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S.B. No. 1028

A BILL TO BE ENTITLED

1 AN ACT

2 relating to a nonsubstantive revision of statutes relating to the
3 Texas Department of Insurance, the business of insurance, and
4 certain related businesses, including conforming amendments,
5 repeals, and penalties.

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

7 SECTION 1. TITLE 4, INSURANCE CODE. The Insurance Code is
8 amended by adding Title 4 to read as follows:

9 TITLE 4. REGULATION OF SOLVENCY

10 SUBTITLE A. GENERAL PROVISIONS

11 CHAPTER 401. AUDITS AND EXAMINATIONS

12 CHAPTER 402. DISCLOSURE OF MATERIAL TRANSACTIONS

13 CHAPTER 403. DIVIDENDS

14 CHAPTER 404. FINANCIAL CONDITION

15 [Chapters 405-420 reserved for expansion]

16 SUBTITLE B. RESERVES AND INVESTMENTS

17 CHAPTER 421. RESERVES IN GENERAL

18 CHAPTER 422. ASSET PROTECTION ACT

19 CHAPTER 423. TRANSACTIONS WITH MONEY AND OTHER ASSETS

20 CHAPTER 424. INVESTMENTS FOR CERTAIN INSURERS

21 CHAPTER 425. RESERVES AND INVESTMENTS FOR LIFE

22 INSURANCE COMPANIES AND RELATED ENTITIES

23 CHAPTER 426. RESERVES FOR WORKERS' COMPENSATION

24 INSURANCE COMPANIES

1 CHAPTER 427. SUBORDINATED INDEBTEDNESS
2 [Chapters 428-440 reserved for expansion]
3 SUBTITLE C. DELINQUENT INSURERS
4 CHAPTER 441. SUPERVISION AND CONSERVATORSHIP
5 CHAPTER 442. LIQUIDATION, REHABILITATION, REORGANIZATION,
6 OR CONSERVATION OF INSURERS
7 [Chapters 443-460 reserved for expansion]
8 SUBTITLE D. GUARANTY ASSOCIATIONS
9 CHAPTER 461. GENERAL PROVISIONS
10 CHAPTER 462. TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY
11 ASSOCIATION
12 CHAPTER 463. LIFE, ACCIDENT, HEALTH, AND HOSPITAL SERVICE
13 INSURANCE GUARANTY ASSOCIATION
14 [Chapters 464-480 reserved for expansion]
15 SUBTITLE E. REQUIREMENTS OF OTHER JURISDICTIONS
16 CHAPTER 481. VOLUNTARY DEPOSITS
17 [Chapters 482-490 reserved for expansion]
18 SUBTITLE F. REINSURANCE
19 CHAPTER 491. GENERAL REINSURANCE REQUIREMENTS
20 CHAPTER 492. REINSURANCE FOR LIFE, HEALTH, AND ACCIDENT
21 INSURANCE COMPANIES AND RELATED ENTITIES
22 CHAPTER 493. REINSURANCE FOR PROPERTY AND CASUALTY INSURERS
23 CHAPTER 494. REINSURANCE OF AIRCRAFT AND SPACE
24 EQUIPMENT RISKS

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6 CHAPTER 401. AUDITS AND EXAMINATIONS

7 SUBCHAPTER A. INDEPENDENT AUDIT OF FINANCIAL STATEMENTS

8 Sec. 401.001. DEFINITIONS. In this subchapter:

9 (1) "Accountant" means an independent certified
10 public accountant or accounting firm that meets the requirements of
11 Section 401.011.

12 (2) "Affiliate" has the meaning assigned by Section
13 823.003.

14 (3) "Health maintenance organization" means a health
15 maintenance organization authorized to engage in business in this
16 state.

17 (4) "Insurer" means an insurer authorized to engage in
18 business in this state, including:

19 (A) a life, health, or accident insurance
20 company;

21 (B) a fire and marine insurance company;

22 (C) a general casualty company;

23 (D) a title insurance company;

24 (E) a fraternal benefit society;

25 (F) a mutual life insurance company;

26 (G) a local mutual aid association;

27 (H) a statewide mutual assessment company;

1 (I) a mutual insurance company other than a
2 mutual life insurance company;

3 (J) a farm mutual insurance company;

4 (K) a county mutual insurance company;

5 (L) a Lloyd's plan;

6 (M) a reciprocal or interinsurance exchange;

7 (N) a group hospital service corporation;

8 (O) a stipulated premium company; and

9 (P) a nonprofit legal services corporation.

10 (5) "Subsidiary" has the meaning assigned by Section
11 823.003. (V.T.I.C. Art. 1.15A, Secs. 3(1), (2), (5), (6).)

12 Sec. 401.002. PURPOSE OF SUBCHAPTER. The purpose of this
13 subchapter is to require an annual audit by an independent
14 certified public accountant of the financial statements reporting
15 the financial condition and the results of operations of each
16 insurer or health maintenance organization. (V.T.I.C. Art. 1.15A,
17 Sec. 1.)

18 Sec. 401.003. EFFECT OF SUBCHAPTER ON AUTHORITY TO EXAMINE.
19 This subchapter does not limit the commissioner's authority to
20 order or the department's authority to conduct an examination of an
21 insurer or health maintenance organization under this code or the
22 commissioner's rules. (V.T.I.C. Art. 1.15A, Sec. 8.)

23 Sec. 401.004. FILING AND EXTENSIONS FOR FILING OF AUDITED
24 FINANCIAL REPORT. (a) Unless exempt under Section 401.006,
25 401.007, or 401.008 and except as otherwise provided by Sections
26 401.005 and 401.016, an insurer or health maintenance organization
27 shall:

1 (1) have an annual audit performed by an accountant;
2 and

3 (2) file with the commissioner on or before June 30 an
4 audited financial report for the preceding calendar year.

5 (b) The commissioner may require an insurer or health
6 maintenance organization to file an audited financial report on a
7 date that precedes June 30. The commissioner must notify the
8 insurer or health maintenance organization of the filing date not
9 later than the 90th day before that date.

10 (c) An insurer or health maintenance organization may
11 request an extension of the filing date by submitting the request in
12 writing before the 10th day preceding the filing date. The request
13 must include sufficient detail for the commissioner to make an
14 informed decision on the requested extension. The commissioner may
15 extend the filing date for one or more 30-day periods if the
16 commissioner determines that there is good cause for the extension
17 based on a showing by the insurer or health maintenance
18 organization and the insurer's or health maintenance organization's
19 accountant of the reasons for requesting the extension. (V.T.I.C.
20 Art. 1.15A, Secs. 2, 9(a), (b), (c).)

21 Sec. 401.005. ALTERNATIVE FILING FOR CANADIAN OR BRITISH
22 INSURERS OR HEALTH MAINTENANCE ORGANIZATIONS. (a) Instead of the
23 audited financial report required by Section 401.004, an insurer or
24 health maintenance organization domiciled in Canada or the United
25 Kingdom may file the insurer's or health maintenance organization's
26 annual statement of total business on the form filed by the insurer
27 or health maintenance organization with the appropriate regulatory

1 authority in the country of domicile. The statement must be audited
2 by an independent accountant chartered in the country of domicile.

3 (b) The chartered accountant must be registered with the
4 commissioner under Section 401.014(a). The registration must be
5 accompanied by a statement, signed by the accountant, indicating
6 that the accountant is aware of the requirements of this subchapter
7 and affirming that the accountant will express the accountant's
8 opinion in conformity with those requirements. (V.T.I.C. Art.
9 1.15A, Sec. 10A.)

10 Sec. 401.006. EXEMPTION FOR CERTAIN SMALL INSURERS AND
11 HEALTH MAINTENANCE ORGANIZATIONS. (a) An insurer or health
12 maintenance organization that has less than \$1 million in direct
13 premiums written in this state during a calendar year is exempt from
14 the requirement to file an audited financial report if the insurer
15 or health maintenance organization submits an affidavit, made under
16 oath by one of the insurer's or health maintenance organization's
17 officers, that specifies the amount of direct premiums written in
18 this state during that period.

19 (b) Notwithstanding Subsection (a), the commissioner may
20 require an insurer or health maintenance organization, other than a
21 fraternal benefit society that does not have any direct premiums
22 written in this state for accident and health insurance during a
23 calendar year, to comply with this subchapter if the commissioner
24 finds that the insurer's or health maintenance organization's
25 compliance is necessary for the commissioner to fulfill the
26 commissioner's statutory responsibilities.

27 (c) An insurer or health maintenance organization that has

1 assumed premiums of at least \$1 million under reinsurance
2 agreements is not exempt under Subsection (a). (V.T.I.C. Art.
3 1.15A, Sec. 4.)

4 Sec. 401.007. EXEMPTION FOR CERTAIN FOREIGN OR ALIEN
5 INSURERS OR HEALTH MAINTENANCE ORGANIZATIONS. (a) A foreign or
6 alien insurer or health maintenance organization that files an
7 audited financial report in another state in accordance with that
8 state's requirements for audited financial reports may be exempt
9 from filing a report under this subchapter if the commissioner
10 finds that the other state's requirements are substantially similar
11 to the requirements prescribed by this subchapter.

12 (b) An insurer or health maintenance organization exempt
13 under this section shall file with the commissioner a copy of:

14 (1) the audited financial report, the report on
15 significant deficiencies in internal controls, and the
16 accountant's letter of qualifications filed with the other state;
17 and

18 (2) any notification of adverse financial conditions
19 report filed with the other state.

20 (c) The reports and letter required by Subsection (b)(1)
21 must be filed in accordance with the filing dates prescribed by
22 Sections 401.004 and 401.019. The report required by Subsection
23 (b)(2) must be filed in accordance with the filing date prescribed
24 by Section 401.017. (V.T.I.C. Art. 1.15A, Sec. 6.)

25 Sec. 401.008. HARSHIP EXEMPTION. (a) An insurer or health
26 maintenance organization that is not eligible for an exemption
27 under Section 401.006 or 401.007 may apply to the commissioner for a

1 hardship exemption.

2 (b) Subject to Subsection (c), the commissioner may grant an
3 exemption under this section if the commissioner finds, after
4 reviewing the application, that compliance with this subchapter
5 would constitute a severe financial or organizational hardship for
6 the insurer or health maintenance organization. The commissioner
7 may grant the exemption at any time for one or more specified
8 periods.

9 (c) The commissioner may not grant an exemption under this
10 section if:

11 (1) the exemption would diminish the department's
12 ability to monitor the financial condition of the insurer or health
13 maintenance organization; or

14 (2) the insurer or health maintenance organization:

15 (A) during the five-year period preceding the
16 date the application for the exemption is made:

17 (i) has been placed under supervision,
18 conservatorship, or receivership;

19 (ii) has undergone a change in control, as
20 described by Section 823.005; or

21 (iii) has been subject to a significant
22 number of complaints, as determined by the commissioner;

23 (B) has been identified by the department as
24 troubled;

25 (C) has been or is the subject of a disciplinary
26 action by the department; or

27 (D) is not complying with the law or with a rule

1 adopted by the commissioner. (V.T.I.C. Art. 1.15A, Secs. 7(a),
2 (b), (c).)

3 Sec. 401.009. CONTENTS OF AUDITED FINANCIAL REPORT. (a) An
4 audited financial report required under Section 401.004 must:

5 (1) describe the financial condition of the insurer or
6 health maintenance organization as of the end of the most recent
7 calendar year and the results of the insurer's or health
8 maintenance organization's operations, changes in financial
9 position, and changes in capital and surplus for that year;

10 (2) conform to the statutory accounting practices
11 prescribed or otherwise permitted by the insurance regulator in the
12 insurer's or health maintenance organization's state of domicile;
13 and

14 (3) include:

15 (A) the report of an accountant;

16 (B) a balance sheet that reports admitted assets,
17 liabilities, capital, and surplus;

18 (C) a statement of gain or loss from operations;

19 (D) a statement of cash flows;

20 (E) a statement of changes in capital and
21 surplus;

22 (F) any notes to financial statements;

23 (G) supplementary data and information,
24 including any additional data or information required by the
25 commissioner; and

26 (H) information required by the department to
27 conduct the insurer's or health maintenance organization's

1 examination under Subchapter B.

2 (b) The notes to financial statements required by
3 Subsection (a)(3)(F) must include:

4 (1) a reconciliation of any differences between the
5 audited statutory financial statements and the annual statements
6 filed under this code, with a written description of the nature of
7 those differences;

8 (2) any notes required by the appropriate National
9 Association of Insurance Commissioners annual statement
10 instructions or by generally accepted accounting principles; and

11 (3) a summary of the ownership of the insurer or health
12 maintenance organization and that entity's relationship to any
13 affiliated company.

14 (c) An insurer or health maintenance organization required
15 under Section 401.004 to file an audited financial report that does
16 not retain an independent certified public accountant to perform an
17 annual audit for the previous year may not be required to include in
18 the report audited statements of operations, cash flows, or changes
19 in capital and surplus for the first year. The insurer or health
20 maintenance organization must include those statements in the
21 first-year report and label the statements as unaudited. The
22 insurer or health maintenance organization must include in the
23 first-year report all other reports described by Section 401.004.

24 (d) The commissioner shall adopt rules governing the
25 information to be included in the audited financial report under
26 Subsection (a)(3)(H). (V.T.I.C. Art. 1.15A, Secs. 10(a), (b), (c),
27 (e), (f).)

1 Sec. 401.010. REQUIREMENTS FOR FINANCIAL STATEMENTS IN
2 AUDITED FINANCIAL REPORT. (a) An accountant must audit the
3 financial reports provided by an insurer or health maintenance
4 organization for purposes of an audit under this subchapter. The
5 accountant who audits the reports must conduct the audit in
6 accordance with generally accepted auditing standards and must
7 consider other procedures described in the Financial Condition
8 Examiner's Handbook adopted by the National Association of
9 Insurance Commissioners.

10 (b) The financial statements included in the audited
11 financial report must be prepared in a form and using language and
12 groupings substantially the same as those of the relevant sections
13 of the insurer's or health maintenance organization's annual
14 statement filed with the commissioner. Beginning in the second
15 year in which an insurer or health maintenance organization is
16 required to file an audited financial report, the financial
17 statements must also be comparative, presenting the amounts as of
18 December 31 of the reported year and the amounts as of December 31
19 of the preceding year. (V.T.I.C. Art. 1.15A, Secs. 10(d), 14.)

20 Sec. 401.011. QUALIFICATIONS OF ACCOUNTANT; ACCEPTANCE OF
21 AUDITED FINANCIAL REPORT. (a) Except as provided by Subsections
22 (c) and (d), the commissioner shall accept an audited financial
23 report from an independent certified public accountant or
24 accounting firm that:

25 (1) is a member in good standing of the American
26 Institute of Certified Public Accountants and is in good standing
27 with all states in which the accountant or firm is licensed to

1 practice, as applicable; and

2 (2) conforms to the American Institute of Certified
3 Public Accountants Code of Professional Conduct and to the rules of
4 professional conduct and other rules of the Texas State Board of
5 Public Accountancy or a similar code.

6 (b) If the insurer or health maintenance organization is
7 domiciled in Canada, the commissioner shall accept an audited
8 financial report from an accountant chartered in Canada. If the
9 insurer or health maintenance organization is domiciled in Great
10 Britain, the commissioner shall accept an audited financial report
11 from an accountant chartered in Great Britain.

12 (c) A partner or other person responsible for rendering a
13 report for an insurer or health maintenance organization for seven
14 consecutive years may not, during the two-year period after that
15 seventh year, render a report for the insurer or health maintenance
16 organization or for a subsidiary or affiliate of the insurer or
17 health maintenance organization that is engaged in the business of
18 insurance. The commissioner may determine that the limitation
19 provided by this subsection does not apply to an accountant for a
20 particular insurer or health maintenance organization if the
21 insurer or health maintenance organization demonstrates to the
22 satisfaction of the commissioner that the limitation's application
23 to the insurer or health maintenance organization would be unfair
24 because of unusual circumstances. In making the determination, the
25 commissioner may consider:

26 (1) the number of partners or individuals the
27 accountant employs, the expertise of the partners or individuals

1 the accountant employs, or the number of the accountant's insurance
2 clients;

3 (2) the premium volume of the insurer or health
4 maintenance organization; and

5 (3) the number of jurisdictions in which the insurer
6 or health maintenance organization engages in business.

7 (d) The commissioner may not accept an audited financial
8 report prepared wholly or partly by an individual who the
9 commissioner finds:

10 (1) has been convicted of fraud, bribery, a violation
11 of the Racketeer Influenced and Corrupt Organizations Act (18
12 U.S.C. Section 1961 et seq.), or a state or federal criminal offense
13 involving dishonest conduct;

14 (2) has violated the insurance laws of this state with
15 respect to a report filed under this subchapter; or

16 (3) has demonstrated a pattern or practice of failing
17 to detect or disclose material information in reports filed under
18 this subchapter. (V.T.I.C. Art. 1.15A, Secs. 12(a), (b), (c).)

19 Sec. 401.012. HEARING ON ACCOUNTANT QUALIFICATIONS;
20 REPLACEMENT OF ACCOUNTANT. The commissioner may hold a hearing to
21 determine if an accountant is qualified and independent. If, after
22 considering the evidence presented, the commissioner determines
23 that an accountant is not qualified and independent for purposes of
24 expressing an opinion on the financial statements in an audited
25 financial report filed under this subchapter, the commissioner
26 shall issue an order directing the insurer or health maintenance
27 organization to replace the accountant with a qualified and

1 independent accountant. (V.T.I.C. Art. 1.15A, Secs. 12(d), (e).)

2 Sec. 401.013. ACCOUNTANT'S LETTER OF QUALIFICATIONS. (a)

3 The audited financial report required under Section 401.004 must be
4 accompanied by a letter provided by the accountant who performed
5 the audit stating:

6 (1) the accountant's general background and
7 experience;

8 (2) the experience of each individual assigned to
9 prepare the audit in auditing insurers or health maintenance
10 organizations and whether the individual is an independent
11 certified public accountant; and

12 (3) that the accountant:

13 (A) is properly licensed by an appropriate state
14 licensing authority, is a member in good standing of the American
15 Institute of Certified Public Accountants, and is otherwise
16 qualified under Section 401.011;

17 (B) is independent from the insurer or health
18 maintenance organization and conforms to the standards of the
19 profession contained in the American Institute of Certified Public
20 Accountants Code of Professional Conduct, the statements of that
21 institute, and the rules of professional conduct adopted by the
22 Texas State Board of Public Accountancy, or a similar code;

23 (C) understands that:

24 (i) the audited financial report and the
25 accountant's opinion on the report will be filed in compliance with
26 this subchapter; and

27 (ii) the commissioner will rely on the

1 report and opinion in monitoring and regulating the insurer's or
2 health maintenance organization's financial position; and

3 (D) consents to the requirements of Section
4 401.020 and agrees to make the accountant's work papers available
5 for review by the department or the department's designee.

6 (b) Subsection (a)(2) does not prohibit an accountant from
7 using any staff the accountant considers appropriate if use of that
8 staff is consistent with generally accepted auditing standards.
9 (V.T.I.C. Art. 1.15A, Sec. 16A.)

10 Sec. 401.014. REGISTRATION OF ACCOUNTANT. (a) Not later
11 than December 31 of the calendar year to be covered by an audited
12 financial report required by this subchapter, an insurer or health
13 maintenance organization must register in writing with the
14 commissioner the name and address of the accountant retained to
15 prepare the report.

16 (b) The insurer or health maintenance organization must
17 include with the registration a statement signed by the accountant:

18 (1) indicating that the accountant is aware of the
19 requirements of this subchapter and of the rules of the insurance
20 department of the insurer's or health maintenance organization's
21 state of domicile that relate to accounting and financial matters;
22 and

23 (2) affirming that the accountant will express the
24 accountant's opinion on the financial statements in terms of the
25 statements' conformity to the statutory accounting practices
26 prescribed or otherwise permitted by the insurance department
27 described by Subdivision (1) and specifying any exceptions the

1 accountant believes are appropriate.

2 (c) The commissioner may not accept an audited financial
3 report prepared by an accountant who is not registered under this
4 section.

5 (d) The commissioner may not accept the registration of a
6 person who does not qualify under Section 401.011 or does not comply
7 with the other requirements of this subchapter. (V.T.I.C. Art.
8 1.15A, Sec. 11.)

9 Sec. 401.015. RESIGNATION OR DISMISSAL OF ACCOUNTANT;
10 STATEMENT CONCERNING DISAGREEMENTS. (a) If an accountant who
11 signed an audited financial report for an insurer or health
12 maintenance organization resigns as accountant for the insurer or
13 health maintenance organization or is dismissed by the insurer or
14 health maintenance organization after the report is filed, the
15 insurer or health maintenance organization shall notify the
16 department not later than the fifth business day after the date of
17 the resignation or dismissal.

18 (b) Not later than the 10th business day after the date the
19 insurer or health maintenance organization notifies the department
20 under Subsection (a), the insurer or health maintenance
21 organization shall file a written statement with the commissioner
22 advising the commissioner of any disagreements between the
23 accountant and the insurer's or health maintenance organization's
24 personnel responsible for presenting the insurer's or health
25 maintenance organization's financial statements that:

26 (1) relate to accounting principles or practices,
27 financial statement disclosure, or auditing scope or procedures;

1 (2) occurred during the 24 months preceding the date
2 of the resignation or dismissal; and

3 (3) would have caused the accountant to note the
4 disagreement in connection with the audited financial report if the
5 disagreement were not resolved to the satisfaction of the
6 accountant.

7 (c) The statement required by Subsection (b) must include a
8 description of disagreements that were resolved to the accountant's
9 satisfaction and those that were not resolved to the accountant's
10 satisfaction.

11 (d) The insurer or health maintenance organization shall
12 file with the statement required by Subsection (b) a letter signed
13 by the accountant stating whether the accountant agrees with the
14 insurer's or health maintenance organization's statement and, if
15 not, the reasons why the accountant does not agree. If the
16 accountant fails to provide the letter, the insurer or health
17 maintenance organization shall file with the commissioner a copy of
18 a written request to the accountant for the letter. (V.T.I.C. Art.
19 1.15A, Sec. 12A.)

20 Sec. 401.016. AUDITED COMBINED OR CONSOLIDATED FINANCIAL
21 STATEMENTS. (a) An insurer or health maintenance organization
22 described by Section 401.001(3) or (4) that is required to file an
23 audited financial report under this subchapter may apply in writing
24 to the commissioner for approval to file audited combined or
25 consolidated financial statements instead of separate audited
26 financial reports if the insurer or health maintenance
27 organization:

1 (1) is part of a group of insurers or health
2 maintenance organizations that uses a pooling arrangement or 100
3 percent reinsurance agreement that affects the solvency and
4 integrity of the insurer's or health maintenance organization's
5 reserves; and

6 (2) cedes all of the insurer's or health maintenance
7 organization's direct and assumed business to the pool.

8 (b) An insurer or health maintenance organization must file
9 an application under Subsection (a) not later than December 31 of
10 the calendar year for which the audited combined or consolidated
11 financial statements are to be filed.

12 (c) An insurer or health maintenance organization that
13 receives approval from the commissioner under this section shall
14 file a columnar combining or consolidating worksheet for the
15 audited combined or consolidated financial statements that
16 includes:

17 (1) the amounts shown on the audited combined or
18 consolidated financial statements;

19 (2) the amounts for each insurer or health maintenance
20 organization stated separately;

21 (3) the noninsurance operations shown on a combined or
22 individual basis;

23 (4) explanations of consolidating and eliminating
24 entries; and

25 (5) a reconciliation of any differences between the
26 amounts shown in the individual insurer or health maintenance
27 organization columns of the worksheet and comparable amounts shown

1 on the insurer's or health maintenance organization's annual
2 statements.

3 (d) An insurer or health maintenance organization that does
4 not receive approval from the commissioner to file audited combined
5 or consolidated financial statements for the insurer or health
6 maintenance organization and any of the insurer's or health
7 maintenance organization's subsidiaries or affiliates shall file a
8 separate audited financial report. (V.T.I.C. Art. 1.15A, Sec. 13.)

9 Sec. 401.017. NOTICE OF ADVERSE FINANCIAL CONDITION OR
10 MISSTATEMENT OF FINANCIAL CONDITION. (a) An insurer or health
11 maintenance organization required to file an audited financial
12 report under this subchapter shall require the insurer's or health
13 maintenance organization's accountant to immediately notify the
14 board of directors of the insurer or health maintenance
15 organization or the insurer's or health maintenance organization's
16 audit committee in writing of any determination by that accountant
17 that:

18 (1) the insurer or health maintenance organization has
19 materially misstated the insurer's or health maintenance
20 organization's financial condition as reported to the commissioner
21 as of the balance sheet date being audited; or

22 (2) the insurer or health maintenance organization
23 does not meet the minimum capital and surplus requirements
24 prescribed by this code for the insurer or health maintenance
25 organization as of that date.

26 (b) An insurer or health maintenance organization that
27 receives a notice described by Subsection (a) shall:

1 (1) provide to the commissioner a copy of the notice
2 not later than the fifth business day after the date the insurer or
3 health maintenance organization receives the notice; and

4 (2) provide to the accountant evidence that the notice
5 was provided to the commissioner.

6 (c) If the accountant does not receive the evidence required
7 by Subsection (b)(2) on or before the fifth business day after the
8 date the accountant notified the insurer or health maintenance
9 organization under Subsection (a), the accountant shall file with
10 the commissioner a copy of the accountant's written notice not
11 later than the 10th business day after the date the accountant
12 notified the insurer or health maintenance organization.

13 (d) An accountant is not liable to an insurer or health
14 maintenance organization or the insurer's or health maintenance
15 organization's policyholders, shareholders, officers, employees,
16 directors, creditors, or affiliates for a statement made under this
17 section if the statement was made in good faith to comply with this
18 section. (V.T.I.C. Art. 1.15A, Secs. 15(a), (b), (d).)

19 Sec. 401.018. INFORMATION DISCOVERED AFTER DATE OF AUDITED
20 FINANCIAL REPORT. If, after the date of an audited financial report
21 filed under this subchapter, the accountant becomes aware of facts
22 that might have affected the report, the accountant must take
23 action as prescribed in Volume 1, AU Section 561, Professional
24 Standards of the American Institute of Certified Public
25 Accountants. (V.T.I.C. Art. 1.15A, Sec. 15(c).)

26 Sec. 401.019. REPORT ON SIGNIFICANT DEFICIENCIES IN
27 INTERNAL CONTROL. (a) In addition to the audited financial report

1 required by this subchapter, each insurer or health maintenance
2 organization shall provide to the commissioner a written report of
3 significant deficiencies required and prepared by an accountant in
4 accordance with the Professional Standards of the American
5 Institute of Certified Public Accountants.

6 (b) The insurer or health maintenance organization shall
7 annually file with the commissioner the report required by this
8 section not later than the 60th day after the date the audited
9 financial report is filed. The insurer or health maintenance
10 organization shall also provide a description of remedial actions
11 taken or proposed to be taken to correct significant deficiencies,
12 if the actions are not described in the accountant's report.

13 (c) The report must follow generally the form for
14 communication of internal control structure matters noted in an
15 audit described in Statement on Auditing Standard (SAS) No. 60, AU
16 Section 325, Professional Standards of the American Institute of
17 Certified Public Accountants. (V.T.I.C. Art. 1.15A, Sec. 16.)

18 Sec. 401.020. ACCOUNTANT WORK PAPERS. (a) In this
19 section, "work papers" means the records kept by an accountant of
20 the procedures followed, the tests performed, the information
21 obtained, and the conclusions reached that are pertinent to the
22 accountant's audit of an insurer's or health maintenance
23 organization's financial statements. The term includes work
24 programs, analyses, memoranda, letters of confirmation and
25 representation, abstracts of company documents and schedules, and
26 commentaries prepared or obtained by the accountant in the course
27 of auditing the financial statements that support the accountant's

1 opinion.

2 (b) An insurer or health maintenance organization required
3 to file an audited financial report under this subchapter shall
4 require the insurer's or health maintenance organization's
5 accountant to make available for review by the department's
6 examiners the work papers and any record of communications between
7 the accountant and the insurer or health maintenance organization
8 relating to the accountant's audit that were prepared in conducting
9 the audit. The insurer or health maintenance organization shall
10 require that the accountant retain the work papers and records of
11 communications until the earlier of:

12 (1) the date the department files a report on the
13 examination covering the audit period; or

14 (2) the seventh anniversary of the date of the last day
15 of the audit period.

16 (c) The department may copy and retain the copies of
17 pertinent work papers when the department's examiners conduct a
18 review under Subsection (b). The review is considered an
19 investigation, and work papers obtained during that investigation
20 may be made confidential by the commissioner, unless the work
21 papers are admitted as evidence in a hearing before a governmental
22 agency or in a court. (V.T.I.C. Art. 1.15A, Sec. 17.)

23 Sec. 401.021. PENALTY FOR FAILURE TO COMPLY. (a) If an
24 insurer or health maintenance organization fails to comply with
25 this subchapter, the commissioner shall order that the insurer's or
26 health maintenance organization's annual audit be performed by a
27 qualified independent certified public accountant.

1 (b) The commissioner shall assess against the insurer or
2 health maintenance organization the cost of auditing the insurer's
3 or health maintenance organization's financial statement under
4 this section.

5 (c) The insurer or health maintenance organization shall
6 pay to the commissioner the amount of the assessment not later than
7 the 30th day after the date the commissioner issues the notice of
8 assessment to the insurer or health maintenance organization.

9 (d) Money collected under this section shall be deposited to
10 the credit of the Texas Department of Insurance operating account
11 for use by the commissioner and the department to pay the expenses
12 incurred under this subchapter. (V.T.I.C. Art. 1.15A, Sec. 9(d).)

13 [Sections 401.022-401.050 reserved for expansion]

14 SUBCHAPTER B. EXAMINATION OF CARRIERS

15 Sec. 401.051. DUTY TO EXAMINE CARRIERS. (a) The
16 department or an examiner appointed by the department shall visit
17 at the carrier's principal office:

18 (1) each carrier that is organized under the laws of
19 this state; and

20 (2) each other carrier that is authorized to engage in
21 business in this state.

22 (b) The department or an examiner appointed by the
23 department may visit the carrier for the purpose of investigating
24 the carrier's affairs and condition. The department or an examiner
25 appointed by the department shall examine the carrier's financial
26 condition and ability to meet the carrier's liabilities and
27 compliance with the laws of this state that affect the conduct of

1 the carrier's business.

2 (c) The department or an examiner appointed by the
3 department may conduct the visit and examination of a carrier
4 described by Subsection (a)(2) alone or with representatives of the
5 insurance supervising departments of other states. (V.T.I.C. Art.
6 1.15, Sec. 1 (part); Art. 1.19 (part).)

7 Sec. 401.052. FREQUENCY OF EXAMINATION. (a) The
8 department shall visit and examine a carrier:

9 (1) annually during the first three years after the
10 carrier is organized or incorporated; and

11 (2) except as provided by Subsection (b), once every
12 three years after the period described by Subdivision (1), or on a
13 more frequent basis as the department considers necessary.

14 (b) If the commissioner determines that the financial
15 strength of a carrier justifies less frequent examinations than
16 those required under Subsection (a)(2), the department may conduct
17 the examination at intervals not less frequent than every five
18 years. The commissioner shall adopt rules governing the
19 determination under this subsection of whether the financial
20 strength of a carrier justifies less frequent examinations.
21 (V.T.I.C. Art. 1.15, Secs. 1 (part), 10.)

22 Sec. 401.053. EXAMINATION PERIOD. Unless the department
23 requests that an examination cover a longer period, the examination
24 must cover the period beginning on the last day covered by the most
25 recent examination and ending on December 31 of the year preceding
26 the year in which the examination is being conducted. (V.T.I.C.
27 Art. 1.04A (part).)

1 Sec. 401.054. POWERS RELATED TO EXAMINATION. The
2 department or the examiner appointed by the department:

3 (1) has free access, and may require the carrier or the
4 carrier's agent to provide free access, to all books and papers of
5 the carrier or the carrier's agent that relate to the carrier's
6 business and affairs; and

7 (2) has the authority to summon and examine under
8 oath, if necessary, an officer, agent, or employee of the carrier or
9 any other person in relation to the carrier's affairs and
10 condition. (V.T.I.C. Art. 1.15, Sec. 1 (part); Art. 1.19 (part).)

11 Sec. 401.055. EFFECT OF SUBCHAPTER ON AUTHORITY TO USE
12 INFORMATION. This subchapter does not limit the commissioner's
13 authority to use a final or preliminary examination report, an
14 examiner's or company's work papers or other documents, or any other
15 information discovered or developed during an examination in
16 connection with a legal or regulatory action that the commissioner,
17 in the commissioner's sole discretion, considers appropriate.
18 (V.T.I.C. Art. 1.15, Sec. 7.)

19 Sec. 401.056. RULES RELATED TO REPORTS AND HEARINGS. The
20 commissioner by rule shall adopt:

21 (1) procedures governing the filing and adoption of an
22 examination report;

23 (2) procedures governing a hearing to be held under
24 this subchapter; and

25 (3) guidelines governing an order issued under this
26 subchapter. (V.T.I.C. Art. 1.15, Sec. 6.)

27 Sec. 401.057. USE OF AUDIT AND WORK PAPERS. (a) In this

1 section, "work papers" has the meaning assigned by Section
2 401.020(a).

3 (b) In conducting an examination under this subchapter, the
4 department shall use audits and work papers that the carrier makes
5 available to the department and that are prepared by an accountant
6 or accounting firm meeting the qualifications of Section 401.011.
7 The department may conduct a separate audit of the carrier if
8 necessary. Work papers developed in the audit shall be maintained
9 in the manner provided by Sections 401.020(b) and (c).

10 (c) The carrier shall provide the department with:

11 (1) the work papers of an accountant or accounting
12 firm or the carrier; and

13 (2) a record of any communications between the
14 accountant or accounting firm and the carrier that relate to an
15 audit.

16 (d) The accountant or accounting firm shall deliver the
17 information described by Subsection (c) to the examiner. The
18 examiner shall retain the information during the department's
19 examination of the carrier.

20 (e) Information obtained under this section is confidential
21 and may not be disclosed to the public except when introduced as
22 evidence in a hearing. (V.T.I.C. Art. 1.15, Sec. 8.)

23 Sec. 401.058. CONFIDENTIALITY OF REPORTS AND RELATED
24 INFORMATION. (a) A final or preliminary examination report and
25 any information obtained during an examination are confidential and
26 are not subject to disclosure under Chapter 552, Government Code.

27 (b) Subsection (a) applies if the examined carrier is under

1 supervision or conservatorship. Subsection (a) does not apply to
2 an examination conducted in connection with a liquidation or
3 receivership under this code or another insurance law of this
4 state. (V.T.I.C. Art. 1.15, Sec. 9.)

5 Sec. 401.059. DETERMINATION OF VALUE. In determining the
6 value or market value of an investment in or on real estate or an
7 improvement to real estate by a carrier authorized to engage in
8 business in this state, the department, in administering this code,
9 may consider any factor or matter that the department considers
10 proper and material, including:

11 (1) an appraisal by a real estate board or other
12 qualified person;

13 (2) an affidavit by another person familiar with those
14 values;

15 (3) a tax valuation;

16 (4) the cost of acquisition after deducting for
17 depreciation and obsolescence;

18 (5) the cost of replacement;

19 (6) sales of other comparable property;

20 (7) enhancement in value from any cause;

21 (8) income received or to be received; and

22 (9) any improvements made. (V.T.I.C. Art. 1.15, Sec.
23 2.)

24 Sec. 401.060. RIGHT TO INFORMATION RELATING TO
25 DETERMINATION OF VALUE OR MARKET VALUE. (a) If the department
26 determines the value or market value of an insurer's investment in
27 or on real estate or an improvement to real estate, the insurer is

1 entitled to make a written request for a written finding by the
2 commissioner in relation to that determination.

3 (b) Not later than the 10th day after the date the
4 commissioner receives a request under Subsection (a), the
5 commissioner shall enter a written order or finding that:

6 (1) states separately the department's findings on
7 each factor or matter on which the department relied in making the
8 determination; and

9 (2) includes the name and address of each person who
10 provided evidence relating to a factor or matter on which the
11 department relied in making the determination.

12 (c) The commissioner shall provide to the insurer that
13 requested a written finding under this section a copy of the finding
14 or order. (V.T.I.C. Art. 1.15, Sec. 3.)

15 Sec. 401.061. DISCIPLINARY ACTION FOR FAILURE TO COMPLY
16 WITH SUBCHAPTER. A carrier is subject to disciplinary action under
17 Chapter 82 if the carrier or the carrier's agent fails or refuses to
18 comply with:

19 (1) this subchapter or a rule adopted under this
20 subchapter; or

21 (2) a request by the department or an appointed
22 examiner to be examined or to provide information requested as part
23 of an examination. (V.T.I.C. Art. 1.15, Sec. 5.)

24 Sec. 401.062. STAY OF RULE, ORDER, DECISION, OR
25 FINDING. The filing of a petition under Subchapter D, Chapter 36,
26 for judicial review of a rule, order, decision, or finding of the
27 commissioner or department under this subchapter operates as a stay

1 of the rule, order, decision, or finding until the court directs
2 otherwise. (V.T.I.C. Art. 1.15, Sec. 4.)

3 [Sections 401.063-401.100 reserved for expansion]

4 SUBCHAPTER C. EXAMINERS AND ACTUARIES

5 Sec. 401.101. USE OF DEPARTMENT EXAMINER OR OTHER QUALIFIED
6 PERSON OR FIRM. The department may use a salaried department
7 examiner or may appoint a qualified person or firm to perform an
8 examination of an insurance organization as provided by law or to
9 assist in the performance of an examination. (V.T.I.C. Art. 1.04A
10 (part).)

11 Sec. 401.102. LEGISLATIVE INTENT AS TO APPOINTMENT OR
12 EMPLOYMENT OF EXAMINERS AND ACTUARIES. (a) The legislature
13 recognizes that experienced, highly qualified examiners and
14 actuaries are necessary for the department to effectively monitor
15 and regulate the solvency of insurers in this state. It is the
16 intent of the legislature that the department, in appointing or
17 employing an examiner or actuary, select a person who:

18 (1) has substantial experience in financial matters
19 relating to insurance or other areas of financial activity that are
20 compatible with the business of insurance; and

21 (2) is recognized for the outstanding quality of the
22 person's work in relation to areas of responsibility typically
23 assigned to an examiner or actuary in the insurance field.

24 (b) The legislature pledges to provide to the department the
25 necessary funding to implement this section and to support the
26 department in the department's efforts to attract the highly
27 qualified persons necessary to fulfill regulatory responsibilities

1 relating to insurer solvency assigned to those persons under the
2 insurance laws of this state. (V.T.I.C. Art. 1.17A.)

3 Sec. 401.103. APPOINTMENT OF EXAMINERS AND ACTUARIES. (a)

4 The department shall appoint:

5 (1) a chief examiner and the number of assistant
6 examiners the department considers necessary to conduct
7 examinations of insurance companies, corporations, and
8 associations at the expense of the insurance company, corporation,
9 or association as provided by law; and

10 (2) the number of actuaries the department considers
11 necessary to:

12 (A) advise the department in connection with the
13 performance of the department's duties; and

14 (B) otherwise aid and counsel the department in
15 connection with the examinations.

16 (b) The department may increase or decrease the number of
17 examiners or actuaries as needed for examination duties. (V.T.I.C.
18 Art. 1.17 (part).)

19 Sec. 401.104. APPOINTMENT OF EXAMINERS, ACTUARIES, AND
20 OTHER PERSONS FOR CERTAIN EXAMINATIONS. (a) The department may
21 commission a department actuary, the chief examiner, another
22 department examiner or employee, or any other person to conduct or
23 assist in the examination of a company that is not organized under
24 the laws of this state.

25 (b) The department may compensate a person described by
26 Subsection (a). If the department compensates the person, the
27 person may not receive any other compensation while the person is

1 assigned to the examination.

2 (c) Except as provided by this section and Section 401.152,
3 a department actuary or examiner may not continue to serve in that
4 capacity if the person directly or indirectly accepts employment or
5 compensation for a service rendered or to be rendered from any
6 insurance company for any reason. (V.T.I.C. Art. 1.17 (part).)

7 Sec. 401.105. OATH OF EXAMINERS AND ASSISTANTS. Before
8 entering into the duties of appointment as an examiner or assistant
9 examiner, an individual must take and file in the office of the
10 secretary of state an oath to:

11 (1) support the constitution of this state;

12 (2) faithfully conduct the individual's duties of
13 office;

14 (3) make fair and impartial examinations;

15 (4) not accept, directly or indirectly, as a gift or
16 emolument any pay for the discharge of the individual's duty, other
17 than the compensation to which the individual is entitled by law;
18 and

19 (5) not reveal the condition of a corporation, firm,
20 or person or any information secured while examining a corporation,
21 firm, or person to anyone other than:

22 (A) the department or an authorized
23 representative of the department; or

24 (B) as required when testifying in an
25 administrative hearing under this code or another insurance law of
26 this state or in court. (V.T.I.C. Art. 1.18 (part).)

27 Sec. 401.106. RIGHT OF ACTION ON BOND. If an examiner or

1 assistant examiner knowingly makes a false report or gives any
2 information in violation of law that relates to an examination of a
3 corporation, firm, or person, the corporation, firm, or person has
4 a right of action on a bond authorized under Chapter 653, Government
5 Code, for the entity's injuries in a suit brought in the name of the
6 state at the relation of the entity. (V.T.I.C. Art. 1.18 (part).)

7 [Sections 401.107-401.150 reserved for expansion]

8 SUBCHAPTER D. EXAMINATION EXPENSES

9 Sec. 401.151. EXPENSES OF EXAMINATION OF DOMESTIC INSURER.

10 (a) A domestic insurer examined on behalf of this state by the
11 department or under the department's authority shall pay the
12 expenses of the examination in an amount the commissioner certifies
13 as just and reasonable.

14 (b) The department shall collect an assessment at the time
15 of the examination to cover all expenses attributable directly to
16 that examination, including:

17 (1) the salaries and expenses of department employees;
18 and

19 (2) expenses described by Section 803.007.

20 (c) The department shall also impose an annual assessment on
21 domestic insurers in an amount sufficient to meet all other
22 expenses and disbursements necessary to comply with the laws of
23 this state relating to the examination of insurers.

24 (d) In determining the amount of the assessment under
25 Subsection (c), the department:

26 (1) shall consider:

27 (A) the insurer's annual premium receipts or

1 admitted assets, or both, that are not attributable to 90 percent of
2 pension plan contracts as defined by Section 818(a), Internal
3 Revenue Code of 1986; or

4 (B) the total amount of the insurer's insurance
5 in force; and

6 (2) may not consider insurance premiums for insurance
7 contracted for by a state or federal governmental entity to provide
8 welfare benefits to designated welfare recipients or contracted for
9 in accordance with or in furtherance of Title 2, Human Resources
10 Code, or the federal Social Security Act (42 U.S.C. Section 301 et
11 seq.).

12 (e) The amount of all examination and evaluation fees paid
13 to the state by an insurer in each taxable year shall be allowed as a
14 credit on the amount of premium taxes due under this subchapter.
15 (V.T.I.C. Art. 1.16, Secs. (a), (b) (part); Art. 1.19 (part).)

16 Sec. 401.152. EXPENSES OF EXAMINATION OF OTHER INSURERS.

17 (a) An insurer not organized under the laws of this state shall
18 reimburse the department for the salary and expenses of each
19 examiner participating in an examination of the insurer and for
20 other department expenses that are properly allocable to the
21 department's participation in the examination.

22 (b) An insurer shall pay the expenses under this section
23 regardless of whether the examination is made only by the
24 department or jointly with the insurance supervisory authority of
25 another state.

26 (c) The insurer shall pay the expenses directly to the
27 department on presentation of an itemized written statement from

1 the commissioner.

2 (d) The commissioner shall determine the salary of an
3 examiner participating in an examination of an insurer's books or
4 records located in another state based on the salary rate
5 recommended by the National Association of Insurance Commissioners
6 or the examiner's regular salary rate.

7 (e) The limitations provided by Sections 803.007(1) and
8 (2)(B) for a domestic company apply to a foreign insurer. (V.T.I.C.
9 Art. 1.16, Secs. (b) (part), (f) (part).)

10 Sec. 401.153. REIMBURSEMENT OF EXPENSES OF CERTAIN PERSONS
11 OR FIRMS. (a) A person or firm appointed by the department to
12 examine an insurer or to assist in the insurer's examination shall
13 be paid for those services at the usual and customary rates charged
14 for those services. The insurer being examined shall pay the fee
15 for those services.

16 (b) The commissioner may disapprove the payment of a fee
17 under Subsection (a) if the fee is excessive in relation to the
18 services actually performed. (V.T.I.C. Art. 1.04A (part).)

19 Sec. 401.154. TAX CREDIT AUTHORIZED. An insurer is
20 entitled to a credit on the amount of premium or other taxes to be
21 paid by the insurer for all examination fees paid under Section
22 401.153. The insurer may take the credit for the taxable year
23 during which the examination fees are paid and may take the credit
24 to the same extent the insurer may take a credit for examination
25 fees paid when a salaried department examiner conducts the
26 examination. (V.T.I.C. Art. 1.04A (part).)

27 Sec. 401.155. ADDITIONAL ASSESSMENTS. (a) The department

1 shall impose additional assessments against insurers on a pro rata
2 basis as necessary to:

3 (1) cover all expenses and disbursements required by
4 law; and

5 (2) comply with this subchapter and Sections 401.103,
6 401.104, 401.105, and 401.106.

7 (b) The department shall use any surplus resulting from an
8 assessment under this section to reduce the amount of subsequent
9 assessments. (V.T.I.C. Art. 1.16, Sec. (e).)

10 Sec. 401.156. DEPOSIT AND USE OF ASSESSMENT AND FEE. (a)
11 The department shall deposit an assessment or fee collected under
12 this subchapter to the credit of the Texas Department of Insurance
13 operating account.

14 (b) Money deposited under this section shall be used to pay
15 the salaries and expenses of actuaries and examiners and all other
16 expenses relating to examinations of insurers. (V.T.I.C. Art.
17 1.16, Secs. (d) (part), (f) (part).)

18 [Sections 401.157-401.200 reserved for expansion]

19 SUBCHAPTER E. CONFIDENTIALITY OF CERTAIN INFORMATION

20 Sec. 401.201. CONFIDENTIALITY OF EARLY WARNING SYSTEM
21 INFORMATION. Information relating to the financial solvency of an
22 organization regulated by the department under this code or another
23 insurance law of this state that is obtained by the department's
24 early warning system is confidential and is not subject to
25 disclosure under Chapter 552, Government Code. (V.T.I.C. Art.
26 1.15B.)

1 CHAPTER 402. DISCLOSURE OF MATERIAL TRANSACTIONS

2 SUBCHAPTER A. GENERAL PROVISIONS

3 Sec. 402.001. APPLICABILITY OF CHAPTER

4 Sec. 402.002. GENERAL REPORTING REQUIREMENTS

5 Sec. 402.003. EXCEPTIONS TO REPORTING REQUIREMENTS

6 Sec. 402.004. REPORT MADE ON NONCONSOLIDATED BASIS

7 Sec. 402.005. CONFIDENTIALITY OF REPORT

8 [Sections 402.006-402.050 reserved for expansion]

9 SUBCHAPTER B. ACQUISITION AND DISPOSITION OF ASSETS

10 Sec. 402.051. ACQUISITIONS AND DISPOSITIONS CONSIDERED

11 MATERIAL

12 Sec. 402.052. ACQUISITIONS AND DISPOSITIONS SUBJECT TO

13 CHAPTER

14 Sec. 402.053. CONTENT OF REPORT CONCERNING MATERIAL

15 ACQUISITIONS AND DISPOSITIONS

16 [Sections 402.054-402.100 reserved for expansion]

17 SUBCHAPTER C. NONRENEWAL, CANCELLATION, AND REVISION

18 OF CEDED REINSURANCE AGREEMENTS

19 Sec. 402.101. NONRENEWALS, CANCELLATIONS, AND

20 REVISIONS CONSIDERED MATERIAL

21 Sec. 402.102. CONDITIONS UNDER WHICH REPORT CONCERNING

22 NONRENEWAL, CANCELLATION, OR REVISION

23 REQUIRED

24 Sec. 402.103. CONDITIONS UNDER WHICH REPORT CONCERNING

25 NONRENEWAL, CANCELLATION, OR REVISION

26 NOT REQUIRED

1 Sec. 402.104. CONTENT OF REPORT CONCERNING MATERIAL
2 NONRENEWALS, CANCELLATIONS, AND
3 REVISIONS

4 CHAPTER 402. DISCLOSURE OF MATERIAL TRANSACTIONS

5 SUBCHAPTER A. GENERAL PROVISIONS

6 Sec. 402.001. APPLICABILITY OF CHAPTER. (a) Except as
7 provided by Subsection (b), this chapter applies to:

8 (1) each of the following domestic or commercially
9 domiciled insurers:

- 10 (A) a capital stock insurance company;
11 (B) a mutual insurance company;
12 (C) a title insurance company;
13 (D) a fraternal benefit society;
14 (E) a Lloyd's plan;
15 (F) a reciprocal or interinsurance exchange;
16 (G) a group hospital service corporation or a
17 nonprofit hospital, medical, or dental service corporation;
18 (H) a risk retention group; and
19 (I) a nonprofit legal services corporation; and
20 (2) a domestic or commercially domiciled health
21 maintenance organization.

22 (b) This chapter does not apply to a domestic insurer that
23 engages in the business of insurance only in this state or to a
24 domestic health maintenance organization that engages in the
25 business of a health maintenance organization only in this state
26 until the insurer or health maintenance organization is authorized
27 to engage in the business of insurance or the business of a health

1 maintenance organization, as applicable, in another state.
2 (V.T.I.C. Art. 21.49-8, Sec. 1.)

3 Sec. 402.002. GENERAL REPORTING REQUIREMENTS. (a) An
4 insurer or health maintenance organization shall file with the
5 department a report, including any necessary exhibit or other
6 attachment, that discloses:

7 (1) the material acquisition or disposition of assets;
8 or

9 (2) the material nonrenewal, cancellation, or
10 revision of a ceded reinsurance agreement.

11 (b) The insurer or health maintenance organization shall
12 file the report required under Subsection (a) not later than the
13 15th day after the last day of the calendar month in which any
14 transaction for which a report is required occurs. (V.T.I.C.
15 Art. 21.49-8, Secs. 2(a) (part), (b), (c).)

16 Sec. 402.003. EXCEPTIONS TO REPORTING REQUIREMENTS. An
17 insurer or health maintenance organization is not required to file
18 a report under Section 402.002 if:

19 (1) the acquisition or disposition of assets or the
20 nonrenewal, cancellation, or revision of a ceded reinsurance
21 agreement is not material; or

22 (2) the insurer's or health maintenance organization's
23 material acquisition or disposition of assets or material
24 nonrenewal, cancellation, or revision of a ceded reinsurance
25 agreement has been submitted to the commissioner for review,
26 approval, or information under another provision of this code or
27 another law, regulation, or requirement. (V.T.I.C. Art. 21.49-8,

1 Secs. 2(a) (part), 3(a) (part), 4(a) (part).)

2 Sec. 402.004. REPORT MADE ON NONCONSOLIDATED BASIS. (a) An
3 insurer or health maintenance organization shall report each
4 material acquisition or disposition and each material nonrenewal,
5 cancellation, or revision of a ceded reinsurance agreement on a
6 nonconsolidated basis unless the insurer or health maintenance
7 organization:

8 (1) is part of a consolidated group of insurers or
9 health maintenance organizations that uses a pooling arrangement or
10 a 100 percent reinsurance agreement that affects the solvency and
11 integrity of the insurer's or health maintenance organization's
12 reserves; and

13 (2) has ceded substantially all of the insurer's or
14 health maintenance organization's direct and assumed business to
15 the pooling arrangement.

16 (b) For purposes of Subsection (a), an insurer or health
17 maintenance organization is considered to have ceded substantially
18 all of the insurer's or health maintenance organization's direct
19 and assumed business to a pooling arrangement if:

20 (1) the insurer or health maintenance organization
21 has, during a calendar year, less than \$1 million total direct and
22 assumed written premiums that are not subject to a pooling
23 arrangement; and

24 (2) the net income of the business that is not subject
25 to the pooling arrangement represents less than five percent of the
26 insurer's or health maintenance organization's capital and surplus.

27 (V.T.I.C. Art. 21.49-8, Secs. 3(e), (f), 4(f), (g).)

1 Sec. 402.005. CONFIDENTIALITY OF REPORT. (a) A report
2 obtained by or disclosed to the commissioner under this chapter is
3 confidential and is not subject to a subpoena, other than a grand
4 jury subpoena.

5 (b) The report may not be disclosed by the commissioner, the
6 National Association of Insurance Commissioners, or any other
7 person without the prior written consent of the affected insurer or
8 health maintenance organization unless the commissioner, after
9 providing notice and an opportunity for a hearing to the affected
10 insurer or health maintenance organization, determines that the
11 interest of shareholders, holders of policies or evidences of
12 coverage, or the public will be served by publishing the report. If
13 the commissioner makes that determination, the department may:

- 14 (1) disclose the report to the public; and
15 (2) publish any part of the report in a manner the
16 commissioner considers appropriate.

17 (c) The report may be disclosed to the insurance department
18 of another state or another authorized governmental agency without
19 complying with Subsection (b). (V.T.I.C. Article 21.49-8, Sec.
20 2(d).)

21 [Sections 402.006-402.050 reserved for expansion]

22 SUBCHAPTER B. ACQUISITION AND DISPOSITION OF ASSETS

23 Sec. 402.051. ACQUISITIONS AND DISPOSITIONS CONSIDERED
24 MATERIAL. For purposes of this chapter, an acquisition, or the
25 aggregate of a series of related acquisitions during a 30-day
26 period, or a disposition, or the aggregate of a series of related
27 dispositions during a 30-day period, is material if it:

- 1 (1) is not recurring;
- 2 (2) is not in the ordinary course of business; and
- 3 (3) involves more than five percent of the reporting
- 4 insurer's or health maintenance organization's total admitted
- 5 assets as reported in the insurer's or health maintenance
- 6 organization's most recent statutory statement filed with the
- 7 department. (V.T.I.C. Art. 21.49-8, Sec. 3(a) (part).)

8 Sec. 402.052. ACQUISITIONS AND DISPOSITIONS SUBJECT TO

9 CHAPTER. (a) An asset acquisition subject to this chapter

10 includes a purchase, lease, exchange, merger, consolidation,

11 succession, or other acquisition of assets, except the construction

12 or development of real property by or for the reporting insurer or

13 health maintenance organization or the acquisition of materials for

14 that purpose.

15 (b) An asset disposition subject to this chapter includes a

16 sale, lease, exchange, merger, consolidation, mortgage,

17 hypothecation, assignment, whether for the benefit of a creditor or

18 otherwise, abandonment, destruction, or other disposition of

19 assets. (V.T.I.C. Art. 21.49-8, Secs. 3(b), (c).)

20 Sec. 402.053. CONTENT OF REPORT CONCERNING MATERIAL

21 ACQUISITIONS AND DISPOSITIONS. In a report of a material

22 acquisition or disposition of assets under Section 402.002, an

23 insurer or health maintenance organization shall disclose:

- 24 (1) the date of the transaction;
- 25 (2) the manner of acquisition or disposition;
- 26 (3) a description of the assets involved;
- 27 (4) the nature and amount of the consideration given

1 or received;

2 (5) the purpose of the transaction;

3 (6) the manner by which the amount of consideration
4 was determined;

5 (7) the gain or loss recognized or realized as a result
6 of the transaction; and

7 (8) the name of each person from whom the assets were
8 acquired or to whom they were disposed. (V.T.I.C. Art. 21.49-8,
9 Sec. 3(d).)

10 [Sections 402.054-402.100 reserved for expansion]

11 SUBCHAPTER C. NONRENEWAL, CANCELLATION, AND REVISION

12 OF CEDED REINSURANCE AGREEMENTS

13 Sec. 402.101. NONRENEWALS, CANCELLATIONS, AND REVISIONS
14 CONSIDERED MATERIAL. For purposes of this chapter, a nonrenewal,
15 cancellation, or revision of a ceded reinsurance agreement is
16 material if, on an annual basis, as reported in an insurer's or
17 health maintenance organization's most recent statutory statement
18 filed with the department, the nonrenewal, cancellation, or
19 revision affects:

20 (1) for property and casualty business, including
21 accident and health business when written as property and casualty
22 business, more than 50 percent of the insurer's or health
23 maintenance organization's ceded written premium; or

24 (2) for life, annuity, and accident and health
25 business, more than 50 percent of the total reserve credit taken for
26 business ceded by the insurer or health maintenance organization.

27 (V.T.I.C. Art. 21.49-8, Sec. 4(a) (part).)

1 Sec. 402.102. CONDITIONS UNDER WHICH REPORT CONCERNING
2 NONRENEWAL, CANCELLATION, OR REVISION REQUIRED. Except as
3 provided by Section 402.103, an insurer or health maintenance
4 organization shall file a report of a material nonrenewal,
5 cancellation, or revision of ceded reinsurance under Section
6 402.002, without regard to which party initiated the nonrenewal,
7 cancellation, or revision, if:

8 (1) the entire cession has been canceled, nonrenewed,
9 or revised, and ceded indemnity and loss adjustment expense
10 reserves after the nonrenewal, cancellation, or revision represent
11 less than 50 percent of the comparable reserves that would have been
12 ceded had the nonrenewal, cancellation, or revision not occurred;

13 (2) an authorized or accredited reinsurer has been
14 replaced by an unauthorized reinsurer on an existing cession, and
15 the result of the revision affects more than 10 percent of the
16 cession; or

17 (3) a collateral requirement previously established
18 for an unauthorized reinsurer has been reduced, in that the
19 requirement to collateralize incurred but unreported claim
20 reserves has been waived for at least one unauthorized reinsurer
21 newly participating in an existing cession, and the result of the
22 revision affects more than 10 percent of the cession. (V.T.I.C.
23 Art. 21.49-8, Secs. 4(c), (d).)

24 Sec. 402.103. CONDITIONS UNDER WHICH REPORT CONCERNING
25 NONRENEWAL, CANCELLATION, OR REVISION NOT REQUIRED. An insurer or
26 health maintenance organization is not required to file a report
27 under Section 402.002 if the insurer's or health maintenance

1 organization's ceded written premium of the total reserve credit
2 taken for business ceded is, on an annual basis, less than an amount
3 equal to:

4 (1) 10 percent of direct and assumed written premiums;
5 or

6 (2) 10 percent of the statutory reserve requirement
7 before a cession. (V.T.I.C. Art. 21.49-8, Sec. 4(b).)

8 Sec. 402.104. CONTENT OF REPORT CONCERNING MATERIAL
9 NONRENEWALS, CANCELLATIONS, AND REVISIONS. In a report of a
10 material nonrenewal, cancellation, or revision of a ceded
11 reinsurance agreement under Section 402.002, an insurer or health
12 maintenance organization shall disclose:

13 (1) the effective date of the nonrenewal,
14 cancellation, or revision;

15 (2) a description of the transaction that identifies
16 the initiator of the transaction;

17 (3) the purpose of the transaction; and

18 (4) if applicable, the identity of each replacement
19 reinsurer. (V.T.I.C. Art. 21.49-8, Sec. 4(e).)

20 CHAPTER 403. DIVIDENDS

21 SUBCHAPTER A. PAYMENT OF DIVIDENDS

22 Sec. 403.001. LIMITATION ON DIVIDENDS

23 Sec. 403.002. DIVIDENDS TO POLICYHOLDERS IN COMMERCIAL
24 LINES

25 [Sections 403.003-403.050 reserved for expansion]

26 SUBCHAPTER B. ESTIMATE OF PROFITS

27 Sec. 403.051. ESTIMATE OF PROFITS

1 Sec. 403.052. ESTIMATE OF PROFITS OF CERTAIN INSURERS

2 Sec. 403.053. ACQUIRED EARNED SURPLUS

3 [Sections 403.054-403.100 reserved for expansion]

4 SUBCHAPTER C. PENALTIES

5 Sec. 403.101. PENALTIES

6 Sec. 403.102. PENALTIES FOR CERTAIN INSURERS

7 CHAPTER 403. DIVIDENDS

8 SUBCHAPTER A. PAYMENT OF DIVIDENDS

9 Sec. 403.001. LIMITATION ON DIVIDENDS. An insurer
10 organized under the laws of this state, including a life, health,
11 fire, marine, or inland marine insurance company, may not pay a
12 dividend except from surplus profits arising from the insurer's
13 business. (V.T.I.C. Arts. 21.31 (part), 21.32 (part).)

14 Sec. 403.002. DIVIDENDS TO POLICYHOLDERS IN COMMERCIAL
15 LINES. (a) An insurer may pay to a commercial policyholder or
16 group of commercial policyholders a dividend that covers more than
17 one class or line of commercial business only:

18 (1) after the insurer establishes on an aggregate
19 basis adequate loss reserves for the classes or lines of commercial
20 insurance included within the dividend; and

21 (2) if the insurer has sufficient surplus from which
22 to pay the dividend.

23 (b) Not later than the 15th day before an insurer pays a
24 dividend described by Subsection (a), the insurer shall file with
25 the department notice of the insurer's intent to pay the dividend.

26 (c) The classes or lines of commercial business for which
27 dividends are authorized under this section include any commercial

1 class or line of commercial business regulated by Title 10 or
2 Chapter 5.

3 (d) An insurer's limitation of a dividend on one or more
4 classes or lines of commercial business to a group of commercial
5 policyholders is not unfair discrimination if the group:

6 (1) has clearly identifiable underwriting
7 characteristics; or

8 (2) is an association or group of business entities
9 engaged in similar undertakings. (V.T.I.C. Art. 5.41-2.)

10 [Sections 403.003-403.050 reserved for expansion]

11 SUBCHAPTER B. ESTIMATE OF PROFITS

12 Sec. 403.051. ESTIMATE OF PROFITS. An insurer organized
13 under the laws of this state may not include the following in the
14 estimate of the insurer's profits for the purpose of paying
15 dividends under Section 403.001:

16 (1) the reserve on all unexpired risks computed in the
17 manner provided by this code;

18 (2) the amount of all unpaid losses, whether adjusted
19 or unadjusted; and

20 (3) all other debts due and payable, or to become due
21 and payable, by the insurer. (V.T.I.C. Art. 21.31 (part).)

22 Sec. 403.052. ESTIMATE OF PROFITS OF CERTAIN INSURERS. A
23 life, health, fire, marine, or inland marine insurance company
24 organized under the laws of this state may not include the following
25 in the estimate of the company's profits for the purpose of paying
26 dividends under Section 403.001:

27 (1) the reserve on all unexpired risks computed in the

1 manner provided by this code;

2 (2) the amount of all unpaid losses, whether adjusted
3 or unadjusted;

4 (3) each amount due the company on bonds, mortgages,
5 stocks, or book-accounts on which no part of the principal or
6 interest has been paid during the year preceding the estimate of
7 profits and for which:

8 (A) a suit for foreclosure or collection has not
9 been commenced; or

10 (B) a judgment obtained in a suit for foreclosure
11 or collection has remained unsatisfied for a period of more than two
12 years and no interest has been paid on the judgment; and

13 (4) if no interest has been paid on a judgment
14 described by Subdivision (3)(B), any interest that is due or
15 accrued on the judgment and remains unpaid. (V.T.I.C. Art. 21.32
16 (part).)

17 Sec. 403.053. ACQUIRED EARNED SURPLUS. (a) This section
18 applies only to:

19 (1) a stock domestic insurance company authorized to
20 engage in the business of life, accident, or health insurance in
21 this state;

22 (2) a stock foreign or alien life, health, or accident
23 insurance company;

24 (3) a stock insurance company authorized to engage in
25 the business of property, casualty, or fire insurance; and

26 (4) a domestic Lloyd's plan, reciprocal or
27 interinsurance exchange, or title insurance company.

1 (b) In determining the amount of "surplus profits arising
2 from the insurer's business" or "earned surplus" for the purpose of
3 paying dividends to shareholders, the insurer may include the
4 acquired earned surplus of an insurance subsidiary acquired by the
5 insurer to the extent that:

6 (1) the inclusion is permitted by an order of the
7 commissioner made in accordance with commissioner rules; and

8 (2) the earned surplus of the acquired subsidiary on
9 the date of acquisition that exists on the date of the
10 commissioner's order is not otherwise reflected in the insurer's
11 earned surplus. (V.T.I.C. Art. 21.32A.)

12 [Sections 403.054-403.100 reserved for expansion]

13 SUBCHAPTER C. PENALTIES

14 Sec. 403.101. PENALTIES. (a) The department may revoke
15 the charter of an insurer organized under the laws of this state
16 that pays a dividend in violation of Sections 403.001 and 403.051.
17 If the department revokes an insurer's charter under this
18 subsection, the department shall immediately revoke the insurer's
19 certificate of authority.

20 (b) Not later than the 10th day before the date on which the
21 department intends to revoke an insurer's certificate of authority
22 under this section, the department shall give the insurer written
23 notice of the department's intent. The notice must include the
24 specific reasons for the revocation. (V.T.I.C. Art. 21.31 (part).)

25 Sec. 403.102. PENALTIES FOR CERTAIN INSURERS. The
26 department may revoke the charter of a life, health, fire, marine,
27 or inland marine insurance company organized under the laws of this

1 state that pays a dividend in violation of Sections 403.001 and
2 403.052. If the department revokes a company's charter under this
3 section, the department shall immediately revoke the company's
4 certificate of authority. (V.T.I.C. Art. 21.32 (part).)

5 CHAPTER 404. FINANCIAL CONDITION

6 SUBCHAPTER A. HAZARDOUS FINANCIAL CONDITION

7 Sec. 404.001. DEFINITION

8 Sec. 404.002. APPLICABILITY OF SUBCHAPTER

9 Sec. 404.003. ORDER TO REMEDY CONDITION

10 Sec. 404.004. CONSTRUCTION WITH LAW RELATING TO

11 CAPITAL AND SURPLUS

12 Sec. 404.005. STANDARDS AND CRITERIA FOR EARLY WARNING

13 Sec. 404.006. AGREEMENT WITH ANOTHER JURISDICTION

14 [Sections 404.007-404.050 reserved for expansion]

15 SUBCHAPTER B. IMPAIRMENT OF STOCK OR SURPLUS

16 Sec. 404.051. IMPAIRMENT PROHIBITED

17 Sec. 404.052. DETERMINATION OF IMPAIRMENT

18 Sec. 404.053. REMEDY FOR IMPAIRMENT

19 CHAPTER 404. FINANCIAL CONDITION

20 SUBCHAPTER A. HAZARDOUS FINANCIAL CONDITION

21 Sec. 404.001. DEFINITION. In this subchapter, "insurer"
22 includes:

- 23 (1) a capital stock insurance company;
24 (2) a reciprocal or interinsurance exchange;
25 (3) a Lloyd's plan;
26 (4) a fraternal benefit society;
27 (5) a mutual company, including a mutual assessment

1 company;

2 (6) a statewide mutual assessment company;

3 (7) a local mutual aid association;

4 (8) a burial association;

5 (9) a county mutual insurance company;

6 (10) a farm mutual insurance company;

7 (11) a fidelity, guaranty, or surety company;

8 (12) a title insurance company;

9 (13) a stipulated premium company;

10 (14) a group hospital service corporation;

11 (15) a health maintenance organization;

12 (16) a risk retention group; and

13 (17) any other organization or person engaged in the

14 business of insurance. (V.T.I.C. Art. 1.32, Sec. 1(a) (part).)

15 Sec. 404.002. APPLICABILITY OF SUBCHAPTER. This subchapter
16 applies to a person or organization engaged in the business of
17 insurance without regard to whether the person or organization is
18 listed in Section 404.001, unless another statute specifically
19 cites this subchapter and exempts the person or organization from
20 this subchapter. (V.T.I.C. Art. 1.32, Sec. 1(a) (part).)

21 Sec. 404.003. ORDER TO REMEDY CONDITION. (a) If the
22 financial condition of an insurer, when reviewed as provided by
23 Subsection (b), indicates a condition that might make the insurer's
24 continued operation hazardous to the insurer's policyholders or
25 creditors or to the public, the commissioner may, after notice and
26 hearing, order the insurer to take action reasonably necessary to
27 remedy the condition.

1 (b) The insurer's financial condition must be reviewed
2 under Subsection (a) in conjunction with one or more of the
3 following:

4 (1) the kinds and nature of risks insured;

5 (2) the loss experience and ownership of the insurer;

6 (3) the ratio of total annual premium and net
7 investment income to commission expenses, general insurance
8 expenses, policy benefits paid, and required policy reserve
9 increases;

10 (4) the insurer's method of operation, affiliations,
11 or investments;

12 (5) any contracts that lead or may lead to contingent
13 liability; or

14 (6) agreements in respect to guaranty and surety.

15 (c) In an order issued under Subsection (a), the
16 commissioner may take any action the commissioner considers
17 reasonably necessary to remedy the condition described by
18 Subsection (a), including:

19 (1) requiring an insurer to:

20 (A) reduce the total amount of present and
21 potential liability for policy benefits by reinsurance;

22 (B) reduce the volume of new business accepted;

23 (C) suspend or limit writing new business for a
24 period;

25 (D) reduce general insurance and commission
26 expenses by specified methods; or

27 (E) increase the insurer's capital and surplus by

1 contribution; or

2 (2) suspending or canceling the insurer's certificate
3 of authority.

4 (d) The commissioner may use the remedies available under
5 Subsection (c) in conjunction with the provisions of Chapter 83 if
6 the commissioner determines that the financial condition of the
7 insurer is hazardous and can be reasonably expected to cause
8 significant and imminent harm to the insurer's policyholders or the
9 public. (V.T.I.C. Art. 1.32, Sec. 2.)

10 Sec. 404.004. CONSTRUCTION WITH LAW RELATING TO CAPITAL AND
11 SURPLUS. The commissioner's authority under Section 404.003 to
12 require an increase in an insurer's capital and surplus by
13 contribution, and any capital and surplus requirements imposed by
14 the commissioner under that section, prevail over:

15 (1) the capital and surplus requirements of:

16 (A) Sections 822.054, 822.201-822.203, 822.205,
17 822.210-822.212, 841.054, 841.201, 841.204, 841.205, 841.207,
18 884.206, 884.308, and 884.309; and

19 (B) Subchapter G, Chapter 841;

20 (2) any other provision of this code or other law
21 establishing capital and surplus requirements for insurers; and

22 (3) any rule adopted under a law described by
23 Subdivision (1) or (2). (V.T.I.C. Art. 1.32, Sec. 2A.)

24 Sec. 404.005. STANDARDS AND CRITERIA FOR EARLY
25 WARNING. (a) The commissioner by rule may:

26 (1) establish uniform standards and criteria for early
27 warning that the continued operation of an insurer might be

1 hazardous to the insurer's policyholders or creditors or to the
2 public; and

3 (2) establish standards for evaluating the financial
4 condition of an insurer.

5 (b) Standards established by the commissioner under this
6 section must be consistent with the purposes of Section 404.003.
7 (V.T.I.C. Art. 1.32, Sec. 3.)

8 Sec. 404.006. AGREEMENT WITH ANOTHER JURISDICTION. The
9 commissioner may enter into an agreement with the insurance
10 regulatory authority of another jurisdiction concerning the
11 management, volume of business, expenses of operation, plans for
12 reinsurance, rehabilitation, or reorganization, and method of
13 operations of, and type of risks to be insured by, an insurer that
14 is:

15 (1) licensed in the other jurisdiction; and

16 (2) considered to be in a hazardous financial
17 condition or in need of a specific remedy that may be imposed by the
18 commissioner and the insurance regulatory authority of the other
19 jurisdiction. (V.T.I.C. Art. 1.32, Sec. 4.)

20 [Sections 404.007-404.050 reserved for expansion]

21 SUBCHAPTER B. IMPAIRMENT OF STOCK OR SURPLUS

22 Sec. 404.051. IMPAIRMENT PROHIBITED. (a) The impairment
23 of the capital stock of a stock insurance company is prohibited.

24 (b) Impairment of the following surpluses in excess of that
25 provided by Section 404.053 is prohibited:

26 (1) the surplus of a stock insurance company; or

27 (2) the minimum required aggregate surplus of a:

- 1 (A) mutual company;
 - 2 (B) Lloyd's plan; or
 - 3 (C) reciprocal or interinsurance exchange.
- 4 (V.T.I.C. Art. 1.10, Sec. 5 (part).)

5 Sec. 404.052. DETERMINATION OF IMPAIRMENT. (a) When
6 determining under this subchapter whether the surplus or the
7 minimum required aggregate surplus of an insurer is impaired, the
8 commissioner shall charge against the insurer:

- 9 (1) the reinsurance reserve required by the laws of
10 this state; and
- 11 (2) all other debts and claims against the insurer.

12 (b) This section does not apply to a life insurance company.
13 (V.T.I.C. Art. 1.10, Sec. 5 (part).)

14 Sec. 404.053. REMEDY FOR IMPAIRMENT. (a) The
15 commissioner shall order an insurer to remedy an impairment of the
16 insurer's surplus, aggregate surplus, or aggregate of guaranty fund
17 and surplus, as applicable, by bringing the surplus to an
18 acceptable level specified by the commissioner, or to cease
19 engaging in business in this state, if the commissioner determines
20 that:

21 (1) the surplus required by Section 822.054, 822.202,
22 822.203, 822.205, 822.210, 822.211, or 822.212 of a stock insurance
23 company engaged in the kind of insurance business described by the
24 company's certificate of authority:

- 25 (A) is impaired by more than 50 percent; or
- 26 (B) is less than the minimum level of surplus
27 required by risk-based capital and surplus rules adopted by the

1 commissioner; or

2 (2) the required aggregate of guaranty fund and
3 surplus of a Lloyd's plan, or the required aggregate surplus of a
4 reciprocal or interinsurance exchange or of a mutual company, other
5 than a life insurance company, engaged in the kind of insurance
6 business described by the insurer's certificate of authority:

7 (A) is impaired by more than 25 percent; or

8 (B) is less than the minimum level of surplus
9 required by risk-based capital and surplus rules adopted by the
10 commissioner.

11 (b) After issuing an order described by Subsection (a), the
12 commissioner shall immediately institute any proceeding necessary
13 to determine what further actions the commissioner will take in
14 relation to the matter. (V.T.I.C. Art. 1.10, Sec. 5 (part).)

15 [Chapters 405-420 reserved for expansion]

16 SUBTITLE B. RESERVES AND INVESTMENTS

17 CHAPTER 421. RESERVES IN GENERAL

18 Sec. 421.001. RESERVES REQUIRED

19 Sec. 421.002. CERTIFICATES FROM OTHER STATES

20 CHAPTER 421. RESERVES IN GENERAL

21 Sec. 421.001. RESERVES REQUIRED. (a) An insurer shall
22 maintain reserves in an amount estimated in the aggregate to
23 provide for the payment of all losses or claims for which the
24 insurer may be liable and that are:

25 (1) incurred on or before the date of statement,
26 whether reported or unreported; and

27 (2) unpaid as of the date of statement.

1 (b) In addition to the reserves required by Subsection (a),
2 an insurer shall maintain reserves in an amount estimated to
3 provide for the expenses of adjustment or settlement of the losses
4 or claims described by that subsection.

5 (c) The commissioner shall adopt each current formula
6 recommended by the National Association of Insurance Commissioners
7 for establishing reserves for each line of insurance. Each insurer
8 writing a line of insurance to which a formula adopted under this
9 subsection applies shall establish reserves in compliance with that
10 formula. (V.T.I.C. Art. 21.39.)

11 Sec. 421.002. CERTIFICATES FROM OTHER STATES. In
12 computing the reserve liability of an insurer, the commissioner may
13 accept the certificate of the officer of another state charged with
14 the duty of supervising the insurer if:

15 (1) the insurer is organized under the laws of the
16 other state; and

17 (2) the certificate shows that the reserve liability
18 has been computed in accordance with Section 421.001. (V.T.I.C.
19 Art. 21.40.)

20 CHAPTER 422. ASSET PROTECTION ACT

21 SUBCHAPTER A. GENERAL PROVISIONS

22 Sec. 422.001. SHORT TITLE

23 Sec. 422.002. PURPOSES

24 Sec. 422.003. DEFINITIONS

25 Sec. 422.004. APPLICABILITY OF CHAPTER

26 Sec. 422.005. EXEMPTIONS

27 Sec. 422.006. CONFLICT WITH OTHER LAW

[Sections 422.007-422.050 reserved for expansion]

SUBCHAPTER B. ENCUMBRANCE OF ASSETS

Sec. 422.051. RESTRICTIONS ON ENCUMBRANCE OF ASSETS

Sec. 422.052. REPORT TO COMMISSIONER

Sec. 422.053. CLAIMANT LIEN ON CERTAIN ASSETS

Sec. 422.054. PREFERENTIAL CLAIMS ON LIQUIDATION

CHAPTER 422. ASSET PROTECTION ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 422.001. SHORT TITLE. This chapter may be cited as the Asset Protection Act. (V.T.I.C. Art. 21.39-A, Sec. 1.)

Sec. 422.002. PURPOSES. (a) The purposes of this chapter are to:

(1) require an insurer to maintain unencumbered assets in an amount equal to the insurer's reserve liabilities;

(2) provide preferential claims against assets in favor of an owner, beneficiary, assignee, certificate holder, or third-party beneficiary of an insurance policy; and

(3) prevent the pledge or encumbrance of assets in excess of certain amounts without a prior written order of the commissioner.

(b) This chapter and the powers granted and functions authorized by this chapter shall be exercised to accomplish the purposes of this chapter. (V.T.I.C. Art. 21.39-A, Secs. 2, 6 (part).)

Sec. 422.003. DEFINITIONS. In this chapter:

(1) "Asset" means any property in which an insurer owns a legal or equitable interest.

1 (2) "Claimant" means an owner, beneficiary, assignee,
2 certificate holder, or third-party beneficiary of an insurance
3 benefit or right arising from the coverage of an insurance policy to
4 which this chapter applies.

5 (3) "Reserve assets" means the assets of an insurer
6 that are authorized investments for policy reserves under this
7 code.

8 (4) "Reserve liabilities" means the liabilities that
9 an insurer is required under this code to establish for all of the
10 insurer's outstanding insurance policies. (V.T.I.C. Art. 21.39-A,
11 Sec. 4.)

12 Sec. 422.004. APPLICABILITY OF CHAPTER. This chapter
13 applies to:

- 14 (1) the following domestic insurers:
- 15 (A) a stock life, health, or accident insurance
16 company;
 - 17 (B) a mutual life, health, or accident insurance
18 company;
 - 19 (C) a stock fire or casualty insurance company;
 - 20 (D) a mutual fire or casualty insurance company;
 - 21 (E) a title insurance company;
 - 22 (F) a mutual assessment company;
 - 23 (G) a local mutual aid association;
 - 24 (H) a local mutual burial association;
 - 25 (I) a statewide mutual assessment company;
 - 26 (J) a stipulated premium company;
 - 27 (K) a fraternal benefit society;

- 1 (L) a group hospital service corporation;
- 2 (M) a county mutual insurance company;
- 3 (N) a Lloyd's plan;
- 4 (O) a reciprocal or interinsurance exchange;
- 5 (P) a farm mutual insurance company; and
- 6 (Q) a mortgage guaranty insurer; and

7 (2) all kinds of insurance written by an insurer to
8 which this chapter applies. (V.T.I.C. Art. 21.39-A, Sec. 3
9 (part).)

10 Sec. 422.005. EXEMPTIONS. (a) This chapter does not
11 apply to:

12 (1) variable contracts for which separate accounts are
13 required to be maintained;

14 (2) a reinsurance agreement or any trust account
15 related to the reinsurance agreement if the agreement and trust
16 account meet the requirements of Chapter 492 or 493;

17 (3) an assessment-as-needed company or insurance
18 coverage written by an assessment-as-needed company;

19 (4) an insurer while:

20 (A) the insurer is subject to a conservatorship
21 order issued by the commissioner; or

22 (B) a court-appointed receiver is in charge of
23 the insurer's affairs; or

24 (5) an insurer's reserve assets that are held,
25 deposited, pledged, or otherwise encumbered to secure, offset,
26 protect, or meet the insurer's reserve liabilities established in a
27 reinsurance agreement under which the insurer reinsures the

1 insurance policy liabilities of a ceding insurer if:

2 (A) the ceding insurer and the reinsurer are
3 authorized to engage in business in this state; and

4 (B) in accordance with a written agreement
5 between the ceding insurer and the reinsurer, reserve assets
6 substantially equal to the reserve liabilities the reinsurer must
7 establish on the reinsured business are:

8 (i) deposited by or withheld from the
9 reinsurer and held in the custody of the ceding insurer, or
10 deposited and held in a trust account with a state or national bank
11 domiciled in this state, as security for the payment of the
12 reinsurer's obligations under the reinsurance agreement;

13 (ii) held subject to withdrawal by the
14 ceding insurer; and

15 (iii) held under the separate or joint
16 control of the ceding insurer.

17 (b) Notwithstanding this section, the commissioner may
18 examine any asset, reinsurance agreement, or deposit arrangement
19 described by Subsection (a)(5) at any time, in accordance with the
20 commissioner's authority under this code to examine an insurer.
21 (V.T.I.C. Art. 21.39-A, Secs. 3 (part), 3A.)

22 Sec. 422.006. CONFLICT WITH OTHER LAW. If this chapter
23 conflicts with another law relating to the subject matter or
24 application of this chapter, this chapter controls. (V.T.I.C.
25 Art. 21.39-A, Sec. 6 (part).)

26 [Sections 422.007-422.050 reserved for expansion]

1 SUBCHAPTER B. ENCUMBRANCE OF ASSETS

2 Sec. 422.051. RESTRICTIONS ON ENCUMBRANCE OF
3 ASSETS. (a) An insurer shall at all times maintain unencumbered
4 assets in an amount equal to the insurer's reserve liabilities.

5 (b) An insurer may not pledge or otherwise encumber:

6 (1) the insurer's assets in an amount that exceeds the
7 amount of the insurer's capital and surplus; or

8 (2) more than 10 percent of the insurer's reserve
9 assets.

10 (c) Notwithstanding any other provision of this section, on
11 application made to the commissioner, the commissioner may issue a
12 written order approving the pledge or encumbrance of an insurer's
13 asset in any amount if the commissioner determines that the pledge
14 or encumbrance will not adversely affect the insurer's solvency.
15 (V.T.I.C. Art. 21.39-A, Sec. 5 (part).)

16 Sec. 422.052. REPORT TO COMMISSIONER. (a) Not later than
17 the 10th day after the date an insurer pledges or otherwise
18 encumbers an asset, the insurer shall report in writing to the
19 commissioner:

20 (1) the amount and identity of the pledged or
21 encumbered asset; and

22 (2) the terms of the transaction.

23 (b) Annually, or more often as required by the commissioner,
24 the insurer shall file with the commissioner a statement sworn to by
25 the insurer's chief executive officer that:

26 (1) title to assets that equal the amount of the
27 insurer's reserve liabilities and that are not pledged or otherwise

1 encumbered is vested in the insurer;

2 (2) the only assets of the insurer that are pledged or
3 otherwise encumbered are those identified and reported in the sworn
4 statement, and no other assets of the insurer are pledged or
5 otherwise encumbered; and

6 (3) the terms of the transaction pledging or otherwise
7 encumbering the assets are those reported in the sworn statement.
8 (V.T.I.C. Art. 21.39-A, Sec. 5 (part).)

9 Sec. 422.053. CLAIMANT LIEN ON CERTAIN ASSETS. (a) A
10 person, corporation, association, or other legal entity that
11 accepts as security for an insurer's debt or other obligation a
12 pledge or encumbrance of an asset of the insurer that is not made in
13 accordance with this chapter is considered to have accepted the
14 asset subject to a superior, preferential, and automatically
15 perfected lien in favor of a claimant of the insurer.

16 (b) Subsection (a) does not apply to an asset of an insurer
17 in conservatorship or receivership if the commissioner in the
18 conservatorship proceeding, or the court in which the receivership
19 is pending, approves the pledge or encumbrance of the asset.
20 (V.T.I.C. Art. 21.39-A, Sec. 5 (part).)

21 Sec. 422.054. PREFERENTIAL CLAIMS ON LIQUIDATION. If an
22 insurer is involuntarily or voluntarily liquidated, a claimant of
23 the insurer has a prior and preferential claim against all assets of
24 the insurer other than the assets that have been pledged or
25 encumbered in accordance with this chapter. All claimants have
26 equal status, and their prior and preferential claim is superior to
27 any claim or cause of action against the insurer by any other

1 person, corporation, association, or legal entity. (V.T.I.C.
2 Art. 21.39-A, Sec. 5 (part).)

3 CHAPTER 423. TRANSACTIONS WITH MONEY AND OTHER ASSETS

4 SUBCHAPTER A. GENERAL PROVISIONS

5 Sec. 423.001. APPLICABILITY OF CHAPTER

6 Sec. 423.002. AMBIGUITIES AND CONFLICTS WITH OTHER LAW

7 Sec. 423.003. RULES

8 [Sections 423.004-423.050 reserved for expansion]

9 SUBCHAPTER B. TRANSACTIONS WITH MONEY

10 Sec. 423.051. DEPOSIT AND INVESTMENT OF MONEY

11 Sec. 423.052. MONEY HELD IN POOLING ACCOUNT

12 Sec. 423.053. AUTHORITY TO DEPOSIT MONEY IN ACCOUNT OF

13 REINSURER

14 [Sections 423.054-423.100 reserved for expansion]

15 SUBCHAPTER C. TRANSACTIONS WITH OTHER ASSETS

16 Sec. 423.101. DEFINITION

17 Sec. 423.102. DEPOSIT AND HOLDING OF SECURITIES

18 Sec. 423.103. SECURITIES HELD UNDER CUSTODIAL OR TRUST

19 AGREEMENT

20 Sec. 423.104. PROOF OF OWNERSHIP OF SECURITIES

21 Sec. 423.105. MANDATORY DEPOSIT OF SECURITIES;

22 COMMISSIONER CONTROL

23 Sec. 423.106. REQUIRED EVIDENCE FOR SECURITIES

24 Sec. 423.107. ASSETS DEPOSITED WITH CLEARING

25 CORPORATION

26 Sec. 423.108. LIMITATION ON ASSETS DEPOSITED WITH

27 CLEARING CORPORATION

1 CHAPTER 423. TRANSACTIONS WITH MONEY AND OTHER ASSETS

2 SUBCHAPTER A. GENERAL PROVISIONS

3 Sec. 423.001. APPLICABILITY OF CHAPTER. (a) This chapter
4 applies to a domestic insurer regulated under this code, including:

- 5 (1) a stock company;
- 6 (2) a reciprocal or interinsurance exchange;
- 7 (3) a Lloyd's plan;
- 8 (4) a fraternal benefit society;
- 9 (5) a stipulated premium company;
- 10 (6) a mutual insurance company of any kind, including:
- 11 (A) a statewide mutual assessment company;
- 12 (B) a local mutual aid association;
- 13 (C) a burial association;
- 14 (D) a county mutual insurance company; and
- 15 (E) a farm mutual insurance company; and
- 16 (7) any other organization or person engaged in the
17 business of insurance.

18 (b) A provision of this code limiting the regulation of an
19 insurer under this code does not limit the application of this
20 chapter, except that this chapter does not apply to an insurer that
21 is exempted from its application by another statute that cites this
22 chapter. (V.T.I.C. Art. 21.39-B, Sec. 4 (part).)

23 Sec. 423.002. AMBIGUITIES AND CONFLICTS WITH OTHER
24 LAW. This chapter controls to the extent of an ambiguity or a
25 conflict between this chapter and another provision of this code.
26 (V.T.I.C. Art. 21.39-B, Sec. 4 (part).)

27 Sec. 423.003. RULES. The commissioner may adopt rules

1 necessary to implement this chapter. (V.T.I.C. Art. 21.39-B, Sec.
2 3.)

3 [Sections 423.004-423.050 reserved for expansion]

4 SUBCHAPTER B. TRANSACTIONS WITH MONEY

5 Sec. 423.051. DEPOSIT AND INVESTMENT OF MONEY. A director,
6 member of a committee, officer, or clerk of a domestic insurer who
7 has the duty to handle or invest the insurer's money may not:

8 (1) invest the money other than in the corporate name
9 of the insurer, except as provided by Section 423.102;

10 (2) deposit the money unless the deposit is:

11 (A) in the corporate name of the insurer;

12 (B) in a pooling account with one or more
13 affiliates, as described by Section 823.003; or

14 (C) in accordance with a reinsurance agreement;

15 (3) borrow the insurer's money;

16 (4) have any interest in a loan, pledge, security, or
17 property of the insurer, except as a stockholder; or

18 (5) take or receive for the individual's use a fee,
19 brokerage, commission, gift, or other consideration for, or on
20 account of, a loan made by or on behalf of the insurer. (V.T.I.C.
21 Art. 21.39-B, Sec. 1 (part).)

22 Sec. 423.052. MONEY HELD IN POOLING ACCOUNT. (a) Only a
23 domestic insurer and an affiliate, as described by Section 823.003,
24 may hold money in a pooling account.

25 (b) The accounting and operating records and books of the
26 insurer and affiliate must be adequately detailed to identify
27 specific insurance policies and policyholders with the money from

1 premiums received by the insurer that issues the policies.
2 (V.T.I.C. Art. 21.39-B, Sec. 2 (part).)

3 Sec. 423.053. AUTHORITY TO DEPOSIT MONEY IN ACCOUNT OF
4 REINSURER. A reinsurance agreement between a domestic insurer and
5 an affiliate, as described by Section 823.003, must specifically
6 authorize the deposit of money from premiums to the account of the
7 affiliate that assumes the reinsurance. (V.T.I.C. Art. 21.39-B,
8 Sec. 2 (part).)

9 [Sections 423.054-423.100 reserved for expansion]

10 SUBCHAPTER C. TRANSACTIONS WITH OTHER ASSETS

11 Sec. 423.101. DEFINITION. In this subchapter, "clearing
12 corporation" means:

13 (1) a clearing corporation as defined by Section
14 8.102(a), Business & Commerce Code; or

15 (2) a clearance system that:

16 (A) is organized or operating under the laws of
17 at least one foreign country;

18 (B) provides for book-entry settlement and
19 custody of internationally traded securities; and

20 (C) has been organized and in operation for not
21 less than 15 consecutive years. (V.T.I.C. Art. 21.39-B, Sec.
22 5(b).)

23 Sec. 423.102. DEPOSIT AND HOLDING OF SECURITIES. (a) A
24 domestic insurer that has securities held in or purchased for the
25 insurer's general account or separate accounts may deposit the
26 securities or arrange through an agent, broker, or dealer for
27 deposit of the securities with a clearing corporation or in the

1 Federal Reserve book-entry system.

2 (b) If securities are deposited directly with a clearing
3 corporation or deposited indirectly through a participating
4 custodian bank, certificates representing securities of the same
5 class of the same issuer may be merged and held in bulk, in the name
6 of a nominee of the clearing corporation, with any other securities
7 deposited with the clearing corporation by any person, regardless
8 of the ownership of the securities.

9 (c) Certificates under Subsection (b) that represent
10 securities of small denominations may be merged into one or more
11 certificates of larger denominations.

12 (d) The records of an agent, broker, dealer, or member bank
13 through which an insurer holds securities in the Federal Reserve
14 book-entry system and the records of a custodian bank through which
15 an insurer holds securities with a clearing corporation must show
16 that the securities are held for the insurer and show the accounts
17 for which the securities are held.

18 (e) A bank must enter into a custodial agreement with an
19 insurer to be eligible to act as a participating custodian bank for
20 the insurer under this section. (V.T.I.C. Art. 21.39-B, Sec. 5(a)
21 (part).)

22 Sec. 423.103. SECURITIES HELD UNDER CUSTODIAL OR TRUST
23 AGREEMENT. A domestic insurer's securities that are held under a
24 custodial agreement or trust agreement with a bank, Federal Home
25 Loan Bank, or trust company may be issued in the name of a nominee of
26 the bank, Federal Home Loan Bank, or trust company only if the bank,
27 Federal Home Loan Bank, or trust company:

- 1 (1) has corporate trust powers;
- 2 (2) is authorized to act as a custodian or trustee;
- 3 (3) is organized under the laws of the United States or
4 any state of the United States; and
- 5 (4) meets one of the following requirements:
 - 6 (A) is a member of the Federal Reserve System;
 - 7 (B) is a member of or is eligible to receive
8 deposits that are insured by the Federal Deposit Insurance
9 Corporation;
 - 10 (C) maintains an account with a Federal Reserve
11 Bank and is subject to supervision and examination by the Board of
12 Governors of the Federal Reserve System; or
 - 13 (D) is subject to supervision and examination by
14 the Federal Housing Finance Board. (V.T.I.C. Art. 21.39-B, Sec. 1
15 (part).)

16 Sec. 423.104. PROOF OF OWNERSHIP OF SECURITIES. (a) A
17 domestic insurer may demonstrate ownership of a security through a
18 definitive certificate or in accordance with rules adopted under
19 this section.

20 (b) The commissioner shall adopt rules under which a
21 domestic insurer may demonstrate ownership of an uncertificated
22 security, as defined by Section 8.102(a), Business & Commerce Code,
23 consistent with common practices of securities exchanges and
24 markets. The rules must establish:

25 (1) standards for the types of uncertificated
26 securities the insurer may hold;

27 (2) the manner in which the insurer may demonstrate

1 ownership of the security; and

2 (3) adequate financial safeguards relating to the
3 ownership of uncertificated securities. (V.T.I.C. Art. 21.39-B,
4 Secs. 5(a) (part), 6.)

5 Sec. 423.105. MANDATORY DEPOSIT OF SECURITIES;
6 COMMISSIONER CONTROL. (a) An insurer that is required to deposit
7 securities as a condition of engaging in the business of insurance
8 in this state may deposit the securities with a clearing
9 corporation or in the Federal Reserve book-entry system.

10 (b) Securities under Subsection (a) are under the
11 commissioner's control and may not be withdrawn by the insurer
12 without the commissioner's approval. (V.T.I.C. Art. 21.39-B, Sec.
13 5(c) (part).)

14 Sec. 423.106. REQUIRED EVIDENCE FOR SECURITIES. (a) An
15 insurer that deposits securities under Section 423.105 shall
16 provide evidence to the commissioner to establish that:

17 (1) the securities are recorded in an account in the
18 name of:

19 (A) the participating custodian bank or member
20 bank through which the insurer deposits the securities with a
21 clearing corporation or in the Federal Reserve book-entry system;
22 or

23 (B) the insurer, if the insurer makes the deposit
24 directly with the clearing corporation as a direct participant; and

25 (2) the records of the participating custodian bank,
26 direct participant, or member bank and of the clearing corporation
27 show that the securities are under the commissioner's control.

1 (b) Evidence under Subsection (a)(1) must be issued, as
2 applicable, by:

3 (1) the participating custodian bank;

4 (2) the member bank; or

5 (3) the insurer, when the insurer makes the deposit
6 directly with the clearing corporation as a direct participant.
7 (V.T.I.C. Art. 21.39-B, Sec. 5(c) (part).)

8 Sec. 423.107. ASSETS DEPOSITED WITH CLEARING CORPORATION.

9 A domestic insurer may deposit assets with a clearing corporation
10 only if:

11 (1) the insurer is a member of an insurance holding
12 company system that has assets of at least \$5 billion, as shown by
13 annual statements of member insurers for the preceding year;

14 (2) the insurer uses the clearing corporation only as
15 a depository for investments in internationally traded securities;

16 (3) the insurer's total investment in internationally
17 traded securities under Subdivision (2) does not exceed the
18 insurer's policyholders' surplus; and

19 (4) the insurer does not use securities deposited with
20 the clearing corporation as security for reinsurance. (V.T.I.C.
21 Art. 21.39-B, Sec. 5(e).)

22 Sec. 423.108. LIMITATION ON ASSETS DEPOSITED WITH CLEARING
23 CORPORATION. The commissioner by rule may adopt a reasonable limit
24 on the percentage of a domestic insurer's assets that may be
25 deposited with a clearing corporation. The limit may not exceed
26 five percent of the insurer's total assets, as shown by the
27 insurer's annual statement filed with the department for the year

1 preceding the year for which the limit is adopted. (V.T.I.C.
2 Art. 21.39-B, Sec. 5(d).)

3 CHAPTER 424. INVESTMENTS FOR CERTAIN INSURERS

4 SUBCHAPTER A. GENERAL PROVISIONS

5 Sec. 424.001. DEFINITIONS

6 Sec. 424.002. INAPPLICABILITY OF CERTAIN LAW

7 [Sections 424.003-424.050 reserved for expansion]

8 SUBCHAPTER B. INVESTMENT OF FUNDS IN EXCESS

9 OF MINIMUM CAPITAL AND SURPLUS

10 Sec. 424.051. GENERAL INVESTMENT AUTHORITY SPECIFIED

11 BY LAW

12 Sec. 424.052. ADDITIONAL GENERAL INVESTMENT AUTHORITY

13 Sec. 424.053. LIMITATION AS TO SINGLE ISSUER OR

14 BORROWER

15 Sec. 424.054. APPLICABILITY OF PERCENTAGE

16 AUTHORIZATIONS AND LIMITATIONS

17 Sec. 424.055. WAIVER BY COMMISSIONER OF QUANTITATIVE

18 LIMITATIONS

19 Sec. 424.056. WRITTEN INVESTMENT PLAN

20 Sec. 424.057. INVESTMENT RECORDS

21 Sec. 424.058. AUTHORIZED INVESTMENTS: FORM OF MINIMUM

22 CAPITAL AND SURPLUS

23 Sec. 424.059. AUTHORIZED INVESTMENTS: GOVERNMENT

24 OBLIGATIONS

25 Sec. 424.060. AUTHORIZED INVESTMENTS: STOCK OF

26 NATIONAL OR STATE BANK

- 1 Sec. 424.061. AUTHORIZED INVESTMENTS: DEPOSITS IN
2 CERTAIN FINANCIAL INSTITUTIONS
- 3 Sec. 424.062. AUTHORIZED INVESTMENTS: CERTAIN
4 OBLIGATIONS OF PARTNERSHIP OR
5 CORPORATION
- 6 Sec. 424.063. AUTHORIZED INVESTMENTS: MUTUAL FUNDS
- 7 Sec. 424.064. AUTHORIZED INVESTMENTS: REAL PROPERTY
- 8 Sec. 424.065. ACTING AS REAL ESTATE BROKER OR
9 SALESPERSON PROHIBITED
- 10 Sec. 424.066. AUTHORIZED INVESTMENTS: OBLIGATIONS
11 SECURED BY REAL PROPERTY LOANS
- 12 Sec. 424.067. AUTHORIZED INVESTMENTS: TRANSPORTATION
13 EQUIPMENT
- 14 Sec. 424.068. AUTHORIZED INVESTMENTS: INVESTMENT IN
15 FOREIGN JURISDICTION
- 16 Sec. 424.069. AUTHORIZED INVESTMENTS: CERTAIN LOANS
- 17 Sec. 424.070. AUTHORIZED INVESTMENTS: OBLIGATIONS OF
18 LOCAL GOVERNMENTAL ENTITIES
- 19 Sec. 424.071. AUTHORIZED INVESTMENTS: THE UNIVERSITY
20 OF TEXAS
- 21 Sec. 424.072. AUTHORIZED INVESTMENTS: BONDS ISSUED,
22 ASSUMED, OR GUARANTEED IN
23 INTERNATIONAL MARKET
- 24 Sec. 424.073. AUTHORIZED INVESTMENTS: INSURER ENGAGED
25 IN BUSINESS IN FOREIGN COUNTRY
- 26 Sec. 424.074. OTHER SPECIFICALLY AUTHORIZED
27 INVESTMENTS

1 [Sections 424.075-424.100 reserved for expansion]

2 SUBCHAPTER C. INVESTMENT POOLS

3 Sec. 424.101. DEFINITIONS

4 Sec. 424.102. AUTHORITY TO INVEST IN POOL

5 Sec. 424.103. INVESTMENT POOL REQUIREMENTS AND
6 QUALIFICATIONS

7 Sec. 424.104. AUTHORIZED INVESTMENTS FOR SHORT-TERM
8 INVESTMENT POOL

9 Sec. 424.105. SHORT-TERM INVESTMENT POOL: CERTAIN
10 SHORT-TERM OBLIGATIONS

11 Sec. 424.106. SHORT-TERM INVESTMENT POOL: CERTAIN
12 MONEY MARKET FUNDS

13 Sec. 424.107. AUTHORIZED INVESTMENTS FOR AUTHORIZED
14 INVESTMENT POOL; LIMITATION

15 Sec. 424.108. GENERAL INSURER INVESTMENT LIMITATIONS

16 Sec. 424.109. DESIGNATION OF POOL MANAGER;
17 QUALIFICATIONS

18 Sec. 424.110. POOL MANAGER TO MAINTAIN ASSETS; CUSTODY
19 AGREEMENT

20 Sec. 424.111. POOLING AGREEMENT PROVISIONS

21 Sec. 424.112. WITHDRAWALS AND DISTRIBUTIONS

22 Sec. 424.113. INVESTMENT POOL RECORDS

23 Sec. 424.114. INSPECTION OF RECORDS

24 Sec. 424.115. REPORTS OF TRANSACTIONS BETWEEN POOL AND
25 PARTICIPANT

26 [Sections 424.116-424.150 reserved for expansion]

1 SUBCHAPTER D. DOLLAR ROLL, REPURCHASE, REVERSE REPURCHASE,
2 AND SECURITIES LENDING TRANSACTIONS

3 Sec. 424.151. DEFINITIONS

4 Sec. 424.152. TRANSACTIONS AUTHORIZED

5 Sec. 424.153. PERIOD OF TRANSACTION

6 Sec. 424.154. CASH REQUIREMENTS

7 Sec. 424.155. COLLATERAL REQUIREMENTS

8 Sec. 424.156. PERCENTAGE LIMITATIONS

9 Sec. 424.157. RULES

10 [Sections 424.158-424.200 reserved for expansion]

11 SUBCHAPTER E. RISK CONTROL TRANSACTIONS

12 Sec. 424.201. DEFINITIONS

13 Sec. 424.202. RISK CONTROL TRANSACTIONS AUTHORIZED

14 Sec. 424.203. NOTICE OF INTENT TO ENGAGE IN RISK

15 CONTROL TRANSACTIONS REQUIRED

16 Sec. 424.204. TRADING REQUIREMENTS FOR DERIVATIVE

17 INSTRUMENTS

18 Sec. 424.205. DERIVATIVE USE PLAN

19 Sec. 424.206. INTERNAL CONTROL PROCEDURES

20 Sec. 424.207. ABILITY TO DEMONSTRATE HEDGING

21 CHARACTERISTICS AND EFFECTIVENESS

22 Sec. 424.208. OFFSETTING TRANSACTIONS

23 Sec. 424.209. INCLUSION OF COUNTERPARTY EXPOSURE

24 AMOUNTS

25 Sec. 424.210. OVERSIGHT BY COMMISSIONER

26 Sec. 424.211. AUTHORITY TO ENTER INTO HEDGING

27 TRANSACTION

1 Sec. 424.212. AUTHORITY TO ENTER INTO INCOME

2 GENERATION TRANSACTION

3 Sec. 424.213. LIMITATION ON SALE OF CALL OPTION ON

4 ASSETS

5 Sec. 424.214. LIMITATION ON SALE OF PUT OPTION ON

6 ASSETS

7 Sec. 424.215. LIMITATION ON SALE OF CALL OPTION ON

8 DERIVATIVE INSTRUMENT

9 Sec. 424.216. LIMITATION ON SALE OF CAP OR FLOOR

10 Sec. 424.217. AUTHORITY TO ENTER REPLICATION

11 TRANSACTION

12 Sec. 424.218. RULES

13 CHAPTER 424. INVESTMENTS FOR CERTAIN INSURERS

14 SUBCHAPTER A. GENERAL PROVISIONS

15 Sec. 424.001. DEFINITIONS. In this chapter:

16 (1) "Insurer" means any insurer organized under the
17 laws of this state other than an insurer writing life, health, and
18 accident insurance.

19 (2) "Minimum capital and surplus" means the minimum
20 amount of capital stock and minimum amount of surplus required of an
21 insurer under Section 822.054 or 822.210.

22 (3) "Securities valuation office" means the
23 Securities Valuation Office of the National Association of
24 Insurance Commissioners. (V.T.I.C. Art. 2.10, Sec. (e) (part);
25 Art. 2.10-5, Sec. 1(10).)

26 Sec. 424.002. INAPPLICABILITY OF CERTAIN LAW. The
27 definition of "state" assigned by Section 311.005, Government Code,

1 does not apply to this chapter. (New.)

2 [Sections 424.003-424.050 reserved for expansion]

3 SUBCHAPTER B. INVESTMENT OF FUNDS IN EXCESS

4 OF MINIMUM CAPITAL AND SURPLUS

5 Sec. 424.051. GENERAL INVESTMENT AUTHORITY SPECIFIED BY
6 LAW. An insurer may not invest the insurer's funds in excess of
7 minimum capital and surplus, except that an insurer may invest as
8 otherwise authorized by this code. (V.T.I.C. Art. 2.10, Sec. (e)
9 (part).)

10 Sec. 424.052. ADDITIONAL GENERAL INVESTMENT AUTHORITY. An
11 insurer may make investments that are not otherwise authorized by
12 this chapter or otherwise authorized by this code for the insurer
13 if:

14 (1) the investment is not specifically prohibited by
15 law and does not exceed the limits prescribed by this code;

16 (2) the amount of a single investment under this
17 section does not exceed five percent of the insurer's capital and
18 surplus in excess of the insurer's minimum capital and surplus; and

19 (3) the aggregate amount of all investments made by
20 the insurer under this section does not exceed five percent of the
21 insurer's assets. (V.T.I.C. Art. 2.10-1, Sec. (2).)

22 Sec. 424.053. LIMITATION AS TO SINGLE ISSUER OR BORROWER.

23 (a) Notwithstanding Sections 424.051, 424.056-424.071, and
24 424.074, the aggregate amount of an insurer's investments in all or
25 any type of securities, loans, obligations, or evidences of
26 indebtedness of a single issuer or borrower, other than investments
27 described by Subsection (c), may not exceed five percent of the

1 insurer's total assets.

2 (b) For purposes of this section, a single issuer or
3 borrower includes:

4 (1) the issuer's or borrower's majority-owned
5 subsidiaries;

6 (2) the issuer's or borrower's parent; or

7 (3) the majority-owned subsidiaries of the issuer's or
8 borrower's parent.

9 (c) This section does not apply to:

10 (1) an authorized investment that:

11 (A) is a direct obligation of or guaranteed by
12 the full faith and credit of the United States, this state, or a
13 political subdivision of this state; or

14 (B) is insured by an agency of the United States
15 or this state; or

16 (2) an investment described by Section 424.061 or
17 424.063. (V.T.I.C. Art. 2.10, Sec. (g) (part).)

18 Sec. 424.054. APPLICABILITY OF PERCENTAGE AUTHORIZATIONS
19 AND LIMITATIONS. (a) The percentage authorizations and
20 limitations established by Sections 424.051, 424.053-424.071, and
21 424.074 apply only at the time an investment is originally acquired
22 or a transaction is entered into and do not apply to the insurer or
23 the investment or transaction after that time.

24 (b) An investment, once qualified under a law described by
25 Subsection (a), remains qualified notwithstanding any refinancing,
26 restructuring, or modification of the investment, except that an
27 insurer may not refinance, restructure, or modify an investment

1 solely to circumvent the requirements or limitations of a law
2 described by Subsection (a). (V.T.I.C. Art. 2.10, Sec. (f).)

3 Sec. 424.055. WAIVER BY COMMISSIONER OF QUANTITATIVE
4 LIMITATIONS. (a) Notwithstanding Sections 424.051,
5 424.056-424.071, and 424.074, the commissioner may waive a
6 quantitative limitation on any investment authorized by those laws
7 if:

8 (1) the insurer seeks the waiver before making the
9 investment;

10 (2) a hearing is held to determine whether the waiver
11 should be granted;

12 (3) the applicant seeking the waiver establishes that
13 unreasonable or unnecessary loss or harm will result to the insurer
14 if the commissioner denies the waiver;

15 (4) the excess investment will not have a material
16 adverse effect on the insurer; and

17 (5) the size of the investment is reasonable in
18 relation to the insurer's assets, capital, surplus, and
19 liabilities.

20 (b) The commissioner's waiver must be in writing and may
21 treat the resulting excess investment as a nonadmitted asset.
22 (V.T.I.C. Art. 2.10, Sec. (g) (part).)

23 Sec. 424.056. WRITTEN INVESTMENT PLAN. (a) Each insurer's
24 board of directors, or, if the insurer does not have a board of
25 directors, the corresponding authority designated by the insurer's
26 charter, bylaws, or plan of operation, shall adopt a written
27 investment plan consistent with the requirements of:

- 1 (1) this chapter;
- 2 (2) Sections 822.204, 822.209, 861.258, and 862.002;
- 3 and
- 4 (3) other statutes governing investments by the
- 5 insurer.

6 (b) The investment plan must:

7 (1) specify the diversification of the insurer's

8 investments designed to reduce the risk of large losses, by:

9 (A) broad categories, such as bonds and real

10 property loans;

11 (B) kinds, such as government obligations,

12 obligations of business entities, mortgage-backed securities, and

13 real property loans on office, retail, industrial, or residential

14 properties;

15 (C) quality;

16 (D) maturity;

17 (E) type of industry; and

18 (F) geographical areas, as to both domestic and

19 foreign investments;

20 (2) balance safety of principal with yield and growth;

21 (3) seek a reasonable relationship of assets and

22 liabilities as to term and nature; and

23 (4) be appropriate considering the capital and surplus

24 and the business conducted by the insurer.

25 (c) At least annually, the board of directors or

26 corresponding authority shall review the adequacy of the investment

27 plan and the implementation of the plan.

1 (d) An insurer shall maintain the insurer's investment plan
2 in the insurer's principal office and provide the plan to the
3 commissioner or the commissioner's designee on request. The
4 commissioner or the commissioner's designee shall maintain the plan
5 as a privileged and confidential document. The plan is not subject
6 to public disclosure. (V.T.I.C. Art. 2.10, Secs. (a), (b), (c).)

7 Sec. 424.057. INVESTMENT RECORDS. An insurer shall
8 maintain investment records covering each transaction. The insurer
9 must be able to demonstrate at all times to the department that the
10 insurer's investments are within the limitations imposed by the
11 statutes listed in Section 424.056(a). (V.T.I.C. Art. 2.10, Sec.
12 (d).)

13 Sec. 424.058. AUTHORIZED INVESTMENTS: FORM OF MINIMUM
14 CAPITAL AND SURPLUS. An insurer may invest the insurer's funds in
15 excess of minimum capital and surplus in any manner authorized by
16 Section 822.204 for investment of the insurer's minimum capital and
17 surplus. (V.T.I.C. Art. 2.10, Sec. (e) (part).)

18 Sec. 424.059. AUTHORIZED INVESTMENTS: GOVERNMENT
19 OBLIGATIONS. An insurer may invest the insurer's funds in excess of
20 minimum capital and surplus in a bond or other evidence of
21 indebtedness of any state or of Canada or a province of Canada that:

22 (1) is issued by the authority of law; and

23 (2) at the time of purchase:

24 (A) bears interest; and

25 (B) is not in default as to principal or
26 interest. (V.T.I.C. Art. 2.10, Sec. (e) (part).)

27 Sec. 424.060. AUTHORIZED INVESTMENTS: STOCK OF NATIONAL OR

1 STATE BANK. (a) An insurer may invest the insurer's funds in
2 excess of minimum capital and surplus in the stock of:

3 (1) a national bank; or

4 (2) a state bank of this state whose deposits are
5 insured by the Federal Deposit Insurance Corporation.

6 (b) Notwithstanding Subsection (a)(2):

7 (1) not more than 35 percent of the total outstanding
8 stock of a single state bank may be purchased by a single insurer;
9 and

10 (2) if an insurer has invested the insurer's funds in
11 35 percent of a state bank's stock under this section, no other
12 insurer may invest funds in the bank's remaining stock. (V.T.I.C.
13 Art. 2.10, Sec. (e) (part).)

14 Sec. 424.061. AUTHORIZED INVESTMENTS: DEPOSITS IN CERTAIN
15 FINANCIAL INSTITUTIONS. (a) Subject to this section, an insurer
16 may invest in any type of savings deposit, time deposit,
17 certificate of deposit, NOW account, or money market account in a
18 solvent bank, savings and loan association, or credit union that is
19 organized under the laws of the United States or a state, or in a
20 branch of one of those financial institutions.

21 (b) An investment under this section must be made in
22 accordance with the laws or regulations applicable to the bank,
23 savings and loan association, or credit union.

24 (c) The amount of an insurer's deposits in a single bank,
25 savings and loan association, or credit union may not exceed the
26 greater of:

27 (1) 20 percent of the insurer's capital and surplus;

1 (2) the amount of federal or state deposit insurance
2 coverage that applies to the deposits; or

3 (3) 10 percent of the amount of capital, surplus, and
4 undivided profits of the financial institution receiving the
5 deposits. (V.T.I.C. Art. 2.10, Sec. (e) (part).)

6 Sec. 424.062. AUTHORIZED INVESTMENTS: CERTAIN OBLIGATIONS
7 OF PARTNERSHIP OR CORPORATION. (a) Except as provided by this
8 section, an insurer may invest the insurer's funds in excess of
9 minimum capital and surplus in a stock, bond, debenture, bill of
10 exchange, evidence of indebtedness, other commercial note or bill,
11 or security of any partnership or dividend-paying corporation that:

12 (1) is incorporated under the laws of the United
13 States, this state, another state, Canada, or a province of Canada;

14 (2) is solvent at the time of the investment; and

15 (3) has not defaulted in the payment of any of the
16 partnership's or corporation's obligations during the five years
17 preceding the date of the investment.

18 (b) Except as provided by Subsection (d), an insurer may
19 invest the insurer's funds in excess of minimum capital and
20 surplus, and all reserves required by law, in a stock, bond, or
21 debenture of any solvent corporation that is incorporated under the
22 laws of the United States, this state, another state, Canada, or a
23 province of Canada.

24 (c) Funds invested under Subsection (a) may not be invested
25 in the stock of an oil, manufacturing, or mercantile corporation
26 unless the corporation has, at the time of the investment:

27 (1) a net worth of at least \$250,000, if the

1 corporation is organized under the laws of this state; or

2 (2) a combined capital, surplus, and undivided profits
3 of at least \$2.5 million, if the corporation is not organized under
4 the laws of this state.

5 (d) An insurer may not invest the insurer's funds in:

6 (1) the insurer's own stock or in any stock on account
7 of which the holders or owners of the stock may be liable for an
8 assessment other than taxes; or

9 (2) any stock, bond, or other security issued by a
10 corporation with respect to which a majority of the stock having
11 voting powers is directly or indirectly owned by or for the benefit
12 of an officer or director of the insurer, unless the insurer has
13 been in continuous operation for at least five years. (V.T.I.C.
14 Art. 2.10, Sec. (e) (part).)

15 Sec. 424.063. AUTHORIZED INVESTMENTS: MUTUAL FUNDS. An
16 insurer may invest the insurer's funds in excess of minimum capital
17 and surplus in shares of a mutual fund engaged in business under the
18 Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), as
19 amended, if:

20 (1) the mutual fund is solvent and has at least \$1
21 million of net assets as of the date of the mutual fund's latest
22 annual or more recent certified audited financial statement; and

23 (2) the amount of the insurer's investment in a single
24 mutual fund does not exceed 15 percent of the insurer's capital and
25 surplus. (V.T.I.C. Art. 2.10, Sec. (e) (part).)

26 Sec. 424.064. AUTHORIZED INVESTMENTS: REAL PROPERTY. (a)
27 Subject to this section, an insurer may invest the insurer's funds

1 in excess of minimum capital and surplus in real property to the
2 extent authorized by other provisions of this code.

3 (b) An insurer with admitted assets of more than \$500
4 million may own investment real property other than real property
5 authorized by another provision of this code, or participations in
6 that other investment real property, if the property is materially
7 enhanced in value by:

8 (1) the construction of durable, permanent-type
9 buildings and other improvements that cost an amount at least equal
10 to the cost of the real property, excluding buildings and
11 improvements at the time the property is acquired; or

12 (2) the construction, commenced before the second
13 anniversary of the date the real property is acquired, of buildings
14 and improvements described by Subdivision (1).

15 (c) The amount invested by an insurer in a single investment
16 real property and improvements, or in any interest in real property
17 and improvements, may not exceed five percent of the insurer's
18 admitted assets in excess of \$500 million. The total amount
19 invested by an insurer in investment real property and improvements
20 may not exceed 15 percent of the insurer's admitted assets in excess
21 of \$500 million.

22 (d) Except as provided by Section 862.002, an insurer may
23 not own, develop, or hold an equity interest in any residential
24 property or subdivision, single or multiunit family dwelling
25 property, or undeveloped real property to subdivide for or develop
26 residential, single or multiunit family dwellings.

27 (e) The investment authority granted by this section is in

1 addition to and separate from the investment authority granted by
2 Section 862.002, except that an insurer may not invest in any real
3 property that, when added to properties acquired by the insurer
4 under Section 862.002, would exceed the limitations prescribed by
5 that section.

6 (f) An insurer's admitted assets are determined from the
7 insurer's annual statements that are made as of the December 31 that
8 precedes the date of the determination and are filed with the
9 department as required by law. The value of any investment made
10 under this section is subject to the appraisal requirement of
11 Section 862.002. (V.T.I.C. Art. 2.10, Sec. (e) (part).)

12 Sec. 424.065. ACTING AS REAL ESTATE BROKER OR SALESPERSON
13 PROHIBITED. An insurer defined in Section 822.001 or 822.201 or
14 another insurer specifically made subject to Sections 424.051,
15 424.053-424.071, and 424.074 may not engage in the business of a
16 broker or salesperson as defined by Chapter 1101, Occupations Code,
17 except that the insurer may hold, improve, maintain, manage, rent,
18 lease, sell, exchange, or convey any of the real property interests
19 legally owned as investments under this code. (V.T.I.C. Art. 2.10,
20 Sec. (e) (part).)

21 Sec. 424.066. AUTHORIZED INVESTMENTS: OBLIGATIONS SECURED
22 BY REAL PROPERTY LOANS. (a) Subject to this section, an insurer
23 may invest the insurer's funds in excess of minimum capital and
24 surplus in a bond, note, or evidence of indebtedness, or a
25 participation in a bond, note, or evidence of indebtedness, that is
26 secured by a valid first lien on real property or a leasehold estate
27 in real property located in the United States or in any state,

1 commonwealth, territory, or possession of the United States.

2 (b) The amount of an obligation secured by a first lien on
3 real property or a leasehold estate in real property may exceed 90
4 percent of the value of the real property or leasehold estate only
5 if:

6 (1) the amount does not exceed 100 percent of the value
7 of the real property or leasehold estate and the insurer or one or
8 more wholly owned subsidiaries of the insurer owns, in the
9 aggregate, a 10 percent or greater equity interest in the real
10 property or leasehold estate;

11 (2) the amount does not exceed 95 percent of the value
12 of the real property and:

13 (A) the property contains only a dwelling
14 designed exclusively for occupancy by not more than four families
15 for residential purposes; and

16 (B) the portion of the unpaid balance of the
17 obligation that exceeds 90 percent of the value of the real property
18 is guaranteed or insured by a mortgage guaranty insurer authorized
19 to engage in business in this state; or

20 (3) the amount exceeds 90 percent of the value of the
21 real property only to the extent the obligation is insured or
22 guaranteed by:

23 (A) this state;

24 (B) the United States;

25 (C) the Federal Housing Administration under the
26 National Housing Act (12 U.S.C. Section 1701 et seq.), as amended;

27 or

1 (D) any other agency or instrumentality of the
2 United States.

3 (c) The term of an obligation secured by a first lien on a
4 leasehold estate in real property and improvements located on the
5 property may not exceed a period equal to four-fifths of the
6 unexpired term of the leasehold estate, and the obligation must
7 fully amortize during that period. The term of the leasehold estate
8 may not expire sooner than the 10th anniversary of the expiration
9 date of the term of the obligation.

10 (d) An obligation secured by a first lien on a leasehold
11 estate in real property and improvements located on the property
12 must be payable in equal monthly, quarterly, semiannual, or annual
13 payments of principal plus accrued interest to the date of the
14 principal payment.

15 (e) An insurer's investment in a single obligation under
16 this section may not exceed 10 percent of the insurer's capital and
17 surplus. An insurer's aggregate investments under this section may
18 not exceed 30 percent of the insurer's assets. (V.T.I.C. Art. 2.10,
19 Sec. (e) (part).)

20 Sec. 424.067. AUTHORIZED INVESTMENTS: TRANSPORTATION
21 EQUIPMENT. An insurer may invest the insurer's funds in excess of
22 minimum capital and surplus in:

23 (1) an adequately secured equipment trust obligation,
24 certificate, or other instrument evidencing an interest in
25 transportation equipment wholly or partly located in the United
26 States; and

27 (2) a right to receive determined portions of rental,

1 purchase, or other fixed obligatory payments for the use or
2 purchase of the equipment. (V.T.I.C. Art. 2.10, Sec. (e) (part).)

3 Sec. 424.068. AUTHORIZED INVESTMENTS: INVESTMENT IN
4 FOREIGN JURISDICTION. (a) In addition to the investments in Canada
5 authorized by Sections 424.051, 424.058-424.071, and 424.074 and
6 subject to this section, an insurer may invest the insurer's funds
7 in excess of minimum capital and surplus in an investment in a
8 foreign commonwealth, territory, or possession of the United
9 States, a foreign country other than Canada, or a foreign security
10 originating in one of those commonwealths, territories,
11 possessions, or countries, if:

12 (1) the investment is similar to investments the
13 insurer is authorized by Sections 424.051, 424.058-424.071, and
14 424.074 to make within the United States or Canada; and

15 (2) if a debt obligation, the investment is rated one
16 or two by the securities valuation office.

17 (b) The aggregate amount of an insurer's investments under
18 Sections 424.051, 424.058-424.071, and 424.074 in a single foreign
19 jurisdiction may not exceed:

20 (1) as to a foreign jurisdiction that is given a
21 sovereign debt rating of one by the securities valuation office, 10
22 percent of the insurer's admitted assets; or

23 (2) as to any other foreign jurisdiction, five percent
24 of the insurer's admitted assets.

25 (c) The amount of investments made under this section may
26 not exceed the sum of:

27 (1) the amounts authorized by Section 424.073; and

1 (2) 20 percent of the insurer's assets.

2 (d) The combined total of the amount of investments made
3 under this section, the amount of similar investments made within
4 the United States and Canada, and any amounts of investments
5 authorized by Section 424.073 may not exceed any limitation
6 prescribed by Sections 424.051, 424.058-424.071, and 424.074.
7 (V.T.I.C. Art. 2.10, Sec. (e) (part).)

8 Sec. 424.069. AUTHORIZED INVESTMENTS: CERTAIN LOANS. An
9 insurer may invest the insurer's funds in excess of minimum capital
10 and surplus in a loan on the pledge of any mortgage, stock, bond, or
11 other evidence of indebtedness acceptable as an investment under
12 Sections 424.051, 424.053-424.071, and 424.074, if the current
13 value of the mortgage, stock, bond, or other evidence of
14 indebtedness is at least 25 percent more than the amount of the
15 loan. (V.T.I.C. Art. 2.10, Sec. (e) (part).)

16 Sec. 424.070. AUTHORIZED INVESTMENTS: OBLIGATIONS OF LOCAL
17 GOVERNMENTAL ENTITIES. (a) Subject to this section, an insurer may
18 invest the insurer's funds in excess of minimum capital and surplus
19 in a bond or other interest-bearing evidence of indebtedness of a:

- 20 (1) county or subdivision of a county;
21 (2) municipality;
22 (3) road district;
23 (4) turnpike district or authority;
24 (5) water district;
25 (6) school district;
26 (7) sanitary or navigation district; or
27 (8) municipally owned revenue water system, sewer

1 system, or electric utility company with respect to which the
2 municipality has appropriated, pledged, or otherwise provided for
3 special revenues to meet the principal and interest payments of the
4 bond or other evidence of indebtedness.

5 (b) A bond or other evidence of indebtedness of a navigation
6 district is an authorized investment under this section only if:

7 (1) the navigation district is located wholly or
8 partly in a county that has a population of at least 100,000; and

9 (2) the interest due on the bond or other evidence of
10 indebtedness has never been in default. (V.T.I.C. Art. 2.10, Sec.
11 (e) (part).)

12 Sec. 424.071. AUTHORIZED INVESTMENTS: THE UNIVERSITY OF
13 TEXAS. An insurer may invest the insurer's funds in excess of
14 minimum capital and surplus in an interest-bearing note or bond of
15 The University of Texas issued under the laws of this state.
16 (V.T.I.C. Art. 2.10, Sec. (e) (part).)

17 Sec. 424.072. AUTHORIZED INVESTMENTS: BONDS ISSUED,
18 ASSUMED, OR GUARANTEED IN INTERNATIONAL MARKET. An insurer may
19 invest the insurer's funds in excess of minimum capital and surplus
20 in bonds issued, assumed, or guaranteed by any of the following
21 international financial institutions in which the United States is
22 a member:

23 (1) the Inter-American Development Bank;

24 (2) the International Bank for Reconstruction and
25 Development (the World Bank);

26 (3) the African Development Bank;

27 (4) the Asian Development Bank; or

1 (5) the International Finance Corporation. (V.T.I.C.
2 Art. 2.10-1, Sec. (1).)

3 Sec. 424.073. AUTHORIZED INVESTMENTS: INSURER ENGAGED IN
4 BUSINESS IN FOREIGN COUNTRY. (a) Subject to this section, an
5 insurer authorized by the law of a foreign country to engage in a
6 line of insurance in which the insurer is authorized to engage in
7 this state may invest in foreign securities originating in the
8 foreign country of the same kind as the domestic securities
9 originating in the United States in which the insurer is authorized
10 to invest under Sections 424.051, 424.053-424.071, and 424.074.

11 (b) The aggregate amount of an insurer's investments made
12 under this section in a single country may not exceed by more than
13 10 percent at any time the lesser of:

14 (1) the amount of funds required by the law of the
15 foreign country to be maintained in securities originating in that
16 country; or

17 (2) the amount of total unearned premium reserves,
18 reinsurance reserves, loss reserves, and any other liabilities
19 required by the law of this state to be carried by the insurer that
20 are directly attributable to the particular insurance policies or
21 contracts on residents or property located in the foreign country.

22 (c) This section does not authorize an insurer to invest in
23 a foreign security originating in a foreign country with respect to
24 which the president of the United States or other federal authority
25 has refused to exercise the authority to issue guarantees on
26 projects in the country to citizens or corporations of the United
27 States against loss by reason of inconvertibility of currency,

1 expropriation, confiscation, war, revolution, or insurrection
2 because the foreign country has failed to enter into arrangements
3 for the security of American property as required by the president
4 or other federal authority for the issuance of those guarantees.
5 (V.T.I.C. Art. 2.10-2.)

6 Sec. 424.074. OTHER SPECIFICALLY AUTHORIZED INVESTMENTS.
7 An insurer may invest the insurer's funds in excess of minimum
8 capital and surplus in:

9 (1) a savings account as authorized by Chapter 65,
10 Finance Code;

11 (2) a bond or other indebtedness as authorized by
12 Sections 435.045 and 435.046, Government Code;

13 (3) a bond issued under Subchapter B, Chapter 1505,
14 Government Code;

15 (4) a bond as authorized by Subchapter B, Chapter 284,
16 Transportation Code;

17 (5) a municipal bond issued under Sections 51.038 and
18 51.039, Water Code;

19 (6) an insured account or evidence of indebtedness as
20 authorized by Section 1, Chapter 160, General Laws, Acts of the 43rd
21 Legislature, Regular Session, 1933 (Article 842a, Vernon's Texas
22 Civil Statutes);

23 (7) an insured or guaranteed obligation as authorized
24 by Chapter 230, Acts of the 49th Legislature, Regular Session, 1945
25 (Article 842a-1, Vernon's Texas Civil Statutes);

26 (8) a bond issued under Section 1, Chapter 1, page 427,
27 General Laws, Acts of the 46th Legislature, Regular Session, 1939

1 (Article 1269k-1, Vernon's Texas Civil Statutes);

2 (9) a bond as authorized by Section 24, Chapter 110,
3 Acts of the 51st Legislature, Regular Session, 1949 (Article
4 8280-133, Vernon's Texas Civil Statutes);

5 (10) a bond as authorized by Section 19, Chapter 340,
6 Acts of the 51st Legislature, Regular Session, 1949 (Article
7 8280-137, Vernon's Texas Civil Statutes);

8 (11) a bond as authorized by Section 10, Chapter 398,
9 Acts of the 51st Legislature, Regular Session, 1949 (Article
10 8280-138, Vernon's Texas Civil Statutes);

11 (12) a bond as authorized by Section 18, Chapter 465,
12 Acts of the 51st Legislature, Regular Session, 1949 (Article
13 8280-139, Vernon's Texas Civil Statutes); or

14 (13) another investment specifically authorized by
15 law. (V.T.I.C. Art. 2.10, Sec. (e) (part).)

16 [Sections 424.075-424.100 reserved for expansion]

17 SUBCHAPTER C. INVESTMENT POOLS

18 Sec. 424.101. DEFINITIONS. In this subchapter:

19 (1) "Business entity" means an association,
20 corporation, joint stock company, joint venture, limited liability
21 company, mutual fund trust, partnership, or other similar form of
22 business organization, regardless of whether organized for profit.

23 (2) "Obligation" means:

24 (A) a bond, note, debenture, trust certificate,
25 including an equipment certificate, or production payment;

26 (B) a negotiable bank certificate of deposit,
27 bankers' acceptance, credit tenant loan, or other loan secured by

1 financing net leases; or

2 (C) any other evidence of indebtedness for the
3 payment of money or participation certificates or other evidences
4 of an interest in an obligation otherwise described by this
5 subdivision, whether constituting a general obligation of the
6 issuer or payable only out of certain revenues or certain funds
7 pledged or otherwise dedicated for payment.

8 (3) "Qualified bank" means a national bank, state
9 bank, or trust company that:

10 (A) is at all times adequately capitalized as
11 determined by the standards adopted by the United States banking
12 regulators; and

13 (B) is either a member of the Federal Reserve
14 System or regulated by state banking laws.

15 (4) "Repurchase transaction," "reverse repurchase
16 transaction," and "securities lending transaction" have the
17 meanings assigned by Section 424.151. (V.T.I.C. Art. 2.10-5, Secs.
18 1(1), (5), (6), (7), (8), (9).)

19 Sec. 424.102. AUTHORITY TO INVEST IN POOL. An insurer may
20 acquire investments and participate in an investment pool that is
21 qualified under Section 424.103(b) and the investments of which are
22 limited to investments authorized for:

23 (1) a short-term investment pool under Section
24 424.104; or

25 (2) an authorized investment pool under Section
26 424.107. (V.T.I.C. Art. 2.10-5, Sec. 2.)

27 Sec. 424.103. INVESTMENT POOL REQUIREMENTS AND

1 QUALIFICATIONS. (a) An investment pool must be a business entity.

2 (b) To be qualified, an investment pool must:

3 (1) have a written pooling agreement and a pool
4 manager that comply with the requirements of this subchapter; and

5 (2) comply with Subsection (c).

6 (c) The investment pool may not:

7 (1) acquire securities issued, assumed, guaranteed,
8 or insured by the investing insurer or an affiliate of the investing
9 insurer;

10 (2) borrow or incur indebtedness for borrowed money,
11 except for securities lending and reverse repurchase transactions
12 that meet the requirements of this subchapter; or

13 (3) permit the aggregate value of securities loaned or
14 sold to, purchased from, or invested in a single business entity at
15 the time of the loan, sale, purchase, or investment to exceed 10
16 percent of the pool's total assets. (V.T.I.C. Art. 2.10-5, Secs.
17 5(a), (b), (c), 6(a).)

18 Sec. 424.104. AUTHORIZED INVESTMENTS FOR SHORT-TERM
19 INVESTMENT POOL. A short-term investment pool may contain only:

20 (1) obligations described by Section 424.105;

21 (2) money market funds described by Section 424.106;

22 or

23 (3) repurchase, reverse repurchase, and securities
24 lending transactions that meet the requirements of Subchapter D.
25 (V.T.I.C. Art. 2.10-5, Sec. 3(a) (part).)

26 Sec. 424.105. SHORT-TERM INVESTMENT POOL: CERTAIN
27 SHORT-TERM OBLIGATIONS. (a) Obligations contained in a short-term

1 investment pool must meet the requirements of this section.

2 (b) The obligations must:

3 (1) have a rating by the securities valuation office
4 of one or two, or an equivalent rating issued by a nationally
5 recognized statistical rating organization recognized by the
6 securities valuation office; or

7 (2) be issued by an issuer with outstanding
8 obligations that have a rating described by Subdivision (1).

9 (c) The obligations must have:

10 (1) a remaining maturity of 397 days or less or a put
11 that:

12 (A) entitles the holder to receive the principal
13 amount of the obligation; and

14 (B) may be exercised through maturity at
15 specified intervals not exceeding 397 days; or

16 (2) a remaining maturity of three years or less and a
17 floating interest rate that resets at least quarterly on the basis
18 of a current short-term index and is not subject to a maximum limit,
19 if the obligations do not have an interest rate that varies
20 inversely to market interest rate changes.

21 (d) For purposes of this section, a current short-term index
22 is:

23 (1) a federal funds rate;

24 (2) the prime rate;

25 (3) the rate for treasury bills;

26 (4) the London InterBank Offered Rate; or

27 (5) the rate for commercial paper. (V.T.I.C. Art.

1 2.10-5, Secs. 3(a) (part), (b), (c).)

2 Sec. 424.106. SHORT-TERM INVESTMENT POOL: CERTAIN MONEY
3 MARKET FUNDS. A short-term investment pool may contain a money
4 market fund as described by 17 C.F.R. Section 270.2a-7 under the
5 Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), as
6 amended, that is:

7 (1) a government money market fund that at all times:

8 (A) invests only in obligations issued,
9 guaranteed, or insured by the United States or collateralized
10 repurchase agreements composed of those obligations; and

11 (B) qualifies for investment without a reserve
12 under the Purposes and Procedures Manual of the securities
13 valuation office or a successor publication; or

14 (2) a class one money market fund that at all times
15 qualifies for investment using the bond class one reserve factor
16 described by the Purposes and Procedures Manual of the securities
17 valuation office. (V.T.I.C. Art. 2.10-5, Secs. 1(2), (3), (4),
18 3(a) (part).)

19 Sec. 424.107. AUTHORIZED INVESTMENTS FOR AUTHORIZED
20 INVESTMENT POOL; LIMITATION. (a) An authorized investment pool
21 may contain only investments that a participating insurer is
22 authorized to acquire by provisions of this code other than this
23 subchapter.

24 (b) The insurer's total of proportionate ownership
25 interests in a single authorized investment held by an authorized
26 investment pool and the insurer's direct investments in that
27 authorized investment may not exceed the limit prescribed by the

1 applicable authorizing provision.

2 (c) In addition to the limitation described by Subsection
3 (b), an insurer is subject to the limitations described by Section
4 424.108. (V.T.I.C. Art. 2.10-5, Sec. 4.)

5 Sec. 424.108. GENERAL INSURER INVESTMENT LIMITATIONS. An
6 insurer may not acquire an investment in an investment pool if, as a
7 result of and after making the investment, the aggregate amount of
8 investments held by the insurer under this subchapter at the time of
9 the investment:

10 (1) in a single investment pool would exceed 10
11 percent of the insurer's admitted assets;

12 (2) in all investment pools investing in investments
13 authorized under Section 424.107 would exceed 25 percent of the
14 insurer's admitted assets; or

15 (3) in all investment pools would exceed 35 percent of
16 the insurer's admitted assets. (V.T.I.C. Art. 2.10-5, Sec. 6(c).)

17 Sec. 424.109. DESIGNATION OF POOL MANAGER; QUALIFICATIONS.

18 (a) The pooling agreement for an investment pool must designate a
19 pool manager.

20 (b) The pool manager must be organized under the laws of the
21 United States or a state and must be:

22 (1) the investing insurer, an affiliated insurer, or a
23 business entity affiliated with the insurer;

24 (2) a qualified bank;

25 (3) a business entity registered under the Investment
26 Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.), as amended;

27 (4) the attorney-in-fact of a reciprocal or

1 interinsurance exchange; or

2 (5) the United States manager or an affiliate or
3 subsidiary of the United States manager of a United States branch of
4 an alien insurer. (V.T.I.C. Art. 2.10-5, Sec. 5(d).)

5 Sec. 424.110. POOL MANAGER TO MAINTAIN ASSETS; CUSTODY
6 AGREEMENT. (a) The pool manager shall maintain the assets of the
7 investment pool in one or more accounts, in the name of or on behalf
8 of the pool, under a custody agreement with a qualified bank.

9 (b) The custody agreement must:

10 (1) state and recognize the claims and rights of each
11 participant;

12 (2) acknowledge that the investment pool's underlying
13 assets are held solely for the benefit of each participant in
14 proportion to the aggregate amount of the participant's investments
15 in the pool; and

16 (3) contain an agreement that the pool's underlying
17 assets may not be commingled with the general assets of the
18 custodian qualified bank or any other person. (V.T.I.C. Art.
19 2.10-5, Sec. 5(f).)

20 Sec. 424.111. POOLING AGREEMENT PROVISIONS. The pooling
21 agreement for an investment pool must provide that:

22 (1) 100 percent of the ownership interests in the pool
23 must at all times be held by:

24 (A) an insurer and the insurer's affiliated
25 insurers;

26 (B) for a pool investing solely in investments
27 authorized under Section 424.104, the insurer and the insurer's

1 subsidiaries and affiliates or any pension or profit-sharing plan
2 of the insurer and the insurer's subsidiaries and affiliates; or

3 (C) for a United States branch of an alien
4 insurer, subsidiaries or affiliates of the insurer's United States
5 manager;

6 (2) the pool's underlying assets are held solely for
7 the benefit of each participant and may not be commingled with the
8 general assets of the pool manager or any other person;

9 (3) each participant owns an undivided interest in the
10 pool's underlying assets in proportion to the aggregate amount of
11 the participant's interest in the pool; and

12 (4) a pool participant or, if a pool participant is
13 insolvent, bankrupt, or in receivership, the participant's
14 trustee, receiver, conservator, or other successor-in-interest may
15 withdraw all or any portion of the participant's investment from
16 the pool under the terms of the pooling agreement. (V.T.I.C. Art.
17 2.10-5, Sec. 5(g).)

18 Sec. 424.112. WITHDRAWALS AND DISTRIBUTIONS. (a) A pool
19 participant must be able to make withdrawals on demand without
20 penalty or other assessment on any business day, and settlement of
21 funds must occur within a reasonable and customary period that does
22 not exceed five business days after a withdrawal.

23 (b) The pooling agreement must provide that the pool manager
24 shall make a distribution to a pool participant, at the manager's
25 discretion:

26 (1) in cash in an amount equal to the fair market value
27 at the time of the distribution of the participant's pro rata share

1 of each of the pool's underlying assets;

2 (2) in kind in an amount equal to a pro rata share of
3 each underlying asset; or

4 (3) in a combination of cash and in-kind distributions
5 in an amount equal to a pro rata share of each underlying asset.

6 (c) A distribution under Subsection (b) must be computed
7 after subtracting all the investment pool's applicable fees and
8 expenses. (V.T.I.C. Art. 2.10-5, Secs. 6(d), (e), (f).)

9 Sec. 424.113. INVESTMENT POOL RECORDS. The pool manager
10 shall compile and maintain:

11 (1) detailed accounting records that show:

12 (A) the cash receipts and disbursements
13 reflecting each pool participant's proportionate investment in the
14 investment pool; and

15 (B) a complete description of all the pool's
16 underlying assets, including the amount, interest rate, and
17 maturity date, if any, of each of those assets and other appropriate
18 designations; and

19 (2) other records that, on a daily basis, allow third
20 parties to verify each participant's investment in the pool.
21 (V.T.I.C. Art. 2.10-5, Sec. 5(e).)

22 Sec. 424.114. INSPECTION OF RECORDS. The pool manager
23 shall make records of the investment pool available for inspection
24 by the commissioner. (V.T.I.C. Art. 2.10-5, Sec. 6(g).)

25 Sec. 424.115. REPORTS OF TRANSACTIONS BETWEEN POOL AND
26 PARTICIPANT. (a) A transaction between an investment pool and a
27 pool participant is not subject to Subchapter C, Chapter 823,

1 except that before entering into a pool, an insurer subject to
2 Chapter 823 shall give the commissioner the written notice required
3 under Section 823.103.

4 (b) The investment pool's investment activities and the
5 transactions between the pool and a pool participant must be
6 reported in the registration statement required by Subchapter B,
7 Chapter 823. (V.T.I.C. Art. 2.10-5, Sec. 6(b).)

8 [Sections 424.116-424.150 reserved for expansion]

9 SUBCHAPTER D. DOLLAR ROLL, REPURCHASE, REVERSE REPURCHASE,
10 AND SECURITIES LENDING TRANSACTIONS

11 Sec. 424.151. DEFINITIONS. In this subchapter:

12 (1) "Dollar roll transaction" means two simultaneous
13 transactions with settlement dates not more than 96 days apart, in
14 one of which an insurer sells to a business entity, and in the other
15 of which the insurer is obligated to purchase from the same business
16 entity, substantially similar securities that are:

17 (A) mortgage-backed securities issued, assumed,
18 or guaranteed by the Government National Mortgage Association, the
19 Federal National Mortgage Association, the Federal Home Loan
20 Mortgage Corporation, or a successor to one of those organizations;
21 or

22 (B) other mortgage-backed securities referred to
23 in 15 U.S.C. Section 77r-1 et seq., as amended.

24 (2) "Repurchase transaction" means a transaction in
25 which an insurer purchases securities from a business entity that
26 is obligated to repurchase the purchased securities or equivalent
27 securities from the insurer at a specified price, either within a

1 specified period or on demand.

2 (3) "Reverse repurchase transaction" means a
3 transaction in which an insurer sells securities to a business
4 entity and is obligated to repurchase the sold securities or
5 equivalent securities from the business entity at a specified
6 price, either within a specified period or on demand.

7 (4) "Securities lending transaction" means a
8 transaction in which an insurer lends securities to a business
9 entity that is obligated to return the loaned securities or
10 equivalent securities to the insurer, either within a specified
11 period or on demand. (V.T.I.C. Art. 2.10-3A, Sec. 1.)

12 Sec. 424.152. TRANSACTIONS AUTHORIZED. An insurer may
13 engage in dollar roll, repurchase, reverse repurchase, and
14 securities lending transactions as provided by this subchapter.
15 (V.T.I.C. Art. 2.10-3A, Sec. 2(a).)

16 Sec. 424.153. PERIOD OF TRANSACTION. An insurer must enter
17 into a written agreement for each transaction under this
18 subchapter, other than a dollar roll transaction. The agreement
19 must require that the transaction terminate on or before the first
20 anniversary of the transaction's inception. (V.T.I.C. Art.
21 2.10-3A, Sec. 2(b).)

22 Sec. 424.154. CASH REQUIREMENTS. With respect to cash
23 received in a transaction under this subchapter, an insurer shall:

24 (1) invest the cash in accordance with this subchapter
25 and in a manner that recognizes the liquidity needs of the
26 transaction; or

27 (2) use the cash for the insurer's general corporate

1 purposes. (V.T.I.C. Art. 2.10-3A, Sec. 3(a).)

2 Sec. 424.155. COLLATERAL REQUIREMENTS. (a) While a
3 transaction under this subchapter is outstanding, the insurer or
4 the insurer's agent or custodian shall maintain, as to acceptable
5 collateral received in the transaction, either physically or
6 through the book-entry system of the Federal Reserve, Depository
7 Trust Company, Participants Trust Company, or another securities
8 depository approved by the commissioner:

9 (1) possession of the collateral;

10 (2) a perfected security interest in the collateral;

11 or

12 (3) in the case of a jurisdiction outside of the United
13 States, title to, or the rights of a secured creditor to, the
14 collateral.

15 (b) The amount of collateral required for repurchase,
16 reverse repurchase, and securities lending transactions is the
17 amount required under the Purposes and Procedures Manual of the
18 securities valuation office or a successor publication. (V.T.I.C.
19 Art. 2.10-3A, Secs. 3(b), (e).)

20 Sec. 424.156. PERCENTAGE LIMITATIONS. (a) An insurer may
21 not enter into a transaction under this subchapter if, as a result
22 of and after making the transaction, the aggregate amount of
23 securities loaned or sold to or purchased from:

24 (1) a single business entity counterparty under this
25 subchapter would exceed five percent of the insurer's assets; or

26 (2) all business entities under this subchapter would
27 exceed 40 percent of the insurer's assets.

1 (b) In computing the amount sold to or purchased from a
2 business entity counterparty under a repurchase or reverse
3 repurchase transaction, effect may be given to netting provisions
4 under a master written agreement. (V.T.I.C. Art. 2.10-3A, Secs.
5 3(c), (d).)

6 Sec. 424.157. RULES. The commissioner may adopt reasonable
7 rules and issue reasonable orders as necessary to implement this
8 subchapter. (V.T.I.C. Art. 2.10-3A, Sec. 3(f).)

9 [Sections 424.158-424.200 reserved for expansion]

10 SUBCHAPTER E. RISK CONTROL TRANSACTIONS

11 Sec. 424.201. DEFINITIONS. In this subchapter:

12 (1) "Acceptable collateral" means:

13 (A) cash;

14 (B) cash equivalents;

15 (C) letters of credit and direct obligations; or

16 (D) securities that are fully guaranteed as to
17 principal and interest by the United States.

18 (2) "Business entity" includes an association, bank,
19 corporation, joint stock company, joint tenancy, joint venture,
20 limited liability company, mutual fund, partnership, sole
21 proprietorship, trust, or other similar form of business
22 organization, regardless of whether organized for profit.

23 (3) "Cap" means an agreement obligating the seller to
24 make payments to the buyer, with each payment based on the amount by
25 which a reference price or level or the performance or value of one
26 or more underlying interests exceeds a predetermined number that is
27 sometimes called the strike rate or strike price.

1 (4) "Cash equivalent" means an investment or security
2 that is short-term, highly rated, highly liquid, and readily
3 marketable. The term includes a money market fund described by
4 Section 424.106. For purposes of this subdivision, an investment
5 or security is:

6 (A) short-term if it has a remaining term to
7 maturity of one year or less; and

8 (B) highly rated if it has:

9 (i) a rating of "P-1" by Moody's Investors
10 Service, Inc.;

11 (ii) a rating of "A-1" by the Standard and
12 Poor's Division of the McGraw Hill Companies, Inc.; or

13 (iii) an equivalent rating by a nationally
14 recognized statistical rating organization recognized by the
15 securities valuation office.

16 (5) "Collar" means an agreement to receive payments as
17 the buyer of a cap, floor, or option and to make payments as the
18 seller of a different cap, floor, or option.

19 (6)(A) "Counterparty exposure amount" means:

20 (i) for an over-the-counter derivative
21 instrument not entered into under a written master agreement that
22 provides for netting of payments owed by the respective parties,
23 the market value of the over-the-counter derivative instrument, if
24 the liquidation of the derivative instrument would result in a
25 final cash payment to the insurer, or zero, if the liquidation of
26 the derivative instrument would not result in a final cash payment
27 to the insurer; or

1 (ii) for an over-the-counter derivative
2 instrument entered into under a written master agreement that
3 provides for netting of payments owed by the respective parties and
4 for which the counterparty's domiciliary jurisdiction is within the
5 United States or a foreign jurisdiction listed in the Purposes and
6 Procedures Manual of the securities valuation office as eligible
7 for netting, the greater of zero or the net sum payable to the
8 insurer in connection with all derivative instruments subject to
9 the written master agreement on the liquidation of the instruments
10 in the event of the counterparty's default under the master
11 agreement, if there is no condition precedent to the counterparty's
12 obligation to make the payment and if there is no setoff of amounts
13 payable under another instrument or agreement.

14 (B) For purposes of this subdivision, market
15 value or the net sum payable, as applicable, must be determined at
16 the end of the most recent quarter of the insurer's fiscal year and
17 must be reduced by the market value of acceptable collateral held by
18 the insurer or a custodian on the insurer's behalf.

19 (7) "Derivative instrument":

20 (A) means an agreement, option, or instrument, or
21 a series or combination of agreements, options, or instruments:

22 (i) to make or take delivery of, or assume
23 or relinquish, a specified amount of one or more underlying
24 interests, or to make a cash settlement instead of making or taking
25 delivery of, or assuming or relinquishing, a specified amount of an
26 underlying interest; or

27 (ii) that has a price, performance, value,

1 or cash flow based primarily on the actual or expected price, yield,
2 level, performance, value, or cash flow of one or more underlying
3 interests;

4 (B) includes an option, a warrant not otherwise
5 permitted to be held by the insurer under this subchapter, a cap, a
6 floor, a collar, a swap, a swaption, a forward, a future, any other
7 substantially similar agreement, option, or instrument, and a
8 series or combination of those agreements, options, or instruments;
9 and

10 (C) does not include a collateralized mortgage
11 obligation, another asset-backed security, a principal-protected
12 structured security, a floating rate security, an instrument that
13 an insurer would otherwise be authorized to invest in or receive
14 under a provision of this subchapter other than this subdivision,
15 or a debt obligation of the insurer.

16 (8) "Derivative transaction" means a transaction
17 involving the use of one or more derivative instruments. The term
18 does not include a dollar roll transaction, repurchase transaction,
19 reverse repurchase transaction, or securities lending transaction.

20 (9) "Floor" means an agreement obligating the seller
21 to make payments to the buyer, each of which is based on the amount
22 by which a predetermined number that is sometimes called the floor
23 price or floor rate exceeds a reference level, performance, price,
24 or value of one or more underlying interests.

25 (10) "Forward" means an agreement to make or take
26 delivery in the future of one or more underlying interests, or to
27 effect a cash settlement, based on the actual or expected level,

1 performance, price, or value of those interests. The term does not
2 include a future or a spot transaction effected within a customary
3 settlement period, a when-issued purchase, or another similar cash
4 market transaction.

5 (11) "Future" means an agreement traded on a futures
6 exchange to make or take delivery of one or more underlying
7 interests, or to effect a cash settlement, based on the actual or
8 expected level, performance, price, or value of those interests.

9 (12) "Futures exchange" means a foreign or domestic
10 exchange, contract market, or board of trade on which trading in
11 futures is conducted and that, in the United States, is authorized
12 to conduct that trading by the Commodity Futures Trading Commission
13 or a successor to that agency.

14 (13) "Hedging transaction" means a derivative
15 transaction entered into and maintained to manage, with respect to
16 an asset, liability, or portfolio of assets or liabilities, that an
17 insurer has acquired or incurred or anticipates acquiring or
18 incurring:

19 (A) the risk of a change in value, yield, price,
20 cash flow, or quantity; or

21 (B) the currency exchange rate risk.

22 (14) "Income generation transaction" means a
23 derivative transaction entered into to generate income. The term
24 does not include a hedging transaction or a replication
25 transaction.

26 (15) "Market value" means the price for a security or
27 derivative instrument obtained from a generally recognized source,

1 the most recent quotation from a generally recognized source, or if
2 a generally recognized source does not exist, the price determined
3 under the terms of the instrument or in good faith by the insurer,
4 as can be reasonably demonstrated to the commissioner on request,
5 plus the amount of accrued but unpaid income on the security or
6 instrument to the extent that amount is not included in the price as
7 of the date the security or instrument is valued.

8 (16) "Option" means an agreement giving the buyer the
9 right to buy or receive, referred to as a "call option," to sell or
10 deliver, referred to as a "put option," to enter into, extend, or
11 terminate, or to effect a cash settlement based on the actual or
12 expected level, performance, price, spread, or value of, one or
13 more underlying interests.

14 (17) "Over-the-counter derivative instrument" means a
15 derivative instrument entered into with a business entity in a
16 manner other than through a securities exchange or futures exchange
17 or cleared through a qualified clearinghouse.

18 (18) "Potential exposure" means:

19 (A) as to a futures position, the amount of
20 initial margin required for that position; or

21 (B) as to a swap, collar, or forward, one-half of
22 one percent multiplied by the notional amount multiplied by the
23 square root of the remaining years to maturity.

24 (19) "Qualified clearinghouse" means a clearinghouse
25 that:

26 (A) is subject to the rules of a securities
27 exchange or a futures exchange; and

1 (B) provides clearing services, including acting
2 as a counterparty to each of the parties to a transaction in a
3 manner that eliminates the parties' credit risk to each other.

4 (20) "Replication transaction" means a derivative
5 transaction or a combination of derivative transactions effected
6 separately or in conjunction with cash market investments included
7 in the insurer's investment portfolio to replicate the risks and
8 returns of another authorized transaction, investment, or
9 instrument or to operate as a substitute for cash market
10 transactions. The term does not include a hedging transaction.

11 (21) "Securities exchange" means:

12 (A) an exchange registered as a national
13 securities exchange or a securities market registered under the
14 Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.), as
15 amended;

16 (B) the Private Offerings, Resales and Trading
17 through Automated Linkages system; or

18 (C) a designated offshore securities market as
19 defined by 17 C.F.R. Section 230.902, as amended.

20 (22) "Swap" means an agreement to exchange or to net
21 payments at one or more times based on the actual or expected price,
22 yield, level, performance, or value of one or more underlying
23 interests.

24 (23) "Swaption" means an option to purchase or sell a
25 swap at a given price and time or at a series of prices and times.
26 The term does not include a swap with an embedded option.

27 (24) "Underlying interest" means an asset, liability,

1 or other interest underlying a derivative instrument or a
2 combination of those assets, liabilities, or interests. The term
3 includes a security, currency, rate, index, commodity, or
4 derivative instrument.

5 (25) "Warrant" means an instrument under which the
6 holder has the right to purchase or sell the underlying interest at
7 a given price and time or at a series of prices and times stated in
8 the warrant. (V.T.I.C. Art. 2.10-4, Sec. 1.)

9 Sec. 424.202. RISK CONTROL TRANSACTIONS AUTHORIZED. (a)
10 Except as provided by Subsection (b), an insurer may engage in a
11 risk control transaction authorized by this subchapter to:

12 (1) protect the insurer's assets against the risk of
13 changing asset values or interest rates;

14 (2) reduce risk; and

15 (3) generate income.

16 (b) An insurer with a statutory net capital and surplus as
17 determined by the insurer's most recent financial statement
18 required to be filed with the department that is less than the
19 minimum amount of capital and surplus required for a new charter and
20 certificate of authority for the same type of insurer may not engage
21 in a transaction authorized under this subchapter. (V.T.I.C. Art.
22 2.10-4, Secs. 2(a), 8(b), (c).)

23 Sec. 424.203. NOTICE OF INTENT TO ENGAGE IN RISK CONTROL
24 TRANSACTIONS REQUIRED. (a) Before an insurer with a statutory net
25 capital and surplus of less than \$10 million engages in a
26 transaction authorized under this subchapter, the insurer shall
27 file a written notice with the commissioner describing:

- 1 (1) the need to engage in the transaction;
- 2 (2) the lack of acceptable alternatives; and
- 3 (3) the insurer's plan to engage in the transaction.

4 (b) If the commissioner does not issue an order prohibiting
5 an insurer who files a notice under Subsection (a) from engaging in
6 the transaction on or before the 90th day after the date the
7 commissioner receives the notice, the insurer may engage in the
8 transaction described in the notice.

9 (c) For purposes of this section, an insurer's net capital
10 and surplus are determined by the insurer's most recent financial
11 statement required to be filed with the department. (V.T.I.C. Art.
12 2.10-4, Secs. 8(a), (c).)

13 Sec. 424.204. TRADING REQUIREMENTS FOR DERIVATIVE
14 INSTRUMENTS. Each derivative instrument must be:

- 15 (1) traded on a securities exchange;
- 16 (2) entered into with, or guaranteed by, a business
17 entity;
- 18 (3) issued or written by, or entered into with, the
19 issuer of the underlying interest on which the derivative
20 instrument is based; or
- 21 (4) in the case of futures, traded through a broker who
22 is:

23 (A) registered as a futures commission merchant
24 under the Commodity Exchange Act (7 U.S.C. Section 1 et seq.), as
25 amended; or

26 (B) exempt from that registration under 17 C.F.R.
27 Section 30.10, adopted under the Commodity Exchange Act (7 U.S.C.

1 Section 1 et seq.), as amended. (V.T.I.C. Art. 2.10-4, Sec. 6.)

2 Sec. 424.205. DERIVATIVE USE PLAN. (a) Before an insurer
3 enters into a derivative transaction, the insurer's board of
4 directors must approve a derivative use plan as part of the
5 insurer's investment plan otherwise required by law.

6 (b) The derivative use plan must:

7 (1) describe investment objectives and risk
8 constraints, such as counterparty exposure amounts;

9 (2) define permissible transactions, identifying the
10 risks to be hedged and the assets or liabilities being replicated;
11 and

12 (3) require compliance with the insurer's internal
13 control procedures established under Section 424.206. (V.T.I.C.
14 Art. 2.10-4, Sec. 2(b).)

15 Sec. 424.206. INTERNAL CONTROL PROCEDURES. An insurer that
16 enters into a derivative transaction shall establish written
17 internal control procedures that require:

18 (1) a quarterly report to the board of directors that
19 reviews:

20 (A) each derivative transaction entered into,
21 outstanding, or closed out;

22 (B) the results and effectiveness of the
23 derivatives program; and

24 (C) the credit risk exposure to each counterparty
25 for over-the-counter derivative transactions based on the
26 counterparty exposure amount;

27 (2) a system for determining whether hedging or

1 replication strategies used by the insurer have been effective;

2 (3) a system of reports, at least as frequent as
3 monthly, to the insurer's management, that include:

4 (A) a description of each derivative transaction
5 entered into, outstanding, or closed out during the period since
6 the last report;

7 (B) the purpose of each outstanding derivative
8 transaction;

9 (C) a performance review of the derivative
10 instrument program; and

11 (D) the counterparty exposure amount for each
12 over-the-counter derivative transaction;

13 (4) a written authorization that identifies the
14 responsibilities and limitations of authority of each person
15 authorized to effect and maintain derivative transactions; and

16 (5) appropriate documentation for each transaction,
17 including:

18 (A) the purpose of the transaction;

19 (B) the assets or liabilities to which the
20 transaction relates;

21 (C) the specific derivative instrument used in
22 the transaction;

23 (D) for an over-the-counter derivative
24 transaction, the name of the counterparty and the counterparty
25 exposure amount; and

26 (E) for an exchange-traded derivative
27 instrument, the name of the exchange and the name of the firm that

1 handled the transaction. (V.T.I.C. Art. 2.10-4, Sec. 2(c).)

2 Sec. 424.207. ABILITY TO DEMONSTRATE HEDGING
3 CHARACTERISTICS AND EFFECTIVENESS. An insurer must be able to
4 demonstrate to the commissioner on request the intended hedging
5 characteristics and continuing effectiveness of a derivative
6 transaction or combination of transactions through:

7 (1) cash flow testing;

8 (2) duration analysis; or

9 (3) other appropriate analysis. (V.T.I.C. Art.
10 2.10-4, Sec. 2(d).)

11 Sec. 424.208. OFFSETTING TRANSACTIONS. (a) Subject to
12 this section, an insurer may purchase or sell one or more derivative
13 instruments to wholly or partly offset a derivative instrument
14 previously purchased or sold, without regard to the quantitative
15 limitations of this subchapter.

16 (b) An offsetting transaction under this section must use
17 the same type of derivative instrument as the derivative instrument
18 being offset. (V.T.I.C. Art. 2.10-4, Sec. 2(f).)

19 Sec. 424.209. INCLUSION OF COUNTERPARTY EXPOSURE AMOUNTS.
20 The insurer shall include all counterparty exposure amounts in
21 determining compliance with the limitations of this subchapter.
22 (V.T.I.C. Art. 2.10-4, Sec. 2(e).)

23 Sec. 424.210. OVERSIGHT BY COMMISSIONER. (a) Not later
24 than the 10th day before the date an insurer is scheduled to enter
25 into an initial hedging transaction, the insurer shall notify the
26 commissioner in writing that:

27 (1) the insurer's board of directors has adopted an

1 investment plan that authorizes hedging transactions; and

2 (2) each hedging transaction will comply with this
3 subchapter.

4 (b) If a hedging transaction does not comply with this
5 subchapter or if continuing the transaction may create a hazardous
6 financial condition for the insurer that affects the insurer's
7 policyholders or creditors or the public, the commissioner may,
8 after notice and an opportunity for a hearing, order the insurer to
9 take action that the commissioner determines is reasonably
10 necessary to:

11 (1) remedy a hazardous financial condition; or

12 (2) prevent an impending hazardous financial
13 condition from occurring. (V.T.I.C. Art. 2.10-4, Secs. 3(a), (d).)

14 Sec. 424.211. AUTHORITY TO ENTER INTO HEDGING TRANSACTION.
15 After providing notice under Section 424.210, an insurer may enter
16 into a hedging transaction under this subchapter if as a result of
17 and after making the transaction:

18 (1) the aggregate statement value of all outstanding
19 caps, floors, options, swaptions, and warrants not attached to
20 another financial instrument purchased by the insurer under this
21 subchapter, other than a collar, does not exceed 7.5 percent of the
22 insurer's assets;

23 (2) the aggregate statement value of all outstanding
24 caps, floors, options, swaptions, and warrants written by the
25 insurer under this subchapter, other than a collar, does not exceed
26 three percent of the insurer's assets; and

27 (3) the aggregate potential exposure of all

1 outstanding collars, forwards, futures, and swaps entered into or
2 acquired by the insurer under this subchapter does not exceed 6.5
3 percent of the insurer's assets. (V.T.I.C. Art. 2.10-4, Sec.
4 3(c).)

5 Sec. 424.212. AUTHORITY TO ENTER INTO INCOME GENERATION
6 TRANSACTION. An insurer may enter into an income generation
7 transaction only if:

8 (1) as a result of and after making the transaction,
9 the sum of the following amounts does not exceed 10 percent of the
10 insurer's assets:

11 (A) the aggregate statement value of admitted
12 assets that at the time of the transaction are subject to call or
13 that generate the cash flows for payments the insurer is required to
14 make under caps and floors sold by the insurer and that at the time
15 of the transaction are outstanding under this subchapter;

16 (B) the statement value of admitted assets
17 underlying derivative instruments that at the time of the
18 transaction are subject to calls sold by the insurer and
19 outstanding under this subchapter; and

20 (C) the purchase price of assets subject to puts
21 that at the time of the transaction are outstanding under this
22 subchapter; and

23 (2) the transaction is a sale of:

24 (A) a call option on assets that meets the
25 requirements of Section 424.213;

26 (B) a put option on assets that meets the
27 requirements of Section 424.214;

1 (C) a call option on a derivative instrument,
2 including a swaption, that meets the requirements of Section
3 424.215; or

4 (D) a cap or floor that meets the requirements of
5 Section 424.216. (V.T.I.C. Art. 2.10-4, Secs. 4(a), (b), (c).)

6 Sec. 424.213. LIMITATION ON SALE OF CALL OPTION ON
7 ASSETS. If an income generation transaction is a sale of a call
8 option on assets, the insurer must, during the entire period the
9 option is outstanding, hold, or have a currently exercisable right
10 to acquire, the underlying assets. (V.T.I.C. Art. 2.10-4, Sec.
11 4(d).)

12 Sec. 424.214. LIMITATION ON SALE OF PUT OPTION ON
13 ASSETS. (a) If an income generation transaction is a sale of a
14 put option on assets, the insurer must:

15 (1) during the entire period the option is
16 outstanding, hold sufficient cash, cash equivalents, or interests
17 in a short-term investment pool to purchase the underlying assets
18 on exercise of the option; and

19 (2) have the ability to hold the underlying assets in
20 the insurer's portfolio.

21 (b) If during the entire period the put option is
22 outstanding the total market value of all put options sold by the
23 insurer exceeds two percent of the insurer's assets, the insurer
24 shall set aside, under a custodial or escrow agreement, cash or cash
25 equivalents that have a market value equal to the amount of the
26 insurer's put option obligations in excess of two percent of the
27 insurer's assets. (V.T.I.C. Art. 2.10-4, Sec. 4(e).)

1 Sec. 424.215. LIMITATION ON SALE OF CALL OPTION ON
2 DERIVATIVE INSTRUMENT. If an income generation transaction is a
3 sale of a call option on a derivative instrument, including a
4 swaption, the insurer must:

5 (1) during the entire period the call option is
6 outstanding, hold, or have a currently exercisable right to
7 acquire, assets generating the cash flow necessary to make any
8 payment for which the insurer is liable under the underlying
9 derivative instrument; and

10 (2) have the ability to enter into the underlying
11 derivative transaction for the insurer's portfolio. (V.T.I.C. Art.
12 2.10-4, Sec. 4(f).)

13 Sec. 424.216. LIMITATION ON SALE OF CAP OR FLOOR. If an
14 income generation transaction is a sale of a cap or a floor, the
15 insurer must, during the entire period the cap or floor is
16 outstanding, hold, or have a currently exercisable right to
17 acquire, assets generating the cash flow necessary to make any
18 payment for which the insurer is liable under the cap or floor.
19 (V.T.I.C. Art. 2.10-4, Sec. 4(g).)

20 Sec. 424.217. AUTHORITY TO ENTER REPLICATION
21 TRANSACTION. (a) An insurer may enter into a replication
22 transaction only with the prior written approval of the
23 commissioner.

24 (b) To be eligible for approval by the commissioner:

25 (1) the insurer must be otherwise authorized to invest
26 the insurer's funds under this chapter in the asset being
27 replicated; and

1 (2) the asset being replicated must be subject to all
2 the provisions of this subchapter relating to the making of the
3 transaction by the insurer with respect to that kind of asset as if
4 the transaction constituted a direct investment by the insurer in
5 the replicated asset.

6 (c) The commissioner may adopt rules regarding replication
7 transactions as necessary to implement this section. (V.T.I.C.
8 Art. 2.10-4, Sec. 5.)

9 Sec. 424.218. RULES. The commissioner may adopt rules
10 consistent with this subchapter that prescribe reasonable limits,
11 standards, and guidelines for:

12 (1) the risk control transactions authorized under
13 this subchapter; and

14 (2) plans related to those transactions. (V.T.I.C.
15 Art. 2.10-4, Sec. 7.)

16 CHAPTER 425. RESERVES AND INVESTMENTS FOR LIFE INSURANCE

17 COMPANIES AND RELATED ENTITIES

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19 Sec. 425.001. SECURITIES IN AMOUNT OF RESERVES

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21 Sec. 425.002. CERTAIN INSURERS: DEPOSIT OF

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23 AMOUNT OF LEGAL RESERVES

24 Sec. 425.003. CERTAIN INSURERS: REQUIRED DEPOSITS OF

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- 1 Sec. 425.004. RECORDS OF SECURITIES DEPOSITED WITH
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- 5 Sec. 425.006. ADDITIONAL RESERVES REQUIRED:
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- 24 SUBCHAPTER C. AUTHORIZED INVESTMENTS AND TRANSACTIONS FOR CAPITAL
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- 26 Sec. 425.101. DEFINITIONS
- 27 Sec. 425.102. INAPPLICABILITY OF CERTAIN LAW

- 1 Sec. 425.103. APPLICABILITY OF SUBCHAPTER
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- 20 Sec. 425.114. AUTHORIZED INVESTMENTS: INSURANCE
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- 22 Sec. 425.115. AUTHORIZED INVESTMENTS: EQUITY
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- 10 Sec. 425.122. AUTHORIZED INVESTMENTS: PREMIUM LOANS
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- 15 Sec. 425.125. RISK CONTROL TRANSACTIONS: DEFINITIONS
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21 COMMISSIONER
- 22 Sec. 425.129. RISK CONTROL TRANSACTIONS: LIMITATIONS
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- 26 Sec. 425.131. RISK CONTROL TRANSACTIONS: TRADING
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1 Sec. 425.132. RISK CONTROL TRANSACTIONS: OFFSETTING

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3 [Sections 425.133-425.150 reserved for expansion]

4 Sec. 425.151. AUTHORIZED INVESTMENTS: FOREIGN

5 COUNTRIES AND UNITED STATES

6 TERRITORIES

7 Sec. 425.152. AUTHORIZED INVESTMENTS: INVESTMENTS NOT

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9 INVESTMENTS AUTHORIZED BY OTHER LAW

10 Sec. 425.153. AUTHORIZED INVESTMENTS: CERTAIN

11 PREVIOUSLY AUTHORIZED INVESTMENTS

12 Sec. 425.154. APPLICABILITY OF PERCENTAGE

13 AUTHORIZATIONS AND LIMITATIONS

14 Sec. 425.155. QUALIFICATION OF INVESTMENTS

15 Sec. 425.156. DISTRIBUTIONS, REINSURANCE, AND MERGER

16 Sec. 425.157. AGGREGATE DIVERSIFICATION REQUIREMENTS

17 Sec. 425.158. WAIVER BY COMMISSIONER OF QUANTITATIVE

18 LIMITATIONS

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21 Sec. 425.161. ACTING AS REAL ESTATE BROKER OR

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25 SUBCHAPTER D. AUTHORIZED INVESTMENTS AND TRANSACTIONS FOR OTHER

26 LIFE, HEALTH, AND ACCIDENT INSURERS

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- 20 Sec. 425.211. AUTHORIZED INVESTMENTS FOR ALL FUNDS:
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- 9 Sec. 425.216. AUTHORIZED INVESTMENTS FOR ALL FUNDS:
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- 11 Sec. 425.217. AUTHORIZED INVESTMENTS FOR ALL FUNDS:
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- 13 Sec. 425.218. AUTHORIZED INVESTMENTS FOR ALL FUNDS:
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- 23 Sec. 425.221. AUTHORIZED INVESTMENTS FOR CAPITAL,
24 SURPLUS, AND CONTINGENCY FUNDS: BONDS
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- 1 Sec. 425.222. AUTHORIZED INVESTMENTS FOR CAPITAL,
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4 Sec. 425.223. AUTHORIZED INVESTMENTS FOR CAPITAL,
5 SURPLUS, AND CONTINGENCY FUNDS:
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7 Sec. 425.224. AUTHORIZED INVESTMENTS FOR CAPITAL,
8 SURPLUS, AND CONTINGENCY FUNDS: LOANS
9 SECURED BY CORPORATE STOCK
10 Sec. 425.225. INVESTMENT IN FOREIGN SECURITIES
11 Sec. 425.226. INVESTMENT IN STOCK SUBJECT TO
12 ASSESSMENT PROHIBITED
13 Sec. 425.227. CERTAIN INVESTMENT POWERS NOT A
14 RESTRICTION
15 Sec. 425.228. INVESTMENTS OF CEDING INSURER
16 Sec. 425.229. AUTHORIZED INVESTMENTS: REAL ESTATE FOR
17 INSURER'S OFFICES
18 Sec. 425.230. AUTHORIZED INVESTMENTS: OIL, GAS, AND
19 MINERALS
20 Sec. 425.231. AUTHORIZED INVESTMENTS: REAL PROPERTY
21 ACQUIRED UNDER CERTAIN CIRCUMSTANCES
22 Sec. 425.232. AUTHORIZED INVESTMENTS: IMPROVED
23 INCOME-PRODUCING REAL PROPERTY
24 CHAPTER 425. RESERVES AND INVESTMENTS FOR LIFE INSURANCE
25 COMPANIES AND RELATED ENTITIES
26 SUBCHAPTER A. GENERAL PROVISIONS
27 Sec. 425.001. SECURITIES IN AMOUNT OF RESERVES

1 REQUIRED. The commissioner, after determining the amount of the
2 reserves required on all of a life insurance company's policies in
3 force, shall ensure that the company has at least that amount in
4 securities of the class and character required by the law of this
5 state, after all debts and claims against the company and the
6 minimum capital required by Chapter 841 or 982, as applicable, have
7 been provided for. (V.T.I.C. Art. 3.32.)

8 Sec. 425.002. CERTAIN INSURERS: DEPOSIT OF SECURITIES,
9 MONEY, OR PROPERTY IN AMOUNT OF LEGAL RESERVES. (a) Except as
10 provided by Subsection (b), a life insurance company incorporated
11 under the laws of this state may deposit with the department, for
12 the common benefit of all the holders of the company's policies and
13 annuity contracts and in an amount equal to the legal reserve on all
14 the company's outstanding policies and contracts in force,
15 securities of the character in which the law of this state permits
16 the company to invest, or against which the law of this state
17 permits the company to loan, the company's capital, surplus, or
18 reserves.

19 (b) A life insurance company may not make a new deposit of
20 securities after August 28, 1961, except to the extent expressly
21 required by Section 425.003.

22 (c) For purposes of this section, securities may be
23 physically delivered to the department without being accompanied by
24 a written transfer of a lien securing the securities. A life
25 insurance company may deposit registered or unregistered United
26 States government securities under this section.

27 (d) A life insurance company may deposit lawful money of the

1 United States instead of all or part of the securities described by
2 Subsection (a). A company may, for the purposes of the deposit
3 described by Subsection (a), convey to the department in trust the
4 real property in which any part of the company's reserve is lawfully
5 invested. If the company conveys the property, the department
6 shall hold the title to the property in trust until the company
7 deposits with the department securities to take the place of the
8 property, at which time the department shall reconvey the property
9 to the company.

10 (e) The department may have any securities or real property
11 appraised and valued before the securities or real property may be
12 deposited with or conveyed to the department under this section.
13 The life insurance company shall pay the reasonable expense of the
14 appraisal or valuation.

15 (f) For purposes of state, county, and municipal taxation,
16 the situs of the deposited securities is the municipality and
17 county in which the life insurance company's charter requires the
18 principal business office of the company making the deposit to be
19 located. (V.T.I.C. Art. 3.16, Secs. 1 (part), 2, 3.)

20 Sec. 425.003. CERTAIN INSURERS: REQUIRED DEPOSITS OF
21 SECURITIES; ADDITIONAL DEPOSITS AND WITHDRAWALS. (a) A life
22 insurance company that, before August 28, 1961, issued or assumed
23 the obligations of policies or annuity contracts that were
24 registered as provided by Article 3.18, as that article existed
25 before August 28, 1961, shall have on deposit with the department
26 securities of the character described by Section 425.002 in an
27 amount equal to or greater than the aggregate net value of the

1 company's outstanding registered policies and annuity contracts in
2 force.

3 (b) To comply with Subsection (a), a life insurance company
4 shall periodically make additional deposits of securities in
5 amounts of not less than \$5,000. A company whose deposits exceed
6 the aggregate net value of the company's outstanding registered
7 policies and annuity contracts in force may periodically withdraw
8 the excess in amounts of not less than \$5,000. A company may at any
9 time withdraw any of the company's deposited securities by
10 depositing in their place securities of equal value to the
11 securities replaced and of a character authorized by this chapter.

12 (c) A life insurance company may at any time collect the
13 interest, rents, and other income from the company's securities on
14 deposit.

15 (d) The net value of each policy or annuity contract subject
16 to this section is the policy's or contract's value according to the
17 standard prescribed by state law when the first premium on the
18 policy or contract is paid, minus the amount of any liens the life
19 insurance company has against the policy or contract not to exceed
20 the policy's or contract's value.

21 (e) The department shall hold a life insurance company's
22 securities on deposit with the department under this section in
23 trust for the benefit of all holders of the company's outstanding
24 policies and annuity contracts that were registered as provided by
25 Article 3.18, as that article existed before August 28, 1961.

26 (f) A life insurance company that has outstanding
27 registered policies or annuity contracts in force may not reinsure

1 all or any part of that outstanding business, other than in a
2 company authorized to engage in business in this state. (V.T.I.C.
3 Art. 3.16, Sec. 1 (part); Art. 3.17.)

4 Sec. 425.004. RECORDS OF SECURITIES DEPOSITED WITH
5 DEPARTMENT; REPORT OF VALUE. Each life insurance company that is
6 required by Section 425.003 to have securities on deposit with the
7 department shall:

8 (1) keep records of:

9 (A) all of the company's outstanding registered
10 policies and annuity contracts in force; and

11 (B) the net value of those policies and
12 contracts; and

13 (2) not later than the 15th day after the last day of
14 each calendar month, file with the department a report stating
15 whether the value of the company's securities on deposit is equal to
16 or greater than the aggregate net value of the company's registered
17 policies and annuity contracts outstanding and in force at the end
18 of the preceding calendar month. (V.T.I.C. Art. 3.18, Secs. 2, 3.)

19 Sec. 425.005. DEPARTMENT DUTIES REGARDING DEPOSITED
20 SECURITIES; INSURANCE COMPANY ACCESS. (a) The department shall
21 keep securities deposited by a life insurance company under
22 Sections 425.002 and 425.003 in a secure safe-deposit, fireproof
23 box or vault in the municipality of, or a municipality near the
24 location of, the company's home office.

25 (b) The life insurance company's officers may, in
26 accordance with reasonable rules adopted by the commissioner, have
27 access to the securities to detach interest coupons, credit

1 payment, and exchange securities as provided by Section 425.003.
2 (V.T.I.C. Art. 3.18, Sec. 4.)

3 Sec. 425.006. ADDITIONAL RESERVES REQUIRED: SUBSTANDARD OR
4 EXTRA HAZARDOUS POLICIES. (a) If a life insurance company engaged
5 in business under the laws of this state has written or assumed
6 risks that are substandard or extra hazardous and has charged more
7 for the policies under which those risks are written or assumed than
8 the company's published premium rates, the commissioner shall, in
9 valuing those policies, compute and charge extra reserves on the
10 policies as necessary because of the extra hazard assumed and the
11 extra premium charged.

12 (b) If the commissioner determines, after notice and
13 hearing, that a particular risk or class of risks is substandard or
14 extra hazardous, a life insurance company may not, after the
15 determination is made, write or assume the particular risk or class
16 of risks unless the company charges an extra premium as necessary
17 because of the extra hazard assumed. (V.T.I.C. Art. 3.29.)

18 Sec. 425.007. SUBSCRIPTION TO OR UNDERWRITING PURCHASE OR
19 SALE OF SECURITIES OR PROPERTY PROHIBITED; CONTROL OF DISPOSITION
20 OF PROPERTY. (a) A life insurance company organized under the laws
21 of this state may not:

22 (1) subscribe to, or participate in, any underwriting
23 of the purchase or sale of securities or property;

24 (2) enter into a transaction described by Subdivision
25 (1) for a purpose described by Subdivision (1);

26 (3) sell on account of the company jointly with any
27 other person, firm, or corporation; or

1 (4) enter into any agreement to withhold from sale any
2 of the company's property.

3 (b) The disposition of the life insurance company's
4 property must be at all times within the control of the company's
5 board of directors. (V.T.I.C. Art. 3.39a.)

6 Sec. 425.008. AUTHORIZED INVESTMENTS FOR FOREIGN
7 COMPANIES. A foreign company shall invest the company's assets in:

8 (1) securities or property of the same classes in
9 which the law of this state permits a domestic insurance company to
10 invest; or

11 (2) securities permitted by other law of this state
12 and approved by the commissioner as being of substantially the same
13 grade as securities or property in which a domestic insurance
14 company is permitted to invest. (V.T.I.C. Art. 3.41.)

15 Sec. 425.009. STUDENT LOANS. A foreign or domestic life
16 insurance company may make loans to a student enrolled in an
17 institution of higher education if the principal amount of the loan
18 is insured by:

19 (1) the federal government under the Higher Education
20 Act of 1965 (Pub. L. No. 89-329), as amended; or

21 (2) the Texas Guaranteed Student Loan Corporation
22 under Chapter 57, Education Code. (V.T.I.C. Art. 3.41a.)

23 [Sections 425.010-425.050 reserved for expansion]

24 SUBCHAPTER B. STANDARD VALUATION LAW

25 Sec. 425.051. SHORT TITLE. This subchapter may be cited as
26 the Standard Valuation Law. (V.T.I.C. Art. 3.28, Sec. 1.)

