

By: Isett

H.B. No. 2203

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the continuation and operation of the Texas Department
3 of Insurance and the operation of certain insurance programs;
4 imposing administrative penalties.

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

6 ARTICLE 1. GENERAL PROVISIONS

7 SECTION 1.001. Section 31.002, Insurance Code, is amended
8 to read as follows:

9 Sec. 31.002. DUTIES OF DEPARTMENT. In addition to the
10 other duties required of the Texas Department of Insurance, the
11 department shall:

- 12 (1) regulate the business of insurance in this state;
- 13 (2) administer the workers' compensation system of
14 this state as provided by Title 5, Labor Code; ~~and~~
- 15 (3) ensure that this code and other laws regarding
16 insurance and insurance companies are executed;
- 17 (4) protect and ensure the fair treatment of
18 consumers; and
- 19 (5) ensure fair competition in the insurance industry
20 in order to foster a competitive market.

21 SECTION 1.002. Section 31.004(a), Insurance Code, is
22 amended to read as follows:

23 (a) The Texas Department of Insurance is subject to Chapter
24 325, Government Code (Texas Sunset Act). Unless continued in

1 existence as provided by that chapter, the department is abolished
2 September 1, 2021 [~~2009~~].

3 SECTION 1.003. Section 33.004, Insurance Code, is amended
4 to read as follows:

5 Sec. 33.004. TRADE ASSOCIATIONS. (a) In this section,
6 "Texas trade association" means a cooperative and voluntarily
7 joined statewide association of business or professional
8 competitors in this state designed to assist its members and its
9 industry or profession in dealing with mutual business or
10 professional problems and in promoting their common interest.

11 (b) A person may not be the commissioner and may not be a
12 department employee employed in a "bona fide executive,
13 administrative, or professional capacity," as that phrase is used
14 for purposes of establishing an exemption to the overtime
15 provisions of the federal Fair Labor Standards Act of 1938 (29
16 U.S.C. Section 201 et seq.), if:

17 (1) the person is an officer, employee, or paid
18 consultant of a Texas trade association in the field of insurance;
19 or

20 (2) the person's spouse is an officer, manager, or paid
21 consultant of a Texas trade association in the field of insurance.

22 (c) A person may not be the commissioner or act as the
23 general counsel to the commissioner or the department if the person
24 is required to register as a lobbyist under Chapter 305, Government
25 Code, because of the person's activities for compensation on behalf
26 of a profession related to the operation of the department [~~A person~~
27 ~~who is an officer, employee, or paid consultant of a trade~~

1 ~~association in the field of insurance may not be:~~

2 ~~[(1) the commissioner, or~~

3 ~~[(2) an employee of the department who is exempt from~~
4 ~~the state's position classification plan or is compensated at or~~
5 ~~above the amount prescribed by the General Appropriations Act for~~
6 ~~step 1, salary group A17, of the position classification salary~~
7 ~~schedule].~~

8 ~~[(b) A person who is the spouse of an officer, manager, or~~
9 ~~paid consultant of a trade association in the field of insurance may~~
10 ~~not be:~~

11 ~~[(1) the commissioner, or~~

12 ~~[(2) an employee of the department who is exempt from~~
13 ~~the state's position classification plan or is compensated at or~~
14 ~~above the amount prescribed by the General Appropriations Act for~~
15 ~~step 1, salary group A17, of the position classification salary~~
16 ~~schedule.~~

17 ~~[(c) In this section, "trade association" means a~~
18 ~~nonprofit, cooperative, and voluntarily joined association of~~
19 ~~business or professional competitors designed to assist its members~~
20 ~~and its industry or profession in dealing with mutual business or~~
21 ~~professional problems and in promoting their common interest.]~~

22 SECTION 1.004. Section 521.003, Insurance Code, is amended
23 to read as follows:

24 Sec. 521.003. COMPLAINTS ~~[NOTIFICATION OF COMPLAINT~~
25 ~~STATUS]~~. (a) The department shall maintain a system to promptly
26 and efficiently act on complaints filed with the department. The
27 department shall maintain information about parties to the

1 complaint, the subject matter of the complaint, a summary of the
2 results of the review or investigation of the complaint, and its
3 disposition.

4 (b) The department shall make information available
5 describing its procedures for complaint investigation and
6 resolution.

7 (c) The department shall periodically notify the complaint
8 parties of the status of the complaint until final disposition. [~~If~~
9 ~~a written complaint is filed with the department, the department,~~
10 ~~at least quarterly and until final disposition of the complaint,~~
11 ~~shall notify each party to the complaint of the complaint's status~~
12 ~~unless the notice would jeopardize an undercover investigation.]~~

13 SECTION 1.005. Subchapter B, Chapter 36, Insurance Code, is
14 amended by adding Sections 36.110 and 36.111 to read as follows:

15 Sec. 36.110. USE OF TECHNOLOGY. The commissioner shall
16 implement a policy requiring the department to use appropriate
17 technological solutions to improve the department's ability to
18 perform its functions. The policy must ensure that the public is
19 able to interact with the department on the Internet.

20 Sec. 36.111. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE
21 RESOLUTION POLICY. (a) The commissioner shall develop and
22 implement a policy to encourage the use of:

23 (1) negotiated rulemaking procedures under Chapter
24 2008, Government Code, for the adoption of department rules; and

25 (2) appropriate alternative dispute resolution
26 procedures under Chapter 2009, Government Code, to assist in the
27 resolution of internal and external disputes under the department's

1 jurisdiction.

2 (b) The department's procedures relating to alternative
3 dispute resolution must conform, to the extent possible, to any
4 model guidelines issued by the State Office of Administrative
5 Hearings for the use of alternative dispute resolution by state
6 agencies.

7 (c) The commissioner shall designate a trained person to:

8 (1) coordinate the implementation of the policy
9 adopted under Subsection (a);

10 (2) serve as a resource for any training needed to
11 implement the procedures for negotiated rulemaking or alternative
12 dispute resolution; and

13 (3) collect data concerning the effectiveness of those
14 procedures, as implemented by the department.

15 SECTION 1.006. Sections 33.005 and 521.004, Insurance Code,
16 are repealed.

17 ARTICLE 2. CERTAIN ADVISORY BOARDS, COMMITTEES, AND COUNCILS

18 SECTION 2.001. Chapter 32, Insurance Code, is amended by
19 adding Subchapter E to read as follows:

20 SUBCHAPTER E. RULES REGARDING USE OF ADVISORY COMMITTEES

21 Sec. 32.151. RULEMAKING AUTHORITY. (a) The commissioner
22 shall adopt rules, in compliance with Section 39.003 of this code
23 and Chapter 2110, Government Code, regarding the purpose,
24 structure, and use of advisory committees by the commissioner, the
25 state fire marshal, or department staff, including rules governing
26 an advisory committee's:

27 (1) purpose, role, responsibility, and goals;

1 (2) size and quorum requirements;

2 (3) qualifications for membership, including
3 experience requirements and geographic representation;

4 (4) appointment procedures;

5 (5) terms of service;

6 (6) training requirements; and

7 (7) duration.

8 (b) An advisory committee must be structured and used to
9 advise the commissioner, the state fire marshal, or department
10 staff. An advisory committee may not be responsible for rulemaking
11 or policymaking.

12 Sec. 32.152. PERIODIC EVALUATION. The commissioner shall
13 by rule establish a process by which the department shall
14 periodically evaluate an advisory committee to ensure its continued
15 necessity. The department may retain or develop committees as
16 appropriate to meet changing needs.

17 Sec. 32.153. COMPLIANCE WITH OPEN MEETINGS ACT. A
18 department advisory committee must comply with Chapter 551,
19 Government Code.

20 SECTION 2.002. Section 523.003, Insurance Code, is amended
21 to read as follows:

22 Sec. 523.003. IMMUNITY. The market assistance program[
23 ~~the members of the executive committee,~~] and participating insurers
24 and agents are not personally liable for:

25 (1) an act performed in good faith in the scope of the
26 person's authority as determined under this chapter; or

27 (2) damages arising from the person's official acts or

1 omissions, other than a corrupt or malicious act or omission.

2 SECTION 2.003. Section 523.055, Insurance Code, is amended
3 to read as follows:

4 Sec. 523.055. AMENDMENT OF PLAN OF OPERATION. [~~(a)~~] The
5 department [~~executive committee~~] may develop amendments to the plan
6 of operation and submit the amendments to the commissioner for
7 adoption by rule.

8 [~~(b) If the executive committee fails to submit suitable
9 amendments to the plan of operation, the department shall develop
10 and submit to the commissioner suitable amendments and the
11 commissioner shall, after notice and hearing, adopt the amendments
12 by rule.~~]

13 SECTION 2.004. Section 523.201, Insurance Code, is amended
14 to read as follows:

15 Sec. 523.201. COLLECTION OF PROGRAM INFORMATION.
16 Information concerning the number and type of applications received
17 and placed by the market assistance program and other information
18 about the program the [~~executive committee or the~~] commissioner
19 considers appropriate shall be collected.

20 SECTION 2.005. Section 1660.102(b), Insurance Code, is
21 amended to read as follows:

22 (b) The commissioner may consider [~~the~~] recommendations [~~of~~
23 ~~the advisory committee~~] or any other information provided in
24 response to a department-issued request for information relating to
25 electronic data exchange, including identification card programs,
26 before adopting rules regarding:

27 (1) information to be included on the identification

1 cards;

2 (2) technology to be used to implement the
3 identification card pilot program; and

4 (3) confidentiality and accuracy of the information
5 required to be included on the identification cards.

