

**CHAPTER 685**

**H.B. No. 1461**

**AN ACT**

relating to insurance regulation and to the continuation, powers, and duties of the Texas Department of Insurance and the office of public insurance counsel; providing administrative penalties; making an appropriation.

*Be it enacted by the Legislature of the State of Texas:*

**ARTICLE 1. ORGANIZATION OF TEXAS DEPARTMENT OF INSURANCE;  
FUNCTIONS OF COMMISSIONER; ELIMINATION OF STATE BOARD  
OF INSURANCE**

**SECTION 1.01.** Article 1.02, Insurance Code, is amended to read as follows:

**Art. 1.02. OPERATION OF DEPARTMENT[~~- BOARD~~].** (a) *A provision of this code or another insurance law, including an enactment or reenactment of a provision of this code or another insurance law by the 73rd Legislature, Regular Session, 1993, that references the State Board of Insurance is not intended to conflict with this article. A reference in this code or another insurance law to the State Board of Insurance means the Commissioner of Insurance or the Texas Department of Insurance, as consistent with the respective powers*

~~and duties of the Commissioner and the department under this article. [The State Board of Insurance is composed of three members, all of whom shall be citizens of Texas. They shall be appointed by the Governor, by and with the advice and consent of the Senate of Texas. The term of office of each member shall be as provided in this Code. Each member of the Board shall be a person with at least ten (10) years of successful experience in business, professional or governmental activities, or a total of at least ten (10) years in any combination of two or more of such activities. Each member shall be available at all reasonable times for the discharge of the duties and functions delegated to the members of the Board by law, but the members shall act as a unit, and in no event shall the individual members divide or confine their activities to special fields of insurance regulation or attempt to administer the functions hereinafter assigned to the Commissioner.]~~

~~(b) The powers, functions, authority, prerogatives, duties, obligations, and responsibilities vested in the department shall be exercised, performed, carried out, and administered by the Commissioner as the chief executive and administrative officer of the department in accordance with the pertinent laws of this state and the rules and regulations for uniform application adopted by the Commissioner [Board and subject to the general supervision and direction of the Board. The duties of the State Board of Insurance shall be primarily in a supervisory capacity, and the carrying out and administering the details of the Insurance Code, other insurance laws of this state, and other laws providing jurisdiction in or applicable to the department or the Commissioner shall be primarily the duty and responsibility of the Commissioner acting under the general supervision and direction of the Board].~~

~~(c) [On February 10th of each odd-numbered year, the Governor shall appoint from among the membership of the Board a Chairman who shall be known and designated as the Chairman of the State Board of Insurance.~~

~~[(d)] The Texas Department of Insurance is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished September 1, 2005 [1993].~~

~~[(e) Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees. In making appointments under this section, the governor shall attempt to appoint members of different minority groups including females, African Americans, Hispanic Americans, Native Americans, and Asian Americans.~~

~~[(f) In addition to grounds provided by other applicable law providing for removal from office, it is a ground for removal from the board that a member:~~

~~[(1) does not have at the time of appointment the qualifications required by this article for appointment to the board;~~

~~[(2) does not maintain during the service on the board the qualifications required by this article for appointment to the board; or~~

~~[(3) violates a prohibition established by Article 1.06A of this code.~~

~~[(g) The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.]~~

~~(d) [(h)] The Commissioner or the Commissioner's designee [board] shall prepare and maintain a written policy statement [plan] to ensure [assure] implementation of a program of equal employment opportunity under which [whereby] all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement [plan] must include:~~

~~(1) personnel policies, including policies relating to [a comprehensive analysis of all employees by race, sex, ethnic origin, class of position, and salary or wage;~~

~~[(2) plans for] recruitment, evaluation, selection, appointment, training, and promotion of[, and other] personnel that are in compliance with the Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes) [policies];~~

~~(2) a comprehensive analysis of the department work force that meets federal and state guidelines;~~

~~(3) procedures by which a determination can be made of significant underuse in the department work force of all persons for whom federal or state guidelines encourage a more equitable balance; and~~

(4) reasonable methods to appropriately address those areas of significant underuse  
~~[(3) steps reasonably designed to overcome any identified underutilization of minorities and women in the department's work force; and~~

~~[(4) objectives and goals, timetables for the achievement of those objectives and goals, and assignments of responsibility for their achievement].~~

(e) A policy statement prepared under Subsection (d) of this article must cover an annual period, be updated annually, be reviewed by the Commission on Human Rights for compliance with Subsection (d)(1) of this article, and be filed with the governor's office.

(f) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (e) of this article. The report may be made separately or as a part of other biennial reports made to the legislature.

(g) The Commissioner shall develop and implement policies that clearly define the respective responsibilities of the Commissioner and the staff of the department.

(h) The Commissioner shall provide to department employees, as often as necessary, information regarding their qualification for office or employment under this code and their responsibilities under applicable laws relating to standards of conduct for state employees.

~~[(i) The plan required by Section (h) of this article shall be filed with the governor's office within 60 days after the effective date of that section, cover an annual period, and be updated at least annually. Progress reports shall be submitted to the governor's office within 30 days before November 1 and April 1 of each year and shall include the steps the department has taken within the reporting period to comply with those requirements.]~~

SECTION 1.02. Article 1.01A, Insurance Code, is amended to read as follows:

Art. 1.01A. CREATION AND STRUCTURE OF THE TEXAS DEPARTMENT OF INSURANCE. (a) In this code and other insurance laws:

(1) ~~["Board" means the three-member State Board of Insurance,~~

~~[(2)] "Department" means the Texas Department of Insurance.~~

(2) ~~[(3)] "Commissioner" means the Commissioner of Insurance appointed under Article 1.09 of this code.~~

(b) The Texas Department of Insurance is created to regulate the business of insurance in this state. The department is composed of ~~[the board,]~~ the Commissioner~~[,] and other officers and employees required to efficiently implement the purpose of this code, other insurance laws of this state, and other laws providing jurisdiction in or applicable to the department[, board,] or Commissioner.~~

(c) Except as otherwise provided by law, all references in this code and other statutes of this state to ~~the board,~~ the Board of Insurance Commissioners, the State Board of Insurance, or individual commissioners mean the department~~[, the board,]~~ or the Commissioner as consistent with the respective duties of ~~the Commissioner or the department [those persons or entities]~~ under this code and other laws relating to the business of insurance in this state.

SECTION 1.03. Chapter 1, Insurance Code, is amended by amending Article 1.04 and adding Articles 1.03A, 1.04A, 1.04B, and 1.04C to read as follows:

Art. 1.03A. RULES FOR GENERAL APPLICATION. ~~The Commissioner may adopt~~  
~~[1.04. DUTIES AND ORGANIZATION OF THE STATE BOARD OF INSURANCE. (a) The State Board of Insurance shall operate and function as one body or a unit and a majority vote of the members of the Board shall be necessary to transact any of its official business. The Board shall maintain one official set of records of its proceedings and actions.~~

~~[(b) The State Board of Insurance shall determine policy for the department, rules, rates, forms, and appeals as provided by law, and shall assume other duties that are expressly assigned to the Board by law, but otherwise the Board shall execute its duties through the Commissioner as provided by law, in accordance with the laws of this state and the rules and regulations for uniform application as made by the Board.~~

~~[(c) All] rules and regulations for the conduct and execution of the duties and functions of the department only as authorized by a statute. Rules and regulations adopted in accordance with this subsection must [shall] be [rules] for general and uniform application and shall be [adopted and] published by the Commissioner [Board] on the basis of a~~

systematic organization of such rules by their subject matter and content. ~~[The Commissioner may make recommendations to the Board regarding such rules and regulations, including amendments, changes and additions.]~~ Such published rules shall be kept current and shall be available in a form convenient to all interested persons.

*Art. 1.04. APPEAL OF DECISION OF COMMISSIONER.* ~~(a) [(d) Any person or organization, private or public, that is affected by any ruling or action of the Commissioner shall have the right to have such ruling or action reviewed by the State Board of Insurance by making an application to the Board. Such application shall state the identities of the parties, the ruling or action complained of, the interests of the parties in such ruling, the grounds of such objections, the action sought of the Board and the reasons and grounds for such action by the Board. The original shall be filed with the Chief Clerk of the Board together with a certification that a true and correct copy of such application has been filed with the Commissioner. Within thirty (30) days after the application is filed, and after ten (10) days written notice to all parties of record, the Board shall review the action complained of in a public hearing and render its decision at the earliest possible date thereafter. The Board shall make such other rules and regulations with regard to such applications and their consideration as it deems advisable, not inconsistent with this Article. Said application shall have precedence over all other business of a different nature pending before the Board.~~

~~[In the public hearing, any and all evidence and matters pertinent to the appeal may be submitted to the Board, whether included in the application or not.~~

~~[(f)] If any insurance company or other party at interest be dissatisfied with any ruling, action, decision, regulation, order, rate, rule, form, act, or administrative ruling adopted by the Commissioner [State Board of Insurance], such dissatisfied company or party at interest after failing to get relief from the Commissioner [State Board of Insurance], may file a petition setting forth the particular objection to such ruling, action, decision, regulation, order, rate, rule, form, act, or administrative ruling, or to either or all of them, in the District Court of Travis County, Texas, and not elsewhere, against the Commissioner [State Board of Insurance] as defendant. Judicial review of a ruling, action, decision, regulation, order, rate, rule, form, act, or administrative ruling of the Commissioner [Board] is subject to the substantial evidence rule and shall be conducted under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The filing of a petition for judicial review of a ruling, action, decision, regulation, order, rate, rule, form, act, or administrative ruling of the Commissioner [Board] under this subsection does not vacate a decision of the Commissioner [Board]. After notice and hearing, the court may vacate the decision of the Commissioner [Board] if the court finds it would serve the interest of justice to do so. Any party to the action may appeal to the Appellate Court having jurisdiction of the cause and the appeal shall be at once returnable to the Appellate Court having jurisdiction of the cause and the action so appealed shall have precedence in the Appellate Court over all causes of a different character therein pending.~~

~~(b) The Commissioner [Board] is not required to give any appeal bond in any cause arising under this article [hereunder].~~

*Art. 1.04A. SALARIED EXAMINERS.* ~~[(g)] In making examinations of any insurance organization as provided by law, the department may use its own salaried examiners or may use the services of persons or firms qualified to perform such examinations or assist in the performance of such examinations. Such examination shall cover the period of time that the department requests. In the event the department does not specify a longer period of time, such examination shall be from the time of the last examination theretofore made by the department to December 31st of the year preceding the examination then being made. All fees paid to those persons or firms whose services are used shall be paid at the usual and customary rates charged for the performance of those services, subject to the right of the Commissioner [Board] to disapprove for payment any fees that are excessive in relation to the services actually performed. Such payment shall be made by the insurance organization being examined and all such examination fees so paid shall be allowed as a credit on the amount of premium or other taxes to be paid by any such insurance organization for the taxable year during which examination fees are paid just as examination fees are credited when the department uses its own salaried examiners.~~



*Art. 1.04B. POLICY HOLDER COMPLAINTS.* [(h)] The department shall establish a program to facilitate resolution of policy holder complaints.

*Art. 1.04C. PUBLIC ACCESS.* (a) *The Commissioner shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the department's programs. The department shall also comply with federal and state laws for program and facility accessibility.*

(b) *The Commissioner shall develop and implement policies that provide the public with a reasonable opportunity to appear before the Commissioner and to speak on any issue under the jurisdiction of the Commissioner.*

SECTION 1.04. Chapter 1, Insurance Code, is amended by amending Articles 1.06A and 1.06B and adding Article 1.06AA to read as follows:

*Art. 1.06A. CONFLICT OF INTEREST; TRADE ASSOCIATIONS.* (a) ~~An [A member of the State Board of Insurance, the commissioner, or an employee of the department may not be an] officer, employee, or paid consultant of a trade association in the field of insurance may not be commissioner or an employee of the department who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule [industry].~~

(b) *A person who is the spouse of an officer, manager, or paid consultant of a trade association in the field of insurance may not be commissioner or a department employee who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.*

(c) *For purposes of this article, a trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.*

*Art. 1.06AA. CONFLICT OF INTEREST; EXEMPT EMPLOYEES.* A ~~[Any] person [whose employment commences after the effective date of this Act] may not be [appointed as a member of the State Board of Insurance or] employed in an exempt salary position as defined by the General Appropriations Act who at the time of [appointment or] employment resides in the same household as a person who is an officer, managerial employee, or paid consultant in the insurance industry.~~

*Art. 1.06B. LOBBYING ACTIVITIES.* A person ~~may not serve as commissioner or act as the general counsel to the commissioner if the person [who] is required to register as a lobbyist under Chapter 305, Government Code, because of the person's [by virtue of his] activities for compensation [in or] on behalf of a profession related to the operation of the department [may not serve as a member of the board or act as the general counsel to the board].~~

SECTION 1.05. Article 1.09, Insurance Code, is amended by amending Subsections (a), (b), (f), (g), and (h) and by adding Subsections (i) and (j) to read as follows:

(a) ~~The Commissioner of Insurance is [Board shall appoint a commissioner of insurance, who shall be] the department's chief executive and administrative officer charged with the primary responsibility of administering, enforcing, and carrying out the provisions of the Insurance Code, other insurance laws of this state, and other laws providing jurisdiction in or applicable to the department or commissioner, except for responsibilities relating to the reporting, collection, enforcement, and administration of taxes and certain fees as described under this code or another insurance law of this state that are assigned to the comptroller of public accounts [under the general supervision and direction of the Board. He shall hold his position at the pleasure of the Board and may be discharged at any time].~~

(b) ~~The governor, with the advice and consent of the senate, shall appoint the commissioner for a two-year term ending on February 1 of each odd-numbered year. The commissioner must [Commissioner of Insurance shall be a resident citizen of Texas, for at least one (1) year immediately prior to his/her appointment and shall] be a competent and experienced administrator, [who shall] be well informed and qualified in the field of insurance and insurance regulation, [- He/she shall] have had at least 10 [ten (10)] years of [administrative or~~

professional] experience as an executive in the administration of business or government, or as a practicing attorney or certified public accountant, and at least five years of that [shall have had training and] experience in the field of insurance or insurance regulation. The appointment of the commissioner shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee. No former or present member of the State Board of Insurance shall be appointed commissioner [Commissioner of Insurance]. A person is not eligible for appointment as commissioner if the person, the person's spouse, or any person that resides in the same household as the person:

(1) is registered, certified, or licensed by the department;

(2) is employed by or participates in the management of a business entity or other organization regulated by the department or receiving funds from the department;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the department or receiving funds from the department; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the department, other than compensation or reimbursement authorized by law.

(f) The commissioner shall appoint such deputies, assistants, and other personnel as are necessary to carry out the duties and functions devolving upon the commissioner [him] and the department under the Insurance Code, other insurance laws of this state, and other laws providing jurisdiction in or applicable to the department or the commissioner, subject to the authorization by the Legislature in its appropriations bills or otherwise[, and to the rules of the Board]. A person appointed under this subsection must have the professional, administrative, and insurance experience necessary to qualify the person for the particular position to which the person is appointed. An associate or deputy commissioner, or a person holding an equivalent position, must have at least five years of the experience required for appointment as Commissioner of Insurance under Subsection (b) of this article and at least two years of this experience must be in work related to the position to be held.

(g) The commissioner or the commissioner's [his] designee shall develop an intra-agency [intraagency] career ladder program. The program shall require intra-agency posting of all nonentry level positions concurrently with any public posting[, one part of which shall be the intraagency posting of each nonentry level classified position for at least five days before the position is filled. Notwithstanding any other law to the contrary, a posting of a position is not required in the case of:

[~~(1) a lateral intraagency transfer; or~~

[~~(2) the promotion of a present employee to a position in a higher pay group because of the employee's ability to assume greater job responsibilities or additional duties or the employee's greater expertise rather than for the mere purpose of filling an existing vacancy].~~

(h) The commissioner or the commissioner's [his] designee shall develop a system of annual performance evaluations [reviews that evaluate both the quality and quantity of the job tasks performed]. All merit pay for department employees must be based on the system established under this subsection [section].

(i) It is a ground for removal from office if the commissioner:

(1) does not have at the time of appointment the qualifications required by Subsection (b) of this section;

(2) does not maintain during service as commissioner the qualifications required by Subsection (b) of this section;

(3) violates a prohibition established by Subsection (b) of this section or Article 1.06, 1.06A, or 1.06B of this code; or

(4) cannot discharge the commissioner's duties for a substantial part of the term for which the commissioner is appointed because of illness or disability.

(j) The validity of an action of the commissioner or the department is not affected by the fact that it is taken when a ground for removal of the commissioner exists.

SECTION 1.06. Article 1.09-1(b), Insurance Code, is amended to read as follows:

(b) ~~[In all rate hearings and policy form proceedings before the Board, except for those rate hearings and proceedings as provided in Subsections (g) and (h), Article 1.35A, of this code, the Attorney General may intervene in the public interest.]~~ The *Commissioner* [Board] shall have and exercise the power of subpoena and subpoena duces tecum for witnesses, documents, and other evidence to the extent of the jurisdiction of this state for such hearings and proceedings on its own motion ~~[or upon application of the Attorney General].~~

SECTION 1.07. Article 1.10, Insurance Code, is amended to read as follows:

Art. 1.10. DUTIES OF THE *DEPARTMENT* [BOARD]. In addition to the other duties required of the *Department*, ~~the Department~~ [Board, it] shall perform duties as follows:

1. Shall Execute the Laws. See that all laws respecting insurance and insurance companies are faithfully executed.

2. File Articles of Incorporation and Other Papers. File and preserve in its office all acts or articles of incorporation of insurance companies and all other papers required by law to be deposited with the *Department* [Board] and, upon application of any party interested therein, furnish certified copies thereof upon payment of the fees prescribed by law.

3. Shall Calculate Reserve. For every company transacting any kind of insurance business in this State, for which no basis is prescribed by law, the *Department* [Board] shall calculate the reinsurance reserve upon the same basis prescribed in Article 6.01 of this code as to companies transacting fire insurance business.

4. To Calculate Re-insurance Reserve. On the thirty-first day of December of each and every year, or as soon thereafter as may be practicable, the *Department* [Board] shall have calculated in ~~the Department~~ [its office] the re-insurance reserve for all unexpired risks of all insurance companies organized under the laws of this state, or transacting business in this state, transacting any kind of insurance other than life, fire, marine, inland, lightning or tornado insurance, which calculation shall be in accordance with the provisions of Paragraph 3 hereof.

5. When a Company's Surplus is Impaired. No impairment of the capital stock of a stock company shall be permitted. No impairment of the surplus of a stock company, or of the minimum required aggregate surplus of a mutual, Lloyd's, or reciprocal insurer, shall be permitted in excess of that provided by this section. Having charged against a company other than a life insurance company, the reinsurance reserve, as prescribed by the laws of this State, and adding thereto all other debts and claims against the company, the Commissioner shall, (i) if it is determined that the surplus required by Article 2.02 or 2.20 of this code of a stock company doing the kind or kinds of insurance business set out in its Certificate of Authority is impaired to the extent of more than fifty (50%) per cent of the required surplus for a capital stock insurance company, or is less than the minimum level of surplus required by *Commissioner* [Board] promulgated risk-based capital and surplus regulations, or (ii) if it is determined that the required aggregate surplus of a reciprocal or mutual company, or the required aggregate of guaranty fund and surplus of a Lloyd's company, other than a life insurance company, doing the kind or kinds of insurance business set out in its Certificate of Authority is impaired to the extent of more than twenty-five per cent (25%) of the required aggregate surplus, or is less than the minimum level of surplus required by *Commissioner* [Board] promulgated risk-based capital and surplus regulations, the Commissioner shall order the company to remedy the impairment of surplus to acceptable levels specified by the Commissioner or to cease to do business within this State. The Commissioner shall thereupon immediately institute such proceedings as may be necessary to determine what further actions shall be taken in the case.

6. Shall Publish Results of Investigation. The *Department* [Board] shall publish the result of ~~an~~ [its] examination of the affairs of any company whenever the *Commissioner* [Board] deems it for the interest of the public.

7. May Order Sanctions. (a) After notice and opportunity for a hearing, the *Commissioner* [State Board of Insurance] may cancel or revoke any permit, license, certificate of authority, certificate of registration, or other authorization issued or existing under its authority or the authorization of this Code if the holder or possessor of same is found to be in violation of, or to have failed to comply with, a specific provision of the Code or any duly

promulgated rule or regulation of the *Commissioner* [~~State Board of Insurance~~]. In lieu of such cancellation or revocation, the *Commissioner* [~~State Board of Insurance~~] may order one or more of the following sanctions if it determines from the facts that such would be more fair, reasonable, or equitable:

(1) Suspend such authorization for a time certain, not to exceed one year;

(2) Order the holder or possessor of such authorization to cease and desist from the specified activity determined to be in violation of specific provisions of this Code or rules and regulations of the *Commissioner* [~~State Board of Insurance~~] or from failure to comply with such provisions of this Code or such rules and regulations;

(3) Direct the holder or possessor of such authorization to *pay an administrative penalty in accordance with Article 1.10E of this code* [~~remit within a specified time, not to exceed sixty (60) days, a specified monetary forfeiture not to exceed Twenty-five Thousand (\$25,000) Dollars for such violation or failure to comply~~]; or

(4) Direct the holder or possessor of such authorization to make complete restitution to all Texas residents, Texas insureds, and entities operating in Texas harmed by the violation or failure to comply.

(b) Restitution under Subdivision (4) of Subsection (a) must be made in the form and amount and within the period determined by the *Commissioner* [~~State Board of Insurance~~].

(c) [~~Any monetary forfeiture paid as a result of an order issued pursuant to Subdivision (3) of Subsection (a) shall be deposited with the State Treasurer to the credit of the General Revenue Fund.~~

[~~(d)~~] If it is found after hearing that any holder or possessor has failed to comply with an order issued pursuant to Subsection (a), the *Commissioner* [~~State Board of Insurance~~] shall, unless its order is lawfully stayed, cancel all authorizations of such holder or possessor.

(d) [~~(e)~~] The *Commissioner* may [~~State Board of Insurance shall have authority to~~] informally dispose of any matter specified in this section by consent order, agreed settlement, stipulations, or default. *An informal disposition or consent order may include a provision under which the holder or possessor agrees to a sanction under this section with the express reservation that:*

(1) *the holder or possessor is not admitting any violation of this code or of a rule or regulation; and*

(2) *the existence of a violation is in dispute.*

(e) [~~(f)~~] The *Commissioner* [~~Board~~] shall give notice of any action taken pursuant to this section to the Insurance Commissioner or other similar officer of every state.

(f) [~~(g)~~] The authority vested in the *Commissioner* [~~State Board of Insurance~~] in this Article shall be in addition to and not in lieu of any other authority to enforce or cause to be enforced any sanctions, penalties, fines, forfeitures, denials, suspensions, or revocations otherwise authorized by law, and shall be applicable to every form of authorization to any person or entity holding or possessing the same.

(g) [~~(h)~~] This section applies to all companies regulated by the *Commissioner*, [~~State Board of Insurance~~] including but not limited to domestic and foreign, stock and mutual life, health, and accident insurance companies; domestic and foreign, stock and mutual, fire and casualty insurance companies; Mexican casualty companies; domestic and foreign Lloyd's plan insurers; domestic and foreign reciprocal or interinsurance exchanges; domestic and foreign fraternal benefit societies; domestic and foreign title insurance companies; attorney's title insurance companies; stipulated premium insurance companies; nonprofit legal service corporations; health maintenance organizations; statewide mutual assessment companies; local mutual aid associations; local mutual burial associations; exempt associations under Article 14.17 of this Code; nonprofit hospital, medical, or dental service corporations including but not limited to companies subject to Chapter 20 of this Code; county mutual insurance companies; and farm mutual insurance companies. Also, this section applies to all agents of those companies and generally to all other individuals, corporations, associations, partnerships, and other

natural or artificial persons engaged in the business of insurance or that hold a permit, certificate, registration, license, or other authority under this Code or that are regulated by the *Commissioner* [~~State Board of Insurance~~].

8. Report to Attorney General. *The Department* [It] shall report promptly and in detail to the Attorney General any violation of law relative to insurance companies or the business of insurance.

9. Shall Furnish Blanks. *The Department* [It] shall furnish to the companies required to report to the *Department* [Board] the necessary blank forms for the statements required.

10. Shall Keep Records. *The Department* [It] shall preserve in a permanent form a full record of the *Department's* [its] proceedings and a concise statement of the condition of each company or agency visited or examined.

11. Give Certified Copies. At the request of any person, and on the payment of the legal fee, the *Department* [Board] shall give certified copies of any record or papers in its office, when the *Commissioner* [it] deems it not prejudicial to public interest and shall give such other certificates as are provided for by law. The fees collected by the *Department* [Board] under this section shall be deposited in the State Treasury to the credit of the *Texas Department* [~~State Board~~] of Insurance operating fund.

12. Report to Governor and Legislature. *The Department shall file annually with the Governor and the presiding officer of each house of the Legislature a complete and detailed written report accounting for all funds received and disbursed by the Department during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act. The report shall also contain the Commissioner's* [~~It shall report annually to the Governor the receipts and expenses of its department for the year, its~~] official acts, the condition of companies doing business in this State, and such other information as will exhibit the affairs of the *Department* [said department]. [~~Upon specific request by the Governor, the Board shall report the names and compensations of its clerks.~~]

13. Send Copies of Reports To. The *Department* [Board] shall send a copy of the [its] annual report to the Insurance Commissioner or other similar officer of every state and, on request, shall send a copy to each company doing business in Texas.

14. Report Laws to Other States. On request, the *Department* [it] shall communicate to the Insurance Commissioner or other similar officer of any other state, in which the substantial provisions of the law of this State relative to insurance have been, or shall be, enacted, any facts which by law it is his duty to ascertain respecting the companies of this State doing business within such other state.

15. See That No Company Does Business. *The Commissioner* [It] shall see that no company is permitted to transact the business of life insurance in this State whose charter authorizes it to do a fire, marine, lightning, tornado, or inland insurance business, and that no company authorized to do a life insurance business in this State be permitted to take fire, marine or inland risks.

16. Admit Mutual Companies. The *Commissioner* [Board] shall admit into this State mutual insurance companies engaged in cyclone, tornado, hail and storm insurance which are organized under the laws of other states and which have Two Million (\$2,000,000.00) Dollars assets in excess of liabilities.

17. Voluntary Deposits. (a) In the event any insurance company organized and doing business under the provisions of this Code shall be required by any other state, country or province as a requirement for permission to do an insurance business therein to make or maintain a deposit with an officer of any state, country, or province, such company, at its discretion, may voluntarily deposit with the State Treasurer such securities as may be approved by the Commissioner of Insurance to be of the type and character authorized by law to be legal investments for such company, or cash, in any amount sufficient to enable it to meet such requirements. The State Treasurer is hereby authorized and directed to receive such deposit and hold it exclusively for the protection of all policyholders or creditors of the company wherever they may be located, or for the protection of the policyholders or creditors of a particular state, country or province, as may be designated

by such company at the time of making such deposit. The company may, at its option, withdraw such deposit or any part thereof, first having deposited with the Treasurer, in lieu thereof, other securities of like class and of equal amount and value to those withdrawn, which withdrawal and substitution must be approved by the Commissioner of Insurance. The proper officer of each insurance company making such deposit shall be permitted at all reasonable times to examine such securities and to detach coupons therefrom, and to collect interest thereon, under such reasonable rules and regulations as may be prescribed by the State Treasurer and the Commissioner of Insurance. Any deposit so made for the protection of policyholders or creditors of a particular state, country or province shall not be withdrawn, except by substitution as provided above, by the company, except upon filing with the Commissioner of Insurance evidence satisfactory to him that the company has withdrawn from business, and has no unsecured liabilities outstanding or potential policyholder liabilities or obligations in such other state, country or province requiring such deposit, and upon the filing of such evidence the company may withdraw such deposit at any time upon the approval of the Commissioner of Insurance. Any deposit so made for the protection of all policyholders or creditors wherever they may be located shall not be withdrawn, except by substitution as provided above, by the company except upon filing with the Commissioner of Insurance evidence satisfactory to him that the company does not have any unsecured liabilities outstanding or potential policy liabilities or obligations anywhere, and upon filing such evidence the company may withdraw such deposit upon the approval of the Commissioner of Insurance. For the purpose of state, county and municipal taxation, the situs of any securities deposited with the State Treasurer hereunder shall be in the city and county where the principal business office of such company is fixed by its charter.

(b) Any voluntary deposit ~~[now]~~ held by the State Treasurer or *the Department* ~~[State Board of Insurance]~~ heretofore made by any insurance company in this State, and which deposit was made for the purpose of gaining admission to another state, may be considered, at the option of such company, to be hereinafter held under the provisions of this Act.

(c) When two or more companies merge or consolidate or enter a total reinsurance contract by which the ceding company is dissolved and its assets acquired and liabilities assumed by the surviving company, and the companies have on deposit with the State Treasurer two or more deposits made for identical purposes under *this section* ~~[either Section 17 of Article 1.10 of the Texas Insurance Code, as amended,]~~ or Article 4739, Revised ~~[Civil]~~ Statutes ~~[of Texas (1925)],~~ as amended, and now repealed, all such deposits, except the deposit of greatest amount and value, may be withdrawn by the new surviving or reinsuring company, upon proper showing of duplication of such deposits and that the company is the owner thereof.

(d) Any company which has made a deposit or deposits under *this section* ~~[Article 1.10, Section 17, Texas Insurance Code, as amended,]~~ or Article 4739, Revised ~~[Civil]~~ Statutes ~~[of Texas (1925)],~~ as amended and now repealed, shall be entitled to a return of such deposits upon proper application therefor and a showing before the Commissioner that such deposit or deposits are no longer required under the laws of any state, country or province in which such company sought or gained admission to do business upon the strength of a certificate of such deposit ~~[by the State Board of Insurance or its predecessor].~~

(e) Upon being furnished a certified copy of the Commissioner's order issued under Subsection (c) or (d) above, the Treasurer of the State of Texas shall release, transfer and deliver such deposit or deposits to the owner as directed in said order.

18. Complaint File. *The Department* ~~[State Board of Insurance]~~ shall *keep* ~~[maintain]~~ an information file *about* ~~[relating to]~~ each ~~[written]~~ complaint ~~[that is]~~ filed with the *Department concerning an activity that is regulated by the Department or Commissioner* ~~[board concerning an activity that is regulated by the board].~~

19. Notice of Complaint Status. If a written complaint is filed with the *Department, the Department, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation* ~~[State Board of Insurance relating to an activity that is~~

regulated by the board, the board, at least quarterly and until final disposition of the complaint, shall notify the person making the complaint and the person complained against of the status of the complaint unless:

~~(A) the complaint relates to an entity in supervision, conservatorship, or liquidation; or~~

~~(B) giving such notice would jeopardize the investigation of a possible violation of a law that is enforceable by a criminal penalty].~~

20. Electronic Transfer of Funds. The *Commissioner* ~~[Board]~~ shall adopt rules for the electronic transfer of any taxes, fees, guarantee funds, or other money owed to or held for the benefit of the state *and for which the Department has the responsibility to administer under this code or another insurance law of this state.* The *Commissioner* ~~[Board]~~ shall require the electronic transfer of any amounts held or owed in an amount exceeding \$500,000.

SECTION 1.08. Chapter 1, Insurance Code, is amended by adding Articles 1.24D and 1.27 to read as follows:

*Art. 1.24D. CONFIDENTIALITY OF UNDERWRITING GUIDELINES. (a) The department or the office of public insurance counsel may request and receive copies of an insurer's underwriting guidelines. Underwriting guidelines are confidential and the department or the office of public insurance counsel may not make the guidelines available to the public, provided, however, that the department or the office of public insurance counsel may disclose a summary of the underwriting guidelines in a manner that does not directly or indirectly identify the insurer who provided the guidelines.*

*(b) This law does not preclude the use of underwriting guidelines as evidence to prosecute a violation of this code. If guidelines are used to prosecute a violation of the law, all copies of those guidelines shall be presumed confidential and subject to a protective order until all appeals on the case have been exhausted. After the exhaustion of all appeals, if an insurer is found to have violated this code, the copies of the underwriting guidelines that were used as evidence of the violation shall no longer be presumed confidential.*

*(c) When such guidelines are furnished to the department or the office of public insurance counsel, only those persons within the department or the office of public insurance counsel with a need to know will have access to such guidelines. The department and the office of public insurance counsel shall establish internal control systems to limit such access and keep a record thereof.*

*(d) Violations of the provisions of this article shall be considered as violation of the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).*

*Art. 1.27. APPLICATION OF PROVISIONS ADOPTED BY NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS. The department may not require an insurer to comply with any rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners unless application of the rule, regulation, directive, or standard, including policy reserves, is expressly authorized by statute and approved by the commissioner.*

SECTION 1.09. Sections 1, 2, 3, 4, and 6, Article 1.31A, Insurance Code, are amended to read as follows:

Sec. 1. DEFINITION [DEFINITIONS]. In this article, "fund"~~]~~:

~~(1) "Board" means the State Board of Insurance.~~

~~(2) "Commissioner" means the commissioner of insurance.~~

~~(3) "Fund" means the Texas Department [State Board] of Insurance operating fund.~~

Sec. 2. CREATION OF FUND. The *Texas Department* ~~[State Board]~~ of Insurance operating fund is a *fund* ~~[created]~~ in the State Treasury.

Sec. 3. DEPOSIT OF REVENUES IN FUND. Money received by the *commissioner or comptroller* ~~[board]~~ from taxes and fees that are required by this code to be credited to the fund and money received by the *commissioner* ~~[board]~~ from sales, reimbursements, and fees authorized by law other than this code shall be deposited in the fund.

Sec. 4. CERTAIN MONEY INCLUDED. The money received from sales, reimbursements, and other fees authorized by law other than this code includes money received from the following:

(1) ~~fees received by the board for filing charters and charter amendments under Article 3914, Revised Statutes, as amended;~~

[2] fees received by the *department* [board] for providing copies of public records under Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-17a, Vernon's Texas Civil Statutes);

[3] ~~money received by the state fire marshal for licenses under Chapter 498, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 9205, Vernon's Texas Civil Statutes);~~

(2) [4] money or credits received by the *department* [board] for surplus or salvage property under Sections 9.04 and 9.05, *State Purchasing and General Services Act* [Chapter 773, Acts of the 66th Legislature, Regular Session, 1979] (Article 601b, Vernon's Texas Civil Statutes);

(3) [5] money received by the *department* [board] from the sale of publications and other printed material under Chapter 248, Acts of the 55th Legislature, Regular Session, 1957 (Article 4413(33), Vernon's Texas Civil Statutes);

(4) [6] receipts to the *department* [board] from miscellaneous transactions and sources under *Section 403.011 or 403.012, Government Code* [Article 4344, Revised Statutes], as amended;

(5) [7] money received by the *department* [board] from charges for postage spent to serve legal process under *Section 17.025, Civil Practice and Remedies Code* [Chapter 288, Acts of the 67th Legislature, Regular Session, 1981 (Article 2041b, Vernon's Texas Civil Statutes)];

(6) [8] receipts to the *department* [board] for furnishing necessary and authorized special or technical services under *Chapter 741, Government Code* [the *Interagency Cooperation Act*,] as amended [~~Article 4413(32), Vernon's Texas Civil Statutes~~];

(7) [9] receipts to the *department* [board] from the State Treasurer involving warrants for which payment is barred under *Chapter 404, Government Code* [Article 4371, Revised Statutes], as amended;

(8) [10] money received by the *department* [board] from sales or reimbursements authorized by the General Appropriations Act; and

(9) [11] money received by the *department* [board] from the sale of any property purchased with money from the [~~State Board of Insurance operating~~] fund or a predecessor fund.

Sec. 6. ADMINISTRATION OF FUND. (a) The commissioner shall administer and may spend money from the fund pursuant to laws of the state, rules *adopted by the commissioner* [of the board], and the General Appropriations Act.

(b) The *commissioner* [board] is responsible for the development and maintenance of an accounting procedure for the receipt, allocation, and disbursement of money deposited in the fund. The procedure shall require adequate records for the *commissioner or comptroller, if applicable*, [board] to adjust the tax assessments and fee schedules as authorized by this code and for the State Auditor to determine the source of all receipts and expenditures.

SECTION 1.10. Article 1.35, Insurance Code, is amended to read as follows:

Art. 1.35. NOTICE OF POLICYHOLDER COMPLAINT PROCEDURES. (a) Each insurance policy delivered or issued for delivery in this state [~~on or after September 1, 1984,~~] shall be accompanied by a brief written notice of suggested procedure to be followed by the policyholder in the event of a dispute concerning a policyholder's claim or premium.

(b) The notice must include the *name and address of the department and the toll-free telephone number maintained under Article 1.35D of this code* [State Board of Insurance].

(c) The *commissioner* [State Board of Insurance] shall promulgate the proper wording for the written notice.

SECTION 1.11. Article 1.35D(b), Insurance Code, is amended to read as follows:



(b) The department, through the toll-free telephone number, shall provide *only* the following to the public:

(1) information collected or maintained by the department relating to the number of *justified, verified as accurate, and documented as valid* complaints received against a particular insurer, as a percentage of the number of insurance policies written by the insurer and in force on the preceding December 31, and the disposition of the complaints;

(2) the rating of the insurer, if any, as published by a nationally recognized rating organization;

(3) the types of coverages available to a consumer through any insurer writing insurance in this state; [and]

(4) *the insurer's admitted assets-to-liabilities ratio; and*

(5) other appropriate information collected and maintained by the department.

SECTION 1.12. Article 1.37, Insurance Code, is amended to read as follows:

Art. 1.37. INFORMATION CONCERNING ~~DEPARTMENT~~ [STATE BOARD] OF INSURANCE. The ~~department~~ [State Board of Insurance] shall prepare information of public [consumer] interest describing the [regulatory] functions of the ~~department~~ [board] and describing the ~~department's~~ [board's] procedures by which [consumer] complaints are filed with and resolved by the ~~department~~ [board]. The ~~department~~ [board] shall make the information available [on request] to the [general] public and *appropriate* state agencies.

SECTION 1.13. Chapter 1, Insurance Code, is amended by adding Article 1.41 to read as follows:

Art. 1.41. LIMITATION ON DISCIPLINE. (a) *Except as provided by Subsections (b) and (c) of this article, the department or commissioner may not commence an action to impose a sanction, penalty, or fine, including an administrative penalty, against any insurer, agent, or other licensee subject to the jurisdiction of the department for any conduct that is in violation of this code or another insurance law of this state after the earlier of:*

(1) *the fifth anniversary of the date on which the conduct occurred; or*

(2) *the second anniversary of the earlier of:*

(A) *the date on which the conduct was first discovered by the department; or*

(B) *the date on which the conduct was made known to the department.*

(b) *The department or commissioner may not commence an action to impose a sanction, penalty, or fine, including an administrative penalty, against any insurer, agent, or other licensee subject to the jurisdiction of the department for any conduct that is in violation of this code or another insurance law of this state and that involves fraud on the part of the insurer, agent, or licensee after the fifth anniversary of the earlier of:*

(1) *the date on which the conduct was first discovered by the department; or*

(2) *the date on which the conduct was made known to the department.*

(c) *This article does not apply to a violation that is ongoing at the time the department seeks to impose the sanction, penalty, or fine.*

SECTION 1.14. Chapter 1, Insurance Code, is amended by adding Article 1.03B to read as follows:

Art. 1.03B. FISCAL IMPACT OF DEPARTMENT RULES. (a) *This article applies to any rule adopted by the commissioner in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).*

(b) *If the fiscal note or the public benefit-cost note required by Subdivisions (4) and (5), Section 5(a), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), fails to accurately state the reasonable actual costs required, and the reasonable actual costs required exceed the costs stated by at least 25 percent of the costs stated, the rule is void effective on the date the rule is adopted.*

SECTION 1.15. Section 323.007, Government Code, is amended by adding Subsection (d) to read as follows:

(d) Upon the direction of the lieutenant governor and the speaker of the house, the council shall prepare a revision of the Insurance Code and other insurance laws of this state that are included in Vernon's Texas Insurance Code for consideration by the 75th Legislature during its regular session. This subsection expires June 1, 1997.

SECTION 1.16. Section 3.22(c), Texas Workers' Compensation Act (Article 8308-3.22, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) The filing required under this section shall be filed with the *commission* [~~State Board of Insurance~~] pursuant to Section 3.27 of this Act.

SECTION 1.17. Section 3.25(c), Texas Workers' Compensation Act (Article 8308-3.25, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) The notice required under this section shall be filed with the *commission* [~~State Board of Insurance~~] pursuant to Section 3.27 of this Act.

SECTION 1.18. Section 3.26(d), Texas Workers' Compensation Act (Article 8308-3.26, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) The notice required under this section shall be filed with the *commission* [~~State Board of Insurance~~] pursuant to Section 3.27 of this Act.

SECTION 1.19. Section 3.27, Texas Workers' Compensation Act (Article 8308-3.27, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 8308-3.27. ~~COLLECTING, MAINTAINING, AND MONITORING AND ENFORCING COMPLIANCE [COOPERATION BETWEEN STATE BOARD OF INSURANCE AND TEXAS WORKERS' COMPENSATION COMMISSION].~~ (a) ~~The commission [On and after September 1, 1991, the State Board of Insurance] shall collect and maintain the information required [to be provided] under this chapter and [shall provide this information in the time and manner prescribed by the commission. The State Board of Insurance] shall monitor compliance with the requirements [and notify the commission of possible violations in the time and manner prescribed by the commission]. The commission [State Board of Insurance] is authorized to adopt rules as necessary to enforce this chapter.~~

(b) The commission shall enforce the administrative penalties established in this chapter according to Article 10 of this Act.

SECTION 1.20. Section 3.28(e), Texas Workers' Compensation Act (Article 8308-3.28, Vernon's Texas Civil Statutes), is amended to read as follows:

(e) The notice required under this section shall be filed with the *commission* [~~State Board of Insurance pursuant to Section 3.27 of this Act~~].

SECTION 1.21. (a) Sections 3(g) and 4(e), Article 1.10A, Insurance Code, are repealed.

(b) Articles 1.03, 1.05, 1.06D, and 1.08, Insurance Code, are repealed.

(c) Subsection (e), Article 1.09, Insurance Code, is repealed.

SECTION 1.22. (a) This section applies to any act of the State Board of Insurance performed before September 1, 1994, that, after September 1, 1994, is an act that shall or may be performed only by the commissioner of insurance, including:

- (1) issuance of a license, certificate, or other similar form of permission;
- (2) promulgation of a rule, standard, regulation, or order;
- (3) promulgation or approval of policy forms or policy form endorsements; or
- (4) adoption or approval of a plan of operation for an organization subject to the jurisdiction of the Texas Department of Insurance.

(b) An act governed by this section remains in effect until:

- (1) it expires under its own terms or in accordance with applicable law; or
- (2) it is superseded by an act of the commissioner of insurance.

SECTION 1.23. (a) As soon as possible on or after the effective date of this Act, but not later than March 1, 1994, the governor shall appoint a commissioner of insurance. The initial term of the commissioner ends on February 1, 1995.

(b) On the effective date of this Act, the commissioner of insurance serving immediately before the effective date of this Act shall assume authority over any area of activity of the

Texas Department of Insurance not subject to the authority of the State Board of Insurance under Subsection (c) of this section.

(c) On the effective date of this Act, the State Board of Insurance serving immediately before the effective date of this Act shall relinquish authority over all areas of activity of the Texas Department of Insurance except:

- (1) promulgation and approval of rates;
- (2) promulgation and approval of policy forms and policy form endorsements; and
- (3) hearings, proceedings, and rules related to the activities described by Subdivision (1) or (2) of this section.

(d) On the date a commissioner of insurance is appointed under Subsection (a) of this section, that commissioner shall assume the authority granted to the commissioner under Subsection (b) of this section. On and after that date, the commissioner shall cooperate with the State Board of Insurance to assume the authority granted to the board under Subsection (c) of this section and shall adopt rules as necessary to govern those activities in accordance with Article 1.33C, Insurance Code, as added by this Act. As soon as possible after the appointment of the commissioner under Subsection (a) of this section but not later than September 1, 1994, the commissioner shall assume the authority granted to the board under Subsection (c) of this section. After the commissioner has assumed this authority, the board may advise the commissioner with respect to that authority.

(e) A decision, rate, rule, or other act of the State Board of Insurance is appealable in the same manner as a decision of the commissioner of insurance under Article 1.04, Insurance Code, as amended by this Act.

(f) Effective September 1, 1994, the State Board of Insurance is abolished.

SECTION 1.24. On the effective date of this Act, the comptroller shall redesignate the State Board of Insurance operating fund (Fund No. 36) as the Texas Department of Insurance operating account in the general revenue fund. All money in the State Board of Insurance operating fund on the effective date of this Act shall be transferred to the Texas Department of Insurance operating account.

## ARTICLE 2. TRANSFER OF CERTAIN FUNCTIONS TO STATE OFFICE OF ADMINISTRATIVE HEARINGS

SECTION 2.01. Chapter 1, Insurance Code, is amended by adding Article 1.33B to read as follows:

*Art. 1.33B. CERTAIN HEARINGS HELD BY STATE OFFICE OF ADMINISTRATIVE HEARINGS.* (a) *This article does not apply to a hearing or proceeding:*

- (1) *relating to the approval or review of rates or rating manuals filed by individual companies, unless they are contested;*
- (2) *relating to the promulgation of rules;*
- (3) *relating to the promulgation or approval of a policy form or policy form endorsement;*
- (4) *relating to the adoption or approval of a plan of operation for an organization subject to the jurisdiction of the department; or*
- (5) *conducted in accordance with Article 1.04D of this code.*

(b) *The State Office of Administrative Hearings established under Chapter 591, Acts of the 72nd Legislature, Regular Session, 1991 (Article 6252-13f, Vernon's Texas Civil Statutes), and its subsequent amendments shall conduct any administrative hearing required to be held or that may be held under this code or another insurance law of this state. This article applies only to hearings required to be held before a decision may be rendered or action taken by the commissioner or the department.*

(c)(1) *Rate promulgation proceedings shall be governed by the provisions of this subsection and shall be treated as a contested case under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). Accordingly, the procedures before the commissioner shall be guided by the principles and procedures for contested cases as provided in the Administrative Procedure and Texas Register Act (Article 6252-13a,*

Vernon's Texas Civil Statutes) and the Texas Rules of Civil Procedure to the extent not inconsistent with the provisions of this subsection.

(2) Opportunity must be afforded all interested parties to respond to and present evidence and argument concerning all issues involved in the proceeding. The testimony of a witness, other than an expert witness, may be presented either orally by the witness at the hearing or by affidavit. Each party to the proceeding shall be accorded the right to cross-examine each witness called to testify by any other party to the proceeding. Accordingly, the attendance of any person providing testimony by affidavit shall be required if any party files a written request that the witness appear for cross-examination. If the person providing testimony by affidavit fails to appear for cross-examination after the filing of a written request that the person appear, the administrative law judge shall exclude the affidavit from evidence and shall not consider the affidavit of that person for any purpose. The direct testimony of each expert witness to be called must be prefiled in accordance with a schedule to be established by the administrative law judge. The administrative law judge shall also establish reasonable deadlines for the filing of affidavits, the designation of witnesses, and such other matters as are necessary or appropriate.

(3) The commissioner may not attempt to influence the administrative law judge's findings of fact, conclusions of law, or the administrative law judge's application of the law to the facts in any proceedings.

(4) The proposal for decision prepared by the administrative law judge, which shall include the proposed findings of fact and conclusions of law, shall be served by registered mail upon the parties by the administrative law judge, and an opportunity shall be given to each party to file exceptions to the proposal and briefs related to the issues addressed in the proposal for decision.

(5) The commissioner shall thereafter in open meeting consider the proposal for decision prepared by the administrative law judge, the exceptions of the parties, and the briefs and arguments of the parties. The commissioner may amend the proposal for decision, including any finding of fact, but any such amendment thereto and the order of the commissioner promulgating the rate shall be based solely upon the record made before the administrative law judge. Any such amendment by the commissioner shall be accompanied by an explanation of the basis of the amendment. The commissioner may also refer the matter back to the administrative law judge to reconsider findings and conclusions set forth in the proposal for decision or to take additional evidence or to make additional findings of fact or conclusions of law. The commissioner shall serve a copy of the commissioner's order, including the commissioner's findings of fact and conclusions of law, upon each party.

(d) The commissioner and the chief administrative law judge of the State Office of Administrative Hearings by rule shall adopt a memorandum of understanding governing hearings held by the State Office of Administrative Hearings under this code and other insurance laws of this state. The memorandum of understanding shall require the chief administrative law judge and the commissioner to cooperate in conducting hearings under this article and may authorize the State Office of Administrative Hearings to perform any procedural act, including giving of notice, that is required to be performed by the commissioner under this code or another insurance law of this state.

(e) Any provision of this code or another insurance law of this state that provides that the commissioner shall take an action at a hearing subject to this article means that the commissioner shall take the action after the receipt of a report from the State Office of Administrative Hearings regarding the hearing conducted by that agency.

(f) This article governs in the event of a conflict with another provision of this code or another insurance law of this state, unless the other provision or insurance law states that this article does not apply.

SECTION 2.02. Chapter 1, Insurance Code, is amended by adding Article 1.33C to read as follows:

Art. 1.33C. RATE AND FORM PROCEEDINGS. (a) The commissioner shall adopt rules governing hearings and other proceedings necessary for the promulgation or approval

of rates and approval or promulgation of policy forms or policy form endorsements under this code or other insurance laws of this state. The commissioner shall conduct these hearings or proceedings in accordance with the rules adopted under this article.

(b) Rules adopted under this article must comply with this code and any other insurance law of this state and must be adopted in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(c) In adopting rules under this article, the commissioner shall consider Article 5.121 of this code.

SECTION 2.03. Article 1.06C, Insurance Code, is amended to read as follows:

Art. 1.06C. PROHIBITED REPRESENTATION. (a) A person serving as a member of the former State Board of Insurance [board], commissioner, general counsel, public counsel, staff employee of a member of the former State Board of Insurance, or an employee of the State Office of Administrative Hearings who is involved in hearing cases under this code or another insurance law of this state [or head of a department division] may not, for a period of one year [two years] after the date the person ceases to be a board member, commissioner, general counsel, public counsel, or employee [division head], represent any person in a matter before the department or receive compensation for services rendered on behalf of any person regarding a matter pending before the department.

(b) ~~A person, other than a person subject to Subsection (a) of this section, who is employed by the department or board may not, for a period of two years after the date the person terminates service with the department or board, represent any person in a matter before the department or receive compensation for services rendered on behalf of any person regarding a matter pending before the department. This subsection does apply to an employee exempt from the state's position classification plan, but does not apply to an employee who was compensated at a salary less than the salary prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.~~

(c) ~~[(d)] A former member of the former State Board of Insurance [board], a former commissioner, a former general counsel, a former public counsel, a staff employee of a member of the former State Board of Insurance [a former head of a department division], or a former employee of the board or the State Office of Administrative Hearings [department described by Subsection (b) of this section] may not represent any person or receive compensation for services rendered on behalf of any person regarding a matter with which the former member, commissioner, general counsel, public counsel, division head, or employee was directly concerned during the period of service or employment on or with the board or State Office of Administrative Hearings [department] or as commissioner, either through personal involvement or because the matter was within the member's, commissioner's, general counsel's, public counsel's, [division head's,] or employee's official responsibility while associated with the board or State Office of Administrative Hearings.~~

(c) ~~[(d)]~~ A former member or employee of the former State Board of Insurance [board] or State Office of Administrative Hearings [department] or a former commissioner, general counsel, ~~[or]~~ public counsel, or staff employee of a member of the former State Board of Insurance commits an offense if the former member, employee, commissioner, general counsel, or public counsel violates this section. An offense under this subsection is a Class A misdemeanor.

(d) ~~[(e)]~~ This section does not apply to an employee of the Texas Department of Insurance whose employment is terminated based on the elimination of the employee's position of employment that is a direct result of a reduction in the agency's workforce.

SECTION 2.04. Article 1.09-4, Insurance Code, is repealed.

SECTION 2.05. (a) Not later than December 31, 1993, the commissioner of insurance and the chief administrative law judge of the State Office of Administrative Hearings shall adopt the memorandum of understanding required by Article 1.33B, Insurance Code, as added by this Act.

(b) This article applies only to a hearing that is not held before or pending on January 1, 1994. Unless the commissioner of insurance and the chief administrative law judge of the State Office of Administrative Hearings agree to apply Article 1.33B, Insurance Code, as added by this Act, a hearing that is held before or pending on January 1, 1994, is governed by

the law in effect immediately before the effective date of this Act, and that law is continued in effect for this purpose.

### ARTICLE 3. TRANSFER OF CERTAIN TAX COLLECTION AND AUDIT FUNCTIONS TO OFFICE OF THE COMPTROLLER

SECTION 3.01. Chapter 1, Insurance Code, is amended by adding Article 1.04D to read as follows:

*Art. 1.04D. DUTIES OF COMPTROLLER. (a) Except as otherwise expressly provided for in this code or another insurance law of this state, the duties of the department and commissioner relative to the collection, reporting, and administration of taxes and certain fees and assessments imposed under this code or another insurance law of this state are transferred to the comptroller effective September 1, 1993, as specifically provided in this code.*

*(b) The duties transferred to the comptroller relative to taxes, fees, and assessments imposed under this code or another insurance law of this state relate to the collection, reporting, enforcement, and administration of all such amounts currently provided for under this code or another insurance law of this state, and also of any taxes, fees, or assessments that have been repealed or are otherwise inactive but for which amounts may still be owing or refunds may be due on or after the effective date of this article.*

*(c) The comptroller may adopt rules to carry out the collection, reporting, enforcement, and administration responsibilities assigned to the comptroller under this code or another insurance law of this state. The comptroller may also prescribe appropriate report forms, establish or alter tax return due dates not otherwise specifically set forth in this code or another insurance law of this state, and otherwise adapt the functions transferred to the comptroller to increase efficiency and cost-effectiveness. With respect to rules related to the collection, reporting, enforcement, or otherwise to the administration of taxes imposed under this code, rules adopted by the comptroller shall prevail in the event of conflict with rules, policies, or procedures established by the department, the commissioner, or otherwise.*

*(d) With respect to the comptroller's performance of the duties relative to the taxes, fees, and assessments imposed under this code or another insurance law of this state, the comptroller has the administrative, enforcement, and collection powers provided by Subtitles A and B, Title 2, Tax Code, and their subsequent amendments. Except as otherwise expressly provided by this code, those powers are granted to the comptroller without limiting and exclusive of powers granted to the department or the commissioner with respect to other fees and assessments under this code.*

SECTION 3.02. Article 1.11(a), Insurance Code, is amended to read as follows:

*(a) The commissioner [Board] may, from time to time, make such changes in the forms of the annual statements required of insurance companies of any kind, as shall seem to it best adapted to elicit a true exhibit of their condition and methods of transacting business. Such form shall elicit only such information as shall pertain to the business of the company.*

*If any annual statement, report, financial statement, [tax return,] or [tax] payment required to be filed or deposited in the offices of the commissioner, or any report, tax return, or payment required to be filed or deposited in the offices of the comptroller [State Board of Insurance], is delivered by the United States Postal Service to the offices of the commissioner or comptroller, as required, [State Board of Insurance] after the prescribed date on which the annual statement, report, financial statement, tax return, or [tax] payment is to be filed, the date of the United States Postal Service postmark stamped on the cover in which the document [annual statement] is mailed, or any other evidence of mailing authorized by the United States Postal Service reflected on the cover in which the document [annual statement] is mailed, shall be deemed to be the date of filing, unless otherwise specifically made an exception to this general statute.*

SECTION 3.03. Section 2(b), Article 1.14-1, Insurance Code, is amended to read as follows:

(b) The provisions of this section do not apply to:

1. The lawful transaction of surplus lines insurance pursuant to Article 1.14-2.

2. The lawful transaction of reinsurance by insurers.
3. Transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state covering only subjects of insurance not resident, located, or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy.
4. Transactions involving contracts of insurance independently procured through negotiations occurring entirely outside of this state which are reported and on which premium tax is paid in accordance with this Article.
5. Transactions in this state involving group life, health or accident insurance (other than credit insurance) and group annuities where the master policy of such groups was lawfully issued and delivered in a state in which the company was authorized to do an insurance business and such transactions are authorized by other statutes of this state.
6. Lawful transactions by servicing companies of the Texas workers' compensation employers' rejected risk fund pursuant to Section 4.08, Article 5.76-2.

7. *Management and accounting activities in this state on behalf of a non-admitted captive insurance company that insures solely directors' and officers' liability insurance for the directors and officers of its parent and affiliated companies and/or the risks of its parent and affiliated companies. This provision does not exempt any insured or insurer from the payment of any applicable tax on premiums or any other applicable provision in this code.*

SECTION 3.031. Section 2(a), Article 1.14-1, Insurance Code, is amended to read as follows:

(a) Any of the following acts in this state effected by mail or otherwise is defined to be doing an insurance business in this state. The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered and takes effect. Unless otherwise indicated, the term insurer as used in this Article includes all corporations, associations, partnerships and individuals engaged as principals in the business of insurance and also includes interinsurance exchanges, mutual benefit societies, and insurance exchanges and syndicates as defined by rules promulgated by the State Board of Insurance.

1. The making of or proposing to make, as an insurer, an insurance contract.
2. The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety.
3. The taking or receiving of any application for insurance.
4. The receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for any insurance or any part thereof.
5. The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state.
6. Directly or indirectly acting as an agent for or otherwise representing or aiding on behalf of another any person or insurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state. The provisions of this subdivision shall not operate to prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of such employer, *its parent or affiliated companies.*

7. Contracting to provide indemnification or expense reimbursement in this state to persons domiciled in this state or for risks located in this state, whether as an insurer, agent, administrator, trust, funding mechanism, or by any other method, for any type of medical expenses including, but not limited to surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric

expenses, whether this coverage is by direct payment, reimbursement, or otherwise. This provision shall not apply to:

(i) any program otherwise authorized by law that is established by any political subdivision of this state or under the provisions of The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes) or by a state agency; or

(ii) a multiple employer welfare arrangement which is fully insured as defined in 29 U.S.C.A. Section 1144(b)(6) except that the Commissioner may apply any laws that regulate the business of insurance in this state to the extent that such laws provide (1) standards requiring the maintenance of specified levels of contributions, which any such plan, or any trust established under such a plan, must meet in order to be considered under such law able to pay benefits in full when due, and (2) provisions to enforce such standards.

8. The doing of any kind of insurance business specifically recognized as constituting the doing of an insurance business within the meaning of the statutes relating to insurance.

9. The doing or proposing to do any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the statutes.

10. Any other transactions of business in this state by an insurer.

11. With respect to policies authorized under Article 3.74 of this code, the use, creation, publication, mailing, or dissemination of an advertisement relating to any of the acts defined in this subsection to be doing an insurance business unless:

(i) that advertisement is used, created, published, mailed, or disseminated on behalf of a person or insurer authorized under this title to engage in the business of insurance in this state, who has actual knowledge of the content of the advertisement and has authorized the advertisement to be used, created, published, mailed, or disseminated on that person's or insurer's behalf; and

(ii) the person or insurer on whose behalf the advertisement is used, created, published, mailed, or disseminated is, in that advertisement, clearly identified by name as the sponsor of the advertisement.

SECTION 3.04. Section 11(a), Article 1.14-1, Insurance Code, is amended to read as follows:

(a) Except as to premiums on lawfully procured surplus lines insurance and premiums on independently procured insurance on which a tax has been paid pursuant to this Article or Article 1.14-2, every unauthorized insurer shall pay to the *comptroller, on a form prescribed by the comptroller, [State Board of Insurance]* before March 1 next succeeding the calendar year in which the insurance was so effectuated, continued or renewed *or another date as prescribed by the comptroller* a premium receipts tax of 4.85 percent of gross premiums charged for such insurance on subjects resident, located or to be performed in this state. Such insurance on subjects resident, located or to be performed in this state procured through negotiations or an application, in whole or in part occurring or made within or from within or outside of this state, or for which premiums in whole or in part are remitted directly or indirectly from within or outside of this state, shall be deemed to be insurance procured, or continued or renewed in this state. The term "premium" includes all premiums, membership fees, assessments, dues and any other consideration for insurance. Such tax shall be in lieu of all other insurance taxes. On default of any such unauthorized insurer in the payment of such tax the insured shall pay the tax. If the tax prescribed by this subsection is not paid within the time stated, *Subtitles A and B, Title 2, Tax Code, and their subsequent amendments, apply* ~~[the tax shall be increased by a penalty of 25 percent and by the amount of an additional penalty computed at the rate of one percent per month or any part thereof from the date such payment was due to the date paid].~~

SECTION 3.05. Sections 12(a), (c), and (e), Article 1.14-1, Insurance Code, are amended to read as follows:

(a) Every insured who procures or causes to be procured or continues or renews insurance with any unauthorized insurer, or any insured or self-insurer who so procures or continues excess loss, catastrophe or other insurance, upon a subject of insurance resident, located or to be performed within this state, other than insurance procured through a surplus lines agent



pursuant to the surplus lines law of this state shall, within 60 days after the date such insurance was so procured, continued or renewed or *before a date prescribed by the comptroller*, file a report of the same with the *comptroller* [~~State Board of Insurance~~] in writing and upon forms designated by the *comptroller* [~~State Board of Insurance~~] and furnished to such an insured upon request. The report shall show the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged therefor, and such additional pertinent information as is reasonably requested by the *comptroller* [~~State Board of Insurance~~].

(c) There is hereby levied upon the obligation, chose in action, or right represented by the premium charged for such insurance, a premium receipts tax of 3.85 percent of gross premiums charged for such insurance. The term "premium" shall include all premiums, membership fees, assessments, dues and any other consideration for insurance. Such tax shall be in lieu of all other insurance taxes. The insured shall, before March 1 next succeeding the calendar year in which the insurance was so procured, continued or renewed or *another date prescribed by the comptroller*, pay the amount of the tax to the *comptroller*, on a form prescribed by the *comptroller* [~~State Board of Insurance~~]. In event of cancellation and rewriting of any such insurance contract the additional premium for premium receipts tax purposes shall be the premium in excess of the unearned premium of the canceled insurance contract.