27 Sec. 425.052. DEFINITIONS. (a) In this subchapter,

1 "reserves" means reserve liabilities.

2 (b) As used in this subchapter:

3 (1) an "issue year basis" of valuation means a
4 valuation basis under which the interest rate used to determine the
5 minimum valuation standard for the entire duration of the annuity
6 or guaranteed interest contract is the calendar year valuation
7 interest rate for the year of issue or year of purchase of the
8 annuity or guaranteed interest contract; and

9 (2) a "change in fund basis" of valuation means a
10 valuation basis under which the interest rate used to determine the
11 minimum valuation standard applicable to each change in the fund
12 held under the annuity or guaranteed interest contract is the
13 calendar year valuation interest rate for the year of the change in
14 the fund. (V.T.I.C. Art. 3.28, Secs. 2 (part), 5(c) (part).)

15 Sec. 425.053. ANNUAL VALUATION OF RESERVES. (a) The
16 department shall annually value or have valued the reserves for all
17 outstanding life insurance policies and annuity and pure endowment
18 contracts of each life insurance company engaged in business in
19 this state. The department may certify the amount of those
20 reserves, specifying the mortality table or tables, rate or rates
21 of interest, and methods, including the net level premium method or
22 another method, used in computing those reserves.

23 (b) In computing reserves under Subsection (a), the
24 department may use group methods and approximate averages for
25 fractions of a year or otherwise.

26 (c) Instead of valuing the reserves as required by
27 Subsection (a) for a foreign or alien company, the department may

1 accept any valuation made by or for the insurance supervisory
2 official of another state or jurisdiction if:

3 (1) the valuation complies with the minimum standard
4 provided by this subchapter; and

5 (2) the official accepts as sufficient and valid for
6 all legal purposes a certificate of valuation made by the
7 department that states the valuation was made in a specified manner
8 according to which the aggregate reserves would be at least as large
9 as they would be if computed in the manner prescribed by the law of
10 that state or jurisdiction. (V.T.I.C. Art. 3.28, Sec. 2 (part).)

11 Sec. 425.054. ACTUARIAL OPINION REQUIRED. (a) For
12 purposes of this section, "qualified actuary" means:

13 (1) a qualified actuary, as that term is defined by
14 Section 802.002; or

15 (2) a person who, before September 1, 1993, satisfied
16 the requirements of the former State Board of Insurance to submit an
17 opinion under former Section 2A(a)(1), Article 3.28.

18 (b) In conjunction with the annual statement and in addition
19 to other information required by this subchapter, each life
20 insurance company engaged in business in this state shall annually
21 submit to the department the opinion of a qualified actuary as to
22 whether the reserves and related actuarial items held in support of
23 the policies and contracts specified by commissioner rule:

24 (1) are computed appropriately;

25 (2) are based on assumptions that satisfy contractual
26 provisions;

27 (3) are consistent with prior reported amounts; and

1 (4) comply with applicable laws of this state.

2 (c) The commissioner by rule shall specify the requirements
3 of an actuarial opinion under Subsection (b), including any matters
4 considered necessary to the opinion's scope.

5 (d) The opinion required by this section must:

6 (1) apply to all of the life insurance company's
7 business in force, including individual and group health insurance
8 plans; and

9 (2) be in the form and contain the substance specified
10 by commissioner rule and be acceptable to the commissioner.

11 (e) The commissioner may accept as an opinion required to be
12 submitted under Subsection (b) by a foreign or alien company the
13 opinion filed by that company with the insurance supervisory
14 official of another state if the commissioner determines that the
15 opinion filed in the other state reasonably meets the requirements
16 applicable to a company domiciled in this state.

17 (f) Except as exempted by or as otherwise provided by
18 commissioner rule, a life insurance company shall include in the
19 opinion required by Subsection (b) an opinion that states whether
20 the reserves and related actuarial items held in support of the
21 policies and contracts specified by commissioner rule adequately
22 provide for the company's obligations under the policies and
23 contracts, including the benefits under and expenses associated
24 with the policies and contracts.

25 (g) In making the opinion under Subsection (f), the reserves
26 and related actuarial items are considered in light of the assets
27 held by the life insurance company with respect to the reserves and

1 related actuarial items, including:

2 (1) the investment earnings on the assets; and

3 (2) the considerations anticipated to be received and
4 retained under the policies and contracts.

5 (h) The person who certifies the opinion required by
6 Subsection (b) must make the opinion required by Subsection (f).

7 (i) Rules adopted under this section may exempt life
8 insurance companies that would be exempt from the requirements of
9 this section under the most recently adopted regulation by the
10 National Association of Insurance Commissioners entitled "Model
11 Actuarial Opinion and Memorandum Regulation," or a successor to
12 that regulation, if the commissioner considers the exemption
13 appropriate. (V.T.I.C. Art. 3.28, Secs. 2A(a)(1), (2), (3), (b).)

14 Sec. 425.055. SUPPORTING MEMORANDUM FOR ACTUARIAL OPINION.

15 (a) A memorandum that, in form and substance, complies with the
16 commissioner's rules shall be prepared to support each actuarial
17 opinion required by Section 425.054.

18 (b) The commissioner may engage an actuary or other
19 financial specialist as defined by commissioner rule if:

20 (1) a life insurance company does not provide a
21 supporting memorandum at the request of the commissioner in the
22 time specified by rule; or

23 (2) the company provides a supporting memorandum, but
24 the commissioner determines that the supporting memorandum does not
25 meet the standards prescribed by rule or is otherwise unacceptable
26 to the commissioner.

27 (c) The actuary or other financial specialist under

1 Subsection (b) shall:

2 (1) review the actuarial opinion and the basis for the
3 opinion; and

4 (2) prepare the supporting memorandum.

5 (d) A life insurance company is responsible for the expense
6 of the actuary or other financial specialist under Subsection (b).
7 (V.T.I.C. Art. 3.28, Secs. 2A(a)(6), (7).)

8 Sec. 425.056. LIMITATION ON LIABILITY FOR ACTUARIAL
9 OPINION. (a) Except in cases of fraud or wilful misconduct or as
10 provided by Subsection (b), a person who certifies an opinion under
11 Section 425.054 is not liable for damages to a person, other than
12 the life insurance company covered by the opinion, for an act,
13 error, omission, decision, or other conduct with respect to the
14 person's opinion.

15 (b) Subsection (a) does not apply to an administrative
16 penalty imposed under Chapter 84. (V.T.I.C. Art. 3.28, Sec.
17 2A(a)(4).)

18 Sec. 425.057. DISCIPLINARY ACTION: COMPANY OR PERSON
19 CERTIFYING OPINION. A company or person that certifies an opinion
20 under Section 425.054 and that violates Section 425.054 or 425.055
21 or rules adopted under those sections is subject to disciplinary
22 action under Chapter 82. (V.T.I.C. Art. 3.28, Sec. 2A(a)(5).)

23 Sec. 425.058. VALUATION OF POLICY OR CONTRACT: GENERAL
24 RULE. (a) Except as otherwise provided by Section 425.059,
25 425.060, 425.061, 425.062, or 425.063, the minimum standard for the
26 valuation of an outstanding life insurance policy or annuity or
27 pure endowment contract issued by a life insurance company on or

1 after the date on which Chapter 1105 applies to policies issued by
2 the company, as determined under Section 1105.002(a) or (b), is the
3 commissioners reserve valuation method described by Sections
4 425.064, 425.065, and 425.068, computed using the table prescribed
5 by this section and with interest at 3-1/2 percent or at the
6 following rate, if applicable:

7 (1) in the case of a policy or contract issued on or
8 after June 14, 1973, and before August 29, 1977, other than an
9 annuity or pure endowment contract, four percent;

10 (2) in the case of a single premium life insurance
11 policy issued on or after August 29, 1977, 5-1/2 percent; or

12 (3) in the case of a life insurance policy issued on or
13 after August 29, 1977, other than a single premium life insurance
14 policy, 4-1/2 percent.

15 (b) Except as provided by Subsection (c), for an ordinary
16 life insurance policy issued on the standard basis, excluding any
17 disability or accidental death benefits in the policy, the
18 applicable table is the Commissioners 1941 Standard Ordinary
19 Mortality Table, if the policy was issued before the date on which
20 Section 1105.152 would apply to the policy, as determined under
21 Section 1105.152(a) or (b), or the Commissioners 1958 Standard
22 Ordinary Mortality Table, if Section 1105.152 applies to the
23 policy. For a policy that is issued to insure a female risk:

24 (1) a modified net premium or present value for a
25 policy issued before August 29, 1977, may be computed according to
26 an age not more than three years younger than the insured's actual
27 age; and

1 (2) a modified net premium or present value for a
2 policy issued on or after August 29, 1977, may be computed according
3 to an age not more than six years younger than the insured's actual
4 age.

5 (c) For an ordinary life insurance policy issued on the
6 standard basis, excluding any disability or accidental death
7 benefits in the policy, and to which Subchapter B, Chapter 1105,
8 applies, the applicable table is:

9 (1) the Commissioners 1980 Standard Ordinary
10 Mortality Table;

11 (2) at the insurer's option for one or more specified
12 life insurance plans, the Commissioners 1980 Standard Ordinary
13 Mortality Table with Ten-Year Select Mortality Factors; or

14 (3) any ordinary mortality table adopted after 1980 by
15 the National Association of Insurance Commissioners that is
16 approved by commissioner rule for use in determining the minimum
17 standard valuation for a policy to which this subdivision applies.

18 (d) For an industrial life insurance policy issued on the
19 standard basis, excluding any disability or accidental death
20 benefits in the policy, the applicable table is:

21 (1) the 1941 Standard Industrial Mortality Table, if
22 the policy was issued before the date on which Section 1105.153
23 would apply to the policy as determined under Section 1105.153(a)
24 or (b); or

25 (2) if Section 1105.153 applies to the policy:

26 (A) the Commissioners 1961 Standard Industrial
27 Mortality Table; or

1 (B) any industrial mortality table adopted after
2 1980 by the National Association of Insurance Commissioners that is
3 approved by commissioner rule for use in determining the minimum
4 standard of valuation for a policy to which this subdivision
5 applies.

6 (e) For an individual annuity or pure endowment contract,
7 excluding any disability or accidental death benefits in the
8 policy, the applicable table is the 1937 Standard Annuity Mortality
9 Table, or at the insurer's option, the Annuity Mortality Table for
10 1949, Ultimate, or a modification of either table that is approved
11 by the commissioner.

12 (f) For a group annuity or pure endowment contract,
13 excluding any disability or accidental death benefits in the
14 policy, the applicable table is:

15 (1) the Group Annuity Mortality Table for 1951;

16 (2) a modification of that table approved by the
17 commissioner; or

18 (3) at the insurance company's option, a table or a
19 modification of a table prescribed for an individual annuity or
20 pure endowment contract by Subsection (e).

21 (g) For total and permanent disability benefits in or
22 supplementary to an ordinary policy or contract, the applicable
23 tables are:

24 (1) for a policy or contract issued on or after January
25 1, 1966:

26 (A) the tables of Period 2 disablement rates and
27 the 1930 to 1950 termination rates of the 1952 Disability Study of

1 the Society of Actuaries, with due regard to the type of benefit; or
2 (B) any table of disablement rates and
3 termination rates adopted after 1980 by the National Association of
4 Insurance Commissioners that are approved by commissioner rule for
5 use in determining the minimum standard of valuation for a policy to
6 which this subdivision applies;

7 (2) for a policy or contract issued on or after January
8 1, 1961, and before January 1, 1966:

9 (A) a table described by Subdivision (1); or

10 (B) at the insurance company's option, the Class
11 (3) Disability Table (1926); or

12 (3) for a policy issued before January 1, 1961, the
13 Class (3) Disability Table (1926).

14 (h) A table described by Subsection (g) must, for an active
15 life, be combined with a mortality table permitted for computing
16 the reserves for a life insurance policy.

17 (i) For accidental death benefits in or supplementary to a
18 policy, the applicable table is:

19 (1) for a policy issued on or after January 1, 1966:

20 (A) the 1959 Accidental Death Benefits Table; or

21 (B) any accidental death benefits table adopted
22 after 1980 by the National Association of Insurance Commissioners
23 that is approved by commissioner rule for use in determining the
24 minimum standard of valuation for a policy to which this
25 subdivision applies;

26 (2) for a policy issued on or after January 1, 1961,
27 and before January 1, 1966:

1 (A) a table described by Subdivision (1); or
2 (B) at the insurance company's option, the
3 Inter-Company Double Indemnity Mortality Table; or
4 (3) for a policy issued before January 1, 1961, the
5 Inter-Company Double Indemnity Mortality Table.

6 (j) A table described by Subsection (i) must be combined
7 with a mortality table permitted for computing the reserves for a
8 life insurance policy.

9 (k) For group life insurance, life insurance issued on the
10 substandard basis and other special benefits, the applicable table
11 is a table approved by the commissioner.

12 (l) Notwithstanding any other law, the minimum reserve
13 requirements applicable to a policy issued under Chapter 1153 are
14 met if, in the aggregate, the reserves are maintained at 100 percent
15 of the 1980 Commissioner's Standard Ordinary Mortality Table, with
16 interest that does not exceed 5.5 percent. This subsection expires
17 September 1, 2013. (V.T.I.C. Art. 3.28, Secs. 3 (part), (a), (b),
18 (c), (d), (e), (f), (g), (h).)

19 Sec. 425.059. VALUATION OF CERTAIN ANNUITIES AND PURE
20 ENDOWMENT CONTRACTS. (a) This section applies to an individual
21 annuity or pure endowment contract issued on or after January 1,
22 1979, and an annuity or pure endowment purchased on or after January
23 1, 1979, under a group annuity or pure endowment contract. This
24 section also applies to an annuity or pure endowment contract
25 issued by an insurer after the date specified in a written notice:

26 (1) that was filed with the State Board of Insurance
27 after June 14, 1973, but before January 1, 1979; and

1 (2) under which the insurance company filing the
2 notice elected to comply before January 1, 1979, with former
3 Section 4, Article 3.28, with respect to individual or group
4 annuities and pure endowment contracts as specified by the company
5 in the notice.

6 (b) Except as provided by Section 425.060, 425.061,
7 425.062, or 425.063, the minimum standard for the valuation of an
8 individual or group annuity or pure endowment contract, excluding
9 any disability or accidental death benefits in the contract, is the
10 commissioners reserve valuation method described by Sections
11 425.064 and 425.065, computed using the table prescribed by this
12 section and with interest at the following interest rate, as
13 applicable:

14 (1) for an individual annuity or pure endowment
15 contract issued before August 29, 1977, other than an individual
16 single premium immediate annuity contract, four percent;

17 (2) for an individual single premium immediate annuity
18 contract issued before August 29, 1977, six percent;

19 (3) for an individual annuity or pure endowment
20 contract issued on or after August 29, 1977, other than an
21 individual single premium immediate annuity contract or an
22 individual single premium deferred annuity or pure endowment
23 contract, 4-1/2 percent;

24 (4) for an individual single premium immediate annuity
25 contract issued on or after August 29, 1977, 7-1/2 percent;

26 (5) for an individual single premium deferred annuity
27 or pure endowment contract issued on or after August 29, 1977, 5-1/2

1 percent;

2 (6) for an annuity or pure endowment purchased before
3 August 29, 1977, under a group annuity or pure endowment contract,
4 six percent; or

5 (7) for an annuity or pure endowment purchased on or
6 after August 29, 1977, under a group annuity or pure endowment
7 contract, 7-1/2 percent.

8 (c) For an individual annuity or pure endowment contract
9 issued before August 29, 1977, the applicable table is:

10 (1) the 1971 Individual Annuity Mortality Table; or

11 (2) a modification of that table approved by the
12 commissioner.

13 (d) For an individual annuity or pure endowment contract
14 issued on or after August 29, 1977, including an individual single
15 premium immediate annuity contract, the applicable table is:

16 (1) the 1971 Individual Annuity Mortality Table;

17 (2) an individual annuity mortality table adopted
18 after 1980 by the National Association of Insurance Commissioners
19 that is approved by the commissioner by rule for use in determining
20 the minimum standard of valuation for a specified type of contract
21 to which this subsection applies; or

22 (3) a modification of one of those tables approved by
23 the commissioner.

24 (e) For an annuity or pure endowment purchased before August
25 29, 1977, under a group annuity or pure endowment contract, the
26 applicable table is:

27 (1) the 1971 Group Annuity Mortality Table; or

1 (2) a modification of that table approved by the
2 commissioner.

3 (f) For an annuity or pure endowment purchased on or after
4 August 29, 1977, under a group annuity or pure endowment contract,
5 the applicable table is:

6 (1) the 1971 Group Annuity Mortality Table;

7 (2) a group annuity mortality table adopted after 1980
8 by the National Association of Insurance Commissioners that is
9 approved by the commissioner by rule for use in determining the
10 minimum standard of valuation for an annuity or pure endowment to
11 which this subsection applies; or

12 (3) a modification of one of those tables approved by
13 the commissioner. (V.T.I.C. Art. 3.28, Sec. 4.)

14 Sec. 425.060. APPLICABILITY OF CALENDAR YEAR STATUTORY
15 VALUATION INTEREST RATES. The calendar year statutory valuation
16 interest rates as defined by Sections 425.061, 425.062, and 425.063
17 are the interest rates used in determining the minimum standard for
18 the valuation of:

19 (1) a life insurance policy to which Subchapter B,
20 Chapter 1105, applies;

21 (2) an individual annuity or pure endowment contract
22 issued on or after January 1, 1982;

23 (3) an annuity or pure endowment purchased on or after
24 January 1, 1982, under a group annuity or pure endowment contract;
25 or

26 (4) the net increase, if any, in a calendar year after
27 January 1, 1982, in amounts held under a guaranteed interest

1 contract. (V.T.I.C. Art. 3.28, Sec. 5(a).)

2 Sec. 425.061. COMPUTATION OF CALENDAR YEAR STATUTORY
3 VALUATION INTEREST RATE: GENERAL RULE. (a) For purposes of
4 Subsection (b):

5 (1) R1 is the lesser of R or .09;

6 (2) R2 is the greater of R or .09;

7 (3) R is the reference interest rate determined under
8 Section 425.063; and

9 (4) W is the weighting factor determined under Section
10 425.062.

11 (b) The calendar year statutory valuation interest rate
12 ("I") is determined as provided by this section, with the results
13 rounded to the nearest one-quarter of one percent:

14 (1) for life insurance:

15 $I = .03 + W(R1 - .03) + (W/2)(R2 - .09)$; and

16 (2) for a single premium immediate annuity or annuity
17 benefits involving life contingencies arising from another annuity
18 with a cash settlement option or from a guaranteed interest
19 contract with a cash settlement option, or for an annuity or
20 guaranteed interest contract without a cash settlement option, or
21 for an annuity or guaranteed interest contract with a cash
22 settlement option that is valued on a change in fund basis:

23 $I = .03 + W(R - .03)$.

24 (c) For an annuity or guaranteed interest contract with a
25 cash settlement option that is valued on an issue year basis, other
26 than an annuity or contract described by Subsection (b)(2):

27 (1) the formula prescribed by Subsection (b)(1)

1 applies to an annuity or guaranteed interest contract with a
2 guarantee duration determined under Section 425.062(f) greater
3 than 10 years; and

4 (2) the formula prescribed by Subsection (b)(2)
5 applies to an annuity or guaranteed interest contract with a
6 guarantee duration determined under Section 425.062(f) of 10 years
7 or less.

8 (d) Notwithstanding Subsections (b) and (c), if the
9 calendar year statutory valuation interest rate for a life
10 insurance policy issued in a calendar year as determined under
11 Subsection (b) or (c), as applicable, would differ from the
12 corresponding actual rate for similar policies issued in the
13 preceding calendar year by less than one-half of one percent, the
14 calendar year statutory valuation interest rate for the policy is
15 the corresponding actual rate for the preceding calendar year. For
16 purposes of this subsection, the calendar year statutory valuation
17 interest rate for a life insurance policy issued in a calendar year
18 is determined for 1980 using the reference interest rate defined
19 for 1979, and is determined for each subsequent calendar year
20 regardless of whether Subchapter B, Chapter 1105, applies to the
21 policy. (V.T.I.C. Art. 3.28, Sec. 5(b).)

22 Sec. 425.062. WEIGHTING FACTORS. (a) This section
23 prescribes the weighting factors referred to in the formulas
24 prescribed by Section 425.061.

25 (b) The weighting factor for a life insurance policy is
26 determined by the following table:

| | | |
|----|----------------------------|------------------|
| 27 | Guarantee Duration (Years) | Weighting Factor |
|----|----------------------------|------------------|

| | | |
|---|------------------------------------|-----|
| 1 | 10 or less | .50 |
| 2 | More than 10, but not more than 20 | .45 |
| 3 | More than 20 | .35 |

4 (c) For purposes of Subsection (b), the guarantee duration
 5 is the maximum number of years the life insurance can remain in
 6 force on a basis guaranteed in the policy or under options to
 7 convert to life insurance plans with premium rates or nonforfeiture
 8 values, or both, that are guaranteed in the original policy.

9 (d) The weighting factor for a single premium immediate
 10 annuity or for annuity benefits involving life contingencies
 11 arising from another annuity with a cash settlement option or from a
 12 guaranteed interest contract with a cash settlement option is .80.

13 (e) The weighting factor for an annuity or a guaranteed
 14 interest contract, other than an annuity or contract to which
 15 Subsection (d) applies, is determined by the following tables:

16 (1) For an annuity or guaranteed interest contract
 17 that is valued on an issue year basis:

| 18 | Guarantee Duration (Years) | Weighting Factor for Plan Type | | |
|----|----------------------------|--------------------------------|-----|-----|
| 19 | | A | B | C |
| 20 | 5 or less: | .80 | .60 | .50 |
| 21 | More than 5, but not more | | | |
| 22 | than 10: | .75 | .60 | .50 |
| 23 | More than 10, but not more | | | |
| 24 | than 20: | .65 | .50 | .45 |
| 25 | More than 20: | .45 | .35 | .35 |

26 (2) For an annuity or guaranteed interest contract
 27 that is valued on a change in fund basis, the factors prescribed by

1 Subdivision (1) increased by:

| 2 | Plan Type | | |
|---|-----------|-----|-----|
| 3 | A | B | C |
| 4 | .15 | .25 | .05 |

5 (3) For an annuity or guaranteed interest contract
6 that is valued on an issue year basis that does not guarantee
7 interest on considerations received more than one year after issue
8 or purchase, other than an annuity or contract that does not have a
9 cash settlement option, or an annuity or guaranteed interest
10 contract that is valued on a change in fund basis that does not
11 guarantee interest rates on considerations received more than 12
12 months after the valuation date, the factors prescribed by
13 Subdivision (1) or determined under Subdivision (2), as
14 appropriate, increased by:

| 15 | Plan Type | | |
|----|-----------|-----|-----|
| 16 | A | B | C |
| 17 | .05 | .05 | .05 |

18 (f) For purposes of Subsection (e):

19 (1) for an annuity or guaranteed interest contract
20 with a cash settlement option, the guarantee duration is the number
21 of years for which the contract guarantees interest rates greater
22 than the calendar year statutory valuation interest rate for life
23 insurance policies with guarantee duration greater than 20 years;
24 and

25 (2) for an annuity or guaranteed interest contract
26 without a cash settlement option, the guarantee duration is the
27 number of years from the issue or purchase date to the date annuity

1 benefits are scheduled to begin.

2 (g) For purposes of Subsection (e):

3 (1) a policy is a "Plan Type A" policy if:

4 (A) the policyholder may withdraw funds at any
5 time, but only:

6 (i) with an adjustment to reflect changes
7 in interest rates or asset values after the insurance company
8 receives the funds;

9 (ii) without an adjustment described by
10 Subparagraph (i), provided that the withdrawal is in installments
11 over five years or more; or

12 (iii) as an immediate life annuity; or

13 (B) the policyholder is not permitted to withdraw
14 funds at any time;

15 (2) a policy is a "Plan Type B" policy if:

16 (A) before the expiration of the interest rate
17 guarantee:

18 (i) the policyholder may withdraw funds,
19 but only:

20 (a) with an adjustment to reflect
21 changes in interest rates or asset values after the insurance
22 company receives the funds; or

23 (b) without an adjustment described
24 by Subsubparagraph (a), provided that the withdrawal is in
25 installments over five years or more; or

26 (ii) the policyholder is not permitted to
27 withdraw funds; and

1 (B) on the expiration of the interest rate
2 guarantee, the policyholder may withdraw funds in a single sum or in
3 installments over less than five years, without an adjustment
4 described by Paragraph (A)(i); and

5 (3) a policy is a "Plan Type C" policy if the
6 policyholder may withdraw funds before the expiration of the
7 interest rate guarantee in a single sum or in installments over less
8 than five years:

9 (A) without an adjustment to reflect changes in
10 interest rates or asset values after the insurance company receives
11 the funds; or

12 (B) subject only to a fixed surrender charge that
13 is a percentage of the fund stipulated in the contract.

14 (h) An insurance company may elect to value an annuity or
15 guaranteed interest contract with a cash settlement option on an
16 issue year basis or on a change in fund basis. A company must value
17 an annuity or guaranteed interest contract without a cash
18 settlement option on an issue year basis. (V.T.I.C. Art. 3.28, Sec.
19 5(c) (part).)

20 Sec. 425.063. REFERENCE INTEREST RATE. (a) In this
21 section, "Moody's Corporate Bond Yield Average" means the Moody's
22 Corporate Bond Yield Average--Monthly Average Corporates, as
23 published by Moody's Investors Service, Inc.

24 (b) Except as provided by Subsection (g), the reference
25 interest rate for purposes of Section 425.061 is determined as
26 provided by Subsections (c)-(f).

27 (c) The reference interest rate for a life insurance policy

1 is the lesser of the average over a period of 36 months or the
2 average over a period of 12 months, ending on June 30 of the
3 calendar year preceding the year of issue, of the Moody's Corporate
4 Bond Yield Average.

5 (d) The reference interest rate is the average over a period
6 of 12 months, ending on June 30 of the calendar year of issue or year
7 of purchase, of the Moody's Corporate Bond Yield Average for:

8 (1) a single premium immediate annuity or annuity
9 benefits involving life contingencies arising from another annuity
10 with a cash settlement option or from a guaranteed interest
11 contract with a cash settlement option;

12 (2) an annuity or guaranteed interest contract with a
13 cash settlement option, other than an annuity or contract described
14 by Subdivision (1), that is valued on an issue year basis and has a
15 guarantee duration as determined under Section 425.062(f) of 10
16 years or less; or

17 (3) an annuity or guaranteed interest contract without
18 a cash settlement option.

19 (e) The reference interest rate is the lesser of the average
20 over a period of 36 months or the average over a period of 12 months,
21 ending on June 30 of the calendar year of issue or purchase, of the
22 Moody's Corporate Bond Yield Average for an annuity or guaranteed
23 interest contract with a cash settlement option, other than an
24 annuity or contract described by Subsection (d)(1), that is valued
25 on an issue year basis and has a guarantee duration as determined
26 under Section 425.062(f) greater than 10 years.

27 (f) The reference interest rate is the average over a period

1 of 12 months, ending on June 30 of the calendar year of the change in
2 the fund, of the Moody's Corporate Bond Yield Average, for an
3 annuity or guaranteed interest contract with a cash settlement
4 option, other than an annuity or contract described by Subsection
5 (d)(1), that is valued on a change in fund basis.

6 (g) At least annually, the commissioner shall:

7 (1) determine whether the reference interest rates
8 prescribed by Subsections (c), (d), (e), and (f) continue to be a
9 reasonably accurate approximation of the average yield achieved
10 from purchases in the United States in publicly quoted markets of
11 investment grade fixed term and fixed interest corporate
12 obligations for the periods referenced in Subsection (c), (d), (e),
13 or (f), as applicable; and

14 (2) if the commissioner determines that a reference
15 interest rate prescribed by Subsection (c), (d), (e), or (f) is not
16 a reasonably accurate approximation of the average yield described
17 by Subdivision (1), adopt rules in the manner prescribed by
18 Chapters 2001 and 2002, Government Code, to prescribe an
19 alternative method of determining a reference interest rate, as
20 appropriate, that is a reasonably accurate approximation of that
21 average yield. (V.T.I.C. Art. 3.28, Secs. 5(d), (e).)

22 Sec. 425.064. COMMISSIONERS RESERVE VALUATION METHOD. (a)
23 Except as otherwise provided by Sections 425.065 and 425.068 and
24 subject to Subsection (b), for the life insurance and endowment
25 benefits of a policy that provides for a uniform amount of insurance
26 and that requires the payment of uniform premiums, the reserve
27 according to the commissioners reserve valuation method is the

1 difference, if greater than zero, of the present value on the date
2 of valuation of those future guaranteed benefits, minus the present
3 value on that date of any future modified net premiums for a policy
4 described by this subsection. The modified net premiums for a
5 policy described by this subsection are a uniform percentage of the
6 respective contract premiums for those benefits, so that the
7 present value on the policy's issue date of all the modified net
8 premiums is equal to the sum of:

9 (1) the present value on that date of those benefits;
10 and

11 (2) the difference, if greater than zero, between:

12 (A) a net level annual premium equal to the
13 present value on the policy's issue date of the benefits provided
14 for after the first policy year, divided by the present value on the
15 policy's issue date of an annuity of one per year, payable on the
16 first policy anniversary and on each subsequent policy anniversary
17 on which a premium becomes due; and

18 (B) a net one-year term premium for the benefits
19 provided for in the first policy year.

20 (b) A net level annual premium under Subsection (a)(2)(A)
21 may not exceed the net level annual premium on the 19-year premium
22 whole life plan for insurance of the same amount at an age that is
23 one year older than the age on the policy's issue date.

24 (c) This subsection applies only to a life insurance policy
25 issued on or after January 1, 1985, for which the contract premium
26 for the first policy year exceeds the contract premium for the
27 second year, for which a comparable additional benefit is not

1 provided in the first year for the excess premium, and that provides
2 an endowment benefit, a cash surrender value, or a combination of an
3 endowment benefit and cash surrender value, in an amount greater
4 than the excess premium. For purposes of this subsection, the
5 "assumed ending date" is the first policy anniversary on which the
6 sum of any endowment benefit and any cash surrender value available
7 on that date is greater than the excess premium. The reserve
8 according to the commissioners reserve valuation method for a
9 policy to which this subsection applies as of any policy
10 anniversary occurring on or before the assumed ending date is,
11 except as otherwise provided by Section 425.068, the greater of:

12 (1) the reserve as of the policy anniversary computed
13 as prescribed by Subsection (a); or

14 (2) the reserve as of the policy anniversary computed
15 as prescribed by Subsection (a) but with:

16 (A) the value prescribed by Subsection (a)(2)(A)
17 reduced by 15 percent of the amount of the excess first-year
18 premium;

19 (B) each present value of a benefit or premium
20 determined without reference to a premium or benefit provided under
21 the policy after the assumed ending date;

22 (C) the policy assumed to mature on the assumed
23 ending date as an endowment; and

24 (D) the cash surrender value provided on the
25 assumed ending date considered to be an endowment benefit.

26 (d) In making the comparison required by Subsection (c), the
27 mortality tables and interest bases described by Sections 425.058,

1 425.061, 425.062, and 425.063 must be used.

2 (e) Reserves according to the commissioners reserve
3 valuation method for the following policies, contracts, and
4 benefits must be computed by a method consistent with the
5 principles of this section:

6 (1) a life insurance policy that provides for a
7 varying amount of insurance or that requires the payment of varying
8 premiums;

9 (2) a group annuity or pure endowment contract
10 purchased under a retirement or deferred compensation plan
11 established or maintained by an employer, including a partnership
12 or sole proprietorship, by an employee organization, or by both,
13 other than a plan providing individual retirement accounts or
14 individual retirement annuities under Section 408, Internal
15 Revenue Code of 1986, and that section's subsequent amendments;

16 (3) disability or accidental death benefits in a
17 policy or contract; and

18 (4) all other benefits, other than life insurance and
19 endowment benefits in a life insurance policy or benefits provided
20 by any other annuity or pure endowment contract. (V.T.I.C.
21 Art. 3.28, Sec. 6.)

22 Sec. 425.065. COMMISSIONERS ANNUITY RESERVE VALUATION
23 METHOD. (a) This section applies to an annuity or pure endowment
24 contract other than a group annuity or pure endowment contract
25 purchased under a retirement or deferred compensation plan
26 established or maintained by an employer, including a partnership
27 or sole proprietorship, by an employee organization, or by both,

1 other than a plan providing individual retirement accounts or
2 individual retirement annuities under Section 408, Internal
3 Revenue Code of 1986, and that section's subsequent amendments.

4 (b) Reserves according to the commissioners annuity reserve
5 method for benefits under an annuity or pure endowment contract,
6 excluding any disability or accidental death benefits in the
7 contract, are the greatest of the respective excesses of the
8 present values on the valuation date of the future guaranteed
9 benefits under the contract at the end of each respective contract
10 year, including guaranteed nonforfeiture benefits, minus the
11 present value on the valuation date of any future valuation
12 considerations derived from future gross considerations that are
13 required by the contract terms and that become payable before the
14 end of the respective contract year. The future guaranteed
15 benefits must be determined by using the mortality table, if any,
16 and the interest rate or rates specified in the contract for
17 determining guaranteed benefits. The valuation considerations are
18 the portions of the respective gross considerations applied under
19 the contract terms to determine nonforfeiture values. (V.T.I.C.
20 Art. 3.28, Sec. 7.)

21 Sec. 425.066. MINIMUM AGGREGATE RESERVES. (a) An
22 insurance company's aggregate reserves for all life insurance
23 policies, excluding disability or accidental death benefits,
24 issued by the company on or after the date on which Chapter 1105
25 applies to policies issued by the company, as determined under
26 Section 1105.002(a) or (b), may not be less than the aggregate
27 reserves computed in accordance with the methods prescribed by

1 Sections 425.064, 425.065, 425.068, and 425.069 and the mortality
2 table or tables and interest rate or rates used in computing
3 nonforfeiture benefits for those policies.

4 (b) The aggregate reserves of an insurance company to which
5 this section applies for all policies, contracts, and benefits may
6 not be less than the aggregate reserves determined to be necessary
7 to issue a favorable opinion under Section 425.054. (V.T.I.C.
8 Art. 3.28, Secs. 8, 8A.)

9 Sec. 425.067. OPTIONAL RESERVE COMPUTATIONS. (a) Reserves
10 for a policy or contract issued by a life insurance company before
11 the date on which Chapter 1105 would apply to the policy or
12 contract, as determined under Section 1105.002(a) or (b), may be
13 computed, at the company's option, according to any standard that
14 produces greater aggregate reserves for all those policies and
15 contracts than the minimum reserves required by the laws applicable
16 to those policies and contracts immediately before that date.

17 (b) Reserves for any category, as established by the
18 commissioner, of policies, contracts, or benefits issued by a life
19 insurance company on or after the date on which Chapter 1105 applies
20 to policies, contracts, or benefits issued by the company, as
21 determined under Section 1105.002(a) or (b), may be computed, at
22 the company's option, according to any standard that produces
23 greater aggregate reserves for the category than the minimum
24 aggregate reserves computed according to the standard provided by
25 this subchapter, but the interest rate or rates used for those
26 policies and contracts, other than annuity and pure endowment
27 contracts, may not be higher than the corresponding interest rate

1 or rates used in computing any nonforfeiture benefits provided in
2 those policies or contracts.

3 (c) An insurance company that has adopted a standard of
4 valuation that produces greater minimum aggregate reserves than the
5 aggregate reserves computed according to the standard provided by
6 this subchapter may, with the commissioner's approval, adopt any
7 lower standard of valuation that produces aggregate reserves at
8 least equal to the minimum aggregate reserves computed according to
9 the standard provided by this subchapter.

10 (d) For purposes of this section, the holding of additional
11 reserves previously determined to be necessary to issue a favorable
12 opinion under Section 425.054 may not be considered to be the
13 adoption of a higher standard of valuation. (V.T.I.C. Art. 3.28,
14 Secs. 9, 9A.)

15 Sec. 425.068. RESERVE COMPUTATION: GROSS PREMIUM CHARGED
16 LESS THAN VALUATION NET PREMIUM. (a) If in a contract year the
17 gross premium charged by a life insurance company on a policy or
18 contract is less than the valuation net premium for the policy or
19 contract computed by the method used in computing the reserve on the
20 policy or contract but using the minimum valuation mortality
21 standards and interest rate, the minimum reserve required for the
22 policy or contract is the greater of:

23 (1) the reserve computed according to the mortality
24 table, interest rate, and method actually used for the policy or
25 contract; or

26 (2) the reserve computed by the method actually used
27 for the policy or contract but using the minimum valuation

1 mortality standards and interest rate and replacing the valuation
2 net premium with the actual gross premium in each contract year for
3 which the valuation net premium exceeds the actual gross premium.

4 (b) The minimum valuation mortality standards and interest
5 rate under Subsection (a) are the standards and rate provided by
6 Sections 425.058, 425.061, 425.062, and 425.063.

7 (c) This subsection applies only to a life insurance policy
8 issued on or after January 1, 1985, for which the gross premium for
9 the first policy year exceeds the gross premium for the second
10 policy year, for which a comparable additional benefit is not
11 provided in the first year for the excess premium, and that provides
12 an endowment benefit, a cash surrender value, or a combination of an
13 endowment benefit and cash surrender value, in an amount greater
14 than the excess premium. For a policy to which this subsection
15 applies, Subsections (a) and (b) shall be applied as if the method
16 actually used in computing the reserve for the policy were the
17 method described in Section 425.064, ignoring Section 425.064(c).
18 The minimum reserve at each policy anniversary is the greater of:

19 (1) the minimum reserve computed in accordance with
20 Section 425.064, including Section 425.064(c); or

21 (2) the minimum reserve computed in accordance with
22 this section. (V.T.I.C. Art. 3.28, Sec. 10.)

23 Sec. 425.069. RESERVE COMPUTATION: INDETERMINATE PREMIUM
24 PLANS AND CERTAIN OTHER PLANS. (a) For a life insurance plan that
25 provides for future premium determination, the amounts of which are
26 to be determined by the insurance company based on estimates of
27 future experience, or a life insurance plan or annuity for which the

1 minimum reserves cannot be determined by the methods described by
2 Sections 425.064, 425.065, and 425.068, the reserves held must:

3 (1) be appropriate in relation to the benefits and the
4 pattern of premiums for the plan; and

5 (2) be computed by a method that is consistent with the
6 principles of this subchapter, as determined by commissioner rule.

7 (b) Notwithstanding any other provision of state law, the
8 commissioner must affirmatively approve a policy, contract, or
9 certificate that provides life insurance under a plan described by
10 Subsection (a) before the policy, contract, or certificate may be
11 marketed, issued, delivered, or used in this state. (V.T.I.C.
12 Art. 3.28, Sec. 11.)

13 Sec. 425.070. COMPUTATION OF RESERVE FOR CERTAIN POLICIES
14 BY CALENDAR YEAR OF ISSUE. (a) The reserve for a policy or
15 contract issued by a life insurance company before the date on which
16 Chapter 1105 would apply to the policy or contract, as determined
17 under Section 1105.002(a) or (b), must be computed in accordance
18 with the terms of the policy or contract and this section.

19 (b) For a policy issued before January 1, 1910, the
20 computation must be based on the American Experience Table of
21 Mortality and 4-1/2 percent annual interest.

22 (c) For a policy issued on or after January 1, 1910, and
23 before January 1, 1948, the computation must be based on:

24 (1) the Actuaries or Combined Experience Table of
25 Mortality and four percent annual interest, if the interest rate
26 guaranteed in the policy is four percent annually or higher; or

27 (2) the American Experience Table of Mortality and

1 the lower rate specified in the policy, if the policy was issued on
2 a reserve basis of an interest rate lower than four percent
3 annually.

4 (d) For a policy issued on or after January 1, 1948, the
5 computation must be based on the mortality table and interest rate
6 specified in the policy, provided that:

7 (1) the specified interest rate may not exceed 3-1/2
8 percent annually;

9 (2) the specified table for a policy, other than an
10 industrial life insurance policy, is the American Experience Table
11 of Mortality, the American Men Ultimate Table of Mortality, the
12 Commissioners 1941 Standard Ordinary Mortality Table, or, for a
13 policy issued after December 31, 1959, the Commissioners 1958
14 Standard Ordinary Mortality Table; and

15 (3) the specified table for an industrial life
16 insurance policy is the American Experience Table of Mortality, the
17 Standard Industrial Mortality Table, the Sub-Standard Industrial
18 Mortality Table, the 1941 Standard Industrial Mortality Table, or
19 the 1941 Sub-Standard Industrial Mortality Table, or, for a policy
20 issued after December 31, 1963, the Commissioners 1961 Standard
21 Industrial Mortality Table.

22 (e) For a policy, other than an industrial life insurance
23 policy, issued after December 31, 1959, to insure a female risk, the
24 computation must be based on any mortality table and interest rate
25 permitted under Subsection (d) and specified in the policy but may,
26 at the insurance company's option, be based on an age not more than
27 three years younger than the insured's actual age.

1 (f) Except as otherwise provided by Section 425.059 for
2 coverage purchased under a group annuity or pure endowment contract
3 to which that section applies, for a policy issued on a substandard
4 risk, an annuity contract, or a contract or policy for disability
5 benefits or accidental death benefits, the computation must be
6 based on the standards and methods adopted by the insurance company
7 and approved by the commissioner.

8 (g) For a group insurance policy issued before May 15, 1947,
9 the computation must be based on the American Men Ultimate Table of
10 Mortality with interest at the rate of three percent or 3-1/2
11 percent annually as provided by the policy. The reserve value of a
12 group insurance policy issued on or after May 15, 1947, and before
13 January 1, 1961, must be computed on the basis of either the
14 American Men Ultimate Table of Mortality or the Commissioners 1941
15 Standard Ordinary Mortality Table with interest at a rate not to
16 exceed 3-1/2 percent annually as provided by the policy. For a
17 group insurance policy issued on or after January 1, 1961, the
18 computation must be based on an interest rate not to exceed 3-1/2
19 percent annually and the mortality table adopted by the insurance
20 company with the commissioner's approval. (V.T.I.C. Art. 3.28,
21 Secs. 3 (part), 12.)

22 [Sections 425.071-425.100 reserved for expansion]

23 SUBCHAPTER C. AUTHORIZED INVESTMENTS AND TRANSACTIONS FOR CAPITAL
24 STOCK LIFE, HEALTH, AND ACCIDENT INSURERS

25 Sec. 425.101. DEFINITIONS. In this subchapter:

26 (1) "Assets" means the statutory accounting admitted
27 assets of an insurance company. The term includes lawful money of

1 the United States, whether in the form of cash or demand deposits in
2 solvent banks, savings and loan associations, credit unions, and
3 branches of those entities, organized under the laws of the United
4 States or a state of the United States, if held in accordance with
5 the laws or regulations applicable to those entities. The term does
6 not include the company's separate accounts that are subject to
7 Chapter 1152.

8 (2) "Securities valuation office" means the
9 Securities Valuation Office of the National Association of
10 Insurance Commissioners. (V.T.I.C. Art. 3.33, Sec. 7(a); New.)

11 Sec. 425.102. INAPPLICABILITY OF CERTAIN LAW. The
12 definition of "state" assigned by Section 311.005, Government Code,
13 does not apply to this subchapter. (New.)

14 Sec. 425.103. APPLICABILITY OF SUBCHAPTER. (a) This
15 subchapter and rules adopted to interpret and implement this
16 subchapter apply to all domestic insurance companies as defined in
17 Section 841.001 and to other insurance companies specifically made
18 subject to this subchapter, including a stipulated premium company
19 that elects under Section 884.311 to be governed by this
20 subchapter.

21 (b) Subchapter D does not apply to an insurance company to
22 which this subchapter applies.

23 (c) This subchapter does not limit or restrict investments
24 in or transactions with or within subsidiaries and affiliates made
25 under Chapter 823. (V.T.I.C. Art. 3.33, Sec. 1 (part).)

26 Sec. 425.104. PURPOSE. The purpose of this subchapter is
27 to protect and further the interests of insureds, insurance

1 companies, creditors, and the public by providing standards for
2 development and administration of plans for investment of insurance
3 companies' assets. (V.T.I.C. Art. 3.33, Sec. 2.)

4 Sec. 425.105. WRITTEN INVESTMENT PLAN. (a) Each
5 insurance company's board of directors or, if the company does not
6 have a board of directors, the corresponding authority designated
7 by the company's charter, bylaws, or plan of operation, shall adopt
8 a written investment plan consistent with this subchapter.

9 (b) The investment plan must:

10 (1) specify the diversification of the insurance
11 company's investments, so as to reduce the risk of large losses, by:

12 (A) broad categories, such as bonds and real
13 property loans;

14 (B) kinds, such as government obligations,
15 obligations of business entities, mortgage-backed securities, and
16 real property loans on office, retail, industrial, or residential
17 properties;

18 (C) quality;

19 (D) maturity;

20 (E) industry; and

21 (F) geographical areas, as to both domestic and
22 foreign investments;

23 (2) balance safety of principal with yield and growth;

24 (3) seek a reasonable relationship of assets and
25 liabilities as to term and nature; and

26 (4) be appropriate considering the capital and surplus
27 and the business conducted by the company.

1 (c) At least annually, the board of directors or
2 corresponding authority shall review the adequacy of the investment
3 plan and the implementation of the plan.

4 (d) An insurance company shall maintain the company's
5 investment plan in the company's principal office and provide the
6 plan to the commissioner or the commissioner's designee on request.
7 The commissioner or the commissioner's designee shall maintain the
8 plan as a privileged and confidential document. The plan is not
9 subject to public disclosure. (V.T.I.C. Art. 3.33, Secs. 3(a), (b)
10 (part).)

11 Sec. 425.106. INVESTMENT RECORDS; DEMONSTRATION OF
12 COMPLIANCE. An insurance company shall maintain investment records
13 covering each transaction. The company must be able to demonstrate
14 at all times that the company's investments are within the
15 limitations imposed by this subchapter. (V.T.I.C. Art. 3.33, Sec.
16 3(b) (part).)

17 Sec. 425.107. COMMUNITY INVESTMENT REPORT. (a) The
18 department shall, after consulting with the insurance industry of
19 this state and the office of public insurance counsel, develop a
20 report of insurance industry community investments in this state.

21 (b) The commissioner may request, and an insurance company
22 shall provide, information necessary to complete the report
23 required by this section.

24 (c) The department shall provide the report required by this
25 section to the legislature not later than December 1 of each
26 even-numbered year. (V.T.I.C. Art. 3.33, Sec. 3A.)

27 Sec. 425.108. AUTHORIZED INVESTMENTS AND TRANSACTIONS IN

1 GENERAL. (a) Subject to the limitations and restrictions imposed
2 by this subchapter, and, unless otherwise specified, based on the
3 insurance company's capital, surplus, and admitted assets as
4 reported in the company's most recently filed statutory financial
5 statement, the investments and transactions described by this
6 subchapter and Subchapter F, Chapter 823, are authorized
7 investments and transactions for a company subject to this
8 subchapter.

9 (b) An insurance company may not make an investment or enter
10 into a transaction that is not authorized by this subchapter or
11 Subchapter F, Chapter 823. (V.T.I.C. Art. 3.33, Sec. 4 (part).)

12 Sec. 425.109. AUTHORIZED INVESTMENTS: GOVERNMENT
13 OBLIGATIONS. (a) An insurance company may invest in:

14 (1) a bond, evidence of indebtedness, or other
15 obligation of the United States;

16 (2) a bond, evidence of indebtedness, or other
17 obligation guaranteed as to principal and interest by the full
18 faith and credit of the United States;

19 (3) a bond, evidence of indebtedness, or other
20 obligation of an agency or instrumentality of the United States
21 government; and

22 (4) subject to Subsections (b) and (c), a bond,
23 evidence of indebtedness, or other obligation of a governmental
24 unit in the United States, Canada, or any province or municipality
25 of Canada, or of an instrumentality of one of those governmental
26 units.

27 (b) An insurance company may not invest in a bond, evidence

1 of indebtedness, or other obligation under Subsection (a)(4) if the
2 governmental unit or instrumentality is in default in the payment
3 of principal of or interest on any of the governmental unit's or
4 instrumentality's obligations.

5 (c) An insurance company's investments in the obligations
6 of a single governmental unit or instrumentality under Subsection
7 (a)(4) may not exceed 20 percent of the company's capital and
8 surplus. (V.T.I.C. Art. 3.33, Secs. 4(a), (b).)

9 Sec. 425.110. AUTHORIZED INVESTMENTS: OBLIGATIONS OF AND
10 OTHER INVESTMENTS IN BUSINESS ENTITIES. (a) In this section:

11 (1) "Business entity" includes a sole proprietorship,
12 corporation, association, general or limited partnership, limited
13 liability company, joint-stock company, joint venture, trust, or
14 other form of business organization, regardless of whether
15 organized for profit, that is organized under the laws of the United
16 States, another state, Canada, or any district, province, or
17 territory of Canada.

18 (2) "Counterparty exposure amount" has the meaning
19 assigned by Section 425.125.

20 (b) Subject to this section, an insurance company may invest
21 in an obligation, including a bond or evidence of indebtedness, a
22 participation in a bond or evidence of indebtedness, or an
23 asset-backed security, that is issued, assumed, guaranteed, or
24 insured by a business entity.

25 (c) An insurance company's investments in the obligations
26 or counterparty exposure amounts of a single business entity rated
27 by the securities valuation office may not exceed 20 percent of the

1 company's statutory capital and surplus.

2 (d) An insurance company may not invest in an obligation,
3 counterparty exposure amount, or preferred stock of a business
4 entity if, after making the investment:

5 (1) the aggregate amount of those investments then
6 held by the company that are rated 3, 4, 5, or 6 by the securities
7 valuation office would exceed 20 percent of the company's assets;

8 (2) the aggregate amount of those investments then
9 held by the company that are rated 4, 5, or 6 by the securities
10 valuation office would exceed 10 percent of the company's assets;

11 (3) the aggregate amount of those investments then
12 held by the company that are rated 5 or 6 by the securities
13 valuation office would exceed three percent of the company's
14 assets; or

15 (4) the aggregate amount of those investments then
16 held by the company that are rated 6 by the securities valuation
17 office would exceed one percent of the company's assets.

18 (e) If an insurance company attains or exceeds the limit of
19 a rating category referred to in Subsection (d), the company is not
20 precluded from acquiring investments in other rating categories
21 subject to the specific and multiple category limits applicable to
22 those investments.

23 (f) Notwithstanding Subsections (c)-(e), an insurance
24 company may invest in an additional obligation of a business entity
25 in which the company holds one or more obligations if the investment
26 is made to protect an investment previously made in that business
27 entity. Obligations invested in under this subsection may not

1 exceed one-half percent of the company's assets.

2 (g) This section does not prohibit an insurance company from
3 investing in an obligation as a result of a restructuring of an
4 already held obligation or preferred stock that is rated 3, 4, 5, or
5 6 by the securities valuation office.

6 (h) An insurance company shall include all counterparty
7 exposure amounts in determining compliance with the limitations of
8 this section. (V.T.I.C. Art. 3.33, Secs. 4(c), (u)(5).)

9 Sec. 425.111. AUTHORIZED INVESTMENTS: BONDS ISSUED,
10 ASSUMED, OR GUARANTEED IN INTERNATIONAL MARKET. (a) Subject to
11 this section, an insurance company may invest in bonds issued,
12 assumed, or guaranteed by:

13 (1) the Inter-American Development Bank;

14 (2) the International Bank for Reconstruction and
15 Development (the World Bank);

16 (3) the Asian Development Bank;

17 (4) the State of Israel;

18 (5) the African Development Bank; and

19 (6) the International Finance Corporation.

20 (b) An insurance company's investments in the bonds of a
21 single entity under this section may not exceed 20 percent of the
22 company's capital and surplus.

23 (c) The aggregate of all investments made by an insurance
24 company under this section may not exceed 20 percent of the
25 company's assets. (V.T.I.C. Art. 3.33, Sec. 4(d).)

26 Sec. 425.112. AUTHORIZED INVESTMENTS: POLICY LOANS. An
27 insurance company may invest in loans on the security of the

1 company's own policies in an amount that does not exceed the amount
2 of the reserve values of those policies. (V.T.I.C. Art. 3.33, Sec.
3 4(e).)

4 Sec. 425.113. AUTHORIZED INVESTMENTS: DEPOSITS IN CERTAIN
5 FINANCIAL INSTITUTIONS. (a) Subject to this section, an insurance
6 company may invest in any type of savings deposit, time deposit,
7 certificate of deposit, NOW account, or money market account in a
8 solvent bank, savings and loan association, or credit union that is
9 organized under the laws of the United States or a state, or in a
10 branch of one of those financial institutions.

11 (b) An investment under this section must be made in
12 accordance with the laws or regulations applicable to the bank,
13 savings and loan association, or credit union.

14 (c) The amount of an insurance company's deposits in a
15 single bank, savings and loan association, or credit union may not
16 exceed the greater of:

- 17 (1) 20 percent of the company's capital and surplus;
18 (2) the amount of federal or state deposit insurance
19 coverage that applies to the deposits; or
20 (3) 10 percent of the amount of capital, surplus, and
21 undivided profits of the financial institution receiving the
22 deposits. (V.T.I.C. Art. 3.33, Sec. 4(f).)

23 Sec. 425.114. AUTHORIZED INVESTMENTS: INSURANCE COMPANY
24 INVESTMENT POOLS. (a) In this section, "affiliate" means, with
25 respect to a person, another person that, directly or indirectly
26 through one or more intermediaries, controls, is controlled by, or
27 is under common control with the person.

1 (b) Subject to Subsections (c)-(g), an insurance company
2 may acquire investments in an investment pool that invests only in:

3 (1) obligations that have a rating by the securities
4 valuation office of one or two, or an equivalent rating issued by a
5 nationally recognized statistical rating organization recognized
6 by the securities valuation office, or that are issued by an issuer
7 with outstanding obligations that have a securities valuation
8 office one or two rating or an equivalent rating described by this
9 subdivision, and that:

10 (A) have a remaining maturity of 397 days or less
11 or a put that:

12 (i) entitles the holder to receive the
13 principal amount of the obligation; and

14 (ii) may be exercised through maturity at
15 specified intervals not exceeding 397 days; or

16 (B) have a remaining maturity of three years or
17 less and a floating interest rate that resets at least quarterly on
18 the basis of a current short-term index (federal funds, prime rate,
19 treasury bills, London InterBank Offered Rate, or commercial paper)
20 and is not subject to a maximum limit, if the obligations do not
21 have an interest rate that varies inversely to market interest rate
22 changes;

23 (2) securities lending, repurchase, and reverse
24 repurchase transactions that meet the requirements of Section
25 425.121 and any applicable department rules;

26 (3) money market funds as authorized by Section
27 425.123, except that a short-term investment pool may not acquire

1 investments in a single business entity that exceed 10 percent of
2 the total assets of the pool; or

3 (4) investments that an insurance company may make
4 under this subchapter, if:

5 (A) the company's proportionate interest in the
6 amount invested in those investments does not exceed the limits of
7 this subchapter; and

8 (B) the aggregate amount of the company's
9 investments in all investment pools under this subdivision does not
10 exceed 25 percent of the company's assets.

11 (c) An insurance company may not acquire an investment in an
12 investment pool under Subsection (b) if, after making the
13 investment, the aggregate amount of the company's investments in
14 all investment pools would exceed 35 percent of the company's
15 assets.

16 (d) For an investment in an investment pool to be qualified
17 under this section, the pool may not:

18 (1) acquire securities issued, assumed, guaranteed,
19 or insured by an investing insurer or an affiliate of the investing
20 insurance company; or

21 (2) borrow or incur an indebtedness for borrowed
22 money, except for securities lending and reverse repurchase
23 transactions.

24 (e) For an investment pool to be qualified under this
25 section:

26 (1) the pool manager must:

27 (A) be organized under the laws of the United

1 States or a state and designated as the pool manager in a pooling
2 agreement; or

3 (B) be:

4 (i) the investing insurance company, an
5 affiliated insurance company, a business entity affiliated with the
6 investing company, a custodian bank, a business entity registered
7 under the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1
8 et seq.), as amended;

9 (ii) in the case of a reciprocal or
10 interinsurance exchange, the exchange's attorney-in-fact; or

11 (iii) in the case of a United States branch
12 of an alien insurance company, the United States manager or an
13 affiliate or subsidiary of the United States manager;

14 (2) the pool manager or an entity designated by the
15 pool manager of the type described by Subdivision (1)(B) must
16 maintain:

17 (A) detailed accounting records showing:

18 (i) the cash receipts and disbursements
19 reflecting each participant's proportionate investment in the
20 pool; and

21 (ii) a complete description of all the
22 pool's underlying assets, including the amount, interest rate,
23 maturity date, if any, and other appropriate designations; and

24 (B) other records that, on a daily basis, allow a
25 third party to verify each participant's investments in the pool;
26 and

27 (3) the assets of the pool must be held in one or more

1 accounts, in the name or on behalf of the pool, at the principal
2 office of the pool manager or under a custody agreement or trust
3 agreement with a custodian bank, provided that the agreement:

4 (A) states and recognizes the claims and rights
5 of each participant;

6 (B) acknowledges that the pool's underlying
7 assets are held solely for the benefit of each participant in
8 proportion to the aggregate amount of the participant's investments
9 in the pool; and

10 (C) contains an agreement that the pool's
11 underlying assets may not be commingled with the general assets of
12 the custodian bank or any other person.

13 (f) The pooling agreement for each investment pool must be
14 in writing and must provide that:

15 (1) 100 percent of the interests in the pool must be
16 held at all times by the insurance company, the company's
17 subsidiaries or affiliates, or, in the case of a United States
18 branch of an alien insurance company, the affiliates or
19 subsidiaries of the United States manager, and any unaffiliated
20 insurance company;

21 (2) the pool's underlying assets may not be commingled
22 with the general assets of the pool manager or any other person;

23 (3) in proportion to the aggregate amount of each pool
24 participant's interest in the pool:

25 (A) each participant owns an undivided interest
26 in the pool's underlying assets; and

27 (B) the pool's underlying assets are held solely

1 for the benefit of each participant;

2 (4) a participant, or, in the event of the
3 participant's insolvency, bankruptcy, or receivership, the
4 participant's trustee, receiver, conservator, or other successor
5 in interest, may withdraw all or part of the participant's
6 investment from the pool under the terms of the pooling agreement;

7 (5) a withdrawal may be made on demand without penalty
8 or other assessment on any business day, and settlement of funds
9 must occur within a reasonable and customary period after the
10 withdrawal, except that:

11 (A) in the case of publicly traded securities,
12 the settlement period may not exceed five business days; and

13 (B) in the case of securities and investments
14 other than publicly traded securities, the settlement period may
15 not exceed 10 business days;

16 (6) the amount of a distribution under Subdivision (5)
17 must be computed after subtracting all the pool's applicable fees
18 and expenses;

19 (7) the pool manager shall distribute to a
20 participant, at the manager's discretion:

21 (A) in cash, an amount that represents the fair
22 market value of the participant's pro rata share of each of the
23 pool's underlying assets;

24 (B) in kind, an amount that represents a pro rata
25 share of each underlying asset; or

26 (C) in a combination of cash and in-kind
27 distributions, an amount that represents a pro rata share in each

1 underlying asset; and

2 (8) the pool manager shall make the records of the pool
3 available for inspection by the commissioner.

4 (g) An investment in an investment pool is not considered to
5 be an affiliate transaction under Subchapter C, Chapter 823, but
6 each pooling agreement is subject to the standards of Section
7 823.101 and the reporting requirements of Section 823.052.
8 (V.T.I.C. Art. 3.33, Sec. 4(g).)

9 Sec. 425.115. AUTHORIZED INVESTMENTS: EQUITY INTERESTS.

10 (a) In this section, "business entity" means a real estate
11 investment trust, corporation, limited liability company,
12 association, limited partnership, joint venture, mutual fund,
13 trust, joint tenancy, or other similar form of business
14 organization, regardless of whether organized for profit.

15 (b) Subject to this section, an insurance company may invest
16 in an equity interest, including common stock, an equity investment
17 in an investment company other than a money market fund described by
18 Section 425.123, a real estate investment trust, a limited
19 partnership interest, a warrant, another right to acquire an equity
20 interest that is created by the person that owns or would issue the
21 equity in which the interest is acquired, and an equity interest in
22 a business entity that is organized under the laws of the United
23 States, a state of the United States, Canada, or a province or
24 territory of Canada.

25 (c) If a market value from a generally recognized source is
26 not available for an equity interest, the business entity or other
27 investment in which the interest is acquired must be subject to:

1 (1) an annual audit by an independent certified public
2 accountant; or

3 (2) another method of valuation acceptable to the
4 commissioner.

5 (d) An insurance company may not invest in a partnership as
6 a general partner except through an investment subsidiary.

7 (e) An insurance company's investments under this section
8 in a single business entity, other than a money market fund
9 described by Section 425.123, may not exceed 15 percent of the
10 company's capital and surplus.

11 (f) The aggregate amount of an insurance company's
12 investments under this section may not exceed 25 percent of the
13 company's assets. (V.T.I.C. Art. 3.33, Sec. 4(h).)

14 Sec. 425.116. AUTHORIZED INVESTMENTS: PREFERRED STOCK.

15 (a) Subject to this section, an insurance company may invest in
16 preferred stock of a business entity, as defined by Section
17 425.110.

18 (b) An insurance company may invest in preferred stock only
19 if:

20 (1) the stock is rated by the securities valuation
21 office; and

22 (2) the sum of the company's aggregate investment in
23 preferred stock rated 3, 4, 5, or 6 and the company's investments
24 under Section 425.110(d) does not exceed the limitations specified
25 by Section 425.110(d).

26 (c) An insurance company's investments in the preferred
27 stock of a single business entity may not exceed 20 percent of the

1 company's capital and surplus.

2 (d) The aggregate amount of an insurance company's
3 investments in preferred stock as to which there is not a sinking
4 fund for the redemption and retirement of the stock that meets the
5 standards established by the National Association of Insurance
6 Commissioners may not exceed 10 percent of the company's assets.

7 (e) The aggregate amount of an insurance company's
8 investments under this section may not exceed 40 percent of the
9 company's assets. (V.T.I.C. Art. 3.33, Sec. 4(i).)

10 Sec. 425.117. AUTHORIZED INVESTMENTS: COLLATERAL LOANS.

11 (a) Subject to this section, an insurance company may invest in a
12 collateral loan secured by:

13 (1) a first lien on an asset; or

14 (2) a valid and perfected first security interest in
15 an asset.

16 (b) The amount of a loan invested in under this section may
17 not exceed 80 percent of the value of the collateral asset at any
18 time during the duration of the loan.

19 (c) The asset used as collateral for a loan under this
20 section must be an asset, other than real property described by
21 Section 425.119, in which the insurance company is authorized by
22 this subchapter to directly invest. (V.T.I.C. Art. 3.33, Sec.
23 4(j).)

24 Sec. 425.118. AUTHORIZED INVESTMENTS: OBLIGATIONS SECURED
25 BY REAL PROPERTY LOANS. (a) Subject to this section, an insurance
26 company may invest in a note, an evidence of indebtedness, or a
27 participation in a note or evidence of indebtedness that is secured

1 by a valid first lien on real property or a leasehold estate in real
2 property located in the United States.

3 (b) The amount of an obligation secured by a first lien on
4 real property or a leasehold estate in real property may exceed 90
5 percent of the value of the real property or leasehold estate only
6 if:

7 (1) the amount does not exceed 100 percent of the value
8 of the real property or leasehold estate and the insurance company
9 or one or more wholly owned subsidiaries of the company owns, in the
10 aggregate, a 10 percent or greater equity interest in the real
11 property or leasehold estate;

12 (2) the amount does not exceed 95 percent of the value
13 of the real property or leasehold estate and:

14 (A) the property contains only a dwelling
15 designed exclusively for occupancy by not more than four families
16 for residential purposes; and

17 (B) the portion of the unpaid balance of the
18 obligation that exceeds 90 percent of the value of the property or
19 leasehold estate is guaranteed or insured by a mortgage guaranty
20 insurer authorized to engage in business in this state; or

21 (3) the amount exceeds 90 percent of the value of the
22 real property or leasehold estate only to the extent the obligation
23 is insured or guaranteed by:

24 (A) the United States;

25 (B) the Federal Housing Administration under the
26 National Housing Act (12 U.S.C. Section 1701 et seq.), as amended;

27 or

1 (C) this state.

2 (c) The term of an obligation secured by a first lien on a
3 leasehold estate in real property may not, as of the date the
4 obligation is acquired, exceed a period equal to four-fifths of the
5 unexpired term of the leasehold estate, and the obligation must
6 fully amortize during that period. The term of the leasehold estate
7 may not expire sooner than the 10th anniversary of the expiration
8 date of the term of the obligation.

9 (d) An obligation secured by a first lien on a leasehold
10 estate in real property must be payable in one or more installments
11 of an amount or amounts sufficient to ensure that, at any time after
12 the expiration of two-thirds of the original term of the
13 obligation, the principal balance on the obligation is not greater
14 than the principal balance would have been if the obligation had
15 been amortized over the original term of the obligation in equal
16 monthly, quarterly, semiannual, or annual payments of principal and
17 interest.

18 (e) If any part of the value of buildings is to be included
19 in the value of real property or a leasehold estate in real property
20 to secure an obligation under this section:

21 (1) the buildings must be covered by adequate property
22 insurance, including fire and extended coverage insurance, issued
23 by:

24 (A) an insurer authorized to engage in business
25 in this state; or

26 (B) an insurer recognized as acceptable to issue
27 that coverage by the insurance regulatory official of the state in

1 which the real property is located;

2 (2) the amount of insurance provided by one or more
3 policies may not be less than the lesser of:

4 (A) the unpaid balance of the obligation; or

5 (B) the insurable value of the buildings; and

6 (3) the loss clause under each policy must be payable
7 to the insurance company as the company's interest may appear.

8 (f) To the extent that a note, evidence of indebtedness, or
9 participation in a note or evidence of indebtedness under this
10 section represents an equity interest in the underlying real
11 property:

12 (1) the value of that equity interest must be
13 determined at the time the note, evidence of indebtedness, or
14 participation is executed; and

15 (2) the portion of the obligation that represents an
16 equity interest in the property must be designated as an investment
17 subject to Section 425.119(c).

18 (g) An insurance company's investment in a single
19 obligation under this section may not exceed 25 percent of the
20 company's capital and surplus.

21 (h) An insurance company may purchase a first lien on real
22 property after the origination of the lien if:

23 (1) the first lien is insured by a mortgagee's title
24 policy issued to the original mortgagee that contains a provision
25 that inures the policy to the use and benefit of the owners of the
26 evidence of indebtedness indicated in the policy and to any
27 subsequent owners of that evidence of indebtedness; and

1 (2) the company maintains evidence of an assignment or
2 other transfer of the first lien on real property to the company.

3 (i) For purposes of Subsection (h)(2), an assignment or
4 other transfer to the insurance company that is duly recorded in the
5 county in which the real property is located is presumed to create
6 legal ownership of the first lien by the company. (V.T.I.C.
7 Art. 3.33, Sec. 4(k).)

8 Sec. 425.119. AUTHORIZED INVESTMENTS: REAL PROPERTY. (a)
9 Subject to this section, an insurance company may invest in a real
10 property fee simple or leasehold estate located in the United
11 States.

12 (b) An insurance company may invest in home and branch
13 office real property or a participation in home or branch office
14 real property. At least 30 percent of the available space in a
15 building used as a home or branch office must be occupied for the
16 business purposes of the company and the company's affiliates. A
17 company's aggregate investment in home and branch office real
18 property may not exceed 20 percent of the company's assets.

19 (c) An insurance company may invest in real property other
20 than home and branch office real property or participations in home
21 and branch office real property. A company's investment under this
22 subsection in a single piece of property or in an interest in a
23 single piece of property, including improvements, fixtures, and
24 equipment relating to the property, may not exceed five percent of
25 the company's assets.

26 (d) Investment real property held under Subsection (b) or
27 (c) must be materially enhanced in value by:

1 (1) the construction of durable, permanent-type
2 buildings and other improvements that cost an amount at least equal
3 to the cost of the real property, excluding buildings and
4 improvements at the time the real property is acquired; or

5 (2) the construction, commenced before the second
6 anniversary of the date the real property is acquired, of buildings
7 and improvements described by Subdivision (1).

8 (e) The admissible asset value of each investment in real
9 property under Subsection (b) or (c) is subject to review and
10 approval by the commissioner. The commissioner may, at the time the
11 investment is made or any time the insurance company is being
12 examined, have the investment appraised by an appraiser appointed
13 by the commissioner. The company shall pay the reasonable expense
14 of the appraisal. The expense of the appraisal is considered to be
15 a part of the expense of examination of the company unless the
16 company applies for the appraisal to be made. A company may not
17 increase the valuation of real property described by Subsection (b)
18 or (c) unless:

19 (1) the company applies for the increase in valuation;
20 and

21 (2) the commissioner approves the increase.

22 (f) Except as provided by Subsection (g), an insurance
23 company may not own, develop, or hold an equity interest in any
24 residential property or subdivision, single or multiunit family
25 dwelling property, or undeveloped real property to subdivide for or
26 develop residential or single or multiunit family dwellings.

27 (g) An insurance company may invest in other real property

1 acquired:

2 (1) in good faith to secure a loan previously
3 contracted for, or for money due;

4 (2) in satisfaction of a debt previously contracted
5 for in the course of the company's dealings; or

6 (3) by purchase at a sale under a judgment or decree of
7 a court or under a mortgage or other lien held by the company.

8 (h) Regardless of the manner in which an insurance company
9 acquires real property under this section, on the sale of the
10 property, the company may retain indefinitely the fee title to the
11 mineral estate or any portion of the mineral estate. (V.T.I.C.
12 Art. 3.33, Sec. 4(1).)

13 Sec. 425.120. AUTHORIZED INVESTMENTS: OIL, GAS, AND
14 MINERALS. (a) In this section:

15 (1) "Producing" means producing oil, gas, or other
16 minerals in paying quantities. A well that has been shut in is
17 considered to be producing oil, gas, or other minerals in paying
18 quantities if shut-in royalties are being paid.

19 (2) "Production payment" means a right to oil, gas, or
20 other minerals in place or as produced that entitles the owner of
21 the right to a specified fraction of production until the owner
22 receives a specified amount of money, or a specified number of units
23 of oil, gas, or other minerals.

24 (3) "Royalty" or "overriding royalty" means a right to
25 oil, gas, and other minerals in place or as produced that entitles
26 the owner of the right to a specified fraction of production without
27 limitation to a specified amount of money or a specified number of

1 units of oil, gas, or other minerals.

2 (b) Subject to this section, in addition to and without
3 limitation on the purposes for which real property may be acquired,
4 secured, held, or retained under other provisions of this
5 subchapter, an insurance company may secure, hold, retain, and
6 convey production payments, producing royalties, and producing
7 overriding royalties, or participations in production payments,
8 producing royalties, or producing overriding royalties as an
9 investment for the production of income.

10 (c) An insurance company may not carry an asset described by
11 Subsection (b) in an amount that exceeds 90 percent of the appraised
12 value of the asset.

13 (d) A single investment under this section may not exceed 10
14 percent of the amount of the insurance company's capital and
15 surplus that exceeds the statutory minimum capital and surplus
16 applicable to the company.

17 (e) The aggregate amount of an insurance company's
18 investments under this section may not exceed 10 percent of the
19 company's assets as of December 31 preceding the date of the
20 investment. (V.T.I.C. Art. 3.33, Sec. 4(m).)

21 Sec. 425.121. AUTHORIZED INVESTMENTS: SECURITIES LENDING,
22 REPURCHASE, REVERSE REPURCHASE, AND DOLLAR ROLL TRANSACTIONS. (a)
23 In this section:

24 (1) "Dollar roll transaction" means two simultaneous
25 transactions with settlement dates not more than 96 days apart, in
26 one of which an insurance company sells to a business entity, and in
27 the other of which the company is obligated to purchase from the

1 same business entity, substantially similar securities that are:

2 (A) mortgage-backed securities issued, assumed,
3 or guaranteed by the Government National Mortgage Association, the
4 Federal National Mortgage Association, the Federal Home Loan
5 Mortgage Corporation, or a successor to one of those organizations;
6 or

7 (B) other mortgage-backed securities referred to
8 in 15 U.S.C. Section 77r-1, as amended.

9 (2) "Repurchase transaction" means a transaction in
10 which an insurance company purchases securities from a business
11 entity that is obligated to repurchase the purchased securities or
12 equivalent securities from the company at a specified price, either
13 within a specified period or on demand.

14 (3) "Reverse repurchase transaction" means a
15 transaction in which an insurance company sells securities to a
16 business entity and is obligated to repurchase the sold securities
17 or equivalent securities from the business entity at a specified
18 price, either within a specified period or on demand.

19 (4) "Securities lending transaction" means a
20 transaction in which an insurance company lends securities to a
21 business entity that is obligated to return the loaned securities
22 or equivalent securities to the company, either within a specified
23 period or on demand.

24 (b) Subject to this section, an insurance company may engage
25 in securities lending, repurchase, reverse repurchase, and dollar
26 roll transactions.

27 (c) An insurance company must enter into a written agreement

1 for each transaction under this section, other than a dollar roll
2 transaction. The agreement must require that the transaction
3 terminate on or before the first anniversary of the transaction's
4 inception.

5 (d) With respect to cash received in a transaction under
6 this section, an insurance company shall:

7 (1) invest the cash in accordance with this subchapter
8 and in a manner that recognizes the liquidity needs of the
9 transaction; or

10 (2) use the cash for the company's general corporate
11 purposes.

12 (e) While a transaction under this section is outstanding,
13 the insurance company or the company's agent or custodian shall
14 maintain, as to acceptable collateral received in the transaction,
15 either physically or through the book-entry system of the Federal
16 Reserve, Depository Trust Company, Participants Trust Company, or
17 another securities depository approved by the commissioner:

18 (1) possession of the collateral;

19 (2) a perfected security interest in the collateral;

20 or

21 (3) in the case of a jurisdiction outside of the United
22 States, title to, or rights of a secured creditor to, the
23 collateral.

24 (f) The limitations of Sections 425.110 and 425.157(b) do
25 not apply to the business entity counterparty exposure created by a
26 transaction under this section. An insurance company may not enter
27 into a transaction under this section if, as a result of and after

1 making the transaction:

2 (1) the aggregate amount of securities loaned or sold
3 to or purchased from any one business entity counterparty under
4 this section would exceed five percent of the company's assets; or

5 (2) the aggregate amount of all securities loaned or
6 sold to or purchased from all business entities under this section
7 would exceed 40 percent of the company's assets.

8 (g) For purposes of Subsection (f)(1), in computing the
9 amount sold to or purchased from a business entity counterparty
10 under a repurchase or reverse repurchase transaction, effect may be
11 given to netting provisions under a master written agreement.

12 (h) The amount of collateral required for securities
13 lending, repurchase, and reverse repurchase transactions is the
14 amount required under the Purposes and Procedures Manual of the
15 securities valuation office or a successor publication. (V.T.I.C.
16 Art. 3.33, Secs. 4(q)(a), (b), (c), (d), (e).)

17 Sec. 425.122. AUTHORIZED INVESTMENTS: PREMIUM LOANS. (a)
18 Subject to Subsection (b), an insurance company may make loans to
19 finance the payment of premiums for the company's own insurance
20 policies or annuity contracts.

21 (b) The amount of a loan under this section may not exceed
22 the sum of:

23 (1) the available cash value of the insurance policy
24 or annuity contract for which the premium loan is made; and

25 (2) the amount of any escrowed commissions payable
26 relating to the insurance policy or annuity contract. (V.T.I.C.
27 Art. 3.33, Sec. 4(r).)

1 Sec. 425.123. AUTHORIZED INVESTMENTS: MONEY MARKET FUNDS.

2 (a) An insurance company may invest in a money market fund as
3 described by 17 C.F.R. Section 270.2a-7 under the Investment
4 Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), that is:

5 (1) a government money market fund that:

6 (A) invests only in obligations issued,
7 guaranteed, or insured by the United States government or
8 collateralized repurchase agreements composed of these
9 obligations; and

10 (B) qualifies for investment without a reserve
11 under the Purposes and Procedures Manual of the securities
12 valuation office or a successor publication; or

13 (2) a class one money market fund that qualifies for
14 investment using the bond class one reserve factor described by the
15 Purposes and Procedures Manual of the securities valuation office
16 or a successor publication.

17 (b) For purposes of complying with Section 425.115, a money
18 market fund that qualifies for listing in the categories prescribed
19 by Subsection (a) must conform to the Purposes and Procedures
20 Manual of the securities valuation office or a successor
21 publication. (V.T.I.C. Art. 3.33, Sec. 4(s).)

22 Sec. 425.124. AUTHORIZED INVESTMENTS: RISK CONTROL
23 TRANSACTIONS. Subject to Sections 425.126-425.132, an insurance
24 company may use derivative instruments, as defined by Section
25 425.125, to engage in hedging transactions, replication
26 transactions, and income generation transactions, as those terms
27 are defined by Section 425.125. (V.T.I.C. Art. 3.33, Sec. 4(u))

1 (part).)

2 Sec. 425.125. RISK CONTROL TRANSACTIONS: DEFINITIONS. In
3 Sections 425.124-425.132:

4 (1) "Acceptable collateral" means cash, cash
5 equivalents, letters of credit, and direct obligations, or
6 securities that are fully guaranteed as to principal and interest
7 by the United States government.

8 (2) "Business entity" includes a sole proprietorship,
9 corporation, limited liability company, association, partnership,
10 joint stock company, joint venture, mutual fund, bank, trust, joint
11 tenancy, or other similar form of business organization, regardless
12 of whether organized for profit.

13 (3) "Cap" means an agreement obligating the seller to
14 make payments to the buyer, with each payment based on the amount by
15 which a reference price or level or the performance or value of one
16 or more underlying interests exceeds a predetermined number that is
17 sometimes called the strike rate or strike price.

18 (4) "Cash equivalent" means an investment or security
19 that is short-term, highly rated, highly liquid, and readily
20 marketable. The term includes a money market fund described by
21 Section 425.123. For purposes of this subdivision, an investment
22 or security is:

23 (A) short-term if it has a remaining term to
24 maturity of one year or less; and

25 (B) highly rated if it has:

26 (i) a rating of "P-1" by Moody's Investors
27 Service, Inc.;

1 (ii) a rating of "A-1" by the Standard and
2 Poor's Division of the McGraw Hill Companies, Inc.; or

3 (iii) an equivalent rating by a nationally
4 recognized statistical rating organization recognized by the
5 securities valuation office.

6 (5) "Collar" means an agreement to receive payments as
7 the buyer of an option, cap, or floor and to make payments as the
8 seller of a different option, cap, or floor.

9 (6)(A) "Counterparty exposure amount" means:

10 (i) for an over-the-counter derivative
11 instrument not entered into under a written master agreement that
12 provides for netting of payments owed by the respective parties,
13 the market value of the over-the-counter derivative instrument, if
14 the liquidation of the derivative instrument would result in a
15 final cash payment to the insurer, or zero, if the liquidation of
16 the derivative instrument would not result in a final cash payment
17 to the insurance company; or

18 (ii) for an over-the-counter derivative
19 instrument entered into under a written master agreement that
20 provides for netting of payments owed by the respective parties,
21 and for which the counterparty's domiciliary jurisdiction is within
22 the United States or a jurisdiction outside the United States that
23 is listed in the Purposes and Procedures Manual of the securities
24 valuation office as eligible for netting, the greater of zero or the
25 net sum payable to the company in connection with all derivative
26 instruments subject to the written master agreement on the
27 liquidation of the instruments in the event of the counterparty's

1 default under the master agreement, if there is no condition
2 precedent to the counterparty's obligation to make the payment and
3 if there is no setoff of amounts payable under another instrument or
4 agreement.

5 (B) For purposes of this subdivision, market
6 value or the net sum payable, as applicable, must be determined at
7 the end of the most recent quarter of the insurance company's fiscal
8 year and must be reduced by the market value of acceptable
9 collateral held by the company or a custodian on the company's
10 behalf.

11 (7) "Derivative instrument":

12 (A) means an agreement, option, or instrument, or
13 a series or combinations of agreements, options, or instruments:

14 (i) to make or take delivery of, or assume
15 or relinquish, a specified amount of one or more underlying
16 interests, or to make a cash settlement instead of making or taking
17 delivery of, or assuming or relinquishing, a specified amount of an
18 underlying instrument; or

19 (ii) that has a price, performance, value,
20 or cash flow based primarily on the actual or expected price, yield,
21 level, performance, value, or cash flow of one or more underlying
22 interests;

23 (B) includes an option, a warrant not otherwise
24 permitted to be held by the insurance company under this
25 subchapter, a cap, a floor, a collar, a swap, a swaption, a forward,
26 a future, any other substantially similar agreement, option, or
27 instrument, and a series or combination of those agreements,

1 options, or instruments; and

2 (C) does not include a collateralized mortgage
3 obligation, another asset-backed security, a principal-protected
4 structured security, a floating rate security, an instrument that a
5 company would otherwise be authorized to invest in or receive under
6 a provision of this subchapter other than Sections 425.124-425.132,
7 or a debt obligation of the company.

8 (8) "Derivative transaction" means a transaction
9 involving the use of one or more derivative instruments. The term
10 does not include a dollar roll transaction, repurchase transaction,
11 reverse repurchase transaction, or securities lending transaction.

12 (9) "Floor" means an agreement obligating the seller
13 to make payments to the buyer, each of which is based on the amount
14 by which a predetermined number that is sometimes called the floor
15 rate or floor price exceeds a reference price, level, performance,
16 or value of one or more underlying interests.

17 (10) "Forward" means an agreement to make or take
18 delivery in the future of one or more underlying interests, or to
19 effect a cash settlement, based on the actual or expected price,
20 level, performance, or value of those interests. The term does not
21 include a future, a spot transaction effected within a customary
22 settlement period, a when-issued purchase, or another similar cash
23 market transaction.

24 (11) "Future" means an agreement traded on a futures
25 exchange to make or take delivery of one or more underlying
26 interests, or to effect a cash settlement based on the actual or
27 expected price, level, performance, or value of those interests.

1 (12) "Futures exchange" means a foreign or domestic
2 exchange, contract market, or board of trade on which trading in
3 futures is conducted and that, in the United States, is authorized
4 to conduct that trading by the Commodity Futures Trading Commission
5 or a successor to that agency.

6 (13) "Hedging transaction" means a derivative
7 transaction entered into and maintained to manage, with respect to
8 an asset, liability, or portfolio of assets or liabilities, that an
9 insurance company has acquired or incurred or anticipates acquiring
10 or incurring:

11 (A) the risk of a change in value, yield, price,
12 cash flow, or quantity; or

13 (B) the currency exchange rate risk.

14 (14) "Income generation transaction" means a
15 derivative transaction entered into to generate income. The term
16 does not include a hedging transaction or a replication
17 transaction.

18 (15) "Market value" means the price for a security or
19 derivative instrument obtained from a generally recognized source,
20 the most recent quotation from a generally recognized source, or if
21 a generally recognized source does not exist, the price determined
22 under the terms of the instrument or in good faith by the insurance
23 company, as can be reasonably demonstrated to the commissioner on
24 request, plus the amount of accrued but unpaid income on the
25 security or instrument to the extent that amount is not included in
26 the price as of the date the security or instrument is valued.

27 (16) "Option" means an agreement giving the buyer the

1 right to buy or receive, referred to as a "call option," to sell or
2 deliver, referred to as a "put option," to enter into, extend, or
3 terminate, or to effect a cash settlement based on the actual or
4 expected price, spread, level, performance, or value of, one or
5 more underlying interests.

6 (17) "Over-the-counter derivative instrument" means a
7 derivative instrument entered into with a business entity in a
8 manner other than through a securities exchange or futures exchange
9 or cleared through a qualified clearinghouse.

10 (18) "Potential exposure" means:

11 (A) as to a futures position, the amount of
12 initial margin required for that position; or

13 (B) as to a swap, collar, or forward, one-half of
14 one percent multiplied by the notional amount multiplied by the
15 square root of the remaining years to maturity.

16 (19) "Qualified clearinghouse" means a clearinghouse
17 that:

18 (A) is subject to the rules of a securities
19 exchange or a futures exchange; and

20 (B) provides clearing services, including acting
21 as a counterparty to each of the parties to a transaction in a
22 manner that eliminates the parties' credit risk to each other.

23 (20) "Replication transaction" means a derivative
24 transaction or a combination of derivative transactions effected
25 separately or in conjunction with cash market investments included
26 in the insurance company's investment portfolio to replicate the
27 risks and returns of another authorized transaction, investment, or

1 instrument, or to operate as a substitute for cash market
2 transactions. The term does not include a hedging transaction.

3 (21) "Securities exchange" means:

4 (A) an exchange registered as a national
5 securities exchange or a securities market registered under the
6 Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.), as
7 amended;

8 (B) the Private Offerings, Resales and Trading
9 through Automated Linkages system; or

10 (C) a designated offshore securities market as
11 defined by 17 C.F.R. Section 230.902, as amended.

12 (22) "Swap" means an agreement to exchange or to net
13 payments at one or more times based on the actual or expected price,
14 yield, level, performance, or value of one or more underlying
15 interests.

16 (23) "Swaption" means an option to purchase or sell a
17 swap at a given price and time or at a series of prices and times.
18 The term does not include a swap with an embedded option.

19 (24) "Underlying interest" means an asset, liability,
20 or other interest underlying a derivative instrument or a
21 combination of those assets, liabilities, or other interests. The
22 term includes a security, currency, rate, index, commodity, or
23 derivative instrument.

24 (25) "Warrant" means an instrument that gives the
25 holder the right to purchase or sell the underlying interest at a
26 given price and time or at a series of prices and times outlined in
27 the warrant agreement. (V.T.I.C. Art. 3.33, Sec. 4(u)(1).)

1 Sec. 425.126. RISK CONTROL TRANSACTIONS: DERIVATIVE USE
2 PLAN. (a) Before an insurance company enters into a derivative
3 transaction, the company's board of directors must approve a
4 derivative use plan as part of the investment plan required by
5 Section 425.105.

6 (b) The derivative use plan must:

7 (1) describe investment objectives and risk
8 constraints, such as counterparty exposure amounts;

9 (2) define permissible transactions identifying the
10 risks to be hedged or the assets or liabilities being replicated;
11 and

12 (3) require compliance with internal control
13 procedures. (V.T.I.C. Art. 3.33, Sec. 4(u)(2).)

14 Sec. 425.127. RISK CONTROL TRANSACTIONS: INTERNAL CONTROL
15 PROCEDURES. An insurance company that enters into a derivative
16 transaction shall establish written internal control procedures
17 that provide for:

18 (1) a quarterly report to the board of directors that
19 reviews:

20 (A) each derivative transaction entered into,
21 outstanding, or closed out;

22 (B) the results and effectiveness of the
23 derivatives program; and

24 (C) the credit risk exposure to each counterparty
25 for over-the-counter derivative transactions based on the
26 counterparty exposure amount;

27 (2) a system for determining whether hedging or

1 replication strategies used have been effective;

2 (3) a system of regular reports, at least monthly, to
3 management that include:

4 (A) a description of each derivative transaction
5 entered into, outstanding, or closed out during the period since
6 the last report;

7 (B) the purpose of each outstanding derivative
8 transaction;

9 (C) a performance review of the derivative
10 instrument program; and

11 (D) the counterparty exposure amount for each
12 over-the-counter derivative transaction;

13 (4) a written authorization that identifies the
14 responsibilities and limitations of authority of each person
15 authorized to effect and maintain derivative transactions; and

16 (5) appropriate documentation for each transaction,
17 including:

18 (A) the purpose of the transaction;

19 (B) the assets or liabilities to which the
20 transaction relates;

21 (C) the specific derivative instrument used in
22 the transaction;

23 (D) for an over-the-counter derivative
24 transaction, the name of the counterparty and the counterparty
25 exposure amount; and

26 (E) for an exchange-traded derivative
27 instrument, the name of the exchange and the name of the firm that

1 handled the transaction. (V.T.I.C. Art. 3.33, Sec. 4(u)(3).)

2 Sec. 425.128. RISK CONTROL TRANSACTIONS: OVERSIGHT BY
3 COMMISSIONER. (a) An insurance company must be able to demonstrate
4 to the commissioner on request the intended hedging characteristics
5 and continuing effectiveness of a derivative transaction or
6 combination of transactions through:

- 7 (1) cash flow testing;
8 (2) duration analysis; or
9 (3) other appropriate analysis.

10 (b) Ten days before entering into an initial hedging
11 transaction, an insurance company shall notify the commissioner in
12 writing that:

- 13 (1) the company's board of directors has adopted an
14 investment plan that authorizes hedging transactions; and
15 (2) each hedging transaction will comply with Sections
16 425.124-425.132.

17 (c) After providing the notice under Subsection (b), the
18 insurance company may enter into a hedging transaction under
19 Section 425.124 if as a result of and after making the transaction:

20 (1) the aggregate statement value of all outstanding
21 options other than collars, and of all caps, floors, swaptions, and
22 warrants under Sections 425.124-425.132 not attached to another
23 financial instrument purchased by the company does not exceed 7.5
24 percent of the company's assets;

25 (2) the aggregate statement value of all outstanding
26 options other than collars, and of all caps, floors, swaptions, and
27 warrants written by the company under Sections 425.124-425.132 does

1 not exceed three percent of the company's assets; and

2 (3) the aggregate potential exposure of all
3 outstanding collars, swaps, forwards, and futures entered into or
4 acquired by the company under Sections 425.124-425.132 does not
5 exceed 6.5 percent of the company's assets.

6 (d) If the hedging transaction does not comply with Sections
7 425.124-425.132, or if continuing the transaction may create a
8 hazardous financial condition for the insurance company that
9 affects the company's policyholders or creditors or the public, the
10 commissioner may, after notice and an opportunity for a hearing,
11 order the company to take action reasonably necessary to:

12 (1) remedy a hazardous financial condition; or

13 (2) prevent an impending hazardous financial
14 condition from occurring. (V.T.I.C. Art. 3.33, Secs. 4(u)(4),
15 4(u)(6)(a) (part), (b).)

16 Sec. 425.129. RISK CONTROL TRANSACTIONS: LIMITATIONS ON
17 INCOME GENERATION TRANSACTIONS. An insurance company may enter
18 into an income generation transaction only if:

19 (1) as a result of and after making the transaction,
20 the sum of the following amounts does not exceed 10 percent of the
21 company's assets:

22 (A) the aggregate statement value of admitted
23 assets that at the time of the transaction are subject to call or
24 that generate the cash flows for payments the company is required to
25 make under caps and floors sold by the company and that at the time
26 of the transaction are outstanding under Sections 425.124-425.132;

27 (B) the statement value of admitted assets

1 underlying derivative instruments that at the time of the
2 transaction are subject to calls sold by the company and
3 outstanding under those sections; and

4 (C) the purchase price of assets subject to puts
5 that at the time of the transaction are outstanding under those
6 sections; and

7 (2) the transaction is one of the following types, is
8 covered in the manner specified by this subdivision, and meets the
9 other requirements of this subdivision:

10 (A) a sale of a call option on assets, if during
11 the entire period the option is outstanding, the company holds, or
12 has a currently exercisable right to acquire, the underlying
13 assets;

14 (B) a sale of a put option on assets, if:

15 (i) during the entire period the option is
16 outstanding, the company holds sufficient cash, cash equivalents,
17 or interests in a short-term investment pool to purchase the
18 underlying assets on exercise of the option;

19 (ii) the company has the ability to hold the
20 underlying assets in the company's portfolio; and

21 (iii) during the entire period the option
22 is outstanding, when the total market value of all put options sold
23 by the company exceeds two percent of the company's assets, the
24 company sets aside, under a custodial or escrow agreement, cash or
25 cash equivalents that have a market value equal to the amount of the
26 company's put option obligations in excess of two percent of the
27 company's assets;

1 (C) a sale of a call option on a derivative
2 instrument, including a swaption, if:

3 (i) during the entire period the call
4 option is outstanding, the company holds, or has a currently
5 exercisable right to acquire, assets generating the cash flow to
6 make any payment for which the company is liable under the
7 underlying derivative instrument; and

8 (ii) the company has the ability to enter
9 into the underlying derivative transaction for the company's
10 portfolio; and

11 (D) a sale of a cap or floor, if during the entire
12 period the cap or floor is outstanding, the company holds, or has a
13 currently exercisable right to acquire, assets generating the cash
14 flow to make any payment for which the company is liable under the
15 cap or floor. (V.T.I.C. Art. 3.33, Sec. 4(u)(7).)

16 Sec. 425.130. RISK CONTROL TRANSACTIONS: LIMITATIONS ON
17 REPLICATION TRANSACTIONS. (a) An insurance company may enter into
18 a replication transaction only with the prior written approval of
19 the commissioner, and only if:

20 (1) the company would otherwise be authorized to
21 invest the company's funds under this subchapter in the asset being
22 replicated; and

23 (2) the asset being replicated is subject to all the
24 provisions of this subchapter relating to the making of investments
25 by the company in that type of asset as if the transaction
26 constituted a direct investment by the company in the replicated
27 asset.

1 (b) The commissioner may adopt fair and reasonable rules
2 regarding replication transactions to implement this section.
3 (V.T.I.C. Art. 3.33, Sec. 4(u)(8).)

4 Sec. 425.131. RISK CONTROL TRANSACTIONS: TRADING
5 REQUIREMENTS. For purposes of Sections 425.124-425.132, each
6 derivative instrument must be:

7 (1) traded on a securities exchange;

8 (2) entered into with, or guaranteed by, a business
9 entity;

10 (3) issued or written by, or entered into with, the
11 issuer of the underlying interest on which the derivative
12 instrument is based; or

13 (4) in the case of futures, traded through a broker
14 that is:

15 (A) registered as a futures commission merchant
16 under the Commodity Exchange Act (7 U.S.C. Section 1 et seq.); or

17 (B) exempt from that registration under 17 C.F.R.
18 Section 30.10, adopted under the Commodity Exchange Act. (V.T.I.C.
19 Art. 3.33, Sec. 4(u)(10).)

20 Sec. 425.132. RISK CONTROL TRANSACTIONS: OFFSETTING
21 TRANSACTIONS. (a) Subject to this section, an insurance company
22 may purchase or sell one or more derivative instruments to wholly or
23 partly offset a derivative instrument previously purchased or sold,
24 without regard to the quantitative limitations of Sections
25 425.124-425.131.

26 (b) An offsetting transaction under this section must use
27 the same type of derivative instrument as the derivative instrument

1 being offset. (V.T.I.C. Art. 3.33, Sec. 4(u)(9).)

2 [Sections 425.133-425.150 reserved for expansion]

3 Sec. 425.151. AUTHORIZED INVESTMENTS: FOREIGN COUNTRIES
4 AND UNITED STATES TERRITORIES. (a) In addition to the investments
5 within Canada authorized by this subchapter and subject to this
6 section, an insurance company may make investments within another
7 foreign country or a commonwealth, territory, or possession of the
8 United States.

9 (b) An investment made under this section must be
10 substantially the same type as an investment authorized to be made
11 within the United States or Canada by this subchapter.

12 (c) The sum of the amount of investments made under this
13 section and the amount of similar investments made within the
14 United States and Canada may not exceed any limitation imposed by
15 Sections 425.109-425.121, 425.124-425.132, and 425.152.

16 (d) The aggregate amount of an insurance company's
17 investments under this section may not exceed the sum of:

18 (1) the amount of the company's reserves attributable
19 to insurance business in force in foreign countries, if any, and any
20 additional investments required by a foreign country as a condition
21 of engaging in business in that country; and

22 (2) 20 percent of the company's assets.

23 (e) An insurance company may not invest more than 10 percent
24 of the company's assets in investments denominated in foreign
25 currency that are not hedged under Sections 425.124-425.132.
26 (V.T.I.C. Art. 3.33, Sec. 4(n).)

27 Sec. 425.152. AUTHORIZED INVESTMENTS: INVESTMENTS NOT

1 OTHERWISE SPECIFIED OR PROHIBITED; INVESTMENTS AUTHORIZED BY OTHER
2 LAW. (a) Subject to this section, an insurance company may make an
3 investment that is not otherwise authorized by this subchapter and
4 that is not specifically prohibited by statute, including any
5 portion of an investment that exceeds the limits imposed by
6 Sections 425.109-425.121, 425.124-425.132, and 425.151.

7 (b) If any aggregate or individual investment limitation
8 imposed by Sections 425.109-425.121, 425.124-425.132, and 425.151
9 is exceeded, the excess portion of the investment is considered to
10 be an investment under Subsection (a).

11 (c) The insurance company has the burden of establishing the
12 value of an investment made under Subsection (a).

13 (d) The amount of a single investment made by an insurance
14 company under Subsection (a) may not exceed 10 percent of the
15 company's capital and surplus in excess of the statutory minimum
16 capital and surplus applicable to that company.

17 (e) The aggregate amount of an insurance company's
18 investments under Subsection (a) may not exceed the lesser of:

19 (1) five percent of the company's assets; or

20 (2) the amount of the company's capital and surplus
21 that exceeds the amount of statutory minimum capital and surplus
22 applicable to that company.

23 (f) An insurance company may invest in any investment
24 authorized for an insurance company that is subject to this
25 subchapter by a provision of this code other than this subchapter or
26 by another law of this state. (V.T.I.C. Art. 3.33, Secs. 4(o), (p)
27 (part).)

1 Sec. 425.153. AUTHORIZED INVESTMENTS: CERTAIN PREVIOUSLY
2 AUTHORIZED INVESTMENTS. (a) An insurance company may continue to
3 hold an investment held by the company on January 1, 1986, that does
4 not conform to the requirements of the investments authorized by
5 Sections 425.109-425.120, 425.151, and 425.152 if the investment
6 was legally authorized at the time the investment was made or
7 acquired or that the company was authorized to hold immediately
8 before January 1, 1986.

9 (b) An investment described by Subsection (a) is considered
10 an authorized investment of the insurance company. A company shall
11 dispose of the investment at the investment's maturity date, if
12 any, or within the time prescribed by the law under which the
13 investment was acquired, if any.

14 (c) This section does not alter the legal or accounting
15 status of an investment described by Subsection (a). (V.T.I.C.
16 Art. 3.33, Sec. 4(p) (part).)

17 Sec. 425.154. APPLICABILITY OF PERCENTAGE AUTHORIZATIONS
18 AND LIMITATIONS. The percentage authorizations and limitations
19 established by this subchapter apply only at the time an investment
20 is originally acquired or a transaction is entered into and do not
21 apply to the insurance company or the investment or transaction
22 after that time, except as provided by Section 425.155. (V.T.I.C.
23 Art. 3.33, Sec. 4(t) (part).)

24 Sec. 425.155. QUALIFICATION OF INVESTMENTS. (a) The
25 qualification or disqualification of an investment under one
26 section of this subchapter does not prevent the investment from
27 qualifying, wholly or partly, under another section of this

1 subchapter. An investment authorized by more than one section may
2 be held under the authorizing section elected by the insurance
3 company.

4 (b) An investment or transaction qualified under any
5 section of this subchapter at the time the insurance company
6 acquired the investment or entered into the transaction continues
7 to be qualified under that section.

8 (c) An insurance company may elect to transfer at any time
9 the qualification of an investment, wholly or partly, to the
10 authority of any section of this subchapter under which the
11 investment qualifies at the time of the transfer, regardless of
12 whether the investment originally qualified under that section.

13 (d) An investment, once qualified under this subchapter,
14 remains qualified notwithstanding any refinancing, restructuring,
15 or modification of the investment, except that an insurance company
16 may not refinance, restructure, or modify an investment to
17 circumvent the requirements of this subchapter. (V.T.I.C.
18 Art. 3.33, Secs. 4(t) (part), (w).)

19 Sec. 425.156. DISTRIBUTIONS, REINSURANCE, AND MERGER. (a)
20 This subchapter does not prohibit an insurance company from
21 acquiring additional obligations, securities, or other assets
22 received as a dividend or as a distribution of assets.

23 (b) This subchapter does not apply to securities,
24 obligations, or other assets accepted incident to the workout,
25 adjustment, restructuring, or similar realization of any kind of
26 previously authorized investment or transaction if the insurance
27 company's board of directors or a committee appointed by the board

1 of directors determines that acceptance of the securities,
2 obligations, or other assets is in the company's best interests.

3 (c) This subchapter does not apply to assets acquired under
4 a lawful agreement of bulk reinsurance, merger, or consolidation if
5 the assets were legal and authorized investments for the ceding,
6 merged, or consolidated insurance company.

7 (d) An obligation, security, or other asset acquired as
8 permitted by this section is not required to be qualified under any
9 other section of this subchapter. (V.T.I.C. Art. 3.33, Sec. 4(v).)

10 Sec. 425.157. AGGREGATE DIVERSIFICATION REQUIREMENTS. (a)
11 This section takes precedence over Sections 425.109-425.120,
12 425.122-425.153, and 425.155(a), (b), and (c).

13 (b) An insurance company's investments in all or any types
14 of securities, loans, obligations, or evidences of indebtedness of
15 a single issuer or borrower, including the issuer's or borrower's
16 majority-owned subsidiaries or parent and the majority-owned
17 subsidiaries of the issuer's or borrower's parent, may not, in the
18 aggregate, exceed five percent of the company's assets. This
19 subsection does not apply to:

20 (1) authorized investments that:

21 (A) are direct obligations of, or are guaranteed
22 by the full faith and credit of, the United States, this state, or a
23 political subdivision of this state; or

24 (B) are insured by an agency of the United States
25 or this state; or

26 (2) an investment provided for by Section 425.112 or
27 425.113.

1 (c) Except as otherwise provided by this subsection, an
2 insurance company's aggregate investment in real property under
3 Sections 425.119, 425.120, 425.152, and 425.153 may not exceed
4 33-1/3 percent of the company's assets. If a company acquires real
5 property under Section 425.119(g) and that acquisition causes the
6 company's aggregate real estate investment to exceed the limitation
7 imposed by this subsection, the company shall, on or before the 10th
8 anniversary of the date the real property is acquired, dispose of a
9 sufficient amount of real property to comply with the applicable
10 limitation. A company that does not dispose of excess real property
11 as required by this subsection may not admit as an asset the value
12 of the real property that exceeds the applicable limitation.

13 (d) If an insurance company's real property acquisitions
14 exceed the limitation imposed by Subsection (c), the company may
15 not acquire additional real property under Section 425.119(b) or
16 (c) or 425.120, 425.152, or 425.153 until the company disposes of
17 the excess real property as specified by Subsection (c). (V.T.I.C.
18 Art. 3.33, Sec. 5.)

19 Sec. 425.158. WAIVER BY COMMISSIONER OF QUANTITATIVE
20 LIMITATIONS. (a) The commissioner may waive a quantitative
21 limitation on any investment authorized by Sections
22 425.109-425.132 and 425.151-425.156 if:

23 (1) the insurer seeks the waiver before making the
24 investment;

25 (2) a hearing is held to determine whether the waiver
26 should be granted;

27 (3) the applicant seeking the waiver establishes that

1 unreasonable or unnecessary loss or harm will result to the company
2 if the commissioner denies the waiver;

3 (4) the excess investment will not have a material
4 adverse effect on the company; and

5 (5) the size of the investment is reasonable in
6 relation to the company's assets, capital, surplus, and
7 liabilities.

8 (b) The commissioner's waiver must be in writing and may
9 treat the resulting excess investment as a nonadmitted asset.
10 (V.T.I.C. Art. 3.33, Sec. 6.)

11 Sec. 425.159. ACCOUNTING PROVISIONS. (a) Each insurance
12 company shall maintain reasonable, adequate, and accurate evidence
13 of the company's ownership of the company's assets and investments.

14 (b) An insurance company shall evidence the company's
15 ownership of governmental or corporate securities as provided by
16 Sections 423.101, 423.102, 423.104(a), 423.105, 423.106, 423.107,
17 and 423.108.

18 (c) An insurance company shall hold investments, other than
19 investments made as a participation in a partnership or joint
20 venture, only in the company's own name or as otherwise provided by
21 Chapter 423. (V.T.I.C. Art. 3.33, Secs. 7(b), (c), (d).)

22 Sec. 425.160. INVESTMENTS OF CEDING INSURERS. (a) Subject
23 to this section, if a domestic insurance company assumes and
24 reinsures the business of and takes over the assets of another
25 domestic insurance company or a foreign company, all assets or
26 investments of the ceding company that were authorized as proper
27 assets or investments for the funds of that company and taken over

1 by the assuming company are considered valid assets or investments
2 of the assuming company under the laws of this state.

3 (b) The commissioner must approve assets or investments
4 described by Subsection (a) and the terms on which those assets or
5 investments are taken over. The commissioner may require the
6 assuming insurance company to reasonably dispose of any of those
7 assets or investments that do not otherwise meet the requirements
8 of this subchapter within a period that will minimize any financial
9 loss or other hardship caused by disposing of the asset or
10 investment. (V.T.I.C. Art. 3.33, Sec. 8.)

11 Sec. 425.161. ACTING AS REAL ESTATE BROKER OR SALESPERSON
12 PROHIBITED. A domestic insurance company or another insurance
13 company specifically made subject to this subchapter may not engage
14 in the business of a broker or salesperson as defined by Chapter
15 1101, Occupations Code, except that the company may hold, improve,
16 maintain, manage, rent, lease, sell, exchange, or convey any of the
17 real property interests owned as investments under Sections
18 425.109-425.132 and 425.151-425.153. (V.T.I.C. Art. 3.33, Sec.
19 10.)

20 Sec. 425.162. RULES. The commissioner may adopt rules,
21 minimum standards, or limitations that are fair and reasonable as
22 appropriate to supplement and implement this subchapter. (V.T.I.C.
23 Art. 3.33, Sec. 9.)

24 [Sections 425.163-425.200 reserved for expansion]

25 SUBCHAPTER D. AUTHORIZED INVESTMENTS AND TRANSACTIONS FOR OTHER
26 LIFE, HEALTH, AND ACCIDENT INSURERS

27 Sec. 425.201. DEFINITION. In this subchapter,

1 "contingency funds" means an insurer's contingency funds over and
2 above the amount of the insurer's policy reserves. (New.)

3 Sec. 425.202. APPLICABILITY OF SUBCHAPTER. This subchapter
4 applies only to an insurer organized under Chapter 881, 884, 885,
5 886, 887, or 2551, except as specifically provided by those
6 chapters. (V.T.I.C. Art. 3.33, Sec. 1 (part).)

7 Sec. 425.203. LIMITATION ON FUNDS AND OTHER ASSETS. (a) An
8 insurer may not use the insurer's funds to make an investment or
9 loan that is not authorized by this subchapter.

10 (b) An insurer may not secure, hold, or convey real property
11 except as authorized by this subchapter. (V.T.I.C. Art. 3.39,
12 Parts I (part), II (part); Art. 3.40 (part).)

13 Sec. 425.204. APPROVAL OF INVESTMENTS AND LOANS REQUIRED.

14 (a) An insurer may not make an investment unless the investment has
15 been authorized by the insurer's board of directors or by a
16 committee responsible for supervising investments.

17 (b) An insurer may not make a loan other than a policy loan
18 unless the loan has been authorized by the insurer's board of
19 directors or by a committee responsible for supervising loans.
20 (V.T.I.C. Art. 3.39, Part I, Sec. F, Para. 2; Part II, Sec. A, Para.
21 7.)

22 Sec. 425.205. AUTHORIZED INVESTMENTS FOR ALL FUNDS:
23 GOVERNMENT BONDS. (a) Subject to this section, an insurer may
24 invest any of the insurer's funds and accumulations in:

25 (1) a bond, treasury bill, note, or certificate of
26 indebtedness of the United States or any other obligation or
27 security fully guaranteed as to principal and interest by the full

1 faith and credit of the United States;

2 (2) a bond of Canada or a province or municipality of
3 Canada;

4 (3) a bond of a state, county, or municipality of the
5 United States;

6 (4) a bond or interest-bearing warrant issued by a
7 county, municipality, school district, or other subdivision that
8 is:

9 (A) organized under the laws of a state of the
10 United States; and

11 (B) authorized to issue the bond or warrant under
12 the constitution and laws of that state;

13 (5) a bond or interest-bearing warrant issued by an
14 educational institution that is:

15 (A) organized under the laws of a state of the
16 United States; and

17 (B) authorized to issue the bond or warrant under
18 the constitution and laws of that state;

19 (6) a bond or warrant, including a revenue or special
20 obligation, of an educational institution located in a state of the
21 United States;

22 (7) a bond or warrant payable from designated revenues
23 of a municipality, county, drainage district, road district, or
24 other civil administration, agency, authority, instrumentality, or
25 subdivision that is:

26 (A) organized under the laws of a state of the
27 United States; and

1 (B) authorized to issue the bond or warrant under
2 the constitution and laws of that state;

3 (8) a paving certificate or other certificate or
4 evidence of indebtedness issued by a municipality in a state of the
5 United States and secured by a first lien on real estate; and

6 (9) a bond issued under the Farm Credit Act of 1971 (12
7 U.S.C. Section 2001 et seq.) that is issued against and secured by
8 promissory notes or obligations, the payment of which is secured by
9 mortgage, deed of trust, or other valid lien on unencumbered real
10 property located in this state.

11 (b) An insurer may invest in a bond or warrant described by
12 Subsection (a)(4) or (5) only if the issuer of the bond or warrant
13 has made legal provision to impose a tax to meet the obligation.

14 (c) An insurer may invest in a bond or warrant described by
15 Subsection (a)(6) only if the special revenue or income to meet the
16 principal and interest payments as they accrue on the obligation
17 has been appropriated, pledged, or otherwise provided by the
18 educational institution.

19 (d) An insurer may invest in a bond or warrant described by
20 Subsection (a)(7) only if special revenue or income to meet the
21 principal and interest payments as they accrue on the obligation
22 has been appropriated, pledged, or otherwise provided by the
23 municipality or other entity. (V.T.I.C. Art. 3.39, Part I (part),
24 Sec. A, Paras. 1, 2, 3, 4, 5, 6, 7, 8, 9.)

25 Sec. 425.206. AUTHORIZED INVESTMENTS FOR ALL FUNDS:
26 CORPORATE BONDS, NOTES, AND DEBENTURES. (a) Subject to Subsection
27 (e), an insurer may invest any of the insurer's funds and

1 accumulations in a first mortgage bond or first lien note on real or
2 personal property of:

3 (1) a solvent corporation that has not defaulted in
4 the payment of any debt during the five years preceding the
5 investment;

6 (2) a solvent corporation that has not been in
7 existence for five consecutive years but whose first mortgage bonds
8 or first lien notes on real or personal property are fully
9 guaranteed by a solvent corporation that has not defaulted in the
10 payment of any debt during the five years preceding the investment;

11 (3) a solvent corporation that has not been in
12 existence for five consecutive years but whose first mortgage bonds
13 or first lien notes on real or personal property are secured by
14 leases or other contracts executed by a solvent corporation that
15 has not defaulted in the payment of any debt during the five years
16 preceding the investment, if the required rentals or other required
17 payments under the leases or other contracts are sufficient in all
18 circumstances to pay interest and principal when due on the bonds or
19 notes; or

20 (4) a solvent corporation that has not been in
21 existence for five consecutive years preceding the investment, if:

22 (A) the corporation has succeeded to the business
23 and assets and has assumed the liabilities of another corporation;
24 and

25 (B) neither the successor corporation or the
26 corporation succeeded has defaulted in the payment of any debt
27 during the five years preceding the investment.

1 (b) Subject to Subsection (e), an insurer may invest any of
2 the insurer's funds and accumulations in a note or debenture of a
3 corporation with a net worth of at least \$5 million if:

4 (1) a prior lien in excess of 10 percent of the net
5 worth of the corporation does not exist against the real or personal
6 property of the corporation at the time the note or debenture is
7 issued; and

8 (2) under the provisions of the indenture providing
9 for the issuance of the note or debenture, a prior lien that exceeds
10 10 percent of the net worth of the corporation cannot be created
11 against the real or personal property of the corporation at the time
12 the note or debenture is issued.

13 (c) Subject to Subsection (e), an insurer may invest any of
14 the insurer's funds and accumulations in a note or debenture of a
15 solvent corporation that has not been in existence for five
16 consecutive years if:

17 (1) a prior lien does not exist against the real or
18 personal property of the corporation at the time the note or
19 debenture is issued;

20 (2) under the provisions of the indenture providing
21 for the issuance of the note or debenture, a prior lien cannot be
22 created against the real or personal property of the corporation at
23 the time the note or debenture is issued; and

24 (3) the note or debenture is:

25 (A) secured by a lease or other contract executed
26 by a solvent corporation that has a net worth of at least \$5 million
27 and has not defaulted in the payment of any debt during the five

1 years preceding the investment, if the required rentals or other
2 required payments under the lease or other contract are sufficient
3 in all circumstances to pay interest and principal when due on the
4 bond or note; or

5 (B) fully guaranteed by a corporation described
6 by Paragraph (A).

7 (d) Subject to Subsection (e), an insurer may invest any of
8 the insurer's funds and accumulations in a bond, bill of exchange,
9 or other commercial note or bill of:

10 (1) a solvent corporation that has not defaulted in
11 the payment of any debt during the five years preceding the
12 investment; or

13 (2) a solvent corporation that has not been in
14 existence for the five years preceding the investment, if:

15 (A) the corporation has succeeded to the business
16 and assets and has assumed the liabilities of another corporation;

17 (B) neither the successor corporation or the
18 corporation succeeded has defaulted in the payment of any debt
19 during the five years preceding the investment;

20 (C) the corporation has a net worth of at least
21 \$50 million; and

22 (D) the corporation does not have long-term
23 indebtedness that exceeds the corporation's net worth, as evidenced
24 by the corporation's latest published financial statements or other
25 financial data available to the public.

26 (e) The amount of an insurer's investments in the bonds,
27 notes, debentures, or other obligations of any one corporation may

1 not exceed five percent of the insurer's admitted assets.
2 (V.T.I.C. Art. 3.39, Part I, Sec. A, Para. 10.)

3 Sec. 425.207. AUTHORIZED INVESTMENTS FOR ALL FUNDS: SHARES
4 OF SAVINGS AND LOAN ASSOCIATIONS. (a) Subject to this section, an
5 insurer may invest any of the insurer's funds and accumulations in a
6 share, stock, share or savings account, or investment certificate
7 of a savings and loan association engaged in business in this state
8 that is qualified to participate in insurance issued by the Federal
9 Deposit Insurance Corporation.

10 (b) An insurer's investment in a savings and loan
11 association may not exceed 20 percent of the savings and loan
12 association's total assets. (V.T.I.C. Art. 3.39, Part I, Sec. A,
13 Para. 11.)

14 Sec. 425.208. AUTHORIZED INVESTMENTS FOR ALL FUNDS: BANK
15 AND BANK HOLDING COMPANY STOCKS. (a) Subject to this section, an
16 insurer may invest any of the insurer's funds and accumulations in:

17 (1) the stock of a state or national bank that is a
18 member of the Federal Deposit Insurance Corporation; and

19 (2) the stock of a bank holding company as defined by
20 the Bank Holding Company Act of 1956 (12 U.S.C. Section 1841 et
21 seq.), as amended by the Bank Holding Company Act Amendments of 1970
22 (12 U.S.C. Section 1841 et seq. and Section 1971 et seq.).

23 (b) An insurer's investment in the stock of a bank or bank
24 holding company may not exceed:

25 (1) 20 percent of the total outstanding shares of the
26 stock of the bank or bank holding company; or

27 (2) 10 percent of the insurer's admitted assets.

1 (V.T.I.C. Art. 3.39, Part I, Sec. A, Para. 12.)

2 Sec. 425.209. AUTHORIZED INVESTMENTS FOR ALL FUNDS:
3 DEBENTURES OF PUBLIC UTILITY CORPORATIONS. (a) Subject to this
4 section, an insurer may invest any of the insurer's funds and
5 accumulations in:

6 (1) a debenture of a solvent public utility
7 corporation that:

8 (A) has not defaulted in the payment of any debt
9 during the five years preceding the investment; and

10 (B) has not failed in any one of the five years
11 preceding the investment to have earned, after taxes, including
12 income taxes, and after deducting proper charges for replacements,
13 depreciation, and obsolescence, an amount applicable to interest on
14 the corporation's outstanding indebtedness equal to at least two
15 times the amount of interest due for that year, or, in the case of
16 issuance of new debentures, the earnings applicable to interest are
17 equal to at least two times the amount of annual interest on the
18 corporation's obligations after giving effect to the new financing;
19 or

20 (2) a debenture of a solvent public utility
21 corporation that has not been in existence for the five years
22 preceding the investment, if:

23 (A) the corporation has succeeded to the business
24 and assets and has assumed the liabilities of another public
25 utility corporation;

26 (B) neither the successor corporation or the
27 corporation succeeded has defaulted in the payment of any debt

1 during the five years preceding the investment; and

2 (C) neither the successor corporation or the
3 corporation succeeded have failed in any one of the five years
4 preceding the investment to have earned, after taxes, including
5 income taxes, and after deducting proper charges for replacements,
6 depreciation, and obsolescence, an amount applicable to interest on
7 the corporation's outstanding indebtedness equal to at least two
8 times the amount of interest due for that year, or in the case of
9 issuance of new debentures, the earnings applicable to interest are
10 equal to at least two times the amount of annual interest on the
11 corporation's obligations after giving effect to the new financing.

12 (b) The amount of an insurer's investment in debentures
13 under this section may not exceed five percent of the insurer's
14 admitted assets. (V.T.I.C. Art. 3.39, Part I, Sec. A, Para. 13.)

15 Sec. 425.210. AUTHORIZED INVESTMENTS FOR ALL FUNDS:
16 PREFERRED STOCK OF PUBLIC UTILITY CORPORATIONS. (a) Subject to
17 this section, an insurer may invest any of the insurer's funds and
18 accumulations in:

19 (1) preferred stock of a solvent public utility
20 corporation, the bonds and debentures of which are authorized
21 investments for the insurer, and that:

22 (A) has not defaulted in the payment of any debt
23 during the five years preceding the investment; and

24 (B) has not failed in any one of the five years
25 preceding the investment to have earned an amount applicable to the
26 dividends on the preferred stock equal to at least three times the
27 amount of dividends due in that year, or, in the case of issuance of

1 new preferred stock, the earnings applicable to dividends are equal
2 to at least three times the amount of the annual dividend
3 requirements after giving effect to the new financing; or

4 (2) a solvent public utility corporation, the bonds
5 and debentures of which are authorized investments for the insurer,
6 and that has not been in existence for the five years preceding the
7 investment, if:

8 (A) the corporation has succeeded to the business
9 and assets and has assumed the liabilities of another public
10 utility corporation;

11 (B) neither the successor corporation or the
12 corporation succeeded has defaulted in the payment of any debt
13 during the five years preceding the investment; and

14 (C) neither the successor corporation or the
15 corporation succeeded have failed in any one of the five years
16 preceding the investment to have earned an amount applicable to the
17 dividends on the preferred stock equal to at least three times the
18 amount of dividends due in that year, or, in the case of issuance of
19 new preferred stock, the earnings applicable to dividends are equal
20 to at least three times the amount of the annual dividend
21 requirements after giving effect to the new financing.

22 (b) Preferred stock purchased under this section must be of
23 an issue entitled to first claim on the net earnings of the public
24 utility corporation, after deducting the amount necessary to
25 service any outstanding bonds and debentures.

26 (c) The amount of an insurer's investment in preferred stock
27 under this section may not exceed 2-1/2 percent of the insurer's

1 admitted assets. (V.T.I.C. Art. 3.39, Part I, Sec. A, Para. 14.)

2 Sec. 425.211. AUTHORIZED INVESTMENTS FOR ALL FUNDS: BONDS
3 ISSUED, ASSUMED, OR GUARANTEED IN INTERNATIONAL MARKET. An insurer
4 may invest any of the insurer's funds and accumulations in bonds
5 issued, assumed, or guaranteed by:

- 6 (1) the Inter-American Development Bank;
- 7 (2) the International Bank for Reconstruction and
8 Development (the World Bank);
- 9 (3) the African Development Bank;
- 10 (4) the Asian Development Bank;
- 11 (5) the International Finance Corporation; and
- 12 (6) the State of Israel. (V.T.I.C. Art. 3.39, Part I,
13 Sec. A, Para. 15A.)

14 Sec. 425.212. AUTHORIZED INVESTMENTS FOR ALL FUNDS:
15 SECURITIES OR INVESTMENTS AUTHORIZED OR DESCRIBED BY SPECIFIC
16 STATUTORY PROVISION. An insurer may invest any of the insurer's
17 funds and accumulations in a security or investment authorized or
18 described by:

- 19 (1) Section 65.013, Finance Code;
- 20 (2) Sections 435.041-435.047, Government Code;
- 21 (3) Subchapter B, Chapter 1505, Government Code;
- 22 (4) Chapter 284, Transportation Code;
- 23 (5) Section 51.039 or 60.104, Water Code;
- 24 (6) Chapter 160, General Laws, Acts of the 43rd
25 Legislature, Regular Session, 1933 (Article 842a, Vernon's Texas
26 Civil Statutes);
- 27 (7) Chapter 230, Acts of the 49th Legislature, Regular

1 Session, 1945 (Article 842a-1, Vernon's Texas Civil Statutes);

2 (8) Chapter 110, Acts of the 51st Legislature, Regular
3 Session, 1949 (Article 8280-133, Vernon's Texas Civil Statutes);

4 (9) Chapter 340, Acts of the 51st Legislature, Regular
5 Session, 1949 (Article 8280-137, Vernon's Texas Civil Statutes);

6 (10) Chapter 398, Acts of the 51st Legislature,
7 Regular Session, 1949 (Article 8280-138, Vernon's Texas Civil
8 Statutes); or

9 (11) Chapter 465, Acts of the 51st Legislature,
10 Regular Session, 1949 (Article 8280-139, Vernon's Texas Civil
11 Statutes). (V.T.I.C. Art. 3.39, Part I, Sec. A, Para. 16.)

12 Sec. 425.213. AUTHORIZED INVESTMENTS FOR ALL FUNDS: OTHER
13 SECURITIES SPECIFICALLY AUTHORIZED BY LAW. An insurer may invest
14 any of the insurer's funds and accumulations in:

15 (1) an adequately secured equipment trust obligation
16 or certificate or another adequately secured instrument
17 evidencing:

18 (A) an interest in transportation equipment that
19 is located wholly or partly within the United States; and

20 (B) a right to receive determined portions of
21 rental, purchase, or other fixed obligatory payments for the use or
22 purchase of the transportation equipment; and

23 (2) any other security as specifically authorized by
24 law. (V.T.I.C. Art. 3.39, Part I, Sec. A, Para. 17.)

25 Sec. 425.214. AUTHORIZED INVESTMENTS FOR ALL FUNDS: LOANS
26 SECURED BY REAL PROPERTY. (a) Subject to this section, an insurer
27 may loan any of the insurer's funds and accumulations and take as

1 collateral a first lien on real property to which the title is
2 valid.

3 (b) The amount of a loan secured by a first lien on real
4 property may exceed 75 percent of the property value only if:

5 (1) the amount does not exceed 90 percent of the
6 property value and the property contains only a dwelling designed
7 exclusively for occupancy by not more than four families for
8 residential purposes; or

9 (2) the amount does not exceed 95 percent of the
10 property value and:

11 (A) the property contains only a dwelling
12 designed exclusively for occupancy by not more than four families
13 for residential purposes; and

14 (B) the portion of the unpaid balance of the loan
15 that exceeds 80 percent of the property value is guaranteed or
16 insured by a mortgage guaranty insurer authorized to engage in
17 business in this state.

18 (c) An insurer may not originate a loan that exceeds 75
19 percent of the value of the real property securing the loan.

20 (d) The aggregate amount of an insurer's loans secured by
21 first liens on real property to any one corporation, company,
22 partnership, individual, or any affiliated person or group may not
23 exceed 10 percent of the insurer's admitted assets. The amount of
24 any single loan secured by a first lien on real property may not
25 exceed five percent of the insurer's admitted assets.

26 (e) The limitations imposed by Subsections (b)-(d) do not
27 apply to a first lien on real property if the commissioner finds

1 that:

2 (1) the making or acquiring of the lien is beneficial
3 to and protects the interest of the insurer; and

4 (2) no substantial damage to the insurer's
5 policyholders and creditors appears probable from the taking or
6 acquiring of the lien.

7 (f) Subject to Subsections (g)-(j), an insurer may loan any
8 of the insurer's funds and accumulations and take as collateral a
9 first lien on a leasehold estate in:

10 (1) real property to which the title is valid; and

11 (2) improvements located on the property to which the
12 title is valid.

13 (g) The term of a loan secured by first lien on a leasehold
14 estate in real property may not, as of the date the loan is made,
15 exceed a period equal to four-fifths of the unexpired term of the
16 leasehold estate. The term of the leasehold estate may not expire
17 sooner than the 10th anniversary of the expiration of the term of
18 the loan.

19 (h) A loan secured by a first lien on a leasehold estate in
20 real property must be payable in equal monthly, quarterly,
21 semiannual, or annual installments on principal and interest during
22 a period not to exceed four-fifths of the unexpired term, as of the
23 date the loan is made, of the leasehold estate.

24 (i) The restrictions imposed by this section on the value of
25 the real property securing a loan compared to the amount of the
26 loan, and on the duration of a loan secured by a leasehold estate in
27 real property, do not apply to a loan if:

1 (1) the entire amount of the indebtedness is insured
2 or guaranteed in any manner by:

3 (A) the United States;

4 (B) the Federal Housing Administration under the
5 National Housing Act (12 U.S.C. Section 1701 et seq.), as amended;
6 or

7 (C) this state; or

8 (2) the difference between the entire amount of the
9 indebtedness and the portion of the loan insured or guaranteed by an
10 entity described by Subdivision (1) does not exceed the amount of a
11 loan permitted by the applicable restriction.

12 (j) If any part of the value of buildings is to be included
13 in the value of real property or leasehold estate in real property
14 to attain the minimum authorized value of the security for a loan
15 under this section:

16 (1) the buildings must be insured against loss by fire
17 by:

18 (A) an insurer authorized to engage in business
19 in the state in which the real property is located; or

20 (B) a company recognized as acceptable for that
21 purpose by the insurance regulatory official of the state in which
22 the real property is located;

23 (2) the amount of insurance coverage may not be less
24 than 50 percent of the value of the buildings, except that the
25 insurance coverage is not required to exceed the outstanding
26 balance owed to the insurer if the outstanding balance of the loan
27 is less than 50 percent of the value of the buildings; and

1 (3) the loss clause under the insurance must be
2 payable to the insurer. (V.T.I.C. Art. 3.39, Part II (part), Sec.
3 A, Paras. 1, 2, 6, 8.)

4 Sec. 425.215. AUTHORIZED INVESTMENTS FOR ALL FUNDS: LOANS
5 SECURED BY CERTAIN COLLATERAL SECURED BY REAL PROPERTY. An insurer
6 may loan any of the insurer's funds and accumulations and take as
7 collateral an obligation secured by a first lien on real property or
8 a leasehold estate that is eligible to secure a loan under Section
9 425.214. (V.T.I.C. Art. 3.39, Part II, Sec. A, Para. 3.)

10 Sec. 425.216. AUTHORIZED INVESTMENTS FOR ALL FUNDS: POLICY
11 LOANS. (a) Subject to Subsection (b), an insurer may loan any of
12 the insurer's funds and accumulations and take as collateral an
13 insurance policy issued by the insurer.

14 (b) A loan on a policy under this section may not exceed the
15 reserve value of the policy. (V.T.I.C. Art. 3.39, Part II, Sec. A,
16 Para. 4.)

17 Sec. 425.217. AUTHORIZED INVESTMENTS FOR ALL FUNDS: LOANS
18 SECURED BY CERTAIN SECURITIES. An insurer may loan any of the
19 insurer's funds and accumulations and take as collateral for the
20 loan any security described by Sections 425.205-425.213 and 425.218
21 in which the insurer may invest any of the insurer's funds and
22 accumulations. (V.T.I.C. Art. 3.39, Part II, Sec. A, Para. 5.)

23 Sec. 425.218. AUTHORIZED INVESTMENTS FOR ALL FUNDS:
24 SECURITIES NOT OTHERWISE SPECIFIED. (a) Notwithstanding any
25 express or implied prohibitions, and subject to this section, an
26 insurer may invest any of the insurer's funds and accumulations in
27 an investment that does not otherwise qualify under any other

1 provision of this chapter.

2 (b) The amount of any one investment by an insurer under
3 this section may not exceed one percent of the insurer's admitted
4 assets.

5 (c) The aggregate amount of investments by an insurer under
6 this section may not exceed the lesser of:

7 (1) five percent of the insurer's admitted assets; or

8 (2) the amount of the insurer's capital and surplus in
9 excess of \$200,000 as shown on the last annual statement filed by
10 the insurer with the department before the date the investment is
11 acquired.

12 (d) Except as provided by another law of this state, this
13 section does not authorize an insurer to invest any of the insurer's
14 funds or accumulations in real property. (V.T.I.C. Art. 3.39, Part
15 I, Sec. A, Para. 15.)

16 Sec. 425.219. AUTHORIZED INVESTMENTS FOR POLICY RESERVES
17 AND SURPLUS: BONDS OF CERTAIN WATER CONTROL AND IMPROVEMENT
18 DISTRICTS. An insurer may invest the insurer's policy reserves and
19 surplus over and above the insurer's capital in municipal bonds
20 issued under Section 51.039, Water Code. (V.T.I.C. Art. 3.39, Part
21 I, Sec. B.)

22 Sec. 425.220. AUTHORIZED INVESTMENTS FOR CAPITAL, SURPLUS,
23 AND CONTINGENCY FUNDS: CAPITAL STOCK, BONDS, AND OTHER CORPORATE
24 OBLIGATIONS. (a) Subject to this section and Section 425.226, an
25 insurer may invest the insurer's capital, surplus, and contingency
26 funds in the capital stock, bonds, bills of exchange, or other
27 commercial notes or bills and securities of:

1 (1) a solvent corporation that has not defaulted in
2 the payment of any debt during the five years preceding the
3 investment; or

4 (2) a solvent corporation that has not been in
5 existence for the five years preceding the investment, if:

6 (A) the corporation has succeeded to the business
7 and assets and has assumed the liabilities of another corporation;
8 and

9 (B) neither the successor corporation nor the
10 corporation succeeded has defaulted in the payment of any debt
11 during the five years preceding the investment.

12 (b) An insurer may not invest in the stock of:

13 (1) a manufacturing corporation with a net worth of
14 less than \$25,000; or

15 (2) an oil corporation with a net worth of less than
16 \$500,000.

17 (c) Except as provided by Subsection (d), an insurer's
18 investment in the insurer's own capital stock or in the stock of a
19 single corporation may not be in an amount exceeding 10 percent of
20 the amount of the insurer's capital, surplus, and contingency
21 funds.

22 (d) An insurer may own, and the insurer may invest not more
23 than 25 percent of the insurer's capital, surplus, and contingency
24 funds in, the capital stock of a single fire and casualty insurance
25 company if that investment gives the insurer a majority of the
26 outstanding stock of the fire and casualty insurance company.

27 (e) In addition to the investments authorized by this

1 section and subject to Section 425.226, an insurer may invest in the
2 capital stock, bonds, and other obligations of one or more solvent
3 corporations that portion of the insurer's surplus funds that
4 exceeds the greater of:

5 (1) 10 percent of the insurer's admitted assets, as
6 determined from the insurer's latest annual statement on file with
7 the department; or

8 (2) the minimum capital and surplus requirements for
9 incorporating a life insurance company under Chapter 841.
10 (V.T.I.C. Art. 3.39, Part I, Sec. C, Paras. 1, 3.)

11 Sec. 425.221. AUTHORIZED INVESTMENTS FOR CAPITAL, SURPLUS,
12 AND CONTINGENCY FUNDS: BONDS OR NOTES OF EDUCATIONAL OR RELIGIOUS
13 CORPORATIONS. Subject to Section 425.226, an insurer may invest
14 the insurer's capital, surplus, and contingency funds in a bond or
15 note of an educational or religious corporation that has provided
16 for the payment of a sufficient amount of the first weekly or
17 monthly revenues of the corporation to an interest and sinking fund
18 account in a bank or trust company as an independent paying agent.
19 (V.T.I.C. Art. 3.39, Part I, Sec. C, Para. 2.)

20 Sec. 425.222. AUTHORIZED INVESTMENTS FOR CAPITAL, SURPLUS,
21 AND CONTINGENCY FUNDS: LIFE INCOME INTERESTS IN QUALIFIED TRUSTS.

22 (a) Subject to this section, an insurer may invest the insurer's
23 capital, surplus, and contingency funds in a life income interest
24 in a qualified irrevocable express testamentary trust.

25 (b) For purposes of this section, a trust is a qualified
26 trust if:

27 (1) each fee simple recipient of any part of the corpus

1 of the trust:

2 (A) is a public charity, church, educational
3 institution, or scientific institution;

4 (B) is located in this state; and

5 (C) is recognized by the United States Internal
6 Revenue Service as exempt from payment of income taxes;

7 (2) the corpus of the trust is wholly or partly
8 composed of interests in real estate, stocks, bonds, debentures,
9 and other securities of an aggregate total value of at least \$5
10 million; and

11 (3) the corpus of the trust produces annual income of
12 at least \$100,000.

13 (c) An insurer's life income interest in a qualified trust
14 may not exceed 10 percent of the insurer's admitted assets.

15 (d) Before an insurer may acquire a life income interest in
16 a qualified trust, the insurer must present evidence satisfactory
17 to the commissioner that shows:

18 (1) the interest is subject to transfer and is
19 recognized as transferable;

20 (2) the interest is capable of reasonable valuation;

21 (3) a market for the sale of the interest exists; and

22 (4) the interest is supported by life insurance in:

23 (A) an amount not less than the admitted value of
24 the interest; and

25 (B) a form approved by the commissioner.

26 (e) In valuing a life income interest in a qualified trust
27 on the insurer's books, the insurer may value the interest only on

1 the basis of the lesser of:

2 (1) the recognized market established in accordance
3 with Subsection (d)(3); or

4 (2) the ratio that the fractional life income interest
5 in the income of the trust bears to the total market value of the
6 properties held by the trust that are of a type of property an
7 insurer may lawfully acquire under the investment statutes of this
8 state. (V.T.I.C. Art. 3.39, Part I, Sec. C, Para. 4.)

9 Sec. 425.223. AUTHORIZED INVESTMENTS FOR CAPITAL, SURPLUS,
10 AND CONTINGENCY FUNDS: CAPITAL STOCK OF REINSURER. (a) Subject to
11 Subsection (b), an insurer may invest the insurer's capital,
12 surplus, and contingency funds in not more than 20 percent of the
13 capital stock of any other insurance company organized under
14 Chapter 841 whose principal business is the reinsurance, either
15 wholly or partly, of risks ceded to that insurer by other life
16 insurance companies.

17 (b) The aggregate amount of an insurer's investments under
18 this section may not exceed 10 percent of the insurer's capital,
19 surplus, and contingency funds.

20 (c) The investment authorized by this section may be made by
21 purchase of stock issued and outstanding or by subscription to and
22 payment for the increase in the capital stock of the reinsurer.
23 (V.T.I.C. Art. 3.39, Part I, Sec. D.)

24 Sec. 425.224. AUTHORIZED INVESTMENTS FOR CAPITAL, SURPLUS,
25 AND CONTINGENCY FUNDS: LOANS SECURED BY CORPORATE STOCK. (a)
26 Subject to this section, an insurer may loan the insurer's capital,
27 surplus, and contingency funds and take as collateral the capital

1 stock, bonds, bills of exchange, or other commercial notes or bills
2 or the securities of:

3 (1) a solvent corporation that has not defaulted in
4 the payment of any debt during the five years preceding the
5 investment; or

6 (2) a solvent corporation that has not been in
7 existence for the five years preceding the investment, if:

8 (A) the corporation has succeeded to the business
9 and assets and has assumed the liabilities of another corporation;
10 and

11 (B) neither the successor corporation nor the
12 corporation succeeded has defaulted in the payment of any debt
13 during the five years preceding the investment.

14 (b) Subject to this section, an insurer may loan the
15 insurer's capital, surplus, and contingency funds and take as
16 collateral the bonds or notes of an educational or religious
17 corporation that has provided for the payment of a sufficient
18 amount of the first weekly or monthly revenues of the corporation to
19 an interest and sinking fund account in a bank or trust company as
20 an independent paying agent.

21 (c) The market value of the stock, bills of exchange, other
22 commercial notes or bills, or securities must be at all times during
23 the continuance of the loan at least 50 percent more than the amount
24 loaned on the securities or obligations.

25 (d) An insurer may not take as collateral for any loan:

26 (1) the insurer's capital stock;

27 (2) the stock of a single corporation in an amount that

1 exceeds 10 percent of the amount of the insurer's own capital,
2 surplus, and contingency funds;

3 (3) the stock of a manufacturing corporation with a
4 net worth of less than \$25,000;

5 (4) the stock of an oil corporation with a net worth of
6 less than \$500,000; or

7 (5) any stock, the holder or owner of which is or may
8 become liable for any assessment other than taxes. (V.T.I.C.
9 Art. 3.39, Part II, Sec. B.)

10 Sec. 425.225. INVESTMENT IN FOREIGN SECURITIES. (a) An
11 insurer authorized to engage in business in a foreign country may
12 invest in securities of that country that are the same kind of
13 securities as those in the United States in which an insurer is
14 authorized by this subchapter to invest.

15 (b) The aggregate amount of an insurer's investments under
16 this section may not exceed the amount of the insurer's reserves on
17 the business in force in the foreign country. (V.T.I.C. Art. 3.39,
18 Part I, Sec. F, Para. 1.)

19 Sec. 425.226. INVESTMENT IN STOCK SUBJECT TO ASSESSMENT
20 PROHIBITED. An insurer may not invest any of the insurer's funds in
21 a stock, the holder or owner of which is or may become liable for any
22 assessment other than taxes. (V.T.I.C. Art. 3.39, Part I, Sec. F,
23 Para. 4.)

24 Sec. 425.227. CERTAIN INVESTMENT POWERS NOT A RESTRICTION.
25 The investment powers granted by Sections 425.207 and 425.208 may
26 not be construed as restricting the powers granted by Sections
27 425.220 and 425.221. (V.T.I.C. Art. 3.39, Part I, Sec. F, Para. 5.)

1 Sec. 425.228. INVESTMENTS OF CEDING INSURER. (a) Subject
2 to this section, if a domestic insurer assumes the business and
3 takes over the assets of another domestic or a foreign insurer, all
4 investments of the ceding insurer that were authorized, when made,
5 by the laws of the state in which the ceding insurer was organized
6 as proper securities for investment of the funds of an insurer and
7 that are taken over by the assuming insurer are considered to be
8 valid securities of the assuming insurer under the laws of this
9 state.

10 (b) The commissioner must approve investments described by
11 Subsection (a) and the terms on which those investments are taken
12 over. The commissioner may require the assuming insurer to dispose
13 of any of the investments on notice the commissioner considers
14 reasonable. (V.T.I.C. Art. 3.39, Part I, Sec. F, Para. 3.)

15 Sec. 425.229. AUTHORIZED INVESTMENTS: REAL ESTATE FOR
16 INSURER'S OFFICES. (a) Subject to this section, an insurer may
17 secure, hold, and convey the following real property:

18 (1) one building site and office building for the
19 insurer's accommodation in the transaction of the insurer's
20 business and for lease;

21 (2) branch office buildings in this state and
22 elsewhere within the United States in which the insurer is
23 authorized to engage in business as necessary for the insurer's
24 convenient accommodation in the transaction of the insurer's
25 business and for lease; and

26 (3) parking facilities adjacent to or in the vicinity
27 of each office building owned by the insurer as reasonably

1 necessary for the insurer and the building tenants.

2 (b) An office building described by Subsection (a)(1) may be
3 on ground on which the insurer owns a lease the term of which
4 expires not sooner than the 50th anniversary of the date the insurer
5 acquires the lease. The insurer must own, or be entitled to the use
6 of, all the improvements on the leased ground. The value of the
7 improvements must be at least equal to the value of the ground and
8 at least 20 times the annual average ground rentals payable under
9 the lease. The office building must have an annual average net
10 rental of at least twice the annual ground rental. The insurer must
11 be liable for and shall pay all state and local taxes imposed
12 against the ground and improvements. For purposes of taxation, the
13 ground and improvements are considered to be real property owned by
14 the insurer. The commissioner must approve the acquisition of an
15 office building on leased ground before the insurer makes the
16 investment.

17 (c) The insurer must use at least 50 percent of the space in
18 each branch office building under Subsection (a)(2) that is
19 available for occupancy for business purposes for the transaction
20 of the insurer's business and not for lease to others.

21 (d) An insurer may make an investment under Subsection
22 (a)(2) or (3) only in a municipality that has a population of 15,000
23 or more.

24 (e) An insurer may not make an investment under this section
25 if, after making the investment, the insurer's aggregate
26 investments under this section would exceed 33-1/3 percent of the
27 insurer's admitted assets as of December 31 preceding the date of

1 the investment, except that an insurer's aggregate investments
2 under this section may be increased to an amount not to exceed 50
3 percent of the insurer's admitted assets if the commissioner
4 approves the investment in advance, and the investment may be
5 further increased if the additional increase is paid for only from
6 surplus funds and is not included as an admitted asset of the
7 insurer.

8 (f) The value of each investment under this section is
9 subject to the approval of the commissioner. The commissioner may,
10 at the time the investment is made or any time when an examination
11 of the insurer is being made, have an investment under this section
12 appraised by an appraiser appointed or approved by the
13 commissioner. The insurer shall pay the reasonable expense of the
14 appraisal. The expense of the appraisal is considered to be an
15 expense of the examination of the insurer. An insurer may not make
16 any increase in the valuation of real property described by
17 Subsection (a) unless the increase in valuation is approved by the
18 commissioner, subject to the conditions imposed by Subsection (e).
19 (V.T.I.C. Art. 3.40 (part).)

20 Sec. 425.230. AUTHORIZED INVESTMENTS: OIL, GAS, AND
21 MINERALS. (a) In this section and Section 425.231:

22 (1) "Producing" means producing oil, gas, or other
23 minerals in paying quantities. A well that has been shut in is
24 considered to be producing oil, gas, or other minerals in paying
25 quantities if shut-in royalties are being paid.

26 (2) "Production payment" means a right to oil, gas, or
27 other minerals in place or as produced that entitles the owner of

1 the right to a specified fraction of production until the owner
2 receives a specified amount of money, or a specified number of units
3 of oil, gas, or other minerals.

4 (3) "Royalty" or "overriding royalty" means a right to
5 oil, gas, and other minerals in place or as produced that entitles
6 the owner of the right to a specified fraction of production without
7 limitation to a specified amount of money or a specified number of
8 units of oil, gas, or other minerals.

9 (b) Subject to this section, in addition to and without
10 limitation on the purposes for which real property may be acquired,
11 secured, held, or retained under Section 425.229 or 425.231, an
12 insurer may secure, hold, retain, and convey production payments,
13 producing royalties, and producing overriding royalties as an
14 investment for the production of income.

15 (c) The aggregate amount of an insurer's investments under
16 this section, plus the aggregate amount of the insurer's
17 investments in home office and branch office properties under
18 Section 425.229, may not exceed the total amount permitted by and is
19 subject to all of the limitations imposed by Sections 425.229(e)
20 and (f). For purposes of this subsection, an investment in
21 production payments, producing royalties, or producing overriding
22 royalties is considered to be an investment in property described
23 by Section 425.229.

24 (d) For the purposes of Section 425.229(f), the
25 commissioner may establish a value of a production payment,
26 producing royalty, or producing overriding royalty as the maximum
27 amount that the insurer purchasing the production payment,

1 producing royalty, or producing overriding royalty could loan
2 against a first lien on the production payment, producing royalty,
3 or producing overriding royalty under Sections 425.214(f)-(h).

4 (e) An insurer may not make an investment in production
5 payments, producing royalties, or producing overriding royalties
6 solely for the production of income if, after making the
7 investment, the insurer's total investment at cost in the
8 production payments, producing royalties, or producing overriding
9 royalties would exceed 10 percent of the insurer's admitted assets
10 as of December 31 preceding the date of the investment.

11 (f) If production in paying quantities from a royalty
12 interest or overriding royalty interest held by an insurer ends,
13 the insurer shall sell and dispose of the royalty or overriding
14 royalty not later than the second anniversary of the date the
15 production ends, unless:

16 (1) production in paying quantities has resumed; or

17 (2) the insurer obtains from the commissioner a
18 certificate stating that the insurer's interests will suffer
19 materially by the forced sale of the interest.

20 (g) The commissioner shall state in a certificate under
21 Subsection (f)(2) the amount of time by which the period for sale is
22 extended under that subsection. (V.T.I.C. Art. 3.40 (part).)

23 Sec. 425.231. AUTHORIZED INVESTMENTS: REAL PROPERTY
24 ACQUIRED UNDER CERTAIN CIRCUMSTANCES. (a) Subject to this
25 section, an insurer may secure, hold, and convey the following real
26 property:

27 (1) real property acquired in good faith as security

1 for a loan previously contracted or for money due;

2 (2) real property conveyed to the insurer to satisfy a
3 debt previously contracted in the course of the insurer's dealings;
4 and

5 (3) real property purchased at a sale under a
6 judgment, court decree, or mortgage or other lien held by the
7 insurer.

8 (b) An insurer shall sell and dispose of all property
9 described by Subsection (a) that is not necessary for the insurer's
10 accommodation in the convenient transaction of the insurer's
11 business, other than an interest in minerals or royalties reserved
12 on the sale of land acquired under Subsection (a) or an interest in
13 producing royalties or producing overriding royalties otherwise
14 acquired, not later than the fifth anniversary of:

15 (1) the date the insurer acquires title to the
16 property; or

17 (2) the date the property ceases to be necessary for
18 the accommodation of the insurer's business.

19 (c) An insurer may hold property acquired under Subsection
20 (a) for a period longer than that specified by Subsection (b) if the
21 insurer obtains a certificate from the commissioner stating that
22 the insurer's interests will suffer materially by the forced sale
23 of the property. The commissioner shall state in the certificate
24 the amount of time by which the period for sale is extended under
25 this subsection. (V.T.I.C. Art. 3.40 (part).)

26 Sec. 425.232. AUTHORIZED INVESTMENTS: IMPROVED
27 INCOME-PRODUCING REAL PROPERTY. (a) In this section, "improved

1 income-producing real property" includes all commercial and
2 industrial real property, a substantial portion of which has been
3 materially enhanced in value by the construction of durable,
4 permanent-type buildings and other improvements costing an amount
5 at least equal to the value of the real property, excluding the
6 buildings and improvements, that is held or acquired by purchase,
7 lease, or otherwise for the production of income. The term does not
8 include agricultural, horticultural, farm and ranch, or
9 residential property, or single or multiunit family dwelling
10 property.

11 (b) Notwithstanding Sections 425.229, 425.230, and 425.231,
12 subject to this section, a domestic insurer may:

13 (1) invest any of the insurer's funds and
14 accumulations in improved income-producing real property or any
15 interest in improved income-producing real property; and

16 (2) hold, improve, maintain, manage, lease, sell, or
17 convey improved income-producing real property or an interest in
18 improved income-producing real property.

19 (c) The aggregate amount of an insurer's investments in all
20 income-producing real property, including improvements, may not
21 exceed 15 percent of the insurer's admitted assets. The amount of
22 an insurer's investment in a single piece of improved
23 income-producing real property, including improvements, may not
24 exceed five percent of the insurer's admitted assets. For purposes
25 of this subsection, an insurer's admitted assets are determined
26 from the insurer's annual statement as of the preceding December 31
27 and filed with the department as required by law. Section

1 425.229(f) applies to the value of any investment made under this
2 section.

3 (d) The investment authority granted by this section is in
4 addition to that granted by Sections 425.229, 425.230, and 425.231,
5 except that an insurer may not make an investment in improved
6 income-producing real property that, when added to the insurer's
7 investments under Section 425.229, would exceed the limitations
8 imposed by Section 425.229(e).

9 (e) This section does not permit an insurer to purchase
10 undeveloped real property for the purpose of development or
11 subdivision. (V.T.I.C. Art. 3.40-1, Secs. 1, 3.)

12 CHAPTER 426. RESERVES FOR WORKERS' COMPENSATION

13 INSURANCE COMPANIES

14 Sec. 426.001. RESERVES REQUIRED

15 Sec. 426.002. COMPUTATION OF RESERVES

16 Sec. 426.003. MAINTENANCE OF RESERVES; NOTICE OF

17 NONCOMPLIANCE

18 CHAPTER 426. RESERVES FOR WORKERS' COMPENSATION

19 INSURANCE COMPANIES

20 Sec. 426.001. RESERVES REQUIRED. A workers' compensation
21 insurance company engaged in business in this state shall maintain
22 reserves in an amount estimated in the aggregate to provide for the
23 payment of all losses and claims incurred, whether reported or
24 unreported. The company may not maintain reserves in an amount that
25 is greater than reasonably necessary for that purpose. (V.T.I.C.
26 Art. 5.61, Sec. (a) (part).)

27 Sec. 426.002. COMPUTATION OF RESERVES. Reserves required

1 by Section 426.001 must be computed in accordance with any rules
2 adopted by the commissioner to adequately protect insureds, secure
3 the solvency of the workers' compensation insurance company, and
4 prevent unreasonably large reserves. (V.T.I.C. Art. 5.61, Sec. (a)
5 (part).)

6 Sec. 426.003. MAINTENANCE OF RESERVES; NOTICE OF
7 NONCOMPLIANCE. (a) If a workers' compensation insurance
8 company's reserves are determined under this chapter to be:

9 (1) inadequate, the commissioner shall notify the
10 company and require the company to establish and maintain
11 reasonable additional reserves; or

12 (2) unreasonably large, the commissioner shall notify
13 the company and require the company to reduce the amount of reserves
14 to a reasonable amount.

15 (b) Not later than the 60th day after the date of
16 notification of noncompliance under Subsection (a), the company
17 shall:

18 (1) restore compliance as required by Subsection (a);
19 and

20 (2) file a statement of restored compliance,
21 accompanied by any documentation required by the commissioner.
22 (V.T.I.C. Art. 5.61, Secs. (b), (c).)

23 CHAPTER 427. SUBORDINATED INDEBTEDNESS

24 SUBCHAPTER A. GENERAL PROVISIONS

25 Sec. 427.001. APPLICABILITY OF CHAPTER

26 Sec. 427.002. RULES

27 [Sections 427.003-427.050 reserved for expansion]

1 SUBCHAPTER B. LOAN, ADVANCE, AND OTHER INDEBTEDNESS

2 Sec. 427.051. LOAN OR ADVANCE PERMITTED

3 Sec. 427.052. SUBORDINATED LIABILITY PERMITTED

4 Sec. 427.053. APPROVAL OF AGREEMENT REQUIRED

5 Sec. 427.054. LIABILITY

6 Sec. 427.055. PAYMENT OF PRINCIPAL OR INTEREST ON

7 CERTAIN LIABILITIES

8 CHAPTER 427. SUBORDINATED INDEBTEDNESS

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 427.001. APPLICABILITY OF CHAPTER. This chapter
11 applies to an insurer or health maintenance organization as defined
12 by Section 401.001. (V.T.I.C. Art. 1.39, Sec. (a).)

13 Sec. 427.002. RULES. The commissioner shall adopt rules
14 necessary to implement this chapter. (V.T.I.C. Art. 1.39, Sec.
15 (f).)

16 [Sections 427.003-427.050 reserved for expansion]

17 SUBCHAPTER B. LOAN, ADVANCE, AND OTHER INDEBTEDNESS

18 Sec. 427.051. LOAN OR ADVANCE PERMITTED. An insurer or
19 health maintenance organization may obtain a loan or an advance,
20 repayable with interest, of:

21 (1) cash;

22 (2) cash equivalents; or

23 (3) other assets that have a readily determinable
24 value and are satisfactory to the commissioner. (V.T.I.C.
25 Art. 1.39, Sec. (b) (part).)

26 Sec. 427.052. SUBORDINATED LIABILITY PERMITTED. (a) An
27 insurer or health maintenance organization may assume a

1 subordinated liability for repayment of a loan or advance described
2 by Section 427.051 and payment of interest on the loan or advance if
3 the insurer or health maintenance organization and the creditor
4 execute a written agreement stating that the creditor may be paid
5 only out of that portion of the insurer's or health maintenance
6 organization's surplus that exceeds the greater of:

7 (1) a minimum surplus amount set in the agreement; or

8 (2) a minimum surplus amount of \$500,000.

9 (b) The department or commissioner may not require the
10 agreement to provide a minimum surplus amount that is different
11 from the amount described by this section. (V.T.I.C. Art. 1.39,
12 Sec. (b) (part).)

13 Sec. 427.053. APPROVAL OF AGREEMENT REQUIRED. (a) An
14 insurer or health maintenance organization must submit the written
15 agreement under Section 427.052 to the commissioner for approval of
16 the form and content of the agreement.

17 (b) The commissioner must approve or disapprove the
18 agreement not later than the 30th day after the date the insurer or
19 health maintenance organization submits the agreement. If the
20 commissioner fails to act as required by this subsection, the
21 agreement is considered approved.

22 (c) An insurer or health maintenance organization may
23 assume a subordinated liability only after the commissioner has
24 approved the agreement under this chapter or Subchapter C, Chapter
25 823. (V.T.I.C. Art. 1.39, Sec. (e) (part).)

26 Sec. 427.054. LIABILITY. (a) A loan or advance made under
27 this chapter, including any interest accruing on the loan or

1 advance, is a legal liability of the insurer or health maintenance
2 organization, and a liability with respect to the insurer's or
3 health maintenance organization's financial statement, only to the
4 extent provided by the terms of the loan or advance agreement.

5 (b) Notwithstanding Subsection (a), if the loan or advance
6 agreement provides for a sinking fund out of which the loan or
7 advance is to be repaid, the loan or advance is a legal liability of
8 the insurer or health maintenance organization, and a liability
9 with respect to the insurer's or health maintenance organization's
10 financial statement, only to the extent of the amounts accumulated
11 and held in the sinking fund. By agreement of the parties, any
12 portion of the amounts accumulated in the sinking fund may be
13 returned to the surplus of the insurer or health maintenance
14 organization at any time and any amount returned may not be a legal
15 liability of the insurer or health maintenance organization or a
16 liability with respect to the insurer's or health maintenance
17 organization's financial statement. (V.T.I.C. Art. 1.39, Secs.
18 (c), (d).)

19 Sec. 427.055. PAYMENT OF PRINCIPAL OR INTEREST ON CERTAIN
20 LIABILITIES. (a) An insurer or health maintenance organization
21 may not pay principal or interest on a subordinated liability
22 assumed under Section 427.052 or Subchapter C, Chapter 823, on or
23 after September 1, 1995, unless:

24 (1) the payment complies with a schedule of payments
25 contained in the agreement approved by the commissioner in
26 accordance with Section 427.052 or Subchapter C, Chapter 823; or

27 (2) if the payment does not comply with the schedule of

1 payments contained in the agreement or the agreement does not
2 contain a payment schedule, the insurer or health maintenance
3 organization provides written notice to the commissioner not later
4 than the 15th day before the scheduled payment date.

5 (b) A loan, debenture, revenue bond, or advance agreement
6 issued to an insurer or health maintenance organization before
7 September 1, 1995, and any subsequent payment of principal or
8 interest on the indebtedness are governed by the law in effect on
9 the date of issuance. (V.T.I.C. Art. 1.39, Sec. (e) (part).)

10 [Chapters 428-440 reserved for expansion]

11 SUBTITLE C. DELINQUENT INSURERS

12 CHAPTER 441. SUPERVISION AND CONSERVATORSHIP

13 SUBCHAPTER A. GENERAL PROVISIONS

14 Sec. 441.001. FINDINGS AND PURPOSE

15 Sec. 441.002. DEFINITION

16 Sec. 441.003. APPLICABILITY OF AND COMPLIANCE WITH

17 CHAPTER

18 Sec. 441.004. ACTIONS OF COMMISSIONER

19 Sec. 441.005. RULES; AUTHORITY FOR ADMINISTRATIVE

20 ACTION

21 Sec. 441.006. RULES AND PROCEDURES FOR MERGER OF

22 INSURERS

23 Sec. 441.007. CONFLICT WITH OTHER LAWS

24 Sec. 441.008. INAPPLICABILITY OF CERTAIN

25 ADMINISTRATIVE PROCEDURE PROVISIONS

26 [Sections 441.009-441.050 reserved for expansion]

1 SUBCHAPTER B. DETERMINATION AND NOTICE

2 Sec. 441.051. CIRCUMSTANCES CONSTITUTING INSOLVENCY OR
3 DELINQUENCY

4 Sec. 441.052. CIRCUMSTANCES CONSTITUTING INSURER
5 EXCEEDING POWERS

6 Sec. 441.053. NOTICE TO INSURER

7 [Sections 441.054-441.100 reserved for expansion]

8 SUBCHAPTER C. SUPERVISION

9 Sec. 441.101. APPOINTMENT OF SUPERVISOR

10 Sec. 441.102. TIME FOR COMPLIANCE WITH REQUIREMENTS OF
11 SUPERVISION

12 Sec. 441.103. PAYMENT OF CLAIMS

13 Sec. 441.104. PROHIBITED ACTS DURING SUPERVISION

14 Sec. 441.105. HEARING ON SUPERVISION; TERMINATION BY
15 CONSERVATION OR RELEASE

16 [Sections 441.106-441.150 reserved for expansion]

17 SUBCHAPTER D. CONSERVATORSHIP

18 Sec. 441.151. APPOINTMENT OF CONSERVATOR

19 Sec. 441.152. NOTICE OF CONSERVATORSHIP

20 Sec. 441.153. POWERS AND DUTIES OF CONSERVATOR

21 Sec. 441.154. PAYMENT OF CLAIMS

22 Sec. 441.155. REINSURANCE DURING CONSERVATORSHIP

23 Sec. 441.156. HEARINGS DURING CONSERVATORSHIP

24 Sec. 441.157. IMMUNITY

25 Sec. 441.158. VENUE

26 Sec. 441.159. DURATION OF CONSERVATORSHIP

27 Sec. 441.160. RETURN TO MANAGEMENT

1 [Sections 441.161-441.200 reserved for expansion]

2 SUBCHAPTER E. PROVISIONS APPLYING TO SUPERVISION AND
3 CONSERVATORSHIP

4 Sec. 441.201. CONFIDENTIALITY

5 Sec. 441.202. COSTS OF SUPERVISION AND CONSERVATORSHIP

6 Sec. 441.203. COLLECTION OF FEES FROM REHABILITATED
7 INSURER

8 Sec. 441.204. REVIEW AND STAY OF CERTAIN ACTS OF
9 SUPERVISOR OR CONSERVATOR

10 Sec. 441.205. APPEAL OF CERTAIN ORDERS

11 Sec. 441.206. EX PARTE MEETING WITH COMMISSIONER

12 Sec. 441.207. INSURER EMPLOYEES DURING SUPERVISION OR
13 CONSERVATORSHIP

14 [Sections 441.208-441.250 reserved for expansion]

15 SUBCHAPTER F. OUT-OF-STATE INSURERS

16 Sec. 441.251. APPLICABILITY

17 Sec. 441.252. APPOINTMENT OF ANCILLARY SUPERVISOR OR
18 CONSERVATOR

19 Sec. 441.253. POWERS AND DUTIES OF ANCILLARY
20 SUPERVISOR OR CONSERVATOR

21 Sec. 441.254. FAILURE TO COMPLY WITH REQUIREMENTS OF
22 SUPERVISION

23 Sec. 441.255. REFERRAL FOR REMEDIAL ACTION

24 [Sections 441.256-441.300 reserved for expansion]

25 SUBCHAPTER G. POWERS AND DUTIES OF ATTORNEY GENERAL

26 Sec. 441.301. REMEDIAL ACTION BY ATTORNEY GENERAL

1 Sec. 441.302. FORFEITURE AND CANCELLATION OF CHARTER

2 ON CONCLUSION OF BUSINESS

3 [Sections 441.303-441.350 reserved for expansion]

4 SUBCHAPTER H. AGENTS OF RECORD FOR CERTAIN INSUREDS

5 Sec. 441.351. AGENTS OF RECORD

6 CHAPTER 441. SUPERVISION AND CONSERVATORSHIP

7 SUBCHAPTER A. GENERAL PROVISIONS

8 Sec. 441.001. FINDINGS AND PURPOSE. (a) An insurer
9 delinquency, or the state's inability to properly proceed in a
10 threatened delinquency, directly or indirectly affects other
11 insurers by creating a lack of public confidence in insurance and
12 insurers. Insurer delinquencies destroy public confidence in the
13 state's ability to regulate insurers. The harmful results of
14 insurer delinquencies, including those described by this
15 subsection, are properly minimized by laws designed to protect and
16 assist insureds, creditors, and owners.

17 (b) Placing an insurer in receivership often destroys or
18 diminishes, or is likely to destroy or diminish, the value of the
19 insurer's assets, including:

20 (1) the insurer's insurance account or in-force
21 business;

22 (2) the insurer as a going concern; and

23 (3) the insurer's agency force.

24 (c) The value of the assets described by Subsection (b)
25 should be preserved if the circumstances of the insurer's financial
26 condition warrant an attempt to rehabilitate or conserve the
27 insurer and the rehabilitation or conservation is otherwise

1 feasible.

2 (d) It is a proper concern of this state and proper policy to
3 attempt to correct or remedy insurer misconduct, ineptness, or
4 misfortune.

5 (e) The purpose of this chapter is to:

6 (1) provide for the rehabilitation and conservation of
7 insurers by authorizing and requiring supervision and
8 conservatorship by the commissioner;

9 (2) authorize action to determine whether an attempt
10 should be made to rehabilitate and conserve an insurer;

11 (3) avoid, if possible and feasible, the necessity of
12 placing an insurer under temporary or permanent receivership;

13 (4) provide for the protection of an insurer's assets
14 pending determination of whether the insurer may be successfully
15 rehabilitated; and

16 (5) alleviate concerns regarding insurance and
17 insurers.

18 (f) Rehabilitation of an insurer might not be accomplished
19 in every case, but this chapter facilitates and directs an attempt
20 to rehabilitate an insurer without immediate resort to the harsher
21 remedy of receivership. If receivership becomes necessary, the
22 preliminary supervision and conservatorship may prevent a
23 dissipation of assets, which will benefit policyholders,
24 creditors, and owners.

25 (g) For the reasons stated by this section, the substance
26 and procedures of this chapter are the public policy of this state
27 and are necessary to the public welfare. That policy and welfare

1 require the availability of this chapter and the application of
2 this chapter if circumstances warrant.

3 (h) This chapter provides, in conjunction with other law, a
4 generally ordered sequence, and provides for review at each step,
5 of supervision, concurrent conservatorship and rehabilitation,
6 including reinsurance, and cessation of the conservatorship by
7 rehabilitation or by receivership and liquidation if at any time
8 that cessation is indicated or determined to be appropriate.
9 (V.T.I.C. Art. 21.28-A, Sec. 1 (part).)

10 Sec. 441.002. DEFINITION. In this chapter, unless the
11 purposes of this chapter clearly require or the context clearly
12 indicates another meaning, "insurer" means a person, organization,
13 or company, regardless of whether the person or entity is
14 authorized or admitted, that engages in the business of insurance
15 or that acts as a principal or agent of a person, organization, or
16 company engaged in the business of insurance. The term includes a
17 stock insurance company, reciprocal or interinsurance exchange,
18 Lloyd's plan, fraternal benefit society, stipulated premium
19 company, title insurance company, and mutual insurance company of
20 any kind, including a statewide mutual assessment company, local
21 mutual aid association, burial association, county mutual
22 insurance company, and farm mutual insurance company. (V.T.I.C.
23 Art. 21.28-A, Secs. 2 (part), (a).)

24 Sec. 441.003. APPLICABILITY OF AND COMPLIANCE WITH
25 CHAPTER. Compliance with this chapter is a condition of engaging
26 in the business of insurance in this state. This chapter applies
27 to, and is a consequence of, any other transaction with respect to

1 an insurer or insurance. (V.T.I.C. Art. 21.28-A, Sec. 1 (part).)

2 Sec. 441.004. ACTIONS OF COMMISSIONER. (a) In the event of
3 an insurer's delinquency or suspected delinquency, the
4 commissioner, in the commissioner's administrative discretion, may
5 act under this chapter, another applicable law, or a combination of
6 this chapter and another applicable law.

7 (b) If the commissioner determines to act under this chapter
8 or is directed by a court to act under this chapter, the
9 commissioner shall comply with the requirements of this chapter.
10 (V.T.I.C. Art. 21.28-A, Secs. 10, 12(a) (part).)

11 Sec. 441.005. RULES; AUTHORITY FOR ADMINISTRATIVE ACTION.

12 (a) The commissioner may:

13 (1) adopt reasonable rules as necessary to implement
14 and supplement this chapter and the purposes of this chapter; and

15 (2) take any administrative action required by the
16 findings of Section 441.001.

17 (b) The authority granted by this section may be inferred
18 from the context of this chapter. (V.T.I.C. Art. 21.28-A, Secs. 1
19 (part), 11.)

20 Sec. 441.006. RULES AND PROCEDURES FOR MERGER OF INSURERS.

21 (a) The commissioner shall adopt rules that encourage the merger of
22 insurers in weak financial condition with insurers in strong
23 financial condition in cases in which rehabilitation or
24 conservation of an insurer would be inefficient or impracticable.

25 (b) The rules and procedures for conservatorship may not be
26 used unless the rules and procedures adopted to promote the merger
27 of insurers in weak financial condition are followed. (V.T.I.C.

1 Art. 21.28-A, Sec. 1 (part).)

2 Sec. 441.007. CONFLICT WITH OTHER LAWS. If this chapter
3 conflicts with any other law, this chapter prevails. (V.T.I.C.
4 Art. 21.28-A, Sec. 12(a) (part).)

5 Sec. 441.008. INAPPLICABILITY OF CERTAIN ADMINISTRATIVE
6 PROCEDURE PROVISIONS. Section 2001.062, Government Code, does not
7 apply to a hearing conducted under this chapter. (V.T.I.C. Art.
8 21.28-A, Sec. 3 (part).)

9 [Sections 441.009-441.050 reserved for expansion]

10 SUBCHAPTER B. DETERMINATION AND NOTICE

11 Sec. 441.051. CIRCUMSTANCES CONSTITUTING INSOLVENCY OR
12 DELINQUENCY. For the purposes of this chapter, the circumstances
13 in which an insurer is considered insolvent, delinquent, or
14 threatened with delinquency include circumstances in which the
15 insurer:

16 (1) has required surplus, capital, or capital stock
17 that is impaired to an extent prohibited by law;

18 (2) continues to write new business when the insurer
19 does not have the surplus, capital, or capital stock that is
20 required by law to write new business;

21 (3) conducts the insurer's business fraudulently; or

22 (4) attempts to dissolve or liquidate without first
23 having made provisions satisfactory to the commissioner for
24 liabilities arising from insurance policies issued by the insurer.
25 (V.T.I.C. Art. 21.28-A, Secs. 2 (part), (b).)

26 Sec. 441.052. CIRCUMSTANCES CONSTITUTING INSURER EXCEEDING
27 POWERS. For the purposes of this chapter, the circumstances in

1 which an insurer is considered to have exceeded the insurer's
2 powers include circumstances in which the insurer:

3 (1) refuses to permit the commissioner, the
4 commissioner's deputy, or an examiner appointed by the department
5 to examine the insurer's books, papers, accounts, records, or
6 affairs;

7 (2) is organized in this state and removes from the
8 state books, papers, accounts, or records that are necessary to
9 examine the insurer;

10 (3) fails to promptly answer inquiries authorized by
11 Section 38.001;

12 (4) fails to comply with an order of the commissioner
13 to remedy, within the time prescribed by law, a prohibited
14 deficiency in the insurer's capital, capital stock, or surplus;

15 (5) without obtaining the commissioner's prior written
16 approval:

17 (A) totally reinsures the insurer's entire
18 outstanding business; or

19 (B) merges or consolidates substantially all of
20 the insurer's property or business with another insurer;

21 (6) continues to write business after the insurer's
22 certificate of authority has been revoked or suspended; or

23 (7) is in a condition that makes the insurer's
24 continuation in business hazardous to the public or to the
25 insurer's policyholders or certificate holders. (V.T.I.C. Art.
26 21.28-A, Secs. 2 (part), (c).)

27 Sec. 441.053. NOTICE TO INSURER. (a) If at any time the

1 commissioner determines that an insurer is insolvent, has exceeded
2 the insurer's powers, or has otherwise failed to comply with the
3 law, the commissioner shall:

4 (1) notify the insurer of that determination;

5 (2) provide to the insurer a written list of the
6 commissioner's requirements to abate the conditions on which that
7 determination was based; and

8 (3) if the commissioner determines that the insurer
9 requires supervision, notify the insurer that the insurer is under
10 the commissioner's supervision and that the commissioner is
11 invoking this chapter.

12 (b) The commissioner may provide the notice and information
13 to an insurer that agrees to supervision.

14 (c) The insurer shall comply with the commissioner's
15 requirements. (V.T.I.C. Art. 21.28-A, Secs. 2 (part), (d) (part),
16 3 (part).)

17 [Sections 441.054-441.100 reserved for expansion]

18 SUBCHAPTER C. SUPERVISION

19 Sec. 441.101. APPOINTMENT OF SUPERVISOR. The commissioner
20 may appoint a supervisor to supervise an insurer. (V.T.I.C. Art.
21 21.28-A, Sec. 4(a) (part).)

22 Sec. 441.102. TIME FOR COMPLIANCE WITH REQUIREMENTS OF
23 SUPERVISION. An insurer under supervision must comply with the
24 commissioner's requirements under Section 441.053 not later than
25 the 180th day after the date of the commissioner's notice of
26 supervision. (V.T.I.C. Art. 21.28-A, Sec. 3 (part).)

27 Sec. 441.103. PAYMENT OF CLAIMS. An insurer under

1 supervision shall continue to pay claims under an insurance policy
2 according to the terms of the policy. (V.T.I.C. Art. 21.28-A, Sec.
3 3 (part).)

4 Sec. 441.104. PROHIBITED ACTS DURING SUPERVISION. During
5 supervision, the commissioner may prohibit the insurer from taking
6 any of the following actions without the prior approval of the
7 commissioner or supervisor:

8 (1) disposing of, conveying, or encumbering any of the
9 insurer's assets or business in force;

10 (2) withdrawing money from the insurer's bank
11 accounts;

12 (3) lending or investing the insurer's money;

13 (4) transferring the insurer's property;

14 (5) incurring a debt, obligation, or liability;

15 (6) merging or consolidating with another company;

16 (7) entering into a new reinsurance contract or
17 treaty;

18 (8) terminating, surrendering, forfeiting,
19 converting, or lapsing an insurance policy, except for nonpayment
20 of premiums due; or

21 (9) releasing, paying, or refunding premium deposits,
22 accrued cash or loan values, unearned premiums, or other reserves
23 on an insurance policy. (V.T.I.C. Art. 21.28-A, Sec. 4(a) (part).)

24 Sec. 441.105. HEARING ON SUPERVISION; TERMINATION BY
25 CONSERVATION OR RELEASE. (a) On the commissioner's own motion or
26 the motion of a party of record, a hearing may be scheduled relating
27 to an insurer under supervision after at least 10 days' written

1 notice to each party of record. Notice may be waived by the parties
2 of record.

3 (b) The commissioner shall place the insurer in
4 conservatorship if, after the hearing, it is determined that the
5 insurer:

6 (1) failed to comply with the commissioner's
7 requirements;

8 (2) has not been rehabilitated;

9 (3) is insolvent; or

10 (4) appears to have exceeded the insurer's powers.

11 (c) The commissioner may release the insurer from
12 supervision if, after the hearing, it is determined that the
13 insurer:

14 (1) has been rehabilitated; or

15 (2) is no longer in a condition that makes the
16 insurer's continuation in business hazardous to the public or to
17 the insurer's policyholders or certificate holders. (V.T.I.C. Art.
18 21.28-A, Sec. 3 (part).)

19 [Sections 441.106-441.150 reserved for expansion]

20 SUBCHAPTER D. CONSERVATORSHIP

21 Sec. 441.151. APPOINTMENT OF CONSERVATOR. (a) The
22 commissioner may appoint a conservator for an insurer:

23 (1) if:

24 (A) after notice and opportunity for hearing, it
25 is determined that the insurer:

26 (i) is insolvent;

27 (ii) appears to have exceeded the insurer's

1 powers; or

2 (iii) has failed to comply with any
3 requirement of the commissioner; or

4 (B) the insurer agrees to the appointment of a
5 conservator; and

6 (2) if it is determined that supervision is inadequate
7 to rehabilitate the insurer.

8 (b) The commissioner may appoint a conservator. (V.T.I.C.
9 Art. 21.28-A, Secs. 2 (part), (d) (part), 5 (part).)

10 Sec. 441.152. NOTICE OF CONSERVATORSHIP. (a) Not later
11 than the seventh day after the date the commissioner enters an order
12 appointing a conservator for an insurer as provided by Section
13 441.151 or Subchapter F, the commissioner shall publish notice of
14 the conservatorship in at least one newspaper of general
15 circulation in each county with a population of at least 100,000.

16 (b) The notice must include:

17 (1) the name of the insurer placed in conservatorship;

18 (2) the date the insurer was placed in conservatorship
19 in this state;

20 (3) the reasons for placing the insurer in
21 conservatorship;

22 (4) any action with respect to the insurer that is
23 available to a policyholder; and

24 (5) any requirement with which a policyholder must
25 comply. (V.T.I.C. Art. 21.28-A, Sec. 5A.)

26 Sec. 441.153. POWERS AND DUTIES OF CONSERVATOR. (a) The
27 conservator appointed for an insurer under Section 441.151 shall

1 immediately take charge of the insurer and all of the insurer's
2 property, books, records, and effects, conduct the insurer's
3 business, and act to remove the causes and conditions that made the
4 conservatorship order necessary, as directed by the commissioner.

5 (b) During the conservatorship, the conservator shall
6 provide reports to the commissioner as required by the commissioner
7 and may:

8 (1) take all necessary measures in the conservator's
9 own name as conservator to preserve, protect, or recover any asset
10 or property of the insurer, including a claim or cause of action
11 that the insurer may assert; and

12 (2) file a suit, or prosecute and defend a suit filed
13 by or against the insurer, as the conservator considers necessary
14 to protect all of the interested parties or any property affected by
15 the suit. (V.T.I.C. Art. 21.28-A, Sec. 5 (part).)

16 Sec. 441.154. PAYMENT OF CLAIMS. An insurer under
17 conservatorship shall continue to pay claims under an insurance
18 policy according to the terms of the policy. (V.T.I.C. Art.
19 21.28-A, Sec. 9 (part).)

20 Sec. 441.155. REINSURANCE DURING CONSERVATORSHIP. (a) If
21 during a conservatorship it appears that the interest of the
22 insurer's policyholders or certificate holders is best protected by
23 reinsuring the policies or certificates, the conservator may, with
24 the approval of or at the direction of the commissioner:

25 (1) reinsure all or part of the insurer's policies or
26 certificates with a solvent insurer authorized to engage in
27 business in this state; and

1 (2) to the extent that the insurer has reserves
2 attributable to the reinsured policies or certificates, transfer to
3 the reinsurer reserves in an amount sufficient to reinsure the
4 policies or certificates.

5 (b) A transfer of reserves under this section may not be
6 considered a preference of a creditor. (V.T.I.C. Art. 21.28-A,
7 Sec. 5 (part).)

8 Sec. 441.156. HEARINGS DURING CONSERVATORSHIP. (a) On
9 the commissioner's own motion or the motion of a party of record, a
10 hearing relating to an insurer in conservatorship may be scheduled
11 after at least 10 days' written notice to each party of record.

12 (b) The notice required by this section may be waived by the
13 parties of record. (V.T.I.C. Art. 21.28-A, Sec. 5 (part).)

14 Sec. 441.157. IMMUNITY. A conservator and the
15 conservator's agents and employees are not liable, and a cause of
16 action does not arise against the conservator or an agent or
17 employee, for an action taken or not taken by the conservator,
18 agent, or employee in connection with the adjustment, negotiation,
19 or settlement of a claim. (V.T.I.C. Art. 21.28-A, Sec. 5 (part).)

20 Sec. 441.158. VENUE. (a) A suit against an insurer in
21 conservatorship or against the conservator may be filed only in
22 Travis County unless the cause of action is based on the terms of an
23 insurance policy issued by the insurer.

24 (b) A conservator appointed under this chapter may file suit
25 in Travis County against any person to preserve, protect, or
26 recover any asset or property of the insurer, including a claim or
27 cause of action that may be asserted by the insurer. (V.T.I.C. Art.

1 21.28-A, Sec. 8.)

2 Sec. 441.159. DURATION OF CONSERVATORSHIP. (a) Except as
3 provided by Subsection (b), a conservator appointed under this
4 chapter shall complete the conservator's duties as required by this
5 chapter not later than the 90th day after the date of appointment.

6 (b) If the commissioner issues written findings that there
7 is a substantial likelihood of rehabilitation of the insurer in
8 conservatorship, the commissioner may extend the conservatorship
9 for additional successive 30-day periods. The total period of
10 extensions may not exceed 180 consecutive days. A hearing is not
11 required before the commissioner issues the findings. (V.T.I.C.
12 Art. 21.28-A, Sec. 9 (part).)

13 Sec. 441.160. RETURN TO MANAGEMENT. An insurer that is
14 rehabilitated shall be returned to management or placed under new
15 management under reasonable conditions that best tend to prevent
16 defeat of the purposes of the conservatorship. (V.T.I.C. Art.
17 21.28-A, Sec. 9 (part).)

18 [Sections 441.161-441.200 reserved for expansion]

19 SUBCHAPTER E. PROVISIONS APPLYING TO SUPERVISION AND
20 CONSERVATORSHIP

21 Sec. 441.201. CONFIDENTIALITY. (a) Hearings and orders,
22 notices, correspondence, reports, records, and other information
23 in the department's possession relating to the supervision or
24 conservatorship of an insurer are confidential during the
25 supervision or conservatorship. On termination of the supervision
26 or conservatorship, the information in the department's custody
27 that relates to the supervision or conservatorship is public

1 information.

2 (b) This section does not prohibit access by the department
3 to hearings or orders, notices, correspondence, reports, records,
4 or other information.

5 (c) The provisions of Chapter 2001, Government Code,
6 relating to discovery apply to the parties of record in a proceeding
7 under this chapter.

8 (d) The commissioner may open a proceeding under this
9 chapter or disclose information that is confidential under this
10 section to a department, agency, or instrumentality of this state,
11 another state, or the United States if the commissioner determines
12 that opening the proceeding or disclosing the information is
13 necessary or proper to enforce the laws of this state, another
14 state, or the United States.

15 (e) An officer or employee of the department is not liable
16 for a release of information that is confidential under this
17 section unless it is shown that the release was accomplished with
18 actual malice.

19 (f) This section does not apply to information:

20 (1) if the insurer's insureds are not protected by
21 Chapter 462, 463, or 2602, or substantially similar statutes; or

22 (2) on the appointment by a court of a receiver for the
23 insurer. (V.T.I.C. Art. 21.28-A, Sec. 3A.)

24 Sec. 441.202. COSTS OF SUPERVISION AND CONSERVATORSHIP.
25 The commissioner shall determine the costs related to services
26 provided by a supervisor or conservator under this chapter.
27 Subject to Section 442.551, the costs shall be charged against the

1 insurer's assets and paid as determined by the commissioner.
2 (V.T.I.C. Art. 21.28-A, Sec. 5 (part).)

3 Sec. 441.203. COLLECTION OF FEES FROM REHABILITATED
4 INSURER. (a) The commissioner may collect fees from an insurer
5 described by Section 82.002 that is successfully rehabilitated by
6 the commissioner. The fees must be in amounts sufficient to cover
7 the cost of rehabilitating the insurer, but may not exceed that
8 cost.

