

1-1 By: Hegar S.B. No. 644
1-2 (In the Senate - Filed February 14, 2011; March 16, 2011,
1-3 read first time and referred to Committee on Government
1-4 Organization; March 28, 2011, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 6, Nays 0;
1-6 March 28, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 644 By: Hegar

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the continuation and operation of the Texas Department
1-11 of Insurance and the operation of certain insurance programs;
1-12 imposing administrative penalties.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 ARTICLE 1. GENERAL PROVISIONS

1-15 SECTION 1.001. Section 31.002, Insurance Code, is amended
1-16 to read as follows:

1-17 Sec. 31.002. DUTIES OF DEPARTMENT. In addition to the other
1-18 duties required of the Texas Department of Insurance, the
1-19 department shall:

- 1-20 (1) regulate the business of insurance in this state;
1-21 (2) administer the workers' compensation system of
1-22 this state as provided by Title 5, Labor Code; ~~and~~
1-23 (3) ensure that this code and other laws regarding
1-24 insurance and insurance companies are executed;
1-25 (4) protect and ensure the fair treatment of
1-26 consumers; and
1-27 (5) ensure fair competition in the insurance industry
1-28 in order to foster a competitive market.

1-29 SECTION 1.002. Subsection (a), Section 31.004, Insurance
1-30 Code, is amended to read as follows:

1-31 (a) The Texas Department of Insurance is subject to Chapter
1-32 325, Government Code (Texas Sunset Act). Unless continued in
1-33 existence as provided by that chapter, the department is abolished
1-34 September 1, 2017 ~~[2011]~~.

1-35 SECTION 1.003. Subchapter B, Chapter 36, Insurance Code, is
1-36 amended by adding Section 36.110 to read as follows:

1-37 Sec. 36.110. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE
1-38 RESOLUTION POLICY. (a) The commissioner shall develop and
1-39 implement a policy to encourage the use of:

- 1-40 (1) negotiated rulemaking procedures under Chapter
1-41 2008, Government Code, for the adoption of department rules; and
1-42 (2) appropriate alternative dispute resolution
1-43 procedures under Chapter 2009, Government Code, to assist in the
1-44 resolution of internal and external disputes under the department's
1-45 jurisdiction.

1-46 (b) The department's procedures relating to alternative
1-47 dispute resolution must conform, to the extent possible, to any
1-48 model guidelines issued by the State Office of Administrative
1-49 Hearings for the use of alternative dispute resolution by state
1-50 agencies.

1-51 (c) The commissioner shall:

- 1-52 (1) coordinate the implementation of the policy
1-53 adopted under Subsection (a);
1-54 (2) provide training as needed to implement the
1-55 procedures for negotiated rulemaking or alternative dispute
1-56 resolution; and
1-57 (3) collect data concerning the effectiveness of those
1-58 procedures.

1-59 ARTICLE 2. CERTAIN ADVISORY BOARDS, COMMITTEES, AND COUNCILS AND
1-60 RELATED TECHNICAL CORRECTIONS

1-61 SECTION 2.001. Chapter 32, Insurance Code, is amended by
1-62 adding Subchapter E to read as follows:

1-

SUBCHAPTER E. RULES REGARDING USE OF ADVISORY COMMITTEES

2-2 Sec. 32.151. RULEMAKING AUTHORITY. (a) The commissioner
 2-3 shall adopt rules, in compliance with Section 39.003 of this code
 2-4 and Chapter 2110, Government Code, regarding the purpose,
 2-5 structure, and use of advisory committees by the commissioner, the
 2-6 state fire marshal, or department staff, including rules governing
 2-7 an advisory committee's:

- 2-8 (1) purpose, role, responsibility, and goals;
 2-9 (2) size and quorum requirements;
 2-10 (3) qualifications for membership, including
 2-11 experience requirements and geographic representation;
 2-12 (4) appointment procedures;
 2-13 (5) terms of service;
 2-14 (6) training requirements; and
 2-15 (7) duration.

2-16 (b) An advisory committee must be structured and used to
 2-17 advise the commissioner, the state fire marshal, or department
 2-18 staff. An advisory committee may not be responsible for rulemaking
 2-19 or policymaking.

2-20 Sec. 32.152. PERIODIC EVALUATION. The commissioner shall
 2-21 by rule establish a process by which the department shall
 2-22 periodically evaluate an advisory committee to ensure its continued
 2-23 necessity. The department may retain or develop committees as
 2-24 appropriate to meet changing needs.

2-25 Sec. 32.153. COMPLIANCE WITH OPEN MEETINGS ACT. A
 2-26 department advisory committee must comply with Chapter 551,
 2-27 Government Code.