(e) If the insured fails to withhold from the premium the amount of tax herein levied, the insured shall be liable for the amount thereof and shall pay the same to the *comptroller* [~~State Board of Insurance~~] within the time stated in Paragraph (c). If the tax prescribed by this subsection is not paid within the time stated in Paragraph (c), *Subtitles A and B, Title 2, Tax Code, and their subsequent amendments, apply* [~~the tax shall be increased by a penalty of 25 percent and by the amount of an additional penalty computed at the rate of one percent per month or any part thereof from the date such payment was due to the date paid~~].

SECTION 3.06. Section 12A, Article 1.14-1, Insurance Code, is amended to read as follows:

Sec. 12A. EXCEPTION IN RESPECT OF FILING OF REPORTS OF TAXES DUE. As respects corporations, the amount of taxes due and payable to the State of Texas under the provisions or under authority of Section 12 of this Article shall be reported directly to the *comptroller* [~~State Board of Insurance~~] and shall be due when the Franchise Tax Report is due or *on another date prescribed by the comptroller*, any other provision of this Article to the contrary notwithstanding. All companies or persons other than corporations filing franchise tax returns shall report to the *comptroller* on or *before the date prescribed by the comptroller* [~~State Board of Insurance~~].

SECTION 3.07. Sections 12(a) and (d), Article 1.14-2, Insurance Code, are amended to read as follows:

(a) The premiums charged for surplus lines insurance are subject to a premium receipts tax of 4.85 percent of gross premiums charged for such insurance. The term premium includes all premiums, membership fees, assessments, dues or any other consideration for insurance. Such tax shall be in lieu of all other insurance taxes. The surplus lines agent shall collect from the insured the amount of the tax at the time of delivery of the cover note, certificate of insurance, policy or other initial confirmation of insurance, in addition to the full amount of the gross premium charged by the insurer for the insurance. No agent shall absorb such tax nor shall any agent, as an inducement for insurance or for any other reason, rebate all or any part of such tax or his commission. The surplus lines agent shall report[, ~~under oath,~~] to the *comptroller* [~~State Board of Insurance~~] within 30 days from the 1st day of January and July of each year the amount of gross premiums paid for such insurance placed through him in nonlicensed insurers, and shall pay to the *comptroller* [~~Board~~] the tax provided for by this Article. If a surplus lines policy covers risks or exposures only partially in this state, the tax payable shall be computed on the portions of the premium which are properly allocable to the risks or exposures located in this state. In determining the amount of premiums taxable in this state, all premiums written, procured, or received in this state and all premiums on policies negotiated in this state shall be deemed written on property or risks located or resident in this state, except such premiums as are properly allocated or

apportioned and reported as taxable premiums of any other state or states. In event of cancellation and rewriting of any surplus lines insurance contract the additional premium for premium receipts tax purposes shall be the premium in excess of the unearned premium of the canceled insurance contract.

(d) The Attorney General, upon request of the *commissioner* [~~State Board of Insurance~~], shall proceed in the courts of this or any other state or in any federal court or agency to recover [~~such~~] license fees [~~or tax~~] not paid within the time prescribed in this *Article* [~~section~~]. *Notwithstanding the preceding sentence, Subtitles A and B, Title 2, Tax Code, and their subsequent amendments, apply to a tax collected under this Article.*

SECTION 3.08. Sections 8 and 9, Article 1.14-3, Insurance Code, are amended to read as follows:

Sec. 8. MAINTENANCE TAX. (a) The *commissioner* [~~board~~] annually shall determine the rate of assessment of a maintenance tax to be paid on an annual, [~~or~~] semiannual, or other periodic basis, as determined by the comptroller. *The rate of assessment may [~~basis and shall collect a maintenance tax in an amount~~] not [~~to~~] exceed one percent of the correctly reported gross premiums on all classes of insurance covered by this article and paid through the exchange. The comptroller shall collect the maintenance tax.*

(b) After taking into account the unexpended funds produced by this tax, if any, the *commissioner* [~~board~~] shall adjust the rate of assessment each year to produce the amount of funds that the *commissioner* [~~board~~] estimates will be necessary to pay all the expenses of regulating all classes of insurance covered by this article during the succeeding year. *In making an estimate under this subsection, the commissioner shall take into account the requirement that the general revenue fund be reimbursed under Article 4.19 of this code and its subsequent amendments.*

(c) The collected taxes shall be deposited in the State Treasury to the credit of the general revenue fund to be reallocated to the Texas Department [~~State Board~~] of Insurance operating fund and shall be spent as authorized by legislative appropriation [~~only~~] on warrants issued by the comptroller [~~of public accounts~~] pursuant to duly certified requisitions of the *commissioner* [~~board~~]. *Amounts reallocated to the Texas Department of Insurance operating fund under this subsection may be transferred to the general revenue fund in accordance with Article 4.19 of this code and its subsequent amendments.*

(d) *The commissioner shall advise the comptroller of the applicable rate of assessment no later than the date 45 days prior to the due date of the tax return for the period for which such taxes are due. If the commissioner has not advised the comptroller of the applicable rate by such date, the applicable rate shall be the rate applied in the previous tax period. If the commissioner advises the comptroller of the applicable rate of assessment after taxes have been assessed pursuant to this subsection, the comptroller shall:*

- (1) advise each taxpayer in writing of the amount of any additional taxes due; or
- (2) refund any excess taxes paid.

Sec. 9. APPLICATION OF THIS ARTICLE AND REGULATIONS. This article and regulations promulgated by the *commissioner* or the *comptroller*, as applicable, [~~board~~] apply to the exchange, its members, and the insurance and reinsurance written through the exchange, except to the extent exempt by regulations of the *commissioner* or the *comptroller*, as applicable [~~board~~]. An exemption may not be unfairly discriminatory or detrimental to the solvency of licensed insurers.

SECTION 3.09. Article 1.35B(a), Insurance Code, is amended to read as follows:

(a) To defray the costs of creating, administering, and operating the office of public insurance counsel, the *comptroller* [~~board~~] shall collect the following assessments annually in connection with the collection of other taxes imposed on insurers:

- (1) each property and casualty insurer authorized to do business in this state shall pay an annual assessment of 5.7 cents for each policy of property and casualty insurance in force at year end in this state;
- (2) each insurer shall pay an annual assessment of 3 cents for each individual policy, and for each certificate of insurance evidencing coverage under a group policy, of life, health, or accident insurance written for delivery and placed in force with the initial premium thereon

paid in full in this state during each calendar year if the insurer is authorized to do business in this state under:

(A) Chapter 3, 10, 11, 14, 20, 22, 23, or 25 of this code;

(B) Chapter 113, Acts of the 53rd Legislature, Regular Session, 1953 (Article 3.49-1, Vernon's Texas Insurance Code);

(C) Section 1, Chapter 417, Acts of the 56th Legislature, Regular Session, 1959 (Article 3.49-2, Vernon's Texas Insurance Code);

(D) the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code);

(E) the Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code);

(F) Section 1, Chapter 123, Acts of the 60th Legislature, Regular Session, 1967 (Article 3.51-3, Vernon's Texas Insurance Code);

(G) Section 1, Chapter 387, Acts of the 55th Legislature, Regular Session, 1957 (Article 3.62-1, Vernon's Texas Insurance Code);

(H) Sections 1 to 3A and 4 to 13, Chapter 397, Acts of the 54th Legislature, Regular Session, 1955 (Articles 3.70-1 to 3.70-3A and 3.70-4 to 3.70-11, Vernon's Texas Insurance Code); or

(I) the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code); and

(3) each title insurance company authorized to do business in this state shall pay an annual assessment of 5.7 cents for each owner policy and mortgage policy of title insurance written for delivery in this state during each calendar year and for which the full basic premium is charged.

SECTION 3.10. Articles 4.05 and 4.07, Insurance Code, are amended to read as follows:

Art. 4.05. TAXES TO BE PAID BEFORE CERTIFICATE IS ISSUED. [~~Upon the receipt of sworn statements showing the gross premium receipts of any insurance organization, the Board of Insurance Commissioners shall certify to the State Treasurer the amount of taxes due by such insurance organization for the preceding year, which taxes shall be paid to the State Treasurer for the use of the State, by such company. Upon his receipt of such certificate and the payment of such tax, the Treasurer shall execute a receipt therefor, which receipt shall be evidence of the payment of such taxes.~~] No [such] life insurance company shall receive a certificate of authority to do business in this State until *all* [such] taxes *imposed under this code or another insurance law of this state* are paid. If, upon the examination of any company, or in any other manner, the *commissioner* [Board] shall be informed that the gross premium receipts of any year exceed in amount those shown by the report thereof, theretofore made as above provided, *the commissioner shall report this fact to the comptroller. The comptroller shall institute a collection action, as the comptroller considers appropriate in accordance with Subtitles A and B, Title 2, Tax Code, and their subsequent amendments, to collect taxes due on unreported gross premium receipts. The comptroller shall deposit taxes collected under this article to the credit of the general revenue fund* [it shall be the duty of such Board to file with the State Treasurer a supplemental certificate showing the additional amount of taxes due by such company, which shall be paid by such company upon notice thereof. The State Treasurer if, within fifteen (15) days after the receipt by him of any certificate or supplemental certificate provided for by this article, the taxes due as shown thereby have not been paid, shall report the facts to the Attorney General, who shall immediately institute suit in the proper court in Travis County to recover such taxes].

Art. 4.07. FEES OF TEXAS DEPARTMENT [STATE BOARD] OF INSURANCE. A. With respect to all authorized insurers writing classes of insurance in this State [~~which are covered by Chapter 3 of this code~~], the Texas Department [State Board] of Insurance shall charge and receive for the use of the State fees in an amount to be determined by the department [Board] not to exceed the following:

(1) [~~For filing the annual statement, \$500.00.~~

(2) [(2)] For filing an amendment to a certificate of authority if the charter is not amended, \$100.00.

(2) [(3)] For affixing the official seal and certifying to the seal, \$20.00.

(3) [(4)] For reservation of name, \$200.00.

(4) [(5)] For renewal of reservation of name, \$50.00.

(5) [(6)] For filing an application for admission of a foreign *or alien* company, \$4,000.00.

(6) [(7)] For filing an original charter of a company including issuance of a certificate of authority, \$3,000.00.

(7) [(8)] For filing an amendment to a charter if a hearing is held, \$500.00.

(8) [(9)] For filing an amendment to a charter if a hearing is not held, \$250.00.

(9) [(10)] For filing a designation of an attorney for service of process or amendment of the designation, \$50.00.

(10) [(11)] For filing a copy of a total reinsurance agreement, \$1,500.00.

(11) [(12)] For filing a copy of a partial reinsurance agreement, \$300.00.

(12) [(13)] For accepting a security deposit, \$200.00.

(13) [(14)] For substitution or amendment of a security deposit, \$100.00.

(14) [(15)] For certification of statutory deposits, \$20.00.

(15) [(16)] For filing a notice of intent to relocate books and records pursuant to Article 1.28 of this code, \$300.00.

(16) [(17)] For filing a statement pursuant to Section 5, Article 21.49-1 of this code, for the first \$9,900,000.00 of the purchase price or consideration, \$1,000.00.

(17) [(18)] For filing a statement pursuant to Section 5, Article 21.49-1 of this code, if the purchase price or consideration exceeds \$9,900,000.00, an additional \$500.00 for each \$10,000,000.00 exceeding \$9,900,000.00, but not more than \$10,000.00 total fee under this subdivision and the preceding subdivision.

(18) [(19)] For filing a registration statement pursuant to Section 3, Article 21.49-1 of this code, \$300.00.

(19) [(20)] For filing for review pursuant to Section 4, Article 21.49-1 or Article 22.15 of this code, \$500.00.

(20) [(21)] For filing of a direct reinsurance agreement pursuant to Article 22.19 of this code, \$300.00.

(21) [(22)] For filing for approval of a merger pursuant to Article 21.25 of this code, \$1,500.00.

(22) [(23)] For filing for approval of reinsurance pursuant to Article 21.26 of this code, \$1,500.00.

(23) [(24)] For filing of restated articles of incorporation for [both] domestic, [and] foreign *or alien* companies, \$500.00.

(24) [(25)] For filing a joint control agreement, \$100.00.

(25) [(26)] For filing a substitution or amendment to a joint control agreement, \$40.00.

(26) [(27)] For filing a change of attorney in fact, \$500.00.

[(28) For valuing policies of life insurance, and for each one million of insurance or fraction thereof, \$10.00.]

*B. For an authorized insurer writing a class of insurance in this state that is subject to Chapter 3 of this code, the Texas Department of Insurance shall charge and the comptroller shall collect for the use of the state fees in an amount to be determined by the commissioner not to exceed the following:*

(1) *For valuing policies of life insurance, and for each one million dollars of insurance or fraction thereof, \$10.00.*

(2) *For filing the annual statement, \$500.00.*

*The provisions of Subtitles A and B, Title 2, Tax Code, and their subsequent amendments, apply to fees collected by the comptroller under this section.*

C. The department [Board] shall, within the limits fixed by this Article [section], prescribe the fees to be charged under this Article [section].

D. *Except as provided by Section B of this Article, the [The] insurers subject to the fees imposed by this Article [section] shall include any and all stock and mutual insurance companies, local mutual aid associations, statewide mutual assessment companies, group hospital service plan corporations, and stipulated premium insurance companies.*

E. [B.] *The Texas Department [State Board] of Insurance shall set and collect a sales charge for making copies of any paper of record in the Texas Department [State Board] of Insurance, such charge to be in an amount deemed sufficient to reimburse the State for the actual expense; provided, however, that the department [State Board of Insurance] may make and distribute copies of papers containing rating information without charge or for such charge as the commissioner [Board] shall deem appropriate to administer the premium rating laws by properly disseminating such rating information; and provided further that Article 5.29, Texas Insurance Code, shall remain in full force and effect without amendment.*

F. [G.] *All fees collected by virtue of Section A of this Article shall be deposited in the State Treasury to the credit of the Texas Department [State Board] of Insurance operating fund and appropriated to the use and benefit of the department [State Board of Insurance] to be used in the payment of salaries and other expenses arising out of and in connection with the examination of insurance companies and/or the licensing of insurance companies and investigations of violations of the insurance laws of this State in such manner as provided in the general appropriation bill.*

G. *All fees collected by the comptroller under Section B of this Article shall be deposited in the general revenue fund. Those amounts are available for appropriation to the Texas Department of Insurance for its use in paying salaries and other expenses arising out of the examination or licensing of insurance companies and investigations of the violations of this code or other insurance laws of this State as provided by the General Appropriations Act.*

H. [D.] *Notwithstanding any other provision of this article, any insurer to which this article applies and whose gross premium receipts are less than \$450,000.00, according to its annual statement for the preceding year ending December 31, shall be required to pay only one-half the amount of the fees required to be paid under this article and as set by the commissioner [State Board of Insurance].*

SECTION 3.11. Sections 1, 6, 11, and 14, Article 4.10, Insurance Code, are amended to read as follows:

Sec. 1. PAYMENT OF TAX. Every insurance carrier, including Lloyd's and reciprocal exchanges and any other organization or concern receiving gross premiums from the business of fire, marine, marine inland, accident, credit, livestock, fidelity, guaranty, surety, casualty, workers' compensation, employers' liability, or any other kind or character of insurance, except title insurance and except as provided in Sections 2, 3, and 4 of this article, shall pay to the comptroller [commissioner of insurance] for transmittal to the state treasurer a [an annual] tax upon such gross premium receipts as provided in this article. Any such insurance carrier doing other kinds of insurance business shall pay the tax levied upon its gross premiums received from such other kinds of business as provided in *Articles 4.03 and 4.11 of this code [Article 4769 and Article 7064a, Revised Civil Statutes of Texas, 1925].*

Sec. 6. TIME OF FILING AND PAYMENT. (a) A premium tax return for each taxable year ending the 31st day of December preceding shall be filed and the total amount of the tax due under this article shall be paid on or before the 1st day of March of each year.

(b) A *semiannual [quarterly] prepayment of premium tax must be made on March 1st and August 1st[, May 15th, August 15th, and November 15th] by all insurers with net tax liability for the previous calendar year in excess of \$1,000. The tax paid on each date must equal one-half [one-fourth] of the total premium tax paid for the previous calendar year. Should no premium tax have been paid during the previous calendar year, the semiannual [quarterly] payment shall equal the tax which would be owed on the aggregate of the gross premium receipts for [during] the two previous calendar quarters [quarter ending March 31st, June 30th, September 30th, or December 31st] at the minimum tax rate specified by law. The*

~~comptroller [State Board of Insurance]~~ is authorized to certify for refund to the State Treasurer any overpayment of premium taxes that results from the *semiannual* [~~quarterly~~] prepayment system herein established.

(c) *The comptroller by rule may change the dates for reporting and payment of taxes to improve operating efficiencies within the agency, so long as a system of semiannual prepayment of taxes imposed by this article is maintained* [~~The State Board of Insurance may establish such rules, regulations, minimum standards, or limitations which are fair and reasonable as may be appropriate for the augmentation and implementation of this article~~].

Sec. 11. ANNUAL TAX RETURN. Each insurance carrier which is liable under this article for tax on premiums shall file a tax return annually[, ~~under oath by two officers of such carrier,~~] on forms prescribed by the ~~comptroller [State Board of Insurance]~~.

Sec. 14. NO OTHER TAXES TO BE LEVIED OR COLLECTED; EXCEPTIONS. No occupational tax shall be levied on insurance carriers or companies herein subjected to this premium receipts tax by any county, city, or town. The taxes in this article shall constitute all taxes collectible under the laws of Texas against any such insurance carrier, except maintenance taxes specifically levied under the laws of Texas and assessed by the *commissioner and administered by the comptroller* [~~State Board of Insurance to support the various activities of the divisions of the State Board of Insurance~~]. *Farm mutuals, local mutual aid associations and burial associations are not subject to the franchise tax.*

No other tax shall be levied or collected from any insurance carrier by the state, county, or city or any town, but this law shall not be construed to prohibit the levy and collection of state, county, and municipal taxes upon the real and personal property of such carrier.

SECTION 3.12. Sections 1, 3, 6, 10, and 13, Article 4.11, Insurance Code, are amended to read as follows:

Sec. 1. INSURANCE CARRIERS REQUIRED TO PAY PREMIUM TAX. Every insurance carrier receiving premiums from the business of life insurance, accident insurance, health insurance, life and accident insurance, life and health insurance, health and accident insurance, or life, health, and accident insurance, including variable life insurance, credit life insurance, and credit accident and health insurance for profit or otherwise or for mutual benefit or protection, in this state, shall pay to the ~~comptroller [State Board of Insurance]~~ for transmittal to the state treasurer a [~~an annual~~] tax upon its gross premiums as provided in this article.

Sec. 3. DATE FOR FILING RETURN AND PAYING TAX. A premium tax return for each tax year ending the 31st day of December preceding shall be filed and the total amount of the tax due under this article shall be paid on or before either March 1 of each year, [~~or~~] the date the annual statement for such carrier is required to be filed with the *commissioner, or another date prescribed by the comptroller* [~~State Board of Insurance~~].

Sec. 6. ANNUAL SWORN RETURNS; FORMS; ADDITIONAL INFORMATION. Each insurance carrier which is liable under this article for tax on premiums shall file a tax return annually[, ~~under oath by two officers of such carrier,~~] on forms prescribed by the ~~comptroller [State Board of Insurance]~~. The ~~comptroller [commissioner of insurance]~~ may require such carrier to file any relevant additional information reasonably necessary to verify the amount of tax due.

Sec. 10. FAILURE TO PAY TAXES. Any insurance carrier failing to pay all taxes imposed by this article shall be subject to the provisions of Article 4.05, Insurance Code, and of Subtitles A and B, Title 2, Tax Code, and their subsequent amendments.

Sec. 13. PREPAYMENT OF TAX; RULES, REGULATIONS, STANDARDS, LIMITATIONS. (a) A *semiannual* [~~quarterly~~] prepayment of premium tax must be made on March 1 and August 1[, May 15, August 15, and November 15] by all insurers with net tax liability for the previous calendar year in excess of \$1,000. The tax paid on each date must equal *one-half* [~~one-fourth~~] of the total premium tax paid for the previous calendar year. Should no premium tax have been paid during the previous calendar year, the *semiannual* [~~quarterly~~] payment shall equal the tax which would be owed on the *aggregate* of the gross premium receipts for [~~during~~] the two previous calendar *quarters* [~~quarter ending March 31, June 30, September 30, or December 31~~] at the minimum tax rate specified by law. The ~~comptroller [State Board of Insurance]~~ is authorized to certify for refund to the state treasurer any

overpayment of premium taxes that results from the *semiannual* [~~quarterly~~] prepayment system herein established.

(b) *The comptroller by rule may change the dates for reporting and payment of taxes to improve operating efficiencies within the agency, so long as a system of semiannual prepayment of taxes imposed by this article is maintained* [~~The State Board of Insurance may establish such rules, regulations, minimum standards, or limitations which are fair and reasonable as may be appropriate for the augmentation and implementation of this article~~].

SECTION 3.13. Sections 2, 3, and 4, Article 4.11C, Insurance Code, are amended to read as follows:

Sec. 2. A reciprocal exchange may elect to be subject to the tax imposed under Article 4.10 of this code, or to be subject to the tax imposed under Article 4.11B of this code. A reciprocal exchange that elects to be taxed under Article 4.10 of this code must file with the *comptroller* [~~commissioner of insurance~~] not later than the 31st day before the day on which the tax year for which the election is to be effective begins a written statement on a form adopted by the *comptroller* [~~State Board of Insurance~~] stating that an election has been made. If a reciprocal exchange does not file an election as provided by this article or has withdrawn the election, the reciprocal exchange is subject to the tax imposed under Article 4.11B of this code.

Sec. 3. A reciprocal exchange that elects to be taxed under Article 4.10 of this code will continue to be taxed under that article for each tax year until written notice is given to the *comptroller* [~~commissioner~~] that the election to be taxed under that article is withdrawn. The notice of withdrawal must be filed with the *comptroller* [~~commissioner of insurance~~] not later than the 31st day before the beginning of the tax year for which the withdrawal is to be effective.

Sec. 4. The *comptroller* [~~State Board of Insurance~~] by rule may adopt necessary forms and procedures to carry out this article. *The comptroller by rule may change the dates for reporting and payment of taxes to improve operating efficiencies within the agency, so long as a system of semiannual prepayment of taxes imposed by this article is maintained.*

SECTION 3.14. Article 4.17, Insurance Code, is amended by amending Subsections (a), (c), (d), and (e) and adding Subsection (g) to read as follows:

(a) *The commissioner* [~~State Board of Insurance~~] shall annually determine the rate of assessment of a maintenance tax to be paid on an annual, [~~or~~] semiannual, or other periodic basis, as determined by the *comptroller*. *The rate of assessment may* [~~basis and collect a maintenance tax in an amount~~] not [~~to~~] exceed .04 percent of the correctly reported gross premiums of life, health, and accident insurance coverages and the gross considerations for annuity and endowment contracts collected by all authorized insurers writing life, health, and accident insurance, annuity, or endowment contracts in this state. *The comptroller shall collect the maintenance tax.*

(c) *The commissioner* [~~State Board of Insurance~~], after taking into account the unexpended funds produced by this tax, if any, shall adjust the rate of assessment each year to produce the amount of funds that it estimates will be necessary to pay all the expenses of regulating life, health, and accident insurers during the succeeding year. *In making an estimate under this subsection, the commissioner shall take into account the requirement that the general revenue fund be reimbursed under Article 4.19 of this code.*

(d) The taxes collected shall be deposited in the state treasury to the credit of the *general revenue fund to be reallocated to the Texas Department* [~~State Board~~] of Insurance operating fund and shall be spent as authorized by legislative appropriation [~~only~~] on warrants issued by the *comptroller* [~~of public accounts~~] pursuant to duly certified requisitions of the *commissioner* [~~State Board of Insurance~~]. *Amounts reallocated to the Texas Department of Insurance operating fund under this subsection may be transferred to the general revenue fund in accordance with Article 4.19 of this code.*

(e) *The comptroller* [~~State Board of Insurance~~] may collect the tax assessed under this article on a semiannual or other periodic basis [~~semiannually~~] from those insurers whose tax liability under this article for the previous year was \$2,000 or more. [~~The State Board of Insurance may prescribe and adopt reasonable rules to implement these payments that are not inconsistent with this article.~~]

(g) *The commissioner shall advise the comptroller of the applicable rate of assessment no later than the date 45 days prior to the due date of the tax return for the period for which such taxes are due. If the commissioner has not advised the comptroller of the applicable rate by such date, the applicable rate shall be the rate applied in the previous tax period. If the commissioner advises the comptroller of the applicable rate of assessment after taxes have been assessed pursuant to this subsection, the comptroller shall:*

- (1) *advise each taxpayer in writing of the amount of any additional taxes due; or*
- (2) *refund any excess taxes paid.*

SECTION 3.15. Chapter 4, Insurance Code, is amended by adding Articles 4.18 and 4.19 to read as follows:

**Art. 4.18. TAX ADMINISTRATION FUNCTIONS; COOPERATION BETWEEN DEPARTMENT AND COMPTROLLER.** (a) *The commissioner and the comptroller shall cooperate fully in performing their respective duties under this code and other insurance laws of this state.*

(b) *The department shall comply with all reasonable requests of the comptroller relating to the sharing of information gathered or compiled in connection with functions carried out under this code or other insurance laws of this state.*

(c) *The department shall maintain the federal identification number of all entities subject to regulation under this code or another insurance law of this state and shall include the appropriate number in any communication to or information shared with the comptroller.*

**Art. 4.19. TAX ADMINISTRATION FUNCTIONS; REIMBURSEMENT OF GENERAL REVENUE FUND.** (a) *The department shall reimburse the general revenue fund for the amount of expenses incurred by the comptroller in administering the taxes imposed under this code or another insurance law of this state in accordance with this article.*

(b) *The comptroller shall certify to the commissioner the total amount of expenses estimated to be required to perform the comptroller's duties under this code or another insurance law of this state for each fiscal biennium. The comptroller shall provide copies of the certification to the budget division of the governor's office and to the Legislative Budget Board.*

(c) *The amount certified by the comptroller under Subsection (b) of this article shall be transferred from the Texas Department of Insurance operating fund to the general revenue fund. It is the intent of the legislature that the money in the department's operating fund that is to be transferred into the general revenue fund under this subsection should reflect the revenues from the various maintenance taxes paid by insurers under this code or other insurance laws of this state.*

(d) *In setting the maintenance taxes for each fiscal year, the commissioner shall ensure that the amount of the taxes imposed is sufficient to fully reimburse the general revenue fund for the expenses incurred by the comptroller in administering the taxes imposed under this code and other insurance laws of this state. If the amount of maintenance taxes collected is insufficient to reimburse the general revenue fund for the expenses incurred by the comptroller in administering the taxes imposed under this code and other insurance laws of this state, other money in the department's operating fund shall be used to reimburse the general revenue fund in accordance with Subsection (b) of this article.*

SECTION 3.16. Articles 5.12, 5.24, 5.49, and 5.68, Insurance Code, are amended to read as follows:

**Art. 5.12. MAINTENANCE TAX ON GROSS PREMIUMS.** (a) *The State of Texas by and through the commissioner [~~State Board of Insurance~~] shall annually determine the rate of assessment of a maintenance tax to be paid [~~and collect~~] on an annual or semiannual basis, as determined by the comptroller. The rate of assessment may [~~Board, a maintenance tax in an amount~~] not [~~to~~] exceed one-fifth of one percent of the correctly reported gross motor vehicle insurance premiums of all authorized insurers writing motor vehicle insurance in this state. The comptroller shall collect the maintenance tax.*

(b) *The tax required by this article is in addition to all other taxes now imposed or that may be subsequently imposed and that are not in conflict with this article.*



(c) The commissioner [~~State Board of Insurance~~], after taking into account the unexpended funds produced by this tax, if any, shall adjust the rate of assessment each year to produce the amount of funds that it estimates will be necessary to pay all the expenses of regulating motor vehicle insurance during the succeeding year. *In making an estimate under this subsection, the commissioner shall take into account the requirement that the general revenue fund be reimbursed under Article 4.19 of this code.*

(d) The taxes collected shall be deposited in the State Treasury to the credit of the *general revenue fund to be reallocated to the Texas Department* [~~State Board~~] of Insurance operating fund and shall be spent as authorized by legislative appropriation only on warrants issued by the comptroller [~~of public accounts~~] pursuant to duly certified requisitions of the commissioner [~~State Board of Insurance~~]. *Amounts reallocated to the Texas Department of Insurance operating fund under this subsection may be transferred to the general revenue fund in accordance with Article 4.19 of this code.*

(e) The comptroller [~~State Board of Insurance~~] may elect to collect on a semiannual or other periodic basis the tax assessed under this article only from insurers whose tax liability under this article for the previous tax year was \$2,000 or more. ~~The State Board of Insurance may prescribe and adopt reasonable rules to implement such payments as it deems advisable, not inconsistent with this article].~~

(f) *The commissioner shall advise the comptroller of the applicable rate of assessment no later than the date 45 days prior to the due date of the tax return for the period for which such taxes are due. If the commissioner has not advised the comptroller of the applicable rate by such date, the applicable rate shall be the rate applied in the previous tax period. If the commissioner advises the comptroller of the applicable rate of assessment after taxes have been assessed pursuant to this subsection, the comptroller shall:*

- (1) *advise each taxpayer in writing of the amount of any additional taxes due; or*
- (2) *refund any excess taxes paid.*

Art. 5.24. MAINTENANCE TAX ON GROSS PREMIUMS. (a) The State of Texas by and through the commissioner [~~State Board of Insurance~~] shall annually determine the rate of assessment of a maintenance tax to be paid [~~and collect~~] on an annual or semiannual basis, as determined by the comptroller. *The rate of assessment may* [~~Board, a maintenance tax in an amount~~] not [~~to~~] exceed two-fifths of one percent of the correctly reported gross premiums of all classes of insurance covered by this subchapter of all authorized insurers writing those classes of insurance in this state. *The comptroller shall collect the maintenance tax.*

(b) The tax required by this article is in addition to all other taxes now imposed or that may be subsequently imposed and that are not in conflict with this article.

(c) The commissioner [~~State Board of Insurance~~], after taking into account the unexpended funds produced by this tax, if any, shall adjust the rate of assessment each year to produce the amount of funds that it estimates will be necessary to pay all the expenses of regulating all classes of insurance covered by this subchapter during the succeeding year. *In making an estimate under this subsection, the board shall take into account the requirement that the general revenue fund be reimbursed under Article 4.19 of this code.*

(d) The taxes collected shall be deposited in the State Treasury to the credit of the *general revenue fund to be reallocated to the Texas Department* [~~State Board~~] of Insurance operating fund and shall be spent as authorized by legislative appropriation [~~only~~] on warrants issued by the comptroller [~~of public accounts~~] pursuant to duly certified requisitions of the commissioner [~~State Board of Insurance~~]. *Amounts reallocated to the Texas Department of Insurance operating fund under this subsection may be transferred to the general revenue fund in accordance with Article 4.19 of this code.*

(e) The comptroller [~~State Board of Insurance~~] may elect to collect on a semiannual basis the tax assessed under this article only from insurers whose tax liability under this article for the previous tax year was \$2,000 or more. ~~The State Board of Insurance may prescribe and adopt reasonable rules to implement such payments as it deems advisable, not inconsistent with this article].~~

(f) *The commissioner shall advise the comptroller of the applicable rate of assessment no later than the date 45 days prior to the due date of the tax return for the period for which such taxes are due. If the commissioner has not advised the comptroller of the applicable*

rate by such date, the applicable rate shall be the rate applied in the previous tax period. If the commissioner advises the comptroller of the applicable rate of assessment after taxes have been assessed pursuant to this subsection, the comptroller shall:

- (1) advise each taxpayer in writing of the amount of any additional taxes due; or
- (2) refund any excess taxes paid.

Art. 5.49. MAINTENANCE TAX ON GROSS PREMIUMS. (a) The State of Texas by and through the commissioner [~~State Board of Insurance~~] shall annually determine the rate of assessment of a maintenance tax to be paid on an annual or semiannual basis, as determined by the comptroller. The rate of assessment may [~~Board, and collect a maintenance tax in an amount~~] not [~~to~~] exceed one and one-fourth percent of the correctly reported gross premiums of fire, lightning, tornado, windstorm, hail, smoke or smudge, cyclone, earthquake, volcanic eruption, rain, frost and freeze, weather or climatic conditions, excess or deficiency of moisture, flood, the rising of the waters of the ocean or its tributaries, bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, any order of a civil authority made to prevent the spread of a conflagration, epidemic, or catastrophe, vandalism or malicious mischief, strike or lockout, explosion as defined in Article 5.52 of this code, water or other fluid or substance resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes, or other conduits or containers insurance coverage collected by all authorized insurers writing those types of insurance in this state. The comptroller shall collect the maintenance tax.

(b) The tax required by this article is in addition to all other taxes now imposed or that may be subsequently imposed and that are not in conflict with this article.

(c) The commissioner [~~State Board of Insurance~~], after taking into account the unexpended funds produced by this tax, if any, shall adjust the rate of assessment each year to produce the amount of funds that it estimates will be necessary to pay all the expenses of regulating all classes of insurance specified by this subchapter during the succeeding year. In making an estimate under this subsection, the commissioner shall take into account the requirement that the general revenue fund be reimbursed under Article 4.19 of this code.

(d) The taxes collected shall be deposited in the State Treasury to the credit of the general revenue fund to be reallocated to the Texas Department [~~State Board~~] of Insurance operating fund and shall be spent as authorized by legislative appropriation [~~only~~] on warrants issued by the comptroller [~~of public accounts~~] pursuant to duly certified requisitions of the commissioner [~~State Board of Insurance~~]. Amounts reallocated to the Texas Department of Insurance operating fund under this subsection may be transferred to the general revenue fund in accordance with Article 4.19 of this code.

(e) The comptroller [~~State Board of Insurance~~] may elect to collect on a semiannual or other periodic basis the tax assessed under this article only from insurers whose tax liability under this article for the previous tax year was \$2,000 or more. [~~The State Board of Insurance may prescribe and adopt reasonable rules to implement such payments as it deems advisable, not inconsistent with this article.~~]

(f) The commissioner shall advise the comptroller of the applicable rate of assessment no later than the date 45 days prior to the due date of the tax return for the period for which such taxes are due. If the commissioner has not advised the comptroller of the applicable rate by such date, the applicable rate shall be the rate applied in the previous tax period. If the commissioner advises the comptroller of the applicable rate of assessment after taxes have been assessed pursuant to this subsection, the comptroller shall:

- (1) advise each taxpayer in writing of the amount of any additional taxes due; or
- (2) refund any excess taxes paid.

Art. 5.68. MAINTENANCE TAX ON GROSS PREMIUMS. (a) The State of Texas by and through the commissioner [~~State Board of Insurance~~] shall, [~~as determined by the Board,~~] annually determine the rate of assessment of a maintenance tax [~~and collect~~] on an annual or semiannual basis. The comptroller shall collect the maintenance tax[,], from each stock company, mutual company, reciprocal or interinsurance exchange, and Lloyd's association. The rate of assessment may [~~a maintenance tax in an amount~~] not [~~to~~] exceed three-fifths of one percent of the correctly reported gross workers' compensation insurance premiums of all authorized insurers writing workers' compensation insurance in this state.

(b) For purposes of this article and Section 2.22, Texas Workers' Compensation Act (Article 8308-2.22, Vernon's Texas Civil Statutes), gross workers' compensation insurance premiums include the modified annual premium of a policyholder that purchases a deductible pursuant to Article 5.55C of this code, and the rate of assessment shall be applied to the modified annual premium prior to application of any deductible premium credit.

(c) The tax required by this article is in addition to all other taxes now imposed or that may be subsequently imposed and that are not in conflict with this article.

(d) The commissioner [~~State Board of Insurance~~], after taking into account the unexpended funds produced by this tax, if any, shall adjust the rate of assessment each year to produce the amount of funds that it estimates will be necessary to pay all the expenses of regulating workers' compensation insurance during the succeeding year. In making an estimate under this subsection, the commissioner shall take into account the requirement that the general revenue fund be reimbursed under Article 4.19 of this code.

(e) The taxes collected shall be deposited in the State Treasury to the credit of the general revenue fund to be reallocated to the Texas Department [~~State Board~~] of Insurance operating fund and shall be spent as authorized by legislative appropriation [only] on warrants issued by the comptroller [~~of public accounts~~] pursuant to duly certified requisitions of the commissioner [~~State Board of Insurance~~]. Amounts reallocated to the Texas Department of Insurance operating fund under this subsection may be transferred to the general revenue fund in accordance with Article 4.19 of this code.

(f) The comptroller [~~State Board of Insurance~~] may elect to collect on a semiannual basis the tax assessed under this article only from insurers whose tax liability under this article for the previous tax year was \$2,000 or more. ~~The State Board of Insurance may prescribe and adopt reasonable rules to implement such payments as it deems advisable, not inconsistent with this article.~~

(g) The commissioner shall advise the comptroller of the applicable rate of assessment no later than the date 45 days prior to the due date of the tax return for the period for which such taxes are due. If the commissioner has not advised the comptroller of the applicable rate by such date, the applicable rate shall be the rate applied in the previous tax period. If the commissioner advises the comptroller of the applicable rate of assessment after taxes have been assessed pursuant to this subsection, the comptroller shall:

(1) advise each taxpayer in writing of the amount of any additional taxes due; or

(2) refund any excess taxes paid.

SECTION 3.17. Section 10(b), Article 5.76-5, Insurance Code, is amended to read as follows:

(b) The maintenance tax surcharge shall be set in an amount sufficient to pay all debt service on the bonds. The maintenance tax surcharge is set by the commissioner [~~State Board of Insurance~~] in the same time and shall be collected by the comptroller on behalf of the fund in the same manner as provided under Article 5.68 of this code.

SECTION 3.18. Articles 5.91 and 9.46, Insurance Code, are amended to read as follows:

Art. 5.91. MAINTENANCE TAX ON GROSS PREMIUMS. (a) The State of Texas by and through the commissioner [~~State Board of Insurance~~] shall annually determine the rate of assessment of a maintenance tax to be paid on an annual or semiannual basis, as determined by the comptroller. The rate of assessment may [~~Board, and collect a maintenance tax in an amount~~] not [~~to~~] exceed two-fifths of one percent of the correctly reported gross premiums on all classes of insurance covered by this subchapter of all authorized insurers writing those classes of insurance in this state. The comptroller shall collect the maintenance tax.

(b) The tax required by this article is in addition to all other taxes now imposed or that may be subsequently imposed and that are not in conflict with this article.

(c) The commissioner [~~State Board of Insurance~~], after taking into account the unexpended funds produced by this tax, if any, shall adjust the rate of assessment each year to produce the amount of funds that it estimates will be necessary to pay all the expenses of regulating all classes of insurance specified by this subchapter during the succeeding year. In making

*an estimate under this subsection, the commissioner shall take into account the requirement that the general revenue fund be reimbursed under Article 4.19 of this code.*

*(d) The taxes collected shall be deposited in the State Treasury to the credit of the general revenue fund to be reallocated to the Texas Department [State Board] of Insurance operating fund and shall be spent as authorized by legislative appropriation [only] on warrants issued by the comptroller [of public accounts] pursuant to duly certified requisitions of the commissioner [State Board of Insurance]. Amounts reallocated to the Texas Department of Insurance operating fund under this subsection may be transferred to the general revenue fund in accordance with Article 4.19 of this code.*

*(e) The comptroller [State Board of Insurance] may elect to collect on a semiannual basis the tax assessed under this article only from insurers whose tax liability under this article for the previous tax year was \$2,000 or more[. The State Board of Insurance may prescribe and adopt reasonable rules to implement such payments as it deems advisable, not inconsistent with this article].*

*(f) The commissioner shall advise the comptroller of the applicable rate of assessment no later than the date 45 days prior to the due date of the tax return for the period for which such taxes are due. If the commissioner has not advised the comptroller of the applicable rate by such date, the applicable rate shall be the rate applied in the previous tax period. If the commissioner advises the comptroller of the applicable rate of assessment after taxes have been assessed pursuant to this subsection, the comptroller shall:*

- (1) advise each taxpayer in writing of the amount of any additional taxes due; or*
- (2) refund any excess taxes paid.*

**Art. 9.46. MAINTENANCE FEE [TAX ON GROSS PREMIUMS].** *(a) The State of Texas by and through the commissioner [State Board of Insurance] shall annually determine the rate of assessment of a maintenance fee to be paid on an annual, [or] semiannual, or other periodic basis, as determined by the comptroller. The rate of assessment may [Board, and collect a maintenance tax in an amount] not [to] exceed one percent of the correctly reported gross title insurance premiums of all authorized insurers writing title insurance in this state. This fee is not a tax and shall be reported and paid separately from premium and retaliatory taxes. The fee is included in the division of premium and may not be separately charged to the title insurance agent. The comptroller shall collect the maintenance fee. [The tax required by this article is in addition to all other taxes now imposed or that may be subsequently imposed and that are not in conflict with this article.]*

*(b) The commissioner [State Board of Insurance], after taking into account the unexpended funds produced by this fee [tax], if any, shall adjust the rate of assessment each year to produce the amount of funds that it estimates will be necessary to pay all the expenses of regulating title insurance during the succeeding year. In making an estimate under this subsection, the commissioner shall take into account the requirement that the general revenue fund be reimbursed under Article 4.19 of this code.*

*(c) The fees [taxes] collected shall be deposited in the State Treasury to the credit of the general revenue fund to be reallocated to the Texas Department [State Board] of Insurance operating fund and shall be spent as authorized by legislative appropriation [only] on warrants issued by the comptroller [of public accounts] pursuant to duly certified requisitions of the commissioner [State Board of Insurance]. Amounts reallocated to the Texas Department of Insurance operating fund under this subsection may be transferred to the general revenue fund in accordance with Article 4.19 of this code.*

*(d) The comptroller [State Board of Insurance] may elect to collect on a semiannual or other periodic basis the fee [tax] assessed under this article only from insurers whose [tax] liability under this article for the previous [tax] year was \$2,000 or more. [The State Board of Insurance may prescribe and adopt reasonable rules to implement such payments as it deems advisable, not inconsistent with this article.]*

*(e) The commissioner shall advise the comptroller of the applicable rate of assessment no later than the date 45 days prior to the due date of the maintenance fee return for the period for which such fees are due. If the commissioner has not advised the comptroller of the applicable rate by such date, the applicable rate shall be the rate applied in the previous*

period. If the commissioner advises the comptroller of the applicable rate of assessment after maintenance fees have been assessed pursuant to this subsection, the comptroller shall:

- (1) advise each insurer in writing of the amount of any additional maintenance fees due; or
- (2) refund any excess maintenance fees paid.

SECTION 3.19. Sections 1, 3, and 5, Article 9.59, Insurance Code, are amended to read as follows:

Sec. 1. PAYMENT OF TAX. Each title insurance company receiving premiums from the business of title insurance shall pay to the *comptroller* [~~commissioner of insurance~~] for transmittal to the state treasurer a [~~an annual~~] tax on those premiums as provided in this article.

Sec. 3. TIME OF FILING AND PAYMENT. (a) A premium tax return for each taxable year ending on December 31, of the preceding year shall be filed and the total amount of the tax due under this article shall be paid on or before March 1 of each year or *another date prescribed by the comptroller*.

(b) A *semiannual* [~~quarterly~~] prepayment of premium tax must be made on March 1 and August 1, [~~May 15, August 15, and November 15~~] by all insurers with net tax liability for the previous calendar year of more than \$1,000. The tax paid on each date must equal *one-half* [~~one-fourth~~] of the total premium tax paid for the previous calendar year. If no premium tax has been paid during the previous calendar year, the *semiannual* [~~quarterly~~] payment shall equal the tax that would be owed on *the aggregate* of the gross premium receipts for [~~during~~] the *two* previous calendar *quarters* [~~quarter ending March 31, June 30, September 30, or December 31~~] at the minimum tax rate specified by law. The *comptroller* [~~commissioner~~] may certify for refund to the state treasurer any overpayment of premium taxes that results from the *semiannual* [~~quarterly~~] prepayment system established by this subsection.

(c) *Without limiting the general authority of the comptroller to adopt rules to promote the efficient administration, collection, enforcement, and reporting of taxes under this code or another insurance law of this state, the commissioner or comptroller, as appropriate, [The State Board of Insurance]* may adopt rules, regulations, minimum standards, and limitations that are fair and reasonable as may be appropriate for the augmentation and implementation of this article.

Sec. 5. ANNUAL TAX RETURN. Each title insurance company that is liable under this article to remit tax on premium shall file a tax return annually [~~, under oath by two officers of the title insurance company,~~] on forms prescribed by the *comptroller* [~~State Board of Insurance~~].

SECTION 3.20. Section 33, Texas Health Maintenance Organization Act (Article 20A.33, Vernon's Texas Insurance Code), is amended by amending Subsection (d) and adding Subsections (e), (f), (g), (h), and (i) to read as follows:

(d) The *commissioner* [~~State Board of Insurance~~] shall annually determine the rate of assessment of [~~and collect~~] a per capita maintenance tax *to be paid on an annual or semiannual basis*, on the correctly reported gross revenues for the issuance of health maintenance certificates or contracts collected by all authorized health maintenance organizations issuing such coverages in this state. *The rate of assessment may [in an amount] not [to] exceed \$2 for each enrollee. The rate of assessment may differ between basic health care plans and single health care service plans and shall equitably reflect any differences in regulatory resources attributable to each type of plan. The comptroller shall collect the maintenance tax.*

(e) The tax required by this *section* [~~article~~] is in addition to all other taxes now imposed or that may be subsequently imposed and that are not in conflict with this section.

(f) The *commissioner* [~~State Board of Insurance~~], after taking into account the unexpended funds produced by this tax, if any, shall adjust the rate of assessment each year to produce the amount of funds that it estimates will be necessary to pay all the expenses of regulating health maintenance organizations during the succeeding year. *In making an estimate under this subsection, the commissioner shall take into account the requirement that the general revenue fund be reimbursed under Article 4.19, Insurance Code.*

(g) The taxes collected shall be deposited in the State Treasury to the credit of the *general revenue fund to be reallocated to the Texas Department [State Board] of Insurance* operating fund and shall be spent as authorized by legislative appropriation [only] on warrants issued by the comptroller [of public accounts] pursuant to duly certified requisitions of the *commissioner [State Board of Insurance]*. Amounts reallocated to the Texas Department of Insurance operating fund under this subsection may be transferred to the general revenue fund in accordance with Article 4.19, Insurance Code.

(h) The comptroller [State Board of Insurance] may collect the tax assessed under this section on a *semiannual or other periodic basis [semiannually]* from those health maintenance organizations whose tax liability under this section for the previous year was \$2,000 or more[. The State Board of Insurance may prescribe and adopt reasonable rules to implement such payments as it deems advisable, not inconsistent with this section].

(i) The commissioner shall advise the comptroller of the applicable rate of assessment no later than the date 45 days prior to the due date of the tax return for the period for which such taxes are due. If the commissioner has not advised the comptroller of the applicable rate by such date, the applicable rate shall be the rate applied in the previous tax period. If the commissioner advises the comptroller of the applicable rate of assessment after taxes have been assessed pursuant to this subsection, the comptroller shall:

- (1) advise each taxpayer in writing of the amount of any additional taxes due; or
- (2) refund any excess taxes paid.

SECTION 3.21. Section 21, Article 21.07–6, Insurance Code, is amended by amending Subsections (a), (c), and (d) and adding Subsection (e) to read as follows:

(a) The commissioner [board] annually shall determine the rate of assessment of a *maintenance tax to be paid on an annual, [or] semiannual, or other periodic basis, as determined by the comptroller. The rate of assessment may [and collect a maintenance tax in an amount] not [to] exceed one percent of the correctly reported administrative or service fees of all administrators that are covered by certificates of authority. The comptroller shall collect the maintenance tax.*

(c) The commissioner [board], after taking into account the unexpended funds produced by this tax, if any, shall adjust the rate of assessment each year to produce the amount of funds that it estimates will be necessary to pay all the expenses of regulating administrators. *In making an estimate under this subsection, the commissioner shall take into account the requirement that the general revenue fund be reimbursed under Article 4.19 of this code.*

(d) The taxes collected under this section shall be deposited in the state treasury to the credit of the *general revenue fund to be reallocated to the Texas Department [State Board] of Insurance* operating fund and shall be spent as authorized by legislative appropriation [only] on warrants issued by the comptroller [of public accounts] pursuant to duly certified requisitions of the *commissioner [board]*. Amounts reallocated to the Texas Department of Insurance operating fund under this subsection may be transferred to the general revenue fund in accordance with Article 4.19 of this code.

(e) The commissioner shall advise the comptroller of the applicable rate of assessment no later than the date 45 days prior to the due date of the tax return for the period for which such taxes are due. If the commissioner has not advised the comptroller of the applicable rate by such date, the applicable rate shall be the rate applied in the previous tax period. If the commissioner advises the comptroller of the applicable rate of assessment after taxes have been assessed pursuant to this subsection, the comptroller shall:

- (1) advise each taxpayer in writing of the amount of any additional taxes due; or
- (2) refund any excess taxes paid.

SECTION 3.22. Sections 4(e) and (f), Article 21.54, Insurance Code, are amended to read as follows:

(e) A filing fee not to exceed \$500 as established by *commissioner [board]* regulation may be imposed for the filing of the financial statement under Subdivision (1) of Subsection (d) of this section. Fees collected for filing the statement shall be deposited in the State Treasury to the credit of the *general revenue fund to be reallocated to the Texas Department [State Board] of Insurance* operating fund.

(f) Such risk retention group shall be liable for the payment of premium and maintenance taxes and taxes on premiums of direct business for risks located within this state and shall report to the commissioner of this state the net premiums written for risks located within this state. Such risk retention group shall be subject to taxation, and any applicable fines and penalties related thereto, on the same basis as a foreign admitted insurer pursuant to Chapters 4 and 5 of this code. *Groups shall provide to the comptroller all information the comptroller may request in connection with the reporting, collection, enforcement, and administration of taxes due under this article and of the fee imposed under Subsection (e) of this section.*

SECTION 3.23. Chapter 23, Insurance Code, is amended by amending Article 23.08 and adding Article 23.08A to read as follows:

Art. 23.08. FEES [AND TAXES]. [(a)] The *commissioner* [State Board of Insurance] shall charge a fee determined by the *commissioner* [Board] in an amount not to exceed \$400 for filing the annual statement of each corporation operating under this chapter; an application fee determined by the *commissioner* [Board] in an amount not to exceed \$3,000 for each corporation applying under this chapter which includes the fee for the issuance of a certificate of authority; and a fee determined by the *commissioner* [Board] in an amount not to exceed \$100 for the issuance of each additional certificate of authority and amendment of a certificate of authority to the corporation. The *commissioner* [Board] shall, within the limits fixed by this article [subsection], prescribe the fees to be charged under this article [subsection]. The fees collected by the *commissioner* [Board] under this article [subsection] shall be deposited in the State Treasury to the credit of the *Texas Department* [State Board] of Insurance operating fund, and Article 1.31A of this code applies to fees collected under this article [subsection].

Art. 23.08A. MAINTENANCE TAX. (a) [(b)] The State of Texas by and through the *commissioner* [State Board of Insurance] shall annually determine the rate of assessment of a maintenance tax to be paid [and collect as determined by the Board,] on an annual or semiannual basis. *The rate of assessment may, a maintenance tax in an amount not [to] exceed one percent of the correctly reported gross revenues received by all corporations issuing prepaid legal services contracts in this state. The comptroller shall collect the maintenance tax.*

(b) The tax required by this article is in addition to all other taxes now imposed or that may be subsequently imposed and that are not in conflict with this article.

(c) The *commissioner* [State Board of Insurance], after taking into account the unexpended funds produced by this tax, if any, shall adjust the rate of assessment each year to produce the amount of funds that it estimates will be necessary to pay all the expenses of regulating nonprofit legal services corporations during the succeeding year. *In making an estimate under this subsection, the commissioner shall take into account the requirement that the general revenue fund be reimbursed under Article 4.19 of this code.*

(d) The taxes collected shall be deposited in the State Treasury to the credit of the *general revenue fund to be reallocated to the Texas Department* [State Board] of Insurance operating fund and shall be spent as authorized by legislative appropriation [only] on warrants issued by the comptroller [of public accounts] pursuant to duly certified requisitions of the *commissioner* [State Board of Insurance]. *Amounts reallocated to the Texas Department of Insurance operating fund under this subsection may be transferred to the general revenue fund in accordance with Article 4.19 of this code.*

(e) Article 1.31A of this code applies to taxes collected under this article [section].

(f) The *comptroller* [State Board of Insurance] may elect to collect on a semiannual basis the tax assessed under this article only from insurers whose tax liability under this article for the previous tax year was \$2,000 or more. The *comptroller* [State Board of Insurance] may prescribe and adopt reasonable rules to implement such payments as it deems advisable, not inconsistent with this article.

(g) *The commissioner shall advise the comptroller of the applicable rate of assessment no later than the date 45 days prior to the due date of the tax return for the period for which such taxes are due. If the commissioner has not advised the comptroller of the applicable rate by such date, the applicable rate shall be the rate applied in the previous tax period. If*

*the commissioner advises the comptroller of the applicable rate of assessment after taxes have been assessed pursuant to this subsection, the comptroller shall:*

- (1) *advise each taxpayer in writing of the amount of any additional taxes due; or*
- (2) *refund any excess taxes paid.*

SECTION 3.24. Section 2.21, Texas Workers' Compensation Act (Article 8308-2.21, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.21. COMMISSION FUNDING. Unless otherwise provided, all proceeds, including administrative penalties and advance deposits for purchase of services, collected under this Act shall be deposited in the General Revenue Fund of the state treasury to the credit of the commission. The funds may be spent as authorized by legislative appropriation on warrants issued by the comptroller ~~[of public accounts]~~ under requisitions made by the commission. *Proceeds deposited in the General Revenue Fund under this section may be used to satisfy the requirements of Article 4.19, Insurance Code.*

SECTION 3.25. Section 2.23(a), Texas Workers' Compensation Act (Article 8308-2.23, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The commission shall set and certify to the *comptroller* ~~[State Board of Insurance]~~ the rate of assessment no later than October 31 of each year, taking into account the following factors:

- (1) *expenditures projected as necessary for the commission to administer this Act during the fiscal year for which the rate of assessment is set and to reimburse the general revenue fund in accordance with Article 4.19, Insurance Code;*
- (2) *projected employee benefits paid from general revenues;*
- (3) *surpluses or deficits produced by this tax in the preceding year; and*
- (4) *revenue recovered from other sources, including reappropriated receipts, grants, payments, fees, gifts, and penalties recovered under this Act.*

SECTION 3.26. Section 11.09(c), Texas Workers' Compensation Act (Article 8308-11.09, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) Amounts received under this section shall be deposited in the state treasury to the credit of a special fund to be used for the operation of the research center *and to reimburse the general revenue fund in accordance with Article 4.19, Insurance Code.*

SECTION 3.27. Section 101.003, Tax Code, is amended by amending Subdivisions (8) and (11) and adding Subdivision (12) to read as follows:

(8) "Taxpayer" means a person liable for a tax, *fee, assessment, or other amount* imposed by law administered by the comptroller ~~[this title]~~.

(11) "Report" means a tax return, declaration, statement, or other document required to be filed with the comptroller ~~[by a provision of this title]~~.

(12) "Obligation" means the duty of a person to pay a tax, *fee, assessment, or other amount or to make, file, or keep a report, certificate, affidavit, or other document.*

SECTION 3.28. Subchapter A, Chapter 111, Tax Code, is amended by adding Section 111.0022 to read as follows:

*Sec. 111.0022. APPLICATION TO OTHER PROGRAMS. This subtitle and Subtitle A apply to the administration of other programs or functions assigned to the comptroller by law.*

SECTION 3.29. The following laws are repealed:

- (1) Section 12(f), Article 1.14-1, Insurance Code;
- (2) Sections 12 and 16, Article 4.10, Insurance Code;
- (3) Sections 7 and 11, Article 4.11, Insurance Code;
- (4) Articles 4.13, 4.14, 4.15, and 4.16, Insurance Code;
- (5) Sections 6 and 10, Article 9.59, Insurance Code; and
- (6) Section 33(b), Texas Health Maintenance Organization Act (Article 20A.33, Vernon's Texas Insurance Code).



SECTION 3.30. (a) The State Board of Insurance, the Commissioner of Insurance, and the Texas Department of Insurance shall transfer and the comptroller shall assume the duties assigned to the comptroller under Article 1.04D, Insurance Code, as added by this Act, on September 1, 1993. In assuming these duties, the comptroller shall assume responsibility for the collection, reporting, enforcement, and administration of any tax, assessment, or fee owing on or before September 1, 1993, to the extent such responsibility is transferred to the comptroller under this article and for the payment of any refund owing on or before September 1, 1993, without regard to whether the law on which the tax, assessment, fee, or refund was based has been repealed on or before that date.

(b) The comptroller may modify procedures that had been used by the State Board of Insurance or the Texas Department of Insurance in performing the functions that are transferred to the comptroller under this article to increase efficiency and cost effectiveness.

(c) Rules of the Texas Department of Insurance that are in effect on September 1, 1993, and that relate to the functions transferred to the comptroller under this article remain in effect until repealed or amended by the comptroller.

SECTION 3.31. (a) To assist the comptroller of public accounts in implementing the reporting, collection, enforcement, and administration functions with respect to insurance taxes and selected fees as described in this article, there is hereby appropriated to the comptroller of public accounts from the general revenue fund the sums of \$1,570,432 for the fiscal year ending August 31, 1994, and \$1,042,138 for the fiscal year ending August 31, 1995. Any unexpended balances remaining as of August 31, 1994 are hereby reappropriated for the fiscal year ending August 31, 1995. The comptroller may transfer the sum appropriated into the comptroller's operating fund No. 062 and into the appropriate program appropriations identified in the General Appropriations Act.

(b) The transfer required by this article includes all duties and obligations of any kind, except as otherwise specifically provided, relating to the reporting, collection, enforcement, and administration of all taxes and of selected fees and assessments as set forth in the Insurance Code, and includes all assets, liabilities, real or personal property, personnel, furniture, computers, and other equipment, files, and related materials used by the State Board of Insurance, the commissioner, or the department to perform the aspects and functions transferred by this article.

SECTION 3.32. The change in law made by this article to Section 6(b), Article 4.10, Insurance Code, Section 13, Article 4.11, Insurance Code, and Section 3(b), Article 9.59, Insurance Code, relating to the dates for prepayment of tax, apply only to the prepayment of premium taxes beginning with prepayments that become due after March 1, 1994. The dates for prepayment of premium taxes under those articles before March 1, 1994, are governed by the law as it existed before the effective date of this article and that law is continued in effect for that purpose.

#### ARTICLE 4. APPEAL OF DECISIONS OF COMMISSIONER

SECTION 4.01. Section 4, Article 1.15, Insurance Code, is amended to read as follows:

Sec. 4. Any rule, regulation, order, decision or finding of the Board under this Act shall be subject to [full] review in accordance with Article 1.04 of this code [~~any suit filed by any interested party in any District Court of the State of Texas in Travis County, Texas, and not elsewhere~~]. The filing of such suit shall operate as a stay of any such rule, regulation, order, decision or finding of the Board until the court directs otherwise. [~~The court may review all the facts, shall hear, try and determine said suit de novo as other civil cases in said court; and in disposing of the issues before it, may modify, affirm, or reverse the action of the Board in whole or in part.~~]

SECTION 4.02. Section 8(A)(4), Article 3.53, Insurance Code, is amended to read as follows:

(4) Any person aggrieved by the action of the board in the setting of a presumptive rate or any other action taken with regard to the setting of such presumptive rate may within 30 days from the date the board took the action complained of appeal in accordance with Article 1.04 of this code, file a suit in a district court of Travis County to review the action. ~~Such cases shall be tried de novo in the district court and shall be governed by the same~~

~~rules of procedure and evidence as in other civil cases in such courts. The court may enter an order setting aside or affirming the action of the board.~~

SECTION 4.03. Article 5.26(g), Insurance Code, is amended to read as follows:

(g) The Board may call a public hearing on any application for permission to file a deviation or a hearing on a permitted deviation and shall call a hearing upon the request of any aggrieved policyholder of the company filing the deviation made within thirty (30) days after the granting or denying of any deviation. The Board shall give reasonable notice of such hearings and shall hear witnesses respecting such matters. Any applicant dissatisfied with any order of the Board made without a hearing under this Article may within thirty (30) days after entry of such order make written request of the Board for a hearing thereon. The Board shall hear such applicant within twenty (20) days after receiving such request and shall give not less than ten (10) days written notice of the time and place of the hearing. Within fifteen (15) days after such hearing the Board shall affirm, reverse or modify by order its previous action, specifying in such order its reasons therefor. Any applicant who may be dissatisfied with any order of the Board respecting its application may appeal *in accordance with Article 1.04 of this code.* ~~[to the District Court of Travis County, Texas, and not elsewhere, by filing a petition within thirty (30) days after the rendition or entry of such order setting forth its grounds of objection thereto, in which said action the appealing applicant shall be plaintiff and the Board shall be defendant. The action shall not be limited to questions of law and the substantial evidence rule shall not apply, but such action shall be tried and determined upon a trial de novo to the same extent as now provided in the case of an appeal from the Justice Court to the County Court.]~~ The judgment of the District Court shall be appealable as in any other civil case. Such action shall have precedence over other civil cases on the dockets of the appellate courts. Should the Board terminate or refuse to renew a permitted deviation or refuse permission for filing of a deviation under subdivision (f) hereof, then such deviation shall remain in effect during the course of any hearing thereon and thirty (30) days thereafter, and during the course of any appeal taken from such order and until final judgment of the courts. ~~[The Board shall not be required to give any appeal or supersedeas bond in any cause arising hereunder. All hearings before the Board and appeals to the District Courts under this Article shall be governed exclusively by this Article.]~~

SECTION 4.04. Article 9.33, Insurance Code, is amended to read as follows:

Art. 9.33. TO CANCEL LICENSE; APPEALS BY COMPANIES. (a) The terms and provisions of this Act are conditions upon which corporations doing the business provided for in this Act may continue to exist, and failure to comply with any of them or a violation of any of the terms of this Act shall be proper cause for revocation of the permit and forfeiture of charter of a domestic corporation or the permit of a foreign corporation.

