

By: Solomons

H.B. No. 472

Substitute the following for H.B. No. 472:

By: Zedler

C.S.H.B. No. 472

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the regulation of third-party administrators,
3 including administrators with delegated duties in the workers'
4 compensation system of this state; providing penalties.

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

6 ARTICLE 1. THIRD-PARTY ADMINISTRATORS

7 SECTION 1.01. Section 4151.001, Insurance Code, is amended
8 by amending Subdivisions (1) and (2) and adding Subdivisions (6),
9 (7), and (8) to read as follows:

10 (1) "Administrator" means a person who, in connection
11 with annuities or life, health, and accident benefits, [~~including~~
12 pharmacy benefits, or workers' compensation benefits, collects
13 premiums or contributions from or adjusts or settles claims for
14 residents of this state. The term includes a workers' compensation
15 health care network under Chapter 1305 that administers a workers'
16 compensation claim for an insurer other than the insurance carrier
17 that establishes or contracts with the network. The term does not
18 include a person described by Section 4151.002.

19 (2) "Insurer" means a person who engages in the
20 business of life, health, or accident insurance or workers'
21 compensation insurance under the law of this state. The term
22 includes an "insurance carrier," as defined by Section 401.011(27),
23 Labor Code, other than a governmental entity.

24 (6) "Workers' compensation benefits" means benefits

1 provided under Title 5, Labor Code, or services provided through a
2 certified workers' compensation health care network authorized
3 under Chapter 1305.

4 (7) "Workers' compensation insurance coverage" means
5 coverage subject to Subtitle E, Title 10. The term includes
6 coverage described by Sections 401.011(44)(A) and (B), Labor Code.

7 (8) "Workers' compensation self-insurer" means a legal
8 entity subject to regulation under Chapter 407 or 407A, Labor Code.

9 SECTION 1.02. Section 4151.002, Insurance Code, is amended
10 to read as follows:

11 Sec. 4151.002. EXEMPTIONS. A person is not an
12 administrator if the person is:

13 (1) an employer administering an employee benefit plan
14 or the plan of an affiliated employer under common management and
15 control [~~acting on behalf of its employees or the employees of one~~
16 ~~or more subsidiaries or affiliated corporations of the employer~~];

17 (2) a union administering a benefit plan [~~acting~~] on
18 behalf of its members;

19 (3) an insurer or a group hospital service corporation
20 subject to Chapter 842 acting with respect to a policy lawfully
21 issued and delivered by the insurer or corporation in and under the
22 law of a state in which the insurer or corporation was authorized to
23 engage in the business of insurance;

24 (4) a health maintenance organization that is
25 authorized to operate in this state under Chapter 843 with respect
26 to any activity that is specifically regulated under that chapter,
27 Chapter 1271, 1272, or 1367, Subchapter A, Chapter 1452, or

1 Subchapter B, Chapter 1507;

2 (5) an agent licensed under Subchapter B, Chapter
3 4051, Subchapter B, Chapter 4053, or Subchapter B, Chapter 4054,
4 who receives commissions as an agent and is acting:

5 (A) under appointment on behalf of an insurer
6 authorized to engage in the business of insurance in this state; and

7 (B) in the customary scope and duties of the
8 person's authority as an agent;

9 (6) a creditor acting on behalf of its debtor with
10 respect to insurance that covers a debt between the creditor and its
11 debtor, if the creditor performs only the functions of a group
12 policyholder or a creditor;

13 (7) a trust established in conformity with 29 U.S.C.
14 Section 186 or a trustee or employee who is acting under the trust;

15 (8) a trust that is exempt from taxation under Section
16 501(a), Internal Revenue Code of 1986, or a trustee or employee
17 acting under the trust;

18 (9) a custodian or a custodian's agent or employee who
19 is acting under a custodian account that complies with Section
20 401(f), Internal Revenue Code of 1986;

21 (10) a bank, credit union, savings and loan
22 association, or other financial institution that is subject to
23 supervision or examination under federal or state law by a federal
24 or state regulatory authority, if the institution is performing
25 only those functions for which the institution holds a license
26 under federal or state law;

27 (11) a company that advances and collects a premium or

1 charge from its credit card holders on their authorization, if the
2 company does not adjust or settle claims and acts only in the
3 company's debtor-creditor relationship with its credit card
4 holders;

5 (12) a person who adjusts or settles claims in the
6 normal course of the person's practice or employment as a licensed
7 attorney and who does not collect any premium or charge in
8 connection with insurance coverage [~~annuities or with life, health,~~
9 ~~or accident benefits, including pharmacy benefits~~];

10 (13) an adjuster licensed under Subtitle C by the
11 department who is engaged in the performance of the individual's
12 [~~person's~~] powers and duties as an adjuster in the scope of the
13 individual's [~~person's~~] license;

14 (14) a person who provides technical, advisory,
15 utilization review, precertification, or consulting services to an
16 insurer, plan, or plan sponsor but does not make any management or
17 discretionary decisions on behalf of the insurer, plan, or plan
18 sponsor;