6 SECTION 2.006. The following laws are repealed:

7 (1) Sections 523.053, 523.202, 524.004, 1660.002(2),
8 1660.101(c), 4004.002, and 4101.006, Insurance Code;

9 (2) Subchapter M, Chapter 843, Insurance Code;

10 (3) Subchapter B, Chapter 1660, Insurance Code;

11 (4) Subchapter G, Chapter 2210, Insurance Code;

12 (5) Subchapter C, Chapter 6001, Insurance Code;

13 (6) Subchapter C, Chapter 6002, Insurance Code;

14 (7) Subchapter C, Chapter 6003, Insurance Code;

15 (8) Chapter 1212, Insurance Code; and

16 (9) Sections 2154.054 and 2154.055(c), Occupations
17 Code.

18 SECTION 2.007. (a) The following boards, committees,
19 councils, and task forces are abolished on the effective date of
20 this Act:

21 (1) the advisory council on continuing education for
22 insurance agents;

23 (2) the fire detection and alarm devices advisory
24 council;

25 (3) the fire extinguisher advisory council;

26 (4) the fire protection advisory council;

27 (5) the fireworks advisory council;

1 (6) the health maintenance organization solvency
2 surveillance committee;

3 (7) the insurance adjuster examination advisory
4 board;

5 (8) the technical advisory committee on claims
6 processing;

7 (9) the technical advisory committee on electronic
8 data exchange;

9 (10) the health coverage public awareness and
10 education program task force;

11 (11) the executive committee of the residential
12 property insurance market assistance program; and

13 (12) the windstorm building code advisory committee on
14 specifications and maintenance.

15 (b) All powers, duties, obligations, rights, contracts,
16 funds, records, and real or personal property of a board,
17 committee, council, or task force listed under Subsection (a) of
18 this section shall be transferred to the Texas Department of
19 Insurance not later than February 28, 2010.

20 SECTION 2.008. The changes in law made by this Act by
21 amending Section 523.003, Insurance Code, and repealing Section
22 843.439, Insurance Code, apply only to a cause of action that
23 accrues on or after the effective date of this Act. A cause of
24 action that accrues before the effective date of this Act is
25 governed by the law in effect immediately before that date, and that
26 law is continued in effect for that purpose.

1 ARTICLE 3. REGULATION OF PREFERRED PROVIDER ORGANIZATIONS

2 SECTION 3.001. Subtitle D, Title 8, Insurance Code, is
3 amended by adding Chapter 1302 to read as follows:

4 CHAPTER 1302. REGULATION OF INDEPENDENT

5 PREFERRED PROVIDER ORGANIZATIONS

6 SUBCHAPTER A. GENERAL PROVISIONS

7 Sec. 1302.001. DEFINITIONS. In this chapter:

8 (1) "Person" means an individual, corporation,
9 association, or other legal entity.

10 (2) "Preferred provider organization" means an
11 insurer, third-party administrator, or other person that contracts
12 with physicians or health care providers regarding reimbursements
13 to be accepted prospectively by the physicians and health care
14 providers in providing health care services to enrollees of health
15 benefit plans contractually entitled to benefit from the
16 reimbursement agreements.

17 Sec. 1302.002. APPLICABILITY. (a) This chapter does not
18 apply to a self-funded health benefit plan exempt from regulation
19 by this state as an employee welfare benefit plan under the Employee
20 Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et
21 seq.).

22 (b) Except as specifically provided by this chapter, a
23 reference in Chapter 1301 to a duty imposed under Chapter 1301 on an
24 insurer or third-party administrator in the operation of a
25 preferred provider benefit plan applies to a preferred provider
26 organization that operates a preferred provider benefit plan under
27 a certificate of authority issued under Subchapter B but that is not

1 an insurer or third-party administrator under this code.

2 Sec. 1302.003. RULES. The commissioner shall adopt rules
3 as necessary to implement this chapter.

4 Sec. 1302.004. COMPLAINTS. The department shall track and
5 analyze complaints made against preferred provider organizations
6 regulated under this chapter.

7 [Sections 1302.005-1302.050 reserved for expansion]

8 SUBCHAPTER B. REGULATION OF PREFERRED PROVIDER ORGANIZATIONS

9 Sec. 1302.051. CERTIFICATE OF AUTHORITY REQUIRED;
10 EXCEPTION. (a) Except as provided by Subsection (b), a person may
11 not organize or operate as a preferred provider organization in
12 this state, or sell or offer to sell or solicit offers to purchase
13 or receive consideration in conjunction with a preferred provider
14 benefit plan, without holding a certificate of authority under this
15 chapter.

16 (b) An insurer that holds a certificate of authority to
17 engage in the business of insurance in this state or is otherwise
18 authorized under this code to engage in the business of insurance in
19 this state is not required to obtain an additional certificate of
20 authority under this subchapter to operate a proprietary preferred
21 provider organization.

22 Sec. 1302.052. USE OF CERTAIN TERMS. A person may not use
23 the term "preferred provider organization" or "PPO" in the course
24 of operation unless the person:

25 (1) complies with this chapter and rules adopted by
26 the commissioner under this chapter; and

27 (2) holds a certificate of authority under this

1 chapter.

2 Sec. 1302.053. DURATION OF CERTIFICATE OF AUTHORITY. A
3 certificate of authority issued under this chapter continues in
4 effect:

5 (1) while the certificate holder meets the
6 requirements of this chapter and rules adopted under this chapter;
7 or

8 (2) until the commissioner suspends or revokes the
9 certificate or the commissioner terminates the certificate at the
10 request of the certificate holder.

11 [Sections 1302.054-1302.100 reserved for expansion]

12 SUBCHAPTER C. APPLICATION; ISSUANCE OF CERTIFICATE

13 Sec. 1302.101. APPLICATION. (a) A person may apply to the
14 department for and obtain a certificate of authority to organize
15 and operate a preferred provider organization.

16 (b) An application for a certificate of authority must:

17 (1) be on a form prescribed by rules adopted by the
18 commissioner; and

19 (2) be verified by the applicant or an officer or other
20 authorized representative of the applicant.

21 Sec. 1302.102. CONTENTS OF APPLICATION. (a) An
22 application for a certificate of authority must include:

23 (1) a copy of the applicant's basic organizational
24 document, if any, such as the articles of incorporation, articles
25 of association, partnership agreement, trust agreement, or other
26 applicable documents;

27 (2) all amendments to the applicant's basic

1 organizational document; and

2 (3) a copy of the bylaws, rules and regulations, or
3 similar documents, if any, regulating the conduct of the
4 applicant's internal affairs.

5 (b) An application for a certificate of authority must
6 include a list of the names, addresses, and official positions of
7 the persons responsible for the conduct of the applicant's affairs,
8 including:

9 (1) each member of the board of directors, board of
10 trustees, executive committee, or other governing body or
11 committee;

12 (2) the principal officer, if the applicant is a
13 corporation; and

14 (3) each partner or member, if the applicant is a
15 partnership or association.

16 (c) An application for a certificate of authority must
17 include a template of any contract made or to be made between the
18 applicant and any physician or health care provider.

19 Sec. 1302.103. APPLICATION FEE. (a) An applicant for a
20 certificate of authority under this chapter shall pay to the
21 department a filing fee not to exceed \$1,000 for processing an
22 original application for a certificate of authority for a preferred
23 provider organization.

24 (b) The commissioner shall deposit a fee collected under
25 this section to the credit of the Texas Department of Insurance
26 operating account.

27 Sec. 1302.104. REQUIREMENTS FOR APPROVAL OF APPLICATION.

1 The commissioner shall approve an application for a certificate of
2 authority to engage in business in this state as a preferred
3 provider organization on payment of the application fee prescribed
4 by Section 1302.103 and if the commissioner is satisfied that:

5 (1) granting the application would not violate a
6 federal or state law;

7 (2) the applicant has not attempted to obtain the
8 certificate of authority through fraud or bad faith;

9 (3) the applicant has complied with this chapter and
10 rules adopted by the commissioner under this chapter; and

11 (4) the name under which the applicant will engage in
12 business in this state is not so similar to that of another
13 preferred provider organization that it is likely to mislead the
14 public.

15 Sec. 1302.105. DENIAL OF APPLICATION. (a) If the
16 commissioner is unable to approve an application for a certificate
17 of authority under this chapter, the commissioner shall:

18 (1) provide the applicant with written notice
19 specifying each deficiency in the application; and

20 (2) offer the applicant the opportunity for a hearing
21 to address each reason and circumstance for possible denial of the
22 application.

23 (b) The commissioner must provide an opportunity for a
24 hearing before the commissioner finally denies an application.

25 (c) At the hearing, the applicant has the burden to produce
26 sufficient competent evidence on which the commissioner can make
27 the determinations required by Section 1302.104.

1 [Sections 1302.106-1302.150 reserved for expansion]

2 SUBCHAPTER D. ENFORCEMENT

3 Sec. 1302.151. GROUNDS FOR DENIAL, SUSPENSION, OR
4 REVOCAION OF CERTIFICATE OF AUTHORITY. The denial, suspension, or
5 revocation of a certificate of authority under this chapter to act
6 as a preferred provider organization is subject to:

7 (1) Subchapter C, Chapter 4005; and

8 (2) Chapter 82.

