

CHAPTER 249

H.B. No. 2022

AN ACT

relating to the imposition of certain fees and taxes on insurers and health maintenance organizations.

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

SECTION 1. Sections 1 and 4, Article 3.04, Insurance Code, are amended to read as follows:

Sec. 1. As a condition precedent to the granting of a charter of any such company, the incorporators shall file with the State Board of Insurance [~~Commissioners~~] the following:

1. An application for charter on such form and including therein such information as may be prescribed by the Board;

2. The articles of incorporation as provided in this Code;

3. An affidavit made by two (2) or more of its incorporators that all of the stock has been subscribed in good faith and fully paid for, as required by law, in the amount [~~of not less than One Hundred Thousand Dollars (\$100,000) capital and that such company is possessed of at least One Hundred Thousand Dollars (\$100,000) surplus,~~] as required by law, in addition to its capital; which affidavit shall state that the facts set forth in the application and the articles of incorporation are true and correct and that the capital and surplus is the bona fide property of such company. The State Board of Insurance may, in its discretion, at the expense of the incorporators, require other and additional satisfactory evidence of the matters required to be set forth in said affidavit before it shall be required to file the articles of incorporation, application for charter or follow the procedure hereinafter set forth;

4. A charter fee *prescribed by law* [~~of Twenty-five Dollars (\$25.00)~~].

Sec. 4. If the Board shall determine by an affirmative finding any of the above issues adversely to the applicants, it shall reject the application in writing giving the reason therefor. Otherwise, the Board shall approve the application, whereupon all such documents shall be deposited with the Board. The Board shall record the documents in a log [~~book~~] kept for that purpose; and upon receipt of *the prescribed* [~~a~~] fee [~~of One Dollar (\$1.00)~~], it shall furnish a certified copy of the same to the incorporators, upon which they shall become a body politic and corporate and may proceed to complete the organization of the company, for which purpose they shall forthwith call a meeting of the stockholders who shall adopt bylaws for the government of the company, and elect a board of directors

of not less than five (5) members; which board shall have full control and management of the affairs of the corporation, subject to the bylaws thereof as adopted or amended from time to time by the stockholders or directors, and to the laws of this state. The board of directors so elected shall serve until the fourth Tuesday in April thereafter, on which date, there shall be held a meeting of the stockholders at the home office, and a board of directors elected for the ensuing year; provided, however, that when the board of directors shall consist of nine (9) or more members, in lieu of electing the whole number of directors annually, the bylaws may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the terms of office of directors of the first class to expire at the first annual meeting of stockholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two classes, or until the third succeeding annual meeting, if there be three classes. No classification of directors shall be effective prior to the first annual meeting of stockholders. Annual meetings of the stockholders, after the first meeting, shall be held at the home office of the company on or before April 30 of each year as may be prescribed in the bylaws of the corporation. If the stockholders fail to elect directors at any annual meeting, directors may be elected at a special meeting of the stockholders called for that purpose. Neither directors nor officers need be stockholders unless the articles of incorporation or bylaws so require. The directors shall choose a president from their own number, and all other officers shall be chosen in accordance with the bylaws of the company, and none of such other officers need be a director except as required by the bylaws of such company. The duties and compensation of officers of such company shall be in accordance with the bylaws of the company, or, to the extent of the absence of provisions governing the same in the bylaws, then the duties and compensation of officers shall be defined and fixed by the directors. The directors shall keep a full and correct record of their transactions to be open during business hours to the inspection of stockholders. The directors shall fill any vacancy which occurs in the board or in any office of such company. A majority of the board shall be a quorum for the transaction of such business. At all meetings of the stockholders, each stockholder shall be entitled to one vote for each share of stock fully paid up appearing in his name on the books of the company, except to the extent that the voting rights of the shares of any class or classes of stock are increased, limited or denied by the articles of incorporation as authorized or permitted by the Texas Business Corporation Act, which vote may be given in person or by written proxy. The majority of the paid up capital stock at any meeting of the stockholders shall be a quorum.

SECTION 2. Articles 3.07 and 3.08, Insurance Code, are amended to read as follows:

Art. 3.07. **SHALL FILE ANNUAL STATEMENT.** Each "domestic" company shall, after the first day of January of each year and before the first day of March following, and before the renewal of its certificate of authority to transact business, prepare, under oath of two of its officers, and deposit in the office of the *State Board of Insurance [Commissioners]*, a statement, accompanied with the *prescribed* fee for filing annual statements [~~of Twenty (\$20.00) Dollars~~], showing the condition of the company on the thirty-first day of December the next preceding, which shall include a statement in detail showing the character of its assets and liabilities on that date, the amount and character of business transacted, moneys received and how expended during the year, and the number and amount of its policies in force on that date in Texas, and the total amount of its policies in force.

