

1-1 By: Hegar S.B. No. 1007  
1-2 (In the Senate - Filed March 2, 2009; March 16, 2009, read  
1-3 first time and referred to Committee on Government Organization;  
1-4 April 2, 2009, reported adversely, with favorable Committee  
1-5 Substitute; April 2, 2009, recommitted to Committee on Government  
1-6 Organization; April 6, 2009, reported adversely, with favorable  
1-7 Committee Substitute by the following vote: Yeas 6, Nays 0;  
1-8 April 6, 2009, sent to printer.)

1-9 COMMITTEE SUBSTITUTE FOR S.B. No. 1007 By: Hegar

1-10 A BILL TO BE ENTITLED  
1-11 AN ACT

1-12 relating to the continuation and operation of the Texas Department  
1-13 of Insurance and the operation of certain insurance programs;  
1-14 imposing administrative penalties.

1-15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-16 ARTICLE 1. GENERAL PROVISIONS

1-17 SECTION 1.001. Section 31.002, Insurance Code, is amended  
1-18 to read as follows:

1-19 Sec. 31.002. DUTIES OF DEPARTMENT. In addition to the other  
1-20 duties required of the Texas Department of Insurance, the  
1-21 department shall:

1-22 (1) regulate the business of insurance in this state;

1-23 (2) administer the workers' compensation system of  
1-24 this state as provided by Title 5, Labor Code; ~~and~~

1-25 (3) ensure that this code and other laws regarding  
1-26 insurance and insurance companies are executed;

1-27 (4) protect and ensure the fair treatment of  
1-28 consumers; and

1-29 (5) ensure fair competition in the insurance industry  
1-30 in order to foster a competitive market.

1-31 SECTION 1.002. Subsection (a), Section 31.004, Insurance  
1-32 Code, is amended to read as follows:

1-33 (a) The Texas Department of Insurance is subject to Chapter  
1-34 325, Government Code (Texas Sunset Act). Unless continued in  
1-35 existence as provided by that chapter, the department is abolished  
1-36 September 1, 2021 ~~[2009]~~.

1-37 SECTION 1.003. Section 33.004, Insurance Code, is amended  
1-38 to read as follows:

1-39 Sec. 33.004. TRADE ASSOCIATIONS. (a) In this section,  
1-40 "Texas trade association" means a cooperative and voluntarily  
1-41 joined statewide association of business or professional  
1-42 competitors in this state designed to assist its members and its  
1-43 industry or profession in dealing with mutual business or  
1-44 professional problems and in promoting their common interest.

1-45 (b) A person may not be the commissioner and may not be a  
1-46 department employee employed in a "bona fide executive,  
1-47 administrative, or professional capacity," as that phrase is used  
1-48 for purposes of establishing an exemption to the overtime  
1-49 provisions of the federal Fair Labor Standards Act of 1938 (29  
1-50 U.S.C. Section 201 et seq.), if:

1-51 (1) the person is an officer, employee, or paid  
1-52 consultant of a Texas trade association in the field of insurance;  
1-53 or

1-54 (2) the person's spouse is an officer, manager, or paid  
1-55 consultant of a Texas trade association in the field of insurance.

1-56 (c) A person may not be the commissioner or act as the  
1-57 general counsel to the commissioner or the department if the person  
1-58 is required to register as a lobbyist under Chapter 305, Government  
1-59 Code, because of the person's activities for compensation on behalf  
1-60 of a profession related to the operation of the department ~~[A person~~  
1-61 ~~who is an officer, employee, or paid consultant of a trade~~  
1-62 ~~association in the field of insurance may not be:~~

1-63 ~~[(1) the commissioner, or~~

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

2-6 ~~[(b) A person who is the spouse of an officer, manager, or~~  
2-7 ~~paid consultant of a trade association in the field of insurance may~~  
2-8 ~~not be:~~

2-9 ~~[(1) the commissioner, or~~  
2-10 ~~[(2) an employee of the department who is exempt from~~  
2-11 ~~the state's position classification plan or is compensated at or~~  
2-12 ~~above the amount prescribed by the General Appropriations Act for~~  
2-13 ~~step 1, salary group A17, of the position classification salary~~  
2-14 ~~schedule.~~

2-15 ~~[(c) In this section, "trade association" means a~~  
2-16 ~~nonprofit, cooperative, and voluntarily joined association of~~  
2-17 ~~business or professional competitors designed to assist its members~~  
2-18 ~~and its industry or profession in dealing with mutual business or~~  
2-19 ~~professional problems and in promoting their common interest.]~~

2-20 SECTION 1.004. Section 521.003, Insurance Code, is amended  
2-21 to read as follows:

2-22 Sec. 521.003. COMPLAINTS [NOTIFICATION OF COMPLAINT  
2-23 STATUS]. (a) The department shall maintain a system to promptly  
2-24 and efficiently act on complaints filed with the department. The  
2-25 department shall maintain information about parties to the  
2-26 complaint, the subject matter of the complaint, a summary of the  
2-27 results of the review or investigation of the complaint, and its  
2-28 disposition.

2-29 (b) The department shall make information available  
2-30 describing its procedures for complaint investigation and  
2-31 resolution.

2-32 (c) The department shall periodically notify the complaint  
2-33 parties of the status of the complaint until final disposition. [If  
2-34 a written complaint is filed with the department, the department,  
2-35 at least quarterly and until final disposition of the complaint,  
2-36 shall notify each party to the complaint of the complaint's status  
2-37 unless the notice would jeopardize an undercover investigation.]

2-38 SECTION 1.005. Subchapter B, Chapter 36, Insurance Code, is  
2-39 amended by adding Sections 36.110 and 36.111 to read as follows:

2-40 Sec. 36.110. USE OF TECHNOLOGY. The commissioner shall  
2-41 implement a policy requiring the department to use appropriate  
2-42 technological solutions to improve the department's ability to  
2-43 perform its functions. The policy must ensure that the public is  
2-44 able to interact with the department on the Internet.

2-45 Sec. 36.111. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE  
2-46 RESOLUTION POLICY. (a) The commissioner shall develop and  
2-47 implement a policy to encourage the use of:

2-48 (1) negotiated rulemaking procedures under Chapter  
2-49 2008, Government Code, for the adoption of department rules; and

2-50 (2) appropriate alternative dispute resolution  
2-51 procedures under Chapter 2009, Government Code, to assist in the  
2-52 resolution of internal and external disputes under the department's  
2-53 jurisdiction.

2-54 (b) The department's procedures relating to alternative  
2-55 dispute resolution must conform, to the extent possible, to any  
2-56 model guidelines issued by the State Office of Administrative  
2-57 Hearings for the use of alternative dispute resolution by state  
2-58 agencies.

2-59 (c) The commissioner shall designate a trained person to:

2-60 (1) coordinate the implementation of the policy  
2-61 adopted under Subsection (a);

2-62 (2) serve as a resource for any training needed to  
2-63 implement the procedures for negotiated rulemaking or alternative  
2-64 dispute resolution; and

2-65 (3) collect data concerning the effectiveness of those  
2-66 procedures, as implemented by the department.

2-67 SECTION 1.006. Sections 33.005 and 521.004, Insurance Code,  
2-68 are repealed.

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ARTICLE 2. CERTAIN ADVISORY BOARDS, COMMITTEES, AND COUNCILS AND RELATED TECHNICAL CORRECTIONS

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

SUBCHAPTER E. RULES REGARDING USE OF ADVISORY COMMITTEES

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

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

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

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

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

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

Sec. 843.410 [843.441]. ASSESSMENTS. (a) To provide funds for the administrative expenses of the commissioner regarding rehabilitation, liquidation, supervision, conservatorship, or seizure [conservation] of a [an-impaired] health maintenance organization in this state that is placed in supervision or conservatorship under Chapter 441 or in a delinquency proceeding under Chapter 443 and is found by the commissioner to have insufficient funds to pay the total amount of health care claims and the administrative[, including] expenses incurred by the commissioner regarding the rehabilitation, liquidation, supervision, conservatorship, or seizure, the commissioner [acting as receiver or by a special deputy receiver, the committee, at the commissioner's direction,] shall assess each health maintenance organization in the proportion that the gross premiums of the health maintenance organization that were written in this state during the preceding calendar year bear to the aggregate gross premiums that were written in this state by all health maintenance organizations, as found [provided to the committee by the commissioner] after review of annual statements and other reports the commissioner considers necessary.

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

(c) [(d)] The total of all assessments on a health maintenance organization may not exceed one-fourth of one percent of the health maintenance organization's gross premiums in any one calendar year.