9 (b) The department may use fees collected under this section
10 only for the rehabilitation of the insurer from which the fees are
11 collected.

12 (c) Fees collected under this section shall be deposited in
13 and expended through the Texas Department of Insurance operating
14 account.

15 (d) The commissioner may determine the terms of the
16 collection or repayment of the fees. (V.T.I.C. Art. 21.28-A, Secs.
17 17(a) (part), (b).)

18 Sec. 441.204. REVIEW AND STAY OF CERTAIN ACTS OF SUPERVISOR
19 OR CONSERVATOR. (a) An insurer under supervision or
20 conservatorship may request the commissioner or, in the
21 commissioner's absence, the commissioner's appointed deputy to
22 review an action taken or proposed to be taken by the supervisor or
23 conservator.

24 (b) A request for review under this section must specify the
25 manner in which the action is believed to not be in the insurer's
26 best interests.

27 (c) A request for review under this section stays the

1 specified action pending review by the commissioner or the
2 commissioner's deputy. (V.T.I.C. Art. 21.28-A, Sec. 7 (part).)

3 Sec. 441.205. APPEAL OF CERTAIN ORDERS. The following
4 orders of the commissioner may be appealed under Subchapter D,
5 Chapter 36:

6 (1) an order appointing a supervisor and providing
7 that the insurer may not engage in certain acts as provided by
8 Section 441.104;

9 (2) an order appointing a conservator; and

10 (3) an order following the review under Section
11 441.204 of an action of a supervisor or conservator. (V.T.I.C. Art.
12 21.28-A, Sec. 7 (part).)

13 Sec. 441.206. EX PARTE MEETING WITH COMMISSIONER.
14 Notwithstanding any other law, the commissioner may, at the time of
15 any proceeding or while a proceeding is pending under this chapter,
16 meet with a supervisor or conservator appointed under this chapter
17 and with the attorney or other representative of the supervisor or
18 conservator, without another person present, to implement the
19 commissioner's duties under this chapter or for the supervisor or
20 conservator to implement that person's duties under this chapter.
21 (V.T.I.C. Art. 21.28-A, Sec. 12(b).)

22 Sec. 441.207. INSURER EMPLOYEES DURING SUPERVISION OR
23 CONSERVATORSHIP. (a) Notwithstanding any other provision of this
24 chapter, an insurer may employ an attorney, actuary, and accountant
25 of the insurer's choice to assist the insurer during supervision.
26 The supervisor shall authorize payment from the insurer for the
27 reasonable fees and expenses of the attorney, actuary, or

1 accountant.

2 (b) The supervisor, conservator, or commissioner shall, to
3 the maximum extent possible, use the insurer's employees instead of
4 outside consultants, actuaries, attorneys, accountants, and other
5 personnel or department employees to minimize the expense of
6 rehabilitation or the necessity of fees to cover the cost of
7 rehabilitation. (V.T.I.C. Art. 21.28-A, Secs. 13, 17(a) (part).)

8 [Sections 441.208-441.250 reserved for expansion]

9 SUBCHAPTER F. OUT-OF-STATE INSURERS

10 Sec. 441.251. APPLICABILITY. This chapter applies to an
11 insurer engaged in the business of insurance in this state but not
12 domiciled in this state, regardless of whether the insurer is
13 authorized to engage in the business of insurance in this state.
14 (V.T.I.C. Art. 21.28-A, Sec. 6 (part).)

15 Sec. 441.252. APPOINTMENT OF ANCILLARY SUPERVISOR OR
16 CONSERVATOR. (a) The commissioner may appoint an ancillary
17 supervisor or ancillary conservator for the assets located in this
18 state of an insurer described by Section 441.251 in the same manner
19 as the commissioner appoints a supervisor or conservator for an
20 insurer domiciled in this state as provided by this chapter if:

21 (1) the commissioner makes a determination described
22 by Section 441.053 with regard to the insurer;

23 (2) the commissioner determines that the insurer does
24 not have the minimum surplus, capital, or capital stock required by
25 this code for similar domestic insurers; or

26 (3) the insurer agrees to the appointment.

27 (b) Subject to Section 441.205, the commissioner may

1 immediately, without prior notice and hearing, appoint an ancillary
2 conservator for the assets, property, books, and records located in
3 this state of an insurer described by Section 441.251 if a
4 conservator, rehabilitator, receiver, liquidator, or equivalent
5 official is appointed in the state in which the insurer is
6 domiciled. (V.T.I.C. Art. 21.28-A, Secs. 2 (part), (d), 6 (part).)

7 Sec. 441.253. POWERS AND DUTIES OF ANCILLARY SUPERVISOR OR
8 CONSERVATOR. (a) An ancillary supervisor or ancillary conservator
9 appointed under this subchapter has all the powers provided by
10 Sections 441.153 and 441.155 with respect to the insurer's assets,
11 property, books, and records located in this state.

12 (b) An ancillary conservator appointed under this
13 subchapter may:

14 (1) reinsure all or part of the insurer's policies or
15 certificates in this state with a solvent insurer authorized to
16 engage in business in this state; and

17 (2) transfer to the reinsurer as reserves any assets
18 in the ancillary conservator's possession in an amount sufficient
19 to reinsure the policies or certificates.

20 (c) A transfer of assets under this section is not
21 considered a preference of a creditor. (V.T.I.C. Art. 21.28-A,
22 Sec. 6 (part).)

23 Sec. 441.254. FAILURE TO COMPLY WITH REQUIREMENTS OF
24 SUPERVISION. The failure of an insurer described by Section
25 441.251 to comply during supervision with the requirements of
26 Section 441.104 with respect to any asset or policy located in this
27 state is grounds for the immediate revocation of the insurer's

1 certificate of authority to engage in business in this state and for
2 the immediate appointment of an ancillary conservator to take
3 charge of the insurer's assets located in this state. (V.T.I.C.
4 Art. 21.28-A, Sec. 6 (part).)

5 Sec. 441.255. REFERRAL FOR REMEDIAL ACTION. The
6 commissioner may refer an insurer described by Section 441.251 to
7 the attorney general for remedial action, including application for
8 appointment of a receiver under Chapter 442, on any grounds on which
9 an insurer domiciled in this state may be referred to the attorney
10 general for remedial action. The commissioner may refer the
11 insurer at any time, and action against the insurer in the insurer's
12 state of domicile is not a prerequisite. (V.T.I.C. Art. 21.28-A,
13 Sec. 6 (part).)

14 [Sections 441.256-441.300 reserved for expansion]

15 SUBCHAPTER G. POWERS AND DUTIES OF ATTORNEY GENERAL

16 Sec. 441.301. REMEDIAL ACTION BY ATTORNEY GENERAL. (a) The
17 commissioner may, at any time and regardless of whether an insurer
18 is under supervision or conservatorship, determine that the insurer
19 is not in a condition to continue business in the interest of the
20 insurer's policyholders or certificate holders. The commissioner
21 shall give notice of that determination to the attorney general.

22 (b) On receipt of notice under Subsection (a), the attorney
23 general shall file suit in the nature of quo warranto in a court in
24 Travis County to:

- 25 (1) forfeit the insurer's charter; or
26 (2) require the insurer to comply with the law or prove
27 to the commissioner that the insurer is solvent, and satisfy the

1 requirement that the insurer's condition does not make the
2 continuation of the insurer's business hazardous to the public or
3 to the insurer's policyholders or certificate holders.

4 (c) The commissioner may at any time refer an insurer to the
5 attorney general for the purpose of taking any remedial action,
6 including applying for the appointment of a receiver under Chapter
7 442.

8 (d) Supervision or conservatorship of the insurer is not
9 required before the attorney general may take remedial action under
10 this section. (V.T.I.C. Art. 21.28-A, Sec. 5 (part).)

11 Sec. 441.302. FORFEITURE AND CANCELLATION OF CHARTER ON
12 CONCLUSION OF BUSINESS. (a) Once all an insurer's policies are
13 reinsured or terminated and the insurer's affairs are concluded as
14 provided by this chapter, the commissioner shall report that fact
15 to the attorney general. On receipt of the report, the attorney
16 general shall take action necessary to forfeit or cancel the
17 insurer's charter.

18 (b) The commissioner shall report to the attorney general
19 the commissioner's approval of the merger or consolidation of an
20 insurer with another insurer or the reinsurance of the insurer's
21 policies. On receipt of the report, the attorney general shall take
22 action to forfeit or cancel the insurer's charter in the manner
23 provided for the forfeiture or cancellation of the charter of an
24 insurer that is totally reinsured or liquidated. (V.T.I.C. Art.
25 21.28-A, Sec. 5 (part).)

26 [Sections 441.303-441.350 reserved for expansion]

1 SUBCHAPTER H. AGENTS OF RECORD FOR CERTAIN INSUREDS

2 Sec. 441.351. AGENTS OF RECORD. (a) Unless otherwise
3 prohibited, the supervisor, conservator, or receiver of an insurer
4 shall provide to the insured's agent of record a copy of each
5 communication provided to an insured if, in the judgment of the
6 supervisor, conservator, or receiver, providing the copy will serve
7 to materially protect the interests of policyholders. The
8 supervisor, conservator, or receiver may also request the
9 assistance of any statewide association of insurance agents in
10 providing to the association's members information that, in the
11 judgment of the supervisor, conservator, or receiver, may serve to
12 materially protect policyholders' interests.

13 (b) If the supervisor, conservator, or receiver sells a
14 delinquent insurer's policies to another insurer, the purchaser
15 shall:

16 (1) recognize the pecuniary interest of the agent of
17 record in the policies being sold, regardless of whether the
18 purchaser customarily conducts the purchaser's business through
19 insurance agents;

20 (2) conduct the purchaser's business with the insured
21 through the agent of record; and

22 (3) provide to the agent of record a written limited
23 agency contract providing the terms that apply to the conduct of
24 their business together.

25 (c) A limited agency contract provided under Subsection (b)
26 must provide a level of commission that is reasonable, adequate,
27 and nonconfiscatory.

1 (d) This subchapter does not prohibit the agent of record
2 from renewing with another insurer an insurance policy purchased by
3 an insurer from a delinquent insurer.

4 (e) This section does not apply to:

5 (1) a life, accident, or health insurance policy or
6 contract delivered or issued for delivery by an insurer organized
7 or operating under Chapter 841, 882, 884, 887, 888, or 982;

8 (2) a contract or certificate delivered or issued for
9 delivery by a group hospital service corporation organized under
10 Chapter 842; or

11 (3) a contract or evidence of coverage delivered or
12 issued for delivery by a health maintenance organization operating
13 under a certificate of authority issued under Chapter 843.
14 (V.T.I.C. Art. 21.28-A, Sec. 4A.)

15 CHAPTER 442. LIQUIDATION, REHABILITATION, REORGANIZATION, OR
16 CONSERVATION OF INSURERS

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27 [Sections 442.608-442.650 reserved for expansion]

1 SUBCHAPTER N. TRANSFER OR DISPOSAL OF EXCESS ASSETS

2 Sec. 442.651. TRANSFER OF REMAINING ASSETS OF STOCK
3 INSURANCE COMPANY TO AGENT

4 Sec. 442.652. DISPOSAL OF REMAINING ASSETS OF INSURER
5 OTHER THAN STOCK INSURANCE COMPANY

6 Sec. 442.653. TRANSFER OF REMAINING ASSETS OF INSURER
7 TO GUARANTY ASSOCIATION

8 [Sections 442.654-442.700 reserved for expansion]

9 SUBCHAPTER O. DURATION AND REOPENING OF RECEIVERSHIP

10 Sec. 442.701. LIMITATION ON DURATION OF RECEIVERSHIP

11 Sec. 442.702. REOPENING OF RECEIVERSHIP

12 [Sections 442.703-442.750 reserved for expansion]

13 SUBCHAPTER P. ANCILLARY DELINQUENCY PROCEEDINGS

14 Sec. 442.751. APPOINTMENT OF ANCILLARY RECEIVER

15 Sec. 442.752. POWERS AND DUTIES OF ANCILLARY RECEIVER

16 Sec. 442.753. COORDINATION WITH RECEIVER IN OTHER
17 STATE

18 Sec. 442.754. APPLICABILITY OF CHAPTER TO ANCILLARY
19 DELINQUENCY PROCEEDINGS

20 [Sections 442.755-442.800 reserved for expansion]

21 SUBCHAPTER Q. AGENCY CONTRACTS WITH CERTAIN INSURERS

22 Sec. 442.801. REQUIRED CONTRACT PROVISION

23 Sec. 442.802. DISPOSITION OF PREMIUMS

24 Sec. 442.803. EFFECT OF SUBCHAPTER ON ACTION BY
25 RECEIVER AGAINST AGENT

26 Sec. 442.804. AGENT NOT RECEIVER'S AGENT

27 CHAPTER 442. LIQUIDATION, REHABILITATION, REORGANIZATION, OR

1 CONSERVATION OF INSURERS

2 SUBCHAPTER A. GENERAL PROVISIONS

3 Sec. 442.001. DEFINITIONS. (a) In this chapter:

4 (1) "Assets" means all property, whether specifically
5 mortgaged, pledged, deposited, or otherwise encumbered for the
6 security or benefit of specified persons or a limited class or
7 classes of persons. The term includes all deposits and funds of a
8 special or trust nature.

9 (2) "Delinquency proceeding" means a proceeding
10 initiated in a court of this state against an insurer to liquidate,
11 rehabilitate, reorganize, or conserve the insurer.

12 (3) "Insurer" means any organization, corporation, or
13 person that engages in the business of insurance, other than an
14 organization, corporation, or person that is specifically made
15 exempt from the application of this chapter by another statute that
16 references this chapter. The term includes:

- 17 (A) a capital stock company;
18 (B) a reciprocal or interinsurance exchange;
19 (C) a Lloyd's plan;
20 (D) a fraternal benefit society;
21 (E) a mutual or mutual assessment company of any
22 kind, including:

- 23 (i) a statewide mutual assessment company;
24 (ii) a local mutual aid association;
25 (iii) a burial association;
26 (iv) a county mutual insurance company; and
27 (v) a farm mutual insurance company; and

1 (F) a fidelity, guaranty, or surety company.

2 (4) "Person" means an individual, association,
3 corporation, partnership, or other private legal entity.

4 (5) "Receiver" means a person appointed to act as
5 receiver under Section 442.051. The term includes the commissioner
6 or a person appointed by the commissioner to act as special deputy
7 receiver.

8 (b) For purposes of this chapter, "court" means the court in
9 which a delinquency proceeding is pending, unless the context
10 clearly indicates otherwise. (V.T.I.C. Art. 21.28, Secs. 1(a)
11 (part), (b), (c), (d), (f), (g); New.)

12 Sec. 442.002. LIQUIDATION OVERSIGHT DIVISION EMPLOYEES.
13 The employees of the commissioner acting as receiver are employees
14 of the department for the purposes of:

15 (1) reporting payroll information to the uniform
16 statewide accounting system; and

17 (2) submitting vouchers to the comptroller for the
18 payment of the employees' salaries. (V.T.I.C. Art. 21.28, Sec.
19 12A(b).)

20 Sec. 442.003. OVERSIGHT OF SPECIAL DEPUTY RECEIVERS AND
21 GUARANTY ASSOCIATIONS. The commissioner shall oversee special
22 deputy receivers and guaranty associations. (V.T.I.C. Art. 21.28,
23 Sec. 2(a) (part).)

24 Sec. 442.004. CONFLICT WITH OTHER LAW. If this chapter
25 conflicts with any other law, this chapter prevails. (V.T.I.C.
26 Art. 21.28, Secs. 12A(a-1) (part), 16 (part).)

27 [Sections 442.005-442.050 reserved for expansion]

1 SUBCHAPTER B. GENERAL PROVISIONS REGARDING RECEIVER

2 Sec. 442.051. RECEIVER. If, under a law of this state, a
3 court of competent jurisdiction finds that a receiver should take
4 charge of the assets of an insurer domiciled in this state, the
5 commissioner or a person appointed as a special deputy receiver by
6 the commissioner under a contract shall act as receiver. (V.T.I.C.
7 Art. 21.28, Sec. 2(a) (part).)

8 Sec. 442.052. APPOINTMENT OF SPECIAL DEPUTY RECEIVER. (a)
9 The commissioner may appoint, set the compensation of, and contract
10 with one or more qualified special deputy receivers to act for the
11 commissioner under this code.

12 (b) The commissioner shall:

13 (1) specify requirements for the position of special
14 deputy receiver; and

15 (2) use a competitive bidding process to select
16 special deputy receivers.

17 (c) In making an appointment under this section, the
18 commissioner shall attempt to reflect the ethnic, racial, and
19 geographic diversity of the state.

20 (d) A special deputy receiver serves at the pleasure of the
21 commissioner. (V.T.I.C. Art. 21.28, Secs. 2(a) (part), 12(b)
22 (part), (h) (part).)

23 Sec. 442.053. PERFORMANCE BOND REQUIRED. A special deputy
24 receiver must file with the commissioner a bond that is:

25 (1) in an amount established by the commissioner;

26 (2) payable to the commissioner for the benefit of
27 injured parties; and

1 (3) conditioned on:

2 (A) the faithful performance of the special
3 deputy receiver's duties; and

4 (B) the proper accounting for all money and
5 property received or administered by the special deputy receiver.
6 (V.T.I.C. Art. 21.28, Sec. 12(a).)

7 Sec. 442.054. POWERS OF SPECIAL DEPUTY RECEIVER. (a)
8 Unless restricted by the commissioner, a special deputy receiver
9 has all the powers of a receiver granted under this code and may
10 perform any act on behalf of the commissioner as receiver.

11 (b) If expressly authorized by the commissioner, a special
12 deputy receiver may employ employees and agents, legal counsel,
13 actuaries, accountants, appraisers, consultants, and other
14 personnel the special deputy receiver considers necessary to assist
15 in the performance of the receiver's duties. The expenses of
16 employing those persons are expenses of the receivership payable
17 out of money or other assets of the insurer. (V.T.I.C. Art. 21.28,
18 Secs. 12(b) (part), (h) (part).)

19 Sec. 442.055. RECEIVER CONSIDERED TO ACT ON BEHALF OF
20 RECEIVERSHIP ESTATE. (a) In performing the duties of receiver
21 under this chapter, the commissioner, a special deputy receiver, or
22 an agent or employee of the commissioner or special deputy receiver
23 is considered to act on behalf of the receivership estate.

24 (b) Chapter 105, Civil Practice and Remedies Code, does not
25 apply to an action taken under this chapter. (V.T.I.C. Art. 21.28,
26 Sec. 2(1).)

27 Sec. 442.056. IMMUNITY. (a) The following persons are not

1 liable, and a cause of action does not arise against any of the
2 following persons, for a good faith action or failure to act in
3 exercising powers and performing duties under this chapter:

4 (1) the commissioner or an agent or employee of the
5 commissioner; or

6 (2) a special deputy receiver or an agent or employee
7 of the special deputy receiver.

8 (b) The attorney general shall defend an action to which
9 Subsection (a) applies that is brought against a person described
10 by that subsection, including an action brought after the
11 defendant's service with the commissioner, a special deputy
12 receiver, or the department has terminated, or after the close of
13 the receivership out of which the action arises. This subsection
14 does not require the attorney general to defend a person with
15 respect to an issue other than the applicability or effect of the
16 immunity provided by Subsection (a). (V.T.I.C. Art. 21.28, Secs.
17 2(j), (k).)

18 [Sections 442.057-442.100 reserved for expansion]

19 SUBCHAPTER C. CONDUCT OF DELINQUENCY PROCEEDINGS: GENERAL

20 PROVISIONS

21 Sec. 442.101. VENUE. Exclusive venue of delinquency
22 proceedings is in Travis County. (V.T.I.C. Art. 21.28, Sec. 2(i).)

23 Sec. 442.102. RIGHTS AND LIABILITIES ESTABLISHED AS OF DATE
24 DELINQUENCY PROCEEDING BEGINS. Except as otherwise directed by the
25 court or expressly provided by this chapter, the rights and
26 liabilities of an insurer that is the subject of a delinquency
27 proceeding and of all other persons interested in the insurer's

1 estate, including the insurer's creditors, policyholders, members,
2 officers, directors, shareholders, and agents, are fixed as of the
3 date of the commencement of the delinquency proceeding, subject to
4 the provisions of Subchapter E relating to the rights of claimants
5 holding unliquidated or undetermined claims or demands. (V.T.I.C.
6 Art. 21.28, Sec. 2(c).)

7 Sec. 442.103. TITLE TO ASSETS; PRIORITY OF RECEIVER'S
8 RIGHTS. (a) The assets of an insurer that is the subject of a
9 delinquency proceeding are in the custody of the court as of the
10 date of the commencement of the proceeding.

11 (b) The receiver is vested by operation of law with the
12 title to all of the insurer's property, contracts, and rights of
13 action, wherever located, as of the date a court order is entered
14 directing possession to be taken. The title of the receiver relates
15 back to the date of the commencement of the delinquency proceeding
16 unless the court provides otherwise.

17 (c) A contractual lien or statutory landlord's lien under
18 Chapter 54, Property Code, that arises after the date of the
19 commencement of the delinquency proceeding is secondary and
20 inferior to the rights of the receiver.

21 (d) The filing or recording of an order described by
22 Subsection (b) in any record office of the state provides the same
23 notice as would be provided by a deed, bill of sale, or other
24 evidence of title filed or recorded by the insurer. (V.T.I.C. Art.
25 21.28, Sec. 2(b).)

26 Sec. 442.104. DUTY OF RECEIVER TO TAKE POSSESSION OF
27 ASSETS; INVENTORY. (a) The receiver shall promptly take

1 possession of the assets of an insurer that is the subject of a
2 delinquency proceeding and, as the court directs, manage those
3 assets in the person's own name as receiver or in the name of the
4 insurer.

5 (b) The receiver is responsible for all assets coming into
6 the receiver's possession.

7 (c) The receiver shall promptly prepare, in duplicate, an
8 inventory of the insurer's assets. The receiver shall file one copy
9 of the inventory with the department and one copy in the office of
10 the clerk of the court. The copies of the inventory are open for
11 inspection. (V.T.I.C. Art. 21.28, Secs. 2(a) (part), (d) (part),
12 (f).)

13 Sec. 442.105. AUTHORITY TO REQUIRE BOND TO PROTECT ASSETS.
14 The court may require:

- 15 (1) the receiver to provide one or more bonds; and
16 (2) if considered desirable by the court for the
17 protection of the assets, a special deputy receiver or other
18 assistant or employee appointed under this chapter to provide one
19 or more bonds. (V.T.I.C. Art. 21.28, Sec. 2(d) (part).)

20 Sec. 442.106. DELIVERY OF PROPERTY AND RECORDS TO RECEIVER.

21 (a) The officers, directors, shareholders, members, trustees,
22 managing general agents, agents, administrators, claims adjusters,
23 managers, attorneys-in-fact, and associate, deputy, or substitute
24 attorneys-in-fact of a delinquent insurer shall immediately
25 deliver to the receiver, without cost to the receiver, all
26 property, books, records, accounts, documents, and other writings
27 of the delinquent insurer or that relate to the business of the

1 delinquent insurer.

2 (b) If by contract or otherwise any property, book, record,
3 account, document, or other writing is owned by a person described
4 by Subsection (a), the owner shall copy the item and deliver the
5 copy to the receiver. The owner shall retain the original until
6 notification that the item is no longer required in the
7 administration of the insurer's estate or until another time as the
8 court, after notice and hearing, directs. A copy is considered to
9 be a record of the delinquent insurer under Subchapter I. (V.T.I.C.
10 Art. 21.28, Sec. 4(e).)

11 Sec. 442.107. DUTY OF RECEIVER TO CONDUCT INSURER'S
12 BUSINESS. (a) On taking possession of the assets of a delinquent
13 insurer, the receiver shall, subject to the direction of the court,
14 immediately begin conducting the insurer's business or taking any
15 steps necessary to conserve the assets and protect the rights of
16 policyholders and claimants for the purpose of liquidating,
17 rehabilitating, reinsuring, reorganizing, or conserving the
18 affairs of the insurer.

19 (b) Notwithstanding the requirements of Subsection (a) or
20 the terms of any insurance contract issued by a delinquent insurer,
21 the receiver is not required to defend any action against an insured
22 of a delinquent insurer. (V.T.I.C. Art. 21.28, Sec. 2(e).)

23 Sec. 442.108. DISPOSAL OF PROPERTY; SETTLING OF CLAIMS.

24 (a) Except as provided by Subsection (b), the receiver may, subject
25 to the approval of the court:

26 (1) sell or otherwise dispose of all or part of the
27 property of an insurer against whom a delinquency proceeding has

1 been brought; and

2 (2) sell or compound all doubtful or uncollectible
3 debts, or claims owed by or to the insurer, including claims based
4 on an assessment levied against a member of a mutual insurer, a
5 reciprocal or interinsurance exchange, or a Lloyd's plan.

6 (b) Without obtaining the approval of the court, the
7 receiver may compromise or compound a debt or claim described by
8 Subsection (a)(2) or sell an item of the insurer's property on terms
9 the receiver considers to be in the best interest of the insurer if
10 the amount of the debt or claim or the value of the item of property
11 does not exceed \$10,000, excluding interest.

12 (c) The receiver may, subject to the approval of the court,
13 sell, agree to sell, or offer to sell any assets of the insurer to
14 creditors of the insurer who seek to participate in the purchase of
15 the assets, to be paid for wholly or partly out of dividends payable
16 to those creditors. On application of the receiver, the court may
17 designate representatives to act for those creditors in purchasing,
18 holding, or otherwise managing those assets, and the receiver may,
19 subject to the approval of the court, advance the expenses of those
20 representatives against the security of the claims of those
21 creditors.

22 (d) The receiver may, subject to the approval of the court
23 and the commissioner, as required by this code, sell or otherwise
24 dispose of the charter or certificate of authority of the insurer
25 separately from the outstanding liabilities of the insurer.
26 (V.T.I.C. Art. 21.28, Sec. 2(g).)

27 Sec. 442.109. BORROWING ON PLEDGE OF ASSETS. (a) To

1 facilitate the rehabilitation, liquidation, conservation, or
2 dissolution of an insurer under this chapter, the receiver may,
3 subject to the approval of the court:

4 (1) borrow money;

5 (2) execute, acknowledge, and deliver a note or other
6 evidence of indebtedness for the loan;

7 (3) secure the repayment of the loan by the mortgage,
8 pledge, assignment, or transfer in trust of any or all of the
9 insurer's property; and

10 (4) take any other action necessary and proper to
11 obtain and provide for the repayment of the loan.

12 (b) The receiver is not under any obligation in the person's
13 personal capacity or official capacity as receiver to repay any
14 loan made under this section. (V.T.I.C. Art. 21.28, Sec. 15.)

15 Sec. 442.110. DEPOSITORIES; ACCOUNTING. (a) Except as
16 otherwise provided by this section, the receiver shall promptly
17 deposit all money collected into the Texas Treasury Safekeeping
18 Trust Company in accordance with procedures established by the
19 comptroller.

20 (b) If determined advantageous by the receiver in the
21 receiver's sound financial judgment, the receiver may deposit the
22 money in one or more banks or savings and loan associations in this
23 state insured by a federal agency that provides for deposit
24 insurance. If the amount deposited exceeds the maximum amount
25 insured by the appropriate federal agency, the receiver shall,
26 without the need for court approval, enter into any contracts and
27 require any security the receiver considers proper to safeguard the

1 deposit.

2 (c) The receiver shall account for all money collected or
3 realized from the assets of each insurer for which the receiver has
4 been appointed separately from all other money. (V.T.I.C. Art.
5 21.28, Sec. 2(h).)

6 Sec. 442.111. REPORTS ON STATUS OF PROCEEDING. The
7 receiver shall:

8 (1) file with the department on the department's
9 request reports showing the operation, receipts, expenditures, and
10 general condition of any insurer of which the receiver is in charge
11 at that time;

12 (2) on request, file a copy of a report described by
13 Subdivision (1) with the court in which the receivership proceeding
14 is pending; and

15 (3) file a final report regarding each insurer that
16 has been liquidated or handled that:

17 (A) shows and fully explains all receipts and
18 expenditures; and

19 (B) accurately states the disposition of all of
20 the insurer's assets. (V.T.I.C. Art. 21.28, Sec. 12(c).)

21 Sec. 442.112. BUSINESS PLAN REPORTS; OTHER PERIODIC
22 REPORTS. (a) A special deputy receiver shall submit a monthly
23 written report to the court and the commissioner that states the
24 special deputy receiver's business plan for the receivership,
25 including:

26 (1) the expenses incurred in administering the
27 receivership during the preceding month and an estimate of those

1 expenses for the succeeding month;

2 (2) a cost-benefit analysis of the expenditure of
3 money other than money spent to pay claims;

4 (3) a budget of monthly expenses that explains any
5 variation from the original projection; and

6 (4) a list of any lawyers or law firms that offered to
7 represent or represented the special deputy receiver in relation to
8 the special deputy receiver's duties under this chapter, and any
9 hours billed or fees paid to a lawyer or law firm that represented
10 the special deputy receiver.

11 (b) The special deputy receiver shall submit the business
12 plan report to the attorney general quarterly, and the attorney
13 general may make recommendations to the commissioner based on the
14 report.

15 (c) In addition to the business plan report, the special
16 deputy receiver shall submit to the commissioner a monthly report
17 relating to the special deputy receiver's activities in
18 administering the receivership.

19 (d) On written application by the special deputy receiver
20 and with the approval of the commissioner, the court may suspend the
21 requirement for monthly reports, or require less frequent reports,
22 on a showing that the costs of the monthly reports exceed the
23 benefit derived from those reports. (V.T.I.C. Art. 21.28, Sec.
24 2(a) (part).)

25 Sec. 442.113. REPORT TO INSURANCE FRAUD UNIT. A special
26 deputy receiver shall report to the insurance fraud unit any
27 information discovered in the administration of a receivership

1 relating to possible fraudulent, deceptive, or unlawful conduct by
2 an insurer. (V.T.I.C. Art. 21.28, Sec. 12(i).)

3 Sec. 442.114. PAYMENT OF LIQUIDATION EXPENSES; OBJECTION.

4 (a) The commissioner or special deputy receiver shall pay the
5 compensation of the special deputy receiver and all other expenses
6 of a liquidation out of the money or other assets of the insurer.

7 (b) Each month, the receiver shall present to the court an
8 itemized accounting, sworn to by the receiver, of the expenses. The
9 court shall approve the accounting unless a party at interest files
10 an objection on or before the 10th day after the date the accounting
11 is presented. The objection must specify each item to which the
12 party objects and the ground for that objection.

13 (c) The court shall set a hearing on an objection filed
14 under Subsection (b) and shall notify the parties of the hearing.
15 The objecting party has the burden of proof to show that an item to
16 which the party objected is improper, unnecessary, or excessive.
17 (V.T.I.C. Art. 21.28, Sec. 12(b) (part).)

18 Sec. 442.115. INJUNCTIONS AND OTHER ORDERS. (a) On
19 application by the receiver, the receivership court, with or
20 without notice, may issue:

21 (1) an injunction restraining the insurer named in the
22 order, the insurer's officers, directors, shareholders, members,
23 trustees, agents, employees, policyholders, attorneys, managers,
24 attorneys-in-fact, including associate, deputy, and substitute
25 attorneys-in-fact, and all other persons from:

26 (A) engaging in the insurer's business; or

27 (B) wasting or disposing of the insurer's

1 property; or

2 (2) an order requiring the delivery of the insurer's
3 assets to the receiver.

4 (b) At any time during a delinquency proceeding, the
5 receivership court may issue an injunction or order considered
6 necessary to prevent:

7 (1) interference with the receiver or the proceeding;

8 (2) waste of the insurer's assets;

9 (3) the initiation or prosecution of an action;

10 (4) the obtaining of a preference, judgment,
11 attachment, garnishment, or other lien; or

12 (5) the making of a levy against the insurer or against
13 all or part of the insurer's assets. (V.T.I.C. Art. 21.28, Secs.
14 4(a), (b).)

15 Sec. 442.116. EFFECT OF INJUNCTION OR ORDER: DENIAL OF
16 CLAIMS AND OTHER DEMANDS. The receiver for an insurer may deny a
17 claim, judgment, lien, preference, or demand made or obtained
18 against the insurer or the receiver after the date of receivership
19 in derogation of the terms of an injunction or order under Section
20 442.115 until:

21 (1) proof of the justness of the claim, judgment,
22 lien, preference, or demand is made before the receivership court;
23 and

24 (2) the court approves the claim, judgment, lien,
25 preference, or demand. (V.T.I.C. Art. 21.28, Sec. 4(c).)

26 Sec. 442.117. OTHER PENDING ACTIONS; IMMUNITY. (a) A
27 judgment or order of a court of this state or of another

1 jurisdiction in an action pending by or against a delinquent
2 insurer that is rendered after the commencement of the delinquency
3 proceeding is not binding on the receiver unless the receiver was
4 made a party to the action.

5 (b) A receiver and the receiver's agents and employees are
6 not liable for, and a cause of action does not arise against the
7 receiver or the receiver's agents or employees for, an act or
8 failure to act by the person that relates to the adjustment,
9 negotiation, or settlement of a claim. (V.T.I.C. Art. 21.28, Sec.
10 4(f).)

11 Sec. 442.118. EXTENSION OF TIME FOR PLEADING;
12 INAPPLICABILITY OF CERTAIN LAWS. (a) The receiver is not required
13 to plead to any action in which the receiver is a proper plaintiff
14 or defendant in any court in this state until the first anniversary
15 of the date the receiver is appointed.

16 (b) Sections 64.033, 64.052, 64.053, and 64.056, Civil
17 Practice and Remedies Code, do not apply to an insolvent insurer
18 being administered under this chapter. (V.T.I.C. Art. 21.28, Sec.
19 4(g).)

20 Sec. 442.119. EXCLUSIVE JURISDICTION OF OTHER ACTIONS. The
21 court of competent jurisdiction of the county in which the
22 delinquency proceeding is pending has exclusive venue to hear and
23 determine all actions or proceedings instituted by or against the
24 insurer or receiver after the commencement of the delinquency
25 proceeding. (V.T.I.C. Art. 21.28, Sec. 4(h).)

26 [Sections 442.120-442.150 reserved for expansion]

1 SUBCHAPTER D. GENERAL SUBPOENA POWERS; WITNESSES

2 AND PRODUCTION OF RECORDS

3 Sec. 442.151. SUBPOENA AUTHORITY. The receiver may request
4 the court to issue ex parte a subpoena to compel the attendance and
5 testimony of a witness before the receiver and the production of any
6 book, account, paper, correspondence, or other record relating to a
7 matter that pertains to the receivership estate. For that purpose:

8 (1) the court has statewide subpoena power and may
9 compel attendance of witnesses and production of records before the
10 receiver at the receiver's offices in Austin; and

11 (2) the receiver or the receiver's designated
12 representative may administer oaths, examine witnesses, and
13 receive evidence. (V.T.I.C. Art. 21.28, Sec. 4(d) (part).)

14 Sec. 442.152. SERVICE OF SUBPOENA. A subpoena issued under
15 this subchapter may be served, at the receiver's discretion, by the
16 receiver, the receiver's authorized agent, a sheriff, or a
17 constable. The sheriff's or constable's fee for serving the
18 subpoena is the same as the fee paid the sheriff or constable for
19 similar services. (V.T.I.C. Art. 21.28, Sec. 4(d) (part).)

20 Sec. 442.153. ENFORCEMENT OF SUBPOENA. (a) On application
21 of the receiver in the case of disobedience of a subpoena or the
22 contumacy of a witness appearing before the receiver or the
23 receiver's designated representative, the court may issue an order
24 requiring the person subpoenaed to obey the subpoena, give
25 evidence, or produce any book, account, paper, correspondence, or
26 other record relating to the matter in question.

27 (b) The court may punish as contempt the failure to obey an

1 order under this section. (V.T.I.C. Art. 21.28, Sec. 4(d) (part).)

2 Sec. 442.154. COMPENSATION FOR ATTENDANCE. (a) A witness
3 who is not a party and who is required to appear before the receiver
4 is entitled to receive:

5 (1) reimbursement for mileage for traveling to or from
6 the place where the witness's presence is required, if the place is
7 more than 25 miles from the witness's place of residence, in the
8 same amount for each mile as the mileage travel allowance for a
9 state employee; and

10 (2) a fee for each day or part of a day the witness is
11 required to be present as a witness that is equal to the greater of:

12 (A) \$10; or

13 (B) the per diem travel allowance of a state
14 employee.

15 (b) Each disbursement made to pay a fee under Subsection (a)
16 shall be included and paid in the manner provided for the payment of
17 other expenses under Sections 442.054, 442.111, and 442.114 and
18 Subchapter J. (V.T.I.C. Art. 21.28, Sec. 4(d) (part).)

19 Sec. 442.155. USE AS EVIDENCE. (a) On certification by the
20 receiver or commissioner under official seal, any book, account,
21 paper, correspondence, document, or other record produced or
22 testimony taken under this chapter and held by the receiver is
23 admissible in evidence in a case without:

24 (1) prior proof of correctness; or

25 (2) other proof except the certificate of the receiver
26 or commissioner that the book, account, paper, correspondence,
27 document, or other record or the testimony was received from the

1 person producing the material or testifying.

2 (b) The certified book, account, paper, correspondence,
3 document, or other record, or a certified copy of the book, account,
4 paper, correspondence, document, or other record, is prima facie
5 evidence of the facts disclosed by that item.

6 (c) This section does not limit any other provision of this
7 chapter or any law that provides for the admission or evidentiary
8 value of evidence. (V.T.I.C. Art. 21.28, Sec. 4(d) (part).)

9 Sec. 442.156. PROTECTIVE ORDERS. A person served with a
10 subpoena under this subchapter may file a motion with the court for
11 a protective order as provided by Rule 192.6, Texas Rules of Civil
12 Procedure. (V.T.I.C. Art. 21.28, Sec. 4(d) (part).)

13 [Sections 442.157-442.200 reserved for expansion]

14 SUBCHAPTER E. CLAIMS AGAINST RECEIVERSHIP ESTATE

15 Sec. 442.201. PROOF OF CLAIM REQUIRED; DEADLINE. (a) If a
16 liquidation, rehabilitation, or conservation order has been
17 entered in a delinquency proceeding, each person who may have a
18 claim against the insurer as provided by Section 442.551, including
19 a claimant with a secured claim or a claim based on trust or escrow
20 funds, must present a proof of claim to the receiver:

21 (1) at a place specified by the receiver; and

22 (2) not later than the date specified by the court,
23 which may not be before the 90th day after the date the order
24 specifying the date is entered.

25 (b) The receiver shall notify all persons who may have a
26 claim against the insurer, as disclosed by the insurer's books and
27 records, regarding the requirement to present a proof of claim to

1 the receiver. The notice must:

2 (1) specify the last day for presenting a proof of
3 claim; and

4 (2) be given in a manner determined by the court.

5 (c) The receiver must receive the required proof of claim
6 before paying a claim.

7 (d) If a proof of claim is not presented on or before the
8 date specified by the court as required by Subsection (a), the claim
9 may not share in any distribution of the insurer's assets by the
10 receiver, except that, subject to court approval, the receiver may
11 accept a claim presented not later than the 90th day after the date
12 notice is mailed to the person under Subsection (b). (V.T.I.C. Art.
13 21.28, Secs. 3(a), (b).)

14 Sec. 442.202. FORM AND CONTENT OF PROOF OF CLAIM. (a) A
15 proof of claim must be in writing and signed by the claimant and
16 must include:

17 (1) a statement of the claim;

18 (2) a description of the consideration for the claim;

19 (3) a statement of whether securities are held as
20 consideration for the claim and, if so, a description of the
21 securities;

22 (4) a statement of any right of priority of payment for
23 the claim or other specific right asserted by the claimant;

24 (5) a statement of whether a payment has been made on
25 the claim and, if so, a description of the payment made and the
26 source of the payment;

27 (6) a statement that the amount claimed is justly owed

1 by the insurer to the claimant; and

2 (7) any other matter that is required by the court in
3 which the receivership is pending.

4 (b) A proof of claim must be in a form prescribed by the
5 receiver, except that the receiver may accept a proof of claim on a
6 form:

7 (1) used for proof of claim by the insurer before the
8 receivership; or

9 (2) prepared or accepted by a receiver or a guaranty
10 fund in another state, if the receiver in this state is an ancillary
11 receiver.

12 (c) A proof of claim must be made under oath, unless the
13 receiver waives the oath.

14 (d) A written instrument on which a claim is based must be
15 presented with a proof of claim unless lost or destroyed. After the
16 instrument is presented and until final disposition of the claim,
17 the receiver may permit the claimant to substitute a copy of the
18 instrument. If the instrument is lost or destroyed, a statement of
19 that fact and of the circumstances of the loss or destruction must
20 be made under oath and presented with the claim.

21 (e) The receiver may accept from each authorized guaranty
22 association a single proof of claim combining all claims and
23 related administrative expenses assigned to that association. A
24 proof of claim presented by a guaranty association must contain any
25 other information the receiver requires. (V.T.I.C. Art. 21.28,
26 Sec. 3(c).)

27 Sec. 442.203. UNLIQUIDATED OR UNDETERMINED CLAIM OR DEMAND.

1 (a) A claim based on an unliquidated or undetermined demand must be
2 presented within the time limit provided by this chapter for
3 presenting a claim. The claim may not share in any distribution to
4 claimants until the claim is definitely liquidated, determined, and
5 allowed. After the claim is liquidated, determined, and allowed,
6 the claim shares ratably with the claims of the same class in all
7 subsequent distributions.

8 (b) For the purposes of this chapter, a claim or demand is
9 considered unliquidated or undetermined if:

10 (1) a right of action on the claim or demand accrued as
11 of the date:

12 (A) the delinquency proceeding was commenced; or

13 (B) the insurance policy was canceled, if
14 applicable; and

15 (2) the liability on the claim or demand has not been
16 determined or the amount of the claim or demand has not been
17 liquidated.

18 (c) If the receiver is otherwise able to close the
19 receivership proceeding, the proposed closing is a sufficient
20 ground to reject any remaining unliquidated or undetermined claim
21 or demand. The receiver shall notify the claimant of the receiver's
22 intention to close the proceeding and shall allow liquidation or
23 determination of those claims during the 60 days after the date of
24 the notice. If a remaining claim is not liquidated or determined on
25 or before the 60th day after the date of the notice, the receiver
26 may reject the claim. (V.T.I.C. Art. 21.28, Sec. 3(d).)

27 Sec. 442.204. THIRD-PARTY CLAIMS AND DEMANDS. (a) If a

1 court has entered a liquidation, rehabilitation, or conservation
2 order in a delinquency proceeding, a person who has a cause of
3 action against an insured of the insurer under a liability
4 insurance policy issued by the insurer is entitled to file a claim
5 with the receiver, regardless of whether the claim is unliquidated
6 or undetermined.

7 (b) A claim described by Subsection (a) may be approved if:

8 (1) it may be reasonably inferred from the proof
9 presented on the claim that the person would be able to obtain a
10 judgment on the cause of action against the insured;

11 (2) the person provides suitable proof that, other
12 than those already presented, no additional valid claims against
13 the insurer arising out of the person's cause of action may be made;
14 and

15 (3) the total liability of the insurer to all
16 claimants arising out of the same act of the insured is not greater
17 than the total liability of the insurer would be if the insurer were
18 not in liquidation, rehabilitation, or conservation.

19 (c) A judgment entered against an insured or insurer before
20 the date of the commencement of the delinquency proceeding may not
21 be given a priority higher than Class 3 under Section 442.551 unless
22 the judgment creditor proves to the receiver's satisfaction the
23 allegations supporting the judgment.

24 (d) A judgment against an insured taken after the date of
25 the commencement of a delinquency proceeding with respect to the
26 insurer may not be considered in the proceeding as evidence of
27 liability or of the amount of damages. A judgment against an

1 insured taken by default or by collusion before the commencement of
2 the delinquency proceeding may not be considered in the proceeding
3 as conclusive evidence of the liability of the insured on the cause
4 of action or of the amount of damages to which the person is
5 entitled. (V.T.I.C. Art. 21.28, Sec. 3(e).)

6 Sec. 442.205. OFFSETS. (a) Except as provided by
7 Subsection (b), the receiver shall set off mutual debts and mutual
8 credits arising out of one or more contracts between the insurer and
9 another person in connection with a claim or delinquency
10 proceeding, and the receiver may allow or pay only the balance.

11 (b) The receiver may not allow an offset in favor of a person
12 if:

13 (1) the obligation of the insurer to the person would
14 not, on the date of the commencement of the delinquency proceeding
15 or as otherwise provided by Section 442.102, entitle the person to
16 share as a claimant in the assets of the insurer;

17 (2) the obligation of the insurer to the person was
18 purchased by or transferred to the person after the commencement of
19 the delinquency proceeding or for the purpose of increasing offset
20 rights;

21 (3) the obligation of the person is to pay:

22 (A) an assessment levied against the members of a
23 mutual insurer, a reciprocal or interinsurance exchange, or a
24 Lloyd's plan; or

25 (B) a balance on a subscription to the capital
26 stock of a stock insurance corporation;

27 (4) the obligation of the person is as a trustee or

1 fiduciary; or

2 (5) the obligation between the person and the insurer
3 arises from a reinsurance transaction in which the person or the
4 insurer assumed risks and obligations from the other party and then
5 ceded to that party substantially the same risks and obligations.

6 (c) The receiver shall provide a person with an accounting
7 statement identifying each debt that is due and payable. A person
8 shall promptly pay to the receiver any amount due and payable to the
9 insurer against which the person asserts an offset of mutual
10 credits that may become due and payable from the insurer in the
11 future. Notwithstanding Subchapter L or any other provision of
12 this chapter, the receiver shall promptly and fully refund, to the
13 extent of the person's prior payment, any mutual credits that
14 become due and payable to the person by the insurer. (V.T.I.C. Art.
15 21.28, Secs. 3(f), (g).)

16 Sec. 442.206. APPROVAL OR REJECTION OF CLAIM. (a) The
17 receiver may approve or reject a claim filed against the insurer.

18 (b) On a rejection of a claim in whole or in part, the
19 receiver shall notify the claimant in writing of the rejection.
20 (V.T.I.C. Art. 21.28, Sec. 3(h) (part).)

21 Sec. 442.207. APPEAL OF RECEIVER'S REJECTION OF CLAIM. (a)
22 The receiver's rejection of a claim may be appealed in the court.
23 The appeal must be brought within three months after the date of
24 service of notice of the rejection.

25 (b) If the receiver's action is appealed within the time
26 prescribed by Subsection (a), review is de novo as if originally
27 filed in the court and is subject to the rules of procedure and

1 appeal applicable to civil cases. The appeal is separate from the
2 delinquency proceeding, and an attempt to appeal the receiver's
3 action by intervening in the delinquency proceeding does not comply
4 with this subsection.

5 (c) If the receiver's action is not appealed within the time
6 prescribed by Subsection (a), the action is final and not subject to
7 judicial review. (V.T.I.C. Art. 21.28, Sec. 3(h) (part).)

8 Sec. 442.208. OBJECTION TO CLAIM BY INTERESTED PARTY. (a)
9 An interested party may object to a claim not rejected by the
10 receiver by filing an objection with the receiver.

11 (b) The receiver shall promptly present the objection to the
12 court for a determination after notice and hearing. (V.T.I.C. Art.
13 21.28, Sec. 3(h) (part).)

14 Sec. 442.209. REFERRAL OF CLAIM TO GUARANTY ASSOCIATION.
15 Notwithstanding any other provision of this chapter, the receiver
16 shall refer a claim covered by a guaranty fund created under Chapter
17 462, 463, or 2602 to the appropriate guaranty association for
18 processing. (V.T.I.C. Art. 21.28, Sec. 3(i).)

19 Sec. 442.210. WORKERS' COMPENSATION CLAIMS. (a) The
20 receiver shall notify the Texas Workers' Compensation Commission
21 immediately on a finding of insolvency or impairment with regard to
22 an insurance company that has in force any workers' compensation
23 coverage in this state.

24 (b) On receipt of the notice under Subsection (a), the Texas
25 Workers' Compensation Commission shall submit to the receiver a
26 list of active cases pending before the commission in which:

27 (1) the insurance company has accepted liability;

1 (2) it appears that a bona fide dispute does not exist;

2 (3) payments were begun before the finding of
3 insolvency or impairment; and

4 (4) payment of future or past workers' compensation
5 benefits is due.

6 (c) Notwithstanding the other provisions of this
7 subchapter, the receiver may begin or continue the payment of
8 claims on cases included in the list submitted under Subsection
9 (b).

10 (d) Files and other information delivered by the Texas
11 Workers' Compensation Commission to the receiver may be delivered
12 to the Texas Property and Casualty Insurance Guaranty Association.

13 (e) The Texas Workers' Compensation Commission shall report
14 to the department any act of a workers' compensation insurance
15 company that may indicate that the company is financially impaired,
16 delinquent, or insolvent. (V.T.I.C. Art. 21.28, Secs. 3A(a), (b),
17 (c), (d) (part), (e).)

18 [Sections 442.211-442.250 reserved for expansion]

19 SUBCHAPTER F. VOIDABLE TRANSFERS OR LIENS

20 Sec. 442.251. CERTAIN TRANSFERS OR LIENS VOIDABLE. A
21 transfer of or lien on the assets of an insurer is voidable if the
22 transfer or lien was:

23 (1) made or created:

24 (A) within four months before the date of the
25 commencement of the delinquency proceeding; and

26 (B) with the intent of giving to a creditor or
27 enabling the creditor to obtain a greater percentage of the

1 creditor's debt than is to be given to or obtained by another
2 creditor of the same class; and

3 (2) accepted by the creditor having reasonable cause
4 to believe that a preference described by Subdivision (1)(B) would
5 occur. (V.T.I.C. Art. 21.28, Sec. 5(a).)

6 Sec. 442.252. PERSONAL LIABILITY FOR VOIDABLE TRANSFER OR
7 LIEN. (a) The following persons are personally liable for the
8 property of the insurer or the benefit of that property received as
9 a result of a transfer or lien described by Section 442.251:

10 (1) each director, officer, agent, employee,
11 shareholder, member, attorney-in-fact, including an associate,
12 substitute, or deputy attorney-in-fact, underwriter, subscriber,
13 or other person acting on behalf of the insurer who is concerned in
14 the transfer or lien; and

15 (2) each person who, as a result of the transfer or
16 lien, receives the property of the insurer or the benefit of that
17 property.

18 (b) A person who is personally liable under Subsection (a)
19 shall account to the receiver for the benefit of the creditors of
20 the insurer. (V.T.I.C. Art. 21.28, Sec. 5(b).)

21 Sec. 442.253. AVOIDANCE OF TRANSFER OR LIEN; RECOVERY OF
22 PROPERTY. The receiver may:

23 (1) avoid a transfer of or lien on the assets of an
24 insurer that a creditor, shareholder, or member of the insurer
25 might have avoided; and

26 (2) recover the transferred property or the value of
27 that property from the person to whom the property was transferred

1 or from a person who received the property, unless the transferee or
2 recipient was a bona fide holder for value before the date of the
3 commencement of the proceeding. (V.T.I.C. Art. 21.28, Sec. 5(c).)

4 [Sections 442.254-442.300 reserved for expansion]

5 SUBCHAPTER G. ASSESSMENTS

6 Sec. 442.301. APPLICATION FOR ASSESSMENT. (a) Not later
7 than the fourth anniversary of the date of an order of
8 rehabilitation or liquidation of a domestic insurer, the receiver
9 may apply to the court to levy an assessment against the members of
10 a mutual insurance company, the members of a reciprocal or
11 interinsurance exchange, or the insureds of a Lloyd's plan who have
12 been issued an insurance policy that expressly provides that the
13 policy is subject to assessment.

14 (b) The application must state:

- 15 (1) the reasonable value of the insurer's assets;
16 (2) the insurer's probable liabilities; and
17 (3) the probable assessment, if any, necessary to pay
18 all possible claims and expenses in full, including expenses of
19 administration and collection. (V.T.I.C. Art. 21.28, Sec. 7(a).)

20 Sec. 442.302. LEVY. (a) After giving notice in the manner
21 designated by the court to each member or insured described by
22 Section 442.301, the court shall consider the application made
23 under that section and may levy one or more assessments, subject to
24 Subsection (c).

25 (b) The assessment or assessments must cover the excess of
26 the insurer's probable liabilities over the reasonable value of the
27 insurer's assets, together with the estimated cost of collection

1 and percentage of uncollectibility of the assessments.

2 (c) The court may not levy an assessment against a member or
3 insured with regard to an insurance policy that does not expressly
4 provide that the policy is subject to assessment. (V.T.I.C. Art.
5 21.28, Sec. 7(b).)

6 Sec. 442.303. COLLECTION. After the court enters an order
7 of assessment under Section 442.302 and after the time for appeal
8 expires, the receiver shall collect the assessments. The receiver
9 may bring an action in a court of competent jurisdiction in the
10 county in which the delinquency proceeding is pending to collect an
11 assessment. (V.T.I.C. Art. 21.28, Sec. 7(c).)

12 Sec. 442.304. SUBCHAPTER NOT EXCLUSIVE. The provisions
13 of this subchapter are in addition to any other remedies for the
14 levy and collection of assessments. (V.T.I.C. Art. 21.28, Sec.
15 7(d).)

16 [Sections 442.305-442.350 reserved for expansion]

17 SUBCHAPTER H. REINSURANCE

18 Sec. 442.351. REINSURER'S LIABILITY. (a) If the receiver
19 has a claim under an insurance policy covered by reinsurance, the
20 liability of the reinsurer to the receiver under the reinsured
21 contract may not be reduced because of the delinquency proceeding
22 against the delinquent insurer, regardless of any contrary
23 provision in the reinsurance contract, unless:

24 (1) the reinsurance contract or other written
25 agreement was entered into before the delinquency proceeding, is
26 otherwise permitted by law, and specifically provides another payee
27 of the reinsurance if the ceding insurer becomes insolvent; or

1 (2) the assuming insurer, with the consent of the
2 direct insured, has assumed in accordance with an assumption
3 reinsurance agreement the policy obligations of the ceding insurer:

4 (A) as direct obligations of the assuming insurer
5 to the payees under the policy; and

6 (B) in substitution for the obligations of the
7 ceding insurer to the payees.

8 (b) Except as provided by Subsection (a), any reinsurance is
9 payable to the receiver under a reinsured contract by the assuming
10 insurer on the basis of:

11 (1) an approved claim under Section 442.206; and

12 (2) a claim paid by a guaranty association under
13 Chapter 462, 463, or 2602 or by the guaranty association of another
14 state. (V.T.I.C. Art. 21.28, Sec. 10(a).)

15 Sec. 442.352. NOTICE OF CLAIM TO REINSURER; INTERPOSITION
16 OF DEFENSE. (a) Within a reasonable time after a claim against
17 the receiver under an insurance policy covered by reinsurance is
18 filed in the delinquency proceeding, the receiver shall give
19 written notice of the pendency of the claim to each affected
20 reinsurer.

21 (b) While the claim is pending, an affected reinsurer may,
22 at the reinsurer's expense, investigate the claim and interpose in
23 the proceeding in which the claim is to be adjusted any defense the
24 reinsurer considers available to the delinquent insurer or the
25 receiver.

26 (c) Subject to court approval, the expense incurred by an
27 assuming insurer under Subsection (b) is chargeable against the

1 delinquent insurer as part of the expense of liquidation to the
2 extent of a proportionate share of any benefit that may accrue to
3 the delinquent insurer solely as a result of the defense undertaken
4 by the assuming insurer. If two or more assuming insurers are
5 involved in the same claim and a majority in interest elect to
6 interpose a defense to the claim, the expense shall be apportioned
7 in accordance with the terms of the reinsurance agreement as if the
8 expense had been incurred by the ceding insurer. (V.T.I.C. Art.
9 21.28, Sec. 10(b).)

10 [Sections 442.353-442.400 reserved for expansion]

11 SUBCHAPTER I. RECORDS AND OTHER INFORMATION

12 Sec. 442.401. USE OF RECORDS AND OTHER INFORMATION AS
13 EVIDENCE. (a) A book, paper, document, or record of a delinquent
14 insurer received by the receiver and held in the course of the
15 delinquency proceeding or a certified copy of the book, paper,
16 document, or record signed and under the official seal of the
17 commissioner or receiver is admissible in evidence in a case
18 without proof of correctness or other proof except the certificate
19 of the commissioner or receiver that the book, paper, document, or
20 record was received from the custody of the delinquent insurer or
21 found among the insurer's effects.

22 (b) The certified original or a certified copy of a book,
23 paper, document, or record described by this section or Section
24 442.402 is prima facie evidence of the facts disclosed by the book,
25 paper, document, or record. (V.T.I.C. Art. 21.28, Secs. 11(a),
26 (c).)

27 Sec. 442.402. CERTIFICATES BY RECEIVER. (a) The receiver

1 may:

2 (1) certify to the correctness of a book, paper,
3 document, or record of the receiver's office, including a book,
4 paper, document, or record described by Section 442.401; and

5 (2) certify under seal of the commissioner to a fact
6 contained in a book, paper, document, or record of the department.

7 (b) A book, paper, document, or record certified as
8 described by Subsection (a) is admissible in evidence in any case in
9 which the original would be evidence. (V.T.I.C. Art. 21.28, Sec.
10 11(b).)

11 Sec. 442.403. MAINTENANCE OF RECORDS. (a) The receiver
12 may devise a method for the effective, efficient, and economical
13 maintenance of the records of the delinquent insurer and of the
14 receiver's office. The method may include maintaining those
15 records on any medium approved by the records management division
16 of the Texas State Library.

17 (b) A copy of an original record or another record that is
18 maintained within the scope of this subchapter on a medium approved
19 by the records management division of the Texas State Library and
20 that is produced by the receiver or the receiver's authorized
21 representative under this chapter:

22 (1) has the same effect as the original record; and

23 (2) may be used in the same manner as the original
24 record in a judicial or administrative proceeding in this state.

25 (c) The receiver may reserve the estate assets for deposit
26 in an account to be used for the specific purpose of maintenance,
27 storage, and disposal of records in closed receivership estates.

1 (V.T.I.C. Art. 21.28, Sec. 11(d).)

2 Sec. 442.404. DISPOSAL OF RECORDS. On approval by the
3 court, the receiver may dispose of any records of the delinquent
4 insurer that are obsolete and unnecessary to the continued
5 administration of the receivership proceeding. (V.T.I.C. Art.
6 21.28, Sec. 11(e).)

7 Sec. 442.405. INAPPLICABILITY OF PUBLIC INFORMATION LAW.
8 Chapter 552, Government Code, does not apply to any record of a
9 receivership estate, or to any record of an insurer before the
10 insurer's receivership, held by the receiver under this chapter.
11 (V.T.I.C. Art. 21.28, Sec. 11(f).)

12 [Sections 442.406-442.450 reserved for expansion]

13 SUBCHAPTER J. AUDITS

14 Sec. 442.451. AUDITS OR INVESTIGATIONS OF RECEIVER, SPECIAL
15 DEPUTY RECEIVER, OR GUARANTY ASSOCIATION. (a) The commissioner
16 shall adopt rules, after submitting the rules to the state auditor
17 for review and comment, prescribing the audits required for the
18 receiver, each special deputy receiver, and each guaranty
19 association established under Chapter 462, 463, or 2602. The rules
20 must include provisions relating to the scope, frequency, reporting
21 requirements, and cost of audits.

22 (b) As determined necessary by the commissioner or the state
23 auditor to supplement audits conducted under rules adopted under
24 Subsection (a), the state auditor may conduct audits or
25 investigations, as defined by Sections 321.0131-321.0136,
26 Government Code, of the receiver, each special deputy receiver, and
27 each guaranty association described by Subsection (a). The audited

1 or investigated entity shall reimburse the state auditor for costs
2 associated with the audit or investigation. (V.T.I.C. Art. 21.28,
3 Secs. 12(j), (k).)

4 Sec. 442.452. PLAN AND REPORT REGARDING AUDIT OF RECEIVER.

5 (a) The state auditor may conduct an audit of the receiver in
6 accordance with the audit plan under Chapter 321, Government Code.
7 The state auditor shall conduct the audit in the manner provided by
8 that chapter.

9 (b) The state auditor's report of an audit under this
10 section may include:

11 (1) an analysis of:

12 (A) the overall performance of the receiver;

13 (B) the receiver's financial operations and
14 condition;

15 (C) the receipts and expenditures made in
16 connection with each audited receivership;

17 (D) the adequacy of the receiver's bond in
18 relation to assets, receipts, and expenditures; and

19 (E) the feasibility of using attorneys employed
20 by the receiver in all litigation;

21 (2) the amount of money made available to the receiver
22 by a guaranty association in connection with each audited
23 receivership and a detail of the purpose and manner of expenditure
24 of the money;

25 (3) the ratio of the total amount of paid claims to the
26 total costs incurred in connection with each audited receivership;
27 and

1 (4) the ratio of the receiver's administrative
2 expenses to the total costs incurred in connection with each
3 audited receivership.

4 (c) The state auditor shall file:

5 (1) copies of the auditor's report in the manner
6 required by Section 321.014, Government Code; and

7 (2) an additional copy of the report with the
8 department. (V.T.I.C. Art. 21.28, Secs. 12(d), (e), (f).)

9 Sec. 442.453. COURT-ORDERED AUDIT. (a) A court in which a
10 receivership action is pending may order an audit of the books and
11 records of the receiver relating to the receivership. The receiver
12 shall make the books and records available to the auditor as
13 required by the court order.

14 (b) A report of an audit conducted under this section shall
15 be filed with the department and the appropriate guaranty
16 association.

17 (c) The receiver shall pay the expenses of an audit
18 conducted under this section. (V.T.I.C. Art. 21.28, Sec. 12(g).)

19 [Sections 442.454-442.500 reserved for expansion]

20 SUBCHAPTER K. DISTRIBUTION OF ASSETS: EARLY ACCESS

21 Sec. 442.501. APPLICATION FOR APPROVAL OF PROPOSAL TO
22 DISTRIBUTE ASSETS. (a) Not later than the 120th day after the
23 date of the commencement of an insolvency proceeding against an
24 impaired insurer, the receiver may apply to the court for approval
25 of a proposal to distribute assets out of marshalled assets as they
26 become available to a guaranty association or foreign guaranty
27 association with a Class 1 or Class 2 claim under this chapter.

1 (b) If the receiver fails to apply for approval within the
2 period prescribed by Subsection (a), a guaranty association may
3 apply to the court and request that the receiver submit a proposal
4 to distribute assets.

5 (c) If the receiver determines that there are insufficient
6 assets to distribute, the receiver may file a statement of the
7 reasons for that determination instead of filing an application
8 under this section. A statement under this subsection is
9 considered to be an application by the receiver for purposes of this
10 section. (V.T.I.C. Art. 21.28, Sec. 7A(a).)

11 Sec. 442.502. CONTENTS OF PROPOSAL TO DISTRIBUTE
12 ASSETS. (a) A proposal to distribute assets under Section
13 442.501 must include provisions for:

14 (1) reserving amounts sufficient to allow the payment
15 of Class 1 claims;

16 (2) to the extent the assets of the insolvent insurer
17 allow any payment of Class 2 claims, reserving amounts sufficient
18 to provide equal pro rata distributions to the Class 2 claimants
19 other than the guaranty associations;

20 (3) distributing the assets marshalled as of the date
21 of the proposal and distributing other assets as they become
22 available;

23 (4) equitably allocating distributions among guaranty
24 associations and foreign guaranty associations entitled to
25 distributions, including providing for:

26 (A) distributions to the associations in amounts
27 estimated to be at least equal to the claim payments made or to be

1 made by the associations for which the associations could assert a
2 claim against the receiver; and

3 (B) distributions for the pro rata amount of the
4 associations' Class 2 claims if the assets, as they become
5 available for distribution, do not equal or exceed the amount of the
6 claim payments made or to be made by the associations; and

7 (5) with regard to an insolvent insurer writing life
8 or health insurance or annuities, distributing the assets to:

9 (A) a guaranty association or foreign guaranty
10 association covering life or health insurance or annuities; or

11 (B) any other entity or organization reinsuring,
12 assuming, or guaranteeing insurance policies or contracts under the
13 laws creating an association described by Paragraph (A).

14 (b) The proposal to distribute assets must also include
15 provisions that require:

16 (1) the receiver to obtain from each guaranty
17 association described by Subsection (a)(4) an agreement to return
18 to the receiver on request and on approval by the court any
19 previously distributed assets, together with income on the assets,
20 required to pay Class 1 claimants and any federal claimants
21 asserting priority claims; and

22 (2) each guaranty association or foreign guaranty
23 association to make a full report to the receiver, as requested by
24 the receiver but not more frequently than quarterly, accounting
25 for:

26 (A) the assets distributed to the association;

27 (B) all distributions made from those assets;

1 (C) any interest earned by the association on
2 those assets; and

3 (D) any other matter as the court directs.

4 (c) A guaranty association or foreign guaranty association
5 is not required to provide a bond under Subsection (b)(1).
6 (V.T.I.C. Art. 21.28, Secs. 7A(b), (c), (d).)

7 Sec. 442.503. NOTICE OF APPLICATION. (a) The receiver
8 shall give notice of an application for approval of a proposal to
9 distribute assets to a guaranty association or foreign guaranty
10 association in, and to the commissioner of insurance of, each of the
11 states. Notice under this subsection must be deposited in the
12 United States certified mail, first class postage prepaid, at least
13 30 days before the date the application is submitted to the court.

14 (b) The receiver shall also give notice of the application
15 to reasonably identifiable Class 1 and Class 2 claimants. Notice
16 under this subsection must be given in a manner the court considers
17 appropriate, including notice by publication.

18 (c) The court may act on the application if:

19 (1) notice has been given as provided by this section;
20 and

21 (2) the receiver's proposal to distribute assets
22 complies with this subchapter. (V.T.I.C. Art. 21.28, Sec. 7A(e).)

23 [Sections 442.504-442.550 reserved for expansion]

24 SUBCHAPTER L. DISTRIBUTION OF ASSETS

25 Sec. 442.551. PRIORITY OF CLAIMS FOR DISTRIBUTION OF
26 ASSETS. (a) The priorities provided by this section are
27 established to:

1 (1) provide for the orderly liquidation of a
2 receivership estate; and

3 (2) further the protection of policyholders and
4 persons making claims under insurance policies.

5 (b) The priority of distribution of assets from the
6 insurer's estate must be in accordance with:

7 (1) the distribution plan approved by the court under
8 Subchapter K; and

9 (2) the order of each class as provided by this
10 section.

11 (c) Each claim in each class must be paid in full, or an
12 adequate amount of money must be retained for that payment, before a
13 payment is made for a claim in the next class.

14 (d) Subclasses may not be established within a class.

15 (e) The classes of claims are as follows:

16 (1) Class 1:

17 (A) all of the receiver's, conservator's, and
18 supervisor's costs and expenses of administration, including
19 repayment of any money spent by the receiver under Section 442.607;

20 (B) all of a guaranty association's or foreign
21 guaranty association's costs and expenses of administration
22 related to a receivership estate and all of the expenses of that
23 association in handling claims; and

24 (C) claims of secured creditors to the extent of
25 the value of the security as provided by Section 442.554;

26 (2) Class 2:

27 (A) all claims by policyholders, beneficiaries,

1 and insureds, and liability claims against insureds covered under
2 insurance policies and contracts issued by the insurer; and

3 (B) all claims by a guaranty association or a
4 foreign guaranty association that are payments of proper
5 policyholder claims;

6 (3) Class 3: claims of the federal government that are
7 not included in Class 2;

8 (4) Class 4: all other claims of general creditors not
9 falling within a higher priority under this subchapter, including
10 claims for taxes and debts due a state or local government that are
11 unsecured; and

12 (5) Class 5: claims of surplus or contribution note
13 holders, debenture holders, or holders of similar obligations and
14 proprietary claims of shareholders, members, or other owners
15 according to the terms of the instruments.

16 (f) For the purpose of Subsection (e)(1)(B), attorney's
17 fees incurred by a guaranty association or foreign guaranty
18 association in the defense of an insured under an insurance policy
19 issued by an impaired insurer are an expense incurred in handling a
20 claim. (V.T.I.C. Art. 21.28, Secs. 8(a)(1), (2).)

21 Sec. 442.552. PAYMENT OF WAGES OF EMPLOYEES OF INSURER
22 SUBJECT TO TEMPORARY RESTRAINING ORDER. (a) The receiver shall pay
23 as a Class 1 claim under Section 442.551 wages owed to employees of
24 an insurer against which a temporary restraining order has been
25 issued under this chapter for services rendered during the period
26 covered by the order.

27 (b) The receiver shall pay for services under Subsection (a)

1 at the rate and in the same manner as if paid by the insurer.
2 (V.T.I.C. Art. 21.28, Sec. 6 (part).)

3 Sec. 442.553. PAYMENT OF WAGES OF EMPLOYEES OF INSURER
4 SUBJECT TO TEMPORARY INJUNCTION. (a) The receiver may pay wages
5 owed to employees of an insurer against which a temporary
6 injunction has been issued under this chapter for services rendered
7 after the issuance of the injunction.

8 (b) Payment for services under Subsection (a) is an expense
9 of administration. (V.T.I.C. Art. 21.28, Sec. 6 (part).)

10 Sec. 442.554. SECURED CREDITOR. (a) The owner of a secured
11 claim against an insurer for which a receiver has been appointed in
12 any state may surrender the owner's security and file a claim as a
13 general creditor, or the claim may be discharged by resort to the
14 security.

15 (b) If a claim described by Subsection (a) is discharged by
16 resort to the security, any deficiency shall be treated as a claim
17 against the general assets of the insurer on the same basis as a
18 claim of an unsecured creditor. If the amount of the deficiency was
19 adjudicated in an ancillary delinquency proceeding as provided by
20 Subchapter P or by a court of competent jurisdiction in a proceeding
21 in which the domiciliary receiver was provided with notice and an
22 opportunity for hearing, the amount is conclusive. If the amount
23 was not adjudicated as provided by this subsection, the amount
24 shall be determined in the delinquency proceeding in the
25 domiciliary state.

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

1 (1) conversion of the security into money according to
2 the terms of the agreement under which the security was delivered to
3 the creditor; or

4 (2) agreement, arbitration, compromise, or litigation
5 between the creditor and the receiver. (V.T.I.C. Art. 21.28, Sec.
6 8(c).)

7 Sec. 442.555. DIVIDEND PAYMENTS. (a) On the direction and
8 approval of the court and in accordance with the priorities
9 provided by this subchapter, the receiver may make periodic
10 dividend payments, including payments of policyholder claims, to
11 facilitate the rehabilitation, liquidation, conservation, or
12 dissolution of an insurer.

13 (b) The receiver at all times shall reserve sufficient
14 assets to pay the expenses of administration. (V.T.I.C. Art.
15 21.28, Sec. 8(b).)

16 Sec. 442.556. CLAIMANTS OF OTHER STATES OR FOREIGN
17 COUNTRIES. (a) If a claimant of another state or of a foreign
18 country is entitled to or receives a dividend on the claim out of a
19 statutory deposit or the proceeds of a bond or other asset located
20 in that state or foreign country, the claimant is not entitled to
21 share in the distribution of any additional dividend from the
22 receiver until all other claimants of the same class receive an
23 equal dividend on their claims, regardless of their residence or
24 the location of the acts or contracts on which the claims are based.

25 (b) After the other claimants of the same class receive an
26 equal dividend on their claims, the claimant of the other state or
27 of the foreign country is entitled to share in the distribution of

1 additional dividends by the receiver, along with and in the same
2 manner as all other creditors of the same class, regardless of their
3 residence. (V.T.I.C. Art. 21.28, Sec. 8(e).)

4 Sec. 442.557. SETOFF OF DIVIDEND AMOUNT. On the
5 declaration of a dividend, the receiver shall apply the amount of
6 the dividend against any debt owed to the insurer by the person
7 entitled to the dividend. (V.T.I.C. Art. 21.28, Sec. 8(f).)

8 Sec. 442.558. CLAIMS UNDER SEPARATE ACCOUNTS ESTABLISHED BY
9 DOMESTIC LIFE INSURANCE COMPANIES. (a) Each claim under a separate
10 account established under Chapter 1152 shall be satisfied out of
11 the portion of the assets in the separate account that is equal to
12 the reserves maintained in the account for the applicable
13 contracts.

14 (b) To the extent reserves maintained in a separate account
15 exceed the amounts needed to satisfy claims under the applicable
16 contracts, the excess shall be treated as general assets of the
17 domestic life insurance company. (V.T.I.C. Art. 21.28, Sec. 8(k)
18 (part).)

19 Sec. 442.559. INTEREST. Interest does not accrue on a claim
20 after the date of the commencement of a delinquency proceeding.
21 (V.T.I.C. Art. 21.28, Sec. 8(d).)

22 [Sections 442.560-442.600 reserved for expansion]

23 SUBCHAPTER M. UNCLAIMED ASSETS

24 Sec. 442.601. DELIVERY OF UNCLAIMED MONEY TO DEPARTMENT.
25 (a) Except as provided by Subsection (b), any unclaimed dividend on
26 an approved claim, unclaimed returned assessment, or other
27 unclaimed money that is subject to distribution to a claimant,

1 policyholder, or other person and that remains in the possession of
2 the receiver after payment of the final dividend shall be delivered
3 to the department at the time the receivership is closed.

4 (b) If a final dividend is paid less than 90 days before the
5 date the receivership is closed, the receiver may continue, for a
6 period not to exceed 90 days from the date the receivership is
7 closed, any bank account of the receivership from which any
8 unclaimed dividend might be paid, before the receiver delivers the
9 unclaimed dividend to the department.

10 (c) The department shall deposit the money in trust in an
11 account to be maintained with the comptroller. (V.T.I.C. Art.
12 21.28, Sec. 8(g).)

13 Sec. 442.602. RECOVERY OF UNCLAIMED MONEY BY OWNER. (a) On
14 receipt of satisfactory written and verified proof of ownership not
15 later than the second anniversary of the date money is deposited
16 with the comptroller under Section 442.601, the department shall
17 certify that fact to the comptroller.

18 (b) On certification under Subsection (a), the comptroller
19 shall issue a warrant drawn on the state treasury for the money in
20 favor of each person entitled to the money. (V.T.I.C. Art. 21.28,
21 Sec. 8(h).)

22 Sec. 442.603. APPLICATION FOR DECLARATION OF ABANDONMENT OF
23 MONEY; NOTICE. (a) After money deposited with the comptroller
24 under Section 442.601 has remained unclaimed for two years, the
25 receiver may initiate an action to declare the money abandoned and
26 that the money is the property of the department by filing in the
27 court of competent jurisdiction in the county in which the

1 delinquency proceeding is or was pending a notice that the receiver
2 intends to declare the money abandoned and claim the money as the
3 property of the department. The action may be for all or part of the
4 money accumulated in any particular receivership.

5 (b) The notice must state:

6 (1) the name of each person entitled to the money;

7 (2) the person's last known address; and

8 (3) the nature or source and amount of the money.

9 (c) On the filing of the notice by the receiver, the court
10 shall set a date for the hearing on the application that is at least
11 20 days after the date the notice was filed and shall make a
12 notation of the date of the hearing on the notice.

13 (d) A copy of the notice with the judge's notation of the
14 date of the hearing must be posted on the courthouse door for at
15 least 20 days before the date a hearing is held on the application.
16 At least 10 days before the date set for the hearing, notice of the
17 filing of the application must be published in a newspaper of
18 general circulation in the county in which the application is
19 pending. The notice must be addressed to the owners of unclaimed
20 money in the particular receivership involved in the application
21 and must state generally that a hearing will be held on the
22 specified date to declare the money abandoned and that the money is
23 the property of the department. (V.T.I.C. Art. 21.28, Sec. 8(i)
24 (part).)

25 Sec. 442.604. HEARING ON APPLICATION FOR DECLARATION OF
26 ABANDONMENT OF MONEY; JUDGMENT. (a) At a hearing on an application
27 filed under Section 442.603, proof to the satisfaction of the court

1 of the following is prima facie evidence that each person entitled
2 to money deposited with the comptroller under Section 442.601
3 intends to abandon the money and that the department is the owner of
4 the money:

5 (1) the money, or a check for the money, was sent by
6 the receiver to the last known address of each person entitled to
7 the money;

8 (2) the money, or a check for the money, was returned
9 unclaimed or the check for the money was not cashed;

10 (3) the money was delivered to the department as
11 required by Section 442.601;

12 (4) the money has remained unclaimed for two years;
13 and

14 (5) notice of the filing of the application was
15 published as required by Section 442.603.

16 (b) On a finding by the court under Subsection (a), the
17 court may render judgment accordingly. On receipt of the judgment,
18 the department shall certify that fact to the comptroller.

19 (c) On certification under Subsection (b), the comptroller
20 shall issue a warrant for the money in favor of the department. The
21 department shall promptly deposit the money in accordance with
22 Section 442.110, except that the money derived from one insurer is
23 not required to be kept separate from money derived from another
24 insurer. (V.T.I.C. Art. 21.28, Sec. 8(i) (part).)

25 Sec. 442.605. USE OF CERTAIN UNLIQUIDATED ASSETS; DEPOSIT
26 OF PROCEEDS IN TRUST. (a) Any assets other than cash that remain in
27 the possession of the receiver after payment of the final dividend

1 in a receivership estate may be conveyed, transferred, or assigned
2 to the commissioner to be handled as a trust.

3 (b) The commissioner may convey, transfer, and assign any
4 assets, including causes of action, judgments, and claims, and
5 settle or release causes of action, judgments, claims, and liens on
6 terms and for amounts the commissioner considers to be in the best
7 interest of the trust, regardless of whether the assets have
8 previously or may subsequently come into the commissioner's
9 possession.

10 (c) From proceeds derived from any assets described by
11 Subsection (b), the commissioner or the special deputy receiver
12 shall defray the costs incident to the sale, settlement, release,
13 or other transaction by which the proceeds are obtained and deliver
14 the remainder to the department. The department shall deposit the
15 money in trust in an account to be maintained with the comptroller
16 and to be handled, disposed of, and used as provided by Sections
17 442.606 and 442.607. (V.T.I.C. Art. 21.28, Sec. 8A (part).)

18 Sec. 442.606. APPLICATION FOR DECLARATION OF ABANDONMENT OF
19 PROCEEDS IN TRUST; NOTICE AND HEARING. (a) On application by the
20 commissioner and after notice and hearing, a court of competent
21 jurisdiction of Travis County may make an order directing
22 disposition of money deposited in a trust account under Section
23 442.605(c).

24 (b) The notice must be addressed to all persons having an
25 interest, as claimants or otherwise, in the assets of the
26 particular receivership involved in the application and must state:

27 (1) the amount of the money and the receivership from

1 which the money was derived; and

2 (2) generally that a hearing will be held on the
3 specified date to determine the disposition of the money, including
4 a declaration that the money is abandoned and is the property of the
5 department.

6 (c) The notice required by Subsection (a) must be:

7 (1) posted on the courthouse door for at least 20 days
8 before the date the hearing is held; and

9 (2) published at least 10 days before the date set for
10 the hearing in a newspaper of general circulation in Travis County.

11 (d) If the court finds that money derived from a
12 receivership is sufficient to justify the reopening of the
13 receivership and the payment of a dividend, the court may enter an
14 order to that effect. If the money is insufficient for that
15 purpose, the court may declare the money abandoned.

16 (e) A certified copy of a judgment declaring the money
17 abandoned is sufficient authority for the comptroller to issue a
18 warrant for the money in favor of the department. On issuance of
19 the warrant, the department shall promptly deposit the money in
20 accordance with Section 442.110, except that money derived from one
21 insurer is not required to be kept separate from money derived from
22 another insurer. (V.T.I.C. Art. 21.28, Sec. 8A (part).)

23 Sec. 442.607. USE OF ABANDONED MONEY. (a) The receiver,
24 with the consent of the department, may spend money deposited by the
25 department under Sections 442.604 and 442.606 to:

26 (1) pay expenses of the office of the receiver that are
27 not properly chargeable to any one receivership or conservatorship

1 estate; and

2 (2) continue the administration of a receivership or
3 conservatorship by the receiver as receiver or conservator, if the
4 department considers the continuation to be in the best interest of
5 the receivership or conservatorship estate.

6 (b) Any money applied under Subsection (a)(2) to a
7 receivership estate must be repaid from the assets of that estate
8 before the payment of any additional dividends in that
9 receivership, including policyholder claims and other claims.

10 (c) Any money applied under Subsection (a)(2) to a
11 conservatorship estate must be repaid from the assets of that
12 estate before the release of that conservatorship for continued
13 operation. (V.T.I.C. Art. 21.28, Secs. 8(j), 8A (part).)

14 [Sections 442.608-442.650 reserved for expansion]

15 SUBCHAPTER N. TRANSFER OR DISPOSAL OF EXCESS ASSETS

16 Sec. 442.651. TRANSFER OF REMAINING ASSETS OF STOCK
17 INSURANCE COMPANY TO AGENT. (a) After the receiver has provided
18 for unclaimed dividends and all of the liabilities of a stock
19 insurance company, the receiver shall call a meeting of the
20 shareholders of the insurer by:

21 (1) publishing notice of the meeting in one or more
22 newspapers in the county in which the principal office of the
23 insurer was located; and

24 (2) giving written notice of the meeting to each
25 shareholder of record at the shareholder's last known address.

26 (b) At the meeting, the shareholders shall appoint one or
27 more agents to take over the liquidation of the insurer for the

1 benefit of the shareholders. Voting privileges are governed by the
2 insurer's bylaws. A majority of the shares must be represented at
3 the agent's appointment. The agent or agents shall execute and file
4 with the court one or more bonds as approved by the court,
5 conditioned on the faithful performance of all the duties of the
6 trust.

7 (c) Under order of the court, the receiver shall transfer
8 and deliver to the agent or agents for continued liquidation under
9 the court's supervision all assets of the insurer remaining in the
10 possession of the receiver. After the transfer and delivery, the
11 receiver and the department, and each employee of the receiver or
12 the department, are discharged from any further liability to the
13 insurer and the creditors and shareholders of the insurer.

14 (d) This section does not permit the insurer to continue
15 engaging in the business of insurance. The charter of the insurer
16 and each certificate of authority or other permit issued under or in
17 connection with the charter are ipso facto revoked by the order of
18 the court directing the receiver to transfer and deliver the
19 remaining assets of the insurer to the agent or agents. (V.T.I.C.
20 Art. 21.28, Sec. 9(a).)

21 Sec. 442.652. DISPOSAL OF REMAINING ASSETS OF INSURER OTHER
22 THAN STOCK INSURANCE COMPANY. After the receiver has provided for
23 unclaimed dividends and all of the liabilities of an insurer other
24 than a stock insurance company, the receiver shall dispose of any
25 remaining assets as directed by the receivership court. (V.T.I.C.
26 Art. 21.28, Sec. 9(b).)

27 Sec. 442.653. TRANSFER OF REMAINING ASSETS OF INSURER TO

1 GUARANTY ASSOCIATION. (a) Notwithstanding any other provision of
2 this chapter, in closing a receivership estate, a special deputy
3 receiver, on approval of the court, may transfer any remaining
4 asset, cause of action asserted on behalf of the impaired insurer,
5 judgment, claim, or lien to the appropriate guaranty association.

6 (b) A transfer under Subsection (a):

7 (1) is not a preference or voidable transfer; and

8 (2) is considered a distribution under Sections
9 442.551(a)-(d).

10 (c) If the amount realized by the guaranty association is
11 materially greater than the amount loaned by the guaranty
12 association to the receivership estate, the court may order the
13 reopening of the receivership to distribute the excess money.

14 (d) This subchapter does not transfer any liability of an
15 impaired insurer to the guaranty association that would not
16 constitute a claim payable under Chapter 462, 463, or 2602.
17 (V.T.I.C. Art. 21.28, Sec. 9(c).)

18 [Sections 442.654-442.700 reserved for expansion]

19 SUBCHAPTER O. DURATION AND REOPENING OF RECEIVERSHIP

20 Sec. 442.701. LIMITATION ON DURATION OF RECEIVERSHIP. (a)

21 Except as otherwise provided by this section, each receivership or
22 other delinquency proceeding prescribed by this chapter shall be
23 administered in accordance with Section 64.072, Civil Practice and
24 Remedies Code.

25 (b) To the extent the proceeding applies to claims against a
26 workers' compensation insurance policy or a title insurance policy,
27 a receivership or other delinquency proceeding shall be

1 administered continuously for any period necessary to effect the
2 receivership's or proceeding's purposes, and any arbitrary
3 limitation on that period provided by another law of this state with
4 regard to the administration of receiverships or of corporate
5 affairs generally does not apply to the proceeding.

6 (c) Instead of the winding up and distribution of a
7 receivership estate of an insurer without capital stock, the court
8 shall order revival and reinstatement of the charter, certificates
9 of authority or other permits, franchises, and management contracts
10 or other control instruments of the insurer if the insurer's
11 remaining cash on hand and on deposit, less any outstanding
12 enforceable liabilities, exceeds the minimum amount of capital and
13 surplus prescribed for that insurer under Section 822.054, 822.202,
14 822.210, or 841.054. (V.T.I.C. Art. 21.28, Sec. 9(d).)

15 Sec. 442.702. REOPENING OF RECEIVERSHIP. (a) If after
16 the receivership has been closed by final order of the court the
17 receiver discovers assets not known to the receiver during the
18 receivership, the receiver shall report the receiver's findings to
19 the court.

20 (b) The court may reopen the receivership for continued
21 liquidation if the court finds that the value of the discovered
22 assets justifies the reopening. (V.T.I.C. Art. 21.28, Sec. 9(e).)

23 [Sections 442.703-442.750 reserved for expansion]

24 SUBCHAPTER P. ANCILLARY DELINQUENCY PROCEEDINGS

25 Sec. 442.751. APPOINTMENT OF ANCILLARY RECEIVER. (a) On
26 the petition of the department, a court of competent jurisdiction
27 in this state shall appoint the commissioner as ancillary receiver

1 in this state for an insurer domiciled in another jurisdiction if a
2 receiver should be appointed for that insurer under the laws of this
3 state.

4 (b) The department:

5 (1) may file the petition on the department's own
6 initiative; and

7 (2) shall file the petition if at least 10 residents of
8 this state who have claims against the insurer file one or more
9 petitions in writing with the department requesting the appointment
10 of an ancillary receiver. (V.T.I.C. Art. 21.28, Sec. 13 (part).)

11 Sec. 442.752. POWERS AND DUTIES OF ANCILLARY RECEIVER.

12 (a) The ancillary receiver is entitled to sue for and possess the
13 assets of the insurer in this state and has the same powers and
14 duties with regard to those assets as a receiver of an insurer
15 domiciled in this state.

16 (b) On commencement of the delinquency proceeding in this
17 state, the ancillary receiver is immediately entitled to possession
18 and control of any special or statutory deposits of the insurer that
19 are located in this state. The ancillary receiver may use those
20 deposits:

21 (1) to pay expenses of the administration of the
22 receivership proceeding; and

23 (2) after paying the expenses under Subdivision (1),
24 to pay approved claims against the deposits. (V.T.I.C. Art. 21.28,
25 Sec. 13 (part).)

26 Sec. 442.753. COORDINATION WITH RECEIVER IN OTHER
27 STATE. If a receiver of a delinquent insurer has been appointed

1 both in this state and in another state, the receiver in this state
2 may, under supervision of the receivership court in this state and
3 regardless of whether the receiver in this state is an ancillary
4 receiver, contract with the receiver in the other state to
5 coordinate the administration of the receiverships in the interest
6 of efficiency and economy in any manner consistent with this
7 chapter. (V.T.I.C. Art. 21.28, Sec. 14.)

8 Sec. 442.754. APPLICABILITY OF CHAPTER TO ANCILLARY
9 DELINQUENCY PROCEEDINGS. The conduct of ancillary delinquency
10 proceedings under this subchapter is subject to the other
11 provisions of this chapter. (V.T.I.C. Art. 21.28, Sec. 13 (part).)

12 [Sections 442.755-442.800 reserved for expansion]

13 SUBCHAPTER Q. AGENCY CONTRACTS WITH CERTAIN INSURERS

14 Sec. 442.801. REQUIRED CONTRACT PROVISION. An agency
15 contract entered into on or after August 27, 1973, by an insurer
16 writing fire and casualty insurance in this state must contain, or
17 shall be construed to contain, the following provision:

18 Notwithstanding any other provision of this
19 contract, the obligation of the agent to remit written
20 premiums to the insurer shall be changed on the
21 commencement of a delinquency proceeding as defined by
22 Chapter 442, Insurance Code, as amended. After the
23 commencement of the delinquency proceeding, the
24 obligation of the agent to remit premiums is limited to
25 premiums earned before the cancellation date of
26 insurance policies stated in the order of a court of
27 competent jurisdiction under Chapter 442, Insurance

1 Code, canceling the policies. The agent does not owe
2 and may not be required to remit to the insurer or to
3 the receiver any premiums that are unearned as of the
4 cancellation date stated in the order.

5 (V.T.I.C. Art. 21.11-2, Sec. 1.)

6 Sec. 442.802. DISPOSITION OF PREMIUMS. (a) On or after
7 the cancellation date of insurance policies as stated in the
8 court's order canceling the policies, the agent shall promptly
9 account to the receiver for:

10 (1) all unearned premiums to be returned to the
11 insured or the replacement coverage to be obtained for the insured;
12 and

13 (2) the earned premiums to be paid to the receiver.

14 (b) The agent shall:

15 (1) promptly return to an insured who paid the
16 premiums any unearned premiums in the possession of the agent on the
17 cancellation date of the policy; or

18 (2) with the approval of the insured, use the unearned
19 premiums to purchase new coverage for the insured with a different
20 insurer.

21 (c) The agent shall promptly remit to the receiver any
22 earned premiums in the possession of the agent. (V.T.I.C. Art.
23 21.11-2, Sec. 2.)

24 Sec. 442.803. EFFECT OF SUBCHAPTER ON ACTION BY RECEIVER
25 AGAINST AGENT. This subchapter does not prejudice a cause of action
26 by the receiver against an agent to recover:

27 (1) unearned premiums that were not returned to

1 policyholders; or

2 (2) earned premiums that were not promptly remitted to
3 the receiver. (V.T.I.C. Art. 21.11-2, Sec. 3.)

4 Sec. 442.804. AGENT NOT RECEIVER'S AGENT. This subchapter
5 does not render the agent an agent of the receiver for earned or
6 unearned premiums. (V.T.I.C. Art. 21.11-2, Sec. 4.)

7 [Chapters 443-460 reserved for expansion]

8 SUBTITLE D. GUARANTY ASSOCIATIONS

9 CHAPTER 461. GENERAL PROVISIONS

10 Sec. 461.001. APPLICABILITY OF CHAPTER

11 Sec. 461.002. DISCLOSURE OF GUARANTY FUND

12 NONPARTICIPATION

13 Sec. 461.003. FORM OF STATEMENT; PROHIBITION

14 CHAPTER 461. GENERAL PROVISIONS

15 Sec. 461.001. APPLICABILITY OF CHAPTER. (a) Except as
16 provided by Subsection (b), this chapter applies to an insurance
17 policy, contract, certificate, evidence of coverage, or
18 application delivered or issued for delivery in this state that is
19 not covered by an insurance guaranty fund or other solvency
20 protection arrangement authorized by this code.

21 (b) This chapter does not apply to:

22 (1) a fidelity, surety, or guaranty bond; or

23 (2) marine insurance as defined by Section 1807.001.

24 (V.T.I.C. Art. 21.28-E, Secs. (a) (part), (c).)

25 Sec. 461.002. DISCLOSURE OF GUARANTY FUND

26 NONPARTICIPATION. (a) Each insurance policy, contract,

27 certificate, evidence of coverage, or application subject to this

1 chapter must include a statement that, if the insurer is unable to
2 fulfill the insurer's contractual obligation under the policy,
3 contract, certificate, or evidence of coverage, the insurer is not
4 covered by an insurance guaranty fund or other solvency protection
5 arrangement.

6 (b) The statement must be in 10-point type and affixed to
7 the first page of the insurance policy, contract, certificate,
8 evidence of coverage, or application. (V.T.I.C. Art. 21.28-E, Sec.
9 (a) (part).)

10 Sec. 461.003. FORM OF STATEMENT; PROHIBITION. (a) The
11 commissioner by rule shall promulgate the statement that an insurer
12 must use to comply with this chapter.

13 (b) An insurer may not include in an insurance policy,
14 contract, certificate, evidence of coverage, or application a
15 statement that does not conform to the appropriate statement
16 prescribed by the commissioner. (V.T.I.C. Art. 21.28-E, Sec. (b).)

17 CHAPTER 462. TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY

18 ASSOCIATION

19 SUBCHAPTER A. GENERAL PROVISIONS

20 Sec. 462.001. SHORT TITLE

21 Sec. 462.002. PURPOSES

22 Sec. 462.003. CONSTRUCTION

23 Sec. 462.004. GENERAL DEFINITIONS

24 Sec. 462.005. DESCRIPTION OF CONTROL

25 Sec. 462.006. NET DIRECT WRITTEN PREMIUMS

26 Sec. 462.007. APPLICABILITY IN GENERAL; EXCEPTIONS

- 1 Sec. 462.008. APPLICABILITY TO TEXAS MUTUAL INSURANCE
2 COMPANY
- 3 Sec. 462.009. APPLICABILITY TO FORMER TEXAS WORKERS'
4 COMPENSATION INSURANCE FACILITY AND
5 SUCCESSOR
- 6 Sec. 462.010. CONFLICT WITH OTHER LAWS
- 7 Sec. 462.011. IMMUNITY IN GENERAL
- 8 Sec. 462.012. IMMUNITY IN RELATION TO CERTAIN REPORTS
9 AND RECOMMENDATIONS
- 10 Sec. 462.013. IMMUNITY IN RELATION TO CERTAIN
11 NEGOTIATIONS
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25 SUBCHAPTER D. ASSESSMENTS IN GENERAL

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27 Sec. 462.152. MAXIMUM TOTAL ASSESSMENT

- 1 Sec. 462.153. REFUND OF CONTRIBUTION
2 Sec. 462.154. NOTICE OF ASSESSMENT
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8 IMPAIRMENT OF INSURER
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10 ACCOUNTS
11 Sec. 462.161. AMOUNT OF ASSESSMENT; PRORATION OF
12 PAYMENT
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14 ADDITIONAL ASSESSMENT AUTHORITY UNDER
15 CERTAIN CIRCUMSTANCES
16 Sec. 462.163. PAYMENT OF ASSESSMENT
17 Sec. 462.164. PARTICIPATION RECEIPTS
18 Sec. 462.165. ACCOUNTING; REPORTS; REFUND
19 Sec. 462.166. USE OF EXCESS MONEY IN ACCOUNT
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23 SUBCHAPTER E. COVERED CLAIMS; CLAIMANTS
24 Sec. 462.201. COVERED CLAIMS IN GENERAL
25 Sec. 462.202. CLAIM FOR UNEARNED PREMIUMS
26 Sec. 462.203. CERTAIN EXPENSES OF RECEIVERSHIP OR
27 CONSERVATORSHIP ESTATE COVERED

- 1 Sec. 462.204. AFFILIATE MAY NOT BE CLAIMANT
- 2 Sec. 462.205. DETERMINATION OF RESIDENCE OF ENTITIES
- 3 Sec. 462.206. CLAIMS NOT COVERED: PREMIUM UNDER
- 4 RETROSPECTIVE RATING PLAN
- 5 Sec. 462.207. CLAIMS NOT COVERED: AMOUNTS DUE CERTAIN
- 6 ENTITIES
- 7 Sec. 462.208. CLAIMS NOT COVERED: SUPPLEMENTARY
- 8 PAYMENT OBLIGATIONS
- 9 Sec. 462.209. CLAIMS NOT COVERED: PREJUDGMENT OR
- 10 POSTJUDGMENT INTEREST
- 11 Sec. 462.210. CLAIMS NOT COVERED: CERTAIN DAMAGES
- 12 Sec. 462.211. CLAIMS NOT COVERED: LATE FILED CLAIMS
- 13 Sec. 462.212. NET WORTH EXCLUSION
- 14 Sec. 462.213. AMOUNT OF INDIVIDUAL COVERED CLAIM;
- 15 LIMIT
- 16 Sec. 462.214. CERTAIN SHAREHOLDERS' CLAIMS: LIMIT
- 17 [Sections 462.215-462.250 reserved for expansion]
- 18 SUBCHAPTER F. NONDUPLICATION OF RECOVERY
- 19 Sec. 462.251. EXHAUSTION OF RIGHTS UNDER OTHER POLICY
- 20 REQUIRED
- 21 Sec. 462.252. REDUCTION IN AMOUNT OF COVERED CLAIM FOR
- 22 OTHER POLICY
- 23 Sec. 462.253. EFFECT ON INSURED OF REDUCTION IN AMOUNT
- 24 OF COVERED CLAIM
- 25 Sec. 462.254. RECOVERY FROM MORE THAN ONE GUARANTY
- 26 ASSOCIATION

1 Sec. 462.255. CERTAIN CLAIMS SUBJECT TO LIEN OR
2 SUBROGATION

3 Sec. 462.256. LIMIT ON TOTAL RECOVERY

4 [Sections 462.257-462.300 reserved for expansion]

5 SUBCHAPTER G. ASSOCIATION POWERS AND DUTIES RELATING TO COVERED
6 CLAIMS

7 Sec. 462.301. GENERAL POWERS AND DUTIES OF ASSOCIATION
8 IN CONNECTION WITH PAYMENT OF COVERED
9 CLAIMS

10 Sec. 462.302. PAYMENT OF COVERED CLAIMS

11 Sec. 462.303. CERTAIN DETERMINATIONS NOT BINDING

12 Sec. 462.304. SERVICING FACILITY

13 Sec. 462.305. SATISFACTION OF OBLIGATION TO PAY
14 COVERED CLAIMS; LIMITATION OF
15 ASSOCIATION'S LIABILITY

16 Sec. 462.306. DISCHARGE OF POLICY OBLIGATION

17 Sec. 462.307. ASSIGNMENT OF RIGHTS

18 Sec. 462.308. RECOVERY FROM CERTAIN PERSONS

19 Sec. 462.309. STAY OF PROCEEDINGS; CERTAIN DECISIONS
20 NOT BINDING

21 Sec. 462.310. SETTLEMENT BY ASSOCIATION BINDING;
22 PRIORITY OF CLAIM AND EXPENSES

23 Sec. 462.311. REPORT TO RECEIVER

24 [Sections 462.312-462.350 reserved for expansion]

25 SUBCHAPTER H. RELEASE FROM RECEIVERSHIP

26 Sec. 462.351. ISSUANCE OF POLICIES AFTER RELEASE FROM
27 RECEIVERSHIP

1 CHAPTER 462. TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY

2 ASSOCIATION

3 SUBCHAPTER A. GENERAL PROVISIONS

4 Sec. 462.001. SHORT TITLE. This chapter may be cited as the
5 Texas Property and Casualty Insurance Guaranty Act. (V.T.I.C. Art.
6 21.28-C, Sec. 1.)

7 Sec. 462.002. PURPOSES. The purposes of this chapter are
8 to:

9 (1) provide a mechanism for the payment of covered
10 claims under certain insurance policies to avoid excessive delay in
11 payment;

12 (2) avoid financial loss to claimants or policyholders
13 because of an insurer's impairment;

14 (3) assist in the detection and prevention of insurer
15 insolvencies; and

16 (4) provide an association to assess the cost of that
17 protection among insurers. (V.T.I.C. Art. 21.28-C, Sec. 2.)

18 Sec. 462.003. CONSTRUCTION. This chapter shall be
19 liberally construed to implement the purposes of this chapter
20 described by Section 462.002, which shall be used to aid and guide
21 interpretation of this chapter. (V.T.I.C. Art. 21.28-C, Sec. 4.)

22 Sec. 462.004. GENERAL DEFINITIONS. In this chapter:

23 (1) "Affiliate" means a person who, directly or
24 indirectly, through one or more intermediaries, controls, is
25 controlled by, or is under common control with an impaired insurer
26 on December 31 of the year preceding the date the insurer becomes an
27 impaired insurer.

1 (2) "Association" means the Texas Property and
2 Casualty Insurance Guaranty Association.

3 (3) "Board" means the board of directors of the
4 association.

5 (4) "Claimant" means an insured making a first-party
6 claim or a person instituting a liability claim.

7 (5) "Impaired insurer" means a member insurer that is:

8 (A) placed in:

9 (i) temporary or permanent receivership or
10 liquidation under a court order, including a court order of another
11 state, based on a finding of insolvency; or

12 (ii) conservatorship after the
13 commissioner determines that the insurer is insolvent; and

14 (B) designated by the commissioner as an impaired
15 insurer.

16 (6) "Member insurer" means an insurer, including a
17 stock insurance company, a mutual insurance company, a Lloyd's
18 plan, a reciprocal or interinsurance exchange, and a county mutual
19 insurance company, that:

20 (A) writes any kind of insurance to which this
21 chapter applies under Sections 462.007 and 462.008, including
22 reciprocal or interinsurance exchange contracts; and

23 (B) holds a certificate of authority to engage in
24 the business of insurance in this state.

25 (7) "Person" means an individual, corporation,
26 partnership, association, or voluntary organization. (V.T.I.C.
27 Art. 21.28-C, Secs. 5(2), (3), (4), (5) (part), (9), (10), (12).)

1 Sec. 462.005. DESCRIPTION OF CONTROL. (a) For purposes of
2 this chapter, control is the power to direct, or cause the direction
3 of, the management and policies of a person, other than power that
4 results from an official position with the person or a corporate
5 office held by the person. The power may be possessed directly or
6 indirectly by any means, including through the ownership of voting
7 securities or by contract, other than a commercial contract for
8 goods or nonmanagement services.

9 (b) A person is presumed to control another person if the
10 person directly or indirectly owns, controls, holds with the power
11 to vote, or holds proxies representing 10 percent or more of the
12 voting securities of the other person. This presumption may be
13 rebutted by a showing that the person does not in fact control the
14 other person. (V.T.I.C. Art. 21.28-C, Sec. 5(7).)

15 Sec. 462.006. NET DIRECT WRITTEN PREMIUMS. (a) Except as
16 provided by Subsection (b) and subject to Subsection (c), in this
17 chapter, "net direct written premiums" means direct premiums
18 written in this state on insurance policies to which this chapter
19 applies, less return premiums on those policies and dividends paid
20 or credited to policyholders on that direct business.

21 (b) Subject to Subsection (c), for assessing the workers'
22 compensation line of business, the term "net direct written
23 premiums" includes the modified annual premium before the
24 application of a deductible premium credit, less return premiums on
25 those policies and dividends paid or credited to policyholders on
26 that direct business.

27 (c) The term "net direct written premiums" does not include

1 premiums on contracts between insurers or reinsurers. (V.T.I.C.
2 Art. 21.28-C, Sec. 5(11).)

3 Sec. 462.007. APPLICABILITY IN GENERAL; EXCEPTIONS. (a)
4 Except as provided by Subsection (b), this chapter applies to each
5 kind of direct insurance.

6 (b) Except as provided by Subchapter F, this chapter does
7 not apply to:

8 (1) life, annuity, health, or disability insurance;

9 (2) mortgage guaranty, financial guaranty, or other
10 kinds of insurance offering protection against investment risks;

11 (3) a fidelity or surety bond, or any other bonding
12 obligation;

13 (4) credit insurance, vendors' single-interest
14 insurance, collateral protection insurance, or similar insurance
15 protecting a creditor's interest arising out of a creditor-debtor
16 transaction;

17 (5) insurance of warranties or service contracts;

18 (6) title insurance;

19 (7) ocean marine insurance;

20 (8) a transaction or combination of transactions
21 between a person, including an affiliate of the person, and an
22 insurer, including an affiliate of the insurer, that involves the
23 transfer of investment or credit risk unaccompanied by the transfer
24 of insurance risk; or

25 (9) insurance provided by or guaranteed by government.

26 (V.T.I.C. Art. 21.28-C, Sec. 3(a).)

27 Sec. 462.008. APPLICABILITY TO TEXAS MUTUAL INSURANCE

1 COMPANY. (a) This chapter applies to insurance written through the
2 Texas Mutual Insurance Company only as provided by this section.

3 (b) This chapter applies to the Texas Mutual Insurance
4 Company on a prospective basis on and after January 1, 2000. The
5 Texas Mutual Insurance Company is only liable for assessments for a
6 claim with a date of injury that occurs on or after January 1, 2000.
7 The association, with respect to an insolvency of the Texas Mutual
8 Insurance Company, is only liable for a claim with a date of injury
9 that occurs on or after January 1, 2000. (V.T.I.C. Art. 21.28-C,
10 Sec. 3(b).)

11 Sec. 462.009. APPLICABILITY TO FORMER TEXAS WORKERS'
12 COMPENSATION INSURANCE FACILITY AND SUCCESSOR. (a)
13 Notwithstanding any other provision of this chapter, this chapter
14 applies to each insurance policy issued under Article 5.76 or
15 5.76-2, as those articles existed before their repeal.

16 (b) Notwithstanding any other provision of this chapter,
17 the stock insurance company that resulted from the transfer of the
18 former Texas workers' compensation insurance facility is
19 considered an impaired insurer for purposes of this chapter if any
20 action described by Section 462.004(5) is taken with respect to the
21 company.

22 (c) A claim under an insurance policy described by
23 Subsection (a) is a covered claim for purposes of this chapter if
24 the claim is a covered claim for purposes of Sections
25 462.201-462.203, 462.205-462.210, 462.213, 462.214, and 462.305(d)
26 without regard to whether the stock insurance company described by
27 Subsection (b):

1 (1) issued or assumed the policy; or
2 (2) was authorized to engage in business in this state
3 at the time:

4 (A) the policy was written; or

5 (B) the company became an impaired insurer.

6 (d) If a conflict exists between this section and any other
7 statute relating to the former Texas workers' compensation
8 insurance facility or the association, this section controls.
9 (V.T.I.C. Art. 21.28-C, Sec. 26.)

10 Sec. 462.010. CONFLICT WITH OTHER LAWS. (a) Except as
11 provided by Subsection (b), if this chapter conflicts with another
12 statute relating to the association, this chapter controls.

13 (b) This section does not apply to a conflict between this
14 chapter and:

15 (1) Subtitle A, Title 5, Labor Code, except as
16 described by Subsection (c); or

17 (2) Subtitle E, Title 10.

18 (c) This chapter controls with respect to subrogation
19 rights of an insurance carrier under Chapter 417, Labor Code,
20 against an impaired insurer's insured or the association.
21 (V.T.I.C. Art. 21.28-C, Sec. 25.)

22 Sec. 462.011. IMMUNITY IN GENERAL. (a) Liability does not
23 exist and a cause of action does not arise against any of the
24 following persons for any good faith act or omission in performing
25 the person's powers and duties under this chapter:

26 (1) the commissioner or the commissioner's
27 representative;

- 1 (2) the association or the association's agent or
2 employee;
- 3 (3) a member insurer;
- 4 (4) the board;
- 5 (5) the receiver; or
- 6 (6) a special deputy receiver or the special deputy
7 receiver's agent or employee.

8 (b) The attorney general shall defend any action to which
9 this section applies that is brought against the commissioner or
10 the commissioner's representative, the association or the
11 association's agent or employee, a member insurer or the insurer's
12 agent or employee, a board member, or a special deputy receiver or
13 the special deputy receiver's agent or employee, including an
14 action instituted after the defendant's service with the
15 association, commissioner, or department has terminated. This
16 subsection does not require the attorney general to defend a person
17 with respect to an issue other than the applicability or effect of
18 the immunity created by Subsection (a). The attorney general is not
19 required to defend the association or the association's agent or
20 employee, a member insurer or the member insurer's agent or
21 employee, a board member, or a special deputy receiver or the
22 special deputy receiver's agent or employee against an action
23 regarding the disposition of a claim filed with the association
24 under this chapter or any issue other than the applicability or
25 effect of the immunity created by Subsection (a). The association
26 may contract with the attorney general under Chapter 771,
27 Government Code, for legal services not covered by this subsection.

1 (V.T.I.C. Art. 21.28-C, Sec. 16.)

2 Sec. 462.012. IMMUNITY IN RELATION TO CERTAIN REPORTS AND
3 RECOMMENDATIONS. Liability does not exist and a cause of action
4 does not arise against any of the following persons for a statement
5 made in good faith by the person in a report or recommendation made
6 under Section 462.111 or 462.113:

7 (1) the commissioner or the commissioner's
8 representative;

9 (2) the association or the association's agent or
10 employee;

11 (3) a member insurer; or

12 (4) the board. (V.T.I.C. Art. 21.28-C, Sec. 13(c).)

13 Sec. 462.013. IMMUNITY IN RELATION TO CERTAIN NEGOTIATIONS.

14 (a) Liability does not exist and a cause of action does not arise
15 against any of the following persons for an act or omission in the
16 performance of an activity related to the negotiations relating to
17 the privatization of the former Texas workers' compensation
18 facility:

19 (1) the commissioner or the commissioner's
20 representative;

21 (2) the association or the association's agent or
22 employee;

23 (3) a member insurer; or

24 (4) a board member.

25 (b) This section applies to each activity undertaken by a
26 person described by Subsection (a), regardless of the date of the
27 act or omission. (V.T.I.C. Art. 21.28-C, Sec. 27.)

1 Sec. 462.014. RULES. The commissioner shall adopt
2 reasonable rules as necessary to implement and supplement this
3 chapter and this chapter's purposes. (V.T.I.C. Art. 21.28-C, Sec.
4 23.)

5 Sec. 462.015. INFORMATION PROVIDED BY OR TO COMMISSIONER.

6 (a) The commissioner shall notify the association of the existence
7 of an impaired insurer not later than the third day after the date
8 the commissioner gives notice of the designation of impairment.
9 The association is entitled to a copy of any complaint seeking an
10 order of receivership with a finding of insolvency against a member
11 insurer at the time the complaint is filed with a court.

12 (b) On the board's request, the commissioner shall provide
13 the association with a statement of the net direct written premiums
14 of each member insurer. (V.T.I.C. Art. 21.28-C, Secs. 10(a), (b).)

15 Sec. 462.016. PENALTY FOR FAILURE TO PAY ASSESSMENTS OR
16 COMPLY WITH PLAN OF OPERATION. (a) The commissioner shall suspend
17 or revoke, after notice and hearing, the certificate of authority
18 to engage in the business of insurance in this state of a member
19 insurer that:

20 (1) fails to pay an assessment at the time the
21 assessment is due; or

22 (2) otherwise fails to comply with the plan of
23 operation.

24 (b) As an alternative to action under Subsection (a), the
25 commissioner may assess a fine on a member insurer that fails to pay
26 an assessment at the time the assessment is due. The fine may not
27 exceed the lesser of:

1 (1) five percent of the unpaid assessment per month;

2 or

3 (2) \$100 per month. (V.T.I.C. Art. 21.28-C, Sec.

4 10(d).)

5 Sec. 462.017. APPEALS AND OTHER ACTIONS. (a) A final
6 action or order of the commissioner under this chapter is subject to
7 judicial review by a court.

8 (b) Venue in a suit against the commissioner or association
9 relating to an action or ruling of the commissioner or association
10 under this chapter is in Travis County. The commissioner or
11 association is not required to give an appeal bond in an appeal of a
12 cause of action arising under this chapter. (V.T.I.C. Art.
13 21.28-C, Secs. 10(f), (g).)

14 [Sections 462.018-462.050 reserved for expansion]

15 SUBCHAPTER B. GOVERNANCE OF ASSOCIATION

16 Sec. 462.051. ASSOCIATION AS LEGAL ENTITY; MEMBERSHIP. (a)
17 The Texas Property and Casualty Insurance Guaranty Association is a
18 nonprofit unincorporated legal entity.

19 (b) The association is composed of all member insurers. A
20 member insurer must remain a member of the association as a
21 condition of engaging in the business of insurance in this state.
22 (V.T.I.C. Art. 21.28-C, Sec. 6 (part).)

23 Sec. 462.052. BOARD OF DIRECTORS. (a) The association's
24 powers are exercised through a board of directors consisting of
25 nine individuals.

26 (b) Member insurers shall select five insurance industry
27 board members, subject to the approval of the commissioner. In

1 approving selections to the board, the commissioner shall consider
2 whether all member insurers are fairly represented.

3 (c) Four board members must be public representatives
4 appointed by the commissioner. (V.T.I.C. Art. 21.28-C, Secs. 6
5 (part), 7(a) (part), (b).)

6 Sec. 462.053. ELIGIBILITY TO SERVE AS PUBLIC
7 REPRESENTATIVE. A board member who is a public representative may
8 not be:

9 (1) an officer, director, or employee of an insurer,
10 insurance agency, agent, broker, adjuster, or any other business
11 entity regulated by the department;

12 (2) a person required to register with the Texas
13 Ethics Commission under Chapter 305, Government Code, in connection
14 with the person's representation of clients in the field of
15 insurance; or

16 (3) related to a person described by Subdivision (1)
17 or (2) within the second degree of affinity or consanguinity.
18 (V.T.I.C. Art. 21.28-C, Sec. 7(d).)

19 Sec. 462.054. ELIGIBILITY TO SERVE AS INDUSTRY
20 REPRESENTATIVE. To be eligible to serve as an insurance industry
21 board member, an individual must be a full-time employee of a member
22 insurer. (V.T.I.C. Art. 21.28-C, Sec. 7(a) (part).)

23 Sec. 462.055. TERM; VACANCY. (a) A board member serves a
24 term established by the plan of operation.

25 (b) The remaining board members, by majority vote, shall
26 fill a vacancy on the board for the unexpired term, subject to the
27 commissioner's approval. (V.T.I.C. Art. 21.28-C, Sec. 7(a)

1 (part).)

2 Sec. 462.056. REIMBURSEMENT OF BOARD MEMBERS. A board
3 member may be reimbursed from the assets of the association for
4 expenses the board member incurs as a board member. (V.T.I.C. Art.
5 21.28-C, Sec. 7(c).)

6 Sec. 462.057. FINANCIAL STATEMENT OF BOARD MEMBER. Each
7 board member shall file with the Texas Ethics Commission a
8 financial statement as provided by Subchapter B, Chapter 572,
9 Government Code. (V.T.I.C. Art. 21.28-C, Sec. 7(e).)

10 Sec. 462.058. CONFLICT OF INTEREST. (a) A director of the
11 association or a member insurer or other entity represented by the
12 director may not receive money or another valuable thing directly,
13 indirectly, or through any substantial interest in any other
14 corporation, firm, or business unit for negotiating, procuring,
15 participating in, recommending, or aiding in a reinsurance
16 agreement, merger, or other transaction, including the purchase,
17 sale, or exchange of assets, insurance policies, or property made
18 by the association or the supervisor, conservator, or receiver on
19 behalf of an impaired insurer.

20 (b) The director, member insurer, or entity may not be
21 pecuniarily or contractually interested, as principal,
22 coprincipal, agent, or beneficiary, directly, indirectly, or
23 through any substantial interest in any other corporation, firm, or
24 business unit, in the reinsurance agreement, merger, purchase,
25 sale, exchange, or other transaction. (V.T.I.C. Art. 21.28-C, Sec.
26 7(f).)

27 Sec. 462.059. MEETING BY CONFERENCE CALL. (a)

1 Notwithstanding Chapter 551, Government Code, the board may hold an
2 open meeting by telephone conference call if immediate action is
3 required and convening of a quorum of the board at a single location
4 is not reasonable or practical.

5 (b) The meeting is subject to the notice requirements that
6 apply to other meetings.

7 (c) The notice of the meeting must specify as the location
8 of the meeting the location at which meetings of the board are
9 usually held, and each part of the meeting that is required to be
10 open to the public must be audible to the public at that location
11 and must be tape recorded. The tape recording shall be made
12 available to the public. (V.T.I.C. Art. 21.28-C, Sec. 8(k).)

13 [Sections 462.060-462.100 reserved for expansion]

14 SUBCHAPTER C. GENERAL POWERS AND DUTIES OF ASSOCIATION

15 Sec. 462.101. GENERAL POWERS AND DUTIES. (a) The
16 association may:

17 (1) employ or retain persons as necessary to handle
18 claims and perform other duties of the association;

19 (2) borrow money necessary to implement this chapter
20 in accordance with the plan of operation;

21 (3) sue or be sued;

22 (4) negotiate and enter into a contract as necessary
23 to implement this chapter; and

24 (5) perform other acts as necessary or proper to
25 implement this chapter.

26 (b) A contract authorized by Subsection (a)(4) includes a
27 lump-sum or structured compromise and settlement agreement with a

1 claimant who has a claim for medical or indemnity benefits for a
2 period of three years or more, other than a settlement or lump-sum
3 payment in violation of Subtitle A, Title 5, Labor Code. (V.T.I.C.
4 Art. 21.28-C, Sec. 8(h) (part).)

5 Sec. 462.102. ASSOCIATION NOT IN PLACE OF IMPAIRED INSURER.
6 In performing the association's statutory obligations under this
7 chapter, the association is not considered:

8 (1) to be engaged in the business of insurance;

9 (2) to have assumed or succeeded to a liability of the
10 impaired insurer; or

11 (3) to otherwise stand in the place of the impaired
12 insurer for any purpose, including for the purpose of determining
13 whether the association is subject to personal jurisdiction of the
14 courts of another state. (V.T.I.C. Art. 21.28-C, Sec. 8(b)
15 (part).)

16 Sec. 462.103. PLAN OF OPERATION. (a) The association shall
17 perform the association's functions under a plan of operation
18 necessary or suitable to ensure the fair, reasonable, and equitable
19 administration of the association. The plan of operation must:

20 (1) be submitted to and approved in writing by the
21 commissioner;

22 (2) establish:

23 (A) procedures under which the powers and duties
24 of the association are performed;

25 (B) procedures for handling assets of the
26 association;

27 (C) the amount and method of reimbursing board

1 members;

2 (D) acceptable forms of proof of covered claims;

3 (E) regular places and times for board meetings;

4 (F) procedures for records to be kept of each
5 financial transaction of the association, the association's
6 agents, and the board; and

7 (G) procedures under which selections for the
8 board are submitted to the commissioner;

9 (3) provide:

10 (A) for the establishment of a claims filing
11 procedure that includes:

12 (i) notice by the association to claimants;

13 (ii) procedures for filing claims seeking
14 recovery from the association; and

15 (iii) a procedure for appealing the denial
16 of claims by the association; and

17 (B) that a member insurer aggrieved by a final
18 action or decision of the association may appeal to the
19 commissioner not later than the 30th day after the date of the
20 action or decision; and

21 (4) contain additional provisions necessary or proper
22 for the execution of the association's powers and duties.

23 (b) The association shall submit to the commissioner any
24 amendment to the plan of operation necessary or suitable to ensure
25 the fair, reasonable, and equitable administration of the
26 association. The amendment takes effect on the commissioner's
27 written approval.

1 (c) If the association does not submit a suitable amendment
2 to the plan of operation, the commissioner after notice and hearing
3 shall adopt reasonable rules as necessary or advisable to implement
4 this chapter. A rule continues in effect until modified by the
5 commissioner or superseded by an amendment submitted by the
6 association and approved by the commissioner.

7 (d) Each member insurer shall comply with the plan of
8 operation. (V.T.I.C. Art. 21.28-C, Secs. 6 (part), 9(a), (b), (c),
9 (d), (f).)

10 Sec. 462.104. NOTICE TO INSUREDS. (a) The commissioner may
11 require that the association notify an impaired insurer's insureds
12 and any other interested parties of:

13 (1) the designation of impairment; and

14 (2) the insureds' and other parties' rights under this
15 chapter.

16 (b) The association shall give notice as the commissioner
17 directs under this section. The association shall mail the notice
18 to the last known address, if available. If sufficient information
19 for notification by mail is not available, notice by publication in
20 a newspaper of general circulation is sufficient notice. (V.T.I.C.
21 Art. 21.28-C, Secs. 8(e), 10(c).)

22 Sec. 462.105. ACCOUNTS. For purposes of administration and
23 assessment, the association is divided into:

24 (1) the workers' compensation insurance account;

25 (2) the automobile insurance account; and

26 (3) the account for all other lines of insurance to
27 which this chapter applies. (V.T.I.C. Art. 21.28-C, Sec. 6

1 (part).)

2 Sec. 462.106. ADMINISTRATIVE EXPENSES. (a) The
3 association may use money in the administrative account to pay
4 administrative costs and other general expenses of the association.

5 (b) The association may transfer income from investment of
6 the association's money to the administrative account.

7 (c) On notification by the association of the amount of any
8 additional money needed for the administrative account, the
9 association shall assess member insurers in the manner provided by
10 Sections 462.159-462.168 for that money. The commissioner shall
11 consider the net direct written premiums collected in this state
12 for all lines of business covered by this chapter. An assessment
13 for administrative expenses incurred by a supervisor or conservator
14 appointed by the commissioner or a court-appointed receiver for a
15 nonmember of the association or unauthorized insurer operating in
16 this state may not exceed \$1 million each calendar year. (V.T.I.C.
17 Art. 21.28-C, Sec. 18(g).)

18 Sec. 462.107. EXAMINATION OF ASSOCIATION. Not later than
19 April 30 of each year, the association shall submit an audited
20 financial statement for the preceding calendar year to the state
21 auditor in a form approved by the state auditor's office. (V.T.I.C.
22 Art. 21.28-C, Sec. 14.)

23 Sec. 462.108. DEPOSIT OF MONEY. The board may deposit the
24 money the association collects into the Texas Treasury Safekeeping
25 Trust Company in accordance with procedures established by the
26 comptroller. The comptroller shall account to the association for
27 the deposited money separately from all other money. (V.T.I.C.

1 Art. 21.28-C, Sec. 8(j).)

2 Sec. 462.109. DELEGATION OF POWERS AND DUTIES. (a) Except
3 as provided by Subsection (b), the plan of operation may provide
4 that, on approval of the board and the commissioner, the
5 association may delegate by contract any or all powers or duties of
6 the association to a corporation or other organization that:

7 (1) performs or will perform in two or more states
8 functions similar to those of the association or the association's
9 equivalent; and

10 (2) provides protection not substantially less
11 favorable and effective than that provided by this chapter.

12 (b) The association may not delegate a power or duty under
13 Section 462.101(a)(2), 462.151, 462.154, 462.155, or 462.302(b)
14 under this section.

15 (c) The association shall:

16 (1) reimburse the corporation or other organization as
17 a servicing facility would be reimbursed; and

18 (2) pay the corporation or other organization for the
19 performance of any other functions of the association.

20 (d) A contract entered into under this section is subject to
21 the performance standards imposed under Section 442.112. (V.T.I.C.
22 Art. 21.28-C, Sec. 9(g).)

23 Sec. 462.110. EXEMPTION FROM CERTAIN FEES AND TAXES. The
24 association is exempt from payment of all fees and of all taxes
25 levied by this state or a subdivision of this state, except taxes
26 levied on real or personal property. (V.T.I.C. Art. 21.28-C, Sec.
27 15.)

1 Sec. 462.111. ACCESS TO RECORDS OF MEMBER INSURER IN
2 RECEIVERSHIP; ACTUARIAL AND OPERATIONAL ANALYSIS. (a) The
3 association shall have access to the books and records of a member
4 insurer in receivership to determine the extent of the impact on the
5 association if the member becomes impaired.

6 (b) The association may:

7 (1) perform or cause to be performed an actuarial and
8 operational analysis of the member insurer; and

9 (2) prepare a report on matters relating to the impact
10 or potential impact on the association in the event of impairment.

11 (c) A report prepared under Subsection (b) is not a public
12 document. (V.T.I.C. Art. 21.28-C, Sec. 13(a).)

13 Sec. 462.112. BOARD ACCESS TO RECORDS OF IMPAIRED INSURER.
14 The receiver or statutory successor of an impaired insurer covered
15 by this chapter shall give the board or the board's representative:

16 (1) access to the insurer's records as necessary for
17 the board to perform the board's functions under this chapter
18 relating to covered claims; and

19 (2) copies of those records on the board's request and
20 at the board's expense. (V.T.I.C. Art. 21.28-C, Sec. 17(b)
21 (part).)

22 Sec. 462.113. BOARD REPORT ON CONCLUSION OF INSOLVENCY. On
23 the conclusion of the insolvency of a domestic insurer with respect
24 to which the association was obligated to pay covered claims, the
25 board may:

26 (1) prepare a report on the history and causes of the
27 insolvency, based on information available to the association; and

1 (2) submit the report to the commissioner. (V.T.I.C.
2 Art. 21.28-C, Sec. 13(b).)

3 Sec. 462.114. DUTY OF RECEIVER. The receiver shall
4 periodically submit a list of claims to the association or similar
5 organization in another state. (V.T.I.C. Art. 21.28-C, Sec. 9(e).)

6 [Sections 462.115-462.150 reserved for expansion]

7 SUBCHAPTER D. ASSESSMENTS IN GENERAL

8 Sec. 462.151. MAKING OF ASSESSMENT; AMOUNT. (a) The
9 association shall assess member insurers the amount necessary to
10 pay:

11 (1) the association's obligations under Section
12 462.302 and the expenses of handling covered claims subsequent to
13 an insolvency; and

14 (2) other expenses authorized by this chapter.

15 (b) The assessment of each member insurer must be in the
16 proportion that the net direct written premiums of the insurer for
17 the calendar year preceding the assessment bear to the net direct
18 written premiums of all member insurers for that year. (V.T.I.C.
19 Art. 21.28-C, Sec. 8(c) (part).)

20 Sec. 462.152. MAXIMUM TOTAL ASSESSMENT. (a) The total
21 assessment of a member insurer in a year may not exceed an amount
22 equal to two percent of the insurer's net direct written premiums
23 for the calendar year preceding the assessment.

24 (b) If the maximum assessment and the association's other
25 assets are insufficient in a year to make all necessary payments,
26 the money available shall be prorated and the association shall pay
27 the unpaid portion as soon as money becomes available. (V.T.I.C.

1 Art. 21.28-C, Sec. 8(c) (part).)

2 Sec. 462.153. REFUND OF CONTRIBUTION. The association may
3 refund to the member insurers in proportion to the contribution of
4 each member insurer to the association the amount by which the
5 association's assets exceed the association's liabilities, if at
6 the end of a calendar year the board finds that the assets of the
7 association exceed the liabilities of the association as estimated
8 by the board for the next year. (V.T.I.C. Art. 21.28-C, Sec. 8(h)
9 (part).)

10 Sec. 462.154. NOTICE OF ASSESSMENT. The association shall
11 notify a member insurer of an assessment not later than the 30th day
12 before the date the assessment is due. (V.T.I.C. Art. 21.28-C, Sec.
13 8(c) (part).)

14 Sec. 462.155. DEFERMENT. (a) The association may defer
15 wholly or partly an assessment of a member insurer that would cause
16 the insurer's financial statement to show amounts of capital or
17 surplus less than the minimum amounts required for a certificate of
18 authority in any jurisdiction in which the insurer is authorized to
19 engage in the business of insurance.

20 (b) The member insurer shall pay the deferred assessment at
21 the time payment will not reduce capital or surplus below required
22 minimums. The payment shall be refunded to or credited against
23 future assessments of any member insurer receiving a larger
24 assessment because of the deferment, as elected by that insurer.

25 (c) During a period of deferment, the member insurer may not
26 pay a dividend to shareholders or policyholders. (V.T.I.C. Art.
27 21.28-C, Sec. 8(c) (part).)

1 Sec. 462.156. USE OF ASSESSMENTS. (a) The amounts provided
2 under assessments made under this chapter supplement the
3 marshalling of assets by the receiver under Chapter 442 to make
4 payments on the impaired insurer's behalf.

5 (b) This section does not require the receiver to exhaust
6 the assets of the impaired insurer before an assessment is made or
7 before money derived from an assessment may be used to pay covered
8 claims. (V.T.I.C. Art. 21.28-C, Sec. 19.)

9 Sec. 462.157. TAX CREDIT. (a) An insurer is entitled to a
10 credit against the insurer's premium tax under Chapter 221 for the
11 total amount of an assessment paid by the insurer under this
12 chapter.

13 (b) The tax credit may be taken at a rate of 10 percent each
14 year for 10 successive years after the date of assessment. At the
15 option of the insurer, the tax credit may be taken over an
16 additional number of years.

17 (c) The balance of a tax credit not claimed in a particular
18 year may be reflected in the books and records of the insurer as an
19 admitted asset of the insurer for all purposes, including
20 exhibition in an annual statement under Section 862.001.

21 (d) Available credit against premium tax allowed under this
22 section may be transferred or assigned among insurers if:

23 (1) a merger, acquisition, or total assumption of
24 reinsurance among the insurers occurs; or

25 (2) the commissioner by order approves the transfer or
26 assignment. (V.T.I.C. Art. 21.28-C, Sec. 21.)

27 Sec. 462.158. ADVANCE AS LOAN. Money advanced by the

1 association under this chapter is considered a special fund loan to
2 the impaired insurer for payment of covered claims and does not
3 become an asset of the impaired insurer. The loan is repayable to
4 the extent money from the impaired insurer is available. (V.T.I.C.
5 Art. 21.28-C, Sec. 18(f).)

6 Sec. 462.159. ESTIMATE OF ADDITIONAL MONEY NEEDED ON
7 IMPAIRMENT OF INSURER. (a) If the commissioner determines that an
8 insurer has become an impaired insurer, the association shall
9 promptly estimate the amount of additional money, by lines of
10 business, needed to supplement the immediately available assets of
11 the impaired insurer to pay covered claims.

12 (b) The board shall make additional money available as the
13 actual need arises for each impaired insurer. (V.T.I.C. Art.
14 21.28-C, Sec. 18(a).)

15 Sec. 462.160. ASSESSMENT FOR ADDITIONAL MONEY FOR ACCOUNTS.
16 If the board determines that additional money is needed in any of
17 the three accounts described by Section 462.105, the board shall
18 make assessments as needed to produce the necessary money.
19 (V.T.I.C. Art. 21.28-C, Sec. 18(b) (part).)

20 Sec. 462.161. AMOUNT OF ASSESSMENT; PRORATION OF PAYMENT.
21 (a) The association, in determining the proportionate amount to be
22 paid by individual insurers under an assessment under Section
23 462.160, shall consider the lines of business written by the
24 impaired insurer and shall assess individual insurers in proportion
25 to the ratio that the total net direct written premiums collected in
26 this state by the insurer for those lines of business bears to the
27 total net direct written premiums collected by all insurers, other

1 than impaired insurers, in this state for those lines of business.

2 (b) The association shall determine the total net direct
3 written premiums of an individual insurer and of all insurers in the
4 state from the insurers' annual statements for the year preceding
5 assessment. (V.T.I.C. Art. 21.28-C, Sec. 18(b) (part).)

6 Sec. 462.162. MAXIMUM ASSESSMENT OF INSURER; ADDITIONAL
7 ASSESSMENT AUTHORITY UNDER CERTAIN CIRCUMSTANCES. (a) Except as
8 otherwise provided by this section, assessments under Section
9 462.160 during a calendar year may not exceed two percent of each
10 insurer's net direct written premiums for the preceding calendar
11 year in the lines of business for which the assessments are made.

12 (b) In the event of a natural disaster or other catastrophe,
13 the association may apply to the governor, in the manner prescribed
14 by the plan of operation, for authority to assess each member
15 insurer that writes insurance coverage, other than automobile
16 insurance coverage or workers' compensation insurance coverage, an
17 additional amount not to exceed two percent of the insurer's net
18 direct written premiums for the preceding calendar year.

19 (c) If the maximum assessment in a calendar year does not
20 provide an amount sufficient for payment of covered claims of
21 impaired insurers, the association may make assessments in
22 successive calendar years. (V.T.I.C. Art. 21.28-C, Sec. 18(b)
23 (part).)

24 Sec. 462.163. PAYMENT OF ASSESSMENT. An insurer shall pay
25 the amount of an assessment under Section 462.160 or 462.162(b) to
26 the association not later than the 30th day after the date the
27 association gives notice of the assessment. (V.T.I.C. Art.

1 21.28-C, Sec. 18(c).)

2 Sec. 462.164. PARTICIPATION RECEIPTS. (a) On receipt from
3 a member insurer of payment of an assessment or partial assessment
4 under Section 462.160 or 462.162(b), the association shall provide
5 the insurer with a participation receipt. A participation receipt
6 creates liability against the account described by Section 462.105
7 for the line or lines of business for which the assessment was made.

8 (b) The account from which an advance is made to an impaired
9 insurer for the payment of covered claims is a general creditor of
10 the impaired insurer for the money advanced. With reference to the
11 remaining balance of an advance not used to pay covered claims, the
12 claim of the account has preference over other general creditors.
13 (V.T.I.C. Art. 21.28-C, Secs. 20(a), (b) (part).)

14 Sec. 462.165. ACCOUNTING; REPORTS; REFUND. (a) The
15 association, with respect to an impaired insurer, shall adopt
16 accounting procedures that reflect the use of all money and shall
17 make a final report of the use of the money to the commissioner. The
18 final report must state any remaining balance from the money
19 advanced to an impaired insurer for the payment of covered claims.

20 (b) The association shall make interim accounting reports
21 as required by the commissioner or requested by the conservator.

22 (c) As soon as practicable after completion of the final
23 report, the association shall refund by line of business the
24 remaining balance of those advances to the association's accounts.
25 (V.T.I.C. Art. 21.28-C, Sec. 20(b) (part).)

26 Sec. 462.166. USE OF EXCESS MONEY IN ACCOUNT. (a) If the
27 association determines that money in the account described by

1 Section 462.164(b) for a line of business exceeds the amount
2 reasonably necessary for efficient future operation under this
3 chapter, the association shall, after deducting any premium tax
4 credit taken under Section 462.157, return the excess money pro
5 rata to the holders of participation receipts:

6 (1) on which an outstanding balance exists; and

7 (2) that were issued for an assessment on the same line
8 of business as the line for which the excess money is found to
9 exist.

10 (b) The association shall transfer an excess amount that
11 exists in the account described by Section 462.164(b) to the
12 comptroller to be deposited to the credit of the general revenue
13 fund if:

14 (1) after a distribution under this section the
15 association finds that an excess amount still exists; or

16 (2) participation receipts on which there is an
17 outstanding balance do not exist. (V.T.I.C. Art. 21.28-C, Sec.
18 20(c).)

19 Sec. 462.167. COLLECTION OF ASSESSMENTS. (a) The
20 commissioner may collect an assessment on behalf of the association
21 through a suit brought for that purpose.

22 (b) Venue for a suit under this section is in Travis County.

23 (c) Either party to the suit may appeal to an appellate
24 court. The appeal is at once returnable to the appellate court.
25 The appeal has precedence in the appellate court over all causes of
26 a different character pending before the court.

27 (d) The commissioner is not required to give an appeal bond

1 in any cause of action arising under this section. (V.T.I.C. Art.
2 21.28-C, Sec. 18(d).)

3 Sec. 462.168. EXEMPTION FOR IMPAIRED INSURER. An impaired
4 insurer is exempt from assessment from the date the insurer is
5 designated an impaired insurer until the date the commissioner
6 determines that the insurer is no longer an impaired insurer.
7 (V.T.I.C. Art. 21.28-C, Sec. 18(e).)

8 [Sections 462.169-462.200 reserved for expansion]

9 SUBCHAPTER E. COVERED CLAIMS; CLAIMANTS

10 Sec. 462.201. COVERED CLAIMS IN GENERAL. A claim is a
11 covered claim if:

12 (1) the claim is an unpaid claim;

13 (2) the claim is made under an insurance policy to
14 which this chapter applies that is:

15 (A) issued by an insurer authorized to engage in
16 business in this state; or

17 (B) assumed by an insurer authorized to engage in
18 business in this state that issues an assumption certificate to the
19 insured;

20 (3) the claim arises out of the policy and is within
21 the coverage and applicable limits of the policy;

22 (4) the insurer that issued the policy or assumed the
23 policy under an assumption certificate issued to the insured is an
24 impaired insurer; and

25 (5) the claim:

26 (A) is made by a liability claimant or insured
27 who is a resident of this state at the time of the insured event; or

1 (B) is a first-party claim for damage to property
2 that is permanently located in this state. (V.T.I.C. Art. 21.28-C,
3 Sec. 5(8) (part).)

4 Sec. 462.202. CLAIM FOR UNEARNED PREMIUMS. (a) A claim for
5 unearned premiums is a covered claim. A covered claim for unearned
6 premiums may not exceed \$25,000.

7 (b) With respect to a covered claim for unearned premiums, a
8 person has a covered claim under this chapter if the person is a
9 resident of this state at the time:

10 (1) the policy is issued; or

11 (2) the insurer is determined to be an impaired
12 insurer. (V.T.I.C. Art. 21.28-C, Sec. 5(8) (part).)

13 Sec. 462.203. CERTAIN EXPENSES OF RECEIVERSHIP OR
14 CONSERVATORSHIP ESTATE COVERED. An administration expense
15 incurred in processing or paying a claim against a receivership or
16 conservatorship estate is a covered claim if the impaired insurer
17 has insufficient assets to pay the expenses of administering the
18 estate. (V.T.I.C. Art. 21.28-C, Sec. 5(8) (part).)

19 Sec. 462.204. AFFILIATE MAY NOT BE CLAIMANT. A person who
20 is an affiliate of an impaired insurer may not be a claimant of the
21 insurer. (V.T.I.C. Art. 21.28-C, Sec. 5(5) (part).)

22 Sec. 462.205. DETERMINATION OF RESIDENCE OF ENTITIES. A
23 corporation or other entity that is not an individual is considered
24 to be a resident of the state in which the entity's principal place
25 of business is located. (V.T.I.C. Art. 21.28-C, Sec. 5(8) (part).)

26 Sec. 462.206. CLAIMS NOT COVERED: PREMIUM UNDER
27 RETROSPECTIVE RATING PLAN. An amount sought as a return of premium

1 under a retrospective rating plan is not a covered claim. (V.T.I.C.
2 Art. 21.28-C, Sec. 5(8) (part).)

3 Sec. 462.207. CLAIMS NOT COVERED: AMOUNTS DUE CERTAIN
4 ENTITIES. (a) Any amount due any reinsurer, insurer,
5 self-insurer, insurance pool, or underwriting association, as a
6 subrogation recovery, reinsurance recovery, contribution, or
7 indemnification, or otherwise, is not a covered claim.

8 (b) An impaired insurer's insured is not liable, and the
9 reinsurer, insurer, self-insurer, insurance pool, or underwriting
10 association is not entitled to sue or continue a suit against the
11 insured, for a subrogation recovery, reinsurance recovery,
12 contribution, or indemnification to the extent of the applicable
13 liability limits of the insurance policy written and issued to the
14 insured by the insolvent insurer. (V.T.I.C. Art. 21.28-C, Sec.
15 5(8) (part).)

16 Sec. 462.208. CLAIMS NOT COVERED: SUPPLEMENTARY PAYMENT
17 OBLIGATIONS. A supplementary payment obligation, including an
18 adjustment fee or expense, attorney's fee or expense, court cost,
19 interest or penalty, or interest or bond premium, incurred before
20 an insurer is determined to be an impaired insurer is not a covered
21 claim. (V.T.I.C. Art. 21.28-C, Sec. 5(8) (part).)

22 Sec. 462.209. CLAIMS NOT COVERED: PREJUDGMENT OR
23 POSTJUDGMENT INTEREST. Prejudgment or postjudgment interest that
24 accrues after an insurer is determined to be an impaired insurer is
25 not a covered claim. (V.T.I.C. Art. 21.28-C, Sec. 5(8) (part).)

26 Sec. 462.210. CLAIMS NOT COVERED: CERTAIN DAMAGES. A claim
27 against the insured, insurer, guaranty association, receiver,

1 special deputy receiver, or commissioner for recovery of punitive,
2 exemplary, extracontractual, or bad-faith damages awarded in a
3 court judgment against an insured or insurer is not a covered claim.
4 (V.T.I.C. Art. 21.28-C, Sec. 5(8) (part).)

5 Sec. 462.211. CLAIMS NOT COVERED: LATE FILED CLAIMS. (a)
6 Notwithstanding any other provision of this chapter and except as
7 provided by Subsection (b), a claim filed with the association on a
8 date that is later than 18 months after the date of the order of
9 liquidation is not a covered claim.

10 (b) This section does not apply to a claim for workers'
11 compensation benefits governed by Title 5, Labor Code, and the
12 applicable rules of the Texas Workers' Compensation Commission.
13 (V.T.I.C. Art. 21.28-C, Sec. 8(d) (part).)

14 Sec. 462.212. NET WORTH EXCLUSION. (a) The association is
15 not liable to pay a first-party claim of an insured whose net worth
16 on December 31 of the year preceding the date the insurer becomes an
17 impaired insurer exceeds \$50 million.

18 (b) For purposes of this section, an insured's net worth
19 includes the aggregate net worth of the insured and the insured's
20 parent, subsidiary, and affiliated companies, computed on a
21 consolidated basis.

22 (c) This section does not exclude the payment of a covered
23 claim for workers' compensation benefits otherwise payable under
24 this chapter. (V.T.I.C. Art. 21.28-C, Sec. 11A.)

25 Sec. 462.213. AMOUNT OF INDIVIDUAL COVERED CLAIM; LIMIT.

26 (a) Except as provided by Subsection (b) and Section 462.252, an
27 individual covered claim may not exceed \$300,000.

1 (b) The association shall pay the full amount of a covered
2 claim arising out of a workers' compensation claim made under a
3 workers' compensation insurance policy.

4 (c) For purposes of this section, an individual covered
5 claim includes any derivative claims by more than one person that
6 arise from the same occurrence. The claims shall be considered
7 collectively as a single claim under this chapter. (V.T.I.C. Art.
8 21.28-C, Sec. 5(8) (part).)

9 Sec. 462.214. CERTAIN SHAREHOLDERS' CLAIMS: LIMIT.
10 Notwithstanding any other provision of this chapter, the
11 association's liability for shareholder derivative actions or
12 other claims for economic loss incurred by a claimant in the
13 claimant's capacity as a shareholder under an insurance policy
14 placed in force on or after January 1, 1992, is limited to \$300,000
15 for each policy, including defense costs, regardless of the number
16 of claimants under each policy. (V.T.I.C. Art. 21.28-C, Sec. 5(8)
17 (part).)

18 [Sections 462.215-462.250 reserved for expansion]

19 SUBCHAPTER F. NONDUPLICATION OF RECOVERY

20 Sec. 462.251. EXHAUSTION OF RIGHTS UNDER OTHER POLICY
21 REQUIRED. (a) Any person who has a claim under an insurance
22 policy, other than an impaired insurer's policy, and whose claim
23 arises from the same facts, injury, or loss giving rise to a claim
24 against an impaired insurer or the insurer's insured, must first
25 exhaust the person's rights under the insurance policy, including:

26 (1) a claim for benefits under a workers' compensation
27 insurance policy or a claim for indemnity or medical benefits under

1 a health, disability, uninsured motorist, personal injury
2 protection, medical payment, liability, or other insurance policy;
3 and

4 (2) the right to defense under the insurance policy.

5 (b) Subsection (a) applies without regard to whether the
6 insurance policy is issued by a member insurer. (V.T.I.C. Art.
7 21.28-C, Sec. 12(a) (part).)

8 Sec. 462.252. REDUCTION IN AMOUNT OF COVERED CLAIM FOR
9 OTHER POLICY. (a) Except as provided by Subsection (b), an amount
10 payable as a covered claim under this chapter is reduced by the full
11 applicable limits of another insurance policy described by Section
12 462.251, and the association shall receive a full credit in the
13 amount of the full applicable limits of the other policy.

14 (b) A covered claim for workers' compensation benefits is
15 subject to reduction only by a third-party liability recovery under
16 Section 417.002, Labor Code.

17 (c) The maximum amount payable by the association is the
18 damages incurred by the claimant, less the association's credit or
19 offset under this section. The association's liability may not
20 exceed the lesser of:

21 (1) \$300,000; or

22 (2) the limits of the insurance policy under which the
23 claim is made. (V.T.I.C. Art. 21.28-C, Sec. 12(a) (part).)

24 Sec. 462.253. EFFECT ON INSURED OF REDUCTION IN AMOUNT OF
25 COVERED CLAIM. To the extent that the association's obligation is
26 reduced by the application of Sections 462.251 and 462.252, the
27 liability of the person insured by the impaired insurer's policy

1 for the claim is reduced in the same amount. (V.T.I.C. Art.
2 21.28-C, Sec. 12(a) (part).)

3 Sec. 462.254. RECOVERY FROM MORE THAN ONE GUARANTY
4 ASSOCIATION. (a) Except as provided by Subsections (b) and (c), a
5 person who has a claim that may be recovered from more than one
6 insurance guaranty association or the equivalent shall seek
7 recovery first from the association of the insured's residence.

8 (b) A claimant shall seek recovery of a first-party claim
9 for damage to property with a permanent location first from the
10 association of the location of the property.

11 (c) A claimant shall seek recovery of a workers'
12 compensation claim first from the association of the claimant's
13 residence.

14 (d) The association has a credit or offset against the
15 benefits under this chapter in the amount of the claimant's
16 recovery under this section.

17 (e) The maximum amount payable by the association is the
18 amount of damages incurred by the claimant, less the credit or
19 offset. The association's liability may not exceed \$300,000.
20 (V.T.I.C. Art. 21.28-C, Sec. 12(b).)

21 Sec. 462.255. CERTAIN CLAIMS SUBJECT TO LIEN OR
22 SUBROGATION. Notwithstanding Sections 462.252(c) and 462.254(e),
23 if a claimant is seeking recovery of insurance policy benefits
24 that, had the impaired insurer not been insolvent, would be subject
25 to lien or subrogation by any other insurer, including a workers'
26 compensation insurer or health insurer, regardless of whether the
27 other insurer is impaired, the association's credit or offset is

1 deducted from the lesser of:

2 (1) the damages incurred by the claimant; or

3 (2) the limits of the policy under which the claim is
4 made. (V.T.I.C. Art. 21.28-C, Secs. 12(a-1) (part), (b-1) (part).)

5 Sec. 462.256. LIMIT ON TOTAL RECOVERY. (a) A claimant's
6 recovery under this chapter may not result in a total recovery to
7 the claimant that is greater than the recovery that would have
8 resulted had the impaired insurer not been insolvent.

9 (b) Subject to Sections 462.201-462.203, 462.205-462.210,
10 462.213, 462.214, and 462.305(d) of this code and Title 5, Labor
11 Code, a claim for workers' compensation benefits under this chapter
12 may not result in a recovery to the claimant that is less than the
13 recovery that would have resulted had the impaired insurer not been
14 insolvent. (V.T.I.C. Art. 21.28-C, Secs. 12(a-1) (part), (b-1)
15 (part).)

16 [Sections 462.257-462.300 reserved for expansion]

17 SUBCHAPTER G. ASSOCIATION POWERS AND DUTIES RELATING TO COVERED
18 CLAIMS

19 Sec. 462.301. GENERAL POWERS AND DUTIES OF ASSOCIATION IN
20 CONNECTION WITH PAYMENT OF COVERED CLAIMS. (a) The association
21 shall investigate and adjust, compromise, settle, and pay covered
22 claims to the extent of the association's obligation and deny all
23 other claims.

24 (b) The association may review a settlement, release, or
25 judgment to which an impaired insurer or the impaired insurer's
26 insured was a party to determine the extent to which the settlement,
27 release, or judgment may be properly contested. (V.T.I.C. Art.

1 21.28-C, Sec. 8(d) (part).)

2 Sec. 462.302. PAYMENT OF COVERED CLAIMS. (a) The
3 association shall pay covered claims that exist before the
4 designation of impairment or that arise:

5 (1) not later than the 30th day after the date of the
6 designation of impairment;

7 (2) before the insurance policy expiration date, if
8 that date is not later than the 30th day after the date of the
9 designation of impairment; or

10 (3) before the insured replaces the insurance policy
11 or causes the policy's cancellation, if the insured does so not
12 later than the 30th day after the date of the designation of
13 impairment.

14 (b) The association shall pay claims in the order the
15 association considers reasonable, including paying as claims are
16 received from the claimants or in groups or categories of claims.
17 (V.T.I.C. Art. 21.28-C, Secs. 8(a) (part), (c) (part).)

18 Sec. 462.303. CERTAIN DETERMINATIONS NOT BINDING. (a) The
19 association is not bound by:

20 (1) a judgment taken before the designation of
21 impairment in which an insured under a liability insurance policy
22 or the insurer failed to exhaust all appeals;

23 (2) a judgment taken by default or consent against an
24 insured or the impaired insurer; or

25 (3) a judgment, settlement, or release entered into by
26 the insured or the impaired insurer.

27 (b) A judgment, settlement, or release described by

1 Subsection (a) is not evidence of liability or of damages in
2 connection with a claim brought against the association or another
3 party under this chapter. (V.T.I.C. Art. 21.28-C, Sec. 8(d)
4 (part).)

5 Sec. 462.304. SERVICING FACILITY. (a) The association
6 shall handle claims through the association's employees or through
7 one or more insurers or other persons designated, subject to the
8 approval of the commissioner, as servicing facilities.

9 (b) A member insurer may decline designation as a servicing
10 facility.

11 (c) The association shall:

12 (1) reimburse a servicing facility for:

13 (A) obligations of the association paid by the
14 facility; and

15 (B) expenses incurred by the facility in handling
16 claims for the association; and

17 (2) pay the other expenses of the association
18 authorized by this chapter.

19 (d) The commissioner may revoke the designation of a
20 servicing facility if the commissioner finds that servicing
21 facility is handling claims unsatisfactorily. (V.T.I.C. Art.
22 21.28-C, Secs. 8(f), (g), 10(e).)

23 Sec. 462.305. SATISFACTION OF OBLIGATION TO PAY COVERED
24 CLAIMS; LIMITATION OF ASSOCIATION'S LIABILITY. (a) The
25 association satisfies the obligation to pay a covered claim by
26 paying the claimant the full amount of a covered claim for benefits.

27 (b) The association's liability is limited to the payment of

1 covered claims. The association is not liable for any other claim
2 or damages against the insured, an impaired insurer, the
3 association, the receiver, the special deputy receiver, the
4 commissioner, or the liquidator, including a claim for:

5 (1) recovery of attorney's fees, prejudgment or
6 postjudgment interest, or penalties;

7 (2) extracontractual damages, multiple damages, or
8 exemplary damages; or

9 (3) any other amount sought in connection with the
10 assertion or prosecution of a claim, without regard to whether the
11 claim is a covered claim, by or on behalf of:

12 (A) an insured or claimant; or

13 (B) a provider of goods or services retained by
14 an insured or claimant.

15 (c) This section does not exclude the payment of workers'
16 compensation benefits or other liabilities or penalties authorized
17 by Title 5, Labor Code, arising from the association's processing
18 and paying workers' compensation benefits after the designation of
19 impairment.

20 (d) The association is not liable to an insured or liability
21 claimant for the association's failure to settle a liability claim
22 within the limits of a covered claim under this chapter. A claim
23 described by this section for failure to settle a liability claim is
24 not a covered claim. (V.T.I.C. Art. 21.28-C, Secs. 5(8) (part),
25 8(a) (part).)

26 Sec. 462.306. DISCHARGE OF POLICY OBLIGATION. (a) The
27 association shall discharge an impaired insurer's policy

1 obligations, including the duty to defend insureds under a
2 liability insurance policy, to the extent that the policy
3 obligation is a covered claim under this chapter.

4 (b) In performing the association's statutory obligations,
5 the association may also enforce a duty imposed on the insured or
6 beneficiary under the terms of an insurance policy within the scope
7 of this chapter. (V.T.I.C. Art. 21.28-C, Sec. 8(b) (part).)

8 Sec. 462.307. ASSIGNMENT OF RIGHTS. (a) A person
9 recovering under this chapter assigns to the association the
10 person's rights:

11 (1) under the insurance policy; and

12 (2) to recover for the occurrence that is the basis of
13 the claim under this chapter under an insurance policy issued by an
14 unimpaired insurer to the extent of the person's recovery from the
15 association.

16 (b) The association may pursue a claim to which the
17 association is subrogated under Subsection (a) in the association's
18 own name or in the name of the person recovering under this chapter.

19 (c) An insured or claimant seeking the protection of this
20 chapter shall cooperate with the association to the same extent as
21 that person would have been required to cooperate with the impaired
22 insurer.

23 (d) Except as provided by Section 462.308, the association
24 does not have a cause of action against the impaired insurer's
25 insured for money the association has paid, other than a cause of
26 action that the impaired insurer would have had if the money had
27 been paid by the impaired insurer.

1 (e) In the case of an impaired insurer operating on a plan
2 with assessment liability, the payment of a claim of the
3 association does not reduce the liability of the insured to the
4 receiver or statutory successor for an unpaid assessment.
5 (V.T.I.C. Art. 21.28-C, Sec. 11(a).)

6 Sec. 462.308. RECOVERY FROM CERTAIN PERSONS. (a) The
7 association is entitled to recover the amount of a covered claim and
8 the cost of defense paid under this chapter from the person on whose
9 behalf the payment was made if the person is:

10 (1) a person:

11 (A) who is an affiliate of the impaired insurer;

12 and

13 (B) whose liability obligations to other persons
14 are satisfied wholly or partly by payment made under this chapter;
15 or

16 (2) an insured:

17 (A) whose net worth on December 31 of the year
18 preceding the date the insurer becomes an impaired insurer exceeds
19 \$50 million; and

20 (B) whose obligations under a liability policy or
21 contract of insurance written, issued, and placed in force after
22 January 1, 1992, are satisfied wholly or partly by payment made
23 under this chapter.

24 (b) The association is not entitled to recover under
25 Subsection (a)(2) against an insured who is exempt from federal
26 income tax under Section 501(a), Internal Revenue Code of 1986, by
27 being described by Section 501(c)(3) of that code.

1 (c) For purposes of Subsection (a)(2), an insured's net
2 worth includes the aggregate net worth of the insured and the
3 insured's parent, subsidiary, and affiliated companies, computed
4 on a consolidated basis. (V.T.I.C. Art. 21.28-C, Sec. 11(b).)

5 Sec. 462.309. STAY OF PROCEEDINGS; CERTAIN DECISIONS NOT
6 BINDING. (a) To permit the association to properly defend a
7 pending cause of action, a proceeding in which an impaired insurer
8 is a party or is obligated to defend a party in a court in this
9 state, other than a proceeding directly related to the receivership
10 or instituted by the receiver, is stayed for:

11 (1) a six-month period beginning on the later of the
12 date of the designation of impairment or the date an ancillary
13 proceeding is brought in this state; and

14 (2) a subsequent period as determined by the court, if
15 any.

16 (b) The stay applies to each party to the proceeding and the
17 proceeding is stayed for all purposes.

18 (c) A deadline imposed under the Texas Rules of Civil
19 Procedure or the Texas Rules of Appellate Procedure is tolled
20 during the stay.

21 (d) The court in which the delinquency proceeding is pending
22 has exclusive jurisdiction regarding the application, enforcement,
23 and extension of the stay and may issue an injunction or another
24 similar order to enforce the stay.

25 (e) The commissioner may bring an ancillary delinquency
26 proceeding under Sections 442.751, 442.752, and 442.754 for the
27 limited purpose of determining the application, enforcement, and

1 extension of the stay to an impaired insurer that is not domiciled
2 in this state.

3 (f) With respect to a covered claim arising from a judgment,
4 order, decision, verdict, or finding based on the default of an
5 impaired insurer or an impaired insurer's failure to defend the
6 insured, the association, on the association's own behalf or on
7 behalf of an insured and on application, shall be entitled to:

8 (1) have the court or administrator that made the
9 judgment, order, decision, verdict, or finding set aside the
10 judgment, order, decision, verdict, or finding; and

11 (2) defend the claim on the merits. (V.T.I.C. Art.
12 21.28-C, Secs. 17(a), (b) (part).)

13 Sec. 462.310. SETTLEMENT BY ASSOCIATION BINDING; PRIORITY
14 OF CLAIM AND EXPENSES. (a) The settlement of a covered claim by the
15 association or a similar organization in another state binds the
16 receiver or statutory successor of an impaired insurer.

17 (b) The court having jurisdiction shall give the covered
18 claim the same priority against assets of the impaired insurer that
19 the claim would have had in the absence of this chapter.

20 (c) The expenses of the association or a similar
21 organization in another state in handling claims have the same
22 priority as the receiver's expenses. (V.T.I.C. Art. 21.28-C, Sec.
23 11(c).)

24 Sec. 462.311. REPORT TO RECEIVER. The association shall
25 periodically file with the receiver of an impaired insurer a
26 statement of covered claims paid by the association and an estimate
27 of claims anticipated against the association. The statement

1 preserves the rights of the association against the assets of the
2 impaired insurer. (V.T.I.C. Art. 21.28-C, Sec. 11(d).)

3 [Sections 462.312-462.350 reserved for expansion]

4 SUBCHAPTER H. RELEASE FROM RECEIVERSHIP

5 Sec. 462.351. ISSUANCE OF POLICIES AFTER RELEASE FROM
6 RECEIVERSHIP. (a) Except as provided by Subsection (b), an
7 impaired insurer placed in receivership for which money has been
8 advanced under this chapter may not be authorized, on release from
9 receivership, to issue new or renewal insurance policies until the
10 insurer repays the advances to the association.

11 (b) On application of the association and after hearing, the
12 commissioner may permit the insurer to issue new insurance policies
13 in accordance with the insurer's plan of operation for repayment of
14 advances.

15 (c) The commissioner, in approving the plan of operation,
16 may place restrictions on the issuance of new or renewal insurance
17 policies as the commissioner considers necessary to implement the
18 plan. (V.T.I.C. Art. 21.28-C, Sec. 22.)

19 CHAPTER 463. LIFE, ACCIDENT, HEALTH, AND HOSPITAL

20 SERVICE INSURANCE GUARANTY ASSOCIATION

21 SUBCHAPTER A. GENERAL PROVISIONS

22 Sec. 463.001. SHORT TITLE

23 Sec. 463.002. PURPOSE

24 Sec. 463.003. DEFINITIONS

25 Sec. 463.004. CONSTRUCTION

26 Sec. 463.005. IMMUNITY

27 Sec. 463.006. RULES

[Sections 463.007-463.050 reserved for expansion]

SUBCHAPTER B. GOVERNANCE OF AND PARTICIPATION IN ASSOCIATION

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Sec. 463.052. REQUIRED PARTICIPATION IN ASSOCIATION

Sec. 463.053. BOARD OF DIRECTORS

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Sec. 463.055. TERM; VACANCY

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[Sections 463.059-463.100 reserved for expansion]

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Sec. 463.106. DELEGATION OF POWERS AND DUTIES

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Sec. 463.108. DETECTION AND PREVENTION OF IMPAIRMENT

AND INSOLVENCY

Sec. 463.109. ASSOCIATION APPEARANCE BEFORE COURT;

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Sec. 463.111. BOARD AND ASSOCIATION ADVICE AND

ASSISTANCE

1 Sec. 463.112. BOARD ACCESS TO RECORDS

2 Sec. 463.113. BOARD REPORT AT CONCLUSION OF INSOLVENCY

3 Sec. 463.114. SUMMARY DOCUMENT; DISCLAIMER

4 [Sections 463.115-463.150 reserved for expansion]

5 SUBCHAPTER D. ASSESSMENTS

6 Sec. 463.151. MAKING AND PAYMENT OF ASSESSMENT

7 Sec. 463.152. CLASSES OF ASSESSMENTS

8 Sec. 463.153. AMOUNT OF ASSESSMENTS

9 Sec. 463.154. DEFERMENT

10 Sec. 463.155. DEPOSIT OF ASSESSMENTS

11 Sec. 463.156. CERTIFICATE OF CONTRIBUTION

12 Sec. 463.157. REFUNDS

13 Sec. 463.158. USE OF ASSESSMENTS

14 Sec. 463.159. FAILURE TO PAY; COLLECTION BY

15 COMMISSIONER

16 Sec. 463.160. PREMIUM TAX CREDIT FOR CLASS A

17 ASSESSMENT

18 Sec. 463.161. PREMIUM TAX CREDIT FOR CLASS B

19 ASSESSMENT

20 Sec. 463.162. ASSIGNMENT OR TRANSFER OF CREDIT

21 Sec. 463.163. INSURED'S LIABILITY UNDER ASSESSMENT

22 PLAN

23 [Sections 463.164-463.200 reserved for expansion]

24 SUBCHAPTER E. COVERAGE PROVIDED BY ASSOCIATION

25 Sec. 463.201. INSUREDS COVERED

26 Sec. 463.202. POLICIES AND CONTRACTS COVERED

27 Sec. 463.203. POLICIES AND CONTRACTS EXCLUDED

1 Sec. 463.204. OBLIGATIONS EXCLUDED

2 Sec. 463.205. PROTECTION PROVIDED BY OTHER

3 JURISDICTION

4 [Sections 463.206-463.250 reserved for expansion]

5 SUBCHAPTER F. POWERS AND DUTIES OF ASSOCIATION RELATING

6 TO IMPAIRED OR INSOLVENT INSURER

7 Sec. 463.251. IMPAIRED DOMESTIC INSURER

8 Sec. 463.252. IMPAIRED DOMESTIC, FOREIGN, OR ALIEN

9 INSURER NOT PAYING CLAIMS

10 Sec. 463.253. INSOLVENT INSURER

11 Sec. 463.254. LIFE OR HEALTH INSURANCE POLICIES OR

12 CONTRACTS

13 Sec. 463.255. POLICY OR CONTRACT WITH GUARANTEED

14 INTEREST RATE

15 Sec. 463.256. ALTERNATIVE POLICY

16 Sec. 463.257. IMPOSITION OF LIEN OR MORATORIUM

17 Sec. 463.258. PREMIUM FOR REISSUANCE OF TERMINATED

18 COVERAGE

19 Sec. 463.259. PREMIUM DUE DURING RECEIVERSHIP

20 Sec. 463.260. LIMITS ON AND TERMINATION OF ASSOCIATION

21 OBLIGATION

22 Sec. 463.261. ASSIGNMENT OF RIGHTS

23 [Sections 463.262-463.300 reserved for expansion]

24 SUBCHAPTER G. OPERATION OF IMPAIRED OR INSOLVENT INSURER

25 Sec. 463.301. ISSUANCE OR RENEWAL OF POLICIES

26 FOLLOWING CONSERVATORSHIP OR

27 RECEIVERSHIP

1 Sec. 463.302. DISTRIBUTIONS TO SHAREHOLDERS AND
2 AFFILIATES

3 Sec. 463.303. ASSETS ATTRIBUTABLE TO COVERED POLICIES

4 Sec. 463.304. DISTRIBUTION OF OWNERSHIP RIGHTS OF
5 INSOLVENT INSURER

6 [Sections 463.305-463.350 reserved for expansion]

7 SUBCHAPTER H. POWERS AND DUTIES OF COMMISSIONER AND DEPARTMENT

8 Sec. 463.351. NOTICE OF COMMISSIONER ACTIONS

9 Sec. 463.352. ADVICE FROM BOARD

10 Sec. 463.353. EXAMINATION

11 Sec. 463.354. DEMAND TO CURE IMPAIRMENT

12 Sec. 463.355. FAILURE TO COMPLY WITH PLAN OF OPERATION

13 Sec. 463.356. ASSUMPTION OF POWERS AND DUTIES OF
14 ASSOCIATION

15 Sec. 463.357. NOTIFICATION OF EFFECT OF CHAPTER

16 Sec. 463.358. STATEMENT OF PREMIUMS

17 [Sections 463.359-463.400 reserved for expansion]

18 SUBCHAPTER I. APPEALS AND OTHER ACTIONS

19 Sec. 463.401. APPEAL TO COMMISSIONER

20 Sec. 463.402. VENUE

21 Sec. 463.403. APPEAL BOND

22 Sec. 463.404. STAY OF PROCEEDINGS; CERTAIN DECISIONS
23 NOT BINDING

24 [Sections 463.405-463.450 reserved for expansion]

25 SUBCHAPTER J. PROHIBITED PRACTICES

26 Sec. 463.451. PROHIBITED USE OF PROTECTION PROVIDED BY
27 CHAPTER

1 CHAPTER 463. LIFE, ACCIDENT, HEALTH, AND HOSPITAL

2 SERVICE INSURANCE GUARANTY ASSOCIATION

3 SUBCHAPTER A. GENERAL PROVISIONS

4 Sec. 463.001. SHORT TITLE. This chapter may be cited as
5 the Life, Accident, Health, and Hospital Service Insurance Guaranty
6 Association Act. (V.T.I.C. Art. 21.28-D, Sec. 1.)

7 Sec. 463.002. PURPOSE. The purpose of this chapter is to
8 protect, subject to certain limitations, a person specified by
9 Section 463.201 against failure in the performance of a contractual
10 obligation under a life, accident, or health insurance policy or
11 annuity contract with respect to which this chapter provides
12 coverage as determined under Subchapter E, because of the
13 impairment or insolvency of the member insurer that issued the
14 policy or contract. (V.T.I.C. Art. 21.28-D, Sec. 2 (part).)

15 Sec. 463.003. DEFINITIONS. In this chapter:

16 (1) "Association" means the Life, Accident, Health,
17 and Hospital Service Insurance Guaranty Association.

18 (2) "Board" means the board of directors of the
19 association.

20 (3) "Contractual obligation" means an obligation
21 under a policy or contract or certificate under a group policy or
22 contract, or part of a policy or contract or certificate, for which
23 coverage is provided under Subchapter E.

24 (4) "Covered policy" means a policy or contract with
25 respect to which this chapter provides coverage as determined under
26 Subchapter E.

27 (5) "Impaired insurer" means a member insurer that:

1 (A) is placed under an order of supervision,
2 liquidation, rehabilitation, or conservation under Chapter 441 or
3 442 and is designated by the commissioner as an impaired insurer; or

4 (B) is determined in good faith by the
5 commissioner to be unable or potentially unable to fulfill the
6 insurer's contractual obligations.

7 (6) "Insolvent insurer" means a member insurer that:

8 (A) has a minimum free surplus, if a mutual
9 insurance company, or required capital, if a stock insurance
10 company, that is impaired to an extent prohibited by law; and

11 (B) the commissioner designates as an insolvent
12 insurer.

13 (7) "Member insurer" means an insurer that is required
14 to participate in the association under Section 463.052.

15 (8) "Person" means an individual, corporation,
16 partnership, association, or voluntary organization.

17 (9) "Premium" means an amount received on a covered
18 policy, less any premium, consideration, or deposit returned on the
19 policy, and any dividend or experience credit on the policy. The
20 term does not include:

21 (A) an amount received for a part of a policy or
22 contract for which coverage is not provided under Section 463.202,
23 except that assessable premiums may not be reduced because of:

24 (i) an interest limitation provided by
25 Section 463.203(b)(3); or

26 (ii) a limitation provided by Section
27 463.204 with respect to a single individual, participant,

1 annuitant, or contract holder;

2 (B) premiums in excess of \$5 million on an
3 unallocated annuity contract not issued under a governmental
4 retirement plan established under Section 401, 403(b), or 457,
5 Internal Revenue Code of 1986; or

6 (C) premiums received from the state treasury or
7 the United States treasury for insurance for which this state or the
8 United States contracts to:

9 (i) provide welfare benefits to designated
10 welfare recipients; or

11 (ii) implement Title 2, Human Resources
12 Code, or the Social Security Act (42 U.S.C. Section 301 et seq.).

13 (10) "Resident" means a person who resides in this
14 state at the time a member insurer that owes a contractual
15 obligation to the person is determined to be impaired or insolvent.
16 For the purposes of this subdivision:

17 (A) a person is considered to be a resident of
18 only one state; and

19 (B) a person other than an individual is
20 considered to be a resident of the state in which the person's
21 principal place of business is located.

22 (11) "Supplemental contract" means an agreement for
23 the distribution of policy or contract proceeds.

24 (12) "Unallocated annuity contract" means an annuity
25 contract or group annuity certificate that is not issued to and
26 owned by an individual, except to the extent of any annuity benefits
27 guaranteed to an individual by an insurer under the contract or

1 certificate. (V.T.I.C. Art. 21.28-D, Secs. 5(2), (3) (part), (4),
2 (5), (6), (7) (part), (9), (10), (11), (12), (13); New.)

3 Sec. 463.004. CONSTRUCTION. This chapter shall be
4 liberally construed to implement the purpose of this chapter
5 described by Section 463.002. Section 463.002 shall be used to aid
6 and guide interpretation of this chapter. (V.T.I.C. Art. 21.28-D,
7 Sec. 4.)

8 Sec. 463.005. IMMUNITY. (a) The following persons are not
9 liable, and a cause of action does not arise against any of the
10 following persons, for a good faith act or omission in exercising
11 powers and performing duties under this chapter:

12 (1) the commissioner or the commissioner's
13 representative;

14 (2) the association or the association's agent or
15 employee;

16 (3) a member insurer or the insurer's agent or
17 employee;

18 (4) a board member;

19 (5) the receiver; and

20 (6) a special deputy receiver or the special deputy
21 receiver's agent or employee.

22 (b) Immunity under Subsection (a) extends to participation
23 in an organization of one or more state associations that have
24 similar purposes and to a similar organization and the
25 organization's agent or employee.

26 (c) The attorney general shall defend any action to which
27 this section applies that is brought against the commissioner or

1 the commissioner's representative, the association or the
2 association's agent or employee, a member insurer or the insurer's
3 agent or employee, a board member, or a special deputy receiver or
4 the special deputy receiver's agent or employee, including an
5 action brought after the defendant's service with the association,
6 commissioner, or department has terminated. This subsection does
7 not require the attorney general to defend a person with respect to
8 an issue other than the applicability or effect of the immunity
9 created by this section. The attorney general is not required to
10 defend the association or the association's agent or employee, a
11 member insurer or the insurer's agent or employee, a board member,
12 or a special deputy receiver or the special deputy receiver's agent
13 or employee against an action regarding the disposition of a claim
14 filed with the association under this chapter or any issue other
15 than the applicability or effect of the immunity created by this
16 section. The association may contract with the attorney general
17 under Chapter 771, Government Code, for legal services not covered
18 by this subsection. (V.T.I.C. Art. 21.28-D, Sec. 17.)

19 Sec. 463.006. RULES. The commissioner shall adopt
20 reasonable rules as necessary to carry out and supplement this
21 chapter and the purposes of this chapter. (V.T.I.C. Art. 21.28-D,
22 Sec. 21.)

23 [Sections 463.007-463.050 reserved for expansion]

24 SUBCHAPTER B. GOVERNANCE OF AND PARTICIPATION IN ASSOCIATION

25 Sec. 463.051. PURPOSE AND REGULATION OF ASSOCIATION. (a)
26 The Life, Accident, Health, and Hospital Service Insurance Guaranty
27 Association is a nonprofit legal entity existing to pay benefits

1 and continue coverage as provided by this chapter.

2 (b) The association is subject to the applicable provisions
3 of this code and other insurance laws of this state and the
4 immediate supervision of the commissioner. The commissioner may
5 examine and regulate the association in the same manner as an
6 insurer under this code. (V.T.I.C. Art. 21.28-D, Secs. 2 (part),
7 6(a) (part), (b), 15 (part).)

8 Sec. 463.052. REQUIRED PARTICIPATION IN ASSOCIATION. (a)
9 As a condition of engaging in the business of insurance in this
10 state, an insurer, including a mutual assessment company, a local
11 mutual aid association, a statewide mutual assessment company, and
12 a stipulated premium company authorized to engage in business in
13 this state, shall participate as a member of the association if the
14 insurer holds a certificate of authority to engage in a kind of
15 insurance business in this state with respect to which this chapter
16 provides coverage as determined under Subchapter E. The
17 requirement to participate applies regardless of whether the
18 insurer's certificate of authority in this state is suspended,
19 revoked, not renewed, or voluntarily withdrawn.

20 (b) The following do not participate as member insurers:

- 21 (1) a health maintenance organization;
22 (2) a fraternal benefit society;
23 (3) a mandatory state pooling plan;
24 (4) a reciprocal or interinsurance exchange; and
25 (5) an entity similar to an entity described by
26 Subdivision (1), (2), (3), or (4). (V.T.I.C. Art. 21.28-D, Secs.
27 5(7) (part), 6(a) (part).)

1 Sec. 463.053. BOARD OF DIRECTORS. (a) The association's
2 powers are exercised through a board of directors consisting of
3 nine individuals appointed by the commissioner as provided by this
4 section.

5 (b) The commissioner shall appoint three board members from
6 officers or employees of the 50 member insurers having the largest
7 total direct premium income according to the most recent financial
8 statement on file on the date of appointment.

9 (c) To give fair representation to member insurers, the
10 commissioner shall appoint two board members from member insurers
11 other than insurers described by Subsection (b), considering the
12 varying categories of premium income and geographical location.

13 (d) The commissioner shall appoint four board members who
14 are public representatives. (V.T.I.C. Art. 21.28-D, Secs. 6(a)
15 (part), 7(a) (part).)

16 Sec. 463.054. ELIGIBILITY TO SERVE AS PUBLIC
17 REPRESENTATIVE. To be eligible to serve as a public
18 representative, an individual may not:

19 (1) be an officer, director, or employee of an
20 insurer, insurance agency, agent, broker, solicitor, adjuster, or
21 other business entity regulated by the department;

22 (2) be a person required to register under Chapter
23 305, Government Code; or

24 (3) be related within the second degree by affinity or
25 consanguinity to a person described by Subdivision (1) or (2).
26 (V.T.I.C. Art. 21.28-D, Sec. 7(a) (part).)

27 Sec. 463.055. TERM; VACANCY. (a) Board members serve

1 staggered six-year terms, with the terms of three members expiring
2 each odd-numbered year. A member may be reappointed.

3 (b) A board member shall serve until a successor is
4 appointed.

5 (c) If a board member who is an officer or employee of a
6 member insurer ceases to be an officer or employee of the insurer,
7 the member's office becomes vacant.

8 (d) The commissioner shall appoint an individual to fill a
9 vacancy on the board for the unexpired term. (V.T.I.C. Art.
10 21.28-D, Sec. 7(a) (part).)

11 Sec. 463.056. COMPENSATION OF BOARD MEMBERS. A board
12 member may not receive compensation from the association for the
13 member's services but may be reimbursed from the association's
14 assets for expenses incurred as a board member. (V.T.I.C. Art.
15 21.28-D, Sec. 7(c).)

16 Sec. 463.057. FINANCIAL STATEMENT OF BOARD MEMBER. Each
17 board member shall file with the Texas Ethics Commission a
18 financial statement as provided by Subchapter B, Chapter 572,
19 Government Code. (V.T.I.C. Art. 21.28-D, Sec. 7(b).)

20 Sec. 463.058. CONFLICT OF INTEREST. (a) In this section,
21 "transaction on behalf of an impaired insurer" includes a
22 reinsurance agreement, transaction, merger, purchase, sale,
23 contribution, or exchange of assets, insurance policies, or
24 property made by the association or a supervisor, conservator, or
25 receiver on behalf of an impaired insurer.

26 (b) A board member may not:

27 (1) receive money or another thing of value for

1 negotiating, procuring, participating in, recommending, or aiding
2 a transaction on behalf of an impaired insurer; or

3 (2) as a principal, coprincipal, agent, or
4 beneficiary, have a pecuniary interest in a transaction on behalf
5 of an impaired insurer.

6 (c) For the purposes of this section, a board member is
7 considered to receive a thing of value or have a pecuniary interest
8 in a transaction on behalf of an impaired insurer regardless of
9 whether the receipt or interest is direct, indirect, or through a
10 substantial interest in a corporation, firm, or other business
11 unit. (V.T.I.C. Art. 21.28-D, Sec. 7(d).)

12 [Sections 463.059-463.100 reserved for expansion]

13 SUBCHAPTER C. GENERAL POWERS AND DUTIES OF ASSOCIATION

14 Sec. 463.101. GENERAL POWERS AND DUTIES. (a) The
15 association may:

16 (1) enter into contracts as necessary or proper to
17 carry out this chapter and the purposes of this chapter;

18 (2) sue or be sued, including taking:

19 (A) necessary or proper legal action to:

20 (i) recover an unpaid assessment under
21 Subchapter D; or

22 (ii) settle a claim or potential claim
23 against the association; or

24 (B) necessary legal action to avoid payment of an
25 improper claim;

26 (3) borrow money to effect the purposes of this
27 chapter;

1 (4) exercise, for the purposes of this chapter and to
2 the extent approved by the commissioner, the powers of a domestic
3 life, accident, or health insurance company or a group hospital
4 service corporation, except that the association may not issue an
5 insurance policy or annuity contract other than to perform the
6 association's obligations under this chapter; and

7 (5) to further the association's purposes, exercise
8 the association's powers, and perform the association's duties,
9 join an organization of one or more state associations that have
10 similar purposes.

11 (b) If not in default, a note or other evidence of
12 indebtedness of the association is a legal investment for a
13 domestic insurer and may be carried as an admitted asset. (V.T.I.C.
14 Art. 21.28-D, Secs. 8(v) (part), (w).)

15 Sec. 463.102. PLAN OF OPERATION; AMENDMENTS. (a) The
16 association shall perform the association's functions under a plan
17 of operation approved by the commissioner. The plan of operation
18 must:

19 (1) establish:

20 (A) procedures for handling the assets of the
21 association;

22 (B) the amount and method of reimbursing board
23 members under Section 463.056;

24 (C) regular places and times for board meetings,
25 including telephone conference calls;

26 (D) procedures for maintaining records of all
27 financial transactions of the association, the association's

1 agents, and the board; and

2 (E) additional procedures for assessments under
3 Subchapter D; and

4 (2) contain additional provisions necessary or proper
5 for the execution of the association's powers and duties.

6 (b) The association may amend the plan of operation. An
7 amendment must be approved by the commissioner and takes effect on:

8 (1) the date the commissioner approves the amendment;

9 or

10 (2) the 30th day after the date the amendment is
11 submitted to the commissioner for approval, if the commissioner
12 does not approve or disapprove the amendment before the 30th day.

13 (c) Each member insurer shall comply with the plan of
14 operation. (V.T.I.C. Art. 21.28-D, Secs. 6(a) (part), 10(a), (b),
15 (c).)

16 Sec. 463.103. PERSONNEL. The association may employ or
17 retain employees or contractors to handle the association's
18 financial transactions and to perform other functions under this
19 chapter. (V.T.I.C. Art. 21.28-D, Sec. 8(v) (part).)

20 Sec. 463.104. ASSOCIATION RECORDS. (a) The association
21 shall maintain a record of each negotiation or meeting in which the
22 association or the association's representative discusses the
23 association's activities in carrying out the powers and duties
24 under Section 463.101, 463.103, 463.109, or 463.111(c) or
25 Subchapter F.

26 (b) A record under Subsection (a) may be made public only
27 on:

1 (1) termination of a liquidation, rehabilitation, or
2 conservation proceeding involving the impaired or insolvent
3 insurer;

4 (2) termination of the impairment or insolvency of the
5 insurer; or

6 (3) order of a court.

7 (c) This section does not limit the association's duty to
8 report on the association's activities as required by Section
9 463.110. (V.T.I.C. Art. 21.28-D, Sec. 14(b).)

10 Sec. 463.105. ACCOUNTS. For the purposes of administration
11 and assessment, the association shall maintain:

12 (1) an accident, health, and hospital services
13 insurance account;

14 (2) a life insurance account;

15 (3) an annuity account; and

16 (4) an administrative account. (V.T.I.C. Art.
17 21.28-D, Sec. 6(a) (part).)

18 Sec. 463.106. DELEGATION OF POWERS AND DUTIES. (a) The plan
19 of operation may provide that, on approval of the board and the
20 commissioner, a power or duty of the association is delegated to a
21 corporation or other organization that:

22 (1) performs in two or more states functions similar
23 to those of the association or the association's equivalent; and

24 (2) provides protection not substantially less
25 favorable and effective than that provided by this chapter.

26 (b) A power or duty under Section 463.261(c) or Subchapter
27 D, other than a duty under Section 463.161(c), may not be delegated

1 under this section.

2 (c) The corporation or other organization to which a power
3 or duty is delegated shall be:

4 (1) reimbursed for a payment made on behalf of the
5 association; and

6 (2) paid for performing any other function of the
7 association. (V.T.I.C. Art. 21.28-D, Sec. 10(d).)