Art. 3.08. **RENEWAL CERTIFICATES.** Whenever any such company, transacting insurance business in this State, shall have filed its annual statement in accordance with the preceding article, showing a condition which entitles it to transact business in this State in accordance with the provisions of this chapter, the *State Board of Insurance [Commissioners]* shall, upon a receipt of *the prescribed [a] fee [of One (\$1.00) Dollar]*, issue a renewal certificate of authority to such company for a period of not more than fifteen (15) months, and not extending more than ninety (90) days beyond the last day of February next after the date of its issuance, on which date such certificate shall expire by its terms unless revoked or suspended according to law.

SECTION 3. Section (d), Article 3.42, Insurance Code, is amended by adding Subsection (4) to read as follows:

(4) *The State Board of Insurance shall charge and receive the following fees in an amount to be determined by the Board not to exceed the following:*

(i) *for a filing of policy forms, amendments, endorsements, and riders filed for review under this Article, unless exempted pursuant to Section (f) of this Article, \$200.00; and*

(ii) *for a filing of policy forms, amendments, endorsements, and riders, exempted from review pursuant to Section (f) of this Article, \$100.00.*

The Board shall, within the limits fixed by this subsection, prescribe the fees to be charged under this subsection. Fees collected under this subsection shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund.

SECTION 4. Article 4.07, Insurance Code, is amended to read as follows:

Art. 4.07. FEES OF 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 [The] State Board of Insurance shall charge and receive for the use of the State [the following] fees in an amount to be determined by the Board not to exceed the following:*

- (1) *For filing the annual statement, \$500.00.*
- (2) *For filing an amendment to a certificate of authority if the charter is not amended, \$100.00.*
- (3) *For affixing the official seal and certifying to the seal, \$20.00.*
- (4) *For reservation of name, \$200.00.*
- (5) *For renewal of reservation of name, \$50.00.*
- (6) *For filing an application for admission of a foreign company, \$4,000.00.*
- (7) *For filing an original charter of a company including issuance of a certificate of authority, \$3,000.00.*
- (8) *For filing an amendment to a charter if a hearing is held, \$500.00.*
- (9) *For filing an amendment to a charter if a hearing is not held, \$250.00.*
- (10) *For filing a designation of an attorney for service of process or amendment of the designation, \$50.00.*
- (11) *For filing a copy of a total reinsurance agreement, \$1,500.00.*
- (12) *For filing a copy of a partial reinsurance agreement, \$300.00.*
- (13) *For accepting a security deposit, \$200.00.*
- (14) *For substitution or amendment of a security deposit, \$100.00.*
- (15) *For certification of statutory deposits, \$20.00.*
- (16) *For filing a notice of intent to relocate books and records pursuant to Article 1.28 of this code, \$300.00.*
- (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.*
- (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.*
- (19) *For filing a registration statement pursuant to Section 3, Article 21.49-1 of this code, \$300.00.*
- (20) *For filing for review pursuant to Section 4, Article 21.49-1 or Article 22.15 of this code, \$500.00.*
- (21) *For filing of a direct reinsurance agreement pursuant to Article 22.19 of this code, \$300.00.*

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

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

(24) For filing of restated articles of incorporation for both domestic and foreign companies, \$500.00.

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

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

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

~~[For filing each declaration or certified copy of charter of an insurance company \$25.00~~

~~[For filing the annual statement of an insurance company, or certificate in lieu thereof \$20.00~~

~~[For certificate of authority and certified copy thereof \$1.00~~

~~[For affixing the official seal and certifying to the same \$1.00]~~

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

The Board shall, within the limits fixed by this section, prescribe the fees to be charged under this section.

The insurers subject to the fees imposed by this 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.

B. The State Board of Insurance shall set and collect a sales charge for making copies of any paper of record in the 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 State Board of Insurance may make and distribute copies of papers containing rating information without charge or for such charge as the 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.

C. All fees collected by virtue of this Article shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund and appropriated to the use and benefit of the 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.

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 State Board of Insurance.

SECTION 5. Chapter 4, Insurance Code, is amended by adding Article 4.17 to read as follows:

Art. 4.17. MAINTENANCE TAX ON GROSS PREMIUMS. (a) The State Board of Insurance shall annually determine the rate of assessment on an annual or semiannual 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.