(d) [(e)] Notwithstanding any other provision of this

4-1 subchapter, funds derived from an assessment made under this  
 4-2 section may not be used for more than 180 consecutive days for the  
 4-3 expenses of administering the affairs of a ~~[an impaired]~~ health  
 4-4 maintenance organization the surplus of which is impaired and that  
 4-5 is [while] in supervision~~[, rehabilitation,]~~ or conservatorship  
 4-6 ~~[conservation for more than 150 days]~~. The commissioner  
 4-7 ~~[committee]~~ may extend the period during which the commissioner  
 4-8 ~~[it]~~ makes assessments for the administrative expenses ~~[of an~~  
 4-9 ~~impaired health maintenance organization as it considers~~  
 4-10 ~~appropriate]~~.

4-11 SECTION 2.003. Section 1660.004, Insurance Code, is amended  
 4-12 to read as follows:

4-13 Sec. 1660.004. GENERAL RULEMAKING. The commissioner may  
 4-14 adopt rules as necessary to implement this chapter~~[, including~~  
 4-15 ~~rules requiring the implementation and provision of the technology~~  
 4-16 ~~recommended by the advisory committee]~~.

4-17 SECTION 2.004. Subsection (b), Section 1660.102, Insurance  
 4-18 Code, is amended to read as follows:

4-19 (b) The commissioner may consider ~~[the]~~ recommendations ~~[of~~  
 4-20 ~~the advisory committee]~~ or any other information provided in  
 4-21 response to a department-issued request for information relating to  
 4-22 electronic data exchange, including identification card programs,  
 4-23 before adopting rules regarding:

4-24 (1) information to be included on the identification  
 4-25 cards;

4-26 (2) technology to be used to implement the  
 4-27 identification card pilot program; and

4-28 (3) confidentiality and accuracy of the information  
 4-29 required to be included on the identification cards.

4-30 SECTION 2.005. Subsection (a), Section 2154.052,  
 4-31 Occupations Code, is amended to read as follows:

4-32 (a) The commissioner:

4-33 (1) shall administer this chapter through the state  
 4-34 fire marshal; and

4-35 (2) may issue rules to administer this chapter ~~[in~~  
 4-36 ~~compliance with Section 2154.054]~~.

4-37 SECTION 2.006. Subsection (a), Section 4001.009, Insurance  
 4-38 Code, is amended to read as follows:

4-39 (a) As referenced in Section 4001.003(9), a reference to an  
 4-40 agent in the following laws includes a subagent without regard to  
 4-41 whether a subagent is specifically mentioned:

4-42 (1) Chapters 281, 402, 421-423, 441, 444, 461-463,  
 4-43 ~~[523,]~~ 541-556, 558, 559, 702, 703, 705, 821, 823-825, 827, 828,  
 4-44 844, 963, 1108, 1205-1209, 1211, 1213, 1214 ~~[1211-1214]~~, 1352,  
 4-45 1353, 1357, 1358, 1360-1363, 1369, 1453-1455, 1503, 1550, 1801,  
 4-46 1803, 2151-2154, 2201-2203, 2205-2213, 3501, 3502, 4007, 4102, and  
 4-47 4201-4203;

4-48 (2) Chapter 403, excluding Section 403.002;

4-49 (3) Subchapter A, Chapter 491;

4-50 (4) Subchapter C, Chapter 521;

4-51 (5) Subchapter A, Chapter 557;

4-52 (6) Subchapter B, Chapter 805;

4-53 (7) Subchapters D, E, and F, Chapter 982;

4-54 (8) Subchapter D, Chapter 1103;

4-55 (9) Subchapters B, C, D, and E, Chapter 1204,  
 4-56 excluding Sections 1204.153 and 1204.154;

4-57 (10) Subchapter B, Chapter 1366;

4-58 (11) Subchapters B, C, and D, Chapter 1367, excluding  
 4-59 Section 1367.053(c);

4-60 (12) Subchapters A, C, D, E, F, H, and I, Chapter 1451;

4-61 (13) Subchapter B, Chapter 1452;

4-62 (14) Sections 551.004, 841.303, 982.001, 982.002,  
 4-63 982.004, 982.052, 982.102, 982.103, 982.104, 982.106, 982.107,  
 4-64 982.108, 982.110, 982.111, 982.112, and 1802.001; and

4-65 (15) Chapter 107, Occupations Code.

4-66 SECTION 2.007. Section 4102.005, Insurance Code, is amended  
 4-67 to read as follows:

4-68 Sec. 4102.005. CODE OF ETHICS. The commissioner~~[, with~~  
 4-69 ~~guidance from the public insurance adjusters examination advisory~~

5-1 ~~committee,~~] by rule shall adopt:

5-2 (1) a code of ethics for public insurance adjusters  
 5-3 that fosters the education of public insurance adjusters concerning  
 5-4 the ethical, legal, and business principles that should govern  
 5-5 their conduct;

5-6 (2) recommendations regarding the solicitation of the  
 5-7 adjustment of losses by public insurance adjusters; and

5-8 (3) any other principles of conduct or procedures that  
 5-9 the commissioner considers necessary and reasonable.

5-10 SECTION 2.008. The following laws are repealed:

5-11 (1) Chapter 523, Insurance Code;

5-12 (2) Section 524.004, Insurance Code;

5-13 (3) Subdivision (2), Section 1660.002, Insurance  
 5-14 Code;

5-15 (4) Subsection (c), Section 1660.101, Insurance Code;

5-16 (5) Sections 4002.004, 4004.002, 4101.006, and  
 5-17 4102.059, Insurance Code;

5-18 (6) Subsections (c) and (d), Section 4201.003,  
 5-19 Insurance Code;

5-20 (7) Sections 843.435, 843.436, 843.437, 843.438,  
 5-21 843.439, and 843.440, Insurance Code;

5-22 (8) Subchapter B, Chapter 1660, Insurance Code;

5-23 (9) Subchapter G, Chapter 2210, Insurance Code;

5-24 (10) Subchapter C, Chapter 6001, Insurance Code;

5-25 (11) Subchapter C, Chapter 6002, Insurance Code;

5-26 (12) Subchapter C, Chapter 6003, Insurance Code;

5-27 (13) Chapter 1212, Insurance Code;

5-28 (14) the heading to Subchapter M, Chapter 843,  
 5-29 Insurance Code;

5-30 (15) Section 2154.054, Occupations Code; and

5-31 (16) Subsection (c), Section 2154.055, Occupations  
 5-32 Code.

5-33 SECTION 2.009. (a) The following boards, committees,  
 5-34 councils, and task forces are abolished on the effective date of  
 5-35 this Act:

5-36 (1) the advisory council on continuing education for  
 5-37 insurance agents;

5-38 (2) the fire detection and alarm devices advisory  
 5-39 council;

5-40 (3) the fire extinguisher advisory council;

5-41 (4) the fire protection advisory council;

5-42 (5) the fireworks advisory council;

5-43 (6) the health maintenance organization solvency  
 5-44 surveillance committee;

5-45 (7) the insurance adjusters examination advisory  
 5-46 board;

5-47 (8) the technical advisory committee on claims  
 5-48 processing;

5-49 (9) the technical advisory committee on electronic  
 5-50 data exchange;

5-51 (10) the health coverage public awareness and  
 5-52 education program task force;

5-53 (11) the executive committee of the residential  
 5-54 property insurance market assistance program; and

5-55 (12) the windstorm building code advisory committee on  
 5-56 specifications and maintenance.

5-57 (b) All powers, duties, obligations, rights, contracts,  
 5-58 funds, records, and real or personal property of a board,  
 5-59 committee, council, or task force listed under Subsection (a) of  
 5-60 this section shall be transferred to the Texas Department of  
 5-61 Insurance not later than February 28, 2010.

5-62 SECTION 2.010. The changes in law made by this Act by  
 5-63 repealing Sections 523.003 and 843.439, Insurance Code, apply only  
 5-64 to a cause of action that accrues on or after the effective date of  
 5-65 this Act. A cause of action that accrues before the effective date  
 5-66 of this Act is governed by the law in effect immediately before that  
 5-67 date, and that law is continued in effect for that purpose.

5-68 ARTICLE 3. REGULATION OF PREFERRED PROVIDER ORGANIZATIONS

5-69 SECTION 3.001. Subtitle D, Title 8, Insurance Code, is

6-1 amended by adding Chapter 1302 to read as follows:

6-2 CHAPTER 1302. REGULATION OF INDEPENDENT PREFERRED PROVIDER  
6-3 ORGANIZATIONS

6-4 SUBCHAPTER A. GENERAL PROVISIONS

6-5 Sec. 1302.001. DEFINITIONS. In this chapter:

6-6 (1) "Person" means an individual, corporation,  
6-7 association, or other legal entity.