2-28 SECTION 2.002. Section 843.441, Insurance Code, is
 2-29 transferred to Subchapter L, Chapter 843, Insurance Code,
 2-30 redesignated as Section 843.410, Insurance Code, and amended to
 2-31 read as follows:

2-32 Sec. 843.410 [843.441]. ASSESSMENTS. (a) To provide
 2-33 funds for the administrative expenses of the commissioner regarding
 2-34 rehabilitation, liquidation, supervision, conservatorship, or
 2-35 seizure [conservation] of a [an impaired] health maintenance
 2-36 organization in this state that is placed under supervision or in
 2-37 conservatorship under Chapter 441 or against which a delinquency
 2-38 proceeding is commenced under Chapter 443 and that is found by the
 2-39 commissioner to have insufficient funds to pay the total amount of
 2-40 health care claims and the administrative[, including] expenses
 2-41 incurred by the commissioner regarding the rehabilitation,
 2-42 liquidation, supervision, conservatorship, or seizure, the
 2-43 commissioner [acting as receiver or by a special deputy receiver,
 2-44 the committee, at the commissioner's direction,] shall assess each
 2-45 health maintenance organization in the proportion that the gross
 2-46 premiums of the health maintenance organization that were written
 2-47 in this state during the preceding calendar year bear to the
 2-48 aggregate gross premiums that were written in this state by all
 2-49 health maintenance organizations, as found [provided to the
 2-50 committee by the commissioner] after review of annual statements
 2-51 and other reports the commissioner considers necessary.

2-52 (b) [(c)] The commissioner may abate or defer an assessment
 2-53 in whole or in part if, in the opinion of the commissioner, payment
 2-54 of the assessment would endanger the ability of a health
 2-55 maintenance organization to fulfill its contractual obligations.
 2-56 If an assessment is abated or deferred in whole or in part, the
 2-57 amount of the abatement or deferral may be assessed against the
 2-58 remaining health maintenance organizations in a manner consistent
 2-59 with the calculations made by the commissioner under Subsection (a)
 2-60 [basis for assessments provided by the approved plan of operation].

2-61 (c) [(d)] The total of all assessments on a health
 2-62 maintenance organization may not exceed one-fourth of one percent
 2-63 of the health maintenance organization's gross premiums in any one
 2-64 calendar year.

2-65 (d) [(e)] Notwithstanding any other provision of this
 2-66 subchapter, funds derived from an assessment made under this
 2-67 section may not be used for more than 180 consecutive days for the
 2-68 expenses of administering the affairs of a [an impaired] health
 2-69 maintenance organization the surplus of which is impaired and that

3-1 is [while] in supervision[~~, rehabilitation,~~] or conservatorship
 3-2 [~~conservation for more than 150 days~~]. The commissioner
 3-3 [~~committee~~] may extend the period during which the commissioner
 3-4 [~~it~~] makes assessments for the administrative expenses [~~of an~~
 3-5 ~~impaired health maintenance organization as it considers~~
 3-6 ~~appropriate~~].

3-7 SECTION 2.003. Section 1660.004, Insurance Code, is amended
 3-8 to read as follows:

3-9 Sec. 1660.004. GENERAL RULEMAKING. The commissioner may
 3-10 adopt rules as necessary to implement this chapter[~~, including~~
 3-11 ~~rules requiring the implementation and provision of the technology~~
 3-12 ~~recommended by the advisory committee~~].

3-13 SECTION 2.004. Subsection (b), Section 1660.102, Insurance
 3-14 Code, is amended to read as follows:

3-15 (b) The commissioner may consider [~~the~~] recommendations [~~of~~
 3-16 ~~the advisory committee~~] or any other information provided in
 3-17 response to a department-issued request for information relating to
 3-18 electronic data exchange, including identification card programs,
 3-19 before adopting rules regarding:

3-20 (1) information to be included on the identification
 3-21 cards;

3-22 (2) technology to be used to implement the
 3-23 identification card pilot program; and

3-24 (3) confidentiality and accuracy of the information
 3-25 required to be included on the identification cards.

3-26 SECTION 2.005. Subsection (a), Section 4001.009, Insurance
 3-27 Code, is amended to read as follows:

3-28 (a) As referenced in Section 4001.003(9), a reference to an
 3-29 agent in the following laws includes a subagent without regard to
 3-30 whether a subagent is specifically mentioned:

3-31 (1) Chapters 281, 402, 421-423, 441, 444, 461-463,
 3-32 [~~523,~~] 541-556, 558, 559, [~~702,~~] 703, 705, 821, 823-825, 827, 828,
 3-33 844, 963, 1108, 1205-1208 [~~1205-1209~~], 1211, 1213, 1214
 3-34 [~~1211-1214~~], 1352, 1353, 1357, 1358, 1360-1363, 1369, 1453-1455,
 3-35 1503, 1550, 1801, 1803, 2151-2154, 2201-2203, 2205-2213, 3501,
 3-36 3502, 4007, 4102, and 4201-4203;

3-37 (2) Chapter 403, excluding Section 403.002;

3-38 (3) Subchapter A, Chapter 491;

3-39 (4) Subchapter C, Chapter 521;

3-40 (5) Subchapter A, Chapter 557;

3-41 (6) Subchapter B, Chapter 805;

3-42 (7) Subchapters D, E, and F, Chapter 982;

3-43 (8) Subchapter D, Chapter 1103;

3-44 (9) Subchapters B, C, D, and E, Chapter 1204,
 3-45 excluding Sections 1204.153 and 1204.154;

3-46 (10) Subchapter B, Chapter 1366;

3-47 (11) Subchapters B, C, and D, Chapter 1367, excluding
 3-48 Section 1367.053(c);

3-49 (12) Subchapters A, C, D, E, F, H, and I, Chapter 1451;

3-50 (13) Subchapter B, Chapter 1452;

3-51 (14) Sections 551.004, 841.303, 982.001, 982.002,
 3-52 982.004, 982.052, 982.102, 982.103, 982.104, 982.106, 982.107,
 3-53 982.108, 982.110, 982.111, 982.112, and 1802.001; and

3-54 (15) Chapter 107, Occupations Code.