(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 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.*

(d) *The taxes collected shall be deposited in the state treasury to the credit of the 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 State Board of Insurance.*

(e) *The State Board of Insurance may collect the tax assessed under this article 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.*

(f) *The insurers subject to the tax imposed by this article include stock and mutual insurance companies, local mutual aid associations, statewide mutual assessment companies, group hospital service plan corporations, and stipulated premium insurance companies collecting those gross premiums and considerations from residents of this state.*

SECTION 6. Section 1, Article 11.02, Insurance Code, is amended to read as follows:

Sec. 1. As a condition precedent to the granting of a charter of any such insurance company, the incorporators shall file with the State Board of Insurance the following:

1. An application for charter on such form and include therein such information as may be prescribed by the Board;

2. The articles of incorporation as provided in this Code;

3. An affidavit made by two (2) or more of its incorporators that such company is possessed of at least Two Hundred Thousand (\$200,000.00) Dollars free surplus, as required by law, which affidavit shall state that the facts set forth in the application and articles of incorporation are true and correct and that the free surplus is the bona fide property of such company. The State Board of Insurance may, in its discretion, at the expense of the incorporators, require other and additional satisfactory evidence of the matters required to be set forth in said affidavit before it shall be required to file the articles of incorporation, application for charter, or follow the procedure hereinafter set forth;

4. A charter fee *prescribed by law* [~~of Twenty-five (\$25.00) Dollars~~].

When such application for charter, articles of incorporation, affidavit and charter fee are filed with the State Board of Insurance, the Board may set a date for a public hearing of the same, which date shall be not less than ten (10) nor more than sixty (60) days after the date of notice thereof. The Board shall notify in writing the person or persons submitting such application of the date for such hearing, and shall furnish a copy of such notice to all interested parties, including any other parties who have theretofore requested a copy of such notice. The Board shall, at the expense of the incorporators, publish a copy of such notice in any newspaper of general circulation in the county of the proposed home office of said company. In all such public hearings on such applications, a record shall be made of such proceedings and no such application shall be granted except when same is adequately supported by competent evidence. Any interested party shall have the right to oppose or support the granting or denial of such application and may intervene and participate fully and in all respects in any hearing or other proceeding had on any such application. Any such intervenor shall have and enjoy all the rights and privileges of a proper or necessary party in a civil suit in the courts of this State, including the right to be represented by counsel.

In considering any such application, the Board shall within thirty (30) days after public hearing, determine whether:

- (a) The minimum free surplus, as required by law, is the bona fide property of the company;
- (b) The proposed officers, directors and managing executive have sufficient insurance experience, ability and standing to render success of the proposed company probable;
- (c) The applicants are acting in good faith;

If the Board shall determine by an affirmative finding any of the above issues adversely to the applicants, it shall reject the application in writing, giving the reason therefor. Otherwise, the Board shall approve the application, whereupon all such documents shall be deposited with the Board.

SECTION 7. Articles 12.18, 13.08, and 20.08, Insurance Code, are amended to read as follows:

Art. 12.18. FEES. For the filing of each annual statement, the Board shall charge *the* [a] fee *prescribed by law* [~~of Five (\$5.00) Dollars~~], which [amount] shall be paid to the State Board of Insurance and must be deposited in the State Treasury to the credit of the State Board of Insurance operating fund, and Article 1.31A of this code applies to that fee.

Art. 13.08. FEES. For the filing of each annual statement, the Board shall charge *the* [a] filing fee *prescribed by law* [~~of Ten (\$10.00) Dollars~~]. The fee shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund, and Article 1.31A of this code applies to that fee.

Art. 20.08. FEES. The State Board of Insurance [~~Commissioners~~] shall charge *the* [a] fee *prescribed by law* [~~of Twenty (\$20.00) Dollars~~] for filing the annual statement of each corporation operating under this chapter, and [~~a fee of One (\$1.00) Dollar~~] for the issuance of each certificate of authority to such corporation.

SECTION 8. Sections 32 and 33, Texas Health Maintenance Organization Act (Articles 20A.32 and 20A.33, Vernon's Texas Insurance Code), are amended to read as follows:

Sec. 32. FEES. Every organization subject to this chapter shall pay to the commissioner the following fees:

- (a) for filing its original application for a certificate of authority, *a fee in an amount not to exceed \$15,000 as determined by the Board* [~~\$250~~];
- (b) for filing each annual report pursuant to Section 10 of this Act, *a fee in an amount not to exceed \$500 as determined by the Board* [~~\$100~~];
- (c) the expenses of all [any] examinations of health maintenance organizations made on behalf of the State of Texas by the Board or under its authority in such amounts as the commissioner shall certify to be just and reasonable [~~conducted pursuant to this Act~~]; [and]
- (d) the licensing, appointment, and examination fees pursuant to Section 15, Texas Health Maintenance Organization Act (Article 20A.15, Vernon's Texas Insurance Code);
- (e) for filing an evidence of coverage which requires approval, *a fee not to exceed \$200 as determined by the Board*; and
- (f) for filings required by rule but which do not require approval, *a fee not to exceed \$100 as determined by the Board*.