6-8 (2) "Preferred provider organization" means an  
6-9 insurer, third-party administrator, or other person that contracts  
6-10 with physicians or health care providers regarding reimbursements  
6-11 to be accepted prospectively by the physicians and health care  
6-12 providers in providing health care services to enrollees of benefit  
6-13 plans contractually entitled to benefit from the reimbursement  
6-14 agreements.

6-15 Sec. 1302.002. APPLICABILITY. (a) This chapter does not  
6-16 apply to a self-funded health benefit plan exempt from regulation  
6-17 by this state as an employee welfare benefit plan under the Employee  
6-18 Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et  
6-19 seq.).

6-20 (b) Except as specifically provided by this chapter, a  
6-21 reference in Chapter 1301 to a duty imposed under Chapter 1301 on a  
6-22 preferred provider organization contracting with a preferred  
6-23 provider benefit plan applies to a preferred provider organization  
6-24 that contracts with a preferred provider benefit plan under a  
6-25 certificate of authority issued under Subchapter B but that is not  
6-26 an insurer or third-party administrator under this code.

6-27 Sec. 1302.003. RULES. The commissioner shall adopt rules  
6-28 as necessary to implement this chapter.

6-29 Sec. 1302.004. COMPLAINTS. The department shall track and  
6-30 analyze complaints made against preferred provider organizations  
6-31 regulated under this chapter.

6-32 [Sections 1302.005-1302.050 reserved for expansion]

6-33 SUBCHAPTER B. REGULATION OF PREFERRED PROVIDER ORGANIZATIONS

6-34 Sec. 1302.051. CERTIFICATE OF AUTHORITY REQUIRED;  
6-35 EXCEPTION. (a) Except as provided by Subsection (b), a person may  
6-36 not organize or operate as a preferred provider organization in  
6-37 this state, or sell or offer to sell or solicit offers to purchase  
6-38 or receive consideration in conjunction with a preferred provider  
6-39 benefit plan, without holding a certificate of authority under this  
6-40 chapter.

6-41 (b) An insurer that holds a certificate of authority to  
6-42 engage in the business of insurance in this state or is otherwise  
6-43 authorized under this code to engage in the business of insurance in  
6-44 this state is not required to obtain an additional certificate of  
6-45 authority under this subchapter to operate a proprietary preferred  
6-46 provider organization.

6-47 Sec. 1302.052. USE OF CERTAIN TERMS. A person may not use  
6-48 the term "preferred provider organization" or "PPO" in the course  
6-49 of operation unless the person:

6-50 (1) complies with this chapter and rules adopted by  
6-51 the commissioner under this chapter; and

6-52 (2) holds a certificate of authority under this  
6-53 chapter.

6-54 Sec. 1302.053. DURATION OF CERTIFICATE OF AUTHORITY. A  
6-55 certificate of authority issued under this chapter continues in  
6-56 effect:

6-57 (1) while the certificate holder meets the  
6-58 requirements of this chapter and rules adopted under this chapter;  
6-59 or

6-60 (2) until the commissioner suspends or revokes the  
6-61 certificate or the commissioner terminates the certificate at the  
6-62 request of the certificate holder.

6-63 [Sections 1302.054-1302.100 reserved for expansion]

6-64 SUBCHAPTER C. APPLICATION; ISSUANCE OF CERTIFICATE

6-65 Sec. 1302.101. APPLICATION. (a) A person may apply to the  
6-66 department for and obtain a certificate of authority to organize  
6-67 and operate a preferred provider organization.

6-68 (b) An application for a certificate of authority must:

6-69 (1) be on a form prescribed by rules adopted by the

7-1 commissioner; and

7-2 (2) be verified by the applicant or an officer or other  
7-3 authorized representative of the applicant.

7-4 Sec. 1302.102. CONTENTS OF APPLICATION. (a) An  
7-5 application for a certificate of authority must include:

7-6 (1) a copy of the applicant's basic organizational  
7-7 document, if any, such as the articles of incorporation, articles  
7-8 of association, partnership agreement, trust agreement, or other  
7-9 applicable documents;

7-10 (2) all amendments to the applicant's basic  
7-11 organizational document; and

7-12 (3) a copy of the bylaws, rules and regulations, or  
7-13 similar documents, if any, regulating the conduct of the  
7-14 applicant's internal affairs.

7-15 (b) An application for a certificate of authority must  
7-16 include a list of the names, addresses, and official positions of  
7-17 the persons responsible for the conduct of the applicant's affairs,  
7-18 including:

7-19 (1) each member of the board of directors, board of  
7-20 trustees, executive committee, or other governing body or  
7-21 committee;

7-22 (2) the principal officer, if the applicant is a  
7-23 corporation; and

7-24 (3) each partner or member, if the applicant is a  
7-25 partnership or association.

7-26 (c) An application for a certificate of authority must  
7-27 include a template of any contract made or to be made between the  
7-28 applicant and any physician or health care provider.

7-29 (d) The commissioner may adopt rules under which a preferred  
7-30 provider organization is required to update the information  
7-31 submitted in an application for a certificate of authority.

7-32 Sec. 1302.103. APPLICATION FEE. (a) An applicant for a  
7-33 certificate of authority under this chapter shall pay to the  
7-34 department a filing fee not to exceed \$1,000 for processing an  
7-35 original application for a certificate of authority for a preferred  
7-36 provider organization.

7-37 (b) The commissioner shall deposit a fee collected under  
7-38 this section to the credit of the Texas Department of Insurance  
7-39 operating account.

7-40 Sec. 1302.104. REQUIREMENTS FOR APPROVAL OF APPLICATION.  
7-41 The commissioner shall approve an application for a certificate of  
7-42 authority to engage in business in this state as a preferred  
7-43 provider organization on payment of the application fee prescribed  
7-44 by Section 1302.103 and if the commissioner is satisfied that:

7-45 (1) granting the application would not violate a  
7-46 federal or state law;

7-47 (2) the applicant has not attempted to obtain the  
7-48 certificate of authority through fraud or bad faith;

7-49 (3) the applicant has complied with this chapter and  
7-50 rules adopted by the commissioner under this chapter; and

7-51 (4) the name under which the applicant will engage in  
7-52 business in this state is not so similar to that of another  
7-53 preferred provider organization that it is likely to mislead the  
7-54 public.

7-55 Sec. 1302.105. DENIAL OF APPLICATION. (a) If the  
7-56 commissioner is unable to approve an application for a certificate  
7-57 of authority under this chapter, the commissioner shall:

7-58 (1) provide the applicant with written notice  
7-59 specifying each deficiency in the application; and

7-60 (2) offer the applicant the opportunity for a hearing  
7-61 to address each reason and circumstance for possible denial of the  
7-62 application.

7-63 (b) The commissioner must provide an opportunity for a  
7-64 hearing before the commissioner finally denies an application.

7-65 (c) At the hearing, the applicant has the burden to produce  
7-66 sufficient competent evidence on which the commissioner can make  
7-67 the determinations required by Section 1302.104.

7-68 [Sections 1302.106-1302.150 reserved for expansion]

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SUBCHAPTER D. ENFORCEMENT

Sec. 1302.151. GROUND~~S~~ FOR DENIAL, SUSPENSION, OR  
REVOCATION OF CERTIFICATE OF AUTHORITY. The denial, suspension, or  
revocation of a certificate of authority under this chapter to act  
as a preferred provider organization is subject to:

- (1) Subchapter C, Chapter 4005; and
- (2) Chapter 82.

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

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

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

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

ARTICLE 4. RATE REGULATION

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

Sec. 2251.101. RATE FILINGS AND SUPPORTING INFORMATION.

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

(b) The commissioner by rule shall:

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

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

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

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

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

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

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

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

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

(a) Not later than the earlier of the date the rate takes effect or the 30th day after the date a rate is filed with the department under Section 2251.101, the [~~The~~] commissioner shall disapprove the [~~a~~] rate if the commissioner determines that the rate [~~filing made under this chapter~~] does not comply with the requirements of



9-1 this chapter [~~meet the standards established under Subchapter B~~].

9-2 (b) Except as provided by Subsection (c), if a rate has not  
 9-3 been disapproved by the commissioner before the expiration of the  
 9-4 30-day period described by Subsection (a), the rate is not  
 9-5 considered disapproved under this section.

9-6 (c) For good cause, the commissioner may, on the expiration  
 9-7 of the 30-day period described by Subsection (a), extend the period  
 9-8 for disapproval of a rate for one additional 30-day period. The  
 9-9 commissioner and the insurer may not by agreement extend the 30-day  
 9-10 period described by Subsection (a) or this subsection.

