

SENATE AMENDMENTS

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H.B. No. 2636

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the nonsubstantive revision of statutes relating to the
3 Texas Department of Insurance, the business of insurance, and
4 certain related businesses, to nonsubstantive additions to and
5 corrections in the codified Insurance Code, and to conforming the
6 provisions of that code that were codified by the 79th Legislature
7 to other Acts of that legislature, including conforming amendments,
8 repeals, and penalties.

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

10 ARTICLE 1. REVISION OF THE INSURANCE CODE OF 1951

11 PART A. ADDITIONS AND CONFORMING AMENDMENTS TO TITLE 2,

12 INSURANCE CODE

13 SECTION 1A.001. CONFORMING AMENDMENT. Chapter 30,
14 Insurance Code, is amended to read as follows:

15 CHAPTER 30. GENERAL PROVISIONS

16 Sec. 30.001. PURPOSE OF TITLES 2, 3, 4, 5, 6, 7, 8, 9, 10,
17 11, 12, 13, ~~[AND]~~ 14, AND 20. (a) This title and Titles 3, 4, 5, 6,
18 7, 8, 9, 10, 11, 12, 13, ~~[and]~~ 14, and 20 are enacted as a part of the
19 state's continuing statutory revision program, begun by the Texas
20 Legislative Council in 1963 as directed by the legislature in the
21 law codified as Section 323.007, Government Code. The program
22 contemplates a topic-by-topic revision of the state's general and
23 permanent statute law without substantive change.

24 (b) Consistent with the objectives of the statutory

1 revision program, the purpose of this title and Titles 3, 4, 5, 6,
2 7, 8, 9, 10, 11, 12, 13, [~~and~~] 14, and 20 is to make the law
3 encompassed by the titles more accessible and understandable by:

4 (1) rearranging the statutes into a more logical
5 order;

6 (2) employing a format and numbering system designed
7 to facilitate citation of the law and to accommodate future
8 expansion of the law;

9 (3) eliminating repealed, duplicative,
10 unconstitutional, expired, executed, and other ineffective
11 provisions; and

12 (4) restating the law in modern American English to
13 the greatest extent possible.

14 Sec. 30.002. CONSTRUCTION. Except as provided by Section
15 30.003 and as otherwise expressly provided in this code, Chapter
16 311, Government Code (Code Construction Act), applies to the
17 construction of each provision in this title and in Titles 3, 4, 5,
18 6, 7, 8, 9, 10, 11, 12, 13, [~~and~~] 14, and 20.

19 Sec. 30.003. DEFINITION OF PERSON. The definition of
20 "person" assigned by Section 311.005, Government Code, does not
21 apply to any provision in this title or in Title 3, 4, 5, 6, 7, 8, 9,
22 10, 11, 12, 13, [~~or~~] 14, or 20.

23 Sec. 30.004. REFERENCE IN LAW TO STATUTE REVISED BY TITLE 2,
24 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, [~~OR~~] 14, OR 20. A reference in a
25 law to a statute or a part of a statute revised by this title or by
26 Title 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, [~~or~~] 14, or 20 is
27 considered to be a reference to the part of this code that revises

1 that statute or part of that statute.

2 SECTION 1A.002. ADDITION. Subchapter A, Chapter 32,
3 Insurance Code, is amended by adding Sections 32.0015 and 32.004 to
4 read as follows:

5 Sec. 32.0015. FILING ARTICLES OF INCORPORATION AND OTHER
6 PAPERS; CERTIFIED COPIES. (a) The department shall file and
7 maintain in a department office:

8 (1) all insurance companies' acts or articles of
9 incorporation; and

10 (2) any other paper required by law to be filed with
11 the department.

12 (b) The department shall provide a certified copy of a
13 document described by Subsection (a)(1) or (2) to a party
14 interested in the document who:

15 (1) submits an application; and

16 (2) pays the fee prescribed by law. (V.T.I.C. Art.
17 1.10, Sec. 2.)

18 Sec. 32.004. PUBLICATION OF RESULTS OF EXAMINATION. The
19 department shall publish the results of an examination of a
20 company's affairs if the commissioner determines that publication
21 is in the public interest. (V.T.I.C. Art. 1.10, Sec. 6.)

22 PART B. ADDITIONS TO TITLE 3, INSURANCE CODE

23 SECTION 1B.001. ADDITION. Subtitle B, Title 3, Insurance
24 Code, is amended by adding Chapter 228 to read as follows:

25 CHAPTER 228. PREMIUM TAX CREDIT FOR CERTAIN INVESTMENTS

26 SUBCHAPTER A. GENERAL PROVISIONS

27 Sec. 228.001. GENERAL DEFINITIONS. In this chapter:

1 (1) "Allocation date" means the date on which
2 certified investors are allocated premium tax credits.

3 (2) "Certified capital" means cash invested by a
4 certified investor that fully funds the purchase price of an equity
5 interest in a certified capital company or a qualified debt
6 instrument issued by the company.

7 (3) "Certified capital company" means a partnership,
8 corporation, or trust or limited liability company, whether
9 organized on a profit or nonprofit basis, that:

10 (A) has as the company's primary business
11 activity the investment of cash in qualified businesses; and

12 (B) is certified as meeting the criteria of this
13 chapter.

14 (4) "Certified investor" means an insurer or other
15 person that has state premium tax liability and that contributes
16 certified capital pursuant to a premium tax credit allocation under
17 this chapter.

18 (5) "Early stage business" means a business described
19 by Section 228.152(a).

20 (6) "Person" means an individual or entity, including
21 a corporation, general or limited partnership, or trust or limited
22 liability company.

23 (7) "Premium tax credit allocation claim" means a
24 claim for allocation of premium tax credits.

25 (8) "Qualified business" means a business described by
26 Section 228.201.

27 (9) "Qualified debt instrument" means a debt

1 instrument issued by a certified capital company, at par value or a
2 premium, that:

3 (A) has an original maturity date that is a date
4 on or after the fifth anniversary of the date of issuance;

5 (B) has a repayment schedule that is not faster
6 than a level principal amortization over five years; and

7 (C) does not have interest, distribution, or
8 payment features that are related to:

9 (i) the profitability of the company; or

10 (ii) the performance of the company's
11 investment portfolio.

12 (10) "Qualified investment" means the investment of
13 cash by a certified capital company in a qualified business for the
14 purchase of any debt, debt participation, equity, or hybrid
15 security of any nature or description, including a debt instrument
16 or security that has the characteristics of debt but that provides
17 for conversion into equity or equity participation instruments such
18 as options or warrants.

19 (11) "State premium tax liability" means:

20 (A) any liability incurred by any person under
21 Chapter 221, 222, 223, or 224; or

22 (B) if the tax liability imposed under Chapter
23 221, 222, 223, or 224 is eliminated or reduced, any tax liability
24 imposed on an insurer or other person that had premium tax liability
25 under Subchapter A, Chapter 4, or Article 9.59 as those laws existed
26 on January 1, 2003.

27 (12) "Strategic investment business" means a business

1 described by Section 228.153(a). (V.T.I.C. Art. 4.51, Subdivs.
2 (2), (3), (4), (5), (6) (part), (7), (8), (9) (part), (10), (12),
3 (13), (15) (part).)

4 Sec. 228.002. DEFINITION OF AFFILIATE. In this chapter,
5 "affiliate" of another person means:

6 (1) a person that is an affiliate for purposes of
7 Section 823.003;

8 (2) a person that directly or indirectly:

9 (A) beneficially owns 10 percent or more of the
10 outstanding voting securities or other voting or management
11 interests of the other person, whether through rights, options,
12 convertible interests, or otherwise; or

13 (B) controls or holds power to vote 10 percent or
14 more of the outstanding voting securities or other voting or
15 management interests of the other person;

16 (3) a person 10 percent or more of the outstanding
17 voting securities or other voting or management interests of which
18 are directly or indirectly:

19 (A) beneficially owned by the other person,
20 whether through rights, options, convertible interests, or
21 otherwise; or

22 (B) controlled or held with power to vote by the
23 other person;

24 (4) a partnership in which the other person is a
25 general partner;

26 (5) an officer, director, employee, or agent of the
27 other person; or

1 (6) an immediate family member of an officer,
2 director, employee, or agent described by Subdivision (5).
3 (V.T.I.C. Art. 4.51, Subdiv. (1).)

4 [Sections 228.003-228.050 reserved for expansion]

5 SUBCHAPTER B. ADMINISTRATION AND PROMOTION

6 Sec. 228.051. ADMINISTRATION BY COMPTROLLER. The
7 comptroller shall administer this chapter. (V.T.I.C. Art. 4.52
8 (part).)

9 Sec. 228.052. RULES; FORMS. The comptroller shall adopt
10 rules and forms as necessary to implement this chapter, including
11 rules that:

12 (1) establish the application procedures for
13 certified capital companies; and

14 (2) facilitate the transfer or assignment of premium
15 tax credits by certified investors. (V.T.I.C. Art. 4.52 (part);
16 Art. 4.53, Sec. (a); Art. 4.71, Sec. (a) (part).)

17 Sec. 228.053. REPORT TO LEGISLATURE. (a) The comptroller
18 shall prepare a biennial report concerning the results of the
19 implementation of this chapter. The report must include:

20 (1) the number of certified capital companies holding
21 certified capital;

22 (2) the amount of certified capital invested in each
23 certified capital company;

24 (3) the amount of certified capital the certified
25 capital company invested in qualified businesses as of January 1,
26 2006, and the cumulative total for each subsequent year;

27 (4) the total amount of tax credits granted under this

1 chapter for each year that credits have been granted;

2 (5) the performance of each certified capital company
3 with respect to renewal and reporting requirements imposed under
4 this chapter;

5 (6) with respect to the qualified businesses in which
6 certified capital companies have invested:

7 (A) the classification of the qualified
8 businesses according to the industrial sector and size of the
9 business;

10 (B) the total number of jobs created by the
11 investment and the average wages paid for the jobs; and

12 (C) the total number of jobs retained as a result
13 of the investment and the average wages paid for the jobs; and

14 (7) the certified capital companies that have been
15 decertified or that have failed to renew the certification and the
16 reason for any decertification.

17 (b) The comptroller shall file the report with the governor,
18 the lieutenant governor, and the speaker of the house of
19 representatives not later than December 15 of each even-numbered
20 year. (V.T.I.C. Art. 4.73.)

21 Sec. 228.054. PROMOTION OF PROGRAM. The Texas Economic
22 Development and Tourism Office shall promote the program
23 established under this chapter in the Texas Business and Community
24 Economic Development Clearinghouse. (V.T.I.C. Art. 4.72.)

25 [Sections 228.055-228.100 reserved for expansion]

1 SUBCHAPTER C. APPLICATION FOR AND GENERAL OPERATION OF CERTIFIED

2 CAPITAL COMPANIES

3 Sec. 228.101. APPLICATION FOR CERTIFICATION. (a) An
4 applicant for certification must file the application in the form
5 prescribed by the comptroller. The application must be accompanied
6 by a nonrefundable application fee of \$7,500.

7 (b) The application must include an audited balance sheet of
8 the applicant, with an unqualified opinion from an independent
9 certified public accountant, as of a date not more than 35 days
10 before the date of the application. (V.T.I.C. Art. 4.53, Sec. (b).)

11 Sec. 228.102. QUALIFICATION. To qualify as a certified
12 capital company:

13 (1) the applicant must have, at the time of
14 application for certification, an equity capitalization of at least
15 \$500,000 in unencumbered cash or cash equivalents;

16 (2) at least two principals or persons employed to
17 manage the funds of the applicant must have at least four years of
18 experience in the venture capital industry; and

19 (3) the applicant must satisfy any additional
20 requirement imposed by the comptroller by rule. (V.T.I.C. Art.
21 4.53, Sec. (c).)

22 Sec. 228.103. MANAGEMENT BY AND CERTAIN OWNERSHIP INTERESTS
23 OF INSURANCE ENTITIES PROHIBITED. (a) An insurer, group of
24 insurers, or other persons who may have state premium tax liability
25 or the insurer's or person's affiliates may not directly or
26 indirectly:

27 (1) manage a certified capital company;

1 (2) beneficially own, whether through rights,
2 options, convertible interests, or otherwise, more than 10 percent
3 of the outstanding voting securities of a certified capital
4 company; or

5 (3) control the direction of investments for a
6 certified capital company.

7 (b) Subsection (a) applies without regard to whether the
8 insurer or other person or the affiliate of the insurer or other
9 person is authorized by or engages in business in this state.

10 (c) Subsections (a) and (b) do not preclude an insurer,
11 certified investor, or any other party from exercising its legal
12 rights and remedies, including interim management of a certified
13 capital company, if authorized by law, with respect to a certified
14 capital company that is in default of the company's statutory or
15 contractual obligations to the insurer, certified investor, or
16 other party.

17 (d) This chapter does not limit an insurer's ownership of
18 nonvoting equity interests in a certified capital company.

19 (V.T.I.C. Art. 4.54; Art. 4.56, Sec. (d).)

20 Sec. 228.104. ACTION ON APPLICATION. (a) The comptroller
21 shall:

22 (1) review the application, organizational documents,
23 and business history of each applicant; and

24 (2) ensure that the applicant satisfies the
25 requirements of this chapter.

26 (b) Not later than the 30th day after the date an
27 application is filed, the comptroller shall:

1 (1) issue the certification; or

2 (2) refuse to issue the certification and communicate
3 in detail to the applicant the grounds for the refusal, including
4 suggestions for the removal of those grounds. (V.T.I.C. Art. 4.53,
5 Secs. (d), (e).)

6 Sec. 228.105. CONTINUATION OF CERTIFICATION. To continue
7 to be certified, a certified capital company must make qualified
8 investments according to the schedule established by Section
9 228.151. (V.T.I.C. Art. 4.56, Sec. (a) (part).)

10 Sec. 228.106. REPORTS TO COMPTROLLER; AUDITED FINANCIAL
11 STATEMENT. (a) Each certified capital company shall report to the
12 comptroller as soon as practicable after the receipt of certified
13 capital:

14 (1) the name of each certified investor from whom the
15 certified capital was received, including the certified investor's
16 insurance premium tax identification number;

17 (2) the amount of each certified investor's investment
18 of certified capital and premium tax credits; and

19 (3) the date on which the certified capital was
20 received.

21 (b) Not later than January 31 of each year, each certified
22 capital company shall report to the comptroller:

23 (1) the amount of the company's certified capital at
24 the end of the preceding year;

25 (2) whether or not the company has invested more than
26 15 percent of the company's total certified capital in a single
27 business;

1 (3) each qualified investment that the company made
2 during the preceding year and, with respect to each qualified
3 investment, the number of employees of the qualified business at
4 the time the qualified investment was made; and

5 (4) any other information required by the comptroller,
6 including any information required by the comptroller to comply
7 with Section 228.053.

8 (c) Not later than April 1 of each year, each certified
9 capital company shall provide to the comptroller an annual audited
10 financial statement that includes the opinion of an independent
11 certified public accountant. The audit must address the methods of
12 operation and conduct of the business of the company to determine
13 whether:

14 (1) the company is complying with this chapter and the
15 rules adopted under this chapter;

16 (2) the funds received by the company have been
17 invested as required within the time provided by Section 228.151;
18 and

19 (3) the company has invested the funds in qualified
20 businesses. (V.T.I.C. Art. 4.58.)

21 Sec. 228.107. RENEWAL FEE; LATE FEE; EXCEPTION. (a) Not
22 later than January 31 of each year, each certified capital company
23 shall pay a nonrefundable renewal fee of \$5,000 to the comptroller.

24 (b) If a certified capital company fails to pay the renewal
25 fee on or before the date specified by Subsection (a), the company
26 must pay, in addition to the renewal fee, a late fee of \$5,000 to
27 continue the company's certification.

1 (c) Notwithstanding Subsection (a), a renewal fee is not
2 required within six months of the date on which a certified capital
3 company's initial certification is issued under Section
4 228.104(b). (V.T.I.C. Art. 4.59.)

5 Sec. 228.108. OFFERING MATERIAL USED BY CERTIFIED CAPITAL
6 COMPANY. Any offering material involving the sale of securities of
7 the certified capital company must include the following statement:

8 By authorizing the formation of a certified
9 capital company, the State of Texas does not endorse
10 the quality of management or the potential for
11 earnings of the company and is not liable for damages
12 or losses to a certified investor in the company. Use
13 of the word "certified" in an offering does not
14 constitute a recommendation or endorsement of the
15 investment by the comptroller of public accounts. If
16 applicable provisions of law are violated, the State
17 of Texas may require forfeiture of unused premium tax
18 credits and repayments of used premium tax credits.

19 (V.T.I.C. Art. 4.55.)

20 [Sections 228.109-228.150 reserved for expansion]

21 SUBCHAPTER D. INVESTMENT BY CERTIFIED CAPITAL COMPANIES

22 Sec. 228.151. REQUIRED SCHEDULE OF INVESTMENT. (a) Before
23 the third anniversary of a certified capital company's allocation
24 date, the company must make qualified investments in an amount
25 cumulatively equal to at least 30 percent of the company's
26 certified capital, subject to Section 228.153(b).

27 (b) Before the fifth anniversary of a certified capital

1 company's allocation date, the company must make qualified
2 investments in an amount cumulatively equal to at least 50 percent
3 of the company's certified capital, subject to Sections 228.152(b)
4 and 228.153(b). (V.T.I.C. Art. 4.56, Sec. (a) (part).)

5 Sec. 228.152. INVESTMENT IN EARLY STAGE BUSINESS REQUIRED.

6 (a) In this section, "early stage business" means a qualified
7 business that:

8 (1) is involved, at the time of a certified capital
9 company's first investment, in activities related to the
10 development of initial product or service offerings, such as
11 prototype development or establishment of initial production or
12 service processes;

13 (2) was initially organized less than two years before
14 the date of the certified capital company's first investment; or

15 (3) during the fiscal year immediately preceding the
16 year of the certified capital company's first investment had, on a
17 consolidated basis with the business's affiliates, gross revenues
18 of not more than \$2 million as determined in accordance with
19 generally accepted accounting principles.

20 (b) A certified capital company must place at least 50
21 percent of the amount of qualified investments required by Section
22 228.151(b) in early stage businesses. (V.T.I.C. Art. 4.51, Subdiv.
23 (6); Art. 4.56, Sec. (b) (part).)

24 Sec. 228.153. INVESTMENT IN STRATEGIC INVESTMENT BUSINESS
25 REQUIRED. (a) In this section:

26 (1) "Strategic investment area" means an area of this
27 state that qualifies as a strategic investment area under

1 Subchapter O, Chapter 171, Tax Code, or, after the date that
2 subchapter expires, an area that qualified as a strategic
3 investment area under that subchapter immediately before that date.

4 (2) "Strategic investment business" means a qualified
5 business that:

6 (A) has the business's principal business
7 operations located in one or more strategic investment areas; and

8 (B) intends to maintain business operations in
9 the strategic investment areas after receipt of the investment by
10 the certified capital company.

11 (b) A certified capital company must place at least 30
12 percent of the amount of qualified investments required by Sections
13 228.151(a) and (b) in a strategic investment business. (V.T.I.C.
14 Art. 4.51, Subdivs. (14), (15); Art. 4.56, Sec. (b) (part).)

15 Sec. 228.154. CERTIFIED CAPITAL NOT INVESTED IN QUALIFIED
16 INVESTMENTS. A certified capital company shall invest any
17 certified capital not invested in qualified investments only in:

18 (1) cash deposited with a federally insured financial
19 institution;

20 (2) certificates of deposit in a federally insured
21 financial institution;

22 (3) investment securities that are:

23 (A) obligations of the United States or agencies
24 or instrumentalities of the United States; or

25 (B) obligations that are guaranteed fully as to
26 principal and interest by the United States;

27 (4) debt instruments rated at least "A" or the

1 equivalent by a nationally recognized credit rating organization,
2 or issued by, or guaranteed with respect to payment by, an entity
3 whose unsecured indebtedness is rated at least "A" or the
4 equivalent by a nationally recognized credit rating organization,
5 and which indebtedness is not subordinated to other unsecured
6 indebtedness of the issuer or the guarantor;

7 (5) obligations of this state or a municipality or
8 political subdivision of this state; or

9 (6) any other investment approved in advance in
10 writing by the comptroller. (V.T.I.C. Art. 4.56, Sec. (h).)

11 Sec. 228.155. COMPUTATION OF AMOUNT OF INVESTMENTS. (a)

12 The aggregate cumulative amount of all qualified investments made
13 by a certified capital company after the company's allocation date
14 shall be considered in the computation of the percentage
15 requirements under this subchapter.

16 (b) A certified capital company may invest proceeds
17 received from a qualified investment in another qualified
18 investment, and that investment counts toward any requirement of
19 this chapter with respect to investments of certified capital.
20 (V.T.I.C. Art. 4.56, Sec. (c).)

21 Sec. 228.156. LIMIT ON QUALIFIED INVESTMENT. A certified
22 capital company may not make a qualified investment at a cost to the
23 company that is greater than 15 percent of the company's total
24 certified capital at the time of investment. (V.T.I.C. Art. 4.56,
25 Sec. (f).)

26 Sec. 228.157. DISTRIBUTIONS BY CERTIFIED CAPITAL COMPANY.

27 (a) In this section, "qualified distribution" means any

1 distribution or payment from certified capital by a certified
2 capital company in connection with:

3 (1) the reasonable costs and expenses of forming,
4 syndicating, managing, and operating the company, provided that the
5 distribution or payment is not made directly or indirectly to a
6 certified investor, including:

7 (A) reasonable and necessary fees paid for
8 professional services, including legal and accounting services,
9 related to the company's formation and operation; and

10 (B) an annual management fee in an amount that
11 does not exceed 2.5 percent of the company's certified capital; and

12 (2) a projected increase in federal or state taxes,
13 including penalties and interest related to state and federal
14 income taxes, of the company's equity owners resulting from the
15 earnings or other tax liability of the company to the extent that
16 the increase is related to the ownership, management, or operation
17 of the company.

18 (b) A certified capital company may make a qualified
19 distribution at any time. To make a distribution or payment other
20 than a qualified distribution, a company must have made qualified
21 investments in an amount cumulatively equal to 100 percent of the
22 company's certified capital.

23 (c) If a business in which a qualified investment is made
24 relocates the business's principal business operations to another
25 state during the term of the certified capital company's investment
26 in the business, the cumulative amount of qualified investments
27 made by the certified capital company for purposes of satisfying

1 the requirements of Subsection (b) only is reduced by the amount of
2 the certified capital company's qualified investments in the
3 business that has relocated.

4 (d) Subsection (c) does not apply if the business
5 demonstrates that the business has returned the business's
6 principal business operations to this state not later than the 90th
7 day after the date of the relocation. (V.T.I.C. Art. 4.51, Subdiv.
8 (11); Art. 4.60, Secs. (a), (c).)

9 Sec. 228.158. REPAYMENT OF DEBT. Notwithstanding Section
10 228.157(b), a certified capital company may make repayments of
11 principal and interest on the company's indebtedness without any
12 restriction, including repaying the company's indebtedness on
13 which certified investors earned premium tax credits. (V.T.I.C.
14 Art. 4.60, Sec. (b).)

15 [Sections 228.159-228.200 reserved for expansion]

16 SUBCHAPTER E. QUALIFIED BUSINESS

17 Sec. 228.201. DEFINITION OF QUALIFIED BUSINESS. (a) In
18 this chapter, "qualified business" means a business that complies
19 with this section at the time of a certified capital company's first
20 investment in the business.

21 (b) A qualified business must:

22 (1) be headquartered in this state and intend to
23 remain in this state after receipt of the certified capital
24 company's investment; and

25 (2) have the business's principal business operations
26 located in this state and intend to maintain business operations in
27 this state after receipt of the certified capital company's

1 investment.

2 (c) A qualified business must agree to use the qualified
3 investment primarily to:

4 (1) support business operations in this state, other
5 than advertising, promotion, and sales operations which may be
6 conducted outside of this state; or

7 (2) in the case of a start-up company, establish and
8 support business operations in this state, other than advertising,
9 promotion, and sales operations which may be conducted outside of
10 this state.

11 (d) A qualified business may not have more than 100
12 employees and must:

13 (1) employ at least 80 percent of the business's
14 employees in this state; or

15 (2) pay 80 percent of the business's payroll to
16 employees in this state.

17 (e) A qualified business must be primarily engaged in:

18 (1) manufacturing, processing, or assembling
19 products;

20 (2) conducting research and development; or

21 (3) providing services.

22 (f) A qualified business may not be primarily engaged in:

23 (1) retail sales;

24 (2) real estate development;

25 (3) the business of insurance, banking, or lending; or

26 (4) the provision of professional services provided by
27 accountants, attorneys, or physicians. (V.T.I.C. Art. 4.51,

1 Subdiv. (9).)

2 Sec. 228.202. RELOCATION OF PRINCIPAL BUSINESS OPERATIONS.

3 If, before the 90th day after the date a certified capital company
4 makes an investment in a qualified business, the qualified business
5 moves the business's principal business operations from this state,
6 the investment may not be considered a qualified investment for
7 purposes of the percentage requirements under this chapter.

8 (V.T.I.C. Art. 4.56, Sec. (g).)

9 Sec. 228.203. EVALUATION OF BUSINESS BY COMPTROLLER. (a) A

10 certified capital company may, before making an investment in a
11 business, request a written opinion from the comptroller as to
12 whether the business in which the company proposes to invest is a
13 qualified business, an early stage business, or a strategic
14 investment business.

15 (b) Not later than the 15th business day after the date of
16 the receipt of a request under Subsection (a), the comptroller
17 shall:

18 (1) determine whether the business meets the
19 definition of a qualified business, an early stage business, or a
20 strategic investment business, as applicable, and notify the
21 certified capital company of the determination and provide an
22 explanation of the determination; or

23 (2) notify the company that an additional 15 days will
24 be needed to review the request and make the determination.

25 (c) If the comptroller fails to notify the certified capital
26 company with respect to the proposed investment within the period
27 specified by Subsection (b), the business in which the company

1 proposes to invest is considered to be a qualified business, an
2 early stage business, or a strategic investment business, as
3 appropriate. (V.T.I.C. Art. 4.57.)

4 Sec. 228.204. CONTINUATION OF CLASSIFICATION AS QUALIFIED
5 BUSINESS; FOLLOW-ON INVESTMENTS AUTHORIZED. (a) A business that
6 is classified as a qualified business at the time of the first
7 investment in the business by a certified capital company:

8 (1) remains classified as a qualified business; and

9 (2) may receive follow-on investments from any
10 certified capital company.

11 (b) Except as provided by Subsection (c), a follow-on
12 investment made under Subsection (a) is a qualified investment even
13 though the business may not meet the definition of a qualified
14 business at the time of the follow-on investment.

15 (c) A follow-on investment does not qualify as a qualified
16 investment if, at the time of the follow-on investment, the
17 qualified business no longer has the business's principal business
18 operations in this state. (V.T.I.C. Art. 4.56, Sec. (e).)

19 [Sections 228.205-228.250 reserved for expansion]

20 SUBCHAPTER F. PREMIUM TAX CREDIT

21 Sec. 228.251. PREMIUM TAX CREDIT. (a) A certified investor
22 who makes an investment of certified capital shall earn in the year
23 of investment a vested credit against state premium tax liability
24 equal to 100 percent of the certified investor's investment of
25 certified capital, subject to the limits imposed by this chapter.

26 (b) Beginning with the tax report due March 1, 2009, for the
27 2008 tax year, a certified investor may take up to 25 percent of the

1 vested premium tax credit in any taxable year of the certified
2 investor. The credit may not be applied to estimated payments due
3 in 2008. (V.T.I.C. Art. 4.65, Sec. (a).)

4 Sec. 228.252. LIMIT ON PREMIUM TAX CREDIT. (a) The credit
5 to be applied against state premium tax liability of a certified
6 investor in any one year may not exceed the state premium tax
7 liability of the investor for the taxable year.

8 (b) A certified investor may carry forward any unused credit
9 against state premium tax liability indefinitely until the premium
10 tax credits are used. (V.T.I.C. Art. 4.65, Sec. (b).)

11 Sec. 228.253. PREMIUM TAX CREDIT ALLOCATION CLAIM REQUIRED.

12 (a) A certified investor must prepare and execute a premium tax
13 credit allocation claim on a form provided by the comptroller.

14 (b) The certified capital company must have filed the claim
15 with the comptroller on the date on which the comptroller accepted
16 premium tax credit allocation claims on behalf of certified
17 investors under the comptroller's rules.

18 (c) The premium tax credit allocation claim form must
19 include an affidavit of the certified investor under which the
20 certified investor becomes legally bound and irrevocably committed
21 to make an investment of certified capital in a certified capital
22 company in the amount allocated even if the amount allocated is less
23 than the amount of the claim, subject only to the receipt of an
24 allocation under Section 228.255.

25 (d) A certified investor may not claim a premium tax credit
26 under Section 228.251 for an investment that has not been funded,
27 without regard to whether the certified investor has committed to

1 fund the investment. (V.T.I.C. Art. 4.66.)

2 Sec. 228.254. TOTAL LIMIT ON PREMIUM TAX CREDITS. (a) The
3 total amount of certified capital for which premium tax credits may
4 be allowed under this chapter for all years in which premium tax
5 credits are allowed is \$200 million.

6 (b) The total amount of certified capital for which premium
7 tax credits may be allowed for all certified investors under this
8 chapter may not exceed the amount that would entitle all certified
9 investors in certified capital companies to take total credits of
10 \$50 million in a year.

11 (c) A certified capital company and the company's
12 affiliates may not file premium tax credit allocation claims in
13 excess of the maximum amount of certified capital for which premium
14 tax credits may be allowed as provided by this section. (V.T.I.C.
15 Art. 4.67.)

16 Sec. 228.255. ALLOCATION OF PREMIUM TAX CREDIT. (a) If the
17 total premium tax credits claimed by all certified investors
18 exceeds the total limits on premium tax credits established by
19 Section 228.254(a), the comptroller shall allocate the total amount
20 of premium tax credits allowed under this chapter to certified
21 investors in certified capital companies on a pro rata basis in
22 accordance with this section.

23 (b) The pro rata allocation for each certified investor
24 shall be the product of:

25 (1) a fraction, the numerator of which is the amount of
26 the premium tax credit allocation claim filed on behalf of the
27 investor and the denominator of which is the total amount of all

1 premium tax credit allocation claims filed on behalf of all
2 certified investors; and

3 (2) the total amount of certified capital for which
4 premium tax credits may be allowed under this chapter.

5 (c) The maximum amount of certified capital for which
6 premium tax credit allocation may be allowed on behalf of a single
7 certified investor and the investor's affiliates, whether by one or
8 more certified capital companies, may not exceed the greater of:

9 (1) \$10 million; or

10 (2) 15 percent of the maximum aggregate amount
11 available under Section 228.254(a). (V.T.I.C. Art. 4.68, Secs.
12 (a), (b), (e).)

13 Sec. 228.256. TREATMENT OF CREDITS AND CAPITAL. In any case
14 under this code or another insurance law of this state in which the
15 assets of a certified investor are examined or considered, the
16 certified capital may be treated as an admitted asset, subject to
17 the applicable statutory valuation procedures. (V.T.I.C. Art.
18 4.69.)

19 Sec. 228.257. TRANSFERABILITY OF CREDIT. (a) A certified
20 investor may transfer or assign premium tax credits only in
21 compliance with the rules adopted under Section 228.052.

22 (b) The transfer or assignment of a premium tax credit does
23 not affect the schedule for taking the premium tax credit under this
24 chapter. (V.T.I.C. Art. 4.71, Secs. (a) (part), (b).)

25 Sec. 228.258. IMPACT OF PREMIUM TAX CREDIT ON INSURANCE
26 RATEMAKING. A certified investor is not required to reduce the
27 amount of premium tax included by the investor in connection with

1 ratemaking for an insurance contract written in this state because
2 of a reduction in the investor's Texas premium tax derived from
3 premium tax credits granted under this chapter. (V.T.I.C. Art.
4 4.70.)

5 Sec. 228.259. RETALIATORY TAX. A certified investor
6 claiming a credit against state premium tax liability earned
7 through an investment in a company is not required to pay any
8 additional retaliatory tax levied under Chapter 281 as a result of
9 claiming that credit. (V.T.I.C. Art. 4.65, Sec. (c) (part).)

10 [Sections 228.260-228.300 reserved for expansion]

11 SUBCHAPTER G. ENFORCEMENT

12 Sec. 228.301. ANNUAL REVIEW BY COMPTROLLER. (a) The
13 comptroller shall conduct an annual review of each certified
14 capital company to:

15 (1) ensure that the company:

16 (A) continues to satisfy the requirements of this
17 chapter; and

18 (B) has not made any investment in violation of
19 this chapter; and

20 (2) determine the eligibility status of the company's
21 qualified investments.

22 (b) Each certified capital company shall pay the cost of the
23 annual review according to a reasonable fee schedule adopted by the
24 comptroller. (V.T.I.C. Art. 4.61, Secs. (a), (b).)

25 Sec. 228.302. DECERTIFICATION OF CERTIFIED CAPITAL
26 COMPANY. (a) A material violation of Section 228.105, 228.106,
27 228.107, 228.151, 228.152, 228.153, 228.154, 228.155, 228.156,

1 228.202, or 228.204 is grounds for decertification of a certified
2 capital company.

3 (b) If the comptroller determines that a certified capital
4 company is not in compliance with a law listed in Subsection (a),
5 the comptroller shall notify the company's officers in writing that
6 the company may be subject to decertification after the 120th day
7 after the date the notice is mailed unless the company:

8 (1) corrects the deficiencies; and

9 (2) returns to compliance with the law.

10 (c) The comptroller may decertify a certified capital
11 company, after opportunity for hearing, if the comptroller finds
12 that the company is not in compliance with a law listed in
13 Subsection (a) at the end of the period established by Subsection
14 (b).

15 (d) Decertification under this section is effective on
16 receipt of notice of decertification by the certified capital
17 company.

18 (e) The comptroller shall notify any appropriate state
19 agency of a decertification of a certified capital company.

20 (V.T.I.C. Art. 4.61, Secs. (c), (d).)

21 Sec. 228.303. ADMINISTRATIVE PENALTY. (a) The comptroller
22 may impose an administrative penalty on a certified capital company
23 that violates this chapter.

24 (b) The amount of the penalty may not exceed \$25,000. Each
25 day a violation continues or occurs is a separate violation for the
26 purpose of imposing the penalty. The amount of the penalty shall be
27 based on:

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

3 (2) the economic harm caused by the violation;

4 (3) the history of previous violations;

5 (4) the amount necessary to deter a future violation;

6 (5) efforts to correct the violation; and

7 (6) any other matter that justice may require.

8 (c) A certified capital company assessed a penalty under
9 this chapter may request a redetermination as provided by Chapter
10 111, Tax Code.

11 (d) The attorney general may sue to collect the penalty.

12 (e) A proceeding to impose the penalty is a contested case
13 under Chapter 2001, Government Code. (V.T.I.C. Art. 4.62.)

14 [Sections 228.304-228.350 reserved for expansion]

15 SUBCHAPTER H. RECAPTURE AND FORFEITURE OF PREMIUM TAX CREDITS

16 Sec. 228.351. RECAPTURE AND FORFEITURE OF PREMIUM TAX
17 CREDIT FOLLOWING DECERTIFICATION. (a) Decertification of a
18 certified capital company may, in accordance with this section,
19 cause:

20 (1) the recapture of premium tax credits previously
21 claimed by the company's certified investors; and

22 (2) the forfeiture of future premium tax credits to be
23 claimed by the investors.

24 (b) Decertification of a certified capital company on or
25 before the third anniversary of the company's allocation date
26 causes the recapture of any premium tax credits previously claimed
27 and the forfeiture of any future premium tax credits to be claimed

1 by a certified investor with respect to the company.

2 (c) For a certified capital company that meets the
3 requirements for continued certification under Section 228.151(a)
4 and subsequently fails to meet the requirements for continued
5 certification under Subsection (b) of that section:

6 (1) any premium tax credit that has been or will be
7 taken by a certified investor on or before the third anniversary of
8 the allocation date is not subject to recapture or forfeiture; and

9 (2) any premium tax credit that has been or will be
10 taken by a certified investor after the third anniversary of the
11 company's allocation date is subject to recapture or forfeiture.

12 (d) For a certified capital company that has met the
13 requirements for continued certification under Section 228.151 and
14 is subsequently decertified:

15 (1) any premium tax credit that has been or will be
16 taken by a certified investor on or before the fifth anniversary of
17 the allocation date is not subject to recapture or forfeiture; and

18 (2) any premium tax credit to be taken after the fifth
19 anniversary of the allocation date is subject to forfeiture only if
20 the company is decertified on or before the fifth anniversary of the
21 company's allocation date.

22 (e) For a certified capital company that has invested an
23 amount cumulatively equal to 100 percent of the company's certified
24 capital in qualified investments, any premium tax credit claimed or
25 to be claimed by a certified investor is not subject to recapture or
26 forfeiture under this section. (V.T.I.C. Art. 4.63, Sec. (a).)

27 Sec. 228.352. NOTICE OF RECAPTURE AND FORFEITURE OF PREMIUM

1 TAX CREDIT. The comptroller shall send written notice to the
2 address of each certified investor whose premium tax credit is
3 subject to recapture or forfeiture, using the address shown on the
4 investor's last premium tax filing. (V.T.I.C. Art. 4.63, Sec.
5 (b).)

6 Sec. 228.353. INDEMNITY AGREEMENTS AND INSURANCE
7 AUTHORIZED. (a) A certified capital company may agree to
8 indemnify, or purchase insurance for the benefit of, a certified
9 investor for losses resulting from the recapture or forfeiture of
10 premium tax credits under Section 228.351.

11 (b) Any guaranty, indemnity, bond, insurance policy, or
12 other payment undertaking made under this section may not be
13 provided by more than one certified investor of the certified
14 capital company or affiliate of the certified investor. (V.T.I.C.
15 Art. 4.64.)

16 PART C. ADDITIONS TO TITLE 4, INSURANCE CODE

17 SECTION 1C.001. ADDITION. Subtitle A, Title 4, Insurance
18 Code, is amended by adding Chapter 406 to read as follows:

19 CHAPTER 406. SPECIAL DEPOSITS REQUIRED UNDER POTENTIALLY
20 HAZARDOUS CONDITIONS

21 Sec. 406.001. DEFINITION. In this chapter, "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. 1.33, Sec. 1.)

15 Sec. 406.002. APPLICABILITY OF CHAPTER. This chapter
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 406.001, unless another statute specifically
19 cites this chapter and exempts the person or organization from this
20 chapter. (V.T.I.C. Art. 1.33, Sec. 2.)

21 Sec. 406.003. REQUIRED DEPOSIT: STANDARDS AND CRITERIA.
22 The commissioner, in the commissioner's sole discretion, may
23 require an insurer to make a deposit under this chapter if the
24 commissioner determines that one of the following conditions, if
25 not rectified, may potentially be hazardous to the insurer's
26 policyholders, enrollees, or creditors, or to the public:

27 (1) the insurer's financial or operating condition,

1 reviewed in conjunction with the kinds and nature of risks insured;

2 (2) the insurer's method of operation;

3 (3) the insurer's relationship with affiliates;

4 (4) the nature and amount of the insurer's
5 investments;

6 (5) the insurer's contracts that may lead to a
7 contingent liability; or

8 (6) the insurer's agreements with respect to guaranty
9 and surety. (V.T.I.C. Art. 1.33, Sec. 3.)

10 Sec. 406.004. REQUIRED DEPOSIT: FORM OF SECURITY. A
11 deposit required under Section 406.003 must be made with the
12 comptroller and approved by the commissioner. The deposit must be
13 made in:

14 (1) cash;

15 (2) securities authorized under this code to be a
16 legal investment for the insurer that:

17 (A) are readily marketable over a national
18 exchange with a maturity date of not more than one year, are listed
19 by the Securities Valuation Office of the National Association of
20 Insurance Commissioners, and qualify as admitted assets; or

21 (B) are clean, irrevocable, and unconditional
22 letters of credit issued or confirmed by a financial institution
23 organized and licensed under the laws of the United States or a
24 state of the United States; or

25 (3) another form of security acceptable to the
26 commissioner. (V.T.I.C. Art. 1.33, Sec. 4.)

27 Sec. 406.005. DURATION OF DEPOSIT. Subject to Section

1 406.006, the comptroller shall hold a deposit required under this
2 chapter until the commissioner issues a written order finding that
3 the condition for which the deposit was required no longer exists.

4 (V.T.I.C. Art. 1.33, Sec. 5.)

5 Sec. 406.006. SUBSTITUTION OR WITHDRAWAL OF DEPOSIT. (a)

6 An insurer may file a written application with the commissioner
7 requesting:

8 (1) withdrawal of all or part of the deposit held by
9 the comptroller under this chapter; or

10 (2) substitution of all or part of the deposited
11 securities held by the comptroller under this chapter.

12 (b) The application must state the basis for the request to
13 withdraw the deposit or to substitute the deposited security.

14 (c) An insurer's application for the substitution of a
15 deposited security must provide specific information regarding the
16 security to be deposited as a substitute for the security held by
17 the comptroller.

18 (d) The commissioner shall issue an order approving or
19 denying an application under this section not later than the 30th
20 day after the date the department receives the application. If the
21 commissioner does not approve or deny the application within that
22 period, the application is denied.

23 (e) The commissioner may, in the commissioner's sole
24 discretion, approve an application to withdraw a deposit or
25 substitute a deposited security if the commissioner determines that
26 the withdrawal or substitution will not be hazardous to the
27 insurer's policyholders, enrollees, or creditors, or to the public.

1 (f) The comptroller may not release a deposit made under
2 this chapter, or any part of the deposit, and may not accept a
3 substitute for a deposited security unless the commissioner issues
4 an order approving the withdrawal or substitution. (V.T.I.C. Art.
5 1.33, Sec. 6.)

6 Sec. 406.007. APPEAL. An insurer may appeal an action of
7 the commissioner under this chapter in accordance with Subchapter
8 D, Chapter 36. (V.T.I.C. Art. 1.33, Sec. 7.)

9 Sec. 406.008. CUMULATIVE OF OTHER DEPOSITS. A deposit
10 required to be made under this chapter is in addition to any other
11 deposit that the insurer is required or authorized to make under
12 this code. (V.T.I.C. Art. 1.33, Sec. 8.)

13 PART D. ADDITIONS TO TITLE 5, INSURANCE CODE

14 SECTION 1D.001. ADDITION. Chapter 542, Insurance Code, is
15 amended by adding Subchapter C-1 to read as follows:

16 SUBCHAPTER C-1. REQUEST FOR CLAIMS INFORMATION BY CERTAIN
17 OFFICIALS

18 Sec. 542.131. REQUEST BY CERTAIN OFFICIALS ENGAGED IN
19 CRIMINAL INVESTIGATION. (a) This section applies only to a claim
20 for a burglary or robbery loss or a death claim seeking life
21 insurance proceeds that is filed with an insurance company on or
22 after September 1, 2001.

23 (b) In the course of a criminal investigation and subject to
24 Subsection (c), the state fire marshal, the fire marshal of a
25 political subdivision of this state, the chief of a fire department
26 in this state, a chief of police of a municipality in this state, or
27 a sheriff in this state may request in writing that an insurance

1 company investigating a claimed burglary or robbery loss or a death
2 claim seeking life insurance proceeds release information in the
3 company's possession that relates to that claimed loss. The
4 company shall release the information to any official authorized to
5 request the information under this subsection if the company has
6 reason to believe that the insurance claim is false or fraudulent.

7 (c) An official who requests information under this section
8 may not request anything other than:

9 (1) an insurance policy relevant to an insurance claim
10 under investigation and the application for that policy;

11 (2) policy premium payment records;

12 (3) the history of the insured's previous claims; and

13 (4) material relating to the investigation of the
14 insurance claim, including:

15 (A) statements of any person;

16 (B) proof of loss; or

17 (C) other relevant evidence.

18 (d) This section does not authorize a public official or
19 agency to adopt or require any form of periodic report by an
20 insurance company.

21 (e) In the absence of fraud or malice, an insurance company
22 or a person who releases information on behalf of an insurance
23 company is not liable for damages in a civil action or subject to
24 criminal prosecution for an oral or written statement made, or any
25 other action taken, that relates to the information required to be
26 released under this section.

27 (f) An official or department employee receiving

1 information under this section shall maintain the confidentiality
2 of the information until the information is required to be released
3 during a criminal or civil proceeding.

4 (g) An insurance company or the company's representative
5 may not intentionally refuse to release to an official described by
6 Subsection (b) the information required to be released to that
7 official under this section. (V.T.I.C. Art. 21.49C.)

8 SECTION 1D.002. ADDITION. Subtitle C, Title 5, Insurance
9 Code, is amended by adding Chapter 560 to read as follows:

10 CHAPTER 560. PROHIBITED RATES

11 Sec. 560.001. DEFINITION OF INSURER. In this chapter,
12 "insurer" means an insurance company, reciprocal or interinsurance
13 exchange, mutual insurance company, farm mutual insurance company,
14 capital stock insurance company, county mutual insurance company,
15 Lloyd's plan, surplus lines insurer, or other legal entity engaged
16 in the business of insurance in this state. The term includes:

17 (1) an affiliate described by Section 823.003(a);

18 (2) the Texas Windstorm Insurance Association
19 established under Chapter 2210;

20 (3) the FAIR Plan Association established under
21 Chapter 2211; and

22 (4) the Texas Automobile Insurance Plan Association
23 established under Chapter 2151. (V.T.I.C. Art. 1.02, Sec. (a).)

24 Sec. 560.002. USE OF CERTAIN RATES PROHIBITED; RATE
25 REQUIREMENTS. (a) An insurer may not use a rate that violates this
26 chapter.

27 (b) A rate used under this code:

1 (1) must be just, fair, reasonable, and adequate; and

2 (2) may not be:

3 (A) confiscatory;

4 (B) excessive for the risks to which the rate
5 applies; or

6 (C) unfairly discriminatory.

7 (c) For purposes of this section, a rate is:

8 (1) inadequate if the rate is insufficient to sustain
9 projected losses and expenses to which the rate applies, and
10 continued use of the rate:

11 (A) endangers the solvency of an insurer using
12 the rate; or

13 (B) has the effect of substantially lessening
14 competition or creating a monopoly in any market;

15 (2) excessive if the rate is likely to produce a
16 long-term profit that is unreasonably high in relation to the
17 insurance coverage provided; or

18 (3) unfairly discriminatory if the rate:

19 (A) is not based on sound actuarial principles;

20 (B) does not bear a reasonable relationship to
21 the expected loss and expense experience among risks; or

22 (C) is based wholly or partly on the race, creed,
23 color, ethnicity, or national origin of the policyholder or an
24 insured. (V.T.I.C. Art. 1.02, Secs. (b), (c).)

25 PART E. ADDITIONS TO TITLE 6, INSURANCE CODE

26 SECTION 1E.001. ADDITION. Subtitle H, Title 6, Insurance
27 Code, is amended by adding Chapter 963 to read as follows:

1 CHAPTER 963. AUTOMOBILE CLUBS

2 Sec. 963.001. DEFINITION. In this chapter, "automobile
3 club" has the meaning assigned by Section 722.002, Transportation
4 Code. (V.T.I.C. Art. 21.80, Sec. (a) (part).)

5 Sec. 963.002. PROVISION OF CERTAIN INSURANCE SERVICES BY
6 AUTOMOBILE CLUB. (a) An automobile club may provide insurance
7 services only as provided by this chapter.

8 (b) An automobile club may provide accidental injury and
9 death benefit insurance coverage to a member through purchase of a
10 group policy of insurance issued to the automobile club for the
11 benefit of its members. The coverage must be purchased from an
12 insurance company authorized to engage in the business of that type
13 of coverage in this state. (V.T.I.C. Art. 21.80, Secs. (a) (part),
14 (b) (part).)

15 Sec. 963.003. CERTIFICATE OF PARTICIPATION. (a) The
16 automobile club shall provide each member covered by insurance
17 described by Section 963.002 a certificate of participation.

18 (b) The certificate of participation must state on its face
19 in at least 14-point black boldfaced type that the certificate is
20 only a certificate of participation in a group accidental injury
21 and death policy and is not automobile liability insurance
22 coverage. (V.T.I.C. Art. 21.80, Sec. (b) (part).)

23 Sec. 963.004. CERTAIN ACTIVITIES PROHIBITED. An automobile
24 club may endorse insurance products and refer members to agents or
25 insurers authorized to provide the insurance products in this
26 state. The automobile club or an agent of the automobile club may
27 not receive consideration for the referral. (V.T.I.C. Art. 21.80,

1 Sec. (c).)

2 Sec. 963.005. CERTAIN TRANSPORTATION-RELATED SERVICES. In
3 addition to reimbursement services described by Section
4 722.002(2), Transportation Code, an automobile club may contract
5 with a member to:

6 (1) reimburse the member for expenses the member
7 incurs for towing, emergency road service, and lockout or lost key
8 services; and

9 (2) provide immediate destination assistance and trip
10 interruption service. (V.T.I.C. Art. 21.80, Sec. (f) (part).)

11 Sec. 963.006. APPLICABILITY OF INSURANCE LAWS. (a) Except
12 as provided by Subsection (b), an automobile club performing
13 services permitted by this chapter is not subject to regulation
14 under the insurance laws of this state because of the performance of
15 those services.

16 (b) An automobile club may sell insurance products to a
17 member for a consideration separate from the amount that the member
18 pays for membership in the automobile club if the automobile club is
19 properly licensed as an agent under the applicable provisions of
20 this code.

21 (c) The insurance laws of this state do not apply to
22 reimbursement provided under Section 963.005. (V.T.I.C. Art.
23 21.80, Secs. (d), (e), (f) (part).)

24 PART F. ADDITIONS TO TITLE 7, INSURANCE CODE

25 SECTION 1F.001. ADDITION. Subtitle A, Title 7, Insurance
26 Code, is amended by adding Chapters 1112 and 1113 to read as
27 follows:

1 CHAPTER 1112. CERTAIN GUARANTEES IN LIFE INSURANCE POLICIES

2 Sec. 1112.001. CERTAIN GUARANTEES NOT PROHIBITED. Section
3 841.253 does not prohibit the issuance of a life insurance policy
4 that guarantees, by coupons or otherwise, definite payments or
5 reductions in premiums. (V.T.I.C. Art. 3.11 (part).)

6 Sec. 1112.002. CERTAIN GUARANTEES CONSTITUTE DEFINITE
7 CONTRACT BENEFIT; VALUATION OF BENEFIT. (a) Except as provided by
8 Subsection (e), a guarantee described by Section 1112.001 that is
9 in a policy or coupon issued after September 5, 1955, shall be
10 treated as a definite contract benefit and valued according to this
11 section and the reserve requirements of Chapter 425.

12 (b) Except as provided by Subsection (c), for a policy or
13 coupon issued before the date determined under Section 1105.002(a)
14 or (b), as applicable to the company, a contract benefit described
15 by Subsection (a) shall be valued using the reserve valuation net
16 premium for the benefits that is a uniform percentage of the gross
17 premiums.

18 (c) A policy described by Subsection (b) that contains a
19 contract benefit described by Subsection (a) may be valued on a
20 basis that provides for not more than one year preliminary term
21 insurance.

22 (d) For a policy or coupon issued on or after the date
23 determined under Section 1105.002(a) or (b), as applicable to the
24 company, a contract benefit described by Subsection (a) shall be
25 valued using the commissioners reserve valuation method described
26 by Section 425.064.

27 (e) A provision of this section relating to reserves does

1 not apply to a policy issued before September 7, 1955. (V.T.I.C.
2 Art. 3.11 (part).)

3 CHAPTER 1113. MANAGEMENT, CONTROL, AND DISPOSITION OF CERTAIN LIFE
4 INSURANCE AND ANNUITY CONTRACTS

5 Sec. 1113.001. LIFE INSURANCE AND ANNUITY CONTRACTS OF
6 SPOUSE. A spouse, without the joinder or consent of the other
7 spouse, has management, control, and disposition of any contract of
8 life insurance or annuity issued in the spouse's name or to the
9 extent provided by the contract or any assignment of the contract,
10 regardless of whether the contract was issued before, on, or after
11 January 1, 1968. (V.T.I.C. Art. 3.49-3.)

12 PART G. ADDITIONS TO TITLE 8, INSURANCE CODE

13 SECTION 1G.001. ADDITION. Subtitle A, Title 8, Insurance
14 Code, is amended by adding Chapter 1214 to read as follows:

15 CHAPTER 1214. ADVERTISING FOR CERTAIN HEALTH BENEFITS

16 Sec. 1214.001. APPLICABILITY OF CHAPTER. This chapter
17 applies only to a health benefit plan that provides benefits for
18 medical or surgical expenses incurred as a result of a health
19 condition, accident, or sickness, including an individual, group,
20 blanket, or franchise insurance policy or agreement, a group
21 hospital service contract, or an individual or group evidence of
22 coverage issued by:

23 (1) an insurance company;

24 (2) a group hospital service corporation operating
25 under Chapter 842;

26 (3) a health maintenance organization operating under
27 Section 1367.053, Subchapter A, Chapter 1452, Subchapter B, Chapter

1 1507, Chapter 222, 251, or 258, as applicable to a health
2 maintenance organization, Chapter 843, Chapter 1271, and Chapter
3 1272; or

4 (4) an approved nonprofit health corporation holding a
5 certificate of authority under Chapter 844. (V.T.I.C.
6 Art. 21.20-2, Sec. 1(a).)

7 Sec. 1214.002. EXCEPTION. This chapter does not apply to:

8 (1) a health benefit plan that provides coverage:

9 (A) only for a specified disease;

10 (B) only for accidental death or dismemberment;

11 or

12 (C) for wages or payments in lieu of wages for a
13 period during which an employee is absent from work because of
14 sickness or injury; or

15 (2) a long-term care insurance policy, including a
16 nursing home fixed indemnity policy, unless the commissioner
17 determines that the policy provides benefits so comprehensive that
18 the policy is a health benefit plan as described by Section
19 1214.001. (V.T.I.C. Art. 21.20-2, Sec. 1(b).)

20 Sec. 1214.003. RATE INFORMATION DISCLAIMERS. (a) Subject
21 to Chapter 541 and Section 543.001, an advertisement for a health
22 benefit plan may include rate information without including
23 information about each benefit exclusion or limitation if the
24 advertisement includes prominent disclaimers clearly indicating
25 that:

26 (1) the rates are illustrative;

27 (2) a person should not send money to the health

1 benefit plan issuer in response to the advertisement;

2 (3) a person cannot obtain coverage under the plan
3 until the person completes an application for coverage; and

4 (4) benefit exclusions or limitations may apply to the
5 plan.

6 (b) An advertisement that states a rate must also indicate
7 the age, gender, and geographic location on which the rate is based.

8 (V.T.I.C. Art. 21.20-2, Sec. 2.)

9 SECTION 1G.002. ADDITION. Subtitle H, Title 8, Insurance
10 Code, is amended by adding Chapter 1550 to read as follows:

11 CHAPTER 1550. CERTAIN REQUIREMENTS FOR INSURERS CONTRACTING WITH
12 GOVERNMENTAL ENTITIES

13 SUBCHAPTER A. REPORTING REQUIREMENTS

14 Sec. 1550.001. DEFINITIONS. In this subchapter:

15 (1) "Governmental entity" means:

16 (A) a state agency; or

17 (B) a county, municipality, school district,
18 special purpose district, or other subdivision of state government
19 that has jurisdiction limited to a geographic portion of the state.

20 (2) "Insurer" means:

21 (A) an insurance company;

22 (B) a health maintenance organization operating
23 under Section 1367.053, Subchapter A, Chapter 1452, Subchapter B,
24 Chapter 1507, Chapter 222, 251, or 258, as applicable to a health
25 maintenance organization, Chapter 843, Chapter 1271, and Chapter
26 1272; or

27 (C) an approved nonprofit health corporation

1 that holds a certificate of authority issued under Chapter 844.
2 (V.T.I.C. Art. 21.49-15, Sec. 1.)

3 Sec. 1550.002. REPORT REQUIRED. (a) This section applies
4 to a contract subject to competitive bidding under which an insurer
5 delivers, issues for delivery, or renews a health insurance policy
6 or contract or an evidence of coverage.

7 (b) An insurer that enters into a contract described by
8 Subsection (a) with a governmental entity shall provide to the
9 governmental entity a detailed report that includes:

10 (1) the claims experience of the governmental entity
11 during the preceding calendar year; and

12 (2) the dollar amount of each large claim, as defined
13 by the governmental entity, paid by the insurer under the contract
14 during the preceding calendar year. (V.T.I.C. Art. 21.49-15, Sec.
15 2(a).)

16 Sec. 1550.003. CLAIM INFORMATION. (a) An insurer
17 providing claim information to a governmental entity in the report
18 under Section 1550.002 shall provide the information in the
19 aggregate, without information through which a specific individual
20 covered by the health insurance or evidence of coverage may be
21 identified.

22 (b) Claim information provided by an insurer to a
23 governmental entity in the report under Section 1550.002:

24 (1) may be viewed or used only for contract bidding
25 purposes; and

26 (2) is confidential for purposes of Chapter 552,
27 Government Code. (V.T.I.C. Art. 21.49-15, Sec. 2(b).)

1 [Sections 1550.004-1550.050 reserved for expansion]

2 SUBCHAPTER B. CERTAIN CONTRACTS

3 WITH MUNICIPALITIES

4 Sec. 1550.051. DEFINITION OF INSURER. In this subchapter,
5 "insurer" means:

6 (1) an insurance company, including a company
7 providing stop-loss or excess loss insurance;

8 (2) a health maintenance organization operating under
9 Section 1367.053, Subchapter A, Chapter 1452, Subchapter B, Chapter
10 1507, Chapter 222, 251, or 258, as applicable to a health
11 maintenance organization, Chapter 843, Chapter 1271, and Chapter
12 1272;

13 (3) an approved nonprofit health corporation that
14 holds a certificate of authority issued under Chapter 844; or

15 (4) a third-party administrator that holds a
16 certificate of authority under Chapter 4151. (V.T.I.C. Art.
17 21.49-16, Sec. 1(1).)

18 Sec. 1550.052. BID REQUIREMENTS. (a) Except as provided by
19 Section 1550.054, an insurer that bids on a contract subject to the
20 competitive bidding and competitive proposal requirements adopted
21 under Section 252.021, Local Government Code, may not submit a bid
22 for a contract to provide stop-loss or other insurance coverage
23 that is subject to any qualification imposed by the insurer that
24 permits the insurer to modify or limit the terms of insurance
25 coverage to be provided after the contract has been made.

26 (b) An insurer's bid submitted under Section 252.021, Local
27 Government Code, must contain the insurer's entire offer.

1 (V.T.I.C. Art. 21.49-16, Sec. 2(a).)

2 Sec. 1550.053. CERTAIN EXCLUSIONS AND INCREASED
3 DEDUCTIBLES PROHIBITED. Except as provided by Section 1550.054, an
4 insurer that provides stop-loss or other insurance coverage for
5 health benefits under a contract subject to this subchapter may
6 not, based on an individual's prior medical history:

7 (1) exclude from coverage an individual who is
8 otherwise eligible for the health benefits coverage; or

9 (2) assign a higher deductible to the individual.

10 (V.T.I.C. Art. 21.49-16, Sec. 2(b).)

11 Sec. 1550.054. EXCEPTION FOR WRITTEN WAIVER. By executing
12 a written waiver in favor of the insurer, a municipality as defined
13 by Section 1.005, Local Government Code, may waive a requirement of
14 Section 1550.052 or 1550.053(2). (V.T.I.C. Art. 21.49-16, Secs.
15 1(2), 2(c).)

16 SECTION 1G.003. ADDITION. Subchapter C, Chapter 1579,
17 Insurance Code, is amended by adding Sections 1579.106, 1579.107,
18 and 1579.108 to read as follows:

19 Sec. 1579.106. PRIOR AUTHORIZATION FOR CERTAIN DRUGS. (a)
20 In this section, "drug formulary" means a list of drugs preferred
21 for use and eligible for coverage by a health coverage plan.

22 (b) A health coverage plan provided under this chapter that
23 uses a drug formulary in providing a prescription drug benefit must
24 require prior authorization for coverage of the following
25 categories of prescribed drugs if the specific drug prescribed is
26 not included in the formulary:

27 (1) a gastrointestinal drug;

1 (2) a cholesterol-lowering drug;

2 (3) an anti-inflammatory drug;

3 (4) an antihistamine drug; and

4 (5) an antidepressant drug.

5 (c) Every six months the trustee shall submit to the
6 comptroller and the Legislative Budget Board a report regarding any
7 cost savings achieved in the program through implementation of the
8 prior authorization requirement of this section. The report must
9 cover the previous six-month period. (V.T.I.C. Art. 3.50-7A, as
10 added Acts 78th Leg., R.S., Ch. 213.)

11 Sec. 1579.107. DISEASE MANAGEMENT SERVICES. (a) In this
12 section, "disease management services" means services to assist an
13 individual manage a disease or other chronic health condition, such
14 as heart disease, diabetes, respiratory illness, end-stage renal
15 disease, HIV infection, or AIDS, and with respect to which the
16 trustee identifies populations requiring disease management.

17 (b) A health coverage plan provided under this chapter must
18 provide disease management services or coverage for disease
19 management services in the manner required by the trustee,
20 including:

21 (1) patient self-management education;

22 (2) provider education;

23 (3) evidence-based models and minimum standards of
24 care;

25 (4) standardized protocols and participation
26 criteria; and

27 (5) physician-directed or physician-supervised care.

1 (V.T.I.C. Art. 3.50-7B.)

2 Sec. 1579.108. LIMITATIONS. The trustee may not contract
3 for or provide a health coverage plan that excludes from
4 participation in the network a general hospital that:

5 (1) is located in the geographical service area or
6 areas of the health coverage plan that includes a county that:

7 (A) has a population of at least 100,000 and not
8 more than 175,000; and

9 (B) is located in the Texas-Louisiana border
10 region, as that term is defined in Section 2056.002(e), Government
11 Code; and

12 (2) agrees to provide medical and health care services
13 under the plan subject to the same terms as other hospital providers
14 under the plan. (V.T.I.C. Art. 3.50-7A, Sec. (b), as added Acts
15 78th Leg., R.S., Ch. 201.)

16 PART H. ADDITIONS TO TITLE 10, INSURANCE CODE

17 SECTION 1H.001. ADDITION. Subtitle C, Title 10, Insurance
18 Code, is amended by adding Chapter 1953 to read as follows:

19 CHAPTER 1953. RATE REGULATION AND RATEMAKING FOR AUTOMOBILE

20 INSURANCE

21 SUBCHAPTER A. RATE REGULATION

22 Sec. 1953.001. EXCLUSION OF CERTAIN TYPES OR CLASSES OF
23 INSURANCE FROM CERTAIN REGULATIONS. (a) This section applies only
24 to insurance against liability for damages arising out of the
25 ownership, operation, maintenance, or use of a motor vehicle
26 described by Article 5.01 or against loss of or damage to a motor
27 vehicle described by Article 5.01 that, in the judgment of the

1 commissioner, is a type or class of insurance that is also the
2 subject of or is more properly regulated under other insurance
3 rating laws that cover that type or class of insurance.

4 (b) A type or class of insurance to which this section
5 applies is excluded from regulation under this chapter and:

6 (1) Articles 5.01, 5.01B, 5.03, 5.04, 5.04-1, 5.06,
7 5.10, and 5.11;

8 (2) Chapters 251 and 254;

9 (3) Subchapters A and B, Chapter 1806; and

10 (4) Chapters 1951 and 1952.

11 (c) If the commissioner finds that a type or class of
12 insurance to which this section applies is also the subject of or is
13 more properly regulated under other insurance rating laws that
14 cover that type or class of insurance, the commissioner shall issue
15 an order declaring which other insurance rating laws apply to:

16 (1) the type or class of insurance; and

17 (2) any motor vehicle equipment described by Article
18 5.01. (V.T.I.C. Art. 5.02.)

19 [Sections 1953.002-1953.050 reserved for expansion]

20 SUBCHAPTER B. RATEMAKING

21 Sec. 1953.051. CERTAIN RATING PLANS PROHIBITED. A rating
22 plan regarding the writing of automobile insurance, other than
23 insurance written under Chapter 2151, may not:

24 (1) assign a rate consequence to a charge or
25 conviction for a violation of Subtitle C, Title 7, Transportation
26 Code; or

27 (2) otherwise cause premiums for automobile insurance

1 to be increased because of a charge or conviction described by
2 Subdivision (1). (V.T.I.C. Art. 5.01-1.)

3 Sec. 1953.052. PREMIUM SURCHARGE REQUIRED. (a) An insurer
4 described by Section 1952.001 shall assess a premium surcharge in
5 an amount prescribed by the department against an insured for no
6 more than three years immediately following the date the insured is
7 convicted of:

8 (1) an offense relating to the operating of a motor
9 vehicle while intoxicated in violation of Section 49.04 or 49.07,
10 Penal Code; or

11 (2) an offense under Section 49.08, Penal Code.

12 (b) An insurer may apply the premium surcharge described by
13 Subsection (a) only to a private passenger automobile policy, as
14 defined by the department.

15 (c) If an insured assessed a premium surcharge under
16 Subsection (a) is convicted of an offense under one of the statutes
17 listed in Subsection (a)(1) or (2) during the period the insured is
18 assessed the premium surcharge, the period for which the premium
19 surcharge is assessed is increased by three additional consecutive
20 years for each conviction. (V.T.I.C. Art. 5.03-1.)

21 [Sections 1953.053-1953.100 reserved for expansion]

22 SUBCHAPTER C. LOSS AND EXPENSE EXPERIENCE

23 Sec. 1953.101. 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 annually in the form and with the detail necessary to aid in
3 determining whether rates and rating systems in use under the
4 following provisions comply with the standards adopted under those
5 provisions:

- 6 (1) this chapter;
- 7 (2) Articles 5.01, 5.03, and 5.04, if applicable;
- 8 (3) Subchapters A and B, Chapter 1806; and
- 9 (4) Chapters 1951 and 1952.

10 (b) In adopting the rules, the commissioner shall adopt
11 rules that are as uniform as is practicable to the rules and forms
12 of statistical plans used in other states.

13 (c) Each insurer shall use the statistical plans adopted
14 under this section to record and report loss experience and other
15 required data in accordance with the rules adopted by the
16 commissioner.

17 (d) The commissioner may modify statistical plans adopted
18 under this section. (V.T.I.C. Art. 5.05, Sec. (a).)

19 Sec. 1953.102. RULES ALLOWING INTERCHANGE OF LOSS
20 EXPERIENCE INFORMATION. The commissioner may adopt reasonable
21 rules to allow the interchange of loss experience information as
22 necessary for the application of rating plans. (V.T.I.C. Art.
23 5.05, Sec. (b).)

24 Sec. 1953.103. EXCHANGE OF INFORMATION AND EXPERIENCE DATA
25 WITH OTHER STATES. To further the uniform administration of rating
26 laws, the 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. 5.05, Sec.
6 (c).)

7 Sec. 1953.104. SWORN STATEMENTS. (a) The department may
8 require a sworn statement from an insurer affected by this
9 subchapter that shows:

10 (1) the insurer's experience on any classification or
11 classifications of risks; and

12 (2) other information that is necessary or helpful in
13 performing duties or exercising authority imposed by law.

14 (b) The department shall prescribe the necessary forms for
15 statements and reports required under Subsection (a) with due
16 regard for the rules, methods, and forms in use in other states for
17 similar purposes so that uniformity of statistics is not disturbed.
18 (V.T.I.C. Art. 5.05, Sec. (d).)

19 SECTION 1H.002. ADDITION. Subtitle D, Title 10, Insurance
20 Code, is amended by adding Chapter 2008 to read as follows:

21 CHAPTER 2008. COVERAGE FOR CERTAIN DAMAGE

22 TO PROPERTY BUILT WHOLLY OR PARTIALLY OVER WATER

23 Sec. 2008.001. APPLICABILITY OF CHAPTER. This chapter
24 applies only to an insurer described by Section 2251.003(a).
25 (V.T.I.C. Art. 5.14, Sec. (a).)

26 Sec. 2008.002. COVERAGE; LIMITS AND DEDUCTIBLES. (a) An
27 insurance policy written by an insurer against loss or damage by

1 windstorm, hurricane, or hail may include coverage for:

2 (1) a building or other structure that is built wholly
3 or partially over water; and

4 (2) the corporeal movable property contained in a
5 building or structure described by Subdivision (1).

6 (b) An insurer that writes coverage described by Subsection
7 (a) may impose appropriate limits of coverage and deductibles for
8 the coverage. (V.T.I.C. Art. 5.14, Secs. (b), (c).)

9 PART I. ADDITIONS TO TITLE 13, INSURANCE CODE

10 SECTION 11.001. ADDITION. Subtitle A, Title 13, Insurance
11 Code, is amended by adding Chapter 4007 to read as follows:

12 CHAPTER 4007. NOTICE TO DEPARTMENT BY CERTAIN PROPERTY AND
13 CASUALTY INSURANCE COMPANIES REGARDING AGENTS

14 Sec. 4007.001. APPLICABILITY OF CHAPTER. This chapter
15 applies only to an insurance company authorized to engage in the
16 business of insurance in this state under:

17 (1) a provision of:

18 (A) Chapter 5, 1805, or 2171; or

19 (B) Subtitle B, C, D, E, F, H, or I, Title 10; or

20 (2) Chapter 861, 862, 883, 911, 912, 941, 942, 984, or
21 3503. (V.T.I.C. Art. 21.70, Sec. (a) (part).)

22 Sec. 4007.002. NOTICE TO DEPARTMENT REQUIRED. (a) On forms
23 prescribed by the commissioner, an insurance company shall notify
24 the department not later than the 30th day after the date on which:

25 (1) balances due from an insurance agent for more than
26 90 days exceed \$1 million or 10 percent of the company's
27 policyholder surplus computed on December 31 of the preceding year

1 or the most recent quarter if a report is specifically required by
2 the department;

3 (2) an agent's authority to settle claims for the
4 company is withdrawn; or

5 (3) the contract with an agent is canceled or
6 terminated.

7 (b) An insurance company may comply with the notification
8 requirement of Subsection (a)(1) by submitting a single annual
9 report if:

10 (1) the company routinely operates above the limit
11 established by Subsection (a)(1); and

12 (2) the commissioner verifies that fact under a
13 procedure adopted by the commissioner. (V.T.I.C. Art. 21.70, Secs.
14 (a) (part), (b).)