(b) Any company qualified or seeking to qualify under this Act, feeling aggrieved by any action of the Board, especially, but not limited to, any action against such company, shall have the right to file a suit in the District Court of Travis County, within thirty (30) days after the Board has made its order or ruling; provided, however, that if the order or ruling is directed against such company, whether or not directed against other companies, such company shall have thirty (30) days after receipt of official notice of such ruling from the Board to review such action of the Board. Such cases shall be *subject to the same standard of review as other appeals under this code in accordance with Article 1.04 of this code* ~~[tried de novo in such District Court in accordance with the provisions of Article 21.44 of the Insurance Code and shall be governed by the same rules of pleading, including rights of amendments thereof, evidence, and procedure as are applicable to other civil cases in the original jurisdiction of a District Court].~~

SECTION 4.05. Article 14.06, Insurance Code, is amended to read as follows:

Art. 14.06. REFUSAL OF CERTIFICATE OR PERMIT. (a) No such corporation shall continue to operate in this State if the Board has notified it in writing of the refusal of the Board to issue it a certificate and permit. But any such corporation may within sixty (60) days after receiving such notice file a suit ~~[in any district court of Travis County, Texas,] to review the said action of the Board in accordance with Article 1.04 of this code [and may by trial de novo have all necessary relief both in law and equity to enforce its rights under this chapter].~~

(b) Nothing in this chapter shall be construed to validate or otherwise sanction any unlawful act of any such corporation, except when such unlawful act may have been construed to be unlawful simply by reason of the fact that the law under which said corporation was created has since been repealed or amended so as to omit therefrom such corporations as are described in this chapter.

SECTION 4.06. Section 6(b), Article 21.21-2, Insurance Code, is amended to read as follows:

(b) Any insurer affected by a ruling or order of the board pursuant to the provisions of this Act may appeal same by filing suit [in any of the district courts of Travis County, Texas,] within 20 days from the date of the order of said board. Such appeal shall be *governed by Article 1.04 of this code* [by trial de novo]. Reasonable attorneys' fees shall be awarded the board if judicial action is necessary for the enforcement of its orders.

SECTION 4.07. Section 7, Article 21.28-A, Insurance Code, is amended to read as follows:

Sec. 7. REVIEW AND STAY OF ACTION. During the period of supervision and during the period of conservatorship, the insurance company may request the Commissioner of Insurance or in his absence, the duly appointed deputy for such purpose, to review an action taken or proposed to be taken by the supervisor or conservator, specifying wherein the action complained of is believed not to be in the best interests of the insurance company, and such request shall stay the action specified pending review of such action by the Commissioner or his duly appointed deputy. Any order entered by the Commissioner appointing a supervisor and providing that the insurance company shall not do certain acts as provided in Section 4 of this Article, any order entered by the Commissioner appointing a conservator, and any order by the Commissioner following the review of an action of the supervisor or conservator as hereinabove provided *may be appealed under Article 1.04 of this code* [shall be immediately reviewed by the State Board of Insurance upon the filing of an appeal by the insurance company. The Board shall review the action complained of in a public hearing and render its decision at the earliest possible date thereafter, and the requirement of ten (10) days notice set out in Article 1.04(d) of this Code may be waived by the parties of record. The Board may stay the effectiveness of any order of the Commissioner, pending its review of such order. Such appeal shall have precedence over all other business of a different nature pending before the Board, and in the public hearing any and all evidence and matters pertaining to the appeal may be submitted to the Board, whether included in the appeal or not, and the Board shall make such other rules and regulations with regard to such applications and their consideration as it deems advisable. If such insurance company be dissatisfied with any decision, regulation, order, rule, act or administrative ruling adopted by the State Board of Insurance, such dissatisfied insurance company after failing to get relief from the State Board of Insurance, may initiate an action by filing a petition setting forth the particular objection to such decision, regulation, order, rule, act or administrative ruling, or to either or all of them, in the District Court of Travis County, Texas, and not elsewhere, against the State Board of Insurance as defendant. Notwithstanding any other statute or rule of procedure, the filing of a petition for the purpose of initiating such an action with respect to this article does not stay or vacate the decision, regulation, order, rule, act, or administrative ruling or either or all of them unless the court that acquires jurisdiction, after hearing and by order, specifically stays or vacates the decision, regulation, order, rule, act, or administrative ruling that is the subject of the action. The action shall not be limited to questions of law and the substantial evidence rule shall not apply, except as interpretation of the Constitution may require, but such action shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the Justice Court to the County Court]. Either party to said action may appeal to the Appellate Court having jurisdiction of said cause and said appeal shall be at once returnable to said Appellate Court having jurisdiction of said cause and said action so appealed shall have precedence in said Appellate Court over all causes of a different character therein pending. [The Board shall not be required to give any appeal bond in any cause arising hereunder.]

SECTION 4.08. The change in law made by this article and made by this Act to Article 9.07, Insurance Code, Article 9.37, Insurance Code, Section 5, Article 9.44, Insurance Code, and Section 8(e), Article 9.56, Insurance Code, that relate to the standard for judicial review

of a ruling, action, order, decision, or other act of the commissioner of insurance or the state board of insurance applies only to judicial review of a ruling, action, order, decision, or other act made or committed on or after the effective date of this Act. Judicial review of a ruling, action, order, decision, or other act made or committed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

## ARTICLE 5. ADMINISTRATIVE PENALTIES

SECTION 5.01. Chapter 1, Insurance Code, is amended by adding Article 1.10E to read as follows:

### Art. 1.10E. ADMINISTRATIVE PENALTIES

Sec. 1. DEFINITIONS. In this article:

(1) "Person" means an individual, corporation, trust, partnership, association, or any other legal entity.

(2) "Administrative penalty" means any monetary penalty which may be imposed under this article by the commissioner.

Sec. 2. PENALTY AUTHORIZED. On written notification of a specific violation, the commissioner may impose an administrative penalty against a person licensed or regulated under this code or another insurance law of this state who violates this code, another insurance law of this state, or a rule or order adopted under this code or another insurance law of this state.

Sec. 3. AMOUNT OF PENALTY. (a) The penalty for a violation may be in an amount not to exceed \$25,000, unless a greater or lesser penalty is specified by a provision of this code or another insurance law of this state.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to the public's interests or confidences caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation;

(6) whether the violation was intentional or unintentional; and

(7) any other matter that justice may require.

Sec. 4. PROCEDURES FOR ASSESSING PENALTY; HEARING. (a) If the department determines that a violation has occurred, the department may issue to the commissioner a report that states the facts on which the determination is based and the department's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(b) Within 14 days after the date the report is issued, the department shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the department or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(d) If the person accepts the determination and recommended penalty of the department, the commissioner by order shall approve the determination and impose the recommended penalty.

(e) If the person requests a hearing or fails to respond timely to the notice, the department shall set a hearing and give notice of the hearing to the person. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for decision, the commissioner by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(f) The notice of the commissioner's order given to the person under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments must include a statement of the right of the person to judicial review of the order.

(g) Within 30 days after the date the commissioner's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(h) Within the 30-day period, a person who acts under Subsection (g)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner by certified mail.

(i) If the commissioner receives a copy of an affidavit under Subsection (h)(2) of this section, the commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(j) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the commissioner may refer the matter to the attorney general for collection of the amount of the penalty.

Sec. 5. JUDICIAL REVIEW. (a) Judicial review of the order of the commissioner:

(1) is instituted by filing a petition as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes); and

(2) is under the substantial evidence rule.

(b) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(c) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

Sec. 6. **DEPOSIT TO GENERAL REVENUE FUND.** A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

Sec. 7. **APPLICATION OF ADMINISTRATIVE PROCEDURE AND TEXAS REGISTER ACT.** All proceedings under this section are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments.

Sec. 8. **APPLICATION TO OTHER LAWS.** This article applies to any monetary penalty imposed by the department or commissioner under this code or another insurance law of this state.

SECTION 5.02. Section 17A, Article 1.14-2, Insurance Code, is amended to read as follows:

Sec. 17A. **ADMINISTRATIVE PENALTY.** [(a)] If a surplus lines agent violates Section 8 of this article or a rule, regulation, or order adopted under that provision, the State Board of Insurance may assess an administrative [a] penalty against that agent as provided by Article 1.10E of this code [Section 7, Article 1.10, of this code.

[(b) In determining the amount of the penalty, the State Board of Insurance shall consider:

- [(1) the nature, circumstances, extent, and gravity of the violation;
- [(2) any economic benefit gained through the violation;
- [(3) the amount necessary to deter future violations; and
- [(4) any other matters that justice may require].

SECTION 5.03. Section 19, Managing General Agents' Licensing Act (Article 21.07-3, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 19. **VIOLATIONS OF ACT.** Any person, firm, or corporation who violates any of the provisions of this Act or any rule, regulation, or order adopted under this Act shall be subject to sanctions under Section 7, Article 1.10, Insurance Code. [In determining the amount of any penalty, the State Board of Insurance shall consider:

- [(1) the nature, circumstances, extent, and gravity of the violation;
- [(2) any economic benefit gained through the violation;
- [(3) the amount necessary to deter future violations; and
- [(4) any other matters that justice may require.]

SECTION 5.04. Article 21.11-1, Insurance Code, is amended by amending Section 6 and adding Section 7 to read as follows:

Sec. 6. If it is found, after notice and an opportunity to be heard as determined by the board, that an insurance company has violated this article, the insurance company shall be subject to an administrative [a civil] penalty under Article 1.10E of this code of not less than \$1,000 nor more than \$10,000[, and it shall be subject to a civil suit by the agent for damages suffered because of the premature termination of the contract by the company].

Sec. 7. Any agent who has sustained actual damages as a result of a company's violation of this article may maintain an action against the company, without regard to whether or not there has been a finding by the board that there has been a violation of this article.

SECTION 5.05. Sections 7(c) and (d), Article 21.21, Insurance Code, are amended to read as follows:

(c) Any person who violates the terms of a cease and desist order under this section *is subject to an administrative penalty under Article 1.10E of this code. An administrative penalty assessed under this subsection may not exceed \$1,000 for each violation and a total of \$5,000 for all violations* [~~shall be given notice to appear and show cause, at a hearing to be held in conformity with Section 6 of this Article, why he should not forfeit and pay to the state a civil penalty of not more than \$1,000 per violation and not to exceed a total of \$5,000~~]. In determining whether or not a cease and desist order has been violated, the Board shall take into consideration the maintenance of procedures reasonably adapted to insure compliance with the order.

(d) An order of the Board awarding *an administrative penalty* [~~civil penalties~~] under Subsection (c) of this section applies only to violations of this order incurred prior to the awarding of the penalty order.

SECTION 5.06. Section 5(k), Article 21.49-1, Insurance Code, is amended to read as follows:

(k) Additional Violations. Each director or officer of an insurance company subject to this article, or of an insurance holding company system subject to this article, who knowingly and wilfully violates, participates in, or assents to or who knowingly and wilfully permits any of the officers, agents, or employees of the insurer or holding company system to engage in transactions or make investments that have not been properly reported or submitted under this article or that knowingly and wilfully violate this article *is subject to an administrative penalty under Article 1.10E of this code*, [~~shall pay, in the person's individual capacity, a civil penalty~~] of not more than \$10,000 for each violation, [~~after notice and an opportunity for hearing before the commissioner. In determining the amount of the civil penalty, the commissioner shall consider the appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations, and any other matters that justice requires~~].

SECTION 5.07. Section 17(a), Article 21.49-3b, Insurance Code, is amended to read as follows:

(a) An association that violates this article or any rule or order adopted under this article is subject to sanctions under Section 7, Article 1.10 of this code. [~~In determining the amount of any penalty, the board shall consider:~~

- [~~(1) the nature, circumstances, extent, and gravity of the violation;~~
- [~~(2) any economic benefit gained through the violation;~~
- [~~(3) the amount necessary to deter future violations; and~~
- [~~(4) any other matters that justice may require.~~]

SECTION 5.08. This article applies only to the assessment of an administrative penalty on or after September 1, 1993. Assessment of an administrative penalty before September 1, 1993, is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for this purpose.

## ARTICLE 6. RATE AND POLICY FORM REGULATION

SECTION 6.01. Chapter 5, Insurance Code, is amended by adding Subchapter N to read as follows:

### SUBCHAPTER N. STREAMLINED PROCEDURES FOR RATEMAKING

*Art. 5.121. STUDY AND IMPLEMENTATION. The department shall study and the commissioner may adopt and implement procedures for streamlining insurance rate proceedings under this chapter, this code, and other insurance laws of this state. The procedures must ensure due process to all affected parties.*

SECTION 6.02. Chapter 1, Insurance Code, is amended by adding Article 1.50 to read as follows:

#### *Art. 1.50. SELECT COMMITTEE ON RATE AND POLICY FORM REGULATION*

*Sec. 1. DEFINITION. In this article, "committee" means the select committee on rate and policy form regulation established under this article.*

**Sec. 2. COMPOSITION OF COMMITTEE.** (a) *The select committee on rate and policy form regulation is composed of:*

(1) *three members, appointed by the governor;*

(2) *three members of the senate, appointed by the lieutenant governor; and*

(3) *three members of the house of representatives, appointed by the speaker of the house of representatives.*

(b) *The governor shall designate a member of the committee to serve as presiding officer of the committee.*

**Sec. 3. PURPOSE; DUTIES; MEETINGS.** (a) *The committee shall study insurance rate and policy form regulation in this state. The committee shall assess:*

(1) *the effects of changes made by the 72nd Legislature in insurance regulation to identify whether the purpose of the department should be further changed from insurance rate and policy form regulation and directed to:*

(A) *regulation of the financial conditions of companies and market conduct; and*

(B) *provision of consumer services;*

(2) *the degree of competition in the insurance industry in this state; and*

(3) *the availability of motor vehicle insurance, the number of uninsured drivers, and the number of drivers insured through the Texas Automobile Insurance Plan Association, on a geographic area basis, to assess if certain geographic areas of the state are underserved.*

(b) *The committee shall meet monthly or as needed to carry out its duties under this section.*

(c) *The committee may appoint subcommittees, task groups, or advisory groups to assist it in its work. Members of these groups are not required to be members of the committee.*

**Sec. 4. REPORT.** (a) *Not later than December 1, 1994, the committee shall issue a report of its findings. The committee shall file copies of the report with the Legislative Reference Library, the governor's office, the secretary of the senate, the chief clerk of the house of representatives, the department, and the office of public insurance counsel. The department shall make copies of the report available to the public at cost.*

(b) *The report shall include recommended rule or statutory changes to implement the committee's recommendations.*

**Sec. 5. STAFF.** *On request of the committee, the Texas Legislative Council, governor's office, senate, and house of representatives shall provide staff as necessary to carry out the duties of the committee.*

**Sec. 6. WITNESSES; PROCESS.** *The committee may issue a subpoena or other process to a witness at any place in this state, compel the attendance of the witness, and compel the production of a book, record, document, or instrument that the committee requires. If necessary to obtain compliance with a subpoena or other process, the committee may issue a writ of attachment. A subpoena or other process issued by the committee may be addressed to and served by any peace officer of this state or a political subdivision of this state. The presiding officer shall issue, in the name of the committee, a subpoena or other process as the committee directs. If the presiding officer is absent, the assistant presiding officer or a designee of the presiding officer may issue a subpoena or other process in the same manner as the presiding officer. A witness attending proceedings of the committee under process is entitled to the same mileage and per diem payments as a witness before a grand jury in this state. The testimony given at any hearing conducted under this article shall be given under oath subject to the penalties of perjury.*

**Sec. 7. COOPERATION OF OTHER AGENCIES.** *If necessary to the discharge of its duties, the committee may request the assistance of a state agency, department, or office. The agency, department, or office shall provide the requested assistance.*

**Sec. 8. EXPENSES.** *The operating expenses of the committee shall be paid from available funds of the Texas Department of Insurance operating fund. A member of the committee appointed under Section 2(a)(1) of this article is entitled to reimbursement from those funds for expenses incurred in carrying out official duties as a member of the*



committee at the rate specified in the General Appropriations Act. Other members of the committee are not entitled to reimbursement for their expenses.

Sec. 9. *PROGRESS REPORT.* Not later than December 1, 1996, the department shall issue a report on the department's progress in implementing recommendations for rule changes made by the committee and in implementing any changes in law made by the 74th Legislature in response to the recommendations of the committee.

Sec. 10. *COMMITTEE ABOLISHED; EXPIRATION OF ARTICLE.* (a) The committee is abolished on December 31, 1994.

(b) This article expires January 1, 1997.

SECTION 6.03. Chapter 3, Insurance Code, is amended by adding Subchapter H to read as follows:

#### SUBCHAPTER H. RATE REPORTING

Art. 3.90. *HEALTH INSURER REPORTING.* (a) This article applies to any insurance company, group hospital service corporation, or health maintenance organization that issues:

(1) an individual, group, blanket, or franchise insurance policy, or an insurance agreement, a group hospital service contract, or an evidence of coverage, that provides benefits for medical or surgical expenses incurred as a result of an accident or sickness; or

(2) a long-term care insurance policy, as that term is defined by Section 2, Article 3.70-12, of this code and its subsequent amendments.

(b) Each insurer subject to this article shall submit to the department information required by the department relating to the insurer's loss experience, overhead, and operating expenses. The department may also request information about characteristics of persons insured by the insurer, including information on age, gender, health status, job classifications, and geographic distribution.

(c) The commissioner shall adopt rules governing the submission of information under this article. The rules may not require an insurer to submit the information more than annually.

SECTION 6.04. Section 3(c), Article 5.101, Insurance Code, is amended to read as follows:

(c) Each initial flexibility band is based on a benchmark rate promulgated by the board. On or before January 1, 1992, and annually thereafter, the board shall conduct hearings to determine the benchmark rates and flexibility bands by line. The determination of the rate shall not include disallowed expenses under Subsection (h) of this section. An insurer, the public insurance counsel, and any other interested person may present testimony at the hearing and may file information for consideration by the board. An advisory organization which collects ratemaking data shall not be a party to the hearing. A trade association that does not collect historical data and that does not provide statistical plans, prospective loss costs, or supplementary rating information to its members may, on behalf of its members that are small or medium-sized insurers, as defined by the commissioner, present rate making data and make recommendations to the board at the hearing. There is no immunity from antitrust liability for a trade association that presents rate making data or makes recommendations to the board at the hearing. The definition of "small and medium-sized insurers" shall be a limitation upon the scope of the presentation to be made by a trade association, but may not limit the participation of a trade association because its membership includes other sized insurers. An insurer shall use that benchmark rate and the flexibility band to develop rates used for the line for the year following the setting of the benchmark rate and the flexibility band.

SECTION 6.05. Article 1.09-5(c), Insurance Code, is amended to read as follows:

(c) An employee of the department may appear before the board or its designated hearings officer only as follows:

(1) a member of the department's legal staff may assist the board or its designated hearings officer in the prehearing process and in aligning parties to board proceedings;

(2) one or more employees of the department may appear as a party, present evidence, and question witnesses in a proceeding in which the public counsel under *Section 5(b)(1), Article 1.35A[(4)(1)]* of this code is not authorized by law to appear;

(3) an employee responsible for collecting and compiling rate data may appear and present evidence relating to the validity of the compiled data and a licensed attorney employed as part of the legal staff of the department may assist such employee in making the presentation;

(4) *one or more employees of the department may present evidence in any rate filing case under Article 5.13-2, 5.15, 5.55, or 5.81 of this code;*

(5) [(4)] the general counsel or an assistant general counsel may assist the board in any proceeding in which insurance rates are set; and

(6) [(5)] the general counsel or an assistant general counsel may be designated by the board and may serve as a hearings officer in any proceeding in which insurance rates are set or any prehearing proceeding provided that any final decision relating to rates to be set must be set by the board.

SECTION 6.06. Article 3.42, Insurance Code, is amended by adding Section (k) to read as follows:

*(k) The department shall develop and implement rules to improve procedures for approval of policy forms under this article.*

SECTION 6.07. Sections 1 and 2, Article 5.13-2, Insurance Code, are amended to read as follows:

Sec. 1. PURPOSE[; ~~EXPIRATION DATE~~]. (a) This article governs the regulation of general liability, ~~lines and~~ commercial property, *all commercial casualty, and medical professional liability insurance rates and forms. It does not govern automobile, lines insurance rates and forms, other than* fidelity, surety, or guaranty bonds. The purposes of this article are to:

(1) promote the public welfare by regulating insurance rates to prohibit excessive, inadequate, or unfairly discriminatory rates;

(2) promote availability of insurance;

(3) promote price competition among insurers to provide rates and premiums that are responsive to competitive market conditions;

(4) prohibit price-fixing agreements and other anticompetitive behavior by insurers;

(5) regulate the insurance forms used for lines of insurance subject to this article to ensure that they are not unjust, unfair, inequitable, misleading, or deceptive; and

(6) provide regulatory procedures for the maintenance of appropriate information reporting systems.

(b) This article expires December 31, 1995.

Sec. 2. SCOPE. This article applies to all lines of general liability, ~~or~~ commercial property, *all commercial casualty, and medical professional liability* insurance written under policies or contracts of insurance issued by a licensed insurer, other than a fidelity, surety, or guaranty bond *or an automobile insurance policy*.

SECTION 6.08. Sections 3(5) and (6), Article 5.13-2, Insurance Code, are amended to read as follows:

(5) "Supplementary rating information" means any manual, rating schedule, plan of rules, rating rules, classification systems, territory codes and descriptions, rating plans, and other similar information *used by the insurer* ~~required by the board~~ to determine the applicable premium for an insured. The term includes factors and relativities, such as increased limits factors, classification relativities, deductible relativities, *premium discount, and* ~~or~~ other similar factors *and rating plans such as experience, schedule, and retrospective rating*.

(6) "Supporting information" means:

(A) the experience and judgment of the filer and the experience or information of other insurers or advisory organizations relied on by the filer;

- (B) the interpretation of any other information relied on by the filer;
- (C) descriptions of methods used in making the rates; and
- (D) any other information required by the *department* [board] to be filed.

SECTION 6.09. Sections 5, 7, 8, and 9, Article 5.13-2, Insurance Code, are amended to read as follows:

Sec. 5. RATE FILINGS; LEGISLATIVE REPORT. (a) Each insurer shall file with the *commissioner* [board] all rates, supplementary rating information, and reasonable and pertinent supporting information for risks written in this state.

(b) If the *commissioner* [board] determines after a hearing that an insurer's rates require supervision because of the insurer's financial condition or the insurer's rating practices, the *commissioner* [board] may require the insurer to file with the *commissioner* [board] all rates, supplementary rate information, and any supporting information prescribed by the *commissioner* [board].

(c) An insured that is aggrieved with respect to any filing in effect, or the public insurance counsel, may make a written application to the *commissioner* [board] for a hearing on the filing. The application must specify the grounds on which the applicant bases the grievance. If the *commissioner* [board] finds that the application is made in good faith, that the applicant would be so aggrieved if the grounds in the application are established, and that those grounds otherwise justify holding the hearing, the *commissioner* [board] shall hold a hearing not later than the 30th day after the date of receipt of the application. The *commissioner* [board] must give at least 10 days' written notice to the applicant and to each insurer that made the filing in question.

(d) If, after the hearing, the *commissioner* [board] finds that the filing does not meet the requirements of this article, the *commissioner* [board] shall issue an order specifying how the filing fails to meet the requirements of this article and stating the date on which, within a reasonable period after the order date, the filing is no longer in effect. The *commissioner* [board] shall send copies of the order to the applicant and to each affected insurer.

(e) The *commissioner* [board] shall require each insurer subject to this article to file information with the *commissioner* [board] on a quarterly basis. Each insurer shall provide the *commissioner* [board] with information relating to changes in losses, premiums, and market share since January 1, 1993. The *commissioner* [board] shall report to the governor, lieutenant governor, and speaker of the house of representatives on a quarterly basis, relating to the information provided by the insurers' reports and to market conduct, especially consumer complaints.

Sec. 7. DISAPPROVAL. (a) The *commissioner* [board] shall disapprove a rate if the *commissioner* [board] determines that the rate filing made under this article does not meet the standards established under that section.

(b) If the *commissioner* [board] disapproves a filing, the *commissioner* [board] shall issue an order specifying in what respects the filing fails to meet the requirements of this article. The filer is entitled to a hearing on written request made to the *commissioner* [board] not later than the 30th day after the effective date of the disapproval order.

(c) If the *commissioner* [board] disapproves a rate that is in effect, the *commissioner* [board] may issue a disapproval order only after a hearing held after at least 20 days' written notice to the insurer that made the filing. The disapproval order must be issued not later than the 15th day after the close of the hearing and must specify how the rate fails to meet the requirements of this article. The disapproval order must state the date on which the further use of that rate is prohibited. The *commissioner* [board] shall set the date not earlier than the 45th day after the date on which the hearing closes.

Sec. 8. FORMS. (a) An insurance policy or printed endorsement form for use in writing the types of insurance subject to this article may not be delivered or issued for delivery in this state unless the form has been filed with and approved by the *commissioner* [board].

(b) Each filing shall be made not later than the 60th day before the date of any use or delivery for use. At the expiration of the 60-day period a filed form is approved unless, before the expiration of the 60 days, the *commissioner* [board] approves or disapproves the form by order. Approval of a form by the *commissioner* [board] constitutes a waiver of any

unexpired portion of the 60-day period. The *commissioner* [board] may extend by not more than an additional 10 [60] days the period during which it may approve or disapprove a form by giving notice to the filer of the extension before the expiration of the initial period. At the expiration of any extension and in the absence of any earlier approval or disapproval, the form shall be considered approved. For good cause shown, the *commissioner* [board] may withdraw the *commissioner's* [its] approval at any time after notice and a hearing.

(c) A *commissioner's* [An] order [of the board] disapproving any form or any notice of the *commissioner's* [board's] intention to withdraw a previous approval must state the grounds for the disapproval in enough detail to reasonably inform the filer of the grounds. An order of withdrawal of a previously approved form takes effect on the expiration of the prescribed period, but not sooner than the 30th day after the effective date of the withdrawal order, as prescribed by the *commissioner* [board].

(d) An insurer may not use in this state any form after disapproval of the form or withdrawal of approval by the *commissioner* [board].

(e) The *commissioner* [board] may promulgate standard insurance policy forms, endorsements, and other related forms that may be used, at the discretion of the insurer, by an insurer instead of the insurer's own forms in writing insurance subject to this article. Forms submitted by insurers for approval under this section must provide coverage equivalent to that provided in the policy forms used for these lines of coverage on the effective date of this article. An endorsement may not reduce coverage provided under the approved policy form.

(f) *Policy forms for use with large risks are exempt from the requirements of Subsections (a), (b), and (e) of this section. For purposes of this subsection, "large risk" means:*

- (1) *an insured that has total insured property values of \$10 million or more;*
- (2) *an insured that has total annual gross revenues of \$20 million or more; or*
- (3) *an insured that has a total premium of \$50,000 or more for property insurance, \$50,000 or more for general liability insurance, or \$100,000 or more for multiperil insurance.*

Sec. 9. COMMISSIONER [BOARD] AUTHORITY. If the *commissioner* [board] determines at any time that the implementation of this article or any part thereof is contrary to the public interest and has resulted in or may result in imminent peril to the insurance consumers of this state, the *commissioner* [board] may issue an order stating the harm to the public and shall thereafter rely upon Subchapters A-L of this chapter, or parts thereof, in the regulation of property and casualty insurance.

SECTION 6.10. Article 5.15(h), Insurance Code, is amended to read as follows:

(h) Notwithstanding Subsections (a)–(g) of this article, [~~on and after October 1, 1991,~~] rates for general liability, [~~and~~] commercial property, and all commercial casualty insurance coverage under this article are determined, and hearings related to those rates are conducted, as provided by Article 5.13–2 of this code. This subsection expires December 31, 1995.

SECTION 6.11. Section 4(a), Article 5.15–1, Insurance Code, is amended to read as follows:

(a) The provisions of Article 5.13–2 of this code [~~5.15, Insurance Code,~~] shall apply to the filing of rates and rating information required under this article.

SECTION 6.12. Section 4A, Article 5.15–1, Insurance Code, is repealed.

SECTION 6.13. Section 1, Article 3.50, Insurance Code, is amended to read as follows:

Sec. 1. DEFINITIONS. No policy of group life insurance shall be delivered in this state unless it conforms to one of the following descriptions:

(1) A policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

(a) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual

proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees.

(b) The premium for the policy shall be paid by the policyholder, either wholly from the employer's fund or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least seventy-five percent (75%) of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy must cover at least ten (10) employees at date of issue.

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees. No policy may be issued which provides insurance on any employee which together with any other insurance under any group life insurance policies issued to the employer or to the trustees of a fund established by the employer exceeds One Hundred Thousand Dollars (\$100,000.00), unless four hundred percent (400%) of the annual compensation of such employee from his employer or employers exceeds One Hundred Thousand Dollars (\$100,000.00), in which event all such term insurance shall not exceed four hundred percent (400%) of such annual compensation, except that this limitation shall not apply to group insurance on other than the term plan where such insurance is to be used to fund the benefits under a pension or profit sharing plan and the amount of such insurance does not exceed that required to provide at normal retirement date the pension specified by the plan, and except that a group policy which is issued by the same or another carrier to replace another group policy may provide term insurance not to exceed the amounts provided by the policy which it replaces, or the amounts provided above, whichever are greater.

(2) A policy issued to a labor union, which shall be deemed the employer and policyholder, to insure the members of such union who are actively engaged in the same occupation and who shall be deemed to be the employees of such union within the meaning of this Article.

(3) A policy issued to any association of employees of the United States Government or any subdivision thereof, provided the majority of the members of such association are residents of this state, an association of public employees, an incorporated city, town or village, an independent school district, common school district, state colleges or universities, any association of state employees, any association of state, county and city, town or village employees, and any association of any combination of state, county or city, town or village employees and any department of the state government which employer or association shall be deemed the policyholder to insure the employees of any such incorporated city, town or village, of any such independent school district, of any common school district, of any such state college or university, of any such department of the state government, members of any association of state, county or city, town or village or of the United States Government or any subdivision thereof, provided the majority of such employees reside in this state, employees for the benefit of persons other than the policyholder subject to the following requirements:

(a) The persons eligible for insurance under the policy shall be all of the employees of the employer or if the policyholder is an association, all of the members of the association.

(b) The premium for a policy issued to any policyholder authorized to be such policyholder under Subsection (3) of Section 1, Article 3.50, Texas Insurance Code, may

be paid in whole or in part from funds contributed by the employer, or in whole or in part from funds contributed by the persons insured under said policy; or in whole or in part from funds contributed by the insured employees who are members of such association of employees; provided, however, that any monies or credits received by or allowed to the policyholder pursuant to any participation agreement contained in or issued in connection with the policy shall be applied to the payment of future premiums and to the pro rata abatement of the insured employees' contribution therefor; and provided further, that the employer may deduct from the employees' salaries the employees' contributions for the premiums when authorized in writing by the respective employees so to do. Such policy may be placed in force only if at least 75% of the eligible employees or if an association of employees is the policyholder, 75% of the eligible members of said association, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required premium contributions and become insured thereunder. Any group policies heretofore issued to any of the groups named in Section 1(3) above and in existence on the effective date of this Act shall continue in force even though the number of employees or members insured thereunder is less than 75% of the eligible employees or members on the effective date of this Act.

(c) The policy must cover at least ten (10) employees at date of issue, or if an association of employees is the policyholder, ten (10) members of said association at date of issue.

(d) The term employees as used herein in addition to its usual meaning shall include elective and appointive officials of the state.

(4) A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:

(a) The debtors eligible for insurance under the policy shall all be members of a group of persons numbering not less than fifty (50) at all times, who become borrowers, or purchasers of securities, merchandise or other property, under agreement to repay the sum borrowed or to pay the balance of the price of the securities, merchandise or other property purchased, to the extent of their respective indebtedness, but not to exceed Fifty Thousand Dollars (\$50,000.00) on any one life or not to exceed One Hundred Twenty-Five Thousand Dollars (\$125,000.00) on any one life if the indebtedness is secured by a first lien on real estate; provided, however, the face amount of any loan or loan commitment, totally or partially executed, made to a debtor for educational purposes or to a debtor with seasonal income by a creditor in good faith for general agricultural or horticultural purposes, secured or unsecured, where the debtor becomes personally liable for the payment of such loan, may be so insured in an initial amount of such insurance not to exceed the total amount repayable under the contract of indebtedness and, when such indebtedness is repayable in substantially equal installments, the amount of insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater, and such insurance on such credit commitments not exceeding one year in duration may be written up to the amount of the loan commitment on a nondecreasing or level term plan, but such insurance shall not exceed One Hundred Thousand Dollars (\$100,000.00) on any one life.

(b) The premium for the policy shall be paid by the policyholder, either from the creditor's funds or from charges collected from the insured debtors, or both.

(c) The insurance issued shall not include annuities or endowment insurance.

(d) The insurance shall be payable to the policyholder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment; provided that in the case of a debtor for educational purposes or of a debtor with seasonal income, under a loan or loan commitment for general agricultural or horticultural purposes of the type described in paragraph (a), the insurance in excess of the indebtedness to the creditor, if any, shall be payable to the estate of the debtor or under the provision of a facility of payment clause.

(5) A policy issued to the trustees of a fund established by two or more employers in the same industry or by one or more labor unions, or to the trustees of a fund established by one or more employers in the same industry and one or more labor unions, or by one or more employers and one or more labor unions whose members are in the same or related

occupations or trades, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the union, subject to the following requirements:

(a) The persons eligible for insurance shall be all of the employees of the employers and the employees of the trade association of such employers or all of the members of the union, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or both. The policy may provide that the term "employees" shall include retired employees, and the individual proprietor or partners if an employer is an individual proprietor or a partnership. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

(b) The premium for the policy shall be paid by the trustees wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions, or by both, or, partly from such funds and partly from funds contributed by the insured persons, except that in no event shall the contribution by an insured person toward the cost of his insurance exceed forty cents per thousand per month. A policy on which part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance may be placed in force only if at least seventy-five percent (75%) of the then eligible persons of each participating employer unit, excluding any as to whom evidence of insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer. The policy may provide that a participating employer or labor union may pay the premium directly to the insurer for the policy issued to the trustee, and in that event, the employer or labor union becomes the premium payor for the insured employees or union members for that employer unit.

(c) The policy must cover at date of issue at least one hundred (100) persons; unless the policy is issued to the trustees of a fund established by employers which have assumed obligations through a collective bargaining agreement and are participating in the fund either pursuant to those obligations with regard to one or more classes of their employees which are encompassed in the collective bargaining agreement or as a method of providing insurance benefits for other classes of their employees, or unless the policy is issued to the trustees of a fund established by one or more labor unions.

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder or employer. No policy may be issued which provides term insurance on any person which together with any other term insurance under any group life insurance policy or policies issued to trustees or employers exceeds One Hundred Thousand Dollars (\$100,000.00), unless four hundred percent (400%) of the annual compensation of such employee from his employer or employers exceeds One Hundred Thousand Dollars (\$100,000.00), in which event all such term insurance shall not exceed four hundred percent (400%) of such annual compensation.

(e) The limitation as to amount of group insurance on any person shall not apply to group insurance on other than the term plan where such insurance is to be used to fund the benefits under a pension plan and the amount of such insurance does not exceed that required to provide at normal retirement date the pension specified by the plan, and except that a group policy which is issued by the same or another carrier to replace another group policy may provide term insurance not to exceed the amount provided by the policy which it replaces, or the amounts provided above whichever is greater.

(f) No policy may be issued (i) to insure employees of any employer whose eligibility to participate in the fund as an employer arises out of considerations directly related to the employer being a commercial correspondent or business client or patron of another employer (regardless of whether such other employer is or is not participating in the fund); or (ii) to insure employees of any employer which is not located in this state, unless the majority of the employers whose employees are to be insured are located in this state, or unless the policy is issued to the trustees of a fund established by one or more labor unions.

*(5A) A policy issued to an association or trust for a group of individuals for the payment of future funeral expenses.*

(6) A policy issued to cover any other group subject to the following requirements:

(a) No such group life insurance policy shall be delivered in this state unless the Commissioner of Insurance finds that:

- (i) the issuance of such group policy is not contrary to the best interest of the public;
- (ii) the issuance of the group policy would result in economies of acquisition or administration; and
- (iii) the benefits are reasonable in relation to the premiums charged.

(b) No such group life insurance coverage may be offered in this state by an insurer under a policy issued in another state unless this state or another state having requirements substantially similar to those contained in Paragraph (a) of Subdivision (6) has made a determination that such requirements have been met.

(c) The premium for the policy shall be paid either from the policyholder's funds or from funds contributed by the covered person or from both.

(d) Notwithstanding other provisions of law, an employer may insure the lives of its officers, directors, employees, and retirees under this subdivision for the purpose of and in an amount necessary to provide funds to offset fringe benefit-related liabilities. Evidence of the purpose of the policy shall be submitted to the Commissioner of Insurance. A policy issued for such purpose shall not diminish other life insurance benefits if any are offered or provided by such employer. The provisions of Subdivisions 5 through 10 of Section 2 of this article shall not apply to such policies.

(7) No policy of wholesale, franchise or employee life insurance, as hereinafter defined, shall be issued or delivered in this state unless it conforms to the following requirements:

(a) Wholesale, franchise or employee life insurance is hereby defined as: a term life insurance plan under which a number of individual term life insurance policies are issued at special rates to a selected group. A special rate is any rate lower than the rate shown in the issuing insurance company's manual for individually issued policies of the same type and to insureds of the same class.

(b) Wholesale, franchise or employee life insurance may be issued to (1) the employees of a common employer or employers, covering at date of issue not less than five employees; or (2) the members of a labor union or unions covering at date of issue not less than five members; or (3) the members of a credit union or credit unions covering at date of issue not less than five (5) members.

(c) The premium for the policy shall be paid either wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions or by both, or partly from such funds and partly from funds contributed by the insured person, except that in no event shall the contribution by an insured person toward the cost of his insurance exceed forty cents per thousand per month.

(d) No policy may be issued on a wholesale, franchise or employee life insurance basis which, together with any other term life insurance policy or policies issued on a wholesale, franchise, employee life insurance or group basis, provides term life insurance coverage for an amount in excess of One Hundred Thousand Dollars (\$100,000.00), unless four hundred percent (400%) of the annual compensation of such employee from his employer or employers exceeds One Hundred Thousand Dollars (\$100,000.00), in which event all such term insurance shall not exceed four hundred percent (400%) of such annual compensation. An individual application shall be taken for each such policy and



the insurer shall be entitled to rely upon the applicant's statements as to applicant's other similar coverage upon his life.

(e) Each such policy of insurance shall contain a provision substantially as follows:

A provision that if the insurance on an insured person ceases because of termination of employment or of membership in the union, such person shall be entitled to have issued to him by the insurer, without evidence of insurability an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one (31) days after such termination.

(f) Each such policy may contain any provision substantially as follows:

- (1) A provision that the policy is renewable at the option of the insurer only;
- (2) A provision for termination of coverage by the insurer upon termination of employment by the insured employee;
- (3) A provision requiring a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as condition to coverage.

(g) The limitation as to amount of group and wholesale, franchise or employee life insurance on any person shall not apply to group insurance on other than the term plan where such insurance is to be used to fund benefits under a pension plan and the amount of such insurance does not exceed that required to provide at normal retirement date the pension specified by the plan, and except that a group policy which is issued by the same or another carrier to replace another group policy may provide term insurance not to exceed the amounts provided by the policy which it replaces, or the amounts provided above, whichever are greater.

(h) Nothing contained in this Subsection (7) shall in any manner alter, impair or invalidate (1) any policy heretofore issued prior to the effective date of this Act; nor (2) any such plan heretofore placed in force and effect provided such prior plan was at date of issue legal and valid; nor (3) any policy issued on a salary savings franchise plan, bank deduction plan, pre-authorized check plan or similar plan of premium collection.

(7A) A policy may be issued to a principal, or if such principal is a life or life and accident or life, accident and health insurer, by or to such principal, covering when issued not less than ten (10) agents of the principal, subject to the following requirements:

(a) As used in this section, the term "agents" shall be deemed to include general agents, subagents and salesmen.

(b) The agents eligible for insurance under the policy shall be those who are under contract to render personal services for the principal for a commission or other fixed or ascertainable compensation.

(c) The premium for the policy shall be paid either wholly by the principal or partly from funds contributed by the principal and partly from funds contributed by the insured agents. A policy on which no part of the premium is to be derived from funds contributed by the insured agents must insure all of the eligible agents or all of any class or classes thereof determined by conditions pertaining to the services to be rendered by the agents to the principal. A policy on which part of the premium is to be derived from funds contributed by the insured agents must cover at issue at least seventy-five percent (75%) of the eligible agents or at least seventy-five percent (75%) of any class or classes thereof determined by conditions pertaining to the services to be rendered by the agents; provided, however, that the benefits may be extended to other classes of agents as seventy-five percent (75%) thereof express the desire to be covered.

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the principal or by the agents. No policy may be issued which provides term insurance on any agent which together with any other term insurance under any group life insurance policy or policies issued to the principal exceeds One Hundred Thousand Dollars (\$100,000.00), unless four hundred percent (400%) of the annual commissions or other fixed or ascertainable compensation of such agent from the principal exceeds One Hundred Thousand Dollars (\$100,000.00), in which

event all such term insurance shall not exceed four hundred percent (400%) of such annual commissions or other fixed or ascertainable compensation.

(e) The insurance shall be for the benefit of persons other than the principal.

(8) A policy issued to the Veterans Land Board of the State of Texas, who shall be deemed the policyholder to insure persons purchasing land under the Texas Veterans Land Program as provided in Section 16(B) of Article 5421m, Vernon's Texas Civil Statutes (Chapter 318, Acts of the 51st Legislature, Regular Session, 1949, as amended).

(9) Any policy of group term life insurance may be extended, in the form of group term life insurance only, to insure the spouse and minor children, natural or adopted, of an insured employee, provided the policy constitutes a part of the employee benefit program established for the benefit of employees of the United States government or any subdivision thereof, and provided further, that the spouse or children of other employees covered by the same employee benefit program in other states of the United States are or may be covered by group term life insurance, subject to the following requirements:

(a) The premiums for the group term life insurance shall be paid by the policyholder from funds solely contributed by the insured employee.

(b) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured employee or by the policyholder, provided that group term life insurance upon the life of a spouse shall not exceed the lesser of (1) Ten Thousand Dollars (\$10,000.00) or (2) one-half of the amount of insurance on the life of the insured employee under the group policy; and provided that group term life insurance on the life of any minor child shall not exceed Two Thousand Dollars (\$2,000.00).

(c) Upon termination of the group term life insurance with respect to the spouse of any insured employee by reason of such person's termination of employment or death, or termination of the group contract, the spouse insured pursuant to this section shall have the same conversion rights as to the group term life insurance on his or her life as is provided for the insured employee.

(d) Only one certificate need be issued for delivery to an insured employee if a statement concerning any dependent's coverage is included in such certificate.

(10) A policy of group life insurance may be issued to a nonprofit service, civic, fraternal, or community organization or association which has had an active existence for at least two years, has a constitution or bylaws, was formed for purposes other than obtaining insurance, and which association shall be deemed the policyholder to insure members and employees of such association for the benefit of persons other than the association or any of its officers, subject to the following requirements:

(a) The persons eligible for insurance shall be all the members of the association, or all of any class thereof determined by conditions pertaining to membership in the association.

(b) The amounts of insurance under the policy shall be based upon some plan precluding individual selection either by the insured members or by the association.

(c) The premium for the policy shall be paid by the policyholder from the policyholder's own funds or from funds contributed by the employees or members specifically for their insurance, or from both. The policy may provide that the premium may be paid directly to the insurer by individual employees or members from their own funds, and in that event, the respective employees or members become the premium payor for that particular certificate.

(d) The policy shall cover at least twenty-five (25) persons at date of issue.

#### ARTICLE 7. FINANCIAL SUPERVISION OF ENTITIES REGULATED BY TEXAS DEPARTMENT OF INSURANCE

SECTION 7.01. Section 2A(a)(1), Article 3.28, Insurance Code, is amended to read as follows:

(1) In conjunction with the annual statement and in addition to other information required by this article, every life insurance company doing business in this state shall annually submit to the State Board of Insurance the opinion of a *qualified [an] actuary [or other financial specialist as defined by Board rule]* as to whether the reserves and related actuarial items held in support of the policies and contracts specified by rule of the Board are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The Board by rule shall define the specific requirements of this opinion~~[, the qualifications of the persons who may certify to such an opinion,]~~ and shall include any matters deemed to be necessary to the opinion's scope. *For purposes of this subdivision, "qualified actuary" has the meaning assigned by Article 1.11(d) of this code. A person who, before September 1, 1993, satisfied the requirements of the Board to submit an opinion under this subdivision may also submit the opinion required by this subdivision.*

SECTION 7.02. Section 2A(b), Article 3.28, Insurance Code, is amended to read as follows:

(b) Actuarial Analysis of Reserves and Assets Supporting Such Reserves. Every life insurance company, except as exempted by or pursuant to rule adopted by the Board, shall also annually include in the opinion required by Subsection (a)(1) of this section, an opinion of the same person who certifies to the opinion under Subsection (a)(1) of this section as to whether the reserves and related actuarial items held in support of the policies and contracts specified by Board rule, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts. The rules adopted by the Board under this section *may [shall]* exempt those companies that would be exempted from the requirements stated in this subsection (b) according to the most recently adopted regulation by the National Association of Insurance Commissioners entitled "Model Actuarial Opinion and Memorandum Regulation" or its successor regulation *if the Board considers the exemption appropriate.*

SECTION 7.03. Article 1.11, Insurance Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) Included on or attached to page 1 of the annual statement shall be the statement of a qualified actuary~~[, who is a member in good standing of the American Academy of Actuaries,]~~ entitled "Statement of Actuarial Opinion," setting forth his or her opinion relating to policy reserves and other actuarial items for life, accident and health, and annuities, or loss and loss adjustment expense reserves for property and casualty risks, as described in the NAIC annual statement instructions as appropriate for the type of risks insured.

(d) *In this article, "qualified actuary" means a member in good standing of the American Academy of Actuaries or a person who has otherwise demonstrated actuarial competence to the satisfaction of the commissioner of insurance or other insurance regulatory official of the insurer's domiciliary state.*

SECTION 7.04. Chapter 1, Insurance Code, is amended by adding Article 1.11A to read as follows:

Art. 1.11A. ACCEPTANCE OF ACTUARIAL OPINION. (a) *In any case in which the commissioner requests or requires the opinion of an actuary under this code, another insurance law of this state, or a rule adopted by the commissioner, including an opinion of a qualified actuary submitted in accordance with Section 2A, Article 3.28, of this code, the opinion is presumed to be accurate and valid and the department shall accept the opinion unless controverted.*

(b) *The department may employ, at the department's expense, an actuary other than the actuary who provides an opinion under Subsection (a) of this section to provide an alternative opinion.*

SECTION 7.05. Article 1.15, Insurance Code, is amended by adding Sections 8, 9, and 10 to read as follows:

Sec. 8. (a) In conducting an examination under this article, the department shall use audits and work papers prepared by an accountant or accounting firm that meets the requirements of Section 12, Article 1.15A, of this code that are made available to the department by the carrier. If necessary, the department may conduct a separate audit of the carrier.

(b) The carrier shall provide the department with the work papers of an accountant or accounting firm or the carrier and a record of any communications between the accountant or accounting firm and the carrier that relate to the audit. The accountant or accounting firm shall deliver that information to the department's examiners, who shall retain the information during the course of the department's examination of the carrier. Information obtained under this section is confidential and may not be disclosed to the public except when introduced as evidence in a hearing.

(c) For purposes of this section, "work papers" has the meaning assigned by Section 17(a), Article 1.15A, of this code. Work papers developed in an audit conducted under this section shall be maintained in the manner provided by Sections 17(b) and (c), Article 1.15A, of this code.

Sec. 9. A final or preliminary examination report, and any information obtained during the course of an examination, is confidential and is not subject to disclosure under the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and its subsequent amendments. This section applies if the carrier examined is under supervision or conservation but does not apply to an examination conducted in connection with a liquidation or a receivership under this code or another insurance law of this state.

Sec. 10. If the Commissioner determines that the financial strength of a carrier justifies less-frequent examinations than are required by Section 1 of this article, the Commissioner may conduct the examination of a carrier at intervals not to exceed five years. The Commissioner shall adopt rules governing the determination of whether the financial strength of a carrier justifies examination under this section. This section applies only to examination of a carrier that has been incorporated or organized for more than three years.

SECTION 7.06. Section 10, Article 1.15A, Insurance Code, is amended by adding Subsection (f) to read as follows:

(f) The audited financial report must also include information required by the department to conduct the examination of the insurer under Article 1.15 of this code. The commissioner shall adopt rules governing the information to be included in the report under this subsection.

SECTION 7.07. Chapter 1, Insurance Code, is amended by adding Article 1.15B to read as follows:

Art. 1.15B. **CONFIDENTIALITY OF EARLY WARNING SYSTEM INFORMATION.** Any information relating to the financial solvency of any organization regulated by the department under this code or another insurance law of this state obtained by the department's early warning system is confidential and is not subject to disclosure under the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and its subsequent amendments.

SECTION 7.08. Section 8, Article 1.14-2, Insurance Code, is amended by amending Subsections (b) and (c) and adding Subsection (d) to read as follows:

(b) No surplus lines agent shall place any coverage with an [unauthorized] insurer unless the insurer has met the eligibility requirements of this section and the stamping office provides evidence that the insurer has met the requirements to the State Board of Insurance. An [unauthorized] insurer shall not be eligible unless the insurer has a minimum capital and surplus of \$15 million ~~(that are not less than the following amounts for the following dates:~~

[1] \$4.5 million capital and surplus as of December 31, 1991; or

[2] \$6 million capital and surplus as of December 31, 1992].

(c) An [unauthorized] insurer may be exempt from the minimum capital and surplus requirements provided by Subsection (b) of this section if the Commissioner of Insurance finds, after public hearing, that the exemption is warranted based on factors such as quality of

management, capital and surplus of any parent company, company underwriting profit and investment income trends, reinsurance contracts, company record and reputation within the industry, and other information the commissioner requires to make a determination. *The commissioner, by rule, shall exempt an insurer from the minimum capital and surplus requirements of Subsection (b) of this section if the insurer writes less than a minimum level of insurance premium in this state. The rules must specify the minimum level of insurance premium.*

*(d) A surplus lines insurer may be exempt from the minimum capital and surplus requirements of this article if the commissioner finds, after a public hearing, that the applicant for exemption complies with each of the following conditions:*

- 1. the insurer has at least \$6 million in capital and surplus;*
- 2. the amount of net risk retained after ceding to a reinsurer is reasonable and does not exceed 10 percent of the capital and surplus of the insurer;*
- 3. the annual ratio of net written premiums to surplus of the insurer does not exceed 2.5 to 1;*
- 4. the reinsurance company of the insurer is rated at least "B+" by the A.M. Best Company;*
- 5. the ownership interest in the insurer of an agent who places insurance with it does not exceed 10 percent;*
- 6. the officers, directors, or managing head have sufficient insurance ability, standing, and good record to render continued success of the company probable;*
- 7. the composition, quality, duration, and liquidity of the insurer's investment portfolio are prudent;*
- 8. the insurer is audited annually by an independent certified public accountant who is in good standing with the American Institute of Certified Public Accountants and is licensed to practice by the Texas State Board of Public Accountancy, and a copy of such audit is filed with the commissioner;*
- 9. the number and type of complaints are not excessive relative to the number of insurance policies written; and*
- 10. the insurer is acting in good faith in applying for an exemption.*

*The commissioner may continue the exemption in force on an annual basis upon the filing of a certificate by the insurer that the above conditions remain true and correct. The commissioner may hold a public hearing, however, at any time to determine that the continued exemption is warranted. The commissioner may waive any of the above 10 conditions if in her or his judgment the policyholders of the insurer would not be adversely affected thereby.*

SECTION 7.09. Article 1.16(b), Insurance Code, is amended to read as follows:

*(b) Assessments for the expenses of such domestic examination which shall be sufficient to meet all the expenses and disbursements necessary to comply with the provisions of the laws of Texas relating to the examination of insurance companies and to comply with the provisions of this Article and Articles 1.17 and 1.18 of this Code, shall be made by the State Board of Insurance upon the corporations or associations to be examined taking into consideration annual premium receipts, and/or admitted assets that are not attributable to 90 percent of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)), and/or insurance in force; provided such assessments shall be made and collected as follows: (1) expenses attributable directly to a specific examination including employees' salaries and expenses and expenses provided by Article 1.28 of this Code shall be collected at the time of examination; (2) assessments calculated annually for each corporation or association which take into consideration annual premium receipts, and/or admitted assets that are not attributable to 90 percent of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)), and/or insurance in force shall be assessed annually for each such corporation or association. In computing the assessments, the board may not consider insurance premiums for insurance contracted for by a state or federal governmental entity to provide welfare benefits to designated welfare recipients or contracted for in accordance with or in furtherance of Title 2, Human*

*Resources Code, or the federal Social Security Act (42 U.S.C. Section 301 et seq.). The [Provided further that the] amount of the [all such] assessments paid in each taxable year to or for the use of the State of Texas by any insurance corporation or association hereby affected shall be allowed as a credit on the amount of premium taxes to be paid by any such insurance corporation or association for such taxable year except as provided by Article 1.28 of this Code.*

SECTION 7.10. Article 1.39, Insurance Code, is amended to read as follows:

Art. 1.39. SUBORDINATED INDEBTEDNESS. (a) This article applies to an insurer as that term is defined by Article 1.15A of this code.

(b) An insurer may obtain a loan or an advance of cash or property, repayable with interest and may assume a subordinated liability for repayment of the advance and payment of interest on the advance if the insurer and creditor execute a written agreement stating that the creditor may be paid only out of that [the] portion of the insurer's surplus that exceeds the greater of a minimum surplus stated and fixed in the agreement or a minimum surplus of \$500,000 for that insurer. The department or the commissioner may not require the agreement to provide another minimum surplus amount.