The Board shall, within the limits fixed by this section, prescribe the fees to be charged under this section.

Fees collected under this section must be deposited in the State Treasury to the credit of the State Board of Insurance operating fund.

Sec. 33. TAXATION. (a) Each health maintenance organization shall on or before the first day of March of each year file its annual statement showing the gross amount of revenues collected during the year ending December 31 preceding, and each such health maintenance organization shall pay an annual tax for the gross amounts of revenues collected for the issuance of health maintenance certificates or contracts in accordance with Article 4.11, Insurance Code, as amended. For the purposes of computing and

collecting the tax herein provided, a health maintenance organization is an "insurance organization" within the terms of Article 4.11, Insurance Code, as amended.

(b) After receipt by the commissioner of insurance of each health maintenance organization's tax return and tax payments, the commissioner shall certify to the State Treasurer the amount of taxes paid by each health maintenance organization. The commissioner's certification shall be authorization for the State Treasurer to transfer the certified amounts from the insurance suspense account to the General Revenue Fund unless there is a lawful reason for maintaining the payment in the insurance suspense account. Such taxes shall be for and on account of business transacted within this state during the calendar year ending December 31 in which such payments were collected, or for that portion of the year during which the health maintenance organization transacted business in this state. Taxes collected under this section shall be deposited in the State Treasury to the credit of the General Revenue Fund.

(c) ~~(b)~~ Each ~~such~~ health maintenance organization covered by Subsection (a) of this section shall be subject to ~~the provisions of~~ Articles 4.13, 4.14, and 4.15, Insurance Code ~~as amended~~.

(d) *The State Board of Insurance shall annually determine the rate of assessment and collect a per capita maintenance tax on the correctly reported gross revenues for the issuance of health maintenance certificates or contracts collected by all authorized insurers issuing such coverages in this state in an amount not to exceed \$2 for each enrollee. 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 section. The 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. The taxes collected shall be deposited in the State Treasury to the credit of the 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 State Board of Insurance. The State Board of Insurance may collect the tax assessed under this section 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.*

SECTION 9. Section 1, Article 22.03, Insurance Code, is amended to read as follows:

Sec. 1. As a condition precedent to the granting of a charter of any such company, the incorporators shall file with the State Board of Insurance the following:

1. An application for charter on such form and including therein such information as may be prescribed by the Board;
2. The articles of incorporation as provided in this Code;
3. An affidavit made by two (2) or more of its incorporators that all of the stock has been subscribed in good faith and fully paid for, as required by law, in the amount of not less than Fifteen Thousand Dollars (\$15,000.00) capital and that such company is possessed of at least Seven Thousand Five Hundred Dollars (\$7,500.00) surplus, as required by law, in addition to its capital, which affidavit shall state that the facts set forth in the application and the articles of incorporation are true and correct and that the capital and surplus is the bona fide property of such company. The State Board of Insurance may, in its discretion, at the expense of the incorporators, require other and additional satisfactory evidence of the matters required to be set forth in said affidavit before it shall be required to file the articles of incorporation, application for charter or follow the procedure hereinafter set forth;
4. A charter fee *as prescribed by law* ~~of Twenty-five Dollars (\$25.00)~~.

SECTION 10. Section (a), Article 23.08, Insurance Code, is amended to read as follows:

(a) The State Board of Insurance shall charge a fee *determined by the Board in an amount not to exceed \$400* ~~of \$50~~ for filing the annual statement of each corporation

operating under this chapter; an application fee *determined by the Board in an amount not to exceed \$3,000* [~~of \$100~~] 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 Board in an amount not to exceed \$100* [~~of \$25~~] for the issuance of each *additional certificate of authority and amendment of a certificate of authority* to the corporation. *The Board shall, within the limits fixed by this subsection, prescribe the fees to be charged under this subsection.* The fees collected by the Board under this subsection shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund, and Article 1.31A of this code applies to fees collected under this subsection.

SECTION 11. 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 from and after its passage, and it is so enacted.

Passed by the House on April 22, 1987, by a non-record vote. Passed by the Senate on May 15, 1987, by a viva-voce vote.

Approved May 28, 1987.

Effective August 31, 1987, 90 days after date of adjournment.