not later than 72 hours after
6 the date on which the loss is reported to the insurer, either pays
7 or commits in writing to pay to the insured the policy limit of the
8 insurance policy in accordance with Section 862.053. The license
9 holder is entitled to reasonable compensation from the insured for
10 services provided by the license holder on behalf of the insured,
11 based on the time spent on a claim that is subject to this
12 subsection and expenses incurred by the license holder, until the
13 claim is paid or the insured receives a written commitment to pay
14 from the insurer.

15 (c) Except for the payment of a commission by the insured,
16 all persons paying any proceeds of a policy of insurance or making
17 any payment affecting an insured's rights under a policy of
18 insurance must:

19 (1) include the insured as a payee on the payment draft
20 or check; and

21 (2) require the written signature and endorsement of
22 the insured on the payment draft or check.

23 (d) A public insurance adjuster may not accept any payment
24 that violates Subsection (c).

25 (e) Notwithstanding any authorization the insured may have
26 given to a public insurance adjuster, a public insurance adjuster
27 may not sign and endorse any payment draft or check on behalf of an

1 insured.

2 Sec. 4102.105. FINANCIAL RESPONSIBILITY. (a) As a
3 continuing condition of licensure, a public insurance adjuster must
4 file proof of financial responsibility with respect to transactions
5 with insureds under this chapter in an amount determined by the
6 commissioner by rule. The financial responsibility must include
7 the ability to pay sums the public insurance adjuster is obligated
8 to pay under any judgment against the public insurance adjuster by
9 an insured, based on an error, omission, fraud, negligent act, or
10 unfair practice of the public insurance adjuster or any person for
11 whose acts the public insurance adjuster is legally liable in the
12 transaction of the public insurance adjuster's business under this
13 code.

14 (b) In determining the amount of the financial
15 responsibility requirement, the commissioner shall consider the
16 nature of the obligation, other financial security requirements
17 under this code, and financial security requirements adopted for
18 public insurance adjusters in other states. In determining the
19 types of financial responsibility required, the commissioner may
20 consider a surety bond or a professional liability policy or
21 similar policy or contract of professional liability coverage
22 acceptable to the commissioner.

23 Sec. 4102.106. PLACE OF BUSINESS. (a) Each license holder
24 who is a resident of this state or a business entity organized under
25 the laws of this state shall:

26 (1) maintain a place of business in this state that is
27 accessible to the general public; and

1 (2) maintain in the place of business the records
2 required by this chapter.

3 (b) The address of the place of business must appear on the
4 face of the license.

5 (c) The license holder shall promptly notify the
6 commissioner of any change in the address of the license holder's
7 place of business.

8 Sec. 4102.107. AGENT FOR SERVICE OF PROCESS. (a) Each
9 nonresident license holder shall maintain an agent in this state
10 for service of process.

11 (b) The name and address of the nonresident license holder's
12 out-of-state business address and the name and address of the agent
13 must appear on the face of the license.

14 (c) The nonresident license holder shall promptly notify
15 the department of any change in the address of the license holder's
16 place of business or in the agent for service of process.

17 Sec. 4102.108. POSTING OF LICENSE. A license issued under
18 this chapter must at all times be posted in a conspicuous place in
19 the principal place of business of the license holder.

20 Sec. 4102.109. CONTINUING EDUCATION. (a) Each license
21 holder must annually complete at least 15 hours of continuing
22 education courses. The commissioner by rule shall prescribe the
23 requirements for continuing education courses under this section.

24 (b) Notwithstanding Subsection (a), the commissioner may
25 waive any continuing education requirement for a nonresident public
26 insurance adjuster with a valid license from another state having
27 continuing education requirements substantially equivalent to

1 those of this state.

2 Sec. 4102.110. RECORD MAINTENANCE. (a) A license holder
3 shall keep a complete record in this state of each of the license
4 holder's transactions as a public insurance adjuster. The records
5 must include each of the following:

6 (1) the name of the insured;

7 (2) the date, location, and amount of the loss;

8 (3) a copy of the contract between the license holder
9 and the insured;

10 (4) the name of the insurer and the amount, expiration
11 date, and number of each policy under which the loss is covered;

12 (5) an itemized statement of the recoveries by the
13 insured from the sources known to the license holder;

14 (6) the total compensation received for the
15 adjustment; and

16 (7) an itemized statement of disbursements made by the
17 license holder from recoveries received on behalf of the insured.

18 (b) Records required to be kept under this section must be:

19 (1) maintained in this state for at least five years
20 after the termination of a transaction with the insured; and

21 (2) open to examination by the commissioner.

22 Sec. 4102.111. FIDUCIARY CAPACITY. (a) All funds received
23 as claim proceeds by a license holder acting as a public insurance
24 adjuster are received and held by the license holder in a fiduciary
25 capacity. A license holder may not divert or appropriate fiduciary
26 funds received or held.

27 (b) An applicant for a license to act as a public insurance

1 adjuster must, as part of the application, endorse an authorization
2 for disclosure to the commissioner of all financial records of any
3 funds the public insurance adjuster holds as a fiduciary. The
4 authorization continues in force and effect for as long as the
5 license holder continues to be licensed under this chapter.

6 Sec. 4102.112. RELOCATION TO ANOTHER STATE. (a) Not later
7 than the 30th day after moving from one state to another state, a
8 nonresident or resident public insurance adjuster licensed in this
9 state shall file with the department:

10 (1) the license holder's new address; and

11 (2) proof of authorization to engage in the business
12 of public insurance adjuster in the new state of residence if that
13 state requires licensure of public insurance adjusters.

14 (b) The department may not charge a fee or require a license
15 application under Subsection (a).

16 Sec. 4102.113. ADVERTISEMENTS. Each advertisement by a
17 license holder soliciting or advertising business must display the
18 license holder's name, address, and license number as they appear
19 in the records of the commissioner.

20 Sec. 4102.114. DUTIES OF NONRESIDENT LICENSE HOLDER. (a) A
21 nonresident license holder shall comply with all of the
22 requirements of this chapter in performing any of the activities of
23 a public insurance adjuster in this state, including the
24 requirements on record maintenance in Section 4102.110.

25 (b) The failure of a nonresident license holder, as
26 determined by the commissioner after notice and an opportunity for
27 a hearing, to properly maintain records in accordance with this

1 chapter and make them available to the department on request
2 constitutes grounds for the suspension of the nonresident license
3 issued under this chapter, in accordance with Section 4102.201.

4 (c) Each individual who holds a nonresident license shall
5 comply with all other laws and rules of this state applicable to
6 public insurance adjusters, including the law governing the
7 collection of state sales tax as appropriate for services performed
8 under this chapter.

9 (d) After licensure as a nonresident public insurance
10 adjuster, as a condition of doing business in this state, the
11 license holder must annually, not later than January 1 and on a form
12 prescribed by the commissioner, submit an affidavit certifying that
13 the licensee is familiar with and understands the laws specified in
14 Section 4102.057(b), the applicable rules adopted under those laws,
15 and the terms and conditions of the types of insurance contracts
16 that provide coverage on real and personal property. Compliance
17 with the filing requirement provided by this subsection is
18 necessary for the issuance, continuation, reinstatement, or
19 renewal of a nonresident public insurance adjuster license.

20 (e) A nonresident license holder is subject to Section
21 4102.208(b), relating to failure to maintain the financial
22 responsibility requirements.

23 [Sections 4102.115-4102.150 reserved for expansion]

24 SUBCHAPTER D. PROHIBITED CONDUCT

25 Sec. 4102.151. SOLICITATION PROHIBITED DURING NATURAL
26 DISASTER. A license holder may not solicit or attempt to solicit a
27 client for employment during the progress of a loss-producing

1 natural disaster occurrence.

2 Sec. 4102.152. SOLICITATION PROHIBITED DURING CERTAIN
3 HOURS. (a) A license holder may not solicit or attempt to solicit
4 business on a loss or a claim in person, by telephone, or in any
5 other manner at any time except between the hours of 9 a.m. and 9
6 p.m. on a weekday or a Saturday and between noon and 9 p.m. on a
7 Sunday.

8 (b) This section does not prohibit a license holder from
9 accepting phone calls or personal visits during the prohibited
10 hours from an insured on the insured's initiation.

11 Sec. 4102.153. CERTAIN REPORTS AND DISCLOSURES PROHIBITED.
12 A license holder may not knowingly make any false report to the
13 license holder's employer or client and may not divulge to any other
14 person, except as the law may require, any information obtained
15 except at the direction of the employer or the client for whom the
16 information is obtained.

17 Sec. 4102.154. USE OF BADGE PROHIBITED. A license holder
18 may not use a badge in connection with the official activities of
19 the license holder's business.

20 Sec. 4102.155. CERTAIN DELEGATION PROHIBITED. A license
21 holder may not permit an employee or agent, in the employee's or
22 agent's own name, to advertise, solicit or engage clients, furnish
23 reports or present bills to clients, or in any manner conduct
24 business for which a license is required under this chapter.

25 Sec. 4102.156. PRACTICE OF LAW PROHIBITED. A license
26 holder may not render services or perform acts that constitute the
27 practice of law, including the giving of legal advice to any person

1 in the license holder's capacity as a public insurance adjuster.

2 Sec. 4102.157. CERTAIN BUSINESS PROHIBITED. A license
3 holder may not solicit or attempt to solicit business, directly or
4 indirectly, or act in any manner on a bodily injury loss covered by
5 a life, health, or accident insurance policy or on any claim for
6 which the client is not an insured under the insurance policy.

7 Sec. 4102.158. CONFLICTS OF INTEREST PROHIBITED. (a) A
8 license holder may not:

9 (1) participate directly or indirectly in the
10 reconstruction, repair, or restoration of damaged property that is
11 the subject of a claim adjusted by the license holder; or

12 (2) engage in any other activities that may reasonably
13 be construed as presenting a conflict of interest, including
14 soliciting or accepting any remuneration from, or having a
15 financial interest in, any salvage firm, repair firm, or other firm
16 that obtains business in connection with any claim the license
17 holder has a contract or agreement to adjust.

18 (b) A license holder may not, without the knowledge and
19 consent of the insured in writing, acquire an interest in salvaged
20 property that is the subject of a claim adjusted by the license
21 holder.

22 (c) A license holder may not represent an insured on a claim
23 or charge a fee to an insured while representing the insurance
24 carrier against which the claim is made.

25 Sec. 4102.159. MISREPRESENTATION PROHIBITED. A license
26 holder may not use any misrepresentation to solicit a contract or
27 agreement to adjust a claim.

1 Sec. 4102.160. CERTAIN PAYMENTS PROHIBITED. A license
2 holder may not:

3 (1) advance money to any potential client or insured;
4 (2) pay, allow, or give, or offer to pay, allow, or
5 give, directly or indirectly, to a person who is not a licensed
6 public insurance adjuster a fee, commission, or other valuable
7 consideration for the referral of an insured to the public
8 insurance adjuster based on the insured entering into a contract
9 with that public insurance adjuster; or

10 (3) otherwise offer to pay a fee, commission, or other
11 valuable consideration exceeding \$100 to a person not licensed as a
12 public insurance adjuster for referring an insured to the license
13 holder.

14 Sec. 4102.161. CERTAIN REPRESENTATIONS PROHIBITED. A
15 license holder may not use any letterhead, advertisement, or other
16 printed matter, or use any other means, to represent that the
17 license holder is an instrumentality of the federal government, of
18 a state, or of a political subdivision of a state.

19 Sec. 4102.162. USE OF DIFFERENT NAME PROHIBITED. A license
20 holder may not use a name different from the name under which the
21 license holder is currently licensed in an advertisement,
22 solicitation, or contract for business.

23 [Sections 4102.163-4102.200 reserved for expansion]

24 SUBCHAPTER E. ENFORCEMENT

25 Sec. 4102.201. DENIAL, SUSPENSION, OR REVOCATION OF
26 LICENSE. (a) The commissioner may deny an application for a
27 license under this chapter or suspend or revoke a license issued

1 under this chapter on the basis of:

2 (1) a violation of this chapter or of any rule adopted
3 by the commissioner under this chapter;

4 (2) a cause that constitutes grounds for denial of an
5 original license;

6 (3) misrepresentation or fraud in obtaining a license;

7 (4) failure to pass a required license examination;

8 (5) the misappropriation or conversion of money
9 required to be held in a fiduciary capacity;

10 (6) material misrepresentation, with intent to
11 deceive, of the terms of an insurance contract;

12 (7) engaging in a fraudulent transaction;

13 (8) demonstrated incompetence or untrustworthiness in
14 the conduct of the license holder's affairs under the license, as
15 determined by the commissioner;

16 (9) conviction of a felony by a final judgment in a
17 court of competent jurisdiction; or

18 (10) material misrepresentation, with intent to
19 deceive, of the person's status as a public insurance adjuster.

20 (b) If the department proposes to refuse to issue an
21 original license under this chapter or to suspend, revoke, or
22 refuse to renew a license under this chapter, the person affected is
23 entitled to notice and hearing as provided by Section 4005.104.

24 (c) A final order entered as a result of a hearing under this
25 section may be appealed to a court of competent jurisdiction as
26 provided by Subchapter D, Chapter 36.

27 (d) An order suspending a license issued under this chapter

1 must specify the period of the suspension not to exceed 12 months.

2 (e) The holder of a license that is revoked or suspended for
3 cause shall surrender the license to the commissioner on demand.

4 (f) The commissioner may issue a license or reinstate a
5 suspended or revoked license on a finding that the cause for
6 suspension, revocation, or refusal no longer exists.

7 Sec. 4102.202. APPLICATION FOR LICENSE AFTER SUSPENSION,
8 DENIAL OF APPLICATION, OR REVOCATION OF LICENSE. (a) A person
9 whose license is suspended under this chapter may apply for a new
10 license only after the expiration of the period of suspension.

11 (b) A person whose license is revoked or whose application
12 for a license is denied, except for a failure to submit a completed
13 application, may not apply for a new license until the fifth
14 anniversary of:

15 (1) the effective date of the denial or revocation; or

16 (2) if the applicant or license holder seeks judicial
17 review of the department's action, the date of the final court order
18 or decree affirming that action.

19 (c) The commissioner may deny a timely application filed
20 under Subsection (b) if the applicant does not show good cause why
21 the denial of the previous license application or the revocation of
22 the license should not be considered a bar to the issuance of the
23 new license.

24 (d) Subsection (c) does not apply to an applicant whose
25 license application was denied for failure by the applicant to:

26 (1) pass the required written examination; or

27 (2) submit a properly completed license application.

1 Sec. 4102.203. DISCIPLINARY PROCEEDING FOR CONDUCT
2 COMMITTED BEFORE SURRENDER OR FORFEITURE OF LICENSE. (a) The
3 department may institute a disciplinary proceeding against a former
4 license holder for conduct that the license holder committed before
5 the effective date of a voluntary surrender or automatic forfeiture
6 of the license.

7 (b) In a proceeding under this section, the fact that the
8 license holder has surrendered or forfeited the license does not
9 affect the license holder's culpability for the conduct.

10 Sec. 4102.204. ADMINISTRATIVE PENALTY. The commissioner,
11 in lieu of suspending or revoking a license for a violation of this
12 chapter or a rule adopted under this chapter, may impose on a
13 license holder an administrative penalty in an amount not to exceed
14 \$2,000 per violation if the commissioner determines that that
15 action better serves the purposes of this chapter.

16 Sec. 4102.205. AUTOMATIC FINES. Section 4005.109 applies
17 to violations of this chapter.

18 Sec. 4102.206. CRIMINAL PENALTY; SANCTIONS. (a) A person
19 commits an offense if the person violates this chapter. An offense
20 under this subsection is a Class B misdemeanor.

21 (b) If conduct that constitutes an offense under Subsection
22 (a) also constitutes an offense under any other law, the person
23 committing the offense may be prosecuted under this section or the
24 other law.

25 (c) In addition to the criminal penalties imposed under
26 Subsection (a), a person in violation of this chapter is subject to
27 the sanctions provided by Sections 541.108-541.110, as if the

1 person had violated an order under those sections.

2 Sec. 4102.207. INSURED OPTION TO VOID CONTRACT. (a) Any
3 contract for services regulated by this chapter that is entered
4 into by an insured with a person who is in violation of Section
5 4102.051 may be voided at the option of the insured.

6 (b) If a contract is voided under this section, the insured
7 is not liable for the payment of any past services rendered, or
8 future services to be rendered, by the violating person under that
9 contract or otherwise.

10 Sec. 4102.208. EMERGENCY CEASE AND DESIST ORDER. (a) If
11 the commissioner believes that a person is engaging in acts or
12 practices in violation of Section 4102.051, the commissioner ex
13 parte may issue an emergency cease and desist order, in accordance
14 with Subchapter B, Chapter 83, requiring the person to immediately
15 cease and desist from engaging further in the acts or practices.

16 (b) In addition to any other remedy available under this
17 code, if the commissioner believes that a person is committing a
18 violation by failing to maintain the financial responsibility
19 requirements of Section 4102.105, the commissioner ex parte may
20 issue an emergency cease and desist order and suspend the person's
21 license, in accordance with Subchapter B, Chapter 83, requiring the
22 person to immediately cease and desist from engaging in the
23 activities of a public insurance adjuster.

24 (c) A license suspended under Subsection (b) may be
25 reinstated on the approval of an application for reinstatement
26 filed with the commissioner, in the form prescribed by the
27 commissioner, with proof that the financial responsibility

1 requirements of Section 4102.105 have been met. The commissioner
2 may deny the application for reinstatement:

3 (1) for any reason that would justify a refusal to
4 issue, or a suspension or revocation of, a license; or

5 (2) for the performance by the applicant of any
6 practice for which a license under this chapter is required while
7 the applicant is under suspension for failure to keep the financial
8 responsibility requirements in force.

9 (b) Article 21.07-5, Insurance Code, as added by Section
10 3.02, Chapter 207, Acts of the 78th Legislature, Regular Session,
11 2003, is repealed.

12 PART 2. CHANGES RELATING TO REFERENCES
13 TO THE INSURANCE CODE

14 SECTION 11.101. Section 17.46(b), Business & Commerce Code,
15 is amended to read as follows:

16 (b) Except as provided in Subsection (d) of this section,
17 the term "false, misleading, or deceptive acts or practices"
18 includes, but is not limited to, the following acts:

19 (1) passing off goods or services as those of another;

20 (2) causing confusion or misunderstanding as to the
21 source, sponsorship, approval, or certification of goods or
22 services;

23 (3) causing confusion or misunderstanding as to
24 affiliation, connection, or association with, or certification by,
25 another;

26 (4) using deceptive representations or designations
27 of geographic origin in connection with goods or services;

1 (5) representing that goods or services have
2 sponsorship, approval, characteristics, ingredients, uses,
3 benefits, or quantities which they do not have or that a person has
4 a sponsorship, approval, status, affiliation, or connection which
5 he does not;

6 (6) representing that goods are original or new if
7 they are deteriorated, reconditioned, reclaimed, used, or
8 secondhand;

9 (7) representing that goods or services are of a
10 particular standard, quality, or grade, or that goods are of a
11 particular style or model, if they are of another;

12 (8) disparaging the goods, services, or business of
13 another by false or misleading representation of facts;

14 (9) advertising goods or services with intent not to
15 sell them as advertised;

16 (10) advertising goods or services with intent not to
17 supply a reasonable expectable public demand, unless the
18 advertisements disclosed a limitation of quantity;

19 (11) making false or misleading statements of fact
20 concerning the reasons for, existence of, or amount of price
21 reductions;

22 (12) representing that an agreement confers or
23 involves rights, remedies, or obligations which it does not have or
24 involve, or which are prohibited by law;

25 (13) knowingly making false or misleading statements
26 of fact concerning the need for parts, replacement, or repair
27 service;

1 (14) misrepresenting the authority of a salesman,
2 representative or agent to negotiate the final terms of a consumer
3 transaction;

4 (15) basing a charge for the repair of any item in
5 whole or in part on a guaranty or warranty instead of on the value of
6 the actual repairs made or work to be performed on the item without
7 stating separately the charges for the work and the charge for the
8 warranty or guaranty, if any;

9 (16) disconnecting, turning back, or resetting the
10 odometer of any motor vehicle so as to reduce the number of miles
11 indicated on the odometer gauge;

12 (17) advertising of any sale by fraudulently
13 representing that a person is going out of business;

14 (18) advertising, selling, or distributing a card
15 which purports to be a prescription drug identification card issued
16 under Section 4151.152 [~~19A, Article 21.07-6~~], Insurance Code, in
17 accordance with rules adopted by the commissioner of insurance,
18 which offers a discount on the purchase of health care goods or
19 services from a third party provider, and which is not evidence of
20 insurance coverage, unless:

21 (A) the discount is authorized under an agreement
22 between the seller of the card and the provider of those goods and
23 services or the discount or card is offered to members of the
24 seller;

25 (B) the seller does not represent that the card
26 provides insurance coverage of any kind; and

27 (C) the discount is not false, misleading, or

1 deceptive;

2 (19) using or employing a chain referral sales plan in
3 connection with the sale or offer to sell of goods, merchandise, or
4 anything of value, which uses the sales technique, plan,
5 arrangement, or agreement in which the buyer or prospective buyer
6 is offered the opportunity to purchase merchandise or goods and in
7 connection with the purchase receives the seller's promise or
8 representation that the buyer shall have the right to receive
9 compensation or consideration in any form for furnishing to the
10 seller the names of other prospective buyers if receipt of the
11 compensation or consideration is contingent upon the occurrence of
12 an event subsequent to the time the buyer purchases the merchandise
13 or goods;

14 (20) representing that a guarantee or warranty confers
15 or involves rights or remedies which it does not have or involve,
16 provided, however, that nothing in this subchapter shall be
17 construed to expand the implied warranty of merchantability as
18 defined in Sections 2.314 through 2.318 and Sections 2A.212 through
19 2A.216 to involve obligations in excess of those which are
20 appropriate to the goods;

21 (21) promoting a pyramid promotional scheme, as
22 defined by Section 17.461;

23 (22) representing that work or services have been
24 performed on, or parts replaced in, goods when the work or services
25 were not performed or the parts replaced;

26 (23) filing suit founded upon a written contractual
27 obligation of and signed by the defendant to pay money arising out

1 of or based on a consumer transaction for goods, services, loans, or
2 extensions of credit intended primarily for personal, family,
3 household, or agricultural use in any county other than in the
4 county in which the defendant resides at the time of the
5 commencement of the action or in the county in which the defendant
6 in fact signed the contract; provided, however, that a violation of
7 this subsection shall not occur where it is shown by the person
8 filing such suit he neither knew or had reason to know that the
9 county in which such suit was filed was neither the county in which
10 the defendant resides at the commencement of the suit nor the county
11 in which the defendant in fact signed the contract;

12 (24) failing to disclose information concerning goods
13 or services which was known at the time of the transaction if such
14 failure to disclose such information was intended to induce the
15 consumer into a transaction into which the consumer would not have
16 entered had the information been disclosed;

17 (25) using the term "corporation," "incorporated," or
18 an abbreviation of either of those terms in the name of a business
19 entity that is not incorporated under the laws of this state or
20 another jurisdiction;

21 (26) selling, offering to sell, or illegally promoting
22 an annuity contract under Chapter 22, Acts of the 57th Legislature,
23 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil
24 Statutes), with the intent that the annuity contract will be the
25 subject of a salary reduction agreement, as defined by that Act, if
26 the annuity contract is not an eligible qualified investment under
27 that Act; or

1 (27) taking advantage of a disaster declared by the
2 governor under Chapter 418, Government Code, by:

3 (A) selling or leasing fuel, food, medicine, or
4 another necessity at an exorbitant or excessive price; or

5 (B) demanding an exorbitant or excessive price in
6 connection with the sale or lease of fuel, food, medicine, or
7 another necessity.