19 (15) an attorney in fact for a Lloyd's plan operating
20 under Chapter 941 or for a reciprocal or interinsurance exchange
21 operating under Chapter 942 who is acting in the capacity of
22 attorney in fact under the applicable chapter;

23 (16) a joint fund, risk management pool, or
24 self-insurance pool composed of political subdivisions of this
25 state that participate in a fund or pool through interlocal
26 agreements, any nonprofit administrative agency or governing body
27 or other nonprofit entity that acts solely on behalf of a fund,

1 pool, agency, or body, or any other fund, pool, agency, or body
2 established under or for the purpose of implementing an interlocal
3 governmental agreement;

4 (17) a self-insured political subdivision;

5 (18) a plan under which insurance benefits are
6 provided exclusively by an insurer authorized to engage in the
7 business of insurance in this state and the administrator of which
8 is:

9 (A) a full-time employee of the plan's organizing
10 or sponsoring association, trust, or other entity; or

11 (B) a trustee of the organizing or sponsoring
12 trust; [~~or~~]

13 (19) a parent of a wholly owned direct or indirect
14 subsidiary insurer authorized to engage in the business of
15 insurance in this state or a wholly owned direct or indirect
16 subsidiary insurer that is a part of the parent's holding company
17 system that, under an agreement regulated and approved under
18 Chapter 823 or a similar statute of the domiciliary state if the
19 parent or subsidiary insurer is a foreign insurer engaged in
20 business in this state, on behalf of only itself or an affiliated
21 insurer:

22 (A) collects premiums or contributions, if the
23 parent or subsidiary insurer:

24 (i) prepares only billing statements and
25 places those statements in the United States mail; and

26 (ii) causes all collected premiums to be
27 deposited directly in a depository account of the particular

1 affiliated insurer; or

2 (B) furnishes proof-of-loss forms, reviews
3 claims, determines the amount of the liability for those claims,
4 and negotiates settlements, if the parent or subsidiary insurer
5 pays claims only from the funds of the particular subsidiary by
6 checks or drafts of that subsidiary; or

7 (20) a workers' compensation self-insurer
8 administering the self-insurer's workers' compensation benefit
9 obligations.

10 SECTION 1.03. Subchapter A, Chapter 4151, Insurance Code,
11 is amended by adding Sections 4151.0021, 4151.0031, and 4151.0051
12 to read as follows:

13 Sec. 4151.0021. APPLICABILITY TO CERTAIN PROCESSING
14 AGENTS. (a) In this section, "processing agent" means a person
15 described by Section 413.0111, Labor Code.

16 (b) A processing agent is not an administrator for purposes
17 of this chapter if the processing agent operates only in the manner
18 authorized by rules adopted by the commissioner of workers'
19 compensation as an agent or assignee for a pharmacy providing
20 pharmaceutical benefits in conjunction with a workers'
21 compensation claim. A person who operates as a processing agent and
22 also performs the functions of an administrator for an insurer,
23 plan, or plan sponsor is required to hold a certificate of authority
24 under this chapter.

25 Sec. 4151.0031. MARKET ANALYSIS. The commissioner may
26 conduct market analyses and examinations of an administrator under
27 Chapter 751.

1 Sec. 4151.0051. REFERRAL TO ADJUSTER BY ADMINISTRATOR. (a)

2 An administrator may not knowingly refer a claim or loss for
3 adjustment in this state to an individual purporting to be or acting
4 as an adjuster unless the individual holds a license under Chapter
5 4101.

6 (b) Before referring a claim or loss for adjustment, an
7 administrator must ascertain from the commissioner whether the
8 individual selected to perform the adjustment holds a license under
9 Chapter 4101. After receipt of information from the department
10 that the individual does hold an adjuster license, the
11 administrator may refer claims or losses to the individual for
12 adjustment until the administrator has actual knowledge or receives
13 information from the department that the individual no longer holds
14 an adjuster license under Chapter 4101.

15 SECTION 1.04. Section 4151.006, Insurance Code, is amended
16 to read as follows:

17 Sec. 4151.006. RULES. The commissioner may adopt, in the
18 manner prescribed by Subchapter A, Chapter 36, rules that are fair,
19 [and] reasonable, and appropriate [rules, minimum standards, or
20 limitations as appropriate] to augment and implement this chapter,
21 including rules establishing financial standards, reporting
22 requirements, and required contract provisions.

23 SECTION 1.05. Section 4151.052, Insurance Code, is amended
24 to read as follows:

25 Sec. 4151.052. APPLICATION. (a) An application for a
26 certificate of authority to engage in business as an administrator
27 must be in a form prescribed by the commissioner and must include

1 the following:

2 (1) a copy of each basic organizational document of
3 the applicant, including the articles of incorporation, bylaws,
4 articles of association, trade name certificate, and any other
5 similar document and a copy of any amendment to any of those
6 documents;

7 (2) a description of the applicant and the applicant's
8 services, facilities, and personnel;

9 (3) if the applicant is not domiciled in this state, a
10 power of attorney executed by the applicant appointing the
11 commissioner, the commissioner's successors in office, or the
12 commissioner's appointed designee as the applicant's attorney in
13 this state on whom process may be served in any legal action or
14 proceeding based on a cause of action arising in this state against
15 the applicant;

16 (4) an audited financial statement of the applicant
17 covering the preceding three calendar years or any lesser period
18 that the applicant and any predecessors of the applicant have been
19 in existence, or if an audited financial statement is not
20 available, an unaudited financial statement as of a date not
21 earlier than the 120th day before the date the application is filed,
22 accompanied by an affidavit or certification of the applicant that:

23 (A) the unaudited financial statement is true and
24 correct, as of its date; and

25 (B) a material change in financial condition has
26 not occurred from the date of the financial statement to the
27 execution date of the affidavit or certification; and

1 (5) any other information the commissioner reasonably
2 requires.