9 SECTION 3.002. Not later than November 1, 2009, the
10 commissioner of insurance shall adopt rules as necessary to
11 implement Chapter 1302, Insurance Code, as added by this Act.

12 SECTION 3.003. (a) Except as provided by Subsections (b)
13 and (c) of this section, a preferred provider organization that is
14 operating before the effective date of this Act and that has not
15 previously submitted an application for a certificate of authority
16 under the Insurance Code must apply for a certificate of authority
17 under Chapter 1302, Insurance Code, as added by this Act, not later
18 than the 60th day after the effective date of this Act.

19 (b) A preferred provider organization operating in this
20 state that, as of August 31, 2009, holds a certificate of authority
21 as an insurer under Chapter 801, Insurance Code, or a certificate of
22 authority as a third-party administrator under Chapter 4151,
23 Insurance Code, is not required to obtain a certificate of
24 authority under Chapter 1302, Insurance Code, as added by this Act.

25 (c) A preferred provider organization in this state that has
26 not applied for or does not hold, as of the effective date of this
27 Act, a certificate of authority under Chapter 801 or 4151,

1 Insurance Code, and that applies for a certificate of authority
2 under Chapter 1302, Insurance Code, as added by this Act, may
3 continue to operate, if the applicant otherwise complies with
4 applicable law, until the commissioner of insurance acts on the
5 application.

6 ARTICLE 4. RATE REGULATION

7 SECTION 4.001. Subchapter A, Chapter 2251, Insurance Code,
8 is amended by adding Section 2251.009 to read as follows:

9 Sec. 2251.009. FILING OF CERTAIN CLAIMS INFORMATION. (a)

10 This section applies only to an insurer subject to this subchapter
11 who writes personal automobile insurance or residential property
12 insurance in this state.

13 (b) The commissioner shall require each insurer described
14 by Subsection (a) to file with the commissioner personal automobile
15 insurance and residential property insurance claims information
16 for the period covered by the filing, including the number of
17 claims:

18 (1) filed during the reporting period;

19 (2) pending on the last day of the reporting period,
20 including pending litigation;

21 (3) paid during the reporting period;

22 (4) denied during the reporting period; and

23 (5) carrying over from the reporting period
24 immediately preceding the current reporting period.

25 (c) The commissioner may require insurers described by
26 Subsection (a) to file the information described by Subsection (b)
27 quarterly or annually.

1 (d) The commissioner may adopt rules necessary to implement
2 this section.

3 SECTION 4.002. Section 2251.101(b), Insurance Code, is
4 amended to read as follows:

5 (b) The commissioner by rule shall:

6 (1) determine the information required to be included
7 in the filing, including:

8 (A) [~~(1)~~] categories of supporting information
9 and supplementary rating information;

10 (B) [~~(2)~~] statistics or other information to
11 support the rates to be used by the insurer, including information
12 necessary to evidence that the computation of the rate does not
13 include disallowed expenses; and

14 (C) [~~(3)~~] information concerning policy fees,
15 service fees, and other fees that are charged or collected by the
16 insurer under Section 550.001 or 4005.003; and

17 (2) prescribe the process through which the department
18 requests supplementary rating information and supporting
19 information under this section, including:

20 (A) any time limits concerning and the time frame
21 in which requests for the information may be made;

22 (B) the number of times the department may make a
23 request for information; and

24 (C) the types of information the department may
25 request when reviewing a rate filing.

26 SECTION 4.003. Section 2251.103, Insurance Code, is amended
27 to read as follows:

1 Sec. 2251.103. COMMISSIONER ACTION CONCERNING [~~DISAPPROVAL~~
2 ~~OF RATE IN~~] RATE FILING; HEARING AND ANALYSIS. (a) Not later than
3 the 30th day after the date a rate is filed with the department
4 under Section 2251.101, the [~~The~~] commissioner shall disapprove
5 the [~~a~~] rate if the commissioner determines that the rate [~~filing~~
6 ~~made under this chapter~~] does not comply with the requirements of
7 this chapter [~~meet the standards established under Subchapter B~~].

8 (b) Except as provided by Subsection (c), if a rate has not
9 been disapproved by the commissioner before the expiration of the
10 30-day period described by Subsection (a), the rate is considered
11 approved.

12 (c) For good cause, the commissioner may, on the expiration
13 of the 30-day period described by Subsection (a), extend the period
14 for disapproval of a rate for one additional 30-day period. The
15 commissioner and the insurer may not by agreement extend the 30-day
16 period described by Subsection (a).

17 (d) If the commissioner disapproves a rate under this
18 section [~~filing~~], the commissioner shall issue an order specifying
19 in what respects the rate [~~filing~~] fails to meet the requirements of
20 this chapter.

21 (e) An insurer that files a rate that is disapproved under
22 this section [~~(c) The filer~~] is entitled to a hearing on written
23 request made to the commissioner not later than the 30th day after
24 the date the order disapproving the rate [~~filing~~] takes effect.

25 (f) The department shall track, compile, and routinely
26 analyze the factors that contribute to the disapproval of rates
27 under this section.

1 SECTION 4.004. Subchapter C, Chapter 2251, Insurance Code,
2 is amended by adding Section 2251.1031 to read as follows:

3 Sec. 2251.1031. REQUESTS FOR ADDITIONAL INFORMATION. (a)
4 If the department determines that the information filed by an
5 insurer under this subchapter or Subchapter D is incomplete or
6 otherwise deficient, the department may request additional
7 information from the insurer.

8 (b) If the department requests additional information from
9 the insurer during the 30-day period described by Section
10 2251.103(a) or 2251.153(a) or under a second 30-day period
11 described by Section 2251.103(c) or 2251.153(c), as applicable, the
12 time between the date the department submits the request to the
13 insurer and the date the department receives the information
14 requested is not included in the computation of the first 30-day
15 period or the second 30-day period, as applicable.

16 (c) For purposes of this section, the date of the
17 department's submission of a request for additional information is:

18 (1) the date of the department's electronic mailing or
19 telephone call relating to the request for additional information;
20 or

21 (2) the postmarked date on the department's letter
22 relating to the request for additional information.

23 (d) The department shall track, compile, and routinely
24 analyze the volume and content of requests for additional
25 information made under this section to ensure that all requests for
26 additional information are fair and reasonable.

27 SECTION 4.005. The heading to Section 2251.104, Insurance

1 Code, is amended to read as follows:

2 Sec. 2251.104. COMMISSIONER DISAPPROVAL OF RATE IN EFFECT;
3 HEARING.

4 SECTION 4.006. Section 2251.107, Insurance Code, is amended
5 to read as follows:

6 Sec. 2251.107. PUBLIC [~~INSPECTION OF~~] INFORMATION. (a)
7 Each filing made, and any supporting information filed, under this
8 chapter, including a claims information filing under Section
9 2251.009, are [is] open to public inspection as of the date of the
10 filing.

11 (b) The department shall make available to the public
12 information concerning best practices for rate development by
13 insurers in this state and the factors that contribute to the
14 disapproval of rates under Section 2251.103. Information provided
15 under this subsection must be general in nature and may not reveal
16 proprietary or trade secret information of any insurer.

17 (c) The department shall post the data contained in claims
18 information filings under Section 2251.009 on the department's
19 Internet website. The commissioner by rule may establish a
20 procedure for posting data under this subsection that includes a
21 description of the data that must be posted and the manner in which
22 the data must be posted.

23 SECTION 4.007. Section 2251.151, Insurance Code, is amended
24 by adding Subsections (c-1) and (f) and amending Subsection (e) to
25 read as follows:

26 (c-1) If the commissioner requires an insurer to file the
27 insurer's rates under this section, the commissioner shall

1 periodically assess whether the conditions described by Subsection
2 (a) continue to exist. If the commissioner determines that the
3 conditions no longer exist, the commissioner shall issue an order
4 excusing the insurer from filing the insurer's rates under this
5 section.

6 (e) If the commissioner requires an insurer to file the
7 insurer's rates under this section, the commissioner shall issue an
8 order specifying the commissioner's reasons for requiring the rate
9 filing and explaining any steps the insurer must take and any
10 conditions the insurer must meet in order to be excused from filing
11 the insurer's rates under this section. An affected insurer is
12 entitled to a hearing on written request made to the commissioner
13 not later than the 30th day after the date the order is issued.

14 (f) The commissioner by rule shall define:

15 (1) the financial conditions and rating practices that
16 may subject an insurer to this section under Subsection (a)(1); and

17 (2) the process by which the commissioner determines
18 that a statewide insurance emergency exists under Subsection
19 (a)(2).

20 SECTION 4.008. Section 2251.156, Insurance Code, is amended
21 to read as follows:

22 Sec. 2251.156. RATE FILING DISAPPROVAL BY COMMISSIONER;
23 HEARING. (a) If the commissioner disapproves a rate filing under
24 Section 2251.153(a)(2), the commissioner shall issue an order
25 disapproving the filing in accordance with Section 2251.103(d)
26 [~~2251.103(b)~~].

27 (b) An insurer whose rate filing is disapproved is entitled

1 to a hearing in accordance with Section 2251.103(e) [~~2251.103(e)~~].