15 PART J. ADDITION OF TITLE 20, INSURANCE CODE

16 SECTION 1J.001. TITLE 20. The Insurance Code is amended by
17 adding Title 20 to read as follows:

18 TITLE 20. REGULATION OF OTHER OCCUPATIONS

19 CHAPTER 6001. FIRE EXTINGUISHER SERVICE AND INSTALLATION

20 SUBCHAPTER A. GENERAL PROVISIONS

21 Sec. 6001.001. PURPOSE

22 Sec. 6001.002. DEFINITIONS

23 [Sections 6001.003-6001.050 reserved for expansion]

24 SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONER,

25 DEPARTMENT, AND STATE FIRE MARSHAL

26 Sec. 6001.051. ADMINISTRATION OF CHAPTER

27 Sec. 6001.052. ADOPTION OF RULES

- 1 Sec. 6001.053. RULES RESTRICTING ADVERTISING OR
2 COMPETITIVE BIDDING
- 3 Sec. 6001.054. GENERAL POWERS AND DUTIES OF DEPARTMENT
- 4 Sec. 6001.055. FEES
- 5 Sec. 6001.056. DEPOSIT IN OPERATING ACCOUNT
- 6 [Sections 6001.057-6001.100 reserved for expansion]
- 7 SUBCHAPTER C. FIRE EXTINGUISHER ADVISORY COUNCIL
- 8 Sec. 6001.101. ADVISORY COUNCIL; APPOINTMENT
- 9 Sec. 6001.102. ADVISORY COUNCIL DUTIES
- 10 [Sections 6001.103-6001.150 reserved for expansion]
- 11 SUBCHAPTER D. REGISTRATION, LICENSE, AND PERMIT REQUIREMENTS
- 12 Sec. 6001.151. FIRM REGISTRATION CERTIFICATE REQUIRED
- 13 Sec. 6001.152. BRANCH OFFICE REGISTRATION CERTIFICATE
14 REQUIRED
- 15 Sec. 6001.153. HYDROSTATIC TESTING; REGISTRATION
16 CERTIFICATE REQUIRED
- 17 Sec. 6001.154. REQUIRED INSURANCE COVERAGE FOR
18 REGISTRATION CERTIFICATE
- 19 Sec. 6001.155. EMPLOYEE LICENSE REQUIRED
- 20 Sec. 6001.156. ACTIVITIES NOT REGULATED BY CHAPTER
- 21 Sec. 6001.157. LICENSE EXAMINATION
- 22 Sec. 6001.158. EXAMINATION RESULTS
- 23 Sec. 6001.159. CONTINUING EDUCATION REQUIREMENTS
- 24 Sec. 6001.160. RECIPROCAL LICENSE
- 25 Sec. 6001.161. APPRENTICE PERMIT REQUIRED
- 26 Sec. 6001.162. NOT TRANSFERABLE
- 27 [Sections 6001.163-6001.200 reserved for expansion]

1 SUBCHAPTER E. RENEWAL OF REGISTRATION, LICENSE, OR PERMIT

2 Sec. 6001.201. RENEWAL REQUIRED; FEE

3 Sec. 6001.202. NOTICE OF EXPIRATION

4 Sec. 6001.203. RENEWAL PROCEDURES

5 [Sections 6001.204-6001.250 reserved for expansion]

6 SUBCHAPTER F. PROHIBITED PRACTICES

7 AND DISCIPLINARY PROCEDURES

8 Sec. 6001.251. PROHIBITED PRACTICES

9 Sec. 6001.252. DISCIPLINARY ACTIONS

10 Sec. 6001.253. DISCIPLINARY HEARING

11 Sec. 6001.254. REAPPLICATION REQUIREMENTS

12 Sec. 6001.255. REEXAMINATION AFTER REVOCATION

13 [Sections 6001.256-6001.300 reserved for expansion]

14 SUBCHAPTER G. CRIMINAL PENALTY

15 Sec. 6001.301. CRIMINAL PENALTY

16 CHAPTER 6001. FIRE EXTINGUISHER SERVICE AND INSTALLATION

17 SUBCHAPTER A. GENERAL PROVISIONS

18 Sec. 6001.001. PURPOSE. The purpose of this chapter is to
19 safeguard lives and property by:

20 (1) regulating:

21 (A) the leasing, selling, installing, and
22 servicing of portable fire extinguishers; and

23 (B) the planning, certifying, installing, and
24 servicing of fixed fire extinguisher systems; and

25 (2) prohibiting portable fire extinguishers, fixed
26 fire extinguisher systems, or extinguisher equipment that is not
27 labeled or listed by a testing laboratory approved by the

1 department. (V.T.I.C. Art. 5.43-1, Sec. 1.)

2 Sec. 6001.002. DEFINITIONS. In this chapter:

3 (1) "Firm" means an individual, partnership,
4 corporation, or association.

5 (2) "Fixed fire extinguisher system" means an assembly
6 of piping, conduits, or containers that convey liquid, powder, or
7 gases to dispersal openings or devices protecting one or more
8 hazards by suppressing or extinguishing fires.

9 (3) "Hydrostatic testing" means pressure testing by
10 hydrostatic methods.

11 (4) "Insurance agent" means:

12 (A) an individual, firm, or corporation licensed
13 under:

14 (i) Subchapter E, Chapter 981; or

15 (ii) Subchapter A, B, C, D, E, or G, Chapter
16 4051; or

17 (B) an individual authorized to represent an
18 insurance fund or pool created by a municipality, county, or other
19 political subdivision of this state under Chapter 791, Government
20 Code.

21 (5) "Portable fire extinguisher" means any device that
22 contains liquid, powder, or gases for suppressing or extinguishing
23 fires.

24 (6) "Registered firm" means a firm that holds a
25 registration certificate.

26 (7) "Service" and "servicing" mean servicing a
27 portable fire extinguisher or a fixed fire extinguisher system by

1 inspecting, charging, filling, maintaining, recharging, refilling,
2 repairing, or testing. (V.T.I.C. Art. 5.43-1, Sec. 3.)

3 [Sections 6001.003-6001.050 reserved for expansion]

4 SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONER,
5 DEPARTMENT, AND STATE FIRE MARSHAL

6 Sec. 6001.051. ADMINISTRATION OF CHAPTER. (a) The
7 department shall administer this chapter.

8 (b) The commissioner may issue rules the commissioner
9 considers necessary to administer this chapter through the state
10 fire marshal. (V.T.I.C. Art. 5.43-1, Sec. 2 (part).)

11 Sec. 6001.052. ADOPTION OF RULES. (a) In adopting
12 necessary rules, the commissioner may use recognized standards,
13 including standards:

14 (1) published by the National Fire Protection
15 Association;

16 (2) recognized by federal law or regulation;

17 (3) published by any nationally recognized
18 standards-making organization; or

19 (4) contained in the manufacturer's installation
20 manuals.

21 (b) The commissioner shall adopt and administer rules
22 determined essentially necessary for the protection and
23 preservation of life and property regarding:

24 (1) registration of firms engaged in the business of:

25 (A) installing or servicing portable fire
26 extinguishers or planning, certifying, installing, or servicing
27 fixed fire extinguisher systems; or

1 (B) hydrostatic testing of fire extinguisher
2 cylinders;

3 (2) the examination and licensing of individuals to:

4 (A) install or service portable fire
5 extinguishers; and

6 (B) plan, certify, install, or service fixed fire
7 extinguisher systems; and

8 (3) requirements for:

9 (A) installing or servicing portable fire
10 extinguishers; and

11 (B) planning, certifying, installing, or
12 servicing fixed fire extinguisher systems.

13 (c) The commissioner by rule shall prescribe requirements
14 for applications and qualifications for licenses, permits, and
15 certificates issued under this chapter. (V.T.I.C. Art. 5.43-1,
16 Secs. 2 (part), 7(a), 8 (part).)

17 Sec. 6001.053. RULES RESTRICTING ADVERTISING OR
18 COMPETITIVE BIDDING. (a) The commissioner may not adopt rules
19 restricting advertising or competitive bidding by the holder of a
20 license, permit, certificate, or approval issued under this chapter
21 except to prohibit false, misleading, or deceptive practices.

22 (b) In the commissioner's rules to prohibit false,
23 misleading, or deceptive practices, the commissioner may not
24 include a rule that:

25 (1) restricts the use of any medium for advertising;

26 (2) restricts the use of a license, permit,
27 certificate, or approval holder's personal appearance or voice in

1 an advertisement;

2 (3) relates to the size or duration of an
3 advertisement by the license, permit, certificate, or approval
4 holder; or

5 (4) restricts the license, permit, certificate, or
6 approval holder's advertisement under a trade name. (V.T.I.C. Art.
7 5.43-1, Sec. 8A.)

8 Sec. 6001.054. GENERAL POWERS AND DUTIES OF DEPARTMENT.

9 (a) The department shall evaluate the qualifications of a firm:

10 (1) applying for a registration certificate to engage
11 in the business of installing or servicing portable fire
12 extinguishers or planning, certifying, installing, or servicing
13 fixed fire extinguisher systems; or

14 (2) seeking approval as a testing laboratory.

15 (b) The department shall issue:

16 (1) registration certificates for firms that qualify
17 under commissioner rules to engage in the business of installing or
18 servicing portable fire extinguishers or planning, certifying,
19 installing, or servicing fixed fire extinguisher systems; and

20 (2) licenses, apprentice permits, and authorizations
21 to perform hydrostatic testing to firms or individuals that
22 qualify. (V.T.I.C. Art. 5.43-1, Sec. 8 (part).)

23 Sec. 6001.055. FEES. (a) The commissioner shall set the
24 fee for:

25 (1) an initial firm registration certificate in an
26 amount not to exceed \$450;

27 (2) the renewal of a firm registration certificate in

1 an amount not to exceed \$300 annually;

2 (3) an initial branch office registration certificate
3 in an amount not to exceed \$100;

4 (4) the renewal of a branch office registration
5 certificate in an amount not to exceed \$100 annually;

6 (5) an initial registration certificate to perform
7 hydrostatic testing of fire extinguishers manufactured in
8 accordance with the specifications and procedures of the United
9 States Department of Transportation in an amount not to exceed
10 \$250;

11 (6) the renewal of a registration certificate to
12 perform hydrostatic testing of fire extinguishers manufactured in
13 accordance with the specifications and procedures of the United
14 States Department of Transportation in an amount not to exceed \$150
15 annually;

16 (7) an initial employee license fee in an amount not to
17 exceed \$70;

18 (8) the annual renewal of an employee license in an
19 amount not to exceed \$50; and

20 (9) an apprentice permit in an amount not to exceed
21 \$30.

22 (b) Unless the examination or reexamination for an employee
23 license is administered by a testing service, the commissioner
24 shall set a nonrefundable fee for:

25 (1) the initial examination in an amount not to exceed
26 \$30; and

27 (2) each reexamination in an amount not to exceed \$20.

1 (c) The commissioner shall set a fee in an amount not to
2 exceed \$20 for:

3 (1) a duplicate registration certificate, license, or
4 apprentice permit issued under this chapter; or

5 (2) any request requiring changes to a registration
6 certificate, license, or permit.

7 (d) On a change of ownership of a registered firm, the
8 department shall issue a new registration certificate with a new
9 number for a fee set by the commissioner in an amount not to exceed
10 \$450. On a change of ownership of a branch office, the commissioner
11 shall charge a fee in an amount not to exceed \$100. (V.T.I.C. Art.
12 5.43-1, Secs. 4(a) (part), (b), (c-1), (d) (part), (e) (part),
13 (f).)

14 Sec. 6001.056. DEPOSIT IN OPERATING ACCOUNT. All money
15 collected under this chapter, other than penalties and monetary
16 forfeitures, shall be paid to the department and deposited in the
17 state treasury to the credit of the Texas Department of Insurance
18 operating account for use in administering this chapter. (V.T.I.C.
19 Art. 5.43-1, Sec. 11.)

20 [Sections 6001.057-6001.100 reserved for expansion]

21 SUBCHAPTER C. FIRE EXTINGUISHER ADVISORY COUNCIL

22 Sec. 6001.101. ADVISORY COUNCIL; APPOINTMENT. (a) The
23 commissioner may delegate the exercise of all or part of the
24 commissioner's functions, powers, and duties under this chapter,
25 other than the issuance of licenses, certificates, and permits, to
26 a fire extinguisher advisory council.

27 (b) The commissioner shall appoint the members of the

1 advisory council. The members of the council must:

2 (1) be experienced and knowledgeable in one or more of
3 the following:

4 (A) fire services;

5 (B) fire extinguisher manufacturing;

6 (C) fire insurance inspection or underwriting;

7 or

8 (D) fire extinguisher servicing; or

9 (2) be members of a fire protection association or
10 industrial safety association. (V.T.I.C. Art. 5.43-1, Secs. 9(a)
11 (part), (b).)

12 Sec. 6001.102. ADVISORY COUNCIL DUTIES. (a) The fire
13 extinguisher advisory council shall assist in the formulation and
14 review of rules adopted under this chapter.

15 (b) The advisory council shall periodically:

16 (1) review rules implementing this chapter; and

17 (2) recommend rule changes to the commissioner.

18 (V.T.I.C. Art. 5.43-1, Sec. 9(a) (part).)

19 [Sections 6001.103-6001.150 reserved for expansion]

20 SUBCHAPTER D. REGISTRATION, LICENSE, AND PERMIT REQUIREMENTS

21 Sec. 6001.151. FIRM REGISTRATION CERTIFICATE REQUIRED.

22 Unless the firm holds a registration certificate issued by the
23 department, a firm may not engage in the business of:

24 (1) installing or servicing portable fire
25 extinguishers; or

26 (2) planning, certifying, installing, or servicing
27 fixed fire extinguisher systems. (V.T.I.C. Art. 5.43-1, Sec. 4(a)

1 (part).)

2 Sec. 6001.152. BRANCH OFFICE REGISTRATION CERTIFICATE
3 REQUIRED. (a) Each separate office location of a firm holding a
4 registration certificate, other than the location identified on the
5 firm's certificate, must have a branch office registration
6 certificate issued by the department.

7 (b) Before issuing a branch office registration
8 certificate, the department must determine that the branch office
9 location is part of a registered firm. (V.T.I.C. Art. 5.43-1, Sec.
10 4(a) (part).)

11 Sec. 6001.153. HYDROSTATIC TESTING; REGISTRATION
12 CERTIFICATE REQUIRED. (a) A firm may not perform hydrostatic
13 testing of fire extinguishers manufactured in accordance with the
14 specifications and procedures of the United States Department of
15 Transportation unless the firm:

16 (1) complies with the procedures specified by that
17 department for compressed gas cylinders; and

18 (2) holds a registration certificate issued by the
19 state fire marshal authorizing hydrostatic testing.

20 (b) The license of an individual qualified to do work
21 described by Subsection (a) must indicate the authority of the
22 individual to perform that work.

23 (c) Hydrostatic testing of fire extinguishers that is not
24 performed under the specifications of the United States Department
25 of Transportation must be performed in the manner recommended by
26 the National Fire Protection Association. (V.T.I.C. Art. 5.43-1,
27 Sec. 4(e) (part).)

1 Sec. 6001.154. REQUIRED INSURANCE COVERAGE FOR
2 REGISTRATION CERTIFICATE. (a) The department may not issue a
3 registration certificate under this chapter unless the applicant
4 files with the department evidence of a general liability insurance
5 policy that includes products and completed operations coverage.
6 The policy must be conditioned to pay on behalf of the insured those
7 amounts that the insured becomes legally obligated to pay as
8 damages because of bodily injury and property damage caused by an
9 occurrence involving the insured or the insured's officer, agent,
10 or employee in the conduct of any activity that requires a
11 registration certificate or license under this chapter.

12 (b) Unless the commissioner, after notice and an
13 opportunity for a hearing, increases or decreases the limits, the
14 limits of insurance coverage required by Subsection (a) must be at
15 least:

16 (1) \$100,000 combined single limits for bodily injury
17 and property damage for each occurrence; and

18 (2) \$300,000 aggregate for all occurrences for each
19 policy year.

20 (c) The evidence of insurance required by this section must
21 be in the form of a certificate of insurance executed by an insurer
22 authorized to engage in the business of insurance in this state and
23 countersigned by an insurance agent licensed in this state. A
24 certificate of insurance for surplus lines coverage procured in
25 compliance with Chapter 981 through a surplus lines agent that is
26 licensed under Subchapter E, Chapter 981, and resident in this
27 state may be filed with the department as evidence of the coverage

1 required by this section.

2 (d) An insurance certificate executed and filed with the
3 department under this section remains in force until the insurer
4 has terminated future liability by the notice required by the
5 department.

6 (e) Failure to maintain the liability insurance required by
7 this section constitutes grounds for the denial, suspension, or
8 revocation, after notice and opportunity for hearing, of a
9 registration certificate issued under this chapter. (V.T.I.C. Art.
10 5.43-1, Secs. 4A, 8 (part).)

11 Sec. 6001.155. EMPLOYEE LICENSE REQUIRED. (a) Except as
12 provided by Section 6001.156, an individual, other than an
13 apprentice, must hold a license issued by the department before:

14 (1) installing or servicing portable fire
15 extinguishers;

16 (2) installing, servicing, or certifying
17 preengineered fixed fire extinguisher systems; or

18 (3) planning, supervising, servicing, or certifying
19 the installation of fixed fire extinguisher systems other than
20 preengineered systems.

21 (b) An individual who holds a license to install or service
22 portable fire extinguishers or install and service fixed fire
23 extinguisher systems must be an employee or agent of a registered
24 firm. (V.T.I.C. Art. 5.43-1, Secs. 4(c), 5(c).)

25 Sec. 6001.156. ACTIVITIES NOT REGULATED BY CHAPTER. (a)
26 The licensing provisions of this chapter do not apply to:

27 (1) the filling or charging of a portable fire

1 extinguisher by the manufacturer before initial sale of the fire
2 extinguisher;

3 (2) the servicing by a firm of the firm's portable fire
4 extinguishers or fixed systems by the firm's personnel who are
5 specially trained for that servicing;

6 (3) the installation of portable fire extinguishers in
7 a building by the building owner, the owner's managing agent, or an
8 employee of the building owner or the owner's managing agent;

9 (4) the installation or servicing of water sprinkler
10 systems installed in compliance with the National Fire Protection
11 Association's Standards for the Installation of Sprinkler Systems;

12 (5) a firm that is engaged in the retail or wholesale
13 sale of portable fire extinguishers that carry an approval label or
14 listing of a testing laboratory approved by the department, but
15 that is not engaged in the installation or servicing of those
16 extinguishers;

17 (6) a fire department that services portable fire
18 extinguishers as a public service without charge, if the members of
19 the fire department are trained in the proper servicing of the fire
20 extinguishers;

21 (7) a firm that is a party to a contract under which:

22 (A) the installation of portable fire
23 extinguishers or a fixed fire extinguisher system is performed
24 under the direct supervision of and certified by a firm
25 appropriately registered to install and certify portable
26 extinguishers or fixed systems; and

27 (B) the registered firm assumes full

1 responsibility for the installation; or

2 (8) an engineer licensed under Chapter 1001,
3 Occupations Code, while acting solely in the engineer's
4 professional capacity.

5 (b) Except as provided by Subsection (a), only the holder of
6 a license or an apprentice permit issued under this chapter may:

7 (1) install or service portable fire extinguishers; or

8 (2) install and maintain fixed fire extinguisher
9 systems. (V.T.I.C. Art. 5.43-1, Secs. 5(b), 6.)

10 Sec. 6001.157. LICENSE EXAMINATION. (a) The state fire
11 marshal shall:

12 (1) establish the scope and type of an examination
13 required by this chapter; and

14 (2) examine each applicant for a license under this
15 chapter.

16 (b) The state fire marshal may administer the examination or
17 may enter into an agreement with a testing service.

18 (c) If a testing service is used, the state fire marshal may
19 contract with the testing service regarding requirements for the
20 examination, including:

21 (1) examination development;

22 (2) scheduling;

23 (3) site arrangements;

24 (4) grading;

25 (5) reporting;

26 (6) analysis; or

27 (7) other administrative duties.

1 (d) The state fire marshal may require the testing service
2 to:

3 (1) correspond directly with a license applicant
4 regarding the administration of the examination;

5 (2) collect a reasonable fee from an applicant for
6 administering the examination; or

7 (3) administer the examination at a specific location
8 or time.

9 (e) The state fire marshal shall adopt rules as necessary to
10 implement examination requirements under this chapter. (V.T.I.C.
11 Art. 5.43-1, Secs. 7(e), (f), (j), 8 (part).)

12 Sec. 6001.158. EXAMINATION RESULTS. (a) Not later than
13 the 30th day after the date on which a licensing examination is
14 administered under this chapter, the state fire marshal shall send
15 notice to each examinee of the results of the examination.

16 (b) If an examination is conducted, graded, or reviewed by a
17 testing service, the state fire marshal shall send notice to the
18 examinees of the results of the examination not later than the 14th
19 day after the date on which the state fire marshal receives the
20 results from the testing service.

21 (c) If the notice of the examination results will be delayed
22 for more than 90 days after the examination date, the state fire
23 marshal, before the 90th day, shall send notice to the examinee of
24 the reason for the delay.

25 (d) The state fire marshal may require a testing service to
26 notify an examinee of the results of the examinee's examination
27 under Subsections (a) and (b).

1 (e) If requested in writing by an individual who fails the
2 licensing examination administered under this chapter, the state
3 fire marshal shall send to the individual an analysis of the
4 individual's performance on the examination. (V.T.I.C. Art.
5 5.43-1, Secs. 7(g), (g-1).)

6 Sec. 6001.159. CONTINUING EDUCATION REQUIREMENTS. (a) The
7 commissioner may adopt procedures for certifying and may certify
8 continuing education programs for individuals licensed under this
9 chapter.

10 (b) Participation in the continuing education programs is
11 voluntary. (V.T.I.C. Art. 5.43-1, Sec. 7(h).)

12 Sec. 6001.160. RECIPROCAL LICENSE. The department may waive
13 any license requirement for an applicant who holds a license issued
14 by another state that has license requirements substantially
15 equivalent to the license requirements of this state. (V.T.I.C.
16 Art. 5.43-1, Sec. 7(i).)

17 Sec. 6001.161. APPRENTICE PERMIT REQUIRED. (a) An
18 individual may not install or service portable fire extinguishers
19 or fixed fire extinguisher systems as an apprentice unless the
20 individual holds an apprentice permit issued by the department.

21 (b) An apprentice may perform a service described by
22 Subsection (a) only under the direct supervision of an individual
23 who holds a license issued under this chapter and who works for the
24 same firm as the apprentice. (V.T.I.C. Art. 5.43-1, Secs. 4(d)
25 (part), 5(b) (part).)

26 Sec. 6001.162. NOT TRANSFERABLE. A registration
27 certificate, license, or permit issued under this chapter is not

1 transferable. (V.T.I.C. Art. 5.43-1, Sec. 5(d).)

2 [Sections 6001.163-6001.200 reserved for expansion]

3 SUBCHAPTER E. RENEWAL OF REGISTRATION, LICENSE, OR PERMIT

4 Sec. 6001.201. RENEWAL REQUIRED; FEE. (a) A renewal of a
5 registration certificate or license issued under this chapter is
6 valid for a period of two years. The license or registration fee
7 for each year of the two-year period is payable on renewal.

8 (b) An apprentice permit expires on the first anniversary of
9 the date of issuance.

10 (c) The commissioner by rule may adopt a system under which
11 registration certificates, licenses, and permits expire on various
12 dates during the year. For the year in which an expiration date of a
13 registration certificate, license, or permit is less than one year
14 from its issuance or anniversary date, the fee shall be prorated on
15 a monthly basis so that each holder of a registration certificate,
16 license, or permit pays only that portion of the renewal fee that is
17 allocable to the number of months during which the registration
18 certificate, license, or permit is valid. On each subsequent
19 renewal, the total renewal fee is payable. (V.T.I.C. Art. 5.43-1,
20 Secs. 4(d) (part), 7A(a), (c).)

21 Sec. 6001.202. NOTICE OF EXPIRATION. At least 30 days
22 before the expiration date of a registration certificate or
23 license, the state fire marshal shall send written notice of the
24 impending expiration to the holder of the registration certificate
25 or license at the holder's last known address. (V.T.I.C. Art.
26 5.43-1, Sec. 7A(b) (part).)

27 Sec. 6001.203. RENEWAL PROCEDURES. (a) The holder of an

1 unexpired registration certificate or license may renew the
2 certificate or license by paying the required renewal fee to the
3 department before the expiration date of the certificate or
4 license.

5 (b) A firm or individual whose registration certificate or
6 license has been expired for 90 days or less may renew the
7 certificate or license by paying to the department:

8 (1) the required renewal fee; and

9 (2) a fee equal to one-half of the initial fee for the
10 certificate or license.

11 (c) A firm or individual whose registration certificate or
12 license has been expired for more than 90 days but less than two
13 years may renew the certificate or license by paying to the
14 department:

15 (1) all unpaid renewal fees; and

16 (2) a fee that is equal to the initial fee for the
17 certificate or license.

18 (d) A firm or individual whose registration certificate or
19 license has been expired for two years or longer may not renew the
20 certificate or license. The firm or individual may obtain a new
21 registration certificate or license by complying with the
22 requirements and procedures for obtaining an initial registration
23 certificate or license.

24 (e) This section may not be construed to prevent the
25 department from denying or refusing to renew a license under
26 applicable law or commissioner rules. (V.T.I.C. Art. 5.43-1, Sec.
27 7A(b) (part).)

1 [Sections 6001.204-6001.250 reserved for expansion]

2 SUBCHAPTER F. PROHIBITED PRACTICES

3 AND DISCIPLINARY PROCEDURES

4 Sec. 6001.251. PROHIBITED PRACTICES. (a) An individual or
5 firm may not:

6 (1) engage in the business of installing or servicing
7 portable fire extinguishers without holding a registration
8 certificate;

9 (2) engage in the business of planning, certifying,
10 installing, or servicing fixed fire extinguisher systems without
11 holding a registration certificate;

12 (3) install, service, or certify the servicing of
13 portable fire extinguishers or plan, certify, service, or install
14 fixed fire extinguisher systems without holding a license;

15 (4) perform hydrostatic testing of fire extinguisher
16 cylinders manufactured in accordance with the specifications and
17 requirements of the United States Department of Transportation
18 without holding a hydrostatic testing registration certificate;

19 (5) obtain or attempt to obtain a registration
20 certificate or license by fraudulent representation;

21 (6) install or service portable fire extinguishers or
22 plan, certify, service, or install fixed fire extinguisher systems
23 in violation of this chapter or the rules adopted and administered
24 under this chapter;

25 (7) except as provided by Subsection (b), install,
26 service, or hydrostatically test a fire extinguisher that does not
27 have the proper identifying labels;

1 (8) sell, install, service, or recharge a carbon
2 tetrachloride fire extinguisher; or

3 (9) except as provided by Subsection (b), lease, sell,
4 service, or install a portable fire extinguisher, a fixed fire
5 extinguisher system, or extinguisher equipment unless it carries an
6 approval label or listing label issued by a testing laboratory
7 approved by the department.

8 (b) The commissioner by rule shall permit an individual or
9 firm to service a portable fire extinguisher regardless of whether
10 the extinguisher carries a label described by Subsection (a).
11 (V.T.I.C. Art. 5.43-1, Secs. 5(a), (e), 10.)

12 Sec. 6001.252. DISCIPLINARY ACTIONS. (a) The state fire
13 marshal may suspend, revoke, or refuse to issue or renew a
14 registration certificate, license, or permit if, after notice and
15 hearing, the state fire marshal finds that the applicant,
16 registrant, license holder, or permit holder has engaged in acts
17 that:

18 (1) violatethis chapter;

19 (2) violate rules or standards adopted under this
20 chapter; or

21 (3) constitute misrepresentation made in connection
22 with:

23 (A) the sale of products; or

24 (B) services rendered.

25 (b) Subject to Section 6001.253, the commissioner may
26 suspend, revoke, or refuse to issue or renew a certificate,
27 license, permit, or approval. (V.T.I.C. Art. 5.43-1, Secs. 7(b),

1 12(a).)

2 Sec. 6001.253. DISCIPLINARY HEARING. (a) If the state fire
3 marshal proposes to suspend, revoke, or refuse to renew a license,
4 permit, certificate, or approval issued under this chapter, the
5 holder of the license, permit, certificate, or approval is entitled
6 to a hearing conducted by the State Office of Administrative
7 Hearings.

8 (b) Proceedings for a disciplinary action are governed by
9 Chapter 2001, Government Code.

10 (c) Rules of practice adopted by the commissioner
11 applicable to the proceedings for a disciplinary action may not
12 conflict with rules adopted by the State Office of Administrative
13 Hearings. (V.T.I.C. Art. 5.43-1, Sec. 13.)

14 Sec. 6001.254. REAPPLICATION REQUIREMENTS. (a) An
15 applicant or holder of a registration certificate, license, or
16 permit whose certificate, license, or permit has been refused or
17 revoked under this chapter, other than for failure to pass a
18 required written examination, may not file another application for
19 a registration certificate, license, or permit before the first
20 anniversary of the effective date of the refusal or revocation.

21 (b) After the first anniversary of the effective date of the
22 refusal or revocation, the applicant may:

23 (1) reapply; and

24 (2) in a public hearing, show good cause why the
25 issuance of the registration certificate, license, or permit is not
26 against the public safety and welfare. (V.T.I.C. Art. 5.43-1, Sec.

27 7(c).)

1 Sec. 6001.255. REEXAMINATION AFTER REVOCATION. An
2 individual whose license to service portable fire extinguishers or
3 to install or service fixed fire extinguisher systems has been
4 revoked must retake and pass the required written examination
5 before a new license may be issued. (V.T.I.C. Art. 5.43-1, Sec.
6 7(d).)

7 [Sections 6001.256-6001.300 reserved for expansion]

8 SUBCHAPTER G. CRIMINAL PENALTY

9 Sec. 6001.301. CRIMINAL PENALTY. (a) A person commits an
10 offense if the person knowingly violates Section 6001.251(a).

11 (b) An offense under this section is a Class B misdemeanor.

12 (c) Venue for an offense under this section is in Travis
13 County or the county in which the offense is committed. (V.T.I.C.
14 Art. 5.43-1, Secs. 12(b), (c); New.)

15 CHAPTER 6002. FIRE DETECTION AND ALARM DEVICE INSTALLATION

16 SUBCHAPTER A. GENERAL PROVISIONS

17 Sec. 6002.001. PURPOSE

18 Sec. 6002.002. DEFINITIONS

19 Sec. 6002.003. EFFECT ON LOCAL REGULATION

20 Sec. 6002.004. PROVISION OF CERTAIN SERVICES BY

21 POLITICAL SUBDIVISION

22 [Sections 6002.005-6002.050 reserved for expansion]

23 SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONER, DEPARTMENT,

24 AND STATE FIRE MARSHAL

25 Sec. 6002.051. ADMINISTRATION OF CHAPTER; RULES

26 Sec. 6002.052. ADOPTION OF RULES; STANDARDS

- 1 Sec. 6002.053. RULES RESTRICTING ADVERTISING OR
2 COMPETITIVE BIDDING
- 3 Sec. 6002.054. FEES
- 4 Sec. 6002.055. DEPOSIT IN OPERATING ACCOUNT
- 5 [Sections 6002.056-6002.100 reserved for expansion]
- 6 SUBCHAPTER C. FIRE DETECTION AND ALARM DEVICES ADVISORY COUNCIL
- 7 Sec. 6002.101. ADVISORY COUNCIL; APPOINTMENT
- 8 Sec. 6002.102. ADVISORY COUNCIL DUTIES
- 9 [Sections 6002.103-6002.150 reserved for expansion]
- 10 SUBCHAPTER D. REGISTRATION, LICENSE, AND APPROVAL REQUIREMENTS
- 11 Sec. 6002.151. FIRM REGISTRATION CERTIFICATE REQUIRED;
12 LIMITED CERTIFICATE
- 13 Sec. 6002.152. BRANCH OFFICE REGISTRATION CERTIFICATE
14 REQUIRED
- 15 Sec. 6002.153. REQUIRED INSURANCE COVERAGE FOR
16 REGISTRATION CERTIFICATE
- 17 Sec. 6002.154. FIRE ALARM TECHNICIAN, RESIDENTIAL FIRE
18 ALARM SUPERINTENDENT, AND FIRE ALARM
19 PLANNING SUPERINTENDENT
- 20 Sec. 6002.155. ACTIVITIES NOT REGULATED BY CHAPTER
- 21 Sec. 6002.156. LICENSE EXAMINATION
- 22 Sec. 6002.157. EXAMINATION RESULTS
- 23 Sec. 6002.158. TRAINING SCHOOLS AND INSTRUCTORS;
24 APPROVAL
- 25 Sec. 6002.159. CONTINUING EDUCATION PROGRAMS
- 26 Sec. 6002.160. RECIPROCAL LICENSE
- 27 Sec. 6002.161. NOT TRANSFERABLE

1 [Sections 6002.162-6002.200 reserved for expansion]

2 SUBCHAPTER E. RENEWAL OF REGISTRATION CERTIFICATE OR LICENSE

3 Sec. 6002.201. RENEWAL REQUIRED; FEE

4 Sec. 6002.202. NOTICE OF EXPIRATION

5 Sec. 6002.203. RENEWAL PROCEDURES

6 Sec. 6002.204. RENEWAL OF CERTAIN LICENSES

7 [Sections 6002.205-6002.250 reserved for expansion]

8 SUBCHAPTER F. SELLING OR LEASING OF FIRE ALARM

9 OR FIRE DETECTION DEVICES

10 Sec. 6002.251. REQUIRED LABEL; EXCEPTIONS

11 Sec. 6002.252. REQUIRED PURCHASE AND INSTALLATION

12 INFORMATION

13 Sec. 6002.253. TRAINING AND SUPERVISION OF CERTAIN

14 EXEMPT EMPLOYEES

15 [Sections 6002.254-6002.300 reserved for expansion]

16 SUBCHAPTER G. PROHIBITED PRACTICES AND DISCIPLINARY PROCEDURES

17 Sec. 6002.301. PROHIBITED PRACTICES

18 Sec. 6002.302. DISCIPLINARY ACTIONS

19 Sec. 6002.303. DISCIPLINARY HEARING

20 Sec. 6002.304. REAPPLICATION REQUIREMENTS

21 [Sections 6002.305-6002.350 reserved for expansion]

22 SUBCHAPTER H. CRIMINAL PENALTY

23 Sec. 6002.351. CRIMINAL PENALTY

24 CHAPTER 6002. FIRE DETECTION AND ALARM DEVICE INSTALLATION

25 SUBCHAPTER A. GENERAL PROVISIONS

26 Sec. 6002.001. PURPOSE. The purpose of this chapter is to
27 safeguard lives and property by:

1 (1) regulating the planning, certifying, leasing,
2 selling, servicing, installing, monitoring, and maintaining of
3 fire detection and fire alarm devices and systems; and

4 (2) except as provided by rules adopted under Section
5 6002.051 or 6002.052, prohibiting fire detection and fire alarm
6 devices, equipment, and systems not labeled or listed by a
7 nationally recognized testing laboratory. (V.T.I.C. Art. 5.43-2,
8 Sec. 1.)

9 Sec. 6002.002. DEFINITIONS. Except as otherwise provided
10 by this chapter, in this chapter:

11 (1) "Fire alarm device" means any device capable,
12 through audible or visible means, of warning that fire or
13 combustion has occurred or is occurring.

14 (2) "Fire alarm planning superintendent" means a
15 licensed individual designated by a registered firm to:

16 (A) plan a fire alarm or detection system that
17 conforms to applicable adopted National Fire Protection
18 Association standards or other adopted standards; and

19 (B) certify that each fire alarm or detection
20 system as planned meets the standards as provided by law.

21 (3) "Fire alarm technician" means a licensed
22 individual designated by a registered firm to:

23 (A) inspect and certify that each fire alarm or
24 detection system as installed meets the standards provided by law;
25 or

26 (B) perform or directly supervise the servicing
27 or maintaining of a previously installed fire alarm device or

1 system and certify that service or maintenance.

2 (4) "Fire detection device" means any arrangement of
3 materials, the sole function of which is to indicate the existence
4 of fire, smoke, or combustion in its incipient stages.

5 (5) "Individual" means a natural person, including an
6 owner, manager, officer, employee, occupant, or other individual.

7 (6) "Installation" means:

8 (A) the initial placement of equipment; or

9 (B) the extension, modification, or alteration
10 of equipment already in place.

11 (7) "Insurance agent" means:

12 (A) an individual, firm, or corporation licensed
13 under:

14 (i) Subchapter E, Chapter 981; or

15 (ii) Subchapter A, B, C, D, E, or G, Chapter
16 4051; or

17 (B) an individual authorized to represent an
18 insurance fund or pool created by a municipality, county, or other
19 political subdivision of this state under Chapter 791, Government
20 Code.

21 (8) "Maintenance" means the maintenance of a fire
22 alarm device or a fire detection device in a condition of repair
23 that provides performance as originally designed or intended.

24 (9) "Monitoring" means the receipt of fire alarm and
25 supervisory signals and the retransmission or communication of
26 those signals to a fire service communications center in this state
27 or serving property in this state.

1 (10) "Organization" means a corporation, a government
2 or a governmental subdivision or agency, a business trust, an
3 estate, a trust, a partnership, a firm or association, two or more
4 individuals with a joint or common interest, or any other legal or
5 commercial entity.

6 (11) "Registered firm" means an individual or
7 organization that holds a registration certificate.

8 (12) "Residential fire alarm superintendent" means a
9 licensed individual designated by a registered firm to:

10 (A) plan a residential single-family or
11 two-family fire alarm or detection system that conforms to
12 applicable adopted National Fire Protection Association standards
13 or other adopted standards; and

14 (B) certify that each fire alarm or detection
15 system as planned meets the standards as provided by law.

16 (13) "Sale" means the sale or offer for sale, lease, or
17 rent of any merchandise, equipment, or service at wholesale or
18 retail, to the public or any individual, for an agreed sum of money
19 or other consideration.

20 (14) "Service" or "servicing" means inspection,
21 maintenance, repair, or testing of a fire alarm device or a fire
22 detection device. (V.T.I.C. Art. 5.43-2, Secs. 2(1), (2), (5),
23 (6), (7), (8), (9), (10), (11), (12) (part), (13) (part), (14),
24 (15), (16) (part).)

25 Sec. 6002.003. EFFECT ON LOCAL REGULATION. (a) This
26 chapter and the rules adopted under this chapter have uniform force
27 and effect throughout this state. A municipality or county may not

1 enact an ordinance or rule inconsistent with this chapter or rules
2 adopted under this chapter. An inconsistent ordinance or rule is
3 void and has no effect.

4 (b) Notwithstanding Subsection (a), a municipality or
5 county may:

6 (1) mandate that a fire alarm or detection system be
7 installed in certain facilities, if the installation conforms to
8 applicable state law;

9 (2) require a better type of alarm or detection system
10 or otherwise safer condition than the minimum required by state
11 law; and

12 (3) require regular inspections by local officials of
13 smoke detectors in dwelling units, as that term is defined by
14 Section 92.251, Property Code, and require the smoke detectors to
15 be operational at the time of inspection.

16 (c) A municipality, county, or other political subdivision
17 of this state may not require, as a condition of engaging in
18 business or performing any activity authorized under this chapter,
19 that a registered firm, a license holder, or an employee of a
20 license holder:

21 (1) obtain a registration, franchise, or license from
22 the political subdivision;

23 (2) pay any fee or franchise tax to the political
24 subdivision; or

25 (3) post a bond.

26 (d) Notwithstanding any other provision of this section or
27 Section 6002.155, a municipality or county may require a registered

1 firm to obtain a permit and pay a permit fee for the installation of
2 a fire alarm or fire detection device or system and require that the
3 installation of such a system be in conformance with the building
4 code or other construction requirements of the municipality or
5 county and state law.

6 (e) Notwithstanding Subsection (d), a municipality or
7 county may not impose qualification or financial responsibility
8 requirements other than proof of a registration certificate.
9 (V.T.I.C. Art. 5.43-2, Secs. 3(a), (c).)

10 Sec. 6002.004. PROVISION OF CERTAIN SERVICES BY POLITICAL
11 SUBDIVISION. (a) In this section, "monitoring" means the receipt
12 of fire alarm or supervisory signals or retransmission or
13 communication of those signals to a fire service communications
14 center that is located in this state or serves property in this
15 state.

16 (b) Except as provided by Subsection (c), a political
17 subdivision may not offer residential alarm system sales, service,
18 installation, or monitoring unless the political subdivision has
19 been providing monitoring services to residences within the
20 boundaries of the political subdivision as of September 1, 1999.
21 Any fee charged by the political subdivision under this subsection
22 may not exceed the cost of the monitoring.

23 (c) A political subdivision may:

24 (1) offer service, installation, or monitoring for
25 property owned by the political subdivision or another political
26 subdivision;

27 (2) allow for the response to an alarm or detection

1 device by:

2 (A) a law enforcement agency or fire department;

3 or

4 (B) a law enforcement officer or firefighter
5 acting in an official capacity; or

6 (3) offer monitoring to a financial institution, as
7 defined by Section 59.301, Finance Code, that requests, in writing,
8 that the political subdivision provide monitoring service to the
9 financial institution.

10 (d) Subsection (b) does not apply to a political
11 subdivision:

12 (1) in a county with a population of less than 80,000;

13 or

14 (2) in which monitoring is not otherwise provided or
15 available.

16 (e) This section is not intended to require a political
17 subdivision to hold a license under this chapter. (V.T.I.C. Art.
18 5.43-2, Secs. 7(b), (c), (d), (e).)

19 [Sections 6002.005-6002.050 reserved for expansion]

20 SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONER, DEPARTMENT,
21 AND STATE FIRE MARSHAL

22 Sec. 6002.051. ADMINISTRATION OF CHAPTER; RULES. (a) The
23 department shall administer this chapter.

24 (b) The commissioner may adopt rules as necessary to
25 administer this chapter, including rules the commissioner
26 considers necessary to administer this chapter through the state
27 fire marshal. (V.T.I.C. Art. 5.43-2, Secs. 4 (part), 6(a) (part).)

1 Sec. 6002.052. ADOPTION OF RULES; STANDARDS. (a) In
2 adopting necessary rules, the commissioner may use:

3 (1) recognized standards, such as, but not limited to:

4 (A) standards of the National Fire Protection
5 Association;

6 (B) standards recognized by federal law or
7 regulation; or

8 (C) standards published by a nationally
9 recognized standards-making organization;

10 (2) the National Electrical Code; or

11 (3) information provided by individual manufacturers.

12 (b) Under rules adopted under Section 6002.051, the
13 department may create specialized licenses or registration
14 certificates for an organization or individual engaged in the
15 business of planning, certifying, leasing, selling, servicing,
16 installing, monitoring, or maintaining fire alarm or fire detection
17 devices or systems. The rules must establish appropriate training
18 and qualification standards for each kind of license and
19 certificate.

20 (c) The commissioner shall also adopt standards applicable
21 to fire alarm devices, equipment, or systems regulated under this
22 chapter. In adopting standards under this subsection, the
23 commissioner may allow the operation of a fire alarm monitoring
24 station that relies on fire alarm devices or equipment approved or
25 listed by a nationally recognized testing laboratory without regard
26 to whether the monitoring station is approved or listed by a
27 nationally recognized testing laboratory if the operator of the

1 station demonstrates that the station operating standards are
2 substantially equivalent to those required to be approved or
3 listed. (V.T.I.C. Art. 5.43-2, Secs. 4 (part), 6(a) (part), (b).)

4 Sec. 6002.053. RULES RESTRICTING ADVERTISING OR
5 COMPETITIVE BIDDING. (a) The commissioner may not adopt rules
6 restricting advertising or competitive bidding by the holder of a
7 license or registration certificate issued under this chapter
8 except to prohibit false, misleading, or deceptive practices.

9 (b) In the commissioner's rules to prohibit false,
10 misleading, or deceptive practices, the commissioner may not
11 include a rule that:

- 12 (1) restricts the use of any medium for advertising;
13 (2) restricts the use of a license or registration
14 certificate holder's personal appearance or voice in an
15 advertisement;
16 (3) relates to the size or duration of an
17 advertisement by the license or registration certificate holder; or
18 (4) restricts the license or registration certificate
19 holder's advertisement under a trade name. (V.T.I.C. Art. 5.43-2,
20 Sec. 6A.)

21 Sec. 6002.054. FEES. (a) The commissioner shall set the
22 fee for:

- 23 (1) an initial registration certificate in an amount
24 not to exceed \$500;
25 (2) the renewal of a registration certificate for each
26 year in an amount not to exceed \$500;
27 (3) the renewal of a registration certificate for an

1 individual or organization engaged in the business of planning,
2 certifying, leasing, selling, servicing, installing, monitoring,
3 or maintaining exclusively single station devices in an amount not
4 to exceed \$250 annually;

5 (4) an initial branch office registration certificate
6 in an amount not to exceed \$150;

7 (5) the renewal of a branch office registration
8 certificate for each year in an amount not to exceed \$150;

9 (6) an initial or renewal training school approval in
10 an amount not to exceed \$500 annually;

11 (7) an initial or renewal of a training school
12 instructor approval in an amount not to exceed \$50 annually;

13 (8) an initial license in an amount not to exceed \$120;
14 and

15 (9) the renewal of a license for each year in an amount
16 not to exceed \$100.

17 (b) Unless the examination or reexamination for a license is
18 administered by a testing service, the commissioner shall set a
19 nonrefundable fee for:

20 (1) the initial examination in an amount not to exceed
21 \$30; and

22 (2) each reexamination in an amount not to exceed \$20.

23 (c) The commissioner shall set a fee in an amount not to
24 exceed \$20 for:

25 (1) a duplicate registration certificate or license
26 issued under this chapter; and

27 (2) any request requiring changes to a registration

1 certificate or license. (V.T.I.C. Art. 5.43-2, Secs. 5(a) (part),
2 (b) (part), (c) (part), (d), (i), 5D(b) (part), (c) (part).)

3 Sec. 6002.055. DEPOSIT IN OPERATING ACCOUNT. The fees
4 collected under this chapter shall be deposited in the state
5 treasury to the credit of the Texas Department of Insurance
6 operating account. (V.T.I.C. Art. 5.43-2, Sec. 8.)

7 [Sections 6002.056-6002.100 reserved for expansion]

8 SUBCHAPTER C. FIRE DETECTION AND ALARM DEVICES ADVISORY COUNCIL

9 Sec. 6002.101. ADVISORY COUNCIL; APPOINTMENT. The
10 commissioner shall appoint an advisory council consisting of seven
11 individuals as follows:

12 (1) three individuals who are employed by a registered
13 firm in the fire protection industry and who have at least three
14 years' experience in the sale, installation, maintenance, or
15 manufacture of fire alarm or fire detection devices;

16 (2) two individuals who:

17 (A) are experienced in the engineering of fire
18 prevention services; or

19 (B) are members of a fire protection association;

20 (3) one individual who is an experienced fire
21 prevention officer employed by a municipality or county; and

22 (4) one individual who:

23 (A) is employed by a registered firm; and

24 (B) has at least three years' experience in the
25 operation of a central fire alarm monitoring station. (V.T.I.C.
26 Art. 5.43-2, Sec. 6(d).)

27 Sec. 6002.102. ADVISORY COUNCIL DUTIES. The advisory

1 council shall periodically:

2 (1) review rules implementing this chapter; and

3 (2) recommend rule changes to the commissioner.

4 (V.T.I.C. Art. 5.43-2, Sec. 6(c).)

5 [Sections 6002.103-6002.150 reserved for expansion]

6 SUBCHAPTER D. REGISTRATION, LICENSE, AND APPROVAL REQUIREMENTS

7 Sec. 6002.151. FIRM REGISTRATION CERTIFICATE REQUIRED;

8 LIMITED CERTIFICATE. (a) An individual or organization may not
9 engage in the business of planning, certifying, leasing, selling,
10 installing, servicing, monitoring, or maintaining fire alarm or
11 fire detection devices or systems unless the individual or
12 organization holds a registration certificate issued by the
13 department.

14 (b) The department may issue a limited registration
15 certificate to an individual or organization whose business is
16 restricted to monitoring.

17 (c) Applications for registration certificates and
18 qualifications for those certificates are subject to rules adopted
19 by the commissioner. (V.T.I.C. Art. 5.43-2, Secs. 5(a) (part),
20 7(a) (part), 10(a) (part).)

21 Sec. 6002.152. BRANCH OFFICE REGISTRATION CERTIFICATE
22 REQUIRED. (a) Except as provided by Subsection (c), each separate
23 office location of a registered firm, other than the location
24 identified on the firm's registration certificate, must have a
25 branch office registration certificate issued by the department.

26 (b) Before issuing a branch office registration
27 certificate, the department must determine that the branch office

1 location is part of a registered firm.

2 (c) A registered firm that is engaged in the business of
3 planning, certifying, leasing, selling, servicing, installing,
4 monitoring, or maintaining exclusively single station devices is
5 not required to apply for or obtain a branch office registration
6 certificate for a separate office or location of the firm.
7 (V.T.I.C. Art. 5.43-2, Sec. 5(b) (part).)

8 Sec. 6002.153. REQUIRED INSURANCE COVERAGE FOR
9 REGISTRATION CERTIFICATE. (a) The department may not issue a
10 registration certificate under this chapter unless the applicant
11 files with the department evidence of a general liability insurance
12 policy that includes products and completed operations coverage.
13 The policy must be conditioned to pay on behalf of the insured those
14 amounts that the insured becomes legally obligated to pay as
15 damages because of bodily injury and property damage caused by an
16 occurrence involving the insured or the insured's officer, agent,
17 or employee in the conduct of any business that requires a
18 registration certificate or license under this chapter.

19 (b) Unless the commissioner increases or decreases the
20 limits under rules adopted under Section 6002.051(b), the limits of
21 insurance coverage required by Subsection (a) must be at least:

22 (1) \$100,000 combined single limits for bodily injury
23 and property damage for each occurrence; and

24 (2) \$300,000 aggregate for all occurrences for each
25 policy year.

26 (c) The evidence of insurance required by this section must
27 be in the form of a certificate of insurance executed by an insurer

1 authorized to engage in the business of insurance in this state and
2 countersigned by an insurance agent licensed in this state. A
3 certificate of insurance for surplus lines coverage procured in
4 compliance with Chapter 981 through a surplus lines agent that is
5 licensed under Subchapter E, Chapter 981, and resident in this
6 state may be filed with the department as evidence of the coverage
7 required by this section.

8 (d) An insurance certificate executed and filed with the
9 department under this section remains in force until the insurer
10 has terminated future liability by the notice required by the
11 department.

12 (e) Failure to maintain the liability insurance required by
13 this section constitutes grounds for the denial, suspension, or
14 revocation, after notice and opportunity for hearing, of a
15 registration certificate issued under this chapter.

16 (f) For an individual or organization licensed to install or
17 service burglar alarms under Chapter 1702, Occupations Code,
18 compliance with the insurance requirements of that chapter
19 constitutes compliance with the insurance requirements of this
20 section if the insurance held by the individual or organization
21 complies with the requirements of this section in amounts and types
22 of coverage.

23 (g) This section does not affect the rights of the insured
24 to negotiate or contract for limitations of liability with a third
25 party, including a customer of the insured. (V.T.I.C. Art. 5.43-2,
26 Secs. 5B(a), (b), (c), (d), (e), (g).)

27 Sec. 6002.154. FIRE ALARM TECHNICIAN, RESIDENTIAL FIRE

1 ALARM SUPERINTENDENT, AND FIRE ALARM PLANNING SUPERINTENDENT. (a)
2 Each registered firm, including a firm engaged in the business of
3 planning, certifying, leasing, selling, servicing, installing,
4 monitoring, or maintaining exclusively single station devices,
5 must employ at least one employee who is a fire alarm technician,
6 residential fire alarm superintendent, or fire alarm planning
7 superintendent.

8 (b) A fire alarm technician, residential fire alarm
9 superintendent, or fire alarm planning superintendent must hold a
10 license issued by the department, conditioned on the successful
11 completion of a written license examination.

12 (c) To engage in the activity for which the license is
13 granted, an individual licensed under this chapter must be an
14 employee or agent of an individual or entity that holds a
15 registration certificate.

16 (d) A fire alarm technician may perform or supervise
17 monitoring. A fire alarm planning superintendent may act as a fire
18 alarm technician or a residential fire alarm superintendent. A
19 residential fire alarm superintendent may act as a fire alarm
20 technician.

21 (e) Applications for licenses and qualifications for those
22 licenses are subject to rules adopted by the commissioner.
23 (V.T.I.C. Art. 5.43-2, Secs. 2(12) (part), (13) (part), (16)
24 (part), 5(a) (part), (c) (part), (f), 5D(a) (part), 10(a) (part).)

25 Sec. 6002.155. ACTIVITIES NOT REGULATED BY CHAPTER. The
26 licensing provisions of this chapter do not apply to:

27 (1) an individual or organization in the business of

1 building construction that installs electrical wiring and devices
2 that may include, in part, the installation of a fire alarm or
3 detection system if:

4 (A) the individual or organization is a party to
5 a contract that provides that:

6 (i) the installation will be performed
7 under the direct supervision of and certified by a licensed
8 employee or agent of a firm registered to install and certify such
9 an alarm or detection device; and

10 (ii) the registered firm assumes full
11 responsibility for the installation of the alarm or detection
12 device; and

13 (B) the individual or organization does not plan,
14 certify, lease, sell, service, or maintain fire alarms or detection
15 devices or systems;

16 (2) an individual or organization that:

17 (A) owns and installs a fire detection or fire
18 alarm device on the individual's or organization's own property; or

19 (B) if the individual or organization does not
20 charge for the device or its installation, installs the device for
21 the protection of the individual's or organization's personal
22 property located on another's property and does not install the
23 device as a normal business practice on the property of another;

24 (3) an individual who holds a license or other
25 authority issued by a municipality to practice as an electrician
26 and who installs fire or smoke detection and alarm devices only in a
27 single family or multifamily residence if:

1 (A) the devices installed are:

2 (i) single station detectors; or

3 (ii) multiple station detectors capable of
4 being connected in a manner that actuation of one detector causes
5 all integral or separate alarms to operate if the detectors are not
6 connected to a control panel or to an outside alarm, do not transmit
7 a signal off the premises, and do not use more than 120 volts; and

8 (B) all installations comply with the adopted
9 edition of Household Fire Warning Equipment, National Fire
10 Protection Association Standard No. 74;

11 (4) an individual or organization that:

12 (A) sells fire detection or fire alarm devices
13 exclusively over-the-counter or by mail order; and

14 (B) does not plan, certify, install, service, or
15 maintain the devices;

16 (5) a law enforcement agency or fire department or a
17 law enforcement officer or firefighter acting in an official
18 capacity that responds to a fire alarm or detection device;

19 (6) an engineer licensed under Chapter 1001,
20 Occupations Code, acting solely in the engineer's professional
21 capacity;

22 (7) an individual or organization that provides and
23 installs at no charge to the property owners or residents a
24 battery-powered smoke detector in a single-family or two-family
25 residence if:

26 (A) the smoke detector bears a label of listing
27 or approval by a testing laboratory approved by the department;

1 (B) the installation complies with the adopted
2 edition of National Fire Protection Association Standard No. 74;

3 (C) the installers are knowledgeable in fire
4 protection and the proper use of smoke detectors; and

5 (D) the detector is a single station installation
6 and not a part of or connected to any other detection device or
7 system;

8 (8) a regular employee of a registered firm who is
9 under the direct supervision of a license holder;

10 (9) a building owner, the owner's managing agent, or an
11 employee of the owner or agent who installs battery-operated single
12 station smoke detectors or monitor fire alarm or fire detection
13 devices or systems in the owner's building, and in which the
14 monitoring:

15 (A) is performed at the owner's property at no
16 charge to the occupants of the building;

17 (B) complies with applicable standards of the
18 National Fire Protection Association as may be adopted by rule
19 under this chapter; and

20 (C) uses equipment approved by a testing
21 laboratory approved by the department for fire alarm monitoring;

22 (10) an individual employed by a registered firm that
23 sells and installs a smoke or heat detector in a single-family or
24 two-family residence if:

25 (A) the detector bears a label of listing or
26 approval by a testing laboratory approved by the department;

27 (B) the installation complies with the adopted

1 edition of National Fire Protection Association Standard No. 74;

2 (C) the installers are knowledgeable in fire
3 protection and the proper use and placement of detectors; and

4 (D) the detector is a single station installation
5 and not a part of or connected to any other detection device or
6 system; or

7 (11) an individual or organization licensed to install
8 or service burglar alarms under Chapter 1702, Occupations Code,
9 that provides and installs in a single-family or two-family
10 residence a combination keypad that includes a panic button to
11 initiate a fire alarm signal if the fire alarm signal:

12 (A) is monitored by a fire alarm firm registered
13 under this chapter; and

14 (B) is not initiated by a fire or smoke detection
15 device. (V.T.I.C. Art. 5.43-2, Sec. 3(b).)

16 Sec. 6002.156. LICENSE EXAMINATION. (a) The state fire
17 marshal shall establish the scope and type of an examination
18 required by this chapter. The examination must cover this chapter
19 and commissioner rules and include specific testing of all license
20 categories.

21 (b) The state fire marshal may administer the examination or
22 may enter into an agreement with a testing service.

23 (c) If a testing service is used, the state fire marshal may
24 contract with the testing service regarding requirements for the
25 examination, including:

26 (1) examination development;

27 (2) scheduling;

- 1 (3) site arrangements;
- 2 (4) grading;
- 3 (5) reporting;
- 4 (6) analysis; or
- 5 (7) other administrative duties.

6 (d) The state fire marshal may require the testing service
7 to:

8 (1) correspond directly with an applicant regarding
9 the administration of the examination;

10 (2) collect a reasonable fee from an applicant for
11 administering the examination; or

12 (3) administer the examination at a specific location
13 or time.

14 (e) Approval for a testing service is valid for one year.

15 (f) The state fire marshal shall adopt rules as necessary to
16 implement examination requirements under this chapter. (V.T.I.C.
17 Art. 5.43-2, Secs. 5D(a) (part), (b) (part), (f), (g), (h).)

18 Sec. 6002.157. EXAMINATION RESULTS. (a) Not later than the
19 30th day after the date on which an examination is administered
20 under this chapter, the state fire marshal shall send notice to each
21 examinee of the results of the examination.

22 (b) If an examination is conducted, graded, or reviewed by a
23 testing service, the state fire marshal shall send notice to each
24 examinee of the results of the examination within two weeks after
25 the date on which the state fire marshal receives the results from
26 the testing service.

27 (c) If the notice of the examination results will be delayed

1 for more than 90 days after the examination date, the state fire
2 marshal shall send notice to the examinee of the reason for the
3 delay before the 90th day.

4 (d) The state fire marshal may require a testing service to
5 notify an examinee of the results of the examinee's examination
6 under this section.

7 (e) If requested in writing by an individual who fails the
8 examination administered under this chapter, the state fire marshal
9 shall send to the individual an analysis of the individual's
10 performance on the examination. (V.T.I.C. Art. 5.43-2, Secs. 5D(a)
11 (part), (a-1).)

12 Sec. 6002.158. TRAINING SCHOOLS AND INSTRUCTORS; APPROVAL.

13 (a) An applicant for approval as a training school must submit an
14 application to the state fire marshal, accompanied by the
15 applicant's complete course or testing curriculum. A registered
16 firm, or an affiliate of a registered firm, is not eligible for
17 approval as a training school.

18 (b) The state fire marshal shall review the materials
19 submitted for course approval and shall approve or deny approval in
20 a letter provided not later than the 60th day after the date of
21 receipt of the application. A denial of approval must disclose
22 specific reasons for the denial. An applicant whose approval is
23 denied may reapply at any time.

24 (c) Training school instructors must be approved by the
25 state fire marshal. To be eligible for approval, an instructor must
26 hold a fire alarm planning superintendent license and have at least
27 three years of experience in fire alarm installation, service, or

1 monitoring.

2 (d) Approval for a training school or instructor is valid
3 for one year.

4 (e) The curriculum for a fire alarm technician course or a
5 residential fire alarm superintendent course must consist of 16
6 hours of classroom instruction for each license category.

7 (f) After approval, each training school must annually
8 conduct, within 125 miles of each county with a population greater
9 than 500,000, at least two classes that are open to the public.
10 (V.T.I.C. Art. 5.43-2, Secs. 5D(b) (part), (c) (part), (d), (e);
11 New.)

12 Sec. 6002.159. CONTINUING EDUCATION PROGRAMS. (a) The
13 commissioner may adopt procedures for certifying and may certify
14 continuing education programs.

15 (b) Participation in the continuing education programs is
16 voluntary. (V.T.I.C. Art. 5.43-2, Sec. 5E.)

17 Sec. 6002.160. RECIPROCAL LICENSE. The department may
18 waive any license requirement for an applicant who holds a license
19 issued by another state that has license requirements substantially
20 equivalent to the license requirements of this state. (V.T.I.C.
21 Art. 5.43-2, Sec. 5F.)

22 Sec. 6002.161. NOT TRANSFERABLE. A registration
23 certificate or license issued under this chapter is not
24 transferable. (V.T.I.C. Art. 5.43-2, Sec. 5(h).)

25 [Sections 6002.162-6002.200 reserved for expansion]

26 SUBCHAPTER E. RENEWAL OF REGISTRATION CERTIFICATE OR LICENSE

27 Sec. 6002.201. RENEWAL REQUIRED; FEE. (a) A renewal of a

1 registration certificate or license issued under this chapter is
2 valid for a period of two years. The license or registration
3 renewal fee for each year of the two-year period is payable on
4 renewal.

5 (b) The commissioner by rule may adopt a system under which
6 registration certificates and licenses expire on various dates
7 during the year. For the year in which an expiration date of a
8 registration certificate or license is less than one year from its
9 issuance or anniversary date, the fee shall be prorated on a monthly
10 basis so that each holder of a registration certificate or license
11 pays only that portion of the renewal fee that is allocable to the
12 number of months during which the registration certificate or
13 license is valid. The total renewal fee is payable on renewal on
14 the new expiration date. (V.T.I.C. Art. 5.43-2, Secs. 5A, 5C(b).)

15 Sec. 6002.202. NOTICE OF EXPIRATION. At least 30 days
16 before the expiration date of a registration certificate or
17 license, the state fire marshal shall send written notice of the
18 impending expiration to the holder of the registration certificate
19 or license at the holder's last known address. (V.T.I.C. Art.
20 5.43-2, Sec. 5C(a) (part).)

21 Sec. 6002.203. RENEWAL PROCEDURES. (a) The holder of an
22 unexpired registration certificate or license may renew the
23 certificate or license by paying the required renewal fee to the
24 department before the expiration date of the certificate or
25 license.

26 (b) An individual or organization whose registration
27 certificate or license has been expired for 90 days or less may

1 renew the certificate or license by paying to the department:

2 (1) the required renewal fee; and

3 (2) a fee that does not exceed one-fourth of the
4 initial fee for the certificate or license.

5 (c) An individual or organization whose registration
6 certificate or license has been expired for more than 90 days but
7 less than two years may renew the certificate or license by paying
8 to the department:

9 (1) all unpaid renewal fees; and

10 (2) a fee that does not exceed the initial fee for the
11 certificate or license.

12 (d) An individual or organization whose registration
13 certificate or license has been expired for two years or longer may
14 not renew the certificate or license. The individual or
15 organization may obtain a new registration certificate or license
16 by complying with the requirements and procedures for obtaining an
17 initial registration certificate or license.

18 (e) This section may not be construed to prevent the
19 department from denying or refusing to renew a license under
20 applicable law or commissioner rules.

21 (f) A license or registration certificate issued under this
22 chapter expires at midnight on the date printed on the license or
23 certificate. A renewal application and fee for the license or
24 registration certificate must be postmarked on or before the
25 expiration date to be accepted as timely.

26 (g) If a renewal application is not complete but there has
27 been no lapse in the required insurance, the applicant is entitled

1 to 30 days from the date that the applicant is notified by the
2 department of the deficiencies in the renewal application to comply
3 with any additional requirement. If an applicant fails to respond
4 and correct all deficiencies in the renewal application within the
5 30-day period, the department may charge a late fee. (V.T.I.C. Art.
6 5.43-2, Secs. 5C(a) (part), (c).)

7 Sec. 6002.204. RENEWAL OF CERTAIN LICENSES. A license
8 holder with an unexpired license who is not employed by a registered
9 firm at the time of the license renewal may renew that license, but
10 the license holder may not engage in any activity for which the
11 license was granted until the license holder is employed by a
12 registered firm. (V.T.I.C. Art. 5.43-2, Sec. 5C(a) (part).)

13 [Sections 6002.205-6002.250 reserved for expansion]

14 SUBCHAPTER F. SELLING OR LEASING OF FIRE ALARM

15 OR FIRE DETECTION DEVICES

16 Sec. 6002.251. REQUIRED LABEL; EXCEPTIONS. (a) Except as
17 provided by Subsections (b) and (c), a detection or alarm device,
18 alarm system, or item of monitoring equipment, a purpose of which is
19 to detect or give alarm of fire, may not be sold, offered for sale,
20 leased, installed, or used to monitor property in this state unless
21 the device, system, or item of equipment carries a label of approval
22 or listing of a testing laboratory approved by the department.

23 (b) Except as provided by Subsection (c), a detection or
24 alarm device, alarm system, or item of monitoring equipment in a
25 one-family or two-family residence, a purpose of which is to detect
26 or give alarm of fire, may not be sold, offered for sale, leased,
27 installed, or used to monitor property in this state after April 14,

1 1989, unless the device, system, or equipment carries a label of
2 approval or listing of a testing laboratory approved by the
3 department.

4 (c) Subsections (a) and (b) do not prohibit the continued
5 use or monitoring of equipment in place if the equipment:

6 (1) complied with the law applicable on the date of the
7 equipment's original placement; and

8 (2) has not been extended, modified, or altered.

9 (d) Fire alarm devices that are not required by this chapter
10 or rules adopted under this chapter and that do not impair the
11 operation of fire alarm or fire detection devices required by this
12 chapter or the rules adopted under this chapter are exempt from the
13 label and listing requirements described by Subsections (a) and (b)
14 if the devices are approved by the local authority with
15 jurisdiction. (V.T.I.C. Art. 5.43-2, Secs. 9(a), (b), (c).)

16 Sec. 6002.252. REQUIRED PURCHASE AND INSTALLATION
17 INFORMATION. A fire detection or fire alarm device may not be sold
18 or installed in this state unless the device is accompanied by
19 printed information that:

20 (1) is supplied to the owner by the supplier or
21 installing contractor; and

22 (2) concerns:

23 (A) instructions describing the installation,
24 operation, testing, and proper maintenance of the device;

25 (B) information to aid in establishing an
26 emergency evacuation plan for the protected premises; and

27 (C) the telephone number and location, including

1 notification procedures, of the nearest fire department. (V.T.I.C.
2 Art. 5.43-2, Sec. 9(d).)

3 Sec. 6002.253. TRAINING AND SUPERVISION OF CERTAIN EXEMPT
4 EMPLOYEES. Each registered firm that employs an individual who is
5 exempt from the licensing requirements of this chapter under
6 Section 6002.155(10) shall appropriately train and supervise the
7 individual to ensure that:

8 (1) each installation complies with the adopted
9 provisions of National Fire Protection Standard No. 74 or other
10 adopted standards;

11 (2) each smoke or heat detector installed or sold
12 carries a label or listing of approval by a testing laboratory
13 approved by the department; and

14 (3) the individual is knowledgeable in fire protection
15 and the proper use and placement of detectors. (V.T.I.C. Art.
16 5.43-2, Sec. 9(e).)

17 [Sections 6002.254-6002.300 reserved for expansion]

18 SUBCHAPTER G. PROHIBITED PRACTICES AND DISCIPLINARY PROCEDURES

19 Sec. 6002.301. PROHIBITED PRACTICES. An individual or
20 organization may not:

21 (1) plan, certify, lease, sell, service, install,
22 monitor, or maintain a fire alarm or fire detection device or system
23 without a license or registration certificate;

24 (2) obtain or attempt to obtain a registration
25 certificate or license by fraudulent representation; or

26 (3) plan, certify, lease, sell, service, install,
27 monitor, or maintain a fire alarm or fire detection device or system

1 in violation of this chapter or the rules adopted under this
2 chapter. (V.T.I.C. Art. 5.43-2, Sec. 7(a).)

3 Sec. 6002.302. DISCIPLINARY ACTIONS. (a) The state fire
4 marshal may suspend, revoke, or refuse to issue or renew a
5 registration certificate or license if, after notice and hearing,
6 the state fire marshal finds that the applicant, registrant, or
7 license holder has engaged in acts that:

8 (1) violate this chapter;

9 (2) violate rules or standards adopted under this
10 chapter; or

11 (3) constitute misrepresentation made in connection
12 with the sale of products or services rendered.

13 (b) An original or renewal registration certificate,
14 license, or testing laboratory approval may be denied, suspended,
15 or revoked, if after notice and public hearing the commissioner,
16 through the state fire marshal, determines from the evidence
17 presented at the hearing that this chapter or a rule adopted under
18 this chapter has been violated. (V.T.I.C. Art. 5.43-2, Secs.
19 10(b), (c).)

20 Sec. 6002.303. DISCIPLINARY HEARING. (a) If the state fire
21 marshal proposes to suspend, revoke, or refuse to renew a license or
22 registration certificate issued under this chapter, the holder of
23 the license or certificate is entitled to a hearing conducted by the
24 State Office of Administrative Hearings.

25 (b) Proceedings for a disciplinary action are governed by
26 Chapter 2001, Government Code.

27 (c) Rules of practice adopted by the commissioner

1 applicable to the proceedings for a disciplinary action may not
2 conflict with rules adopted by the State Office of Administrative
3 Hearings. (V.T.I.C. Art. 5.43-2, Sec. 10A.)

4 Sec. 6002.304. REAPPLICATION REQUIREMENTS. (a) A holder
5 of a registration certificate, license, or testing laboratory
6 approval that has been revoked under this chapter may not file
7 another application for a registration certificate, license, or
8 approval before the first anniversary of the effective date of the
9 revocation.

10 (b) An individual or organization reapplying under this
11 section must request a public hearing to show cause why the issuance
12 of a new registration certificate, license, or approval should not
13 be denied. (V.T.I.C. Art. 5.43-2, Sec. 10(d).)

14 [Sections 6002.305-6002.350 reserved for expansion]

15 SUBCHAPTER H. CRIMINAL PENALTY

16 Sec. 6002.351. CRIMINAL PENALTY. (a) An individual or
17 organization commits an offense if the individual or organization
18 violates Section 6002.151, 6002.152, or 6002.154.

19 (b) An offense under this section is a Class B misdemeanor.

20 (c) Venue for an offense under this section is in Travis
21 County or the county in which the offense is committed. (V.T.I.C.
22 Art. 5.43-2, Sec. 11.)

23 CHAPTER 6003. FIRE PROTECTION SPRINKLER SYSTEM SERVICE AND

24 INSTALLATION

25 SUBCHAPTER A. GENERAL PROVISIONS

26 Sec. 6003.001. DEFINITIONS

27 Sec. 6003.002. APPLICABILITY OF CHAPTER

1 Sec. 6003.003. EFFECT ON LOCAL REGULATION
2 [Sections 6003.004-6003.050 reserved for expansion]
3 SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONER,
4 DEPARTMENT, AND STATE FIRE MARSHAL
5 Sec. 6003.051. ADMINISTRATION OF CHAPTER
6 Sec. 6003.052. ADOPTION OF RULES
7 Sec. 6003.053. RULES RESTRICTING ADVERTISING OR
8 COMPETITIVE BIDDING
9 Sec. 6003.054. GENERAL POWERS AND DUTIES OF
10 COMMISSIONER, STATE FIRE MARSHAL, AND
11 DEPARTMENT
12 Sec. 6003.055. FEES
13 Sec. 6003.056. DEPOSIT IN OPERATING ACCOUNT
14 [Sections 6003.057-6003.100 reserved for expansion]
15 SUBCHAPTER C. FIRE PROTECTION ADVISORY COUNCIL
16 Sec. 6003.101. ADVISORY COUNCIL; APPOINTMENT
17 Sec. 6003.102. ADVISORY COUNCIL DUTIES
18 [Sections 6003.103-6003.150 reserved for expansion]
19 SUBCHAPTER D. REGISTRATION AND LICENSE REQUIREMENTS
20 Sec. 6003.151. FIRE PROTECTION SPRINKLER SYSTEM
21 CONTRACTOR; REGISTRATION CERTIFICATE
22 REQUIRED
23 Sec. 6003.152. REQUIRED INSURANCE COVERAGE FOR
24 REGISTRATION CERTIFICATE
25 Sec. 6003.153. RESPONSIBLE MANAGING EMPLOYEE: LICENSE
26 REQUIRED

- 1 Sec. 6003.154. POSTING OF LICENSE OR CERTIFICATE
2 REQUIRED
- 3 Sec. 6003.155. DISPLAY OF REGISTRATION CERTIFICATE
4 NUMBER ON CERTAIN DOCUMENTS REQUIRED
- 5 Sec. 6003.156. LICENSE EXAMINATION
- 6 Sec. 6003.157. EXAMINATION RESULTS
- 7 Sec. 6003.158. CONTINUING EDUCATION REQUIREMENTS
- 8 Sec. 6003.159. RECIPROCAL LICENSE
- 9 Sec. 6003.160. NOT TRANSFERABLE
- 10 [Sections 6003.161-6003.200 reserved for expansion]
- 11 SUBCHAPTER E. RENEWAL OF REGISTRATION CERTIFICATE OR LICENSE
- 12 Sec. 6003.201. RENEWAL REQUIRED; FEE
- 13 Sec. 6003.202. NOTICE OF EXPIRATION
- 14 Sec. 6003.203. RENEWAL PROCEDURES
- 15 [Sections 6003.204-6003.250 reserved for expansion]
- 16 SUBCHAPTER F. PROHIBITED PRACTICES
17 AND DISCIPLINARY PROCEDURES
- 18 Sec. 6003.251. PROHIBITED PRACTICES
- 19 Sec. 6003.252. DISCIPLINARY ACTIONS
- 20 Sec. 6003.253. DISCIPLINARY HEARING
- 21 Sec. 6003.254. APPLICABILITY OF ADMINISTRATIVE
22 PROCEDURE ACT
- 23 Sec. 6003.255. REAPPLICATION REQUIREMENTS
- 24 [Sections 6003.256-6003.300 reserved for expansion]
- 25 SUBCHAPTER G. CRIMINAL PENALTY
- 26 Sec. 6003.301. CRIMINAL PENALTY

1 CHAPTER 6003. FIRE PROTECTION SPRINKLER SYSTEM SERVICE AND

2 INSTALLATION

3 SUBCHAPTER A. GENERAL PROVISIONS

4 Sec. 6003.001. DEFINITIONS. In this chapter:

5 (1) "Fire protection sprinkler system" means an
6 assembly of underground or overhead piping or conduits that conveys
7 water with or without other agents to dispersal openings or devices
8 to:

9 (A) extinguish, control, or contain fire; and

10 (B) provide protection from exposure to fire or
11 the products of combustion.