9-11 (d) If the commissioner disapproves a rate under this  
 9-12 section [~~filing~~], the commissioner shall issue an order specifying  
 9-13 in what respects the rate [~~filing~~] fails to meet the requirements of  
 9-14 this chapter.

9-15 (e) An insurer that files a rate that is disapproved under  
 9-16 this section [~~(c)~~ ~~The filer~~] is entitled to a hearing on written  
 9-17 request made to the commissioner not later than the 30th day after  
 9-18 the date the order disapproving the rate [~~filing~~] takes effect.

9-19 (f) The department shall track, compile, and routinely  
 9-20 analyze the factors that contribute to the disapproval of rates  
 9-21 under this section.

9-22 SECTION 4.003. Subchapter C, Chapter 2251, Insurance Code,  
 9-23 is amended by adding Section 2251.1031 to read as follows:

9-24 Sec. 2251.1031. REQUESTS FOR ADDITIONAL INFORMATION.

9-25 (a) If the department determines that the information filed by an  
 9-26 insurer under this subchapter or Subchapter D is incomplete or  
 9-27 otherwise deficient, the department may request additional  
 9-28 information from the insurer.

9-29 (b) If the department requests additional information from  
 9-30 the insurer during the 30-day period described by Section  
 9-31 2251.103(a) or 2251.153(a) or under a second 30-day period  
 9-32 described by Section 2251.103(c) or 2251.153(c), as applicable, the  
 9-33 time between the date the department submits the request to the  
 9-34 insurer and the date the department receives the information  
 9-35 requested is not included in the computation of the first 30-day  
 9-36 period or the second 30-day period, as applicable.

9-37 (c) For purposes of this section, the date of the  
 9-38 department's submission of a request for additional information is  
 9-39 the earlier of:

9-40 (1) the date of the department's electronic mailing or  
 9-41 documented telephone call relating to the request for additional  
 9-42 information; or

9-43 (2) the postmarked date on the department's letter  
 9-44 relating to the request for additional information.

9-45 (d) The department shall track, compile, and routinely  
 9-46 analyze the volume and content of requests for additional  
 9-47 information made under this section to ensure that all requests for  
 9-48 additional information are fair and reasonable.

9-49 SECTION 4.004. The heading to Section 2251.104, Insurance  
 9-50 Code, is amended to read as follows:

9-51 Sec. 2251.104. COMMISSIONER DISAPPROVAL OF RATE IN EFFECT;  
 9-52 HEARING.

9-53 SECTION 4.005. Section 2251.107, Insurance Code, is amended  
 9-54 to read as follows:

9-55 Sec. 2251.107. PUBLIC [~~INSPECTION—OF~~] INFORMATION.

9-56 (a) Each filing made, and any supporting information filed, under  
 9-57 this chapter is open to public inspection as of the date of the  
 9-58 filing.

9-59 (b) Each year the department shall make available to the  
 9-60 public information concerning the department's general process and  
 9-61 methodology for rate review under this chapter, including factors  
 9-62 that contribute to the disapproval of a rate. Information provided  
 9-63 under this subsection must be general in nature and may not reveal  
 9-64 proprietary or trade secret information of any insurer.

9-65 SECTION 4.006. Section 2251.151, Insurance Code, is amended  
 9-66 by adding Subsections (c-1) and (f) and amending Subsection (e) to  
 9-67 read as follows:

9-68 (c-1) If the commissioner requires an insurer to file the  
 9-69 insurer's rates under this section, the commissioner shall

10-1 periodically assess whether the conditions described by Subsection  
 10-2 (a) continue to exist. If the commissioner determines that the  
 10-3 conditions no longer exist, the commissioner shall issue an order  
 10-4 excusing the insurer from filing the insurer's rates under this  
 10-5 section.

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

10-14 (f) The commissioner by rule shall define:

10-15 (1) the financial conditions and rating practices that  
 10-16 may subject an insurer to this section under Subsection (a)(1); and

10-17 (2) the process by which the commissioner determines  
 10-18 that a statewide insurance emergency exists under Subsection  
 10-19 (a)(2).

10-20 SECTION 4.007. Section 2251.156, Insurance Code, is amended  
 10-21 to read as follows:

10-22 Sec. 2251.156. RATE FILING DISAPPROVAL BY COMMISSIONER;  
 10-23 HEARING. (a) If the commissioner disapproves a rate filing under  
 10-24 Section 2251.153(a)(2), the commissioner shall issue an order  
 10-25 disapproving the filing in accordance with Section 2251.103(d)  
 10-26 [~~2251.103(b)~~].

10-27 (b) An insurer whose rate filing is disapproved is entitled  
 10-28 to a hearing in accordance with Section 2251.103(e) [~~2251.103(e)~~].

10-29 (c) The department shall track precedents related to  
 10-30 disapprovals of rates under this subchapter to ensure uniform  
 10-31 application of rate standards by the department.

10-32 SECTION 4.008. Section 2251.154, Insurance Code, is  
 10-33 repealed.

10-34 SECTION 4.009. Section 2251.103, Insurance Code, as amended  
 10-35 by this Act, and Section 2251.1031, Insurance Code, as added by this  
 10-36 Act, apply only to a rate filing made on or after the effective date  
 10-37 of this Act. A rate filing made before the effective date of this  
 10-38 Act is governed by the law in effect at the time the filing was made,  
 10-39 and that law is continued in effect for that purpose.

10-40 SECTION 4.010. Subsection (c-1), Section 2251.151,  
 10-41 Insurance Code, as added by this Act, applies to an insurer that is  
 10-42 required to file the insurer's rates for approval under Section  
 10-43 2251.151, Insurance Code, on or after the effective date of this  
 10-44 Act, regardless of when the order requiring the insurer to file the  
 10-45 insurer's rates for approval under that section is first issued.

10-46 SECTION 4.011. Subsection (e), Section 2251.151, Insurance  
 10-47 Code, as amended by this Act, applies only to an order issued by the  
 10-48 commissioner of insurance on or after the effective date of this  
 10-49 Act. An order of the commissioner issued before the effective date  
 10-50 of this Act is governed by the law in effect on the date the order  
 10-51 was issued, and that law is continued in effect for that purpose.

10-52 ARTICLE 5. STATE FIRE MARSHAL'S OFFICE

10-53 SECTION 5.001. Section 417.008, Government Code, is amended  
 10-54 by adding Subsection (f) to read as follows:

10-55 (f) The commissioner by rule shall prescribe a reasonable  
 10-56 fee for an inspection performed by the state fire marshal that may  
 10-57 be charged to a property owner or occupant who requests the  
 10-58 inspection, as the commissioner considers appropriate. In  
 10-59 prescribing the fee, the commissioner shall consider the overall  
 10-60 cost to the state fire marshal to perform the inspections,  
 10-61 including the approximate amount of time the staff of the state fire  
 10-62 marshal needs to perform an inspection, travel costs, and other  
 10-63 expenses.

10-64 SECTION 5.002. Section 417.0081, Government Code, is  
 10-65 amended to read as follows:

10-66 Sec. 417.0081. INSPECTION OF CERTAIN STATE-OWNED OR  
 10-67 STATE-LEASED BUILDINGS. (a) The state fire marshal, at the  
 10-68 commissioner's direction, shall periodically inspect public  
 10-69 buildings under the charge and control of the Texas Facilities

11-1 ~~[General Services]~~ Commission and buildings leased for the use of a  
 11-2 state agency by the Texas Facilities Commission.

11-3 (b) For the purpose of determining a schedule for conducting  
 11-4 inspections under this section, the commissioner by rule shall  
 11-5 adopt guidelines for assigning potential fire safety risk to  
 11-6 state-owned and state-leased buildings. Rules adopted under this  
 11-7 subsection must provide for the inspection of each state-owned and  
 11-8 state-leased building to which this section applies, regardless of  
 11-9 how low the potential fire safety risk of the building may be.

11-10 (c) On or before January 1 of each year, the state fire  
 11-11 marshal shall report to the governor, lieutenant governor, speaker  
 11-12 of the house of representatives, and appropriate standing  
 11-13 committees of the legislature regarding the state fire marshal's  
 11-14 findings in conducting inspections under this section.