8 SECTION 11.102. Section 17.50(a), Business & Commerce Code,
9 is amended to read as follows:

10 (a) A consumer may maintain an action where any of the
11 following constitute a producing cause of economic damages or
12 damages for mental anguish:

13 (1) the use or employment by any person of a false,
14 misleading, or deceptive act or practice that is:

15 (A) specifically enumerated in a subdivision of
16 Subsection (b) of Section 17.46 of this subchapter; and

17 (B) relied on by a consumer to the consumer's
18 detriment;

19 (2) breach of an express or implied warranty;

20 (3) any unconscionable action or course of action by
21 any person; or

22 (4) the use or employment by any person of an act or
23 practice in violation of Chapter 541 [~~Article 21.21~~], Insurance
24 Code.

25 SECTION 11.103. Effective January 1, 2006, Section 2.003,
26 Business Organizations Code, is amended to read as follows:

27 Sec. 2.003. GENERAL PROHIBITED PURPOSES. A domestic entity

1 may not:

2 (1) engage in a business or activity that:

3 (A) is expressly unlawful or prohibited by a law
4 of this state;

5 (B) cannot lawfully be engaged in by that entity
6 under state law; or

7 (C) may not be engaged in by an entity without
8 first obtaining a license under the laws of this state to engage in
9 that business or activity and a license cannot lawfully be granted
10 to the entity; or

11 (2) operate as a:

12 (A) bank;

13 (B) trust company;

14 (C) savings association;

15 (D) insurance company;

16 (E) railroad company;

17 (F) cemetery organization; or

18 (G) abstract or title company governed by Title
19 11 [~~Chapter 9~~], Insurance Code.

20 SECTION 11.104. Section 12.003(b), Civil Practice and
21 Remedies Code, is amended to read as follows:

22 (b) Notwithstanding any other law, a person or a person
23 licensed or regulated by Title 11 [~~Chapter 9~~], Insurance Code (the
24 Texas Title Insurance Act), does not have a duty to disclose a
25 fraudulent, as described by Section 51.901(c), Government Code,
26 court record, document, or instrument purporting to create a lien
27 or purporting to assert a claim on real property or an interest in

1 real property in connection with a sale, conveyance, mortgage, or
2 other transfer of the real property or interest in real property.

3 SECTION 11.105. Section 38.006, Civil Practice and Remedies
4 Code, is amended to read as follows:

5 Sec. 38.006. EXCEPTIONS. This chapter does not apply to a
6 contract issued by an insurer that is subject to the provisions of:

7 (1) Title 11 [~~Article 3.62, Insurance Code,~~
8 [~~(2) Section 1, Chapter 387, Acts of the 55th~~
9 ~~Legislature, Regular Session, 1957 (Article 3.62-1, Vernon's Texas~~
10 ~~Insurance Code),~~

11 [~~(3) Chapter 9~~], Insurance Code;

12 (2) Chapter 541 [~~(4) Article 21.21~~], Insurance Code;

13 [~~or~~]

14 (3) [~~(5)~~] the Unfair Claim Settlement Practices Act
15 (Subchapter A, Chapter 542 [~~Article 21.21-2~~], Insurance Code); or

16 (4) Subchapter B, Chapter 542, Insurance Code.

17 SECTION 11.106. Section 75.004(c), Civil Practice and
18 Remedies Code, is amended to read as follows:

19 (c) This section does not affect the liability of an insurer
20 or insurance plan in an action under Chapter 541 [~~Article 21.21~~],
21 Insurance Code, or an action for bad faith conduct, breach of
22 fiduciary duty, or negligent failure to settle a claim.

23 SECTION 11.107. Section 88.001(6), Civil Practice and
24 Remedies Code, is amended to read as follows:

25 (6) "Health insurance carrier" means an authorized
26 insurance company that issues policies of accident and health
27 [~~sickness~~] insurance under Chapter 1201, [~~Section 1, Chapter 397,~~

1 ~~Acts of the 54th Legislature, 1955 (Article 3.70-1, Vernon's Texas]~~
2 Insurance Code[~~→~~].

3 SECTION 11.108. Sections 22.004(a), (b), (c), (i), and (j),
4 Education Code, are amended to read as follows:

5 (a) A district shall participate in the uniform group
6 coverage program established under Chapter 1579 [~~Article 3.50-7~~],
7 Insurance Code, as provided by Subchapter D [~~Section 5~~] of that
8 chapter [~~article~~].

9 (b) A district that does not participate in the program
10 described by Subsection (a) shall make available to its employees
11 group health coverage provided by a risk pool established by one or
12 more school districts under Chapter 172, Local Government Code, or
13 under a policy of insurance or group contract issued by an insurer,
14 a company subject to Chapter 842, Insurance Code, or a health
15 maintenance organization under Chapter 843, Insurance Code. The
16 coverage must meet the substantive coverage requirements of Chapter
17 1251, Subchapter A, Chapter 1364, and Subchapter A, Chapter 1366
18 [~~Article 3.51-6~~], Insurance Code, and any other law applicable to
19 group health insurance policies or contracts issued in this state.
20 The coverage must include major medical treatment but may exclude
21 experimental procedures. In this subsection, "major medical
22 treatment" means a medical, surgical, or diagnostic procedure for
23 illness or injury. The coverage may include managed care or
24 preventive care and must be comparable to the basic health coverage
25 provided under Chapter 1551, Insurance Code. The board of trustees
26 of the Teacher Retirement System of Texas shall adopt rules to
27 determine whether a school district's group health coverage is

1 comparable to the basic health coverage specified by this
2 subsection. The rules must provide for consideration of the
3 following factors concerning the district's coverage in
4 determining whether the district's coverage is comparable to the
5 basic health coverage specified by this subsection:

6 (1) the deductible amount for service provided inside
7 and outside of the network;

8 (2) the coinsurance percentages for service provided
9 inside and outside of the network;

10 (3) the maximum amount of coinsurance payments a
11 covered person is required to pay;

12 (4) the amount of the copayment for an office visit;

13 (5) the schedule of benefits and the scope of
14 coverage;

15 (6) the lifetime maximum benefit amount; and

16 (7) verification that the coverage is issued by a
17 provider licensed to do business in this state by the Texas
18 Department of Insurance or is provided by a risk pool authorized
19 under Chapter 172, Local Government Code, or that a district is
20 capable of covering the assumed liabilities in the case of coverage
21 provided through district self-insurance.

22 (c) The cost of the coverage provided under the program
23 described by Subsection (a) shall be paid by the state, the
24 district, and the employees in the manner provided by Chapter 1579
25 [~~Article 3.50-7~~], Insurance Code. The cost of coverage provided
26 under a plan adopted under Subsection (b) shall be shared by the
27 employees and the district using the contributions by the state

1 described by Subchapter F, Chapter 1579 [~~Section 9, Article~~
2 ~~3.50-7~~], Insurance Code, or by Chapter 1580 [~~Article 3.50-8~~],
3 Insurance Code.

4 (i) Notwithstanding any other provision of this section, a
5 district participating in the uniform group coverage program
6 established under Chapter 1579 [~~Article 3.50-7~~], Insurance Code,
7 may not make group health coverage available to its employees under
8 this section after the date on which the program of coverages
9 provided under Chapter 1579 [~~Article 3.50-7~~], Insurance Code, is
10 implemented.

11 (j) This section does not preclude a district that is
12 participating in the uniform group coverage program established
13 under Chapter 1579 [~~Article 3.50-7~~], Insurance Code, from entering
14 into contracts to provide optional insurance coverages for the
15 employees of the district.

16 SECTION 11.109. Section 65.013(b), Finance Code, is amended
17 to read as follows:

18 (b) An investment by an insurance company in a savings
19 account is eligible for tax reducing purposes under Chapter 221
20 [~~Article 4.10~~], Insurance Code.

21 SECTION 11.110. Section 95.010(b), Finance Code, is amended
22 to read as follows:

23 (b) An investment by an insurance company in a deposit
24 account is eligible for tax reducing purposes under Chapters 221
25 and 222 [~~Articles 4.10 and 4.11~~], Insurance Code.

26 SECTION 11.111. Section 182.021, Finance Code, is amended
27 to read as follows:

1 Sec. 182.021. ACTIVITIES NOT REQUIRING CHARTER. Subject to
2 Subchapter C, Chapter 187, a company does not engage in the trust
3 business in a manner requiring a state charter by:

4 (1) acting in a manner authorized by law and in the
5 scope of authority as an agent of a trust institution;

6 (2) rendering a service customarily performed as an
7 attorney in a manner approved and authorized by the Supreme Court of
8 Texas or State Bar of Texas;

9 (3) acting as trustee under a deed of trust made only
10 as security for the payment of money or for the performance of
11 another act;

12 (4) conducting business as a trust institution if the
13 exercise of fiduciary powers in this state by the trust institution
14 is not otherwise prohibited by law;

15 (5) engaging in a business regulated by the Office of
16 Consumer Credit Commissioner, except as limited by rules adopted by
17 the finance commission;

18 (6) receiving and distributing rents and proceeds of
19 sale as a licensed real estate broker on behalf of a principal in a
20 manner authorized by the Texas Real Estate Commission;

21 (7) engaging in a securities transaction or providing
22 an investment advisory service as a licensed and registered dealer,
23 salesman, or advisor to the extent that the activity is regulated by
24 the State Securities Board or the Securities and Exchange
25 Commission;

26 (8) engaging in the sale and administration of an
27 insurance product by an insurance company or agent authorized or

1 licensed by the Texas Department of Insurance to the extent that the
2 activity is regulated by the Texas Department of Insurance;

3 (9) engaging in the lawful sale of prepaid funeral
4 benefits under a permit issued by the banking commissioner under
5 Chapter 154;

6 (10) engaging in the lawful business of a perpetual
7 care cemetery corporation under Chapter 712, Health and Safety
8 Code;

9 (11) engaging as a principal or agent in the lawful
10 sale of checks under a license issued by the banking commissioner
11 under Chapter 152;

12 (12) acting as trustee under a voting trust as
13 provided by Article 2.30, Texas Business Corporation Act;

14 (13) acting as trustee by a public, private, or
15 independent institution of higher education or a university system,
16 as defined by Section 61.003, Education Code, including an
17 affiliated foundation or corporation of such an institution or
18 system acting as trustee as provided by the Education Code;

19 (14) engaging in another activity expressly excluded
20 from the application of this subtitle by rule of the finance
21 commission;

22 (15) rendering services customarily performed by a
23 certified accountant in a manner authorized by the Texas State
24 Board of Public Accountancy;

25 (16) serving as trustee of a charitable trust as
26 provided by Article 2.31, Texas Non-Profit Corporation Act (Article
27 1396-2.31, Vernon's Texas Civil Statutes);

1 (17) performing escrow or settlement services if
2 licensed or authorized under Title 11 [~~Chapter 9~~], Insurance Code;

3 (18) acting as a qualified intermediary in a tax
4 deferred exchange under Section 1031, Internal Revenue Code of
5 1986, and applicable regulations; or

6 (19) providing permitted services at a trust
7 representative office established in this state pursuant to
8 Subchapter C, Chapter 187.

9 SECTION 11.112. Section 278.001(2), Finance Code, is
10 amended to read as follows:

11 (2) "Currency transmission business" means engaging
12 in or offering currency transmission as a service or for profit.
13 The term does not include:

14 (A) a federally insured financial institution,
15 as defined by Section 201.101, that is organized under the laws of
16 this state, another state, or the United States; or

17 (B) a title insurance company or title insurance
18 agent, as defined by Section 2501.003 [~~Article 9.02~~], Insurance
19 Code.

20 SECTION 11.113. Section 303.407, Finance Code, is amended
21 to read as follows:

22 Sec. 303.407. ENFORCEMENT BY TEXAS DEPARTMENT OF INSURANCE.
23 The Texas Department of Insurance shall enforce this chapter as it
24 applies to contracts subject to Chapter 651 [~~24~~], Insurance Code.

25 SECTION 11.114. Section 303.502(a), Finance Code, is
26 amended to read as follows:

27 (a) Except as inconsistent with this chapter:

1 (1) a person subject to Chapter 651 [~~24~~], Insurance
2 Code, who contracts for, charges, or receives an interest rate
3 authorized by this chapter remains subject to that chapter; and

4 (2) a party to an insurance premium finance agreement,
5 including an agreement for an open-end account, has all the rights
6 provided by Chapter 651 [~~24~~], Insurance Code.

7 SECTION 11.115. Section 307.001(7), Finance Code, is
8 amended to read as follows:

9 (7) "Title insurance" means insurance that may be
10 issued only by persons regulated under Title 11 [~~Chapter 9~~],
11 Insurance Code, and that insures:

12 (A) a lender or owner against loss caused by:

13 (i) defective title held by the mortgagor
14 or owner or insured;

15 (ii) unknown mortgages or defective
16 recording of mortgages or liens on real property;

17 (iii) failure of any person to pay ad
18 valorem taxes resulting in a lien; or

19 (iv) failure to research properly title,
20 taxes, liens, or other matters relative to the validity of loans or
21 liens secured by real property or insurance; or

22 (B) the validity, enforceability, or priority of
23 any lien or title on real property.

24 SECTION 11.116. Sections 342.051(c) and (d), Finance Code,
25 are amended to read as follows:

26 (c) A person is not required to obtain a license under
27 Subsection (a) if the person is:

1 (1) a bank, savings bank, or savings and loan
2 association organized under the laws of the United States or under
3 the laws of the institution's state of domicile; or

4 (2) subject to Chapter 651 [~~24~~], Insurance Code.

5 (d) An insurance agent licensed under Subchapter B, C, D, or
6 E, Chapter 4051 [~~Article 21.14~~], Insurance Code, is not required to
7 obtain a license to negotiate or arrange a loan on behalf of a bank,
8 savings bank, or savings and loan association provided that the
9 insurance agent or the bank, savings bank, or savings and loan
10 association does not make the provision of insurance a condition to
11 apply for or obtain a loan or service from the bank, savings bank,
12 or savings and loan association.

13 SECTION 11.117. Section 348.012, Finance Code, is amended
14 to read as follows:

15 Sec. 348.012. APPLICABILITY OF INSURANCE PREMIUM FINANCING
16 PROVISIONS. Chapter 651 [~~24~~], Insurance Code, does not apply to a
17 retail installment transaction.

18 SECTION 11.118. Section 348.208(c), Finance Code, is
19 amended to read as follows:

20 (c) Notwithstanding any other law, service contracts sold
21 by a retail seller of a motor vehicle to a retail buyer are not
22 subject to Chapter 101 or 226, Insurance Code.

23 SECTION 11.119. Section 533.0025(c), Government Code, is
24 amended to read as follows:

25 (c) In determining whether a model or arrangement described
26 by Subsection (b) is more cost-effective, the commissioner must
27 consider:

1 (1) the scope, duration, and types of health benefits
2 or services to be provided in a certain part of this state or to a
3 certain population of recipients;

4 (2) administrative costs necessary to meet federal and
5 state statutory and regulatory requirements;

6 (3) the anticipated effect of market competition
7 associated with the configuration of Medicaid service delivery
8 models determined by the commission; and

9 (4) the gain or loss to this state of a tax collected
10 under Chapter 222 [~~Article 4.11~~], Insurance Code.

11 SECTION 11.120. Section 551.079, Government Code, is
12 amended to read as follows:

13 Sec. 551.079. TEXAS DEPARTMENT OF INSURANCE. (a) The
14 requirements of this chapter do not apply to a meeting of the
15 commissioner of insurance or the commissioner's designee with the
16 board of directors of a guaranty association established under
17 Chapter 2602, Insurance Code, or Article [~~9.487~~] 21.28-C[~~7~~] or
18 21.28-D, Insurance Code, in the discharge of the commissioner's
19 duties and responsibilities to regulate and maintain the solvency
20 of a person regulated by the Texas Department of Insurance.

21 (b) The commissioner of insurance may deliberate and
22 determine the appropriate action to be taken concerning the
23 solvency of a person regulated by the Texas Department of Insurance
24 in a closed meeting with persons in one or more of the following
25 categories:

26 (1) staff of the Texas Department of Insurance;

27 (2) a regulated person;

1 (3) representatives of a regulated person; or

2 (4) members of the board of directors of a guaranty
3 association established under Chapter 2602, Insurance Code, or
4 Article [~~9.48,~~] 21.28-C[~~7~~] or 21.28-D, Insurance Code.

5 SECTION 11.121. Section 1471.062, Government Code, is
6 amended to read as follows:

7 Sec. 1471.062. ASSESSMENTS CONSIDERED TAXES. For purposes
8 of a title insurance policy issued under Title 11 [~~Chapter 9~~],
9 Insurance Code, an assessment under this subchapter and any
10 interest on or expenses or attorney's fees related to the
11 assessment are considered taxes.

12 SECTION 11.122. Section 2253.021(f), Government Code, is
13 amended to read as follows:

14 (f) A bond required under this section must clearly and
15 prominently display on the bond or on an attachment to the bond:

16 (1) the name, mailing address, physical address, and
17 telephone number, including the area code, of the surety company to
18 which any notice of claim should be sent; or

19 (2) the toll-free telephone number maintained by the
20 Texas Department of Insurance under Subchapter B, Chapter 521
21 [~~Article 1.35D~~], Insurance Code, and a statement that the address
22 of the surety company to which any notice of claim should be sent
23 may be obtained from the Texas Department of Insurance by calling
24 the toll-free telephone number.

25 SECTION 11.123. Section 2253.024(a), Government Code, is
26 amended to read as follows:

27 (a) A prime contractor, on the written request of a person

1 who provides public work labor or material and when required by
2 Subsection (c), shall provide to the person:

3 (1) the name and last known address of the
4 governmental entity with whom the prime contractor contracted for
5 the public work;

6 (2) a copy of the payment and performance bonds for the
7 public work, including bonds furnished by or to the prime
8 contractor; and

9 (3) the name of the surety issuing the payment bond and
10 the performance bond and the toll-free telephone number maintained
11 by the Texas Department of Insurance under Subchapter B, Chapter
12 521 [~~Article 1.35D~~], Insurance Code, for obtaining information
13 concerning licensed insurance companies.

14 SECTION 11.124. Section 2253.026(d), Government Code, is
15 amended to read as follows:

16 (d) A governmental entity shall furnish the following
17 information to a person who makes a request under Subsection (a):

18 (1) a certified copy of a payment bond and any
19 attachment to the bond;

20 (2) the public work contract for which the bond was
21 given; and

22 (3) the toll-free telephone number maintained by the
23 Texas Department of Insurance under Subchapter B, Chapter 521
24 [~~Article 1.35D~~], Insurance Code, for obtaining information
25 concerning licensed insurance companies.

26 SECTION 11.125. Sections 62.059(a) and (d), Health and
27 Safety Code, are amended to read as follows:

1 (a) In this section, "group health benefit plan" means a
2 plan described [~~has the meaning assigned~~] by Section 1207.001
3 [~~Article 21.52K~~], Insurance Code.

4 (d) If the commission determines that it is cost-effective
5 to enroll the child in the group health benefit plan, the commission
6 shall:

7 (1) inform the child and the child's parent or guardian
8 of the availability of the premium assistance program under this
9 section;

10 (2) offer, as an optional alternative to enrollment in
11 the commission's state child health plan program, a premium
12 assistance payment to assist with the employee's or member's share
13 of the required premiums for the group health benefit plan that is
14 available to the child; and

15 (3) provide written notice to the issuer of the group
16 health benefit plan in accordance with Chapter 1207 [~~Article~~
17 ~~21.52K~~], Insurance Code.

18 SECTION 11.126. Section 81.102(a), Health and Safety Code,
19 is amended to read as follows:

20 (a) A person may not require another person to undergo a
21 medical procedure or test designed to determine or help determine
22 if a person has AIDS or HIV infection, antibodies to HIV, or
23 infection with any other probable causative agent of AIDS unless:

24 (1) the medical procedure or test is required under
25 Subsection (d), under Section 81.050, or under Article 21.31, Code
26 of Criminal Procedure;

27 (2) the medical procedure or test is required under

1 Section 81.090, and no objection has been made under Section
2 81.090(1);

3 (3) the medical procedure or test is authorized under
4 Chapter 545 [~~Article 21.21-4~~], Insurance Code;

5 (4) a medical procedure is to be performed on the
6 person that could expose health care personnel to AIDS or HIV
7 infection, according to board guidelines defining the conditions
8 that constitute possible exposure to AIDS or HIV infection, and
9 there is sufficient time to receive the test result before the
10 procedure is conducted; or

11 (5) the medical procedure or test is necessary:

12 (A) as a bona fide occupational qualification and
13 there is not a less discriminatory means of satisfying the
14 occupational qualification;

15 (B) to screen blood, blood products, body fluids,
16 organs, or tissues to determine suitability for donation;

17 (C) in relation to a particular person under this
18 chapter;

19 (D) to manage accidental exposure to blood or
20 other body fluids, but only if the test is conducted under written
21 infectious disease control protocols adopted by the health care
22 agency or facility;

23 (E) to test residents and clients of residential
24 facilities of the Texas Department of Mental Health and Mental
25 Retardation, but only if:

26 (i) the test result would change the
27 medical or social management of the person tested or others who

1 associated with that person; and

2 (ii) the test is conducted in accordance
3 with guidelines adopted by the residential facility or the Texas
4 Department of Mental Health and Mental Retardation and approved by
5 the department; or

6 (F) to test residents and clients of residential
7 facilities of the Texas Youth Commission, but only if:

8 (i) the test result would change the
9 medical or social management of the person tested or others who
10 associate with that person; and

11 (ii) the test is conducted in accordance
12 with guidelines adopted by the Texas Youth Commission.

13 SECTION 11.127. Section 161.0073(c), Health and Safety
14 Code, is amended to read as follows:

15 (c) A person required to report information to the
16 department for registry purposes or authorized to receive
17 information from the registry may not disclose the individually
18 identifiable information to any other person without written
19 consent of the parent, managing conservator, or guardian of the
20 child, except as provided by Chapter 159, Occupations Code, or
21 Section 602.053 [~~Article 28B.04~~], Insurance Code.

22 SECTION 11.128. Section 32.038(a), Human Resources Code, is
23 amended to read as follows:

24 (a) The department may receive directly from an insurance
25 company any payments to which the department is entitled under
26 Section 1204.153 [~~Article 3.76~~], Insurance Code.

27 SECTION 11.129. Section 32.0422(a)(2), Human Resources

1 Code, is amended to read as follows:

2 (2) "Group health benefit plan" means a plan described
3 ~~[has the meaning assigned]~~ by Section 1207.001 ~~[Article 21.52K]~~,
4 Insurance Code.

5 SECTION 11.130. Section 32.0422(e), Human Resources Code,
6 is amended to read as follows:

7 (e) If the department determines that it is cost-effective
8 to enroll the individual in the group health benefit plan, the
9 department shall:

10 (1) require the individual to apply to enroll in the
11 group health benefit plan as a condition for eligibility under the
12 medical assistance program; and

13 (2) provide written notice to the issuer of the group
14 health benefit plan in accordance with Chapter 1207 ~~[Article~~
15 ~~21.52K]~~, Insurance Code.

16 SECTION 11.131. Section 401.011(1), Labor Code, is amended
17 to read as follows:

18 (1) "Adjuster" means a person licensed under Chapter
19 4101, ~~[407, Acts of the 63rd Legislature, Regular Session, 1973~~
20 ~~(Article 21.07-4, Vernon's Texas]~~ Insurance Code[+].

21 SECTION 11.132. Section 402.084(b), Labor Code, is amended
22 to read as follows:

23 (b) Information on a claim may be released as provided by
24 Subsection (a) to:

25 (1) the employee or the employee's legal beneficiary;

26 (2) the employee's or the legal beneficiary's
27 representative;

1 (3) the employer at the time of injury;

2 (4) the insurance carrier;

3 (5) the Texas Certified Self-Insurer Guaranty
4 Association established under Subchapter G, Chapter 407, if that
5 association has assumed the obligations of an impaired employer;

6 (6) the Texas Property and Casualty Insurance Guaranty
7 Association, if that association has assumed the obligations of an
8 impaired insurance company;

9 (7) a third-party litigant in a lawsuit in which the
10 cause of action arises from the incident that gave rise to the
11 injury; or

12 (8) a subclaimant under Section 409.009 that is an
13 insurance carrier that has adopted an antifraud plan under
14 Subchapter B, Chapter 704 [~~Article 3.97-3~~], Insurance Code, or the
15 authorized representative of such a subclaimant.