12 (2) "Fire protection sprinkler system contractor"
13 means an individual or organization that offers to undertake,
14 represents itself as being able to undertake, or undertakes the
15 plan, sale, installation, maintenance, or servicing of:

16 (A) a fire protection sprinkler system; or

17 (B) any part of a fire protection sprinkler
18 system.

19 (3) "Individual" means a natural person, including an
20 owner, manager, officer, employee, or occupant.

21 (4) "Installation" means:

22 (A) the initial placement of equipment; or

23 (B) the extension, modification, or alteration
24 of equipment after initial placement.

25 (5) "Insurance agent" means:

26 (A) an individual, firm, or corporation licensed
27 under:

1 (i) Subchapter E, Chapter 981; or
2 (ii) Subchapter A, B, C, D, E, or G, Chapter
3 4051; or

4 (B) an individual authorized to represent an
5 insurance fund or pool created by a municipality, county, or other
6 political subdivision of this state under Chapter 791, Government
7 Code.

8 (6) "License" means the document issued to a
9 responsible managing employee authorizing the employee to engage in
10 the fire protection sprinkler system business in this state.

11 (7) "Maintenance" means the maintenance of a fire
12 protection sprinkler system or any part of a fire protection
13 sprinkler system in the condition of repair that provides
14 performance as originally planned.

15 (8) "Organization" means a corporation, a partnership
16 or other business association, a governmental entity, or any other
17 legal or commercial entity.

18 (9) "Registration certificate" means the document
19 issued to a fire protection sprinkler system contractor authorizing
20 the contractor to engage in business in this state.

21 (10) "Responsible managing employee" means an
22 individual designated by a company that plans, sells, installs,
23 maintains, or services fire protection sprinkler systems to ensure
24 that each fire protection sprinkler system, as installed,
25 maintained, or serviced, meets the standards for the system as
26 provided by law.

27 (11) "Service" means maintenance, repair, or testing.

1 (V.T.I.C. Art. 5.43-3, Secs. 1(1), (2), (5), (6), (7), (8), (9),
2 (10), (11), (12), (13) as added Acts 71st Leg., R.S., Ch. 823.)

3 Sec. 6003.002. APPLICABILITY OF CHAPTER. (a) This chapter
4 does not apply to:

5 (1) an employee of the United States, this state, or
6 any political subdivision of this state who acts as a fire
7 protection sprinkler system contractor for the employing
8 governmental entity;

9 (2) the plan, sale, installation, maintenance, or
10 servicing of a fire protection sprinkler system in any property
11 owned by the United States or this state;

12 (3) an individual or organization acting under court
13 order as authorization;

14 (4) an individual or organization that sells or
15 supplies products or materials to a registered fire protection
16 sprinkler system contractor;

17 (5) an installation, maintenance, or service project
18 for which the total contract price for labor, materials, and all
19 other services is less than \$100, if:

20 (A) the project is not a part of a complete or
21 more costly project, whether the complete project is to be
22 undertaken by one or more fire protection sprinkler system
23 contractors; or

24 (B) the project is not divided into contracts of
25 less than \$100 for the purpose of evading this chapter;

26 (6) an engineer licensed under Chapter 1001,
27 Occupations Code, acting solely in the engineer's professional

1 capacity;

2 (7) a regular employee of a registered fire protection
3 sprinkler system contractor; or

4 (8) an owner or lessee of property that:

5 (A) installs a fire protection sprinkler system
6 on the owned or leased property for the owner's or lessee's own use
7 or for family members' use; and

8 (B) does not offer the property for sale or lease
9 before the first anniversary of the date of installation of the fire
10 protection sprinkler system.

11 (b) This chapter does not authorize an individual or
12 organization to practice professional engineering other than in
13 compliance with Chapter 1001, Occupations Code. (V.T.I.C. Art.
14 5.43-3, Secs. 2(b), 11.)

15 Sec. 6003.003. EFFECT ON LOCAL REGULATION. (a) This
16 chapter and the rules adopted under this chapter have uniform force
17 and effect throughout this state. A municipality or county may not
18 enact an order, ordinance, or rule requiring a fire protection
19 sprinkler system contractor to obtain a registration certificate
20 from the municipality or county. A municipality or county may not
21 impose on a fire protection sprinkler system contractor
22 qualification or financial responsibility requirements other than
23 proof of a registration certificate.

24 (b) Notwithstanding any other provision of this chapter, a
25 municipality or county may require a fire protection sprinkler
26 system contractor to obtain a permit and pay a permit fee for the
27 installation of a fire protection sprinkler system and require the

1 installation of a fire protection sprinkler system to conform to
2 the building code or other construction requirements of the
3 municipality or county.

4 (c) A municipal or county order, ordinance, or rule in
5 effect on September 1, 1983, is not invalidated because of any
6 provision of this chapter. (V.T.I.C. Art. 5.43-3, Sec. 2(a).)

7 [Sections 6003.004-6003.050 reserved for expansion]

8 SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONER,
9 DEPARTMENT, AND STATE FIRE MARSHAL

10 Sec. 6003.051. ADMINISTRATION OF CHAPTER. (a) The
11 department shall administer this chapter.

12 (b) The commissioner may issue rules necessary to
13 administer this chapter through the state fire marshal. (V.T.I.C.
14 Art. 5.43-3, Sec. 3(a) (part).)

15 Sec. 6003.052. ADOPTION OF RULES. (a) In adopting
16 necessary rules, the commissioner may use recognized standards,
17 including standards:

18 (1) adopted by federal law or regulation;

19 (2) published by a nationally recognized
20 standards-making organization; or

21 (3) developed by individual manufacturers.

22 (b) Under rules adopted under Section 6003.051(b), the
23 department may create a specialized licensing or registration
24 program for fire protection sprinkler system contractors.
25 (V.T.I.C. Art. 5.43-3, Secs. 3(a) (part), (b).)

26 Sec. 6003.053. RULES RESTRICTING ADVERTISING OR
27 COMPETITIVE BIDDING. (a) The commissioner may not adopt rules

1 restricting advertising or competitive bidding by the holder of a
2 license or registration certificate issued under this chapter
3 except to prohibit false, misleading, or deceptive practices.

4 (b) In the commissioner's rules to prohibit false,
5 misleading, or deceptive practices, the commissioner may not
6 include a rule that:

7 (1) restricts the use of any medium for advertising;

8 (2) restricts the use of a license or registration
9 certificate holder's personal appearance or voice in an
10 advertisement;

11 (3) relates to the size or duration of an
12 advertisement by the license or registration certificate holder; or

13 (4) restricts the license or registration certificate
14 holder's advertisement under a trade name. (V.T.I.C. Art. 5.43-3,
15 Sec. 7A.)

16 Sec. 6003.054. GENERAL POWERS AND DUTIES OF COMMISSIONER,
17 STATE FIRE MARSHAL, AND DEPARTMENT. (a) The commissioner may
18 delegate authority to exercise all or part of the commissioner's
19 functions, powers, and duties under this chapter, including the
20 issuance of licenses and registration certificates, to the state
21 fire marshal. The state fire marshal shall implement the rules
22 adopted by the commissioner for the protection and preservation of
23 life and property in controlling:

24 (1) the registration of an individual or an
25 organization engaged in the business of planning, selling,
26 installing, maintaining, or servicing fire protection sprinkler
27 systems; and

1 (2) the requirements for the plan, sale, installation,
2 maintenance, or servicing of fire protection sprinkler systems by:

3 (A) determining the criteria and qualifications
4 for registration certificate and license holders;

5 (B) evaluating the qualifications of an
6 applicant for a registration certificate to engage in the business
7 of planning, selling, installing, maintaining, or servicing fire
8 protection sprinkler systems;

9 (C) conducting examinations and evaluating the
10 qualifications of a license applicant; and

11 (D) issuing registration certificates and
12 licenses to qualified applicants.

13 (b) The commissioner shall establish a procedure for
14 reporting and processing complaints relating to the business of
15 planning, selling, installing, maintaining, or servicing fire
16 protection sprinkler systems in this state. (V.T.I.C. Art. 5.43-3,
17 Secs. 7(a), (b).)

18 Sec. 6003.055. FEES. (a) The commissioner shall set the
19 fee for:

20 (1) a registration certificate application in an
21 amount not to exceed \$100;

22 (2) an initial or renewal registration certificate in
23 an amount not to exceed \$1,200 annually; and

24 (3) an initial or renewal responsible managing
25 employee license fee in an amount not to exceed \$200 annually.

26 (b) Unless the examination for a responsible managing
27 employee license is administered by a testing service, the

1 commissioner shall set a nonrefundable fee for each examination in
2 an amount not to exceed \$100.

3 (c) The commissioner shall set a fee in an amount not to
4 exceed \$70 for:

5 (1) a duplicate registration certificate or license
6 issued under this chapter; or

7 (2) any request requiring changes to a registration
8 certificate or license. (V.T.I.C. Art. 5.43-3, Secs. 4(a) (part),
9 (c) (part), (d) (part), (e), (i) (part), 5A(a) (part).)

10 Sec. 6003.056. DEPOSIT IN OPERATING ACCOUNT. All fees
11 collected under this chapter shall be deposited in the state
12 treasury to the credit of the Texas Department of Insurance
13 operating account for use in administering this chapter. (V.T.I.C.
14 Art. 5.43-3, Sec. 4(i) (part).)

15 [Sections 6003.057-6003.100 reserved for expansion]

16 SUBCHAPTER C. FIRE PROTECTION ADVISORY COUNCIL

17 Sec. 6003.101. ADVISORY COUNCIL; APPOINTMENT. (a) The
18 commissioner shall appoint the members of the fire protection
19 advisory council, who serve at the pleasure of the commissioner.

20 (b) The advisory council is composed of seven members as
21 follows:

22 (1) three members who have been actively engaged in
23 the management of a fire protection sprinkler system business for
24 not less than five years preceding appointment;

25 (2) one member who represents the engineering section
26 of the department's property and casualty program;

27 (3) one member who is a volunteer firefighter; and

1 (4) two members who each represent a different
2 municipal fire department in this state.

3 (c) The State Firemen's and Fire Marshals' Association of
4 Texas, on the commissioner's request, may recommend a volunteer
5 firefighter for appointment to the advisory council. (V.T.I.C.
6 Art. 5.43-3, Secs. 6(a) (part), (c), (e).)

7 Sec. 6003.102. ADVISORY COUNCIL DUTIES. (a) In addition to
8 other duties delegated by the commissioner, the fire protection
9 advisory council shall:

10 (1) advise the state fire marshal regarding practices
11 in the fire protection sprinkler system industry and the rules
12 necessary to implement and administer this chapter; and

13 (2) make recommendations to the state fire marshal
14 regarding forms and procedures for registration certificates and
15 licenses.

16 (b) The advisory council shall periodically:

17 (1) review rules implementing this chapter; and

18 (2) recommend rule changes to the commissioner.

19 (V.T.I.C. Art. 5.43-3, Secs. 6(b), (d).)

20 [Sections 6003.103-6003.150 reserved for expansion]

21 SUBCHAPTER D. REGISTRATION AND LICENSE REQUIREMENTS

22 Sec. 6003.151. FIRE PROTECTION SPRINKLER SYSTEM
23 CONTRACTOR; REGISTRATION CERTIFICATE REQUIRED. (a) Unless the
24 individual or organization holds a registration certificate issued
25 by the department, an individual or organization may not plan,
26 sell, install, maintain, or service a fire protection sprinkler
27 system.

1 (b) An applicant for a registration certificate must apply
2 to the department on a form prescribed by the commissioner.

3 (c) An organization that is a partnership or joint venture
4 is not required to register under the name of the organization if
5 each partner or joint venturer holds a registration certificate.
6 (V.T.I.C. Art. 5.43-3, Secs. 4(a) (part), 8 (part).)

7 Sec. 6003.152. REQUIRED INSURANCE COVERAGE FOR
8 REGISTRATION CERTIFICATE. (a) The department may not issue a
9 registration certificate under this chapter unless the applicant
10 files with the department evidence of a general liability insurance
11 policy that includes products and completed operations coverage.
12 The policy must be conditioned to pay on behalf of the insured those
13 amounts that the insured becomes legally obligated to pay as
14 damages because of bodily injury and property damage caused by an
15 occurrence involving the insured or the insured's officer, agent,
16 or employee in the conduct of any activity that requires a
17 registration certificate or license under this chapter.

18 (b) Unless the commissioner, after notice and an
19 opportunity for a hearing, increases or decreases the limits, the
20 limits of insurance coverage required by Subsection (a) must be at
21 least:

22 (1) \$100,000 combined single limits for bodily injury
23 and property damage for each occurrence; and

24 (2) \$300,000 aggregate for all occurrences for each
25 policy year.

26 (c) The evidence of insurance required by this section must
27 be in the form of a certificate of insurance executed by an insurer

1 authorized to engage in the business of insurance in this state and
2 countersigned by an insurance agent licensed in this state. A
3 certificate of insurance for surplus lines coverage procured in
4 compliance with Chapter 981 through a surplus lines agent that is
5 licensed under Subchapter E, Chapter 981, and resident in this
6 state may be filed with the department as evidence of the coverage
7 required by this section.

8 (d) An insurance certificate executed and filed with the
9 department under this section remains in force until the insurer
10 has terminated future liability by the notice required by the
11 department.

12 (e) Failure to maintain the liability insurance required by
13 this section constitutes grounds for the denial, suspension, or
14 revocation, after notice and opportunity for hearing, of a
15 registration certificate issued under this chapter. (V.T.I.C. Art.
16 5.43-3, Secs. 5, 7(c).)

17 Sec. 6003.153. RESPONSIBLE MANAGING EMPLOYEE: LICENSE
18 REQUIRED. (a) Each fire protection sprinkler system contractor
19 must employ at least one licensed responsible managing employee on
20 a full-time basis.

21 (b) A person may not act as a responsible managing employee
22 unless the person holds a license issued by the department,
23 conditioned on the successful completion of the license examination
24 and compliance with the requirements of the rules adopted under
25 this chapter.

26 (c) Notwithstanding Subsection (a), an individual or
27 organization with a current registration certificate may act as a

1 fire protection sprinkler system contractor for 30 days after the
2 death or dissociation of its licensed responsible managing employee
3 or for a longer period approved by the commissioner under the rules
4 adopted under this chapter. (V.T.I.C. Art. 5.43-3, Secs. 4(b), (c)
5 (part), 8 (part).)

6 Sec. 6003.154. POSTING OF LICENSE OR CERTIFICATE REQUIRED.
7 Each registration certificate and license issued under this chapter
8 must be posted in a conspicuous place in the fire protection
9 sprinkler system contractor's place of business. (V.T.I.C. Art.
10 5.43-3, Sec. 4(f).)

11 Sec. 6003.155. DISPLAY OF REGISTRATION CERTIFICATE NUMBER
12 ON CERTAIN DOCUMENTS REQUIRED. Each bid, proposal, offer, and
13 installation drawing for a fire protection sprinkler system must
14 prominently display the registration certificate number of the fire
15 protection sprinkler system contractor. (V.T.I.C. Art. 5.43-3,
16 Sec. 4(g).)

17 Sec. 6003.156. LICENSE EXAMINATION. (a) The state fire
18 marshal shall establish the scope and type of an examination
19 required by this chapter.

20 (b) The state fire marshal may administer the examination or
21 may enter into an agreement with a testing service.

22 (c) If a testing service is used, the state fire marshal may
23 contract with the testing service regarding requirements for the
24 examination, including:

- 25 (1) examination development;
- 26 (2) scheduling;
- 27 (3) site arrangements;

- 1 (4) grading;
- 2 (5) reporting;
- 3 (6) analysis; or
- 4 (7) other administrative duties.

5 (d) The state fire marshal may require the testing service
6 to:

7 (1) correspond directly with an applicant regarding
8 the administration of the examination;

9 (2) collect a reasonable fee from an applicant for
10 administering the examination; or

11 (3) administer the examination at a specific location
12 or time.

13 (e) The state fire marshal shall adopt rules as necessary to
14 implement examination requirements under this chapter. (V.T.I.C.
15 Art. 5.43-3, Secs. 5B(a), (b), (e).)

16 Sec. 6003.157. EXAMINATION RESULTS. (a) Not later than the
17 30th day after the date on which an examination is administered
18 under this chapter, the state fire marshal shall send notice to each
19 examinee of the results of the examination.

20 (b) If an examination is graded or reviewed by a testing
21 service, the state fire marshal shall send notice to each examinee
22 of the results of the examination not later than the 14th day after
23 the date on which the state fire marshal receives the results from
24 the testing service.

25 (c) If the notice of the examination results will be delayed
26 for more than 90 days after the examination date, the state fire
27 marshal, before the 90th day, shall send notice to the examinee of

1 the reason for the delay.

2 (d) The state fire marshal may require a testing service to
3 notify an examinee of the results of the examinee's examination.

4 (e) If requested in writing by an individual who fails the
5 examination administered under this chapter, the state fire marshal
6 shall send to the individual an analysis of the individual's
7 performance on the examination. (V.T.I.C. Art. 5.43-3, Secs.
8 5B(c), (d).)

9 Sec. 6003.158. CONTINUING EDUCATION REQUIREMENTS. (a) The
10 commissioner may adopt procedures for certifying and may certify
11 continuing education programs.

12 (b) Participation in the continuing education programs is
13 voluntary. (V.T.I.C. Art. 5.43-3, Sec. 5C.)

14 Sec. 6003.159. RECIPROCAL LICENSE. The department may waive
15 any license requirement for an applicant who holds a license issued
16 by another state that has license requirements substantially
17 equivalent to the license requirements of this state. (V.T.I.C.
18 Art. 5.43-3, Sec. 5D.)

19 Sec. 6003.160. NOT TRANSFERABLE. A registration
20 certificate or license issued under this chapter is not
21 transferable. (V.T.I.C. Art. 5.43-3, Sec. 4(h).)

22 [Sections 6003.161-6003.200 reserved for expansion]

23 SUBCHAPTER E. RENEWAL OF REGISTRATION CERTIFICATE OR LICENSE

24 Sec. 6003.201. RENEWAL REQUIRED; FEE. (a) Except as
25 otherwise provided by this subsection, an initial registration
26 certificate or license is valid for a period of one year from the
27 date of issue and is renewable on payment of the renewal fee. An

1 initial registration certificate or license issued on or after
2 September 1, 1983, may be issued for a period of less than one year
3 and the renewal fee shall be prorated proportionally.

4 (b) A renewal of a registration certificate or license
5 issued under this chapter is valid for a period of two years. The
6 license or registration fee for each year of the two-year period is
7 payable on renewal.

8 (c) The commissioner by rule may adopt a system under which
9 registration certificates and licenses expire on various dates
10 during the year. For the year in which an expiration date of a
11 registration certificate or license is less than one year from its
12 issuance or anniversary date, the fee shall be prorated on a monthly
13 basis so that each holder of a registration certificate or license
14 pays only that portion of the renewal fee that is allocable to the
15 number of months during which the registration certificate or
16 license is valid. On renewal on the new expiration date, the total
17 renewal fee is payable. (V.T.I.C. Art. 5.43-3, Secs. 4(d) (part),
18 5A(a), (c).)

19 Sec. 6003.202. NOTICE OF EXPIRATION. At least 30 days
20 before the expiration date of a registration certificate or
21 license, the department shall send written notice of the impending
22 expiration to the holder of the registration certificate or
23 license at the holder's last known address. (V.T.I.C. Art. 5.43-3,
24 Sec. 5A(b) (part).)

25 Sec. 6003.203. RENEWAL PROCEDURES. (a) The holder of an
26 unexpired registration certificate or license may renew the
27 certificate or license by paying the required renewal fee to the

1 department before the expiration date of the certificate or
2 license.

3 (b) An individual or organization whose registration
4 certificate or license has been expired for 90 days or less may
5 renew the certificate or license by paying to the department:

6 (1) the required renewal fee; and

7 (2) a fee equal to one-half of the initial fee for the
8 certificate or license.

9 (c) An individual or organization whose registration
10 certificate or license has been expired for more than 90 days but
11 less than two years may renew the certificate or license by paying
12 to the department:

13 (1) all unpaid renewal fees; and

14 (2) a fee that is equal to the initial fee for the
15 certificate or license.

16 (d) An individual or organization whose registration
17 certificate or license has been expired for two years or longer may
18 not renew the certificate or license. The individual or
19 organization may obtain a new registration certificate or license
20 by complying with the requirements and procedures for obtaining an
21 initial registration certificate or license.

22 (e) This section may not be construed to prevent the
23 department from denying or refusing to renew a license under
24 applicable law or commissioner rules. (V.T.I.C. Art. 5.43-3, Sec.
25 5A(b) (part).)

26 [Sections 6003.204-6003.250 reserved for expansion]

1 SUBCHAPTER F. PROHIBITED PRACTICES

2 AND DISCIPLINARY PROCEDURES

3 Sec. 6003.251. PROHIBITED PRACTICES. An individual or
4 organization may not:

5 (1) obtain or attempt to obtain a registration
6 certificate or license by fraudulent representation; or

7 (2) plan, sell, install, maintain, or service a fire
8 protection sprinkler system in violation of this chapter or the
9 rules adopted under this chapter. (V.T.I.C. Art. 5.43-3, Sec. 8
10 (part).)

11 Sec. 6003.252. DISCIPLINARY ACTIONS. The state fire
12 marshal may suspend, revoke, or refuse to issue or renew a
13 registration certificate or license if, after notice and hearing,
14 the state fire marshal finds that the applicant, registrant, or
15 license holder has engaged in acts that:

16 (1) violate this chapter;

17 (2) violate rules or standards adopted under this
18 chapter; or

19 (3) constitute misrepresentation made in connection
20 with:

21 (A) the sale of products; or

22 (B) services rendered. (V.T.I.C. Art. 5.43-3,
23 Sec. 9(a).)

24 Sec. 6003.253. DISCIPLINARY HEARING. (a) If the state fire
25 marshal proposes to suspend, revoke, or refuse to renew a license or
26 registration certificate issued under this chapter, the holder of
27 the license or certificate is entitled to a hearing conducted by the

1 State Office of Administrative Hearings.

2 (b) Rules of practice adopted by the commissioner
3 applicable to the proceedings for a disciplinary action may not
4 conflict with rules adopted by the State Office of Administrative
5 Hearings. (V.T.I.C. Art. 5.43-3, Sec. 9A (part).)

6 Sec. 6003.254. APPLICABILITY OF ADMINISTRATIVE PROCEDURE
7 ACT. Proceedings for the denial, suspension, or revocation of a
8 registration certificate or license, appeals from those
9 proceedings, and any other proceedings for a disciplinary action
10 are governed by Chapter 2001, Government Code. (V.T.I.C. Art.
11 5.43-3, Secs. 9(b), 9A (part).)

12 Sec. 6003.255. REAPPLICATION REQUIREMENTS. (a) An
13 applicant or holder of a registration certificate or license whose
14 certificate or license has been denied, refused, or revoked under
15 this chapter, other than for failure to pass a required written
16 examination, may not file another application for a registration
17 certificate or license before:

18 (1) the first anniversary of the effective date of the
19 denial, refusal, or revocation; or

20 (2) if judicial review of the denial, refusal, or
21 revocation is sought, before the first anniversary of the date of
22 the final court order or decree affirming the action.

23 (b) The commissioner may deny an application described by
24 Subsection (a) unless the applicant shows good cause why the
25 denial, refusal, or revocation of the registration certificate or
26 license should not be considered a bar to the issuance of a new
27 registration certificate or license. (V.T.I.C. Art. 5.43-3, Sec.

1 9(c).)

2 [Sections 6003.256-6003.300 reserved for expansion]

3 SUBCHAPTER G. CRIMINAL PENALTY

4 Sec. 6003.301. CRIMINAL PENALTY. (a) A person commits an
5 offense if the person knowingly violates Section 6003.151(a),
6 6003.153, or 6003.251.

7 (b) An offense under this section is a Class B misdemeanor.

8 (c) Venue for an offense under this section is in Travis
9 County or the county in which the offense is committed. (V.T.I.C.
10 Art. 5.43-3, Sec. 10; New.)

11 PART K. ADDITIONS TO GOVERNMENT CODE AND LOCAL GOVERNMENT CODE

12 SECTION 1K.001. ADDITION. Subchapter A, Chapter 533,
13 Government Code, is amended by adding Section 533.019 to read as
14 follows:

15 Sec. 533.019. MANAGED CARE ORGANIZATIONS: FISCAL SOLVENCY
16 AND COMPLAINT SYSTEM GUIDELINES. (a) The Texas Department of
17 Insurance, in conjunction with the commission, shall establish
18 fiscal solvency standards and complaint system guidelines for
19 managed care organizations that serve Medicaid recipients.

20 (b) The guidelines must require that information regarding
21 a managed care organization's complaint process be made available
22 to a recipient in an appropriate communication format when the
23 recipient enrolls in the Medicaid managed care program. (V.T.I.C.
24 Art. 1.61.)

25 SECTION 1K.002. ADDITION. Subtitle C, Title 5, Local
26 Government Code, is amended by adding Chapter 177 to read as
27 follows:

1 CHAPTER 177. LIFE, HEALTH, AND ACCIDENT INSURANCE FOR OFFICIALS,
2 EMPLOYEES, AND RETIREES OF POLITICAL SUBDIVISIONS

3 SUBCHAPTER A. GENERAL PROVISIONS

4 Sec. 177.001. CERTAIN COVERAGE AUTHORIZED. (a) A county or
5 other political subdivision of this state may procure contracts
6 insuring the political subdivision's officials, employees, and
7 retirees or any class of the political subdivision's officials,
8 employees, and retirees under a policy of group life, group health,
9 accident, accidental death and dismemberment, or hospital,
10 surgical, or medical expense insurance.

11 (b) The dependents of those officials, employees, and
12 retirees may be insured under a group policy that provides:

13 (1) health insurance; or

14 (2) hospital, surgical, or medical expense insurance.

15 (V.T.I.C. Art. 3.51-2, Sec. (a) (part).)

16 Sec. 177.002. PAYMENT OF PREMIUMS. (a) A county or other
17 political subdivision of this state that is authorized to procure a
18 contract insuring the political subdivision's officials,
19 employees, and retirees or any class of the political subdivision's
20 officials, employees, and retirees under a policy of group
21 insurance that covers one or more risks may pay from the local funds
22 of the political subdivision all or any portion of the premiums for
23 the policy. The political subdivision may also pay all or any
24 portion of the premiums on group health, hospital, surgical, or
25 medical expense insurance for dependents of the political
26 subdivision's officials, employees, and retirees.

27 (b) If authorized by the official, employee, or retiree in

1 writing to make the deduction, the county or other political
2 subdivision may deduct from the person's salary an amount equal to
3 any required contribution by the person to the premiums for the
4 insurance issued under Section 177.001 to the political
5 subdivision as the policyholder. (V.T.I.C. Art. 3.51-2, Secs. (a)
6 (part), (b), (c) (part).)

7 Sec. 177.003. USE OF STATE FUNDS. State funds may not be
8 used to procure a contract under this subchapter or pay premiums
9 under that contract. (V.T.I.C. Art. 3.51-2, Sec. (a) (part).)

10 [Sections 177.004-177.050 reserved for expansion]

11 SUBCHAPTER B. HEALTH AND INSURANCE FUND

12 Sec. 177.051. FUND AUTHORIZED. (a) A county or other
13 political subdivision of this state may establish a fund to provide
14 insurance authorized by Subchapter A.

15 (b) A fund established under Subsection (a) shall be known
16 as the "health and insurance fund--employees and dependents."
17 (V.T.I.C. Art. 3.51-2, Sec. (c) (part).)

18 Sec. 177.052. PAYMENT OF MONEY INTO FUND. There shall be
19 credited to a fund established under this subchapter:

20 (1) any salary deduction to which an official,
21 employee, or retiree agrees in writing; and

22 (2) contributions from the county or other political
23 subdivision. (V.T.I.C. Art. 3.51-2, Sec. (c) (part).)

24 Sec. 177.053. USE OF MONEY IN FUND. Payment from a fund
25 established under this subchapter:

26 (1) is authorized only for the payment of premiums on
27 life, group health, accident, accidental death and dismemberment,

1 or hospital, surgical, or medical expense insurance for officials,
2 employees, retirees, and their dependents; and

3 (2) must be made in accordance with rules adopted by
4 the county or other political subdivision establishing the fund.
5 (V.T.I.C. Art. 3.51-2, Sec. (c) (part).)

6 Sec. 177.054. PAYMENT OF CLAIMS FROM FUND. A claim against
7 a fund established under this subchapter shall be payable in the
8 same manner as other claims of the county or other political
9 subdivision. (V.T.I.C. Art. 3.51-2, Sec. (c) (part).)

10 PART L. REPEALER

11 SECTION 1L.001. REPEALER. (a) The following Acts and
12 articles as compiled in Vernon's Texas Insurance Code are repealed:

13 (1) 1.01, 1.02, 1.10, 1.12, 1.13, 1.33, and 1.61;

14 (2) 3.11, 3.38, 3.49-3, 3.50-7B, and 3.51-2;

15 (3) 3.50-7A, as added by Chapter 201, Acts of the 78th
16 Legislature, Regular Session, 2003;

17 (4) 3.50-7A, as added by Chapter 213, Acts of the 78th
18 Legislature, Regular Session, 2003;

19 (5) 5.01-1, 5.02, 5.03-1, 5.05, 5.14, 5.43-1, 5.43-2,
20 5.43-3, and 5.66; and

21 (6) 21.20-2, 21.49-15, 21.49-16, 21.49C, 21.70, and
22 21.80.

23 (b) Subsection (b), Article 1.09-1, Insurance Code, is
24 repealed.

25 (c) Subchapter B, Chapter 4, Insurance Code, is repealed.

26 PART M. LEGISLATIVE INTENT

27 SECTION 1M.001. LEGISLATIVE INTENT. This article is

1 enacted under Section 43, Article III, Texas Constitution. This
2 article is intended as a recodification only, and no substantive
3 change in law is intended by this article.

4 PART N. EFFECTIVE DATE

5 SECTION 1N.001. EFFECTIVE DATE. This article takes effect
6 April 1, 2009.

7 ARTICLE 2. UPDATES OF CROSS-REFERENCES IN TITLES 2, 3, 5, 6, 7, 8,
8 10, 11, AND 13, INSURANCE CODE

9 PART A. GENERAL PROVISIONS

10 SECTION 2A.001. This article is enacted as part of the
11 state's continuing statutory revision program under Chapter 323,
12 Government Code. This article is a revision for purposes of Section
13 43, Article III, Texas Constitution, and has the purpose of making
14 necessary corrections to enacted codifications of the Insurance
15 Code.

16 SECTION 2A.002. If any provision of this article conflicts
17 with a statute enacted by the 80th Legislature, Regular Session,
18 2007, the statute controls.

19 PART B. CROSS-REFERENCE UPDATES: TITLE 2, INSURANCE CODE

20 SECTION 2B.001. Section 34.004(a), Insurance Code, is
21 amended to correct a cross-reference to read as follows:

22 (a) A person is not liable in a civil action, including an
23 action for libel or slander, for collecting, reviewing, analyzing,
24 disseminating, or reporting information collected from annual
25 statements filed under Chapter 802 [~~Article 1.11~~] if the person is:

26 (1) the department, the commissioner, or an employee
27 of the department;

1 (2) a member or employee of or delegate to the National
2 Association of Insurance Commissioners or an authorized committee,
3 subcommittee, or task force of that association; or

4 (3) another person who is responsible for collecting,
5 reviewing, analyzing, and disseminating information from filed
6 annual statement convention blanks.

7 SECTION 2B.002. Section 36.002, Insurance Code, is amended
8 to correct cross-references to read as 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 2008, 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)(1) [~~941.003(b)(3)~~] or (c), or
26 942.003(b)(1) [~~942.003(b)(3)~~] or (c);

27 (B) Subchapter H, Chapter 544;

1 (C) Chapter 251, as that chapter relates to:

2 (i) automobile insurance;

3 (ii) casualty insurance and fidelity,
4 guaranty, and surety bond insurance;

5 (iii) fire insurance and allied lines;

6 (iv) workers' compensation insurance; or

7 (v) aircraft insurance;

8 (D) Chapter 5, 252, 253, 254, 255, 256, 426, 493,
9 494, 1804, 1805, 1806, ~~or~~ 2171, 6001, 6002, or 6003;

10 (E) Subtitle B, C, D, E, F, H, or I, Title 10;

11 (F) Section 417.008, Government Code; or

12 (G) [~~Chapter 406A, Labor Code; or~~

13 [~~H~~] Chapter 2154, Occupations Code.

14 SECTION 2B.003. Section 36.106, Insurance Code, is amended
15 to correct cross-references to read as follows:

16 Sec. 36.106. WAIVER OF CERTAIN NOTICE REQUIREMENTS. The
17 commissioner may, on written agreement or stipulation of each party
18 and any intervenor, waive or modify the notice publication
19 requirement of Section 822.059 [~~Article 2.01~~], 822.157 [~~2.03~~],
20 841.060 [~~3.04~~], or 884.058 [~~22.03~~].

21 SECTION 2B.004. Section 38.002(a)(1), Insurance Code, is
22 amended to correct a cross-reference to read as follows:

23 (1) "Insurer" means an insurance company, reciprocal
24 or interinsurance exchange, mutual insurance company, capital
25 stock company, county mutual insurance company, Lloyd's plan, or
26 other legal entity engaged in the business of personal automobile
27 insurance or residential property insurance in this state. The

1 term includes:

2 (A) an affiliate as described by [~~Section 2,~~
3 ~~Article 21.49-1, or~~] Section 823.003(a) if that affiliate is
4 authorized to write and is writing personal automobile insurance or
5 residential property insurance in this state;

6 (B) the Texas Windstorm Insurance Association
7 created and operated under Chapter 2210 [~~Article 21.49~~];

8 (C) the FAIR Plan Association under Chapter 2211
9 [~~Article 21.49A~~]; and

10 (D) the Texas Automobile Insurance Plan
11 Association under Chapter 2151 [~~Article 21.81~~].

12 SECTION 2B.005. Section 38.003(b), Insurance Code, is
13 amended to correct a cross-reference to read as follows:

14 (b) For purposes of this section, "insurer" means a
15 reciprocal or interinsurance exchange, mutual insurance company,
16 capital stock company, county mutual insurance company, Lloyd's
17 plan, life, accident, or health or casualty insurance company,
18 health maintenance organization, mutual life insurance company,
19 mutual insurance company other than life, mutual, or natural
20 premium life insurance company, general casualty company,
21 fraternal benefit society, group hospital service company, or other
22 legal entity engaged in the business of insurance in this state.
23 The term includes an affiliate as described by [~~Section 2, Article~~
24 ~~21.49-1, or~~] Section 823.003(a) if that affiliate is authorized to
25 write and is writing insurance in this state.

26 SECTION 2B.006. Section 38.051, Insurance Code, is amended
27 to correct cross-references to read as follows:

1 Sec. 38.051. DEFINITION. In this subchapter, "health
2 benefit plan provider" means an insurance company, group hospital
3 service corporation, or health maintenance organization that
4 issues:

5 (1) an individual, group, blanket, or franchise
6 insurance policy, an insurance agreement, a group hospital service
7 contract, or an evidence of coverage, that provides benefits for
8 medical or surgical expenses incurred as a result of an accident or
9 sickness; or

10 (2) a long-term care benefit plan [~~insurance policy~~],
11 as defined by Section 1651.003 [~~2, Article 3.70-12~~].

12 SECTION 2B.007. Section 38.101(2), Insurance Code, is
13 amended to correct cross-references to read as follows:

14 (2) "Health benefit plan coverage" means a group
15 policy, contract, or certificate of health insurance or benefits
16 delivered, issued for delivery, or renewed in this state by:

17 (A) an insurance company subject to a law
18 described by Section 841.002 [~~Chapter 3~~];

19 (B) a group hospital service corporation under
20 Chapter 842 [~~20~~];

21 (C) a health maintenance organization under
22 Section 1367.053, Subchapter A, Chapter 1452, Subchapter B, Chapter
23 1507, Chapters 222, 251, and 258, as applicable to a health
24 maintenance organization, and Chapters 843, 1271, and 1272 [~~the~~
25 ~~Texas Health Maintenance Organization Act (Chapter 20A, Vernon's~~
26 ~~Texas Insurance Code)~~]; or

27 (D) a self-insurance trust or mechanism

1 providing health care benefits.

2 SECTION 2B.008. Section 38.152, Insurance Code, is amended
3 to correct a cross-reference to read as follows:

4 Sec. 38.152. EXEMPTION. This subchapter does not apply to
5 a farm mutual insurance company or to a county mutual fire insurance
6 company writing exclusively industrial fire insurance as described
7 by Section 912.310 [~~Article 17.02~~].

8 SECTION 2B.009. Section 38.252(c), Insurance Code, is
9 amended to correct a cross-reference to read as follows:

10 (c) The commissioner shall not require reporting of data:

11 (1) that could reasonably be used to identify a
12 specific enrollee in a health benefit plan;

13 (2) in any way that violates confidentiality
14 requirements of state or federal law applicable to an enrollee in a
15 health benefit plan; or

16 (3) in which the health maintenance organization
17 operating under [~~the Texas Health Maintenance Organization Act~~ (
18 Section 1367.053, Subchapter A, Chapter 1452, Subchapter B, Chapter
19 1507, Chapter 222, 251, or 258, as applicable to a health
20 maintenance organization, Chapter 843, Chapter 1271, and Chapter
21 1272 [~~20A, Vernon's Texas Insurance Code~~)] does not directly
22 process the claim or does not receive complete and accurate
23 encounter data.

24 SECTION 2B.010. Section 82.002(a), Insurance Code, is
25 amended to correct cross-references to read as follows:

26 (a) This chapter applies to each company regulated by the
27 commissioner, including:

1 (1) a domestic or foreign, stock or mutual, life,
2 health, or accident insurance company;

3 (2) a domestic or foreign, stock or mutual, fire or
4 casualty insurance company;

5 (3) a Mexican casualty company;

6 (4) a domestic or foreign Lloyd's plan insurer;

7 (5) a domestic or foreign reciprocal or interinsurance
8 exchange;

9 (6) a domestic or foreign fraternal benefit society;

10 (7) a domestic or foreign title insurance company;

11 (8) an attorney's title insurance company;

12 (9) a stipulated premium insurance company;

13 (10) a nonprofit legal service corporation;

14 (11) a health maintenance organization;

15 (12) a statewide mutual assessment company;

16 (13) a local mutual aid association;

17 (14) a local mutual burial association;

18 (15) an association exempt under Section 887.102
19 [~~Article 14.17~~];

20 (16) a nonprofit hospital, medical, or dental service
21 corporation, including a company subject to Chapter 842 [~~20~~];

22 (17) a county mutual insurance company; and

23 (18) a farm mutual insurance company.

24 SECTION 2B.011. Section 83.001(4), Insurance Code, is
25 amended to correct cross-references to read as follows:

26 (4) "Unfair act" means an unfair method of
27 competition, an unfair or deceptive act or practice, or an unfair

1 claim settlement practice as defined under Chapter 541 [~~Article~~
2 ~~21.21~~] or 542 [~~21.21-2~~] or a rule adopted under either chapter
3 [~~article~~].

4 SECTION 2B.012. Section 83.002(a), Insurance Code, is
5 amended to correct cross-references to read as follows:

6 (a) This chapter applies to each company regulated by the
7 commissioner, including:

8 (1) a domestic or foreign, stock or mutual, life,
9 health, or accident insurance company;

10 (2) a domestic or foreign, stock or mutual, fire or
11 casualty insurance company;

12 (3) a Mexican casualty company;

13 (4) a domestic or foreign Lloyd's plan insurer;

14 (5) a domestic or foreign reciprocal or interinsurance
15 exchange;

16 (6) a domestic or foreign fraternal benefit society;

17 (7) a domestic or foreign title insurance company;

18 (8) an attorney's title insurance company;

19 (9) a stipulated premium insurance company;

20 (10) a nonprofit legal service corporation;

21 (11) a statewide mutual assessment company;

22 (12) a local mutual aid association;

23 (13) a local mutual burial association;

24 (14) an association exempt under Section 887.102
25 [~~Article 14.17~~];

26 (15) a nonprofit hospital, medical, or dental service
27 corporation, including a company subject to Chapter 842 [~~20~~];

1 (16) a county mutual insurance company; and

2 (17) a farm mutual insurance company.

3 SECTION 2B.013. Section 83.051(a), Insurance Code, is
4 amended to correct cross-references to read as follows:

5 (a) The commissioner ex parte may issue an emergency cease
6 and desist order if:

7 (1) the commissioner believes that:

8 (A) an authorized person engaging in the business
9 of insurance is:

10 (i) committing an unfair act; or

11 (ii) in a hazardous condition or a
12 hazardous financial condition under Section 843.406 [~~19, Texas~~
13 ~~Health Maintenance Organization Act (Article 20A.19, Vernon's~~
14 ~~Texas Insurance Code),~~] or Subchapter A, Chapter 404 [~~Article~~
15 ~~1.32~~], as determined by the commissioner; or

16 (B) an unauthorized person:

17 (i) is engaging in the business of
18 insurance in violation of Chapter 101 or in violation of a rule
19 adopted under that chapter; or

20 (ii) is engaging in the business of
21 insurance in violation of Chapter 101 and is committing an unfair
22 act; and

23 (2) it appears to the commissioner that the alleged
24 conduct:

25 (A) is fraudulent;

26 (B) is hazardous or creates an immediate danger
27 to the public safety; or

1 (C) is causing or can be reasonably expected to
2 cause public injury that:

- 3 (i) is likely to occur at any moment;
4 (ii) is incapable of being repaired or
5 rectified; and
6 (iii) has or is likely to have influence or
7 effect.

8 SECTION 2B.014. Section 101.001(a), Insurance Code, is
9 amended to correct a cross-reference to read as follows:

10 (a) It is a state concern that many residents of this state
11 hold insurance policies issued by persons or insurers who are not
12 authorized to do insurance business in this state and who are not
13 qualified as eligible surplus lines insurers under Chapter 981
14 [~~Article 1.14-2~~]. These residents face often insurmountable
15 obstacles in asserting legal rights under the policies in foreign
16 forums under unfamiliar laws and rules of practice.

17 SECTION 2B.015. Section 101.002(2), Insurance Code, is
18 amended to correct a cross-reference to read as follows:

19 (2) "Unfair act" means an unfair method of competition
20 or an unfair or deceptive act or practice as defined under Chapter
21 541 [~~Article 21.21~~] or a rule adopted under that chapter [~~article~~].

22 SECTION 2B.016. Section 101.052, Insurance Code, is amended
23 to correct cross-references to read as follows:

24 Sec. 101.052. ADVERTISING RELATING TO MEDICARE SUPPLEMENT
25 BENEFIT PLANS [~~POLICIES~~]. With respect to a Medicare supplement
26 benefit plan [~~policy~~] authorized under Chapter 1652 [~~Article 3.74~~],
27 the business of insurance in this state includes using, creating,

1 publishing, mailing, or disseminating in this state an
2 advertisement relating to an act that constitutes the business of
3 insurance under Section 101.051 unless the advertisement is used,
4 created, published, mailed, or disseminated on behalf of an insurer
5 or person who:

6 (1) is authorized under this code to engage in the
7 business of insurance in this state;

8 (2) has actual knowledge of the content of the
9 advertisement;

10 (3) has authorized the advertisement to be used,
11 created, published, mailed, or disseminated on that insurer's or
12 person's behalf; and

13 (4) is clearly identified by name in the advertisement
14 as the sponsor of the advertisement.

15 SECTION 2B.017. Section 101.101, Insurance Code, is amended
16 to correct a cross-reference to read as follows:

17 Sec. 101.101. DEFINITION. In this subchapter, "person"
18 means an individual or entity that is a person for purposes of
19 Section 541.002 [~~2(a), Article 21.21~~].

20 SECTION 2B.018. Section 101.203(c), Insurance Code, is
21 amended to correct cross-references to read as follows:

22 (c) This section does not apply to:

23 (1) a transaction in this state that:

24 (A) involves a policy that:

25 (i) is lawfully solicited, negotiated,
26 written, and delivered outside this state; and

27 (ii) covers, at the time the policy is

1 issued, only subjects of insurance that are not resident, located,
2 or expressly to be performed in this state; and

3 (B) takes place after the policy is issued; or

4 (2) surplus lines insurance procured through eligible
5 surplus lines insurers [~~carriers~~] as defined by Section 981.002
6 [~~Article 1.14-2~~].

7 SECTION 2B.019. Section 101.301(b), Insurance Code, is
8 amended to correct cross-references to read as follows:

9 (b) This section does not apply to:

10 (1) a transaction described by Section 101.053(b)(4);
11 or

12 (2) surplus lines insurance procured through eligible
13 surplus lines insurers [~~carriers~~] as defined by Section 981.002
14 [~~Article 1.14-2~~].

15 PART C. CROSS-REFERENCE UPDATES: TITLE 3, INSURANCE CODE

16 SECTION 2C.001. Section 252.002(b), Insurance Code, is
17 amended to correct a cross-reference to read as follows:

18 (b) The commissioner shall annually adjust the rate of
19 assessment of the maintenance tax so that the tax imposed that year,
20 together with any unexpended funds produced by the tax, produces
21 the amount the commissioner determines is necessary to pay the
22 expenses during the succeeding year of regulating all classes of
23 insurance specified under:

24 (1) Chapters 1807, 2001-2006, 2171, 6001, 6002, and
25 6003;

26 (2) Subchapter C, Chapter 5;

27 (3) Subchapter H, Chapter 544;

1 (4) Subchapter D, Chapter 1806;

2 (5) Section 403.002;

3 (6) Sections 417.007, 417.008, and 417.009,
4 Government Code; and

5 (7) Chapter 2154, Occupations Code.

6 SECTION 2C.002. Section 252.003, Insurance Code, is amended
7 to correct a cross-reference to read as follows:

8 Sec. 252.003. PREMIUMS SUBJECT TO TAXATION. An insurer
9 shall pay maintenance taxes under this chapter on the correctly
10 reported gross premiums collected from writing insurance in this
11 state against loss or damage by:

12 (1) bombardment;

13 (2) civil war or commotion;

14 (3) cyclone;

15 (4) earthquake;

16 (5) excess or deficiency of moisture;

17 (6) explosion as defined by Section 2002.006(b)
18 [Article 5.52];

19 (7) fire;

20 (8) flood;

21 (9) frost and freeze;

22 (10) hail;

23 (11) insurrection;

24 (12) invasion;

25 (13) lightning;

26 (14) military or usurped power;

27 (15) an order of a civil authority made to prevent the

1 spread of a conflagration, epidemic, or catastrophe;

2 (16) rain;

3 (17) riot;

4 (18) the rising of the waters of the ocean or its
5 tributaries;

6 (19) smoke or smudge;

7 (20) strike or lockout;

8 (21) tornado;

9 (22) vandalism or malicious mischief;

10 (23) volcanic eruption;

11 (24) water or other fluid or substance resulting from
12 the breakage or leakage of sprinklers, pumps, or other apparatus
13 erected for extinguishing fires, water pipes, or other conduits or
14 containers;

15 (25) weather or climatic conditions; or

16 (26) windstorm.

17 SECTION 2C.003. Section 253.002(b), Insurance Code, is
18 amended to correct a cross-reference to read as follows:

19 (b) The commissioner shall annually adjust the rate of
20 assessment of the maintenance tax so that the tax imposed that year,
21 together with any unexpended funds produced by the tax, produces
22 the amount the commissioner determines is necessary to pay the
23 expenses during the succeeding year of regulating all classes of
24 insurance specified under Section 253.003 [~~Subchapter B, Chapter~~
25 ~~5~~].

26 SECTION 2C.004. Section 253.003, Insurance Code, is amended
27 to correct a cross-reference to read as follows:

1 Sec. 253.003. PREMIUMS SUBJECT TO TAXATION. An insurer
2 shall pay maintenance taxes under this chapter on the correctly
3 reported gross premiums from writing a class of insurance specified
4 under:

5 (1) Chapters 2008, 2251, and 2252;

6 (2) Subchapter B, Chapter 5;

7 (3) Subchapter C, Chapter 1806;

8 (4) Subchapter A, Chapter 2301; and

9 (5) Subtitle B, Title 10.

10 SECTION 2C.005. Section 255.003(a), Insurance Code, is
11 amended to correct a cross-reference to read as follows:

12 (a) An insurer shall pay maintenance taxes under this
13 chapter on the correctly reported gross workers' compensation
14 insurance premiums from writing workers' compensation insurance in
15 this state, including the modified annual premium of a policyholder
16 that purchases an optional deductible plan under Subchapter E,
17 Chapter 2053 [~~Article 5.55C~~].

18 SECTION 2C.006. Section 256.002(b), Insurance Code, is
19 amended to correct a cross-reference to read as follows:

20 (b) The commissioner shall annually adjust the rate of
21 assessment of the maintenance tax so that the tax imposed that year,
22 together with any unexpended funds produced by the tax, produces
23 the amount the commissioner determines is necessary to pay the
24 expenses during the succeeding year of regulating all classes of
25 insurance specified under Chapter 2101 [~~Subchapter K, Chapter 5~~].

26 SECTION 2C.007. Section 256.003, Insurance Code, is amended
27 to correct a cross-reference to read as follows:

1 Sec. 256.003. PREMIUMS SUBJECT TO TAXATION. An insurer
2 shall pay maintenance taxes under this chapter on the correctly
3 reported gross premiums from writing a class of insurance specified
4 under Chapter 2101 [~~Subchapter K, Chapter 5~~].

5 SECTION 2C.008. Section 261.003(b), Insurance Code, is
6 amended to correct a cross-reference to read as follows:

7 (b) The commissioner shall annually adjust the rate of
8 assessment of the maintenance tax so that the tax imposed that year,
9 together with any unexpended funds produced by the tax, produces
10 the amount the commissioner determines is necessary to pay the
11 expenses during the succeeding year of regulating all classes of
12 insurance specified under Chapter 2204 [~~Article 1.14-3~~].

13 SECTION 2C.009. Section 261.004, Insurance Code, is amended
14 to correct a cross-reference to read as follows:

15 Sec. 261.004. PREMIUMS SUBJECT TO TAXATION. The exchange
16 shall pay maintenance taxes under this chapter on the correctly
17 reported gross premiums paid through the exchange on all classes of
18 insurance specified under Chapter 2204 [~~Article 1.14-3~~].

19 PART D. CROSS-REFERENCE UPDATES: TITLE 5, INSURANCE CODE

20 SECTION 2D.001. Section 501.158, Insurance Code, is amended
21 to correct cross-references to read as follows:

22 Sec. 501.158. CONFIDENTIALITY REQUIREMENTS.
23 Confidentiality requirements applicable to examination reports
24 under Sections 401.105 and 401.106 [~~Article 1.18~~] and to the
25 commissioner under Section 441.201 [~~3A, Article 21.28-A~~] apply to
26 the public counsel.

27 SECTION 2D.002. Section 501.204(a), Insurance Code, is

1 amended to correct a cross-reference and to conform more closely to
2 the source law from which the section is derived to read as follows:

3 (a) This section applies to each insurer authorized to
4 engage in business in this state under:

- 5 (1) [~~Chapter 25,~~
6 [~~2~~] Chapter 841;
7 (2) [~~3~~] Chapter 842;
8 (3) Section 1367.053, Subchapter A, Chapter 1452,
9 Subchapter B, Chapter 1507, Chapter 222, 251, or 258, as applicable
10 to a health maintenance organization, [~~4~~] Chapter 843, Chapter
11 1271, or Chapter 1272;
12 (4) [~~5~~] Chapter 882;
13 (5) [~~6~~] Chapter 884;
14 (6) [~~7~~] Chapter 885;
15 (7) [~~8~~] Chapter 887;
16 (8) [~~9~~] Chapter 888;
17 (9) [~~10~~] Chapter 961;
18 (10) Chapter 962;
19 (11) Chapter 982;
20 (12) Subchapter B, Chapter 1103;
21 (13) Subchapter A, Chapter 1104;
22 (14) Chapter 1201, or a provision listed in Section
23 1201.005;
24 (15) Chapter 1551;
25 (16) Chapter 1578; or
26 (17) Chapter 1601.

27 SECTION 2D.003. Sections 523.051(a) and (c), Insurance

1 Code, are amended to correct a cross-reference to read as follows:

2 (a) The market assistance program is a voluntary program
3 designed to assist applicants for insurance and insureds in this
4 state in obtaining residential property insurance coverage in
5 underserved areas. The commissioner by rule shall designate
6 underserved areas using the standards described by Section 2004.002
7 [~~1, Article 5.35-3~~].

8 (c) The market assistance program may not provide
9 assistance regarding windstorm and hail insurance coverage for a
10 risk eligible for that coverage under Chapter 2210 [~~Article 21.49~~].

11 SECTION 2D.004. Section 523.202(b), Insurance Code, is
12 amended to correct a cross-reference to read as follows:

13 (b) After each review, the executive committee shall report
14 to the commissioner regarding:

15 (1) the need to continue operating the voluntary
16 market assistance program;

17 (2) the need to establish a mandatory market
18 assistance program;

19 (3) the need to establish a FAIR (Fair Access to
20 Insurance Requirements) Plan under Chapter 2211 [~~Article 21.49A~~];
21 or

22 (4) other recommendations the executive committee
23 considers appropriate.

24 SECTION 2D.005. Section 541.005(a), Insurance Code, is
25 amended to correct cross-references to read as follows:

26 (a) A risk retention group or purchasing group described by
27 Subchapter B, Chapter 2201, or [~~as those terms are defined by~~]

1 Section 2201.251 that is [~~2, Article 21.54,~~] not chartered in this
2 state may not engage in a trade practice in this state that is
3 defined as unlawful under this chapter.

4 SECTION 2D.006. Section 541.454(a), Insurance Code, is
5 amended to correct cross-references to read as follows:

6 (a) Civil penalties, premium refunds, judgments,
7 compensatory judgments, individual recoveries, orders, class
8 action awards, costs, damages, or attorney's fees assessed or
9 awarded under this chapter:

10 (1) may be paid only from the capital or surplus funds
11 of the offending insurer; and

12 (2) may not take precedence over, be in priority to, or
13 in any other manner apply to:

14 (A) Chapter 462 or 463 [~~Article 21.28-C or~~
15 ~~21.28-D~~] or any other insurance guaranty act; or

16 (B) Chapter 422 [~~Article 21.39-A~~].

17 SECTION 2D.007. Section 542.052, Insurance Code, is amended
18 to correct a cross-reference to read as follows:

19 Sec. 542.052. APPLICABILITY OF SUBCHAPTER. This subchapter
20 applies to any insurer authorized to engage in business as an
21 insurance company or to provide insurance in this state, including:

22 (1) a stock life, health, or accident insurance
23 company;

24 (2) a mutual life, health, or accident insurance
25 company;

26 (3) a stock fire or casualty insurance company;

27 (4) a mutual fire or casualty insurance company;

- 1 (5) a Mexican casualty insurance company;
- 2 (6) a Lloyd's plan;
- 3 (7) a reciprocal or interinsurance exchange;
- 4 (8) a fraternal benefit society;
- 5 (9) a stipulated premium company;
- 6 (10) a nonprofit legal services corporation;
- 7 (11) a statewide mutual assessment company;
- 8 (12) a local mutual aid association;
- 9 (13) a local mutual burial association;
- 10 (14) an association exempt under Section 887.102;
- 11 (15) a nonprofit hospital, medical, or dental service
12 corporation, including a corporation subject to Chapter 842;
- 13 (16) a county mutual insurance company;
- 14 (17) a farm mutual insurance company;
- 15 (18) a risk retention group;
- 16 (19) a purchasing group;
- 17 (20) an eligible surplus lines insurer; and
- 18 (21) except as provided by Section 542.053(b), a
19 guaranty association operating under Chapter 462 or 463 [~~Article~~
20 ~~21.28-C or 21.28-D~~].

21 SECTION 2D.008. Sections 542.053(a) and (b), Insurance
22 Code, are amended to correct cross-references to read as follows:

- 23 (a) This subchapter does not apply to:
 - 24 (1) workers' compensation insurance;
 - 25 (2) mortgage guaranty insurance;
 - 26 (3) title insurance;
 - 27 (4) fidelity, surety, or guaranty bonds;

1 (5) marine insurance as defined by Section 1807.001
2 [~~Article 5.53~~]; or

3 (6) a guaranty association created and operating under
4 Chapter 2602.

5 (b) A guaranty association operating under Chapter 462 or
6 463 [~~Article 21.28-C or 21.28-D~~] is not subject to the damage
7 provisions of Section 542.060.

8 SECTION 2D.009. Section 542.102(b), Insurance Code, is
9 amended to correct a cross-reference to read as follows:

10 (b) This section does not apply to a workers' compensation
11 insurance policy subject to Section 2051.151 [~~Article 5.65A~~].

12 SECTION 2D.010. Section 542.152, Insurance Code, is amended
13 to correct a cross-reference to read as follows:

14 Sec. 542.152. EXCEPTION. This subchapter does not apply
15 to:

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

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

19 (3) marine insurance as defined by Section 1807.001
20 [~~Article 5.53~~].

21 SECTION 2D.011. Section 544.301(1), Insurance Code, is
22 amended to correct cross-references to read as follows:

23 (1) "Insurer" means an insurance company, reciprocal
24 or interinsurance exchange, mutual insurance company, capital
25 stock company, county mutual insurance company, farm mutual
26 insurance company, Lloyd's plan, or other legal entity authorized
27 to write residential property insurance in this state. The term

1 includes an affiliate, as described by Section 823.003(a), if that
2 affiliate is authorized to write and is writing residential
3 property insurance in this state. The term does not include:

4 (A) an eligible surplus lines insurer regulated
5 under Chapter 981;

6 (B) the Texas Windstorm Insurance Association
7 under Chapter 2210 [~~Article 21.49~~]; or

8 (C) the FAIR Plan Association under Chapter 2211
9 [~~Article 21.49A~~].

10 SECTION 2D.012. Section 551.001, Insurance Code, is amended
11 to correct cross-references by amending Subsection (a) and adding
12 Subsection (a-1) to read as follows:

13 (a) The commissioner may, as necessary, adopt and enforce
14 reasonable rules, including notice requirements, relating to the
15 cancellation and nonrenewal of any insurance policy regulated by
16 the department under:

17 (1) Chapter 5;

18 (2) Chapter 1804, 1805, 2171, or 2301; or

19 (3) Subtitle C, D, E, or F, Title 10 [~~, other than:~~

20 [~~(1) a policy subject to Subchapter B or C; or~~

21 [~~(2) a marine insurance policy other than inland~~
22 ~~marine]].~~

23 (a-1) Notwithstanding Subsection (a), Subsection (a) does
24 not apply to:

25 (1) an insurance policy subject to Subchapter B or C of
26 this chapter; or

27 (2) a marine insurance policy other than inland

1 marine.

2 SECTION 2D.013. Sections 551.107(b) and (e), Insurance
3 Code, are amended to correct cross-references to read as follows:

4 (b) A claim under this section does not include a claim:

5 (1) resulting from a loss caused by natural causes;

6 (2) that is filed but is not paid or payable under the
7 policy; or

8 (3) that an insurer is prohibited from using under
9 Section 544.353 [~~3, Article 5.35-4~~].

10 (e) An insurer may notify an insured who has filed two
11 claims in a period of less than three years that the insurer may
12 refuse to renew the policy if the insured files a third claim during
13 the three-year period. If the insurer does not notify the insured
14 in accordance with this subsection, the insurer may not refuse to
15 renew the policy because of claims. The notice form must:

16 (1) list the policyholder's claims; and

17 (2) contain the sentence: "The filing by you of
18 another claim, except for a claim resulting from a loss caused by
19 natural causes, a claim filed but not paid or payable under the
20 policy under which it was filed, or an appliance-related claim that
21 we are prohibited from using under Section 544.353 [~~3, Article~~
22 ~~5.35-4~~], Texas Insurance Code, could cause us to refuse to renew
23 your policy."

24 SECTION 2D.014. Section 553.004(a), Insurance Code, is
25 amended to correct a cross-reference to read as follows:

26 (a) If the commissioner considers it necessary, the
27 commissioner may initiate an examination of an insurer under

1 Sections 401.051, 401.052, and 401.054-401.062 [Article 1.15].

2 SECTION 2D.015. Section 558.001, Insurance Code, is amended
3 to correct a cross-reference to read as follows:

4 Sec. 558.001. DEFINITION. In this chapter, "insurer" means
5 an insurance company or other entity authorized to engage in the
6 business of insurance in this state. The term includes:

- 7 (1) a stock life, health, or accident insurance
8 company;
- 9 (2) a mutual life, health, or accident insurance
10 company;
- 11 (3) a stock fire or casualty insurance company;
- 12 (4) a mutual fire or casualty insurance company;
- 13 (5) a Mexican casualty insurance company;
- 14 (6) a farm mutual insurance company;
- 15 (7) a county mutual insurance company;
- 16 (8) a Lloyd's plan;
- 17 (9) a reciprocal or insurance exchange;
- 18 (10) a fraternal benefit society;
- 19 (11) a stipulated premium company;
- 20 (12) a nonprofit legal services corporation;
- 21 (13) a statewide mutual assessment company;
- 22 (14) a local mutual aid association;
- 23 (15) a local mutual burial association;
- 24 (16) an association exempt under Section 887.102;
- 25 (17) a nonprofit hospital, medical, or dental service
26 corporation, including a corporation subject to Chapter 842;
- 27 (18) a risk retention group;

- 1 (19) a purchasing group;
- 2 (20) an eligible surplus lines insurer; and
- 3 (21) a guaranty association operating under Chapter
- 4 462 or 463 [~~Article 21.28-C or 21.28-D~~].

5 SECTION 2D.016. Section 558.002(c), Insurance Code, is

6 amended to correct cross-references to read as follows:

7 (c) A guaranty association shall promptly refund any

8 unearned premium as described by Subchapter E, Chapter 462 [~~Section~~

9 ~~5(8), Article 21.28-C~~], or Sections 463.003(9) [~~5(10)~~] and 463.259

10 [~~8(n), Article 21.28-D~~].

11 SECTION 2D.017. Section 706.001(a), Insurance Code, is

12 amended to correct a cross-reference to read as follows:

13 (a) The definitions adopted under Sections 2251.002 and

14 2301.002 and the terms described by Sections 2251.003 and 2301.003

15 [~~Article 5.13-2~~] apply to this chapter.

16 SECTION 2D.018. Section 706.004, Insurance Code, is amended

17 to correct a cross-reference to read as follows:

18 Sec. 706.004. RATES AND FORMS. Notwithstanding any other

19 law, rates and forms for insurance coverage issued under this

20 chapter are governed by:

- 21 (1) Subchapters A-E, Chapter 2251;
- 22 (2) Subchapter A, Chapter 2301; and
- 23 (3) Article 5.13-2.

24 PART E. CROSS-REFERENCE UPDATES: TITLE 6, INSURANCE CODE

25 SECTION 2E.001. Section 802.056, Insurance Code, is amended

26 to correct cross-references to read as follows:

27 Sec. 802.056. STATUS OF REPORTS AND OTHER INFORMATION. A

1 report or any other information resulting from the collection,
2 review, analysis, and distribution of information developed from
3 the filing of annual statement convention blanks and provided to
4 the department by the National Association of Insurance
5 Commissioners is considered part of the process of examination of
6 insurance companies under this code, including Chapters 86 and 401
7 ~~[Articles 1.15-1.19]~~.

8 SECTION 2E.002. Section 803.009, Insurance Code, is amended
9 to correct cross-references to read as follows:

10 Sec. 803.009. CONFLICTING PROVISIONS. This chapter
11 prevails over a conflicting provision of any other law of this
12 state, including:

13 (1) Chapters 221, 222, and 223;

14 (2) Sections 401.151, 401.152, 401.155, and 401.156;

15 and

16 (3) Section 171.0525, Tax Code ~~[Articles 1.16, 4.10,~~
17 ~~4.11, and 9.59]~~.

18 SECTION 2E.003. Section 804.104, Insurance Code, is amended
19 to correct a cross-reference to read as follows:

20 Sec. 804.104. RISK RETENTION GROUP NOT CHARTERED IN THIS
21 STATE. A risk retention group that is not chartered but that is
22 registered in this state under Section 2201.152 ~~[4(b)(3), Article~~
23 ~~21.54]~~, must designate the commissioner as its agent for service of
24 process and receipt of legal documents.

25 SECTION 2E.004. Section 804.201(a), Insurance Code, is
26 amended to correct a cross-reference to read as follows:

27 (a) Process served by serving the commissioner under this

1 chapter must be directed to the defendant and include:

2 (1) for an unauthorized person or insurer, the name
3 and address of the person or insurer to be served;

4 (2) for a risk retention group, the name and address of
5 the group to be served;

6 (3) for a surplus lines insurer, the name and address
7 of the insurer to be served;

8 (4) for an unincorporated association, trust, or other
9 organization formed under Chapter 1505 [~~Article 3.71~~], the name and
10 address of the association, trust, or organization; or

11 (5) for an authorized company, the name and address of
12 the company as it appears in the department records.

13 SECTION 2E.005. Section 822.056(e), Insurance Code, is
14 amended to correct a cross-reference to read as follows:

15 (e) If all of the authorized shares of stock without par
16 value are not subscribed and paid for when the charter is granted or
17 the amendment is filed, respectively, the insurance company shall
18 file with the department a certificate authenticated by a majority
19 of the directors stating the number of shares without par value
20 issued and the consideration received for those shares. An
21 insurance company may issue and dispose of those remaining
22 authorized shares for money or an instrument authorized for minimum
23 capital under:

24 (1) a provision of Subchapter B, Chapter 424, other
25 than Section 424.052, 424.072, or 424.073; and

26 (2) Section 822.204 [~~and Article 2.10~~].

27 SECTION 2E.006. Sections 822.061(a) and (b), Insurance

1 Code, are amended to correct a cross-reference to read as follows:

2 (a) On receipt of a charter fee in the amount determined
3 under Chapter 202 [~~Article 4.07~~], the commissioner shall examine
4 the articles of incorporation filed with the department under
5 Section 822.060 and any certificate filed under Section
6 822.057(a)(4).

7 (b) If the commissioner approves the articles of
8 incorporation and, if applicable, the certificate filed under
9 Section 822.057(a)(4), the commissioner shall certify and file the
10 approved documents with the department records and, on receipt of a
11 fee in the amount determined under Chapter 202 [~~Article 4.07~~], the
12 commissioner shall issue a certified copy of the charter to the
13 incorporators.

14 SECTION 2E.007. Section 822.155, Insurance Code, is amended
15 to correct a cross-reference to read as follows:

16 Sec. 822.155. APPLICATION FOR AMENDMENT OF CHARTER. A
17 domestic insurance company may amend its charter by paying to the
18 commissioner a fee in the amount determined under Chapter 202
19 [~~Article 4.07~~] and by filing with the department:

20 (1) an application for a charter amendment on the form
21 and containing the information prescribed by the commissioner; and

22 (2) the company's proposed amendment.

23 SECTION 2E.008. Sections 822.158(a) and (e), Insurance
24 Code, are amended to correct cross-references to read as follows:

25 (a) Not later than the 60th day after the date the
26 application under Section 822.155 is filed, the commissioner shall
27 determine whether:

1 (1) the proposed capital structure of the insurance
2 company meets the requirements of this code;

3 (2) the officers, directors, and managing head of the
4 insurance company have sufficient insurance experience, ability,
5 standing, and good record to make success of the company probable;

6 (3) the applicants are acting in good faith;

7 (4) if the proposed amendment relates to a diminution
8 of the insurance company's charter powers with respect to the kinds
9 of insurance business in which the company may be engaged, all
10 liabilities incidental to the exercise of the powers to be
11 eliminated have been terminated or wholly reinsured; and

12 (5) the property involved in an increase of capital or
13 surplus, or both, is:

14 (A) properly valued; and

15 (B) in the form authorized by the following
16 provisions [~~Section 822.204 and Article 2.10~~], to the extent those
17 provisions apply:

18 (i) Subchapter B, Chapter 424, other than
19 Sections 424.052, 424.072, and 424.073; and

20 (ii) Section 822.204.

21 (e) On approval of a certificate required under Section
22 822.156 and receipt of a fee in the amount determined under Chapter
23 202 [~~Article 4.07~~], the commissioner shall issue to the directors a
24 certified copy of an amendment authorizing the issuance of shares
25 of stock without par value that is filed under this section. The
26 amendment is effective on issuance of the certified copy of the
27 amendment.

1 SECTION 2E.009. Section 822.211, Insurance Code, is amended
2 to correct cross-references to read as follows:

3 Sec. 822.211. ACTION OF COMMISSIONER WHEN CAPITAL OR
4 SURPLUS REQUIREMENTS NOT SATISFIED. If an insurance company does
5 not comply with the capital and surplus requirements of this
6 chapter, the commissioner may enter an order prohibiting the
7 company from writing new business and may:

8 (1) place the company under state supervision or
9 conservatorship;

10 (2) declare the company to be in a hazardous condition
11 as provided by Subchapter A, Chapter 404 [~~Article 1.32~~];

12 (3) declare the company to be impaired as provided by
13 Subchapter B, Chapter 404 [~~Section 5, Article 1.10~~]; or

14 (4) apply to the company any other applicable sanction
15 provided by this code.

16 SECTION 2E.010. Section 823.001(c), Insurance Code, is
17 amended to read as follows:

18 (c) The purpose of this chapter [~~article~~] is to promote the
19 public interest by:

20 (1) facilitating the achievement of the objectives
21 described by Subsection (a);

22 (2) requiring disclosure of pertinent information
23 relating to and approval of changes in control of an insurer;

24 (3) requiring disclosure and approval of material
25 transactions and relationships between the insurer and the
26 insurer's affiliates, including certain dividends to shareholders
27 paid by the insurer; and

1 (4) providing standards governing material
2 transactions between the insurer and the insurer's affiliates.