11-15 SECTION 5.003. Section 417.0082, Government Code, is  
 11-16 amended to read as follows:

11-17 Sec. 417.0082. PROTECTION OF CERTAIN STATE-OWNED OR  
 11-18 STATE-LEASED BUILDINGS AGAINST FIRE HAZARDS. (a) The state fire  
 11-19 marshal, under the direction of the commissioner, shall take any  
 11-20 action necessary to protect a public building under the charge and  
 11-21 control of the Texas Facilities ~~[Building and Procurement]~~  
 11-22 Commission, and the building's occupants, and the occupants of a  
 11-23 building leased for the use of a state agency by the Texas  
 11-24 Facilities Commission, against an existing or threatened fire  
 11-25 hazard. The state fire marshal and the Texas Facilities ~~[Building~~  
 11-26 ~~and Procurement]~~ Commission shall include the State Office of Risk  
 11-27 Management in all communication concerning fire hazards.

11-28 (b) The commissioner, the Texas Facilities ~~[Building and~~  
 11-29 ~~Procurement]~~ Commission, and the risk management board shall make  
 11-30 and each adopt by rule a memorandum of understanding that  
 11-31 coordinates the agency's duties under this section.

11-32 SECTION 5.004. Section 417.010, Government Code, is amended  
 11-33 to read as follows:

11-34 Sec. 417.010. DISCIPLINARY AND ENFORCEMENT ACTIONS;  
 11-35 ADMINISTRATIVE PENALTIES ~~[ALTERNATE REMEDIES]~~. (a) This section  
 11-36 applies to each person and firm licensed, registered, or otherwise  
 11-37 regulated by the department through the state fire marshal,  
 11-38 including:

11-39 (1) a person regulated under Title 20, Insurance Code;  
 11-40 and

11-41 (2) a person licensed under Chapter 2154, Occupations  
 11-42 Code.

11-43 (b) The commissioner by rule shall delegate to the state  
 11-44 fire marshal the authority to take disciplinary and enforcement  
 11-45 actions, including the imposition of administrative penalties in  
 11-46 accordance with this section on a person regulated under a law  
 11-47 listed under Subsection (a) who violates that law or a rule or order  
 11-48 adopted under that law. In the rules adopted under this subsection,  
 11-49 the commissioner shall:

11-50 (1) specify which types of disciplinary and  
 11-51 enforcement actions are delegated to the state fire marshal; and

11-52 (2) outline the process through which the state fire  
 11-53 marshal may, subject to Subsection (e), impose administrative  
 11-54 penalties or take other disciplinary and enforcement actions.

11-55 (c) The commissioner by rule shall adopt a schedule of  
 11-56 administrative penalties for violations subject to a penalty under  
 11-57 this section to ensure that the amount of an administrative penalty  
 11-58 imposed is appropriate to the violation. The department shall  
 11-59 provide the administrative penalty schedule to the public on  
 11-60 request. The amount of an administrative penalty imposed under  
 11-61 this section must be based on:

11-62 (1) the seriousness of the violation, including:  
 11-63 (A) the nature, circumstances, extent, and  
 11-64 gravity of the violation; and

11-65 (B) the hazard or potential hazard created to the  
 11-66 health, safety, or economic welfare of the public;

11-67 (2) the economic harm to the public interest or public  
 11-68 confidence caused by the violation;

11-69 (3) the history of previous violations;

- 12-1                   (4) the amount necessary to deter a future violation;
- 12-2                   (5) efforts to correct the violation;
- 12-3                   (6) whether the violation was intentional; and
- 12-4                   (7) any other matter that justice may require.

12-5           (d) In [The state fire marshal, in] the enforcement of a law  
 12-6 that is enforced by or through the state fire marshal, the state  
 12-7 fire marshal may, in lieu of cancelling, revoking, or suspending a  
 12-8 license or certificate of registration, impose on the holder of the  
 12-9 license or certificate of registration an order directing the  
 12-10 holder to do one or more of the following:

- 12-11                   (1) cease and desist from a specified activity;
- 12-12                   (2) pay an administrative penalty imposed under this  
 12-13 section [remit to the commissioner within a specified time a  
 12-14 monetary forfeiture not to exceed \$10,000 for each violation of an  
 12-15 applicable law or rule]; or [and]

12-16                   (3) make restitution to a person harmed by the holder's  
 12-17 violation of an applicable law or rule.

12-18           (e) The state fire marshal shall impose an administrative  
 12-19 penalty under this section in the manner prescribed for imposition  
 12-20 of an administrative penalty under Subchapter B, Chapter 84,  
 12-21 Insurance Code. The state fire marshal may impose an  
 12-22 administrative penalty under this section without referring the  
 12-23 violation to the department for commissioner action.

12-24           (f) An affected person may dispute the imposition of the  
 12-25 penalty or the amount of the penalty imposed in the manner  
 12-26 prescribed by Subchapter C, Chapter 84, Insurance Code. Failure to  
 12-27 pay an administrative penalty imposed under this section is subject  
 12-28 to enforcement by the department.

12-29                                   ARTICLE 6. TITLE INSURANCE

12-30           SECTION 6.001. Section 2602.107, Insurance Code, is amended  
 12-31 by adding Subsection (d) to read as follows:

12-32                   (d) The association shall pay, from the guaranty fee  
 12-33 account, fees and reasonable and necessary expenses that the  
 12-34 department incurs in an examination of a title agent or direct  
 12-35 operation under Subchapter H, Chapter 2651.

12-36           SECTION 6.002. Subchapter D, Chapter 2651, Insurance Code,  
 12-37 is amended by adding Section 2651.1511 and amending Sections  
 12-38 2651.153 and 2651.155 to read as follows:

12-39           Sec. 2651.1511. ANNUAL AUDIT OF OPERATING ACCOUNTS: TITLE  
 12-40 INSURANCE AGENTS AND DIRECT OPERATIONS. (a) Each title insurance  
 12-41 agent and direct operation shall submit to the department an annual  
 12-42 audit of operating accounts that is verified by an officer of:

- 12-43                   (1) the audited title insurance agent; or
- 12-44                   (2) the audited direct operation.

12-45                   (b) The title insurance agent or direct operation shall pay  
 12-46 for an audit of operating accounts under this section.

12-47                   (c) Not later than the 90th day after the date of the end of  
 12-48 the agent's or direct operation's fiscal year, the agent or direct  
 12-49 operation shall send by certified mail, postage prepaid, to the  
 12-50 department one copy of the audit report with a transmittal letter.

12-51                   (d) Notwithstanding Subsection (a), the commissioner may  
 12-52 exempt a title insurance agent or direct operation with an annual  
 12-53 premium volume of less than \$100,000 from the requirements of  
 12-54 Subsections (a)-(c).

12-55           Sec. 2651.153. RULES. The commissioner by rule shall  
 12-56 adopt:

- 12-57                   (1) the standards for an audit conducted under this  
 12-58 subchapter; [and]
- 12-59                   (2) the form of the required audit report; and
- 12-60                   (3) a process to exempt a title insurance agent or  
 12-61 direct operation under Section 2651.1511(d).

12-62           Sec. 2651.155. CONFIDENTIALITY OF AUDIT. (a) The  
 12-63 commissioner may classify an audit report that is filed with the  
 12-64 department by a title insurance company under this subchapter as  
 12-65 confidential and privileged.

12-66                   (b) Information obtained in an audit of the operating  
 12-67 accounts of a title insurance agent or direct operation under this  
 12-68 subchapter is confidential and not subject to disclosure under this  
 12-69 code or Chapter 552, Government Code.

13-1 SECTION 6.003. Chapter 2651, Insurance Code, is amended by  
13-2 adding Subchapter H to read as follows:

13-3 SUBCHAPTER H. EXAMINATION OF TITLE INSURANCE AGENTS AND DIRECT  
13-4 OPERATIONS

13-5 Sec. 2651.351. EXAMINATION OF TITLE INSURANCE AGENTS AND  
13-6 DIRECT OPERATIONS. (a) The department shall examine each title  
13-7 insurance agent and direct operation licensed in this state as  
13-8 provided by this subchapter.

13-9 (b) The department shall:

13-10 (1) examine the title insurance agent's or direct  
13-11 operation's:

13-12 (A) financial condition;

13-13 (B) trust, escrow, and operating accounts;

13-14 (C) ability to meet its liabilities; and

13-15 (D) compliance with the laws of this state and  
13-16 rules adopted by the commissioner that affect the business conduct  
13-17 of the title insurance agent or direct operation; and

13-18 (2) verify the data reported for rate promulgation.

13-19 (c) The department shall conduct the examination at the  
13-20 principal office of the title insurance agent or direct operation,  
13-21 but may access any other offices or business locations of the title  
13-22 insurance agent or direct operation for purposes of conducting the  
13-23 examination. The department may conduct the examination alone or  
13-24 with representatives of the insurance supervising departments of  
13-25 other states.

13-26 (d) Subject to Subsection (e), the department shall examine  
13-27 a title insurance agent or direct operation as frequently as the  
13-28 department considers necessary. At a minimum, the department shall  
13-29 examine a title insurance agent or direct operation not less  
13-30 frequently than once every three years.