16 SECTION 11.133. Section 403.001(c), Labor Code, is amended
17 to read as follows:

18 (c) Money deposited in the general revenue fund under this
19 section may be used to satisfy the requirements of Section 201.052
20 [~~Article 4.19~~], Insurance Code.

21 SECTION 11.134. Section 403.002(c), Labor Code, is amended
22 to read as follows:

23 (c) A workers' compensation insurance company is taxed at
24 the rate established under Section 403.003. The tax shall be
25 collected in the manner provided for collection of other taxes on
26 gross premiums from a workers' compensation insurance company as
27 provided in Chapter 255 [~~Article 5.68~~], Insurance Code.

1 SECTION 11.135. Section 403.003(a), Labor Code, is amended
2 to read as follows:

3 (a) The commission shall set and certify to the comptroller
4 the rate of maintenance tax assessment not later than October 31 of
5 each year, taking into account:

6 (1) any expenditure projected as necessary for the
7 commission to:

8 (A) administer this subtitle during the fiscal
9 year for which the rate of assessment is set; and

10 (B) reimburse the general revenue fund as
11 provided by Section 201.052 [~~Article 4.19~~], Insurance Code;

12 (2) projected employee benefits paid from general
13 revenues;

14 (3) a surplus or deficit produced by the tax in the
15 preceding year;

16 (4) revenue recovered from other sources, including
17 reappropriated receipts, grants, payments, fees, gifts, and
18 penalties recovered under this subtitle; and

19 (5) expenditures projected as necessary to support the
20 prosecution of workers' compensation insurance fraud.

21 SECTION 11.136. Sections 405.003(d) and (e), Labor Code,
22 are amended to read as follows:

23 (d) The tax on insurance companies and on self-insurance
24 groups described by Subsection (a) shall be assessed, collected,
25 and paid in the same manner and at the same time as the maintenance
26 tax established for the support of the department under Chapter 255
27 [~~Article 5.68~~], Insurance Code. The tax on certified self-insurers

1 shall be assessed, collected, and paid in the same manner and at the
2 same time as the self-insurer maintenance tax collected under
3 Section 407.104.

4 (e) Amounts received under this section shall be deposited
5 in the general revenue fund [~~state treasury~~] in accordance with
6 Section 251.004 [~~Article 5.68(e)~~], Insurance Code, to be used:

7 (1) for the operation of the department's duties under
8 this chapter; and

9 (2) to reimburse the general revenue fund in
10 accordance with Section 201.052 [~~Article 4.19~~], Insurance Code.

11 SECTION 11.137. Section 407.001(5), Labor Code, is amended
12 to read as follows:

13 (5) "Qualified claims servicing contractor" means a
14 person who provides claims service for a certified self-insurer,
15 who is a separate business entity from the affected certified
16 self-insurer, and who is:

17 (A) an insurance company authorized by the Texas
18 Department of Insurance to write workers' compensation insurance;

19 (B) a subsidiary of an insurance company that
20 provides claims service under contract; or

21 (C) a third-party administrator that has on its
22 staff an individual licensed under Chapter 4101, [~~407, Acts of the~~
23 ~~63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's~~
24 ~~Texas~~] Insurance Code[+].

25 SECTION 11.138. Section 407A.301(e), Labor Code, is amended
26 to read as follows:

27 (e) The tax under this section shall be collected by the

1 comptroller as provided by Section 201.051 and Chapter 255 [~~Article~~
2 ~~5.68~~], Insurance Code.

3 SECTION 11.139. Sections 407A.302(a) and (c), Labor Code,
4 are amended to read as follows:

5 (a) Subject to Subsection (b), each group shall pay the
6 maintenance tax imposed under Chapter 255 [~~Article 5.68~~], Insurance
7 Code, for the administrative costs incurred by the department in
8 implementing this chapter.

9 (c) The maintenance tax assessed under this section is
10 subject to Chapter 255 [~~Article 5.68~~], Insurance Code, and shall be
11 collected by the comptroller in the manner provided by that chapter
12 [~~article~~].

13 SECTION 11.140. Section 407A.304(b), Labor Code, is amended
14 to read as follows:

15 (b) The rate for the premium tax under this section is the
16 rate assessed under Chapter 221 [~~Article 4.10~~], Insurance Code.

17 SECTION 11.141. Section 408.0221(g), Labor Code, is amended
18 to read as follows:

19 (g) The standards adopted for preferred provider networks
20 under Chapter 1301 [~~Article 3.70-3C~~], Insurance Code, [~~as added by~~
21 ~~Chapter 1024, Acts of the 75th Legislature, Regular Session, 1997,~~]
22 apply as minimum standards for regional health care delivery
23 networks created under this section and are adopted by reference in
24 this section except to the extent they are inconsistent with this
25 subtitle. The advisory committee may also recommend additional
26 standards, including standards that require:

27 (1) for each geographic region, access to an adequate

1 number of health care providers and treating doctors in each
2 appropriate health care discipline and the professional
3 specialties within those disciplines and a viable network through:

4 (A) the use of economic profiling as described by
5 Section 1301.058 [~~Article 3.70-3C~~], Insurance Code [~~, as added by~~
6 ~~Chapter 1024, Acts of the 75th Legislature, Regular Session, 1997~~];
7 and

8 (B) limitations on the number of providers, as
9 provided by Chapter 1301, Insurance Code [~~that article~~];

10 (2) the ability of an employee to receive treatment by
11 a regional network provider within a reasonable amount of time of
12 the regional network's knowledge of the need or request for
13 treatment and within a reasonable travel distance for the employee;

14 (3) a reasonable effort by the regional network to
15 attract health care providers who reflect the ethnic and cultural
16 background of the regional employee population;

17 (4) the availability of board-certified occupational
18 medicine specialists to provide expertise on disability management
19 and prevention and treatment of occupational injuries and
20 illnesses;

21 (5) accreditation of the regional networks or a
22 commitment to seek accreditation from a nationally recognized
23 organization such as the American Accreditation HealthCare
24 Commission or the National Committee for Quality Assurance;

25 (6) the use of strict credentialing criteria by
26 regional networks in the selection and deselection of its health
27 care providers, including verification that the provider:

1 (A) is on the commission's list of approved
2 doctors, if the provider is required to be on that list;

3 (B) has not, at the time of selection or
4 deselection, been sanctioned or made subject to additional
5 utilization review requirements by the commission;

6 (C) is not, at the time of selection or
7 deselection, subject to sanctions or substantive practice
8 restrictions imposed by the provider's licensing authority;

9 (D) has or is able to obtain practice privileges,
10 if required, at a participating hospital; and

11 (E) is covered by professional liability
12 insurance coverage as required by the regional network contract;

13 (7) satisfactory evidence of the regional network's
14 ability to comply with any financial requirements and ensure
15 delivery of services;

16 (8) compliance with ongoing training and educational
17 requirements established by the commission;

18 (9) the use of nationally recognized, scientifically
19 valid, and outcome-based treatment standards as guidelines for
20 health care;

21 (10) disclosure of the availability of interpreter
22 services as appropriate for the evaluation and treatment of
23 employees;

24 (11) timely and accurate reporting of data to
25 appropriately manage and determine the effectiveness of the
26 regional network in reducing medical costs and ensuring quality of
27 care;

1 (12) a process for reconsideration of medical
2 necessity denials and dispute resolution within the regional
3 network; and

4 (13) a process for reviewing requests for a change in
5 treating doctors made under Section 408.0222(s).

6 SECTION 11.142. Section 408.0223(d), Labor Code, is amended
7 to read as follows:

8 (d) The standards adopted for preferred provider networks
9 under Chapter 1301 [~~Article 3.70-3C~~], Insurance Code, [~~as added by~~
10 ~~Chapter 1024, Acts of the 75th Legislature, Regular Session, 1997,~~
11 ~~and as subsequently amended,~~] apply as minimum standards for
12 insurance carrier networks and are adopted by reference in this
13 section except to the extent those standards are inconsistent with
14 this subtitle. The advisory committee, defined in Section
15 408.0221, may recommend additional standards for insurance carrier
16 networks that are no more stringent than the additional standards
17 that the advisory committee recommends for regional health care
18 delivery networks pursuant to Section 408.0221(g).

19 SECTION 11.143. Section 413.011(c), Labor Code, is amended
20 to read as follows:

21 (c) This section may not be interpreted in a manner that
22 would discriminate in the amount or method of payment or
23 reimbursement for services in a manner prohibited by Sections
24 1451.104(a) and (c) [~~Section 3(d), Article 21.52~~], Insurance Code,
25 or as restricting the ability of chiropractors to serve as treating
26 doctors as authorized by this subtitle. The commission shall also
27 develop guidelines relating to fees charged or paid for providing

1 expert testimony relating to an issue arising under this subtitle.

2 SECTION 11.144. Section 415.002(a), Labor Code, is amended
3 to read as follows:

4 (a) An insurance carrier or its representative commits an
5 administrative violation if that person wilfully or intentionally:

6 (1) misrepresents a provision of this subtitle to an
7 employee, an employer, a health care provider, or a legal
8 beneficiary;

9 (2) terminates or reduces benefits without
10 substantiating evidence that the action is reasonable and
11 authorized by law;

12 (3) instructs an employer not to file a document
13 required to be filed with the commission;

14 (4) instructs or encourages an employer to violate a
15 claimant's right to medical benefits under this subtitle;

16 (5) fails to tender promptly full death benefits if a
17 legitimate dispute does not exist as to the liability of the
18 insurance carrier;

19 (6) allows an employer, other than a self-insured
20 employer, to dictate the methods by which and the terms on which a
21 claim is handled and settled;

22 (7) fails to confirm medical benefits coverage to a
23 person or facility providing medical treatment to a claimant if a
24 legitimate dispute does not exist as to the liability of the
25 insurance carrier;

26 (8) fails, without good cause, to attend a dispute
27 resolution proceeding within the commission;

1 (9) attends a dispute resolution proceeding within the
2 commission without complete authority or fails to exercise
3 authority to effectuate agreement or settlement;

4 (10) adjusts a workers' compensation claim in a manner
5 contrary to license requirements for an insurance adjuster,
6 including the requirements of Chapter 4101, [~~407, Acts of the 63rd~~
7 ~~Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's~~
8 ~~Texas]~~ Insurance Code[~~→~~], or the rules of the commissioner of
9 insurance [~~State Board of Insurance~~];

10 (11) fails to process claims promptly in a reasonable
11 and prudent manner;

12 (12) fails to initiate or reinstate benefits when due
13 if a legitimate dispute does not exist as to the liability of the
14 insurance carrier;

15 (13) misrepresents the reason for not paying benefits
16 or terminating or reducing the payment of benefits;

17 (14) dates documents to misrepresent the actual date
18 of the initiation of benefits;

19 (15) makes a notation on a draft or other instrument
20 indicating that the draft or instrument represents a final
21 settlement of a claim if the claim is still open and pending before
22 the commission;

23 (16) fails or refuses to pay benefits from week to week
24 as and when due directly to the person entitled to the benefits;

25 (17) fails to pay an order awarding benefits;

26 (18) controverts a claim if the evidence clearly
27 indicates liability;

1 (19) unreasonably disputes the reasonableness and
2 necessity of health care;

3 (20) violates a commission rule; or

4 (21) fails to comply with a provision of this
5 subtitle.

6 SECTION 11.145. Section 157.102(a), Local Government Code,
7 is amended to read as follows:

8 (a) The commissioners court of a county that adopts rules
9 under Section 157.101 may require persons participating in the
10 group health and related benefits plan to contribute toward the
11 payment of the plan. The commissioners court may establish a fund
12 to pay for the group health and related benefits. The fund may take
13 the form of a single nonprofit trust as described by Section
14 222.002(c)(5)(A) [~~2(c)(1), Article 4.11~~], Insurance Code.

15 SECTION 11.146. Section 376.165(f), Local Government Code,
16 is amended to read as follows:

17 (f) For purposes of a title insurance policy issued under
18 Title 11 [~~Chapter 9~~], Insurance Code, an assessment is a tax.

19 SECTION 11.147. Section 89.043(e), Natural Resources Code,
20 is amended to read as follows:

21 (e) The commission shall file for record a copy of the
22 notice in the office of the county clerk of the county in which the
23 well is located. The notice filed with the county need not be
24 acknowledged. The copy of the notice filed in the office of the
25 county clerk must contain the section, block, survey, and abstract
26 number, when available to the commission, of the land on which the
27 well is located. The clerk shall record the notice in the real

1 property records of the county. The commission shall not be charged
2 a fee for the filing or recording of the notice. The commission
3 shall furnish a copy of the notice to a holder of a lien on the well
4 or a nonoperator on that person's request. For purposes of title
5 insurance policies issued under authority of Title 11 [~~Chapter 9~~],
6 Insurance Code, this notice is not a notice of enforcement or
7 violation of law, ordinance, or governmental regulation unless the
8 notice contains a legally sufficient description of the specific
9 land on which the well is located.

10 SECTION 11.148. Section 505.303(c), Occupations Code, is
11 amended to read as follows:

12 (c) For purposes of Subchapter C, Chapter 1451 [~~Article~~
13 ~~21.52~~], Insurance Code:

14 (1) a person recognized as qualified for the
15 independent practice of clinical social work may use the title
16 "Licensed Clinical Social Worker" or another title approved by the
17 board; and

18 (2) a board-approved title under this subsection has
19 the same meaning and effect as the title "Licensed Clinical Social
20 Worker."

21 SECTION 11.149. Section 953.004(a), Occupations Code, is
22 amended to read as follows:

23 (a) An insurer who issues or renews prepaid legal service
24 contracts under Article 5.13-1, Insurance Code, shall notify the
25 commissioner of insurance in writing not later than the 60th day
26 before transferring regulation of the insurer's legal service
27 contracts from the Texas Department of Insurance to the Texas

1 Department of Licensing and Regulation. An insurer that complies
2 with this section is exempt from the requirements of Chapters 551
3 and [+

4 [~~(1) Articles 21.49-2, 21.49-2A, 21.49-2B, 21.49-2D,~~
5 ~~and 21.49-2E, Insurance Code, and~~

6 [~~(2) Chapter~~] 827, Insurance Code.

7 SECTION 11.150. Section 1304.152(b), Occupations Code, is
8 amended to read as follows:

9 (b) The insurer may not cancel the policy until the insurer
10 delivers to the provider a written notice of cancellation that
11 complies with the notice requirements prescribed by Subchapters B
12 and C, Chapter 551 [~~Articles 21.49-2A and 21.49-2B~~], Insurance
13 Code, for cancellation of an insurance policy under those
14 subchapters [~~articles~~]. The provider shall forward a copy of the
15 cancellation notice to the executive director not later than the
16 15th business day after the date the notice is delivered to the
17 provider. Cancellation of the policy does not reduce the insurer's
18 responsibility for a service contract issued by the provider and
19 insured under the policy before the date of the cancellation.

20 SECTION 11.151. Section 1702.002(9), Occupations Code, is
21 amended to read as follows:

22 (9) "Insurance agent" means:

23 (A) a person licensed under Subchapter B, C, D,
24 or E, Chapter 4051, [~~Article 21.14~~] or Chapter 981, Insurance Code;

25 (B) a salaried, state, or special agent; or

26 (C) a person authorized to represent an insurance
27 fund or pool created by a local government under Chapter 791,

1 Government Code.

2 SECTION 11.152. Section 1704.211(c), Occupations Code, is
3 amended to read as follows:

4 (c) An agent designated by a power of attorney under
5 Subsection (a) is not required under this chapter to obtain a
6 general property and casualty [~~local recording~~] agent license under
7 Chapter 4051 [~~Article 21.14~~], Insurance Code.

8 SECTION 11.153. Section 1958.154(d), Occupations Code, is
9 amended to read as follows:

10 (d) The commissioner of insurance shall adopt rules
11 describing the information that must be provided in the certificate
12 of mold remediation. In adopting the rules, the commissioner shall
13 design the certificate as necessary to comply with any requirements
14 imposed under Subchapter G, Chapter 544 [~~Article 21.21-11~~],
15 Insurance Code.

16 SECTION 11.154. Section 2154.001(10), Occupations Code, is
17 amended to read as follows:

18 (10) "Insurance agent" means:

19 (A) a person, firm, or corporation licensed under
20 Subchapter B, C, D, or E, Chapter 4051, [~~Article 21.14~~] or Chapter
21 981, Insurance Code;

22 (B) a salaried, state, or special agent; and

23 (C) a person authorized to represent an insurance
24 fund or pool created by a city, county, or other political
25 subdivision of the state under Chapter 791, Government Code.

26 SECTION 11.155. Section 2154.207(d), Occupations Code, is
27 amended to read as follows:

1 (d) A certificate of insurance for surplus lines coverage
2 obtained under Chapter 981 [~~Article 1.14-2~~], Insurance Code,
3 through a licensed Texas surplus lines agent resident in this state
4 may be filed with the commissioner as evidence of coverage required
5 by this section.

6 SECTION 11.156. Section 2306.203(b), Occupations Code, is
7 amended to read as follows:

8 (b) An insurer who issues a reimbursement insurance policy
9 under this chapter may not cancel the policy until the insurer
10 delivers to the warrantor a written notice of cancellation that
11 complies with the notice requirements prescribed by Subchapters B
12 and C, Chapter 551 [~~Articles 21.49-2A and 21.49-2B~~], Insurance
13 Code, for cancellation of an insurance policy under those
14 subchapters [~~articles~~]. The warrantor shall forward a copy of the
15 cancellation notice to the department not later than the 15th
16 business day after the date the notice is delivered to the
17 warrantor.

18 SECTION 11.157. Section 35.01(2), Penal Code, is amended to
19 read as follows:

20 (2) "Health care provider" means a person who renders
21 health care services or an agent or employee of an organization that
22 renders or provides a facility and means to render health care
23 services. The term includes a physician, surgeon, person who may be
24 selected by an insured or a beneficiary under Subchapter C, Chapter
25 1451 [~~Article 21.52~~], Insurance Code, and person defined as a
26 provider of health care under Section 152.003, Occupations Code.

27 SECTION 11.158. Section 53.202, Property Code, is amended

1 to read as follows:

2 Sec. 53.202. BOND REQUIREMENTS. The bond must:

3 (1) be in a penal sum at least equal to the total of the
4 original contract amount;

5 (2) be in favor of the owner;

6 (3) have the written approval of the owner endorsed on
7 it;

8 (4) be executed by:

9 (A) the original contractor as principal; and

10 (B) a corporate surety authorized and admitted to
11 do business in this state and licensed by this state to execute
12 bonds as surety, subject to Section 1, Chapter 87, Acts of the 56th
13 Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas
14 Insurance Code);

15 (5) be conditioned on prompt payment for all labor,
16 subcontracts, materials, specially fabricated materials, and
17 normal and usual extras not exceeding 15 percent of the contract
18 price; and

19 (6) clearly and prominently display on the bond or on
20 an attachment to the bond:

21 (A) the name, mailing address, physical address,
22 and telephone number, including the area code, of the surety
23 company to which any notice of claim should be sent; or

24 (B) the toll-free telephone number maintained by
25 the Texas Department of Insurance under Subchapter B, Chapter 521
26 [~~Article 1.35D~~], Insurance Code, and a statement that the address
27 of the surety company to which any notice of claim should be sent

1 may be obtained from the Texas Department of Insurance by calling
2 the toll-free telephone number.

3 SECTION 11.159. Section 63.004(b), Property Code, is
4 amended to read as follows:

5 (b) If the holder of a lien secured by a manufactured home
6 transfers loan or credit advance documents to a lender refinancing
7 the lien, that lender and a title insurance company, title
8 insurance agent or direct operation, or attorney to whom the loan or
9 credit advance documents are delivered holds the loan or credit
10 advance documents in trust for that lienholder. In this
11 subsection, "direct operation" has the meaning assigned by Section
12 2501.003 [~~Article 9.02~~], Insurance Code.

13 SECTION 11.160. Section 3805.153, Special District Local
14 Laws Code, is amended to read as follows:

15 Sec. 3805.153. ASSESSMENTS CONSIDERED TAXES. For purposes
16 of a title insurance policy issued under Title 11 [~~Chapter 9~~],
17 Insurance Code, an assessment is a tax.

18 SECTION 11.161. Section 112.058(d), Tax Code, is amended to
19 read as follows:

20 (d) All protest payments of the following taxes that become
21 due during the fiscal biennium beginning September 1, 1987, may not
22 be placed in a suspense account, but shall immediately be deposited
23 to the credit of the fund or funds to which those taxes are
24 allocated by law:

25 (1) taxes imposed under Chapter 151, 152, 154, 155,
26 156, 157, or 171 of this code;

27 (2) taxes imposed under Article 4.11A, Insurance Code;

1 (3) surtaxes imposed under Chapters 221, 222, 223,
2 225, and 226 [~~Article 1.14-1, 1.14-2, 4.10, 4.11, or 9.59~~],
3 Insurance Code; and

4 (4) taxes and fees paid under the provisions enacted
5 by Article 9, H.B. No. 61, Acts of the 70th Legislature, 2nd Called
6 Session, 1987.

7 SECTION 11.162. Section B, Article 2.01, Texas Business
8 Corporation Act, is amended to read as follows:

9 B. No corporation may adopt this Act or be organized under
10 this Act or obtain authority to transact business in this State
11 under this Act:

12 (1) If any one or more of its purposes for the
13 transaction of business in this State is expressly prohibited by
14 any law of this State.

15 (2) If any one or more of its purposes for the
16 transaction of business in this State is to engage in any activity
17 which cannot lawfully be engaged in without first obtaining a
18 license under the authority of the laws of this State to engage in
19 such activity and such a license cannot lawfully be granted to a
20 corporation.

21 (3) If among its purposes for the transaction of
22 business in this State, there is included, however worded, a
23 combination of the two businesses listed in either of the
24 following:

25 (a) The business of raising cattle and owning
26 land therefor, and the business of operating stockyards and of
27 slaughtering, refrigerating, canning, curing or packing meat.

1 Owning and operating feed lots and feeding cattle shall not be
2 considered as engaging in "the business of raising cattle and
3 owning land therefor" within the purview of this paragraph of this
4 subsection.

5 (b) The business of engaging in the petroleum oil
6 producing business in this State and the business of engaging
7 directly in the oil pipe line business in this State: provided,
8 however, that a corporation engaged in the oil producing business
9 in this State which owns or operates private pipe lines in and about
10 its refineries, fields or stations or which owns stock of
11 corporations engaged in the oil pipe line business shall not be
12 deemed to be engaging directly in the oil pipe line business in this
13 State; and provided that any corporation, or group of corporations
14 acting in partnership or other combination with other corporations,
15 engaged as a common carrier in the pipe line business for
16 transporting oil, oil products, gas, carbon dioxide, salt brine,
17 fuller's earth, sand, clay, liquefied minerals or other mineral
18 solutions, shall have all of the rights and powers conferred by
19 Sections 111.019 through 111.022, Natural Resources Code.

20 (4) If any one or more of its purposes is to operate
21 any of the following:

22 (a) Banks, (b) trust companies, (c) building and
23 loan associations or companies, (d) insurance companies of every
24 type and character that operate under the insurance laws of this
25 State, and corporate attorneys in fact for reciprocal or
26 inter-insurance exchanges, (e) railroad companies, (f) cemetery
27 companies, (g) cooperatives or limited cooperative associations,

1 (h) labor unions, (i) abstract and title insurance companies whose
2 purposes are provided for and whose powers are prescribed by Title
3 11, [~~Chapter 9 of the~~] Insurance Code [~~of this State~~].