3-55 SECTION 2.006. Section 4102.005, Insurance Code, is amended
 3-56 to read as follows:

3-57 Sec. 4102.005. CODE OF ETHICS. The commissioner[~~, with~~
 3-58 ~~guidance from the public insurance adjusters examination advisory~~
 3-59 ~~committee,~~] by rule shall adopt:

3-60 (1) a code of ethics for public insurance adjusters
 3-61 that fosters the education of public insurance adjusters concerning
 3-62 the ethical, legal, and business principles that should govern
 3-63 their conduct;

3-64 (2) recommendations regarding the solicitation of the
 3-65 adjustment of losses by public insurance adjusters; and

3-66 (3) any other principles of conduct or procedures that
 3-67 the commissioner considers necessary and reasonable.

3-68 SECTION 2.007. Subsection (a), Section 2154.052,
 3-69 Occupations Code, is amended to read as follows:

4-1 (a) The commissioner:
4-2 (1) shall administer this chapter through the state
4-3 fire marshal; and
4-4 (2) may issue rules to administer this chapter [~~in~~
4-5 ~~compliance with Section 2154.054~~].
4-6 SECTION 2.008. The following laws are repealed:
4-7 (1) Subsection (d), Article 3.70-3D, Insurance Code,
4-8 as effective on appropriation in accordance with Section 5, Chapter
4-9 1457 (H.B. 3021), Acts of the 76th Legislature, Regular Session,
4-10 1999;
4-11 (2) Chapter 523, Insurance Code;
4-12 (3) Section 524.061, Insurance Code;
4-13 (4) the heading to Subchapter M, Chapter 843,
4-14 Insurance Code;
4-15 (5) Sections 843.435, 843.436, 843.437, 843.438,
4-16 843.439, and 843.440, Insurance Code;
4-17 (6) Chapter 1212, Insurance Code;
4-18 (7) Subdivision (2), Section 1660.002, Insurance
4-19 Code;
4-20 (8) Subchapter B, Chapter 1660, Insurance Code;
4-21 (9) Subsection (c), Section 1660.101, Insurance Code;
4-22 (10) Sections 4002.004, 4004.002, 4101.006, and
4-23 4102.059, Insurance Code;
4-24 (11) Subsections (c) and (d), Section 4201.003,
4-25 Insurance Code;
4-26 (12) Subchapter C, Chapter 6001, Insurance Code;
4-27 (13) Subchapter C, Chapter 6002, Insurance Code;
4-28 (14) Subchapter C, Chapter 6003, Insurance Code;
4-29 (15) Section 2154.054, Occupations Code; and
4-30 (16) Subsection (c), Section 2154.055, Occupations
4-31 Code.
4-32 SECTION 2.009. (a) The following boards, committees,
4-33 councils, and task forces are abolished on the effective date of
4-34 this Act:
4-35 (1) the consumer assistance program for health
4-36 maintenance organizations advisory committee;
4-37 (2) the executive committee of the market assistance
4-38 program for residential property insurance;
4-39 (3) the TexLink to Health Coverage Program task force;
4-40 (4) the Health Maintenance Organization Solvency
4-41 Surveillance Committee;
4-42 (5) the technical advisory committee on claims
4-43 processing;
4-44 (6) the technical advisory committee on electronic
4-45 data exchange;
4-46 (7) the examination of license applicants advisory
4-47 board;
4-48 (8) the advisory council on continuing education for
4-49 insurance agents;
4-50 (9) the insurance adjusters examination advisory
4-51 board;
4-52 (10) the public insurance adjusters examination
4-53 advisory committee;
4-54 (11) the utilization review agents advisory
4-55 committee;
4-56 (12) the fire extinguisher advisory council;
4-57 (13) the fire detection and alarm devices advisory
4-58 council;
4-59 (14) the fire protection advisory council; and
4-60 (15) the fireworks advisory council.
4-61 (b) All powers, duties, obligations, rights, contracts,
4-62 funds, records, and real or personal property of a board,
4-63 committee, council, or task force listed under Subsection (a) of
4-64 this section shall be transferred to the Texas Department of
4-65 Insurance not later than February 28, 2012.
4-66 SECTION 2.010. The changes in law made by this Act by
4-67 repealing Sections 523.003 and 843.439, Insurance Code, apply only
4-68 to a cause of action that accrues on or after the effective date of
4-69 this Act. A cause of action that accrues before the effective date

5-1 of this Act is governed by the law in effect immediately before that
 5-2 date, and that law is continued in effect for that purpose.