2 SECTION 4.009. Sections 2251.252(a) and (b), Insurance
3 Code, are amended to read as follows:

4 (a) Except as provided by Subsections (b) and (c), an
5 insurer is exempt from the rate filing and approval requirements of
6 this chapter if the insurer, during the calendar year preceding the
7 date filing is otherwise required under this chapter, issued
8 residential property insurance policies in this state that
9 accounted for less than four [~~two~~] percent of the total amount of
10 premiums collected by insurers for residential property insurance
11 policies issued in this state, more than 50 percent of which cover
12 property:

13 (1) valued at less than \$100,000; and

14 (2) located in an area designated by the commissioner
15 as underserved for residential property insurance under Chapter
16 2004.

17 (b) If an insurer described by Subsection (a) is a member of
18 an affiliated insurance group, this subchapter applies to the
19 insurer only if the total aggregate premium collected by the group
20 accounts for less than four [~~two~~] percent of the total amount of
21 premiums collected by insurers for residential property insurance
22 policies issued in this state.

23 SECTION 4.010. Section 2251.154, Insurance Code, is
24 repealed.

25 SECTION 4.011. The commissioner of insurance shall require
26 an insurer to make the insurer's first claims information filing
27 under Section 2251.009, Insurance Code, as added by this Act,

1 beginning on or after January 1, 2010.

2 SECTION 4.012. Section 2251.103, Insurance Code, as amended
3 by this Act, and Section 2251.1031, Insurance Code, as added by this
4 Act, apply only to a rate filing made on or after the effective date
5 of this Act. A rate filing made before the effective date of this
6 Act is governed by the law in effect at the time the filing was made,
7 and that law is continued in effect for that purpose.

8 SECTION 4.013. Section 2251.151(c-1), Insurance Code, as
9 added by this Act, applies to an insurer that is required to file
10 the insurer's rates for approval under Section 2251.151, Insurance
11 Code, on or after the effective date of this Act, regardless of when
12 the order requiring the insurer to file the insurer's rates for
13 approval under that section is first issued.

14 SECTION 4.014. Section 2251.151(e), Insurance Code, as
15 amended by this Act, applies only to an order issued by the
16 commissioner of insurance on or after the effective date of this
17 Act. An order of the commissioner issued before the effective date
18 of this Act is governed by the law in effect on the date the order
19 was issued, and that law is continued in effect for that purpose.

20 ARTICLE 5. STATE FIRE MARSHAL'S OFFICE

21 SECTION 5.001. Section 417.008, Government Code, is amended
22 by adding Subsection (f) to read as follows:

23 (f) The commissioner by rule shall prescribe a reasonable
24 fee for an inspection performed by the state fire marshal that may
25 be charged to a property owner or occupant who requests the
26 inspection, as the commissioner considers appropriate. In
27 prescribing the fee, the commissioner shall consider the overall

1 cost to the state fire marshal to perform the inspections,
2 including the approximate amount of time the staff of the state fire
3 marshal needs to perform an inspection, travel costs, and other
4 expenses.

5 SECTION 5.002. Section 417.0081, Government Code, is amended
6 to read as follows:

7 Sec. 417.0081. INSPECTION OF CERTAIN STATE-OWNED OR
8 STATE-LEASED BUILDINGS. (a) The state fire marshal, at the
9 commissioner's direction, shall periodically inspect public
10 buildings under the charge and control of the Texas Facilities
11 [General Services] Commission and buildings leased for the use of a
12 state agency by the Texas Facilities Commission.

13 (b) For the purpose of determining a schedule for conducting
14 inspections under this section, the commissioner by rule shall
15 adopt guidelines for assigning potential fire safety risk to
16 state-owned and state-leased buildings. Rules adopted under this
17 subsection must provide for the inspection of each state-owned and
18 state-leased building to which this section applies, regardless of
19 how low the potential fire safety risk of the building may be.

20 (c) On or before January 1 of each year, the state fire
21 marshal shall report to the governor, lieutenant governor, speaker
22 of the house of representatives, and appropriate standing
23 committees of the legislature regarding the state fire marshal's
24 findings in conducting inspections under this section.

25 SECTION 5.003. Section 417.0082, Government Code, is amended
26 to read as follows:

27 Sec. 417.0082. PROTECTION OF CERTAIN STATE-OWNED OR

1 STATE-LEASED BUILDINGS AGAINST FIRE HAZARDS. (a) The state fire
2 marshal, under the direction of the commissioner, shall take any
3 action necessary to protect a public building under the charge and
4 control of the Texas Facilities [~~Building and Procurement~~]
5 Commission, and the building's occupants, and the occupants of a
6 building leased for the use of a state agency by the Texas
7 Facilities Commission, against an existing or threatened fire
8 hazard. The state fire marshal and the Texas Facilities [~~Building~~
9 ~~and Procurement~~] Commission shall include the State Office of Risk
10 Management in all communication concerning fire hazards.

11 (b) The commissioner, the Texas Facilities [~~Building and~~
12 ~~Procurement~~] Commission, and the risk management board shall make
13 and each adopt by rule a memorandum of understanding that
14 coordinates the agency's duties under this section.

15 SECTION 5.004. Section 417.010, Government Code, is amended
16 to read as follows:

17 Sec. 417.010. DISCIPLINARY AND ENFORCEMENT ACTIONS;
18 ADMINISTRATIVE PENALTIES [~~ALTERNATE REMEDIES~~]. (a) This section
19 applies to each person and firm licensed, registered, or otherwise
20 regulated by the department through the state fire marshal,
21 including:

22 (1) a person regulated under Title 20, Insurance Code;
23 and

24 (2) a person licensed under Chapter 2154, Occupations
25 Code.

26 (b) The commissioner by rule shall delegate to the state
27 fire marshal the authority to take disciplinary and enforcement

1 actions, including the imposition of administrative penalties in
2 accordance with this section on a person regulated under a law
3 listed under Subsection (a) who violates that law or a rule or order
4 adopted under that law. In the rules adopted under this subsection,
5 the commissioner shall:

6 (1) specify which types of disciplinary and
7 enforcement actions are delegated to the state fire marshal; and

8 (2) outline the process through which the state fire
9 marshal may, subject to Subsection (e), impose administrative
10 penalties or take other disciplinary and enforcement actions.

11 (c) The commissioner by rule shall adopt a schedule of
12 administrative penalties for violations subject to a penalty under
13 this section to ensure that the amount of an administrative penalty
14 imposed is appropriate to the violation. The department shall
15 provide the administrative penalty schedule to the public on
16 request. The amount of an administrative penalty imposed under
17 this section must be based on:

18 (1) the seriousness of the violation, including:

19 (A) the nature, circumstances, extent, and
20 gravity of the violation; and

21 (B) the hazard or potential hazard created to the
22 health, safety, or economic welfare of the public;

23 (2) the economic harm to the public interest or public
24 confidence caused by the violation;

25 (3) the history of previous violations;

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

27 (5) efforts to correct the violation;

1 (6) whether the violation was intentional; and

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

3 (d) In [The state fire marshal, in] the enforcement of a law
4 that is enforced by or through the state fire marshal, the state
5 fire marshal may, in lieu of cancelling, revoking, or suspending a
6 license or certificate of registration, impose on the holder of the
7 license or certificate of registration an order directing the
8 holder to do one or more of the following:

9 (1) cease and desist from a specified activity;

10 (2) pay an administrative penalty imposed under this
11 section [remit to the commissioner within a specified time a
12 monetary forfeiture not to exceed \$10,000 for each violation of an
13 applicable law or rule]; or [and]

14 (3) make restitution to a person harmed by the holder's
15 violation of an applicable law or rule.

16 (e) The state fire marshal shall impose an administrative
17 penalty under this section in the manner prescribed for imposition
18 of an administrative penalty under Subchapter B, Chapter 84,
19 Insurance Code. The state fire marshal may impose an
20 administrative penalty under this section without referring the
21 violation to the department for commissioner action.

22 (f) An affected person may dispute the imposition of the
23 penalty or the amount of the penalty imposed in the manner
24 prescribed by Subchapter C, Chapter 84, Insurance Code. Failure to
25 pay an administrative penalty imposed under this section is subject
26 to enforcement by the department.

ARTICLE 6. TITLE INSURANCE

SECTION 6.001. Section 2602.107, Insurance Code, is amended by adding Subsection (d) to read as follows:

(d) The association shall pay, from the guaranty fee account, fees and reasonable and necessary expenses that the department incurs in an examination of a title agent or direct operation under Subchapter H, Chapter 2651.

SECTION 6.002. Subchapter D, Chapter 2651, Insurance Code, is amended by adding Section 2651.1511 and amending Sections 2651.153 and 2651.155 to read as follows:

Sec. 2651.1511. ANNUAL AUDIT OF OPERATING ACCOUNTS: TITLE INSURANCE AGENTS AND DIRECT OPERATIONS. (a) Each title insurance agent and direct operation shall submit to the department an annual audit of operating accounts that is verified by an officer of:

(1) the audited title insurance agent; or

(2) the audited direct operation.

(b) The title insurance agent or direct operation shall pay for an audit of operating accounts under this section.

(c) Not later than the 90th day after the date of the end of the agent's or direct operation's fiscal year, the agent or direct operation shall send by certified mail, postage prepaid, to the department one copy of the audit report with a transmittal letter.

(d) Notwithstanding Subsection (a), the commissioner may exempt a title insurance agent or direct operation with an annual premium volume of less than \$100,000 from the requirements of Subsections (a)-(c).

Sec. 2651.153. RULES. The commissioner by rule shall

1 adopt:

2 (1) the standards for an audit conducted under this
3 subchapter; [and]

4 (2) the form of the required audit report; and

5 (3) a process to exempt a title insurance agent under
6 Section 2651.1511(d).

