

By: Hegar

S.B. No. 1007

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and operation of the Texas Department of Insurance and the operation of certain insurance programs; imposing administrative penalties.

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

ARTICLE 1. GENERAL PROVISIONS

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

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

(1) regulate the business of insurance in this state;

(2) administer the workers' compensation system of this state as provided by Title 5, Labor Code; ~~and~~

(3) ensure that this code and other laws regarding insurance and insurance companies are executed;

(4) protect and ensure the fair treatment of consumers; and

(5) ensure fair competition in the insurance industry in order to foster a competitive market.

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

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

1 existence as provided by that chapter, the department is abolished
2 September 1, 2015 [~~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 AND
18 RELATED TECHNICAL CORRECTIONS

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

21 SUBCHAPTER E. RULES REGARDING USE OF ADVISORY COMMITTEES

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

- 1 (1) purpose, role, responsibility, and goals;
- 2 (2) size and quorum requirements;
- 3 (3) qualifications for membership, including
4 experience requirements and geographic representation;
- 5 (4) appointment procedures;
- 6 (5) terms of service;
- 7 (6) training requirements; and
- 8 (7) duration.

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

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

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

21 SECTION 2.002. Section 843.441, Insurance Code, is
22 transferred to Subchapter L, Chapter 843, Insurance Code,
23 renumbered as Section 843.410, Insurance Code, and amended to read
24 as follows:

25 Sec. 843.410 [~~843.441~~]. ASSESSMENTS. (a) To provide
26 funds for the administrative expenses of the commissioner regarding
27 rehabilitation, liquidation, supervision, conservatorship, or

1 seizure [~~conservation~~] of a a [~~an impaired~~] health maintenance
 2 organization in this state that is placed in supervision or
 3 conservatorship under Chapter 441 or in a delinquency proceeding
 4 under Chapter 443 and is found by the commissioner to have
 5 insufficient funds to pay the total amount of health care claims and
 6 the administrative [~~, including~~] expenses incurred by the
 7 commissioner regarding the rehabilitation, liquidation,
 8 supervision, conservatorship, or seizure, the commissioner [~~acting~~
 9 ~~as receiver or by a special deputy receiver, the committee, at the~~
 10 ~~commissioner's direction,~~] shall assess each health maintenance
 11 organization in the proportion that the gross premiums of the
 12 health maintenance organization that were written in this state
 13 during the preceding calendar year bear to the aggregate gross
 14 premiums that were written in this state by all health maintenance
 15 organizations, as found [~~provided to the committee by the~~
 16 ~~commissioner~~] after review of annual statements and other reports
 17 the commissioner considers necessary.

18 (b) [~~(c)~~] The commissioner may abate or defer an assessment
 19 in whole or in part if, in the opinion of the commissioner, payment
 20 of the assessment would endanger the ability of a health
 21 maintenance organization to fulfill its contractual obligations.
 22 If an assessment is abated or deferred in whole or in part, the
 23 amount of the abatement or deferral may be assessed against the
 24 remaining health maintenance organizations in a manner consistent
 25 with the calculations made by the commissioner under Subsection (a)
 26 [~~basis for assessments provided by the approved plan of operation~~].

27 (c) [~~(d)~~] The total of all assessments on a health

1 maintenance organization may not exceed one-fourth of one percent
 2 of the health maintenance organization's gross premiums in any one
 3 calendar year.

4 (d) [~~(e)~~] Notwithstanding any other provision of this
 5 subchapter, funds derived from an assessment made under this
 6 section may not be used for more than 180 consecutive days for the
 7 expenses of administering the affairs of a ~~[an impaired]~~ health
 8 maintenance organization the surplus of which is impaired and that
 9 is [~~while~~] in supervision~~[, rehabilitation,]~~ or conservatorship
 10 [~~conservation for more than 150 days~~]. The commissioner
 11 [~~committee~~] may extend the period during which the commissioner
 12 [~~it~~] makes assessments for the administrative expenses [~~of an~~
 13 ~~impaired health maintenance organization as it considers~~
 14 ~~appropriate~~].

15 SECTION 2.003. Section 1660.004, Insurance Code, is amended
 16 to read as follows:

17 Sec. 1660.004. GENERAL RULEMAKING. The commissioner may
 18 adopt rules as necessary to implement this chapter~~[, including~~
 19 ~~rules requiring the implementation and provision of the technology~~
 20 ~~recommended by the advisory committee]~~.

21 SECTION 2.004. Subsection (b), Section 1660.102, Insurance
 22 Code, is amended to read as follows:

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

1 (1) information to be included on the identification
2 cards;

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

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

7 SECTION 2.005. Subsection (a), Section 2154.052,
8 Occupations Code, is amended to read as follows:

9 (a) The commissioner:

10 (1) shall administer this chapter through the state
11 fire marshal; and

12 (2) may issue rules to administer this chapter [~~in~~
13 ~~compliance with Section 2154.054~~].

14 SECTION 2.006. Subsection (a), Section 4001.009, Insurance
15 Code, is amended to read as follows:

16 (a) As referenced in Section 4001.003(9), a reference to an
17 agent in the following laws includes a subagent without regard to
18 whether a subagent is specifically mentioned:

19 (1) Chapters 281, 402, 421-423, 441, 444, 461-463,
20 [~~523~~] 541-556, 558, 559, 702, 703, 705, 821, 823-825, 827, 828,
21 844, 963, 1108, 1205-1209, 1211, 1213, 1214 [~~1211-1214~~], 1352,
22 1353, 1357, 1358, 1360-1363, 1369, 1453-1455, 1503, 1550, 1801,
23 1803, 2151-2154, 2201-2203, 2205-2213, 3501, 3502, 4007, 4102, and
24 4201-4203;

25 (2) Chapter 403, excluding Section 403.002;

26 (3) Subchapter A, Chapter 491;

27 (4) Subchapter C, Chapter 521;

- 1 (5) Subchapter A, Chapter 557;
- 2 (6) Subchapter B, Chapter 805;
- 3 (7) Subchapters D, E, and F, Chapter 982;
- 4 (8) Subchapter D, Chapter 1103;
- 5 (9) Subchapters B, C, D, and E, Chapter 1204,
- 6 excluding Sections 1204.153 and 1204.154;
- 7 (10) Subchapter B, Chapter 1366;
- 8 (11) Subchapters B, C, and D, Chapter 1367, excluding
- 9 Section 1367.053(c);
- 10 (12) Subchapters A, C, D, E, F, H, and I, Chapter 1451;
- 11 (13) Subchapter B, Chapter 1452;
- 12 (14) Sections 551.004, 841.303, 982.001, 982.002,
- 13 982.004, 982.052, 982.102, 982.103, 982.104, 982.106, 982.107,
- 14 982.108, 982.110, 982.111, 982.112, and 1802.001; and
- 15 (15) Chapter 107, Occupations Code.