5-3 ARTICLE 3. RATE REGULATION

5-4 SECTION 3.001. Section 2251.101, Insurance Code, is amended
 5-5 to read as follows:

5-6 Sec. 2251.101. RATE FILINGS AND SUPPORTING INFORMATION.

5-7 (a) Except as provided by Subchapter D, for risks written in this
 5-8 state, each insurer shall file with the commissioner all rates,
 5-9 applicable rating manuals, supplementary rating information, and
 5-10 additional information as required by the commissioner. An insurer
 5-11 may use a rate filed under this subchapter on and after the date the
 5-12 rate is filed.

5-13 (b) The commissioner by rule shall:

5-14 (1) determine the information required to be included
 5-15 in the filing, including:

5-16 (A) ~~[(1)]~~ categories of supporting information
 5-17 and supplementary rating information;

5-18 (B) ~~[(2)]~~ statistics or other information to
 5-19 support the rates to be used by the insurer, including information
 5-20 necessary to evidence that the computation of the rate does not
 5-21 include disallowed expenses; and

5-22 (C) ~~[(3)]~~ information concerning policy fees,
 5-23 service fees, and other fees that are charged or collected by the
 5-24 insurer under Section 550.001 or 4005.003; and

5-25 (2) prescribe the process through which the department
 5-26 requests supplementary rating information and supporting
 5-27 information under this section, including:

5-28 (A) the number of times the department may make a
 5-29 request for information; and

5-30 (B) the types of information the department may
 5-31 request when reviewing a rate filing.

5-32 SECTION 3.002. Section 2251.103, Insurance Code, is amended
 5-33 to read as follows:

5-34 Sec. 2251.103. COMMISSIONER ACTION CONCERNING [DISAPPROVAL
 5-35 OF RATE IN] RATE FILING NOT YET IN EFFECT; HEARING AND ANALYSIS.

5-36 (a) Not later than the earlier of the date the rate takes effect or
 5-37 the 30th day after the date a rate is filed with the department
 5-38 under Section 2251.101, the [The] commissioner shall disapprove the
 5-39 [a] rate if the commissioner determines that the rate [filing made
 5-40 under this chapter] does not comply with the requirements of this
 5-41 chapter [meet the standards established under Subchapter B].

5-42 (b) Except as provided by Subsection (c), if a rate has not
 5-43 been disapproved by the commissioner before the expiration of the
 5-44 30-day period described by Subsection (a), the rate is not
 5-45 considered disapproved under this section.

5-46 (c) For good cause, the commissioner may, on the expiration
 5-47 of the 30-day period described by Subsection (a), extend the period
 5-48 for disapproval of a rate for one additional 30-day period. The
 5-49 commissioner and the insurer may not by agreement extend the 30-day
 5-50 period described by Subsection (a) or this subsection.

5-51 (d) If the commissioner disapproves a rate under this
 5-52 section [filing], the commissioner shall issue an order specifying
 5-53 in what respects the rate [filing] fails to meet the requirements of
 5-54 this chapter.

5-55 (e) An insurer that files a rate that is disapproved under
 5-56 this section [(c) The filer] is entitled to a hearing on written
 5-57 request made to the commissioner not later than the 30th day after
 5-58 the date the order disapproving the rate [filing] takes effect.

5-59 (f) The department shall track, compile, and routinely
 5-60 analyze the factors that contribute to the disapproval of rates
 5-61 under this section.

5-62 SECTION 3.003. Subchapter C, Chapter 2251, Insurance Code,
 5-63 is amended by adding Section 2251.1031 to read as follows:

5-64 Sec. 2251.1031. REQUESTS FOR ADDITIONAL INFORMATION.

5-65 (a) If the department determines that the information filed by an
 5-66 insurer under this subchapter or Subchapter D is incomplete or
 5-67 otherwise deficient, the department may request additional
 5-68 information from the insurer.

5-69 (b) If the department requests additional information from

6-1 the insurer during the 30-day period described by Section
 6-2 2251.103(a) or 2251.153(a) or under a second 30-day period
 6-3 described by Section 2251.103(c) or 2251.153(c), as applicable, the
 6-4 time between the date the department submits the request to the
 6-5 insurer and the date the department receives the information
 6-6 requested is not included in the computation of the first 30-day
 6-7 period or the second 30-day period, as applicable.

6-8 (c) For purposes of this section, the date of the
 6-9 department's submission of a request for additional information is
 6-10 the earlier of:

6-11 (1) the date of the department's electronic mailing or
 6-12 documented telephone call relating to the request for additional
 6-13 information; or

6-14 (2) the postmarked date on the department's letter
 6-15 relating to the request for additional information.

6-16 (d) The department shall track, compile, and routinely
 6-17 analyze the volume and content of requests for additional
 6-18 information made under this section to ensure that all requests for
 6-19 additional information are fair and reasonable.

6-20 SECTION 3.004. The heading to Section 2251.104, Insurance
 6-21 Code, is amended to read as follows:

6-22 Sec. 2251.104. COMMISSIONER DISAPPROVAL OF RATE IN EFFECT;
 6-23 HEARING.