3 (b) An applicant for a certificate of authority under this
4 chapter shall notify the department in the manner prescribed by
5 commissioner rule of any material change in the applicant's
6 ownership or control not later than the 30th day after the effective
7 date of the change and shall notify the department of any other fact
8 or circumstance affecting the applicant's qualifications for a
9 certificate of authority in this state as required by commissioner
10 rule.

11 SECTION 1.06. Section 4151.056, Insurance Code, is amended
12 to read as follows:

13 Sec. 4151.056. DURATION OF CERTIFICATE OF AUTHORITY. A
14 certificate of authority issued to an administrator under this
15 chapter is effective until it is suspended, canceled, or revoked.
16 The issuance, denial, suspension, cancellation, or revocation of a
17 certificate of authority to act as an administrator is subject to:

18 (1) Subchapter G [~~Subchapters B and C, Chapter 4005~~];
19 and

20 (2) Chapter 82.

21 SECTION 1.07. The heading to Subchapter C, Chapter 4151,
22 Insurance Code, is amended to read as follows:

23 SUBCHAPTER C. POWERS AND DUTIES OF [~~THIRD-PARTY~~] ADMINISTRATORS AND
24 INSURERS

25 SECTION 1.08. Section 4151.101, Insurance Code, is amended
26 to read as follows:

27 Sec. 4151.101. WRITTEN AGREEMENT WITH INSURER OR PLAN

1 SPONSOR REQUIRED. (a) An administrator may provide services only
2 under a written agreement with an insurer or plan sponsor.

3 (b) The commissioner by rule may prescribe provisions that
4 must be included in the written agreement.

5 SECTION 1.09. Section 4151.102, Insurance Code, is amended
6 by adding Subsection (a-1) to read as follows:

7 (a-1) The written agreement must include a statement of the
8 duties that the administrator is expected to perform on behalf of
9 the insurer, and the lines, classes, or types of insurance that the
10 administrator is authorized to administer. The agreement must
11 include, as applicable, provisions regarding claims handling and
12 other standards relating to the business underwritten by the
13 insurer.

14 SECTION 1.10. Section 4151.103(a), Insurance Code, is
15 amended to read as follows:

16 (a) The [~~During the term of the written agreement, the~~]
17 administrator and the insurer, plan, or plan sponsor shall retain a
18 copy of the written agreement as part of their official records:

19 (1) during the term of the agreement; and
20 (2) until the fifth anniversary of the date on which
21 the agreement expires.

22 SECTION 1.11. Section 4151.104, Insurance Code, is amended
23 to read as follows:

24 Sec. 4151.104. NOTICE OF USE OF ADMINISTRATOR'S SERVICES.

25 (a) If an insurer, plan, or plan sponsor uses the services of an
26 administrator, the administrator shall give written notice to each
27 insured, covered individual, or plan participant of the

1 administrator's identity and the relationship among the
2 administrator and the insurer, plan, or plan sponsor and the
3 insured, covered individual, or plan participant. The insurer,
4 plan, or plan sponsor must approve the notice before the notice is
5 distributed.

6 (b) An administrator who fails to provide notice as required
7 by Subsection (a) is subject to an administrative penalty in the
8 manner provided by Chapter 84.

9 SECTION 1.12. Subchapter C, Chapter 4151, Insurance Code,
10 is amended by adding Sections 4151.1041 and 4151.1042 to read as
11 follows:

12 Sec. 4151.1041. REFERRAL BY INSURER. (a) An insurer may
13 not knowingly refer a claim or loss for administration in this state
14 to an individual or entity purporting to be or acting as an
15 administrator unless the individual or entity holds a certificate
16 of authority under this chapter.

17 (b) Before referring a claim or loss for administration, an
18 insurer must ascertain from the commissioner whether the individual
19 or entity performing the administration holds a certificate of
20 authority under this chapter. Once the insurer has ascertained
21 that the individual or entity holds a certification of authority,
22 the insurer may refer a claim to the individual or entity for
23 administration and may continue to refer claims to the individual
24 or entity until the insurer has knowledge or receives information
25 from the commissioner that the individual or entity no longer holds
26 a certificate of authority.

27 Sec. 4151.1042. RESPONSIBILITIES OF INSURER; SEMIANNUAL

1 AUDIT. (a) If an insurer uses the services of an administrator,
2 the insurer is responsible for determining the benefits, premium
3 rates, reimbursement procedures, and claims payment procedures
4 applicable to the coverage and for securing reinsurance, if any.
5 The insurer shall provide a copy of the written requirements
6 relating to those matters to the administrator. The
7 responsibilities of the administrator as to any of those matters
8 must be set forth in the written agreement between the
9 administrator and the insurer.