13-31 (e) The commissioner shall adopt rules governing the  
13-32 frequency of examinations of a title insurance agent or direct  
13-33 operation licensed for less than three years.

13-34 Sec. 2651.352. EXAMINATION PERIOD. Unless the department  
13-35 requests that an examination cover a longer period, the examination  
13-36 must cover the period beginning on the last day covered by the most  
13-37 recent examination and ending on December 31 of the year preceding  
13-38 the year in which the examination is being conducted.

13-39 Sec. 2651.353. POWERS RELATED TO EXAMINATION. The  
13-40 department or the examiner appointed by the department:

13-41 (1) has free access, and may require the title  
13-42 insurance agent or direct operation to provide free access, to all  
13-43 books and papers of the title insurance agent or direct operation  
13-44 that relate to the business and affairs of the title insurance agent  
13-45 or direct operation; and

13-46 (2) has the authority to summon and examine under  
13-47 oath, if necessary, an officer, agent, or employee of the title  
13-48 insurance agent or direct operation or any other person in relation  
13-49 to the affairs and condition of the title insurance agent or direct  
13-50 operation.

13-51 Sec. 2651.354. EFFECT OF SUBCHAPTER ON AUTHORITY TO USE  
13-52 INFORMATION. (a) This subchapter does not limit the department's  
13-53 authority to:

13-54 (1) use a final or preliminary examination report, the  
13-55 work papers of an examiner, title insurance agent, or direct  
13-56 operation, or other documents, or any other information discovered  
13-57 or developed during an examination in connection with a legal or  
13-58 regulatory action; or

13-59 (2) release a final or preliminary examination report,  
13-60 the work papers of an examiner, title insurance agent, or direct  
13-61 operation, or other documents, or any other information discovered  
13-62 or developed during an examination, to a law enforcement agency, an  
13-63 attorney regulatory authority, or an agency of this state, another  
13-64 state, or the United States if the disclosure is necessary or proper  
13-65 for the enforcement of the laws of this state, another state, or the  
13-66 United States, as determined by the commissioner.

13-67 (b) A release by the commissioner under Subsection (a) of a  
13-68 final or preliminary examination report, the work papers of an  
13-69 examiner, title insurance agent, or direct operation, or other

14-1 documents, or any other information discovered or developed during  
 14-2 an examination, does not make the report, work papers, documents,  
 14-3 or information public information under Chapter 552, Government  
 14-4 Code.

14-5 Sec. 2651.355. CONFIDENTIALITY OF REPORTS AND RELATED  
 14-6 INFORMATION. (a) A final or preliminary examination report and  
 14-7 any information obtained during an examination are confidential and  
 14-8 are not subject to disclosure under Chapter 552, Government Code.

14-9 (b) Subsection (a) applies if the examined title insurance  
 14-10 agent or direct operation is under supervision or conservatorship.

14-11 (c) Subsection (a) does not apply to an examination  
 14-12 conducted in connection with a liquidation or receivership under  
 14-13 this code or another insurance law of this state.

14-14 Sec. 2651.356. DISCIPLINARY ACTION FOR FAILURE TO COMPLY  
 14-15 WITH SUBCHAPTER. A title insurance agent or direct operation is  
 14-16 subject to disciplinary action under Chapter 82 for failure or  
 14-17 refusal to comply with:

14-18 (1) this subchapter or a rule adopted under this  
 14-19 subchapter; or

14-20 (2) a request by the department or an appointed  
 14-21 examiner to be examined or to provide information requested as part  
 14-22 of an examination.

14-23 SECTION 6.004. Subsection (c), Section 2703.153, Insurance  
 14-24 Code, is amended to read as follows:

14-25 (c) Not less frequently than once every five years, the  
 14-26 commissioner shall evaluate the information required under this  
 14-27 section to determine whether the department needs additional or  
 14-28 different information or no longer needs certain information to  
 14-29 promulgate rates. If the department requires a title insurance  
 14-30 company or title insurance agent to include new or different  
 14-31 information in the statistical report, that information may be  
 14-32 considered by the commissioner in fixing premium rates if the  
 14-33 information collected is reasonably credible for the purposes for  
 14-34 which the information is to be used.

14-35 SECTION 6.005. Subsections (b), (c), and (d), Section  
 14-36 2602.103, Insurance Code, are repealed.

14-37 ARTICLE 7. TEXAS WINDSTORM INSURANCE ASSOCIATION

14-38 SECTION 7.001. Subsections (a) and (d), Section 2210.052,  
 14-39 Insurance Code, are amended to read as follows:

14-40 (a) Each member of the association shall participate in the  
 14-41 assessments [~~writings, expenses, profits, and losses~~] of the  
 14-42 association in the proportion that the net direct premiums of that  
 14-43 member during the preceding calendar year bears to the aggregate  
 14-44 net direct premiums by all members of the association, as  
 14-45 determined using the information provided under Subsection (b).

14-46 (d) Notwithstanding Subsection (a), a member, in accordance  
 14-47 with the plan of operation, is entitled to receive credit for  
 14-48 similar insurance voluntarily written in an area designated by the  
 14-49 commissioner. The member's participation in the assessments  
 14-50 [~~writings~~] of the association shall be reduced in accordance with  
 14-51 the plan of operation.

14-52 SECTION 7.002. Subsection (c), Section 2210.060, Insurance  
 14-53 Code, is amended to read as follows:

14-54 (c) Subsection (a) does not authorize the association to  
 14-55 indemnify a member of the association for participating in the  
 14-56 assessments made by [~~writings, expenses, profits, and losses of~~]  
 14-57 the association in the manner provided by this chapter.

14-58 SECTION 7.003. Subchapter C, Chapter 2210, Insurance Code,  
 14-59 is amended by adding Section 2210.1015 to read as follows:

14-60 Sec. 2210.1015. PRIMARY DUTY OF BOARD MEMBERS. The primary  
 14-61 duty of each member of the board of directors is to the association,  
 14-62 as specified in the plan of operation.

14-63 SECTION 7.004. Section 2210.102, Insurance Code, is amended  
 14-64 to read as follows:

14-65 Sec. 2210.102. COMPOSITION. (a) The board of directors  
 14-66 is composed of 11 [~~the following nine~~] members appointed by the  
 14-67 commissioner as follows:

14-68 (1) five representatives of different insurers who are  
 14-69 members of the association[~~, elected by the members as provided by~~

15-1 ~~the plan of operation];~~  
 15-2 (2) four [~~two~~] public representatives [~~who are~~  
 15-3 ~~nominated by the office of public insurance counsel and]~~ who, as of  
 15-4 the date of the appointment:  
 15-5 (A) reside in a catastrophe area; and  
 15-6 (B) are policyholders of the association; and  
 15-7 (3) two property and casualty agents, each of whom  
 15-8 must:  
 15-9 (A) have demonstrated experience in the  
 15-10 association;  
 15-11 (B) maintain the agent's principal office, as of  
 15-12 the date of the appointment, in a catastrophe area; and  
 15-13 (C) hold a license under Chapter 4051 as a  
 15-14 general property and casualty agent or a personal lines property  
 15-15 and casualty agent.  
 15-16 (b) Insurers who are members of the association shall  
 15-17 nominate, from among those members, persons to fill any vacancy in  
 15-18 the five board of director seats reserved for insurers. The board  
 15-19 of directors shall solicit nominations from the members and submit  
 15-20 the nominations to the commissioner. The nominee slate submitted  
 15-21 to the commissioner under this subsection must include at least  
 15-22 four more names than the number of vacancies. The commissioner  
 15-23 shall appoint replacement insurer members from the nominee slate.  
 15-24 (c) The persons appointed under Subsections (a)(2) and (3)  
 15-25 must be from different counties.  
 15-26 (d) Notwithstanding Section 2210.103, a member of the board  
 15-27 of directors serves at the pleasure of the commissioner. The  
 15-28 commissioner shall appoint a replacement for a member who leaves or  
 15-29 is removed from the board of directors in the manner provided by  
 15-30 this section.  
 15-31 SECTION 7.005. Subsection (a), Section 2210.103, Insurance  
 15-32 Code, is amended to read as follows:  
 15-33 (a) Members of the board of directors serve three-year  
 15-34 staggered terms, with the terms of three members or four members, as  
 15-35 applicable, expiring on the third Tuesday of March of each year.  
 15-36 SECTION 7.006. Section 2210.104, Insurance Code, is amended  
 15-37 to read as follows:  
 15-38 Sec. 2210.104. OFFICERS. The board of directors shall  
 15-39 elect from the board's membership an executive committee consisting  
 15-40 of a presiding officer, assistant presiding officer, and  
 15-41 secretary-treasurer. At least one of the officers must be a member  
 15-42 appointed under Section 2210.102(a)(2) or (3). The board of  
 15-43 directors may elect other officers from the board's membership as  
 15-44 considered necessary to conduct the duties of the board.  
 15-45 SECTION 7.007. Subsection (a), Section 2210.152, Insurance  
 15-46 Code, is amended to read as follows:  
 15-47 (a) The plan of operation must:  
 15-48 (1) provide for the efficient, economical, fair, and  
 15-49 nondiscriminatory administration of the association; and  
 15-50 (2) include:  
 15-51 (A) a plan for the equitable assessment of the  
 15-52 members of the association to defray losses and expenses;  
 15-53 (B) underwriting standards;  
 15-54 (C) procedures for accepting and ceding  
 15-55 reinsurance;  
 15-56 (D) procedures for determining the amount of  
 15-57 insurance to be provided to specific risks;  
 15-58 (E) time limits and procedures for processing  
 15-59 applications for insurance; ~~and]~~  
 15-60 (F) a plan for property inspections for windstorm  
 15-61 and hail insurance; and  
 15-62 (G) other provisions as considered necessary by  
 15-63 the department to implement the purposes of this chapter.  
 15-64 SECTION 7.008. Subsection (a), Section 2210.202, Insurance  
 15-65 Code, is amended to read as follows:  
 15-66 (a) A person who has an insurable interest in insurable  
 15-67 property may apply to the association for insurance coverage  
 15-68 provided under the plan of operation and an inspection of the  
 15-69 property, subject to any rules, including any inspection fee,