6-24 SECTION 3.005. Section 2251.107, Insurance Code, is amended
 6-25 to read as follows:

6-26 Sec. 2251.107. PUBLIC [~~INSPECTION~~ OF] INFORMATION.

6-27 (a) Each filing made, and any supporting information filed, under
 6-28 this chapter is open to public inspection as of the date of the
 6-29 filing.

6-30 (b) Each year the department shall make available to the
 6-31 public information concerning the department's general process and
 6-32 methodology for rate review under this chapter, including factors
 6-33 that contribute to the disapproval of a rate. Information provided
 6-34 under this subsection must be general in nature and may not reveal
 6-35 proprietary or trade secret information of any insurer.

6-36 SECTION 3.006. Section 2251.151, Insurance Code, is amended
 6-37 by adding Subsections (c-1) and (f) and amending Subsection (e) to
 6-38 read as follows:

6-39 (c-1) If the commissioner requires an insurer to file the
 6-40 insurer's rates under this section, the commissioner shall
 6-41 periodically assess whether the conditions described by Subsection
 6-42 (a) continue to exist. If the commissioner determines that the
 6-43 conditions no longer exist, the commissioner shall issue an order
 6-44 excusing the insurer from filing the insurer's rates under this
 6-45 section.

6-46 (e) If the commissioner requires an insurer to file the
 6-47 insurer's rates under this section, the commissioner shall issue an
 6-48 order specifying the commissioner's reasons for requiring the rate
 6-49 filing and explaining any steps the insurer must take and any
 6-50 conditions the insurer must meet in order to be excused from filing
 6-51 the insurer's rates under this section. An affected insurer is
 6-52 entitled to a hearing on written request made to the commissioner
 6-53 not later than the 30th day after the date the order is issued.

6-54 (f) The commissioner by rule shall define:

6-55 (1) the financial conditions and rating practices that
 6-56 may subject an insurer to this section under Subsection (a)(1); and

6-57 (2) the process by which the commissioner determines
 6-58 that a statewide insurance emergency exists under Subsection
 6-59 (a)(2).

6-60 SECTION 3.007. Section 2251.156, Insurance Code, is amended
 6-61 to read as follows:

6-62 Sec. 2251.156. RATE FILING DISAPPROVAL BY COMMISSIONER;
 6-63 HEARING. (a) If the commissioner disapproves a rate filing under
 6-64 Section 2251.153(a)(2), the commissioner shall issue an order
 6-65 disapproving the filing in accordance with Section 2251.103(d)
 6-66 [~~2251.103(b)~~].

6-67 (b) An insurer whose rate filing is disapproved is entitled
 6-68 to a hearing in accordance with Section 2251.103(e) [~~2251.103(c)~~].

6-69 (c) The department shall track precedents related to

7-1 disapprovals of rates under this subchapter to ensure uniform
 7-2 application of rate standards by the department.

7-3 SECTION 3.008. Section 2254.003, Insurance Code, is amended
 7-4 by amending Subsection (a) and adding Subsections (a-1), (a-2), and
 7-5 (a-3) to read as follows:

7-6 (a) This section applies to a rate for personal automobile
 7-7 insurance or residential property insurance filed on or after the
 7-8 effective date of Chapter 206, Acts of the 78th Legislature,
 7-9 Regular Session, 2003.

7-10 (a-1) If the department provides an insurer with formal
 7-11 written notice that a rate is excessive or unfairly discriminatory,
 7-12 then the insurer may file a new rate or take other corrective action
 7-13 to substantially address the department's concerns. The new rate
 7-14 or other corrective action must be filed on or before the 60th day
 7-15 following the date of formal written notice. At the commissioner's
 7-16 discretion, the commissioner may extend the deadline to file by an
 7-17 additional 30 days. If the department accepts the new rate or other
 7-18 corrective action, then the insurer shall, according to
 7-19 commissioner order, refund or issue a premium discount directly to
 7-20 each affected policyholder on the portion of the premium found to be
 7-21 excessive or unfairly discriminatory, plus interest on that amount.
 7-22 The interest rate to be paid on refunds or discounts under this
 7-23 subsection is the sum of six percent and the prime rate for the
 7-24 calendar year in which formal written notice is given. For purposes
 7-25 of this subsection, the prime rate is the prime rate as published in
 7-26 The Wall Street Journal for the first day of the calendar year that
 7-27 is not a Saturday, Sunday, or legal holiday.

7-28 (a-2) If the insurer does not file or take, or the
 7-29 department does not accept, a new rate or other corrective action as
 7-30 provided under Subsection (a-1), and the commissioner issues an
 7-31 order disapproving the rate as excessive or unfairly discriminatory
 7-32 under Section 2251.104, then the insurer must refund or issue a
 7-33 premium discount directly to each affected policyholder on the
 7-34 portion of the premium found to be excessive or unfairly
 7-35 discriminatory, plus interest on that amount. The interest rate to
 7-36 be paid on refunds or discounts under this subsection is 18 percent.
 7-37 An insurer is not required to pay any interest penalty if the
 7-38 insurer prevails in an appeal of the commissioner's order under
 7-39 Subchapter D, Chapter 36.

