

By: Taylor of Galveston

H.B. No. 1951

A BILL TO BE ENTITLED

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

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

6 ARTICLE 1. GENERAL PROVISIONS

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

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

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

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

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

1 existence as provided by that chapter, the department is abolished
2 September 1, 2023 [~~2011~~].

3 SECTION 1.003. Subchapter B, Chapter 36, Insurance Code, is
4 amended by adding Section 36.110 to read as follows:

5 Sec. 36.110. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE
6 RESOLUTION POLICY. (a) The commissioner shall develop and
7 implement a policy to encourage the use of:

8 (1) negotiated rulemaking procedures under Chapter
9 2008, Government Code, for the adoption of department rules; and

10 (2) appropriate alternative dispute resolution
11 procedures under Chapter 2009, Government Code, to assist in the
12 resolution of internal and external disputes under the department's
13 jurisdiction.

14 (b) The department's procedures relating to alternative
15 dispute resolution must conform, to the extent possible, to any
16 model guidelines issued by the State Office of Administrative
17 Hearings for the use of alternative dispute resolution by state
18 agencies.

19 (c) The commissioner shall:

20 (1) coordinate the implementation of the policy
21 adopted under Subsection (a);

22 (2) provide training as needed to implement the
23 procedures for negotiated rulemaking or alternative dispute
24 resolution; and

25 (3) collect data concerning the effectiveness of those
26 procedures.

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

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

5 SUBCHAPTER E. RULES REGARDING USE OF ADVISORY COMMITTEES

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

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

13 (2) size and quorum requirements;

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

16 (4) appointment procedures;

17 (5) terms of service;

18 (6) training requirements; and

19 (7) duration.

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

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

1 appropriate to meet changing needs.

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

5 SECTION 2.002. Section 843.441, Insurance Code, is
6 transferred to Subchapter L, Chapter 843, Insurance Code,
7 redesignated as Section 843.410, Insurance Code, and amended to
8 read as follows:

9 Sec. 843.410 [~~843.441~~]. ASSESSMENTS. (a) To provide
10 funds for the administrative expenses of the commissioner regarding
11 rehabilitation, liquidation, supervision, conservatorship, or
12 seizure [~~conservation~~] of a [~~an impaired~~] health maintenance
13 organization in this state that is placed under supervision or in
14 conservatorship under Chapter 441 or against which a delinquency
15 proceeding is commenced under Chapter 443 and that is found by the
16 commissioner to have insufficient funds to pay the total amount of
17 health care claims and the administrative [~~, including~~] expenses
18 incurred by the commissioner regarding the rehabilitation,
19 liquidation, supervision, conservatorship, or seizure, the
20 commissioner [~~acting as receiver or by a special deputy receiver,~~
21 ~~the committee, at the commissioner's direction,~~] shall assess each
22 health maintenance organization in the proportion that the gross
23 premiums of the health maintenance organization that were written
24 in this state during the preceding calendar year bear to the
25 aggregate gross premiums that were written in this state by all
26 health maintenance organizations, as found [~~provided to the~~
27 ~~committee by the commissioner~~] after review of annual statements

1 and other reports the commissioner considers necessary.

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

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

15 **(d)** [~~(e)~~] Notwithstanding any other provision of this
16 subchapter, funds derived from an assessment made under this
17 section may not be used for more than 180 consecutive days for the
18 expenses of administering the affairs of a [an impaired] health
19 maintenance organization the surplus of which is impaired and that
20 is [~~while~~] in supervision[, ~~rehabilitation,~~] or conservatorship
21 [~~conservation for more than 150 days~~]. The commissioner
22 [~~committee~~] may extend the period during which the commissioner
23 [~~it~~] makes assessments for the administrative expenses [~~of an~~
24 ~~impaired health maintenance organization as it considers~~
25 ~~appropriate~~].