7 Sec. 2651.155. CONFIDENTIALITY OF AUDIT. (a) The
8 commissioner may classify an audit report that is filed with the
9 department by a title insurance company under this subchapter as
10 confidential and privileged.

11 (b) Information obtained in an audit of the operating
12 accounts of a title insurance agent or direct operation under this
13 subchapter is confidential and not subject to disclosure under this
14 code or Chapter 552, Government Code.

15 SECTION 6.003. Chapter 2651, Insurance Code, is amended by
16 adding Subchapter H to read as follows:

17 SUBCHAPTER H. EXAMINATION OF TITLE INSURANCE AGENTS AND DIRECT
18 OPERATIONS

19 Sec. 2651.351. EXAMINATION OF TITLE INSURANCE AGENTS AND
20 DIRECT OPERATIONS. (a) The department shall examine each title
21 insurance agent and direct operation licensed in this state as
22 provided by this subchapter.

23 (b) The department shall:

24 (1) examine the title insurance agent's or direct
25 operation's:

26 (A) financial condition;

27 (B) trust, escrow, and operating accounts;

1 (C) ability to meet its liabilities; and

2 (D) compliance with the laws of this state and
3 rules adopted by the commissioner that affect the business conduct
4 of the title insurance agent or direct operation; and

5 (2) verify the data reported for rate promulgation.

6 (c) The department shall conduct the examination at the
7 principal office of the title insurance agent or direct operation,
8 and may conduct the examination alone or with representatives of
9 the insurance supervising departments of other states.

10 (d) Subject to Subsection (e), the department shall examine
11 a title insurance agent or direct operation as frequently as the
12 department considers necessary. At a minimum, the department shall
13 examine a title insurance agent or direct operation not less
14 frequently than once every three years.

15 (e) The commissioner shall adopt rules governing the
16 frequency of examinations of a title insurance agent or direct
17 operation licensed for less than three years.

18 Sec. 2652.352. EXAMINATION PERIOD. Unless the department
19 requests that an examination cover a longer period, the examination
20 must cover the period beginning on the last day covered by the most
21 recent examination and ending on December 31 of the year preceding
22 the year in which the examination is being conducted.

23 Sec. 2651.353. POWERS RELATED TO EXAMINATION. The
24 department or the examiner appointed by the department:

25 (1) has free access, and may require the title
26 insurance agent or direct operation to provide free access, to all
27 books and papers of the title insurance agent or direct operation

1 that relate to the business and affairs of the title insurance agent
2 or direct operation; and

3 (2) has the authority to summon and examine under
4 oath, if necessary, an officer, agent, or employee of the title
5 insurance agent or direct operation or any other person in relation
6 to the affairs and condition of the title insurance agent or direct
7 operation.

8 Sec. 2651.354. EFFECT OF SUBCHAPTER ON AUTHORITY TO USE
9 INFORMATION. This subchapter does not limit the commissioner's
10 authority to use a final or preliminary examination report, the
11 work papers of an examiner, title insurance agent, or direct
12 operation, or other documents, or any other information discovered
13 or developed during an examination in connection with a legal or
14 regulatory action that the commissioner, in the commissioner's sole
15 discretion, considers appropriate.

16 Sec. 2651.355. CONFIDENTIALITY OF REPORTS AND RELATED
17 INFORMATION. (a) A final or preliminary examination report and any
18 information obtained during an examination are confidential and are
19 not subject to disclosure under Chapter 552, Government Code.

20 (b) Subsection (a) applies if the examined title insurance
21 agent or direct operation is under supervision or conservatorship.

22 (c) Subsection (a) does not apply to an examination
23 conducted in connection with a liquidation or receivership under
24 this code or another insurance law of this state.

25 Sec. 2651.356. DISCIPLINARY ACTION FOR FAILURE TO COMPLY
26 WITH SUBCHAPTER. A title insurance agent or direct operation is
27 subject to disciplinary action under Chapter 82 for failure or

1 refusal to comply with:

2 (1) this subchapter or a rule adopted under this
3 subchapter; or

4 (2) a request by the department or an appointed
5 examiner to be examined or to provide information requested as part
6 of an examination.

7 SECTION 6.004. Section 2703.153(c), Insurance Code, is
8 amended to read as follows:

9 (c) Not less frequently than once every five years, the
10 commissioner shall evaluate the information required under this
11 section to determine whether the department needs additional or
12 different information or no longer needs certain information to
13 promulgate rates. If the department requires a title insurance
14 company or title insurance agent to include new or different
15 information in the statistical report, that information may be
16 considered by the commissioner in fixing premium rates if the
17 information collected is reasonably credible for the purposes for
18 which the information is to be used.

19 SECTION 6.005. Sections 2602.103(b), (c), and (d),
20 Insurance Code, are repealed.

21 ARTICLE 7. TEXAS WINDSTORM INSURANCE ASSOCIATION

22 SECTION 7.001. Section 2210.008, Insurance Code, is amended
23 to read as follows:

24 Sec. 2210.008. DEPARTMENT RULES; ORDERS. (a) The
25 commissioner shall adopt rules in the manner prescribed by
26 Subchapter A, Chapter 36, as the commissioner considers necessary
27 to implement this chapter. The commissioner shall adopt rules as

1 provided by this chapter to approve proposed changes to the
2 operations of the association.

3 (b) The [~~After notice and hearing as provided by Subsection~~
4 ~~(b), the~~] commissioner may issue any orders that the commissioner
5 considers necessary to implement this chapter[~~, including orders~~
6 ~~regarding maximum rates, competitive rates, and policy forms~~].

7 [~~(b) Before the commissioner adopts an order, the~~
8 ~~department shall post notice of the hearing on the order at the~~
9 ~~secretary of state's office in Austin and shall hold a hearing to~~
10 ~~consider the proposed order. Any person may appear at the hearing~~
11 ~~and testify for or against the adoption of the order.~~]

12 SECTION 7.002. Section 2210.102, Insurance Code, is amended
13 to read as follows:

14 Sec. 2210.102. COMPOSITION. (a) The board of directors
15 is composed of 11 [~~the following nine~~] members appointed by the
16 commissioner as follows:

17 (1) five representatives of different insurers who are
18 members of the association[~~, elected by the members as provided by~~
19 ~~the plan of operation~~];

20 (2) four [~~two~~] public representatives [~~who are~~
21 ~~nominated by the office of public insurance counsel and~~] who, as of
22 the date of the appointment:

23 (A) reside in a catastrophe area; and

24 (B) are policyholders of the association; and

25 (3) two property and casualty agents, each of whom
26 must:

27 (A) have demonstrated experience in the

1 association;

2 (B) maintain the agent's principal office, as of
3 the date of the appointment, in a catastrophe area; and

4 (C) hold a license under Chapter 4051 as a
5 general property and casualty agent or a personal lines property
6 and casualty agent.

7 (b) Insurers who are members of the association shall
8 nominate, from among those members, persons to fill any vacancy in
9 the five board of director seats reserved for insurers. The board
10 of directors shall solicit nominations from the members and submit
11 the nominations to the commissioner. The nominee slate submitted
12 to the commissioner under this subsection must include more names
13 than the number of vacancies. The commissioner shall appoint
14 replacement insurer members from the nominee slate.

15 (c) The persons appointed under Subsections (a)(2) and (3)
16 must be from different counties.

17 SECTION 7.003. Section 2210.103(a), Insurance Code, is
18 amended to read as follows:

19 (a) Members of the board of directors serve three-year
20 staggered terms, with the terms of three members or four members, as
21 applicable, expiring on the third Tuesday of March of each year.

22 SECTION 7.004. Section 2210.104, Insurance Code, is amended
23 to read as follows:

24 Sec. 2210.104. OFFICERS. The commissioner shall appoint a
25 presiding officer [~~board of directors shall elect~~] from the board's
26 membership [~~an executive committee consisting of a presiding~~
27 ~~officer, assistant presiding officer, and secretary-treasurer. At~~

1 ~~least one of the officers must be a member appointed under Section~~
2 ~~2210.102(a)(2) or (3)].~~ The board of directors may elect other
3 officers from the board's membership as considered necessary to
4 conduct the duties of the board.

5 SECTION 7.005. Section 2210.152(a), Insurance Code, is
6 amended to read as follows:

7 (a) The plan of operation must:

8 (1) provide for the efficient, economical, fair, and
9 nondiscriminatory administration of the association; and

10 (2) include:

11 (A) a plan for the equitable assessment of the
12 members of the association to defray losses and expenses;

13 (B) underwriting standards;

14 (C) procedures for accepting and ceding
15 reinsurance;

16 (D) procedures for determining the amount of
17 insurance to be provided to specific risks;

18 (E) time limits and procedures for processing
19 applications for insurance; ~~and~~

20 (F) a plan for property inspections for windstorm
21 and hail insurance; and

22 (G) other provisions as considered necessary by
23 the department to implement the purposes of this chapter.

24 SECTION 7.006. Section 2210.153, Insurance Code, is amended
25 to read as follows:

26 Sec. 2210.153. AMENDMENTS TO PLAN OF OPERATION. (a) The
27 association shall ~~may~~ present a recommendation for a change in

1 the plan of operation to the department [~~at:~~

2 [~~(1) periodic hearings conducted by the department for~~
3 ~~that purpose, or~~

4 [~~(2) hearings relating to property and casualty~~
5 ~~insurance rates.~~

6 [~~(b) The association must present a proposed change to the~~
7 ~~department]~~ in writing in the manner prescribed by the
8 commissioner. A proposed change does not take effect unless
9 adopted by the commissioner by rule.