7-40 (a-3) The period for the refund and interest begins on the
 7-41 date the department first provides the insurer with formal written
 7-42 notice that the insurer's filed rate is excessive or unfairly
 7-43 discriminatory, and interest continues to accrue until the refund
 7-44 or discount is paid or issued.

7-45 SECTION 3.009. Section 2251.154, Insurance Code, is
 7-46 repealed.

7-47 SECTION 3.010. Subsection (c), Section 2254.003, Insurance
 7-48 Code, is repealed.

7-49 SECTION 3.011. Section 2251.103, Insurance Code, as amended
 7-50 by this Act, and Section 2251.1031, Insurance Code, as added by this
 7-51 Act, apply only to a rate filing made on or after the effective date
 7-52 of this Act. A rate filing made before the effective date of this
 7-53 Act is governed by the law in effect at the time the filing was made,
 7-54 and that law is continued in effect for that purpose.

7-55 SECTION 3.012. Subsection (c-1), Section 2251.151,
 7-56 Insurance Code, as added by this Act, applies to an insurer that is
 7-57 required to file the insurer's rates for approval under Section
 7-58 2251.151, Insurance Code, on or after the effective date of this
 7-59 Act, regardless of when the order requiring the insurer to file the
 7-60 insurer's rates for approval under that section is first issued.

7-61 SECTION 3.013. Subsection (e), Section 2251.151, Insurance
 7-62 Code, as amended by this Act, applies only to an order issued by the
 7-63 commissioner of insurance on or after the effective date of this
 7-64 Act. An order of the commissioner issued before the effective date
 7-65 of this Act is governed by the law in effect on the date the order
 7-66 was issued, and that law is continued in effect for that purpose.

7-67 ARTICLE 4. STATE FIRE MARSHAL'S OFFICE

7-68 SECTION 4.001. Section 417.008, Government Code, is amended
 7-69 by adding Subsection (f) to read as follows:

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

8-10 SECTION 4.002. Section 417.0081, Government Code, is
 8-11 amended to read as follows:

8-12 Sec. 417.0081. INSPECTION OF CERTAIN STATE-OWNED OR
 8-13 STATE-LEASED BUILDINGS. (a) The state fire marshal, at the
 8-14 commissioner's direction, shall periodically inspect public
 8-15 buildings under the charge and control of the Texas Facilities
 8-16 [General Services] Commission and buildings leased for the use of a
 8-17 state agency by the Texas Facilities Commission.

8-18 (b) For the purpose of determining a schedule for conducting
 8-19 inspections under this section, the commissioner by rule shall
 8-20 adopt guidelines for assigning potential fire safety risk to
 8-21 state-owned and state-leased buildings. Rules adopted under this
 8-22 subsection must provide for the inspection of each state-owned and
 8-23 state-leased building to which this section applies, regardless of
 8-24 how low the potential fire safety risk of the building may be.

8-25 (c) On or before January 1 of each year, the state fire
 8-26 marshal shall report to the governor, lieutenant governor, speaker
 8-27 of the house of representatives, and appropriate standing
 8-28 committees of the legislature regarding the state fire marshal's
 8-29 findings in conducting inspections under this section.

8-30 SECTION 4.003. Section 417.0082, Government Code, is
 8-31 amended to read as follows:

8-32 Sec. 417.0082. PROTECTION OF CERTAIN STATE-OWNED OR
 8-33 STATE-LEASED BUILDINGS AGAINST FIRE HAZARDS. (a) The state fire
 8-34 marshal, under the direction of the commissioner, shall take any
 8-35 action necessary to protect a public building under the charge and
 8-36 control of the Texas Facilities [Building and Procurement]
 8-37 Commission, and the building's occupants, and the occupants of a
 8-38 building leased for the use of a state agency by the Texas
 8-39 Facilities Commission, against an existing or threatened fire
 8-40 hazard. The state fire marshal and the Texas Facilities [Building
 8-41 and Procurement] Commission shall include the State Office of Risk
 8-42 Management in all communication concerning fire hazards.

8-43 (b) The commissioner, the Texas Facilities [Building and
 8-44 Procurement] Commission, and the risk management board shall make
 8-45 and each adopt by rule a memorandum of understanding that
 8-46 coordinates the agency's duties under this section.

8-47 SECTION 4.004. Section 417.010, Government Code, is amended
 8-48 to read as follows:

8-49 Sec. 417.010. DISCIPLINARY AND ENFORCEMENT ACTIONS;
 8-50 ADMINISTRATIVE PENALTIES [ALTERNATE REMEDIES]. (a) This section
 8-51 applies to each person and firm licensed, registered, or otherwise
 8-52 regulated by the department through the state fire marshal,
 8-53 including:

8-54 (1) a person regulated under Title 20, Insurance Code;

8-55 and

8-56 (2) a person licensed under Chapter 2154, Occupations

8-57 Code.