4 SECTION 11.163. Section 643.101(e), Transportation Code,
5 is amended to read as follows:

6 (e) Unless state law permits a commercial motor vehicle to
7 be self-insured, any insurance required for a commercial motor
8 vehicle must be obtained from:

9 (1) an insurer authorized to do business in this state
10 whose aggregate net risk, after reinsurance, under any one
11 insurance policy is not in excess of 10 percent of the insurer's
12 policyholders' surplus, and credit for such reinsurance is
13 permitted by law; or

14 (2) an insurer that meets the eligibility requirements
15 of a surplus lines insurer pursuant to Chapter 981 [~~Article~~
16 ~~1.14-2~~], Insurance Code. Notwithstanding any other provision in
17 law, an insurer in compliance with this subsection shall be deemed
18 to be in compliance with any rating or financial criteria
19 established for motor carriers by any political subdivision of the
20 state.

21 SECTION 11.164. Section 49.231(n), Water Code, is amended
22 to read as follows:

23 (n) For purposes of title insurance policies issued under
24 the authority of Title 11 [~~Chapter 9~~], Insurance Code, standby fees
25 are considered taxes.

26 ARTICLE 12. CHANGES RELATING TO LABOR CODE

27 SECTION 12.001. Section 204.022(a), Labor Code, as amended

1 by Chapters 77, 526, and 817, Acts of the 78th Legislature, Regular
2 Session, 2003, is reenacted and amended to read as follows:

3 (a) Benefits computed on benefit wage credits of an employee
4 or former employee may not be charged to the account of an employer
5 if the employee's last separation from the employer's employment
6 before the employee's benefit year:

7 (1) was required by a federal statute;

8 (2) was required by a statute of this state or an
9 ordinance of a municipality of this state;

10 (3) would have disqualified the employee under Section
11 207.044, 207.045, 207.051, or 207.053 if the employment had been
12 the employee's last work;

13 (4) imposes a disqualification under Section 207.044,
14 207.045, 207.051, or 207.053;

15 (5) was caused by a medically verifiable illness of
16 the employee or the employee's minor child;

17 (6) was based on a natural disaster that results in a
18 disaster declaration by the president of the United States under
19 the Robert T. Stafford Disaster Relief and Emergency Assistance Act
20 (42 U.S.C. Section 5121 et seq.), if the employee would have been
21 entitled to unemployment assistance benefits under Section 410 of
22 that act (42 U.S.C. Section 5177) had the employee not received
23 state unemployment compensation benefits;

24 (7) was caused by a natural disaster, fire, flood, or
25 explosion that causes employees to be separated from one employer's
26 employment;

27 (8) was based on a disaster that results in a disaster

1 declaration by the governor under Section 418.014, Government Code;

2 (9) resulted from the employee's resigning from
3 partial employment to accept other employment that the employee
4 reasonably believed would increase the employee's weekly wage; ~~or~~

5 (10) ~~[(9)]~~ was caused by the employer being called to
6 active military service in any branch of the United States armed
7 forces on or after January 1, 2003; or

8 (11) ~~[(9)]~~ resulted from the employee leaving the
9 employee's workplace to protect the employee from family violence
10 or stalking as evidenced by:

11 (A) an active or recently issued protective order
12 documenting family violence against, or the stalking of, the
13 employee or the potential for family violence against, or the
14 stalking of, the employee;

15 (B) a police record documenting family violence
16 against, or the stalking of, the employee; and

17 (C) a physician's statement or other medical
18 documentation of family violence against the employee.

19 SECTION 12.0015. Section 204.022(d), Labor Code, as added
20 by Chapter 817, Acts of the 78th Legislature, Regular Session,
21 2003, is amended to correct a reference to read as follows:

22 (d) For purposes of Subsection (a)(11) ~~[(a)(9)]~~:

23 (1) "Family violence" has the meaning assigned by
24 Section 71.004, Family Code.

25 (2) "Stalking" means conduct described by Section
26 42.072, Penal Code.

27 SECTION 12.002. Section 403.006(a), Labor Code, as amended

1 by Chapters 211 and 1296, Acts of the 78th Legislature, Regular
2 Session, 2003, is reenacted and amended to read as follows:

3 (a) The subsequent injury fund is a dedicated [~~general~~
4 ~~revenue~~] account in the general revenue fund [~~in the state~~
5 ~~treasury~~]. Money in the account may be appropriated only for the
6 purposes of this section or as provided by other law. [~~Section~~
7 ~~403.095, Government Code, does not apply to the subsequent injury~~
8 ~~fund.~~]

9 SECTION 12.003. Section 410.306(b), Labor Code, is amended
10 to correct a reference to read as follows:

11 (b) The commission on payment of a reasonable fee shall make
12 available to the parties a certified copy of the commission's
13 record. All facts and evidence the record contains are admissible
14 to the extent allowed under the Texas Rules of [~~Civil~~] Evidence.

15 ARTICLE 13. CHANGES RELATING TO

16 LOCAL GOVERNMENT CODE

17 SECTION 13.001. Section 271.0565, Local Government Code, as
18 amended by Chapters 660 and 725, Acts of the 78th Legislature,
19 Regular Session, 2003, is reenacted and amended to read as follows:

20 Sec. 271.0565. PRE-BID CONFERENCE. (a) The commissioners
21 court of a county or the governing body of a district or authority
22 created under Section 59, Article XVI, Texas Constitution, if the
23 governing body is the commissioners court of the county in which the
24 district is located, may require a principal, officer, or employee
25 of each prospective bidder to attend a mandatory pre-bid conference
26 conducted for the purpose of discussing contract requirements and
27 answering questions of prospective bidders.

1 (b) [~~(c)~~] After a conference is conducted under Subsection
2 (a) [~~(b)~~], any additional required notice for the proposed contract
3 may be sent by certified mail, return receipt requested, only to
4 prospective bidders who attended the conference. Notice under this
5 subsection is not subject to the requirements of Section 271.055.

6 ARTICLE 14. CHANGES RELATING TO NATURAL
7 RESOURCES CODE

8 SECTION 14.001. Section 31.013, Natural Resources Code, as
9 amended in part by Chapter 1091, Acts of the 78th Legislature,
10 Regular Session, 2003, and repealed by Chapter 285, Acts of the 78th
11 Legislature, Regular Session, 2003, is reenacted and amended to
12 read as follows:

13 Sec. 31.013. BONDS. The land office shall pay the expenses
14 necessary and incidental to the execution of [~~the~~] bonds required
15 by law to be executed by employees of the land office.

16 SECTION 14.002. Section 31.017, Natural Resources Code, as
17 amended by Chapter 1091, Acts of the 78th Legislature, Regular
18 Session, 2003, and repealed in part by Chapter 285, Acts of the 78th
19 Legislature, Regular Session, 2003, is reenacted to read as
20 follows:

21 Sec. 31.017. RECEIVER. With the consent of the governor,
22 the commissioner shall appoint a suitable person to serve as
23 receiver for the land office.

24 SECTION 14.003. Section 31.062, Natural Resources Code, as
25 repealed by Chapter 1091, Acts of the 78th Legislature, Regular
26 Session, 2003, and amended in part by Chapter 285, Acts of the 78th
27 Legislature, Regular Session, 2003, is reenacted and amended to

1 read as follows:

2 Sec. 31.062. EMBEZZLEMENT. [~~(c)~~] If a [~~the~~] suspended
3 receiver [~~clerk~~] is found guilty of embezzlement, the receiver
4 [~~clerk~~] shall be removed from office and a suit shall be instituted
5 to recover on a bond authorized under Chapter 653, Government Code.

6 SECTION 14.004. Section 31.1571, Natural Resources Code, as
7 amended by Chapter 1091, Acts of the 78th Legislature, Regular
8 Session, 2003, and Chapter 149, Acts of the 78th Legislature,
9 Regular Session, 2003, is reenacted and amended to read as follows:

10 Sec. 31.1571. GOVERNOR'S REPORT. (a) At any time, the
11 commissioner may make a report to the governor recommending real
12 estate transactions or other actions involving any real property
13 included in the most recent evaluation report and identified as not
14 used or substantially underused.

15 (b) After the commissioner recommends a real estate
16 transaction to the governor under this section, the commissioner
17 shall notify the state agency that owns or controls the real
18 property and the Texas Department of Housing and Community Affairs.
19 Not later than the 60th day after the date the written
20 recommendation is received, the state agency and the Texas
21 Department of Housing and Community Affairs may file with the
22 governor their comments on or objections to the recommendation.

23 (c) If the commissioner recommends a real estate
24 transaction to the governor involving real property identified as
25 not used or substantially underused and the division's analysis of
26 the highest and best use for the real property is determined to be
27 residential, the Texas Department of Housing and Community Affairs

1 shall evaluate the property and identify any property suitable for
2 affordable housing. The Texas Department of Housing and Community
3 Affairs shall submit comments concerning any property suitable for
4 affordable housing and any documents supporting the comments to the
5 governor not later than the 60th day after the date it receives the
6 report prepared under this section.

7 (d) [~~(e)~~] Any unused or underused state property may be sold
8 or leased, or an easement over the property may be granted, to the
9 United States for the use and benefit of the United States armed
10 forces if the commissioner or the commissioner's designee, after
11 consultation with appropriate military authorities, determines
12 that the sale, lease, or easement would materially assist the
13 military in accomplishing its mission. A sale, lease, or easement
14 under this subsection must be at market value. The state shall
15 retain all minerals it owns with respect to the land, but it may
16 relinquish the right to use the surface to extract them.

17 (e) [~~(d)~~] Notwithstanding any other law, real property that
18 the commissioner has reported as unused or substantially underused
19 and recommended for a real estate transaction may not be developed,
20 sold, or otherwise disposed of by the state agency that owns or
21 controls the real property before the earlier of:

22 (1) the date the governor rejects a recommended real
23 estate transaction involving the real property; or

24 (2) two years from the date the recommendation is
25 approved, unless extended by the governor.

26 (f) [~~(e)~~] If a state agency that owns or controls real
27 property reported as unused or substantially underused intends to

1 dispose of or change the use of the real property prior to the time
2 provided by Subsection (e)~~[(d)]~~, the governor may require a general
3 development plan for future use of the real property or any other
4 information. At any time, the governor may request that the state
5 agency provide its general development plan or any other
6 information to the land office for evaluation and may consult with
7 the commissioner. The plan shall be submitted no later than 30 days
8 prior to the time that the real estate transaction would be approved
9 by operation of law if not disapproved by the governor. The governor
10 may take such plan into consideration in determining whether to
11 reject the commissioner's recommendation.

12 (g)~~[(f)]~~ The commissioner may conduct the transaction
13 unless the governor gives the commissioner written notice
14 disapproving the recommendation. The governor must provide written
15 notice of disapproval under this subsection not later than the 90th
16 day after the date the governor receives the commissioner's written
17 recommendation.

18 SECTION 14.005. Section 31.301(e), Natural Resources Code,
19 as amended by Chapter 328, Acts of the 78th Legislature, Regular
20 Session, 2003, is repealed to conform to the repeal of the law from
21 which it was derived by Chapter 1091, Acts of the 78th Legislature,
22 Regular Session, 2003.

23 SECTION 14.006. (a) Section 40.153, Natural Resources
24 Code, is amended to correct a reference to read as follows:

25 Sec. 40.153. REIMBURSEMENT OF FUND. The commissioner shall
26 recover to the use of the fund, either from persons responsible for
27 the unauthorized discharge or otherwise liable or from the federal

1 fund, jointly and severally, all sums owed to or expended from the
2 fund. This section does not apply to sums expended under Section
3 40.152(a)(9) [~~40.152(a)(10)~~].

4 (b) Section 40.161(c), Natural Resources Code, is amended
5 to correct a reference to read as follows:

6 (c) This section does not apply to a sum expended under
7 Section 40.152(a)(9) [~~40.152(a)(10)~~].

8 ARTICLE 15. CHANGES RELATING TO OCCUPATIONS CODE

9 SECTION 15.001. (a) Section 51.055(a), Occupations Code, as
10 amended by Chapters 816 and 1170, Acts of the 78th Legislature,
11 Regular Session, 2003, is amended to conform to Section 51.052(a),
12 Occupations Code, as amended by Chapter 816, Acts of the 78th
13 Legislature, Regular Session, 2003, to read as follows:

14 (a) Members of the commission serve staggered six-year
15 terms. The terms of [~~one or~~] two or three members expire on
16 February 1 of each odd-numbered year.

17 (b) Section 25.01, Chapter 1170, Acts of the 78th
18 Legislature, Regular Session, 2003, is repealed.

19 SECTION 15.002. Section 3(e), Article 9032, Revised
20 Statutes, is codified as Section 58.105, Occupations Code, and
21 amended to read as follows:

22 Sec. 58.105. CIVIL PENALTY. (a) A person who discloses
23 genetic information in violation of Sections 58.102-58.104 is
24 liable for a civil penalty not to exceed \$10,000.

25 (b) The attorney general may bring an action in the name of
26 the state to recover a civil penalty under this section, plus
27 reasonable attorney's fees and court costs.

1 SECTION 15.003. Section 3(e), Article 9032, Revised
2 Statutes, is repealed.

3 SECTION 15.004. (a) Section 110.051(b), Occupations Code,
4 is amended to conform to Section 42.01, Chapter 1170, Acts of the
5 78th Legislature, Regular Session, 2003, to read as follows:

6 (b) The council consists of seven [~~six~~] part-time members,
7 appointed by the governor with the advice and consent of the senate
8 as follows:

9 (1) three [~~two~~] representatives of the public; and

10 (2) four members each of whom meets the requirements
11 for registration as a sex offender treatment provider.

12 (b) Section 110.054, Occupations Code, is amended to
13 conform to Section 42.02, Chapter 1170, Acts of the 78th
14 Legislature, Regular Session, 2003, to read as follows:

15 Sec. 110.054. TERMS. Members of the council serve
16 staggered six-year terms. The terms of two or three members expire
17 on February 1 of each odd-numbered year.

18 (c) Subchapter H, Chapter 110, Occupations Code, is amended
19 to conform to Section 27, Chapter 326, Acts of the 78th Legislature,
20 Regular Session, 2003, by adding Section 110.354 to read as
21 follows:

22 Sec. 110.354. EMERGENCY SUSPENSION. (a) The council or a
23 three-member committee of council members designated by the council
24 shall temporarily suspend the registration of a person registered
25 under this chapter if the council or committee determines from the
26 evidence or information presented to it that continued practice by
27 the person would constitute a continuing and imminent threat to the

1 public welfare.

2 (b) A registration may be suspended under this section
3 without notice or hearing on the complaint if:

4 (1) action is taken to initiate proceedings for a
5 hearing before the State Office of Administrative Hearings
6 simultaneously with the temporary suspension; and

7 (2) a hearing is held as soon as practicable under this
8 chapter and Chapter 2001, Government Code.

9 (c) The State Office of Administrative Hearings shall hold a
10 preliminary hearing not later than the 14th day after the date of
11 the temporary suspension to determine if there is probable cause to
12 believe that a continuing and imminent threat to the public welfare
13 still exists. A final hearing on the matter shall be held not later
14 than the 61st day after the date of the temporary suspension.

15 (d) Chapter 110, Occupations Code, is amended to conform to
16 Section 27, Chapter 326, Acts of the 78th Legislature, Regular
17 Session, 2003, by adding Subchapter J to read as follows:

18 SUBCHAPTER J. ADMINISTRATIVE PENALTY

19 Sec. 110.451. IMPOSITION OF ADMINISTRATIVE PENALTY. The
20 council may impose an administrative penalty on a person registered
21 under this chapter who violates this chapter or a rule or order
22 adopted under this chapter.

23 Sec. 110.452. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The
24 amount of the administrative penalty may not be less than \$50 or
25 more than \$5,000 for each violation. Each day a violation continues
26 or occurs is a separate violation for the purpose of imposing a
27 penalty.

1 (b) The amount shall be based on:

2 (1) the seriousness of the violation, including the
3 nature, circumstances, extent, and gravity of the violation;

4 (2) the economic harm caused by the violation;

5 (3) the history of previous violations;

6 (4) the amount necessary to deter a future violation;

7 (5) efforts to correct the violation; and

8 (6) any other matter that justice may require.

9 Sec. 110.453. REPORT AND NOTICE OF VIOLATION AND PENALTY.

10 (a) If the commissioner of public health or the commissioner's
11 designee determines that a violation occurred, the commissioner or
12 the designee may issue to the council a report stating:

13 (1) the facts on which the determination is based; and

14 (2) the commissioner's or the designee's
15 recommendation on the imposition of an administrative penalty,
16 including a recommendation on the amount of the penalty.

17 (b) Within 14 days after the date the report is issued, the
18 commissioner of public health or the commissioner's designee shall
19 give written notice of the report to the person. The notice must:

20 (1) include a brief summary of the alleged violation;

21 (2) state the amount of the recommended administrative
22 penalty; and

23 (3) inform the person of the person's right to a
24 hearing on the occurrence of the violation, the amount of the
25 penalty, or both.

26 Sec. 110.454. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
27 Within 10 days after the date the person receives the notice, the

1 person in writing may:

2 (1) accept the determination and recommended
3 administrative penalty of the commissioner of public health or the
4 commissioner's designee; or

5 (2) make a request for a hearing on the occurrence of
6 the violation, the amount of the penalty, or both.

7 (b) If the person accepts the determination and recommended
8 penalty of the commissioner of public health or the commissioner's
9 designee, the council by order shall approve the determination and
10 impose the recommended penalty.

11 Sec. 110.455. HEARING. (a) If the person requests a
12 hearing or fails to respond in a timely manner to the notice, the
13 commissioner of public health or the commissioner's designee shall
14 set a hearing and give written notice of the hearing to the person.

15 (b) An administrative law judge of the State Office of
16 Administrative Hearings shall hold the hearing.

17 (c) The administrative law judge shall make findings of fact
18 and conclusions of law and promptly issue to the council a proposal
19 for a decision about the occurrence of the violation and the amount
20 of a proposed administrative penalty.

21 Sec. 110.456. DECISION BY COUNCIL. (a) Based on the
22 findings of fact, conclusions of law, and proposal for decision,
23 the council by order may determine that:

24 (1) a violation occurred and impose an administrative
25 penalty; or

26 (2) a violation did not occur.

27 (b) The notice of the council's order given to the person

1 must include a statement of the right of the person to judicial
2 review of the order.

3 Sec. 110.457. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

4 (a) Within 30 days after the date the council's order becomes
5 final, the person shall:

6 (1) pay the administrative penalty; or

7 (2) file a petition for judicial review contesting the
8 occurrence of the violation, the amount of the penalty, or both.

9 (b) Within the 30-day period prescribed by Subsection (a), a
10 person who files a petition for judicial review may:

11 (1) stay enforcement of the penalty by:

12 (A) paying the penalty to the court for placement
13 in an escrow account; or

14 (B) giving the court a supersedeas bond approved
15 by the court that:

16 (i) is for the amount of the penalty; and

17 (ii) is effective until all judicial review
18 of the council's order is final; or

19 (2) request the court to stay enforcement of the
20 penalty by:

21 (A) filing with the court a sworn affidavit of
22 the person stating that the person is financially unable to pay the
23 penalty and is financially unable to give the supersedeas bond; and

24 (B) giving a copy of the affidavit to the
25 commissioner of public health or the commissioner's designee by
26 certified mail.

27 (c) If the commissioner of public health or the

1 commissioner's designee receives a copy of an affidavit under
2 Subsection (b)(2), the commissioner or the designee may file with
3 the court, within five days after the date the copy is received, a
4 contest to the affidavit.

5 (d) The court shall hold a hearing on the facts alleged in
6 the affidavit as soon as practicable and shall stay the enforcement
7 of the penalty on finding that the alleged facts are true. The
8 person who files an affidavit has the burden of proving that the
9 person is financially unable to pay the penalty and to give a
10 supersedeas bond.

11 Sec. 110.458. COLLECTION OF PENALTY. (a) If the person
12 does not pay the administrative penalty and the enforcement of the
13 penalty is not stayed, the penalty may be collected.

14 (b) The attorney general may sue to collect the penalty.

15 Sec. 110.459. DETERMINATION BY COURT. (a) If the court
16 sustains the determination that a violation occurred, the court may
17 uphold or reduce the amount of the administrative penalty and order
18 the person to pay the full or reduced amount of the penalty.

19 (b) If the court does not sustain the finding that a
20 violation occurred, the court shall order that a penalty is not
21 owed.

22 Sec. 110.460. REMITTANCE OF PENALTY AND INTEREST. (a) If
23 the person paid the administrative penalty and if the amount of the
24 penalty is reduced or the penalty is not upheld by the court, the
25 court shall order, when the court's judgment becomes final, that
26 the appropriate amount plus accrued interest be remitted to the
27 person.

1 (b) The interest accrues at the rate charged on loans to
2 depository institutions by the New York Federal Reserve Bank.

3 (c) The interest shall be paid for the period beginning on
4 the date the penalty is paid and ending on the date the penalty is
5 remitted.

6 (d) If the person gave a supersedeas bond and the penalty is
7 not upheld by the court, the court shall order, when the court's
8 judgment becomes final, the release of the bond.

9 (e) If the person gave a supersedeas bond and the amount of
10 the penalty is reduced, the court shall order the release of the
11 bond after the person pays the reduced amount.

12 Sec. 110.461. ADMINISTRATIVE PROCEDURE. A proceeding under
13 this subchapter is a contested case under Chapter 2001, Government
14 Code.

15 (e) The following are repealed:

16 (1) Section 27, Chapter 326, Acts of the 78th
17 Legislature, Regular Session, 2003; and

18 (2) Sections 42.01 and 42.02, Chapter 1170, Acts of
19 the 78th Legislature, Regular Session, 2003.

20 SECTION 15.0045. Section 262.1515(a), Occupations Code, is
21 amended to correct a reference to read as follows:

22 (a) A licensed dentist may delegate a service, task, or
23 procedure, pursuant to this section, to a dental hygienist, without
24 complying with Section 262.151(a)(2) if:

25 (1) the dental hygienist has at least two years'
26 experience in the practice of dental hygiene; and

27 (2) the service, task, or procedure is performed in

1 one of the following locations:

2 (A) a nursing facility as defined in Section
3 242.301, Health and Safety Code; or

4 (B) a school-based health center established
5 under Subchapter B, Chapter 38 [~~Section 38.011~~], Education Code [~~7~~
6 ~~as added by Chapter 1418, Acts of the 76th Legislature, Regular~~
7 ~~Session, 1999~~].

8 SECTION 15.005. Section 411.1388(a), Government Code, is
9 amended to read as follows:

10 (a) The Interagency Council on Sex Offender Treatment is
11 entitled to obtain from the department criminal history record
12 information maintained by the department that relates to a person
13 who:

14 (1) is registered to provide mental health or medical
15 services for the rehabilitation of sex offenders under Chapter 110,
16 Occupations Code [~~462, Acts of the 68th Legislature, Regular~~
17 ~~Session, 1983 (Article 4413(51), Vernon's Texas Civil Statutes)~~];
18 or

19 (2) has applied for registration or renewal of a
20 registration to provide mental health or medical services for the
21 rehabilitation of sex offenders under Chapter 110, Occupations Code
22 [~~462, Acts of the 68th Legislature, Regular Session, 1983 (Article~~
23 ~~4413(51), Vernon's Texas Civil Statutes)~~].

24 SECTION 15.006. Section 562.108(a), Occupations Code, as
25 amended by Chapters 582 and 914, Acts of the 78th Legislature,
26 Regular Session, 2003, is reenacted to read as follows:

27 (a) A Class A or Class C pharmacy, or a Class E pharmacy

1 located not more than 20 miles from any institution in this state
2 that is licensed under Chapter 242 or 252, Health and Safety Code,
3 may maintain controlled substances and dangerous drugs in an
4 emergency medication kit used at an institution licensed under
5 those chapters. A United States Department of Veterans Affairs
6 pharmacy or another federally operated pharmacy may maintain
7 controlled substances and dangerous drugs in an emergency
8 medication kit used at an institution licensed under Chapter 242,
9 Health and Safety Code, that is a veterans home, as defined by
10 Section 164.002, Natural Resources Code. The controlled substances
11 and dangerous drugs may be used only for the emergency medication
12 needs of a resident at the institution. A Class E pharmacy may not
13 maintain drugs in an emergency medication kit for an institution
14 that is located more than 20 miles from a pharmacy.