8 Sec. 463.107. EXEMPTION FROM TAXATION. The association is
9 exempt from payment of all fees and all taxes levied by this state
10 or a subdivision of this state, except taxes levied on property.
11 (V.T.I.C. Art. 21.28-D, Sec. 16.)

12 Sec. 463.108. DETECTION AND PREVENTION OF IMPAIRMENT AND
13 INSOLVENCY. On a majority vote, the board:

14 (1) may make recommendations to the commissioner for
15 detecting and preventing insurer insolvencies; and

16 (2) shall notify the commissioner of information
17 indicating that a member insurer may be impaired or insolvent.
18 (V.T.I.C. Art. 21.28-D, Secs. 12(e), (g).)

19 Sec. 463.109. ASSOCIATION APPEARANCE BEFORE COURT;
20 INTERVENTION. (a) The association may appear before a court in
21 this state with jurisdiction over an impaired or insolvent insurer
22 concerning which the association is or may become obligated under
23 this chapter. The association's right to appear applies to:

24 (1) a proposal for reinsuring, modifying, or
25 guaranteeing the insurer's policies or contracts;

26 (2) the determination of the insurer's policies or
27 contracts and contractual obligations; and

1 (3) any other matter germane to the association's
2 powers and duties.

3 (b) The association may appear or intervene before a court
4 in another state with jurisdiction over:

5 (1) an impaired or insolvent insurer concerning which
6 the association is or may become obligated; or

7 (2) a third party against whom the association may
8 have rights through subrogation of the insurer's policyholders.
9 (V.T.I.C. Art. 21.28-D, Sec. 8(s).)

10 Sec. 463.110. ANNUAL REPORT. Not later than the 120th day
11 after the last day of each association fiscal year, the board shall
12 submit to the commissioner:

13 (1) a financial report in a form approved by the
14 commissioner; and

15 (2) a report of the association's activities during
16 the preceding fiscal year. (V.T.I.C. Art. 21.28-D, Sec. 15
17 (part).)

18 Sec. 463.111. BOARD AND ASSOCIATION ADVICE AND ASSISTANCE.

19 (a) On a majority vote, the board may report and make
20 recommendations to the commissioner on any matter germane to:

21 (1) the solvency, liquidation, rehabilitation, or
22 conservation of a member insurer; or

23 (2) the solvency of an insurer seeking to engage in the
24 business of insurance in this state.

25 (b) A report or recommendation under Subsection (a) is not a
26 public document, and Chapter 552, Government Code, does not apply
27 to the report or recommendation until the insurer that is the

1 subject of the report or recommendation is designated as impaired.

2 (c) On the commissioner's request, the association may
3 assist and advise the commissioner concerning rehabilitation,
4 payment of claims, continuation of coverage, or the performance of
5 other contractual obligations of an impaired or insolvent insurer.
6 (V.T.I.C. Art. 21.28-D, Secs. 8(r), 12(d).)

7 Sec. 463.112. BOARD ACCESS TO RECORDS. The receiver or
8 statutory successor of an impaired insurer shall give the board or a
9 representative of the board:

10 (1) access to the insurer's records as necessary for
11 the board to carry out the board's functions under this chapter
12 relating to covered claims; and

13 (2) copies of those records on the board's request and
14 at the board's expense. (V.T.I.C. Art. 21.28-D, Sec. 18 (part).)

15 Sec. 463.113. BOARD REPORT AT CONCLUSION OF INSOLVENCY.

16 (a) At the conclusion of an insurer insolvency in which the
17 association was obligated to pay a covered claim, the board shall
18 prepare and submit to the commissioner a report containing any
19 information the board possesses concerning the history and causes
20 of the insolvency.

21 (b) The board:

22 (1) shall cooperate with the boards of directors of
23 guaranty associations in other states to prepare a report on the
24 history and causes of the insolvency of a particular insurer; and

25 (2) may adopt by reference a report prepared by any of
26 those associations. (V.T.I.C. Art. 21.28-D, Sec. 12(h).)

27 Sec. 463.114. SUMMARY DOCUMENT; DISCLAIMER. (a) The

1 association shall prepare a summary document describing the general
2 purposes and limitations of this chapter and amend the document as
3 necessary to comply with this chapter. The document must clearly
4 and conspicuously contain on the document's face a disclaimer that:

5 (1) states the name and address of the association and
6 department;

7 (2) warns the policy or contract holder that:

8 (A) the association may not cover the policy; or

9 (B) coverage, if available, is subject to
10 substantial limitations and exclusions and requires continuous
11 residence in this state;

12 (3) states that an insurer and the insurer's agent are
13 prohibited by law from using the association's existence to sell,
14 solicit, or induce the purchase of any kind of insurance;

15 (4) warns the policy or contract holder not to rely on
16 association coverage in selecting an insurer; and

17 (5) provides other information the commissioner
18 prescribes.

19 (b) The association shall submit the document to the
20 commissioner for approval.

21 (c) At the expiration of the 60th day after approval of the
22 document, an insurer may not deliver a policy or contract with
23 respect to which this chapter provides coverage as determined under
24 Subchapter E to a policy or contract holder before a copy of the
25 summary document is delivered to the policy or contract holder. The
26 document must also be available on request of a policyholder.

27 (d) The distribution, delivery, content, or interpretation

1 of a summary document does not guarantee that a policy or contract
2 or a policy or contract holder is provided coverage by this chapter
3 if a member insurer becomes impaired or insolvent. Failure to
4 receive the document does not give an insured or policy, contract,
5 or certificate holder any rights greater than those provided by
6 this chapter.

7 (e) An insurer or agent may not deliver a policy or contract
8 described by Section 463.202 that is excluded from the coverage
9 provided by this chapter by Section 463.203 unless the insurer or
10 agent, either before or in conjunction with delivery, gives the
11 policy or contract holder a separate written notice clearly and
12 conspicuously disclosing that the policy or contract is not covered
13 by the association.

14 (f) The commissioner shall specify by rule the form and
15 content of the disclaimer required by Subsection (a) and the notice
16 required by Subsection (e). (V.T.I.C. Art. 21.28-D, Secs. 19(b),
17 (c), (d).)

18 [Sections 463.115-463.150 reserved for expansion]

19 SUBCHAPTER D. ASSESSMENTS

20 Sec. 463.151. MAKING AND PAYMENT OF ASSESSMENT. (a) The
21 association shall assess member insurers, separately for each
22 account under Section 463.105, in the amounts and at the times the
23 board determines necessary to provide money for the association to
24 exercise the association's powers, perform the association's
25 duties, and carry out the purposes of this chapter. The association
26 may not make an assessment to meet the requirements of the
27 association with respect to an impaired or insolvent insurer until

1 the assessment is necessary to carry out the purposes of this
2 chapter. The board shall classify assessments under Section
3 463.152 and determine the amount of assessments with reasonable
4 accuracy, recognizing that exact determinations may not always be
5 possible.

6 (b) An assessment is due on the date the association
7 specifies, which may not be earlier than the 30th day after the date
8 the association gives written notice of the assessment to member
9 insurers. Interest accrues on an unpaid amount at a rate of 10
10 percent beginning on the due date.

11 (c) An insurer whose certificate of authority to engage in
12 business in this state is revoked or surrendered remains liable for
13 any unpaid assessment made before the date of the revocation or
14 surrender. (V.T.I.C. Art. 21.28-D, Secs. 2 (part), 9(a), (g),
15 (1).)

16 Sec. 463.152. CLASSES OF ASSESSMENTS. (a) Assessments are
17 classified as Class A or Class B assessments.

18 (b) Class A assessments are made to pay:

19 (1) the association's administrative costs;

20 (2) administrative expenses that:

21 (A) are properly incurred under this chapter; and

22 (B) relate to an unauthorized insurer or to an
23 entity that is not a member insurer; and

24 (3) other general expenses not related to a particular
25 impaired or insolvent insurer.

26 (c) Class B assessments are made to the extent necessary for
27 the association to carry out the association's powers and duties

1 under Sections 463.101, 463.103, 463.109, and 463.111(c) and
2 Subchapter F with regard to an impaired or insolvent insurer.
3 (V.T.I.C. Art. 21.28-D, Sec. 9(b).)

4 Sec. 463.153. AMOUNT OF ASSESSMENTS. (a) The board shall
5 determine the amount of a Class A assessment for each account under
6 Section 463.105, considering with respect to member insurers one or
7 more of the following as shown by annual statements for the year
8 preceding the date of the assessment:

- 9 (1) annual premium receipts;
10 (2) admitted assets; or
11 (3) insurance in force.

12 (b) Class B assessments against a member insurer for each
13 account under Section 463.105 shall be made in the proportion that
14 premiums received on all business by the insurer on policies
15 covered by each account bear to the premiums received on all
16 business by all assessed member insurers. The amount of a Class B
17 assessment shall be divided among the separate accounts in the
18 proportion that the premiums on the policies covered by each
19 account were received by the impaired or insolvent insurer from all
20 covered policies during the year preceding the date of the
21 impairment, as shown in the annual statements for the year
22 preceding the date of the assessment.

23 (c) The total amount of assessments on a member insurer for
24 each account under Section 463.105 may not exceed one percent of the
25 insurer's premiums on the policies covered by the account in a
26 single calendar year. If the maximum assessment and the other
27 assets of the association do not provide in a year an amount

1 sufficient to carry out the association's responsibilities, the
2 association shall make necessary additional assessments as soon as
3 this chapter permits. (V.T.I.C. Art. 21.28-D, Secs. 9(c), (d),
4 (f), (h) (part), (i) (part).)

5 Sec. 463.154. DEFERMENT. The association may wholly or
6 partly defer an assessment of a member insurer if the association
7 believes payment of the assessment would endanger the ability of
8 the insurer to fulfill the insurer's contractual obligations. The
9 amount of the assessment that is deferred may be assessed against
10 the other member insurers in a manner consistent with this
11 subchapter. (V.T.I.C. Art. 21.28-D, Secs. 9(h) (part), (i)
12 (part).)

13 Sec. 463.155. DEPOSIT OF ASSESSMENTS. The association may
14 deposit assessments into the Texas Treasury Safekeeping Trust
15 Company in accordance with procedures established by the
16 comptroller. The comptroller shall account to the association for
17 the deposited money separately from all other money. (V.T.I.C.
18 Art. 21.28-D, Sec. 9(n).)

19 Sec. 463.156. CERTIFICATE OF CONTRIBUTION. The association
20 shall issue to each member insurer that pays a Class B assessment a
21 certificate of contribution, in a form the commissioner prescribes,
22 for the amount paid. All outstanding certificates are of equal
23 priority regardless of the amount of the assessment paid or the date
24 the certificate is issued. (V.T.I.C. Art. 21.28-D, Sec. 9(k).)

25 Sec. 463.157. REFUNDS. (a) The board may refund to member
26 insurers the amount by which the association's assets, including
27 any net realized gains and income from investments, exceed the

1 amount the board determines is necessary to carry out the
2 association's obligations regarding that amount during the next
3 year.

4 (b) A refund must be made:

5 (1) by an equitable method established in the plan of
6 operation; and

7 (2) in proportion to the contribution of each member
8 insurer.

9 (c) The board may retain a reasonable amount to provide for
10 the association's continuing expenses and for future losses if
11 refunds are impractical. (V.T.I.C. Art. 21.28-D, Sec. 9(j).)

12 Sec. 463.158. USE OF ASSESSMENTS. Money from assessments
13 supplements the marshalling of an impaired insurer's assets to make
14 payments on the insurer's behalf. (V.T.I.C. Art. 21.28-D, Sec.
15 9(m).)

16 Sec. 463.159. FAILURE TO PAY; COLLECTION BY COMMISSIONER.
17 On failure of a member insurer to pay an assessment when due, the
18 commissioner may either:

19 (1) suspend or revoke, after notice and hearing, the
20 insurer's certificate of authority to engage in the business of
21 insurance in this state; or

22 (2) levy a forfeiture in an amount not less than \$100
23 each month or more than five percent of the unpaid assessment each
24 month. (V.T.I.C. Art. 21.28-D, Sec. 11(c) (part).)

25 Sec. 463.160. PREMIUM TAX CREDIT FOR CLASS A ASSESSMENT.
26 The amount of a Class A assessment paid by a member insurer shall be
27 allowed as a credit on the amount of premium taxes due in the same

1 manner as a credit is allowed under Section 401.151(e). (V.T.I.C.
2 Art. 21.28-D, Sec. 9(e).)

3 Sec. 463.161. PREMIUM TAX CREDIT FOR CLASS B ASSESSMENT.

4 (a) A member insurer is entitled to show as an admitted asset a
5 certificate of contribution in the form the commissioner approves
6 under Section 463.156. Unless the commissioner requires a longer
7 period, the certificate may be shown at:

8 (1) for the calendar year of issuance, an amount equal
9 to the certificate's original face value approved by the
10 commissioner; and

11 (2) beginning with the year following the calendar
12 year of issuance, an amount equal to the certificate's original
13 face value, reduced by 10 percent a year for each year after the
14 year of issuance, for a period of 10 years.

15 (b) An amount written off during a calendar year under
16 Subsection (a) shall be allowed as a credit against the member
17 insurer's premium tax owed for business engaged in during that
18 year. The insurer is not required to write off in a single year an
19 amount that exceeds the amount of premium tax owed for the business
20 described by this subsection.

21 (c) The association shall pay to the commissioner, and the
22 commissioner shall deliver to the comptroller for deposit to the
23 credit of the general revenue fund, any amount owed as a refund from
24 the association under Section 463.157 that was written off and used
25 for a tax credit under this section. (V.T.I.C. Art. 21.28-D, Secs.
26 13(a), (b), (c).)

27 Sec. 463.162. ASSIGNMENT OR TRANSFER OF CREDIT. (a) A

1 member insurer may assign or transfer a credit against premium tax
2 to another member insurer if:

3 (1) an acquisition, merger, or total assumption of
4 reinsurance occurs between the insurers; or

5 (2) the commissioner by order approves the assignment
6 or transfer.

7 (b) Not later than the later of November 1 or the 60th day
8 after the date of the assignment or transfer, each member insurer
9 shall:

10 (1) report the assignment or transfer to the
11 comptroller on a form the comptroller prescribes; and

12 (2) include with the report any documents from the
13 commissioner that show approval of the assignment or transfer.
14 (V.T.I.C. Art. 21.28-D, Secs. 13(d), (e).)

15 Sec. 463.163. INSURED'S LIABILITY UNDER ASSESSMENT PLAN.
16 This chapter does not reduce the liability for unpaid assessments
17 of the insureds of an impaired or insolvent insurer operating under
18 a plan with assessment liability. (V.T.I.C. Art. 21.28-D, Sec.
19 14(a).)

20 [Sections 463.164-463.200 reserved for expansion]

21 SUBCHAPTER E. COVERAGE PROVIDED BY ASSOCIATION

22 Sec. 463.201. INSUREDS COVERED. (a) This chapter provides
23 coverage for a policy described by Section 463.202 to a person who
24 is:

25 (1) subject to Subsection (b), an owner of or
26 certificate holder under a policy or contract specified by Section
27 463.202, or a contract holder under an unallocated annuity

1 contract; or

2 (2) a beneficiary, assignee, or payee, other than a
3 certificate holder under a group policy or contract who is not a
4 resident, of a person described by Subdivision (1).

5 (b) Coverage under Subsection (a)(1) applies to a person who
6 is not a resident, only if:

7 (1) the insurer that issued the policy or contract is
8 domiciled in this state;

9 (2) the insurer never held a certificate of authority
10 in the state in which the person resides;

11 (3) the state in which the person resides has an
12 association similar to the association; and

13 (4) the person is not eligible for coverage by the
14 association in the state in which the person resides. (V.T.I.C.
15 Art. 21.28-D, Sec. 3(a).)

16 Sec. 463.202. POLICIES AND CONTRACTS COVERED. (a) Except
17 as limited by this chapter, the coverage provided by this chapter to
18 a person specified by Section 463.201 applies with respect to the
19 following policies and contracts issued by a member insurer:

20 (1) a direct, nongroup life, health, accident,
21 annuity, or supplemental policy or contract;

22 (2) a certificate under a direct group policy or
23 contract;

24 (3) a group hospital service contract; and

25 (4) an unallocated annuity contract.

26 (b) The coverage provided by this chapter also applies with
27 respect to all other insurance coverage written by the following

1 entities authorized to engage in business in this state:

- 2 (1) a mutual assessment company;
- 3 (2) a local mutual aid association;
- 4 (3) a statewide mutual assessment company; and
- 5 (4) a stipulated premium company.

6 (c) For the purposes of this section, an annuity contract or
7 a certificate under a group annuity contract includes:

- 8 (1) a guaranteed investment contract;
- 9 (2) a deposit administration contract;
- 10 (3) an allocated or unallocated funding agreement;
- 11 (4) a structured settlement agreement;
- 12 (5) a lottery contract; and
- 13 (6) an immediate or deferred annuity contract.

14 (V.T.I.C. Art. 21.28-D, Sec. 3(b).)

15 Sec. 463.203. POLICIES AND CONTRACTS EXCLUDED. (a) In this
16 section, "Moody's Corporate Bond Yield Average" means the monthly
17 average corporates as published by Moody's Investors Service, Inc.,
18 or any successor to that entity.

19 (b) This chapter does not provide coverage for:

20 (1) any part of a policy or contract not guaranteed by
21 the insurer or under which the risk is borne by the policy or
22 contract holder;

23 (2) a policy or contract of reinsurance, unless an
24 assumption certificate has been issued;

25 (3) any part of a policy or contract to the extent that
26 the rate of interest on which that part is based:

27 (A) as averaged over the period of four years

1 before the date the association became obligated with respect to
2 the policy or contract, exceeds a rate of interest determined by
3 subtracting two percentage points from Moody's Corporate Bond Yield
4 Average averaged for the same four-year period or for a lesser
5 period if the policy or contract was issued less than four years
6 before the date the association became obligated; and

7 (B) on and after the date the association became
8 obligated with respect to the policy or contract, exceeds the rate
9 of interest determined by subtracting three percentage points from
10 Moody's Corporate Bond Yield Average as most recently available;

11 (4) a plan or program of an employer, association, or
12 similar entity to provide life, health, or annuity benefits to the
13 entity's employees or members to the extent that the plan or program
14 is self-funded or uninsured, including benefits payable by an
15 employer, association, or similar entity under:

16 (A) a multiple employer welfare arrangement as
17 defined by Section 3, Employee Retirement Income Security Act of
18 1974 (29 U.S.C. Section 1002);

19 (B) a minimum premium group insurance plan;

20 (C) a stop-loss group insurance plan; or

21 (D) an administrative services-only contract;

22 (5) any part of a policy or contract to the extent that
23 the part provides dividends or experience rating credits or
24 provides that fees or allowances be paid to any person, including
25 the policy or contract holder, in connection with the service to or
26 administration of the policy or contract;

27 (6) a policy or contract issued in this state by a

1 member insurer at a time the insurer was not authorized to issue the
2 policy or contract in this state;

3 (7) an unallocated annuity contract issued to an
4 employee benefit plan protected under the federal Pension Benefit
5 Guaranty Corporation;

6 (8) any part of an unallocated annuity contract that
7 is not issued to or in connection with a specific employee, a
8 benefit plan for a union or association of individuals, or a
9 governmental lottery; or

10 (9) any part of a financial guarantee, funding
11 agreement, or guaranteed investment contract that:

12 (A) does not contain a mortality guarantee; and

13 (B) is not issued to or in connection with a
14 specific employee, a benefit plan, or a governmental lottery.
15 (V.T.I.C. Art. 21.28-D, Secs. 3(c), 5(8).)

16 Sec. 463.204. OBLIGATIONS EXCLUDED. A contractual
17 obligation does not include:

18 (1) death benefits in an amount in excess of \$300,000
19 or a net cash surrender or net cash withdrawal value in an amount in
20 excess of \$100,000 in the aggregate under one or more policies on a
21 single life;

22 (2) an amount in excess of:

23 (A) \$100,000 in the aggregate under one or more
24 annuity contracts issued to the same holder of individual annuity
25 policies or to the same annuitant or participant under group
26 annuity policies; or

27 (B) \$5 million in unallocated annuity contract

1 benefits with respect to a single contract holder regardless of the
2 number of those contracts;

3 (3) an amount in excess of \$200,000 in the aggregate
4 under one or more accident, health, or accident and health
5 insurance policies on a single life; or

6 (4) punitive, exemplary, extracontractual, or bad
7 faith damages, regardless of whether the damages are:

8 (A) agreed to or assumed by an insurer or
9 insured; or

10 (B) imposed by a court. (V.T.I.C. Art. 21.28-D,
11 Sec. 5(3) (part).)

12 Sec. 463.205. PROTECTION PROVIDED BY OTHER JURISDICTION.
13 This chapter does not provide coverage for a resident with respect
14 to an impaired or insolvent insurer domiciled in another
15 jurisdiction if guaranty protection is provided to the resident by
16 the law of that jurisdiction. (V.T.I.C. Art. 21.28-D, Sec. 8(o).)

17 [Sections 463.206-463.250 reserved for expansion]

18 SUBCHAPTER F. POWERS AND DUTIES OF ASSOCIATION RELATING
19 TO IMPAIRED OR INSOLVENT INSURER

20 Sec. 463.251. IMPAIRED DOMESTIC INSURER. (a) This section
21 applies only to a member insurer that is an impaired domestic
22 insurer.

23 (b) With the commissioner's approval, the association may:

24 (1) guarantee, assume, or reinsure, or cause to be
25 guaranteed, assumed, or reinsured, one or more of the insurer's
26 policies or contracts;

27 (2) provide money, pledges, notes, guarantees, or

1 other means proper to:

2 (A) implement Subdivision (1); and

3 (B) ensure payment of the insurer's contractual
4 obligations until action is taken under Subdivision (1); or

5 (3) loan money to the insurer.

6 (c) In taking action under Subsection (b), the association
7 may impose any condition that:

8 (1) does not impair the insurer's contractual
9 obligations; and

10 (2) is approved by:

11 (A) the commissioner; and

12 (B) the insurer, except in a conservation or
13 rehabilitation ordered by a court. (V.T.I.C. Art. 21.28-D, Sec.
14 8(a).)

15 Sec. 463.252. IMPAIRED DOMESTIC, FOREIGN, OR ALIEN INSURER
16 NOT PAYING CLAIMS. (a) This section applies only to a member
17 insurer that:

18 (1) is an impaired domestic, foreign, or alien
19 insurer; and

20 (2) is not timely paying claims.

21 (b) Subject to Subsection (d), the association shall:

22 (1) with respect to the insurer, take one or more
23 actions that the association is authorized to take under Section
24 463.251 with respect to an impaired domestic insurer, subject to
25 the conditions of that section; or

26 (2) provide substitute benefits instead of the
27 insurer's contractual obligations as provided by Subsection (c).

1 (c) A policy or contract owner who claims emergency or
2 hardship may petition for substitute benefits under standards the
3 association proposes and the commissioner approves. Substitute
4 benefits are available only for a health claim, periodic annuity
5 benefit payment, death benefit, supplemental benefit, or cash
6 withdrawal.

7 (d) The association is required to take action under this
8 section only if:

9 (1) the laws of the insurer's state of domicile provide
10 that, until all payments of or on account of the insurer's
11 contractual obligations are made by all guaranty associations and
12 all expenses of the associations and interest on those payments and
13 expenses have been repaid to the associations or a plan of repayment
14 by the insurer has been approved by the associations:

15 (A) the delinquency proceeding may not be
16 dismissed;

17 (B) the insurer and the insurer's assets may not
18 be returned to the control of the insurer's shareholders or private
19 management; and

20 (C) the insurer may not solicit or accept new
21 business or have any suspended or revoked certificate of authority
22 restored;

23 (2) the insurer is a domestic insurer that has been
24 placed under an order of rehabilitation by a court in this state;
25 or

26 (3) the insurer is a foreign or alien insurer and:

27 (A) the insurer has been prohibited from

1 soliciting or accepting new business in this state;

2 (B) the insurer's certificate of authority has
3 been suspended or revoked in this state; and

4 (C) a petition for rehabilitation or liquidation
5 has been filed in a court in the insurer's state of domicile by the
6 insurance official of that state. (V.T.I.C. Art. 21.28-D, Secs.
7 8(b), (c).)

8 Sec. 463.253. INSOLVENT INSURER. (a) This section applies
9 only to a member insurer that is an insolvent insurer.

10 (b) The association shall provide money, pledges,
11 guarantees, or other means reasonably necessary to discharge the
12 insurer's duties and to:

13 (1) guarantee, assume, or reinsure, or cause to be
14 guaranteed, assumed, or reinsured, the insurer's policies or
15 contracts; or

16 (2) ensure payment of the insurer's contractual
17 obligations. (V.T.I.C. Art. 21.28-D, Sec. 8(d).)

18 Sec. 463.254. LIFE OR HEALTH INSURANCE POLICIES OR
19 CONTRACTS. (a) This section applies only when the association is
20 taking an action under Section 463.252(b)(2) or 463.253 with
21 respect to a life or health insurance policy or contract.

22 (b) The association, in accordance with Subsections (c) and
23 (d), as applicable, shall ensure payment of benefits identical to
24 the benefits that would have been payable under the policy or
25 contract of the insurer, at premiums identical to the premiums that
26 would have been applicable under that policy or contract, except
27 for terms of conversion and renewability.

1 (c) For a group policy or contract, the association shall
2 ensure payment of benefits under Subsection (b) for claims incurred
3 before the later of:

4 (1) the earlier of the next renewal date under the
5 policy or contract or the 45th day after the date the association
6 becomes obligated with respect to the policy or contract; or

7 (2) the 30th day after the date the association
8 becomes obligated with respect to the policy or contract.

9 (d) For an individual policy, the association shall ensure
10 payment of benefits under Subsection (b) for claims incurred before
11 the later of:

12 (1) the earlier of the next renewal date under the
13 policy, if any, or the first anniversary of the date the association
14 becomes obligated with respect to the policy; or

15 (2) the 30th day after the date the association
16 becomes obligated with respect to the policy.

17 (e) The association shall diligently attempt to provide
18 each known insured or group policyholder with notice before the
19 30th day before the date the benefits are terminated.

20 (f) As provided by Subsections (g)-(i), the association
21 shall make substitute coverage available on an individual basis to:

22 (1) each known insured under an individual policy, or
23 the owner if other than the insured; and

24 (2) each individual who:

25 (A) was formerly insured under a group policy or
26 contract; and

27 (B) is not eligible for replacement group

1 coverage.

2 (g) Substitute coverage is available for an individual
3 policy under Subsection (f) only if the insured or owner was
4 entitled under law or the terminated policy to continue an
5 individual policy in force until a specified age or for a specified
6 period during which the insurer:

7 (1) was not entitled to unilaterally change a
8 provision of the policy; or

9 (2) was entitled only to change a premium by class.

10 (h) Substitute coverage is available for a group policy or
11 contract under Subsection (f) only if the formerly insured
12 individual was entitled under law or the terminated policy or
13 contract to convert group coverage to individual coverage.

14 (i) To provide substitute coverage under Subsection (f),
15 the association may offer to reissue the terminated coverage or
16 issue an alternative policy. The association shall offer the
17 reissued or alternative policy without requiring evidence of
18 insurability. The reissued or alternative policy may not provide
19 for a waiting period or exclusion that would not have applied under
20 the terminated policy. The association may reinsure a reissued or
21 alternative policy. (V.T.I.C. Art. 21.28-D, Secs. 8(e), (f).)

22 Sec. 463.255. POLICY OR CONTRACT WITH GUARANTEED INTEREST
23 RATE. In taking an action under Section 463.252(b)(2) or 463.253
24 with respect to a policy or contract with a guaranteed minimum
25 interest rate, the association shall ensure the payment or
26 crediting of a rate of interest consistent with Section
27 463.203(b)(3). (V.T.I.C. Art. 21.28-D, Sec. 8(1).)

1 Sec. 463.256. ALTERNATIVE POLICY. (a) An alternative
2 policy issued by the association must:

3 (1) be approved by the commissioner;

4 (2) provide coverage of a kind that the association
5 determines is similar to the coverage of the policy issued by the
6 impaired or insolvent insurer;

7 (3) contain at least the minimum provisions required
8 by the statutes of this state; and

9 (4) provide benefits that are not unreasonable in
10 relation to the premium charged.

11 (b) The association shall set the premium according to a
12 table of rates the association adopts. The premium:

13 (1) must reflect:

14 (A) the amount of insurance provided; and

15 (B) each insured's age and class of risk; and

16 (2) may not reflect any change in an insured's health
17 occurring after the original policy was most recently underwritten.

18 (c) The association may adopt various kinds of alternative
19 policies to issue at a later date without regard to any particular
20 impairment or insolvency. (V.T.I.C. Art. 21.28-D, Secs. 8(g), (h),
21 (i).)

22 Sec. 463.257. IMPOSITION OF LIEN OR MORATORIUM. To carry
23 out the association's duties under this chapter and with the court's
24 approval, the association may:

25 (1) impose a permanent policy or contract lien in
26 connection with any guarantee, assumption, or reinsurance
27 agreement if the association determines that:

1 (A) the amounts that may be assessed under this
2 chapter are insufficient to ensure full and prompt performance of
3 the association's duties under this chapter; or

4 (B) adverse economic or financial conditions
5 affecting member insurers make imposition of the lien in the public
6 interest; or

7 (2) in addition to any contractual provision for
8 deferral of cash or policy loan value, impose a temporary
9 moratorium or lien on payment of cash values and policy loans or the
10 exercise of any other right to withdraw money held in connection
11 with a policy or contract. (V.T.I.C. Art. 21.28-D, Sec. 8(p).)

12 Sec. 463.258. PREMIUM FOR REISSUANCE OF TERMINATED
13 COVERAGE. If the association reissues terminated coverage at a
14 premium different from the terminated policy's premium, the premium
15 must:

16 (1) reflect the amount of insurance provided and the
17 insured's age and class of risk; and

18 (2) be approved by the commissioner or a court.
19 (V.T.I.C. Art. 21.28-D, Sec. 8(j).)

20 Sec. 463.259. PREMIUM DUE DURING RECEIVERSHIP. After a
21 court enters an order of receivership with respect to an insolvent
22 insurer, a premium due for coverage issued by the insurer is owned
23 by and is payable at the direction of the association. The
24 association is liable for an unearned premium owed to a policy or
25 contract owner that arises after the court enters the order.
26 (V.T.I.C. Art. 21.28-D, Sec. 8(n).)

27 Sec. 463.260. LIMITS ON AND TERMINATION OF ASSOCIATION

1 OBLIGATION. (a) The association is not liable for benefits that
2 exceed the contractual obligations for which the insurer is liable
3 or would have been liable if not impaired or insolvent.

4 (b) The association's obligations with respect to coverage
5 under a policy of an impaired or insolvent insurer or under a
6 reissued or alternative policy terminate on the date the coverage
7 or policy is replaced by another similar policy by the
8 policyholder, the insured, or the association.

9 (c) If a premium is not paid before the 32nd day after the
10 date the premium is due under a guaranteed, assumed, alternative,
11 or reissued policy or contract or substitute coverage, the
12 association's obligations under the policy, contract, or coverage
13 terminate, except with respect to a claim incurred or any net cash
14 surrender value due as provided by this chapter. (V.T.I.C. Art.
15 21.28-D, Secs. 3(d), 8(k), (m).)

16 Sec. 463.261. ASSIGNMENT OF RIGHTS. (a) A person receiving
17 a benefit under this chapter, including a payment of or on account
18 of a contractual obligation, continuation of coverage, or provision
19 of substitute or alternative coverage, is considered to have
20 assigned to the association the rights under, and any cause of
21 action relating to, the covered policy to the extent of the benefit
22 received. The association may require a payee, policy or contract
23 owner, beneficiary, insured, or annuitant to assign the person's
24 rights and cause of action to the association as a condition of
25 receiving a right or benefit under this chapter.

26 (b) The association's subrogation rights under Subsection
27 (a) have the same priority against the assets of the impaired or

1 insolvent insurer as that held by the person entitled to receive a
2 benefit under this chapter.

3 (c) The association has all common law rights of subrogation
4 and any other equitable or legal remedy that would have been
5 available to the impaired or insolvent insurer or holder of a policy
6 or contract with respect to the policy or contract. (V.T.I.C. Art.
7 21.28-D, Secs. 8(t), (u).)

8 [Sections 463.262-463.300 reserved for expansion]

9 SUBCHAPTER G. OPERATION OF IMPAIRED OR INSOLVENT INSURER

10 Sec. 463.301. ISSUANCE OR RENEWAL OF POLICIES FOLLOWING
11 CONSERVATORSHIP OR RECEIVERSHIP. (a) If an assessment has been
12 made under this chapter for the insurer or guaranty fees have been
13 provided for the insurer, an impaired insurer placed in
14 conservatorship or receivership may not issue a new or renewal
15 insurance policy on release from the conservatorship or
16 receivership until the insurer has repaid in full the amount of
17 guaranty fees provided by the association.

18 (b) Notwithstanding Subsection (a), on application of the
19 association and after hearing, the commissioner may permit the
20 insurer to issue new policies as provided by a plan of operation by
21 the insurer for repayment. In approving the plan, the commissioner
22 may restrict the issuance of new or renewal policies as necessary to
23 implement the plan.

24 (c) The commissioner shall give 10 days' notice of the
25 hearing to the association. The association and the member insurers
26 that paid assessments in relation to the impaired insurer are
27 entitled to appear at and participate in the hearing.

1 (d) Money recovered against an impaired insurer under this
2 section shall be repaid to the member insurers that paid
3 assessments in relation to the impaired insurer on return of the
4 member insurers' certificates of contribution. (V.T.I.C. Art.
5 21.28-D, Sec. 14(k).)

6 Sec. 463.302. DISTRIBUTIONS TO SHAREHOLDERS AND
7 AFFILIATES. (a) An impaired or insolvent insurer may not make a
8 distribution to shareholders until the association has recovered
9 the total amount of valid claims for money spent in carrying out the
10 association's powers and performing the association's duties under
11 Section 463.101, 463.103, 463.109, or 463.111(c) or Subchapter F
12 with respect to that insurer, plus interest on that amount.

13 (b) Except as otherwise provided by this section, a receiver
14 appointed under an order of receivership for an insurer domiciled
15 in this state may recover on behalf of the insurer from an affiliate
16 that controlled the insurer the amount of any distribution, other
17 than a stock dividend the insurer paid on the insurer's capital
18 stock, made during the five years preceding the date of the petition
19 for liquidation or rehabilitation.

20 (c) A person who was an affiliate that controlled the
21 insurer when a distribution described by Subsection (b) was paid is
22 liable for the amount of the distribution received. A person who
23 was an affiliate that controlled the insurer when the distribution
24 was declared is liable for the amount of the distribution the
25 affiliate would have received if the distribution had been paid
26 immediately. Two or more persons liable for the same distribution
27 are jointly and severally liable. If a person liable under this

1 subsection is insolvent, all of the affiliates that controlled the
2 insolvent person when the distribution was paid are jointly and
3 severally liable for any resulting deficiency in the amount
4 recovered from the insolvent person.

5 (d) The maximum amount recoverable under Subsections (b)
6 and (c) is the amount needed in excess of all other available assets
7 of the insolvent insurer to pay the insurer's contractual
8 obligations.

9 (e) The receiver may not recover a distribution to
10 shareholders under Subsection (b) if the insurer shows that, at the
11 time the distribution was paid, the distribution was lawful and
12 reasonable and that the insurer did not know and could not
13 reasonably have known that the distribution might adversely affect
14 the ability of the insurer to fulfill the insurer's contractual
15 obligations. (V.T.I.C. Art. 21.28-D, Secs. 14(e), (f), (g), (h),
16 (i), (j).)

17 Sec. 463.303. ASSETS ATTRIBUTABLE TO COVERED POLICIES. (a)
18 For the purposes of this section, assets attributable to covered
19 policies are the proportion of the assets that the reserves that
20 should have been established for the covered policies bear to the
21 reserves that should have been established for all insurance
22 policies written by the impaired or insolvent insurer.

23 (b) To carry out the association's obligations under this
24 chapter, the association is considered a creditor of the impaired
25 or insolvent insurer to the extent of assets attributable to
26 covered policies, less any amount to which the association is
27 entitled as subrogee under Section 463.261.

1 (c) Assets of the impaired or insolvent insurer
2 attributable to covered policies shall be used to continue all
3 covered policies and pay all contractual obligations of the
4 impaired or insolvent insurer as required by this chapter.
5 (V.T.I.C. Art. 21.28-D, Sec. 14(c).)

6 Sec. 463.304. DISTRIBUTION OF OWNERSHIP RIGHTS OF INSOLVENT
7 INSURER. In making an equitable distribution of the ownership
8 rights of an insolvent insurer before the termination of a
9 receivership, the court:

10 (1) shall consider the welfare of the policyholders of
11 the continuing or successor insurer; and

12 (2) may consider the contributions of the respective
13 parties, including the association, the shareholders and
14 policyholders of the insolvent insurer, and any other party with a
15 bona fide interest. (V.T.I.C. Art. 21.28-D, Sec. 14(d).)

16 [Sections 463.305-463.350 reserved for expansion]

17 SUBCHAPTER H. POWERS AND DUTIES OF COMMISSIONER AND DEPARTMENT

18 Sec. 463.351. NOTICE OF COMMISSIONER ACTIONS. (a) The
19 commissioner shall:

20 (1) notify the insurance officials of all the other
21 states, territories of the United States, and the District of
22 Columbia by mail not later than the 30th day after the date the
23 commissioner:

24 (A) revokes or suspends a member insurer's
25 certificate of authority; or

26 (B) issues a formal order requiring a member
27 insurer to:

1 (i) restrict the insurer's premium writing;
2 (ii) withdraw from this state;
3 (iii) reinsure all or part of the insurer's
4 business;

5 (iv) obtain additional contributions to
6 surplus; or

7 (v) increase capital, surplus, or another
8 account for the security of policyholders or creditors;

9 (2) report to the board when the commissioner:

10 (A) takes an action described by Subdivision (1)
11 or receives from another insurance official a report indicating
12 that a similar action has been taken in another state; or

13 (B) has reasonable cause to believe from a
14 completed or continuing examination that a member insurer may be
15 impaired or insolvent; and

16 (3) provide to the board the National Association of
17 Insurance Commissioners Insurance Regulatory Information System
18 ratios and listings of insurers not included in those ratios.

19 (b) A report under Subsection (a)(2)(A) must contain all
20 significant details of the action taken or report received.

21 (c) The board may use information described by this section
22 to carry out the board's duties under this chapter. The board shall
23 keep a report made under this section and the contents of the report
24 confidential until the commissioner or other lawful authority makes
25 the report and the contents public. (V.T.I.C. Art. 21.28-D, Secs.
26 12(a), (b).)

27 Sec. 463.352. ADVICE FROM BOARD. The commissioner may seek

1 the board's advice and recommendations on a matter affecting the
2 commissioner's duties regarding the financial condition of:

3 (1) a member insurer; or

4 (2) an insurer applying for a certificate of authority
5 to engage in the business of insurance in this state. (V.T.I.C.
6 Art. 21.28-D, Sec. 12(c).)

7 Sec. 463.353. EXAMINATION. (a) The board by majority vote
8 may request the commissioner to order an examination of a member
9 insurer that the board in good faith believes may be impaired or
10 insolvent. The commissioner shall keep the request on file. The
11 request is open for public inspection before release of the
12 examination report to the public.

13 (b) Not later than the 30th day after the date the
14 commissioner receives the request, the commissioner shall begin the
15 examination. The examination may be conducted:

16 (1) as a National Association of Insurance
17 Commissioners examination; or

18 (2) by a person the commissioner designates.

19 (c) The association shall pay the cost of the examination.

20 (d) The commissioner shall notify the board when the
21 examination is completed. The examination report shall be treated
22 in the same manner as other examination reports. The report may not
23 be released to the board before the report is released to the
24 public, except that the commissioner may comply with Section
25 463.351. (V.T.I.C. Art. 21.28-D, Sec. 12(f).)

26 Sec. 463.354. DEMAND TO CURE IMPAIRMENT. (a) When an
27 impairment is declared and the amount of the impairment is

1 determined, the commissioner shall serve a demand on the impaired
2 insurer to cure the impairment within a reasonable time.

3 (b) Notice of the demand under Subsection (a) to the
4 impaired insurer constitutes notice to any shareholders of the
5 insurer.

6 (c) Failure of the impaired insurer to comply promptly with
7 the demand does not excuse the association from exercising the
8 association's powers and performing the association's duties under
9 this chapter. (V.T.I.C. Art. 21.28-D, Sec. 11(b).)

10 Sec. 463.355. FAILURE TO COMPLY WITH PLAN OF OPERATION. On
11 failure of a member insurer to comply with the plan of operation,
12 the commissioner may suspend or revoke, after notice and hearing,
13 the insurer's certificate of authority to engage in the business of
14 insurance in this state. (V.T.I.C. Art. 21.28-D, Sec. 11(c)
15 (part).)

16 Sec. 463.356. ASSUMPTION OF POWERS AND DUTIES OF
17 ASSOCIATION. The commissioner may assume the powers and duties of
18 the association under this chapter with respect to impaired or
19 insolvent insurers if the association does not within a reasonable
20 period act as provided by:

- 21 (1) Section 463.252(b)(2);
22 (2) Section 463.253; and
23 (3) Section 463.254. (V.T.I.C. Art. 21.28-D, Sec.
24 8(q).)

25 Sec. 463.357. NOTIFICATION OF EFFECT OF CHAPTER. The
26 commissioner, as receiver of an impaired insurer, may notify all
27 interested persons of the effect of this chapter. (V.T.I.C. Art.

1 21.28-D, Sec. 11(e).)

2 Sec. 463.358. STATEMENT OF PREMIUMS. On request, the
3 commissioner shall provide the association with a statement of the
4 premiums in this state and any other appropriate state for each
5 member insurer. (V.T.I.C. Art. 21.28-D, Sec. 11(a).)

6 [Sections 463.359-463.400 reserved for expansion]

7 SUBCHAPTER I. APPEALS AND OTHER ACTIONS

8 Sec. 463.401. APPEAL TO COMMISSIONER. (a) Not later than
9 the 60th day after the date of a final action of the association or
10 the board, a member insurer may appeal the action to the
11 commissioner.

12 (b) A member insurer appealing an assessment shall pay the
13 assessment to the association. The association may use the money to
14 meet the association's obligations while the appeal is pending. If
15 the appeal on the assessment is upheld, the association shall
16 return to the insurer the amount paid in error or in excess of the
17 amount the commissioner determines the insurer was obligated to
18 pay. (V.T.I.C. Art. 21.28-D, Sec. 11(d).)

19 Sec. 463.402. VENUE. Venue for an action against the
20 association under this chapter is in Travis County. (V.T.I.C. Art.
21 21.28-D, Sec. 20(a).)

22 Sec. 463.403. APPEAL BOND. The association is not required
23 to give an appeal bond in an appeal of a cause of action under this
24 chapter. (V.T.I.C. Art. 21.28-D, Sec. 20(b).)

25 Sec. 463.404. STAY OF PROCEEDINGS; CERTAIN DECISIONS NOT
26 BINDING. (a) To permit the receiver or association to properly
27 defend a pending cause of action, a proceeding in which an impaired

1 insurer is a party or is obligated to defend a party in a court in
2 this state, other than a proceeding directly related to the
3 receivership or brought by the receiver, is stayed for:

4 (1) a six-month period beginning on the later of the
5 date the insurer is designated as impaired or the date an ancillary
6 proceeding is brought in this state; and

7 (2) any subsequent period as determined by the court.

8 (b) If a covered claim arises from a judgment, order,
9 verdict, finding, or other decision based on the default of an
10 impaired insurer or the insurer's failure to defend an insured, the
11 association on the association's behalf or on behalf of the insured
12 may apply to the court or administrator that made the decision to
13 have the decision set aside and is entitled to defend the claim on
14 the merits. (V.T.I.C. Art. 21.28-D, Sec. 18 (part).)

15 [Sections 463.405-463.450 reserved for expansion]

16 SUBCHAPTER J. PROHIBITED PRACTICES

17 Sec. 463.451. PROHIBITED USE OF PROTECTION PROVIDED BY
18 CHAPTER. (a) A person may not make, publish, disseminate,
19 circulate, or place before the public, or directly or indirectly
20 cause to be made, published, disseminated, circulated, or placed
21 before the public, a written or oral advertisement, announcement,
22 or statement that uses the existence of the association to sell,
23 solicit, or induce the purchase of a kind of insurance with respect
24 to which this chapter provides coverage.

25 (b) This section applies to an advertisement, announcement,
26 or statement made, published, disseminated, circulated, or placed
27 before the public:

- 1 (1) in a newspaper, magazine, or other publication;
- 2 (2) in a notice, circular, pamphlet, letter, or
- 3 poster;
- 4 (3) over a radio or television station; or
- 5 (4) in any other manner.

6 (c) Except as provided by Section 463.114, the use by a
7 person of the protection provided by this chapter in the sale of
8 insurance is unfair competition and an unfair practice under
9 Chapter 541.

10 (d) This section does not apply to the association or any
11 other entity that does not sell or solicit insurance. (V.T.I.C.
12 Art. 21.28-D, Sec. 19(a).)

13 [Chapters 464-480 reserved for expansion]

14 SUBTITLE E. REQUIREMENTS OF OTHER JURISDICTIONS

15 CHAPTER 481. VOLUNTARY DEPOSITS

16 Sec. 481.001. DEPOSIT WITH COMPTROLLER

17 Sec. 481.002. APPLICABILITY OF CHAPTER TO CERTAIN
18 DEPOSITS

19 Sec. 481.003. DUTIES OF COMPTROLLER

20 Sec. 481.004. ACCESS TO DEPOSIT

21 Sec. 481.005. SITUS OF DEPOSIT FOR TAX PURPOSES

22 Sec. 481.006. WITHDRAWAL OF DEPOSIT

23 Sec. 481.007. WITHDRAWAL OF DEPOSIT AFTER MERGER,
24 CONSOLIDATION, OR TOTAL REINSURANCE

25 Sec. 481.008. RETURN OF DEPOSIT

26 Sec. 481.009. DELIVERY OF DEPOSIT BY COMPTROLLER

CHAPTER 481. VOLUNTARY DEPOSITS

1
2 Sec. 481.001. DEPOSIT WITH COMPTROLLER. (a) An insurer
3 organized and engaged in business under this code that is required
4 by another state, country, or province as a condition of engaging in
5 an insurance business in that state, country, or province to make or
6 maintain a deposit with an officer of any state, country, or
7 province may, at the insurer's discretion, voluntarily deposit with
8 the comptroller cash or securities in an amount that is sufficient
9 to satisfy the conditions of the other state, country, or province.

10 (b) Any securities deposited must be approved by the
11 commissioner as being of a type and character in which the insurer
12 is authorized by law to invest. (V.T.I.C. Art. 1.10, Sec. 17(a)
13 (part).)

14 Sec. 481.002. APPLICABILITY OF CHAPTER TO CERTAIN
15 DEPOSITS. A voluntary deposit held by the comptroller or the
16 department that was made by an insurer in this state before May 8,
17 1959, to gain admission to another state may, at the insurer's
18 option, be considered to be held under this chapter. (V.T.I.C. Art.
19 1.10, Sec. 17(b).)

20 Sec. 481.003. DUTIES OF COMPTROLLER. The comptroller
21 shall receive a deposit made by an insurer as described by this
22 chapter and hold it exclusively for the protection of all
23 policyholders or creditors of the insurer, wherever they are
24 located, or for the protection of the insurer's policyholders or
25 creditors in a particular state, country, or province, as
26 designated by the insurer at the time the insurer makes the deposit.
27 (V.T.I.C. Art. 1.10, Sec. 17(a) (part).)

1 Sec. 481.004. ACCESS TO DEPOSIT. In accordance with
2 reasonable rules adopted by the comptroller and the commissioner,
3 the proper officer of an insurer making a deposit as described by
4 this chapter may at a reasonable time:

- 5 (1) examine the deposit;
6 (2) detach coupons from the securities; and
7 (3) collect interest on the deposit. (V.T.I.C. Art.
8 1.10, Sec. 17(a) (part).)

9 Sec. 481.005. SITUS OF DEPOSIT FOR TAX PURPOSES. For
10 purposes of state, county, or municipal taxation, the situs of
11 deposited securities is the municipality and county in which the
12 principal business office of the insurer making the deposit is
13 fixed by the insurer's charter. (V.T.I.C. Art. 1.10, Sec. 17(a)
14 (part).)

15 Sec. 481.006. WITHDRAWAL OF DEPOSIT. (a) An insurer that
16 makes a deposit as described by this chapter may, at the insurer's
17 option, withdraw all or part of the deposit if:

18 (1) the insurer first deposits with the comptroller
19 other securities of like class as, and of an amount and value equal
20 to, the securities proposed to be withdrawn; and

21 (2) the withdrawal and substitution are approved by
22 the commissioner.

23 (b) An insurer, without making a substitute deposit under
24 Subsection (a), may not withdraw all or part of a deposit made as
25 described by this chapter for the protection of the insurer's
26 policyholders or creditors in a particular state, country, or
27 province that requires the deposit unless:

1 (1) the insurer files with the commissioner evidence
2 that satisfies the commissioner that the insurer has withdrawn from
3 business and does not have any unsecured liabilities outstanding or
4 potential policyholder liabilities or obligations in the other
5 state, country, or province; and

6 (2) the commissioner approves the withdrawal.

7 (c) An insurer, without making a substitute deposit under
8 Subsection (a), may not withdraw all or part of a deposit made as
9 described by this chapter for the protection of all of the insurer's
10 policyholders or creditors, wherever they are located, unless:

11 (1) the insurer files with the commissioner evidence
12 that satisfies the commissioner that the insurer does not have any
13 unsecured liabilities outstanding or potential policy liabilities
14 or obligations anywhere; and

15 (2) the commissioner approves the withdrawal.

16 (V.T.I.C. Art. 1.10, Sec. 17(a) (part).)

17 Sec. 481.007. WITHDRAWAL OF DEPOSIT AFTER MERGER,
18 CONSOLIDATION, OR TOTAL REINSURANCE. When two or more insurers
19 that have two or more deposits made for identical purposes as
20 described by this chapter or former Article 4739, Revised Statutes,
21 merge, consolidate, or enter into a total reinsurance contract by
22 which the ceding insurer is dissolved and the ceding insurer's
23 assets and liabilities are acquired or assumed by the surviving
24 insurer, the new, surviving, or reinsuring insurer may withdraw all
25 of the deposits, except for the deposit of the greatest amount and
26 value. The new, surviving, or reinsuring insurer must demonstrate
27 that the deposits are duplicated and that the insurer is the owner

1 of the deposits. (V.T.I.C. Art. 1.10, Sec. 17(c).)

2 Sec. 481.008. RETURN OF DEPOSIT. An insurer that has made
3 a deposit as described by this chapter or former Article 4739,
4 Revised Statutes, is entitled to a return of the deposit if the
5 insurer applies for the return of the deposit and demonstrates to
6 the commissioner that the deposit is no longer required under the
7 laws of any state, country, or province in which the insurer sought
8 or gained admission to engage in business based on a certificate of
9 the deposit. (V.T.I.C. Art. 1.10, Sec. 17(d).)

10 Sec. 481.009. DELIVERY OF DEPOSIT BY COMPTROLLER. On being
11 provided a certified copy of the commissioner's order issued under
12 Section 481.007 or 481.008, the comptroller shall release,
13 transfer, and deliver the deposit to the owner of the deposit in
14 accordance with the order. (V.T.I.C. Art. 1.10, Sec. 17(e).)

15 [Chapters 482-490 reserved for expansion]

16 SUBTITLE F. REINSURANCE

17 CHAPTER 491. GENERAL REINSURANCE REQUIREMENTS

18 SUBCHAPTER A. REINSURANCE

19 Sec. 491.001. INAPPLICABILITY OF SUBCHAPTER

20 Sec. 491.002. REINSURANCE PERMITTED

21 Sec. 491.003. RISK LIMITATION FOR DOMESTIC OR FOREIGN

22 INSURER

23 Sec. 491.004. RISK LIMITATION FOR ALIEN INSURER

24 Sec. 491.005. COMPLIANCE WITH OTHER LAW

25 [Sections 491.006-491.050 reserved for expansion]

1 SUBCHAPTER B. COMPUTATION OF REINSURANCE RESERVE

2 Sec. 491.051. COMPUTATION OF RESERVE FOR INSURER WITH
3 NO BASIS PRESCRIBED BY LAW

4 Sec. 491.052. COMPUTATION OF REINSURANCE RESERVES FOR
5 CERTAIN INSURERS

6 CHAPTER 491. GENERAL REINSURANCE REQUIREMENTS

7 SUBCHAPTER A. REINSURANCE

8 Sec. 491.001. INAPPLICABILITY OF SUBCHAPTER. This
9 subchapter does not apply to:

- 10 (1) life insurance;
- 11 (2) health insurance;
- 12 (3) annuity contracts;
- 13 (4) title insurance;
- 14 (5) workers' compensation insurance;
- 15 (6) employers' liability insurance coverage; or
- 16 (7) any policy or kind of coverage for which the
17 maximum possible loss to the insurer is not readily ascertainable
18 on the policy's issuance. (V.T.I.C. Art. 21.72, Sec. 3.)

19 Sec. 491.002. REINSURANCE PERMITTED. An insurer or
20 reinsurer authorized to engage in the business of insurance or
21 reinsurance in this state may reinsure all or part of a single risk
22 in another solvent insurer. (V.T.I.C. Art. 21.72, Sec. 2.)

23 Sec. 491.003. RISK LIMITATION FOR DOMESTIC OR FOREIGN
24 INSURER. An insurer incorporated under the laws of this state,
25 another state, or the United States and authorized to engage in
26 business in this state may not expose itself to a loss or hazard on a
27 single risk in an amount that exceeds 10 percent of the insurer's

1 surplus for policyholders unless the insurer reinsures the excess
2 in another solvent insurer. (V.T.I.C. Art. 21.72, Sec. 1(a).)

3 Sec. 491.004. RISK LIMITATION FOR ALIEN INSURER. An
4 insurer incorporated under the laws of a jurisdiction other than
5 this state, another state, or the United States and authorized to
6 engage in business in this state may not, unless the insurer
7 reinsures the excess in another solvent insurer, expose itself to a
8 loss or hazard on a single risk in an amount that exceeds the sum of:

9 (1) 10 percent of the insurer's deposit with the
10 statutory officer in the state through which the insurer is
11 authorized to engage in business in the United States; and

12 (2) 10 percent of the other surplus for policyholders
13 of the insurer's United States branch. (V.T.I.C. Art. 21.72, Sec.
14 1(b).)

15 Sec. 491.005. COMPLIANCE WITH OTHER LAW. Reinsurance that
16 is required or permitted by this subchapter must comply with
17 Chapter 493. (V.T.I.C. Art. 21.72, Sec. 4.)

18 [Sections 491.006-491.050 reserved for expansion]

19 SUBCHAPTER B. COMPUTATION OF REINSURANCE RESERVE

20 Sec. 491.051. COMPUTATION OF RESERVE FOR INSURER WITH NO
21 BASIS PRESCRIBED BY LAW. For an insurer engaged in the business of
22 a kind of insurance in this state, for which no basis is prescribed
23 by law, the department shall compute the reinsurance reserve on the
24 basis prescribed by Section 862.102 for an insurer writing fire
25 insurance. (V.T.I.C. Art. 1.10, Sec. 3.)

26 Sec. 491.052. COMPUTATION OF REINSURANCE RESERVES FOR
27 CERTAIN INSURERS. (a) On December 31 of each year, or as soon as

1 practicable after that date, the department shall, in accordance
2 with Section 491.051, compute the reinsurance reserve for all
3 unexpired risks of each insurer organized under the laws of this
4 state or engaged in the business of insurance in this state.

5 (b) This section does not apply to:

- 6 (1) life insurance;
- 7 (2) fire insurance;
- 8 (3) marine insurance;
- 9 (4) inland marine insurance;
- 10 (5) lightning insurance; or
- 11 (6) tornado insurance. (V.T.I.C. Art. 1.10, Sec. 4.)

12 CHAPTER 492. REINSURANCE FOR LIFE, HEALTH, AND ACCIDENT INSURANCE

13 COMPANIES AND RELATED ENTITIES

14 SUBCHAPTER A. GENERAL PROVISIONS

15 Sec. 492.001. DEFINITIONS

16 Sec. 492.002. APPLICABILITY OF CHAPTER

17 Sec. 492.003. RULES

18 [Sections 492.004-492.050 reserved for expansion]

19 SUBCHAPTER B. REINSURANCE

20 Sec. 492.051. REINSURANCE AUTHORIZED

21 Sec. 492.052. LIMITATION ON REINSURANCE OF ENTIRE

22 OUTSTANDING BUSINESS

23 Sec. 492.053. LIMITATION ON REINSURANCE OF RISKS OF

24 INSURER WITH LESS THAN MINIMUM CAPITAL

25 AND SURPLUS

26 Sec. 492.054. FILING OF REINSURANCE SCHEDULES

27 Sec. 492.055. ACCOUNTING FOR REINSURANCE CONTRACTS

- 1 Sec. 492.056. LIMITATION ON RIGHTS AGAINST REINSURER
2 [Sections 492.057-492.100 reserved for expansion]
3 SUBCHAPTER C. CREDIT FOR REINSURANCE
4 Sec. 492.101. EXCLUSIVE PROCEDURE FOR TAKING CREDIT
5 FOR REINSURANCE
6 Sec. 492.102. CREDIT FOR REINSURANCE GENERALLY
7 Sec. 492.103. ACCREDITED REINSURER
8 Sec. 492.104. CREDIT FOR FUNDS SECURING REINSURANCE
9 OBLIGATIONS
10 Sec. 492.105. ACCEPTABILITY OF CERTAIN LETTERS OF
11 CREDIT
12 Sec. 492.106. CREDIT FOR REINSURANCE: DIRECT PAYMENT
13 ON LIABILITY REQUIRED
14 Sec. 492.107. REQUEST FOR INFORMATION FROM ASSUMING
15 INSURER
16 [Sections 492.108-492.150 reserved for expansion]
17 SUBCHAPTER D. REQUIREMENTS FOR TRUST CREDIT ALLOWANCE
18 Sec. 492.151. APPLICABILITY OF SUBCHAPTER
19 Sec. 492.152. COMPOSITION OF TRUST
20 Sec. 492.153. FORM OF TRUST
21 Sec. 492.154. TERMS OF TRUST
22 Sec. 492.155. REPORTS AND CERTIFICATION
23 Sec. 492.156. CERTAIN TRUSTEED ASSUMING INSURERS:
24 REQUIREMENTS FOR REINSURANCE CONTRACT
25 Sec. 492.157. EXAMINATION OF TRUST AND ASSUMING
26 INSURER

1 CHAPTER 492. REINSURANCE FOR LIFE, HEALTH, AND ACCIDENT INSURANCE

2 COMPANIES AND RELATED ENTITIES

3 SUBCHAPTER A. GENERAL PROVISIONS

4 Sec. 492.001. DEFINITIONS. In this chapter:

5 (1) "Assuming insurer" means an insurer that, under a
6 reinsurance contract, incurs an obligation to a ceding insurer, the
7 performance of which is contingent on the ceding insurer's
8 incurring liability or loss under the ceding insurer's insurance
9 contract with a third person.

10 (2) "Qualified United States financial institution"
11 means an institution that:

12 (A) is organized or, in the case of a United
13 States branch or agency office of a foreign banking organization,
14 licensed, under the laws of the United States or any state of the
15 United States; and

16 (B) is regulated, supervised, and examined by a
17 federal or state authority that has regulatory authority over banks
18 and trust companies. (V.T.I.C. Art. 3.10, Secs. (e) (part), (k).)

19 Sec. 492.002. APPLICABILITY OF CHAPTER. (a) Except as
20 provided by Subsection (b), this chapter applies to:

21 (1) all life, health, and accident insurance companies
22 regulated by the department, including:

23 (A) a stock or mutual life, health, or accident
24 insurance company;

25 (B) a fraternal benefit society; and

26 (C) a nonprofit hospital, medical, or dental
27 service corporation, including a group hospital service

1 corporation operating under Chapter 842; and

2 (2) a health maintenance organization operating under
3 Chapter 843.

4 (b) This chapter does not apply to a ceding insurer
5 domiciled in another state that regulates credit for reinsurance
6 under statutes, rules, or regulations substantially similar in
7 substance or effect to this chapter if the ceding insurer on request
8 provides the commissioner with:

9 (1) evidence of the similarity in the form of those
10 statutes, rules, or regulations; and

11 (2) an interpretation of the statutes, rules, or
12 regulations and the standards used by the state of domicile.
13 (V.T.I.C. Art. 3.10, Sec. (a) (part).)

14 Sec. 492.003. RULES. The commissioner may adopt rules
15 implementing this chapter. (V.T.I.C. Art. 3.10, Sec. (f).)

16 [Sections 492.004-492.050 reserved for expansion]

17 SUBCHAPTER B. REINSURANCE

18 Sec. 492.051. REINSURANCE AUTHORIZED. (a) An insurer
19 authorized to engage in the business of insurance in this state may
20 reinsure in any solvent assuming insurer any risk or part of a risk
21 that both insurers are authorized to assume.

22 (b) A life insurance company authorized to engage in
23 business in this state may provide reinsurance on the same basis as
24 an insurer described by Section 493.051(b).

25 (c) The commissioner may adopt necessary and reasonable
26 rules under Subsection (b) to protect the public interest.
27 (V.T.I.C. Art. 3.10, Sec. (a) (part); Art. 5.75-1, Secs. (l), (m).)

1 Sec. 492.052. LIMITATION ON REINSURANCE OF ENTIRE
2 OUTSTANDING BUSINESS. (a) An insurer may not reinsure the
3 insurer's entire outstanding business in an assuming insurer unless
4 the assuming insurer is authorized to engage in the business of
5 insurance in this state.

6 (b) Before the date of reinsurance:

7 (1) the reinsurance contract must be submitted to the
8 commissioner; and

9 (2) the commissioner must approve the contract as
10 fully protecting the interests of all policyholders. (V.T.I.C.
11 Art. 3.10, Sec. (a) (part).)

12 Sec. 492.053. LIMITATION ON REINSURANCE OF RISKS OF INSURER
13 WITH LESS THAN MINIMUM CAPITAL AND SURPLUS. An insurer operating
14 under Section 841.204 may not reinsure any risk or part of a risk in
15 an insurer that is not authorized to engage in the business of
16 insurance in this state. (V.T.I.C. Art. 3.10, Sec. (a) (part).)

17 Sec. 492.054. FILING OF REINSURANCE SCHEDULES. The
18 commissioner shall require each insurer to file reinsurance
19 schedules:

20 (1) when the insurer makes the insurer's annual
21 report; and

22 (2) at other times as the commissioner directs.
23 (V.T.I.C. Art. 3.10, Sec. (i).)

24 Sec. 492.055. ACCOUNTING FOR REINSURANCE CONTRACTS. (a)
25 An insurer shall account for reinsurance contracts and shall record
26 the contracts in the insurer's financial statements in a manner
27 that accurately reflects the effect of the contracts on the

1 insurer's financial condition.

2 (b) A reinsurance contract may contain a provision allowing
3 the offset of mutual debts and credits between the ceding insurer
4 and the assuming insurer, whether arising out of one or more
5 reinsurance contracts.

6 (c) The commissioner may adopt reasonable rules relating
7 to:

8 (1) the accounting and financial statement
9 requirements of this section and the treatment of reinsurance
10 contracts between insurers, including minimum risk transfer
11 standards, asset debits or credits, reinsurance debits or credits,
12 and reserve debits or credits relating to the transfer of all or any
13 part of an insurer's risks or liabilities by reinsurance contracts;
14 and

15 (2) any contingencies arising from reinsurance
16 contracts.

17 (d) A rule adopted under Subsection (c) after September 1,
18 1995, applies to:

19 (1) a reinsurance contract entered into on or after
20 the effective date of the rule; and

21 (2) a reinsurance contract that is amended on or after
22 the effective date of the rule. (V.T.I.C. Art. 3.10, Sec. (1).)

23 Sec. 492.056. LIMITATION ON RIGHTS AGAINST REINSURER. A
24 person does not have a right against a reinsurer that is not
25 specifically stated in:

26 (1) the reinsurance contract; or

27 (2) a specific agreement between the reinsurer and the

1 person. (V.T.I.C. Art. 3.10, Sec. (h).)

2 [Sections 492.057-492.100 reserved for expansion]

3 SUBCHAPTER C. CREDIT FOR REINSURANCE

4 Sec. 492.101. EXCLUSIVE PROCEDURE FOR TAKING CREDIT FOR
5 REINSURANCE. A ceding insurer may take a credit for reinsurance, as
6 an asset or as a deduction from liability, only as provided by this
7 chapter. (V.T.I.C. Art. 3.10, Sec. (a) (part).)

8 Sec. 492.102. CREDIT FOR REINSURANCE GENERALLY. (a) A
9 ceding insurer may be allowed credit for reinsurance ceded, as an
10 asset or as a deduction from liability, only if the reinsurance is
11 ceded to an assuming insurer that:

12 (1) is authorized to engage in the business of
13 insurance or reinsurance in this state;

14 (2) is accredited as a reinsurer in this state, as
15 provided by Section 492.103; or

16 (3) subject to Subchapter D, maintains, in a qualified
17 United States financial institution that has been granted the
18 authority to operate with fiduciary powers, a trust fund to pay
19 valid claims of:

20 (A) the assuming insurer's United States
21 policyholders and ceding insurers; and

22 (B) the policyholders' and ceding insurers'
23 assigns and successors in interest.

24 (b) Notwithstanding Subsection (a), a ceding insurer may be
25 allowed credit for reinsurance ceded to an assuming insurer that
26 does not meet the requirements of that subsection, but only with
27 respect to the insurance of risks located in a jurisdiction in which

1 the reinsurance is required by the jurisdiction's law, including
2 regulations, to be ceded to an assuming insurer that does not meet
3 the requirements of that subsection. (V.T.I.C. Art. 3.10, Secs.
4 (b) (part), (e) (part).)

5 Sec. 492.103. ACCREDITED REINSURER. For purposes of
6 Section 492.102(a)(2), an insurer is accredited as a reinsurer in
7 this state if the insurer:

8 (1) submits to this state's jurisdiction;

9 (2) submits to this state's authority to examine the
10 insurer's books and records;

11 (3) is domiciled and authorized to engage in the
12 business of insurance or reinsurance in at least one state or, if
13 the insurer is a United States branch of an alien assuming insurer,
14 is entered through and authorized to engage in the business of
15 insurance or reinsurance in at least one state;

16 (4) annually files with the department a copy of the
17 annual statement the insurer files with the insurance department of
18 the insurer's state of domicile; and

19 (5) maintains a surplus as regards policyholders in an
20 amount of at least \$20 million. (V.T.I.C. Art. 3.10, Sec. (b)
21 (part).)

22 Sec. 492.104. CREDIT FOR FUNDS SECURING REINSURANCE
23 OBLIGATIONS. (a) Subject to Subsection (b), any asset or deduction
24 from liability for reinsurance ceded to an assuming insurer that
25 does not meet the requirements of Section 492.102 shall be allowed
26 in an amount that does not exceed the liabilities carried by the
27 ceding insurer and in the amount of funds held by or on behalf of the

1 ceding insurer under a reinsurance contract with the assuming
2 insurer, including funds held in trust for the ceding insurer, as
3 security for the payment of obligations under the contract.

4 (b) The funds held as security:

5 (1) must be held in the United States subject to
6 withdrawal solely by and under the exclusive control of the ceding
7 insurer or, in the case of a trust, held in a qualified United
8 States financial institution that has been granted the authority to
9 operate with fiduciary powers; and

10 (2) may be in the form of:

11 (A) cash;

12 (B) securities that:

13 (i) are readily marketable over a national
14 exchange;

15 (ii) have a maturity date of not later than
16 one year;

17 (iii) are listed by the Securities
18 Valuation Office of the National Association of Insurance
19 Commissioners; and

20 (iv) qualify as admitted assets;

21 (C) subject to Section 492.105, a clean,
22 irrevocable, unconditional letter of credit, issued or confirmed by
23 a qualified United States financial institution that has been
24 determined by the commissioner or the Securities Valuation Office
25 of the National Association of Insurance Commissioners to meet the
26 standards of financial condition and standing that are considered
27 necessary and appropriate to regulate the quality of financial

1 institutions whose letters of credit will be acceptable to the
2 commissioner; or

3 (D) another form of security acceptable to the
4 commissioner. (V.T.I.C. Art. 3.10, Secs. (d) (part), (e) (part).)

5 Sec. 492.105. ACCEPTABILITY OF CERTAIN LETTERS OF CREDIT.

6 A letter of credit issued or confirmed by an institution that meets
7 the standards prescribed by Section 492.104(b)(2)(C) as of the date
8 the letter is issued or confirmed, but later fails to meet those
9 standards, continues to be acceptable as security under Section
10 492.104 until the earliest of:

11 (1) the letter's expiration;

12 (2) the letter's extension, renewal, modification, or
13 amendment after the date the institution fails to meet those
14 standards; or

15 (3) the expiration of the three-month period after the
16 date the institution fails to meet those standards. (V.T.I.C.
17 Art. 3.10, Sec. (d) (part).)

18 Sec. 492.106. CREDIT FOR REINSURANCE: DIRECT PAYMENT ON
19 LIABILITY REQUIRED. A ceding insurer may not be given credit for
20 reinsurance ceded, as an asset or as a deduction from liability, in
21 an accounting or financial statement unless the reinsurance is
22 payable by the assuming insurer:

23 (1) on the liability of the ceding insurer under the
24 contracts reinsured, without diminution because of the ceding
25 insurer's insolvency; and

26 (2) directly to the ceding insurer or to the ceding
27 insurer's domiciliary liquidator or receiver. (V.T.I.C.

1 Art. 3.10, Sec. (j).)

2 Sec. 492.107. REQUEST FOR INFORMATION FROM ASSUMING
3 INSURER. (a) The commissioner may request that an assuming insurer
4 not meeting the requirements of Section 492.102 file:

5 (1) financial statements certified and audited by an
6 independent certified public accountant;

7 (2) a certified copy of the certificate or letter of
8 authority from the domiciliary jurisdiction; and

9 (3) information on the principals and management of
10 the assuming insurer.

11 (b) If an assuming insurer does not comply with a request
12 under this section, the commissioner may issue a directive
13 prohibiting all authorized insurers from taking credit for business
14 ceded to the assuming insurer after the effective date of the
15 directive.

16 (c) An unauthorized insurer that is included in the most
17 recent quarterly listing published by the International Insurers
18 Department of the National Association of Insurance Commissioners
19 is considered to have complied with a request under this section.
20 (V.T.I.C. Art. 3.10, Sec. (m).)

21 [Sections 492.108-492.150 reserved for expansion]

22 SUBCHAPTER D. REQUIREMENTS FOR TRUST CREDIT ALLOWANCE

23 Sec. 492.151. APPLICABILITY OF SUBCHAPTER. This subchapter
24 applies to a trust that is used to qualify for a reinsurance credit
25 under Section 492.102(a)(3) and to the assuming insurer that
26 maintains the trust fund. (New.)

27 Sec. 492.152. COMPOSITION OF TRUST. (a) If the assuming

1 insurer is a single insurer, the trust must:

2 (1) consist of a trustee account representing the
3 assuming insurer's liabilities attributable to business written in
4 the United States; and

5 (2) include a trustee surplus of at least \$20
6 million.

7 (b) If the assuming insurer is a group of insurers that
8 includes an unincorporated individual insurer:

9 (1) the trust must:

10 (A) consist of a trustee account representing
11 the group's liabilities attributable to business written in the
12 United States; and

13 (B) include a trustee surplus of at least \$100
14 million; and

15 (2) the group shall make available to the department
16 an annual certification by the group's domiciliary regulator and
17 its independent public accountants of each underwriter's solvency.
18 (V.T.I.C. Art. 3.10, Sec. (b) (part).)

19 Sec. 492.153. FORM OF TRUST. The trust must be established
20 in a form approved by the commissioner. (V.T.I.C. Art. 3.10, Sec.
21 (b) (part).)

22 Sec. 492.154. TERMS OF TRUST. (a) The trust instrument
23 must provide that contested claims are valid and enforceable on the
24 final order of any court in the United States.

25 (b) The trust must vest legal title to the trust's assets in
26 the trustees of the trust for:

27 (1) the trust's United States policyholders and ceding

1 insurers; and

2 (2) the policyholders' and ceding insurers' assigns
3 and successors in interest.

4 (c) The trust must remain in effect as long as the assuming
5 insurer has outstanding obligations under a reinsurance contract
6 subject to the trust. (V.T.I.C. Art. 3.10, Sec. (b) (part).)

7 Sec. 492.155. REPORTS AND CERTIFICATION. (a) Not later
8 than February 28 of each year, the trustees of the trust shall:

9 (1) report to the department in writing, showing the
10 balance of the trust and listing the trust's investments at the end
11 of the preceding year; and

12 (2) certify the date of termination of the trust, if
13 termination is planned, or certify that the trust will not expire
14 before December 31 of the year of the report.

15 (b) To enable the commissioner to determine the sufficiency
16 of the trust fund under Section 492.102(a)(3), the assuming insurer
17 shall report to the department not later than March 1 of each year
18 information substantially the same as the information required to
19 be reported by an authorized insurer on the National Association of
20 Insurance Commissioners' Annual Statement form. (V.T.I.C. Art.
21 3.10, Sec. (b) (part).)

22 Sec. 492.156. CERTAIN TRUSTEED ASSUMING INSURERS:
23 REQUIREMENTS FOR REINSURANCE CONTRACT. (a) A ceding insurer may
24 not be allowed credit under Section 492.102(a)(3) for reinsurance
25 ceded to an assuming insurer that is not authorized or accredited to
26 engage in the business of insurance or reinsurance in this state
27 unless the assuming insurer agrees in the reinsurance contract:

1 (1) that, if the assuming insurer fails to perform the
2 assuming insurer's obligations under the reinsurance contract, the
3 assuming insurer, at the request of the ceding insurer, will:

4 (A) submit to the jurisdiction of a court in any
5 state of the United States;

6 (B) comply with all requirements necessary to
7 give the court jurisdiction; and

8 (C) abide by the final decision of that court or,
9 if the court's decision is appealed, of the appellate court; and

10 (2) to designate the commissioner or an attorney as an
11 agent for service of process in any action, suit, or proceeding
12 instituted by or on behalf of the ceding insurer.

13 (b) This section is not intended to conflict with or
14 override a provision in a reinsurance contract that requires the
15 parties to arbitrate the parties' disputes. (V.T.I.C. Art. 3.10,
16 Sec. (c).)

17 Sec. 492.157. EXAMINATION OF TRUST AND ASSUMING INSURER.
18 The trust and the assuming insurer are subject to examination as
19 determined by the commissioner. (V.T.I.C. Art. 3.10, Sec. (b)
20 (part).)

21 CHAPTER 493. REINSURANCE FOR PROPERTY AND

22 CASUALTY INSURERS

23 SUBCHAPTER A. GENERAL PROVISIONS

24 Sec. 493.001. DEFINITIONS

25 Sec. 493.002. APPLICABILITY OF CHAPTER

26 Sec. 493.003. RULES

27 [Sections 493.004-493.050 reserved for expansion]

1 SUBCHAPTER B. REINSURANCE

2 Sec. 493.051. REINSURANCE AUTHORIZED

3 Sec. 493.052. LIMITATION ON REINSURANCE OF ENTIRE
4 OUTSTANDING BUSINESS

5 Sec. 493.053. FILING OF REINSURANCE SCHEDULES

6 Sec. 493.054. ACCOUNTING FOR REINSURANCE CONTRACTS

7 Sec. 493.055. LIMITATION ON RIGHTS AGAINST REINSURER

8 [Sections 493.056-493.100 reserved for expansion]

9 SUBCHAPTER C. CREDIT FOR REINSURANCE

10 Sec. 493.101. EXCLUSIVE PROCEDURE FOR TAKING CREDIT
11 FOR REINSURANCE

12 Sec. 493.102. CREDIT FOR REINSURANCE GENERALLY

13 Sec. 493.103. ACCREDITED REINSURER

14 Sec. 493.104. CREDIT FOR FUNDS SECURING REINSURANCE
15 OBLIGATIONS

16 Sec. 493.105. ACCEPTABILITY OF CERTAIN LETTERS OF
17 CREDIT

18 Sec. 493.106. CREDIT FOR REINSURANCE: DIRECT PAYMENT
19 ON LIABILITY REQUIRED

20 Sec. 493.107. REQUEST FOR INFORMATION FROM ASSUMING
21 INSURER

22 [Sections 493.108-493.150 reserved for expansion]

23 SUBCHAPTER D. REQUIREMENTS FOR TRUST CREDIT ALLOWANCE

24 Sec. 493.151. APPLICABILITY OF SUBCHAPTER

25 Sec. 493.152. COMPOSITION OF TRUST

26 Sec. 493.153. FORM OF TRUST

27 Sec. 493.154. TERMS OF TRUST

1 Sec. 493.155. REPORTS AND CERTIFICATION

2 Sec. 493.156. CERTAIN TRUSTEED ASSUMING INSURERS:

3 REQUIREMENTS FOR REINSURANCE CONTRACT

4 Sec. 493.157. EXAMINATION OF TRUST AND ASSUMING

5 INSURER

6 CHAPTER 493. REINSURANCE FOR PROPERTY AND

7 CASUALTY INSURERS

8 SUBCHAPTER A. GENERAL PROVISIONS

9 Sec. 493.001. DEFINITIONS. In this chapter:

10 (1) "Assuming insurer" means an insurer that, under a
11 reinsurance contract, incurs an obligation to a ceding insurer, the
12 performance of which is contingent on the ceding insurer incurring
13 liability or loss under the ceding insurer's insurance contract
14 with a third person.

15 (2) "Qualified United States financial institution"
16 means an institution that:

17 (A) is organized or, in the case of a United
18 States branch or agency office of a foreign banking organization,
19 licensed, under the laws of the United States or any state of the
20 United States; and

21 (B) is regulated, supervised, and examined by a
22 federal or state authority that has regulatory authority over banks
23 and trust companies. (V.T.I.C. Art. 5.75-1, Secs. (e)(1) (part),
24 (2) (part), (j).)

25 Sec. 493.002. APPLICABILITY OF CHAPTER. (a) Except as
26 provided by Subsection (b), this chapter applies to all insurers,
27 including:

- 1 (1) a stock or mutual property and casualty insurance
2 company;
- 3 (2) a Mexican casualty insurance company;
- 4 (3) a Lloyd's plan;
- 5 (4) a reciprocal or interinsurance exchange;
- 6 (5) a nonprofit legal service corporation;
- 7 (6) a county mutual insurance company;
- 8 (7) a farm mutual insurance company;
- 9 (8) a risk retention group; and
- 10 (9) any insurer writing a line of insurance regulated
11 by Title 10.

12 (b) This chapter does not apply to a ceding insurer
13 domiciled in another state that regulates credit for reinsurance
14 under statutes, rules, or regulations substantially similar in
15 substance and effect to this chapter if the ceding insurer on
16 request provides the commissioner with:

17 (1) evidence of the similarity in the form of those
18 statutes, rules, or regulations; and

19 (2) an interpretation of the standards used by the
20 state of domicile. (V.T.I.C. Art. 5.75-1, Sec. (a) (part).)

21 Sec. 493.003. RULES. The commissioner may adopt necessary
22 and reasonable rules under this chapter to protect the public
23 interest. (V.T.I.C. Art. 5.75-1, Sec. (m).)

24 [Sections 493.004-493.050 reserved for expansion]

25 SUBCHAPTER B. REINSURANCE

26 Sec. 493.051. REINSURANCE AUTHORIZED. (a) An insurer
27 authorized to engage in the business of insurance in this state may

1 reinsure, in any solvent assuming insurer, any risk or part of a
2 risk that both insurers are authorized by law to assume.

3 (b) An insurer authorized to engage in business in this
4 state that writes any line of insurance regulated by Title 10 may
5 provide reinsurance under this chapter while the insurer is in
6 compliance with law. (V.T.I.C. Art. 5.75-1, Secs. (a) (part),
7 (k).)

8 Sec. 493.052. LIMITATION ON REINSURANCE OF ENTIRE
9 OUTSTANDING BUSINESS. (a) An insurer may not reinsure the
10 insurer's entire outstanding business in an assuming insurer unless
11 the assuming insurer is authorized to engage in the business of
12 insurance in this state.

13 (b) Before the date of reinsurance:

14 (1) the reinsurance contract must be submitted to the
15 commissioner; and

16 (2) the commissioner must approve the contract as
17 fully protecting the interests of all policyholders. (V.T.I.C.
18 Art. 5.75-1, Sec. (a) (part).)

19 Sec. 493.053. FILING OF REINSURANCE SCHEDULES. The
20 commissioner shall require each insurer to file reinsurance
21 schedules:

22 (1) when the insurer makes the insurer's annual
23 report; and

24 (2) at other times as the commissioner directs.
25 (V.T.I.C. Art. 5.75-1, Sec. (h).)

26 Sec. 493.054. ACCOUNTING FOR REINSURANCE CONTRACTS. (a)
27 An insurer shall account for reinsurance contracts and shall record

1 the contracts in the insurer's financial statements in a manner
2 that accurately reflects the effect of the contracts on the
3 insurer's financial condition.

4 (b) A reinsurance contract may contain a provision allowing
5 the offset of mutual debts and credits between the ceding insurer
6 and the assuming insurer, whether arising out of one or more
7 reinsurance contracts.

8 (c) The commissioner may adopt reasonable rules relating
9 to:

10 (1) the accounting and financial statement
11 requirements of this section and the treatment of reinsurance
12 contracts between insurers, including minimum risk transfer
13 standards, asset debits or credits, reinsurance debits or credits,
14 and reserve debits or credits relating to the transfer of all or any
15 part of an insurer's risks or liabilities by reinsurance contracts;
16 and

17 (2) any contingencies arising from reinsurance
18 contracts. (V.T.I.C. Art. 5.75-1, Sec. (n).)

19 Sec. 493.055. LIMITATION ON RIGHTS AGAINST REINSURER. A
20 person does not have a right against a reinsurer that is not
21 specifically stated in:

22 (1) the reinsurance contract; or

23 (2) a specific agreement between the reinsurer and the
24 person. (V.T.I.C. Art. 5.75-1, Sec. (g).)

25 [Sections 493.056-493.100 reserved for expansion]

26 SUBCHAPTER C. CREDIT FOR REINSURANCE

27 Sec. 493.101. EXCLUSIVE PROCEDURE FOR TAKING CREDIT FOR

1 REINSURANCE. A ceding insurer may take a credit for reinsurance,
2 as an asset or as a deduction from liability, only as provided by
3 this chapter. (V.T.I.C. Art. 5.75-1, Sec. (a) (part).)

4 Sec. 493.102. CREDIT FOR REINSURANCE GENERALLY. (a) A
5 ceding insurer may be allowed credit for reinsurance ceded, as an
6 asset or as a deduction from liability, only if the reinsurance is
7 ceded to an assuming insurer that:

8 (1) is authorized to engage in the business of
9 insurance or reinsurance in this state;

10 (2) is accredited as a reinsurer in this state, as
11 provided by Section 493.103; or

12 (3) subject to Subchapter D, maintains, in a qualified
13 United States financial institution that has been granted the
14 authority to operate with fiduciary powers, a trust fund to pay
15 valid claims of:

16 (A) the assuming insurer's United States
17 policyholders and ceding insurers; and

18 (B) the policyholders' and ceding insurers'
19 assigns and successors in interest.

20 (b) Notwithstanding Subsection (a), a ceding insurer may be
21 allowed credit for reinsurance ceded to an assuming insurer that
22 does not meet the requirements of that subsection, but only with
23 respect to the insurance of risks located in a jurisdiction in which
24 the reinsurance is required by the jurisdiction's law, including
25 regulations, to be ceded to an assuming insurer that does not meet
26 the requirements of that subsection. (V.T.I.C. Art. 5.75-1, Secs.
27 (b) (part), (e)(2) (part).)

1 Sec. 493.103. ACCREDITED REINSURER. For purposes of
2 Section 493.102(a)(2), an insurer is accredited as a reinsurer in
3 this state if the insurer:

4 (1) submits to this state's jurisdiction;

5 (2) submits to this state's authority to examine the
6 insurer's books and records;

7 (3) is domiciled and authorized to engage in the
8 business of insurance or reinsurance in at least one state or, if
9 the insurer is a United States branch of an alien assuming insurer,
10 is entered through and authorized to engage in the business of
11 insurance or reinsurance in at least one state;

12 (4) annually files with the department a copy of the
13 annual statement the insurer files with the insurance department of
14 the insurer's state of domicile; and

15 (5) maintains a surplus as regards policyholders in an
16 amount of at least \$20 million. (V.T.I.C. Art. 5.75-1, Sec. (b)
17 (part).)

18 Sec. 493.104. CREDIT FOR FUNDS SECURING REINSURANCE
19 OBLIGATIONS. (a) Subject to Subsection (b), any asset or deduction
20 from liability for reinsurance ceded to an assuming insurer that
21 does not meet the requirements of Section 493.102 shall be allowed
22 in an amount that does not exceed the liabilities carried by the
23 ceding insurer and in the amount of funds held by or on behalf of the
24 ceding insurer under a reinsurance contract with the assuming
25 insurer, including funds held in trust for the ceding insurer, as
26 security for the payment of obligations under the contract.

27 (b) The funds held as security:

1 (1) must be held in the United States subject to
2 withdrawal solely by and under the exclusive control of the ceding
3 insurer or, in the case of a trust, held in a qualified United
4 States financial institution that has been granted the authority to
5 operate with fiduciary powers; and

6 (2) may be in the form of:

7 (A) cash;

8 (B) securities that:

9 (i) are readily marketable over a national
10 exchange;

11 (ii) have a maturity date of not later than
12 one year;

13 (iii) are listed by the Securities
14 Valuation Office of the National Association of Insurance
15 Commissioners; and

16 (iv) qualify as admitted assets;

17 (C) subject to Section 493.105, a clean,
18 irrevocable, unconditional letter of credit, issued or confirmed by
19 a qualified United States financial institution that has been
20 determined by the commissioner or the Securities Valuation Office
21 of the National Association of Insurance Commissioners to meet the
22 standards of financial condition and standing that are considered
23 necessary and appropriate to regulate the quality of financial
24 institutions whose letters of credit will be acceptable to the
25 commissioner; or

26 (D) another form of security acceptable to the
27 commissioner. (V.T.I.C. Art. 5.75-1, Secs. (d) (part), (e)(1))

1 (part).)

2 Sec. 493.105. ACCEPTABILITY OF CERTAIN LETTERS OF
3 CREDIT. A letter of credit issued or confirmed by an institution
4 that meets the standards prescribed by Section 493.104(b)(2)(C) as
5 of the date the letter is issued or confirmed, but later fails to
6 meet those standards, continues to be acceptable as security under
7 Section 493.104 until the earliest of:

8 (1) the letter's expiration;

9 (2) the letter's extension, renewal, modification, or
10 amendment after the date the institution fails to meet those
11 standards; or

12 (3) the expiration of the three-month period after the
13 date the institution fails to meet those standards. (V.T.I.C. Art.
14 5.75-1, Sec. (d) (part).)

15 Sec. 493.106. CREDIT FOR REINSURANCE: DIRECT PAYMENT ON
16 LIABILITY REQUIRED. (a) A ceding insurer may not be given credit
17 for reinsurance ceded, as an asset or as a deduction from liability,
18 in an accounting or financial statement unless the reinsurance is
19 payable by the assuming insurer:

20 (1) on the liability of the ceding insurer under the
21 contracts reinsured, without diminution because of the ceding
22 insurer's insolvency; and

23 (2) directly to the ceding insurer or to the ceding
24 insurer's domiciliary liquidator or receiver.

25 (b) Subsection (a)(2) does not apply if:

26 (1) the reinsurance contract specifically provides
27 that, if the ceding insurer is insolvent, the reinsurance is

1 payable to a payee other than one described by Subsection (a)(2); or

2 (2) the assuming insurer, with the direct insured's
3 consent, has assumed the ceding insurer's policy obligations to the
4 payee as the assuming insurer's direct obligations to the payee
5 under the policy as a substitute for the ceding insurer's
6 obligations. (V.T.I.C. Art. 5.75-1, Sec. (i).)

7 Sec. 493.107. REQUEST FOR INFORMATION FROM ASSUMING
8 INSURER. (a) The commissioner may request that an assuming
9 insurer not meeting the requirements of Section 493.102 file:

10 (1) financial statements certified and audited by an
11 independent certified public accountant;

12 (2) a certified copy of the certificate or letter of
13 authority from the domiciliary jurisdiction; and

14 (3) information on the principals and management of
15 the assuming insurer.

16 (b) If an assuming insurer does not comply with a request
17 under this section, the commissioner may issue a directive
18 prohibiting all authorized insurers from taking credit for business
19 ceded to the assuming insurer after the effective date of the
20 directive.

21 (c) An unauthorized insurer that is included in the most
22 recent quarterly listing published by the International Insurers
23 Department of the National Association of Insurance Commissioners
24 is considered to have complied with a request under this section.
25 (V.T.I.C. Art. 5.75-1, Sec. (o).)

26 [Sections 493.108-493.150 reserved for expansion]

1 SUBCHAPTER D. REQUIREMENTS FOR TRUST CREDIT ALLOWANCE

2 Sec. 493.151. APPLICABILITY OF SUBCHAPTER. This
3 subchapter applies to a trust that is used to qualify for a
4 reinsurance credit under Section 493.102(a)(3) and to the assuming
5 insurer that maintains the trust fund. (New.)

6 Sec. 493.152. COMPOSITION OF TRUST. (a) If the assuming
7 insurer is a single insurer, the trust must:

8 (1) consist of a trustee account representing the
9 assuming insurer's liabilities attributable to business written in
10 the United States; and

11 (2) include a trustee surplus of at least \$20
12 million.

13 (b) If the assuming insurer is a group of insurers that
14 includes an unincorporated individual insurer:

15 (1) the trust must:

16 (A) consist of a trustee account representing
17 the group's liabilities attributable to business written in the
18 United States; and

19 (B) include a trustee surplus of at least \$100
20 million; and

21 (2) the group shall make available to the department
22 an annual certification by the group's domiciliary regulator and
23 its independent public accountants of each underwriter's solvency.

24 (c) If the assuming insurer is a group of incorporated
25 insurers under common administration that has continuously engaged
26 in the business of insurance for at least three years, is under the
27 supervision of the Department of Trade and Industry of the United

1 Kingdom, and has an aggregate policyholders' surplus of \$10
2 billion:

3 (1) the trust must:

4 (A) consist of a trustee account representing
5 the group's several liabilities attributable to business written in
6 the United States under reinsurance contracts issued in the name of
7 the group; and

8 (B) include a trustee surplus of not less than
9 \$100 million held jointly for the benefit of United States insurers
10 that have ceded business to any member of the group; and

11 (2) each member of the group shall make available to
12 the department an annual certification by the member's domiciliary
13 regulator and its independent public accountants of each member's
14 solvency. (V.T.I.C. Art. 5.75-1, Sec. (b) (part).)

15 Sec. 493.153. FORM OF TRUST. The trust must be established
16 in a form approved by the commissioner. (V.T.I.C. Art. 5.75-1, Sec.
17 (b) (part).)

18 Sec. 493.154. TERMS OF TRUST. (a) The trust instrument
19 must provide that contested claims are valid and enforceable on the
20 final order of any court in the United States.

21 (b) The trust must vest legal title to the trust's assets in
22 the trustees of the trust for:

23 (1) the trust's United States policyholders and ceding
24 insurers; and

25 (2) the policyholders' and ceding insurers' assigns
26 and successors in interest.

27 (c) The trust must remain in effect as long as the assuming

1 insurer has outstanding obligations under a reinsurance contract
2 subject to the trust. (V.T.I.C. Art. 5.75-1, Sec. (b) (part).)

3 Sec. 493.155. REPORTS AND CERTIFICATION. (a) Not later
4 than February 28 of each year, the trustees of the trust shall:

5 (1) report to the department in writing, showing the
6 balance of the trust and listing the trust's investments at the end
7 of the preceding year; and

8 (2) certify the date of termination of the trust, if
9 termination is planned, or certify that the trust will not expire
10 before December 31 of the year of the report.

11 (b) To enable the commissioner to determine the sufficiency
12 of the trust fund under Section 493.102(a)(3), the assuming insurer
13 shall report to the department not later than March 1 of each year
14 information substantially the same as the information required to
15 be reported by an authorized insurer on the National Association of
16 Insurance Commissioners' Annual Statement form. (V.T.I.C.
17 Art. 5.75-1, Sec. (b) (part).)

18 Sec. 493.156. CERTAIN TRUSTEED ASSUMING INSURERS:
19 REQUIREMENTS FOR REINSURANCE CONTRACT. (a) A ceding insurer may
20 not be allowed credit under Section 493.102(a)(3) for reinsurance
21 ceded to an assuming insurer that is not authorized or accredited to
22 engage in the business of insurance or reinsurance in this state
23 unless the assuming insurer agrees in the reinsurance contract:

24 (1) that, if the assuming insurer fails to perform the
25 assuming insurer's obligations under the reinsurance contract, the
26 assuming insurer, at the request of the ceding insurer, will:

27 (A) submit to the jurisdiction of a court in any

1 state of the United States;

2 (B) comply with all requirements necessary to
3 give the court jurisdiction; and

4 (C) abide by the final decision of that court or,
5 if the court's decision is appealed, of the appellate court; and

6 (2) to designate the commissioner or an attorney as an
7 agent for service of process in any action, suit, or proceeding
8 instituted by or on behalf of the ceding insurer.

9 (b) This section is not intended to conflict with or
10 override a provision in a reinsurance contract that requires the
11 parties to arbitrate the parties' disputes. (V.T.I.C. Art. 5.75-1,
12 Sec. (c).)

13 Sec. 493.157. EXAMINATION OF TRUST AND ASSUMING
14 INSURER. The trust and the assuming insurer are subject to
15 examination as determined by the commissioner. (V.T.I.C.
16 Art. 5.75-1, Sec. (b) (part).)

17 CHAPTER 494. REINSURANCE OF AIRCRAFT AND SPACE EQUIPMENT RISKS

18 Sec. 494.001. DEFINITIONS

19 Sec. 494.002. AUTHORITY TO REINSURE

20 Sec. 494.003. REQUIREMENT FOR CEDING INSURER

21 CHAPTER 494. REINSURANCE OF AIRCRAFT AND SPACE EQUIPMENT RISKS

22 Sec. 494.001. DEFINITIONS. In this chapter:

23 (1) "Aircraft" means an object that is capable of:

24 (A) moving through the atmosphere, regardless of
25 whether the object is powered or tethered; and

26 (B) lifting the weight of the object and an
27 additional payload.

1 (2) "Space equipment" means a spacecraft, satellite,
2 rocket, or other manmade object that may be:

3 (A) launched from earth into orbit around a
4 celestial body or for space travel; or

5 (B) placed into orbit around a celestial body.
6 (V.T.I.C. Art. 5.75-3, Sec. (a).)

7 Sec. 494.002. AUTHORITY TO REINSURE. (a) A domestic
8 insurance company as defined by Section 841.001, alone or together
9 with another insurer, may reinsure any liability, property,
10 casualty, collision, personal injury, death, or other risk relating
11 to, arising from, or incident to the manufacture, ownership,
12 custody, or operation of an aircraft or any space equipment,
13 subject to any just and reasonable limitation imposed by the
14 commissioner.

15 (b) A limitation imposed by the commissioner must be
16 consistent with the purposes of this chapter. (V.T.I.C.
17 Art. 5.75-3, Sec. (b).)

18 Sec. 494.003. REQUIREMENT FOR CEDING INSURER. To enter
19 into a reinsurance agreement under this chapter, the ceding insurer
20 must be authorized to engage in business in this state. (V.T.I.C.
21 Art. 5.75-3, Sec. (c).)

22 SECTION 2. TITLE 10, INSURANCE CODE. The Insurance Code is
23 amended by adding Title 10 to read as follows:

24 TITLE 10. PROPERTY AND CASUALTY INSURANCE
25 SUBTITLE A. GENERAL PROVISIONS
26 CHAPTER 1801. PROPERTY AND CASUALTY INSURANCE LEGISLATIVE
27 OVERSIGHT COMMITTEE

1 CHAPTER 1802. PROPERTY AND CASUALTY INSURANCE INITIATIVES
2 TASK FORCE
3 CHAPTER 1803. REPORTS OF INSURANCE COVERAGE FOR STATE AGENCIES
4 CHAPTER 1804. RATES AND FORMS FOR NATIONAL DEFENSE PROJECTS
5 CHAPTER 1805. JOINT UNDERWRITING AND ADVISORY ORGANIZATIONS
6 CHAPTER 1806. PROHIBITED PRACTICES AND REBATES
7 RELATED TO POLICIES
8 CHAPTER 1807. APPLICABILITY TO MARINE INSURANCE
9 [Chapters 1808-1900 reserved for expansion]
10 SUBTITLE B. LIABILITY INSURANCE FOR PHYSICIANS AND
11 HEALTH CARE PROVIDERS
12 CHAPTER 1901. PROFESSIONAL LIABILITY INSURANCE FOR PHYSICIANS
13 AND HEALTH CARE PROVIDERS
14 CHAPTER 1902. CERTAIN LIABILITY COVERAGE FOR PHYSICIANS AND
15 HEALTH CARE PROVIDERS
16 CHAPTER 1903. LOSS CONTROL INFORMATION AND SERVICES
17 [Chapters 1904-1950 reserved for expansion]
18 SUBTITLE C. AUTOMOBILE INSURANCE
19 CHAPTER 1951. GENERAL PROVISIONS: AUTOMOBILE INSURANCE
20 CHAPTER 1952. POLICY PROVISIONS AND FORMS FOR
21 AUTOMOBILE INSURANCE
22 [Chapters 1953-2000 reserved for expansion]
23 SUBTITLE D. FIRE INSURANCE AND ALLIED LINES,
24 INCLUDING RESIDENTIAL PROPERTY INSURANCE
25 CHAPTER 2001. GENERAL PROVISIONS: FIRE INSURANCE
26 AND ALLIED LINES, INCLUDING RESIDENTIAL
27 PROPERTY INSURANCE

- 1 CHAPTER 2002. POLICY PROVISIONS AND FORMS FOR FIRE INSURANCE
2 AND ALLIED LINES, INCLUDING RESIDENTIAL
3 PROPERTY INSURANCE
4 CHAPTER 2003. PROCEDURES FOR EVALUATING FIRE LOSS RISK
5 CHAPTER 2004. RESIDENTIAL PROPERTY INSURANCE IN
6 UNDERSERVED AREAS
7 CHAPTER 2005. HOME WARRANTY AND HOME PROTECTION INSURANCE
8 CHAPTER 2006. PREMIUM RATE DISCOUNTS
9 CHAPTER 2007. ASSESSMENT FOR RURAL FIRE PROTECTION
10 [Chapters 2008-2050 reserved for expansion]
11 SUBTITLE E. WORKERS' COMPENSATION INSURANCE
12 CHAPTER 2051. GENERAL PROVISIONS: WORKERS'
13 COMPENSATION INSURANCE
14 CHAPTER 2052. POLICY PROVISIONS AND FORMS FOR WORKERS'
15 COMPENSATION INSURANCE
16 CHAPTER 2053. RATES FOR WORKERS' COMPENSATION INSURANCE
17 CHAPTER 2054. TEXAS MUTUAL INSURANCE COMPANY
18 [Chapters 2055-2100 reserved for expansion]
19 SUBTITLE F. OTHER COVERAGE
20 CHAPTER 2101. COVERAGE FOR AIRCRAFT
21 [Chapters 2102-2150 reserved for expansion]
22 SUBTITLE G. POOLS, GROUPS, PLANS, AND SELF-INSURANCE
23 CHAPTER 2151. TEXAS AUTOMOBILE INSURANCE PLAN ASSOCIATION
24 CHAPTER 2152. GROUP INSURANCE IN UNDERSERVED AREAS
25 CHAPTER 2153. GROUP MARKETING OF AUTOMOBILE INSURANCE FOR PERSONS
26 OVER 55 YEARS OF AGE
27 CHAPTER 2154. VOLUNTEER FIRE DEPARTMENT MOTOR

1 VEHICLE SELF-INSURANCE
2 PROGRAM
3 [Chapters 2155-2170 reserved for expansion]
4 CHAPTER 2171. COMMERCIAL GROUP PROPERTY INSURANCE
5 [Chapters 2172-2200 reserved for expansion]
6 CHAPTER 2201. RISK RETENTION GROUPS AND PURCHASING GROUPS
7 CHAPTER 2202. JOINT UNDERWRITING
8 CHAPTER 2203. MEDICAL LIABILITY INSURANCE JOINT UNDERWRITING
9 ASSOCIATION
10 CHAPTER 2204. TEXAS INSURANCE EXCHANGE
11 CHAPTER 2205. TEXAS CHILD-CARE FACILITY LIABILITY POOL
12 CHAPTER 2206. RISK MANAGEMENT POOLS FOR CERTAIN
13 EDUCATIONAL ENTITIES
14 CHAPTER 2207. EXCESS LIABILITY POOLS FOR COUNTIES AND
15 CERTAIN EDUCATIONAL ENTITIES
16 CHAPTER 2208. TEXAS PUBLIC ENTITY EXCESS INSURANCE POOL
17 CHAPTER 2209. TEXAS NONPROFIT ORGANIZATIONS LIABILITY POOL
18 CHAPTER 2210. TEXAS WINDSTORM INSURANCE ASSOCIATION
19 CHAPTER 2211. FAIR PLAN
20 CHAPTER 2212. SELF-INSURANCE TRUSTS FOR HEALTH CARE
21 LIABILITY CLAIMS
22 CHAPTER 2213. SELF-INSURANCE TRUSTS FOR BANKS AND SAVINGS
23 AND LOAN ASSOCIATIONS
24 [Chapters 2214-2250 reserved for expansion]
25 SUBTITLE H. RATEMAKING IN GENERAL
26 CHAPTER 2251. RATES
27 CHAPTER 2252. RATE ADMINISTRATION

1 CHAPTER 2253. RATING TERRITORIES

2 CHAPTER 2254. PREMIUM REFUND FOR CERTAIN PERSONAL LINES

3 [Chapters 2255-2300 reserved for expansion]

4 SUBTITLE I. POLICY FORMS IN GENERAL

5 CHAPTER 2301. POLICY FORMS

6 TITLE 10. PROPERTY AND CASUALTY INSURANCE

7 SUBTITLE A. GENERAL PROVISIONS

8 CHAPTER 1801. PROPERTY AND CASUALTY INSURANCE LEGISLATIVE

9 OVERSIGHT COMMITTEE

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Sec. 1801.001. DEFINITION

12 Sec. 1801.002. SUNSET PROVISION

13 [Sections 1801.003-1801.050 reserved for expansion]

14 SUBCHAPTER B. LEGISLATIVE OVERSIGHT COMMITTEE

15 Sec. 1801.051. COMPOSITION OF COMMITTEE

16 Sec. 1801.052. MEETINGS

17 Sec. 1801.053. POWERS AND DUTIES OF COMMITTEE

18 Sec. 1801.054. REPORT

19 CHAPTER 1801. PROPERTY AND CASUALTY INSURANCE LEGISLATIVE

20 OVERSIGHT COMMITTEE

21 SUBCHAPTER A. GENERAL PROVISIONS

22 Sec. 1801.001. DEFINITION. In this chapter, "committee"
23 means the property and casualty insurance legislative oversight
24 committee. (V.T.I.C. Art. 21.49-20, Sec. (a).)

25 Sec. 1801.002. SUNSET PROVISION. The committee is subject
26 to Chapter 325, Government Code (Texas Sunset Act). Unless
27 continued in existence as provided by that chapter, the committee

1 is abolished September 1, 2007. (V.T.I.C. Art. 21.49-20, Sec.
2 (d).)

3 [Sections 1801.003-1801.050 reserved for expansion]

4 SUBCHAPTER B. LEGISLATIVE OVERSIGHT COMMITTEE

5 Sec. 1801.051. COMPOSITION OF COMMITTEE. (a) The
6 property and casualty insurance legislative oversight committee is
7 composed of seven members as follows:

8 (1) the chair of the Senate Business and Commerce
9 Committee and the chair of the House Committee on Insurance, who
10 shall serve as joint presiding officers of the committee;

11 (2) two members of the senate appointed by the
12 lieutenant governor;

13 (3) two members of the house of representatives
14 appointed by the speaker of the house of representatives; and

15 (4) the public insurance counsel.

16 (b) An appointed member of the committee serves at the
17 pleasure of the appointing official.

18 (c) In making appointments to the committee, the appointing
19 officials shall attempt to appoint persons who represent the gender
20 composition, minority populations, and geographic regions of this
21 state. (V.T.I.C. Art. 21.49-20, Secs. (b), (c).)

22 Sec. 1801.052. MEETINGS. The committee shall meet with the
23 commissioner at least annually. (V.T.I.C. Art. 21.49-20, Sec. (e)
24 (part).)

25 Sec. 1801.053. POWERS AND DUTIES OF COMMITTEE. (a) The
26 committee shall:

27 (1) receive information about rules proposed by the

1 department relating to property and casualty insurance and may
2 submit comments to the commissioner on the proposed rules;

3 (2) monitor the progress of property and casualty
4 insurance regulation reform, including:

5 (A) the fairness of rates, underwriting
6 guidelines, and rating manuals;

7 (B) the availability of coverage; and

8 (C) the effect of rate rollbacks, credit scoring,
9 and regulation of homeowners and automobile insurance markets;

10 (3) review recommendations for legislation proposed
11 by the department; and

12 (4) review the necessity of having the department
13 periodically examine the market conduct of an insurer or group of
14 insurers, including the insurer's or group's:

15 (A) business practices;

16 (B) performance; and

17 (C) operations.

18 (b) The committee may request reports and other information
19 from the department as necessary to implement this chapter.
20 (V.T.I.C. Art. 21.49-20, Secs. (e) (part), (f).)

21 Sec. 1801.054. REPORT. (a) Not later than November 15 of
22 each even-numbered year, the committee shall report on the
23 committee's activities under Sections 1801.052 and 1801.053(a) to:

24 (1) the governor;

25 (2) the lieutenant governor; and

26 (3) the speaker of the house of representatives.

27 (b) The report must include:

1 (1) an analysis of any problems caused by property and
2 casualty insurance regulation reform; and

3 (2) recommendations of any legislative action
4 necessary to address those problems and to foster stability,
5 availability, and competition within the property and casualty
6 insurance industry. (V.T.I.C. Art. 21.49-20, Sec. (g).)

7 CHAPTER 1802. PROPERTY AND CASUALTY INSURANCE INITIATIVES TASK
8 FORCE

9 Sec. 1802.001. PROPERTY AND CASUALTY INSURANCE
10 INITIATIVES TASK FORCE

11 CHAPTER 1802. PROPERTY AND CASUALTY INSURANCE INITIATIVES TASK
12 FORCE

13 Sec. 1802.001. PROPERTY AND CASUALTY INSURANCE INITIATIVES
14 TASK FORCE. (a) The commissioner may establish a task force to
15 study the utility and feasibility of instituting various property
16 and casualty insurance initiatives in this state.

17 (b) The initiatives studied may include:

18 (1) possible coordination with:

19 (A) the Texas Economic Development Bank to make
20 certain property and casualty insurance an enterprise zone program
21 under Chapter 2303, Government Code; and

22 (B) Neighborhood Housing Service (NHS) programs
23 to establish voluntary NHS-Insurance Industry Partnerships;

24 (2) possible insurance agent programs to increase
25 minority agency access to standard insurance companies, including
26 minority intern programs with insurance companies;

27 (3) possible tax incentives for insurance written in

1 underserved areas; and

2 (4) a consumer education program designed to increase
3 the ability of consumers to differentiate among different products
4 and providers in the property and casualty insurance market.
5 (V.T.I.C. Art. 21.49B.)

6 CHAPTER 1803. REPORTS OF INSURANCE COVERAGE FOR STATE AGENCIES

7 Sec. 1803.001. DEFINITIONS

8 Sec. 1803.002. REPORTING REQUIREMENTS

9 Sec. 1803.003. FAILURE TO REPORT

10 Sec. 1803.004. RULES

11 CHAPTER 1803. REPORTS OF INSURANCE COVERAGE FOR STATE AGENCIES

12 Sec. 1803.001. DEFINITIONS. In this chapter:

13 (1) "Insurer" means an insurance company or other
14 entity that is authorized by the department to engage in the
15 business of insurance in this state, including:

16 (A) a reciprocal or interinsurance exchange;

17 (B) a mutual insurance company;

18 (C) a county mutual insurance company; and

19 (D) a Lloyd's plan.

20 (2) "State agency" has the meaning assigned by Section
21 412.001, Labor Code. (V.T.I.C. Art. 21.49-15A, Secs. 1(1), (3).)

22 Sec. 1803.002. REPORTING REQUIREMENTS. (a) Each insurer
23 that enters into an insurance policy or other contract or agreement
24 with a state agency for the purchase by the state agency of
25 property, casualty, or liability insurance coverage, including a
26 policy, contract, or agreement subject to competitive bidding
27 requirements, shall report to the State Office of Risk Management

1 the intended sale of the insurance coverage.

2 (b) The insurer shall report the intended sale of the
3 insurance coverage not later than the 30th day before the date the
4 sale is scheduled to occur in the manner prescribed by the State
5 Office of Risk Management.

6 (c) The State Office of Risk Management may require an
7 insurer to submit copies of insurance forms, policies, and other
8 relevant information. (V.T.I.C. Art. 21.49-15A, Secs. 2(a), (b),
9 (c).)

10 Sec. 1803.003. FAILURE TO REPORT. An insurer that fails to
11 comply with the reporting requirements of this chapter is subject
12 to sanctions under Chapter 82. (V.T.I.C. Art. 21.49-15A, Sec.
13 2(e).)

14 Sec. 1803.004. RULES. The State Office of Risk Management
15 shall adopt rules as necessary to implement this chapter. The
16 office shall consult with the commissioner in adopting rules.
17 (V.T.I.C. Art. 21.49-15A, Sec. 2(d).)

18 CHAPTER 1804. RATES AND FORMS FOR NATIONAL DEFENSE PROJECTS

19 Sec. 1804.001. APPLICABILITY OF CHAPTER

20 Sec. 1804.002. SPECIAL RATES AND RATING PLANS FOR
21 CASUALTY INSURANCE

22 Sec. 1804.003. SPECIAL RATES AND FORMS FOR MATERIAL
23 DAMAGE INSURANCE

24 CHAPTER 1804. RATES AND FORMS FOR NATIONAL DEFENSE PROJECTS

25 Sec. 1804.001. APPLICABILITY OF CHAPTER. This chapter
26 applies only to insurance in relation to a national defense project
27 in this state. (V.T.I.C. Arts. 5.69 (part), 5.70 (part), 5.71

1 (part).)

2 Sec. 1804.002. SPECIAL RATES AND RATING PLANS FOR CASUALTY
3 INSURANCE. (a) The commissioner may promulgate special rates and
4 special rating plans for workers' compensation insurance,
5 automobile insurance, and other lines of casualty insurance, to
6 apply only to the construction or operation of a national defense
7 project.

8 (b) The commissioner may promulgate the special rates and
9 special rating plans separately for each class of insurance or in
10 combination for all classes of insurance.

11 (c) The commissioner may adopt rules as may be necessary,
12 proper, or advisable to place in effect special rates and special
13 rating plans promulgated under this section. (V.T.I.C. Art. 5.69
14 (part).)

15 Sec. 1804.003. SPECIAL RATES AND FORMS FOR MATERIAL DAMAGE
16 INSURANCE. (a) The commissioner may promulgate special rates and
17 forms for fire insurance, windstorm insurance, and other kinds of
18 material damage insurance required or used on a national defense
19 project.

20 (b) The commissioner may adopt rules incidental to the
21 business described by Subsection (a) and necessary to place in
22 effect special rates and forms promulgated under this section.
23 (V.T.I.C. Art. 5.70 (part).)

24 CHAPTER 1805. JOINT UNDERWRITING AND ADVISORY ORGANIZATIONS

25 SUBCHAPTER A. GENERAL PROVISIONS

26 Sec. 1805.001. APPLICABILITY OF CHAPTER

27 [Sections 1805.002-1805.050 reserved for expansion]

1 SUBCHAPTER B. ADVISORY ORGANIZATIONS

2 Sec. 1805.051. LICENSE APPLICATION

3 Sec. 1805.052. ISSUANCE OF LICENSE; TERM

4 Sec. 1805.053. INFORMATION REPORTED BY ADVISORY
5 ORGANIZATION

6 Sec. 1805.054. INSURER'S AUTHORITY TO SUBSCRIBE TO
7 ADVISORY ORGANIZATION

8 Sec. 1805.055. SUBMISSION, RECEIPT, AND USE OF
9 INFORMATION BY INSURER

10 Sec. 1805.056. AUDIT

11 Sec. 1805.057. RATE FILING REVIEW

12 Sec. 1805.058. PROHIBITED ACTS

13 Sec. 1805.059. DISCIPLINARY ACTION

14 Sec. 1805.060. SUNSET REVIEW

15 Sec. 1805.061. CONFLICT WITH OTHER LAW

16 [Sections 1805.062-1805.100 reserved for expansion]

17 SUBCHAPTER C. EXAMINATIONS

18 Sec. 1805.101. EXAMINATION AUTHORIZED

19 Sec. 1805.102. EXAMINATION COSTS

20 Sec. 1805.103. OUT-OF-STATE EXAMINATION

21 [Sections 1805.104-1805.150 reserved for expansion]

22 SUBCHAPTER D. CERTAIN PRACTICES IN JOINT UNDERWRITING OR JOINT
23 REINSURANCE

24 Sec. 1805.151. AUTHORITY OF COMMISSIONER

25 CHAPTER 1805. JOINT UNDERWRITING AND ADVISORY ORGANIZATIONS

26 SUBCHAPTER A. GENERAL PROVISIONS

27 Sec. 1805.001. APPLICABILITY OF CHAPTER. This chapter

1 applies to the kinds of insurance and insurers subject to:

2 (1) Section 403.002;

3 (2) Section 941.003 with respect to the application of
4 a law described by Section 941.003(b)(3) or (c);

5 (3) Section 942.003 with respect to the application of
6 a law described by Section 942.003(b)(3) or (c);

7 (4) Subchapter A, B, C, or D, Chapter 5;

8 (5) Subchapter H, Chapter 544;

9 (6) Subchapter A, Chapter 2301;

10 (7) Chapter 252, 253, 254, 255, 426, 1806, 1807, 2001,
11 2002, 2003, 2004, 2005, 2006, 2051, 2052, 2053, 2171, 2251, or 2252;

12 (8) Subtitle B or C, Title 10;

13 (9) Chapter 406A, Labor Code; or

14 (10) Chapter 2154, Occupations Code. (V.T.I.C.
15 Art. 5.75.)

16 [Sections 1805.002-1805.050 reserved for expansion]

17 SUBCHAPTER B. ADVISORY ORGANIZATIONS

18 Sec. 1805.051. LICENSE APPLICATION. (a) A corporation,
19 unincorporated association, partnership, or individual may file
20 with the commissioner an application for an advisory organization
21 license for the kinds of insurance specified in the application.

22 (b) The applicant must:

23 (1) file with the commissioner:

24 (A) a copy of the applicant's:

25 (i) constitution and bylaws;

26 (ii) article of agreement or association or
27 certificate of incorporation; and

1 (iii) rules governing the applicant's
2 activities as an advisory organization; and

3 (B) a statement of qualifications to act as an
4 advisory organization; and

5 (2) pay a \$100 license fee. (V.T.I.C. Art. 5.73, Sec.
6 4A(b).)

7 Sec. 1805.052. ISSUANCE OF LICENSE; TERM. (a) The
8 commissioner shall issue a license to an applicant the commissioner
9 determines is qualified, without regard to:

10 (1) the state of domicile or residence of the
11 applicant; or

12 (2) the location of the applicant's place of business.

13 (b) The commissioner shall grant or deny a license to an
14 applicant not later than the 60th day after the date the
15 commissioner receives the application.

16 (c) A license issued under this subchapter remains in effect
17 until the commissioner suspends or revokes the license. (V.T.I.C.
18 Art. 5.73, Secs. 4A(d), (e), (f).)

19 Sec. 1805.053. INFORMATION REPORTED BY ADVISORY
20 ORGANIZATION. (a) An advisory organization may file with the
21 commissioner prospective loss costs, supplementary rating
22 information, and policy forms. A filing made by an advisory
23 organization under this section is subject to the provisions of
24 this code or other insurance laws of this state governing rate
25 filings.

26 (b) An advisory organization at least quarterly shall file
27 with the commissioner a list of:

1 (1) each subscriber company engaging in business in
2 this state; and

3 (2) the products or information the subscriber company
4 purchases.

5 (c) On request by the commissioner, an advisory
6 organization shall provide to the department a summary of the
7 actuarial assumptions, trend factors, economic factors, and other
8 criteria used in trending data for companies engaging in business
9 in this state. (V.T.I.C. Art. 5.73, Secs. 4A(a) (part), (g), (h).)

10 Sec. 1805.054. INSURER'S AUTHORITY TO SUBSCRIBE TO ADVISORY
11 ORGANIZATION. An insurer engaging in business in this state may
12 subscribe to an advisory organization. (V.T.I.C. Art. 5.73, Sec. 1
13 (part).)

14 Sec. 1805.055. SUBMISSION, RECEIPT, AND USE OF INFORMATION
15 BY INSURER. (a) Except as provided by Subsection (b), an insurer
16 may submit to or receive from an advisory organization the
17 following only if the advisory organization holds a license issued
18 under this subchapter:

19 (1) statistical plans;

20 (2) historical data;

21 (3) prospective loss costs;

22 (4) supplementary rating information;

23 (5) policy forms and endorsements;

24 (6) research;

25 (7) rates of individual insurers that are effective at
26 the time the information is submitted or received or that were
27 previously in effect; and

1 (8) performance of inspections.

2 (b) An insurer may not:

3 (1) accept from an advisory organization
4 recommendations for rates; or

5 (2) submit to or receive from an advisory organization
6 recommendations for profit or expenses other than loss adjustment
7 expenses.

8 (c) An insurer that subscribes to an advisory organization
9 may use prospective loss costs, supplementary rating information,
10 and policy forms filed by the advisory organization under Section
11 1805.053(a) and may incorporate the information into the insurer's
12 filings.

13 (d) Notwithstanding any other law, an insurer that reports
14 data under this subchapter is not relieved of the responsibility of
15 reporting that data directly to the department at the department's
16 request. (V.T.I.C. Art. 5.73, Secs. 1 (part), 2 (part), 4(c),
17 4A(a) (part), (c).)

18 Sec. 1805.056. AUDIT. (a) The department shall require
19 an annual audit of an advisory organization that provides
20 statistics or other information to the department in a proceeding
21 to set rates.

22 (b) The audit must:

23 (1) be conducted at the expense of the advisory
24 organization under rules adopted by the commissioner; and

25 (2) examine the advisory organization's method of
26 collecting, analyzing, and reporting data to ensure the accuracy of
27 data.

1 (c) The audit may examine source documents within
2 individual companies.

3 (d) Except for individual company information, an audit is
4 public information. (V.T.I.C. Art. 5.73, Sec. 4(a).)

5 Sec. 1805.057. RATE FILING REVIEW. The commissioner may:

6 (1) review the rate filing of an insurer that relies on
7 the prospective loss costs provided by an advisory organization;
8 and

9 (2) require the insurer to provide the insurer's
10 actual data and loss experience in addition to the information
11 provided by the advisory organization. (V.T.I.C. Art. 5.73, Sec.
12 4B.)

13 Sec. 1805.058. PROHIBITED ACTS. (a) An advisory
14 organization may not compile or distribute recommendations for:

15 (1) rates; or

16 (2) profit or expenses other than loss adjustment
17 expenses.

18 (b) An insurer or advisory organization may not:

19 (1) attempt to monopolize, combine, or conspire with
20 another person to monopolize an insurance market;

21 (2) engage in a boycott, on a concerted basis, of an
22 insurance market; or

23 (3) make an agreement with another insurer, advisory
24 organization, or person if the agreement has the purpose or effect
25 of restraining trade unreasonably or substantially lessening
26 competition in the business of insurance. (V.T.I.C. Art. 5.73,
27 Secs. 2 (part), 3(a), (b).)

1 Sec. 1805.059. DISCIPLINARY ACTION. (a) If, after a
2 hearing, the commissioner determines that the furnishing of
3 specified services by an advisory organization involves an act or
4 practice that is unfair, unreasonable, or otherwise inconsistent
5 with this chapter or other applicable laws of this state, the
6 commissioner may issue a written order:

7 (1) specifying the manner in which the act or practice
8 is unfair, unreasonable, or inconsistent with the applicable law;
9 and

10 (2) requiring the advisory organization to
11 discontinue the act or practice.

12 (b) In addition to any other remedies available at law, the
13 commissioner may impose a sanction authorized under Chapter 82.
14 (V.T.I.C. Art. 5.73, Sec. 3(c).)

15 Sec. 1805.060. SUNSET REVIEW. During the period in which
16 the Sunset Advisory Commission performs its review of the
17 department under Chapter 325, Government Code, the commission shall
18 review the authority granted under this subchapter. (V.T.I.C.
19 Art. 5.73, Sec. 5.)

20 Sec. 1805.061. CONFLICT WITH OTHER LAW. To the extent this
21 subchapter conflicts with Section 2053.052(c), 2053.055, 2053.151,
22 2053.152, or 2053.153, or Subchapter A or C, Chapter 2053, with
23 respect to the setting of rates for workers' compensation
24 insurance, the referenced provision of Chapter 2053 controls.
25 (V.T.I.C. Art. 5.73, Sec. 6.)

26 [Sections 1805.062-1805.100 reserved for expansion]

1 SUBCHAPTER C. EXAMINATIONS

2 Sec. 1805.101. EXAMINATION AUTHORIZED. (a) As often as
3 the department determines expedient, the department may examine a
4 group, association, or other organization referred to in this
5 chapter, including an advisory organization described by
6 Subchapter B.

7 (b) An officer, manager, agent, or employee of the group,
8 association, or organization may be examined at any time under oath
9 and shall make available any book, record, account, document, or
10 agreement governing the method of operation of the group,
11 association, or organization. (V.T.I.C. Art. 5.73, Sec. 4(b);
12 Art. 5.74 (part).)

13 Sec. 1805.102. EXAMINATION COSTS. The group, association,
14 or other organization shall pay the reasonable costs of an
15 examination under this subchapter on presentation of a detailed
16 account of the costs. (V.T.I.C. Art. 5.74 (part).)

17 Sec. 1805.103. OUT-OF-STATE EXAMINATION. In lieu of an
18 examination under this subchapter, the department may accept the
19 report of an examination made by the insurance supervisory official
20 of another state in accordance with the laws of that state.
21 (V.T.I.C. Art. 5.74 (part).)

22 [Sections 1805.104-1805.150 reserved for expansion]

23 SUBCHAPTER D. CERTAIN PRACTICES IN JOINT UNDERWRITING OR JOINT
24 REINSURANCE

25 Sec. 1805.151. AUTHORITY OF COMMISSIONER. If, after a
26 hearing, the commissioner determines that an activity or practice
27 of a group, association, or other organization of insurers engaging

1 in joint underwriting or joint reinsurance is unfair, unreasonable,
2 or otherwise inconsistent with this chapter or other applicable
3 law, the commissioner may issue a written order:

4 (1) specifying the manner in which the activity or
5 practice is unfair, unreasonable, or inconsistent with the
6 applicable law; and

7 (2) requiring the group, association, or organization
8 to discontinue the activity or practice. (V.T.I.C. Art. 5.72.)

9 CHAPTER 1806. PROHIBITED PRACTICES AND REBATES RELATED TO POLICIES

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Sec. 1806.001. DEFINITION

12 [Sections 1806.002-1806.050 reserved for expansion]

13 SUBCHAPTER B. PROVISIONS APPLICABLE TO AUTOMOBILE INSURANCE

14 Sec. 1806.051. APPLICABILITY OF SUBCHAPTER

15 Sec. 1806.052. CONSTRUCTION OF SUBCHAPTER

16 Sec. 1806.053. DISCRIMINATIONS OR DISTINCTIONS

17 Sec. 1806.054. OTHER PROHIBITED INDUCEMENTS

18 Sec. 1806.055. PROFIT SHARING AUTHORIZED; CERTAIN

19 PROHIBITIONS

20 Sec. 1806.056. PROFIT SHARING BASED ON COMBAT DUTY

21 AUTHORIZED

22 Sec. 1806.057. PROFIT SHARING WITH MEMBERS OF CERTAIN

23 ASSOCIATIONS AUTHORIZED

24 Sec. 1806.058. PARTICIPATING POLICIES

25 [Sections 1806.059-1806.100 reserved for expansion]

26 SUBCHAPTER C. PROVISIONS APPLICABLE TO CASUALTY INSURANCE

27 AND FIDELITY, GUARANTY, AND SURETY BONDS

- 1 Sec. 1806.101. DEFINITIONS
- 2 Sec. 1806.102. APPLICABILITY OF SUBCHAPTER
- 3 Sec. 1806.103. CONSTRUCTION OF SUBCHAPTER
- 4 Sec. 1806.104. PROHIBITED ACTS
- 5 Sec. 1806.105. PROFIT SHARING AUTHORIZED; CERTAIN
- 6 PROHIBITIONS
- 7 Sec. 1806.106. PROFIT SHARING WITH CERTAIN
- 8 ASSOCIATIONS AUTHORIZED
- 9 Sec. 1806.107. ENFORCEMENT

10 [Sections 1806.108-1806.150 reserved for expansion]

11 SUBCHAPTER D. PROVISIONS APPLICABLE TO FIRE INSURANCE
12 AND ALLIED LINES

- 13 Sec. 1806.151. APPLICABILITY OF SUBCHAPTER
- 14 Sec. 1806.152. CONSTRUCTION OF SUBCHAPTER
- 15 Sec. 1806.153. UNJUST DISCRIMINATION; REBATES
- 16 Sec. 1806.154. PROFIT SHARING AUTHORIZED
- 17 Sec. 1806.155. INSURER LIABILITY ON POLICY ISSUED
- 18 WITHOUT AUTHORITY
- 19 Sec. 1806.156. ACCEPTANCE OF REBATE OR OTHER
- 20 INDUCEMENT; CRIMINAL PENALTY

21 CHAPTER 1806. PROHIBITED PRACTICES AND REBATES RELATED TO POLICIES
22 SUBCHAPTER A. GENERAL PROVISIONS

23 Sec. 1806.001. DEFINITION. In this chapter, "nonprofit
24 business association" means a business association that is a
25 nonprofit corporation exempt from federal income taxation under
26 Section 501(a), Internal Revenue Code of 1986, and its subsequent
27 amendments by being described as an exempt organization by Section

1 501(c)(6) of that code. (V.T.I.C. Art. 5.08, Sec. (d) (part); Art.
2 5.20, Sec. (c) (part).)

3 [Sections 1806.002-1806.050 reserved for expansion]

4 SUBCHAPTER B. PROVISIONS APPLICABLE TO AUTOMOBILE INSURANCE

5 Sec. 1806.051. APPLICABILITY OF SUBCHAPTER. This
6 subchapter applies to an insurer writing automobile insurance in
7 this state, including an insurance company, corporation,
8 reciprocal or interinsurance exchange, mutual insurance company,
9 association, Lloyd's plan, or other insurer. (V.T.I.C. Art. 5.01,
10 Sec. (a) (part); Art. 5.08, Sec. (a) (part); Art. 5.09, Sec. (a)
11 (part).)

12 Sec. 1806.052. CONSTRUCTION OF SUBCHAPTER. This subchapter
13 may not be construed to prohibit the modification of rates by a
14 rating plan that complies with Chapter 2251 or Article 5.13-2, as
15 applicable, that is designed to encourage the prevention of
16 accidents, and to account for all relevant factors inside and
17 outside this state, including the peculiar hazards and experience
18 of past and prospective individual risks. (V.T.I.C. Art. 5.09,
19 Sec. (a) (part).)

20 Sec. 1806.053. DISCRIMINATIONS OR DISTINCTIONS. Except as
21 provided by Section 1806.056, with respect to business written in
22 this state:

23 (1) an insurer may not discriminate or make a
24 distinction, or permit discrimination or a distinction to be made,
25 among insureds having like hazards with respect to premiums charged
26 for, or dividends or other benefits payable under, an insurance
27 policy;

1 (2) an insurer or an insurer's agent may not make an
2 insurance contract or an agreement relating to that insurance,
3 other than as expressed in the policy; and

4 (3) an insurer or an insurer's agent or other
5 representative may not directly or indirectly pay, allow, or give,
6 or offer to pay, allow, or give, as an inducement to the insured, a
7 rebate payable on the policy or a special favor or advantage in the
8 dividends or other benefits to accrue, or anything of value, not
9 specified in the policy. (V.T.I.C. Art. 5.09, Sec. (a) (part).)

10 Sec. 1806.054. OTHER PROHIBITED INDUCEMENTS. Except as
11 provided by Section 1806.055, 1806.056, or 1806.057, an insurer or
12 an insurer's officer, director, agent, or other representative may
13 not, for the purpose of writing the insurance of an insured, grant
14 to the insured or contract with the insured for a special favor or
15 advantage in dividends or other profits, or commissions or
16 dividends of commissions or profits to accrue on the policy, or
17 compensation or other valuable consideration not specified in the
18 policy, or an inducement not specified in the policy. (V.T.I.C.
19 Art. 5.08, Sec. (a) (part).)

20 Sec. 1806.055. PROFIT SHARING AUTHORIZED; CERTAIN
21 PROHIBITIONS. (a) Section 1806.054 does not prohibit an insurer
22 from sharing earned profits with the insurer's policyholders under
23 a profit sharing agreement contained in the policy if:

24 (1) the insurer shares profits uniformly among those
25 insured under the policy; and

26 (2) the insurer distributes earnings equitably among
27 those insureds under the terms of the policy.

1 (b) An insurer may not:

2 (1) discriminate in the distribution of profits among
3 insureds of the same class;

4 (2) distribute the profit to an insured before the
5 expiration of the policy; or

6 (3) establish a class of insureds for the distribution
7 of profits, except on the commissioner's approval.

8 (c) A violation of this section is unjust discrimination and
9 rebating.

10 (d) The commissioner may revoke the certificate of
11 authority of an insurer that violates this section or the license of
12 an agent who violates this section. (V.T.I.C. Art. 5.08, Sec. (b).)

13 Sec. 1806.056. PROFIT SHARING BASED ON COMBAT DUTY
14 AUTHORIZED. (a) This subchapter does not prohibit an insurer, on
15 approval by the commissioner, from distributing to policyholders
16 who are on active duty in the United States Armed Forces any
17 estimated profits resulting from service by those policyholders in
18 a foreign country in a combat theater of operations after January 1,
19 1990.

20 (b) An insurer that elects to make distributions under this
21 section must:

22 (1) file a written description of the insurer's
23 distribution program with the commissioner for approval; and

24 (2) notify the commissioner in writing of each
25 distribution made under the program.

26 (c) If the commissioner does not act on the insurer's
27 distribution program on or before the fifth business day after the

1 date the commissioner receives the insurer's description of the
2 program, the distribution program is considered approved.

3 (d) An insurer may distribute estimated profits among
4 policyholders under this section based on:

5 (1) the time served by a policyholder in a combat
6 theater of operations;

7 (2) the location of the policyholder's military
8 service;

9 (3) the duration of the applicable insurance policy;
10 or

11 (4) any other reasonable basis. (V.T.I.C. Art. 5.08,
12 Sec. (c); Art. 5.09, Sec. (b).)

13 Sec. 1806.057. PROFIT SHARING WITH MEMBERS OF CERTAIN
14 ASSOCIATIONS AUTHORIZED. (a) Section 1806.054 does not prohibit
15 an insurer, on approval by the commissioner, from sharing profits
16 with policyholders who are part of a group program established by a
17 nonprofit business association and who participate in the group
18 program because of membership in the association.

19 (b) An insurer that elects to make distributions under this
20 section must:

21 (1) file a written description of the insurer's
22 distribution program with the commissioner for approval; and

23 (2) notify the commissioner in writing of each
24 distribution made under the program.

25 (c) If the commissioner does not act on the insurer's
26 distribution program on or before the fifth business day after the
27 date the commissioner receives the insurer's description of the

1 program, the distribution program is considered approved.
2 (V.T.I.C. Art. 5.08, Sec. (d) (part).)

3 Sec. 1806.058. PARTICIPATING POLICIES. (a) This
4 subchapter, Subtitle C, and Subchapter A, Chapter 5, may not be
5 construed to prohibit:

6 (1) a stock company, mutual insurance company,
7 reciprocal or interinsurance exchange, or Lloyd's plan from
8 operating under this subchapter, Subchapter A, Chapter 5, and
9 Subtitle C; or

10 (2) a stock company, mutual insurance company,
11 reciprocal or interinsurance exchange, or Lloyd's plan from issuing
12 participating policies.

13 (b) A distribution of profits or dividends to insureds may
14 not take effect or be paid until the commissioner approves the
15 distribution. The commissioner may not approve a distribution of
16 profits or dividends until the insurer has provided adequate
17 reserves. The reserves must be computed on the same basis for all
18 classes of insurers operating under this subchapter, Subtitle C,
19 and Subchapter A, Chapter 5. (V.T.I.C. Art. 5.07.)

20 [Sections 1806.059-1806.100 reserved for expansion]

21 SUBCHAPTER C. PROVISIONS APPLICABLE TO CASUALTY INSURANCE

22 AND FIDELITY, GUARANTY, AND SURETY BONDS

23 Sec. 1806.101. DEFINITIONS. In this subchapter:

24 (1) "Insurance" includes a suretyship.

25 (2) "Policy" includes a bond. (V.T.I.C. Art. 5.20,
26 Sec. (d).)

27 Sec. 1806.102. APPLICABILITY OF SUBCHAPTER. (a) Except

1 as provided by Subsections (b) and (c), this subchapter applies to
2 an insurer, including a corporation, reciprocal or interinsurance
3 exchange, mutual insurance company, association, Lloyd's plan, or
4 other organization, writing casualty insurance or writing
5 fidelity, surety, or guaranty bonds, on risks or operations in this
6 state.

7 (b) This subchapter does not apply to:

8 (1) a farm mutual insurance company or association
9 regulated under Chapter 911; or

10 (2) a county mutual insurance company regulated under
11 Chapter 912.

12 (c) This subchapter does not apply to the writing of:

13 (1) automobile insurance;

14 (2) life, health, or accident insurance;

15 (3) professional liability insurance;

16 (4) reinsurance;

17 (5) aircraft insurance;

18 (6) fraternal benefit insurance;

19 (7) fire insurance;

20 (8) workers' compensation insurance;

21 (9) marine insurance, including noncommercial inland
22 marine insurance and ocean marine insurance;

23 (10) title insurance;

24 (11) explosion insurance, except insurance against
25 loss from personal injury or property damage resulting accidentally
26 from:

27 (A) a steam boiler;

- 1 (B) a heater or pressure vessel;
- 2 (C) an electrical device;
- 3 (D) an engine; or

4 (E) all machinery and appliances used in
5 connection with or in the operation of a boiler, heater, vessel,
6 electrical device, or engine described by Paragraphs (A)-(D); or

7 (12) insurance coverage for any of the following
8 conditions or risks:

9 (A) weather or climatic conditions, including
10 lightning, tornado, windstorm, hail, cyclone, rain, or frost and
11 freeze;

12 (B) earthquake or volcanic eruption;

13 (C) smoke or smudge;

14 (D) excess or deficiency of moisture;

15 (E) flood;

16 (F) the rising water of an ocean or an ocean's
17 tributary;

18 (G) bombardment, invasion, insurrection, riot,
19 civil war or commotion, military or usurped power, or any order of a
20 civil authority made to prevent the spread of a conflagration,
21 epidemic or catastrophe;

22 (H) vandalism or malicious mischief;

23 (I) strike or lockout;

24 (J) water or other fluid or substance resulting
25 from:

26 (i) the breakage or leakage of a sprinkler,
27 pump, or other apparatus erected for extinguishing fire, or a water

1 pipe or other conduit or container; or

2 (ii) casual water entering a building
3 through a leak or opening in the building or by seepage through
4 building walls; or

5 (K) accidental damage to a sprinkler, pump, fire
6 apparatus, pipe, or other conduit or container described by
7 Paragraph (J)(i). (V.T.I.C. Art. 5.13, Secs. (a) (part), (b),
8 (c).)

9 Sec. 1806.103. CONSTRUCTION OF SUBCHAPTER. (a) This
10 subchapter does not limit in any manner the kinds or classes of
11 insurance that an insurer may write under an appropriate statute or
12 the insurer's charter or certificate of authority.

13 (b) This subchapter may not be construed to prohibit the
14 modification of rates by a rating plan that complies with Chapter
15 2251 or Article 5.13-2, as applicable. (V.T.I.C. Art. 5.13, Sec.
16 (d); Art. 5.20, Sec. (b) (part).)

17 Sec. 1806.104. PROHIBITED ACTS. (a) Except as otherwise
18 provided by this subchapter, an insurer, an insurer's employee, or
19 a broker or agent may not knowingly:

20 (1) issue an insurance policy that is not in
21 accordance with an applicable filing that is filed and in effect
22 under Chapter 2251 or 2301 or Article 5.13-2; or

23 (2) charge, demand, or receive a premium on an
24 insurance policy that is not in accordance with an applicable
25 filing that is filed and in effect under Chapter 2251 or 2301 or
26 Article 5.13-2.

27 (b) Except as provided in an applicable filing that is filed

1 and in effect under Chapter 2251 or 2301 or Article 5.13-2, an
2 insurer, an insurer's employee, or a broker or agent may not
3 directly or indirectly pay, allow, or give, or offer to pay, allow,
4 or give, as an inducement to insurance, or after insurance has been
5 written, a rebate, discount, abatement, credit or reduction of the
6 premium stated in an insurance policy, or a special favor or
7 advantage in the dividends or other benefits to accrue on the
8 policy, or any valuable consideration or inducement, not specified
9 in the policy.

10 (c) An insured named in an insurance policy or an employee
11 of an insured may not knowingly receive or accept, directly or
12 indirectly, a rebate, discount, abatement, credit, or reduction of
13 the premium stated in an insurance policy, or a special favor or
14 advantage or valuable consideration or inducement. (V.T.I.C. Art.
15 5.20, Sec. (a).)

16 Sec. 1806.105. PROFIT SHARING AUTHORIZED; CERTAIN
17 PROHIBITIONS. (a) This subchapter does not prohibit an insurer
18 from sharing earned profits with the insurer's policyholders in
19 accordance with a profit sharing agreement contained in the policy,
20 provided that any profit sharing under the policy with those
21 insureds must be uniform among the insureds and may consist only of
22 the equitable distribution of earnings among the insureds in
23 accordance with the terms of the policy.

24 (b) An insurer may not:

25 (1) discriminate in the distribution of profits among
26 insureds of the same class;

27 (2) distribute the profit to an insured before the

1 expiration of the policy; or

2 (3) establish a class of insureds for the distribution
3 of profits, except on the commissioner's approval.

4 (c) A distribution of profits or dividends to an insured may
5 not take effect or be distributed until:

6 (1) adequate reserves are provided, as computed on the
7 same basis for all classes of insurers to which this subchapter
8 applies; and

9 (2) the commissioner approves the distribution.
10 (V.T.I.C. Art. 5.20, Sec. (b) (part).)

11 Sec. 1806.106. PROFIT SHARING WITH CERTAIN ASSOCIATIONS
12 AUTHORIZED. (a) This subchapter does not prohibit an insurer, on
13 approval by the commissioner, from sharing profits with
14 policyholders who are part of a group program established by a
15 nonprofit business association and who participate in the group
16 program because of membership in the association.

17 (b) An insurer that elects to make distributions under this
18 section must:

19 (1) file a written description of the insurer's
20 distribution program with the commissioner for approval; and

21 (2) notify the commissioner in writing of each
22 distribution made under the program.

23 (c) If the commissioner does not act on the insurer's
24 distribution program on or before the fifth business day after the
25 date the commissioner receives the insurer's description of the
26 program, the distribution program is considered approved.

27 (V.T.I.C. Art. 5.20, Sec. (c) (part).)

1 Sec. 1806.107. ENFORCEMENT. (a) A violation of this
2 subchapter is unjust discrimination and rebating.

3 (b) The commissioner may revoke the certificate of
4 authority of an insurer that violates this subchapter or the
5 license of an agent who violates this subchapter. (V.T.I.C. Art.
6 5.20, Sec. (b) (part).)

7 [Sections 1806.108-1806.150 reserved for expansion]

8 SUBCHAPTER D. PROVISIONS APPLICABLE TO FIRE INSURANCE

9 AND ALLIED LINES

10 Sec. 1806.151. APPLICABILITY OF SUBCHAPTER. (a) Each
11 insurance policy or contract insuring property in this state
12 against loss by fire, including a policy or contract or portion of a
13 policy or contract that insures the shore end of a marine risk
14 against loss by fire, must be issued in accordance with:

- 15 (1) this subchapter;
- 16 (2) Section 403.002;
- 17 (3) Subchapter C, Chapter 5;
- 18 (4) Subchapter H, Chapter 544; and
- 19 (5) Chapters 252, 2001, 2002, 2003, 2004, 2005, 2006,
20 and 2171.

21 (b) An insurer issuing an insurance policy or contract
22 described by Subsection (a), including a fire insurance company,
23 marine insurance company, fire and marine insurance company, and
24 fire and tornado insurance company, is governed by the laws
25 described by Subsection (a).

26 (c) This section applies to an insurer or to an insurance
27 policy or contract regardless of:

- 1 (1) the kind and character of property insured;
- 2 (2) whether the property is:
- 3 (A) fixed or movable;
- 4 (B) stationary or in transit; or
- 5 (C) consigned or billed for shipment inside or
- 6 outside the boundaries of this state or to a foreign country;
- 7 (3) whether the insurer is organized:
- 8 (A) under the laws of this state, another state,
- 9 territory, or possession of the United States, or a foreign
- 10 country; or
- 11 (B) by authority of the federal government; or
- 12 (4) the kind of insurer or the name of the insurer
- 13 issuing the policy or contract. (V.T.I.C. Art. 5.27 (part).)

14 Sec. 1806.152. CONSTRUCTION OF SUBCHAPTER. (a) This

15 subchapter, Subtitle D, and Subchapter C, Chapter 5, may not be

16 construed to deal with the collection of premiums, but each insurer

17 may make rules and regulations the insurer considers just between

18 the insurer and the insurer's agents and policyholders.

19 (b) A bona fide extension of credit may not be construed as

20 discrimination or as a violation of this subchapter. (V.T.I.C.

21 Art. 5.42 (part).)

22 Sec. 1806.153. UNJUST DISCRIMINATION; REBATES. (a) An

23 insurer or an insurer's officer, director, agent, or other

24 representative may not grant or contract for a special favor or

25 advantage in:

- 26 (1) dividends or other profits to accrue on an
- 27 insurance policy;

1 (2) commissions in the dividends or other profits to
2 accrue on an insurance policy;

3 (3) commissions or division of commission; or

4 (4) a position, valuable consideration, or inducement
5 not specified in an insurance policy.

6 (b) An insurer may not directly or indirectly give, sell, or
7 purchase or offer to give, sell, or purchase as an inducement to
8 insurance or in connection with insurance:

9 (1) stocks, bonds, or other securities of an insurer
10 or other corporation, partnership, or individual;

11 (2) dividends or profits that have accrued or will
12 accrue on stocks, bonds, or other securities of an insurer or other
13 corporation, partnership, or individual; or

14 (3) anything of value not specified in the policy.

15 (c) An insurer or an insurer's officer, director, agent, or
16 other representative that violates this section has engaged in
17 unjust discrimination. (V.T.I.C. Art. 5.41, Sec. (a) (part).)

18 Sec. 1806.154. PROFIT SHARING AUTHORIZED. (a) Section
19 1806.153 does not prohibit an insurer from sharing profits with the
20 insurer's policyholders if:

21 (1) a profit sharing agreement is placed on or in the
22 face of the policy;

23 (2) the profit sharing is uniform and does not
24 discriminate among individuals or among classes; and

25 (3) the profit is not distributed to an insured before
26 the expiration of the insurance policy.

27 (b) An insurer or an insurer's officer, director, agent, or

1 other representative that violates this section has engaged in
2 unjust discrimination. (V.T.I.C. Art. 5.41, Sec. (a) (part).)

3 Sec. 1806.155. INSURER LIABILITY ON POLICY ISSUED WITHOUT
4 AUTHORITY. (a) If an insurer or an insurer's agent issues an
5 insurance policy without authority and the policyholder sustains a
6 loss or damage covered under the policy, the insurer is liable to
7 the policyholder under the policy in the same manner and to the same
8 extent as if the insurer had been authorized to issue the policy,
9 although the policy was issued in violation of this code.

10 (b) This section may not be construed to give an insurer the
11 authority to issue an insurance policy or contract other than as
12 provided by this code. (V.T.I.C. Art. 5.41, Sec. (a) (part).)

13 Sec. 1806.156. ACCEPTANCE OF REBATE OR OTHER INDUCEMENT;
14 CRIMINAL PENALTY. (a) A person commits an offense if the person
15 knowingly receives or accepts from an insurer, an insurer's agent,
16 broker, or other representative, or any other person a rebate of
17 premium payable on an insurance policy, or a special favor or
18 advantage in dividends or other financial profits accrued or to
19 accrue on the policy, or any valuable consideration, position or
20 inducement not specified in the policy.

21 (b) An offense under this section is punishable by:
22 (1) a fine of not more than \$100;
23 (2) confinement in jail for not more than 90 days; or
24 (3) both a fine and confinement under this subsection.
25 (V.T.I.C. Art. 5.41-1.)

26 CHAPTER 1807. APPLICABILITY TO MARINE INSURANCE

27 Sec. 1807.001. DEFINITIONS

1 Sec. 1807.002. INAPPLICABILITY OF CERTAIN LAWS TO

2 MARINE INSURANCE; EXCEPTION

3 CHAPTER 1807. APPLICABILITY TO MARINE INSURANCE

4 Sec. 1807.001. DEFINITIONS. In this chapter:

5 (1) "Insurable property and interests" includes:

6 (A) goods, freights, and cargoes;

7 (B) merchandise;

8 (C) effects;

9 (D) disbursements;

10 (E) profits;

11 (F) money, bullion, and precious stones;

12 (G) securities;

13 (H) choses in action;

14 (I) evidences of debt;

15 (J) valuable papers; and

16 (K) bottomry and respondentia interests.

17 (2) "Marine insurance" means:

18 (A) insurance and reinsurance that covers:

19 (i) loss or damage to:

20 (a) a hull, vessel, or craft of any
21 kind, an aid to navigation, a dry dock, or a marine railway, whether
22 complete, under construction, or awaiting construction; or

23 (b) insurable property and interests
24 in respect to, appertaining to, or in connection with a risk or
25 peril of navigation, transit, or transportation:

26 (1) on or under a sea, lake, or
27 river or other water, in the air, or on land in connection with or

1 incident to export, import, or waterborne risks;

2 (2) while being assembled,
3 packed, crated, baled, compressed, or similarly prepared for
4 shipment;

5 (3) while awaiting shipment; or

6 (4) during any delay, storage,
7 or transshipment or reshipment incident to the initial shipment;

8 (ii) a marine builder or repairer risk;

9 (iii) a marine protection or indemnity
10 risk; or

11 (iv) a war risk regarding any insurable
12 property or interest described by this section; and

13 (B) insurance defined as marine insurance by
14 another statute, lawful custom, or rule adopted by the
15 commissioner. (V.T.I.C. Art. 5.53 (part).)

16 Sec. 1807.002. INAPPLICABILITY OF CERTAIN LAWS TO MARINE
17 INSURANCE; EXCEPTION. (a) The following provisions do not apply to
18 marine insurance:

19 (1) Sections 36.002, 37.051, 403.002, 492.051, and
20 501.159;

21 (2) Subchapter H, Chapter 544;

22 (3) Chapters 5, 252, 253, 493, 494, 1804, 1805, 1806,
23 and 2171; and

24 (4) Subtitles B, C, D, E, F, H, and I.

25 (b) Subsection (a) does not apply to:

26 (1) a farm mutual insurance company operating under
27 Chapter 911;

1 (2) a mutual insurance company engaged in business
2 under Chapter 12, Title 78, Revised Statutes, before that chapter's
3 repeal by Section 18, Chapter 40, Acts of the 41st Legislature, 1st
4 Called Session, 1929, as amended by Section 1, Chapter 60, General
5 Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, that
6 retains the rights and privileges under the repealed law to the
7 extent provided by those sections; or

8 (3) a county mutual insurance company operating under
9 Chapter 912. (V.T.I.C. Arts. 5.53 (part), 5.54 (part).)

10 [Chapters 1808-1900 reserved for expansion]

11 SUBTITLE B. LIABILITY INSURANCE FOR PHYSICIANS AND

12 HEALTH CARE PROVIDERS

13 CHAPTER 1901. PROFESSIONAL LIABILITY INSURANCE FOR

14 PHYSICIANS AND HEALTH CARE PROVIDERS

15 SUBCHAPTER A. GENERAL PROVISIONS

16 Sec. 1901.001. DEFINITIONS

17 Sec. 1901.002. APPLICABILITY OF CHAPTER

18 Sec. 1901.003. APPLICABILITY OF OTHER LAW

19 Sec. 1901.004. ANNUAL REPORTS

20 Sec. 1901.005. RULES

21 [Sections 1901.006-1901.050 reserved for expansion]

22 SUBCHAPTER B. RATE STANDARDS

23 Sec. 1901.051. CONSIDERATIONS IN SETTING RATES

24 Sec. 1901.052. GROUPING OF RISKS

25 Sec. 1901.053. MODIFICATION OF CLASSIFICATION RATES

26 Sec. 1901.054. LIMITATIONS ON RATES

27 Sec. 1901.055. CLAIM SURCHARGE

1 Sec. 1901.056. ABSOLUTE RATES PROHIBITED

2 Sec. 1901.057. CONSIDERATIONS IN APPROVING RATES

3 [Sections 1901.058-1901.100 reserved for expansion]

4 SUBCHAPTER C. REVIEW OF RATES

5 Sec. 1901.101. RECONSIDERATION OF RATES AND PREMIUMS

6 Sec. 1901.102. APPEAL

7 [Sections 1901.103-1901.150 reserved for expansion]

8 SUBCHAPTER D. BEST PRACTICES FOR NURSING HOMES

9 Sec. 1901.151. BEST PRACTICES

10 Sec. 1901.152. CONSIDERATION OF BEST PRACTICES IN

11 SETTING RATES

12 Sec. 1901.153. STANDARD OF CARE FOR CIVIL ACTIONS NOT

13 ESTABLISHED

14 [Sections 1901.154-1901.200 reserved for expansion]

15 SUBCHAPTER E. POLICY FORMS

16 Sec. 1901.201. STANDARDIZED POLICY FORMS; APPROVAL OF

17 OTHER FORMS

18 [Sections 1901.202-1901.250 reserved for expansion]

19 SUBCHAPTER F. COVERAGE

20 Sec. 1901.251. PREMIUM BASIS

21 Sec. 1901.252. COVERAGE FOR EXEMPLARY DAMAGES

22 Sec. 1901.253. NOTICE OF PREMIUM INCREASE,

23 CANCELLATION, OR NONRENEWAL

24 CHAPTER 1901. PROFESSIONAL LIABILITY INSURANCE FOR

25 PHYSICIANS AND HEALTH CARE PROVIDERS

26 SUBCHAPTER A. GENERAL PROVISIONS

27 Sec. 1901.001. DEFINITIONS. In this chapter:

1 (1) "Health care provider" means:

2 (A) a person, partnership, professional
3 association, corporation, facility, or institution, or an officer,
4 employee, or agent of the person or entity acting in the course and
5 scope of authority, employment, or agency, as applicable, if the
6 person or entity is licensed or chartered by this state to provide
7 health care as:

- 8 (i) a registered nurse;
- 9 (ii) a hospital;
- 10 (iii) a dentist;
- 11 (iv) a podiatrist;
- 12 (v) a chiropractor;
- 13 (vi) an optometrist or therapeutic
14 optometrist;
- 15 (vii) a pharmacist;
- 16 (viii) a veterinarian;
- 17 (ix) a not-for-profit kidney dialysis
18 center;
- 19 (x) a blood bank that is a nonprofit
20 corporation chartered to operate a blood bank and is accredited by
21 the American Association of Blood Banks;
- 22 (xi) a for-profit or not-for-profit nursing
23 home; or
- 24 (xii) a for-profit or not-for-profit
25 assisted living facility; or

26 (B) a health care practitioner or facility that
27 the commissioner, in accordance with Section 2203.103(b),

1 determines is eligible for coverage under this chapter.

2 (2) "Hospital" means a public or private institution
3 licensed under Chapter 241 or 577, Health and Safety Code.

4 (3) "Physician" means a person licensed to practice
5 medicine in this state. (V.T.I.C. Art. 5.15-1, Sec. 2.)

6 Sec. 1901.002. APPLICABILITY OF CHAPTER. This chapter
7 applies to:

8 (1) an insurer authorized to write or engaged in
9 writing professional liability insurance for a physician or health
10 care provider; and

11 (2) a rating organization acting on behalf of an
12 insurer described by Subdivision (1). (V.T.I.C. Art. 5.15-1, Sec.
13 1.)

14 Sec. 1901.003. APPLICABILITY OF OTHER LAW. Chapters 2251
15 and 2301 and Article 5.13-2 apply to rates and forms for
16 professional liability insurance for physicians and health care
17 providers under this chapter. (V.T.I.C. Art. 5.15-1, Sec. 4(a).)

18 Sec. 1901.004. ANNUAL REPORTS. (a) An insurer that
19 issues professional liability insurance policies covering
20 physicians and health care providers shall file annually with the
21 commissioner a report of:

22 (1) all claims and the amounts of those claims;

23 (2) amounts of claims reserves;

24 (3) investment income of the insurer derived from
25 medical professional liability premiums;

26 (4) information relating to amounts of judgments and
27 settlements paid on claims; and

1 (5) other information required by the commissioner.

2 (b) The commissioner may promulgate a form on which the
3 information under Subsection (a) must be reported. The form must
4 require that the information be reported in an accurate manner and
5 be reasonably calculated to:

6 (1) facilitate interpretation; and

7 (2) protect the confidentiality of the physician or
8 health care provider. (V.T.I.C. Art. 5.15-1, Sec. 5.)

9 Sec. 1901.005. RULES. The commissioner shall establish by
10 rule:

11 (1) criteria that insurers must follow in establishing
12 reconsideration procedures under Section 1901.101; and

13 (2) standards and procedures to be followed in the
14 review of rates and premiums by the commissioner. (V.T.I.C.
15 Art. 5.15-1, Sec. 4B(c).)

16 [Sections 1901.006-1901.050 reserved for expansion]

17 SUBCHAPTER B. RATE STANDARDS

18 Sec. 1901.051. CONSIDERATIONS IN SETTING RATES. (a) In
19 setting rates, an insurer shall consider:

20 (1) past and prospective loss and expense experience
21 for all professional liability insurance for physicians and health
22 care providers written in this state, subject to Subsection (b);

23 (2) a reasonable margin for underwriting profit and
24 contingencies;

25 (3) investment income; and

26 (4) dividends or savings allowed or returned by the
27 insurer to the insurer's policyholders or members.

1 (b) If the department finds that the group or risk to be
2 insured is not of sufficient size to be credible, an insurer must
3 also consider in setting rates past and prospective loss and
4 expense experience for all professional liability insurance for
5 physicians and health care providers written outside this state.
6 (V.T.I.C. Art. 5.15-1, Sec. 3 (part).)

7 Sec. 1901.052. GROUPING OF RISKS. In setting rates, an
8 insurer may group risks by classification, rating schedule, or any
9 other reasonable method. (V.T.I.C. Art. 5.15-1, Sec. 3 (part).)

10 Sec. 1901.053. MODIFICATION OF CLASSIFICATION RATES. (a)
11 An insurer may modify classification rates to produce rates for
12 individual risks in accordance with rating plans that establish
13 standards for measuring variations in hazards or expense
14 provisions.

15 (b) The standards may measure any difference among risks
16 that can be demonstrated to have a probable effect on losses or
17 expenses. (V.T.I.C. Art. 5.15-1, Sec. 3 (part).)

18 Sec. 1901.054. LIMITATIONS ON RATES. (a) Rates set under
19 this chapter may not be excessive or inadequate, as described by
20 this section, or unreasonable or unfairly discriminatory.

21 (b) A rate is not excessive unless:

22 (1) the rate is unreasonably high for the insurance
23 coverage provided; and

24 (2) a reasonable degree of competition does not exist
25 in the area with respect to the classification to which the rate
26 applies.

27 (c) A rate is not inadequate unless the rate is unreasonably

1 low for the insurance coverage provided and:

2 (1) is insufficient to sustain projected losses and
3 expenses; or

4 (2) the use of the rate has or, if continued, will have
5 the effect of destroying competition or creating a monopoly.
6 (V.T.I.C. Art. 5.15-1, Sec. 3 (part).)

7 Sec. 1901.055. CLAIM SURCHARGE. A claim surcharge
8 assessed by an insurer against a physician or health care provider
9 under a professional liability insurance policy may be based only
10 on claims actually paid by an insurer as a result of:

11 (1) a settlement; or

12 (2) an adverse judgment or decision of a court.
13 (V.T.I.C. Art. 5.15-1, Sec. 9.)

14 Sec. 1901.056. ABSOLUTE RATES PROHIBITED. (a) In this
15 section, "absolute rates" means rates, rating plans, or rating
16 classifications that are filed under Chapter 2251 or Article 5.13-2
17 by an insurer or authorized rating organization and that are
18 required to be used, to the exclusion of all others, by each insurer
19 authorized to write policies.

20 (b) A provision of this chapter, Chapter 2251, or Article
21 5.13-2 relating to the regulation of rates, rating plans, and
22 rating classifications for professional liability insurance for
23 physicians and health care providers does not:

24 (1) give the commissioner the power to promulgate
25 uniform or absolute rates; or

26 (2) prevent different insurers or organizations
27 authorized to file rates from filing different rates for risks in a

1 given classification or modified rates for individual risks made in
2 accordance with rating plans. (V.T.I.C. Art. 5.15-1, Sec. 4(b).)

3 Sec. 1901.057. CONSIDERATIONS IN APPROVING RATES. In
4 approving rates under this chapter, the commissioner shall consider
5 the impact of risk management courses taken by physicians and
6 health care providers in this state. (V.T.I.C. Art. 5.15-1, Sec. 3
7 (part).)

8 [Sections 1901.058-1901.100 reserved for expansion]

9 SUBCHAPTER C. REVIEW OF RATES

10 Sec. 1901.101. RECONSIDERATION OF RATES AND
11 PREMIUMS. (a) Each insurer to which this chapter applies shall
12 adopt a procedure for reconsideration of a rate or premium charged a
13 physician or health care provider for professional liability
14 insurance coverage.

15 (b) The procedure must include:

16 (1) an opportunity for a hearing before officers or
17 employees who have responsibility for determining rates and
18 premiums to be charged for professional liability insurance; and

19 (2) a requirement that the insurer reconsider the rate
20 or premium and provide the physician or health care provider a
21 written explanation of the rate or premium being charged.
22 (V.T.I.C. Art. 5.15-1, Sec. 4B(a).)

23 Sec. 1901.102. APPEAL. A physician or health care provider
24 that is not satisfied with a decision under procedures established
25 under Section 1901.101 may appeal to the commissioner for:

26 (1) a review of the rate or premium; and

27 (2) a determination of whether the rate or premium

1 being charged complies with criteria under Sections
2 1901.051-1901.054 and 1901.057. (V.T.I.C. Art. 5.15-1, Sec.
3 4B(b).)

4 [Sections 1901.103-1901.150 reserved for expansion]

5 SUBCHAPTER D. BEST PRACTICES FOR NURSING HOMES

6 Sec. 1901.151. BEST PRACTICES. (a) The commissioner
7 shall adopt best practices for risk management and loss control
8 that may be used by for-profit and not-for-profit nursing homes.

9 (b) In developing or amending the best practices, the
10 commissioner shall consult with the Health and Human Services
11 Commission and a task force appointed by the commissioner.

12 (c) The task force must be composed of representatives of:

13 (1) insurers that write professional liability
14 insurance for nursing homes;

15 (2) the Texas Medical Liability Insurance
16 Underwriting Association;

17 (3) nursing homes; and

18 (4) consumers. (V.T.I.C. Art. 5.15-4, Secs. (a),
19 (c).)

20 Sec. 1901.152. CONSIDERATION OF BEST PRACTICES IN SETTING
21 RATES. In setting rates for professional liability insurance
22 applicable to a for-profit or not-for-profit nursing home, an
23 insurer or the Texas Medical Liability Insurance Underwriting
24 Association may consider whether the nursing home adopts and
25 implements the best practices adopted under this subchapter.
26 (V.T.I.C. Art. 5.15-4, Sec. (b).)

27 Sec. 1901.153. STANDARD OF CARE FOR CIVIL ACTIONS NOT

1 ESTABLISHED. The best practices for risk management and loss
2 control adopted under this subchapter do not establish standards of
3 care for nursing homes applicable in a civil action against a
4 nursing home. (V.T.I.C. Art. 5.15-4, Sec. (d).)

5 [Sections 1901.154-1901.200 reserved for expansion]

6 SUBCHAPTER E. POLICY FORMS

7 Sec. 1901.201. STANDARDIZED POLICY FORMS; APPROVAL OF OTHER
8 FORMS. (a) The commissioner shall prescribe standardized policy
9 forms for occurrence, claims-made, and claims-paid professional
10 liability insurance policies for physicians and health care
11 providers.

12 (b) An insurer may not use a form other than a standardized
13 policy form in writing professional liability insurance for
14 physicians and health care providers unless the form has been
15 approved by the commissioner.

16 (c) An insurer writing professional liability insurance for
17 physicians and health care providers may use an endorsement if the
18 endorsement has been filed with and approved by the commissioner.
19 (V.T.I.C. Art. 5.15-1, Sec. 4(c).)

20 [Sections 1901.202-1901.250 reserved for expansion]

21 SUBCHAPTER F. COVERAGE

22 Sec. 1901.251. PREMIUM BASIS. An insurer may not write a
23 professional liability insurance policy under this chapter on less
24 than an annual premium basis. (V.T.I.C. Art. 5.15-1, Sec. 6.)

25 Sec. 1901.252. COVERAGE FOR EXEMPLARY DAMAGES. (a) Except
26 as provided by Subsection (b), a medical professional liability
27 insurance policy issued to or renewed for a physician or health care

1 provider in this state may not include coverage for exemplary
2 damages that may be assessed against the physician or health care
3 provider.

4 (b) The commissioner may approve an endorsement form that
5 provides for coverage for exemplary damages for use on a medical
6 professional liability insurance policy issued to:

7 (1) a hospital; or

8 (2) a for-profit or not-for-profit nursing home or
9 assisted living facility. (V.T.I.C. Art. 5.15-1, Sec. 8.)

10 Sec. 1901.253. NOTICE OF PREMIUM INCREASE, CANCELLATION, OR
11 NONRENEWAL. (a) An insurer that issues a professional liability
12 insurance policy for a physician or health care provider must
13 provide to the insured written notice of at least 90 days if the
14 insurer intends to:

15 (1) increase the premiums on the policy; or

16 (2) cancel or not renew the policy for a reason other
17 than for nonpayment of premiums or because the insured is no longer
18 licensed.

19 (b) If the insurer intends to increase the premiums, the
20 insurer shall state in the notice the amount of the increase.

21 (c) If the insurer intends to cancel or not renew the
22 policy, the insurer shall state in the notice the reason for
23 cancellation or nonrenewal.

24 (d) An insurer may provide notice of cancellation under this
25 section only within the first 90 days from the effective date of the
26 policy. (V.T.I.C. Art. 5.15-1, Sec. 7.)

1 CHAPTER 1902. CERTAIN LIABILITY COVERAGE FOR

2 PHYSICIANS AND HEALTH CARE PROVIDERS

3 Sec. 1902.001. DEFINITIONS

4 Sec. 1902.002. COVERAGE FOR PHYSICIANS OR HEALTH CARE

5 PROVIDERS UNDER VENDOR ENDORSEMENTS

6 OR CERTAIN POLICIES

7 Sec. 1902.003. EXCLUSIONS AND LIMITATIONS ON COVERAGE

8 UNDER VENDOR ENDORSEMENTS PROHIBITED

9 CHAPTER 1902. CERTAIN LIABILITY COVERAGE FOR

10 PHYSICIANS AND HEALTH CARE PROVIDERS

11 Sec. 1902.001. DEFINITIONS. In this chapter:

12 (1) "Health care provider" has the meaning assigned
13 by Section 1901.001.

14 (2) "Manufacturer" has the meaning assigned by Section
15 82.001, Civil Practice and Remedies Code.

16 (3) "Physician" has the meaning assigned by Section
17 1901.001. (New; V.T.I.C. Art. 5.15-1, Sec. 11 (part).)

18 Sec. 1902.002. COVERAGE FOR PHYSICIANS OR HEALTH CARE
19 PROVIDERS UNDER VENDOR ENDORSEMENTS OR CERTAIN POLICIES. A

20 physician or health care provider is considered a vendor for
21 purposes of coverage under a vendor's endorsement or a

22 manufacturer's general liability or products liability policy.
23 (V.T.I.C. Art. 5.15-1, Sec. 11 (part).)

24 Sec. 1902.003. EXCLUSIONS AND LIMITATIONS ON COVERAGE UNDER
25 VENDOR ENDORSEMENTS PROHIBITED. An insurer may not exclude or

26 otherwise limit coverage for physicians or health care providers
27 under a vendor's endorsement issued to a manufacturer. (V.T.I.C.

1 Art. 5.15-1, Sec. 11 (part).)

2 CHAPTER 1903. LOSS CONTROL INFORMATION AND SERVICES

3 SUBCHAPTER A. LOSS CONTROL SERVICES FOR

4 PROFESSIONAL LIABILITY INSURANCE FOR HOSPITALS

5 Sec. 1903.001. DEFINITION

6 Sec. 1903.002. INAPPLICABILITY OF SUBCHAPTER

7 Sec. 1903.003. LOSS CONTROL SERVICES REQUIRED

8 Sec. 1903.004. SANCTIONS

9 Sec. 1903.005. RULES

10 [Sections 1903.006-1903.050 reserved for expansion]

11 SUBCHAPTER B. LOSS CONTROL INFORMATION FOR GENERAL AND CERTAIN

12 PROFESSIONAL LIABILITY INSURANCE

13 Sec. 1903.051. LOSS CONTROL INFORMATION REQUIRED

14 Sec. 1903.052. SANCTIONS

15 Sec. 1903.053. RULES

16 [Sections 1903.054-1903.100 reserved for expansion]

17 SUBCHAPTER C. CIVIL PROCEEDINGS

18 Sec. 1903.101. IMMUNITY FROM LIABILITY

19 Sec. 1903.102. LOSS CONTROL INFORMATION NOT

20 DISCOVERABLE OR ADMISSIBLE

21 CHAPTER 1903. LOSS CONTROL INFORMATION AND SERVICES

22 SUBCHAPTER A. LOSS CONTROL SERVICES FOR

23 PROFESSIONAL LIABILITY INSURANCE FOR HOSPITALS

24 Sec. 1903.001. DEFINITION. In this subchapter, "hospital"
25 means a public or private institution licensed under Chapter 241 or
26 577, Health and Safety Code. (V.T.I.C. Art. 5.15-2, Sec. (e).)

27 Sec. 1903.002. INAPPLICABILITY OF SUBCHAPTER. This

1 subchapter and Subchapter C do not apply to insurance policies that
2 provide excess coverage issued by the Texas Medical Liability
3 Insurance Underwriting Association under Chapter 2203, or to those
4 policies if the policies are serviced by an insurer acting as a
5 servicing carrier under an agreement entered into between the
6 association and the insurer and approved by the commissioner.
7 (V.T.I.C. Art. 5.15-2, Sec. (f).)

8 Sec. 1903.003. LOSS CONTROL SERVICES REQUIRED. (a) Before
9 writing professional liability insurance for a hospital in this
10 state, an insurer must maintain or provide loss control facilities
11 that:

12 (1) provide loss control services reasonably
13 commensurate with the risks, exposures, and experience of the
14 insured's business;

15 (2) are adequate to provide loss control services
16 required by the nature of the policyholder's operations; and

17 (3) include surveys, recommendations, training
18 programs, consultations, and analyses of accident causes.

19 (b) To provide the facilities required by this section, the
20 insurer may:

21 (1) employ qualified personnel;

22 (2) retain qualified independent contractors;

23 (3) contract with the policyholder to provide
24 qualified loss control personnel and services; or

25 (4) use a combination of methods described by this
26 subsection.

27 (c) Independent contractors and other personnel described

1 by Subsection (b) must have the qualifications of a field safety
2 representative. A field safety representative must be an
3 individual who:

4 (1) holds a:

5 (A) bachelor's degree in science or engineering;

6 (B) bachelor of arts degree in nursing;

7 (C) bachelor of science degree in nursing,
8 pharmacy, or physical therapy; or

9 (D) master's degree in hospital administration;

10 (2) is a licensed engineer;

11 (3) is a certified safety professional;

12 (4) is a certified industrial hygienist;

13 (5) has at least 10 years' experience in occupational
14 safety and health; or

15 (6) has completed a course of training in loss control
16 services approved by the department. (V.T.I.C. Art. 5.15-2, Secs.
17 (a), (b).)

18 Sec. 1903.004. SANCTIONS. (a) If there is evidence that
19 reasonable loss control services are not being maintained or
20 provided by an insurer as required by this subchapter or are not
21 being used by the insurer in a reasonable manner to prevent injury
22 to patients of the insurer's policyholders, the commissioner shall
23 order a hearing to determine whether the insurer is not in
24 compliance with this subchapter.

25 (b) If it is determined that the insurer is not in
26 compliance, the commissioner may impose any sanction authorized by
27 Chapter 82. (V.T.I.C. Art. 5.15-2, Sec. (c).)

1 Sec. 1903.005. RULES. The commissioner may adopt
2 reasonable rules for the enforcement of this subchapter after
3 holding a public hearing on the proposed rules. (V.T.I.C. Art.
4 5.15-2, Sec. (d).)

5 [Sections 1903.006-1903.050 reserved for expansion]

6 SUBCHAPTER B. LOSS CONTROL INFORMATION FOR GENERAL AND CERTAIN
7 PROFESSIONAL LIABILITY INSURANCE

8 Sec. 1903.051. LOSS CONTROL INFORMATION REQUIRED. (a)
9 Before writing professional liability insurance, including medical
10 professional liability insurance, for insureds other than
11 hospitals or general liability insurance in this state, an insurer
12 must provide to the insurer's policyholders loss control
13 information reasonably commensurate with the risks, exposures, and
14 experience of the insured's business.

15 (b) To provide the information described by Subsection (a)
16 or services, the insurer may:

- 17 (1) employ qualified personnel;
- 18 (2) retain qualified independent contractors;
- 19 (3) contract with the policyholder to provide
20 qualified loss control personnel and services; or
- 21 (4) use a combination of methods described by this
22 subsection. (V.T.I.C. Art. 5.15-3, Secs. (a), (b).)

23 Sec. 1903.052. SANCTIONS. (a) If there is evidence that
24 reasonable loss control information is not being provided by an
25 insurer as required by this subchapter or is not being used by the
26 insurer in a reasonable manner to reduce losses, the commissioner
27 shall order a hearing to determine whether the insurer is not in

1 compliance with this subchapter.

2 (b) If it is determined that the insurer is not in
3 compliance, the commissioner may impose any sanction authorized by
4 Chapter 82. (V.T.I.C. Art. 5.15-3, Sec. (c).)

5 Sec. 1903.053. RULES. After opportunity for a hearing, the
6 commissioner may adopt reasonable rules for the enforcement of this
7 subchapter. (V.T.I.C. Art. 5.15-3, Sec. (d).)

8 [Sections 1903.054-1903.100 reserved for expansion]

9 SUBCHAPTER C. CIVIL PROCEEDINGS

10 Sec. 1903.101. IMMUNITY FROM LIABILITY. (a) An insurer
11 or an agent or employee of the insurer is not liable, and a cause of
12 action does not arise against the insurer, agent, or employee, for
13 an accident based on an allegation that the accident was caused or
14 could have been prevented by a program, information, inspection, or
15 other activity or service undertaken by the insurer to prevent
16 accidents or to control losses, as applicable, in connection with
17 the operations of the insured.

18 (b) The immunity from liability provided by this section
19 does not affect the liability of an insurer as otherwise provided in
20 an insurance policy. (V.T.I.C. Art. 5.15-2, Sec. (g); Art. 5.15-3,
21 Sec. (e).)

22 Sec. 1903.102. LOSS CONTROL INFORMATION NOT DISCOVERABLE OR
23 ADMISSIBLE. Loss control information provided by an insurer to an
24 insured is not discoverable or admissible as evidence in a civil
25 proceeding. (V.T.I.C. Art. 5.15-2, Sec. (h); Art. 5.15-3, Sec.
26 (f).)

27 [Chapters 1904-1950 reserved for expansion]

1 SUBTITLE C. AUTOMOBILE INSURANCE

2 CHAPTER 1951. GENERAL PROVISIONS: AUTOMOBILE INSURANCE

3 Sec. 1951.001. RATES FOR AUTOMOBILE INSURANCE

4 Sec. 1951.002. RULES

5 Sec. 1951.003. FORMER MILITARY VEHICLES

6 Sec. 1951.004. CRIMINAL PENALTY

7 CHAPTER 1951. GENERAL PROVISIONS: AUTOMOBILE INSURANCE

8 Sec. 1951.001. RATES FOR AUTOMOBILE INSURANCE. Rates for
9 personal and commercial automobile insurance in this state are
10 determined as provided by Chapter 2251 and Article 5.13-2.
11 (V.T.I.C. Art. 5.11, Sec. (c) (part).)

12 Sec. 1951.002. RULES. The commissioner may adopt and
13 enforce reasonable rules necessary to carry out the provisions of
14 this subtitle. (V.T.I.C. Art. 5.10.)

15 Sec. 1951.003. FORMER MILITARY VEHICLES. (a) In this
16 section, "former military vehicle" has the meaning assigned by
17 Section 504.502, Transportation Code.

18 (b) A rating plan that includes a classification applicable
19 to antique, privately owned passenger vehicles that are maintained
20 primarily for use in exhibitions, club activities, parades, or
21 other functions of public interest and that may be used
22 occasionally for other purposes must include in that classification
23 former military vehicles maintained for those uses. (V.T.I.C.
24 Art. 5.01-3.)

25 Sec. 1951.004. CRIMINAL PENALTY. (a) An insurer, or an
26 officer or representative of an insurer, commits an offense if the
27 insurer, officer, or representative violates:

1 (1) Section 1951.001, 1951.002, 1952.051, 1952.052,
2 1952.053, 1952.054, or 1952.055;

3 (2) Subchapter B, Chapter 1806;

4 (3) Chapter 254; or

5 (4) Article 5.01, 5.02, 5.03, 5.05, 5.06, 5.10, or
6 5.11.

7 (b) An offense under this section is a misdemeanor
8 punishable by a fine of not less than \$100 or more than \$500.
9 (V.T.I.C. Art. 5.12-1 (part).)

10 CHAPTER 1952. POLICY PROVISIONS AND FORMS FOR
11 AUTOMOBILE INSURANCE

12 SUBCHAPTER A. GENERAL PROVISIONS

13 Sec. 1952.001. APPLICABILITY OF CHAPTER

14 [Sections 1952.002-1952.050 reserved for expansion]

15 SUBCHAPTER B. POLICY FORMS AND PROVISIONS IN GENERAL

16 Sec. 1952.051. POLICY FORMS FOR AUTOMOBILE INSURANCE

17 Sec. 1952.052. USE OF PREVIOUSLY APPROVED OR ADOPTED
18 POLICY FORMS AUTHORIZED

19 Sec. 1952.053. WITHDRAWAL OF APPROVAL

20 Sec. 1952.054. REQUIRED DISCLOSURES REGARDING
21 SHORT-TERM POLICIES

22 Sec. 1952.055. CERTIFICATE OF INSURANCE AS SUBSTITUTE
23 FOR INSURANCE POLICY

24 Sec. 1952.056. REQUIRED PROVISION: COVERAGE FOR
25 CERTAIN SPOUSES

26 Sec. 1952.057. PROHIBITED PROVISION: PAYMENT ON
27 CONVICTION FOR DRUG OFFENSE

1 Sec. 1952.058. LOSS CONTROL INFORMATION AND SERVICES

2 REQUIRED

3 [Sections 1952.059-1952.100 reserved for expansion]

4 SUBCHAPTER C. UNINSURED OR UNDERINSURED MOTORIST COVERAGE

5 Sec. 1952.101. UNINSURED OR UNDERINSURED MOTORIST

6 COVERAGE REQUIRED

7 Sec. 1952.102. UNINSURED MOTOR VEHICLE

8 Sec. 1952.103. UNDERINSURED MOTOR VEHICLE

9 Sec. 1952.104. REQUIRED PROVISIONS RELATING TO

10 UNINSURED OR UNDERINSURED MOTORIST

11 COVERAGE

12 Sec. 1952.105. LIABILITY LIMITS

13 Sec. 1952.106. RECOVERY UNDER UNDERINSURED MOTORIST

14 COVERAGE

15 Sec. 1952.107. RECOVERY UNDER COLLISION OR COMBINED

16 COVERAGE

17 Sec. 1952.108. INSURER'S RIGHT OF RECOVERY

18 Sec. 1952.109. BURDEN OF PROOF IN DISPUTE

19 Sec. 1952.110. VENUE

20 [Sections 1952.111-1952.150 reserved for expansion]

21 SUBCHAPTER D. PERSONAL INJURY PROTECTION COVERAGE

22 Sec. 1952.151. PERSONAL INJURY PROTECTION

23 Sec. 1952.152. PERSONAL INJURY PROTECTION COVERAGE

24 REQUIRED

25 Sec. 1952.153. MAXIMUM REQUIRED AMOUNT OF PERSONAL

26 INJURY PROTECTION

27 Sec. 1952.154. LOSS OF INCOME BENEFITS

- 1 Sec. 1952.155. BENEFITS PAYABLE WITHOUT REGARD TO
2 FAULT OR COLLATERAL SOURCE; EFFECT ON
3 SUBROGATION
- 4 Sec. 1952.156. PAYMENT OF BENEFITS
- 5 Sec. 1952.157. ACTION FOR FAILURE TO PAY BENEFITS
- 6 Sec. 1952.158. EXCLUSION OF BENEFITS
- 7 Sec. 1952.159. OFFSET AGAINST LIABILITY CLAIM
- 8 Sec. 1952.160. INAPPLICABILITY TO ACCIDENT OR HEALTH
9 INSURANCE
- 10 Sec. 1952.161. CERTAIN COVERAGE UNAFFECTED
11 [Sections 1952.162-1952.200 reserved for expansion]
- 12 SUBCHAPTER E. SHORT-TERM LIABILITY INSURANCE FOR
13 CERTAIN MOTORISTS
- 14 Sec. 1952.201. APPLICABILITY OF SUBCHAPTER
- 15 Sec. 1952.202. DEFINITIONS
- 16 Sec. 1952.203. SHORT-TERM LIABILITY INSURANCE PROGRAM
- 17 Sec. 1952.204. AGENT LICENSE REQUIRED
- 18 Sec. 1952.205. SALE OF SHORT-TERM LIABILITY INSURANCE
19 POLICIES
- 20 [Sections 1952.206-1952.250 reserved for expansion]
- 21 SUBCHAPTER F. GARAGE INSURANCE
- 22 Sec. 1952.251. DEFINITIONS
- 23 Sec. 1952.252. GARAGE INSURANCE
24 [Sections 1952.253-1952.300 reserved for expansion]

1 SUBCHAPTER G. REPAIR OF MOTOR VEHICLES

2 Sec. 1952.301. LIMITATION ON PARTS, PRODUCTS, OR
3 REPAIR PERSONS OR FACILITIES
4 PROHIBITED

5 Sec. 1952.302. PROHIBITED ACTS IN CONNECTION WITH
6 REPAIR OF MOTOR VEHICLE

7 Sec. 1952.303. CONTRACTS BETWEEN INSURER AND REPAIR
8 PERSON OR FACILITY

9 Sec. 1952.304. PROVISION OF INFORMATION REGARDING
10 REPAIRS

11 Sec. 1952.305. NOTICE OF RIGHTS REGARDING REPAIR OF
12 MOTOR VEHICLE

13 Sec. 1952.306. COMPLAINTS

14 Sec. 1952.307. RULES

15 CHAPTER 1952. POLICY PROVISIONS AND FORMS FOR
16 AUTOMOBILE INSURANCE

17 SUBCHAPTER A. GENERAL PROVISIONS

18 Sec. 1952.001. APPLICABILITY OF CHAPTER. Except as
19 provided by Section 1952.201, this chapter applies to an insurer
20 writing automobile insurance in this state, including an insurance
21 company, corporation, reciprocal or interinsurance exchange,
22 mutual insurance company, association, Lloyd's plan, or other
23 insurer. (V.T.I.C. Art. 5.01, Sec. (a) (part).)