~~(c) [Before an insurer may assume a subordinated liability under Subsection (a) of this article, the agreement must be approved by the commissioner.~~

~~(d) An insurer may not repay principal or pay interest on a subordinate liability assumed under this article unless the repayment or payment is approved by the commissioner. The commissioner may approve the repayment or payment only if satisfied that the repayment or payment is appropriate, considering the financial condition of the insurer. The commissioner may not deny approval of the repayment or payment if the insurer submits evidence, satisfactory to the commissioner, that the insurer has at least the minimum surplus stated in the agreement.~~

~~(e) A loan or advance made under this article, and any interest accruing on the loan or advance, is [not] a legal liability and [or] financial statement liability of the insurer only to the extent provided by the terms and conditions of the loan or advance agreement, and the loan or advance may not otherwise be a legal liability or financial statement liability of the insurer. [until the commissioner authorizes repayment or payment under Subsection (d) of this article. Until the commissioner authorizes the repayment or payment, all financial statements published by the insurer or filed with the commissioner must show as a liability that portion of the insurer's surplus that exceeds the minimum surplus as defined in the subordinated agreement to the extent of the unpaid balance thereon, and must show the amount of that minimum surplus as a special surplus account.]~~

*(d) If the loan or advance agreement provides for a sinking fund out of which the loan or advance is to be repaid, then the loan or advance shall be a legal liability and financial statement liability of the insurer only to the extent of those funds accumulated and held in the sinking fund, and the loan or advance may not otherwise be a legal liability or financial statement liability of the insurer. By mutual agreement of the parties to the agreement, any portion of the accumulated funds in the sinking fund may be returned to the surplus of the insurer at any time and from time to time and thereafter may not be considered as a legal liability or financial statement liability of the insurer.*

SECTION 7.11. Section 4, Article 3.33, Insurance Code, is amended to read as follows:

Sec. 4. AUTHORIZED INVESTMENTS AND LOANS. Subject to the limitations and restrictions herein contained, the investments and loans described in the following subsections, and none other, are authorized for the insurers subject hereto:

(a) United States Government Bonds. Bonds, evidences of indebtedness or obligations of the United States of America, or bonds, evidences of indebtedness or obligations guaranteed as to principal and interest by the full faith and credit of the United States of America, and bonds, evidences of indebtedness, or obligations of agencies and instrumentalities of the government of the United States of America;

(b) Other Governmental Bonds. Bonds, evidences of indebtedness or obligations of governmental units in the United States, Canada, or any province or city of Canada, and of the instrumentalities of such governmental units; provided:

(1) such governmental unit or instrumentality is not in default in the payment of principal or interest in any of its obligations; and

(2) investments in the obligations of any one governmental unit or instrumentality may not exceed 20 percent of the insurer's capital and surplus;

(c) *Obligations of Business Entities.* *Obligations, including bonds or evidences of indebtedness, or participations in those bonds or evidences of indebtedness, that are issued, assumed, guaranteed, or insured by any business entity, including a sole proprietorship, a corporation, an association, a general or limited partnership, a joint-stock company, a joint venture, a trust, or any other form of business organization, whether for-profit or not-for-profit, that is organized under the laws of the United States, another state, Canada, or any state, district, province, or territory of Canada, subject to all conditions set forth below:*

(1) *an insurer may acquire obligations in any one business entity rated one or two by the Securities Valuation Office of the National Association of Insurance Commissioners, but not to exceed 20 percent of the insurer's statutory capital and surplus as reported in the most recent annual statement filed with the department;*

(2) *an insurer may acquire obligations rated three or lower by the Securities Valuation Office if, after giving effect to such an acquisition, the aggregate amount of all obligations rated three or lower then held by the domestic insurer does not exceed 20 percent of its admitted assets. Not more than 10 percent of the admitted assets of that insurer may consist of obligations rated four, five, or six by the Securities Valuation Office. Not more than three percent of the admitted assets of that insurer may consist of obligations rated five or six by the Securities Valuation Office. Not more than one percent of the admitted assets of that insurer may consist of obligations rated six by the Securities Valuation Office. Attaining or exceeding the limit in any one category does not preclude an insurer from acquiring obligations in other categories, subject to the specific and multi-category limits;*

(3) *an insurer may not invest more than an aggregate of one percent of its admitted assets in obligations rated three by the Securities Valuation Office that are issued, assumed, guaranteed, or insured by any one business entity, or more than one-half percent of its admitted assets in obligations rated four, five, or six by the Securities Valuation Office that are issued, assumed, guaranteed, or insured by any one business entity. An insurer may not invest more than one percent of its admitted assets in any obligations rated three, four, five, or six by the Securities Valuation Office that are issued, assumed, guaranteed, or insured by any one business entity;*

(4) *notwithstanding the foregoing, an insurer may acquire an obligation of a business entity in which the insurer already has one or more obligations if the obligation is acquired in order to protect an investment previously made in that business entity. Such acquired obligations may not exceed one-half percent of the insurer's admitted assets; and*

(5) *this subsection does not prohibit an insurer from acquiring an obligation as a result of a restructuring of an already held obligation that is rated three or lower by the Securities Valuation Office;*

~~[Corporate Bonds. Bonds, evidences of indebtedness or obligations of corporations organized under the laws of the United States of America or its states or Canada or any state, district, province, or territory of Canada; provided:~~

~~(1) any such corporation must be solvent with at least \$1,000,000 of net worth as of the date of its latest annual or more recent certified audited financial statement or will have at least \$1,000,000 of net worth after completion of a securities offering which is being subscribed to by the insurer, or the obligation is guaranteed as to principal and interest by a solvent corporation meeting such net worth requirements which is organized under the laws of the United States of America or one of its states or Canada or any state, district, province, or territory of Canada;~~

~~(2) investments in the obligations of any one corporation may not exceed 20 percent of the insurer's capital and surplus; and~~

~~(3) the aggregate of all investments under this subsection may not exceed;~~

~~[(A) one hundred percent of the insurer's assets (excluding, however, those assets representing the minimum capital required for the insurer), but only if more than 75 percent of the total amount invested by the insurer in such bonds, evidences of indebtedness, or obligations of any such corporations qualifying under Subdivision (1) of this subsection are rated either: (i) AA or better by Standard and Poor's Bond Ratings service; or (ii) Aa or better by Moody's Bond Ratings service; or~~

~~[(B) eighty percent of the insurer's assets (excluding, however, those assets representing the minimum capital required for the insurer), but only if more than 50 percent of the total amount invested by the insurer in such bonds, evidences of indebtedness or obligations of any such corporations qualifying under Subdivision (1) of this subsection are rated either: (i) BBB or better by Standard and Poor's Bond Ratings service; or (ii) Baa or better by Moody's Bond Ratings service; or~~

~~[(C) fifty percent of the insurer's assets;]~~

(d) International Market. Bonds issued, assumed, or guaranteed by the Interamerican Development Bank, the International Bank for Reconstruction and Development (the World Bank), the Asian Development Bank, the State of Israel, the African Development Bank, and the International Finance Corporation; provided:

(1) investments in the bonds of any one of the entities specified above may not exceed 20 percent of the insurer's capital and surplus; and

(2) the aggregate of all investments made under this subsection may not exceed 20 percent of the insurer's assets;

(e) Policy Loans. Loans upon the security of the insurer's own policies not in excess of the amount of the reserve values thereof;

(f) Time and Savings Deposits. Any type or form of savings deposits, time deposits, certificates of deposit, NOW accounts, and money market accounts in solvent banks, savings and loan associations, and credit unions and branches thereof, organized under the laws of the United States of America or its states, when made in accordance with the laws or regulations applicable to such entities; provided the amount of the deposits in any one bank, savings and loan association, or credit union will not exceed the greater of:

(1) twenty percent of the insurer's capital and surplus;

(2) the amount of federal or state deposit insurance coverage pertaining to such deposit; or

(3) ten percent of the amount of capital, surplus, and undivided profits of the entity receiving such deposits;

(g) Equipment Trusts. Equipment trust obligations or certificates; provided:

(1) any such obligation or certificate is secured by an interest in transportation equipment that is in whole or in part within the United States of America ~~[and the amount of the obligation or certificate may not exceed 90 percent of the value of the equipment];~~

(2) the obligation or certificate provides a right to receive determined portions of rental, purchase, or other fixed obligatory payments for the use or purchase of the transportation equipment;

(3) *the obligation is classified as an obligation of a business entity and is subject to the limitations on obligations of business entities set forth in Subsection (c) of this section* ~~[investment in any one equipment trust obligation or certificate may not exceed 10 percent of the insurer's capital and surplus]; and~~

(4) the aggregate of all investments made under this subsection may not exceed 10 percent of the insurer's assets;

(h) Common Stock. Common stock of any corporation organized under the laws of the United States of America or any of its states, shares of mutual funds doing business under the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), *other than money market funds as defined in Subsection (s) of this section*, and shares in real estate investment trusts as defined in the Internal Revenue Code of 1954 (26 U.S.C. Section 856); provided:



(1) any such corporation, other than a mutual fund, must be solvent with at least \$1,000,000 net worth as of the date of its latest annual or more recent certified audited financial statement or will have at least \$1,000,000 of net worth after completion of a securities offering which is being subscribed to by the insurer;

(2) mutual funds, *other than money market funds as defined in Subsection (s) of this section*, and real estate investment trusts must be solvent with at least \$1,000,000 of net assets as of the date of its latest annual or more recent certified audited financial statement;

(3) investments in any one corporation, mutual fund, *other than a money market fund as defined in Subsection (s) of this section*, or real estate investment trust may not exceed 15 [10] percent of the insurer's capital and surplus; and

(4) the aggregate of all investments made under this subsection may not exceed 25 [20] percent of the insurer's assets;

(i) Preferred Stock. Preferred stock of corporations organized under the laws of the United States of America or any of its states; provided:

(1) such corporation must be solvent with at least \$1,000,000 of net worth as of the date of its latest annual or more recent certified audited financial statement or will have at least \$1,000,000 of net worth after completion of a security offering which is being subscribed to by the insurer;

(2) investments in the preferred stock of any one corporation will not exceed 20 percent of the insurer's capital and surplus;

(3) in the aggregate not more than 10 percent of the insurer's assets may be invested in preferred stock, the redemption and retirement of which is not provided for by a sinking fund meeting the standards established by the National Association of Insurance Commissioners to value the preferred stock at cost; and

(4) the aggregate of all investments made under this subsection may not exceed 40 percent of the insurer's assets;

(j) Collateral Loans. Collateral loans secured by a first lien upon or a valid and perfected first security interest in an asset; provided:

(1) the amount of any such collateral loan will not exceed 80 percent of the value of the collateral asset at any time during the duration of the loan; and

(2) the asset used as collateral would be authorized for direct investment by the insurer under other provisions of this Section 4, except real property in Subsection (l);

(k) Real Estate Loans. Notes, evidences of indebtedness, or participations therein secured by a valid first lien upon real property or leasehold estate therein located in the United States of America; provided:

(1) the amount of any such obligation secured by a first lien upon real property or leasehold estate therein shall not exceed 90 percent of the value of such real property or leasehold estate therein, but the amount of such obligation:

(A) may exceed 90 percent but shall not exceed 100 percent of the value of such real property or leasehold estate therein if the insurer or one or more wholly owned subsidiaries of the insurer owns in the aggregate a 10 percent or greater equity interest in such real property or leasehold estate therein;

(B) may be 95 percent of the value of such real property or leasehold estate therein if it contains only a dwelling designed exclusively for occupancy by not more than four families for residential purposes, and the portion of the unpaid balance of such obligation which is in excess of an amount equal to 90 percent of such value is guaranteed or insured by a mortgage insurance company qualified to do business in the State of Texas; or

(C) may be greater than 90 percent of the value of such real property or leasehold estate therein to the extent the obligation is insured or guaranteed by the United States of America, the Federal Housing Administration pursuant to the National Housing Act of 1934, as amended (12 U.S.C. Section 1701 et seq.), or the State of Texas; and

(2) the term of an obligation secured by a first lien upon a leasehold estate in real property shall not exceed a period equal to four-fifths of the then unexpired term of such leasehold estate; provided the unexpired term of the leasehold estate must extend at least 10 years beyond the term of the obligation, and each obligation shall be payable in an installment or installments of sufficient amount or amounts so that at any time after the expiration of two-thirds of the original loan term, the principal balance will be no greater than the principal balance would have been if the loan had been amortized over the original loan term in equal monthly, quarterly, semiannual, or annual payments of principal and interest, it being required that under any method of repayment such obligation will fully amortize during a period of time not exceeding four-fifths of the then unexpired term of the security leasehold estate; and

(3) if any part of the value of buildings is to be included in the value of such real property or leasehold estate therein to secure the obligations provided for in this subsection, such buildings shall be covered by adequate property insurance, including but not limited to fire and extended coverage insurance issued by a company authorized to transact business in the State of Texas or by a company recognized as acceptable for such purpose by the insurance regulatory official of the state in which such real estate is located, and the amount of insurance granted in the policy or policies shall be not less than the unpaid balance of the obligation or the insurable value of such buildings, whichever is the lesser; the loss clause shall be payable to the insurer as its interest may appear; and

(4) to the extent any note, evidence of indebtedness, or participation therein under this subsection represents an equity interest in the underlying real property, the value of such equity interest shall be determined at the time of execution of such note, evidence of indebtedness, or participation therein and that portion shall be designated as an investment subject to the provisions of Subsection (1)(2) of this section; and

(5) the amount of any one such obligation may not exceed 25 percent of the insurer's capital and surplus; and

*(6) a first lien on real property may be purchased after its origination if the first lien is insured by a mortgagee's title policy issued to the original mortgagee that contains a provision that insures the policy to the use and benefit of the owners of the evidence of debt indicated in the policy and to any subsequent owners of that evidence of debt, and if the insurer maintains evidence of assignments or other transfers of the first lien on real property to the insurer. An assignment or other transfer to the insurer, duly recorded in the county in which the real property is located, shall be presumed to create legal ownership of the first lien by the insurer;*

(1) Real Estate. Real property fee simple or leasehold estates located within the United States of America, as follows:

(1) home and branch office real property or participations therein, which must be materially enhanced in value by the construction of durable, permanent-type buildings and other improvements costing an amount at least equal to the cost of such real property, exclusive of buildings and improvements at the time of acquisition, or by the construction of such buildings and improvements which must be commenced within two years of the date of the acquisition of such real property; provided:

(A) at least 30 percent of the available space in such building shall be occupied for the business purposes of the insurer and its affiliates; and

(B) the aggregate investment in such home and branch offices shall not exceed 20 percent of the insurer's assets; and

(2) other investment property or participations therein, which must be materially enhanced in value by the construction of durable, permanent-type buildings and other improvements costing an amount at least equal to the cost of such real property, exclusive of buildings and improvements at the time of acquisition, or by the construction of such buildings and improvements which must be commenced within two years of the date of acquisition of such real property; provided that such investment in any one piece of property or interest therein, including the improvements, fixtures, and equipment pertaining thereto may not exceed five percent of the insurer's assets; provided,

however, nothing in this article shall allow ownership of, development of, or equity interest in any residential property or subdivision, single or multiunit family dwelling property, or undeveloped real estate for the purpose of subdivision for or development of residential, single, or multiunit family dwellings, except acquisitions as provided in Subdivision (4) below, and such ownership, development, or equity interests shall be specifically prohibited;

(3) the admissible asset value of each such investment in the properties acquired under Subdivisions (1) and (2) of this subsection shall be subject to review and approval by the Commissioner of Insurance. The commissioner shall have discretion at the time such investment is made or any time when an examination of the company is being made to cause any such investment to be appraised by an appraiser, appointed by the commissioner, and the reasonable expense of such appraisal shall be paid by such insurance company and shall be deemed to be a part of the expense of examination of such company; if the appraisal is made upon application of the company, the expense of such appraisal shall not be considered a part of the expense of examination of such company; no insurance company may hereafter make any write-up in the valuation of any of the properties described in Subdivision (1) or (2) of this subsection unless and until it makes application therefor and such increase in valuation shall be approved by the commissioner; and

(4) other real property acquired:

(A) in good faith by way of security for loans previously contracted or money due; or

(B) in satisfaction of debts previously contracted for in the course of its dealings; or

(C) by purchase at sales under judgment or decrees of court, or mortgage or other lien held by such insurer; and

(5) regardless of the mode of acquisition specified herein, upon sale of any such real property, the fee title to the mineral estate or any portion thereof may be retained by the insurance company indefinitely;

(m) Oil, Gas, and Minerals. In addition to and without limitation on the purposes for which real property may be acquired, secured, held, or retained pursuant to other provisions of this section, every such insurance company may secure, hold, retain, and convey production payments, producing royalties and producing overriding royalties, or participations therein as an investment for the production of income; provided:

(1) in no event may such company carry such assets in an amount in excess of 90 percent of the appraised value thereof; and

(2) no one investment under this subsection may exceed 10 percent of the insurer's capital and surplus in excess of statutory minimum capital and surplus applicable to that insurer, and the aggregate of all such investments may not exceed 10 percent of the insurer's assets as of December 31st next preceding the date of such investment; and

(3) for the purposes of this subsection, the following definitions apply:

(A) a production payment is defined to mean a right to oil, gas, or other minerals in place or as produced that entitles its owner to a specified fraction of production until a specified sum of money, or a specified number of units of oil, gas, or other minerals, has been received;

(B) a royalty and an overriding royalty are each defined to mean a right to oil, gas, and other minerals in place or as produced that entitles the owner to a specified fraction of production without limitation to a specified sum of money or a specified number of units of oil, gas, or other minerals;

(C) "producing" is defined to mean producing oil, gas, or other minerals in paying quantities, provided that it shall be deemed that oil, gas, or other minerals are being produced in paying quantities if a well has been "shut in" and "shut-in royalties" are being paid;

(n) Foreign Countries and United States Territories. *In addition to the investments in Canada authorized in other subsections of this section, investments [Investments] in other*

foreign countries or in commonwealths, territories, or possessions of the United States ~~[where the insurer conducts an insurance business]~~; provided:

(1) such investments are similar to those authorized for investment within the United States of America or Canada by other provisions of this section and are rated one or two by the Securities Valuation Office of the National Association of Insurance Commissioners; and

(2) such investments when added to the amount of similar investments made within the United States and Canada do not result in the combined total of such investments exceeding the limitations specified in Subsections (a) through (p) of this section; and

(3) such investments may not exceed the sum of:

(A) the amount of reserves attributable to the business in force in said countries, if any, and any additional investments; ~~provided, however, such investments may exceed such reserves to the extent required by any country as a condition to doing business therein, [but to the extent such investments exceed such reserves said investments shall not be considered as admitted assets of the insurer]; and~~

(B) five percent of the insurer's assets;

(o) Investments Not Otherwise Specified. Investments which are not otherwise authorized by this article and which are not specifically prohibited by statute, including that portion of any investments which may exceed the limits specified in Subsections (a) through (n) of this section; provided:

(1) if any aggregate or individual specified investment limitation in Subsections (a) through (n) of this section is exceeded, then the excess portion of such investment shall be an investment under this subsection; and

(2) the burden of establishing the value of such investments shall be upon the insurer; and

(3) the amount of any one such investment may not exceed 10 percent of the insurer's capital and surplus in excess of the statutory minimum capital and surplus applicable to that insurer; and

(4) the aggregate of all investments made under this subsection may not exceed the lesser of either five percent of the insurer's assets or the insurer's capital and surplus in excess of the statutory minimum capital and surplus applicable to that insurer;

(p) Other Authorized Investments. Those other investments as follows:

(1) any investment held by an insurer on the effective date of this Act, which was legally authorized at the time it was made or acquired or which the insurer was authorized to hold or possess immediately prior to such effective date, but which does not conform to the requirements of the investments authorized in Subsections (a) through (o) of this section, may continue to be held by and considered as an admitted asset of the insurer; provided the investment is disposed of at its maturity date, if any, or within the time prescribed by the law under which it was acquired, if any; and provided further, in no event shall the provisions of this subdivision alter the legal or accounting status of such asset; and

(2) any other investment which may be authorized by other provisions of this code or by other laws of this state for the insurers which are subject to this article.

(q) Special Limitations for Certain Fixed Annuity Insurers. The quantitative limitations imposed above in Subsections (b)(2), (c)(2), (f)(1), (g)(3), (h)(3), (i)(2), and (k)(5) of this section shall not apply to any insurer with assets in excess of \$2,500,000,000 and that receives more than 90 percent of its premium income from fixed rate annuity contracts and that has more than 90 percent of its assets allocated to its reserves held for fixed rate annuity contracts, excluding, however, any premium income, assets, and reserves received from, held for, or allocated to separate accounts from the computation of the above percentages, and in lieu thereof, the following quantitative limitations shall apply to such insurers:

(1) the limitation in Subsection (b)(2) of this section shall be two percent of the insurer's assets;

(2) the limitation in Subsection (c)(2) of this section shall be two percent of the insurer's assets;

(3) the limitation in Subsection (f)(1) of this section shall be two percent of the insurer's assets;

(4) the limitation in Subsection (g)(3) of this section shall be one percent of the insurer's assets;

(5) the limitation in Subsection (h)(3) of this section shall be one percent of the insurer's assets;

(6) the limitation in Subsection (i)(2) of this section shall be two percent of the insurer's assets; and

(7) the limitation in Subsection (k)(5) of this section shall be two percent of the insurer's assets.

(r) Premium Loans. Loans to finance the payment of premiums for the insurer's own insurance policies or annuity contracts; provided that the amount of any such loan does not exceed the sum of: (i) the available cash value of such insurance policy or annuity contract; and (ii) the amount of any escrowed commissions payable relating to such insurance policy or annuity contract for which the premium loan is made; and

(s) Money Market Funds. (1) Money market funds as defined by 17 CFR 270.2a-7 under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) that meet the following additional conditions:

(A) the funds invest 100 percent of total assets in United States treasury bills, notes, and bonds, and collateralized repurchase agreements composed of those obligations at all times;

(B) the funds invest 100 percent of total assets in other full faith and credit instruments of the United States; or

(C) the funds invest at least 95 percent of total assets in exempt securities, short-term debt instruments with a maturity of 397 days or less, class one bonds, and collateralized repurchase agreements composed of those securities at all times;

(2) For purposes of complying with Subsection (h) of this section, money market funds qualifying for listing within these categories must conform to the purpose and procedures manual of the valuation of securities manual of the National Association of Insurance Commissioners.

(t) The percentage authorizations and limitations set forth in any and all of the provisions of this section shall apply at the time of originally making such investments and shall not be applicable to the company or such investment thereafter.

SECTION 7.12. Section 3(d), Article 21.49-1, Insurance Code, is amended to read as follows:

(d) Amendments to Registration Statements. Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within 15 days after the end of the month in which it learns of each such change or addition, *except that the insurer is not required to report a transaction under this subsection that is authorized under Subsection 4(d) of this section. In addition, [; provided, however, that]* subject to Subsection (c) of Section 4, each registered insurer shall [se] report all dividends and other distributions to shareholders within two business days following the declaration thereof[;] and at least 10 days before the date of payment. For purposes of determining compliance with those deadlines, reports are considered to be made when received by the Texas Department of Insurance. Reports under this subsection are for informational purposes only. The commissioner shall adopt rules that establish procedures to:

(1) consider the prepayment notices promptly, that shall include the standards set forth under Section 4(b), Article 21.49-1 of this code;

(2) review annually all reported ordinary dividends paid within the preceding twelve months; and

*(3) take such appropriate actions as may be authorized by other provisions of this code [provided further that any transaction authorized by Section 4(d) hereof need not be reported under this subsection].*

SECTION 7.13. Section 4(b), Article 21.49-1, Insurance Code, is amended to read as follows:

(b) Adequacy of Surplus. For the purposes of this article, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

- (1) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;
- (2) the extent to which the insurer's business is diversified among the several lines of insurance;
- (3) the number and size of risks insured in each line of business;
- (4) the extent of the geographical dispersion of the insurer's insured risks;
- (5) the nature and extent of the insurer's reinsurance program;
- (6) the quality, diversification, and liquidity of the insurer's investment portfolio;
- (7) the recent past and projected future trend in the size of the insurer's surplus as regards policyholders and the insurer's investment portfolio;
- (8) the surplus as regards policyholders maintained by other comparable insurers;
- (9) the adequacy of the insurer's reserves; ~~and~~
- (10) the quality and liquidity of investments in subsidiaries made pursuant to Section 6. The commissioner may treat any such investment as a nonadmitted or disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment such investment so warrants; *and*
- (11) *the quality of the insurer's earnings and the extent to which the insurer's reported earnings include extraordinary items.*

SECTION 7.14. Section 3A, Article 21.39-A, Insurance Code, is amended by adding Subsection (c) to read as follows:

*(c) This Act does not apply to a reinsurance agreement or any trust account related to the reinsurance agreement if the agreement and trust account meet the requirements of Article 3.10 or 5.75-1 of this code.*

SECTION 7.15. Section 1, Article 21.39-B, Insurance Code, is amended to read as follows:

Sec. 1. Any director, member of a committee, or officer, or any clerk of a domestic company, who is charged with the duty of handling or investing its funds, shall not:

- (1) deposit or invest such funds, except in the corporate name of such company, provided, however, that securities kept under a custodial agreement or trust agreement with a bank, *federal home loan bank*, or trust company may be issued in the name of a nominee of such bank, *federal home loan bank*, or trust company if such bank, *federal home loan bank*, or trust company has corporate trust powers and is duly authorized to act as a custodian or trustee and is organized under the laws of the United States of America or any state thereof and either (i) is a member of the Federal Reserve System, (ii) is a member of or is eligible to receive deposits which are insured by the Federal Deposit Insurance Corporation, ~~or~~ (iii) maintains an account with a Federal Reserve Bank and is subject to supervision and examination by the Board of Governors of the Federal Reserve System, *or (iv) is subject to supervision and examination by the Federal Housing Finance Board;*
- (2) borrow the funds of such company;
- (3) be interested in any way in any loan, pledge, security, or property of such company, except as stockholder; or
- (4) take or receive to his own use any fee, brokerage, commission, gift, or other consideration for, or on account of, a loan made by or on behalf of such company.

SECTION 7.16. Section 4(a), Article 21.39-B, Insurance Code, is amended to read as follows:

(a) A domestic insurance company may evidence its ownership of securities *either through definitive certificates or through uncertificated securities as defined by the Business & Commerce Code and as provided by Section 6 of this article. The insurance company[, or it]* may deposit or arrange *through its agents, brokers, or dealers* for the deposit of securities held in or purchased for its general account or its separate accounts in *either* a clearing corporation or the Federal Reserve Book Entry System. When securities are deposited with a clearing corporation directly or deposited indirectly through a participating custodian bank, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of nominee of such clearing corporation with any other securities deposited with such clearing corporation by any person, regardless of the ownership of such securities, and certificates representing securities of small denominations may be merged into one or more certificates of larger denominations. The records of *any agent, broker, dealer, or member banks* through which an insurance company holds securities in the Federal Reserve Book Entry System and the record of any custodian banks through which an insurance company holds securities in a clearing corporation shall at all times show that such securities are held for such insurance company and for which accounts thereof. To be eligible to act as a participating custodian bank under this subsection, a bank must enter a custodial agreement with the insurance company for which it is to act as a participating custodian bank.

SECTION 7.17. Article 21.39-B, Insurance Code, is amended by adding Section 6 to read as follows:

*Sec. 6. The State Board of Insurance shall adopt rules authorizing a domestic insurance company to demonstrate ownership of an uncertificated security consistent with common practices of securities exchanges and markets. The rules shall establish:*

- (1) standards for the types of uncertificated securities that may be held;*
- (2) the manner in which ownership of the security may be demonstrated; and*
- (3) adequate financial safeguards relating to the ownership of uncertificated securities.*

SECTION 7.18. Notwithstanding Section 8(b), Article 1.14-2, Insurance Code, as amended by this Act, each insurer subject to the minimum capital and surplus requirements of that section shall have a minimum capital and surplus of not less than:

- (1) \$9 million not later than December 31, 1993;
- (2) \$12 million not later than December 31, 1994; and
- (3) \$15 million not later than December 31, 1995.

SECTION 7.19. Article 1.16(b), Insurance Code, as amended by this Act, applies only to an assessment made by the State Board of Insurance on or after September 1, 1993. An assessment made before that date is governed by the law in effect on the date that the assessment is made, and the former law is continued in effect for that purpose.

SECTION 7.20. Article 1.39, Insurance Code, as amended by this Act, applies only to a subordinated indebtedness created on or after the effective date of this Act.

SECTION 7.21. (a) Section 4(c), Article 3.33, Insurance Code, as amended by this Act, does not prohibit an insurer from acquiring an obligation that it has committed to acquire within the nine months preceding the effective date of this Act if the insurer would have been permitted to acquire that obligation under Section 4, Article 3.33, Insurance Code, as it existed before amendment by this Act on the date on which the insurer committed to purchase that obligation.

(b) Section 4(c), Article 3.33, Insurance Code, as amended by this Act, does not require an insurer to sell or otherwise dispose of any obligation:

- (1) legally acquired before the effective date of this Act; or
- (2) if acquired on or after the effective date of this Act, that satisfied the conditions of that subsection on the date of the acquisition, but that subsequently fails to satisfy those conditions.

SECTION 7.22. Section 8(e), Article 1.14-2, Insurance Code, is amended to read as follows:

(e) Instead of the minimum capital and surplus requirements provided by this section, a ~~[an unincorporated]~~ group of ~~[alien individual]~~ insurers, *which group includes unincorporated individual insurers*, may maintain a trust fund in an amount not less than \$50 million as security to the full amount of the trust fund for all policyholders and creditors in the United States of each member of the group. Except as specifically otherwise provided by this subsection, the trust fund must comply with the terms and conditions provided by Subsection (d) of this section for the trust fund required by that subsection.

#### ARTICLE 8. CONSOLIDATION, LIQUIDATION, REHABILITATION, REORGANIZATION, OR CONSERVATION OF INSURERS

SECTION 8.01. Subsection (a), Section 2, Article 21.28, Insurance Code, is amended to read as follows:

(a) Receiver Taking Charge; Commissioner and Powers and Duties. Whenever under the law of this State a court of competent jurisdiction finds that a receiver should take charge of the assets of an insurer domiciled in this State, the commissioner of insurance or a person designated by the commissioner under contract shall act as receiver. The receiver shall forthwith take possession of the assets of such insurer and deal with the same in the person's own name as receiver or in the name of the insurer as the court may direct. The receiver has the powers specified in this code. A person designated by the commissioner to act as special deputy receiver under contract is subject to the performance standards imposed by this subsection. It is the intent of the legislature that ~~[continuous]~~ oversight of the special deputy receivers and guaranty associations shall be conducted by the commissioner. The commissioner shall use a competitive bidding process in the selection of special deputy receivers and shall establish specifications for the position of special deputy receiver. The special deputy receiver shall submit monthly written reports to the court and commissioner that state the special deputy receiver's business plan for the receivership, including expenses incurred in administering the receivership during the preceding month and an estimate of those expenses for the succeeding month. The report must include a cost-benefit analysis on the expenditure of funds other than funds spent for the payment of claims. The business plan report must include a budget of monthly expenses that explains any variation from the original projection. The business plan report must include a list of any lawyers or law firms that offered to or did represent the special deputy receiver in relation to its duties under this article, and any hours billed or fees paid to a lawyer or law firm that represented the special deputy receiver. The special deputy receiver shall submit the business plan report to the attorney general on a quarterly basis, and the attorney general may make recommendations to the commissioner based on the report. In addition to the business plan report, the special deputy receiver shall submit a monthly report to the commissioner relating to the special deputy receiver's activities in administering the receivership. *Upon written application by the special deputy receiver and with approval of the commissioner, the court may suspend the requirement for monthly reports or require reports less frequently based upon a showing that the costs of such reports exceed the benefit derived from their filing.*

SECTION 8.02. Sections 3(f) and (g), Article 21.28, Insurance Code, are amended to read as follows:

(f) Offsets. In all cases of mutual debts or mutual credits, *whether arising out of one or more contracts* between the insurer and another person in connection with any claim or proceeding under this Article, such credits and debts shall be set off and the balance only shall be allowed or paid, except as provided in subsection (g).

(g) No Offsets. No offsets shall be allowed in favor of any person where (1) the obligation of the insurer to such person would not at the date of the commencement of the delinquency proceedings or as otherwise provided in Section 2(c), entitle him to share as a claimant in the assets of such insurer, or (2) the obligation of the insurer to such person was purchased by or transferred to such person subsequent to the commencement of the delinquency proceedings *or for the purpose of increasing offset rights [with a view of its being used as an offset]*, or (3) the obligation of such person is to pay an assessment levied against the members of a mutual insurer, or reciprocal exchange, or underwriters at Lloyds, or to pay a balance upon a subscription to the capital stock of a stock insurance corporation, or (4) the obligation of such person is as a trustee or fiduciary, *or (5) the obligations between the person and the insurer*



arise from reinsurance transactions in which either the person or the insurer has assumed risks and obligations from the other party and then has ceded back to that party substantially the same risks and obligations. The receiver shall provide persons with accounting statements identifying all debts that are due and payable. If a person owes the insurer amounts that are due and payable, against which the person asserts offset of mutual credits that may become due and payable from the insurer in the future, the person shall promptly pay to the receiver the amounts due and payable. Notwithstanding Section 8, or any other provision of this Article, the receiver shall promptly and fully refund, to the extent of the person's prior payments, any mutual credits that become due and payable to the person by the insurer.

SECTION 8.03. Article 21.28, Insurance Code, is amended by adding Section 7A to read as follows:

Sec. 7A. **EARLY ACCESS DISTRIBUTION.** (a) Within 120 days of the commencement of the insolvency proceeding against an impaired insurer, the liquidator or a special deputy receiver appointed under this Article may make application to the court for approval of a proposal to disburse assets out of marshaled assets, from time to time as such assets become available, to a guaranty association or foreign guaranty association having Class 1 or Class 2 claims against the estate of the impaired insurer because of such insolvency. If the receiver or special deputy receiver fails to make such application within 120 days, the guaranty association may submit an application to the court requesting that the receiver or special deputy receiver submit a proposal to disburse assets. If the liquidator or special deputy receiver determines that there are insufficient assets to disburse, the application required by this section shall be considered satisfied by a filing by the liquidator or special deputy receiver stating the reasons for this determination.

(b) Such proposal shall, at a minimum, include provisions for:

(1) reserving amounts sufficient to allow the payment of Class 1 claims, and to the extent the assets of the insolvent insurer will allow any payment to be made on Class 2 claims, reserving amounts sufficient to provide equal pro-rata distributions to the Class 2 claimants other than the guaranty associations;

(2) disbursement of the assets marshaled to date and the subsequent distribution of assets as they become available;

(3) equitable allocation of disbursements to each of the guaranty associations and foreign guaranty associations entitled thereto;

(4) the securing of the liquidator or special deputy receiver from each of the associations entitled to disbursements pursuant to this section of an agreement to return to the liquidator upon request and approval by the court such assets, together with income on assets previously disbursed, as may be required to pay Class 1 claimants and any federal claimants asserting priority claims. No bond shall be required of any such association; and

(5) a full report to be made by each association to the liquidator or special deputy receiver, as requested by the liquidator or special deputy receiver, but no more frequently than quarterly, accounting for the assets so disbursed to the association, all disbursements made therefrom, any interest earned by the association on such assets and any other matter as the court may direct.

(c) The proposal submitted by the liquidator or special deputy receiver shall provide for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made thereby for which such associations could assert a claim against the liquidator, and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of such claim payments made or to be made by the association, then disbursements shall be made for the pro-rata amount of the association's Class 2 claim.

(d) The proposal submitted by the liquidator or special deputy receiver shall, with respect to an insolvent insurer writing life or health insurance or annuities, provide for disbursement of assets to any guaranty association or foreign guaranty association covering life or health insurance or annuities or to any other entity or organization reinsuring, assuming, or guaranteeing policies or contracts of insurance under the acts creating such associations.

(e) Notice of the application shall be given to the association in and to the commissioners of insurance of each of the states. Notice shall be considered to have been given when deposited in the United States certified mail, first class postage prepaid, at least 30 days prior to the submission of the application to the court. Action of the application may be taken by the court if notice has been given and if the liquidator's or special deputy receiver's proposal complies with the requirements of this section. Notice of the application shall be given to those Class 1 and Class 2 claimants that are reasonably ascertainable in a manner deemed appropriate by the court, including notice by publication.

SECTION 8.04. Subsection (a), Section 8, Article 21.28, Insurance Code, is amended to read as follows:

(a) Priority of Distribution of Assets. ~~The [Notwithstanding any other provision of law, the]~~ priority of distribution of assets from the insurer's estate shall be in accordance with the disbursement plan approved by the court pursuant to Section 7A of this Article, and in accordance with the order of each class as provided by this subsection. Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. No subclasses shall be established within any class. ~~[Additional subclasses may not be established within any class.]~~

Class 1.

(1) All of the receiver's, conservator's, and supervisor's costs and expenses of administration, including repayment of funds advanced to the receiver from the abandoned property fund of the State Board of Insurance.

(2) All of the expenses of an insurance guaranty association or foreign insurance guaranty association in handling claims.

(3) Wages owed to employees of the insurer as provided for in Section 6 of this Article.

(4) Secured creditors to the extent of the value of the security as provided by Section 8(c) of this Article.

Class 2.

(1) All claims by policyholders, beneficiaries, insureds, and liability claims against insureds covered under insurance policies and insurance contracts issued by the insurer.

(2) All claims by an insurance guaranty association or a foreign insurance guaranty association that are payments of proper policyholder claims.

Class 3.

All other claims of general creditors not falling within any other priority under this section including claims for taxes and debts due the federal government or any state or local government which are not secured claims.

Class 4.

Claims of surplus or contribution note holders, holders of debentures or holders of similar obligations and proprietary claims of shareholders, members, or other owners according to the terms of the instruments.

SECTION 8.05. Section 8, Article 21.28, Insurance Code, is amended by adding Subsection (k) to read as follows:

(k) Every claim under a separate account established under Article 3.75 of this code, providing that the income, gains, and losses, realized and unrealized, from assets allocated to the separate account shall be credited to or charged against the account, without regard to other income, gains, or losses of the life insurance company, shall be satisfied out of the assets in the separate account equal to the reserves maintained in such account for the contracts. To the extent provided under contracts established under Article 3.75 of this code, that portion of the assets of any separate account equal to the reserves and other contract liabilities for the separate account is not chargeable with liabilities arising out of any other business of the company. To the extent, if any, reserves maintained in the separate account are in excess of the amounts needed to satisfy claims under the separate account contracts, the excess shall be treated as general assets of the life insurance company.

SECTION 8.06. Section 9, Article 21.28, Insurance Code, is amended to read as follows:

Sec. 9. CLOSING. (a) Excess Assets—Stock Companies. When the receiver shall have made provision for unclaimed dividends and all of the liabilities of a stock insurance company, he shall call a meeting of the stockholders of the insurer by giving notice thereof in one (1) or more newspapers in the county where the principal office of the insurer was located, and by written notice to the stockholders of record at their last known address. At such meeting, the stockholders shall appoint an agent or agents to take over the affairs to continue the liquidation for benefit of the stockholders. Voting privileges shall be governed by the insurer's bylaws. A majority of the stock shall be represented at the agent's appointment. Such agent or agents shall execute and file with the court such bond or bonds as shall be approved by it, conditioned on the faithful performance of all the duties of the trust. Under order of the court the receiver shall then transfer and deliver to such agent or agents for continued liquidation under the court's supervision all assets of insurer remaining in his hands, whereupon the receiver and the Board, and each member and employee thereof, shall be discharged from any further liability to such insurer and its creditors and stockholders; provided, however, that nothing herein contained shall be so construed as to permit the insurer to continue in business as such, but the charter of such insurer and all permits and licenses issued thereunder or in connection therewith shall be ipso facto revoked and annulled by such order of the court directing the receiver to transfer and deliver the remaining assets of such insurer to such agent or agents.

(b) Excess Assets—Other Companies. After the receiver shall have made provision for unclaimed dividends and all of the liabilities of any insurer other than a stock insurance company, he shall dispose of any remaining assets as directed by the receivership court.

(c) Excess Assets—Guaranty Associations. *Notwithstanding any other provisions of this article in closing an estate, a special deputy receiver, on approval of the court, may transfer any remaining assets, causes of action asserted on behalf of the impaired insurer, judgment, claims, or liens to the appropriate guaranty association and this transfer shall not be a preference or voidable transfer but shall be considered a distribution under Section 8(a)(1) of this article. In the event the sum realized by the guaranty association is materially larger than the amount loaned to the estate by the guaranty association, the court may order reopening of the estate to disburse the excess funds. Nothing in this section shall be construed as a transfer of any liability of an impaired insurer to the guaranty association that would not constitute a claim payable under Articles 9.48, 21.28-C, or 21.28-D of this code.*

(d) Limitation. Except as otherwise provided by this subsection, each receivership or other delinquency proceeding prescribed by this Article shall be administered in accordance with Section 64.072, Civil Practice and Remedies Code. To the extent a receivership or delinquency proceeding initiated against an insurer applies to claims against a workers' compensation insurance policy or a title insurance policy, the receivership or delinquency proceeding shall be administered continuously for whatever length of time is necessary to effectuate its purposes, and no arbitrary period prescribed elsewhere by the laws of Texas limiting the time for the administration of receiverships or of corporate affairs generally shall be applicable thereto. Instead of the winding up and distribution of a receivership estate of an insurer without capital stock, the court shall order revival and reinstatement of the charter, permits, licenses, franchises, and management contracts or other control instruments of the insurer if the insurer's remaining cash on hand and on deposit, less any outstanding valid and enforceable liabilities, exceeds the minimum amount of capital and surplus prescribed for that insurer under Article 2.02 or Section 1 of Article 3.02 of this code.

(e) [(d)] Reopening. If after the receivership shall have been closed by final order of the court, the liquidator shall discover assets not known to him during receivership, he shall report his findings to the court. It shall be within the discretion of the court as to whether the value of the after-discovered assets shall justify the reopening of the receivership for continued liquidation.

SECTION 8.07. Subsection (d), Section 11, Article 21.28, Insurance Code, is amended to read as follows:

(d) Maintenance of Records. The receiver may devise a method for the effective, efficient, and economical maintenance of the records of the delinquent insurer and of the liquidator's office including maintaining those records on any medium approved by the Records Manage-

ment Division of the Texas State Library. A copy of an original record or any other record that is maintained on any medium approved by the Records Management Division of the Texas State Library within the scope of this section that is produced by the receiver or his authorized representative under this Article shall have the same force and effect as the original record and may be used the same as the original record in any judicial or administrative proceeding in this state. *In order to maintain the records of delinquent insurers after the closing of the receivership proceedings, the receiver may reserve assets of an estate to be deposited in an account to be used for the specific purpose of maintenance, storage, and disposal of records in closed receivership estates. [If the need exists for the continued maintenance of any records of a delinquent insurer after the closing of the receivership proceedings, the receiver may reserve sufficient assets, including cash, to be transferred to the liquidator on closing of the receivership for the specific purpose of meeting the reasonable cost of maintaining those records.]*

SECTION 8.08. Section 3, Article 21.28-A, Insurance Code, is amended to read as follows:

Sec. 3. NOTICE TO COMPLY WITH WRITTEN REQUIREMENTS OF COMMISSIONER; NONCOMPLIANCE; TAKING CHARGE AS CONSERVATOR. If upon examination or at any other time it appears to or is the opinion of the Commissioner of Insurance that any insurance company is insolvent, or its condition is such as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance, or if such company appears to have exceeded its powers (as defined herein) or has failed to comply with the law, or if such insurance company gives its consent (as defined herein), then the Commissioner of Insurance shall upon his determination (a) notify the insurance company of his determination, and (b) furnish to the insurance company a written list of the Commissioner's requirements to abate his determination, and (c) if the Commissioner makes a further determination to supervise he shall notify the insurance company that it is under the supervision of the Commissioner of Insurance and that the Commissioner is applying and effecting the provisions of this Article. Such insurance company shall comply with the lawful requirements of the Commissioner of Insurance. If placed under supervision, the insurance company shall have not more than *one hundred-eighty (180) [sixty (60)]* days from the date of the Commissioner's notice of supervision to comply with the requirements of the Commissioner. ~~[The Commissioner may extend the supervision for an additional period not to exceed thirty (30) days on written determination by the Commissioner that there is a substantial likelihood of rehabilitation. No hearing is required before the Commissioner makes the determination.]~~ During the period of supervision, the insurance company shall continue to pay claims according to terms of the insurance policy, and the Commissioner may schedule a hearing relating to the insurance company in supervision with not less than ten (10) days' written notice to all parties of record on his own motion or that of any party of record. However, notice may be waived by the parties of record. If after hearing it is determined that the insurance company has failed to comply with the lawful requirements of the Commissioner, it has not been rehabilitated, it is insolvent, or it is otherwise in such a condition as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance, or if the company appears to have exceeded its powers as defined in this Article, the Commissioner of Insurance, acting for himself, or through a conservator appointed by the Commissioner of Insurance for that purpose, shall take charge as conservator of the insurance company and all of the property and effects thereof. If after hearing it is determined that the insurance company has been rehabilitated or its condition has otherwise been remedied such that the continuance of its business is no longer hazardous to the public or to holders of its policies or certificates of insurance, the Commissioner may release that insurance company from supervision. Section 15, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), does not apply to hearings held by the Commissioner or his representative under this Article.

SECTION 8.09. Sections 3A(a) and (e), Article 21.28-A, Insurance Code, are amended to read as follows:

(a) ~~All [Notwithstanding any other provision of law,]~~ hearings, orders, notices, correspondence, reports, records, and other information in the possession of the *Texas Department [State Board]* of Insurance relating to the supervision or conservatorship of any insurance company are ~~[not]~~ confidential ~~[unless the Commissioner of Insurance determines that~~

~~confidentiality] during the [initial] period of supervision and conservatorship. On termination of the supervision and conservatorship, the information in the custody of the department that relates to the supervision and conservatorship becomes public information [is necessary to accomplish the purposes of this article. The Commissioner of Insurance shall make this determination of confidentiality on the date the first notice of supervision is given. The period of confidentiality determined by the Commissioner of Insurance may not be for a period that exceeds 60 days after the date of the Commissioner's determination].~~

(e) An officer or employee of the *Texas Department* [~~State Board~~] of Insurance is not liable for release of information without a showing that *the* release of information was accomplished with actual malice.

This section does not apply to information (1) if the insureds of the insurance company are not protected by Article 9.48, 21.28-C, or 21.28-D of this code or by statutes substantially similar to those Articles, or (2) on the appointment of a receiver for the insurance company by a court of competent jurisdiction.

SECTION 8.10. Article 21.28-A, Insurance Code, is amended by adding Section 13 to read as follows:

*Sec. 13. INSURER'S ATTORNEY, ACTUARY, AND ACCOUNTANT. (a) Notwithstanding any other provision of this article, during a supervision proceeding, the insurer may employ an attorney, actuary, and accountant of the insurer's choice to assist the insurer during the supervision.*

*(b) The supervisor shall authorize the payment of reasonable fees and expenses from the insurer for the attorney, actuary, or accountant.*

SECTION 8.11. Section 17(a), Article 21.28-A, Insurance Code, is amended to read as follows:

(a) The State Board of Insurance may collect fees from any entity that is regulated by the board as provided by Subsection (h) of Section 7 of Article 1.10 of this code and that is successfully rehabilitated by the board. The fees shall be in amounts sufficient to cover but not exceed the costs of rehabilitation of that entity. The board shall use the fees for the sole purpose of the rehabilitation of the entity from which they are collected. Fees collected under this subsection shall be deposited in and expended through the State Board of Insurance Operating Fund. *The supervisor, conservator, or commissioner shall use the employees of the entity being rehabilitated, to the maximum extent possible, instead of outside consultants, actuaries, attorneys, accountants, other personnel or departmental employees, in order to minimize the expense of rehabilitation or the necessity of fees for rehabilitation.*

SECTION 8.12. Article 1.24A, Insurance Code, is repealed.

SECTION 8.13. Article 5.58A, Insurance Code, is repealed.

SECTION 8.14. Section 5, Article 1.24B, Insurance Code, is amended to read as follows:

*Sec. 5. RULES AND FORMS. (a) The State Board of Insurance may promulgate necessary rules to carry out this article, to define terminology, criteria, content, and other matters relating to the reports, and to designate other types or lines of liability insurance required to provide information under this article and may prescribe the form and content of the closed claim reports and summary claims reports to be filed.*

*(b) In lieu of requiring insurers to file the reports required by Section 2, the State Board of Insurance may, following notice and public hearing, provide for alternative reporting in the form of sampling of the required closed claim data.*

SECTION 8.15. Section 6, Article 1.24B, Insurance Code, is amended by adding Subsection (d) to read as follows:

*(d) The board may establish an electronic data base composed of reports filed with the board, provide the public with access to that data, establish a system to provide access by electronic data transmittal processes to that data, and set and charge a fee for electronic access to the data base in an amount reasonable and necessary to cover the costs of access.*

ARTICLE 9. TEXAS PROPERTY AND CASUALTY  
INSURANCE GUARANTY ASSOCIATION

SECTION 9.01. Section 3, Article 21.28-C, Insurance Code, is amended to read as follows:

Sec. 3. SCOPE. This Act applies to all kinds of direct insurance, *and except as provided in Section 12 of this Act*, [but] is not applicable to the following:

- (1) life, annuity, health, or disability insurance;
- (2) mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks;
- (3) fidelity or surety bonds, or any other bonding obligations;
- (4) credit insurance, vendors' single-interest insurance, collateral protection insurance, or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction;
- (5) insurance of warranties or service contracts;
- (6) title insurance;
- (7) ocean marine insurance;
- (8) any transaction or combination of transactions between a person, including an affiliate of such a person, and an insurer, including an affiliate of such an insurer, that involves the transfer of investment or credit risk unaccompanied by the transfer of insurance risk; or
- (9) any insurance provided by or guaranteed by government.

SECTION 9.02. Subdivision (8), Section 5, Article 21.28-C, Insurance Code, is amended to read as follows:

(8) "Covered claim" means an unpaid claim of an insured or third-party liability claimant that arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this Act applies, issued or assumed (whereby an assumption certificate is issued to the insured) by an insurer licensed to do business in this state, if that insurer becomes an impaired insurer and the third-party claimant or liability claimant or insured is a resident of this state at the time of the insured event, or the property from which the claim arises is permanently located in this state. "Covered claim" shall also include 75 percent of unearned premiums, but in no event shall a covered claim for unearned premiums exceed \$1,000. Individual covered claims (*including any and all derivative claims by more than one person which arise from the same occurrence, which shall be considered collectively as a single claim under this Act*) shall be limited to \$100,000, except that the association shall pay the full amount of any covered claim arising out of a *workers' compensation claim made under a workers' compensation policy*. "Covered claim" shall not include any amount sought as a *return of premium under a retrospective rating plan or any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise*. "Covered claim" shall not include supplementary payment obligations, including adjustment fees and expenses, attorney's fees and expenses, court costs, interest and penalties, and interest and bond premiums incurred prior to the determination that an insurer is an impaired insurer under this Act. "Covered claim" shall not include any *prejudgment or postjudgment interest that accrues subsequent to the determination that an insurer is an impaired insurer under this Act*. "Covered claim" shall not include any *claim for recovery of punitive, exemplary, extracontractual, or bad-faith damages, whether sought as a recovery against the insured, insurer, guaranty association, receiver, special deputy receiver, or commissioner, awarded in a court judgment against an insured or insurer*. "Covered claim" shall not include, and the association shall not have any liability to an insured or third-party liability claimant, for its failure to settle a liability claim within the limits of a covered claim under this Act. With respect to a covered claim for unearned premiums, both persons who were residents of this state at the time the policy was issued and persons who are residents of this state at the time the company is found to be an impaired insurer shall be considered to have covered claims under this Act. If the impaired insurer has insufficient assets to pay the expenses of administering the receivership or conservatorship estate, that

portion of the expenses of administration incurred in the processing and payment of claims against the estate shall also be a covered claim under this Act.

SECTION 9.03. Subdivision (9), Section 5, Article 21.28–C, Insurance Code, is amended to read as follows:

(9) “Impaired insurer” means:

(A) a member insurer that is placed in temporary or permanent receivership under an order of a court of competent jurisdiction, *including the courts of any other state*, based on a finding of insolvency and that has been designated an impaired insurer by the commissioner; or

(B) a member insurer placed in conservatorship after it has been determined by the commissioner to be insolvent and that has been designated an impaired insurer by the commissioner.

SECTION 9.04. Subdivision (11), Section 5, Article 21.28–C, Insurance Code, is amended to read as follows:

(11) “Net direct written premiums”, *when assessing other than the workers’ compensation line of business*, means direct premiums written in this state on insurance policies to which this Act applies, less return premiums on those policies and dividends paid or credited to policyholders on that direct business. The term does not include premiums on contracts between insurers or reinsurers. *When assessing the workers’ compensation line of business, the term “net direct written premiums” includes the modified annual premium prior to the application of any deductible premium credit, less return premiums on those policies and dividends paid or credited to policyholders on that direct business. The term does not include premiums on contracts between insurers or reinsurers.*

SECTION 9.05. Subsection (d), Section 7, Article 21.28–C, Insurance Code, is amended to read as follows:

(d) A public representative may not be:

(1) an officer, director, or employee of an insurance company, insurance agency, agent, broker, solicitor, adjuster, or any other business entity regulated by the Texas Department of Insurance;

(2) a person required to register with the *Texas Ethics Commission* [~~secretary of state~~] under Chapter 305, Government Code, *in connection with the person’s representation of clients in the field of insurance*; or

(3) related to a person described by Subdivision (1) or (2) of this subsection within the second degree of affinity or consanguinity.

SECTION 9.06. Section 7, Article 21.28–C, Insurance Code, is amended by adding Subsection (f) to read as follows:

(f) *A director of the association or any member company or other entity represented by the director may not receive any money or valuable thing directly, indirectly, or through any substantial interest in any other corporation, firm, or business unit for negotiating, procuring, participating, recommending, or aiding in a transaction, reinsurance agreement, merger, purchase, sale, or exchange of assets, policies of insurance, or property made by the association or the supervisor, conservator, or receiver on behalf of an impaired insurer. The director, company, or entity may not be pecuniarily or contractually interested, as principal, co-principal, agent, or beneficiary, directly, indirectly, or through any substantial interest in any other corporation, firm, or business unit, in the transaction, reinsurance agreement, merger, purchase, sale, or exchange.*

SECTION 9.07. Subsection (b), Section 8, Article 21.28–C, Insurance Code, is amended to read as follows:

(b) *The association shall undertake to discharge the policy obligations of the impaired insurer, including the duty to defend insureds under a liability policy, to the extent that the policy obligations are covered claims under this Act. In performing its statutory obligations, the association may also enforce any duty imposed on the insured party or beneficiary under the terms of any policy of insurance within the scope of this Act. In performing its statutory obligations under this Act, the association shall not be considered to*

be in the business of insurance, shall not be considered to have assumed or succeeded to any liabilities of the impaired insurer, and shall not be considered to otherwise stand in the shoes of the impaired insurer for any purpose, including the issue of whether the association is amenable to the personal jurisdiction of the courts of any other state. The association is considered the insurer to the extent of its obligation on the covered claims and to that extent has all rights, duties, and obligations of the impaired insurer as if the insurer had not become impaired.

SECTION 9.08. Subsection (d), Section 8, Article 21.28-C, Insurance Code, is amended to read as follows:

(d) The association shall investigate [~~claims brought against the association~~] and [shall] adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims. The association may review settlements, releases, and judgments to which the impaired insurer or its insureds were parties to determine the extent to which those settlements, releases, and judgments may be properly contested. *Any judgment taken by default or consent against an insured or the impaired insurer, and any settlement, release, or judgment entered into by the insured or the impaired insurer, is not binding on the association, and may not be considered as evidence of liability or of damages in connection with any claim brought against the association or any other party under this Act. Notwithstanding any other provision of this Act, a covered claim shall not include any claim filed with the guaranty association after the later of the final date for filing claims against the liquidator or receiver of an insolvent insurer or eighteen months after the order of liquidation.*

SECTION 9.09. Subsection (h), Section 8, Article 21.28-C, Insurance Code, is amended to read as follows:

(h) The association may:

- (1) employ or retain persons as necessary to handle claims and perform other duties of the association;
- (2) borrow funds necessary to implement this Act in accordance with the plan of operation;
- (3) sue or be sued;
- (4) negotiate and become a party to contracts as necessary to implement this Act, *including lump-sum or structured compromise and settlement agreements with claimants who have claims for medical or indemnity benefits for a period of three years or more other than a settlement or lump-sum payment in violation of the Texas Workers' Compensation Act (Article 8308-1.01 et seq., Vernon's Texas Civil Statutes);*
- (5) perform other acts as necessary or proper to implement this Act; or
- (6) refund to the member insurers in proportion to the contribution of each member insurer to the association that amount by which the assets of the association exceed the liabilities, if at the end of any calendar year the board of directors finds that the assets of the association exceed the liabilities of the association as estimated by the board of directors for the coming year.

SECTION 9.10. Subsection (i), Section 8, Article 21.28-C, Insurance Code, is repealed.

SECTION 9.11. Section 8, Article 21.28-C, Insurance Code, is amended by adding Subsection (k) to read as follows:

*(k)(1) Notwithstanding Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), the board may hold an open meeting by telephone conference call if immediate action is required and the convening at one location of a quorum of the board is not reasonable or practical.*

*(2) The meeting is subject to the notice requirements applicable to other meetings.*

*(3) The notice of the meeting must specify as the location of the meeting the location where meetings of the board are usually held.*

*(4) Each part of the meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting as the location of the*



*meeting and shall be tape recorded. The tape recording shall be made available to the public.*

SECTION 9.12. Subsection (d), Section 9, Article 21.28-C, Insurance Code, is amended to read as follows:

(d) The plan of operation must:

- (1) establish the procedures under which the powers and duties of the association are performed;
- (2) establish procedures for handling assets of the association;
- (3) establish the amount and method of reimbursing members of the board of directors;
- (4) *provide for the establishment of a claims filing procedure that includes, but is not limited to, notice by the association to claimants, procedures for filing claims seeking recovery from the association, and a procedure for appealing the denial of claims by the association* [~~establish procedures by which claims may be filed with the association~~]; and
- (5) establish acceptable forms of proof of covered claims.

SECTION 9.13. Subsection (e), Section 9, Article 21.28-C, Insurance Code, is amended to read as follows:

(e) [~~Notice of claims to the receiver of the impaired insurer constitutes notice to the association or its agent.~~] A list of claims shall be submitted periodically to the association or similar organization in another state by the receiver.

SECTION 9.14. Subsection (a), Section 11, Article 21.28-C, Insurance Code, is amended to read as follows:

(a) A person recovering under this Act is considered to have assigned *to the association the person's right under the policy, and the person's rights to recover for the occurrence made the basis of the claim under this Act under any policy of insurance issued by an unimpaired insurer* [~~the person's rights under the policy to the association~~] to the extent of the person's recovery from the association. *The association may pursue any such claims to which it is subrogated under this provision in its own name or in the name of the person recovering under this Act.* Each insured or claimant seeking the protection of this Act shall cooperate with the association to the same extent as that person would have been required to cooperate with the impaired insurer. The association does not have a cause of action against the insured of the impaired insurer for any sums it has paid out except those causes of action the impaired insurer would have had if the sums had been paid by the impaired insurer and except as provided in Subsection (b) of this section. In the case of an impaired insurer operating on a plan with assessment liability, payments of claims of the association do not reduce the liability of the insureds to the receiver or statutory successor for unpaid assessments.

SECTION 9.15. Subsection (a), Section 12, Article 21.28-C, Insurance Code, is amended to read as follows:

(a) A person who has a claim against an insurer under any provision in an insurance policy other than a policy of an impaired insurer that is also a covered claim shall exhaust first the person's rights under the policy, *including any claim for indemnity or medical benefits under any workers' compensation, health, disability, uninsured motorist, personal injury protection, medical payment, liability, or other policy.* *The association shall have a credit or setoff against any amount of benefits which would otherwise be payable by the association to the claimant under this Act, in the amount of the claimant's recovery under any policy issued by an unimpaired insurer.* *Subject to the provisions of Subsection (a-1) below, the association's credit or setoff under this section shall be deducted from damages incurred by the claimant, and the remaining sum shall be the maximum amount payable by the association, except that the association's liability shall not exceed \$100,000 or the limits of the policy under which the claim is made, whichever is less.*

*(a-1) Notwithstanding Subsection (a) of this section, if a claimant is seeking recovery of policy benefits that, but for the insolvency of the impaired insurer, would be subject to lien or subrogation by a workers' compensation insurer, health insurer or any other insurer, whether impaired or not, then the association's credit or offset shall be deducted from the damages incurred by the claimant or the limits of the policy under which the claim is made,*

whichever is less. In no event shall a claimant's recovery under this Act result in a total recovery to the claimant that is greater than that which would have resulted but for the insolvency of the impaired insurer. Subject to Section 5(8) of this Act, a claimant's recovery under this Act may not result in a recovery to the claimant that is less than that which would have resulted but for the insolvency of the impaired insurer. ~~Any amount payable on a covered claim under this Act shall be reduced by the amount of any recovery under the insurance policy.~~

SECTION 9.16. Subsection (b), Section 12, Article 21.28-C, Insurance Code, is amended to read as follows:

(b) A person who has a claim that may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured, except that if it is a first-party claim for damage to property with a permanent location, the person shall seek recovery first from the association of the location of the property, and if it is a workers' compensation claim the person shall seek recovery first from the association of the residence of the claimant. *The association shall have a credit or setoff against any amount of benefits under this Act, in the amount of the claimant's recovery from the guaranty association or equivalent. Subject to the provisions of Subsection (b-1) below, the association's credit or setoff under this Section shall be deducted from the damages incurred by the claimant, and the remaining sum shall be the maximum amount payable by the association, except that the association's liability shall not exceed \$100,000.*

*(b-1) Notwithstanding Subsection (b) of this section, if a claimant is seeking recovery of policy benefits that, but for the insolvency of the impaired insurer, would be subject to lien or subrogation by a workers' compensation insurer, health insurer or any other insurer, whether impaired or not, then the association's credit or offset shall be deducted from the damages incurred by the claimant or the limits of the policy under which the claim is made, whichever is less. In no event shall a claimant's recovery under this Act result in a total recovery to the claimant that is greater than that which would have resulted but for the insolvency of the impaired insurer. Subject to Section 5(8) of this Act, a claimant's recovery under this Act shall not result in a recovery to the claimant that is less than that which would have resulted but for the insolvency of the impaired insurer. ~~Any recovery under this Act shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.~~*

SECTION 9.17. Section 13, Article 21.28-C, Insurance Code, is amended to read as follows:

Sec. 13. **FINANCIAL CONDITION OF MEMBER INSURERS; PREVENTION OF INSOLVENCIES.** (a) *The association shall have access to the books and records of a member insurer in receivership, in order to make a determination of the extent of the impact on the association in the event such member becomes impaired. The association shall have the authority to perform or cause to be performed an actuarial and operational analysis of the member insurer and prepare a report on matters relating to the impact or potential impact on the association in the event of impairment. Such reports shall not be public documents. ~~To aid in the detection and prevention of insurer insolvencies, the board of directors, on majority vote, may make recommendations to the commissioner for the detection and prevention of insurer insolvencies and respond to requests by the commissioner to discuss and make recommendations regarding the status of any member insurer whose financial condition may be hazardous to policyholders or the public. Those recommendations are not public documents and are not subject to the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), until such time as an insurer is declared to be impaired.~~*

(b) At the conclusion of any domestic insurer insolvency in which the association was obligated to pay covered claims, the board of directors may prepare a report on the history and causes of the insolvency, based on the information available to the association, and may submit the report to the commissioner.

(c) *There shall be no liability on the part of, and no cause of action of any nature shall arise against the association or its agents or employees, the board of directors, member insurers, or the commissioner or the commissioner's authorized representative for any*

*statement made in good faith by them in any report or recommendation made under this section.*

SECTION 9.18. Section 14, Article 21.28-C, Insurance Code, is amended to read as follows:

Sec. 14. EXAMINATION OF THE ASSOCIATION. ~~[The association shall be subject to examination and regulation by the commissioner in the same manner as other insurers under this code.]~~ Not later than March 30 of each year, the *association* ~~[board of directors]~~ shall submit *an audited financial statement to the state auditor* ~~[a financial report]~~ for the preceding calendar year in a form approved by the *state auditor's office* ~~[commissioner]~~.

SECTION 9.19. Subsection (a), Section 16, Article 21.28-C, Insurance Code, is amended to read as follows:

(a) There is no liability on the part of, and no cause of action of any nature arises against, any member insurer, the association or its agents or employees, the board of directors, receiver, special deputy receiver or its agents or employees, or the commissioner or the commissioner's representatives for any good faith action or failure to act in the performance of powers and duties under this Act.

SECTION 9.20. Section 17, Article 21.28-C, Insurance Code, is amended to read as follows:

Sec. 17. STAY OF PROCEEDINGS. All proceedings in which an impaired insurer is a party or is obligated to defend a party in any court in this state, except proceedings directly related to the receivership or instituted by the receiver, shall be stayed for six months and any additional time thereafter as may be determined by the court from the date of the designation of impairment or an ancillary proceeding is instituted in the state, whichever is later, to permit proper defense by the receiver or the association of all pending causes of action. As to any covered claims arising from a judgment under any decision, verdict, or finding based on the default of the impaired insurer or its failure to defend an insured, the association either on its own behalf or on behalf of the insured *shall be entitled, upon application, [may apply]* to have the judgment, order, decision, verdict, or finding set aside by the same court or administrator that made the judgment, order, decision, verdict, or finding and shall be permitted to defend the claim on the merits. The receiver or statutory successor of an impaired insurer covered by this Act shall permit access by the board or its authorized representative to records of the impaired insurer as are necessary for the board in carrying out its functions under this Act with regard to covered claims. In addition, the receiver or statutory successor shall provide the board or its representative with copies of the records on request of the board and at the expense of the board.

SECTION 9.21. Section 18, Article 21.28-C, Insurance Code, is amended by adding Subsection (h) to read as follows:

*(h) Notwithstanding Subsection (b) of this section, the association may assess the workers' compensation line of business during a calendar year not more than three percent of each insurer's net direct written premium for the preceding calendar year for assessments made on or before December 31, 1995. An assessment under this subsection may be made only if the association finds that the assessment is necessary to meet the obligations of the association. This subsection expires January 1, 1996.*

SECTION 9.22. Article 21.28-C, Insurance Code, is amended by adding Section 25 to read as follows:

Sec. 25. CONTROLLING LAW. (a) *Except as provided in Subsection (b) of this section, if a conflict exists between this Act and any other statutory provision relating to the association, this Act shall control.*

(b) *This section does not apply to a conflict between this Act and:*

- (1) *the Texas Workers' Compensation Act (Article 8308-1.01, et seq., Vernon's Texas Civil Statutes);*
- (2) *Subchapter D, Chapter 5, of this code; or*
- (3) *Article 5.76-2, 5.76-3, 5.76-4, or 5.76-5 of this code.*

SECTION 9.23. Notwithstanding Subsection (b), Section 1.27, Chapter 12, Acts of 72nd Legislature, 2nd Called Session, 1991, the Texas Property and Casualty Insurance Guaranty Association may assume its responsibilities under this Act in proceedings initiated before January 1, 1992, prior to September 1, 1994, on an estate-by-estate basis. Assumption of its responsibilities in proceedings initiated before January 1, 1992, shall not impose upon the Texas Property and Casualty Insurance Guaranty Association a duty to defend insureds who have been sued under a liability policy issued by an impaired insurer.

#### ARTICLE 10. LIFE, ACCIDENT, HEALTH, AND HOSPITAL SERVICE INSURANCE GUARANTY ASSOCIATION

SECTION 10.01. Section 7, Article 21.28-D, Insurance Code, is amended by adding Subsection (d) to read as follows:

*(d) A director of the association or any member company or other entity represented by the director may not receive any money or valuable thing directly, indirectly, or through any substantial interest in any other corporation, firm, or business unit for negotiating, procuring, participating, recommending, or aiding in a transaction, reinsurance agreement, merger, purchase, sale, or exchange of assets, policies of insurance, or property made by the association or the supervisor, conservator, or receiver on behalf of an impaired insurer. The director, company, or entity may not be pecuniarily or contractually interested, as principal, co-principal, agent, or beneficiary, directly, indirectly, or through any substantial interest in any other corporation, firm, or business unit, in the transaction, reinsurance agreement, merger, purchase, sale, or exchange.*

SECTION 10.02. Section 17(a), Article 21.28-D, Insurance Code, is amended to read as follows:

(a) There is no liability on the part of and no cause of action of any nature arises against any member insurer or its agents or employees, the association or its agents or employees, members of the board of directors, the receiver, the special deputy or its agents or employees, or the commissioner or the commissioner's representatives, for any good faith action or omission in the performance of powers and duties under this Act. This immunity extends to the participation in any organization of one or more other state associations of similar purposes and to any similar organization and its agents or employees.

#### ARTICLE 11. TITLE INSURANCE GUARANTY ASSOCIATION

SECTION 11.01. Section 5(2), Article 9.48, Insurance Code, is amended by amending Paragraph B and by adding Paragraph C to read as follows:

B. "Covered claim" shall not include any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise. "Covered claim" shall not include supplementary payment obligations, including but not limited to adjustment fees and expenses, attorneys' fees and expenses, court costs, interest, enhanced damages, whether sought as a recovery against the insured, the impaired insurer, the impaired agent, or the association, that arise ~~arising~~ under Article 21.21 of this code or under the Deceptive Trade Practices-Consumer Protection Act (Section 17.41 et seq., Business & Commerce Code), and bond premiums, incurred prior to the determination that an insurer or agent is "impaired" under this article. "Covered claim" shall also not include any shortage of trust funds, shortage in an escrow account resulting from the insolvency of a financial institution, or punitive, exemplary, extracontractual, or bad faith damages awarded by a court judgment against an insured or insurer. A "covered claim" does not include a claim under Subparagraph (ii) or (iv) of Paragraph A of Subdivision (2) of Section 5 if the claimant has a lien against the real estate that was the subject of the transaction from which the claim arises unless that lien is held to be invalid as a matter of law. No claimant who has caused or substantially contributed to his loss by his action or failure to act shall have a covered claim under Paragraph A of Subdivision (2) of Section 5.