15 SECTION 15.007. (a) Part 1, Chapter 1051, Occupations
16 Code, is redesignated as Article 1, Chapter 1051, Occupations Code,
17 and the heading of Part 1, Chapter 1051, Occupations Code, is
18 amended to read as follows:

19 ARTICLE [~~PART~~] 1. GENERAL PROVISIONS; BOARD OF
20 ARCHITECTURAL EXAMINERS

21 (b) Part 2, Chapter 1051, Occupations Code, is redesignated
22 as Article 2, Chapter 1051, Occupations Code, and the heading of
23 Part 2, Chapter 1051, Occupations Code, is amended to read as
24 follows:

25 ARTICLE [~~PART~~] 2. GENERAL PROVISIONS APPLYING TO ARCHITECTS,
26 LANDSCAPE ARCHITECTS, AND INTERIOR DESIGNERS

27 (c) Part 3, Chapter 1051, Occupations Code, is redesignated

1 as Article 3, Chapter 1051, Occupations Code, and the heading of
2 Part 3, Chapter 1051, Occupations Code, is amended to read as
3 follows:

4 ARTICLE [~~PART~~] 3. PROVISIONS APPLYING ONLY TO ARCHITECTS

5 (d) Section 1051.603, Occupations Code, is amended to read
6 as follows:

7 Sec. 1051.603. LANDSCAPE ARCHITECTURE. This article [~~part~~]
8 does not:

- 9 (1) limit the practice of landscape architecture; or
10 (2) prohibit the use of the title "Landscape
11 Architect" by a qualified person.

12 (e) Section 1051.604, Occupations Code, is amended to read
13 as follows:

14 Sec. 1051.604. INTERIOR DESIGN. This article [~~part~~] does
15 not:

- 16 (1) limit the practice of interior design; or
17 (2) prohibit the use of the title "Interior Designer"
18 by a qualified person.

19 (f) Section 1051.653(a), Occupations Code, is amended to
20 read as follows:

21 (a) The board shall administer scholarships to applicants
22 for examination under this article [~~part~~] in a manner the board
23 determines best serves the public purpose of:

- 24 (1) promoting the professional needs of the state;
25 (2) increasing the number of highly trained and
26 educated architects available to serve the residents of the state;
27 (3) improving the state's business environment and

1 encouraging economic development; and

2 (4) identifying, recognizing, and supporting
3 outstanding applicants who plan to pursue careers in architecture.

4 SECTION 15.008. Section 1602.253, Occupations Code, is
5 repealed to conform to Section 1, Chapter 311, Acts of the 78th
6 Legislature, Regular Session, 2003.

7 SECTION 15.009. Section 1702.324(b), Occupations Code, as
8 amended by Chapters 936, 1237, and 1276, Acts of the 78th
9 Legislature, Regular Session, 2003, is reenacted to read as
10 follows:

11 (b) This chapter does not apply to:

12 (1) a manufacturer or a manufacturer's authorized
13 distributor who sells equipment to a license holder or registrant
14 that is used in the operations for which the person is required to
15 be licensed or registered;

16 (2) a person engaged exclusively in the business of
17 obtaining and providing information to:

18 (A) determine creditworthiness;

19 (B) collect debts; or

20 (C) ascertain the reliability of information
21 provided by an applicant for property, life, or disability
22 insurance or an indemnity or surety bond;

23 (3) a person engaged exclusively in the business of
24 repossessing property that is secured by a mortgage or other
25 security interest;

26 (4) a person who:

27 (A) is engaged in the business of psychological

1 testing or other testing and interviewing services, including
2 services to determine attitudes, honesty, intelligence,
3 personality, and skills, for preemployment purposes; and

4 (B) does not perform any other service that
5 requires a license under this chapter;

6 (5) a person who:

7 (A) is engaged in obtaining information that is a
8 public record under Chapter 552, Government Code, regardless of
9 whether the person receives compensation;

10 (B) is not a full-time employee, as defined by
11 Section 61.001, Labor Code, of a person licensed under this
12 chapter; and

13 (C) does not perform any other act that requires
14 a license under this chapter;

15 (6) a licensed engineer practicing engineering or
16 directly supervising engineering practice under Chapter 1001,
17 including forensic analysis, burglar alarm system engineering, and
18 necessary data collection;

19 (7) an employee of a cattle association who inspects
20 livestock brands under the authority granted to the cattle
21 association by the Grain Inspection, Packers and Stockyards
22 Administration of the United States Department of Agriculture;

23 (8) a landman performing activities in the course and
24 scope of the landman's business;

25 (9) an attorney while engaged in the practice of law;

26 (10) a person who obtains a document for use in
27 litigation under an authorization or subpoena issued for a written

1 or oral deposition;

2 (11) an admitted insurer, insurance adjuster, agent,
3 or insurance broker licensed by the state, performing duties in
4 connection with insurance transacted by that person;

5 (12) a person who on the person's own property or on
6 property owned or managed by the person's employer:

7 (A) installs, changes, or repairs a mechanical
8 security device;

9 (B) repairs an electronic security device; or

10 (C) cuts or makes a key for a security device; or

11 (13) security personnel, including security contract
12 personnel, working at a commercial nuclear power plant licensed by
13 the United States Nuclear Regulatory Commission.

14 SECTION 15.010. (a) Subchapter A, Chapter 2306,
15 Occupations Code, as added by Section 14A.629, Chapter 1276, Acts
16 of the 78th Legislature, Regular Session, 2003, is amended by
17 adding Section 2306.006 to conform to Section 18.002, Chapter 816,
18 Acts of the 78th Legislature, Regular Session, 2003, to read as
19 follows:

20 Sec. 2306.006. APPLICABILITY OF OTHER LAW. Section 51.405
21 does not apply to this chapter.

22 (b) Section 2306.051(a), Occupations Code, as added by
23 Section 14A.629, Chapter 1276, Acts of the 78th Legislature,
24 Regular Session, 2003, is amended to conform to Section 18.003,
25 Chapter 816, Acts of the 78th Legislature, Regular Session, 2003,
26 to read as follows:

27 (a) The commission [~~executive director~~] may adopt rules as

1 necessary to implement this chapter.

2 (c) Sections 2306.101(a) and (b), Occupations Code, as
3 added by Section 14A.629, Chapter 1276, Acts of the 78th
4 Legislature, Regular Session, 2003, are amended to conform to
5 Section 18.004, Chapter 816, Acts of the 78th Legislature, Regular
6 Session, 2003, to read as follows:

7 (a) The Vehicle Protection Product Warrantor Advisory Board
8 is an advisory body to the commission [~~department~~].

9 (b) The advisory board consists of six members appointed by
10 the presiding officer of the commission, with the commission's
11 approval, [~~executive director~~] as follows:

12 (1) two members who are officers, directors, or
13 employees of a warrantor who has been approved or expects to be
14 approved by the department;

15 (2) two members who are officers, directors, or
16 employees of a retail outlet or other entity located in this state
17 that sells vehicle protection products and is approved or expected
18 to be approved by the department; and

19 (3) two members who are residents of this state and, at
20 the time of appointment, are consumers of vehicle protection
21 products issued by warrantors registered or expected to be
22 registered under this chapter.

23 (d) Section 2306.102, Occupations Code, as added by Section
24 14A.629, Chapter 1276, Acts of the 78th Legislature, Regular
25 Session, 2003, is amended to conform to Section 18.004, Chapter
26 816, Acts of the 78th Legislature, Regular Session, 2003, to read as
27 follows:

1 Sec. 2306.102. ADVISORY BOARD DUTIES. The advisory board
2 shall advise[+]

3 [~~(1)~~] the commission [~~executive director~~] on adopting
4 rules, [~~and~~] enforcing and administering this chapter, [~~+~~] and

5 [~~(2)~~ ~~the commission on~~] setting fees.

6 (e) Section 2306.103, Occupations Code, as added by Section
7 14A.629, Chapter 1276, Acts of the 78th Legislature, Regular
8 Session, 2003, is amended to conform to Section 18.004, Chapter
9 816, Acts of the 78th Legislature, Regular Session, 2003, to read as
10 follows:

11 Sec. 2306.103. TERMS; VACANCY. (a) Members of the advisory
12 board serve staggered six-year terms, with the terms of two members
13 expiring on February 1 of each odd-numbered year. [~~The executive
14 director shall appoint the initial six board members to terms of six
15 years or less in order to create staggered terms for the subsequent
16 members of the advisory board.~~]

17 (b) The presiding officer of the commission, with the
18 commission's approval, [~~executive director~~] shall fill any vacancy
19 on the advisory board by appointing an individual who meets the
20 qualifications for the vacant advisory board position to serve the
21 remainder of the unexpired term.

22 (f) Section 2306.104, Occupations Code, as added by Section
23 14A.629, Chapter 1276, Acts of the 78th Legislature, Regular
24 Session, 2003, is amended to conform to Section 18.004, Chapter
25 816, Acts of the 78th Legislature, Regular Session, 2003, to read as
26 follows:

27 Sec. 2306.104. PRESIDING OFFICER. The presiding officer of

1 the commission, with the commission's approval, [~~executive~~
2 ~~director~~] shall designate one member of the advisory board to serve
3 as presiding officer of the board for two years.

4 (g) Section 2306.105(a), Occupations Code, as added by
5 Section 14A.629, Chapter 1276, Acts of the 78th Legislature,
6 Regular Session, 2003, is amended to conform to Section 18.004,
7 Chapter 816, Acts of the 78th Legislature, Regular Session, 2003,
8 to read as follows:

9 (a) The advisory board shall meet at least every six months
10 and may meet at other times at the call of the presiding officer of
11 the board or the presiding officer of the commission [~~executive~~
12 ~~director~~].

13 (h) Section 2306.153, Occupations Code, as added by Section
14 14A.629, Chapter 1276, Acts of the 78th Legislature, Regular
15 Session, 2003, is amended to conform to Section 18.005, Chapter
16 816, Acts of the 78th Legislature, Regular Session, 2003, to read as
17 follows:

18 Sec. 2306.153. REGISTRATION FEE. Each registered warrantor
19 must pay an annual registration fee [~~, not to exceed \$2,500,~~] as set
20 by the commission to cover the costs of administering this chapter.

21 (i) Section 2306.154, Occupations Code, as added by Section
22 14A.629, Chapter 1276, Acts of the 78th Legislature, Regular
23 Session, 2003, is amended to conform to Section 18.005, Chapter
24 816, Acts of the 78th Legislature, Regular Session, 2003, to read as
25 follows:

26 Sec. 2306.154. RENEWAL OF REGISTRATION. The commission
27 [~~executive director~~] shall adopt rules providing for the renewal of

1 a warrantor's registration.

2 (j) Subchapter E, Chapter 2306, Occupations Code, as added
3 by Section 14A.629, Chapter 1276, Acts of the 78th Legislature,
4 Regular Session, 2003, is amended by adding Section 2306.2025 to
5 conform to Sections 23.001 and 26.081, Chapter 816, Acts of the 78th
6 Legislature, Regular Session, 2003, to read as follows:

7 Sec. 2306.2025. FINANCIAL SECURITY REQUIREMENTS; VALET
8 PARKING SERVICES. (a) In this section, "valet parking service" has
9 the meaning assigned by Section 686.001(3), Transportation Code.

10 (b) A valet parking service must abide by the financial
11 responsibility requirements provided by Chapter 686,
12 Transportation Code.

13 (c) The department may coordinate with the Texas Department
14 of Insurance to assure consistency with the standard proof of motor
15 vehicle liability insurance form prescribed by Section 601.081,
16 Transportation Code.

17 (k) Section 2306.204(f), Occupations Code, as added by
18 Section 14A.629, Chapter 1276, Acts of the 78th Legislature,
19 Regular Session, 2003, is amended to conform to Section 18.006,
20 Chapter 816, Acts of the 78th Legislature, Regular Session, 2003,
21 to read as follows:

22 (f) The commission [~~executive director~~] shall adopt rules
23 governing how a warrantor shall protect nonpublic personal
24 information provided by a consumer to the warrantor.

25 (l) Section 2306.252, Occupations Code, as added by Section
26 14A.629, Chapter 1276, Acts of the 78th Legislature, Regular
27 Session, 2003, is amended to conform to Section 18.007, Chapter

1 816, Acts of the 78th Legislature, Regular Session, 2003, to read as
2 follows:

3 Sec. 2306.252. INJUNCTION. The executive director may
4 bring an action against a warrantor for injunctive relief under
5 Section 51.352 for a threatened or existing violation of this
6 chapter or of an order or rule adopted [~~by the executive director~~]
7 under this chapter.

8 (m) Section 2306.254, Occupations Code, as added by Section
9 14A.629, Chapter 1276, Acts of the 78th Legislature, Regular
10 Session, 2003, is amended to conform to Section 18.007, Chapter
11 816, Acts of the 78th Legislature, Regular Session, 2003, to read as
12 follows:

13 Sec. 2306.254. VIOLATIONS OF A SIMILAR NATURE. For
14 purposes of Section [~~Sections 2306.251 and~~] 2306.253, violations
15 are of a similar nature if the violations consist of the same or a
16 similar course of conduct, action, or practice, regardless of the
17 number of times the conduct, act, or practice determined to be a
18 violation of this chapter occurred.

19 (n) Section 2306.251, Occupations Code, as added by Section
20 14A.629, Chapter 1276, Acts of the 78th Legislature, Regular
21 Session, 2003, is repealed to conform to Section 18.008(2), Chapter
22 816, Acts of the 78th Legislature, Regular Session, 2003.

23 (o) Article 18 and Sections 23.001 and 26.081, Chapter 816,
24 Acts of the 78th Legislature, Regular Session, 2003, are repealed.

25 ARTICLE 16. CHANGES RELATING TO

26 PENAL CODE

27 SECTION 16.001. Section 22.01(b), Penal Code, as amended by

1 Chapters 294 and 1019, Acts of the 78th Legislature, Regular
2 Session, 2003, is reenacted and amended to read as follows:

3 (b) An offense under Subsection (a)(1) is a Class A
4 misdemeanor, except that the offense is a felony of the third degree
5 if the offense is committed against:

6 (1) a person the actor knows is a public servant while
7 the public servant is lawfully discharging an official duty, or in
8 retaliation or on account of an exercise of official power or
9 performance of an official duty as a public servant;

10 (2) a member of the defendant's family or household, if
11 it is shown on the trial of the offense that the defendant has been
12 previously convicted of an offense against a member of the
13 defendant's family or household under this section; ~~[or]~~

14 (3) a person who contracts with government to perform
15 a service in a facility as defined by Section 1.07(a)(14), Penal
16 Code, or ~~[+]~~ Section 51.02(13) or (14), Family Code ~~[, or Section~~
17 ~~51.02(14), Family Code]~~, or an employee of that person:

18 (A) while the person or employee is engaged in
19 performing a service within the scope of the contract, if the actor
20 knows the person or employee is authorized by government to provide
21 the service; or

22 (B) in retaliation for or on account of the
23 person's or employee's performance of a service within the scope of
24 the contract; or

25 (4) ~~[—(3)]~~ a person the actor knows is a security
26 officer while the officer is performing a duty as a security
27 officer.

1 SECTION 16.002. Section 22.01(e), Penal Code, as amended by
2 Chapters 1019 and 1028, Acts of the 78th Legislature, Regular
3 Session, 2003, is reenacted and amended to read as follows:

4 (e) In this section:

5 (1) "Family" has the meaning assigned by Section
6 71.003, Family Code.

7 (2) "Household" has the meaning assigned by Section
8 71.005, Family Code.

9 (3) "Security officer" means a commissioned security
10 officer as defined by Section 1702.002, Occupations Code, or a
11 noncommissioned security officer registered under Section
12 1702.221, Occupations Code.

13 (4) [~~(3)~~] "Sports participant" means a person who
14 participates in any official capacity with respect to an
15 interscholastic, intercollegiate, or other organized amateur or
16 professional athletic competition and includes an athlete,
17 referee, umpire, linesman, coach, instructor, administrator, or
18 staff member.

19 SECTION 16.003. Section 22.07, Penal Code, as amended by
20 Chapters 139, 388, and 446, Acts of the 78th Legislature, Regular
21 Session, 2003, is reenacted and amended to read as follows:

22 Sec. 22.07. TERRORISTIC THREAT. (a) A person commits an
23 offense if he threatens to commit any offense involving violence to
24 any person or property with intent to:

25 (1) cause a reaction of any type to his threat by an
26 official or volunteer agency organized to deal with emergencies;

27 (2) place any person in fear of imminent serious

1 bodily injury;

2 (3) prevent or interrupt the occupation or use of a
3 building, [+] room, [+] place of assembly, [+] place to which the
4 public has access, [+] place of employment or occupation, [+]
5 aircraft, automobile, or other form of conveyance, [+] or other
6 public place;

7 (4) cause impairment or interruption of public
8 communications, public transportation, public water, gas, or power
9 supply or other public service;

10 (5) place the public or a substantial group of the
11 public in fear of serious bodily injury; or

12 (6) influence the conduct or activities of a branch or
13 agency of the federal government, the state, or a political
14 subdivision of the state.

15 (b) An offense under Subsection (a)(1) [~~Subdivision (1) or~~
16 ~~(2) of Subsection (a)~~] is a Class B misdemeanor.

17 (c) An offense under Subsection (a)(2) is a Class B
18 misdemeanor, except that the [~~an~~] offense [~~under Subdivision (2) of~~
19 ~~Subsection (a)~~] is a Class A misdemeanor if the offense:

20 (1) is committed against a member of the person's
21 family or household or otherwise constitutes family violence; or

22 (2) [~~if the offense~~] is committed against a public
23 servant.

24 (d) An offense under Subsection (a)(3) [~~Subdivision (3) of~~
25 ~~Subsection (a)~~] is a Class A misdemeanor, unless the actor causes
26 pecuniary loss of \$1,500 or more to the owner of the building, room,
27 place, or conveyance, in which event the offense is a state jail

1 felony.

2 (e) An offense under Subsection (a)(4), (a)(5), or (a)(6)
3 ~~[Subdivision (4), (5), or (6) of Subsection (a)]~~ is a felony of the
4 third degree.

5 (f) ~~[(e)]~~ In this section:

6 (1) "Family" has the meaning assigned by Section
7 71.003, Family Code.

8 (2) "Family violence" has the meaning assigned by
9 Section 71.004, Family Code.

10 (3) "Household" has the meaning assigned by Section
11 71.005, Family Code.

12 (g) ~~[(e)]~~ For purposes of Subsection (d), the ~~[The]~~ amount
13 of pecuniary loss ~~[under Subsection (b)]~~ is the amount of economic
14 loss suffered by the owner of the building, room, place, or
15 conveyance as a result of the prevention or interruption of the
16 occupation or use of the building, room, place, or conveyance.

17 SECTION 16.004. Section 46.12(d), Penal Code, is amended to
18 correct a reference to read as follows:

19 (d) This section does not prevent the prosecution from:

20 (1) introducing or relying on any other evidence or
21 testimony to establish any element of an offense for which
22 punishment is increased under Section 46.11; or

23 (2) using or introducing any other map or diagram
24 otherwise admissible under the Texas Rules of ~~[Criminal]~~ Evidence.

25 ARTICLE 17. CHANGES RELATING TO PROPERTY CODE

26 SECTION 17.001. Section 5.008(e), Property Code, is amended
27 to correct typographical and grammatical errors to read as follows:

1 (e) This section does not apply to a transfer:

2 (1) pursuant to a court order or foreclosure sale;

3 (2) by a trustee in bankruptcy;

4 (3) to a mortgagee [~~mortgage~~] by a mortgagor or
5 successor in interest, or to a beneficiary of a deed of trust by a
6 trustor or successor in interest;

7 (4) by a mortgagee or a beneficiary under a deed of
8 trust who has acquired the real property at a sale conducted
9 pursuant to a power of sale under a deed of trust or a sale pursuant
10 to a court ordered foreclosure or has acquired the real property by
11 a deed in lieu of foreclosure;

12 (5) by a fiduciary in the course of the administration
13 of a decedent's estate, guardianship, conservatorship, or trust;

14 (6) from one co-owner to one or more other co-owners;

15 (7) made to a spouse or to a person or persons in the
16 lineal line of consanguinity of one or more of the transferors;

17 (8) between spouses resulting from a decree of
18 dissolution of marriage or a decree of legal separation or from a
19 property settlement agreement incidental to such a decree;

20 (9) to or from any governmental entity;

21 (10) [~~transfers~~] of a new residence [~~residences~~] of
22 not more than one dwelling unit which has [~~have~~] not previously been
23 occupied for residential purposes; or

24 (11) [~~transfers~~] of real property where the value of
25 any dwelling does not exceed five percent [~~(5%)~~] of the value of the
26 property.

ARTICLE 18. CHANGES RELATING TO SPECIAL DISTRICT

LOCAL LAWS CODE

SECTION 18.001. (a) Subchapter C, Chapter 1002, Special District Local Laws Code, is amended to conform to Section 1, Chapter 762, Acts of the 78th Legislature, Regular Session, 2003, by adding Section 1002.110 to read as follows:

Sec. 1002.110. PUBLIC WORKS CONTRACTS. With respect to the construction of public works, the district has all of the powers and duties conferred on a municipality under Subchapter H, Chapter 271, Local Government Code, with respect to the construction of a facility. To the extent of any conflict, this section prevails over any other law relating to the construction of public works engaged in by the district.

(b) Chapter 762, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 18.002. (a) Section 3802.052(b), Special District Local Laws Code, is amended to conform to Section 1, Chapter 1252, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(b) The mayor and members of the governing body of the City of Houston shall consider for appointment ~~appoint~~ as directors ~~[for the positions indicated]~~ persons representing the following interests:

(1) ~~[positions 1, 11, and 12 must represent]~~ owners of multifamily rental housing with at least 200 rental units;

(2) lessees ~~[position 2 must be a lessee]~~ of office space of at least 30,000 square feet of rentable area;

1 (3) [~~positions 9 and 10 must represent~~] owners of
2 office facilities with at least 500 employees or a taxable value in
3 excess of \$10 million;

4 (4) [~~positions 8, 13, and 14 must represent~~] owners of
5 multitenant office buildings;

6 (5) [~~position 15 must represent~~] owners of multitenant
7 retail property or major retail tenants [~~of at least 20,000 square~~
8 ~~feet~~];

9 (6) [~~position 16 must represent~~] owners of temporary
10 lodging facilities with on-site food service;

11 (7) [~~position 17 must represent~~] owners of undeveloped
12 property with a contiguous area of at least five acres; and

13 (8) [~~positions 3, 4, 5, 6, and 7 must represent the~~
14 ~~district at large and may be filled by~~] any other person qualified
15 to serve on the board as provided by Section 375.063, Local
16 Government Code, to represent the district at large.

17 (b) Subchapter C, Chapter 3802, Special District Local Laws
18 Code, is amended to conform to Section 2, Chapter 1252, Acts of the
19 78th Legislature, Regular Session, 2003, by adding Section 3802.106
20 to read as follows:

21 Sec. 3802.106. CONFERENCE AND CONVOCATION CENTERS. The
22 district may finance, acquire, lease as a lessor or lessee,
23 construct, improve, operate, or maintain conference and
24 convocation centers and supporting facilities. The district may
25 enter into a long-term operating agreement with any person for the
26 center or facility.

27 (c) Chapter 1252, Acts of the 78th Legislature, Regular

1 Session, 2003, is repealed.

2 SECTION 18.003. (a) The heading to Chapter 3805, Special
3 District Local Laws Code, is amended to conform to Section 1,
4 Chapter 766, Acts of the 78th Legislature, Regular Session, 2003,
5 to read as follows:

6 CHAPTER 3805. HARRIS COUNTY IMPROVEMENT [~~UPPER KIRBY MANAGEMENT~~]
7 DISTRICT NO. 3

8 (b) Section 3805.001(2), Special District Local Laws Code,
9 is amended to conform to Section 3, Chapter 766, Acts of the 78th
10 Legislature, Regular Session, 2003, to read as follows:

11 (2) "District" means the Harris County Improvement
12 [~~Upper Kirby Management~~] District No. 3.