24 [Sections 1952.002-1952.050 reserved for expansion]

25 SUBCHAPTER B. POLICY FORMS AND PROVISIONS IN GENERAL

26 Sec. 1952.051. POLICY FORMS FOR AUTOMOBILE INSURANCE.
27 Notwithstanding Subsections (1)-(4) and (7), Article 5.06, policy

1 forms and endorsements for automobile insurance in this state are
2 regulated under Chapter 2301 and Article 5.13-2. (V.T.I.C. Art.
3 5.06, Sec. 12(a).)

4 Sec. 1952.052. USE OF PREVIOUSLY APPROVED OR ADOPTED POLICY
5 FORMS AUTHORIZED. An insurer may continue to use a policy form or
6 endorsement approved or adopted by the commissioner under Article
7 5.06 before June 11, 2003, on notification in writing to the
8 commissioner that the insurer will continue to use the policy form
9 or endorsement. (V.T.I.C. Art. 5.06, Sec. (12)(b).)

10 Sec. 1952.053. WITHDRAWAL OF APPROVAL. The commissioner
11 may, after notice and hearing, withdraw the commissioner's approval
12 of a policy or endorsement form that was approved by the
13 commissioner under Article 5.06. (V.T.I.C. Art. 5.06, Sec. (8).)

14 Sec. 1952.054. REQUIRED DISCLOSURES REGARDING SHORT-TERM
15 POLICIES. (a) An insurance policy or other document evidencing
16 proof of purchase of a personal automobile insurance policy written
17 for a term of less than 30 days may not be used to obtain an original
18 or renewal driver's license, an automobile registration or license
19 plates, or a motor vehicle inspection certificate. An insurance
20 policy or other document described by this subsection must contain
21 the following statement:

22 TEXAS LAW PROHIBITS USE OF THIS DOCUMENT TO OBTAIN A
23 MOTOR VEHICLE INSPECTION CERTIFICATE, AN ORIGINAL OR
24 RENEWAL DRIVER'S LICENSE, OR AN AUTOMOBILE
25 REGISTRATION OR LICENSE PLATES.

26 (b) Before accepting any premium or fee for a personal
27 automobile insurance policy or binder for a term of less than 30

1 days, an agent or insurer must make the following written
2 disclosure to the applicant or insured:

3 TEXAS LAW PROHIBITS USE OF THIS POLICY OR BINDER TO
4 OBTAIN A MOTOR VEHICLE INSPECTION CERTIFICATE, AN
5 ORIGINAL OR RENEWAL DRIVER'S LICENSE, OR AN AUTOMOBILE
6 REGISTRATION OR LICENSE PLATES.

7 (V.T.I.C. Art. 5.06, Secs. (9) (part), (10) (part).)

8 Sec. 1952.055. CERTIFICATE OF INSURANCE AS SUBSTITUTE FOR
9 INSURANCE POLICY. (a) An insurer that complies with applicable
10 requirements may issue and deliver a certificate of insurance as a
11 substitute for issuing and delivering an insurance policy adopted
12 or approved by the commissioner. The certificate must:

13 (1) be in the form prescribed by the commissioner; and

14 (2) refer to and identify the policy form for which the
15 certificate is substituted.

16 (b) A certificate under this section represents the
17 insurance policy and, when issued, is evidence that the certificate
18 holder is insured under the identified policy form. The
19 certificate is subject to the same limitations, conditions,
20 coverages, selection of options, and other provisions provided in
21 the policy, and the certificate must show and adequately reference
22 that policy information. The certificate or subsequent attachments
23 to the certificate must refer to all endorsements to the policy.

24 (c) A certificate under this section must be executed in the
25 same manner as though an insurance policy were issued. If an
26 insurer substitutes a certificate for a policy, the insurer shall
27 simultaneously provide the insured receiving the certificate with

1 an outline of coverages in the form and content approved by the
2 commissioner. At the insured's request, the insurer shall provide
3 the insured with a copy of the policy.

4 (d) The commissioner may adopt rules necessary to implement
5 this section, including a rule limiting the application of this
6 section to private passenger automobile insurance policies.
7 (V.T.I.C. Art. 5.06, Secs. (5), (6).)

8 Sec. 1952.056. REQUIRED PROVISION: COVERAGE FOR CERTAIN
9 SPOUSES. A personal automobile insurance policy or any similar
10 policy form adopted or approved by the commissioner under Article
11 5.06 or filed under Subchapter B, Chapter 2301, that covers
12 liability arising out of ownership, maintenance, or use of a motor
13 vehicle of a spouse who is otherwise insured by the policy must
14 contain a provision to continue coverage for the spouse during a
15 period of separation in contemplation of divorce. (V.T.I.C.
16 Art. 5.06-6.)

17 Sec. 1952.057. PROHIBITED PROVISION: PAYMENT ON CONVICTION
18 FOR DRUG OFFENSE. (a) An insurer may not deliver or issue for
19 delivery in this state an automobile insurance policy that provides
20 payment on final conviction of the named insured for loss for a
21 covered motor vehicle seized by federal or state law enforcement
22 officers as evidence in a case against the named insured under
23 Chapter 481, Health and Safety Code, or under the federal
24 Controlled Substances Act (21 U.S.C. Section 801 et seq.).

25 (b) For purposes of this section, a named insured for:

26 (1) an individual automobile insurance policy is the
27 person named on the declaration page of the policy and the person's

1 spouse; and

2 (2) an automobile insurance policy other than an
3 individual policy is the company or corporation named on the
4 declaration page of the policy and any officer, director, or
5 shareholder of that company or corporation. (V.T.I.C.
6 Art. 5.06-5.)

7 Sec. 1952.058. LOSS CONTROL INFORMATION AND SERVICES
8 REQUIRED. (a) An insurer must provide loss control information as
9 a prerequisite to writing commercial automobile liability
10 insurance in this state.

11 (b) The insurer shall provide to the insurer's
12 policyholders loss control information reasonably commensurate
13 with the risks, exposures, and experience of the insured's
14 business. To provide loss control information or services, the
15 insurer may:

16 (1) employ qualified personnel;

17 (2) retain qualified independent contractors;

18 (3) contract with the policyholder to provide
19 qualified loss control personnel and services; or

20 (4) use a combination of methods described by this
21 subsection.

22 (c) If there is evidence that an insurer is not providing
23 reasonable loss control information or is not using that
24 information in a reasonable manner to reduce losses, the
25 commissioner shall order a hearing to determine whether the insurer
26 is in compliance with this section. If the commissioner determines
27 that the insurer is not in compliance, the commissioner may impose

1 any sanction authorized by Chapter 82.

2 (d) An insurer or an agent or employee of the insurer is not
3 liable, and a cause of action does not arise against the insurer,
4 agent, or employee, for any accident based on the allegation that
5 the accident was caused or could have been prevented by a program,
6 information, inspection, or other activity or service undertaken by
7 the insurer for the prevention of accidents in connection with
8 operations of the insured. The immunity provided by this
9 subsection does not affect the liability of an insurer for
10 compensation or as otherwise provided in an insurance policy.

11 (e) Loss control information an insurer provides to an
12 insured under this section is not subject to discovery and is not
13 admissible as evidence in any civil proceeding.

14 (f) The commissioner, after holding a public hearing on the
15 proposed rules, may adopt reasonable rules for the enforcement of
16 this section. (V.T.I.C. Art. 5.06-4.)

17 [Sections 1952.059-1952.100 reserved for expansion]

18 SUBCHAPTER C. UNINSURED OR UNDERINSURED MOTORIST COVERAGE

19 Sec. 1952.101. UNINSURED OR UNDERINSURED MOTORIST COVERAGE
20 REQUIRED. (a) In this section, "uninsured or underinsured
21 motorist coverage" means the provisions of an automobile liability
22 insurance policy that provide for coverage in at least the limits
23 prescribed by Chapter 601, Transportation Code, that protects
24 insureds who are legally entitled to recover from owners or
25 operators of uninsured or underinsured motor vehicles damages for
26 bodily injury, sickness, disease, or death, or property damage
27 resulting from the ownership, maintenance, or use of any motor

1 vehicle.

2 (b) An insurer may not deliver or issue for delivery in this
3 state an automobile liability insurance policy, including a policy
4 provided through the Texas Automobile Insurance Plan Association
5 under Chapter 2151, that covers liability arising out of the
6 ownership, maintenance, or use of any motor vehicle unless the
7 insurer provides uninsured or underinsured motorist coverage in the
8 policy or supplemental to the policy.

9 (c) The coverage required by this subchapter does not apply
10 if any insured named in the insurance policy rejects the coverage in
11 writing. Unless the named insured requests in writing the coverage
12 required by this subchapter, the insurer is not required to provide
13 that coverage in or supplemental to a renewal insurance policy if
14 the named insured rejected the coverage in connection with an
15 insurance policy previously issued to the insured by the same
16 insurer or by an affiliated insurer. (V.T.I.C. Art. 5.06-1, Sec.
17 (1).)

18 Sec. 1952.102. UNINSURED MOTOR VEHICLE. (a) For purposes
19 of the coverage required by this subchapter, "uninsured motor
20 vehicle," subject to the terms of the coverage, is considered to
21 include an insured motor vehicle as to which the insurer providing
22 liability insurance is unable because of insolvency to make payment
23 with respect to the legal liability of the insured within the limits
24 specified in the insurance.

25 (b) The commissioner may, in the policy forms filed under
26 Subchapter B, Chapter 2301, allow "uninsured motor vehicle" to be
27 defined or, in policy forms adopted under Article 5.06, define

1 "uninsured motor vehicle," to exclude certain motor vehicles whose
2 operators are in fact uninsured. (V.T.I.C. Art. 5.06-1, Secs.
3 (2)(a), (c).)

4 Sec. 1952.103. UNDERINSURED MOTOR VEHICLE. For purposes
5 of the coverage required by this subchapter, "underinsured motor
6 vehicle" means an insured motor vehicle on which there is
7 collectible liability insurance coverage with limits of liability
8 for the owner or operator that were originally lower than, or have
9 been reduced by payment of claims arising from the same accident to,
10 an amount less than the limit of liability stated in the
11 underinsured coverage of the insured's policy. (V.T.I.C.
12 Art. 5.06-1, Sec. (2)(b).)

13 Sec. 1952.104. REQUIRED PROVISIONS RELATING TO UNINSURED OR
14 UNDERINSURED MOTORIST COVERAGE. The portion of a policy form
15 adopted under Article 5.06 or filed as provided by Subchapter B,
16 Chapter 2301, to provide coverage under this subchapter must:

17 (1) provide that, regardless of the number of persons
18 insured, policies or bonds applicable, vehicles involved, or claims
19 made, the total aggregate limit of liability to any one person who
20 sustains bodily injury or property damage as the result of a single
21 occurrence may not exceed the limit of liability for those
22 coverages as stated in the insurance policy and that the total
23 aggregate limit of liability to all claimants, if more than one, may
24 not exceed the total limit of liability per occurrence as stated in
25 the policy;

26 (2) provide for the exclusion of the recovery of
27 damages for bodily injury or property damage, or both, resulting

1 from the intentional acts of the insured; and

2 (3) require that, for the insured to recover under the
3 uninsured motorist coverage if the owner or operator of any motor
4 vehicle that causes bodily injury or property damage to the insured
5 is unknown, actual physical contact must have occurred between the
6 motor vehicle owned or operated by the unknown person and the person
7 or property of the insured. (V.T.I.C. Art. 5.06-1, Sec. (2)(d).)

8 Sec. 1952.105. LIABILITY LIMITS. (a) The limits of
9 liability for bodily injury, sickness, disease, or death must be
10 offered to an insured in the amounts desired by the insured, but not
11 in amounts greater than the limits of liability specified in the
12 bodily injury liability provisions of the insured's policy.

13 (b) Subject to a deductible amount of \$250, coverage for
14 property damage must be offered to an insured in the amounts desired
15 by the insured, but not in amounts greater than the limits of
16 liability specified in the property damage liability provisions of
17 the insured's policy.

18 (c) Notwithstanding Subsections (a) and (b), amounts of
19 liability limits for bodily injury, sickness, disease, or death and
20 amounts for coverage for property damage may not be offered in
21 amounts less than those prescribed by Chapter 601, Transportation
22 Code. (V.T.I.C. Art. 5.06-1, Secs. (3), (4)(a).)

23 Sec. 1952.106. RECOVERY UNDER UNDERINSURED MOTORIST
24 COVERAGE. Underinsured motorist coverage must provide for payment
25 to the insured of all amounts that the insured is legally entitled
26 to recover as damages from owners or operators of underinsured
27 motor vehicles because of bodily injury or property damage, not to

1 exceed the limit specified in the insurance policy, and reduced by
2 the amount recovered or recoverable from the insurer of the
3 underinsured motor vehicle. (V.T.I.C. Art. 5.06-1, Sec. (5).)

4 Sec. 1952.107. RECOVERY UNDER COLLISION OR COMBINED
5 COVERAGE. (a) An insured who has collision coverage and
6 uninsured or underinsured property damage liability coverage may
7 recover under the coverage the insured chooses.

8 (b) If neither the collision coverage or the uninsured or
9 underinsured property damage liability coverage is sufficient
10 alone to cover all damage resulting from a single occurrence, the
11 insured may recover under both coverages. If recovering under both
12 coverages, the insured shall designate one coverage as the primary
13 coverage and pay the deductible applicable to that coverage. The
14 primary coverage must be exhausted before any recovery is made
15 under the secondary coverage.

16 (c) If both the primary and secondary coverages are used to
17 pay damages from a single occurrence, the insured may not be
18 required to pay the deductible applicable to the secondary coverage
19 when the amount of the deductible otherwise applicable to the
20 secondary coverage is the same as or less than the amount of the
21 deductible applicable to the primary coverage. If both coverages
22 are used to pay damages from a single occurrence and the amount of
23 the deductible otherwise applicable to the secondary coverage is
24 greater than the amount of the deductible applicable to the primary
25 coverage, the insured shall pay the difference between the amount
26 of the two deductibles with respect to the secondary coverage.

27 (d) The insured may not recover under both the primary and

1 secondary coverages more than the actual damages suffered.
2 (V.T.I.C. Art. 5.06-1, Sec. (4)(b).)

3 Sec. 1952.108. INSURER'S RIGHT OF RECOVERY. (a) An insurer
4 that makes a payment to any person under any coverage required by
5 this subchapter is subject to the terms of that coverage and, to the
6 extent of the payment, is entitled to the proceeds of any settlement
7 or judgment resulting from the exercise of any right of recovery of
8 the person to whom the payment is made against any person or
9 organization legally responsible for the bodily injury, sickness,
10 disease, or death for which the payment is made, including the
11 proceeds recoverable from the assets of an insolvent insurer.

12 (b) If, under an insurance policy issued under this
13 subchapter, an insurer makes a payment as a result of the insolvency
14 of another insurer:

15 (1) the insolvent insurer's insured shall be given
16 credit to the extent of the paying insurer's payment in any judgment
17 obtained against the insured with respect to the insured's legal
18 liability for damages described by Subsection (a); and

19 (2) subject to Subchapter F, Chapter 462, the paying
20 insurer has the right to proceed directly against the insolvent
21 insurer or that insurer's receiver, and in pursuing that right the
22 paying insurer has any rights that the insolvent insurer's insured
23 might otherwise have had if the insured had made the payment.
24 (V.T.I.C. Art. 5.06-1, Sec. (6).)

25 Sec. 1952.109. BURDEN OF PROOF IN DISPUTE. The insurer has
26 the burden of proof in a dispute as to whether a motor vehicle is
27 uninsured. (V.T.I.C. Art. 5.06-1, Sec. (7).)

1 Sec. 1952.110. VENUE. Notwithstanding Section 15.032,
2 Civil Practice and Remedies Code, an action against an insurer in
3 relation to the coverage provided under this subchapter, including
4 an action to enforce that coverage, may be brought only in the
5 county in which:

6 (1) the policyholder or beneficiary instituting the
7 action resided at the time of the accident involving the uninsured
8 or underinsured motor vehicle; or

9 (2) the accident occurred. (V.T.I.C. Art. 5.06-1,
10 Sec. (8).)

11 [Sections 1952.111-1952.150 reserved for expansion]

12 SUBCHAPTER D. PERSONAL INJURY PROTECTION COVERAGE

13 Sec. 1952.151. PERSONAL INJURY PROTECTION. "Personal
14 injury protection" consists of provisions of an automobile
15 liability insurance policy that provide for payment to the named
16 insured in the policy, members of the insured's household, and any
17 authorized operator or passenger of the named insured's motor
18 vehicle, including a guest occupant, of all reasonable expenses
19 that:

20 (1) arise from an accident;

21 (2) are incurred not later than the third anniversary
22 of the date of the accident; and

23 (3) are for:

24 (A) necessary medical, surgical, x-ray, or
25 dental services, including prosthetic devices, and necessary
26 ambulance, hospital, professional nursing, or funeral services;

27 (B) in the case of an income producer,

1 replacement of income lost as the result of the accident; or

2 (C) in the case of a person injured in the
3 accident who was not an income or wage producer at the time of the
4 accident, reimbursement of necessary and reasonable expenses
5 incurred for essential services ordinarily performed by the injured
6 person for care and maintenance of the family or family household.
7 (V.T.I.C. Art. 5.06-3, Sec. (b) (part).)

8 Sec. 1952.152. PERSONAL INJURY PROTECTION COVERAGE
9 REQUIRED. (a) An insurer may not deliver or issue for delivery in
10 this state an automobile liability insurance policy, including a
11 policy provided through the Texas Automobile Insurance Plan
12 Association under Chapter 2151, that covers liability arising out
13 of the ownership, maintenance, or use of any motor vehicle unless
14 the insurer provides personal injury protection coverage in the
15 policy or supplemental to the policy.

16 (b) The coverage required by this subchapter does not apply
17 if any insured named in the insurance policy rejects the coverage in
18 writing. Unless the named insured requests in writing the coverage
19 required by this subchapter, the insurer is not required to provide
20 that coverage in or supplemental to a renewal insurance policy if
21 the named insured rejected the coverage in connection with an
22 insurance policy previously issued to the insured by the same
23 insurer or by an affiliated insurer. (V.T.I.C. Art. 5.06-3, Sec.
24 (a).)

25 Sec. 1952.153. MAXIMUM REQUIRED AMOUNT OF PERSONAL INJURY
26 PROTECTION. This subchapter does not require an insurer to provide
27 personal injury protection coverage in an amount that exceeds

1 \$2,500 for all benefits, in the aggregate, for each person.
2 (V.T.I.C. Art. 5.06-3, Sec. (b) (part).)

3 Sec. 1952.154. LOSS OF INCOME BENEFITS. An insurer
4 providing loss of income benefits under coverage required by this
5 subchapter may require that the insured, as a condition of
6 receiving those benefits, provide the insurer with reasonable
7 medical proof of the insured's injury causing loss of income.
8 (V.T.I.C. Art. 5.06-3, Sec. (b) (part).)

9 Sec. 1952.155. BENEFITS PAYABLE WITHOUT REGARD TO FAULT OR
10 COLLATERAL SOURCE; EFFECT ON SUBROGATION. (a) The benefits under
11 coverage required by this subchapter are payable without regard to:

12 (1) the fault or nonfault of the named insured or
13 recipient in causing or contributing to the accident; and

14 (2) any collateral source of medical, hospital, or
15 wage continuation benefits.

16 (b) An insurer paying benefits under coverage required by
17 this subchapter does not have a right of subrogation or claim
18 against any other person or insurer to recover any benefits by
19 reason of the alleged fault of the other person in causing or
20 contributing to the accident. (V.T.I.C. Art. 5.06-3, Sec. (c).)

21 Sec. 1952.156. PAYMENT OF BENEFITS. (a) Subject to the
22 requirements of this section and Section 1952.157, an insurer shall
23 pay benefits under the coverage required by this subchapter
24 periodically as claims for those benefits arise, but not later than
25 the 30th day after the date the insurer receives satisfactory proof
26 of a claim.

27 (b) The coverage required by this subchapter may:

1 (1) prescribe a period of not less than six months
2 after the date of an accident within which the original proof of
3 loss with respect to a claim for benefits must be presented to the
4 insurer; and

5 (2) provide that an insurer may require reasonable
6 medical proof of an alleged recurrence of an injury for which an
7 original claim for benefits was made if a lapse occurs in the period
8 of total disability or in the medical treatment of an injured person
9 who:

10 (A) has received benefits under that coverage;
11 and

12 (B) subsequently claims additional benefits
13 based on the alleged recurrence.

14 (c) The aggregate benefits payable under the coverage
15 required by this subchapter to any person may not exceed the maximum
16 limits prescribed in the insurance policy. (V.T.I.C. Art. 5.06-3,
17 Sec. (d) (part).)

18 Sec. 1952.157. ACTION FOR FAILURE TO PAY BENEFITS. (a) If
19 the insurer fails to pay benefits under the coverage required by
20 this subchapter when due, the person entitled to those benefits may
21 bring an action in contract to recover the benefits.

22 (b) If the insurer is required to pay benefits described by
23 Subsection (a), the person entitled to the benefits is entitled to
24 recover reasonable attorney's fees, a penalty of 12 percent, and
25 interest at the legal rate from the date those amounts became
26 overdue. (V.T.I.C. Art. 5.06-3, Sec. (d) (part).)

27 Sec. 1952.158. EXCLUSION OF BENEFITS. An insurer shall

1 exclude benefits to an insured or the insured's personal
2 representative under the coverage required by this subchapter if
3 the insured's conduct contributed to the injury the insured
4 sustained and that conduct:

5 (1) involved intentionally causing injury to the
6 insured; or

7 (2) occurred while committing a felony or while
8 seeking to elude lawful apprehension or arrest by a law enforcement
9 official. (V.T.I.C. Art. 5.06-3, Sec. (e).)

10 Sec. 1952.159. OFFSET AGAINST LIABILITY CLAIM. (a) If a
11 liability claim is made by a guest or passenger described by Section
12 1952.151 against the owner or operator of the motor vehicle in which
13 the guest or passenger was riding or against the owner's or
14 operator's liability insurer, the owner or operator of the motor
15 vehicle or the owner's or operator's liability insurer is entitled
16 to an offset, credit, or deduction against any award made to the
17 guest or passenger in an amount equal to the amounts paid by the
18 owner, the operator, or the owner's or operator's automobile
19 liability insurer to the guest or passenger under personal injury
20 protection.

21 (b) This subchapter does not authorize a direct action
22 against a liability insurer if that right does not presently exist
23 at law. (V.T.I.C. Art. 5.06-3, Sec. (h).)

24 Sec. 1952.160. INAPPLICABILITY TO ACCIDENT OR HEALTH
25 INSURANCE. This subchapter applies only to an automobile insurance
26 policy subject to this subtitle or Subchapter A, Chapter 5, and does
27 not apply to any other accident or health insurance policy,

1 regardless of whether the accident or health insurance policy
2 provides indemnity against automobile-connected injuries.
3 (V.T.I.C. Art. 5.06-3, Sec. (f).)

4 Sec. 1952.161. CERTAIN COVERAGE UNAFFECTED. This
5 subchapter does not:

6 (1) affect the offering of medical payments coverage,
7 disability benefits, or accidental death benefits, as presently
8 prescribed by the commissioner; or

9 (2) prevent an insurer from providing benefits broader
10 than the minimum benefits described by this subchapter, subject to
11 the rules prescribed by the commissioner. (V.T.I.C. Art. 5.06-3,
12 Sec. (g).)

13 [Sections 1952.162-1952.200 reserved for expansion]

14 SUBCHAPTER E. SHORT-TERM LIABILITY INSURANCE FOR
15 CERTAIN MOTORISTS

16 Sec. 1952.201. APPLICABILITY OF SUBCHAPTER. This
17 subchapter applies to an insurer authorized to write automobile
18 insurance in this state, including an insurance company, reciprocal
19 or interinsurance exchange, mutual insurance company, capital
20 stock company, county mutual insurance company, Lloyd's plan, or
21 other entity. (V.T.I.C. Art. 5.01C, Sec. 1(1).)

22 Sec. 1952.202. DEFINITIONS. In this subchapter:

23 (1) "Motor vehicle" means any private passenger
24 vehicle or utility type vehicle that has a gross weight of not more
25 than 25,000 pounds.

26 (2) "Short-term liability insurance policy" means an
27 insurance policy that:

1 (A) provides coverage for at least 24 hours but
2 not for more than one week;

3 (B) meets the requirements of Chapter 601,
4 Transportation Code;

5 (C) covers liability for bodily injury, death,
6 and property damage arising from the use or operation of a motor
7 vehicle; and

8 (D) is not insurance assigned to an authorized
9 insurer by the Texas Automobile Insurance Plan Association under
10 Section 2151.102(a). (V.T.I.C. Art. 5.01C, Secs. 1(2), (3).)

11 Sec. 1952.203. SHORT-TERM LIABILITY INSURANCE PROGRAM. (a)
12 The commissioner by rule may establish a program to provide for the
13 sale of short-term liability insurance policies to nonresident
14 motorists who are visiting this state.

15 (b) The commissioner may negotiate an agreement with any
16 insurer under which the insurer will sell insurance policies
17 described by this section. (V.T.I.C. Art. 5.01C, Sec. 2.)

18 Sec. 1952.204. AGENT LICENSE REQUIRED. A person
19 representing an insurer in selling short-term liability insurance
20 policies under this subchapter must be licensed under Title 13.
21 (V.T.I.C. Art. 5.01C, Sec. 3.)

22 Sec. 1952.205. SALE OF SHORT-TERM LIABILITY INSURANCE
23 POLICIES. An insurer selling short-term liability insurance
24 policies under this subchapter shall use policy forms adopted by
25 the commissioner under Article 5.06 or filed and in effect as
26 provided by Subchapter B, Chapter 2301, as applicable, unless the
27 insurer is exempt from using those forms. (V.T.I.C. Art. 5.01C,

1 Sec. 4.)

2 [Sections 1952.206-1952.250 reserved for expansion]

3 SUBCHAPTER F. GARAGE INSURANCE

4 Sec. 1952.251. DEFINITIONS. In this subchapter:

5 (1) "Garage customer" means a person or organization
6 other than:

7 (A) the named insured under a garage insurance
8 policy;

9 (B) an employee, director, officer, shareholder,
10 partner, or agent of the named insured; or

11 (C) a resident of the same household as:

12 (i) the named insured; or

13 (ii) an employee, director, officer,
14 shareholder, partner, or agent of the named insured.

15 (2) "Garage insurance" means automobile insurance as
16 defined by Article 5.01 issued to a named insured who is engaged in
17 the business of selling, servicing, or repairing motor vehicles as
18 defined by commissioner rule or order. (V.T.I.C. Art. 5.06-2, Sec.
19 (1) (part).)

20 Sec. 1952.252. GARAGE INSURANCE. (a) A garage insurance
21 policy may provide that a garage customer is not an insured under
22 the policy and that the coverage under the policy does not apply to
23 a garage customer except to the extent that any other insurance
24 coverage that is collectible and available to the garage customer
25 is not equal to the minimum financial responsibility limits
26 specified by Chapter 601, Transportation Code.

27 (b) Notwithstanding any provision to the contrary in

1 another insurance policy as to whether the insurance coverage
2 described by Subsection (a) that is provided under that policy is
3 primary, excess, or contingent insurance, or otherwise, the other
4 insurance coverage is the primary insurance as to the garage
5 customer.

6 (c) A garage insurance policy containing a provision
7 described by Subsection (a) may not cover a garage customer except
8 to the extent permitted by this section, notwithstanding the terms
9 of the other insurance policy providing coverage described by
10 Subsection (a). (V.T.I.C. Art. 5.06-2, Secs. (1) (part), (2).)

11 [Sections 1952.253-1952.300 reserved for expansion]

12 SUBCHAPTER G. REPAIR OF MOTOR VEHICLES

13 Sec. 1952.301. LIMITATION ON PARTS, PRODUCTS, OR REPAIR
14 PERSONS OR FACILITIES PROHIBITED. (a) Except as provided by rules
15 adopted by the commissioner, under an automobile insurance policy
16 that is delivered, issued for delivery, or renewed in this state, an
17 insurer may not directly or indirectly limit the insurer's coverage
18 under a policy covering damage to a motor vehicle by:

19 (1) specifying the brand, type, kind, age, vendor,
20 supplier, or condition of parts or products that may be used to
21 repair the vehicle; or

22 (2) limiting the beneficiary of the policy from
23 selecting a repair person or facility to repair damage to the
24 vehicle.

25 (b) In settling a liability claim by a third party against
26 an insured for property damage claimed by the third party, an
27 insurer may not require the third-party claimant to have repairs

1 made by a particular repair person or facility or to use a
2 particular brand, type, kind, age, vendor, supplier, or condition
3 of parts or products. (V.T.I.C. Art. 5.07-1, Secs. (a), (g).)

4 Sec. 1952.302. PROHIBITED ACTS IN CONNECTION WITH REPAIR OF
5 MOTOR VEHICLE. In connection with the repair of damage to a motor
6 vehicle covered under an automobile insurance policy, an insurer,
7 an employee or agent of an insurer, an insurance adjuster, or an
8 entity that employs an insurance adjuster may not:

9 (1) solicit or accept a referral fee or gratuity in
10 exchange for referring a beneficiary or third-party claimant to a
11 repair person or facility to repair the damage;

12 (2) state or suggest, either orally or in writing, to a
13 beneficiary that the beneficiary must use a specific repair person
14 or facility or a repair person or facility identified on a preferred
15 list compiled by an insurer for the damage repair or parts
16 replacement to be covered by the policy; or

17 (3) restrict the right of a beneficiary or third-party
18 claimant to choose a repair person or facility by requiring the
19 beneficiary or third-party claimant to travel an unreasonable
20 distance to repair the damage. (V.T.I.C. Art. 5.07-1, Sec. (b).)

21 Sec. 1952.303. CONTRACTS BETWEEN INSURER AND REPAIR PERSON
22 OR FACILITY. (a) A contract between an insurer and a repair person
23 or facility, including an agreement under which the repair person
24 or facility agrees to extend discounts for parts or labor to the
25 insurer in exchange for referrals by the insurer, may not result in
26 a reduction of coverage under an insured's automobile insurance
27 policy.

1 (b) The commissioner may adopt rules under Chapter 542 with
2 respect to any fraudulent activity of any party to an agreement
3 described by Subsection (a). (V.T.I.C. Art. 5.07-1, Secs. (c),
4 (h).)

5 Sec. 1952.304. PROVISION OF INFORMATION REGARDING
6 REPAIRS. An insurer may not prohibit a repair person or facility
7 from providing a beneficiary or third-party claimant with
8 information that states:

9 (1) the description, manufacturer, or source of the
10 parts used; and

11 (2) the amounts charged to the insurer for the parts
12 and related labor. (V.T.I.C. Art. 5.07-1, Sec. (d).)

13 Sec. 1952.305. NOTICE OF RIGHTS REGARDING REPAIR OF MOTOR
14 VEHICLE. (a) At the time a motor vehicle is presented to an
15 insurer, an insurance adjuster, or other person in connection with
16 a claim for damage repair, the insurer, insurance adjuster, or
17 other person shall provide to the beneficiary or third-party
18 claimant notice of the provisions of this subchapter.

19 (b) The commissioner shall adopt a rule establishing the
20 method or methods insurers must use to comply with the notice
21 provisions of this section. (V.T.I.C. Art. 5.07-1, Sec. (e).)

22 Sec. 1952.306. COMPLAINTS. A beneficiary, third-party
23 claimant, or repair person or facility may submit a written,
24 documented complaint to the department with respect to an alleged
25 violation of this subchapter. (V.T.I.C. Art. 5.07-1, Sec. (f).)

26 Sec. 1952.307. RULES. Rules adopted by the commissioner to
27 implement this subchapter must include requirements that:

1 (1) any limitation described by Section 1952.301(a) be
2 clearly and prominently displayed on the face of the insurance
3 policy or certificate in lieu of an insurance policy; and

4 (2) the insured give written consent to a limitation
5 described by Section 1952.301(a) after the insured is notified
6 orally and in writing of the limitation at the time the insurance
7 policy is purchased. (V.T.I.C. Art. 5.07-1, Sec. (i).)

8 [Chapters 1953-2000 reserved for expansion]

9 SUBTITLE D. FIRE INSURANCE AND ALLIED LINES,

10 INCLUDING RESIDENTIAL PROPERTY INSURANCE

11 CHAPTER 2001. GENERAL PROVISIONS: FIRE INSURANCE AND ALLIED

12 LINES, INCLUDING RESIDENTIAL PROPERTY INSURANCE

13 Sec. 2001.001. APPLICABILITY OF SUBTITLE

14 Sec. 2001.002. RATES

15 Sec. 2001.003. AUTHORITY TO REQUIRE SWORN STATEMENTS

16 Sec. 2001.004. AUTHORITY TO INSPECT AND TAKE TESTIMONY

17 REGARDING RECORDS

18 Sec. 2001.005. AUTHORITY TO REQUIRE PROVISION OF DATA

19 Sec. 2001.006. REPORT OF INFORMATION RELATING TO

20 CERTAIN FIRE LOSSES

21 Sec. 2001.007. CRIMINAL PENALTY

22 Sec. 2001.008. IMMUNITY FROM PROSECUTION

23 Sec. 2001.009. LIMITATION ON COMPENSATION AND EXPENSES

24 Sec. 2001.010. PUBLIC GUIDE RELATING TO COMMERCIAL

25 PROPERTY RATING

1 CHAPTER 2001. GENERAL PROVISIONS: FIRE INSURANCE AND ALLIED
2 LINES, INCLUDING RESIDENTIAL PROPERTY INSURANCE

3 Sec. 2001.001. APPLICABILITY OF SUBTITLE. (a) Each
4 insurance policy or contract insuring property in this state
5 against loss by fire, including a policy or contract or portion of a
6 policy or contract that insures the shore end of a marine risk
7 against loss by fire, must be issued in accordance with:

- 8 (1) this chapter;
9 (2) Section 403.002;
10 (3) Subchapter C, Chapter 5;
11 (4) Subchapter H, Chapter 544;
12 (5) Subchapter D, Chapter 1806; and
13 (6) Chapters 252, 2002, 2003, 2004, 2005, 2006, and
14 2171.

15 (b) An insurer issuing an insurance policy or contract
16 described by Subsection (a), including a fire insurance company,
17 marine insurance company, fire and marine insurance company, and
18 fire and tornado insurance company, is governed by the laws
19 described by Subsection (a).

20 (c) This section applies to an insurer or to an insurance
21 policy or contract regardless of:

- 22 (1) the kind and character of property insured;
23 (2) whether the property is:
24 (A) fixed or movable;
25 (B) stationary or in transit; or
26 (C) consigned or billed for shipment inside or
27 outside the boundaries of this state or to a foreign country;

1 (3) whether the insurer is organized:

2 (A) under the laws of this state, another state,
3 territory, or possession of the United States, or a foreign
4 country; or

5 (B) by authority of the federal government; or

6 (4) the kind of insurer or the name of the insurer
7 issuing the policy or contract. (V.T.I.C. Art. 5.27 (part).)

8 Sec. 2001.002. RATES. (a) Rates for all lines of insurance
9 subject to a law described by Section 2001.001(a) are determined as
10 provided by Chapter 2251 and Article 5.13-2.

11 (b) The requirement imposed by Subsection (a) does not
12 affect the requirement for the commissioner to conduct inspections
13 of commercial property and prescribe a manual of rules and rating
14 schedules for commercial property under a law described by Section
15 2001.001(a). (V.T.I.C. Art. 5.25, Sec. (b); Art. 5.28, Sec. (d).)

16 Sec. 2001.003. AUTHORITY TO REQUIRE SWORN STATEMENTS. For
17 an insurer described by Section 2001.001, the department may
18 require from the insurer or a director, officer, representative, or
19 agent of the insurer a sworn statement covering any period that
20 states:

21 (1) the rates and premiums collected for fire
22 insurance on each class of risks and on all property in this state;

23 (2) the causes of fire, if known to the insurer or
24 individual or if the insurer or individual possesses relevant
25 information or data or can obtain the information or data at
26 reasonable expense; and

27 (3) all necessary facts and information to allow the

1 department to determine enforcement and to enforce a law described
2 by Section 2001.001(a). (V.T.I.C. Art. 5.28, Sec. (a) (part).)

3 Sec. 2001.004. AUTHORITY TO INSPECT AND TAKE TESTIMONY
4 REGARDING RECORDS. (a) The commissioner or a person authorized by
5 the commissioner may:

6 (1) visit:

7 (A) a general, local, or other office of an
8 insurer engaged in the business of insurance in this state;

9 (B) the insurer's home office located outside
10 this state, if applicable; and

11 (C) the office of any of the insurer's officers,
12 directors, agents, or other representatives; and

13 (2) require the insurer or an officer, director,
14 agent, or other representative of the insurer to produce for
15 inspection by the commissioner or the commissioner's authorized
16 representative all of the books, records, and papers of the
17 insurer, officer, director, agent, or representative.

18 (b) The commissioner or the commissioner's authorized
19 representative may:

20 (1) examine and make or have made copies of the books,
21 records, and papers described by Subsection (a); and

22 (2) take testimony under oath regarding the books,
23 records, and papers and compel the attendance of witnesses for that
24 purpose. (V.T.I.C. Art. 5.28, Sec. (b).)

25 Sec. 2001.005. AUTHORITY TO REQUIRE PROVISION OF DATA. The
26 department may require:

27 (1) any or all of the fire insurance companies engaged

1 in the business of insurance in this state to jointly or separately
2 provide to the department any data the company or companies
3 possess, including maps, tariffs, inspection reports, and any data
4 affecting fire insurance risks in this state or any part of this
5 state; and

6 (2) any two or more of those companies or any joint
7 agents or representatives of the companies to provide to the
8 department for use in implementing a law described by Section
9 2001.001(a) any data the companies, agents, or representatives
10 possess. (V.T.I.C. Art. 5.28, Sec. (c).)

11 Sec. 2001.006. REPORT OF INFORMATION RELATING TO CERTAIN
12 FIRE LOSSES. (a) The state fire marshal, a fire marshal of a
13 political subdivision of this state, the chief of a fire department
14 in this state, or a peace officer in this state may request an
15 insurer investigating a fire loss of property in which damages or
16 losses exceed \$1,000 to release information in the insurer's
17 possession relating to that loss. The insurer shall release the
18 requested information and cooperate with the official. The
19 requested information may include only:

20 (1) an insurance policy relevant to the fire loss
21 under investigation and any application for a policy;

22 (2) policy premium payment records;

23 (3) the history of the insured's previous claims for
24 fire loss; and

25 (4) material relating to the investigation of the
26 loss, including:

27 (A) statements of any person;

1 (B) proof of loss; or

2 (C) other relevant evidence.

3 (b) This section does not authorize a public official or
4 agency to adopt or require any type of periodic report by an
5 insurer.

6 (c) An insurer that has reason to suspect that a fire loss to
7 the property of a person insured by the insurer was caused by
8 incendiary means and that receives a request for information under
9 Subsection (a) shall:

10 (1) notify the requesting official and provide the
11 official with all relevant material acquired during the insurer's
12 investigation of the fire loss;

13 (2) cooperate with and take any action requested of
14 the insurer by a law enforcement agency; and

15 (3) permit a person ordered by a court to inspect any
16 of the insurer's records relating to the insurance policy and the
17 loss.

18 (d) In the absence of fraud or malice, an insurer or a person
19 who provided information on the insurer's behalf is not liable for
20 damages in a civil action or subject to criminal prosecution for an
21 oral or written statement made or any other action taken that is
22 necessary to supply information required under this section.

23 (e) An official or a department or agency employee who
24 receives information under this section shall maintain the
25 confidentiality of the information until the information is
26 required to be released in a criminal or civil proceeding.

27 (f) An official described by Subsection (a) may be required

1 to testify as to any information in the official's possession
2 regarding the fire loss of property in a civil action in which a
3 person seeks recovery for the loss from an insurer under an
4 insurance policy.

5 (g) A person may not intentionally:

6 (1) refuse to release information requested under
7 Subsection (a);

8 (2) refuse to notify the fire marshal of a fire loss
9 required to be reported under Subsection (c);

10 (3) refuse to provide the fire marshal with relevant
11 information required to be provided under Subsection (c); or

12 (4) fail to maintain the confidentiality of
13 information that is confidential under Subsection (e). (V.T.I.C.
14 Art. 5.46.)

15 Sec. 2001.007. CRIMINAL PENALTY. (a) An officer or
16 director of a fire insurance company described by Section 2001.001,
17 or an agent or person acting on behalf of or employed by a fire
18 insurance company described by Section 2001.001, commits an offense
19 if the officer, director, agent, or person intentionally:

20 (1) performs or causes to be performed, alone or in
21 conjunction with a corporation, company, or person, an act
22 prohibited by a law described by Section 2001.001(a);

23 (2) fails to perform an act required to be performed by
24 a law described by Section 2001.001(a);

25 (3) permits an act prohibited by a law described by
26 Section 2001.001(a); or

27 (4) otherwise violates a law described by Section

1 2001.001(a).

2 (b) An offense under this section is a misdemeanor
3 punishable by a fine of not less than \$300 or more than \$1,000.
4 (V.T.I.C. Art. 5.48-1.)

5 Sec. 2001.008. IMMUNITY FROM PROSECUTION. (a) A person is
6 not excused from giving testimony or producing evidence when
7 legally required at the trial of another person charged with
8 violating a law relating to fire insurance on the ground that the
9 testimony or evidence may incriminate the person under the laws of
10 this state.

11 (b) A person may not be prosecuted or subjected to a penalty
12 or forfeiture for or because of a transaction, matter, or thing
13 about which the person testifies or produces evidence under this
14 section. (V.T.I.C. Art. 5.48-2.)

15 Sec. 2001.009. LIMITATION ON COMPENSATION AND EXPENSES.
16 The total amount of necessary compensation for experts, clerical
17 personnel, and other department employees and necessary expenses,
18 including travel expenses, incurred by the department in
19 implementing the laws described by Section 2001.001(a) may not
20 exceed the amount of the assessments on the gross premiums of all
21 fire insurance companies engaged in the business of insurance in
22 this state. (V.T.I.C. Art. 5.51 (part).)

23 Sec. 2001.010. PUBLIC GUIDE RELATING TO COMMERCIAL PROPERTY
24 RATING. (a) In this section, "rating agency" means a public or
25 private legal entity that is authorized to conduct commercial
26 property rating in this state.

27 (b) The commissioner shall make available to the public a

1 generalized guide that:

2 (1) summarizes the procedures used by the department
3 or other rating agency to rate nonresidential commercial buildings
4 in this state; and

5 (2) specifies how different construction elements and
6 techniques used in a building project affect the insurance rating
7 of the completed building.

8 (c) The commissioner may charge a reasonable fee to cover
9 the administrative costs of producing and distributing the guide.

10 (d) The commissioner shall review the information in the
11 guide in January of each odd-numbered year and shall revise the
12 guide as necessary to incorporate any changes that have occurred in
13 the preceding biennium that affect the information. (V.T.I.C.
14 Art. 5.25-1.)

15 CHAPTER 2002. POLICY PROVISIONS AND FORMS FOR FIRE INSURANCE AND
16 ALLIED LINES, INCLUDING RESIDENTIAL PROPERTY INSURANCE

17 SUBCHAPTER A. POLICY PROVISIONS

18 Sec. 2002.001. ENDORSEMENTS REDUCING AMOUNT OF
19 COVERAGE

20 Sec. 2002.002. LIEN ON INSURED PROPERTY

21 Sec. 2002.003. COVERAGES FOR SPOUSES AND FORMER
22 SPOUSES

23 Sec. 2002.004. JEWELRY COVERAGE

24 Sec. 2002.005. COINSURANCE CLAUSES

25 Sec. 2002.006. PROVISIONS GOVERNING CERTAIN CONDITIONS
26 OR RISKS

27 [Sections 2002.007-2002.050 reserved for expansion]

1 SUBCHAPTER B. POLICY FORMS

2 Sec. 2002.051. POLICY FORMS AND ENDORSEMENTS FOR
3 RESIDENTIAL PROPERTY INSURANCE

4 Sec. 2002.052. APPLICABILITY OF OTHER LAW TO
5 RESIDENTIAL PROPERTY INSURANCE

6 [Sections 2002.053-2002.100 reserved for expansion]

7 SUBCHAPTER C. ITEMS PROVIDED TO POLICYHOLDER IN CONNECTION WITH
8 INSURANCE POLICY

9 Sec. 2002.101. RATE ANALYSIS

10 Sec. 2002.102. NOTICE OF RENEWAL

11 CHAPTER 2002. POLICY PROVISIONS AND FORMS FOR FIRE INSURANCE AND
12 ALLIED LINES, INCLUDING RESIDENTIAL PROPERTY INSURANCE

13 SUBCHAPTER A. POLICY PROVISIONS

14 Sec. 2002.001. ENDORSEMENTS REDUCING AMOUNT OF
15 COVERAGE. An insurer may not use an endorsement to a policy form to
16 which Article 5.35, Subchapter B, or Subchapter B, Chapter 2301,
17 applies that reduces the amount of coverage that would otherwise be
18 provided under the policy unless:

19 (1) the insured requests the endorsement; or

20 (2) the insurer provides the policyholder with a
21 written explanation of the change made by the endorsement before
22 the effective date of the change. (V.T.I.C. Art. 5.36.)

23 Sec. 2002.002. LIEN ON INSURED PROPERTY. A provision in an
24 insurance policy issued by an insurer subject to this subtitle or
25 Subchapter C, Chapter 5, is void if the provision states that the
26 encumbrance of the insured property by a lien of any character at
27 the time of or after the policy's issuance renders the policy void.

1 (V.T.I.C. Art. 5.37.)

2 Sec. 2002.003. COVERAGES FOR SPOUSES AND FORMER SPOUSES. A
3 homeowners insurance policy or fire insurance policy promulgated
4 under Article 5.35 or filed and in effect as provided by Subchapter
5 B, Chapter 2301, may not be delivered, issued for delivery, or
6 renewed in this state unless the policy contains the following
7 language: "It is understood and agreed that this policy, subject to
8 all other terms and conditions contained in this policy, when
9 covering residential community property, as defined by state law,
10 shall remain in full force and effect as to the interest of each
11 spouse covered, irrespective of divorce or change of ownership
12 between the spouses unless excluded by endorsement attached to this
13 policy until the expiration of the policy or until canceled in
14 accordance with the terms and conditions of this policy."

15 (V.T.I.C. Art. 5.35-1.)

16 Sec. 2002.004. JEWELRY COVERAGE. (a) In this section,
17 "personal property insurance" means insurance against damage to or
18 loss of tangible personal property, including coverage provided in
19 a homeowners insurance policy, residential fire and allied lines
20 insurance policy, or farm and ranch owners insurance policy.

21 (b) This section applies to each insurer that provides
22 personal property insurance in this state, including a county
23 mutual insurance company, farm mutual insurance company, Lloyd's
24 plan, and reciprocal or interinsurance exchange.

25 (c) An insurer that provides personal property insurance
26 coverage in this state for jewelry may elect to pay either:

27 (1) the stated value of the jewelry item; or

1 (2) the actual cost of replacing the jewelry item with
2 one of like kind and quality. (V.T.I.C. Art. 5.35-2.)

3 Sec. 2002.005. COINSURANCE CLAUSES. (a) Except as
4 otherwise provided by this section, an insurer subject to this
5 subtitle or Subchapter C, Chapter 5, may not issue an insurance
6 policy or contract covering property in this state that contains a
7 clause that:

8 (1) requires the insured to obtain or maintain a
9 larger amount of insurance than expressed in the policy or
10 contract; or

11 (2) in any way provides that the insured is liable as a
12 coinsurer with the insurer issuing the policy or contract for any
13 part of the loss or damage that may be caused by fire to the property
14 described in the policy or contract.

15 (b) A clause described by Subsection (a) is void.

16 (c) A coinsurance clause may be included in an insurance
17 policy written on cotton, grain, or other products in the process of
18 marketing, shipping, storing, or manufacturing.

19 (d) An insured may be given an option to accept an insurance
20 policy or contract that contains a clause described by Subsection
21 (a) covering a class of property other than the property described
22 by Subsection (c), a private dwelling, or a stock of merchandise
23 offered for sale at retail that has a value of less than \$10,000, if
24 the insured is allowed a reduction in the premium rate for the
25 policy or contract. A clause to which this subsection applies is
26 valid and binding. The commissioner may promulgate the premium
27 rates that apply to a coinsurance clause under this subsection.

1 (e) The commissioner by order may authorize or require the
2 use of any form of coinsurance clause in connection with an
3 insurance policy that insures against the hazards of tornado,
4 windstorm, and hail on any class of property. The commissioner may
5 adopt rules with reference to:

6 (1) coinsurance clauses authorized or required by this
7 subsection and the use of those clauses; and

8 (2) credits in premium rates for the use of
9 coinsurance clauses authorized or required by this subsection.

10 (V.T.I.C. Art. 5.38.)

11 Sec. 2002.006. PROVISIONS GOVERNING CERTAIN CONDITIONS OR
12 RISKS. (a) This chapter; Sections 403.002, 2001.001-2001.006,
13 2001.009, and 2001.010; Subchapter H, Chapter 544; Subchapter D,
14 Chapter 1806; Chapters 2003, 2004, 2006, and 2171; and Articles
15 5.25, 5.25A, 5.25-3, 5.26, 5.27, 5.28, 5.29, 5.30, 5.31, 5.32,
16 5.34, 5.35, 5.39, 5.40, and 5.41 govern the following in the same
17 manner and to the same extent those provisions govern fire
18 insurance and fire insurance rates:

19 (1) insurance coverage for any of the following
20 conditions or risks:

21 (A) weather or climatic conditions, including
22 lightning, tornado, windstorm, hail, cyclone, rain, or frost and
23 freeze;

24 (B) earthquake or volcanic eruption;

25 (C) smoke or smudge;

26 (D) excess or deficiency of moisture;

27 (E) flood;

1 (F) the rising water of an ocean or an ocean's
2 tributary;

3 (G) bombardment, invasion, insurrection, riot,
4 civil war or commotion, military or usurped power, or any order of a
5 civil authority made to prevent the spread of a conflagration,
6 epidemic or catastrophe;

7 (H) vandalism or malicious mischief;

8 (I) strike or lockout;

9 (J) explosion, as provided by Subsection (b);

10 (K) water or other fluid or substance resulting
11 from:

12 (i) the breakage or leakage of a sprinkler,
13 pump, or other apparatus erected for extinguishing fire, or a water
14 pipe or other conduit or container; or

15 (ii) casual water entering a building
16 through a leak or opening in the building or by seepage through
17 building walls; or

18 (L) accidental damage to a sprinkler, pump, fire
19 apparatus, pipe, or other conduit or container described by
20 Paragraph (K)(i);

21 (2) premium rates in this state for the insurance
22 described by Subdivision (1); and

23 (3) all matters pertaining to the insurance described
24 by Subdivision (1), except as provided by this section with respect
25 to marine insurance as defined by Section 1807.001.

26 (b) In this section:

27 (1) "explosion" includes:

1 (A) the explosion of a pressure vessel, other
2 than a steam boiler of more than 15 pounds pressure, in a building
3 designed and used solely for residential purposes by not more than
4 four families;

5 (B) an explosion of any kind originating outside
6 of an insured building or outside of the building containing the
7 insured property;

8 (C) the explosion of a pressure vessel that does
9 not contain steam or that is not operated with steam coils or steam
10 jets; and

11 (D) an electric disturbance causing or
12 concomitant with an explosion in public service or public utility
13 property; and

14 (2) insurance coverage for explosion does not include
15 coverage for loss of or damage to any property of the insured
16 resulting from the explosion of or injury to:

17 (A) a boiler, heater, or other fired pressure
18 vessel;

19 (B) an unfired pressure vessel;

20 (C) a pipe or container connected with a boiler
21 or vessel described by Paragraph (A) or (B);

22 (D) an engine, turbine, compressor, pump, or
23 wheel;

24 (E) an apparatus generating, transmitting, or
25 using electricity; or

26 (F) any other machinery or apparatus connected
27 with or operated by a boiler, vessel, or machine described by

1 Paragraphs (A)-(E).

2 (c) This section does not apply to:

3 (1) a farm mutual insurance company operating under
4 Chapter 911;

5 (2) a county mutual insurance company operating under
6 Chapter 912;

7 (3) a mutual insurance company engaged in business
8 under Chapter 12, Title 78, Revised Statutes, before that chapter's
9 repeal by Section 18, Chapter 40, Acts of the 41st Legislature, 1st
10 Called Session, 1929, as amended by Section 1, Chapter 60, General
11 Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, that
12 retains the rights and privileges under the repealed law to the
13 extent provided by those sections;

14 (4) the making of inspections or issuance of
15 certificates of inspections on a boiler, apparatus, or machinery
16 described by Subsection (b)(2), whether insured or otherwise; or

17 (5) the insurance of a vessel or craft, its cargo,
18 marine builder's risk, marine protection and indemnity, or another
19 risk commonly insured under a marine insurance policy, as
20 distinguished from an inland marine insurance policy. (V.T.I.C.
21 Art. 5.52, Secs. (a), (c); Art. 5.53 (part); Art. 5.54 (part).)

22 [Sections 2002.007-2002.050 reserved for expansion]

23 SUBCHAPTER B. POLICY FORMS

24 Sec. 2002.051. POLICY FORMS AND ENDORSEMENTS FOR
25 RESIDENTIAL PROPERTY INSURANCE. Notwithstanding Subsections
26 (a)-(j), Article 5.35, policy forms and endorsements for
27 residential property insurance in this state are regulated under

1 Subchapter A, Chapter 2301, and Article 5.13-2. (V.T.I.C. Art.
2 5.35, Sec. (k)(1), as added Acts 78th Leg., R.S., Ch. 206.)

3 Sec. 2002.052. APPLICABILITY OF OTHER LAW TO RESIDENTIAL
4 PROPERTY INSURANCE. An insurer may continue to use a policy form
5 or endorsement promulgated, approved, or adopted by the
6 commissioner under Article 5.35 before June 11, 2003, on
7 notification in writing to the commissioner that the insurer will
8 continue to use the policy form or endorsement. (V.T.I.C.
9 Art. 5.35, Sec. (k)(2), as added Acts 78th Leg., R.S., Ch. 206.)

10 [Sections 2002.053-2002.100 reserved for expansion]

11 SUBCHAPTER C. ITEMS PROVIDED TO POLICYHOLDER IN CONNECTION WITH
12 INSURANCE POLICY

13 Sec. 2002.101. RATE ANALYSIS. (a) On issuing a fire
14 insurance policy, an insurer engaged in the business of fire
15 insurance in this state shall provide the policyholder with a
16 written analysis of the rate or premium charged for the policy
17 showing the items of charge and credit that determine the rate or
18 premium.

19 (b) Subsection (a) does not apply if the insurer has
20 previously provided the policyholder with an analysis of the rate
21 or premium. (V.T.I.C. Art. 5.30, Sec. (a) (part).)

22 Sec. 2002.102. NOTICE OF RENEWAL. (a) An insurer,
23 including a farm mutual insurance company, county mutual insurance
24 company, Lloyd's plan, or reciprocal or interinsurance exchange,
25 that renews a homeowners insurance policy, fire and residential
26 allied lines insurance policy, farm and ranch owners insurance
27 policy, or farm and ranch insurance policy must provide the

1 policyholder with written notice of any difference between each
2 form of the policy offered to the policyholder on renewal and the
3 form of the policy held immediately before renewal.

4 (b) A notice provided under this section must be written in
5 plain language.

6 (c) The commissioner may adopt rules as necessary to
7 implement this section. (V.T.I.C. Art. 5.45.)

8 CHAPTER 2003. PROCEDURES FOR EVALUATING FIRE LOSS RISK

9 SUBCHAPTER A. EVALUATING FIRE LOSS RISK

10 Sec. 2003.001. FIRE LOSS INFORMATION

11 Sec. 2003.002. FIRE SUPPRESSION RATINGS FOR BORDER

12 MUNICIPALITIES

13 Sec. 2003.003. CREDIT FOR REDUCING FIRE HAZARD

14 Sec. 2003.004. POLICYHOLDER CREDIT FOR REDUCING HAZARD

15 [Sections 2003.005-2003.050 reserved for expansion]

16 SUBCHAPTER B. MUNICIPAL FIRE LOSS LISTS

17 Sec. 2003.051. ANNUAL LIST OF INSURED FIRE LOSSES BY

18 MUNICIPALITY

19 Sec. 2003.052. MUNICIPALITY'S REQUEST FOR LIST; RETURN

20 REPORT

21 Sec. 2003.053. LIST CORRECTIONS; USE

22 Sec. 2003.054. CHARGE FOR LIST AND FIRE RECORD SYSTEM

23 Sec. 2003.055. DEPARTMENT AUTHORITY TO REQUIRE

24 PROVISION OF FIRE LOSS INFORMATION

25 Sec. 2003.056. DISCRETIONARY PROVISION OF LIST

26 [Sections 2003.057-2003.100 reserved for expansion]

1 SUBCHAPTER C. VOLUNTARY INSPECTION PROGRAM

2 Sec. 2003.101. DEFINITIONS

3 Sec. 2003.102. RIGHT TO VOLUNTARY INSPECTION OF
4 PROPERTY CONDITION

5 Sec. 2003.103. PLAN OF OPERATION

6 Sec. 2003.104. ELIGIBLE INSPECTORS

7 Sec. 2003.105. PRESUMPTION OF INSURABILITY

8 Sec. 2003.106. ENFORCEMENT

9 Sec. 2003.107. RULES

10 CHAPTER 2003. PROCEDURES FOR EVALUATING FIRE LOSS RISK

11 SUBCHAPTER A. EVALUATING FIRE LOSS RISK

12 Sec. 2003.001. FIRE LOSS INFORMATION. (a) The department
13 shall ascertain as soon as practicable the annual fire loss in this
14 state.

15 (b) The department shall, in a manner that will aid in
16 determining equitable insurance rates and methods to reduce annual
17 fire loss and insurance rates of this state or subdivisions of this
18 state:

19 (1) obtain, make, and maintain records regarding the
20 annual fire loss in this state; and

21 (2) collect data concerning the annual fire loss as
22 necessary to enable the department to classify:

23 (A) fire losses in this state;

24 (B) the causes of those fire losses;

25 (C) the amount of the premiums collected for fire
26 loss for each class of risk; and

27 (D) the amount paid for the fire losses.

1 (c) The commissioner may designate one or more advisory
2 organizations or other agencies to gather, audit, and compile the
3 fire loss experience of insurers. The insurers shall bear the costs
4 incurred under this subsection.

5 (d) To implement this section, the department may:

6 (1) employ clerical personnel, inspectors, experts,
7 and other assistants; and

8 (2) incur other necessary expenses. (V.T.I.C.
9 Art. 5.25, Sec. (a) (part).)

10 Sec. 2003.002. FIRE SUPPRESSION RATINGS FOR BORDER
11 MUNICIPALITIES. In assigning or evaluating a fire suppression
12 rating for a municipality at or near the border between this state
13 and another state or the United Mexican States, the commissioner
14 shall consider the existence and capabilities of a fire department
15 or volunteer fire department that:

16 (1) serves an adjoining or nearby municipality in the
17 other state or the United Mexican States; and

18 (2) by agreement or by long-standing practice provides
19 fire suppression services to the municipality in this state.
20 (V.T.I.C. Art. 5.25-3 (part).)

21 Sec. 2003.003. CREDIT FOR REDUCING FIRE HAZARD. The
22 commissioner may give a locality, municipality, or other political
23 subdivision credit for:

24 (1) each fire hazard that the locality, municipality,
25 or other political subdivision reduces or removes;

26 (2) additional fire-fighting equipment, increased
27 police protection, or any other equipment or improvement that tends

1 to reduce the fire hazard of the locality, municipality, or other
2 political subdivision; and

3 (3) a good fire record made by the locality,
4 municipality, or other political subdivision. (V.T.I.C.
5 Art. 5.33, Sec. (a).)

6 Sec. 2003.004. POLICYHOLDER CREDIT FOR REDUCING
7 HAZARD. (a) The commissioner may require an insurer to give
8 credit to a policyholder for a hazard that the policyholder reduces
9 or removes.

10 (b) For purposes of this section, the following actions
11 constitute a reduction in hazard by a policyholder:

12 (1) the installation of a new standard fire hydrant
13 approved by the department within the required distance of a risk,
14 as prescribed by the department; or

15 (2) the use of compressed air foam technology in
16 fire-fighting equipment.

17 (c) The insurer shall give credit in the proportion that the
18 hazard is reduced or removed and shall refund to the policyholder
19 the proportional part of the unearned premium charged for the
20 hazard that is reduced or removed. (V.T.I.C. Art. 5.33, Secs. (b),
21 (c), (d).)

22 [Sections 2003.005-2003.050 reserved for expansion]

23 SUBCHAPTER B. MUNICIPAL FIRE LOSS LISTS

24 Sec. 2003.051. ANNUAL LIST OF INSURED FIRE LOSSES BY
25 MUNICIPALITY. (a) The department shall compile for each
26 municipality in this state a list for distribution to the
27 municipality of the insured fire and lightning losses that:

1 (1) exceed \$100; and
2 (2) are paid in the municipality for the preceding
3 statistical year under policy forms:

4 (A) adopted or approved by the commissioner and
5 authorized for use by Section 2301.052(b); or

6 (B) filed and in effect as provided by Section
7 2301.052(a).

8 (b) Each list must include:

9 (1) the name of each person recovering a loss under a
10 policy form described by Subsection (a);

11 (2) the address or location where the loss occurred;
12 and

13 (3) the amount paid by the insurer on the loss.

14 (c) The department shall develop each list from information
15 obtained from insurer reports of individual losses during the
16 statistical year. (V.T.I.C. Art. 5.25-2, Secs. 1, 2.)

17 Sec. 2003.052. MUNICIPALITY'S REQUEST FOR LIST; RETURN
18 REPORT. (a) The department shall provide to a municipality a copy
19 of the list compiled under Section 2003.051 for the municipality on
20 the request of the municipality or the municipality's authorized
21 agent or fire marshal.

22 (b) Each municipality shall investigate the information
23 contained in the list to determine the losses actually occurring
24 within the limits of the municipality. The municipality shall
25 report to the department:

26 (1) a list of the losses that actually occurred within
27 the limits of the municipality;

1 (2) a list of the losses that did not occur within the
2 limits of the municipality; and

3 (3) other evidence essential to establishing the
4 losses occurring in the municipality. (V.T.I.C. Art. 5.25-2, Secs.
5 3, 4.)

6 Sec. 2003.053. LIST CORRECTIONS; USE. The department
7 shall:

8 (1) make changes that the department considers
9 appropriate to correct the list compiled under Section 2003.051 for
10 a municipality; and

11 (2) use the corrected list to determine the fire
12 record credit or debit for the municipality for the next year.
13 (V.T.I.C. Art. 5.25-2, Sec. 5.)

14 Sec. 2003.054. CHARGE FOR LIST AND FIRE RECORD SYSTEM. The
15 commissioner shall set and collect a charge for compiling and
16 providing a list under this subchapter and as the commissioner
17 considers appropriate for administering the fire record system.
18 (V.T.I.C. Art. 5.25-2, Sec. 6.)

19 Sec. 2003.055. DEPARTMENT AUTHORITY TO REQUIRE PROVISION OF
20 FIRE LOSS INFORMATION. To accumulate statistical information for
21 the control and prevention of fires, the department may require
22 each municipality in this state and each insurer engaged in
23 business in this state to provide to the department a complete and
24 accurate report that lists all fire and lightning losses occurring
25 in this state that are reflected in the municipality's or insurer's
26 records. (V.T.I.C. Art. 5.25-2, Sec. 7.)

27 Sec. 2003.056. DISCRETIONARY PROVISION OF LIST. The

1 department is not required to provide a list compiled under this
2 subchapter if the fire record system is not in effect. (V.T.I.C.
3 Art. 5.25-2, Sec. 8.)

4 [Sections 2003.057-2003.100 reserved for expansion]

5 SUBCHAPTER C. VOLUNTARY INSPECTION PROGRAM

6 Sec. 2003.101. DEFINITIONS. In this subchapter:

7 (1) "Inspection" means a physical inspection of
8 property for which residential property insurance is sought.

9 (2) "Inspection certificate" means a certificate
10 issued under this subchapter by an inspector indicating that the
11 condition of property meets or exceeds minimum standards.

12 (3) "Inspector" means a person authorized by the
13 commissioner to perform inspections under this subchapter.

14 (4) "Minimum standards" means the standards adopted by
15 the commissioner by rule regarding the insurability of property
16 under this subchapter.

17 (5) "Residential property insurance" means insurance
18 against loss to real or tangible personal property at a fixed
19 location that is provided through a homeowners insurance policy, a
20 residential fire and allied lines insurance policy, or a farm and
21 ranch owners insurance policy. (V.T.I.C. Art. 5.33B, Sec. 2.)

22 Sec. 2003.102. RIGHT TO VOLUNTARY INSPECTION OF PROPERTY
23 CONDITION. A person with an insurable interest in real or tangible
24 personal property at a fixed location who desires to purchase
25 residential property insurance may obtain an independent
26 inspection of the condition of the property by an inspector
27 authorized to perform inspections under this subchapter. (V.T.I.C.

1 Art. 5.33B, Sec. 1.)

2 Sec. 2003.103. PLAN OF OPERATION. (a) The commissioner
3 shall adopt a plan of operation for the voluntary inspection
4 program.

5 (b) The plan of operation must include rules and standards
6 for the voluntary inspection program, including:

7 (1) the manner and scope of the inspections to be
8 performed;

9 (2) the contents of the written evaluation report;

10 (3) the form of the inspection certificate to be
11 issued;

12 (4) the term during which an inspection certificate is
13 valid;

14 (5) rules for the certification or licensing of
15 persons authorized to perform inspections under the program; and

16 (6) the fee that may be charged a person requesting an
17 inspection under the program. (V.T.I.C. Art. 5.33B, Sec. 3(a)
18 (part).)

19 Sec. 2003.104. ELIGIBLE INSPECTORS. Persons who may be
20 certified or licensed to perform inspections under this subchapter
21 include:

22 (1) a person licensed to perform real property
23 inspections under Chapter 1102, Occupations Code; and

24 (2) a designated employee or agent of a county or
25 municipality that chooses to establish a voluntary inspection
26 program to inspect residential properties within the territorial
27 limits of the county or municipality. (V.T.I.C. Art. 5.33B, Sec.

1 3(a) (part).)

2 Sec. 2003.105. PRESUMPTION OF INSURABILITY. (a) The
3 existence of an inspection certificate issued under this subchapter
4 creates a presumption that the condition of the property inspected
5 is adequate for the issuance of residential property insurance.

6 (b) If an inspection certificate is used in whole or in part
7 to determine insurability, an insurer may require as a condition of
8 issuing a residential property insurance policy that the applicant
9 for that insurance provide a written statement that there has not
10 been a material or substantial change to the property condition
11 since the date of the inspection certificate.

12 (c) An insurer who receives an inspection certificate may
13 not use the condition of the property as grounds to refuse to issue
14 or renew residential property insurance unless the insurer:

15 (1) reinspects the property; and

16 (2) specifies the areas of deficiency in the insurer's
17 declination letter. (V.T.I.C. Art. 5.33B, Sec. 4.)

18 Sec. 2003.106. ENFORCEMENT. The commissioner by rule may
19 provide for the use of any disciplinary procedure authorized by
20 this code to:

21 (1) maintain the integrity of the voluntary inspection
22 program; or

23 (2) ensure compliance with this subchapter. (V.T.I.C.
24 Art. 5.33B, Sec. 5.)

25 Sec. 2003.107. RULES. In addition to the plan of operation
26 adopted under Section 2003.103, the commissioner may adopt rules
27 that are appropriate to accomplish the purposes of this subchapter.

1 (V.T.I.C. Art. 5.33B, Sec. 6.)

2 CHAPTER 2004. RESIDENTIAL PROPERTY INSURANCE IN UNDERSERVED AREAS

3 Sec. 2004.001. DEFINITION

4 Sec. 2004.002. DESIGNATION OF UNDERSERVED AREAS

5 Sec. 2004.003. AUTHORIZATION FOR ISSUANCE OF INSURANCE

6 Sec. 2004.004. EXCLUSION OF CERTAIN COVERAGE

7 Sec. 2004.005. AVAILABILITY OF COVERAGE

8 Sec. 2004.006. POLICY FORMS

9 Sec. 2004.007. INAPPLICABILITY OF CERTAIN LAWS TO

10 PREMIUMS

11 Sec. 2004.008. RATES

12 CHAPTER 2004. RESIDENTIAL PROPERTY INSURANCE IN UNDERSERVED AREAS

13 Sec. 2004.001. DEFINITION. In this chapter, "residential
14 property insurance" means insurance against loss to real or
15 tangible personal property at a fixed location that is provided
16 through a homeowners insurance policy, residential fire and allied
17 lines insurance policy, or farm and ranch owners insurance policy.
18 (V.T.I.C. Art. 5.35-3, Sec. 1(a) (part).)

19 Sec. 2004.002. DESIGNATION OF UNDERSERVED AREAS. (a) The
20 commissioner by rule may designate an area as an underserved area
21 for residential property insurance.

22 (b) In determining which areas to designate as underserved,
23 the commissioner shall consider:

24 (1) whether residential property insurance is not
25 reasonably available to a substantial number of owners of insurable
26 property in the area; and

27 (2) any other relevant factor as determined by the

1 commissioner. (V.T.I.C. Art. 5.35-3, Sec. 1(a) (part).)

2 Sec. 2004.003. AUTHORIZATION FOR ISSUANCE OF
3 INSURANCE. An insurer authorized to write property or casualty
4 insurance in this state, including a Lloyd's plan and a reciprocal
5 or interinsurance exchange, that writes residential property
6 insurance in this state may write that insurance on forms adopted
7 under this chapter. (V.T.I.C. Art. 5.35-3, Sec. 2.)

8 Sec. 2004.004. EXCLUSION OF CERTAIN COVERAGE. Insurance
9 provided under this chapter may not include windstorm and hail
10 insurance coverage for a risk eligible for that coverage under
11 Chapter 2210. (V.T.I.C. Art. 5.35-3, Sec. 1(b).)

12 Sec. 2004.005. AVAILABILITY OF COVERAGE. In a designated
13 underserved area, each insurer described by Section 2004.003 shall
14 provide to the insurer's agents, and the agents shall offer to all
15 insureds, the full range of coverages prescribed under this chapter
16 subject to the insurer's applicable rates and underwriting
17 guidelines. (V.T.I.C. Art. 5.35-3, Sec. 5.)

18 Sec. 2004.006. POLICY FORMS. (a) The commissioner shall
19 adopt policy forms for residential property insurance that are
20 specifically for use in designated underserved areas. The policy
21 forms must include a basic policy covering fire and allied lines
22 perils with endorsements providing additional coverage at the
23 insured's option.

24 (b) An insurer writing insurance in an underserved area may
25 use the policy forms adopted under this chapter. (V.T.I.C.
26 Art. 5.35-3, Sec. 3.)

27 Sec. 2004.007. INAPPLICABILITY OF CERTAIN LAWS TO

1 PREMIUMS. The premium for an insurance policy written under this
2 chapter is not:

- 3 (1) subject to tax under Chapter 221; and
4 (2) considered net direct premiums under Section
5 2210.003(7). (V.T.I.C. Art. 5.35-3, Secs. 6, 7.)

6 Sec. 2004.008. RATES. Rates for coverage provided under
7 this chapter are determined according to the provisions of this
8 code applicable to the insurer providing the coverage. (V.T.I.C.
9 Art. 5.35-3, Sec. 4.)

10 CHAPTER 2005. HOME WARRANTY AND HOME
11 PROTECTION INSURANCE

12 Sec. 2005.001. DEFINITIONS

13 Sec. 2005.002. AUTHORIZATION TO WRITE CERTAIN
14 INSURANCE

15 Sec. 2005.003. MANNER OF REGULATION

16 Sec. 2005.004. LIMITS OF COVERAGE

17 CHAPTER 2005. HOME WARRANTY AND HOME
18 PROTECTION INSURANCE

19 Sec. 2005.001. DEFINITIONS. In this chapter:

20 (1) "Home protection insurance" means coverage
21 insuring a purchaser of a home protection service or product
22 against actual property loss.

23 (2) "Home protection service or product" means a
24 service or product used for the protection of residential property,
25 including a service or product provided by a person regulated under
26 Chapter 1702, Occupations Code.

27 (3) "Home warranty insurance" means coverage:

1 (A) insuring performance by a builder of
2 residential property of the builder's warranty obligations to a
3 purchaser of the residential property; or

4 (B) insuring against named defects arising from
5 failure of the builder to construct residential property in
6 accordance with specified construction standards. (V.T.I.C. Art.
7 5.53-A, Sec. 2.)

8 Sec. 2005.002. AUTHORIZATION TO WRITE CERTAIN INSURANCE.
9 An insurer authorized to engage in the business of fire insurance
10 and allied lines or inland marine insurance may write home warranty
11 insurance or home protection insurance in this state. (V.T.I.C.
12 Art. 5.53-A, Sec. 1(a).)

13 Sec. 2005.003. MANNER OF REGULATION. Home warranty
14 insurance or home protection insurance is not inland marine
15 insurance, but is governed in the same manner and to the same extent
16 as inland marine insurance. (V.T.I.C. Art. 5.53-A, Sec. 1(b).)

17 Sec. 2005.004. LIMITS OF COVERAGE. The amount of coverage
18 under a home protection insurance policy may not exceed \$2,000 for
19 any single occurrence. (V.T.I.C. Art. 5.53-A, Sec. 1(c).)

20 CHAPTER 2006. PREMIUM RATE DISCOUNTS

21 SUBCHAPTER A. OPTIONAL PREMIUM DISCOUNT FOR USE OF INSULATING

22 CONCRETE FORM SYSTEM

23 Sec. 2006.001. DEFINITIONS

24 Sec. 2006.002. OPTIONAL PREMIUM DISCOUNT

25 Sec. 2006.003. PROPERTY INSPECTION

26 Sec. 2006.004. PREMIUM DISCOUNT; EXCEPTION

27 Sec. 2006.005. RULES

[Sections 2006.006-2006.050 reserved for expansion]

SUBCHAPTER B. OPTIONAL PREMIUM DISCOUNT FOR CERTAIN RESIDENTIAL
PROPERTY INSURANCE POLICIES

Sec. 2006.051. DEFINITIONS

Sec. 2006.052. OPTIONAL PREMIUM DISCOUNT

Sec. 2006.053. APPROVAL OF ACTUARIALLY JUSTIFIED
PREMIUM DISCOUNT

Sec. 2006.054. LIMIT ON PREMIUM DISCOUNT

Sec. 2006.055. RULES AND GUIDELINES

CHAPTER 2006. PREMIUM RATE DISCOUNTS

SUBCHAPTER A. OPTIONAL PREMIUM DISCOUNT FOR USE OF INSULATING
CONCRETE FORM SYSTEM

Sec. 2006.001. DEFINITIONS. In this subchapter:

(1) "Applicant" includes:

- (A) an applicant for new insurance coverage; and
- (B) a policyholder renewing insurance coverage.

(2) "Insulating concrete form system" means a building construction system primarily used to frame exterior walls in which polystyrene foam forms are placed in the walls of a structure under construction and filled with concrete and steel reinforcing material to become a permanent part of the structure.

(3) "Insurer" means an insurer authorized to write property and casualty insurance in this state, including:

- (A) a county mutual insurance company;
- (B) a farm mutual insurance company;
- (C) a Lloyd's plan; and
- (D) a reciprocal or interinsurance exchange.

1 (V.T.I.C. Art. 5.33E, Sec. 1.)

2 Sec. 2006.002. OPTIONAL PREMIUM DISCOUNT. (a) In
3 accordance with the rules adopted by the commissioner under this
4 subchapter, an insurer may grant to an applicant a discount in the
5 applicant's homeowners insurance premiums for insured property on
6 receipt of written verification from the applicant that the
7 property was constructed with an insulating concrete form system.

8 (b) The commissioner by rule shall prescribe the
9 requirements for determining that a structure was constructed with
10 an insulating concrete form system.

11 (c) Verification under this section must comply with the
12 requirements prescribed by the commissioner. (V.T.I.C.
13 Art. 5.33E, Secs. 2, 3(a) (part).)

14 Sec. 2006.003. PROPERTY INSPECTION. (a) If determined
15 necessary by the commissioner, the rules adopted under this
16 subchapter may require an inspection of the property to be insured.

17 (b) The applicant shall pay the costs of a required
18 inspection. (V.T.I.C. Art. 5.33E, Sec. 3(b).)

19 Sec. 2006.004. PREMIUM DISCOUNT; EXCEPTION. (a) The
20 commissioner by rule shall establish the premium discount under
21 this subchapter based on sound actuarial principles.

22 (b) The commissioner may approve a premium discount greater
23 or less than the discount established by rule under Subsection (a)
24 if:

25 (1) the insurer files the proposed discount with the
26 department; and

27 (2) the commissioner determines that the proposed

1 (1) discount the premiums that would otherwise be
2 charged for the policy by not less than three percent if the
3 policyholder:

4 (A) has continuously been a residential property
5 insurance policyholder with the insurer or an affiliate of the
6 insurer; and

7 (B) has not filed a residential property
8 insurance claim during the three years before the effective date of
9 the policy; and

10 (2) increase the amount of the discount by one percent
11 for each subsequent year in which the policyholder:

12 (A) has been a residential property insurance
13 policyholder with the insurer or an affiliate of the insurer; and

14 (B) has not filed a residential property
15 insurance claim.

16 (b) This section applies regardless of whether any of the
17 policies that continuously covered the policyholder was a different
18 kind of residential property insurance policy from the policy
19 eligible for the premium discount. (V.T.I.C. Art. 5.43, Secs. (b),
20 (d).)

21 Sec. 2006.053. APPROVAL OF ACTUARIALLY JUSTIFIED PREMIUM
22 DISCOUNT. The commissioner may approve a premium discount filed
23 with the department that is greater or less than the discount
24 specified by this subchapter if the commissioner determines the
25 discount is actuarially justified. (V.T.I.C. Art. 5.43, Sec. (e)
26 (part).)

27 Sec. 2006.054. LIMIT ON PREMIUM DISCOUNT. An insurer that

1 provides a premium discount under this subchapter is not required
2 to provide the discount in an amount that exceeds 10 percent of the
3 premiums that would otherwise be charged for the residential
4 property insurance policy. (V.T.I.C. Art. 5.43, Sec. (c).)

5 Sec. 2006.055. RULES AND GUIDELINES. (a) The commissioner
6 shall adopt rules as necessary to implement this subchapter.

7 (b) The commissioner by rule shall establish guidelines
8 under which an insurer that provides a premium discount under this
9 subchapter shall determine the appropriate discount based on sound
10 actuarial principles. (V.T.I.C. Art. 5.43, Sec. (e) (part).)

11 CHAPTER 2007. ASSESSMENT FOR RURAL FIRE PROTECTION

12 Sec. 2007.001. APPLICABILITY OF CHAPTER

13 Sec. 2007.002. ASSESSMENT

14 Sec. 2007.003. DETERMINATION OF ASSESSMENT

15 Sec. 2007.004. DATES OF ASSESSMENT AND PAYMENT

16 Sec. 2007.005. RECOVERY OF ASSESSMENT

17 Sec. 2007.006. NOTICE TO POLICYHOLDERS

18 Sec. 2007.007. VOLUNTEER FIRE DEPARTMENT ASSISTANCE

19 FUND

20 Sec. 2007.008. RULES; COOPERATION

21 Sec. 2007.009. EXPIRATION OF CHAPTER

22 CHAPTER 2007. ASSESSMENT FOR RURAL FIRE PROTECTION

23 Sec. 2007.001. APPLICABILITY OF CHAPTER. This chapter
24 applies only to an insurer that:

25 (1) is authorized to engage in business in this state,
26 including a stock company, mutual insurance company, farm mutual
27 insurance company, county mutual insurance company, Lloyd's plan,

1 and reciprocal or interinsurance exchange; and

2 (2) writes a policy of:

3 (A) homeowners insurance;

4 (B) fire insurance;

5 (C) farm and ranch owners insurance;

6 (D) private passenger automobile physical damage
7 insurance;

8 (E) commercial automobile physical damage
9 insurance; or

10 (F) commercial multiple peril insurance.

11 (V.T.I.C. Art. 5.102, Secs. 1(1), (2) (part), 2.)

12 Sec. 2007.002. ASSESSMENT. The comptroller shall assess
13 against all insurers to which this chapter applies a combined total
14 of \$15 million for each 12-month period. (V.T.I.C. Art. 5.102,
15 Sec. 3(a) (part).)

16 Sec. 2007.003. DETERMINATION OF ASSESSMENT. (a) In this
17 section, "net direct premium" means the gross direct premium
18 written and reported by an insurer on annual financial statements
19 on:

20 (1) an insurance policy described by Section
21 2007.001(2), other than a commercial multiple peril policy; and

22 (2) the nonliability portion of a commercial multiple
23 peril policy.

24 (b) Each insurer shall pay a portion of the assessment in
25 the proportion that the insurer's net direct premiums for the
26 period for which the assessment is made bear to the aggregate net
27 direct premiums written in this state by all insurers for that

1 period. (V.T.I.C. Art. 5.102, Secs. 1(2) (part), 3(a) (part).)

2 Sec. 2007.004. DATES OF ASSESSMENT AND PAYMENT. (a) The
3 comptroller shall assess insurers under this chapter on or before
4 September 1 of each year.

5 (b) An insurer shall pay the amount of the insurer's
6 assessment on or after the 60th day after the date the comptroller
7 assesses the insurer. (V.T.I.C. Art. 5.102, Secs. 3(b), (c).)

8 Sec. 2007.005. RECOVERY OF ASSESSMENT. An insurer may
9 recover an assessment under this chapter by:

10 (1) reflecting the assessment as an expense in a rate
11 filing required under this code; or

12 (2) charging the insurer's policyholders. (V.T.I.C.
13 Art. 5.102, Sec. 3(d).)

14 Sec. 2007.006. NOTICE TO POLICYHOLDERS. (a) An insurer
15 that recovers an assessment by charging the insurer's policyholders
16 under Section 2007.005 shall provide notice to each policyholder
17 regarding the amount of the assessment being recovered.

18 (b) The notice may be included on:

19 (1) a declarations page;

20 (2) a renewal certificate; or

21 (3) a billing statement.

22 (c) The commissioner by rule may adopt a form for providing
23 the notice. (V.T.I.C. Art. 5.102, Sec. 3(e).)

24 Sec. 2007.007. VOLUNTEER FIRE DEPARTMENT ASSISTANCE
25 FUND. The comptroller shall credit assessments collected under
26 this chapter to the volunteer fire department assistance fund
27 created under Section 614.104, Government Code. (V.T.I.C.

1 Art. 5.102, Sec. 3(f).)

2 Sec. 2007.008. RULES; COOPERATION. (a) The comptroller
3 and the commissioner shall adopt rules as necessary to implement
4 this chapter.

5 (b) The comptroller and the department shall cooperate as
6 necessary to implement this chapter. (V.T.I.C. Art. 5.102, Sec.
7 4.)

8 Sec. 2007.009. EXPIRATION OF CHAPTER. This chapter
9 expires September 1, 2011. (V.T.I.C. Art. 5.102, Sec. 5.)

10 [Chapters 2008-2050 reserved for expansion]

11 SUBTITLE E. WORKERS' COMPENSATION INSURANCE

12 CHAPTER 2051. GENERAL PROVISIONS: WORKERS' COMPENSATION INSURANCE

13 SUBCHAPTER A. APPLICABILITY AND CONSTRUCTION

14 Sec. 2051.001. DEFINITION

15 Sec. 2051.002. CONSTRUCTION OF CERTAIN LAWS

16 [Sections 2051.003-2051.050 reserved for expansion]

17 SUBCHAPTER B. COMPENSATION AND EXPENSES

18 Sec. 2051.051. LIMITATION ON COMPENSATION AND EXPENSES

19 [Sections 2051.052-2051.100 reserved for expansion]

20 SUBCHAPTER C. POLICYHOLDER DUTIES

21 Sec. 2051.101. DISCLOSURE BY POLICYHOLDER REQUIRED

22 [Sections 2051.102-2051.150 reserved for expansion]

23 SUBCHAPTER D. DUTIES AND PROHIBITED ACTS; ENFORCEMENT

24 Sec. 2051.151. NOTICE OF CLAIMS INFORMATION TO

25 POLICYHOLDER REQUIRED; ADMINISTRATIVE

26 PENALTY

1 Sec. 2051.152. PROHIBITED ACTS BY PERSON;

2 ADMINISTRATIVE PENALTY

3 Sec. 2051.153. LIABILITY OF POLICYHOLDER FOR

4 ADDITIONAL PREMIUM

5 Sec. 2051.154. PROHIBITED ACT BY INSURER;

6 ADMINISTRATIVE PENALTY

7 Sec. 2051.155. SANCTION OF AGENT REQUIRED

8 Sec. 2051.156. CANCELLATION OF CERTIFICATE OF

9 AUTHORITY REQUIRED

10 Sec. 2051.157. PENALTY FOR CERTAIN VIOLATIONS

11 [Sections 2051.158-2051.200 reserved for expansion]

12 SUBCHAPTER E. RULES

13 Sec. 2051.201. RULEMAKING AUTHORITY: WORKERS'

14 COMPENSATION INSURANCE

15 CHAPTER 2051. GENERAL PROVISIONS: WORKERS' COMPENSATION INSURANCE

16 SUBCHAPTER A. APPLICABILITY AND CONSTRUCTION

17 Sec. 2051.001. DEFINITION. In this chapter, "insurance
18 company" means a stock company, mutual insurance company,
19 reciprocal or interinsurance exchange, or Lloyd's plan authorized
20 to engage in the business of workers' compensation insurance in
21 this state. (V.T.I.C. Art. 5.63.)

22 Sec. 2051.002. CONSTRUCTION OF CERTAIN LAWS. The
23 following shall be construed and applied independently of any other
24 law that relates to insurance rates and forms or prescribes the
25 duties of the commissioner or the department:

26 (1) this chapter;

27 (2) Subchapter D, Chapter 5;

1 (3) Chapter 251, as that chapter relates to workers'
2 compensation insurance;

3 (4) Chapters 255, 426, 2052, and 2053; and

4 (5) Chapter 406A, Labor Code. (V.T.I.C. Art. 5.66
5 (part).)

6 [Sections 2051.003-2051.050 reserved for expansion]

7 SUBCHAPTER B. COMPENSATION AND EXPENSES

8 Sec. 2051.051. LIMITATION ON COMPENSATION AND EXPENSES.

9 The total amount of necessary compensation of experts, clerical
10 personnel, and other department employees, necessary travel
11 expenses, and other expenses necessarily incurred to implement the
12 purposes of the laws referenced in Sections 2051.002(1), (2), (3),
13 (4), and (5) may not exceed the total amount assessed and collected
14 from insurance companies writing workers' compensation insurance
15 in this state. (V.T.I.C. Art. 5.67 (part).)

16 [Sections 2051.052-2051.100 reserved for expansion]

17 SUBCHAPTER C. POLICYHOLDER DUTIES

18 Sec. 2051.101. DISCLOSURE BY POLICYHOLDER REQUIRED. (a) A
19 policyholder shall fully disclose to the policyholder's insurance
20 company:

21 (1) information concerning the policyholder's
22 ownership, change of ownership, operations, or payroll; and

23 (2) the policyholder's records relating to workers'
24 compensation insurance.

25 (b) The commissioner shall adopt rules necessary to
26 implement this section. (V.T.I.C. Art. 5.65B, Secs. (a), (d).)

27 [Sections 2051.102-2051.150 reserved for expansion]

1 SUBCHAPTER D. DUTIES AND PROHIBITED ACTS; ENFORCEMENT

2 Sec. 2051.151. NOTICE OF CLAIMS INFORMATION TO POLICYHOLDER
3 REQUIRED; ADMINISTRATIVE PENALTY. (a) Except as otherwise
4 provided by Subsection (b), an insurance company that writes
5 workers' compensation insurance in this state shall notify a
6 policyholder of a claim that is filed against the policyholder's
7 policy and, after the initial notice, the company shall notify the
8 policyholder of:

9 (1) any proposal to settle the claim; or

10 (2) on receipt of a written request from the
11 policyholder, any administrative or judicial proceeding relating
12 to the resolution of the claim, including a benefit review
13 conference conducted by the Texas Workers' Compensation
14 Commission.

15 (b) A policyholder may waive the notice required by
16 Subsection (a).

17 (c) An insurance company that writes workers' compensation
18 insurance in this state, on the written request of a policyholder,
19 shall provide to the policyholder:

20 (1) a list of:

21 (A) claims charged against the policy; and

22 (B) payments made and reserves established on
23 each claim; and

24 (2) a statement explaining the effect of claims on
25 premium rates.

26 (d) The insurance company shall provide the information
27 described by Subsection (c) in writing not later than the 30th day

1 after the date the company receives the policyholder's written
2 request for the information. For purposes of this subsection,
3 information is considered to be provided to the policyholder on the
4 date the information is:

- 5 (1) received by the United States Postal Service; or
- 6 (2) personally delivered to the policyholder.

7 (e) An insurance company that fails to comply with this
8 section commits a Class D administrative violation under Subtitle
9 A, Title 5, Labor Code. (V.T.I.C. Art. 5.65A.)

10 Sec. 2051.152. PROHIBITED ACTS BY PERSON; ADMINISTRATIVE
11 PENALTY. (a) A person commits an administrative violation if the
12 person:

13 (1) to obtain workers' compensation insurance coverage
14 for the person or another person, intentionally or knowingly:

- 15 (A) makes a false statement;
- 16 (B) misrepresents or conceals a material fact;
- 17 (C) makes a false entry in, fabricates, alters,
18 conceals, or destroys a document; or
- 19 (D) conspires to commit an act listed in
20 Paragraph (A), (B), or (C); or

21 (2) intentionally and knowingly obtains or maintains:

- 22 (A) workers' compensation insurance coverage
23 from an insurer that is not authorized to engage in business in this
24 state; or
- 25 (B) alternative coverage from an insurer in
26 violation of this code.

27 (b) An administrative violation under Subsection (a) is

1 punishable by an administrative penalty not to exceed \$5,000
2 assessed in accordance with the procedures established for an
3 administrative violation under Chapter 415, Labor Code.

4 (c) Each day an administrative violation under Subsection
5 (a)(2) occurs or continues is a separate violation. (V.T.I.C.
6 Art. 5.65C, Secs. (a), (b), (f).)

7 Sec. 2051.153. LIABILITY OF POLICYHOLDER FOR ADDITIONAL
8 PREMIUM. (a) If a policyholder commits an administrative
9 violation under Section 2051.152 and obtains workers' compensation
10 insurance coverage at a premium that is less than the premium that
11 would have been charged if the policyholder had not committed the
12 administrative violation, the policyholder is liable to the insurer
13 for:

14 (1) the difference between the premium due and the
15 premium actually charged; and

16 (2) reasonable interest and attorney's fees.

17 (b) For the purposes of this section, "insurer" includes the
18 Texas Mutual Insurance Company. (V.T.I.C. Art. 5.65C, Sec. (d).)

19 Sec. 2051.154. PROHIBITED ACT BY INSURER; ADMINISTRATIVE
20 PENALTY. (a) An insurer commits an administrative violation if the
21 insurer directly or indirectly requires a person to apply for or
22 purchase an insurance policy, other than a workers' compensation
23 insurance policy, as a condition of issuing a workers' compensation
24 insurance policy.

25 (b) An insurer that violates this section is subject to
26 administrative penalties under Chapter 84. (V.T.I.C. Art. 5.65C,
27 Sec. (e).)

1 Sec. 2051.155. SANCTION OF AGENT REQUIRED. The
2 commissioner shall impose a sanction in accordance with Chapter 82
3 against an agent who commits an administrative violation under
4 Section 2051.152 or 2051.154. (V.T.I.C. Art. 5.65C, Sec. (c).)

5 Sec. 2051.156. CANCELLATION OF CERTIFICATE OF AUTHORITY
6 REQUIRED. The commissioner shall cancel an insurance company's
7 certificate of authority to engage in the business of workers'
8 compensation insurance in this state on a second conviction of an
9 officer or representative of the company for violating a provision
10 of a law referenced in Section 2051.002(1), (2), (3), (4), or (5)
11 relating to that business. (V.T.I.C. Art. 5.64.)

12 Sec. 2051.157. PENALTY FOR CERTAIN VIOLATIONS. An officer
13 or other representative of an insurance company is subject to a fine
14 of not less than \$100 or more than \$500 if the officer or other
15 representative violates any provision of the following relating to
16 the company's business:

- 17 (1) Subchapter A or B;
18 (2) Section 2051.156 or 2051.201;
19 (3) Chapter 426 or 2052;
20 (4) Subchapter A, C, or D, Chapter 2053;
21 (5) Section 2053.051, 2053.052, 2053.053, or
22 2053.055; or
23 (6) Article 5.66. (V.T.I.C. Art. 5.68-1.)

24 [Sections 2051.158-2051.200 reserved for expansion]

25 SUBCHAPTER E. RULES

26 Sec. 2051.201. RULEMAKING AUTHORITY: WORKERS'
27 COMPENSATION INSURANCE. The commissioner may adopt and enforce all

1 reasonable rules as are necessary to carry out the provisions of a
2 law referenced in Section 2051.002(1), (2), (3), (4), or (5).
3 (V.T.I.C. Art. 5.62.)

4 CHAPTER 2052. POLICY PROVISIONS AND FORMS FOR WORKERS'

5 COMPENSATION INSURANCE

6 Sec. 2052.001. DEFINITION

7 Sec. 2052.002. STANDARD POLICY FORMS; EXCEPTIONS

8 Sec. 2052.003. AGREEMENT REQUIRED TO BE CONTAINED IN

9 APPLICATION AND POLICY

10 Sec. 2052.004. POLICYHOLDER DIVIDENDS

11 CHAPTER 2052. POLICY PROVISIONS AND FORMS FOR WORKERS'

12 COMPENSATION INSURANCE

13 Sec. 2052.001. DEFINITION. In this chapter, "insurance
14 company" means a stock company, mutual insurance company,
15 reciprocal or interinsurance exchange, or Lloyd's plan authorized
16 to engage in the business of workers' compensation insurance in
17 this state. (V.T.I.C. Art. 5.63.)

18 Sec. 2052.002. STANDARD POLICY FORMS; EXCEPTIONS. (a) The
19 commissioner shall prescribe standard policy forms and a uniform
20 policy for workers' compensation insurance.

21 (b) In writing workers' compensation insurance in this
22 state, an insurance company may not use a form other than one
23 prescribed under this section unless the form is an endorsement:

24 (1) appropriate to the company's plan of operation;

25 and

26 (2) submitted to and approved by the department.

27 (V.T.I.C. Arts. 5.56 (part), 5.57 (part).)

1 Sec. 2052.003. AGREEMENT REQUIRED TO BE CONTAINED IN
2 APPLICATION AND POLICY. (a) A contract or other agreement with
3 respect to workers' compensation insurance coverage that is not
4 contained in the application and policy required by this chapter
5 violates this subtitle and is void.

6 (b) An insurance company that uses a contract or other
7 agreement described by Subsection (a) engages in conduct that
8 constitutes sufficient grounds for the revocation of the company's
9 certificate of authority to write workers' compensation insurance
10 in this state. (V.T.I.C. Art. 5.57 (part).)

11 Sec. 2052.004. POLICYHOLDER DIVIDENDS. (a) Subject to
12 Subsections (b) and (c), this subtitle and Article 5.66 may not be
13 construed to prohibit an insurance company, including the Texas
14 Mutual Insurance Company, from issuing participating policies.

15 (b) A policyholder dividend under a workers' compensation
16 insurance policy:

17 (1) does not take effect until approved by the
18 department; and

19 (2) may not be approved by the department until the
20 insurance company provides adequate reserves.

21 (c) For purposes of Subsection (b), reserves must be
22 computed on the same basis for all classes of insurance companies
23 operating under this subtitle and Article 5.66. (V.T.I.C. Art.
24 5.60, Sec. (c).)

25 CHAPTER 2053. RATES FOR WORKERS' COMPENSATION INSURANCE

26 SUBCHAPTER A. RATE FILINGS

27 Sec. 2053.001. DEFINITIONS

- 1 Sec. 2053.002. RATE STANDARDS
- 2 Sec. 2053.003. RATE FILING AND SUPPORTING INFORMATION
- 3 Sec. 2053.004. PUBLIC INSPECTION OF INFORMATION
- 4 Sec. 2053.005. EFFECTIVE DATE OF RATE; HEARING
- 5 Sec. 2053.006. DISAPPROVAL OF RATE FILING; HEARING
- 6 Sec. 2053.007. DISAPPROVAL OF RATE; HEARING
- 7 Sec. 2053.008. EFFECT OF DISAPPROVAL ORDER
- 8 Sec. 2053.009. GRIEVANCE
- 9 Sec. 2053.010. ADMINISTRATIVE PENALTY
- 10 [Sections 2053.011-2053.050 reserved for expansion]
- 11 SUBCHAPTER B. RATE ADMINISTRATION
- 12 Sec. 2053.051. HAZARD CLASSIFICATION SYSTEM
- 13 Sec. 2053.052. EXPERIENCE RATING PLAN
- 14 Sec. 2053.053. USE OF HAZARD CLASSIFICATIONS REQUIRED
- 15 Sec. 2053.054. USE OF INCURRED CLAIMS EXPERIENCE IN
- 16 FUTURE RATINGS REQUIRED
- 17 Sec. 2053.055. RATE ADJUSTMENT
- 18 [Sections 2053.056-2053.100 reserved for expansion]
- 19 SUBCHAPTER C. STATISTICAL PLANS; AGENT
- 20 Sec. 2053.101. STATISTICAL PLANS FOR REPORTING LOSS
- 21 EXPERIENCE AND OTHER DATA
- 22 Sec. 2053.102. TREATMENT OF PAYMENTS UNDER STATISTICAL
- 23 PLAN
- 24 Sec. 2053.103. STATISTICAL AGENT
- 25 [Sections 2053.104-2053.150 reserved for expansion]

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27 CHAPTER 2053. RATES FOR WORKERS' COMPENSATION INSURANCE

SUBCHAPTER A. RATE FILINGS

Sec. 2053.001. DEFINITIONS. In this subchapter:

(1) "Filer" means an insurance company that files rates, prospective loss costs, or supplementary rating information under this subchapter.

(2) "Insurance company" means a person authorized to engage in the business of workers' compensation insurance in this state. The term includes the Texas Mutual Insurance Company.

(3) "Prospective loss cost" means that portion of a rate that:

(A) does not include a provision for expenses or profit, other than loss adjustment expenses; and

(B) is based on historical aggregate losses and loss adjustment expenses projected by development to the ultimate value of those losses and expenses and projected through trending to a future point in time.

(4) "Rate" means the cost of workers' compensation insurance per exposure unit, whether expressed as a single number or as a prospective loss cost, adjusted to account for the treatment of expenses, profit, and individual insurance company variation in loss experience, before applying individual risk variations based on loss or expense considerations. The term does not include a minimum premium.

(5) "Supplementary rating information" means any manual, rating plan or schedule, plan of rules, rating rule, classification system, territory code or description, or other similar information required to determine the applicable premium

1 for an insured. The term includes increased limits factors,
2 classification relativities, deductible relativities, and other
3 similar factors and relativities.

4 (6) "Supporting information" means:

5 (A) the experience and judgment of the filer and
6 the experience or information of other insurance companies;

7 (B) the interpretation of any other information
8 on which the filer relied;

9 (C) a description of methods used in making a
10 rate; and

11 (D) any other information the department
12 requires to be filed. (V.T.I.C. Art. 5.55, Secs. 1(1), (2), (3),
13 (4), (6), (7).)

14 Sec. 2053.002. RATE STANDARDS. (a) In setting rates, an
15 insurance company shall consider:

16 (1) past and prospective loss cost experience;

17 (2) operation expenses;

18 (3) investment income;

19 (4) a reasonable margin for profit and contingencies;

20 and

21 (5) any other relevant factor.

22 (b) A rate may not be excessive, inadequate, or unfairly
23 discriminatory.

24 (c) An insurance company may:

25 (1) group risks by classification to establish rates
26 and minimum premiums; and

27 (2) modify classification rates to produce rates for

1 individual risks in accordance with rating plans that establish
2 standards for measuring variations in those risks on the basis of
3 any factor listed in Subsection (a).

4 (d) In setting rates that apply only to policyholders in
5 this state, an insurance company shall use available premium, loss,
6 claim, and exposure information from this state to the full extent
7 that the information is actuarially credible. The insurance
8 company may use experience from outside this state as necessary to
9 supplement information from this state that is not actuarially
10 credible. (V.T.I.C. Art. 5.55, Secs. 2(b), (c), (d), (e).)

11 Sec. 2053.003. RATE FILING AND SUPPORTING INFORMATION. (a)
12 Each insurance company shall file with the department all rates,
13 supplementary rating information, and reasonable and pertinent
14 supporting information for risks written in this state.

15 (b) An insurance company may not make a filing described by
16 Subsection (a) more frequently than once every six months.
17 (V.T.I.C. Art. 5.55, Sec. 3(a) (part).)

18 Sec. 2053.004. PUBLIC INSPECTION OF INFORMATION. Each
19 filing made, including any supporting information filed, under this
20 subchapter is open to public inspection as of the date the filing is
21 made. (V.T.I.C. Art. 5.55, Sec. 4.)

22 Sec. 2053.005. EFFECTIVE DATE OF RATE; HEARING. (a) A
23 filer shall designate the date a rate proposed in a filing made
24 under Section 2053.003 is to take effect. Subject to Subsections
25 (b)-(d), the rate does not take effect until the department
26 receives all necessary information required for the filing.

27 (b) A filing made under Section 2053.003 takes effect on the

1 date designated by the filer under Subsection (a) unless the
2 department, not later than the 30th day after the date the
3 department receives the filing, notifies the filer that the filing
4 is missing specific required information. The filer must provide
5 the missing information not later than the 30th day after the date
6 the filer is notified under this subsection.

7 (c) If the filer in good faith believes that information
8 requested under Subsection (b) has already been provided to the
9 department, the filer may request a hearing. The commissioner
10 shall hold the hearing not later than the 30th day after the date
11 the department receives the request for a hearing.

12 (d) The commissioner shall issue an order not later than the
13 30th day after the date of the hearing under Subsection (c). If the
14 commissioner determines that the filing is still missing required
15 information, the commissioner shall specify in the order the
16 information that is missing. (V.T.I.C. Art. 5.55, Secs. 3(a)
17 (part), (b).)

18 Sec. 2053.006. DISAPPROVAL OF RATE FILING; HEARING. (a)
19 The commissioner shall disapprove a rate filing made under Section
20 2053.003 if the commissioner determines that the filing does not
21 meet the standards established under this subchapter.

22 (b) If the commissioner disapproves a rate filing, the
23 commissioner shall issue an order specifying in what respects the
24 filing fails to meet the requirements of this subchapter.

25 (c) A filer whose rate filing is disapproved is entitled to
26 a hearing on written request made to the department not later than
27 the 30th day after the date the order disapproving the filing takes

1 effect. (V.T.I.C. Art. 5.55, Sec. 5.)

2 Sec. 2053.007. DISAPPROVAL OF RATE; HEARING. (a) The
3 commissioner may issue an order after a hearing disapproving a rate
4 that is in effect. The commissioner must provide the insurance
5 company that filed the rate written notice of the hearing not later
6 than the 10th day before the date of the hearing.

7 (b) The commissioner shall issue an order disapproving a
8 rate under Subsection (a) not later than the 15th day after the
9 close of the hearing. The order must:

10 (1) specify in what respects the rate fails to meet the
11 requirements of this subchapter; and

12 (2) state the date further use of the rate is
13 prohibited.

14 (c) An order issued under this section does not affect an
15 insurance policy made or issued in accordance with this code before
16 the expiration of the period stated in the order. (V.T.I.C. Art.
17 5.55, Sec. 6.)

18 Sec. 2053.008. EFFECT OF DISAPPROVAL ORDER. (a) If a
19 workers' compensation insurance policy is issued and the
20 commissioner subsequently disapproves the rate or filing that
21 governs the premium charged on the policy, the policyholder may:

22 (1) continue the policy at the original rate;

23 (2) cancel the policy without penalty; or

24 (3) enter into an agreement with the insurance company
25 issuing the policy to amend the policy to reflect the premium that
26 would have been charged based on the insurance company's most
27 recently approved rate.

1 (b) An amendment under Subsection (a)(3) may not take effect
2 before the date further use of the rate is prohibited under an order
3 issued under Section 2053.007. (V.T.I.C. Art. 5.55, Sec. 7(a).)

4 Sec. 2053.009. GRIEVANCE. (a) The office of public
5 insurance counsel or an insured who is aggrieved with respect to a
6 filing made under Section 2053.003 that is in effect may apply to
7 the department in writing for a hearing on the filing. The
8 application must specify the grounds for the applicant's grievance.

9 (b) The commissioner shall hold a hearing on an application
10 filed under Subsection (a) not later than the 30th day after the
11 date the department receives the application if the department
12 determines that:

13 (1) the application is made in good faith;

14 (2) the applicant would be aggrieved as alleged if the
15 grounds specified in the application were established; and

16 (3) the grounds specified in the application otherwise
17 justify holding the hearing.

18 (c) The department shall provide written notice of a hearing
19 under Subsection (b) to the applicant and to each insurance company
20 that made the filing not later than the 10th day before the date of
21 the hearing. The notice must specify:

22 (1) which of the grounds specified in the application
23 are in question; and

24 (2) whether the insurance company's entire filing will
25 be considered at the hearing or whether the hearing is limited to
26 consideration of the grounds specified in the application.

27 (d) If, after the hearing, the commissioner determines that

1 the filing does not meet the requirements of this subchapter, the
2 commissioner shall issue an order specifying:

3 (1) in what respects the filing fails to meet those
4 requirements;

5 (2) the date the filing is no longer in effect, which
6 must be within a reasonable period that is not less than 60 days
7 after the date the order is issued; and

8 (3) whether the order applies with respect to all
9 insureds affected by the filing or only with respect to the
10 applicant, if the applicant was an aggrieved insured.

11 (e) The department shall send copies of the order issued
12 under Subsection (d) to the applicant and each affected insurance
13 company.

14 (f) An order issued under Subsection (d) does not affect an
15 insurance policy or contract made or issued before the expiration
16 of the period stated in the order. (V.T.I.C. Art. 5.55, Secs. 3(c),
17 (d).)

18 Sec. 2053.010. ADMINISTRATIVE PENALTY. (a) The
19 commissioner may assess an administrative penalty against an
20 insurance company if the commissioner determines, based on a
21 pattern of charges for premiums, that the company is consistently
22 overcharging or undercharging the company's policyholders for
23 workers' compensation insurance.

24 (b) An administrative penalty under this section must be:

25 (1) assessed in accordance with Section 415.021, Labor
26 Code; and

27 (2) set by the commissioner in an amount reasonable

1 and necessary to deter overcharging or undercharging of
2 policyholders. (V.T.I.C. Art. 5.55, Sec. 7(b).)

3 [Sections 2053.011-2053.050 reserved for expansion]

4 SUBCHAPTER B. RATE ADMINISTRATION

5 Sec. 2053.051. HAZARD CLASSIFICATION SYSTEM. (a) For
6 workers' compensation insurance, the department shall:

7 (1) determine hazards by class; and

8 (2) establish classification relativities applicable
9 to an employer's payroll in each of the classes at levels adequate
10 to the risks to which the relativities apply.

11 (b) The classification relativities established under
12 Subsection (a)(2):

13 (1) must be designed to encourage safety;

14 (2) may be territorially based; and

15 (3) may reflect a difference in losses between
16 employers of high wage earners and employers of low wage earners
17 within the same class.

18 (c) The department shall revise the classification system
19 at least once every five years. (V.T.I.C. Art. 5.60, Secs. (a), (d)
20 (part).)

21 Sec. 2053.052. EXPERIENCE RATING PLAN. (a) The
22 commissioner shall adopt a uniform experience rating plan for
23 workers' compensation insurance. The plan must:

24 (1) encourage accident prevention; and

25 (2) account for:

26 (A) the peculiar hazard and experience of
27 individual risks, past and prospective, inside and outside this

1 state; and

2 (B) any other relevant factor.

3 (b) The commissioner shall revise the rating plan at least
4 once every five years.

5 (c) The commissioner may adopt reasonable rules and plans
6 requiring the interchange of loss experience necessary for the
7 application of the rating plan. (V.T.I.C. Art. 5.58, Sec. (h); Art.
8 5.60, Secs. (b), (d) (part).)

9 Sec. 2053.053. USE OF HAZARD CLASSIFICATIONS REQUIRED. A
10 stock company, mutual insurance company, reciprocal or
11 interinsurance exchange, or Lloyd's plan authorized to engage in
12 the business of workers' compensation insurance in this state may
13 not use hazard classifications other than the classifications
14 established by the department. (V.T.I.C. Arts. 5.56 (part), 5.63.)

15 Sec. 2053.054. USE OF INCURRED CLAIMS EXPERIENCE IN FUTURE
16 RATINGS REQUIRED. (a) Regardless of a change in a policyholder's
17 ownership, control, management, or operations, incurred claims
18 experience must be used in future ratings to ensure that an employer
19 does not evade an unfavorable or high-cost experience.

20 (b) On application by an affected party, the department may
21 modify a rating under Subsection (a) on proof that a change in a
22 policyholder's management or operations is clearly designed to
23 result in a probable reduction of the insured's loss experience.

24 (c) The commissioner shall adopt rules necessary to
25 implement this section. (V.T.I.C. Art. 5.65B, Secs. (a) (part),
26 (b), (c), (d).)

27 Sec. 2053.055. RATE ADJUSTMENT. If the commissioner

1 determines that an insurance company's rates do not meet with the
2 standards imposed by Section 2053.002, the commissioner may order
3 the insurance company to adjust the rates to meet those standards.
4 An insurance company may appeal an order under this section in
5 accordance with Subchapter D, Chapter 36. (V.T.I.C. Art. 5.58,
6 Sec. (a) (part).)

7 [Sections 2053.056-2053.100 reserved for expansion]

8 SUBCHAPTER C. STATISTICAL PLANS; AGENT

9 Sec. 2053.101. STATISTICAL PLANS FOR REPORTING LOSS
10 EXPERIENCE AND OTHER DATA. The commissioner shall develop and may
11 periodically modify reasonable statistical plans for workers'
12 compensation insurance to be used by each insurance company in
13 recording and reporting the insurance company's loss experience and
14 other data required by the department, so that the total loss and
15 expense experience of all insurance companies is made available at
16 least annually in the form and detail necessary to assist in
17 determining whether an insurance company's rates meet the standards
18 imposed under Section 2053.002. (V.T.I.C. Art. 5.58, Sec. (a)
19 (part).)

20 Sec. 2053.102. TREATMENT OF PAYMENTS UNDER STATISTICAL
21 PLAN. A statistical plan developed under Section 2053.101 must
22 require the following payments to be reported separately and not to
23 be considered as a loss or expense for purposes of computing a
24 premium rate modifier or surcharge of an insured:

25 (1) a direct payment made by an insurance company to
26 influence public policy; and

27 (2) any amount paid by an insurance company:

1 (A) as damages in an action against the insurance
2 company for malice or bad faith; or

3 (B) as a fine or penalty. (V.T.I.C. Art. 5.58,
4 Sec. (e).)

5 Sec. 2053.103. STATISTICAL AGENT. (a) The commissioner
6 may designate or contract with a qualified organization to serve as
7 the statistical agent for the commissioner under this subchapter as
8 provided by Subchapter E, Chapter 38.

9 (b) The statistical agent may provide to one or more
10 advisory organizations any information provided by the agent to the
11 commissioner under this subchapter. (V.T.I.C. Art. 5.58, Sec. (a)
12 (part).)

13 [Sections 2053.104-2053.150 reserved for expansion]

14 SUBCHAPTER D. REPORTING REQUIREMENTS AND EXCHANGE OF INFORMATION

15 Sec. 2053.151. WORKERS' COMPENSATION CLAIMS REPORTS AND
16 INFORMATION. (a) The following information must be reported on
17 each workers' compensation claim:

18 (1) the hazard classification of the affected
19 employee;

20 (2) the date of injury;

21 (3) the social security number of the claimant;

22 (4) the severity classification of the claim,
23 including separate classifications for:

24 (A) claims in which death benefits are paid;

25 (B) claims in which lifetime income benefits are
26 paid;

27 (C) claims in which only temporary income

1 benefits are paid;

2 (D) claims in which impairment income benefits
3 are paid;

4 (E) claims in which supplemental income benefits
5 are paid; and

6 (F) claims in which only medical benefits are
7 paid;

8 (5) the amount paid in periodic payments;

9 (6) the amount paid in lump-sum payments;

10 (7) the amount paid for:

11 (A) temporary income benefits;

12 (B) impairment income benefits;

13 (C) supplemental income benefits; and

14 (D) death and burial benefits;

15 (8) the total amount paid for:

16 (A) income, death, or burial benefits; and

17 (B) medical benefits;

18 (9) the total amount of incurred losses for:

19 (A) income, death, or burial benefits; and

20 (B) medical benefits;

21 (10) the amount paid to:

22 (A) doctors and other health care providers; and

23 (B) hospitals and other health care facilities;

24 and

25 (11) other information required by the commissioner.

26 (b) For purposes of Subsection (a), the commissioner shall
27 establish standards and procedures for categorizing insurance and

1 medical benefits required to be reported on each workers'
2 compensation claim. In establishing the standards, the
3 commissioner shall consult with the Texas Workers' Compensation
4 Commission to ensure that the data collection methodology will
5 yield data necessary for research and medical cost containment
6 efforts.

7 (c) The commissioner may allow the information required by
8 Subsection (a) to be reported in the aggregate for each risk for
9 claims in which benefit payments are less than \$5,000. The
10 commissioner may adjust the \$5,000 threshold for aggregate
11 reporting to account for inflationary changes.

12 (d) A person may not distribute or otherwise disclose a
13 social security number or any other information collected under
14 Subsection (a) that would disclose the identity of a claimant.
15 (V.T.I.C. Art. 5.58, Secs. (b), (c), (d), (g).)

16 Sec. 2053.152. UPDATE AND TRANSMISSION OF CLAIMS REPORTS.

17 (a) An insurance company, in accordance with the filing
18 requirements of a statistical plan developed under Section
19 2053.101, shall update and transmit to the commissioner or the
20 commissioner's statistical agent a claims report filed under
21 Section 2053.151.

22 (b) Each insurance company that writes at least one-half of
23 one percent of the workers' compensation insurance in this state
24 shall report the company's data in a compatible electronic format
25 prescribed by the commissioner. The commissioner shall take
26 necessary measures to ensure the accuracy of the data and the
27 adequacy of the electronic format for the data. (V.T.I.C. Art.

1 5.58, Sec. (f).)

2 Sec. 2053.153. EXCHANGE OF INFORMATION AND CONSULTATION
3 WITH OTHERS. To further the uniform administration of rating laws
4 relating to workers' compensation insurance, the commissioner and
5 each insurance company may:

6 (1) exchange information and experience data with the
7 National Association of Insurance Commissioners and with insurance
8 supervisory officials, insurance companies, and advisory
9 organizations in other states; and

10 (2) consult and cooperate with a person or entity
11 described by Subdivision (1) with respect to ratemaking and the
12 application of rating systems. (V.T.I.C. Art. 5.58, Sec. (i).)

13 Sec. 2053.154. LOSS STATEMENT AND PAYROLL REPORT. (a) For
14 purposes of this section, "insurance company" means a stock
15 company, mutual insurance company, reciprocal or interinsurance
16 exchange, or Lloyd's plan authorized to engage in the business of
17 workers' compensation insurance in this state. The term includes
18 the Texas Mutual Insurance Company.

19 (b) The department may require an insurance company to
20 submit a sworn statement or report showing:

21 (1) the payroll reported to the insurance company;

22 (2) incurred losses by classification; and

23 (3) other information the department determines may be
24 necessary to implement the department's duties.

25 (c) The department shall prescribe the necessary forms for a
26 statement or report required by Subsection (b) with consideration
27 of the methods and forms used for similar purposes in other states

1 so that uniformity of statistics will not be affected. (V.T.I.C.
2 Arts. 5.59, 5.63.)

3 [Sections 2053.155-2053.200 reserved for expansion]

4 SUBCHAPTER E. OPTIONAL DEDUCTIBLE PLANS

5 Sec. 2053.201. DEFINITION. In this subchapter, "insurance
6 company" means a stock company, mutual insurance company,
7 reciprocal or interinsurance exchange, or Lloyd's plan authorized
8 to engage in the business of workers' compensation insurance in
9 this state. (V.T.I.C. Art. 5.63.)

10 Sec. 2053.202. ESTABLISHMENT OF OPTIONAL DEDUCTIBLE PLANS.

11 (a) The department shall require each insurance company writing
12 workers' compensation insurance in this state to offer at least
13 three optional deductible plans adopted under this section that
14 allow a policyholder to self-insure for the amount of the
15 deductible.

16 (b) The commissioner by rule shall allow an employer to
17 enter into an agreement with an insurer for a negotiated deductible
18 that exceeds the highest deductible available under a plan
19 described by Subsection (a). (V.T.I.C. Art. 5.55C, Secs. (a),
20 (b).)

21 Sec. 2053.203. PAYMENT OF CLAIMS; REIMBURSEMENT. (a) An
22 insurance company issuing a deductible policy under this subchapter
23 shall service all claims that arise during the policy period,
24 including those claims payable, wholly or partly, from the
25 deductible amount.

26 (b) A deductible policy must provide that:

27 (1) the insurance company issuing the policy shall pay

1 all benefits that are payable from the deductible amount; and

2 (2) the policyholder shall make reimbursements
3 periodically, rather than at the time claim costs are incurred.

4 (c) The commissioner shall adopt rules to provide for
5 adequate security for reimbursement of the amount paid by an
6 insurance company that is payable from the deductible amount.
7 (V.T.I.C. Art. 5.55C, Secs. (d), (e).)

8 Sec. 2053.204. RATE REDUCTION. (a) The department shall
9 perform an actuarial analysis to determine the amount of rate
10 reduction applicable to a deductible policy under this subchapter
11 as compared to a standard workers' compensation insurance policy
12 without a deductible.

13 (b) In years subsequent to the year in which the actuarial
14 analysis described by Subsection (a) is performed, the department
15 shall determine the amount of rate reduction according to rating
16 procedures adopted by the commissioner.

17 (c) When establishing procedures for the computation of
18 experience modifiers, the commissioner may allow the exclusion of
19 any claim amount paid under a deductible by an employer. (V.T.I.C.
20 Art. 5.55C, Sec. (c).)

21 Sec. 2053.205. PROHIBITED CONDUCT. A person who is
22 employed by a policyholder who self-insures the deductible amount
23 as provided by this subchapter may not be required to pay any
24 portion of the deductible amount or be harassed, discharged, or
25 otherwise discriminated against because the person, in good faith:

26 (1) is considering initiating or has initiated a
27 workers' compensation claim;

1 (2) has retained a representative to represent the
2 person regarding a claim;

3 (3) has testified or will testify at an administrative
4 or judicial proceeding under Subtitle A, Title 5, Labor Code;

5 (4) has reported a hazardous working condition or
6 hazardous practice to the Texas Workers' Compensation Commission;
7 or

8 (5) has taken or is considering taking any other
9 action that may result in a requirement that the policyholder pay a
10 deductible amount through a self-insurance plan. (V.T.I.C. Art.
11 5.55C, Secs. (f), (g)(1).)

12 Sec. 2053.206. VIOLATION OF SUBCHAPTER. (a) A person
13 commits a Class A administrative violation under Subtitle A, Title
14 5, Labor Code, if the person engages in conduct that violates this
15 subchapter.

16 (b) Liability for damages for a violation of this subchapter
17 is determined exclusively under Subtitle A, Title 5, Labor Code.
18 (V.T.I.C. Art. 5.55C, Secs. (g)(2), (h).)

19 [Sections 2053.207-2053.250 reserved for expansion]

20 SUBCHAPTER F. PREMIUM INCENTIVES AND SURCHARGE
21 FOR SMALL EMPLOYERS

22 Sec. 2053.251. DEFINITIONS. In this subchapter:

23 (1) "Insurance company" means a stock company, mutual
24 insurance company, reciprocal or interinsurance exchange, or
25 Lloyd's plan authorized to engage in the business of workers'
26 compensation insurance in this state.

27 (2) "Premium" means workers' compensation insurance

1 premium.

2 (3) "Small employer" means an employer:

3 (A) who is not experience-rated by the department
4 for workers' compensation insurance purposes; and

5 (B) whose annual premium is less than \$5,000.
6 (V.T.I.C. Art. 5.55B, Sec. (a); Art. 5.63; New.)

7 Sec. 2053.252. PLAN FOR PREMIUM DISCOUNT AND SURCHARGE.

8 The commissioner shall adopt a plan under which each insurance
9 company writing workers' compensation insurance in this state
10 shall:

11 (1) grant a premium discount to a small employer who
12 qualifies for a discount under this subchapter; and

13 (2) assess a surcharge as provided by Section
14 2053.254. (V.T.I.C. Art. 5.55B, Sec. (b) (part).)

15 Sec. 2053.253. ELIGIBILITY FOR PREMIUM DISCOUNT. (a) A
16 small employer who has not experienced a compensable employee
17 lost-time injury during the most recent one-year period for which
18 statistics are available shall receive a discount of 10 percent on
19 the amount of the employer's premium.

20 (b) A small employer who has not experienced a compensable
21 employee lost-time injury during the most recent two-year period
22 for which statistics are available shall receive a discount of 15
23 percent on the amount of the employer's premium.

24 (c) A small employer who has experienced one or more
25 compensable employee lost-time injuries during the most recent
26 one-year period for which statistics are available is not eligible
27 for a discount on the amount of the employer's premium. (V.T.I.C.

1 Art. 5.55B, Secs. (c), (d), (e).)

2 Sec. 2053.254. ASSESSMENT OF PREMIUM SURCHARGE. A small
3 employer who has experienced two or more compensable employee
4 lost-time injuries during the most recent one-year period for which
5 statistics are available shall be assessed a surcharge of 10
6 percent on the amount of the employer's premium. (V.T.I.C. Art.
7 5.55B, Secs. (b) (part), (f).)

8 Sec. 2053.255. MAXIMUM DISCOUNT AND ASSESSMENT. For any
9 annual premium, a small employer may not:

- 10 (1) receive a discount of more than 15 percent; or
11 (2) be required to pay a surcharge of more than 10
12 percent. (V.T.I.C. Art. 5.55B, Sec. (g) (part).)

13 Sec. 2053.256. DISCOUNTS AND SURCHARGES NOT CUMULATIVE.

14 (a) The discounts and surcharges established under this subchapter
15 are not cumulative.

16 (b) A small employer is entitled to receive the discount
17 under this subchapter in addition to any lesser deviation in the
18 rate used to write an insurance policy under Sections 2053.051 and
19 2053.052(a) and (b). (V.T.I.C. Art. 5.55B, Sec. (g) (part).)

20 CHAPTER 2054. TEXAS MUTUAL INSURANCE COMPANY

21 SUBCHAPTER A. GENERAL PROVISIONS

22 Sec. 2054.001. DEFINITIONS

23 Sec. 2054.002. REFERENCE TO TEXAS WORKERS'

24 COMPENSATION INSURANCE FUND

25 Sec. 2054.003. OPERATION AS DOMESTIC MUTUAL INSURANCE

26 COMPANY

- 1 Sec. 2054.004. INSURANCE COMPANY UNDER TEXAS WORKERS'
2 COMPENSATION ACT
3 Sec. 2054.005. APPLICABILITY OF CODE
4 Sec. 2054.006. AUTHORITY OF COMMISSIONER AND
5 DEPARTMENT
6 Sec. 2054.007. APPLICABILITY OF OPEN MEETINGS LAW
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22 SUBCHAPTER H. COMPANY AS INSURER OF LAST RESORT

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22 [Sections 2054.457-2054.500 reserved for expansion]

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- 14 [Sections 2054.514-2054.550 reserved for expansion]
- 15 SUBCHAPTER L. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES
- 16 Sec. 2054.551. PUBLIC INTEREST INFORMATION
- 17 Sec. 2054.552. COMPLAINTS
- 18 Sec. 2054.553. COMPLAINT RECORD
- 19 CHAPTER 2054. TEXAS MUTUAL INSURANCE COMPANY
- 20 SUBCHAPTER A. GENERAL PROVISIONS
- 21 Sec. 2054.001. DEFINITIONS. In this chapter:
- 22 (1) "Board" means the board of directors of the
23 company.
- 24 (2) "Commission" means the Texas Workers' Compensation
25 Commission.
- 26 (3) "Company" means the Texas Mutual Insurance
27 Company.

1 (4) "Workers' compensation insurance" means insurance
2 for a risk under:

3 (A) Subtitle A, Title 5, Labor Code;

4 (B) Chapter 504, Labor Code;

5 (C) the Longshore and Harbor Workers'
6 Compensation Act (33 U.S.C. Section 901 et seq.);

7 (D) the Federal Mine Safety and Health Act of
8 1977 (30 U.S.C. Section 801 et seq.);

9 (E) the Defense Base Act (42 U.S.C. Sections
10 1651-1654);

11 (F) the federal Employers' Liability Act (45
12 U.S.C. Section 51 et seq.);

13 (G) the Nonappropriated Fund Instrumentalities
14 Act (5 U.S.C. Sections 8171-8173);

15 (H) the Outer Continental Shelf Lands Act (43
16 U.S.C. Section 1331 et seq.); or

17 (I) the Merchant Marine Act of 1920 (46 App.
18 U.S.C. Section 861 et seq.). (V.T.I.C. Art. 5.76-3, Secs. 1(1),
19 (2), (3), (5).)

20 Sec. 2054.002. REFERENCE TO TEXAS WORKERS' COMPENSATION
21 INSURANCE FUND. A reference in state law to the Texas Workers'
22 Compensation Insurance Fund means the Texas Mutual Insurance
23 Company. (V.T.I.C. Art. 5.76-3, Sec. 2(a) (part).)

24 Sec. 2054.003. OPERATION AS DOMESTIC MUTUAL INSURANCE
25 COMPANY. (a) The company operates as a domestic mutual insurance
26 company under Chapter 883. The company is subject to that chapter,
27 but is not subject to Chapter 826.

1 (b) The company:

2 (1) has the legal rights of a mutual insurance company
3 operating under Chapter 883 and of an individual in this state; and

4 (2) may bring a suit in the company's own name without
5 any procedural prerequisites to the exercise of that power.

6 (c) The company is not a state agency. (V.T.I.C. Art.
7 5.76-3, Secs. 2(a) (part), (b) (part), (h), 21(c).)

8 Sec. 2054.004. INSURANCE COMPANY UNDER TEXAS WORKERS'
9 COMPENSATION ACT. The company is an insurance company for purposes
10 of Subtitle A, Title 5, Labor Code. (V.T.I.C. Art. 5.76-3, Sec.
11 21(a).)

12 Sec. 2054.005. APPLICABILITY OF CODE. The company is
13 subject to this code. (V.T.I.C. Art. 5.76-3, Sec. 18(c) (part).)

14 Sec. 2054.006. AUTHORITY OF COMMISSIONER AND
15 DEPARTMENT. (a) The commissioner may regulate the company to the
16 same extent that the commissioner may regulate a mutual insurance
17 company.

18 (b) The company is subject to the jurisdiction of the
19 commissioner and department in the same manner as a private
20 insurance company. (V.T.I.C. Art. 5.76-3, Secs. 18(c) (part),
21 21(b).)

22 Sec. 2054.007. APPLICABILITY OF OPEN MEETINGS
23 LAW. (a) Except as otherwise provided by Subsection (b), Chapter
24 551, Government Code, applies to the company.

25 (b) The board may hold closed meetings to consider:

26 (1) information relating to claims, rates, or the
27 company's underwriting guidelines; or

1 (2) other information that would give advantage to a
2 competitor or bidder. (V.T.I.C. Art. 5.76-3, Sec. 2(d) (part).)

3 Sec. 2054.008. APPLICABILITY OF PUBLIC INFORMATION
4 LAW. (a) In this section, "investigation file" means information
5 the company compiles or maintains with respect to a company
6 investigation authorized by law.

7 (b) To the extent consistent with this section, Chapter 552,
8 Government Code, applies to the company.

9 (c) The board may refuse to disclose:

10 (1) information relating to claims, rates, or the
11 company's underwriting guidelines; or

12 (2) other information that would give advantage to a
13 competitor or bidder.

14 (d) Except as provided by Subsection (e), a company
15 investigation file:

16 (1) is confidential and not subject to required
17 disclosure under Chapter 552, Government Code; and

18 (2) may be disclosed only:

19 (A) in a criminal proceeding;

20 (B) in a hearing conducted by the commission;

21 (C) on a judicial determination of good cause; or

22 (D) to a governmental agency, political
23 subdivision, or regulatory body if the disclosure is necessary or
24 proper for the enforcement of a law of this state, another state, or
25 the United States.

26 (e) Disclosure of information in an investigation file that
27 is contained in or derived from a claim file, an employer injury

1 report, or an occupational disease report is governed by any
2 confidentiality provision applicable to that information.
3 (V.T.I.C. Art. 5.76-3, Secs. 2(d) (part), 10.)

4 Sec. 2054.009. CONFLICTS WITH CERTAIN INSURANCE LAWS. To
5 the extent of a conflict between this chapter and Chapter 883 or
6 another law of this state applicable to a nonlife mutual insurance
7 company, this chapter prevails. (V.T.I.C. Art. 5.76-3, Sec. 2(b)
8 (part).)

9 [Sections 2054.010-2054.050 reserved for expansion]

10 SUBCHAPTER B. BOARD OF DIRECTORS

11 Sec. 2054.051. BOARD OF DIRECTORS; COMPOSITION. (a) The
12 company is governed by a board composed of nine members.

13 (b) The governor, with the advice and consent of the senate,
14 shall appoint five board members. The company's policyholders
15 shall elect the remaining members. (V.T.I.C. Art. 5.76-3, Sec.
16 3(a) (part).)

17 Sec. 2054.052. QUALIFICATIONS. (a) Each board member must
18 be a resident of this state.

19 (b) An individual may not serve as a board member if the
20 individual, another individual related to the individual within the
21 second degree by consanguinity or affinity, or another individual
22 residing in the same household with the individual:

23 (1) is registered or licensed under this code or is
24 required to be registered or licensed under this code;

25 (2) is employed by or acts as a consultant to a person
26 registered or licensed under this code or required to be registered
27 or licensed under this code;

1 (3) owns, controls, has a financial interest in, or
2 participates in the management of an organization registered or
3 licensed under this code or required to be registered or licensed
4 under this code;

5 (4) receives a substantial tangible benefit from the
6 company or the department; or

7 (5) is an officer, employee, or consultant of an
8 association in the field of insurance.

9 (c) Subsection (b) does not prohibit an individual from
10 serving as a board member if the individual is only a policyholder
11 or a consumer of insurance or insurance products.

12 (d) An individual who is ineligible to serve on the board
13 under Subsection (b) may not serve as a board member until the first
14 anniversary of the date the condition that makes the individual
15 ineligible ends. (V.T.I.C. Art. 5.76-3, Secs. 3(a) (part), (d),
16 (h), (i).)

17 Sec. 2054.053. PRESIDING OFFICER; OTHER OFFICERS. (a) The
18 governor shall designate a board member as the presiding officer to
19 serve in that capacity at the pleasure of the governor.

20 (b) The board members shall elect annually any other
21 officers the board considers necessary to perform the board's
22 duties. (V.T.I.C. Art. 5.76-3, Sec. 3(k) (part).)

23 Sec. 2054.054. TERMS. (a) Board members serve staggered
24 six-year terms, with the terms of three members expiring July 1 of
25 each odd-numbered year.

26 (b) A board member whose term has expired shall continue to
27 serve until the member's successor is appointed by the governor or

1 is elected by the company's policyholders, as applicable.
2 (V.T.I.C. Art. 5.76-3, Sec. 3(b).)

3 Sec. 2054.055. VACANCIES. (a) The governor shall fill a
4 vacancy in the appointed board members by appointment with the
5 advice and consent of the senate.

6 (b) A vacancy in the elected board members shall be filled
7 as provided by the company's bylaws.

8 (c) If a vacancy occurs before the date the vacating
9 member's term expires, the successor member shall be appointed or
10 elected for a term that expires on the same date as the vacating
11 member's term. (V.T.I.C. Art. 5.76-3, Sec. 3(c).)

12 Sec. 2054.056. GROUNDS FOR REMOVAL. (a) It is a ground for
13 removal from the board if a member:

14 (1) does not have at the time of appointment or
15 election the qualifications required by Section 2054.052;

16 (2) does not maintain during service on the board the
17 qualifications required by Section 2054.052;

18 (3) cannot because of illness or disability discharge
19 the member's duties for a substantial part of the term for which the
20 member is appointed or elected; or

21 (4) is absent from more than half of the regularly
22 scheduled board meetings that the member is eligible to attend
23 during a calendar year.

24 (b) The validity of a board action is not affected by the
25 fact that it is taken when a ground for removal of a board member
26 exists. (V.T.I.C. Art. 5.76-3, Secs. 3(e), (f).)

27 Sec. 2054.057. PROCEDURES FOR REMOVAL. (a) If the

1 president of the company has knowledge that a potential ground for
2 removal of a board member exists, the president shall notify the
3 presiding officer of the board of the potential ground.

4 (b) If the potential ground for removal involves an
5 appointed board member, the presiding officer shall notify the
6 governor and the attorney general that a potential ground for
7 removal exists.

8 (c) If the potential ground for removal involves the
9 presiding officer, the president shall notify the next highest
10 board officer, who shall notify the governor and the attorney
11 general that a potential ground for removal exists.

12 (d) If the potential ground for removal involves an elected
13 board member, the board shall act on the potential ground for
14 removal as provided by the company's bylaws. (V.T.I.C. Art.
15 5.76-3, Sec. 3(g).)

16 Sec. 2054.058. COMMITTEES AND SUBCOMMITTEES. The board may
17 create committees and subcommittees. (V.T.I.C. Art. 5.76-3, Sec.
18 3(k) (part).)

19 Sec. 2054.059. MEETINGS. (a) The board shall hold a
20 meeting at least once each calendar quarter, at other times at the
21 call of the presiding officer, and at times established by the
22 company's bylaws.

23 (b) A special meeting may be called by any two board members
24 on two days' notice. (V.T.I.C. Art. 5.76-3, Sec. 3(l).)

25 Sec. 2054.060. QUORUM. Five board members constitute a
26 quorum. (V.T.I.C. Art. 5.76-3, Sec. 3(m).)

27 Sec. 2054.061. COMPENSATION. A board member is entitled to

1 receive:

2 (1) fees for service on the board commensurate with
3 industry standards; and

4 (2) actual and necessary travel expenses and any other
5 expense incurred in performing the member's duties. (V.T.I.C. Art.
6 5.76-3, Sec. 3(j).)

7 [Sections 2054.062-2054.100 reserved for expansion]

8 SUBCHAPTER C. MANAGEMENT OF COMPANY

9 Sec. 2054.101. GENERAL POWERS OF BOARD. The board has full
10 authority over the company and may:

11 (1) perform any act necessary or convenient to
12 administer the company or in connection with the company's
13 insurance business; and

14 (2) function in all aspects as the governing body of a
15 domestic mutual insurance company. (V.T.I.C. Art. 5.76-3, Sec.
16 4(a) (part).)

17 Sec. 2054.102. GENERAL DUTIES OF BOARD RELATING TO WORKERS'
18 COMPENSATION INSURANCE. The board shall:

19 (1) provide for engaging in the business of workers'
20 compensation insurance and for the delivery in this state of
21 workers' compensation insurance to the same extent as any other
22 insurance company engaging in the business of workers' compensation
23 insurance in this state;

24 (2) propose rates for workers' compensation insurance
25 issued by the company; and

26 (3) exercise any other authority necessary to engage
27 in the business of workers' compensation insurance. (V.T.I.C. Art.

1 5.76-3, Sec. 4(a) (part).)

2 Sec. 2054.103. APPOINTMENT OF PRESIDENT. (a) The board
3 shall appoint a president who serves at the pleasure of the board.

4 (b) The president must have proven successful experience as
5 an executive at the general management level in the business of
6 insurance.

7 (c) The president shall receive compensation as set by the
8 board. (V.T.I.C. Art. 5.76-3, Sec. 4(d).)

9 Sec. 2054.104. APPOINTMENT OF INTERNAL AUDITOR. The board
10 shall appoint an internal auditor who serves at the pleasure of the
11 board. (V.T.I.C. Art. 5.76-3, Sec. 4(c).)

12 Sec. 2054.105. PERSONAL LIABILITY OF BOARD MEMBERS,
13 OFFICERS, AND EMPLOYEES. In connection with the administration,
14 management, or conduct of the company, the company's business, or a
15 related matter, a board member, the president, or an officer or
16 employee of the company is not personally liable in the
17 individual's private capacity for an act performed or a contract or
18 other obligation entered into or undertaken in the individual's
19 official capacity in good faith and without intent to defraud.
20 (V.T.I.C. Art. 5.76-3, Sec. 6.)

21 Sec. 2054.106. PRINCIPAL OFFICE. The board shall maintain
22 the company's principal office in Travis County. (V.T.I.C. Art.
23 5.76-3, Sec. 3(n).)

24 Sec. 2054.107. CERTAIN RELATIONSHIPS WITH OTHER INSURERS
25 PROHIBITED. The company may not have:

26 (1) an affiliate, spin-off, or subsidiary that writes
27 a line of insurance other than workers' compensation insurance; or

1 (2) interlocking boards of directors with an insurer
2 that writes a line of insurance other than workers' compensation
3 insurance. (V.T.I.C. Art. 5.76-3, Sec. 4(b).)

4 Sec. 2054.108. PROGRAM AND FACILITY ACCESSIBILITY. (a)
5 The company shall comply with federal and state laws that relate to
6 program and facility accessibility.

7 (b) The president shall prepare and maintain a written plan
8 that describes the manner in which an individual who does not speak
9 English can be provided reasonable access to the company's programs
10 and services.

11 (c) The board shall develop and implement policies that
12 provide the public with a reasonable opportunity to appear before
13 the board and to speak on any issue under the company's
14 jurisdiction. (V.T.I.C. Art. 5.76-3, Secs. 19(c), (d).)

15 [Sections 2054.109-2054.150 reserved for expansion]

16 SUBCHAPTER D. OPERATION OF COMPANY; FINANCIAL ADMINISTRATION

17 Sec. 2054.151. PURPOSES OF COMPANY. The company shall:

18 (1) serve as a competitive force in the marketplace;
19 (2) guarantee the availability of workers'
20 compensation insurance in this state; and

21 (3) serve as an insurer of last resort as provided by
22 Subchapter H. (V.T.I.C. Art. 5.76-3, Sec. 2(c).)

23 Sec. 2054.152. PAYMENT OF TAXES, FEES, AND OTHER CHARGES.
24 The company shall pay the following in the same manner as a domestic
25 mutual insurance company authorized to engage in the business of
26 insurance and to write workers' compensation insurance in this
27 state:

- 1 (1) taxes, including maintenance and premium taxes;
2 (2) fees; and
3 (3) payments due in lieu of taxes. (V.T.I.C. Art.
4 5.76-3, Secs. 11(a), (b).)

5 Sec. 2054.153. MEMBERSHIP IN TEXAS PROPERTY AND CASUALTY
6 INSURANCE GUARANTY ASSOCIATION. (a) In this section,
7 "association" means the Texas Property and Casualty Insurance
8 Guaranty Association.

9 (b) The company is:

- 10 (1) a member of and protected by the association; and
11 (2) subject to assessment under Chapter 462.

12 (c) Notwithstanding Subsection (b), the company is liable
13 only for an assessment by the association regarding a claim with a
14 date of injury occurring on or after January 1, 2000, and the
15 association, with respect to an insolvency of the company, is
16 liable only for a claim with a date of injury occurring on or after
17 that date. (V.T.I.C. Art. 5.76-3, Secs. 11(c), (d).)

18 Sec. 2054.154. COMPANY ASSETS; STATE LIABILITY. (a) All
19 money, revenues, and other assets of the company belong solely to
20 the company and are governed by the laws applicable to domestic
21 mutual insurance companies.

22 (b) The state:

- 23 (1) covenants with the company's policyholders,
24 persons receiving workers' compensation benefits, and the company's
25 creditors that the state will not borrow, appropriate, or direct
26 payments from the company's money, revenues, or other assets for
27 any purpose; and

1 (2) has no liability or responsibility to those
2 policyholders, persons receiving benefits, or creditors if the
3 company is placed in conservatorship or receivership or becomes
4 insolvent. (V.T.I.C. Art. 5.76-3, Sec. 12(a).)

5 Sec. 2054.155. REQUIRED RESERVES. The company shall
6 establish and maintain reserves for losses on an actuarially sound
7 basis in accordance with Chapter 426. (V.T.I.C. Art. 5.76-3, Sec.
8 12(b).)

9 Sec. 2054.156. RATIO OF CERTAIN PREMIUMS TO SURPLUS. The
10 company shall maintain a ratio of net written premiums on policies
11 written after reinsurance to surplus of not more than three to one.
12 (V.T.I.C. Art. 5.76-3, Sec. 12(c).)

13 Sec. 2054.157. DISSOLUTION PROHIBITED. The company may
14 not be dissolved. (V.T.I.C. Art. 5.76-3, Sec. 2(j).)

15 [Sections 2054.158-2054.200 reserved for expansion]

16 SUBCHAPTER E. EXAMINATIONS, REPORTS, AND FILINGS

17 Sec. 2054.201. EXAMINATION BY DEPARTMENT. (a) The
18 department shall examine the company in the manner and under the
19 conditions specified by Chapters 86 and 401 for the examination of
20 insurers.

21 (b) The company shall pay the costs of the examination.
22 (V.T.I.C. Art. 5.76-3, Secs. 18(a), (b).)

23 Sec. 2054.202. PROVIDING INFORMATION TO LEGISLATURE. The
24 company shall provide requested information to each appropriate
25 legislative committee in the manner requested by the committee.
26 (V.T.I.C. Art. 5.76-3, Sec. 4(e).)

27 Sec. 2054.203. ANNUAL ACCOUNTING OF MONEY RECEIVED AND

1 DISBURSED. Each year, the company shall prepare a complete and
2 detailed written report accounting for all money the company
3 received and disbursed during the preceding fiscal year. (V.T.I.C.
4 Art. 5.76-3, Sec. 2(i).)

5 Sec. 2054.204. ANNUAL STATEMENTS. (a) The company shall
6 file annual statements with the department and commission in the
7 same manner as is required of other workers' compensation insurance
8 companies.

9 (b) The department shall include in the department's annual
10 report under Section 32.021 a report on the company's condition.
11 (V.T.I.C. Art. 5.76-3, Sec. 12(e).)

12 Sec. 2054.205. PUBLICATION AND FILING OF AUDITED REPORT.
13 The board shall:

14 (1) publish an independently audited report analyzing
15 the company's activities and fiscal condition during the preceding
16 fiscal year; and

17 (2) file the audited report with the department for
18 submission simultaneously with its annual financial report.
19 (V.T.I.C. Art. 5.76-3, Sec. 16(a).)

20 Sec. 2054.206. ADDITIONAL REPORTS. The company shall file
21 with the department and the commission all reports required of
22 other workers' compensation insurance companies. (Art. 5.76-3,
23 Sec. 16(b).)

24 Sec. 2054.207. PERIODIC REPORTS TO BOARD. The president
25 shall make periodic reports to the board regarding:

26 (1) the company's status; and

27 (2) the company's investments. (V.T.I.C. Art. 5.76-3,

1 Sec. 13.)

2 [Sections 2054.208-2054.250 reserved for expansion]

3 SUBCHAPTER F. GENERAL POWERS AND DUTIES RELATING TO INSURANCE

4 Sec. 2054.251. RATEMAKING AUTHORITY. (a) Except as
5 provided by this section, the board may propose rates to be charged
6 by the company for insurance.

7 (b) The board shall engage the services of an independent
8 actuary who is a member in good standing with the Casualty Actuarial
9 Society or the American Academy of Actuaries to develop and
10 recommend actuarially sound rates.

11 (c) The company is subject to the requirements of Subchapter
12 A, Chapter 2053, and shall include the recommendations of the
13 independent actuary as part of the company's filing under that
14 subchapter. (V.T.I.C. Art. 5.76-3, Sec. 7(a).)

15 Sec. 2054.252. AMOUNTS OF RATES. Rates charged by the
16 company for insurance must be set in amounts sufficient, when
17 invested, to:

- 18 (1) carry all claims to maturity;
19 (2) meet the reasonable expenses of conducting the
20 company's business; and
21 (3) maintain a reasonable surplus. (V.T.I.C. Art.
22 5.76-3, Sec. 7(b).)

23 Sec. 2054.253. MULTITIERED PREMIUM SYSTEMS. (a)
24 Notwithstanding any other provision of this code or another
25 insurance law of this state, the company may establish multitiered
26 premium systems to price workers' compensation insurance policies
27 to:

1 (1) insureds in the company's competitive programs;
2 and

3 (2) insureds to whom policies are offered by the
4 company under Subchapter H.

5 (b) The systems may provide for a higher or lower premium
6 payment by an insured based on:

7 (1) the company's evaluation of the underwriting
8 characteristics of the individual risk; and

9 (2) the appropriate premium to be charged for the
10 policy coverages.

11 (c) The systems must be filed in accordance with Subchapter
12 A, Chapter 2053. (V.T.I.C. Art. 5.76-3, Sec. 7(c).)

13 Sec. 2054.254. CASH DIVIDENDS; CREDIT ON RENEWAL PREMIUM.

14 (a) The company may pay a cash dividend or allow a credit on the
15 renewal premium for a policyholder insured with the company, other
16 than a policyholder insured under Subchapter H.

17 (b) Payment of a cash dividend or allowance of a credit:

18 (1) must be made in accordance with criteria approved
19 by the board, which may consider the policyholder's safety record
20 and performance; and

21 (2) may be made only with the department's prior
22 approval. (V.T.I.C. Art. 5.76-3, Sec. 12(d).)

23 Sec. 2054.255. APPOINTMENT OF AGENT NOT REQUIRED. (a)
24 Notwithstanding any other provision of this code or another
25 insurance law of this state, the company is not required to appoint
26 a general property and casualty agent to act as an agent for the
27 company.

1 (b) An agent who transacts business with the company acts as
2 an agent for the applicant and not as an agent for the company,
3 unless the company and the agent have entered into a written
4 agreement for the agent to act on behalf of the company. (V.T.I.C.
5 Art. 5.76-3, Sec. 5(d).)

6 Sec. 2054.256. WORK PRODUCT INFORMATION. (a) Information
7 submitted to the company by an insurance agent on behalf of an
8 employer, including a policy expiration date, is the work product
9 of the agent. The company may not use the information in any
10 marketing or direct sales activity.

11 (b) Except as otherwise required or permitted by Chapter
12 552, Government Code, the company may not provide to an insurance
13 agent information obtained from another insurance agent.

14 (c) This section does not prevent:

15 (1) an employer from designating another insurance
16 agent or the company as the agent of record; or

17 (2) the company from using information submitted to
18 the company under this section for underwriting or a fraud
19 investigation. (V.T.I.C. Art. 5.76-3, Sec. 5(e).)

20 Sec. 2054.257. PAYMENT OF COMMISSION TO AGENT. The company
21 shall pay an insurance agent a reasonable commission on a workers'
22 compensation insurance policy that is written through the agent.
23 (V.T.I.C. Art. 5.76-3, Sec. 5(c).)

24 [Sections 2054.258-2054.300 reserved for expansion]

25 SUBCHAPTER G. ISSUANCE OF COVERAGE

26 Sec. 2054.301. APPLICATION FOR COVERAGE. An application
27 to the company for workers' compensation insurance coverage must

1 be:

2 (1) made on the form prescribed by the company; and

3 (2) submitted directly by the applicant or by a
4 general property and casualty agent on behalf of the applicant.
5 (V.T.I.C. Art. 5.76-3, Sec. 5(a).)

6 Sec. 2054.302. POLICY FORMS. The company shall use the
7 uniform policy and standard policy forms prescribed by the
8 department under Section 2052.002. (V.T.I.C. Art. 5.76-3, Sec.
9 14.)

10 Sec. 2054.303. DENIAL OF COVERAGE BASED ON CREDIT
11 RISK. The company may refuse to write insurance coverage for an
12 applicant that the company identifies as a credit risk unless the
13 applicant, before a policy is issued:

14 (1) pays the total estimated premium and related
15 charges; or

16 (2) provides security for payment of the total
17 estimated premium and related charges. (V.T.I.C. Art. 5.76-3, Sec.
18 5(b).)

19 Sec. 2054.304. CANCELLATION AND NONRENEWAL. The company
20 may cancel or refuse to renew coverage on a policyholder as provided
21 by Section 406.008, Labor Code. (V.T.I.C. Art. 5.76-3, Sec. 15.)

22 [Sections 2054.305-2054.350 reserved for expansion]

23 SUBCHAPTER H. COMPANY AS INSURER OF LAST RESORT

24 Sec. 2054.351. INSURER OF LAST RESORT. (a) Except as
25 provided by Section 2054.304 and this subchapter, the company may
26 not refuse to insure a risk that tenders:

27 (1) the necessary premium; and

1 (2) any applicable accident prevention service fee.

2 (b) If an applicant would be rejected for workers'
3 compensation insurance under the company's underwriting standards,
4 the company may not reject the risk, but shall insure the risk at a
5 higher premium as provided by the company's requirements. The
6 company may require the risk to meet other conditions considered
7 necessary to protect the company's interests. (V.T.I.C. Art.
8 5.76-4, Secs. (a), (b).)

9 Sec. 2054.352. REQUIRED DECLINATION OF CERTAIN RISKS. (a)
10 In this section, "good faith" means honesty in fact in any conduct
11 or transaction.

12 (b) The company shall decline to insure a risk if:

13 (1) insuring the risk would cause the company to
14 exceed the premium-to-surplus ratios established by Section
15 2054.156; or

16 (2) the risk is not, in good faith, entitled to
17 insurance through the company. (V.T.I.C. Art. 5.76-4, Sec. (d).)

18 Sec. 2054.353. REQUIRED INSURANCE OF CERTAIN COMMONLY OWNED
19 OR CONTROLLED ENTITIES. If the company suspects fraud or
20 identifies conditions that may result in acts of fraud, the company
21 may require an applicant for workers' compensation insurance
22 coverage who is identified as a risk for purposes of Section
23 2054.351(b) to insure all business entities that are commonly owned
24 or controlled by the applicant. (V.T.I.C. Art. 5.76-4, Sec. (g).)

25 Sec. 2054.354. DEVELOPMENT AND PUBLICATION OF CERTAIN
26 INFORMATION. (a) The company shall develop statistical and other
27 information as necessary to allow the company to distinguish

1 between the company's:

- 2 (1) writings in the voluntary market; and
3 (2) writings as the insurer of last resort.

4 (b) The department shall develop and publish classification
5 relativities specifically designed for the risks insured under this
6 subchapter.

7 (c) On request, the company shall report statistical or
8 other information developed under Subsection (a) to:

- 9 (1) the department; or
10 (2) any successor entity for research and oversight of
11 the workers' compensation system of this state. (V.T.I.C. Art.
12 5.76-4, Secs. (c), (e), (h).)

13 [Sections 2054.355-2054.400 reserved for expansion]

14 SUBCHAPTER I. APPEALS

15 Sec. 2054.401. APPEAL OF CERTAIN ACTIONS AND DECISIONS.

16 (a) An act or decision by the company to deny, cancel, or refuse to
17 renew a policy or risk insured under Subchapter H may be appealed to
18 the board not later than the 30th day after the date the affected
19 party receives actual notice that the act occurred or the decision
20 was made.

21 (b) The board shall:

22 (1) not later than the 30th day after the date the
23 request for hearing is made, hear the appeal; and

24 (2) not later than the 10th day before the date of the
25 hearing, notify the appellant in writing of the time and place of
26 the hearing.

27 (c) Not later than the 30th day after the last day of the

1 hearing, the board shall affirm, reverse, or modify the act or
2 decision appealed to the board.

3 (d) Unless the board specifically orders otherwise, a
4 hearing under this section does not suspend the operation of an act
5 or decision of the company. (V.T.I.C. Art. 5.76-3, Sec. 2(e).)

6 Sec. 2054.402. REVIEW OF BOARD DECISION BY COMMISSIONER.

7 (a) A board decision under Section 2054.401 is subject to review by
8 the commissioner in the manner provided by Chapter 2001, Government
9 Code.

10 (b) The commissioner's review of a board decision does not
11 suspend the operation of an act or decision of the company unless
12 the commissioner specifically orders the suspension on a showing by
13 an aggrieved party of:

14 (1) immediate, irreparable injury, loss, or damage;
15 and

16 (2) probable success on the merits. (V.T.I.C. Art.
17 5.76-3, Sec. 2(f).)

18 Sec. 2054.403. APPEAL OF COMMISSIONER'S DECISION. (a) A
19 person aggrieved by a decision of the commissioner under Section
20 2054.402 may appeal the decision to a district court.

21 (b) Judicial review under this section is governed by the
22 substantial evidence rule. (V.T.I.C. Art. 5.76-3, Sec. 2(g).)

23 [Sections 2054.404-2054.450 reserved for expansion]

24 SUBCHAPTER J. CONTROL OF FRAUD AND OTHER VIOLATIONS

25 Sec. 2054.451. IDENTIFICATION AND INVESTIGATION PROGRAM
26 FOR FRAUD AND OTHER VIOLATIONS. (a) The company shall develop and
27 implement a program to identify and investigate acts of fraud and

1 violations of this code relating to workers' compensation insurance
2 by applicants, policyholders, claimants, agents, insurers, health
3 care providers, or other persons.

4 (b) The company shall cooperate with the commission to
5 compile and maintain information necessary to detect practices or
6 patterns of conduct that violate this code relating to workers'
7 compensation insurance or that violate Subtitle A, Title 5, Labor
8 Code. (V.T.I.C. Art. 5.76-3, Sec. 9(a).)

9 Sec. 2054.452. INVESTIGATIONS; COORDINATION WITH
10 COMMISSION. (a) The company may investigate cases of suspected
11 fraud and violations of this code relating to workers' compensation
12 insurance.

13 (b) The company may:

14 (1) coordinate the company's investigations with those
15 conducted by the commission to avoid duplication of efforts; and

16 (2) refer to the commission a case that is not
17 otherwise resolved by the company so that the commission may:

18 (A) perform any further investigation necessary
19 under the circumstances;

20 (B) conduct administrative violation
21 proceedings; and

22 (C) assess and collect penalties and
23 restitution. (V.T.I.C. Art. 5.76-3, Sec. 9(b).)

24 Sec. 2054.453. RESTITUTION PAYABLE TO COMPANY. Restitution
25 collected under Section 2054.452(b) must be paid to the company.
26 (V.T.I.C. Art. 5.76-3, Sec. 9(d).)

27 Sec. 2054.454. DEPOSIT AND USE OF PENALTIES COLLECTED BY

1 COMMISSION. A penalty collected under Section 2054.452(b):

2 (1) must be deposited in the general revenue fund to
3 the credit of the commission; and

4 (2) may be appropriated only to the commission to
5 offset the costs of the program under Section 2054.451. (V.T.I.C.
6 Art. 5.76-3, Sec. 9(e).)

7 Sec. 2054.455. FUNDING AGREEMENTS FOR CRIMINAL
8 PROSECUTIONS. The company may enter into funding agreements with
9 local prosecutors to prosecute offenses against the company.
10 (V.T.I.C. Art. 5.76-3, Sec. 9(c).)

11 Sec. 2054.456. IMMUNITY FOR CERTAIN ACTIONS. The company,
12 the board, and company employees are not liable in a civil action
13 for an action taken in good faith in executing a duty under this
14 subchapter, including identifying or referring a person for
15 investigation of or prosecution for a possible administrative
16 violation or criminal offense. (V.T.I.C. Art. 5.76-3, Sec. 9(f).)

17 [Sections 2054.457-2054.500 reserved for expansion]

18 SUBCHAPTER K. ACCIDENT PREVENTION

19 Sec. 2054.501. DEFINITION. In this subchapter, "division"
20 means the commission's division of workers' health and safety.
21 (New.)

22 Sec. 2054.502. REQUIREMENTS FOR PREVENTION OF INJURIES.
23 The company may make and enforce requirements for the prevention of
24 injuries to an employee of a policyholder or applicant for
25 insurance under this chapter. On reasonable notice, a policyholder
26 or applicant shall grant representatives of the company, the
27 commission, or the department free access to the premises of the

1 policyholder or applicant during regular working hours for purposes
2 of this section. (V.T.I.C. Art. 5.76-3, Sec. 8(a).)

3 Sec. 2054.503. GROUND S FOR CANCELLATION OR DENIAL OF
4 COVERAGE. A failure or refusal by a policyholder or applicant for
5 insurance to comply with a requirement prescribed by the company
6 under Section 2054.502, or a failure or refusal to fully disclose
7 all information pertinent to insuring or servicing the policyholder
8 or applicant, constitutes sufficient grounds for the company to
9 cancel a policy or deny an application. (V.T.I.C. Art. 5.76-3,
10 Sec. 8(b).)

11 Sec. 2054.504. SAFETY CONSULTATION FOR CERTAIN
12 INSUREDS. (a) A policyholder who is insured under Subchapter H
13 shall obtain a safety consultation:

14 (1) if the policyholder:

15 (A) has a Texas experience modifier greater than
16 1.25;

17 (B) has a national experience modifier greater
18 than 1.25 and estimated premium allocable to this state of \$2,500 or
19 more; or

20 (C) does not have an experience modifier but has
21 had a loss ratio greater than 0.70 in at least two of the three most
22 recent policy years for which information is available; or

23 (2) as required by the company, if the policyholder:

24 (A) has been in business for less than three
25 years; and

26 (B) meets the criteria established by the company
27 for a safety consultation.

1 (b) The criteria under Subsection (a)(2)(B) may include:

2 (1) the number and classification of employees;

3 (2) the policyholder's industry; and

4 (3) the policyholder's previous workers' compensation
5 experience in this state or another jurisdiction. (V.T.I.C. Art.
6 5.76-3, Secs. 8(c), (d).)

7 Sec. 2054.505. SAFETY CONSULTATION PROCEDURES. Not later
8 than the 30th day after the effective date of a policy, the
9 policyholder shall obtain a safety consultation required under
10 Section 2054.504 from a safety consultant. The safety consultant
11 must be:

12 (1) the company;

13 (2) the division; or

14 (3) a professional source approved for that purpose by
15 the division. (V.T.I.C. Art. 5.76-3, Sec. 8(e) (part).)

16 Sec. 2054.506. SAFETY CONSULTANT REPORT. A safety
17 consultant acting under this subchapter shall file a written report
18 with the commission and the policyholder specifying any hazardous
19 condition or practice identified in the safety consultation.
20 (V.T.I.C. Art. 5.76-3, Sec. 8(e) (part).)

21 Sec. 2054.507. ACCIDENT PREVENTION PLAN. (a) If a safety
22 consultant identifies a hazardous condition or practice, the
23 policyholder and the safety consultant shall develop a specific
24 accident prevention plan that addresses the condition or practice.

25 (b) The safety consultant may approve an existing accident
26 prevention plan.

27 (c) The policyholder shall comply with the accident

1 prevention plan. (V.T.I.C. Art. 5.76-3, Sec. 8(f).)

2 Sec. 2054.508. ACCIDENT INVESTIGATIONS; OTHER
3 MONITORING. The division may:

4 (1) investigate an accident that occurs at a work site
5 of a policyholder for whom an accident prevention plan was
6 developed under Section 2054.507; and

7 (2) otherwise monitor as the division determines
8 necessary the implementation of the accident prevention plan.
9 (V.T.I.C. Art. 5.76-3, Sec. 8(g).)

10 Sec. 2054.509. FOLLOW-UP INSPECTION. (a) Not earlier than
11 the 90th day after or later than the sixth month after the date an
12 accident prevention plan is developed under Section 2054.507, the
13 division shall conduct a follow-up inspection of the policyholder's
14 premises in accordance with rules adopted by the commission.

15 (b) The commission may require the participation of the
16 safety consultant who performed the initial consultation and
17 developed the accident prevention plan.

18 (c) If the division determines that a policyholder has
19 complied with the terms of the accident prevention plan or has
20 implemented other accepted corrective measures, the division shall
21 certify that determination.

22 (d) If the division determines that a policyholder has
23 failed or refuses to implement the accident prevention plan or
24 other suitable hazard abatement measures, the policyholder may
25 elect to cancel coverage not later than the 30th day after the date
26 of the determination. (V.T.I.C. Art. 5.76-3, Sec. 8(h) (part).)

27 Sec. 2054.510. CANCELLATION OF COVERAGE BY COMPANY;

1 IMPOSITION OF ADMINISTRATIVE PENALTY. (a) If a policyholder
2 described by Section 2054.509(d) does not elect to cancel coverage
3 as provided by that section:

4 (1) the company may cancel the coverage; or

5 (2) the commission may impose an administrative
6 penalty on the policyholder.

7 (b) The amount of an administrative penalty under
8 Subsection (a)(2) may not exceed \$5,000. Each day of noncompliance
9 constitutes a separate violation.

10 (c) In imposing an administrative penalty, the commission
11 may consider any matter that justice may require and shall
12 consider:

13 (1) the seriousness of the violation, including the
14 nature, circumstances, consequences, extent, and gravity of the
15 prohibited act;

16 (2) the history and extent of previous administrative
17 violations;

18 (3) the demonstrated good faith of the violator,
19 including actions taken to rectify the consequences of the
20 prohibited act;

21 (4) any economic benefit resulting from the prohibited
22 act; and

23 (5) the penalty necessary to deter future violations.

24 (d) A penalty collected under this section must be:

25 (1) deposited in the general revenue fund to the
26 credit of the commission; or

27 (2) reappropriated to the commission to offset the

1 costs of implementing and administering this subchapter. (V.T.I.C.
2 Art. 5.76-3, Secs. 8(h) (part), (i).)

3 Sec. 2054.511. CONTINUING COMPLIANCE WITH SUBCHAPTER. The
4 procedures established under this subchapter must be followed each
5 year the policyholder meets the criteria established by Section
6 2054.504(a)(1). (V.T.I.C. Art. 5.76-3, Sec. 8(j).)

7 Sec. 2054.512. FEES FOR SERVICES. The commission shall:

8 (1) charge a policyholder for the reasonable cost of
9 services provided to the policyholder under Sections 2054.505,
10 2054.506, 2054.507, 2054.509, and 2054.510(a); and

11 (2) set the fees for the services at a
12 cost-reimbursement level, including a reasonable allocation of the
13 commission's administrative costs. (V.T.I.C. Art. 5.76-3, Sec.
14 8(k).)

15 Sec. 2054.513. ENFORCEMENT OF SUBCHAPTER. The compliance
16 and practices division of the commission shall enforce compliance
17 with this subchapter through the administrative violation
18 proceedings under Chapter 415, Labor Code. (V.T.I.C. Art. 5.76-3,
19 Sec. 8(l).)

20 [Sections 2054.514-2054.550 reserved for expansion]

21 SUBCHAPTER L. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

22 Sec. 2054.551. PUBLIC INTEREST INFORMATION. (a) The
23 company shall prepare information of public interest describing the
24 functions of the company and the procedures by which complaints are
25 submitted to and resolved by the company.

26 (b) The company shall make the information available to the
27 public and appropriate state agencies. (V.T.I.C. Art. 5.76-3, Sec.

1 19(a).)

2 Sec. 2054.552. COMPLAINTS. (a) The company shall
3 establish methods by which consumers and service recipients are
4 notified of the name, mailing address, and telephone number of the
5 company for the purpose of directing a complaint to the company.

6 (b) The company may provide for the notice:

7 (1) by a supplement or endorsement to a written
8 policy;

9 (2) on a sign prominently displayed in the place of
10 business of each regional office of the company; or

11 (3) in a bill for services provided by the company.

12 (V.T.I.C. Art. 5.76-3, Sec. 19(b).)

13 Sec. 2054.553. COMPLAINT RECORD. (a) The company shall
14 keep information about each written complaint filed with the
15 company. The information must include:

16 (1) the date the complaint is received;

17 (2) the name of the complainant;

18 (3) the subject matter of the complaint;

19 (4) a record of each person contacted in relation to
20 the complaint;

21 (5) a summary of the results of the review or
22 investigation of the complaint; and

23 (6) for a complaint for which the company takes no
24 action, an explanation of the reason the complaint was closed
25 without action.

26 (b) For each written complaint the company receives and has
27 authority to resolve, the company shall:

1 (1) provide the company's policies and procedures
2 relating to complaint investigation and resolution to the person
3 filing the complaint and each person or entity that is a subject of
4 the complaint; and

5 (2) at least quarterly and until final disposition of
6 the complaint, notify the person filing the complaint and each
7 person or entity that is a subject of the complaint of the status of
8 the complaint unless the notification would jeopardize an
9 undercover investigation. (V.T.I.C. Art. 5.76-3, Sec. 20.)

10 [Chapters 2055-2100 reserved for expansion]

11 SUBTITLE F. OTHER COVERAGE

12 CHAPTER 2101. COVERAGE FOR AIRCRAFT

13 Sec. 2101.001. APPLICABILITY OF CHAPTER

14 Sec. 2101.002. FILING OF POLICY FORMS AND ENDORSEMENTS

15 MAY BE REQUIRED

16 Sec. 2101.003. DISAPPROVAL OF POLICY FORM OR

17 ENDORSEMENT

18 Sec. 2101.004. CERTAIN CONTRACTS OR OTHER AGREEMENTS

19 VOID

20 Sec. 2101.005. RULES

21 CHAPTER 2101. COVERAGE FOR AIRCRAFT

22 Sec. 2101.001. APPLICABILITY OF CHAPTER. This chapter
23 applies only to aircraft hull and aircraft liability insurance.
24 (V.T.I.C. Art. 5.90 (part).)

25 Sec. 2101.002. FILING OF POLICY FORMS AND ENDORSEMENTS MAY
26 BE REQUIRED. If the commissioner finds that a public need exists
27 to regulate the insurance subject to this chapter, the commissioner

1 by order may require each insurer issuing that insurance in this
2 state to file with the department each policy form and endorsement
3 the insurer uses to write the insurance. (V.T.I.C. Art. 5.90
4 (part).)

5 Sec. 2101.003. DISAPPROVAL OF POLICY FORM OR ENDORSEMENT.

6 (a) The commissioner may disapprove the use of a policy form or
7 endorsement filed under this chapter.

8 (b) After the commissioner disapproves a policy form or
9 endorsement, an insurer may not use the form or endorsement.
10 (V.T.I.C. Art. 5.90 (part).)

11 Sec. 2101.004. CERTAIN CONTRACTS OR OTHER AGREEMENTS
12 VOID. (a) A contract or other agreement is void if the contract
13 or agreement is not written into:

14 (1) the application for an insurance policy subject to
15 this chapter; or

16 (2) the policy.

17 (b) A contract or other agreement that is void under
18 Subsection (a) is:

19 (1) a violation of this chapter; and

20 (2) sufficient cause to revoke the insurer's
21 certificate of authority to write aircraft insurance in this state.
22 (V.T.I.C. Art. 5.90 (part).)

23 Sec. 2101.005. RULES. When the commissioner acts under
24 this chapter, the commissioner may adopt any rules that are
25 necessary to carry out the provisions of this chapter or Chapter 251
26 or 256. (V.T.I.C. Art. 5.92.)

27 [Chapters 2102-2150 reserved for expansion]

1 SUBTITLE G. POOLS, GROUPS, PLANS, AND SELF-INSURANCE

2 CHAPTER 2151. TEXAS AUTOMOBILE INSURANCE PLAN ASSOCIATION

3 SUBCHAPTER A. GENERAL PROVISIONS

4 Sec. 2151.001. DEFINITIONS

5 [Sections 2151.002-2151.050 reserved for expansion]

6 SUBCHAPTER B. TEXAS AUTOMOBILE INSURANCE PLAN ASSOCIATION

7 Sec. 2151.051. NATURE AND COMPOSITION OF ASSOCIATION

8 Sec. 2151.052. AUTHORITY OF GOVERNING COMMITTEE

9 Sec. 2151.053. MEMBERSHIP OF GOVERNING COMMITTEE

10 Sec. 2151.054. ELIGIBILITY TO SERVE AS INSURER

11 REPRESENTATIVE

12 Sec. 2151.055. INELIGIBILITY TO SERVE AS PUBLIC MEMBER

13 Sec. 2151.056. IMMUNITY FROM LIABILITY

14 [Sections 2151.057-2151.100 reserved for expansion]

15 SUBCHAPTER C. POWERS AND DUTIES OF ASSOCIATION

16 Sec. 2151.101. POWERS OF NONPROFIT CORPORATION

17 Sec. 2151.102. ASSIGNMENT OF INSURANCE; ELIGIBILITY

18 Sec. 2151.103. ASSESSMENTS

19 [Sections 2151.104-2151.150 reserved for expansion]

20 SUBCHAPTER D. PLAN OF OPERATION

21 Sec. 2151.151. CONTENTS OF PLAN OF OPERATION;

22 AMENDMENTS

23 Sec. 2151.152. CORRECTIVE ACTION TO PLAN OF OPERATION

24 Sec. 2151.153. INCENTIVE PROGRAMS

25 Sec. 2151.154. ASSIGNMENT DISTRIBUTION PLAN

26 [Sections 2151.155-2151.200 reserved for expansion]

1 SUBCHAPTER E. RATES FOR INSURANCE; HEARING

2 Sec. 2151.201. RATE STANDARDS

3 Sec. 2151.202. RATE FILINGS

4 Sec. 2151.203. RECORDING AND REPORTING OF PREMIUM,
5 LOSS, AND EXPENSE EXPERIENCE

6 Sec. 2151.204. NOTICE OF FILING

7 Sec. 2151.205. OPPORTUNITY TO REVIEW FILING

8 Sec. 2151.206. HEARING ON FILING

9 Sec. 2151.207. ACTION OF COMMISSIONER ON FILING

10 Sec. 2151.208. AMENDED FILING

11 Sec. 2151.209. OPPORTUNITY TO REVIEW AMENDED FILING

12 Sec. 2151.210. HEARING ON AMENDED FILING

13 Sec. 2151.211. APPEAL

14 Sec. 2151.212. HEARINGS BY DEPARTMENT

15 CHAPTER 2151. TEXAS AUTOMOBILE INSURANCE PLAN ASSOCIATION

16 SUBCHAPTER A. GENERAL PROVISIONS

17 Sec. 2151.001. DEFINITIONS. In this chapter:

18 (1) "Association" means the Texas Automobile
19 Insurance Plan Association.

20 (2) "Authorized insurer" means an insurer authorized
21 by the department to write automobile liability coverage under this
22 title. Except as provided by Section 2251.204, the term does not
23 include a county mutual insurance company organized under Chapter
24 912.

25 (3) "Insurance" means an insurance policy that meets
26 the requirements of Chapter 601, Transportation Code. (V.T.I.C.
27 Art. 21.81, Secs. 1(1), (2), (3).)

1 [Sections 2151.002-2151.050 reserved for expansion]

2 SUBCHAPTER B. TEXAS AUTOMOBILE INSURANCE PLAN ASSOCIATION

3 Sec. 2151.051. NATURE AND COMPOSITION OF ASSOCIATION. (a)
4 The Texas Automobile Insurance Plan Association is a nonprofit
5 corporate body composed of all authorized insurers.

6 (b) Each authorized insurer must be a member of the
7 association as a condition of the insurer's authority to write
8 automobile liability insurance in this state. (V.T.I.C.
9 Art. 21.81, Sec. 2(a) (part).)

10 Sec. 2151.052. AUTHORITY OF GOVERNING COMMITTEE. The
11 association is administered by a governing committee under a plan
12 of operation. (V.T.I.C. Art. 21.81, Secs. 2(b) (part), 3(a)
13 (part).)

14 Sec. 2151.053. MEMBERSHIP OF GOVERNING COMMITTEE. The
15 governing committee is composed of 15 members selected as follows:

16 (1) eight members who represent the interests of
17 insurers, elected by the association members according to a method
18 the members determine;

19 (2) five public members, nominated by the office of
20 public insurance counsel and selected by the commissioner; and

21 (3) two members who are general property and casualty
22 agents, as required by the plan of operation. (V.T.I.C.
23 Art. 21.81, Sec. 2(b) (part).)

24 Sec. 2151.054. ELIGIBILITY TO SERVE AS INSURER
25 REPRESENTATIVE. To be eligible to serve on the governing committee
26 as a representative of insurers, an individual must be a full-time
27 employee of an authorized insurer. (V.T.I.C. Art. 21.81, Sec.

1 2(c).)

2 Sec. 2151.055. INELIGIBILITY TO SERVE AS PUBLIC MEMBER. An
3 individual may not serve on the governing committee as a public
4 member if the individual, another individual related to that
5 individual within the second degree by consanguinity or affinity,
6 or another individual residing in the same household with that
7 individual:

8 (1) is required to be registered or licensed under
9 this code or another insurance law of this state;

10 (2) is employed by or acts as a consultant to a person
11 required to be registered or licensed or required to hold a
12 certificate of authority under this code or another insurance law
13 of this state;

14 (3) is the owner of, has a financial interest in, or
15 participates in the management of an organization required to be
16 registered or licensed or required to hold a certificate of
17 authority under this code or another insurance law of this state;

18 (4) is an officer, employer, or consultant of an
19 association in the field of insurance; or

20 (5) is required to register as a lobbyist under
21 Chapter 305, Government Code. (V.T.I.C. Art. 21.81, Sec. 2(d).)

22 Sec. 2151.056. IMMUNITY FROM LIABILITY. (a) The
23 association, a member of the governing committee, or an employee of
24 the association is not personally liable for:

25 (1) an act performed in good faith within the scope of
26 the person's authority as determined under this chapter or the plan
27 of operation; or

1 (2) damages occasioned by the person's official act or
2 omission except an act or omission that is corrupt or malicious.

3 (b) The association shall provide counsel to defend an
4 action brought against a member of the governing committee or an
5 employee because of the person's official act or omission
6 regardless of whether the person has terminated service with the
7 association when the action is instituted.

8 (c) This section is cumulative of and does not affect or
9 modify a common law or statutory privilege or immunity. (V.T.I.C.
10 Art. 21.81, Sec. 6.)

11 [Sections 2151.057-2151.100 reserved for expansion]

12 SUBCHAPTER C. POWERS AND DUTIES OF ASSOCIATION

13 Sec. 2151.101. POWERS OF NONPROFIT CORPORATION. (a) The
14 association has the powers granted to a nonprofit corporation under
15 the Business Organizations Code.

16 (b) Notwithstanding Subsection (a), on or before December
17 31, 2009, the association has the powers granted to a nonprofit
18 corporation under the Texas Non-Profit Corporation Act (Article
19 1396-1.01 et seq., Vernon's Texas Civil Statutes) or the Business
20 Organizations Code, as applicable.

21 (c) This subsection and Subsection (b) expire December 31,
22 2009. (V.T.I.C. Art. 21.81, Sec. 3(a) (part).)

23 Sec. 2151.102. ASSIGNMENT OF INSURANCE; ELIGIBILITY. (a)
24 The association shall provide for the assignment of insurance to an
25 authorized insurer for a person required by Chapter 601,
26 Transportation Code, to show proof of financial responsibility for
27 the future.

1 (b) An applicant is not eligible for insurance through the
2 association unless the applicant and the servicing agent certify as
3 part of the application to the association that the applicant has
4 been rejected for insurance by at least two insurers that are
5 authorized to engage in business in this state and that are writing
6 automobile insurance in this state. (V.T.I.C. Art. 21.81, Sec. 4.)

7 Sec. 2151.103. ASSESSMENTS. (a) The association may
8 assess authorized insurers to provide money to operate the
9 association.

10 (b) The amount assessed against an authorized insurer must
11 be in proportion to the insurer's writing of automobile liability
12 insurance in this state.

13 (c) The association may bring an action to collect an
14 assessment against an authorized insurer that does not pay the
15 assessment within a reasonable time. In addition, the association
16 may report an authorized insurer's failure to pay the assessment to
17 the commissioner. The commissioner may institute a disciplinary
18 action against the insurer under Chapter 82. (V.T.I.C. Art. 21.81,
19 Sec. 3(a) (part).)

20 [Sections 2151.104-2151.150 reserved for expansion]

21 SUBCHAPTER D. PLAN OF OPERATION

22 Sec. 2151.151. CONTENTS OF PLAN OF OPERATION; AMENDMENTS.

23 (a) The plan of operation must:

24 (1) provide for the efficient, economical, fair, and
25 nondiscriminatory administration of the association; and

26 (2) provide a means by which insurance may be provided
27 in accordance with Section 2151.102(a).

1 (b) Subject to the commissioner's approval, the governing
2 committee may amend the plan of operation. (V.T.I.C. Art. 21.81,
3 Secs. 1(4), 3(b), (c).)

4 Sec. 2151.152. CORRECTIVE ACTION TO PLAN OF OPERATION. If
5 the commissioner at any time believes that any part of the plan of
6 operation is inconsistent with the purposes of Chapter 601,
7 Transportation Code, the commissioner shall notify the governing
8 committee in writing so that the governing committee may take
9 corrective action. (V.T.I.C. Art. 21.81, Sec. 3(d).)

10 Sec. 2151.153. INCENTIVE PROGRAMS. (a) The plan of
11 operation must include incentive programs to encourage authorized
12 insurers to write insurance on a voluntary basis and to minimize the
13 use of the association as a means to obtain insurance.

14 (b) One incentive program must target underserved
15 geographic areas, which the commissioner by rule shall designate.
16 In designating underserved areas, the commissioner shall consider
17 with respect to an area:

18 (1) the availability of insurance;

19 (2) the number of uninsured drivers;

20 (3) the number of drivers insured through the
21 association; and

22 (4) any other relevant factor.

23 (c) The incentive programs are effective on the
24 commissioner's approval. (V.T.I.C. Art. 21.81, Sec. 3(e).)

25 Sec. 2151.154. ASSIGNMENT DISTRIBUTION PLAN. (a) The
26 plan of operation must include a voluntary, competitive limited
27 assignment distribution plan that allows an authorized insurer to

1 contract directly with a servicing insurer to accept assignments to
2 the servicing insurer by the association.