26 SECTION 2.003. Section 1660.004, Insurance Code, is amended
27 to read as follows:

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

5 SECTION 2.004. Section 1660.102(b), Insurance Code, is
6 amended to read as follows:

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

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

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

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

18 SECTION 2.005. Section 4001.009(a), Insurance Code, is
19 amended to read as follows:

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

23 (1) Chapters 281, 402, 421-423, 441, 444, 461-463,
24 [~~523, 7~~] 541-556, 558, 559, [~~702, 7~~] 703, 705, 821, 823-825, 827, 828,
25 844, 963, 1108, 1205-1208 [~~1205-1209~~], 1211, 1213, 1214
26 [~~1211-1214~~], 1352, 1353, 1357, 1358, 1360-1363, 1369, 1453-1455,
27 1503, 1550, 1801, 1803, 2151-2154, 2201-2203, 2205-2213, 3501,

- 1 3502, 4007, 4102, and 4201-4203;
- 2 (2) Chapter 403, excluding Section 403.002;
- 3 (3) Subchapter A, Chapter 491;
- 4 (4) Subchapter C, Chapter 521;
- 5 (5) Subchapter A, Chapter 557;
- 6 (6) Subchapter B, Chapter 805;
- 7 (7) Subchapters D, E, and F, Chapter 982;
- 8 (8) Subchapter D, Chapter 1103;
- 9 (9) Subchapters B, C, D, and E, Chapter 1204,
- 10 excluding Sections 1204.153 and 1204.154;
- 11 (10) Subchapter B, Chapter 1366;
- 12 (11) Subchapters B, C, and D, Chapter 1367, excluding
- 13 Section 1367.053(c);
- 14 (12) Subchapters A, C, D, E, F, H, and I, Chapter 1451;
- 15 (13) Subchapter B, Chapter 1452;
- 16 (14) Sections 551.004, 841.303, 982.001, 982.002,
- 17 982.004, 982.052, 982.102, 982.103, 982.104, 982.106, 982.107,
- 18 982.108, 982.110, 982.111, 982.112, and 1802.001; and
- 19 (15) Chapter 107, Occupations Code.

20 SECTION 2.006. Section 4102.005, Insurance Code, is amended

21 to read as follows:

22 Sec. 4102.005. CODE OF ETHICS. The commissioner[~~with~~

23 ~~guidance from the public insurance adjusters examination advisory~~

24 ~~committee,~~] by rule shall adopt:

- 25 (1) a code of ethics for public insurance adjusters
- 26 that fosters the education of public insurance adjusters concerning
- 27 the ethical, legal, and business principles that should govern

1 their conduct;

2 (2) recommendations regarding the solicitation of the
3 adjustment of losses by public insurance adjusters; and

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

6 SECTION 2.007. Section 2154.052(a), Occupations Code, is
7 amended to read as follows:

8 (a) The commissioner:

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

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

13 SECTION 2.008. The following laws are repealed:

14 (1) Article 3.70-3D(d), Insurance Code, as effective
15 on appropriation in accordance with Section 5, Chapter 1457 (H.B.
16 3021), Acts of the 76th Legislature, Regular Session, 1999;

17 (2) Chapter 523, Insurance Code;

18 (3) Section 524.061, Insurance Code;

19 (4) the heading to Subchapter M, Chapter 843,
20 Insurance Code;

21 (5) Sections 843.435, 843.436, 843.437, 843.438,
22 843.439, and 843.440, Insurance Code;

23 (6) Chapter 1212, Insurance Code;

24 (7) Section 1660.002(2), Insurance Code;

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

26 (9) Section 1660.101(c), Insurance Code;

27 (10) Sections 4002.004, 4004.002, 4101.006, and

1 4102.059, Insurance Code;

2 (11) Sections 4201.003(c) and (d), Insurance Code;

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

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

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

6 (15) Section 2154.054, Occupations Code; and

7 (16) Section 2154.055(c), Occupations Code.