13 (c) Section 3805.002, Special District Local Laws Code, is
14 amended to conform to Section 2, Chapter 766, Acts of the 78th
15 Legislature, Regular Session, 2003, to read as follows:

16 Sec. 3805.002. HARRIS COUNTY IMPROVEMENT [~~UPPER KIRBY~~
17 ~~MANAGEMENT~~] DISTRICT NO. 3. A special district known as the "Harris
18 County Improvement [~~Upper Kirby Management~~] District No. 3" is a
19 governmental agency and political subdivision of this state.

20 (d) Subchapter D, Chapter 3805, Special District Local Laws
21 Code, is amended to conform to Section 4, Chapter 766, Acts of the
22 78th Legislature, Regular Session, 2003, by adding Sections
23 3805.1525 and 3805.1526 to read as follows:

24 Sec. 3805.1525. ASSESSMENT IN PART OF DISTRICT. An
25 assessment may be imposed on only a part of the district if only
26 that part will benefit from the service or improvement.

27 Sec. 3805.1526. PETITION REQUIRED FOR ASSESSMENT AND FOR

1 FINANCING SERVICES AND IMPROVEMENTS. (a) The board may not impose
2 an assessment or finance a service or improvement project under
3 this chapter unless a written petition requesting the improvement
4 or service has been filed with the board.

5 (b) The petition must be signed by:

6 (1) the owners of a majority of the assessed value of
7 real property in the district or in the area of the district that
8 will be subject to the assessment as determined by the most recent
9 certified tax appraisal roll for Harris County; or

10 (2) at least 25 persons who own real property in the
11 district or the area of the district that will be subject to the
12 assessment, if more than 25 persons own real property in the
13 district or area that will be subject to the assessment as
14 determined by the most recent certified tax appraisal roll for
15 Harris County.

16 (e) Section 3805.155, Special District Local Laws Code, is
17 amended to conform to Section 5, Chapter 766, Acts of the 78th
18 Legislature, Regular Session, 2003, to read as follows:

19 Sec. 3805.155. PROPERTY OF CERTAIN UTILITIES [~~ELECTRIC~~
20 ~~UTILITY~~] EXEMPT FROM ASSESSMENT AND IMPACT FEES. The district may
21 not impose an impact fee or assessment on the property, including
22 equipment[~~r~~] or facilities, of:

23 (1) an electric utility as defined by Section 31.002,
24 Utilities Code;

25 (2) a gas utility as defined by Section 101.003 or
26 121.001, Utilities Code;

27 (3) a telecommunications provider as defined by

1 Section 51.002, Utilities Code; or

2 (4) a cable operator as defined by 47 U.S.C. Section
3 522, as amended.

4 (f) Subchapter D, Chapter 3805, Special District Local Laws
5 Code, is amended to conform to Section 6, Chapter 766, Acts of the
6 78th Legislature, Regular Session, 2003, by adding Section 3805.157
7 to read as follows:

8 Sec. 3805.157. USE OF ELECTRICAL OR OPTICAL LINES. (a) The
9 district may impose an assessment to pay the cost of:

10 (1) burying or removing electrical power lines,
11 telephone lines, cable or fiber optic lines, or any other type of
12 electrical or optical line;

13 (2) removing poles and any elevated lines using the
14 poles; and

15 (3) reconnecting the lines described by Subdivision
16 (2) to the buildings or other improvements to which the lines were
17 connected.

18 (b) The district may acquire, operate, or charge fees for
19 the use of the district conduits for:

20 (1) another person's:

21 (A) telecommunications network;

22 (B) fiber-optic cable; or

23 (C) electronic transmission line; or

24 (2) any other type of transmission line or supporting
25 facility.

26 (c) The district may not require a person to use a district
27 conduit.

1 (g) Chapter 3805, Special District Local Laws Code, is
2 amended to conform to Section 7, Chapter 766, Acts of the 78th
3 Legislature, Regular Session, 2003, by adding Subchapter F to read
4 as follows:

5 SUBCHAPTER F. PUBLIC TRANSIT SYSTEM AND PARKING FACILITIES

6 Sec. 3805.251. PUBLIC TRANSIT SYSTEM; PETITION REQUIRED.

7 (a) The district may acquire, lease as lessor or lessee, construct,
8 develop, own, operate, and maintain a public transit system to
9 serve the area within the boundaries of the district.

10 (b) Before the district may act under Subsection (a), a
11 petition must be filed with the district that requests the action
12 with regard to a public transit system. The petition must be signed
13 by owners of property representing a majority of the total assessed
14 value or a majority of the area of the real property in the district
15 that abuts the right-of-way in which the public transit system is
16 proposed to be located. The determination of a majority is based on
17 the property owners along the entire right-of-way of the proposed
18 transit project and may not be computed on a block-by-block basis.

19 Sec. 3805.252. PARKING FACILITIES AUTHORIZED; OPERATION BY
20 PRIVATE ENTITY; TAX EXEMPTION. (a) The district may acquire, lease
21 as lessor or lessee, construct, develop, own, operate, and maintain
22 parking facilities, including:

23 (1) lots, garages, parking terminals, or other
24 structures or accommodations for parking motor vehicles; and

25 (2) equipment, entrances, exits, fencing, and other
26 accessories necessary for safety and convenience in parking
27 vehicles.

1 (b) A parking facility of the district must be leased to or
2 operated on behalf of the district by an entity other than the
3 district.

4 (c) The district's parking facilities are a program
5 authorized by the legislature under Section 52-a, Article III,
6 Texas Constitution, and serve a public purpose under that section
7 even if leased or operated by a private entity for a term of years.

8 (d) The district's public parking facilities and any lease
9 to a private entity are exempt from the payment of ad valorem taxes
10 and state and local sales and use taxes.

11 Sec. 3805.253. RULES FOR TRANSIT OR PARKING SYSTEM. (a)
12 The district may adopt rules covering its public transit system or
13 its public parking facilities.

14 (b) A rule adopted under this section that relates to or
15 affects the use of the public right-of-way or a requirement for
16 off-street parking is subject to all applicable municipal charter,
17 code, or ordinance requirements.

18 Sec. 3805.254. PAYING COST OF PUBLIC TRANSIT SYSTEM OR
19 PARKING FACILITIES. (a) The district may use any of its resources,
20 including revenue, assessments, taxes, and grant or contract
21 proceeds, to pay the cost of acquiring and operating a public
22 transit system or public parking facilities.

23 (b) The district may:

24 (1) set and impose fees, charges, or tolls for the use
25 of the public transit system or the public parking facilities; and

26 (2) issue bonds or notes to finance the cost of these
27 facilities.

1 (2) "District" means the Harris County Improvement
2 ~~[Energy Corridor Management]~~ District No. 4.

3 (c) Section 3814.002, Special District Local Laws Code, is
4 amended to conform to Section 2, Chapter 324, Acts of the 78th
5 Legislature, Regular Session, 2003, to read as follows:

6 Sec. 3814.002. HARRIS COUNTY IMPROVEMENT ~~[ENERGY CORRIDOR~~
7 ~~MANAGEMENT]~~ DISTRICT NO. 4. The Harris County Improvement ~~[Energy~~
8 ~~Corridor Management]~~ District No. 4 is a special district created
9 under Section 59, Article XVI, Texas Constitution.

10 (d) Section 3814.003, Special District Local Laws Code, is
11 amended to conform to Section 3, Chapter 324, Acts of the 78th
12 Legislature, Regular Session, 2003, by adding Subsection (d) to
13 read as follows:

14 (d) By creating the district and in authorizing the City of
15 Houston, Harris County, and other political subdivisions to
16 contract with the district, the legislature has established a
17 program to accomplish the public purposes set out in Section 52-a,
18 Article III, Texas Constitution.

19 (e) Subchapter A, Chapter 3814, Special District Local Laws
20 Code, is amended to conform to Section 11, Chapter 324, Acts of the
21 78th Legislature, Regular Session, 2003, by adding Section
22 3814.0055 to read as follows:

23 Sec. 3814.0055. ELIGIBILITY FOR INCLUSION IN SPECIAL ZONES.
24 All or any part of the area of the district is eligible to be
25 included in:

26 (1) a tax increment reinvestment zone created by the
27 municipality under Chapter 311, Tax Code;

1 (2) a tax abatement reinvestment zone created by the
2 municipality under Chapter 312, Tax Code; or

3 (3) an enterprise zone created by the municipality
4 under Chapter 2303, Government Code.

5 (f) Section 3814.051, Special District Local Laws Code, is
6 amended to conform to Section 5, Chapter 324, Acts of the 78th
7 Legislature, Regular Session, 2003, to read as follows:

8 Sec. 3814.051. BOARD OF DIRECTORS. (a) The district is
9 governed by a board of:

10 (1) nine voting directors appointed under Section
11 3814.052; and

12 (2) nonvoting directors as provided by Section
13 3814.053.

14 (b) If the board determines that it is in the best interest
15 of the district, the board by resolution may increase or decrease
16 the number of directors on the board except that the board may not
17 consist of fewer than seven or more than 15 directors.

18 (g) Section 3814.053, Special District Local Laws Code, is
19 amended to conform to Section 6, Chapter 324, Acts of the 78th
20 Legislature, Regular Session, 2003, by adding Subsection (c) to
21 read as follows:

22 (c) A nonvoting director is not included for determining a
23 board quorum.

24 (h) Section 3814.101, Special District Local Laws Code, is
25 amended to conform to Section 7, Chapter 324, Acts of the 78th
26 Legislature, Regular Session, 2003, to read as follows:

27 Sec. 3814.101. ADDITIONAL POWERS OF DISTRICT. The

1 district may exercise the powers given to:

2 (1) a corporation created under Section 4B,
3 Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas
4 Civil Statutes), including the power to own, operate, acquire,
5 construct, lease, improve, or maintain a project described by that
6 section; and

7 (2) a housing finance corporation created under
8 Chapter 394, Local Government Code, to provide housing or
9 residential development projects in the district.

10 (i) Subchapter C, Chapter 3814, Special District Local Laws
11 Code, is amended to conform to Section 11, Chapter 324, Acts of the
12 78th Legislature, Regular Session, 2003, by adding Section 3814.108
13 to read as follows:

14 Sec. 3814.108. MEMBERSHIP IN CHARITABLE ORGANIZATION. The
15 district may join and pay dues to an organization that:

16 (1) enjoys tax-exempt status under Section 501(c)(3),
17 501(c)(4), or 501(c)(6), Internal Revenue Code of 1986 (26 U.S.C.
18 Section 501), as amended; and

19 (2) performs a service or provides an activity that
20 furtheres a district purpose.

21 (j) Subchapter C, Chapter 3814, Special District Local Laws
22 Code, is amended to conform to Section 11, Chapter 324, Acts of the
23 78th Legislature, Regular Session, 2003, by adding Section 3814.109
24 to read as follows:

25 Sec. 3814.109. ECONOMIC DEVELOPMENT PROGRAM. (a) The
26 district may establish and provide for the administration of one or
27 more programs, including programs to loan or grant public money or

1 provide district personnel or services, to:

2 (1) promote state or local economic development; and

3 (2) stimulate business and commercial activity in the
4 district.

5 (b) For purposes of this section, the district has all of
6 the powers and authority of a municipality under Chapter 380, Local
7 Government Code.

8 (k) Section 3814.151, Special District Local Laws Code, is
9 amended to conform to Section 8, Chapter 324, Acts of the 78th
10 Legislature, Regular Session, 2003, to read as follows:

11 Sec. 3814.151. PETITION REQUIRED FOR FINANCING SERVICES AND
12 IMPROVEMENTS WITH ASSESSMENTS. (a) The board may not finance a
13 service or an improvement project with assessments under this
14 chapter unless a written petition requesting that service or
15 improvement is filed with the board.

16 (b) The petition must be signed by:

17 (1) the owners of a majority of the assessed value of
18 real property in the district subject to assessment according to
19 the most recent certified tax appraisal roll for Harris County; or

20 (2) at least 25 owners of real property [~~land~~] in the
21 district, if more than 25 persons own real property in the district
22 according to the most recent certified tax appraisal roll for
23 Harris County.

24 (l) Section 3814.154, Special District Local Laws Code, is
25 amended to conform to Section 10, Chapter 324, Acts of the 78th
26 Legislature, Regular Session, 2003, by adding Subsection (d) to
27 read as follows:

1 (d) The board may make a correction to or deletion from the
2 assessment roll without notice and hearing required for an
3 additional assessment if the correction or deletion does not
4 increase the amount of a parcel of land.

5 (m) Section 3814.158, Special District Local Laws Code, is
6 amended to conform to Section 9, Chapter 324, Acts of the 78th
7 Legislature, Regular Session, 2003, by amending Subsection (a) and
8 adding Subsection (c) to read as follows:

9 (a) The [~~In addition to the elections required under~~
10 ~~Subchapter L, Chapter 375, Local Government Code, the~~] district
11 must hold an election in the manner provided by Subchapter L,
12 Chapter 375, Local Government Code, [~~that subchapter~~] to obtain
13 voter approval before the district may:

14 (1) impose a maintenance tax; or

15 (2) issue a bond payable from ad valorem taxes [~~or~~
16 ~~assessments~~].

17 (c) Section 375.243, Local Government Code, does not apply
18 to the district.

19 (n) Subchapter D, Chapter 3814, Special District Local Laws
20 Code, is amended to conform to Section 11, Chapter 324, Acts of the
21 78th Legislature, Regular Session, 2003, by adding Section 3814.159
22 to read as follows:

23 Sec. 3814.159. TAX AND ASSESSMENT ABATEMENTS. The district
24 may grant in the manner authorized by Chapter 312, Tax Code, an
25 abatement for a tax or assessment owed to the district.

26 (o) Sections 3814.052(b) and 3814.055, Special District
27 Local Laws Code, are repealed to conform to Section 12, Chapter 324,

1 Acts of the 78th Legislature, Regular Session, 2003.

2 (p) Chapter 324, Acts of the 78th Legislature, Regular
3 Session, 2003, is repealed.

4 SECTION 18.005. (a) Section 3817.154, Special District
5 Local Laws Code, is amended to conform to Section 11, Chapter 209,
6 Acts of the 78th Legislature, Regular Session, 2003, by adding
7 Subsection (d) to read as follows:

8 (d) Chapter 321, Tax Code, applies to the imposition,
9 computation, administration, enforcement, and collection of the
10 sales and use tax imposed by this section except to the extent it is
11 inconsistent with this chapter.

12 (b) Section 11, Chapter 209, Acts of the 78th Legislature,
13 Regular Session, 2003, is repealed.

14 ARTICLE 19. CHANGES RELATING TO TAX CODE

15 SECTION 19.001. Section 41.66(a), Tax Code, is amended to
16 correct a reference to the State Property Tax Board to read as
17 follows:

18 (a) The appraisal review board shall establish by rule the
19 procedures for hearings it conducts as provided by Subchapters A
20 and C of this chapter. On request made by a property owner in the
21 owner's notice of protest or in a separate writing delivered to the
22 appraisal review board on or before the date the notice of protest
23 is filed, the property owner is entitled to a copy of the hearing
24 procedures. The copy of the hearing procedures shall be delivered
25 to the property owner not later than the 10th day before the date
26 the hearing on the protest begins and may be delivered with the
27 notice of the protest hearing required under Section 41.46(a). The

1 notice of protest form prescribed by the comptroller [~~State~~
2 ~~Property Tax Board~~] under Section 41.44(d) or any other notice of
3 protest form made available to a property owner by the appraisal
4 review board or the appraisal office shall provide the property
5 owner an opportunity to make or decline to make a request under this
6 subsection. The appraisal review board shall post a copy of the
7 hearing procedures in a prominent place in the room in which the
8 hearing is held.

9 SECTION 19.002. Section 352.002(a), Tax Code, as amended by
10 Chapters 64, 637, 741, 1097, and 1108, Acts of the 78th Legislature,
11 Regular Session, 2003, is reenacted and amended to read as follows:

12 (a) The commissioners courts of the following counties by
13 the adoption of an order or resolution may impose a tax on a person
14 who, under a lease, concession, permit, right of access, license,
15 contract, or agreement, pays for the use or possession or for the
16 right to the use or possession of a room that is in a hotel, costs \$2
17 or more each day, and is ordinarily used for sleeping:

18 (1) a county that has a population of more than 3.3
19 million;

20 (2) a county that has a population of 90,000 or more,
21 borders the United Mexican States, and does not have three or more
22 cities that each have a population of more than 17,500;

23 (3) a county in which there is no municipality;

24 (4) a county in which there is located an Indian
25 reservation under the jurisdiction of the United States government;

26 (5) a county that has a population of 30,000 or less,
27 that has no more than one municipality with a population of less

1 than 2,500, and that borders two counties located wholly in the
2 Edwards Aquifer Authority established by Chapter 626, Acts of the
3 73rd Legislature, Regular Session, 1993;

4 (6) a county that borders the Gulf of Mexico;

5 (7) a county that has a population of less than 5,000,
6 that borders the United Mexican States, and in which there is
7 located a major observatory;

8 (8) a county that has a population of 12,000 or less
9 and borders the Toledo Bend Reservoir;

10 (9) a county that has a population of less than 12,000
11 and an area of less than 275 square miles;

12 (10) a county that has a population of 30,000 or less
13 and borders Possum Kingdom Lake;

14 (11) a county that borders the United Mexican States
15 and has a population of more than 300,000 and less than 600,000;

16 (12) a county that has a population of 35,000 or more
17 and borders or contains a portion of Lake Fork Reservoir;

18 (13) a county that borders the United Mexican States
19 and in which there is located a national recreation area;

20 (14) a county that borders the United Mexican States
21 and in which there is located a national park of more than 400,000
22 acres;

23 (15) a county that has a population of 28,000 or less,
24 that has no more than four municipalities, and that is located
25 wholly in the Edwards Aquifer Authority established by Chapter 626,
26 Acts of the 73rd Legislature, Regular Session, 1993;

27 (16) a county that has a population of 25,000 or less,

1 whose territory is less than 750 square miles, and that has two
2 incorporated municipalities, each with a population of 800 or less,
3 located on the Frio River; ~~and~~

4 (17) a county that has a population of 34,000 or more
5 and borders Lake Buchanan; ~~and~~

6 (18) ~~(17)~~ a county that has a population of more
7 than 45,000 and less than 75,000, that borders the United Mexican
8 States, and that borders or contains a portion of Falcon Lake; ~~and~~

9 (19) ~~(17)~~ a county with a population of 21,000 or
10 less that borders the Neches River and in which there is located a
11 national preserve; ~~and~~

12 (20) ~~(17)~~ a county that has a population of 22,500
13 or less and that borders or contains a portion of Lake Livingston.

14 SECTION 19.003. Section 352.002(d), Tax Code, as amended by
15 Chapters 64, 1097, and 1108, Acts of the 78th Legislature, Regular
16 Session, 2003, is reenacted and amended to read as follows:

17 (d) The tax imposed by a county authorized by Subsection
18 (a)(4), (6), (8), (10), (11), (12), ~~or~~ (17), (19), or (20) to
19 impose the tax does not apply to a hotel located in a municipality
20 that imposes a tax under Chapter 351 applicable to the hotel. This
21 subsection does not apply to a county authorized by Subsection
22 (a)(6) to impose the tax that:

23 (1) has a population of less than 40,000 and adjoins
24 the most populous county in this state; or

25 (2) has a population of more than 200,000 and borders
26 the Neches River.

ARTICLE 20. CHANGES RELATING TO TRANSPORTATION CODE

SECTION 20.001. Section 201.112(a), Transportation Code, as amended by Chapters 312, 713, and 1325, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(a) The commission may by rule establish procedures for the informal resolution of a claim arising out of a contract described by:

- (1) Section 22.018;
- (2) Chapter 223;
- (3) Chapter 361; ~~[ex]~~
- (4) Section 391.091; or
- (5) [4] ~~[4]~~ Chapter 2254, Government Code.

SECTION 20.002. Section 223.042, Transportation Code, as amended by Chapters 28 and 274, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

Sec. 223.042. PRIVATIZATION OF MAINTENANCE CONTRACTS. (a) Of the amount spent in a fiscal year by the department for maintenance projects, the department shall spend not less than 50 percent through contracts awarded by competitive bids.

(b) Money spent for maintenance projects to which this section does not apply is ~~[are]~~ included when computing the amount of expenditures for maintenance projects in a fiscal year.

(c) The department may award a contract under this section as a purchase of service under Subtitle D, Title 10, Government Code, if the department:

- (1) estimates that the contract will involve an amount

1 less than \$15,000; and

2 (2) determines that the competitive bidding procedure
3 in this chapter is not practical.

4 (d) The department shall consider all of its direct and
5 indirect costs in determining the cost of providing the services.
6 The department shall use the cost accounting procedures and
7 instructions developed by the State Council on Competitive
8 Government under Section 2162.102(c)(2), Government Code, in
9 determining its cost. On request, the State Council on Competitive
10 Government shall provide technical assistance to the department
11 about the cost accounting procedures and instructions.

12 (e) Subsection (a) does not apply unless the department
13 determines that a function of comparable quality and quantity can
14 be purchased or performed at a savings by using private sector
15 contracts.

16 (f) The department shall file a report with the Legislative
17 Budget Board on September 1 of each fiscal year detailing the
18 contracts awarded by the department under this section during the
19 previous fiscal year.

20 (g) The commission shall adopt rules to administer this
21 section.

22 (h) In this section, "maintenance project" means any
23 routine or preventive maintenance activity. The term includes
24 mowing, concrete removal and replacement, illumination
25 maintenance, guardrail repair, fence repair, litter pick-up,
26 herbicide spraying, pothole repair, silt and erosion control or
27 repair, sign installation, highway overlaying, paint and bead

1 striping, rest area maintenance, and installation of raised
2 pavement markings.

3 (i) This section does not apply to the purchase of materials
4 for maintenance projects.

5 (j) [~~(i)~~] As an alternative to the requirements of Section
6 2253.021, Government Code, the department may require that a bond
7 securing a contractor's performance under a contract awarded under
8 this section for a routine maintenance activity:

9 (1) be in an amount equal to the greatest annual amount
10 to be paid the contractor under the contract and remain in effect
11 for one year from the day work is resumed after any default by the
12 contractor; or

13 (2) be in an amount equal to the amount to be paid the
14 contractor during the term of the bond and be for a term of two
15 years, renewable annually in two-year increments.

16 (k) [~~(j)~~] A bond posted under Subsection (j) [~~(i)~~] must:

17 (1) be solely for the protection of the department;
18 and

19 (2) be conditioned on the faithful performance of the
20 maintenance work in accordance with the contract requirements.

21 SECTION 20.003. (a) Section 502.184(b), Transportation
22 Code, is amended to conform to the repeal of Sections 502.254,
23 502.255, 502.256, 502.257, 502.267, 502.268, and 502.273 of that
24 code and the enactment of Sections 504.202, 504.305, 504.315,
25 504.409, and 504.411 of that code by Chapter 1320, Acts of the 78th
26 Legislature, Regular Session, 2003, to read as follows:

27 (b) The fee for replacement of certain specialized license

1 plates is:

2 License plates issued under:	Fee:
3 Section <u>504.202</u> [502.254]	\$1
4 Section <u>504.315(c) or (e)</u> [502.255 or 502.257]	No fee
5 Section <u>504.305 or 504.411</u> [502.256 or 502.267]	\$2
6 Section <u>504.409</u> [502.268]	\$9
7 [Section 502.273]	\$30

8 (b) Section 502.410(b), Transportation Code, is amended to
 9 conform to the repeal of Sections 502.253, 502.267, and 502.281 of
 10 that code and the enactment of Sections 504.201, 504.411, and
 11 504.508 of that code by Chapter 1320, Acts of the 78th Legislature,
 12 Regular Session, 2003, to read as follows:

13 (b) Subsection (a) does not apply to a statement or
 14 application filed or given under Section 502.184, [~~502.253,~~
 15 ~~502.267, 502.281,~~] 502.352, 502.353, 502.354, [~~or~~] 502.355,
 16 504.201, 504.411, or 504.508.