3 SECTION 2E.011. Section 823.353(a), Insurance Code, is
4 amended to correct a cross-reference to read as follows:

5 (a) Each registered insurer that complies with an order
6 under Section 823.351(a) shall pay the expense of the examination
7 in accordance with Sections 401.151, 401.152, 401.155, and 401.156
8 ~~[Article 1.16]~~.

9 SECTION 2E.012. Section 823.451, Insurance Code, is amended
10 to correct cross-references to read as follows:

11 Sec. 823.451. RECEIVERSHIP. If it appears to the
12 commissioner that a person's violation of this chapter so impairs
13 the financial condition of a domestic insurer as to threaten the
14 insurer's insolvency or make the further transaction of the
15 insurer's business hazardous to the insurer's policyholders or
16 creditors or the public, the commissioner may proceed under
17 Chapters 441 and 443 ~~[Articles 21.28 and 21.28-A]~~ to take
18 possession of the insurer's property and conduct the business of
19 the insurer.

20 SECTION 2E.013. Section 824.151(b), Insurance Code, is
21 amended to correct a cross-reference to read as follows:

22 (b) Except as provided by Section 824.152, the provisions of
23 Subchapter D, Chapter 425, ~~[Article 3.39]~~ that limit investments in
24 the corporate stock of another corporation do not apply to a
25 purchase made under this section.

26 SECTION 2E.014. Sections 824.152(d) and (g), Insurance
27 Code, are amended to correct a cross-reference to read as follows:

1 (d) A purchase, offer to purchase, tender offer, request to
2 purchase, or invitation to purchase shares in excess of the limits
3 imposed under Subchapter D, Chapter 425, [Article 3.39] may not be
4 made until it is filed with and approved by the commissioner in
5 accordance with Chapter 823.

6 (g) If the merger or consolidation does not take effect
7 within the period finally determined and extended by the
8 commissioner, the purchasing corporation must sell or otherwise
9 dispose of the purchased shares that exceed the investment
10 limitations imposed under Subchapter D, Chapter 425, [Article 3.39]
11 within six months of the final effective date.

12 SECTION 2E.015. Section 828.051, Insurance Code, is amended
13 to correct cross-references to read as follows:

14 Sec. 828.051. EXCEPTION TO LIMITATION ON PURCHASING SHARES
15 OF OTHER COMPANY. Subchapters C and D, Chapter 425, [Articles 3.33
16 and 3.39] do not apply to a purchase or contract described by
17 Section 828.001 if all requirements of this subchapter are met.

18 SECTION 2E.016. Section 828.054, Insurance Code, is amended
19 to correct cross-references to read as follows:

20 Sec. 828.054. APPROVAL REQUIRED. A purchase, offer to
21 purchase, tender offer, request to purchase, or invitation to
22 purchase shares in excess of the limits imposed under Subchapter C
23 or D, Chapter 425, [Article 3.33 or 3.39] may not be made until it is
24 filed with and approved by the commissioner in accordance with
25 Chapter 823.

26 SECTION 2E.017. Section 828.056(b), Insurance Code, is
27 amended to correct cross-references to read as follows:

1 (b) If the reinsurance agreement does not take effect within
2 the period finally determined and extended by the commissioner, the
3 purchasing company shall sell or otherwise dispose of the purchased
4 shares that exceed the investment limitations imposed under
5 Subchapter C or D, Chapter 425, [Article 3.33 or 3.39] within six
6 months of the final effective date.

7 SECTION 2E.018. Section 841.002, Insurance Code, is amended
8 to correct cross-references to read as follows:

9 Sec. 841.002. APPLICABILITY OF CHAPTER AND OTHER
10 LAW. Except as otherwise expressly provided by this code, each
11 insurance company incorporated or engaging in business in this
12 state as a life insurance company, an accident insurance company, a
13 life and accident insurance company, a health and accident
14 insurance company, or a life, health, and accident insurance
15 company is subject to:

- 16 (1) this chapter;
- 17 (2) Chapter 3;
- 18 (3) Chapters 425 and 492; [and]
- 19 (4) [~~(3)~~] Title 7;
- 20 (5) Sections 1202.051, 1204.151, 1204.153, and
21 1204.154;
- 22 (6) Subchapter A, Chapter 1202, Subchapters A and F,
23 Chapter 1204, Subchapter A, Chapter 1273, Subchapters A, B, and D,
24 Chapter 1355, and Subchapter A, Chapter 1366;
- 25 (7) Subchapter A, Chapter 1507;
- 26 (8) Chapters 1203, 1210, 1251-1254, 1301, 1351, 1354,
27 1359, 1364, 1368, 1505, 1506, 1651, 1652, and 1701; and

1 (9) Chapter 177, Local Government Code.

2 SECTION 2E.019. Section 841.054(c), Insurance Code, is
3 amended to correct a cross-reference to read as follows:

4 (c) At the time of incorporation, the required capital and
5 surplus shall consist only of:

6 (1) United States currency;

7 (2) bonds of the United States, this state, or a county
8 or municipality of this state; or

9 (3) government insured mortgage loans that are
10 authorized by this chapter or Chapter 425 [~~3~~], with not more than 50
11 percent of the required capital invested in first mortgage real
12 property loans.

13 SECTION 2E.020. Section 841.058(a), Insurance Code, is
14 amended to correct a cross-reference to read as follows:

15 (a) To obtain a charter for a domestic insurance company,
16 the incorporators must pay to the department the charter fee in an
17 amount determined under Chapter 202 [~~Article 4.07~~] and file with
18 the department:

19 (1) an application for charter on the form and
20 containing the information prescribed by the commissioner;

21 (2) the company's articles of incorporation; and

22 (3) an affidavit made by two or more of the
23 incorporators that states that:

24 (A) the minimum capital and surplus requirements
25 of Section 841.054 are satisfied;

26 (B) the capital and surplus are the bona fide
27 property of the company; and

1 (C) the information in the articles of
2 incorporation is true and correct.

3 SECTION 2E.021. Section 841.061(c), Insurance Code, is
4 amended to correct a cross-reference to read as follows:

5 (c) If the commissioner does not reject the application
6 under Subsection (b), the commissioner shall approve the
7 application. On approval of an application, the department shall
8 record the information required by Section 841.058 in records
9 maintained for that purpose. On receipt of a fee in the amount
10 determined under Chapter 202 [~~Article 4.07~~], the commissioner shall
11 provide to the incorporators a certified copy of the application,
12 articles of incorporation, and submitted affidavit.

13 SECTION 2E.022. Section 841.207, Insurance Code, is amended
14 to correct a cross-reference to read as follows:

15 Sec. 841.207. ACTIONS OF COMMISSIONER WHEN CAPITAL AND
16 SURPLUS REQUIREMENTS NOT SATISFIED. If an insurance company does
17 not comply with the capital and surplus requirements of this
18 chapter, the commissioner may order the insurance company to cease
19 writing new business and may:

20 (1) place the insurance company under state
21 supervision or conservatorship;

22 (2) declare the insurance company to be in a hazardous
23 condition as provided by Subchapter A, Chapter 404 [~~Article 1.32~~];

24 (3) declare the insurance company to be impaired as
25 provided by Section 841.206; or

26 (4) apply to the insurance company any other
27 applicable sanction provided by this code.

1 SECTION 2E.023. Section 841.255(a), Insurance Code, is
2 amended to correct a cross-reference to read as follows:

3 (a) Not later than March 1 of each year, a domestic
4 insurance company shall:

5 (1) prepare a statement showing the condition of the
6 company on December 31 of the preceding year; and

7 (2) deliver the statement to the department
8 accompanied by a filing fee in the amount determined under Chapter
9 202 [~~Article 4.07~~].

10 SECTION 2E.024. Section 841.257, Insurance Code, is amended
11 to correct cross-references to read as follows:

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

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

18 (2) reinsurance under Sections 492.051(b) and (c) or
19 Chapter 493 [~~Article 5.75-1~~] by a life insurance company authorized
20 to engage in the business of insurance in this state; or

21 (3) reinsurance under Chapter 494 [~~Article 5.75-3~~] by
22 a domestic insurance company.

23 SECTION 2E.025. Section 842.201(c), Insurance Code, is
24 amended to correct a cross-reference to read as follows:

25 (c) The department shall charge a fee in an amount
26 determined under Chapter 202 [~~Article 4.07~~] for filing the
27 statement.

1 SECTION 2E.026. Section 842.209, Insurance Code, is amended
2 to correct cross-references to read as follows:

3 Sec. 842.209. EXAMINATIONS. The following laws [~~Articles~~
4 ~~1.15 and 1.16~~] apply to a group hospital service corporation:

- 5 (1) Subchapter A, Chapter 86; and
6 (2) Sections 401.051, 401.052, 401.054-401.062,
7 401.151, 401.152, 401.155, and 401.156.

8 SECTION 2E.027. Section 842.210, Insurance Code, is amended
9 to correct cross-references to read as follows:

10 Sec. 842.210. LIQUIDATION, REHABILITATION, OR CONSERVATION
11 OF GROUP HOSPITAL SERVICE CORPORATION. The dissolution,
12 liquidation, rehabilitation, or conservation of a group hospital
13 service corporation is subject to Chapters 441 and 443 [~~Articles~~
14 ~~21.28 and 21.28-A~~].

15 SECTION 2E.028. Section 842.253, Insurance Code, is amended
16 to correct a cross-reference to read as follows:

17 Sec. 842.253. POLICY, CERTIFICATE, AND APPLICATION
18 FORMS. A policy, certificate, or application form used by a group
19 hospital service corporation is subject to Chapter 1701 [~~Article~~
20 ~~3.42~~].

21 SECTION 2E.029. Sections 843.002(20), (28), and (30),
22 Insurance Code, are amended to correct cross-references to read as
23 follows:

24 (20) "Net worth" means the amount by which total
25 liabilities, excluding liability for subordinated debt issued in
26 compliance with Chapter 427 [~~Article 1.39~~], is exceeded by total
27 admitted assets.

1 (28) "Uncovered expenses" means the estimated amount
2 of administrative expenses and the estimated cost of health care
3 services that are not guaranteed, insured, or assumed by a person
4 other than the health maintenance organization. The term does not
5 include the cost of health care services if the physician or
6 provider agrees in writing that an enrollee is not liable,
7 assessable, or in any way subject to making payment for the services
8 except as described in the evidence of coverage issued to the
9 enrollee under Chapter 1271 [~~Article 20A.09~~]. The term includes
10 any amount due on loans in the next calendar year unless the amount
11 is specifically subordinated to uncovered medical and health care
12 expenses or the amount is guaranteed by a sponsoring organization.

13 (30) "Delegated entity" means an entity, other than a
14 health maintenance organization authorized to engage in business
15 under this chapter, that by itself, or through subcontracts with
16 one or more entities, undertakes to arrange for or provide medical
17 care or health care to an enrollee in exchange for a predetermined
18 payment on a prospective basis and that accepts responsibility for
19 performing on behalf of the health maintenance organization a
20 function regulated by this chapter, Section 1367.053, Subchapter A,
21 Chapter 1452, Subchapter B, Chapter 1507, Chapter 222, 251, or 258,
22 as applicable to a health maintenance organization, or Chapter 1271
23 or 1272 [~~or Chapter 20A~~]. The term does not include:

24 (A) an individual physician; or

25 (B) a group of employed physicians, practicing
26 medicine under one federal tax identification number, whose total
27 claims paid to providers not employed by the group constitute less

1 than 20 percent of the group's total collected revenue computed on a
2 calendar year basis.

3 SECTION 2E.030. Section 843.006(a), Insurance Code, is
4 amended to correct a cross-reference to read as follows:

5 (a) Except as provided by Subsection (b), each application,
6 filing, and report required under this chapter, Section 1367.053,
7 Subchapter A, Chapter 1452, Subchapter B, Chapter 1507, Chapter
8 222, 251, or 258, as applicable to a health maintenance
9 organization, or Chapter 1271 or 1272 [~~or Chapter 20A~~] is a public
10 document.

11 SECTION 2E.031. Section 843.007(a), Insurance Code, is
12 amended to correct a cross-reference to read as follows:

13 (a) Any information relating to the diagnosis, treatment,
14 or health of an enrollee or applicant obtained by a health
15 maintenance organization from the enrollee or applicant or from a
16 physician or provider shall be held in confidence and may not be
17 disclosed to any person except:

18 (1) to the extent necessary to accomplish the purposes
19 of this chapter or:

20 (A) Section 1367.053;

21 (B) Subchapter A, Chapter 1452;

22 (C) Subchapter B, Chapter 1507;

23 (D) Chapter 222, 251, or 258, as applicable to a
24 health maintenance organization; or

25 (E) Chapter 1271 or 1272 [~~Chapter 20A~~];

26 (2) with the express consent of the enrollee or
27 applicant;

1 (3) in compliance with a statute or court order for the
2 production or discovery of evidence; or

3 (4) in the event of a claim or litigation between the
4 enrollee or applicant and the health maintenance organization in
5 which the information is pertinent.

6 SECTION 2E.032. Section 843.008, Insurance Code, is amended
7 to correct cross-references to read as follows:

8 Sec. 843.008. COSTS OF ADMINISTERING HEALTH MAINTENANCE
9 ORGANIZATION LAWS. Money collected under this chapter and
10 Chapters 222, 251, and 258, as applicable to a health maintenance
11 organization, [Article 20A.33] must be sufficient to administer
12 this chapter and:

13 (1) Section 1367.053;

14 (2) Subchapter A, Chapter 1452;

15 (3) Subchapter B, Chapter 1507;

16 (4) Chapters 222, 251, and 258, as applicable to a
17 health maintenance organization; and

18 (5) Chapters 1271 and 1272 [Chapter 20A].

19 SECTION 2E.033. Sections 843.051(a), (b), and (e),
20 Insurance Code, are amended to correct cross-references to read as
21 follows:

22 (a) Except to the extent that the commissioner determines
23 that the nature of health maintenance organizations, health care
24 plans, or evidences of coverage renders a provision of the
25 following laws clearly inappropriate, Subchapter A, Chapter 542,
26 Subchapters D and E, Chapter 544, and Chapters 541, 543, and 547
27 [Articles 21.21, 21.21A, 21.21-2, 21.21-5, and 21.21-6, as added by

1 ~~Chapter 522, Acts of the 74th Legislature, Regular Session, 1995,~~
2 ~~and the Unauthorized Insurers False Advertising Process Act~~
3 ~~(Article 21.21-1, Vernon's Texas Insurance Code)]~~ apply to:

4 (1) health maintenance organizations that offer
5 basic, limited, and single health care coverages;

6 (2) basic, limited, and single health care plans; and

7 (3) evidences of coverage under basic, limited, and
8 single health care plans.

9 (b) A health maintenance organization is subject to:

10 (1) Chapter 402 [~~Section 3B, Article 3.51-6~~];

11 (2) Chapter 827 and is an authorized insurer for
12 purposes of that chapter; and

13 (3) Subchapter G, Chapter 1251, and Section 1551.064
14 [~~Article 21.49-8~~].

15 (e) Except for Chapter 251, as applicable to a third-party
16 administrator, and Chapters 259, 4151, and 4201 [~~Articles 21.07-6~~
17 ~~and 21.58A~~], insurance laws and group hospital service corporation
18 laws do not apply to a physician or provider. Notwithstanding this
19 subsection, a physician or provider who conducts a utilization
20 review during the ordinary course of treatment of patients under a
21 joint or delegated review agreement with a health maintenance
22 organization on services provided by the physician or provider is
23 not required to obtain certification under Subchapter C, Chapter
24 4201 [~~Section 3, Article 21.58A~~].

25 SECTION 2E.034. Section 843.071(b), Insurance Code, is
26 amended to correct a cross-reference to read as follows:

27 (b) A person may not use "health maintenance organization"

1 or "HMO" in the course of operation unless the person:

- 2 (1) complies with this chapter and:
- 3 (A) Section 1367.053;
- 4 (B) Subchapter A, Chapter 1452;
- 5 (C) Subchapter B, Chapter 1507;
- 6 (D) Chapters 222, 251, and 258, as applicable to
- 7 a health maintenance organization; and
- 8 (E) Chapters 1271 and 1272 [~~Chapter 20A~~]; and
- 9 (2) holds a certificate of authority under this
- 10 chapter.

11 SECTION 2E.035. Section 843.073(b), Insurance Code, is

12 amended to correct a cross-reference to read as follows:

13 (b) Except as provided by Section 843.101 or 843.318(a), a

14 physician or provider that employs or enters into a contractual

15 arrangement with a provider or group of providers to provide basic

16 or limited health care services or a single health care service is

17 subject to this chapter and the following provisions [~~Chapter 20A~~]

18 and is required to obtain a certificate of authority under this

19 chapter:

- 20 (1) Section 1367.053;
- 21 (2) Subchapter A, Chapter 1452;
- 22 (3) Subchapter B, Chapter 1507;
- 23 (4) Chapters 222, 251, and 258, as applicable to a
- 24 health maintenance organization; and
- 25 (5) Chapters 1271 and 1272.

26 SECTION 2E.036. Sections 843.078(j), (m), and (n),

27 Insurance Code, are amended to correct cross-references to read as

1 follows:

2 (j) An application for a certificate of authority must
3 include a description of the procedures and programs to be
4 implemented by the applicant to meet the quality of health care
5 requirements of this chapter and:

- 6 (1) Section 1367.053;
7 (2) Subchapter A, Chapter 1452;
8 (3) Subchapter B, Chapter 1507; and
9 (4) Chapters 1271 and 1272 [~~Chapter 20A~~].

10 (m) An application for a certificate of authority must
11 include documentation demonstrating that the applicant will comply
12 with Section 1271.005(c) [~~Article 20A.097~~].

13 (n) An application for a certificate of authority must
14 include any other information that the commissioner requires to
15 make the determinations required by this chapter and:

- 16 (1) Section 1367.053;
17 (2) Subchapter A, Chapter 1452;
18 (3) Subchapter B, Chapter 1507;
19 (4) Chapters 222, 251, and 258, as applicable to a
20 health maintenance organization; and
21 (5) Chapters 1271 and 1272 [~~Chapter 20A~~].

22 SECTION 2E.037. Section 843.084, Insurance Code, is amended
23 to correct a cross-reference to read as follows:

24 Sec. 843.084. DURATION OF CERTIFICATE OF AUTHORITY. A
25 certificate of authority continues in effect:

- 26 (1) while the certificate holder meets the
27 requirements of this chapter and:

1 (A) Section 1367.053;

2 (B) Subchapter A, Chapter 1452;

3 (C) Subchapter B, Chapter 1507;

4 (D) Chapters 222, 251, and 258, as applicable to
5 a health maintenance organization; and

6 (E) Chapters 1271 and 1272 [~~Chapter 20A~~]; or

7 (2) until the commissioner suspends or revokes the
8 certificate or the commissioner terminates the certificate at the
9 request of the certificate holder.

10 SECTION 2E.038. Section 843.107, Insurance Code, is amended
11 to correct a cross-reference to read as follows:

12 Sec. 843.107. INDEMNITY BENEFITS; POINT-OF-SERVICE
13 PROVISIONS. A health maintenance organization may offer:

14 (1) indemnity benefits covering out-of-area emergency
15 care;

16 (2) indemnity benefits, in addition to those relating
17 to out-of-area and emergency care, provided through an insurer or
18 group hospital service corporation;

19 (3) a point-of-service plan under Subchapter A,
20 Chapter 1273 [~~Article 3.64~~]; or

21 (4) a point-of-service rider under Section 843.108.

22 SECTION 2E.039. Section 843.151, Insurance Code, is amended
23 to correct a cross-reference to read as follows:

24 Sec. 843.151. RULES. The commissioner may adopt reasonable
25 rules as necessary and proper to:

26 (1) implement this chapter and Section 1367.053,
27 Subchapter A, Chapter 1452, Subchapter B, Chapter 1507, Chapters

1 222, 251, and 258, as applicable to a health maintenance
2 organization, and Chapters 1271 and 1272 [Chapter 20A], including
3 rules to:

4 (A) prescribe authorized investments for a
5 health maintenance organization for all investments not otherwise
6 addressed in this chapter;

7 (B) ensure that enrollees have adequate access to
8 health care services; and

9 (C) establish minimum physician-to-patient
10 ratios, mileage requirements for primary and specialty care,
11 maximum travel time, and maximum waiting time for obtaining an
12 appointment; and

13 (2) meet the requirements of federal law and
14 regulations.

15 SECTION 2E.040. Section 843.152, Insurance Code, is amended
16 to correct a cross-reference to read as follows:

17 Sec. 843.152. SUBPOENA AUTHORITY. In implementing this
18 chapter and the following provisions [Chapter 20A], the
19 commissioner may exercise subpoena authority in accordance with
20 Subchapter C, Chapter 36:

21 (1) Section 1367.053;

22 (2) Subchapter A, Chapter 1452;

23 (3) Subchapter B, Chapter 1507;

24 (4) Chapters 222, 251, and 258, as applicable to a
25 health maintenance organization; and

26 (5) Chapters 1271 and 1272.

27 SECTION 2E.041. Section 843.153, Insurance Code, is amended

1 to correct a cross-reference to read as follows:

2 Sec. 843.153. AUTHORITY TO CONTRACT. In performing duties
3 under this chapter and the following provisions [~~Chapter 20A~~], the
4 commissioner may contract with a state agency or, after notice and
5 opportunity for hearing, with a qualified person to make
6 recommendations concerning determinations to be made by the
7 commissioner:

8 (1) Section 1367.053;

9 (2) Subchapter A, Chapter 1452;

10 (3) Subchapter B, Chapter 1507;

11 (4) Chapters 222, 251, and 258, as applicable to a
12 health maintenance organization; and

13 (5) Chapters 1271 and 1272.

14 SECTION 2E.042. Sections 843.155(b) and (c), Insurance
15 Code, are amended to correct cross-references to read as follows:

16 (b) The report shall:

17 (1) be verified by at least two principal officers;

18 (2) be in a form prescribed by the commissioner; and

19 (3) include:

20 (A) a financial statement of the health
21 maintenance organization, including its balance sheet and receipts
22 and disbursements for the preceding calendar year, certified by an
23 independent public accountant;

24 (B) the number of individuals enrolled during the
25 preceding calendar year, the number of enrollees as of the end of
26 that year, and the number of enrollments terminated during that
27 year;

1 (C) updated financial projections for the next
2 calendar year of the type described in Section 843.078(e), until
3 the health maintenance organization has had a net income for 12
4 consecutive months; and

5 (D) other information relating to the
6 performance of the health maintenance organization as necessary to
7 enable the commissioner to perform the commissioner's duties under:

8 (i) this chapter;

9 (ii) Section 1367.053;

10 (iii) Subchapter A, Chapter 1452;

11 (iv) Subchapter B, Chapter 1507;

12 (v) Chapters 222, 251, and 258, as
13 applicable to a health maintenance organization; and

14 (vi) Chapters 1271 and 1272 [~~and Chapter~~
15 ~~20A~~].

16 (c) Sections 36.108 and 201.055 and Chapter 802 [~~and Article~~
17 ~~1.11~~] apply to the annual report of a health maintenance
18 organization.

19 SECTION 2E.043. Sections 843.156(f), (h), and (i),
20 Insurance Code, are amended to correct cross-references to read as
21 follows:

22 (f) The commissioner may examine and use the records of a
23 health maintenance organization, including records of a quality of
24 care assurance program and records of a medical peer review
25 committee, as necessary to implement the purposes of this chapter,
26 Section 1367.053, Subchapter A, Chapter 1452, Subchapter B, Chapter
27 1507, Chapters 222, 251, and 258, as applicable to a health

1 maintenance organization, and Chapters 1271 and 1272 [~~and Chapter~~
 2 ~~20A~~], including commencement of an enforcement action under Section
 3 843.461 or 843.462. Information obtained under this subsection is
 4 confidential and privileged and is not subject to the public
 5 information law, Chapter 552, Government Code, or to subpoena
 6 except as necessary for the commissioner to enforce this chapter,
 7 Section 1367.053, Subchapter A, Chapter 1452, Subchapter B, Chapter
 8 1507, Chapter 222, 251, or 258, as applicable to a health
 9 maintenance organization, or Chapter 1271 or 1272 [~~or Chapter 20A~~].

10 In this subsection, "medical peer review committee" has the meaning
 11 assigned by Section 151.002, Occupations Code.

12 (h) Chapter 86, Section 401.101, and Subchapters B and D,
 13 Chapter 401, [~~Articles 1.04A, 1.15, 1.16, and 1.19~~] apply to a
 14 health maintenance organization, except to the extent that the
 15 commissioner determines that the nature of the examination of a
 16 health maintenance organization renders the applicability of those
 17 provisions clearly inappropriate.

18 (i) Section 38.001, Section 81.003, and Chapter 82 [~~, and~~
 19 ~~Article 1.12~~] apply to a health maintenance organization.

20 SECTION 2E.044. Section 843.157(a), Insurance Code, is
 21 amended to correct cross-references to read as follows:

22 (a) The rehabilitation, liquidation, supervision, or
 23 conservation of a health maintenance organization shall be treated
 24 as the rehabilitation, liquidation, supervision, or conservation
 25 of an insurer and be conducted under the supervision of the
 26 commissioner under Chapter 441 or 443 [~~Article 21.28 or 21.28-A~~],
 27 as appropriate.

1 SECTION 2E.045. Sections 843.204(b) and (c), Insurance
2 Code, are amended to correct cross-references to read as follows:

3 (b) In this chapter, Section 1367.053, Subchapter A,
4 Chapter 1452, Subchapter B, Chapter 1507, Chapters 222, 251, and
5 258, as applicable to a health maintenance organization, and
6 Chapters 1271 and 1272 [~~and Chapter 20A~~], a statement or item of
7 information is:

8 (1) considered to be untrue if the statement or item
9 does not conform to fact in any respect that is or may be
10 significant to an enrollee of, or person considering enrollment in,
11 a health care plan; and

12 (2) considered to be misleading, whether or not the
13 statement or item is literally untrue, if, in the total context in
14 which the statement is made or the item is communicated, the
15 statement or item may be reasonably understood by a reasonable
16 person who does not possess special knowledge regarding health care
17 coverage as indicating:

18 (A) the inclusion of a benefit or advantage that
19 does not exist and that is of possible significance to an enrollee
20 of, or person considering enrollment in, a health care plan; or

21 (B) the absence of an exclusion, limitation, or
22 disadvantage that does exist and that is of possible significance
23 to an enrollee of, or person considering enrollment in, a health
24 care plan.

25 (c) In this chapter, Section 1367.053, Subchapter A,
26 Chapter 1452, Subchapter B, Chapter 1507, Chapters 222, 251, and
27 258, as applicable to a health maintenance organization, and

1 Chapters 1271 and 1272 [~~and Chapter 20A~~], an evidence of coverage is
2 considered to be deceptive if the evidence of coverage, taken as a
3 whole and with consideration given to typography and format as well
4 as language, would cause a reasonable person who does not possess
5 special knowledge regarding health care plans and evidences of
6 coverage for health care plans to expect charges or benefits,
7 services, or other advantages that the evidence of coverage does
8 not provide or that the health care plan issuing the evidence of
9 coverage does not regularly make available for enrollees covered
10 under the evidence of coverage.

11 SECTION 2E.046. Sections 843.261(a), (c), and (d),
12 Insurance Code, are amended to correct cross-references to read as
13 follows:

14 (a) A health maintenance organization shall implement and
15 maintain an internal appeal system that:

16 (1) provides reasonable procedures for the resolution
17 of an oral or written appeal concerning dissatisfaction or
18 disagreement with an adverse determination; and

19 (2) includes procedures for notification, review, and
20 appeal of an adverse determination in accordance with Chapter 4201
21 [~~Article 21.58A~~].

22 (c) When an enrollee, a person acting on behalf of an
23 enrollee, or an enrollee's provider of record expresses orally or
24 in writing any dissatisfaction or disagreement with an adverse
25 determination, the health maintenance organization or utilization
26 review agent shall:

27 (1) consider the expression of dissatisfaction or

1 disagreement as an appeal of the adverse determination; and

2 (2) review and resolve the appeal in accordance with
3 Chapter 4201 [~~Article 21.58A~~].

4 (d) A health maintenance organization may integrate its
5 appeal procedures related to adverse determinations with the
6 complaint and appeal procedures established by the health
7 maintenance organization under Section 843.251 and otherwise
8 governed by this subchapter only if the procedures related to
9 adverse determinations comply with this section and Chapter 4201
10 [~~Article 21.58A~~].

11 SECTION 2E.047. Section 843.282(a), Insurance Code, is
12 amended to correct a cross-reference to read as follows:

13 (a) Any person, including a person who has attempted to
14 resolve a complaint through a health maintenance organization's
15 complaint system process and is dissatisfied with the resolution,
16 may submit a complaint to the department alleging a violation of:

- 17 (1) this chapter;
18 (2) Section 1367.053;
19 (3) Subchapter A, Chapter 1452;
20 (4) Subchapter B, Chapter 1507;
21 (5) Chapters 222, 251, and 258, as applicable to a
22 health maintenance organization; or
23 (6) Chapter 1271 or 1272 [~~or Chapter 20A~~].

24 SECTION 2E.048. Section 843.301, Insurance Code, is amended
25 to correct a cross-reference to read as follows:

26 Sec. 843.301. PRACTICE OF MEDICINE NOT AFFECTED. This
27 chapter, Section 1367.053, Subchapter A, Chapter 1452, Subchapter

1 B, Chapter 1507, Chapters 222, 251, and 258, as applicable to a
2 health maintenance organization, and Chapters 1271 and 1272 [~~and~~
3 ~~Chapter 20A]~~ do not:

4 (1) authorize any person, other than a licensed
5 physician or practitioner of the healing arts, acting within the
6 scope of the person's license, to engage directly or indirectly in
7 the practice of medicine or a healing art; or

8 (2) authorize any person to regulate, interfere with,
9 or intervene in any manner in the practice of medicine or a healing
10 art.

11 SECTION 2E.049. Section 843.337(e), Insurance Code, is
12 amended to correct a cross-reference to read as follows:

13 (e) Except as provided by Chapter 1213 [~~Article 21.527~~], a
14 physician or provider may, as appropriate:

15 (1) mail a claim by United States mail, first class, or
16 by overnight delivery service;

17 (2) submit the claim electronically;

18 (3) fax the claim; or

19 (4) hand deliver the claim.

20 SECTION 2E.050. Section 843.352, Insurance Code, is amended
21 to correct a cross-reference to read as follows:

22 Sec. 843.352. CONFLICT WITH OTHER LAW. To the extent of
23 any conflict between this subchapter and Subchapter C, Chapter 1204
24 [~~Article 21.52C~~], this subchapter controls.

25 SECTION 2E.051. Sections 843.407(a), (b), and (c),
26 Insurance Code, are amended to correct cross-references to read as
27 follows:

1 (a) In addition to all other remedies available by law, if
2 the commissioner believes that a health maintenance organization or
3 another person is insolvent or does not maintain the net worth
4 required under Sections 843.403, 843.4031, and 843.404, the
5 commissioner may bring an action in a Travis County district court
6 to be named receiver in accordance with Section 843.157 and Chapter
7 443 [~~Article 21.28~~].

8 (b) The court may:

9 (1) find that a receiver should take charge of the
10 assets of the health maintenance organization; and

11 (2) name the commissioner as the receiver of the
12 health maintenance organization in accordance with Section 843.157
13 and Chapter 443 [~~Article 21.28~~].

14 (c) The operations and business of a health maintenance
15 organization represent the business of insurance for purposes of
16 Section 843.157 and Chapters 441 and 443 [~~Articles 21.28 and~~
17 ~~21.28-A~~].

18 SECTION 2E.052. Section 843.461(b), Insurance Code, is
19 amended to correct cross-references to read as follows:

20 (b) The commissioner may take an enforcement action listed
21 in Subsection (a) against a health maintenance organization if the
22 commissioner finds that the health maintenance organization:

23 (1) is operating in a manner that is:

24 (A) significantly contrary to its basic
25 organizational documents or health care plan; or

26 (B) contrary to the manner described in and
27 reasonably inferred from other information submitted under Section

1 843.078, 843.079, or 843.080;

2 (2) issues an evidence of coverage or uses a schedule
3 of charges for health care services that does not comply with the
4 requirements of Sections 843.346, 1271.001-1271.005, 1271.007,
5 1271.151, 1271.152, and 1271.156, and Subchapters B, C, E, F, and G,
6 Chapter 1271 [~~Article 20A.09~~];

7 (3) does not meet the requirements of Section
8 843.082(1);

9 (4) provides a health care plan that does not provide
10 or arrange for basic health care services, provides a limited
11 health care service plan that does not provide or arrange for the
12 plan's limited health care services, or provides a single health
13 care service plan that does not provide or arrange for a single
14 health care service;

15 (5) cannot fulfill its obligation to provide:

16 (A) health care services as required under its
17 health care plan;

18 (B) limited health care services as required
19 under its limited health care service plan; or

20 (C) a single health care service as required
21 under its single health care service plan;

22 (6) is no longer financially responsible and may
23 reasonably be expected to be unable to meet its obligations to
24 enrollees or prospective enrollees;

25 (7) has not implemented the complaint system required
26 by Section 843.251 in a manner to resolve reasonably valid
27 complaints;

1 (8) has advertised or merchandised its services in an
2 untrue, misrepresentative, misleading, deceptive, or unfair manner
3 or a person on behalf of the health maintenance organization has
4 advertised or merchandised the health maintenance organization's
5 services in an untrue, misrepresentative, misleading, deceptive,
6 or untrue manner;

7 (9) would be hazardous to its enrollees if it
8 continued in operation;

9 (10) has not complied substantially with:

10 (A) this chapter [~~or Chapter 20A~~] or a rule
11 adopted under this chapter; or

12 (B) Section 1367.053, Subchapter A, Chapter
13 1452, Subchapter B, Chapter 1507, Chapter 222, 251, or 258, as
14 applicable to a health maintenance organization, or Chapter 1271 or
15 1272 or a rule adopted under one of those provisions [~~Chapter 20A~~];

16 or

17 (11) has not taken corrective action the commissioner
18 considers necessary to correct a failure to comply with this
19 chapter, any applicable provision of this code, or any applicable
20 rule or order of the commissioner not later than the 30th day after
21 the date of notice of the failure or within any longer period
22 specified in the notice and determined by the commissioner to be
23 reasonable.

24 SECTION 2E.053. Section 843.463, Insurance Code, is amended
25 to correct a cross-reference to read as follows:

26 Sec. 843.463. INJUNCTIONS. If the commissioner believes
27 that a health maintenance organization or another person is

1 violating or has violated this chapter [~~or Chapter 20A~~] or a rule
2 adopted under this chapter or Section 1367.053, Subchapter A,
3 Chapter 1452, Subchapter B, Chapter 1507, Chapter 222, 251, or 258,
4 as applicable to a health maintenance organization, or Chapter 1271
5 or 1272 or a rule adopted under one of those provisions [~~Chapter~~
6 ~~20A~~], the commissioner may bring an action in a Travis County
7 district court to enjoin the violation and obtain other relief the
8 court considers appropriate.

9 SECTION 2E.054. Section 843.464(a), Insurance Code, is
10 amended to correct a cross-reference to read as follows:

11 (a) A person, including an agent or officer of a health
12 maintenance organization, commits an offense if the person:

13 (1) wilfully violates this chapter or [~~Chapter 20A or~~]
14 a rule adopted under this chapter or Section 1367.053, Subchapter
15 A, Chapter 1452, Subchapter B, Chapter 1507, Chapter 222, 251, or
16 258, as applicable to a health maintenance organization, or Chapter
17 1271 or 1272 or a rule adopted under one of those provisions
18 [~~Chapter 20A~~]; or

19 (2) knowingly makes a false statement with respect to
20 a report or statement required under this chapter or Section
21 1367.053, Subchapter A, Chapter 1452, Subchapter B, Chapter 1507,
22 Chapter 222, 251, or 258, as applicable to a health maintenance
23 organization, or Chapter 1271 or 1272 [~~Chapter 20A~~].

24 SECTION 2E.055. Section 845.051, Insurance Code, is amended
25 to correct a cross-reference to read as follows:

26 Sec. 845.051. STATEWIDE RURAL HEALTH CARE SYSTEM. The
27 commissioner shall designate a single organization as the statewide

1 rural health care system. The system is authorized to sponsor,
2 arrange for the provision of, or provide health care services to
3 enrollees in programs in rural areas. The programs are not subject
4 to:

5 (1) a law requiring the coverage or the offer of
6 coverage for services by a particular health care provider under:

7 (A) Chapter 62, Health and Safety Code;

8 (B) Chapter 32, Human Resources Code;

9 (C) a state-, county-, or local
10 government-sponsored indigent care initiative; or

11 (D) a federal Medicare Plus Choice program; or

12 (2) Subchapters A-I, Chapter 1251, Subchapter A,
13 Chapter 1364, Subchapter A, Chapter 1366, or Section 1551.064
14 [~~Article 3.51-6~~] under a state-, county-, or local
15 government-sponsored uninsured or indigent care initiative.

16 SECTION 2E.056. Section 846.003(b), Insurance Code, is
17 amended to correct cross-references to read as follows:

18 (b) A multiple employer welfare arrangement is subject to
19 the following laws:

20 (1) Subchapters C and D, Chapter 36;

21 (2) Section 38.001;

22 (3) Section 81.002;

23 (4) Chapter 82;

24 (5) Chapter 83;

25 (6) Chapter 86;

26 (7) Section 201.003;

27 (8) Sections 401.051, 401.052, 401.054-401.062,

- 1 401.151, 401.152, 401.155, and 401.156;
2 (9) Chapter 441;
3 (10) Chapter 443;
4 (11) Chapter 461;
5 (12) Section 521.005;
6 (13) Chapter 541;
7 (14) Chapter 701;
8 (15) Chapter 801;
9 (16) [(7)] Chapter 803;
10 (17) [(8)] Chapter 804;
11 (18) [(9)] Subchapter A, Chapter 805; and
12 (19) [(10)] Sections 841.259, 841.701-841.702, and
13 841.704-841.705[+]
14 ~~[(11) Section 841.704;~~
15 ~~[(12) Section 841.259;~~
16 ~~[(13) Article 1.10D;~~
17 ~~[(14) Article 1.12;~~
18 ~~[(15) Article 1.13;~~
19 ~~[(16) Article 1.15;~~
20 ~~[(17) Article 1.16;~~
21 ~~[(18) Article 1.19;~~
22 ~~[(19) Article 1.35;~~
23 ~~[(20) Article 1.31;~~
24 ~~[(21) Article 3.56;~~
25 ~~[(22) Article 21.21;~~
26 ~~[(23) Article 21.28;~~
27 ~~[(24) Article 21.28A; and~~

1 ~~[(25) Article 21.28E]~~.

2 SECTION 2E.057. Section 846.007(d), Insurance Code, is
3 amended to correct a cross-reference to read as follows:

4 (d) A multiple employer welfare arrangement may establish
5 premium discounts, rebates, or a reduction in otherwise applicable
6 copayments or deductibles in return for adherence to programs of
7 health promotion and disease prevention. A discount, rebate, or
8 reduction established under this subsection does not violate
9 Section 541.056(a) ~~[4(8), Article 21.21]~~.

10 SECTION 2E.058. Section 846.158(c), Insurance Code, is
11 amended to correct a cross-reference to read as follows:

12 (c) Each multiple employer welfare arrangement shall pay
13 the expenses of the examination as provided by Sections 401.151,
14 401.152, 401.155, and 401.156 ~~[Article 1.16]~~.

15 SECTION 2E.059. Section 846.202(a), Insurance Code, is
16 amended to correct a cross-reference to read as follows:

17 (a) In this section, "creditable coverage" has the meaning
18 assigned by Section 1205.004 ~~[Section 3, Article 21.52G, as added~~
19 ~~by Chapter 955, Acts of the 75th Legislature, Regular Session,~~
20 ~~1997]~~.

21 SECTION 2E.060. Sections 861.052(b) and (d), Insurance
22 Code, are amended to correct a cross-reference to read as follows:

23 (b) The incorporators shall file with the department:

24 (1) articles of incorporation for the general casualty
25 company;

26 (2) a charter fee in the amount determined under
27 Chapter 202 ~~[Article 4.07]~~; and

1 (3) an affidavit, made by two or more of the
2 incorporators, that all of the general casualty company's stock is
3 subscribed in good faith and fully paid for.

4 (d) On receipt of a fee in the amount determined under
5 Chapter 202 [~~Article 4.07~~], the department shall provide the
6 incorporators with a certified copy of the articles of
7 incorporation.

8 SECTION 2E.061. Section 861.154, Insurance Code, is amended
9 to correct a cross-reference to read as follows:

10 Sec. 861.154. DIVIDENDS. Except as authorized by Sections
11 403.001 and 403.051 [~~Article 21.31~~], the directors of a general
12 casualty company may not issue dividends.

13 SECTION 2E.062. Section 861.251(b), Insurance Code, is
14 amended to correct a cross-reference to read as follows:

15 (b) After incorporation and issuance of a certificate of
16 authority, a general casualty company shall invest the minimum
17 capital and surplus as provided by Section 822.204. The company
18 shall invest all other funds of the company in excess of the minimum
19 capital and surplus as provided by:

20 (1) a provision of Subchapter B, Chapter 424, other
21 than Section 424.052, 424.072, or 424.073; [~~Article 2.10~~] and

22 (2) Section 862.002.

23 SECTION 2E.063. Section 861.252(a), Insurance Code, is
24 amended to correct a cross-reference to read as follows:

25 (a) On granting of the charter to a general casualty
26 company, the company shall deposit with the comptroller \$50,000 in:

27 (1) cash; or

1 (2) securities of the kind described by a provision of
2 Subchapter B, Chapter 424, other than Section 424.052, 424.072, or
3 424.073 [Article 2.10].

4 SECTION 2E.064. Section 861.254(h), Insurance Code, is
5 amended to correct a cross-reference to read as follows:

6 (h) Except as provided by Chapter 202 [Article 4.07], the
7 department shall charge a fee of \$20 for filing the annual statement
8 required by this section. The comptroller shall collect the fee.

9 SECTION 2E.065. Section 861.257, Insurance Code, is amended
10 to correct cross-references to read as follows:

11 Sec. 861.257. EXAMINATION OF COMPANY. A general casualty
12 company is subject to:

13 (1) Subchapter A, Chapter 86; and

14 (2) Sections 401.051, 401.052, 401.054-401.062,
15 401.151, 401.152, 401.155, and 401.156 [Articles 1.15 and 1.16].

16 SECTION 2E.066. Section 861.258(d), Insurance Code, is
17 amended to correct a cross-reference to read as follows:

18 (d) Subsection (b) does not apply to:

19 (1) real property occupied by buildings used in whole
20 or in part by a general casualty company in the transaction of
21 business;

22 (2) an interest in minerals or royalty reserved on the
23 sale of real property acquired under Sections 862.002(c)(1)-(3);
24 and

25 (3) investment real property acquired under Section
26 424.064 [Article 2.10(e)(11)].

27 SECTION 2E.067. Section 862.101(f), Insurance Code, is

1 amended to correct cross-references to read as follows:

2 (f) Reinsurance that is required or permitted by this
3 section must comply with:

4 (1) Subchapter A, Chapter 491;

5 (2) Sections 492.051(b) and (c); and

6 (3) Chapter 493 [Articles 5.75-1 and 21.72].

7 SECTION 2E.068. Section 862.151, Insurance Code, is amended
8 to correct a cross-reference to read as follows:

9 Sec. 862.151. REDUCTION OF CAPITAL STOCK AND PAR VALUE OF
10 SHARES. (a) If the minimum surplus of a fire, marine, or inland
11 marine insurance company is impaired in excess of the amount
12 permitted under Subchapter B, Chapter 404 [~~Section 5, Article~~
13 ~~1.10~~], the commissioner may allow the company to amend its charter
14 as provided by Sections 822.157 and 822.158 to reduce the amount of
15 the company's capital stock and the par value of its shares in
16 proportion to the extent of the permitted amount of impairment.

17 (b) A company acting under Subsection (a):

18 (1) may not reduce the par value of its shares below
19 the sum computed under Section 822.055;

20 (2) may not deduct from the assets and property on hand
21 more than \$125,000;

22 (3) shall retain the remainder of the assets and
23 property on hand as surplus assets;

24 (4) may not distribute any of the assets or property to
25 the shareholders; and

26 (5) may not reduce the capital stock or surplus of the
27 company to an amount less than the minimum capital and the minimum

1 surplus required by Sections 822.202, 822.210, and 822.211, subject
2 to Subchapter B, Chapter 404 [~~Section 5, Article 1.10~~].

3 SECTION 2E.069. Sections 862.152(a) and (b), Insurance
4 Code, are amended to correct a cross-reference to read as follows:

5 (a) This section applies to a fire, marine, or inland marine
6 insurance company that receives notice from the commissioner under
7 Subchapter B, Chapter 404 [~~Section 5, Article 1.10~~], to make good
8 within 60 days:

9 (1) any impairment of the company's required capital;
10 or

11 (2) the company's surplus.

12 (b) The company shall promptly call on its shareholders for
13 an amount necessary to make the company's capital and surplus equal
14 to the amount required by Sections 822.054 and 822.210, subject to
15 Subchapter B, Chapter 404 [~~Section 5, Article 1.10~~].

16 SECTION 2E.070. Section 862.153(a), Insurance Code, is
17 amended to correct a cross-reference to read as follows:

18 (a) If a shareholder of the insurance company who is given
19 notice under Section 862.152 does not pay the amount called for by
20 the company under that section, the company may:

21 (1) require the return of the original certificate of
22 stock held by the shareholder; and

23 (2) issue a new certificate for a number of shares that
24 the shareholder may be entitled to in the proportion that the value
25 of the funds of the company, computed without inclusion of any money
26 or other property paid by shareholders in response to the notice
27 under Section 862.152, bears to the total amount of the original

1 capital and the minimum surplus of the company required by Section
2 822.054 or 822.210, subject to Subchapter B, Chapter 404 [~~Section~~
3 ~~5, Article 1.10~~].

4 SECTION 2E.071. Section 862.154(b), Insurance Code, is
5 amended to correct a cross-reference to read as follows:

6 (b) The insurance company shall sell any new stock created
7 under Subsection (a) for an amount sufficient to make up any
8 impairment of the company's required minimum capital and to make up
9 the surplus of the company as required by Section 822.054 or
10 822.210, subject to Subchapter B, Chapter 404 [~~Section 5, Article~~
11 ~~1.10~~], but may not impair the capital of the company.

12 SECTION 2E.072. Section 881.006(b), Insurance Code, is
13 amended to correct a cross-reference to read as follows:

14 (b) Sections 201.001 and 201.002 apply [~~Article 1.31A~~
15 ~~applies~~] to the fee.

16 SECTION 2E.073. Section 882.002, Insurance Code, is amended
17 to correct cross-references to read as follows:

18 Sec. 882.002. EXAMINATION OF COMPANY. The following
19 provisions [~~Articles 1.15 and 1.16~~] apply to a mutual life
20 insurance company organized under this chapter:

21 (1) Subchapter A, Chapter 86; and
22 (2) Sections 401.051, 401.052, 401.054-401.062,
23 401.151, 401.152, 401.155, and 401.156.

24 SECTION 2E.074. Section 882.056(a), Insurance Code, is
25 amended to correct a cross-reference to read as follows:

26 (a) To obtain a charter for a mutual life insurance company
27 under this chapter, the incorporators must pay the charter fee in

1 the amount determined under Chapter 202 [~~Article 4.07~~] and file
2 with the department:

3 (1) an application for charter on the form and
4 including the information prescribed by the commissioner;

5 (2) the company's articles of incorporation; and

6 (3) an affidavit made by two or more of the
7 incorporators that states that:

8 (A) the unencumbered surplus requirements of
9 Section 882.055 are satisfied;

10 (B) the unencumbered surplus is the bona fide
11 property of the company; and

12 (C) the information in the application and
13 articles of incorporation is true and correct.

14 SECTION 2E.075. Section 883.202(a), Insurance Code, is
15 amended to correct a cross-reference to read as follows:

16 (a) A domestic mutual insurance company that writes
17 fidelity and surety bond coverage shall maintain on deposit with
18 the comptroller cash or securities of the kind described by a
19 provision of Subchapter B, Chapter 424, other than Section 424.052,
20 424.072, or 424.073, [~~Article 2.10~~] in an amount equal to the amount
21 of cash or securities required of a domestic stock insurance
22 company.

23 SECTION 2E.076. Section 884.002(c), Insurance Code, is
24 amended to correct cross-references to read as follows:

25 (c) The following provisions of this code apply to a
26 stipulated premium company:

27 (1) Article [~~1.15,~~

- 1 ~~[(2) Article 1.15A;~~
2 ~~[(3) Article 1.16;~~
3 ~~[(4) Article 1.19;~~
4 ~~[(5) Article 1.32;~~
5 ~~[(6) Article 3.10;~~
6 ~~[(7) Article 3.39;~~
7 ~~[(8) Article 3.40;~~
8 ~~[(9) Article 21.07-7;~~
9 ~~[(10) Article 21.21;~~
10 ~~[(11) Article 21.28;~~
11 ~~[(12) Article 21.32;~~
12 ~~[(13) Article 21.39;~~
13 ~~[(14) Article]~~ 21.47;
14 (2) [(15)] Section 38.001;
15 (3) Chapter 86;
16 (4) Subchapter A, Chapter 401;
17 (5) Sections 401.051, 401.052, 401.054-401.062,
18 401.151, 401.152, 401.155, and 401.156;
19 (6) Sections 403.001, 403.052, and 403.102;
20 (7) Subchapter A, Chapter 404;
21 (8) Section 421.001;
22 (9) Subchapter D, Chapter 425;
23 (10) Chapter 443;
24 (11) Chapter 492, other than Sections 492.051(b) and
25 (c);
26 (12) Chapter 541;
27 (13) [(16)] Sections 801.001-801.002;

- 1 (14) [~~(17)~~] Sections 801.051-801.055;
2 (15) [~~(18)~~] Section 801.057;
3 (16) [~~(19)~~] Sections 801.101-801.102;
4 (17) [~~(20)~~] Subchapter A, Chapter 821;
5 (18) [~~(21)~~] Chapter 824;
6 (19) [~~(22)~~] Chapter 828;
7 (20) [~~(23)~~] Section 841.251;
8 (21) [~~(24)~~] Section 841.259;
9 (22) [~~(25)~~] Section 841.261; [~~and~~]
10 (23) [~~(26)~~] Section 841.703; and
11 (24) Chapter 4152.

12 SECTION 2E.077. Section 884.056(a), Insurance Code, is
13 amended to correct a cross-reference to read as follows:

14 (a) To obtain a charter for a stipulated premium company
15 under this chapter, the incorporators must pay a charter fee in an
16 amount determined under Chapter 202 [~~Article 4.07~~] and file with
17 the department:

18 (1) an application for charter on the form and
19 containing the information prescribed by the department;

20 (2) the company's articles of incorporation; and

21 (3) an affidavit made by two or more of the
22 incorporators that states that:

23 (A) the minimum capital and surplus requirements
24 of Section 884.054 are satisfied;

25 (B) the capital and surplus is the bona fide
26 property of the company; and

27 (C) the information in the application and

1 articles of incorporation is true and correct.

2 SECTION 2E.078. Section 884.059(c), Insurance Code, is
3 amended to correct a cross-reference to read as follows:

4 (c) If the commissioner does not reject the application
5 under Subsection (b), the commissioner shall approve the
6 application and on receipt of a fee in the amount determined under
7 Chapter 202 [~~Article 4.07~~] shall provide to the incorporators a
8 certified copy of the application, articles of incorporation, and
9 submitted affidavit.

10 SECTION 2E.079. Section 884.201, Insurance Code, is amended
11 to correct a cross-reference to read as follows:

12 Sec. 884.201. FORM OF CAPITAL AND SURPLUS. After a charter
13 is granted under this chapter, the stipulated premium company:

14 (1) shall maintain the company's minimum capital at
15 all times in a form described by Section 884.054(d); and

16 (2) may invest the company's surplus as provided by
17 Sections 425.203-425.228 [~~Article 3.39~~].

18 SECTION 2E.080. Section 884.253(c), Insurance Code, is
19 amended to correct a cross-reference to read as follows:

20 (c) A stipulated premium company that complies with
21 Subsection (b) may pay cash dividends in accordance with Sections
22 403.001 and 403.052 [~~Article 21.32~~].

23 SECTION 2E.081. Sections 884.256(a) and (e), Insurance
24 Code, are amended to correct cross-references to read as follows:

25 (a) Except as provided by Section 884.406, not later than
26 March 31 of each year a stipulated premium company shall:

27 (1) prepare a statement showing the condition of the

1 company on December 31 of the preceding year; and

2 (2) deliver the statement to the department
3 accompanied by a filing fee in the amount determined under Chapter
4 202 [~~Article 4.07~~].

5 (e) Fees collected under this section shall be deposited to
6 the credit of the Texas Department of Insurance operating account.
7 Sections 201.001 and 201.002 apply [~~Article 1.31A applies~~] to fees
8 collected under this section.

9 SECTION 2E.082. Section 884.307(a), Insurance Code, is
10 amended to correct cross-references to read as follows:

11 (a) A stipulated premium company that possesses capital and
12 unencumbered surplus in a combined amount of at least \$100,000 more
13 than all of its liabilities, including contingent liabilities, may
14 issue annuity contracts as authorized by Chapters [~~Chapter~~] 3 and
15 1701 and Title 7.

16 SECTION 2E.083. Section 884.310, Insurance Code, is amended
17 to correct a cross-reference to read as follows:

18 Sec. 884.310. AGENT. Each agent of a stipulated premium
19 company must be licensed under Title 13 [~~Subchapter A, Chapter 21~~].

20 SECTION 2E.084. Sections 884.311(a) and (c), Insurance
21 Code, are amended to correct cross-references to read as follows:

22 (a) A stipulated premium insurance company issuing life,
23 health, or accident coverages or maintaining policies in force that
24 were issued in accordance with Subchapter I may elect that the
25 company's investments and transactions be governed by Subchapter C,
26 Chapter 425 [~~Article 3.33 of this code~~].

27 (c) After the second anniversary of the effective date of an

1 initial election authorized by this section, the stipulated premium
2 insurance company may elect that the company's investments and
3 transactions be governed by Sections 425.203-425.228 [~~Article 3.39~~
4 ~~of this code~~].

5 SECTION 2E.085. Section 884.357, Insurance Code, is amended
6 to correct a cross-reference to read as follows:

7 Sec. 884.357. FORM APPROVAL. The approval of a form of an
8 insurance policy issued by a stipulated premium company is governed
9 by Chapter 1701 [~~Article 3.42~~].

10 SECTION 2E.086. Section 884.402, Insurance Code, is amended
11 to correct cross-references to read as follows:

12 Sec. 884.402. ADDITIONAL COVERAGE. A stipulated premium
13 company that, at the time it begins to issue coverages under this
14 subchapter, possesses the amounts of capital and unencumbered
15 surplus equal to or greater than the corresponding amounts required
16 for organization of a life and health company under Sections
17 841.052, 841.054, 841.204, 841.205, 841.301, and 841.302 may,
18 subject to Section 884.403:

19 (1) issue any kind of life insurance coverage
20 authorized by Chapter 3, 841, or 1701 or Title 7;

21 (2) issue any kind of health or accident insurance
22 coverage authorized by:

23 (A) Title 7;

24 (B) Chapter 3, 704, 841, 846, 982, 1201, 1202,
25 1203, 1210, 1251, 1252, 1253, 1254, 1301, 1351, 1354, 1359, 1364,
26 1368, 1501, 1504, 1505, 1506, 1552, 1575, 1576, 1577, 1579, 1581,
27 1625, 1651, 1652, or 1701;

1 (C) Chapter 492, other than Sections 492.051(b)
2 and (c);

3 (D) Subchapter B, Chapter 38, Subchapter D,
4 Chapter 425, Subchapter A or F, Chapter 1204, Subchapter A, Chapter
5 1273, Subchapter A, B, or D, Chapter 1355, Subchapter A, Chapter
6 1366, Subchapter A, Chapter 1507;

7 (E) Section 1204.151, 1204.153, 1204.154, or
8 1451.051; or

9 (F) Chapter 177, Local Government Code; or

10 (3) issue life insurance coverage through policies
11 without cash surrender values or nonforfeiture values and that
12 exceed \$10,000 on one life.

13 SECTION 2E.087. Section 884.405, Insurance Code, is amended
14 to correct cross-references to read as follows:

15 Sec. 884.405. AGENT; LICENSE. (a) An agent may not
16 solicit or write any coverage authorized by this subchapter unless
17 the agent:

18 (1) holds a license issued under Chapter 4054 [~~Chapter~~
19 ~~213, Acts of the 54th Legislature, Regular Session, 1955 (Article~~
20 ~~21.07-1, Vernon's Texas Insurance Code)] ; and~~

21 (2) is appointed by the stipulated premium company for
22 which the agent is soliciting and writing coverage under this
23 subchapter.

24 (b) The commissioner may issue under Chapter 4054 [~~Chapter~~
25 ~~213, Acts of the 54th Legislature, Regular Session, 1955 (Article~~
26 ~~21.07-1, Vernon's Texas Insurance Code),~~] a license for an agent to
27 solicit and write any coverage authorized by this subchapter for a

1 stipulated premium company. Chapter 4054 applies [~~Chapter 213,~~
2 ~~Acts of the 54th Legislature, Regular Session, 1955 (Article~~
3 ~~21.07-1, Vernon's Texas Insurance Code), applies~~] to the stipulated
4 premium company as if the company were a legal reserve life
5 insurance company.

6 SECTION 2E.088. Section 884.455, Insurance Code, is amended
7 to correct a cross-reference to read as follows:

8 Sec. 884.455. REQUIRED SECURITIES. The commissioner shall
9 require that a stipulated premium company have securities of the
10 class and character required by Sections 425.203-425.228 [~~Article~~
11 ~~3.39~~] in the amount of the reserve liability computed for the
12 company under Section 884.454 less any deficiency reserve under
13 Section 884.453 after all the debts and claims against the company
14 and the minimum capital required by this chapter have been applied.

15 SECTION 2E.089. Section 884.601(a), Insurance Code, is
16 amended to correct a cross-reference to read as follows:

17 (a) The shareholders of a stipulated premium company that
18 possesses capital in an amount equal to at least \$700,000,
19 unencumbered surplus in an amount equal to at least \$700,000, and
20 sufficient reserves on hand for the company's policies as required
21 under provisions of Chapter 425, other than Sections
22 425.002-425.005, [~~Subchapter C, Chapter 3,~~] may convert the company
23 to a legal reserve company that operates under Chapter 841 by
24 complying with each requirement applicable to a company operating
25 under that chapter.

26 SECTION 2E.090. Section 884.701, Insurance Code, is amended
27 to correct cross-references to read as follows:

1 Sec. 884.701. HAZARDOUS FINANCIAL CONDITION, SUPERVISION,
2 CONSERVATORSHIP, AND LIQUIDATION. Subchapter A, Chapter 404, and
3 Chapters 441 and 443 [~~Articles 1.32, 21.28, and 21.28-A~~] apply to a
4 stipulated premium company engaged in the business of insurance in
5 this state.

6 SECTION 2E.091. Section 885.301(a), Insurance Code, is
7 amended to correct cross-references to read as follows:

8 (a) A fraternal benefit society may provide for the payment
9 of:

- 10 (1) death benefits in any form;
- 11 (2) endowment benefits;
- 12 (3) annuity benefits;
- 13 (4) benefits for temporary or permanent disability
14 resulting from disease or accident;
- 15 (5) benefits for hospital, medical, or nursing
16 expenses resulting from sickness, bodily infirmity, or accident;
- 17 (6) benefits for the erection of a monument or
18 tombstone to the memory of a deceased member;
- 19 (7) funeral benefits; and
- 20 (8) any other benefit that may be provided by a life,
21 accident, or health insurance company and that is:

22 (A) offered in compliance with a law described by
23 Section 841.002 [~~the provisions of Chapter 3 and Title 7~~]
24 applicable to a life, accident, or health insurance company; and

25 (B) consistent with this chapter.

26 SECTION 2E.092. Section 885.306(a), Insurance Code, is
27 amended to correct a cross-reference to read as follows:

1 (a) A fraternal benefit society may not deliver or issue for
2 delivery in this state a benefit certificate unless the form of the
3 certificate has been filed under Chapter 1701 [~~Article 3.42~~].

4 SECTION 2E.093. Section 885.351, Insurance Code, is amended
5 to correct cross-references to read as follows:

6 Sec. 885.351. AGENTS. (a) A fraternal benefit society may
7 appoint an agent licensed by the department under Subchapter B,
8 Chapter 4054, [~~Article 21.07-1~~] to sell benefits listed under
9 Section 885.301(a) to society members.

10 (b) Except as provided by Section 885.352, a person may not
11 solicit or procure benefit contracts for a fraternal benefit
12 society unless the person is licensed as a general life, accident,
13 and health agent under Subchapter B, Chapter 4054 [~~Article~~
14 ~~21.07-1~~].

15 (c) The licensing and regulation of agents for fraternal
16 benefit societies is subject to Title 13 [~~Subchapter A, Chapter~~
17 ~~21,~~] and other laws regulating those agents.

18 SECTION 2E.094. Section 885.353, Insurance Code, is amended
19 to correct cross-references to read as follows:

20 Sec. 885.353. EMPLOYMENT OF CERTAIN PERSONS TO SOLICIT
21 BUSINESS PROHIBITED. A fraternal benefit society may not employ or
22 otherwise retain a person to solicit business if the person has had
23 a license revoked under Chapter 4005 [~~Article 21.07 or 21.14, or~~
24 ~~under Chapter 213, Acts of the 54th Legislature, Regular Session,~~
25 ~~1955 (Article 21.07-1, Vernon's Texas Insurance Code)~~].

26 SECTION 2E.095. Section 885.404(c), Insurance Code, is
27 amended to correct a cross-reference to read as follows:

1 (c) For any category of benefit certificates issued to
2 insure a female risk, a modified net premium or present value
3 referred to in Subchapter B, Chapter 425, [~~Article 3.28~~] may be
4 computed according to an age not more than six years younger than
5 the actual age of the insured.

6 SECTION 2E.096. Section 885.408(b), Insurance Code, is
7 amended to correct a cross-reference to read as follows:

8 (b) Sections 425.203-425.228 apply [~~Article 3.39 applies~~]
9 to reserve investments for a domestic fraternal benefit society.

10 SECTION 2E.097. Section 885.410, Insurance Code, is amended
11 to correct cross-references to read as follows:

12 Sec. 885.410. EXAMINATION OF DOMESTIC FRATERNAL BENEFIT
13 SOCIETIES. A domestic fraternal benefit society is subject to:

14 (1) Subchapter A, Chapter 86;

15 (2) Subchapter A, Chapter 401; and

16 (3) Sections 401.051, 401.052, 401.054-401.062,
17 401.151, 401.152, 401.155, and 401.156 [~~Articles 1.15, 1.15A, and~~
18 ~~1.16~~].

19 SECTION 2E.098. Section 885.411(e), Insurance Code, is
20 amended to correct cross-references to read as follows:

21 (e) A foreign fraternal benefit society is subject to the
22 provisions of Subchapter A, Chapter 86, and Sections 401.051,
23 401.052, 401.054-401.062, 401.151, 401.152, 401.155, and 401.156
24 [~~Articles 1.15 and 1.16~~] that apply to an insurer that is not
25 organized under the laws of this state but is authorized to engage
26 in business in this state.

27 SECTION 2E.099. Section 885.412(b), Insurance Code, is

1 amended to correct cross-references to read as follows:

2 (b) This section does not apply to a proceeding involving a
3 fraternal benefit society instituted by the commissioner or the
4 state, including an administrative hearing, a proceeding under
5 Chapter 441 or 443 [~~Article 21.28 or 21.28-A~~], or a court
6 proceeding.

7 SECTION 2E.100. Section 885.413, Insurance Code, is amended
8 to correct a cross-reference to read as follows:

9 Sec. 885.413. FEES. The department shall deposit fees
10 collected under this chapter to the credit of the Texas Department
11 of Insurance operating account. Sections 201.001 and 201.002 apply
12 [~~Article 1.31A applies~~] to fees collected under this chapter.

13 SECTION 2E.101. Section 885.414(a), Insurance Code, is
14 amended to correct cross-references to read as follows:

15 (a) This chapter does not prevent or limit any action by or
16 remedy available to the department or the state under Chapter 441 or
17 443 [~~Article 21.28 or 21.28-A~~] or other applicable law.

18 SECTION 2E.102. Section 886.107(b), Insurance Code, is
19 amended to correct a cross-reference to read as follows:

20 (b) Sections 201.001 and 201.002 apply [~~Article 1.31A~~
21 ~~applies~~] to the fee.

22 SECTION 2E.103. Section 887.062, Insurance Code, is amended
23 to correct cross-references to read as follows:

24 Sec. 887.062. EXAMINATION. The following provisions
25 [~~Articles 1.15 and 1.16~~] apply to an association:

- 26 (1) Subchapter A, Chapter 86; and
27 (2) Sections 401.051, 401.052, 401.054-401.062,

1 401.151, 401.152, 401.155, and 401.156.

2 SECTION 2E.104. Section 887.551, Insurance Code, is amended
3 to correct cross-references to read as follows:

4 Sec. 887.551. HAZARDOUS FINANCIAL CONDITION, SUPERVISION,
5 CONSERVATORSHIP, AND LIQUIDATION. The following provisions
6 [~~Articles 1.32, 21.28, and 21.28-A~~] apply to an association engaged
7 in the business of insurance in this state:

8 (1) Subchapter A, Chapter 404;

9 (2) Chapter 441; and

10 (3) Chapter 443.

11 SECTION 2E.105. Section 888.052(b), Insurance Code, is
12 amended to correct a cross-reference to read as follows:

13 (b) Annual assessments collected under this section shall
14 be deposited to the credit of the Texas Department of Insurance
15 operating account. Sections 201.001 and 201.002 apply [~~Article~~
16 ~~1.31A applies~~] to the assessments.

17 SECTION 2E.106. Section 911.001(c), Insurance Code, is
18 amended to correct cross-references to read as follows:

19 (c) Except to the extent of any conflict with this chapter,
20 the following provisions apply to a farm mutual insurance company:

21 (1) Subchapter A, Chapter 32;

22 (2) Subchapter D, Chapter 36;

23 (3) Sections 31.002(2), 32.021(c), 32.023, 32.041,
24 33.002, 38.001, 81.001-81.004, 201.005, 201.055, 401.051, 401.052,
25 401.054-401.062, 401.103-401.106, 401.151, 401.152, 401.155,
26 401.156, 421.001, 801.051-801.055, 801.057, 801.101, 801.102,
27 822.204, 841.004, 841.251, 841.252, [~~and~~] 862.101, 1806.001,

1 1806.101, 1806.103(b), and 1806.104-1806.107;

2 (4) Chapter 86;

3 (5) Subchapter A, Chapter 401;

4 (6) Subchapter B, Chapter 404;

5 (7) Chapter 422;

6 (8) Subchapter B, Chapter 424, other than Section
7 424.052, 424.072, or 424.073;

8 (9) Chapter 441;

9 (10) Chapter 443;

10 (11) Chapter 462;

11 (12) Chapter 481;

12 (13) Chapter 541;

13 (14) [~~5~~] Chapter 802;

14 (15) [~~6~~] Subchapter A, Chapter 805;

15 (16) [~~7~~] Chapter 824; and

16 (17) Article [~~8~~] Sections 2, 5, 6, and 17, Article
17 1.10, and Articles] 1.09-1[, 1.12, 1.13, 1.15, 1.15A, 1.16, 1.17,
18 1.18, 1.19, 2.10, 5.20, 21.28, 21.28--A, 21.28--C, 21.39, and
19 21.39--A].

20 SECTION 2E.107. Section 911.251, Insurance Code, is amended
21 to correct cross-references to read as follows:

22 Sec. 911.251. LICENSING AND APPOINTMENT OF CERTAIN
23 AGENTS. (a) An individual or firm may not solicit, write, sign,
24 execute, or deliver insurance policies, bind insurance risks,
25 collect premiums, or otherwise act on behalf of a farm mutual
26 insurance company in the capacity of an insurance agent in the
27 solicitation or sale of crop insurance unless the individual or

1 firm holds a license issued under Title 13 [~~Subchapter A, Chapter~~
2 ~~21~~].

3 (b) A farm mutual insurance company may not appoint and act
4 through an agent under Subchapter F, Chapter 4051 [~~Article~~
5 ~~21.14-2~~].

6 SECTION 2E.108. Sections 911.308(c) and (d), Insurance
7 Code, are amended to correct cross-references to read as follows:

8 (c) A company described by Subsection (b) shall invest the
9 minimum unencumbered surplus as provided by Section 822.204. The
10 company may invest funds in excess of the minimum unencumbered
11 surplus as provided by the provisions of Subchapter B, Chapter 424,
12 other than Sections 424.052, 424.072, and 424.073 [~~Article 2.10~~].

13 (d) A company described by Subsection (b) shall, without
14 delay, restore the minimum unencumbered surplus if the surplus is
15 impaired. The department shall proceed as provided by Subchapter
16 B, Chapter 404 [~~Section 5, Article 1.10~~].

17 SECTION 2E.109. Sections 912.002(b) and (c), Insurance
18 Code, are amended to correct cross-references to read as follows:

19 (b) A county mutual insurance company is subject to:

20 (1) Sections 38.001, 401.051, 401.052,
21 401.054-401.062, 401.151, 401.152, 401.155, 401.156, 501.159,
22 501.202, 501.203, [and] 822.204, 1806.001, 1806.101, 1806.103(b),
23 1806.104-1806.107, 2002.002, and 2002.005;

24 (2) Subchapter A, Chapter 86;

25 (3) Subchapter A, Chapter 401;

26 (4) the provisions of Subchapter B, Chapter 424, other
27 than Sections 424.052, 424.072, and 424.073;

1 (5) Chapters 221, 251, 252, 254, [~~and~~] 541, and 2210;

2 and

3 (6) [~~(3)~~] Articles [~~1.15, 1.15A, 1.16, 2.10, 5.20,~~
4 ~~5.37, 5.38,~~] 5.39 and [~~7~~] 5.40 [~~, and 21.49~~].

5 (c) Rate regulation for a residential fire and allied lines
6 insurance policy written by a county mutual insurance company is
7 subject to Chapter 2253 [~~Subchapters Q and U, Chapter 5~~]. On and
8 after December 1, 2004, rate regulation for a personal automobile
9 insurance policy and a residential fire and allied lines insurance
10 policy written by a county mutual insurance company is subject to
11 Article 5.13-2 and Chapter 2251. A county mutual insurance company
12 is subject to Chapter 2253 [~~Subchapter U, Chapter 5~~]. The
13 commissioner may adopt rules as necessary to implement this
14 subsection.

15 SECTION 2E.110. Section 912.152, Insurance Code, is amended
16 to correct cross-references to read as follows:

17 Sec. 912.152. POLICY FORMS. (a) A county mutual insurance
18 company is subject to:

19 (1) Sections 1952.051-1952.055;

20 (2) Subchapter B, Chapter 2002;

21 (3) Chapter 2301; and

22 (4) Articles 5.06 and [~~7~~] 5.35 [~~, and 5.145~~].

23 (b) County mutual insurance companies shall file policy
24 forms under Subchapter B, Chapter 2301, [~~Article 5.145~~] or continue
25 to use the standard policy forms and endorsements promulgated under
26 former Articles 5.06 and 5.35 on notification to the commissioner
27 in writing in the manner prescribed by those articles that those

1 forms will continue to be used.