8-58 (b) The commissioner by rule shall delegate to the state
 8-59 fire marshal the authority to take disciplinary and enforcement
 8-60 actions, including the imposition of administrative penalties in
 8-61 accordance with this section on a person regulated under a law
 8-62 listed under Subsection (a) who violates that law or a rule or order
 8-63 adopted under that law. In the rules adopted under this subsection,
 8-64 the commissioner shall:

8-65 (1) specify which types of disciplinary and
 8-66 enforcement actions are delegated to the state fire marshal; and

8-67 (2) outline the process through which the state fire
 8-68 marshal may, subject to Subsection (e), impose administrative
 8-69 penalties or take other disciplinary and enforcement actions.

9-1 (c) The commissioner by rule shall adopt a schedule of
9-2 administrative penalties for violations subject to a penalty under
9-3 this section to ensure that the amount of an administrative penalty
9-4 imposed is appropriate to the violation. The department shall
9-5 provide the administrative penalty schedule to the public on
9-6 request. The amount of an administrative penalty imposed under
9-7 this section must be based on:

- 9-8 (1) the seriousness of the violation, including:
- 9-9 (A) the nature, circumstances, extent, and
- 9-10 gravity of the violation; and
- 9-11 (B) the hazard or potential hazard created to the
- 9-12 health, safety, or economic welfare of the public;
- 9-13 (2) the economic harm to the public interest or public
- 9-14 confidence caused by the violation;
- 9-15 (3) the history of previous violations;
- 9-16 (4) the amount necessary to deter a future violation;
- 9-17 (5) efforts to correct the violation;
- 9-18 (6) whether the violation was intentional; and
- 9-19 (7) any other matter that justice may require.

9-20 (d) In [~~The state fire marshal, in~~] the enforcement of a law
9-21 that is enforced by or through the state fire marshal, the state
9-22 fire marshal may, in lieu of cancelling, revoking, or suspending a
9-23 license or certificate of registration, impose on the holder of the
9-24 license or certificate of registration an order directing the
9-25 holder to do one or more of the following:

- 9-26 (1) cease and desist from a specified activity;
- 9-27 (2) pay an administrative penalty imposed under this
- 9-28 section [~~remit to the commissioner within a specified time a~~
9-29 monetary forfeiture not to exceed \$10,000 for each violation of an
9-30 applicable law or rule]; or [~~and~~]
- 9-31 (3) make restitution to a person harmed by the holder's
9-32 violation of an applicable law or rule.

9-33 (e) The state fire marshal shall impose an administrative
9-34 penalty under this section in the manner prescribed for imposition
9-35 of an administrative penalty under Subchapter B, Chapter 84,
9-36 Insurance Code. The state fire marshal may impose an
9-37 administrative penalty under this section without referring the
9-38 violation to the department for commissioner action.

9-39 (f) An affected person may dispute the imposition of the
9-40 penalty or the amount of the penalty imposed in the manner
9-41 prescribed by Subchapter C, Chapter 84, Insurance Code. Failure to
9-42 pay an administrative penalty imposed under this section is subject
9-43 to enforcement by the department.

9-44 ARTICLE 5. TITLE INSURANCE

9-45 SECTION 5.001. Subsection (c), Section 2703.153, Insurance
9-46 Code, is amended to read as follows:

9-47 (c) Not less frequently than once every five years, the
9-48 commissioner shall evaluate the information required under this
9-49 section to determine whether the department needs additional or
9-50 different information or no longer needs certain information to
9-51 promulgate rates. If the department requires a title insurance
9-52 company or title insurance agent to include new or different
9-53 information in the statistical report, that information may be
9-54 considered by the commissioner in fixing premium rates if the
9-55 information collected is reasonably credible for the purposes for
9-56 which the information is to be used.

9-57 ARTICLE 6. ELECTRONIC TRANSACTIONS

9-58 SECTION 6.001. Subtitle A, Title 2, Insurance Code, is
9-59 amended by adding Chapter 35 to read as follows:

9-60 CHAPTER 35. ELECTRONIC TRANSACTIONS

9-61 Sec. 35.001. DEFINITIONS. In this chapter:

9-62 (1) "Conduct business" includes engaging in or
9-63 transacting any business in which a regulated entity is authorized
9-64 to engage or is authorized to transact under the law of this state.

9-65 (2) "Regulated entity" means each insurer or other
9-66 organization regulated by the department, including:

- 9-67 (A) a domestic or foreign, stock or mutual, life,
- 9-68 health, or accident insurance company;
- 9-69 (B) a domestic or foreign, stock or mutual, fire

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

10-22 Sec. 35.002. CONSTRUCTION WITH OTHER LAW.
10-23 (a) Notwithstanding any other provision of this code, a regulated
10-24 entity may conduct business electronically in accordance with this
10-25 chapter and the rules adopted under Section 35.004.
10-26 (b) To the extent of any conflict between another provision
10-27 of this code and a provision of this chapter, the provision of this
10-28 chapter controls.

10-29 Sec. 35.003. ELECTRONIC TRANSACTIONS AUTHORIZED. A
10-30 regulated entity may conduct business electronically to the same
10-31 extent that the entity is authorized to conduct business otherwise
10-32 if before the conduct of business each party to the business agrees
10-33 to conduct the business electronically.