16 SECTION 2.007. Section 4102.005, Insurance Code, is amended
17 to read as follows:

18 Sec. 4102.005. CODE OF ETHICS. The commissioner [~~with~~
19 ~~guidance from the public insurance adjusters examination advisory~~
20 ~~committee,~~] by rule shall adopt:

- 21 (1) a code of ethics for public insurance adjusters
- 22 that fosters the education of public insurance adjusters concerning
- 23 the ethical, legal, and business principles that should govern
- 24 their conduct;
- 25 (2) recommendations regarding the solicitation of the
- 26 adjustment of losses by public insurance adjusters; and
- 27 (3) any other principles of conduct or procedures that

1 the commissioner considers necessary and reasonable.

2 SECTION 2.008. The following laws are repealed:

3 (1) Chapter 523, Insurance Code;

4 (2) Section 524.004, Insurance Code;

5 (3) Subdivision (2), Section 1660.002, Insurance
6 Code;

7 (4) Subsection (c), Section 1660.101, Insurance Code;

8 (5) Sections 4002.004, 4004.002, 4101.006, and
9 4102.059, Insurance Code;

10 (6) Subsections (c) and (d), Section 4201.003,
11 Insurance Code;

12 (7) Sections 843.435, 843.436, 843.437, 843.438,
13 843.439, and 843.440, Insurance Code;

14 (8) Subchapter B, Chapter 1660, Insurance Code;

15 (9) Subchapter G, Chapter 2210, Insurance Code;

16 (10) Subchapter C, Chapter 6001, Insurance Code;

17 (11) Subchapter C, Chapter 6002, Insurance Code;

18 (12) Subchapter C, Chapter 6003, Insurance Code;

19 (13) Chapter 1212, Insurance Code;

20 (14) the heading to Subchapter M, Chapter 843,
21 Insurance Code;

22 (15) Section 2154.054, Occupations Code; and

23 (16) Subsection (c), Section 2154.055, Occupations
24 Code.

25 SECTION 2.009. (a) The following boards, committees,
26 councils, and task forces are abolished on the effective date of
27 this Act:

- 1 (1) the advisory council on continuing education for
2 insurance agents;
- 3 (2) the fire detection and alarm devices advisory
4 council;
- 5 (3) the fire extinguisher advisory council;
- 6 (4) the fire protection advisory council;
- 7 (5) the fireworks advisory council;
- 8 (6) the health maintenance organization solvency
9 surveillance committee;
- 10 (7) the insurance adjusters examination advisory
11 board;
- 12 (8) the technical advisory committee on claims
13 processing;
- 14 (9) the technical advisory committee on electronic
15 data exchange;
- 16 (10) the health coverage public awareness and
17 education program task force;
- 18 (11) the executive committee of the residential
19 property insurance market assistance program; and
- 20 (12) the windstorm building code advisory committee on
21 specifications and maintenance.

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

27 SECTION 2.010. The changes in law made by this Act by

1 repealing Sections 523.003 and 843.439, Insurance Code, apply only
2 to a cause of action that accrues on or after the effective date of
3 this Act. A cause of action that accrues before the effective date
4 of this Act is governed by the law in effect immediately before that
5 date, and that law is continued in effect for that purpose.

6 ARTICLE 3. REGULATION OF PREFERRED PROVIDER ORGANIZATIONS

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

9 CHAPTER 1302. REGULATION OF INDEPENDENT PREFERRED PROVIDER

10 ORGANIZATIONS

11 SUBCHAPTER A. GENERAL PROVISIONS

12 Sec. 1302.001. DEFINITIONS. In this chapter:

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

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

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

27 (b) Except as specifically provided by this chapter, a

1 reference in Chapter 1301 to a duty imposed under Chapter 1301 on a
2 preferred provider organization contracting with a preferred
3 provider benefit plan applies to a preferred provider organization
4 that contracts with a preferred provider benefit plan under a
5 certificate of authority issued under Subchapter B but that is not
6 an insurer or third-party administrator under this code.

7 Sec. 1302.003. RULES. The commissioner shall adopt rules
8 as necessary to implement this chapter.

9 Sec. 1302.004. COMPLAINTS. The department shall track and
10 analyze complaints made against preferred provider organizations
11 regulated under this chapter.

12 [Sections 1302.005-1302.050 reserved for expansion]

13 SUBCHAPTER B. REGULATION OF PREFERRED PROVIDER ORGANIZATIONS

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

21 (b) An insurer that holds a certificate of authority to
22 engage in the business of insurance in this state or is otherwise
23 authorized under this code to engage in the business of insurance in
24 this state is not required to obtain an additional certificate of
25 authority under this subchapter to operate a proprietary preferred
26 provider organization.

27 Sec. 1302.052. USE OF CERTAIN TERMS. A person may not use

1 the term "preferred provider organization" or "PPO" in the course
2 of operation unless the person:

3 (1) complies with this chapter and rules adopted by
4 the commissioner under this chapter; and

5 (2) holds a certificate of authority under this
6 chapter.

7 Sec. 1302.053. DURATION OF CERTIFICATE OF AUTHORITY. A
8 certificate of authority issued under this chapter continues in
9 effect:

10 (1) while the certificate holder meets the
11 requirements of this chapter and rules adopted under this chapter;
12 or

13 (2) until the commissioner suspends or revokes the
14 certificate or the commissioner terminates the certificate at the
15 request of the certificate holder.