10 (b) An insurer shall ensure competent administration of its
11 programs.

12 (c) If an administrator administers benefits for more than
13 100 certificate holders, subscribers, claimants, or policyholders
14 on behalf of an insurer, the insurer shall, at least semiannually,
15 conduct a review of the operations of the administrator. At least
16 one of the reviews must include an on-site audit of the operations
17 of the administrator.

18 SECTION 1.13. Section 4151.111, Insurance Code, is amended
19 by adding Subsection (c) to read as follows:

20 (c) In the event of a conflict between this section and a
21 provision of the Labor Code relating to time periods for
22 adjudication and payment of workers' compensation claims, the Labor
23 Code provision prevails.

24 SECTION 1.14. Section 4151.113(b), Insurance Code, is
25 amended to read as follows:

26 (b) A trade secret, including the identity and address of a
27 policyholder, ~~or~~ certificate holder, or subscriber is

1 confidential, except the commissioner may use that information in a
2 proceeding against the administrator.

3 SECTION 1.15. Section 4151.117, Insurance Code, is amended
4 to read as follows:

5 Sec. 4151.117. COMPENSATION OF ADMINISTRATOR. (a) An
6 administrator's compensation may be determined:

7 (1) as a percentage of the premiums or charges the
8 administrator collects or the amount of claims the administrator
9 pays or processes; or

10 (2) except as provided by Subsection (b), on another
11 basis as specified in the written agreement.

12 (b) An insurer or plan sponsor may not permit or provide
13 compensation or another thing of value to an administrator who
14 enters into a written agreement with the insurer or plan sponsor
15 under Section 4151.101 that is based on the savings accruing to the
16 insurer or plan sponsor because of adverse determinations regarding
17 claims for benefits, reductions of or limitations on benefits, or
18 other analogous actions inconsistent with this chapter, that are
19 made or taken by the administrator.

20 SECTION 1.16. The heading to Subchapter E, Chapter 4151,
21 Insurance Code, is amended to read as follows:

22 SUBCHAPTER E. DEPARTMENT REGULATION OF [~~THIRD-PARTY~~]

23 ADMINISTRATORS

24 SECTION 1.17. Section 4151.205, Insurance Code, is amended
25 by amending Subsection (a) and adding Subsections (c), (d), (e),
26 and (f) to read as follows:

27 (a) An administrator shall annually, not later than March 1,

1 file with the commissioner a report on a form prescribed by the
2 commissioner. The report must contain any information required by
3 the commissioner and must be verified by at least two officers of
4 the administrator.

5 (c) Except as provided by Subsection (f), the annual report
6 must include an audited financial statement performed by an
7 independent certified public accountant. An audited financial
8 statement prepared on a consolidated basis must include a columnar
9 consolidating or combining worksheet that shall be filed with the
10 annual report and must comply with the following:

11 (1) amounts shown on the consolidated audited
12 financial report must be shown on the worksheet;

13 (2) amounts for each entity must be stated separately;
14 and

15 (3) explanations of consolidating and eliminating
16 entries must be included.

17 (d) The annual report must include the complete name and
18 address of each insurer engaged in the business of workers'
19 compensation in this state with which the administrator had an
20 agreement during the preceding fiscal year.

21 (e) Information derived from an audited financial statement
22 contained in an annual report under this section is confidential
23 and is not subject to disclosure under Chapter 552, Government
24 Code.

25 (f) An administrator who receives less than \$10 million
26 annually under written agreements subject to this chapter with
27 insurers or plan sponsors in this state is not required to file an

1 audited financial statement under Subsection (c), but must file a
2 financial statement certified in the manner prescribed by
3 commissioner rule.

4 SECTION 1.18. Section 4151.206(a), Insurance Code, is
5 amended to read as follows:

6 (a) The commissioner shall collect and an applicant or
7 administrator shall pay to the commissioner fees in an amount to be
8 determined by the commissioner as follows:

9 (1) a filing fee not to exceed \$1,000 for processing an
10 original application for a certificate of authority for an
11 administrator;

12 (2) a fee not to exceed \$500 for an examination under
13 Section 4151.201 [~~4201.201~~]; and

14 (3) a filing fee not to exceed \$200 for an annual
15 report.

16 SECTION 1.19. Subchapter E, Chapter 4151, Insurance Code,
17 is amended by adding Sections 4151.210, 4151.211, and 4151.212 to
18 read as follows:

19 Sec. 4151.210. EFFECT OF REVOCATION OF OTHER CERTIFICATES.
20 An officer, director, or shareholder of an entity whose certificate
21 of authority to engage in the business of insurance or other
22 analogous authorization has been revoked in this state or in any
23 other state may not act as an officer, director, member, manager, or
24 partner, or as a shareholder with a controlling interest, of an
25 entity that holds a certificate of authority issued under this
26 chapter unless the commissioner determines, for good cause shown,
27 that it is in the public interest to permit the individual to act in

1 that capacity.