2 SECTION 2E.111. Section 912.251, Insurance Code, is amended
3 to correct a cross-reference to read as follows:

4 Sec. 912.251. LICENSING AND APPOINTMENT OF AGENTS. An
5 agent for a county mutual insurance company must be licensed and
6 appointed as provided by Title 13 [~~Subchapter A, Chapter 21~~].

7 SECTION 2E.112. Section 912.308(b), Insurance Code, is
8 amended to correct a cross-reference to read as follows:

9 (b) A county mutual insurance company is subject to
10 Subchapter B, Chapter 404, and Sections 822.203, 822.205, 822.210,
11 and 822.212 [~~and Section 5, Article 1.10~~].

12 SECTION 2E.113. Section 912.701, Insurance Code, is amended
13 to correct cross-references to read as follows:

14 Sec. 912.701. HAZARDOUS FINANCIAL CONDITION, SUPERVISION,
15 CONSERVATORSHIP, AND LIQUIDATION. Subchapter A, Chapter 404, and
16 Chapters 441 and 443 [~~Articles 1.32, 21.28, and 21.28-A~~] apply to a
17 county mutual insurance company engaged in the business of
18 insurance in this state.

19 SECTION 2E.114. Section 941.003(c), Insurance Code, is
20 amended to correct a cross-reference to read as follows:

21 (c) Chapter 2007 [~~Subchapter M, Chapter 5,~~] applies to rates
22 for motor vehicle insurance written by a Lloyd's plan.

23 SECTION 2E.115. Section 941.102(d), Insurance Code, is
24 amended to correct a cross-reference to read as follows:

25 (d) Sections 201.001 and 201.002 apply [~~Article 1.31A~~
26 ~~applies~~] to a fee collected under Subsection (c).

27 SECTION 2E.116. Section 941.204(b), Insurance Code, is

1 amended to correct a cross-reference to read as follows:

2 (b) Funds of a Lloyd's plan other than the minimum guaranty
3 fund and surplus described by Subsection (a) must, if invested, be
4 invested as provided by:

5 (1) the provisions of Subchapter B, Chapter 424, other
6 than Sections 424.052, 424.072, and 424.073 [Article 2.10]; or

7 (2) any other law governing the investment of the
8 funds of a capital stock insurance company engaged in the same kind
9 of business.

10 SECTION 2E.117. Section 941.206, Insurance Code, is amended
11 to correct cross-references to read as follows:

12 Sec. 941.206. HAZARDOUS FINANCIAL CONDITION, SUPERVISION,
13 CONSERVATORSHIP, AND LIQUIDATION; IMPAIRMENT OF SURPLUS. (a)
14 Subchapter A, Chapter 404, and Chapters 441 and 443 [Articles 1.32,
15 21.28, and 21.28-A] apply to a Lloyd's plan engaged in the business
16 of insurance in this state.

17 (b) Subchapter B, Chapter 404, [Section 5, Article 1.10,]
18 applies to a Lloyd's plan.

19 SECTION 2E.118. Section 941.251(a), Insurance Code, is
20 amended to correct cross-references to read as follows:

21 (a) The provisions of Sections 86.001, 86.002, 401.051,
22 401.052, 401.054-401.062, 401.151, 401.152, 401.155, and 401.156
23 [The provisions of Articles 1.15 and 1.16] that relate to the
24 examination of insurers apply to a Lloyd's plan.

25 SECTION 2E.119. Section 942.003(c), Insurance Code, is
26 amended to correct a cross-reference to read as follows:

27 (c) Chapter 2007 [Subchapter M, Chapter 5,] applies to rates

1 for motor vehicle insurance written by an exchange.

2 SECTION 2E.120. Section 942.155(c), Insurance Code, is
3 amended to correct a cross-reference to read as follows:

4 (c) An exchange shall maintain the required assets as to:

5 (1) minimum surplus requirements, as provided by
6 Section 822.204; and

7 (2) other funds, as provided by the provisions of
8 Subchapter B, Chapter 424, other than Sections 424.052, 424.072,
9 and 424.073 [~~Article 2.10~~].

10 SECTION 2E.121. Section 942.156, Insurance Code, is amended
11 to correct a cross-reference to read as follows:

12 Sec. 942.156. ISSUANCE OF FIDELITY AND SURETY BOND
13 INSURANCE; DEPOSIT REQUIRED. (a) If a domestic exchange writes
14 fidelity or surety bond insurance in this state, the exchange shall
15 keep on deposit with the comptroller money, bonds, or other
16 securities in an amount of not less than \$50,000. The department
17 shall approve for the deposit securities described by the
18 provisions of Subchapter B, Chapter 424, other than Sections
19 424.052, 424.072, and 424.073, [~~Article 2.10,~~] and the exchange
20 shall maintain the approved securities intact at all times.

21 (b) A foreign exchange that writes fidelity or surety bond
22 insurance in this state shall file with the department evidence
23 satisfactory to the department that the exchange has, for the
24 protection of its subscribers, at least \$100,000 in money, bonds,
25 or other securities as described by the provisions of Subchapter B,
26 Chapter 424, other than Sections 424.052, 424.072, and 424.073,
27 [~~Article 2.10~~] on deposit with the comptroller or other appropriate

1 official of its state of domicile or in escrow under that official's
2 supervision and control in a reliable bank or trust company. If
3 those bonds or other securities are not acceptable to and approved
4 by the department, the department may deny the attorney in fact for
5 the exchange a certificate of authority.

6 SECTION 2E.122. Sections 942.203(a) and (b), Insurance
7 Code, are amended to correct cross-references to read as follows:

8 (a) To the extent applicable, the schedule of fees
9 established under Chapter 202 [~~Article 4.07~~] applies to an exchange
10 and the exchange's attorney in fact.

11 (b) An exchange is subject to:

12 (1) Chapters 221 and 222; and

13 (2) Chapters 251-255 [~~Articles 4.04, 4.10, 4.11, 5.12,~~
14 ~~5.24, 5.49, and 5.68~~].

15 SECTION 2E.123. Section 961.002(b), Insurance Code, is
16 amended to correct cross-references to read as follows:

17 (b) The following provisions of this code apply to a
18 nonprofit legal services corporation in the same manner that they
19 apply to an insurer or a person engaged in the business of
20 insurance, to the extent the provisions do not conflict with this
21 chapter:

22 (1) Articles [~~1.01~~] 1.09-1 and [~~1.11, 1.12, 1.13,~~
23 ~~1.15, 1.15A, 1.16, 1.17, 1.18, 1.19, 1.20, 1.21, 1.22, 21.21,~~
24 ~~21.21-2, 21.28, 21.28-A,~~] 21.47 [~~and 21.49-8~~];

25 (2) [~~Sections 2, 6, and 17, Article 1.10,~~

26 [~~3~~] Sections 31.002, 31.004, 31.007, 31.021,
27 31.022, 31.023, [~~31.025~~] 31.026, 31.027, [~~32.001, 32.002,~~

1 ~~32.003,~~] 32.021, 32.022(a), 32.023, [~~32.041,~~] 33.002, 33.006,
2 36.108, 38.001, 81.004, 201.005, 201.055, 401.051, 401.052,
3 401.054-401.062, 401.103-401.106, 401.151, 401.152, 401.155,
4 401.156, 801.001, 801.002, 801.051-801.055, 801.057, 801.101,
5 801.102, [~~802.003,~~] 841.251, and 841.252;

6 (3) [~~(4)~~] Subchapter B, Chapter 31;

7 (4) Subchapters A and C, Chapter 32;

8 (5) Subchapter D, Chapter 36;

9 (6) Subchapter A, Chapter 401;

10 (7) Subchapter A, Chapter 542;

11 (8) Subchapter A, Chapter 805; and

12 (9) Chapters 86, 402, 441, 443, 481, 541, 802, and [~~(7)~~
13 Chapter] 824.

14 SECTION 2E.124. Section 961.005, Insurance Code, is amended
15 to correct a cross-reference to read as follows:

16 Sec. 961.005. AGENTS. The licensing and regulation of an
17 agent authorized to solicit prepaid legal services contracts for a
18 nonprofit legal services corporation is subject to Title 13
19 [~~Subchapter A, Chapter 21~~].

20 SECTION 2E.125. Section 981.005, Insurance Code, is amended
21 to correct a cross-reference to read as follows:

22 Sec. 981.005. VALIDITY OF CONTRACTS. (a) Unless a material
23 and intentional violation of this chapter or Chapter 225 [~~Section~~
24 ~~12, Article 1.14-2,~~] exists, an insurance contract obtained from an
25 eligible surplus lines insurer is:

26 (1) valid and enforceable as to all parties; and

27 (2) recognized in the same manner as a comparable

1 contract issued by an authorized insurer.

2 (b) A material and intentional violation of this chapter or
3 Chapter 225 [~~Section 12, Article 1.14-2,~~] does not preclude the
4 insured from enforcing the insured's rights under the contract.

5 SECTION 2E.126. Section 981.006, Insurance Code, is amended
6 to correct a cross-reference to read as follows:

7 Sec. 981.006. SANCTIONS. Chapter 82 applies to a surplus
8 lines agent or an eligible surplus lines insurer that violates:

9 (1) this chapter;

10 (2) Chapter 225 [~~Section 12, Article 1.14-2~~]; or

11 (3) a rule or order adopted under Subchapter B or
12 Section 981.005.

13 SECTION 2E.127. Section 981.008, Insurance Code, is amended
14 to correct a cross-reference to read as follows:

15 Sec. 981.008. SURPLUS LINES INSURANCE PREMIUM TAX. The
16 premiums charged for surplus lines insurance are subject to the
17 premium tax imposed under Chapter 225 [~~Section 12, Article 1.14-2~~].

18 SECTION 2E.128. Section 981.101(b), Insurance Code, is
19 amended to correct cross-references to read as follows:

20 (b) A surplus lines document must state, in 11-point type,
21 the following:

22 This insurance contract is with an insurer not licensed to transact
23 insurance in this state and is issued and delivered as surplus line
24 coverage under the Texas insurance statutes. The Texas Department
25 of Insurance does not audit the finances or review the solvency of
26 the surplus lines insurer providing this coverage, and the insurer
27 is not a member of the property and casualty insurance guaranty

1 association created under Chapter 462 [~~Article 21.28-C~~], Insurance
2 Code. Chapter 225 [~~Section 12, Article 1.14-2~~], Insurance Code,
3 requires payment of a _____ (insert appropriate tax rate)
4 percent tax on gross premium.

5 SECTION 2E.129. Section 981.104(b), Insurance Code, is
6 amended to correct a cross-reference to read as follows:

7 (b) A change made under Subsection (a) may not result in
8 coverage or an insurance contract that would violate this chapter
9 or Chapter 225 [~~Section 12, Article 1.14-2~~], if originally issued
10 on that basis.

11 SECTION 2E.130. Section 981.160, Insurance Code, is amended
12 to correct a cross-reference to read as follows:

13 Sec. 981.160. NO ENFORCEMENT AUTHORITY. This subchapter
14 does not give the stamping office authority to enforce this chapter
15 or Chapter 225 [~~Section 12, Article 1.14-2~~].

16 SECTION 2E.131. Section 981.201, Insurance Code, is amended
17 to correct a cross-reference to read as follows:

18 Sec. 981.201. DEFINITION. In this subchapter, "managing
19 general agent" means an agent licensed under Chapter 4053 [~~the~~
20 ~~Managing General Agents' Licensing Act (Article 21.07-3, Vernon's~~
21 ~~Texas Insurance Code)~~].

22 SECTION 2E.132. Section 981.203(a), Insurance Code, is
23 amended to correct cross-references to read as follows:

24 (a) The department may issue a surplus lines license to an
25 applicant who the department determines complies with Subsection
26 (b) and is:

27 (1) an individual who:

1 (A) has passed an examination under Chapter 4002
2 [~~Article 21.01-1~~] and department rules; and

3 (B) holds a current license as:

4 (i) a general property and casualty agent
5 authorized under Subchapter B, Chapter 4051 [~~Article 21.14~~]; or

6 (ii) a managing general agent; or

7 (2) a corporation, limited liability company, or
8 partnership that:

9 (A) has at least one officer or director or at
10 least one active partner who has passed the required surplus lines
11 license examination;

12 (B) holds a current license as:

13 (i) a general property and casualty agent
14 authorized under Subchapter B, Chapter 4051 [~~Article 21.14~~]; or

15 (ii) a managing general agent; and

16 (C) conducts insurance activities under this
17 chapter only through an individual licensed under this section.

18 SECTION 2E.133. Section 981.220(b), Insurance Code, is
19 amended to correct a cross-reference to read as follows:

20 (b) A surplus lines license granted to a managing general
21 agent who is not also licensed under Subchapters A-E, Chapter 4051,
22 [~~Article 21.14~~] is limited to the acceptance of business
23 originating through a licensed general property and casualty agent.
24 The license does not authorize the agent to engage in business
25 directly with the insurance applicant.

26 SECTION 2E.134. Section 981.221, Insurance Code, is amended
27 to correct a cross-reference to read as follows:

1 Sec. 981.221. SUSPENSION OR REVOCATION OF LICENSE. If a
2 license holder does not maintain the qualifications necessary to
3 obtain the license, the department may revoke or suspend the
4 license or deny the renewal of that license in accordance with
5 Chapter 4003 and Subchapters B and C, Chapter 4005 [~~Article~~
6 ~~21.01-2~~].

7 SECTION 2E.135. Section 981.222, Insurance Code, is amended
8 to correct cross-references to read as follows:

9 Sec. 981.222. APPLICABILITY OF OTHER LAW. In addition to
10 the requirements of this chapter, the administration and regulation
11 of a surplus lines agent's license is governed by Title 13
12 [~~Subchapter A, Chapter 21~~], except that the provisions of Sections
13 4001.002(b)(2)-(6), 4001.003, and 4001.004 and Subchapters C-G,
14 Chapter 4001, do [~~Article 21.07 does~~] not apply to a license issued
15 under this subchapter.

16 SECTION 2E.136. Section 982.107, Insurance Code, is amended
17 to correct a cross-reference to read as follows:

18 Sec. 982.107. APPLICABILITY OF OTHER LAW. Chapter 402
19 [~~Article 21.49-8~~] applies to a foreign or alien insurance company.

20 SECTION 2E.137. Section 982.254, Insurance Code, is amended
21 to correct a cross-reference to read as follows:

22 Sec. 982.254. FAILURE TO ELIMINATE IMPAIRMENT OF TRUSTEED
23 SURPLUS. If an alien insurance company has not satisfied the
24 commissioner at the end of the designated period under Section
25 982.253(a) that the impairment has been eliminated, the
26 commissioner may proceed against the company as provided by Chapter
27 441 [~~Article 21.28-A~~] as an insurance company whose further

1 transaction of the business of insurance in the United States will
2 be hazardous to its policyholders in the United States.

3 SECTION 2E.138. Section 982.255(a), Insurance Code, is
4 amended to correct cross-references to read as follows:

5 (a) The books, records, accounting, and verification
6 relating to an authorized alien insurance company's trusteed assets
7 are subject to examination by the department or the department's
8 appointed representative at the United States branch office of the
9 company, in the same manner and to the same extent that applies
10 under Subchapter A, Chapter 86, and Sections 401.051, 401.052,
11 401.054-401.062, 401.151, 401.152, 401.155, and 401.156 [~~Articles~~
12 ~~1.15 and 1.16~~] to domestic and foreign insurance companies
13 authorized to engage in the same kind of insurance.

14 SECTION 2E.139. Section 984.002, Insurance Code, is amended
15 to correct cross-references to read as follows:

16 Sec. 984.002. AUTHORIZED AGENT REQUIRED. A Mexican
17 casualty insurance company may engage in the business of insurance
18 in this state only through an agent licensed by the department under
19 Subchapters A-E and G, Chapter 4051, or Chapter 4055 [~~Article 21.09~~
20 ~~or 21.14~~].

21 PART F. CROSS-REFERENCE UPDATES: TITLE 7, INSURANCE CODE

22 SECTION 2F.001. Section 1101.055(b), Insurance Code, is
23 amended to correct a cross-reference to read as follows:

24 (b) A life insurance policy may provide for a settlement
25 that will be less than the amount required under Subsection (a) if
26 the death of the insured is:

27 (1) by the insured's own hand regardless of whether the

1 insured is sane or insane;

2 (2) caused by following a hazardous occupation that is
3 stated in the policy; or

4 (3) the result of aviation activities under conditions
5 specified in the policy and approved by the department under
6 Chapter 1701 [~~Article 3.42~~].

7 SECTION 2F.002. Section 1101.101(b), Insurance Code, is
8 amended to correct a cross-reference to read as follows:

9 (b) Notwithstanding Chapter 1701 [~~Article 3.42~~], a policy
10 issued or delivered in another state, territory, district, or
11 county by a life insurance company organized under the laws of this
12 state may contain any provision required by the laws of that state,
13 territory, district, or county.

14 SECTION 2F.003. Section 1102.004(b), Insurance Code, is
15 amended to correct a cross-reference to read as follows:

16 (b) This section does not require the resubmission for
17 approval of any previously approved insurance policy form unless:

18 (1) withdrawal of approval is authorized under this
19 section or Chapter 1701 [~~Article 3.42~~]; or

20 (2) after notice and hearing, the commissioner
21 determines that approval was obtained by improper means, including
22 by misrepresentation, fraud, or a misleading statement or document.

23 SECTION 2F.004. Section 1105.007(b), Insurance Code, is
24 amended to correct a cross-reference to read as follows:

25 (b) Subsection (a) does not require a cash surrender value
26 greater than the reserve for the policy computed as provided by
27 Subchapter B, Chapter 425 [~~Article 3.28~~].

1 SECTION 2F.005. Section 1105.056, Insurance Code, is
2 amended to correct a cross-reference to read as follows:

3 Sec. 1105.056. NONFORFEITURE INTEREST RATE. The annual
4 nonforfeiture interest rate for a policy issued in a particular
5 calendar year is equal to 125 percent of the calendar year statutory
6 valuation interest rate for that policy as defined by Subchapter B,
7 Chapter 425 [~~Article 3.28~~], rounded to the nearest one-fourth of
8 one percent.

9 SECTION 2F.006. Section 1111.006, Insurance Code, is
10 amended to correct cross-references to read as follows:

11 Sec. 1111.006. APPLICABILITY OF OTHER INSURANCE LAWS. The
12 following laws apply to a person engaged in the business of life or
13 viatical settlements:

- 14 (1) [~~Articles 1.10, 1.10D, 1.19, and 21.21;~~
15 [~~2~~] Chapters 82, 83, [and] 84, 481, 541, and 701;
16 (2) [~~3~~] Sections 31.002, [32.001, 32.002, 32.003,
17 32.021, 32.023, 32.041, 38.001, 81.004, 86.001, 86.051, 86.052,
18 201.004, 401.051, 401.054, 401.151(a), 521.003, 521.004,
19 543.001(c), 801.056, and 862.052;
20 (3) Subchapter A, Chapter 32; [and]
21 (4) Subchapter C, Chapter 36;
22 (5) Subchapter B, Chapter 404; and
23 (6) Subchapter B, Chapter 491.

24 SECTION 2F.007. Section 1131.007, Insurance Code, is
25 amended to correct a cross-reference to read as follows:

26 Sec. 1131.007. POLICY FORM. A policy of group life
27 insurance is subject to Chapter 1701 [~~Article 3.42~~].

1 SECTION 2F.008. Section 1151.101, Insurance Code, is
2 amended to correct a cross-reference to read as follows:

3 Sec. 1151.101. AUTHORIZED PROVISIONS. In addition to the
4 provisions required by Subchapter B and Section 1151.152, an
5 industrial life insurance policy may:

6 (1) exclude liability or promise a benefit that is
7 less than the full amount payable as a death benefit if the insured:

8 (A) dies by the insured's own hand, regardless of
9 whether the insured is sane or insane; or

10 (B) dies as a result of engaging in a stated
11 hazardous occupation;

12 (2) promise a benefit that is less than the full amount
13 payable if the insured dies as a result of an aviation activity
14 under a condition specified in the policy approved by the
15 department as provided by Chapter 1701 [~~Article 3.42~~];

16 (3) limit the maximum amount payable on the death of a
17 child younger than 15 years of age; and

18 (4) include any other provision not otherwise
19 prohibited by this chapter.

20 SECTION 2F.009. Section 1152.151, Insurance Code, is
21 amended to correct cross-references to read as follows:

22 Sec. 1152.151. AGENT'S LICENSE REQUIRED. (a) A person may
23 not sell or offer for sale in this state a variable contract, or act
24 to negotiate, make, or consummate a variable contract for another,
25 unless the department has licensed the person under Chapter 4054
26 [~~Article 21.07-1~~] as a general life, accident, and health agent.

27 (b) The licensing and regulation of a person acting as a

1 variable contract agent is subject to the same provisions
2 applicable to the licensing and regulation of other agents under
3 Title 13 [~~Subchapter A, Chapter 21~~].

4 PART G. CROSS-REFERENCE UPDATES: TITLE 8, INSURANCE CODE

5 SECTION 2G.001. Section 1251.202, Insurance Code, is
6 amended to correct cross-references to read as follows:

7 Sec. 1251.202. NOTICE REGARDING CERTAIN EMPLOYER HEALTH
8 BENEFIT PLANS. (a) In this section, "standard health benefit plan"
9 means a plan offered under [~~Article 3.80, Article 20A.09N, or~~]
10 Chapter 1507.

11 (b) If an employer offers to employees a standard health
12 benefit plan, the employer shall:

13 (1) provide a copy of the disclosure statement
14 provided to the employer by the plan issuer under [~~Section 6,~~
15 ~~Article 3.80, Article 20A.09N(g),~~] Section 1507.006[~~7~~] or
16 [~~Section~~] 1507.056 to:

17 (A) each employee:

18 (i) before the employee initially enrolls
19 in the plan, unless the employee received notice under Paragraph
20 (B) on or after the 90th day before the date the employee initially
21 enrolls; and

22 (ii) not later than the 30th day before the
23 date the employee renews enrollment in the plan; and

24 (B) each prospective employee before the
25 prospective employee is hired by the employer; and

26 (2) obtain a copy of the notice signed by the employee
27 or prospective employee at the time the notice is provided.

1 SECTION 2G.002. Section 1272.052(c), Insurance Code, is
2 amended to correct a cross-reference to read as follows:

3 (c) The parties to the delegation agreement shall determine
4 which party bears the expense of complying with a requirement of
5 this subchapter, including the cost of an examination required by
6 the department under Subchapter B, Chapter 401 [~~Article 1.15~~], if
7 applicable.

8 SECTION 2G.003. Section 1272.058, Insurance Code, is
9 amended to correct a cross-reference to read as follows:

10 Sec. 1272.058. INFORMATION RELATING TO DELEGATED THIRD
11 PARTY. A delegation agreement required by Section 1272.052 must
12 require the delegated entity to provide the license number of a
13 delegated third party performing a function that requires:

14 (1) a license as a third-party administrator under
15 Chapter 4151 or utilization review agent under Chapter 4201
16 [~~Article 21.58A~~]; or

17 (2) another license under this code or another
18 insurance law of this state.

19 SECTION 2G.004. Section 1272.060, Insurance Code, is
20 amended to correct a cross-reference to read as follows:

21 Sec. 1272.060. UTILIZATION REVIEW. A delegation agreement
22 required by Section 1272.052 must provide that:

23 (1) enrollees shall receive notification at the time
24 of enrollment of which entity is responsible for performing
25 utilization review;

26 (2) the delegated entity or third party performing
27 utilization review shall perform that review in accordance with

1 Chapter 4201 [~~Article 21.58A~~]; and

2 (3) the delegated entity or third party shall forward
3 utilization review decisions made by the entity or third party to
4 the health maintenance organization on a monthly basis.

5 SECTION 2G.005. Section 1272.301(d), Insurance Code, is
6 amended to correct a cross-reference to read as follows:

7 (d) A denial of out-of-network services under this section
8 is subject to appeal under Chapter 4201 [~~Article 21.58A~~].

9 SECTION 2G.006. Section 1274.004(b), Insurance Code, is
10 amended to correct a cross-reference to read as follows:

11 (b) Before adopting rules under this section, the
12 commissioner shall consult and receive advice from the technical
13 advisory committee on claims processing established under Chapter
14 1212 [~~Article 21.52Y~~].

15 SECTION 2G.007. Sections 1305.004(a)(11), (12), (17),
16 (27), and (28), Insurance Code, are amended to correct
17 cross-references to read as follows:

18 (11) "Independent review organization" means an
19 entity that is certified by the commissioner to conduct independent
20 review under Chapter 4202 [~~Article 21.58C~~] and rules adopted by the
21 commissioner.

22 (12) "Life-threatening" has the meaning assigned by
23 Section 4201.002 [~~2, Article 21.58A~~].

24 (17) "Nurse" has the meaning assigned by Section
25 4201.002 [~~Section 2, Article 21.58A~~].

26 (27) "Utilization review" has the meaning assigned by
27 Section 4201.002 [~~2, Article 21.58A~~].

1 (28) "Utilization review agent" has the meaning
2 assigned by Section 4201.002 [~~Article 21.58A~~].

3 SECTION 2G.008. Section 1305.056(c), Insurance Code, is
4 amended to correct a cross-reference to read as follows:

5 (c) A network is subject to Chapters 441 and 443 [~~Articles~~
6 ~~21.28 and 21.28-A~~] and is considered an insurer or insurance
7 company, as applicable, for purposes of those laws.

8 SECTION 2G.009. Section 1305.154(c), Insurance Code, is
9 amended to correct a cross-reference to read as follows:

10 (c) A network's contract with a carrier must include:

11 (1) a description of the functions that the carrier
12 delegates to the network, consistent with the requirements of
13 Subsection (b), and the reporting requirements for each function;

14 (2) a statement that the network and any management
15 contractor or third party to which the network delegates a function
16 will perform all delegated functions in full compliance with all
17 requirements of this chapter, the Texas Workers' Compensation Act,
18 and rules of the commissioner or the commissioner of workers'
19 compensation;

20 (3) a provision that the contract:

21 (A) may not be terminated without cause by either
22 party without 90 days' prior written notice; and

23 (B) must be terminated immediately if cause
24 exists;

25 (4) a hold-harmless provision stating that the
26 network, a management contractor, a third party to which the
27 network delegates a function, and the network's contracted

1 providers are prohibited from billing or attempting to collect any
2 amounts from employees for health care services under any
3 circumstances, including the insolvency of the carrier or the
4 network, except as provided by Section 1305.451(b)(6);

5 (5) a statement that the carrier retains ultimate
6 responsibility for ensuring that all delegated functions and all
7 management contractor functions are performed in accordance with
8 applicable statutes and rules and that the contract may not be
9 construed to limit in any way the carrier's responsibility,
10 including financial responsibility, to comply with all statutory
11 and regulatory requirements;

12 (6) a statement that the network's role is to provide
13 the services described under Subsection (b) as well as any other
14 services or functions delegated by the carrier, including functions
15 delegated to a management contractor, subject to the carrier's
16 oversight and monitoring of the network's performance;

17 (7) a requirement that the network provide the
18 carrier, at least monthly and in a form usable for audit purposes,
19 the data necessary for the carrier to comply with reporting
20 requirements of the department and the division of workers'
21 compensation with respect to any services provided under the
22 contract, as determined by commissioner rules;

23 (8) a requirement that the carrier, the network, any
24 management contractor, and any third party to which the network
25 delegates a function comply with the data reporting requirements of
26 the Texas Workers' Compensation Act and rules of the commissioner
27 of workers' compensation;

1 (9) a contingency plan under which the carrier would,
2 in the event of termination of the contract or a failure to perform,
3 reassume one or more functions of the network under the contract,
4 including functions related to:

5 (A) payments to providers and notification to
6 employees;

7 (B) quality of care;

8 (C) utilization review;

9 (D) retrospective review; and

10 (E) continuity of care, including a plan for
11 identifying and transitioning employees to new providers;

12 (10) a provision that requires that any agreement by
13 which the network delegates any function to a management contractor
14 or any third party be in writing, and that such an agreement require
15 the delegated third party or management contractor to be subject to
16 all the requirements of this subchapter;

17 (11) a provision that requires the network to provide
18 to the department the license number of a management contractor or
19 any delegated third party who performs a function that requires a
20 license as a utilization review agent under Chapter 4201 [~~Article~~
21 ~~21.58A~~] or any other license under this code or another insurance
22 law of this state;

23 (12) an acknowledgment that:

24 (A) any management contractor or third party to
25 whom the network delegates a function must perform in compliance
26 with this chapter and other applicable statutes and rules, and that
27 the management contractor or third party is subject to the

1 carrier's and the network's oversight and monitoring of its
2 performance; and

3 (B) if the management contractor or the third
4 party fails to meet monitoring standards established to ensure that
5 functions delegated to the management contractor or the third party
6 under the delegation contract are in full compliance with all
7 statutory and regulatory requirements, the carrier or the network
8 may cancel the delegation of one or more delegated functions;

9 (13) a requirement that the network and any management
10 contractor or third party to which the network delegates a function
11 provide all necessary information to allow the carrier to provide
12 information to employees as required by Section 1305.451; and

13 (14) a provision that requires the network, in
14 contracting with a third party directly or through another third
15 party, to require the third party to permit the commissioner to
16 examine at any time any information the commissioner believes is
17 relevant to the third party's financial condition or the ability of
18 the network to meet the network's responsibilities in connection
19 with any function the third party performs or has been delegated.

20 SECTION 2G.010. Section 1305.351(a), Insurance Code, is
21 amended to correct cross-references to read as follows:

22 (a) The requirements of Chapter 4201 [~~Article 21.58A~~] apply
23 to utilization review conducted in relation to claims in a workers'
24 compensation health care network. In the event of a conflict
25 between Chapter 4201 [~~Article 21.58A~~] and this chapter, this
26 chapter controls.

27 SECTION 2G.011. Section 1305.355(a), Insurance Code, is

1 amended to correct a cross-reference to read as follows:

2 (a) The utilization review agent shall:

3 (1) permit the employee or person acting on behalf of
4 the employee and the employee's requesting provider whose
5 reconsideration of an adverse determination is denied to seek
6 review of that determination within the period prescribed by
7 Subsection (b) by an independent review organization assigned in
8 accordance with Chapter 4202 [~~Article 21.58C~~] and commissioner
9 rules; and

10 (2) provide to the appropriate independent review
11 organization, not later than the third business day after the date
12 the utilization review agent receives notification of the
13 assignment of the request to an independent review organization:

14 (A) any medical records of the employee that are
15 relevant to the review;

16 (B) any documents used by the utilization review
17 agent in making the determination;

18 (C) the response letter described by Section
19 1305.354(a)(4);

20 (D) any documentation and written information
21 submitted in support of the request for reconsideration; and

22 (E) a list of the providers who provided care to
23 the employee and who may have medical records relevant to the
24 review.

25 SECTION 2G.012. Section 1369.056, Insurance Code, is
26 amended to correct cross-references to read as follows:

27 Sec. 1369.056. ADVERSE DETERMINATION. (a) The refusal of a

1 group health benefit plan issuer to provide benefits to an enrollee
2 for a prescription drug is an adverse determination for purposes of
3 Section 4201.002 [~~2, Article 21.58A,~~] if:

4 (1) the drug is not included in a drug formulary used
5 by the group health benefit plan; and

6 (2) the enrollee's physician has determined that the
7 drug is medically necessary.

8 (b) The enrollee may appeal the adverse determination under
9 Subchapters H and I, Chapter 4201 [~~Sections 6 and 6A, Article~~
10 ~~21.58A~~].

11 SECTION 2G.013. Sections 1501.002(8) and (14), Insurance
12 Code, are amended to correct cross-references to read as follows:

13 (8) "Large employer" means a person who employed an
14 average of at least 51 eligible employees on business days during
15 the preceding calendar year and who employs at least two employees
16 on the first day of the plan year. The term includes a governmental
17 entity subject to Article 3.51-1, [~~3.51-2,~~] 3.51-4, or 3.51-5, to
18 Subchapter C, Chapter 1364, [~~or~~] to Chapter 1578, or to Chapter 177,
19 Local Government Code, that otherwise meets the requirements of
20 this subdivision. For purposes of this definition, a partnership
21 is the employer of a partner.

22 (14) "Small employer" means a person who employed an
23 average of at least two employees but not more than 50 eligible
24 employees on business days during the preceding calendar year and
25 who employs at least two employees on the first day of the plan
26 year. The term includes a governmental entity subject to Article
27 3.51-1, [~~3.51-2,~~] 3.51-4, or 3.51-5, to Subchapter C, Chapter 1364,

1 ~~[or]~~ to Chapter 1578, or to Chapter 177, Local Government Code, that
2 otherwise meets the requirements of this subdivision. For purposes
3 of this definition, a partnership is the employer of a partner.

4 SECTION 2G.014. Section 1501.009(b), Insurance Code, is
5 amended to correct cross-references to read as follows:

6 (b) An independent school district that is participating in
7 the uniform group coverage program established under Chapter 1579
8 ~~[Article 3.50-7]~~ may not participate in the small employer market
9 under this section for health insurance coverage and may not renew a
10 health insurance contract obtained in accordance with this section
11 after the date on which the program of coverages provided under
12 Chapter 1579 ~~[Article 3.50-7]~~ is implemented. This subsection does
13 not affect a contract for the provision of optional coverages not
14 included in a health benefit plan under this chapter.

15 SECTION 2G.015. Section 1501.257(c), Insurance Code, is
16 amended to correct a cross-reference to read as follows:

17 (c) Utilization review performed for any cost containment,
18 case management, or managed care arrangement must comply with
19 Chapter 4201 ~~[Article 21.58A]~~.

20 SECTION 2G.016. Section 1504.001(4), Insurance Code, is
21 amended to correct a cross-reference to read as follows:

22 (4) "Health benefit plan issuer" means:

23 (A) an insurance company, group hospital service
24 corporation, or health maintenance organization that delivers or
25 issues for delivery an individual, group, blanket, or franchise
26 insurance policy or agreement, a group hospital service contract,
27 or an evidence of coverage that provides benefits for medical or

1 surgical expenses incurred as a result of an accident or sickness;

2 (B) a governmental entity subject to Subchapter
3 D, Chapter 1355, Subchapter C, Chapter 1364, Chapter 1578, [~~or~~]
4 Article 3.51-1, [~~3.51-2,~~] 3.51-4, or 3.51-5, or Chapter 177, Local
5 Government Code;

6 (C) the issuer of a multiple employer welfare
7 arrangement as defined by Section 846.001; or

8 (D) the issuer of a group health plan as defined
9 by Section 607, Employee Retirement Income Security Act of 1974 (29
10 U.S.C. Section 1167).

11 SECTION 2G.017. Section 1506.109(a), Insurance Code, is
12 amended to correct a cross-reference to read as follows:

13 (a) The pool shall provide for and use cost containment
14 measures and requirements to make the coverage offered by the pool
15 more cost-effective. To the extent the board determines it is
16 cost-effective, the cost containment measures must include
17 individual case management and disease management. The cost
18 containment measures may include preadmission screening, the
19 requirement of a second surgical opinion, and concurrent
20 utilization review subject to Chapter 4201 [~~Article 21.58A~~].

21 SECTION 2G.018. Section 1551.003(12), Insurance Code, is
22 amended to correct a cross-reference to read as follows:

23 (12) "Serious mental illness" has the meaning assigned
24 by Section 1355.001 [~~1, Article 3.51-14~~].

25 SECTION 2G.019. Sections 1551.064(a) and (b), Insurance
26 Code, are amended to correct cross-references to read as follows:

27 (a) This section applies only to a group policy or contract

1 described by Section 1251.301 [~~3B(a), Article 3.51-6~~]. A policy or
2 contract executed under this chapter must provide that:

3 (1) premium payments must be:

4 (A) paid directly to the Employees Retirement
5 System of Texas; and

6 (B) postmarked or received not later than the
7 10th day of the month for which the premium is due;

8 (2) the premium for group continuation coverage under
9 Subchapter G, Chapter 1251 [~~Section 3B, Article 3.51-6~~], may not
10 exceed the level established for other surviving dependents of
11 deceased employees and annuitants;

12 (3) at the time the group policy or contract is
13 delivered, issued for delivery, renewed, amended, or extended, the
14 Employees Retirement System of Texas shall give notice of the
15 continuation option to each state agency covered by the group
16 benefits program; and

17 (4) each state agency shall give written notice of the
18 continuation option to each employee and dependent of an employee
19 who is covered by the group benefits program.

20 (b) A group policy or contract executed under this chapter
21 must provide that, not later than the 15th day after the date of any
22 severance of the family relationship that might activate the
23 continuation option under Subchapter G, Chapter 1251 [~~Section 3B,
24 Article 3.51-6~~], the group member shall give written notice of the
25 severance to the employing state agency.

26 SECTION 2G.020. Section 1601.109(a), Insurance Code, is
27 amended to correct a cross-reference to read as follows:

1 (a) In this section, "serious mental illness" has the
2 meaning assigned by Section 1355.001 [~~1, Article 3.51-14~~].

3 PART H. CROSS-REFERENCE UPDATES: TITLE 10, INSURANCE CODE

4 SECTION 2H.001. Section 1805.001, Insurance Code, is
5 amended to correct cross-references to read as follows:

6 Sec. 1805.001. APPLICABILITY OF CHAPTER. This chapter
7 applies to the kinds of insurance and insurers subject to:

8 (1) Section 403.002;

9 (2) Section 941.003 with respect to the application of
10 a law described by Section 941.003(b)(1) [~~941.003(b)(3)~~] or (c);

11 (3) Section 942.003 with respect to the application of
12 a law described by Section 942.003(b)(1) [~~942.003(b)(3)~~] or (c);

13 (4) Subchapter A, B, or C, [~~or D~~] Chapter 5;

14 (5) Subchapter H, Chapter 544;

15 (6) Subchapter A, Chapter 2301;

16 (7) Chapter 252, 253, 254, 255, 426, 1806, 1807, 2001,
17 2002, 2003, 2004, 2005, 2006, 2008, 2051, 2052, 2053, 2055, 2171,
18 2251, or 2252;

19 (8) Subtitle B or C, Title 10; or

20 (9) [~~Chapter 406A, Labor Code, or~~

21 [~~10~~] Chapter 2154, Occupations Code.

22 SECTION 2H.002. Section 1951.004(a), Insurance Code, is
23 amended to correct cross-references to read as follows:

24 (a) An insurer, or an officer or representative of an
25 insurer, commits an offense if the insurer, officer, or
26 representative violates:

27 (1) Section 1951.001, 1951.002, 1952.051, 1952.052,

1 1952.053, 1952.054, or 1952.055;

2 (2) Subchapter B, Chapter 1806;

3 (3) Subchapter C, Chapter 1953;

4 (4) Chapter 254; or

5 (5) (4) Article 5.01, [~~5.02~~] 5.03, [~~5.05~~] 5.06,
6 5.10, or 5.11.

7 SECTION 2H.003. Section 2051.002, Insurance Code, is
8 amended to correct cross-references to read as follows:

9 Sec. 2051.002. CONSTRUCTION OF CERTAIN LAWS. The following
10 shall be construed and applied independently of any other law that
11 relates to insurance rates and forms or prescribes the duties of the
12 commissioner or the department:

13 (1) this chapter;

14 (2) [~~Subchapter D, Chapter 5,~~

15 [~~3~~] Chapter 251, as that chapter relates to workers'
16 compensation insurance; and

17 (3) (4) Chapters 255, 426, 2052, [~~and~~] 2053, and
18 2055 [~~, and~~

19 [~~5~~] Chapter 406A, Labor Code].

20 SECTION 2H.004. Section 2051.157, Insurance Code, is
21 amended to correct a cross-reference to read as follows:

22 Sec. 2051.157. PENALTY FOR CERTAIN VIOLATIONS. An officer
23 or other representative of an insurance company is subject to a fine
24 of not less than \$100 or more than \$500 if the officer or other
25 representative violates any provision of the following relating to
26 the company's business:

27 (1) Subchapter A or B;

- 1 (2) Section 2051.156 or 2051.201;
2 (3) Chapter 426 or 2052;
3 (4) Subchapter A, C, or D, Chapter 2053; or
4 (5) Section 2053.051, 2053.052, 2053.053, or
5 2053.055 [~~or~~
6 ~~[(6) Article 5.66]~~.

7 SECTION 2H.005. Section 2052.004(a), Insurance Code, is
8 amended to correct a cross-reference to read as follows:

9 (a) Subject to Subsections (b) and (c), this subtitle [~~and~~
10 ~~Article 5.66]~~ may not be construed to prohibit an insurance
11 company, including the Texas Mutual Insurance Company, from issuing
12 participating policies.

13 SECTION 2H.006. Section 2201.155(a), Insurance Code, is
14 amended to correct a cross-reference to read as follows:

15 (a) A risk retention group not chartered in this state is
16 liable for the payment of premium and maintenance taxes and taxes on
17 premiums of direct business for risks located in this state and
18 shall report to the commissioner the net premiums written for risks
19 located in this state. The group is subject to taxation, and any
20 fine or penalty related to that taxation, on the same basis as a
21 foreign admitted insurer in accordance with Chapters 4, 201, 202,
22 203, 221, 222, 224, 227, 228, and 251-257.

23 SECTION 2H.007. Section 2204.101(d), Insurance Code, is
24 amended to correct a cross-reference to read as follows:

25 (d) The exchange and the members are considered insurers for
26 purposes of:

- 27 (1) Sections 201.052, 201.053, and 201.054;

1 (2) Chapters 4, 202, 203, 221, 222, 224, 227, 228, 251,
2 257, and 1109; and

3 (3) Section 171.0525, Tax Code.

4 PART I. CROSS-REFERENCE UPDATES: TITLE 11, INSURANCE CODE

5 SECTION 2I.001. Section 2551.001(c), Insurance Code, is
6 amended to correct cross-references to read as follows:

7 (c) To the extent applicable, the following provisions of
8 this code apply to a title insurance company:

9 (1) Articles [~~1.01, 1.04A,~~] 1.09-1 and [~~1.12, 1.13,~~
10 ~~1.15-1.19, 21.31,~~] 21.47[~~, and 21.49-8~~];

11 (2) Subsection (b), Article 1.04D;

12 (3) [~~Article 1.14-3, other than Section 8,~~

13 [~~(4) Subchapter F, Chapter 5,~~

14 [~~(5)~~] Chapters 33, 82, 83, 84, 86, 102, 261, 281, 401,
15 402, 493, 494, 541, 547, 555, 701, 801, 802, 824, [~~and~~] 828, 1805,
16 and 2204;

17 (4) [~~(6)~~] Chapter 31, other than Section 31.005;

18 (5) [~~(7)~~] Chapter 32, other than Section 32.022(b);

19 (6) [~~(8)~~] Chapter 36, other than Sections 36.003,
20 36.004, and 36.101-36.106;

21 (7) [~~(9)~~] Subchapter A, Chapter 38;

22 (8) [~~(10)~~] Subchapters A-G, Chapter 101;

23 (9) [~~(11)~~] Chapter 982, other than Sections 982.003,
24 982.051, 982.101, 982.105, 982.106(b), 982.109, and 982.113; and

25 (10) [~~(12)~~] Sections 37.052, 39.001, 39.002, 81.002,
26 81.004, 201.004, 201.005, 201.051, 201.055, 403.001, 403.051,
27 403.101, 521.002-521.004, 805.021, 822.001, 822.051, 822.052(1),

1 (2), and (3), 822.053, 822.057, except Subsection (a)(4), 822.058,
2 822.059, 822.060, 822.155, 822.157, 822.158, except Subsection
3 (a)(5), 841.004, 841.251, 841.252(a)-(c), and 4001.103.

4 SECTION 2I.002. Sections 2551.151(a) and (g), Insurance
5 Code, are amended to correct cross-references to read as follows:

6 (a) A title insurance company shall hold all investments in
7 cash or in the following:

8 (1) an abstract plant or plants, provided that:

9 (A) the corporation is organized under this title
10 and has the right to engage in the business of title insurance;

11 (B) except as provided by Subsection (b), the
12 investment is not more than 50 percent of the corporation's capital
13 stock; and

14 (C) the valuation of the plant or plants is
15 approved by the department;

16 (2) securities described by Subchapter D, Chapter 425,
17 other than Sections 425.202 and 425.229-425.232, [~~Article 3.39~~] or
18 investments authorized for title insurance companies under the laws
19 of any other state in which the company is authorized to engage in
20 business;

21 (3) real property or any real property interest that
22 is:

23 (A) required for the company's convenient
24 accommodation in the transaction of business with reasonable regard
25 to future needs;

26 (B) acquired in connection with a claim under a
27 title insurance policy;

1 (C) acquired in satisfaction or on account of
2 loans, mortgages, liens, judgments, or decrees previously owed to
3 the company in the course of business;

4 (D) acquired in partial payment of the
5 consideration of the sale of real property owned by the company if
6 the transaction results in a net reduction in the company's
7 investment in real property; or

8 (E) reasonably necessary to maintain or enhance
9 the sale value of real property previously acquired or held by the
10 company under this subdivision;

11 (4) a first mortgage note secured by any of the
12 following, provided that the amount of the note does not exceed 80
13 percent of the appraised value of the security for the note:

14 (A) an abstract plant and connected personal
15 property in or outside this state;

16 (B) stock of a title insurance agent in or
17 outside this state;

18 (C) a construction contract to build an abstract
19 plant and connected personal property; or

20 (D) any two or more of the items listed in this
21 subdivision;

22 (5) the shares of any federal home loan bank in an
23 amount necessary to qualify for membership and any additional
24 amounts approved by the commissioner;

25 (6) foreign securities that are substantially of the
26 same kinds, classes, and investment grade as securities otherwise
27 qualified for investment under this section, provided that, unless

1 the investment is also qualified under Subdivision (2), the
2 aggregate amount of foreign investments made under this subdivision
3 does not exceed:

4 (A) five percent of the insurer's admitted assets
5 at the end of the preceding year;

6 (B) two percent of the insurer's admitted assets
7 at the end of the preceding year invested in the securities of all
8 entities domiciled in any one foreign country; and

9 (C) one-half of one percent of the insurer's
10 admitted assets at the end of the preceding year invested in the
11 securities of any one individual entity domiciled in a foreign
12 country;

13 (7) securities lending, repurchase, reverse
14 repurchase, and dollar roll transactions, as described by Section
15 425.121 [~~4(g), Article 3.33~~]; or

16 (8) money market funds, as described by Section
17 425.123 [~~4(s), Article 3.33~~].

18 (g) A title insurance company may invest in a certified
19 capital company in the manner provided by Chapter 228 [~~Subchapter~~
20 ~~B, Chapter 4~~].

21 SECTION 2I.003. Section 2601.001, Insurance Code, is
22 amended to correct a cross-reference to read as follows:

23 Sec. 2601.001. SUPERVISION, LIQUIDATION, REHABILITATION,
24 REORGANIZATION, OR CONSERVATION OF TITLE INSURANCE COMPANIES AND
25 AGENTS. Each title insurance agent and title insurance company is
26 subject to Chapters 441 and 443 [~~Articles 21.28 and 21.28-A~~].

27 SECTION 2I.004. Section 2602.002(a), Insurance Code, is

1 amended to correct a cross-reference to read as follows:

2 (a) This chapter is for:

3 (1) the purposes and findings stated in Sections
4 441.001, 441.003, 441.005, and 441.006 [~~Section 1, Article~~
5 ~~21.28-A~~]; and

6 (2) the protection of holders of covered claims.

7 SECTION 2I.005. Section 2602.005(b), Insurance Code, is
8 amended to correct cross-references to read as follows:

9 (b) If this chapter conflicts with another law relating to
10 the subject matter of this chapter or its application, other than
11 Chapter 441 or 443 [~~Article 21.28 or 21.28-A~~], this chapter
12 controls. If this chapter conflicts with Chapter 441 or 443
13 [~~Article 21.28 or 21.28-A~~], that chapter [~~article~~] controls.

14 SECTION 2I.006. Section 2602.114(e), Insurance Code, is
15 amended to correct a cross-reference to read as follows:

16 (e) A board member may not disclose information received in
17 the meeting unless authorized by the commissioner or required as
18 witness in court. A board member and the meeting are subject to the
19 confidentiality standard imposed on an examiner under Sections
20 401.105 and 401.106 [~~Article 1.18~~], except that a bond is not
21 required of a board member.

22 SECTION 2I.007. Section 2602.254, Insurance Code, is
23 amended to correct a cross-reference to read as follows:

24 Sec. 2602.254. CERTAIN CONSERVATOR AND RECEIVER EXPENSES
25 COVERED. Reasonable and necessary administrative expenses
26 incurred by a conservator appointed by the commissioner or a
27 receiver appointed by a court for an unauthorized insurer operating

1 in this state are covered claims if the commissioner has notified
2 the association or the association has otherwise become aware that:

3 (1) the unauthorized insurer has insufficient liquid
4 assets to pay those expenses; and

5 (2) insufficient money is available from:

6 (A) abandoned money under Section 443.304 [~~87~~
7 ~~Article 21.28~~]; and

8 (B) department appropriations for use in paying
9 those expenses.

10 SECTION 2I.008. Section 2602.301(a), Insurance Code, is
11 amended to correct a cross-reference to read as follows:

12 (a) The association shall:

13 (1) investigate a claim brought against the
14 association, the commissioner, or a special deputy receiver
15 appointed under Chapter 443 [~~Article 21.28~~] if the claim involves
16 or may involve the association's rights and obligations under this
17 chapter; and

18 (2) adjust, compromise, settle, and pay a covered
19 claim to the extent of the association's obligation, and deny all
20 other claims.

21 PART J. CROSS-REFERENCE UPDATES: TITLE 13, INSURANCE CODE

22 SECTION 2J.001. Section 4001.002(a), Insurance Code, is
23 amended to correct a cross-reference to read as follows:

24 (a) Except as otherwise provided by this code, this title
25 applies to each person licensed under:

26 (1) Subchapter H, Chapter 885;

27 (2) Subchapter F, Chapter 911;

- (3) Section 912.251;
- (4) Section 961.005;
- (5) Subchapter E, Chapter 981;
- (6) [~~(5)~~] Subchapter D, Chapter 1152;
- (7) [~~(6)~~] Subchapter C or D of this chapter;
- (8) [~~(7)~~] Subtitle B, C, or D of this title;
[~~(8)~~ Article 23.23A,] or
- (9) Subsection (c), Article 5.13-1.

SECTION 2J.002. Section 4001.009(a), Insurance Code, is amended to correct cross-references to read as follows:

(a) As referenced in Section 4001.003(9), a reference to an agent in the following laws includes a subagent without regard to whether a subagent is specifically mentioned:

(1) Chapters 281, 402, 421-423, 441, 444, 461-463, 523, 541-556, 558, 559, 702, 703, 705, 821, 823-825, 827, 828, 844, 963, 1108, 1205-1209, 1211-1214 [~~1211-1213~~], 1352, 1353, 1357, 1358, 1360-1363, 1369, 1453-1455, 1503, 1550, 1801, 1803, 2151-2154, 2201-2203, 2205-2213, 3501, 3502, 4007, [and] 4102, and 4201-4203;

(2) Chapter 403, excluding Section 403.002;

(3) Subchapter A, Chapter 491;

(4) Subchapter C, Chapter 521;

~~[(3) Subchapter F, Chapter 542,~~

~~[(4) Subchapters G and I, Chapter 544,]~~

(5) Subchapter A, Chapter 557;

(6) Subchapter B, Chapter 805;

(7) Subchapters D, E, and F, Chapter 982;

1 (8) [~~(7)~~] Subchapter D, Chapter 1103;

2 (9) [~~(8)~~] Subchapters B, C, D, and E, Chapter 1204,
3 excluding Sections 1204.153 and 1204.154;

4 (10) [~~(9)~~] Subchapter B, Chapter 1366;

5 (11) [~~(10)~~] Subchapters B, C, and D, Chapter 1367,
6 excluding Section 1367.053(c);

7 (12) [~~(11)~~] Subchapters A, C, D, E, F, H, and I,
8 Chapter 1451;

9 (13) [~~(12)~~] Subchapter B, Chapter 1452;

10 (14) [~~(13)~~] Sections 551.004, 841.303, 982.001,
11 982.002, 982.004, 982.052, 982.102, 982.103, 982.104, 982.106,
12 982.107, 982.108, 982.110, 982.111, [~~and~~] 982.112, and 1802.001;
13 and

14 (15) [~~(14)~~] ~~Subchapters D, E, and F, Chapter 982;~~

15 ~~[(15)] Section 1101.003(a); and~~

16 ~~[(16)] Chapter 107, Occupations Code.~~

17 SECTION 2J.003. Section 4051.002, Insurance Code, is
18 amended to correct a cross-reference to read as follows:

19 Sec. 4051.002. REQUIREMENTS APPLICABLE TO CERTAIN AGENT
20 CONTRACTS. An agent's contract entered into on or after August 27,
21 1973, by an insurer engaged in the business of property and casualty
22 insurance in this state is subject to Chapter 444 [~~Article~~
23 ~~21.11-2~~].

24 SECTION 2J.004. Section 4051.101(a), Insurance Code, is
25 amended to correct cross-references to read as follows:

26 (a) Except as provided by Section 4051.052, a person is
27 required to hold a limited property and casualty license if the

1 person acts as an agent who writes:

2 (1) job protection insurance as defined by Section
3 962.002 [~~Article 25.01~~];

4 (2) exclusively, insurance on growing crops under
5 Subchapter F;

6 (3) any form of insurance authorized under Chapter 911
7 for a farm mutual insurance company;

8 (4) exclusively, any form of insurance authorized to
9 be solicited and written in this state that relates to:

10 (A) the ownership, operation, maintenance, or
11 use of a motor vehicle designed for use on the public highways,
12 including a trailer or semitrailer, and the motor vehicle's
13 accessories or equipment; or

14 (B) the ownership, occupancy, maintenance, or
15 use of a manufactured home classified as personal property under
16 Section 2.001, Property Code;

17 (5) a prepaid legal services contract under Article
18 5.13-1 or Chapter 961;

19 (6) exclusively, an industrial fire insurance policy:

20 (A) covering dwellings, household goods, and
21 wearing apparel;

22 (B) written on a weekly, monthly, or quarterly
23 basis on a continuous premium payment plan; and

24 (C) written for an insurer exclusively engaged in
25 the business as described by Section 912.310;

26 (7) credit insurance, except as otherwise provided by
27 Chapter 4055; or

1 (8) any other kind of insurance, if holding a limited
2 property and casualty license to write that kind of insurance is
3 determined necessary by the commissioner for the protection of the
4 insurance consumers of this state.

5 SECTION 2J.005. Section 4152.104(b), Insurance Code, is
6 amended to correct a cross-reference to read as follows:

7 (b) Expenses relating to an examination conducted under
8 this subchapter may be charged to the person examined in accordance
9 with Sections 401.151, 401.152, 401.155, and 401.156 [~~Article~~
10 ~~1.16~~].

11 SECTION 2J.006. Section 4152.152, Insurance Code, is
12 amended to correct cross-references to read as follows:

13 Sec. 4152.152. PLACEMENT OF REINSURANCE WITH UNAUTHORIZED
14 REINSURER. Unless the ceding insurer releases the broker in
15 writing from the broker's obligations under this section, a broker
16 who places reinsurance on behalf of an authorized ceding insurer
17 with a reinsurer that is not authorized, accredited, or trusteeed in
18 this state under Chapter 492 [~~Article 3.10~~] or 493 [~~5.75-1~~] shall:

19 (1) exercise due diligence in inquiring into the
20 financial condition of the reinsurer;

21 (2) disclose to the ceding insurer the broker's
22 findings in connection with the inquiry under Subdivision (1); and

23 (3) make available to the ceding insurer a copy of the
24 current financial statement of the reinsurer.

25 SECTION 2J.007. Section 4152.214(a), Insurance Code, is
26 amended to correct cross-references to read as follows:

27 (a) Unless the ceding insurer releases the manager in

1 writing from the manager's obligations under this section, a
2 manager who places reinsurance on behalf of an authorized ceding
3 insurer with a reinsurer that is not authorized, accredited, or
4 trustee in this state under Chapter 492 [~~Article 3.10~~] or 493
5 [~~5.75-1~~] shall:

6 (1) exercise due diligence in inquiring into the
7 financial condition of the reinsurer;

8 (2) disclose to the ceding insurer the manager's
9 findings in connection with the inquiry under Subdivision (1); and

10 (3) make available to the ceding insurer a copy of the
11 current financial statement of the reinsurer.

12 PART K. EFFECTIVE DATE

13 SECTION 2K.001. This article takes effect April 1, 2009.

14 ARTICLE 3. INSURANCE CODE UPDATE

15 PART A. GENERAL PROVISIONS

16 SECTION 3A.001. This article is enacted as part of the
17 state's continuing statutory revision program under Chapter 323,
18 Government Code. This article is a revision for purposes of Section
19 43, Article III, Texas Constitution, and has the purposes of:

20 (1) conforming codifications enacted by the 79th
21 Legislature to other Acts of that legislature that amended the laws
22 codified or added new law to subject matter codified;

23 (2) making necessary corrections to enacted
24 codifications; and

25 (3) renumbering titles, chapters, and sections of
26 codes that duplicate title, chapter, or section numbers.

27 SECTION 3A.002. (a) The repeal of a statute by this article

1 does not affect an amendment, revision, or reenactment of the
2 statute by the 80th Legislature, Regular Session, 2007. The
3 amendment, revision, or reenactment is preserved and given effect
4 as part of the code provision that revised the statute so amended,
5 revised, or reenacted.

6 (b) If any provision of this article conflicts with a
7 statute enacted by the 80th Legislature, Regular Session, 2007, the
8 statute controls.

9 SECTION 3A.003. (a) A transition or saving provision of a
10 law codified by this article applies to the codified law to the same
11 extent as it applied to the original law.

12 (b) The repeal of a transition or saving provision by this
13 article does not affect the application of the provision to the
14 codified law.

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

19 PART B. CHANGES UPDATING INSURANCE CODE

20 SECTION 3B.001. (a) Section 401.010(a), Insurance Code, is
21 amended to conform to Section 2, Chapter 408, Acts of the 79th
22 Legislature, Regular Session, 2005, to read as follows:

23 (a) An accountant must audit the financial reports provided
24 by an insurer or health maintenance organization for purposes of an
25 audit under this subchapter. The accountant who audits the reports
26 must conduct the audit in accordance with generally accepted
27 auditing standards or with standards adopted by the Public Company

1 Accounting Oversight Board, as applicable, and must consider the
2 standards specified [~~other procedures described~~] in the Financial
3 Condition Examiner's Handbook adopted by the National Association
4 of Insurance Commissioners or other analogous nationally
5 recognized standards adopted by commissioner rule.

6 (b) Section 2, Chapter 408, Acts of the 79th Legislature,
7 Regular Session, 2005, which amended former Subsection (b), Section
8 14, Article 1.15A, Insurance Code, is repealed.

9 SECTION 3B.002. (a) Section 401.011(d), Insurance Code, is
10 amended to conform to Section 1, Chapter 408, Acts of the 79th
11 Legislature, Regular Session, 2005, to read as follows:

12 (d) The commissioner may not accept an audited financial
13 report prepared wholly or partly by an individual or firm who the
14 commissioner finds:

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

19 (2) has violated the insurance laws of this state with
20 respect to a report filed under this subchapter; [~~or~~]

21 (3) has demonstrated a pattern or practice of failing
22 to detect or disclose material information in reports filed under
23 this subchapter; or

24 (4) has directly or indirectly entered into an
25 agreement of indemnity or release of liability regarding an audit
26 of an insurer.

27 (b) Section 1, Chapter 408, Acts of the 79th Legislature,

1 Regular Session, 2005, which amended former Subsection (c), Section
2 12, Article 1.15A, Insurance Code, is repealed.

3 SECTION 3B.003. Subchapters A, B, C, D, E, F, G, H, I, J, K,
4 L, M, N, O, and P, Chapter 442, Insurance Code, and Section 6.069,
5 Chapter 265, Acts of the 79th Legislature, Regular Session, 2005,
6 which amended former Section 3A, Article 21.28, Insurance Code, are
7 repealed to conform to the repeal of Article 21.28, Insurance Code,
8 by Section 9, Chapter 995, Acts of the 79th Legislature, Regular
9 Session, 2005.

10 SECTION 3B.004. (a) The following changes are made to Title
11 1, Insurance Code, and Subtitle C, Title 4, Insurance Code, for
12 organizational purposes:

13 (1) Chapter 21A, Insurance Code, is redesignated as
14 Chapter 443, Subtitle C, Title 4, Insurance Code, and:

15 (A) Subchapter A in the redesignated chapter is
16 redesignated as Subchapter A, Chapter 443, Insurance Code, and the
17 sections in the redesignated subchapter, Sections 21A.001,
18 21A.002, 21A.003, 21A.004, 21A.005, 21A.006, 21A.007, 21A.008,
19 21A.009, 21A.010, 21A.011, 21A.012, 21A.013, 21A.0135, 21A.014,
20 21A.015, 21A.016, and 21A.017, are redesignated as Sections
21 443.001, 443.002, 443.003, 443.004, 443.005, 443.006, 443.007,
22 443.008, 443.009, 443.010, 443.011, 443.012, 443.013, 443.0135,
23 443.014, 443.015, 443.016, and 443.017, respectively;

24 (B) Subchapter B in the redesignated chapter is
25 redesignated as Subchapter B, Chapter 443, Insurance Code, and the
26 sections in the redesignated subchapter, Sections 21A.051 through
27 21A.059, are redesignated as Sections 443.051 through 443.059;

1 (C) Subchapter C in the redesignated chapter is
2 redesignated as Subchapter C, Chapter 443, Insurance Code, and the
3 sections in the redesignated subchapter, Sections 21A.101 through
4 21A.105, are redesignated as Sections 443.101 through 443.105;

5 (D) Subchapter D in the redesignated chapter is
6 redesignated as Subchapter D, Chapter 443, Insurance Code, and the
7 sections in the redesignated subchapter, Sections 21A.151 through
8 21A.156, are redesignated as Sections 443.151 through 443.156;

9 (E) Subchapter E in the redesignated chapter is
10 redesignated as Subchapter E, Chapter 443, Insurance Code, and the
11 sections in the redesignated subchapter, Sections 21A.201 through
12 21A.213, are redesignated as Sections 443.201 through 443.213;

13 (F) Subchapter F in the redesignated chapter is
14 redesignated as Subchapter F, Chapter 443, Insurance Code, and the
15 sections in the redesignated subchapter, Sections 21A.251 through
16 21A.261, are redesignated as Sections 443.251 through 443.261;

17 (G) Subchapter G in the redesignated chapter is
18 redesignated as Subchapter G, Chapter 443, Insurance Code, and the
19 sections in the redesignated subchapter, Sections 21A.301 through
20 21A.304, are redesignated as Sections 443.301 through 443.304;

21 (H) Subchapter H in the redesignated chapter is
22 redesignated as Subchapter H, Chapter 443, Insurance Code, and the
23 sections in the redesignated subchapter, Sections 21A.351 through
24 21A.355, are redesignated as Sections 443.351 through 443.355; and

25 (I) Subchapter I in the redesignated chapter is
26 redesignated as Subchapter I, Chapter 443, Insurance Code, and the
27 sections in the redesignated subchapter, Sections 21A.401 and

1 21A.402, are redesignated as Sections 443.401 and 443.402,
2 respectively; and

3 (2) Subchapter Q, Chapter 442, Insurance Code, is
4 redesignated as Chapter 444, Insurance Code, the heading of
5 Subchapter Q is amended to read as follows: "CHAPTER 444
6 [~~SUBCHAPTER Q~~]. AGENCY CONTRACTS WITH CERTAIN INSURERS", and
7 Sections 442.801, 442.802, 442.803, and 442.804 in the redesignated
8 subchapter are redesignated as Sections 444.001, 444.002, 444.003,
9 and 444.004, respectively.

10 (b) Sections 21A.004(a)(4), (11), (14), (17), and (26),
11 Insurance Code, redesignated as Sections 443.004(a)(4), (11),
12 (14), (17), and (26), Insurance Code, respectively, by Subsection
13 (a)(1)(A) of this section, are amended to conform to the additional
14 changes made by Subsection (a)(1) of this section and to the
15 recodification and repeal of Articles 21.28-C and 21.28-D,
16 Insurance Code, by Chapter 727, Acts of the 79th Legislature,
17 Regular Session, 2005, to read as follows:

18 (4) "Delinquency proceeding" means any proceeding
19 instituted against an insurer for the purpose of liquidating,
20 rehabilitating, or conserving the insurer, and any proceeding under
21 Section 443.051 [~~21A.051~~].

22 (11) "Guaranty association" means any mechanism
23 mandated by [~~Article 21.28-C or 21.28-D,~~] Chapter 462, 463, or
24 2602[7] or other laws of this state or a similar mechanism in
25 another state that is created for the payment of claims or
26 continuation of policy obligations of financially impaired or
27 insolvent insurers.

1 (14) "Insurer" means any person that has done,
2 purports to do, is doing, or is authorized to do the business of
3 insurance in this state, and is or has been subject to the authority
4 of or to liquidation, rehabilitation, reorganization, supervision,
5 or conservation by any insurance commissioner. For purposes of
6 this chapter, any other persons included under Section 443.003
7 [~~21A.003~~] are insurers.

8 (17) "Party in interest" means the commissioner, a 10
9 percent or greater equity security holder in the insolvent insurer,
10 any affected guaranty association, any nondomiciliary commissioner
11 for a jurisdiction in which the insurer has outstanding claims
12 liabilities, and any of the following parties that have filed a
13 request for inclusion on the service list under Section 443.007
14 [~~21A.007~~]:

15 (A) an insurer that ceded to or assumed business
16 from the insolvent insurer; and

17 (B) an equity shareholder, policyholder,
18 third-party claimant, creditor, and any other person, including any
19 indenture trustee, with a financial or regulatory interest in the
20 receivership proceeding.

21 (26) "Secured claim" means any claim secured by an
22 asset that is not a general asset. The term includes the right to
23 set off as provided in Section 443.209 [~~21A.209~~]. The term does not
24 include a claim arising from a constructive or resulting trust, a
25 special deposit claim, or a claim based on mere possession.

26 (c) Sections 21A.005(e), (h), and (i), Insurance Code,
27 redesignated as Sections 443.005(e), (h), and (i), Insurance Code,

1 respectively, by Subsection (a)(1)(A) of this section, are amended
2 to conform to the additional changes made by Subsection (a)(1) of
3 this section to read as follows:

4 (e) If, on motion of any party, the receivership court finds
5 that any action, as a matter of substantial justice, should be tried
6 in a forum outside this state, the receivership court may enter an
7 appropriate order to stay further proceedings on the action in this
8 state. Except as to claims against the estate, nothing in this
9 chapter deprives a party of any contractual right to pursue
10 arbitration. A party in arbitration may bring a claim or
11 counterclaim against the estate, but the claim or counterclaim is
12 subject to Section 443.209 [~~21A.209~~].

13 (h) At any time after an order is entered pursuant to
14 Section 443.051, 443.101, or 443.151 [~~21A.051, 21A.101, or~~
15 ~~21A.151~~], the commissioner or receiver may transfer the case to the
16 county of the principal office of the person proceeded against. In
17 the event of transfer, the court in which the proceeding was
18 commenced, upon application of the commissioner or receiver, shall
19 direct its clerk to transmit the court's file to the clerk of the
20 court to which the case is to be transferred. The proceeding, after
21 transfer, shall be conducted in the same manner as if it had been
22 commenced in the court to which the matter is transferred.

23 (i) A person may not intervene in any delinquency proceeding
24 in this state for the purpose of seeking or obtaining payment of any
25 judgment, lien, or other claim of any kind. The claims procedure
26 set forth in this chapter constitutes the exclusive means for
27 obtaining payment of claims from the receivership estate. This

1 provision is not intended to affect the rights conferred on the
2 guaranty associations by Section 443.008(1) [~~21A.008(1)~~].

3 (d) Section 21A.008(e), Insurance Code, redesignated as
4 Section 443.008(e), Insurance Code, by Subsection (a)(1)(A) of this
5 section, is amended to conform to the additional changes made by
6 Subsection (a)(1) of this section to read as follows:

7 (e) Notwithstanding Subsection (c), the commencement of a
8 delinquency proceeding under this chapter does not operate as a
9 stay of:

10 (1) regulatory actions not described by Subsection
11 (c)(7) that are taken by the commissioners of nondomiciliary
12 states, including the suspension of licenses;

13 (2) criminal proceedings;

14 (3) any act to perfect or to maintain or continue the
15 perfection of an interest in property to the extent that the act is
16 accomplished within any relation back period under applicable law;

17 (4) set off as permitted by Section 443.209 [~~21A.209~~];

18 (5) pursuit and enforcement of nonmonetary
19 governmental claims, judgments, and proceedings;

20 (6) presentment of a negotiable instrument and the
21 giving of notice and protesting dishonor of the instrument;

22 (7) enforcement of rights against single beneficiary
23 trusts established pursuant to and in compliance with laws relating
24 to credit for reinsurance;

25 (8) termination, liquidation, and netting of
26 obligations under qualified financial contracts as provided for in
27 Section 443.261 [~~21A.261~~];

1 (9) discharge by a guaranty association of statutory
2 responsibilities under any law governing guaranty associations; or

3 (10) any of the following actions:

4 (A) an audit by a governmental unit to determine
5 tax liability;

6 (B) the issuance to the insurer by a governmental
7 unit of a notice of tax deficiency;

8 (C) a demand for tax returns; or

9 (D) the making of an assessment for any tax and
10 issuance of a notice and demand for payment of the assessment.

11 (e) Section 21A.009(c), Insurance Code, redesignated as
12 Section 443.009(c), Insurance Code, by Subsection (a)(1)(A) of this
13 section, is amended to conform to the additional changes made by
14 Subsection (a)(1) of this section to read as follows:

15 (c) If applicable law, an order, or an agreement fixes a
16 period for commencing or continuing a civil action in a court other
17 than the receivership court on a claim against the insurer, and the
18 period has not expired before the date of the initial filing of the
19 petition in a delinquency proceeding, then the period does not
20 expire until the later of:

21 (1) the end of the period, including any suspension of
22 the period occurring on or after the filing of the initial petition
23 in the delinquency proceeding; or

24 (2) 30 days after termination or expiration of the
25 stay under Section 443.008 [~~21A.008~~] with respect to the claim.

26 (f) Section 21A.0135, Insurance Code, redesignated as
27 Section 443.0135, Insurance Code, by Subsection (a)(1)(A) of this

1 section, is amended to conform to the additional changes made by
2 Subsection (a)(1) of this section to read as follows:

3 Sec. 443.0135 [~~21A.0135~~]. CONTRACTS FOR SPECIAL DEPUTIES.

4 (a) The receiver shall use a competitive bidding process in the
5 selection of any special deputies appointed under Section 443.102
6 or 443.154 [~~21A.102 or 21A.154~~]. The process must include
7 procedures to promote the participation of historically
8 underutilized businesses that have been certified by the Texas
9 Building and Procurement Commission under Section 2161.061,
10 Government Code.

11 (b) A proposal submitted in connection with a bid
12 solicitation under Subsection (a) must describe the efforts that
13 have been made to include historically underutilized businesses as
14 subcontractors and the plan for using the historically
15 underutilized businesses in the administration of the receivership
16 estate. A special deputy appointed under Section 443.102 or
17 443.154 [~~21A.102 or 21A.154~~] shall make a good faith effort to
18 implement the plan and shall report to the receiver the special
19 deputy's efforts to identify and subcontract with historically
20 underutilized businesses.

21 (g) Sections 21A.015(a), (c), and (i), Insurance Code,
22 redesignated as Sections 443.015(a), (c), and (i), Insurance Code,
23 respectively, by Subsection (a)(1)(A) of this section, are amended
24 to conform to the additional changes made by Subsection (a)(1) of
25 this section to read as follows:

26 (a) The receiver may pay any expenses under contracts,
27 leases, employment agreements, or other arrangements entered into

1 by the insurer prior to receivership, as the receiver deems
2 necessary for the purposes of this chapter. The receiver is not
3 required to pay any expenses that the receiver determines are not
4 necessary, and may reject any contract pursuant to Section 443.013
5 [~~21A.013~~].