16 [Sections 1302.054-1302.100 reserved for expansion]

17 SUBCHAPTER C. APPLICATION; ISSUANCE OF CERTIFICATE

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

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

22 (1) be on a form prescribed by rules adopted by the
23 commissioner; and

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

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

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

5 (2) all amendments to the applicant's basic
6 organizational document; and

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

10 (b) An application for a certificate of authority must
11 include a list of the names, addresses, and official positions of
12 the persons responsible for the conduct of the applicant's affairs,
13 including:

14 (1) each member of the board of directors, board of
15 trustees, executive committee, or other governing body or
16 committee;

17 (2) the principal officer, if the applicant is a
18 corporation; and

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

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

24 (d) The commissioner may adopt rules under which a preferred
25 provider organization is required to update the information
26 submitted in an application for a certificate of authority.

27 Sec. 1302.103. APPLICATION FEE. (a) An applicant for a

1 certificate of authority under this chapter shall pay to the
2 department a filing fee not to exceed \$1,000 for processing an
3 original application for a certificate of authority for a preferred
4 provider organization.

5 (b) The commissioner shall deposit a fee collected under
6 this section to the credit of the Texas Department of Insurance
7 operating account.

8 Sec. 1302.104. REQUIREMENTS FOR APPROVAL OF APPLICATION.

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

13 (1) granting the application would not violate a
14 federal or state law;

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

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

19 (4) the name under which the applicant will engage in
20 business in this state is not so similar to that of another
21 preferred provider organization that it is likely to mislead the
22 public.

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

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

1 state that, as of August 31, 2009, holds a certificate of authority
2 as an insurer under Chapter 801, Insurance Code, or a certificate of
3 authority as a third-party administrator under Chapter 4151,
4 Insurance Code, is not required to obtain a certificate of
5 authority under Chapter 1302, Insurance Code, as added by this Act.

6 (c) A preferred provider organization in this state that has
7 not applied for or does not hold, as of the effective date of this
8 Act, a certificate of authority under Chapter 801 or 4151,
9 Insurance Code, and that applies for a certificate of authority
10 under Chapter 1302, Insurance Code, as added by this Act, may
11 continue to operate, if the applicant otherwise complies with
12 applicable law, until the commissioner of insurance acts on the
13 application.

14 ARTICLE 4. RATE REGULATION

15 SECTION 4.001. Section 2251.101, Insurance Code, is amended
16 to read as follows:

17 Sec. 2251.101. RATE FILINGS AND SUPPORTING INFORMATION.

18 (a) Except as provided by Subchapter D, for risks written in this
19 state, each insurer shall file with the commissioner all rates,
20 applicable rating manuals, supplementary rating information, and
21 additional information as required by the commissioner. An insurer
22 may use a rate filed under this subchapter on and after the date the
23 rate is filed.

24 (b) The commissioner by rule shall:

25 (1) determine the information required to be included
26 in the filing, including:

27 (A) [~~1~~] categories of supporting information

1 and supplementary rating information;

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

6 (C) [(3)] information concerning policy fees,
7 service fees, and other fees that are charged or collected by the
8 insurer under Section 550.001 or 4005.003; and

9 (2) prescribe the process through which the department
10 requests supplementary rating information and supporting
11 information under this section, including:

12 (A) the number of times the department may make a
13 request for information; and

14 (B) the types of information the department may
15 request when reviewing a rate filing.

16 SECTION 4.002. Section 2251.103, Insurance Code, is amended
17 to read as follows:

18 Sec. 2251.103. COMMISSIONER ACTION CONCERNING [~~DISAPPROVAL~~
19 ~~OF RATE IN~~] RATE FILING NOT YET IN EFFECT; HEARING AND ANALYSIS.

20 (a) Not later than the earlier of the date the rate takes effect or
21 the 30th day after the date a rate is filed with the department
22 under Section 2251.101, the [The] commissioner shall disapprove the
23 [a] rate if the commissioner determines that the rate [filing made
24 under this chapter] does not comply with the requirements of this
25 chapter [meet the standards established under Subchapter B].

26 (b) Except as provided by Subsection (c), if a rate has not
27 been disapproved by the commissioner before the expiration of the

1 30-day period described by Subsection (a), the rate is not
2 considered disapproved under this section.

3 (c) For good cause, the commissioner may, on the expiration
4 of the 30-day period described by Subsection (a), extend the period
5 for disapproval of a rate for one additional 30-day period. The
6 commissioner and the insurer may not by agreement extend the 30-day
7 period described by Subsection (a) or this subsection.

8 (d) If the commissioner disapproves a rate under this
9 section [filing], the commissioner shall issue an order specifying
10 in what respects the rate [filing] fails to meet the requirements of
11 this chapter.

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

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

19 SECTION 4.003. Subchapter C, Chapter 2251, Insurance Code,
20 is amended by adding Section 2251.1031 to read as follows:

21 Sec. 2251.1031. REQUESTS FOR ADDITIONAL INFORMATION.

22 (a) If the department determines that the information filed by an
23 insurer under this subchapter or Subchapter D is incomplete or
24 otherwise deficient, the department may request additional
25 information from the insurer.

26 (b) If the department requests additional information from
27 the insurer during the 30-day period described by Section

1 2251.103(a) or 2251.153(a) or under a second 30-day period
2 described by Section 2251.103(c) or 2251.153(c), as applicable, the
3 time between the date the department submits the request to the
4 insurer and the date the department receives the information
5 requested is not included in the computation of the first 30-day
6 period or the second 30-day period, as applicable.

7 (c) For purposes of this section, the date of the
8 department's submission of a request for additional information is
9 the earlier of:

10 (1) the date of the department's electronic mailing or
11 documented telephone call relating to the request for additional
12 information; or

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

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

19 SECTION 4.004. The heading to Section 2251.104, Insurance
20 Code, is amended to read as follows:

21 Sec. 2251.104. COMMISSIONER DISAPPROVAL OF RATE IN EFFECT;
22 HEARING.

23 SECTION 4.005. Section 2251.107, Insurance Code, is amended
24 to read as follows:

25 Sec. 2251.107. PUBLIC [~~INSPECTION~~—OF] INFORMATION.

26 (a) Each filing made, and any supporting information filed, under
27 this chapter is open to public inspection as of the date of the

1 filing.