10 (b) [~~(c)~~] An interested person may, in accordance with
11 Chapter 2001, Government Code, petition the commissioner to modify
12 the plan of operation.

13 SECTION 7.007. Section 2210.202(a), Insurance Code, is
14 amended to read as follows:

15 (a) A person who has an insurable interest in insurable
16 property may apply to the association for insurance coverage
17 provided under the plan of operation and an inspection of the
18 property, subject to any rules, including any inspection fee,
19 established by the board of directors and approved by the
20 commissioner. The association shall make insurance available to
21 each applicant in the catastrophe area whose property is insurable
22 property but who, after diligent efforts, is unable to obtain
23 property insurance through the voluntary market, as evidenced by
24 two declinations, cancellations, or a combination of declinations
25 and cancellations from insurers authorized to engage in the
26 business of, and writing, property insurance in this state. For
27 purposes of this section, "declination" has the meaning assigned by

1 the plan of operation and may include a refusal to offer coverage
2 and the inability to obtain substantially equivalent insurance
3 coverage and rates. Notwithstanding Section 2210.203(c), evidence
4 of two declinations or other comparable evidence is required with
5 an application for renewal of an association policy unless the
6 association has evidence that comparable voluntary market coverage
7 is not available in the area of the property to be insured for the
8 same class of risk.

9 SECTION 7.008. Section 2210.207(e), Insurance Code, is
10 amended to read as follows:

11 (e) Notwithstanding this chapter or any other law, the
12 commissioner [~~after notice and hearing,~~] may adopt rules to:

13 (1) authorize the association to provide actual cash
14 value coverage instead of replacement cost coverage on the roof
15 covering of a building insured by the association; and

16 (2) establish:

17 (A) the conditions under which the association
18 may provide that actual cash value coverage;

19 (B) the appropriate premium reductions when
20 coverage for the roof covering is provided on an actual cash value
21 basis; and

22 (C) the disclosure that must be provided to the
23 policyholder, prominently displayed on the face of the windstorm
24 and hail insurance policy.

25 SECTION 7.009. Section 2210.251, Insurance Code, is amended
26 by amending Subsections (a), (c), (f), and (g) and adding
27 Subsections (i), (j), and (k) to read as follows:

1 (a) Except as provided by this section, to be considered
2 insurable property eligible for windstorm and hail insurance
3 coverage from the association, a structure that is constructed or
4 repaired or to which additions are made on or after January 1, 1988,
5 must be inspected or approved by the association [~~department~~] for
6 compliance with the plan of operation.

7 (c) After January 1, 2004, a person must submit a notice of a
8 windstorm inspection to the association [~~unit responsible for~~
9 ~~certification of windstorm inspections at the department~~] before
10 beginning to construct, alter, remodel, enlarge, or repair a
11 structure.

12 (f) The association [~~department~~] shall issue a certificate
13 of compliance for each structure that qualifies for coverage. The
14 certificate is evidence of insurability of the structure by the
15 association.

16 (g) The association [~~department~~] may enter into agreements
17 and contracts as necessary to implement this section.

18 (i) The association may charge a reasonable fee for each
19 inspection in an amount set by commissioner rule. The association
20 may use fees collected under this section for operating expenses.

21 (j) Without limitation of the department's authority to
22 otherwise enforce this chapter, the department shall monitor the
23 association's compliance with this subchapter. To facilitate the
24 department's oversight of the inspection program, the association
25 shall report to the department monthly, in the manner prescribed by
26 the commissioner, regarding:

27 (1) the number of inspections performed;

1 (2) the number of structures inspected;

2 (3) the number and a general description of the type of
3 inspection deficiencies discovered through the inspection program;

4 and

5 (4) any actions taken to resolve problems with
6 inspections.

7 (k) The commissioner may adopt rules in the manner
8 prescribed by Subchapter A, Chapter 36, as necessary to implement
9 this section.

10 SECTION 7.010. Sections 2210.254(a) and (c), Insurance
11 Code, are amended to read as follows:

12 (a) For purposes of this chapter, a "qualified inspector"
13 includes:

14 (1) a person determined by the association
15 [~~department~~] to be qualified because of training or experience to
16 perform building inspections;

17 (2) a licensed professional engineer who meets the
18 requirements specified by the association [~~commissioner rule~~] for
19 appointment to conduct windstorm inspections; and

20 (3) an inspector who:

21 (A) is certified by the International Code
22 Council, the Building Officials and Code Administrators
23 International, Inc., the International Conference of Building
24 Officials, or the Southern Building Code Congress International,
25 Inc.;

26 (B) has certifications as a buildings inspector
27 and coastal construction inspector; and

1 (C) complies with other requirements specified
2 by the board of directors [~~commissioner rule~~].

3 (c) Before performing building inspections, a qualified
4 inspector must enter into a contract with the association [~~be~~
5 ~~approved and appointed or employed by the department~~].

6 SECTION 7.011. Subchapter F, Chapter 2210, Insurance Code,
7 is amended by adding Section 2210.2541 to read as follows:

8 Sec. 2210.2541. ASSOCIATION INSPECTION PROGRAM. (a) The
9 association shall develop an inspection program to perform
10 inspections for windstorm and hail insurance as required by this
11 subchapter.

12 (b) The association shall adopt inspection standards and
13 regulations regarding the operation of the inspection program,
14 including:

15 (1) inspection training and education requirements,
16 as determined necessary by the association, for licensed engineers
17 who contract with the association under Section 2210.255;

18 (2) guidelines for inspection fees assessed under
19 Section 2210.251(i) and for fees collected by inspectors under this
20 subchapter; and

21 (3) procedures for handling complaints made to the
22 association regarding inspectors.

23 (c) The association shall include in the inspection program
24 an oversight process that includes regular reinspections by the
25 association to ensure that association inspectors perform duties
26 under this subchapter appropriately.

27 (d) The association shall report possible licensing

1 violations by an inspector selected under Sections 2210.254 and
2 2210.255 to perform inspections under this subchapter to the Texas
3 Board of Professional Engineers.

4 (e) The association shall establish procedures as part of
5 the inspection program as necessary to issue certificates of
6 compliance under Section 2210.251(f).

7 (f) As part of the report required under Section
8 2210.251(j), the association shall report to the department
9 regarding the operation of the inspection program.

10 SECTION 7.012. Section 2210.255, Insurance Code, is amended
11 to read as follows:

12 Sec. 2210.255. CONTRACT WITH ~~[APPOINTMENT OF]~~ LICENSED
13 ENGINEER AS INSPECTOR. (a) On request of an engineer licensed by
14 the Texas Board of Professional Engineers, the association may
15 enter into a contract with ~~[commissioner shall appoint]~~ the
16 engineer under which the engineer serves as an inspector under this
17 subchapter. The association may enter into a contract under this
18 subsection only on receipt of information satisfactory to the board
19 ~~[not later than the 10th day after the date the engineer delivers to~~
20 ~~the commissioner information demonstrating]~~ that the engineer is
21 qualified to perform windstorm inspections under this subchapter.

22 (b) The association shall consult with the commissioner
23 regarding ~~[shall adopt rules establishing]~~ the information to be
24 considered in contracting with ~~[appointing]~~ engineers under this
25 section.

26 SECTION 7.013. Subchapter F, Chapter 2210, Insurance Code,
27 is amended by adding Section 2210.2565 to read as follows:

1 Sec. 2210.2565. PROCEDURES REGARDING CONTRACTING WITH
2 INSPECTORS. The board of directors shall develop procedures for
3 contracting with and oversight of inspectors selected under
4 Sections 2210.254 and 2210.255, including procedures relating to
5 the grounds for the suspension, modification, or revocation of a
6 contract under this subchapter with an inspector.

7 SECTION 7.014. Section 2210.351, Insurance Code, is amended
8 to read as follows:

9 Sec. 2210.351. ASSOCIATION RATE FILINGS AND SUPPORTING
10 INFORMATION; USE OF RATE. (a) Except as provided by Section
11 2210.3562, the [The] association shall [must] file with the
12 department each manual of classifications, rules, rates, including
13 condition charges, [and] each rating plan, [and] each modification
14 of those items that the association proposes to use, supplementary
15 rating information, and additional information as required by the
16 commissioner.

17 (b) The commissioner by rule shall determine the
18 information required to be included in the filing, including:

19 (1) categories of supporting information and
20 supplementary rating information;

21 (2) statistics or other information to support the
22 rates to be used by the association, including information
23 necessary to evidence that the computation of the rate does not
24 include disallowed expenses; and

25 (3) information concerning policy fees, service fees,
26 and other fees that are charged or collected by the association.

27 (c) After the filing has been made, the association may use

1 a filed rate. A filed rate is subject to disapproval by the
2 commissioner in the manner prescribed by this subchapter.

3 (d) A filing under this section must indicate the character
4 and the extent of the coverage contemplated and must be accompanied
5 by the policy and endorsement forms proposed to be used. The forms
6 may be designed specifically for use by the association without
7 regard to other forms filed with, approved by, or prescribed by the
8 department for use in this state.