6 (c) The receiver shall submit to the receivership court an
7 application pursuant to Section 443.007 [~~21A.007~~] to approve:

8 (1) the terms of compensation of each special deputy
9 or contractor with respect to which the total amount of the
10 compensation is reasonably expected by the receiver for the
11 duration of the delinquency proceeding to exceed \$250,000, or
12 another amount established by the receivership court; and

13 (2) any other anticipated expense in excess of
14 \$25,000, or another amount established by the receivership court.

15 (i) All expenses of receivership shall be paid from the
16 assets of the insurer, except as provided by this subsection. In
17 the event that the property of the insurer does not contain
18 sufficient cash or liquid assets to defray the expenses incurred,
19 the commissioner may advance funds from the account established
20 under Section 443.304(c) [~~21A.304(c)~~]. Any amounts advanced shall
21 be repaid to the account out of the first available money of the
22 insurer.

23 (h) Sections 21A.051(a), (b), and (i), Insurance Code,
24 redesignated as Sections 443.051(a), (b), and (i), Insurance Code,
25 respectively, by Subsection (a)(1)(B) of this section, are amended
26 to conform to the additional changes made by Subsection (a)(1) of
27 this section to read as follows:

1 (a) The commissioner may file in a district court of Travis
2 County a petition with respect to an insurer domiciled in this
3 state, an unauthorized insurer, or, pursuant to Section 443.401
4 [~~21A.401~~], a foreign insurer:

5 (1) alleging that grounds exist that would justify a
6 court order for a formal delinquency proceeding against the insurer
7 under this chapter;

8 (2) alleging that the interests of policyholders,
9 creditors, or the public will be endangered by delay; and

10 (3) setting forth the contents of a seizure order
11 deemed to be necessary by the commissioner.

12 (b) Upon a filing under Subsection (a), the receivership
13 court may issue, ex parte and without notice or hearing, the
14 requested seizure order directing the commissioner to take
15 possession and control of all or a part of the property, books,
16 accounts, documents, and other records of an insurer, and of the
17 premises occupied by it for transaction of its business, and until
18 further order of the receivership court, enjoining the insurer and
19 its officers, managers, agents, and employees from disposition of
20 its property and from the transaction of its business except with
21 the written consent of the commissioner. Any person having
22 possession or control of and refusing to deliver any of the books,
23 records, or assets of a person against whom a seizure order has been
24 issued commits an offense. An offense under this subsection is
25 punishable in the manner described by Section 443.010(e)
26 [~~21A.010(e)~~].

27 (i) In all proceedings and judicial reviews under this

1 section, all records of the insurer, department files, court
2 records and papers, and other documents, so far as they pertain to
3 or are a part of the record of the proceedings, are confidential,
4 and all papers filed with the clerk of the court shall be held by the
5 clerk in a confidential file as permitted by law, except to the
6 extent necessary to obtain compliance with any order entered in
7 connection with the proceedings, unless and until:

8 (1) the court, after hearing argument in chambers,
9 orders otherwise;

10 (2) the insurer requests that the matter be made
11 public; or

12 (3) the commissioner applies for an order under
13 Section 443.057 [~~21A.057~~].

14 (i) Section 21A.052(b), Insurance Code, redesignated as
15 Section 443.052(b), Insurance Code, by Subsection (a)(1)(B) of this
16 section, is amended to conform to the additional changes made by
17 Subsection (a)(1) of this section to read as follows:

18 (b) The petition must state the grounds upon which the
19 proceeding is based and the relief requested and may include a
20 prayer for restraining orders and injunctive relief as described in
21 Section 443.008 [~~21A.008~~]. On the filing of the petition or order,
22 a copy shall be forwarded by first class mail or electronic
23 communication as permitted by the receivership court to the
24 insurance regulatory officials and guaranty associations in states
25 in which the insurer did business.

26 (j) Section 21A.056(a), Insurance Code, redesignated as
27 Section 443.056(a), Insurance Code, by Subsection (a)(1)(B) of this

1 section, is amended to conform to the additional changes made by
2 Subsection (a)(1) of this section to read as follows:

3 (a) The commissioner, rehabilitator, or liquidator may
4 share documents, materials, or other information in the possession,
5 custody, or control of the department without regard to the
6 confidentiality of those documents, materials, or information,
7 pertaining to an insurer that is the subject of a proceeding under
8 this chapter with other state, federal, and international
9 regulatory agencies, with the National Association of Insurance
10 Commissioners and its affiliates and subsidiaries, with state,
11 federal, and international law enforcement authorities, with an
12 auditor appointed by the receivership court in accordance with
13 Section 443.355 [~~21A.355~~], and, pursuant to Section 443.105
14 [~~21A.105~~], with representatives of guaranty associations that may
15 have statutory obligations as a result of the insolvency of the
16 insurer, provided that the recipient agrees to maintain the
17 confidentiality, if any, of the documents, material, or other
18 information. Nothing in this section limits the power of the
19 commissioner to disclose information under other applicable law.

20 (k) Section 21A.057, Insurance Code, redesignated as
21 Section 443.057, Insurance Code, by Subsection (a)(1)(B) of this
22 section, is amended to conform to the additional changes made by
23 Subsection (a)(1) of this section and to the recodification and
24 repeal of Articles 1.15, 1.15A, 1.16, 1.32, and 21.28-A, Insurance
25 Code, by Chapter 727, Acts of the 79th Legislature, Regular
26 Session, 2005, to read as follows:

27 Sec. 443.057 [~~21A.057~~]. GROUNDS FOR CONSERVATION,

1 REHABILITATION, OR LIQUIDATION. The commissioner may file with a
2 court in this state a petition with respect to an insurer domiciled
3 in this state or an unauthorized insurer for an order of
4 rehabilitation or liquidation on any one or more of the following
5 grounds:

6 (1) the insurer is impaired;

7 (2) the insurer is insolvent;

8 (3) the insurer is about to become insolvent, with
9 "about to become insolvent" being defined as reasonably anticipated
10 that the insurer will not have liquid assets to meet its next 90
11 days' current obligations;

12 (4) the insurer has neglected or refused to comply
13 with an order of the commissioner to make good within the time
14 prescribed by law any deficiency, whenever its capital and minimum
15 required surplus, if a stock company, or its surplus, if a company
16 other than stock, has become impaired;

17 (5) the insurer, its parent company, its subsidiaries,
18 or its affiliates have converted, wasted, or concealed property of
19 the insurer or have otherwise improperly disposed of, dissipated,
20 used, released, transferred, sold, assigned, hypothecated, or
21 removed the property of the insurer;

22 (6) the insurer is in a condition such that it could
23 not meet the requirements for organization and authorization as
24 required by law, except as to the amount of the original surplus
25 required of a stock company under Title 6, and except as to the
26 amount of the surplus required of a company other than a stock
27 company in excess of the minimum surplus required to be maintained;

1 (7) the insurer, its parent company, its subsidiaries,
2 or its affiliates have concealed, removed, altered, destroyed, or
3 failed to establish and maintain books, records, documents,
4 accounts, vouchers, and other pertinent material adequate for the
5 determination of the financial condition of the insurer by
6 examination under Chapter 401 [~~Article 1.15, 1.15A, or 1.16~~] or has
7 failed to properly administer claims or maintain claims records
8 that are adequate for the determination of its outstanding claims
9 liability;

10 (8) at any time after the issuance of an order under
11 Section 404.003 or Chapter 441 [~~Article 1.32 or 21.28-A~~], or at the
12 time of instituting any proceeding under this chapter, it appears
13 to the commissioner that, upon good cause shown, it would not be in
14 the best interest of the policyholders, creditors, or the public to
15 proceed with the conduct of the business of the insurer;

16 (9) the insurer is in a condition such that the further
17 transaction of business would be hazardous financially, according
18 to Subchapter A, Chapter 404, [~~Article 1.32~~] or otherwise, to its
19 policyholders, creditors, or the public;

20 (10) there is reasonable cause to believe that there
21 has been embezzlement from the insurer, wrongful sequestration or
22 diversion of the insurer's property, forgery or fraud affecting the
23 insurer, or other illegal conduct in, by, or with respect to the
24 insurer that, if established, would endanger assets in an amount
25 threatening the solvency of the insurer;

26 (11) control of the insurer is in a person who is:

27 (A) dishonest or untrustworthy; or

1 (B) so lacking in insurance company managerial
2 experience or capability as to be hazardous to policyholders,
3 creditors, or the public;

4 (12) any person who in fact has executive authority in
5 the insurer, whether an officer, manager, general agent, director,
6 trustee, employee, shareholder, or other person, has refused to be
7 examined under oath by the commissioner concerning the insurer's
8 affairs, whether in this state or elsewhere or if examined under
9 oath, refuses to divulge pertinent information reasonably known to
10 the person; and after reasonable notice of the fact, the insurer has
11 failed promptly and effectively to terminate the employment and
12 status of the person and all the person's influence on management;

13 (13) after demand by the commissioner under Chapter
14 401 [~~Article 1.15, 1.15A, or 1.16~~] or under this chapter, the
15 insurer has failed promptly to make available for examination any
16 of its own property, books, accounts, documents, or other records,
17 or those of any subsidiary or related company within the control of
18 the insurer or of any person having executive authority in the
19 insurer, so far as they pertain to the insurer;

20 (14) without first obtaining the written consent of
21 the commissioner, the insurer has transferred, or attempted to
22 transfer, in a manner contrary to Chapter 823 or any law relating to
23 bulk reinsurance, substantially its entire property or business, or
24 has entered into any transaction the effect of which is to merge,
25 consolidate, or reinsure substantially its entire property or
26 business in or with the property or business of any other person;

27 (15) the insurer or its property has been or is the

1 subject of an application for the appointment of a receiver,
2 trustee, custodian, conservator, sequestrator, or similar
3 fiduciary of the insurer or its property otherwise than as
4 authorized under the insurance laws of this state;

5 (16) within the previous five years, the insurer has
6 wilfully and continuously violated its charter, articles of
7 incorporation or bylaws, any insurance law of this state, or any
8 valid order of the commissioner;

9 (17) the insurer has failed to pay within 60 days after
10 the due date any obligation to any state or political subdivision of
11 a state or any judgment entered in any state, if the court in which
12 the judgment was entered had jurisdiction over the subject matter,
13 except that nonpayment is not a ground until 60 days after any good
14 faith effort by the insurer to contest the obligation has been
15 terminated, whether it is before the commissioner or in the courts;

16 (18) the insurer has systematically engaged in the
17 practice of reaching settlements with and obtaining releases from
18 claimants, and then unreasonably delayed payment, failed to pay the
19 agreed-upon settlements, or systematically attempted to compromise
20 with claimants or other creditors on the ground that it is
21 financially unable to pay its claims or obligations in full;

22 (19) the insurer has failed to file its annual report
23 or other financial report required by statute within the time
24 allowed by law;

25 (20) the board of directors or the holders of a
26 majority of the shares entitled to vote, or a majority of those
27 individuals entitled to the control of those entities specified by

1 Section 443.003 [~~21A.003~~], request or consent to rehabilitation or
2 liquidation under this chapter;

3 (21) the insurer does not comply with its domiciliary
4 state's requirements for issuance to it of a certificate of
5 authority, or its certificate of authority has been revoked by its
6 state of domicile; or

7 (22) when authorized by department rules.

8 (1) Section 21A.058, Insurance Code, redesignated as
9 Section 443.058, Insurance Code, by Subsection (a)(1)(B) of this
10 section, is amended to conform to the additional changes made by
11 Subsection (a)(1) of this section to read as follows:

12 Sec. 443.058 [~~21A.058~~]. ENTRY OF ORDER. If the
13 commissioner establishes any of the grounds provided in Section
14 443.057 [~~21A.057~~], the receivership court shall grant the petition
15 and issue the order of rehabilitation or liquidation requested in
16 the petition.

17 (m) Section 21A.101(b), Insurance Code, redesignated as
18 Section 443.101(b), Insurance Code, by Subsection (a)(1)(C) of this
19 section, is amended to conform to the additional changes made by
20 Subsection (a)(1) of this section to read as follows:

21 (b) Any order issued under this section must require
22 accountings to the receivership court by the rehabilitator.
23 Accountings must be at the intervals specified by the receivership
24 court in its order, but not less frequently than semi-annually.
25 Each accounting must include a report concerning the
26 rehabilitator's opinion as to the likelihood that a plan under
27 Section 443.103 [~~21A.103~~] will be prepared by the rehabilitator and

1 the timetable for doing so.

2 (n) Section 21A.102(a), Insurance Code, redesignated as
3 Section 443.102(a), Insurance Code, by Subsection (a)(1)(C) of this
4 section, is amended to conform to the additional changes made by
5 Subsection (a)(1) of this section to read as follows:

6 (a) The rehabilitator may appoint one or more special
7 deputies. A special deputy serves at the pleasure of the
8 rehabilitator and has all the powers and responsibilities of the
9 rehabilitator granted under this section, unless specifically
10 limited by the rehabilitator. The rehabilitator may employ or
11 contract with legal counsel, actuaries, accountants, appraisers,
12 consultants, clerks, assistants, and other personnel as may be
13 deemed necessary. Any special deputy or any other person with whom
14 the rehabilitator contracts under this subsection may act on behalf
15 of the commissioner only in the commissioner's capacity as
16 rehabilitator. Any person with whom the rehabilitator contracts
17 under this subsection is not considered an agent of the state, and
18 any contract entered into under this subsection does not constitute
19 a contract with the state. The provisions of any law governing the
20 procurement of goods and services by the state does not apply to any
21 contract entered into by the commissioner as rehabilitator. The
22 compensation of any special deputies, employees, and contractors
23 and all expenses of taking possession of the insurer and of
24 conducting the rehabilitation shall be fixed by the rehabilitator,
25 with the approval of the receivership court in accordance with
26 Section 443.015 [~~21A.015~~], and shall be paid out of the property of
27 the insurer. The persons appointed under this subsection serve at

1 the pleasure of the rehabilitator. If the rehabilitator deems it
2 necessary to the proper performance of the rehabilitator's duties
3 under this chapter, the rehabilitator may appoint an advisory
4 committee of policyholders, claimants, or other creditors,
5 including guaranty associations. The advisory committee serves at
6 the pleasure of the rehabilitator and without compensation or
7 reimbursement for expenses. The rehabilitator or the receivership
8 court in rehabilitation proceedings conducted under this chapter
9 may not appoint another committee of any nature.

10 (o) Section 21A.104, Insurance Code, redesignated as
11 Section 443.104, Insurance Code, by Subsection (a)(1)(C) of this
12 section, is amended to conform to the additional changes made by
13 Subsection (a)(1) of this section to read as follows:

14 Sec. 443.104 [~~21A.104~~]. TERMINATION OF REHABILITATION. (a)
15 When the rehabilitator believes further attempts to rehabilitate an
16 insurer would substantially increase the risk of loss to creditors,
17 policyholders, or the public or would be futile, the rehabilitator
18 may move for an order of liquidation. In accordance with Section
19 443.105 [~~21A.105~~], the rehabilitator or the rehabilitator's
20 designated representative shall coordinate with the guaranty
21 associations that may become liable as a result of the liquidation
22 and any national association of guaranty associations to plan for
23 transition to liquidation.

24 (b) Because the protection of the interests of insureds,
25 claimants, and the public requires the timely performance of all
26 insurance policy obligations, if the payment of policy obligations
27 is suspended in substantial part for a period of six months at any

1 time after the appointment of the rehabilitator and the
2 rehabilitator has not filed an application for approval of a plan
3 under Section 443.103 [~~21A.103~~], the rehabilitator shall petition
4 the receivership court for an order of liquidation.

5 (c) The rehabilitator or the directors of the insurer may at
6 any time petition the receivership court for, or the receivership
7 court on its own motion may enter, an order terminating
8 rehabilitation of an insurer. Subject to the provisions of Section
9 443.351 [~~21A.351~~], if the receivership court finds that
10 rehabilitation has been accomplished and that grounds for
11 rehabilitation under Section 443.057 [~~21A.057~~] no longer exist, it
12 shall order that the insurer be restored to title and possession of
13 its property and the control of the business.

14 (p) Sections 21A.151(b) and (e), Insurance Code,
15 redesignated as Sections 443.151(b) and (e), Insurance Code,
16 respectively, by Subsection (a)(1)(D) of this section, are amended
17 to conform to the additional changes made by Subsection (a)(1) of
18 this section to read as follows:

19 (b) Upon issuance of the order of liquidation, the rights
20 and liabilities of the insurer and of its creditors, policyholders,
21 shareholders, members, and all other persons interested in its
22 estate become fixed as of the date of entry of the order of
23 liquidation, except as provided by Sections 443.152 and 443.255
24 [~~21A.152 and 21A.255~~], unless otherwise fixed by the court.

25 (e) In the event an order of liquidation is set aside on
26 appeal, the company may not be released from delinquency
27 proceedings except in accordance with Section 443.351 [~~21A.351~~].

1 (q) Sections 21A.152(b), (c), and (d), Insurance Code,
2 redesignated as Sections 443.152(b), (c), and (d), Insurance Code,
3 respectively, by Subsection (a)(1)(D) of this section, are amended
4 to conform to the additional changes made by Subsection (a)(1) of
5 this section to read as follows:

6 (b) Notwithstanding any policy or contract language or any
7 other statute, all policies, insurance contracts other than
8 reinsurance by which the insurer has ceded insurance obligations to
9 another person, and surety bonds or surety undertakings, other than
10 life or health insurance or annuities, in effect at the time of
11 issuance of an order of liquidation, unless further extended by the
12 receiver with the approval of the receivership court, continue in
13 force only until the earlier of:

14 (1) the 30th day after the date of entry of the
15 liquidation order;

16 (2) the date of expiration of the policy coverage;

17 (3) the date the insured has replaced the insurance
18 coverage with equivalent insurance with another insurer or
19 otherwise terminated the policy;

20 (4) the date the liquidator has effected a transfer of
21 the policy obligation pursuant to Section 443.154(h) [~~21A.154(h)~~];

22 or

23 (5) the date proposed by the liquidator and approved
24 by the receivership court to cancel coverage.

25 (c) An order of liquidation under Section 443.151 [~~21A.151~~]
26 must terminate coverages at the time specified by Subsections (a)
27 and (b) for purposes of any other statute.

1 (d) Policies of life or health insurance or annuities
2 covered by a guaranty association and any portion of policies of
3 life or health insurance or annuities covered by a guaranty
4 association continue in force for the period and under the terms
5 provided for by any applicable guaranty association law. Policies
6 of life or health insurance or annuities not covered by a guaranty
7 association and any portion of policies of life or health insurance
8 or annuities not covered by a guaranty association terminate under
9 Subsection (b), except to the extent the liquidator proposes and
10 the receivership court approves the use of property of the estate,
11 consistent with Section 443.301 [~~21A.301~~], for the purpose of
12 continuing the contracts or coverage by transferring them to an
13 assuming reinsurer.

14 (r) Sections 21A.154(a), (b), (h), (k), (l), (y), and (z),
15 Insurance Code, redesignated as Sections 443.154(a), (b), (h), (k),
16 (l), (y), and (z), Insurance Code, respectively, by Subsection
17 (a)(1)(D) of this section, are amended to conform to the additional
18 changes made by Subsection (a)(1) of this section to read as
19 follows:

20 (a) The liquidator may appoint a special deputy or deputies
21 to act for the liquidator under this chapter and employ or contract
22 with legal counsel, actuaries, accountants, appraisers,
23 consultants, clerks, assistants, and other personnel the
24 liquidator may deem necessary to assist in the liquidation. A
25 special deputy has all powers of the liquidator granted by this
26 section, unless specifically limited by the liquidator, and serves
27 at the pleasure of the liquidator. A special deputy or any other

1 person with whom the liquidator contracts under this subsection may
2 act on behalf of the commissioner only in the commissioner's
3 capacity as liquidator. Any person with whom the liquidator
4 contracts is not considered to be an agent of the state and any
5 contract under this subsection is not a contract with the state.
6 The provisions of any law governing the procurement of goods and
7 services by the state do not apply to any contract entered into by
8 the commissioner as liquidator. This subsection does not waive any
9 immunity granted by Section 443.014 [~~21A.014~~] or create any cause
10 of action against the state.

11 (b) The liquidator may determine the reasonable
12 compensation for any special deputies, employees, or contractors
13 retained by the liquidator as provided in Subsection (a) and pay
14 compensation in accordance with Section 443.015 [~~21A.015~~].

15 (h) The liquidator may use property of the estate of an
16 insurer under a liquidation order to transfer to a solvent assuming
17 insurer policy obligations or the insurer's obligations under
18 surety bonds and surety undertakings as well as collateral held by
19 the insurer with respect to the reimbursement obligations of the
20 principals under those surety bonds and surety undertakings, if the
21 transfer can be arranged without prejudice to applicable priorities
22 under Section 443.301 [~~21A.301~~]. If all insureds, principals,
23 third-party claimants, and obligees under the policies, surety
24 bonds, and surety undertakings consent or if the receivership court
25 so orders, the estate has no further liability under the
26 transferred policies, surety bonds, or surety undertakings after
27 the transfer is made.

1 (k) The liquidator may enter into contracts as necessary to
2 carry out the order to liquidate and, subject to the provisions of
3 Section 443.013 [~~21A.013~~], may assume or reject any executory
4 contract or unexpired lease to which the insurer is a party.

5 (l) The liquidator may continue to prosecute and institute
6 in the name of the insurer or in the liquidator's own name any and
7 all suits and other legal proceedings, in this state or elsewhere,
8 and abandon the prosecution of claims the liquidator deems
9 unprofitable to pursue further. If the insurer is dissolved under
10 Section 443.153 [~~21A.153~~], the liquidator has the power to apply to
11 any court in this state or elsewhere for leave to substitute the
12 liquidator for the insurer as a party.

13 (y) The liquidator may hypothecate, encumber, lease, sell,
14 transfer, abandon, or otherwise dispose of or deal with any
15 property of the insurer, settle or resolve any claim brought by the
16 liquidator on behalf of the insurer, or commute or settle any claim
17 of reinsurance under any contract of reinsurance, as follows:

18 (1) if the property or claim has a market or settlement
19 value that does not exceed the lesser of \$1 million or 10 percent of
20 the general assets of the estate as shown on the receivership's
21 financial statements, the liquidator may take action at the
22 liquidator's discretion, provided that the receivership court may,
23 upon petition of the liquidator, increase the threshold upon a
24 showing that compliance with this requirement is burdensome to the
25 liquidator in administering the estate and is unnecessary to
26 protect the material interests of creditors;

27 (2) in all instances other than those described in

1 Subdivision (1), the liquidator may take the action only after
2 obtaining approval of the receivership court as provided by Section
3 443.007 [~~21A.007~~];

4 (3) the liquidator may, at the liquidator's
5 discretion, request the receivership court to approve a proposed
6 action as provided by Section 443.007 [~~21A.007~~] if the value of the
7 property or claim appears to be less than the threshold provided by
8 Subdivision (1) but cannot be ascertained with certainty, or for
9 any other reason as determined by the liquidator; and

10 (4) after obtaining approval of the receivership court
11 as provided in Section 443.007 [~~21A.007~~], the liquidator may,
12 subject to Subsection (z), transfer rights to payment under ceding
13 reinsurance agreements covering policies to a third-party
14 transferee.

15 (z) The transferee of a right to payment under Subsection
16 (y)(4) has the rights to collect and enforce collection of the
17 reinsurance for the amount payable to the ceding insurer or to its
18 receiver, without diminution because of the insolvency or because
19 the receiver has failed to pay all or a portion of the claim, based
20 on the amounts paid or allowed pursuant to Section 443.211
21 [~~21A.211~~]. The transfer of the rights does not give rise to any
22 defense regarding the reinsurer's obligations under the
23 reinsurance agreement regardless of whether an agreement or other
24 applicable law prohibits the transfer of rights under the
25 reinsurance agreement. Except as provided in this subsection, any
26 transfer of rights pursuant to Subsection (y)(4) does not impair
27 any rights or defenses of the reinsurer that existed prior to the

1 transfer or that would have existed in the absence of the transfer.
2 Except as otherwise provided in this subsection, any transfer of
3 rights pursuant to Subsection (y)(4) does not relieve the
4 transferee or the liquidator from obligations owed to the reinsurer
5 pursuant to the reinsurance or other agreement.

6 (s) Section 21A.155(b), Insurance Code, redesignated as
7 Section 443.155(b), Insurance Code, by Subsection (a)(1)(D) of this
8 section, is amended to conform to the additional changes made by
9 Subsection (a)(1) of this section to read as follows:

10 (b) The notice of the entry of an order of liquidation must
11 contain or provide directions for obtaining the following
12 information:

13 (1) a statement that the insurer has been placed in
14 liquidation;

15 (2) a statement that certain acts are stayed under
16 Section 443.008 [~~21A.008~~] and describe any additional injunctive
17 relief ordered by the receivership court;

18 (3) a statement whether, and to what extent, the
19 insurer's policies continue in effect;

20 (4) to the extent applicable, a statement that
21 coverage by state guaranty associations may be available for all or
22 part of policy benefits in accordance with applicable state
23 guaranty laws;

24 (5) a statement of the deadline for filing claims, if
25 established, and the requirements for filing a proof of claim
26 pursuant to Section 443.251 [~~21A.251~~] on or before that date;

27 (6) a statement of the date, time, and location of any

1 initial status hearing scheduled at the time the notice is sent;

2 (7) a description of the process for obtaining notice
3 of matters before the receivership court; and

4 (8) any other information the liquidator or the
5 receivership court deems appropriate.

6 (t) Section 21A.156(a), Insurance Code, redesignated as
7 Section 443.156(a), Insurance Code, by Subsection (a)(1)(D) of this
8 section, is amended to conform to the additional changes made by
9 Subsection (a)(1) of this section to read as follows:

10 (a) Every person who represented the insurer as an agent and
11 receives notice in the form prescribed in Section 443.155 [~~21A.155~~]
12 that the insurer is the subject of a liquidation order, not later
13 than the 30th day after the date of the notice, shall provide to the
14 liquidator, in addition to the information the agent may be
15 required to provide pursuant to Section 443.010 [~~21A.010~~], the
16 information in the agent's records related to any policy issued by
17 the insurer through the agent and any policy issued by the insurer
18 through an agent under contract to the agent, including the name and
19 address of any subagent. For purposes of this subsection, a policy
20 is issued through an agent if the agent has a property interest in
21 the expiration of the policy or if the agent has had in the agent's
22 possession a copy of the declarations of the policy at any time
23 during the life of the policy, except where the ownership of the
24 expiration of the policy has been transferred to another.

25 (u) Sections 21A.207(a), (d), and (f), Insurance Code,
26 redesignated as Sections 443.207(a), (d), and (f), Insurance Code,
27 respectively, by Subsection (a)(1)(E) of this section, are amended

1 to conform to the additional changes made by Subsection (a)(1) of
2 this section to read as follows:

3 (a) Except as otherwise provided in this section, to the
4 extent that the receiver obtains an order under Section 443.201
5 [~~21A.201~~] or avoids a transfer under Section 443.202, 443.203,
6 443.204, 443.205, or 443.206 [~~Sections 21A.202, 21A.203, 21A.204,~~
7 ~~21A.205, or 21A.206~~], the receiver may recover the property
8 transferred, or the value of the property, from:

9 (1) the initial transferee of the transfer or the
10 entity for whose benefit the transfer was made; or

11 (2) any immediate or mediate transferee of the initial
12 transferee.

13 (d) In addition to the remedies specifically provided under
14 Sections 443.201-443.206 [~~21A.201-21A.206~~] and Subsection (a), if
15 the receiver is successful in establishing a claim to the property
16 or any part of the property, the receiver is entitled to recover
17 judgment for:

18 (1) rental for the use of the tangible property from
19 the later of the entry of the receivership order or the date of the
20 transfer;

21 (2) in the case of funds or intangible property, the
22 greater of:

23 (A) the actual interest or income earned by the
24 property; or

25 (B) interest at the statutory rate for judgments
26 from the later of the date of the entry of the receivership order or
27 the date of the transfer; and

1 (3) except as to recoveries from guaranty
2 associations, all costs, including investigative costs and other
3 expenses necessary to the recovery of the property or funds, and
4 reasonable attorney's fees.

5 (f) In any action under Sections 443.201-443.206
6 [~~21A.201-21A.206~~], the receiver has the burden of proving the
7 avoidability of a transfer, and the person against whom recovery or
8 avoidance is sought has the burden of proving the nature and extent
9 of any affirmative defense.

10 (v) Section 21A.208(b), Insurance Code, redesignated as
11 Section 443.208(b), Insurance Code, by Subsection (a)(1)(E) of this
12 section, is amended to conform to the additional changes made by
13 Subsection (a)(1) of this section to read as follows:

14 (b) A claim allowable under Subsection (a) by reason of the
15 avoidance, whether voluntary or involuntary, or a preference, lien,
16 conveyance, transfer, assignment, or encumbrance, may be filed as
17 an excused late filing under Section 443.251(b) [~~21A.251(b)~~] if
18 filed not later than the 30th day after the date of the avoidance,
19 or within the further time allowed by the receivership court under
20 Subsection (a).

21 (w) Section 21A.210(j), Insurance Code, redesignated as
22 Section 443.210(j), Insurance Code, by Subsection (a)(1)(E) of this
23 section, is amended to conform to the additional changes made by
24 Subsection (a)(1) of this section to read as follows:

25 (j) Any claim filed by an assessee who fails to pay an
26 assessment, after the conclusion of any legal action by the
27 assessee objecting to the assessment, is deemed a late filed claim

1 under Section 443.251 [~~21A.251~~].

2 (x) Sections 21A.211(b) and (f), Insurance Code,
3 redesignated as Sections 443.211(b) and (f), Insurance Code,
4 respectively, by Subsection (a)(1)(E) of this section, are amended
5 to conform to the additional changes made by Subsection (a)(1) of
6 this section and to the recodification and repeal of Articles
7 21.28-C and 21.28-D, Insurance Code, by Chapter 727, Acts of the
8 79th Legislature, Regular Session, 2005, to read as follows:

9 (b) Except as provided by Subsection (a), any reinsurance
10 shall be payable to the receiver under a policy reinsured by the
11 assuming insurer on the basis of claims:

12 (1) allowed under Section 443.253 [~~21A.253~~]; and

13 (2) paid under:

14 (A) Chapter 462, 463, or [~~Article 21.28-C or~~
15 ~~21.28-D,~~

16 [~~(B) Chapter~~] 2602; or

17 (B) [~~(C)~~] the guaranty associations of other
18 states.

19 (f) Nothing in this chapter shall be construed as
20 authorizing the receiver, or other entity, to compel payment from a
21 non-life reinsurer on the basis of estimated incurred but not
22 reported losses or outstanding reserves, except outstanding
23 reserves with respect to claims made pursuant to Section 443.255
24 [~~21A.255~~] and approved workers compensation claims filed under
25 Section 443.252(d) [~~21A.252(d)~~].

26 (y) Sections 21A.212(a), (b), and (c), Insurance Code,
27 redesignated as Sections 443.212(a), (b), and (c), Insurance Code,

1 respectively, by Subsection (a)(1)(E) of this section, are amended
2 to conform to the additional changes made by Subsection (a)(1) of
3 this section to read as follows:

4 (a) An insured shall pay, either directly to the receiver or
5 to any agent that has paid or is obligated to pay the receiver on
6 behalf of the insured, any unpaid earned premium or retrospectively
7 rated premium due the insurer based on the termination of coverage
8 under Section 443.152 [~~21A.152~~]. Premium on surety business is
9 deemed earned at inception if a policy term cannot be determined.
10 All other premium is deemed earned and is prorated equally over the
11 determined policy term, regardless of any provision in the bond,
12 guaranty, contract or other agreement.

13 (b) Any person, other than the insured, shall turn over to
14 the receiver any unpaid premium due and owing as shown on the
15 records of the insurer, including any amount representing
16 commissions, for the full policy term due the insurer at the time of
17 the entry of the receivership order, whether earned or unearned,
18 based on the termination of coverage under Section 443.152
19 [~~21A.152~~]. The unpaid premium due the receiver from any person
20 other than the insured excludes any premium not collected from the
21 insured and not earned based on the termination of coverage under
22 Section 443.152 [~~21A.152~~].

23 (c) Any person, other than the insured, responsible for the
24 remittance of a premium, shall turn over to the receiver any
25 unearned commission of the person based on the termination of
26 coverage under Section 443.152 [~~21A.152~~]. Credits, setoffs, or
27 both may not be allowed to an agent, broker, premium finance

1 company, or any other person for any amounts advanced to the insurer
2 by the person on behalf of, but in the absence of a payment by, the
3 insured, or for any other amount paid by the person to any other
4 person after the entry of the order of receivership.

5 (z) Sections 21A.213(h) and (i), Insurance Code,
6 redesignated as Sections 443.213(h) and (i), Insurance Code,
7 respectively, by Subsection (a)(1)(E) of this section, are amended
8 to conform to the additional changes made by Subsection (a)(1) of
9 this section to read as follows:

10 (h) To the extent a guaranty association is required by
11 applicable law to pay any claims for which the insurer would have
12 been entitled to reimbursement from the policyholder, the following
13 provisions apply:

14 (1) The receiver shall promptly invoice the
15 policyholder for the reimbursement due under the agreement, and the
16 policyholder is obligated to pay the amount invoiced to the
17 receiver for the benefit of the guaranty associations that paid the
18 claims. Neither the insolvency of the insurer nor the insurer's
19 inability to perform any obligations under the deductible agreement
20 is a defense to the policyholder's reimbursement obligation under
21 the deductible agreement. At the time the policyholder
22 reimbursements are collected, the receiver shall promptly forward
23 those amounts to the guaranty association, based on the claims paid
24 by the guaranty association that were subject to the deductible.

25 (2) If the collateral is insufficient to reimburse the
26 guaranty association for claims paid within the deductible, the
27 receiver shall use any existing collateral to make a partial

1 reimbursement to the guaranty association, subject to any
2 allocation under Subsection (d), (e), or (f). If more than one
3 guaranty association has a claim against the same collateral, the
4 receiver shall prorate payments to each guaranty association based
5 on the amount of the claims each guaranty association has paid.

6 (3) The receiver is entitled to deduct from
7 reimbursements owed to a guaranty association or collateral to be
8 returned to a policyholder reasonable actual expenses incurred in
9 fulfilling the receiver's responsibilities under this section.
10 Expenses incurred to collect reimbursements for the benefit of a
11 guaranty association are subject to the approval of the guaranty
12 association. Any remaining expenses that are not deducted from the
13 reimbursements are payable subject to Section 443.015 [~~21A.015~~].

14 (4) The receiver shall provide any affected guaranty
15 associations with a complete accounting of the receiver's
16 deductible billing and collection activities on a quarterly basis,
17 or at other intervals as may be agreed to between the receiver and
18 the guaranty associations. Accountings under this subdivision must
19 include copies of the policyholder billings, the reimbursements
20 collected, the available amounts and use of collateral for each
21 account, and any prorating of payments.

22 (5) If the receiver fails to make a good faith effort
23 to collect reimbursements due from a policyholder under a
24 deductible agreement within 120 days of receipt of claims payment
25 reports from a guaranty association, the guaranty association may,
26 after notice to the receiver, collect the reimbursements that are
27 due, and, in so doing, the guaranty association shall have the same

1 rights and remedies as the receiver. A guaranty association shall
2 report any amounts collected under this subdivision and expenses
3 incurred in collecting those amounts to the receiver.

4 (6) The receiver shall periodically adjust the
5 collateral held as the claims subject to the deductible agreement
6 are paid, provided that adequate collateral is maintained. The
7 receiver is not required to adjust the collateral more than once a
8 year. The receiver shall inform the guaranty associations of all
9 collateral reviews, including the basis for the adjustment.

10 (7) Reimbursements received or collected by a guaranty
11 association under this section may not be considered a distribution
12 of the insurer's assets. A guaranty association shall provide the
13 receiver with an accounting of any amounts it has received or
14 collected under this section and any expenses incurred in
15 connection with that receipt or collection. The amounts received,
16 net of any expenses incurred in connection with collection of the
17 amounts, must be set off against the guaranty association's claim
18 filed under Section 443.251 [~~21A.251~~] for the payments that were
19 reimbursed.

20 (8) To the extent that a guaranty association pays a
21 claim within the deductible amount that is not reimbursed by either
22 the receiver or by policyholder payments, the guaranty association
23 has a claim for those amounts in the delinquency proceeding in
24 accordance with Section 443.251 [~~21A.251~~].

25 (9) Nothing in this section limits any rights of a
26 guaranty association under applicable law to obtain reimbursement
27 for claims payments made by the guaranty association under policies

1 of the insurer or for the association's related expenses.

2 (i) If a claim that is subject to a deductible agreement and
3 secured by collateral is not covered by any guaranty association,
4 the following provisions apply:

5 (1) The receiver is entitled to retain as an asset of
6 the estate any collateral or deductible reimbursements obtained by
7 the receiver.

8 (2) If a policyholder fails to assume an obligation
9 under a deductible agreement to pay a claim, the receiver shall use
10 the collateral to adjust and pay the claim to the extent that the
11 available collateral, after any allocation under Subsection (d),
12 (e), or (f), is sufficient to pay all outstanding and anticipated
13 claims within the deductible. If the collateral is exhausted and
14 all reasonable means of collection against the insured have been
15 exhausted, the remaining claims shall be subject to the provisions
16 of Sections 443.251 and 443.301 [~~21A.251 and 21A.301~~].

17 (3) The receiver is entitled to deduct from collateral
18 reasonable actual expenses incurred in fulfilling the receiver's
19 responsibilities under this section. Any remaining expenses that
20 are not deducted from the reimbursements are payable subject to
21 Section 443.015 [~~21A.015~~].

22 (aa) Sections 21A.251(a) and (b), Insurance Code,
23 redesignated as Sections 443.251(a) and (b), Insurance Code,
24 respectively, by Subsection (a)(1)(F) of this section, are amended
25 to conform to the additional changes made by Subsection (a)(1) of
26 this section to read as follows:

27 (a) Except as provided by this subsection, proof of all

1 claims must be filed with the liquidator in the form required by
2 Section 443.252 [~~21A.252~~] on or before the last day for filing
3 specified in the notice required under Section 443.155 [~~21A.155~~],
4 which date may not be later than 18 months after entry of the order
5 of liquidation, unless the receivership court, for good cause
6 shown, extends the time, except that proofs of claims for cash
7 surrender values or other investment values in life insurance and
8 annuities and for any other policies insuring the lives of persons
9 need not be filed unless the liquidator expressly so requires. The
10 receivership court, only upon application of the liquidator, may
11 allow alternative procedures and requirements for the filing of
12 proofs of claim or for allowing or proving claims. Upon
13 application, if the receivership court dispenses with the
14 requirements of filing a proof of claim by a person or a class or
15 group of persons, a proof of claim for the person, class, or group
16 is deemed to have been filed for all purposes, except that the
17 receivership court's waiver of proof of claim requirements does not
18 impact guaranty association proof of claim filing requirements or
19 coverage determinations to the extent the guaranty fund statute or
20 filing requirements are inconsistent with the receivership court's
21 waiver of proof.

22 (b) The liquidator shall permit a claimant that makes a late
23 filing to share ratably in distributions, whether past or future,
24 as if the claim were not filed late, to the extent that the payment
25 will not prejudice the orderly administration of the liquidation,
26 under the following circumstances:

27 (1) the eligibility to file a proof of claim was not

1 known to the claimant, and the claimant filed a proof of claim not
2 later than the 90th day after the date of first learning of the
3 eligibility;

4 (2) a transfer to a creditor was avoided under Section
5 443.202, 443.203, 443.204, or 443.206 [~~21A.202, 21A.203, 21A.204,~~
6 ~~or 21A.206~~], or was voluntarily surrendered under Section 443.208
7 [~~21A.208~~], and the filing satisfies the conditions of Section
8 443.208 [~~21A.208~~]; or

9 (3) the valuation under Section 443.260 [~~21A.260~~], of
10 security held by a secured creditor shows a deficiency, and the
11 claim for the deficiency is filed not later than the 30th day after
12 the valuation.

13 (bb) Sections 21A.253(b), (d), (i), and (k), Insurance
14 Code, redesignated as Sections 443.253(b), (d), (i), and (k),
15 Insurance Code, respectively, by Subsection (a)(1)(F) of this
16 section, are amended to conform to the additional changes made by
17 Subsection (a)(1) of this section to read as follows:

18 (b) Pursuant to the review, the liquidator shall provide
19 written notice of the claim determination by any means authorized
20 by Section 443.007 [~~21A.007~~] to the claimant or the claimant's
21 attorney and may provide notice to any reinsurer that is or may be
22 liable in respect of the claim. The notice must set forth the
23 amount of the claim allowed by the liquidator, if any, and the
24 priority class of the claim as established in Section 443.301
25 [~~21A.301~~].

26 (d) A claim that has not become mature as of the coverage
27 termination date established under Section 443.201 [~~21A.201~~]

1 because payment on the claim is not yet due may be allowed as if it
2 were mature. A claim that is allowed under this subsection may be
3 discounted to present value based upon a reasonable estimated date
4 of the payment, if the liquidator determines that the present value
5 of the payment is materially less than the amount of the payment.

6 (i) A claim that does not contain all the applicable
7 information required by Section 443.252 [~~21A.252~~] need not be
8 further reviewed or adjudicated, and may be denied or disallowed by
9 the liquidator subject to the notice and objection procedures in
10 this section.

11 (k) The liquidator is not required to process claims for any
12 class until it appears reasonably likely that property will be
13 available for a distribution to that class. If there are
14 insufficient assets to justify processing all claims for any class
15 listed in Section 443.301 [~~21A.301~~], the liquidator shall report
16 the facts to the receivership court and make such recommendations
17 as may be appropriate for handling the remainder of the claims.

18 (cc) Section 21A.254, Insurance Code, redesignated as
19 Section 443.254, Insurance Code, by Subsection (a)(1)(F) of this
20 section, is amended to conform to the additional changes made by
21 Subsection (a)(1) of this section to read as follows:

22 Sec. 443.254 [~~21A.254~~]. CLAIMS UNDER OCCURRENCE POLICIES,
23 SURETY BONDS, AND SURETY UNDERTAKINGS. (a) Subject to the
24 provisions of Section 443.253 [~~21A.253~~], any insured has the right
25 to file a claim for the protection afforded under the insured's
26 policy, regardless of whether a claim is known at the time of
27 filing, if the policy is an occurrence policy.

1 (b) Subject to the provisions of Section 443.253 [~~21A.253~~],
2 an obligee under a surety bond or surety undertaking has the right
3 to file a claim for the protection afforded under the surety bond or
4 surety undertaking issued by the insurer under which the obligee is
5 the beneficiary, regardless of whether a claim is known at the time
6 of filing.

7 (c) After a claim is filed under Subsection (a) or (b), at
8 the time that a specific claim is made by or against the insured or
9 by the obligee, the insured or the obligee shall supplement the
10 claim, and the receiver shall treat the claim as a contingent or
11 unliquidated claim under Section 443.255 [~~21A.255~~].

12 (dd) Sections 21A.255(a) and (c), Insurance Code,
13 redesignated as Sections 443.255(a) and (c), Insurance Code,
14 respectively, by Subsection (a)(1)(F) of this section, are amended
15 to conform to the additional changes made by Subsection (a)(1) of
16 this section to read as follows:

17 (a) A claim of an insured or third party may be allowed under
18 Section 443.253 [~~21A.253~~], regardless of the fact that the claim
19 was contingent or unliquidated, if any contingency is removed in
20 accordance with Subsection (b) and the value of the claim is
21 determined. For purposes of this section, a claim is contingent if:

22 (1) the accident, casualty, disaster, loss, event, or
23 occurrence insured, reinsured, or bonded or reinsured against
24 occurred on or before the date fixed under Section 443.151
25 [~~21A.151~~]; and

26 (2) the act or event triggering the insurer's
27 obligation to pay has not occurred as of the date fixed under

1 Section 443.151 [~~21A.151~~].

2 (c) The liquidator may petition the receivership court to
3 set a date before which all claims under this section are final. In
4 addition to the notice requirements of Section 443.007 [~~21A.007~~],
5 the liquidator shall give notice of the filing of the petition to
6 all claimants with claims that remain contingent or unliquidated
7 under this section.

8 (ee) Section 21A.256(c), Insurance Code, redesignated as
9 Section 443.256(c), Insurance Code, by Subsection (a)(1)(F) of this
10 section, is amended to conform to the additional changes made by
11 Subsection (a)(1) of this section to read as follows:

12 (c) The liquidator may make recommendations to the
13 receivership court for the allowance of an insured's claim after
14 consideration of the probable outcome of any pending action against
15 the insured on which the claim is based, the probable damages
16 recoverable in the action, and the probable costs and expenses of
17 defense. After allowance by the receivership court, the liquidator
18 shall withhold any distribution payable on the claim, pending the
19 outcome of litigation and negotiation between the insured and the
20 third party. The liquidator may reconsider the claim as provided in
21 Section 443.253(j) [~~21A.253(j)~~]. As claims against the insured are
22 settled or barred, the insured or third party, as appropriate,
23 shall be paid from the amount withheld the same percentage
24 distribution as was paid on other claims of like priority, based on
25 the lesser of the amount actually due from the insured by action or
26 paid by agreement plus the reasonable costs and expense of defense,
27 or the amount allowed on the claims by the receivership court.

1 After all claims are settled or barred, any sum remaining from the
2 amount withheld shall revert to the undistributed property of the
3 insurer.

4 (ff) Section 21A.257(a), Insurance Code, redesignated as
5 Section 443.257(a), Insurance Code, by Subsection (a)(1)(F) of this
6 section, is amended to conform to the additional changes made by
7 Subsection (a)(1) of this section to read as follows:

8 (a) When objections to the liquidator's proposed treatment
9 of a claim are filed and the liquidator does not alter the
10 determination of the claim as a result of the objections, the
11 liquidator shall ask the receivership court for a hearing pursuant
12 to Section 443.007 [~~21A.007~~].

13 (gg) Section 21A.258, Insurance Code, redesignated as
14 Section 443.258, Insurance Code, by Subsection (a)(1)(F) of this
15 section, is amended to conform to the additional changes made by
16 Subsection (a)(1) of this section to read as follows:

17 Sec. 443.258 [~~21A.258~~]. LIQUIDATOR'S RECOMMENDATIONS TO
18 RECEIVERSHIP COURT. The liquidator shall present to the
19 receivership court, for approval, reports of claims settled or
20 determined by the liquidator under Section 443.253 [~~21A.253~~]. The
21 reports must be presented from time to time as determined by the
22 liquidator and must include information identifying the claim and
23 the amount and priority class of the claim.

24 (hh) Sections 21A.260(e) and (g), Insurance Code,
25 redesignated as Sections 443.260(e) and (g), Insurance Code,
26 respectively, by Subsection (a)(1)(F) of this section, are amended
27 to conform to the additional changes made by Subsection (a)(1) of

1 this section to read as follows:

2 (e) If collateral is insufficient to satisfy in full all
3 potential claims against it under Subsections (c) and (g), the
4 claims against the collateral must be paid on a pro rata basis, and
5 an obligee or completion contractor under Subsection (c) has a
6 claim, subject to allowance under Section 443.253 [~~21A.253~~], for
7 any deficiency.

8 (g) To the extent that a guaranty association has made a
9 payment relating to a claim against a surety bond, the guaranty
10 association shall first be reimbursed for that payment and related
11 expenses out of the available collateral or proceeds related to the
12 surety bond. To the extent that the collateral is sufficient, the
13 guaranty association shall be reimbursed 100 percent of its
14 payment. If the collateral is insufficient to satisfy in full all
15 potential claims against the collateral under Subsection (c) and
16 this subsection, a guaranty association that has paid claims on the
17 surety bond is entitled to a pro rata share of the available
18 collateral in accordance with Subsection (e), and the guaranty
19 association has claims against the general assets of the estate in
20 accordance with Section 443.253 [~~21A.253~~] for any deficiency. Any
21 payment made to a guaranty association under this subsection from
22 collateral may not be deemed early access or otherwise deemed a
23 distribution out of the general assets or property of the estate,
24 and the guaranty association receiving payment shall subtract any
25 payment from the collateral from the association's final claims
26 against the estate.

27 (ii) Sections 21A.261(a) and (e), Insurance Code,

1 redesignated as Sections 443.261(a) and (e), Insurance Code,
2 respectively, by Subsection (a)(1)(F) of this section, are amended
3 to conform to the additional changes made by Subsection (a)(1) of
4 this section to read as follows:

5 (a) Notwithstanding any other provision of this chapter,
6 including any other provision of this chapter permitting the
7 modification of contracts, or other law of this state, a person may
8 not be stayed or prohibited from exercising:

9 (1) a contractual right to terminate, liquidate, or
10 close out any netting agreement or qualified financial contract
11 with an insurer because of:

12 (A) the insolvency, financial condition, or
13 default of the insurer at any time, provided that the right is
14 enforceable under applicable law other than this chapter; or

15 (B) the commencement of a formal delinquency
16 proceeding under this chapter;

17 (2) any right under a pledge, security, collateral, or
18 guarantee agreement, or any other similar security arrangement or
19 credit support document, relating to a netting agreement or
20 qualified financial contract; or

21 (3) subject to any provision of Section 443.209(b)
22 [~~21A.209(b)~~], any right to set off or net out any termination value,
23 payment amount, or other transfer obligation arising under or in
24 connection with a netting agreement or qualified financial contract
25 where the counterparty or its guarantor is organized under the laws
26 of the United States or a state or foreign jurisdiction approved by
27 the Securities Valuation Office of the National Association of

1 Insurance Commissioners as eligible for netting.

2 (e) Notwithstanding any other provision of this chapter, a
3 receiver may not avoid a transfer of money or other property arising
4 under or in connection with a netting agreement or qualified
5 financial contract, or any pledge, security, or collateral or
6 guarantee agreement or any other similar security arrangement or
7 credit support document relating to a netting agreement or
8 qualified financial contract, that is made before the commencement
9 of a formal delinquency proceeding under this chapter. However, a
10 transfer may be avoided under Section 443.205(a) [~~21A.205(a)~~] if
11 the transfer was made with actual intent to hinder, delay, or
12 defraud the insurer, a receiver appointed for the insurer, or
13 existing or future creditors.

14 (jj) Section 21A.301, Insurance Code, redesignated as
15 Section 443.301, Insurance Code, by Subsection (a)(1)(G) of this
16 section, is amended to conform to the additional changes made by
17 Subsection (a)(1) of this section and to the recodification and
18 repeal of Section 2(3), Article 21.28-C, and Section 12, Article
19 21.28-D, Insurance Code, by Chapter 727, Acts of the 79th
20 Legislature, Regular Session, 2005, to read as follows:

21 Sec. 443.301 [~~21A.301~~]. PRIORITY OF DISTRIBUTION. The
22 priority of payment of distributions on unsecured claims must be in
23 accordance with the order in which each class of claims is set forth
24 in this section. Every claim in each class shall be paid in full, or
25 adequate funds retained for their payment, before the members of
26 the next class receive payment, and all claims within a class must
27 be paid substantially the same percentage of the amount of the

1 claim. Except as provided by Subsections (a)(2), (a)(3), (i), and
2 (k), subclasses may not be established within a class. No claim by
3 a shareholder, policyholder, or other creditor shall be permitted
4 to circumvent the priority classes through the use of equitable
5 remedies. The order of distribution of claims shall be:

6 (a) Class 1. (1) The costs and expenses of administration
7 expressly approved or ratified by the liquidator, including the
8 following:

9 (A) the actual and necessary costs of preserving
10 or recovering the property of the insurer;

11 (B) reasonable compensation for all services
12 rendered on behalf of the administrative supervisor or receiver;

13 (C) any necessary filing fees;

14 (D) the fees and mileage payable to witnesses;

15 (E) unsecured loans obtained by the receiver; and

16 (F) expenses, if any, approved by the
17 rehabilitator of the insurer and incurred in the course of the
18 rehabilitation that are unpaid at the time of the entry of the order
19 of liquidation.

20 (2) The reasonable expenses of a guaranty association,
21 including overhead, salaries and other general administrative
22 expenses allocable to the receivership to include administrative
23 and claims handling expenses and expenses in connection with
24 arrangements for ongoing coverage, other than expenses incurred in
25 the performance of duties under Section 462.002(3), 463.108,
26 463.111, 463.113, 463.353, or 2602.113~~[, Section 2(3) of Article~~
27 ~~21.28-C, and Section 12 of Article 21.28-D]~~ or similar duties under

1 the statute governing a similar organization in another state. In
2 the case of the Texas Property and Casualty Insurance Guaranty
3 Association and other property and casualty guaranty associations,
4 the expenses shall include loss adjustment expenses, including
5 adjusting and other expenses and defense and cost containment
6 expenses. In the event that there are insufficient assets to pay
7 all of the costs and expenses of administration under Subsection
8 (a)(1) and the expenses of a guaranty association, the costs and
9 expenses under Subsection (a)(1) shall have priority over the
10 expenses of a guaranty association. In this event, the expenses of
11 a guaranty association shall be paid on a pro rata basis after the
12 payment of costs and expenses under Subsection (a)(1) in full.

13 (3) For purposes of Subsection (a)(1)(E), any
14 unsecured loan obtained by the receiver, unless by its terms it
15 otherwise provides, has priority over all other costs of
16 administration. Absent agreement to the contrary, all claims in
17 this subclass share pro rata.

18 (4) Except as expressly approved by the receiver, any
19 expenses arising from a duty to indemnify the directors, officers,
20 or employees of the insurer are excluded from this class and, if
21 allowed, are Class 5 claims.

22 (b) Class 2. All claims under policies of insurance,
23 including third-party claims, claims under nonassessable policies
24 for unearned premium, claims of obligees and, subject to the
25 discretion of the receiver, completion contractors under surety
26 bonds and surety undertakings other than bail bonds, mortgage or
27 financial guaranties, or other forms of insurance offering

1 protection against investment risk, claims by principals under
2 surety bonds and surety undertakings for wrongful dissipation of
3 collateral by the insurer or its agents, and claims incurred during
4 the extension of coverage provided for in Section 443.152
5 [~~21A.152~~]. All other claims incurred in fulfilling the statutory
6 obligations of a guaranty association not included in Class 1,
7 including indemnity payments on covered claims and, in the case of
8 the Life, Accident, Health, and Hospital Service Insurance Guaranty
9 Association or another life and health guaranty association, all
10 claims as a creditor of the impaired or insolvent insurer for all
11 payments of and liabilities incurred on behalf of covered claims or
12 covered obligations of the insurer and for the funds needed to
13 reinsure those obligations with a solvent insurer. Notwithstanding
14 any provision of this chapter, the following claims are excluded
15 from Class 2 priority:

16 (1) obligations of the insolvent insurer arising out
17 of reinsurance contracts;

18 (2) obligations, excluding unearned premium claims on
19 policies other than reinsurance agreements, incurred after:

20 (A) the expiration date of the insurance policy;

21 (B) the policy has been replaced by the insured
22 or canceled at the insured's request; or

23 (C) the policy has been canceled as provided by
24 this chapter;

25 (3) obligations to insurers, insurance pools, or
26 underwriting associations and their claims for contribution,
27 indemnity, or subrogation, equitable or otherwise;

1 (4) any claim that is in excess of any applicable
2 limits provided in the insurance policy issued by the insurer;

3 (5) any amount accrued as punitive or exemplary
4 damages unless expressly covered under the terms of the policy;

5 (6) tort claims of any kind against the insurer and
6 claims against the insurer for bad faith or wrongful settlement
7 practices; and

8 (7) claims of the guaranty associations for
9 assessments not paid by the insurer, which must be paid as claims in
10 Class 5.

11 (c) Class 3. Claims of the federal government not included
12 in Class 3.

13 (d) Class 4. Debts due employees for services or benefits
14 to the extent that the debts do not exceed \$5,000 or two months
15 salary, whichever is the lesser, and represent payment for services
16 performed within one year before the entry of the initial order of
17 receivership. This priority is in lieu of any other similar
18 priority that may be authorized by law as to wages or compensation
19 of employees.

20 (e) Class 5. Claims of other unsecured creditors not
21 included in Classes 1 through 4, including claims under reinsurance
22 contracts, claims of guaranty associations for assessments not paid
23 by the insurer, and other claims excluded from Class 2.

24 (f) Class 6. Claims of any state or local governments,
25 except those specifically classified elsewhere in this section.
26 Claims of attorneys for fees and expenses owed them by an insurer
27 for services rendered in opposing a formal delinquency proceeding.

1 In order to prove the claim, the claimant must show that the insurer
2 that is the subject of the delinquency proceeding incurred the fees
3 and expenses based on its best knowledge, information, and belief,
4 formed after reasonable inquiry, indicating opposition was in the
5 best interests of the insurer, was well grounded in fact, and was
6 warranted by existing law or a good faith argument for the
7 extension, modification, or reversal of existing law, and that
8 opposition was not pursued for any improper purpose, such as to
9 harass or to cause unnecessary delay or needless increase in the
10 cost of the litigation.

11 (g) Class 7. Claims of any state or local government for a
12 penalty or forfeiture, but only to the extent of the pecuniary loss
13 sustained from the act, transaction, or proceeding out of which the
14 penalty or forfeiture arose, with reasonable and actual costs
15 occasioned thereby. The balance of the claims must be treated as
16 Class 9 claims under Subsection (i).

17 (h) Class 8. Except as provided in Sections 443.251(b)
18 [~~21A.251(b)~~] and (d), late filed claims that would otherwise be
19 classified in Classes 2 through 7.

20 (i) Class 9. Surplus notes, capital notes or contribution
21 notes or similar obligations, premium refunds on assessable
22 policies, and any other claims specifically assigned to this class.
23 Claims in this class are subject to any subordination agreements
24 related to other claims in this class that existed before the entry
25 of the liquidation order.

26 (j) Class 10. Interest on allowed claims of Classes 1
27 through 9, according to the terms of a plan proposed by the

1 liquidator and approved by the receivership court.

2 (k) Class 11. Claims of shareholders or other owners
3 arising out of their capacity as shareholders or other owners, or
4 any other capacity, except as they may be qualified in Class 2, 5,
5 or 10. Claims in this class are subject to any subordination
6 agreements related to other claims in this class that existed
7 before the entry of the liquidation order.

8 (kk) Section 21A.302(f), Insurance Code, redesignated as
9 Section 443.302(f), Insurance Code, by Subsection (a)(1)(G) of this
10 section, is amended to conform to the additional changes made by
11 Subsection (a)(1) of this section to read as follows:

12 (f) Any claim payments made under Subsection (d) and any
13 related expenses must be treated as early access payments under
14 Section 443.303 [~~21A.303~~] to the guaranty association responsible
15 for the claims.

16 (ll) Sections 21A.303(a), (b), (c), (e), (f), and (g),
17 Insurance Code, redesignated as Sections 443.303(a), (b), (c), (e),
18 (f), and (g), Insurance Code, respectively, by Subsection (a)(1)(G)
19 of this section, are amended to conform to the additional changes
20 made by Subsection (a)(1) of this section to read as follows:

21 (a) For purposes of this section, "distributable assets"
22 means all general assets of the liquidation estate less:

23 (1) amounts reserved, to the extent necessary and
24 appropriate, for the entire Section 443.301(a) [~~21A.301(a)~~]
25 expenses of the liquidation through and after its closure; and

26 (2) to the extent necessary and appropriate, reserves
27 for distributions on claims other than those of the guaranty

1 associations falling within the priority classes of claims
2 established in Section 443.301(c) [~~21A.301(c)~~].

3 (b) Early access payments to guaranty associations must be
4 made as soon as possible after the entry of a liquidation order and
5 as frequently as possible after the entry of the order, but at least
6 annually if distributable assets are available to be distributed to
7 the guaranty associations, and must be in amounts consistent with
8 this section. Amounts advanced to an affected guaranty association
9 pursuant to this section shall be accounted for as advances against
10 distributions to be made under Section 443.302 [~~21A.302~~]. Where
11 sufficient distributable assets are available, amounts advanced
12 are not limited to the claims and expenses paid to date by the
13 guaranty associations; however, the liquidator may not distribute
14 distributable assets to the guaranty associations in excess of the
15 anticipated entire claims of the guaranty associations falling
16 within the priority classes of claims established in Sections
17 443.301(b) [~~21A.301(b)~~] and (c).

18 (c) Within 120 days after the entry of an order of
19 liquidation by the receivership court, and at least annually after
20 the entry of the order, the liquidator shall apply to the
21 receivership court for approval to make early access payments out
22 of the general assets of the insurer to any guaranty associations
23 having obligations arising in connection with the liquidation or
24 shall report that there are no distributable assets at that time
25 based on financial reporting as required in Section 443.016
26 [~~21A.016~~]. The liquidator may apply to the receivership court for
27 approval to make early access payments more frequently than

1 annually based on additional information or the recovery of
2 material assets.

3 (e) Notice of each application for early access payments, or
4 of any report required pursuant to this section, must be given in
5 accordance with Section 443.007 [~~21A.007~~] to the guaranty
6 associations that may have obligations arising from the
7 liquidation. Notwithstanding the provisions of Section 443.007
8 [~~21A.007~~], the liquidator shall provide these guaranty
9 associations with at least 30 days' actual notice of the filing of
10 the application and with a complete copy of the application prior to
11 any action by the receivership court. Any guaranty association
12 that may have obligations arising in connection with the
13 liquidation has:

14 (1) the right to request additional information from
15 the liquidator, who may not unreasonably deny such request; and

16 (2) the right to object as provided by Section 443.007
17 [~~21A.007~~] to any part of each application or to any report filed by
18 the liquidator pursuant to this section.

19 (f) In each application regarding early access payments,
20 the liquidator shall, based on the best information available to
21 the liquidator at the time, provide, at a minimum, the following:

22 (1) to the extent necessary and appropriate, the
23 amount reserved for the entire expenses of the liquidation through
24 and after its closure and for distributions on claims falling
25 within the priority classes of claims established in Sections
26 443.301(b) [~~21A.301(b)~~] and (c);

27 (2) the computation of distributable assets and the

1 amount and method of equitable allocation of early access payments
2 to each of the guaranty associations; and

3 (3) the most recent financial information filed with
4 the National Association of Insurance Commissioners by the
5 liquidator.

6 (g) Each guaranty association that receives any payments
7 pursuant to this section agrees, upon depositing the payment in any
8 account to its benefit, to return to the liquidator any amount of
9 these payments that may be required to pay claims of secured
10 creditors and claims falling within the priority classes of claims
11 established in Section 443.301(a) [~~21A.301(a)~~], (b), or (c). No
12 bond may be required of any guaranty association.

13 (mm) Sections 21A.304(a), (b), and (d), Insurance Code,
14 redesignated as Sections 443.304(a), (b), and (d), Insurance Code,
15 respectively, by Subsection (a)(1)(G) of this section, are amended
16 to conform to the additional changes made by Subsection (a)(1) of
17 this section to read as follows:

18 (a) If any funds of the receivership estate remain unclaimed
19 after the final distribution under Section 443.302 [~~21A.302~~], the
20 funds must be placed in a segregated unclaimed funds account held by
21 the commissioner. If the owner of any of the unclaimed funds
22 presents proof of ownership satisfactory to the commissioner before
23 the second anniversary of the date of the termination of the
24 delinquency proceeding, the commissioner shall remit the funds to
25 the owner. The interest earned on funds held in the unclaimed funds
26 account may be used to pay any administrative costs related to the
27 handling or return of unclaimed funds.

1 (b) If any amounts held in the unclaimed funds account
2 remain unclaimed on or after the second anniversary of the date of
3 the termination of the delinquency proceeding, the commissioner may
4 file a motion for an order directing the disposition of the funds in
5 the court in which the delinquency proceeding was pending. Any
6 costs incurred in connection with the motion may be paid from the
7 unclaimed funds account. The motion shall identify the name of the
8 insurer, the names and last known addresses of the persons entitled
9 to the unclaimed funds, if known, and the amount of the funds.
10 Notice of the motion shall be given as directed by the court. Upon a
11 finding by the court that the funds have not been claimed before the
12 second anniversary of the date of the termination of the
13 delinquency proceeding, the court shall order that any claims for
14 unclaimed funds and any interest earned on the unclaimed funds that
15 has not been expended under Subsection (a) are abandoned and that
16 the funds must be disbursed under one of the following methods:

17 (1) the amounts may be deposited in the general
18 receivership expense account under Subsection (c);

19 (2) the amounts may be transferred to the comptroller,
20 and deposited into the general revenue fund; or

21 (3) the amounts may be used to reopen the receivership
22 in accordance with Section 443.353 [~~21A.353~~] and be distributed to
23 the known claimants with approved claims.

24 (d) Any advance to a receivership under Subsection (c)(2)
25 may be treated as a claim under Section 443.301 [~~21A.301~~] as agreed
26 at the time the advance is made or, in the absence of an agreement,
27 in the priority determined to be appropriate by the court.

1 (nn) Section 21A.352, Insurance Code, redesignated as
2 Section 443.352, Insurance Code, by Subsection (a)(1)(H) of this
3 section, is amended to conform to the additional changes made by
4 Subsection (a)(1) of this section to read as follows:

5 Sec. 443.352 [~~21A.352~~]. TERMINATION OF LIQUIDATION
6 PROCEEDINGS. When all property justifying the expense of
7 collection and distribution has been collected and distributed
8 under this chapter, the liquidator shall apply to the receivership
9 court for an order discharging the liquidator and terminating the
10 proceeding. The receivership court may grant the application and
11 make any other orders, including orders to transfer any remaining
12 funds that are uneconomic to distribute, or pursuant to Section
13 443.302(c) [~~21A.302(c)~~], assign any assets that remain
14 unliquidated, including claims and causes of action, as may be
15 deemed appropriate.

16 (oo) Section 21A.354(b), Insurance Code, redesignated as
17 Section 443.354(b), Insurance Code, by Subsection (a)(1)(H) of this
18 section, is amended to conform to the additional changes made by
19 Subsection (a)(1) of this section to read as follows:

20 (b) If the receiver determines that any records should be
21 maintained after the closing of the delinquency proceeding, the
22 receiver may reserve property from the receivership estate for the
23 maintenance of the records, and any amounts so retained are
24 administrative expenses of the estate under Section 443.301(a)
25 [~~21A.301(a)~~]. Any records retained pursuant to this subsection
26 must be transferred to the custody of the commissioner, and the
27 commissioner may retain or dispose of the records as appropriate,

1 at the commissioner's discretion. Any records of a delinquent
2 insurer that are transferred to the commissioner may not be
3 considered records of the department for any purposes, and Chapter
4 552, Government Code, does not apply to those records.

5 (pp) Sections 21A.401(a) and (d), Insurance Code,
6 redesignated as Sections 443.401(a) and (d), Insurance Code,
7 respectively, by Subsection (a)(1)(I) of this section, are amended
8 to conform to the changes made by Subsection (a)(1) of this section
9 and to the recodification and repeal of Section 17, Article
10 21.28-C, and Section 18, Article 21.28-D, Insurance Code, by
11 Chapter 727, Acts of the 79th Legislature, Regular Session, 2005,
12 to read as follows:

13 (a) The commissioner may initiate an action against a
14 foreign insurer pursuant to Section 443.051 [~~21A.051~~] on any of the
15 grounds stated in that section or on the basis that:

16 (1) any of the foreign insurer's property has been
17 sequestered, garnished, or seized by official action in its
18 domiciliary state or in any other state;

19 (2) the foreign insurer's certificate of authority to
20 do business in this state has been revoked or was never issued and
21 there are residents of this state with unpaid claims or in-force
22 policies; or

23 (3) initiation of the action is necessary to enforce a
24 stay under Section 462.309, 463.404, or [~~17, Article 21.28-C,~~
25 ~~Section 18, Article 21.28-D, or Section~~] 2602.259.

26 (d) Notwithstanding Section 443.201(c) [~~21A.201(c)~~], the
27 conservator shall hold and conserve the assets located in this

1 state until the commissioner in the insurer's domiciliary state is
2 appointed its receiver or until an order terminating conservation
3 is entered under Subsection (g). Once a domiciliary receiver is
4 appointed, the conservator shall turn over to the domiciliary
5 receiver all property subject to an order under this section.

6 (qq) Sections 21A.402(a) and (c), Insurance Code,
7 redesignated as Sections 443.402(a) and (c), Insurance Code,
8 respectively, by Subsection (a)(1)(I) of this section, are amended
9 to conform to the additional changes made by Subsection (a)(1) of
10 this section to read as follows:

11 (a) A domiciliary receiver appointed in another state is
12 vested by operation of law with title to, and may summarily take
13 possession of, all property and records of the insurer in this
14 state. Notwithstanding any other provision of law regarding
15 special deposits, special deposits held in this state shall be,
16 upon the entry of an order of liquidation with a finding of
17 insolvency, distributed to the guaranty associations in this state
18 as early access payments subject to Section 443.303 [~~21A.303~~], in
19 relation to the lines of business for which the special deposits
20 were made. The holder of any special deposit shall account to the
21 domiciliary receiver for all distributions from the special deposit
22 at the time of the distribution. The statutory provisions of
23 another state and all orders entered by courts of competent
24 jurisdiction in relation to the appointment of a domiciliary
25 receiver of an insurer and any related proceedings in another state
26 must be given full faith and credit in this state. For purposes of
27 this section, "another state" means any state other than this

1 state. This state shall treat any other state than this state as a
2 reciprocal state.

3 (c) Except as provided in Subsection (a), the domiciliary
4 receiver shall handle special deposits and special deposit claims
5 in accordance with federal law and the statutes pursuant to which
6 the special deposits are required. All amounts in excess of the
7 estimated amount necessary to administer the special deposit and
8 pay the unpaid special deposit claims are deemed general assets of
9 the estate. If there is a deficiency in any special deposit so that
10 the claims secured by the special deposit are not fully discharged
11 from the deposit, the claimants may share in the general assets of
12 the insurer to the extent of the deficiency at the same priority as
13 other claimants in their class of priority under Section 443.301
14 [~~21A.301~~], but the sharing must be deferred until the other
15 claimants of their class have been paid percentages of their claims
16 equal to the percentage paid from the special deposit. The intent
17 of this provision is to equalize to this extent the advantage gained
18 by the security provided by the special deposits.

19 (rr) Section 442.801, Insurance Code, redesignated as
20 Section 444.001, Insurance Code, by Subsection (a)(2) of this
21 section, is amended to conform to the repeal of Article 21.28,
22 Insurance Code, and the enactment of Chapter 21A, Insurance Code,
23 by Chapter 995, Acts of the 79th Legislature, Regular Session,
24 2005, and to the changes made by Subsection (a)(1) of this section
25 to read as follows:

26 Sec. 444.001 [~~442.801~~]. REQUIRED CONTRACT PROVISION. An
27 agency contract entered into on or after August 27, 1973, by an

1 insurer writing fire and casualty insurance in this state must
2 contain, or shall be construed to contain, the following provision:

3 Notwithstanding any other provision of this contract, the
4 obligation of the agent to remit written premiums to the insurer
5 shall be changed on the commencement of a delinquency proceeding as
6 defined by Chapter 443 [~~442~~], Insurance Code, as amended. After the
7 commencement of the delinquency proceeding, the obligation of the
8 agent to remit premiums is limited to premiums earned before the
9 cancellation date of insurance policies stated in the order of a
10 court of competent jurisdiction under Chapter 443 [~~442~~], Insurance
11 Code, canceling the policies. The agent does not owe and may not be
12 required to remit to the insurer or to the receiver any premiums
13 that are unearned as of the cancellation date stated in the order.