2 (b) Each year the department shall make available to the
3 public information concerning the department's general process and
4 methodology for rate review under this chapter, including factors
5 that contribute to the disapproval of a rate. Information provided
6 under this subsection must be general in nature and may not reveal
7 proprietary or trade secret information of any insurer.

8 SECTION 4.006. Section 2251.151, Insurance Code, is amended
9 by adding Subsections (c-1) and (f) and amending Subsection (e) to
10 read as follows:

11 (c-1) If the commissioner requires an insurer to file the
12 insurer's rates under this section, the commissioner shall
13 periodically assess whether the conditions described by Subsection
14 (a) continue to exist. If the commissioner determines that the
15 conditions no longer exist, the commissioner shall issue an order
16 excusing the insurer from filing the insurer's rates under this
17 section.

18 (e) If the commissioner requires an insurer to file the
19 insurer's rates under this section, the commissioner shall issue an
20 order specifying the commissioner's reasons for requiring the rate
21 filing and explaining any steps the insurer must take and any
22 conditions the insurer must meet in order to be excused from filing
23 the insurer's rates under this section. An affected insurer is
24 entitled to a hearing on written request made to the commissioner
25 not later than the 30th day after the date the order is issued.

26 (f) The commissioner by rule shall define:

27 (1) the financial conditions and rating practices that

1 may subject an insurer to this section under Subsection (a)(1); and
2 (2) the process by which the commissioner determines
3 that a statewide insurance emergency exists under Subsection
4 (a)(2).

5 SECTION 4.007. Section 2251.156, Insurance Code, is amended
6 to read as follows:

7 Sec. 2251.156. RATE FILING DISAPPROVAL BY COMMISSIONER;
8 HEARING. (a) If the commissioner disapproves a rate filing under
9 Section 2251.153(a)(2), the commissioner shall issue an order
10 disapproving the filing in accordance with Section 2251.103(d)
11 [~~2251.103(b)~~].

12 (b) An insurer whose rate filing is disapproved is entitled
13 to a hearing in accordance with Section 2251.103(e) [~~2251.103(e)~~].

14 (c) The department shall track precedents related to
15 disapprovals of rates under this subchapter to ensure uniform
16 application of rate standards by the department.

17 SECTION 4.008. Subsection (a), Section 2254.003, Insurance
18 Code, is amended to read as follows:

19 (a) This section applies to a rate for personal automobile
20 insurance or residential property insurance filed on or after the
21 effective date of Chapter 206, Acts of the 78th Legislature,
22 Regular Session, 2003.

23 SECTION 4.009. Section 2254.003, Insurance Code, is amended
24 by adding Subsections (a-1), (a-2), and (a-3) to read as follows:

25 (a-1) If the department provides an insurer with formal
26 written notice that a rate is excessive or unfairly discriminatory,
27 then the insurer may file a new rate or take other corrective action

1 to substantially address the department's concerns. The new rate
2 or other corrective action must be filed on or before the 60th day
3 following the date of formal written notice. At the commissioner's
4 discretion, the commissioner may extend the deadline to file by an
5 additional 30 days. If the department accepts the new rate or other
6 corrective action, then the insurer shall, according to
7 commissioner order, refund or issue a premium discount directly to
8 each affected policyholder on the portion of the premium found to be
9 excessive or unfairly discriminatory, plus interest on that amount.
10 The interest rate to be paid on refunds under this subsection is the
11 sum of six percent and the prime rate for the calendar year in which
12 formal written notice is given. For purposes of this subsection,
13 the prime rate is the prime rate as published in The Wall Street
14 Journal for the first day of the calendar year that is not a
15 Saturday, Sunday, or legal holiday.

16 (a-2) If the insurer does not file, or the department does
17 not accept, a new rate or other corrective action as provided under
18 Subsection (a-1), and the commissioner issues an order finding that
19 the rate is excessive or unfairly discriminatory under Section
20 2251.104, then the insurer must refund or issue a premium discount
21 directly to each affected policyholder the portion of the premium
22 found to be excessive or unfairly discriminatory, plus interest on
23 that amount. The interest rate to be paid on such refunds under
24 this subsection is 18 percent. An insurer shall not be required to
25 pay any interest penalty if the insurer prevails in an appeal of the
26 commissioner's order under Subchapter D, Chapter 36.

27 (a-3) The period for the refund and interest begins on the

1 date the department first provides the insurer with formal written
2 notice that the insurer's filed rate is excessive or unfairly
3 discriminatory, and interest continues to accrue until the refund
4 is paid.

5 SECTION 4.010. Section 2251.154 and Subsection (c), Section
6 2254.003, Insurance Code, are repealed.

7 SECTION 4.011. Section 2251.103, Insurance Code, as amended
8 by this Act, and Section 2251.1031, Insurance Code, as added by this
9 Act, apply only to a rate filing made on or after the effective date
10 of this Act. A rate filing made before the effective date of this
11 Act is governed by the law in effect at the time the filing was made,
12 and that law is continued in effect for that purpose.

13 SECTION 4.012. Subsection (c-1), Section 2251.151,
14 Insurance Code, as added by this Act, applies to an insurer that is
15 required to file the insurer's rates for approval under Section
16 2251.151, Insurance Code, on or after the effective date of this
17 Act, regardless of when the order requiring the insurer to file the
18 insurer's rates for approval under that section is first issued.

19 SECTION 4.013. Subsection (e), Section 2251.151, Insurance
20 Code, as amended by this Act, applies only to an order issued by the
21 commissioner of insurance on or after the effective date of this
22 Act. An order of the commissioner issued before the effective date
23 of this Act is governed by the law in effect on the date the order
24 was issued, and that law is continued in effect for that purpose.

25 ARTICLE 5. STATE FIRE MARSHAL'S OFFICE

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

1 (f) The commissioner by rule shall prescribe a reasonable
2 fee for an inspection performed by the state fire marshal that may
3 be charged to a property owner or occupant who requests the
4 inspection, as the commissioner considers appropriate. In
5 prescribing the fee, the commissioner shall consider the overall
6 cost to the state fire marshal to perform the inspections,
7 including the approximate amount of time the staff of the state fire
8 marshal needs to perform an inspection, travel costs, and other
9 expenses.