2 Sec. 4151.211. RESTRICTIONS ON ACQUISITION OF OWNERSHIP
3 INTEREST. (a) An individual may not acquire an ownership interest
4 in an entity that holds a certificate of authority under this
5 chapter if the individual is, or after the acquisition would be,
6 directly or indirectly in control of the certificate holder, or
7 otherwise acquire control of or exercise any control over the
8 certificate holder, unless the individual has filed with the
9 department under oath:

10 (1) a biographical form for each individual by whom or
11 on whose behalf the acquisition of control is to be effected;

12 (2) a statement certifying that no individual who is
13 acquiring an ownership interest in or control of the certificate
14 holder has been the subject of a disciplinary action taken by a
15 financial or insurance regulator of this state, another state, or
16 the United States;

17 (3) a statement certifying that, immediately on the
18 change of control, the certificate holder will be able to satisfy
19 the requirements for the issuance of a certificate of authority;
20 and

21 (4) any additional information that the commissioner
22 by rule may prescribe as necessary or appropriate to the public
23 interest and the protection of the insurance consumers of this
24 state.

25 (b) The department may require a partnership, syndicate, or
26 other group that is required to file a statement under Subsection
27 (a) to provide the information required under that subsection for

1 each partner of the partnership, each member of the syndicate or
2 group, and each person who controls the partner or member. If the
3 partner, member, or person is a corporation or the person required
4 to file the statement under Subsection (a) is a corporation, the
5 department may require that the information required under that
6 subsection be provided regarding:

7 (1) the corporation;

8 (2) each individual who is an executive officer or
9 director of the corporation; and

10 (3) each person who is directly or indirectly the
11 beneficial owner of more than 10 percent of the outstanding voting
12 securities of the corporation.

13 (c) The department may disapprove an acquisition of control
14 if, after notice and opportunity for hearing, the commissioner
15 determines that:

16 (1) immediately on the change of control the
17 certificate holder would not be able to satisfy the requirements
18 for the certificate of authority;

19 (2) the competence, trustworthiness, experience, and
20 integrity of the individuals who would control the operation of the
21 certificate holder are such that it would not be in the interest of
22 the insurance consumers of this state to permit the acquisition of
23 control; or

24 (3) the acquisition of control would violate this code
25 or another law of this state, another state, or the United States.

26 (d) Notwithstanding Subsection (c), a change in control is
27 considered approved if the commissioner does not disapprove the

1 requested change before the 61st day after the date on which the
2 department receives all information required by this section.

3 Sec. 4151.212. MAINTENANCE OF QUALIFICATIONS REQUIRED. The
4 department may, in the manner prescribed by Subchapter G, revoke,
5 suspend, or refuse to renew the certificate of authority of a
6 certificate holder who does not maintain the qualifications
7 necessary to obtain a certificate of authority issued under this
8 chapter.

9 SECTION 1.20. Chapter 4151, Insurance Code, is amended by
10 adding Subchapter F to read as follows:

11 SUBCHAPTER F. WORKERS' COMPENSATION BENEFIT PLANS

12 Sec. 4151.251. APPLICATION. (a) This subchapter applies
13 to the administration of workers' compensation insurance coverage
14 for:

15 (1) an insurer; and

16 (2) an employer that enters into an agreement with an
17 insurer for a large deductible policy under Section 2053.202(b).

18 (b) This subchapter does not apply to an employer that does
19 not elect to obtain workers' compensation insurance coverage under
20 Subchapter A, Chapter 406, Labor Code.

21 Sec. 4151.252. AGREEMENT WITH AFFILIATED ADMINISTRATOR;
22 COMMISSIONER APPROVAL REQUIRED. An insurer that holds a
23 certificate of authority to engage in the business of workers'
24 compensation insurance in this state may not enter into an
25 agreement with an administrator, or permit an agent, including a
26 managing general agent, to enter into such an agreement on the
27 insurer's behalf, to adjust or handle claims for employees of the

1 administrator or of any other employer affiliated with the
2 administrator without the approval of the commissioner.

3 Sec. 4151.253. AGREEMENTS BETWEEN EMPLOYERS AND
4 ADMINISTRATORS. (a) An administrator may enter into an agreement
5 with an insurer for the adjustment or handling of workers'
6 compensation claims for residents of this state only with the
7 insurer responsible for those claims.

8 (b) An administrator may accept compensation of any kind for
9 the adjustment or handling of workers' compensation claims for
10 residents of this state only from the insurer responsible for those
11 claims.

12 (c) Notwithstanding Subsections (a) and (b), an employer
13 that is approved as a workers' compensation self-insurer in another
14 state, but that is not approved as a workers' compensation
15 self-insurer in this state, may, if in compliance with all
16 provisions of this chapter and subject to Subsection (d), agree
17 with its workers' compensation insurer in this state that the
18 workers' compensation insurer will use the same administrator in
19 this state for the adjustment and handling of workers' compensation
20 claims as the employer uses in the state in which it has been
21 approved as a self-insurer. The agreement may include coordination
22 of claims reports, premium payments, and loss reimbursements under
23 deductible insurance between this state and other states in which
24 the same administrator handles and adjusts workers' compensation
25 claims on behalf of the employer.