14 (ss) Section 442.803, Insurance Code, redesignated as
15 Section 444.003, Insurance Code, by Subsection (a)(2) of this
16 section, is amended to conform to the additional changes made by
17 Subsection (a)(2) of this section to read as follows:

18 Sec. 444.003 [~~442.803~~]. EFFECT OF CHAPTER [~~SUBCHAPTER~~] ON
19 ACTION BY RECEIVER AGAINST AGENT. This chapter [~~subchapter~~] does
20 not prejudice a cause of action by the receiver against an agent to
21 recover:

22 (1) unearned premiums that were not returned to
23 policyholders; or

24 (2) earned premiums that were not promptly remitted to
25 the receiver.

26 (tt) Section 442.804, Insurance Code, redesignated as
27 Section 444.004, Insurance Code, by Subsection (a)(2) of this

1 section, is amended to conform to the additional changes made by
2 Subsection (a)(2) of this section to read as follows:

3 Sec. 444.004 [~~442.804~~]. AGENT NOT RECEIVER'S AGENT. This
4 chapter [~~subchapter~~] does not render the agent an agent of the
5 receiver for earned or unearned premiums.

6 SECTION 3B.005. (a) Section 462.007(b), Insurance Code,
7 is amended to conform to Section 2, Chapter 995, Acts of the 79th
8 Legislature, Regular Session, 2005, to read as follows:

9 (b) Except as provided by Subchapter F, this chapter does
10 not apply to:

- 11 (1) life, annuity, health, or disability insurance;
- 12 (2) mortgage guaranty, financial guaranty, or other
13 kinds of insurance offering protection against investment risks;
- 14 (3) a fidelity or surety bond, or any other bonding
15 obligation;
- 16 (4) credit insurance, vendors' single-interest
17 insurance, collateral protection insurance, or similar insurance
18 protecting a creditor's interest arising out of a creditor-debtor
19 transaction;
- 20 (5) insurance of warranties or service contracts;
- 21 (6) title insurance;
- 22 (7) ocean marine insurance;
- 23 (8) a transaction or combination of transactions
24 between a person, including an affiliate of the person, and an
25 insurer, including an affiliate of the insurer, that involves the
26 transfer of investment or credit risk unaccompanied by the transfer
27 of insurance risk, including transactions, except for workers'

1 compensation insurance, involving captive insurers, policies in
2 which deductible or self-insured retention is substantially equal
3 in amount to the limit of the liability under the policy, and
4 transactions in which the insured retains a substantial portion of
5 the risk; or

6 (9) insurance provided by or guaranteed by government.

7 (b) Section 2, Chapter 995, Acts of the 79th Legislature,
8 Regular Session, 2005, which amended former Subsection (a),
9 Section 3, Article 21.28-C, Insurance Code, is repealed.

10 SECTION 3B.006. (a) Section 462.207, Insurance Code, is
11 amended to conform to Section 3, Chapter 995, Acts of the 79th
12 Legislature, Regular Session, 2005, to read as follows:

13 Sec. 462.207. CLAIMS NOT COVERED: AMOUNTS DUE CERTAIN
14 ENTITIES. (a) Any amount directly or indirectly due any
15 reinsurer, insurer, self-insurer, insurance pool, or underwriting
16 association, as a subrogation recovery, reinsurance recovery,
17 contribution, or indemnification, or otherwise, is not a covered
18 claim.

19 (b) An impaired insurer's insured is not liable, and the
20 reinsurer, insurer, self-insurer, insurance pool, or underwriting
21 association is not entitled to sue or continue a suit against the
22 insured, for a subrogation recovery, reinsurance recovery,
23 contribution, ~~or~~ indemnification, or any other claim asserted
24 directly or indirectly by a reinsurer, insurer, insurance pool, or
25 underwriting association to the extent of the applicable liability
26 limits of the insurance policy written and issued to the insured by
27 the insolvent insurer.

1 (b) Section 3, Chapter 995, Acts of the 79th Legislature,
2 Regular Session, 2005, which amended former Subdivision (8),
3 Section 5, Article 21.28-C, Insurance Code, is repealed.

4 SECTION 3B.007. (a) Section 462.211, Insurance Code, is
5 amended to conform to Section 4, Chapter 995, Acts of the 79th
6 Legislature, Regular Session, 2005, and Section 6.070, Chapter 265,
7 Acts of the 79th Legislature, Regular Session, 2005, to read as
8 follows:

9 Sec. 462.211. CLAIMS NOT COVERED: LATE FILED CLAIMS. (a)
10 Notwithstanding any other provision of this chapter or any other
11 law to the contrary, and subject to [~~except as provided by~~]
12 Subsection (b), a claim that is filed with the association on a date
13 that is later than 18 months after the date of the order of
14 liquidation or that is unknown and unreported as of the date is not
15 a covered claim.

16 (b) This section does not apply to a claim for workers'
17 compensation benefits governed by Title 5, Labor Code, and the
18 applicable rules of the commissioner of workers' compensation
19 [~~Texas Workers' Compensation Commission~~].

20 (b) Subchapter C, Chapter 462, Insurance Code, is amended to
21 conform to Section 4, Chapter 995, Acts of the 79th Legislature,
22 Regular Session, 2005, by adding Section 462.1121 to read as
23 follows:

24 Sec. 462.1121. ACTION TO OBTAIN INFORMATION CONCERNING
25 INSURER IN RECEIVERSHIP AUTHORIZED. (a) The association may bring
26 an action against any third-party administrator, agent, attorney,
27 or other representative of an insurer for which a receiver has been

1 appointed to obtain custody and control of all information,
2 including files, records, and electronic data, related to the
3 insurer that is appropriate or necessary for the association, or a
4 similar association in other states, to carry out its duties under
5 this chapter or a similar law of another state. The association has
6 the absolute right to obtain information under this section through
7 emergency equitable relief, regardless of where the information is
8 physically located.

9 (b) In bringing an action under this section, the
10 association is not subject to any defense, possessory lien or other
11 type of lien, or other legal or equitable ground for refusal to
12 surrender the information that may be asserted against the receiver
13 of the insurer.

14 (c) The association is entitled to an award of reasonable
15 attorney's fees and costs incurred by the association in any action
16 to obtain information under this section.

17 (d) The rights granted to the association under this section
18 do not affect the receiver's title to information, and information
19 obtained under this section remains the property of the receiver
20 while in the custody of the association.

21 (c) The following are repealed:

22 (1) Section 4, Chapter 995, Acts of the 79th
23 Legislature, Regular Session, 2005, which amended former Section 8,
24 Article 21.28-C, Insurance Code, by amending Subsection (d) and
25 adding Subsection (i); and

26 (2) Section 6.070, Chapter 265, Acts of the 79th
27 Legislature, Regular Session, 2005, which amended former

1 Subsection (d), Section 8, Article 21.28-C, Insurance Code.

2 SECTION 3B.008. (a) Section 462.017(b), Insurance Code,
3 is amended to conform to Section 5, Chapter 995, Acts of the 79th
4 Legislature, Regular Session, 2005, to read as follows:

5 (b) Venue in a suit by or against the commissioner or
6 association relating to an action or ruling of the commissioner or
7 association under this chapter is in Travis County. The
8 commissioner or association is not required to give an appeal bond
9 in an appeal of a cause of action arising under this chapter.

10 (b) Section 5, Chapter 995, Acts of the 79th Legislature,
11 Regular Session, 2005, which amended former Subsection (g), Section
12 10, Article 21.28-C, Insurance Code, is repealed.

13 SECTION 3B.009. (a) Sections 462.308(a) and (c),
14 Insurance Code, are amended to conform to Section 6, Chapter 995,
15 Acts of the 79th Legislature, Regular Session, 2005, to read as
16 follows:

17 (a) The association is entitled to recover:

18 (1) the amount of a covered claim and the cost of
19 defense paid on behalf of [~~under this chapter from the person on~~
20 ~~whose behalf the payment was made if the person is:~~

21 [~~(1)~~] a person:

22 (A) who is an affiliate of the impaired insurer;

23 and

24 (B) whose liability obligations to other persons
25 are satisfied wholly or partly by payment made under this chapter;
26 and [~~or~~]

27 (2) the amount of a covered claim for workers'

1 compensation insurance benefits and the costs of administration and
2 defense of the claim paid under this chapter from an insured
3 employer[+]

4 [~~(A)~~] whose net worth on December 31 of the year
5 preceding the date the insurer becomes an impaired insurer exceeds
6 \$50 million[~~, and~~

7 [~~(B) whose obligations under a liability policy~~
8 ~~or contract of insurance written, issued, and placed in force after~~
9 ~~January 1, 1992, are satisfied wholly or partly by payment made~~
10 ~~under this chapter~~].

11 (c) For purposes of Subsection (a)(2), an insured's net
12 worth is deemed to include [~~includes~~] the aggregate net worth of the
13 insured and of the insured's parent, subsidiary, and affiliated
14 companies[~~,~~] computed on a consolidated basis.

15 (b) Section 6, Chapter 995, Acts of the 79th Legislature,
16 Regular Session, 2005, which amended former Subsection (b), Section
17 11, Article 21.28-C, Insurance Code, is repealed.

18 SECTION 3B.010. (a) Section 462.212, Insurance Code, is
19 amended to conform to Section 7, Chapter 995, Acts of the 79th
20 Legislature, Regular Session, 2005, to read as follows:

21 Sec. 462.212. NET WORTH EXCLUSION. (a) Except for a
22 workers' compensation claim governed by Title 5, Labor Code, a
23 covered claim does not include, and the association is not liable
24 for, any claim arising from an insurance policy of any [~~The~~
25 ~~association is not liable to pay a first-party claim of an~~] insured
26 whose net worth on December 31 of the year preceding the date the
27 insurer becomes an impaired insurer exceeds \$50 million.

1 (b) For purposes of this section, an insured's net worth
2 includes the aggregate net worth of the insured and of the insured's
3 parent, subsidiary, and affiliated companies[7] computed on a
4 consolidated basis.

5 (c) This section does not apply:

6 (1) to third-party claims against an insured that has:

7 (A) applied for or consented to the appointment
8 of a receiver, trustee, or liquidator for all or a substantial part
9 of the insurer's assets;

10 (B) filed a voluntary petition in bankruptcy; or

11 (C) filed a petition or an answer seeking a
12 reorganization or arrangement with creditors or to take advantage
13 of any insolvency law; or

14 (2) if an order, judgment, or decree is entered by a
15 court of competent jurisdiction, on the application of a creditor,
16 adjudicating the insured bankrupt or insolvent or approving a
17 petition seeking reorganization of the insured or of all or a
18 substantial part of its assets.

19 (d) In an instance described by Subsection (c), the
20 association is entitled to assert a claim in the bankruptcy or
21 receivership proceeding to recover the amount of any covered claim
22 and costs of defense paid on behalf of the insured.

23 (e) The association may establish procedures for requesting
24 financial information from an insured or claimant on a confidential
25 basis for the purpose of applying sections concerning the net worth
26 of first-party and third-party claimants, subject to any
27 information requested under this subsection being shared with any

1 other association similar to the association and with the
2 liquidator for the impaired insurer on the same confidential basis.
3 If the insured or claimant refuses to provide the requested
4 financial information, the association requests an auditor's
5 certification of that information, and the auditor's certification
6 is available but not provided, the association may deem the net
7 worth of the insured or claimant to be in excess of \$50 million at
8 the relevant time.

9 (f) In any lawsuit contesting the applicability of Section
10 462.308 or this section when the insured or claimant has declined to
11 provide financial information under the procedure provided in the
12 plan of operation under Section 462.103, the insured or claimant
13 bears the burden of proof concerning its net worth at the relevant
14 time. If the insured or claimant fails to prove that its net worth
15 at the relevant time was less than the applicable amount, the court
16 shall award the association its full costs, expenses, and
17 reasonable attorney's fees in contesting the claim [~~This section~~
18 ~~does not exclude the payment of a covered claim for workers'~~
19 ~~compensation benefits otherwise payable under this chapter].~~

20 (b) Section 7, Chapter 995, Acts of the 79th Legislature,
21 Regular Session, 2005, which amended former Section 11A, Article
22 21.28-C, Insurance Code, is repealed.

23 SECTION 3B.011. (a) Sections 462.309(c) and (e),
24 Insurance Code, are amended to conform to Section 8, Chapter 995,
25 Acts of the 79th Legislature, Regular Session, 2005, to read as
26 follows:

27 (c) A deadline imposed under the Texas Rules of Civil

1 Procedure or the Texas Rules of Appellate Procedure is tolled
2 during the stay. Statutes of limitation or repose are not tolled
3 during the stay, and any action filed during the stay is stayed upon
4 the filing of the action.

5 (e) The commissioner may bring an ancillary conservation
6 [~~delinquency~~] proceeding under Section 443.401 [~~Sections 442.751,~~
7 ~~442.752, and 442.754~~] for the [~~limited~~] purpose of determining the
8 application, enforcement, and extension of the stay to an impaired
9 insurer that is not domiciled in this state.

10 (b) Section 8, Chapter 995, Acts of the 79th Legislature,
11 Regular Session, 2005, which amended former Subsection (a), Section
12 17, Article 21.28-C, Insurance Code, is repealed.

13 SECTION 3B.012. (a) The heading to Chapter 463, Insurance
14 Code, is amended to conform to Section 9, Chapter 753, Acts of the
15 79th Legislature, Regular Session, 2005, to read as follows:

16 CHAPTER 463. TEXAS LIFE, ACCIDENT, HEALTH, AND HOSPITAL SERVICE
17 INSURANCE GUARANTY ASSOCIATION

18 (b) Section 463.001, Insurance Code, is amended to conform
19 to Section 9, Chapter 753, Acts of the 79th Legislature, Regular
20 Session, 2005, to read as follows:

21 Sec. 463.001. SHORT TITLE. This chapter may be cited as
22 the Texas Life, Accident, Health, and Hospital Service Insurance
23 Guaranty Association Act.

24 SECTION 3B.013. (a) Section 463.003, Insurance Code, is
25 amended to conform to Sections 2 and 3, Chapter 753, Acts of the
26 79th Legislature, Regular Session, 2005, and to more closely
27 conform to the source law from which the section was derived, to

1 read as follows:

2 Sec. 463.003. GENERAL DEFINITIONS. In this chapter:

3 (1) "Association" means the Texas Life, Accident,
4 Health, and Hospital Service Insurance Guaranty Association.

5 (1-a) "Benefit plan" means a specific employee, union,
6 or association of natural persons benefit plan.

7 (2) "Board" means the board of directors of the
8 association.

9 (3) "Contractual obligation" means an obligation
10 under a policy or contract or certificate under a group policy or
11 contract, or part of a policy or contract or certificate, for which
12 coverage is provided under Subchapter E.

13 (4) "Covered policy" means a policy or contract, or
14 portion of a policy or contract, with respect to which this chapter
15 provides coverage as determined under Subchapter E.

16 (5) "Impaired insurer" means a member insurer that is
17 designated an "impaired insurer" by the commissioner and is:

18 (A) [is] placed by a court in this state or
19 another state under an order of supervision, liquidation,
20 rehabilitation, or conservation ~~[under Chapter 441 or 442 and is~~
21 ~~designated by the commissioner as an impaired insurer]; [or]~~

22 (B) placed under an order of liquidation or
23 rehabilitation under Chapter 443; or

24 (C) placed under an order of supervision or
25 conservation by the commissioner under Chapter 441 ~~[is determined~~
26 ~~in good faith by the commissioner to be unable or potentially unable~~
27 ~~to fulfill the insurer's contractual obligations].~~

1 (6) "Insolvent insurer" means a member insurer that[+
2 [~~(A)~~] has been placed under an order of
3 liquidation with a finding of insolvency by a court in this state or
4 another state [~~a minimum free surplus, if a mutual insurance~~
5 ~~company, or required capital, if a stock insurance company, that is~~
6 ~~impaired to an extent prohibited by law; and~~
7 [~~(B) the commissioner designates as an insolvent~~
8 ~~insurer~~].

9 (7) "Member insurer" means an insurer that is required
10 to participate in the association under Section 463.052.

11 (7-a) "Owner" means the owner of a policy or contract
12 and "policy owner" and "contract owner" mean the person who is
13 identified as the legal owner under the terms of the policy or
14 contract or who is otherwise vested with legal title to the policy
15 or contract through a valid assignment completed in accordance with
16 the terms of the policy or contract and is properly recorded as the
17 owner on the books of the insurer. The terms "owner," "contract
18 owner," and "policy owner" do not include persons with a mere
19 beneficial interest in a policy or contract.

20 (8) "Person" means an individual, corporation,
21 limited liability company, partnership, association, governmental
22 body or entity, or voluntary organization.

23 (8-a) "Plan sponsor" means:

24 (A) the employer in the case of a benefit plan
25 established or maintained by a single employer;

26 (B) the employee organization in the case of a
27 benefit plan established or maintained by an employee organization;

1 or

2 (C) in a case of a benefit plan established or
3 maintained by two or more employers or jointly by one or more
4 employers and one or more employee organizations, the association,
5 committee, joint board of trustees, or other similar group of
6 representatives of the parties who establish or maintain the
7 benefit plan.

8 (9) "Premium" means an amount received on a covered
9 policy, less any premium, consideration, or deposit returned on the
10 policy, and any dividend or experience credit on the policy. The
11 term does not include:

12 (A) an amount received for a policy or contract
13 or part of a policy or contract for which coverage is not provided
14 under Section 463.202, except that assessable premiums may not be
15 reduced because of:

16 (i) an interest limitation provided by
17 Section 463.203(b)(3); or

18 (ii) a limitation provided by Section
19 463.204 with respect to a single individual, participant,
20 annuitant, or contract owner [~~holder~~];

21 (B) premiums in excess of \$5 million on an
22 unallocated annuity contract not issued under a governmental
23 benefit [~~retirement~~] plan established under Section 401, 403(b),
24 or 457, Internal Revenue Code of 1986; [~~or~~]

25 (C) premiums received from the state treasury or
26 the United States treasury for insurance for which this state or the
27 United States contracts to:

1 (i) provide welfare benefits to designated
2 welfare recipients; or

3 (ii) implement Title 2, Human Resources
4 Code, or the Social Security Act (42 U.S.C. Section 301 et seq.); or

5 (D) premiums in excess of \$5 million with respect
6 to multiple nongroup policies of life insurance owned by one owner,
7 regardless of whether the policy owner is an individual, firm,
8 corporation, or other person and regardless of whether the persons
9 insured are officers, managers, employees, or other persons,
10 regardless of the number of policies or contracts held by the owner.

11 (10) "Resident" means a person who resides in this
12 state on the earlier of the date a member insurer becomes an
13 impaired insurer or the date of entry of a court order that
14 determines a member insurer to be an impaired insurer or the date of
15 entry of a court order that determines a member insurer to be an
16 insolvent insurer and to whom the [at the time a] member insurer
17 [that] owes a contractual obligation [to the person is determined
18 to be impaired or insolvent]. For the purposes of this subdivision:

19 (A) a person is considered to be a resident of
20 only one state; ~~and~~

21 (B) a person other than an individual is
22 considered to be a resident of the state in which the person's
23 principal place of business is located; and

24 (C) a United States citizen who is either a
25 resident of a foreign country or a resident of a United States
26 possession, territory, or protectorate that does not have an
27 association similar to the association created by this chapter is

1 considered a resident of the state of domicile of the insurer that
2 issued the policy or contract.

3 (10-a) "Structured settlement annuity" means an
4 annuity purchased to fund periodic payments for a plaintiff or
5 other claimant in payment for or with respect to personal injury
6 suffered by the plaintiff or other claimant.

7 (11) "Supplemental contract" means a written ~~[an]~~
8 agreement for the distribution of policy or contract proceeds.

9 (12) "Unallocated annuity contract" means an annuity
10 contract or group annuity certificate that is not issued to and
11 owned by an individual, except to the extent of any annuity benefits
12 guaranteed to an individual by an insurer under the contract or
13 certificate.

14 (b) Subchapter A, Chapter 463, Insurance Code, is amended to
15 conform to Section 3, Chapter 753, Acts of the 79th Legislature,
16 Regular Session, 2005, by adding Section 463.0031 to read as
17 follows:

18 Sec. 463.0031. DEFINITION OF PRINCIPAL PLACE OF BUSINESS OF
19 PLAN SPONSOR OR OTHER PERSON. (a) Except as otherwise provided by
20 this section, in this chapter, the "principal place of business" of
21 a plan sponsor or a person other than an individual means the single
22 state in which the individuals who establish policy for the
23 direction, control, and coordination of the operations of the plan
24 sponsor or person as a whole primarily exercise that function, as
25 determined by the association in its reasonable judgment by
26 considering the following factors:

27 (1) the state in which the primary executive and

1 administrative headquarters of the plan sponsor or person is
2 located;

3 (2) the state in which the principal office of the
4 chief executive officer of the plan sponsor or person is located;

5 (3) the state in which the board of directors, or
6 similar governing person or persons, of the plan sponsor or person
7 conduct the majority of their meetings;

8 (4) the state in which the executive or management
9 committee of the board of directors, or similar governing person or
10 persons, of the plan sponsor or person conduct the majority of their
11 meetings;

12 (5) the state from which the management of the overall
13 operations of the plan sponsor or person is directed; and

14 (6) in the case of a benefit plan sponsored by
15 affiliated companies comprising a consolidated corporation, the
16 state in which the holding company or controlling affiliate has its
17 principal place of business as determined using the factors
18 described by Subdivisions (1)-(5).

19 (b) In the case of a plan sponsor, if more than 50 percent of
20 the participants in the benefit plan are employed in a single state,
21 that state is the principal place of business of the plan sponsor.

22 (c) The principal place of business of a plan sponsor of a
23 benefit plan described in Section 463.003(8-a)(C) is the principal
24 place of business of the association, committee, joint board of
25 trustees, or other similar group of representatives of the parties
26 who establish or maintain the benefit plan that, in lieu of a
27 specific or clear designation of a principal place of business,

1 shall be deemed to be the principal place of business of the
2 employer or employee organization that has the largest investment
3 in that benefit plan.

4 (c) Section 463.052(b), Insurance Code, is amended to
5 conform to Section 2, Chapter 753, Acts of the 79th Legislature,
6 Regular Session, 2005, to read as follows:

7 (b) The following do not participate as member insurers:

8 (1) a health maintenance organization;

9 (2) a fraternal benefit society;

10 (3) a mandatory state pooling plan;

11 (4) a reciprocal or interinsurance exchange; ~~and~~

12 (5) an organization which has a certificate of
13 authority or license limited to the issuance of charitable gift
14 annuities, as defined by this code or rules adopted by the
15 commissioner; and

16 (6) an entity similar to an entity described by
17 Subdivision (1), (2), (3), ~~or~~ (4), or (5).

18 (d) Section 463.204, Insurance Code, is amended to conform
19 to Section 2, Chapter 753, Acts of the 79th Legislature, Regular
20 Session, 2005, to read as follows:

21 Sec. 463.204. OBLIGATIONS EXCLUDED. A contractual
22 obligation does not include:

23 (1) death benefits in an amount in excess of \$300,000
24 or a net cash surrender or net cash withdrawal value in an amount in
25 excess of \$100,000 ~~[in the aggregate]~~ under one or more policies on
26 a single life;

27 (2) an amount in excess of:

1 (A) \$100,000 in the present value [~~aggregate~~]
2 under one or more annuity contracts issued with respect to a single
3 life under [~~to the same holder of~~] individual annuity policies or
4 [~~to the same annuitant or participant under~~] group annuity
5 policies; or

6 (B) \$5 million in unallocated annuity contract
7 benefits with respect to a single contract owner [~~holder~~]
8 regardless of the number of those contracts;

9 (3) an amount in excess of the following amounts,
10 including any net cash surrender or cash withdrawal values,
11 [~~\$200,000 in the aggregate~~] under one or more accident, health,
12 [~~or~~] accident and health, or long-term care insurance policies on a
13 single life;

14 (A) \$500,000 for basic hospital,
15 medical-surgical, or major medical insurance, as those terms are
16 defined by this code or rules adopted by the commissioner;

17 (B) \$300,000 for disability and long-term care
18 insurance, as those terms are defined by this code or rules adopted
19 by the commissioner; or

20 (C) \$200,000 for coverages that are not defined
21 as basic hospital, medical-surgical, major medical, disability, or
22 long-term care insurance;

23 (4) an amount in excess of \$100,000 in present value
24 annuity benefits, in the aggregate, including any net cash
25 surrender and net cash withdrawal values, with respect to each
26 individual participating in a governmental retirement benefit plan
27 established under Section 401, 403(b), or 457, Internal Revenue

1 Code of 1986 (26 U.S.C. Sections 401, 403(b), and 457), covered by
2 an unallocated annuity contract or the beneficiary or beneficiaries
3 of the individual if the individual is deceased;

4 (5) an amount in excess of \$100,000 in present value
5 annuity benefits, in the aggregate, including any net cash
6 surrender and net cash withdrawal values, with respect to each
7 payee of a structured settlement annuity or the beneficiary or
8 beneficiaries of the payee if the payee is deceased;

9 (6) aggregate benefits in an amount in excess of
10 \$300,000 with respect to a single life, except with respect to:

11 (A) benefits paid under basic hospital,
12 medical-surgical, or major medical insurance policies, described
13 by Subdivision (3)(A), in which case the aggregate benefits are
14 \$500,000; and

15 (B) benefits paid to one owner of multiple
16 nongroup policies of life insurance, whether the policy owner is an
17 individual, firm, corporation, or other person, and whether the
18 persons insured are officers, managers, employees, or other
19 persons, in which case the maximum benefits are \$5 million
20 regardless of the number of policies and contracts held by the
21 owner;

22 (7) an amount in excess of \$5 million in benefits, with
23 respect to either one plan sponsor whose plans own directly or in
24 trust one or more unallocated annuity contracts not included in
25 Subdivision (4) irrespective of the number of contracts with
26 respect to the contract owner or plan sponsor or one contract owner
27 provided coverage under Section 463.201(a)(3)(B), except that, if

1 one or more unallocated annuity contracts are covered contracts
2 under this chapter and are owned by a trust or other entity for the
3 benefit of two or more plan sponsors, coverage shall be afforded by
4 the association if the largest interest in the trust or entity
5 owning the contract or contracts is held by a plan sponsor whose
6 principal place of business is in this state, and in no event shall
7 the association be obligated to cover more than \$5 million in
8 benefits with respect to all these unallocated contracts;

9 (8) any contractual obligations of the insolvent or
10 impaired insurer under a covered policy or contract that do not
11 materially affect the economic value of economic benefits of the
12 covered policy or contract; or

13 (9) [~~4~~] punitive, exemplary, extracontractual, or
14 bad faith damages, regardless of whether the damages are:

15 (A) agreed to or assumed by an insurer or
16 insured; or

17 (B) imposed by a court.

18 (e) The following are repealed:

19 (1) Section 2, Chapter 753, Acts of the 79th
20 Legislature, Regular Session, 2005, which amended former Section 5,
21 Article 21.28-D, Insurance Code, by amending Subdivisions (2), (3),
22 (4), (5), (6), (7), (9), (10), (11), and (12) and adding
23 Subdivisions (2-a), (8-a), (9-a), and (11-a); and

24 (2) Section 3, Chapter 753, Acts of the 79th
25 Legislature, Regular Session, 2005, which added Section 5A to
26 former Article 21.28-D, Insurance Code.

27 SECTION 3B.014. (a) Section 463.051(a), Insurance Code,

1 is amended to conform to Section 4, Chapter 753, Acts of the 79th
2 Legislature, Regular Session, 2005, to read as follows:

3 (a) The Texas Life, Accident, Health, and Hospital Service
4 Insurance Guaranty Association is a nonprofit legal entity existing
5 to pay benefits and continue coverage as provided by this chapter.

6 (b) Section 4, Chapter 753, Acts of the 79th Legislature,
7 Regular Session, 2005, which amended former Subsection (a), Section
8 6, Article 21.28-D, Insurance Code, is repealed.

9 SECTION 3B.015. (a) Section 463.101(a), Insurance Code,
10 is amended to conform to Section 5, Chapter 753, Acts of the 79th
11 Legislature, Regular Session, 2005, to read as follows:

12 (a) The association may:

13 (1) enter into contracts as necessary or proper to
14 carry out this chapter and the purposes of this chapter;

15 (2) sue or be sued, including taking:

16 (A) necessary or proper legal action to:

17 (i) recover an unpaid assessment under
18 Subchapter D; or

19 (ii) settle a claim or potential claim
20 against the association; or

21 (B) necessary legal action to avoid payment of an
22 improper claim;

23 (3) borrow money to effect the purposes of this
24 chapter;

25 (4) exercise, for the purposes of this chapter and to
26 the extent approved by the commissioner, the powers of a domestic
27 life, accident, or health insurance company or a group hospital

1 service corporation, except that the association may not issue an
2 insurance policy or annuity contract other than to perform the
3 association's obligations under this chapter; ~~and~~

4 (5) to further the association's purposes, exercise
5 the association's powers, and perform the association's duties,
6 join an organization of one or more state associations that have
7 similar purposes;

8 (6) request information from a person seeking coverage
9 from the association in determining its obligations under this
10 chapter with respect to the person, and the person shall promptly
11 comply with the request; and

12 (7) take any other necessary or appropriate action to
13 discharge the association's duties and obligations under this
14 chapter or to exercise the association's powers under this chapter.

15 (b) Subchapter E, Chapter 463, Insurance Code, is amended to
16 conform to Section 5, Chapter 753, Acts of the 79th Legislature,
17 Regular Session, 2005, by adding Section 463.206 to read as
18 follows:

19 Sec. 463.206. ASSOCIATION DISCRETION IN MANNER OF PROVIDING
20 BENEFITS. (a) The board shall have discretion and may exercise
21 reasonable business judgment to determine the means by which the
22 association is to provide the benefits of this chapter in an
23 economical and efficient manner.

24 (b) If the association arranges or offers to provide the
25 benefits of this chapter to a covered person under a plan or
26 arrangement that fulfills the association's obligations under this
27 chapter, the person is not entitled to benefits from the

1 association in addition to or other than those provided under the
2 plan or arrangement.

3 (c) Section 463.259, Insurance Code, is amended to conform
4 to Section 5, Chapter 753, Acts of the 79th Legislature, Regular
5 Session, 2005, to read as follows:

6 Sec. 463.259. PREMIUM DUE DURING RECEIVERSHIP. After a
7 court enters an order of receivership with respect to an impaired or
8 insolvent insurer, a premium due for coverage issued by the insurer
9 is owned by and is payable at the direction of the association. The
10 association is liable for an unearned premium owed to a policy or
11 contract owner that arises after the court enters the order.

12 (d) Section 463.261, Insurance Code, is amended to conform
13 to Section 5, Chapter 753, Acts of the 79th Legislature, Regular
14 Session, 2005, by adding Subsections (d) and (e) to read as follows:

15 (d) The rights of the association under Subsection (c)
16 include, in the case of a structured settlement annuity, any rights
17 of the owner, beneficiary, or payee of the annuity, to the extent of
18 benefits received under this chapter, against any person originally
19 or by succession responsible for the losses arising from the
20 personal injury relating to the annuity or payment for the annuity,
21 other than a person responsible solely by reason of serving as an
22 assignee in respect of a qualified assignment under Section 130,
23 Internal Revenue Code of 1986 (26 U.S.C. Section 130).

24 (e) If a provision of this section is invalid or ineffective
25 with respect to any person or claim for any reason, the amount
26 payable by the association with respect to the related covered
27 obligations is reduced by the amount realized by any other person

1 with respect to the person or claim that is attributable to the
2 policies, or portion of the policies, covered by the association.
3 If the association has provided benefits with respect to a covered
4 obligation and a person recovers amounts as to which the
5 association has rights described in this section, the person shall
6 pay to the association the portion of the recovery attributable to
7 the policies, or portion of the policies, covered by the
8 association.

9 (e) Subchapter F, Chapter 463, Insurance Code, is amended to
10 conform to Section 5, Chapter 753, Acts of the 79th Legislature,
11 Regular Session, 2005, by adding Section 463.263 to read as
12 follows:

13 Sec. 463.263. DEPOSIT TO BE PAID TO ASSOCIATION. (a) A
14 deposit in this state, held under law or required by the
15 commissioner for the benefit of creditors, including policy owners,
16 that is not turned over to the domiciliary receiver on the entry of
17 a final order of liquidation or order approving a rehabilitation
18 plan of an insurer domiciled in this state or a reciprocal state in
19 accordance with Section 443.402 shall be promptly paid to the
20 association.

21 (b) The association is entitled to retain a portion of any
22 amount paid to the association under this section equal to the
23 percentage determined by dividing the aggregate amount of policy
24 owners' claims related to that insolvency for which the association
25 has provided statutory benefits by the aggregate amount of all
26 policy owners' claims in this state related to that insolvency and
27 shall remit to the domiciliary receiver the amount paid to the

1 association and retained under this section.

2 (c) The amount paid to the association under this section,
3 less the amount retained by the association under this section, is
4 treated as a distribution of estate assets under Section 443.303 or
5 the similar law of the state of domicile of the impaired or
6 insolvent insurer.

7 (f) Section 5, Chapter 753, Acts of the 79th Legislature,
8 Regular Session, 2005, which amended former Section 8, Article
9 21.28-D, Insurance Code, by amending Subsections (e), (n), and (v)
10 and adding Subsections (u-1), (u-2), (u-3), (x), and (y), is
11 repealed.

12 SECTION 3B.016. (a) Section 463.151, Insurance Code, is
13 amended to conform to Section 6, Chapter 753, Acts of the 79th
14 Legislature, Regular Session, 2005, by amending Subsection (a) and
15 adding Subsection (a-1) to read as follows:

16 (a) The association shall assess member insurers,
17 separately for each account under Section 463.105, in the amounts
18 and at the times the board determines necessary to provide money for
19 the association to exercise the association's powers, perform the
20 association's duties, and carry out the purposes of this chapter.
21 The association may not authorize and call ~~make~~ an assessment to
22 meet the requirements of the association with respect to an
23 impaired or insolvent insurer until the assessment is necessary to
24 carry out the purposes of this chapter. The board shall classify
25 assessments under Section 463.152 and determine the amount of
26 assessments with reasonable accuracy, recognizing that exact
27 determinations may not always be possible.

1 (a-1) The association shall notify each member insurer of
2 its anticipated pro rata share of an authorized assessment not yet
3 called not later than the 180th day after the date the assessment is
4 authorized.

5 (b) Section 463.152, Insurance Code, is amended to conform
6 to Section 6, Chapter 753, Acts of the 79th Legislature, Regular
7 Session, 2005, by amending Subsections (b) and (c) and adding
8 Subsection (d) to read as follows:

9 (b) Class A assessments are authorized and called ~~made~~ to
10 pay:

11 (1) the association's administrative costs;

12 (2) administrative expenses that:

13 (A) are properly incurred under this chapter; and

14 (B) relate to an unauthorized insurer or to an
15 entity that is not a member insurer; and

16 (3) other general expenses not related to a particular
17 impaired or insolvent insurer.

18 (c) Class B assessments are authorized and called ~~made~~ to
19 the extent necessary for the association to carry out the
20 association's powers and duties under Sections 463.101, 463.103,
21 463.109, and 463.111(c) and Subchapter F with regard to an impaired
22 or insolvent insurer.

23 (d) For purposes of this section, an assessment is
24 authorized at the time a resolution by the board is passed under
25 which an assessment will be called immediately or in the future from
26 member insurers for a specified amount and an assessment is called
27 at the time a notice has been issued by the association to member

1 insurers requiring that an authorized assessment be paid within a
2 period stated in the notice. An authorized assessment becomes a
3 called assessment at the time notice is mailed by the association to
4 member insurers.

5 (c) Sections 463.153(b) and (c), Insurance Code, are
6 amended to conform to Section 6, Chapter 753, Acts of the 79th
7 Legislature, Regular Session, 2005, to read as follows:

8 (b) Class B assessments against a member insurer for each
9 account under Section 463.105 shall be authorized and called ~~[made]~~
10 in the proportion that the premiums received on ~~[all]~~ business in
11 this state by the insurer on policies or contracts covered by each
12 account for the three most recent calendar years for which
13 information is available preceding the year in which the insurer
14 became impaired or insolvent bear to ~~[the]~~ premiums received on
15 ~~[all]~~ business in this state for those calendar years by all
16 assessed member insurers. The amount of a Class B assessment shall
17 be allocated ~~[divided]~~ among the separate accounts in accordance
18 with an allocation formula that may be based on:

19 (1) the premiums or reserves of the impaired or
20 insolvent insurer; or

21 (2) any other standard deemed by the board in the
22 board's sole discretion as being fair and reasonable under the
23 circumstances ~~[the proportion that the premiums on the policies~~
24 ~~covered by each account were received by the impaired or insolvent~~
25 ~~insurer from all covered policies during the year preceding the~~
26 ~~date of the impairment, as shown in the annual statements for the~~
27 ~~year preceding the date of the assessment].~~

1 (c) The total amount of assessments on a member insurer for
2 each account under Section 463.105 may not exceed two [~~one~~] percent
3 of the insurer's premiums on the policies covered by the account
4 during the three [~~in a single~~] calendar years preceding the year in
5 which the insurer became an impaired or insolvent insurer. If two
6 or more assessments are authorized in a calendar year with respect
7 to insurers that become impaired or insolvent in different calendar
8 years, the average annual premiums for purposes of the aggregate
9 assessment percentage limitation described by this subsection
10 shall be equal to the higher of the three-year average annual
11 premiums for the applicable subaccount or account as computed in
12 accordance with this section [~~year~~]. If the maximum assessment and
13 the other assets of the association do not provide in a year an
14 amount sufficient to carry out the association's responsibilities,
15 the association shall make necessary additional assessments as soon
16 as this chapter permits.

17 (d) Section 6, Chapter 753, Acts of the 79th Legislature,
18 Regular Session, 2005, which amended former Section 9, Article
19 21.28-D, Insurance Code, by amending Subsections (b), (d), (f),
20 (g), and (h) and adding Subsection (b-1), is repealed.

21 SECTION 3B.017. (a) Section 463.161(a), Insurance Code, is
22 amended to conform to Section 7, Chapter 753, Acts of the 79th
23 Legislature, Regular Session, 2005, to read as follows:

24 (a) A member insurer is entitled to show as an admitted
25 asset a certificate of contribution in the form the commissioner
26 approves under Section 463.156. Unless the commissioner requires a
27 longer period, the certificate may be shown at:

1 (1) for the calendar year of issuance, an amount equal
2 to the certificate's original face value approved by the
3 commissioner; and

4 (2) beginning with the year following the calendar
5 year of issuance, an amount equal to the certificate's original
6 face value, reduced by 20 [~~10~~] percent a year for each year after
7 the year of issuance, for a period of five [~~10~~] years.

8 (b) Section 7, Chapter 753, Acts of the 79th Legislature,
9 Regular Session, 2005, which amended former Subsection (a), Section
10 (13), Article 21.28-D, Insurance Code, is repealed.

11 SECTION 3B.018. (a) Section 463.201, Insurance Code, is
12 amended to conform to Section 1, Chapter 753, Acts of the 79th
13 Legislature, Regular Session, 2005, and to conform more closely to
14 the source law from which the section was derived to read as
15 follows:

16 Sec. 463.201. INSUREDS COVERED. (a) Subject to Subsections
17 (b) and (c), this [~~This~~] chapter provides coverage for a policy or
18 contract described by Section 463.202 to a person who is:

19 (1) a person, other than a certificate holder under a
20 group policy or contract who is not a resident, who is a
21 beneficiary, assignee, or payee of a person described by
22 Subdivision (2);

23 (2) a person who is [~~subject to Subsection (b),~~] an
24 owner of or certificate holder under a policy or contract specified
25 by Section 463.202, other than [~~or a contract holder under~~] an
26 unallocated annuity contract or structured settlement annuity, and
27 who is:

1 (A) a resident; or

2 (B) not a resident, but only under all of the
3 following conditions:

4 (i) the insurers that issued the policies
5 or contracts are domiciled in this state;

6 (ii) the state in which the person resides
7 has an association similar to the association; and

8 (iii) the person is not eligible for
9 coverage by an association in any other state because the insurer
10 was not licensed in the state at the time specified in that state's
11 guaranty association law;

12 (3) a person who is the owner of an unallocated annuity
13 contract issued to or in connection with:

14 (A) a benefit plan whose plan sponsor has the
15 sponsor's principal place of business in this state; or

16 (B) a government lottery, if the owner is a
17 resident; or

18 (4) a person who is the payee under a structured
19 settlement annuity, or beneficiary of the payee if the payee is
20 deceased, if:

21 (A) the payee is a resident, regardless of where
22 the contract owner resides;

23 (B) the payee is not a resident, the contract
24 owner of the structured settlement annuity is a resident, and the
25 payee is not eligible for coverage by the association in the state
26 in which the payee resides; or

27 (C) the payee and the contract owner are not

1 residents, the insurer that issued the structured settlement
2 annuity is domiciled in this state, the state in which the contract
3 owner resides has an association similar to the association, and
4 neither the payee or, if applicable, the payee's beneficiary, nor
5 the contract owner is eligible for coverage by the association in
6 the state in which the payee or contract owner resides [~~(2) a~~
7 ~~beneficiary, assignee, or payee, other than a certificate holder~~
8 ~~under a group policy or contract who is not a resident, of a person~~
9 ~~described by Subdivision (1)].~~

10 (b) This chapter does not provide coverage to:

11 (1) a person who is a payee or the beneficiary of a
12 payee with respect to a contract the owner of which is a resident of
13 this state, if the payee or the payee's beneficiary is afforded any
14 coverage by the association of another state; or

15 (2) a person otherwise described by Subsection (a)(3),
16 if any coverage is provided by the association of another state to
17 that person.

18 (c) This chapter is intended to provide coverage to persons
19 who are residents of this state, and in those limited circumstances
20 as described in this chapter, to nonresidents. In order to avoid
21 duplicate coverage, if a person who would otherwise receive
22 coverage under this chapter is provided coverage under the laws of
23 any other state, the person may not be provided coverage under this
24 chapter. In determining the application of the provisions of this
25 subsection in situations in which a person could be covered by the
26 association of more than one state, whether as an owner, payee,
27 beneficiary, or assignee, this chapter shall be construed in

1 conjunction with other state laws to result in coverage by only one
2 association. [~~Coverage under Subsection (a)(1) applies to a person~~
3 ~~who is not a resident, only if:~~

4 [~~(1) the insurer that issued the policy or contract is~~
5 ~~domiciled in this state,~~

6 [~~(2) the insurer never held a certificate of authority~~
7 ~~in the state in which the person resides,~~

8 [~~(3) the state in which the person resides has an~~
9 ~~association similar to the association; and~~

10 [~~(4) the person is not eligible for coverage by the~~
11 ~~association in the state in which the person resides.]~~

12 (b) Sections 463.202(a) and (c), Insurance Code, are
13 amended to conform to Section 1, Chapter 753, Acts of the 79th
14 Legislature, Regular Session, 2005, to read as follows:

15 (a) Except as limited by this chapter, the coverage provided
16 by this chapter to a person specified by Section 463.201, subject to
17 Sections 463.201(b) and (c), applies with respect to the following
18 policies and contracts issued by a member insurer:

19 (1) a direct, nongroup life, health, accident,
20 annuity, or supplemental policy or contract;

21 (2) a certificate under a direct group policy or
22 contract;

23 (3) a group hospital service contract; and

24 (4) an unallocated annuity contract.

25 (c) For the purposes of this section, an annuity contract or
26 a certificate under a group annuity contract includes:

27 (1) a guaranteed investment contract;

- 1 (2) a deposit administration contract;
- 2 (3) an allocated or unallocated funding agreement;
- 3 (4) a structured settlement annuity [~~agreement~~];
- 4 (5) an annuity issued to or in connection with a
- 5 government lottery [~~a lottery contract~~]; and
- 6 (6) an immediate or deferred annuity contract.

7 (c) Section 463.203, Insurance Code, is amended to conform
8 to Section 1, Chapter 753, Acts of the 79th Legislature, Regular
9 Session, 2005, by amending Subsection (b) and adding Subsection (c)
10 to read as follows:

11 (b) This chapter does not provide coverage for:

12 (1) any part of a policy or contract not guaranteed by
13 the insurer or under which the risk is borne by the policy or
14 contract owner [~~holder~~];

15 (2) a policy or contract of reinsurance, unless an
16 assumption certificate has been issued;

17 (3) any part of a policy or contract to the extent that
18 the rate of interest on which that part is based:

19 (A) as averaged over the period of four years
20 before the date the member insurer becomes impaired or insolvent
21 under this chapter, whichever is earlier [~~association became~~
22 ~~obligated with respect to the policy or contract~~], exceeds a rate of
23 interest determined by subtracting two percentage points from
24 Moody's Corporate Bond Yield Average averaged for the same
25 four-year period or for a lesser period if the policy or contract
26 was issued less than four years before the date the member insurer
27 becomes impaired or insolvent under this chapter, whichever is

1 earlier [~~association became obligated~~]; and

2 (B) on and after the date the member insurer
3 becomes impaired or insolvent under this chapter, whichever is
4 earlier [~~association became obligated with respect to the policy or~~
5 ~~contract~~], exceeds the rate of interest determined by subtracting
6 three percentage points from Moody's Corporate Bond Yield Average
7 as most recently available;

8 (4) a portion of a policy or contract issued to a plan
9 or program of an employer, association, [~~or~~] similar entity, or
10 other person to provide life, health, or annuity benefits to the
11 entity's employees, [~~or~~] members, or others, to the extent that the
12 plan or program is self-funded or uninsured, including benefits
13 payable by an employer, association, or similar entity under:

14 (A) a multiple employer welfare arrangement as
15 defined by Section 3, Employee Retirement Income Security Act of
16 1974 (29 U.S.C. Section 1002);

17 (B) a minimum premium group insurance plan;

18 (C) a stop-loss group insurance plan; or

19 (D) an administrative services-only contract;

20 (5) any part of a policy or contract to the extent that
21 the part provides dividends, [~~or~~] experience rating credits, or
22 voting rights, or provides that fees or allowances be paid to any
23 person, including the policy or contract owner [~~holder~~], in
24 connection with the service to or administration of the policy or
25 contract;

26 (6) a policy or contract issued in this state by a
27 member insurer at a time the insurer was not authorized to issue the

1 policy or contract in this state;

2 (7) an unallocated annuity contract issued to or in
3 connection with a [an employee] benefit plan protected under the
4 federal Pension Benefit Guaranty Corporation, regardless of
5 whether the Pension Benefit Guaranty Corporation has not yet become
6 liable to make any payments with respect to the benefit plan;

7 (8) any part of an unallocated annuity contract that
8 is not issued to or in connection with a specific employee, a
9 benefit plan for a union or association of individuals, or a
10 governmental lottery; ~~or~~

11 (9) any part of a financial guarantee, funding
12 agreement, or guaranteed investment contract that:

13 (A) does not contain a mortality guarantee; and

14 (B) is not issued to or in connection with a
15 specific employee, a benefit plan, or a governmental lottery;

16 (10) a part of a policy or contract to the extent that
17 the assessments required by Subchapter D with respect to the policy
18 or contract are preempted by federal or state law;

19 (11) a contractual agreement that established the
20 member insurer's obligations to provide a book value accounting
21 guaranty for defined contribution benefit plan participants by
22 reference to a portfolio of assets that is owned by the benefit plan
23 or the plan's trustee in a case in which neither the benefit plan
24 sponsor nor its trustee is an affiliate of the member insurer; or

25 (12) a part of a policy or contract to the extent the
26 policy or contract provides for interest or other changes in value
27 that are to be determined by the use of an index or external

1 reference stated in the policy or contract, but that have not been
2 credited to the policy or contract, or as to which the policy or
3 contract owner's rights are subject to forfeiture, as of the date
4 the member insurer becomes an impaired or insolvent insurer under
5 this chapter, whichever date is earlier, subject to Subsection (c).

6 (c) For purposes of determining the values that have been
7 credited and are not subject to forfeiture as described by
8 Subsection (b)(12), if a policy's or contract's interest or changes
9 in value are credited less frequently than annually, the interest
10 or change in value determined by using the procedures defined in the
11 policy or contract is credited as if the contractual date of
12 crediting interest or changing values is the earlier of the date of
13 impairment or the date of insolvency, and is not subject to
14 forfeiture.

15 (d) Section 463.260(a), Insurance Code, is amended to
16 conform to Section 1, Chapter 753, Acts of the 79th Legislature,
17 Regular Session, 2005, to read as follows:

18 (a) The association is not liable for benefits that exceed
19 the contractual obligations for which the insurer is liable or
20 would have been liable if not impaired or insolvent. The
21 association has no obligation to provide benefits outside the
22 express written terms of the policy or contract, including:

23 (1) claims based on marketing materials;

24 (2) claims based on side letters, riders, or other
25 documents that were issued without meeting applicable policy form
26 filing or approval requirements;

27 (3) claims based on misrepresentation of or regarding

1 policy benefits;

2 (4) extracontractual claims; or

3 (5) claims for penalties or consequential or
4 incidental damages.

5 (e) Subchapter F, Chapter 463, Insurance Code, is amended to
6 conform to Section 1, Chapter 753, Acts of the 79th Legislature,
7 Regular Session, 2005, by adding Section 463.262 to read as
8 follows:

9 Sec. 463.262. EFFECT OF SUBROGATION AND ASSIGNMENT OF
10 RIGHTS AND AVAILABLE ASSETS ON ASSOCIATION OBLIGATION. (a) The
11 limitations set forth in this chapter are limitations on the
12 benefits for which the association is obligated before taking into
13 account either the association's subrogation and assignment rights
14 or the extent to which those benefits could be provided out of the
15 assets of the impaired or insolvent insurer attributable to covered
16 policies.

17 (b) The costs of the association's obligations under this
18 chapter may be met by the use of assets attributable to covered
19 policies or reimbursed to the association pursuant to the
20 association's subrogation and assignment rights.

21 (f) Section 1, Chapter 753, Acts of the 79th Legislature,
22 Regular Session, 2005, which amended former Section 3, Article
23 21.28-D, Insurance Code, is repealed.

24 SECTION 3B.019. (a) Section 463.302(d), Insurance Code,
25 is amended to conform to Section 8, Chapter 753, Acts of the 79th
26 Legislature, Regular Session, 2005, to read as follows:

27 (d) The maximum amount recoverable under Subsections (b)

1 and (c) is the amount needed in excess of all other available assets
2 of the impaired or insolvent insurer to pay the insurer's
3 contractual obligations.

4 (b) Section 463.304, Insurance Code, is amended to conform
5 to Section 8, Chapter 753, Acts of the 79th Legislature, Regular
6 Session, 2005, to read as follows:

7 Sec. 463.304. DISTRIBUTION OF OWNERSHIP RIGHTS OF IMPAIRED
8 OR INSOLVENT INSURER. In making an equitable distribution of the
9 ownership rights of an impaired or insolvent insurer before the
10 termination of a receivership, the court:

11 (1) shall consider the welfare of the policyholders of
12 the continuing or successor insurer; and

13 (2) may consider the contributions of the respective
14 parties, including the association, the shareholders and
15 policyholders of the impaired or insolvent insurer, and any other
16 party with a bona fide interest.

17 (c) Section 8, Chapter 753, Acts of the 79th Legislature,
18 Regular Session, 2005, which amended former Subsections (d) and
19 (i), Section 14, Article 21.28-D, Insurance Code, is repealed.

20 SECTION 3B.020. (a) Article 21.79H, Insurance Code, is
21 transferred to Chapter 542, Insurance Code, redesignated as
22 Subchapter G of that chapter, and amended to read as follows:

23 SUBCHAPTER G. INSURER'S RECOVERY FROM UNINSURED THIRD PARTY

24 Sec. 542.301. APPLICABILITY OF SUBCHAPTER [~~Art. 21.79H.~~
25 ~~RECOVERY OF CERTAIN COSTS FROM THIRD PARTY~~]. [~~(a)~~] This subchapter
26 [~~article~~] applies to any insurer that delivers, issues for
27 delivery, or renews a private passenger automobile insurance policy

1 in this state, including a county mutual, a reciprocal or
2 interinsurance exchange, or a Lloyd's plan.

3 Sec. 542.302. RECOVERY IN SUIT OR OTHER ACTION. [~~(b)~~] An
4 insurer that brings suit or takes other action described by Section
5 542.202 [~~of this code~~] against a responsible third party relating
6 to a loss that is covered under a private passenger automobile
7 insurance policy issued by the insurer and for which the
8 responsible third party is uninsured is entitled to recover, in
9 addition to payments made by the insurer or insured, the costs of
10 bringing the suit or taking the action, including reasonable
11 attorney's fees and court costs.

12 (b) For organizational purposes, the heading to Subchapter
13 E, Chapter 542, Insurance Code, is amended to read as follows:

14 SUBCHAPTER E. RECOVERY OF DEDUCTIBLE [~~COLLECTION~~] FROM THIRD
15 PARTIES UNDER CERTAIN AUTOMOBILE INSURANCE POLICIES

16 SECTION 3B.021. (a) Section 544.303, Insurance Code, is
17 amended to conform to Section 1, Chapter 149, Acts of the 79th
18 Legislature, Regular Session, 2005, to read as follows:

19 Sec. 544.303. PROHIBITION OF CERTAIN UNDERWRITING
20 DECISIONS BASED ON PREVIOUS MOLD CLAIM OR DAMAGE. An insurer may
21 not make an underwriting decision regarding a residential property
22 insurance policy based on previous mold damage or a claim for mold
23 damage if:

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

26 (2) the property has had mold damage;

27 (3) mold remediation has been performed on the

1 property; and

2 (4) the property was:

3 (A) remediated, as evidenced by a certificate of
4 mold remediation issued to the property owner under Section
5 1958.154, Occupations Code, that establishes with reasonable
6 certainty that the underlying cause of the mold at the property has
7 been remediated; or

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

11 (b) Section 1, Chapter 149, Acts of the 79th Legislature,
12 Regular Session, 2005, which amended former Section 3, Article
13 21.21-11, Insurance Code, is repealed.

14 SECTION 3B.022. (a) Section 544.352, Insurance Code, is
15 amended to conform to Section 1, Chapter 528, Acts of the 79th
16 Legislature, Regular Session, 2005, and further amended to read as
17 follows:

18 Sec. 544.352. DEFINITIONS. In this subchapter:

19 (1) "Appliance" means a household device operated by
20 gas or electric current, including hoses directly attached to the
21 device. The term includes air conditioning units, heating units,
22 refrigerators, dishwashers, icemakers, clothes washers, water
23 heaters, and disposals.

24 (2) "Insurer" means an insurance company, reciprocal
25 or interinsurance exchange, mutual insurance company, capital
26 stock company, county mutual insurance company, farm mutual
27 insurance company, association, Lloyd's plan, or other entity

1 writing residential property insurance in this state. The term
2 includes an affiliate, as described by Section 823.003(a), if that
3 affiliate is authorized to write and is writing residential
4 property insurance in this state. The term does not include:

5 (A) the Texas Windstorm Insurance Association
6 created and operated under Chapter 2210 [~~Article 21.49~~]; or

7 (B) the FAIR Plan created and operated under
8 Chapter 2211 [~~Article 21.49A~~].

9 (3) [~~(2)~~] "Residential property insurance" means
10 insurance against loss to residential real property at a fixed
11 location or tangible personal property provided in a homeowners
12 policy, which includes a tenant policy, a condominium owners
13 policy, or a residential fire and allied lines policy.

14 (4) [~~(3)~~] "Underwriting guideline" means a rule,
15 standard, guideline, or practice, whether written, oral, or
16 electronic, that is used by an insurer or an agent of an insurer to:

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

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

21 (b) Section 1, Chapter 528, Acts of the 79th Legislature,
22 Regular Session, 2005, which added Subdivision (4) to former
23 Section 2, Article 5.35-4, Insurance Code, is repealed.

24 SECTION 3B.023. (a) Chapter 544, Insurance Code, is
25 amended to codify Article 21.53X, Insurance Code, as added by
26 Section 8, Chapter 97, Acts of the 79th Legislature, Regular
27 Session, 2005, by adding Subchapter J and is further amended to read

1 as follows:

2 SUBCHAPTER J. PROHIBITED PRACTICES RELATING TO EXPOSURE TO
3 ASBESTOS OR SILICA

4 Sec. 544.451. DEFINITION. In this subchapter, "health
5 benefit plan" means a plan that provides benefits for medical,
6 surgical, or other treatment expenses incurred as a result of a
7 health condition, a mental health condition, an accident, sickness,
8 or substance abuse, including an individual, group, blanket, or
9 franchise insurance policy or insurance agreement, a group hospital
10 service contract, or an individual or group evidence of coverage or
11 similar coverage document. The term includes:

12 (1) a small employer health benefit plan or a health
13 benefit plan written to provide coverage with a cooperative under
14 Chapter 1501;

15 (2) a standard health benefit plan offered under
16 Subchapter A or Subchapter B, Chapter 1507; and

17 (3) a health benefit plan offered under Chapter 1551,
18 1575, 1579, or 1601.

19 Sec. 544.452. APPLICABILITY OF SUBCHAPTER. This subchapter
20 applies to any entity that offers a health benefit plan or an
21 annuity or life insurance policy or contract in this state,
22 including:

23 (1) a stock or mutual life, health, or accident
24 insurance company;

25 (2) a group hospital service corporation operating
26 under Chapter 842;

27 (3) a fraternal benefit society operating under

1 Chapter 885;

2 (4) a stipulated premium insurance company operating
3 under Chapter 884;

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

5 (6) an exchange operating under Chapter 942;

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

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

10 (9) an approved nonprofit health corporation that
11 holds a certificate of authority under Chapter 844;

12 (10) a statewide mutual assessment company operating
13 under Chapter 881;

14 (11) a local mutual aid association operating under
15 Chapter 886; and

16 (12) a local mutual burial association operating under
17 Chapter 888.

18 Sec. 544.453. PROHIBITION. An entity that offers a health
19 benefit plan or an annuity or life insurance policy or contract may
20 not use the fact that a person has been exposed to asbestos fibers
21 or silica or has filed a claim governed by Chapter 90, Civil
22 Practice and Remedies Code, to reject, deny, limit, cancel, refuse
23 to renew, increase the premiums for, or otherwise adversely affect
24 the person's eligibility for or coverage under the policy or
25 contract.

26 (b) Article 21.53X, Insurance Code, as added by Section 8,
27 Chapter 97, Acts of the 79th Legislature, Regular Session, 2005, is

1 repealed.

2 SECTION 3B.024. Section 551.004, Insurance Code, is amended
3 to correct references to read as follows:

4 Sec. 551.004. TRANSFER NOT CONSIDERED A REFUSAL TO RENEW.
5 For purposes of this chapter and Subchapters C and D, Chapter 1952
6 [Articles 5.06-1 and 5.06-3 of this code], the transfer of a
7 policyholder between admitted companies within the same insurance
8 group is not considered a refusal to renew.

9 SECTION 3B.0245. (a) Subchapter A, Chapter 551, Insurance
10 Code, is amended to conform to the enactment of Article 21.49-2V,
11 Insurance Code, by Section 8.02, Chapter 206, Acts of the 78th
12 Legislature, Regular Session, 2003, by adding Section 551.005 to
13 read as follows:

14 Sec. 551.005. MEMBERSHIP DUES. (a) In this section,
15 "insurer" includes a county mutual insurance company, a Lloyd's
16 plan, and a reciprocal or interinsurance exchange.

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

20 (b) Article 21.49-2V, Insurance Code, as added by Section
21 8.02, Chapter 206, Acts of the 78th Legislature, Regular Session,
22 2003, is repealed.

23 SECTION 3B.025. Section 843.318(a), Insurance Code, is
24 amended to conform more closely to the source law from which the
25 section was derived to read as follows:

26 (a) This chapter and this code do not prohibit a physician
27 or provider who is participating in a health maintenance

1 organization delivery network, whether by contracting with a health
2 maintenance organization under Section 843.101 or by
3 subcontracting with a physician or provider in the health
4 maintenance organization delivery network, from entering into a
5 contractual arrangement [~~authorized by this section~~] within a
6 health maintenance organization delivery network described by
7 Subsections (b)-(e).

8 SECTION 3B.026. Section 941.003(b), Insurance Code, as
9 amended by Chapters 631 and 1295, Acts of the 79th Legislature,
10 Regular Session, 2005, is reenacted and is amended to correct
11 references to read as follows:

12 (b) A Lloyd's plan is subject to:

13 (1) Subchapter [~~Section 5, Article 1.10,~~

14 [~~(2) Article 1.15A,~~

15 [~~(3) Subchapters~~] A, [~~Q, T, and U,~~] Chapter 5, Chapter

16 254, Subchapters A and B, Chapter 1806, and Subtitle C, Title 10;

17 (2) [(4)] Articles [~~5.20,~~] 5.35, [~~5.38,~~] 5.39, and
18 5.40;

19 (3) [(5)] Article [~~21.49-8,~~

20 [~~(6) Sections 822.203, 822.205, 822.210, and 822.212,~~

21 [(7)] Article 5.13-2, as provided by that article,
22 Chapter 2251, as provided by that chapter, and Chapter 2301, as
23 provided by that chapter;

24 (4) [(8)] Chapters 251, 252, 402, [and] 541, and 2253;

25 (5) Subchapter A, Chapter 401;

26 (6) Subchapter B, Chapter 404;

27 (7) Subchapter C, Chapter 1806; and

1 (8) Sections [~~(9) Section~~] 38.001, 501.159, 822.203,
2 822.205, 822.210, 822.212, 2002.005, 2002.051, and 2002.052.

3 SECTION 3B.027. Section 942.003(b), Insurance Code, as
4 amended by Chapters 631 and 1295, Acts of the 79th Legislature,
5 Regular Session, 2005, is reenacted and is amended to correct
6 references to read as follows:

7 (b) An exchange is subject to:

8 (1) Subchapter [Section 5, Article 1.10;
9 [~~(2) Articles 1.15, 1.15A, and 1.16;~~
10 [~~(3) Subchapters] A, [Q, T, and U,] Chapter 5, Chapter~~
11 254, Subchapters A and B, Chapter 1806, and Subtitle C, Title 10;

12 (2) [~~(4)~~] Articles [~~5.20,~~] 5.35, [~~5.37, 5.38,~~] 5.39,
13 and 5.40;

14 (3) [~~(5) Article 21.49-8;~~
15 [~~(6) Sections 822.203, 822.205, 822.210, 822.212,~~
16 861.254(a)-(f), 861.255, 862.001(b), and 862.003;

17 [~~(7)~~] Article 5.13-2, as provided by that article,
18 Chapter 2251, as provided by that chapter, and Chapter 2301, as
19 provided by that chapter;

20 (4) Chapters 402, [~~(8) Chapter] 541, and 2253;~~

21 (5) Subchapter A, Chapter 401, and Sections 401.051,
22 401.052, 401.054, 401.055, 401.056, 401.057, 401.058, 401.059,
23 401.060, 401.061, 401.062, 401.151, 401.152, 401.155, and 401.156;

24 (6) Subchapter B, Chapter 404;

25 (7) Subchapter C, Chapter 1806; and

26 (8) Sections [~~(9) Section] 38.001, 501.159, 822.203,~~
27 822.205, 822.210, 822.212, 861.254(a)-(f), 861.255, 862.001(b),

1 862.003, 2002.002, 2002.005, 2002.051, and 2002.052.

2 SECTION 3B.02701. Sections 1272.001(a)(1), (3), and (4),
3 Insurance Code, are amended to conform more closely to the source
4 law from which they were derived to read as follows:

5 (1) "Delegated entity" means an entity, other than a
6 health maintenance organization authorized to engage in business
7 under Chapter 843, that by itself, or through subcontracts with one
8 or more entities, undertakes to arrange for or provide medical care
9 or health care to an enrollee in exchange for a predetermined
10 payment on a prospective basis and that accepts responsibility for
11 performing on behalf of the health maintenance organization a
12 function regulated by this chapter, Chapter 222, 251, or 258, as
13 applicable to a health maintenance organization, Chapter 843 or [7]
14 1271, Section 1367.053 [~~or 1367~~], Subchapter A, Chapter 1452, or
15 Subchapter B, Chapter 1507. The term does not include:

16 (A) an individual physician; or

17 (B) a group of employed physicians, practicing
18 medicine under one federal tax identification number, whose total
19 claims paid to providers not employed by the group constitute less
20 than 20 percent of the group's total collected revenue computed on a
21 calendar year basis.

22 (3) "Delegated third party" means a third party other
23 than a delegated entity that contracts with a delegated entity,
24 either directly or through another third party, to:

25 (A) accept responsibility for performing a
26 function regulated by this chapter, Chapter 222, 251, or 258, as
27 applicable to a health maintenance organization, Chapter 843 or [7]

1 1271, Section 1367.053 [~~or 1367~~], Subchapter A, Chapter 1452, or
2 Subchapter B, Chapter 1507; or

3 (B) receive, handle, or administer funds, if the
4 receipt, handling, or administration is directly or indirectly
5 related to a function regulated by this chapter, Chapter 222, 251,
6 or 258, as applicable to a health maintenance organization, Chapter
7 843 or [~~7~~] 1271, Section 1367.053 [~~or 1367~~], Subchapter A, Chapter
8 1452, or Subchapter B, Chapter 1507.

9 (4) "Delegation agreement" means an agreement by which
10 a health maintenance organization assigns the responsibility for a
11 function regulated by this chapter, Chapter 222, 251, or 258, as
12 applicable to a health maintenance organization, Chapter 843 or [~~7~~]
13 1271, Section 1367.053 [~~or 1367~~], Subchapter A, Chapter 1452, or
14 Subchapter B, Chapter 1507.

15 SECTION 3B.0271. (a) Section 1301.004, Insurance Code, to
16 conform more closely to the source law from which it was derived, is
17 transferred to Section 1301.061, Insurance Code, redesignated as
18 Subsection (c) of that section, and amended to read as follows:

19 (c) [~~Sec. 1301.004. COMPLIANCE WITH CHAPTER~~
20 ~~REQUIRED.~~] Each preferred provider benefit plan offered in this
21 state must comply with this chapter.

22 (b) Subchapter A, Chapter 1301, Insurance Code, is amended
23 to conform more closely to the source law from which Chapter 1301
24 was derived by adding Section 1301.0041 to read as follows:

25 Sec. 1301.0041. APPLICABILITY. This chapter applies to any
26 preferred provider benefit plan in which an insurer provides,
27 through the insurer's health insurance policy, for the payment of a

1 level of coverage that is different from the basic level of coverage
2 provided by the health insurance policy if the insured uses a
3 preferred provider.

4 SECTION 3B.028. Section 1365.004, Insurance Code, is
5 amended to conform more closely to the source law from which the
6 section was derived to read as follows:

7 Sec. 1365.004. RIGHT TO REJECT COVERAGE OR SELECT
8 ALTERNATIVE BENEFITS [~~COVERAGE~~]. An offer of coverage required
9 under Section 1365.003 is subject to the right of the group contract
10 holder to reject the coverage or to select an alternative level of
11 benefits [~~coverage~~] that is offered by or negotiated with the group
12 health benefit plan issuer.

13 SECTION 3B.0281. Section 1367.053(c), Insurance Code, is
14 amended to conform more closely to the source law from which the
15 section was derived to read as follows:

16 (c) In addition to the immunizations required under
17 Subsection (a), a health maintenance organization that issues a
18 health benefit plan shall provide under the plan coverage for
19 immunization against rotovirus and any other immunization required
20 for a child by law.

21 SECTION 3B.029. (a) Section 1507.003(b), Insurance Code,
22 is amended to conform to Section 2, Chapter 577, Acts of the 79th
23 Legislature, Regular Session, 2005, to read as follows:

24 (b) For purposes of this subchapter, "state-mandated health
25 benefits" does not include benefits that are mandated by federal
26 law or standard provisions or rights required under this code or
27 other laws of this state to be provided in an individual, blanket,

1 or group policy for accident and health insurance that are
2 unrelated to a specific health illness, injury, or condition of an
3 insured, including provisions related to:

4 (1) continuation of coverage under:

5 (A) Subchapters F and G, Chapter 1251;

6 (B) Section 1201.059; and

7 (C) Subchapter B, Chapter 1253;

8 (2) termination of coverage under Sections 1202.051
9 and 1501.108;

10 (3) preexisting conditions under Subchapter D,
11 Chapter 1201, and Sections 1501.102-1501.105;

12 (4) coverage of children, including newborn or adopted
13 children, under:

14 (A) Subchapter D, Chapter 1251;

15 (B) Sections 1201.053, 1201.061,
16 1201.063-1201.065, and Subchapter A, Chapter 1367;

17 (C) Chapter 1504;

18 (D) Chapter 1503;

19 (E) Section 1501.157;

20 (F) Section 1501.158; and

21 (G) Sections 1501.607-1501.609;

22 (5) services of practitioners under:

23 (A) Subchapters A, B, and C, Chapter 1451; or

24 (B) Section 1301.052;

25 (6) supplies and services associated with the
26 treatment of diabetes under Subchapter B, Chapter 1358;

27 (7) coverage for serious mental illness under

1 Subchapter A, Chapter 1355 [~~, if the standard health benefit plan is~~
2 ~~issued to a large employer as defined by Section 1501.002~~];

3 (8) coverage for childhood immunizations and hearing
4 screening as required by Subchapters B and C, Chapter 1367, other
5 than Section 1367.053(c) and Chapter 1353;

6 (9) coverage for reconstructive surgery for certain
7 craniofacial abnormalities of children as required by Subchapter D,
8 Chapter 1367;

9 (10) coverage for the dietary treatment of
10 phenylketonuria as required by Chapter 1359;

11 (11) coverage for referral to a non-network physician
12 or provider when medically necessary covered services are not
13 available through network physicians or providers, as required by
14 Section 1271.055; and

15 (12) coverage for cancer screenings under:

16 (A) Chapter 1356;

17 (B) Chapter 1362; ~~and~~

18 (C) Chapter 1363; and

19 (D) Chapter 1370.

20 (b) Section 2, Chapter 577, Acts of the 79th Legislature,
21 Regular Session, 2005, which amended former Subsection (b), Section
22 3, Article 3.80, Insurance Code, is repealed.

23 SECTION 3B.030. (a) Section 1507.053(b), Insurance Code,
24 is amended to conform to Section 3, Chapter 577, Acts of the 79th
25 Legislature, Regular Session, 2005, to read as follows:

26 (b) For purposes of this subchapter, "state-mandated health
27 benefits" does not include coverage that is mandated by federal law

1 or standard provisions or rights required under this code or other
2 laws of this state to be provided in an evidence of coverage that
3 are unrelated to a specific health illness, injury, or condition of
4 an enrollee, including provisions related to:

5 (1) continuation of coverage under Subchapter G,
6 Chapter 1251;

7 (2) termination of coverage under Sections 1202.051
8 and 1501.108;

9 (3) preexisting conditions under Subchapter D,
10 Chapter 1201, and Sections 1501.102-1501.105;

11 (4) coverage of children, including newborn or adopted
12 children, under:

13 (A) Chapter 1504;

14 (B) Chapter 1503;

15 (C) Section 1501.157;

16 (D) Section 1501.158; and

17 (E) Sections 1501.607-1501.609;

18 (5) services of providers under Section 843.304;

19 (6) coverage for serious mental health illness under
20 Subchapter A, Chapter 1355 [~~if the standard health benefit plan is~~
21 ~~issued to a large employer as defined by Section 1501.002~~]; and

22 (7) coverage for cancer screenings under:

23 (A) Chapter 1356;

24 (B) Chapter 1362; ~~and~~

25 (C) Chapter 1363; and

26 (D) Chapter 1370.

27 (b) Section 3, Chapter 577, Acts of the 79th Legislature,

1 Regular Session, 2005, which amended former Subsection (d), Article
2 20A.09N, Insurance Code, is repealed.

3 SECTION 3B.031. Section 1801.002, Insurance Code, is
4 repealed to conform to Section 5.01(4), Chapter 1227, Acts of the
5 79th Legislature, Regular Session, 2005.