10 SECTION 5.002. Section 417.0081, Government Code, is
11 amended to read as follows:

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

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

25 (c) On or before January 1 of each year, the state fire
26 marshal shall report to the governor, lieutenant governor, speaker
27 of the house of representatives, and appropriate standing

1 committees of the legislature regarding the state fire marshal's
2 findings in conducting inspections under this section.

3 SECTION 5.003. Section 417.0082, Government Code, is
4 amended to read as follows:

5 Sec. 417.0082. PROTECTION OF CERTAIN STATE-OWNED OR
6 STATE-LEASED BUILDINGS AGAINST FIRE HAZARDS. (a) The state fire
7 marshal, under the direction of the commissioner, shall take any
8 action necessary to protect a public building under the charge and
9 control of the Texas Facilities [~~Building and Procurement~~]
10 Commission, and the building's occupants, and the occupants of a
11 building leased for the use of a state agency by the Texas
12 Facilities Commission, against an existing or threatened fire
13 hazard. The state fire marshal and the Texas Facilities [~~Building~~
14 ~~and Procurement~~] Commission shall include the State Office of Risk
15 Management in all communication concerning fire hazards.

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

20 SECTION 5.004. Section 417.010, Government Code, is amended
21 to read as follows:

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

27 (1) a person regulated under Title 20, Insurance Code;

1 and

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

4 (b) The commissioner by rule shall delegate to the state
5 fire marshal the authority to take disciplinary and enforcement
6 actions, including the imposition of administrative penalties in
7 accordance with this section on a person regulated under a law
8 listed under Subsection (a) who violates that law or a rule or order
9 adopted under that law. In the rules adopted under this subsection,
10 the commissioner shall:

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

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

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

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

24 (A) the nature, circumstances, extent, and
25 gravity of the violation; and

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

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

3 (3) the history of previous violations;

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

5 (5) efforts to correct the violation;

6 (6) whether the violation was intentional; and

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

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

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

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

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

21 (e) The state fire marshal shall impose an administrative
22 penalty under this section in the manner prescribed for imposition
23 of an administrative penalty under Subchapter B, Chapter 84,
24 Insurance Code. The state fire marshal may impose an
25 administrative penalty under this section without referring the
26 violation to the department for commissioner action.

27 (f) An affected person may dispute the imposition of the

1 penalty or the amount of the penalty imposed in the manner
2 prescribed by Subchapter C, Chapter 84, Insurance Code. Failure to
3 pay an administrative penalty imposed under this section is subject
4 to enforcement by the department.

5 ARTICLE 6. TITLE INSURANCE

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

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

12 SECTION 6.002. Subchapter D, Chapter 2651, Insurance Code,
13 is amended by adding Section 2651.1511 and amending Sections
14 2651.153 and 2651.155 to read as follows:

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

19 (1) the audited title insurance agent; or

20 (2) the audited direct operation.

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

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

27 (d) Notwithstanding Subsection (a), the commissioner may

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

- 3 (A) financial condition;
4 (B) trust, escrow, and operating accounts;
5 (C) ability to meet its liabilities; and
6 (D) compliance with the laws of this state and
7 rules adopted by the commissioner that affect the business conduct
8 of the title insurance agent or direct operation; and

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

10 (c) The department shall conduct the examination at the
11 principal office of the title insurance agent or direct operation,
12 but may access any other offices or business locations of the title
13 insurance agent or direct operation for purposes of conducting the
14 examination. The department may conduct the examination alone or
15 with representatives of the insurance supervising departments of
16 other states.

17 (d) Subject to Subsection (e), the department shall examine
18 a title insurance agent or direct operation as frequently as the
19 department considers necessary. At a minimum, the department shall
20 examine a title insurance agent or direct operation not less
21 frequently than once every three years.

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

25 Sec. 2651.352. EXAMINATION PERIOD. Unless the department
26 requests that an examination cover a longer period, the examination
27 must cover the period beginning on the last day covered by the most

1 recent examination and ending on December 31 of the year preceding
2 the year in which the examination is being conducted.

3 Sec. 2651.353. POWERS RELATED TO EXAMINATION. The
4 department or the examiner appointed by the department:

5 (1) has free access, and may require the title
6 insurance agent or direct operation to provide free access, to all
7 books and papers of the title insurance agent or direct operation
8 that relate to the business and affairs of the title insurance agent
9 or direct operation; and

10 (2) has the authority to summon and examine under
11 oath, if necessary, an officer, agent, or employee of the title
12 insurance agent or direct operation or any other person in relation
13 to the affairs and condition of the title insurance agent or direct
14 operation.

15 Sec. 2651.354. EFFECT OF SUBCHAPTER ON AUTHORITY TO USE
16 INFORMATION. (a) This subchapter does not limit the department's
17 authority to:

18 (1) use a final or preliminary examination report, the
19 work papers of an examiner, title insurance agent, or direct
20 operation, or other documents, or any other information discovered
21 or developed during an examination in connection with a legal or
22 regulatory action; or

23 (2) release a final or preliminary examination report,
24 the work papers of an examiner, title insurance agent, or direct
25 operation, or other documents, or any other information discovered
26 or developed during an examination, to a law enforcement agency, an
27 attorney regulatory authority, or an agency of this state, another

1 state, or the United States if the disclosure is necessary or proper
2 for the enforcement of the laws of this state, another state, or the
3 United States, as determined by the commissioner.

4 (b) A release by the commissioner under Subsection (a) of a
5 final or preliminary examination report, the work papers of an
6 examiner, title insurance agent, or direct operation, or other
7 documents, or any other information discovered or developed during
8 an examination, does not make the report, work papers, documents,
9 or information public information under Chapter 552, Government
10 Code.

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

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

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

20 Sec. 2651.356. DISCIPLINARY ACTION FOR FAILURE TO COMPLY
21 WITH SUBCHAPTER. A title insurance agent or direct operation is
22 subject to disciplinary action under Chapter 82 for failure or
23 refusal to comply with:

24 (1) this subchapter or a rule adopted under this
25 subchapter; or

26 (2) a request by the department or an appointed
27 examiner to be examined or to provide information requested as part

1 of an examination.