9 ~~[(c) As soon as reasonably possible after the filing has~~
10 ~~been made, the commissioner in writing shall approve, modify, or~~
11 ~~disapprove the filing. A filing is considered approved unless~~
12 ~~modified or disapproved on or before the 30th day after the date of~~
13 ~~the filing.]~~

14 ~~[(d) If at any time the commissioner determines that a~~
15 ~~filing approved under Subsection (c) no longer meets the~~
16 ~~requirements of this chapter, the commissioner may, after a hearing~~
17 ~~held on at least 20 days' notice to the association that specifies~~
18 ~~the matters to be considered at the hearing, issue an order~~
19 ~~withdrawing approval of the filing. The order must specify in what~~
20 ~~respects the commissioner determines that the filing no longer~~
21 ~~meets the requirements of this chapter. An order issued under this~~
22 ~~subsection may not take effect before the 30th day after the date of~~
23 ~~issuance of the order.]~~

24 (e) The department shall value the loss and loss adjustment
25 expense data to be used for a filing not earlier than March 31 of the
26 year before the year in which the filing is to be made.

27 SECTION 7.015. Sections 2210.352 and 2210.353, Insurance

1 Code, are amended to read as follows:

2 Sec. 2210.352. MANUAL RATE FILINGS: ANNUAL FILING. (a)
3 Not later than August 15 of each year, the association shall file
4 with the department [~~for approval by the commissioner~~] a proposed
5 manual rate for all types and classes of risks written by the
6 association. Chapter 40 does not apply to:

- 7 (1) a filing made under this subsection; or
8 (2) a department action with respect to the filing.

9 (b) The [~~Before approving, disapproving, or modifying a~~
10 ~~filing, the~~] commissioner shall provide all interested persons a
11 reasonable opportunity to:

- 12 (1) review the filing;
13 (2) obtain copies of the filing on payment of any
14 legally required copying cost; and
15 (3) submit to the commissioner written comments or
16 information related to the filing.

17 (c) [~~The commissioner shall schedule an open meeting not~~
18 ~~later than the 45th day after the date the department receives a~~
19 ~~filing at which interested persons may present written or oral~~
20 ~~comments relating to the filing.~~

21 [~~(d) An open meeting under Subsection (c) is subject to~~
22 ~~Chapter 551, Government Code, but is not a contested case hearing~~
23 ~~under Chapter 2001, Government Code.~~

24 [~~(e)~~] The department shall file with the secretary of state
25 for publication in the Texas Register notice that a filing has been
26 made under Subsection (a) not later than the seventh day after the
27 date the department receives the filing. The notice must include

1 information relating to:

2 (1) the availability of the filing for public
3 inspection at the department during regular business hours and the
4 procedures for obtaining copies of the filing; and

5 (2) procedures for making written comments related to
6 the filing[~~, and~~

7 [~~(3) the time, place, and date of the open meeting~~
8 ~~scheduled under Subsection (c) at which interested persons may~~
9 ~~present written or oral comments relating to the filing]~~.

10 (d) ~~The [(f) After the conclusion of the open meeting, the]~~
11 commissioner shall approve, disapprove, or modify the filing in
12 writing not later than November 15 of the year in which the filing
13 was made. If the filing is not approved, disapproved, or modified
14 on or before that date, the filing is considered approved.

15 (e) [~~(g)~~] If the commissioner disapproves a filing, the
16 commissioner shall state in the order issued under Section
17 2210.3561 [~~writing~~] the reasons for the disapproval and the
18 criteria the association is required to meet to obtain approval.

19 Sec. 2210.353. MANUAL RATE FILINGS: AMENDED FILING. (a)
20 Not later than the 30th day after the date the association receives
21 the commissioner's written disapproval under Section 2210.352(d)
22 [~~2210.352(f)~~], the association may file with the commissioner an
23 amended filing that conforms to all criteria stated in that written
24 disapproval.

25 (b) Not later than the 30th day after the date an amended
26 filing made under Subsection (a) is received, the commissioner
27 shall approve the amended filing with or without modifications or

1 disapprove the amended filing. If the filing is not modified or
2 disapproved on or before the 30th day after the date of receipt, the
3 filing is considered approved without modification.

4 (c) Before approving or disapproving an amended filing, the
5 commissioner shall, in the manner provided by Section 2210.352(b),
6 provide all interested persons a reasonable opportunity to:

7 (1) review the amended filing;

8 (2) obtain copies of the amended filing on payment of
9 any legally required copying cost; and

10 (3) submit to the commissioner written comments or
11 information related to the amended filing.

12 ~~[(d) The commissioner may, in the manner provided by~~
13 ~~Sections 2210.352(c) and (d), hold a hearing regarding an amended~~
14 ~~filing not later than the 20th day after the date the department~~
15 ~~receives the amended filing.~~

16 ~~[(e) Not later than the 10th day after the date the hearing~~
17 ~~is concluded, the commissioner shall approve or disapprove the~~
18 ~~amended filing.~~

19 ~~[(f) The requirements imposed under Subsection (a) and~~
20 ~~under Sections 2210.352(e), (f), and (g) apply to a hearing~~
21 ~~conducted under this section and the commissioner's decision~~
22 ~~resulting from that hearing.]~~

23 SECTION 7.016. Section 2210.356, Insurance Code, is amended
24 to read as follows:

25 Sec. 2210.356. UNIFORM RATE REQUIREMENTS [~~, INFORMATION~~
26 ~~USED IN DEVELOPING RATES~~]. (a) Each rate used under [~~approved by~~
27 ~~the commissioner in accordance with~~] this subchapter must be

1 uniform throughout the first tier coastal counties.

2 (b) The catastrophe element used to develop rates under this
3 subchapter applicable to risks written by the association must be
4 uniform throughout the seacoast territory. [~~The catastrophe~~
5 ~~element of the rates must be developed using:~~

6 [~~(1) 90 percent of both the monoline extended coverage~~
7 ~~loss experience and related premium income for all insurers, other~~
8 ~~than the association, for covered property located in the seacoast~~
9 ~~territory, using not less than the most recent 30 years of~~
10 ~~experience available; and~~

11 [~~(2) 100 percent of both the loss experience and~~
12 ~~related premium income for the association for covered property,~~
13 ~~using not less than the most recent 30 years of experience~~
14 ~~available.~~

15 [~~(c) The noncatastrophe element of the noncommercial rates~~
16 ~~must be developed using:~~

17 [~~(1) 90 percent of both the monoline extended coverage~~
18 ~~loss experience and related premium income for all insurers, other~~
19 ~~than the association, for covered property located in the~~
20 ~~catastrophe area of the seacoast territory, using the most recent~~
21 ~~10 years of experience available; and~~

22 [~~(2) 100 percent of both the loss experience and~~
23 ~~related premium income for the association for covered property,~~
24 ~~using the most recent 10 years of experience available.~~

25 [~~(d) The noncatastrophe element of the commercial rates~~
26 ~~must be developed using 100 percent of both the loss experience and~~
27 ~~related premium income for the association for covered property,~~

1 ~~using the most recent 10 years of experience available.]~~

2 SECTION 7.017. Subchapter H, Chapter 2210, Insurance Code,
3 is amended by adding Sections 2210.3561 and 2210.3562 to read as
4 follows:

5 Sec. 2210.3561. DISAPPROVAL OF RATE IN RATE FILING;
6 HEARING. (a) The commissioner shall disapprove a rate before its
7 use if the commissioner determines that the rate filing made under
8 Section 2210.351 does not meet the standards established under
9 Section 2210.355 or 2210.356.

10 (b) If the commissioner disapproves a filing, the
11 commissioner shall issue an order specifying in what respects the
12 filing fails to meet the requirements of this subchapter.

13 Sec. 2210.3562. PRIOR APPROVAL OF CERTAIN RATE INCREASES
14 REQUIRED. (a) The association shall file with the department all
15 rates, all supplementary rating information, and any supporting
16 information in accordance with this section if the association
17 proposes an average rate change of five percent or more during any
18 12-month period. The commissioner may specify any rate information
19 and additional information, as described by Section 2210.351(a), to
20 be filed with the department under this section.

21 (b) Not later than the 30th day after the date the
22 association files a proposed rate under Subsection (a), the
23 commissioner shall enter an order approving or disapproving the
24 proposed rate. The commissioner may, on notice to the association,
25 extend the period for entering an order under this section an
26 additional 30 days.

27 (c) An order disapproving a rate under this section must

1 state:

2 (1) the grounds for the disapproval; and

3 (2) the findings in support of the disapproval.

4 (d) The association may not issue an insurance policy or
5 endorsement subject to this section until the commissioner approves
6 the rates to be applied to the policy or endorsement. From the date
7 of the filing of the proposed rate with the department to the
8 effective date of the new rate, the association's previously filed
9 rate that is in effect on the date of the filing remains in effect.

10 (e) For purposes of this section, a rate is filed with the
11 department on the date the department receives the rate filing.

12 SECTION 7.018. Section 2210.359, Insurance Code, is amended
13 to read as follows:

14 Sec. 2210.359. LIMITATION ON CERTAIN RATE CHANGES. (a)
15 Except as otherwise provided by this subsection, a rate approved by
16 the commissioner under this subchapter may not reflect an average
17 rate change that is more than 10 percent higher or lower than the
18 rate for commercial windstorm and hail insurance or 10 percent
19 higher or lower than the rate for noncommercial windstorm and hail
20 insurance in effect on the date the filing is made. The rate may not
21 reflect a rate change for an individual rating class that is 15
22 percent higher or lower than the rate for that individual rating
23 class in effect on the date the filing is made. This subsection
24 does not apply to a rate filed under Section 2210.351 [~~Sections~~
25 ~~2210.351(a)-(d)~~].