10-34 Sec. 35.004. RULES. (a) The commissioner shall adopt
10-35 rules necessary to implement and enforce this chapter.
10-36 (b) The rules adopted by the commissioner under this section
10-37 must include rules that establish minimum standards with which a
10-38 regulated entity must comply in the entity's electronic conduct of
10-39 business with other regulated entities and consumers.

10-40 SECTION 6.002. Chapter 35, Insurance Code, as added by this
10-41 Act, applies only to business conducted on or after the effective
10-42 date of this Act. Business conducted before the effective date of
10-43 this Act is governed by the law in effect on the date the business
10-44 was conducted, and that law is continued in effect for that purpose.

10-45 ARTICLE 7. DATA COLLECTION
10-46 SECTION 7.001. Chapter 38, Insurance Code, is amended by
10-47 adding Subchapter I to read as follows:

10-48 SUBCHAPTER I. DATA COLLECTION RELATING TO
10-49 CERTAIN PERSONAL LINES OF INSURANCE

10-50 Sec. 38.401. APPLICABILITY OF SUBCHAPTER. This subchapter
10-51 applies only to an insurer who writes personal automobile insurance
10-52 or residential property insurance in this state.

10-53 Sec. 38.402. FILING OF CERTAIN CLAIMS INFORMATION.
10-54 (a) The commissioner shall require each insurer described by
10-55 Section 38.401 to file with the commissioner aggregate personal
10-56 automobile insurance and residential property insurance claims
10-57 information for the period covered by the filing, including the
10-58 number of claims:
10-59 (1) filed during the reporting period;
10-60 (2) pending on the last day of the reporting period,
10-61 including pending litigation;
10-62 (3) closed with payment during the reporting period;
10-63 (4) closed without payment during the reporting
10-64 period; and
10-65 (5) carrying over from the reporting period
10-66 immediately preceding the current reporting period.
10-67 (b) An insurer described by Section 38.401 must file the
10-68 information described by Subsection (a) on an annual basis. The
10-69 information filed must be broken down by quarter.

11-1 Sec. 38.403. PUBLIC INFORMATION. (a) The department shall
11-2 post the data contained in claims information filings under Section
11-3 38.402 on the department's Internet website. The commissioner by
11-4 rule may establish a procedure for posting data under this
11-5 subsection that includes a description of the data that must be
11-6 posted and the manner in which the data must be posted.

11-7 (b) Information provided under this section must be
11-8 aggregate data by line of insurance for each insurer and may not
11-9 reveal proprietary or trade secret information of any insurer.

11-10 Sec. 38.404. RULES. The commissioner may adopt rules
11-11 necessary to implement this subchapter.

11-12 ARTICLE 8. STUDY ON RATE FILING AND APPROVAL
11-13 REQUIREMENTS FOR CERTAIN INSURERS WRITING IN
11-14 UNDERSERVED AREAS; UNDERSERVED AREA DESIGNATION

11-15 SECTION 8.001. Section 2004.002, Insurance Code, is amended
11-16 by amending Subsection (b) and adding Subsections (c) and (d) to
11-17 read as follows:

11-18 (b) In determining which areas to designate as underserved,
11-19 the commissioner shall consider:

11-20 (1) whether residential property insurance is not
11-21 reasonably available to a substantial number of owners of insurable
11-22 property in the area; ~~and~~

11-23 (2) whether access to the full range of coverages and
11-24 policy forms for residential property insurance does not reasonably
11-25 exist; and

11-26 (3) any other relevant factor as determined by the
11-27 commissioner.

11-28 (c) The commissioner shall determine which areas to
11-29 designate as underserved under this section not less than once
11-30 every six years.

11-31 (d) The commissioner shall conduct a study concerning the
11-32 accuracy of current designations of underserved areas under this
11-33 section for the purpose of increasing and improving access to
11-34 insurance in those areas not less than once every six years.

11-35 SECTION 8.002. Subchapter F, Chapter 2251, Insurance Code,
11-36 is amended by adding Section 2251.253 to read as follows:

11-37 Sec. 2251.253. REPORT. (a) The commissioner shall conduct
11-38 a study concerning the impact of increasing the percentage of the
11-39 total amount of premiums collected by insurers for residential
11-40 property insurance under Section 2251.252.

11-41 (b) The commissioner shall report the results of the study
11-42 in the biennial report required under Section 32.022.

11-43 (c) This section expires September 1, 2013.

11-44 ARTICLE 9. TRANSITION; EFFECTIVE DATE

11-45 SECTION 9.001. Except as otherwise provided by this Act,
11-46 this Act applies only to an insurance policy, contract, or evidence
11-47 of coverage that is delivered, issued for delivery, or renewed on or
11-48 after January 1, 2012. A policy, contract, or evidence of coverage
11-49 delivered, issued for delivery, or renewed before January 1, 2012,
11-50 is governed by the law as it existed immediately before the
11-51 effective date of this Act, and that law is continued in effect for
11-52 that purpose.

11-53 SECTION 9.002. This Act takes effect September 1, 2011.

11-54 * * * * *