26 (d) An administrator described by Subsection (c) must hold a
27 certificate of authority under this chapter.

1 Sec. 4151.254. LARGE DEDUCTIBLE POLICIES. An employer who
2 enters into an agreement with an insurer under Section 2053.202(b)
3 may not use an administrator to handle workers' compensation claims
4 unless the administrator has entered into a written agreement with
5 the insurer under Subchapter C under which the insurer is
6 responsible for:

- 7 (1) setting standards used in the handling of claims;
8 and
9 (2) paying the administrative costs incurred by the
10 administrator.

11 SECTION 1.21. Chapter 4151, Insurance Code, is amended by
12 adding Subchapter G to read as follows:

13 SUBCHAPTER G. DISCIPLINARY ACTIONS; PENALTIES

14 Sec. 4151.301. GROUNDS FOR DENIAL, SUSPENSION, OR
15 REVOCAION OF CERTIFICATE OF AUTHORITY. The department may deny an
16 application for a certificate of authority or discipline the holder
17 of a certificate of authority under this subchapter if the
18 department determines that the applicant or holder, individually,
19 or through an officer, director, or shareholder:

20 (1) has wilfully violated an insurance law of this
21 state;

22 (2) has intentionally made a material misstatement in
23 the application for a certificate of authority;

24 (3) has obtained or attempted to obtain a certificate
25 of authority by fraud or misrepresentation;

26 (4) has misappropriated, converted to the applicant's
27 or holder's own use, or illegally withheld money belonging to:

1 (A) an insurance carrier, as that term is
2 defined by Section 401.011, Labor Code;

3 (B) an insurer, as that term is defined by
4 Section 4001.003;

5 (C) a health maintenance organization; or

6 (D) an insured, enrollee, or beneficiary;

7 (5) has engaged in fraudulent or dishonest acts or
8 practices;

9 (6) has materially misrepresented the terms and
10 conditions of an insurance policy, certificate, evidence of
11 coverage, or contract;

12 (7) has been convicted of a felony;

13 (8) is in a financial condition, or is operating or
14 conducting business in a manner, that would render further
15 transaction of business in this state hazardous or injurious to
16 insured persons or the public;

17 (9) has failed to comply with any judgment rendered
18 against the applicant or holder before the 60th day after the date
19 on which the judgment becomes final;

20 (10) has wilfully violated a commissioner rule;

21 (11) has refused to be examined or to produce
22 accounts, records, and files for examination as required by this
23 chapter or commissioner rule;

24 (12) at any time fails to meet a qualification for
25 which issuance of the certificate of authority could have been
26 denied had the failure then existed and been known to the
27 commissioner;

1 (13) has had a certificate of authority, license, or
2 other authority issued by this state, another state, or the United
3 States suspended or revoked; or

4 (14) has failed to timely file the annual report
5 required by Section 4151.205.

6 Sec. 4151.302. REMEDIES FOR VIOLATION OF INSURANCE LAWS OR
7 COMMISSIONER RULES. In addition to any other remedy available
8 under Chapter 82 for a violation of this code, another insurance law
9 of this state, or a commissioner rule, the department may:

10 (1) deny an application for a certificate of
11 authority;

12 (2) suspend or revoke a certificate of authority;

13 (3) place on probation a person whose certificate of
14 authority has been suspended;

15 (4) assess an administrative penalty; or

16 (5) reprimand a certificate of authority holder.

17 Sec. 4151.303. PROBATED SUSPENSION. If the suspension of a
18 certificate of authority is probated, the commissioner may require
19 the holder to:

20 (1) report regularly to the department on any matter
21 that is the basis of the probation; or

22 (2) limit the holder's practice to the areas
23 prescribed by the department.

24 Sec. 4151.304. HEARING. If the department proposes to deny
25 an application for a certificate of authority, or to suspend or
26 revoke a certificate of authority, the applicant or holder is
27 entitled to notice and a hearing conducted by the State Office of

1 Administrative Hearings as provided by Chapter 40.

2 Sec. 4151.305. APPLICATION FOR CERTIFICATE OF AUTHORITY
3 AFTER DENIAL OR REVOCATION. (a) A person, or officer, director, or
4 shareholder of a person, whose application has been denied or whose
5 certificate of authority has been revoked under this subchapter may
6 not apply for a certificate of authority before the fifth
7 anniversary of:

8 (1) the effective date of the denial or revocation; or

9 (2) the date of a final court order affirming the
10 denial or revocation if judicial review was sought.

11 (b) An application filed after the period required by
12 Subsection (a) may be denied by the commissioner if the applicant
13 fails to show good cause why the denial or revocation should not be
14 a bar to the issuance of a new certificate.

15 (c) Subsection (b) does not apply to an applicant whose
16 application was denied for failure by the applicant to submit a
17 properly completed application for a certificate of authority.