C. *If an impaired insurer or an impaired agent has insufficient assets to pay the expenses of administering the receivership or conservatorship estate, the association may advance funds necessary to pay those expenses on the terms it may negotiate. Any funds*

*advanced with regard to the expenses of administering the estate of an impaired agent may be paid only from the guaranty fee account.*

SECTION 11.02. Section 5, Article 9.48, Insurance Code, is amended by adding Subdivisions (14) and (15) to read as follows:

(14) *"Affiliate" means a person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an impaired insurer on December 31 of the year next proceeding the date the insurer becomes an impaired insurer.*

(15) *"Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10 percent or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact.*

SECTION 11.03. Section 7, Article 9.48, Insurance Code, is amended by adding Subsection (g) to read as follows:

(g) *An insurer designated as an impaired insurer by the commissioner is exempt from assessment from and after the date of designation and until the commissioner determines that the insurer is no longer an impaired insurer.*

SECTION 11.04. Sections 7A and 8, Article 9.48, Insurance Code, are amended to read as follows:

Sec. 7A. PURPOSE OF ASSESSMENTS. (a) *The amounts provided pursuant to assessments made under this article are considered to be supplemental to the marshaling of assets for the purpose of making payments on behalf of an impaired insurer.*

(b) *The association may assess its insurers or use funds derived from assessments to pay covered claims before the receiver exhausts the assets of the impaired insurer.*

Sec. 8. PENALTY FOR FAILURE TO PAY ASSESSMENTS. (a) *The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact business in this state of any insurer who fails to pay an assessment when due, and the association shall promptly report the failure to pay to the commissioner. As an alternative, the commissioner may assess an administrative penalty in accordance with Article 1.10E of this code on any insurer that fails to pay an assessment when due. The fine may not exceed the greater of five percent of the unpaid assessment per month or \$100 per month.*

(b) *Any insurer whose certificate or authority to do business in this state is cancelled or surrendered shall be liable for any unpaid assessments made prior to the date of such cancellation or surrender.*

SECTION 11.05. Section 10, Article 9.48, Insurance Code, is amended by amending Subsections (d) and (e) and by adding Subsection (j) to read as follows:

(d) *The association stands in the place of the impaired insurer or agent to the extent of its obligation on the covered claims and, to that extent, has all rights, duties, and obligations of the impaired insurer or agent as if the insurer or agent had not become impaired. In performing its obligations under this article, the association shall not be considered to be in the business of insurance, shall not be considered to have assumed or succeeded to any liabilities of the impaired insurer or the impaired agent, and shall not be considered to otherwise stand in the shoes of the impaired insurer or the impaired agent for any purpose, including, but not limited to, the issue of whether the association is amenable to the personal jurisdiction of the courts of any other state.*

(e) *The association shall investigate claims brought against the association, the commissioner, or a special deputy receiver appointed under Article 21.28 of this code if the claims involve or may involve the association's rights and obligations under this article, and shall adjust, compromise, settle, and pay covered claims to the extent of the association's obligation, and deny all other claims. The association may review settlements, releases, and*

judgments to which the impaired insurer or agent or its insureds were parties to determine the extent to which the settlements, releases, and judgments are contested.

*(j) Funds advanced by the association under this article do not become assets of the impaired insurer or the impaired agent but are considered special fund loans to the impaired insurer or the impaired agent for payment of covered claims. That loan is repayable to the extent available from the funds of the impaired insurer or the impaired agent.*

SECTION 11.06. Section 11, Article 9.48, Insurance Code, is amended to read as follows:

Sec. 11. APPROVAL OF COVERED CLAIMS. (a) Funds received from assessments or from guaranty fees shall be liable only for the difference between the amount of the covered claims and the amount of the assets marshalled by the receiver for payment to holders of covered claims. In ancillary receiverships in this state, funds received from assessments shall be liable only for the difference between the amount of the covered claims and the amount of assets marshalled by the receivers in other states for application to payment of covered claims within this state.

(b) If a conservator is appointed to handle the affairs of an impaired insurer or agent, the conservator shall determine whether or not covered claims should or can be provided for in whole or in part by reinsurance, assumption, or substitution. Upon determination by the conservator that actual payment of covered claims should be made, the conservator shall give notice of such determination to claimants falling within the class of "covered claims." The conservator shall mail such notice to the latest address reflected in the records of the impaired insurer or agent. If the records of the impaired insurer or agent do not reflect the address of a claimant, the conservator may give notice by publication in a newspaper of general circulation. Such notice shall state the time within which the claimant must file his claim with the conservator, which time shall in no event be less than 90 days from the date of the mailing or publication of such notice. The conservator may require, in whole or in part, that sworn claim forms be filed and may require that additional information or evidence be filed as may be reasonably necessary for the conservator to determine the legality or the amount due under a covered claim. When an impaired insurer or agent has been placed in conservatorship, the funds received from assessments or from guaranty fees shall be liable only for the difference between the amount of the covered claim approved by the conservator and the amount of assets marshalled by the conservator for payment to holders of covered claims.

(c) Upon determination by the conservator that actual payment of covered claims should be made or upon order of the court to the receiver to give notice for the filing of claims, any person who has a cause of action against an insured of the impaired insurer under a title insurance policy issued or assumed by such insurer shall, if such cause of action meets the definition of "covered claim," have the right to file a claim with the receiver or the conservator, regardless of the fact that such claim may be unliquidated or undetermined, and such claim may be approved as a "covered claim" (1) if it may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such insured; and (2) if such person shall furnish suitable proof that no further valid claims against such insurer arising out of his cause of action other than those already presented can be made; and (3) if the total liability of such insurer to all claimants arising from the same title insurance policy shall be no greater than its total liability would be were it not in liquidation, rehabilitation, or conservation. In the proceedings of considering "covered claims," no judgment against an insured taken after the date of the commencement of the delinquency proceedings or the appointment of a conservator shall be considered as evidence of liability, or of the amount of damages, and no judgment ~~against an insured~~ taken by default or consent against an insured or the impaired insurer and any settlement, release, or judgment entered into by the insured or the impaired insurer may not be considered to be binding on the association and may not ~~by collusion prior to the commencement of the delinquency proceedings or the appointment of a conservator shall~~ be considered as ~~evidence~~ evidence ~~either (1) of the liability [of such insured to such person upon such cause of action,] or (2) of the amount~~ of damages in connection with any claim brought against the association or any other party under this article ~~[to which such person is therein entitled].~~

(d) The acceptance of payment from the association by the holder of a covered claim or the acceptance of the benefits of contracts by the association providing for reinsurance or assumption of liabilities or for substitution shall constitute an assignment to the association of any cause of action or right of the holder of such covered claim arising from the occurrence upon which the covered claim is based. Such assignment shall be to the extent of the amount accepted or the value of the benefits provided by such contracts of reinsurance or assumption of liabilities or substitution. Such assignment to the association may be assigned to the insurer executing such reinsurance, assumption or substitution agreement.

(e) *The receiver or statutory successor of an impaired insurer is bound by settlements of covered claims by the association. The court having jurisdiction shall grant those claims priority equal to that to which the claimant would have been entitled in the absence of this article against the assets of the impaired insurer. The expenses of the association in handling claims shall be accorded the same priority as the receiver's expenses.*

(f) *The association shall file periodically with the receiver of the impaired insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association that shall preserve the rights of the association against the assets of the impaired insurer.*

SECTION 11.07. Section 14, Article 9.48, Insurance Code, is amended by amending Subsection (c) and by adding Subsection (g) to read as follows:

(c) Powers and duties of association. In addition to the powers and duties provided by other sections of this article, the association:

(1) may render assistance and advice to the commissioner, upon his request, concerning rehabilitation, payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired insurer or agent;

(2) has standing to appear before any court in this state with jurisdiction over an impaired insurer or agent concerning which the association is or may become obligated under this article;

(3) Each director of the association shall file a financial statement with the *Texas Ethics Commission* [~~secretary of state~~] in accordance with Sections 3 and 4, Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes).

(4) may borrow funds as necessary to implement this article in accordance with the plan of operation;

(5) may lend money to an impaired insurer;

(6) sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments;

(7) may enter into contracts as necessary or proper to implement this article;

(8) [(5)] may employ or retain such persons who are necessary to handle the financial transactions of the association, and to perform any other functions that become necessary or proper under this article;

(9) may ensure payment of the policy obligations of an impaired insurer;

(10) [(6)] may negotiate and contract with any liquidator, rehabilitator, conservator, receiver, or ancillary receiver to carry out the powers and duties of the association;

(11) may guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, a policy or contract of an impaired insurer;

(12) [(7)] may take legal action as necessary to avoid the payment of improper claims, or to settle claims or potential claims against the impaired insurer or association;

(13) [(8)] shall, on the request of the commissioner, authorize the expenditure of funds from the guaranty fee account to retain, compensate, and reimburse for reasonable and necessary expenses, a person or persons who will audit and review agent and insurer escrow and trust accounts and make reports relating to those accounts to the commissioner, solely under the direction of and as assigned by the commissioner; [and]

(14) [(9)] shall collect, receive, retain, and disburse the income provided by Section 6 of this article solely for the purposes, to the persons, and under the circumstances that are specifically stated in this article; and

(15) may perform other acts as necessary or proper to implement this article.

(g) Notwithstanding Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), the board may hold an open meeting by telephone conference call if immediate action is required and the convening at one location of a quorum of the board is not reasonable or practical. The meeting is subject to the notice requirements applicable to other meetings. The notice of the meeting must specify as the location of the meeting the location at which meetings of the board are usually held. Each part of the meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting as the location of the meeting and shall be tape recorded. The tape recording shall be made available to the public for 30 days after the meeting date.

SECTION 11.08. Article 9.48, Insurance Code, is amended by adding Section 15A to read as follows:

*Sec. 15A. DUTIES AND POWERS OF COMMISSIONER. (a) The commissioner shall notify the association of the existence of an impaired insurer not later than the third day after the date on which the commissioner gives notice of the designation of impairment. The association is entitled to a copy of any complaint seeking an order of receivership with a finding of insolvency against an insurer at the same time that the complaint is filed with a court of competent jurisdiction.*

*(b) The commissioner shall notify the board when the commissioner receives a report from the commissioner of insurance or other analogous officer of another state that indicates that an insurer has been designated impaired in another state. The report to the board must contain all significant details of the action taken or the report received from the other commissioner or analogous officer.*

*(c) The commissioner shall report to the board when the commissioner has reasonable cause to believe from any examination, whether completed or in process, of any insurer that the insurer may be an impaired insurer. The board may use this information in carrying out its duties and responsibilities under this article. The board shall keep the report and the information contained in the report confidential until it is made public by the commissioner or other lawful authority.*

*(d) On the request of the board, the commissioner shall provide the association with a statement of the net direct written premiums of each insurer.*

*(e) The commissioner may require that the association notify the insureds of the impaired insurer and any other interested parties of the designation of impairment and of their rights under this article. Notification by publication in a newspaper of general circulation is sufficient notice under this section.*

SECTION 11.09. Section 17(a), Article 9.48, Insurance Code, is amended to read as follows:

(a) There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer of the association or its agents or employees, the association or its agents or employees, members of the association's board of directors, the receiver, a special deputy receiver or its agents or employees, or the commissioner or his representatives for any good faith action or omission in the performance of their powers and duties under this article.

SECTION 11.10. Sections 20(c) and (d), Article 9.48, Insurance Code, are amended to read as follows:

(c) *If an insurer is appealing an assessment, the amount assessed shall be paid to the association and shall be available to meet association obligations during the pendency of an appeal. If the appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the insurer. [The liability of the appealing insurer for an assessment shall be suspended pending appeal by such insurer contesting the amount or legality of such assessment.]*



(d) Venue in a suit [~~against the association~~] relating to any action or ruling [~~of the association~~] made under this article is in Travis County. *Either party to the action may appeal to the appellate court having jurisdiction over the cause. The appeal shall be at once returnable to the appellate court having jurisdiction over the cause, and the action so appealed shall have precedence in the appellate court over all cases of a different character pending before the court. The commissioner and association are [is] not required to give an appeal bond in an appeal of a cause of action arising under this article.*

SECTION 11.11. Article 9.48, Insurance Code, is amended by adding Section 23 to read as follows:

Sec. 23. MISCELLANEOUS PROVISIONS. (a) *The association shall maintain records of all negotiations and meetings in which the association or its representatives discuss the activities of the association in carrying out its powers and duties under this article. Records of the negotiations or meetings may be made public only on the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, on the termination of the impairment or insolvency of the insurer, or on the order of a court of competent jurisdiction. This subsection does not limit the duty of the association to report on its activities under Section 14 of this article.*

(b) *To carry out its obligations under this article, the association is considered a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies, reduced by any amounts that the association recovers as a subrogee under this article. Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this article. For purposes of this subsection, assets attributable to covered policies are that proportion of the assets that the reserves that should have been established for the covered policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.*

(c) *A distribution to stockholders of an impaired or insolvent insurer may not be made until the total amount of valid claims of the association for funds expended in carrying out its powers and duties under this article with respect to the insurer have been recovered with interest by the association.*

(d) *If an order of receivership of an insurer domiciled in this state has been entered, the receiver appointed under the order may recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation, subject to the limitations imposed under Subsections (e), (f), and (g) of this section.*

(e) *A distribution to stockholders is not recoverable under Subsection (d) of this section if the insurer shows that the distribution was lawful and reasonable as of the date of payment, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.*

(f) *A person that was an affiliate that controlled the insurer at the time distributions subject to Subsection (d) of this section were paid is liable for the amount of distributions received. A person that was an affiliate that controlled the insurer at the time the distributions were declared is liable for the amount of distributions the person would have received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, those persons are jointly and severally liable.*

(g) *The maximum amount recoverable under Subsections (d) and (f) of this section is the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.*

(h) *If a person liable under Subsection (f) of this section is insolvent, all of its affiliates that controlled it at the time the distribution was paid are jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.*

(i) *An impaired insurer placed in conservatorship or receivership for which assessments have been made under this article, or for which association funds have been provided, may not, on release from conservatorship or receivership, issue new or renewal insurance policies*

until the insurer has repaid in full the amount of guaranty fees furnished by the association. The commissioner may permit, on application of the association and after hearing, the issuance of new policies in accordance with a plan of operation by the released insurer for repayment. The commissioner, in approving the plan, may place restrictions on the issuance of new or renewal policies as necessary for the implementation of the plan. The commissioner shall give notice of a hearing under this subsection to the association not later than the 11th day before the date on which the hearing is scheduled. The association and member insurers that paid assessments in relation to the impaired insurer are entitled to appear at and participate in the hearing. Money recovered by the association under this subsection shall be repaid to the member insurers that paid assessments in relation to the impaired insurer on return of the appropriate certificate of contribution.

## ARTICLE 12. REGULATION OF CERTAIN LICENSE HOLDERS

SECTION 12.01. Subchapter A, Chapter 21, Insurance Code, is amended by adding Article 21.01-2 to read as follows:

### Art. 21.01-2. GENERAL PROVISIONS APPLICABLE TO CERTAIN LICENSE HOLDERS

Sec. 1. APPLICATION. Except as otherwise provided by this article, this article applies to licensing of persons under:

- (1) Section 4, Article 1.14-2, Insurance Code;
- (2) Section 7, Article 3.75, Insurance Code;
- (3) Article 9.36, 9.42, or 9.43, Insurance Code;
- (4) Section 6, Article 9.56, Insurance Code;
- (5) Section 15 or 15A, Texas Health Maintenance Organization Act (Section 20A.15 or 20A.15A, Vernon's Texas Insurance Code);
- (6) Article 21.07, Insurance Code;
- (7) Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code);
- (8) Chapter 29, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-2, Vernon's Texas Insurance Code);
- (9) the Managing General Agents' Licensing Act (Article 21.07-3, Vernon's Texas Insurance Code);
- (10) Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code);
- (11) Article 21.07-6, Insurance Code;
- (12) Article 21.07-7, Insurance Code;
- (13) Article 21.09, Insurance Code;
- (14) Article 21.11, Insurance Code;
- (15) Article 21.14, Insurance Code;
- (16) Article 21.14-1, Insurance Code;
- (17) Article 21.14-2, Insurance Code; or
- (18) Article 23.23, Insurance Code.

Sec. 2. RENEWAL OF LICENSES. (a) A person may renew an unexpired license by filing a renewal application with the department in the form prescribed by the department and paying to the department before the expiration date of the license the required renewal fee. A renewal fee paid under this section is nonrefundable.

(b) If a person's license has been expired for 90 days or less, the person may renew the license by filing a renewal application with the department in the form prescribed by the department and paying to the department the required renewal fee and a fee that is equal to one-half of the license fee, if any, for the license.

(c) If a person's license has been expired for longer than 90 days, the person may not renew the license. The person may obtain a new license by submitting to reexamination, if examination is required for original issuance of the license, and complying with the requirements and procedures for obtaining an original license. However, the department may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application. The person must pay to the department a fee that is equal to the license fee.

(d) At least 30 days before the expiration of a person's license, the department shall send written notice of the impending license expiration to the person at the person's last known address according to the records of the department.

(e) The commissioner by rule may adopt a system under which licenses expire on various dates during a licensing period. For the licensing period in which the license expiration is changed, license fees shall be prorated on a monthly basis so that each license holder shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable. The commissioner shall adopt a system under which a person who holds more than one license may renew all the licenses held in a single process.

(f) This section is not applicable to a license issued under Article 21.07-6 of this code.

Sec. 3. **LICENSING BY ENDORSEMENT.** The department may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

Sec. 4. **CONTINUING EDUCATION.** (a) The department may recognize, prepare, or administer continuing education programs for persons whose licenses are subject to this article.

(b) Except as otherwise provided by this code or another insurance law of this state, participation in continuing education programs is voluntary.

Sec. 5. **DISCIPLINE OF LICENSE HOLDERS.** (a) The department shall refuse to issue an original license, revoke, suspend, or refuse to renew a license, place on probation a person whose license has been suspended, assess an administrative penalty, or reprimand a license holder for a violation of this code, another insurance law of this state, or a rule of the commissioner or the board. If a license suspension is probated, the commissioner may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit the person's practice to the areas prescribed by the department; or

(3) continue or review professional education until the person attains a degree of skill satisfactory to the commissioner in those areas that are the basis of the probation.

(b) If the department proposes to refuse to issue an original license, or to suspend, revoke, or refuse to renew a license, the person affected is entitled to a hearing conducted by the State Office of Administrative Hearings in accordance with Article 1.33B of this code. Notice of the hearing shall be provided to the person and to any insurance carrier appearing on the application as desiring that the license be issued. The commissioner shall prescribe procedures by which all decisions to deny, suspend, or revoke a license, or to refuse to renew a license, are made by or are appealable to the commissioner.

Sec. 6. **STATUTORY REFERENCES.** A reference in this article to a statutory provision applies to all reenactments, revisions, or amendments of that provision.

SECTION 12.02. Section 7(f), Article 3.75, Insurance Code, is amended to read as follows:

(f) Licenses which have not expired or which have not been suspended or revoked may be renewed by filing with the State Board of Insurance a completed renewal application and paying the nonrefundable renewal fee set by the board in an amount not to exceed \$50 on or before the expiration date of the license *in accordance with Article 21.01-2 of this code.* ~~[If a license has been expired for not longer than 90 days, the licensee may renew the license by paying to the board the required nonrefundable renewal fee and a nonrefundable fee that is one-half of the original license fee. If a license has been expired for more than 90 days, the license may not be renewed. A new license may be obtained by complying with the~~

~~requirements and procedures for obtaining an original license. At least 30 days before the expiration of a license, the commissioner shall send written notice of the impending license expiration to the licensee at the licensee's last known address. This subsection may not be construed to prevent the board from denying or refusing to renew a license under applicable law or rules of the State Board of Insurance.]~~

SECTION 12.03. Article 21.01-1, Insurance Code, is amended to read as follows:

Art. 21.01-1. AGENTS' QUALIFYING EXAMINATION [~~TO BE PRESCRIBED BY THE BOARD~~]. (a) The State Board of Insurance may, at its discretion, accept examinations administered by a testing service as satisfying the examination requirements of persons seeking license as agents, solicitors, counselors, or adjusters under this code. The State Board of Insurance may negotiate agreements with such testing services to include performance of examination development, test scheduling, examination site arrangements, and test administration, grading, reporting and analysis. The State Board of Insurance may require such testing services to correspond directly with the applicants with regard to the administration of such examinations and that such testing services collect fees for administering such examinations directly from the applicants. The State Board of Insurance may stipulate that any agreements with such testing services provide for the administration of examinations in specific locales and at specified frequencies. The State Board of Insurance shall retain the authority to establish the scope and type of all examinations. Prior to negotiating and making any agreement with any testing service as authorized hereby, the State Board of Insurance shall hold a public hearing thereon in accordance with the provisions of Section 5 of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and shall adopt such rules, regulations, and standards as may be deemed appropriate by the Board to implement the authority granted in this Article.

(b) The commissioner may appoint advisory boards consisting of any of the following persons: persons holding a license for which the respective examinations are intended, persons who are employed by insurance companies appointing such licensees, persons acting as general agents or managers, persons teaching insurance at an accredited college or university in Texas, persons who are citizens of the State of Texas but who are not of any of the preceding descriptions, or any combination of such persons. The function of such advisory boards will be to make recommendations to the State Board of Insurance or the testing service with respect to the scope, type, and conduct of such examinations and the times and places within the state where they shall be held. The members of such advisory boards shall serve without pay but shall be reimbursed for their reasonable expenses in attending meetings of their respective advisory boards.

(c) In the absence of an agreement with a testing service, the State Board of Insurance shall administer any required qualifying examination in accordance with the provisions of the respective statutes governing the issuance of the license sought by the applicant.

(d) *Not later than the 30th day after the date on which a licensing examination is administered under this code, the department shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a testing service, the department shall notify examinees of the results of the examination not later than the 14th day after the date on which the department receives the results from the testing service. If the notice of examination results graded or reviewed by a testing service will be delayed for longer than 90 days after the examination date, the department shall notify the examinee of the reason for the delay before the 90th day. The department may require a testing service to notify examinees of the results of an examination.*

(e) *If requested in writing by a person who fails a licensing examination administered under this code, the department shall furnish the person with an analysis of the person's performance on the examination.*

SECTION 12.04. Sections 4(c) and (d), Article 1.14-2, Insurance Code, are amended to read as follows:

(c) Unless the State Board of Insurance adopts a system for staggered renewal of licenses, as provided by Article 21.01-2 of this code [~~this section~~], each license issued under this section is for a two-year term that expires on December 31; however, the term of the initial licensing period shall expire on December 31 of the year following the year in which the license is issued. A license may be renewed for periods of two years.

(d) By filing a completed written application in the form prescribed by the State Board of Insurance and paying the nonrefundable renewal fee set by the board in an amount not to exceed \$50, an unexpired license may be renewed on or before the expiration date of the license. ~~[If a license has been expired for not longer than 90 days, the licensee may renew the license by filing a completed written application for renewal and by paying to the board the required nonrefundable renewal fee and a nonrefundable fee that is one-half of the original fee for the license. If a license has been expired for more than 90 days, the license may not be renewed. A new license may be obtained by complying with the requirements and procedures for obtaining an original license. This subsection may not be construed to prevent the board from denying or refusing to renew a license under applicable law or rules of the State Board of Insurance.]~~

SECTION 12.05. Section 2(b), Article 9.36, Insurance Code, is amended to read as follows:

(b) Unless a staggered renewal system is adopted under *Article 21.01-2 of this code and its subsequent amendments* ~~[Section 5 of this article]~~, a license shall continue in force until June 1 after the second anniversary of the date on which the license was issued unless previously cancelled.

SECTION 12.06. Sections B and E, Article 9.37, Insurance Code, are amended to read as follows:

B. ~~The department may discipline [license of] any agent or direct operation or deny an application under Section 5, Article 21.01-2, of this code and its subsequent amendments [may be denied, or a license duly issued may be suspended or revoked or a renewal thereof refused by the Board,] if, after notice and hearing as hereafter provided,] it finds that the applicant for or holder of such license:~~

- (1) Has wilfully violated any provision of this Act; [or]
- (2) Has intentionally made a material misstatement in the application for such license; [or]
- (3) Has obtained, or attempted to obtain, such license by fraud or misrepresentation; [or]
- (4) Has misappropriated or converted to his own use or illegally withheld money belonging to a title insurance company, an insured or any other person; [or]
- (5) ~~[Has otherwise demonstrated lack of trustworthiness or competence to act as an agent or direct operation; or~~
- [6] Has been guilty of fraudulent or dishonest practices; [or]
- (6) ~~[(7)]~~ Has materially misrepresented the terms and conditions of title insurance policies or contracts; or
- (7) ~~[(8)]~~ Is not of good character or reputation; or
- [9] Has failed to maintain a separate and distinct accounting of escrow funds, and has failed to maintain an escrow bank account or accounts separate and apart from all other accounts.

E. ~~A disciplinary action or denial of an application under this article may be appealed under Article 1.04 of this code and its subsequent amendments [If the Board shall refuse an application for any license provided for in this Act, or shall suspend, revoke or refuse to renew any such license at said hearing, then any such applicant or licensee, and any title insurance company or companies concerned, may appeal from said order by filing suit against the Board as defendant in any of the District Courts of Travis County, Texas, and not elsewhere, within twenty (20) days from the date of the order of said Board. The action shall not be limited to questions of law and shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court. Any party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The Board shall not be required to give any appeal bond in any cause arising hereunder].~~

SECTION 12.07. Section 1(b), Article 9.42, Insurance Code, is amended to read as follows:

(b) Unless a system of staggered renewal is adopted under *Article 21.01-2 of this code and its subsequent amendments* [~~Section 2 of this article~~], a license shall continue in force until the second June 1 after its issuance, unless previously cancelled. Provided, however, that if any title insurance agent or direct operation surrenders its license or has its license revoked by the Board, all existing licenses of its escrow officers shall automatically terminate without notice.

SECTION 12.08. Section B, Article 9.43, Insurance Code, is amended to read as follows:

B. Such application shall contain the following:

(1) that the proposed escrow officer is a natural person, a bona fide resident of the State of Texas, and either an attorney or a bona fide employee of an attorney licensed as an escrow officer, a bona fide employee of a title insurance agent, or a bona fide employee of a direct operation;

(2) that the proposed escrow officer has reasonable experience or instruction in the field of title insurance; *and*

(3) that [~~the proposed escrow officer is known to the direct operation or title insurance agent to have a good business reputation and is worthy of the public trust and~~] the direct operation or title insurance agent knows of no fact or condition which would disqualify the proposed escrow officer from receiving a license.

SECTION 12.09. Sections 2 and 5, Article 9.44, Insurance Code, are amended to read as follows:

Sec. 2. *The department may discipline an* [~~license of any~~] *escrow officer or deny an application under Section 5, Article 21.01-2, of this code and its subsequent amendments* [~~may be denied, or a license duly issued may be suspended or revoked or a renewal thereof refused by the Board,~~] *if*, ~~after notice and hearing as hereafter provided,~~ *it finds that the applicant for or holder of such license:*

(1) has wilfully violated any provision of this Act;

(2) has intentionally made a material misstatement in the application for such license;

(3) has obtained, or attempted to obtain, such license by fraud or misrepresentation;

(4) has misappropriated or converted to the escrow officer's own use or illegally withheld money belonging to a direct operation, title insurance agent, or any other person;

(5) [~~has otherwise demonstrated lack of trustworthiness or competence to act as escrow officer;~~

[(6)] has been guilty of fraudulent or dishonest practices;

(6) [(7)] has materially misrepresented the terms and conditions of title insurance policies or contracts;

[(8) ~~is not of good character or reputation;~~] or

(7) [(9)] has failed to complete all educational requirements.

Sec. 5. *A disciplinary action or denial of an application under this article may be appealed under Article 1.04 of this code and its subsequent amendments* [~~If the Board shall refuse an application for any license provided for in this Article, or shall suspend, revoke or refuse to renew any such license at said hearing, then any such applicant may appeal from said order by filing suit against the Board as defendant in any of the District Courts of Travis County, Texas, and not elsewhere, within twenty (20) days from the date of the order of said Board. The action shall not be limited to questions of law and shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court. Either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The Board shall not be required to give any appeal bond in any cause arising hereunder.~~]

SECTION 12.10. Section 6(b), Article 9.56, Insurance Code, is amended to read as follows:

(b) Unless a system of staggered renewal is adopted under *Article 21.01-2 of this code and its subsequent amendments* [~~Subsection (d) of this section~~], on or before the first day of June of each year, every attorney's title insurance company operating under the provisions of this Chapter 9 shall certify to the board, on forms provided by the board, the names and addresses of every title attorney of said attorney's title insurance company, and shall apply for and pay a fee in an amount not to exceed \$50 as determined by the board for an annual license in the name of each title attorney included in said list; if any such attorney's title insurance company shall terminate any licensed title attorney, it shall immediately notify the board in writing of such act and request cancellation of such license, notifying the title attorney of such action. No such attorney's title insurance company shall permit any title attorney appointed by it to write, sign, or deliver title insurance policies within the state until the foregoing conditions have been complied with, and the board has granted said license. The board shall deliver such license to the attorney's title insurance company for transmittal to the title attorney.

Unless a system of staggered renewal is adopted under *Article 21.01-2 of this code and its subsequent amendments* [~~Subsection (d) of this section~~], licenses shall continue until the first day of the next June unless previously cancelled; provided, however, that if any attorney's title insurance company surrenders or has its certificate of authority revoked by the board, all existing licenses of its title attorneys shall automatically terminate without notice.

The board shall keep a record of the names and addresses of all licensed title attorneys in such manner that the title attorneys appointed by any attorney's title insurance company authorized to transact the business of an attorney's title insurance company within the State of Texas may be conveniently ascertained and inspected by any person upon request.

SECTION 12.11. Sections 8(b) and (e), Article 9.56, Insurance Code, are amended to read as follows:

(b) ~~The department may discipline a [license of any] title attorney or deny an application under Section 5, Article 21.01-2, of this code and its subsequent amendments [may be denied, or a license duly issued may be suspended or revoked or a renewal thereof refused by the board,] if, after notice and hearing as hereafter provided,~~ it finds that the applicant for or holder of such license:

- (1) has wilfully violated any provision of this Chapter 9; [or]
- (2) has intentionally made a material misstatement in the application for such license; [or]
- (3) has obtained, or attempted to obtain, such license by fraud or misrepresentation; [or]
- (4) has misappropriated or converted to his own use or illegally withheld money belonging to an attorney's title insurance company, an insured, or any other person; [or]
- (5) [~~has otherwise demonstrated lack of trustworthiness or competence to act as a title attorney; or~~]
- [(6)] has been guilty of fraudulent or dishonest practices; [or]
- (6) [(7)] has materially misrepresented the terms and conditions of title insurance policies or contracts; [or]
- [(8) is not of good character or reputation; or]
- (7) [(9)] has failed to maintain a separate and distinct accounting of escrow funds, and has failed to maintain an escrow bank account or accounts separate and apart from all other accounts; [or]
- (8) [(10)] has failed to remain a member of the State Bar of Texas, or has been disbarred; or
- (9) [(11)] is no longer actively engaged in the practice of law.

(e) ~~A disciplinary action or denial of an application under this article may be appealed under Article 1.04 of this code and its subsequent amendments [If the board shall refuse an application for any license provided for in this Act, or shall suspend, revoke, or refuse to renew any such license at said hearing, then any such applicant or licensee, and any~~

~~attorney's title insurance company concerned, may appeal from said order by filing suit against the board as defendant in any of the district courts of Travis County, Texas, and not elsewhere, within 20 days from the date of the order of said board. The action shall not be limited to questions of law and shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court. Any party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The board shall not be required to give any appeal bond in any cause arising hereunder].~~

SECTION 12.12. Chapter 10, Insurance Code, is amended by adding Article 10.37-2 to read as follows:

*Art. 10.37-2. CERTAIN PERSONS MAY NOT SOLICIT. A fraternal benefit society may not employ or otherwise retain a person to solicit business if that person has had a license revoked under Articles 21.07 or 21.14, Insurance Code, or under Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code).*

SECTION 12.13. Section 15(c), Texas Health Maintenance Organization Act (Section 20A.15, Vernon's Texas Insurance Code), is amended to read as follows:

(c) Except as may be provided by a staggered renewal system adopted under *Article 21.01-2, Insurance Code, and its subsequent amendments* [~~Subsection (i) of this section~~], each license issued to a health maintenance organization agent shall expire two years following the date of issue, unless prior thereto it is suspended or revoked by the commissioner or the authority of the agent to act for the health maintenance organization is terminated.

SECTION 12.14. Sections 15A(c) and (i), Texas Health Maintenance Organization Act (Section 20A.15A, Vernon's Texas Insurance Code), are amended to read as follows:

(c) Except as may be provided by a staggered renewal system adopted under *Article 21.01-2, Insurance Code, and its subsequent amendments* [~~Section 15(i) of this Act~~], each license issued to a health maintenance organization agent under this section shall expire two years following the date of issuance, unless before that time the license is suspended or revoked by the commissioner or the authority of the agent to act for the health maintenance organization is terminated.

(i) ~~A licensee may renew an unexpired license issued under this section by filing the required renewal application and paying a nonrefundable fee with the State Board of Insurance on or before the expiration date of the license. [If a license has been expired for not longer than 90 days, the licensee may renew the license by filing a completed application and paying to the State Board of Insurance the required nonrefundable renewal fee and a nonrefundable fee that is one-half of the original license fee. If a license has been expired for more than 90 days, the license may not be renewed. A new license may be obtained by complying with the requirements and procedures for obtaining an original license. At least 30 days before the expiration of a license, the commissioner shall send written notice of the impending license expiration to the licensee at the licensee's last known address. This section does not prevent the State Board of Insurance from denying or refusing to renew a license under applicable law or rules.]~~

SECTION 12.15. Article 21.06, Insurance Code, is amended to read as follows:

*Art. 21.06. CERTIFICATES FOR AGENTS. Each such foreign insurance company shall, by resolution of its board of directors, designate some officer or agent who is empowered to appoint or employ its agents or solicitors in this State, and such officer or agent shall promptly notify the Board in writing of the name, title and address of each person so appointed or employed. Upon receipt of this notice, [if such person is of good reputation and character,] the Board shall issue to him a certificate which shall include a copy of the certificate of authority authorizing the company requesting it to do business in this State, and the name and title of the person to whom the certificate is issued. Such certificate, unless sooner revoked by the Board for cause or cancelled at the request of the company employing the holder thereof, shall continue in force until the first day of March next after its issuance, and must be renewed annually.*



SECTION 12.16. Section 1, Article 21.07, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) *A person who has had a license revoked under Section 10 of this article may not solicit or otherwise transact business under Chapter 10 of this code.*

SECTION 12.17. Section 2(b), Article 21.07, Insurance Code, is amended to read as follows:

(b) The application must bear a signed endorsement by an officer or properly authorized representative of the insurance carrier that the individual applicant or each member of the partnership or each officer, director, and shareholder of the corporation is ~~[trustworthy, of good character and good reputation, and]~~ qualified to hold himself or the partnership or the corporation out in good faith to the general public as an insurance agent, and that the insurance carrier desires that the applicant act as an insurance agent to represent it in this State.

SECTION 12.18. Section 3, Article 21.07, Insurance Code, is amended to read as follows:

Sec. 3. ISSUANCE OF LICENSE UNDER CERTAIN CIRCUMSTANCES. ~~The [After the State Board of Insurance has determined that such applicant is of good character and trustworthy, the] State Board of Insurance shall issue a license to a [such] person or corporation in such form as it may prepare authorizing such applicant to write the types of insurance authorized by law to be issued by applicant's appointing insurance carrier, except that:~~

(a) Such applicant shall not be authorized to write health and accident insurance unless:

(i) applicant, if not a partnership or corporation, shall have first passed a written examination as provided for in this Article 21.07, as amended, or (ii) applicant will act only as a ticket-selling agent of a public carrier with respect to accident life insurance covering risks of travel or as an agent selling credit life, health and accident insurance issued exclusively in connection with credit transactions, or (iii) applicant will write policies or riders to policies providing only lump sum cash benefits in the event of the accidental death, or death by accidental means, or dismemberment, or providing only ambulance expense benefits in the event of accident or sickness; and

(b) Such applicant, if not a partnership or corporation, shall not be authorized to write life insurance in excess of \$7,500 [~~\$5,000~~] upon any one life unless: (i) applicant, if not a partnership or corporation, shall have first passed a written examination as provided for in this Article 21.07, as amended, or (ii) applicant will act only as a ticket-selling agent of a public carrier with respect to accident life insurance covering risks of travel or as an agent selling credit life, health and accident insurance issued exclusively in connection with credit transactions, or (iii) applicant will write policies or riders to policies providing only lump sum cash benefits in the event of the accidental death, or death by accidental means, or dismemberment, or providing only ambulance expense benefits in the event of accident or sickness.

SECTION 12.19. Section 4(c), Article 21.07, Insurance Code, is amended to read as follows:

(c) After the State Board of Insurance shall determine that such applicant has successfully passed the written examination or it has been waived, ~~[and is a person of good character and reputation,]~~ the State Board of Insurance shall forthwith issue a license to such applicant which shall also authorize such applicant to write health and accident insurance for the designated insurance carrier.

SECTION 12.20. Sections 4A(a), (c), and (e), Article 21.07, Insurance Code, are amended to read as follows:

(a) Each applicant for a license under the provisions of this Article 21.07, Insurance Code, as amended, who desires to write life insurance in excess of \$7,500 [~~\$5,000~~] upon any one life, other than as excepted in Section 3 of this Article 21.07, within this state shall submit to a personal written examination prescribed by the State Board of Insurance and administered in the English or Spanish language to determine his competency with respect to life insurance and his familiarity with the pertinent provisions of the laws of the State of Texas relating to life insurance and shall pass the same to the satisfaction of the State Board of Insurance;

except that no written examination shall be required of an applicant that is a partnership or corporation.

(c) After the State Board of Insurance shall determine that such applicant has successfully passed the written examination or it has been waived [~~and is a person of good character and reputation~~], the State Board of Insurance shall forthwith issue a license to such applicant which shall also authorize such applicant to write life insurance upon any one life in excess of \$7,500 [~~Five Thousand Dollars (\$5,000.00)~~] for the designated insurance carrier.

(e) When any license shall be issued by the State Board of Insurance to an applicant entitled to write life insurance upon any one life in excess of \$7,500 [~~Five Thousand Dollars (\$5,000.00)~~], the license shall have stamped thereon the words, "Life Insurance in Excess of \$7,500 [~~\$5,000.00~~]."

SECTION 12.21. Sections 5, 8, and 11, Article 21.07, Insurance Code, are amended to read as follows:

Sec. 5. FAILURE OF APPLICANT TO QUALIFY FOR LICENSE. If [~~the State Board of Insurance is not satisfied that~~] the applicant for a license [~~is trustworthy and of good character, or, if applicable, that the applicant~~], if required to do so, has not passed the written examination to the satisfaction of the State Board of Insurance, the State Board of Insurance shall forthwith notify the applicant and the insurance carrier in writing that the license will not be issued to the applicant.

Sec. 8. TEMPORARY LICENSE. The department [~~, if it is satisfied with the honesty and trustworthiness of any applicant who desires to write health and accident insurance,~~] may issue a temporary agent's license, authorizing the applicant to write health and accident insurance, as well as all other insurance authorized to be written by the appointing insurance carrier, effective for ninety (90) days, without requiring the applicant to pass a written examination, as follows:

To any applicant who has been appointed or who is being considered for appointment as an agent by an insurance carrier authorized to write health and accident insurance immediately upon receipt by the department of an application executed by such person in the form required by this Article, together with a nonrefundable filing fee of \$100 and a certificate signed by an officer or properly authorized representative of such insurance carrier certifying:

(a) [~~that such insurance carrier has investigated the character and background of such person and is satisfied that he is trustworthy and of good character;~~

[(b)] that such person has been appointed or is being considered for appointment by such insurance carrier as its agent; and

(b) [(e)] that such insurance carrier desires that such person be issued a temporary license; provided that if such temporary license shall not have been received from the department within seven days from the date on which the application and certificate were delivered to or mailed to the department, the insurance carrier may assume that such temporary license will be issued in due course and the applicant may proceed to act as an agent; provided, however, that no temporary license shall be renewable or issued more than once in a consecutive six months period to the same applicant; and provided further, that no temporary license shall be granted to any person who does not intend to actively sell health and accident insurance to the public generally and it is intended to prohibit the use of a temporary license to obtain commissions from sales to persons of family employment or business relationships to the temporary licensee, to accomplish which purposes an insurance carrier is hereby prohibited from knowingly paying directly or indirectly to the holder of a temporary license under this Section any commissions on the sale of a contract of health and accident insurance to any person related to temporary licensee by blood or marriage, and the holder of a temporary license is hereby prohibited from receiving or accepting commissions on the sale of a contract of health and accident insurance to any person included in the foregoing classes of relationship.

Sec. 11. JUDICIAL REVIEW OF ACTS OF STATE BOARD OF INSURANCE. If the commissioner refuses an application for license as provided by this Article, or suspends, revokes, or refuses to renew a license at a hearing as provided by this Article, [~~and this action is upheld on review to the Board as provided by this code,~~] and if the applicant or accused is

dissatisfied with the action of the commissioner [~~and the Board~~], the applicant or accused may appeal from the action as provided by [~~Section (f),~~] Article 1.04[~~7~~], of this code.

SECTION 12.22. Section 10(a), Article 21.07, Insurance Code, is amended to read as follows:

(a) *The department may discipline a [A] license holder or deny an application under Section 5, Article 21.01-2, of this code* [~~may be denied, or a license duly issued may be suspended or revoked or the renewal thereof refused by the State Board of Insurance~~] if[, ~~after notice and hearing as hereafter provided,~~] it finds that the applicant, individually or through any officer, director, or shareholder, for, or holder of, such license:

- (1) Has wilfully violated any provision of the insurance laws of this State; [~~or~~]
- (2) Has intentionally made a material misstatement in the application for such license; [~~or~~]
- (3) Has obtained, or attempted to obtain, such license by fraud or misrepresentation; [~~or~~]
- (4) Has misappropriated or converted to his or its own use or illegally withheld money belonging to an insurance carrier or an insured or beneficiary; [~~or~~]
- (5) [~~Has otherwise demonstrated lack of trustworthiness or competence to act as an agent; or~~]  
~~[(6)]~~ Has been guilty of fraudulent or dishonest practices; [~~or~~]
- (6) [~~(7)~~] Has materially misrepresented the terms and conditions of any insurance policy or contract; [~~or~~]
- (7) [~~(8)~~] Has made or issued, or caused to be made or issued, any statement misrepresenting or making incomplete comparisons regarding the terms or conditions of any insurance contract legally issued by any insurance carrier, for the purpose of inducing or attempting to induce the owner of such contract to forfeit or surrender such contract or allow it to lapse for the purpose of replacing such contract with another; [~~or~~]
- [~~(9) Is not of good character or reputation;~~] or
- (8) [~~(10)~~] Is convicted of a felony.

SECTION 12.23. Section 19(b), Article 21.07, Insurance Code, is amended to read as follows:

(b) The State Board of Insurance may, upon request of such insurer on application forms furnished by the State Board of Insurance and upon payment of a nonrefundable license fee in an amount not to exceed \$50 as determined by the State Board of Insurance, issue such license to such person which will be valid only for such limited representation of such insurer as provided herein. The application shall be accompanied by a certificate, on forms to be prescribed and furnished by the State Board of Insurance and signed by an officer or properly authorized representative of the insurance company the applicant proposes to represent, stating that the insurance company [~~has investigated the character and background of the applicant and is satisfied that the applicant is trustworthy and qualified to hold himself out in good faith as an insurance agent, and that the insurance company~~] desires that the applicant act as an insurance agent to represent the insurance company. The insurer shall also certify to the State Board of Insurance that it has provided the applicant with at least forty (40) hours of training, has tested the applicant and found the applicant qualified to represent the insurer, and that the insurer is willing to be bound by the acts of such applicant within the scope of such limited representation.

SECTION 12.24. Section 3, Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), is amended by adding Subsection (c) to read as follows:

(c) *A person who has had a license revoked under Section 12 of this Act may not solicit or otherwise transact business under Chapter 10 of this code.*

SECTION 12.25. Section 4(b), Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), is amended to read as follows:

(b) The application shall be accompanied by a certificate on forms furnished by the Commissioner and signed by an officer or properly authorized representative of the life

insurance company the applicant proposes to represent, stating that ~~[the insurer has investigated the character and background of the applicant and is satisfied that the applicant or the partners of the partnership or the officers, directors, and shareholders of the corporation are trustworthy and qualified to act as a life insurance agent, that]~~ the applicant has completed the educational requirements as provided in this Act, and that the insurer desires that the applicant be licensed as a life insurance agent to represent it in this State.

SECTION 12.26. Section 6, Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 6. ISSUANCE OR DENIAL OF LICENSE. ~~After [If the Commissioner is satisfied that the applicant is trustworthy and competent and after]~~ the applicant, if required to do so, has passed the written examination to the satisfaction of the Commissioner, a license shall be issued forthwith. If the license is denied for any of the reasons set forth in Section 12 of this Act, the Commissioner shall notify the applicant and the insurer in writing that the license will not be issued to the applicant.

SECTION 12.27. Section 9(a), Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), is amended to read as follows:

(a) Except as may be provided by a staggered renewal system adopted under *Article 21.01-2, Insurance Code* ~~[Subsection (e) of this section]~~, each license issued to a life insurance agent shall expire two years following the date of issue, unless prior thereto it is suspended or revoked by the Commissioner.

SECTION 12.28. Section 10, Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 10. TEMPORARY LICENSE. (a) The department~~[,] if it is satisfied with the honesty and trustworthiness of the applicant,~~ may issue a temporary life insurance agent's license, effective for ninety days, without requiring the applicant to pass a written examination, as follows:

(1) ~~[(a)]~~ To an applicant who has fulfilled the provisions of Section 4 of this Act where such applicant will actually collect the premiums on industrial life insurance contracts during the period of such temporary license; provided, however, that if such temporary license is not received from the department within seven days from the date the application was sent to the department, the company may assume that the temporary license will be issued in due course and the applicant may proceed to act as an agent. For the purpose of this subsection an industrial life insurance contract shall mean a contract for which the premiums are payable at monthly or more frequent intervals directly by the owner thereof, or by a person representing the owner, to a representative of the company;

(2) ~~[(b)]~~ To any person who is being considered for appointment as an agent by an insurer immediately upon receipt by the department of an application executed by such person in the form required by Section 4 of this Act, together with a nonrefundable filing fee of \$100 and a certificate signed by an officer or properly authorized representative of such insurer stating:

(A) ~~[(1) that such insurer has investigated the character and background of such person and is satisfied that he is trustworthy;~~

~~[(2) that such person is being considered for appointment by such insurer as its full-time agent; [and]~~

(B) ~~[(3) that such insurer desires that such person be issued a temporary license; provided that if such temporary license shall not have been received from the department within seven days from the date on which the application and certificate were delivered to or mailed to the department the insurer may assume that such temporary license will be issued in due course and the applicant may proceed to act as an agent; provided, however, that no temporary license shall be renewable nor issued more than once in a consecutive six months period to the same applicant; and provided further, that no temporary license shall be granted to any person who does not intend to apply for a license to sell life insurance to the public generally and it is intended to prohibit the use of a temporary license to obtain commissions from sales to persons of family employment or business relationships to the temporary licensee, to accomplish which purposes an insurer is hereby prohibited from knowingly paying directly or indirectly to the holder of~~

a temporary license under this subsection any commissions on the sale of a contract of insurance on the life of the temporary licensee, or on the life of any person related to him by blood or marriage, or on the life of any person who is or has been during the past six months his employer either as an individual or as a member of a partnership, association, firm or corporation, or on the life of any person who is or who has been during the past six months his employee, and the holder of a temporary license is hereby prohibited from receiving or accepting commissions on the sale of a contract of insurance to any person included in the foregoing classes of relationship;

(C) [(4)] that a person who has been issued a temporary license under this subsection and is acting under the authority of the temporary license may not engage in any insurance solicitation, sale, or other agency transaction that results in or is intended to result in the replacement of any existing individual life insurance policy form or annuity contract that is in force or receive, directly or indirectly, any commission or other compensation that may or does result from such solicitation, sale, or other agency transaction; and that any person holding a permanent license may not circumvent or attempt to circumvent the intent of this subdivision by acting for or with a person holding such a temporary license. As used in this subdivision, "replacement" means any transaction in which a new life insurance or annuity contract is to be purchased, and it is known or should be known to the temporary agent that by reason of the solicitation, sale, or other transaction the existing life insurance or annuity contract has been or is to be:

(i) [(A)] lapsed, forfeited, surrendered, or otherwise terminated;

(ii) [(B)] converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(iii) [(C)] amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(iv) [(D)] reissued with any reduction in cash value; or

(v) [(E)] pledged as collateral or subjected to borrowing, whether in a single loan or under a schedule of borrowing over a period of time for amounts in the aggregate exceeding 25 percent of the loan value set forth in the policy; and

(D) [(5)] that such person will complete, under such insurer's supervision, at least forty hours of training as prescribed by Subsection (c) of this Section within fourteen days from the date on which the application and certificate were delivered or mailed to the department.

(b) [(6)] The department shall have the authority to cancel, suspend, or revoke the temporary appointment powers of any life insurance company, if, after notice and hearing, he finds that such company has abused such temporary appointment powers. In considering such abuse, the department may consider, but is not limited to, the number of temporary appointments made by a company as provided by Subsection (f) [(a)] of this Section, the percentage of appointees sitting for the examination as life insurance agents under this Article as it may be in violation of Subsection (e) [(d)] of this Section, and the number of appointees successfully passing said examination in accordance with Subsection (e) [(d)]. Appeals from the department's decision shall be made in accordance with Section 13 hereof.

(c) At least forty hours of training must be administered to any applicant for a temporary license as herein defined within fourteen days from the date on which the application and certificate were delivered or mailed to the department. Of this forty-hour requirement, ten hours must be taught in a classroom setting, including but not limited to an accredited college, university, junior or community college, business school, or private institute or classes sponsored by the insurer and especially established for this purpose. Such training program shall be constructed so as to provide an applicant with the basic knowledge of:

- (1) the broad principles of insurance, licensing, and regulatory laws of this State; and
- (2) the obligations and duties of a life insurance agent.

(d) The Commissioner of Insurance may, in his discretion, require that *the* [such] training program required by Subsection (c) of this Section [shall] be filed with the department for

approval in the event *the commissioner* [he] finds an abuse of temporary appointment powers under Subsection (b)[(6)] of this Section.

(e) [(d)] Each insurer is responsible for requiring that not less than 70 percent of such insurer's applicants for temporary licenses sit for an examination during any two consecutive calendar quarters. At least 50 percent of those applicants sitting for the examination must pass during such a period.

(f) [(e)] Each insurer may make no more than two hundred and fifty temporary licensee appointments during a calendar year under Subsection (a)(2) [(4)] of this Section.

SECTION 12.29. Section 12(a), Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), is amended to read as follows:

(a) *The commissioner may discipline a [A] license holder or deny an application under Section 5, Article 21.01-2, Insurance Code, [may be denied, or a license duly issued may be suspended or revoked or the renewal thereof refused by the Commissioner] if, after notice and hearing as hereafter provided,* the Commissioner finds that the applicant, individually or through any officer, director, or shareholder, for, or holder of such license:

- (1) Has wilfully violated any provision of the insurance laws of this State;
- (2) Has intentionally made a material misstatement in the application for such license;
- (3) Has obtained, or attempted to obtain, such license by fraud or misrepresentation;
- (4) Has misappropriated or converted to the applicant's or licensee's own use or illegally withheld money belonging to an insurer or an insured or beneficiary;
- (5) [~~Has otherwise demonstrated lack of trustworthiness or competence to act as a life insurance agent;~~
- [(6)] Has been guilty of fraudulent or dishonest practices;
- (6) [(7)] Has materially misrepresented the terms and conditions of life insurance policies or contracts;
- (7) [(8)] Has made or issued, or caused to be made or issued, any statement misrepresenting or making incomplete comparisons regarding the terms or conditions of any insurance or annuity contract legally issued by any insurer, for the purpose of inducing or attempting to induce the owner of such contract to forfeit or surrender such contract or allow it to lapse for the purpose of replacing such contract with another;
- (8) [(9)] Has obtained, or attempted to obtain such license, not for the purpose of holding himself or itself out to the general public as a life insurance agent, but primarily for the purpose of soliciting, negotiating or procuring life insurance or annuity contracts covering the applicant or licensee, members of the applicant's or licensee's family, or the applicant's or licensee's business associates;
- (9) [(10) ~~Is not of good character or reputation; or~~
- [(11)] Is convicted of a felony; or
- (10) *Is guilty of rebating an insurance premium or commission to an insured.*

SECTION 12.30. Section 13, Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 13. JUDICIAL REVIEW OF ACTS OF COMMISSIONER. If the Commissioner refuses an application for license as provided by this Act or suspends, revokes, or refuses to renew a license at a hearing provided by this Act, [~~and the action is upheld on review to the Board as provided by this Code,~~] and if the applicant or accused is dissatisfied with the action of the Commissioner and the Board, the applicant or accused may appeal from that action in accordance with [~~Section (f),~~] Article 1.04, Insurance Code.

SECTION 12.31. Section 16(h), Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), is amended to read as follows:

(h) After the State Board of Insurance determines that an applicant has successfully passed the written examination or is exempt therefrom as provided in Subsection (d) above, [~~and the board has determined the applicant to be of good character and reputation,~~] has been

appointed to act as an agent by one or more legal reserve life insurance companies, and has paid a nonrefundable license fee not to exceed \$50 as determined by the board, the board shall issue a license to such applicant authorizing the applicant to act as an accident and health insurance agent for the appointing insurance carrier.

SECTION 12.32. Section 5, Chapter 29, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-2, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 5. MODE OF LICENSING AND REGULATION. (a) The licensing and regulation of a Life Insurance Counselor, as that term is defined herein, shall be in the same manner and subject to the same requirements as applicable to the licensing of agents of legal reserve life insurance companies as provided in Article 21.07-1 of the Texas Insurance Code, 1951, or as provided by any existing or subsequent applicable law governing the licensing of such agents, and all the provisions thereof are hereby made applicable to applicants and licensees under this Act, except that a Life Insurance Counselor shall not advertise in any manner and shall not circulate materials indicating professional superiority or the performance of professional service in a superior manner; provided, however, that an appointment to act for an insurer shall not be a condition to the licensing of a Life Insurance Counselor.

(b) In addition to the above requirements, the applicant for licensure as a Life Insurance Counselor shall submit to the Commissioner [~~evidence of high moral and ethical character,~~] documentation that he has been licensed as a life insurance agent in excess of three years. After the Insurance Commissioner has satisfied himself as to these requirements, he shall then cause the applicant for a Life Insurance Counselor's license to sit for an examination which shall include the following[:

~~[Such examination shall consist of]~~ five subjects and subject areas:

- (1) [~~(a)~~] Fundamentals of life and health insurance;
- (2) [~~(b)~~] Group life insurance, pensions and health insurance;
- (3) [~~(c)~~] Law, trust and taxation;
- (4) [~~(d)~~] Finance and economics; and
- (5) [~~(e)~~] Business insurance and estate planning.

(c) No license shall be granted until such individual shall have successfully passed each of the five parts *under Subsection (b) of this section* [~~above enumerated~~]. Such examinations may be given and scheduled by the Commissioner at his discretion. Individuals currently holding Life Insurance Counselor licenses issued by the Texas State Board of Insurance, who do not have the equivalent of the requirements above listed, shall have one year from the date of enactment hereof to so qualify.

~~[Unless the State Board of Insurance accepts a qualifying examination administered by a testing service, as provided under Article 21.01-1, Insurance Code, as amended, not later than the 30th day after the day on which a licensing examination is administered under this Section, the Commissioner shall send notice to each examinee of the results of the examination. If an examination is graded or reviewed by a testing service, the Commissioner shall send, or require the testing service to send, notice to the examinees of the results of the examination within two weeks after the date on which the Commissioner receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the Commissioner shall send, or require the testing service to send, notice to the examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails the licensing examination administered under this Section, the Commissioner shall send, or require the testing service to send, to the person an analysis of the person's performance on the examination.]~~

SECTION 12.33. Sections 9, 12, and 14, Managing General Agents' Licensing Act (Article 21.07-3, Vernon's Texas Insurance Code), are amended to read as follows:

Sec. 9. EXPIRATION OF LICENSE; RENEWAL. [~~(a)~~] Except as may be provided by a staggered renewal system adopted under *Article 21.01-2, Insurance Code* [~~Subsection (e) of this section~~], every license issued under this Act expires two years from the date of issuance, unless a completed application to qualify for renewal of such license shall be filed with the commissioner and a nonrefundable fee paid on or before such date, in which event the license

sought to be renewed shall continue in full force and effect until renewed or renewal is denied.

~~[(b) An unexpired license may be renewed by paying the required nonrefundable renewal fee to the board not later than the expiration date of the license. If a license has been expired for not longer than 90 days, the licensee may renew the license by paying to the board the required nonrefundable renewal fee and a nonrefundable fee that is one half of the original license fee. If a license has been expired for more than 90 days, the license may not be renewed. A new license may be obtained by complying with the requirements and procedures for obtaining an original license. At least 30 days before the expiration of a license, the commissioner shall send written notice of the impending license expiration to the licensee at the licensee's last known address. This subsection may not be construed to prevent the board from denying or refusing to renew a license under applicable law or rules of the State Board of Insurance.~~

~~[(c) The State Board of Insurance by rule may adopt a system under which licenses expire on various dates during the year. For the period in which the license is valid for less than two years, the license fee shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On each subsequent renewal of the license, the total license renewal fee is payable.]~~

Sec. 12. DENIAL, REFUSAL, SUSPENSION, OR REVOCATION OF LICENSES. *The commissioner may discipline a [A] license holder or deny an application under Section 5, Article 21.01-2, Insurance Code, if it [may be denied, suspended for a period of time, revoked or the renewal thereof refused by the commissioner if, after notice and hearing as hereinafter provided, he] finds that the applicant for, or holder of such license:*

- (a) has wilfully violated or participated in the violation of any provisions of this Act or any of the insurance laws of this state; [or]
- (b) has intentionally made a material misstatement in the application for such license; [or]
- (c) has obtained, or attempted to obtain such license by fraud or misrepresentation; [or]
- (d) has misappropriated or converted to his own use or has illegally withheld moneys required to be held in a fiduciary capacity; [or]
- (e) has with intent to deceive materially misrepresented the terms or effect of any contract of insurance, or has engaged in any fraudulent transaction; or
- (f) has been convicted of a felony, or of any misdemeanor of which criminal fraud is an essential element[;—or

~~[(g) has shown himself to be, and is so deemed by the commissioner, incompetent, or untrustworthy, or not of good character and reputation].~~

Sec. 14. JUDICIAL REVIEW OF ACTS OF COMMISSIONER [AND THE BOARD]. If the commissioner shall refuse an application for license as provided in this Act, or shall suspend, revoke or refuse to renew any license at a hearing as provided by this Act, [and such action is upheld upon review to the board as in this Code provided,] and if the applicant or accused thereafter is dissatisfied with the action of the commissioner [and the board], the applicant or accused may appeal from that action in accordance with [Section (f),] Article 1.04, Insurance Code.

SECTION 12.34. Sections 10 and 18, Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code), are amended to read as follows:

Sec. 10. EXAMINATION FOR LICENSE. [(a)] Each applicant for a license as an adjuster shall, prior to the issuance of such license, personally take and pass, to the satisfaction of the commissioner, an examination as a test of his qualifications and competency; but the requirement of an examination shall not apply to any of the following:

- (1) an applicant who for the 90-day period next preceding the effective date of this Act has been principally engaged in the investigation, adjustment, or supervision of losses and who is so engaged on the effective date of this Act;



(2) an applicant for the renewal of a license issued hereunder; [or]

(3) an applicant who is licensed as an insurance adjuster, as defined by this statute, in another state with which state a reciprocal agreement has been entered into by the commissioner; or

(4) any person who has completed a course or training program in adjusting of losses as prescribed and approved by the commissioner and is certified to the commissioner upon completion of the course that such person has completed said course or training program, and has passed an examination testing his knowledge and qualification, as prescribed by the commissioner.

~~[(b) Unless the State Board of Insurance accepts a qualifying examination administered by a testing service, as provided under Article 21.01-1, Insurance Code, as amended, not later than the 30th day after the day on which a licensing examination is administered under this section, the commissioner shall send notice to each examinee of the results of the examination. If an examination is graded or reviewed by a testing service, the commissioner shall send, or require the testing service to send, notice to the examinees of the results of the examination within two weeks after the date on which the commissioner receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the commissioner shall send, or require the testing service to send, notice to the examinee of the reason for the delay before the 90th day.~~

~~[(c) If requested in writing by a person who fails the licensing examination administered under this section, the commissioner shall send, or require the testing service to send, to the person an analysis of the person's performance on the examination.]~~

Sec. 18. ~~AUTOMATIC [PROCEDURE FOR REFUSAL, SUSPENSION, OR] REVOCATION.~~ [(a)] The commissioner may revoke or refuse to renew any license of an adjuster immediately and without hearing, upon the licensee's conviction of a felony, by final judgment, in any court of competent jurisdiction.

~~[(b) The commissioner may deny, suspend, revoke, or refuse to renew a license:~~

~~[(1) by order or notice given to the licensee not less than 15 days in advance of the effective date of the order or notice, subject to the right of the licensee to demand in writing, a hearing, before the board after receipt of notice and before the effective date of the revocation. Pending such hearing, the license may be suspended.~~

~~[(2) by an order after a hearing which is effective 10 days after the order is issued subject to appeal to a district court in Travis County.]~~

SECTION 12.35. Section 16(a), Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code), is amended to read as follows:

(a) Except as may be provided by a staggered renewal system adopted under *Article 21.01-2, Insurance Code* [~~Subsection (e) of this section~~], an adjuster's license expires two years after the date of issuance.

SECTION 12.36. Section 17(a), Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code), is amended to read as follows:

(a) The *department* [~~commissioner~~] may *discipline an adjuster or deny an application under Section 5, Article 21.01-2, Insurance Code,* [~~deny, suspend, revoke, or refuse to renew any adjuster's license~~] for any of the following causes:

(1) for any cause for which issuance of the license could have been refused had it been existent and been known to the board;

(2) if the applicant or licensee willfully violates or knowingly participates in the violation of any provision of this Act;

(3) if the applicant or licensee has obtained or attempted to obtain any such license through willful misrepresentation or fraud, or has failed to pass any examination required under this Act;

(4) if the applicant or licensee has misappropriated, or converted to the applicant's or licensee's own use, or has illegally withheld moneys required to be held in a fiduciary capacity;

(5) if the applicant or licensee has, with intent to deceive, materially misrepresented the terms or effect of an insurance contract, or has engaged in any fraudulent transactions; or

(6) if the applicant or licensee is convicted, by final judgment, of a felony; ~~or~~

~~[(7) if in the conduct of the licensee's affairs under the license, the licensee has proven to be, and is so deemed by the commissioner, incompetent, untrustworthy, or a source of injury to the public].~~

SECTION 12.37. Section 5(a), Article 21.07-6, Insurance Code, is amended to read as follows:

(a) The commissioner shall approve an application for a certificate of authority to conduct a business in this state as an administrator if the commissioner is satisfied that the application meets the following criteria:

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

(2) the ~~[competence, trustworthiness, experience,]~~ financial condition~~[, or integrity]~~ of an administrator applicant or those persons who would operate or control an administrator applicant are such that the granting of a certificate of authority would not be adverse to the public interest;

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

(4) the applicant has complied with this article and rules adopted by the board under this article; and

(5) the name under which the applicant will conduct business in this state is not so similar to that of another administrator or insurer that it is likely to mislead the public.