2 SECTION 6.004. Subsection (c), Section 2703.153, Insurance
3 Code, is amended to read as follows:

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

14 SECTION 6.005. Subsections (b), (c), and (d), Section
15 2602.103, Insurance Code, are repealed.

16 ARTICLE 7. TEXAS WINDSTORM INSURANCE ASSOCIATION

17 SECTION 7.001. Subsections (a) and (d), Section 2210.052,
18 Insurance Code, are amended to read as follows:

19 (a) Each member of the association shall participate in the
20 assessments [~~writings, expenses, profits, and losses~~] of the
21 association in the proportion that the net direct premiums of that
22 member during the preceding calendar year bears to the aggregate
23 net direct premiums by all members of the association, as
24 determined using the information provided under Subsection (b).

25 (d) Notwithstanding Subsection (a), a member, in accordance
26 with the plan of operation, is entitled to receive credit for
27 similar insurance voluntarily written in an area designated by the

1 commissioner. The member's participation in the assessments
2 [~~writings~~] of the association shall be reduced in accordance with
3 the plan of operation.

4 SECTION 7.002. Subsection (c), Section 2210.060, Insurance
5 Code, is amended to read as follows:

6 (c) Subsection (a) does not authorize the association to
7 indemnify a member of the association for participating in the
8 assessments made by [~~writings, expenses, profits, and losses of~~]
9 the association in the manner provided by this chapter.

10 SECTION 7.003. Subchapter C, Chapter 2210, Insurance Code,
11 is amended by adding Section 2210.1015 to read as follows:

12 Sec. 2210.1015. PRIMARY DUTY OF BOARD MEMBERS. The primary
13 duty of each member of the board of directors is to the association,
14 as specified in the plan of operation.

15 SECTION 7.004. Section 2210.102, Insurance Code, is amended
16 to read as follows:

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

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

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

26 (A) reside in a catastrophe area; and

27 (B) are policyholders of the association; and

1 (3) two property and casualty agents, each of whom
2 must:

3 (A) have demonstrated experience in the
4 association;

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

7 (C) hold a license under Chapter 4051 as a
8 general property and casualty agent or a personal lines property
9 and casualty agent.

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

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

20 (d) Notwithstanding Section 2210.103, a member of the board
21 of directors serves at the pleasure of the commissioner. The
22 commissioner shall appoint a replacement for a member who leaves or
23 is removed from the board of directors in the manner provided by
24 this section.

25 SECTION 7.005. Subsection (a), Section 2210.103, Insurance
26 Code, is amended to read as follows:

27 (a) Members of the board of directors serve three-year

1 staggered terms, with the terms of three members or four members, as
2 applicable, expiring on the third Tuesday of March of each year.

3 SECTION 7.006. Section 2210.104, Insurance Code, is amended
4 to read as follows:

5 Sec. 2210.104. OFFICERS. The board of directors shall
6 elect from the board's membership an executive committee consisting
7 of a presiding officer, assistant presiding officer, and
8 secretary-treasurer. At least one of the officers must be a member
9 appointed under Section 2210.102(a)(2) or (3). The board of
10 directors may elect other officers from the board's membership as
11 considered necessary to conduct the duties of the board.

12 SECTION 7.007. Subsection (a), Section 2210.152, Insurance
13 Code, is amended to read as follows:

14 (a) The plan of operation must:

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

17 (2) include:

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

20 (B) underwriting standards;

21 (C) procedures for accepting and ceding
22 reinsurance;

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

25 (E) time limits and procedures for processing
26 applications for insurance; ~~and~~

27 (F) a plan for property inspections for windstorm

1 and hail insurance; and

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

4 SECTION 7.008. Subsection (a), Section 2210.202, Insurance
5 Code, is amended to read as follows:

6 (a) A person who has an insurable interest in insurable
7 property may apply to the association for insurance coverage
8 provided under the plan of operation and an inspection of the
9 property, subject to any rules, including any inspection fee,
10 established by the board of directors and approved by the
11 commissioner. The association shall make insurance available to
12 each applicant in the catastrophe area whose property is insurable
13 property but who, after diligent efforts, is unable to obtain
14 property insurance covering damages from wind and hail through the
15 voluntary market, as evidenced by two declinations, cancellations,
16 or a combination of declinations and cancellations from insurers
17 authorized to engage in the business of, and writing, property
18 insurance covering damages from wind and hail in this state. For
19 purposes of this section, "declination" has the meaning assigned by
20 the plan of operation and may include a refusal to offer coverage
21 and the inability to obtain coverage. Notwithstanding Section
22 2210.203(c), evidence of two declinations or other comparable
23 evidence is required with an application for renewal of an
24 association policy unless the association has evidence that
25 comparable voluntary market coverage is not available in the area
26 of the property to be insured for the same class of risk.

27 SECTION 7.009. Section 2210.251, Insurance Code, is amended

1 by amending Subsections (a), (c), (f), and (g) and adding
2 Subsections (i), (j), and (k) to read as follows:

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

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

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

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

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

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

1 by the commissioner, regarding:

2 (1) the number of inspections performed;

3 (2) the number of structures inspected;

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

6 and

7 (4) any actions taken to resolve problems with
8 inspections.

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

12 SECTION 7.010. Subsections (a) and (c), Section 2210.254,
13 Insurance Code, are amended to read as follows:

14 (a) For purposes of this chapter, a "qualified inspector"
15 includes:

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

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

22 (3) an inspector who:

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

1 (B) has certifications as a buildings inspector
2 and coastal construction inspector; and

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

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

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

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

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

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

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

23 (3) procedures for handling complaints made to the
24 association regarding inspectors.

25 (c) The association shall include in the inspection program
26 an oversight process that includes regular reinspections by the
27 association to ensure that association inspectors perform duties

1 under this subchapter appropriately.

2 (d) The association shall report possible licensing
3 violations by an inspector selected under Sections 2210.254 and
4 2210.255 to perform inspections under this subchapter to the Texas
5 Board of Professional Engineers.