17 (c) Section 681.0032, Transportation Code, is amended to
 18 conform to the repeal of Section 502.253 of that code and the
 19 enactment of Section 504.201 of that code by Chapter 1320, Acts of
 20 the 78th Legislature, Regular Session, 2003, to read as follows:

21 Sec. 681.0032. ISSUANCE OF DISABLED PARKING PLACARDS TO
 22 CERTAIN INSTITUTIONS. (a) The department shall provide for the
 23 issuance of disabled parking placards described by Section 681.002
 24 for a van or bus operated by an institution, facility, or
 25 residential retirement community for the elderly in which a person
 26 described by Section 504.201(a) [~~502.253(b)~~] resides, including an
 27 institution licensed under Chapter 242, Health and Safety Code, and

1 a facility licensed under Chapter 246 or 247 of that code.

2 (b) The application for a disabled parking placard must be
3 made in the manner provided by Section 681.003(b) and be
4 accompanied by a written statement signed by the administrator or
5 manager of the institution, facility, or retirement community
6 certifying to the department that the institution, facility, or
7 retirement community regularly transports, as a part of the
8 services that the institution, facility, or retirement community
9 provides, one or more persons described by Section 504.201(a)
10 [~~502.253(b)~~] who reside in the institution, facility, or retirement
11 community. The department shall determine the eligibility of the
12 institution, facility, or retirement community on the evidence the
13 applicant provides.

14 (d) Section 681.004(a), Transportation Code, is amended to
15 conform to the repeal of Section 502.253 of that code and the
16 enactment of Section 504.201 of that code by Chapter 1320, Acts of
17 the 78th Legislature, Regular Session, 2003, to read as follows:

18 (a) A person with a permanent disability may receive:

19 (1) two disabled parking placards, if the person does
20 not receive a set of special license plates under Section 504.201
21 [~~502.253~~]; or

22 (2) one disabled parking placard, if the person
23 receives a set of special license plates under Section 504.201
24 [~~502.253~~].

25 (e) Sections 681.006(a) and (b), Transportation Code, are
26 amended to conform to the repeal of Section 502.253 of that code and
27 the enactment of Section 504.201 of that code by Chapter 1320, Acts

1 of the 78th Legislature, Regular Session, 2003, to read as follows:

2 (a) Subject to Section 681.009(e), a vehicle may be parked
3 for an unlimited period in a parking space or area that is
4 designated specifically for persons with physical disabilities if:

5 (1) the vehicle is being operated by or for the
6 transportation of a person with a disability; and

7 (2) there are:

8 (A) displayed on the vehicle special license
9 plates issued under Section 504.201 [~~502.253~~]; or

10 (B) placed on the rearview mirror of the
11 vehicle's front windshield a disabled parking placard.

12 (b) The owner of a vehicle is exempt from the payment of a
13 fee or penalty imposed by a governmental unit for parking at a meter
14 if:

15 (1) the vehicle is being operated by or for the
16 transportation of a person with a disability; and

17 (2) there are:

18 (A) displayed on the vehicle special license
19 plates issued under Section 504.201 [~~502.253~~]; or

20 (B) placed on the rearview mirror of the
21 vehicle's front windshield a disabled parking placard.

22 (f) Section 681.007, Transportation Code, is amended to
23 conform to the repeal of Section 502.253 of that code and the
24 enactment of Section 504.201 of that code by Chapter 1320, Acts of
25 the 78th Legislature, Regular Session, 2003, to read as follows:

26 Sec. 681.007. PARKING PRIVILEGES: VEHICLES DISPLAYING
27 INTERNATIONAL SYMBOL OF ACCESS. A vehicle may be parked and is

1 exempt from the payment of a fee or penalty in the same manner as a
2 vehicle that has displayed on the vehicle special license plates
3 issued under Section 504.201 [~~502.253~~] or a disabled parking
4 placard as provided by Section 681.006 if there is displayed on the
5 vehicle a license plate or placard that:

6 (1) bears the international symbol of access; and

7 (2) is issued by a state or by a state or province of a
8 foreign country to the owner or operator of the vehicle for the
9 transportation of a person with a disability.

10 (g) Sections 681.008(a) and (b), Transportation Code, are
11 amended to conform to the repeal of Sections 502.254, 502.255,
12 502.257, 502.259, and 502.260 of that code and the enactment of
13 Sections 504.202 and 504.315 of that code by Chapter 1320, Acts of
14 the 78th Legislature, Regular Session, 2003, to read as follows:

15 (a) A vehicle may be parked for an unlimited period in a
16 parking space or area that is designated specifically for persons
17 with physical disabilities if:

18 (1) the vehicle is being operated by or for the
19 transportation of:

20 (A) the person who registered the vehicle under
21 Section 504.202(a) [~~502.254(a)~~]; or

22 (B) a person described by Section 504.202(b)
23 [~~502.254(b)~~] if the vehicle is registered under that subsection;
24 and

25 (2) there are displayed on the vehicle special license
26 plates issued under Section 504.202 [~~502.254~~].

27 (b) A vehicle on which license plates issued under Section

1 504.202 or Section 504.315(c), (d), (e), or (g) [~~502.254, 502.255,~~
2 ~~502.257, 502.259, or 502.260~~] are displayed is exempt from the
3 payment of a parking fee collected through a parking meter charged
4 by a governmental authority other than a branch of the federal
5 government, when being operated by or for the transportation of:

6 (1) the person who registered the vehicle under
7 Section 504.202(a) or Section 504.315(c), (d), (e), or (g)
8 [~~502.254(a), 502.255, 502.257, 502.259, or 502.260~~]; or

9 (2) a person described in Section 504.202(b)
10 [~~502.254(b)~~] if the vehicle is registered under that subsection.

11 (h) Section 681.009(e), Transportation Code, is amended to
12 conform to the repeal of Section 502.253 of that code and the
13 enactment of Section 504.201 of that code by Chapter 1320, Acts of
14 the 78th Legislature, Regular Session, 2003, to read as follows:

15 (e) A private property owner or private person who controls
16 property used for parking and who designates one or more uncovered
17 parking spaces for the exclusive use of vehicles transporting
18 persons with disabilities shall assign at least half of those
19 spaces for the exclusive use of vehicles displaying a white on blue
20 shield disabled parking placard, except that if an odd number of
21 spaces is designated, only the number of spaces that is the largest
22 whole number less than half of the number of designated spaces must
23 be assigned for the exclusive use of vehicles displaying a white on
24 blue shield placard. Van-accessible parking spaces shall be
25 counted as assigned spaces under this subsection. These assigned
26 spaces must be the spaces located closest to an accessible route to
27 an entrance accessible to a person with a disability. The remaining

1 designated parking spaces may be used by vehicles displaying a
2 white on blue shield disabled parking placard, a white on red shield
3 disabled parking placard, or license plates issued under Section
4 504.201 [~~502.253~~]. This subsection applies only to a property used
5 for parking that serves a building or other facility:

6 (1) that state law requires to be accessible to person
7 with disabilities; and

8 (2) for which construction or an alteration of the
9 building or other facility is completed on or after September 1,
10 1999.

11 (i) Sections 681.011(a), (b), and (m), Transportation Code,
12 are amended to conform to the repeal of Sections 502.253 and 502.254
13 of that code and the enactment of Sections 504.201 and 504.202 of
14 that code by Chapter 1320, Acts of the 78th Legislature, Regular
15 Session, 2003, to read as follows:

16 (a) A person commits an offense if:

17 (1) the person stands a vehicle on which are displayed
18 license plates issued under Section 504.201 [~~502.253~~] or 504.202
19 [~~502.254~~] or a disabled parking placard in a parking space or area
20 designated specifically for persons with disabilities by:

21 (A) a political subdivision; or

22 (B) a person who owns or controls private
23 property used for parking as to which a political subdivision has
24 provided for the application of this section under Subsection (f);
25 and

26 (2) the standing of the vehicle in that parking space
27 or area is not authorized by Section 681.006, 681.007, or 681.008.

1 (b) A person commits an offense if the person:

2 (1) stands a vehicle on which license plates issued
3 under Section 504.201 [~~502.253~~] or 504.202 [~~502.254~~] are not
4 displayed and a disabled parking placard is not displayed in a
5 parking space or area designated specifically for individuals with
6 disabilities by:

7 (A) a political subdivision; or

8 (B) a person who owns or controls private
9 property used for parking as to which a political subdivision has
10 provided for the application of this section under this Subsection
11 (f); or

12 (2) stands a vehicle displaying a white on red shield
13 disabled parking placard or license plates issued under Section
14 504.201 [~~502.253~~] in a space designated under Section 681.009(e)
15 for the exclusive use of vehicles displaying a white on blue shield
16 disabled parking placard.

17 (1) [~~(m)~~] A person commits an offense if the person:

18 (1) stands a vehicle on which are displayed license
19 plates issued under Section 504.201 [~~502.253~~] or a disabled parking
20 placard in a parking space or area for which this chapter creates an
21 exemption from payment of a fee or penalty imposed by a governmental
22 unit;

23 (2) does not have a disability;

24 (3) is not transporting a person with disability; and

25 (4) does not pay any applicable fee related to
26 standing in the space or area imposed by a governmental unit or
27 exceeds a limitation on the length of time for standing in the space

1 or area.

2 (j) Section 684.011(a), Transportation Code, is amended to
3 conform to the repeal of Section 502.253 of that code and the
4 enactment of Section 504.201 of that code by Chapter 1320, Acts of
5 the 78th Legislature, Regular Session, 2003, to read as follows:

6 (a) The owner or operator of a vehicle may not leave
7 unattended on a parking facility a vehicle that:

8 (1) is in or obstructs a vehicular traffic aisle,
9 entry, or exit of the parking facility;

10 (2) prevents a vehicle from exiting a parking space in
11 the facility;

12 (3) is in or obstructs a fire lane marked according to
13 Subsection (c); or

14 (4) does not display the special license plates issued
15 under Section 504.201 [~~502.253~~] or the disabled parking placard
16 issued under Chapter 681 for a vehicle transporting a disabled
17 person and is in a parking space that is designated for the
18 exclusive use of a vehicle transporting a disabled person.

19 SECTION 20.004. Section 521.341, Transportation Code, as
20 amended by Section 30.93(a), Chapter 165, Acts of the 75th
21 Legislature, Regular Session, 1997, is amended to more closely
22 conform to the change in law made by Section 3, Chapter 708, Acts of
23 the 74th Legislature, Regular Session, 1995, to read as follows:

24 Sec. 521.341. REQUIREMENTS FOR AUTOMATIC LICENSE
25 SUSPENSION. Except as provided by Sections 521.344(d)-(i), a
26 license is automatically suspended on final conviction of the
27 license holder of:

1 (1) an offense under Section 19.05, Penal Code,
2 committed as a result of the holder's criminally negligent
3 operation of a motor vehicle;

4 (2) an offense under Section 38.04, Penal Code, if the
5 holder used a motor vehicle in the commission of the offense;

6 (3) an offense under Section 49.04 or 49.08, Penal
7 Code;

8 (4) an offense under Section 49.07, Penal Code, if the
9 holder [~~person~~] used a motor vehicle in the commission of the
10 offense;

11 (5) an offense punishable as a felony under the motor
12 vehicle laws of this state;

13 (6) an offense under Section 550.021; or

14 (7) an offense under Section 521.451 or 521.453.

15 SECTION 20.0045. Section 524.011(c), Transportation Code,
16 is amended to correct a reference to read as follows:

17 (c) The report required under Subsection (b)(4)(D)
18 [~~(b)(2)(B)~~] must:

19 (1) identify the arrested person;

20 (2) state the arresting officer's grounds for
21 believing the person committed the offense;

22 (3) give the analysis of the specimen if any; and

23 (4) include a copy of the criminal complaint filed in
24 the case, if any.

25 SECTION 20.005. Section 601.162(b), Transportation Code,
26 is amended to more closely conform to the law from which that
27 section was derived to read as follows:

1 (b) If a suspension is terminated under Subsection
2 (a)(3)(C), on notice of a default in the payment of an installment
3 under the agreement, the department shall promptly suspend the
4 driver's license and vehicle registration or nonresident's
5 operating privilege of the person defaulting. A suspension under
6 this subsection continues until:

7 (1) the person deposits and maintains security in
8 accordance with Section 601.153 in an amount determined by the
9 department at the time of suspension under this subsection and
10 files evidence of financial responsibility in accordance with
11 Section 601.153; or

12 (2) the second anniversary of the date security was
13 required [~~deposited~~] under Subdivision (1) if, during that period,
14 an action on the agreement has not been instituted in a court in
15 this state.

16 SECTION 20.006. Section 601.340(a), Transportation Code,
17 is amended to more closely conform to the law from which that
18 section was derived to read as follows:

19 (a) Except as provided by Subsection (b) or (c), the
20 department shall suspend the registration of each motor vehicle
21 registered in the name of a person if the department:

22 (1) under any state law, other than Section 521.341(7)
23 [~~521.341(6)~~], suspends or revokes the person's driver's license on
24 receipt of a record of a conviction or a forfeiture of bail; or

25 (2) receives a record of a guilty plea of the person
26 entered for an offense for which the department would be required to
27 suspend the driver's license of a person convicted of the offense.

1 ARTICLE 21. CHANGES RELATING TO UTILITIES CODE

2 SECTION 21.001. Section 39.903(a), Utilities Code, as
3 amended by Chapters 211 and 1296, Acts of the 78th Legislature,
4 Regular Session, 2003, is reenacted to read as follows:

5 (a) The system benefit fund is an account in the general
6 revenue fund. Money in the account may be appropriated only for the
7 purposes provided by this section or other law. Interest earned on
8 the system benefit fund shall be credited to the fund. Section
9 403.095, Government Code, does not apply to the system benefit
10 fund.

11 SECTION 21.002. Section 57.046(c), Utilities Code, as added
12 by Chapter 198, Acts of the 78th Legislature, Regular Session,
13 2003, is repealed as duplicative of Subsection (d) of that section.

14 SECTION 21.003. Sections 121.211(d), (e), (f), and (g),
15 Utilities Code, as added by Chapters 200 and 520, Acts of the 78th
16 Legislature, Regular Session, 2003, are reenacted to read as
17 follows:

18 (d) The railroad commission may assess each investor-owned
19 and each municipally owned natural gas distribution system subject
20 to this chapter an annual inspection fee not to exceed 50 cents for
21 each service line reported by the system on the Distribution Annual
22 Report, Form RSPA F7100.1-1, due on March 15 of each year. The fee
23 is due March 15 of each year.

24 (e) The railroad commission may assess each operator of a
25 natural gas master metered system subject to this chapter an annual
26 inspection fee not to exceed \$100 for each master metered system.
27 The fee is due June 30 of each year.

1 (f) The railroad commission may assess a late payment
2 penalty of 10 percent of the total assessment due under Subsection
3 (d) or (e) that is not paid within 30 days after the annual due date
4 established by the applicable subsection.

5 (g) Each investor-owned and municipally owned natural gas
6 distribution company and each natural gas master meter operator
7 shall recover as a surcharge to its existing rates the amounts paid
8 to the railroad commission under this section. Amounts collected
9 under this subsection by an investor-owned natural gas distribution
10 company shall not be included in the revenue or gross receipts of
11 the company for the purpose of calculating municipal franchise fees
12 or any tax imposed under Subchapter B, Chapter 182, Tax Code, or
13 under Chapter 122. Those amounts are not subject to a sales and use
14 tax imposed by Chapter 151, Tax Code, or Chapters 321 through 327,
15 Tax Code.

16 ARTICLE 22. CHANGES RELATING TO WATER CODE

17 SECTION 22.001. Section 5.756(d), Water Code, is amended to
18 correct a reference to read as follows:

19 (d) The commission shall include in the annual enforcement
20 report required by Section 5.126 [~~5.123, as added by Chapters 304~~
21 ~~and 1082, Acts of the 75th Legislature, Regular Session, 1997,~~] the
22 comparative performance analysis required by Subsection (c),
23 organized by region and regulated medium.

24 SECTION 22.0015. Section 16.093(a), Water Code, is amended
25 to correct a reference to read as follows:

26 (a) The board may execute agreements with the United States
27 Environmental Protection Agency or its successor agency and any

1 other federal agency that administers programs providing federal
2 grants to local governments for the construction of treatment
3 works, as defined in Section 17.001 [~~17.272 of this code~~]. The
4 board may exercise all duties and responsibilities required for the
5 administration by the board of the federal construction grant
6 program.

7 SECTION 22.002. Section 26.0491(a), Water Code, is amended
8 to correct a reference to read as follows:

9 (a) In this section, "separate sanitary sewer system" has
10 the meaning assigned by Section 26.049 [~~29.049~~].

11 SECTION 22.003. Section 49.181(a), Water Code, as amended
12 by Chapters 248 and 608, Acts of the 78th Legislature, Regular
13 Session, 2003, is reenacted to read as follows:

14 (a) A district may not issue bonds unless the commission
15 determines that the project to be financed by the bonds is feasible
16 and issues an order approving the issuance of the bonds. This
17 section does not apply to:

18 (1) refunding bonds if the commission issued an order
19 approving the issuance of the bonds or notes that originally
20 financed the project;

21 (2) refunding bonds that are issued by a district
22 under an agreement between the district and a municipality allowing
23 the issuance of the district's bonds to refund bonds issued by the
24 municipality to pay the cost of financing facilities; or

25 (3) bonds issued to and approved by the Farmers Home
26 Administration, the United States Department of Agriculture, the
27 North American Development Bank, or the Texas Water Development

1 Board.

2 SECTION 22.004. Section 49.278(a), Water Code, as amended
3 by Chapters 248 and 1129, Acts of the 78th Legislature, Regular
4 Session, 2003, is reenacted and amended to read as follows:

5 (a) This subchapter does not apply to:

6 (1) equipment, materials, or machinery purchased by
7 the district at an auction that is open to the public;

8 (2) contracts for personal or professional services or
9 for a utility service operator;

10 (3) contracts made by a district engaged in the
11 distribution and sale of electric energy to the public;

12 (4) contracts for services or property for which there
13 is only one source or for which it is otherwise impracticable to
14 obtain competition;

15 (5) high technology procurements; ~~[or]~~

16 (6) contracts for the purchase of electricity for use
17 by the district; or

18 (7) ~~[(6)]~~ contracts for services related to
19 compliance with a state or federal construction storm water
20 requirement, including acquisition of permits, construction,
21 repair, and removal of temporary erosion control devices, cleaning
22 of silt and debris from streets and storm sewers, monitoring of
23 construction sites, and preparation and filing of all required
24 reports.

25 ARTICLE 23. RENUMBERING

26 SECTION 23.001. The following provisions of enacted codes
27 are renumbered or relettered and appropriate cross-references are

1 changed to eliminate duplicate citations or to relocate misplaced
2 provisions:

3 (1) Section 5.55, Alcoholic Beverage Code, as added by
4 Chapter 101, Acts of the 78th Legislature, Regular Session, 2003,
5 is renumbered as Section 5.56, Alcoholic Beverage Code.

6 (2) Section 20.11, Business & Commerce Code, as added
7 by Chapter 1291, Acts of the 78th Legislature, Regular Session,
8 2003, is renumbered as Section 20.021, Business & Commerce Code.

9 (3) Section 35.58, Business & Commerce Code, as added
10 by Chapter 649, Acts of the 78th Legislature, Regular Session,
11 2003, is renumbered as Section 35.60, Business & Commerce Code.

12 (4) Section 35.58, Business & Commerce Code, as added
13 by Chapter 808, Acts of the 78th Legislature, Regular Session,
14 2003, is renumbered as Section 35.61, Business & Commerce Code.

15 (5) Chapter 46, Business & Commerce Code, as added by
16 Chapter 402, Acts of the 78th Legislature, Regular Session, 2003,
17 is renumbered as Chapter 47, Business & Commerce Code, and Sections
18 46.001, 46.002, 46.003, and 46.004, Business & Commerce Code, as
19 added by that Act, are renumbered as Sections 47.001, 47.002,
20 47.003, and 47.004, Business & Commerce Code, respectively.

21 (6) Subsection (d), Section 33.012, Civil Practice and
22 Remedies Code, as added by Chapter 136, Acts of the 74th
23 Legislature, Regular Session, 1995, is relettered as Subsection
24 (e), Section 33.012, Civil Practice and Remedies Code.

25 (7) Article 13.28, Code of Criminal Procedure, as
26 added by Chapter 415, Acts of the 78th Legislature, Regular
27 Session, 2003, is renumbered as Article 13.29, Code of Criminal

1 Procedure.

2 (8) Article 38.39, Code of Criminal Procedure, as
3 added by Chapter 2, Acts of the 77th Legislature, Regular Session,
4 2001, is renumbered as Article 38.43, Code of Criminal Procedure.

5 (9) Section 7.027, Education Code, as added by Chapter
6 201, Acts of the 78th Legislature, Regular Session, 2003, is
7 renumbered as Section 7.028, Education Code.

8 (10) Section 11.064, Education Code, as added by
9 Chapter 344, Acts of the 78th Legislature, Regular Session, 2003,
10 is renumbered as Section 11.065, Education Code.

11 (11) Section 12.131, Education Code, as added by
12 Chapter 193, Acts of the 78th Legislature, Regular Session, 2003,
13 is renumbered as Section 12.132, Education Code.

14 (12) Section 21.413, Education Code, as added by
15 Chapters 201 and 263, Acts of the 78th Legislature, Regular
16 Session, 2003, is renumbered as Section 21.414, Education Code.

17 (13) Section 21.456, Education Code, as added by
18 Chapter 1212, Acts of the 78th Legislature, Regular Session, 2003,
19 is renumbered as Section 21.457, Education Code.

20 (14) Section 28.0212, Education Code, as added by
21 Chapter 194, Acts of the 78th Legislature, Regular Session, 2003,
22 is renumbered as Section 28.0214, Education Code.

23 (14-a) Section 29.089, Education Code, as added by
24 Chapter 430, Acts of the 78th Legislature, Regular Session, 2003,
25 is renumbered as Section 29.090, Education Code.

26 (15) Subchapter D, Chapter 32, Education Code, as
27 added by Chapter 188, Acts of the 78th Legislature, Regular

1 Session, 2003, is relettered as Subchapter E, Chapter 32, Education
2 Code, and Sections 32.151 and 32.152, Education Code, as added by
3 that Act, are renumbered as Sections 32.201 and 32.202, Education
4 Code, respectively.

5 (16) Section 37.021, Education Code, as added by
6 Chapter 631, Acts of the 78th Legislature, Regular Session, 2003,
7 is renumbered as Section 37.022, Education Code.

8 (17) Subsection (c-1), Section 42.152, Education
9 Code, as added by Chapter 783, Acts of the 78th Legislature, Regular
10 Session, 2003, is relettered as Subsection (c-2), Section 42.152,
11 Education Code.

12 (18) Section 43.020, Education Code, as added by
13 Chapter 1270, Acts of the 78th Legislature, Regular Session, 2003,
14 is renumbered as Section 43.021, Education Code.

15 (19) Section 55.1741, Education Code, as added by
16 Chapter 1188, Acts of the 78th Legislature, Regular Session, 2003,
17 is renumbered as Section 55.17411, Education Code.

18 (20) Section 56.3575, Education Code, as added by
19 Chapter 728, Acts of the 78th Legislature, Regular Session, 2003,
20 is renumbered as Section 56.4075, Education Code.

21 (21) Section 61.0816, Education Code, as added by
22 Chapter 1200, Acts of the 78th Legislature, Regular Session, 2003,
23 is renumbered as Section 61.0817, Education Code.

24 (22) Section 61.955, Education Code, as added by
25 Chapter 820, Acts of the 78th Legislature, Regular Session, 2003,
26 is renumbered as Section 61.9705, Education Code.

27 (23) Subsection (e), Section 84.032, Election Code, as

1 added by Chapter 393, Acts of the 78th Legislature, Regular
2 Session, 2003, is relettered as Subsection (f), Section 84.032,
3 Election Code.

4 (24) Section 6.410, Family Code, as added by Chapter
5 1314, Acts of the 78th Legislature, Regular Session, 2003, is
6 renumbered as Section 6.411, Family Code.