SECTION 12.38. Section 3(e), Article 21.07-7, Insurance Code, is amended to read as follows:

~~(e) The department [commissioner] may discipline a license holder or deny an application under Section 5, Article 21.01-2, of this code if it [deny a license application or suspend, revoke, or refuse to renew a license if, after notice and hearing as provided by this code, the commissioner] determines that the applicant for or holder of a license, or any person who would be authorized to act on behalf of the applicant or the license holder under Subsection (c) of this section has:~~

(1) wilfully violated or participated in the violation of this article or any of the insurance laws of this state;

(2) intentionally made a material misstatement in the license application;

(3) obtained or attempted to obtain the license by fraud or misrepresentation;

(4) misappropriated, converted to his own use, or illegally withheld money required to be held in a fiduciary capacity;

(5) materially misrepresented the terms or effect of any contract of insurance or reinsurance, or engaged in any fraudulent transaction; or

(6) been convicted of a felony or of any misdemeanor of which criminal fraud is an essential element; ~~or~~

~~[(7) shown himself to be, and is so determined to be by the commissioner, incompetent, untrustworthy, or not of good character and reputation].~~

SECTION 12.39. Section 2(b), Article 21.14, Insurance Code, is amended to read as follows:

(b) Nothing contained in this article shall be so construed as to affect or apply to orders, societies, or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations in the same or similar lines of business, and the ladies' societies, or ladies' auxiliary to such orders, societies or associations, or any secretary of a Labor Union or organization, or any secretary or agent of any fraternal benefit society, which does not operate at a profit, *except that a person who has had a license revoked under*

*Section 16 of this article may not solicit or otherwise transact business under Chapter 10 of this code.*

SECTION 12.40. Sections 3(a) and (c), Article 21.14, Insurance Code, are amended to read as follows:

(a) When any person, partnership or corporation shall desire to engage in business as a local recording agent for an insurance company, or insurance carrier, he or it shall make application for a license to the State Board of Insurance, in such form as the Board may require. Such application shall bear a signed endorsement by a general, state or special agent of a qualified insurance company, or insurance carrier that applicant or each member of the partnership or each stockholder of the corporation is a resident of *this state* [Texas, ~~trustworthy, of good character and good reputation, and is worthy of a license~~].

(c) The Board shall issue a license to a corporation if the Board finds:

(1) That the corporation is a Texas corporation organized or existing under the Texas Business Corporation Act or the Texas Professional Corporation Act having its principal place of business in the State of Texas and having as one of its purposes the authority to act as a local recording agent; and

(2) That every officer, director and shareholder of the corporation is individually licensed as a local recording agent under the provisions of this Insurance Code, except as may be otherwise permitted by this Section or Section 3a of this article, or that every officer and director of the corporation is individually licensed as a local recording agent under this Insurance Code, that the corporation is a wholly owned subsidiary of a parent corporation that is licensed as a local recording agent under this Insurance Code, and that every shareholder of the parent corporation is individually licensed as a local recording agent under this Insurance Code, and except as specifically provided by this article, that no shareholder of the corporation is a corporate entity; and

(3) That such corporation will have the ability to pay any sums up to \$25,000 which it might become legally obligated to pay on account of any claim made against it by any customer and caused by any negligent act, error or omission of the corporation or any person for whose acts the corporation is legally liable in the conduct of its business as a local recording agent. The term "customer" as used herein shall mean any person, firm or corporation to whom such corporation sells or attempts to sell a policy of insurance, or from whom such corporation accepts an application for insurance. Such ability shall be proven in one of the following ways:

(A) [(a)] An errors and omissions policy insuring such corporation against errors and omissions, in at least the sum of \$100,000[,] with no more than a \$10,000 deductible feature *or the sum of at least \$300,000 with no more than a \$25,000 deductible feature*, issued by an insurance company licensed to do business in the State of Texas or, if a policy cannot be obtained from a company licensed to do business in Texas, a policy issued by a company not licensed to do business in Texas, on filing an affidavit with the State Board of Insurance stating the inability to obtain coverage and receiving the Board's approval; or

(B) [(b)] A bond executed by such corporation as principal and a surety company authorized to do business in this state, as surety, in the principal sum of \$25,000, payable to the State Board of Insurance for the use and benefit of customers of such corporation, conditioned that such corporation shall pay any final judgment recovered against it by any customer; or

(C) [(c)] A deposit of cash or securities of the class authorized by Articles 2.08 and 2.10 of this Code, having a fair market value of \$25,000 with the State Treasurer. The State Treasurer is hereby authorized and directed to accept and receive such deposit and hold it exclusively for the protection of any customer of such corporation recovering a final judgment against such corporation. Such deposit may be withdrawn only upon filing with the Board evidence satisfactory to it that the corporation has withdrawn from business, and has no unsecured liabilities outstanding, or that such corporation has provided for the protection of its customers by furnishing an errors and omissions policy or a bond as hereinbefore provided. Securities so deposited may be exchanged from time to time for other qualified securities.

A binding commitment to issue such a policy or bond, or the tender of such securities, shall be sufficient in connection with any application for license.

Nothing contained herein shall be construed to permit any unlicensed employee or agent of any corporation to perform any act of a local recording agent without obtaining a local recording agent's license. The Board shall not require a corporation to take the examination provided in Section 6 of this Article 21.14.

If at any time, any corporation holding a local recording agent's license does not maintain the qualifications necessary to obtain a license, the license of such corporation to act as a local recording agent shall be cancelled or denied in accordance with the provisions of Sections 16, 17 and 18 of this Article 21.14; provided, however, that should any person who is not a licensed local recording agent acquire shares in such a corporation by devise or descent, they shall have a period of 90 days from date of acquisition within which to obtain a license as a local recording agent or to dispose of the shares to a licensed local recording agent except as may be permitted by Section 3a of this article.

Should such an unlicensed person, except as may be permitted by Section 3a of this article, acquire shares in such a corporation and not dispose of them within said period of 90 days to a licensed local recording agent, then they must be purchased by the corporation for their book value, that is, the value of said shares of stock as reflected by the regular books and records of said corporation, as of the date of the acquisition of said shares by said unlicensed person. Should the corporation fail or refuse to so purchase such shares, its license shall be cancelled.

Any such corporation shall have the power to redeem the shares of any shareholder, or the shares of a deceased shareholder, upon such terms as may be agreed upon by the Board of Directors and such shareholder or his personal representative, or at such price and upon such terms as may be provided in the Articles of Incorporation, the Bylaws, or an existing contract entered into between the shareholders of the corporation.

Each corporation licensed as a local recording agent shall file, under oath, a list of the names and addresses of all of its officers, directors and shareholders with its application for renewal license.

Each corporation licensed as a local recording agent shall notify the State Board of Insurance upon any change in its officers, directors or shareholders not later than the 30th day after the date on which the change became effective.

The term "firm" as it applies to local recording agents in Sections 2, 12 and 16 of this Article 21.14 shall be construed to include corporations.

SECTION 12.41. Sections 5, 8, and 18, Article 21.14, Insurance Code, are amended to read as follows:

Sec. 5. ACTIVE AGENTS OR SOLICITORS ONLY TO BE LICENSED. No license shall be granted to any person, firm, partnership or corporation as a local recording agent or to a person as a solicitor, for the purpose of writing any form of insurance, unless it is found by the State Board of Insurance that such person, firm, partnership or corporation, is or intends to be, actively engaged in the soliciting or writing of insurance for the public generally; that each person or individual of a firm is a resident of Texas, ~~of good character and good reputation, worthy of a license,~~ and is to be actively engaged in good faith in the business of insurance, and that the application is not being made in order to evade the laws against rebating and discrimination either for the applicant or for some other person, firm, partnership or corporation. Nothing herein contained shall prohibit an applicant insuring property which the applicant owns or in which the applicant has an interest; but it is the intent of this Section to prohibit coercion of insurance and to preserve to each citizen the right to choose his own agent or insurance carrier, and to prohibit the licensing of an individual, firm, partnership or corporation to engage in the insurance business principally to handle business which the applicant controls only through ownership, mortgage or sale, family relationship or employment, which shall be taken to mean that an applicant who is making an original application for license shall show the State Board of Insurance that the applicant has a bona fide intention to engage in business in which, in any calendar year, at least twenty-five per cent (25%) of the total volume of premiums shall be derived from persons or organizations other than applicant and from property other than that on which the

applicant shall control the placing of insurance through ownership, mortgage, sale, family relationship or employment. Nothing herein contained shall be construed to authorize a partnership or corporation to receive a license as a solicitor.

Sec. 8. EXPIRATION OF LICENSE; RENEWAL. ~~[(a)]~~ Except as may be provided by a staggered renewal system adopted under *Article 21.01-2 of this code* ~~[Subsection (e) of this section]~~, every license issued to a local recording agent or a solicitor shall expire two years from the date of its issue, unless a completed application to qualify for the renewal of any such license shall be filed with the State Board of Insurance and a nonrefundable fee paid on or before such date, in which event the license sought to be renewed shall continue in full force and effect until renewed or renewal is denied.

~~[(b) An unexpired license may be renewed by filing a completed application and paying the required nonrefundable renewal fee to the State Board of Insurance not later than the expiration date of the license. If a license has been expired for not longer than 90 days, the licensee may renew the license by paying to the State Board of Insurance the required nonrefundable renewal fee and a nonrefundable fee that is one-half of the original license fee. If a license has been expired for more than 90 days, the license may not be renewed. A new license may be obtained by complying with the requirements and procedures for obtaining an original license. At least 30 days before the expiration of a license, the commissioner shall send written notice of the impending license expiration to the licensee at the licensee's last known address. This subsection may not be construed to prevent the board from denying or refusing to renew a license under applicable law or rules of the State Board of Insurance.~~

~~[(c) The State Board of Insurance by rule may adopt a system under which licenses expire on various dates during the year. For the period in which the license is valid for less than two years, the license fee shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On each subsequent renewal of the license, the total license renewal fee is payable.]~~

Sec. 18. APPEAL. If the Commissioner refuses an application for license as provided by this article, or suspends, revokes, or refuses to renew any license at a hearing as provided by this article, ~~[and the action is upheld on review to the Board as provided by this Code,]~~ and if the applicant or accused is dissatisfied with the action of the Commissioner ~~[and the Board]~~, the applicant or accused may appeal from the action in accordance with ~~[Section (f),]~~ Article 1.04[,] of this Code.

SECTION 12.42. Section 16, Article 21.14, Insurance Code, as amended by Chapters 242 and 790, Acts of the 72nd Legislature, Regular Session, 1991, is reenacted and amended to read as follows:

Sec. 16. SUSPENSION OR REVOCATION OF LICENSE. (a) The license of any local recording agent shall be suspended during a period in which the agent does not have outstanding a valid appointment to act as an agent for an insurance company. The Board shall end the suspension on receipt of evidence satisfactory to the board that the agent has a valid appointment. The Board shall cancel the license of a solicitor if the solicitor does not have outstanding a valid appointment to act as a solicitor for a local recording agent, and shall suspend the license during a period that the solicitor's local recording agent does not have outstanding a valid appointment to act as an agent under this Article.

(b) ~~The department may discipline [licensee of] any local recording agent or solicitor or deny an application under Section 5, Article 21.01-2, of this code [may be denied or a license duly issued may be suspended or revoked or the renewal thereof refused by the State Board of Insurance] if, after notice and hearing as hereafter provided,~~ it finds that the applicant, individually or through any officer, director, or shareholder, for or holder of such license:

- (1) Has wilfully violated any provision of the insurance laws of this state;
- (2) Has intentionally made a material misstatement in the application for such license;
- (3) Has obtained, or attempted to obtain, such license by fraud or misrepresentation;
- (4) Has misappropriated or converted to the applicant's or licensee's own use or illegally withheld money belonging to an insurer or an insured or beneficiary;

(5) ~~Has otherwise demonstrated lack of trustworthiness or competence to act as an insurance agent;~~

~~[(6)]~~ Has been guilty of fraudulent or dishonest acts;

(6) ~~[(7)]~~ Has materially misrepresented the terms and conditions of any insurance policies or contracts;

(7) ~~[(8)]~~ Has made or issued, or caused to be made or issued, any statement misrepresenting or making incomplete comparisons regarding the terms or conditions of any insurance contract legally issued by an insurance carrier for the purpose of inducing or attempting to induce the owner of such contract to forfeit or surrender such contract or allow it to expire for the purpose of replacing such contract with another;

~~(8) [(9) Is not of good character or reputation;~~

~~[(10)]~~ Is convicted of a felony;

(9) ~~[(11)]~~ Is guilty of rebating any insurance premium or discriminating as between insureds; ~~[or]~~

(10) ~~[(12)]~~ Is not engaged in the soliciting or writing of insurance for the public generally as required by Section 5 of this Article; or

(11) ~~[(12)]~~ Is afflicted with a disability as that term is defined by Subsection (a) of Article 21.15-6 of this code.

(c) ~~[(b)]~~ The State Board of Insurance may order that a local recording agent or solicitor who is afflicted with a disability be placed on disability probation under the terms and conditions specified under Article 21.15-6 of this code instead of taking disciplinary action under Subsection (b) ~~[(a)]~~ of this section.

(d) ~~[(e)]~~ A license applicant or licensee whose license application or license has been denied, refused, or revoked under this section may not apply for any license as an insurance agent before the first anniversary of the effective date of the denial, refusal, or revocation, or, if the applicant or licensee seeks judicial review of the denial, refusal, or revocation before the first anniversary of the date of the final court order or decree affirming that action. The Commissioner may deny an application timely filed if the applicant does not show good cause why the denial, refusal, or revocation of the previous license application or license should not be considered a bar to the issuance of a new license. This subsection does not apply to an applicant whose license application was denied for failure to pass a required written examination.

SECTION 12.43. Section 18, Article 21.14, Insurance Code, is amended to read as follows:

Sec. 18. APPEAL. If the Commissioner refuses an application for license as provided by this article, or suspends, revokes, or refuses to renew any license at a hearing as provided by this article, ~~[and the action is upheld on review to the Board as provided by this Code,]~~ and if the applicant or accused is dissatisfied with the action of the Commissioner and the Board, the applicant or accused may appeal from the action in accordance with ~~[Section (f),]~~ Article 1.04~~[,]~~ of this Code.

SECTION 12.44. Sections 5, 8, and 10, Article 21.14-1, Insurance Code, are amended to read as follows:

Sec. 5. QUALIFICATIONS FOR RISK MANAGER'S LICENSE. To qualify for a license under this article; a person must:

(1) be at least 18 years of age;

(2) maintain a place of business in this state;

(3) ~~[be a trustworthy and competent person;~~

~~[(4)]~~ meet the application requirements required by this article and rules of the board;

(4) ~~[(5)]~~ take and pass the licensing examination; and

(5) ~~[(6)]~~ pay the examination and licensing fees.

Sec. 8. LICENSE RENEWAL; RENEWAL FEE. *Except as provided by a staggered renewal system adopted under Article 21.01-2 of this code, a* ~~[(a)-A]~~ license issued under this article expires two years after the date of issuance. A licensee may renew an unexpired license by filing a completed application for renewal with the board and paying the

nonrefundable renewal fee, in an amount not to exceed \$50 as determined by the board, on or before the expiration date of the license. The commissioner shall issue a renewal certificate to the licensee at the time of the renewal if the commissioner determines the licensee continues to be eligible for the license.

~~[(b) If a person's license has been expired for not longer than 90 days, the licensee may renew the license by paying the nonrefundable renewal fee plus a nonrefundable late fee in an amount not to exceed one half of the original license fee as determined by the board.~~

~~[(e) If the license has been expired for more than 90 days, the person may not renew the license. The person may obtain a new license by submitting to reexamination, if the person was originally required to take the examination, and complying with the requirements and procedures for obtaining an original license.~~

~~[(d) The commissioner shall notify each licensee in writing at the licensee's last known address of the pending license expiration not later than the 30th day before the date on which the license expires.]~~

Sec. 10. DENIAL, SUSPENSION, OR REVOCATION OF A LICENSE. ~~[(a)]~~ The department may discipline a risk manager or deny an application under Section 5, Article 21.01-2, of this code [State Board of Insurance may deny an application or suspend, revoke, or refuse to renew a risk manager's license for any of the following reasons]:

(1) for any cause for which issuance of the license could have been refused had it been known to the board;

(2) if the licensee wilfully violates or knowingly participates in the violation of this article, any insurance law of this state, or rules of the board;

(3) if the licensee has obtained or attempted to obtain a license through wilful misrepresentation or fraud, or has failed to pass the examination required under this article; or

(4) if a licensee is convicted, by final judgment, of a felony[;—or

~~[(5) if in the conduct of his affairs under the license, the licensee has shown himself to be, and is so deemed by the commissioner, incompetent, untrustworthy, or a source of injury to the public.~~

~~[(b) A risk manager's license may not be suspended or revoked without notice and hearing by the board].~~

SECTION 12.45. Sections 2(a) and (c), Article 21.14-2, Insurance Code, are amended to read as follows:

(a) To obtain a license to act as an agent under this article, an applicant must submit a completed written application to the commissioner of insurance on a form prescribed by the State Board of Insurance and pay a \$50 nonrefundable fee. The application must bear an endorsement signed by an agent of an insurance company that meets the requirements of Section 1 of this article and must state that the applicant is a resident of this state[~~, is of good character and good reputation, and is worthy of a license~~].

~~(c) Except as provided by a staggered renewal system adopted under Article 21.01-2 of this code, a [A] license issued under this article expires two years after the date of its issuance unless a completed application to renew the license is filed with the commissioner and the \$50 nonrefundable renewal fee is paid on or before that date, in which case the license continues in full force and effect until renewed or the renewal is denied. [If a license has been expired for not longer than 90 days, the licensee may renew the license by filing with the State Board of Insurance the required nonrefundable renewal fee and a nonrefundable fee that is one half of the original license fee. If a license has been expired for more than 90 days, the license may not be renewed. A new license may be obtained by complying with the procedures for obtaining an original license. At least 30 days before the expiration of a license the commissioner of insurance shall send written notice of the impending license expiration to the licensee at the licensee's last known address. This section may not be construed to prevent the board from denying or refusing to renew a license under applicable law or the rules of the State Board of Insurance.]~~

SECTION 12.46. Section 3, Article 21.14-2, Insurance Code, is amended to read as follows:

Sec. 3. The license of an agent is automatically suspended or canceled if the agent does not have outstanding a valid appointment to act as an agent for an insurance company described in Section 1 of this article. The *department may discipline a licensee or deny an application under Section 5, Article 21.01-2, of this code if it [commissioner of insurance may deny a license application and may suspend or revoke a license or deny the renewal of a license if, after notice and hearing, the commissioner]* determines that the license applicant or licensee:

- (1) has intentionally or knowingly violated the insurance laws of this state;
- (2) has obtained or attempted to obtain a license by fraud or misrepresentation;
- (3) has misappropriated, converted, or illegally withheld money belonging to an insurer or an insured or beneficiary;
- (4) [~~has otherwise demonstrated lack of trustworthiness or competence to act as an insurance agent;~~
- [(5)] has been guilty of fraudulent or dishonest acts;
- (5) [(6)] has materially misrepresented the terms and conditions of an insurance policy or contract;
- (6) [(7)] has made or issued or caused to be made or issued any statement misrepresenting or making incomplete comparisons regarding the terms or conditions of an insurance contract legally issued by an insurance carrier for the purpose of inducing or attempting to induce the owner of the contract to forfeit or surrender the contract or allow the contract to expire or for the purpose of replacing the contract with another contract;
- (7) [(8)] has been convicted of a felony; or
- (8) [(9)] is guilty of rebating an insurance premium or discriminating between insureds.

SECTION 12.47. Article 21.15, Insurance Code, is amended to read as follows:

Art. 21.15. REVOCATION OF AGENT'S CERTIFICATE. Cause for the *discipline under Section 5, Article 21.01-2, of this code* [~~revocation of the certificate of authority~~] of an agent or solicitor for an insurance company may exist [~~for violation of any of the insurance laws, or~~] if [~~it shall appear to the Board upon due proof, after notice that~~] such agent or solicitor has knowingly deceived or defrauded a policyholder or a person having been solicited for insurance[,], or [~~that such agent or solicitor~~] has unreasonably failed and neglected to pay over to the company, or its agent entitled thereto, any premium or part thereof collected by him on any policy of insurance or application therefor. The Board shall publish such revocation in such manner as it deems proper for the protection of the public; and no person whose certificate of authority as agent or solicitor has been revoked shall be entitled to again receive a certificate of authority as such agent or solicitor for any insurance company in this State for a period of one year.

SECTION 12.48. Amend Subchapter E, Chapter 21, Insurance Code, by adding Article 21.35A to read as follows:

Art. 21.35A. PERMISSIBLE REIMBURSEMENT. (a) *In this article, "client" means an applicant for insurance coverage or an insured.*

(b) *A local recording agent may charge a client a fee to reimburse the agent for costs incurred by the agent in obtaining a motor vehicle record of a person, or a photograph of property, insured under, or to be insured under, an insurance policy. The fee may not exceed the actual costs incurred by the agent. The agent may obtain the record or photograph in connection with an application for insurance coverage by the client or the issuance of an insurance policy to the client or on the client's request. The agent must provide a copy of the motor vehicle record to the client.*

(c) *An agent may not charge a client a fee under this article unless the agent notifies the client of the agent's reimbursement requirement and obtains the client's written consent for each fee charged before the agent incurs the expense for the client.*

SECTION 12.49. Section (a), Article 21.35B, Insurance Code, is amended to read as follows:

(a) No payment may be solicited or collected by an insurer, its agent, or sponsoring organization in connection with an application for insurance or the issuance of a policy other



than premiums, taxes, finance charges, policy fees, agent fees, service fees, inspection fees, or membership dues in a sponsoring organization. *The commissioner by rule shall permit sponsoring organizations to solicit voluntary contributions with a membership renewal solicitation when the membership renewal solicitation is separate from an insurance billing.*

SECTION 12.50. Section (c), Article 23.23, Insurance Code, is amended to read as follows:

(c) Except as may be provided by a staggered renewal system adopted under *Section 2(f), Article 21.01–2* [~~section (h)~~] of this code [~~article~~], each license issued to agents of corporations complying with this chapter shall expire two years following the date of issue, unless prior thereto it is suspended or revoked by the Commissioner of Insurance or the authority of the agent to act for the corporation complying with this chapter is terminated.

SECTION 12.51. The following laws are repealed:

- (1) Section 4(e), Article 1.14–2, Insurance Code;
- (2) Sections 5, 6, and 7, Article 9.36, Insurance Code;
- (3) Section C, Article 9.37, Insurance Code;
- (4) Sections 2, 3, and 4, Article 9.42, Insurance Code;
- (5) Section 3, Article 9.44, Insurance Code;
- (6) Sections 6(d), (e), (f), and (g) and Section 8(c), Article 9.56, Insurance Code;
- (7) Sections 15(h), (i), (j), (k), and (l), Texas Health Maintenance Organization Act (Section 20A.15, Vernon's Texas Insurance Code);
- (8) Section 15A(j), Texas Health Maintenance Organization Act (Section 20A.15A, Vernon's Texas Insurance Code);
- (9) Sections 4(e) and (f), Article 21.07, Insurance Code;
- (10) Section 10(b), Article 21.07, Insurance Code;
- (11) Sections 3A and 15A, Article 21.07, Insurance Code;
- (12) Sections 5(e), 9(d) and (e), and 12(b), Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07–1, Vernon's Texas Insurance Code);
- (13) Section 5A, Managing General Agents' Licensing Act (Article 21.07–3, Vernon's Texas Insurance Code);
- (14) Sections 16(c), (d), and (e), Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07–4, Vernon's Texas Insurance Code);
- (15) Sections 3(j) and (k), Article 21.07–7, Insurance Code;
- (16) Article 21.13, Insurance Code;
- (17) Sections 4(e), 7a, and 17, Article 21.14, Insurance Code;
- (18) Sections 6(f) and (h), Article 21.14–1, Insurance Code; and
- (19) Sections (g), (h), (i), (j), (k), and (l), Article 23.23, Insurance Code.

SECTION 12.52. (a) The change in law made by this article to Section 4A, Article 21.07, Insurance Code, does not affect the validity of a license issued under that section on or before the effective date of this Act.

(b) A person who holds a license issued under Section 4A, Article 21.07, Insurance Code, on or before the effective date of this Act may renew that license in accordance with Article 21.07, Insurance Code, as amended by this Act. On renewal, the license shall be conformed to Section 4A, Article 21.07, Insurance Code, as amended by this Act, and a new license shall be issued in conformity with Section 4A(e), Article 21.07, Insurance Code, as amended by this Act.

SECTION 12.53. This article applies only to issuance or renewal of a license or discipline of a license holder on or after September 1, 1993. Issuance or renewal of a license or discipline of a license holder before September 1, 1993, is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for this purpose.

## ARTICLE 13. REINSURANCE ISSUES

SECTION 13.01. Article 3.10(a), Insurance Code, is amended to read as follows:

(a) Any insurer authorized to do the business of insurance in this state may reinsure in any solvent assuming insurer, any risk or part of a risk which both are authorized to assume; provided, however, no credit for reinsurance, either as an asset or a deduction of liability, may be taken by the ceding insurer except as provided in this article, and, provided further, no insurer operating under Section 2(a) of Article 3.02 shall reinsure any risk or part of a risk with any insurer which is not licensed to engage in the business of insurance in this state. This article applies to all insurers regulated by the State Board of Insurance, including any stock and mutual life, accident, and health insurers, fraternal benefit societies, *health maintenance organizations operating under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code)*, and nonprofit hospital, medical, or dental service corporations, including companies subject to Chapter 20 of this code. No such insurer shall have the power to reinsure its entire outstanding business to an assuming insurer unless the assuming insurer is licensed in this state and until the contract therefor shall be submitted to the Commissioner and approved by him as protecting fully the interests of all policy holders. This article does not apply to ceding insurers domiciled in another state that regulates credit for reinsurance under statutes, rules, or regulations substantially similar in substance or effect to this article. To qualify for this exception, the ceding insurer must provide the Commissioner on request with evidence of the similarity in the form of statutes, rules, or regulations, and an interpretation of the statutes, rules, or regulations and the standards used by the state of domicile. This article is supplementary to and cumulative of other provisions of this code and other insurance laws of this state relating to reinsurance to the extent those provisions are not in conflict with this article.

SECTION 13.02. Section 2(c), Article 4.11, Insurance Code, is amended to read as follows:

(c) "Gross premiums" are the total gross amount of all premiums, membership fees, assessments, dues, and any other considerations for such insurance received during the taxable year on each and every kind of such insurance policy or contract covering persons located in the State of Texas and arising from the types of insurance specified in Section 1 of this article, but deducting returned premiums, any dividends applied to purchase paid-up additions to insurance or to shorten the endowment or premium payment period, and excluding those premiums received from insurance carriers for reinsurance and there shall be no deduction for premiums paid for reinsurance. *For purposes of this article, a stop-loss or excess loss insurance policy issued to a health maintenance organization, as defined under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code), shall be considered reinsurance.* Such gross premiums shall not include premiums received from the Treasury of the State of Texas or from the Treasury of the United States for insurance contracted for by the state or federal government for the purpose of providing welfare benefits to designated welfare recipients or for insurance contracted for by the state or federal government in accordance with or in furtherance of the provisions of Title 2, Human Resources Code, or the Federal Social Security Act. The gross premiums receipts so reported shall not include the amount of premiums paid on group health, accident, and life policies in which the group covered by the policy consists of a single nonprofit trust established to provide coverage primarily for municipal or county employees of this state.

SECTION 13.03. Article 5.75-1(n), Insurance Code, is amended to read as follows:

(n) An insurer shall account for reinsurance agreements and shall record those agreements in the insurer's financial statements in a manner that accurately reflects the effect of the reinsurance agreements on the financial condition of the insurer. The State Board of Insurance may adopt reasonable rules relating to the accounting and financial statement requirements of this subsection and the treatment of reinsurance agreements between insurers, including asset debits or credits, reinsurance debits or credits, and reserve debits or credits relating to the transfer of risks or liabilities by reinsurance agreements and to any contingencies arising from reinsurance agreements. *Reinsurance agreements may contain a provision allowing the offset of mutual debts and credits between the ceding insurer and the assuming insurer whether arising out of one or more reinsurance agreements.*

SECTION 13.04. Section 6(a), Texas Health Maintenance Organization Act (Article 20A.06, Vernon's Texas Insurance Code), is amended to read as follows:

(a) The powers of a health maintenance organization include, but are not limited to, the following:

(1) the purchase, lease, construction, renovation, operation, or maintenance of hospitals, medical facilities, or both, and ancillary equipment and such property as may reasonably be required for its principal office or for such other purposes as may be necessary in the transaction of the business of the health maintenance organization;

(2) the making of loans to a medical group, under an independent contract with it in furtherance of its program, or corporations under its control, for the purpose of acquiring or constructing medical facilities and hospitals, or in the furtherance of a program providing health care services to enrollees;

(3) the furnishing of or arranging for medical care services only through physicians or groups of physicians who have independent contracts with the health maintenance organizations; the furnishing of or arranging for the delivery of health care services only through providers or groups of providers who are under contract with or employed by the health maintenance organization or through physicians or providers who have contracted for health care services with those physicians or providers, except for the furnishing of or authorization for emergency services, services by referral, and services to be provided outside of the service area as approved by the commissioner; provided, however, that a health maintenance organization is not authorized to employ or contract with physicians or providers in any manner which is prohibited by any licensing law of this state under which such physicians or providers are licensed;

(4) the contracting with any person for the performance on its behalf of certain functions such as marketing, enrollment, and administration;

(5) the contracting with an insurance company licensed in this state, or with a group hospital service corporation authorized to do business in the state, for the provision of insurance, *reinsurance*, indemnity, or reimbursement against the cost of health care and medical care services provided by the health maintenance organization;

(6) the offering of:

(A) indemnity benefits covering out-of-area emergency services; and

(B) indemnity benefits in addition to those relating to out-of-area and emergency services, provided through insurers or group hospital service corporations;

(7) receiving and accepting from government or private agencies payments covering all or part of the cost of the services provided or arranged for by the organization;

(8) all powers given to corporations (including professional corporations and associations), partnerships, and associations pursuant to their organizational documents which are not in conflict with provisions of this Act, or other applicable law.

SECTION 13.05. Article 5.75-1(b), Insurance Code, is amended to read as follows:

(b) Credit for reinsurance shall be allowed a ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when:

(1) the reinsurance is ceded to an assuming insurer which is licensed to transact insurance or reinsurance in this state; or

(2) the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this state. An accredited reinsurer is one which: submits to this state's jurisdiction; submits to this state's authority to examine its books and records; is domiciled and licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least one state; files annually a copy of its annual statement, filed with the insurance department of its state of domicile, with the State Board of Insurance; and maintains a surplus as regards policyholders in an amount not less than \$20 million; or

(3) the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution, as defined in Subsection (e)(2), for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns, and successors in interest. The trustee assuming insurer shall report annually not later than March 1 to the State Board of Insurance information substantially the same as that

required to be reported on the NAIC Annual Statement form by licensed insurers to enable the State Board of Insurance to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust shall consist of a trustee account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, include a trustee surplus of not less than \$20 million. In the case of a group of insurers, which group includes unincorporated individual insurers [~~individual unincorporated underwriters~~], the trust shall consist of a trustee account representing the group's liabilities attributable to business written in the United States and, in addition, include a trustee surplus of not less than \$100 million; and the group shall make available to the State Board of Insurance an annual certification by the group's domiciliary regulator and its independent public accountants of the solvency of each underwriter. In the case of a group of incorporated insurers under common administration which has continuously transacted an insurance business for at least three years, which is under the supervision of the Department of Trade and Industry of the United Kingdom, and which has aggregate policyholder's surplus of \$10 billion, the trust shall consist of a trustee account representing the group's several liabilities attributable to business written in the United States pursuant to reinsurance contracts issued in the name of the group and, in addition, include a trustee surplus of not less than \$100 million which shall be held jointly for the benefit of United States insurers ceding business to any member of the group, and each member of the group shall make available to the State Board of Insurance an annual certification by the member's domiciliary regulator and its independent public accountants of the solvency of each member. Such trust shall be established in a form approved by the State Board of Insurance. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the State Board of Insurance. The trust described herein must remain in effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust. Not later than February 28 of each year the trustees of the trust shall report to the State Board of Insurance in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31; or

(4) the reinsurance is ceded to an assuming insurer not meeting the requirements of Subdivision (1), (2), or (3), but only with respect to the insurance of risks located in a jurisdiction where such reinsurance is required by applicable law or regulation of that jurisdiction to be ceded to an assuming insurer that does not meet the requirements of Subdivision (1), (2), or (3) of this subsection.

SECTION 13.06. Article 3.10(b), Insurance Code, is amended to read as follows:

(b) Credit for reinsurance shall be allowed a ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when:

(1) the reinsurance is ceded to an assuming insurer which is licensed to transact insurance or reinsurance in this state; or

(2) the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this state. An accredited reinsurer is one which: submits to this state's jurisdiction; submits to this state's authority to examine its books and records; is domiciled and licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least one state; files annually a copy of its annual statement, filed with the insurance department of its state of domicile, with the State Board of Insurance; and maintains a surplus as regards policy holders in an amount not less than \$20 million; or

(3) the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution, as defined in Subsection (e)(2), for the payment of the valid claims of its United States policy holders and ceding insurers, their assigns, and successors in interest. The trustee assuming insurer shall report annually not later than March 1 to the State Board of Insurance information substantially the same as that

required to be reported on the NAIC Annual Statement form by licensed insurers to enable the State Board of Insurance to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust shall consist of a trustee account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, include a trustee surplus of not less than \$20 million. In the case of a group of insurers, *which group includes unincorporated individual insurers* [~~individual unincorporated underwriters~~], the trust shall consist of a trustee account representing the group's liabilities attributable to business written in the United States and, in addition, include a trustee surplus of not less than \$100 million and the group shall make available to the State Board of Insurance an annual certification by the group's domiciliary regulator and its independent public accountants of the solvency of each underwriter. Such trust shall be established in a form approved by the State Board of Insurance. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policy holders and ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the State Board of Insurance. The trust described herein must remain in effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust. Not later than February 28 of each year the trustees of the trust shall report to the State Board of Insurance in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31; or

(4) the reinsurance is ceded to an assuming insurer not meeting the requirements of Subdivision (1), (2), or (3), but only with respect to the insurance of risks located in a jurisdiction where such reinsurance is required by applicable law or regulation of that jurisdiction to be ceded to an assuming insurer that does not meet the requirements of Subdivision (1), (2), or (3) of this subsection.

#### ARTICLE 14. MOTOR VEHICLE INSURANCE

SECTION 14.01. Section 1B, Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) As a condition of operating a motor vehicle in this state, the operator of the motor vehicle shall furnish, on request of a peace officer or a person involved in an accident with the operator:

(1) a liability insurance policy in at least the minimum amounts required by this Act, or a photocopy of that policy, that covers the vehicle;

(2) a standard proof of liability insurance form promulgated by the Texas Department of Insurance and issued by a liability insurer that:

(A) includes the name of the insurer;

(B) includes the insurance policy number;

(C) includes the policy period;

(D) includes the name and address of each insured;

(E) includes the policy limits or a statement that the coverage of the policy complies with at least the minimum amounts of liability insurance required by this Act; and

(F) includes the make and model of each covered vehicle;

(3) an insurance binder that confirms that the operator is in compliance with this Act;

(4) a certificate or copy of a certificate issued by the department that shows the vehicle is covered by self-insurance;

(5) a certificate issued by the state treasurer that shows that the owner of the vehicle has on deposit with the treasurer money or securities in at least the amount required by Section 25 of this Act;

(6) a certificate issued by the department that shows that the vehicle is a vehicle for which a bond is on file with the department as provided by Section 24 of this Act; or

(7) a copy of a certificate issued by the county judge of a county in which the vehicle is registered that shows that the owner of the vehicle has on deposit with the county judge cash or a cashier's check in at least the amount required by Section 1A(b)(6) of this Act.

(d) A standard proof of liability insurance form described in Subsection (A)(2) of this section, or a document that is an unauthorized version of the form, is a governmental record for purposes of Chapter 37, Penal Code. A standard proof of liability insurance form is unauthorized for purposes of this subsection if it is not issued by an insurer authorized to transact motor vehicle liability insurance in this state.

SECTION 14.02. Section 19, Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes), is amended by adding Subsection (c) to read as follows:

(c) A certificate described in Subsection (a) of this section, or a document that is an unauthorized version of the certificate, is a governmental record for purposes of Chapter 37, Penal Code. A certificate is unauthorized for purposes of this subsection if it is not issued by an insurer authorized to transact motor vehicle liability insurance in this state.

SECTION 14.03. Subchapter F, Chapter 21, Insurance Code, is amended by adding Article 21.81 to read as follows:

**Art. 21.81. TEXAS AUTOMOBILE INSURANCE PLAN ASSOCIATION**

**Sec. 1. DEFINITIONS.** In this article:

(1) "Association" means the Texas Automobile Insurance Plan Association established under this article.

(2) "Authorized insurer" means any insurer authorized by the Texas Department of Insurance to write motor vehicle liability coverage under the provisions of Chapter 5 of this code. The term does not include an insurer organized under Chapter 17 of this code.

(3) "Insurance" means an insurance policy that meets the requirements of the Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes).

(4) "Plan of operation" means the plan for operating the association to provide a means by which insurance may be assigned to an eligible person who is required by law to show proof of financial responsibility for the future.

**Sec. 2. CREATION OF THE ASSOCIATION.** (a) The Texas Automobile Insurance Plan Association is established. The association is a nonprofit corporate body composed of all authorized insurers. Each authorized insurer shall be a member of the association and shall remain a member of the association so long as the association is in existence as a condition of its authority to write motor vehicle liability insurance in this state.

(b) The association shall be administered by a governing committee composed of fifteen members selected as follows:

(1) eight members who represent the interests of insurers, elected by the members of the association according to a method determined by such members;

(2) five public members nominated by the Office of Public Insurance Counsel and selected by the commissioner; and

(3) two members who are licensed local recording agents, as defined by the plan of operation.

(c) To be eligible to serve on the governing committee as a representative of insurers, a person must be a full-time employee of an authorized insurer.

(d) A person may not serve on the governing committee as a public member if that person, an individual related to that person within the second degree of consanguinity or affinity, or an individual residing in the same household with that person is:

(1) required to be registered or licensed under this code or another insurance law of this state;

(2) employed by or acts as a consultant to a person required to be registered or licensed under this code or another insurance law of this state;

(3) the owner of, has a financial interest in, or participates in the management of an organization required to be registered or licensed under this code or another insurance law of this state;

(4) an officer, employer, or consultant of an association in the field of insurance; or

(5) required to register as a lobbyist under Chapter 305, Government Code.

**Sec. 3. AUTHORITY OF THE ASSOCIATION; PLAN OF OPERATION.** (a) *The governing committee has the responsibility for the administration of the association through the plan of operation. The association may collect funds from the member companies to provide for the operation of the association. Assessments must be made upon member companies in proportion to their writings of motor vehicle liability insurance in this state. If an assessment made upon a member insurer is not paid within a reasonable time, the association may bring an action to collect the assessment. In addition, the association may report the failure to pay to the commissioner, who may institute a disciplinary action under Article 1.10 of this code. The association has the powers granted to nonprofit corporations under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes).*

(b) *The plan of operation of the association must provide for the efficient, economical, fair, and nondiscriminatory administration of the association.*

(c) *Subject to the approval of the commissioner, the governing committee may make and amend the plan of operation.*

(d) *If the commissioner at any time believes that any part of the plan of operation is not in keeping with the purposes of the Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes), the commissioner shall notify the governing committee in writing so that the governing committee may take corrective action.*

(e) *Among other provisions, the plan of operation must contain incentive programs to encourage members to write insurance on a voluntary basis and to minimize the use of the association as a means to obtain insurance. The incentive programs are effective on approval of the commissioner. One of these programs shall target underserved geographic areas which shall be determined and designated by the commissioner by rule. In determining which areas will be designated as underserved, the commissioner shall consider the availability of insurance, the number of uninsured drivers, the number of drivers insured through the association, and any other relevant factor.*

(f) *The plan of operation must include a voluntary, competitive limited assignment distribution plan that allows members to contract directly with a servicing carrier to accept assignments to that carrier by the association. A servicing carrier must be an insurance company licensed to write automobile insurance in this state and is qualified if it has written automobile liability insurance in Texas for at least five years or is currently engaged as a servicing carrier for assigned risk automobile business in at least one other state. After notice and hearing, the commissioner may prohibit an insurer from acting as a servicing carrier. The terms of the contract between the servicing carrier and the insurer, including the buy-out fee, shall be determined by negotiation between the parties. The governing committee may adopt reasonable rules for the conduct of business under the contract and may establish reasonable standards of eligibility for servicing carriers.*

**Sec. 4. DUTIES AND FUNCTIONS OF THE ASSOCIATION.** (a) *The association shall provide a means by which insurance may be assigned to an authorized insurance company for a person required by the Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes) to show proof of financial responsibility for the future.*

(b) *An applicant is not eligible for insurance through the association unless the applicant and the servicing agent certify as part of the application to the association that the applicant has been rejected for insurance by at least two insurers licensed to do business in this state and actually writing automobile insurance in this state, including insurers that are not rate regulated.*

(c) *A person who obtains, from any source, excess private passenger auto liability insurance coverage over the minimum auto liability coverage required by law shall be ineligible for insurance through the association. The coverage for the excess and basic limits policies is not affected by a violation of this section unless the insurer shows that the*

*insured had actual knowledge that they were ineligible for coverage through the association. An agent may not knowingly write excess private passenger auto liability insurance coverage if the minimum auto liability coverage required by law is provided through the association. If an agent violates this section, the agent, after notice and hearing, is subject to the penalties provided by Section 7, Article 1.10, of this code.*

**Sec. 5. RATES FOR INSURANCE.** (a) *At least annually, the commissioner shall conduct a hearing for the purpose of determining appropriate rates to be charged for insurance provided through the association. The association may appear as a matter of right, shall be admitted as a party to present testimony at the hearing, and may file information for consideration by the commissioner. The commissioner shall determine and prescribe rates that are just, reasonable, adequate, not excessive, not confiscatory, and not unfairly discriminatory for the risks to which they apply. Rates shall be set in an amount sufficient to carry all claims to maturity and to meet the expenses incurred in the writing and servicing of the business. In making a determination, the commissioner shall consider the reports of aggregated premiums earned and losses and expenses incurred in the writing of motor vehicle insurance through the plan collected under the statistical plan provided for by Subsection (b) of this section.*

(b) *The commissioner shall promulgate reasonable rules and statistical plans to be used by each insurer in the recording and reporting of its premium, loss, and expense experience which must be reported separately for business assigned to it and other data required by the commissioner.*

**Sec. 6. IMMUNITY FROM LIABILITY.** (a) *The association, a member of the governing committee, and any employee of the association is not personally liable for any act performed in good faith within the scope of the person's authority as determined under this article or the plan of operation or for damages occasioned by his or her official acts or omissions except for an act or omission that is corrupt or malicious. The association shall provide counsel to defend any action brought against a member of the governing committee or an employee by reason of the person's official act or omission whether or not at the time of the institution of the action the defendant has terminated service with the association.*

(b) *This section is cumulative with and does not affect or modify any common law or statutory privilege or immunity.*

**SECTION 14.04.** Article 5.06, Insurance Code, is amended by adding Subsections (9) and (10) to read as follows:

(9) *An insurance policy or other document evidencing proof of purchase of a personal automobile insurance policy written for a term of less than 30 days may not be used to obtain an original or renewal driver's license, an automobile registration or license plates, or a motor vehicle inspection certificate and must contain a statement as follows:*

**"TEXAS LAW PROHIBITS USE OF THIS DOCUMENT TO OBTAIN A MOTOR VEHICLE INSPECTION CERTIFICATE, AN ORIGINAL OR RENEWAL DRIVER'S LICENSE, OR AN AUTOMOBILE REGISTRATION OR LICENSE PLATES."**

(10) *Before accepting any premium or fee for a personal automobile insurance policy or binder for a term of less than 30 days, an agent or insurer must make the following written disclosure to the applicant or insured:*

**"TEXAS LAW PROHIBITS USE OF THIS POLICY OR BINDER TO OBTAIN A MOTOR VEHICLE INSPECTION CERTIFICATE, AN ORIGINAL OR RENEWAL DRIVER'S LICENSE, OR AN AUTOMOBILE REGISTRATION OR LICENSE PLATES."**

**SECTION 14.05.** Section 6(c), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) *An application for an original or renewal driver's license must be accompanied by evidence of financial responsibility or a statement that the applicant does not own a motor vehicle for which maintenance of financial responsibility is required under the Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes). Evidence of financial responsibility presented under this subsection must be in at least the minimum amounts required by Subdivision 10, Section 1, Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes), must cover each motor vehicle that the applicant owns and for which the applicant is required to maintain financial responsibility, and*



may be shown in the manner specified under Section 1B(a)(4) of that Act. *A personal automobile insurance policy used as evidence of financial responsibility under this subsection must be written for a term of 30 days or more as required by Article 5.06, Insurance Code.* A statement that the applicant does not own an applicable motor vehicle must be sworn to and signed by the applicant.

SECTION 14.06. Subsection (a), Section 2a, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-2a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The owner of a motor vehicle covered by Section 1A, Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes), shall submit with the application for registration under Section 3 of this Act evidence of financial responsibility that is ~~currently~~ valid. *A personal automobile insurance policy used as evidence of financial responsibility under this subsection must be written for a term of 30 days or more as required by Article 5.06, Insurance Code.*

SECTION 14.07. Section 140(a), Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Every motor vehicle, trailer, semitrailer, pole trailer, or mobile home, registered in this state and operated on the highways of this state, shall have the tires, brake system (including power brake unit), lighting equipment, horns and warning devices, mirrors, windshield wipers, front seat belts in vehicles where seat belt anchorages were part of the manufacturer's original equipment on the vehicle, steering system (including power steering), wheel assembly, safety guards or flaps if required by Section 139A of this Act, tax decal if required by Section 141(d) of this Act, sunscreening devices unless the vehicle is exempt from sunscreen device restrictions under Section 134C(k) or (l) of this Act, exhaust system, and exhaust emission system inspected at state-appointed inspection stations or by State Inspectors as hereinafter provided. Provisions relating to the inspection of trailers, semitrailers, pole trailers, or mobile homes shall not apply when the registered or gross weight of such vehicles and the load carried thereon is four thousand five hundred (4,500) pounds or less. Only the mechanism and equipment designated in this section may be inspected, and the owner shall not be required to have any other equipment or part of his motor vehicle inspected as a prerequisite for the issuance of an inspection certificate. At the time of inspection the owner or operator shall furnish evidence of financial responsibility. The evidence of financial responsibility may be shown in the manner specified under Section 1B(a)(4), Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes). *A personal automobile insurance policy used as evidence of financial responsibility under this subsection must be written for a term of 30 days or more as required by Article 5.06, Insurance Code.* An inspection certificate may not be issued for a vehicle for which the owner or operator fails to furnish the required evidence of financial responsibility. An inspection facility or station is not liable to any person, including a third party, for issuing an inspection certificate in reliance on evidence of financial responsibility submitted to the facility or station. If the inspection facility or station is the seller of a motor vehicle, the inspection facility or station may rely on an oral insurance binder.

SECTION 14.08. Section 35, Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes), is repealed.

SECTION 14.09. (a) Not later than December 31, 1993, the plan of operation for the Texas Automobile Insurance Plan Association established under Article 21.81, Insurance Code, as added by this Act, shall include the limited assignment distribution plan required by Section 3(f) of that article.

(b) The administrative agency created under Section 35, Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes), shall continue to operate in accordance with that section as it existed immediately before the effective date of this Act until a governing committee is selected and a plan of operation for the Texas Automobile Insurance Plan Association is adopted and approved under Article 21.81, Insurance Code, as added by this Act. On the effective date of the plan of operation, the administrative agency shall transfer all of its assets and obligations to the Texas Automobile Insurance Plan Association. On and after the effective date of the plan of operation, the administrative

agency established under Section 35, Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes), is abolished.

#### ARTICLE 15. WORKERS' COMPENSATION INSURANCE

SECTION 15.01. Section 4.06(d), Article 5.76-2, Insurance Code, is amended to read as follows:

(d) A policyholder in the facility who is insured under the rejected risk fund shall obtain a safety consultation if the employer:

- (1) has a *Texas* ~~[an]~~ experience modifier greater than 1.25;
- (2) has a national experience modifier greater than 1.25 and estimated premium allocable to Texas of \$2,500 or more;
- (3) ~~(2)~~ does not have an experience modifier but has had a loss ratio greater than 0.70 in at least two of the three most recent policy years for which information is available; or
- (4) ~~(3)~~ has not been in business three years and meets criteria established by the commission, which may include the number and classification of employees, the policyholder's industry, and previous workers' compensation experience in this state or another jurisdiction.

SECTION 15.02. Section 10(c), Article 5.76-3, Insurance Code, is amended to read as follows:

(c) A policyholder in the fund who is insured under Article 5.76-4 of this code shall obtain a safety consultation if the policyholder:

- (1) has a *Texas* ~~[an]~~ experience modifier greater than 1.25; ~~[or]~~
- (2) has a national experience modifier greater than 1.25 and estimated premium allocable to Texas of \$2,500 or more; or
- (3) does not have an experience modifier but has had a loss ratio greater than 0.70 in at least two of the three most recent policy years for which information is available.

SECTION 15.03. Article 5.76-4(d), Insurance Code, is amended to read as follows:

(d) The fund shall decline to insure any risk if insuring that risk would cause the fund to exceed the premium-to-surplus ratios established by Article 5.76-3 of this code *or if the risk is not in good faith entitled to insurance through the fund. For purposes of this subsection only, "good faith" means honesty in fact in any conduct or transaction.*

#### ARTICLE 16. TITLE INSURANCE

SECTION 16.01. Articles 9.02(a) and (i), Insurance Code, are amended to read as follows:

(a) "Title Insurance" means insuring, guaranteeing or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens, encumbrances upon, or defects in the title to said property, and the invalidity *or impairment* of liens thereon, or doing any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Act.

(i) "Abstract plant" as used herein shall mean a geographical abstract plant such as is defined by the Board ~~[from time to time]~~ and the Board, in defining an abstract plant, shall require a geographically arranged plant, currently kept to date, that is found by the Board to be adequate for use in insuring titles, so as to provide for the safety and protection of the policyholders.

SECTION 16.02. Articles 9.03 and 9.07, Insurance Code, are amended to read as follows:

Art. 9.03. MAY INCORPORATE. (a) Private corporations may be created *and licensed under this chapter to* ~~[for the following named purposes:~~

- ~~(1) To~~ compile and own *or lease*, or to acquire and own *or lease*, records or abstracts of title to lands and interests in land[;] and to insure titles to lands or interests therein, both in Texas and other *jurisdictions* ~~[states of the United States]~~, and indemnify the owners of such lands, or the holders of interests in or liens on such lands, against loss or damage on account of encumbrances upon or defects in the title to such lands or interests therein; and in transactions in which title insurance is to be or is being issued, to supervise or approve

the signing of legal instruments (but not the preparation of such instruments) affecting land titles, disbursement of funds, prorations, delivery of legal instruments, closing of deals, issuance of commitments for title insurance specifying the requirements for title insurance and the defects in title necessary to be cured or corrected. ~~Nothing~~[-~~provided, however, that nothing~~] herein contained shall authorize such corporation to practice law, as that term is defined by the courts of this state, and in the event of any conflict herein, this clause shall be controlling.

(b) *A corporation described by Subsection (a) of this article* [~~Such corporations~~] may also exercise the following powers by including same in the charter when filed originally, or by amendment:

- (1) [(2)] To make and sell abstracts of title in any counties of Texas or other states;
- (2) [(3)] To accumulate and lend money, to purchase, sell or deal in notes, bonds, and securities, but without banking privileges;
- (3) [(4)] To act as trustee under any lawful trust committed to it by contract or will, appointment by any court having jurisdiction of the subject matter as trustee, receiver or guardian and as executor or guardian under the terms of any will and as any administrator of the estates of decedents under the appointment of the court.

Art. 9.07. POLICY FORMS AND PREMIUMS. (a) Corporations organized under this Chapter, as well as foreign corporations and those created under Subdivision 57, Article 1302, of the Revised Civil Statutes of 1925 *before the repeal of that statute*, or under Chapter 8 of this Code, or any other law insofar as the business of either may be the business of title insurance, shall operate in Texas under the control and supervision and under such uniform rules and regulations as to forms of policies and underwriting contracts and premiums therefor, and such underwriting standards and practices as may be [~~from time to time~~] prescribed by the Board; and no Texas or foreign corporation, whether incorporated under this Chapter or any other law of the State of Texas, shall be permitted to issue any title policy of any character, or underwriting contract, *to delete any policy exclusion or to reinsure any portion of the risk assumed by any title policy, on Texas real property other than under this Chapter and under such rules and regulations.* No policy of title insurance, *title insurance coverage*, reinsurance of any risk assumed under any policy of title insurance, or any guarantee of any character *made when insuring* [on] Texas titles shall be issued or valid unless written by a corporation complying with the provisions of and authorized or qualified under this Chapter, except as is provided in Article 9.19D. Before any premium rate provided for herein shall be fixed or charged, reasonable notice shall issue, and a hearing afforded to the title insurance companies and title insurance agents authorized or qualified under this Chapter and the public. Under no circumstances may any title insurance company or title insurance agent use any form which is required under the provisions of this Chapter 9 to be promulgated or approved until the same shall have been so promulgated or approved by the Board.

(b) The Board shall have the duty to fix and promulgate the premium rates to be charged by title insurance companies and title insurance agents created or operating under this Chapter for policies of title insurance or other promulgated or approved forms, and the premiums therefor shall be paid in the due and ordinary course of business. Premium rates for reinsurance as between title insurance companies qualified under this Chapter shall not be fixed or promulgated by the Board, and title insurance companies may set such premium rates for reinsurance as such title insurance companies shall agree upon. Under no circumstance shall any premium be charged for any policy of title insurance or other promulgated or approved forms different from those fixed and promulgated by the Board, except for premiums charged for reinsurance. The premium rates fixed by the Board shall be reasonable to the public and nonconfiscatory as to the title insurance companies and title insurance agents. For the purpose of collecting data on which to determine the proper rates to be fixed, the Board shall require all title insurance companies and all title insurance agents operating in Texas to submit such information in such form as it may deem proper, all information as to loss experience, expense of operation, and other material matter for the Board's consideration.

(c) The Board shall hold a *biennial* [~~an annual~~] hearing not earlier than October 1 or later than December 15 of each *even-numbered* calendar year, to consider adoption of premium

rates and such other matters and subjects relative to the regulation of the business of title insurance as may be requested by any title insurance company, any title insurance agent, any member of the public, or as the Board may determine necessary to consider. Proper notice of such public hearing and the items to be considered shall be made to the public and shall be sent direct to all title insurance companies and title insurance agents qualified or authorized to do business under this Chapter for at least four (4) weeks in advance of such hearing.

(d) Premium rates when once fixed shall not be changed until after a public hearing shall be had by the Board, after proper notice sent direct to all title insurance companies and title insurance agents qualified or authorized to do business under this Chapter, and after public notice in such manner as to give fair publicity thereto for at least four (4) weeks in advance. The Board must call such additional hearings to consider premium rate changes at the request of a title insurance company or the office of public insurance counsel.

(e) The Board may, on its own motion, following notice as required for the *biennial* [annual] hearing hold at any time a public hearing to consider adoption of premium rates and such other matters and subjects relative to the regulation of the business of title insurance as the Board shall determine necessary or proper.

(f) Any title insurance company, any title insurance agent, or other person or association of persons interested, feeling injured by any action of the Board or the Commissioner with regard to premium rates or other action taken by the Board or the Commissioner, shall have the right to appeal in accordance with Article 1.04 of this code [~~file a suit in the District Court of Travis County, within thirty (30) days after the Board has made such order, to review the action. Such cases shall be tried de novo in the District Court in accordance with the provisions of Article 21.80 of the Insurance Code and shall be governed by the same rules of evidence and procedure as other civil cases in said court; in which suit the court may enter a judgment setting aside the Board's order, or affirming, the action of the Board].~~

SECTION 16.03. Chapter 9, Insurance Code, is amended by adding Article 9.07B to read as follows:

*Art. 9.07B. ABSTRACT OF TITLE; COMMITMENT FOR TITLE INSURANCE DISTINGUISHED.* (a) *An abstract of title prepared from an abstract plant for a chain of title of real property described in the abstract of title is not title insurance, a commitment for title insurance, or any other title insurance form.*

(b) *The Board may not adopt regulations relating to abstracts of title.*

(c) *A "commitment for title insurance" means a title insurance form that offers to issue a title policy subject to stated exceptions, requirements, and terms. The term includes a mortgagee title policy binder on an interim construction loan. The commitment, binder, title policy, or other insurance form is not an abstract of title. The commitment or binder constitutes a statement of the terms and conditions on which the title insurance company is willing to issue its policy. The title insurance policy or other insurance form constitutes a statement of the terms and conditions of the indemnity under the title insurance policy or other form.*

SECTION 16.04. Article 9.09, Insurance Code, is amended to read as follows:

**Art. 9.09. PROHIBITING TRANSACTING OF OTHER KINDS OF INSURANCE BY TITLE INSURANCE COMPANIES OR THE TRANSACTING OF TITLE INSURANCE BY OTHER TYPES OF INSURANCE COMPANIES.** Corporations, domestic or foreign, operating under this Chapter shall not transact, underwrite or issue any kind of insurance other than title insurance on real property; nor shall title insurance be transacted, underwritten or issued by any company transacting any other kinds of insurance; ~~provided, however, that the above prohibitions shall not apply as to any corporation, domestic or foreign, which on October 1, 1967 was transacting, underwriting and issuing within the State of Texas title insurance and any other kind of insurance. Any corporation now organized and doing business under the provisions of Chapter 8 and actively writing title insurance shall be subject to all the provisions of this Chapter except Article 9.18 relating to investments].~~

SECTION 16.05. Chapter 9, Insurance Code, is amended by adding Article 9.09A to read as follows:

*Art. 9.09A. PROHIBITING UNMARKETABILITY OF TITLE INSURANCE. An insurance company may not insure against loss or damage by reason of unmarketability of title. The commissioner may not promulgate rules or forms providing for that coverage.*

SECTION 16.06. Article 9.17(a), Insurance Code, is amended to read as follows:

(a) All title insurance companies operating under the provisions of this Act shall at all times establish and maintain, in addition to other reserves, a reserve against (1) unpaid losses, and (2) loss expense for costs of defense of the insured and other costs expected to be paid to other parties in the defense, settlement, or processing of the claim under the terms of the title insurance policy, and shall calculate such reserves by making a careful estimate in each case of the loss and loss expense likely to be incurred, by reason of every claim presented, pursuant to notice from or on behalf of the insured, of a title defect in or lien or adverse claim against the title insured, that may result in a loss or cause expense to be incurred for the proper disposition of the claim. The sums of items so estimated for payment of loss and costs of defense of the insured and other costs expected to be paid to other parties in the defense, settlement, or processing under the terms of the title insurance policy shall be the total expenses of such title insurance company.

SECTION 16.07. Articles 9.18 and 9.21, Insurance Code, are amended to read as follows:

Art. 9.18. ADMISSIBLE INVESTMENTS FOR TITLE INSURANCE COMPANIES. Investments of all title insurance companies operating under the provisions of this Act shall be held in cash or may be invested in the following:

(a) Any corporation organized under this Act having the right to do a title insurance business may invest as much as 50 [fifty (50%)] percent of its capital stock in an abstract plant or plants, provided that the valuation to be placed upon such plant or plants shall be approved by the Board; provided, however, that if such corporation maintains with the Board the deposit of One Hundred Thousand Dollars (\$100,000) in securities as provided in Article 9.12 of this Act, such of its capital in excess of 50 [fifty (50%)] percent, as deemed necessary to its business by its board of directors may be invested in abstract plants; and provided further, that a corporation created or operating under the provisions of this Act may own or acquire more than one abstract plant in any one county but only one abstract plant in any one county is admissible as an investment.

(b) Those securities set forth in Article 3.39, Insurance Code, [~~as authorized investments for life insurance companies~~] and in authorized investments for title insurance companies under the laws of any other state in which the affected company may be authorized to do business from time to time.

(c) Real estate or any interest therein which may be:

(1) required for its convenient accommodation in the transaction of its business with reasonable regard to future needs;

(2) acquired in connection with a claim under a policy of title insurance;

(3) acquired in satisfaction or on account of loans, mortgages, liens, judgments or decrees, previously owing to it in the course of its business;

(4) acquired in part payment of the consideration of the sale of real property owned by it if the transaction shall result in a net reduction in the company's investment in real estate;

(5) reasonably necessary for the purpose of maintaining or enhancing the sale value of real property previously acquired or held by it under Subparagraphs (1), (2), (3) or (4) of this Section; provided, however, that no title insurance company shall hold any real estate acquired under Subparagraphs (2), (3) or (4) for more than ten (10) years without written approval of the Board.

(d) First mortgage notes secured by:

(1) abstract plants and connected personalty within or without the State of Texas;

(2) stock of title insurance agents within or without the State of Texas;

(3) construction contract or contracts for the purpose of building an abstract plant and connected personalty;

(4) any combination of two or more of items (1), (2), and (3).

In no event shall the amount of any first mortgage note exceed 80 [eighty (80%)] percent of the appraised value of the security for such note as set out above.