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

11 (1) the consumer assistance program for health
12 maintenance organizations advisory committee;

13 (2) the executive committee of the market assistance
14 program for residential property insurance;

15 (3) the TexLink to Health Coverage Program task force;

16 (4) the health maintenance organization solvency
17 surveillance committee;

18 (5) the technical advisory committee on claims
19 processing;

20 (6) the technical advisory committee on electronic
21 data exchange;

22 (7) the examination of license applicants advisory
23 board;

24 (8) the advisory council on continuing education for
25 insurance agents;

26 (9) the insurance adjusters examination advisory
27 board;

1 (10) the public insurance adjusters examination
2 advisory committee;

3 (11) the utilization review agents advisory
4 committee;

5 (12) the fire extinguisher advisory council;

6 (13) the fire detection and alarm devices advisory
7 council;

8 (14) the fire protection advisory council; and

9 (15) the fireworks advisory council.

10 (b) All powers, duties, obligations, rights, contracts,
11 funds, records, and real or personal property of a board,
12 committee, council, or task force listed under Subsection (a) of
13 this section shall be transferred to the Texas Department of
14 Insurance not later than February 28, 2012.

15 SECTION 2.010. The changes in law made by this Act by
16 repealing Sections 523.003 and 843.439, Insurance Code, apply only
17 to a cause of action that accrues on or after the effective date of
18 this Act. A cause of action that accrues before the effective date
19 of this Act is governed by the law in effect immediately before that
20 date, and that law is continued in effect for that purpose.

21 ARTICLE 3. RATE REGULATION

22 SECTION 3.001. Section 2251.101, Insurance Code, is amended
23 to read as follows:

24 Sec. 2251.101. RATE FILINGS AND SUPPORTING INFORMATION.

25 (a) Except as provided by Subchapter D, for risks written in this
26 state, each insurer shall file with the commissioner all rates,
27 applicable rating manuals, supplementary rating information, and

1 additional information as required by the commissioner. An insurer
2 may use a rate filed under this subchapter on and after the date the
3 rate is filed.

4 (b) The commissioner by rule shall:

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

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

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

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

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

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

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

23 SECTION 3.002. Section 2251.103, Insurance Code, is amended
24 to read as follows:

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

27 (a) Not later than the earlier of the date the rate takes effect or

1 the 30th day after the date a rate is filed with the department
2 under Section 2251.101, the [The] commissioner shall disapprove the
3 [a] rate if the commissioner determines that the rate [~~filing made~~
4 ~~under this chapter~~] does not comply with the requirements of this
5 chapter [~~meet the standards established under Subchapter B~~].

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

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

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

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

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

26 SECTION 3.003. Subchapter C, Chapter 2251, Insurance Code,
27 is amended by adding Section 2251.1031 to read as follows:

1 Sec. 2251.1031. REQUESTS FOR ADDITIONAL INFORMATION.

2 (a) If the department determines that the information filed by an
3 insurer under this subchapter or Subchapter D is incomplete or
4 otherwise deficient, the department may request additional
5 information from the insurer.

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

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

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

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

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

26 SECTION 3.004. The heading to Section 2251.104, Insurance
27 Code, is amended to read as follows:

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

3 SECTION 3.005. Section 2251.107, Insurance Code, is amended
4 to read as follows:

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

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

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

15 SECTION 3.006. Section 2251.151, Insurance Code, is amended
16 by adding Subsections (c-1) and (f) and amending Subsection (e) to
17 read as follows:

18 (c-1) If the commissioner requires an insurer to file the
19 insurer's rates under this section, the commissioner shall
20 periodically assess whether the conditions described by Subsection
21 (a) continue to exist. If the commissioner determines that the
22 conditions no longer exist, the commissioner shall issue an order
23 excusing the insurer from filing the insurer's rates under this
24 section.

25 (e) If the commissioner requires an insurer to file the
26 insurer's rates under this section, the commissioner shall issue an
27 order specifying the commissioner's reasons for requiring the rate

1 filing and explaining any steps the insurer must take and any
2 conditions the insurer must meet in order to be excused from filing
3 the insurer's rates under this section. An affected insurer is
4 entitled to a hearing on written request made to the commissioner
5 not later than the 30th day after the date the order is issued.