7 (25) Section 264.113, Family Code, as added by Chapter
8 234, Acts of the 78th Legislature, Regular Session, 2003, is
9 renumbered as Section 264.115, Family Code.

10 (26) Section 15.413, Finance Code, as added by Chapter
11 533, Acts of the 78th Legislature, Regular Session, 2003, is
12 renumbered as Section 15.415, Finance Code.

13 (27) Subchapter V, Chapter 54, Government Code, as
14 added by Chapter 137, Acts of the 78th Legislature, Regular
15 Session, 2003, is relettered as Subchapter W, Chapter 54,
16 Government Code, and Sections 54.1151, 54.1152, 54.1153, 54.1154,
17 54.1155, and 54.1156, Government Code, as added by that Act, are
18 renumbered as Sections 54.1171, 54.1172, 54.1173, 54.1174,
19 54.1175, and 54.1176, Government Code, respectively.

20 (28) Subchapter W, Chapter 54, Government Code, as
21 added by Chapter 42, Acts of the 78th Legislature, Regular Session,
22 2003, is relettered as Subchapter Y, Chapter 54, Government Code,
23 and Sections 54.1151, 54.1152, 54.1153, 54.1154, 54.1155, 54.1156,
24 and 54.1157, Government Code, as added by that Act, are renumbered
25 as Sections 54.1231, 54.1232, 54.1233, 54.1234, 54.1235, 54.1236,
26 and 54.1237, Government Code, respectively.

27 (29) Section 411.1181, Government Code, as added by

1 Chapter 1237, Acts of the 78th Legislature, Regular Session, 2003,
2 is renumbered as Section 411.1182, Government Code.

3 (30) Section 431.017, Government Code, as added by
4 Chapter 949, Acts of the 78th Legislature, Regular Session, 2003,
5 is renumbered as Section 431.018, Government Code.

6 (31) Subsection (k), Section 441.203, Government
7 Code, as added by Chapter 785, Acts of the 78th Legislature, Regular
8 Session, 2003, is relettered as Subsection (l), Section 441.203,
9 Government Code.

10 (32) Section 531.0224, Government Code, as added by
11 Chapter 358, Acts of the 78th Legislature, Regular Session, 2003,
12 is renumbered as Section 531.0225, Government Code.

13 (33) Section 531.063, Government Code, as added by
14 Chapter 613, Acts of the 78th Legislature, Regular Session, 2003,
15 is renumbered as Section 531.064, Government Code.

16 (34) Section 552.141, Government Code, as added by
17 Chapter 804, Acts of the 78th Legislature, Regular Session, 2003,
18 is renumbered as Section 552.143, Government Code.

19 (35) Section 552.141, Government Code, as added by
20 Chapter 1215, Acts of the 78th Legislature, Regular Session, 2003,
21 is renumbered as Section 552.144, Government Code.

22 (36) Section 659.262, Government Code, as added by
23 Chapter 1310, Acts of the 78th Legislature, Regular Session, 2003,
24 is renumbered as Section 659.263, Government Code.

25 (37) Subsection (h), Section 1372.0231, Government
26 Code, as added by Chapter 1329, Acts of the 78th Legislature,
27 Regular Session, 2003, is relettered as Subsection (j), Section

1 1372.0231, Government Code.

2 (38) Section 2054.255, Government Code, as added by
3 Chapters 514 and 816, Acts of the 78th Legislature, Regular
4 Session, 2003, is renumbered as Section 2054.355, Government Code.

5 (39) Section 2054.256, Government Code, as added by
6 Chapters 514 and 816, Acts of the 78th Legislature, Regular
7 Session, 2003, is renumbered as Section 2054.356, Government Code.

8 (40) Subsection (f), Section 2171.055, Government
9 Code, as added by Chapter 501, Acts of the 78th Legislature, Regular
10 Session, 2003, is relettered as Subsection (g), Section 2171.055,
11 Government Code.

12 (41) Subsection (c), Section 2175.061, Government
13 Code, as added by Chapter 309, Acts of the 78th Legislature, Regular
14 Session, 2003, is relettered as Subsection (d), Section 2175.061,
15 Government Code.

16 (42) Section 2306.563, Government Code, as added by
17 Chapter 1050, Acts of the 78th Legislature, Regular Session, 2003,
18 is renumbered as Section 2306.5621, Government Code.

19 (43) Chapter 3105, Government Code, as added by
20 Chapter 614, Acts of the 78th Legislature, Regular Session, 2003,
21 is renumbered as Chapter 3106, Government Code, and Sections
22 3105.001, 3105.002, 3105.003, 3105.004, 3105.005, 3105.006, and
23 3105.007, Government Code, as added by that Act, are renumbered as
24 Sections 3106.001, 3106.002, 3106.003, 3106.004, 3106.005,
25 3106.006, and 3106.007, Government Code, respectively.

26 (44) Section 161.010, Health and Safety Code, as added
27 by Chapter 844, Acts of the 78th Legislature, Regular Session,

1 2003, is renumbered as Section 161.0101, Health and Safety Code.

2 (45) Subchapter R, Chapter 161, Health and Safety
3 Code, as added by Chapter 926, Acts of the 78th Legislature, Regular
4 Session, 2003, is relettered as Subchapter S, Chapter 161, Health
5 and Safety Code, and Sections 161.451 and 161.452, Health and
6 Safety Code, as added by that Act, are renumbered as Sections
7 161.471 and 161.472, Health and Safety Code, respectively.

8 (46) Subchapter R, Chapter 161, Health and Safety
9 Code, as added by Chapter 1011, Acts of the 78th Legislature,
10 Regular Session, 2003, is relettered as Subchapter T, Chapter 161,
11 Health and Safety Code, and Sections 161.451 and 161.452, Health
12 and Safety Code, as added by that Act, are renumbered as Sections
13 161.501 and 161.502, Health and Safety Code, respectively.

14 (47) Subchapter I, Chapter 242, Health and Safety
15 Code, as added by Chapter 189, Acts of the 74th Legislature, Regular
16 Session, 1995, and as redesignated by Chapters 165 and 530, Acts of
17 the 75th Legislature, Regular Session, 1997, is redesignated as
18 Subchapter H-1, Chapter 242, Health and Safety Code.

19 (48) Section 281.106, Health and Safety Code, as added
20 by Chapter 55, Acts of the 78th Legislature, Regular Session, 2003,
21 is renumbered as Section 281.107, Health and Safety Code.

22 (49) Subchapter M, Chapter 285, Health and Safety
23 Code, as added by Chapter 272, Acts of the 78th Legislature, Regular
24 Session, 2003, is relettered as Subchapter N, Chapter 285, Health
25 and Safety Code, and Sections 285.201 and 285.202, Health and
26 Safety Code, as added by that Act, are renumbered as Sections
27 285.231 and 285.232, Health and Safety Code, respectively.

1 (50) Section 388.009, Health and Safety Code, as added
2 by Chapter 1148, Acts of the 78th Legislature, Regular Session,
3 2003, is renumbered as Section 388.011, Health and Safety Code.

4 (51) Subdivision (6), Section 431.221, Health and
5 Safety Code, as added by Chapter 383, Acts of the 78th Legislature,
6 Regular Session, 2003, is renumbered as Subdivision (7), Section
7 431.221, Health and Safety Code.

8 (52) Section 533.0354, Health and Safety Code, as
9 added by Chapter 358, Acts of the 78th Legislature, Regular
10 Session, 2003, is renumbered as Section 533.0352, Health and Safety
11 Code.

12 (53) Subchapter G, Chapter 756, Health and Safety
13 Code, as added by Chapter 1082, Acts of the 78th Legislature,
14 Regular Session, 2003, is relettered as Subchapter H, Chapter 756,
15 Health and Safety Code, and Sections 756.101, 756.102, and 756.103,
16 Health and Safety Code, as added by that Act, are renumbered as
17 Sections 756.121, 756.122, and 756.123, Health and Safety Code,
18 respectively.

19 (54) Subsection (e), Section 22.001, Human Resources
20 Code, as added by Chapter 162, Acts of the 78th Legislature, Regular
21 Session, 2003, is relettered as Subsection (f), Section 22.001,
22 Human Resources Code.

23 (55) Section 22.040, Human Resources Code, as added by
24 Chapter 198, Acts of the 78th Legislature, Regular Session, 2003,
25 is renumbered as Section 22.041, Human Resources Code.

26 (56) Section 31.015, Human Resources Code, as added by
27 Chapter 1169, Acts of the 78th Legislature, Regular Session, 2003,

1 is renumbered as Section 31.016, Human Resources Code.

2 (57) Subsection (z), Section 32.024, Human Resources
3 Code, as added by Chapter 215, Acts of the 78th Legislature, Regular
4 Session, 2003, is relettered as Subsection (aa), Section 32.024,
5 Human Resources Code.

6 (58) Section 32.0462, Human Resources Code, as added
7 by Chapter 198, Acts of the 78th Legislature, Regular Session,
8 2003, is renumbered as Section 32.0463, Human Resources Code.

9 (59) Section 32.059, Human Resources Code, as added by
10 Chapter 208, Acts of the 78th Legislature, Regular Session, 2003,
11 is renumbered as Section 32.057, Human Resources Code.

12 (60) Section 843.319, Insurance Code, as added by
13 Chapter 214, Acts of the 78th Legislature, Regular Session, 2003,
14 is renumbered as Section 843.321, Insurance Code.

15 (61) Section 1551.219, Insurance Code, as added by
16 Chapter 589, Acts of the 78th Legislature, Regular Session, 2003,
17 is renumbered as Section 1551.220, Insurance Code.

18 (62) Section 1575.162, Insurance Code, as added by
19 Chapter 589, Acts of the 78th Legislature, Regular Session, 2003,
20 is renumbered as Section 1575.164, Insurance Code.

21 (63) Subchapter I, Chapter 301, Labor Code, as added
22 by Chapter 817, Acts of the 78th Legislature, Regular Session,
23 2003, is relettered as Subchapter J, Chapter 301, Labor Code, and
24 Section 301.151, Labor Code, as added by that Act, is renumbered as
25 Section 301.171, Labor Code.

26 (64) Subsection (d), Section 152.032, Local
27 Government Code, as added by Chapter 581, Acts of the 78th

1 Legislature, Regular Session, 2003, is relettered as Subsection
2 (e), Section 152.032, Local Government Code.

3 (65) Subsection (a-1), Section 152.074, Local
4 Government Code, as added by Chapter 1225, Acts of the 78th
5 Legislature, Regular Session, 2003, is relettered as Subsection
6 (a-2), Section 152.074, Local Government Code.

7 (66) Section 211.016, Local Government Code, as added
8 by Chapter 279, Acts of the 78th Legislature, Regular Session,
9 2003, is renumbered as Section 211.017, Local Government Code.

10 (67) Section 378.0045, Local Government Code, as added
11 by Chapter 1116, Acts of the 78th Legislature, Regular Session,
12 2003, is renumbered as Section 379B.0045, Local Government Code.

13 (68) Chapter 58, Occupations Code, as added by Chapter
14 1420, Acts of the 77th Legislature, Regular Session, 2001, and as
15 renumbered by Chapter 1275, Acts of the 78th Legislature, Regular
16 Session, 2003, is renumbered as Chapter 59, Occupations Code, and
17 Section 58.001, Occupations Code, as added and renumbered by those
18 Acts, is renumbered as Section 59.001, Occupations Code.

19 (69) Chapter 107, Occupations Code, as added by
20 Chapter 1274, Acts of the 78th Legislature, Regular Session, 2003,
21 is renumbered as Chapter 111, Occupations Code, and Sections
22 107.001, 107.002, 107.003, and 107.004, Occupations Code, as added
23 by that Act, are renumbered as Sections 111.001, 111.002, 111.003,
24 and 111.004, Occupations Code, respectively.

25 (70) Section 254.013, Occupations Code, as added by
26 Chapter 17, Acts of the 78th Legislature, Regular Session, 2003, is
27 renumbered as Section 254.015, Occupations Code.

1 (71) Section 254.013, Occupations Code, as added by
2 Chapter 1163, Acts of the 78th Legislature, Regular Session, 2003,
3 is renumbered as Section 254.016, Occupations Code.

4 (72) Section 254.014, Occupations Code, as added by
5 Chapter 1163, Acts of the 78th Legislature, Regular Session, 2003,
6 is renumbered as Section 254.017, Occupations Code.

7 (73) Subsection (c), Section 301.351, Occupations
8 Code, as added by Chapter 876, Acts of the 78th Legislature, Regular
9 Session, 2003, is relettered as Subsection (d), Section 301.351,
10 Occupations Code.

11 (74) Subsection (d), Section 801.361, Occupations
12 Code, as added by Chapter 806, Acts of the 78th Legislature, Regular
13 Session, 2003, is relettered as Subsection (e), Section 801.361,
14 Occupations Code.

15 (75) Chapter 953, Occupations Code, as added by
16 Chapter 696, Acts of the 78th Legislature, Regular Session, 2003,
17 is renumbered as Chapter 954, Occupations Code, and Section
18 953.001, Occupations Code, as added by that Act, is renumbered as
19 Section 954.001, Occupations Code.

20 (76) Chapter 2306, Occupations Code, as added by
21 Chapter 1045, Acts of the 78th Legislature, Regular Session, 2003,
22 is renumbered as Chapter 2307, Occupations Code, and Sections
23 2306.001, 2306.002, 2306.003, 2306.004, 2306.005, 2306.006,
24 2306.007, 2306.008, 2306.009, 2306.010, and 2306.011, Occupations
25 Code, as added by that Act, are renumbered as Sections 2307.001,
26 2307.002, 2307.003, 2307.004, 2307.005, 2307.006, 2307.007,
27 2307.008, 2307.009, 2307.010, and 2307.011, Occupations Code,

1 respectively.

2 (77) Subsection (d), Section 32.45, Penal Code, as
3 added by Chapters 198 and 257, Acts of the 78th Legislature, Regular
4 Session, 2003, is relettered as Subsection (e), Section 32.45,
5 Penal Code.

6 (78) Subsection (g), Section 46.15, Penal Code, as
7 added by Chapter 421, Acts of the 78th Legislature, Regular
8 Session, 2003, is relettered as Subsection (h), Section 46.15,
9 Penal Code.

10 (79) Subsection (f), Section 55.004, Property Code, as
11 added by Chapter 1266, Acts of the 78th Legislature, Regular
12 Session, 2003, is relettered as Subsection (h), Section 55.004,
13 Property Code.

14 (80) Subsections (h) and (i), Section 11.20, Tax Code,
15 as added by Chapter 1052, Acts of the 78th Legislature, Regular
16 Session, 2003, are relettered as Subsections (j) and (k), Section
17 11.20, Tax Code, respectively.

18 (81) Subsection (m), Section 23.55, Tax Code, as added
19 by Chapter 288, Acts of the 78th Legislature, Regular Session,
20 2003, is relettered as Subsection (o), Section 23.55, Tax Code.

21 (82) Subsection (g), Section 312.204, Tax Code, as
22 added by Chapter 978, Acts of the 78th Legislature, Regular
23 Session, 2003, is relettered as Subsection (h), Section 312.204,
24 Tax Code.

25 (83) Subsection (l), Section 321.203, Tax Code, as
26 added by Chapter 1155, Acts of the 78th Legislature, Regular
27 Session, 2003, is relettered as Subsection (m), Section 321.203,

1 Tax Code.

2 (84) Section 225.057, Transportation Code, as added by
3 Chapter 45, Acts of the 78th Legislature, Regular Session, 2003, is
4 renumbered as Section 225.056, Transportation Code.

5 (85) Subsection (i), Section 644.153, Transportation
6 Code, as added by Chapter 1325, Acts of the 78th Legislature,
7 Regular Session, 2003, is relettered as Subsection (u), Section
8 644.153, Transportation Code.

9 (86) Subchapter O, Chapter 60, Water Code, as added by
10 Chapter 249, Acts of the 78th Legislature, Regular Session, 2003,
11 is relettered as Subchapter P, Chapter 60, Water Code, and Sections
12 60.451 and 60.452, Water Code, as added by that Act, are renumbered
13 as Sections 60.481 and 60.482, Water Code, respectively.

14 SECTION 23.002. The following reference changes are made to
15 conform the provisions amended to the renumbering changes made by
16 Section 23.001 of this Act:

17 (1) Subsection (g), Article 18.18, Code of Criminal
18 Procedure, is amended to read as follows:

19 (g) For purposes of this article:

20 (1) "criminal instrument" has the meaning defined in
21 the Penal Code;

22 (2) "gambling device or equipment, altered gambling
23 equipment or gambling paraphernalia" has the meaning defined in the
24 Penal Code;

25 (3) "prohibited weapon" has the meaning defined in the
26 Penal Code;

27 (4) "dog-fighting equipment" means:

1 (A) equipment used for training or handling a
2 fighting dog, including a harness, treadmill, cage, decoy, pen,
3 house for keeping a fighting dog, feeding apparatus, or training
4 pen;

5 (B) equipment used for transporting a fighting
6 dog, including any automobile, or other vehicle, and its
7 appurtenances which are intended to be used as a vehicle for
8 transporting a fighting dog;

9 (C) equipment used to promote or advertise an
10 exhibition of dog fighting, including a printing press or similar
11 equipment, paper, ink, or photography equipment; or

12 (D) a dog trained, being trained, or intended to
13 be used to fight with another dog;

14 (5) "obscene device" and "obscene" have the meanings
15 assigned by Section 43.21, Penal Code; ~~[-]~~

16 (6) "re-encoder" has the meaning assigned by Section
17 35.60 [~~35.58~~], Business & Commerce Code; and

18 (7) "scanning device" has the meaning assigned by
19 Section 35.60 [~~35.58~~], Business & Commerce Code.

20 (2) Subsection (a), Section 47.003, Business &
21 Commerce Code, as renumbered from Section 46.003, Business &
22 Commerce Code, by this article, is amended to read as follows:

23 (a) The attorney general or the appropriate district or
24 county attorney, in the name of the state, may bring an action for
25 an injunction or other process against a person who is violating or
26 threatening to violate Section 47.002 [~~46.002~~]. The action may be
27 brought in a district court of Travis County or of a county in which

1 any part of the violation or threatened violation occurs.

2 (3) Subsections (a) and (b), Section 47.004, Business
3 & Commerce Code, as renumbered from Section 46.004, Business &
4 Commerce Code, by this article, are amended to read as follows:

5 (a) A sex offender commits an offense if the offender
6 violates Section 47.002(a) [~~46.002(a)~~].

7 (b) A sexually oriented business commits an offense if the
8 business violates Section 47.002(b) [~~46.002(b)~~].

9 (4) Subsection (a), Section 56.4075, Education Code,
10 as renumbered from Section 56.3575, Education Code, by this
11 article, is amended to read as follows:

12 (a) The coordinating board may award a grant in an amount
13 not more than three times the amount that may be awarded under
14 Section 56.407 [~~56.357, as added by Chapter 624, Acts of the 77th~~
15 ~~Legislature, Regular Session, 2001,~~] to a student who:

16 (1) is enrolled in a program that fulfills the
17 educational requirements for licensure or certification by the
18 state in a health care profession that the coordinating board, in
19 consultation with the Texas Workforce Commission and the statewide
20 health coordinating council, has identified as having a critical
21 shortage in the number of license holders needed in this state;

22 (2) has completed at least one-half of the work toward
23 a degree or certificate that fulfills the educational requirement
24 for licensure or certification; and

25 (3) meets all the requirements to receive a grant
26 award under Section 56.407 [~~56.357, as added by Chapter 624, Acts of~~
27 ~~the 77th Legislature, Regular Session, 2001]~~.

1 (5) Subsection (b), Section 54.1232, Government Code,
2 as renumbered from Section 54.1152, Government Code, by this
3 article, is amended to read as follows:

4 (b) A magistrate appointed under Section 54.1231 [~~54.1151~~]
5 must take the constitutional oath of office required of appointed
6 officers of this state.

7 (6) Section 1372.0222, Government Code, is amended to
8 read as follows:

9 Sec. 1372.0222. DEDICATION OF PORTION OF STATE CEILING FOR
10 FIRE FIGHTER AND POLICE OFFICER HOME LOAN PROGRAM. Until August 1,
11 out of that portion of the state ceiling that is available
12 exclusively for reservations by issuers of qualified mortgage bonds
13 under Section 1372.022, \$25 million shall be allotted each year and
14 made available exclusively to the Texas State Affordable Housing
15 Corporation for the purpose of issuing qualified mortgage bonds in
16 connection with the fire fighter and police officer home loan
17 program established under Section 2306.5621 [~~2306.563~~].

18 (7) Subsection (a), Section 2306.553, Government
19 Code, is amended to read as follows:

20 (a) The public purpose of the corporation is to perform
21 activities and services that the corporation's board of directors
22 determines will promote the public health, safety, and welfare
23 through the provision of adequate, safe, and sanitary housing
24 primarily for individuals and families of low, very low, and
25 extremely low income, for professional educators under the
26 professional educators home loan program as provided by Section
27 2306.562, and for fire fighters and police officers under the fire

1 fighter and police officer home loan program as provided by Section
2 2306.5621 [~~2306.563~~]. The activities and services shall include
3 engaging in mortgage banking activities and lending transactions
4 and acquiring, holding, selling, or leasing real or personal
5 property.

6 (8) Section 161.452, Health and Safety Code, as added
7 by Chapter 1011, Acts of the 78th Legislature, Regular Session,
8 2003, is renumbered as Section 161.502, Health and Safety Code, as
9 provided by this article, and amended to read as follows:

10 Sec. 161.502 [~~161.452~~]. DUTIES OF DEPARTMENT. The
11 department shall:

12 (1) establish guidelines for the provision of the
13 information required by Section 161.501 [~~161.451~~];

14 (2) make available on the department's website a
15 printable list of professional organizations that provide
16 postpartum counseling and assistance to parents; and

17 (3) update the list required under Subdivision (2)
18 monthly.

19 (9) Article 21.30, Insurance Code, is amended to read
20 as follows:

21 Art. 21.30. WAIVER OF CERTAIN PROVISIONS FOR CERTAIN
22 FEDERAL PLANS. If the commissioner of insurance, in consultation
23 with the commissioner of health and human services, determines that
24 a provision of Section 3A, 3C-3J, or 10-12, Article 3.70-3C of this
25 code, as added by Chapter 1024, Acts of the 75th Legislature,
26 Regular Session, 1997, Section 843.209 or 843.321 [~~843.319~~] of this
27 code, Subchapter J, Chapter 843 of this code, or Article 21.52Z of

1 this code will cause a negative fiscal impact on the state with
2 respect to providing benefits or services under Subchapter XIX,
3 Social Security Act (42 U.S.C. Section 1396 et seq.), as amended, or
4 Subchapter XXI, Social Security Act (42 U.S.C. Section 1397aa et
5 seq.), as amended, the commissioner of insurance by rule shall
6 waive the application of that provision to the providing of those
7 benefits or services.

8 (10) Section 1455.005, Insurance Code, is amended to
9 read as follows:

10 Sec. 1455.005. RULES. Subject to Section 111.004
11 [~~107.004~~], Occupations Code, the commissioner may adopt rules
12 necessary to implement this chapter.

13 (11) Subsection (a), Section 152.032, Local
14 Government Code, is amended to read as follows:

15 (a) Except as provided by Subsections (b), ~~[and]~~ (d), and
16 (e), the amount of the compensation and allowances of a county
17 auditor may not exceed the amount of the compensation and
18 allowances received from all sources by the highest paid elected
19 county officer, other than a judge of a statutory county court,
20 whose salary and allowances are set by the commissioners court.

21 SECTION 23.003. If the number, letter, or designation
22 assigned by Section 23.001 of this Act conflicts with a number,
23 letter, or designation assigned by another Act of the 79th
24 Legislature:

25 (1) the other Act controls, and the change made by
26 Section 23.001 of this Act has no effect; and

27 (2) any cross-reference change made by Section 23.002

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1 of this Act to conform to that change made by Section 23.001 of this
2 Act has no effect.

3 ARTICLE 24. EFFECTIVE DATE

4 SECTION 24.001. This Act takes effect September 1, 2005.