(e) *The shares of any federal home loan bank in the amount necessary to qualify for membership and any additional amounts approved by the Commissioner.*

(f) *Investments in foreign securities that are substantially of the same kinds, classes, and investment-grade as those eligible for investment under other provisions of this Article. Unless the investment is also authorized under Subsection (b) of this Article the aggregate amount of foreign investments made under this Section may not exceed:*

(1) *five percent of the insurer's admitted assets at the last year end;*

(2) *two percent of the insurer's admitted assets at the last year end invested in the securities of all entities domiciled in any one foreign country; and*

(3) *one-half of one percent of the insurer's admitted assets at the last year end invested in the securities of any one individual entity domiciled in a foreign country.*

Any investments which do not [now] qualify under this Article [~~the provisions of Subsections (a), (b), (c), or (d) above~~] and which were owned by the title insurance company on October 1, 1967, [~~are owned as of the effective date of this Act shall~~] continue to qualify.

If any otherwise valid investment which qualifies under the provisions of this Article shall exceed in amount any of the limitations on investment contained in this Article, it shall be inadmissible only to the extent that it exceeds such limitation.

#### Art. 9.21. AUTHORITY OF BOARD OF INSURANCE OF THE STATE OF TEXAS.

(a) If any company operating under the provisions of this Act shall engage in the characters of business described in Subdivisions (1) and (2) [~~and (3)~~] of Article 9.03 of this Act, in such manner as might bring it within the provision of any other regulatory statute now or hereafter to be in force within the State of Texas, all examination and regulation shall be exercised by the Board rather than any other state agency which may be named in such other laws, so long as such corporation engages in the title guaranty or insurance business.

(b) The Board is hereby vested with power and authority under this Act to promulgate and enforce rules and regulations prescribing underwriting standards and practices upon which title insurance contracts are to be issued, and is hereby further vested with the power and authority to define risks which may not be assumed under title insurance contracts, *including risks that may not be assumed because of the insolvency of the parties to the transaction.* In addition, the Board is hereby vested with power and authority to promulgate and enforce all other such rules and regulations which in the discretion of the Board are deemed necessary to accomplish the purposes of this Act.

SECTION 16.08. Article 9.49, Insurance Code, is amended to read as follows:

Art. 9.49. INSURED CLOSING. (a) Title insurance companies operating under the provisions of this chapter are hereby expressly authorized and empowered to issue upon request on real property transactions in this state at no charge whatever insured closing and settlement letters, in the form prescribed by the board, in connection with the closing and settlement of loans [~~made~~] by a title insurance agent or direct operation [~~agents~~] for any title insurance company operating under the provisions of this chapter. Only [~~After January 1, 1976, only~~] the form prescribed by the board shall be used [~~thereafter~~] in issuing such insured closing and settlement letters. The liability of the title insurance company *under a policy of title insurance that is issued* shall not be changed or altered by the failure of the title insurance company to issue such insured closing and settlement letters [~~as authorized by this Article 9.49~~].

(b) *When an owner policy of title insurance is to be issued in connection with a real property transaction involving real property located in this state, only the title insurance company issuing that owner policy is hereby expressly authorized and empowered, at or before closing, to issue, upon written request, to the buyer or seller of the real property in connection with such closing and settlement by a title insurance agent or direct operation an insured closing and settlement letter, provided that the sale price of the real property exceeds the guaranty amount specified in Article 9.48 of this Insurance Code. Only the form of letter and the manner of issuance prescribed by the board shall be used in issuing such buyer's or seller's insured closing and settlement letters. The liability of the title insurance*

company under any issued policy of title insurance shall not be changed or altered by the failure of the title insurance company to issue the authorized buyer's or seller's insured closing and settlement letters. The board may promulgate a charge, if any, to be made in the form and manner prescribed by the board for the issuance of each insured closing and settlement letter.

SECTION 16.09. This article applies only to a policy or contract of title insurance that is delivered, issued for delivery, or renewed on or after January 1, 1994. A policy or contract delivered, issued for delivery, or renewed before January 1, 1994, is governed by the law that existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

## ARTICLE 17. TEXAS CATASTROPHE PROPERTY INSURANCE POOL

SECTION 17.01. Section 3(d), Article 21.49, Insurance Code, is amended to read as follows:

(d) "Texas Windstorm and Hail Insurance" means deductible insurance against direct loss, and indirect losses resulting from a direct loss, to insurable property as a result of windstorm or hail, as such terms shall be defined and limited in policies and forms approved by the State Board of Insurance.

SECTION 17.02. Article 21.49, Insurance Code, is amended by adding Section 6B to read as follows:

Sec. 6B. ASSESSMENT FOR INSPECTIONS. (a) The board shall assess each insurer who provides property insurance in a first tier coastal county in accordance with this section.

(b) The total assessment under this section must be in the amount the board estimates is necessary to cover the cost of administration of the windstorm inspection program in the first tier coastal counties under Section 6A of this article in the state fiscal year in which the assessment is made, reduced by the total amount of fees the board estimates will be collected for that year under Section 6A(c) of this article.

(c) The assessment must be based on each insurer's proportionate share of the total extended coverage and other allied lines premium received by all insurers for property insurance in the first tier coastal counties in the calendar year preceding the year in which the assessment is made. The board shall adopt rules to implement the assessment of insurers under this section.

(d) For purposes of this section, "property insurance" means any commercial or residential policy promulgated or approved by the board that provides coverage for the perils of windstorm and hail, including a Texas Windstorm and Hail Insurance Policy.

SECTION 17.03. Sections 5(e), (h), and (l), Article 21.49, Insurance Code, are amended to read as follows:

(e) The Board may [shall] develop programs to improve the efficient operation of the Association, including a program designed to create incentives for insurers to write windstorm and hail insurance voluntarily to cover property located in a catastrophe area, especially property located on the barrier islands. [~~The Board shall implement the incentive program not later than April 1, 1992. The program shall be designed in a way that reduces the number of policies that are not written in the voluntary market in catastrophe areas by not less than 10 percent by January 1, 1993, not less than 25 percent by January 1, 1994, and not less than 40 percent by January 1, 1995, based on the number of risks underwritten by the Association on January 1, 1991. The Board shall report its results to the legislature on March 1 of each year beginning in 1993.~~]

(h) Members of the board of directors of the Association serve three-year staggered terms, with the terms of three members expiring on the third Tuesday of March of each year. A person may hold a seat on the board of directors for not more than three consecutive full terms, not to exceed nine years [~~If an insurer member has been elected and served two full terms, such insurer shall provide for a reasonable rotation of persons designated by it to serve on the board.~~].

(l) If an occurrence or series of occurrences within the defined catastrophe area results in insured losses *that result in tax credits under Section 19(l) of this article* [~~in excess of \$100 million~~] in a single calendar year, the Association shall immediately notify the Board of that fact. The Board on receiving notice shall immediately notify the Governor and appropriate committees of each house of the Legislature of the amount of insured losses *eligible for tax credits under Section 19(l) of this article* [~~in excess of \$100 million~~].

SECTION 17.04. Sections 8(h) and (i), Article 21.49, Insurance Code, are amended to read as follows:

(h) *Each extended coverage benchmark rate, flexibility band, and promulgated rate established by the Board in accordance with Chapter 5, Insurance Code, must be uniform throughout the first tier of coastal counties.*

*The rates for noncommercial windstorm and hail insurance written by the association before December 31, 1995, shall be 90 percent of the modified extended coverage rates. For purposes of this section, the modified extended coverage rate is the greater of the upper flexibility band for extended coverage established by the board under Article 5.101 of this code or 25 percent above the extended coverage benchmark rate established by the board under that article.*

*The rates for noncommercial windstorm and hail insurance written by the association after December 31, 1995, shall be 90 percent of* [~~Rates, including extended coverage rates covering risks or classes of risks written by the Association before December 31, 1995, may not exceed the benchmark rates promulgated by the Board under Subchapter M, Chapter 5, Insurance Code, for noncommercial lines of insurance. Rates for noncommercial lines of insurance written by the Association on or after December 31, 1995, may not exceed~~] *the manual rate for monoline extended coverage promulgated by the Board for noncommercial risks under Subchapter C, Chapter 5, Insurance Code. Notwithstanding Article 5.13-2, Insurance Code, the Board shall promulgate a manual rate for commercial risks and classes of risks written by the Association in accordance with Subchapter C, Chapter 5, Insurance Code. Article 5.13-2, Insurance Code, does not apply to the rates of insurance written by the Association. The rates for commercial windstorm and hail insurance written by the Association shall be 90 percent of the manual rates for extended coverage promulgated by the Board for commercial risks under Subchapter C, Chapter 5, Insurance Code.*

If valid flood or rising water insurance coverage exists and is maintained on any risk being insured in the pool the State Board of Insurance may provide for a rate and reduction in rate of premium as may be appropriate.

*The catastrophe element of extended coverage rates promulgated by the Board under this Act applicable to commercial risks written by the Association shall be uniform throughout the seacoast territory and shall be based on all monoline extended coverage loss experience of all regulated insurers authorized to do business in this state, including the Association, for property located in the seacoast territory, using the most recent 30 years' experience available. Surcharges collected in the past and used in the development of current manual rates may not be excluded from future rate development as long as those surcharges were collected during the experience period used by the Board.*

*The association shall either establish a reinsurance program or enter into a contract as provided in Subsection (i) of this section. The Texas Department of Insurance may approve any reinsurance program.* [~~The State Board of Insurance shall make provision by rule and regulation requiring catastrophe reserves as part of the premium received on risks or classes of risks located in a catastrophe area and shall approve a catastrophe reinsurance pool or program that is funded through the excess of premiums over losses in a calendar year and may approve a catastrophe reinsurance pool funded through assessments of members of the Association. The amount required to be reserved for catastrophes (as such catastrophes are defined by the Board) shall be that portion of the pure premium as is actuarially made attributable, as ascertained by the Board, to prospective catastrophic loss. The portion of the pure premium attributable to prospective catastrophic loss shall not be income and shall be unearned until the occurrence of an applicable catastrophe as defined and shall be held in trust by the pool or trustee of the pool until losses are paid therefrom under such reasonable rules and regulations as the State Board of Insurance shall prescribe or approve.]~~



(i) *The association may enter into a written agreement with the Texas Department of Insurance under which the association members relinquish their net equity pursuant to the written agreement on an annual basis by making payments to a fund known as the catastrophe reserve trust fund to be held by the Texas Department of Insurance outside the state treasury to protect policyholders of the association and to reduce the potential for payments by members of the association giving rise to tax credits in the event of loss or losses.*

*The catastrophe reserve trust fund shall be kept and maintained by the Texas Department of Insurance pursuant to the written agreement between the association, the Texas Department of Insurance, the state treasurer, and the comptroller. Legal title to money and investments in the fund is in the Texas Department of Insurance unless or until paid out as provided by the written agreement. The state treasurer, as custodian, shall administer the funds strictly and solely as provided by the agreement and the state may not take any action with respect to the fund other than as specified by this act and the agreement.*

*On the effective date of an agreement, all funds held on behalf of or paid to the association under one or more reinsurance plans or programs may be immediately paid to the catastrophe reserve trust fund. Thereafter, at the end of either each calendar year or policy year, the association may pay the net equity of a member, including all premium and other revenue of the association in excess of incurred losses and operating expenses to the catastrophe reserve trust fund or a reinsurance program approved by the Commissioner of Insurance.*

*The written agreement shall establish the procedure relating to the disbursement of funds from the catastrophe reserve trust fund to policyholders in the event of an occurrence or series of occurrences within the defined catastrophe area that results in insured losses and operating expenses of the association greater than \$100 million [The Board annually shall promulgate extended coverage rates based on sound actuarial principles. Rates for windstorm and hail insurance shall be 90 percent of the extended coverage rates. Extended coverage rates shall be uniform throughout the first tier coastal counties. The catastrophe element of extended coverage rates shall be uniform throughout the seacoast territory and shall be based on all monoline extended coverage loss experience of all regulated insurers authorized to do business in this state, including the Association, for property located in the seacoast territory, using the most recent 30 years' experience available. Surcharges collected in the past and used in the development of current manual rates may not be excluded from future rate development as long as those surcharges were collected during the experience period used by the Board].*

SECTION 17.05. Article 21.49, Insurance Code, is amended by adding Section 8B to read as follows:

*Sec. 8B. INDIRECT LOSSES; PERSONAL LINES. (a) Except as provided by Subsections (b) and (c) of this section, a policy of windstorm and hail insurance issued by the association for a dwelling, as that term is defined by the Texas Department of Insurance or its successor, must include coverage for wind-driven rain damage, regardless of whether an opening is made by the wind, loss of use, and consequential losses, according to forms approved by the commissioner and for a premium paid by the insured based on rates established by rule adopted by the commissioner. A policy of windstorm and hail insurance issued by the association for tenant contents of a dwelling or other residential building must include coverage for loss of use and consequential losses, according to forms approved by the board and for a premium paid by the insured based on rates established by rule adopted by the commissioner. The association shall provide coverage under this section as directed by rule of the commissioner.*

*(b) The association is not required to offer coverage for indirect losses as provided by Subsection (a) of this section unless that coverage was excluded from a companion policy in the voluntary market.*

*(c) The association is not required to provide coverage for (1) "loss of use" if such "loss of use" is loss of rents or loss of rental value; or (2) "additional living expenses" when the property insured is a secondary or a non-primary residence.*

SECTION 17.06. Sections 10, 12A, and 19, Article 21.49, Insurance Code, are amended to read as follows:

Sec. 10. IMMUNITY FROM LIABILITY. There shall be no liability on the part of and no cause of action of any nature shall arise against a *director of the association*, the Board or any of its staff, the Association or its agents or employees, or against any participating insurer or its agents or employees, for any inspections made under the plan of operation or any statements made in good faith by them in any reports or communications concerning risks submitted to the Association, or at any administrative hearings conducted in connection therewith under the provisions of this Act.

Sec. 12A. LEGAL COUNSEL. The association shall establish a plan in its plan of operation under which the association's legal representation before the State Board of Insurance, the Texas Department of Insurance, and the Texas legislature is without conflict of interest or the appearance of a conflict of interest as defined in the Texas Disciplinary Rules of Professional Conduct. The association shall also adopt separate and distinct procedures for legal counsel in the handling of disputes involving policyholder claims against the association [~~is a state agency for purposes of employing or authorizing legal representation and shall be represented by the attorney general in the manner provided by general law for representation of any other state agency by the attorney general~~].

Sec. 19. PAYMENT OF LOSSES [EXCEEDING \$100 MILLION IN YEAR]; PREMIUM TAX CREDIT. (a) *If, in any calendar year, an occurrence or series of occurrences within the defined catastrophe area results in insured losses and operating expenses of the association in excess of premium and other revenue of the association, any excess losses shall be paid as follows:*

(1) *\$100 million shall be assessed to the members of the association with the proportion of the loss allocable to each insurer determined in the same manner as its participation in the association has been determined for the year under Section 5(c) of this Act;*

(2) *any losses in excess of \$100 million shall be paid from either the catastrophe reserve trust fund established under Section 8(i) of this Act or any reinsurance program established by the association;*

(3) *for losses in excess of those paid under Subdivisions (1) and (2) of this subsection, an additional \$200 million shall be assessed to the members of the association with the proportion of the loss allocable to each insurer determined in the same manner as its participation in the association has been determined for the year under Section 5(c) of this Act;*

(4) *any losses in excess of those paid under Subdivisions (1), (2), and (3) of this subsection shall be assessed against members of the association, with the proportion of the total loss allocable to each insurer determined in the same manner as its participation in the association has been determined for the year under Section 5(c) of this Act.*

(b) ~~An insurer may credit any amount paid in accordance with Subsection (a)(4) of this section in a calendar year against its premium tax under Article 4.10 of this code [In the event any occurrence or series of occurrences within the defined catastrophe area results in insured losses of the association totaling in excess of \$100 million within a single calendar year, the proportion of the total loss allocable to each insurer shall be determined in the same manner as its participation in the association has been determined for the year under Subsection (c) of Section 5 of the Texas Catastrophe Insurance Pool Act, as amended, and any insurer which has paid its share of total losses exceeding \$100 million in a calendar year shall be entitled to credit the amount of that excess share against its premium tax under Article 7064, Revised Civil Statutes of Texas, 1925, as amended]. The tax credit herein authorized shall be allowed at a rate not to exceed 20 percent per year for five or more successive years following the year of payment of the claims. The balance of payments paid by the insurer and not claimed as such tax credit may be reflected in the books and records of the insurer as an admitted asset of the insurer for all purposes, including exhibition in annual statements pursuant to Article 6.12 of this code [Insurance Code].~~

SECTION 17.07. Section 8E, Article 21.49, Insurance Code, is repealed.

SECTION 17.08. (a) Except as provided by Subsection (c) of this section, this article takes effect September 1, 1993.

(b) The change in law made to Article 21.49, Insurance Code, by this article applies only to an insurance policy that is delivered, issued for delivery, or renewed on or after October 1,

1993. An insurance policy that is delivered, issued for delivery, or renewed before October 1, 1993, is governed by the law as it existed immediately before the effective date of this article, and that law is continued in effect for that purpose.

(c) Section 17.02 of this article takes effect immediately. The State Board of Insurance may not make the first assessment under Section 6B, Article 21.49, Insurance Code, as added by this article, for windstorm and hail inspections before August 31, 1993. The first assessment must be in the amount the board estimates is necessary to cover the cost of administration of the windstorm inspection program in the first tier coastal counties under Article 21.49, Insurance Code, in the period beginning September 1, 1993, and ending August 31, 1994, reduced by the total amount of fees the board estimates will be collected for that period under Section 6A(c), Article 21.49, Insurance Code.

**ARTICLE 18. ADMISSION OF INSURERS ORGANIZED UNDER THE LAWS OF ANOTHER STATE OR ORGANIZED UNDER THE LAWS OF A FOREIGN COUNTRY USING TEXAS AS A STATE OF ENTRY INTO THE UNITED STATES**

**SECTION 18.01.** Section 6, Article 3.01, Insurance Code, is amended to read as follows:

**Sec. 6.** The term "foreign company" means any life, accident or health insurance company organized under the laws of any other state or territory of the United States [~~or foreign country~~].

**SECTION 18.02.** Article 3.01, Insurance Code, is amended by adding Sections 7A and 13 to read as follows:

*Sec. 7A. The term "alien company" means any life, accident, or health insurance company organized under the laws of any foreign country.*

*Sec. 13. The "United States branch" means:*

*(a) the business unit through which business is transacted within the United States by an alien insurer;*

*(b) the assets and liabilities of the insurer within the United States pertaining to such business;*

*(c) the management powers pertaining to such business and to the assets and liabilities;*  
or

*(d) any combination of the foregoing.*

**SECTION 18.03.** Subchapter B, Chapter 3, Insurance Code, is amended to read as follows:

**SUBCHAPTER B. FOREIGN OR ALIEN COMPANIES**

**Art. 3.20. SCOPE.** *This subchapter applies to any life insurance company, or accident insurance company, or life and accident, or health and accident, or life, health and accident insurance company, incorporated under the laws of any other state, territory or country, desiring to transact the business of such insurance in this State.*

**Art. 3.20-1. STATEMENT TO BE FILED.** *(a) Any foreign or alien life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company, incorporated under the laws of any other state, territory or country, desiring to transact the business of such insurance in this State, shall furnish the Texas Department of Insurance [~~said Board of Insurance Commissioners~~] with a written or printed statement under oath of the president or vice president, or treasurer and secretary of such company which statement shall show:*

1. The name and locality of the company.
2. The amount of its capital stock.
3. The amount of its capital stock paid up.
4. The assets of the company, including: first, the amount of cash on hand and in the hands of other persons, naming such persons and their residence; second, real estate unincumbered, where situated and its value; third, the bonds owned by the company and how they are secured, with the rate of interest thereon; fourth, debts due the company

secured by mortgage, describing the property mortgaged and its market value; fifth, debts otherwise secured, stating how secured; sixth, debts for premiums; seventh, all other moneys and securities.

5. Amount of liabilities of the company, stating the name of the person or corporation to whom liable.
6. Losses adjusted and due.
7. Losses adjusted and not due.
8. Losses adjusted.
9. Losses in suspense and for what cause.
10. All other claims against the company, describing the same.

The *Department* [~~Board of Insurance Commissioners~~] may require any additional facts to be shown by such annual statement.

(b) Each *foreign* [~~such~~] company shall be required to file a similar statement not later than March 1 of each year.

(c) *Each alien company shall be required to file a financial statement as provided in Article 3.27-2 of this subchapter.*

Art. 3.21. ARTICLES OF INCORPORATION TO BE FILED. Any such foreign or alien insurance company shall accompany the statement required in the foregoing article with a certified copy of its acts or articles of incorporation, and all amendments thereto, and a copy of its by-laws, together with the name and residence of each of its officers and directors. The same shall be certified under the hand of the president or secretary of such company.

Art. 3.22. CAPITAL STOCK AND SURPLUS REQUIREMENTS. No [~~such~~] foreign or alien stock insurance company shall be licensed by the *Department* [~~Board of Insurance Commissioners~~] or shall transact any such business of insurance in this State unless such company is possessed of not less than the minimum capital and surplus required by this chapter of a similar domestic company in similar circumstances, including the same character of investments for its minimum capital and surplus. No such foreign or alien mutual insurance company shall be licensed by the *Department* [~~Board of Insurance Commissioners~~] or shall transact any such business of insurance in this State unless such company is possessed of not less than the minimum free surplus required by Chapter 11 of this Code of a similar domestic company in similar circumstances including the same character of investments for its minimum free surplus.

Art. 3.23. ALIEN [~~FOREIGN~~] COMPANIES TO DEPOSIT. (a) No alien [~~such foreign~~] insurance company [~~incorporated by or organized under the laws of any foreign government,~~] shall transact business in this State, unless it shall first deposit and keep deposited with the Treasurer of this State, for the benefit of the policyholders of such company, citizens or residents of the United States, bonds or securities of the United States or the State of Texas *in an [to the] amount at least equal to the minimum capital required to be maintained by a domestic stock insurer licensed to transact the same kind of insurance, or at least equal to one-half the minimum free surplus required to be maintained by a domestic mutual insurer licensed to transact the same kind of insurance [of One Hundred Thousand (\$100,000.00) Dollars].*

(b) *Upon approval of the commissioner in accordance with Article 3.27-1 of this subchapter, a licensed alien insurer may be permitted to deposit assets with a trustee or trustees for the security of its policyholders in the United States in lieu of making the deposit with the Treasurer of this State so long as such assets are composed of securities or bonds of the United States or this State and are maintained in accordance with provisions of Article 3.27-1 of this code.*

Art. 3.24. DEPOSIT LIABLE FOR JUDGMENT; DURATION. The deposit required by the preceding article shall be held liable to pay the judgments of policyholders of the insurer in the United States [~~in such company~~], and may be so decreed by the court adjudicating the same. *It shall be maintained so long as any liability of the insurer arising out of its insurance transactions in the United States remains outstanding.*

Art. 3.24-1. **CERTIFICATE OF AUTHORITY.** When a foreign or alien company has complied with the requirements of this Subchapter and all other requirements imposed on such company by law and has paid any deposit imposed by law, and the operational history of the company when reviewed in conjunction with its loss experience, the kinds and nature of risks insured, the financial condition of the company and its ownership, its proposed method of operation, its affiliations, its investments, any contracts leading to contingent liability or agreements in respect to guaranty and surety, other than insurance, and the ratio of total annual premium and net investment income to commission expenses, general insurance expenses, policy benefits paid and required policy reserve increases, indicates a condition such that the expanded operation of the company in this State or its operations outside this State will not create a condition which might be hazardous to its policyholders, creditors or the general public, the Commissioner shall file in the office the documents delivered to him and shall issue to the company a certificate of authority to transact in this State the kind or kinds of business specified therein. Such certificate shall continue in full force and effect upon the condition that the company shall continue to comply with the laws of this State.

Art. 3.25. **LAW DEEMED ACCEPTED.** Each life insurance company not organized under the laws of this State, hereafter granted a certificate of authority to transact business in this State, shall be deemed to have accepted such certificate and to transact such business hereunder subject to the conditions and requirements that, after it shall cease to transact new business in this State under a certificate of authority, and so long as it shall continue to collect renewal premiums from citizens of this State, it shall be subject to the payment of the same occupation tax in proportion to its gross premiums during any year, from citizens of this State, as is or may be imposed by law on such companies transacting new business within this State, under certificates of authority during such year. The rate of such tax to be so paid by any such company shall never exceed the rate imposed by law upon insurance companies transacting business in this State. Each such company shall make the same reports of its gross premium receipts for each such year and within the same period as is or may be required of such companies holding certificates of authority and shall at all times be subject to examination by the Board of Insurance Commissioners or some one selected by it for that purpose, in the same way and to the same extent as is or may be required of companies transacting new business under certificates of authority in this State, the expenses of such examination to be paid by the company examined. The respective duties of the Board in certifying to the amount of such taxes and of the State Treasurer and Attorney General in their collection shall be the same as are or may be prescribed respecting taxes due from companies authorized to transact new business within this State.

Art. 3.26. **WHEN ALIEN [FOREIGN] COMPANIES NEED NOT DEPOSIT.** If the deposit required by Article 3.23 of this code has been made in any State of the United States, under the laws of such State, in such manner as to secure equally all the policyholders of such Company who are citizens and residents of the United States, then no deposit shall be required in this State; but a certificate of such deposit under the hand and seal of the officer of such other State with whom the same has been made shall be filed with the *Department [Board of Insurance Commissioners]*.

Art. 3.27. **COMPANIES DESIRING TO LOAN MONEY.** Any life insurance company not desiring to engage in the business of writing life insurance in this State, but desiring to loan its funds in this State, may obtain a permit to do so from the Secretary of State by complying with the laws of this State relating to foreign corporations engaged in loaning money in this State, without being required to secure a certificate of authority to write life insurance in this State.

Art. 3.27-1. **TRUSTEED ASSETS OF AN ALIEN INSURER.** (a) *Assets which any authorized alien insurer is required or permitted by this subchapter to deposit with a trustee or trustees for the security of its policyholders in the United States shall be known as "trusteed assets". All trusteed assets shall be continuously kept within the United States, and the trusteed assets of an alien insurer entering the United States through this State shall be kept continuously in this State.*

(b) *The deed of trust and all amendments to the deed of trust of such insurer shall be authenticated in such form and manner as prescribed by the commissioner, and shall not be effective unless approved by the commissioner.*

(c) *The commissioner shall give approval to a deed of trust if the commissioner finds:*

(1) *the deed of trust or its amendments are sufficient in form and are in conformity with applicable law;*

(2) *the trustee or trustees are eligible as such; and*

(3) *the deed of trust is adequate to protect the interests of the beneficiaries of the trust.*

(d) *If after notice and hearing the commissioner finds that the requisites for approval of the deed of trust no longer exist, the commissioner may withdraw approval.*

(e) *The commissioner may from time to time approve modifications of, or variations in any deed of trust, which in the commissioner's judgment are in the best interests of the policyholders of the alien insurer within the United States.*

(f) *The deed of trust shall contain provisions which:*

(1) *vest legal title to trusteed assets in the trustee or trustees and successors lawfully appointed, in trust for the security of all policyholders of the alien insurer within the United States;*

(2) *provide for substitution of a new trustee or trustees in the event of vacancy by death, resignation, or other incapacity, subject to the approval of the commissioner; and*

(3) *require that the trustee or trustees shall continuously maintain a record at all times sufficient to identify the assets of the trust fund.*

(g) *The deed of trust may provide that income, earnings, dividends, or interest accumulations of the assets of the fund may be paid over to the United States manager of the alien insurer, upon request.*

(h) *The deed of trust shall provide that no withdrawal of assets, other than income as specified in Subsection (g) of this article, shall be made or permitted by the trustee or trustees without prior written approval of the commissioner, except:*

(1) *to make deposits required by law in any state for the security or benefit of all policyholders of the alien insurer in the United States;*

(2) *to substitute other assets permitted by law and at least equal in value to those withdrawn upon the specific written direction of the United States manager or an assistant United States manager when duly empowered and acting pursuant to either general or specific written authority previously given or delegated by the board of directors; or*

(3) *to transfer such assets to an official liquidator or rehabilitator pursuant to an order of a court of competent jurisdiction.*

(i) *Upon withdrawal of trusteed assets deposited in another state in which the insurer is authorized to do business, the deed of trust may require similar written approval of the insurance supervising official of that state in lieu of approval of the commissioner as provided in Subsection (h) of this article. In all such instances, the alien insurer shall notify the commissioner in writing of the nature and extent of the withdrawal.*

**Art. 3.27-2. TRUSTEED SURPLUS OF ALIEN INSURERS.** (a) *Every authorized alien insurer shall file with the Department a financial statement not later than March 1 of each year on a form prescribed by the commissioner showing at last year end the following:*

(1) *all its general deposits of assets within the United States deposited with officers of any state in trust for the exclusive benefit, security, and protection of its policyholders within the United States;*

(2) *all its special deposits of assets within the United States deposited with officers of any state in trust for the exclusive benefit, security, and protection of its policyholders within a particular state;*

(3) *all its trusteed assets within the United States held by a trustee or trustees for the exclusive benefit, security, and protection of all its policyholders within the United States;*

(4) *the amount of its policy loans to policyholders within the United States, not exceeding the amount of the legal reserve required on each such policy;*

(5) *all its reserves and other liabilities arising out of policies or obligations issued, assumed or incurred in the United States; and*

(6) such further information as determined necessary to implement provisions of this article.

(b) In determining the net amount of an alien insurer's liabilities in the United States, a deduction may be made for the following:

(1) reinsurance on losses with insurers qualifying for credit, less unpaid reinsurance premiums, with a schedule showing by company the amount deducted; and

(2) unearned premiums on agents' balances or uncollected premiums not more than 90 days past due. Any liability on an asset not considered in the statement may be applied against such asset.

(c) No credit shall be allowed in the statement for any special state deposit held for the exclusive benefit of policyholders of any particular state except as an offset against the liabilities of the alien insurer in that state.

(d) The accrued interest at the date of the statement on assets deposited with states and trustees shall be allowed in the statement where the interest is collected by the states or trustees.

(e) The aggregate value of the insurer's general state deposits and trustee assets less the aggregate net amount of all its liabilities and reserves in the United States as determined in accordance with this section shall be known as its "trusteed" surplus in the United States. Whenever it appears to the commissioner from any such statement or any report that an alien insurer's trustee surplus is reduced below the greater of minimum capital required of, or the minimum surplus required to be maintained by, a domestic insurer licensed to transact the same kinds of insurance, the commissioner shall determine the amount of the impairment and order the insurer, through its United States manager or attorney, to eliminate the impairment within such period as the commissioner designates, not more than 90 days from service of the order. The commissioner may also by order revoke or suspend the insurer's license or prohibit it from issuing new policies in the United States while the impairment exists. If at the expiration of the designated period has not satisfied the commissioner that the impairment has been eliminated, the commissioner may proceed against such insurer pursuant to the provisions of Article 21.28-A of this code as an insurer whose further transaction of the business of insurance in the United States will be hazardous to its policyholders in the United States.

(f) The trustee surplus statement shall be signed and verified by the United States manager, attorney-in-fact, or a duly empowered assistant United States manager of the alien insurer. The items of securities and other property held under trust deeds shall be certified to by the United States trustee or trustees. The commissioner may at any time and for any time period determined necessary require further statements of the same kind.

Art. 3.27-3. EXAMINATION OF ALIEN INSURERS. (a) The books, records, accounting, and verification pertaining to the trustee assets of any authorized alien insurer are subject to examination by the Department or its duly appointed representative at the United States branch office of such insurer, in the same manner and to the same extent that applies under Articles 1.15 and 1.16 of this code to domestic and foreign insurers licensed to transact the same kind of insurance.

(b) The books, records, and accounting for trustee assets shall be kept and maintained, in English, in the Texas branch office of any alien insurer entering the United States through this State.

SECTION 18.04. Article 21.43, Insurance Code, is amended to read as follows:

#### Art. 21.43. FOREIGN OR ALIEN INSURANCE CORPORATIONS

##### Sec. 1. DEFINITIONS. In this article:

(a) The term "foreign insurance corporation" means any insurance company other than one subject to provisions of Subchapter B, Chapter 3, of this code organized under the laws of any other state or territory of the United States.

(b) The term "alien insurance corporation" means an insurance company other than one subject to provisions of Subchapter B, Chapter 3, of this code organized under the laws of any foreign country. For the purposes of this article, the term also includes any

*nonincorporated insurer organized under the laws of any foreign country in a form recognized by the department.*

(c) The term "United States branch" means:

(1) *the business unit through which business is transacted within the United States by an alien insurer;*

(2) *the assets and liabilities of the insurer within the United States pertaining to such business;*

(3) *the management powers pertaining to such business and to the assets and liabilities; or*

(4) *any combination of the foregoing.*

**Sec. 2. SCOPE.** *This article applies to any insurance corporation other than one subject to Subchapter B, Chapter 3, of this code incorporated under the laws of any other state, territory, or country desiring to be licensed to transact the business of insurance in this State.*

**Sec. 3. CERTIFICATE OF AUTHORITY REQUIRED.** (a) *It shall be unlawful, except as provided in Articles 1.14-1 and 1.14-2 of this code, for any foreign insurance corporation or alien insurance corporation of the type provided for in any chapter of this code to engage in the business of insuring others against losses which may be insured against under the laws of this state without initially procuring a certificate of authority from the commissioner of insurance permitting it to engage in those business activities.*

(b) *This article does not prohibit a foreign insurer from reinsuring a domestic insurer or prohibit the location in Texas of a company that does not directly insure either persons domiciled or other risks located in this state.*

**Sec. 4. ANNUAL FINANCIAL STATEMENT TO BE FILED.** (a) *Any foreign or alien insurance corporation desiring to transact the business of insurance in this state shall furnish the Texas Department of Insurance with copies of its annual financial statements for the two most recent years, certified by the commissioner or other insurance supervising official of the state or country in which the insurer is organized and incorporated. The Department may require any additional facts to be shown by such annual statement.*

(b) *Each foreign insurance corporation shall be required to file a statement similar to that required in Subsection (a) not later than March 1 of each year.*

(c) *Each alien insurance corporation shall be required to file a financial statement as provided in Section 11 of this article.*

**Sec. 5. ARTICLES OF INCORPORATION TO BE FILED.** *Any foreign or alien insurance corporation shall accompany the statement required in Section 4 of this article with a certified copy of its acts or articles of incorporation, and all amendments thereto, and a copy of its by-laws, together with the name and residence of each of its officers and directors. These documents shall be certified under the hand of the president or secretary of such company.*

**Sec. 6. EXAMINATION REQUIRED.** *Before issuing a certificate of authority to a foreign or alien insurance corporation to do business in this state, the commissioner shall either make an examination of the insurer at the expense of such insurer at its principal office within the United States or accept a report of an examination made by the insurance department or other insurance supervisory official of any other state or of any government of a foreign country.*

**Sec. 7. ALIEN CORPORATIONS TO DEPOSIT.** (a) *No alien insurance corporation shall transact business in this State, unless it shall first deposit and keep deposited with the Treasurer of this State, for the benefit of the policyholders of such company, citizens, or residents of the United States, bonds or securities of the United States or the State of Texas in an amount at least equal to the minimum capital required to be maintained by a domestic stock insurer licensed to transact the same kind of insurance, or at least equal to one-half the minimum free surplus required to be maintained by a domestic mutual insurer licensed to transact the same kind of insurance.*



(b) Upon approval of the commissioner in accordance with Section 10 of this article, a licensed alien insurer may be permitted to deposit assets with a trustee or trustees for the security of its policyholders in the United States in lieu of making the deposit with the Treasurer of this State so long as such assets are composed of securities or bonds of the United States or this State and are maintained in accordance with provisions of Section 10 of this article.

(c) If the deposit required by Subsection (a) of this section has been made in any State of the United States, under the laws of such State, in such manner as to secure equally all the policyholders of such Company who are citizens and residents of the United States, then no deposit shall be required in this State; but a certificate of such deposit under the hand and seal of the officer of such other State with whom the same has been made shall be filed with the Department.

Sec. 8. **PURPOSE AND DURATION OF DEPOSIT.** The deposit required by Section 7 of this article shall be for the exclusive benefit, security, and protection of policyholders of the insurer in the United States. It shall be maintained so long as any liability of the insurer arising out of its insurance transactions in the United States remains outstanding.

Sec. 9. **TEXAS LAW DEEMED ACCEPTED.** The provisions of this code are conditions on which foreign or alien insurance corporations are permitted to do the business of insurance in this state, and any of the foreign or alien corporations engaged in issuing contracts or policies in this state are deemed to have agreed to fully comply with these provisions as a prerequisite to the right to engage in business in this state.

Sec. 10. **TRUSTEED ASSETS OF ALIEN INSURANCE CORPORATIONS.** (a) Assets which any authorized alien insurer is required or permitted by this article to deposit with a trustee or trustees for the security of its policyholders in the United States shall be known as "trusteed assets." All trusteed assets shall be continuously kept within the United States, and the trusteed assets of an alien insurer entering the United States through this State shall be kept continuously in this State.

(b) The deed of trust and all amendments to the deed of trust of such insurer shall be authenticated in such form and manner as prescribed by the commissioner and shall not be effective unless approved by the commissioner.

(c) The commissioner shall give approval to a deed of trust if the commissioner finds:

(1) the deed of trust or its amendments are sufficient in form and are in conformity with applicable law;

(2) the trustee or trustees are eligible as such; and

(3) the deed of trust is adequate to protect the interests of the beneficiaries of the trust.

(d) If after notice and hearing the commissioner finds that the requisites for approval of the deed of trust no longer exist, the commissioner may withdraw approval.

(e) The commissioner may from time to time approve modifications of, or variations in any deed of trust, which in the commissioner's judgment are in the best interests of the policyholders of the alien insurer corporation within the United States.

(f) The deed of trust shall contain provisions which:

(1) vest legal title to trusteed assets in the trustee or trustees and successors lawfully appointed, in trust for the security of all policyholders of the alien insurer within the United States;

(2) provide for substitution of a new trustee or trustees in the event of vacancy by death, resignation, or other incapacity, subject to the approval of the commissioner; and

(3) require that the trustee or trustees shall continuously maintain a record at all times sufficient to identify the assets of the trust fund.

(g) The deed of trust may provide that income, earnings, dividends, or interest accumulations of the assets of the fund may be paid over to the United States manager of the alien insurer, upon request.

(h) The deed of trust shall provide that no withdrawal of assets, other than income as specified in Subsection (g) of this section, shall be made or permitted by the trustee or trustees without prior written approval of the commissioner, except:

(1) to make deposits required by law in any state for the security or benefit of all policyholders of the alien insurer in the United States;

(2) to substitute other assets permitted by law and at least equal in value to those withdrawn, upon the specific written direction of the United States manager or an assistant United States manager when duly empowered and acting pursuant to either general or specific written authority previously given or delegated by the board of directors; or

(3) to transfer such assets to an official liquidator or rehabilitator pursuant to an order of a court of competent jurisdiction.

(i) Upon withdrawal of trustee assets deposited in another state in which the insurer is authorized to do business, the deed of trust may require similar written approval of the insurance supervising official of that state in lieu of approval of the commissioner as provided in Subsection (h) of this section. In all such instances, the alien insurer shall notify the commissioner in writing of the nature and extent of the withdrawal.

Sec. 11. TRUSTEED SURPLUS OF ALIEN INSURANCE CORPORATIONS. (a) Every authorized alien insurer shall file with the Department a financial statement not later than March 1 of each year on a form prescribed by the commissioner showing at last year end the following:

(1) all its general deposits of assets within the United States deposited with officers of any state in trust for the exclusive benefit, security, and protection of its policyholders within the United States;

(2) all its special deposits of assets within the United States deposited with officers of any state in trust for the exclusive benefit, security, and protection of its policyholders within a particular state;

(3) all its trustee assets within the United States held by a trustee or trustees for the exclusive benefit, security, and protection of all its policyholders within the United States;

(4) all its reserves and other liabilities arising out of policies or obligations issued, assumed, or incurred in the United States; and

(5) such further information as determined necessary to implement provisions of this section.

(b) In determining the net amount of an alien insurer's liabilities in the United States, a deduction may be made for the following:

(1) reinsurance on losses with insurers qualifying for credit, less unpaid reinsurance premiums, with a schedule showing by company the amount deducted; and

(2) unearned premiums on agents' balances or uncollected premiums not more than 90 days past due. Any liability on an asset not considered in the statement may be applied against such asset.

(c) No credit shall be allowed in the statement for any special state deposit held for the exclusive benefit of policyholders of any particular state except as an offset against the liabilities of the alien insurer in that state.

(d) The accrued interest at the date of the statement on assets deposited with states and trustees shall be allowed in the statement where the interest is collected by the states or trustees.

(e) The aggregate value of the insurer's general state deposits and trustee assets less the aggregate net amount of all its liabilities and reserves in the United States as determined in accordance with this section shall be known as its "trustee" surplus in the United States. Whenever it appears to the commissioner from any such statement or any report that an alien insurer's trustee surplus is reduced below the greater of minimum capital required of, or the minimum surplus required to be maintained by, a domestic insurer licensed to transact the same kinds of insurance, the commissioner shall determine the amount of the impairment and order the insurer, through its United States manager or attorney, to eliminate the impairment within such period as the commissioner designates, not more than 90 days from service of the order. The commissioner may also by order revoke or suspend the insurer's license or prohibit it from issuing new policies in the United States while the

impairment exists. If at the expiration of the designated period has not satisfied the commissioner that the impairment has been eliminated, the commissioner may proceed against such insurer pursuant to the provisions of Article 21.28-A of this code as an insurer whose further transaction of the business of insurance in the United States will be hazardous to its policyholders in the United States.

(f) The trustee surplus statement shall be signed and verified by the United States manager, attorney-in-fact, or a duly empowered assistant United States manager of the alien insurer. The items of securities and other property held under trust deeds shall be certified to by the United States trustee or trustees. The commissioner may at any time and for any time period determined necessary require further statements of the same kind.

Sec. 12. EXAMINATION OF ALIEN INSURANCE CORPORATIONS. (a) The books, records, accounting, and verification pertaining to the trustee assets of any authorized alien insurer are subject to examination by the Department or its duly appointed representative at the United States branch office of such insurer in the same manner and to the same extent that applies under Articles 1.15 and 1.16 of this code to domestic and foreign insurers licensed to transact the same kind of insurance.

(b) The books, records, and accounting for trustee assets shall be kept and maintained, in English, in the Texas branch office of any alien insurer entering the United States through this State.

Sec. 13. MISCELLANEOUS PROVISIONS. (a) ~~[It shall be unlawful, except as is provided for surplus lines in Articles 1.14-1 and 1.14-2 of this code, for any foreign insurance corporation of the type provided for in any chapter of this code to engage in the business of insuring others against losses which may be insured against under the laws of this state without initially procuring a certificate of authority from the commissioner of insurance permitting it to engage in those business activities.~~

~~[(b) This article does not prohibit a foreign insurer from reinsuring a domestic insurer or prohibit the location in Texas of a company that does not directly insure either persons domiciled or other risks located in this state.~~

~~[(c) The provisions of this code are conditions on which the foreign insurance corporations are permitted to do business in this state, and any of the foreign corporations engaged in issuing contracts or policies in this state are deemed to have agreed to these conditions as a prerequisite to the right to engage in business in this state.~~

[(4)] A foreign or alien insurance corporation may not be denied permission to do business in this state on the ground that all of its authorized capital stock has not been fully subscribed and paid for if:

(1) at least the minimum dollar amount of capital stock of the corporation required by the laws of this state (which may be less than all of its authorized capital stock) has been subscribed and paid for;

(2) it has at least the minimum dollar amount of surplus required by the laws of this state for the kinds of business the corporation seeks to write; and

(3) the corporation has fully complied with the laws of its domiciliary state or country relating to authorization and issuance of capital stock.

(b) [(e)] A foreign casualty insurer may not be required to make or maintain the deposit required of domestic casualty insurers by Article 8.05 of this code if a similar deposit has been made in any state of the United States, under the laws of that state, in a manner that secures equally all the policyholders of the company who are citizens and residents of the United States. A certificate of the deposit under the signature and seal of the officer of the other state with whom the deposit is made must be filed with the department [board].

(c) [(f)] A foreign or alien insurance corporation subject to this code may not be denied permission to do business in this state because the name of the corporation is the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state or of any foreign or alien corporation authorized to transact business in this state if the foreign or alien insurance corporation:

(1) files an assumed name certificate setting forth a name permitted under the laws of this state with the *Texas Department [State Board]* of Insurance and with any county clerks as provided by Section 36.10 or 36.11, Business & Commerce Code; and

(2) does not transact or conduct any business in this state except under the assumed name.

(d) [(g)] No action on or involving any contract entered into in this state between an insurance corporation and a resident of this state shall be commenced in or transferred to a court in another state without the consent of the resident of this state.

SECTION 18.05. Article 21.44, Insurance Code, is amended to read as follows:

Art. 21.44. *CAPITAL AND SURPLUS REQUIREMENTS FOR FOREIGN OR ALIEN INSURANCE COMPANIES OTHER THAN LIFE.* No foreign or alien insurance company subject to the provisions of Article 21.43 of this code [~~other than one doing a life insurance business~~] shall be permitted to do business within this State unless it shall have and maintain the minimum requirements of this Code as to capital or surplus or both, applicable to companies organized under this Code doing the same kind or kinds of business.

## ARTICLE 19. HEALTH CARE PROVIDERS

SECTION 19.01. Subsection (B), Section 2, Chapter 397, Acts of the 54th Legislature, 1955 (Article 3.70-2, Vernon's Texas Insurance Code), is amended to read as follows:

(B) No policy of accident and sickness insurance shall make benefits contingent upon treatment or examination by a particular practitioner or by particular practitioners of the healing arts hereinafter designated unless such policy contains a provision designating the practitioner or practitioners who will be recognized by the insurer and those who will not be recognized by the insurer. Such provision may be located in the "Exceptions" or "Exceptions and Reductions" provisions, or elsewhere in the policy, or by endorsement attached to the policy, at the insurer's option. In designating the practitioners who will and will not be recognized, such provision shall use the following terms: Doctor of Medicine, Doctor of Osteopathy, Doctor of Dentistry, Doctor of Chiropractic, Doctor of Optometry, Doctor of Podiatry, *Licensed Audiologist, Licensed Speech-language Pathologist, Doctor in Psychology, Certified Social Worker—Advanced Clinical Practitioner, Licensed Dietitian, Licensed Professional Counselor, [and] Licensed Marriage and Family Therapist, and Licensed Hearing Aid Fitter and Dispenser.*

For purposes of this Act, such designations shall have the following meanings:

Doctor of Medicine: One licensed by the Texas State Board of Medical Examiners on the basis of the degree "Doctor of Medicine";

Doctor of Osteopathy: One licensed by the Texas State Board of Medical Examiners on the basis of the degree of "Doctor of Osteopathy";

Doctor of Dentistry: One licensed by the State Board of Dental Examiners;

Doctor of Chiropractic: One licensed by the Texas Board of Chiropractic Examiners;

Doctor of Optometry: One licensed by the Texas Optometry Board;

Doctor of Podiatry: One licensed by the State Board of Podiatry Examiners;

*Licensed Audiologist:* One with a master's or doctorate degree in audiology from an accredited college or university and who is *licensed as an audiologist by the State Committee of Examiners for Speech-Language Pathology and Audiology [certified by the American Speech-language and Hearing Association];*

*Licensed Speech-language Pathologist:* One with a master's or doctorate degree in speech pathology or speech-language pathology from an accredited college or university and who is *licensed as a speech-language pathologist by the State Committee of Examiners for Speech-Language Pathology and Audiology [certified by the American Speech-language and Hearing Association];*

Doctor in Psychology: One licensed by the Texas State Board of Examiners of Psychologists and certified as a Health Service Provider;

**Certified Social Worker—Advanced Clinical Practitioner:** One certified by the Texas Department of Human Services as a Certified Social Worker with the order of recognition of Advanced Clinical Practitioner;

**Licensed Dietitian:** One licensed by the Texas State Board of Examiners of Dietitians;

**Licensed Professional Counselor:** One licensed by the Texas State Board of Examiners of Professional Counselors; ~~and~~

**Licensed Marriage and Family Therapist:** One licensed by the Texas State Board of Examiners of Marriage and Family Therapists; *and*

*Licensed Hearing Aid Fitter and Dispenser:* One licensed by the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids.

SECTION 19.02. Sections 1 and 3, Article 21.52, Insurance Code, as amended by Chapters 242 and 824, Acts of the 72nd Legislature, Regular Session, 1991, are reenacted and amended to read as follows:

Sec. 1. DEFINITIONS. As used in this article:

(a) "health insurance policy" means any individual, group, blanket, or franchise insurance policy, insurance agreement, or group hospital service contract, providing benefits for medical or surgical expenses incurred as a result of an accident or sickness;

(b) "doctor of podiatric medicine" includes D.P.M., podiatrist, doctor of surgical chiropody, D.S.C. and chiropodist;

(c) "doctor of optometry" includes optometrist, doctor of optometry, and O.D.;

(d) "doctor of chiropractic" means a person who is licensed by the Texas Board of Chiropractic Examiners to practice chiropractic;

(e) "licensed dentist" means a person who is licensed to practice dentistry by the State Board of Dental Examiners;

(f) "*licensed audiologist*" means a person who has received a master's or doctorate degree in audiology from an accredited college or university and is *licensed as an audiologist by the State Committee of Examiners for Speech-Language Pathology and Audiology* ~~[certified by the American Speech-language and Hearing Association]~~;

(g) "*licensed speech-language pathologist*" means a person who has received a master's or doctorate degree in speech-language pathology from an accredited college or university and is *licensed as a speech-language pathologist by the State Committee of Examiners for Speech-Language Pathology and Audiology* ~~[certified by the American Speech-language and Hearing Association to restore speech loss or correct a speech impairment]~~;

(h) "certified social worker—advanced clinical practitioner" means a person who is certified by the Texas Department of Human Services as a certified social worker with the order of recognition of advanced clinical practitioner;

(i) "licensed dietitian" means a person who is licensed by the Texas State Board of Examiners of Dietitians;

(j) "licensed professional counselor" means a person who is licensed by the Texas State Board of Examiners of Professional Counselors; ~~and~~

(k) "psychologist" means a person licensed to practice psychology by the Texas State Board of Examiners of Psychologists;

(l) ~~(k)~~ "licensed marriage and family therapist" means a person who is licensed by the Texas State Board of Examiners of Marriage and Family Therapists; *and*

(m) "*licensed hearing aid fitter and dispenser*" means a person who is licensed by the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids.

Sec. 3. SELECTION OF PRACTITIONERS. Any person who is issued, who is a party to, or who is a beneficiary under any health insurance policy delivered, renewed, or issued for delivery in this state by any insurance company, association, or organization to which this article applies may select a licensed doctor of podiatric medicine, a licensed dentist, or a doctor of chiropractic to perform the medical or surgical services or procedures scheduled in the policy which fall within the scope of the license of that practitioner, a licensed doctor of optometry to perform the services or procedures scheduled in the policy which fall within the

scope of the license of that doctor of optometry, a *licensed* [an] audiologist to measure hearing for the purpose of determining the presence or extent of a hearing loss and to provide aural rehabilitation services to a person with a hearing loss if those services or procedures are scheduled in the policy, a *licensed* speech-language pathologist to evaluate speech and language and to provide habilitative and rehabilitative services to restore speech or language loss or to correct a speech or language impairment if those services or procedures are scheduled in the policy, a certified social worker—advanced clinical practitioner to provide the services that fall within the scope of the license of such certified practitioner and which are specified as services within the terms of the policy of insurance, including the provision of direct, diagnostic, preventive, or clinical services to individuals, families, and groups whose functioning is threatened or affected by social or psychological stress or health impairment, if those services or procedures are scheduled in the policy, a licensed dietitian including a provisional licensed dietitian under a licensed dietitian's supervision to provide the services that fall within the scope of the license of that dietitian if those services are scheduled in the policy, a licensed professional counselor to provide the services that fall within the scope of the license of that professional if those services are scheduled in the policy, [œ] a licensed marriage and family therapist to provide the services that fall within the scope of the license of that professional if those services are scheduled in the policy, [œ] a psychologist to perform the services or procedures scheduled in the policy that fall within the scope of the license of that psychologist, or a *licensed hearing aid fitter and dispenser* to provide the services or procedures scheduled in the policy that fall within the scope of the license of that practitioner. The services of a certified social worker—advanced clinical practitioner, licensed professional counselor, or licensed marriage and family therapist that are included in this Act may require a professional recommendation by a doctor of medicine or doctor of osteopathy unless the health insurance policy terms do not require such a recommendation. The payment or reimbursement by the insurance company, association, or organization for those services or procedures in accordance with the payment schedule or the payment provisions in the policy shall not be denied because the same were performed by a licensed doctor of podiatric medicine, a licensed doctor of optometry, a licensed doctor of chiropractic, a licensed dentist, a *licensed* [an] audiologist, a *licensed* speech-language pathologist, a certified social worker—advanced clinical practitioner, a licensed dietitian, a licensed professional counselor, [œ] a licensed marriage and family therapist, [œ] a psychologist, or a *licensed hearing aid fitter and dispenser*. There shall not be any classification, differentiation, or other discrimination in the payment schedule or the payment provisions in a health insurance policy, nor in the amount or manner of payment or reimbursement thereunder, between scheduled services or procedures when performed by a doctor of podiatric medicine, a doctor of optometry, a doctor of chiropractic, a licensed dentist, a *licensed* [an] audiologist, a *licensed* speech-language pathologist, a certified social worker—advanced clinical practitioner, a licensed dietitian, a licensed professional counselor, [œ] a licensed marriage and family therapist, [œ] a psychologist, or a *licensed hearing aid fitter and dispenser* which fall within the scope of his license or certification and the same services or procedures when performed by any other practitioner of the healing arts whose services or procedures are covered by the policy. Any provision in a health insurance policy contrary to or in conflict with the provisions of this article shall, to the extent of the conflict, be void, but such invalidity shall not affect the validity of the other provisions of this policy. Any presently approved policy form containing any provision in conflict with the requirements of this Act shall be brought into compliance with this Act by the use of riders and endorsements which have been approved by the State Board of Insurance or by the filing of new or revised policy forms for approval by the State Board of Insurance.

SECTION 19.03: The Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code) is amended by adding Section 6A to read as follows:

Sec. 6A. *GROUP MODEL HEALTH MAINTENANCE ORGANIZATIONS.* (a) *Unless this section and the powers specified in Section 6(a) of this Act are specifically amended by law, a law, whether enacted before or after this enactment of this section, may not be construed to prohibit or restrict a group model health maintenance organization from:*

(1) *selectively contracting with or declining to contract with any or all providers as the health maintenance organization considers necessary;*

(2) contracting for or declining to contract for an individual health care service or full range of health care services as the health maintenance organization considers necessary, if the service or services may be legally provided by the contracting provider; or

(3) requiring enrolled members of the health maintenance organization who wish to obtain the services covered by the health maintenance organization to use the providers specified by the health maintenance organization.

(b) For purposes of this section "group model health maintenance organization" means a health maintenance organization that provides the majority of its professional services through a single group medical practice that is formally affiliated with the medical school component of a Texas, state-supported, public college or university.

SECTION 19.04. Article 21.52, Insurance Code, is amended by adding Section 3A to read as follows:

*Sec. 3A. PROVISION OF PHYSICAL MODALITIES AND PROCEDURES. (a) A health insurer or licensed third party administrator may not deny reimbursement to a practitioner for the provision of covered services of physical modalities and procedures that are within the scope of such practitioner's practice provided such services are performed in strict conformity with applicable laws and regulations relating to the licensure of the practitioner and with the terms of the insurance policy or other coverage agreement.*

*(b) A health maintenance organization or preferred provider organization may not deny reimbursement to a participating practitioner for services provided pursuant to a coverage agreement solely because of the type of practitioner who provided such services as long as the services are performed in strict conformity with applicable laws and regulations relating to the licensure of the practitioner and with the terms of the insurance policy or other coverage agreement.*

*(c) Nothing herein shall be construed to circumvent contractual provider network agreements between a health insurer or a third party administrator and licensed practitioners.*

SECTION 19.05. Article 21.52, Insurance Code, is amended by adding Section 4 to read as follows:

*Sec. 4. PROVIDER CONTRACTORS. Each person who arranges contracts with providers on behalf of a health maintenance organization or health insurer shall comply with laws relating to the duties of the health maintenance organization or health insurer to notify and consider providers for those contracts. A violation of this section constitutes restraint of trade and is an unlawful practice under Section 15.05, Business & Commerce Code.*

SECTION 19.06. (a) Section 6, Article 21.52B, Insurance Code, is repealed.

(b) This section takes effect August 30, 1993.

SECTION 19.07. Section 2(b), Article 21.52B, Insurance Code, is amended to read as follows:

(b) This section does not prohibit:

(1) a provision of a policy from limiting the quantity or dosage supply of pharmaceutical products for which coverage is provided or providing financial incentives to encourage the beneficiary and prescribing physician to use a program that provides pharmaceutical products in quantities that result in cost savings to the insurance plan and beneficiary if the provision applies equally to all designated providers of pharmaceutical services under the policy; or

(2) a pharmacy card program that provides a [~~for an alternative~~] means of obtaining pharmaceutical services offered by the [such] policy through all designated providers of pharmaceutical services.

SECTION 19.08. Section 5, Article 21.52B, Insurance Code, is amended to read as follows:

*Sec. 5. APPLICATION OF PROHIBITION. The provisions of Section 2 of this article do not apply to a self-insured [an] employee benefit plan that is subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001, et seq.).*

SECTION 19.09. (a) The Legislature hereby creates an interim select committee to study the impact of requiring a health insurance policy or health maintenance organization to allow

any qualified provider who is a physician, physician's assistant, advanced nurse practitioner, or any class of provider enumerated in Articles 21.52 and 21.52B, Insurance Code, to participate as a contracting provider for such policy or plan.

(b) The committee is composed of:

- (1) three members of the senate, appointed by the lieutenant governor; and
- (2) three members of the house of representatives, appointed by the speaker of the house of representatives.

(c) Not later than December 1, 1994, the committee shall report its findings and any recommendations for changes in the law to the 74th Legislature.

SECTION 19.10. Sections 19.01 and 19.02 of this article apply only to an insurance policy that is delivered, issued for delivery, or renewed on or after January 1, 1994. An insurance policy that is delivered, issued for delivery, or renewed before January 1, 1994, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

#### ARTICLE 20. PARTICULAR FUNCTIONS OF THE STATE BOARD OF INSURANCE

SECTION 20.01. Subchapter B, Chapter 21, Insurance Code, is amended by adding Article 21.20-1 to read as follows:

*Art. 21.20-1. RULES RESTRICTING COMPETITIVE BIDDING OR ADVERTISING. The commissioner may not adopt rules restricting competitive bidding or advertising by a person regulated by the department except to prohibit false, misleading, or deceptive practices by the person.*

SECTION 20.02. Section 2, Article 1.10D, Insurance Code, is amended by adding Subsection (d-1) to read as follows:

*(d-1) An authorized governmental agency and any state licensing agency shall furnish any materials, documents, reports, complaints, or other evidence to the insurance fraud unit on the request of the unit. Compliance with this subsection by an authorized governmental agency or state licensing agency does not constitute waiver of any privilege or requirement of confidentiality otherwise applicable. Notwithstanding Section 5(a) of this article, the commissioner may not release evidence obtained under this subsection for public inspection if release of the evidence would violate a privilege held by or a requirement of confidentiality imposed on the agency from which the evidence was obtained.*

SECTION 20.03. Sections 1(a) and (c), Article 1.28, Insurance Code, are amended to read as follows:

(a) On giving written notice of intent to the commissioner of insurance, and if the commissioner of insurance does not disapprove within 30 days after that notice is given, a domestic insurance company, including a life, health, and accident insurance company, fire and marine insurance company, surety and trust company, general casualty company, title insurance company, fraternal benefit society, mutual life insurance company, local mutual aid association, statewide mutual assessment company, mutual insurance company other than life, farm mutual insurance company, county mutual insurance company, Lloyds plan, reciprocal exchange, group hospital service corporation, health maintenance organization, stipulated premium insurance company, nonprofit legal services corporation, or any other entity licensed under the Insurance Code or chartered or organized under the laws of this state that is an affiliated member of an insurance holding company system, as defined by Article 21.49-1 [21.49], Insurance Code, as added by Chapter 356, Acts of the 62nd Legislature, Regular Session, 1971 (Article 21.49-1, Vernon's Texas Insurance Code), may locate and maintain all or any portion of its books, records, and accounts and its principal offices outside this state at a location within the United States if the company meets the requirements of this section. *This article does not apply to or prohibit the location and maintenance of the normal books, records, and accounts of either a branch office or agency office of a domestic insurance company at the branch office or agency office, if that office is located in the United States.*

(c) *The ultimate controlling person of the insurance holding company system, the immediate controlling person of the domestic insurance company, or an intermediate controlling*



person of the domestic insurance company must be legally domiciled, licensed, or admitted to transact business in a jurisdiction within the United States.

SECTION 20.04. Article 16.01(b), Insurance Code, is amended to read as follows:

(b) Farm mutual insurance companies may insure rural and urban dwellings and attendant outhouses and yard buildings, and all their contents for home and personal use, musical instruments and libraries, barns and ranch buildings of every description together with vehicles and implements used thereon, ~~and~~ agricultural products produced or kept on farms and ranches ~~[but not including growing crops]~~. No building, or its contents, with more than 40 per cent of its floor space or more than 500 square feet of floor space, whichever is the lesser amount, used for business purposes may be insured by a farm mutual insurance company except church buildings, fraternal lodge halls, private and church schools, and non-industrial use buildings owned by non-profit organizations may be insured, wherever situated. Farm mutual insurance companies shall not insure any type of commercial or private passenger motor vehicle except trailers and mobile homes. *A farm mutual insurance company may not insure growing crops unless that insurance is reinsured by:*

(1) *the Federal Crop Insurance Corporation under Section 508, Federal Crop Insurance Act (7 U.S.C. Section 1508); or*

(2) *a property and casualty insurance company licensed to write insurance in this state that has a rating by the A.M. Best Company of A – or better.*

SECTION 20.05. Section 10, Chapter 273, Acts of the 71st Legislature, Regular Session, 1989, as amended by Section 13.29, Chapter 242, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

Sec. 10. A farm mutual that was engaged in the business of insuring commercial or private passenger motor vehicles on January 1, 1989, may continue to insure motor vehicles until January 1, 1996; provided, however, this authorization shall terminate immediately if the company ceases insuring motor vehicles, or if there is a change of control of the company as defined in Article 21.49–1, Insurance Code. A company insuring motor vehicles under this provision shall not use more than 33 [25] percent of its gross income for expenses unless otherwise approved by the commissioner of insurance.