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

9 (f) As part of the report required under Section
10 2210.251(j), the association shall report to the department
11 regarding the operation of the inspection program.

12 SECTION 7.012. Section 2210.255, Insurance Code, is amended
13 to read as follows:

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

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

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

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

9 SECTION 7.014. Subsection (c), Section 2210.452, Insurance
10 Code, is amended to read as follows:

11 (c) At the end of each calendar year or policy year, the
12 association shall pay the net gain from operations of the
13 association to the trust fund. For purposes of this subsection:

14 (1) "Net gain from operations" includes ~~[equity of a~~
15 ~~member, including]~~ all premium and other revenue of the association
16 in excess of incurred losses and operating expenses.

17 (2) "Operating expenses" includes the cost of any
18 reinsurance ~~[, to the trust fund or a reinsurance program approved~~
19 ~~by the commissioner].~~

20 SECTION 7.015. Subsection (b), Section 2210.454, Insurance
21 Code, is amended to read as follows:

22 (b) Each state fiscal year, the department may fund the
23 mitigation and preparedness plan using the investment income of the
24 trust fund in an amount not less than \$1 million and not more than 10
25 percent of the investment income of the prior fiscal year. ~~[From~~
26 ~~that amount and as part of that plan, the department may use in each~~
27 ~~fiscal year \$1 million for the windstorm inspection program~~

1 ~~established under Section 2210.251.]~~

2 SECTION 7.016. The following laws are repealed:

3 (1) Subsection (d), Section 2210.254, Insurance Code;
4 and

5 (2) Sections 2210.256 and 2210.257, Insurance Code.

6 SECTION 7.017. (a) The board of directors of the Texas
7 Windstorm Insurance Association established under Section
8 2210.102, Insurance Code, as that section existed before amendment
9 by this Act, is abolished effective January 1, 2010.

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

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

21 SECTION 7.018. Section 2210.202, Insurance Code, as amended
22 by this Act, applies only to an insurance policy delivered, issued
23 for delivery, or renewed on or after January 1, 2010. A policy
24 delivered, issued for delivery, or renewed before January 1, 2010,
25 is governed by the law as it existed immediately before the
26 effective date of this Act, and that law is continued in effect for
27 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.

9 (a) 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
21 rules 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. DATA COLLECTION

5 SECTION 9.001. Chapter 38, Insurance Code, is amended by
6 adding Subchapter I to read as follows:

7 SUBCHAPTER I. DATA COLLECTION RELATING TO CERTAIN PERSONAL LINES
8 OF INSURANCE

9 Sec. 38.401. APPLICABILITY OF SUBCHAPTER. This subchapter
10 applies only to an insurer who writes personal automobile insurance
11 or residential property insurance in this state.

12 Sec. 38.402. FILING OF CERTAIN CLAIMS INFORMATION.

13 (a) The commissioner shall require each insurer described by
14 Section 38.401 to file with the commissioner aggregate personal
15 automobile insurance and residential property insurance claims
16 information for the period covered by the filing, including the
17 number of 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) closed with payment during the reporting period;

22 (4) closed without payment during the reporting
23 period; and

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

26 (b) An insurer described by Section 38.401 must file the
27 information described by Subsection (a) on an annual basis. The

1 information filed must be broken down by quarter.

2 Sec. 38.403. PUBLIC INFORMATION. (a) The department shall
3 post the data contained in claims information filings under Section
4 38.402 on the department's Internet website. The commissioner by
5 rule may establish a procedure for posting data under this
6 subsection that includes a description of the data that must be
7 posted and the manner in which the data must be posted.

8 (b) Information provided under this section must be
9 aggregate data by line of insurance for each insurer and may not
10 reveal proprietary or trade secret information of any insurer.

11 Sec. 38.404. RULES. The commissioner may adopt rules
12 necessary to implement this subchapter.

13 SECTION 9.002. Subtitle G, Title 5, Insurance Code, is
14 amended by adding Chapter 752 to read as follows:

15 CHAPTER 752. DATA MINING AND PATTERN RECOGNITION

16 Sec. 752.001. DEFINITION. In this chapter, "regulated
17 entities" means insurers or other organizations regulated by the
18 department, including:

- 19 (1) a domestic or foreign Lloyd's plan;
20 (2) a domestic or foreign reciprocal or interinsurance
21 exchange;
22 (3) a county mutual insurance company;
23 (4) a farm mutual insurance company;
24 (5) a domestic or foreign title insurance company; and
25 (6) an attorney's title insurance company.

26 Sec. 752.002. STUDY OF INFORMATION CONCERNING DATA MINING
27 AND PATTERN RECOGNITION. (a) The commissioner by rule shall

1 require regulated entities to report to the department concerning:

2 (1) technologies used by the entities to identify
3 relationships among variables that are used to predict differences
4 in expected losses of covered persons or applicants for coverage or
5 that are otherwise used in activities of regulated entities; and

6 (2) the manner in which the regulated entities use the
7 technologies described by Subdivision (1) in:

8 (A) underwriting and creating and defining risk
9 classifications;

10 (B) setting rates and premiums, as applicable;

11 (C) detecting fraudulent claims;

12 (D) identifying subrogation opportunities;

13 (E) improving marketing; or

14 (F) performing other activities identified by
15 the commissioner.

16 (b) In exercising the commissioner's authority under this
17 section, the commissioner shall require that regulated entities
18 report with respect to selected lines of insurance or selected
19 segments of the market and may limit the reporting to specific uses
20 of relationships derived from the technologies.

21 (c) Underwriting guidelines and related information
22 obtained by the commissioner under this section are subject to
23 Section 38.002 or 38.003, as appropriate. Other information
24 obtained under this section is commercial information not subject
25 to disclosure requirements of Chapter 552, Government Code.

26 Sec. 752.003. REPORT TO THE LEGISLATURE. The department
27 shall include in its biennial report to the legislature under

1 Section 32.022 information concerning the use of relationships
2 derived from the technologies described by Section 752.002 by
3 regulated entities.