16-1 established by the board of directors and approved by the  
 16-2 commissioner. The association shall make insurance available to  
 16-3 each applicant in the catastrophe area whose property is insurable  
 16-4 property but who, after diligent efforts, is unable to obtain  
 16-5 property insurance covering damages from wind and hail through the  
 16-6 voluntary market, as evidenced by two declinations, cancellations,  
 16-7 or a combination of declinations and cancellations from insurers  
 16-8 authorized to engage in the business of, and writing, property  
 16-9 insurance covering damages from wind and hail in this state. For  
 16-10 purposes of this section, "declination" has the meaning assigned by  
 16-11 the plan of operation and may include a refusal to offer coverage  
 16-12 and the inability to obtain coverage. Notwithstanding Section  
 16-13 2210.203(c), evidence of two declinations or other comparable  
 16-14 evidence is required with an application for renewal of an  
 16-15 association policy unless the association has evidence that  
 16-16 comparable voluntary market coverage is not available in the area  
 16-17 of the property to be insured for the same class of risk.

16-18 SECTION 7.009. Section 2210.251, Insurance Code, is amended  
 16-19 by amending Subsections (a), (c), (f), and (g) and adding  
 16-20 Subsections (i), (j), and (k) to read as follows:

16-21 (a) Except as provided by this section, to be considered  
 16-22 insurable property eligible for windstorm and hail insurance  
 16-23 coverage from the association, a structure that is constructed or  
 16-24 repaired or to which additions are made on or after January 1, 1988,  
 16-25 must be inspected or approved by the association [~~department~~] for  
 16-26 compliance with the plan of operation.

16-27 (c) After January 1, 2004, a person must submit a notice of a  
 16-28 windstorm inspection to the association [~~unit responsible for~~  
 16-29 ~~certification of windstorm inspections at the department~~] before  
 16-30 beginning to construct, alter, remodel, enlarge, or repair a  
 16-31 structure.

16-32 (f) The association [~~department~~] shall issue a certificate  
 16-33 of compliance for each structure that qualifies for coverage. The  
 16-34 certificate is evidence of insurability of the structure by the  
 16-35 association.

16-36 (g) The association [~~department~~] may enter into agreements  
 16-37 and contracts as necessary to implement this section.

16-38 (i) The association may charge a reasonable fee for each  
 16-39 inspection in an amount set by commissioner rule. The association  
 16-40 may use fees collected under this section for operating expenses.

16-41 (j) Without limitation of the department's authority to  
 16-42 otherwise enforce this chapter, the department shall monitor the  
 16-43 association's compliance with this subchapter. To facilitate the  
 16-44 department's oversight of the inspection program, the association  
 16-45 shall report to the department quarterly, in the manner prescribed  
 16-46 by the commissioner, regarding:

16-47 (1) the number of inspections performed;

16-48 (2) the number of structures inspected;

16-49 (3) the number and a general description of the type of  
 16-50 inspection deficiencies discovered through the inspection program;  
 16-51 and

16-52 (4) any actions taken to resolve problems with  
 16-53 inspections.

16-54 (k) The commissioner may adopt rules in the manner  
 16-55 prescribed by Subchapter A, Chapter 36, as necessary to implement  
 16-56 this section.

16-57 SECTION 7.010. Subsections (a) and (c), Section 2210.254,  
 16-58 Insurance Code, are amended to read as follows:

16-59 (a) For purposes of this chapter, a "qualified inspector"  
 16-60 includes:

16-61 (1) a person determined by the association  
 16-62 [~~department~~] to be qualified because of training or experience to  
 16-63 perform building inspections;

16-64 (2) a licensed professional engineer who meets the  
 16-65 requirements specified by the association [~~commissioner rule~~] for  
 16-66 appointment to conduct windstorm inspections; and

16-67 (3) an inspector who:

16-68 (A) is certified by the International Code  
 16-69 Council, the Building Officials and Code Administrators



17-1 International, Inc., the International Conference of Building  
 17-2 Officials, or the Southern Building Code Congress International,  
 17-3 Inc.;

17-4 (B) has certifications as a buildings inspector  
 17-5 and coastal construction inspector; and

17-6 (C) complies with other requirements specified  
 17-7 by the board of directors [~~commissioner rule~~].

17-8 (c) Before performing building inspections, a qualified  
 17-9 inspector must enter into a contract with the association [~~be~~  
 17-10 ~~approved and appointed or employed by the department~~].

17-11 SECTION 7.011. Subchapter F, Chapter 2210, Insurance Code,  
 17-12 is amended by adding Section 2210.2541 to read as follows:

17-13 Sec. 2210.2541. ASSOCIATION INSPECTION PROGRAM. (a) The  
 17-14 association shall develop an inspection program to perform  
 17-15 inspections for windstorm and hail insurance as required by this  
 17-16 subchapter.

17-17 (b) The association shall adopt inspection standards and  
 17-18 regulations regarding the operation of the inspection program,  
 17-19 including:

17-20 (1) inspection training and education requirements,  
 17-21 as determined necessary by the association, for licensed engineers  
 17-22 who contract with the association under Section 2210.255;

17-23 (2) guidelines for inspection fees assessed under  
 17-24 Section 2210.251(i) and for fees collected by inspectors under this  
 17-25 subchapter; and

17-26 (3) procedures for handling complaints made to the  
 17-27 association regarding inspectors.

17-28 (c) The association shall include in the inspection program  
 17-29 an oversight process that includes regular reinspections by the  
 17-30 association to ensure that association inspectors perform duties  
 17-31 under this subchapter appropriately.

17-32 (d) The association shall report possible licensing  
 17-33 violations by an inspector selected under Sections 2210.254 and  
 17-34 2210.255 to perform inspections under this subchapter to the Texas  
 17-35 Board of Professional Engineers.

17-36 (e) The association shall establish procedures as part of  
 17-37 the inspection program as necessary to issue certificates of  
 17-38 compliance under Section 2210.251(f).

17-39 (f) As part of the report required under Section  
 17-40 2210.251(j), the association shall report to the department  
 17-41 regarding the operation of the inspection program.

17-42 SECTION 7.012. Section 2210.255, Insurance Code, is amended  
 17-43 to read as follows:

17-44 Sec. 2210.255. CONTRACT WITH [~~APPOINTMENT OF~~] LICENSED  
 17-45 ENGINEER AS INSPECTOR. (a) On request of an engineer licensed by  
 17-46 the Texas Board of Professional Engineers, the association may  
 17-47 enter into a contract with [~~commissioner shall appoint~~] the  
 17-48 engineer under which the engineer serves as an inspector under this  
 17-49 subchapter. The association may enter into a contract under this  
 17-50 subsection only on receipt of information satisfactory to the board  
 17-51 [not later than the 10th day after the date the engineer delivers to  
 17-52 the commissioner information demonstrating] that the engineer is  
 17-53 qualified to perform windstorm inspections under this subchapter.