A farm mutual that on January 1, 1989, was operated under or controlled by a plan or method other than that provided in Section (c) or Section (d) of Article 16.01, Insurance Code, may continue under such plan or operation or method of control, as the case may be, but shall be required to comply with Sections (c) and (d) of Article 16.01 and all other provisions of Chapter 16, Insurance Code, including Section (g) of Article 16.08, on or before January 1, 1996, or immediately on any change of control as defined in Article 21.49–1, Insurance Code.

SECTION 20.06. Section 4, Article 4.10, Insurance Code, is amended to read as follows:

Sec. 4. INAPPLICABILITY OF ARTICLE. (a) *Except as provided by Subsection (b) of this section, this [This] article shall not apply to purely cooperative or mutual fire insurance companies carried on by the members thereof solely for the protection of their own property and not for profit.*

(b) *This article applies to crop insurance premiums only written by a farm mutual insurance company on or after January 1, 1994.*

SECTION 20.07. Chapter 16, Insurance Code, is amended by adding Article 16.24A to read as follows:

Art. 16.24A. LICENSING OF AGENTS FOR CROP INSURANCE. (a) *No person or firm shall solicit, write, sign, execute or deliver insurance policies, bind insurance risks, collect premiums, or otherwise act in the capacity of a local recording agent in the solicitation or sale of crop insurance for a farm mutual insurance company unless the person or firm is licensed under Article 21.14 of this code.*

(b) *A farm mutual insurance company may not appoint and act through an agent who qualifies for a license as an agricultural insurance agent under Article 21.14–2 of this code.*

SECTION 20.08. Section 2, Article 21.49–1, Insurance Code, is amended to read as follows:

Sec. 2. DEFINITIONS. As used in this article, the following terms shall have the respective meanings hereinafter set forth, unless the context shall otherwise require:

(a) Affiliate. An “affiliate” of, or person “affiliated” with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(b) *Commercially Domiciled Insurer.* The term “commercially domiciled insurer” means a foreign or alien insurer authorized to do business in this state that during its three preceding fiscal years taken together, or any lesser period if it has been licensed to transact business in this state only for that lesser period, has written an average of more gross premiums in this state than it has written in its state of domicile during the same period, with those gross premiums constituting 20 percent or more of its total gross premiums everywhere in the United States for that three-year or lesser period, as reported in its three most recent annual statements.

(c) Commissioner. The term “Commissioner” shall mean the Commissioner of Insurance, the commissioner’s deputies, or the State Board of Insurance, as appropriate.

(d) [(e)] Control. The term “control,” including the terms “controlling,” “controlled by,” and “under common control with,” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, or with members of the person’s immediate family, owns, controls, or holds with the power to vote, or if any person other than a corporate officer or director of a person holds proxies representing, 10 percent or more of the voting securities or authority of any other person, or if any person by *contract* or ~~[contractor]~~ agreement is designated as an attorney-in-fact for a Lloyd’s Plan insurer under Article 18.02 of this code or for a reciprocal or interinsurance exchange under Articles 19.02 and 19.10 of this code. This presumption may be rebutted by a showing made in the manner provided by Section 3(j) that control does not exist in fact and that the person rebutting the presumption is in compliance with Sections 5(a) through (c) of this article. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect, where a person exercises directly or indirectly either alone or pursuant to an agreement with one or more other persons such a controlling influence over the management or policies of an authorized insurer as to make it necessary or appropriate in the public interest or for the protection of the policyholders of the insurer that the person be deemed to control the insurer.

(e) [(d)] Holding Company. The term “holding company” means any person who directly or indirectly controls any insurer.

(f) [(e)] Controlled Insurer. The term “controlled insurer” means an insurer controlled directly or indirectly by a holding company.

(g) [(f)] Controlled Person. The term “controlled person” means any person, other than a controlled insurer who is controlled directly or indirectly by a holding company.

(h) *Domestic Insurer.* The term “domestic insurer” includes a commercially domiciled insurer.

(i) [(g)] Insurance Holding Company System. The term “insurance holding company system” consists of two or more affiliated persons, one or more of which is an insurer.

(j) [(h)] Insurer. The term “insurer” shall include all insurance companies organized or chartered under the laws of this State, *commercially domiciled insurers*, or *insurers* licensed to do business in this State, including capital stock companies, mutual companies, farm mutual insurance companies, title insurance companies, fraternal benefit societies, local mutual aid associations, Statewide mutual assessment companies, county mutual insurance companies, Lloyd’s Plan companies, reciprocal or interinsurance exchanges, stipulated premium insurance companies, and group hospital service companies, except that it shall not include agencies, authorities, or instrumentalities of the United States, its

possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(k) [(j)] Person. A “person” is an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker’s function.

(l) [(i)] Securityholder. A “securityholder” of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

(m) [(k)] Subsidiary. A “subsidiary” of a specified person is an affiliate controlled by such person directly or indirectly through one or more intermediaries.

(n) [(l)] Voting Security. The term “voting security” means any security or other instrument which has the power to vote at a meeting of shareholders of a person for or against the election of directors or any other matter involving the direction of the management and policies of such person, or any other security or instrument which the State Board of Insurance deems to be of similar nature and considers necessary or appropriate, by which such rules and regulations as it may prescribe in the public interest deems to treat as a voting security.

(o) [(m)] Notwithstanding any other provision of this article, the following shall not be deemed holding companies: the United States, a state or any political subdivision, agency, or instrumentality thereof, or any corporation which is wholly owned directly or indirectly by one or more of the foregoing.

(p) [(n)] Immediate Family. The term “immediate family” means a person’s spouse, father, mother, children, brothers, sisters, and grandchildren, the father, mother, brothers, and sisters of the person’s spouse, and the spouse of the person’s child, brother or sister, mother, father, or grandparent.

(q) [(o)] Ultimate Controlling Person. The term “ultimate controlling person” means that person who is not controlled by another person.

(r) [(p)] Notwithstanding any other provision of this article, this article shall not be applicable to any insurance holding company system in which the insurer, the holding company, if any, the subsidiaries, if any, the affiliates, if any, and each and every other member thereof, if any, is privately owned by not more than five (5) securityholders, each of whom is and must be an individual or a natural person, and the commissioner has found that it is not necessary that such holding company system be regulated under this article or certain provisions of this article and has issued a total or partial exemption certificate to such holding company which shall effect the exemption until revoked by the commissioner.

(s) *The commissioner may exempt from the provisions of this article any commercially domiciled insurer if the commissioner determines that the insurer has assets physically located in this state or an asset to liability ratio sufficient to justify the conclusion that there is no reasonable danger that the operations or conduct of the business of the insurer could present a danger of loss to the policyholders of this state.*

SECTION 20.09. Sections 3(a) and (j), Article 21.49–1, Insurance Code, are amended to read as follows:

(a) Registration. Every insurer which is authorized to do business in this State and which is a member of an insurance holding company system shall register with the commissioner, except a foreign or non-domestic insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this article. *The exemption from registration for a foreign insurer does not apply to a commercially domiciled insurer doing business in this state.* Any insurer which is subject to registration under this section shall register within 15 days after it becomes subject to registration unless the commissioner for good cause shown extends the time for registration, and then within such extended time. The commissioner may require any authorized insurer which is a member of an insurance holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by such insurance company with the insurance regulatory authority of its domiciliary jurisdiction.

(j) Disclaimer. Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. *Unless disallowed by the commissioner, a [A] disclaimer filed under this subsection relieves [does not relieve] a person of the duty to comply with the requirements of Sections 5(a) through (c) of this article.* The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

SECTION 20.10. Section 5(e), Article 21.49-1, Insurance Code, is amended to read as follows:

(e) Exemptions. The provisions of this section shall not apply to:

(1) any acquisition by a person who is a broker-dealer under state or federal securities laws of any voting security which, immediately prior to consummation of such acquisition, was not issued and outstanding and which acquisition is solely for resale under a plan approved by the commissioner that will not reasonably result in an acquisition of control on resale and where during the period prior to resale no actual positive act of control by virtue of those shares is committed;

(2) any transaction which is subject to the provisions of: (i) Article 21.25, Sections 1 through 5, of this code, dealing with the merger or consolidation of two or more insurers and complying with the terms of such article until the plan of merger or consolidation has been filed by the domestic insurer with the Commissioner of Insurance in accordance with such Article 21.25. After the filing of such plan of merger or consolidation the transaction shall be subject to the approval provisions of Subsection (c) of Section 5 of this article, but the Commissioner may exempt such transaction from any or all of the other provisions and requirements of Section 5 of this article if the commissioner finds that the notice, proxy statement, and other materials furnished to shareholders and security holders in connection with such merger or consolidation contained reasonable and adequate factual and financial disclosure, material and information relating to such transaction, (ii) Article 11.20 of this code, (iii) Article 11.21 of this code, (iv) Article 14.13 of this code, (v) Article 14.61 of this code, (vi) Article 14.63 of this code, (vii) Article 21.26 of this code, provided that the requirements of said article are fully complied with, [and] (viii) *Article 22.15 of this code, provided that the requirements of said article are fully complied with, and* (ix) Article 22.19 of this code, provided that the reinsurance is a total direct reinsurance agreement;

(3) any offer, request, invitation, agreement, or acquisition which the commissioner by order shall exempt therefrom as (i) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or (ii) as otherwise not comprehended within the purposes of this section;

(4) any acquisition of a voting security of a domestic insurer by a person in control of such domestic insurer if, after such acquisition, such person, directly or indirectly, owns or controls less than 50 percent of the then issued and outstanding voting securities of such domestic insurer;

(5) any acquisition of a voting security of a domestic insurer by a person that, directly or indirectly, owns or controls as much as 10 percent but less than 50 percent of the then issued and outstanding voting securities of such domestic insurer, and such person would, after such acquisition, directly or indirectly, own or control 50 percent or more of the then issued and outstanding voting securities of such domestic insurer, provided such person has made written application for such exemption and the commissioner by order has determined that such acquisition will not jeopardize the financial stability of the domestic insurer, prejudice the interests of its policyholders, or adversely affect the public interest; or

(6) any acquisition of a voting security of a domestic insurer by a person that, prior thereto, directly or indirectly, owns or controls more than 50 percent of the then issued and outstanding voting securities of such domestic insurer.

SECTION 20.11. Article 21.49–2A(b), Insurance Code, is amended to read as follows:

(b) Except as provided by Section (c) of this article, an insurer may not cancel:

- (1) a policy of liability insurance *that is a renewal or continuation policy; or*
- (2) a policy of liability insurance *that is in its initial policy period after the 60th day following the date on which the policy was issued.*

SECTION 20.12. Section 7(d), Article 21.49–2B, Insurance Code, is amended to read as follows:

(d) An insurer *may* [~~shall~~] notify an insured who has filed two claims in a period of less than three years that the insurer may decline to renew the policy if the insured files a third claim during the three-year period. *If the insurer does not notify the insured in accordance with this subsection, the insurer may not refuse to renew the policy because of losses. The notice form must list the policyholder's claims and contain the sentence: "Another non-weather related loss could cause us to refuse to renew your policy." [The notice must be in a form approved by the board.]*

SECTION 20.13. Section 2(g), Article 22.13, Insurance Code, is amended to read as follows:

(g) If a stipulated premium company ceases to write *new* health, accident, sickness, or hospitalization policies, or any combination of those policies, in an amount in excess of \$10,000 for any one risk, and so notifies the commissioner, the requirements imposed under Subsection (d) of this section relating to increase of minimum capital shall be suspended until the date on which the stipulated premium company resumes writing those health, accident, sickness, or hospitalization policies, and upon such resumption of writing of such policies, the stipulated premium company shall be required to increase its capital to the amount required by Subsection (d) as of the date of such resumption of such policy writings. *For purposes of this subsection, renewal of a policy is not the writing of a new health, accident, sickness, or hospitalization policy.*

SECTION 20.14. Article 23.01, Insurance Code, is amended to read as follows:

Art. 23.01. INCORPORATION; DEFINITIONS. (a) Any seven or more persons on application to the secretary of state for a corporate charter under the Texas Non-Profit Corporation Act as a nonmembership corporation may be incorporated for the sole purpose of establishing, maintaining, and operating non-profit legal service plans, whereby legal services may be provided by such corporation through contracting attorneys as is hereinafter provided.

(b) As used in this chapter, the following words, unless the context of their use clearly indicates otherwise, shall have the following meanings:

(1) "Attorney" means a person [~~currently~~] licensed [~~by the Supreme Court of Texas~~] to practice law *in the jurisdiction in which the legal services are to be provided.*

(2) "Applicant" means a person applying for a legal services contract for performance of legal services through a corporation qualified under this chapter.

(3) "Benefit certificate" means a writing setting forth the benefits and other required matters issued to a participant under a group contract for legal services and also an individual contract for legal services issued to a participant.

(4) "Contracting attorney" means an attorney who has entered into the contract provided by Article 23.11 of this code.

(5) "Participant" means the person entitled to performance of legal services under contract with a corporation qualified under this chapter.

(6) "State Board of Insurance" means all of the insurance regulatory officials whose duties and functions are designated by the Insurance Code of Texas as such now exists or may be amended in the future. Any duty stated by this chapter to be performed by or to be placed on the State Board of Insurance is placed upon and is to be performed by the insurance regulatory official or group of officials on whom similar duties are placed or to be performed for insurers or the business of insurance by the Insurance Code. The multimember insurance regulatory body designated by the Insurance Code as the uniform insurance rule-making authority is authorized to enact rules designating the proper

insurance regulatory official to perform any duty placed by this chapter on the insurance regulatory officials where such duty is not similar to duties otherwise performed by a specific official or group of such officials.

SECTION 20.15. Article 23.22, Insurance Code, is amended to read as follows:

Art. 23.22. COMPLAINTS. The State Board of Insurance shall refer *a complaint* [~~any complaints~~] received by it concerning the performance of *an* [~~any~~] attorney licensed in this state who is connected with a [~~any~~] corporation complying with this chapter to the Supreme Court of the State of Texas or to any person designated by the Supreme Court to receive attorney grievances from the public. *The board shall refer a complaint regarding an attorney licensed in another jurisdiction who is connected with a corporation complying with this chapter to the appropriate licensing agency of the other jurisdiction.*

SECTION 20.16. Article 1.24, Insurance Code, is amended to read as follows:

Art. 1.24. TO MAKE INQUIRIES. The Board is authorized to address any *reasonable* inquiries to any insurance company or insurance agent, or to the holder of any permit, certificate of registration, or other authorization issued or existing under the authority or authorization of this code, in relation to the company's, agent's, or holder's business condition, or any matter connected with its transactions which the Board may deem necessary for the public good or for a proper discharge of its duties. It shall be the duty of the addressee to [~~promptly~~] answer such inquiries in writing *not later than the 10th day after the date the request is received.* A response made under this article that is otherwise privileged or confidential by law remains privileged or confidential unless and until introduced into evidence at an administrative hearing or in a court of competent jurisdiction.

SECTION 20.17. Section 1(a), Article 21.21, Insurance Code, is amended to read as follows:

(a) The purpose of this Act is to regulate trade practices in the business of insurance [~~in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, 79th Congress),~~] by defining, or providing for the determination of, all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

SECTION 20.18. Section 1A, Article 21.50, Insurance Code, is amended to read as follows:

Sec. 1A. POLICY FORMS; RATES AND RATE INFORMATION; FILING REQUIREMENTS. (a) The procedures as set forth herein shall govern mortgage guaranty insurance as defined in this article but shall not affect any other of the provisions of this code.

(b) *All policy forms, related forms, classifications, and rules used by a mortgage guaranty insurer in this state shall be exempt from approval by the board, but all such policy forms, related forms, classifications, and rules which are to be used in this state, except those filed under Subsection (l), shall be filed with the board at least 15 days before they are to become effective. The board may, after a hearing held on not less than 20 days' notice, specifying the matters to be considered at such hearing, to every insurer which made such filing, and upon finding that such filing is no longer in the best interest of the public of this state, issue an order suspending such exemption as to any or all insurers which made such filings and ordering such insurers to cease and desist from the use of such policy forms, related forms, classifications, and rules as the board may specify in its order. [A mortgage guaranty insurer shall not issue or use policy forms or related forms in this state until such forms are filed and approved by the board. As soon as reasonably possible after the filing has been made, the board shall approve or disapprove the same; provided, however, that any filing shall be deemed approved unless disapproved within 30 days; provided further, that the board may by official order postpone action for such further time not exceeding 30 days as it deems necessary for proper consideration. The board shall approve uniform policy forms, related forms, classifications, and rules for all lines and types of insurance applicable to the various risks under this article except as provided in Subsection (k) hereof.]*

(c) *No policy of mortgage guaranty insurance shall contain a provision which allows subrogation rights or any other claim by the insurer against the borrower for a deficiency arising from a foreclosure sale of a single-family dwelling occupied by the borrower as the*

*principal residence of the borrower.* The commissioner [~~board~~] shall disapprove any such form if:

(1) It is in any respect in violation of or does not comply with this code or rules adopted by the commissioner.

(2) It contains provisions which encourage misrepresentation or are unjust, unfair, inequitable, misleading, deceptive, or contrary to law or to the public policy of this state.

(d) *The commissioner may, after notice and hearing, adopt reasonable rules relating to the minimum standards for coverage under such policy forms consistent with the purpose of this article and the public policy of this state.*

(e) [(d)] The board may, after notice and hearing, adopt reasonable rules and amendments to rules that are necessary for it to establish guidelines, procedures, methods, standards, and criteria by which the various and different types of forms and documents submitted to the board are to be reviewed and acted on by the board.

(f) [(e)] A mortgage guaranty insurer shall file with the board all rates and supplementary rate information and all changes and amendments thereto which are to be used in this state at least 15 days before they are to become effective. Rates, rating plans, and charges shall not be excessive, inadequate, or unfairly discriminatory and shall be reasonable with respect to the benefits provided.

(g) [(f)] On any filing of rates or changes and amendments to these rates, the insurer shall file adequate supporting data, including:

(1) information on past and prospective loss experience within and outside the state, on catastrophe hazards, on expenses of operation, on a reasonable margin for profit and contingencies;

(2) an explanation of the filer's interpretation of any statistical data relied on by it;

(3) an explanation and description of the methods used in making the rates;

(4) certification by an appropriate official of the insurer relating to the appropriateness of the charges, rates or rating plans based on reasonable assumptions and accompanied by adequate supporting information.

(h) [(g)] The board may establish requirements for data and information to be filed under this article.

(i) [(h)] The board shall, after due consideration, promulgate reasonable rules and statistical plans which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss experience and such other data as may be required, in order that the total loss and expense experience of all insurers may be made available in such form and detail as may be deemed necessary by the board.

(j) [(i)] Nothing in this Act shall be considered as compelling the State Board of Insurance to establish standard and absolute rates and the board is specifically authorized, in its discretion, to accept different rates for different insurers for the same risk or risks on the types of insurance covered by this article; nor shall this article be construed as to require the board to establish a single and uniform rate for each risk or risks or to compel all insurers to adhere to such rates previously filed by other insurers; and the board is empowered to accept such different rates for different insurers as filed by any qualified insurer unless it finds that such filing does not meet the requirements of this article.

(k) [(j)] If at any time the board finds that a policy form or rate filing no longer meets the requirements of this code, it may, after a hearing held on not less than 20 days' notice, specifying the matters to be considered at such hearing, to every insurer which made such filing, issue an order withdrawing its approval thereof. Said order shall specify in what respects the board finds that such filing no longer meets the requirements of this code and shall be effective not less than 30 days after its issuance.

(l) [(k)] Policies providing coverage for a pool or group of loans in connection with the issuance of mortgage-backed securities or bonds shall be exempt from approval by the board under Subsection (b) of this section, but all such policy forms, related forms, classifications, and rules which are to be used in this state shall be filed with the board at least 15 days ~~after~~ ~~before~~ they are to become effective. *Mortgage guaranty insurers are prohibited from*

*discrimination in the issuance or extension of mortgage guaranty insurance on the basis of the applicant's sex, marital status, race, color, creed, national origin, disability, age, or solely on the geographic location of the property unless (1) the discrimination related to geographic location of the property is for a business purpose that is not a mere pretext for unfair discrimination; or (2) the refusal, cancellation, or limitation is required by law or regulatory mandate. [The board may, after a hearing held on not less than 20 days' notice, specifying the matters to be considered at such hearing, to every insurer which made such filing, and upon finding that such filing is no longer in the best interest of the public of this state, issue an order suspending such exemption as to any or all insurers which made such filings and ordering such insurers to cease and desist from the use of such policy forms, related forms, classifications, and rules as the board may specify in its order.]*

SECTION 20.19. The heading to Article 21.22, Insurance Code, is amended to read as follows:

Art. 21.22. UNLIMITED EXEMPTION OF INSURANCE BENEFITS AND CERTAIN ANNUITY PROCEEDS FROM SEIZURE UNDER PROCESS

SECTION 20.20. Article 21.22, Insurance Code, is amended by amending Sections 1, 4, and 5 and adding Section 6 to read as follows:

Sec. 1. Notwithstanding any provision of this code other than this article, all money or benefits of any kind, including policy proceeds and cash values, to be paid or rendered to the insured or any beneficiary under any policy of insurance or annuity contract issued by a life, health or accident insurance company, including mutual and fraternal insurance, or under any plan or program of annuities and benefits in use by any employer or individual, shall:

- (1) inure exclusively to the benefit of the person for whose use and benefit the insurance or annuity is designated in the policy or contract;
- (2) be fully exempt from execution, attachment, garnishment or other process;
- (3) be fully exempt from being seized, taken or appropriated or applied by any legal or equitable process or operation of law to pay any debt or liability of the insured or of any beneficiary, either before or after said money or benefits is or are paid or rendered; and
- (4) be fully exempt from all demands in any bankruptcy proceeding of the insured or beneficiary.

Sec. 4. This article does not prevent the proper assignment of any money or benefits to be paid or rendered under an insurance policy or annuity contract to which this article applies, or any rights under the policy or contract, by the insured, [or] owner, or annuitant in accordance with the terms of the policy or contract.

Sec. 5. Wherever any policy of insurance, annuity contract, or plan or program of annuities and benefits mentioned in Section 1 of this article shall contain a provision against assignment or commutation by any beneficiary thereunder of the money or benefits to be paid or rendered thereunder, or any rights therein, any assignment or commutation or any attempted assignment or commutation by such beneficiary of such money or benefits or rights in violation of such provision shall be wholly void.

Sec. 6. For purposes of regulation under this code, an annuity contract issued by a life, health, or accident insurance company, including a mutual company or fraternal company, or under any plan or program of annuities or benefits in use by an employer or individual, shall be considered a policy or contract of insurance.

SECTION 20.21. Subchapter G, Chapter 3, Insurance Code, is amended by adding Article 3.70-13 to read as follows:

Art. 3.70-13. CERTAIN POLICIES CONTINUOUS. A guaranteed renewable policy or a noncancellable policy shall be deemed to be a continuous policy, subject only to the terms and conditions thereof, including payment of policy premiums, and such policies shall be considered to be continued in force by the payment of the policy premium in accordance with the policy terms and conditions, and such policies shall not be deemed or treated as renewed policies by the payment of such contracted policy premiums. This article does not apply to a health benefit plan adopted in accordance with Chapter 26 of this code, as added by H.B. No. 2055, Acts of the 73rd Legislature, Regular Session, 1993.



SECTION 20.22. Article 1.33, Insurance Code, is amended by adding Section (e) to read as follows:

(e) *Without limiting the authority granted by the other sections of this article, the commissioner may, upon written agreement or stipulation of all parties and any intervenor, in the commissioner's sole discretion: (i) waive or modify the publication of notice required by Articles 2.01, 2.03, 3.04, 3.05, 22.03, and 22.04 of this code, and (ii) informally dispose of any contested case as provided by Section 19(e), Administrative Procedure and Texas Register Act (Article 6252-19a, Vernon's Texas Civil Statutes), or any subsequent amendment thereto, notwithstanding any provision of this code which would otherwise require a hearing before the commissioner.*

SECTION 20.23. Subchapter C, Chapter 5, Insurance Code, is amended by adding Article 5.35-2 to read as follows:

*Art. 5.35-2. COVERAGE FOR REAL PROPERTY FOUNDATIONS. The commissioner shall adopt an endorsement form that excludes coverage for damage to foundations or slabs of the insured dwelling, other than loss caused by fire, lightning, smoke, windstorm, hurricane, hail, explosion, aircraft, vehicles, vandalism, malicious mischief, riot, civil commotion, and falling objects, from a homeowner's, farm and ranch owner's, or fire insurance policy promulgated under Article 5.35 of this code. An insurer may attach this endorsement only if the insured dwelling is more than 10 years old.*

SECTION 20.24. Article 21.46, Insurance Code, is amended to read as follows:

**Art. 21.46. A.** Whenever by the laws of any other state or territory of the United States any taxes, including income and corporate franchise, licenses, fees, fines, penalties, deposit requirements or other obligations, prohibitions or restrictions are imposed upon any insurance company organized in this State and licensed and actually doing business in such other state or territory which, in the aggregate are in excess of the aggregate of the taxes, including income and corporate franchise, licenses, fees, fines, penalties, deposit requirements or other obligations, prohibitions or restrictions directly imposed upon a similar insurance company of such other state or territory doing business in this State, the State Board of Insurance shall impose upon any similar company of such state or territory in the same manner and for the same purpose, the same taxes, licenses, fees, fines, penalties, deposit requirements or other obligations, prohibitions or restrictions; provided, however, the aggregate of taxes, licenses, fees, fines, penalties or other obligations imposed by this State pursuant to this Article on an insurance company of another state or territory shall not exceed the aggregate of such charges imposed by such other state or territory on a similar insurance company of this State actually licensed and doing business therein; provided, further, that wherever under any law of this State the basic rate of taxation of any insurance company of another state or territory is reduced if any such insurance company has made investments in Texas securities then in computing the aggregate Texas premium tax burdens of any such insurance company of any other state or territory each shall for purposes of comparison with the premium tax laws of its home state be considered to have assumed and paid an aggregate premium tax burden equal to the basic rate; provided, further, that for the purpose of this Section, an alien insurer shall be deemed a company of the State designated by it wherein it has

- (a) established its principal office or agency in the United States, or
- (b) maintains the largest amount of its assets held in trust or on deposit for the security of its policyholders or policyholders and creditors in the United States, or
- (c) in which it was admitted to do business in the United States.

Licenses and fees collected by the State Board of Insurance under this Article shall be deposited in the State Treasury to the credit of the general revenue fund.

The provisions of this Section shall not apply to ad valorem taxes on real or personal property or to personal income taxes.

The provisions of this Act shall not apply to a company of any other state doing business in this State if fifteen per cent (15%) or more of the voting stock of said company is owned by a corporation organized under the laws of this State, and domiciled in this State; however, the prior provisions of this Act shall apply without exception to any and all person or persons, company or companies, firm or firms, association or associations, group or groups, corporation

or corporations, or any insurance organization or organizations of any kind, which did not qualify as a matter of fact, under the exception of this paragraph, on or before January 29, 1957.

*B. Should the insurance department, commissioner, director, or other similar insurance regulatory official of any other state or territory of the United States impose any sanctions, fines, penalties, financial or deposit requirements, prohibitions, restrictions, regulatory requirements, or other obligations of any kind upon any insurance company organized or chartered in this state and licensed to transact business in such other state or territory, because of the failure of the Texas Department of Insurance to obtain, maintain, or receive accreditation certification or any similar form of approval, compliance, or acceptance from, by, or as a member of the National Association of Insurance Commissioners, or any committee, task force, working group, or advisory committee thereof, or because of the failure of the Texas Department of Insurance to comply with any directive, financial annual statement requirement, model act or regulation, market conduct or financial examination report or requirement, or any report of any kind of the National Association of Insurance Commissioners, or any committee, task force, working group, or advisory committee thereof, the Texas Department of Insurance shall, without exception or exclusion, impose upon any and all insurance companies organized or chartered in such other state or territory and licensed to do business in this state the same sanctions, fines, penalties, deposit requirements, prohibitions, restrictions, or other obligations imposed upon the insurance company of this state.*

SECTION 20.25. (a) The changes in law made to Articles 23.01 and 23.22, Insurance Code, by this article apply only to a contract entered into or renewed by a nonprofit legal services corporation on or after January 1, 1994. A contract that is entered into or renewed before January 1, 1994, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) This article applies only to an insurance policy that is delivered, issued for delivery, or renewed on or after January 1, 1994. A policy that is delivered, issued for delivery, or renewed before January 1, 1994, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(c) The change in law made by this Act to Article 21.22, Insurance Code, applies to money or benefits to be paid or rendered to an insured or a beneficiary under an insurance policy or annuity contract issued by a life, health, or accident insurance company without regard to whether the policy or contract was issued or entered into before, on, or after the effective date of this Act.

(d) The change in law made by Section 20.06 of this article to Section 4, Article 4.10, Insurance Code, applies only to crop insurance premiums written by a farm mutual insurance company on or after January 1, 1994, and the current law shall otherwise continue in effect.

(e) The change in law made by Section 20.07 of this article applies only to an agent selling crop insurance for a farm mutual insurance company and the current law shall otherwise continue in effect.

SECTION 20.26. (a) Section 4.04, Article 5.76-2, Insurance Code, is amended by adding Subsection (q) to read as follows:

*(q) The pass-through allowances authorized in Subsections (d) and (e) hereof shall be deemed exclusive subsequent to the effective date of this article, but other methods utilized prior to such effective date shall be deemed valid if consistent with the purpose of this article and if the premium resulting from their use is less than the premium which would have been charged for a similarly rated risk in the Rejected Risk Fund.*

(b) The validation made by this amendment shall govern any civil or regulatory proceeding except a civil proceeding pending in a court of competent jurisdiction on May 1, 1993, including civil proceedings filed on or before May 1, 1993, which are seeking class action status, whether or not the plaintiff or defendant classes have been certified.

#### ARTICLE 21. CONTINUATION AND FUNCTIONS OF OFFICE OF PUBLIC INSURANCE COUNSEL

SECTION 21.01. Article 1.35A, Insurance Code, is amended to read as follows:

## Art. 1.35A. OFFICE OF PUBLIC INSURANCE COUNSEL[.]

Sec. 1. CREATION; PURPOSE. [(a)] The independent office of public insurance counsel is created to represent the interests of insurance consumers in Texas.

Sec. 2. APPOINTMENT, QUALIFICATIONS, AND REMOVAL OF PUBLIC COUNSEL. (a) [(b)] The governor with the advice and consent of the senate shall appoint a public counsel who shall serve as the executive director of the office of public insurance counsel.

(b) [(e)] To be eligible to serve as public counsel for the office of public insurance counsel, a person must be a resident of Texas and be licensed [eligible] to practice law in Texas. The public counsel shall be a person who has demonstrated a strong commitment and involvement in efforts to safeguard the rights of the public and who possesses the knowledge and experience necessary to practice effectively in insurance proceedings.

(c) A person is not eligible for appointment as public counsel if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization regulated by the department or receiving funds from the department;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the department or receiving funds from the department or the office of public insurance counsel; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the department or the office of public insurance counsel, other than compensation or reimbursement authorized by law for department or office of public insurance counsel membership, attendance, or expenses.

(d) Appointment of the public counsel shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointee.

(e) [(d)] The public counsel shall serve for a term of two years expiring on February 1 of each odd-numbered year.

(f) It is a ground for removal from office if the public counsel:

(1) does not have at the time of appointment the qualifications required by Subsection (b) of this section;

(2) does not maintain during service as public counsel the qualifications required by Subsection (b) of this section;

(3) violates a prohibition established by Subsection (c) of this section or Section 4 of this article; or

(4) cannot discharge the public counsel's duties for a substantial part of the term for which the public counsel is appointed because of illness or disability.

(g) The validity of an action of the office of public insurance counsel is not affected by the fact that it is taken when a ground for removal of the public counsel exists.

Sec. 3. ADMINISTRATION. (a) [(e)] The public counsel, as executive director of the office of public insurance counsel, shall be charged with the responsibility of administering, enforcing, and carrying out the provisions of this article, including preparation and submission to the legislature of a budget for the office, employing all necessary professional, technical, and other employees to carry out the provisions of this article, approval of expenditures for professional services, travel, per diem, and other actual and necessary expenses incurred in administering the office. Expenses for the office shall be paid from the assessment imposed in Article 1.35B of this chapter. The compensation for employees of the office of public insurance counsel shall be fixed by the legislature as provided by the General Appropriations Act.

(b) The office of public insurance counsel shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the office of public insurance counsel during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

(c) All money paid to the office of public insurance counsel under this article shall be deposited in the state treasury.

(d) *The public counsel or the public counsel's designee shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:*

(1) *personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel that are in compliance with the Texas Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes) and its subsequent amendments;*

(2) *a comprehensive analysis of the office of public insurance counsel work force that meets federal and state guidelines;*

(3) *procedures by which a determination can be made of significant underuse in the office of public insurance counsel work force of all persons for whom federal or state guidelines encourage a more equitable balance; and*

(4) *reasonable methods to appropriately address those areas of significant underuse.*

(e) *A policy statement prepared under Subsection (d) of this section must cover an annual period, be updated at least annually and reviewed by the Commission on Human Rights for compliance with Subsection (d)(1) of this section, and be filed with the governor's office.*

(f) *The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (e) of this section. The report may be made separately or as a part of other biennial reports made to the legislature.*

(g) *The public counsel or the public counsel's designee shall develop an intra-agency career ladder program. The program shall require intra-agency posting of all nonentry level positions concurrently with any public posting.*

(h) *The public counsel or the public counsel's designee shall develop a system of annual performance evaluations. All merit pay for office of public insurance counsel employees must be based on the system established under this subsection.*

(i) *The office of public insurance counsel shall provide to its public counsel and employees, as often as necessary, information regarding their qualification for office or employment under this article and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.*

**Sec. 4. CONFLICT OF INTEREST.** (a) *A person may not serve as the public counsel or act as the general counsel for the office of public insurance counsel if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation related to the operation of the department or the office of public insurance counsel.*

(b) [(f)] *A person serving as the public counsel may not, for a period of two years after the date the person ceases to be public counsel, represent any person in a proceeding before the board or receive compensation for services rendered on behalf of any person regarding a case pending before the rate board, commissioner, or department [board].*

(c) *An officer, employee, or paid consultant of a trade association in the field of insurance may not serve as the public counsel or be an employee of the office of public insurance counsel who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.*

(d) *A person who is the spouse of an officer, manager, or paid consultant of a trade association in the field of insurance may not serve as the public counsel and may not be an office of public insurance counsel employee who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.*

(e) *For purposes of this section, a trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.*

Sec. 5. **POWERS AND DUTIES.** (a) [(g)] The office of public insurance counsel may assess the impact of insurance rates, rules, and forms on insurance consumers in Texas and, in its own name, shall act as an advocate of positions that are most advantageous to a substantial number of insurance consumers as determined by the public counsel for the office.

(b) [(h)] The public counsel:

(1) may appear or intervene as a matter of right before the *commissioner or department [State Board of Insurance]* as a party or otherwise on behalf of insurance consumers as a class in:

(A) matters involving rates, rules, and forms affecting property and casualty insurance;

(B) matters involving rates, rules, and forms affecting title insurance;

(C) matters involving rules affecting life, health, and accident insurance;

(D) matters involving rates, rules, and forms affecting credit life, and credit accident and health insurance;

(E) matters involving rates, rules, and forms affecting all other lines of insurance for which the *commissioner or department [State Board of Insurance]* promulgates, sets, or approves rates, rules, and/or forms; and

(F) matters involving withdrawal of approval of policy forms *in proceedings initiated by the department under Articles [Article] 3.42(f) and 3.42(g) of this code or if the public counsel presents persuasive evidence to the department [determines]* that such forms do not comply with *such articles of this code or any valid rule relating thereto duly adopted by the commissioner [State Board of Insurance] or are [is] otherwise contrary to law;*

(2) may initiate or intervene as a matter of right or otherwise appear in a judicial proceeding involving or arising out of any action taken by an administrative agency in a proceeding in which the public counsel *previously* appeared under the authority granted by this article;

(3) is entitled to access to any records of the department that are available to any party other than the *department [board's] staff in a proceeding before the commissioner or department under the authority granted public counsel by this article [board];*

(4) is entitled to obtain discovery under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) of any nonprivileged matter that is relevant to the subject matter involved in a *[any]* proceeding or submission before the *commissioner or department as authorized by this article [State Board of Insurance];*

(5) may recommend legislation to the legislature that, in the judgment of the public counsel, would affect positively the interests of insurance consumers;

(6) may appear or intervene as a matter of right as a party or otherwise on behalf of insurance consumers as a class in all proceedings in which the public counsel determines that insurance consumers need representation, except that the public counsel may not intervene in any enforcement or *parens patriae* proceeding brought by the attorney general; *[and]*

(7) *may appear or intervene before the commissioner or department as a party or otherwise on behalf of small commercial insurance consumers, as a class, in matters involving rates, rules, and forms affecting commercial insurance consumers, as a class, in all proceedings where it is deemed by the counsel that small commercial consumers are in need of representation; and*

(8) shall submit to the department for adoption a consumer bill of rights appropriate to each personal line of insurance regulated by the *department [board]* to be distributed upon the issuance of a policy by insurers to each policyholder under rules adopted by the department.

(c) [(i)] The public counsel may not intervene or appear in *any proceedings or hearings before the [board or] commissioner or department, or other proceedings, that relate to approval or consideration of individual charters, licenses, acquisitions, mergers, [or] examinations, proceedings concerning the solvency of individual insurers [after a receiver is appointed], financial issues, policy forms, advertising, or other regulatory issues [or other matters]*

affecting individual *insurers* [insurer] or *agents* [agent-licenses]. The confidentiality requirements applicable to examination reports under Article 1.18 of this code and to the commissioner under Section 3A, Article 21.28, of this code shall apply to the public counsel.

(d) [(j)] Any order of the *commissioner* [board] which determines, approves, or sets a rate under this code and is appealed shall be and remain in effect during the pendency of an appeal. During the pendency of the appeal, an insurer shall use the rate provided in the order being appealed. Such rate shall be lawful and valid during such appeal, and an insurer shall not be required to make any refund therefrom after a decision on the appeal. If a decision on appeal shall vacate the order, the rate established by the *commissioner* [board] prior to the rendition of the vacated order shall be in effect from and after the date of remand and until the *commissioner* [board] shall make a further determination; however, the *commissioner* [board] shall consider the order of the court in setting future rates.

*Sec. 6. PUBLIC ACCESS AND INFORMATION.* (a) *The office of public insurance counsel shall prepare information of public interest describing the functions of the office. The office of public insurance counsel shall make the information available to the public and appropriate state agencies.*

(b) *The office of public insurance counsel shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the office of public insurance counsel's programs. The office of public insurance counsel shall also comply with federal and state laws for program and facility accessibility.*

*Sec. 7. APPLICABILITY OF SUNSET ACT.* [(k)] The office of public insurance counsel is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished September 1, 2005 [1993].

## ARTICLE 22. REDESIGNATION OF PROVISIONS WITH DUPLICATE DESIGNATIONS; CONFORMING AMENDMENTS

SECTION 22.01. Article 3.77, Insurance Code, as added by Chapter 800, Acts of the 71st Legislature, Regular Session, 1989, is reenacted and redesignated as Article 3.78, Insurance Code, to read as follows:

Art. 3.78 [3.77]. ELIGIBILITY FOR BENEFITS FOR ALZHEIMER'S DISEASE. If an individual or group policy, contract, or certificate, or evidence of coverage providing coverage for Alzheimer's disease is delivered or issued for delivery in this state by an insurer, including a group hospital service corporation under Chapter 20 of this code, and the policy, contract, certificate, or evidence requires demonstrable proof of organic disease or other proof before the insurer will authorize payment of benefits for Alzheimer's disease, a clinical diagnosis of Alzheimer's disease by a physician licensed in this state, including history and physical, neurological, psychological and/or psychiatric evaluations, and laboratory studies, shall satisfy the requirement for demonstrable proof of organic disease or other proof under the coverage.

SECTION 22.02. Subsection (e), Section 2, Article 21.48A, Insurance Code, as added by Section 2, Chapter 327, Acts of the 72nd Legislature, Regular Session, 1991, is reenacted and redesignated as Subsection (f) to read as follows:

(f) [(e)] A Lender that requires a Borrower to secure insurance coverage before the Lender will provide a residential mortgage loan shall accept an insurance binder as evidence of the required insurance if:

(1) the insurance binder is issued by a licensed local recording agent as that term is defined by Article 21.14 of this code and, if requested to do so, the agent shall furnish appropriate evidence to the Lender;

(2) the local recording agent is appointed to represent the insurance company whose name appears on the binder and is authorized to issue binders and, if requested to do so, the agent shall furnish appropriate evidence to the Lender;

(3) the insurance binder is accompanied by evidence of payment of the required premium; and

(4) the insurance binder will be replaced by an original insurance policy for the required coverage within 30 days of the date of the issuance of the insurance binder.

If the foregoing conditions are met, a Lender may not require a Borrower to provide an original insurance policy in lieu of the insurance binder.

SECTION 22.03. Article 21.49-14, Insurance Code, as added by Section 5.08, Chapter 1, Acts of the 70th Legislature, 1st Called Session, 1987, is reenacted and redesignated as Article 21.49-13, Insurance Code, to read as follows:

Art. 21.49-13 [21.49-14]. EXCESS LIABILITY POOLS

Sec. 1. DEFINITIONS. In this article:

- (1) "Pool" means an excess liability pool created under this article.
- (2) "Fund" means an excess liability fund.
- (3) "Board" means the board of trustees of a pool.
- (4) "County" means a county in this state.
- (5) "School district" means a public school district created under the laws of this state.
- (6) "Junior college district" means a junior college district organized under the laws of this state.
- (7) "Entity" means a county, school district, or junior college district.

Sec. 2. CREATION OF POOLS. (a) Separate excess liability pools may be created for counties, school districts, and junior college districts as provided by this article.

(b) An excess liability pool may be created:

(1) for counties, on written agreement to create the pool by the county judges of not fewer than five counties in this state;

(2) for school districts, on written agreement to create the pool by the presidents of the boards of trustees, acting on behalf of their boards, of not fewer than five school districts in this state; or

(3) for junior college districts, on written agreement to create the pool by the presiding officers of the boards of trustees, acting on behalf of their boards, of not fewer than five junior college districts in this state.

(c) An excess liability pool is created to provide excess liability insurance coverage as provided by this article and the plan.

(d) An entity may participate only in a pool created for that type of entity. There may not be more than one county excess liability pool, one school district excess liability pool, and one junior college district excess liability pool.

Sec. 3. SCOPE OF COVERAGE. (a) A pool shall insure an entity and its officers and employees against liability for acts and omissions under the laws governing that entity and its officers and employees in their official or employment capacities.

(b) Under excess liability insurance coverage, a pool shall pay that portion of a claim against an entity and its officers and employees that is finally determined or settled or is included in a final judgment of a court and that is in excess of \$500,000, but the amount paid by the pool may not be in excess of the amount determined by the board to be actuarially sound for the pool.

(c) Under the insurance coverage, the pool may participate in the evaluation, settlement, or defense of any claim.

Sec. 4. PARTICIPATION IN POOL. An entity is entitled to coverage from the pool on:

- (1) submitting a complete application;
- (2) providing any other information required by the pool;
- (3) meeting the underwriting standards established by the pool; and
- (4) paying the premiums required for the coverage.

Sec. 5. PAYMENT OF CONTRIBUTIONS AND PREMIUMS. An entity purchasing excess liability insurance coverage from the pool may use funds of the entity to pay any contributions or premiums required by the pool for the coverage.

Sec. 6. PLAN OF OPERATION. (a) At the time the written agreement is executed under Section 2 of this article, the creators shall select nine persons to serve as a temporary board to draft the plan of operation for a pool.

(b) Within 30 days after selection, the members of a temporary board shall meet to prepare a detailed plan of operation for the pool.

(c) The plan of operation may include any matters relating to the organization and operation of the pool and the pool's finances. The plan must include:

(1) the organizational structure of the pool, including the method of selection of the board, the method of procedure and operation of the board, and a summary of the method for managing and operating the pool;

(2) a description of the contributions and other financial arrangements necessary to cover the initial expenses of the pool and estimates supported by statistical data of the amounts of those contributions or other financial arrangements;

(3) underwriting standards and procedures for the evaluation of risks;

(4) procedures for purchase of reinsurance;

(5) methods, procedures, and guidelines for establishing rates for premiums for and maximum limits of excess coverage available from the pool;

(6) procedures for the processing and payment of claims;

(7) methods and procedures for defraying any losses and expenses of the pool;

(8) methods, procedures, and guidelines for the management and investment of the fund;

(9) guidelines for nonrenewal of coverage;

(10) minimum limits of capital and surplus to be maintained by the pool; and

(11) minimum standards for reserve requirements for the pool.

(d) The temporary board shall complete and adopt the plan of operation within 90 days after the date of the appointment of the temporary board.

(e) Within 15 days following the day on which the plan of operation is adopted, the first board must be selected as provided by the plan of operation. The members of the first board shall take office not later than the 30th day following the date of the adoption of the plan of operation.

Sec. 7. BOARD OF TRUSTEES. (a) A pool is governed by a board of nine trustees selected as provided by the plan of operation.

(b) Members of the board serve for terms of two years with the terms expiring at the time provided by the plan of operation.

(c) A vacancy on the board shall be filled as provided by the plan of operation.

(d) A person serving on the board who is an officer or employee of an entity covered by the pool performs duties on the board as additional duties required of his original office or employment.

(e) Each member of the board shall execute a bond in the amount required by the plan of operation payable to the pool and conditioned on the faithful performance of his duties. The pool shall pay the cost of the bond.

(f) Members of the board are not entitled to compensation for their service on the board.

(g) The board shall select from its membership persons to serve as chairman, vice-chairman, and secretary. The persons selected serve for terms of one year that expire as provided by the plan of operation.

(h) The board shall hold meetings at the call of the chairman and at times established by its rules.

(i) A majority of the members of the board constitutes a quorum.

(j) In addition to other duties provided by this article and the plan of operation, the board shall:

(1) approve contracts other than excess liability insurance contracts issued to entities by the pool;



- (2) consider and adopt premium rate schedules for the pool;
  - (3) consider and adopt policy forms for the pool;
  - (4) receive service of summons on behalf of the pool; and
  - (5) appoint and supervise the activities of the pool manager.
- (k) In addition to other authority provided by this article, the board may:
- (1) adopt necessary rules;
  - (2) delegate specific responsibilities to the pool manager; and
  - (3) amend the plan of operation to assure the orderly management and operation of the pool.

(l) A member of the board is not liable with respect to a claim or judgment for which coverage is provided by the pool or for a claim or judgment against an entity covered by the pool against whom a claim is made.

Sec. 8. POOL MANAGER. (a) The board shall appoint a pool manager who shall serve at the pleasure of the board.

(b) The pool manager is entitled to receive the compensation authorized by the board.

(c) The pool manager shall execute a bond in the amount determined by the board, payable to the pool, conditioned on the faithful performance of his duties. The pool shall pay the cost of the bond.

(d) The pool manager shall manage and conduct the affairs of the pool under the general supervision of the board and shall perform any other duties directed by the board.

(e) In addition to any other duties provided by this article or by the board, the pool manager shall:

- (1) receive and pass on applications from entities for excess liability coverage from the pool;
- (2) negotiate contracts for the pool;
- (3) prepare premium rate schedules for the approval of the board;
- (4) collect and compile statistical data relating to the excess liability coverage provided by the pool, including relevant loss, expense, and premium data, and make that information available to the board and to the public; and
- (5) prepare and submit to the board for approval proposed policy forms for pool coverage.

(f) The pool manager may refuse to renew the coverage of any entity insured by the pool based on the guidelines provided by the plan of operation.

Sec. 9. EMPLOYEES AND OTHER PERSONNEL. (a) The pool manager shall employ or contract with persons necessary to assist the board and pool manager in carrying out the powers and duties of the pool.

(b) The board shall approve compensation paid to employees of the pool and contracts made with other persons under this section.

(c) The board may require any employee or person with whom it contracts under this section to execute a bond in an amount determined by the board, payable to the board, and conditioned on the faithful performance of the employee's or person's duties or responsibilities to the pool.

(d) An employee or person with whom the pool has contracted under this section is not liable with respect to any claim or judgment for which coverage is provided by the pool or for any claim or judgment against any entity covered by the pool against whom a claim is made.

Sec. 10. OFFICE. (a) A pool shall maintain its principal office in Austin, Texas.

(b) The records, files, and other documents and information relating to the pool must be maintained in the pool's principal office.

Sec. 11. RULES. The board may adopt and amend rules to carry out this article.

Sec. 12. GENERAL POWERS AND DUTIES. (a) A pool shall:

- (1) issue excess liability coverage to each entity entitled to coverage under this article;

- (2) collect premiums for coverage issued or renewed by the pool;
- (3) process and pay valid claims; and
- (4) maintain detailed data regarding the pool.

(b) The pool may:

- (1) enter into contracts;
- (2) purchase reinsurance;
- (3) cancel or refuse to renew coverage; and

(4) perform any other acts necessary to carry out this article, the plan of operation, and the rules adopted by the board.

Sec. 13. EXCESS LIABILITY FUND. (a) On creation of a pool, the first board shall create an excess liability fund.

(b) The fund is composed of:

- (1) premiums paid by entities for coverage by the pool;
- (2) contributions and other money received by the pool to cover the initial expenses of the fund;
- (3) investments and money earned from investments of the fund; and
- (4) any other money received by the pool.

(c) The pool manager shall manage the fund under the general supervision of the board.

(d) Administrative expenses of the pool may be paid from the fund, but payments for this purpose during any fiscal year of the pool may not exceed the amount established by the board.

(e) Money in the fund may not be used to pay punitive damages, fines or penalties for violation of a civil or criminal statute, or fines or penalties imposed for violation of an administrative rule or regulation, or an order, rule, or ordinance.

(f) Money for a claim may not be paid from the fund under excess liability insurance coverage unless and until all benefits payable under any other underlying policy of liability insurance covering the claim or judgment are exhausted.

(g) The board may select one or more banks to serve as depository for money of the fund. Before the pool manager deposits fund money in a depository bank in an amount that exceeds the maximum amount secured by the Federal Deposit Insurance Corporation, the bank must execute a bond or provide other security in an amount sufficient to secure from loss the fund money that exceeds the amount secured by the Federal Deposit Insurance Corporation.

(h) Each year as provided by the plan of operation, the board shall have an actuary who is a member of the American Academy of Actuaries audit the capital, surplus, and reserves of the pool and prepare for the pool and its members a formal report.

Sec. 14. INVESTMENTS. (a) The fund manager, under the general supervision of the board, shall manage and invest the money in the fund in the manner provided by the plan of operation.

(b) Money earned by investment of money in the fund must be deposited in the fund or reinvested for the fund.

Sec. 15. CONTRIBUTIONS. The board shall determine the amount of any contributions necessary to meet initial expenses of the pool. The board shall make this determination based on the data provided in the plan of operation.

Sec. 16. PREMIUM RATES; LIMITS OF COVERAGE. (a) The board shall determine the rates for premiums that will be charged and the maximum limits of coverage provided to assure that the pool is actuarially sound.

(b) The pool manager shall prepare the statistical data and other information and the proposed rate schedules and maximum limits of coverage for consideration of the board.

(c) The board shall periodically reexamine the rate schedules and the maximum limits of coverage as conditions change.

Sec. 17. **COVERAGE PERIOD.** (a) On accepting coverage from the pool, an entity shall maintain that coverage for a period not less than 36 calendar months following the month the coverage is issued.

(b) An entity that voluntarily discontinues coverage in the pool may not again obtain coverage from the pool for at least 36 calendar months following the month in which the coverage was discontinued.

Sec. 18. **COVERAGE.** Excess liability coverage provided by the pool may be provided on a claims-made or an occurrence basis.

Sec. 19. **NONRENEWAL.** (a) Except as provided by Subsection (b) of this section, the pool may refuse to renew the coverage of any entity that fails to comply with the pool's underwriting standards.

(b) The pool may not refuse to renew the coverage of an entity for the first 36 calendar months following the month in which the entity was first insured by the pool.

(c) Section 17(b) of this article does not apply to discontinuance of an entity's coverage if the pool refuses renewal under this section. An entity whose coverage is not renewed is not eligible to apply for new coverage during the 12 calendar months beginning after the month in which the pool gave written notice that it would not renew the coverage.

Sec. 20. **SHORTAGE OF AVAILABLE MONEY.** (a) If money in the fund will be exhausted by payment of all final and settled claims and final judgments during the fiscal year, the amount paid by the pool to each person having a claim or judgment shall be prorated, with each person receiving an amount that is equal to the percentage the amount owed to him by the pool bears to the total amount owed, outstanding, and payable by the pool.

(b) The remaining amount that is due and unpaid to a person who receives prorated payment under Subsection (a) of this section must be paid in the immediately following fiscal year.

Sec. 21. **COMMISSIONS.** A pool may pay commissions from the fund on approval of the board.

Sec. 22. **APPLICATION OF OTHER LAWS.** (a) Except as provided by Subsection (b) of this section, the pool is not considered insurance under the Insurance Code and other laws of this state, and the State Board of Insurance has no jurisdiction over the pool.

(b) The pool shall collect the necessary data, information, and statements and shall file with the State Board of Insurance the reports and statements required by Articles 1.24A and 1.24B and is subject to 21.21 of this code.

SECTION 22.04. Section 5, Article 17.25, Insurance Code, is amended to read as follows:

Sec. 5. **POLICY FORMS PRESCRIBED.** Each county mutual insurance company shall be subject to the provisions of Article 5.06 and [of] Article 5.35 [~~and of Article 5.36~~] of this Code. The Board of Insurance Commissioners pursuant to Article 5.35 may in its discretion make, promulgate and establish uniform policies for county mutual insurance companies different from the uniform policies made, promulgated and established for use by companies other than county mutual insurance companies, and shall prescribe the conditions under which such policies may be adopted and used by county mutual insurance companies, and the conditions under which such companies shall adopt and use the same forms and no others as are prescribed for other companies.

SECTION 22.05. Article 8.24(i), Insurance Code, is amended to read as follows:

(i) The department shall have authority to suspend or revoke the certificate of authority of any insurance carrier authorized to do business in Texas under this Article, if the State Board of Insurance, after notice and opportunity for hearing, shall find that such carrier has systematically, with neglect and with willful disregard, failed to comply with its obligations derived from the contracts of insurance, and the laws applicable thereto, as contained in policies issued in the State of Texas.

Any carrier aggrieved by an order of the State Board of Insurance hereunder shall be entitled to appeal therefrom pursuant to the provisions of Article 1.04 [~~1.04(f)~~] of *this code* [~~the Insurance Code~~].

SECTION 22.06. Section 9, Article 21.49, Insurance Code, is amended to read as follows:

Sec. 9. APPEALS. Any person insured pursuant to this Act, or his duly authorized representative, or any affected insurer who may be aggrieved by an act, ruling or decision of the Association, may, within 30 days after such act, ruling or decision, appeal to the commissioner. In the event the Association is aggrieved by the action of the commissioner with respect to any ruling, order, or determination of the commissioner, it may, within 30 days after such action, make a written request to the commissioner, for a hearing thereon. The commissioner shall hear the Association, or the appeal from an act, ruling or decision of the Association, within 30 days after receipt of such request or appeal and shall give not less than 10 days' written notice of the time and place of hearing to the Association making such request or the person, or his duly authorized representative, appealing from the act, ruling or decision of the Association. A hearing on an act, ruling or decision of the Association relating to the payment of, the amount of, or the denial of a particular claim shall be held, at the request of the claimant, in either the county in which the covered property is located or Travis County. Within 30 days after the hearing, the commissioner shall affirm, reverse or modify its previous action or the act, ruling or decision appealed to the commissioner. Pending such hearing and decision thereon, the commissioner may suspend or postpone the effective date of its previous rule or of the act, ruling or decision appealed to the commissioner. The Association, or the person aggrieved by any order or decision of the commissioner, may thereafter appeal to either a District Court of Travis County, Texas, or a District Court in the county in which the covered property is located. An action brought under this section is subject to the procedures established under Article 1.04 [1.04(9)] of this code.

SECTION 22.07. Section 7(b), Article 21.49-3, Insurance Code, is amended to read as follows:

(b) In the event any person insured or applying for insurance is aggrieved by the final action of the board of directors of the association, the aggrieved party may, within 30 days after such action, make a written request to the commissioner for a hearing thereon. The commissioner shall hear the appeal from an act, ruling, or decision of the association, within 30 days after receipt of such request or appeal and shall give not less than 10 days' written notice of the time and place of hearing to the person, or his duly authorized representative, appealing from the act, ruling, or decision of the board of directors of the association. Within 30 days after such hearing, the commissioner shall affirm, reverse, or modify the act, ruling, or decision appealed to the commissioner. Pending such hearing and decision thereon, the commissioner may suspend or postpone the effective date of the rule or of the act, ruling, or decision appealed. The association, or the person aggrieved by any order or decision of the commissioner, may thereafter appeal in accordance with Article 1.04 [1.04(9)] of this code.

#### ARTICLE 23. CONSOLIDATION OF FUNDS

SECTION 23.01. The application of Sections 403.094 and 403.095, Government Code, to a fund or the permissible uses of revenue or fund balances is not affected by this Act.

#### ARTICLE 24. CERTAIN INFORMATION RELATING TO RATES

SECTION 24.01. Section 4(a), Article 5.73, Insurance Code, is amended to read as follows:

(a) The Board shall *annually* require an audit of any advisory organization that provides statistics or other information to the Board in a proceeding to set rates. The audit shall be conducted under rules adopted by the Board, at the expense of the advisory organization. The audit must examine the advisory organization's method of collecting, analyzing, and reporting data to assure the accuracy of data. The audit may examine source documents within individual companies. *Except for individual company information, an audit is public information.*

SECTION 24.02. Article 5.73, Insurance Code, is amended by adding Sections 4A, 4B, 4C, and 4D to read as follows:

Sec. 4A. (a) *An advisory organization may not receive from or supply to insurers transacting insurance in this state the information described in Section 1 of this article unless the advisory organization establishes a subsidiary that:*

- (1) *is domiciled in this state;*
- (2) *has an office in this state; and*

(3) has a governing board composed of:

(A) an *ex officio* member appointed by the commissioner; and

(B) five representatives of property and casualty insurers licensed in this state who subscribe to or purchase products from the advisory organization.

(b) Each advisory organization shall file with the commissioner a copy of its constitution and bylaws, article of agreement or association, or certificate of incorporation and a copy of the rules governing its activities.

(c) Each advisory organization shall file with the commissioner a list showing each subscriber company doing business in this state and the products or information the subscriber company purchases. The filing required by this subsection shall be made at least quarterly.

(d) On request by the commissioner, each advisory organization shall report to the department a summary of the actuarial assumptions, trend factors, economic factors, and other criteria used in trending data for companies doing business in this state.

Sec. 4B. Each insurer relying on prospective loss costs provided by an advisory organization must justify, by expert evidence, its need for that information on the grounds of insufficiency of that insurer's data and experience. Such justification may be made by affidavit by a qualified actuary or after notice and opportunity for a hearing. An insurer unable to demonstrate its need for prospective loss costs provided by an advisory organization may not file or use that information.

Sec. 4C. An insurer may not receive from an advisory organization prospective loss costs for personal automobile, homeowners', or dwelling fire insurance.

Sec. 4D. The select committee on rate and form regulation created under Article 1.50 of this code shall appoint an independent consulting firm to evaluate the activities of advisory organizations in this state, including their impact on competition in the insurance market, their use by insurers, and their impact on availability and affordability of coverage, and any other matters relevant to determining their continued authorization. The committee shall include in its report to the legislature a recommendation for the future role of advisory organizations in this state.

SECTION 24.03. Section 5, Article 5.73, Insurance Code, is amended to read as follows:

Sec. 5. The authority granted under this article expires September 1, 1997 [1993].

SECTION 24.04. Article 21.69, Insurance Code, is amended to read as follows:

Art. 21.69. ~~PARALLEL STATISTICAL DATA COLLECTION [BOARD MAY CONTRACT FOR PREMIUM AND LOSS DATA]~~. (a) Except as provided in Article 5.58 of this code, the commissioner shall contract with one statistical entity for each line of insurance to compile and maintain historical premium and loss data pursuant to statistical plans adopted by the commissioner. A statistical entity designated by the commissioner must provide sufficient evidence of five years of experience in data collection, data maintenance, data quality control, accounting and related areas ~~[board may contract with any qualified entity to collect historical premium and loss data as defined by the board and pursuant to statistical plans promulgated or approved by the board]~~.

(b) An insurer may continue to provide historical premium and loss data to a statistical agent designated by the board prior to April 1, 1993, as required by a statistical plan in use on that date. The board shall receive that information, and the statistical agent may return that information to its subscribers. The board may utilize this information in all rate hearings.

(c) The select committee on rate and form regulation created under Article 1.50 of this code shall appoint an independent consulting firm to evaluate the costs and benefits of each of the systems and include in its report to the legislature a recommendation for future data collection consistent with its recommendations on rates.

SECTION 24.05. Not later than December 31, 1993, each advisory organization governed by Article 5.73, Insurance Code, shall establish a subsidiary domiciled in this state as required by Section 4A(a), Article 5.73, Insurance Code, as added by this Act.

ARTICLE 25. EFFECTIVE DATE; EMERGENCY

SECTION 25.01. Except as otherwise provided by this Act, this Act takes effect September 1, 1993.

SECTION 25.02. Section 20.18 of this Act shall only apply to policies and certificates of insurance issued on or after September 1, 1993.

SECTION 25.03. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

Passed by the House on May 8, 1993: Yeas 66, Nays 48, 3 present, not voting; the House concurred in Senate amendments to H.B. No. 1461 on May 28, 1993, by a non-record vote; the House adopted H.C.R. No. 180 authorizing certain corrections in H.B. No. 1461 on May 29, 1993, by a non-record vote; passed subject to the provisions of Article III, Section 49a, of the Constitution of the State of Texas; passed by the Senate, with amendments, on May 27, 1993: Yeas 30, Nays 0; the Senate adopted H.C.R. No. 180 authorizing certain corrections in H.B. No. 1461 on May 30, 1993; passed subject to the provisions of Article III, Section 49a, of the Constitution of the State of Texas.

Filed without signature June 17, 1993.

Effective Sept. 1, 1993, except §§ 17.02 and 19.06 effective Aug. 30, 1993, 90 days after date of adjournment.