3 (b) A servicing insurer must be authorized to write
4 automobile insurance in this state and must:

5 (1) have written automobile liability insurance in
6 this state for at least five years; or

7 (2) be currently engaged as a servicing insurer for
8 assigned risk automobile business in at least one other state.

9 (c) After notice and hearing, the commissioner may prohibit
10 an insurer from acting as a servicing insurer.

11 (d) An authorized insurer and a servicing insurer shall
12 determine through negotiation the terms of a contract described by
13 this section, including the buy-out fee.

14 (e) The governing committee may:

15 (1) adopt reasonable rules for the conduct of business
16 under a contract described by this section; and

17 (2) establish reasonable standards of eligibility for
18 servicing insurers. (V.T.I.C. Art. 21.81, Sec. 3(f).)

19 [Sections 2151.155-2151.200 reserved for expansion]

20 SUBCHAPTER E. RATES FOR INSURANCE; HEARING

21 Sec. 2151.201. RATE STANDARDS. Rates for insurance
22 provided under this chapter must be:

23 (1) just, reasonable, adequate, not excessive, not
24 confiscatory, and not unfairly discriminatory for the risks to
25 which the rates apply; and

26 (2) sufficient to carry all claims to maturity and
27 meet the expenses incurred in the writing and servicing of the

1 business. (V.T.I.C. Art. 21.81, Sec. 5(a) (part).)

2 Sec. 2151.202. RATE FILINGS. (a) The association shall
3 file annually with the department rates to be charged for insurance
4 provided through the association for approval by the commissioner.

5 (b) The association may not file rates under this section
6 more than once in any 12-month period. (V.T.I.C. Art. 21.81, Sec.
7 5(c) (part).)

8 Sec. 2151.203. RECORDING AND REPORTING OF PREMIUM, LOSS,
9 AND EXPENSE EXPERIENCE. (a) The commissioner shall adopt
10 reasonable rules and statistical plans for the recording and
11 reporting of premium, loss, and expense experience and other
12 required data by each authorized insurer. The premium, loss, and
13 expense experience must be reported separately for business
14 assigned to the insurer.

15 (b) Each authorized insurer shall use the statistical plans
16 adopted under this section to record and report premium, loss, and
17 expense experience and other required data in accordance with the
18 rules adopted by the commissioner.

19 (c) In approving rates under this subchapter, the
20 commissioner shall consider the reports collected under the
21 statistical plan regarding aggregated premiums earned and losses
22 and expenses incurred in the writing of automobile insurance
23 through the association. (V.T.I.C. Art. 21.81, Sec. 5(a) (part),
24 (b).)

25 Sec. 2151.204. NOTICE OF FILING. (a) The department
26 shall file with the secretary of state for publication in the Texas
27 Register notice that a filing has been made under Section 2151.202

1 not later than the seventh day after the date the filing is received
2 by the department.

3 (b) The notice must include information relating to:

4 (1) the availability of the filing for public
5 inspection at the department during regular business hours;

6 (2) the procedures for obtaining copies of the filing;

7 (3) procedures for making written comments related to
8 the filing; and

9 (4) the time, place, and date of the hearing scheduled
10 under Section 2151.206. (V.T.I.C. Art. 21.81, Sec. 5(f).)

11 Sec. 2151.205. OPPORTUNITY TO REVIEW FILING. Before
12 approving, disapproving, or modifying a filing made under Section
13 2151.202, the commissioner must provide to all interested persons a
14 reasonable opportunity to:

15 (1) review the filing;

16 (2) obtain a copy of the filing on payment of any
17 legally required copying cost; and

18 (3) submit to the commissioner written comments,
19 analyses, or information related to the filing. (V.T.I.C.
20 Art. 21.81, Sec. 5(d).)

21 Sec. 2151.206. HEARING ON FILING. (a) Not later than the
22 45th day after the date the department receives a filing required by
23 Section 2151.202, the commissioner shall schedule a hearing at
24 which interested persons may present written or oral comments
25 relating to the filing.

26 (b) The association, the public insurance counsel, and any
27 other interested person or entity that submits proposed changes or

1 actuarial analyses may ask questions of any person testifying at
2 the hearing.

3 (c) A hearing held under this section is not a contested
4 case hearing under Chapter 2001, Government Code. (V.T.I.C. Art.
5 21.81, Sec. 5(e).)

6 Sec. 2151.207. ACTION OF COMMISSIONER ON FILING. (a) After
7 the conclusion of the hearing under Section 2151.206, the
8 commissioner shall approve, disapprove, or modify the filing in
9 writing.

10 (b) If the commissioner disapproves a filing, the
11 commissioner shall state in writing the reasons for the disapproval
12 and the criteria to be met by the association to obtain approval.
13 (V.T.I.C. Art. 21.81, Sec. 5(g) (part).)

14 Sec. 2151.208. AMENDED FILING. The association may file
15 with the commissioner an amended filing to comply with the
16 commissioner's comments not later than the 10th day after the date
17 the association receives the commissioner's written disapproval.
18 (V.T.I.C. Art. 21.81, Sec. 5(g) (part).)

19 Sec. 2151.209. OPPORTUNITY TO REVIEW AMENDED FILING.
20 Before approving or disapproving an amended filing, the
21 commissioner must provide to all interested persons a reasonable
22 opportunity, in the same manner an opportunity is provided under
23 Section 2151.205, to:

24 (1) review the amended filing;
25 (2) obtain a copy of the amended filing on payment of
26 any legally required copying cost; and

27 (3) submit to the commissioner written comments or

1 information related to the amended filing. (V.T.I.C. Art. 21.81,
2 Sec. 5(h) (part).)

3 Sec. 2151.210. HEARING ON AMENDED FILING. (a) The
4 commissioner may hold a hearing in the manner provided by Section
5 2151.206 not later than the 20th day after the date the department
6 receives an amended filing.

7 (b) Not later than the 10th day after the date the hearing on
8 the amended filing is concluded, the commissioner shall approve or
9 disapprove the amended filing.

10 (c) Not later than the 30th day after the date the amended
11 filing is received by the department, the commissioner shall
12 disapprove the amended filing or the filing is considered approved.

13 (d) The requirements provided under Sections 2151.204 and
14 2151.207 apply to a hearing conducted under this section.
15 (V.T.I.C. Art. 21.81, Sec. 5(h) (part).)

16 Sec. 2151.211. APPEAL. (a) A person aggrieved by a
17 decision of the commissioner under this subchapter may appeal the
18 decision not later than the 30th day after the date of the decision.

19 (b) An appeal of a commissioner's decision under this
20 subchapter must be made in accordance with Subchapter D, Chapter
21 36. (V.T.I.C. Art. 21.81, Sec. 5(i).)

22 Sec. 2151.212. HEARINGS BY DEPARTMENT. Subchapter B,
23 Chapter 40, does not apply to this subchapter. (V.T.I.C. Art.
24 21.81, Sec. 5(c) (part).)

25 CHAPTER 2152. GROUP INSURANCE IN UNDERSERVED AREAS

26 Sec. 2152.001. DEFINITION

27 Sec. 2152.002. DESIGNATION OF UNDERSERVED AREAS

1 Sec. 2152.003. AUTHORIZATION FOR ISSUANCE OF GROUP

2 INSURANCE IN UNDERSERVED AREA

3 Sec. 2152.004. EXCLUSION OF CERTAIN COVERAGE

4 Sec. 2152.005. FORMATION OF GROUP

5 Sec. 2152.006. RATES

6 Sec. 2152.007. POLICY FORMS AND CERTIFICATES

7 Sec. 2152.008. RULES

8 CHAPTER 2152. GROUP INSURANCE IN UNDERSERVED AREAS

9 Sec. 2152.001. DEFINITION. In this chapter, "residential
10 property insurance" means insurance against loss to real or
11 tangible personal property at a fixed location that is provided
12 through a homeowners policy, residential fire and allied lines
13 policy, or farm and ranch owners policy. (V.T.I.C. Art. 21.79, Sec.
14 1(a) (part).)

15 Sec. 2152.002. DESIGNATION OF UNDERSERVED AREAS. (a) The
16 commissioner by rule may designate an area as an underserved area
17 for personal automobile insurance or residential property
18 insurance.

19 (b) In determining which areas to designate as underserved,
20 the commissioner shall consider:

21 (1) whether the insurance described by Subsection (a)
22 is not reasonably available to a substantial number of insurable
23 risks and the availability of insurance in general; and

24 (2) any other relevant factor as determined by the
25 commissioner. (V.T.I.C. Art. 21.79, Sec. 1(a) (part).)

26 Sec. 2152.003. AUTHORIZATION FOR ISSUANCE OF GROUP
27 INSURANCE IN UNDERSERVED AREA. An insurer authorized to write

1 property or casualty insurance in this state, including a Lloyd's
2 plan and a reciprocal or interinsurance exchange, that writes
3 personal automobile insurance or residential property insurance in
4 this state may write the personal automobile insurance or
5 residential property insurance on a group basis in an underserved
6 area designated by the commissioner. (V.T.I.C. Art. 21.79, Sec.
7 2.)

8 Sec. 2152.004. EXCLUSION OF CERTAIN COVERAGE. Group
9 insurance provided under this chapter may not include windstorm and
10 hail insurance coverage for a risk eligible for that coverage under
11 Chapter 2210. (V.T.I.C. Art. 21.79, Sec. 1(b).)

12 Sec. 2152.005. FORMATION OF GROUP. A group may be formed
13 solely to purchase insurance subject to this chapter. (V.T.I.C.
14 Art. 21.79, Sec. 3.)

15 Sec. 2152.006. RATES. Rates for coverage provided under
16 this chapter are subject to the applicable statutes relating to the
17 insurers providing the coverage. (V.T.I.C. Art. 21.79, Sec. 5.)

18 Sec. 2152.007. POLICY FORMS AND CERTIFICATES. The
19 commissioner shall adopt policy forms and certificates for use in
20 underserved areas designated by the commissioner under this
21 chapter. (V.T.I.C. Art. 21.79, Sec. 4.)

22 Sec. 2152.008. RULES. In addition to other rules adopted
23 under this chapter, the commissioner may adopt any rules that are
24 appropriate and necessary to implement this chapter. (V.T.I.C. Art.
25 21.79, Sec. 6.)

1 CHAPTER 2153. GROUP MARKETING OF AUTOMOBILE INSURANCE

2 FOR PERSONS OVER 55 YEARS OF AGE

3 SUBCHAPTER A. GENERAL PROVISIONS

4 Sec. 2153.001. DEFINITIONS

5 Sec. 2153.002. APPLICABILITY OF CERTAIN PROVISIONS

6 Sec. 2153.003. RULES

7 [Sections 2153.004-2153.050 reserved for expansion]

8 SUBCHAPTER B. CONDITIONS FOR ISSUANCE

9 OF GROUP AUTOMOBILE INSURANCE

10 Sec. 2153.051. AUTHORIZATION FOR ISSUANCE OF GROUP

11 AUTOMOBILE INSURANCE

12 Sec. 2153.052. ELIGIBILITY OF GROUP

13 Sec. 2153.053. ELIGIBILITY OF GROUP MEMBER

14 Sec. 2153.054. GUARANTEED ISSUE

15 Sec. 2153.055. INSURER QUALIFICATIONS

16 Sec. 2153.056. VEHICLES COVERED

17 Sec. 2153.057. INDIVIDUAL POLICIES

18 Sec. 2153.058. GROUP PAYMENT OF PREMIUMS

19 Sec. 2153.059. LIMITATIONS ON CANCELING INSURANCE

20 [Sections 2153.060-2153.100 reserved for expansion]

21 SUBCHAPTER C. RECORDS, RATES, AND FORMS

22 Sec. 2153.101. MAINTENANCE OF RECORDS

23 Sec. 2153.102. RATES

24 Sec. 2153.103. POLICY FORMS

1 CHAPTER 2153. GROUP MARKETING OF AUTOMOBILE INSURANCE

2 FOR PERSONS OVER 55 YEARS OF AGE

3 SUBCHAPTER A. GENERAL PROVISIONS

4 Sec. 2153.001. DEFINITIONS. In this chapter:

5 (1) "Group automobile insurance" means automobile
6 insurance that:

7 (A) covers individuals who are over 55 years of
8 age; and

9 (B) is offered under a group marketing plan.

10 (2) "Group marketing" means the marketing of group
11 automobile insurance to an eligible group under Section 2153.052.
12 (V.T.I.C. Art. 21.77, Secs. 2(1) (part), (2) (part).)

13 Sec. 2153.002. APPLICABILITY OF CERTAIN PROVISIONS.

14 Sections 4001.051 and 4001.053 do not apply to a group
15 participating in a group marketing plan under this chapter.
16 (V.T.I.C. Art. 21.77, Sec. 10.)

17 Sec. 2153.003. RULES. The commissioner may adopt any rules
18 necessary to carry out the provisions of this chapter. (V.T.I.C.
19 Art. 21.77, Sec. 9.)

20 [Sections 2153.004-2153.050 reserved for expansion]

21 SUBCHAPTER B. CONDITIONS FOR ISSUANCE

22 OF GROUP AUTOMOBILE INSURANCE

23 Sec. 2153.051. AUTHORIZATION FOR ISSUANCE OF GROUP
24 AUTOMOBILE INSURANCE. An insurer may issue group automobile
25 insurance in this state if the conditions of Sections 2153.054(b),
26 2153.055-2153.059, and 2153.103 are met. (V.T.I.C. Art. 21.77,
27 Sec. 5(a).)

1 Sec. 2153.052. ELIGIBILITY OF GROUP. (a) To be eligible
2 for group marketing, a group must:

3 (1) have existed for at least six months before the
4 date the group automobile insurance is purchased; and

5 (2) be organized for a purpose other than to become an
6 insurance group under this chapter.

7 (b) The group may include any group that is actuarially
8 credible for underwriting purposes. (V.T.I.C. Art. 21.77, Sec. 3.)

9 Sec. 2153.053. ELIGIBILITY OF GROUP MEMBER. A member of a
10 group described by Section 2153.052 is eligible to participate in a
11 group marketing plan if the member is:

12 (1) in good standing with the group;

13 (2) over 55 years of age; and

14 (3) authorized to operate a motor vehicle in this
15 state. (V.T.I.C. Art. 21.77, Sec. 4.)

16 Sec. 2153.054. GUARANTEED ISSUE. (a) An insurer shall
17 issue group automobile insurance:

18 (1) on a guaranteed basis under a single insurance
19 program; and

20 (2) without individual underwriting selection or
21 individual proof of insurability.

22 (b) An insurer that issues group automobile insurance and
23 the insured group shall accept for participation in the group
24 marketing plan any member of the group who is eligible under Section
25 2153.053 and who wants to participate. (V.T.I.C. Art. 21.77, Secs.
26 2(2) (part), 5(b).)

27 Sec. 2153.055. INSURER QUALIFICATIONS. To qualify to

1 write group automobile insurance, an insurer:

2 (1) must be authorized to engage in the business of
3 automobile insurance in this state;

4 (2) must also be engaged in the business of writing
5 automobile insurance for independent individual risks; and

6 (3) may not be organized solely to provide group
7 automobile insurance. (V.T.I.C. Art. 21.77, Secs. 2(1) (part), (2)
8 (part), 5(c).)

9 Sec. 2153.056. VEHICLES COVERED. A group marketing plan
10 must provide that a motor vehicle is eligible for group automobile
11 insurance coverage only if the vehicle is owned by a group member or
12 the member's spouse jointly or severally. (V.T.I.C. Art. 21.77,
13 Sec. 5(g).)

14 Sec. 2153.057. INDIVIDUAL POLICIES. An insurer shall
15 issue an individual policy to each participating group member.
16 (V.T.I.C. Art. 21.77, Secs. 5(d) (part), (e) (part).)

17 Sec. 2153.058. GROUP PAYMENT OF PREMIUMS. An insurer shall
18 provide group automobile insurance under an agreement under which
19 the group periodically pays the premiums on the policies to the
20 insurer. (V.T.I.C. Art. 21.77, Sec. 5(e) (part).)

21 Sec. 2153.059. LIMITATIONS ON CANCELING INSURANCE. (a) An
22 insurer may not cancel the insurance of a group member unless:

23 (1) the member fails to pay the premiums; or

24 (2) the insurance for the entire group is canceled.

25 (b) An insurer that cancels insurance under Subsection (a)
26 shall provide to each group member whose insurance is canceled the
27 same notice of cancellation the insurer provides for cancellation

1 of individual automobile insurance policies. (V.T.I.C.
2 Art. 21.77, Sec. 5(f).)

3 [Sections 2153.060-2153.100 reserved for expansion]

4 SUBCHAPTER C. RECORDS, RATES, AND FORMS

5 Sec. 2153.101. MAINTENANCE OF RECORDS. An insurer that
6 writes insurance under a group marketing plan shall maintain
7 separate experience data on the group marketing plan business,
8 including complete records of premium income, losses, and expenses,
9 so that the experience may be fairly ascertained. (V.T.I.C.
10 Art. 21.77, Sec. 6.)

11 Sec. 2153.102. RATES. Rates for group automobile
12 insurance are determined in the manner provided by Chapter 2251 and
13 Article 5.13-2, to the extent that those laws apply. (V.T.I.C.
14 Art. 21.77, Sec. 7.)

15 Sec. 2153.103. POLICY FORMS. An insurer that writes group
16 automobile insurance shall use policy forms:

17 (1) prescribed by the commissioner and authorized for
18 use by Section 2301.052(b); or

19 (2) filed and in effect as provided by Section
20 2301.052(a). (V.T.I.C. Art. 21.77, Secs. 5(d) (part), 8.)

21 CHAPTER 2154. VOLUNTEER FIRE DEPARTMENT MOTOR VEHICLE

22 SELF-INSURANCE PROGRAM

23 Sec. 2154.001. DEFINITIONS

24 Sec. 2154.002. MOTOR VEHICLE SELF-INSURANCE PROGRAM

25 Sec. 2154.003. SELF-INSURANCE POOL; COVERAGE

26 Sec. 2154.004. PARTICIPATION IN SELF-INSURANCE POOL

1 Sec. 2154.005. VOLUNTEER FIRE DEPARTMENT

2 SELF-INSURANCE FUND

3 Sec. 2154.006. LIMITATION ON STATE'S LIABILITY

4 Sec. 2154.007. SELF-INSURANCE FEE

5 Sec. 2154.008. LEGAL REPRESENTATION

6 CHAPTER 2154. VOLUNTEER FIRE DEPARTMENT MOTOR VEHICLE

7 SELF-INSURANCE PROGRAM

8 Sec. 2154.001. DEFINITIONS. In this chapter:

9 (1) "Fund" means the volunteer fire department
10 self-insurance fund established under Section 2154.005.

11 (2) "Program" means the volunteer fire department
12 motor vehicle self-insurance program administered under this
13 chapter.

14 (3) "Service" means the Texas Forest Service of The
15 Texas A&M University System.

16 (4) "Volunteer fire department" means a fire
17 department operated by the fire department's members on a
18 not-for-profit basis. The term includes a fire department that is
19 exempt from federal income tax under Section 501(a), Internal
20 Revenue Code of 1986, by being listed as an exempt organization in
21 Section 501(c)(3) of that code. (V.T.I.C. Art. 21.61, Sec. 1.)

22 Sec. 2154.002. MOTOR VEHICLE SELF-INSURANCE PROGRAM. (a)
23 The service shall administer a volunteer fire department
24 self-insurance program that:

25 (1) identifies and evaluates risks arising from the
26 use of motor vehicles by volunteer fire departments;

27 (2) maintains a loss-prevention and loss-control

1 program to reduce risks arising from the use of motor vehicles by
2 volunteer fire departments;

3 (3) consolidates and administers volunteer fire
4 department risk management and self-insurance programs; and

5 (4) provides motor vehicle self-insurance coverage in
6 accordance with Section 2154.003.

7 (b) The service may employ staff to administer the program.

8 (c) The director of the service may adopt rules to implement
9 and administer the program. (V.T.I.C. Art. 21.61, Secs. 2, 3.)

10 Sec. 2154.003. SELF-INSURANCE POOL; COVERAGE. (a) The
11 program shall administer a self-insurance pool to provide coverage
12 for motor vehicles a volunteer fire department uses for fire
13 fighting.

14 (b) The coverage may indemnify an official, employee,
15 member, or volunteer of a volunteer fire department for liability
16 arising from the use of a covered motor vehicle in performing the
17 person's fire-fighting duties. The maximum limits of coverage are:

18 (1) for bodily injury or death:

19 (A) \$100,000 for each person; and

20 (B) \$300,000 for each single occurrence; and

21 (2) for injury to or destruction of property, \$100,000
22 for each single occurrence.

23 (c) Self-insurance coverage provided under this section may
24 be funded only from money available from the fund.

25 (d) The director of the service may establish:

26 (1) eligibility requirements for participation in
27 coverage under this section; and

1 (2) equipment and safety standards for the motor
2 vehicles to be covered under this section.

3 (e) Coverage limits of self-insurance provided under this
4 section must be based on the liquidity of the fund after deducting
5 the cost of administering this chapter. (V.T.I.C. Art. 21.61,
6 Secs. 4(a), (b), (c), 5(d), (e).)

7 Sec. 2154.004. PARTICIPATION IN SELF-INSURANCE POOL. (a)
8 To participate in coverage provided under Section 2154.003, a
9 volunteer fire department must submit a written request to the
10 program.

11 (b) The director of the program shall approve the request
12 for participation if each motor vehicle to be covered meets the
13 eligibility requirements and equipment and safety standards
14 established under Section 2154.003(d). (V.T.I.C. Art. 21.61, Sec.
15 4(d).)

16 Sec. 2154.005. VOLUNTEER FIRE DEPARTMENT SELF-INSURANCE
17 FUND. (a) The fund is an account in the general revenue fund.

18 (b) The fund is composed of:

19 (1) money collected under Section 2154.007; and

20 (2) interest accruing on money in the fund.

21 (c) Money in the fund may be spent only for:

22 (1) funding self-insurance under the program; or

23 (2) administering this chapter, including paying the
24 salaries and expenses of staff for the program and the fund.
25 (V.T.I.C. Art. 21.61, Secs. 5(a), (b), (c).)

26 Sec. 2154.006. LIMITATION ON STATE'S LIABILITY. The state's
27 liability for a loss covered by self-insurance provided under this

1 chapter is limited to the assets of the fund, and the state is not
2 otherwise liable for that loss. (V.T.I.C. Art. 21.61, Sec. 5(f).)

3 Sec. 2154.007. SELF-INSURANCE FEE. (a) The service may
4 assess and collect a reasonable fee from participating volunteer
5 fire departments to provide self-insurance coverage under this
6 chapter. In establishing the amount of the fee, the service shall
7 consider the amount that could be charged to the volunteer fire
8 department for similar insurance coverage provided to that
9 department in accordance with this code.

10 (b) Fees collected under this section shall be deposited to
11 the credit of the fund. (V.T.I.C. Art. 21.61, Sec. 6.)

12 Sec. 2154.008. LEGAL REPRESENTATION. (a) The service may
13 employ an attorney to represent a volunteer fire department or an
14 official, employee, member, or volunteer of a volunteer fire
15 department in a liability action for which insurance coverage is
16 provided under this chapter.

17 (b) The attorney general may not provide the services
18 described by Subsection (a). (V.T.I.C. Art. 21.61, Sec. 7.)

19 [Chapters 2155-2170 reserved for expansion]

20 CHAPTER 2171. COMMERCIAL GROUP PROPERTY INSURANCE

21 Sec. 2171.001. DEFINITION

22 Sec. 2171.002. AUTHORIZATION FOR ISSUANCE

23 Sec. 2171.003. POLICY FORM FILINGS

24 Sec. 2171.004. RATE FILINGS

25 Sec. 2171.005. IDENTIFICATION OF INSURED REQUIRED

26 CHAPTER 2171. COMMERCIAL GROUP PROPERTY INSURANCE

27 Sec. 2171.001. DEFINITION. In this chapter, "large risk"

1 means an insured described by Section 2301.004. (V.T.I.C.
2 Art. 5.41-3, Secs. (a) (part), (b) (part).)

3 Sec. 2171.002. AUTHORIZATION FOR ISSUANCE. An insurer may
4 write commercial group property insurance for:

5 (1) a group of businesses that constitutes a large
6 risk if the members of the group have clearly identifiable
7 underwriting characteristics; or

8 (2) an association that constitutes a large risk if
9 the members of the association are engaged in similar undertakings.
10 (V.T.I.C. Art. 5.41-3, Sec. (a) (part).)

11 Sec. 2171.003. POLICY FORM FILINGS. (a) An insurer shall
12 file a policy form with the commissioner before using the form for a
13 group of businesses or an association described by Section 2171.002
14 in which each member of the group or association is not a large
15 risk.

16 (b) A filing made under this section is for informational
17 purposes only. (V.T.I.C. Art. 5.41-3, Sec. (b) (part).)

18 Sec. 2171.004. RATE FILINGS. An insurer shall file with
19 the commissioner in accordance with Chapter 2251 the following
20 information for commercial group property insurance written under
21 this chapter in this state:

22 (1) rates;

23 (2) supplementary rating information; and

24 (3) pertinent supporting information. (V.T.I.C.
25 Art. 5.41-3, Sec. (c).)

26 Sec. 2171.005. IDENTIFICATION OF INSURED REQUIRED. An
27 insurer filing a policy form under Section 2171.003 or rates and

1 related information under Section 2171.004 shall clearly identify
2 the group of businesses or the association to be insured. (V.T.I.C.
3 Art. 5.41-3, Sec. (d).)

4 [Chapters 2172-2200 reserved for expansion]

5 CHAPTER 2201. RISK RETENTION GROUPS AND PURCHASING GROUPS

6 SUBCHAPTER A. GENERAL PROVISIONS

7 Sec. 2201.001. PURPOSE OF CHAPTER

8 Sec. 2201.002. GENERAL DEFINITIONS

9 Sec. 2201.003. LIABILITY DEFINED

10 Sec. 2201.004. AGENT LICENSE REQUIRED

11 Sec. 2201.005. EXEMPTION FROM CERTAIN REQUIREMENTS

12 Sec. 2201.006. AUTHORITY OF COMMISSIONER

13 Sec. 2201.007. ANNUAL REPORT TO COMMISSIONER

14 Sec. 2201.008. RULES

15 [Sections 2201.009-2201.050 reserved for expansion]

16 SUBCHAPTER B. RISK RETENTION GROUP QUALIFICATIONS

17 Sec. 2201.051. GENERAL QUALIFICATIONS OF RISK

18 RETENTION GROUP

19 Sec. 2201.052. NAME OF GROUP

20 Sec. 2201.053. STATUS AS LIABILITY INSURER REQUIRED

21 Sec. 2201.054. QUALIFICATIONS REGARDING AUTHORITY OF

22 CERTAIN ENTITIES TO ENGAGE IN

23 BUSINESS

24 Sec. 2201.055. QUALIFICATIONS REGARDING MEMBERSHIP

25 Sec. 2201.056. AUTHORIZED ACTIVITIES

26 [Sections 2201.057-2201.100 reserved for expansion]

1 SUBCHAPTER C. RISK RETENTION GROUPS

2 CHARTERED IN THIS STATE

3 Sec. 2201.101. ELIGIBILITY REQUIREMENTS

4 Sec. 2201.102. CHARTER APPLICATION

5 Sec. 2201.103. PLAN OF OPERATION; REVISIONS

6 Sec. 2201.104. FILING FEE

7 [Sections 2201.105-2201.150 reserved for expansion]

8 SUBCHAPTER D. RISK RETENTION GROUPS

9 NOT CHARTERED IN THIS STATE

10 Sec. 2201.151. COMPLIANCE REQUIRED

11 Sec. 2201.152. PREREQUISITES TO OFFERING INSURANCE

12 Sec. 2201.153. REQUIREMENTS FOR CONTINUING BUSINESS

13 Sec. 2201.154. FILING FEES

14 Sec. 2201.155. PAYMENT OF TAXES

15 Sec. 2201.156. EXAMINATION OF FINANCIAL CONDITION;

16 DISSOLUTION OR DELINQUENCY

17 PROCEEDINGS

18 Sec. 2201.157. APPLICABILITY OF STATE LAWS PROHIBITING

19 CERTAIN ACTS OR PRACTICES

20 Sec. 2201.158. INJUNCTIVE RELIEF

21 [Sections 2201.159-2201.200 reserved for expansion]

22 SUBCHAPTER E. PROVISIONS REGULATING GENERAL OPERATION

23 OF RISK RETENTION GROUPS

24 Sec. 2201.201. SCOPE OF AUTHORITY

25 Sec. 2201.202. PLAN OF OPERATION

26 Sec. 2201.203. AGENT TO VERIFY AUTHORITY

1 Sec. 2201.204. APPLICABILITY OF CERTAIN REQUIREMENTS

2 FOR LIABILITY INSURERS

3 Sec. 2201.205. RISK RETENTION GROUP PARTICIPATION IN

4 INSOLVENCY GUARANTY FUND PROHIBITED

5 Sec. 2201.206. REQUIRED NOTICE

6 Sec. 2201.207. PROHIBITED ACTIVITIES

7 Sec. 2201.208. INJUNCTIVE RELIEF

8 Sec. 2201.209. PENALTIES

9 [Sections 2201.210-2201.250 reserved for expansion]

10 SUBCHAPTER F. PURCHASING GROUPS

11 Sec. 2201.251. GENERAL QUALIFICATIONS OF PURCHASING

12 GROUP

13 Sec. 2201.252. DETERMINATION OF LOCATION

14 Sec. 2201.253. LIMITATIONS ON AUTHORITY

15 Sec. 2201.254. APPLICATION OF STATE LAW

16 Sec. 2201.255. NOTICE TO COMMISSIONER; FILING FEE

17 Sec. 2201.256. REGISTRATION REQUIREMENT; FEES

18 Sec. 2201.257. PAYMENT OF PREMIUM TAXES

19 Sec. 2201.258. PURCHASING GROUP PARTICIPATION IN

20 INSOLVENCY GUARANTY FUND PROHIBITED;

21 EXCEPTION

22 Sec. 2201.259. REQUIRED NOTICE

23 CHAPTER 2201. RISK RETENTION GROUPS AND PURCHASING GROUPS

24 SUBCHAPTER A. GENERAL PROVISIONS

25 Sec. 2201.001. PURPOSE OF CHAPTER. The purpose of this
26 chapter is to:

27 (1) regulate the formation and operation of risk

1 retention groups and purchasing groups in this state formed under:

2 (A) the Product Liability Risk Retention Act of
3 1981 (15 U.S.C. Section 3901 et seq.); or

4 (B) the Liability Risk Retention Act of 1986 (15
5 U.S.C. Section 3901 et seq.); and

6 (2) protect the public by the appropriate regulation
7 of groups described by Subdivision (1) to the extent permitted by
8 law. (V.T.I.C. Art. 21.54, Sec. 1.)

9 Sec. 2201.002. GENERAL DEFINITIONS. In this chapter:

10 (1) "Agent" includes the terms "agent" and "broker" as
11 used in the Liability Risk Retention Act of 1986 (15 U.S.C. Section
12 3901 et seq.).

13 (2) "Hazardous financial condition" means a condition
14 in which a risk retention group, based on the group's present or
15 reasonably anticipated financial condition and although the group
16 is not yet financially impaired or insolvent, is unlikely to be able
17 to:

18 (A) meet obligations to policyholders with
19 respect to known claims and reasonably anticipated claims; or

20 (B) pay other obligations in the normal course of
21 business.

22 (3) "Insurance" means primary insurance, excess
23 insurance, reinsurance, surplus lines insurance, and any other
24 arrangement for transferring and distributing risk that is
25 determined to be insurance under the laws of this state.

26 (4) "State" means any state of the United States or the
27 District of Columbia. (V.T.I.C. Art. 21.54, Secs. 2(4), (11),

1 (12), (13).)

2 Sec. 2201.003. LIABILITY DEFINED. (a) In this chapter,
3 except as provided by Subsection (b) or as otherwise provided by
4 this chapter:

5 (1) "Completed operations liability" means liability,
6 including liability for activities that are completed or abandoned
7 before the date of the occurrence giving rise to the liability,
8 arising out of the installation, maintenance, or repair of any
9 product at a site that is not owned or controlled by:

10 (A) a person who performs that work; or

11 (B) a person who hires an independent contractor
12 to perform that work.

13 (2) "Liability" means legal liability for damages,
14 including costs of defense, legal costs, fees, and other claims
15 expenses, incurred because of personal injury, property damage, or
16 other damage or loss to another person resulting from or arising out
17 of:

18 (A) a product, trade, or business, regardless of
19 whether the business operates for profit;

20 (B) operations, premises, or services, including
21 professional services; or

22 (C) any activity of:

23 (i) a state or local government; or

24 (ii) an agency or political subdivision of
25 a state or local government.

26 (3) "Product liability" means liability for damages
27 incurred because of any personal injury, death, emotional harm,

1 consequential economic damage, or property damage, including
2 damage resulting from the loss of use of property, arising out of
3 the manufacture, design, importation, distribution, packaging,
4 labeling, lease, or sale of a product, but does not include the
5 liability of any person for those damages if the product involved
6 was in the possession of that person when the incident giving rise
7 to the claim occurred.

8 (b) In this chapter, "liability" does not include:

9 (1) liability for damages incurred because of personal
10 injury, property damage, or other damage or loss resulting from a
11 personal, familial, or household activity or responsibility; or

12 (2) an employer's liability with respect to the
13 employer's employees other than legal liability under the Federal
14 Employers' Liability Act (45 U.S.C. Section 51 et seq.). (V.T.I.C.
15 Art. 21.54, Secs. 2(3), (5), (6), (7).)

16 Sec. 2201.004. AGENT LICENSE REQUIRED. (a) A person, firm,
17 partnership, or corporation may not act or offer to act as an agent
18 for, or aid in any manner in the solicitation, negotiation, or
19 placement of insurance on behalf of, a risk retention group or
20 purchasing group operating in this state or a group member in this
21 state without first obtaining a license as an agent under:

22 (1) Chapter 4051, if a resident of this state; or

23 (2) Chapter 4056, if a nonresident of this state.

24 (b) A person, firm, partnership, or corporation must comply
25 with Chapter 981 before the person, firm, partnership, or
26 corporation, on behalf of a purchasing group or a group member in
27 this state:

1 (1) acts or offers to act as an agent for an insurer
2 not authorized to engage in business in this state; or

3 (2) aids in any manner in the solicitation,
4 negotiation, or placement of insurance with an insurer not
5 authorized to engage in business in this state. (V.T.I.C. Art.
6 21.54, Secs. 10(a), (b).)

7 Sec. 2201.005. EXEMPTION FROM CERTAIN REQUIREMENTS. (a) A
8 provision of Chapter 981, 4055, or 4056 does not apply to an agent
9 described by Subsection (b) if the provision:

10 (1) requires residency in this state;

11 (2) requires countersignatures;

12 (3) prohibits the solicitation of insurance in this
13 state by a nonresident or the payment of commissions to a
14 nonresident; or

15 (4) prohibits a nonresident from acting as a surplus
16 or excess lines agent.

17 (b) The exemption provided by Subsection (a) applies to an
18 agent licensed under Chapter 981, 4055, or 4056 who is acting on
19 behalf of a risk retention group or purchasing group operating in
20 this state or a group member in this state in providing or placing
21 liability insurance for risks located in this state. (V.T.I.C.
22 Art. 21.54, Sec. 10(c).)

23 Sec. 2201.006. AUTHORITY OF COMMISSIONER. (a) To enforce
24 the laws of this state, the commissioner may use any authority
25 provided by this code that is not specifically preempted by the
26 Product Liability Risk Retention Act of 1981, as amended by the
27 Liability Risk Retention Act of 1986 (15 U.S.C. Section 3901 et

1 seq.), including the authority to investigate, issue a subpoena,
2 conduct a deposition or hearing, issue an order, and impose a
3 penalty.

4 (b) The commissioner shall rely on the procedural laws and
5 rules of this state with regard to an investigation, an
6 administrative proceeding, or litigation. (V.T.I.C. Art. 21.54,
7 Secs. 12(a), (b).)

8 Sec. 2201.007. ANNUAL REPORT TO COMMISSIONER. An agent
9 licensed as required by Section 2201.004 shall report to the
10 commissioner not later than March 1 of each year the activities and
11 scope of services being provided to a risk retention group or
12 purchasing group. The report must be made in accordance with rules
13 adopted by the commissioner. (V.T.I.C. Art. 21.54, Sec. 10(e).)

14 Sec. 2201.008. RULES. The commissioner may adopt rules
15 relating to risk retention groups and purchasing groups that are
16 necessary to carry out this chapter. (V.T.I.C. Art. 21.54, Sec.
17 15.)

18 [Sections 2201.009-2201.050 reserved for expansion]

19 SUBCHAPTER B. RISK RETENTION GROUP QUALIFICATIONS

20 Sec. 2201.051. GENERAL QUALIFICATIONS OF RISK RETENTION
21 GROUP. A risk retention group must be a corporation or other
22 limited liability association that:

23 (1) is organized primarily to assume and spread, and
24 engages primarily in assuming and spreading, all or any portion of
25 the liability exposure of the group's members; and

26 (2) otherwise meets the qualifications of this
27 subchapter. (V.T.I.C. Art. 21.54, Sec. 2(10) (part).)

1 Sec. 2201.052. NAME OF GROUP. A risk retention group must
2 include in its name the phrase "risk retention group." (V.T.I.C.
3 Art. 21.54, Sec. 2(10) (part).)

4 Sec. 2201.053. STATUS AS LIABILITY INSURER REQUIRED. A
5 corporation or other limited liability association must be
6 chartered and authorized to engage in the business of insurance as a
7 liability insurer under the laws of any state to act as a risk
8 retention group. (V.T.I.C. Art. 21.54, Sec. 2(10) (part).)

9 Sec. 2201.054. QUALIFICATIONS REGARDING AUTHORITY OF
10 CERTAIN ENTITIES TO ENGAGE IN BUSINESS. (a) In this section,
11 "completed operations liability" and "product liability" have the
12 meanings assigned by the Product Liability Risk Retention Act of
13 1981 (15 U.S.C. Section 3901 et seq.) before the effective date of
14 the Liability Risk Retention Act of 1986 (15 U.S.C. Section 3901 et
15 seq.).

16 (b) Notwithstanding Section 2201.053, a corporation or
17 other limited liability association may be considered a risk
18 retention group if:

19 (1) before January 1, 1985, the corporation or
20 association:

21 (A) was chartered and authorized to engage in the
22 business of insurance under the laws of Bermuda or the Cayman
23 Islands; and

24 (B) had certified to the commissioner, director,
25 or superintendent of insurance of at least one state that it
26 satisfied the capitalization requirements of that state; and

27 (2) since January 1, 1985, the corporation or

1 association has been continuously engaged in business solely to
2 continue to provide insurance to cover completed operations
3 liability or product liability. (V.T.I.C. Art. 21.54, Sec. 2(10)
4 (part).)

5 Sec. 2201.055. QUALIFICATIONS REGARDING MEMBERSHIP. (a) A
6 risk retention group must be composed of members who are engaged in
7 similar or related businesses or activities with respect to the
8 liability to which those members are exposed by virtue of any
9 related, similar, or common product, trade, business, operations,
10 premises, or services.

11 (b) A risk retention group must have:

12 (1) as members, only persons who are provided
13 insurance by the group; or

14 (2) as the sole owner, an organization that has:

15 (A) as members, only persons who comprise the
16 membership of the group; and

17 (B) as owners, only persons who comprise the
18 membership of the group and are provided insurance by the group.

19 (c) A risk retention group may not exclude a person from
20 membership in the group solely to provide a competitive advantage
21 for group members over that person. (V.T.I.C. Art. 21.54, Sec.
22 2(10) (part).)

23 Sec. 2201.056. AUTHORIZED ACTIVITIES. (a) A risk
24 retention group may provide:

25 (1) liability insurance for assuming and spreading all
26 or any portion of the liability of the group's members; and

27 (2) reinsurance with respect to the liability of

1 another risk retention group, or a member of that group, engaged in
2 businesses or activities that meet the requirements of Section
3 2201.055(a) for membership in the group providing reinsurance.

4 (b) A risk retention group may not engage in activities that
5 include providing insurance other than the insurance described by
6 Subsection (a). (V.T.I.C. Art. 21.54, Sec. 2(10) (part).)

7 [Sections 2201.057-2201.100 reserved for expansion]

8 SUBCHAPTER C. RISK RETENTION GROUPS

9 CHARTERED IN THIS STATE

10 Sec. 2201.101. ELIGIBILITY REQUIREMENTS. Except as
11 otherwise provided by this chapter, a risk retention group that
12 applies to be chartered in this state must:

13 (1) be chartered and authorized to engage in the
14 business of insurance under Chapter 822, 861, 883, or 942; and

15 (2) comply with all the laws, rules, and requirements,
16 including Chapter 804, applicable to insurers authorized to engage
17 in business under those chapters and with Subchapter D to the extent
18 those requirements do not limit the laws, rules, or requirements of
19 this state. (V.T.I.C. Art. 21.54, Secs. 3(a), (b), as amended Acts
20 70th Leg., R.S., Ch. 46.)

21 Sec. 2201.102. CHARTER APPLICATION. (a) A risk retention
22 group that applies to be chartered in this state shall provide to
23 the commissioner with the application for charter the following in
24 accordance with rules adopted by the commissioner:

25 (1) the group's name;

26 (2) the identity of the group's initial members;

27 (3) the identity of the individuals who organized the

1 group or who will provide administrative services or otherwise
2 influence or control the group's activities;

3 (4) the amount and nature of initial capitalization;

4 (5) the coverages to be afforded; and

5 (6) the states in which the group intends to operate.

6 (b) Immediately on receipt of an application for charter,
7 the commissioner shall provide summary information concerning the
8 filing, including the information provided under Subsection (a), to
9 the National Association of Insurance Commissioners. (V.T.I.C.
10 Art. 21.54, Secs. 3(d), (e).)

11 Sec. 2201.103. PLAN OF OPERATION; REVISIONS. (a) Except as
12 provided by Subsection (b), before a risk retention group chartered
13 in this state may offer insurance in any state, the group must
14 submit to the commissioner for approval a plan of operation as
15 described by Section 2201.202.

16 (b) A risk retention group is not required to submit a plan
17 of operation under this section with respect to any kind or
18 classification of liability insurance that:

19 (1) was defined in the Product Liability Risk
20 Retention Act of 1981 (15 U.S.C. Section 3901 et seq.), as that Act
21 existed before October 27, 1986; and

22 (2) was offered before October 27, 1986, by any risk
23 retention group that had been chartered and operating for at least
24 three years before that date.

25 (c) The risk retention group must submit a revision of the
26 group's plan of operation to the commissioner and the commissioner
27 must approve the revision before the group:

1 (1) offers an additional line of insurance in this
2 state or in any other state; or

3 (2) effects a change in the group's operations as
4 described in the plan of operation. (V.T.I.C. Art. 21.54, Secs.
5 3(b), as amended Acts 70th Leg., R.S., Ch. 115, (c).)

6 Sec. 2201.104. FILING FEE. (a) In addition to all other
7 fees imposed on an insurer chartered and authorized to engage in
8 business under Chapter 822, 861, 883, or 942, a risk retention group
9 chartered in this state shall pay a filing fee in an amount not to
10 exceed \$1,000 as set by rules adopted by the commissioner.

11 (b) Fees collected under this section shall be deposited to
12 the credit of the Texas Department of Insurance operating account
13 to pay expenses incurred by the commissioner under Sections
14 2201.102 and 2201.103. (V.T.I.C. Art. 21.54, Sec. 3(f).)

15 [Sections 2201.105-2201.150 reserved for expansion]

16 SUBCHAPTER D. RISK RETENTION GROUPS

17 NOT CHARTERED IN THIS STATE

18 Sec. 2201.151. COMPLIANCE REQUIRED. A risk retention group
19 chartered and authorized to engage in business in another state,
20 Bermuda, or the Cayman Islands shall comply with this subchapter to
21 engage in business as a risk retention group in this state.
22 (V.T.I.C. Art. 21.54, Sec. 4(a).)

23 Sec. 2201.152. PREREQUISITES TO OFFERING INSURANCE. (a)
24 Before offering insurance in this state, a risk retention group not
25 chartered in this state must submit to the commissioner:

26 (1) a statement that:

27 (A) identifies the state or states in which the

1 group is chartered and authorized to engage in business as a
2 liability insurer, the date of charter, and the group's principal
3 place of business; and

4 (B) provides any other information the
5 commissioner requires to verify that the group qualifies as a risk
6 retention group under Subchapter B, including information on the
7 group's membership;

8 (2) except as provided by Subsection (b), a copy of the
9 group's plan of operation, as described by Section 2201.202, and
10 revisions of that plan submitted to the state in which the group is
11 chartered and authorized to engage in business; and

12 (3) a statement of registration that designates the
13 commissioner as the group's agent for the purpose of receiving
14 service of legal documents or process as provided by Chapter 804.

15 (b) A risk retention group is not required to submit a plan
16 of operation under this section with respect to any line or
17 classification of liability insurance that:

18 (1) was defined in the Product Liability Risk
19 Retention Act of 1981 (15 U.S.C. Section 3901 et seq.), as that Act
20 existed before October 27, 1986; and

21 (2) was offered before October 27, 1986, by any risk
22 retention group that had been chartered and operating for at least
23 three years before that date. (V.T.I.C. Art. 21.54, Sec. 4(b).)

24 Sec. 2201.153. REQUIREMENTS FOR CONTINUING BUSINESS. (a)
25 A risk retention group not chartered in this state that engages in
26 business in this state shall submit to the commissioner:

27 (1) a copy of the group's financial statement

1 submitted to the state in which the group is chartered and
2 authorized to engage in business;

3 (2) a copy of each examination of the group as
4 certified by the commissioner, director, or superintendent of
5 insurance of another state or other public official conducting the
6 examination;

7 (3) on the commissioner's request, a copy of any audit
8 performed with respect to the group; and

9 (4) any other information required to verify that the
10 group continues to qualify as a risk retention group under
11 Subchapter B.

12 (b) A financial statement submitted under Subsection (a)(1)
13 must:

14 (1) be certified by an independent public accountant;
15 and

16 (2) contain a statement of opinion on loss and loss
17 adjustment expense reserves made:

18 (A) under criteria established by the National
19 Association of Insurance Commissioners; and

20 (B) by a member of the American Academy of
21 Actuaries or a qualified loss reserve specialist. (V.T.I.C. Art.
22 21.54, Sec. 4(d).)

23 Sec. 2201.154. FILING FEES. (a) The commissioner by rule
24 shall impose a filing fee in an amount not to exceed \$500 for filing
25 the items described by Sections 2201.152(a)(1) and (2).

26 (b) The commissioner by rule may impose a filing fee in an
27 amount not to exceed \$500 for filing the financial statement under

1 Section 2201.153(a)(1). A risk retention group shall provide to
2 the comptroller all information the comptroller requests in
3 connection with the reporting, collection, enforcement, and
4 administration of the fee.

5 (c) Fees collected under this section shall be deposited to
6 the credit of the Texas Department of Insurance operating account.
7 (V.T.I.C. Art. 21.54, Secs. 4(c), (e), (f) (part).)

8 Sec. 2201.155. PAYMENT OF TAXES. (a) A risk retention
9 group not chartered in this state is liable for the payment of
10 premium and maintenance taxes and taxes on premiums of direct
11 business for risks located in this state and shall report to the
12 commissioner the net premiums written for risks located in this
13 state. The group is subject to taxation, and any fine or penalty
14 related to that taxation, on the same basis as a foreign admitted
15 insurer in accordance with Chapters 4, 201, 202, 203, 221, 222, 224,
16 227, and 251-257.

17 (b) A risk retention group shall provide to the comptroller
18 all information the comptroller requests in connection with the
19 reporting, collection, enforcement, and administration of taxes
20 under this section. (V.T.I.C. Art. 21.54, Sec. 4(f) (part).)

21 Sec. 2201.156. EXAMINATION OF FINANCIAL CONDITION;
22 DISSOLUTION OR DELINQUENCY PROCEEDINGS. (a) A risk retention
23 group not chartered in this state must submit to an examination by
24 the commissioner to determine the group's financial condition if
25 the commissioner of insurance of the jurisdiction in which the
26 group is chartered and authorized to engage in business has not
27 initiated an examination on or before the 60th day after the date

1 the commissioner of this state requests an examination.

2 (b) The commissioner shall:

3 (1) coordinate the examination under Subsection (a) to
4 avoid unjustified repetition; and

5 (2) conduct the examination in an expeditious manner
6 under Sections 401.051, 401.052, 401.054-401.062, 401.103-401.106,
7 401.151, 401.152, 401.155, and 401.156 and Chapters 86 and 803 in
8 accordance with the National Association of Insurance
9 Commissioners Financial Condition Examiner's Handbook.

10 (c) A risk retention group not chartered in this state that
11 engages in business in this state must comply with an order issued
12 in a voluntary dissolution proceeding or in a delinquency
13 proceeding commenced by the commissioner or by a commissioner of
14 another jurisdiction if, after an examination under this section,
15 there is a finding that the group is financially impaired.
16 (V.T.I.C. Art. 21.54, Secs. 4(i), (j).)

17 Sec. 2201.157. APPLICABILITY OF STATE LAWS PROHIBITING
18 CERTAIN ACTS OR PRACTICES. (a) A risk retention group not
19 chartered in this state shall comply with the laws of this state
20 relating to deceptive, false, or fraudulent acts or practices,
21 including Chapters 541 and 543.

22 (b) A risk retention group not chartered in this state and
23 the group's agents and representatives shall comply with Chapter
24 542. (V.T.I.C. Art. 21.54, Secs. 4(g), (h).)

25 Sec. 2201.158. INJUNCTIVE RELIEF. (a) A risk retention
26 group not chartered in this state must comply with the terms of an
27 injunction issued by a court of this state or any other state based

1 on a finding that the group is in a hazardous financial condition or
2 is financially impaired.

3 (b) Injunctive relief must be issued by a court if the
4 commissioner seeks to enjoin a risk retention group not chartered
5 in this state from:

6 (1) violating the law of this state prohibiting
7 deceptive, false, or fraudulent acts or practices;

8 (2) soliciting or selling insurance to a person who is
9 not eligible for membership in the group; or

10 (3) soliciting or selling insurance or operating when
11 the group is in a hazardous financial condition or is financially
12 impaired. (V.T.I.C. Art. 21.54, Secs. 4(k), 12(c).)

13 [Sections 2201.159-2201.200 reserved for expansion]

14 SUBCHAPTER E. PROVISIONS REGULATING GENERAL OPERATION
15 OF RISK RETENTION GROUPS

16 Sec. 2201.201. SCOPE OF AUTHORITY. A risk retention group
17 may engage in the business of insurance in this state only:

18 (1) as a risk retention group; and

19 (2) to conduct the activities described in this
20 chapter. (V.T.I.C. Art. 21.54, Sec. 5(d).)

21 Sec. 2201.202. PLAN OF OPERATION. A plan of operation
22 submitted to the commissioner under Section 2201.103 or 2201.152
23 must be in the form of an analysis that presents the expected
24 activities and results of a risk retention group, including, at a
25 minimum:

26 (1) information sufficient to verify that the group's
27 members are engaged in businesses or activities that are similar or

1 related with respect to the liability to which those members are
2 exposed by virtue of any related, similar, or common product,
3 trade, business, operations, premises, or services;

4 (2) for each state in which the group intends to
5 operate, the coverages, deductibles, coverage limits, rates, and
6 rating classification systems for each line of insurance the group
7 intends to offer;

8 (3) historical and expected loss experience of the
9 proposed members and national experience of similar exposures to
10 the extent that this experience is reasonably available;

11 (4) pro forma financial statements and projections;

12 (5) appropriate opinions, including a determination
13 of minimum premium or participation levels required to begin
14 operations and to prevent a hazardous financial condition, by:

15 (A) a qualified, independent casualty actuary
16 who is a member in good standing of the American Academy of
17 Actuaries; or

18 (B) an individual who the commissioner
19 recognizes as having comparable training and experience;

20 (6) identification of management, underwriting and
21 claims procedures, marketing methods, managerial oversight
22 methods, and investment policies; and

23 (7) other matters prescribed by the insurance laws of
24 the state in which the group is chartered. (V.T.I.C. Art. 21.54,
25 Sec. 2(8).)

26 Sec. 2201.203. AGENT TO VERIFY AUTHORITY. Before placing
27 business with a risk retention group, each agent shall secure from

1 the appropriate insurance regulatory authority a certified copy of
2 the certificate of authority verifying that the insurer is
3 authorized in the insurer's domiciliary jurisdiction to write the
4 liability insurance policy the agent proposes to procure from the
5 insurer. (V.T.I.C. Art. 21.54, Sec. 10(d).)

6 Sec. 2201.204. APPLICABILITY OF CERTAIN REQUIREMENTS FOR
7 LIABILITY INSURERS. A risk retention group authorized to engage in
8 business in this state under Subchapter C or D must participate on
9 the same basis as a liability insurer holding a certificate of
10 authority to engage in the business of insurance in this state in:

- 11 (1) the Texas Windstorm Insurance Association;
- 12 (2) joint underwriting associations;
- 13 (3) mandatory liability and assigned risk pools; and
- 14 (4) residual market facilities. (V.T.I.C. Art. 21.54,
15 Sec. 11(c).)

16 Sec. 2201.205. RISK RETENTION GROUP PARTICIPATION IN
17 INSOLVENCY GUARANTY FUND PROHIBITED. A risk retention group may
18 not be required or permitted to join or contribute financially to
19 any insurance insolvency guaranty fund or similar mechanism in this
20 state. A risk retention group, and any of the group's insureds or
21 claimants against an insured, may not receive any benefit from an
22 insurance insolvency guaranty fund or similar mechanism in this
23 state for a claim arising under an insurance policy issued by the
24 group. (V.T.I.C. Art. 21.54, Sec. 11(a).)

25 Sec. 2201.206. REQUIRED NOTICE. (a) Any policy issued by a
26 risk retention group must contain in 10-point type on the front page
27 and on the declarations page the following notice:

NOTICE

1
2 This policy is issued by your risk retention
3 group. Your risk retention group may not be
4 subject to all of the insurance laws and
5 regulations of your state. State insurance
6 insolvency guaranty funds are not available
7 for your risk retention group.

8 (b) Each person, firm, partnership, or corporation licensed
9 under Chapter 981, 4051, or 4056 shall inform each prospective
10 insured on business to be placed with a risk retention group of the
11 notice required by Subsection (a). (V.T.I.C. Art. 21.54, Secs.
12 5(a), 10(f) (part).)

13 Sec. 2201.207. PROHIBITED ACTIVITIES. A risk retention
14 group may not:

15 (1) solicit or sell insurance to any person who is not
16 eligible for membership in the group;

17 (2) solicit or sell insurance or operate if the group
18 is in a hazardous financial condition or is financially impaired;
19 or

20 (3) engage in business in this state if an insurer is
21 directly or indirectly a member or owner of the group, unless all of
22 the group members are insurers. (V.T.I.C. Art. 21.54, Secs. 5(b),
23 (c).)

24 Sec. 2201.208. INJUNCTIVE RELIEF. An order issued by a
25 United States district court enjoining a risk retention group from
26 soliciting or selling insurance or operating in any state, in all
27 states, or in any territory or possession of the United States on a

1 finding that the group is in a hazardous financial condition, is
2 financially impaired, or is insolvent is enforceable in the courts
3 of this state. (V.T.I.C. Art. 21.54, Sec. 14.)

4 Sec. 2201.209. PENALTIES. (a) A risk retention group that
5 is authorized to engage in business in this state under Subchapter C
6 or D and that violates this chapter is subject to all sanctions and
7 penalties applicable to an insurer that holds a certificate of
8 authority under Chapters 822 and 861, including revocation of the
9 authority to engage in business in this state.

10 (b) A risk retention group not chartered in this state that
11 violates this chapter is also subject to any fine or penalty
12 applicable to a foreign admitted insurer generally, including
13 revocation of the authority to engage in business in this state.

14 (c) A risk retention group engaging in business in this
15 state that is not authorized to engage in business under Subchapter
16 C or D is considered an unauthorized insurer and is subject to
17 Section 823.457, Subchapters A-P, Chapter 442, and Chapters 101,
18 441, 804, and 801, other than Section 801.056. (V.T.I.C. Art.
19 21.54, Secs. 4(m), 13.)

20 [Sections 2201.210-2201.250 reserved for expansion]

21 SUBCHAPTER F. PURCHASING GROUPS

22 Sec. 2201.251. GENERAL QUALIFICATIONS OF PURCHASING GROUP.

23 (a) A purchasing group must:

24 (1) have as one of the group's purposes the purchase of
25 liability insurance on a group basis;

26 (2) be composed of members whose businesses or
27 activities are similar or related with respect to the liability to

1 which those members are exposed by virtue of any related, similar,
2 or common product, trade, business, operations, premises, or
3 services; and

4 (3) purchase group liability insurance only for the
5 group's members and only to cover the members' similar or related
6 liability exposure as described in Subdivision (2).

7 (b) A purchasing group may be domiciled in any state.
8 (V.T.I.C. Art. 21.54, Sec. 2(9).)

9 Sec. 2201.252. DETERMINATION OF LOCATION. (a) For
10 purposes of this subchapter, a purchasing group is considered to be
11 located in the state in which the highest aggregate premiums are in
12 force on the date the group insurance policy is written or renewed.
13 The group's location is ascertained on each placement or renewal of
14 insurance by the group with an insurer or risk retention group.

15 (b) For purposes of this section, a group insurance policy
16 is considered to be renewed annually. (V.T.I.C. Art. 21.54, Sec.
17 2(14).)

18 Sec. 2201.253. LIMITATIONS ON AUTHORITY. (a) A purchasing
19 group located in this state may not purchase liability insurance
20 from a risk retention group that is not chartered in a state or from
21 an insurer that does not hold a certificate of authority to engage
22 in the business of insurance in this state unless the purchase is
23 effected through a licensed agent acting under Chapter 981.

24 (b) A purchasing group may not offer insurance policy
25 coverage declared unlawful by the Texas Supreme Court. (V.T.I.C.
26 Art. 21.54, Secs. 8(a), (c).)

27 Sec. 2201.254. APPLICATION OF STATE LAW. (a) A purchasing

1 group meeting the criteria established under the Liability Risk
2 Retention Act of 1986 (15 U.S.C. Section 3901 et seq.) is exempt
3 from any law of this state that:

4 (1) relates to the creation of groups for the purchase
5 of insurance;

6 (2) requires countersignatures;

7 (3) prohibits group purchasing; or

8 (4) discriminates against a purchasing group or the
9 group's members.

10 (b) An insurer is exempt from any law of this state that
11 prohibits providing or offering to provide to a purchasing group or
12 the group's members advantages based on the group's or members' loss
13 and expense experience that are not afforded to other persons with
14 respect to rates, policy forms, coverages, or other matters.

15 (c) A purchasing group is subject to all other applicable
16 laws of this state. (V.T.I.C. Art. 21.54, Sec. 6.)

17 Sec. 2201.255. NOTICE TO COMMISSIONER; FILING FEE.

18 (a) Before engaging in business in this state, a purchasing group
19 must provide notice to the commissioner. The notice must:

20 (1) identify the state in which the group is
21 domiciled;

22 (2) specify the lines and classifications of liability
23 insurance the group intends to purchase;

24 (3) specify the method by which and the persons, if
25 any, through whom insurance will be offered to group members whose
26 risks are located in this state;

27 (4) identify the insurer from which the group intends

1 to purchase group insurance and the domicile of that insurer;

2 (5) identify the group's principal place of business
3 and, if ascertainable at the time of filing, the group's location;
4 and

5 (6) provide other information the commissioner
6 requires to verify that the group qualifies as a purchasing group
7 under Section 2201.251.

8 (b) The commissioner by rule shall impose a filing fee in an
9 amount not to exceed \$100 for filing notice under this section.
10 Fees collected under this subsection shall be deposited to the
11 credit of the Texas Department of Insurance operating account.
12 (V.T.I.C. Art. 21.54, Sec. 7(a).)

13 Sec. 2201.256. REGISTRATION REQUIREMENT; FEES. (a) A
14 purchasing group shall register with and designate the commissioner
15 or other appropriate authority as the group's agent solely for the
16 purpose of receiving service of legal documents or process unless
17 the group:

18 (1) was domiciled before April 1, 1986, in any state of
19 the United States and is domiciled on and after October 27, 1986, in
20 any state of the United States;

21 (2) before October 27, 1986, purchased the group's
22 insurance from an insurer authorized to engage in business in any
23 state, and after October 27, 1986, purchased the group's insurance
24 from an insurer authorized to engage in business in any state;

25 (3) was a purchasing group under the requirements of
26 the Product Liability Risk Retention Act of 1981 (15 U.S.C. Section
27 3901 et seq.) before October 27, 1986; and

1 (4) does not purchase insurance that was not
2 authorized for purposes of an exemption under that Act as effective
3 before October 27, 1986.

4 (b) The commissioner by rule may impose a fee in an amount
5 not to exceed \$50 for each document served on the commissioner and
6 forwarded to the purchasing group. Fees collected under this
7 subsection shall be deposited to the credit of the Texas Department
8 of Insurance operating account. (V.T.I.C. Art. 21.54, Sec. 7(b).)

9 Sec. 2201.257. PAYMENT OF PREMIUM TAXES. (a) Premiums paid
10 for coverage of risks located in this state by a purchasing group or
11 any group member are subject to taxation at the same rate and
12 subject to the same interest, fines, and penalties for nonpayment
13 that apply to premiums paid for similar coverage by other insureds.

14 (b) Title 3 is used to compute applicable tax rates for a
15 purchasing group or any group member that pays premiums for
16 coverage of risks located in this state to:

17 (1) an insurer holding a certificate of authority to
18 engage in the business of insurance in this state; or

19 (2) a risk retention group authorized to engage in
20 business in this state.

21 (c) To the extent that a purchasing group or group member
22 pays premiums as described by Subsection (b), the insurer or risk
23 retention group receiving those premiums shall remit the tax to the
24 department.

25 (d) Chapter 225 is used to compute applicable tax rates for
26 a purchasing group or any group member that pays premiums for
27 coverage of risks located in this state to an eligible surplus lines

1 insurer. If a purchasing group or member pays those premiums, the
2 surplus lines agent shall report and remit the tax. If the agent
3 does not remit the tax, the purchasing group shall remit the tax.
4 (V.T.I.C. Art. 21.54, Sec. 9.)

5 Sec. 2201.258. PURCHASING GROUP PARTICIPATION IN
6 INSOLVENCY GUARANTY FUND PROHIBITED; EXCEPTION. (a) A claim
7 against a purchasing group or a group member may not be paid from
8 any insurance insolvency guaranty fund or similar mechanism in this
9 state.

10 (b) A purchasing group, a group member, or any claimant
11 against the group or group member may not receive any benefit from
12 an insurance insolvency guaranty fund or similar mechanism in this
13 state for a claim arising under an insurance policy procured
14 through the group unless the policy is underwritten by an insurer
15 authorized to engage in business in this state that, at the time of
16 the policy's issuance:

17 (1) has capital and surplus of at least \$25 million; or
18 (2) is a member of a company group that has combined
19 capital and surplus of at least \$25 million. (V.T.I.C. Art. 21.54,
20 Sec. 11(b).)

21 Sec. 2201.259. REQUIRED NOTICE. (a) A purchasing group
22 that obtains liability insurance from an insurer or a risk
23 retention group shall provide notice to each group member that has a
24 risk located in this state that the risk is not protected by an
25 insurance insolvency guaranty fund in this state and that the
26 insurer or risk retention group may not be subject to all the
27 insurance laws and rules of this state.

1 (b) Each person, firm, partnership, or corporation licensed
2 under Chapter 981, 4051, or 4056 shall inform each prospective
3 insured on business to be written through a purchasing group of the
4 notice required by Subsection (a). (V.T.I.C. Art. 21.54, Secs.
5 8(b), 10(f) (part).)

6 CHAPTER 2202. JOINT UNDERWRITING

7 SUBCHAPTER A. GENERAL PROVISIONS

8 Sec. 2202.001. DEFINITIONS

9 Sec. 2202.002. INAPPLICABILITY OF CHAPTER

10 Sec. 2202.003. DEPOSIT OF FEES

11 Sec. 2202.004. CERTAIN APPROPRIATIONS FROM GENERAL

12 REVENUE FUND PROHIBITED

13 [Sections 2202.005-2202.050 reserved for expansion]

14 SUBCHAPTER B. AUTHORITY TO ACT AS JOINT UNDERWRITING ASSOCIATION

15 Sec. 2202.051. CERTIFICATE OF AUTHORITY REQUIRED

16 Sec. 2202.052. APPLICATION FOR CERTIFICATE OF

17 AUTHORITY

18 Sec. 2202.053. ISSUANCE OF CERTIFICATE OF AUTHORITY

19 Sec. 2202.054. TERM OF CERTIFICATE OF AUTHORITY

20 Sec. 2202.055. RENEWAL OF CERTIFICATE OF AUTHORITY

21 Sec. 2202.056. FEE FOR CERTIFICATE OF AUTHORITY

22 Sec. 2202.057. RECIPROCITY

23 [Sections 2202.058-2202.100 reserved for expansion]

24 SUBCHAPTER C. POWERS AND DUTIES OF JOINT UNDERWRITING

25 ASSOCIATION

26 Sec. 2202.101. AUTHORITY TO ACT

1 Sec. 2202.102. NOTIFICATION OF CERTAIN INFORMATION

2 REQUIRED

3 Sec. 2202.103. MAINTENANCE OF INFORMATION

4 [Sections 2202.104-2202.150 reserved for expansion]

5 SUBCHAPTER D. AUDIT AND EXAMINATION REQUIREMENTS

6 Sec. 2202.151. ANNUAL AUDIT

7 Sec. 2202.152. EXAMINATION BY COMMISSIONER

8 [Sections 2202.153-2202.200 reserved for expansion]

9 SUBCHAPTER E. DISCIPLINARY ACTIONS AND

10 PROCEDURES; ENFORCEMENT

11 Sec. 2202.201. GROUNDS FOR DENIAL OF CERTIFICATE OF

12 AUTHORITY OR FOR DISCIPLINARY ACTION

13 Sec. 2202.202. DENIAL OF CERTIFICATE OF AUTHORITY OR

14 DISCIPLINARY ACTION

15 Sec. 2202.203. NOTICE AND HEARING

16 Sec. 2202.204. ISSUANCE OF ORDER

17 Sec. 2202.205. APPEAL

18 Sec. 2202.206. APPLICATION AFTER DENIAL, REFUSAL, OR

19 REVOCATION

20 Sec. 2202.207. ADDITIONAL SANCTIONS; INJUNCTION

21 CHAPTER 2202. JOINT UNDERWRITING

22 SUBCHAPTER A. GENERAL PROVISIONS

23 Sec. 2202.001. DEFINITIONS. In this chapter:

24 (1) "Insurer" means any insurance company,

25 corporation, reciprocal or interinsurance exchange, mutual

26 association, county mutual insurance company, Lloyd's plan, or

27 other insurer authorized to engage in business in this state. The

1 term does not include an insurer that writes only life, health, or
2 accident insurance, variable life insurance, or variable annuity
3 contracts.

4 (2) "Joint underwriting association" means a
5 voluntary unincorporated association of insurers authorized to
6 engage in business in this state that has been authorized by the
7 association's member insurers to act on behalf of the member
8 insurers in joint underwriting or in issuing syndicate insurance
9 policies on a several, but not joint, basis. (V.T.I.C. Art.
10 21.49-3b, Secs. 2(3), (4).)

11 Sec. 2202.002. INAPPLICABILITY OF CHAPTER. This chapter
12 does not apply to the transaction of life, health, or accident
13 insurance business. (V.T.I.C. Art. 21.49-3b, Sec. 15.)

14 Sec. 2202.003. DEPOSIT OF FEES. Fees collected under this
15 chapter shall be deposited to the credit of the Texas Department of
16 Insurance operating account. (V.T.I.C. Art. 21.49-3b, Sec. 16
17 (part).)

18 Sec. 2202.004. CERTAIN APPROPRIATIONS FROM GENERAL REVENUE
19 FUND PROHIBITED. The legislature may not appropriate money from
20 the general revenue fund to administer this chapter, other than
21 fees collected under this chapter and deposited to the credit of the
22 Texas Department of Insurance operating account. (V.T.I.C. Art.
23 21.49-3b, Sec. 16 (part).)

24 [Sections 2202.005-2202.050 reserved for expansion]

25 SUBCHAPTER B. AUTHORITY TO ACT AS JOINT UNDERWRITING ASSOCIATION

26 Sec. 2202.051. CERTIFICATE OF AUTHORITY REQUIRED. An
27 association of insurers may not act as a joint underwriting

1 association in this state on behalf of the association's member
2 insurers unless the association holds a certificate of authority
3 issued under this chapter. (V.T.I.C. Art. 21.49-3b, Sec. 3.)

4 Sec. 2202.052. APPLICATION FOR CERTIFICATE OF
5 AUTHORITY. (a) An association of insurers that applies for a
6 certificate of authority under this chapter must file a written
7 application on forms prescribed by the commissioner.

8 (b) The application must include:

9 (1) the names and addresses of the association's
10 officers and directors;

11 (2) a copy of the association's constitution, articles
12 of agreement or association, bylaws, rules, powers of attorney, or
13 other agreements governing the association's activities;

14 (3) a list of the insurers authorized to engage in
15 business in this state who are association members and the
16 addresses of those insurers' principal administrative offices;

17 (4) the name and address of a resident of this state
18 who will act as the association's agent for receipt of notices or
19 orders of the commissioner and for service of process; and

20 (5) other information as required by the commissioner.

21 (c) At least one officer of the association must swear to
22 the application. (V.T.I.C. Art. 21.49-3b, Sec. 4.)

23 Sec. 2202.053. ISSUANCE OF CERTIFICATE OF AUTHORITY. The
24 commissioner shall issue a certificate of authority to a joint
25 underwriting association that complies with the requirements of
26 this chapter. (V.T.I.C. Art. 21.49-3b, Sec. 5.)

27 Sec. 2202.054. TERM OF CERTIFICATE OF AUTHORITY. Unless

1 renewed, a certificate of authority issued under this chapter
2 expires on the third anniversary of the date the certificate is
3 issued. (V.T.I.C. Art. 21.49-3b, Sec. 11 (part).)

4 Sec. 2202.055. RENEWAL OF CERTIFICATE OF AUTHORITY. (a) An
5 applicant for the renewal of a certificate of authority must file an
6 application for renewal with the commissioner and pay the renewal
7 fee on or before the date the certificate expires.

8 (b) The applicant shall file a list of the names and
9 addresses of the association's officers and directors and a list of
10 the association's member insurers with the application for renewal.
11 At least one officer of the association must swear to the list.

12 (c) A renewed certificate of authority expires on the third
13 anniversary of the renewal date. (V.T.I.C. Art. 21.49-3b, Secs.
14 8(a), 11 (part).)

15 Sec. 2202.056. FEE FOR CERTIFICATE OF AUTHORITY. (a) An
16 applicant for the issuance or renewal of a certificate of authority
17 must pay a nonrefundable fee in an amount set by the commissioner
18 when the applicant files the application.

19 (b) The fee may not exceed \$200. (V.T.I.C. Art. 21.49-3b,
20 Sec. 12.)

21 Sec. 2202.057. RECIPROCITY. The commissioner may waive
22 any requirement for a certificate of authority for an applicant who
23 holds a certificate of authority from another state if the other
24 state has requirements for a certificate of authority that are
25 substantially equivalent to the requirements of this state.
26 (V.T.I.C. Art. 21.49-3b, Sec. 6.)

27 [Sections 2202.058-2202.100 reserved for expansion]

1 SUBCHAPTER C. POWERS AND DUTIES OF JOINT UNDERWRITING

2 ASSOCIATION

3 Sec. 2202.101. AUTHORITY TO ACT. A joint underwriting
4 association may:

5 (1) act only on behalf of association members who are
6 authorized to engage in business in this state; and

7 (2) engage in only those activities the association is
8 authorized to perform by the association members. (V.T.I.C.
9 Art. 21.49-3b, Sec. 7.)

10 Sec. 2202.102. NOTIFICATION OF CERTAIN INFORMATION
11 REQUIRED. An association holding a certificate of authority under
12 this chapter shall notify the commissioner of a change in the
13 information required to be filed under Section 2202.052 not later
14 than the 30th day after the date the change takes effect. (V.T.I.C.
15 Art. 21.49-3b, Sec. 8(b).)

16 Sec. 2202.103. MAINTENANCE OF INFORMATION. (a) A joint
17 underwriting association shall maintain at the association's
18 principal administrative office adequate records of all
19 transactions.

20 (b) The association shall maintain the records in
21 accordance with prudent recognized industry standards of
22 recordkeeping.

23 (c) The commissioner or the commissioner's designated
24 representative is entitled to access to records maintained under
25 Subsection (a) for examination, audit, and inspection.

26 (d) Trade secrets, including the identity and addresses of
27 policyholders and certificate holders, are confidential, except

1 that the commissioner may use information otherwise confidential in
2 proceedings instituted against an association. (V.T.I.C. Art.
3 21.49-3b, Sec. 9.)

4 [Sections 2202.104-2202.150 reserved for expansion]

5 SUBCHAPTER D. AUDIT AND EXAMINATION REQUIREMENTS

6 Sec. 2202.151. ANNUAL AUDIT. An independent certified
7 public accountant shall annually audit the books of accounts of a
8 joint underwriting association as provided by Subchapter A, Chapter
9 401. A copy of the audit must be filed with the commissioner.
10 (V.T.I.C. Art. 21.49-3b, Sec. 10(a).)

11 Sec. 2202.152. EXAMINATION BY COMMISSIONER. (a) The
12 commissioner may require an examination of a joint underwriting
13 association as often as the commissioner considers necessary. The
14 association shall pay the reasonable costs of the examination on
15 presentation to the association of a detailed account of the costs
16 of the examination.

17 (b) The association's officers and employees may be
18 examined under oath at any time and shall exhibit on request all
19 books, records, accounts, documents, or agreements governing the
20 association's operations.

21 (c) Instead of the examination, the commissioner may accept
22 the report of an examination made by the insurance supervisory
23 official of another state under the laws of that state. (V.T.I.C.
24 Art. 21.49-3b, Sec. 10(b).)

25 [Sections 2202.153-2202.200 reserved for expansion]

1 SUBCHAPTER E. DISCIPLINARY ACTIONS AND

2 PROCEDURES; ENFORCEMENT

3 Sec. 2202.201. GROUNDS FOR DENIAL OF CERTIFICATE OF
4 AUTHORITY OR FOR DISCIPLINARY ACTION. The commissioner may deny an
5 application for a certificate of authority or discipline a
6 certificate holder under this subchapter if the commissioner finds
7 that the applicant or certificate holder, or an officer or director
8 of an applicant or certificate holder:

9 (1) wilfully violated or participated in the violation
10 of this chapter or any other insurance law of this state;

11 (2) intentionally made a material misstatement in the
12 original or renewal application;

13 (3) obtained or attempted to obtain the certificate by
14 fraud or misrepresentation;

15 (4) misappropriated, converted to a personal or other
16 inappropriate use, or illegally withheld money required to be held
17 in a fiduciary capacity;

18 (5) has been convicted of a felony or convicted of a
19 misdemeanor of which criminal fraud is an essential element; or

20 (6) is incompetent or untrustworthy. (V.T.I.C. Art.
21 21.49-3b, Sec. 13 (part).)

22 Sec. 2202.202. DENIAL OF CERTIFICATE OF AUTHORITY OR
23 DISCIPLINARY ACTION. If the commissioner finds that a ground for a
24 denial of a certificate of authority or disciplinary action under
25 Section 2202.201 exists, the commissioner may:

26 (1) deny the application for the certificate; or

27 (2) suspend, revoke, or refuse to renew the

1 certificate of authority. (V.T.I.C. Art. 21.49-3b, Sec. 13
2 (part).)

3 Sec. 2202.203. NOTICE AND HEARING. (a) Before the
4 commissioner may deny an application for a certificate of authority
5 or discipline a certificate holder under this subchapter, the
6 commissioner must:

7 (1) give notice by certified mail to the applicant or
8 certificate holder; and

9 (2) set a date on which the applicant or certificate
10 holder may appear to be heard and produce evidence.

11 (b) A hearing under Subsection (a) may not be set for a date
12 that is earlier than the 20th day or later than the 30th day after
13 the date the notice is mailed.

14 (c) The notice must contain specific reasons for the hearing
15 and a list of the matters to be considered at the hearing.

16 (d) At the hearing, the commissioner or a department
17 employee designated to conduct the hearing may:

18 (1) administer oaths, require the appearance of
19 witnesses, and examine any person under oath; and

20 (2) on the commissioner's initiative or on the request
21 of the applicant or certificate holder, require the production of
22 books, records, or papers relevant to the inquiry. (V.T.I.C. Art.
23 21.49-3b, Secs. 13 (part), 14(a).)

24 Sec. 2202.204. ISSUANCE OF ORDER. On the termination of
25 the hearing, the findings shall be written and filed with the
26 department. The commissioner shall issue an order showing the
27 findings approved by the commissioner and shall send the order by

1 certified mail to the applicant or certificate holder. (V.T.I.C.
2 Art. 21.49-3b, Sec. 14(b).)

3 Sec. 2202.205. APPEAL. If the commissioner denies an
4 application for a certificate of authority as provided by this
5 chapter or suspends, revokes, or refuses to renew a certificate at a
6 hearing as provided by this chapter, the applicant or certificate
7 holder may appeal the commissioner's action as provided by
8 Subchapter D, Chapter 36. (V.T.I.C. Art. 21.49-3b, Sec. 14(c).)

9 Sec. 2202.206. APPLICATION AFTER DENIAL, REFUSAL, OR
10 REVOCATION. (a) Except as provided by Subsection (b), an applicant
11 for a certificate of authority or certificate holder whose
12 certificate of authority has been denied, refused, or revoked under
13 this chapter may not file another application for a certificate of
14 authority before the first anniversary of the effective date of the
15 denial, refusal, or revocation.

16 (b) If an applicant or certificate holder seeks judicial
17 review of a denial, refusal, or revocation, the applicant or
18 certificate holder may not file another application for a
19 certificate of authority before the first anniversary of the date
20 of a final court order or decree affirming the denial, refusal, or
21 revocation.

22 (c) If an applicant files an application after the date
23 specified by this section, the commissioner may refuse the
24 application unless the applicant shows good cause why the denial of
25 the previous application or the refusal to renew or the revocation
26 of the original certificate of authority should not be a bar to the
27 issuance of a new certificate. (V.T.I.C. Art. 21.49-3b, Sec.

1 14(d).)

2 Sec. 2202.207. ADDITIONAL SANCTIONS; INJUNCTION. (a) An
3 association that violates this chapter or a rule or order adopted
4 under this chapter is subject to sanctions under Chapter 82.

5 (b) The attorney general, a district or county attorney, or
6 the commissioner may institute proceedings for an injunction or any
7 other proceeding necessary to enforce this chapter. (V.T.I.C. Art.
8 21.49-3b, Sec. 17.)

9 CHAPTER 2203. MEDICAL LIABILITY INSURANCE JOINT UNDERWRITING

10 ASSOCIATION

11 SUBCHAPTER A. GENERAL PROVISIONS

12 Sec. 2203.001. SHORT TITLE

13 Sec. 2203.002. DEFINITIONS

14 Sec. 2203.003. IMMUNITY

15 Sec. 2203.004. APPLICABILITY OF OTHER LAW

16 Sec. 2203.005. RELATIONSHIP TO SURPLUS LINES INSURANCE

17 [Sections 2203.006-2203.050 reserved for expansion]

18 SUBCHAPTER B. ASSOCIATION ADMINISTRATION AND OPERATION

19 Sec. 2203.051. PURPOSE OF ASSOCIATION

20 Sec. 2203.052. BOARD OF DIRECTORS

21 Sec. 2203.053. PLAN OF OPERATION

22 Sec. 2203.054. AMENDMENTS TO PLAN OF OPERATION

23 Sec. 2203.055. JOINT UNDERWRITING ASSOCIATION

24 MEMBERSHIP

25 Sec. 2203.056. ANNUAL STATEMENT; ADDITIONAL

26 INFORMATION

27 [Sections 2203.057-2203.100 reserved for expansion]

1 SUBCHAPTER C. ELIGIBILITY FOR COVERAGE

2 Sec. 2203.101. GENERAL ELIGIBILITY

3 Sec. 2203.102. INSURER OF LAST RESORT FOR CERTAIN
4 NURSING HOMES AND ASSISTED LIVING
5 FACILITIES

6 Sec. 2203.103. ELIGIBILITY OF OTHER HEALTH CARE
7 PRACTITIONERS AND FACILITIES

8 Sec. 2203.104. APPLICATION FOR COVERAGE

9 [Sections 2203.105-2203.150 reserved for expansion]

10 SUBCHAPTER D. ASSOCIATION COVERAGE

11 Sec. 2203.151. POWERS RELATING TO MEDICAL LIABILITY
12 INSURANCE COVERAGE

13 Sec. 2203.152. POLICY LIMITS

14 Sec. 2203.153. FOLLOWING FORM EXCESS LIABILITY
15 COVERAGE

16 Sec. 2203.154. PUNITIVE DAMAGES EXCLUDED

17 Sec. 2203.155. INSTALLMENT PLAN

18 Sec. 2203.156. TERM OF POLICY; NOTICE OF CERTAIN
19 CHANGES

20 [Sections 2203.157-2203.200 reserved for expansion]

21 SUBCHAPTER E. RATES AND POLICY FORMS

22 Sec. 2203.201. APPLICABILITY OF OTHER LAW TO RATES AND
23 POLICY FORMS

24 Sec. 2203.202. RATE STANDARDS

25 Sec. 2203.203. DISCOUNT FOR CERTAIN HEALTH CARE
26 PROVIDERS

27 [Sections 2203.204-2203.250 reserved for expansion]

1 SUBCHAPTER F. FINANCIAL PARTICIPATION BY MEMBERS AND POLICYHOLDERS

2 Sec. 2203.251. DEFICIT RECOUPMENT

3 Sec. 2203.252. ASSESSMENT OF POLICYHOLDERS FOR DEFICIT
4 RECOUPMENT

5 Sec. 2203.253. LIMITATION ON REIMBURSEMENT BY MEMBER
6 FOR DEFICIT RECOUPMENT

7 Sec. 2203.254. CONTRIBUTION BY MEMBERS FOR SOUND
8 FINANCIAL OPERATION

9 Sec. 2203.255. REIMBURSEMENT OF ASSESSMENT OR
10 CONTRIBUTION; PREMIUM TAX CREDIT

11 Sec. 2203.256. STANDARDS FOR RECOUPMENT PROVISIONS

12 [Sections 2203.257-2203.300 reserved for expansion]

13 SUBCHAPTER G. POLICYHOLDER'S STABILIZATION RESERVE FUNDS

14 Sec. 2203.301. POLICYHOLDER'S STABILIZATION RESERVE
15 FUND FOR PHYSICIANS AND CERTAIN
16 HEALTH CARE PROVIDERS

17 Sec. 2203.302. POLICYHOLDER'S STABILIZATION RESERVE
18 FUND CHARGE FOR PHYSICIANS AND
19 CERTAIN HEALTH CARE PROVIDERS

20 Sec. 2203.303. POLICYHOLDER'S STABILIZATION RESERVE
21 FUND FOR NURSING HOMES AND ASSISTED
22 LIVING FACILITIES

23 Sec. 2203.304. POLICYHOLDER'S STABILIZATION RESERVE
24 FUND CHARGE FOR NURSING HOMES AND
25 ASSISTED LIVING FACILITIES

26 Sec. 2203.305. SEPARATE FUNDS

27 [Sections 2203.306-2203.350 reserved for expansion]

| | | |
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| 1 | | SUBCHAPTER H. REVENUE BOND PROGRAM |
| 2 | Sec. 2203.351. | PURPOSE |
| 3 | Sec. 2203.352. | DEFINITIONS |
| 4 | Sec. 2203.353. | APPLICABILITY OF OTHER LAWS |
| 5 | Sec. 2203.354. | ISSUANCE OF BONDS AUTHORIZED |
| 6 | Sec. 2203.355. | LIMITATION ON AMOUNT OF BONDS |
| 7 | Sec. 2203.356. | TERMS OF ISSUANCE |
| 8 | Sec. 2203.357. | CONTENTS OF BOND RESOLUTION; |
| 9 | | ADMINISTRATION OF ACCOUNTS |
| 10 | Sec. 2203.358. | SOURCE OF PAYMENT |
| 11 | Sec. 2203.359. | SURCHARGE FEE |
| 12 | Sec. 2203.360. | EXEMPTION FROM TAXATION |
| 13 | Sec. 2203.361. | AUTHORIZED INVESTMENTS |
| 14 | Sec. 2203.362. | STATE PLEDGE REGARDING BOND OWNER |
| 15 | | RIGHTS AND REMEDIES |
| 16 | Sec. 2203.363. | PAYMENT ENFORCEABLE BY MANDAMUS |
| 17 | | [Sections 2203.364-2203.400 reserved for expansion] |
| 18 | | SUBCHAPTER I. APPEALS |
| 19 | Sec. 2203.401. | DEFINITION |
| 20 | Sec. 2203.402. | APPEAL TO BOARD OF DIRECTORS; HEARING |
| 21 | Sec. 2203.403. | DECISION OF BOARD OF DIRECTORS |
| 22 | Sec. 2203.404. | APPEAL TO COMMISSIONER; HEARING |
| 23 | Sec. 2203.405. | COMMISSIONER'S DECISION |
| 24 | Sec. 2203.406. | APPEAL OF COMMISSIONER'S DECISION |
| 25 | | CHAPTER 2203. MEDICAL LIABILITY INSURANCE JOINT UNDERWRITING |
| 26 | | ASSOCIATION |
| 27 | | SUBCHAPTER A. GENERAL PROVISIONS |

1 Sec. 2203.001. SHORT TITLE. This chapter may be cited as
2 the Texas Medical Liability Insurance Underwriting Association
3 Act. (V.T.I.C. Art. 21.49-3, Sec. 1.)

4 Sec. 2203.002. DEFINITIONS. In this chapter:

5 (1) "Assisted living facility" means a for-profit or
6 not-for-profit assisted living facility.

7 (2) "Association" means the joint underwriting
8 association established under this chapter.

9 (3) "Board of directors" means the board of directors
10 of the association.

11 (4) "Health care provider" means:

12 (A) a person, partnership, professional
13 association, corporation, facility, or institution licensed or
14 chartered by this state to provide health care, as defined in
15 Section 74.001(a)(10), Civil Practice and Remedies Code, as:

16 (i) a registered nurse, dentist,
17 podiatrist, pharmacist, chiropractor, or optometrist;

18 (ii) a hospital;

19 (iii) a nursing home;

20 (iv) a radiation therapy center that is
21 independent of any other medical treatment facility, is licensed by
22 the Department of State Health Services in that agency's capacity
23 as the Texas Radiation Control Agency under Chapter 401, Health and
24 Safety Code, and is in compliance with the regulations adopted
25 under that chapter;

26 (v) a blood bank that is a nonprofit
27 corporation chartered to operate a blood bank and is accredited by

1 the American Association of Blood Banks;

2 (vi) a nonprofit corporation that is
3 organized for the delivery of health care to the public and is
4 certified under Chapter 162, Occupations Code;

5 (vii) a health center, as defined by 42
6 U.S.C. Section 254b, as amended; or

7 (viii) an assisted living facility; or

8 (B) an officer, employee, or agent of an entity
9 listed in Paragraph (A) acting in the course and scope of that
10 person's office, employment, or agency.

11 (5) "Medical liability insurance" means primary and
12 excess liability insurance coverage against:

13 (A) the legal liability of the insured; and

14 (B) loss, damage, or expense incident to a claim
15 arising out of the death or injury of a person as the result of
16 negligence in rendering or failing to render professional service
17 by a health care provider or physician who is in a category eligible
18 for coverage by the association.

19 (6) "Net direct premiums" means gross direct premiums
20 written on automobile liability and other liability insurance
21 written under this code, less:

22 (A) policyholder dividends;

23 (B) return premiums for the unused or unabsorbed
24 portion of premium deposits; and

25 (C) return premiums on canceled contracts
26 written on the liability risks.

27 (7) "Nursing home" means a for-profit or

1 not-for-profit nursing home.

2 (8) "Physician" means a person licensed to practice
3 medicine in this state. (V.T.I.C. Art. 21.49-3, Secs. 2(1), (2),
4 (3), (5), (6); Art. 21.49-3d, Sec. 2(1); New.)

5 Sec. 2203.003. IMMUNITY. Liability does not exist on the
6 part of, and a cause of action does not arise against, the
7 association, an association agent or employee, an insurer, an agent
8 licensed under this code, the commissioner or department, or an
9 authorized representative of the commissioner or department for a
10 statement made in good faith by any of them:

11 (1) in a report or communication concerning risks
12 insured or to be insured through the association; or

13 (2) at an administrative hearing conducted in
14 connection with the report or communication. (V.T.I.C. Art.
15 21.49-3, Sec. 8.)

16 Sec. 2203.004. APPLICABILITY OF OTHER LAW. The association
17 is subject to Sections 401.051, 401.052, 401.054-401.062, 401.151,
18 401.152, 401.155, and 401.156 and Subchapter A, Chapter 86.
19 (V.T.I.C. Art. 21.49-3, Sec. 10.)

20 Sec. 2203.005. RELATIONSHIP TO SURPLUS LINES INSURANCE.
21 The association is not an authorized insurer for purposes of
22 Chapter 981 with respect to medical liability insurance for
23 physicians. (V.T.I.C. Art. 21.49-3, Sec. 3(a) (part).)

24 [Sections 2203.006-2203.050 reserved for expansion]

25 SUBCHAPTER B. ASSOCIATION ADMINISTRATION AND OPERATION

26 Sec. 2203.051. PURPOSE OF ASSOCIATION. The association
27 provides medical liability insurance on a self-supporting basis.

1 (V.T.I.C. Art. 21.49-3, Sec. 3(a) (part).)

2 Sec. 2203.052. BOARD OF DIRECTORS. (a) The association is
3 governed by a board of directors composed of the following nine
4 members:

5 (1) five representatives of insurers that are required
6 to be association members, elected by association members;

7 (2) one physician, appointed by the Texas Medical
8 Association or a successor to that association;

9 (3) one representative of hospitals, appointed by the
10 Texas Hospital Association or a successor to that association; and

11 (4) two public members, appointed by the commissioner.

12 (b) The board members serve one-year terms beginning on
13 October 1 of each year. (V.T.I.C. Art. 21.49-3, Sec. 6.)

14 Sec. 2203.053. PLAN OF OPERATION. (a) The association
15 operates under a plan of operation adopted by the commissioner.

16 (b) The plan of operation must:

17 (1) provide for economic, fair, and nondiscriminatory
18 administration;

19 (2) provide for the prompt and efficient provision of
20 medical liability insurance; and

21 (3) contain other provisions, including provisions
22 relating to:

23 (A) the establishment of necessary facilities;

24 (B) the association's management;

25 (C) the assessment of members and policyholders
26 to defray losses and expenses;

27 (D) the administration of the policyholder's

1 stabilization reserve funds;

2 (E) commission arrangements;

3 (F) reasonable and objective underwriting
4 standards;

5 (G) the acceptance, assumption, and cession of
6 reinsurance;

7 (H) the appointment of servicing insurers; and

8 (I) procedures for determining amounts of
9 insurance to be provided by the association.

10 (c) The plan of operation must direct that any revenue
11 exceeding expenditures that remains in the association's funds at
12 the close of the association's fiscal year, after the association
13 reimburses members' contributions in accordance with Section
14 2203.255(a), be added to the association's reserves. (V.T.I.C.
15 Art. 21.49-3, Secs. 3(c)(1) (part), (2) (part), (3).)

16 Sec. 2203.054. AMENDMENTS TO PLAN OF OPERATION. Amendments
17 to the plan of operation:

18 (1) shall be made at the commissioner's direction; or

19 (2) may be made by the board of directors, subject to
20 the commissioner's approval. (V.T.I.C. Art. 21.49-3, Sec.
21 3(c)(4).)

22 Sec. 2203.055. JOINT UNDERWRITING ASSOCIATION MEMBERSHIP.

23 (a) The association is composed of each insurer, including a
24 Lloyd's plan and a reciprocal or interinsurance exchange,
25 authorized to write and writing liability insurance, including
26 automobile liability insurance, on a direct basis in this state,
27 other than:

1 (1) a farm mutual insurance company authorized under
2 Chapter 911; and

3 (2) a county mutual insurance company authorized under
4 Chapter 912.

5 (b) An insurer that is a member of the association must
6 remain a member as a condition of the insurer's authority to engage
7 in the business of the insurance described by Subsection (a).

8 (c) Each association member participates in the writings,
9 expenses, and losses of the association in the proportion that the
10 net direct premiums of the member, excluding the portion of
11 premiums attributable to the operation of the association, written
12 during the preceding calendar year bears to the aggregate net
13 direct premiums written in this state by all association members.

14 (d) The association shall annually determine a member's
15 participation in the association on the basis of the net direct
16 premiums written by the member during the preceding calendar year,
17 as reported in the annual statements and other reports the member
18 files as required by the department. (V.T.I.C. Art. 21.49-3, Secs.
19 3(a) (part), 5(b) (part).)

20 Sec. 2203.056. ANNUAL STATEMENT; ADDITIONAL INFORMATION.

21 (a) Not later than March 1 of each year, the association shall file
22 with the department a statement that contains information regarding
23 the association's transactions, condition, operations, and affairs
24 during the preceding calendar year.

25 (b) The statement must:

26 (1) contain the matters and information required by
27 the department; and

1 (2) be in the form approved by the department.

2 (c) The department at any time may require the association
3 to provide additional information regarding the association's
4 transactions or condition, or any related matter considered to be:

5 (1) material; and

6 (2) of assistance in evaluating the scope, operation,
7 and experience of the association. (V.T.I.C. Art. 21.49-3, Sec.
8 9.)

9 [Sections 2203.057-2203.100 reserved for expansion]

10 SUBCHAPTER C. ELIGIBILITY FOR COVERAGE

11 Sec. 2203.101. GENERAL ELIGIBILITY. (a) The commissioner
12 shall by order establish the categories of physicians and health
13 care providers that are eligible to obtain insurance coverage from
14 the association. The commissioner may revise the order to:

15 (1) include as eligible for that coverage other
16 categories of physicians and health care providers; or

17 (2) exclude from eligibility for that coverage
18 particular categories of physicians and health care providers.

19 (b) If a category of physicians or health care providers is
20 excluded from eligibility to obtain insurance coverage from the
21 association, the commissioner may determine, after notice of at
22 least 10 days and a hearing, that medical liability insurance is not
23 otherwise available. On that determination, the previously
24 excluded category is eligible to obtain insurance coverage from the
25 association. (V.T.I.C. Art. 21.49-3, Secs. 3A(a), (b).)

26 Sec. 2203.102. INSURER OF LAST RESORT FOR CERTAIN NURSING
27 HOMES AND ASSISTED LIVING FACILITIES. (a) A nursing home or

1 assisted living facility not otherwise eligible for insurance
2 coverage from the association under Section 2203.101 is eligible
3 for that coverage if the home or facility demonstrates, in
4 accordance with the requirements of the association, that the home
5 or facility:

6 (1) made a verifiable effort to obtain insurance
7 coverage from authorized insurers and eligible surplus lines
8 insurers; and

9 (2) was unable to obtain substantially equivalent
10 insurance coverage and rates.

11 (b) In consultation with the Department of Aging and
12 Disability Services, the commissioner by rule shall adopt minimum
13 rating standards for for-profit nursing homes and for-profit
14 assisted living facilities that must be met before a for-profit
15 nursing home or for-profit assisted living facility may obtain
16 insurance coverage through the association. The standards must
17 promote the highest practical level of care for residents of the
18 nursing homes and assisted living facilities. (V.T.I.C. Art.
19 21.49-3, Secs. 3A(c), (d).)

20 Sec. 2203.103. ELIGIBILITY OF OTHER HEALTH CARE
21 PRACTITIONERS AND FACILITIES. (a) In this section:

22 (1) "Health care" includes a medical or health care
23 service, including an examination, treatment, medical diagnosis,
24 or evaluation, and care provided in an inpatient, outpatient, or
25 residential setting.

26 (2) "Health care facility" means a facility providing
27 health care, other than a facility described by Section

1 2203.002(4).

2 (3) "Health care practitioner" means an individual,
3 other than an individual described by Section 2203.002(4), who:

4 (A) is licensed to provide health care; or

5 (B) is not licensed to provide health care but
6 provides health care under the direction or supervision of a
7 licensed individual.

8 (b) After notice and opportunity for hearing, the
9 commissioner may:

10 (1) determine that appropriate liability insurance
11 coverage written by insurers authorized to engage in business in
12 this state is not reasonably available to a type of health care
13 practitioner or health care facility; and

14 (2) by order designate that type of health care
15 practitioner or health care facility to be included as a health care
16 provider eligible to receive coverage under this chapter.

17 (c) A health care practitioner or facility designated under
18 Subsection (b) is entitled to receive insurance coverage under this
19 chapter in accordance with Chapter 1901 in the same manner as other
20 health care providers described by Section 2203.002 and Section
21 1901.001.

22 (d) The commissioner's order may indicate whether a health
23 care practitioner or facility designated under Subsection (b) is
24 included under the policyholder's stabilization reserve fund
25 established under Section 2203.301 or 2203.303 or whether a
26 separate policyholder's stabilization reserve fund is created. A
27 separate policyholder's stabilization reserve fund established

1 under this subsection operates in the same manner as a
2 policyholder's stabilization reserve fund created under Section
3 2203.303. (V.T.I.C. Art. 21.49-3, Sec. 3B.)

4 Sec. 2203.104. APPLICATION FOR COVERAGE. (a) A health
5 care provider or physician included in a category eligible for
6 insurance coverage by the association is entitled to apply to the
7 association for the coverage. An agent authorized under Chapter
8 4051 may apply on behalf of an applicant.

9 (b) The association shall issue a medical liability
10 insurance policy to an applicant:

11 (1) if the association determines that:

12 (A) the applicant meets the underwriting
13 standards of the association prescribed by the plan of operation;
14 and

15 (B) there is no unpaid and uncontested premium,
16 policyholder's stabilization reserve fund charge, or assessment
17 due from the applicant for prior insurance, as shown by the
18 insured's failure to pay or to object in writing to the charges on
19 or before the 30th day after the date of the billing; and

20 (2) on receipt of the premium and the policyholder's
21 stabilization reserve fund charge, or the portion of the premium
22 and charge prescribed by the plan of operation. (V.T.I.C. Art.
23 21.49-3, Secs. 4(a)(1), (2) (part).)

24 [Sections 2203.105-2203.150 reserved for expansion]

25 SUBCHAPTER D. ASSOCIATION COVERAGE

26 Sec. 2203.151. POWERS RELATING TO MEDICAL LIABILITY
27 INSURANCE COVERAGE. (a) Under this chapter and the plan of

1 operation, the association, on behalf of the association members,
2 may:

3 (1) issue, or cause to be issued, medical liability
4 insurance policies to applicants, including primary, excess, and
5 incidental coverages, subject to the limits specified in the plan
6 of operation and Section 2203.152;

7 (2) underwrite medical liability insurance and adjust
8 and pay losses related to that insurance, or appoint servicing
9 insurers to perform those functions;

10 (3) either or both accept and refuse the assumption of
11 reinsurance from association members; and

12 (4) cede and purchase reinsurance.

13 (b) The association may provide general liability insurance
14 coverage to be issued in connection with medical liability
15 insurance issued by the association. (V.T.I.C. Art. 21.49-3, Secs.
16 3(b) (part), (d).)

17 Sec. 2203.152. POLICY LIMITS. The association may not
18 issue one or more policies insuring an individual or organization
19 for an amount exceeding \$1 million for each occurrence and \$3
20 million in the aggregate for a year. (V.T.I.C. Art. 21.49-3, Sec.
21 3(b) (part).)

22 Sec. 2203.153. FOLLOWING FORM EXCESS LIABILITY COVERAGE.
23 Excess liability insurance coverage written for a physician or
24 health care provider by the association under this chapter must be
25 written as following form excess liability insurance to the
26 physician's or provider's primary insurance coverage. (V.T.I.C.
27 Art. 21.49-3, Sec. 4(c).)

1 Sec. 2203.154. PUNITIVE DAMAGES EXCLUDED. The association
2 may not issue or renew a medical liability insurance policy for a
3 physician or health care provider under this chapter that includes
4 coverage for punitive damages assessed against the physician or
5 health care provider. (V.T.I.C. Art. 21.49-3, Sec. 4(d).)

6 Sec. 2203.155. INSTALLMENT PLAN. The association may offer
7 an installment payment plan for insurance coverage obtained through
8 the association. (V.T.I.C. Art. 21.49-3, Sec. 4(e).)

9 Sec. 2203.156. TERM OF POLICY; NOTICE OF CERTAIN CHANGES.

10 (a) A policy issued by the association must be for a term of one
11 year or less, as determined by the association.

12 (b) Section 1901.253 does not apply to a medical liability
13 insurance policy issued by the association for a term of less than
14 one year.

15 (c) The association shall ensure that appropriate written
16 notice is provided to the insured for a policy described by
17 Subsection (b) if the association intends to:

18 (1) increase the premiums on the policy; or

19 (2) cancel or not renew the policy for a reason other
20 than for nonpayment of premiums or because the insured is no longer
21 licensed. (V.T.I.C. Art. 21.49-3, Secs. 4(a)(2) (part), (f).)

22 [Sections 2203.157-2203.200 reserved for expansion]

23 SUBCHAPTER E. RATES AND POLICY FORMS

24 Sec. 2203.201. APPLICABILITY OF OTHER LAW TO RATES AND
25 POLICY FORMS. (a) Except as provided by Subsection (b) and subject
26 to Section 2203.203, the following laws govern the rates, rating
27 plans, rating rules, rating classifications, territories, and

1 policy forms applicable to the insurance written by the association
2 and related statistics:

- 3 (1) Section 36.002(1);
- 4 (2) Subchapter B, Chapter 5;
- 5 (3) Subchapter C, Chapter 1806;
- 6 (4) Subchapter A, Chapter 2301;
- 7 (5) Chapter 251, as that chapter relates to casualty
8 insurance and fidelity, guaranty, and surety bond insurance;
- 9 (6) Chapter 253;
- 10 (7) Chapters 2251 and 2252; and
- 11 (8) Subtitle B.

12 (b) If a provision of a law described by Subsections
13 (a)(1)-(8) conflicts with a provision of this chapter, this chapter
14 prevails. (V.T.I.C. Art. 21.49-3, Sec. 4(b)(1) (part).)

15 Sec. 2203.202. RATE STANDARDS. (a) In determining rates,
16 rating plans, rating rules, rating classifications, territories,
17 and policy forms, the association shall consider:

- 18 (1) the past and prospective loss and expense
19 experience for medical professional liability insurance, inside
20 and outside this state, of all of the association members;
- 21 (2) trends in the frequency and severity of losses;
- 22 (3) the association's investment income; and
- 23 (4) other information the commissioner may require.

24 (b) Rates, rating plans, and rating rules must be based on:

- 25 (1) the association's loss and expense experience; and
- 26 (2) other information based on that experience the
27 department considers appropriate.

1 (c) The resultant premium rates must be:

2 (1) actuarially sound; and

3 (2) computed to be self-supporting. (V.T.I.C. Art.
4 21.49-3, Secs. 4(b)(1) (part), (4) (part).)

5 Sec. 2203.203. DISCOUNT FOR CERTAIN HEALTH CARE PROVIDERS.

6 (a) The rates applicable to professional liability insurance
7 coverage provided by the association for not-for-profit nursing
8 homes and not-for-profit assisted living facilities must reflect a
9 discount of 30 percent from the rates for the same coverage provided
10 to others in the same category of insureds.

11 (b) The commissioner shall ensure compliance with this
12 section. (V.T.I.C. Art. 21.49-3, Sec. 4(b)(6).)

13 [Sections 2203.204-2203.250 reserved for expansion]

14 SUBCHAPTER F. FINANCIAL PARTICIPATION BY MEMBERS AND POLICYHOLDERS

15 Sec. 2203.251. DEFICIT RECOUPMENT. (a) This section
16 applies to a deficit sustained in a single year by the association
17 with respect to:

18 (1) physicians and health care providers, other than
19 nursing homes and assisted living facilities; or

20 (2) a nursing home or assisted living facility.

21 (b) The deficit must be recouped in accordance with the plan
22 of operation and the rating plan in effect when the deficit is
23 sustained under one or more of the following procedures, in this
24 sequence:

25 (1) a contribution from the policyholder's
26 stabilization reserve fund established under Section 2203.301 or
27 the policyholder's stabilization reserve fund established under

1 Section 2203.303, as appropriate, until the respective fund is
2 exhausted;

3 (2) an assessment on the policyholders in accordance
4 with Section 2203.252; or

5 (3) an assessment on the members in accordance with
6 Sections 2203.055(c) and (d) and 2203.253. (V.T.I.C. Art. 21.49-3,
7 Sec. 4(b)(3) (part).)

8 Sec. 2203.252. ASSESSMENT OF POLICYHOLDERS FOR DEFICIT
9 RECOUPMENT. (a) Each policyholder within the group of physicians
10 and health care providers, other than nursing homes and assisted
11 living facilities, or within the group of nursing homes and
12 assisted living facilities, has contingent liability for a
13 proportionate share of an assessment made under this chapter of
14 policyholders in the applicable group.

15 (b) If a deficit, as computed under the plan of operation,
16 is sustained with respect to a group described by Subsection (a) in
17 a single year, the board of directors shall levy an assessment only
18 on the policyholders in the applicable group who held policies in
19 force at any time during the two most recently completed calendar
20 years:

21 (1) before the date the assessment is levied; and

22 (2) in which the association was issuing policies.

23 (c) The aggregate amount of an assessment under Subsection
24 (b) must be equal to the amount of the deficit not recouped under
25 Section 2203.251(b)(1) from the applicable policyholder's
26 stabilization reserve fund. Subject to Subsection (d), each
27 policyholder in the applicable group shall be assessed for a

1 portion of the deficit that reflects the proportion that the earned
2 premium on the policies of that policyholder bears to the total
3 earned premium for all policies of the association in the
4 applicable group in the two most recently completed calendar years.

5 (d) The maximum aggregate assessment on each policyholder
6 in the applicable group may not exceed the annual premium for the
7 liability insurance policy most recently in effect. (V.T.I.C. Art.
8 21.49-3, Sec. 5(a).)

9 Sec. 2203.253. LIMITATION ON REIMBURSEMENT BY MEMBER FOR
10 DEFICIT RECOUPMENT. (a) An association member is not obligated in
11 a single year to reimburse the association for the member's
12 proportionate share of the deficits from the association's
13 operations in that year in an amount that exceeds one percent of the
14 member's policyholder surplus. The aggregate amount not reimbursed
15 in accordance with this subsection shall be reallocated among the
16 other association members. The association shall reallocate that
17 amount in accordance with the method of determining a member's
18 participation under Sections 2203.055(c) and (d), after excluding
19 the total net direct premiums of all members not sharing in the
20 excess deficits.

21 (b) If the deficits from the association's operations
22 allocated to all association members in a calendar year exceed one
23 percent of all members' respective policyholder surplus, the
24 association shall allocate to each member the amount of the
25 deficits in accordance with the method of determining a member's
26 participation under Sections 2203.055(c) and (d). (V.T.I.C. Art.
27 21.49-3, Sec. 5(b) (part).)

1 Sec. 2203.254. CONTRIBUTION BY MEMBERS FOR SOUND FINANCIAL
2 OPERATION. If sufficient funds are not available for the sound
3 financial operation of the association, each association member
4 shall contribute to the financial requirements of the association
5 in accordance with Sections 2203.055(c) and (d), 2203.252, and
6 2203.253, as authorized and considered necessary by the department.
7 A contribution under this section is in addition to:

8 (1) an assessment paid in accordance with the plan of
9 operation under Section 2203.053(b); and

10 (2) a contribution from a policyholder's stabilization
11 reserve fund. (V.T.I.C. Art. 21.49-3, Sec. 4(b)(5) (part).)

12 Sec. 2203.255. REIMBURSEMENT OF ASSESSMENT OR
13 CONTRIBUTION; PREMIUM TAX CREDIT. (a) Subject to commissioner
14 approval, the association shall reimburse an assessment or
15 contribution, with interest at a rate approved by the commissioner,
16 to:

17 (1) the association members; or

18 (2) the state, to the extent that the members have
19 recouped their assessments using premium tax credits as provided by
20 Subsection (c).

21 (b) Pending recoupment or reimbursement of an assessment or
22 contribution paid by a member to the association, the unrepaid
23 balance of the assessment or contribution may be reflected in the
24 member's books and records as an admitted asset of the member for
25 all purposes, including exhibition in an annual statement under
26 Section 862.001.

27 (c) To the extent a member has paid one or more assessments

1 and has not received reimbursement from the association in
2 accordance with Subsection (a), a credit against premium taxes
3 under Chapter 221 is allowed at a rate of 20 percent a year for five
4 successive years following the year in which the deficit was
5 sustained. At the member's option, the tax credit may be taken over
6 an additional number of years. (V.T.I.C. Art. 21.49-3, Secs.
7 4(b)(3) (part), (5) (part).)

8 Sec. 2203.256. STANDARDS FOR RECOUPMENT PROVISIONS. A
9 provision for recoupment must be based on:

- 10 (1) the association's loss and expense experience; and
11 (2) other information based on that experience the
12 department considers appropriate. (V.T.I.C. Art. 21.49-3, Sec.
13 4(b)(4) (part).)

14 [Sections 2203.257-2203.300 reserved for expansion]

15 SUBCHAPTER G. POLICYHOLDER'S STABILIZATION RESERVE FUNDS

16 Sec. 2203.301. POLICYHOLDER'S STABILIZATION RESERVE FUND
17 FOR PHYSICIANS AND CERTAIN HEALTH CARE PROVIDERS. (a) The
18 policyholder's stabilization reserve fund for physicians and
19 health care providers other than nursing homes and assisted living
20 facilities is collected and administered by the association as
21 provided by this section, Section 2203.302, and the plan of
22 operation.

23 (b) The policyholder's stabilization reserve fund shall be:

24 (1) credited with all policyholder's stabilization
25 reserve fund charges collected under Section 2203.302;

26 (2) charged with any deficit sustained by physicians
27 and health care providers, other than nursing homes and assisted

1 living facilities, from the association's operation during the
2 previous year;

3 (3) treated as a liability of the association along
4 with, and in the same manner as, premium and loss reserves; and

5 (4) valued annually by the board of directors as of the
6 close of the preceding year. (V.T.I.C. Art. 21.49-3, Secs. 4A(a)
7 (part), (c), (e).)

8 Sec. 2203.302. POLICYHOLDER'S STABILIZATION RESERVE FUND
9 CHARGE FOR PHYSICIANS AND CERTAIN HEALTH CARE PROVIDERS. (a) Each
10 policyholder other than a nursing home or assisted living facility
11 shall pay annually into the policyholder's stabilization reserve
12 fund under Section 2203.301 a charge that:

13 (1) is in an amount established annually by advisory
14 directors chosen by physicians and health care providers, other
15 than nursing homes and assisted living facilities, eligible for
16 insurance through the association in accordance with the plan of
17 operation;

18 (2) is in proportion to each premium payment due for
19 liability insurance through the association; and

20 (3) is separately stated in the policy.

21 (b) A charge stated in a policy as required by Subsection
22 (a)(3) is not:

23 (1) a part of premiums; or

24 (2) subject to premium taxation or a servicing fee,
25 acquisition cost, or any other similar charge.

26 (c) If the association offers an installment payment plan
27 for coverage obtained through the association, the association may:

1 (1) permit payment of the policyholder's stabilization
2 reserve fund charge under this section on an installment basis; or

3 (2) require the policyholder to pay the charge as an
4 annual lump sum.

5 (d) Collections of the policyholder's stabilization reserve
6 fund charge under this section shall continue until the net balance
7 of the policyholder's stabilization reserve fund under Section
8 2203.301 is not less than the projected sum of premiums for
9 physicians and health care providers, other than nursing homes and
10 assisted living facilities, to be written in the year following the
11 valuation date. (V.T.I.C. Art. 21.49-3, Secs. 4A(b), as amended
12 Acts 78th Leg., R.S., Chs. 56, 141, (d).)

13 Sec. 2203.303. POLICYHOLDER'S STABILIZATION RESERVE FUND
14 FOR NURSING HOMES AND ASSISTED LIVING FACILITIES. (a) The
15 policyholder's stabilization reserve fund for nursing homes and
16 assisted living facilities is collected and administered by the
17 association as provided by this section, Section 2203.304, and the
18 plan of operation.

19 (b) The policyholder's stabilization reserve fund shall be:

20 (1) credited with:

21 (A) all policyholder's stabilization reserve
22 fund charges collected under Section 2203.304; and

23 (B) the net earnings on liability insurance
24 policies issued to nursing homes and assisted living facilities;

25 (2) charged with any deficit sustained by nursing
26 homes and assisted living facilities from the association's
27 operation during the previous year;

1 (3) treated as a liability of the association along
2 with, and in the same manner as, premium and loss reserves; and

3 (4) valued annually by the board of directors as of the
4 close of the preceding year.

5 (c) The policyholder's stabilization reserve fund under
6 this section, and any earnings of the fund, are state funds and
7 shall be held by the comptroller outside the state treasury on
8 behalf of, and with legal title in, the department. No part of the
9 fund or the earnings of the fund may inure to the benefit of an
10 association member, a policyholder, or another individual. The
11 fund assets may be used in accordance with the association's plan of
12 operation only to implement this chapter and for the purposes of the
13 association, including to make payment to satisfy, wholly or
14 partly, the liability of the association regarding a claim made on a
15 policy written by the association.

16 (d) Notwithstanding Sections 11, 12, and 13, Article
17 21.49-3, the policyholder's stabilization reserve fund under this
18 section may be terminated only by law.

19 (e) Notwithstanding Section 11, Article 21.49-3, on
20 termination of the policyholder's stabilization reserve fund under
21 this section, all assets of the fund shall be transferred to the
22 general revenue fund to be appropriated for purposes related to
23 ensuring the provision of the kinds of liability insurance coverage
24 that the association may provide under this chapter to nursing
25 homes and assisted living facilities. (V.T.I.C. Art. 21.49-3,
26 Secs. 4B(a) (part), (c), (e), (f), (g), (h).)

27 Sec. 2203.304. POLICYHOLDER'S STABILIZATION RESERVE FUND

1 CHARGE FOR NURSING HOMES AND ASSISTED LIVING FACILITIES. (a) Each
2 policyholder that is a nursing home or assisted living facility
3 shall pay annually into the policyholder's stabilization reserve
4 fund under Section 2203.303 a charge that:

5 (1) is in an amount established annually by advisory
6 directors chosen by nursing homes and assisted living facilities
7 eligible for insurance through the association in accordance with
8 the plan of operation;

9 (2) is in proportion to each premium payment due for
10 liability insurance through the association; and

11 (3) is separately stated in the policy.

12 (b) A charge stated in a policy as required by Subsection
13 (a)(3) is not:

14 (1) a part of premiums; or

15 (2) subject to premium taxation or a servicing fee,
16 acquisition cost, or any other similar charge.

17 (c) If the association offers an installment payment plan
18 for coverage obtained through the association, the association may:

19 (1) permit payment of the policyholder's stabilization
20 reserve fund charge under this section on an installment basis; or

21 (2) require the policyholder to pay the charge as an
22 annual lump sum.

23 (d) Collections of the policyholder's stabilization reserve
24 fund charge under this section shall continue only until the net
25 balance of the policyholder's stabilization reserve fund under
26 Section 2203.303 is not less than the projected sum of premiums for
27 nursing homes and assisted living facilities to be written in the

1 year following the valuation date. (V.T.I.C. Art. 21.49-3, Secs.
2 4B(b), as amended Acts 78th Leg., R.S., Chs. 56, 141, (d).)

3 Sec. 2203.305. SEPARATE FUNDS. The policyholder's
4 stabilization reserve fund for physicians and health care providers
5 other than nursing homes and assisted living facilities described
6 by Section 2203.301 is separate from the policyholder's
7 stabilization reserve fund for nursing homes and assisted living
8 facilities described by Section 2203.303. (V.T.I.C. Art. 21.49-3,
9 Secs. 4A(a) (part), 4B(a) (part).)

10 [Sections 2203.306-2203.350 reserved for expansion]

11 SUBCHAPTER H. REVENUE BOND PROGRAM

12 Sec. 2203.351. PURPOSE. The legislature finds that the
13 issuance of bonds to provide a method to raise funds to provide
14 professional liability insurance for nursing homes and assisted
15 living facilities in this state through the association is to
16 benefit the public and to further a public purpose. (V.T.I.C. Art.
17 21.49-3d, Sec. 1.)

18 Sec. 2203.352. DEFINITIONS. In this subchapter:

19 (1) "Board" means the board of directors of the Texas
20 Public Finance Authority.

21 (2) "Bond resolution" means the resolution or order
22 authorizing bonds to be issued under this subchapter. (V.T.I.C.
23 Art. 21.49-3d, Secs. 2(2), (3).)

24 Sec. 2203.353. APPLICABILITY OF OTHER LAWS. The following
25 laws apply to bonds issued under this subchapter to the extent
26 consistent with this subchapter:

27 (1) Chapters 1201, 1202, 1204, 1205, 1231, 1232, and

1 1371, Government Code; and

2 (2) Subchapter A, Chapter 1206, Government Code.
3 (V.T.I.C. Art. 21.49-3d, Secs. 3(b), 4.)

4 Sec. 2203.354. ISSUANCE OF BONDS AUTHORIZED. On behalf of
5 the association and subject to Section 2203.355, the Texas Public
6 Finance Authority shall issue revenue bonds to:

7 (1) fund the policyholder's stabilization reserve fund
8 for nursing homes and assisted living facilities under Section
9 2203.303;

10 (2) pay costs related to issuing the bonds; and

11 (3) pay other costs related to the bonds as determined
12 by the board. (V.T.I.C. Art. 21.49-3d, Sec. 3(a).)

13 Sec. 2203.355. LIMITATION ON AMOUNT OF BONDS. The Texas
14 Public Finance Authority may issue on behalf of the association
15 bonds in a total amount not to exceed \$75 million. (V.T.I.C. Art.
16 21.49-3d, Sec. 5.)

17 Sec. 2203.356. TERMS OF ISSUANCE. (a) Bonds issued under
18 this subchapter may be issued at a public or private sale.

19 (b) Bonds must:

20 (1) be issued in the name of the association; and

21 (2) mature not more than 10 years after the date
22 issued. (V.T.I.C. Art. 21.49-3d, Sec. 6.)

23 Sec. 2203.357. CONTENTS OF BOND RESOLUTION; ADMINISTRATION
24 OF ACCOUNTS. (a) In a bond resolution, the board may:

25 (1) provide for the flow of funds and the
26 establishment, maintenance, and investment of funds and special
27 accounts with regard to the bonds, including an interest and

1 sinking fund account, a reserve account, and other accounts; and

2 (2) make additional covenants with regard to the bonds
3 and the designated income and receipts of the association pledged
4 to the payment of the bonds.

5 (b) The association shall administer the accounts in
6 accordance with this chapter. (V.T.I.C. Art. 21.49-3d, Secs. 7,
7 8.)

8 Sec. 2203.358. SOURCE OF PAYMENT. (a) Bonds issued under
9 this subchapter are payable only from:

10 (1) the surcharge fee established under Section
11 2203.359; or

12 (2) other sources the association is authorized to
13 levy and charge and from which the association is authorized to
14 collect in connection with paying any portion of the bonds.

15 (b) The bonds are obligations solely of the association and
16 do not create a pledge, gift, or loan of the faith, credit, or
17 taxing authority of this state.

18 (c) Each bond must:

19 (1) include a statement that the state is not
20 obligated to pay any amount on the bond and that the faith, credit,
21 and taxing authority of this state are not pledged, given, or loaned
22 to those payments; and

23 (2) state on the bond's face that the bond:

24 (A) is payable solely from the revenue pledged
25 for that purpose; and

26 (B) is not a legal or moral obligation of the
27 state. (V.T.I.C. Art. 21.49-3d, Sec. 9.)

1 Sec. 2203.359. SURCHARGE FEE. (a) A surcharge fee is
2 assessed against:

3 (1) each association member; and

4 (2) the association.

5 (b) The commissioner shall set the surcharge fee in an
6 amount sufficient to pay all debt service on the bonds issued under
7 this subchapter. Each association member and the association shall
8 pay the surcharge fee as required by the commissioner by rule.

9 (c) The comptroller shall collect the surcharge fee and the
10 department shall reimburse the comptroller in the manner described
11 by Section 201.052.

12 (d) The commissioner, in consultation with the comptroller,
13 may coordinate payment and collection of the surcharge fee with
14 other payments made by association members and collected by the
15 comptroller.

16 (e) Except as provided by Subsection (f), as a condition of
17 engaging in the business of insurance in this state, an association
18 member agrees that, if the member leaves the liability insurance
19 market in this state, the member remains obligated to pay the
20 member's share of the surcharge fee assessed under this section
21 until the bonds are retired. The amount assessed against a member
22 under this subsection must be:

23 (1) proportionate to the member's share of the
24 liability insurance market, including automobile liability
25 insurance, in this state as of the last complete reporting period
26 before the date the member ceases to engage in the liability
27 insurance business in this state; and

1 (2) based on the member's gross premiums for liability
2 insurance, including automobile liability insurance, for the
3 member's last reporting period.

4 (f) An association member is not required to pay the
5 proportionate amount under Subsection (e) in any year in which the
6 surcharge fee assessed against association members continuing to
7 write liability insurance in this state is sufficient to service
8 the bond obligation. (V.T.I.C. Art. 21.49-3d, Sec. 10.)

9 Sec. 2203.360. EXEMPTION FROM TAXATION. Bonds issued under
10 this subchapter, any interest from the bonds, and all assets
11 pledged to secure the payment of the bonds are exempt from taxation
12 by the state or a political subdivision of this state. (V.T.I.C.
13 Art. 21.49-3d, Sec. 11.)

14 Sec. 2203.361. AUTHORIZED INVESTMENTS. Bonds issued under
15 this subchapter are authorized investments under Subchapter B,
16 Chapter 424, and Subchapter D, Chapter 425. (V.T.I.C. Art.
17 21.49-3d, Sec. 12.)

18 Sec. 2203.362. STATE PLEDGE REGARDING BOND OWNER RIGHTS AND
19 REMEDIES. (a) The state pledges to and agrees with the owners of
20 bonds issued in accordance with this subchapter that the state will
21 not limit or alter the rights vested in the association to fulfill
22 the terms of agreements made with the owners or impair the rights
23 and remedies of the owners until the following obligations are
24 fully discharged:

- 25 (1) the bonds;
26 (2) any bond premium;
27 (3) interest; and

1 (4) all costs and expenses related to an action or
2 proceeding by or on behalf of the owners.

3 (b) The association may include the state's pledge and
4 agreement under Subsection (a) in an agreement with the owners of
5 the bonds. (V.T.I.C. Art. 21.49-3d, Sec. 13.)

6 Sec. 2203.363. PAYMENT ENFORCEABLE BY MANDAMUS. A writ of
7 mandamus and any other legal or equitable remedy are available to a
8 party in interest to require the association or another party to
9 fulfill an agreement or perform a function or duty under:

10 (1) this subchapter;

11 (2) the Texas Constitution; or

12 (3) a bond resolution. (V.T.I.C. Art. 21.49-3d, Sec.
13 14.)

14 [Sections 2203.364-2203.400 reserved for expansion]

15 SUBCHAPTER I. APPEALS

16 Sec. 2203.401. DEFINITION. In this subchapter, "act"
17 includes a ruling or decision. (New.)

18 Sec. 2203.402. APPEAL TO BOARD OF DIRECTORS; HEARING. (a)
19 A person insured or applying for insurance under this chapter, the
20 person's authorized representative, or an affected insurer that may
21 be aggrieved by an act of the association may appeal to the board of
22 directors not later than the 30th day after the date the act occurs.
23 At the time the person is notified of the act, the association shall
24 provide to the person written notice of the person's right to appeal
25 under this subsection.

26 (b) The board of directors shall:

27 (1) hear an appeal brought under Subsection (a) not

1 later than the 30th day after the date the board of directors
2 receives the appeal; and

3 (2) give not less than 10 days' written notice of the
4 time and place of the hearing to the person bringing the appeal or
5 the person's authorized representative. (V.T.I.C. Art. 21.49-3,
6 Secs. 7(a), (b) (part).)

7 Sec. 2203.403. DECISION OF BOARD OF DIRECTORS. (a) Not
8 later than the 10th day after the date of the hearing under Section
9 2203.402(b), the board of directors shall affirm, reverse, or
10 modify the board's previous action or the appealed act.

11 (b) At the time the person is notified of the final action of
12 the board of directors, the association shall provide to the person
13 written notice of the person's right to appeal under Section
14 2203.404. (V.T.I.C. Art. 21.49-3, Sec. 7(b) (part).)

15 Sec. 2203.404. APPEAL TO COMMISSIONER; HEARING. (a) Not
16 later than the 30th day after the date of the final action of the
17 board of directors under Section 2203.403, a person insured or
18 applying for insurance aggrieved by that final action may appeal to
19 the commissioner by making a written request for a hearing.

20 (b) The appeal shall be heard not later than the 30th day
21 after the date the appeal is received. The person bringing the
22 appeal or the person's authorized representative must be given
23 written notice of the time and place of the hearing on or before the
24 10th day before the date of the hearing. (V.T.I.C. Art. 21.49-3,
25 Sec. 7(c) (part).)

26 Sec. 2203.405. COMMISSIONER'S DECISION. (a) Not later
27 than the 30th day after the date of the hearing under Section

1 2203.404, the commissioner shall affirm, reverse, or modify the
2 appealed act.

3 (b) Pending the hearing and decision, the commissioner may
4 suspend or postpone the effective date of a rule or of the act
5 appealed. (V.T.I.C. Art. 21.49-3, Sec. 7(c) (part).)

6 Sec. 2203.406. APPEAL OF COMMISSIONER'S DECISION. (a) The
7 association or a person aggrieved by an order or decision of the
8 commissioner may appeal in accordance with Subchapter D, Chapter
9 36.

10 (b) At the time the person is notified of the commissioner's
11 order or decision, the commissioner shall provide to the person
12 written notice of the person's right to appeal under this section.
13 (V.T.I.C. Art. 21.49-3, Sec. 7(d).)

14 CHAPTER 2204. TEXAS INSURANCE EXCHANGE

15 SUBCHAPTER A. GENERAL PROVISIONS

16 Sec. 2204.001. DEFINITIONS

17 Sec. 2204.002. EXEMPTION

18 Sec. 2204.003. RULES

19 [Sections 2204.004-2204.050 reserved for expansion]

20 SUBCHAPTER B. OPERATION AND MANAGEMENT

21 Sec. 2204.051. PURPOSE OF EXCHANGE; SPECIFIC

22 AUTHORIZATION FOR CERTAIN INSURANCE

23 Sec. 2204.052. OPERATION OF EXCHANGE

24 Sec. 2204.053. CONSTITUTION AND BYLAWS

25 Sec. 2204.054. DIRECTORS

26 [Sections 2204.055-2204.100 reserved for expansion]

SUBCHAPTER C. FINANCES

Sec. 2204.101. TAXES

Sec. 2204.102. INVESTMENTS IN MEMBER OR AGENT

Sec. 2204.103. COVERAGE BY GUARANTY FUNDS

CHAPTER 2204. TEXAS INSURANCE EXCHANGE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2204.001. DEFINITIONS. In this chapter:

(1) "Directors" means the board of directors of the exchange.

(2) "Exchange" means the Texas Insurance Exchange.

(3) "Member" means a person, firm, corporation, or underwriting syndicate authorized by the directors to insure or reinsure risks through the exchange. (V.T.I.C. Art. 1.14-3, Secs. 1(1), (3), (4).)

Sec. 2204.002. EXEMPTION. (a) This chapter, Chapters 251 and 261, and rules adopted by the commissioner or comptroller, as applicable, apply to the exchange, a member, and insurance and reinsurance written through the exchange, except to the extent exempted by rules adopted by the commissioner or comptroller, as applicable.

(b) An exemption may not be:

(1) unfairly discriminatory; or

(2) detrimental to the solvency of an insurer authorized to engage in the business of insurance in this state. (V.T.I.C. Art. 1.14-3, Sec. 9.)

Sec. 2204.003. RULES. The commissioner shall adopt rules for the operation and management of the exchange. (V.T.I.C.

1 Art. 1.14-3, Sec. 4 (part).)

2 [Sections 2204.004-2204.050 reserved for expansion]

3 SUBCHAPTER B. OPERATION AND MANAGEMENT

4 Sec. 2204.051. PURPOSE OF EXCHANGE; SPECIFIC AUTHORIZATION
5 FOR CERTAIN INSURANCE. (a) The exchange shall provide a facility
6 for underwriting:

7 (1) reinsurance of any kind of insurance;

8 (2) direct insurance of any kind of risk located
9 entirely outside the United States;

10 (3) direct insurance of any kind of risk that:

11 (A) is located in another state; and

12 (B) qualifies for placement under the excess and
13 surplus lines requirements of the jurisdiction in which the risk is
14 located; and

15 (4) a risk located in this state that has been
16 submitted to and certified as rejected by a committee representing
17 at least three and not more than seven insurers authorized to engage
18 in the business of insurance in this state and subject to conditions
19 imposed by rules adopted by the commissioner.

20 (b) For purposes of Chapter 101, insurance or reinsurance a
21 member writes to cover a risk described by Subsection (a)(4) is
22 considered to be specifically authorized by the laws of this state.
23 (V.T.I.C. Art. 1.14-3, Secs. 3, 11.)

24 Sec. 2204.052. OPERATION OF EXCHANGE. The exchange shall
25 operate under:

26 (1) a constitution and bylaws adopted by the exchange
27 and approved by the department; and

1 (2) rules adopted by the commissioner under Section
2 2204.003. (V.T.I.C. Art. 1.14-3, Secs. 2, 5(a).)

3 Sec. 2204.053. CONSTITUTION AND BYLAWS. (a) In this
4 section:

5 (1) "Principal office" means an office at which
6 officers and personnel who are engaged in administration,
7 underwriting, claims adjustment, policyholders' service,
8 marketing, accounting, recordkeeping, and support services are
9 located.

10 (2) "Subscriber" means a person, firm, corporation, or
11 other organization that, on payment of fees or dues required by the
12 constitution and bylaws, the directors designate as a subscriber.

13 (b) The constitution and bylaws of the exchange must provide
14 for:

15 (1) the election of nine directors, four of whom
16 represent the public interest and are not members, subscribers, or
17 agents of the exchange;

18 (2) the locations of the principal offices of the
19 exchange and the members in this state for transacting business
20 described by Section 2204.051(a);

21 (3) the submission by the exchange, members, and
22 applicants for membership in the exchange of financial information
23 required by rules adopted by the commissioner;

24 (4) the establishment and maintenance by the exchange
25 of a security fund in a form and amount specified by rules adopted
26 by the commissioner;

27 (5) the voting power of members; and

1 (6) members' rights and duties, including the manner
2 of conducting business, financial stability, dues, membership
3 fees, mandatory arbitration, and any other matter necessary or
4 appropriate to conduct business authorized by this chapter.

5 (c) For an agent transacting business on the exchange to
6 participate in the operation and management of the exchange, the
7 constitution and bylaws of the exchange must provide for the voting
8 power and other rights granted to a nonprofit corporation under the
9 Business Organizations Code.

10 (c-1) Notwithstanding Subsection (c), on or before December
11 31, 2009, for an agent transacting business on the exchange to
12 participate in the operation and management of the exchange, the
13 constitution and bylaws of the exchange must provide for the voting
14 power and other rights granted to a nonprofit corporation under the
15 Texas Non-Profit Corporation Act (Article 1396-1.01 et seq.,
16 Vernon's Texas Civil Statutes) or the Business Organizations Code,
17 as applicable.

18 (c-2) This subsection and Subsection (c-1) expire January
19 1, 2010.

20 (d) In a manner that complies with the requirements adopted
21 under this section, the exchange may, with the department's
22 approval, amend the exchange's constitution or bylaws in accordance
23 with the terms of the constitution and bylaws.

24 (e) The constitution, a bylaw, or an amendment to the
25 constitution or a bylaw is invalid without the department's
26 approval. (V.T.I.C. Art. 1.14-3, Secs. 1(5), 5(b), (c), (d), (e).)

27 Sec. 2204.054. DIRECTORS. (a) The directors shall

1 operate and manage the exchange in accordance with rules adopted
2 under Section 2204.003.

3 (b) The directors shall be elected by the members and any
4 other person authorized by the exchange's constitution and bylaws
5 to vote in an election of directors.

6 (c) At least two-thirds of the directors must be citizens of
7 the United States. (V.T.I.C. Art. 1.14-3, Secs. 4 (part), 6.)

8 [Sections 2204.055-2204.100 reserved for expansion]

9 SUBCHAPTER C. FINANCES

10 Sec. 2204.101. TAXES. (a) Except as provided by this
11 section and Chapters 251 and 261, the exchange is not subject to
12 state or local taxes that are measured by income, premiums, or gross
13 receipts.

14 (b) A direct premium written, procured, or received by a
15 member through the exchange on a risk located in this state is:

16 (1) considered written, procured, or received by the
17 exchange; and

18 (2) subject to the premium taxes imposed under
19 Subtitle B, Title 3.

20 (c) Premium taxes shall be reported, paid, and administered
21 as provided by Subtitle B, Title 3.

22 (d) The exchange and the members are considered insurers for
23 purposes of:

24 (1) Sections 201.052, 201.053, and 201.054;

25 (2) Chapters 4, 202, 203, 221, 222, 224, 227, 251, 257,
26 and 1109; and

27 (3) Section 171.0525, Tax Code. (V.T.I.C. Art.

1 1.14-3, Sec. 7.)

2 Sec. 2204.102. INVESTMENTS IN MEMBER OR AGENT. (a) The
3 commissioner by rule may establish limitations on investments in a
4 member.

5 (b) An investment, directly or indirectly, in a member by an
6 agent transacting business on the exchange or in an agent
7 transacting business on the exchange by a member is limited in the
8 aggregate to:

9 (1) less than 20 percent of the total investment in the
10 member or agent; or

11 (2) a lesser amount provided by a rule adopted by the
12 commissioner. (V.T.I.C. Art. 1.14-3, Sec. 10.)

13 Sec. 2204.103. COVERAGE BY GUARANTY FUNDS. (a) The
14 performance of a contractual obligation of the exchange or a member
15 entered into under this chapter is not covered by an insurance
16 guaranty fund provided by the laws of this state.

17 (b) This section does not apply to the security fund
18 established under Section 2204.053(b)(4). (V.T.I.C. Art. 1.14-3,
19 Sec. 12.)

20 CHAPTER 2205. TEXAS CHILD-CARE FACILITY LIABILITY POOL

21 SUBCHAPTER A. GENERAL PROVISIONS

22 Sec. 2205.001. DEFINITIONS

23 Sec. 2205.002. POOL NOT ENGAGED IN BUSINESS OF

24 INSURANCE

25 Sec. 2205.003. DEPARTMENT AND COMMISSIONER SUPERVISION

26 [Sections 2205.004-2205.050 reserved for expansion]

1 SUBCHAPTER B. CREATION OF POOL

2 Sec. 2205.051. CREATION OF POOL

3 Sec. 2205.052. PARTICIPATION IN POOL

4 Sec. 2205.053. SELECTION OF TEMPORARY BOARD

5 [Sections 2205.054-2205.100 reserved for expansion]

6 SUBCHAPTER C. PLAN OF OPERATION

7 Sec. 2205.101. TIME FOR CREATION OF PLAN OF OPERATION

8 Sec. 2205.102. CONTENTS OF PLAN OF OPERATION

9 Sec. 2205.103. APPROVAL OF PLAN OF OPERATION

10 [Sections 2205.104-2205.150 reserved for expansion]

11 SUBCHAPTER D. BOARD OF TRUSTEES

12 Sec. 2205.151. GOVERNANCE OF POOL

13 Sec. 2205.152. TERMS; VACANCY

14 Sec. 2205.153. PERFORMANCE BOND REQUIRED

15 Sec. 2205.154. COMPENSATION

16 Sec. 2205.155. OFFICERS; MEETINGS

17 Sec. 2205.156. GENERAL POWERS AND DUTIES OF BOARD

18 Sec. 2205.157. IMMUNITY OF BOARD MEMBERS FROM CERTAIN

19 LIABILITIES

20 [Sections 2205.158-2205.200 reserved for expansion]

21 SUBCHAPTER E. OPERATION OF POOL

22 Sec. 2205.201. GENERAL POWERS AND DUTIES OF POOL

23 Sec. 2205.202. POOL MANAGER; PERFORMANCE BOND REQUIRED

24 Sec. 2205.203. GENERAL POWERS AND DUTIES OF POOL

25 MANAGER

26 Sec. 2205.204. PERSONNEL

27 Sec. 2205.205. PERFORMANCE BOND AUTHORIZED

1 Sec. 2205.206. IMMUNITY OF EMPLOYEES AND CONTRACTORS

2 FROM CERTAIN LIABILITIES

3 Sec. 2205.207. OFFICE; RECORDS

4 Sec. 2205.208. ANNUAL AUDIT

5 [Sections 2205.209-2205.250 reserved for expansion]

6 SUBCHAPTER F. TEXAS CHILD-CARE FACILITY LIABILITY FUND

7 Sec. 2205.251. FUND CREATION; MANAGEMENT

8 Sec. 2205.252. CONTRIBUTIONS

9 Sec. 2205.253. USES OF FUND

10 Sec. 2205.254. DEPOSITORY BANK

11 [Sections 2205.255-2205.300 reserved for expansion]

12 SUBCHAPTER G. POOL COVERAGE

13 Sec. 2205.301. SCOPE OF COVERAGE

14 Sec. 2205.302. BASIS OF COVERAGE

15 Sec. 2205.303. RATES AND LIMITS OF COVERAGE

16 Sec. 2205.304. COVERAGE PERIOD

17 Sec. 2205.305. NONRENEWAL OF COVERAGE

18 Sec. 2205.306. SUBSEQUENT COVERAGE

19 Sec. 2205.307. PAYMENT OF CLAIMS AND JUDGMENTS

20 CHAPTER 2205. TEXAS CHILD-CARE FACILITY LIABILITY POOL

21 SUBCHAPTER A. GENERAL PROVISIONS

22 Sec. 2205.001. DEFINITIONS. In this chapter:

23 (1) "Board" means the board of trustees of the pool.

24 (2) "Child-care facility" has the meaning assigned by
25 Section 42.002, Human Resources Code.

26 (3) "Fund" means the Texas child-care facility
27 liability fund.

1 (4) "Pool" means the Texas Child-Care Facility
2 Liability Pool. (V.T.I.C. Art. 21.49-18, Sec. 1.)

3 Sec. 2205.002. POOL NOT ENGAGED IN BUSINESS OF
4 INSURANCE. (a) Except as provided by this section and Section
5 2205.003(b), the pool is not engaged in the business of insurance
6 under this code or other state law, and this code and other state
7 insurance laws do not apply to the pool.

8 (b) The pool is subject to:

9 (1) this chapter;

10 (2) the requirements of this code or commissioner
11 rules relating to reporting liability claims information; and

12 (3) the requirements of Chapter 2251 and Article
13 5.13-2 relating to making, filing, and approving rates. (V.T.I.C.
14 Art. 21.49-18, Secs. 20(a), (b) (part).)

15 Sec. 2205.003. DEPARTMENT AND COMMISSIONER SUPERVISION.

16 (a) The pool is subject to the department's continuing supervision
17 relating to the pool's solvency.

18 (b) The commissioner may set minimum requirements to ensure
19 the capability of the pool to satisfy the pool's obligations.
20 (V.T.I.C. Art. 21.49-18, Secs. 20(b) (part), (c).)

21 [Sections 2205.004-2205.050 reserved for expansion]

22 SUBCHAPTER B. CREATION OF POOL

23 Sec. 2205.051. CREATION OF POOL. (a) The Texas Child-Care
24 Facility Liability Pool is created when the governing bodies of 10
25 or more child-care facilities agree in writing to participate in
26 the pool.

27 (b) The pool provides liability insurance coverage for

1 child-care facilities as provided by this chapter. (V.T.I.C. Art.
2 21.49-18, Secs. 2, 3(a) (part).)

3 Sec. 2205.052. PARTICIPATION IN POOL. A child-care
4 facility is entitled to coverage from the pool if the facility:

- 5 (1) submits a complete application;
- 6 (2) provides other information required by the pool;
- 7 (3) meets the underwriting standards established by
8 the pool; and
- 9 (4) pays the premiums required for the coverage.

10 (V.T.I.C. Art. 21.49-18, Sec. 4.)

11 Sec. 2205.053. SELECTION OF TEMPORARY BOARD. At the time
12 the governing bodies of the child-care facilities enter into the
13 written agreement under Section 2205.051, the governing bodies
14 shall select nine individuals to:

- 15 (1) serve as the temporary board; and
- 16 (2) draft the plan of operation for the pool.

17 (V.T.I.C. Art. 21.49-18, Sec. 5(a).)

18 [Sections 2205.054-2205.100 reserved for expansion]

19 SUBCHAPTER C. PLAN OF OPERATION

20 Sec. 2205.101. TIME FOR CREATION OF PLAN OF OPERATION. (a)
21 Not later than the 30th day after the date the last member of the
22 temporary board is selected, the temporary board shall meet to
23 prepare a plan of operation for the pool.

24 (b) The temporary board shall complete and adopt the plan of
25 operation not later than the 90th day after the date the last member
26 of the temporary board is selected. (V.T.I.C. Art. 21.49-18, Secs.
27 5(b), (d).)

1 Sec. 2205.102. CONTENTS OF PLAN OF OPERATION. (a) Subject
2 to the requirements of this chapter, the plan of operation must
3 include:

4 (1) the organizational structure of the pool,
5 including:

6 (A) the method of selecting the board;

7 (B) the board's methods of procedure and
8 operation; and

9 (C) a summary of the methods for managing and
10 operating the pool;

11 (2) a description of the contributions and other
12 financial arrangements necessary to cover the initial expenses of
13 the pool and estimates, supported by statistical information, of
14 the amounts of those contributions or other financial arrangements;

15 (3) underwriting standards and procedures for
16 evaluating risks;

17 (4) a requirement that each participant in the pool
18 receive continuing training in the methods of controlling liability
19 losses;

20 (5) procedures for purchasing reinsurance;

21 (6) procedures and guidelines for:

22 (A) establishing premium rates for and maximum
23 limits of excess liability coverage available from the pool;

24 (B) negotiating and paying settlements,
25 defending claims, and paying judgments; and

26 (C) managing and investing the fund;

27 (7) procedures for:

- 1 (A) processing and paying claims; and
2 (B) defraying losses or expenses of the pool;
3 (8) guidelines for nonrenewal of coverage;
4 (9) the minimum capital and surplus to be maintained
5 by the pool; and
6 (10) the minimum standards for reserve requirements
7 for the pool.

8 (b) The plan of operation may include any matter relating to
9 the organization and operation of the pool or to the pool's
10 finances. (V.T.I.C. Art. 21.49-18, Sec. 5(c).)

11 Sec. 2205.103. APPROVAL OF PLAN OF OPERATION. (a) On
12 completion of the plan of operation, the temporary board shall
13 submit the plan to the department for examination, suggested
14 changes, and final approval.

15 (b) The department shall approve the plan of operation on
16 the determination that the pool is able and will continue to be able
17 to pay valid claims made against the pool. (V.T.I.C. Art. 21.49-18,
18 Sec. 5(e).)

19 [Sections 2205.104-2205.150 reserved for expansion]

20 SUBCHAPTER D. BOARD OF TRUSTEES

21 Sec. 2205.151. GOVERNANCE OF POOL. (a) The pool is
22 governed by a board of trustees composed of nine members selected as
23 provided by the plan of operation.

24 (b) Not later than the 15th day after the date the
25 department approves the plan of operation, the initial regular
26 board must be selected as provided by the plan of operation. The
27 members of the initial regular board shall take office not later

1 than the 30th day after the date the plan of operation is adopted.
2 (V.T.I.C. Art. 21.49-18, Secs. 5(g), 6(a).)

3 Sec. 2205.152. TERMS; VACANCY. (a) Board members serve
4 two-year terms. The terms expire as provided by the plan of
5 operation.

6 (b) A vacancy on the board shall be filled as provided by the
7 plan of operation. (V.T.I.C. Art. 21.49-18, Secs. 6(b), (c).)

8 Sec. 2205.153. PERFORMANCE BOND REQUIRED. (a) Each board
9 member shall execute a bond in the amount required by the plan of
10 operation. The bond must be payable to the pool and conditioned on
11 the faithful performance of the member's duties.

12 (b) The pool shall pay the cost of the bond executed under
13 this section. (V.T.I.C. Art. 21.49-18, Sec. 6(d).)

14 Sec. 2205.154. COMPENSATION. A board member is not
15 entitled to compensation for the member's service on the board.
16 (V.T.I.C. Art. 21.49-18, Sec. 6(e).)

17 Sec. 2205.155. OFFICERS; MEETINGS. (a) The board shall
18 elect from the board's membership a presiding officer and other
19 officers as provided by the plan of operation.

20 (b) Each officer serves a one-year term that expires as
21 provided by the plan of operation.

22 (c) The board shall meet at the call of the presiding
23 officer and at times established by the board's rules. (V.T.I.C.
24 Art. 21.49-18, Secs. 6(f), (g).)

25 Sec. 2205.156. GENERAL POWERS AND DUTIES OF BOARD. (a) The
26 board shall:

27 (1) approve contracts, other than liability insurance

1 contracts issued by the pool to child-care facilities; and

2 (2) adopt premium rate schedules and policy forms for
3 the pool.

4 (b) The board may:

5 (1) adopt rules as necessary for the operation of the
6 pool;

7 (2) delegate specific responsibilities to the pool
8 manager; and

9 (3) with the department's approval, amend the plan of
10 operation as necessary to ensure the orderly management and
11 operation of the pool. (V.T.I.C. Art. 21.49-18, Secs. 5(f) (part);
12 7(a) (part), (b).)

13 Sec. 2205.157. IMMUNITY OF BOARD MEMBERS FROM CERTAIN
14 LIABILITIES. A board member is not liable:

15 (1) with respect to a claim or judgment for which
16 coverage is provided by the pool; or

17 (2) for a claim or judgment against a child-care
18 facility covered by the pool. (V.T.I.C. Art. 21.49-18, Sec. 6(h).)

19 [Sections 2205.158-2205.200 reserved for expansion]

20 SUBCHAPTER E. OPERATION OF POOL

21 Sec. 2205.201. GENERAL POWERS AND DUTIES OF POOL. (a) The
22 pool shall:

23 (1) issue primary and excess liability coverage to
24 each child-care facility entitled to coverage under this chapter;

25 (2) collect premiums for coverage issued or renewed by
26 the pool;

27 (3) process and pay valid claims;

1 (4) maintain detailed information regarding the pool;
2 and

3 (5) establish a plan to conduct loss control training
4 or contract with an outside entity to establish continuing training
5 and inspections programs designed to reduce the potential liability
6 losses of pool participants.

7 (b) The pool may:

8 (1) enter into contracts;

9 (2) purchase reinsurance;

10 (3) cancel or refuse to renew coverage; and

11 (4) perform any other act necessary to implement this
12 chapter, the plan of operation, or a rule adopted by the board.
13 (V.T.I.C. Art. 21.49-18, Sec. 11.)

14 Sec. 2205.202. POOL MANAGER; PERFORMANCE BOND
15 REQUIRED. (a) The board shall appoint a pool manager who serves at
16 the pleasure of the board, and the board shall supervise the pool
17 manager's activities.

18 (b) The pool manager shall execute a bond in the amount
19 determined by the board. The bond must be payable to the pool and
20 conditioned on the faithful performance of the pool manager's
21 duties. (V.T.I.C. Art. 21.49-18, Secs. 7(a) (part); 8(a) (part),
22 (b).)

23 Sec. 2205.203. GENERAL POWERS AND DUTIES OF POOL MANAGER.

24 (a) The pool manager shall direct the general operation of the pool
25 and perform other duties as directed by the board.

26 (b) The pool manager shall:

27 (1) receive and approve applications for liability

1 coverage from the pool;

2 (2) negotiate contracts for the pool; and

3 (3) prepare proposed policy forms for board approval.

4 (c) The pool manager may refuse to renew the coverage of a
5 child-care facility insured by the pool that fails to meet the
6 guidelines included in the plan of operation. (V.T.I.C. Art.
7 21.49-18, Secs. 8(a) (part), (c) (part), (d).)

8 Sec. 2205.204. PERSONNEL. (a) The pool manager may
9 employ or contract with persons as necessary to assist the board and
10 the pool manager in implementing the powers and duties of the pool.

11 (b) The board must approve:

12 (1) the compensation paid to a pool employee; and

13 (2) a contract made with a person under this section.

14 (V.T.I.C. Art. 21.49-18, Secs. 9(a), (b).)

15 Sec. 2205.205. PERFORMANCE BOND AUTHORIZED. The board may
16 require an employee or a person with whom the pool manager contracts
17 under Section 2205.204 to execute a bond in an amount determined by
18 the board. The bond must be payable to the board and conditioned on
19 the faithful performance of the employee's or other person's duties
20 to the pool. (V.T.I.C. Art. 21.49-18, Sec. 9(c).)

21 Sec. 2205.206. IMMUNITY OF EMPLOYEES AND CONTRACTORS FROM
22 CERTAIN LIABILITIES. An employee or a person with whom the pool
23 manager contracts under Section 2205.204 is not liable with respect
24 to a claim or judgment against a child-care facility covered by the
25 pool. (V.T.I.C. Art. 21.49-18, Sec. 9(d).)

26 Sec. 2205.207. OFFICE; RECORDS. (a) The pool shall
27 maintain the pool's principal office in Austin, Texas.

1 (b) Records and other information relating to the operation
2 of the pool must be maintained in the pool's principal office.
3 (V.T.I.C. Art. 21.49-18, Sec. 10.)

4 Sec. 2205.208. ANNUAL AUDIT. The board shall require an
5 annual audit of the pool's capital, surplus, and reserves. The
6 audit must be conducted by an actuary who is a member of the
7 American Academy of Actuaries or a similar national organization of
8 actuaries recognized by the board. (V.T.I.C. Art. 21.49-18, Sec.
9 12(h).)

10 [Sections 2205.209-2205.250 reserved for expansion]

11 SUBCHAPTER F. TEXAS CHILD-CARE FACILITY LIABILITY FUND

12 Sec. 2205.251. FUND CREATION; MANAGEMENT. (a) The Texas
13 child-care facility liability fund is established on the creation
14 of the pool.

15 (b) The fund is composed of:

16 (1) premiums paid by child-care facilities for
17 coverage provided by the pool;

18 (2) contributions and other money received by the pool
19 to cover the initial expenses of the fund;

20 (3) investments of the fund and money earned from
21 those investments; and

22 (4) any other money received by the pool.

23 (c) The pool manager, under the general supervision of the
24 board, shall manage and invest the money in the fund in the manner
25 provided by the plan of operation.

26 (d) Money earned by the investment of money in the fund must
27 be deposited in the fund or reinvested for the fund. (V.T.I.C. Art.

1 21.49-18, Secs. 12(a), (b), (c); 13.)

2 Sec. 2205.252. CONTRIBUTIONS. The board shall determine
3 the amount of contributions necessary to meet the initial expenses
4 of the pool. The board shall make this determination based on the
5 information provided by the plan of operation. (V.T.I.C. Art.
6 21.49-18, Sec. 14.)

7 Sec. 2205.253. USES OF FUND. (a) Administrative expenses
8 of the pool may be paid from the fund. Payments for administrative
9 expenses during a fiscal year may not exceed 10 percent of the total
10 amount of the money in the fund during that fiscal year.

11 (b) Money in the fund may not be used to pay:

12 (1) punitive damages; or

13 (2) a fine or penalty imposed for a violation of:

14 (A) a statute;

15 (B) a rule of a state agency; or

16 (C) an ordinance or order of a local government.

17 (c) A claim or judgment may be paid from the fund under
18 excess liability insurance coverage only if all benefits payable
19 under any other underlying liability insurance policy covering that
20 claim or judgment are exhausted. (V.T.I.C. Art. 21.49-18, Secs.
21 12(d), (e), (f).)

22 Sec. 2205.254. DEPOSITORY BANK. (a) The board may select
23 one or more banks to serve as a depository for the fund.

24 (b) A depository bank must provide security before money in
25 the fund may be deposited in the bank in an amount that exceeds the
26 maximum amount secured by the Federal Deposit Insurance
27 Corporation. The security must be in an amount sufficient to secure

1 the excess amount of the deposit. (V.T.I.C. Art. 21.49-18, Sec.
2 12(g).)

3 [Sections 2205.255-2205.300 reserved for expansion]

4 SUBCHAPTER G. POOL COVERAGE

5 Sec. 2205.301. SCOPE OF COVERAGE. (a) The pool shall
6 insure a child-care facility and the facility's officers and
7 employees against liability for acts and omissions under the laws
8 of this state by the officers and employees in their official or
9 employment capacities.

10 (b) The pool shall provide to a child-care facility that
11 qualifies under this chapter and the plan of operation:

12 (1) primary liability insurance coverage in an amount
13 not to exceed \$300,000; and

14 (2) excess liability insurance coverage in an amount
15 that the board determines is actuarially sound.

16 (c) The pool may participate in evaluating, settling, and
17 defending a claim against a child-care facility insured by the
18 pool.

19 (d) The pool is liable in an amount not to exceed the limit
20 of coverage provided to a child-care facility on a claim made
21 against the facility. (V.T.I.C. Art. 21.49-18, Sec. 3.)

22 Sec. 2205.302. BASIS OF COVERAGE. The pool may provide
23 liability insurance coverage on a claims-made basis or an
24 occurrence basis. (V.T.I.C. Art. 21.49-18, Sec. 17.)

25 Sec. 2205.303. RATES AND LIMITS OF COVERAGE. (a) To
26 ensure that the pool is actuarially sound, the board shall:

27 (1) set the premium rates charged; and

1 (2) determine the maximum limits of coverage provided.

2 (b) The pool manager, for the board's consideration, shall:

3 (1) collect and compile statistical information
4 relating to the liability coverage provided by the pool, including
5 relevant loss, expense, and premium information, and other
6 necessary information;

7 (2) prepare the proposed premium rate schedules for
8 the approval of the board; and

9 (3) prepare the maximum limits of coverage.

10 (c) The board shall periodically reexamine the rate
11 schedules and the maximum limits of coverage.

12 (d) The pool manager shall make available to the public the
13 information described by Subsection (b)(1). (V.T.I.C. Art.
14 21.49-18, Secs. 8(c) (part), 15.)

15 Sec. 2205.304. COVERAGE PERIOD. A child-care facility
16 that accepts coverage provided by the pool shall maintain that
17 coverage for at least 24 consecutive months following the date the
18 pool issued the coverage. (V.T.I.C. Art. 21.49-18, Sec. 16(a).)

19 Sec. 2205.305. NONRENEWAL OF COVERAGE. (a) Except as
20 provided by Subsection (b), the pool may refuse to renew the
21 coverage of a child-care facility that fails to comply with the
22 pool's underwriting standards.

23 (b) The pool may not refuse to renew the coverage of a
24 child-care facility during the first 24 months following the date
25 the facility is first provided coverage by the pool if the facility
26 maintains the underwriting standards established by the plan of
27 operation. (V.T.I.C. Art. 21.49-18, Sec. 18.)

1 Sec. 2206.052. PARTICIPATION IN POOL

2 Sec. 2206.053. ORGANIZATIONAL MEETING; SELECTION OF
3 TEMPORARY BOARD

4 [Sections 2206.054-2206.100 reserved for expansion]

5 SUBCHAPTER C. JUNIOR COLLEGE DISTRICT RISK MANAGEMENT POOL

6 Sec. 2206.101. CREATION OF JUNIOR COLLEGE DISTRICT
7 RISK MANAGEMENT POOL

8 Sec. 2206.102. PARTICIPATION IN POOL

9 Sec. 2206.103. ORGANIZATIONAL MEETING; SELECTION OF
10 TEMPORARY BOARD

11 [Sections 2206.104-2206.150 reserved for expansion]

12 SUBCHAPTER D. PLAN OF OPERATION

13 Sec. 2206.151. TIME FOR CREATION OF PLAN OF OPERATION

14 Sec. 2206.152. CONTENTS OF PLAN OF OPERATION

15 [Sections 2206.153-2206.200 reserved for expansion]

16 SUBCHAPTER E. BOARD OF TRUSTEES

17 Sec. 2206.201. BOARD OF TRUSTEES

18 Sec. 2206.202. GENERAL AUTHORITY OF BOARD; RULES

19 Sec. 2206.203. PERSONNEL; CONTRACTS FOR SERVICES

20 Sec. 2206.204. PERFORMANCE BOND REQUIRED

21 Sec. 2206.205. IMMUNITY FROM CERTAIN LIABILITIES

22 [Sections 2206.206-2206.250 reserved for expansion]

23 SUBCHAPTER F. RISK MANAGEMENT FUND

24 Sec. 2206.251. FUND CREATION; MANAGEMENT

25 Sec. 2206.252. USES OF FUND

26 [Sections 2206.253-2206.300 reserved for expansion]

1 SUBCHAPTER G. PREMIUM RATES AND COVERAGE; REINSURANCE

2 Sec. 2206.301. PREMIUM RATES AND COVERAGE LIMITS

3 Sec. 2206.302. GUARANTEED ISSUANCE OF INITIAL
4 COVERAGE; RISK MANAGEMENT

5 Sec. 2206.303. REINSURANCE

6 CHAPTER 2206. RISK MANAGEMENT POOLS FOR CERTAIN EDUCATIONAL
7 ENTITIES

8 SUBCHAPTER A. GENERAL PROVISIONS

9 Sec. 2206.001. DEFINITIONS. In this chapter:

10 (1) "Board" means the board of trustees of a pool.

11 (2) "Fund" means a risk management fund.

12 (3) "Junior college district" means a junior college
13 district created under the laws of this state.

14 (4) "Pool" means a risk management pool created under
15 this chapter.

16 (5) "School district" means a public school district
17 created under the laws of this state. (V.T.I.C. Art. 21.49-17,
18 Secs. 1(1), (2), (4), (5), (6).)

19 Sec. 2206.002. APPLICABILITY OF OTHER LAWS. (a) Except
20 as provided by Subsection (b), a pool is not considered insurance
21 under this code or other laws of this state, and the department does
22 not have jurisdiction over the pool.

23 (b) The pool:

24 (1) shall collect the necessary information and file
25 with the department the reports required by Subchapter D, Chapter
26 38; and

27 (2) is subject to Chapter 541 and Section 543.001.

1 (V.T.I.C. Art. 21.49-17, Sec. 15.)

2 [Sections 2206.003-2206.050 reserved for expansion]

3 SUBCHAPTER B. SCHOOL DISTRICT RISK MANAGEMENT POOL

4 Sec. 2206.051. CREATION OF SCHOOL DISTRICT RISK MANAGEMENT
5 POOL. (a) The boards of trustees of five or more school districts
6 may create the school district risk management pool by adopting a
7 resolution to create the pool.

8 (b) The school district risk management pool insures each
9 school district that purchases coverage in the pool against
10 liability under law for the district's acts and omissions.

11 (c) Not more than one school district risk management pool
12 may be created under this subchapter. (V.T.I.C. Art. 21.49-17,
13 Secs. 2(b) (part), (c) (part), (e) (part).)

14 Sec. 2206.052. PARTICIPATION IN POOL. (a) A school
15 district that meets the criteria established by the school district
16 risk management pool in the pool's plan of operation may:

17 (1) purchase coverage from the pool; and

18 (2) use district money to pay the fees, contributions,
19 or premiums required to participate in the pool and obtain the
20 coverage.

21 (b) A junior college district may not participate in the
22 school district risk management pool. (V.T.I.C. Art. 21.49-17,
23 Secs. 2(d) (part), 3 (part).)

24 Sec. 2206.053. ORGANIZATIONAL MEETING; SELECTION OF
25 TEMPORARY BOARD. (a) On authorization to create the school
26 district risk management pool as provided by Section 2206.051, the
27 board of trustees of each school district adopting a resolution to

1 create the pool shall select one representative to meet with
2 representatives of the other school districts adopting the
3 resolution.

4 (b) At the meeting, the representatives shall:

5 (1) adopt guidelines for developing an organizational
6 plan for the pool; and

7 (2) select nine individuals to serve as a temporary
8 board for the pool. (V.T.I.C. Art. 21.49-17, Secs. 4(a) (part),
9 (b).)

10 [Sections 2206.054-2206.100 reserved for expansion]

11 SUBCHAPTER C. JUNIOR COLLEGE DISTRICT RISK MANAGEMENT POOL

12 Sec. 2206.101. CREATION OF JUNIOR COLLEGE DISTRICT RISK
13 MANAGEMENT POOL. (a) The board of trustees of five or more junior
14 college districts may create the junior college district risk
15 management pool by adopting a resolution to create the pool.

16 (b) The junior college district risk management pool
17 insures each junior college district that purchases coverage in the
18 pool against liability under law for the district's acts and
19 omissions.

20 (c) Not more than one junior college district risk
21 management pool may be created under this subchapter. (V.T.I.C.
22 Art. 21.49-17, Secs. 2(b) (part), (c) (part), (e) (part).)

23 Sec. 2206.102. PARTICIPATION IN POOL. (a) A junior
24 college district that meets the criteria established by the junior
25 college district risk management pool in the pool's plan of
26 operation may:

27 (1) purchase coverage from the pool; and

1 (2) use district money to pay the fees, contributions,
2 or premiums required to participate in the pool and obtain the
3 coverage.

4 (b) A school district may not participate in the junior
5 college district risk management pool. (V.T.I.C. Art. 21.49-17,
6 Secs. 2(d) (part), 3 (part).)

7 Sec. 2206.103. ORGANIZATIONAL MEETING; SELECTION OF
8 TEMPORARY BOARD. (a) On authorization to create the junior
9 college district risk management pool as provided by Section
10 2206.101, the board of trustees of each junior college district
11 adopting a resolution to create the pool shall select one
12 representative to meet with representatives of the other junior
13 college districts adopting the resolution.

14 (b) At the meeting, the representatives shall:

15 (1) adopt guidelines for developing an organizational
16 plan for the pool; and

17 (2) select nine individuals to serve as a temporary
18 board for the pool. (V.T.I.C. Art. 21.49-17, Secs. 4(a) (part),
19 (b).)

20 [Sections 2206.104-2206.150 reserved for expansion]

21 SUBCHAPTER D. PLAN OF OPERATION

22 Sec. 2206.151. TIME FOR CREATION OF PLAN OF
23 OPERATION. (a) Not later than the 30th day after the date the
24 temporary board of a pool is selected, the temporary board shall
25 meet and begin preparing a detailed plan of operation for the pool.

26 (b) The temporary board shall complete the plan of operation
27 not later than the 90th day after the date the temporary board is

1 selected. (V.T.I.C. Art. 21.49-17, Secs. 5(a), (c).)

2 Sec. 2206.152. CONTENTS OF PLAN OF OPERATION. (a) Subject
3 to the requirements of this chapter, a pool's plan of operation must
4 include:

5 (1) the organizational structure of the pool,
6 including:

7 (A) the number of regular board members;

8 (B) the method of selecting the board members;

9 (C) the board's method of procedure and
10 operation; and

11 (D) a summary of the method for managing and
12 operating the pool;

13 (2) a description of the fees, contributions, or
14 financial arrangements necessary to cover the initial expenses of
15 the pool and estimates, supported by statistical data, of the
16 amounts of those fees, contributions, or other financial
17 arrangements;

18 (3) underwriting guidelines and procedures for
19 evaluating risks;

20 (4) procedures for purchasing reinsurance;

21 (5) methods, procedures, and guidelines for
22 establishing:

23 (A) premium rates for pool coverage; and

24 (B) pool coverage limits;

25 (6) procedures for processing and paying claims;

26 (7) methods and procedures for defraying losses and
27 expenses of the pool;

1 (8) methods, procedures, and guidelines for managing
2 and investing the money in the fund created for the pool;

3 (9) minimum capital and surplus to be maintained by
4 the pool; and

5 (10) minimum standards for reserve requirements for
6 the pool.

7 (b) The plan of operation may include any matter relating to
8 the organization and operation of the pool and the pool's finances.

9 (V.T.I.C. Art. 21.49-17, Sec. 5(b).)

10 [Sections 2206.153-2206.200 reserved for expansion]

11 SUBCHAPTER E. BOARD OF TRUSTEES

12 Sec. 2206.201. BOARD OF TRUSTEES. (a) A pool is governed
13 by a board of trustees as provided by the plan of operation.

14 (b) Not later than the 15th day after the date the temporary
15 board of a pool completes the plan of operation, the initial regular
16 board must be selected and take office as provided by the plan.

17 (c) An individual serving on the board who is an officer or
18 employee of a school district or junior college district covered by
19 the pool performs duties on the board as additional duties required
20 of the individual's original office or employment. (V.T.I.C. Art.
21 21.49-17, Secs. 6(a), (b), (c).)

22 Sec. 2206.202. GENERAL AUTHORITY OF BOARD; RULES. (a) A
23 board is responsible for the general administration and operation
24 of the pool and the pool's fund.

25 (b) The board may:

26 (1) exercise powers and enter into contracts necessary
27 to implement this chapter and the plan of operation; and

1 (2) adopt rules to implement this chapter and the plan
2 of operation. (V.T.I.C. Art. 21.49-17, Secs. 6(d), 10, 14.)

3 Sec. 2206.203. PERSONNEL; CONTRACTS FOR SERVICES. (a) A
4 board may employ a fund manager and other persons necessary to
5 implement this chapter and the plan of operation.

6 (b) The board may employ or contract with a person or
7 insurer for underwriting, accounting, claims, and other services.
8 (V.T.I.C. Art. 21.49-17, Sec. 11.)

9 Sec. 2206.204. PERFORMANCE BOND REQUIRED. (a) Each board
10 member and each board employee who has authority over money in the
11 fund or money collected or invested by the pool shall execute a bond
12 in an amount determined by the board. The bond must be payable to
13 the pool and conditioned on the faithful performance of the
14 person's duties.

15 (b) The pool shall pay the cost of a bond executed under
16 Subsection (a). (V.T.I.C. Art. 21.49-17, Sec. 6(f).)

17 Sec. 2206.205. IMMUNITY FROM CERTAIN LIABILITIES. A board
18 member or board employee is not liable:

19 (1) with respect to a claim or judgment for which
20 coverage is provided by the pool; or

21 (2) for a claim or judgment made against a school
22 district or junior college district covered by the pool. (V.T.I.C.
23 Art. 21.49-17, Sec. 6(e).)

24 [Sections 2206.206-2206.250 reserved for expansion]

25 SUBCHAPTER F. RISK MANAGEMENT FUND

26 Sec. 2206.251. FUND CREATION; MANAGEMENT. (a) Immediately
27 after taking office, an initial regular board shall create a risk

1 management fund. The fund must include:

2 (1) fees, contributions, and premiums collected by the
3 pool;

4 (2) investments of money in the fund;

5 (3) interest earned on investments made by the pool;
6 and

7 (4) all other income received by the pool.

8 (b) The board shall manage and invest the money in the fund
9 in the manner provided by the plan of operation. (V.T.I.C. Art.
10 21.49-17, Secs. 7(a), (b).)

11 Sec. 2206.252. USES OF FUND. (a) The money in a pool's
12 fund:

13 (1) shall be used to pay liability claims and
14 judgments against school districts or junior college districts that
15 participate in the pool, not to exceed the limits of the coverage
16 provided by the pool; and

17 (2) may be used to pay the administrative and
18 management costs of the pool and the fund, not to exceed the limits
19 provided in the plan of operation.

20 (b) On the board's approval, a pool may pay commissions from
21 the fund. (V.T.I.C. Art. 21.49-17, Secs. 7(c), 13.)

22 [Sections 2206.253-2206.300 reserved for expansion]

23 SUBCHAPTER G. PREMIUM RATES AND COVERAGE; REINSURANCE

24 Sec. 2206.301. PREMIUM RATES AND COVERAGE LIMITS. A pool's
25 board shall determine the premium rates charged by the pool and pool
26 coverage limits to ensure that the pool and the fund are actuarially
27 sound. (V.T.I.C. Art. 21.49-17, Sec. 8.)

1 Sec. 2207.002. POOL NOT ENGAGED IN BUSINESS OF
2 INSURANCE

3 [Sections 2207.003-2207.050 reserved for expansion]

4 SUBCHAPTER B. COUNTY EXCESS LIABILITY POOL

5 Sec. 2207.051. CREATION OF COUNTY EXCESS LIABILITY
6 POOL

7 Sec. 2207.052. PARTICIPATION IN OTHER POOLS NOT
8 PERMITTED

9 Sec. 2207.053. SELECTION OF TEMPORARY BOARD

10 [Sections 2207.054-2207.100 reserved for expansion]

11 SUBCHAPTER C. SCHOOL DISTRICT EXCESS LIABILITY POOL

12 Sec. 2207.101. CREATION OF SCHOOL DISTRICT EXCESS
13 LIABILITY POOL

14 Sec. 2207.102. PARTICIPATION IN OTHER POOLS NOT
15 PERMITTED

16 Sec. 2207.103. SELECTION OF TEMPORARY BOARD

17 [Sections 2207.104-2207.150 reserved for expansion]

18 SUBCHAPTER D. JUNIOR COLLEGE DISTRICT EXCESS LIABILITY POOL

19 Sec. 2207.151. CREATION OF JUNIOR COLLEGE DISTRICT
20 EXCESS LIABILITY POOL

21 Sec. 2207.152. PARTICIPATION IN OTHER POOLS NOT
22 PERMITTED

23 Sec. 2207.153. SELECTION OF TEMPORARY BOARD

24 [Sections 2207.154-2207.200 reserved for expansion]

25 SUBCHAPTER E. PLAN OF OPERATION

26 Sec. 2207.201. TIME FOR CREATION OF PLAN OF OPERATION

27 Sec. 2207.202. CONTENTS OF PLAN OF OPERATION

1 [Sections 2207.203-2207.250 reserved for expansion]

2 SUBCHAPTER F. BOARD OF TRUSTEES

3 Sec. 2207.251. BOARD OF TRUSTEES

4 Sec. 2207.252. TERMS; VACANCY

5 Sec. 2207.253. PERFORMANCE BOND REQUIRED

6 Sec. 2207.254. COMPENSATION

7 Sec. 2207.255. OFFICERS; MEETINGS

8 Sec. 2207.256. GENERAL POWERS AND DUTIES OF BOARD

9 Sec. 2207.257. ANNUAL AUDIT; REPORT

10 Sec. 2207.258. IMMUNITY OF BOARD MEMBERS FROM CERTAIN

11 LIABILITIES

12 [Sections 2207.259-2207.300 reserved for expansion]

13 SUBCHAPTER G. OPERATION OF POOL

14 Sec. 2207.301. GENERAL POWERS AND DUTIES OF POOL

15 Sec. 2207.302. POOL MANAGER; PERFORMANCE BOND REQUIRED

16 Sec. 2207.303. GENERAL POWERS AND DUTIES OF POOL

17 MANAGER

18 Sec. 2207.304. PERSONNEL

19 Sec. 2207.305. PERFORMANCE BOND AUTHORIZED

20 Sec. 2207.306. IMMUNITY OF EMPLOYEES AND CONTRACTORS

21 FROM CERTAIN LIABILITIES

22 Sec. 2207.307. OFFICE; RECORDS

23 [Sections 2207.308-2207.350 reserved for expansion]

24 SUBCHAPTER H. EXCESS LIABILITY FUND

25 Sec. 2207.351. FUND CREATION; MANAGEMENT

26 Sec. 2207.352. CONTRIBUTIONS

27 Sec. 2207.353. USES OF FUND

1 Sec. 2207.354. DEPOSITORY BANK

2 [Sections 2207.355-2207.400 reserved for expansion]

3 SUBCHAPTER I. POOL COVERAGE

4 Sec. 2207.401. ENTITLEMENT TO COVERAGE

5 Sec. 2207.402. SCOPE OF COVERAGE

6 Sec. 2207.403. BASIS OF COVERAGE

7 Sec. 2207.404. RATES AND LIMITS OF COVERAGE

8 Sec. 2207.405. USE OF ENTITY MONEY FOR POOL COVERAGE

9 AUTHORIZED

10 Sec. 2207.406. COVERAGE PERIOD

11 Sec. 2207.407. NONRENEWAL OF COVERAGE

12 Sec. 2207.408. SUBSEQUENT COVERAGE

13 Sec. 2207.409. PAYMENT OF CLAIMS AND JUDGMENTS

14 CHAPTER 2207. EXCESS LIABILITY POOLS FOR COUNTIES AND CERTAIN

15 EDUCATIONAL ENTITIES

16 SUBCHAPTER A. GENERAL PROVISIONS

17 Sec. 2207.001. DEFINITIONS. In this chapter:

18 (1) "Board" means the board of trustees of a pool.

19 (2) "County" means a county in this state.

20 (3) "Fund" means an excess liability fund.

21 (4) "Junior college district" means a junior college
22 district created under the laws of this state.

23 (5) "Pool" means an excess liability pool created
24 under this chapter.

25 (6) "School district" means a public school district
26 created under the laws of this state. (V.T.I.C. Art. 21.49-13,
27 Secs. 1(1), (2), (3), (4), (5), (6).)

1 Sec. 2207.002. POOL NOT ENGAGED IN BUSINESS OF
2 INSURANCE. (a) Except as provided by Subsection (b), a pool is not
3 engaged in the business of insurance under this code or other laws
4 of this state, and the department does not have jurisdiction over a
5 pool.

6 (b) A pool:

7 (1) shall collect the necessary information and file
8 with the department the reports required by Subchapter D, Chapter
9 38; and

10 (2) is subject to Chapter 541 and Section 543.001.
11 (V.T.I.C. Art. 21.49-13, Sec. 22.)

12 [Sections 2207.003-2207.050 reserved for expansion]

13 SUBCHAPTER B. COUNTY EXCESS LIABILITY POOL

14 Sec. 2207.051. CREATION OF COUNTY EXCESS LIABILITY
15 POOL. (a) The county judges of five or more counties may, on
16 written agreement, create a county excess liability pool.

17 (b) The county excess liability pool provides excess
18 liability insurance coverage as provided by this chapter and the
19 pool's plan of operation.

20 (c) Not more than one county excess liability pool may be
21 created under this subchapter. (V.T.I.C. Art. 21.49-13, Secs. 2(b)
22 (part), (c), (d) (part).)

23 Sec. 2207.052. PARTICIPATION IN OTHER POOLS NOT PERMITTED.
24 A county may participate only in a pool created for counties.
25 (V.T.I.C. Art. 21.49-13, Sec. 2(d) (part).)

26 Sec. 2207.053. SELECTION OF TEMPORARY BOARD. At the time a
27 written agreement is executed under Section 2207.051, the county

1 judges of each county executing the agreement to create the pool
2 shall select nine individuals to:

- 3 (1) serve as a temporary board; and
4 (2) draft the plan of operation for the pool.
5 (V.T.I.C. Art. 21.49-13, Sec. 6(a).)

6 [Sections 2207.054-2207.100 reserved for expansion]

7 SUBCHAPTER C. SCHOOL DISTRICT EXCESS LIABILITY POOL

8 Sec. 2207.101. CREATION OF SCHOOL DISTRICT EXCESS LIABILITY
9 POOL. (a) Acting on behalf of their boards, the presidents of the
10 boards of trustees of five or more school districts may, on written
11 agreement, create a school district excess liability pool.

12 (b) The school district excess liability pool provides
13 excess liability insurance coverage as provided by this chapter and
14 the pool's plan of operation.

15 (c) Not more than one school district excess liability pool
16 may be created under this subchapter. (V.T.I.C. Art. 21.49-13,
17 Secs. 2(b) (part), (c), (d) (part).)

18 Sec. 2207.102. PARTICIPATION IN OTHER POOLS NOT PERMITTED.
19 A school district may participate only in a pool created for school
20 districts. (V.T.I.C. Art. 21.49-13, Sec. 2(d) (part).)

21 Sec. 2207.103. SELECTION OF TEMPORARY BOARD. At the time a
22 written agreement is executed under Section 2207.101, the
23 presidents of the boards of trustees of each school district
24 executing the agreement to create the pool shall select nine
25 individuals to:

- 26 (1) serve as a temporary board; and
27 (2) draft the plan of operation for the pool.

1 (V.T.I.C. Art. 21.49-13, Sec. 6(a).)

2 [Sections 2207.104-2207.150 reserved for expansion]

3 SUBCHAPTER D. JUNIOR COLLEGE DISTRICT EXCESS LIABILITY POOL

4 Sec. 2207.151. CREATION OF JUNIOR COLLEGE DISTRICT EXCESS
5 LIABILITY POOL. (a) Acting on behalf of their boards, the
6 presiding officers of the boards of trustees of five or more junior
7 college districts may, on written agreement, create a junior
8 college district excess liability pool.

9 (b) The junior college district excess liability pool
10 provides excess liability insurance coverage as provided by this
11 chapter and the pool's plan of operation.

12 (c) Not more than one junior college district excess
13 liability pool may be created under this subchapter. (V.T.I.C.
14 Art. 21.49-13, Secs. 2(b) (part), (c), (d) (part).)

15 Sec. 2207.152. PARTICIPATION IN OTHER POOLS NOT PERMITTED.
16 A junior college district may participate only in a pool created for
17 junior college districts. (V.T.I.C. Art. 21.49-13, Sec. 2(d)
18 (part).)

19 Sec. 2207.153. SELECTION OF TEMPORARY BOARD. At the time a
20 written agreement is executed under Section 2207.151, the presiding
21 officers of the boards of trustees of each junior college district
22 executing the agreement to create the pool shall select nine
23 individuals to:

24 (1) serve as a temporary board; and

25 (2) draft the plan of operation for the pool.

26 (V.T.I.C. Art. 21.49-13, Sec. 6(a).)

27 [Sections 2207.154-2207.200 reserved for expansion]

SUBCHAPTER E. PLAN OF OPERATION

Sec. 2207.201. TIME FOR CREATION OF PLAN OF OPERATION. (a) Not later than the 30th day after the date the temporary board of a pool is selected, the temporary board shall meet to prepare a detailed plan of operation for the pool.

(b) The temporary board shall complete and adopt the plan of operation not later than the 90th day after the date the temporary board is selected. (V.T.I.C. Art. 21.49-13, Secs. 6(b), (d).)

Sec. 2207.202. CONTENTS OF PLAN OF OPERATION. (a) Subject to the requirements of this chapter, a pool's plan of operation must include:

(1) the organizational structure of the pool, including:

(A) the method of selecting the board;

(B) the board's method of procedure and operation; and

(C) a summary of the method for managing and operating the pool;

(2) a description of the contributions and other financial arrangements necessary to cover the initial expenses of the pool and estimates, supported by statistical data, of the amounts of those contributions or other financial arrangements;

(3) underwriting standards and procedures for evaluating risks;

(4) procedures for purchasing reinsurance;

(5) methods, procedures, and guidelines for:

(A) establishing the premium rates for and

1 maximum limits of excess liability insurance coverage available
2 from the pool; and

3 (B) managing and investing money in the fund
4 created for the pool;

5 (6) procedures for processing and paying claims;

6 (7) methods and procedures for defraying losses and
7 expenses of the pool;

8 (8) guidelines for nonrenewal of coverage;

9 (9) minimum capital and surplus to be maintained by
10 the pool; and

11 (10) minimum standards for reserve requirements for
12 the pool.

13 (b) The plan of operation may include any matter relating to
14 the organization and operation of the pool or to the pool's
15 finances. (V.T.I.C. Art. 21.49-13, Sec. 6(c).)