4 ARTICLE 10. STUDY ON RATE FILING AND APPROVAL

5 REQUIREMENTS FOR CERTAIN INSURERS WRITING IN

6 UNDERSERVED AREAS; UNDERSERVED AREA DESIGNATION

7 SECTION 10.001. Section 2004.002, Insurance Code, is
8 amended by amending Subsection (b) and adding Subsections (c) and
9 (d) to read as follows:

10 (b) In determining which areas to designate as underserved,
11 the commissioner shall consider:

12 (1) whether residential property insurance is not
13 reasonably available to a substantial number of owners of insurable
14 property in the area; ~~and~~

15 (2) whether access to the full range of coverages and
16 policy forms for residential property insurance does not reasonably
17 exist; and

18 (3) any other relevant factor as determined by the
19 commissioner.

20 (c) The commissioner shall determine which areas to
21 designate as underserved under this section not less than once
22 every six years.

23 (d) The commissioner shall conduct a study concerning the
24 accuracy of current designations of underserved areas under this
25 section for the purpose of increasing and improving access to
26 insurance in those areas not less than once every six years.

27 SECTION 10.002. Subchapter F, Chapter 2251, Insurance Code,

1 is amended by adding Section 2251.253 to read as follows:

2 Sec. 2251.253. REPORT. (a) The commissioner shall conduct
3 a study concerning the impact of increasing the percentage of the
4 total amount of premiums collected by insurers for residential
5 property insurance under Section 2251.252.

6 (b) The commissioner shall report the results of the study
7 in the biennial report required under Section 32.022.

8 (c) This section expires September 1, 2011.

9 ARTICLE 11. CANCELLATION OR RESCISSION

10 SECTION 11.001. Subchapter B, Chapter 541, Insurance Code,
11 is amended by adding Section 541.062 to read as follows:

12 Sec. 541.062. BAD FAITH CANCELLATION OR RESCISSION. It is
13 an unfair method of competition or an unfair or deceptive act or
14 practice for a health benefit plan issuer to:

15 (1) set cancellation or rescission goals, quotas, or
16 targets;

17 (2) pay compensation of any kind, including a bonus or
18 award, that varies according to the number of cancellations or
19 rescissions;

20 (3) set, as a condition of employment, a number or
21 volume of cancellations or rescissions to be achieved; or

22 (4) set a performance standard, for employees or by
23 contract with another entity, based on the number or volume of
24 cancellations or rescissions.

25 SECTION 11.002. Chapter 1202, Insurance Code, is amended by
26 adding Subchapter C to read as follows:

27 SUBCHAPTER C. NOTICE REQUIRED FOR CERTAIN CANCELLATION OR

1 RESCISSION DECISIONS

2 Sec. 1202.101. APPLICABILITY. (a) This subchapter
3 applies only to a health benefit plan, including a small or large
4 employer health benefit plan written under Chapter 1501, that
5 provides benefits for medical or surgical expenses incurred as a
6 result of a health condition, accident, or sickness, including an
7 individual, group, blanket, or franchise insurance policy or
8 insurance agreement, a group hospital service contract, or an
9 individual or group evidence of coverage or similar coverage
10 document that is offered by:

- 11 (1) an insurance company;
- 12 (2) a group hospital service corporation operating
13 under Chapter 842;
- 14 (3) a fraternal benefit society operating under
15 Chapter 885;
- 16 (4) a stipulated premium company operating under
17 Chapter 884:
- 18 (5) a reciprocal exchange operating under Chapter 942;
- 19 (6) a Lloyd's plan operating under Chapter 941;
- 20 (7) a health maintenance organization operating under
21 Chapter 843;
- 22 (8) a multiple employer welfare arrangement that holds
23 a certificate of authority under Chapter 846; or
- 24 (9) an approved nonprofit health corporation that
25 holds a certificate of authority under Chapter 844.

26 (b) This subchapter does not apply to:

- 27 (1) a health benefit plan that provides coverage:

1 (A) only for a specified disease or for another
2 limited benefit other than an accident policy;

3 (B) only for accidental death or dismemberment;

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

7 (D) as a supplement to a liability insurance
8 policy;

9 (E) for credit insurance;

10 (F) only for dental or vision care;

11 (G) only for hospital expenses; or

12 (H) only for indemnity for hospital confinement;

13 (2) a Medicare supplemental policy as defined by
14 Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss),
15 as amended;

16 (3) a workers' compensation insurance policy;

17 (4) medical payment insurance coverage provided under
18 a motor vehicle insurance policy; or

19 (5) a long-term care insurance policy, including a
20 nursing home fixed indemnity policy, unless the commissioner
21 determines that the policy provides benefit coverage so
22 comprehensive that the policy is a health benefit plan described by
23 Subsection (a).

24 Sec. 1202.102. NOTICE OF INTENT TO CANCEL OR RESCIND.

25 (a) A health benefit plan issuer may not cancel or rescind a health
26 benefit plan on the basis of a misrepresentation or a preexisting
27 condition without first notifying an affected individual in writing

1 60 days before the issuer's intent to cancel or rescind the health
2 benefit plan.

3 (b) The notice required under Subsection (a) must include,
4 as applicable:

5 (1) the principal reasons for the decision to cancel
6 or rescind the health benefit plan;

7 (2) the clinical basis for a determination that a
8 preexisting condition exists;

9 (3) a description of any general screening criteria
10 used to evaluate issued health benefit plans and determine
11 eligibility for a decision to cancel or rescind; and

12 (4) notice that the individual may file a complaint
13 with the department if the individual believes the cancellation or
14 rescission is inappropriate.

15 Sec. 1202.103. RULES. The commissioner shall adopt rules
16 to implement and administer this subchapter.

17 ARTICLE 12. TRANSITION; EFFECTIVE DATE

18 SECTION 12.001. Except as otherwise provided by this Act,
19 this Act applies only to an insurance policy, contract, or evidence
20 of coverage that is delivered, issued for delivery, or renewed on or
21 after January 1, 2010. A policy, contract, or evidence of coverage
22 delivered, issued for delivery, or renewed before January 1, 2010,
23 is governed by the law as it existed immediately before the
24 effective date of this Act, and that law is continued in effect for
25 that purpose.

26 SECTION 12.002. This Act takes effect September 1, 2009.