18 Sec. 4151.306. DISCIPLINARY PROCEEDING FOR CONDUCT
19 COMMITTED BEFORE SURRENDER OR FORFEITURE OF CERTIFICATE. (a) The
20 department may institute a disciplinary proceeding against a former
21 certificate holder, or officer, director, or shareholder of a
22 former certificate holder, for conduct committed before the
23 effective date of a voluntary surrender or automatic forfeiture of
24 the certificate of authority.

25 (b) In a proceeding under this section, the fact that the
26 certificate holder, or officer, director, or shareholder of a
27 certificate holder, has surrendered or forfeited the certificate

1 does not affect the former certificate holder's, or officer,
2 director, or shareholder of a former certificate holder's,
3 culpability for the conduct that is the subject of the proceeding.

4 Sec. 4151.307. EMERGENCY CERTIFICATE SUSPENSION. (a) The
5 commissioner may suspend the certificate of an administrator
6 without notice or hearing if the commissioner determines that:

7 (1) the administrator is insolvent or impaired;

8 (2) an order for receivership, conservatorship,
9 rehabilitation, or any other delinquency regarding the
10 administrator has been entered in any state; or

11 (3) the financial condition or business practices of
12 the administrator otherwise pose an imminent threat to the public
13 health, safety, or welfare of the residents of this state.

14 (b) On determining that grounds exist under Subsection (a)
15 to suspend the administrator's certificate of authority, the
16 commissioner may issue an order suspending the certificate. The
17 commissioner shall immediately serve notice of the suspension on
18 the holder.

19 (c) The notice required by Subsection (b) must:

20 (1) be personally served on the holder or be sent by
21 registered or certified mail, return receipt requested, to the
22 holder's last known address according to the department's records;

23 (2) state the grounds for the suspension; and

24 (3) inform the holder of the right to a hearing on the
25 suspension order.

26 (d) An administrator whose certificate of authority is
27 suspended under this section is entitled to request a hearing on the

1 suspension not later than the 30th day after the date of receipt of
2 notice of the suspension. Not later than the 10th day after the
3 date a hearing is requested, the commissioner shall issue a notice
4 of hearing.

5 (e) The hearing must be held not later than the 10th day
6 after the date notice of hearing is issued, unless the parties agree
7 to a later date.

8 (f) A hearing on a suspension order under this section is
9 subject to Chapter 2001, Government Code, and to Subchapter A,
10 Chapter 40. After the hearing, the administrative law judge shall
11 recommend to the commissioner whether to uphold, vacate, or modify
12 the suspension order.

13 (g) A suspension order issued under this section remains in
14 effect until further action is taken by the commissioner.

15 SECTION 1.22. Section 4151.207, Insurance Code, is
16 transferred to Subchapter G, Chapter 4151, Insurance Code, as added
17 by this Act, renumbered as Section 4151.308, and amended to read as
18 follows:

19 Sec. 4151.308 [~~4151.207~~]. GENERAL ADMINISTRATIVE SANCTIONS.
20 An administrator or other person who violates this chapter is
21 subject to the sanctions provided by Chapter 82.

22 SECTION 1.23. Section 4151.208, Insurance Code, is
23 transferred to Subchapter G, Chapter 4151, Insurance Code, as added
24 by this Act, renumbered as Section 4151.309, and amended to read as
25 follows:

26 Sec. 4151.309 [~~4151.208~~]. CRIMINAL PENALTY [~~OFFENSE~~]. (a)
27 An administrator commits an offense if the administrator knowingly

1 violates this chapter or a rule of the commissioner adopted under
2 this chapter.

3 (b) An offense under this section is a misdemeanor
4 punishable by a fine of not less than \$500 or more than \$5,000.

5 ARTICLE 2. CONFORMING AMENDMENTS--INSURANCE CODE

6 SECTION 2.01. Section 1305.004(a), Insurance Code, is
7 amended by adding Subdivision (1-a) to read as follows:

8 (1-a) "Administrator" has the meaning assigned by
9 Section 4151.001.

10 SECTION 2.02. Subchapter A, Chapter 1305, Insurance Code,
11 is amended by adding Section 1305.008 to read as follows:

12 Sec. 1305.008. ADMINISTRATOR CERTIFICATE OF AUTHORITY
13 REQUIRED. A third party that performs the functions of an
14 administrator under Chapter 4151 must hold a certificate of
15 authority issued under that chapter to provide those functions
16 under this chapter for an insurance carrier.

17 SECTION 2.03. Sections 1305.1545(a) and (c), Insurance
18 Code, are amended to read as follows:

19 (a) An insurance carrier or [~~third-party~~] administrator may
20 not reimburse a doctor or other health care provider, an
21 institutional provider, or an organization of doctors and health
22 care providers on a discounted fee basis for services that are
23 provided to an injured employee unless:

24 (1) the carrier or [~~third-party~~] administrator has
25 contracted with either:

26 (A) the doctor or other health care provider,
27 institutional provider, or organization of doctors and health care

1 providers; or

2 (B) a network that has contracted with the doctor
3 or other health care provider, institutional provider, or
4 organization of doctors and health care providers; and

5 (2) the doctor or other health care provider,
6 institutional provider, or organization of doctors and health care
7 providers has agreed to the contract and has agreed to provide
8 health care services under the terms of the contract.