17-54 (b) The association shall consult with the commissioner  
 17-55 regarding [~~shall adopt rules establishing~~] the information to be  
 17-56 considered in contracting with [~~appointing~~] engineers under this  
 17-57 section.

17-58 SECTION 7.013. Subchapter F, Chapter 2210, Insurance Code,  
 17-59 is amended by adding Section 2210.2565 to read as follows:

17-60 Sec. 2210.2565. PROCEDURES REGARDING CONTRACTING WITH  
 17-61 INSPECTORS. The board of directors shall develop procedures for  
 17-62 contracting with and oversight of inspectors selected under  
 17-63 Sections 2210.254 and 2210.255, including procedures relating to  
 17-64 the grounds for the suspension, modification, or revocation of a  
 17-65 contract under this subchapter with an inspector.

17-66 SECTION 7.014. Subsection (c), Section 2210.452, Insurance  
 17-67 Code, is amended to read as follows:

17-68 (c) At the end of each calendar year or policy year, the  
 17-69 association shall pay the net gain from operations of the

18-1 association to the trust fund. For purposes of this subsection:  
18-2 (1) "Net gain from operations" includes [equity of a  
18-3 member, including] all premium and other revenue of the association  
18-4 in excess of incurred losses and operating expenses.

18-5 (2) "Operating expenses" includes the cost of any  
18-6 reinsurance[, to the trust fund or a reinsurance program approved  
18-7 by the commissioner].

18-8 SECTION 7.015. Subsection (b), Section 2210.454, Insurance  
18-9 Code, is amended to read as follows:

18-10 (b) Each state fiscal year, the department may fund the  
18-11 mitigation and preparedness plan using the investment income of the  
18-12 trust fund in an amount not less than \$1 million and not more than 10  
18-13 percent of the investment income of the prior fiscal year. [~~From~~  
18-14 ~~that amount and as part of that plan, the department may use in each~~  
18-15 ~~fiscal year \$1 million for the windstorm inspection program~~  
18-16 ~~established under Section 2210.251.]~~

18-17 SECTION 7.016. The following laws are repealed:

18-18 (1) Subsection (d), Section 2210.254, Insurance Code;  
18-19 and

18-20 (2) Sections 2210.256 and 2210.257, Insurance Code.

18-21 SECTION 7.017. (a) The board of directors of the Texas  
18-22 Windstorm Insurance Association established under Section  
18-23 2210.102, Insurance Code, as that section existed before amendment  
18-24 by this Act, is abolished effective January 1, 2010.

18-25 (b) Not later than December 31, 2009, the commissioner of  
18-26 insurance shall appoint the members of the board of directors of the  
18-27 Texas Windstorm Insurance Association under Section 2210.102,  
18-28 Insurance Code, as amended by this Act.

18-29 (c) The term of a person who is serving as a member of the  
18-30 board of directors of the Texas Windstorm Insurance Association  
18-31 immediately before the abolition of that board under Subsection (a)  
18-32 of this section expires on January 1, 2010. Such a person is  
18-33 eligible for appointment by the commissioner of insurance to the  
18-34 new board of directors of the Texas Windstorm Insurance Association  
18-35 under Section 2210.102, Insurance Code, as amended by this Act.

18-36 SECTION 7.018. Section 2210.202, Insurance Code, as amended  
18-37 by this Act, applies only to an insurance policy delivered, issued  
18-38 for delivery, or renewed on or after January 1, 2010. A policy  
18-39 delivered, issued for delivery, or renewed before January 1, 2010,  
18-40 is governed by the law as it existed immediately before the  
18-41 effective date of this Act, and that law is continued in effect for  
18-42 that purpose.

18-43 ARTICLE 8. ELECTRONIC TRANSACTIONS

18-44 SECTION 8.001. Subtitle A, Title 2, Insurance Code, is  
18-45 amended by adding Chapter 35 to read as follows:

18-46 CHAPTER 35. ELECTRONIC TRANSACTIONS

18-47 Sec. 35.001. DEFINITIONS. In this chapter:

18-48 (1) "Conduct business" includes engaging in or  
18-49 transacting any business in which a regulated entity is authorized  
18-50 to engage or is authorized to transact under the law of this state.

18-51 (2) "Regulated entity" means each insurer or other  
18-52 organization regulated by the department, including:

18-53 (A) a domestic or foreign, stock or mutual, life,  
18-54 health, or accident insurance company;

18-55 (B) a domestic or foreign, stock or mutual, fire  
18-56 or casualty insurance company;

18-57 (C) a Mexican casualty company;

18-58 (D) a domestic or foreign Lloyd's plan;

18-59 (E) a domestic or foreign reciprocal or  
18-60 interinsurance exchange;

18-61 (F) a domestic or foreign fraternal benefit  
18-62 society;

18-63 (G) a domestic or foreign title insurance  
18-64 company;

18-65 (H) an attorney's title insurance company;

18-66 (I) a stipulated premium company;

18-67 (J) a nonprofit legal service corporation;

18-68 (K) a health maintenance organization;

18-69 (L) a statewide mutual assessment company;

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

Sec. 35.002. CONSTRUCTION WITH OTHER LAW.

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

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

Sec. 35.003. ELECTRONIC TRANSACTIONS AUTHORIZED. A regulated entity may conduct business electronically to the same extent that the entity is authorized to conduct business otherwise if before the conduct of business each party to the business agrees to conduct the business electronically.

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

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

SECTION 8.002. Chapter 35, Insurance Code, as added by this Act, applies only to business conducted on or after the effective date of this Act. Business conducted before the effective date of this Act is governed by the law in effect on the date the business was conducted, and that law is continued in effect for that purpose.

ARTICLE 9. DATA COLLECTION

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

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

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

Sec. 38.402. FILING OF CERTAIN CLAIMS INFORMATION. (a) The commissioner shall require each insurer described by Section 38.401 to file with the commissioner aggregate personal automobile insurance and residential property insurance claims information for the period covered by the filing, including the number of claims:

- (1) filed during the reporting period;
- (2) pending on the last day of the reporting period, including pending litigation;
- (3) closed with payment during the reporting period;
- (4) closed without payment during the reporting period; and
- (5) carrying over from the reporting period immediately preceding the current reporting period.

(b) An insurer described by Section 38.401 must file the information described by Subsection (a) on an annual basis. The information filed must be broken down by quarter.

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

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

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

ARTICLE 10. STUDY ON RATE FILING AND APPROVAL REQUIREMENTS FOR CERTAIN INSURERS WRITING IN UNDERSERVED AREAS; UNDERSERVED AREA DESIGNATION

20-1 SECTION 10.001. Section 2004.002, Insurance Code, is  
20-2 amended by amending Subsection (b) and adding Subsections (c) and  
20-3 (d) to read as follows:

20-4 (b) In determining which areas to designate as underserved,  
20-5 the commissioner shall consider:

20-6 (1) whether residential property insurance is not  
20-7 reasonably available to a substantial number of owners of insurable  
20-8 property in the area; ~~and~~

20-9 (2) whether access to the full range of coverages and  
20-10 policy forms for residential property insurance does not reasonably  
20-11 exist; and

20-12 (3) any other relevant factor as determined by the  
20-13 commissioner.

20-14 (c) The commissioner shall determine which areas to  
20-15 designate as underserved under this section not less than once  
20-16 every six years.

20-17 (d) The commissioner shall conduct a study concerning the  
20-18 accuracy of current designations of underserved areas under this  
20-19 section for the purpose of increasing and improving access to  
20-20 insurance in those areas not less than once every six years.

20-21 SECTION 10.002. Subchapter F, Chapter 2251, Insurance Code,  
20-22 is amended by adding Section 2251.253 to read as follows:

20-23 Sec. 2251.253. REPORT. (a) The commissioner shall conduct  
20-24 a study concerning the impact of increasing the percentage of the  
20-25 total amount of premiums collected by insurers for residential  
20-26 property insurance under Section 2251.252.

20-27 (b) The commissioner shall report the results of the study  
20-28 in the biennial report required under Section 32.022.

20-29 (c) This section expires September 1, 2011.

20-30 ARTICLE 11. TRANSITION; EFFECTIVE DATE

20-31 SECTION 11.001. Except as otherwise provided by this Act,  
20-32 this Act applies only to an insurance policy, contract, or evidence  
20-33 of coverage that is delivered, issued for delivery, or renewed on or  
20-34 after January 1, 2010. A policy, contract, or evidence of coverage  
20-35 delivered, issued for delivery, or renewed before January 1, 2010,  
20-36 is governed by the law as it existed immediately before the  
20-37 effective date of this Act, and that law is continued in effect for  
20-38 that purpose.

20-39 SECTION 11.002. This Act takes effect September 1, 2009.

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