6 SECTION 3B.032. (a) Section 1806.101, Insurance Code, is
7 amended to conform to Section 2, Chapter 631, Acts of the 79th
8 Legislature, Regular Session, 2005, to read as follows:

9 Sec. 1806.101. DEFINITIONS. In this subchapter:

10 (1) "Insurance" includes a suretyship.

11 (2) "Insurer" means an insurance company or other
12 legal entity described by Sections 1806.102(a) and (b).

13 (3) "Policy" includes a bond.

14 (b) Sections 1806.104(a) and (b), Insurance Code, are
15 amended to conform to Section 2, Chapter 631, Acts of the 79th
16 Legislature, Regular Session, 2005, to read as follows:

17 (a) Except as otherwise provided by this subchapter, an
18 insurer, an insurer's employee, or a broker or agent may not
19 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~~

1 ~~filed and in effect under Chapter 2251 or 2301 or Article 5.13-2]~~,
2 an 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) Section 2, Chapter 631, Acts of the 79th Legislature,
11 Regular Session, 2005, which amended former Subsections (a) and
12 (d), Article 5.20, Insurance Code, is repealed.

13 SECTION 3B.033. Section 1806.102, Insurance Code, is
14 amended to conform to Section 1, Chapter 631, Acts of the 79th
15 Legislature, Regular Session, 2005, to read as follows:

16 Sec. 1806.102. APPLICABILITY OF SUBCHAPTER. (a) This
17 ~~[Except as provided by Subsections (b) and (c), this]~~ subchapter
18 applies to an insurer, including a corporation, reciprocal or
19 interinsurance exchange, mutual insurance company, association,
20 Lloyd's plan, or other organization, writing casualty insurance or
21 writing fidelity, surety, or guaranty bonds, on risks or operations
22 in this state.

23 (b) This subchapter applies ~~[does not apply]~~ to:

24 (1) a farm mutual insurance company with respect to
25 each line of insurance that a farm mutual insurance company is
26 authorized to write under Section 911.151 ~~[or association regulated~~
27 ~~under Chapter 911]; and ~~[or]~~~~

1 (2) a county mutual insurance company with respect to
2 each line of insurance that a county mutual insurance company is
3 authorized to write under Section 912.151 [~~regulated under Chapter~~
4 ~~912~~].

5 (c) Except as otherwise provided by this subchapter, this
6 [~~This~~] subchapter does not apply to the writing of:

- 7 (1) automobile insurance;
- 8 (2) life, health, or accident insurance;
- 9 (3) professional liability insurance;
- 10 (4) reinsurance;
- 11 (5) aircraft insurance;
- 12 (6) fraternal benefit insurance;
- 13 (7) fire insurance;
- 14 (8) workers' compensation insurance;
- 15 (9) marine insurance, including noncommercial inland
16 marine insurance and ocean marine insurance;
- 17 (10) title insurance;
- 18 (11) explosion insurance, except insurance against
19 loss from personal injury or property damage resulting accidentally
20 from:

- 21 (A) a steam boiler;
- 22 (B) a heater or pressure vessel;
- 23 (C) an electrical device;
- 24 (D) an engine; or
- 25 (E) all machinery and appliances used in
26 connection with or in the operation of a boiler, heater, vessel,
27 electrical device, or engine described by Paragraphs (A)-(D); or

1 (12) insurance coverage for any of the following
2 conditions or risks:

3 (A) weather or climatic conditions, including
4 lightning, tornado, windstorm, hail, cyclone, rain, or frost and
5 freeze;

6 (B) earthquake or volcanic eruption;

7 (C) smoke or smudge;

8 (D) excess or deficiency of moisture;

9 (E) flood;

10 (F) the rising water of an ocean or an ocean's
11 tributary;

12 (G) bombardment, invasion, insurrection, riot,
13 civil war or commotion, military or usurped power, or any order of a
14 civil authority made to prevent the spread of a conflagration,
15 epidemic or catastrophe;

16 (H) vandalism or malicious mischief;

17 (I) strike or lockout;

18 (J) water or other fluid or substance resulting
19 from:

20 (i) the breakage or leakage of a sprinkler,
21 pump, or other apparatus erected for extinguishing fire, or a water
22 pipe or other conduit or container; or

23 (ii) casual water entering a building
24 through a leak or opening in the building or by seepage through
25 building walls; or

26 (K) accidental damage to a sprinkler, pump, fire
27 apparatus, pipe, or other conduit or container described by

1 Paragraph (J)(i).

2 SECTION 3B.034. (a) Section 1901.054(b), Insurance Code,
3 is amended to conform to Section 1, Chapter 1135, Acts of the 79th
4 Legislature, Regular Session, 2005, to read as follows:

5 (b) A rate is not excessive unless[+]

6 [~~(1)~~] the rate is unreasonably high for the insurance
7 coverage provided[~~, and~~

8 [~~(2) a reasonable degree of competition does not exist~~
9 ~~in the area with respect to the classification to which the rate~~
10 ~~applies].~~

11 (b) Section 1901.057, Insurance Code, is amended to conform
12 to Section 1, Chapter 1135, Acts of the 79th Legislature, Regular
13 Session, 2005, to read as follows:

14 Sec. 1901.057. CONSIDERATIONS IN APPROVING RATES. In
15 approving rates under this chapter, the department [~~commissioner~~]
16 shall consider the impact of risk management courses taken by
17 physicians and health care providers in this state.

18 (c) Section 1, Chapter 1135, Acts of the 79th Legislature,
19 Regular Session, 2005, which amended former Section 3, Article
20 5.15-1, Insurance Code, is repealed.

21 SECTION 3B.035. (a) Subchapter B, Chapter 1901, Insurance
22 Code, is amended by adding Section 1901.0541 to conform to Section
23 2, Chapter 1135, Acts of the 79th Legislature, Regular Session,
24 2005, to read as follows:

25 Sec. 1901.0541. USE IN UNDERWRITING OF CERTAIN INFORMATION
26 RELATED TO LAWSUITS; REFUND. (a) Notwithstanding any other
27 provision of this code, an insurer may not consider for the purpose

1 of setting premiums or reducing a claims-free discount for a
2 particular insured physician's professional liability insurance a
3 lawsuit filed against the physician if:

4 (1) before trial, the lawsuit was dismissed by the
5 claimant or nonsuited; and

6 (2) no payment was made to the claimant under a
7 settlement agreement.

8 (b) An insurer that, in setting premiums or reducing a
9 claims-free discount for a physician's professional liability
10 insurance, considers a lawsuit filed against the physician shall
11 refund to the physician any increase in premiums paid by the
12 physician that is attributable to that lawsuit or reinstate the
13 claims-free discount if the lawsuit is dismissed by the claimant or
14 nonsuited without payment to the claimant under a settlement
15 agreement. The insurer shall issue the refund or reinstate the
16 discount on or before the 30th day after the date the insurer
17 receives written evidence that the lawsuit was dismissed or
18 nonsuited without payment to the claimant under a settlement
19 agreement.

20 (c) This section does not prohibit an insurer from
21 considering and using aggregate historical loss and expense
22 experience applicable generally to a classification of physicians'
23 professional liability insurance to set rates for that
24 classification to the extent authorized by Chapter 2251 and Article
25 5.13-2. Notwithstanding Section 2251.052(c), an insurer may not
26 assign a physician to a particular classification based on a factor
27 described by Subsection (a).

1 (b) Subchapter F, Chapter 1901, Insurance Code, is amended
2 by adding Section 1901.254 to conform to Section 2, Chapter 1135,
3 Acts of the 79th Legislature, Regular Session, 2005, to read as
4 follows:

5 Sec. 1901.254. PROHIBITION OF USE OF CERTAIN INFORMATION
6 FOR PHYSICIAN OR HEALTH CARE PROVIDER. (a) For the purpose of
7 writing professional liability insurance for physicians and health
8 care providers, an insurer may not consider whether, or the extent
9 to which, a physician or health care provider provides services in
10 this state to individuals who are recipients of Medicaid or covered
11 by the state child health plan program established by Chapter 62,
12 Health and Safety Code, including any consideration resulting in:

13 (1) denial of coverage;

14 (2) refusal to renew coverage;

15 (3) cancellation of coverage;

16 (4) limitation of the amount, extent, or kind of
17 coverage available; or

18 (5) a determination of the rate or premium to be paid.

19 (b) The commissioner may adopt rules as necessary to
20 implement this section.

21 (c) Section 2, Chapter 1135, Acts of the 79th Legislature,
22 Regular Session, 2005, which added Sections 12 and 13 to former
23 Article 5.15-1, Insurance Code, is repealed.

24 SECTION 3B.036. (a) Subchapter F, Chapter 1901, Insurance
25 Code, is amended by adding Section 1901.255 to conform to Section 1,
26 Chapter 184, Acts of the 79th Legislature, Regular Session, 2005,
27 to read as follows:

1 Sec. 1901.255. COVERAGE FOR VOLUNTEER HEALTH CARE
2 PROVIDERS. (a) In this section:

3 (1) "Charitable organization" has the meaning
4 assigned by Section 84.003, Civil Practice and Remedies Code.

5 (2) "Volunteer health care provider" has the meaning
6 assigned by Section 84.003, Civil Practice and Remedies Code.

7 (b) An insurer may make available professional liability
8 insurance covering a volunteer health care provider for an act or
9 omission resulting in death, damage, or injury to a patient while
10 the person is acting in the course and scope of the person's duties
11 as a volunteer health care provider as described by Chapter 84,
12 Civil Practice and Remedies Code.

13 (c) This section does not affect the liability of a
14 volunteer health care provider who is serving as a direct service
15 volunteer of a charitable organization. Section 84.004(c), Civil
16 Practice and Remedies Code, applies to the volunteer health care
17 provider without regard to whether the volunteer health care
18 provider obtains liability insurance under this section.

19 (d) An insurer may make professional liability insurance
20 available under this section to a volunteer health care provider
21 without regard to whether the volunteer health care provider is a
22 "health care provider" as defined by Section 1901.001.

23 (b) Section 1, Chapter 184, Acts of the 79th Legislature,
24 Regular Session, 2005, which added Section 12 to former Article
25 5.15-1, Insurance Code, is repealed.

26 SECTION 3B.037. (a) Section 1952.101(c), Insurance Code,
27 is amended to conform to Section 3, Chapter 1159, Acts of the 79th

1 Legislature, Regular Session, 2005, to read as follows:

2 (c) The coverage required by this subchapter does not apply
3 if any insured named in the insurance policy rejects the coverage in
4 writing. Unless the named insured requests in writing the coverage
5 required by this subchapter, the insurer is not required to provide
6 that coverage in or supplemental to a reinstated insurance policy
7 or renewal insurance policy if the named insured rejected the
8 coverage in connection with that insurance policy or an insurance
9 policy previously issued to the insured by the same insurer or by an
10 affiliated insurer.

11 (b) Section 3, Chapter 1159, Acts of the 79th Legislature,
12 Regular Session, 2005, which amended former Section (1), Article
13 5.06-1, Insurance Code, is repealed.

14 SECTION 3B.038. (a) Section 1952.152(b), Insurance Code,
15 is amended to conform to Section 4, Chapter 1159, Acts of the 79th
16 Legislature, Regular Session, 2005, to read as follows:

17 (b) The coverage required by this subchapter does not apply
18 if any insured named in the insurance policy rejects the coverage in
19 writing. Unless the named insured requests in writing the coverage
20 required by this subchapter, the insurer is not required to provide
21 that coverage in or supplemental to a reinstated insurance policy
22 or renewal insurance policy if the named insured rejected the
23 coverage in connection with that insurance policy or an insurance
24 policy previously issued to the insured by the same insurer or by an
25 affiliated insurer.

26 (b) Section 4, Chapter 1159, Acts of the 79th Legislature,
27 Regular Session, 2005, which amended former Subsection (a), Article

1 5.06-3, Insurance Code, is repealed.

2 SECTION 3B.039. (a) Section 1952.155, Insurance Code, is
3 amended by amending Subsection (b) and adding Subsection (c) to
4 conform to Section 2, Chapter 1074, Acts of the 79th Legislature,
5 Regular Session, 2005, to read as follows:

6 (b) Except as provided by Subsection (c), an [An] insurer
7 paying benefits under coverage required by this subchapter does not
8 have a right of subrogation or claim against any other person or
9 insurer to recover any benefits by reason of the alleged fault of
10 the other person in causing or contributing to the accident.

11 (c) An insurer paying benefits pursuant to this subchapter,
12 including a county mutual insurance company, shall have a right of
13 subrogation and a claim against a person causing or contributing to
14 the accident if, on the date of loss, financial responsibility as
15 required by Chapter 601, Transportation Code, has not been
16 established for a motor vehicle involved in the accident and
17 operated by that person.

18 (b) Section 2, Chapter 1074, Acts of the 79th Legislature,
19 Regular Session, 2005, which amended former Article 5.06-3,
20 Insurance Code, by amending Subsection (c) and adding Subsection
21 (i), is repealed.

22 SECTION 3B.040. (a) Section 2006.052, Insurance Code, is
23 amended to conform to Sections 4 and 6, Chapter 291, Acts of the
24 79th Legislature, Regular Session, 2005, by amending Subsection (b)
25 and adding Subsection (c) to read as follows:

26 (b) This section applies to an insurer that uses a tier
27 classification or discount program that has a premium consequence

1 based in whole or in part on claims experience, regardless of
2 whether any of the policies that continuously covered the
3 policyholder was a different kind of residential property insurance
4 policy from the policy eligible for the premium discount.

5 (c) A residential property insurance claim under this
6 section does not include a claim:

7 (1) resulting from a loss caused by natural causes;

8 (2) that is filed but is not paid or payable under the
9 policy; or

10 (3) that an insurer is prohibited from using under
11 Section 544.353.

12 (b) Subchapter B, Chapter 2006, Insurance Code, is amended
13 to conform to Section 4, Chapter 291, Acts of the 79th Legislature,
14 Regular Session, 2005, by adding Section 2006.0521 to read as
15 follows:

16 Sec. 2006.0521. COMPLIANCE WITH OTHER LAW REQUIRED. Any
17 change in the amount of a premium discount provided under this
18 subchapter must comply with the requirements of Section 551.107.

19 (c) Sections 4 and 6, Chapter 291, Acts of the 79th
20 Legislature, Regular Session, 2005, which amended former Article
21 5.43, Insurance Code, by amending Subsection (d) and adding
22 Subsections (a-1) and (f), are repealed.

23 SECTION 3B.041. (a) Section 2051.151(a), Insurance Code,
24 is amended to conform to Section 6.062, Chapter 265, Acts of the
25 79th Legislature, Regular Session, 2005, to read as follows:

26 (a) Except as otherwise provided by Subsection (b), an
27 insurance company that writes workers' compensation insurance in

1 this state shall notify a policyholder of a claim that is filed
2 against the policyholder's policy and, after the initial notice,
3 the company shall notify the policyholder of:

4 (1) any proposal to settle the claim; or

5 (2) on receipt of a written request from the
6 policyholder, any administrative or judicial proceeding relating
7 to the resolution of the claim[~~, including a benefit review
8 conference conducted by the Texas Workers' Compensation
9 Commission~~].

10 (b) Section 6.062, Chapter 265, Acts of the 79th
11 Legislature, Regular Session, 2005, which amended former Section
12 (a), Article 5.65A, Insurance Code, is repealed.

13 SECTION 3B.042. (a) Section 2053.001, Insurance Code, is
14 amended to conform to Section 5.01, Chapter 265, Acts of the 79th
15 Legislature, Regular Session, 2005, by amending Subdivision (2) and
16 adding Subdivision (2-a) to read as follows:

17 (2) "Insurance company" means a person authorized to
18 engage in the business of workers' compensation insurance in this
19 state. The term includes:

20 (A) the Texas Mutual Insurance Company;

21 (B) a Lloyd's plan under Chapter 941; and

22 (C) a reciprocal and interinsurance exchange
23 under Chapter 942.

24 (2-a) "Premium" means the amount charged for a
25 workers' compensation insurance policy, including any
26 endorsements, after the application of individual risk variations
27 based on loss or expense considerations.

1 (b) Section 5.01, Chapter 265, Acts of the 79th Legislature,
2 Regular Session, 2005, which amended former Section 1, Article
3 5.55, Insurance Code, by amending Subdivision (2) and adding
4 Subdivision (2-a), is repealed.

5 SECTION 3B.043. (a) Sections 2053.002(a) and (b),
6 Insurance Code, are amended to conform to Section 5.02, Chapter
7 265, Acts of the 79th Legislature, Regular Session, 2005, to read as
8 follows:

- 9 (a) In setting rates, an insurance company shall consider:
- 10 (1) past and prospective loss cost experience;
 - 11 (2) operation expenses;
 - 12 (3) investment income;
 - 13 (4) a reasonable margin for profit and contingencies;
 - 14 [~~and~~
 - 15 (5) the effect on premiums of individual risk
16 variations based on loss or expense considerations; and
 - 17 (6) any other relevant factor.

18 (b) A rate or premium established under this subchapter may
19 not be excessive, inadequate, or unfairly discriminatory.

20 (b) Section 5.02, Chapter 265, Acts of the 79th Legislature,
21 Regular Session, 2005, which amended former Subsections (b) and
22 (d), Section 2, Article 5.55, Insurance Code, is repealed.

23 SECTION 3B.044. Section 2053.007(c), Insurance Code, is
24 repealed to conform to Section 5.04, Chapter 265, Acts of the 79th
25 Legislature, Regular Session, 2005.

26 SECTION 3B.045. (a) Section 2053.010, Insurance Code, is
27 amended to conform to Section 5.05, Chapter 265, Acts of the 79th

1 Legislature, Regular Session, 2005, to read as follows:

2 Sec. 2053.010. PENALTIES [~~ADMINISTRATIVE PENALTY~~]. If a
3 workers' compensation insurance policy is issued and the
4 commissioner subsequently disapproves the rate or filing on which
5 the premium is based, the commissioner, after notice and the
6 opportunity for a hearing, may:

- 7 (1) impose sanctions under Chapter 82;
8 (2) issue a cease and desist order under Chapter 83;
9 (3) impose administrative penalties under Chapter 84;

10 or

11 (4) take any combination of these actions. [~~(a) The~~
12 ~~commissioner may assess an administrative penalty against an~~
13 ~~insurance company if the commissioner determines, based on a~~
14 ~~pattern of charges for premiums, that the company is consistently~~
15 ~~overcharging or undercharging the company's policyholders for~~
16 ~~workers' compensation insurance.~~

17 ~~[(b) An administrative penalty under this section must be:~~

18 ~~[(1) assessed in accordance with Section 415.021,~~
19 ~~Labor Code, and~~

20 ~~[(2) set by the commissioner in an amount reasonable~~
21 ~~and necessary to deter overcharging or undercharging of~~
22 ~~policyholders.]~~

23 (b) Section 5.05, Chapter 265, Acts of the 79th Legislature,
24 Regular Session, 2005, which amended former Section 7, Article
25 5.55, Insurance Code, is repealed.

26 SECTION 3B.046. (a) Subchapter A, Chapter 2053, Insurance
27 Code, is amended to conform to Section 5.055, Chapter 265, Acts of

1 the 79th Legislature, Regular Session, 2005, by adding Section
2 2053.011 to read as follows:

3 Sec. 2053.011. EXCLUSIVE JURISDICTION. The department has
4 exclusive jurisdiction over all rates and premiums subject to this
5 subchapter.

6 (b) Section 5.055, Chapter 265, Acts of the 79th
7 Legislature, Regular Session, 2005, which added Section 8 to former
8 Article 5.55, Insurance Code, is repealed.

9 SECTION 3B.047. (a) Subchapter A, Chapter 2053, Insurance
10 Code, is amended to conform to Section 5.03, Chapter 265, Acts of
11 the 79th Legislature, Regular Session, 2005, by adding Sections
12 2053.012 and 2053.013 to read as follows:

13 Sec. 2053.012. REPORT ON LEGISLATIVE REFORMS REQUIRED. (a)
14 Not later than December 1 of each even-numbered year, the
15 commissioner shall report to the governor, lieutenant governor, and
16 speaker of the house of representatives regarding the impact that
17 legislation enacted during the regular session of the 79th
18 Legislature reforming the workers' compensation system of this
19 state has had on the affordability and availability of workers'
20 compensation insurance for the employers of this state. The report
21 must include an analysis of:

22 (1) the projected workers' compensation premium
23 savings realized by employers as a result of the reforms;

24 (2) the impact of the reforms on:

25 (A) the percentage of employers who provide
26 workers' compensation insurance coverage for their employees; and

27 (B) to the extent possible, economic development

1 and job creation;

2 (3) the effects of the reforms on market competition
3 and carrier financial solvency, including an analysis of how
4 carrier loss ratios, combined ratios, and use of individual risk
5 variations have changed since implementation of the reforms; and

6 (4) the extent of participation in workers'
7 compensation health care networks by small and medium-sized
8 employers.

9 (b) If the commissioner determines that workers'
10 compensation rate filings or premium levels analyzed by the
11 department do not appropriately reflect the savings associated with
12 the reforms described by Subsection (a), the commissioner shall
13 include in the report required under Subsection (a) any
14 recommendations, including any recommended legislative changes,
15 necessary to identify the tools needed by the department to more
16 effectively regulate workers' compensation rates.

17 (c) At the request of the department, each insurance company
18 shall submit to the department all data and other information
19 considered necessary by the commissioner to generate the report
20 required under Subsection (a). Failure by an insurance company to
21 submit the data and information in a timely fashion, as determined
22 by commissioner rule, constitutes grounds for sanctions under
23 Chapter 82.

24 Sec. 2053.013. REVIEW OF RATES; CONSIDERATION OF OTHER LAW.
25 In reviewing rates under this subchapter, the commissioner shall
26 consider any state or federal legislation that has been enacted and
27 that may impact rates and premiums for workers' compensation

1 insurance coverage in this state.

2 (b) Section 5.03, Chapter 265, Acts of the 79th Legislature,
3 Regular Session, 2005, which added Subsections (e) through (h) to
4 former Section 3, Article 5.55, Insurance Code, is repealed.

5 SECTION 3B.048. (a) Chapter 2053, Insurance Code, is
6 amended to conform to Section 5.06, Chapter 265, Acts of the 79th
7 Legislature, Regular Session, 2005, by adding Subchapter A-1 to
8 read as follows:

9 SUBCHAPTER A-1. UNDERWRITING GUIDELINES

10 Sec. 2053.031. DEFINITIONS. In this subchapter:

11 (1) "Insurance company" has the meaning assigned by
12 Section 2053.001.

13 (2) "Underwriting guideline" means a rule, standard,
14 guideline, or practice, whether written, oral, or electronic, that
15 is used by an insurance company or its agent to decide whether to
16 accept or reject an application for coverage under a workers'
17 compensation insurance policy or to determine how to classify those
18 risks that are accepted for the purpose of determining a rate.

19 Sec. 2053.032. UNDERWRITING GUIDELINES. Each underwriting
20 guideline used by an insurance company in writing workers'
21 compensation insurance must be sound, actuarially justified, or
22 otherwise substantially commensurate with the contemplated risk.
23 An underwriting guideline may not be unfairly discriminatory.

24 Sec. 2053.033. ENFORCEMENT. This subchapter may be
25 enforced in the manner provided by Section 38.003(g).

26 Sec. 2053.034. FILING REQUIREMENTS. Each insurance company
27 shall file with the department a copy of the insurance company's

1 underwriting guidelines. The insurance company shall update its
2 filing each time the underwriting guidelines are changed. If a
3 group of insurance companies files one set of underwriting
4 guidelines for the group, the group shall identify which
5 underwriting guidelines apply to each insurance company in the
6 group.

7 Sec. 2053.035. APPLICABILITY OF SECTION 38.003. Section
8 38.003 applies to this subchapter to the extent consistent with
9 this subchapter.

10 (b) Section 5.06, Chapter 265, Acts of the 79th Legislature,
11 Regular Session, 2005, which added Article 5.55A to former
12 Subchapter D, Chapter 5, Insurance Code, is repealed.

13 SECTION 3B.049. (a) Subchapter B, Chapter 2053, Insurance
14 Code, is amended to conform to Section 5.08, Chapter 265, Acts of
15 the 79th Legislature, Regular Session, 2005, by adding Section
16 2053.056 to read as follows:

17 Sec. 2053.056. RATE HEARINGS. (a) The commissioner shall
18 conduct a public hearing each biennium, beginning not later than
19 December 1, 2008, to review rates to be charged for workers'
20 compensation insurance written in this state. A public hearing
21 under this section is not a contested case as defined by Section
22 2001.003, Government Code.

23 (b) Not later than the 30th day before the date of the public
24 hearing required under Subsection (a), each insurance company
25 subject to this subtitle and Article 5.66 shall file the insurance
26 company's rates, supporting information, and supplementary rating
27 information with the commissioner.

1 (c) The commissioner shall review the information submitted
2 under Subsection (b) to determine the positive or negative impact
3 of the enactment of workers' compensation reform legislation
4 enacted by the 79th Legislature, Regular Session, 2005, on workers'
5 compensation rates and premiums. The commissioner may consider
6 other factors, including relativities under Section 2053.051, in
7 determining whether a change in rates has impacted the premium
8 charged to policyholders.

9 (d) The commissioner shall implement rules as necessary to
10 mandate rate reductions or to modify the use of individual risk
11 variations if the commissioner determines that the rates or
12 premiums charged by insurance companies do not meet the rating
13 standards as defined in this code.

14 (e) The commissioner shall adopt rules as necessary to
15 mandate rate or premium reductions by insurance companies for the
16 use of cost-containment strategies that result in savings to the
17 workers' compensation system, including use of a workers'
18 compensation health care network health care delivery system, as
19 described by Chapter 1305.

20 (b) Section 5.08, Chapter 265, Acts of the 79th Legislature,
21 Regular Session, 2005, which amended former Article 5.60A,
22 Insurance Code, is repealed.

23 SECTION 3B.050. (a) Section 2053.151(b), Insurance Code,
24 is amended to conform to Section 5.07, Chapter 265, Acts of the 79th
25 Legislature, Regular Session, 2005, to read as follows:

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 commissioner of workers'
4 compensation [~~Texas Workers' Compensation Commission~~] to ensure
5 that the data collection methodology will yield data necessary for
6 research and medical cost containment efforts.

7 (b) Section 5.07, Chapter 265, Acts of the 79th Legislature,
8 Regular Session, 2005, which amended former Subsection (b), Article
9 5.58, Insurance Code, is repealed.

10 SECTION 3B.051. (a) Section 2054.008(d), Insurance Code,
11 is amended to conform to Section 6.065, Chapter 265, Acts of the
12 79th Legislature, Regular Session, 2005, to read as follows:

13 (d) Except as provided by Subsection (e), a company
14 investigation file:

15 (1) is confidential and not subject to required
16 disclosure under Chapter 552, Government Code; and

17 (2) may be disclosed only:

18 (A) in a criminal proceeding;

19 (B) in a hearing conducted by the division of
20 workers' compensation of the department [~~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 (b) Section 6.065, Chapter 265, Acts of the 79th
27 Legislature, Regular Session, 2005, which amended former

1 Subsection (a), Section 10, Article 5.76-3, Insurance Code, is
2 repealed.

3 SECTION 3B.052. (a) Section 2054.204(a), Insurance Code,
4 is amended to conform to Section 6.066, Chapter 265, Acts of the
5 79th Legislature, Regular Session, 2005, to read as follows:

6 (a) The company shall file annual statements with the
7 department [~~and commission~~] in the same manner as is required of
8 other workers' compensation insurance companies.

9 (b) Section 6.066, Chapter 265, Acts of the 79th
10 Legislature, Regular Session, 2005, which amended former
11 Subsection (e), Section 12, Article 5.76-3, Insurance Code, is
12 repealed.

13 SECTION 3B.053. (a) Section 2054.206, Insurance Code, is
14 amended to conform to Section 6.067, Chapter 265, Acts of the 79th
15 Legislature, Regular Session, 2005, to read as follows:

16 Sec. 2054.206. ADDITIONAL REPORTS. The company shall file
17 with the department [~~and the commission~~] all reports required of
18 other workers' compensation insurance companies.

19 (b) Section 6.067, Chapter 265, Acts of the 79th
20 Legislature, Regular Session, 2005, which amended former
21 Subsection (b), Section 16, Article 5.76-3, Insurance Code, is
22 repealed.

23 SECTION 3B.0531. Section 2054.253(b), Insurance Code, is
24 amended to conform more closely to the source law from which the
25 section was derived to read as follows:

26 (b) The systems may provide for a higher or lower premium
27 payment by an insured based on[+]

1 ~~[(1)]~~ the company's evaluation of the underwriting
2 characteristics of the individual risk~~[+]~~ and

3 ~~[(2)]~~ the appropriate premium to be charged for the
4 policy coverages.

5 SECTION 3B.054. (a) Section 2054.451(b), Insurance Code,
6 is amended to conform to Section 6.064, Chapter 265, Acts of the
7 79th Legislature, Regular Session, 2005, to read as follows:

8 (b) The company shall cooperate with the division of
9 workers' compensation of the department ~~[commission]~~ to compile and
10 maintain information necessary to detect practices or patterns of
11 conduct that violate this code relating to workers' compensation
12 insurance or that violate Subtitle A, Title 5, Labor Code.

13 (b) Section 2054.452, Insurance Code, is amended to conform
14 to Section 6.064, Chapter 265, Acts of the 79th Legislature,
15 Regular Session, 2005, to read as follows:

16 Sec. 2054.452. INVESTIGATIONS; COORDINATION ~~[WITH~~
17 ~~COMMISSION]~~. (a) The company may investigate cases of suspected
18 fraud and violations of this code relating to workers' compensation
19 insurance.

20 (b) The company may:

21 (1) coordinate the company's investigations with those
22 conducted by the division of workers' compensation of the
23 department ~~[commission]~~ to avoid duplication of efforts; and

24 (2) refer to the division of workers' compensation of
25 the department ~~[commission]~~ a case that is not otherwise resolved
26 by the company so that the division ~~[commission]~~ may:

27 (A) perform any further investigation necessary

1 under the circumstances;

2 (B) conduct administrative violation
3 proceedings; and

4 (C) assess and collect penalties and
5 restitution.

6 (c) Section 2054.454, Insurance Code, is amended to conform
7 to Section 6.064, Chapter 265, Acts of the 79th Legislature,
8 Regular Session, 2005, to read as follows:

9 Sec. 2054.454. DEPOSIT AND USE OF PENALTIES COLLECTED BY
10 DIVISION [~~COMMISSION~~]. A penalty collected under Section
11 2054.452(b):

12 (1) must be deposited in the Texas Department of
13 Insurance operating account [~~general revenue fund to the credit of~~
14 ~~the commission~~]; and

15 (2) may be appropriated only to the division of
16 workers' compensation of the department [~~commission~~] to offset the
17 costs of the program under Section 2054.451.

18 (d) Section 6.064, Chapter 265, Acts of the 79th
19 Legislature, Regular Session, 2005, which amended former
20 Subsections (a), (b), and (e), Section 9, Article 5.76-3, Insurance
21 Code, is repealed.

22 SECTION 3B.055. (a) Section 2054.501, Insurance Code, is
23 amended to conform to Section 6.063, Chapter 265, Acts of the 79th
24 Legislature, Regular Session, 2005, to read as follows:

25 Sec. 2054.501. DEFINITION. In this subchapter, "division"
26 means the [~~commission's~~] division of workers' compensation of the
27 department [~~health and safety~~].

1 (b) Section 2054.502, Insurance Code, is amended to conform
2 to Section 6.063, Chapter 265, Acts of the 79th Legislature,
3 Regular Session, 2005, to read as follows:

4 Sec. 2054.502. REQUIREMENTS FOR PREVENTION OF INJURIES.
5 The company may make and enforce requirements for the prevention of
6 injuries to an employee of a policyholder or applicant for
7 insurance under this chapter. On reasonable notice, a policyholder
8 or applicant shall grant representatives of the company[~~the~~
9 ~~commission,~~] or the department free access to the premises of the
10 policyholder or applicant during regular working hours for purposes
11 of this section.

12 (c) Section 2054.506, Insurance Code, is amended to conform
13 to Section 6.063, Chapter 265, Acts of the 79th Legislature,
14 Regular Session, 2005, to read as follows:

15 Sec. 2054.506. SAFETY CONSULTANT REPORT. A safety
16 consultant acting under this subchapter shall file a written report
17 with the division [~~commission~~] and the policyholder specifying any
18 hazardous condition or practice identified in the safety
19 consultation.

20 (d) Section 2054.509, Insurance Code, is amended to conform
21 to Section 6.063, Chapter 265, Acts of the 79th Legislature,
22 Regular Session, 2005, to read as follows:

23 Sec. 2054.509. FOLLOW-UP INSPECTION. (a) Not earlier than
24 the 90th day after or later than the sixth month after the date an
25 accident prevention plan is developed under Section 2054.507, the
26 division shall conduct a follow-up inspection of the policyholder's
27 premises in accordance with rules adopted by the commissioner of

1 workers' compensation [~~commission~~].

2 (b) The division [~~commission~~] may require the participation
3 of the safety consultant who performed the initial consultation and
4 developed the accident prevention plan.

5 (c) If the commissioner of workers' compensation [~~division~~]
6 determines that a policyholder has complied with the terms of the
7 accident prevention plan or has implemented other accepted
8 corrective measures, the commissioner of workers' compensation
9 [~~division~~] shall certify that determination.

10 (d) If the commissioner of workers' compensation [~~division~~]
11 determines that a policyholder has failed or refuses to implement
12 the accident prevention plan or other suitable hazard abatement
13 measures, the policyholder may elect to cancel coverage not later
14 than the 30th day after the date of the determination.

15 (e) Sections 2054.510(a), (c), and (d), Insurance Code, are
16 amended to conform to Section 6.063, Chapter 265, Acts of the 79th
17 Legislature, Regular Session, 2005, to read as follows:

18 (a) If a policyholder described by Section 2054.509(d) does
19 not elect to cancel coverage as provided by that section:

20 (1) the company may cancel the coverage; or

21 (2) the commissioner of workers' compensation
22 [~~commission~~] may impose an administrative penalty on the
23 policyholder.

24 (c) In imposing an administrative penalty, the commissioner
25 of workers' compensation [~~commission~~] may consider any matter that
26 justice may require and shall consider:

27 (1) the seriousness of the violation, including the

1 nature, circumstances, consequences, extent, and gravity of the
2 prohibited act;

3 (2) the history and extent of previous administrative
4 violations;

5 (3) the demonstrated good faith of the violator,
6 including actions taken to rectify the consequences of the
7 prohibited act;

8 (4) any economic benefit resulting from the prohibited
9 act; and

10 (5) the penalty necessary to deter future violations.

11 (d) A penalty collected under this section [~~must be~~]:

12 (1) must be deposited in the general revenue fund [~~to~~
13 ~~the credit of the commission~~]; and [~~or~~]

14 (2) may be appropriated [~~reappropriated~~] to the
15 division [~~commission~~] to offset the costs of implementing and
16 administering this subchapter.

17 (f) Section 2054.512, Insurance Code, is amended to conform
18 to Section 6.063, Chapter 265, Acts of the 79th Legislature,
19 Regular Session, 2005, to read as follows:

20 Sec. 2054.512. FEES FOR SERVICES. The division
21 [~~commission~~] shall:

22 (1) charge a policyholder for the reasonable cost of
23 services provided to the policyholder under Sections 2054.505,
24 2054.506, 2054.507, 2054.509, and 2054.510(a); and

25 (2) set the fees for the services at a
26 cost-reimbursement level, including a reasonable allocation of the
27 division's [~~commission's~~] administrative costs.

1 (g) Section 2054.513, Insurance Code, is amended to conform
2 to Section 6.063, Chapter 265, Acts of the 79th Legislature,
3 Regular Session, 2005, to read as follows:

4 Sec. 2054.513. ENFORCEMENT OF SUBCHAPTER. The [~~compliance~~
5 ~~and practices~~] division [~~of the commission~~] shall enforce
6 compliance with this subchapter through the administrative
7 violation proceedings under Chapter 415, Labor Code.

8 (h) Section 6.063, Chapter 265, Acts of the 79th
9 Legislature, Regular Session, 2005, which amended former
10 Subsections (a), (e), (g), (h), (i), (k), and (l), Section 8,
11 Article 5.76-3, Insurance Code, is repealed.

12 SECTION 3B.056. Section 2054.001(2), Insurance Code, is
13 repealed to conform to Section 7.01, Chapter 265, Acts of the 79th
14 Legislature, Regular Session, 2005.

15 SECTION 3B.057. Section 6.068, Chapter 265, Acts of the
16 79th Legislature, Regular Session, 2005, which amended former
17 Subsections (a) and (c), Section 10, Article 5.76-5, Insurance
18 Code, is repealed.

19 SECTION 3B.058. Section 2151.154, Insurance Code, is
20 amended to conform more closely to the source law from which the
21 section was derived to read as follows:

22 Sec. 2151.154. ASSIGNMENT DISTRIBUTION PLAN. (a) The
23 plan of operation must include a voluntary, competitive limited
24 assignment distribution plan that allows an authorized insurer to
25 contract directly with a servicing carrier [~~insurer~~] to accept
26 assignments to the servicing carrier [~~insurer~~] by the association.

27 (b) A servicing carrier [~~insurer~~] must be authorized to

1 write automobile insurance in this state and must:

2 (1) have written automobile liability insurance in
3 this state for at least five years; or

4 (2) be currently engaged as a servicing carrier
5 [~~insurer~~] for assigned risk automobile business in at least one
6 other state.

7 (c) After notice and hearing, the commissioner may prohibit
8 an insurer from acting as a servicing carrier [~~insurer~~].

9 (d) An authorized insurer and a servicing carrier [~~insurer~~]
10 shall determine through negotiation the terms of a contract
11 described by this section, including the buy-out fee.

12 (e) The governing committee may:

13 (1) adopt reasonable rules for the conduct of business
14 under a contract described by this section; and

15 (2) establish reasonable standards of eligibility for
16 servicing carriers [~~insurers~~].

17 SECTION 3B.059. (a) Section 2154.005(a), Insurance Code,
18 is amended to conform to Section 1, Chapter 217, Acts of the 79th
19 Legislature, Regular Session, 2005, to read as follows:

20 (a) The fund is an account in a depository selected by the
21 board of regents of The Texas A&M University System in the manner
22 provided by Section 51.003, Education Code, for funds subject to
23 the control of institutions of higher education under Section
24 51.002, Education Code [~~the general revenue fund~~].

25 (b) Section 1, Chapter 217, Acts of the 79th Legislature,
26 Regular Session, 2005, which amended former Subsections (a) and
27 (c), Section 5, Article 21.61, Insurance Code, is repealed.

1 SECTION 3B.0591. (a) The following changes are made to
2 Subtitle A, Title 5, Labor Code, and Subtitle E, Title 10, Insurance
3 Code, for organizational purposes:

4 (1) Chapter 406A, Labor Code, is redesignated as
5 Chapter 2055, Subtitle E, Title 10, Insurance Code; and

6 (2) Sections 406A.001, 406A.002, 406A.003, 406A.004,
7 406A.005, 406A.006, 406A.007, and 406A.008 in the redesignated
8 chapter are redesignated as Sections 2055.001, 2055.002, 2055.003,
9 2055.004, 2055.005, 2055.006, 2055.007, and 2055.008, Insurance
10 Code, respectively.

11 (b) Section 406A.001, Labor Code, redesignated as Section
12 2055.001, Insurance Code, by Subsection (a)(2) of this section, is
13 amended to conform to that redesignation to read as follows:

14 Sec. 2055.001 [~~406A.001~~]. DEFINITION [~~DEFINITIONS~~]. In
15 this chapter, "business"

16 [~~(1) "Business~~] entity" means a business enterprise
17 owned by a single person or a corporation, organization, business
18 trust, trust, partnership, joint venture, association, or other
19 business entity.

20 [~~(2) "Commissioner" means the commissioner of~~
21 ~~insurance.~~

22 [~~(3) "Department" means the Texas Department of~~
23 ~~Insurance.~~]

24 (c) Section 406A.008, Labor Code, redesignated as Section
25 2055.008, Insurance Code, by Subsection (a)(2) of this section, is
26 amended to conform to that redesignation to read as follows:

27 Sec. 2055.008 [~~406A.008~~]. APPLICABILITY OF OTHER LAW. (a)

1 A group established under this chapter is entitled to any deviation
2 applicable under Section 2052.004, 2053.051, or 2053.052(a) or
3 (b) [~~7 Insurance Code~~].

4 (b) A member of a group is not subject to the discounts and
5 surcharges established under Subchapter F, Chapter 2053[~~7~~
6 ~~Insurance Code~~].

7 (d) Section 36.002, Insurance Code, is amended to conform to
8 the redesignation of Chapter 406A, Labor Code, as Chapter 2055,
9 Insurance Code, by Subsection (a)(1) of this section to read as
10 follows:

11 Sec. 36.002. ADDITIONAL RULEMAKING AUTHORITY. The
12 commissioner may adopt reasonable rules that are:

13 (1) necessary to effect the purposes of a provision
14 of:

15 (A) Subchapter B, Chapter 5;

16 (B) Subchapter C, Chapter 1806;

17 (C) Subchapter A, Chapter 2301;

18 (D) Chapter 251, as that chapter relates to
19 casualty insurance and fidelity, guaranty, and surety bond
20 insurance;

21 (E) Chapter 253;

22 (F) Chapter 2251 or 2252; or

23 (G) Subtitle B, Title 10; or

24 (2) appropriate to accomplish the purposes of a
25 provision of:

26 (A) Section 37.051(a), 403.002, 492.051(b) or
27 (c), 501.159, 941.003(b)(3) or (c), or 942.003(b)(3) or (c);

1 (B) Subchapter H, Chapter 544;

2 (C) Chapter 251, as that chapter relates to:

3 (i) automobile insurance;

4 (ii) casualty insurance and fidelity,
5 guaranty, and surety bond insurance;

6 (iii) fire insurance and allied lines;

7 (iv) workers' compensation insurance; or

8 (v) aircraft insurance;

9 (D) Chapter 5, 252, 253, 254, 255, 256, 426, 493,
10 494, 1804, 1805, 1806, or 2171;

11 (E) Subtitle B, C, D, E, F, H, or I, Title 10;

12 (F) Section 417.008, Government Code; or

13 (G) [~~Chapter 406A, Labor Code; or~~

14 [~~H~~] Chapter 2154, Occupations Code.

15 (e) Section 1805.001, Insurance Code, is amended to conform
16 to the redesignation of Chapter 406A, Labor Code, as Chapter 2055,
17 Insurance Code, by Subsection (a)(1) of this section to read as
18 follows:

19 Sec. 1805.001. APPLICABILITY OF CHAPTER. This chapter
20 applies to the kinds of insurance and insurers subject to:

21 (1) Section 403.002;

22 (2) Section 941.003 with respect to the application of
23 a law described by Section 941.003(b)(3) or (c);

24 (3) Section 942.003 with respect to the application of
25 a law described by Section 942.003(b)(3) or (c);

26 (4) Subchapter A, B, C, or D, Chapter 5;

27 (5) Subchapter H, Chapter 544;

1 (6) Subchapter A, Chapter 2301;

2 (7) Chapter 252, 253, 254, 255, 426, 1806, 1807, 2001,
3 2002, 2003, 2004, 2005, 2006, 2051, 2052, 2053, 2055, 2171, 2251, or
4 2252;

5 (8) Subtitle B or C, Title 10; or

6 (9) [~~Chapter 406A, Labor Code, or~~

7 [~~10~~] Chapter 2154, Occupations Code.

8 (f) Section 2051.002, Insurance Code, is amended to conform
9 to the redesignation of Chapter 406A, Labor Code, as Chapter 2055,
10 Insurance Code, by Subsection (a)(1) of this section to read as
11 follows:

12 Sec. 2051.002. CONSTRUCTION OF CERTAIN LAWS. The following
13 shall be construed and applied independently of any other law that
14 relates to insurance rates and forms or prescribes the duties of the
15 commissioner or the department:

16 (1) this chapter;

17 (2) Subchapter D, Chapter 5;

18 (3) Chapter 251, as that chapter relates to workers'
19 compensation insurance; and

20 (4) Chapters 255, 426, 2052, [~~and~~] 2053, and 2055[~~+~~
21 ~~and~~

22 [~~5~~] ~~Chapter 406A, Labor Code~~].

23 SECTION 3B.060. (a) Subchapter C, Chapter 2203, Insurance
24 Code, is amended to conform to Section 1, Chapter 246, Acts of the
25 79th Legislature, Regular Session, 2005, and Section 2, Chapter
26 1136, Acts of the 79th Legislature, Regular Session, 2005, by
27 adding Section 2203.1021 to read as follows:

1 Sec. 2203.1021. VOLUNTEER HEALTH CARE PROVIDERS. (a) In
2 this section:

3 (1) "Charitable organization" has the meaning
4 assigned by Section 84.003, Civil Practice and Remedies Code.

5 (2) "Volunteer health care provider" has the meaning
6 assigned by Section 84.003, Civil Practice and Remedies Code.

7 (b) The association shall make available medical liability
8 insurance or appropriate health care liability insurance covering a
9 volunteer health care provider for the legal liability of the
10 person against any loss, damage, or expense incident to a claim
11 arising out of the death or injury of any person as the result of
12 negligence in rendering or the failure to render professional
13 service while acting in the course and scope of the person's duties
14 as a volunteer health care provider as described by Chapter 84,
15 Civil Practice and Remedies Code.

16 (c) A volunteer health care provider who is serving as a
17 direct service volunteer of a charitable organization is eligible
18 to obtain from the association the liability insurance made
19 available under this section. A volunteer health care provider who
20 obtains coverage under this section is subject to Section 2203.302
21 and the other provisions of this chapter in the same manner as
22 physicians who are eligible to obtain medical liability insurance
23 from the association.

24 (d) This section does not affect the liability of a
25 volunteer health care provider who is serving as a direct service
26 volunteer of a charitable organization. Section 84.004(c), Civil
27 Practice and Remedies Code, applies to the volunteer health care

1 provider without regard to whether the volunteer health care
2 provider obtains liability insurance under this section.

3 (b) Section 1, Chapter 246, Acts of the 79th Legislature,
4 Regular Session, 2005, and Section 2, Chapter 1136, Acts of the 79th
5 Legislature, Regular Session, 2005, which added Section 3C to
6 former Article 21.49-3, Insurance Code, are repealed.

7 SECTION 3B.061. (a) Sections 2210.004(a) and (g),
8 Insurance Code, are amended to conform to Section 1, Chapter 1153,
9 Acts of the 79th Legislature, Regular Session, 2005, to read as
10 follows:

11 (a) For purposes of this chapter and subject to this
12 section, "insurable property" means immovable property at a fixed
13 location in a catastrophe area or corporeal movable property
14 located in that immovable property, as designated in the plan of
15 operation, that is determined by the association according to the
16 criteria specified in the plan of operation to be in an insurable
17 condition against windstorm and hail or fire and explosion, as
18 appropriate, as determined by normal underwriting standards. The
19 term includes property described by Section 2210.209.

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 June 11, 2003 [~~January~~
5 ~~1, 2004~~].

6 (b) Section 1, Chapter 1153, Acts of the 79th Legislature,
7 Regular Session, 2005, which amended former Subsection (f), Section
8 3, Article 21.49, Insurance Code, is repealed.

9 SECTION 3B.062. (a) Subchapter E, Chapter 2210, Insurance
10 Code, is amended to conform to Section 2, Chapter 1153, Acts of the
11 79th Legislature, Regular Session, 2005, by adding Section 2210.209
12 to read as follows:

13 Sec. 2210.209. WINDSTORM AND HAIL INSURANCE: COVERAGE FOR
14 CERTAIN PROPERTY LOCATED OVER WATER. (a) A windstorm and hail
15 insurance policy issued by the association may include coverage
16 for:

17 (1) a building or other structure located in the
18 seacoast territory that is built wholly or partially over water;
19 and

20 (2) the corporeal movable property contained in a
21 building or structure described by Subdivision (1).

22 (b) The association may impose appropriate limits of
23 coverage and deductibles for coverage described by Subsection (a).

24 (c) The board of directors of the association shall submit
25 any proposed changes to the plan of operation necessary to
26 implement Subsections (a) and (b) to the commissioner in the manner
27 provided by Section 2210.153.

1 (d) The commissioner shall adopt rules as necessary to
2 implement this section, including any rules necessary to implement
3 changes in the plan of operation proposed under Subsection (c).

4 (b) Section 2, Chapter 1153, Acts of the 79th Legislature,
5 Regular Session, 2005, which added Section 3A to former Article
6 21.49, Insurance Code, is repealed.

7 SECTION 3B.063. (a) Section 2210.006(b), Insurance Code,
8 is amended to conform to Section 1, Chapter 1251, Acts of the 79th
9 Legislature, Regular Session, 2005, to read as follows:

10 (b) This chapter does not apply to:

11 (1) a farm mutual insurance company operating under
12 Chapter 911;

13 (2) a nonaffiliated county mutual fire insurance
14 company described by Section 912.310 that is writing exclusively
15 industrial fire insurance policies as described by Section
16 912.310(a)(2); or

17 (3) a mutual insurance company or a statewide mutual
18 assessment company engaged in business under Chapter 12 or 13,
19 Title 78, Revised Statutes, respectively, before those chapters'
20 repeal by Section 18, Chapter 40, Acts of the 41st Legislature, 1st
21 Called Session, 1929, as amended by Section 1, Chapter 60, General
22 Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, that
23 retains the rights and privileges under the repealed law to the
24 extent provided by those sections.

25 (b) Section 1, Chapter 1251, Acts of the 79th Legislature,
26 Regular Session, 2005, which amended former Subsection (k), Section
27 3, Article 21.49, Insurance Code, is repealed.

1 SECTION 3B.0631. Section 2210.359(a), Insurance Code, is
2 amended to conform more closely to the source law from which it was
3 derived to read as follows:

4 (a) Except as otherwise provided by this subsection, a [A]
5 rate approved by the commissioner under this subchapter may not
6 reflect an average rate change that is more than 10 percent higher
7 or lower than the rate for commercial windstorm and hail insurance
8 or 10 percent higher or lower than the rate for noncommercial
9 windstorm and hail insurance in effect on the date the filing is
10 made. The rate may not reflect a rate change for an individual
11 rating class that is 15 percent higher or lower than the rate for
12 that individual rating class in effect on the date the filing is
13 made. This subsection does not apply to a rate filed under Sections
14 2210.351(a)-(d).

15 SECTION 3B.064. Subchapter I, Chapter 2210, Insurance Code,
16 is repealed to conform to Section 1, Chapter 222, Acts of the 79th
17 Legislature, Regular Session, 2005.

18 SECTION 3B.065. (a) Section 2211.051, Insurance Code, is
19 amended to conform to Section 1, Chapter 1082, Acts of the 79th
20 Legislature, Regular Session, 2005, to read as follows:

21 Sec. 2211.051. ESTABLISHMENT OF FAIR PLAN. The
22 commissioner may establish a Fair Access to Insurance Requirements
23 Plan to deliver residential property insurance to residents of this
24 state in underserved areas if the commissioner determines, after a
25 public hearing, that:

26 (1) in all or any part of the state, residential
27 property insurance is not reasonably available in the voluntary

1 market to a substantial number of insurable risks; or [~~and~~]

2 (2) at least 25 percent of the applicants to the
3 residential property market assistance program who are qualified
4 under that program's plan of operation have not been placed with an
5 insurer in the preceding six months.

6 (b) Section 2211.052, Insurance Code, is amended to conform
7 to Section 2, Chapter 1082, Acts of the 79th Legislature, Regular
8 Session, 2005, by amending Subsections (b) and (d) and adding
9 Subsection (e) to read as follows:

10 (b) The governing committee is composed of 11 members
11 appointed by the commissioner as follows:

12 (1) five members who represent the interests of
13 insurers;

14 (2) four public members who reside in this state; and

15 (3) two members who are general property and casualty
16 agents.

17 (d) Each member of the governing committee who represents
18 the interests of insurers must be a full-time employee of an insurer
19 that is a member of the association.

20 (e) The commissioner may remove a member of the governing
21 committee without cause and may replace the member in accordance
22 with Subsection (b).

23 (c) Subchapter B, Chapter 2211, Insurance Code, is amended
24 to conform to Section 2, Chapter 1082, Acts of the 79th Legislature,
25 Regular Session, 2005, by adding Section 2211.0521 to read as
26 follows:

27 Sec. 2211.0521. MEETINGS OF GOVERNING BODY. (a)

1 Notwithstanding Chapter 551, Government Code, or any other law,
2 members of the governing committee may meet by telephone conference
3 call, video conference, or other similar telecommunication method.
4 The governing committee may use telephone conference call, video
5 conference, or other similar telecommunication method for purposes
6 of establishing a quorum or voting or for any other meeting purpose
7 in accordance with this subsection and Subsection (b). This
8 subsection applies without regard to the subject matter discussed
9 or considered by the members of the governing committee at the
10 meeting.

11 (b) A meeting held by telephone conference call, video
12 conference, or other similar telecommunication method:

13 (1) is subject to the notice requirements applicable
14 to other meetings of the governing committee;

15 (2) may not be held unless notice of the meeting
16 specifies the location of the meeting at which at least one member
17 of the governing committee is physically present;

18 (3) must be audible to the public at the location
19 specified in the notice under Subdivision (2); and

20 (4) must provide two-way audio communication between
21 all members of the governing committee attending the meeting during
22 the entire meeting, and if the two-way audio communication link
23 with members attending the meeting is disrupted so that a quorum of
24 the governing committee is no longer participating in the meeting,
25 the meeting may not continue until the two-way audio communication
26 link is reestablished.

27 (d) Sections 2211.101(b) and (c), Insurance Code, are

1 amended to conform to Sections 1, 2, and 3, Chapter 1082, Acts of
2 the 79th Legislature, Regular Session, 2005, to read as follows:

3 (b) Except as provided by this subsection, each ~~[Each]~~
4 insurer, as a condition of the insurer's authority to engage in the
5 business of residential property insurance in this state, shall
6 participate in the association in accordance with this chapter,
7 including participating in the association's assessments
8 ~~[writings, expenses, and losses]~~ in the proportion that the
9 insurer's net direct premiums written in this state during the
10 preceding calendar year bear to the aggregate net direct premiums
11 written in this state by all participating insurers. The Texas
12 Windstorm Insurance Association established by Chapter 2210 may not
13 participate in the association for any purpose.

14 (c) An insurer's participation under Subsection (b) in the
15 association's assessments ~~[writings, expenses, and losses]~~ must be
16 determined in accordance with the residential property statistical
17 plan adopted by the commissioner.

18 (e) The following are repealed:

19 (1) Section 1, Chapter 1082, Acts of the 79th
20 Legislature, Regular Session, 2005, which amended former
21 Subsections (a) and (b), Section 1, Article 21.49A, Insurance Code;

22 (2) Section 2, Chapter 1082, Acts of the 79th
23 Legislature, Regular Session, 2005, which amended former Section 3,
24 Article 21.49A, Insurance Code, by amending Subsections (b), (d),
25 and (e) and adding Subsections (f) and (g); and

26 (3) Section 3, Chapter 1082, Acts of the 79th
27 Legislature, Regular Session, 2005, which amended former

1 Subsection (d), Section 5, Article 21.49A, Insurance Code.

2 SECTION 3B.066. (a) Section 2211.104, Insurance Code, is
3 amended to conform to Section 4, Chapter 1082, Acts of the 79th
4 Legislature, Regular Session, 2005, by amending Subsections (b),
5 (c), and (d) and adding Subsection (e) to read as follows:

6 (b) As reimbursement for assessments paid under this
7 section or service fees paid under Section 2211.209, each [~~If the~~
8 ~~association assesses participating insurers under this section,~~
9 ~~each~~] insurer may charge a premium surcharge on every property
10 insurance policy insuring property in this state that the insurer
11 issues, the effective date of which is within the three-year period
12 beginning on the 90th day after the date of the assessment or the
13 90th day after the date the service fee under Section 2211.209 is
14 paid, as applicable.

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 or service fee payment to the amount of the insurer's
20 direct earned premiums, as reported to the department in the
21 insurer's financial statement for the calendar year preceding the
22 year in which the assessment or service fee payment is made so that,
23 over the three-year period, the aggregate of all surcharges by the
24 insurer under this section is at least equal to [~~equals~~] the amount
25 of the assessment or service fee payment.

26 (d) The amount of any assessment paid and surcharged under
27 this section may be carried by the insurer as an admitted asset of

1 the insurer for all purposes, including exhibition in annual
2 statements under Section 862.001, until collected [~~The minimum~~
3 ~~surcharge on a policy may be \$1. A surcharge may be rounded to the~~
4 ~~nearest dollar~~].

5 (e) The commissioner shall adopt rules and procedures as
6 necessary to implement this section.

7 (b) Section 4, Chapter 1082, Acts of the 79th Legislature,
8 Regular Session, 2005, which amended former Section 11, Article
9 21.49A, Insurance Code, is repealed.

10 SECTION 3B.067. (a) Subchapter B, Chapter 2211, Insurance
11 Code, is amended to conform to Section 5, Chapter 1082, Acts of the
12 79th Legislature, Regular Session, 2005, by adding Section 2211.059
13 to read as follows:

14 Sec. 2211.059. ASSETS OF ASSOCIATION. On dissolution of
15 the association, all assets of the association shall be deposited
16 in the general revenue fund.

17 (b) Section 5, Chapter 1082, Acts of the 79th Legislature,
18 Regular Session, 2005, which added Section 16 to former Article
19 21.49A, Insurance Code, is repealed.

20 SECTION 3B.068. (a) Subchapter D, Chapter 2211, Insurance
21 Code, is amended to conform to Section 3, Chapter 1153, Acts of the
22 79th Legislature, Regular Session, 2005, by adding Section 2211.157
23 to read as follows:

24 Sec. 2211.157. COVERAGE FOR CERTAIN WINDSTORM AND HAIL
25 DAMAGE; COVERAGE FOR CERTAIN PROPERTY LOCATED OVER WATER. (a) A
26 policy issued by the association may include coverage against loss
27 or damage by windstorm or hail for:

1 (1) a building or other structure that is built wholly
2 or partially over water; and

3 (2) the corporeal movable property contained in a
4 building or structure described by Subdivision (1).

5 (b) The association may impose appropriate limits of
6 coverage and deductibles for coverage described by Subsection (a).

7 (c) The governing committee of the association shall submit
8 any proposed changes to the plan of operation necessary to
9 implement Subsections (a) and (b) to the commissioner for the
10 approval of the commissioner in the manner provided by Section
11 2211.053.

12 (d) The commissioner shall adopt rules as necessary to
13 implement this section, including any rules necessary to implement
14 changes in the plan of operation proposed under Subsections (a) and
15 (b).

16 (b) Section 3, Chapter 1153, Acts of the 79th Legislature,
17 Regular Session, 2005, which added Section 5A to former Article
18 21.49A, Insurance Code, is repealed.

19 SECTION 3B.069. (a) Section 2212.001, Insurance Code, is
20 amended to conform to Section 2, Chapter 184, Acts of the 79th
21 Legislature, Regular Session, 2005; Section 2, Chapter 246, Acts of
22 the 79th Legislature, Regular Session, 2005; and Section 3, Chapter
23 1136, Acts of the 79th Legislature, Regular Session, 2005, to read
24 as follows:

25 Sec. 2212.001. DEFINITIONS. In this chapter:

26 (1) "Charitable organization" has the meaning
27 assigned by Section 84.003, Civil Practice and Remedies Code.

1 (2) "Dentist" means a person licensed to practice
2 dentistry in this state.

3 (3) [~~(2)~~] "Health care liability claim" means a cause
4 of action against a physician or dentist for treatment, lack of
5 treatment, or other claimed departure from accepted standards of
6 health care or safety that proximately results in injury to or death
7 of the patient, whether the patient's claim or cause of action
8 sounds in tort or contract.

9 (4) [~~(3)~~] "Physician" means a person licensed to
10 practice medicine in this state.

11 (5) [~~(4)~~] "Trust" means a self-insurance trust
12 organized and operated under this chapter.

13 (6) "Volunteer health care provider" has the meaning
14 assigned by Section 84.003, Civil Practice and Remedies Code.

15 (b) Section 2, Chapter 184, Acts of the 79th Legislature,
16 Regular Session, 2005; Section 2, Chapter 246, Acts of the 79th
17 Legislature, Regular Session, 2005; and Section 3, Chapter 1136,
18 Acts of the 79th Legislature, Regular Session, 2005, all of which
19 added Subdivisions (4) and (5) to former Subsection (a), Article
20 21.49-4, Insurance Code, are repealed.

21 SECTION 3B.070. (a) Subchapter C, Chapter 2212, Insurance
22 Code, is amended to conform to Section 3, Chapter 184, Acts of the
23 79th Legislature, Regular Session, 2005; Section 3, Chapter 246,
24 Acts of the 79th Legislature, Regular Session, 2005; and Section 4,
25 Chapter 1136, Acts of the 79th Legislature, Regular Session, 2005,
26 by adding Section 2212.102 to read as follows:

27 Sec. 2212.102. COVERAGE FOR VOLUNTEER HEALTH CARE

1 PROVIDERS. (a) The trust, in accordance with Section 2212.054, may
2 make available professional liability insurance covering a
3 volunteer health care provider for an act or omission resulting in
4 death, damage, or injury to a patient while the person is acting in
5 the course and scope of the person's duties as a volunteer health
6 care provider as described by Chapter 84, Civil Practice and
7 Remedies Code.

8 (b) This section does not affect the liability of a
9 volunteer health care provider who is serving as a direct service
10 volunteer of a charitable organization. Section 84.004(c), Civil
11 Practice and Remedies Code, applies to the volunteer health care
12 provider without regard to whether the volunteer health care
13 provider obtains liability insurance under this section.

14 (c) The trust may make professional liability insurance
15 available under this section to a volunteer health care provider
16 without regard to whether the volunteer health care provider is a
17 physician or dentist.

18 (b) Section 3, Chapter 184, Acts of the 79th Legislature,
19 Regular Session, 2005; Section 3, Chapter 246, Acts of the 79th
20 Legislature, Regular Session, 2005; and Section 4, Chapter 1136,
21 Acts of the 79th Legislature, Regular Session, 2005, all of which
22 added Subsection (c-1) to former Article 21.49-4, Insurance Code,
23 are repealed.

24 SECTION 3B.071. (a) Section 2251.003(b), Insurance Code,
25 is amended to conform to Section 1, Chapter 70, Acts of the 79th
26 Legislature, Regular Session, 2005; Section 1, Chapter 71, Acts of
27 the 79th Legislature, Regular Session, 2005; and Section 4, Chapter

1 102, Acts of the 79th Legislature, Regular Session, 2005, to read as
2 follows:

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, guaranty, and surety bonds other than
15 criminal 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 (15) multi-peril insurance; and

26 (16) identity theft insurance issued under Chapter

27 706.

1 (b) Section 2301.003(b), Insurance Code, is amended to
2 conform to Section 1, Chapter 70, Acts of the 79th Legislature,
3 Regular Session, 2005; Section 1, Chapter 71, Acts of the 79th
4 Legislature, Regular Session, 2005; and Section 4, Chapter 102,
5 Acts of the 79th Legislature, Regular Session, 2005, to read as
6 follows:

7 (b) This subchapter applies to all lines of the following
8 kinds of insurance written under an insurance policy or contract
9 issued by an insurer authorized to engage in the business of
10 insurance in this state:

11 (1) general liability insurance;

12 (2) residential and commercial property insurance,
13 including farm and ranch insurance and farm and ranch owners
14 insurance;

15 (3) personal and commercial casualty insurance,
16 except as provided by Section 2301.005;

17 (4) medical professional liability insurance;

18 (5) fidelity, guaranty, and surety bonds other than
19 criminal court appearance bonds;

20 (6) personal umbrella insurance;

21 (7) personal liability insurance;

22 (8) guaranteed auto protection (GAP) insurance;

23 (9) involuntary unemployment insurance;

24 (10) financial guaranty insurance;

25 (11) inland marine insurance;

26 (12) rain insurance;

27 (13) hail insurance on farm crops; [~~and~~]

- 1 (14) personal and commercial automobile insurance;
2 (15) multi-peril insurance; and
3 (16) identity theft insurance issued under Chapter
4 706.

5 (c) Section 1, Chapter 70, Acts of the 79th Legislature,
6 Regular Session, 2005; Section 1, Chapter 71, Acts of the 79th
7 Legislature, Regular Session, 2005; and Section 4, Chapter 102,
8 Acts of the 79th Legislature, Regular Session, 2005, all of which
9 amended former Subsection (a), Section 2, Article 5.13-2, Insurance
10 Code, are repealed.

11 SECTION 3B.072. (a) Subchapter E, Chapter 2251, Insurance
12 Code, is amended by adding Section 2251.205 to conform to Section 1,
13 Chapter 1118, Acts of the 79th Legislature, Regular Session, 2005,
14 to read as follows:

15 Sec. 2251.205. APPLICATION OF FILING REQUIREMENTS TO OTHER
16 INSURERS. An insurer is subject to the filing requirements
17 determined by the commissioner by rule under Section 2251.204 if:

18 (1) the insurer, along with the insurer's affiliated
19 companies or group, issues personal automobile liability insurance
20 policies only below 101 percent of the minimum limits required by
21 Chapter 601, Transportation Code; and

22 (2) the insurer, along with the insurer's affiliated
23 companies or group, has a market share of less than 3.5 percent of
24 the personal automobile insurance market in this state.

25 (b) Section 1, Chapter 1118, Acts of the 79th Legislature,
26 Regular Session, 2005, which added Subsection (h) to former Section
27 13, Article 5.13-2, Insurance Code, is repealed.

1 SECTION 3B.073. (a) Section 2253.001, Insurance Code, is
2 amended to conform to Section 2, Chapter 291, Acts of the 79th
3 Legislature, Regular Session, 2005, to read as follows:

4 Sec. 2253.001. RATING TERRITORIES. (a) Notwithstanding
5 any other provision of this code, an insurer, in writing
6 residential property or personal automobile insurance, may use
7 rating territories that subdivide a county only if:

8 (1) the county is subdivided; and

9 (2) the rate for any subdivision in the county is not
10 greater than 15 percent higher than the rate used in any other
11 subdivision in the county by that insurer.

12 (b) The [~~For residential property insurance or personal~~
13 ~~automobile insurance, the~~] commissioner by rule may allow a greater
14 rate difference than the rate difference specified by Subsection
15 (a).

16 (b) Section 2, Chapter 291, Acts of the 79th Legislature,
17 Regular Session, 2005, which amended former Article 5.171,
18 Insurance Code, is repealed.

19 SECTION 3B.074. Section 4151.206(a), Insurance Code, is
20 amended to conform more closely to the source law from which the
21 section was derived to read as follows:

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

25 (1) a filing fee not to exceed \$1,000 for processing an
26 original application for a certificate of authority for an
27 administrator;

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

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

5 SECTION 3B.075. (a) Sections 4201.054(a) and (d),
6 Insurance Code, are amended to conform to Section 6.072, Chapter
7 265, Acts of the 79th Legislature, Regular Session, 2005, to read as
8 follows:

9 (a) Except as provided by this section, this chapter applies
10 to utilization review of a health care service provided to a person
11 eligible for workers' compensation medical benefits under Title 5,
12 Labor Code. The commissioner of workers' compensation shall
13 regulate as provided by this chapter a person who performs
14 utilization review of a medical benefit provided under Title 5
15 [~~Chapter 408~~], Labor Code.

16 (d) The commissioner of workers' compensation [~~and the~~
17 ~~Texas Workers' Compensation Commission~~] may adopt rules [~~and enter~~
18 ~~into memoranda of understanding~~] as necessary to implement this
19 section.

20 (b) Section 4201.054(b), Insurance Code, is repealed to
21 conform to Section 6.072, Chapter 265, Acts of the 79th
22 Legislature, Regular Session, 2005.

23 (c) Section 6.072, Chapter 265, Acts of the 79th
24 Legislature, Regular Session, 2005, which amended former
25 Subsection (c), Section 14, Article 21.58A, Insurance Code, is
26 repealed.

27 SECTION 3B.076. (a) Section 4201.207(b), Insurance Code,

1 is amended to conform to Section 6.071, Chapter 265, Acts of the
2 79th Legislature, Regular Session, 2005, to read as follows:

3 (b) A health care provider's charges for providing medical
4 information to a utilization review agent may not:

5 (1) exceed the cost of copying records regarding a
6 workers' compensation claim as set by rules adopted by the
7 commissioner of workers' compensation [~~Texas Workers' Compensation~~
8 ~~Commission~~]; or

9 (2) include any costs otherwise recouped as part of
10 the charges for health care.

11 (b) Section 6.071, Chapter 265, Acts of the 79th
12 Legislature, Regular Session, 2005, which amended former
13 Subsection (1), Section 4, Article 21.58A, Insurance Code, is
14 repealed.

15 SECTION 3B.077. This article takes effect September 1, 2007.

ADOPTED

MAY 15 2007

Lotay Spaw
Secretary of the Senate

BY: *Zaffinini*

COMMITTEE AMENDMENT NO. 1

1 Amend H.B. No. 2636 (house engrossment) as follows:

2 (1) In SECTION 2E.086 of the bill, in amended Paragraph (B),
3 Subdivision (2), Section 884.402, Insurance Code (page 199, line
4 26), strike "1577".

5 (2) In SECTION 3A.002 of the bill, insert the following
6 (page 249, between lines 8 and 9):

7 (c) If any provision of this article conflicts with a
8 provision of H.B. No. 3167, Acts of the 80th Legislature, Regular
9 Session, 2007, this article controls.

412
X

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 7, 2007

TO: Honorable Kim Brimer, Chair, Senate Committee on Administration

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB2636** by Smithee (Relating to the nonsubstantive revision of statutes relating to the Texas Department of Insurance, the business of insurance, and certain related businesses, to nonsubstantive additions to and corrections in the codified Insurance Code, and to conforming the provisions of that code that were codified by the 79th Legislature to other Acts of that legislature, including conforming amendments, repeals, and penalties.),
Committee Report 2nd House, As Amended

No fiscal implication to the State is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance

LBB Staff: JOB, CT, JRO, SK

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 2, 2007

TO: Honorable Kim Brimer, Chair, Senate Committee on Administration

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2636 by Smithee (Relating to the nonsubstantive revision of statutes relating to the Texas Department of Insurance, the business of insurance, and certain related businesses, to nonsubstantive additions to and corrections in the codified Insurance Code, and to conforming the provisions of that code that were codified by the 79th Legislature to other Acts of that legislature, including conforming amendments, repeals, and penalties.), **As Engrossed**

No fiscal implication to the State is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance

LBB Staff: JOB, CT, JRO, SK

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

April 10, 2007

TO: Honorable John T. Smithee, Chair, House Committee on Insurance

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2636 by Smithee (Relating to the nonsubstantive revision of statutes relating to the Texas Department of Insurance, the business of insurance, and certain related businesses, to nonsubstantive additions to and corrections in the codified Insurance Code, and to conforming the provisions of that code that were codified by the 79th Legislature to other Acts of that legislature, including conforming amendments, repeals, and penalties.),
Committee Report 1st House, As Amended

No fiscal implication to the State is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance

LBB Staff: JOB, JRO, SK

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LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

March 29, 2007

TO: Honorable John T. Smithee, Chair, House Committee on Insurance

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2636 by Smithee (Relating to the nonsubstantive revision of statutes relating to the Texas Department of Insurance, the business of insurance, and certain related businesses, to nonsubstantive additions to and corrections in the codified Insurance Code, and to conforming the provisions of that code that were codified by the 79th Legislature to other Acts of that legislature, including conforming amendments, repeals, and penalties.), **As Introduced**

No fiscal implication to the State is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance

LBB Staff: JOB, JRO, SK