16 [Sections 2207.203-2207.250 reserved for expansion]

17 SUBCHAPTER F. BOARD OF TRUSTEES

18 Sec. 2207.251. BOARD OF TRUSTEES. (a) A pool is governed
19 by a board of trustees composed of nine members selected as provided
20 by the plan of operation.

21 (b) Not later than the 15th day after the date the temporary
22 board of a pool adopts the plan of operation, the initial regular
23 board must be selected as provided by the plan. The members of the
24 initial regular board shall take office not later than the 30th day
25 after the date the plan of operation is adopted.

26 (c) An individual serving on the board who is an officer or
27 employee of a county, school district, or junior college district

1 covered by the pool performs duties on the board as additional
2 duties required of the individual's original office or employment.
3 (V.T.I.C. Art. 21.49-13, Secs. 6(e), 7(a), (d).)

4 Sec. 2207.252. TERMS; VACANCY. (a) Board members serve
5 two-year terms that expire at the time provided by the plan of
6 operation.

7 (b) A vacancy on the board shall be filled as provided by the
8 plan of operation. (V.T.I.C. Art. 21.49-13, Secs. 7(b), (c).)

9 Sec. 2207.253. PERFORMANCE BOND REQUIRED. (a) Each board
10 member shall execute a bond in the amount required by the plan of
11 operation. The bond must be payable to the pool and conditioned on
12 the faithful performance of the member's duties.

13 (b) The pool shall pay the cost of the bond executed under
14 this section. (V.T.I.C. Art. 21.49-13, Sec. 7(e).)

15 Sec. 2207.254. COMPENSATION. A board member is not
16 entitled to compensation for the member's service on the board.
17 (V.T.I.C. Art. 21.49-13, Sec. 7(f).)

18 Sec. 2207.255. OFFICERS; MEETINGS. (a) The board shall
19 select from the board members a presiding officer, an assistant
20 presiding officer, and a secretary who serve one-year terms that
21 expire as provided by the plan of operation.

22 (b) The board shall hold meetings at the call of the
23 presiding officer and at times established by the board's rules.

24 (c) A majority of the board members constitutes a quorum.
25 (V.T.I.C. Art. 21.49-13, Secs. 7(g), (h), (i).)

26 Sec. 2207.256. GENERAL POWERS AND DUTIES OF BOARD. (a) In
27 addition to other duties provided by the plan of operation, the

1 board shall:

2 (1) approve contracts other than excess liability
3 insurance contracts issued by the pool to a county, school
4 district, or junior college district, as applicable;

5 (2) adopt premium rate schedules and policy forms for
6 the pool; and

7 (3) receive service of summons on behalf of the pool.

8 (b) The board may:

9 (1) adopt necessary rules, including rules to
10 implement this chapter;

11 (2) delegate specific responsibilities to the pool
12 manager; and

13 (3) amend the plan of operation to ensure the orderly
14 management and operation of the pool. (V.T.I.C. Art. 21.49-13,
15 Secs. 7(j) (part), (k), 11.)

16 Sec. 2207.257. ANNUAL AUDIT; REPORT. (a) Each year as
17 provided by the plan of operation, the board shall have an actuary
18 audit the capital, surplus, and reserves of the pool and prepare a
19 formal report for the pool and the members of the pool.

20 (b) The actuary must be a member of the American Academy of
21 Actuaries. (V.T.I.C. Art. 21.49-13, Sec. 13(h).)

22 Sec. 2207.258. IMMUNITY OF BOARD MEMBERS FROM CERTAIN
23 LIABILITIES. A board member is not liable:

24 (1) with respect to a claim or judgment for which
25 coverage is provided by the pool; or

26 (2) for a claim or judgment against a county, school
27 district, or junior college district covered by the applicable

1 pool. (V.T.I.C. Art. 21.49-13, Sec. 7(1).)

2 [Sections 2207.259-2207.300 reserved for expansion]

3 SUBCHAPTER G. OPERATION OF POOL

4 Sec. 2207.301. GENERAL POWERS AND DUTIES OF POOL. (a) A
5 pool shall:

6 (1) issue excess liability insurance coverage to each
7 county, school district, or junior college district entitled to
8 coverage under this chapter;

9 (2) collect premiums for coverage issued or renewed by
10 the pool;

11 (3) process and pay valid claims; and

12 (4) maintain detailed data regarding the pool.

13 (b) The pool may:

14 (1) enter into contracts;

15 (2) purchase reinsurance;

16 (3) cancel or refuse to renew coverage; and

17 (4) perform any other act necessary to implement this
18 chapter, the plan of operation, or a rule adopted by the board.

19 (V.T.I.C. Art. 21.49-13, Sec. 12.)

20 Sec. 2207.302. POOL MANAGER; PERFORMANCE BOND
21 REQUIRED. (a) The board shall appoint a pool manager who serves at
22 the pleasure of the board, and the board shall supervise the pool
23 manager's activities.

24 (b) The pool manager is entitled to receive the compensation
25 authorized by the board.

26 (c) The pool manager shall execute a bond in the amount
27 determined by the board. The bond must be payable to the pool and

1 conditioned on the faithful performance of the pool manager's
2 duties.

3 (d) The pool shall pay the cost of the bond executed under
4 this section. (V.T.I.C. Art. 21.49-13, Secs. 7(j) (part), 8(a),
5 (b), (c).)

6 Sec. 2207.303. GENERAL POWERS AND DUTIES OF POOL
7 MANAGER. (a) The pool manager shall manage and conduct the
8 affairs of the pool under the general supervision of the board and
9 shall perform any other duties as directed by the board.

10 (b) In addition to any other duties provided by the board,
11 the pool manager shall:

12 (1) receive and pass on applications for excess
13 liability insurance coverage from the pool;

14 (2) negotiate contracts for the pool; and

15 (3) prepare and submit to the board for approval
16 proposed policy forms for coverage from the pool.

17 (c) The pool manager may refuse to renew the coverage of a
18 county, school district, or junior college district insured by the
19 pool based on the guidelines included in the plan of operation.
20 (V.T.I.C. Art 21.49-13, Secs. 8(d), (e) (part), (f).)

21 Sec. 2207.304. PERSONNEL. (a) The pool manager shall
22 employ or contract with persons necessary to assist the board and
23 the pool manager in implementing the powers and duties of the pool.

24 (b) The board must approve:

25 (1) the compensation paid to a pool employee; and

26 (2) a contract made with a person under this section.

27 (V.T.I.C. Art. 21.49-13, Secs. 9(a), (b).)

1 Sec. 2207.305. PERFORMANCE BOND AUTHORIZED. The board may
2 require an employee or a person with whom the pool manager contracts
3 under Section 2207.304 to execute a bond in an amount determined by
4 the board. The bond must be payable to the board and conditioned on
5 the faithful performance of the employee's or other person's duties
6 to the pool. (V.T.I.C. Art. 21.49-13, Sec. 9(c).)

7 Sec. 2207.306. IMMUNITY OF EMPLOYEES AND CONTRACTORS FROM
8 CERTAIN LIABILITIES. An employee or a person with whom the pool
9 manager contracts under Section 2207.304 is not liable:

10 (1) with respect to a claim or judgment for which
11 coverage is provided by the pool; or

12 (2) for a claim or judgment against a county, school
13 district, or junior college district covered by the applicable
14 pool. (V.T.I.C. Art. 21.49-13, Sec. 9(d).)

15 Sec. 2207.307. OFFICE; RECORDS. (a) A pool shall maintain
16 the pool's principal office in Austin, Texas.

17 (b) Records, files, and other documents and information
18 relating to the pool must be maintained in the pool's principal
19 office. (V.T.I.C. Art. 21.49-13, Sec. 10.)

20 [Sections 2207.308-2207.350 reserved for expansion]

21 SUBCHAPTER H. EXCESS LIABILITY FUND

22 Sec. 2207.351. FUND CREATION; MANAGEMENT. (a) On creation
23 of a pool, the initial regular board shall create an excess
24 liability fund.

25 (b) The fund is composed of:

26 (1) premiums paid by counties, school districts, or
27 junior college districts, as applicable, for coverage provided by

1 the pool;

2 (2) contributions and other money received by the pool
3 to cover the initial expenses of the fund;

4 (3) investments of the fund and money earned from
5 those investments; and

6 (4) any other money received by the pool.

7 (c) The pool manager shall manage the fund under the general
8 supervision of the board. The fund manager, under the general
9 supervision of the board, shall manage and invest the money in the
10 fund in the manner provided by the plan of operation.

11 (d) Money earned by the investment of money in the fund must
12 be deposited in the fund or reinvested for the fund. (V.T.I.C. Art.
13 21.49-13, Secs. 13(a), (b), (c), 14.)

14 Sec. 2207.352. CONTRIBUTIONS. The board shall determine
15 the amount of any contributions necessary to meet the initial
16 expenses of the pool. The board shall make this determination based
17 on the data provided by the plan of operation. (V.T.I.C.
18 Art. 21.49-13, Sec. 15.)

19 Sec. 2207.353. USES OF FUND. (a) Administrative expenses
20 of the pool may be paid from the fund. Payments for administrative
21 expenses during a fiscal year of the pool may not exceed the amount
22 established by the board.

23 (b) The pool may pay commissions from the fund on approval
24 of the board.

25 (c) Money in the fund may not be used to pay:

26 (1) punitive damages; or

27 (2) a fine or penalty imposed for a violation of:

- 1 (A) a statute;
- 2 (B) an administrative rule or regulation; or
- 3 (C) an order, rule, or ordinance.

4 (d) Money for a claim may not be paid from the fund under
5 excess liability insurance coverage until all benefits payable
6 under any other underlying liability insurance policy covering the
7 claim or judgment are exhausted. (V.T.I.C. Art. 21.49-13, Secs.
8 13(d), (e), (f), 21.)

9 Sec. 2207.354. DEPOSITORY BANK. (a) The board may select
10 one or more banks to serve as a depository for money in the fund.

11 (b) A depository bank must execute a bond or provide other
12 security before the pool manager may deposit fund money in the bank
13 in an amount that exceeds the maximum amount secured by the Federal
14 Deposit Insurance Corporation. The bond or other security must be
15 in an amount sufficient to secure the excess amount of the deposit.
16 (V.T.I.C. Art. 21.49-13, Sec. 13(g).)

17 [Sections 2207.355-2207.400 reserved for expansion]

18 SUBCHAPTER I. POOL COVERAGE

19 Sec. 2207.401. ENTITLEMENT TO COVERAGE. A county, school
20 district, or junior college district is entitled to coverage from
21 the pool if the county, school district, or junior college
22 district:

- 23 (1) submits a complete application;
- 24 (2) provides other information required by the pool;
- 25 (3) meets the underwriting standards established by
26 the pool; and
- 27 (4) pays the premiums required for the coverage.

1 (V.T.I.C. Art. 21.49-13, Sec. 4.)

2 Sec. 2207.402. SCOPE OF COVERAGE. (a) A pool shall insure
3 a county, school district, or junior college district and the
4 entity's officers and employees against liability for acts and
5 omissions under the laws governing that county, school district, or
6 junior college district and the entity's officers and employees in
7 their official or employment capacities.

8 (b) Except as provided by Subsection (c), under the excess
9 liability insurance coverage, a pool shall pay any portion of a
10 claim against a county, school district, or junior college
11 district, as applicable, and the entity's officers and employees
12 that:

13 (1) exceeds \$500,000; and

14 (2) is finally determined or settled or is included in
15 a final judgment of a court.

16 (c) The amount paid by a pool under this section may not
17 exceed the amount the board determines is actuarially sound for the
18 pool.

19 (d) A pool may participate in evaluating, settling, or
20 defending a claim made under the excess liability insurance
21 coverage. (V.T.I.C. Art. 21.49-13, Sec. 3.)

22 Sec. 2207.403. BASIS OF COVERAGE. The pool may provide
23 excess liability insurance coverage on a claims-made basis or an
24 occurrence basis. (V.T.I.C. Art. 21.49-13, Sec. 18.)

25 Sec. 2207.404. RATES AND LIMITS OF COVERAGE. (a) To
26 ensure that the pool is actuarially sound, the board shall:

27 (1) set the premium rates charged; and

1 (2) determine the maximum limits of coverage provided.

2 (b) The pool manager, for the board's consideration, shall:

3 (1) collect and compile statistical data relating to
4 the excess liability insurance coverage provided by the pool,
5 including relevant loss, expense, and premium data, and other
6 information;

7 (2) prepare the proposed premium rate schedules for
8 the approval of the board; and

9 (3) prepare the maximum limits of coverage.

10 (c) The board shall periodically reexamine the rate
11 schedules and the maximum limits of coverage as conditions change.

12 (d) The pool manager shall make available to the public the
13 information described by Subsection (b)(1). (V.T.I.C. Art.
14 21.49-13, Secs. 8(e) (part), 16.)

15 Sec. 2207.405. USE OF ENTITY MONEY FOR POOL COVERAGE
16 AUTHORIZED. A county, school district, or junior college district
17 may use its money to pay any contributions or premiums required by
18 the applicable pool to purchase excess liability insurance coverage
19 from the pool. (V.T.I.C. Art. 21.49-13, Sec. 5.)

20 Sec. 2207.406. COVERAGE PERIOD. A county, school
21 district, or junior college district that accepts coverage provided
22 by the applicable pool shall maintain that coverage for at least 36
23 calendar months following the month in which the pool issued the
24 coverage. (V.T.I.C. Art. 21.49-13, Sec. 17(a).)

25 Sec. 2207.407. NONRENEWAL OF COVERAGE. (a) Except as
26 provided by Subsection (b), the applicable pool may refuse to renew
27 the coverage of a county, school district, or junior college

1 district that fails to comply with the pool's underwriting
2 standards.

3 (b) The applicable pool may not refuse to renew the coverage
4 of a county, school district, or junior college district during the
5 first 36 calendar months following the month in which the entity is
6 first provided coverage by the pool. (V.T.I.C. Art. 21.49-13,
7 Secs. 19(a), (b).)

8 Sec. 2207.408. SUBSEQUENT COVERAGE. (a) A county, school
9 district, or junior college district that voluntarily discontinues
10 coverage provided by the applicable pool may not subsequently
11 obtain coverage from the pool for at least 36 calendar months
12 following the month in which the entity discontinues the coverage.

13 (b) A county, school district, or junior college district
14 whose coverage is not renewed under Section 2207.407 is not
15 eligible to subsequently apply for coverage during the 12 calendar
16 months following the month in which the applicable pool gives
17 written notice of nonrenewal. (V.T.I.C. Art. 21.49-13, Secs.
18 17(b), 19(c) (part).)

19 Sec. 2207.409. PAYMENT OF CLAIMS AND JUDGMENTS. (a) If
20 money in the fund would be exhausted by the payment of all final and
21 settled claims and final judgments during a fiscal year, the pool
22 shall prorate the amount paid to each person having the claim or
23 judgment.

24 (b) If the amount paid by the pool is prorated under this
25 section, each person described by Subsection (a) shall receive an
26 amount equal to the percentage that the amount owed to that person
27 by the pool bears to the total amount owed, outstanding, and payable

1 by the pool.

2 (c) The pool shall pay in the next fiscal year the remaining
3 amount that is due and unpaid to a person who receives a prorated
4 payment under this section. (V.T.I.C. Art. 21.49-13, Sec. 20.)

5 CHAPTER 2208. TEXAS PUBLIC ENTITY EXCESS INSURANCE POOL

6 SUBCHAPTER A. GENERAL PROVISIONS

7 Sec. 2208.001. DEFINITIONS

8 Sec. 2208.002. POOL NOT ENGAGED IN BUSINESS OF
9 INSURANCE

10 [Sections 2208.003-2208.050 reserved for expansion]

11 SUBCHAPTER B. CREATION OF POOL

12 Sec. 2208.051. CREATION OF POOL

13 Sec. 2208.052. PARTICIPATION IN POOL

14 [Sections 2208.053-2208.100 reserved for expansion]

15 SUBCHAPTER C. BOARD OF TRUSTEES

16 Sec. 2208.101. ADMINISTRATION OF POOL; BOARD

17 MEMBERSHIP

18 Sec. 2208.102. COMPENSATION

19 Sec. 2208.103. OFFICERS; MEETINGS

20 Sec. 2208.104. GENERAL POWERS AND DUTIES OF BOARD

21 Sec. 2208.105. IMMUNITY OF BOARD MEMBERS FROM CERTAIN

22 LIABILITIES

23 [Sections 2208.106-2208.150 reserved for expansion]

24 SUBCHAPTER D. PLAN OF OPERATION

25 Sec. 2208.151. TIME FOR CREATION OF PLAN OF OPERATION

26 Sec. 2208.152. CONTENTS OF PLAN OF OPERATION

27 [Sections 2208.153-2208.200 reserved for expansion]

- 1 SUBCHAPTER E. OPERATION OF POOL
- 2 Sec. 2208.201. GENERAL POWERS AND DUTIES OF POOL
- 3 Sec. 2208.202. POOL MANAGER
- 4 Sec. 2208.203. GENERAL POWERS AND DUTIES OF POOL
- 5 MANAGER
- 6 Sec. 2208.204. PERSONNEL
- 7 Sec. 2208.205. PERFORMANCE BOND AUTHORIZED
- 8 Sec. 2208.206. IMMUNITY OF EMPLOYEES AND CONTRACTORS
- 9 FROM CERTAIN LIABILITIES
- 10 Sec. 2208.207. OFFICE; RECORDS
- 11 [Sections 2208.208-2208.250 reserved for expansion]
- 12 SUBCHAPTER F. TEXAS PUBLIC ENTITY EXCESS INSURANCE FUND
- 13 Sec. 2208.251. FUND CREATION; MANAGEMENT
- 14 Sec. 2208.252. USES OF FUND
- 15 Sec. 2208.253. DEPOSITORY
- 16 [Sections 2208.254-2208.300 reserved for expansion]
- 17 SUBCHAPTER G. POOL COVERAGE
- 18 Sec. 2208.301. SCOPE OF COVERAGE
- 19 Sec. 2208.302. BASIS OF COVERAGE
- 20 Sec. 2208.303. PUNITIVE DAMAGES NOT COVERED
- 21 Sec. 2208.304. RATES AND LIMITS OF COVERAGE
- 22 Sec. 2208.305. USE OF PUBLIC MONEY FOR POOL COVERAGE
- 23 AUTHORIZED
- 24 Sec. 2208.306. COVERAGE PERIOD
- 25 Sec. 2208.307. NONRENEWAL OF COVERAGE
- 26 Sec. 2208.308. SUBSEQUENT COVERAGE
- 27 Sec. 2208.309. PAYMENT OF CLAIMS AND JUDGMENTS

1 CHAPTER 2208. TEXAS PUBLIC ENTITY EXCESS INSURANCE POOL

2 SUBCHAPTER A. GENERAL PROVISIONS

3 Sec. 2208.001. DEFINITIONS. In this chapter:

4 (1) "Board" means the board of trustees of the pool.

5 (2) "Fund" means the Texas public entity excess
6 insurance fund.

7 (3) "Insurance" means liability insurance or workers'
8 compensation insurance.

9 (4) "Pool" means the Texas public entity excess
10 insurance pool.

11 (5) "Public entity" means one or more municipalities
12 that have formed an insurance pool under Chapter 791, Government
13 Code. (V.T.I.C. Art. 21.49-11, Secs. 1(1), (2), (3), (4), (6).)

14 Sec. 2208.002. POOL NOT ENGAGED IN BUSINESS OF
15 INSURANCE. (a) Except as provided by Subsection (b), the pool is
16 not engaged in the business of insurance under this code or other
17 laws of this state, and the department has no jurisdiction over the
18 pool.

19 (b) The pool is subject to Chapter 541 and Subchapter D,
20 Chapter 38. (V.T.I.C. Art. 21.49-11, Sec. 20.)

21 [Sections 2208.003-2208.050 reserved for expansion]

22 SUBCHAPTER B. CREATION OF POOL

23 Sec. 2208.051. CREATION OF POOL. (a) The Texas Public
24 Entity Excess Insurance Pool is created on the written agreement of
25 the presiding officers of 25 or more public entities in this state.

26 (b) The pool provides excess liability and workers'
27 compensation insurance coverage to a public entity and the entity's

1 officers and employees as provided by this chapter. (V.T.I.C. Art.
2 21.49-11, Sec. 2(a).)

3 Sec. 2208.052. PARTICIPATION IN POOL. A public entity is
4 entitled to coverage from the pool if the entity:

5 (1) submits a complete application;

6 (2) provides other relevant information required by
7 the pool;

8 (3) meets the underwriting guidelines established by
9 the pool; and

10 (4) pays the premiums required for the coverage.
11 (V.T.I.C. Art. 21.49-11, Sec. 3.)

12 [Sections 2208.053-2208.100 reserved for expansion]

13 SUBCHAPTER C. BOARD OF TRUSTEES

14 Sec. 2208.101. ADMINISTRATION OF POOL; BOARD
15 MEMBERSHIP. (a) A board of trustees shall administer the pool.

16 (b) The board is composed of the members of the governing
17 board of an association that:

18 (1) on September 2, 1987, had been providing pooled
19 self-insurance in this state for more than five years; and

20 (2) has as the association's members the public
21 entities that entered into the written agreement under Section
22 2208.051.

23 (c) Board members shall represent members of the pool.
24 (V.T.I.C. Art. 21.49-11, Secs. 5(a), (c).)

25 Sec. 2208.102. COMPENSATION. A board member is not
26 entitled to compensation for the member's service on the board.
27 (V.T.I.C. Art. 21.49-11, Sec. 5(b).)

1 Sec. 2208.103. OFFICERS; MEETINGS. (a) Each individual
2 who serves as an officer of the governing board of the association
3 described by Section 2208.101(b) serves as an officer of the board.

4 (b) The board shall hold meetings at the call of the
5 presiding officer and at times established by the board's rules.

6 (c) A majority of the board members constitutes a quorum.
7 (V.T.I.C. Art. 21.49-11, Secs. 5(d), (e), (f).)

8 Sec. 2208.104. GENERAL POWERS AND DUTIES OF BOARD. (a) In
9 addition to other duties provided by the plan of operation, the
10 board shall:

11 (1) approve contracts other than excess insurance
12 contracts issued to public entities by the pool;

13 (2) adopt premium rate schedules and policy forms for
14 the pool; and

15 (3) receive service of summons on behalf of the pool.

16 (b) The board may:

17 (1) adopt necessary rules, including rules to
18 implement this chapter;

19 (2) delegate specific responsibilities to the pool
20 manager; and

21 (3) amend the plan of operation to ensure the orderly
22 management and operation of the pool. (V.T.I.C. Art. 21.49-11,
23 Secs. 5(g) (part), (h), 10.)

24 Sec. 2208.105. IMMUNITY OF BOARD MEMBERS FROM CERTAIN
25 LIABILITIES. A board member is not liable:

26 (1) with respect to a claim or judgment for which
27 coverage is provided by the pool; or

1 (2) for a claim or judgment against a public entity
2 covered by the pool. (V.T.I.C. Art. 21.49-11, Sec. 5(i).)

3 [Sections 2208.106-2208.150 reserved for expansion]

4 SUBCHAPTER D. PLAN OF OPERATION

5 Sec. 2208.151. TIME FOR CREATION OF PLAN OF OPERATION. Not
6 later than the 30th day after the date the pool is created, the
7 board shall meet to prepare a detailed plan of operation for the
8 pool. (V.T.I.C. Art. 21.49-11, Sec. 6(a).)

9 Sec. 2208.152. CONTENTS OF PLAN OF OPERATION. (a) Subject
10 to the requirements of this chapter, the plan of operation must
11 include:

12 (1) the organizational structure of the pool, the
13 board's method of procedure and operation, and a summary of the
14 method for managing and operating the pool;

15 (2) a description of the financial arrangements
16 necessary to cover the initial expenses of the pool and estimates,
17 supported by statistical data, of the amounts of those
18 contributions or other financial arrangements;

19 (3) underwriting guidelines and procedures for
20 evaluating risks;

21 (4) procedures for purchasing reinsurance;

22 (5) methods, procedures, and guidelines for:

23 (A) establishing premium rates for and maximum
24 limits of excess coverage available from the pool; and

25 (B) managing and investing the fund;

26 (6) procedures for processing and paying claims;

27 (7) methods and procedures for defraying losses and

1 expenses of the pool; and

2 (8) guidelines for nonrenewal of coverage.

3 (b) The plan of operation may include any matter relating to
4 the organization and operation of the pool or to the pool's
5 finances. (V.T.I.C. Art. 21.49-11, Sec. 6(b).)

6 [Sections 2208.153-2208.200 reserved for expansion]

7 SUBCHAPTER E. OPERATION OF POOL

8 Sec. 2208.201. GENERAL POWERS AND DUTIES OF POOL. (a) The
9 pool shall:

10 (1) issue insurance coverage to each public entity
11 entitled to coverage under this chapter;

12 (2) collect premiums for coverage issued or renewed by
13 the pool;

14 (3) process and pay valid claims; and

15 (4) maintain detailed data regarding the pool.

16 (b) The pool may:

17 (1) enter into contracts;

18 (2) purchase reinsurance;

19 (3) cancel or refuse to renew coverage; and

20 (4) perform any other act necessary to implement this
21 chapter, the plan of operation, or a rule adopted by the board.

22 (V.T.I.C. Art. 21.49-11, Sec. 11.)

23 Sec. 2208.202. POOL MANAGER. (a) The board shall appoint
24 a pool manager who serves at the pleasure of the board, and the
25 board shall supervise the pool manager's activities.

26 (b) The pool manager is entitled to receive compensation as
27 authorized by the board. (V.T.I.C. Art. 21.49-11, Secs. 5(g)(5),

1 7(a), (b).)

2 Sec. 2208.203. GENERAL POWERS AND DUTIES OF POOL MANAGER.

3 (a) The pool manager shall manage and conduct the affairs of the
4 pool under the general supervision of the board and shall perform
5 any other duties as directed by the board.

6 (b) In addition to any other duties provided by the board,
7 the pool manager shall:

8 (1) receive and pass on applications for insurance
9 coverage from the pool;

10 (2) negotiate contracts for the pool; and

11 (3) prepare, and submit to the board for approval,
12 proposed policy forms for coverage from the pool.

13 (c) The pool manager may refuse to renew the coverage of a
14 public entity insured by the pool based on the guidelines included
15 in the plan of operation. (V.T.I.C. Art. 21.49-11, Secs. 7(c), (d)
16 (part), (e).)

17 Sec. 2208.204. PERSONNEL. (a) The pool manager shall
18 employ or contract with persons necessary to assist the board and
19 the pool manager in implementing the powers and duties of the pool.

20 (b) The board must approve:

21 (1) the compensation paid to a pool employee; and

22 (2) a contract made with a person under this section.

23 (V.T.I.C. Art. 21.49-11, Secs. 8(a), (b).)

24 Sec. 2208.205. PERFORMANCE BOND AUTHORIZED. The board may
25 require an employee or a person with whom the pool manager contracts
26 under Section 2208.204 to execute a bond in an amount determined by
27 the board. The bond must be payable to the board and conditioned on

1 the faithful performance of the employee's or other person's duties
2 to the pool. (V.T.I.C. Art. 21.49-11, Sec. 8(c).)

3 Sec. 2208.206. IMMUNITY OF EMPLOYEES AND CONTRACTORS FROM
4 CERTAIN LIABILITIES. An employee or a person with whom the pool
5 manager contracts under Section 2208.204 is not liable:

6 (1) with respect to a claim or judgment for which
7 coverage is provided by the pool; or

8 (2) for a claim or judgment against a public entity
9 covered by the pool. (V.T.I.C. Art. 21.49-11, Sec. 8(d).)

10 Sec. 2208.207. OFFICE; RECORDS. (a) The pool shall
11 maintain the pool's principal office in Austin, Texas.

12 (b) Records, files, and other documents and information
13 relating to the pool must be maintained in the pool's principal
14 office. (V.T.I.C. Art. 21.49-11, Sec. 9.)

15 [Sections 2208.208-2208.250 reserved for expansion]

16 SUBCHAPTER F. TEXAS PUBLIC ENTITY EXCESS INSURANCE FUND

17 Sec. 2208.251. FUND CREATION; MANAGEMENT. (a) On creation
18 of the pool, the board shall create the Texas public entity excess
19 insurance fund.

20 (b) The fund is composed of:

21 (1) premiums paid by public entities for coverage
22 provided by the pool;

23 (2) proceeds from bonds and other money received by
24 the pool to cover the expenses of the fund;

25 (3) investments of the fund and money earned from
26 those investments; and

27 (4) any other money received by the pool.

1 (c) The pool manager shall manage the fund under the general
2 supervision of the board. The fund manager, under the general
3 supervision of the board, shall manage and invest the money in the
4 fund in the manner provided by the plan of operation.

5 (d) Money earned by the investment of money in the fund must
6 be deposited in the fund or reinvested for the fund. (V.T.I.C. Art.
7 21.49-11, Secs. 12(a), (b), (c), 13.)

8 Sec. 2208.252. USES OF FUND. (a) Administrative expenses
9 of the pool may be paid from the fund.

10 (b) Money in the fund may not be used to pay:

11 (1) punitive damages;

12 (2) a fine or penalty imposed for a violation of:

13 (A) a statute;

14 (B) an administrative rule or regulation; or

15 (C) an order or ordinance of a public entity; or

16 (3) a claim under excess insurance coverage until all
17 benefits payable under any other underlying policy or
18 self-insurance covering the claim or judgment are exhausted.
19 (V.T.I.C. Art. 21.49-11, Secs. 12(d), (e), (f).)

20 Sec. 2208.253. DEPOSITORY. (a) The board may select one
21 or more banks to serve as depository for money in the fund.

22 (b) A depository bank must execute a bond or provide other
23 security before the pool manager may deposit fund money in the bank
24 in an amount that exceeds the maximum amount secured by the Federal
25 Deposit Insurance Corporation. The bond or other security must be
26 in an amount sufficient to secure the excess amount of the deposit.
27 (V.T.I.C. Art. 21.49-11, Sec. 12(g).)

1 [Sections 2208.254-2208.300 reserved for expansion]

2 SUBCHAPTER G. POOL COVERAGE

3 Sec. 2208.301. SCOPE OF COVERAGE. (a) Except as provided
4 by Subsection (b), under the excess insurance coverage, the pool
5 shall pay any portion of a claim against a public entity and the
6 entity's officers and employees that:

7 (1) exceeds \$1 million; and

8 (2) is finally determined or settled or is included in
9 a final judgment of a court.

10 (b) The amount paid by the pool under this section may not
11 exceed the amount the board determines is actuarially sound for the
12 pool.

13 (c) The pool may participate in evaluating or defending a
14 claim made under the insurance coverage. (V.T.I.C. Art. 21.49-11,
15 Secs. 2(b), (c).)

16 Sec. 2208.302. BASIS OF COVERAGE. The pool may provide
17 excess insurance coverage on a claims-made basis or an occurrence
18 basis. (V.T.I.C. Art. 21.49-11, Sec. 16.)

19 Sec. 2208.303. PUNITIVE DAMAGES NOT COVERED. Excess
20 insurance coverage provided by the pool may not include coverage
21 for punitive damages. (V.T.I.C. Art. 21.49-11, Sec. 17.)

22 Sec. 2208.304. RATES AND LIMITS OF COVERAGE. (a) To
23 ensure that the pool is actuarially sound, the board shall:

24 (1) set the premium rates charged; and

25 (2) determine the maximum limits of insurance coverage
26 provided.

27 (b) The pool manager, for the board's consideration, shall:

1 (1) collect and compile statistical data relating to
2 the insurance coverage provided by the pool, including relevant
3 loss, expense, and premium data and other information;

4 (2) prepare the proposed premium rate schedules for
5 the approval of the board; and

6 (3) prepare the maximum limits of insurance coverage.

7 (c) The board shall periodically reexamine the rate
8 schedules and the maximum limits of insurance coverage as
9 conditions change. (V.T.I.C. Art. 21.49-11, Secs. 7(d) (part),
10 14.)

11 Sec. 2208.305. USE OF PUBLIC MONEY FOR POOL COVERAGE
12 AUTHORIZED. A public entity may use the entity's money to pay any
13 contributions or premiums required by the pool to purchase excess
14 insurance coverage from the pool. (V.T.I.C. Art. 21.49-11, Sec.
15 4.)

16 Sec. 2208.306. COVERAGE PERIOD. A public entity that
17 accepts coverage provided by the pool shall maintain that coverage
18 for at least 35 calendar months following the month in which the
19 pool issued the coverage. (V.T.I.C. Art. 21.49-11, Sec. 15(a).)

20 Sec. 2208.307. NONRENEWAL OF COVERAGE. The pool may refuse
21 to renew the insurance coverage of a public entity that fails to
22 comply with the pool's underwriting or risk management guidelines.
23 (V.T.I.C. Art. 21.49-11, Sec. 18(a).)

24 Sec. 2208.308. SUBSEQUENT COVERAGE. (a) A public entity
25 that voluntarily discontinues insurance coverage provided by the
26 pool may not subsequently obtain coverage from the pool for at least
27 36 calendar months following the month in which the entity

1 discontinues the coverage.

2 (b) A public entity whose insurance coverage is not renewed
3 by the pool is not eligible to subsequently apply for coverage
4 during the 11 calendar months following the month in which the pool
5 gives written notice of nonrenewal. (V.T.I.C. Art. 21.49-11, Secs.
6 15(b), 18(b).)

7 Sec. 2208.309. PAYMENT OF CLAIMS AND JUDGMENTS. (a) If
8 money in the fund would be exhausted by the payment of all final and
9 settled claims and final judgments during a fiscal year, the pool
10 shall prorate the amount paid to each person having the claim or
11 judgment.

12 (b) If the amount paid by the pool is prorated under this
13 section, each person described by Subsection (a) shall receive an
14 amount equal to the percentage that the amount owed to that person
15 by the pool bears to the total amount owed, outstanding, and payable
16 by the pool.

17 (c) The public entity incurring the original liability
18 shall pay the remaining amount that is due and unpaid to a person
19 who receives a prorated payment under this section. (V.T.I.C. Art.
20 21.49-11, Sec. 19.)

21 CHAPTER 2209. TEXAS NONPROFIT ORGANIZATIONS LIABILITY POOL

22 SUBCHAPTER A. GENERAL PROVISIONS

23 Sec. 2209.001. DEFINITIONS

24 Sec. 2209.002. POOL NOT ENGAGED IN BUSINESS OF

25 INSURANCE

26 Sec. 2209.003. DEPARTMENT AND COMMISSIONER SUPERVISION

27 [Sections 2209.004-2209.050 reserved for expansion]

1 SUBCHAPTER B. CREATION OF POOL

2 Sec. 2209.051. CREATION OF POOL

3 Sec. 2209.052. PARTICIPATION IN POOL

4 Sec. 2209.053. SELECTION OF TEMPORARY BOARD

5 [Sections 2209.054-2209.100 reserved for expansion]

6 SUBCHAPTER C. PLAN OF OPERATION

7 Sec. 2209.101. TIME FOR CREATION OF PLAN OF OPERATION

8 Sec. 2209.102. CONTENTS OF PLAN OF OPERATION

9 Sec. 2209.103. APPROVAL OF PLAN

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20 CHAPTER 2209. TEXAS NONPROFIT ORGANIZATIONS LIABILITY POOL

21 SUBCHAPTER A. GENERAL PROVISIONS

22 Sec. 2209.001. DEFINITIONS. In this chapter:

23 (1) "Board" means the board of trustees of the pool.

24 (2) "Fund" means the Texas nonprofit organizations
25 liability fund.

26 (3) "Nonprofit organization" means an organization
27 that is exempt from federal income taxation under Section 501(a),

1 Internal Revenue Code of 1986, by being described as an exempt
2 organization by Section 501(c)(3) or (4), Internal Revenue Code of
3 1986.

4 (4) "Pool" means the Texas Nonprofit Organizations
5 Liability Pool. (V.T.I.C. Art. 21.49-14, Sec. 1.)

6 Sec. 2209.002. POOL NOT ENGAGED IN BUSINESS OF
7 INSURANCE. (a) Except as provided by this section and Section
8 2209.003(b), the pool is not engaged in the business of insurance
9 under this code or other laws of this state, and this code,
10 including Chapter 462, and other insurance laws of this state do not
11 apply to the pool.

12 (b) The pool is subject to:

13 (1) this chapter;

14 (2) the requirements of this code or the commissioner
15 relating to reporting liability claims data; and

16 (3) the requirements of Chapter 2251 and Article
17 5.13-2 relating to making, filing, and approving rates. (V.T.I.C.
18 Art. 21.49-14, Secs. 21(a), (b) (part), (d).)

19 Sec. 2209.003. DEPARTMENT AND COMMISSIONER
20 SUPERVISION. (a) The pool is subject to the department's
21 continuing supervision relating to the pool's solvency.

22 (b) The commissioner may set certain minimum requirements
23 to ensure the capability of the pool to satisfy the pool's
24 obligations.

25 (c) The department shall charge the pool reasonable fees for
26 services performed by the department under this chapter. (V.T.I.C.
27 Art. 21.49-14, Secs. 21(b) (part), (c), (e).)

1 [Sections 2209.004-2209.050 reserved for expansion]

2 SUBCHAPTER B. CREATION OF POOL

3 Sec. 2209.051. CREATION OF POOL. (a) The Texas Nonprofit
4 Organizations Liability Pool is created on the written agreement of
5 the chief executive officers of 15 or more nonprofit organizations.

6 (b) The pool provides primary and excess liability
7 insurance coverage as provided by this chapter. (V.T.I.C. Art.
8 21.49-14, Sec. 2.)

9 Sec. 2209.052. PARTICIPATION IN POOL. A nonprofit
10 organization is entitled to coverage from the pool if the
11 organization:

- 12 (1) submits a complete application;
13 (2) provides other information required by the pool;
14 (3) meets the underwriting standards established by
15 the pool; and
16 (4) pays the premiums required for the coverage.
17 (V.T.I.C. Art. 21.49-14, Sec. 4.)

18 Sec. 2209.053. SELECTION OF TEMPORARY BOARD. At the time
19 the chief executive officers of the nonprofit organizations enter
20 into the written agreement under Section 2209.051, the officers
21 shall select nine individuals to:

- 22 (1) serve as the temporary board; and
23 (2) draft the plan of operation for the pool.
24 (V.T.I.C. Art. 21.49-14, Sec. 5(a).)

25 [Sections 2209.054-2209.100 reserved for expansion]

26 SUBCHAPTER C. PLAN OF OPERATION

27 Sec. 2209.101. TIME FOR CREATION OF PLAN OF

1 OPERATION. (a) Not later than the 30th day after the date the
2 temporary board is selected, the temporary board shall meet to
3 prepare a detailed plan of operation for the pool.

4 (b) The temporary board shall complete and adopt the plan of
5 operation not later than the 90th day after the date the temporary
6 board is selected. (V.T.I.C. Art. 21.49-14, Secs. 5(b), (d).)

7 Sec. 2209.102. CONTENTS OF PLAN OF OPERATION. (a) Subject
8 to the requirements of this chapter, the plan of operation must
9 include:

10 (1) the organizational structure of the pool,
11 including:

12 (A) the method of selecting the board;

13 (B) the board's method of procedure and
14 operation; and

15 (C) a summary of the method for managing and
16 operating the pool;

17 (2) a description of the contributions and other
18 financial arrangements necessary to cover the initial expenses of
19 the pool and estimates, supported by statistical data, of the
20 amounts of those contributions or other financial arrangements;

21 (3) underwriting standards and procedures for
22 evaluating risks, including a requirement that all participants in
23 the pool receive ongoing training in the methods of controlling
24 liability losses;

25 (4) procedures for purchasing reinsurance;

26 (5) methods, procedures, and guidelines for:

27 (A) establishing premium rates for and maximum

1 limits of excess coverage available from the pool;

2 (B) negotiating and paying settlements,
3 defending claims, and paying judgments; and

4 (C) managing and investing the fund;

5 (6) procedures for processing and paying claims;

6 (7) methods and procedures for defraying losses and
7 expenses of the pool; and

8 (8) guidelines for nonrenewal of coverage.

9 (b) The plan of operation may include any matter relating to
10 the organization and operation of the pool or to the pool's
11 finances. (V.T.I.C. Art. 21.49-14, Sec. 5(c).)

12 Sec. 2209.103. APPROVAL OF PLAN. (a) On completion of the
13 plan of operation, the temporary board shall submit the plan to the
14 department for examination, suggested changes, and final approval.

15 (b) The department shall approve the plan of operation only
16 if the department is satisfied that the pool is able and will
17 continue to be able to pay valid claims made against the pool.
18 (V.T.I.C. Art. 21.49-14, Sec. 5(e).)

19 [Sections 2209.104-2209.150 reserved for expansion]

20 SUBCHAPTER D. BOARD OF TRUSTEES

21 Sec. 2209.151. GOVERNANCE OF POOL; BOARD MEMBERSHIP. (a)
22 The pool is governed by a board of trustees composed of nine members
23 selected as provided by the plan of operation.

24 (b) Not later than the 15th day after the date the
25 department approves the plan of operation, the initial regular
26 board must be selected as provided by the plan of operation. The
27 members of the initial regular board shall take office not later

1 than the 30th day after the date the plan of operation is adopted.

2 (c) Four board members must be representatives of the
3 public. A public representative may not:

4 (1) be an officer, director, or employee of an
5 insurer, insurance agency, agent, broker, solicitor, adjuster, or
6 other business entity regulated by the department;

7 (2) be a person required to register under Chapter
8 305, Government Code; or

9 (3) be related to a person described by Subdivision
10 (1) or (2) within the second degree by consanguinity or affinity.
11 (V.T.I.C. Art. 21.49-14, Secs. 5(g), 6(a).)

12 Sec. 2209.152. TERMS; VACANCY. (a) Board members serve
13 staggered two-year terms. The terms of four members expire in
14 odd-numbered years as provided by the plan of operation.

15 (b) A vacancy on the board shall be filled as provided by the
16 plan of operation. (V.T.I.C. Art. 21.49-14, Secs. 6(b), (c).)

17 Sec. 2209.153. PERFORMANCE BOND REQUIRED. (a) Each board
18 member shall execute a bond in the amount required by the plan of
19 operation. The bond must be payable to the pool and conditioned on
20 the faithful performance of the member's duties.

21 (b) The pool shall pay the cost of the bond executed under
22 this section. (V.T.I.C. Art. 21.49-14, Sec. 6(d).)

23 Sec. 2209.154. COMPENSATION. A board member is not
24 entitled to compensation for the member's service on the board.
25 (V.T.I.C. Art. 21.49-14, Sec. 6(e).)

26 Sec. 2209.155. OFFICERS; MEETINGS. (a) The board shall
27 select from the board members a presiding officer, an assistant

1 presiding officer, and a secretary, who serve one-year terms that
2 expire as provided by the plan of operation.

3 (b) The board shall hold meetings at the call of the
4 presiding officer and at times established by the board's rules.

5 (c) A majority of the board members constitutes a quorum.
6 (V.T.I.C. Art. 21.49-14, Secs. 6(f), (g), (h).)

7 Sec. 2209.156. GENERAL POWERS AND DUTIES OF BOARD. (a) In
8 addition to other duties provided by the plan of operation, the
9 board shall:

10 (1) approve contracts other than insurance contracts
11 issued by the pool to nonprofit organizations;

12 (2) adopt premium rate schedules and policy forms for
13 the pool; and

14 (3) receive service of summons on behalf of the pool.

15 (b) The board may:

16 (1) adopt necessary rules, including rules to
17 implement this chapter;

18 (2) delegate specific responsibilities to the pool
19 manager; and

20 (3) with the department's approval, amend the plan of
21 operation to ensure the orderly management and operation of the
22 pool. (V.T.I.C. Art. 21.49-14, Secs. 5(f) (part), 6(i) (part),
23 (j), 10.)

24 Sec. 2209.157. IMMUNITY OF BOARD MEMBERS FROM CERTAIN
25 LIABILITIES. A board member is not liable:

26 (1) with respect to a claim or judgment for which
27 coverage is provided by the pool; or

1 (2) for a claim or judgment against a nonprofit
2 organization covered by the pool. (V.T.I.C. Art. 21.49-14, Sec.
3 6(k).)

4 [Sections 2209.158-2209.200 reserved for expansion]

5 SUBCHAPTER E. OPERATION OF POOL

6 Sec. 2209.201. GENERAL POWERS AND DUTIES OF POOL. (a) The
7 pool shall:

8 (1) issue primary and excess liability coverage to
9 each nonprofit organization entitled to coverage under this
10 chapter;

11 (2) collect premiums for coverage issued or renewed by
12 the pool;

13 (3) process and pay valid claims;

14 (4) maintain detailed data regarding the pool; and

15 (5) establish a plan to conduct loss control training
16 or contract with an outside organization or individual to establish
17 ongoing training and facilities inspection programs designed to
18 reduce the potential liability losses of pool participants.

19 (b) The pool may:

20 (1) enter into contracts;

21 (2) purchase reinsurance;

22 (3) cancel or refuse to renew coverage; and

23 (4) perform any other act necessary to carry out this
24 chapter, the plan of operation, or a rule adopted by the board.
25 (V.T.I.C. Art. 21.49-14, Sec. 11.)

26 Sec. 2209.202. POOL MANAGER; PERFORMANCE BOND REQUIRED.

27 (a) The board shall appoint a pool manager who serves at the

1 pleasure of the board, and the board shall supervise the pool
2 manager's activities.

3 (b) The pool manager is entitled to receive compensation as
4 authorized by the board.

5 (c) The pool manager shall execute a bond in the amount
6 determined by the board. The bond must be payable to the pool and
7 conditioned on the faithful performance of the pool manager's
8 duties.

9 (d) The pool shall pay the cost of the bond executed under
10 this section. (V.T.I.C. Art. 21.49-14, Secs. 6(i) (part), 7(a),
11 (b), (c).)

12 Sec. 2209.203. GENERAL POWERS AND DUTIES OF POOL
13 MANAGER. (a) The pool manager shall manage and conduct the
14 affairs of the pool under the general supervision of the board and
15 shall perform any other duties as directed by the board.

16 (b) In addition to any other duties provided by the board,
17 the pool manager shall:

18 (1) receive and pass on applications for liability
19 coverage from the pool;

20 (2) negotiate contracts for the pool; and

21 (3) prepare, and submit to the board for approval,
22 proposed policy forms for coverage from the pool.

23 (c) The pool manager may refuse to renew the coverage of a
24 nonprofit organization insured by the pool based on the guidelines
25 included in the plan of operation. (V.T.I.C. Art. 21.49-14, Secs.
26 7(d), (e) (part), (f).)

27 Sec. 2209.204. PERSONNEL. (a) The pool manager shall

1 employ or contract with persons necessary to assist the board and
2 the pool manager in carrying out the powers and duties of the pool.

3 (b) The board must approve:

4 (1) the compensation paid to a pool employee; and

5 (2) a contract made with a person under this section.

6 (V.T.I.C. Art. 21.49-14, Secs. 8(a), (b).)

7 Sec. 2209.205. PERFORMANCE BOND AUTHORIZED. The board may
8 require an employee or a person with whom the pool manager contracts
9 under Section 2209.204 to execute a bond in an amount determined by
10 the board. The bond must be payable to the board and conditioned on
11 the faithful performance of the employee's or other person's duties
12 to the pool. (V.T.I.C. Art. 21.49-14, Sec. 8(c).)

13 Sec. 2209.206. IMMUNITY OF EMPLOYEES AND CONTRACTORS FROM
14 CERTAIN LIABILITIES. An employee or a person with whom the pool
15 manager contracts under Section 2209.204 is not liable:

16 (1) with respect to a claim or judgment for which
17 coverage is provided by the pool; or

18 (2) for a claim or judgment against a nonprofit
19 organization covered by the pool. (V.T.I.C. Art. 21.49-14, Sec.
20 8(d).)

21 Sec. 2209.207. RECORDS. Records, files, and other
22 documents and information relating to the pool must be maintained
23 in the pool's principal office. (V.T.I.C. Art. 21.49-14, Sec. 9.)

24 [Sections 2209.208-2209.250 reserved for expansion]

25 SUBCHAPTER F. TEXAS NONPROFIT ORGANIZATIONS LIABILITY FUND

26 Sec. 2209.251. FUND CREATION; MANAGEMENT. (a) On creation
27 of the pool, the initial regular board shall create the Texas

1 nonprofit organizations liability fund.

2 (b) The fund is composed of:

3 (1) premiums paid by nonprofit organizations for
4 coverage provided by the pool;

5 (2) contributions and other money received by the pool
6 to cover the initial expenses of the fund;

7 (3) investments of the fund and money earned from
8 those investments; and

9 (4) any other money received by the pool.

10 (c) The pool manager shall manage the fund under the general
11 supervision of the board. The fund manager, under the general
12 supervision of the board, shall manage and invest the money in the
13 fund in the manner provided by the plan of operation.

14 (d) Money earned by the investment of money in the fund must
15 be deposited in the fund or reinvested for the fund. (V.T.I.C. Art.
16 21.49-14, Secs. 12(a), (b), (c), 13.)

17 Sec. 2209.252. CONTRIBUTIONS. The board shall determine
18 the amount of any contributions necessary to meet the initial
19 expenses of the pool. The board shall make this determination based
20 on the data provided by the plan of operation. (V.T.I.C. Art.
21 21.49-14, Sec. 14.)

22 Sec. 2209.253. USES OF FUND. (a) Administrative expenses
23 of the pool may be paid from the fund. Payments for administrative
24 expenses during a fiscal year of the pool may not exceed 10 percent
25 of the total amount of the money in the fund during that fiscal
26 year.

27 (b) Money in the fund may not be used to pay:

- 1 (1) punitive damages; or
- 2 (2) a fine or penalty imposed for a violation of:
 - 3 (A) a statute;
 - 4 (B) an administrative rule of a state agency; or
 - 5 (C) an ordinance or order of a local government.

6 (V.T.I.C. Art. 21.49-14, Secs. 12(d), (e).)

7 Sec. 2209.254. DEPOSITORY BANK. (a) The board may select
8 one or more banks to serve as a depository for money in the fund.

9 (b) A depository bank must execute a bond or provide other
10 security before the pool manager may deposit fund money in the bank
11 in an amount that exceeds the maximum amount secured by the Federal
12 Deposit Insurance Corporation. The bond or other security must be
13 in an amount sufficient to secure the excess amount of the deposit.

14 (V.T.I.C. Art. 21.49-14, Sec. 12(f).)

15 [Sections 2209.255-2209.300 reserved for expansion]

16 SUBCHAPTER G. POOL COVERAGE

17 Sec. 2209.301. SCOPE OF COVERAGE. (a) The pool shall
18 insure a nonprofit organization and the organization's officers and
19 employees against liability for acts and omissions under the laws
20 of this state.

21 (b) The pool shall provide to a nonprofit organization that
22 qualifies under this chapter and the plan of operation:

23 (1) primary liability insurance coverage in an amount
24 not to exceed \$250,000; and

25 (2) excess liability insurance coverage in an amount
26 that the board finds is actuarially sound.

27 (c) The pool may participate in evaluating, settling, and

1 defending a claim against a nonprofit organization insured by the
2 pool if the claim is covered by pool coverage.

3 (d) The pool is liable in an amount not to exceed the limit
4 of coverage provided to a nonprofit organization on a claim made
5 against the organization. (V.T.I.C. Art. 21.49-14, Sec. 3.)

6 Sec. 2209.302. COVERAGE ON CLAIMS-MADE BASIS. The pool may
7 provide liability insurance coverage on a claims-made basis on
8 forms approved by the department. (V.T.I.C. Art. 21.49-14, Sec.
9 17.)

10 Sec. 2209.303. PUNITIVE DAMAGES NOT COVERED. Liability
11 insurance coverage provided by the pool may not include coverage
12 for punitive damages. (V.T.I.C. Art. 21.49-14, Sec. 18.)

13 Sec. 2209.304. RATES AND LIMITS OF COVERAGE. (a) To
14 ensure that the pool is actuarially sound, the board shall:

- 15 (1) set the premium rates charged; and
16 (2) determine the maximum limits of coverage provided.

17 (b) The pool manager, for the board's consideration, shall:

- 18 (1) collect and compile statistical data relating to
19 the liability insurance coverage provided by the pool, including
20 relevant loss, expense, and premium data, and other information;

- 21 (2) prepare the proposed premium rate schedules for
22 the approval of the board; and

- 23 (3) prepare the maximum limits of coverage.

24 (c) The board shall periodically reexamine the rate
25 schedules and the maximum limits of coverage as conditions change.

26 (d) The pool manager shall make available to the public the
27 information described by Subsection (b)(1). (V.T.I.C. Art.

1 21.49-14, Secs. 7(e) (part), 15.)

2 Sec. 2209.305. COVERAGE PERIOD. A nonprofit organization
3 that accepts coverage provided by the pool shall maintain that
4 coverage for at least 24 calendar months following the month in
5 which the pool issued the coverage. (V.T.I.C. Art. 21.49-14, Sec.
6 16(a).)

7 Sec. 2209.306. NONRENEWAL OF COVERAGE. (a) Except as
8 provided by Subsection (b), the pool may refuse to renew the
9 coverage of a nonprofit organization that fails to comply with the
10 pool's underwriting standards.

11 (b) The pool may not refuse to renew the coverage of a
12 nonprofit organization during the first 24 calendar months
13 following the month in which the nonprofit organization is first
14 provided coverage by the pool if the organization maintains the
15 underwriting standards established by the plan of operation.
16 (V.T.I.C. Art. 21.49-14, Secs. 19(a), (b).)

17 Sec. 2209.307. SUBSEQUENT COVERAGE. (a) A nonprofit
18 organization that voluntarily discontinues coverage provided by
19 the pool may not subsequently obtain coverage from the pool for at
20 least 12 calendar months following the month in which the
21 organization discontinues the coverage.

22 (b) A nonprofit organization whose coverage is not renewed
23 under Section 2209.306 is not eligible to subsequently apply for
24 coverage during the 12 calendar months following the month in which
25 the pool gives written notice of nonrenewal. (V.T.I.C. Art.
26 21.49-14, Secs. 16(b), 19(c) (part).)

27 Sec. 2209.308. PAYMENT OF CLAIMS AND JUDGMENTS. (a) If

1 money in the fund would be exhausted by the payment of all final and
2 settled claims and final judgments during a fiscal year, the pool
3 shall prorate the amount paid to each person having the claim or
4 judgment.

5 (b) If the amount paid by the pool is prorated under this
6 section, each person described by Subsection (a) shall receive an
7 amount equal to the percentage that the amount owed to that person
8 by the pool bears to the total amount owed, outstanding, and payable
9 by the pool.

10 (c) The pool shall pay in the next fiscal year the remaining
11 amount that is due and unpaid to a person who receives a prorated
12 payment under this section. (V.T.I.C. Art. 21.49-14, Sec. 20.)

13 CHAPTER 2210. TEXAS WINDSTORM INSURANCE ASSOCIATION

14 SUBCHAPTER A. GENERAL PROVISIONS

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20 INADEQUATE FIRE INSURANCE AREA;

21 REVOCATION OF DESIGNATION

22 Sec. 2210.006. APPLICABILITY OF CHAPTER TO CERTAIN

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25 Sec. 2210.008. DEPARTMENT ORDERS

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22 LIABILITY

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1 Sec. 2210.504. COMMISSIONER ACTION ON PROPOSED

2 ADJUSTMENTS

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4 Sec. 2210.506. EXCEPTION FROM CERTAIN ADMINISTRATIVE

5 PROCEDURES

6 [Sections 2210.507-2210.550 reserved for expansion]

7 SUBCHAPTER L. APPEALS AND OTHER ACTIONS

8 Sec. 2210.551. APPEALS

9 Sec. 2210.552. CLAIM DISPUTES; VENUE

10 CHAPTER 2210. TEXAS WINDSTORM INSURANCE ASSOCIATION

11 SUBCHAPTER A. GENERAL PROVISIONS

12 Sec. 2210.001. PURPOSE. An adequate market for windstorm,
13 hail, and fire insurance is necessary to the economic welfare of
14 this state, and without that insurance, the orderly growth and
15 development of this state would be severely impeded. This chapter
16 provides a method by which adequate windstorm, hail, and fire
17 insurance may be obtained in certain designated portions of this
18 state. (V.T.I.C. Art. 21.49, Sec. 1.)

19 Sec. 2210.002. SHORT TITLE. This chapter may be cited as
20 the Texas Windstorm Insurance Association Act. (V.T.I.C.
21 Art. 21.49, Sec. 2.)

22 Sec. 2210.003. GENERAL DEFINITIONS. In this chapter,
23 unless the context clearly indicates otherwise:

24 (1) "Association" means the Texas Windstorm Insurance
25 Association.

26 (2) "Board of directors" means the board of directors
27 of the association.

1 (3) "Catastrophe area" means a municipality, a part of
2 a municipality, a county, or a part of a county designated by the
3 commissioner under Section 2210.005.

4 (4) "First tier coastal county" means:

5 (A) Aransas County;

6 (B) Brazoria County;

7 (C) Calhoun County;

8 (D) Cameron County;

9 (E) Chambers County;

10 (F) Galveston County;

11 (G) Jefferson County;

12 (H) Kenedy County;

13 (I) Kleberg County;

14 (J) Matagorda County;

15 (K) Nueces County;

16 (L) Refugio County;

17 (M) San Patricio County; or

18 (N) Willacy County.

19 (5) "Inadequate fire insurance area" means a
20 municipality or county designated by the commissioner under Section
21 2210.005 that constitutes, or is located in, a catastrophe area.

22 (6) "Insurance" means Texas fire and explosion
23 insurance and Texas windstorm and hail insurance.

24 (7) "Net direct premium" means gross direct written
25 premium less return premium on each canceled contract, regardless
26 of assumed or ceded reinsurance, that is written on property in this
27 state, as defined by the board of directors.

1 (8) "New building code" means a building standard,
2 specification, or guideline adopted by the commissioner after May
3 1, 1997, that must be satisfied before new residential construction
4 qualifies for a certificate of compliance that constitutes evidence
5 of insurability of the structure by the association.

6 (9) "Plan of operation" means the plan adopted under
7 this chapter for the operation of the association.

8 (10) "Seacoast territory" means the territory of this
9 state composed of the first tier coastal counties and the second
10 tier coastal counties.

11 (11) "Second tier coastal county" means:

- 12 (A) Bee County;
- 13 (B) Brooks County;
- 14 (C) Fort Bend County;
- 15 (D) Goliad County;
- 16 (E) Hardin County;
- 17 (F) Harris County;
- 18 (G) Hidalgo County;
- 19 (H) Jackson County;
- 20 (I) Jim Wells County;
- 21 (J) Liberty County;
- 22 (K) Live Oak County;
- 23 (L) Orange County;
- 24 (M) Victoria County; or
- 25 (N) Wharton County.

26 (12) "Texas fire and explosion insurance" means
27 insurance against direct loss to insurable property incurred as a

1 result of fire or explosion, as those terms are defined and limited
2 in policies and forms approved by the department.

3 (13) "Texas windstorm and hail insurance" means
4 deductible insurance against:

5 (A) direct loss to insurable property incurred as
6 a result of windstorm or hail, as those terms are defined and
7 limited in policies and forms approved by the department; and

8 (B) indirect losses resulting from the direct
9 loss. (V.T.I.C. Art. 21.49, Secs. 3(b), (c) (part), (d), (e), (g),
10 (h) (part), (i) (part), (j), (l), (m), (n), (o); New.)

11 Sec. 2210.004. DEFINITION OF INSURABLE PROPERTY. (a) For
12 purposes of this chapter and subject to this section, "insurable
13 property" means immovable property at a fixed location in a
14 catastrophe area or corporeal movable property located in that
15 immovable property, as designated in the plan of operation, that is
16 determined by the association according to the criteria specified
17 in the plan of operation to be in an insurable condition against
18 windstorm and hail or fire and explosion, as appropriate, as
19 determined by normal underwriting standards.

20 (b) A structure located in a catastrophe area, construction
21 of which began on or after the 30th day after the date of
22 publication of the plan of operation, that is not built in
23 compliance with building specifications set forth in the plan of
24 operation or continued in compliance with those specifications,
25 does not constitute an insurable risk for purposes of windstorm and
26 hail insurance except as otherwise provided by this chapter.

27 (c) A structure, or an addition to a structure, that is

1 constructed in conformity with plans and specifications that comply
2 with the specifications set forth in the plan of operation at the
3 time construction begins may not be declared ineligible for
4 windstorm and hail insurance as a result of subsequent changes in
5 the building specifications set forth in the plan of operation.

6 (d) Except as otherwise provided by this section, if repair
7 of damage to a structure involves replacement of items covered in
8 the building specifications set forth in the plan of operation, the
9 repairs must be completed in a manner that complies with those
10 specifications for the structure to continue to be insurable
11 property for windstorm and hail insurance.

12 (e) If repair to a structure, other than a roof repair that
13 exceeds 100 square feet, is less than five percent of the total
14 amount of property coverage on the structure, the repairs may be
15 completed in a manner that returns the structure to the structure's
16 condition immediately before the loss without affecting the
17 eligibility of the structure to qualify as insurable property.

18 (f) This chapter does not preclude special rating of
19 individual risks as may be provided in the plan of operation.

20 (g) For purposes of this chapter, a residential structure is
21 insurable property if:

22 (1) the residential structure is not:

23 (A) a condominium, apartment, duplex, or other
24 multifamily residence; or

25 (B) a hotel or resort facility;

26 (2) the residential structure is located within an
27 area designated as a unit under the Coastal Barrier Resources Act

1 (Pub. L. No. 97-348); and

2 (3) a building permit or plat for the residential
3 structure was filed with the municipality, the county, or the
4 United States Army Corps of Engineers before January 1, 2004.
5 (V.T.I.C. Art. 21.49, Sec. 3(f).)

6 Sec. 2210.005. DESIGNATION AS CATASTROPHE AREA OR
7 INADEQUATE FIRE INSURANCE AREA; REVOCATION OF
8 DESIGNATION. (a) After at least 10 days' notice and a hearing,
9 the commissioner may designate an area of this state as a
10 catastrophe area if the commissioner determines that windstorm and
11 hail insurance is not reasonably available to a substantial number
12 of the owners of insurable property located in that territory
13 because the territory is subject to unusually frequent and severe
14 damage resulting from windstorms or hailstorms.

15 (b) After at least 10 days' notice and a hearing, the
16 commissioner may designate an area of this state as an inadequate
17 fire insurance area if the commissioner determines that fire and
18 explosion insurance is not reasonably available to a substantial
19 number of owners of insurable property located in that area.

20 (c) The commissioner shall revoke a designation made under
21 Subsection (a) or (b) if the commissioner determines, after at
22 least 10 days' notice and a hearing, that the applicable insurance
23 coverage is no longer reasonably unavailable to a substantial
24 number of owners of insurable property within the designated
25 territory.

26 (d) If the association determines that windstorm and hail
27 insurance or fire and explosion insurance is no longer reasonably

1 unavailable to a substantial number of owners of insurable property
2 in a territory designated as a catastrophe area or inadequate fire
3 insurance area, as applicable, the association may request in
4 writing that the commissioner revoke the designation. After at
5 least 10 days' notice and a hearing, but not later than the 30th day
6 after the date of the hearing, the commissioner shall:

- 7 (1) approve the request and revoke the designation; or
8 (2) reject the request. (V.T.I.C. Art. 21.49, Secs.
9 3(h) (part), (i) (part).)

10 Sec. 2210.006. APPLICABILITY OF CHAPTER TO CERTAIN
11 INSURERS. (a) Except as provided by Subsection (b), this chapter
12 applies to each insurer authorized to engage in the business of
13 property insurance in this state, including a county mutual
14 insurance company, a Lloyd's plan, and a reciprocal or
15 interinsurance exchange.

16 (b) This chapter does not apply to:

17 (1) a farm mutual insurance company operating under
18 Chapter 911;

19 (2) a county mutual fire insurance company described
20 by Section 912.310; or

21 (3) a mutual insurance company or a statewide mutual
22 assessment company engaged in business under Chapter 12 or 13,
23 Title 78, Revised Statutes, respectively, before those chapters'
24 repeal by Section 18, Chapter 40, Acts of the 41st Legislature, 1st
25 Called Session, 1929, as amended by Section 1, Chapter 60, General
26 Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, that
27 retains the rights and privileges under the repealed law to the

1 extent provided by those sections. (V.T.I.C. Art. 21.49, Secs.
2 3(k), 18.)

3 Sec. 2210.007. IMMUNITY FROM LIABILITY IN

4 GENERAL. (a) This section applies to:

5 (1) the association and a director, agent, or
6 association staff;

7 (2) the commissioner, the department, and department
8 staff; and

9 (3) a participating insurer and the insurer's agents
10 and staff.

11 (b) A person described by Subsection (a) is not liable, and
12 a cause of action does not arise against the person, for:

13 (1) an inspection made under the plan of operation; or

14 (2) any statement made in good faith by the person:

15 (A) in a report or communication concerning risks
16 submitted to the association; or

17 (B) at any administrative hearing conducted
18 under this chapter in connection with the inspection or statement.

19 (V.T.I.C. Art. 21.49, Sec. 10(c).)

20 Sec. 2210.008. DEPARTMENT ORDERS. (a) After notice and
21 hearing as provided by Subsection (b), the commissioner may issue
22 any orders that the commissioner considers necessary to implement
23 this chapter, including orders regarding maximum rates,
24 competitive rates, and policy forms.

25 (b) Before the commissioner adopts an order, the department
26 shall post notice of the hearing on the order at the secretary of
27 state's office in Austin and shall hold a hearing to consider the

1 proposed order. Any person may appear at the hearing and testify
2 for or against the adoption of the order. (V.T.I.C. Art. 21.49,
3 Sec. 5A.)

4 [Sections 2210.009-2210.050 reserved for expansion]

5 SUBCHAPTER B. ADMINISTRATION OF ASSOCIATION

6 Sec. 2210.051. COMPOSITION OF ASSOCIATION; REQUIRED
7 MEMBERSHIP. (a) The association is composed of all property
8 insurers authorized to engage in the business of property insurance
9 in this state, other than insurers prevented by law from writing on
10 a statewide basis coverages available through the association.

11 (b) As a condition of the insurer's authority to engage in
12 the business of insurance in this state, each insurer subject to
13 Subsection (a) must be a member of the association and must remain a
14 member for the duration of the association's existence. An insurer
15 that ceases to be a member of the association remains liable on
16 insurance contracts entered into during the insurer's membership in
17 the association to the same extent and effect as if the insurer's
18 membership in the association had not been terminated.

19 (c) An insurer that becomes authorized to write and is
20 engaged in writing insurance that requires the insurer to be a
21 member of the association shall become a member of the association
22 on the January 1 following the effective date of that
23 authorization. The determination of the insurer's participation in
24 the association is made as of the date of the insurer's membership
25 in the manner used to determine participation for all other members
26 of the association. (V.T.I.C. Art. 21.49, Secs. 4(a), 5(b)
27 (part).)

1 Sec. 2210.052. MEMBER PARTICIPATION IN ASSOCIATION. (a)
2 Each member of the association shall participate in the writings,
3 expenses, profits, and losses of the association in the proportion
4 that the net direct premiums of that member during the preceding
5 calendar year bears to the aggregate net direct premiums by all
6 members of the association, as determined using the information
7 provided under Subsection (b).

8 (b) The department shall review annual statements, other
9 reports, and other statistics that the department considers
10 necessary to obtain the information required under Subsection (a)
11 and shall provide that information to the association. The
12 department is entitled to obtain the annual statements, other
13 reports, and other statistics from any member of the association.

14 (c) Each member's participation in the association shall be
15 determined annually in the manner provided by the plan of
16 operation. For purposes of determining participation in the
17 association, two or more members that are subject to common
18 ownership or that operate in this state under common management or
19 control shall be treated as a single member. The determination
20 shall also include the net direct premiums of an affiliate that is
21 under that common management or control, including an affiliate
22 that is not authorized to engage in the business of property
23 insurance in this state.

24 (d) Notwithstanding Subsection (a), a member, in accordance
25 with the plan of operation, is entitled to receive credit for
26 similar insurance voluntarily written in an area designated by the
27 commissioner. The member's participation in the writings of the

1 association shall be reduced in accordance with the plan of
2 operation. (V.T.I.C. Art. 21.49, Sec. 5(b) (part).)

3 Sec. 2210.053. OPERATION OF ASSOCIATION. (a) In
4 accordance with this chapter and the plan of operation, and with
5 respect to insurance on insurable property, the association, on
6 behalf of the association's members, may:

7 (1) cause issuance of insurance policies to applicants
8 for insurance coverage;

9 (2) assume reinsurance from the members;

10 (3) cede reinsurance to the members; and

11 (4) purchase reinsurance on behalf of the members.

12 (b) The department may develop programs to improve the
13 efficient operation of the association, including a program
14 designed to create incentives for insurers to write windstorm and
15 hail insurance voluntarily to cover property located in a
16 catastrophe area, especially property located on the barrier
17 islands of this state. (V.T.I.C. Art. 21.49, Secs. 5(a), (e).)

18 Sec. 2210.054. ANNUAL STATEMENT. (a) The association
19 shall file annually with the department a statement covering
20 periods designated by the department that summarizes the
21 transactions, conditions, operations, and affairs of the
22 association during the preceding year.

23 (b) The statement must:

24 (1) be filed at times designated by the department;

25 (2) contain the information prescribed by the
26 department; and

27 (3) be in the form prescribed by the department.

1 (V.T.I.C. Art. 21.49, Sec. 12.)

2 Sec. 2210.055. LEGAL COUNSEL. (a) The association shall
3 establish a plan in the plan of operation under which the
4 association's legal representation before the department and the
5 legislature is without conflict of interest or the appearance of a
6 conflict of interest as defined by the Texas Disciplinary Rules of
7 Professional Conduct.

8 (b) The association shall adopt separate and distinct
9 procedures for legal counsel in disputes involving policyholder
10 claims against the association. (V.T.I.C. Art. 21.49, Sec. 12A.)

11 Sec. 2210.056. USE OF ASSOCIATION ASSETS. (a) The
12 association's net earnings may not inure, in whole or in part, to
13 the benefit of a private shareholder or individual.

14 (b) The association's assets may not be used for or diverted
15 to any purpose other than to:

16 (1) satisfy, in whole or in part, the liability of the
17 association on claims made on policies written by the association;

18 (2) make investments authorized under applicable law;

19 (3) pay reasonable and necessary administrative
20 expenses incurred in connection with the operation of the
21 association and the processing of claims against the association;

22 or

23 (4) make remittance under the laws of this state to be
24 used by this state to:

25 (A) pay claims made on policies written by the
26 association;

27 (B) purchase reinsurance covering losses under

1 those policies; or

2 (C) prepare for or mitigate the effects of
3 catastrophic natural events.

4 (c) On dissolution of the association, all assets of the
5 association revert to this state. (V.T.I.C. Art. 21.49, Secs.
6 4(c), (d).)

7 Sec. 2210.057. EXAMINATION OF ASSOCIATION. (a) The
8 association is subject to Sections 401.051, 401.052,
9 401.054-401.062, 401.151, 401.152, 401.155, and 401.156 and
10 Subchapter A, Chapter 86.

11 (b) A final examination report of the association resulting
12 from an examination as provided by this section is a public record
13 and is available to the public at the offices of the department in
14 accordance with Chapter 552, Government Code. (V.T.I.C.
15 Art. 21.49, Sec. 5B.)

16 Sec. 2210.058. PAYMENT OF EXCESS LOSSES; PREMIUM TAX
17 CREDIT. (a) If, in any calendar year, an occurrence or series of
18 occurrences in a catastrophe area results in insured losses and
19 operating expenses of the association in excess of premium and
20 other revenue of the association, the excess losses shall be paid as
21 follows:

22 (1) \$100 million shall be assessed against the members
23 of the association as provided by Subsection (b);

24 (2) losses in excess of \$100 million shall be paid from
25 the catastrophe reserve trust fund established under Subchapter J
26 and any reinsurance program established by the association;

27 (3) for losses in excess of those paid under

1 Subdivisions (1) and (2), an additional \$200 million shall be
2 assessed against the members of the association, as provided by
3 Subsection (b); and

4 (4) losses in excess of those paid under Subdivisions
5 (1), (2), and (3) shall be assessed against members of the
6 association, as provided by Subsection (b).

7 (b) The proportion of the losses allocable to each insurer
8 under Subsections (a)(1), (3), and (4) shall be determined in the
9 manner used to determine each insurer's participation in the
10 association for the year under Section 2210.052.

11 (c) An insurer may credit an amount paid in accordance with
12 Subsection (a)(4) in a calendar year against the insurer's premium
13 tax under Chapter 221. The tax credit authorized under this
14 subsection shall be allowed at a rate not to exceed 20 percent per
15 year for five or more successive years following the year of payment
16 of the claims. The balance of payments made by the insurer and not
17 claimed as a premium tax credit may be reflected in the books and
18 records of the insurer as an admitted asset of the insurer for all
19 purposes, including exhibition in an annual statement under Section
20 862.001. (V.T.I.C. Art. 21.49, Sec. 19.)

21 Sec. 2210.059. NOTIFICATION REGARDING TAX CREDITS. (a)
22 The association shall immediately notify the department if an
23 occurrence or series of occurrences in a catastrophe area results
24 in insured losses that result in a tax credit under Section
25 2210.058(c) in a calendar year.

26 (b) On receipt of notice under Subsection (a), the
27 department shall immediately notify the governor and the

1 appropriate committees of each house of the legislature of the
2 amount of insured losses eligible for tax credits under Section
3 2210.058(c). (V.T.I.C. Art. 21.49, Sec. 5(1).)

4 Sec. 2210.060. INDEMNIFICATION BY ASSOCIATION. (a) Except
5 as provided by Subsection (b), the association shall indemnify each
6 director, officer, and employee of the association and each member
7 of the association against all costs and expenses actually and
8 necessarily incurred by the person or entity in connection with the
9 defense of an action or proceeding in which the person or entity is
10 made a party because of the person's status as a director, officer,
11 or employee of the association or the member's status as a member of
12 the association.

13 (b) Subsection (a) does not apply to a matter in which the
14 person or entity is determined in the action or proceeding to be
15 liable because of misconduct in the performance of duties as a
16 director, officer, or employee of the association or a member of the
17 association.

18 (c) Subsection (a) does not authorize the association to
19 indemnify a member of the association for participating in the
20 writings, expenses, profits, and losses of the association in the
21 manner provided by this chapter.

22 (d) Indemnification under this section is not exclusive of
23 other rights to which the member or officer may be entitled as a
24 matter of law. (V.T.I.C. Art. 21.49, Sec. 11.)

25 [Sections 2210.061-2210.100 reserved for expansion]

26 SUBCHAPTER C. ASSOCIATION BOARD OF DIRECTORS

27 Sec. 2210.101. ACCOUNTABLE TO COMMISSIONER. The board of

1 directors is responsible and accountable to the commissioner.
2 (V.T.I.C. Art. 21.49, Sec. 5(g) (part).)

3 Sec. 2210.102. COMPOSITION. (a) The board of directors
4 is composed of the following nine members:

5 (1) five representatives of different insurers who are
6 members of the association, elected by the members as provided by
7 the plan of operation;

8 (2) two public representatives who are nominated by
9 the office of public insurance counsel and who, as of the date of
10 the appointment:

11 (A) reside in a catastrophe area; and

12 (B) are policyholders of the association; and

13 (3) two general property and casualty agents:

14 (A) who have demonstrated experience in the
15 association; and

16 (B) whose principal offices, as of the date of
17 the appointment, are located in a catastrophe area.

18 (b) The persons appointed under Subsections (a)(2) and (3)
19 must be from different counties. (V.T.I.C. Art. 21.49, Secs. 5(g)
20 (part), (i).)

21 Sec. 2210.103. TERMS. (a) Members of the board of
22 directors serve three-year staggered terms, with the terms of three
23 members expiring on the third Tuesday of March of each year.

24 (b) A person may serve on the board of directors for not more
25 than three consecutive full terms, not to exceed nine years.
26 (V.T.I.C. Art. 21.49, Sec. 5(h).)

27 Sec. 2210.104. OFFICERS. The board of directors shall

1 elect from the board's membership an executive committee consisting
2 of a presiding officer, assistant presiding officer, and
3 secretary-treasurer. At least one of the officers must be a member
4 appointed under Section 2210.102(a)(2) or (3). (V.T.I.C.
5 Art. 21.49, Sec. 5(j).)

6 Sec. 2210.105. MEETINGS. (a) Except for an emergency
7 meeting, the association shall notify the department not later than
8 the 11th day before the date of a meeting of the board of directors
9 or of the members of the association.

10 (b) Except for a closed meeting authorized by Subchapter D,
11 Chapter 551, Government Code, a meeting of the board of directors or
12 of the members of the association is open to:

13 (1) the commissioner or the commissioner's designated
14 representative; and

15 (2) the public.

16 (c) Notice of a meeting of the board of directors or the
17 association must be given as provided by Chapter 551, Government
18 Code. (V.T.I.C. Art. 21.49, Sec. 5(k).)

19 Sec. 2210.106. IMMUNITY OF DIRECTOR OR OFFICER FROM
20 LIABILITY. (a) A director or officer of the association is not
21 individually liable for an act or failure to act in the performance
22 of official duties in connection with the association.

23 (b) Subsection (a) does not apply to:

24 (1) an act or failure to act of the association or an
25 employee of the association;

26 (2) an act or omission involving a motor vehicle; or

27 (3) an act or failure to act that constitutes bad

1 faith, intentional misconduct, or gross negligence. (V.T.I.C.
2 Art. 21.49, Secs. 10(a), (b).)

3 [Sections 2210.107-2210.150 reserved for expansion]

4 SUBCHAPTER D. PLAN OF OPERATION

5 Sec. 2210.151. ADOPTION OF PLAN OF OPERATION. With the
6 advice of the board of directors, the commissioner by rule shall
7 adopt the plan of operation to provide:

8 (1) Texas windstorm and hail insurance in a
9 catastrophe area; and

10 (2) Texas fire and explosion insurance in an
11 inadequate fire insurance area. (V.T.I.C. Art. 21.49, Secs. 3(c)
12 (part), 5(c) (part).)

13 Sec. 2210.152. CONTENTS OF PLAN OF OPERATION. (a) The
14 plan of operation must:

15 (1) provide for the efficient, economical, fair, and
16 nondiscriminatory administration of the association; and

17 (2) include:

18 (A) a plan for the equitable assessment of the
19 members of the association to defray losses and expenses;

20 (B) underwriting standards;

21 (C) procedures for accepting and ceding
22 reinsurance;

23 (D) procedures for determining the amount of
24 insurance to be provided to specific risks;

25 (E) time limits and procedures for processing
26 applications for insurance; and

27 (F) other provisions as considered necessary by

1 the department to implement the purposes of this chapter.

2 (b) The plan of operation may provide for liability limits
3 for an insured structure and for the corporeal movable property
4 located in the structure. (V.T.I.C. Art. 21.49, Secs. 3(c) (part),
5 5(c) (part), (d).)

6 Sec. 2210.153. AMENDMENTS TO PLAN OF OPERATION. (a) The
7 association may present a recommendation for a change in the plan of
8 operation to the department at:

9 (1) periodic hearings conducted by the department for
10 that purpose; or

11 (2) hearings relating to property and casualty
12 insurance rates.

13 (b) The association must present a proposed change to the
14 department in writing in the manner prescribed by the commissioner.
15 A proposed change does not take effect unless adopted by the
16 commissioner by rule.

17 (c) An interested person may, in accordance with Chapter
18 2001, Government Code, petition the commissioner to modify the plan
19 of operation. (V.T.I.C. Art. 21.49, Secs. 5(c) (part), (f).)

20 [Sections 2210.154-2210.200 reserved for expansion]

21 SUBCHAPTER E. INSURANCE COVERAGE

22 Sec. 2210.201. DEFINITION OF INSURABLE INTEREST. In this
23 subchapter, "insurable interest" includes any lawful and
24 substantial economic interest in the safety or preservation of
25 property from loss, destruction, or pecuniary damage. (V.T.I.C.
26 Art. 21.49, Sec. 6(a) (part).)

27 Sec. 2210.202. APPLICATION FOR COVERAGE. (a) A person

1 who has an insurable interest in insurable property may apply to the
2 association for insurance coverage provided under the plan of
3 operation and an inspection of the property, subject to any rules,
4 including any inspection fee, established by the board of directors
5 and approved by the commissioner.

6 (b) A general property and casualty agent must submit an
7 application for the insurance coverage on behalf of the applicant
8 on forms prescribed by the association. The application must
9 contain a statement as to whether the applicant has submitted or
10 will submit the premium in full from personal funds or, if not, to
11 whom a balance is or will be due. (V.T.I.C. Art. 21.49, Sec. 6(a)
12 (part).)

13 Sec. 2210.203. ISSUANCE OF COVERAGE; TERM;
14 RENEWAL. (a) If the association determines that the property for
15 which an application for insurance coverage is made is insurable
16 property, the association, on payment of the premium, shall direct
17 the issuance of an insurance policy as provided by the plan of
18 operation.

19 (b) A policy issued under this section is for a one-year
20 term.

21 (c) A policy may be renewed annually on application for
22 renewal as long as the property continues to be insurable property.
23 (V.T.I.C. Art. 21.49, Secs. 6(b) (part), (c).)

24 Sec. 2210.204. CANCELLATION OF CERTAIN COVERAGE. (a)
25 Subsections (b) and (c) apply if:

26 (1) an agent or another person, firm, or corporation
27 finances the payment of all or a portion of the premium for

1 insurance coverage;

2 (2) there is an outstanding balance for the financing
3 of the premium; and

4 (3) that balance, or an installment of that balance,
5 is not paid before the expiration of the 10th day after the due
6 date.

7 (b) The agent or other person, firm, or corporation to whom
8 the balance described by Subsection (a) is due may request
9 cancellation of the insurance coverage by:

10 (1) returning the policy, with proof that the insured
11 was notified of the return; or

12 (2) requesting the association to cancel the insurance
13 coverage by a notice mailed to the insured and to any others shown
14 in the policy as having an insurable interest in the property.

15 (c) On completion of cancellation under Subsection (b), the
16 association shall refund the unearned premium, less any minimum
17 retained premium set forth in the plan of operation, to the person,
18 firm, or corporation to whom the unpaid balance is due.

19 (d) If an insured requests cancellation of the insurance
20 coverage, the association shall refund the unearned premium payable
21 to the insured and the holder of an unpaid balance. The general
22 property and casualty agent who submitted the application shall
23 refund the agent's commission on any unearned premium in the same
24 manner. (V.T.I.C. Art. 21.49, Sec. 6(b) (part).)

25 Sec. 2210.205. DELETION OF INSURANCE COVERAGE FROM OTHER
26 POLICIES. The department shall prepare endorsements and forms
27 applicable to the standard prescribed policies that delete

1 insurance coverages available through the association, and the
2 commissioner shall promulgate the applicable reduction of premiums
3 and rates for the use of the endorsement or form. (V.T.I.C.
4 Art. 21.49, Sec. 7.)

5 Sec. 2210.206. INSURANCE COVERAGE FOR CERTAIN GOVERNMENTAL
6 ENTITIES. (a) In insuring property of this state or property of a
7 political subdivision of this state, the association may not direct
8 an insurer to issue the policy if the insurer's organizational plan
9 precludes the insurer from writing insurance coverage for this
10 state or a political subdivision of this state.

11 (b) An insurer described by Subsection (a) may not act as a
12 reinsurer with respect to an insurance policy described by
13 Subsection (a). (V.T.I.C. Art. 21.49, Sec. 4(b).)

14 Sec. 2210.207. WINDSTORM AND HAIL INSURANCE: REPLACEMENT
15 COST COVERAGE. (a) In this section, "roof covering" means:

- 16 (1) the roofing material exposed to the weather;
17 (2) the underlayments applied for moisture
18 protection; and
19 (3) all flashings required in the replacement of a
20 roof covering.

21 (b) Subject to any applicable deductibles and the limits for
22 the coverage purchased by the insured, a windstorm and hail
23 insurance policy issued by the association may include replacement
24 cost coverage for one- and two-family dwellings, including
25 outbuildings, as provided under the dwelling extension coverage in
26 the policy.

27 (c) If, at the time of loss, the total amount of insurance

1 applicable to a dwelling is equal to 80 percent or more of the full
2 replacement cost of the dwelling or equal to the maximum amount of
3 insurance otherwise available through the association, coverage
4 applicable to the dwelling under the policy is extended to include
5 the full cost of repair or replacement, without a deduction for
6 depreciation.

7 (d) If, at the time of loss, the total amount of insurance
8 applicable to a dwelling is equal to less than 80 percent of the
9 full replacement cost of the dwelling and less than the maximum
10 amount of insurance available through the association, liability
11 for loss under the policy may not exceed the replacement cost of the
12 part of the dwelling that is damaged or destroyed, less
13 depreciation.

14 (e) Notwithstanding this chapter or any other law, the
15 commissioner, after notice and hearing, may adopt rules to:

16 (1) authorize the association to provide actual cash
17 value coverage instead of replacement cost coverage on the roof
18 covering of a building insured by the association; and

19 (2) establish:

20 (A) the conditions under which the association
21 may provide that actual cash value coverage;

22 (B) the appropriate premium reductions when
23 coverage for the roof covering is provided on an actual cash value
24 basis; and

25 (C) the disclosure that must be provided to the
26 policyholder, prominently displayed on the face of the windstorm
27 and hail insurance policy.

1 (f) Notwithstanding Chapter 40, a hearing under Subsection
2 (e) shall be held before the commissioner or the commissioner's
3 designee.

4 (g) The commissioner may adopt rules as necessary to
5 implement this section. (V.T.I.C. Art. 21.49, Sec. 8A.)

6 Sec. 2210.208. WINDSTORM AND HAIL INSURANCE: COVERAGE FOR
7 CERTAIN INDIRECT LOSSES. (a) Except as provided by Subsections
8 (e) and (f), a windstorm and hail insurance policy issued by the
9 association for a dwelling, as that term is defined by the
10 department or a successor to the department, must include coverage
11 for:

12 (1) wind-driven rain damage, regardless of whether an
13 opening is made by the wind;

14 (2) loss of use; and

15 (3) consequential losses.

16 (b) A windstorm and hail insurance policy issued by the
17 association for tenant contents of a dwelling or other residential
18 building must include coverage for loss of use and consequential
19 losses.

20 (c) The coverage required under Subsection (a) or (b) must
21 be made:

22 (1) according to forms approved by the commissioner;

23 and

24 (2) for a premium paid by the insured based on rates
25 established by commissioner rule.

26 (d) The association shall provide coverage under this
27 section as directed by commissioner rule.

1 (e) The association is not required to offer coverage for
2 indirect losses as provided by Subsection (a) or (b) unless that
3 coverage was excluded from a companion policy in the voluntary
4 market.

5 (f) The association is not required to provide coverage for:

6 (1) loss of use, if the loss is loss of rent or loss of
7 rental value; or

8 (2) additional living expenses, if the insured
9 property is a secondary or a nonprimary residence. (V.T.I.C.
10 Art. 21.49, Sec. 8B.)

11 [Sections 2210.209-2210.250 reserved for expansion]

12 SUBCHAPTER F. PROPERTY INSPECTIONS FOR WINDSTORM AND HAIL
13 INSURANCE

14 Sec. 2210.251. INSPECTION REQUIREMENTS. (a) Except as
15 provided by this section, to be considered insurable property
16 eligible for windstorm and hail insurance coverage from the
17 association, a structure that is constructed or repaired or to
18 which additions are made on or after January 1, 1988, must be
19 inspected or approved by the department for compliance with the
20 plan of operation.

21 (b) After January 1, 2004, for geographic areas specified by
22 the commissioner, the commissioner by rule shall adopt the 2003
23 International Residential Code for one- and two-family dwellings
24 published by the International Code Council. For those geographic
25 areas, the commissioner by rule may adopt a subsequent edition of
26 that code and may adopt any supplements published by the
27 International Code Council and amendments to that code.

1 (c) After January 1, 2004, a person must submit a notice of a
2 windstorm inspection to the unit responsible for certification of
3 windstorm inspections at the department before beginning to
4 construct, alter, remodel, enlarge, or repair a structure.

5 (d) A structure constructed or repaired or to which
6 additions were made before January 1, 1988, that is located in an
7 area that was governed at the time of the construction, repair, or
8 addition by a building code recognized by the association is
9 insurable property eligible for windstorm and hail insurance
10 coverage from the association without compliance with the
11 inspection or approval requirements of this section or the plan of
12 operation.

13 (e) A structure constructed or repaired or to which
14 additions were made before January 1, 1988, that is located in an
15 area not governed by a building code recognized by the association
16 is insurable property eligible for windstorm and hail insurance
17 coverage from the association without compliance with the
18 inspection or approval requirements of this section or the plan of
19 operation if the structure was previously insured by an insurer
20 authorized to engage in the business of insurance in this state and
21 the structure is in essentially the same condition as when
22 previously insured, except for normal wear and tear, and is without
23 any structural change other than a change made according to code.
24 For purposes of this subsection, evidence of previous insurance
25 coverage includes:

- 26 (1) a copy of a previous insurance policy;
27 (2) copies of canceled checks or agent's records that

1 show payments for previous policies; and

2 (3) a copy of the title to the structure or mortgage
3 company records that show previous policies.

4 (f) The department shall issue a certificate of compliance
5 for each structure that qualifies for coverage. The certificate is
6 evidence of insurability of the structure by the association.

7 (g) The department may enter into agreements and contracts
8 as necessary to implement this section.

9 (h) The department may charge a reasonable fee to cover the
10 cost of making building requirements and inspection standards
11 available to the public. (V.T.I.C. Art. 21.49, Secs. 6A(a), (b),
12 (g), (h).)

13 Sec. 2210.252. INTERNATIONAL RESIDENTIAL CODE BUILDING
14 SPECIFICATIONS. (a) After January 1, 2004, for geographic areas
15 specified by the commissioner, the commissioner by rule may
16 supplement the plan of operation building specifications with the
17 structural provisions of the International Residential Code for
18 one- and two-family dwellings, as published by the International
19 Code Council or an analogous entity recognized by the department.

20 (b) For a geographic area specified under Subsection (a),
21 the commissioner by rule may adopt a subsequent edition of the
22 International Residential Code for one- and two-family dwellings
23 and may adopt a supplement published by the International Code
24 Council or an amendment to that code. (V.T.I.C. Art. 21.49, Sec.
25 5(m).)

26 Sec. 2210.253. INSURER ASSESSMENT: FIRST TIER COASTAL
27 COUNTY. (a) In this section, "property insurance" means a

1 commercial or residential insurance policy prescribed or approved
2 by the department that provides coverage for windstorm and hail
3 damage, including a Texas windstorm and hail insurance policy.

4 (b) The department shall assess each insurer that provides
5 property insurance in a first tier coastal county in accordance
6 with this section.

7 (c) The total assessment under this section in a state
8 fiscal year must be in the amount estimated by the department as
9 necessary to cover the administrative costs of the windstorm
10 inspection program under Section 2210.251 to be incurred in the
11 first tier coastal counties in that fiscal year.

12 (d) The assessment must be based on each insurer's
13 proportionate share of the total extended coverage and other allied
14 lines premium received by all insurers for property insurance in
15 the first tier coastal counties in the calendar year preceding the
16 year in which the assessment is made.

17 (e) The commissioner shall adopt rules to implement the
18 assessment of insurers under this section. (V.T.I.C. Art. 21.49,
19 Secs. 6B(a), (b) (part), (c), (d).)

20 Sec. 2210.254. QUALIFIED INSPECTORS. (a) For purposes of
21 this chapter, a "qualified inspector" includes:

22 (1) a person determined by the department to be
23 qualified because of training or experience to perform building
24 inspections;

25 (2) a licensed professional engineer who meets the
26 requirements specified by commissioner rule for appointment to
27 conduct windstorm inspections; and

1 (3) an inspector who:

2 (A) is certified by the International Code
3 Council, the Building Officials and Code Administrators
4 International, Inc., the International Conference of Building
5 Officials, or the Southern Building Code Congress International,
6 Inc.;

7 (B) has certifications as a buildings inspector
8 and coastal construction inspector; and

9 (C) complies with other requirements specified
10 by commissioner rule.

11 (b) A windstorm inspection may be performed only by a
12 qualified inspector.

13 (c) Before performing building inspections, a qualified
14 inspector must be approved and appointed or employed by the
15 department.

16 (d) The department may charge a reasonable fee for the
17 filing of applications by and determining the qualifications of
18 persons for appointment as qualified inspectors. (V.T.I.C.
19 Art. 21.49, Sec. 6A(d).)

20 Sec. 2210.255. APPOINTMENT OF LICENSED ENGINEER AS
21 INSPECTOR. (a) On request of an engineer licensed by the Texas
22 Board of Professional Engineers, the commissioner shall appoint the
23 engineer as an inspector under this subchapter not later than the
24 10th day after the date the engineer delivers to the commissioner
25 information demonstrating that the engineer is qualified to perform
26 windstorm inspections under this subchapter.

27 (b) The commissioner shall adopt rules establishing the

1 information to be considered in appointing engineers under this
2 section. (V.T.I.C. Art. 21.49, Sec. 6D.)

3 Sec. 2210.256. DISCIPLINARY PROCEEDINGS REGARDING
4 APPOINTED INSPECTORS. (a) After notice and hearing, the
5 department may revoke an appointment made under Section 2210.254 if
6 the appointee is found to be in violation of this subchapter or a
7 rule of the commissioner adopted under this subchapter.

8 (b) The commissioner, instead of revocation, may impose one
9 or more of the following sanctions if the commissioner determines
10 from the facts that the sanction would be fair, reasonable, or
11 equitable:

12 (1) suspension of the appointment for a specific
13 period, not to exceed one year;

14 (2) issuance of an order directing the appointee to
15 cease and desist from the specified activity or failure to act
16 determined to be in violation of this subchapter or rules of the
17 commissioner adopted under this subchapter; or

18 (3) if the commissioner finds that the appointee
19 knowingly, wilfully, fraudulently, or with gross negligence signed
20 or caused to be prepared an inspection report that contains a false
21 or fraudulent statement, issuance of an order directing the
22 appointee to pay within a specified time, not to exceed 60 days, a
23 fine not to exceed \$5,000 for the violation.

24 (c) A fine paid as a result of an order issued under
25 Subsection (b)(3) shall be deposited in the general revenue fund.

26 (d) If it is found after a hearing that an appointee has
27 failed to comply with an order issued under Subsection (b), the

1 department shall, unless the order is stayed, revoke the
2 appointment of the person.

3 (e) The department may informally dispose of any matter
4 under Subsection (a) or (b) by consent order or default.

5 (f) If an appointee is an engineer licensed by the Texas
6 Board of Professional Engineers who is found by the department to
7 have knowingly, wilfully, fraudulently, or with gross negligence
8 signed or caused to be prepared an inspection report that contains a
9 false or fraudulent statement, the commissioner may take action
10 against the appointee in the manner provided by Subsections (a) and
11 (b) but may not assess a fine against the appointee. The
12 commissioner shall notify the Texas Board of Professional Engineers
13 of an order issued by the commissioner against an appointee who is
14 an engineer licensed by that board, including an order suspending
15 or revoking the appointment of the person. (V.T.I.C. Art. 21.49,
16 Secs. 6A(j), (j-1), (k), (k-1).)

17 Sec. 2210.257. DEPOSIT OF FEES. All fees collected by the
18 department under this subchapter shall be deposited to the credit
19 of the Texas Department of Insurance operating account. (V.T.I.C.
20 Art. 21.49, Sec. 6A(i).)

21 [Sections 2210.258-2210.300 reserved for expansion]

22 SUBCHAPTER G. WINDSTORM BUILDING CODE ADVISORY COMMITTEE

23 Sec. 2210.301. DEFINITION. In this subchapter, "advisory
24 committee" means the Windstorm Building Code Advisory Committee on
25 Specifications and Maintenance. (V.T.I.C. Art. 21.49, Sec.
26 6C(a).)

27 Sec. 2210.302. ADVISORY COMMITTEE. (a) The advisory

1 committee shall advise and make recommendations to the commissioner
2 on building and maintenance requirements under the plan of
3 operation.

4 (b) The advisory committee is composed of nine voting
5 members appointed by the commissioner without regard to the race,
6 color, disability, sex, religion, age, or national origin of the
7 appointee.

8 (c) The commissioner or the commissioner's designee shall
9 serve as an ex officio, nonvoting member of the advisory committee.

10 (d) The commissioner shall appoint the voting members of the
11 advisory committee as follows:

12 (1) three members who are representatives of the
13 building industry who reside in catastrophe areas:

14 (A) two of whom are residential builders; and

15 (B) one of whom is a representative of the
16 building supply industry;

17 (2) three members who are representatives of the
18 insurance industry:

19 (A) one of whom is a member of the board of
20 directors; and

21 (B) two of whom are full-time employees of an
22 insurer authorized to engage in the business of property and
23 casualty insurance in this state that writes insurance in a
24 catastrophe area; and

25 (3) three members who are representatives of the
26 public who reside in a catastrophe area, one of whom is a
27 professional engineer licensed in this state. (V.T.I.C.

1 Art. 21.49, Secs. 6C(b), (c).)

2 Sec. 2210.303. TERMS. A member of the advisory committee
3 serves a three-year term. (V.T.I.C. Art. 21.49, Sec. 6C(d)
4 (part).)

5 Sec. 2210.304. COMPENSATION. A member of the advisory
6 committee is not entitled to compensation but is entitled to
7 reimbursement for actual and necessary expenses incurred in
8 performing duties as an advisory committee member, subject to any
9 applicable limitation on reimbursement provided by the General
10 Appropriations Act. (V.T.I.C. Art. 21.49, Sec. 6C(d) (part).)

11 Sec. 2210.305. PRESIDING OFFICER. The advisory committee
12 shall elect a presiding officer from the committee members.
13 (V.T.I.C. Art. 21.49, Sec. 6C(e) (part).)

14 Sec. 2210.306. MEETINGS. (a) The advisory committee
15 shall meet at least two times each year at the call of the presiding
16 officer with the approval of the commissioner. The advisory
17 committee shall publish the date and location of the meeting not
18 later than the 45th day before the date on which the meeting is
19 scheduled to occur.

20 (b) The commissioner or the commissioner's designee must be
21 present at each meeting of the advisory committee. (V.T.I.C.
22 Art. 21.49, Sec. 6C(e) (part).)

23 Sec. 2210.307. RECOMMENDATIONS FOR CHANGES IN PLAN OF
24 OPERATION PROCEDURES. (a) The advisory committee shall analyze
25 and make recommendations for changes regarding procedures
26 described under Section 2210.152(a)(2) that are adopted by the
27 commissioner in the plan of operation. In making recommendations,

1 the advisory committee shall seek to balance the concerns of all
2 affected parties, including consumers, builders, and the
3 association.

4 (b) Each proposal for a change in an applicable procedure
5 must be submitted to the commissioner. Each proposal must be
6 submitted separately in writing and must contain:

7 (1) the name, mailing address, and telephone number of
8 the proponent, or, if the proponent is a group or organization, the
9 name of the group or organization and the mailing address and
10 telephone number of the group or organization;

11 (2) a citation of any applicable statute or rule;

12 (3) the text of the proposed change, with deletions
13 from current language struck through with a single line and new
14 language underlined; and

15 (4) a statement of the purpose of the proposed change,
16 with supporting written or printed information.

17 (c) The commissioner by rule shall adopt a form to be used by
18 a person in presenting to the commissioner a proposal for a change
19 in an applicable procedure.

20 (d) To be considered at a scheduled advisory committee
21 meeting, a proposal must be submitted not later than the 30th day
22 before the date of that meeting and must meet the requirements of
23 Subsection (b).

24 (e) The department shall review and organize each proposal
25 submitted and shall allow the advisory committee and interested
26 parties to view the proposals to be considered within a reasonable
27 time before the meeting of the advisory committee. If requested by

1 a majority of the advisory committee, the department shall make
2 recommendations regarding each proposal submitted and provide to
3 the advisory committee any necessary technical information.

4 (f) At an advisory committee meeting, any interested person
5 may present the person's views on a proposal for a change in an
6 applicable procedure that is included on the advisory committee's
7 published agenda. The advisory committee shall consider each
8 comment presented in acting on the disposition of each proposal.

9 (g) After consideration of a proposal for a change in an
10 applicable procedure, the advisory committee by vote shall:

11 (1) recommend adoption of the proposal as initially
12 submitted;

13 (2) recommend adoption of the proposal with
14 modifications;

15 (3) recommend rejection of the proposal; or

16 (4) suspend consideration of the proposal and request
17 additional evaluation and study of the proposal.

18 (h) The advisory committee shall submit to the commissioner
19 the committee's recommendation on each proposal. The commissioner
20 shall notify the advisory committee of the acceptance or rejection
21 of each recommendation not later than the 30th day after the date of
22 receipt by the commissioner. Acceptance of a recommendation by the
23 commissioner means that the commissioner will consider adoption of
24 that recommendation at a rulemaking hearing. Before adopting a
25 recommendation, the commissioner must determine that the proposal,
26 if adopted, will not weaken the integrity or diminish the
27 effectiveness of a procedure. (V.T.I.C. Art. 21.49, Secs. 6C(f),

1 (g), (h), (i), (j), (k), (l), (m).)

2 Sec. 2210.308. RULES. In addition to any other rulemaking
3 authority granted under this chapter, the commissioner may adopt
4 rules as necessary to implement this subchapter. (V.T.I.C. Art.
5 21.49, Sec. 6C(n).)

6 [Sections 2210.309-2210.350 reserved for expansion]

7 SUBCHAPTER H. RATES

8 Sec. 2210.351. ASSOCIATION FILINGS. (a) The association
9 must file with the department each manual of classifications,
10 rules, rates, including condition charges, and each rating plan,
11 and each modification of those items that the association proposes
12 to use.

13 (b) A filing under this section must indicate the character
14 and the extent of the coverage contemplated and must be accompanied
15 by the policy and endorsement forms proposed to be used. The forms
16 may be designed specifically for use by the association without
17 regard to other forms filed with, approved by, or prescribed by the
18 department for use in this state.

19 (c) As soon as reasonably possible after the filing has been
20 made, the commissioner in writing shall approve, modify, or
21 disapprove the filing. A filing is considered approved unless
22 modified or disapproved on or before the 30th day after the date of
23 the filing.

24 (d) If at any time the commissioner determines that a filing
25 approved under Subsection (c) no longer meets the requirements of
26 this chapter, the commissioner may, after a hearing held on at least
27 20 days' notice to the association that specifies the matters to be

1 considered at the hearing, issue an order withdrawing approval of
2 the filing. The order must specify in what respects the
3 commissioner determines that the filing no longer meets the
4 requirements of this chapter. An order issued under this subsection
5 may not take effect before the 30th day after the date of issuance
6 of the order.

7 (e) The department shall value the loss and loss adjustment
8 expense data to be used for a filing not earlier than March 31 of the
9 year before the year in which the filing is to be made. (V.T.I.C.
10 Art. 21.49, Secs. 8(a) (part), (c), (d), (h)(15).)

11 Sec. 2210.352. MANUAL RATE FILINGS: ANNUAL FILING. (a)
12 Not later than August 15 of each year, the association shall file
13 with the department for approval by the commissioner a proposed
14 manual rate for all types and classes of risks written by the
15 association. Chapter 40 does not apply to:

- 16 (1) a filing made under this subsection; or
17 (2) a department action with respect to the filing.

18 (b) Before approving, disapproving, or modifying a filing,
19 the commissioner shall provide all interested persons a reasonable
20 opportunity to:

- 21 (1) review the filing;
22 (2) obtain copies of the filing on payment of any
23 legally required copying cost; and
24 (3) submit to the commissioner written comments or
25 information related to the filing.

26 (c) The commissioner shall schedule an open meeting not
27 later than the 45th day after the date the department receives a

1 filing at which interested persons may present written or oral
2 comments relating to the filing.

3 (d) An open meeting under Subsection (c) is subject to
4 Chapter 551, Government Code, but is not a contested case hearing
5 under Chapter 2001, Government Code.

6 (e) The department shall file with the secretary of state
7 for publication in the Texas Register notice that a filing has been
8 made under Subsection (a) not later than the seventh day after the
9 date the department receives the filing. The notice must include
10 information relating to:

11 (1) the availability of the filing for public
12 inspection at the department during regular business hours and the
13 procedures for obtaining copies of the filing;

14 (2) procedures for making written comments related to
15 the filing; and

16 (3) the time, place, and date of the open meeting
17 scheduled under Subsection (c) at which interested persons may
18 present written or oral comments relating to the filing.

19 (f) After the conclusion of the open meeting, the
20 commissioner shall approve, disapprove, or modify the filing in
21 writing not later than November 15 of the year in which the filing
22 was made. If the filing is not approved, disapproved, or modified
23 on or before that date, the filing is considered approved.

24 (g) If the commissioner disapproves a filing, the
25 commissioner shall state in writing the reasons for the disapproval
26 and the criteria the association is required to meet to obtain
27 approval. (V.T.I.C. Art. 21.49, Secs. 8(h)(2), (3), (4), (5), (6))

1 (part).)

2 Sec. 2210.353. MANUAL RATE FILINGS: AMENDED FILING. (a)
3 Not later than the 30th day after the date the association receives
4 the commissioner's written disapproval under Section 2210.352(f),
5 the association may file with the commissioner an amended filing
6 that conforms to all criteria stated in that written disapproval.

7 (b) Not later than the 30th day after the date an amended
8 filing made under Subsection (a) is received, the commissioner
9 shall approve the amended filing with or without modifications or
10 disapprove the amended filing. If the filing is not modified or
11 disapproved on or before the 30th day after the date of receipt, the
12 filing is considered approved without modification.

13 (c) Before approving or disapproving an amended filing, the
14 commissioner shall, in the manner provided by Section 2210.352(b),
15 provide all interested persons a reasonable opportunity to:

- 16 (1) review the amended filing;
17 (2) obtain copies of the amended filing on payment of
18 any legally required copying cost; and
19 (3) submit to the commissioner written comments or
20 information related to the amended filing.

21 (d) The commissioner may, in the manner provided by Sections
22 2210.352(c) and (d), hold a hearing regarding an amended filing not
23 later than the 20th day after the date the department receives the
24 amended filing.

25 (e) Not later than the 10th day after the date the hearing is
26 concluded, the commissioner shall approve or disapprove the amended
27 filing.

1 (f) The requirements imposed under Subsection (a) and under
2 Sections 2210.352(e), (f), and (g) apply to a hearing conducted
3 under this section and the commissioner's decision resulting from
4 that hearing. (V.T.I.C. Art. 21.49, Secs. 8(h)(6) (part), (7).)

5 Sec. 2210.354. MANUAL RATE FILINGS: ADDITIONAL SUPPORTING
6 INFORMATION. (a) In conjunction with the review of a filing under
7 Section 2210.352 or 2210.353:

8 (1) the commissioner may request the association to
9 provide additional supporting information relating to the filing;
10 and

11 (2) any interested person may file a written request
12 with the commissioner for additional supporting information
13 relating to the filing.

14 (b) A request under this section must be reasonable and must
15 be directly related to the filing.

16 (c) The commissioner shall submit to the association all
17 requests for additional supporting information made under this
18 section for the commissioner's use and the use of any interested
19 person.

20 (d) Unless a different period is requested by the
21 association and approved by the commissioner, the association shall
22 provide the information to the commissioner not later than the
23 fifth day after the date the written request for additional
24 supporting information is delivered to the association. The
25 department shall notify an interested person who has requested
26 additional information of the availability of the information not
27 later than one business day after the date the commissioner

1 receives the information from the association. (V.T.I.C.
2 Art. 21.49, Sec. 8(h)(8).)

3 Sec. 2210.355. GENERAL RATE REQUIREMENTS; RATE
4 STANDARDS. (a) Rates for coverage under this chapter must be made
5 in accordance with this section.

6 (b) In adopting rates under this chapter, the following must
7 be considered:

8 (1) the past and prospective loss experience within
9 and outside this state of hazards for which insurance is made
10 available through the plan of operation, if any;

11 (2) expenses of operation, including acquisition
12 costs;

13 (3) a reasonable margin for profit and contingencies;
14 and

15 (4) all other relevant factors, within and outside
16 this state.

17 (c) Rates must be reasonable, adequate, not unfairly
18 discriminatory, and nonconfiscatory as to any class of insurer.

19 (d) For the establishment of rates and minimum premiums, the
20 risks may be grouped by classification.

21 (e) Classification rates may be modified to produce rates
22 for individual risks in accordance with rating plans that establish
23 standards for measuring variations in those risks on the basis of
24 any or all of the factors described by Subsection (b). The
25 classification rates may include rules for classification of risks
26 insured under this chapter and rate modifications to those
27 classifications.

1 (f) Each provision regarding a rate, classification,
2 standard, or premium must be made without prejudice to, or
3 prohibition of, provision by the association for consent rates on
4 individual risks if the rate and risk are acceptable to the
5 association, and are analogous to the rate provided for under
6 Article 5.26(a). This subsection applies regardless of whether
7 such a risk would otherwise be subject to or the subject of a rate
8 classification provision or eligibility provision.

9 (g) A commission paid to an agent must be reasonable,
10 adequate, not unfairly discriminatory, and nonconfiscatory.
11 (V.T.I.C. Art. 21.49, Sec. 8(e).)

12 Sec. 2210.356. UNIFORM RATE REQUIREMENTS; INFORMATION USED
13 IN DEVELOPING RATES. (a) Each rate approved by the commissioner in
14 accordance with this subchapter must be uniform throughout the
15 first tier coastal counties.

16 (b) The catastrophe element used to develop rates under this
17 subchapter applicable to risks written by the association must be
18 uniform throughout the seacoast territory. The catastrophe element
19 of the rates must be developed using:

20 (1) 90 percent of both the monoline extended coverage
21 loss experience and related premium income for all insurers, other
22 than the association, for covered property located in the seacoast
23 territory, using not less than the most recent 30 years of
24 experience available; and

25 (2) 100 percent of both the loss experience and
26 related premium income for the association for covered property,
27 using not less than the most recent 30 years of experience

1 available.

2 (c) The noncatastrophe element of the noncommercial rates
3 must be developed using:

4 (1) 90 percent of both the monoline extended coverage
5 loss experience and related premium income for all insurers, other
6 than the association, for covered property located in the
7 catastrophe area of the seacoast territory, using the most recent
8 10 years of experience available; and

9 (2) 100 percent of both the loss experience and
10 related premium income for the association for covered property,
11 using the most recent 10 years of experience available.

12 (d) The noncatastrophe element of the commercial rates must
13 be developed using 100 percent of both the loss experience and
14 related premium income for the association for covered property,
15 using the most recent 10 years of experience available. (V.T.I.C.
16 Art. 21.49, Secs. 8(h)(1), (11), (12), (13).)

17 Sec. 2210.357. RATE CLASSIFICATIONS. All premiums written
18 and losses paid under this chapter, as appropriate, must be
19 included in applicable classifications for general ratemaking
20 purposes. (V.T.I.C. Art. 21.49, Sec. 8(g).)

21 Sec. 2210.358. EXPERIENCE DATA. (a) Not later than June 1
22 of each year, the department shall provide to the association and
23 other interested persons the experience data to be used in
24 establishing the rates under this subchapter in that year.

25 (b) On request from the department, an insurer shall provide
26 the data to the department or the department may obtain the data
27 from a designated statistical agent, as defined by Section 38.201.

1 (V.T.I.C. Art. 21.49, Sec. 8(h)(16).)

2 Sec. 2210.359. LIMITATION ON CERTAIN RATE CHANGES. (a) A
3 rate approved by the commissioner under this subchapter may not
4 reflect an average rate change that is more than 10 percent higher
5 or lower than the rate for commercial windstorm and hail insurance
6 or 10 percent higher or lower than the rate for noncommercial
7 windstorm and hail insurance in effect on the date the filing is
8 made. The rate may not reflect a rate change for an individual
9 rating class that is 15 percent higher or lower than the rate for
10 that individual rating class in effect on the date the filing is
11 made.

12 (b) The commissioner may, after notice and hearing, suspend
13 this section on a finding that a catastrophe loss or series of
14 occurrences resulting in losses in the catastrophe area justify a
15 need to ensure:

- 16 (1) rate adequacy in the catastrophe area; and
17 (2) availability of insurance outside the catastrophe
18 area. (V.T.I.C. Art. 21.49, Sec. 8(h)(9).)

19 Sec. 2210.360. USE OF CERTAIN SURCHARGES IN DEVELOPING
20 RATES. Surcharges previously collected and used in the
21 development of current rates may not be excluded from future rate
22 development if those surcharges were collected during the
23 experience period considered by the commissioner. (V.T.I.C.
24 Art. 21.49, Sec. 8(h)(14).)

25 Sec. 2210.361. ASSOCIATION RECOMMENDATIONS REGARDING
26 REDUCTIONS IN COVERAGES OR INCREASES IN DEDUCTIBLES. (a) The
27 association may make recommendations to the commissioner that would

1 result in a reduction of coverages or an increase in an applicable
2 deductible if the resultant reduction in coverages or increase in
3 deductibles is accompanied by proposed rate credits.

4 (b) After notice and hearing, the commissioner may accept,
5 modify, or reject a recommendation made by the association under
6 this section. Chapter 40 does not apply to an action taken under
7 this section. (V.T.I.C. Art. 21.49, Sec. 8(a) (part).)

8 Sec. 2210.362. IMPLIED CONSENT BY APPLICANT FOR INSURANCE
9 COVERAGE. For purposes of this chapter, an applicant for insurance
10 coverage is considered to have consented to the appropriate rates
11 and classifications authorized by this chapter regardless of any
12 other rates or classifications. (V.T.I.C. Art. 21.49, Sec. 8(f).)

13 Sec. 2210.363. EFFECT ON RATES OF CERTAIN OTHER INSURANCE
14 COVERAGE. The commissioner may provide for an appropriate premium
15 rate or reduction in premium rate if flood or rising water insurance
16 coverage exists and is maintained on a risk insured by the
17 association. (V.T.I.C. Art. 21.49, Sec. 8(h)(10).)

18 [Sections 2210.364-2210.400 reserved for expansion]

19 SUBCHAPTER I. RATE ROLLBACK

20 Sec. 2210.401. RATE ROLLBACK FOR CERTAIN RESIDENTIAL
21 CONSTRUCTION. (a) This section applies only to insurance
22 coverage issued by the association to cover new residential
23 construction, excluding an addition or repair to an existing
24 structure, built to the standards of a new building code.

25 (b) The commissioner shall hold a rulemaking hearing under
26 Chapter 2001, Government Code, to determine the percentage of
27 equitable across-the-board reductions in insurance rates required

1 for Texas windstorm and hail insurance coverage written by the
2 association.

3 (c) Not later than the 180th day after the date a building
4 code is implemented, the commissioner shall issue an order
5 mandating the appropriate rate reductions.

6 (d) The commissioner shall require a six percent
7 across-the-board reduction if, before the 181st day after the date
8 a new building code is implemented:

9 (1) the commissioner has not issued an order
10 establishing rate reductions for Texas windstorm and hail insurance
11 on new residential construction built to the standards of a new
12 building code; or

13 (2) the order has not become final because of judicial
14 intervention or any other reason.

15 (e) Notwithstanding Chapter 40, a hearing under this
16 section shall be held before the commissioner or the commissioner's
17 designee. (V.T.I.C. Art. 21.49, Sec. 8E, as added Acts 75th Leg.,
18 R.S., Ch. 1000.)

19 [Sections 2210.402-2210.450 reserved for expansion]

20 SUBCHAPTER J. CATASTROPHE RESERVE TRUST FUND AND REINSURANCE
21 PROGRAM

22 Sec. 2210.451. DEFINITION. In this subchapter, "trust
23 fund" means the catastrophe reserve trust fund. (V.T.I.C. Art.
24 21.49, Sec. 8(i)(1) (part).)

25 Sec. 2210.452. ESTABLISHMENT AND USE OF TRUST
26 FUND. (a) The commissioner shall adopt rules under which
27 association members relinquish their net equity on an annual basis

1 as provided by those rules by making payments to the catastrophe
2 reserve trust fund. The trust fund may be used only to fund:

3 (1) the obligations of the trust fund under Section
4 2210.058(a); and

5 (2) the mitigation and preparedness plan established
6 under Section 2210.454 to reduce the potential for payments by
7 association members that give rise to tax credits in the event of
8 loss.

9 (b) All money, including investment income, deposited in
10 the trust fund constitutes state funds until disbursed as provided
11 by this chapter and commissioner rules. The comptroller shall hold
12 the money outside the state treasury on behalf of, and with legal
13 title in, the department. The department shall keep and maintain
14 the trust fund in accordance with this chapter and commissioner
15 rules. The comptroller, as custodian of the trust fund, shall
16 administer the trust fund strictly and solely as provided by this
17 chapter and commissioner rules.

18 (c) At the end of each calendar year or policy year, the
19 association shall pay the net equity of a member, including all
20 premium and other revenue of the association in excess of incurred
21 losses and operating expenses, to the trust fund or a reinsurance
22 program approved by the commissioner.

23 (d) The commissioner by rule shall establish the procedure
24 relating to the disbursement of money from the trust fund to
25 policyholders in the event of an occurrence or series of
26 occurrences within a catastrophe area that results in a
27 disbursement under Section 2210.058(a).

1 (e) The trust fund may be terminated only by law. On
2 termination of the trust fund, all assets of the trust fund revert
3 to the state to provide funding for the mitigation and preparedness
4 plan established under Section 2210.454. (V.T.I.C. Art. 21.49,
5 Secs. 8(i)(1) (part), (2), (3), (4).)

6 Sec. 2210.453. REINSURANCE PROGRAM. (a) The association
7 shall:

8 (1) make payments into the trust fund; or

9 (2) establish a reinsurance program approved by the
10 department.

11 (b) With the approval of the department, the association may
12 establish a reinsurance program that operates in addition to or in
13 concert with the trust fund. (V.T.I.C. Art. 21.49, Sec. 8(h)(17).)

14 Sec. 2210.454. MITIGATION AND PREPAREDNESS PLAN. (a) The
15 commissioner shall annually develop and implement a mitigation and
16 preparedness plan.

17 (b) Each state fiscal year, the department may fund the
18 mitigation and preparedness plan using the investment income of the
19 trust fund in an amount not less than \$1 million and not more than 10
20 percent of the investment income of the prior fiscal year. From
21 that amount and as part of that plan, the department may use in each
22 fiscal year \$1 million for the windstorm inspection program
23 established under Section 2210.251.

24 (c) The mitigation and preparedness plan must provide for
25 actions to be taken in the seacoast territory by the commissioner,
26 or by a local government, state agency, educational institution, or
27 nonprofit organization designated by the commissioner in the plan,

1 to implement programs to:

2 (1) improve preparedness for windstorm and hail
3 catastrophes;

4 (2) reduce potential losses in the event of such a
5 catastrophe; and

6 (3) provide research into the means to:

7 (A) reduce those losses;

8 (B) educate or inform the public in determining
9 the appropriateness of particular upgrades to structures; or

10 (C) protect infrastructure from potential damage
11 from those catastrophes.

12 (d) Money in excess of \$1 million may not be used under this
13 section if the commissioner determines that an expenditure of
14 investment income from the trust fund would jeopardize the
15 actuarial soundness of the fund or materially impair the ability of
16 the fund to serve the state purposes for which the fund was
17 established. (V.T.I.C. Art. 21.49, Sec. 8(i)(5).)

18 [Sections 2210.455-2210.500 reserved for expansion]

19 SUBCHAPTER K. LIABILITY LIMITS

20 Sec. 2210.501. MAXIMUM LIABILITY LIMITS. (a) The board
21 of directors shall propose the maximum liability limits under a
22 windstorm and hail insurance policy issued by the association under
23 this chapter. The maximum liability limits must be approved by the
24 commissioner.

25 (b) Subject to Section 2210.502, the maximum liability
26 limits for coverage on a single insurable property may not be less
27 than:

1 (1) \$350,000 for:

2 (A) a dwelling, including an individually owned
3 townhouse unit; and

4 (B) the corporeal movable property located in or
5 about the dwelling and, as an extension of coverage, away from those
6 premises, as provided under the policy;

7 (2) \$2,192,000 for a building, and the corporeal
8 movable property located in the building, if the building is:

9 (A) owned by, and at least 75 percent of which is
10 occupied by, a governmental entity; or

11 (B) not owned by, but is wholly and exclusively
12 occupied by, a governmental entity;

13 (3) \$125,000 for individually owned corporeal movable
14 property located in an apartment unit, residential condominium
15 unit, or townhouse unit that is occupied by the owner of that
16 property and, as an extension of coverage, away from those
17 premises, as provided under the policy; and

18 (4) \$1,500,000 for:

19 (A) a structure other than a dwelling or a public
20 building; and

21 (B) the corporeal movable property located in
22 that structure and, as an extension of coverage, away from those
23 premises, as provided under the policy.

24 (c) Maximum liability limits for insurable property not
25 described by Subsection (b) are established by the plan of
26 operation. (V.T.I.C. Art. 21.49, Secs. 8D(a), (c).)

27 Sec. 2210.502. ADJUSTMENTS TO MAXIMUM LIABILITY LIMITS.

1 (a) Not later than September 30 of each year, the board of
2 directors shall propose inflation adjustments to the maximum
3 liability limits imposed under Section 2210.501 in increments of
4 \$1,000, rounded to the nearest \$1,000, considering the limits
5 imposed by Section 2210.501(b), at a rate that reflects any change
6 in the BOECKH Index. If the BOECKH Index ceases to exist, the board
7 of directors shall propose the adjustments in the same manner based
8 on another index that the board of directors determines accurately
9 reflects changes in the cost of construction or residential values
10 in the catastrophe area.

11 (b) An adjustment to the maximum liability limits that is
12 approved by the commissioner applies to each windstorm and hail
13 insurance policy delivered, issued for delivery, or renewed on or
14 after January 1 of the year following the date of the approval. The
15 indexing of the limits shall adjust for changes occurring on and
16 after January 1, 1997.

17 (c) The board of directors may propose additional increases
18 in the maximum liability limits as the board determines necessary
19 to implement the purposes of this chapter.

20 (d) Notwithstanding Section 2210.501(b), the maximum
21 liability limit imposed under Section 2210.501(b)(2) is frozen, and
22 the indexing and adjustments provided by this section do not apply
23 to that limit, until the limit imposed on a structure subject to
24 Section 2210.501(b)(4) and the corporeal property located in that
25 structure reaches or exceeds \$2,192,000, at which time the limit
26 imposed under Section 2210.501(b)(2) shall be indexed and adjusted
27 as provided for a risk under Section 2210.501(b)(4). (V.T.I.C.

1 Art. 21.49, Secs. 8D(b), (d), (e).)

2 Sec. 2210.503. FILING OF PROPOSED ADJUSTMENTS WITH
3 COMMISSIONER. Not later than the 10th day after the date a proposed
4 adjustment to the maximum liability limits is determined under
5 Section 2210.501(a) or (b) or Section 2210.502, the association
6 shall file the proposed adjustments with the commissioner in
7 writing. The filing must include:

8 (1) a statement of the proposed adjusted limits;

9 (2) a statement of the limits in effect immediately
10 preceding the effective date of the proposed adjustment;

11 (3) a brief summary of the changes to the BOECKH Index
12 or other index on which the proposed adjustments are based; and

13 (4) a brief summary of the computations used in
14 determining the proposed adjustments. (V.T.I.C. Art. 21.49, Sec.
15 8D(f).)

16 Sec. 2210.504. COMMISSIONER ACTION ON PROPOSED
17 ADJUSTMENTS. (a) Not later than the 60th day after the date of
18 receipt of a filing under Section 2210.503, and after notice and
19 hearing, the commissioner by order shall approve, disapprove, or
20 modify the proposed adjustment to the maximum liability limits.

21 (b) Notwithstanding Subsection (a) and Sections
22 2210.501(c), 2210.502(a)-(c), and 2210.503, the commissioner may
23 not approve adjustments of maximum liability limits to amounts
24 lower than the amounts prescribed under Section 2210.501(b).
25 (V.T.I.C. Art. 21.49, Secs. 8D(g), (h).)

26 Sec. 2210.505. REINSURED EXCESS LIMITS. (a)
27 Notwithstanding any other law, the association may issue a

1 windstorm and hail insurance policy that includes coverage for an
2 amount in excess of a maximum liability limit established under
3 Sections 2210.501-2210.504 if the association first obtains from a
4 reinsurer approved by the commissioner reinsurance for the full
5 amount of policy exposure above that limit.

6 (b) The premium charged by the association for the excess
7 coverage must equal the amount of the reinsurance premium charged
8 to the association by the reinsurer, plus any payment to the
9 association that is approved by the commissioner.

10 (c) The commissioner shall adopt rules as necessary to
11 implement this section. (V.T.I.C. Art. 21.49, Secs. 8E(a), (b),
12 (c), as added Acts 75th Leg., R.S., Ch. 642.)

13 Sec. 2210.506. EXCEPTION FROM CERTAIN ADMINISTRATIVE
14 PROCEDURES. Chapter 40 does not apply to an action taken under this
15 subchapter. (V.T.I.C. Art. 21.49, Secs. 8D(i), 8E(d), as added
16 Acts 75th Leg., R.S., Ch. 642.)

17 [Sections 2210.507-2210.550 reserved for expansion]

18 SUBCHAPTER L. APPEALS AND OTHER ACTIONS

19 Sec. 2210.551. APPEALS. (a) This section applies to:

20 (1) a person insured under this chapter or an
21 authorized representative of the person; or

22 (2) an affected insurer.

23 (b) A person or entity described by Subsection (a) who is
24 aggrieved by an act, ruling, or decision of the association may
25 appeal to the commissioner not later than the 30th day after the
26 date of that act, ruling, or decision.

27 (c) If the association is aggrieved by the action of the

1 commissioner with respect to a ruling, order, or determination of
2 the commissioner, the association may, not later than the 30th day
3 after the date of the action, make a written request to the
4 commissioner for a hearing on the action.

5 (d) On 10 days' written notice of the time and place of the
6 hearing, the commissioner shall conduct a hearing on the
7 association's request or the appeal from an act, ruling, or
8 decision of the association, not later than the 30th day after the
9 date of receipt of the request or appeal.

10 (e) A hearing on an act, ruling, or decision of the
11 association relating to the payment of, the amount of, or the denial
12 of a particular claim shall be held, at the request of the claimant,
13 in the county in which the insured property is located or in Travis
14 County.

15 (f) Not later than the 30th day after the date of the
16 hearing, the commissioner shall affirm, reverse, or modify the
17 commissioner's previous action or the act, ruling, or decision
18 appealed to the commissioner. Pending the hearing and decision,
19 the commissioner may suspend or postpone the effective date of the
20 previous action or of the act, ruling, or decision appealed to the
21 commissioner.

22 (g) The association, or the person or entity aggrieved by
23 the order or decision of the commissioner, may appeal to a district
24 court in the county in which the covered property is located or a
25 district court in Travis County.

26 (h) An action brought under this section is subject to the
27 procedures established under Subchapter D, Chapter 36. (V.T.I.C.

1 Art. 21.49, Sec. 9.)

2 Sec. 2210.552. CLAIM DISPUTES; VENUE. (a) Except as
3 provided by Sections 2210.007 and 2210.106, a person insured under
4 this chapter who is aggrieved by an act, ruling, or decision of the
5 association relating to the payment of, the amount of, or the denial
6 of a claim may:

7 (1) bring an action against the association, including
8 an action under Chapter 541; or

9 (2) appeal the act, ruling, or decision under Section
10 2210.551.

11 (b) A person may not proceed under both Section 2210.551 and
12 this section for the same act, ruling, or decision.

13 (c) Except as provided by Subsection (d), venue in an action
14 brought under this section, including an action under Chapter 541,
15 against the association is in the county in which the insured
16 property is located or in a district court in Travis County.

17 (d) Venue in an action, including an action under Chapter
18 541, brought under this section in which the claimant joins the
19 department as a party to the action is only in a district court in
20 Travis County. (V.T.I.C. Art. 21.49, Sec. 9A.)

21 CHAPTER 2211. FAIR PLAN

22 SUBCHAPTER A. GENERAL PROVISIONS

23 Sec. 2211.001. DEFINITIONS

24 Sec. 2211.002. IMMUNITY

25 Sec. 2211.003. APPEALS; JUDICIAL REVIEW

26 [Sections 2211.004-2211.050 reserved for expansion]

1 SUBCHAPTER B. ESTABLISHMENT AND ADMINISTRATION OF FAIR PLAN

2 Sec. 2211.051. ESTABLISHMENT OF FAIR PLAN

3 Sec. 2211.052. ADMINISTRATION OF FAIR PLAN;

4 COMPOSITION OF GOVERNING COMMITTEE

5 Sec. 2211.053. AMENDMENTS TO PLAN OF OPERATION

6 Sec. 2211.054. CONTENTS OF PLAN OF OPERATION

7 Sec. 2211.055. ASSOCIATION DUTIES WITH RESPECT TO

8 POLICIES

9 Sec. 2211.056. FILING AND APPROVAL OF RATES

10 Sec. 2211.057. POWERS OF COMMISSIONER

11 Sec. 2211.058. ANNUAL OPERATING REPORT

12 [Sections 2211.059-2211.100 reserved for expansion]

13 SUBCHAPTER C. INSURER PARTICIPATION IN FAIR PLAN

14 Sec. 2211.101. COVERAGE PROVIDED TO INSUREDS IN

15 UNDERSERVED AREA

16 Sec. 2211.102. LIABILITY OF INSURERS TO ASSOCIATION;

17 ASSESSMENTS

18 Sec. 2211.103. RECOMPUTATION OF REIMBURSEMENT RATIOS

19 Sec. 2211.104. ADDITIONAL ASSESSMENT IN EVENT OF

20 DEFICIT; PREMIUM SURCHARGE AUTHORIZED

21 Sec. 2211.105. RETENTION AND USE OF PROFITS BY

22 ASSOCIATION

23 [Sections 2211.106-2211.150 reserved for expansion]

24 SUBCHAPTER D. COVERAGE PROVIDED TO INSUREDS

25 Sec. 2211.151. MANDATORY COVERAGE PROVIDED TO CERTAIN

26 INSUREDS

27 Sec. 2211.152. DESIGNATION OF AREA AS UNDERSERVED

- 1 Sec. 2211.153. INSPECTION BUREAU
- 2 Sec. 2211.154. PROPERTY INSPECTION
- 3 Sec. 2211.155. INSPECTION RESULTS; REINSPECTION
- 4 Sec. 2211.156. CERTAIN COVERAGE EXCLUDED
- 5 [Sections 2211.157-2211.200 reserved for expansion]
- 6 SUBCHAPTER E. REVENUE BOND PROGRAM
- 7 Sec. 2211.201. PURPOSE
- 8 Sec. 2211.202. DEFINITIONS
- 9 Sec. 2211.203. APPLICABILITY OF OTHER LAWS
- 10 Sec. 2211.204. ISSUANCE OF PUBLIC SECURITIES
- 11 AUTHORIZED
- 12 Sec. 2211.205. LIMITATION ON AMOUNT OF PUBLIC
- 13 SECURITIES
- 14 Sec. 2211.206. TERMS OF ISSUANCE
- 15 Sec. 2211.207. CONTENTS OF PUBLIC SECURITY RESOLUTION;
- 16 ADMINISTRATION OF ACCOUNTS
- 17 Sec. 2211.208. SOURCE OF PAYMENT
- 18 Sec. 2211.209. SERVICE FEE
- 19 Sec. 2211.210. EXEMPTION FROM TAXATION
- 20 Sec. 2211.211. AUTHORIZED INVESTMENTS
- 21 Sec. 2211.212. STATE PLEDGE REGARDING PUBLIC SECURITY
- 22 OWNER RIGHTS AND REMEDIES
- 23 Sec. 2211.213. PAYMENT ENFORCEABLE BY MANDAMUS
- 24 [Sections 2211.214-2211.250 reserved for expansion]
- 25 SUBCHAPTER F. PENALTIES
- 26 Sec. 2211.251. SANCTIONS AND ADMINISTRATIVE PENALTIES
- 27 Sec. 2211.252. ADDITIONAL DISCIPLINARY PROCEDURES

CHAPTER 2211. FAIR PLAN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2211.001. DEFINITIONS. In this chapter:

(1) "Association" means the FAIR Plan Association established under this chapter.

(2) "FAIR Plan" means a Fair Access to Insurance Requirements Plan established under Section 2211.051.

(3) "Governing committee" means the governing committee of the association.

(4) "Inspection bureau" means the organization or organizations designated by the association under Section 2211.153.

(5) "Insurer" means an authorized insurer writing property insurance in this state, including:

(A) a Lloyd's plan; and

(B) a reciprocal or interinsurance exchange.

(6) "Net direct premiums" means gross direct written premiums less return premiums on canceled contracts, regardless of reinsurance assumed or ceded, written on residential property under this chapter.

(7) "Residential property insurance" means the coverage provided by a homeowners insurance policy, residential fire and allied lines insurance policy, or farm and ranch owners insurance policy against loss incurred to real or tangible personal property at a fixed location.

(8) "Underserved area" or "underserved areas" means an area or areas designated as underserved by the commissioner by

1 rule. (V.T.I.C. Art. 21.49A, Secs. 2(1) (part), (2), (3), (4)
2 (part), (5), (6) (part); Art. 21.49A-1, Sec. 2(1); New.)

3 Sec. 2211.002. IMMUNITY. Liability does not exist on the
4 part of, and a cause of action does not arise against, an insurer,
5 the inspection bureau, the association, the governing committee,
6 the commissioner, an authorized representative of the
7 commissioner, or an agent or employee of an insurer, the inspection
8 bureau, the association, or the governing committee for:

9 (1) an inspection required by this chapter;

10 (2) an act or omission in connection with an
11 inspection; or

12 (3) a statement made:

13 (A) in a report and communication concerning the
14 insurability of property;

15 (B) in the determinations required by this
16 subchapter or Subchapter B, C, D, or F; or

17 (C) at a hearing conducted in connection with an
18 inspection. (V.T.I.C. Art. 21.49A, Sec. 9.)

19 Sec. 2211.003. APPEALS; JUDICIAL REVIEW. (a) An applicant
20 or affected insurer is entitled to appeal to the association. The
21 association's decision may be appealed to the commissioner not
22 later than the 30th day after the date of the decision.

23 (b) An order or decision made by the commissioner under this
24 chapter is subject to judicial review in accordance with Subchapter
25 D, Chapter 36. (V.T.I.C. Art. 21.49A, Sec. 8.)

26 [Sections 2211.004-2211.050 reserved for expansion]

1 SUBCHAPTER B. ESTABLISHMENT AND ADMINISTRATION OF FAIR PLAN

2 Sec. 2211.051. ESTABLISHMENT OF FAIR PLAN. The
3 commissioner may establish a Fair Access to Insurance Requirements
4 Plan to deliver residential property insurance to residents of this
5 state in underserved areas if the commissioner determines, after a
6 public hearing, that:

7 (1) in all or any part of the state, residential
8 property insurance is not reasonably available in the voluntary
9 market to a substantial number of insurable risks; and

10 (2) at least 25 percent of the applicants to the
11 residential property market assistance program who are qualified
12 under that program's plan of operation have not been placed with an
13 insurer in the preceding six months. (V.T.I.C. Art. 21.49A, Secs.
14 1(a) (part), 2(1) (part).)

15 Sec. 2211.052. ADMINISTRATION OF FAIR PLAN; COMPOSITION OF
16 GOVERNING COMMITTEE. (a) The governing committee shall
17 administer the FAIR Plan under a plan of operation.

18 (b) The governing committee is composed of 11 members
19 appointed by the commissioner as follows:

20 (1) five members who represent the interests of
21 insurers;

22 (2) four public members; and

23 (3) two members who are general property and casualty
24 agents.

25 (c) The commissioner or an employee of the department
26 designated by the commissioner serves as an ex officio member.

27 (d) Each member of the governing committee who represents

1 the interests of insurers must be a full-time employee of an
2 insurer. (V.T.I.C. Art. 21.49A, Secs. 3(a) (part), (b), (c), (d).)

3 Sec. 2211.053. AMENDMENTS TO PLAN OF OPERATION. (a) The
4 governing committee may, on the committee's own initiative or at
5 the commissioner's request, propose amendments to the plan of
6 operation.

7 (b) Amendments to the plan must be adopted by the
8 commissioner by rule. (V.T.I.C. Art. 21.49A, Sec. 3(a) (part).)

9 Sec. 2211.054. CONTENTS OF PLAN OF OPERATION. The plan of
10 operation must:

11 (1) provide for a nonprofit association to issue
12 residential property insurance under this chapter and distribute
13 the losses and expenses in writing that insurance in this state;

14 (2) provide that all insurers that write residential
15 property insurance shall participate in the association in
16 accordance with Sections 2211.101(b) and (c);

17 (3) provide that a participating insurer is entitled
18 to receive credit in accordance with Section 2211.101(d);

19 (4) provide for the immediate binding of eligible
20 risks;

21 (5) provide for the use of premium installment payment
22 plans, adequate marketing, and service facilities;

23 (6) provide for the establishment of reasonable
24 service standards;

25 (7) provide procedures for efficient, economical,
26 fair, and nondiscriminatory administration of the association;

27 (8) provide procedures for determining the net level

1 of participation required for each insurer in the association;

2 (9) provide for the use of deductibles and other
3 underwriting devices;

4 (10) provide for assessment of all members in amounts
5 sufficient to operate the association;

6 (11) establish maximum limits of liability to be
7 placed through the program;

8 (12) establish commissions to be paid to the insurance
9 agents submitting applications;

10 (13) provide that the association issue policies in
11 the association's own name;

12 (14) provide reasonable underwriting standards for
13 determining insurability of a risk;

14 (15) provide procedures for the association to assume
15 and cede reinsurance; and

16 (16) provide any other procedure or operational matter
17 the governing committee or the commissioner considers necessary.
18 (V.T.I.C. Art. 21.49A, Secs. 2(1) (part), 3(e) (part).)

19 Sec. 2211.055. ASSOCIATION DUTIES WITH RESPECT TO
20 POLICIES. (a) The association may, for FAIR Plan purposes only:

21 (1) issue insurance policies and endorsements to those
22 policies in the association's own name or a trade name adopted for
23 that purpose; and

24 (2) act on behalf of all participating insurers in
25 connection with those policies and act in any other manner
26 necessary to accomplish the purposes of this chapter, including:

27 (A) issuing insurance policies;

1 (B) collecting premiums;
2 (C) issuing cancellations; and
3 (D) paying commissions, losses, judgments, and
4 expenses.

5 (b) In connection with an insurance policy issued by the
6 association:

7 (1) service of a notice, proof of loss, legal process,
8 or other communication with regard to the policy must be made on the
9 association; and

10 (2) an action by the insured constituting a claim
11 under the policy may be brought only against the association, and
12 the association is the proper party for all purposes in an action
13 brought under or in connection with the policy.

14 (c) The requirements of Subsection (b) must be stated in an
15 insurance policy issued by the association.

16 (d) The form and content of an insurance policy issued by
17 the association are subject to the commissioner's approval.

18 (e) The association may assume and cede reinsurance as
19 provided by the plan of operation. (V.T.I.C. Art. 21.49A, Secs.
20 5(a), (b) (part), (c).)

21 Sec. 2211.056. FILING AND APPROVAL OF RATES. (a) The
22 association shall file with the commissioner for approval the
23 proposed rates and supplemental rate information to be used in
24 connection with the issuance of insurance policies or endorsements.

25 (b) The association shall set rates in an amount sufficient
26 to:

27 (1) carry all claims to maturity; and

1 (2) meet the expenses incurred in the writing and
2 servicing of the business.

3 (c) Not later than the 60th day after the date the
4 association files the proposed rates, the commissioner shall enter
5 an order approving or disapproving, wholly or partly, the proposed
6 rates. The commissioner may, on notice to the association, extend
7 the period for entering an order under this section an additional 30
8 days.

9 (d) An order disapproving a rate must state:

10 (1) the grounds for the disapproval; and

11 (2) the findings in support of the disapproval.

12 (e) The association may not issue an insurance policy or
13 endorsement until the commissioner approves the rates to be applied
14 to the policy or endorsement. (V.T.I.C. Art. 21.49A, Sec. 7.)

15 Sec. 2211.057. POWERS OF COMMISSIONER. The commissioner
16 is charged with the authority to supervise the association and the
17 inspection bureau. The commissioner also has the power to:

18 (1) examine the operation of the association and the
19 inspection bureau through free access to all the books, records,
20 files, papers, and documents relating to the operation of the
21 association and the inspection bureau;

22 (2) summon, qualify, and examine as a witness any
23 person who has knowledge of the operation of the association or the
24 inspection bureau, including a member of the governing committee or
25 an officer or employee of the association or the inspection bureau;

26 (3) take any action necessary to enable this state and
27 the association to fully participate in any federal reinsurance

1 program that is enacted for purposes similar to the purposes of this
2 chapter;

3 (4) require reports from the association concerning
4 risks the association insures under this chapter as the
5 commissioner considers necessary; and

6 (5) adopt policy forms and endorsements, promulgate
7 rates, and adopt rating and rule manuals for use by the association.
8 (V.T.I.C. Art. 21.49A, Sec. 14.)

9 Sec. 2211.058. ANNUAL OPERATING REPORT. (a) Not later
10 than March 31 of each year, the association shall compile and submit
11 to the commissioner an operating report covering the preceding
12 calendar year.

13 (b) The report is a public record. (V.T.I.C. Art. 21.49A,
14 Sec. 13.)

15 [Sections 2211.059-2211.100 reserved for expansion]

16 SUBCHAPTER C. INSURER PARTICIPATION IN FAIR PLAN

17 Sec. 2211.101. COVERAGE PROVIDED TO INSUREDS IN UNDERSERVED
18 AREA. (a) In accordance with the plan of operation, the
19 association shall develop and administer a program for
20 participation by each insurer that writes residential property
21 insurance in this state.

22 (b) Each insurer, as a condition of the insurer's authority
23 to engage in the business of residential property insurance in this
24 state, shall participate in the association in accordance with this
25 chapter, including participating in the association's writings,
26 expenses, and losses in the proportion that the insurer's net
27 direct premiums written in this state during the preceding calendar

1 year bear to the aggregate net direct premiums written in this state
2 by all participating insurers.

3 (c) An insurer's participation under Subsection (b) in the
4 association's writings, expenses, and losses must be determined in
5 accordance with the residential property statistical plan adopted
6 by the commissioner.

7 (d) A participating insurer is entitled to receive credit
8 for similar insurance voluntarily written in an underserved area.
9 The participation of an insurer entitled to receive credit under
10 this subsection must be reduced in accordance with the plan of
11 operation. (V.T.I.C. Art. 21.49A, Secs. 1(b), 3(e) (part), 4
12 (part), 5(d).)

13 Sec. 2211.102. LIABILITY OF INSURERS TO ASSOCIATION;
14 ASSESSMENTS. The participating insurers are liable to the
15 association as provided by this chapter and the plan of operation
16 for the expenses and liabilities incurred by the association as
17 provided by this chapter and the plan. The association shall make
18 assessments against the participating insurers as required to meet
19 those expenses and liabilities. (V.T.I.C. Art. 21.49A, Sec. 5(b)
20 (part).)

21 Sec. 2211.103. RECOMPUTATION OF REIMBURSEMENT RATIOS. If
22 a participating insurer fails to pay an assessment because of the
23 insurer's insolvency, the association shall immediately recompute
24 the reimbursement ratios to exclude from the ratios the amount of
25 that assessment the commissioner determines is uncollectible, so
26 that the uncollectible amount is assumed by and redistributed among
27 the remaining participating insurers. (V.T.I.C. Art. 21.49A, Sec.

1 10.)

2 Sec. 2211.104. ADDITIONAL ASSESSMENT IN EVENT OF DEFICIT;
3 PREMIUM SURCHARGE AUTHORIZED. (a) If the association incurs a
4 deficit, the association, at the commissioner's direction, shall:

5 (1) request the issuance of public securities as
6 authorized by Subchapter E; or

7 (2) assess participating insurers in accordance with
8 this section.

9 (b) If the association assesses participating insurers
10 under this section, each insurer may charge a premium surcharge on
11 every property insurance policy insuring property in this state
12 that the insurer issues, the effective date of which is within the
13 three-year period beginning on the 90th day after the date of the
14 assessment.

15 (c) The insurer shall compute the amount of the surcharge
16 under Subsection (b) as a uniform percentage of the premium on each
17 policy described by Subsection (b). The percentage must be equal to
18 one-third of the ratio of the amount of the participating insurer's
19 assessment to the amount of the insurer's direct earned premiums,
20 as reported to the department in the insurer's financial statement
21 for the calendar year preceding the year in which the assessment is
22 made so that, over the three-year period, the aggregate of all
23 surcharges by the insurer under this section equals the amount of
24 the assessment.

25 (d) The minimum surcharge on a policy may be \$1. A surcharge
26 may be rounded to the nearest dollar. (V.T.I.C. Art. 21.49A, Sec.
27 11.)

1 Sec. 2211.105. RETENTION AND USE OF PROFITS BY
2 ASSOCIATION. (a) The association shall retain any profits of the
3 association to be used for the purposes of the association.

4 (b) The association:

5 (1) shall use the profits to mitigate losses,
6 including purchasing reinsurance and offsetting future
7 assessments; and

8 (2) may not distribute the profits to insurers.
9 (V.T.I.C. Art. 21.49A, Sec. 15.)

10 [Sections 2211.106-2211.150 reserved for expansion]

11 SUBCHAPTER D. COVERAGE PROVIDED TO INSUREDS

12 Sec. 2211.151. MANDATORY COVERAGE PROVIDED TO CERTAIN
13 INSUREDS. The association shall make residential property
14 insurance available to each applicant in an underserved area whose
15 property is insurable in accordance with reasonable underwriting
16 standards but who, after diligent efforts, is unable to obtain
17 residential property insurance through the voluntary market, as
18 evidenced by two declinations from insurers authorized to engage in
19 the business of, and writing, residential property insurance in
20 this state. (V.T.I.C. Art. 21.49A, Sec. 4 (part).)

21 Sec. 2211.152. DESIGNATION OF AREA AS UNDERSERVED. The
22 commissioner by rule shall designate the areas determined to be
23 underserved. In determining which areas to designate as
24 underserved, the commissioner shall consider the factors specified
25 in Section 2004.002. (V.T.I.C. Art. 21.49A, Secs. 1(a) (part),
26 2(6) (part).)

27 Sec. 2211.153. INSPECTION BUREAU. The association, with

1 the approval of the commissioner, shall designate one or more
2 organizations as the inspection bureau. The inspection bureau
3 shall:

4 (1) make inspections to determine the condition of a
5 property for which residential property insurance is sought; and

6 (2) perform other duties authorized by the association
7 or the commissioner. (V.T.I.C. Art. 21.49A, Sec. 2(4) (part).)

8 Sec. 2211.154. PROPERTY INSPECTION. (a) A person who has
9 an insurable interest in real or tangible personal property at a
10 fixed location in an underserved area and who, after diligent
11 effort, is unable to obtain residential property insurance, as
12 evidenced by two current declinations from insurers authorized to
13 engage in the business of residential property insurance in this
14 state and actually writing residential property insurance in this
15 state, is entitled on application to the association to an
16 inspection and evaluation of the property by representatives of the
17 inspection bureau.

18 (b) A general property and casualty agent may make an
19 application on behalf of the applicant. The applicant or agent must
20 submit the application on a form prescribed by the association.

21 (c) Promptly after the application is received, the
22 inspection bureau shall make an inspection and file an inspection
23 report with the association. The inspection report must be made
24 available to the applicant on request. The association shall
25 prescribe the manner and scope of the inspection and inspection
26 report for residential property in accordance with the plan of
27 operation. (V.T.I.C. Art. 21.49A, Secs. 2(4) (part), 6(a), (b),

1 (c).)

2 Sec. 2211.155. INSPECTION RESULTS; REINSPECTION. (a) If,
3 after an inspection, the inspection bureau determines that
4 residential property meets the underwriting standards established
5 in the plan of operation, the applicant must be informed in writing
6 of that determination and the association shall issue a policy or
7 binder. If the residential property does not meet the underwriting
8 standards, the applicant must be informed in writing of the reason
9 for the failure of the residential property to meet the standards.

10 (b) If, at any time, an applicant whose residential property
11 did not meet the underwriting standards makes improvements to the
12 property or the property's condition that the applicant believes
13 are sufficient to make the property meet the standards, an
14 inspection bureau representative shall reinspect the property on
15 request. In any case, the applicant is eligible for one
16 reinspection on or before the 60th day after the date of the initial
17 inspection.

18 (c) If, on reinspection, the residential property meets the
19 underwriting standards, the applicant must be informed in writing
20 of that fact and the association shall issue a policy or binder.
21 (V.T.I.C. Art. 21.49A, Secs. 6(d), (e).)

22 Sec. 2211.156. CERTAIN COVERAGE EXCLUDED. The FAIR Plan
23 may not provide windstorm and hail insurance coverage for a risk
24 eligible for that coverage under Chapter 2210. (V.T.I.C. Art.
25 21.49A, Sec. 1(c).)

26 [Sections 2211.157-2211.200 reserved for expansion]

1 SUBCHAPTER E. REVENUE BOND PROGRAM

2 Sec. 2211.201. PURPOSE. The legislature finds that
3 issuing public securities to provide a method to raise funds to
4 provide residential property insurance in this state through the
5 association is to benefit the public and to further a public
6 purpose. (V.T.I.C. Art. 21.49A-1, Sec. 1.)

7 Sec. 2211.202. DEFINITIONS. In this subchapter:

8 (1) "Board" means the board of directors of the Texas
9 Public Finance Authority.

10 (2) "Bond" means a debt instrument or other public
11 security issued by the Texas Public Finance Authority.

12 (3) "Public security resolution" means the resolution
13 or order authorizing public securities to be issued under this
14 subchapter. (V.T.I.C. Art. 21.49A-1, Secs. 2(2), (3), (4).)

15 Sec. 2211.203. APPLICABILITY OF OTHER LAWS. The following
16 laws apply to public securities issued under this subchapter to the
17 extent consistent with this subchapter:

18 (1) Chapters 1201, 1202, 1204, 1205, 1231, 1232, and
19 1371, Government Code; and

20 (2) Subchapter A, Chapter 1206, Government Code.
21 (V.T.I.C. Art. 21.49A-1, Secs. 3(b), 4.)

22 Sec. 2211.204. ISSUANCE OF PUBLIC SECURITIES
23 AUTHORIZED. At the request of the association and subject to
24 Section 2211.205, the Texas Public Finance Authority shall issue
25 public securities to:

26 (1) fund the association, including to:

27 (A) establish and maintain reserves to pay

1 claims;

2 (B) pay operating expenses; and

3 (C) purchase reinsurance;

4 (2) pay costs related to issuing the public
5 securities; and

6 (3) pay other costs related to the public securities
7 as determined by the board. (V.T.I.C. Art. 21.49A-1, Sec. 3(a).)

8 Sec. 2211.205. LIMITATION ON AMOUNT OF PUBLIC
9 SECURITIES. The Texas Public Finance Authority may issue on behalf
10 of the association public securities in a total amount not to exceed
11 \$75 million. (V.T.I.C. Art. 21.49A-1, Sec. 5.)

12 Sec. 2211.206. TERMS OF ISSUANCE. (a) Public securities
13 issued under this subchapter may be issued at a public or private
14 sale.

15 (b) Public securities must:

16 (1) be issued in the name of the association; and

17 (2) mature not more than 10 years after the date
18 issued. (V.T.I.C. Art. 21.49A-1, Sec. 6.)

19 Sec. 2211.207. CONTENTS OF PUBLIC SECURITY RESOLUTION;
20 ADMINISTRATION OF ACCOUNTS. (a) In a public security resolution,
21 the board may:

22 (1) provide for the flow of funds and the
23 establishment, maintenance, and investment of funds and special
24 accounts with regard to the public securities, including an
25 interest and sinking fund account, a reserve account, and other
26 accounts; and

27 (2) make additional covenants with regard to the

1 public securities and the designated income and receipts of the
2 association pledged to the payment of the public securities.

3 (b) The association shall administer the accounts in
4 accordance with this chapter. (V.T.I.C. Art. 21.49A-1, Secs. 7,
5 8.)

6 Sec. 2211.208. SOURCE OF PAYMENT. (a) Public securities
7 issued under this subchapter are payable only from:

8 (1) the service fee established under Section
9 2211.209; or

10 (2) other amounts the association is authorized to
11 levy, charge, and collect.

12 (b) The public securities are obligations solely of the
13 association and do not create a pledge, gift, or loan of the faith,
14 credit, or taxing authority of this state.

15 (c) Each public security must:

16 (1) include a statement that the state is not
17 obligated to pay any amount on the security and that the faith,
18 credit, and taxing authority of this state are not pledged, given,
19 or loaned to those payments; and

20 (2) state on the security's face that the security:

21 (A) is payable solely from the revenue pledged
22 for that purpose; and

23 (B) is not a legal or moral obligation of the
24 state. (V.T.I.C. Art. 21.49A-1, Sec. 9.)

25 Sec. 2211.209. SERVICE FEE. (a) A service fee may be
26 assessed against:

27 (1) each participating insurer; and

1 (2) the association.

2 (b) The commissioner shall set the service fee in an amount
3 sufficient to pay all debt service on the public securities issued
4 under this subchapter. Each participating insurer and the
5 association shall pay the service fee as required by the
6 commissioner by rule.

7 (c) The comptroller shall collect the service fee and the
8 department shall reimburse the comptroller in the manner described
9 by Section 201.052.

10 (d) The commissioner, in consultation with the comptroller,
11 may coordinate payment and collection of the service fee with other
12 payments made by participating insurers and collected by the
13 comptroller.

14 (e) As a condition of engaging in the business of insurance
15 in this state, a participating insurer agrees that, if the insurer
16 leaves the property insurance market in this state, the insurer
17 remains obligated to pay the insurer's share of the service fee
18 assessed under this section until the public securities are
19 retired. The amount assessed against an insurer under this
20 subsection must be:

21 (1) proportionate to the insurer's share of the
22 property insurance market, including residential property
23 insurance, in this state as of the last complete reporting period
24 before the date the insurer ceases to engage in the property
25 insurance business in this state; and

26 (2) based on the insurer's gross premiums for property
27 insurance, including residential property insurance, for the

1 insurer's last reporting period. (V.T.I.C. Art. 21.49A-1, Sec.
2 10.)

3 Sec. 2211.210. EXEMPTION FROM TAXATION. Public securities
4 issued under this subchapter, any interest from the public
5 securities, and all assets pledged to secure the payment of the
6 public securities are exempt from taxation by the state or a
7 political subdivision of this state. (V.T.I.C. Art. 21.49A-1, Sec.
8 11.)

9 Sec. 2211.211. AUTHORIZED INVESTMENTS. Public securities
10 issued under this subchapter are authorized investments under
11 Subchapter B, Chapter 424, and Subchapters C and D, Chapter 425.
12 (V.T.I.C. Art. 21.49A-1, Sec. 12.)

13 Sec. 2211.212. STATE PLEDGE REGARDING PUBLIC SECURITY OWNER
14 RIGHTS AND REMEDIES. (a) The state pledges to and agrees with the
15 owners of public securities issued in accordance with this
16 subchapter that the state will not limit or alter the rights vested
17 in the association to fulfill the terms of agreements made with the
18 owners or impair the rights and remedies of the owners until the
19 following obligations are fully discharged:

- 20 (1) the public securities;
21 (2) any bond premium;
22 (3) interest; and
23 (4) all costs and expenses related to an action or
24 proceeding by or on behalf of the owners.

25 (b) The association may include the state's pledge and
26 agreement under Subsection (a) in an agreement with the owners of
27 the public securities. (V.T.I.C. Art. 21.49A-1, Sec. 13.)

1 Sec. 2212.002. TRUST NOT ENGAGED IN BUSINESS OF
2 INSURANCE

3 [Sections 2212.003-2212.050 reserved for expansion]

4 SUBCHAPTER B. CREATION AND OPERATION OF TRUST

5 Sec. 2212.051. CREATION OF TRUST

6 Sec. 2212.052. MINIMUM REQUIREMENTS

7 Sec. 2212.053. FILING REQUIREMENTS

8 Sec. 2212.054. POWERS OF TRUST

9 Sec. 2212.055. GUARANTEE OF CERTAIN LIABILITIES

10 Sec. 2212.056. ADMINISTRATIVE SANCTIONS

11 [Sections 2212.057-2212.100 reserved for expansion]

12 SUBCHAPTER C. INSURANCE CONTRACTS ISSUED BY TRUST

13 Sec. 2212.101. COVERAGE UNDER CONTRACT

14 CHAPTER 2212. SELF-INSURANCE TRUSTS FOR HEALTH CARE

15 LIABILITY CLAIMS

16 SUBCHAPTER A. GENERAL PROVISIONS

17 Sec. 2212.001. DEFINITIONS. In this chapter:

18 (1) "Dentist" means a person licensed to practice
19 dentistry in this state.

20 (2) "Health care liability claim" means a cause of
21 action against a physician or dentist for treatment, lack of
22 treatment, or other claimed departure from accepted standards of
23 health care or safety that proximately results in injury to or death
24 of the patient, whether the patient's claim or cause of action
25 sounds in tort or contract.

26 (3) "Physician" means a person licensed to practice
27 medicine in this state.

1 (4) "Trust" means a self-insurance trust organized and
2 operated under this chapter. (V.T.I.C. Art. 21.49-4, Sec. (a);
3 New.)

4 Sec. 2212.002. TRUST NOT ENGAGED IN BUSINESS OF INSURANCE.
5 A trust is not engaged in the business of insurance under this code
6 and other laws of this state, and this code, other than this
7 chapter, does not apply to the trust, except as provided by Section
8 2212.052. (V.T.I.C. Art. 21.49-4, Sec. (e) (part).)

9 [Sections 2212.003-2212.050 reserved for expansion]

10 SUBCHAPTER B. CREATION AND OPERATION OF TRUST

11 Sec. 2212.051. CREATION OF TRUST. (a) Subject to
12 Subsection (b), an incorporated association, a purpose of which is
13 to unite in one compact organization the entire profession licensed
14 to practice medicine or dentistry in this state, or a portion of the
15 members of the profession licensed to practice medicine who are
16 practicing a particular specialty within the practice of medicine
17 in the state or are practicing within a particular region of the
18 state, may create a trust to self-insure physicians or dentists and
19 agree, by contract or otherwise, to insure other members of the
20 organization or association against health care liability claims
21 and related risks.

22 (b) The organization or association must:

23 (1) have been in continuing existence for at least two
24 years;

25 (2) have established a health care liability claim
26 trust or other agreement to provide coverage against health care
27 liability claims and related risks; and

1 (3) employ appropriate professional staff and
2 consultants for program management. (V.T.I.C. Art. 21.49-4, Sec.
3 (b).)

4 Sec. 2212.052. MINIMUM REQUIREMENTS. (a) The department
5 may require a trust to satisfy reasonable minimum requirements that
6 ensure the trust is able to satisfy the trust's contractual
7 obligations.

8 (b) On request, a trust shall provide books, records, and
9 documents required by the department to fulfill the requirements of
10 this section relating to the trust's solvency. (V.T.I.C.
11 Art. 21.49-4, Secs. (e) (part), (f).)

12 Sec. 2212.053. FILING REQUIREMENTS. (a) A trust shall file
13 with the department:

14 (1) all rates and forms, for informational purposes
15 only;

16 (2) all liability claims reports required under
17 Subchapter D, Chapter 38; and

18 (3) the trust's independently audited annual financial
19 statement.

20 (b) An audited annual financial statement filed under this
21 section may not be considered an examination document. (V.T.I.C.
22 Art. 21.49-4, Secs. (g), (h), (j).)

23 Sec. 2212.054. POWERS OF TRUST. (a) A trust may:

24 (1) purchase, on behalf of the members of the
25 association that created the trust, medical professional liability
26 insurance, specific excess insurance, aggregate excess insurance,
27 and reinsurance, as necessary in the opinion of the trustees;

1 (2) purchase required risk management services; and
2 (3) pay claims that arise under any deductible
3 provisions.

4 (b) A trust's investment powers and limitations are the same
5 as the investment powers and limitations of a state bank with trust
6 powers. (V.T.I.C. Art. 21.49-4, Secs. (c), (d) (part).)

7 Sec. 2212.055. GUARANTEE OF CERTAIN LIABILITIES. The
8 trust shall adopt rules to guarantee all contingent liabilities in
9 the event of dissolution. (V.T.I.C. Art. 21.49-4, Sec. (d)
10 (part).)

11 Sec. 2212.056. ADMINISTRATIVE SANCTIONS. If a trust is
12 found to have violated this code or a rule adopted by the
13 commissioner that is declared applicable to the trust, the
14 commissioner may order sanctions under Chapter 82 for the
15 violation. (V.T.I.C. Art. 21.49-4, Sec. (i).)

16 [Sections 2212.057-2212.100 reserved for expansion]

17 SUBCHAPTER C. INSURANCE CONTRACTS ISSUED BY TRUST

18 Sec. 2212.101. COVERAGE UNDER CONTRACT. A contract of
19 professional liability insurance issued by a trust may include
20 coverage of:

21 (1) a professional association or partnership of
22 physicians, with respect to health care liability claims and
23 related risks if a majority of the persons having a proprietary
24 interest in the association or partnership are members of the
25 association that created the trust;

26 (2) proprietary members, associates, stockholders,
27 and executive officers and directors of an association or

1 partnership described by Subdivision (1), with respect to potential
2 vicarious liability for acts or omissions of others giving rise to
3 health care liability claims and related risks;

4 (3) an insured physician and, as applicable, an
5 insured professional association or partnership, including
6 proprietary members, associates, stockholders, and executive
7 officers and directors of the association or partnership, with
8 respect to liability of an insured arising out of:

9 (A) injury to a patient related to ownership,
10 maintenance, or use of premises for the practice of medicine,
11 including necessary or incidental operations;

12 (B) service by an insured physician as a member
13 of a committee, board, or similar group of a hospital medical staff
14 or of a professional association or society with respect to medical
15 staff privileges, accreditation, or disciplinary matters relating
16 to competency or patient safety and risk reduction programs; or

17 (C) a health care liability claim or related risk
18 based in whole or part on an act or omission occurring before the
19 date a contract of professional insurance is issued by the trust; or

20 (4) an applicant for membership in the association
21 that created the trust, pending final action on the application,
22 with respect to health care liability claims and related risks,
23 including coverage described by Subdivision (1), (2), or (3), as
24 applicable. (V.T.I.C. Art. 21.49-4a.)

1 CHAPTER 2213. SELF-INSURANCE TRUSTS FOR BANKS AND SAVINGS AND LOAN
2 ASSOCIATIONS

3 SUBCHAPTER A. GENERAL PROVISIONS

4 Sec. 2213.001. DEFINITIONS

5 Sec. 2213.002. SELF-INSURANCE TRUST NOT ENGAGED IN
6 BUSINESS OF INSURANCE

7 Sec. 2213.003. RULES

8 [Sections 2213.004-2213.050 reserved for expansion]

9 SUBCHAPTER B. CREATION AND OPERATION OF SELF-INSURANCE TRUST

10 Sec. 2213.051. CREATION OF BANK SELF-INSURANCE TRUST;
11 COVERAGE

12 Sec. 2213.052. CREATION OF SAVINGS AND LOAN
13 SELF-INSURANCE TRUST; COVERAGE

14 Sec. 2213.053. PLAN OF ORGANIZATION AND OPERATION;
15 TRUSTEES

16 Sec. 2213.054. MINIMUM REQUIREMENTS; COMMISSIONER
17 SUPERVISION

18 Sec. 2213.055. CREATION OF TRUST FUND

19 Sec. 2213.056. PERSONNEL; PAYMENT OF EXPENSES

20 [Sections 2213.057-2213.100 reserved for expansion]

21 SUBCHAPTER C. PARTICIPATION IN SELF-INSURANCE TRUST

22 Sec. 2213.101. PARTICIPATION

23 CHAPTER 2213. SELF-INSURANCE TRUSTS FOR BANKS AND SAVINGS AND LOAN
24 ASSOCIATIONS

25 SUBCHAPTER A. GENERAL PROVISIONS

26 Sec. 2213.001. DEFINITIONS. In this chapter:

27 (1) "Bank" means a bank chartered under federal or

1 state law.

2 (2) "Plan" means a self-insurance trust's plan of
3 organization and operation.

4 (3) "Savings and loan association" means a savings and
5 loan association chartered under federal or state law.

6 (4) "Self-insurance trust" means a self-insurance
7 trust organized and operated under this chapter.

8 (5) "Trustees" means the trustees of a self-insurance
9 trust. (V.T.I.C. Art. 21.49-6, Secs. 1(1), (3); Art. 21.49-7,
10 Secs. 1(1) (part), (3); New.)

11 Sec. 2213.002. SELF-INSURANCE TRUST NOT ENGAGED IN BUSINESS
12 OF INSURANCE. (a) A self-insurance trust is not engaged in the
13 business of insurance under this code or other laws of this state.

14 (b) Other than this chapter, the provisions of this code,
15 including the Texas Property and Casualty Insurance Guaranty Act,
16 Chapter 462, do not apply to a self-insurance trust. (V.T.I.C.
17 Art. 21.49-6, Sec. 11; Art. 21.49-7, Sec. 11.)

18 Sec. 2213.003. RULES. The commissioner may adopt:

19 (1) necessary rules to carry out the provisions of
20 this chapter relating to bank self-insurance trusts; and

21 (2) reasonable rules necessary to carry out the
22 provisions of this chapter relating to savings and loan
23 self-insurance trusts. (V.T.I.C. Art. 21.49-6, Sec. 10; Art.
24 21.49-7, Sec. 10.)

25 [Sections 2213.004-2213.050 reserved for expansion]

26 SUBCHAPTER B. CREATION AND OPERATION OF SELF-INSURANCE TRUST

27 Sec. 2213.051. CREATION OF BANK SELF-INSURANCE TRUST;

1 COVERAGE. (a) A group or association of banks or bankers, composed
2 of any number of members, may create a bank self-insurance trust to
3 self-insure banks that are members of the group or association, or
4 that have any officers who are members of the group or association,
5 against losses described by this section.

6 (b) The bank self-insurance trust may self-insure a bank
7 described by Subsection (a) against losses resulting from:

8 (1) dishonest acts and criminal acts of employees;

9 (2) a robbery or other act commonly included within a
10 bank's bond coverage; and

11 (3) indemnification for a wrongful act committed by a
12 director, officer, or employee of a member of the group or
13 association, subject to the limitations under Chapter 8, Business
14 Organizations Code.

15 (c) The trustees shall determine, according to the plan, the
16 amount of coverage to be provided to a bank participating in the
17 bank self-insurance trust.

18 (d) Notwithstanding Subsection (b), on or before December
19 31, 2009, the bank self-insurance trust may self-insure a bank
20 described by Subsection (a) against losses resulting from:

21 (1) dishonest acts and criminal acts of employees;

22 (2) a robbery or other act commonly included within a
23 bank's bond coverage; and

24 (3) indemnification for a wrongful act committed by a
25 director, officer, or employee of a member of the group or
26 association, subject to the limitations under Article 2.02-1, Texas
27 Business Corporation Act, or Chapter 8, Business Organizations

1 Code, as applicable.

2 (e) This subsection and Subsection (d) expire January 1,
3 2010. (V.T.I.C. Art. 21.49-6, Secs. 2, 7 (part).)

4 Sec. 2213.052. CREATION OF SAVINGS AND LOAN SELF-INSURANCE
5 TRUST; COVERAGE. (a) Two or more savings and loan associations
6 that have their principal offices located in this state may create a
7 savings and loan self-insurance trust to provide insurance and
8 indemnity coverage for the savings and loan self-insurance trust's
9 members and the officers and directors of the savings and loan
10 self-insurance trust's members.

11 (b) Insurance and indemnity coverage provided by the
12 savings and loan self-insurance trust is limited to savings and
13 loan blanket bonds covering losses resulting from:

- 14 (1) dishonest acts and criminal acts of employees; or
15 (2) robbery.

16 (c) The trustees shall determine, according to the plan, the
17 amount of coverage to be provided to a savings and loan association
18 participating in the savings and loan self-insurance trust.
19 (V.T.I.C. Art. 21.49-7, Secs. 1(1) (part), 2, 7 (part).)

20 Sec. 2213.053. PLAN OF ORGANIZATION AND OPERATION;
21 TRUSTEES. (a) Before organizing and operating a self-insurance
22 trust, the group or association of banks or bankers or the savings
23 and loan associations, as applicable, proposing to organize the
24 self-insurance trust shall:

25 (1) select trustees to administer the self-insurance
26 trust; and

27 (2) prepare a detailed plan of organization and

1 operation in the form and manner prescribed by the commissioner.

2 (b) The group or association of banks or bankers or the
3 savings and loan associations shall submit the proposed plan to the
4 commissioner for examination, suggested changes, and final
5 approval.

6 (c) The commissioner shall approve the proposed plan only if
7 the commissioner is satisfied that the self-insurance trust is able
8 and will continue to be able to pay valid claims made to the
9 self-insurance trust.

10 (d) After final approval, the plan may be amended with the
11 commissioner's approval. (V.T.I.C. Art. 21.49-6, Secs. 3, 4;
12 Art. 21.49-7, Secs. 3, 4.)

13 Sec. 2213.054. MINIMUM REQUIREMENTS; COMMISSIONER
14 SUPERVISION. (a) After approval of a self-insurance trust's
15 plan, the self-insurance trust is subject to continuing supervision
16 by the commissioner relating to:

- 17 (1) the solvency of the self-insurance trust; and
18 (2) the approval of the self-insurance trust's policy
19 forms.

20 (b) The commissioner may set minimum requirements to ensure
21 that a self-insurance trust is able to satisfy the self-insurance
22 trust's contractual obligations. (V.T.I.C. Art. 21.49-6, Sec. 9;
23 Art. 21.49-7, Sec. 9.)

24 Sec. 2213.055. CREATION OF TRUST FUND. (a) The trustees
25 shall create a trust fund to pay claims made under the coverage
26 provided by the self-insurance trust under Section 2213.051 or
27 2213.052, as applicable.

1 (b) The trustees shall administer and control the trust fund
2 and shall pay claims from and invest the money of the trust fund as
3 provided by the plan. (V.T.I.C. Art. 21.49-6, Sec. 5;
4 Art. 21.49-7, Sec. 5.)

5 Sec. 2213.056. PERSONNEL; PAYMENT OF EXPENSES. (a) The
6 trustees shall employ appropriate professional employees and
7 consultants for management of the self-insurance trust program.

8 (b) The trustees shall pay the salaries of professional
9 employees and consultants and other costs of administering the
10 self-insurance trust program from the trust fund.

11 (c) The total amount paid for salaries and administration
12 may not exceed an amount set by the commissioner. The amount set by
13 the commissioner may not exceed 35 percent of the total amount of
14 money in the trust fund in any year. (V.T.I.C. Art. 21.49-6, Sec.
15 8; Art. 21.49-7, Sec. 8.)

16 [Sections 2213.057-2213.100 reserved for expansion]

17 SUBCHAPTER C. PARTICIPATION IN SELF-INSURANCE TRUST

18 Sec. 2213.101. PARTICIPATION. A bank that is a member, or
19 that has an officer who is a member, of a group or association of
20 banks or bankers organizing a bank self-insurance trust or of
21 savings and loan associations organizing a savings and loan
22 self-insurance trust may participate in the applicable
23 self-insurance trust by:

24 (1) entering into a contract or agreement with the
25 trustees for coverage that the self-insurance trust may provide
26 under Section 2213.051 or 2213.052, as applicable; and

27 (2) paying the required contribution to the trust fund

1 in the amount determined by the trustees in accordance with the
2 plan. (V.T.I.C. Art. 21.49-6, Secs. 6, 7 (part); Art. 21.49-7,
3 Secs. 6, 7 (part).)

4 [Chapters 2214-2250 reserved for expansion]

5 SUBTITLE H. RATEMAKING IN GENERAL

6 CHAPTER 2251. RATES

7 SUBCHAPTER A. GENERAL PROVISIONS FOR RATES

8 Sec. 2251.001. PURPOSE

9 Sec. 2251.002. DEFINITIONS

10 Sec. 2251.003. APPLICABILITY OF CERTAIN SUBCHAPTERS

11 Sec. 2251.004. REGULATION OF INLAND MARINE RATES

12 Sec. 2251.005. NOTICE OF RATE INCREASE FOR RESIDENTIAL
13 PROPERTY INSURANCE POLICIES

14 Sec. 2251.006. CONSIDERATION OF CERTAIN OTHER LAW

15 Sec. 2251.007. ADMINISTRATIVE PROCEDURE ACT APPLICABLE

16 Sec. 2251.008. QUARTERLY REPORT OF INSURER;
17 LEGISLATIVE REPORT

18 [Sections 2251.009-2251.050 reserved for expansion]

19 SUBCHAPTER B. RATE STANDARDS

20 Sec. 2251.051. EXCESSIVE, INADEQUATE, AND UNFAIRLY
21 DISCRIMINATORY RATES

22 Sec. 2251.052. RATE STANDARDS

23 [Sections 2251.053-2251.100 reserved for expansion]

24 SUBCHAPTER C. RATE FILINGS

25 Sec. 2251.101. RATE FILINGS AND SUPPORTING INFORMATION

26 Sec. 2251.102. FILING REQUIREMENTS FOR INSURERS WITH
27 LESS THAN FIVE PERCENT OF MARKET

1 Sec. 2251.103. DISAPPROVAL OF RATE IN RATE FILING;
2 HEARING

3 Sec. 2251.104. DISAPPROVAL OF RATE IN EFFECT; HEARING

4 Sec. 2251.105. GRIEVANCE

5 Sec. 2251.106. ROLE OF PUBLIC INSURANCE COUNSEL

6 Sec. 2251.107. PUBLIC INSPECTION OF INFORMATION

7 [Sections 2251.108-2251.150 reserved for expansion]

8 SUBCHAPTER D. PRIOR APPROVAL OF RATES UNDER
9 CERTAIN CIRCUMSTANCES

10 Sec. 2251.151. REQUIREMENT TO FILE RATES FOR PRIOR
11 APPROVAL UNDER CERTAIN CIRCUMSTANCES

12 Sec. 2251.152. RATE APPROVAL REQUIRED; EXCEPTION

13 Sec. 2251.153. COMMISSIONER ACTION

14 Sec. 2251.154. ADDITIONAL INFORMATION

15 Sec. 2251.155. RATE FILING APPROVAL BY COMMISSIONER;
16 USE OF RATE

17 Sec. 2251.156. RATE FILING DISAPPROVAL BY
18 COMMISSIONER; HEARING

19 [Sections 2251.157-2251.200 reserved for expansion]

20 SUBCHAPTER E. STANDARD RATE INDEX FOR PERSONAL AUTOMOBILE
21 INSURANCE

22 Sec. 2251.201. APPLICABILITY OF SUBCHAPTER

23 Sec. 2251.202. STATEWIDE STANDARD RATE INDEX FOR
24 PERSONAL AUTOMOBILE INSURANCE

25 Sec. 2251.203. ESTABLISHMENT OF OTHER STANDARD RATE
26 INDEXES

1 Sec. 2251.204. APPLICATION TO CERTAIN COUNTY MUTUAL
2 INSURANCE COMPANIES

3 [Sections 2251.205-2251.250 reserved for expansion]

4 SUBCHAPTER F. EXEMPTIONS FOR CERTAIN INSURERS FROM RATE FILING AND
5 APPROVAL REQUIREMENTS

6 Sec. 2251.251. APPLICABILITY OF SUBCHAPTER

7 Sec. 2251.252. EXEMPTION FROM CERTAIN OTHER LAW

8 CHAPTER 2251. RATES

9 SUBCHAPTER A. GENERAL PROVISIONS FOR RATES

10 Sec. 2251.001. PURPOSE. The purposes of this subchapter
11 and Subchapters B, C, D, and E are to:

12 (1) promote the public welfare by regulating insurance
13 rates to prohibit excessive, inadequate, or unfairly
14 discriminatory rates;

15 (2) promote the availability of insurance;

16 (3) promote price competition among insurers to
17 provide rates and premiums that are responsive to competitive
18 market conditions;

19 (4) prohibit price-fixing agreements and other
20 anticompetitive behavior by insurers; and

21 (5) provide regulatory procedures for the maintenance
22 of appropriate information reporting systems. (V.T.I.C. Art.
23 5.13-2, Sec. 1 (part).)

24 Sec. 2251.002. DEFINITIONS. In this chapter:

25 (1) "Disallowed expenses" includes:

26 (A) administrative expenses, other than
27 acquisition, loss control, and safety engineering expenses, that

1 exceed 110 percent of the industry median for those expenses;

2 (B) lobbying expenses;

3 (C) advertising expenses, other than for
4 advertising:

5 (i) directly related to the services or
6 products provided by the insurer; or

7 (ii) designed and directed at loss
8 prevention;

9 (D) amounts paid by an insurer:

10 (i) as damages in an action brought against
11 the insurer for bad faith, fraud, or any matters other than payment
12 under the insurance contract; or

13 (ii) as fees, fines, penalties, or
14 exemplary damages for a civil or criminal violation of law;

15 (E) contributions to:

16 (i) social, religious, political, or
17 fraternal organizations; or

18 (ii) organizations engaged in legislative
19 advocacy;

20 (F) except as authorized by commissioner rule,
21 fees and assessments paid to advisory organizations;

22 (G) any amount determined by the commissioner to
23 be excess premiums charged by the insurer; and

24 (H) any unreasonably incurred expenses, as
25 determined by the commissioner after notice and hearing.

26 (2) "Filer" means an insurer that files rates,
27 prospective loss costs, or supplementary rating information under

1 this chapter.

2 (3) "Prospective loss cost" means that portion of a
3 rate that:

4 (A) does not include a provision for expenses or
5 profit, other than loss adjustment expenses; and

6 (B) is based on historical aggregate losses and
7 loss adjustment expenses projected by development to the ultimate
8 value of those losses and expenses and projected through trending
9 to a future point in time.

10 (4) "Rate" means the cost of insurance per exposure
11 unit, whether expressed as a single number or as a prospective loss
12 cost, adjusted to account for the treatment of expenses, profit,
13 and individual insurer variation in loss experience, before
14 applying individual risk variations based on loss or expense
15 considerations.

16 (5) "Rating manual" means a publication or schedule
17 that lists rules, classifications, territory codes and
18 descriptions, rates, premiums, and other similar information used
19 by an insurer to determine the applicable premium charged an
20 insured.

21 (6) "Residential property insurance" means insurance
22 coverage against loss to real or tangible personal property at a
23 fixed location that is provided through a homeowners insurance
24 policy, including a tenants insurance policy, a condominium owners
25 insurance policy, or a residential fire and allied lines insurance
26 policy.

27 (7) "Supplementary rating information" means any

1 manual, rating schedule, plan of rules, rating rules,
2 classification systems, territory codes and descriptions, rating
3 plans, and other similar information used by the insurer to
4 determine the applicable premium for an insured. The term includes
5 factors and relativities, including increased limits factors,
6 classification relativities, deductible relativities, premium
7 discount, and other similar factors and rating plans such as
8 experience, schedule, and retrospective rating.

9 (8) "Supporting information" means:

10 (A) the experience and judgment of the filer and
11 the experience or information of other insurers or advisory
12 organizations on which the filer relied;

13 (B) the interpretation of any other information
14 on which the filer relied;

15 (C) a description of methods used in making a
16 rate; and

17 (D) any other information the department
18 requires to be filed. (V.T.I.C. Art. 5.13-2, Secs. 3(a)(1), (2),
19 (4), (5), (6), (7), (8), (9); Art. 5.13-2C, Sec. 1(2).)

20 Sec. 2251.003. APPLICABILITY OF CERTAIN SUBCHAPTERS. (a)
21 This subchapter and Subchapters B, C, D, and E apply to:

22 (1) an insurer to which Article 5.13 applies, other
23 than the Texas Windstorm Insurance Association, the FAIR Plan
24 Association, and the Texas Automobile Insurance Plan Association;
25 and

26 (2) except as provided by Subsection (c), a Lloyd's
27 plan, reciprocal or interinsurance exchange, and county mutual

1 insurance company with respect to the lines of insurance described
2 by Subsection (b).