9 (c) An insurance carrier or [~~third-party~~] administrator who
10 violates this section:

11 (1) commits an unfair claim settlement practice in
12 violation of Subchapter A, Chapter 542, Insurance Code; and

13 (2) is subject to administrative penalties under
14 Chapters 82 and 84, Insurance Code.

15 SECTION 2.04. Section 4101.002, Insurance Code, is amended
16 by amending Subsection (a) and adding Subsection (c) to read as
17 follows:

18 (a) This chapter does not apply to:

19 (1) an attorney who:

20 (A) adjusts insurance losses periodically and
21 incidentally to the practice of law; and

22 (B) does not represent that the attorney is an
23 adjuster;

24 (2) a salaried employee of an insurer who is not
25 regularly engaged in the adjustment, investigation, or supervision
26 of insurance claims;

27 (3) a person employed only to furnish technical

1 assistance to a licensed adjuster, including:

- 2 (A) an attorney;
- 3 (B) an engineer;
- 4 (C) an estimator;
- 5 (D) a handwriting expert;
- 6 (E) a photographer; and
- 7 (F) a private detective;

8 (4) an agent or general agent of an authorized insurer
9 who processes an undisputed or uncontested loss for the insurer
10 under a policy issued by the agent or general agent;

11 (5) a person who performs clerical duties and does not
12 negotiate with parties to disputed or contested claims;

13 (6) a person who handles claims arising under life,
14 accident, and health insurance policies;

15 (7) a person:

16 (A) who is employed principally as:

- 17 (i) a right-of-way agent; or
- 18 (ii) a right-of-way and claims agent;

19 (B) whose primary responsibility is the
20 acquisition of easements, leases, permits, or other real property
21 rights; and

22 (C) who handles only claims arising out of
23 operations under those easements, leases, permits, or other
24 contracts or contractual obligations;

25 (8) an individual who is employed to investigate
26 suspected fraudulent insurance claims but who does not adjust
27 losses or determine claims payments; [~~or~~]

1 (9) a public insurance adjuster licensed under Chapter
2 4102; or

3 (10) an individual who investigates or settles only
4 workers' compensation claims.

5 (c) For purposes of Subsection (a)(6), claims arising under
6 workers' compensation insurance policies, including claims
7 relating to services provided through a certified workers'
8 compensation health care network authorized under Chapter 1305, do
9 not constitute claims arising under life, accident, or health
10 insurance policies.

11 ARTICLE 3. CONFORMING AMENDMENTS--LABOR CODE

12 SECTION 3.01. Section 407.001(5), Labor Code, is amended to
13 read as follows:

14 (5) "Qualified claims servicing contractor" means a
15 person who provides claims service for a certified self-insurer,
16 who is a separate business entity from the affected certified
17 self-insurer, and who is:

18 (A) an insurance company authorized by the Texas
19 Department of Insurance to write workers' compensation insurance;

20 (B) a subsidiary of an insurance company that
21 provides claims service under contract; or

22 (C) an [a third-party] administrator who holds a
23 certificate of authority [that has on its staff an individual
24 licensed] under Chapter 4151 [4101], Insurance Code.

25 SECTION 3.02. Section 407A.001(a), Labor Code, is amended
26 by adding Subdivision (9) to read as follows:

27 (9) "Third-party administrator" means a person who

1 holds a certificate of authority as an administrator under Chapter
2 4151, Insurance Code.

3 SECTION 3.03. Subchapter A, Chapter 407A, Labor Code, is
4 amended by adding Section 407A.009 to read as follows:

5 Sec. 407A.009. CERTIFICATE OF AUTHORITY REQUIRED FOR
6 CERTAIN SERVICE COMPANIES. A service company that adjusts or
7 settles claims for the group must hold a certificate of authority as
8 an administrator under Chapter 4151, Insurance Code.

9 ARTICLE 4. TRANSITION; EFFECTIVE DATE

10 SECTION 4.01. A person is not required to hold a certificate
11 of authority under Chapter 4151, Insurance Code, as amended by this
12 Act, to comply with Section 1305.008, Insurance Code, as added by
13 this Act, before January 1, 2008.

14 SECTION 4.02. A service company that adjusts or settles
15 claims for a workers' compensation self-insurance group under
16 Chapter 407A, Labor Code, is not required to hold a certificate of
17 authority under Chapter 4151, Insurance Code, as amended by this
18 Act, to comply with Section 407A.009, Labor Code, as added by this
19 Act, before January 1, 2008.

20 SECTION 4.03. The Texas Department of Insurance shall issue
21 certificates of authority to applicants under Section 4151.052,
22 Insurance Code, as amended by this Act, beginning September 1,
23 2007.

24 SECTION 4.04. (a) Except as provided by Subsections (b) and
25 (c) of this section, this Act takes effect September 1, 2007.

26 (b) A person is not required to hold a certificate of
27 authority under Chapter 4151, Insurance Code, as amended by this

1 Act, to administer workers' compensation benefits for an insurer
2 before January 1, 2008.

3 (c) Subchapter G, Chapter 4151, Insurance Code, as added by
4 this Act, applies to a disciplinary action commenced on or after
5 January 1, 2008.