6 (f) The commissioner by rule shall define:

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

9 (2) the process by which the commissioner determines
10 that a statewide insurance emergency exists under Subsection
11 (a)(2).

12 SECTION 3.007. Section 2251.156, Insurance Code, is amended
13 to read as follows:

14 Sec. 2251.156. RATE FILING DISAPPROVAL BY COMMISSIONER;
15 HEARING. (a) If the commissioner disapproves a rate filing under
16 Section 2251.153(a)(2), the commissioner shall issue an order
17 disapproving the filing in accordance with Section 2251.103(d)
18 [~~2251.103(b)~~].

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

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

24 SECTION 3.008. Section 2254.003(a), Insurance Code, is
25 amended to read as follows:

26 (a) This section applies to a rate for personal automobile
27 insurance or residential property insurance filed on or after the

1 effective date of Chapter 206, Acts of the 78th Legislature,
2 Regular Session, 2003.

3 SECTION 3.009. Section 2251.154, Insurance Code, is
4 repealed.

5 SECTION 3.010. Section 2251.103, Insurance Code, as amended
6 by this Act, and Section 2251.1031, Insurance Code, as added by this
7 Act, apply only to a rate filing made on or after the effective date
8 of this Act. A rate filing made before the effective date of this
9 Act is governed by the law in effect at the time the filing was made,
10 and that law is continued in effect for that purpose.

11 SECTION 3.011. Section 2251.151(c-1), Insurance Code, as
12 added by this Act, applies to an insurer that is required to file
13 the insurer's rates for approval under Section 2251.151, Insurance
14 Code, on or after the effective date of this Act, regardless of when
15 the order requiring the insurer to file the insurer's rates for
16 approval under that section is first issued.

17 SECTION 3.012. Section 2251.151(e), Insurance Code, as
18 amended by this Act, applies only to an order issued by the
19 commissioner of insurance on or after the effective date of this
20 Act. An order of the commissioner issued before the effective date
21 of this Act is governed by the law in effect on the date the order
22 was issued, and that law is continued in effect for that purpose.

23 ARTICLE 4. STATE FIRE MARSHAL'S OFFICE

24 SECTION 4.001. Section 417.008, Government Code, is amended
25 by adding Subsection (f) to read as follows:

26 (f) The commissioner by rule shall prescribe a reasonable
27 fee for an inspection performed by the state fire marshal that may

1 be charged to a property owner or occupant who requests the
2 inspection, as the commissioner considers appropriate. In
3 prescribing the fee, the commissioner shall consider the overall
4 cost to the state fire marshal to perform the inspections,
5 including the approximate amount of time the staff of the state fire
6 marshal needs to perform an inspection, travel costs, and other
7 expenses.

8 SECTION 4.002. Section 417.0081, Government Code, is
9 amended to read as follows:

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

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

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

1 SECTION 4.003. Section 417.0082, Government Code, is
2 amended to read as follows:

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

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

18 SECTION 4.004. Section 417.010, Government Code, is amended
19 to read as follows:

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

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

26 and

27 (2) a person licensed under Chapter 2154, Occupations

1 Code.

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

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

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

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

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

22 (A) the nature, circumstances, extent, and
23 gravity of the violation; and

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

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

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

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

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

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

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

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

25 (f) An affected person may dispute the imposition of the
26 penalty or the amount of the penalty imposed in the manner
27 prescribed by Subchapter C, Chapter 84, Insurance Code. Failure to

1 pay an administrative penalty imposed under this section is subject
2 to enforcement by the department.