3 (b) This subchapter and Subchapters B, C, D, and E apply to
4 all lines of the following kinds of insurance written under an
5 insurance policy or contract issued by an insurer authorized to
6 engage in the business of insurance in this state:

7 (1) general liability insurance;

8 (2) residential and commercial property insurance,
9 including farm and ranch insurance and farm and ranch owners
10 insurance;

11 (3) personal and commercial casualty insurance,
12 except as provided by Section 2251.004;

13 (4) medical professional liability insurance;

14 (5) fidelity and surety bonds other than criminal
15 court appearance bonds;

16 (6) personal umbrella insurance;

17 (7) personal liability insurance;

18 (8) guaranteed auto protection (GAP) insurance;

19 (9) involuntary unemployment insurance;

20 (10) financial guaranty insurance;

21 (11) inland marine insurance;

22 (12) rain insurance;

23 (13) hail insurance on farm crops; and

24 (14) personal and commercial automobile insurance.

25 (c) Sections 2251.008, 2251.052, 2251.101, 2251.102,
26 2251.103, 2251.104, 2251.105, and 2251.107 do not apply to a
27 Lloyd's plan or a reciprocal or interinsurance exchange with

1 respect to commercial property insurance, inland marine insurance,
2 rain insurance, or hail insurance on farm crops. (V.T.I.C. Art.
3 5.13-2, Secs. 1 (part), 2(a), 3(a)(3).)

4 Sec. 2251.004. REGULATION OF INLAND MARINE RATES. The
5 commissioner shall adopt rules governing the manner in which rates
6 for the various classifications of risks insured under inland
7 marine insurance, as determined by the commissioner, are regulated.
8 (V.T.I.C. Art. 5.13-2, Sec. 2(b) (part).)

9 Sec. 2251.005. NOTICE OF RATE INCREASE FOR RESIDENTIAL
10 PROPERTY INSURANCE POLICIES. (a) An insurer shall notify a
11 policyholder of a residential property insurance policy issued by
12 the insurer of a rate increase scheduled to take effect on the
13 policy's renewal that will result in a premium amount to be paid by
14 the policyholder that is at least 10 percent greater than the lesser
15 of:

16 (1) the premium amount paid by the policyholder for
17 coverage under the policy during the 12-month period preceding the
18 policy's renewal date; or

19 (2) the premium amount paid by the policyholder for
20 coverage under the policy during the policy period preceding the
21 policy's renewal date.

22 (b) An insurer shall send the notice required by Subsection
23 (a) before the renewal date and not later than the 30th day before
24 the date the rate increase is scheduled to take effect.

25 (c) An insurer may send the notice described by Subsection
26 (a) to any policyholder of a residential property insurance policy
27 issued by the insurer, regardless of whether the policyholder's

1 premium amount will increase as a result of the scheduled rate
2 change.

3 (d) The commissioner by rule may exempt an insurer from the
4 notice requirements of this section for a short-term policy, as
5 defined by the commissioner, that is written by the insurer.
6 (V.T.I.C. Art. 5.13-2, Sec. 15.)

7 Sec. 2251.006. CONSIDERATION OF CERTAIN OTHER LAW. In
8 reviewing rates under this chapter, the commissioner shall consider
9 any state or federal law that may affect rates for liability
10 coverage included in an insurance policy subject to this chapter.
11 (V.T.I.C. Art. 5.13-2, Sec. 14.)

12 Sec. 2251.007. ADMINISTRATIVE PROCEDURE ACT APPLICABLE.
13 Chapter 2001, Government Code, applies to all rate hearings
14 conducted under this chapter. (V.T.I.C. Art. 5.13-2, Sec. 10.)

15 Sec. 2251.008. QUARTERLY REPORT OF INSURER; LEGISLATIVE
16 REPORT. (a) The commissioner shall require each insurer subject to
17 this subchapter to quarterly file with the commissioner information
18 relating to changes in losses, premiums, and market share since
19 January 1, 1993.

20 (b) Quarterly, the commissioner shall report to the
21 governor, the lieutenant governor, and the speaker of the house of
22 representatives regarding:

23 (1) the information provided to the commissioner in
24 the insurers' reports under Subsection (a); and

25 (2) market conduct, especially consumer complaints.
26 (V.T.I.C. Art. 5.13-2, Sec. 5(e).)

27 [Sections 2251.009-2251.050 reserved for expansion]

SUBCHAPTER B. RATE STANDARDS

Sec. 2251.051. EXCESSIVE, INADEQUATE, AND UNFAIRLY DISCRIMINATORY RATES. (a) A rate is determined to be excessive, inadequate, or unfairly discriminatory for purposes of this chapter as provided by this section.

(b) A rate is excessive if the rate is likely to produce a long-term profit that is unreasonably high in relation to the insurance coverage provided.

(c) A rate is inadequate if:

(1) the rate is insufficient to sustain projected losses and expenses to which the rate applies; and

(2) continued use of the rate:

(A) endangers the solvency of an insurer using the rate; or

(B) has the effect of substantially lessening competition or creating a monopoly in a market.

(d) A rate is unfairly discriminatory if the rate:

(1) is not based on sound actuarial principles;

(2) does not bear a reasonable relationship to the expected loss and expense experience among risks; or

(3) is based wholly or partly on the race, creed, color, ethnicity, or national origin of the policyholder or an insured. (V.T.I.C. Art. 5.13-2, Sec. 3(b).)

Sec. 2251.052. RATE STANDARDS. (a) In setting rates, an insurer shall consider:

(1) past and prospective loss experience:

(A) inside this state; and

1 (B) outside this state if the data from this
2 state are not credible;

3 (2) the peculiar hazards and experiences of individual
4 risks, past and prospective, inside and outside this state;

5 (3) the insurer's actuarially credible historical
6 premium, exposure, loss, and expense experience;

7 (4) catastrophe hazards in this state;

8 (5) operating expenses, excluding disallowed
9 expenses;

10 (6) investment income;

11 (7) a reasonable margin for profit; and

12 (8) any other factors inside and outside this state:

13 (A) determined to be relevant by the insurer; and

14 (B) not disallowed by the commissioner.

15 (b) A rate may not be excessive, inadequate, unreasonable,
16 or unfairly discriminatory for the risks to which the rate applies.

17 (c) The insurer may:

18 (1) group risks by classification to establish rates
19 and minimum premiums; and

20 (2) modify classification rates to produce rates for
21 individual risks in accordance with rating plans that establish
22 standards for measuring variations in those risks on the basis of
23 any factor listed in Subsection (a).

24 (d) In setting rates that apply only to policyholders in
25 this state, an insurer shall use available premium, loss, claim,
26 and exposure information from this state to the full extent of the
27 actuarial credibility of that information. The insurer may use

1 experience from outside this state as necessary to supplement
2 information from this state that is not actuarially credible.

3 (e) In determining rating territories and territorial
4 rates, an insurer shall use methods based on sound actuarial
5 principles. (V.T.I.C. Art. 5.13-2, Secs. 4(b), (c), (d), (e),
6 (f).)

7 [Sections 2251.053-2251.100 reserved for expansion]

8 SUBCHAPTER C. RATE FILINGS

9 Sec. 2251.101. RATE FILINGS AND SUPPORTING INFORMATION.

10 (a) Except as provided by Subchapter D, for risks written in this
11 state, each insurer shall file with the commissioner all rates,
12 applicable rating manuals, supplementary rating information, and
13 additional information as required by the commissioner.

14 (b) The commissioner by rule shall determine the
15 information required to be included in the filing, including:

16 (1) categories of supporting information and
17 supplementary rating information;

18 (2) statistics or other information to support the
19 rates to be used by the insurer, including information necessary to
20 evidence that the computation of the rate does not include
21 disallowed expenses; and

22 (3) information concerning policy fees, service fees,
23 and other fees that are charged or collected by the insurer under
24 Section 550.001 or 4005.003. (V.T.I.C. Art. 5.13-2, Secs. 5(a),
25 (a-1).)

26 Sec. 2251.102. FILING REQUIREMENTS FOR INSURERS WITH LESS
27 THAN FIVE PERCENT OF MARKET. In determining filing requirements

1 under Section 2251.101 for an insurer with less than five percent of
2 the market, the commissioner shall consider insurer and
3 market-specific attributes, as applicable. The commissioner shall
4 determine filing requirements for those insurers accordingly to
5 accommodate premium volume and loss experience, targeted markets,
6 limitations on coverage, and any potential barriers to market entry
7 or growth. (V.T.I.C. Art. 5.13-2, Sec. 5(a-2).)

8 Sec. 2251.103. DISAPPROVAL OF RATE IN RATE FILING; HEARING.

9 (a) The commissioner shall disapprove a rate if the commissioner
10 determines that the rate filing made under this chapter does not
11 meet the standards established under Subchapter B.

12 (b) If the commissioner disapproves a filing, the
13 commissioner shall issue an order specifying in what respects the
14 filing fails to meet the requirements of this chapter.

15 (c) The filer is entitled to a hearing on written request
16 made to the commissioner not later than the 30th day after the date
17 the order disapproving the rate filing takes effect. (V.T.I.C.
18 Art. 5.13-2, Secs. 7(a), (b).)

19 Sec. 2251.104. DISAPPROVAL OF RATE IN EFFECT; HEARING.

20 (a) The commissioner may disapprove a rate that is in effect only
21 after a hearing. The commissioner shall provide the filer at least
22 20 days' written notice.

23 (b) The commissioner must issue an order disapproving a rate
24 under Subsection (a) not later than the 15th day after the close of
25 the hearing. The order must:

26 (1) specify in what respects the rate fails to meet the
27 requirements of this chapter; and

1 (2) state the date on which further use of the rate is
2 prohibited, which may not be earlier than the 45th day after the
3 close of the hearing under this section. (V.T.I.C. Art. 5.13-2,
4 Sec. 7(c).)

5 Sec. 2251.105. GRIEVANCE. (a) An insured who is aggrieved
6 with respect to any filing under this chapter that is in effect, or
7 the public insurance counsel, may apply to the commissioner in
8 writing for a hearing on the filing. The application must specify
9 the grounds for the applicant's grievance.

10 (b) The commissioner shall hold a hearing on an application
11 filed under Subsection (a) not later than the 30th day after the
12 date the commissioner receives the application if the commissioner
13 determines that:

14 (1) the application is made in good faith;

15 (2) the applicant would be aggrieved as alleged if the
16 grounds specified in the application were established; and

17 (3) the grounds specified in the application otherwise
18 justify holding the hearing.

19 (c) The commissioner shall provide written notice of a
20 hearing under Subsection (b) to the applicant and each insurer that
21 made the filing not later than the 10th day before the date of the
22 hearing.

23 (d) If, after the hearing, the commissioner determines that
24 the filing does not meet the requirements of this chapter, the
25 commissioner shall issue an order:

26 (1) specifying in what respects the filing fails to
27 meet those requirements; and

1 (2) stating the date on which the filing is no longer
2 in effect, which must be within a reasonable period after the order
3 date.

4 (e) The commissioner shall send copies of the order issued
5 under Subsection (d) to the applicant and each affected insurer.
6 (V.T.I.C. Art. 5.13-2, Secs. 5(c), (d).)

7 Sec. 2251.106. ROLE OF PUBLIC INSURANCE COUNSEL. (a) On
8 request to the commissioner, the public insurance counsel may
9 review all rate filings and additional information provided by an
10 insurer under this chapter. Confidential information reviewed
11 under this subsection remains confidential.

12 (b) The public insurance counsel, not later than the 30th
13 day after the date of a rate filing under this chapter, may file
14 with the commissioner a written objection to:

15 (1) an insurer's rate filing; or

16 (2) the criteria on which the insurer relied to
17 determine the rate.

18 (c) A written objection filed under Subsection (b) must
19 contain the reasons for the objection. (V.T.I.C. Art. 5.13-2, Sec.
20 16.)

21 Sec. 2251.107. PUBLIC INSPECTION OF INFORMATION. Each
22 filing made, and any supporting information filed, under this
23 chapter is open to public inspection as of the date of the filing.
24 (V.T.I.C. Art. 5.13-2, Sec. 6.)

25 [Sections 2251.108-2251.150 reserved for expansion]

26 SUBCHAPTER D. PRIOR APPROVAL OF RATES UNDER

27 CERTAIN CIRCUMSTANCES

1 Sec. 2251.151. REQUIREMENT TO FILE RATES FOR PRIOR APPROVAL
2 UNDER CERTAIN CIRCUMSTANCES. (a) The commissioner by order may
3 require an insurer to file with the department for the
4 commissioner's approval all rates, supplementary rating
5 information, and any supporting information in accordance with this
6 subchapter if the commissioner determines that:

7 (1) the insurer's rates require supervision because of
8 the insurer's financial condition or rating practices; or

9 (2) a statewide insurance emergency exists.

10 (b) If an insurer's previously filed rate is in effect on
11 the date the insurer files a new rate with the department under this
12 section, the previously filed rate remains in effect after the new
13 rate is filed until the effective date of the new rate.

14 (c) The commissioner may require an insurer to file the
15 insurer's rates under this section until the commissioner
16 determines that the conditions described by Subsection (a) no
17 longer exist.

18 (d) For purposes of this section, a rate is filed with the
19 department on the date the department receives the rate filing.
20 (V.T.I.C. Art. 5.13-2, Secs. 5A(a), (b) (part), (j), (m).)

21 Sec. 2251.152. RATE APPROVAL REQUIRED; EXCEPTION. (a) An
22 insurer subject to this subchapter may not use a rate until the rate
23 has been filed with the department and approved by the commissioner
24 in accordance with this subchapter.

25 (b) Notwithstanding Subsection (a), after a rate filing is
26 approved under this subchapter, an insurer, without prior approval
27 of the commissioner, may use any rate subsequently filed by the

1 insurer if the subsequently filed rate does not exceed the lesser
2 of:

3 (1) 107.5 percent of the rate approved by the
4 commissioner; or

5 (2) 110 percent of any rate used by the insurer in the
6 previous 12-month period.

7 (c) Filed rates under Subsection (b) take effect on the date
8 specified by the insurer. (V.T.I.C. Art. 5.13-2, Secs. 5A(b)
9 (part), (k).)

10 Sec. 2251.153. COMMISSIONER ACTION. (a) Not later than the
11 30th day after the date a rate is filed with the department under
12 this subchapter, the commissioner shall:

13 (1) approve the rate if the commissioner determines
14 that the rate complies with the requirements of this chapter; or

15 (2) disapprove the rate if the commissioner determines
16 that the rate does not comply with the requirements of this chapter.

17 (b) Except as provided by Subsection (c), if a rate has not
18 been approved or disapproved by the commissioner before the
19 expiration of the 30-day period described by Subsection (a), the
20 rate is considered approved and the insurer may use the rate unless
21 the rate proposed in the filing represents an increase of 12.5
22 percent or more from the insurer's previously filed rate.

23 (c) For good cause, the commissioner may, on the expiration
24 of the 30-day period described by Subsection (a), extend the period
25 for approval or disapproval of a rate for one additional 30-day
26 period. The commissioner and the insurer may not by agreement
27 extend the 30-day period described by Subsection (a). (V.T.I.C.

1 Art. 5.13-2, Secs. 5A(c), (d), (e), (f).)

2 Sec. 2251.154. ADDITIONAL INFORMATION. (a) If the
3 department determines that the information filed by an insurer
4 under this chapter is incomplete or otherwise deficient, the
5 department may request additional information from the insurer. If
6 the department requests additional information from the insurer
7 during the 30-day period provided by Section 2251.153(a) or under a
8 second 30-day period provided under Section 2251.153(c), the time
9 between the date the department submits the request to the insurer
10 and the date the department receives the information requested is
11 not included in the computation of the first 30-day period or the
12 second 30-day period, as applicable.

13 (b) For purposes of this section, the date of the
14 department's submission of a request for additional information is:

15 (1) the date of the department's electronic mailing or
16 telephone call relating to the request for additional information;
17 or

18 (2) the postmarked date on the department's letter
19 relating to the request for additional information. (V.T.I.C. Art.
20 5.13-2, Sec. 5A(g).)

21 Sec. 2251.155. RATE FILING APPROVAL BY COMMISSIONER; USE OF
22 RATE. (a) The commissioner shall approve a rate filing under this
23 subchapter if the proposed rate is adequate, not excessive, and not
24 unfairly discriminatory.

25 (b) If the commissioner approves a rate filing under this
26 section, the commissioner shall provide the insurer with a written
27 or electronic notification of the approval. The insurer may use the

1 rate on receipt of the approval notice. (V.T.I.C. Art. 5.13-2,
2 Secs. 5A(h), (i).)

3 Sec. 2251.156. RATE FILING DISAPPROVAL BY COMMISSIONER;
4 HEARING. (a) If the commissioner disapproves a rate filing under
5 Section 2251.153(a)(2), the commissioner shall issue an order
6 disapproving the filing in accordance with Section 2251.103(b).

7 (b) An insurer whose rate filing is disapproved is entitled
8 to a hearing in accordance with Section 2251.103(c). (V.T.I.C.
9 Art. 5.13-2, Sec. 5A(1).)

10 [Sections 2251.157-2251.200 reserved for expansion]

11 SUBCHAPTER E. STANDARD RATE INDEX FOR PERSONAL AUTOMOBILE

12 INSURANCE

13 Sec. 2251.201. APPLICABILITY OF SUBCHAPTER. (a) This
14 subchapter governs rate regulation of personal automobile
15 insurance issued by a county mutual insurance company as prescribed
16 by this subchapter.

17 (b) The commissioner by rule may designate other types of
18 insurers that, historically and as of June 11, 2003, have served
19 exclusively or are serving exclusively the high-risk, nonstandard
20 market and meet capitalization and solvency requirements set by the
21 commissioner. An insurer designated by the commissioner under this
22 subsection is governed by this subchapter. (V.T.I.C. Art. 5.13-2,
23 Secs. 13(a), (g).)

24 Sec. 2251.202. STATEWIDE STANDARD RATE INDEX FOR PERSONAL
25 AUTOMOBILE INSURANCE. (a) Using standard and generally accepted
26 actuarial techniques, the commissioner shall annually compute and
27 publish a statewide standard rate index that accurately reflects

1 the average statewide rates for classifications for each of the
2 following coverages under a personal automobile insurance policy:

- 3 (1) bodily injury liability;
- 4 (2) property damage liability;
- 5 (3) personal injury protection;
- 6 (4) medical payments;
- 7 (5) uninsured and underinsured motorist;
- 8 (6) physical damage--collision; and
- 9 (7) physical damage--other than collision.

10 (b) The commissioner shall compute the rate index using the
11 benchmark rate in effect for personal automobile insurance under
12 former Article 5.101 on June 11, 2003. The commissioner shall
13 adjust the rate index annually to reflect average changes in claims
14 costs in the personal automobile insurance market in this state.
15 (V.T.I.C. Art. 5.13-2, Secs. 13(b), (c) (part).)

16 Sec. 2251.203. ESTABLISHMENT OF OTHER STANDARD RATE
17 INDEXES. The commissioner may compute and establish standard rate
18 indexes other than the rate index required under Section
19 2251.202(a) for any of the personal automobile insurance coverages
20 listed under that subsection as necessary to implement this
21 subchapter. (V.T.I.C. Art. 5.13-2, Sec. 13(d).)

22 Sec. 2251.204. APPLICATION TO CERTAIN COUNTY MUTUAL
23 INSURANCE COMPANIES. (a) For purposes of this subsection, a
24 "nonstandard rate" is a rate that is 30 percent or more above the
25 standard rate index as determined by the commissioner under this
26 subchapter. A county mutual insurance company that issues personal
27 automobile insurance policies only at nonstandard rates is subject

1 to filing requirements, as determined by the commissioner by rule,
2 if the insurance company and the company's affiliated companies or
3 group has a market share of less than 3.5 percent.

4 (b) In setting rates, a county mutual insurance company
5 subject to this section must comply with the rating standards
6 established under Subchapter B. The commissioner may inspect the
7 books and records of the company at any time to ensure compliance
8 with the rating standards.

9 (c) Not later than the first day any change in the rates of a
10 county mutual insurance company subject to this section takes
11 effect, the company shall file for informational purposes those
12 rates and any additional information required by the department.
13 The commissioner by rule shall determine the information required
14 to be provided in the filing under this subsection.

15 (d) A county mutual insurance company described by
16 Subsection (a) is subject to Chapter 2254. A county mutual
17 insurance company not described by Subsection (a) is:

18 (1) subject to Chapter 2151; and

19 (2) required to comply with the other filing
20 requirements of this chapter and any other provision of this code
21 applicable to a county mutual insurance company. (V.T.I.C. Art.
22 5.13-2, Secs. 13(e), (f).)

23 [Sections 2251.205-2251.250 reserved for expansion]

24 SUBCHAPTER F. EXEMPTIONS FOR CERTAIN INSURERS FROM RATE FILING AND
25 APPROVAL REQUIREMENTS

26 Sec. 2251.251. APPLICABILITY OF SUBCHAPTER. This
27 subchapter applies to:

1 (1) an insurer, including an insurance company, a
2 reciprocal or interinsurance exchange, a mutual insurance company,
3 a capital stock insurance company, a county mutual insurance
4 company, a Lloyd's plan, or any other legal entity authorized to
5 write residential property insurance in this state; and

6 (2) an insurer's affiliate, as described by this code,
7 if the affiliate is authorized to write residential property
8 insurance. (V.T.I.C. Art. 5.13-2C, Sec. 1(1).)

9 Sec. 2251.252. EXEMPTION FROM CERTAIN OTHER LAW. (a)
10 Except as provided by Subsections (b) and (c), an insurer is exempt
11 from the rate filing and approval requirements of this chapter if
12 the insurer, during the calendar year preceding the date filing is
13 otherwise required under this chapter, issued residential property
14 insurance policies in this state that accounted for less than two
15 percent of the total amount of premiums collected by insurers for
16 residential property insurance policies issued in this state, more
17 than 50 percent of which cover property:

18 (1) valued at less than \$100,000; and

19 (2) located in an area designated by the commissioner
20 as underserved for residential property insurance under Chapter
21 2004.

22 (b) If an insurer described by Subsection (a) is a member of
23 an affiliated insurance group, this subchapter applies to the
24 insurer only if the total aggregate premium collected by the group
25 accounts for less than two percent of the total amount of premiums
26 collected by insurers for residential property insurance policies
27 issued in this state.

1 (c) An insurer described by Subsection (a) that proposes to
2 increase the premium rates charged policyholders for a residential
3 property insurance product by an amount that is 10 percent or more
4 over the amount the insurer charged policyholders for the same or an
5 equivalent residential property insurance product during the
6 preceding calendar year must file the insurer's proposed rates in
7 accordance with this chapter and, if applicable, obtain approval of
8 the proposed rates as provided by this chapter. (V.T.I.C. Art.
9 5.13-2C, Secs. 2, 3(a), (b).)

10 CHAPTER 2252. RATE ADMINISTRATION

11 SUBCHAPTER A. GENERAL PROVISIONS

12 Sec. 2252.001. APPLICABILITY OF CHAPTER

13 Sec. 2252.002. CONSTRUCTION OF CHAPTER

14 [Sections 2252.003-2252.050 reserved for expansion]

15 SUBCHAPTER B. RATING SYSTEMS

16 Sec. 2252.051. INSURER TO PROVIDE RATE INFORMATION

17 Sec. 2252.052. RIGHT TO HEARING ON RATING SYSTEM

18 Sec. 2252.053. APPEAL OF DECISION ON RATING SYSTEM

19 [Sections 2252.054-2252.100 reserved for expansion]

20 SUBCHAPTER C. LOSS AND EXPENSE EXPERIENCE

21 Sec. 2252.101. RECORDING AND REPORTING OF LOSS AND

22 EXPENSE EXPERIENCE AND OTHER DATA

23 Sec. 2252.102. RULES AND PLANS REQUIRING INTERCHANGE

24 OF LOSS EXPERIENCE

25 Sec. 2252.103. EXCHANGE OF RATE INFORMATION WITH OTHER

26 STATES

27 [Sections 2252.104-2252.150 reserved for expansion]

SUBCHAPTER D. PROHIBITED ACTS

Sec. 2252.151. PROHIBITED CONDUCT RELATED TO RATES AND
PREMIUMS

CHAPTER 2252. RATE ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2252.001. APPLICABILITY OF CHAPTER. (a) Except as provided by Subsections (b) and (c), this chapter applies to an insurer, including a corporation, reciprocal or interinsurance exchange, mutual insurance company, association, Lloyd's plan, or other organization, writing casualty insurance or writing fidelity, surety, or guaranty bonds, on risks or operations in this state.

(b) This chapter does not apply to:

(1) a farm mutual insurance company or association regulated under Chapter 911; or

(2) a county mutual insurance company regulated under Chapter 912.

(c) This chapter does not apply to the writing of:

(1) automobile insurance;

(2) life, health, or accident insurance;

(3) professional liability insurance;

(4) reinsurance;

(5) aircraft insurance;

(6) fraternal benefit insurance;

(7) fire insurance;

(8) workers' compensation insurance;

(9) marine insurance, including noncommercial inland

1 marine insurance and ocean marine insurance;

2 (10) title insurance;

3 (11) explosion insurance, except insurance against
4 loss from personal injury or property damage resulting accidentally
5 from:

6 (A) a steam boiler;

7 (B) a heater or pressure vessel;

8 (C) an electrical device;

9 (D) an engine; or

10 (E) all machinery and appliances used in
11 connection with or in the operation of a boiler, heater, vessel,
12 electrical device, or engine described by Paragraphs (A)-(D); or

13 (12) insurance coverage for any of the following
14 conditions or risks:

15 (A) weather or climatic conditions, including
16 lightning, tornado, windstorm, hail, cyclone, rain, or frost and
17 freeze;

18 (B) earthquake or volcanic eruption;

19 (C) smoke or smudge;

20 (D) excess or deficiency of moisture;

21 (E) flood;

22 (F) the rising water of an ocean or an ocean's
23 tributary;

24 (G) bombardment, invasion, insurrection, riot,
25 civil war or commotion, military or usurped power, or any order of a
26 civil authority made to prevent the spread of a conflagration,
27 epidemic or catastrophe;

1 (H) vandalism or malicious mischief;
2 (I) strike or lockout;
3 (J) water or other fluid or substance resulting
4 from:

5 (i) the breakage or leakage of a sprinkler,
6 pump, or other apparatus erected for extinguishing fire, or a water
7 pipe or other conduit or container; or

8 (ii) casual water entering a building
9 through a leak or opening in the building or by seepage through
10 building walls; or

11 (K) accidental damage to a sprinkler, pump, fire
12 apparatus, pipe, or other conduit or container described by
13 Paragraph (J)(i). (V.T.I.C. Art. 5.13, Secs. (a) (part), (b),
14 (c).)

15 Sec. 2252.002. CONSTRUCTION OF CHAPTER. This chapter does
16 not limit in any manner the kinds or classes of insurance that an
17 insurer may write under an appropriate statute or the insurer's
18 charter or certificate of authority. (V.T.I.C. Art. 5.13, Sec.
19 (d).)

20 [Sections 2252.003-2252.050 reserved for expansion]

21 SUBCHAPTER B. RATING SYSTEMS

22 Sec. 2252.051. INSURER TO PROVIDE RATE INFORMATION. (a) An
23 insurer shall provide all information relevant to a rate used by the
24 insurer to:

25 (1) any person who is or will be affected by the rate
26 or by a modification of the rate; or

27 (2) the authorized representative of a person

1 described by Subdivision (1).

2 (b) The insurer shall provide the information within a
3 reasonable time after receipt of a written request for the
4 information and on payment of any reasonable charge set by the
5 insurer. (V.T.I.C. Art. 5.18, Sec. (a).)

6 Sec. 2252.052. RIGHT TO HEARING ON RATING SYSTEM. (a) An
7 insurer shall provide within this state reasonable means by which a
8 person aggrieved by the application of the insurer's rating system
9 may be heard on written request to review the manner in which the
10 rating system has been applied in connection with the insurance
11 afforded the person.

12 (b) The person may be heard under this section in person or
13 through the person's authorized representative. (V.T.I.C.
14 Art. 5.18, Sec. (b) (part).)

15 Sec. 2252.053. APPEAL OF DECISION ON RATING SYSTEM. Any
16 party affected by an action taken by an insurer or rating
17 organization in response to a request for a hearing under Section
18 2252.052 may appeal that action to the commissioner not later than
19 the 10th day after the date the party receives written notice of the
20 action. (V.T.I.C. Art. 5.18, Sec. (b) (part).)

21 [Sections 2252.054-2252.100 reserved for expansion]

22 SUBCHAPTER C. LOSS AND EXPENSE EXPERIENCE

23 Sec. 2252.101. RECORDING AND REPORTING OF LOSS AND EXPENSE
24 EXPERIENCE AND OTHER DATA. (a) The commissioner shall adopt
25 reasonable rules and statistical plans for the recording and
26 reporting of loss experience and other required data by insurers.
27 The rules and plans must ensure that each insurer's total loss and

1 expense experience is made available at least as frequently as
2 biennially in the form and with the detail necessary to aid in
3 determining whether rating plans comply with the standards provided
4 by this chapter, Chapter 1901, Chapter 2251, or Subchapter B,
5 Chapter 5.

6 (b) In adopting the rules and statistical plans, the
7 commissioner shall have due regard for:

8 (1) the rating plans used under this chapter, Chapter
9 1901, Chapter 2251, or Subchapter B, Chapter 5; and

10 (2) the rules and forms of plans used in other states
11 to ensure that the rules and plans are as uniform as is practicable.

12 (c) Each insurer shall use the statistical plans adopted
13 under this section to record and report loss experience and other
14 required data in accordance with the rules adopted by the
15 commissioner.

16 (d) The commissioner may designate other agencies to gather
17 and compile the loss experience and other data.

18 (e) The commissioner may adopt modifications to statistical
19 plans adopted under this section. (V.T.I.C. Art. 5.19, Sec. (a).)

20 Sec. 2252.102. RULES AND PLANS REQUIRING INTERCHANGE OF
21 LOSS EXPERIENCE. The commissioner may adopt reasonable rules and
22 plans requiring the interchange of loss experience necessary for
23 the application of rating plans. (V.T.I.C. Art. 5.19, Sec. (b).)

24 Sec. 2252.103. EXCHANGE OF RATE INFORMATION WITH OTHER
25 STATES. To further the uniform administration of rating laws, the
26 department or an insurer may:

27 (1) exchange information and experience data with

1 insurance supervisory officials, insurers, and rating
2 organizations in other states; and

3 (2) consult and cooperate with the individuals or
4 entities described by Subdivision (1) with respect to ratemaking
5 and the application of rating systems. (V.T.I.C. Art. 5.19, Sec.
6 (c).)

7 [Sections 2252.104-2252.150 reserved for expansion]

8 SUBCHAPTER D. PROHIBITED ACTS

9 Sec. 2252.151. PROHIBITED CONDUCT RELATED TO RATES AND
10 PREMIUMS. (a) A person or organization may not knowingly give
11 false or misleading information to the department or commissioner,
12 an insurer, or any other entity that will in any manner affect the
13 proper determination of rates or premiums.

14 (b) An insurer or agent who knowingly misrepresents the
15 actual or replacement value of real or personal property to achieve
16 an unfair competitive rate advantage commits an offense. (V.T.I.C.
17 Art. 5.21.)

18 CHAPTER 2253. RATING TERRITORIES

19 Sec. 2253.001. RATING TERRITORIES

20 CHAPTER 2253. RATING TERRITORIES

21 Sec. 2253.001. RATING TERRITORIES. (a) Notwithstanding
22 any other provision of this code, an insurer may use rating
23 territories that subdivide a county only if:

24 (1) the county is subdivided; and

25 (2) the rate for any subdivision in the county is not
26 greater than 15 percent higher than the rate used in any other
27 subdivision in the county by that insurer.

1 (b) For residential property insurance or personal
2 automobile insurance, the commissioner by rule may allow a greater
3 rate difference than the rate difference specified by Subsection
4 (a). (V.T.I.C. Art. 5.171.)

5 CHAPTER 2254. PREMIUM REFUND FOR CERTAIN PERSONAL LINES

6 Sec. 2254.001. DEFINITIONS

7 Sec. 2254.002. INAPPLICABILITY OF CHAPTER

8 Sec. 2254.003. REFUND OR DISCOUNT BASED ON EXCESSIVE

9 OR UNFAIRLY DISCRIMINATORY PREMIUM

10 RATES

11 Sec. 2254.004. RATE HEARING BY STATE OFFICE OF

12 ADMINISTRATIVE HEARINGS

13 CHAPTER 2254. PREMIUM REFUND FOR CERTAIN PERSONAL LINES

14 Sec. 2254.001. DEFINITIONS. In this chapter:

15 (1) "Insurer" means an insurance company, reciprocal
16 or interinsurance exchange, mutual insurance company, capital
17 stock company, county mutual insurance company, Lloyd's plan, or
18 other legal entity authorized to write residential property
19 insurance or personal automobile insurance in this state. The term
20 includes an affiliate, as described by this code, that is
21 authorized to write residential property insurance. The term does
22 not include:

23 (A) the Texas Windstorm Insurance Association
24 under Chapter 2210; or

25 (B) the FAIR Plan Association under Chapter 2211.

26 (2) "Personal automobile insurance" means motor
27 vehicle insurance coverage for the ownership, maintenance, or use

1 of a private passenger, utility, or miscellaneous type motor
2 vehicle, including a motor home, trailer, or recreational vehicle,
3 that is:

4 (A) owned or leased by one or more individuals;
5 and

6 (B) not used primarily for the delivery of goods,
7 materials, or services, other than for use in farm or ranch
8 operations.

9 (3) "Residential property insurance" means insurance
10 coverage against loss to real or tangible personal property at a
11 fixed location that is provided through:

12 (A) a homeowners policy, including a tenants
13 policy;

14 (B) a condominium owners policy; or

15 (C) a residential fire and allied lines policy.

16 (V.T.I.C. Art. 5.144, Sec. (a).)

17 Sec. 2254.002. INAPPLICABILITY OF CHAPTER. This chapter
18 does not apply to rates for personal automobile insurance or
19 residential property insurance for which an insurer obtains prior
20 rate approval under Subchapter D, Chapter 2251. (V.T.I.C.
21 Art. 5.144, Sec. (f).)

22 Sec. 2254.003. REFUND OR DISCOUNT BASED ON EXCESSIVE OR
23 UNFAIRLY DISCRIMINATORY PREMIUM RATES. (a) This section applies
24 to a rate filed on or after the effective date of Chapter 206, Acts
25 of the 78th Legislature, Regular Session, 2003.

26 (b) Except as provided by Section 2254.004(c), if the
27 commissioner determines that an insurer has charged a rate for

1 personal automobile insurance or residential property insurance
2 that is excessive or unfairly discriminatory, as described by
3 Section 2251.051, the commissioner may:

4 (1) order the insurer to refund directly to each
5 affected policyholder the portion of the premium that is excessive
6 or unfairly discriminatory, if that portion of the premium is at
7 least 7.5 percent of the total premium charged for the coverage; or

8 (2) if that portion of the premium is less than 7.5
9 percent of the total premium, order the insurer to provide, to each
10 affected policyholder:

11 (A) who renews the policy, a future premium
12 discount equal to the amount of the excessive or unfairly
13 discriminatory portion of the premium; and

14 (B) who does not renew or whose coverage is
15 otherwise terminated, a refund in the amount described by
16 Subdivision (1). (V.T.I.C. Art. 5.144, Secs. (b), (g).)

17 Sec. 2254.004. RATE HEARING BY STATE OFFICE OF
18 ADMINISTRATIVE HEARINGS. (a) Not later than the 20th day after
19 the date of an order under Section 2254.003, the insurer may request
20 that the State Office of Administrative Hearings conduct a rate
21 hearing to determine whether the rate that is subject to the order
22 is excessive or unfairly discriminatory.

23 (b) The office of public insurance counsel may participate
24 in and present evidence at the hearing.

25 (c) After completion of the hearing, the administrative law
26 judge shall:

27 (1) prepare a proposal for decision under Section

1 40.058; and

2 (2) remand the matter to the commissioner recommending
3 that the commissioner affirm the order or that:

4 (A) the commissioner complete an additional
5 review of the order not later than the 10th day after the date the
6 commissioner receives the proposal;

7 (B) the parties enter into negotiations; or

8 (C) the commissioner take within a period
9 specified by the administrative law judge other appropriate action
10 with respect to the order.

11 (d) The commissioner's action or failure to act on a
12 proposal or recommendation under Subsection (c) is subject to
13 judicial review under Subchapter D, Chapter 36. (V.T.I.C.
14 Art. 5.144, Secs. (c), (d), (e).)

15 [Chapters 2255-2300 reserved for expansion]

16 SUBTITLE I. POLICY FORMS IN GENERAL

17 CHAPTER 2301. POLICY FORMS

18 SUBCHAPTER A. POLICY FORMS GENERALLY

19 Sec. 2301.001. PURPOSE

20 Sec. 2301.002. DEFINITIONS

21 Sec. 2301.003. APPLICABILITY OF SUBCHAPTER

22 Sec. 2301.004. EXEMPTION FOR LARGE RISKS

23 Sec. 2301.005. REGULATION OF INLAND MARINE FORMS

24 Sec. 2301.006. FILING AND APPROVAL OF FORMS

25 Sec. 2301.007. DISAPPROVAL OF FORMS; WITHDRAWAL OF
26 APPROVAL

27 Sec. 2301.008. ADOPTION AND USE OF STANDARD FORMS

1 Sec. 2301.009. PUBLIC INSPECTION OF INFORMATION

2 [Sections 2301.010-2301.050 reserved for expansion]

3 SUBCHAPTER B. POLICY FORMS FOR PERSONAL AUTOMOBILE

4 INSURANCE COVERAGE AND RESIDENTIAL PROPERTY INSURANCE COVERAGE

5 Sec. 2301.051. DEFINITIONS

6 Sec. 2301.052. REGULATION OF POLICY FORMS AND

7 ENDORSEMENTS

8 Sec. 2301.053. REQUIREMENTS FOR FORMS; PLAIN-LANGUAGE

9 REQUIREMENT

10 Sec. 2301.054. CERTAIN CONTRACTS OR AGREEMENTS

11 PROHIBITED; REVOCATION OF CERTIFICATE

12 OF AUTHORITY

13 Sec. 2301.055. RULES

14 CHAPTER 2301. POLICY FORMS

15 SUBCHAPTER A. POLICY FORMS GENERALLY

16 Sec. 2301.001. PURPOSE. The purposes of this subchapter
17 are to:

18 (1) promote the availability of insurance;

19 (2) regulate the insurance forms used for lines of
20 insurance to which this subchapter applies to ensure that the forms
21 are not unjust, unfair, inequitable, misleading, or deceptive; and

22 (3) provide regulatory procedures for the maintenance
23 of appropriate information reporting systems. (V.T.I.C. Art.
24 5.13-2, Sec. 1 (part).)

25 Sec. 2301.002. DEFINITIONS. In this subchapter:

26 (1) "Form" means an insurance policy form or a printed
27 endorsement form.

1 (2) "Residential property insurance" means insurance
2 coverage against loss to real or tangible personal property at a
3 fixed location that is provided through a homeowners insurance
4 policy, including a tenants insurance policy, a condominium owners
5 insurance policy, or a residential fire and allied lines insurance
6 policy.

7 (3) "Supporting information" means any information
8 required by the department to be filed. (V.T.I.C. Art. 5.13-2,
9 Secs. 3(a)(7), (9) (part); New.)

10 Sec. 2301.003. APPLICABILITY OF SUBCHAPTER. (a) This
11 subchapter applies to:

12 (1) an insurer to which Article 5.13 applies, other
13 than the Texas Windstorm Insurance Association, the FAIR Plan
14 Association, and the Texas Automobile Insurance Plan Association;
15 and

16 (2) except as provided by Subsections (c) and (d), a
17 Lloyd's plan, reciprocal or interinsurance exchange, and county
18 mutual insurance company with respect to the lines of insurance
19 described by Subsection (b).

20 (b) This subchapter applies to all lines of the following
21 kinds of insurance written under an insurance policy or contract
22 issued by an insurer authorized to engage in the business of
23 insurance in this state:

24 (1) general liability insurance;

25 (2) residential and commercial property insurance,
26 including farm and ranch insurance and farm and ranch owners
27 insurance;

1 (3) personal and commercial casualty insurance,
2 except as provided by Section 2301.005;

3 (4) medical professional liability insurance;

4 (5) fidelity and surety bonds other than criminal
5 court appearance bonds;

6 (6) personal umbrella insurance;

7 (7) personal liability insurance;

8 (8) guaranteed auto protection (GAP) insurance;

9 (9) involuntary unemployment insurance;

10 (10) financial guaranty insurance;

11 (11) inland marine insurance;

12 (12) rain insurance;

13 (13) hail insurance on farm crops; and

14 (14) personal and commercial automobile insurance.

15 (c) Section 2301.009 does not apply to a Lloyd's plan or a
16 reciprocal or interinsurance exchange with respect to commercial
17 property insurance.

18 (d) This subchapter does not apply to a Lloyd's plan or
19 reciprocal or interinsurance exchange with respect to inland marine
20 insurance, rain insurance, or hail insurance on farm crops.
21 (V.T.I.C. Art. 5.13-2, Secs. 1 (part), 2(a), 3(a)(3).)

22 Sec. 2301.004. EXEMPTION FOR LARGE RISKS. Sections
23 2301.006, 2301.007(a) and (b), and 2301.008 do not apply to forms
24 for use with an insured that has:

25 (1) total insured property values of \$5 million or
26 more;

27 (2) total annual gross revenues of \$10 million or

1 more; or

2 (3) a total premium of \$25,000 or more for property
3 insurance, \$25,000 or more for general liability insurance, or
4 \$50,000 or more for multiperil insurance. (V.T.I.C. Art. 5.13-2,
5 Sec. 8(f).)

6 Sec. 2301.005. REGULATION OF INLAND MARINE FORMS. The
7 commissioner shall adopt rules governing the manner in which forms
8 for the various classifications of risks insured under inland
9 marine insurance, as determined by the commissioner, are regulated.
10 (V.T.I.C. Art. 5.13-2, Sec. 2(b) (part).)

11 Sec. 2301.006. FILING AND APPROVAL OF FORMS. (a) Except as
12 provided by Section 2301.008, an insurer may not deliver or issue
13 for delivery in this state a form for use in writing insurance
14 described by Section 2301.003 unless the form has been filed with
15 and approved by the commissioner.

16 (b) An insurer must file the form not later than the 60th day
17 before the date an insurer uses the form or delivers the form for
18 use.

19 (c) A filed form is approved at the expiration of 60 days
20 after the date the form is filed unless the commissioner by order
21 approves or disapproves the form during the 60-day period. The
22 commissioner's approval of a filed form constitutes a waiver of any
23 unexpired portion of the 60-day period.

24 (d) The commissioner may extend by not more than 10 days the
25 60-day period described by Subsection (c) during which the
26 commissioner may approve or disapprove a form filed by an insurer.
27 The commissioner shall notify the insurer of the extension before

1 the expiration of the 60-day period.

2 (e) A filed form for which an extension has been granted
3 under Subsection (d) is considered approved at the expiration of
4 the extension period described by that subsection absent an earlier
5 approval or disapproval of the form. (V.T.I.C. Art. 5.13-2, Secs.
6 8(a), (b) (part).)

7 Sec. 2301.007. DISAPPROVAL OF FORMS; WITHDRAWAL OF
8 APPROVAL. (a) The commissioner may disapprove a form filed under
9 Section 2301.006 or withdraw approval of a form if the form:

10 (1) violates any law, including a rule adopted under
11 this code; or

12 (2) contains a provision or has a title or heading that
13 is unjust or deceptive, encourages misrepresentation, or violates
14 public policy.

15 (b) For good cause shown, the commissioner may withdraw
16 approval of a form after notice and hearing.

17 (c) An order issued by the commissioner disapproving a form,
18 or a notice of the commissioner's intention to withdraw approval of
19 a form, must state the grounds for the disapproval or withdrawal of
20 approval in sufficient detail to reasonably inform the insurer of
21 those grounds.

22 (d) An order of withdrawal of approval of a form takes
23 effect on the date prescribed by the commissioner in the order. The
24 commissioner may not prescribe a date earlier than the 30th day
25 after the effective date of the order, as prescribed by the
26 commissioner.

27 (e) An insurer may not use a form in this state after the

1 commissioner disapproves the form or withdraws approval of the
2 form. (V.T.I.C. Art. 5.13-2, Secs. 8(b) (part), (c), (d), (e)
3 (part).)

4 Sec. 2301.008. ADOPTION AND USE OF STANDARD FORMS. The
5 commissioner may adopt standard insurance policy forms, printed
6 endorsement forms, and other related forms that an insurer may use
7 instead of the insurer's own forms in writing insurance subject to
8 this subchapter. (V.T.I.C. Art. 5.13-2, Sec. 8(e) (part).)

9 Sec. 2301.009. PUBLIC INSPECTION OF INFORMATION. Each
10 filing made, and any supporting information filed, under this
11 subchapter is open to public inspection as of the date of the
12 filing. (V.T.I.C. Art. 5.13-2, Sec. 6.)

13 [Sections 2301.010-2301.050 reserved for expansion]

14 SUBCHAPTER B. POLICY FORMS FOR PERSONAL AUTOMOBILE

15 INSURANCE COVERAGE AND RESIDENTIAL PROPERTY INSURANCE COVERAGE

16 Sec. 2301.051. DEFINITIONS. In this subchapter:

17 (1) "Insurer" means an insurance company, reciprocal
18 or interinsurance exchange, mutual insurance company, capital
19 stock insurance company, county mutual insurance company, Lloyd's
20 plan, or other legal entity authorized to write personal automobile
21 insurance or residential property insurance in this state. The
22 term includes an affiliate, as described by this code, that is
23 authorized to write and is writing personal automobile insurance or
24 residential property insurance in this state. The term does not
25 include:

26 (A) the Texas Windstorm Insurance Association;

27 (B) the FAIR Plan Association; or

1 (C) the Texas Automobile Insurance Plan
2 Association.

3 (2) "Personal automobile insurance" means automobile
4 insurance coverage for the ownership, maintenance, or use of a
5 private passenger, utility, or miscellaneous type motor vehicle,
6 including a motor home, trailer, or recreational vehicle, that is:

7 (A) owned or leased by one or more individuals;
8 and

9 (B) not primarily used for the delivery of goods,
10 materials, or services, other than for use in farm or ranch
11 operations.

12 (3) "Residential property insurance" means insurance
13 coverage against loss to tangible personal property or to
14 residential real property at a fixed location that is provided
15 through a homeowners insurance policy, including a tenants
16 insurance policy, a condominium owners insurance policy, or a
17 residential fire and allied lines insurance policy. (V.T.I.C. Art.
18 5.145, Sec. 1.)

19 Sec. 2301.052. REGULATION OF POLICY FORMS AND ENDORSEMENTS.

20 (a) Notwithstanding any other provision of this code and except as
21 provided by this section, Subchapter A applies to an insurer with
22 respect to insurance policy forms and endorsements for personal
23 automobile insurance and residential property insurance.

24 (b) An insurer may continue to use an insurance policy form
25 or endorsement promulgated, approved, or adopted under Article 5.06
26 or 5.35 before June 11, 2003, on written notification to the
27 commissioner that the insurer will continue to use the form or

1 endorsement. (V.T.I.C. Art. 5.145, Sec. 2.)

2 Sec. 2301.053. REQUIREMENTS FOR FORMS; PLAIN-LANGUAGE
3 REQUIREMENT. (a) Each form filed in accordance with this
4 subchapter must comply with applicable state and federal law.

5 (b) Each form for a personal automobile insurance policy
6 must provide the coverages mandated under Subchapters C and D,
7 Chapter 1952, unless the coverages are rejected by the named
8 insured in the manner provided by those subchapters.

9 (c) A form may not be used unless the form is written in
10 plain language. For purposes of this section, a form is written in
11 plain language if:

12 (1) the form achieves the minimum score established by
13 the commissioner on the Flesch reading ease test or an equivalent
14 test selected by the commissioner; or

15 (2) at the commissioner's option, the form conforms to
16 the language requirements in a National Association of Insurance
17 Commissioners model act relating to plain language.

18 (d) Subsection (c) does not apply to policy language that is
19 mandated by state or federal law. (V.T.I.C. Art. 5.145, Sec. 3.)

20 Sec. 2301.054. CERTAIN CONTRACTS OR AGREEMENTS PROHIBITED;
21 REVOCATION OF CERTIFICATE OF AUTHORITY. (a) A contract or
22 agreement that is not written into an application for personal
23 automobile insurance coverage and the personal automobile
24 insurance policy is void and violates this code.

25 (b) A contract or agreement described by Subsection (a)
26 constitutes grounds for the revocation of an insurer's certificate
27 of authority to write personal automobile insurance in this state.

1 (V.T.I.C. Art. 5.145, Sec. 4.)

2 Sec. 2301.055. RULES. The commissioner may adopt
3 reasonable and necessary rules to implement this subchapter.

4 (V.T.I.C. Art. 5.145, Sec. 6.)

5 SECTION 3. TITLE 12, INSURANCE CODE. The Insurance Code is
6 amended by adding Title 12 to read as follows:

7 TITLE 12. OTHER COVERAGE

8 CHAPTER 3501. CREDIT INVOLUNTARY UNEMPLOYMENT INSURANCE

9 CHAPTER 3502. MORTGAGE GUARANTY INSURANCE

10 CHAPTER 3503. SURETY BONDS AND RELATED INSTRUMENTS

11 TITLE 12. OTHER COVERAGE

12 CHAPTER 3501. CREDIT INVOLUNTARY UNEMPLOYMENT INSURANCE

13 Sec. 3501.001. DEFINITION

14 Sec. 3501.002. AUTHORIZATION

15 Sec. 3501.003. RATES AND FORMS

16 CHAPTER 3501. CREDIT INVOLUNTARY UNEMPLOYMENT INSURANCE

17 Sec. 3501.001. DEFINITION. In this chapter, "credit
18 involuntary unemployment insurance" means insurance that
19 indemnifies a debtor for installment or other periodic payments on
20 an indebtedness while the debtor is involuntarily unemployed. The
21 term includes policy forms and endorsements that define involuntary
22 unemployment to provide coverage and a premium charge for
23 interruption or reduction of a debtor's income during periods of
24 leave, whether paid or unpaid, authorized by the federal Family and
25 Medical Leave Act of 1993 (29 U.S.C. Section 2601 et seq.), as
26 amended, or other state or federal law. (V.T.I.C. Art. 21.79E
27 (part).)

1 Sec. 3501.002. AUTHORIZATION. (a) Any insurer authorized
2 to write any form of casualty insurance in this state may also write
3 group or individual credit involuntary unemployment insurance.

4 (b) Credit involuntary unemployment insurance may be
5 written alone or in conjunction with credit life insurance, credit
6 accident and health insurance, or both, in a policy issued by an
7 authorized insurer.

8 (c) Credit involuntary unemployment insurance may not be
9 written in contravention of Chapter 15, Business & Commerce Code.
10 (V.T.I.C. Art. 21.79E (part).)

11 Sec. 3501.003. RATES AND FORMS. Rates and forms for credit
12 involuntary unemployment insurance must be set and filed in
13 accordance with Chapters 2251 and 2301 and Article 5.13-2.
14 (V.T.I.C. Art. 21.79E (part).)

15 CHAPTER 3502. MORTGAGE GUARANTY INSURANCE

16 SUBCHAPTER A. GENERAL PROVISIONS

17 Sec. 3502.001. APPLICABILITY OF CHAPTER

18 Sec. 3502.002. APPLICABILITY OF OTHER LAW

19 Sec. 3502.003. MORTGAGE GUARANTY INSURANCE DEFINED

20 Sec. 3502.004. AUTHORIZED REAL ESTATE SECURITY DEFINED

21 [Sections 3502.005-3502.050 reserved for expansion]

22 SUBCHAPTER B. MORTGAGE GUARANTY INSURERS

23 Sec. 3502.051. GENERAL ELIGIBILITY TO WRITE MORTGAGE

24 GUARANTY INSURANCE

25 Sec. 3502.052. ELIGIBILITY OF FOREIGN OR ALIEN INSURER

26 TO WRITE MORTGAGE GUARANTY INSURANCE

27 Sec. 3502.053. DISCRIMINATION PROHIBITED

1 [Sections 3502.054-3502.100 reserved for expansion]

2 SUBCHAPTER C. FORMS AND RATES

3 Sec. 3502.101. RATE FILINGS

4 Sec. 3502.102. RATE STANDARDS

5 Sec. 3502.103. RECORDING AND REPORTING OF LOSS AND
6 EXPENSE EXPERIENCE AND OTHER DATA

7 Sec. 3502.104. POLICY FORM FILINGS

8 Sec. 3502.105. POLICY FORM STANDARDS

9 Sec. 3502.106. CLAIM AGAINST RESIDENTIAL BORROWER

10 Sec. 3502.107. EXEMPTION; WITHDRAWAL OF APPROVAL

11 Sec. 3502.108. RULES

12 [Sections 3502.109-3502.150 reserved for expansion]

13 SUBCHAPTER D. FINANCIAL REQUIREMENTS

14 Sec. 3502.151. DEFINITION

15 Sec. 3502.152. CAPITAL AND SURPLUS REQUIREMENTS

16 Sec. 3502.153. UNEARNED PREMIUM RESERVE

17 Sec. 3502.154. LOSS RESERVE

18 Sec. 3502.155. CONTINGENCY RESERVE

19 Sec. 3502.156. OUTSTANDING TOTAL LIABILITY

20 Sec. 3502.157. LIMIT ON INSURANCE OF CERTAIN LOANS

21 Sec. 3502.158. LIMIT ON COVERAGE FOR CERTAIN INSUREDS

22 [Sections 3502.159-3502.200 reserved for expansion]

23 SUBCHAPTER E. LENDER POWERS AND DUTIES

24 Sec. 3502.201. DEFINITION

25 Sec. 3502.202. NOTICE OF BORROWER'S RIGHT TO CANCEL

26 Sec. 3502.203. REFUND OF PREMIUM

27 Sec. 3502.204. ADVERTISING OF "INSURED LOANS"

1 CHAPTER 3502. MORTGAGE GUARANTY INSURANCE

2 SUBCHAPTER A. GENERAL PROVISIONS

3 Sec. 3502.001. APPLICABILITY OF CHAPTER. This chapter
4 applies only to mortgage guaranty insurance and does not affect any
5 other provision of this code. (V.T.I.C. Art. 21.50, Sec. 1A(a).)

6 Sec. 3502.002. APPLICABILITY OF OTHER LAW. (a) This code
7 and other state laws apply to the business of mortgage guaranty
8 insurance.

9 (b) This chapter controls to the extent of any conflict with
10 another provision of this code or other state law. (V.T.I.C.
11 Art. 21.50, Sec. 10.)

12 Sec. 3502.003. MORTGAGE GUARANTY INSURANCE DEFINED. In
13 this chapter, "mortgage guaranty insurance" means insurance
14 against:

15 (1) financial loss because of nonpayment of principal,
16 interest, and other amounts agreed to be paid under the terms of a
17 note, bond, or other evidence of indebtedness that is secured by an
18 authorized real estate security, provided the improvement on the
19 real estate is:

20 (A) one or more residential buildings designed to
21 be occupied by not more than four families;

22 (B) a condominium unit; or

23 (C) one or more buildings designed to be occupied
24 by five or more families or for industrial or commercial purposes;
25 or

26 (2) financial loss because of nonpayment of rent and
27 other amounts agreed to be paid under the terms of a written lease

1 for the possession, use, or occupancy of real estate, provided the
2 improvement on the real estate is one or more buildings designed to
3 be occupied for industrial or commercial purposes. (V.T.I.C.
4 Art. 21.50, Sec. 1 (part).)

5 Sec. 3502.004. AUTHORIZED REAL ESTATE SECURITY
6 DEFINED. (a) In this chapter, "authorized real estate security"
7 means:

8 (1) a proprietary lease and a stock membership
9 certificate issued to a tenant stockholder or resident member of a
10 fee simple cooperative housing corporation as defined in Section
11 216, Internal Revenue Code of 1986; or

12 (2) a mortgage, deed of trust, wraparound mortgage, or
13 other instrument that constitutes a first lien or charge on real
14 estate or is considered to be the equivalent of a first lien or
15 charge on real estate by the Federal National Mortgage Association,
16 the Federal Home Loan Mortgage Corporation, the Federal Housing
17 Finance Board, a successor of one of those entities, an agency of
18 this state, or a federal agency, provided:

19 (A) the improvement on the real estate is a
20 building or buildings designed to be occupied as specified by
21 Section 3502.003(1); and

22 (B) the real estate loan is a type of loan that
23 is:

24 (i) authorized to be made by a bank, savings
25 and loan association, credit union, or insurer that is supervised
26 and regulated by a department of this state or a federal agency;

27 (ii) authorized to be made by a mortgage

1 banker that is an approved seller-servicer of the Federal National
2 Mortgage Association, the Federal Home Loan Mortgage Corporation,
3 or a successor of one of those entities; or

4 (iii) approved by the federal secretary of
5 housing and urban development for participation in a mortgage
6 insurance program.

7 (b) The lien on real estate described by Subsection (a)(2)
8 may be subject and subordinate to:

9 (1) the lien of a public bond, assessment, or tax if
10 there is not a delinquent installment, call, or payment of or under
11 the bond, assessment, or tax;

12 (2) an outstanding mineral, oil, or timber right,
13 right-of-way, easement or right-of-way support, sewer right,
14 building restriction, other restriction or covenant, or other
15 condition or regulation of use; or

16 (3) an outstanding lease on the real estate under
17 which rents or profits are reserved to the owner. (V.T.I.C.
18 Art. 21.50, Sec. 1 (part).)

19 [Sections 3502.005-3502.050 reserved for expansion]

20 SUBCHAPTER B. MORTGAGE GUARANTY INSURERS

21 Sec. 3502.051. GENERAL ELIGIBILITY TO WRITE MORTGAGE
22 GUARANTY INSURANCE. (a) An insurer that writes anywhere any class
23 of insurance other than mortgage guaranty insurance may not be
24 issued or continue to hold a certificate of authority to write
25 mortgage guaranty insurance in this state.

26 (b) A mortgage guaranty insurer that writes anywhere the
27 class of mortgage guaranty insurance described by Section

1 3502.003(1)(C) or (2) may not be issued or continue to hold a
2 certificate of authority to write in this state the class of
3 mortgage guaranty insurance described by Section 3502.003(1)(A) or
4 (B). (V.T.I.C. Art. 21.50, Sec. 2 (part).)

5 Sec. 3502.052. ELIGIBILITY OF FOREIGN OR ALIEN INSURER TO
6 WRITE MORTGAGE GUARANTY INSURANCE. The department may not issue a
7 certificate of authority to a foreign or alien insurer writing
8 mortgage guaranty insurance unless the insurer demonstrates a
9 satisfactory operating experience in the insurer's state of
10 domicile. (V.T.I.C. Art. 21.50, Sec. 2 (part).)

11 Sec. 3502.053. DISCRIMINATION PROHIBITED. In extending or
12 issuing mortgage guaranty insurance, a mortgage guaranty insurer
13 may not discriminate on the basis of the applicant's sex, marital
14 status, race, color, creed, national origin, disability, or age or
15 solely on the basis of the geographic location of the property to be
16 insured unless:

17 (1) the discrimination related to geographic location
18 is for a business purpose that is not a mere pretext for unfair
19 discrimination; or

20 (2) the refusal, cancellation, or limitation of the
21 insurance is required by law or regulatory mandate. (V.T.I.C.
22 Art. 21.50, Sec. 1A(1) (part).)

23 [Sections 3502.054-3502.100 reserved for expansion]

24 SUBCHAPTER C. FORMS AND RATES

25 Sec. 3502.101. RATE FILINGS. (a) Not later than the 15th
26 day before the date a mortgage guaranty insurer uses a rate or
27 supplementary rate information in this state, the insurer must file

1 the rate and supplementary rate information, and any changes to the
2 rate or supplementary rate information, with the department.

3 (b) The rate filing must include adequate supporting data,
4 including:

5 (1) information on:

6 (A) past and prospective loss experience in this
7 state and outside the state;

8 (B) catastrophe hazards;

9 (C) expenses of operation; and

10 (D) a reasonable margin for profit and
11 contingencies;

12 (2) an explanation of the insurer's interpretation of
13 any statistical data on which the insurer relied;

14 (3) an explanation and description of the methods used
15 in making the rates; and

16 (4) certification by an appropriate official of the
17 insurer relating to the appropriateness of the charges, rates, or
18 rating plans based on reasonable assumptions and accompanied by
19 adequate supporting information. (V.T.I.C. Art. 21.50, Secs.
20 1A(f) (part), (g).)

21 Sec. 3502.102. RATE STANDARDS. (a) A mortgage guaranty
22 insurance rate, rating plan, or charge may not be excessive,
23 inadequate, or unfairly discriminatory and must be reasonable with
24 respect to the benefits provided.

25 (b) This chapter does not require the department to:

26 (1) establish standard and absolute rates or a single
27 and uniform rate for each risk or risks; or

1 (2) compel all insurers to adhere to rates previously
2 filed by other insurers.

3 (c) The department may accept different rates for different
4 insurers for the same risk or risks on mortgage guaranty insurance.
5 The department may accept different rates for different insurers as
6 filed by any authorized insurer unless the department finds that
7 the filing does not meet the requirements of this chapter.
8 (V.T.I.C. Art. 21.50, Secs. 1A(f) (part), (j).)

9 Sec. 3502.103. RECORDING AND REPORTING OF LOSS AND EXPENSE
10 EXPERIENCE AND OTHER DATA. (a) The commissioner shall adopt
11 reasonable rules and statistical plans for the recording and
12 reporting of loss experience and other required data by a mortgage
13 guaranty insurer. The rules and plans must ensure that each
14 insurer's total loss and expense experience is made available in
15 the form and with the detail the commissioner considers necessary.

16 (b) Each mortgage guaranty insurer shall use the
17 statistical plans adopted under this section to record and report
18 loss experience and other required data in accordance with the
19 rules adopted by the commissioner.

20 (c) The commissioner may modify statistical plans adopted
21 under this section. (V.T.I.C. Art. 21.50, Sec. 1A(i).)

22 Sec. 3502.104. POLICY FORM FILINGS. (a) Except as
23 provided by Subsection (b), not later than the 15th day before the
24 date a mortgage guaranty insurer uses a policy form, related form,
25 classification, or rule in this state, the insurer must file the
26 form, classification, or rule with the department.

27 (b) This subsection applies only to a policy form, related

1 form, classification, or rule a mortgage guaranty insurer uses in
2 this state for a policy that provides coverage for a pool or group
3 of loans in connection with the issuance of mortgage-backed
4 securities or bonds. Not later than the 15th day after the date the
5 insurer uses the form, classification, or rule, the insurer shall
6 file the form, classification, or rule with the department.
7 (V.T.I.C. Art. 21.50, Secs. 1A(b) (part), (1) (part).)

8 Sec. 3502.105. POLICY FORM STANDARDS. The commissioner
9 shall disapprove a mortgage guaranty insurance policy form if the
10 form:

11 (1) violates this code or rules adopted by the
12 commissioner; or

13 (2) contains a provision that encourages
14 misrepresentation or is unjust, unfair, inequitable, misleading,
15 deceptive, or contrary to law or to the public policy of this state.
16 (V.T.I.C. Art. 21.50, Sec. 1A(c) (part).)

17 Sec. 3502.106. CLAIM AGAINST RESIDENTIAL BORROWER. A
18 mortgage guaranty insurance policy may not contain a provision that
19 allows subrogation rights or any other claim by the insurer against
20 the borrower for a deficiency arising from a foreclosure sale of a
21 single-family dwelling that is occupied by the borrower as the
22 borrower's principal residence. (V.T.I.C. Art. 21.50, Sec. 1A(c)
23 (part).)

24 Sec. 3502.107. EXEMPTION; WITHDRAWAL OF APPROVAL. (a) A
25 policy form, related form, classification, or rule a mortgage
26 guaranty insurer uses in this state, including for a policy
27 described by Section 3502.104(b), is exempt from department

1 approval.

2 (b) If the commissioner finds, after notice and hearing,
3 that the filing of a policy form, related form, classification, or
4 rule is no longer in the best interest of the public, the
5 commissioner may issue an order:

6 (1) suspending the exemption under Subsection (a) with
7 respect to one or more insurers that filed the form,
8 classification, or rule; and

9 (2) requiring each affected insurer to cease and
10 desist using the form, classification, or rule, as the commissioner
11 specifies.

12 (c) If the commissioner finds, after notice and hearing,
13 that a filed policy form or rate no longer meets the requirements of
14 this code, the commissioner may issue an order withdrawing approval
15 of the form or rate. The order must specify the reasons the form or
16 rate no longer meets the requirements. An order under this
17 subsection may not take effect until the 30th day after the date the
18 commissioner issues the order.

19 (d) The commissioner must provide to each insurer that filed
20 a form, classification, rule, or rate that is the subject of a
21 hearing under this section notice of the hearing not later than the
22 20th day before the date of the hearing. The notice must specify
23 the matters to be considered at the hearing. (V.T.I.C. Art. 21.50,
24 Secs. 1A(b) (part), (k), (l) (part).)

25 Sec. 3502.108. RULES. (a) The commissioner may, after
26 notice and hearing, adopt reasonable rules:

27 (1) relating to the minimum standards for coverage

1 under policy forms consistent with the purpose of this chapter and
2 the public policy of this state; and

3 (2) necessary to establish guidelines, procedures,
4 methods, standards, and criteria by which the types of forms and
5 documents submitted to the department are to be reviewed and acted
6 on by the department.

7 (b) The department may establish requirements for data and
8 information filed under this chapter. (V.T.I.C. Art. 21.50, Secs.
9 1A(d), (e), (h).)

10 [Sections 3502.109-3502.150 reserved for expansion]

11 SUBCHAPTER D. FINANCIAL REQUIREMENTS

12 Sec. 3502.151. DEFINITION. In this subchapter,
13 "contingency reserve" means an additional premium reserve
14 established to protect policyholders against the effect of adverse
15 economic cycles or losses. (V.T.I.C. Art. 21.50, Sec. 1(c).)

16 Sec. 3502.152. CAPITAL AND SURPLUS REQUIREMENTS. An
17 insurer may not write mortgage guaranty insurance unless the
18 insurer has the minimum capital and surplus required by Chapter 861
19 for a general casualty company. (V.T.I.C. Art 21.50, Sec. 2.
20 (part).)

21 Sec. 3502.153. UNEARNED PREMIUM RESERVE. (a) Except as
22 provided by Subsection (b), the unearned premium reserve on
23 mortgage guaranty insurance must be computed in accordance with
24 this code.

25 (b) For a policy covering a risk period of more than one
26 year, the unearned premium reserve must be computed in accordance
27 with standards adopted by the commissioner after appropriate

1 hearings. (V.T.I.C. Art. 21.50, Sec. 3.)

2 Sec. 3502.154. LOSS RESERVE. A mortgage guaranty insurer
3 shall determine the loss reserve using the case basis method. The
4 loss reserve must include a reserve for claims incurred but not
5 reported. (V.T.I.C. Art. 21.50, Sec. 4.)

6 Sec. 3502.155. CONTINGENCY RESERVE. (a) In addition to
7 the capital, surplus, and reserves required by Sections 3502.152,
8 3502.153, and 3502.154, a mortgage guaranty insurer shall establish
9 a contingency reserve and report the contingency reserve as a
10 liability in the insurer's financial statements.

11 (b) To establish and maintain the contingency reserve, the
12 mortgage guaranty insurer shall annually contribute to the
13 contingency reserve 50 percent of the earned premiums on the
14 insurer's mortgage guaranty insurance business. The reserved
15 earned premiums may be released to the insurer's surplus annually
16 after the premiums have been maintained for 120 months.

17 (c) In addition, the mortgage guaranty insurer may withdraw
18 premiums from the contingency reserve in any year for which the
19 insurer can demonstrate to the department that the incurred losses
20 for that year exceed 35 percent of the corresponding earned
21 premiums for that year. The insurer shall reduce any subsequent
22 annual release to surplus from the established contingency reserve
23 by an amount equal to the amount withdrawn and released for the
24 losses. The insurer shall deduct from subsequent annual releases
25 any balance that exceeds the normal annual release from the
26 contingency reserve. (V.T.I.C. Art. 21.50, Sec. 5.)

27 Sec. 3502.156. OUTSTANDING TOTAL LIABILITY. (a) A

1 mortgage guaranty insurer may not at any time have outstanding
2 under the insurer's aggregate mortgage guaranty insurance policies
3 a total liability, net of reinsurance, that exceeds the sum of the
4 insurer's capital, surplus, and contingency reserve, multiplied by
5 25.

6 (b) A mortgage guaranty insurer shall compute the insurer's
7 liability for the purposes of this section on the basis of the
8 insurer's liability under the election as provided by Section
9 3502.158. An insurer shall compute the insurer's liability for
10 leases on the basis of the insurer's liability as determined by the
11 department.

12 (c) A mortgage guaranty insurer that has outstanding total
13 liability that exceeds the amount computed under Subsection (a) may
14 not write new mortgage guaranty insurance business until the
15 insurer's total liability no longer exceeds that amount. (V.T.I.C.
16 Art. 21.50, Sec. 6.)

17 Sec. 3502.157. LIMIT ON INSURANCE OF CERTAIN
18 LOANS. (a) In this section, "contiguous" means not separated by
19 more than one-half mile.

20 (b) A mortgage guaranty insurer may not insure loans secured
21 by properties in a single housing tract or a contiguous tract in an
22 amount that exceeds 10 percent of the insurer's capital, surplus,
23 and contingency reserve.

24 (c) In determining the amount of risk under this section, a
25 mortgage guaranty insurer shall deduct from the total direct risk
26 insured any applicable reinsurance in an assuming insurer
27 authorized to engage in the business of mortgage guaranty insurance

1 in this state. (V.T.I.C. Art. 21.50, Sec. 8.)

2 Sec. 3502.158. LIMIT ON COVERAGE FOR CERTAIN INSUREDS. For
3 the classes of insurance described by Section 3502.003(1), a
4 mortgage guaranty insurer shall elect to:

5 (1) limit the insurer's coverage, net of reinsurance,
6 to a maximum of 25 percent of the entire indebtedness to the
7 insured; or

8 (2) pay the entire indebtedness to the insured and
9 acquire title to the authorized real estate security. (V.T.I.C.
10 Art. 21.50, Sec. 7.)

11 [Sections 3502.159-3502.200 reserved for expansion]

12 SUBCHAPTER E. LENDER POWERS AND DUTIES

13 Sec. 3502.201. DEFINITION. In this subchapter, "lender"
14 has the meaning assigned by Section 549.001. (V.T.I.C. Art. 21.50,
15 Sec. 1B(d).)

16 Sec. 3502.202. NOTICE OF BORROWER'S RIGHT TO
17 CANCEL. (a) A lender that requires a borrower to purchase
18 mortgage guaranty insurance shall provide annually to the borrower
19 a copy of the following written notice printed in at least 10-point
20 boldfaced type:

21 "NOTICE OF RIGHT TO CANCEL PRIVATE MORTGAGE INSURANCE: If
22 you currently pay private mortgage insurance premiums, you may have
23 the right to cancel the insurance and cease paying premiums. This
24 would permit you to make a lower total monthly mortgage payment and
25 to possibly receive a refund of any unearned premiums on the policy.
26 In most cases, you have the right to cancel private mortgage
27 insurance if the principal balance of your loan is 80 percent or

1 less of the current fair market appraised value of your home. If
2 you want to learn whether you are eligible to cancel this insurance,
3 please contact us at (address and telephone number of lender) or the
4 Texas Department of Insurance consumer help line at (the
5 appropriate toll-free telephone number)."

6 (b) If federal law requires a lender to provide a borrower
7 with a written notice containing substantially the same information
8 required by Subsection (a), a lender that provides the notice
9 required by federal law within the period prescribed by federal law
10 satisfies the notice requirement of Subsection (a). (V.T.I.C.
11 Art. 21.50, Secs. 1B(a), (c).)

12 Sec. 3502.203. REFUND OF PREMIUM. A lender that receives a
13 refund of an unearned mortgage guaranty insurance premium paid by a
14 borrower shall remit the refund to the borrower not later than the
15 10th business day after the date the lender receives the refund.
16 (V.T.I.C. Art. 21.50, Sec. 1B(b).)

17 Sec. 3502.204. ADVERTISING OF "INSURED LOANS." A bank,
18 savings and loan association, insurer, or approved seller-servicer
19 of the Federal National Mortgage Association, any of whose
20 authorized real estate securities are insured by a mortgage
21 guaranty insurer, may not state in a brochure, pamphlet, or report
22 or any form of advertising that the real estate loans of the bank,
23 savings and loan association, insurer, or seller-servicer are
24 "insured loans" unless:

25 (1) the brochure, pamphlet, report, or advertising
26 also:

27 (A) clearly states that the loans are insured by

1 private insurers; and

2 (B) lists the names of the private insurers; and

3 (2) the insurance on the real estate loans is written
4 by an insurer authorized to write that insurance in this state.
5 (V.T.I.C. Art. 21.50, Sec. 9.)

6 CHAPTER 3503. SURETY BONDS AND RELATED INSTRUMENTS

7 SUBCHAPTER A. CERTAIN REQUIRED OR PERMITTED OBLIGATIONS

8 Sec. 3503.001. DEFINITION

9 Sec. 3503.002. EXECUTION OF OBLIGATION BY SURETY
10 COMPANY

11 Sec. 3503.003. DESIGNATION OF AGENT BY CORPORATE
12 SURETY REQUIRED

13 Sec. 3503.004. WRITTEN CERTIFICATION OF REINSURANCE AS
14 CONDITION OF ACCEPTANCE OF OBLIGATION

15 Sec. 3503.005. ADDITIONAL REQUIREMENTS FOR CERTAIN
16 BONDS

17 [Sections 3503.006-3503.050 reserved for expansion]

18 SUBCHAPTER B. PROMPT PAYMENT OF CONSTRUCTION PAYMENT BONDS

19 Sec. 3503.051. DEFINITIONS

20 Sec. 3503.052. CONSTRUCTION OF SUBCHAPTER

21 Sec. 3503.053. CERTAIN TERMS VOID

22 Sec. 3503.054. NOTICE OF CLAIM; ACKNOWLEDGMENT AND
23 INVESTIGATION

24 Sec. 3503.055. NOTICE OF ACCEPTANCE OR REJECTION OF
25 CLAIM

26 Sec. 3503.056. PAYMENT OF CLAIM

27 Sec. 3503.057. RULES

1 [Sections 3503.058-3503.100 reserved for expansion]

2 SUBCHAPTER C. OTHER BONDS

3 Sec. 3503.101. BAIL BOND CERTIFICATES

4 [Sections 3503.102-3503.150 reserved for expansion]

5 SUBCHAPTER D. SUIT ON CERTAIN BONDS OR OTHER OBLIGATIONS

6 Sec. 3503.151. VENUE OF SUIT ON CERTAIN BONDS OR OTHER

7 OBLIGATIONS

8 Sec. 3503.152. RESIDENCE OF INSURANCE COMPANY

9 Sec. 3503.153. SERVICE OF PROCESS

10 Sec. 3503.154. ACCEPTANCE OF SUBCHAPTER

11 [Sections 3503.155-3503.200 reserved for expansion]

12 SUBCHAPTER E. REGULATION OF SURETY COMPANY

13 Sec. 3503.201. MERGER OR CONSOLIDATION OF CERTAIN

14 COMPANIES

15 CHAPTER 3503. SURETY BONDS AND RELATED INSTRUMENTS

16 SUBCHAPTER A. CERTAIN REQUIRED OR PERMITTED OBLIGATIONS

17 Sec. 3503.001. DEFINITION. In this subchapter,
18 "obligation" means a bond, undertaking, recognizance, guaranty, or
19 other obligation that is by law or by a charter, ordinance, or rule
20 of a municipality, board, body, organization, court, or public
21 officer required or permitted to be made, given, tendered, or filed
22 to guarantee the performance of an act, duty, or obligation or the
23 refraining from an act. (V.T.I.C. Art. 7.19-1, Sec. (a) (part).)

24 Sec. 3503.002. EXECUTION OF OBLIGATION BY SURETY
25 COMPANY. (a) A surety company authorized to engage in business in
26 this state may execute an obligation.

27 (b) Except as provided by Section 3503.004 or 3503.005, the

1 execution of an obligation by a surety company under Subsection (a)
2 is in full compliance with each law, charter, ordinance, or rule
3 that requires:

4 (1) the obligation to be executed by one or more
5 sureties; or

6 (2) the executing sureties to possess any
7 qualification, including the requirement that a surety be a
8 resident, householder, or freeholder.

9 (c) Each municipality, board, body, organization, court,
10 public officer, and head of department shall accept and treat an
11 obligation executed by a surety company under Subsection (a) as
12 fully complying with each law, charter, ordinance, or rule
13 described by Subsection (b). (V.T.I.C. Art. 7.19-1, Sec. (a)
14 (part).)

15 Sec. 3503.003. DESIGNATION OF AGENT BY CORPORATE SURETY
16 REQUIRED. Notwithstanding Section 3503.002, in specifications by
17 a municipality for work or supplies for which sealed bids are
18 required, the municipality may require that a corporate surety
19 tender designate, in a manner satisfactory to the municipality, an
20 agent:

21 (1) who is a resident of the county in which the
22 municipality is located; and

23 (2) to whom any required notices may be delivered and
24 on whom process may be served in matters arising out of the
25 suretyship. (V.T.I.C. Art. 7.19-1, Sec. (a) (part).)

26 Sec. 3503.004. WRITTEN CERTIFICATION OF REINSURANCE AS
27 CONDITION OF ACCEPTANCE OF OBLIGATION. (a) If an obligation is in

1 an amount that exceeds 10 percent of the surety company's capital
2 and surplus, the municipality, board, body, organization, court, or
3 public officer may require, as a condition of accepting the
4 obligation, written certification that the surety company has
5 reinsured the portion of the risk that exceeds 10 percent of the
6 surety company's capital and surplus with one or more reinsurers
7 who are authorized, accredited, or trusted to engage in business
8 in this state.

9 (b) The amount reinsured by a reinsurer under this section
10 may not exceed 10 percent of the reinsurer's capital and surplus.

11 (c) On request, the department shall provide the amount of
12 the allowed capital and surplus, as of the date of the last annual
13 statutory financial statement, for a surety company or reinsurer
14 authorized to engage in business in this state. (V.T.I.C. Art.
15 7.19-1, Sec. (b).)

16 Sec. 3503.005. ADDITIONAL REQUIREMENTS FOR CERTAIN
17 BONDS. (a) A bond that is made, given, tendered, or filed under
18 Chapter 53, Property Code, or Chapter 2253, Government Code, may be
19 executed only by a surety company that is authorized to write surety
20 bonds in this state. If the amount of the bond exceeds \$100,000,
21 the surety company must also:

22 (1) hold a certificate of authority from the United
23 States secretary of the treasury to qualify as a surety on
24 obligations permitted or required under federal law; or

25 (2) have obtained reinsurance for any liability in
26 excess of \$100,000 from a reinsurer that:

27 (A) is an authorized reinsurer in this state; and

1 (B) holds a certificate of authority from the
2 United States secretary of the treasury to qualify as a surety or
3 reinsurer on obligations permitted or required under federal law.

4 (b) To determine whether the surety on the bond or the
5 reinsurer holds a certificate of authority from the United States
6 secretary of the treasury, a party may conclusively rely on the list
7 published in the Federal Register by the United States Department
8 of the Treasury, covering the date on which the bond was executed,
9 of the companies holding certificates of authority as acceptable
10 sureties on federal bonds and as acceptable reinsuring companies.
11 A purchaser, insurer of title, or lender acquiring or insuring an
12 interest in or title to real property may also conclusively rely on,
13 and is protected by, a statement on a recorded bond or a sworn,
14 recorded statement by the surety that refers to the specific
15 recorded bond and states that, at the time the bond was executed,
16 the surety complied with Subsection (a)(1) or (2). (V.T.I.C. Art.
17 7.19-1, Secs. (c), (d).)

18 [Sections 3503.006-3503.050 reserved for expansion]

19 SUBCHAPTER B. PROMPT PAYMENT OF CONSTRUCTION PAYMENT BONDS

20 Sec. 3503.051. DEFINITIONS. In this subchapter:

21 (1) "Claimant" means a person directly entitled to
22 payment under a construction payment bond.

23 (2) "Construction payment bond" means a surety
24 agreement or obligation issued to guarantee or assure payment by a
25 principal obligor for work performed or materials supplied or
26 specially fabricated for a public or private construction project.

27 (3) "Notice of claim" means a written notification by

1 a claimant who makes a claim for payment from the surety company.
2 The term does not include a routine statutory notice required by
3 Section 53.056(b), 53.057, 53.058, 53.252(b), or 53.253, Property
4 Code, or Section 2253.047, Government Code.

5 (4) "Surety company" means an authorized surety or
6 guaranty company that executes and delivers a construction payment
7 bond as a surety for a principal obligor. (V.T.I.C. Art. 7.20, Sec.
8 1.)

9 Sec. 3503.052. CONSTRUCTION OF SUBCHAPTER. (a) This
10 subchapter shall be construed to encourage prompt payment of just
11 claims made under construction payment bonds of surety companies.
12 This subchapter does not foreclose any other remedy available to a
13 claimant by law or contract.

14 (b) This subchapter may not be construed to:

15 (1) create a private cause of action;

16 (2) be a precondition to judicially enforcing an
17 obligation under a construction payment bond;

18 (3) diminish any other obligation of a surety company
19 that exists by law; or

20 (4) prohibit a surety company from asserting a defense
21 against a construction payment bond claim in a proceeding to
22 enforce a claim. (V.T.I.C. Art. 7.20, Sec. 6.)

23 Sec. 3503.053. CERTAIN TERMS VOID. A term contained in a
24 construction payment bond that is inconsistent with this subchapter
25 is void. (V.T.I.C. Art. 7.20, Sec. 7.)

26 Sec. 3503.054. NOTICE OF CLAIM; ACKNOWLEDGMENT AND
27 INVESTIGATION. (a) A surety company that issues a construction

1 payment bond shall, not later than the 15th day after the date of
2 receipt of notice of claim under the bond:

3 (1) acknowledge receipt of the claim;

4 (2) begin any review or investigation necessary to
5 determine whether the surety company is obligated to satisfy the
6 claim under the bond; and

7 (3) request from the claimant each document, item of
8 information, accounting, statement, or form that the surety company
9 reasonably believes, at that time, will be required from the
10 claimant.

11 (b) If a construction payment bond provides an address to
12 which a notice of claim under the bond should be submitted, the
13 notice is effective on the date the notice is received at that
14 address.

15 (c) This subchapter does not exempt a claimant from
16 complying with any applicable statutory or contractual notice
17 requirement. (V.T.I.C. Art. 7.20, Sec. 2.)

18 Sec. 3503.055. NOTICE OF ACCEPTANCE OR REJECTION OF
19 CLAIM. (a) Except as provided by Subsection (c), a surety company
20 shall notify a claimant in writing of the acceptance or rejection of
21 a claim not later than the 30th day after the date the company
22 receives all documents, items of information, accountings,
23 statements, and forms requested by the company under Section
24 3503.054.

25 (b) If the surety company rejects all or part of the claim,
26 the notice required by Subsection (a) must state in specific terms
27 the reasons for the rejection that are known by the company at the

1 time of the rejection.

2 (c) If the surety company is unable to accept or reject the
3 claim within the period specified by Subsection (a), the company,
4 in that same period, shall notify the claimant in writing that the
5 company is unable to accept or reject the claim. The notice
6 provided under this subsection must:

7 (1) state the reasons for which the company needs
8 additional time to accept or reject the claim; and

9 (2) include a request for any additional information
10 the company reasonably needs to process the claim.

11 (d) Not later than the 30th day after the date a surety
12 company notifies a claimant under Subsection (c), the company shall
13 notify the claimant in writing of the acceptance or rejection of the
14 claim. If the company rejects all or part of the claim, the company
15 shall state in specific terms the reasons for the rejection that are
16 known by the company at the time of the rejection.

17 (e) In addition to any other contractual or statutory basis
18 for denying a claim, the surety company may reject all or part of a
19 claim:

20 (1) that is the subject of a legitimate dispute
21 between the principal obligor and the claimant; or

22 (2) for which the claimant has failed to provide
23 supporting documents or information the company reasonably
24 requested.

25 (f) The time limits provided by this section and Section
26 3503.054 may be varied by any statute requiring a construction
27 payment bond.

1 (g) This section does not preclude a surety company from
2 asserting any defense in an action brought by a claimant on a
3 construction payment bond if the company makes a good faith effort
4 to inform the claimant in accordance with this section of the
5 reasons for rejecting all or part of the claim. (V.T.I.C. Art.
6 7.20, Sec. 3.)

7 Sec. 3503.056. PAYMENT OF CLAIM. (a) If a surety company
8 notifies a claimant under Section 3503.055 that the company accepts
9 a claim or part of a claim, the company shall pay the claim not later
10 than the 15th day after the date of the notice.

11 (b) If payment of the claim or part of the claim is
12 conditioned on the execution of a document or performance of an act
13 by the claimant, the surety company shall pay the claim not later
14 than the seventh day after the date the company receives the
15 executed document or evidence that the act has been performed.

16 (c) For purposes of this section, payment of a claim occurs
17 when the surety company places the company's check or draft in the
18 United States mail properly addressed to the claimant or the
19 claimant's representative. (V.T.I.C. Art. 7.20, Sec. 4.)

20 Sec. 3503.057. RULES. The commissioner may adopt rules
21 enforcing this subchapter in cases in which a surety company
22 violates this subchapter as a general business practice. (V.T.I.C.
23 Art. 7.20, Sec. 5.)

24 [Sections 3503.058-3503.100 reserved for expansion]

25 SUBCHAPTER C. OTHER BONDS

26 Sec. 3503.101. BAIL BOND CERTIFICATES. (a) In any year,
27 an insurance company authorized to engage in fidelity and surety

1 insurance business in this state may become surety in an amount not
2 to exceed \$200 with respect to each bail bond certificate issued in
3 that year by:

4 (1) an automobile club authorized to transact business
5 in this state; or

6 (2) a truck and bus association incorporated in this
7 state.

8 (b) The bail bond certificate must be a printed card or
9 other certificate that:

10 (1) is issued by:

11 (A) an automobile club authorized to transact
12 business within this state; or

13 (B) a truck and bus association incorporated in
14 this state;

15 (2) is issued to a member of the club or association
16 and signed by the member of the club or association; and

17 (3) contains a printed statement that:

18 (A) a fidelity and surety company authorized to
19 engage in business in this state guarantees the appearance of the
20 member whose signature appears on the card or certificate; and

21 (B) if the member fails to appear in court at the
22 time of trial, the fidelity and surety company will pay any fine or
23 forfeiture imposed on the member in an amount not to exceed \$200.

24 (V.T.I.C. Art. 7.20-1.)

25 [Sections 3503.102-3503.150 reserved for expansion]

26 SUBCHAPTER D. SUIT ON CERTAIN BONDS OR OTHER OBLIGATIONS

27 Sec. 3503.151. VENUE OF SUIT ON CERTAIN BONDS OR OTHER

1 OBLIGATIONS. (a) This section applies to:

2 (1) a bond or other obligation of an insurance company
3 authorized to engage in business in this state and to act as surety
4 and guarantor of the fidelity of employees, trustees, executors,
5 administrators, guardians, or others appointed to, or assuming the
6 performance of, any public or private trust under appointment of a
7 court or tribunal, or under contract between private individuals or
8 corporations; or

9 (2) a bond that may be required:

10 (A) to be filed in a judicial proceeding;

11 (B) to guarantee a contract or undertaking
12 between:

13 (i) individuals;

14 (ii) private corporations;

15 (iii) individuals and corporations; or

16 (iv) individuals or private corporations
17 and the state, a municipal corporation, or a county; or

18 (C) of a state, county, municipal, or district
19 official, including a school district official.

20 (b) A proper court in the county in which a bond or other
21 obligation described by Subsection (a) is filed has jurisdiction of
22 a suit instituted on the bond or obligation. (V.T.I.C. Art. 7.01
23 (part).)

24 Sec. 3503.152. RESIDENCE OF INSURANCE COMPANY. An
25 insurance company described by Section 3503.151 is a resident of a
26 county in which the company engages in business. (V.T.I.C. Art.
27 7.01 (part).)

1 Sec. 3503.153. SERVICE OF PROCESS. In a suit described by
2 Section 3503.151, process shall be served in accordance with
3 Sections 804.003, 804.101, 804.102, 804.103, 804.201, 804.202,
4 804.203(a), (c), and (d), and 804.204, as applicable. (V.T.I.C.
5 Art. 7.01 (part).)

6 Sec. 3503.154. ACCEPTANCE OF SUBCHAPTER. The doing or
7 performance of any business in any county is considered an
8 acceptance of the provisions of this subchapter. (V.T.I.C. Art.
9 7.01 (part).)

10 [Sections 3503.155-3503.200 reserved for expansion]

11 SUBCHAPTER E. REGULATION OF SURETY COMPANY

12 Sec. 3503.201. MERGER OR CONSOLIDATION OF CERTAIN
13 COMPANIES. When two or more companies authorized to write
14 fidelity, guaranty, and surety insurance in this state merge or
15 consolidate and, incident to the merger or consolidation, enter
16 into a total reinsurance contract under which the merged or ceding
17 company is dissolved and that company's assets are acquired and
18 liabilities are assumed by the new or surviving company, the
19 commissioner, on finding that the contracting companies have on
20 deposit with the comptroller two or more deposits made for the same
21 or similar purposes under former Article 7.03, repealed by Chapter
22 388, Acts of the 55th Legislature, Regular Session, 1957, or under
23 Section 861.252, shall authorize the comptroller to:

24 (1) retain for a single purpose only the deposit of the
25 greatest amount and value; and

26 (2) permit the new or surviving company, on proper
27 showing that there is duplication of deposits and that the new or

1 surviving company is the owner of those deposits, to withdraw a
2 duplicate or excessive deposit. (V.T.I.C. Art. 7.02.)

3 SECTION 4. TITLE 14, INSURANCE CODE. The Insurance Code is
4 amended by adding Title 14 to read as follows:

5 TITLE 14. UTILIZATION REVIEW AND INDEPENDENT REVIEW

6 CHAPTER 4201. UTILIZATION REVIEW AGENTS

7 CHAPTER 4202. INDEPENDENT REVIEW ORGANIZATIONS

8 CHAPTER 4203. PROHIBITED CONSULTANT ACTIVITIES

9 TITLE 14. UTILIZATION REVIEW AND INDEPENDENT REVIEW

10 CHAPTER 4201. UTILIZATION REVIEW AGENTS

11 SUBCHAPTER A. GENERAL PROVISIONS

12 Sec. 4201.001. PURPOSE

13 Sec. 4201.002. DEFINITIONS

14 Sec. 4201.003. RULES

15 Sec. 4201.004. TELEPHONE ACCESS

16 [Sections 4201.005-4201.050 reserved for expansion]

17 SUBCHAPTER B. APPLICABILITY OF CHAPTER

18 Sec. 4201.051. PERSONS PROVIDING INFORMATION ABOUT

19 SCOPE OF COVERAGE OR BENEFITS

20 Sec. 4201.052. CERTAIN CONTRACTS WITH FEDERAL

21 GOVERNMENT

22 Sec. 4201.053. MEDICAID AND CERTAIN OTHER STATE HEALTH

23 OR MENTAL HEALTH PROGRAMS

24 Sec. 4201.054. WORKERS' COMPENSATION BENEFITS

25 Sec. 4201.055. HEALTH CARE SERVICE PROVIDED UNDER

26 AUTOMOBILE INSURANCE POLICY

27 Sec. 4201.056. EMPLOYEE WELFARE BENEFIT PLANS

- 1 Sec. 4201.057. HEALTH MAINTENANCE ORGANIZATIONS
2 Sec. 4201.058. INSURERS
3 [Sections 4201.059-4201.100 reserved for expansion]
4 SUBCHAPTER C. CERTIFICATION
5 Sec. 4201.101. CERTIFICATE OF REGISTRATION REQUIRED
6 Sec. 4201.102. REQUIREMENTS FOR CERTIFICATION
7 Sec. 4201.103. CERTIFICATE RENEWAL
8 Sec. 4201.104. CERTIFICATION AND RENEWAL FORMS
9 Sec. 4201.105. FEES
10 Sec. 4201.106. CERTIFICATE NOT TRANSFERABLE
11 Sec. 4201.107. REPORTING MATERIAL CHANGES
12 Sec. 4201.108. LIST OF UTILIZATION REVIEW AGENTS
13 [Sections 4201.109-4201.150 reserved for expansion]
14 SUBCHAPTER D. UTILIZATION REVIEW: GENERAL STANDARDS
15 Sec. 4201.151. UTILIZATION REVIEW PLAN
16 Sec. 4201.152. UTILIZATION REVIEW UNDER DIRECTION OF
17 PHYSICIAN
18 Sec. 4201.153. SCREENING CRITERIA AND REVIEW
19 PROCEDURES
20 Sec. 4201.154. REVIEW AND INSPECTION OF SCREENING
21 CRITERIA AND REVIEW PROCEDURES
22 Sec. 4201.155. LIMITATION ON NOTICE REQUIREMENTS AND
23 REVIEW PROCEDURES
24 [Sections 4201.156-4201.200 reserved for expansion]

1 SUBCHAPTER E. UTILIZATION REVIEW: RELATIONS WITH PATIENTS AND
2 HEALTH CARE PROVIDERS

3 Sec. 4201.201. REPETITIVE CONTACTS WITH HEALTH CARE
4 PROVIDER OR PATIENT; FREQUENCY OF
5 REVIEWS

6 Sec. 4201.202. OBSERVING OR PARTICIPATING IN PATIENT'S
7 CARE

8 Sec. 4201.203. MENTAL HEALTH THERAPY

9 Sec. 4201.204. COMPLAINT SYSTEM

10 Sec. 4201.205. DESIGNATED INITIAL CONTACT

11 Sec. 4201.206. OPPORTUNITY TO DISCUSS TREATMENT BEFORE
12 ADVERSE DETERMINATION

13 Sec. 4201.207. CHARGES BY HEALTH CARE PROVIDER FOR
14 PROVIDING MEDICAL INFORMATION

15 [Sections 4201.208-4201.250 reserved for expansion]

16 SUBCHAPTER F. UTILIZATION REVIEW: PERSONNEL

17 Sec. 4201.251. DELEGATION OF UTILIZATION REVIEW

18 Sec. 4201.252. PERSONNEL

19 Sec. 4201.253. PROHIBITED BASES FOR EMPLOYMENT,
20 COMPENSATION, EVALUATIONS, OR
21 PERFORMANCE STANDARDS

22 [Sections 4201.254-4201.300 reserved for expansion]

23 SUBCHAPTER G. NOTICE OF DETERMINATIONS

24 Sec. 4201.301. GENERAL DUTY TO NOTIFY

25 Sec. 4201.302. GENERAL TIME FOR NOTICE

26 Sec. 4201.303. ADVERSE DETERMINATION: CONTENTS OF
27 NOTICE

1 Sec. 4201.304. TIME FOR NOTICE OF ADVERSE
2 DETERMINATION

3 [Sections 4201.305-4201.350 reserved for expansion]

4 SUBCHAPTER H. APPEAL OF ADVERSE DETERMINATION

5 Sec. 4201.351. COMPLAINT AS APPEAL

6 Sec. 4201.352. WRITTEN DESCRIPTION OF APPEAL
7 PROCEDURES

8 Sec. 4201.353. APPEAL PROCEDURES MUST BE REASONABLE

9 Sec. 4201.354. PERSONS OR ENTITIES WHO MAY APPEAL

10 Sec. 4201.355. ACKNOWLEDGMENT OF APPEAL

11 Sec. 4201.356. DECISION BY PHYSICIAN REQUIRED;
12 SPECIALTY REVIEW

13 Sec. 4201.357. EXPEDITED APPEAL FOR DENIAL OF
14 EMERGENCY CARE OR CONTINUED
15 HOSPITALIZATION

16 Sec. 4201.358. RESPONSE LETTER TO INTERESTED PERSONS

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14 CHAPTER 4201. UTILIZATION REVIEW AGENTS

15 SUBCHAPTER A. GENERAL PROVISIONS

16 Sec. 4201.001. PURPOSE. The purpose of this chapter is to:

17 (1) promote the delivery of quality health care in a
18 cost-effective manner;

19 (2) ensure that a utilization review agent adheres to
20 reasonable standards for conducting utilization review;

21 (3) foster greater coordination and cooperation
22 between a health care provider and utilization review agent;

23 (4) improve communications and knowledge of benefits
24 among all parties concerned before an expense is incurred; and

25 (5) ensure that a utilization review agent maintains
26 the confidentiality of medical records in accordance with
27 applicable law. (V.T.I.C. Art. 21.58A, Sec. 1.)

1 Sec. 4201.002. DEFINITIONS. In this chapter:

2 (1) "Adverse determination" means a determination by a
3 utilization review agent that health care services provided or
4 proposed to be provided to a patient are not medically necessary.

5 (2) "Emergency care" means health care services
6 provided in a hospital emergency facility or comparable facility to
7 evaluate and stabilize medical conditions of a recent onset and
8 severity, including severe pain, that would lead a prudent
9 layperson possessing an average knowledge of medicine and health to
10 believe that the individual's condition, sickness, or injury is of
11 such a nature that failure to get immediate medical care could:

12 (A) place the individual's health in serious
13 jeopardy;

14 (B) result in serious impairment to bodily
15 functions;

16 (C) result in serious dysfunction of a bodily
17 organ or part;

18 (D) result in serious disfigurement; or

19 (E) for a pregnant woman, result in serious
20 jeopardy to the health of the fetus.

21 (3) "Enrollee" means an individual covered by a
22 health insurance policy or health benefit plan. The term includes
23 an individual who is covered as an eligible dependent of another
24 individual.

25 (4) "Health benefit plan" means a plan of benefits,
26 other than a health insurance policy, that:

27 (A) defines the coverage provisions for health

1 care for enrollees; and

2 (B) is offered or provided by a public or private
3 organization.

4 (5) "Health care provider" means a person,
5 corporation, facility, or institution that is:

6 (A) licensed by a state to provide or is
7 otherwise lawfully providing health care services; and

8 (B) eligible for independent reimbursement for
9 those health care services.

10 (6) "Health insurance policy" means an insurance
11 policy, including a policy written by a corporation subject to
12 Chapter 842, that provides coverage for medical or surgical
13 expenses incurred as a result of accident or sickness.

14 (7) "Life-threatening" means a disease or condition
15 from which the likelihood of death is probable unless the course of
16 the disease or condition is interrupted.

17 (8) "Nurse" means a professional or registered nurse,
18 a licensed vocational nurse, or a licensed practical nurse.

19 (9) "Patient" means the enrollee or an eligible
20 dependent of the enrollee under a health benefit plan or health
21 insurance policy.

22 (10) "Payor" means:

23 (A) an insurer that writes health insurance
24 policies;

25 (B) a preferred provider organization, health
26 maintenance organization, or self-insurance plan; or

27 (C) any other person or entity that provides,

1 offers to provide, or administers hospital, outpatient, medical, or
2 other health benefits to a person treated by a health care provider
3 in this state under a policy, plan, or contract.

4 (11) "Physician" means a licensed doctor of medicine
5 or a doctor of osteopathy.

6 (12) "Provider of record" means the physician or other
7 health care provider with primary responsibility for the care,
8 treatment, and services provided to an enrollee. The term includes
9 a health care facility if treatment is provided on an inpatient or
10 outpatient basis.

11 (13) "Utilization review" means a system for
12 prospective or concurrent review of the medical necessity and
13 appropriateness of health care services being provided or proposed
14 to be provided to an individual in this state. The term does not
15 include a review in response to an elective request for
16 clarification of coverage.

17 (14) "Utilization review agent" means an entity that
18 conducts utilization review for:

19 (A) an employer with employees in this state who
20 are covered under a health benefit plan or health insurance policy;

21 (B) a payor; or

22 (C) an administrator holding a certificate of
23 authority under Chapter 4151.

24 (15) "Utilization review plan" means the screening
25 criteria and utilization review procedures of a utilization review
26 agent.

27 (16) "Working day" means a weekday that is not a legal

1 holiday. (V.T.I.C. Art. 21.58A, Sec. 2 (part).)

2 Sec. 4201.003. RULES. (a) The commissioner may adopt rules
3 to implement this chapter.

4 (b) A rule adopted under this chapter relates only to a
5 person or entity subject to this chapter.

6 (c) The commissioner shall appoint an advisory committee to
7 advise the commissioner on development of rules regarding the
8 administration of this chapter, as authorized by Section 2001.031,
9 Government Code. The committee includes:

10 (1) the public counsel appointed under Chapter 501;
11 and

12 (2) one representative for each of the following:

13 (A) insurers;

14 (B) health maintenance organizations;

15 (C) group hospital service corporations;

16 (D) utilization review agents;

17 (E) employers;

18 (F) consumer organizations;

19 (G) physicians;

20 (H) dentists;

21 (I) hospitals;

22 (J) registered nurses; and

23 (K) other health care providers.

24 (d) The advisory committee's deliberations are subject to
25 Chapter 551, Government Code. (V.T.I.C. Art. 21.58A, Secs. 13,
26 14(f).)

27 Sec. 4201.004. TELEPHONE ACCESS. (a) A utilization review

1 agent shall:

2 (1) have appropriate personnel reasonably available,
3 by toll-free telephone at least 40 hours per week during normal
4 business hours in this state, to discuss patients' care and allow
5 response to telephone review requests;

6 (2) have a telephone system capable, during hours
7 other than normal business hours, of accepting or recording
8 incoming telephone calls or of providing instructions to a caller;
9 and

10 (3) respond to a call made during hours other than
11 normal business hours not later than the second working day after
12 the later of:

13 (A) the date the call was received; or

14 (B) the date the details necessary to respond
15 have been received from the caller.

16 (b) A utilization review agent must provide to the
17 commissioner a written description of the procedures to be used
18 when responding with respect to poststabilization care subsequent
19 to emergency treatment as requested by a treating physician or
20 other health care provider. (V.T.I.C. Art. 21.58A, Sec. 7.)

21 [Sections 4201.005-4201.050 reserved for expansion]

22 SUBCHAPTER B. APPLICABILITY OF CHAPTER

23 Sec. 4201.051. PERSONS PROVIDING INFORMATION ABOUT SCOPE OF
24 COVERAGE OR BENEFITS. This chapter does not apply to a person who:

25 (1) provides information to an enrollee about scope of
26 coverage or benefits provided under a health insurance policy or
27 health benefit plan; and

1 (2) does not determine whether a particular health
2 care service provided or to be provided to an enrollee is medically
3 necessary or appropriate. (V.T.I.C. Art. 21.58A, Sec. 14(a).)

4 Sec. 4201.052. CERTAIN CONTRACTS WITH FEDERAL GOVERNMENT.
5 This chapter does not apply to a contract with the federal
6 government to provide utilization review with respect to a patient
7 who is eligible for services under Title XVIII or XIX of the Social
8 Security Act (42 U.S.C. Section 1395 et seq. or Section 1396 et
9 seq.). (V.T.I.C. Art. 21.58A, Sec. 14(b)(1).)

10 Sec. 4201.053. MEDICAID AND CERTAIN OTHER STATE HEALTH OR
11 MENTAL HEALTH PROGRAMS. Except as provided by Section 4201.057,
12 this chapter does not apply to:

13 (1) the state Medicaid program;

14 (2) the services program for children with special
15 health care needs under Chapter 35, Health and Safety Code;

16 (3) a program administered under Title 2, Human
17 Resources Code;

18 (4) a program of the Department of State Health
19 Services relating to mental health services;

20 (5) a program of the Department of Aging and
21 Disability Services relating to mental retardation services; or

22 (6) a program of the Texas Department of Criminal
23 Justice. (V.T.I.C. Art. 21.58A, Sec. 14(b)(2).)

24 Sec. 4201.054. WORKERS' COMPENSATION BENEFITS. (a) Except
25 as provided by this section, this chapter applies to utilization
26 review of a health care service provided to a person eligible for
27 workers' compensation medical benefits under Title 5, Labor Code.

1 The commissioner shall regulate as provided by this chapter a
2 person who performs utilization review of a medical benefit
3 provided under Chapter 408, Labor Code.

4 (b) This section does not affect the authority of the Texas
5 Workers' Compensation Commission to exercise the powers granted to
6 that commission under Title 5, Labor Code.

7 (c) Title 5, Labor Code, prevails in the event of a conflict
8 between this chapter and Title 5, Labor Code.

9 (d) The commissioner and the Texas Workers' Compensation
10 Commission may adopt rules and enter into memoranda of
11 understanding as necessary to implement this section. (V.T.I.C.
12 Art. 21.58A, Sec. 14(c).)

13 Sec. 4201.055. HEALTH CARE SERVICE PROVIDED UNDER
14 AUTOMOBILE INSURANCE POLICY. This chapter does not apply to
15 utilization review of a health care service provided under an
16 automobile insurance policy or contract that is authorized under
17 Chapter 2301 or Article 5.13-2 or that is issued under Chapter 981.
18 (V.T.I.C. Art. 21.58A, Sec. 14(d).)

19 Sec. 4201.056. EMPLOYEE WELFARE BENEFIT PLANS. This
20 chapter does not apply to the terms or benefits of an employee
21 welfare benefit plan defined by Section 3(1) of the Employee
22 Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(1)).
23 (V.T.I.C. Art. 21.58A, Sec. 14(e).)

24 Sec. 4201.057. HEALTH MAINTENANCE ORGANIZATIONS. (a) In
25 this section, "health maintenance organization" includes a health
26 maintenance organization that contracts with the Health and Human
27 Services Commission or with an agency operating part of the state

1 Medicaid managed care program to provide health care services to
2 recipients of medical assistance under Chapter 32, Human Resources
3 Code.

4 (b) This chapter applies to a health maintenance
5 organization except as expressly provided by this section.

6 (c) As a condition of holding a certificate of authority to
7 engage in the business of a health maintenance organization, a
8 health maintenance organization that performs utilization review
9 must:

10 (1) comply with this chapter, except Subchapter C; and

11 (2) submit to assessment of a maintenance tax under
12 Chapter 258 to cover the costs of administering compliance with
13 this subsection.

14 (d) The commissioner shall adopt rules for appropriate
15 verification and enforcement of compliance with Subsection (c).

16 (e) Notwithstanding Subsection (c)(1), a health maintenance
17 organization that performs utilization review for a person or
18 entity subject to this chapter, other than a person or entity for
19 which the health maintenance organization is the payor, must obtain
20 a certificate of registration under Subchapter C and shall comply
21 with all of the provisions of this chapter.

22 (f) This chapter does not prohibit or limit the distribution
23 of a portion of the savings from the reduction or elimination of
24 unnecessary medical services, treatment, supplies, confinements,
25 or days of confinement in a health care facility through profit
26 sharing, bonus, or withholding arrangements to a participating
27 physician or participating health care provider for providing

1 commissioner may issue a certificate of registration only to an
2 applicant who has met all the requirements of this chapter and all
3 applicable rules adopted by the commissioner.

4 (b) As a condition of holding a certificate of registration
5 or renewal of a certificate, a utilization review agent must
6 maintain compliance with Subchapters D, E, and F. (V.T.I.C. Art.
7 21.58A, Secs. 3(b), 4(a).)

8 Sec. 4201.103. CERTIFICATE RENEWAL. Certification may be
9 renewed biennially by filing, not later than March 1, a renewal form
10 with the commissioner accompanied by a fee in an amount set by the
11 commissioner. (V.T.I.C. Art. 21.58A, Sec. 3(d).)

12 Sec. 4201.104. CERTIFICATION AND RENEWAL FORMS. (a) The
13 commissioner shall promulgate forms to be filed under this
14 subchapter for initial certification and for a renewal certificate
15 of registration. The form for initial certification must require:

16 (1) the utilization review agent's name, address,
17 telephone number, and normal business hours;

18 (2) the name and address of an agent for service of
19 process in this state;

20 (3) a summary of the utilization review plan;

21 (4) information concerning the categories of
22 personnel who will perform utilization review for the agent;

23 (5) a copy of the procedures established under
24 Subchapter H for the appeal of an adverse determination;

25 (6) a certification that the agent will comply with
26 this chapter; and

27 (7) a copy of the procedures for resolving oral or

1 written complaints initiated by enrollees, patients, or health care
2 providers as required by Section 4201.204.

3 (b) The commissioner may not require that the summary of the
4 utilization review plan include proprietary details. (V.T.I.C.
5 Art. 21.58A, Sec. 3(e).)

6 Sec. 4201.105. FEES. The commissioner shall establish,
7 administer, and enforce the fees for initial certification and
8 certification renewal in amounts that do not exceed the amounts
9 necessary to cover the cost of administering this chapter.
10 (V.T.I.C. Art. 21.58A, Sec. 3(f).)

11 Sec. 4201.106. CERTIFICATE NOT TRANSFERABLE. A certificate
12 of registration is not transferable. (V.T.I.C. Art. 21.58A, Sec.
13 3(c).)

14 Sec. 4201.107. REPORTING MATERIAL CHANGES. A utilization
15 review agent shall report any material change to the information
16 disclosed in a form filed under this subchapter not later than the
17 30th day after the date the change takes effect. (V.T.I.C. Art.
18 21.58A, Sec. 3(g).)

19 Sec. 4201.108. LIST OF UTILIZATION REVIEW AGENTS. (a) The
20 commissioner shall maintain and update monthly a list of each
21 utilization review agent to whom a certificate of registration has
22 been issued and the renewal date of the certificate.

23 (b) The commissioner shall provide the list at cost to each
24 individual or organization requesting the list. (V.T.I.C. Art.
25 21.58A, Sec. 12.)

26 [Sections 4201.109-4201.150 reserved for expansion]

1 SUBCHAPTER D. UTILIZATION REVIEW: GENERAL STANDARDS

2 Sec. 4201.151. UTILIZATION REVIEW PLAN. A utilization
3 review agent's utilization review plan, including reconsideration
4 and appeal requirements, must be reviewed by a physician and
5 conducted in accordance with standards developed with input from
6 appropriate health care providers and approved by a physician.
7 (V.T.I.C. Art. 21.58A, Sec. 4(b).)

8 Sec. 4201.152. UTILIZATION REVIEW UNDER DIRECTION OF
9 PHYSICIAN. A utilization review agent shall conduct utilization
10 review under the direction of a physician licensed to practice
11 medicine by a state licensing agency in the United States.
12 (V.T.I.C. Art. 21.58A, Sec. 4(h).)

13 Sec. 4201.153. SCREENING CRITERIA AND REVIEW PROCEDURES.

14 (a) A utilization review agent shall use written medically
15 acceptable screening criteria and review procedures that are
16 established and periodically evaluated and updated with
17 appropriate involvement from physicians, including practicing
18 physicians, dentists, and other health care providers.

19 (b) A utilization review determination shall be made in
20 accordance with currently accepted medical or health care
21 practices, taking into account special circumstances of the case
22 that may require deviation from the norm stated in the screening
23 criteria.

24 (c) Screening criteria must be:

- 25 (1) objective;
- 26 (2) clinically valid;
- 27 (3) compatible with established principles of health

1 care; and

2 (4) flexible enough to allow a deviation from the norm
3 when justified on a case-by-case basis.

4 (d) Screening criteria must be used to determine only
5 whether to approve the requested treatment. A denial of requested
6 treatment must be referred to an appropriate physician, dentist, or
7 other health care provider to determine medical necessity.
8 (V.T.I.C. Art. 21.58A, Sec. 4(i) (part).)

9 Sec. 4201.154. REVIEW AND INSPECTION OF SCREENING CRITERIA
10 AND REVIEW PROCEDURES. (a) A utilization review agent's written
11 screening criteria and review procedures shall be made available
12 for:

13 (1) review and inspection to determine
14 appropriateness and compliance as considered necessary by the
15 commissioner; and

16 (2) copying as necessary for the commissioner to
17 accomplish the commissioner's duties under this code.

18 (b) Any information obtained or acquired under the
19 authority of this section, Section 4201.153, and this chapter is
20 confidential and privileged and is not subject to Chapter 552,
21 Government Code, or to subpoena except to the extent necessary for
22 the commissioner to enforce this chapter. (V.T.I.C. Art. 21.58A,
23 Sec. 4(i) (part).)

24 Sec. 4201.155. LIMITATION ON NOTICE REQUIREMENTS AND REVIEW
25 PROCEDURES. A utilization review agent may not establish or impose
26 a notice requirement or other review procedure that is contrary to
27 the requirements of the health insurance policy or health benefit

1 plan. (V.T.I.C. Art. 21.58A, Sec. 4(d).)

2 [Sections 4201.156-4201.200 reserved for expansion]

3 SUBCHAPTER E. UTILIZATION REVIEW: RELATIONS WITH PATIENTS AND
4 HEALTH CARE PROVIDERS

5 Sec. 4201.201. REPETITIVE CONTACTS WITH HEALTH CARE
6 PROVIDER OR PATIENT; FREQUENCY OF REVIEWS. A utilization review
7 agent:

8 (1) may not engage in unnecessary or unreasonable
9 repetitive contacts with a health care provider or patient; and

10 (2) shall base the frequency of contacts or reviews on
11 the severity or complexity of the patient's condition or on
12 necessary treatment and discharge planning activity. (V.T.I.C.
13 Art. 21.58A, Sec. 4(j).)

14 Sec. 4201.202. OBSERVING OR PARTICIPATING IN PATIENT'S
15 CARE. (a) Unless approved for an individual patient by the
16 provider of record or modified by contract, a utilization review
17 agent shall be prohibited from observing, participating in, or
18 otherwise being present during a patient's examination, treatment,
19 procedure, or therapy.

20 (b) This subchapter, Subchapters D and F, and Section
21 4201.102(b) may not be construed to otherwise limit or deny contact
22 with a patient for purposes of conducting utilization review unless
23 otherwise specifically prohibited by law. (V.T.I.C. Art. 21.58A,
24 Sec. 4(e).)

25 Sec. 4201.203. MENTAL HEALTH THERAPY. (a) A utilization
26 review agent may not require, as a condition of treatment approval
27 or for any other reason, the observation of a psychotherapy session

1 or the submission or review of a mental health therapist's process
2 or progress notes.

3 (b) Notwithstanding this section, a utilization review
4 agent may require submission of a patient's medical record summary.
5 (V.T.I.C. Art. 21.58A, Sec. 4(o).)

6 Sec. 4201.204. COMPLAINT SYSTEM. (a) A utilization review
7 agent shall establish and maintain a complaint system that provides
8 reasonable procedures for the resolution of oral or written
9 complaints initiated by enrollees, patients, or health care
10 providers concerning the utilization review.

11 (b) The complaint procedure must include a requirement that
12 the utilization review agent provide a written response to the
13 complainant within 30 days.

14 (c) A utilization review agent shall submit to the
15 commissioner a summary report of all complaints at the times and in
16 the form specified by the commissioner. The agent shall allow the
17 commissioner to examine the complaints and relevant documents at
18 any time.

19 (d) A utilization review agent shall maintain a record of
20 each complaint until the third anniversary of the date the
21 complainant filed the complaint. (V.T.I.C. Art. 21.58A, Sec.
22 4(m).)

23 Sec. 4201.205. DESIGNATED INITIAL CONTACT. (a) A health
24 care provider may designate one or more individuals as the initial
25 contact or contacts for a utilization review agent seeking routine
26 information or data.

27 (b) A designation made under this section may not preclude a

1 utilization review agent or medical advisor from contacting a
2 health care provider or the provider's employees who are not
3 designated under this section under circumstances in which:

4 (1) a review might otherwise be unreasonably delayed;
5 or

6 (2) the designated individual is unable to provide the
7 necessary data or information that the agent requests. (V.T.I.C.
8 Art. 21.58A, Sec. 4(g).)

9 Sec. 4201.206. OPPORTUNITY TO DISCUSS TREATMENT BEFORE
10 ADVERSE DETERMINATION. Subject to the notice requirements of
11 Subchapter G, before a utilization review agent who questions the
12 medical necessity or appropriateness of a health care service
13 issues an adverse determination, the agent shall provide the health
14 care provider who ordered the service a reasonable opportunity to
15 discuss with a physician the patient's treatment plan and the
16 clinical basis for the agent's determination. (V.T.I.C. Art.
17 21.58A, Sec. 4(k).)

18 Sec. 4201.207. CHARGES BY HEALTH CARE PROVIDER FOR
19 PROVIDING MEDICAL INFORMATION. (a) Unless precluded or modified
20 by contract, a utilization review agent shall reimburse a health
21 care provider for the reasonable costs of providing medical
22 information in writing, including the costs of copying and
23 transmitting requested patient records or other documents.

24 (b) A health care provider's charges for providing medical
25 information to a utilization review agent may not:

26 (1) exceed the cost of copying records as set by rules
27 adopted by the Texas Workers' Compensation Commission; or

1 (2) include any costs otherwise recouped as part of
2 the charges for health care. (V.T.I.C. Art. 21.58A, Sec. 4(1).)

3 [Sections 4201.208-4201.250 reserved for expansion]

4 SUBCHAPTER F. UTILIZATION REVIEW: PERSONNEL

5 Sec. 4201.251. DELEGATION OF UTILIZATION REVIEW. A
6 utilization review agent may delegate utilization review to
7 qualified personnel in the hospital or other health care facility
8 in which the health care services to be reviewed were or are to be
9 provided. The delegation does not release the agent from the full
10 responsibility for compliance with this chapter, including the
11 conduct of those to whom utilization review has been delegated.
12 (V.T.I.C. Art. 21.58A, Sec. 4(n).)

13 Sec. 4201.252. PERSONNEL. (a) Personnel employed by or
14 under contract with a utilization review agent to perform
15 utilization review must be appropriately trained and qualified.

16 (b) Personnel, other than a physician, who obtain oral or
17 written information directly from a patient's physician or other
18 health care provider regarding the patient's specific medical
19 condition, diagnosis, or treatment options or protocols must be a
20 nurse, physician assistant, or other health care provider qualified
21 to provide the requested service.

22 (c) This section may not be interpreted to require personnel
23 who perform clerical or administrative tasks to have the
24 qualifications prescribed by this section. (V.T.I.C. Art. 21.58A,
25 Sec. 4(c).)

26 Sec. 4201.253. PROHIBITED BASES FOR EMPLOYMENT,
27 COMPENSATION, EVALUATIONS, OR PERFORMANCE STANDARDS. A

1 utilization review agent may not permit or provide compensation or
2 another thing of value to an employee or agent of the utilization
3 review agent, condition employment of the agent's employees or
4 agent evaluations, or set employee or agent performance standards,
5 based on the amount of volume of adverse determinations, reductions
6 of or limitations on lengths of stay, benefits, services, or
7 charges, or the number or frequency of telephone calls or other
8 contacts with health care providers or patients, that are
9 inconsistent with this chapter. (V.T.I.C. Art. 21.58A, Sec. 4(f).)

10 [Sections 4201.254-4201.300 reserved for expansion]

11 SUBCHAPTER G. NOTICE OF DETERMINATIONS

12 Sec. 4201.301. GENERAL DUTY TO NOTIFY. A utilization
13 review agent shall provide notice of a determination made in a
14 utilization review to:

- 15 (1) the enrollee's provider of record; and
16 (2) the enrollee or a person acting on the enrollee's
17 behalf. (V.T.I.C. Art. 21.58A, Sec. 5(a).)

18 Sec. 4201.302. GENERAL TIME FOR NOTICE. A utilization
19 review agent must mail or otherwise transmit the notice required by
20 this subchapter not later than the second working day after the date
21 of the request for utilization review and the agent receives all
22 information necessary to complete the review. (V.T.I.C. Art.
23 21.58A, Sec. 5(b).)

24 Sec. 4201.303. ADVERSE DETERMINATION: CONTENTS OF NOTICE.
25 (a) Notice of an adverse determination must include:

- 26 (1) the principal reasons for the adverse
27 determination;

1 (2) the clinical basis for the adverse determination;

2 (3) a description of or the source of the screening
3 criteria used as guidelines in making the adverse determination;
4 and

5 (4) a description of the procedure for the complaint
6 and appeal process, including notice to the enrollee of the
7 enrollee's right to appeal an adverse determination to an
8 independent review organization and of the procedures to obtain
9 that review.

10 (b) For an enrollee who has a life-threatening condition,
11 the notice required by Subsection (a)(4) must include a description
12 of the enrollee's right to an immediate review by an independent
13 review organization and of the procedures to obtain that review.
14 (V.T.I.C. Art. 21.58A, Sec. 5(c).)

15 Sec. 4201.304. TIME FOR NOTICE OF ADVERSE DETERMINATION. A
16 utilization review agent shall provide notice of an adverse
17 determination required by this subchapter as follows:

18 (1) with respect to a patient who is hospitalized at
19 the time of the adverse determination, within one working day by
20 either telephone or electronic transmission to the provider of
21 record, followed by a letter within three working days notifying
22 the patient and the provider of record of the adverse
23 determination;

24 (2) with respect to a patient who is not hospitalized
25 at the time of the adverse determination, within three working days
26 in writing to the provider of record and the patient; or

27 (3) within the time appropriate to the circumstances

1 relating to the delivery of the services to the patient and to the
2 patient's condition, provided that when denying poststabilization
3 care subsequent to emergency treatment as requested by a treating
4 physician or other health care provider, the agent shall provide
5 the notice to the treating physician or other health care provider
6 not later than one hour after the time of the request. (V.T.I.C.
7 Art. 21.58A, Sec. 5(d).)

8 [Sections 4201.305-4201.350 reserved for expansion]

9 SUBCHAPTER H. APPEAL OF ADVERSE DETERMINATION

10 Sec. 4201.351. COMPLAINT AS APPEAL. For purposes of this
11 subchapter, a complaint filed concerning dissatisfaction or
12 disagreement with an adverse determination constitutes an appeal of
13 that adverse determination. (V.T.I.C. Art. 21.58A, Sec. 6(a)
14 (part).)

15 Sec. 4201.352. WRITTEN DESCRIPTION OF APPEAL PROCEDURES. A
16 utilization review agent shall maintain and make available a
17 written description of the procedures for appealing an adverse
18 determination. (V.T.I.C. Art. 21.58A, Sec. 6(a) (part).)

19 Sec. 4201.353. APPEAL PROCEDURES MUST BE REASONABLE. The
20 procedures for appealing an adverse determination must be
21 reasonable. (V.T.I.C. Art. 21.58A, Sec. 6(b) (part).)

22 Sec. 4201.354. PERSONS OR ENTITIES WHO MAY APPEAL. The
23 procedures for appealing an adverse determination must provide that
24 the adverse determination may be appealed orally or in writing by:

- 25 (1) an enrollee;
- 26 (2) a person acting on the enrollee's behalf; or
- 27 (3) the enrollee's physician or other health care

1 provider. (V.T.I.C. Art. 21.58A, Sec. 6(b) (part).)

2 Sec. 4201.355. ACKNOWLEDGMENT OF APPEAL. (a) The
3 procedures for appealing an adverse determination must provide
4 that, within five working days from the date the utilization review
5 agent receives the appeal, the agent shall send to the appealing
6 party a letter acknowledging the date of receipt.

7 (b) The letter must also include a list of:

8 (1) the procedures required by this subchapter; and

9 (2) the documents that the appealing party must submit
10 for review.

11 (c) When a utilization review agent receives an oral appeal
12 of an adverse determination, the agent shall send a one-page appeal
13 form to the appealing party. (V.T.I.C. Art. 21.58A, Sec. 6(b)
14 (part).)

15 Sec. 4201.356. DECISION BY PHYSICIAN REQUIRED; SPECIALTY
16 REVIEW. (a) The procedures for appealing an adverse determination
17 must provide that a physician makes the decision on the appeal,
18 except as provided by Subsection (b).

19 (b) If not later than the 10th working day after the date an
20 appeal is denied the enrollee's health care provider states in
21 writing good cause for having a particular type of specialty
22 provider review the case, a health care provider who is of the same
23 or a similar specialty as the health care provider who would
24 typically manage the medical or dental condition, procedure, or
25 treatment under consideration for review shall review the decision
26 denying the appeal. The specialty review must be completed within
27 15 working days of the date the health care provider's request for

1 specialty review is received. (V.T.I.C. Art. 21.58A, Sec. 6(b)
2 (part).)

3 Sec. 4201.357. EXPEDITED APPEAL FOR DENIAL OF EMERGENCY
4 CARE OR CONTINUED HOSPITALIZATION. (a) The procedures for
5 appealing an adverse determination must include, in addition to the
6 written appeal, a procedure for an expedited appeal of a denial of
7 emergency care or a denial of continued hospitalization. That
8 procedure must include a review by a health care provider who:

9 (1) has not previously reviewed the case; and

10 (2) is of the same or a similar specialty as the health
11 care provider who would typically manage the medical or dental
12 condition, procedure, or treatment under review in the appeal.

13 (b) The time for resolution of an expedited appeal under
14 this section shall be based on the medical or dental immediacy of
15 the condition, procedure, or treatment under review, provided that
16 the resolution of the appeal may not exceed one working day from the
17 date all information necessary to complete the appeal is received.
18 (V.T.I.C. Art. 21.58A, Sec. 6(b) (part).)

19 Sec. 4201.358. RESPONSE LETTER TO INTERESTED PERSONS. The
20 procedures for appealing an adverse determination must provide
21 that, after the utilization review agent has sought review of the
22 appeal, the agent shall issue a response letter explaining the
23 resolution of the appeal to:

24 (1) the patient or a person acting on the patient's
25 behalf; and

26 (2) the patient's physician or other health care
27 provider. (V.T.I.C. Art. 21.58A, Sec. 6(b) (part).)

1 Sec. 4201.359. NOTICE OF APPEAL. (a) The procedures for
2 appealing an adverse determination must require written notice to
3 the appealing party of the determination of the appeal as soon as
4 practicable, but not later than the 30th calendar day, after the
5 date the utilization review agent receives the appeal.

6 (b) If the appeal is denied, the notice must include a clear
7 and concise statement of:

8 (1) the clinical basis for the denial;

9 (2) the specialty of the physician or other health
10 care provider making the denial; and

11 (3) the appealing party's right to seek review of the
12 denial by an independent review organization under Subchapter I and
13 the procedures for obtaining that review. (V.T.I.C. Art. 21.58A,
14 Sec. 6(b) (part).)

15 Sec. 4201.360. IMMEDIATE APPEAL TO INDEPENDENT REVIEW
16 ORGANIZATION IN LIFE-THREATENING CIRCUMSTANCES. Notwithstanding
17 any other law, in a circumstance involving an enrollee's
18 life-threatening condition, the enrollee is:

19 (1) entitled to an immediate appeal to an independent
20 review organization as provided by Subchapter I; and

21 (2) not required to comply with procedures for an
22 internal review of the utilization review agent's adverse
23 determination. (V.T.I.C. Art. 21.58A, Sec. 6(c).)

24 [Sections 4201.361-4201.400 reserved for expansion]

25 SUBCHAPTER I. INDEPENDENT REVIEW OF ADVERSE DETERMINATION

26 Sec. 4201.401. REVIEW BY INDEPENDENT REVIEW ORGANIZATION;
27 COMPLIANCE WITH INDEPENDENT DETERMINATION. (a) A utilization

1 review agent shall allow any party whose appeal of an adverse
2 determination is denied by the agent to seek review of that
3 determination by an independent review organization assigned to the
4 appeal in accordance with Chapter 4202.

5 (b) The utilization review agent shall comply with the
6 independent review organization's determination regarding the
7 medical necessity or appropriateness of health care items and
8 services for an enrollee. (V.T.I.C. Art. 21.58A, Sec. 6A (part).)

9 Sec. 4201.402. INFORMATION PROVIDED TO INDEPENDENT REVIEW
10 ORGANIZATION. (a) Not later than the third business day after the
11 date a utilization review agent receives a request for independent
12 review, the agent shall provide to the appropriate independent
13 review organization:

14 (1) a copy of:

15 (A) any medical records of the enrollee that are
16 relevant to the review;

17 (B) any documents used by the plan in making the
18 determination to be reviewed;

19 (C) the written notification described by
20 Section 4201.359; and

21 (D) any documents and other written information
22 submitted to the agent in support of the appeal; and

23 (2) a list of each physician or other health care
24 provider who:

25 (A) has provided care to the enrollee; and

26 (B) may have medical records relevant to the
27 appeal.

1 (b) A utilization review agent may provide confidential
2 information in the custody of the agent to an independent review
3 organization, subject to rules and standards adopted by the
4 commissioner under Chapter 4202. (V.T.I.C. Art. 21.58A, Secs. 6A
5 (part); 8(f), as added Acts 75th Leg., R.S., Ch. 163.)

6 Sec. 4201.403. PAYMENT FOR INDEPENDENT REVIEW. A
7 utilization review agent shall pay for an independent review
8 conducted under this subchapter. (V.T.I.C. Art. 21.58A, Sec. 6A
9 (part).)

10 [Sections 4201.404-4201.450 reserved for expansion]

11 SUBCHAPTER J. SPECIALTY UTILIZATION REVIEW AGENTS

12 Sec. 4201.451. DEFINITION. For purposes of this
13 subchapter, "specialty utilization review agent" means a
14 utilization review agent who conducts utilization review for a
15 specialty health care service, including dentistry, chiropractic
16 services, or physical therapy. (V.T.I.C. Art. 21.58A, Sec. 14(j)
17 (part).)

18 Sec. 4201.452. INAPPLICABILITY OF CERTAIN OTHER LAW. A
19 specialty utilization review agent is not subject to Section
20 4201.151, 4201.152, 4201.206, 4201.252, or 4201.356. (V.T.I.C.
21 Art. 21.58A, Sec. 14(j) (part).)

22 Sec. 4201.453. UTILIZATION REVIEW PLAN. A specialty
23 utilization review agent's utilization review plan, including
24 reconsideration and appeal requirements, must be reviewed by a
25 health care provider of the appropriate specialty and conducted in
26 accordance with standards developed with input from a health care
27 provider of the appropriate specialty. (V.T.I.C. Art. 21.58A, Sec.

1 14(j) (part).)

2 Sec. 4201.454. UTILIZATION REVIEW UNDER DIRECTION OF
3 PROVIDER OF SAME SPECIALTY. A specialty utilization review agent
4 shall conduct utilization review under the direction of a health
5 care provider who is of the same specialty as the agent and who is
6 licensed or otherwise authorized to provide the specialty health
7 care service by a state licensing agency in the United States.
8 (V.T.I.C. Art. 21.58A, Sec. 14(j) (part).)

9 Sec. 4201.455. PERSONNEL. (a) Personnel who are employed
10 by or under contract with a specialty utilization review agent to
11 perform utilization review must be appropriately trained and
12 qualified.

13 (b) Personnel who obtain oral or written information
14 directly from a physician or other health care provider must be a
15 nurse, physician assistant, or other health care provider of the
16 same specialty as the agent and who are licensed or otherwise
17 authorized to provide the specialty health care service by a state
18 licensing agency in the United States.

19 (c) This section does not require personnel who perform only
20 clerical or administrative tasks to have the qualifications
21 prescribed by this section. (V.T.I.C. Art. 21.58A, Sec. 14(j)
22 (part).)

23 Sec. 4201.456. OPPORTUNITY TO DISCUSS TREATMENT BEFORE
24 ADVERSE DETERMINATION. Subject to the notice requirements of
25 Subchapter G, before a specialty utilization review agent who
26 questions the medical necessity or appropriateness of a health care
27 service issues an adverse determination, the agent shall provide

1 the health care provider who ordered the service a reasonable
2 opportunity to discuss the patient's treatment plan and the
3 clinical basis for the agent's determination with a health care
4 provider who is of the same specialty as the agent. (V.T.I.C. Art.
5 21.58A, Sec. 14(j) (part).)

6 Sec. 4201.457. APPEAL DECISIONS. A specialty utilization
7 review agent shall comply with the requirement that a physician or
8 other health care provider who makes the decision in an appeal of an
9 adverse determination must be of the same or a similar specialty as
10 the health care provider who would typically manage the specialty
11 condition, procedure, or treatment under review in the appeal.
12 (V.T.I.C. Art. 21.58A, Sec. 14(j) (part).)

13 [Sections 4201.458-4201.500 reserved for expansion]

14 SUBCHAPTER K. CLAIMS REVIEW OF MEDICAL NECESSITY
15 AND APPROPRIATENESS

16 Sec. 4201.501. RETROSPECTIVE REVIEW OF MEDICAL NECESSITY
17 AND APPROPRIATENESS. (a) A retrospective review of the medical
18 necessity and appropriateness of a health care service made under a
19 health insurance policy or health benefit plan shall be based on
20 written screening criteria established and periodically updated
21 with appropriate involvement from physicians, including practicing
22 physicians, and other health care providers.

23 (b) A payor's system for retrospective review of medical
24 necessity and appropriateness under this section must be under the
25 direction of a physician. (V.T.I.C. Art. 21.58A, Sec. 11(a).)

26 Sec. 4201.502. APPEALS OF RETROSPECTIVE ADVERSE
27 DETERMINATIONS. (a) When an adverse determination is made under a

1 health insurance policy or health benefit plan based on a
2 retrospective review of the medical necessity and appropriateness
3 of the allocation of health care resources and services, the payor
4 shall provide the health care provider with the opportunity to
5 appeal the determination in the same manner as provided to the
6 enrollee, with the enrollee's consent to act on the enrollee's
7 behalf. In no event shall a health care provider be precluded from
8 appeal if the enrollee is not reasonably available or competent to
9 consent.

10 (b) The appeal does not imply or confer on a health care
11 provider any contractual right with respect to the enrollee's
12 health insurance policy or health benefit plan that the health care
13 provider does not otherwise have. (V.T.I.C. Art. 21.58A, Sec.
14 11(b).)

15 [Sections 4201.503-4201.550 reserved for expansion]

16 SUBCHAPTER L. CONFIDENTIALITY OF INFORMATION; ACCESS TO OTHER
17 INFORMATION

18 Sec. 4201.551. GENERAL CONFIDENTIALITY REQUIREMENT. (a) A
19 utilization review agent shall preserve the confidentiality of
20 individual medical records to the extent required by law.

21 (b) This chapter does not authorize a utilization review
22 agent to take any action that violates a state or federal law or
23 regulation concerning confidentiality of patient records.
24 (V.T.I.C. Art. 21.58A, Secs. 8(a), (h) (part).)

25 Sec. 4201.552. CONSENT REQUIREMENTS. (a) A utilization
26 review agent may not disclose individual medical records, personal
27 information, or other confidential information about a patient

1 obtained in the performance of utilization review without the
2 patient's prior written consent or except as otherwise required by
3 law.

4 (b) If the prior written consent is submitted by anyone
5 other than the patient who is the subject of the personal or
6 confidential information requested, the consent must:

7 (1) be dated; and

8 (2) contain the patient's signature.

9 (c) The patient's signature for purposes of Subsection
10 (b)(2) must have been obtained one year or less before the date the
11 disclosure is sought or the consent is invalid. (V.T.I.C. Art.
12 21.58A, Sec. 8(b).)

13 Sec. 4201.553. PROVIDING INFORMATION TO AFFILIATED
14 ENTITIES. A utilization review agent may provide confidential
15 information to a third party under contract with or affiliated with
16 the agent solely to perform or assist with utilization review.
17 Information provided to a third party under this section remains
18 confidential. (V.T.I.C. Art. 21.58A, Sec. 8(c).)

19 Sec. 4201.554. PROVIDING INFORMATION TO COMMISSIONER.
20 Notwithstanding this subchapter, a utilization review agent shall
21 provide to the commissioner on request individual medical records
22 or other confidential information to enable the commissioner to
23 determine compliance with this chapter. The information is
24 confidential and privileged and is not subject to Chapter 552,
25 Government Code, or to subpoena, except to the extent necessary to
26 enable the commissioner to enforce this chapter. (V.T.I.C. Art.
27 21.58A, Sec. 8(i).)

1 Sec. 4201.555. ACCESS TO RECORDED PERSONAL INFORMATION.

2 (a) If an individual submits a written request to a utilization
3 review agent for access to recorded personal information concerning
4 the individual, the agent shall, within 10 business days from the
5 date the agent receives the request:

6 (1) inform the requesting individual in writing of the
7 nature and substance of the recorded personal information; and

8 (2) allow the individual, at the individual's
9 discretion, to:

10 (A) view and copy, in person, the recorded
11 personal information concerning the individual; or

12 (B) obtain a copy of the information by mail.

13 (b) If the information requested under this section is in
14 coded form, the utilization review agent shall provide in writing
15 an accurate translation of the information in plain language.

16 (c) A utilization review agent's charges for providing a
17 copy of information requested under this section shall be
18 reasonable, as determined by rule adopted by the commissioner. The
19 charges may not include any costs otherwise recouped as part of the
20 charges for utilization review. (V.T.I.C. Art. 21.58A, Secs. 8(d),
21 (e).)

22 Sec. 4201.556. PUBLISHING INFORMATION IDENTIFIABLE TO
23 HEALTH CARE PROVIDER. (a) A utilization review agent may not
24 publish data that identifies a particular physician or other health
25 care provider, including data in a quality review study or
26 performance tracking data, without providing prior written notice
27 to the physician or other provider.

1 (b) The prohibition under this section does not apply to
2 internal systems or reports used by the utilization review agent.
3 (V.T.I.C. Art. 21.58A, Sec. 8(f), as added Acts 75th Leg., R.S., Ch.
4 1025.)

5 Sec. 4201.557. REQUIREMENT TO MAINTAIN DATA IN CONFIDENTIAL
6 MANNER. A utilization review agent shall maintain all data
7 concerning a patient or physician or other health care provider in a
8 confidential manner that prevents unauthorized disclosure to a
9 third party. (V.T.I.C. Art. 21.58A, Sec. 8(h) (part).)

10 Sec. 4201.558. DESTRUCTION OF CERTAIN CONFIDENTIAL
11 DOCUMENTS. When a utilization review agent determines a document
12 in the custody of the agent that contains confidential patient
13 information or confidential physician or other health care provider
14 financial data is no longer needed, the document shall be destroyed
15 by a method that ensures the complete destruction of the
16 information. (V.T.I.C. Art. 21.58A, Sec. 8(g).)

17 [Sections 4201.559-4201.600 reserved for expansion]

18 SUBCHAPTER M. ENFORCEMENT

19 Sec. 4201.601. NOTICE OF SUSPECTED VIOLATION; COMPELLING
20 PRODUCTION OF INFORMATION. If the commissioner believes that a
21 person or entity conducting utilization review is in violation of
22 this chapter or applicable rules, the commissioner:

23 (1) shall notify the utilization review agent, health
24 maintenance organization, or insurer of the alleged violation; and

25 (2) may compel the production of documents or other
26 information as necessary to determine whether a violation has
27 occurred. (V.T.I.C. Art. 21.58A, Sec. 9(a).)

1 Sec. 4201.602. ENFORCEMENT PROCEEDING. (a) The
2 commissioner may initiate a proceeding under this subchapter.

3 (b) A proceeding under this chapter is a contested case for
4 purposes of Chapter 2001, Government Code. (V.T.I.C. Art. 21.58A,
5 Secs. 9(b), (c).)

6 Sec. 4201.603. REMEDIES AND PENALTIES FOR VIOLATION. If
7 the commissioner determines that a utilization review agent, health
8 maintenance organization, insurer, or other person or entity
9 conducting utilization review has violated or is violating this
10 chapter, the commissioner may:

- 11 (1) impose a sanction under Chapter 82;
12 (2) issue a cease and desist order under Chapter 83;
13 or
14 (3) assess an administrative penalty under Chapter 84.
15 (V.T.I.C. Art. 21.58A, Sec. 9(d).)

16 CHAPTER 4202. INDEPENDENT REVIEW ORGANIZATIONS

17 Sec. 4202.001. DEFINITION

18 Sec. 4202.002. ADOPTION OF STANDARDS FOR INDEPENDENT
19 REVIEW ORGANIZATIONS

20 Sec. 4202.003. REQUIREMENTS REGARDING TIMELINESS OF
21 DETERMINATION

22 Sec. 4202.004. CERTIFICATION

23 Sec. 4202.005. PERIODIC REPORTING OF INFORMATION;
24 ANNUAL DESIGNATION

25 Sec. 4202.006. PAYORS FEES

26 Sec. 4202.007. OVERSIGHT

1 Sec. 4202.008. PROHIBITED OWNERSHIP OR CONTROL OF
2 INDEPENDENT REVIEW ORGANIZATION

3 Sec. 4202.009. CONFIDENTIAL INFORMATION

4 Sec. 4202.010. IMMUNITY FROM LIABILITY

5 CHAPTER 4202. INDEPENDENT REVIEW ORGANIZATIONS

6 Sec. 4202.001. DEFINITION. In this chapter, "payor" has
7 the meaning assigned by Section 4201.002. (V.T.I.C. Art. 21.58C,
8 Sec. 1(2).)

9 Sec. 4202.002. ADOPTION OF STANDARDS FOR INDEPENDENT REVIEW
10 ORGANIZATIONS. (a) The commissioner shall adopt standards and
11 rules for:

12 (1) the certification, selection, and operation of
13 independent review organizations to perform independent review
14 described by Subchapter I, Chapter 4201; and

15 (2) the suspension and revocation of the
16 certification.

17 (b) The standards adopted under this section must ensure:

18 (1) the timely response of an independent review
19 organization selected under this chapter;

20 (2) the confidentiality of medical records
21 transmitted to an independent review organization for use in
22 conducting an independent review;

23 (3) the qualifications and independence of each
24 physician or other health care provider making a review
25 determination for an independent review organization;

26 (4) the fairness of the procedures used by an
27 independent review organization in making review determinations;

1 and

2 (5) the timely notice to an enrollee of the results of
3 an independent review, including the clinical basis for the review
4 determination. (V.T.I.C. Art. 21.58C, Secs. 2(a) (part), (b).)

5 Sec. 4202.003. REQUIREMENTS REGARDING TIMELINESS OF
6 DETERMINATION. The standards adopted under Section 4202.002 must
7 require each independent review organization to make the
8 organization's determination:

9 (1) for a life-threatening condition as defined by
10 Section 4201.002, not later than the earlier of:

11 (A) the fifth day after the date the organization
12 receives the information necessary to make the determination; or

13 (B) the eighth day after the date the
14 organization receives the request that the determination be made;
15 and

16 (2) for a condition other than a life-threatening
17 condition, not later than the earlier of:

18 (A) the 15th day after the date the organization
19 receives the information necessary to make the determination; or

20 (B) the 20th day after the date the organization
21 receives the request that the determination be made. (V.T.I.C.
22 Art. 21.58C, Secs. 1(1), 2(c).)

23 Sec. 4202.004. CERTIFICATION. To be certified as an
24 independent review organization under this chapter, an
25 organization must submit to the commissioner an application in the
26 form required by the commissioner. The application must include:

27 (1) for an applicant that is publicly held, the name of

1 each shareholder or owner of more than five percent of any of the
2 applicant's stock or options;

3 (2) the name of any holder of the applicant's bonds or
4 notes that exceed \$100,000;

5 (3) the name and type of business of each corporation
6 or other organization that the applicant controls or is affiliated
7 with and the nature and extent of the control or affiliation;

8 (4) the name and a biographical sketch of each
9 director, officer, and executive of the applicant and of any entity
10 listed under Subdivision (3) and a description of any relationship
11 the named individual has with:

12 (A) a health benefit plan;

13 (B) a health maintenance organization;

14 (C) an insurer;

15 (D) a utilization review agent;

16 (E) a nonprofit health corporation;

17 (F) a payor;

18 (G) a health care provider; or

19 (H) a group representing any of the entities
20 described by Paragraphs (A) through (G);

21 (5) the percentage of the applicant's revenues that
22 are anticipated to be derived from independent reviews conducted
23 under Subchapter I, Chapter 4201;

24 (6) a description of the areas of expertise of the
25 physicians or other health care providers making review
26 determinations for the applicant; and

27 (7) the procedures to be used by the applicant in

1 making independent review determinations under Subchapter I,
2 Chapter 4201. (V.T.I.C. Art. 21.58C, Sec. 2(d).)

3 Sec. 4202.005. PERIODIC REPORTING OF INFORMATION; ANNUAL
4 DESIGNATION. (a) An independent review organization shall
5 annually submit the information required in an application for
6 certification under Section 4202.004. Anytime there is a material
7 change in the information the organization included in the
8 application, the organization shall submit updated information to
9 the commissioner.

10 (b) The commissioner shall designate annually each
11 organization that meets the standards for an independent review
12 organization adopted under Section 4202.002. (V.T.I.C. Art.
13 21.58C, Secs. 2(a) (part), (e).)

14 Sec. 4202.006. PAYORS FEES. The commissioner shall charge
15 payors fees in accordance with this chapter as necessary to fund the
16 operations of independent review organizations. (V.T.I.C.
17 Art. 21.58C, Sec. 2(a) (part).)

18 Sec. 4202.007. OVERSIGHT. The commissioner shall provide
19 ongoing oversight of the independent review organizations to ensure
20 continued compliance with this chapter and the standards and rules
21 adopted under this chapter. (V.T.I.C. Art. 21.58C, Sec. 2(a)
22 (part).)

23 Sec. 4202.008. PROHIBITED OWNERSHIP OR CONTROL OF
24 INDEPENDENT REVIEW ORGANIZATION. An independent review
25 organization may not be a subsidiary of, or in any way owned or
26 controlled by, a payor or a trade or professional association of
27 payors. (V.T.I.C. Art. 21.58C, Sec. 2(f).)

1 Sec. 4202.009. CONFIDENTIAL INFORMATION. Information that
2 reveals the identity of a physician or other individual health care
3 provider who makes a review determination for an independent review
4 organization is confidential. (V.T.I.C. Art. 21.58C, Sec. 2(h).)

5 Sec. 4202.010. IMMUNITY FROM LIABILITY. (a) An
6 independent review organization conducting an independent review
7 under Subchapter I, Chapter 4201, is not liable for damages arising
8 from the review determination made by the organization.

9 (b) This section does not apply to an act or omission of the
10 independent review organization that is made in bad faith or that
11 involves gross negligence. (V.T.I.C. Art. 21.58C, Sec. 2(g).)

12 CHAPTER 4203. PROHIBITED CONSULTANT ACTIVITIES

13 Sec. 4203.001. DEFINITION

14 Sec. 4203.002. PROHIBITED CONSULTANT ACTIVITIES

15 CHAPTER 4203. PROHIBITED CONSULTANT ACTIVITIES

16 Sec. 4203.001. DEFINITION. In this chapter, "consultant"
17 means a person who, for compensation and at the request of an
18 insurer, business, individual, or utilization review agent:

19 (1) reviews, assesses, or evaluates a claim, charge,
20 or service of another chiropractor to determine whether the claim,
21 charge, or service is:

22 (A) medically necessary, reasonable, or
23 appropriate; or

24 (B) recommended for payment or nonpayment; or

25 (2) advises an insurer or utilization review agent
26 regarding a chiropractic charge or service or recommends to that
27 insurer or agent guidelines for a chiropractic charge or service.

1 (V.T.I.C. Art. 21.58B (part).)

2 Sec. 4203.002. PROHIBITED CONSULTANT ACTIVITIES. A member
3 or employee of the Texas Board of Chiropractic Examiners may not act
4 as a consultant or perform any consultant activities for an insurer
5 or business, individual, or utilization review agent that audits
6 chiropractic claims, charges, or services. (V.T.I.C. Art. 21.58B
7 (part).)

8 SECTION 5. CONFORMING AMENDMENT. Article 5.25, Insurance
9 Code, is amended to read as follows:

10 Art. 5.25. BOARD SHALL FIX RATES. (a) The State Board of
11 Insurance shall have the sole and exclusive power and authority and
12 it shall be its duty to prescribe, fix, determine and promulgate the
13 rates of premiums to be charged and collected by fire insurance
14 companies transacting business in this State. Said Board shall
15 also have authority to alter or amend any and all such rates of
16 premiums so fixed and determined and adopted by it, and to raise or
17 lower the same, or any part thereof, as herein provided. [~~Said~~
18 ~~Board shall have authority to employ clerical help, inspectors,~~
19 ~~experts and other assistants, and to incur such other expenses as~~
20 ~~may be necessary in carrying out the provisions of this law. Said~~
21 ~~Board shall ascertain as soon as practicable the annual fire loss in~~
22 ~~this State, obtain, make and maintain a record thereof and collect~~
23 ~~such data with respect thereto as will enable said Board to classify~~
24 ~~the fire losses of this State, the causes thereof, and the amount of~~
25 ~~premiums collected therefor for each class of risks and the amount~~
26 ~~paid thereon, in such manner as will aid in determining equitable~~
27 ~~insurance rates, methods of reducing such fire losses and reducing~~

1 ~~the insurance rates of the State, or subdivisions of the State. The~~
2 ~~Board may designate one or more advisory organizations or other~~
3 ~~agencies to gather, audit, and compile such experience of insurers,~~
4 ~~and the cost thereof shall be borne by such insurers.]~~

5 (b) Notwithstanding Subsection (a) of this article, on and
6 after the effective date of S.B. No. 14, Acts of the 78th
7 Legislature, Regular Session, 2003, rates for homeowners and
8 residential fire and residential allied lines insurance coverage
9 under this subchapter are determined as provided by Subchapter Q of
10 this chapter, and rates for other lines of insurance subject to this
11 subchapter are determined as provided by Article 5.13-2 of this
12 code, except that on and after December 1, 2004, rates for all lines
13 of insurance subject to this subchapter are determined as provided
14 by Article 5.13-2 of this code. [~~This subsection does not affect~~
15 ~~the requirement for the commissioner to conduct inspections of~~
16 ~~commercial property and prescribe a manual of rules and rating~~
17 ~~schedules for commercial property under this subchapter.]~~

18 SECTION 6. CONFORMING AMENDMENT. Article 5.25-3, Insurance
19 Code, is amended to read as follows:

20 Art. 5.25-3. FIRE INSURANCE RATES AND FIRE SUPPRESSION
21 RATINGS FOR BORDER MUNICIPALITY. The commissioner, in adopting
22 fire insurance rates [~~or in assigning or evaluating a fire~~
23 ~~suppression rating]~~ for a municipality at or near the border
24 between this state and another state or the United Mexican States,
25 shall take into account the existence and capabilities of a fire
26 department or volunteer fire department that serves an adjoining or
27 nearby municipality in the other state or the United Mexican States

1 and that by agreement or by long-standing practice provides fire
2 suppression services to the Texas municipality.

3 SECTION 7. CONFORMING AMENDMENT. Article 5.28(a),
4 Insurance Code, is amended to read as follows:

5 (a) Said Board is authorized and empowered to require sworn
6 statements for any period of time from any insurance company
7 affected by this law and from any of its directors, officers,
8 representatives, general agents, state agents, special agents, and
9 local agents of the rates and premiums collected for fire insurance
10 on each class of risks, on all property in this State and of the
11 causes of fire, if such be known, if they are in possession of such
12 data, and information, or can obtain it at a reasonable expense;
13 and said Board is empowered to require such statements showing all
14 necessary facts and information to enable said Board to make, amend
15 and maintain the general basis schedules provided for in this law
16 and the rules and regulations for applying same and to determine
17 reasonable and proper maximum specific rates [~~and to determine and~~
18 ~~assist in the enforcement of the provisions of this law~~].

19 SECTION 8. CONFORMING AMENDMENT. Article 5.30(a),
20 Insurance Code, is amended to read as follows:

21 (a) [~~When a policy of fire insurance shall be issued by any~~
22 ~~company transacting the business of fire insurance in this State,~~
23 ~~such company shall furnish the policyholder with a written or~~
24 ~~printed analysis of the rate or premium charged for such policy,~~
25 ~~showing the items of charge and credit which determine the rate,~~
26 ~~unless such policyholder has theretofore been furnished with such~~
27 ~~analysis of such rate.~~] All schedules of rates promulgated by said

1 Board shall be open to the public, and every local agent of any
2 company engaging in the business of fire insurance in this state
3 ~~[such fire insurance company]~~ shall have and exhibit to the public
4 copies of such schedules covering all risks upon which he is
5 authorized to write insurance.

6 SECTION 9. CONFORMING AMENDMENT. Article 5.41(a),
7 Insurance Code, is amended to read as follows:

8 (a) A ~~[No]~~ company engaging or participating ~~[shall engage~~
9 ~~or participate]~~ in the insuring or reinsuring of any property in
10 this state ~~[State]~~ against loss or damage by fire may not ~~[except in~~
11 ~~compliance with the terms and provisions of this law; nor shall any~~
12 ~~such company]~~ knowingly write insurance at any lesser rate than the
13 rates herein provided for, and it shall be unlawful for any company
14 so to do, unless it shall thereafter file an analysis of same with
15 the Board~~[, and it shall be unlawful for any company, or its~~
16 ~~officers, directors, general agents, state agents, special agents,~~
17 ~~local agents, or its representatives, to grant or contract for any~~
18 ~~special favor or advantages in the dividends or other profits to~~
19 ~~come thereon, or in commissions in the dividends or other profits to~~
20 ~~accrue thereon, or in commissions or division of commission, or any~~
21 ~~position or any valuable consideration or any inducement not~~
22 ~~specified in the policy contract of insurance, nor shall such~~
23 ~~company give, sell or purchase, offer to give, sell or purchase,~~
24 ~~directly or indirectly, as an inducement to insure or in connection~~
25 ~~therewith, any stocks, bonds or other securities of any insurance~~
26 ~~company or other corporation, partnership or individual, or any~~
27 ~~dividends or profits accrued or to accrue thereon, or anything of~~

1 ~~value whatsoever, not specified in the policy. Nothing in this law~~
 2 ~~shall be construed to prohibit a company from sharing its profits~~
 3 ~~with its policyholders, if such agreement as to profit sharing~~
 4 ~~shall be placed on or in the face of the policy, and such profit~~
 5 ~~sharing shall be uniform and shall not discriminate between~~
 6 ~~individuals or between classes. No part of the profit shall be paid~~
 7 ~~until the expiration of the policy. Any company, or any of its~~
 8 ~~officers, directors, general agents, state agents, special agents,~~
 9 ~~local agents or its representatives, doing any of the acts in this~~
 10 ~~article prohibited, shall be deemed guilty of unjust~~
 11 ~~discrimination. If any agent or company shall issue a policy~~
 12 ~~without authority, and any policyholder holding such policy shall~~
 13 ~~sustain a loss or damage thereunder, said company or companies~~
 14 ~~shall be liable to the policyholder thereunder, in the same manner~~
 15 ~~and to the same extent as if said company had been authorized to~~
 16 ~~issue said policies, although the company issued said policy in~~
 17 ~~violation of the provisions of this subchapter. But this shall not~~
 18 ~~be construed to give any company the right to issue any contract or~~
 19 ~~policy of insurance other than as provided in this subchapter].~~

20 SECTION 10. CONFORMING AMENDMENT. Chapter 30, Insurance
 21 Code, is amended to read as follows:

22 CHAPTER 30. GENERAL PROVISIONS

23 Sec. 30.001. PURPOSE OF TITLES 2, 3, 4, 5, 6, 7, 8, 9, 10,
 24 11, 12, [~~AND~~] 13, AND 14. (a) This title and Titles 3, 4, 5, 6, 7, 8,
 25 9, 10, 11, 12, [~~and~~] 13, and 14 are enacted as a part of the state's
 26 continuing statutory revision program, begun by the Texas
 27 Legislative Council in 1963 as directed by the legislature in the

1 law codified as Section 323.007, Government Code. The program
2 contemplates a topic-by-topic revision of the state's general and
3 permanent statute law without substantive change.

4 (b) Consistent with the objectives of the statutory
5 revision program, the purpose of this title and Titles 3, 4, 5, 6,
6 7, 8, 9, 10, 11, 12, [~~and~~] 13, and 14 is to make the law encompassed
7 by the titles more accessible and understandable by:

8 (1) rearranging the statutes into a more logical
9 order;

10 (2) employing a format and numbering system designed
11 to facilitate citation of the law and to accommodate future
12 expansion of the law;

13 (3) eliminating repealed, duplicative,
14 unconstitutional, expired, executed, and other ineffective
15 provisions; and

16 (4) restating the law in modern American English to
17 the greatest extent possible.

18 Sec. 30.002. CONSTRUCTION. Except as provided by Section
19 30.003 and as otherwise expressly provided in this code, Chapter
20 311, Government Code (Code Construction Act), applies to the
21 construction of each provision in this title and in Titles 3, 4, 5,
22 6, 7, 8, 9, 10, 11, 12, [~~and~~] 13, and 14.

23 Sec. 30.003. DEFINITION OF PERSON. The definition of
24 "person" assigned by Section 311.005, Government Code, does not
25 apply to any provision in this title or in Title 3, 4, 5, 6, 7, 8, 9,
26 10, 11, 12, [~~or~~] 13, or 14.

27 Sec. 30.004. REFERENCE IN LAW TO STATUTE REVISED BY TITLE 2,

1 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, [~~OR~~] 13, OR 14. A reference in a law
2 to a statute or a part of a statute revised by this title or by Title
3 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, [~~or~~] 13, or 14 is considered to be a
4 reference to the part of this code that revises that statute or part
5 of that statute.

6 SECTION 11. CONFORMING AMENDMENT. Subchapter A, Chapter
7 36, Insurance Code, is amended by adding Section 36.002 to read as
8 follows:

9 Sec. 36.002. ADDITIONAL RULEMAKING AUTHORITY. The
10 commissioner may adopt reasonable rules that are:

11 (1) necessary to effect the purposes of a provision
12 of:

13 (A) Subchapter B, Chapter 5;

14 (B) Subchapter C, Chapter 1806;

15 (C) Subchapter A, Chapter 2301;

16 (D) Chapter 251, as that chapter relates to
17 casualty insurance and fidelity, guaranty, and surety bond
18 insurance;

19 (E) Chapter 253;

20 (F) Chapter 2251 or 2252; or

21 (G) Subtitle B, Title 10; or

22 (2) appropriate to accomplish the purposes of a
23 provision of:

24 (A) Section 37.051(a), 403.002, 492.051(b) or
25 (c), 501.159, 941.003(b)(3) or (c), or 942.003(b)(3) or (c);

26 (B) Subchapter H, Chapter 544;

27 (C) Chapter 251, as that chapter relates to:

- 1 (i) automobile insurance;
- 2 (ii) casualty insurance and fidelity,
- 3 guaranty, and surety bond insurance;
- 4 (iii) fire insurance and allied lines;
- 5 (iv) workers' compensation insurance; or
- 6 (v) aircraft insurance;
- 7 (D) Chapter 5, 252, 253, 254, 255, 256, 426, 493,
- 8 494, 1804, 1805, 1806, or 2171;
- 9 (E) Subtitle B, C, D, E, F, H, or I, Title 10;
- 10 (F) Section 417.008, Government Code;
- 11 (G) Chapter 406A, Labor Code; or
- 12 (H) Chapter 2154, Occupations Code. (V.T.I.C.
- 13 Art. 5.19, Sec. (d); Art. 5.98.)

SECTION 12. CONFORMING AMENDMENT. Subtitle B, Title 2, Insurance Code, is amended by adding Chapter 86 to read as follows:

CHAPTER 86. REVOCATION OR MODIFICATION OF CERTIFICATE OF
AUTHORITY; AUTHORITY TO BRING CERTAIN ACTIONS
SUBCHAPTER A. REVOCATION OR MODIFICATION OF CERTIFICATE
OF AUTHORITY

Sec. 86.001. AUTHORITY TO REVOKE OR MODIFY CERTIFICATE OF
AUTHORITY. The commissioner may revoke or modify a certificate of
authority if a condition or requirement prescribed by law for
granting the certificate is no longer satisfied. (V.T.I.C. Art.
1.15, Sec. 1 (part); Art. 1.19 (part).)

Sec. 86.002. NOTICE OF INTENT TO REVOKE OR MODIFY
CERTIFICATE OF AUTHORITY. (a) The commissioner must notify an
insurance carrier in writing of the commissioner's intent to revoke

1 or modify the carrier's certificate of authority.

2 (b) The commissioner must provide the notice not later than
3 the 10th day before the date the revocation or modification is to
4 occur.

5 (c) The commissioner must specifically state in the notice
6 the reason for the action. (V.T.I.C. Art. 1.15, Sec. 1 (part).)

7 [Sections 86.003-86.050 reserved for expansion]

8 SUBCHAPTER B. AUTHORITY TO BRING CERTAIN ACTIONS

9 Sec. 86.051. AUTHORITY TO BRING ACTION FOR OR PROSECUTE
10 VIOLATION OF LAW. The department, through the attorney general or
11 an attorney designated by the attorney general, may institute an
12 action relating to or initiate a prosecution for a violation of a
13 law of this state relating to insurance. (V.T.I.C. Art. 1.19
14 (part).)

15 Sec. 86.052. AUTHORITY TO BRING ACTION TO CLOSE AFFAIRS OR
16 RESTRAIN BUSINESS OF DOMESTIC INSURANCE COMPANY. Only the
17 department may bring an action to:

18 (1) close the affairs of an insurance company
19 organized under the laws of this state; or

20 (2) enjoin, restrain, or interfere with the
21 prosecution of the business of an insurance company organized under
22 the laws of this state. (V.T.I.C. Art. 1.19 (part).)

23 SECTION 13. CONFORMING AMENDMENT. Chapter 252, Insurance
24 Code, is amended by adding Section 252.005 to read as follows:

25 Sec. 252.005. EXCEPTION. This chapter does not apply to:

26 (1) a farm mutual insurance company operating under
27 Chapter 911; or

1 (2) a mutual insurance company engaged in business
2 under Chapter 12, Title 78, Revised Statutes, before that chapter's
3 repeal by Section 18, Chapter 40, Acts of the 41st Legislature, 1st
4 Called Session, 1929, as amended by Section 1, Chapter 60, General
5 Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, that
6 retains the rights and privileges under the repealed law to the
7 extent provided by those sections. (V.T.I.C. Art. 5.54 (part).)

8 SECTION 14. CONFORMING AMENDMENT. Subchapter D, Chapter
9 501, Insurance Code, is amended by adding Section 501.159 to read as
10 follows:

11 Sec. 501.159. COMMENTS ON CERTAIN INSURER FILINGS. (a)
12 Notwithstanding this chapter, the office may submit written
13 comments to the commissioner and otherwise participate regarding
14 individual insurer filings made under Chapters 2251 and 2301
15 relating to insurance described by Subchapter B, Chapter 2301.

16 (b) The commissioner may adopt reasonable and necessary
17 rules to implement this section. (V.T.I.C. Art. 5.145, Secs. 5, 6.)

18 SECTION 15. CONFORMING AMENDMENT. Subchapter O, Chapter
19 841, Insurance Code, is amended by adding Section 841.705 to read as
20 follows:

21 Sec. 841.705. PENALTY FOR FAILURE TO INVEST OR REPORT. (a)
22 In addition to the penalty provided by this subchapter, an
23 insurance company is subject to a penalty as prescribed by
24 Subsection (b) if, while holding a certificate of authority to
25 engage in the business of insurance in this state, or after the
26 company ceases to write new business or ceases to hold a certificate
27 of authority, the company intentionally fails or refuses to:

- 1 (1) make the investments required by Chapter 425;
2 (2) make a report required by a law described by
3 Section 841.002;
4 (3) make any special report requested by the
5 commissioner under a law described by Section 841.002; or
6 (4) comply with another provision of a law described
7 by Section 841.002.

8 (b) A penalty under this section is in the amount of \$25 per
9 day for each day the company remains in default after the
10 commissioner notifies the company of the default in the manner
11 provided by this subchapter.

12 (c) A penalty under this section may be recovered in a suit
13 brought by the attorney general on behalf of the state in a district
14 court of Travis County.

15 (d) In a suit brought to recover a penalty under this
16 section:

- 17 (1) there are rebuttable presumptions that:
18 (A) any default that may have occurred was
19 intentional; and
20 (B) the notice required by Subsection (b) was
21 given; and

22 (2) if the question of whether the investments
23 required by Chapter 425 were made is at issue, the defendant
24 insurance company has the burden of proving that the investments
25 were made as required by that chapter. (V.T.I.C. Art. 3.56.)

26 SECTION 16. CONFORMING AMENDMENT. Subtitle H, Title 6,
27 Insurance Code, is amended by adding Chapter 962 to read as follows:

1 CHAPTER 962. JOB PROTECTION INSURANCE

2 SUBCHAPTER A. GENERAL PROVISIONS

3 Sec. 962.001. GENERAL DEFINITIONS. In this chapter:

4 (1) "Insured" means an individual whose
5 indemnification against income loss is provided because of the
6 individual's membership in a company or association that offers a
7 job protection insurance plan.

8 (2) "Insurer" has the meaning assigned by Section
9 801.001.

10 (3) "Person" means an individual, corporation,
11 association, or other legal entity. (V.T.I.C. Art. 25.01, Secs.
12 (3), (4), (5).)

13 Sec. 962.002. JOB PROTECTION INSURANCE DEFINED. (a) In
14 this chapter, "job protection insurance" means insurance providing
15 indemnity that is:

16 (1) paid for loss of position arising from discharge
17 or suspension;

18 (2) payable in installments that do not exceed the
19 average monthly wage of the insured; and

20 (3) provided to:

21 (A) conductors, engineers, motormen, brakemen,
22 switchmen, firemen, dispatchers, clerks, operators, trackmen,
23 signalmen, and maintenance-of-way personnel of steam and electric
24 railways; and

25 (B) bus drivers and truck drivers employed by
26 common carriers.

27 (b) The term "job protection insurance" does not include a

1 job benefit fund administered by and through a labor union only for
2 the union's members. (V.T.I.C. Art. 25.01, Sec. (1).)

3 Sec. 962.003. COMPLIANCE WITH CHAPTER REQUIRED. An insurer
4 must comply with this chapter to write the insurance coverages
5 authorized by Section 962.101. (V.T.I.C. Art. 25.02, Sec. (c).)

6 Sec. 962.004. APPLICABILITY OF OTHER LAW. An insurer
7 operating under this chapter is subject to the following
8 provisions, if not in conflict with this chapter:

9 (1) the other chapters of this code, including:

10 (A) Chapter 221;

11 (B) Chapter 281, other than any minimum capital
12 and surplus requirements specified in that chapter;

13 (C) Chapter 822, including Sections 822.203,
14 822.205, 822.210, and 822.212;

15 (D) Chapter 861; and

16 (E) Chapter 402; and

17 (2) Section 171.0525, Tax Code. (V.T.I.C. Arts.
18 25.05, 25.07.)

19 Sec. 962.005. AGENTS. Title 13 applies to the licensing and
20 regulation of an agent authorized to solicit job protection
21 insurance for an insurer operating under this chapter. (V.T.I.C.
22 Art. 25.06.)

23 [Sections 962.006-962.050 reserved for expansion]

24 SUBCHAPTER B. AUTHORITY TO ENGAGE IN BUSINESS

25 Sec. 962.051. QUALIFICATIONS FOR CERTIFICATE OF AUTHORITY.

26 An insurer may not be issued a certificate of authority to operate
27 under this chapter unless:

1 (1) it or a predecessor was writing the insurance
2 coverages authorized by Section 962.101 on or before January 1,
3 1920, in at least one state; and

4 (2) it had policyholders in this state on August 29,
5 1983, and provides proof of that fact to the department. (V.T.I.C.
6 Art. 25.04, Sec. (a).)

7 Sec. 962.052. ISSUANCE OF CERTIFICATE OF AUTHORITY. (a)
8 The commissioner shall issue a certificate of authority to a
9 domestic or foreign insurer that applies for a certificate if:

10 (1) the applicant has:

11 (A) complied with the requirements of this
12 chapter and all other requirements imposed on the applicant by law;
13 and

14 (B) paid any deposit imposed by law; and

15 (2) the operational history of the applicant indicates
16 a condition such that the expanded operation of the applicant in
17 this state or the applicant's operations outside this state will
18 not create a condition that might be hazardous to the applicant's
19 policyholders or creditors or to the public, when that operational
20 history is reviewed in conjunction with:

21 (A) the applicant's loss experience;

22 (B) the kinds and nature of risks insured;

23 (C) the financial condition of the applicant and
24 the applicant's ownership;

25 (D) the applicant's proposed method of
26 operation;

27 (E) the applicant's affiliations;

1 (F) the applicant's investments;

2 (G) any contracts leading to contingent
3 liability or agreements relating to guaranty and surety, other than
4 insurance; and

5 (H) the ratio of the applicant's total annual
6 premium and net investment income to commission expenses, general
7 insurance expenses, policy benefits paid, and required policy
8 reserve increases.

9 (b) The commissioner shall file in the department's offices
10 any documents delivered to the commissioner under this section.

11 (c) The certificate of authority authorizes the insurer to
12 engage in the kind or kinds of business in this state specified in
13 the certificate. (V.T.I.C. Art. 25.04, Sec. (b) (part).)

14 Sec. 962.053. COMPLIANCE WITH STATE LAW REQUIRED. A
15 certificate of authority issued under this chapter continues in
16 effect on the condition that the insurer continue to comply with the
17 laws of this state. (V.T.I.C. Art. 25.04, Sec. (b) (part).)

18 Sec. 962.054. INSURERS NOT MEETING CERTAIN REQUIREMENTS.
19 To write the insurance coverages authorized by Section 962.101, a
20 domestic or foreign insurer that does not meet the requirements of
21 Sections 962.051 and 962.052 must comply with Chapters 822 and 861.
22 (V.T.I.C. Art. 25.04, Sec. (c).)

23 Sec. 962.055. CAPITAL AND SURPLUS REQUIREMENTS. A domestic
24 or foreign insurer operating under this chapter shall maintain the
25 minimum capital and surplus required by Sections 822.054, 822.210,
26 and 822.211. (V.T.I.C. Art. 25.03.)

27 [Sections 962.056-962.100 reserved for expansion]

SUBCHAPTER C. COVERAGE

Sec. 962.101. AUTHORIZED COVERAGES. A domestic or foreign insurer operating under this chapter may write:

(1) job protection insurance; and

(2) insurance that:

(A) insures an individual described by Section 962.002(a) against bodily injury or death by accident or against disability on account of sickness or accident;

(B) grants specific hospital benefits and medical, surgical, and sick-care benefits to an individual and the individual's family; and

(C) provides reimbursement of funeral expenses in an amount not to exceed \$200 to any person in connection with the coverage. (V.T.I.C. Art. 25.02, Sec. (a).)

Sec. 962.102. OTHER COVERAGES PROHIBITED. A domestic or foreign insurer operating under this chapter may not write coverage that is not authorized by Section 962.101. (V.T.I.C. Art. 25.02, Sec. (b).)

Sec. 962.103. APPLICABILITY OF GUARANTY FUND LAW. A guaranty fund established under this code does not provide coverage for insurance written under this chapter except as specifically provided by a law governing the fund. (V.T.I.C. Art. 25.08.)

[Sections 962.104-962.700 reserved for expansion]

SUBCHAPTER O. ENFORCEMENT PROVISIONS

Sec. 962.701. PROHIBITED ACTS; OFFENSE. (a) A person may not:

(1) provide coverage described by Section 962.101

1 unless the person holds a certificate of authority to provide that
2 coverage; or

3 (2) solicit insurance for an insurer authorized to
4 provide insurance coverage under this chapter unless the person
5 holds an insurance agent's license.

6 (b) A person commits an offense if the person knowingly
7 violates Subsection (a). An offense under this subsection is a
8 Class B misdemeanor.

9 (c) Venue for prosecution of an offense under this section
10 is in Travis County. (V.T.I.C. Art. 25.09; Art. 25.10, Secs. (b),
11 (c).)

12 Sec. 962.702. REFUSAL TO ISSUE OR RENEW CERTIFICATE OF
13 AUTHORITY OR LICENSE; SUSPENSION OR REVOCATION. If, after notice
14 and hearing, the commissioner finds that the applicant, certificate
15 holder, or license holder has violated this chapter or another
16 provision of this code, the commissioner may refuse to issue or
17 renew a certificate of authority or a license, or may suspend or
18 revoke a certificate of authority or a license. (V.T.I.C. Art.
19 25.10, Sec. (a).)

20 SECTION 17. CONFORMING AMENDMENT. Subtitle A, Title 5,
21 Labor Code, is amended by adding Chapter 406A to read as follows:

22 CHAPTER 406A. GROUP PURCHASE OF WORKERS' COMPENSATION

23 INSURANCE COVERAGE

24 Sec. 406A.001. DEFINITIONS. In this chapter:

25 (1) "Business entity" means a business enterprise
26 owned by a single person or a corporation, organization, business
27 trust, trust, partnership, joint venture, association, or other

1 business entity.

2 (2) "Commissioner" means the commissioner of
3 insurance.

4 (3) "Department" means the Texas Department of
5 Insurance. (V.T.I.C. Art. 5.57A, Sec. (a).)

6 Sec. 406A.002. CERTIFICATION PROGRAM. (a) The department
7 shall:

8 (1) maintain a certification program for groups
9 organized under this chapter; and

10 (2) issue certificates of approval to eligible
11 business entities authorizing formation and maintenance of a group.

12 (b) The commissioner by rule shall adopt forms, criteria,
13 and procedures for issuing certificates of approval to groups under
14 this chapter. (V.T.I.C. Art. 5.57A, Secs. (d), (e).)

15 Sec. 406A.003. FORMATION OF GROUP. (a) On receipt of a
16 certificate of approval issued by the department under this
17 chapter, two or more business entities or two or more members of a
18 trade association may join together to form a group to purchase
19 individual workers' compensation insurance policies covering each
20 member of the group.

21 (b) To be eligible to join a group, a business entity must:

22 (1) be engaged in a business pursuit that is the same
23 as or similar to the other business entities participating in the
24 group as determined by the department; or

25 (2) be a member of the same trade association as the
26 other business entities participating in the group. (V.T.I.C.
27 Art. 5.57A, Secs. (a)(3), (b), (c), as amended Acts 78th Leg.,

1 R.S., Chs. 275, 607.)

2 Sec. 406A.004. PLAN OF OPERATION. (a) A group shall:

3 (1) adopt a plan of operation; and

4 (2) file a copy of the plan of operation with the
5 department.

6 (b) The plan of operation must include:

7 (1) provisions governing the composition and
8 selection of a governing board;

9 (2) the methods for administering the group; and

10 (3) guidelines governing the workers' compensation
11 insurance coverage obtained by the group that include provisions
12 governing:

13 (A) the payment of premiums;

14 (B) the distribution of discounts; and

15 (C) the methods for providing risk management.

16 (V.T.I.C. Art. 5.57A, Sec. (i).)

17 Sec. 406A.005. GROUP PURCHASE AUTHORIZED. A group
18 certified under this chapter may purchase individual workers'
19 compensation insurance policies covering each member of the group
20 from any insurer authorized to write workers' compensation
21 insurance in this state. (V.T.I.C. Art. 5.57A, Sec. (f) (part).)

22 Sec. 406A.006. POLICY RATES. Rates for policies purchased
23 under this chapter must be computed using manual rules and rates.
24 The department shall determine any experience rating factor that
25 must be applied to those policies as provided by the commissioner by
26 rule. (V.T.I.C. Art. 5.57A, Sec. (h).)

27 Sec. 406A.007. GROUP DISCOUNT. (a) A group that purchases

1 a policy under this chapter is entitled to any premium or volume
2 discount that would be applicable to a policy of the combined
3 premium amount.

4 (b) A group shall apportion any discount or policyholder
5 dividend received on workers' compensation insurance coverage
6 among the members of the group according to a formula adopted in the
7 plan of operation for the group. (V.T.I.C. Art. 5.57A, Secs. (f)
8 (part), (g).)

9 Sec. 406A.008. APPLICABILITY OF OTHER LAW. (a) A group
10 established under this chapter is entitled to any deviation
11 applicable under Section 2052.004, 2053.051, or 2053.052(a) or (b),
12 Insurance Code.

13 (b) A member of a group is not subject to the discounts and
14 surcharges established under Subchapter F, Chapter 2053, Insurance
15 Code. (V.T.I.C. Art. 5.57A, Sec. (j).)

16 SECTION 18. REPEALER. (a) The following Acts and articles
17 as compiled in Vernon's Texas Insurance Code are repealed:

18 (1) 1.04A, 1.14-3, 1.15, 1.15A, 1.15B, 1.16, 1.17,
19 1.17A, 1.18, 1.19, 1.32, and 1.39;

20 (2) 2.10, 2.10-1, 2.10-2, 2.10-3A, 2.10-4, and 2.10-5;

21 (3) 3.10, 3.16, 3.17, 3.18, 3.28, 3.29, 3.31, 3.32,
22 3.33, 3.39, 3.39a, 3.40, 3.40-1, 3.41, 3.41a, and 3.56;

23 (4) 5.01C, 5.01-3, 5.06-1, 5.06-2, 5.06-3, 5.06-4,
24 5.06-5, 5.06-6, 5.07, 5.07-1, 5.08, 5.09, 5.12-1, 5.13-2C, 5.15-2,
25 5.15-3, 5.15-4, 5.18, 5.19, 5.20, 5.21, 5.25-1, 5.25-2, 5.33,
26 5.33B, 5.33E, 5.35-1, 5.35-2, 5.35-3, 5.36, 5.37, 5.38, 5.41-1,
27 5.41-2, 5.41-3, 5.42, 5.43, 5.45, 5.46, 5.47, 5.48, 5.48-1, 5.48-2,

1 5.51, 5.52, 5.53, 5.53-A, 5.54, 5.55, 5.55B, 5.55C, 5.56, 5.57,
2 5.57A, 5.58, 5.59, 5.60, 5.60A, 5.61, 5.62, 5.63, 5.64, 5.65A,
3 5.65B, 5.65C, 5.67, 5.68-1, 5.69, 5.70, 5.71, 5.72, 5.73, 5.74,
4 5.75, 5.75-1, 5.75-3, 5.76-3, 5.76-4, 5.76-5, 5.90, 5.92, 5.98,
5 5.102, 5.131, 5.144, 5.145, 5.171, and 5.172;

6 (5) 7.01, 7.02, 7.19-1, 7.20, and 7.20-1;

7 (6) 21.11-2, 21.28, 21.28-A, 21.28-C, 21.28-D,
8 21.28-E, 21.31, 21.32, 21.32A, 21.39, 21.39-A, 21.39-B, 21.40,
9 21.49, 21.49-3b, 21.49-3d, 21.49-4, 21.49-4a, 21.49-6, 21.49-7,
10 21.49-8, 21.49-11, 21.49-13, 21.49-14, 21.49-15A, 21.49-17,
11 21.49-18, 21.49-20, 21.49A, 21.49A-1, 21.49B, 21.50, 21.54,
12 21.58A, 21.58B, 21.58C, 21.61, 21.72, 21.77, 21.79, 21.79E, and
13 21.81; and

14 (7) 25.01, 25.02, 25.03, 25.04, 25.05, 25.06, 25.07,
15 25.08, 25.09, and 25.10.

16 (b) Sections 3, 4, 5, and 17, Article 1.10, Insurance Code,
17 are repealed.

18 (c) Subsections (5), (6), (9), (10), (11), and (12)(b),
19 Article 5.06, Insurance Code, are repealed.

20 (d) Sections 2-8 and 10-16, Article 5.13-2, Insurance Code,
21 are repealed.

22 (e) Sections 1-9 and 11, Article 5.15-1, Insurance Code, are
23 repealed.

24 (f) Subsections (b) and (c), Article 5.28, Insurance Code,
25 are repealed.

26 (g) Subsection (k), Article 5.35, Insurance Code, as added
27 by Chapter 206, Acts of the 78th Legislature, Regular Session,

1 2003, is repealed.

2 (h) Sections 1, 3-4B, and 5-10, Article 21.49-3, Insurance
3 Code, are repealed.

4 SECTION 19. LEGISLATIVE INTENT. This Act is enacted under
5 Section 43, Article III, Texas Constitution. This Act is intended
6 as a recodification only, and no substantive change in law is
7 intended by this Act.

8 SECTION 20. EFFECTIVE DATE. This Act takes effect April 1,
9 2007.