26 (b) The commissioner may, by an order issued under Section
27 2210.008 after notice and hearing, suspend this section on a

1 finding that a catastrophe loss or series of occurrences resulting
2 in losses in the catastrophe area justify a need to ensure:

- 3 (1) rate adequacy in the catastrophe area; and
4 (2) availability of insurance outside the catastrophe
5 area.

6 SECTION 7.019. Subchapter H, Chapter 2210, Insurance Code,
7 is amended by adding Section 2210.364 to read as follows:

8 Sec. 2210.364. BOARD RATE MEETINGS; PUBLICATION OF PROPOSED
9 RATE CHANGES. (a) The board of directors shall discuss and make
10 decisions on proposed rate changes in public meetings of the board.

11 (b) The board of directors shall publish each proposed rate
12 change in the Texas Register for public comment before the public
13 meeting at which that change is to be discussed.

14 SECTION 7.020. Chapter 2210, Insurance Code, is amended by
15 adding Subchapter I to read as follows:

16 SUBCHAPTER I. POLICY FORMS AND ENDORSEMENTS

17 Sec. 2210.401. FILING OF POLICY FORMS AND ENDORSEMENTS.

18 (a) The association shall file with the department each policy and
19 endorsement form proposed to be used. The forms may be designed
20 specifically for use by the association without regard to other
21 forms filed with, approved by, or prescribed by the department for
22 use in this state.

23 (b) Not later than the 30th day after the date the
24 association files a proposed form or endorsement under Subsection
25 (a), the commissioner shall enter an order approving or
26 disapproving the proposed form or endorsement. The commissioner
27 may, on notice to the association, extend the period for entering an

1 order under this section an additional 30 days.

2 (c) An order disapproving a policy form or endorsement under
3 this section must state:

4 (1) the grounds for the disapproval; and

5 (2) the findings in support of the disapproval.

6 (d) The association may not use a policy form or endorsement
7 disapproved under Subsection (b) until the commissioner approves
8 the policy form or endorsement.

9 Sec. 2210.402. BOARD MEETINGS RELATING TO FORMS;
10 PUBLICATION OF PROPOSED CHANGES TO FORMS. (a) The board of
11 directors shall discuss and make decisions on proposed changes to
12 policy forms and endorsements used by the association in public
13 meetings of the board.

14 (b) The board of directors shall publish each proposed
15 change to a policy form or endorsement in the Texas Register for
16 public comment before the public meeting at which that change is to
17 be discussed.

18 SECTION 7.021. Section 2210.453, Insurance Code, is amended
19 to read as follows:

20 Sec. 2210.453. REINSURANCE PROGRAM. (a) The association
21 shall:

22 (1) make payments into the trust fund; or

23 (2) establish a reinsurance program approved by the
24 commissioner by rule [~~department~~].

25 (b) With the approval of the commissioner by rule
26 [~~department~~], the association may establish a reinsurance program
27 that operates in addition to or in concert with the trust fund.

1 (c) The commissioner is not required to conduct a hearing
2 under this section to approve a reinsurance program.

3 SECTION 7.022. Section 2210.454(b), Insurance Code, is
4 amended to read as follows:

5 (b) Each state fiscal year, the department may fund the
6 mitigation and preparedness plan using the investment income of the
7 trust fund in an amount not less than \$1 million and not more than 10
8 percent of the investment income of the prior fiscal year. ~~[From~~
9 ~~that amount and as part of that plan, the department may use in each~~
10 ~~fiscal year \$1 million for the windstorm inspection program~~
11 ~~established under Section 2210.251.]~~

12 SECTION 7.023. Section 2210.502(b), Insurance Code, is
13 amended to read as follows:

14 (b) An adjustment to the maximum liability limits must be
15 ~~[that is]~~ approved by the commissioner by rule. An adjustment
16 applies to each windstorm and hail insurance policy delivered,
17 issued for delivery, or renewed on or after January 1 of the year
18 following the date of the approval by the commissioner. The
19 indexing of the limits shall adjust for changes occurring on and
20 after January 1, 1997.

21 SECTION 7.024. Section 2210.504(a), Insurance Code, is
22 amended to read as follows:

23 (a) Not later than the 60th day after the date of receipt of
24 a filing under Section 2210.503, ~~[and after notice and hearing,]~~
25 the commissioner by rule ~~[order]~~ shall adopt a ~~[approve,~~
26 ~~disapprove, or modify the]~~ proposed adjustment to the maximum
27 liability limits, as provided by Section 2210.502.

1 SECTION 7.025. The following laws are repealed:

2 (1) Section 2210.207(f), Insurance Code;

3 (2) Section 2210.254(d), Insurance Code; and

4 (3) Sections 2210.256 and 2210.257, Insurance Code.

5 SECTION 7.026. (a) The board of directors of the Texas
6 Windstorm Insurance Association established under Section
7 2210.102, Insurance Code, as that section existed before amendment
8 by this Act, is abolished effective January 1, 2010.

9 (b) Not later than December 31, 2009, the commissioner of
10 insurance shall appoint the members of the board of directors of the
11 Texas Windstorm Insurance Association under Section 2210.102,
12 Insurance Code, as amended by this Act.

13 (c) The term of a person who is serving as a member of the
14 board of directors of the Texas Windstorm Insurance Association
15 immediately before the abolition of that board under Subsection (a)
16 of this section expires on January 1, 2010. Such a person is
17 eligible for appointment by the commissioner of insurance to the
18 new board of directors of the Texas Windstorm Insurance Association
19 under Section 2210.102, Insurance Code, as amended by this Act.

20 SECTION 7.027. Section 2210.202, Insurance Code, as amended
21 by this Act, applies only to an insurance policy delivered, issued
22 for delivery, or renewed on or after January 1, 2010. A policy
23 delivered, issued for delivery, or renewed before January 1, 2010,
24 is governed by the law as it existed immediately before the
25 effective date of this Act, and that law is continued in effect for
26 that purpose.

ARTICLE 8. ELECTRONIC TRANSACTIONS

SECTION 8.001. Subtitle A, Title 2, Insurance Code, is amended by adding Chapter 35 to read as follows:

CHAPTER 35. ELECTRONIC TRANSACTIONS

Sec. 35.001. DEFINITIONS. In this chapter:

(1) "Conduct business" includes engaging in or transacting any business in which a regulated entity is authorized to engage or is authorized to transact under the law of this state.

(2) "Regulated entity" means each insurer or other organization regulated by the department, including:

(A) a domestic or foreign, stock or mutual, life, health, or accident insurance company;

(B) a domestic or foreign, stock or mutual, fire or casualty insurance company;

(C) a Mexican casualty company;

(D) a domestic or foreign Lloyd's plan;

(E) a domestic or foreign reciprocal or interinsurance exchange;

(F) a domestic or foreign fraternal benefit society;

(G) a domestic or foreign title insurance company;

(H) an attorney's title insurance company;

(I) a stipulated premium company;

(J) a nonprofit legal service corporation;

(K) a health maintenance organization;

(L) a statewide mutual assessment company;

- 1 (M) a local mutual aid association;
- 2 (N) a local mutual burial association;
- 3 (O) an association exempt under Section 887.102;
- 4 (P) a nonprofit hospital, medical, or dental
5 service corporation, including a company subject to Chapter 842;
- 6 (Q) a county mutual insurance company; and
- 7 (R) a farm mutual insurance company.

8 Sec. 35.002. CONSTRUCTION WITH OTHER LAW. (a)

9 Notwithstanding any other provision of this code, a regulated
10 entity may conduct business electronically in accordance with this
11 chapter and the rules adopted under Section 35.004.

12 (b) To the extent of any conflict between another provision
13 of this code and a provision of this chapter, the provision of this
14 chapter controls.

15 Sec. 35.003. ELECTRONIC TRANSACTIONS AUTHORIZED. A

16 regulated entity may conduct business electronically to the same
17 extent that the entity is authorized to conduct business otherwise
18 if before the conduct of business each party to the business agrees
19 to conduct the business electronically.

20 Sec. 35.004. RULES. (a) The commissioner shall adopt rules
21 necessary to implement and enforce this chapter.

22 (b) The rules adopted by the commissioner under this section
23 must include rules that establish minimum standards with which a
24 regulated entity must comply in the entity's electronic conduct of
25 business with other regulated entities and consumers.

26 SECTION 8.002. Chapter 35, Insurance Code, as added by this
27 Act, applies only to business conducted on or after the effective

1 date of this Act. Business conducted before the effective date of
2 this Act is governed by the law in effect on the date the business
3 was conducted, and that law is continued in effect for that purpose.

4 ARTICLE 9. TRANSITION; EFFECTIVE DATE

5 SECTION 9.001. Except as otherwise provided by this Act,
6 this Act applies only to an insurance policy, contract, or evidence
7 of coverage that is delivered, issued for delivery, or renewed on or
8 after January 1, 2010. A policy, contract, or evidence of coverage
9 delivered, issued for delivery, or renewed before January 1, 2010,
10 is governed by the law as it existed immediately before the
11 effective date of this Act, and that law is continued in effect for
12 that purpose.

13 SECTION 9.002. This Act takes effect September 1, 2009.