3 ARTICLE 5. TITLE INSURANCE

4 SECTION 5.001. Section 2703.153(c), Insurance Code, is
5 amended to read as follows:

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

16 ARTICLE 6. ELECTRONIC TRANSACTIONS

17 SECTION 6.001. Subtitle A, Title 2, Insurance Code, is
18 amended by adding Chapter 35 to read as follows:

19 CHAPTER 35. ELECTRONIC TRANSACTIONS

20 Sec. 35.001. DEFINITIONS. In this chapter:

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

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

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

- 1 (B) a domestic or foreign, stock or mutual, fire
2 or casualty insurance company;
- 3 (C) a Mexican casualty company;
- 4 (D) a domestic or foreign Lloyd's plan;
- 5 (E) a domestic or foreign reciprocal or
6 interinsurance exchange;
- 7 (F) a domestic or foreign fraternal benefit
8 society;
- 9 (G) a domestic or foreign title insurance
10 company;
- 11 (H) an attorney's title insurance company;
- 12 (I) a stipulated premium company;
- 13 (J) a nonprofit legal service corporation;
- 14 (K) a health maintenance organization;
- 15 (L) a statewide mutual assessment company;
- 16 (M) a local mutual aid association;
- 17 (N) a local mutual burial association;
- 18 (O) an association exempt under Section 887.102;
- 19 (P) a nonprofit hospital, medical, or dental
20 service corporation, including a company subject to Chapter 842;
- 21 (Q) a county mutual insurance company; and
- 22 (R) a farm mutual insurance company.

23 Sec. 35.002. CONSTRUCTION WITH OTHER LAW.

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

27 (b) To the extent of any conflict between another provision

1 of this code and a provision of this chapter, the provision of this
2 chapter controls.

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

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

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

14 SECTION 6.002. Chapter 35, Insurance Code, as added by this
15 Act, applies only to business conducted on or after the effective
16 date of this Act. Business conducted before the effective date of
17 this Act is governed by the law in effect on the date the business
18 was conducted, and that law is continued in effect for that purpose.

19 ARTICLE 7. DATA COLLECTION

20 SECTION 7.001. Chapter 38, Insurance Code, is amended by
21 adding Subchapter I to read as follows:

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

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

27 Sec. 38.402. FILING OF CERTAIN CLAIMS INFORMATION.

1 (a) The commissioner shall require each insurer described by
2 Section 38.401 to file with the commissioner aggregate personal
3 automobile insurance and residential property insurance claims
4 information for the period covered by the filing, including the
5 number of claims:

6 (1) filed during the reporting period;

7 (2) pending on the last day of the reporting period,
8 including pending litigation;

9 (3) closed with payment during the reporting period;

10 (4) closed without payment during the reporting
11 period; and

12 (5) carrying over from the reporting period
13 immediately preceding the current reporting period.

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

17 Sec. 38.403. PUBLIC INFORMATION. (a) The department shall
18 post the data contained in claims information filings under Section
19 38.402 on the department's Internet website. The commissioner by
20 rule may establish a procedure for posting data under this
21 subsection that includes a description of the data that must be
22 posted and the manner in which the data must be posted.

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

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

ARTICLE 8. STUDY ON RATE FILING AND APPROVAL
REQUIREMENTS FOR CERTAIN INSURERS WRITING IN
UNDERSERVED AREAS; UNDERSERVED AREA DESIGNATION

SECTION 8.001. Section 2004.002, Insurance Code, is amended by amending Subsection (b) and adding Subsections (c) and (d) to read as follows:

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

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

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

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

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

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

SECTION 8.002. Subchapter F, Chapter 2251, Insurance Code, is amended by adding Section 2251.253 to read as follows:

Sec. 2251.253. REPORT. (a) The commissioner shall conduct a study concerning the impact of increasing the percentage of the

1 total amount of premiums collected by insurers for residential
2 property insurance under Section 2251.252.

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

5 (c) This section expires September 1, 2013.

6 ARTICLE 9. TRANSITION; EFFECTIVE DATE

7 SECTION 9.001. Except as otherwise provided by this Act,
8 this Act applies only to an insurance policy, contract, or evidence
9 of coverage that is delivered, issued for delivery, or renewed on or
10 after January 1, 2012. A policy, contract, or evidence of coverage
11 delivered, issued for delivery, or renewed before January 1, 2012,
12 is governed by the law as it existed immediately before the
13 effective date of this Act, and that law is continued in effect for
14 that purpose.

15 SECTION 9.002. This Act takes effect September 1, 2011.